

ANNEX 18 (2)

EXTRACTS OF THE GENERAL CRIMINAL CONTRACT APPLICABLE TO VHCC WORK

Changes to definitions: the definitions in the General Criminal Contract's Standard Terms apply, subject to the following modifications	
Assessment	An assessment under this Contract of the amount which (subject to the provisions of this Contract) is due in respect of any claim (on an appeal or otherwise)
Case	VHCC
Claim	A claim for payment for VHCC Work
Client	Individual for whom the Defence Team is performing VHCC Work
Contract	Very High Cost Case (Crime) Contract for Panel Members
Contract Documents	Documents comprising the Very High Cost Case (Crime) Contract for Panel Members, as set out in clause []
Contract Work	VHCC Work
Contract Work Report Form	Audit Bundle
Contractor	Panel Member
Former Client	Individual for whom you have performed VHCC Work
Key Personnel	Key Members of the Defence Team
Matter	VHCC
Office	Office(s) set out in Annex [3] of the Very High Cost Case (Crime) Contract for Panel Members

Clauses from the General Criminal Contract's Standard Terms which apply to the Contract	
Interpretation section	1.2 to 1.23
Relationship	2.1 to 2.6 2.8
Your main rights and obligations	3.5 to 3.10 3.12 to 3.18 3.19 – delete the words “in any Category of Work” 3.20 to 3.22
Crime SQM holders and provisional crime SQM holders	4
Advertising and promotion	5
The SQM	6
SQM Certificates	7 In 7.3 delete reference to Devolved Powers.
Payment – general	12A.1 to 12A.9 12A.13 to 12A.15
Payment – Remainder Work	12C.1 12C.2 12C.4 – delete the reference to “unique file reference numbers”.
Confidential information	13 - delete the reference to ‘Schedules’ in 13.6.
Warranties	14
Indemnities	15
General	16.1 to 16.8 16.10 16.11 16.13 to 16.31 16.34 to 16.46
Constitutional and other changes and matters to be notified	18 – delete “... in any Class of Work or at all” in 18.1 (b).
Prohibited gifts	19

How the Contract can be ended	20.1 20.5 to 20.11 – delete 20.11 (c). 20.12 20.13
Consequences of termination	21.1 to 21.8 21.9 – amend to “Arrangements under Clause 21.7 above may require you to transfer the Clients’ files to such other Panel Members as the Clients may specify”. 21.10 – delete “... (for example your ability to perform a particular Class of Work) ...”.
Other Contract Sanctions	22.1 to 22.3 22.6 22.8 to 22.10 22.12 to 22.14
Internal review and review	23
Mediation and arbitration	24

Sections of the General Criminal Contract's Specification which apply to the Contract

Part A: Scope and Structure of Contract Work

Introduction	1.1.1 – delete “(including Advocacy Assistance) and Representation)” 1.2.1 (a) 1.2.2 (a) 1.2.3 to 1.2.4
Criminal Investigations	2.1 – delete “(including Advocacy Assistance)” 2.2.1 (a) to (c) 2.2.2 2.3 to 2.5

Part B: Rules and guidance on performing VHCC Work

General Rules	1.1.1 1.1.2 (a) 1.4.1 1.4.2 1.4.4 to 1.4.8 (a) 1.4.8 (d) to 1.4.9 1.4.10 – delete “If a Client is charged...under that UFN” 1.4.13 to 1.4.14
Advice and Assistance	2 – delete reference to Devolved Powers. 2.1 to 2.5
Financial Criteria	2.6.1 (a) 2.6.2 to 2.6.7
Refusal – good cause	2.7
Limits on Work	2.8
Upper Limit	2.9 – delete reference to Advocacy Assistance and reference to Devolved Powers.
Separate matters	2.11 (a) – delete reference to Advocacy Assistance. 2.11.1 to 2.11.4
Previous Advice and Assistance	2.12
Further instructions and boundary with representation	2.13 2.14 – bold text only
Police Station Advice and Assistance – own solicitor	3

Guidance on Specific Units of Work	6 6.1 to 6.2
Supplementary rules – all authorised levels of service	<p>7.1 – cold calling and marketing</p> <p>7.4 – information to clients</p> <p>7.5 – furnishing information – replace “relevant Regional Director” with “CCU”.</p> <p>7.6 – contractor error or omission</p> <p>7.7 – unnecessary expenditure of public funds – replace “Director” with “CCU”.</p> <p>7.8 – misrepresentation - replace “Director” with “CCU”. Delete reference to application form.</p> <p>7.10 – time limits - replace “Director” with “CCU”.</p> <p>7.11 – continuity of service – first paragraph in bold and 7.11.2 only.</p> <p>7.12 – VHCCs</p>
<u>Part C: reporting, assessment and payment of claims</u>	
General rules – all authorised levels of service	<p>1.1 (a) – delete “...or Advocacy Assistance...Order);”</p> <p>1.1 (b) to (h)</p> <p>1.1.1</p> <p>1.1.4</p> <p>1.2 – delete “Credits claimed will be...Payments.”; “except where a Claim for court Duty Solicitor...endorsed”; delete third and fourth paragraphs in bold</p> <p>1.2.1 – delete “A Duty Period...concludes.”</p> <p>1.3 (a) to 1.3 (b)</p> <p>1.3 (e) to 1.3 (j)</p> <p>1.3 (l)</p> <p>1.3.1 to 1.3.3</p> <p>1.5 – claims for police station advice and assistance</p> <p>1.8 – inter partes costs</p> <p>1.9 – previous claims – delete reference to “Advocacy Assistance or Representation”</p>

	<p>1.10 – delete reference to “Advocacy Assistance”</p> <p>1.11 to 1.17</p> <p>1.18 – disbursements - but only: the bold text – delete reference to Advocacy Assistance or Representation</p> <p>1.19 – witness expenses</p> <p>1.20 – payment other than through this Contract</p> <p>1.21 – wasted costs – replace “Regional Director” with “CCU”.</p> <p>1.22 – payment from Central Funds</p> <p>1.25 – recovery of overpayments - delete reference to appeals under Rules 1.11 or 1.12.</p> <p>1.26 – file review</p>
<u>Part D: Quality and performance standards</u>	
Financial control and time recording	2.1
Legal reference materials	2.2
File management	2.3
File review	2.4
Performance standards – overview	4 – relevant to police station
Performance standards	5 – relevant to police station work
<u>Part E: Remuneration under the General Criminal Contract</u>	
The rates that apply to Contract Work	1
Work undertaken in the Criminal Investigation Class	2.1 to 2.2 – delete reference to Duty Solicitor
<u>Part F: SQM Category Definitions</u>	
<u>Part G: Guidance on Contract sanctions</u>	

1. Interpretation

2. Clause headings in this Contract are inserted for convenience only and do not affect its interpretation.
3. Words denoting the masculine include the feminine and the neuter and words denoting the singular include the plural and vice versa.
4. Reference to “day”, “week” or “year” means a calendar day, week or year, as appropriate and reference to a working day means any day except Saturday, Sunday and any bank holiday. Reference to “month” means a calendar month unless the context requires otherwise when it shall mean a named month as in January or February etc.
5. Reference to any legislation, Regulations or Arrangements is, as the context requires, a reference to any substitute for, or re-enactment of, such legislation, Regulations or Arrangements and includes any new legislation, Regulations or Arrangements arising at any time.
6. References to “approving” or “approval” mean approving or approval as provided by this Contract or, if no express provision is made by this Contract, to approving or approval in writing.
7. References to “authorising” or “authority” mean authorising or authority as provided by this Contract or, if no express provision is made by this Contract, to authorising or authority in writing.
8. References to “directing” or “direction” mean directing or direction as provided by this Contract or, if no express provision is made by this Contract, to directing or direction in writing.
9. References to “notifying”, “notification” or “notice” mean notifying, notification or notice as provided by this Contract or, if no express provision is made by this Contract, to notifying, notification or notice in writing.
10. Any obligation relating to the completion and submission of any form designated or specified by us, or to “our form”, includes the obligation properly to complete and submit the form in such a format (electronic, paper or otherwise) as we may specify.
11. Unless otherwise specified, reference to any Contract Document or to any “current” document or other provision means the Contract Document, document or other provision in its current form from time to time and not merely as at the date this Contract comes into force.
12. Reference to a “current” payment rate or other provision means a payment rate or other provision in its current rate or provision from time to time and not merely as at the date this Contract comes into force.
13. Where this Contract imposes an obligation on you, you must comply with it and must use reasonable endeavours to ensure that your personnel and contractors comply with it. Similarly, where this Contract imposes an obligation on us, we must comply with it and must use reasonable endeavours to ensure that our personnel and contractors comply with it.

14. Any obligation on you to have systems, procedures or controls includes the obligation effectively to operate them.
15. Where, in relation to any options available to us under any Clause, those options are joined by the word “and” (as in we may “a”, “b” and “c”), our choice is not restricted to selecting all options or no options but extends to selecting any one or more of them.
16. Any reference to this Contract, or any part of it, ending or terminating means (unless otherwise stated) ending in any manner and not merely by effluxion of time or otherwise.
17. Any reference to this Contract, or any part of it, expiring means (unless otherwise stated) expiring by effluxion of time (and “expiry” has the associated meaning).
18. Where Regulations refer to a “franchise contract” that reference includes this Contract (so that this Contract is a franchise contract for the purposes of the Regulations). This Contract is governed by English Law.
19. References to “documents”, “records”, “files”, “information” and similar references to items commonly committed to paper include documents, records, files, information etc stored in other media e.g. in electronic format, digitally, on disk, on computer etc. and references to “auditing” include auditing items in such other media.
20. References to “company” include, except where the context requires otherwise, a limited liability partnership.
21. References to “personnel” include partners (partnership) directors (company) and members (limited liability partnership).
22. References to “partner” include a person held out as a partner of a partnership.
23. References to a “director” include a “member” of a limited liability partnership, except where the context requires otherwise.

Relationship

Reasonableness and good faith

1. In funding services as part of the Criminal Defence Service we are bound by section 18(3) of the Act to aim to obtain the best possible value for money. Without prejudice to more specific provisions of this Contract and to your professional obligations in respect of Clients, you and we agree to work together in mutual trust and co-operation to achieve this aim.
2. In complying with this Contract, in exercising your rights under it and in performing Contract Work, you must act reasonably and in good faith.
3. In exercising our rights under this Contract, and in complying with it, we must act in good faith and as a responsible public body required to discharge its functions under the Act, having regard to the professional duties owed by you to your Clients.
4. Clauses 2.1 to 2.3 above do not relieve either you or us from the requirement to comply with express provisions of this Contract and are subject to all such express provisions.

Are you our partner or agent?

5. In performing Contract Work or other legal services, you are, and acknowledge that you are, an independent provider of legal services. You are not an agent or partner of ours and must not act as such or conduct your activities so as to give the impression that you are our agent or partner.
6. We shall not incur any contractual liability to any other person as a result of anything done by you in connection with the performance of this Contract.

Does this Contract create any third party rights?

8. This Contract does not create any right enforceable by any person not a party to it.

3. Your main rights and obligations

How must you demonstrate compliance?

5. You must demonstrate to our reasonable satisfaction that you are complying with, and have at all times while this Contract has been in force complied with, the provisions of this Clause 3. You must demonstrate this when you are being audited by our representatives and at such other times as we may require.

What access to your premises do you have to give us?

6. You must allow our representatives to have prompt access to your premises and equipment: (a) in order to audit or assess whether you are complying with this Contract; (b) in order to verify the accuracy of information you hold concerning Contract Work and your compliance with this Contract; (c) to perform Assessments or otherwise discharge our functions under the Act and (d) to facilitate an Official Investigation. Access to equipment does not give us the right of access to information about private clients. It does allow us to access your computer or I.T. system but we will exercise this right only to facilitate an Official Investigation.
7. Unless an Official Investigation is being conducted (when, if we request it, you must give immediate access) we will require access for our representatives only during normal business hours and we will give you five working days notice of the date when we require such access (unless you agree a shorter period of notice).

What facilities and documents do you have to make available to us?

8. You must make available to our representatives such information, assistance and facilities (including, without limitation, photocopying and interviewing facilities) and such documents or parts of documents, including the Case and Matter files and file records of any Clients and Former Clients, as we may require.

9. You must comply with Clause 3.8 above:
- (a) as quickly as reasonably practicable (and, in any event, within 24 hours or such longer period as we may agree with you) if an Official Investigation is being conducted;
 - (b) without unreasonable delay (and in any event within 14 days) during an audit or assessment by our representatives, or for the purposes of an Assessment;
 - (c) within such period as we may specify (being not less than 14 days) on such other occasions as we may require for the purposes set out in this Contract.

Do you have to co-operate with Researchers?

10. You must co-operate with any Researchers and provide such information to them as they may reasonably require. Such co-operation includes permitting the Researchers, on reasonable notice, to have access to your premises during normal office hours and to review, on the premises, the files of Clients and Former Clients. It also includes, occasionally, discussing with the Researchers issues relating to the operation of this Contract.

Do you have to tell us of any change in your ability to perform Contract Work?

12. You must notify us of any significant changes in your personnel deployed in Contract Work and of any other changes affecting you such as might reasonably be expected significantly to affect your ability to perform Contract Work.

Are you bound by this Contract to comply with requirements of your professional body?

13. In performing Contract Work, you must comply with the conduct and practice rules (including, where you are in practice as solicitors, the Solicitors' Practice Rules and the Solicitors' Accounts Rules) of your professional body.

Can we require you not to remove documents?

14. Once you have been given notice that we require access to your premises you must not remove from those premises any documents or parts of documents (including the Case and Matter files and file records of Clients and Former Clients) unless their removal is required in Clients' (or Former Clients') interests (in which case a written record of any removed document or part of a document must be provided to our representatives on their exercising access) or otherwise in accordance with our prior agreement.

May we remove documents or require you to send them to us or to store them securely?

15. When required for the purposes of this Clause 3 (except for Clause 3.10), we may remove, require you to send us or require the secure, sealed retention of (in such manner and for

such period as we may specify) documents or parts of documents (including the Case and Matter files and file records of Clients and Former Clients).

How long must you keep closed Case files for?

16. For the purposes of this Clause 3, you must securely retain, for three years after closure, all the Case and Matter files (and file records) of all Clients (and Former Clients) for whom you have performed work under the Act. Files and records may be retained in any manner (for example, on microfiche or CD ROM) which enables them to be audited without undue difficulty. Closed files and records or copies of them need not be retained if the Case or Matter has been transferred elsewhere at the Client's (or Former Client's) request, for example, because the Client (or Former Client) has changed solicitors. However, you should retain copies if, without them, there is a risk that you will be unable to demonstrate compliance, as required by Clause 3.5. Normally, obtaining an undertaking from the new solicitor to return the file, should it be required for audit purposes, will be sufficient.

May we carry out Client satisfaction surveys?

17. You must permit us to carry out surveys of Clients and must provide us with such information as we may require for such purpose.
18. If you request it, we will provide you with the information we obtain in any of the surveys of Clients (and Former Clients) for whom you have performed Contract Work.

What material changes do you have to tell us about?

19. Without prejudice to Part D, Clause 18 of these Contract Standard Terms, you must notify us of any material alteration:
- (a) to any material information you have provided to us (including information which you provided in seeking to become a Contractor); and
 - (b) to the manner in which you perform the Contract Work (including material alterations to your management systems).

For the purposes of this Clause, material alterations include any decision to stop providing Contract Work in any Category of Work or any fundamental change in the management of your Office.

Do you have to tell us about disciplinary and other proceedings?

