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06 February 2008

Dear [Panel Member]

Very High Cost Case (Crime) Panel Tender

I am writing to inform you of the steps that the Legal Services Commission and the Ministry of Justice will be taking in order to proceed with the tender to establish a Panel of solicitors and advocates to represent defendants in major criminal cases.

Following the open and competitive tender process run by the Commission in 2007 contracts were offered to solicitors and barristers who had been successful in the process. Nearly all of the Solicitor Panel Members that were offered a contract returned their signed copy, including a significant number of Solicitor Advocates. However, despite having been offered contracts at the prices bid, the majority of barristers offered contracts did not sign them. It is clear that on current numbers, the number of Panel Advocates is insufficient to meet the likely demand for VHCC work over the next 18 months. Therefore, we are taking a number of steps in order to enable us to bring the Panel into effect and ensure that those solicitors and barristers who have bid for this work and wish to sign contracts can undertake these cases.

In particular, we appreciate that all solicitors who have returned signed contracts, entered into the tender process in good faith. We recognise the substantial cost and effort that applicants put into the process and we are keen to mirror their good faith. We are surprised that a large number of barristers who agreed with firms to bid for these contracts and were aware of the prices that they were bidding for have subsequently declined to sign contracts. We have received a number of reports about pressure on would-be Panel Advocates not to sign their contracts and even instances of signed contracts being withheld. The Commission will be taking appropriate steps in respect of the reply it has received. We believe that this approach should not endanger the contracts that solicitors have bid for and been offered.

As a result of this, and in order to ensure that we progress to implement the Panel we will be taking a number of steps. These are designed to ensure that the Panel is established and that no benefit accrues to individuals who choose not to join the Panel despite having bid to join it.

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The Ministry of Justice is consulting on a Funding Order that will ensure that, should Solicitor Panel Members have to instruct non-Panel advocates in a particular case, the amounts that will be paid by the Commission will be no greater than those paid to Panel Advocates. Where a Solicitor Panel Member has to instruct non-Panel advocates the contractual relationship will be between the Commission and the Solicitor Panel Member, and therefore payments, at the panel rates, by the Commission for advocacy services will be made to the solicitor rather than to the advocate directly. Given the very large number of barristers who bid for this work we are confident that, should it be necessary, solicitors will be able to instruct appropriate advocates on a case-by-case basis. Paying solicitors for these advocacy services and allowing them to obtain services from within such a market should provide solicitors with the additional flexibility to ensure appropriate arrangements

Second, in order to enable solicitors to instruct non-Panel advocates in this way, should this be necessary, the Commission will amend its requirements in respect of the exclusive Advocates Panel and permit Solicitor Panel Members to instruct non-Panel advocates as above: but only in the event that an appropriate Panel Advocate is not available. We are proposing to amend the contracts for both Solicitor Panel Members and Panel Advocates to make this clear and have taken the opportunity to make other minor changes to deal with other issues that were raised after previous consultation in respect of the contract. A summary of the amendments we propose are as set out in the attached Annex. We are also disapplying EC2 and DC6, which are no longer relevant.

The proposed contract amendments and draft Funding Order putting the above payment arrangement in place are currently subject to consultation with representative bodies, which will run until 4pm Tuesday 12 February 2008. Our intention is that, subject to that consultation and consideration of the views of the consultees, further offers of Panel membership will be sent out next week together with the amended contracts. For the avoidance of doubt, all successful advocates will be given a fresh opportunity and invited to sign the new contract, [by 12pm Wednesday 27 February 2008] irrespective of whether they signed previously. This would ensure direct payment from the LSC and provide "first call" in respect of VHCC cases, subject to experience requirements.

If you have already signed and returned a contract I do apologise for the inconvenience, but assure you that our objective is to ensure that the VHCC Panel is operative as soon as possible. If you have any queries in relation to this letter or the process please contact cartervhcc@legalservices.gov.uk or Catherine Conway on 0207 759 1009.

