

Police Station Advice & Assistance Fixed Fee Scheme Questions and Answers For Service Providers working under the Unified Contract (Crime) from 14 July 2008

This Q&A is the third version dated 14 July 2008

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1. CDS6 Guidance and Police Station / Duty Solicitor Scheme Codes

In October 2007 the LSC published new CDS6 Guidance that contained new Police Station and Duty Solicitor Scheme Codes.

The guidance can be found on the LSC website at:

<http://www.legalservices.gov.uk/docs/forms/CDS6Guidance.pdf>

The Police Station codes are required to pay the correct Police Station Advice and Assistance Fixed Fee.

The LSC are aware that new codes are required for work carried out at locations that are not police stations and which do not have a separate code.

We are also aware that there are a small number of police station codes that have been linked to incorrect duty solicitor schemes in the guidance.

NEW AND CORRECTED CODES

Scheme-specific “non-police station site” codes have been produced and the errors in linking police stations to duty solicitor schemes have been corrected.

These codes should be used where the attendance takes place at a location for which there is not a designated code, either because the location is not a police station (e.g. attendance at railway station or hospital) or because the location is a new police station and a specific code is yet to be allocated.

2. Police Station Advice and Assistance Fixed Fees

Where can I find the Police Station Advice and Assistance Fixed Fees?

The Police Station Advice and Assistance Fixed Fees are set out in the Annex to the Unified Contract (Crime). The fixed fees vary by Duty Solicitor Scheme.

Which fixed fee should I claim?

The relevant fixed fee is the fee for the Duty Solicitor Scheme in which the first attendance takes place – regardless of whether the Matter originated or is subsequently continued at a Police Station in a different Duty Solicitor Scheme.

What fixed fee is claimable if a solicitor is required to attend a client at an Army barracks abroad?

The fixed fee claimable would be for the scheme from which the request for advice was made. The request for advice will usually originate from an English or Welsh barracks (Colchester, Aldershot etc.).

What does the fixed fee cover?

The Police Station Advice and Assistance fixed fee covers all **Police Station Attendance (pre-charge)** work **provided to one Client in a single Matter**.

Where the same Matter also includes:

- Freestanding advice and assistance
- Police Station Telephone Advice

One Police Station Advice and Assistance fixed fee will be paid for this work.

How do I know whether more than one Matter has arisen?

Work carried out for separate Clients should be treated as separate Matters.

Work for the same Client may be treated as a separate Matter if it involves the provision of advice and assistance on **a legal issue which amounts to a genuinely separate problem**.

How do I identify whether a legal issue which amounts to a genuinely separate problem has arisen?

Whether a genuinely separate problem has arisen will depend on the facts of each investigation. The following guidance is provided in the General Criminal Contract.

- The fact that you may be giving initial advice to the Client about potentially different remedies arising from the same set of originating circumstances does not in itself mean they are separate Matters.

- The fact that circumstances have changed or developments have occurred as the case has progressed will not mean that a separate Matter arises if the advice continues to be provided on the same overall legal issue.

Where separate Matters are claimed you must record the reasons on file and be able to justify your decision on Assessment or audit.

Circumstances that are likely to be treated as a **single Matter**:

- Where the two Matters are genuinely different problems requiring separate advice at the same time **on one occasion only**, then they should be treated as the same Matter, despite the fact that they would normally be treated as separate Matters.
- Where two or more Matters **arise from the same set of circumstances**, the chances of them being separate Matters diminish.
- Charges laid at the same time which are **likely to be dealt with under one Representation Order, or are likely to be heard together, or are likely to form part of the same Case**, should be dealt with as one Matter.
- Advice given on related issues which could be considered to be a **“series of offences”** should be dealt with as a **single Matter**, rather than separate Matters.

3. Transferring Solicitor

What happens if the Client wants to change solicitor during the course of the investigation? Who gets paid?

Where a Client has received Police Station Advice and Assistance from one firm of solicitors in a Matter no claim can be made in respect of the same Matter from another firm of solicitors except where:

- There is a **gap in time and circumstances have changed materially** between the first and second or subsequent occasions when the Police Station Advice and Assistance was sought.
- The Client has **reasonable cause to transfer**.
- The first firm of solicitors confirm that they will be **making no claim** for Police Station Advice and Assistance.

The solicitor must make **reasonable enquiries of the Client** to ascertain whether they have received previous Police Station Advice and Assistance in the same Matter in the previous six months.