20. Immediately you become aware of them, you must notify us (and provide details) of (a) any professional disciplinary proceedings and (b) any criminal charges in relation to any alleged offence punishable by imprisonment that might be relevant to the performance of Contract Work or any alleged offence of dishonesty or deception concerning (i) you, (ii)

any of your personnel who have been, or may be, involved in Contract Work (iii) any of your partners, or (iv) any of your directors.

Do you have to tell us about events which entitle us to apply a Contract sanction?

21. You must notify us (and provide details) if you become aware of any event which would entitle us to terminate this Contract, or to apply any other Contract sanction.

Are we authorised by you to obtain a Report?

22. By signing this Contract, you authorise us to obtain a Report if at any time we have good reason to suspect serious professional misconduct, breaches of Regulations or dishonesty by (i) you (whether or not you are under Official Investigation); (ii) any of your personnel who have been, or may be, involved in Contract Work (iii) any of your partners, or (iv) any of your directors and must use all reasonable endeavours to ensure that such of them as may be required to give consent to enable such Reports to be given to us, must do so.

4. Crime SQM holders and Provisional Crime SQM holders

1. If you are a Crime SQM holder, you have the right to use our Logo in accordance with our conditions as to use.
2. If you are a Provisional Crime SQM holder, you have the right to use our Logo only if we have given you express, written permission and only in accordance with our conditions as to use.
3. For the avoidance of doubt, the rights in Clauses 4.1 and 4.2 (and your right to hold a SQM Certificate) end when this Contract ends (and you then cease to be a Crime SQM holder).

Advertising and promotion

Are there any restrictions on how you may advertise?

1. If you are a Provisional Crime SQM holder, unless we grant you prior written permission, you must not in any way imply that you are, or will be, a Crime SQM holder. If we do grant such prior written permission, you must comply with such terms as to publicity as we may specify.
2. You may publicise and promote your status as a Crime SQM holder, or Provisional Crime SQM holder, in any reasonable manner consistent with the spirit and intention of this Contract.
3. You must not say or do anything which is or is likely to be misleading to Clients or potential Clients regarding your status as a Crime SQM holder or Provisional Crime SQM holder.

4. If we consider that you are publicising or promoting in a manner which is not consistent with the spirit and intention of this Contract, or may be misleading to Clients (or potential Clients), we may direct you to cease such publicity or promotion. If we do so direct, you must comply with such direction without delay.

Are there any restrictions on your use of SQM Promotional Items?

5. You acknowledge that we own all rights in the SQM Promotional Items.
6. You must not alter or amend any SQM Promotional Items without our prior written permission.
7. You acknowledge that any SQM Promotional Items which are owned by us, and designated as such, at all times remain in our ownership.
8. In any of your promotional material referring to Contract Work, leaflets or other information referring to Contract Work, you must make use of our Logo in such manner as may be required by us in Guidance.

6. The SQM

What is the SQM?

1. The SQM is one of the Contract Documents. It contains the current quality assurance standard. Additional quality and performance standards may be contained in the Specification and if so specified are part of the SQM for the purposes of this Contract.
2. The SQM includes requirements with which you must demonstrate compliance before we will issue a SQM Certificate for an Office and with which you must continue to comply, and demonstrate compliance, as required by this Contract.

May we amend the SQM?

3. Except when this Contract expressly provides otherwise, we have complete discretion to amend any part of the SQM which does not impose obligations or requirements on you.

The SQM-Amendments to parts which impose obligations or requirements (General)

4. We may, from time to time, amend any part of the SQM which imposes obligations or requirements on you. In doing so, we will have regard to the professional duties owed by you to Clients.
5. Before we amend any part of the SQM which imposes obligations or requirements on you, we must consult with the Law Society.

The SQM-Urgent amendments to parts which impose obligations or requirements

6. If we consider that there is an urgent need to amend any part of the SQM which imposes obligations or requirements on you:

- (a) consultation need last no longer than 21 days; and
- (b) after consultation has concluded, we will give you no less than six weeks notice of the date when the amendment will come into effect.

The SQM-Non-urgent amendments to parts which impose obligations or requirements

7. If we wish to amend any part of the SQM which imposes obligations or requirements on you but do not consider that there is an urgent need to do so:
 - (a) consultation need last no longer than six weeks; and
 - (b) after consultation has concluded, we will give you no less than eight weeks notice of the date when the amendment will come into effect.

7. SQM Certificates

When will we issue a SQM Certificate?

1. We will issue a SQM Certificate (or amend your current SQM Certificate) within a reasonable period after you have passed a Crime Pre-SQM Audit. SQM Certificates remain our property and must be dealt with as directed by us. Any SQM Certificate that we may have issued to you under any other contract with us, that is in force immediately before this Contract starts, remains valid for the purposes of this Contract.

What information will a SQM Certificate include?

2. Each SQM Certificate will state the address of the Crime SQM Office. It may also specify the SQM Categories of Work applicable to the Office and such other information as we consider should be included in it.

In what circumstances will we issue a replacement SQM Certificate?

3. If your name or the name of a Crime SQM Office changes or if there is any change to any of your SQM Categories of Work or Devolved Powers, we will issue a replacement SQM Certificate within a reasonable period afterwards.

11. Specification

What is the Specification?

1. The Specification is one of the Contract Documents. It contains rules and Guidance and a description of the work covered by this Contract. It also specifies the payment rates for different types of Contract Work.
2. The rules in the Specification are concerned, generally, with how you must (and must not) perform, record and report Contract Work and Claim payment for it.

3. Guidance in the Specification may be Guidance on the rules in it or Guidance on the completion of forms, on how Contract sanctions may be applied, on the extent of Contract Work, on the scope of Classes of Work, Categories of Work and Units of Work and (without limitation) on other issues relating to the meaning and operation of (and compliance with) this Contract. Like you, we must comply with Guidance.

May we amend the Specification?

4. Subject to Clauses 11.5 to 11.9 below, we may, at our discretion, add to and otherwise amend the Specification from time to time. If justified in local or individual circumstances, amendments may be such as affect all Contractors, some Contractors or individual Contractors.

What must we do before we amend the Specification?

5. We may not amend the Specification without prior consultation. If the amendment affects only one Contractor, we will consult with that Contractor. If the amendment affects more than one Contractor, consultation will be with the Law Society and will be subject to the provisions of Clauses 11.6 and 11.7 below.
6. Unless we consider that there is an urgent need to amend the Specification, consultation with the Law Society need last no longer than six weeks.
7. If we consider that there is an urgent need to amend the Specification, consultation with the Law Society need last no longer than 21 days.

When must you comply with amendments to the Specification?

8. Unless we consider that there is an urgent need for the affected Contractors to comply with the amendment, each affected Contractor must comply with the amendment within six weeks after we have given them notice of it.
9. If we consider that there is an urgent need for the affected Contractors to comply with the amendment, each affected Contractor must comply with the amendment within such period (not shorter than four weeks) as we may specify when we give them notice of the amendment.

12A Payment – General

What payments are you entitled to?

1. Subject to the provisions of this Clause 12A, 12B and 12C, unless, for any reason, payment has been reduced (whether on Assessment or otherwise), suspended or terminated, we will pay you in accordance with this Contract for performing Contract Work.

What payments are you not entitled to?

2. You are not entitled to any payment in respect of any Contract Work except in accordance with this Contract.
3. For the avoidance of doubt, you are entitled to payment by us under this Contract only for the performance of Contract Work that consists of the provision of services to a Client and (except where expressly provided otherwise) you are not otherwise entitled to any payment in respect of complying with this Contract.

Are we entitled to Assess your Claims?

4. We are entitled to Assess all of your Claims (except where this Contract or Regulations provide that Assessment is to be by another body). Subject to your rights of appeal, where a Claim is assessed, the amount due from us in respect of that Claim is (subject to the provisions of this Contract) the amount allowed on the Assessment, whether or not payment in respect of the work done has already been made by us.

How will we pay you?

5. We will pay you by BACS, unless we direct otherwise.

Do payments include VAT?

6. If your Claims properly include claims for VAT, we will include in our payments to you such VAT as is properly payable. If you omit to claim VAT and seek to claim it from us subsequently, we are not obliged to make any payment in respect of such VAT but will do so where an occasional, clerical error has caused VAT to be omitted from a Claim.
7. You must, if so requested by us, provide us with such information as we may require as to the amount of Value Added Tax properly arising under this Contract and payable by us to you whether in addition to, or included in, the amounts otherwise prescribed by this Contract.

What if you owe us any money?

8. We may set-off against any amount payable by us to you under this Contract or otherwise, any amount payable by you to us, under this Contract or otherwise. For the avoidance of doubt, when this Contract ends, any obligation to make payment is subject to this right of set-off.

When must you pay third parties?

9. Subject to Clause 12A.12, you must pay any third parties whom you instruct in connection with Contract Work within three months of submitting any Claim to us that includes their charges and in accordance with the terms of your agreement with them. If you fail to pay a third party in accordance with this Clause 12A.9, we reserve the right to pay the third party and deduct the amount of the payment from any monies payable from us to you under this Contract. We will not do so without first giving you at least 14 days notice, in which you may either confirm to us that you have made payment or demonstrate to our reasonable satisfaction that you have reasonable grounds for not making payment (at present).

April and October Compliance

10. Subject to Clauses 11.11 and 11.12 and 11.12A, we will require compliance with any amendments to the Specification with effect from either of two points during each year – April or October.
11. If, in any case, the Law Society has requested a longer consultation period than the six weeks or 21 days specified in Clauses 11.6 or 11.7 (as appropriate) we may require compliance with the amendments at another point in the year, but will always consider whether delaying the requirement to comply until the following April or October (as appropriate) is a practicable alternative.
12. Clause 11.10 does not apply (and we may require compliance with effect from another point in a year) if we consider that it is impracticable to require compliance with effect from either April or October, or if the amendments affect fewer than 10% of the number of our Contractors, and in any case where the Law Society agrees. Examples of when we may consider that it is impracticable to require compliance from April or October are if:
 - (a) The Department for Constitutional Affairs requires an amendment; or
 - (b) An amendment is required pursuant to other provisions of this Contract, e.g. Clauses 16.16 or 16.17.

When are monies payable by you?

13. If we have made an overpayment to you or, in respect of a case or Case, you have breached this Contract and, as a result of the breach, we have incurred (or will incur) a financial loss, we may send you a notice (or debit note) specifying the amount of the overpayment or financial loss (and an explanation of both the amount and either why the overpayment was made or of the breach).
14. A notice (or debit note) under Clause 12A.13 has the effect of making the amount specified in it payable to us. An “overpayment” under Clause 12A.13 includes (without limitation) (a) a payment made in error; (b) a payment made in respect of a case or Matter,

the payment for which is subsequently reduced on Assessment or in respect of which we are not required to pay (or you are not entitled to payment) for some or all of the work that you have carried out; and (c) payments for Contract Work that are unlikely to be recovered by us within six months by adjusting your monthly payments and the submission of your Claims for Contract Work. Where the provisions of this Clause apply because of a reduction on Assessment then, unless we consider that there is a risk to public funds, we will not apply it until any appeal against the Assessment has concluded.

No payments for referrals of introductions

15. You must not make or receive (directly or indirectly) any payment or other financial benefit for the referral or introduction (directly or indirectly) of any Client or potential Client to another provider of publicly funded legal services or to you.

12C. Payment – Remainder Work

What if we do not permit Remainder Work?

1. Unless we agree that you may perform any Remainder Work, we are obliged to pay only for Contract Work performed while this Contract was in force (neither terminated nor otherwise ended). We will agree that you may perform Remainder Work unless we have any grounds for applying a Contract sanction.
2. If you are not permitted to perform Remainder Work, you must send us all your remaining Claims within three months of the date this Contract ceased to be in force. We will Assess the Claims and (unless we give you notice that we intend to Assess previously submitted Claims) we will make payment to you in respect of them within three months of receipt of the last Claim or within four months of the date this Contract ceased to be in force, whichever is later. We have no obligation to make any payment in respect of any Claim received by us more than three months after this Contract ceased to be in force.

What information must you provide before we will permit you to perform Remainder Work?

4. It will be a condition of permitting any Remainder Work that you provide us with the names of, and unique file reference numbers for, all your Clients whose Matters or Cases have not yet been the subject of a Claim. No payment will be made in respect of any Matter or Case for which these details have not been provided within three months of the date when we permitted you to perform Remainder Work.

13. Confidential information

What information must we keep confidential?

1. Subject to Clause 16.24 and except where legislation or the order of a competent court or tribunal requires otherwise, we and any Researchers shall keep all information of a confidential nature concerning your affairs or business strictly confidential and shall not use such information for any purpose other than those purposes required or authorised or permitted by the Act or this Contract or in respect of research being carried out on our behalf. We shall not disclose confidential information about your Clients or Former Clients except as permitted by Access to Justice Legislation (for the avoidance of doubt, including section 20 of the Act) or required by other legislation.
2. We shall be under a duty to ensure that in any report provided to us by Researchers and intended to be published, no information shall be included which will disclose details which will identify you (or any Client or Former Client of yours) or enable you (or any Client or Former Client of yours) to be identified.

What information must you keep confidential?

3. You must keep strictly confidential all information of a confidential nature concerning the affairs or business of any other Contractor (or former Contractor) or its Clients or Former Clients which you might obtain from our personnel or representatives through inadvertent or wrongful disclosure. If you do obtain any such information, you must inform us without delay and must return to us any written information without taking copies of it.
4. You must keep strictly confidential all information which you may obtain from us which is designated as confidential. Provided you have not (outside the terms of this Contract) agreed otherwise with us, in respect of any information obtained from us which is designated as confidential, you may disclose such information to the Law Society, provided you secure from them an agreement to treat it as strictly confidential.

What information is not covered by this Clause?

5. For the purposes of this Contract, none of the following is information of a confidential nature:
 - (a) information which, before its receipt directly or indirectly from the other party, was in the possession of the receiving party and at its free disposal;
 - (b) information which is subsequently disclosed to the receiving party, without any obligation of confidentiality, by a third party who has not derived it directly or indirectly from the other party, or in any unlawful manner, or in breach of any obligation of confidentiality;
 - (c) information which is required by legislation to be disclosed but only to the extent that it must be so disclosed;

- (d) information which, to the extent that it must be so disclosed, is required to be disclosed by any court, tribunal or other administrative body with such power or which is disclosed by us for the purposes of providing information to Parliament;
 - (e) information which we reasonably consider necessary to be disclosed for the purposes of an Official Investigation; or
 - (f) information which is already in the public domain.
6. For the avoidance of doubt, the obligation of confidentiality set out in Clauses 13.1 and 13.2, above does not apply to information about:
- (a) the award of this Contract (or Schedules under it) to you;
 - (b) the terms (including payment terms) of this Contract (or Schedules under it);
 - (c) the payments that we have made to you (by category, class or otherwise);
 - (d) the numbers of Matters and Cases that you have started and completed (by category, class or otherwise);
 - (e) your status as a Provisional SQM holder or SQM holder; or
 - (f) about contract decisions concerning you (or your personnel), taken by us, or the reasons for such decisions.

For the avoidance of doubt, “contract decisions” include decisions concerning sanctions, decisions concerning the amount of payments made to you and the results of audits and we may disclose and publish any or all of the information referred to in this Clause 13.6.

14. Warranties

What warranties do you give?

1. You warrant that, to the best of your knowledge and belief:
 - (a) all information in writing provided to us in your seeking to become a Contractor was, when given, true and accurate in all material respects;
 - (b) no information has been omitted which would make that which has been provided materially misleading or inaccurate;
 - (c) no circumstances have since arisen which materially affect the truth and accuracy of such information.

What warranties do we give?