Yours etc



Richard Collins

Executive Director, Policy

Annex – summary of contract changes

PANEL MEMBER'S CONTRACT	
Recital	Fourth paragraph amended to clarify that Non-Panel Advocates can be instructed with the CCU's authority.
Definitions	Definition of "Non-Panel Advocate" added and "Advocate"; "Defence Team", "Panel Advocates", "Panel Members" and "VHCC Advocate List" clarified.
Clause 3.1 and 5.9	Amendment to clarify that Panel Members'/Panel Advocates' exclusive right to VHCC work is subject to an exception where there is insufficient capacity on the Panel and where the instruction of Non-Panel Advocates is permitted with the CCU's permission. Clause 5.9 has been added to allow alternative arrangements to be made where there the Panel has insufficient capacity to cover VHCC work.
Clause 5.4	Drafting amendment to alleviate reported confusion among providers and clarify that it is the Panel Members who have responsibility for allocating the Defence Teams. The scheme for contracting and conducting VHCCs will not change as a result of the amendment to clause 5.4; it is merely a point of clarification.
Clause 9.2.1 and 9.2.3	Drafting amendment for clarity and to align with the Advocate's Panel Contract.
Clause 11.1	Alteration of contract term due to the new start date of the Contract. Note that although the start date has been delayed, the contract will apply to all VHCCs where the Representation Order is issued on or after the 14 th January 2008.
Clause 11.6	Wording added to allow termination where there is insufficient capacity on the panel to cover VHCC work.
Clause 15.1.7, 15.1.8 and 15.6	Additional wording added to take account of the dis-application of tender criteria EC2 and DC6.
Clause 30.2A	This clause regarding amendments agreed by the consultative bodies was previously incorporated into an addendum to the Contract. We have now added this to the body of the agreement but the clause has not

	been altered.
Clause 32.1	Amended to state that Non-Panel Advocates can be instructed where the CCU has given permission and that the subcontracting arrangements will apply.
Clause 38.9	Amended to reflect the fact that if a Panel Member loses their contract, their listed Panel Advocates will no longer be on the Panel but will still be able to conduct work on VHCCs (as a Non-Panel Advocate where authorisation is granted by the CCU).
PANEL MEMBER'S ANNEXES	
Annex 4 – clause 1.3A	Additional wording added to resolve uncertainty about notification of the Defence Team to the CCU.
Annex 6 – clause 1.11	The standard requirement has been extended to Advocates.
Annex 8 – clause 1.12	Clause added to clarify that Non-Panel Advocates will not be paid directly by the LSC.
Annex 8 – clause 3.2	Non-Panel Advocate's fees added to the disbursement table.
Annex 9 – clause 1.5 and 1.6	Amendments to clarify the circumstances in which a Non-Panel Advocate can be instructed and responsibility for Non-Panel Advocate compliance.

PANEL ADVOCATE'S CONTRACT	
Recital	Fifth paragraph amended to clarify that Non-Panel Advocates can be instructed with the CCU's authority.
Definitions	Definition of "Non-Panel Advocate" added and "Panel Advocates" and "Panel Members" clarified.
Clause 3.1 and 4.6	Amendment to clarify that Panel Members'/Panel Advocates' exclusive right to VHCC work is subject to an exception where there is insufficient capacity on the Panel and where the instruction of Non-Panel Advocates is permitted with the CCU's permission. Clause 4.6 has been added to allow alternative arrangements to be made where there the Panel has insufficient capacity to cover VHCC work.
Clause 4.3	Drafting amendment to alleviate reported confusion among providers and clarify that it is the Panel Members who have responsibility for allocating the Defence Teams. The

	scheme for contracting and conducting VHCCs will not change as a result of the amendment to clause 4.3; it is merely a point of clarification.
Clause 9.1	Alteration of contract term due to the new start date of the Contract. Note that although the start date has been delayed, the contract will apply to all VHCCs where the Representation Order is issued on or after the 14 th January 2008.
Clause 9.6	Wording added to allow termination where there is insufficient capacity on the panel to cover VHCC work.
Clause 9.7	Deletion of the word "Panel" to allow transfer to Non-Panel Advocates.
Clause 12.2.6, 12.2.7 and 12.7	Additional wording added to take account of the dis-application of tender criteria EC2 and DC6.
Clause 27	Amended to state that Non-Panel Advocates can be instructed where the CCU has given permission and that the subcontracting arrangements will apply.
Clause 33.6	Amended to reflect the fact that if a Panel Member loses their contract, their listed Panel Advocates will no longer be on the Panel but will still be able to conduct work on VHCCs (as a Non-Panel Advocate where authorisation is granted by the CCU).
PANEL ADVOCATE'S ANNEXES	
Annex 2 – clause 1.3A	Additional wording added to resolve uncertainty about notification of the Defence Team to the CCU.
Annex 7 – clause 1.1	Additional wording added to clarify that Non-Panel Advocates can be instructed with the CCU's permission.