What constitutes “reasonable cause to transfer”?

A Client who has received Police Station Advice and Assistance from a firm of solicitors and **does not like the advice given and wants a second opinion** does not have reasonable cause to transfer.

There will be reasonable cause to transfer where the first firm of solicitors cannot continue to act for the Client e.g. **due to a conflict of interests**.

Where a client receives first advice from the duty solicitor rather than his chosen representative either because of **administrative error** on the part of DSCC / LSC or because the duty solicitor and own solicitor received **simultaneous instructions from different parties** this will constitute “reasonable cause to transfer”.

The duty solicitor will be able to claim for the work already carried out on the case (if only telephone advice has been provided before the case is transferred the Telephone Advice fixed fee should be claimed, if an attendance has taken place the Police Station Advice and Assistance fixed fee can be claimed).

Can Duty Solicitor Matters be handed back to the DSCC before work on the Matter has concluded for redeployment to another duty solicitor? If so, will both duty solicitors be able to claim for the work carried out?

Duty Solicitor Matters, once accepted should only be handed back to the DSCC for redeployment to another Duty Solicitor in the following circumstances:

- (a) You are reasonably unable to continue to act personally and there is no other suitable person in your firm able to act and you are unable to instruct a suitable agent. Examples of circumstances where it would be reasonable not to continue to act personally include:
 - i. Personal illness;
 - ii. Pre-arranged annual leave / holiday
 - iii. Unavailability due to other professional commitments to publicly funded Clients; or
- (b) The Client removes / rescinds instructions from your firm; or
- (c) Your firm is unable to act because you have legitimate concerns about a breach of your professional code of conduct; or
- (d) You confirm that you will not claim a Police Station Advice and Assistance Fixed Fee or any other remuneration for the Matter.

Where a Duty Solicitor Matter is legitimately handed back to the DSCC (i.e. one of the above reasons applies) both the first and second Duty Solicitors that provide advice and assistance to the same Client in the same Matter will be able to claim for work carried out – e.g. if both Duty Solicitors carry out a Police Station Attendance both will be able to claim the Police Station Advice and Assistance Fixed Fee. However, if the first Duty Solicitor has only provided telephone advice before handing the Matter back he can only claim the Telephone Advice Fixed Fee.

4. How To Claim The Fixed Fee

Can I just claim the relevant fixed fee on the CDS6 claim form rather than setting out the actual profit, travel and waiting costs?

No. The Contract still requires that you complete the CDS6 form as previously, i.e. claiming profit costs, travel and waiting using the rates set out in the Contract.

The LSC will substitute the relevant Police Station Advice and Assistance Fixed Fee.

Reporting the costs of the case will allow the LSC to monitor the sensitivity of the fixed fees and also provide information on waiting times by police station, allowing us to identify and evidence problems that we can then work with CJS partners to address.

Why do I have to provide both a police station identifier and a scheme identifier?

The police station identifier will trigger the relevant fixed fee. The scheme identifier will identify where work is being carried out and allow the LSC to monitor the interaction between schemes and police stations.

The scheme identifier will also allow the LSC to identify and evidence instances of Clients being routinely moved to locations outside the scheme in which they were arrested and to monitor volumes of work generated by individual schemes.

Solicitors are only required to record a scheme identifier for Duty Solicitor Matters.

The police station and scheme identifiers can be found in the CDS6 Guidance available on the LSC website:

<http://www.legalservices.gov.uk/docs/forms/CDS6Guidance.pdf>

5. Exceptional Cases

How are Exceptional Cases assessed?

Cases that would be receive a Police Station Advice and Assistance Fixed Fee may qualify as Exceptional Cases if the costs of the case (profit costs, travel and waiting) when calculated using the hourly rates set out in the General Criminal Contract exceed a threshold set at three times the value of the relevant fixed fee.

Cases that qualify as exceptional are paid the Police Station Advice and Assistance Fixed Fee and hourly rates for work carried out beyond the threshold.

Example:

Fixed Fee: £200

Threshold: £600 (three times fixed fee)

Costs (profit costs, travel and waiting): £1,500

Exceptional Case claim: £200 (fixed fee plus £900 at hourly rates)

Costs must be reported on the CDS6 exclusive of VAT (using the rates set out in the General Criminal Contract).

Note:

The value of the fixed fee and the value of the exceptional threshold do not include VAT.

Is there a time limit for claiming Exceptional Cases?