2. We warrant that, to the best of our knowledge and belief:
 - (a) all information which we have provided to you in writing specifically to assist you in seeking to become a Contractor was, when given, true and accurate in all material respects;
 - (b) no information has been omitted which would make that which has been provided misleading or inaccurate;
 - (c) no circumstances have since arisen which materially affect the truth and accuracy of such information.

3. As a condition of entering into this Contract, both you and we are entitled to rely upon, and shall be deemed accordingly to have relied upon, such information referred to in Clauses 14.1 or 14.2 above as was provided to the other.

15. Indemnity

What indemnity must you give us?

1. You must indemnify us and keep us indemnified, without delay, against all losses, costs, claims, damages, actions, expenses and other liabilities of whatever nature incurred by us as a result of:
 - (a) any injury (fatal or otherwise) sustained by, or any loss or damage to the property of any of our personnel or authorised representatives arising in the course of our exercising any of our rights, or performing any of our obligations, under this Contract, where such injury, loss or damage arises as a consequence of any act or default committed by you or by any of your personnel (save to the extent that such injury or damage arose, or was incurred as a result of the wilful default or negligence of our personnel or authorised representatives);
 - (b) any claim made by or on behalf of a third party arising out of any act or default committed by you or on your behalf (save for any such act or default which may have been committed by us, and any wrongful termination or breach of this Contract by us) in connection with:
 - (i) their employment, loss of employment or non-employment; or
 - (ii) your provision of, or failure to provide, Contract Work or other legal services or other information to any person or organisation; or
 - (iii) your failure to comply with any legislation.

What expenses are not covered by the indemnity?

2. For the avoidance of doubt, we are not entitled to indemnity in respect of administrative costs of following procedures prescribed by this Contract.

16. General

Entire agreement

1. This Contract represents the entire agreement and understanding between the parties in connection with its subject matter.
2. This Contract supersedes any previous agreement between the parties relating to its subject matter. It supersedes all prior negotiations, representations and undertakings, whether written or oral and does not exclude any liability for fraudulent misrepresentation.

What if you or we waive, delay or omit to exercise rights?

3. No failure by you or us to exercise any power (or to insist upon strict compliance by you with any obligation or condition) shall constitute a waiver of any of your or our rights under this Contract.
4. No waiver by you or us of any particular default by you or us shall affect or impair your or our rights in respect of any other default (of any kind) by you or us.
5. No delay or omission by you or us to exercise any rights arising from any particular default by you or us shall affect or impair your or our rights in respect of such default or any other default (of any kind) by you or us.

What if you or we are prevented from complying with this Contract?

6. Neither of the parties to this Contract is responsible to the other for any delay in performance, or for any non-performance, of its obligations and duties under this Contract due to any cause beyond its reasonable control. However, the affected party must promptly upon the occurrence of such cause:
 - (a) inform the other party in writing of such cause and of what obligation or duty it has delayed or prevented being performed; and
 - (b) take all action within its power to comply with the terms of this Contract as fully and promptly as possible;

and, unless the affected party takes such steps, this Clause shall not have the effect of absolving it from its obligations under this Contract. For the avoidance of doubt, any actions or non-actions of either party's personnel or any failures of either party's systems, procedures, premises or equipment shall not be deemed to be causes beyond the reasonable control of the relevant party, for the purposes of this Clause (unless the cause of failure was beyond reasonable control).

7. If the circumstances described in Clause 16.6 above arise, but do not appear to be of a temporary nature, either party may give the other notice of termination of this Contract within such period as is reasonable in the circumstances (which shall be no shorter than one month).
8. Any notice under Clause 16.7 above shall not take effect if the party that was prevented from complying with this Contract (or complying with it in a timely manner) is able, to the other party's satisfaction, to comply with its obligations and duties under this Contract within the period of notice specified in accordance with Clause 16.7 above.

What general provisions limit Contract Work and payment for it?

10. You are not entitled to any payment under this Contract for any work which you perform outside this Contract.

11. Payment for Contract Work is governed solely by the provisions of this Contract and you are not entitled to any payment for it outside this Contract.

What happens if any part of this Contract is held to be void?

13. Subject to Clauses 16.14 and 16.15 below, if any term of this Contract is held by any competent authority to be invalid, illegal or unenforceable in whole or in part, the other terms of this Contract and the remainder of the affected term so far as practicable shall continue to be valid and enforceable.
14. If, in our reasonable opinion, the effect of a decision of a competent authority that a term of this Contract (or the same – or very similar – term in another of our contracts) is invalid, illegal or unenforceable in whole or in part, is such that the purpose of this Contract is undermined or our position is materially prejudiced, we are entitled:
 - (a) with the agreement of the Law Society, or without it if such agreement is unreasonably withheld, to substitute for such term (or part of a term) such further term (or part of a term) the meaning of which has been advised by leading counsel instructed by us and the Law Society (if it agrees to joint instruction) to be as close as permissible to that of the invalid, illegal or unenforceable term (or part of a term);
or
 - (b) to terminate this Contract.
15. If, in your reasonable opinion, the effect of Clause 16.13 above (following a decision of a competent authority) is such that your position is prejudiced, you may ask us to agree a suitable amendment to this Contract.

What if Access to Justice Legislation affects what can be performed as Contract Work?

16. If any Access to Justice Legislation, either when it comes into force or subsequently, affects this Contract, we are entitled to make such amendments to this Contract as we consider necessary in the circumstances.

What if other legislation affects this Contract?

17. We have the right to revise or vary the terms of this Contract to comply with any U.K. legislation or any EC legislation having direct effect, or as a result of any decision of a U.K. court or tribunal, or a decision of the European Court of Human Rights or of the European Court of Justice or any other institution of the European Union, or to comply with the requirements of any regulatory body or tax or similar authority.
18. Where you and we are in dispute as to whether a proposed revision or variation of this Contract is necessary pursuant to Clause 16.17 above, we will not make the revision or variation unless we have consulted with the Law Society and have obtained an opinion of leading counsel stating that it is necessary.

Interventions and Receivers

19. This Clause applies if there is an intervention in your practice by the Law Society (or by any other organisation that may lawfully do so) that has the effect of preventing you carrying out work under this Contract or if a receiver is appointed for you, with a view to closing your practice. In these circumstances, you must:
- (a) Without delay, assist in transferring open Matters and Cases to any new organisations that Clients may select to continue their Matters and Cases (providing us with details of the costs you have incurred on each Matter and Case);
 - (b) Within one month of the date of the intervention or appointment of a receiver, give us a list of all your Matters and Cases, distinguishing between those that are open and those that are closed and showing the present position on each;
 - (c) Within six months of the date of the intervention or appointment of a receiver, submit bills and claims for assessment (by the court or by us as appropriate) and claims for payment by us on all Matters and Cases on which this may be done;
- and if you fail to comply with this Clause we may apply a payment suspension order under Clause 22.
- 19A. In respect of any Matter or Case in respect of which you have failed to comply with Clause 16.19, we are not required to pay for any work you have carried out on it or for any costs (including disbursements) you may have incurred on it. In addition, the amount by which the monthly payments that we have made to you exceeds the value of the Claims that you have submitted to us is repayable to us.
- 19B. Unless there is a risk to public funds, or exercising our right of set-off will not recover monies payable under Clause 16.19A within a reasonable period, we will not normally require the immediate, actual repayment of such monies and, instead, will merely exercise our right of set-off against other monies payable to you by us.

What amendments to Contract Documents may we make after consultation?

20. In all cases where we are required to consult, we have, after such consultation, complete discretion to issue, delete, implement and amend in the form originally proposed or in a modified form.

May we amend Contract Documents for some Contractors and not others?

21. When we are entitled to make amendments to the Contract Documents, we may make amendments which affect all, or only some, Contractors.

Do you have to provide information under the National Audit Act 1983?

22. For the purpose of examination and certification of our accounts, or any examination under section 6(1) of the National Audit Act 1983 as to the economy, efficiency and

effectiveness with which we have used our resources, the Comptroller and Auditor General may examine such documents as he may reasonably require which are owned, held or otherwise within your control and may require you to provide such oral or written explanations as he may reasonably require for those purposes. You must give all reasonable assistance to the Comptroller and Auditor General for those purposes.

23. We will pay you for time properly spent by you in giving required assistance to the Comptroller and Auditor General at the current Crime SQM holder preparation hourly rate for proceedings in a magistrates court under a Representation Order.

Do you have to provide information under any other legislation?

24. Under the Code of Practice on Access to Government Information (or any similar code), under the Data Protection Act 1998, under any freedom of information or other legislation, we may be required to provide information which is held by you. If we ask you to give us such information, you must do so without delay.

In what form may information be required?

25. Where either you are required to provide information to us or we are required to provide information to you, we may specify that such information shall be provided in electronic form.

Can you claim payment from Clients or Former Clients?

26. Except where this Contract or Regulations so provide, you must not claim or seek to claim any payment from any Client or Former Client for any Contract Work or for any work that was performed in your or your Client's or Former Client's reasonable belief that it was Contract Work.

Who has rights in work and files?

27. By virtue of performing Contract Work you do not obtain any lien over any Case or Matter files or any other rights in the work or documents relating to them.
28. All rights, which are not exclusively Clients' (or other parties') rights, in any product of Contract Work (including, without limitation, any experts' reports and any work by any third parties, any legal (or other) research or other legal work and any counsel's opinions) and in any information gathered in performing Contract Work and in any documents relating to Contract Work, vest in us. This provision does not extend to information which you have properly gathered for your own purposes through performing Contract Work – such as the development of a case management system.

When might we ask for a Report and what do you have to do?

29. We may request a Report at any time when we suspect professional misconduct, breaches of any legislation or dishonesty by any of your personnel which may affect the performance of Contract Work and you must use all reasonable endeavours to ensure that such of your personnel as may be required to give consent to enable such Reports to be provided to us shall do so. You must co-operate in, and provide such information as may be reasonably required for the purposes of, any Official Investigation. You must ensure that your personnel are available when reasonably required for the purposes of an Official Investigation and must use all reasonable endeavours to ensure that your personnel co-operate in any investigation.

What if we commission research on this Contract?

30. At any time, we may commission research on the operation of our contracts with some Contractors. The product of such research and all rights in it are our property. To the extent that they exist, we will make available to you, if requested, (subject to our rights) any research findings which may have been derived from your operations.

What special provisions apply to Solicitors' Chambers?

31. If you are a Solicitors' Chambers:
- (a) unless otherwise agreed in writing between you and us, we will make payments under this Contract as if you were one firm of solicitors;
 - (b) only Solicitors' Chambers Members may perform Contract Work;
 - (c) any breach of this Contract by a Solicitors' Chambers Member entitles us to apply any sanction under this Contract not only to the (whole) Contractor but, instead, to that Solicitor's Chambers Member and to appropriately amend monthly payments;
 - (d) if any of the Solicitors' Chambers Members ceases to be appropriately associated with the Contractor or if any new Solicitors' Chambers Member joins the Solicitors' Chambers, the Contractor must notify us and we may appropriately amend monthly payments;
 - (e) each Solicitors' Chambers Member is liable in its own right to make such payments (or repayments) which may be due to us in connection with any Contract Work which it has (or should have) performed.

Are you obliged to check Orders and Certificates and authorities in connection with Contract Work?

Data Protection Act

34. In respect of personal data, you must comply with your obligations under the Data Protection Act 1998. You must hold, process, use, store and disclose personal data in accordance with the Data Protection Act 1998. You must have and operate, appropriate measures to prevent both:
 - (a) unauthorised or unlawful processing of; and
 - (b) loss or destruction of, or damage to, any personal data you hold or process.
35. If we make any personal data available to you, you must comply with any appropriate direction we may make in respect of them, or as otherwise required by law.
36. You must ensure that your personnel (including your partners and directors) are aware of the information that we may disclose and publish in accordance with Clause 13 and of the list of excluded individuals that we may maintain as specified in Clause 22.
37. In this Clause, the term "personal data" has the same meaning as in the Data Protection Act 1998.

Equality and Diversity

Our obligations

38. As a public authority we have statutory obligations:
 - (a) to promote race equality, disability equality and gender equality in accordance with the Sex Discrimination Act 1975 ("the 1975 Act"), Race Relations Act 1976 ("the 1976 Act") and Disability Discrimination Act 1995 ("the 1995 Act"); and
 - (b) not to discriminate in the provision of goods, facilities or services on the basis of race, disability, gender, religion or belief or sexual orientation in accordance with the 1975 Act, the 1976 Act, 1995 Act and the Equality Act 2006;and you must use all reasonable endeavours to assist us, and to co-operate with us, to enable us to comply with these obligations.

Your obligations

39. To help us to comply with our statutory obligations, you must comply with the requirements of the Equality and Diversity Annex.
40. Without limiting the generality of any other provision of this Contract, you must not unlawfully discriminate; and must take all reasonable steps to ensure that your personnel do not to unlawfully discriminate within the meaning and scope of:
 - (a) the Equal Pay Act 1970,
 - (b) the Sex Discrimination Act 1975;
 - (c) the Race Relations Act 1976;
 - (d) the Disability Discrimination Act 1995;

- (e) the Employment Rights Act 1996;
 - (f) the Human Rights Act 1998;
 - (g) the Part-Time Workers (Prevention of Less Favourable Treatment) Regulations 2000;
 - (h) the Fixed-Term Employees (Prevention of Less Favourable Treatment) Regulations 2000;
 - (i) the Employment Equality (Sexual Orientation) Regulations 2003;
 - (j) the Employment Equality (Religion or Belief Act) Regulations 2003
 - (k) the Work and Families Act 2006
 - (l) the Employment Equality (Age) Regulations 2006;and
 - (m) any other relevant legislation in force from time to time relating to discrimination in employment and the provision of goods, facilities or services.
41. To be sure that we are complying with our statutory obligations to promote race, disability and gender equality and to carry out equalities impact assessments, we need to require you to provide information to us e.g. about Clients and your personnel. This also helps us to make decisions that better take account of any equality and diversity needs of Clients and potential Clients.
 42. You must complete and return to us our equality and diversity Contract Work Report Forms within the period specified in the forms provided that to do so does not breach or prejudice your professional obligations. These may require information about your personnel, showing their level e.g. partner, solicitor, legal executive etc correlated against gender, ethnicity and disability, and you must collect relevant information accordingly.
 43. You must collect information about your Clients eg on gender, ethnicity and disabilities e.g. by completing the equal opportunities information section on our funding application forms.
 44. Researchers (normally the Legal Services Research Centre) will contact you annually to ask you to complete an equality and diversity survey. You must co-operate with the Researchers and complete and return to them their survey documents (which are Contract Work Report Forms) within the period specified by the Researchers.

Email and Website

45. As well as a postal address or Document Exchange (DX) number and telephone number, you must have an operational email address to which we may send you electronic communications.
46. You must have access to our website www.legalservices.gov.uk. From no earlier than October 2007, we may require you to use our website to make transactions – Claims etc. We will consult with The Law Society, and give you notice, before introducing this requirement in accordance with clauses 10.6 – 10.9 as if the introduction of the requirement were a change to the Specification.

18. Constitutional and other changes and matters to be notified

Do you have to tell us of material constitutional changes?

1. You must notify us in writing as soon as possible before any expected material constitutional change, of which you are aware, which will or might affect you. You must notify us on, or within fourteen (14) days of, any material constitutional change which affects or might affect you. Examples of material constitutional change are:
 - (a) the closure or planned closure of any Office;
 - (b) any decision on your part to cease to carry out Contract Work in any Class of Work or at all;
 - (c) any change in the identity of any of your Key Personnel;
 - (d) where you are an advisory service, any material change (including any change of chairman or treasurer or any change of 75% or more of your membership since this Contract came into force) in the composition of your management committee;
 - (e) if you are a principal, any creation of a partnership (for the avoidance of doubt, in this Clause 18, “principal” means an individual who, being you, is the sole other party to this contract);
 - (f) any change (by more than one third) in the composition of your partnership (or in the number of your members or directors – limited liability partnerships and companies, including incorporated practices) in the previous 12 months;
 - (g) any sale, merger, acquisition by (or of), or transfer of your business or advisory service (including any transfer of your business to a limited liability partnership or company (incorporated practice)).

19. Prohibited giftsNo bribery or collusion

1. You must not try to bribe any of our personnel, or any person who may perform services for, or who is associated (in any way) with, the Legal Services Commission.
2. When bidding, or applying for, a contract with us, or for authority to perform work, or for an allocation of duty solicitor or other work, (or for the purpose of, or with the intention of, doing so) you must not collude with any other person or attempt to bribe them.

No false bids

3. When bidding, or applying for, a contract with us, or for authority to perform work, or for an allocation of duty solicitor or other work, you must not bid any price that is unrealistically low. A price is unrealistically low if you intend to secure the contract, authority or allocation by virtue (in whole or in part) of the low price and intend, or hope, to recover any unrealistic element of it by a subsequent renegotiation of the price.

What must you do?

4. You must be alive to the possibility of fraud and unethical behaviour by your personnel and by any third parties, must not tolerate it and must have procedures to identify, address and counter it.

What if this Clause is breached?

5. Any breach of Clause 19.1, 19.2 or 19.3 by you or by anyone employed, or otherwise engaged, by you acting on your behalf (whether with or without your knowledge) is a Fundamental Breach.

20. How the Contract can be ended**Termination by Three and Six Months' Notice**

1. You may, at any time, serve no less than three months' notice on us terminating this Contract.

How can we end this Contract?

5. We may (without limitation) end this Contract as provided by its terms. The main provisions for termination are set out in this Clause 20.

When will this Contract terminate immediately?

6. If, at any time after you have signed this Contract, but before its start date:
 - (a) your application for approval as a Crime SQM holder is suspended, withdrawn, refused, lapses or otherwise ends; or
 - (b) you fail a Crime Preliminary SQM Audit; or
 - (c) you fail a Crime Pre-SQM Audit; or
 - (d) you are a Crime SQM holder and we have grounds for terminating your SQM contract or your SQM contract is terminated or otherwise ends,this Contract immediately lapses and shall not come into force on its start date.

Immediate termination

7. This Contract terminates immediately if there is an intervention by the Law Society (or by any other organisation that may lawfully do so) that has the effect of preventing you from carrying out work under this Contract.

When might there be urgent termination?

8. We are entitled, at any time, to serve notice on you terminating this Contract (or any part of it) with effect from such date as may be specified by us in such notice if:
- (a) you are a Provisional Crime SQM holder and:
 - (i) your application for approval as a Crime SQM holder is suspended, withdrawn, refused, lapses or otherwise ends; or
 - (ii) you fail a Crime Preliminary Audit; or
 - (iii) you fail a Crime Pre-SQM Audit;
 - (b) you are under Official Investigation or we receive a Report and, in either case, consider that termination is required to protect Clients or us from possible serious harm or to protect public funds or Clients' interests, or if a Report identifies that there has been such a serious breach of Contract or of legislation or such serious professional misconduct or dishonesty that, in all the circumstances, termination is justified;
 - (c) your financial situation is such that we consider that we or Clients are at risk of financial loss or other material prejudice;
 - (d) you are in breach of Part D, Clause 19 (prohibited gifts) of these Contract Standard Terms;
 - (e) you are in breach of your warranty in Part D, Clause 14 of these Contract Standard Terms, we consider such breach to be material and we are not reasonably satisfied that, at all relevant times:
 - (i) you believed such information to be true and accurate in all material respects;
 - (ii) you were unaware of any omissions which made the information supplied misleading or inaccurate; and
 - (iii) you believed that no circumstances had arisen which materially affected the truth and accuracy of such information;
 - (f) you have failed to provide documents or access to premises in accordance with Clause 3.6 or Clause 3.8 of these Contract Standard Terms;
 - (g) this Contract (which will not normally come into force until we have received satisfactory replies to all our pre-contract enquiries) has come into force before we have received such replies and, despite all reasonable endeavours on our part, we subsequently do not receive such replies within a reasonable period.

When might there be termination on notice and how will this work?

9. If you have breached this Contract (except for any failure to comply with the SQM) and the breach is capable of remedy, we are entitled to serve a rectification notice on you, at any time, requiring you to remedy the breach within such period as we may specify, being not less than 28 days. If you fail to remedy the breach to our reasonable satisfaction, we

may serve notice on you terminating this Contract (or any part of it) with effect from such date as we may specify in the notice.

10. If you have breached this Contract (except for any failure to comply with the SQM) and the breach is not capable of remedy, we are entitled to serve a notice on you requiring you not to repeat the breach. If you repeat the breach or we serve you with two further notices (one or each of which may be a rectification notice) in connection with any breach, we may serve notice on you terminating this Contract (or any part of it) with effect from such date as we may specify in the notice.

What about termination for failure to comply with the SQM

11. If, in accordance with procedures in the SQM, you have been issued with a Notice to Terminate, we may, on the date specified in the Notice to Terminate (or on such later date as we may subsequently specify) terminate:
 - (a) this Contract;
 - (b) approval of your Office;
 - (c) approval of any or all of your Classes of Work.

Can there be suspension of a Contract?

12. Whenever we are entitled to terminate this Contract (or any part of it) we may suspend this Contract (or any part of it). We will set out the effects of any suspension (which shall be less serious than termination) in a notice to you.

Termination for Fundamental Breach

13. If you have committed a Fundamental Breach, we may serve a notice on you terminating this Contract (or any part of it) with effect from the date specified in the notice.

21. Consequences of termination

What are the consequences of this Contract ending?

1. Subject to Clause 21.2 below and to any direction by us, when this Contract ends all rights, authorisations and licences granted under this Contract by us to you (and to any of your personnel) end immediately.
2. Unless we otherwise agree in respect of any Contract Work, when this Contract ends you must stop all work on Cases and Matters that you were performing under it as Contract Work and must stop holding yourself out as able to perform Contract Work.
3. Subject to Clause 21.4 and Clause 21.6 below, when this Contract ends our obligation to make payments to you under it ceases.
4. Subject to the provisions of this Contract, the ending of this Contract is without prejudice to any of your or our accrued rights (including, without limitation, our rights to assess

your Claims and to recover any overpayments to you and your rights to recover in respect of any underpayments by us).

5. Upon termination of this Contract under Clause 20 (except Clauses 20.1 to 20.5) neither you nor any of your partners, shareholders, directors, executive officers or senior personnel who, we determine, were responsible for the circumstances leading to the termination, may (for such period as we may prescribe) apply to us for a contract under the Act. Where termination was under Clause 20.9(b), the prescribed period will be at least two years and, normally, longer. This prohibition continues to have effect after this Contract has ended.
6. Any provision of this Contract which relates to, or governs your or our acts after it ends, remains in full force and effect and is enforceable even though the Contract has ended.

What happens to Clients and files if this Contract ends?

7. We will make reasonable endeavours to make arrangements, with which both you and we must comply, to enable any Cases and Matters which you may not continue after any suspension or ending of this Contract to be transferred to one or more other Contractors.
8. Arrangements under Clause 21.7 will allow you to continue to perform such work as may be required by the rules of your professional body and may require you to provide reasonable information about individual Cases and Matters so as to enable an orderly transfer.
9. Arrangements under Clause 21.7 above may require you to transfer the Clients' files to such other Contractors as we may specify.

What if part of the Contract ends?

10. When part of this Contract ends (for example your ability to perform a particular Class of Work is ended) this Clause 21 has effect in respect of that part.

22. Other Contract Sanctions

When may we apply the sanctions in this Clause?

1. If you have breached this Contract or we may apply any Contract sanction under Clause 20 we may (without prejudice to any of our other rights) serve one or more of the notices and orders and apply one or more of the sanctions set out in this Clause 22.
2. We may also (without prejudice to any of our other rights) serve a notice or order or apply a sanction, as specified in Clauses 22.8 to 22.12.
3. Notices, orders and sanctions take effect from the date specified in the notice or order served by us and may be subject to conditions.

What is a payment reduction or non-payment order?

6. We may serve you with a payment reduction, or non-payment, order with the effect that you are not entitled to payment for some or all of the work specified in it.

What is a payment suspension order?

8. If you are under Official Investigation or your financial situation is such that we consider that there is a risk to Clients or to public funds, we may serve you with a payment suspension order (or a “vendor hold”) which has the effect of suspending some or all payments due from us to you under this Contract for such period as may be stated in the order.

What is a constraint order?

9. If you are under Official Investigation, we may serve you with a constraint order, which has the effect of prohibiting you (and your personnel) from starting any new Cases or Matters under this Contract, unless we otherwise direct.

What is a promotional restraint notice?

10. We may serve a notice on you suspending (with effect from such date as we may specify) your entitlement under this Contract to use SQM Promotional Items and to hold yourself out or to promote yourself as a Crime SQM holder, for such period as:
 - (a) any of your solicitors engaged in Contract Work and required under the Solicitors’ Act 1974 to have a valid practising certificate, ceases to have one;
 - (b) you are under Official Investigation;
 - (c) an internal review, review (or mediation) or arbitration under this Contract is under way.

Can individuals be excluded from performing Contract Work?

12. If any of your personnel is, or has been, a cause or subject of an Official Investigation, Report or Contract sanction while he or she was with you, or the cause or subject of such a, or any similar, investigation, report or sanction while he or she was with any other supplier of legal services we may, if we reasonably consider that such a step is necessary to protect Clients’ interests or to protect us from material harm, require that the person concerned shall not (for such period as we may reasonably specify) (a) be a supervisor of Contract Work; and (b) be involved in your performance of Contract Work.
13. Clause 22.12 has effect even if the requirement was made before the person concerned was a member of your personnel. Therefore, we will not pay for any Contract Work that you carry out in breach of a requirement under clause 22.12 (whether the requirement was

made while the person concerned was one of your personnel or not) or for work carried out by any of your personnel who, at the time he or she carried it out, were lawfully prohibited from doing so by any organisation with such power.

14. We will maintain a list (accessible by you) of individuals whom we have required not to be supervisors of Contract Work or involved in the performance of Contract Work.

23. Internal review and review

What matters are subject to internal review?

1. All disputes between you and us concerning:
 - (a) alleged breaches of this Contract;
 - (b) Contract sanctions;
 - (c) decisions by us on the scope of Contract Work authorised by the Contract for Signature; and
 - (d) notices by us under Clauses 22.10 and 22.11 in this Part;are subject to internal review. (For the avoidance of doubt, decisions on individual Client Cases, Matters or Claims are excluded from this Clause 23). For the purposes of this Clause 23, Contract sanctions comprise termination and suspension under Clauses 20.9 to 20.14 in this Part, and any Contract sanctions specified in Clauses 22.5 to 22.9 or in Clause 22.12 in this Part (and include any notice of intention to apply such a sanction). For the purposes of this Clause 23, alleged breaches of this Contract do not include any alleged breach relating to the issue of a Contract notice unless and until we subsequently apply a Contract sanction consequent on the notice.

What matters are subject to internal review, review and arbitration?

2. All disputes between you and us concerning:
 - (a) alleged breaches of this Contract;
 - (b) Contract sanctions; and
 - (c) decisions by us on the scope of Contract Work authorised by the Contract for Signature,are subject to internal review, review (mediation by agreement) and arbitration. We will give written reasons for any decision we make to apply a Contract sanction (and for any decision we make to issue a notice under Clauses 22.10 or 22.11). If requested by you, we will give written reasons for any decision as to the scope of Contract Work authorised by the Contract for Signature.

Must you apply promptly for internal review etc?

3. If you do not pursue your rights under this Clause 23 or Clause 24 within the periods of time specified (or such longer periods of time as we may agree) you thereby accept the position and lose your right to dispute it.

Will sanctions be applied immediately?

4. Pending any internal review, review (mediation by agreement) or arbitration any Contract sanction applied, or to be applied, by us shall be suspended unless we consider that, because of a risk to Clients or to public funds, such sanction must have effect pending any internal review, review (mediation by agreement) or arbitration.
5. Whenever we have determined that any Contract sanction shall continue to have effect pending any internal review, review (mediation by agreement) and arbitration you may apply in writing for a review direct to the Contract Review Body without first applying for an internal review.

What is the internal review procedure?

6. If you have a dispute with us within the scope of Clause 23.1 above, you may write to the Regional Director setting out your reasons and requesting an internal review of our decision. Your reasons must be received by the Regional Director within 21 days (or such longer period as we may agree) of the decision and may include any further information that you wish to be taken into account.
7. If the Regional Director receives a written request for an internal review pursuant to Clause 23.6 above, he will, within 7 days of receipt, forward it to the Supplier Development Group. The Supplier Development Group will, within 14 days of receipt, either (a) review the decision in the light of the information available including the reasons for the decision and your reasons for disagreeing with it or (b) where the dispute is within Clause 23.2, may refer it to the secretary to the Contract Review Body, as an application for a review by the Contract Review Body, in which case, Clauses 23.13 to 23.15 shall apply. The Supplier Development Group will not consider any documents that you have not already seen.
8. Neither you nor we have a right to make oral representations on an internal review.
9. On an internal review, the Supplier Development Group may uphold the original decision, overturn the original decision or substitute a fresh decision for the original decision and if it does so, it will give written reasons for its decision.

What is the review procedure?

10. If you have a dispute with us within the scope of Clause 23.2 above, you may within 21 days of the Supplier Development Group giving its decision and reasons following an

internal review (or, where you are applying for a review pursuant to Clause 23.5 above, within 21 days of the original decision) apply in writing for a review by the Contract Review Body.

11. The application for review must be submitted to the Regional Director. It may include any further information that you wish to be taken into account.
12. The application for review must state your grounds for disagreeing with the decision(s). When your application for a review is received by the Regional Director, it will be forwarded to the secretary to the Contract Review Body, within 7 days, with the original decision and the reasons for it and (unless your application is pursuant to Clause 23.5 above) with your reasons for requesting an internal review and the Supplier Development Group's internal review decision and reasons.
13. The secretary to the Contract Review Body will consider the information received within 14 days of receipt and, if the secretary considers that the Contract Review Body would be assisted by further written information, the secretary will forthwith seek to obtain it from the Regional Director, from you and from such other person as he considers appropriate, within 14 days thereafter. Any further information received from the Regional Director, from you or from any other person will be disclosed to the Regional Director and to you in writing and you and the Regional Director will be given the option to comment in writing on it within seven days. The secretary to the Contract Review Body will also ask you whether you will wish to make oral representations to the Contract Review Body.
14. On a review, you and we may make oral representations, for a maximum of fifteen minutes or such longer period as may be permitted by the Contract Review Body.
15. The Contract Review Body may allow the review, dismiss the review or make a different decision. The Contract Review Body may give directions to the Regional Director. The Contract Review Body may also recommend that a fresh decision is made after a specified period. The Contract Review Body will give written reasons for its decision. The Contract Review Body may award interest (from the date of suspension) at the judgment debt rate if a decision for review was to suspend payment and the review is allowed.