In order to receive additional payment for Exceptional Cases you must submit the file and an EC-1 claim form for assessment. The sooner the file and claim form are submitted the sooner payment can be made.

If you need to retain the file, e.g. for court, you will be able to decide whether to submit the file before the case goes to court or once the whole case is concluded. If you submit the file before the court date and need it returned quickly you can advise us of this on the claim form.

Alternatively you can photocopy the full file and send that for assessment.

Regardless of when the Exceptional Case claim is submitted you will be paid the Police Station Advice and Assistance Fixed Fee because you have reported it on the CDS6.

6. Attending the Police Station

When can I attend the Police Station and make a claim for a Police Station Advice and Assistance Fixed Fee?

You can only attend the Police Station and make a claim for Police Station Advice and Assistance Fixed Fee when the sufficient benefit test is satisfied:

The circumstances in which the test will be satisfied include:

- (a) to provide advice prior to and during interview
- (b) to advise at an identification procedure (including a video identification procedure when the client is not present)
- (c) when appropriate, to advise on the implications of the caution when the Client is charged with an offence
- (d) to advise when the advice may materially affect the outcome of the investigation and goes significantly beyond initial advice
- (e) to advise a client who complains of serious maltreatment by the police

If none of the above is satisfied further justification for attending should be provided on the file.

What can I claim if the circumstances above are not satisfied but the advice is given in person rather than over the telephone because I was present at the police station when the advice was requested by the Client?

A claim should not be made for an attendance where the advice could have been provided reasonably by way of telephone advice. If it is considered that the advice should have been provided by telephone then the claim will be limited to the police station telephone advice fixed fee.

If the solicitor was already at the same police station the claim should be for Police Station Telephone Advice rather than Police Station Attendance.

7. Disbursements and Hotel Expenses

Are disbursements for professional services (e.g. interpreters, medical reports) and travelling expenses included in the value of the Police Station Advice and Assistance Fixed Fee?

No. Disbursements will be payable in addition to the Police Station Advice and Assistance Fixed Fee where they have been actually and reasonably incurred.

Disbursements should form part of the same claim but will be paid separately and will not be taken into account when assessing whether the claim exceeds the Exceptional Case threshold.

Can Duty Solicitors still claim hotel expenses?

Yes, but this is now subject to obtaining prior authority from the Director in accordance with clause A22.20 of the Unified Contract (Crime) Specification. In making his/her decision, the Director will have regard to the need to ensure continued coverage of the Duty Solicitor Rotas. In circumstances where the Director reasonably believes that coverage is not at risk (e.g. where there are significantly more firms on the Rota than would be required to maintain coverage), the Director will not grant prior authority.

If prior authority is granted, the expenses can include meals but not alcohol or other incidental expenses such as newspapers.

Hotel expenses should be claimed as a disbursement and as a separate Matter using claim code INVG.

8. Freestanding Advice and Assistance

Can Freestanding Advice and Assistance still be claimed under a CDS1/CDS2?

Freestanding Advice and Assistance can be claimed separately at hourly rates where the Matter does not include and Police Station Advice and Assistance.

Where the Matter consists of both Freestanding Advice and Assistance and Police Station Advice and Assistance the Police Station Advice and Assistance fixed fee covers both units of work.

Solicitors should record the actual costs of both units of work on the CDS6 claim form and the total value of the claim will determine whether the Matter qualifies as an exceptional case.

Which claim code should be used?

Where the claim is only for Freestanding Advice and Assistance the claim code is INVA.

Where the claim is for both Freestanding Advice and Assistance and Police Station Advice and Assistance the claim code is INVC, INVD (armed forces) or INVJ (immigration).

What rates should Freestanding Advice and Assistance be claimed at?

	National	London
Preparation	46.90	49.70
Travel and waiting	26.30	26.30
Routine letters and routine telephone calls	3.70 per item	3.85 per item

9. Police Station Telephone Advice

Can Police Station Telephone Advice still be claimed?

The Police Station Telephone Advice Fixed Fee can still be claimed where the Matter does not include any Police Station Advice and Assistance.

Where the Matter requires both Police Station Attendance and Police Station Telephone Advice one Police Station Advice and Assistance fixed fee will be paid for both units of work.

Solicitors should record the actual costs of both units of work on the CDS6 claim form and the total value of the claim will determine whether the Matter qualifies as an exceptional case.

Which claim code should be used?