24. Mediation and Arbitration

1. If either you or we disagree with the decision of the Contract Review Body the decision shall (if both you and we agree) be referred to a neutral mediator within 14 days of the decision of the Contract Review Body.
2. The neutral mediator will be chosen by agreement between you and us. If you and we are unable to agree on the choice of a mediator (or if any chosen mediator will not act) both you and we will apply jointly to a nationally recognised mediation body to appoint a mediator.
3. Within 14 days of the appointment of a mediator, you and we must meet him to agree a programme for the exchange of information and a timetable and structure for discussions.

If you and we are unable to agree on any issue at the meeting, the mediator may give directions or seek assistance from a nationally recognised mediation body.

4. Unless otherwise agreed, all negotiations connected with the dispute and any settlement or agreement relating to it must be conducted in confidence and are without prejudice to either your or our rights in any future proceedings.
5. If agreement is reached on the dispute, it shall be put in writing by the mediator for signature by you and us. Once a written agreement has been signed by both you and us it is binding.
6. If you and we are unable to reach agreement on the dispute, either party may ask the mediator to provide a non-binding but informative opinion in writing. Such an opinion shall be provided on a without prejudice basis and must not be used in evidence in any proceedings relating to this Contract without both your and our prior written consent.
7. If no agreement (or no full agreement) is reached within 60 days of the appointment of the mediator (or such longer period as you and we may agree) the dispute, or any remaining part of it must be referred to arbitration under Clause 24.8 below.

When are disputes subject to arbitration?

8. If either you or we disagree with the decision of the Contract Review Body (or if Clause 24.7 applies) the decision of the Contract Review Body shall be referred to arbitration to be decided under the Arbitration Act 1996. The arbitration shall be in accordance with the relevant arbitration scheme run by the Chartered Institute of Arbitrators and shall be final and binding. Notice of intention to enter arbitration must be given in accordance with the terms of the scheme within 21 days of the decision of the Contract Review Body or (if later) the date when Clause 24.7 applies. (For the avoidance of doubt, the “relevant scheme” is the current scheme, established by the Chartered Institute of Arbitrators, for the purpose of determining disputes under the Commission’s contracts for legal services.)
9. Both you and we must use reasonable endeavours to ensure that any arbitration is concluded within three months or as soon as practicable thereafter and must provide in a timely manner all reasonable information, assistance, co-operation and responses that may be required.
10. We reserve the right to apply any Contract sanction we consider appropriate if:
 - (a) the arbitration has not been concluded within three months of the appointment of an arbitrator; or
 - (b) for any reason an arbitrator is not appointed within one month of the date of the notice to enter arbitration; or
 - (c) after one month has elapsed since the date of the relevant decision, we consider that you are failing to comply with Clause 24.9 above,provided that, under (a) the delay has not been caused by us and, under (b) we are not the cause of the failure to appoint an arbitrator.

Part A Scope and Structure of Contract Work

1. Introduction

1.1 Contract Scope

1. Work may be done under this Contract to provide such Advice and Assistance (including Advocacy Assistance) and Representation as the interests of justice require, in accordance with the provisions of this Contract, the Act and Regulations made under it. Work may only be done under this Contract so far as it falls within the Criminal Defence Service established under the Act, unless otherwise stated under the terms of this Contract.

1.2 Classification of Contract Work

1. This Contract provides for work to be undertaken within the following Classes of Work:
 - (a) Criminal Investigations;
2. Each Class of Work is divided into various Units of Work in respect of which one or more of the following Authorised Levels of Service may be provided:
 - (a) Advice and Assistance;
3. Certain Units of Work are subject to work limitations, but these are not absolute limits. The upper limit may be exceeded on application made to the Commission and extension being granted. The work limitations set out in Sections 2 to 6 of this Part are inclusive of profit costs, Disbursements and Counsels' fees, but exclusive of VAT.
4. Details of the Units of Work that may be undertaken within each Class of Work are set out in Sections 2 to 6 of this Part. A summary of the Classes, the Units of Work within them and the Authorised Levels of Service that may be provided within each Unit of Work are set out in the table below.

To reflect amendments to appeals procedures, with effect from 2 October 2006 in this Specification the following terms have the following meanings:

“Costs Committee” means “Independent Costs Assessor” and “Assessor” shall have the same meaning. This amendment shall not affect the sensible interpretation of the Specification for cases or situations that are in a process beginning before, but ending after, the date this amendment came into effect e.g. so that a decision of a “Regional Director” made before 2 October 2006 may be subject to review by an “Assessor” after 2 October 2006.

2. Criminal Investigations

2.1 Introduction

1. Advice and Assistance (including Advocacy Assistance) may be given to Qualifying Clients involved in Criminal Investigations in accordance with the terms of this Contract.

2.2 Scope of Class

1. This Class of Work includes all work properly undertaken for a Client during the Criminal Investigation of a Matter (i.e. up to the point at which the Client is charged or summoned for the Matter under investigation, or the investigation is otherwise terminated). This Class also includes post-charge Police Station Advice and Assistance on the same Matter which is necessary to complete the attendance at the Police Station immediately following charge and, subject to paragraph 2.4.3, post-charge Police Station Advice and Assistance where a Client is being represented in the Criminal Proceedings Class of Work and in the same Matter or Case:
 - the Client is arrested for breach of bail conditions or on a warrant following failure to appear at the magistrates' or Crown Court; or
 - the Client is required to attend a post-charge interview or identification procedure or is the subject of an identification procedure carried out by means of video recordings who is not present at a Police Station at the time the procedure is carried out; or
 - the Client is recharged following discontinuance or dismissal of proceedings; or
 - the Client is required to attend the Police Station for a reprimand, warning or caution to be administered.

The following Units of Work fall within the Class:

- (a) **Advice and Assistance** to a Client involved in a Criminal Investigation, other than Advice and Assistance under paragraphs (b) to (e) below;
- (b) **Police Station Telephone Advice**, that is telephone Advice and Assistance, where there is no attendance at the Police Station, to a Client who:
 - (i) is arrested and held in custody at a Police Station; or
 - (ii) is a Volunteer; or
 - (iii) is being interviewed in connection with a Serious Service Offence; or
 - (iv) is detained under Schedule 7 of the Terrorism Act 2000.except that, during the CDS Direct Pilot, all CDS Direct Pilot Cases are excluded from such Police Station Telephone Advice (and no payment in respect of them will be made) – see Part B Section 9.
- (c) **Police Station Attendance**, that is Advice and Assistance, where there is an attendance at the Police Station, to a Client who:
 - (i) is arrested and held in custody at a Police Station; or

- (ii) is a Volunteer; or
 - (iii) is being interviewed in connection with a Serious Service Offence; or
 - (iv) is detained under Schedule 7 of the Terrorism Act 2000; or
 - (v) is the subject of an identification procedure carried out by means of video recordings who is not present at a Police Station at the time the procedure is carried out.
2. This Class of Work does not include any matter in connection with an investigation by Services Police where an attendance takes place outside the UK.

2.3 Qualifying Criteria

Merits

1. The Sufficient Benefit Test set out in Part B, Rule 2.5 of this Specification must be met in order to receive Advice and Assistance under paragraphs 2.2.1(a) to (c).
2. The Sufficient Benefit Test will be satisfied automatically where a Client has a right to legal advice or is a Volunteer under the Police and Criminal Evidence Act 1984 or the equivalent legislation applying to the armed forces in the case of military investigations. However the Sufficient Benefit Test is only met automatically for the purposes of initial advice. It must still be applied by you in determining the extent of the advice which is required (including whether an attendance is necessary and the length of time which should be spent).

Financial

3. In order to receive Advice and Assistance under paragraph 2.2.1(a) above, the Client must satisfy any financial criteria set out in Regulations.

2.4 Rules on Claiming

1. A single Claim must be submitted for all work in this Class undertaken for a Client in the same Matter irrespective of the number of attendances or occasions on which advice is given, or the Units of Work included in the Claim, except where a Claim has been submitted already for the same Matter because paragraph 2.4.2(c) or (d) below applies. The single Claim must be for one, or more, of the Units of Work set out at paragraph 2.2.1 above.
2. A Claim may be submitted when:
 - (a) the Investigation has been concluded, either by way of the Client being charged or summoned, or the Matter has been disposed of in any other way; or
 - (b) it is known that no further work will be undertaken for the Client in the same Matter; or

- (c) it is unclear whether further work will be required and a minimum of one month has elapsed since the last work in the Matter was undertaken. This provision will not apply where a Client has an outstanding bail back in the Matter, unless it is known that further work will not be undertaken on that occasion; or
 - (d) post-charge work has been undertaken that is within the scope of paragraph 2.2.1.
3. If post-charge work is claimed in this Class under paragraph 2.2.1 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 for the substantive proceedings. Any post-charge work done outside the Police Station shall be undertaken and claimed in the Criminal Proceedings Class of Work. Travel, waiting and attendance at the Police Station may be claimed in the Investigations Class where post-charge work is undertaken within paragraph 2.2.1, but no telephone calls (whether routine, advice or fixed fee) may be claimed under the Investigations Class except where the client is arrested for breach of bail conditions or on a warrant following failure to appear at the magistrates' or Crown Court.

2.5 Work Limitations

1. Subject to any authority to extend the limit granted in accordance with Part B, Rule 2.9 of this Specification, the following work limitations apply:

	Advice and Assistance given under paragraph 2.2.1(a)
Upper Limit	£300

Summary of Grant Arrangements and Limitations

Part B Rules and Guidance on Performing Contract Work

1. General Rules – all Authorised Levels of Service

APPLICATIONS

1.1 Application Form

You shall not provide Contract Work unless the Client has attended you in person and completed an application on the relevant form, unless provided otherwise.

A copy of the completed form must be kept by you on the file, and its correct completion will be checked upon audit.

We may prescribe different forms for different Classes or Units of Work or Clients and for different Authorised Levels of Service.

We may amend the form or forms from time to time upon giving reasonable notice to you and following consultation with the Law Society.

1. Failure to properly complete the requisite form may lead to the costs of the matter being disallowed on Assessment. The financial criteria section (where relevant) and the Client details must be fully completed and the form signed by the Client in your presence. Work carried out before the completion and signing of the form will not be remunerated. Limited exceptions to these principles for Advice and Assistance are contained in Rules 2.1, 2.3 and 2.4 in this Part (postal applications, telephone advice and outward travel).
2. An application form need not be completed prior to advising and assisting the Client under the following Units of Work, provided that you ensure that the Client satisfies the relevant Qualifying Criteria prior to giving the advice:
 - (a) Police Station Advice and Assistance under Part A, paragraphs 2.2.1(b) or (c) of this Specification;

Files

1.4 Unique File Number

You must assign a unique file number (UFN) to each separate Matter or Case other than those involving only the provision of Advice and Assistance or Advocacy Assistance by a court Duty

Solicitor acting as such. (The definition of a “Matter” is contained in Rule 2.11 in this Part. The definition of a “Case” is in Rule 5.8 in this Part.)

You must assign a UFN to a Matter or Case before the first point of contact with us, which may be an application e.g. to extend the upper limit, or a Claim. The UFN format as set out in paragraph 8(f) below is always calculated with reference to the date on which Contract Work was first undertaken for the Client (which may be earlier than the date on which the UFN is actually assigned).

The same UFN must be used for all Claims arising out of the same Matter or Case concerning the same Client. If you act for two or more Clients during the course of a single Matter or Case, then a “lead” UFN must be assigned in accordance with the Guidance in this Rule, if the work undertaken will form a single Claim.

If a Matter involving the same Client develops into a Case, then the same UFN must be assigned to both the Matter and the Case.

You do not need to assign a UFN to any work which commenced under the Legal Aid Act 1988 (see Rule 1.5 of this Part). You may continue to use your current referencing system for those cases.

1. The UFN must be formulated in accordance with the Guidance below.
2. The UFN must be unique and must be recorded on each file, any correspondence or applications sent to the Commission and the Claim form.
4. If more than one Matter gives rise to a single Case, you must use the UFN assigned to the earliest Matter in time as the UFN for the Case.
5. If one Matter gives rise to more than one Case, you must assign a new UFN to the second and subsequent Cases.
6. Where you take over a Matter or Case from another CDS Supplier, you shall assign a new UFN. The relevant date for the purposes of formulating the UFN is the first occasion on which you undertake Contract Work for the Client following a change of Solicitor.
7. If the Client seeks further advice on the same Matter or Case after you have submitted a Claim, the original UFN must be used if you undertake any further work.

Filing of Case Information and UFNs

8. The following file management principles apply:
 - (a) subject to paragraphs (c) and (d) below, you must retain on a separate case file, or on linked files retained together, records of each individual Matter or Case undertaken by you under this Contract;
 - (d) where a Matter concludes after a single attendance where only Police Station Telephone Advice is provided, then a separate file need not be opened, but relevant

papers must be retained safely on a collective file as they may be called for on audit or Assessment. A UFN must be allocated to each separate Matter for claiming purposes;

- (e) each separate Matter or Case shall be identified by a UFN assigned by you and formulated in accordance with paragraph (f) below. Although papers relating to more than one UFN may be maintained on a single file or a set of linked files (e.g. where they relate to the same Client), you must ensure that all records relating to any one UFN are held on the same file or set of linked files in a way that can be readily identified by both you and the Commission's staff;
- (f) the UFN format is:
 - (i) the date on which Contract Work was first undertaken for the Client in the Matter or Case set out in the six digit numerical format of DDMMYY;
 - (ii) a forward slash;
 - (iii) a sequential number unique to that day. The numerical sequence part of the UFN will return to 001 at the beginning of each day, i.e. from midnight onwards.

e.g. the UFN for the first Matter or Case dealt with on 2 April 2001 will be:

020401/001

The next number in sequence will be:

020401/002

Similarly the UFN for the first Matter or Case on 3 April 2001 will be:

030401/001

and then 030401/002 etc.

- (g) the UFN will apply for the life of the Matter or Case, and where a Matter becomes a Case (because paragraph (b) above applies) the UFN allocated to the Matter also applies to the Case;
 - (h) you are not required to use the UFN as your sole file numbering system. A UFN must be assigned in accordance with these rules to Contract Work. It will be used by us as the only reference number for the purposes of correspondence, applications, Claims and audits at all Authorised Levels of Service.
9. The UFN will be used to identify all the work done throughout the Criminal Investigations Class of Work for a single Client on a single Matter and will be reported on the Claim made at the conclusion of the work done in that Class.
 10. A separate UFN must be assigned to each individual Client who you act for in a Matter, even if they are co-suspects at the Police Station. A separate Claim will be made for each

Client and the time spent must be apportioned where necessary.¹¹ If a Client is charged with an offence and a Representation Order is granted in the magistrates' court, the same UFN applies to all work done by you under the Criminal Proceedings Class of Work and you must make the Claim for work done in that Class under that UFN.

13. Where you act for co-defendants and provide pre-Order cover under Part B, Rule 5.13 a single Claim may be submitted for each Client represented and the maximum fee set out in Part A paragraph 3.6.3 and Part B, Rule 5.13 applies to each Claim. The work undertaken for any Client who is granted a Representation Order shall be included as part of the standard or non-standard fee Claim under that Order. If one or more of the Clients is not granted an Order then a separate Claim may be made for those Clients and the pre-Order cover maximum fee will apply to each separate Claim. You must assign a separate UFN to each Claim.

Purpose

14. The filing of all relevant papers on a single file or linked files maintained together is a quality issue. Criminal cases often pass between a number of fee-earners, each of whom must have access to all up-to-date and relevant information. This requirement also enables the Commission to link Clients in the same Matter or Case and identify files for the contract management audit.

2. Advice and Assistance

Performing Contract Work

Advice and Assistance includes provision of Advocacy Assistance where it is permitted under Section 4 of this Part (cross refer to Rule 4.1 in this Part for an explanation of which of these Rules do not apply to Advocacy Assistance).