Where the claim is only for Police Station Telephone Advice the claim code is INVB.

Where the claim is for both Police Station Telephone Advice and Police Station Advice and Assistance the claim code is INVC, INVD (armed forces) or INVJ (immigration).

How much can be claimed for Police Station Telephone Advice?

	National	London
Police Station Telephone Advice Fixed Fee	30.25 per claim	31.45 per claim

10. Police Station Attendance (pre-charge)

How is Police Station Attendance work paid?

The costs of all Police Station Attendance work in a Matter should be submitted as a single claim and the relevant Police Station Advice and Assistance Fixed Fee will be paid.

Which claim code should be used?

INVC, INVD (armed forces) or INVJ (immigration).

Which rates should Police Station Attendance be claimed at?

Profit Costs	National	London
Duty Solicitor (unsocial hours)	69.05	69.05
Duty Solicitor (other hours)	52.00	56.20
Own Solicitor	52.00	56.20
Duty Solicitor - serious offences (unsocial hours)	80.00	80.00
Duty Solicitor – serious offences (other hours)	60.00	65.00
Travelling and waiting		
Duty Solicitor (unsocial hours)	69.05	69.05
Duty Solicitor (other hours)	52.00	56.20
Own Solicitor	28.80	28.80

11. Advocacy Assistance

Can Advocacy Assistance for Warrants of Further Detention still be claimed?

Yes. Advocacy Assistance is not covered by the Police Station Advice and Assistance Fixed Fee.

Advocacy Assistance is available for the following work, either:

Advocacy Assistance in a magistrates' court, High Court, before a judicial authority or a senior judge in connection with an application for a warrant for further detention, or for an extension of such a warrant, under sections 43 or 44 of the Police and Criminal Evidence Act 1984 or paragraphs 29 or 36 of Schedule 8 of the Terrorism Act 2000.

or:

Advocacy Assistance before a judicial officer on an application to extend detention in military custody under the Armed Forces Discipline Act 2000.

If Advocacy Assistance is provided and the Client has already received Police Station Advice and Assistance on the same Matter or Case, then the same UFN shall be assigned and the work may be claimed at the appropriate hourly rate separately to any claim for Police Station Advice and Assistance.

Which claim code should be used?

INVE (warrant of further detention) or INVF (warrant of further detention armed forces).

What rates should Advocacy Assistance be claimed at?

Advocacy Assistance on a Warrant of Further Detention or at an Armed Forces Custody Hearing

	National	London
Preparation		
- Standard Rate	46.90	49.70
- Enhanced Rate	62.50	66.30
Advocacy		
- Standard Rate	59.00	59.00
- Enhanced Rate	78.65	78.65
Travelling and waiting		
- Standard Rate	26.30	26.30
- Enhanced Rate	35.05	35.05
Routine letters written and telephone calls	per item	per item
- Standard Rate	3.70	3.85
- Enhanced Rate	4.90	5.10

Note

The enhanced rate applies to Duty Solicitors providing Advocacy Assistance in unsocial hours only. The standard rate applies to Advocacy Assistance provided by Duty Solicitors outside unsocial hours and Own Solicitors at any time.

Advocacy Assistance (warrants of further detention before the High Court or senior judge)

	National	London
Routine letter out	7.50 per item	7.50 per item
Routine telephone calls	4.15 per item	4.15 per item
All other preparation work including any work which was reasonably done arising out of or incidental to the proceedings, interviews with client, witnesses, and other parties; obtaining evidence; preparation and consideration of, and dealing with, documents, negotiations and notices; dealing with letters written and received and telephone calls which are not routine.	75.00 per hour	79.50 per hour
Attending counsel in conference or at trial or hearing of any summons or application at court, or other appointment.	37.00 per hour	37.00 per hour
Attending without counsel at the trial or hearing of any cause or the hearing of any summons or application at court or other appointment	75.00 per hour	75.00 per hour
Travelling and waiting	33.25 per hour	33.25 per hour

12. Police Station Attendance (post-charge)

Can Police Station Advice and Assistance provided after the Client has been charged still be claimed?

Yes. Post charge Police Station Attendance is where a client is:

- being represented in respect of a Matter or case; and
- the Matter or case is in the proceedings class of work; and
- the Client is arrested for breach of bail conditions or on a warrant following failure to appear at the magistrates' or Crown Court; or
- a post-charge interview or identification procedure is arranged; or
- the client is recharged following discontinuance or dismissal of the case; or
- the Client is required to attend the Police Station for a reprimand, caution or warning to be administered.

This work should be claimed separately at the rates set out above. The same UFN as the substantive Matter or case should be used.

Only actual travelling, waiting and attendance at the police station may be claimed. Any office-based work associated with the identification procedure or recharge must be claimed as part of the substantive claim that will be made in the Proceedings Class of Work.

If post-charge work is claimed where the Client is already represented on the same Matter or Case in the Criminal Proceedings Class of Work then the same UFN shall be assigned as the substantive proceedings.

Note:

Where the Client is arrested for breach of bail conditions or on a warrant following failure to appear at the magistrates' court or Crown Court the claim should be limited to Police Station Telephone Advice unless the Sufficient Benefit Test is satisfied i.e. attendance is required:

- (a) to provide advice prior to and during interview
- (b) to advise at an identification procedure (including a video identification procedure when the client is not present)
- (c) when appropriate, to advise on the implications of the caution when the Client is charged with an offence
- (d) to advise when the advice may materially affect the outcome of the investigation and goes significantly beyond initial advice
- (e) to advise a client who complains of serious maltreatment by the police

Which claim code should be used?

INVH (post-charge attendance – breach of bail / arrest on a warrant)

INVI (post-charge identification procedure / recharge / referral back for caution, reprimand, warning)

INVB (where only Telephone Advice is claimable)

What rates should be used to claim for Police Station Attendance (post-charge)

Profit Costs	National	London
Duty Solicitor (unsocial hours)	69.05	69.05
Duty Solicitor (other hours)	52.00	56.20
Own Solicitor	52.00	56.20
Duty Solicitor - serious offences (unsocial hours)	80.00	80.00
Duty Solicitor – serious offences (other hours)	60.00	65.00
Travelling and waiting		
Duty Solicitor (unsocial hours)	69.05	69.05
Duty Solicitor (other hours)	52.00	56.20
Own Solicitor	28.80	28.80

13. Duty Solicitor Standby

Are Duty Solicitor Standby payments still claimable?

No. Duty Solicitor Standby payments can no longer be claimed as a separate payment.

The total amount spent on Duty Solicitor Standby in 2006/07 was used to raise the value of the Police Station Advice and Assistance fixed fees.

The LSC determined how much Standby was paid in each CJS Area in 06/07 and used that amount to increase the fees within the area.

For example: the fees within London CJS Area were increased by £18; fees in Cumbria were increased by £17; and fees in Surrey were increased by £13.

14. Claiming Police Station Fixed Fees

Scenario	Fees payable	Notes	Unified Contract Reference
One client arrested on one Matter	One fee	One fee will be paid per client per Matter.	Part B 1.1.21 (1)
Two clients arrested at the same time and advised by firm.	Two fees	One fee will per paid per client per Matter. Note that both must be advised at the police station to trigger the fixed fee. If one is advised by telephone only the telephone advice fixed fee will be paid for that client.	Part A19
Conflicts of Interest: e.g. Two clients arrested at the same time, but there is a conflict so the firm can only act for one.	Two fees	As above, one fee will be paid per client per Matter. Note that both must be advised at the police station to trigger the fixed fee. If one is advised by telephone only the telephone advice fixed fee will be paid for that client.	Part A19
Client arrested for multiple offences - irrespective of whether they are linked or not. e.g. arrested for burglary committed on 20 January 2008 and rape committed on 10 August 1983.	The starting point is that this will be one fee. In order for more than one fee to be paid there must be separate Matters.	Separate Matters arise where the Client has genuinely separate legal problems requiring separate advice. Note: Where two or more Matters require advice on one occasion only they should be treated as the same Matter. Where two or more Matters arise from the same set of circumstances , the chances of them being separate Matters diminish.	Part A19 contains guidance on Separate Matters and Boundaries between Classes of Work.