APPLICATIONS

2.1 Postal Applications

You may exercise the Devolved Power to accept an application for Advice and Assistance by post from a Client where there is good reason to do so, but not where the Client is resident outside England and Wales and:

- (a) such residence is purely temporary and the Client can without serious disadvantage delay the application until he or she has returned to England and Wales; or**
- (b) the Advice and Assistance could be applied for on the same Matter by a person resident in England and Wales; or**

(c) it is otherwise unreasonable to accept the application.

1. Good reason for the purposes of this Rule should take into account all factors mentioned in the Guidance to Rule 7.9 in this Part.
2. It would not be reasonable to accept a postal application on behalf of a person outside of England and Wales if the Client could be expected to attend personally in any event, for example, because of a forthcoming or regular visits to England and Wales.³ This Rule sets out the only circumstances in which you may accept an application for Advice and Assistance from a Client outside England and Wales, except for Police Station Advice and Assistance.

2.2 Attendance on Client's Behalf

Where a Client cannot for good reason attend on you in order to apply for Advice and Assistance, that Client may authorise another person ('the authorised person') to attend on their behalf.

The authorised person must provide you with the information and satisfactory evidence in support necessary to assess whether the Client meets the financial criteria. The authorised person must attend on you personally to make the application.

Save where the Advice and Assistance is provided to a Client whose physical or mental disability renders it impracticable to attend the office, no member, associate or employee of your firm (or family member of such member, associate or employee) may act as an authorised person for the purposes of this Rule.

You may not accept an application for Advice and Assistance from an authorised person on behalf of a Client unless that Client is, at the time when the authorisation is given, either present in or resides in England and Wales.

1. Good reason for the purposes of this Rule should take into account all factors mentioned in the Guidance to Rule 7.9 in this Part.
2. The reason relied upon must always be noted by you and kept on the file.
3. If the Client provides written authority, a copy should be kept by you. The form should be signed by the authorised person on the Client's behalf and should be annotated indicating the full name of the person signing and to make it clear that the application signed was in accordance with this Rule.
4. If the authorisation was by telephone, an attendance note should be made and retained on file. The form should be signed by the authorised person on the Client's behalf and should be annotated indicating the full name of the person signing and to make it clear that the application signed was in accordance with this Rule.
5. Work in respect of the authorisation should not be included in your Claim for costs.

2.3 Telephone Advice

You may claim payment for advice given to a Client over the telephone before that Client has signed the application form where:

- (a) the Client cannot for good reason attend your office; and**
 - (b) the Client meets the Qualifying Criteria for the provision of Advice and Assistance (including the financial criteria) and has subsequently signed the application form.**
1. Good reason is as defined in the Guidance to Rule 7.9 in this Part. The reason relied upon should always be noted by you and kept on the file.
 2. Your Client does not have to attend your office to sign the application form after having been given the telephone advice. Instead, you may send the form to your Client, after you have given the advice, for signature and return.

2.4 Outward Travel

You may claim for the mileage or cost of public transport for outward travel (but not travelling time, except as allowed in Guidance) to visit a Client away from your office before the application form is signed where:

- (a) the visit is justified for good reason; and**
 - (b) the Client meets the Qualifying Criteria for the provision of Advice and Assistance (including financial criteria) and has subsequently signed the application form.**
1. Good reason is as defined in the Guidance to Rule 7.9 in this Part.
 2. Where you are visiting the Client in detention, prison or hospital then you may also claim the travelling time at the appropriate rate. The provisions of paragraph (b) of this Rule will need to be satisfied for any Claim to be made.
 3. Costs must be reasonably incurred taking account of all the circumstances including, for example, the distances involved as against the availability of advice from a more local Contractor and the justification for travelling to attend on the Client at all, bearing in mind that telephone advice can be given and applications accepted by post.

QUALIFYING CRITERIA

2.5 Sufficient Benefit Test

Advice and Assistance may only be provided on legal issues concerning English law and where there is sufficient benefit to the Client, having regard to the circumstances of the Matter, including the personal circumstances of the Client, to justify work or further work being carried out.

This Rule only applies to Advice and Assistance other than Advocacy Assistance.

1. The Sufficient Benefit Test applies both when the application is made and as and when further Advice and Assistance is provided throughout the Matter. It should therefore be considered whenever work is to be carried out on the Matter and should be applied in conjunction with any Guidance on the appropriate work relevant to the particular Class.
2. In some cases, it will be necessary to provide some initial Advice and Assistance in order to determine whether there is likely to be any benefit to the Client, however, once it is apparent that the test is no longer satisfied then the Advice and Assistance must cease and the Client must be so advised.
3. In practice the test should weed out cases which do not merit public funding.
4. At the most basic level, the test is intended to prevent you starting or continuing to carry out work where there is no real legal issue in relation to which the Client will benefit from the provision of Advice and Assistance. You should not be providing Advice and Assistance where the Client is seeking advice on non-legal matters. In such cases, you should generally refuse to provide Advice and Assistance at all, or if necessary cease to provide Advice and Assistance once the position becomes clear, which would often be at first interview.
5. The test is not intended to prevent you from providing any Advice and Assistance merely because the Client's case has poor prospects of success. For example, a Client may be entitled to advice about appealing out of time, even if it is soon clear that there are no legal grounds for pursuing an appeal.
6. In general, you should not be carrying out work, beyond taking initial instructions and advising the Client of his or her options unless on the evidence available to you at the time the Advice and Assistance is being provided, the Client's case involves a legal issue.

Sufficient Benefit and specific Units of Work

7. In addition to the general requirements set out above there may be further specific requirements which need to be met in order for the Sufficient Benefit Test to be satisfied in particular instances. Further guidance on sufficient benefit and on when it will or will not be reasonable to carry on particular work is contained in the Guidance on specific Units of Work in Section 6 of this Part.

Witnesses

8. A witness may require Advice and Assistance if asked to give a statement to the investigating authorities. There must be some complicating factor or circumstances that makes it reasonable for Advice and Assistance to be given to a witness e.g. if the witness is at risk of self incrimination.

Police Station Advice and Assistance

9. The Sufficient Benefit Test will be satisfied automatically where a Client has a right to legal advice or is a Volunteer under the Police and Criminal Evidence Act 1984 or the equivalent legislation applying to armed forces in the case of military investigations. However, the Sufficient Benefit Test is only met automatically for the purposes of initial advice. It must still be applied by you in determining the extent of the advice which is required (including whether an attendance is necessary and the length of time which should be spent).

2.6 Financial Criteria

Advice and Assistance shall only be given to a Client who has satisfied any financial criteria set out in Regulations.

Subject to Regulations, satisfactory evidence in support of the Client's financial information must be provided to you before you apply the financial criteria.

The evidence (or a copy thereof) must be retained on the file.

1. Regulations do not impose any financial criteria in relation to the following Units of Work:
 - (a) Police Station Advice and Assistance under Part A, paragraphs 2.2.1(b) and (c) of this Specification;
2. Satisfactory financial evidence will need to be supplied where the financial criteria apply.
3. Satisfactory evidence in support of disposable income would be the most recent pay slip if the Client is employed, or the most recent tax assessment or accounts if the Client is self-employed. In the case of a Client in receipt of benefit, his or her benefit book, notification or any relevant correspondence from the paying agency in the Client's possession would be satisfactory evidence. It will therefore generally, except in cases of doubt, be unnecessary to obtain a specific letter from the Benefits Agency confirming that the benefit remains in payment.
4. Satisfactory evidence of disposable capital would normally be the Client's signed statement on the application form. Written evidence of disposable capital need only be supplied in cases of doubt. In such cases, up to date bank statements or savings books should be supplied where relevant.
5. You may accept clean copies of any of the above as satisfactory evidence. The evidence must be supplied in relation to both the Client and his or her partner if their means are aggregated.
6. You may assess the Client's means without the accompanying evidence where it is not practicable to obtain it before commencing the Advice and Assistance, or where pre-signature telephone advice is given. In such cases, the Client must be required to provide

the evidence as soon as practicable, unless exceptionally the personal circumstances of the applicant (such as the Client's age, mental disability or homelessness) make it impracticable for the evidence to be supplied. Otherwise, if satisfactory evidence of the Client's financial circumstances is not subsequently supplied, then any work carried out by you above two hours shall not be claimed by you as Contract Work. In such circumstances, a note must be made on file.

7. Time spent applying the financial criteria for Advice and Assistance and completing the application form is not remunerable under the Contract.

REFUSAL TO GIVE ADVICE AND ASSISTANCE

2.7 Refusal to Give Advice and Assistance – Good Cause

Subject to Rule 2.10 in this Part, you may for good cause refuse to accept an application for Advice and Assistance, or having accepted an application, decline to carry out or continue to carry out work and may, if you think fit, refuse to disclose your reasons for doing so to the Client or person seeking Advice and Assistance on his or her behalf. You shall however give the Regional Director such information about such a refusal as he or she may require.

1. This Rule does not refer to situations where an application for Advice and Assistance is refused on the basis of the financial criteria, where relevant, or where you cease to provide Advice and Assistance because further work is not justified (for example, because the Sufficient Benefit Test is no longer met) but to other situations where you are unable or unwilling, perhaps for professional reasons, to take the matter on or to continue acting.
2. Good cause will therefore include potential or actual conflicts of interest.

LIMITS ON WORK

2.8 Initial Limit

The initial limit for Advice and Assistance and Advocacy Assistance has been disapplied to all Classes of Work. Instead you may perform Advice and Assistance and Advocacy Assistance up to the amount of any upper limit set by Rule 2.9, without the need for any formal extension or extensions. You should continue to have regard to the Sufficient Benefit Test throughout the Matter, and should only perform such work as is reasonable in a particular Matter. You must also continue to have regard to the Guidance in Section 6 on the reasonableness of the work to be done and the time to be spent. The existing Guidance on time standards will therefore continue to be applied on Assessment, save that formal extensions of the initial limit will not be required.

2.9 Upper Limit

You will not be paid more than the upper limit unless that limit has previously been extended by the Regional Director in accordance with the Rules and Guidance set out in this Specification (or in the case of Legal Help in the rules set out in the General Civil Contract).

The upper limits applying to the different Units of Work are set out in Part A, Sections 2 to 6 of this Specification.

The Sufficient Benefit Test must be reapplied before any extension is sought in Matters to which it applies.

An application for authority to exceed the upper limit must be made to the relevant Regional Director on the form specified by us.

If authority is granted to exceed the limit you may claim at the appropriate payment rate under Part E of this Specification for the work actually and reasonably carried out in accordance with the Sufficient Benefit Test (where it applies), up to a maximum of the amount authorised by us in the particular case.

If we refuse to grant an extension to the upper limit, a right of review arises to the Funding Review Committee in accordance with Rule 5.12 in this Part.

The upper limits set by us may vary according to the type of Advice and Assistance or Advocacy Assistance provided and by individual Contractor.

1. The cost of Advice and Assistance (including Advocacy Assistance) for the purposes of this Rule consists of:
 - (a) the fees which are properly claimable by you in respect of the Advice and Assistance under the terms of the Contract;
 - (b) any Disbursements, including Counsel's fees, properly incurred by you in connection with the giving of Advice and Assistance or Advocacy Assistance.
VAT is not included.
2. In order that we can monitor high cost matters you must not exceed the upper limit without our authority. The Regional Director may grant or refuse such authority on our behalf. If authority is granted, the Regional Director will set a new upper limit on the Matter, above which payment will not be made unless you have applied for and been granted further authority. Application for authority must be made on the appropriate form.
3. Authority to exceed the limit is unlikely to be granted in any case where Advice and Assistance is in relation to proceedings or potential proceedings for which Advocacy Assistance or Representation would be available. In such cases the appropriate way to

proceed once the limit for Advice and Assistance (other than Advocacy Assistance) is reached would usually be by an application for Advocacy Assistance or Representation.

4. In general, authority will not be granted unless the work carried out to date and the further work proposed is reasonable in accordance with any Guidance and the Sufficient Benefit Test (where applicable) and any other relevant merits test continues to be satisfied. It would not be reasonable to include any work which has to be undertaken as a result of your obvious error or omission and any such work should not be included as part of a Claim for costs.
5. Extensions cannot be granted retrospectively and do not operate retrospectively. When circumstances change such that it is necessary to carry out substantively different work from that envisaged in the extension granted, a separate extension will need to be considered.
6. You will not be paid under this Contract for any work undertaken in excess of the upper limit if an extension has not been obtained. Where an extension to the upper limit has been granted on the basis of certain work being undertaken, then the costs (including Disbursements) of other work not previously specified may be disallowed as it does not fall within the scope of the extension granted, unless there are circumstances which justify the unanticipated work as reasonable. This is an issue for determination on Assessment.
7. The level of the upper limits will be set by us from time to time and will vary by reference to the type of Advice and Assistance or Advocacy Assistance provided. However, a Regional Director may also vary the limit for individual Contractors. A Regional Director may, for example, increase the limits applicable to Matters commenced by a Contractor where its SQM record and its record of work carried under the Contract justifies this. Likewise, a Regional Director may decrease the limits for a Contractor where he or she has concerns about the work carried out by that Contractor, including any concerns which have arisen as a result of the Assessment of Claims or in relation to Devolved Powers.

2.10 Refusal to Grant an Extension

THIS RULE HAS BEEN INTENTIONALLY OMITTED

Separate Matters and Boundaries between Classes of Work

2.11 Separate Matters and Boundaries between Classes of Work

- (a) **In the Criminal Investigations Class, all Advice and Assistance and Advocacy Assistance provided to one Client in respect of a Criminal Investigation constitutes a single Matter, whether or not that Investigation is extended to include other alleged offences;**

Work for the same Client may be treated as a separate Matter if it involves the provision of Advice and Assistance or Advocacy Assistance under this Contract on a legal issue which amounts to a genuinely separate problem requiring a separate application (where relevant) and

which can be claimed separately in accordance with the Rules in Part A, Sections 2 to 6 of this Specification.

You must identify, and record on the appropriate case file, any point at which the work which you are performing for a Client becomes a separate Matter.

Where two or more separate Matters arise, each one must be the subject of a separate application form (where relevant) and the appropriate Qualifying Criteria will apply to each Matter.

1. This Rule and the Guidance below must be read in conjunction with the Guidance on specific Units of Work in Section 6 of this Part.
2. If any work will constitute a separate Matter, you must decide whether you may perform it under your Contract.
 - (a) a single application form should be completed to identify the issues and provide general, preliminary advice. If one legal issue is identified then the original, single application should be used for the provision of further Advice and Assistance. The following points should be noted:
 - (i) 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;
 - (ii) 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 and Assistance continues to be provided on the same overall legal issue;
 - (b) where multiple application forms are used then you must record the reasons on file and be able to justify your decision on Assessment or audit. Duplicated work should not be claimed and work undertaken under one Matter may affect the reasonableness of subsequent work in separate Matters (for example, less preliminary work may be necessary under the second Matter as a result of your existing knowledge of the Client and his or her circumstances). Where different fee-earners undertake work for the same Client on different Matters, care should be exercised to ensure that no duplication of work takes place. If it subsequently comes to light that more than one fee-earner has undertaken work for the same Client on the same Matter then a check should be made to ensure that there has been no duplication. If duplicated work has been claimed in error, you must notify us;
 - (c) 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;
 - (d) where two or more Matters arise from the same set of circumstances, the chances of them being separate Matters diminish;
 - (e) where two Matters or more lead to a single application or appeal, one application form should be completed and the case should be treated as one Matter;

- (f) where two or more Matters would be dealt with under one Representation Order or as part of the same Case, one application form should be completed and the Case should be treated as one Matter;
 - (g) if a Client seeks advice as to whether he or she should change Solicitor from a Solicitor already providing Advice and Assistance it is not justified to consider this as a separate Matter to the advice being given by the previous Solicitor. The provisions of Rule 2.12 below should be applied before any advice is given as a separate Matter.
3. 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.
 4. 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.