		<p>Charges laid at the same time which are likely to be dealt with under one Representation Order or are likely to be heard together, or are likely to form part of the same Case, should dealt with as one Matter.</p> <p>Advice given on related issues which could be considered a “series of offences” should be dealt with as a single Matter.</p>	
Two Matters in total. No Further Action on one Matter, the other Matter charged.	One fee	Advice provided on separate Matters on one occasion only should be treated as a single Matter.	Part A19
Two matters in total. One of those Matters charged the other bailed to return	Two fees	Two Matters advised on and advice continued on one of the Matters after first occasion. Two fees will be paid.	Part A19
Three matters in total. One of those matters charged and Two bailed to return but to different dates	Three fees	As above.	Part A19
Any number of Matters. All Matters charged to same date	One fee	Charges laid at the same time which are likely to be dealt with under one Representation Order or are likely to be heard together, or are likely to form part of the same Case , should dealt with as one Matter	Part A19
Any number of matters. All matters charged but to different courts/dates	One fee for each Matter charged to different dates /	As above	Part A19

	courts		
Arrested on one offence; at police station arrested on further offences(s)	One fee, unless they become separate Matters	See above for guidance on separate Matters.	Part A19 contains guidance on Separate Matters and Boundaries between Classes of Work.
Post-charge ID procedure	Paid at hourly rates	Post-charge work and Advocacy Assistance on Warrants for Further Detention are paid at hourly rates.	Part A 2.4.3 & 4

15. Scenarios

Attendance at a Bailback

Client was arrested on suspicion of being drunk in charge of motor vehicle, and was interviewed during initial period of detention. The client did not request legal advice during the initial period of detention. The client was then bailed and requested advice on the return date at police station when he was to be charged.

Can the solicitor attend the police station for the bailback and claim a fixed fee?

An attendance fee would have been claimable when the client was initially arrested because the fact that he was interviewed means that the sufficient benefit test for attending is automatically satisfied.

Whether an attendance fee is claimable for the bailback will again depend on the sufficient benefit test being satisfied.

The circumstances in which the test will be satisfied include:

- (a) to provide advice prior to and during interview
- (b) to advise at an ID procedure
- (c) when appropriate, to advise on the implications of the caution when the Client is charged with an offence
- (d) to advise when the advice may materially affect the outcome of the investigation and goes significantly beyond initial advice
- (e) to advise a client who complains of serious maltreatment by the police

If none of the above is satisfied further justification for attending should be provided on the file.

In this case it is possible that (c) applies and the solicitor is justified in attending in order to advise the client when he is charged.

However, the offence the client is being charged with may be one that is limited to telephone advice only. The offences limited to telephone advice only are:

- (a) Client detained in relation to a non-imprisonable offence
- (b) Client arrested on a bench warrant for failing to appear and being held for production before the court (except where the solicitor has clear documentary evidence that would result in the client being released from custody)
- (c) Client arrested on suspicion of:
 - Driving with excess alcohol, who is taken to the police station to give a specimen (s5 Road Traffic Act 1998)
 - Failure to provide a specimen (ss6-7A Road Traffic Act 1998)
 - Driving whilst unfit/drunk in charge of a motor vehicle (s4 Road Traffic Act 1988)
- (d) Client detained in relation to breach of police or court bail conditions

If the offence under investigation is one of the above the matter will be limited to telephone advice and an attendance will only be permitted if the sufficient benefit test (above) is satisfied and one of the exceptions set out below applies:

- (a) An interview or an identification procedure is going to take place;
- (b) The Client is eligible for assistance under the PACE Codes of Practice;
- (c) The Client is unable to communicate over the telephone
- (d) The Client complains of serious maltreatment by the police
- (e) The investigation includes another alleged offence which is not limited to telephone advice
- (f) The solicitor is already at the same police station, in which case the solicitor may attend the Client but may not claim more than the telephone advice fixed fee.

Separate Matters

1. Solicitor attends client at police station where he's interviewed about separate offences, e.g. burglary and assault: charged with one, bailed back in relation to the other. Should one fee or two be claimed?

Where the client is arrested for multiple offences the starting point is that one fee will be paid. In order for more than one fee to be paid the offences must constitute separate Matters.

Separate Matters arise where the Client has genuinely separate legal problems requiring separate advice. Part B A 19 of the Contract provides guidance on identifying whether offences are separate Matters.

- Where two or more Matters require advice on one occasion only they should be treated as the same Matter
- Where two or more Matters arise from the same set of circumstances the chances of them being separate Matters diminish
- Charges laid at the same time which are likely to be dealt with under one representation order or are likely to be heard together, or are likely to form part of the same Case, should be dealt with as one Matter.
- Advice given on related issues which could be considered a “series of offences” should be dealt with as a single Matter.

In this case the fact that the client is charged in relation to one offence and bailed for the other because it is still being investigated would suggest that these are separate Matters i.e. separate problems requiring separate advice.

2. Client arrested for handling stolen credit card and is bailed to return. Upon return the client is arrested for a series of obtaining by deception offences.

The information provided suggests that this is a “series of offences” and should be treated as one Matter.

However, if the offences are separated and charged to different dates / courts or some charged and some NFA'd there will be separate Matters and one fee claimable for each:

E.g.

Handling stolen credit card: NFA

Deception offences: all charged to same court on same date

Two Matters have arisen and two fees should be claimed.

3. Client arrested for robbery, whilst at the police station is arrested for three other street robberies all in no way connected factually to the others, a burglary (also not factually linked) and possession of drugs.

He is charged upon the day of initial arrest with the original robbery, bailed to two other days (one to deal with the robberies and burglary and the other for drugs).

The outcome at the first bail return date is that he is charged with two further robberies but no further action is taken in relation to the burglary and one robbery.

He answers bail in relation to the drugs matter and is charged.

He has in the meantime missed court in relation to the first robbery case and is arrested on warrant so is also arrested in relation to the warrant.

There are four offences here:

- i) Robberies
- ii) Burglary
- iii) Possession of drugs
- iv) Arrest on a warrant

On the facts provided it would appear that all are separate problems requiring separate advice.

Robberies

Although not factually connected these may still be a "series of offences". If this is the case it is a single Matter and one fee is claimable.

However, the fact that one robbery has been NFA'd and others charged suggests that they should be treated separately.

Advice on the robbery that was NFA'd should be treated as a separate Matter.

It appears the remaining robberies were charged to at least two different dates / courts and were to be dealt with under a separate Representation Orders.

One Matter per charge / Representation Order application.

Burglary

This appears to be a separate Matter. It is not connected factually to either the robberies or the drug possession; it is unlikely that it could be considered part of

“series of offences”; and it was not charged to the same date / court as any of the other offences.

Advice on the burglary should be treated as a separate Matter.

Possession of drugs

As with the burglary this appears to be a separate Matter. It is not connected factually to either the robberies or the burglary; it is unlikely that it could be considered part of “series of offences”; and it was not charged to the same date / court as any of the other offences.

Advice on the possession of drugs should be treated as a separate Matter.

Arrest on a warrant (failing to appear)

The client has been charged but did not appear before the court.

This work falls within the definition of post-charge work and should be claimed separately from the fixed fee and at hourly rates.

Arrest on a warrant is limited to telephone advice under the Contract but there are exceptions whereby attendance is justified.

If the client is already represented in the substantive proceedings in the Matter then the same UFN as the substantive proceedings shall be assigned.

4. Client arrested for rape. Whilst in the station is arrested for having indecent images on his computer.

He is bailed in relation to those matters and upon his return is charged in relation to the indecent images, further bailed in relation to the rape but is arrested for driving whilst disqualified and also charged with the driving matter that day.

A further bail date is set in relation to the rape and eventually no further action is taken.

There are three offences here:

- i) Rape
- ii) Indecent images
- iii) Driving whilst disqualified

On the facts provided it would appear that all are separate problems requiring separate advice.

Rape / Indecent images

These offences are unlikely to form a “series of offences”, they have not arisen from the same set of circumstances and they are not going to be charged together / dealt with under the same representation Order.

They should be treated as separate Matters.

Driving whilst disqualified

As above, there appears to be nothing that would link this to the other offences so that they might be considered a “series of offences”, it has not arisen from the same set of circumstances, and it is not charged with the other offences under the same Representation Order.

It should be treated as a separate Matter.

5. Client arrested for burglary and once detained arrested for 5 other robberies. No further action taken in relation to the first matter but has been bailed to another date for I.D. enquiries etc.

Two Matters (provided the 5 robberies are a “series of offences”). Burglary is dealt with at first attendance and the Matter concludes there.

The investigation into the robberies continues and the number of Matters will depend on the outcome – although it appears from the facts provided that they will be treated as a single Matter i.e. “series of offences” or charged to the same court / date or dealt with under one Representation Order.

6. Client arrested for criminal damage and theft. Solicitor attends the police station and the client is interviewed regarding both offences (not factually connected). Following interview the client is charged with criminal damage but no further action is taken in relation to the theft.

Whilst the offences may be separate problems requiring separate advice, and therefore constitute two Matters, the fact that the advice was given at the same time and on one occasion only means that they should be treated as the same Matter, notwithstanding that they would normally be treated as separate Matters.