2.12 Previous Advice and Assistance

You may not provide Advice and Assistance to a Client who has received Advice and Assistance for the same Matter from another Solicitor within the six months preceding the application, except where:

- (a) **there is a gap in time and circumstances have changed materially between the first and second occasions when the Advice and Assistance was sought, for example, a Client has been charged or convicted in the intervening period; or**
- (b) **the Client has reasonable cause to transfer from the first Solicitor e.g. conflict of interest; or**
- (c) **the first Solicitor has confirmed to you that he or she will be making no Claim for payment for the Advice and Assistance; or**
- (d) **Advice and Assistance was originally given at a Police Station or by a court Duty Solicitor acting as such.**

When providing Advice and Assistance in the circumstances set out in this Rule you should record the justification for doing so on the file. For the avoidance of doubt, this power is a Devolved Power.

1. If a Client changes Solicitor within the same firm, or the Solicitor changes firm and continues to advise the Client, then there will not have been Advice and Assistance from ‘another Solicitor’ for the purposes of this Rule. However, the Rule will apply if the Client changes firms and the same Solicitor does not continue to provide Advice and Assistance to the Client.
2. You should not provide Advice and Assistance under the terms of any of the exceptions contained at (a) to (c) above where:
 - (a) the Client merely finds the first advice unpalatable and wants a second opinion;

- (b) there is only a short time between the first and second occasions when Advice and Assistance is sought and no material change of circumstances has occurred;
 - (c) the change requested is from a second to a third Solicitor (unless exceptionally there is good reason for a further change);
 - (d) there is no reasonable explanation for the Client seeking Advice and Assistance from a new Solicitor.
3. If in doubt, you should assume that previous Advice and Assistance has been given and ensure that any work you carry out reflects the fact that some work may already have been done on the Matter to ensure that there is no element of repetition.
 4. Prior to giving Advice and Assistance under the Rule, the Client must complete a fresh application form and must meet the Qualifying Criteria.
 5. Where Advice and Assistance is provided in contravention of this Rule, then the work undertaken cannot be claimed or paid as Contract Work.
 6. You must assign a new unique file number and must make a note on the file to confirm that Advice and Assistance has been given to the Client previously by another Solicitor.
 7. If you provide further Advice and Assistance in accordance with this Rule, then any work undertaken by another Solicitor previously will not count for the purposes of the upper limits specified in Part A, Sections 2 to 6 of this Specification.

2.13 Further Instructions after a Matter Ends or a Claim has been submitted

Where you have previously provided Advice and Assistance to a Client in relation to a Matter, and you have already claimed for the Matter in a Claim submitted to us in accordance with the Rules in Part C of this Specification, then any further Advice and Assistance provided to the Client in relation to the same Matter must be the subject of a separate application.

The original upper limit (as extended) will continue to apply, where relevant.

1. One effect of this Rule is that the Client must complete a further application form and establish that the financial criteria are met, where relevant. It will not normally be reasonable to provide Advice and Assistance in relation to a Matter where you have previously provided it unless there are substantive issues outstanding from the first occasion when Advice and Assistance was provided (this will often be the case where the Client has simply failed to give instructions for a period) or there has been a material development or change in the Client's circumstances such that further Advice and Assistance is now required.
2. Where a separate Matter is commenced under this Rule, then your case file should make reference to any previous closed file and the files should be kept together for audit purposes. You must assign the original unique file number to the new Matter.
3. You may need to consider an extension to the upper limit where appropriate, unless the previous limit was not exhausted.

(Cross-refer to Part C, Rule 1.9 of this Specification for the Rule on Previous Claims).2.14

Boundary between Advice and Assistance and Representation

Advice and Assistance does not extend to cover Representation, no matter what the circumstances of the Client or the case. Where a Representation Order is granted you shall not provide or continue to provide Advice and Assistance or Advocacy Assistance to the Client on the same Matter which gave rise to the Criminal Proceedings, unless a Criminal Investigation is ongoing in respect of other offences relating to the same Matter.

3. Police Station Advice and Assistance – Own Solicitor

3.1 Rules Applying

The Rules in Section 1 and Rules 2.5 (Sufficient Benefit Test), 2.7 (Refusal – Good Cause), 2.11 (Separate Matters) and 2.13 to 2.14 (Further Instructions, Boundary with Representation) of this Part apply to Police Station Advice and Assistance, together with the Rules in this Section.

3.2 Applications

Subject to any Arrangements made by the Commission, an application for Police Station Advice and Assistance may be made by telephone to the Solicitor or Representative from whom the Advice and Assistance is sought.

A written application is not required for Police Station Advice and Assistance given under Part A, paragraphs 2.2.1(b) or (c) of this Specification.

3.3 Use of Representatives

Police Station Advice and Assistance may be given by a Representative.

In Own Solicitor cases, initial advice may be given by a Representative.

When you delegate work to a Representative who is not directly employed by your firm, i.e. under a contract of service, you must ensure that the individual is appropriately supervised and the Guidance below is complied with.

If we consider that you have failed to comply with the supervision requirements set out in this Rule then you are not entitled to payment under this Contract for any work which was not properly supervised.

A Probationary Representative may not provide Police Station Advice and Assistance on an indictable only offence.

From 1 April 2003, a Probationary Representative may only provide Police Station Advice and Assistance for the firm (which must hold a General Criminal Contract) at which his or her supervising solicitor is based.

A Representative shall not be employed as a special constable or in any other capacity that may cause a conflict of interest when undertaking criminal defence work.

If work is delegated to a Representative or agent who is not an employee of the firm, the travel time claimed shall not exceed 45 minutes each way. Where this rule is applied the fares and/or mileage claimed should not exceed that which would have been paid had the journey lasted less than 45 minutes.

A Solicitor may be suspended from acting as a supervising Solicitor for Probationary Representatives if serious shortcomings in supervision have been identified to you and remedial action has not been taken or is ineffective. If suspended, the Solicitor has a right of appeal to the regional duty solicitor committee under paragraph 7.13(d) of the Duty Solicitor Arrangements 2001.

1. You may use staff not employed by you, subject to the Performance Standards. Any work conducted for you by staff not employed by you is subject to the Quality Standards. This includes work conducted by staff who are designated by you and those who are not.
2. If you deploy a Representative not employed under a contract of service by your firm, you must be satisfied that the Representative is competent to do the work i.e. has the necessary skill, knowledge and experience. The Representative must be a Solicitor or currently registered as a Probationary or Accredited Representative.
3. Before attending the Police Station, the Representative must have the telephone number of the conducting Solicitor (including an out of hours number if appropriate).
4. The Representative must be able to contact the conducting Solicitor (or another Solicitor in the firm with sufficient experience of Police Station work) in case the Representative requires guidance as to how to proceed with the case when advising and assisting at the Police Station.
5. A written report on the case must be submitted to the conducting Solicitor by the Representative once the attendance at the Police Station has concluded and at the latest by the next working day.
6. A supervising Solicitor for a Probationary Representative shall document, within 7 days of the Representative's inclusion on the Police Station Register:
 - (a) the dates by which a further test needs to be passed at 6 months and all tests within 12 months to avoid suspension from the Register;

- (b) the process that the supervising Solicitor will use to ensure that the Probationary Representative's work is quality assured.

Failure to comply with this requirement may be construed as a serious shortcoming in supervision justifying suspension as a supervising Solicitor.

3.4 Serious Service Offences/Armed Forces Custody Hearings

A Client who is being investigated in connection with a Serious Service Offence or at an application to extend detention in military custody before a judicial officer under the Armed Forces Discipline Act 2000 may be advised by a Solicitor or an Accredited Representative.

1. Military suspects being investigated for military offences other than summary only may receive Advice and Assistance from a Solicitor.
2. The Armed Forces Discipline Act 2000 amends the relevant Service Acts by introducing an entitlement for services personnel to be legally represented at a pre-charge custody hearing. Representation at such hearings must be provided by a Solicitor, or an Accredited Representative who is a solicitor,.

3.5 Investigations by Non-Police Agencies

You may not claim for an attendance for providing Police Station Advice and Assistance if you attend a Client making a voluntary attendance in connection with an investigation by an agency other than the police unless a Constable is present.

1. You may be entitled to claim this work as Advice and Assistance if the Client meets the Qualifying Criteria.
2. An interview with a Volunteer may take place in a location other than a Police Station e.g. the person's home, or the offices of an investigating agency. The crucial element of the definition of "Police Station" is that a Constable must be present. A Constable includes an officer of HM Revenue and Customs, a British Transport Police officer or any official with a power of arrest conferred by virtue of his or her office. It does not, however, include any other investigators, e.g. government departments, local authority, Post Office or SFO even if they have power to search premises or are required by section 66(9) of the Police and Criminal Evidence Act 1984 (PACE) to have regard to the PACE Codes of Practice. The provisions of PACE apply to all non-police investigators, including government departments, such as the DTI, as well as the Post Office and others.
3. If you provide Advice and Assistance to a Volunteer in circumstances where a Constable is not present, then you will not be entitled to claim for the work as Police Station Advice and Assistance. The work may be remunerated as Advice and Assistance if the Client satisfies the Qualifying Criteria, otherwise you may be paid on a private client basis.

3.6 Immigration Advice

Where you give Police Station Advice and Assistance and it is apparent, or becomes apparent, that an immigration offence may have been committed or that an immigration issue arises, you shall give Advice and Assistance to the Client up until the point where the immigration authorities take over conduct of the investigation. You may continue to advise after this point if the Client remains in detention and requires advice, however you should consider whether it is practicable to refer the immigration offence or issue to a supplier with a contract in the immigration Category of Work in the local area (which may include your firm).

1. For the purposes of this Rule, an “immigration offence” means a breach of the Immigration Acts, such as illegal entry, overstaying leave to enter or remain, breaching a condition of leave, an offence under the Asylum and Immigration Appeals Act 1993 or failure to observe a condition of temporary admission or release. This list is not exhaustive.
2. For the purposes of this Rule, an “immigration issue” arises where an individual is arrested or attends the Police Station as a Volunteer in relation to alleged criminal conduct and it is apparent, or becomes apparent, that an immigration offence may have been committed or there is some other issue regarding the Client’s immigration status.
3. You may not generally give Police Station Advice and Assistance under this Contract where:
 - (a) an individual is detained after entry and is served with illegal entry papers or a notice of intention to deport;
 - (b) an individual is detained by the immigration authorities on entry;
 - (c) an individual is arrested by police on behalf of the immigration authorities where no criminal allegations are made and is detained under the immigration authorities’ administrative powers.
4. Where the Client remains in detention and advice is required and it is not practicable to refer the Client to an immigration SQM holder, you may continue to provide Advice and Assistance. A full note of the relevant circumstances must be made on the file. The advice you may give includes any urgent advice required covering immigration status and procedure.
5. The SQM requires that you have a clear policy and procedures for referral. We would expect organisations to build links with immigration suppliers and document details of appropriate suppliers to which you will refer Clients.

3.7 Service Requirements for Own Solicitor Police Station Advice and Assistance

1. Own Solicitor Police Station Attendances and Police Station Telephone Advice may only be undertaken by a Representative (including a Solicitor who is also a Representative) or:
 - (a) (for work done before 00.01 on 1 November 2005) any Solicitor;

- (b) (for work done after 00.01 on 1 November 2005 but before 00:01 on 1 November 2006) a Solicitor who is on the Police Station Register and has not been suspended;
 - (c) (for work done after 00.01 on 1 November 2006) a Solicitor holding the Police Station Qualification under the Law Society's Criminal Litigation Accreditation Scheme;
 - (d) (for work done on or after 00.01 on 1 November 2005, where the firm is a member of the Specialist Fraud Panel and the offence for which the client has been arrested is primarily or substantially based on allegations of fraud or other serious financial impropriety or involves complex financial transactions or records) a Solicitor.
2. Subject to paragraph 3.7.3 below the following services shall be provided once a case has been accepted:
- (a) attendance at the Police Station to provide advice and attend all police interviews with the Client where the Client has been arrested in connection with an offence;
 - (b) attendance at any identification parade, group or video identification or confrontation;
 - (c) attendance at the Police Station where the Client complains of serious maltreatment by the police.
3. If exceptional circumstances exist which justify non-attendance at the Police Station, the Own Solicitor or Representative shall record his or her decision not to attend, including details of the exceptional circumstances and the reasons for the decision on the case file. Exceptional circumstances could arise if a Client expressly instructs the Own Solicitor or Representative not to attend. Exceptional circumstances are less likely to arise in the case of paragraph 3.7.2(c).
4. You shall only attend the Police Station when the Sufficient Benefit Test set out in Part B, Rule 2.5 is satisfied. The circumstances when this 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.
5. On Assessment of your Claims for Police Station Advice and Assistance we will take into account the factors above when determining whether it was reasonable for you to attend. If none of these is satisfied then further justification shall be provided on file. If one or more of the factors are met, then the attendance will normally be justified, however we may still reduce the Claim if we consider that the time spent was not reasonable.
6. Any attendance must be for the purposes of providing legal advice that could not be given over the telephone to the Client. You may not claim for an attendance when the advice

could have been provided reasonably by way of telephone advice. If we consider that the advice could reasonably have been provided over the telephone, we may disallow the costs of any attendance at the Police Station, however, we will take into account any evidence on file that attendance was considered necessary at the time the decision to attend was made. The file must show that the attendance was expected to materially progress the case beyond initial advice. If you were already at the same Police Station, we may cap your Claim to no more than the value of the Police Station Telephone Advice fixed fee if we consider that advice could have been provided reasonably over the telephone.

7. In the following cases, you may provide Police Station Telephone Advice only and you shall not claim from public funds for any Police Station Attendance unless one of the exceptions in paragraph 7 below applies:
 - (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 available that would result in the client being released from custody, in which case attendance may be allowed provided that the reason is justified on file;
 - (c) Client arrested on suspicion of:
 - (i) driving with excess alcohol, who is taken to the Police Station to give a specimen (Section 5 Road Traffic Act 1988);
 - (ii) failure to provide a specimen (Sections 6, 7 and 7A Road Traffic Act 1988);
 - (iii) driving whilst unfit/drunk in charge of a motor vehicle (Section 4 Road Traffic Act 1988).
 - (d) Client detained in relation to breach of police or court bail conditions.
8. You may attend the Police Station to advise on any matter falling within paragraph 6 above if one of the following exceptions applies and the Sufficient Benefit Test is satisfied:
 - (a) an interview or an identification procedure is going to take place;
 - (b) the Client is eligible for assistance from an appropriate adult under the PACE Codes of Practice;
 - (c) the Client requires an interpreter or is otherwise unable to communicate over the telephone;
 - (d) the Client complains of serious maltreatment by the police;
 - (e) the investigation includes another alleged offence which does not fall within paragraphs 6 (a) to (d) above;
 - (f) you are already at the same Police Station, in which case you may attend the Client but may not claim more than the Police Station Telephone Advice fixed fee.

If any of the above exceptions apply then you must endorse the reasons for attendance on file, otherwise your Claim will be limited to the Police Station Telephone Advice fixed fee.