Transferring Solicitor

Firm have a client who they attended on interview in Weymouth. Client was bailed, but the return (probably involving a re-interview) is to take place in Dagenham. Should the firm continue with the matter in these circumstances?

In circumstances where the client is transferred a considerable distance from the original place of arrest the contractual position is that, in the majority of circumstances, it is in the best interests of the client for the solicitor originally instructed to retain the case for the duration of the investigation. This provides continuity of service to the client and prevents unnecessary and costly repetition of work.

For these reasons the contractual starting point for cases accepted by the Duty Solicitor is that they must be retained once accepted and the Duty Solicitor must continue to act for that client until the end of the investigation either personally or by using other suitable representatives within the firm or instructing an agent.

However, there will be circumstances in which it is either not possible nor in the best interests of the client for the originally instructed solicitor to continue providing advice for the duration of the investigation.

The General Criminal Contract therefore sets out a number of circumstances in which the Duty Solicitor originally instructed may hand the case back to the DSCC for redeployment to another Duty Solicitor. The circumstances are:

- The Duty Solicitor is unable to continue to act personally (e.g. due to personal illness, pre-arranged leave or holiday, or unavailability due to other professional commitments to publicly funded clients) and no other suitable person from the firm is able to act and no suitable agent can be instructed.
- The Client reasonably removes / rescinds instructions from the Duty Solicitor's firm.
- The Duty Solicitor's firm is unable to act because of legitimate concerns about a breach of the Solicitors' Professional Code of Conduct.

Therefore, in this case the contract requires the solicitor to endeavour to retain the case, either personally or through a suitable local agent. If the solicitor is unable to instruct such an agent (or if any of the other circumstances detailed above apply) then a local Duty Solicitor will be deployed to attend the client and both solicitors will be able to claim a fixed fee for the work carried out.

Whilst this system reduces the flexibility to transfer clients that Duty Solicitors enjoyed under the system of hourly rates it is believed that the current contractual requirements benefit the client by minimising the number of solicitors that will work on his or her case; ensures best value for the legal aid fund by reducing the cost of unnecessary duplication of work; and provides sufficient safeguards to deal with the exceptional circumstances in which the originally instructed solicitor genuinely cannot continue to act for the client.

Other Issues

When does the Duty Solicitor Serious Offence Rate apply and who can claim it?

Answer

Duty Solicitor serious offence rates may be included in the calculation for assessing whether a case is exceptional – and paid where the case exceeds the Exceptional Cases Threshold – provided:

- (a) The attendance is to advise a client under arrest for one or more of the following serious offences*
- (b) Duty Solicitor rates would normally be payable
- (c) The attendance is personally undertaken by a Duty Solicitor employed by the firm accepting the case, or by a Duty Solicitor who is a partner in the firm accepting the case.

The rates only apply to claims relating to:

- (a) Attendances undertaken throughout a Duty Period; and
- (b) Attendances that take place after acceptance of a Matter up until the point when the Client is released from the initial continuous period of custody.

*Serious offences

- (i) treason (common law);
- (ii) murder (common law);
- (iii) manslaughter (Homicide Act 1957 and common law);
- (iv) causing death by dangerous driving (Section 1 Road Traffic Act 1988);
- (v) rape (Section 1 Sexual Offences Act 2003);
- (vi) assault by penetration (Section 2 Sexual Offences Act 2003);
- (vii) rape of a child under 13 (Section 5 Sexual Offences Act 2003);
- (viii) assault of a child under 13 by penetration (Section 6 Sexual Offences Act);
- (ix) robbery (Section 8 Theft Act 1968);
- (x) assault with intent to rob (common law);

- (xi) arson (Sections 1(1), 1(2) or 1(3) Criminal Damage Act 1971);
- (xii) perverting the course of public justice (common law);
- (xiii) conspiracy to defraud (common law);
- (xiv) kidnapping (common law);
- (xv) wounding or grievous bodily harm (Sections 18 and 20 Offences against the Person Act 1861);
- (xvi) conspiracy to commit any of the above offences (Section 1 Criminal Law Act 1977);
- (xvii) soliciting or inciting to commit any of the above offences (common law);
- (xviii) attempting to commit any of the above offences (Sections 1 or 1A Criminal Attempts Act 1981);
- (xix) any offence if the client is accused of possessing a firearm, shotgun or imitation firearm;
- (xx) any offence if the client is detained under section 41 of the Terrorism Act 2000;