9. An attendance at the Police Station for an ineffective bail to return may be disallowed if checks were not made prior to the attendance to establish whether it would be effective.
10. If the police indicate that an interview or identification procedure will take place at a specified time, Police Station Telephone Advice may be provided to the Client. You should attend the Police Station in sufficient time prior to the allotted time to undertake reasonable steps that directly relate to the interview or identification procedure, e.g. taking instructions from the Client, obtaining disclosure of evidence, attending the officer in the case.
11. When you attend the Police Station you shall seek to minimise the travel, waiting and attendance time that you incur. In assessing whether your Claims are reasonable we may take into account the average costs incurred by other CDS Suppliers in your region.
12. You may provide further legal advice to the Client immediately following charge, but it will not be reasonable for you to continue to attend the Client thereafter whilst fingerprints, photographs and swabs are taken, except where the Client requires further assistance due to his or her particular circumstances, such as youth or vulnerability, in which case the relevant factors must be noted on file. It is reasonable to remain at the Police Station if you are required to make representations about bail, provided that the justification is noted on file.

3.8 Non-Discrimination

1. An Own Solicitor or Representative must be prepared to carry out his or her duties so as not to discriminate on grounds of race, gender, sexual orientation, religion, age or disability, and regardless of the nature of any offence for which the Client is under investigation or with which the Client has been charged or previously convicted.

4.9 Change of Solicitor

The provisions set out in Regulations apply.

If the Client instructs a new Solicitor, you shall without delay send all relevant papers and other material in your possession relating to the proceedings to the new Solicitor. Part C, Rule 1.3 of this Specification applies for the purposes of determining when the Matter ends.

5.5 Change of Solicitor

The provisions set out in Regulations apply.

Where a new Solicitor or Counsel is assigned by an amendment to the Representation Order or Certificate, you shall without delay send all relevant papers and other material in your possession relating to the proceedings to the new Solicitor or Counsel.

If the Order is amended to show a new Solicitor or Counsel, the date on which the amendment came to the knowledge of the original Solicitor is deemed to be the date on which the Case ends for the purposes of any Claim.

7. Supplementary Rules – all Authorised Levels of Service

7.1 Cold Calling and Marketing

Contracted legal services may not be marketed by means of unsolicited visits or telephone calls, whether by you or another person or body.

The marketing of contracted services via leaflets, letters or circulars – whether by you or another person or body for you (directly or indirectly) – should not be undertaken without our express permission.

A Solicitor or other Representative at the Police Station, prison or other place of detention must not provide any money or other gifts to a Client except items of refreshment and smoking materials for immediate consumption by the Client.¹ General permission is granted for:

- (a) leaflets which are given to existing Clients or to other agencies or organisations in order to explain the services offered by the firm;
 - (b) publication of material which is intended to inform the public about legal issues.
2. Express permission will not normally be granted for the circulation of leaflets, letters or circulars within a prison or other place of detention.
 3. Advertising the firm's services in the media within the ambit of professional rules of conduct is acceptable.
 4. The sending of leaflets, letters or circulars under this Rule will not be claimable by you as part of the costs of Contract Work.
 5. The Rule also applies where a third party makes the unsolicited visits or calls and refers the Client to you.
 6. Marketing of legal services other than contracted services is not affected by this Rule.

7.4 Information to Clients

You may be required by us to provide specified information to Clients or to other persons contacting your office in such form as we may direct.

1. This Rule deals firstly with information of a standardised nature relating to Client care issues, such as details of how complaints may be dealt with. We may provide a standardised format for the provision of this information, or may, for example, specify that all such information should be provided in one initial letter.

2. The Rule also requires you to make available any standard information leaflets that we supply you with. These will cover general guides to the services funded by the Criminal Defence Service or the Commission. Such leaflets should be made available as appropriate to any person who contacts your office, whether or not they become a Client for the purposes of this Contract. The provision of such leaflets will not be claimable by you as part of the costs of Contract Work.

7.5 Furnishing Information

Where you have carried out Contract Work on behalf of a Client, you will promptly furnish such information or documents in relation to that Contract Work as the relevant Regional Director may require for the purpose of exercising his or her functions under any legislation, or under this Contract.

1. Information will normally be requested under this Rule for the purposes of Assessment or audit.

ERRORS AND OMISSIONS

7.6 Contractor Error or Omission

Where work has been undertaken as a result of your error or omission, you are not entitled to claim payment under this Contract.

1. This Rule covers situations where an error or omission by you has affected the conduct of the Contract Work, resulting in additional costs being incurred unnecessarily, e.g. extra photocopying arising from your loss of papers, additional preparation time arising from a procedural error made by you.

7.7 Unnecessary Expenditure of Public Funds

Where you have failed to comply with any provisions of the Contract or any applicable legislation and as a result of your default or omission, there has been a loss to public funds, the Assessor may, on referral of the matter by Director, refuse payment on our behalf of all or part of your costs (including any Disbursements incurred) in connection with the matter in which such failure occurred, until the loss has been restored.

1. This Rule covers situations where a failure to perform the work in accordance with this Contract, the Regulations or Guidance has led to financial loss to public funds.

7.8 Misrepresentation

If it comes to your attention that a Client has wilfully failed to provide information relevant to your decision to carry out Contract Work on his or her behalf or has knowingly made a false

statement or false representation and after this failure or false statement or false representation has occurred, you have carried out Contract Work on the Client's behalf, then you should report the matter forthwith to the relevant Director.

1. The application form signed by the Client will incorporate an agreement by the Client to repay to us any costs we pay out to you in the Matter in the event of the Client having withheld or misrepresented information with the intention of appearing to qualify for Contract Work.

7.10 Time Limits

Where under this Contract an act is required to be done within a specified period or from a specified date, the period of time so fixed starts immediately after that date.

The period within which an act is required or authorised to be done under this Contract may, for good reason, be extended at the discretion of the Director. Any such period may be extended even if the application for the extension is not made until after the expiration of the period.

7.11 Continuity of Service

Where you commence Contract Work for a Client in a Matter or Case, then unless any circumstances arise which would cause you to cease acting in accordance with an express provision specified elsewhere in this Contract or in any relevant rules of professional conduct, you shall continue to advise, assist or represent that Client until the Matter or Case ends, in accordance with Part C, Rule 1.3.

2. This Rule does not override the circumstances in which a retainer may be terminated as set out in the Guide to the Professional Conduct of Solicitors.

7.12 Very High Cost Cases

A CDS Supplier which has conduct of a Case that is a Very High Cost Case shall notify the Commission in writing as soon as is practicable.

A Very High Cost Case is a Case with regard to which if the case proceeds to trial, that trial would be likely to last for 41 days or longer.

Any question as to whether a Case fulfils the criteria above shall be referred to and decided by us.

Once a Case has been committed, transferred or sent to the Crown Court for trial you shall consider whether the Case satisfies or may satisfy the definition of a Very High Cost Case. If it does or if you are in any doubt, you shall refer it to us within seven days of committal, transfer or sending or any later date on which the criteria for a very high cost Case are satisfied for the first

time. A note should be available on file to confirm that you have complied with this Rule. Failure to do so will be treated as a breach of contract.

Part C Contract Work – Reporting, Assessment and Payment of Claims

1. General Rules – All Authorised Levels of Service

Reporting, Assessment and Payment of Claims

Files

1.1 Assessment and Information to be retained on file

Each file assigned a unique file number (UFN) shall contain the following information:

- (a) a copy of the original application for Advice and Assistance or Advocacy Assistance, where applicable, and any subsequent applications for a further Authorised Level of Service (excluding an application for a Representation Order);**
- (b) a breakdown of the work undertaken within each Unit of Work in respect of which payment is claimed in accordance with Part E of this Specification;**
- (c) the dates on which each item of work was done, the time taken, the amount claimed and whether the work was done for more than one Client;**
- (d) a list of any Disbursements claimed, the circumstances in which they were incurred and the amounts claimed;**
- (e) the original Representation Order or notice of refusal, together with any amendments (where relevant);**
- (f) supporting invoices, receipts, vouchers and grants of prior authority or extensions to the upper limit (where relevant);**
- (g) a record of any fees agreed with Counsel; and**
- (h) details of any special circumstances relevant to Assessment.**

The relevant Regional Director may assess the Claim (either before or after the credit in relation to that Claim has been given) in accordance with Rule 1.13 in this Part. Where an Assessment is carried out after a credit has been given in relation to any Matter or Case, then that credit may be adjusted accordingly.

1. The above information may be called for by the Regional Director for the purposes of Assessment. It will also be required on audit.
4. Paragraphs (b), (c) and (d) of this Rule will be complied with by completing the form provided by us and retaining it on file.

Claims

1.2 Time Limit for Submission of Claims

Subject to Rules 1.4 and 1.7 of this Part, at the conclusion of any Matter or Case or Duty Period, you must submit a Claim for costs to the relevant Regional Director on the Contract Work Report Form (CWRF) claiming an amount to be reconciled against the payments made to you under the Contract (a “credit”). The Claim must be submitted on a form and in a format approved by us. Credits claimed will be set off against the Standard Monthly Payments. The UFN must be inserted on each Claim, except where a Claim for court Duty Solicitor Work is made in which case the relevant part of the CWRF should be endorsed. You must retain the information specified in Rule 1.1 of this Part on file. We may call upon you to produce this either for audit or Assessment purposes. You shall supply such further particulars, information and documents in support of your Claim as we may require.

Except where a warrant of arrest is issued in magistrates’ court proceedings, you must submit your Claim for payment to the relevant Regional Office within three months (or such longer period as we may direct) of the Matter or Case or Duty Period ending. If you fail to do so, we are not obliged to make payment in full under the Contract.

All Claims made under the same Representation Order or relating to the same Case or Matter must be submitted together.

If we receive a Claim after the three month time limit has expired, we may reduce it by up to a maximum of 25% if it is up to one month late; if it is between one and two months late, it may be reduced by up to 50%; if it is over two months late we may reduce the Claim by up to 100% in accordance with the Guidance to this Rule.

If the Claim form is not properly completed, your Claim will be rejected. The original submission date remains the relevant date for the purpose of any late Claim penalty.

Part B, Rule 7.10 of this Specification does not apply for the purposes of this Rule.

1. A Matter or Case ends for the purposes of this Rule, when one of the events set out in Rule 1.3 below occurs. A Duty Period ends on the date when the Duty Period concludes.
2. Where a Claim is submitted outside the three month limit, an explanation should be provided, stating whether there are circumstances which would justify not imposing a late Claims penalty. In deciding whether there are such circumstances, each case will be judged on its own merits, although regard can be had to your firm’s history of late Claims. Such circumstances might relate directly to the conduct of the case itself, e.g. where a co-defendant’s case is awaiting disposal, or to the conduct of the firm, e.g. oversight, loss of file, departure of fee-earner. If a firm has a history of late claiming, then the circumstances are less likely to justify not imposing a late Claims penalty.

3. Where the circumstances relate to reasons beyond your control concerning the Case itself a penalty will not be imposed. Where an explanation is provided, we will not generally impose a penalty unless your office has a history or an established pattern of submitting late Claims.⁴ Deductions are based on the global bill (including any Counsel's fees and Disbursements) and not just profit costs, but are made from the payment which would otherwise be made to the Solicitor unless Counsel has been responsible for the delay, e.g. late return of papers. Counsel's fees (i.e. the amount you agreed to pay in a standard fee case) are preserved for payment, provided that he or she has not caused or contributed to the delay.
5. If you are acting for more than one Client in the same Case and that Case concludes at a different time for each Client, then you should submit a single Claim once the Case covering all relevant Clients has concluded. The trigger date for submitting a Claim is the latest date on which the proceedings concluded for all Clients.
6. You may appeal to the Costs Committee under Rule 1.11 of this Part against the imposition of any late Claims penalty.

1.3 Matter and Case Ends

A Matter or Case ends when any of the following events occurs:

- (a) where work is undertaken in the Criminal Investigations Class, when the Investigation has concluded, either by way of the Client being charged or summoned, or the Matter being disposed of in any other way;**
- (b) when you are notified that a Criminal Investigation or Criminal Proceedings are discontinued or withdrawn (or do not proceed for some other reason);**
- (e) the Matter or Case has concluded;**
- (f) the Client decides not to proceed or decides to act in person;**
- (g) it is known that no further work will be undertaken for the Client in the same Matter or Case;**
- (h) it is unclear whether further work will be required or not and the Client fails to give instructions for two months (unless the Matter is on hold, for example, because you are waiting for a third party to act);**
- (i) the Matter or Case begins to be funded outside this Contract;**
- (j) you have informed the Client that the provision of Contract Work is no longer justified and no appeal is submitted or pending;**
- (l) subject to (l) above, you can no longer act due to a conflict of interest or other good reason or the Client is referred to, or instructs, another Solicitor. The Matter or Case ends either on the date of referral or when a new Solicitor is instructed, whichever occurs first.**

1. We need to be able to identify when Matters and Cases end so that we can monitor the legal services which are being provided, and to ensure that Claims are submitted promptly.
2. The reason for a Matter or Case ending must be evident from your file. You must submit your Claim for payment in accordance with the Rules in this Specification to the appropriate Regional Office within three months of the Matter or Case ending.
3. Where you have agreed with the Client that the Matter is on hold, paragraph (i) above will not be satisfied. The Matter will, however, end under this sub-clause where instructions are required from the Client and he or she fails to respond.

(For further Guidance see the following Rules: Part B, Rules 4.9 and 5.5 (Change of Solicitor) Rules 4.11 and 5.11 (Withdrawal of Advocacy Assistance/Representation) of this Specification).

1.5 Claims for Police Station Advice and Assistance

A single Claim on a Contract Work Report Form must be submitted for all work undertaken for a Client on the same Matter. If you give Advice and Assistance or further Police Station Advice and Assistance on the same Matter, you must use the same UFN and Rule 1.9 of this Part will apply.

Where you have advised or assisted more than one Client in respect of the same Investigation, you must submit a separate Claim for each Client using the Contract Work Report Form. You must apportion the time spent between each Claim and retain on file a breakdown of the total time spent and the work undertaken for each individual Client. You must assign a separate UFN to each Client in accordance with the Guidance issued by us under Part B, Rule 1.4 of this Specification.

1.9 Previous Claims

If you have already submitted a Claim and the same Client seeks further Advice and Assistance, Advocacy Assistance or Representation from you on the same Matter or Case, then any subsequent work will be treated as supplemental to the original Claim and, where relevant, the original limit (as extended) will continue to apply. You must notify us at the time that you submit the supplemental Claim that a Claim has been made previously.

When a supplemental Claim is submitted, the UFN which was assigned to the original Claim must be used.

1. Where a Client seeks further Advice and Assistance, Advocacy Assistance or Representation on the same Matter you may need to consider an extension to the costs limit, where appropriate, unless the previous limit was not exhausted. The upper limit will continue to apply to the cumulative costs throughout the lifetime of the Matter.

(Cross-refer to Part B, Rule 2.12 of this Specification for further Guidance where Advice and Assistance has been given previously).

ASSESSMENT AND COSTS APPEALS

1.10 Applying Findings Generally on Assessment

When we Assess a sample of Claims, we may apply any findings to your other Claims for payment for Contract Work.

When we apply findings in this way, we may do so for all Cases commenced under this Contract (or any previous contract it has replaced) where costs have been claimed from us either:

- (a) in the case of mis-claiming, since the date permitted by Clause 12.B.9 of the Contract Standard Terms;**
- (b) in the case of over claiming or other claiming issues:**
 - (i) since the date of the last contract compliance audit, or**
 - (ii) from a date 12 months immediately preceding the date the file sample was requested for Assessment,**

whichever is the most recent.

“Mis-claiming” is defined as claiming in a manner that is clearly contrary to a specific rule in the Contract and where no discretion arises as to payment. For instance, claiming the wrong rates, failing to claim post charge Advice and Assistance provided on the same Case as part of the standard fee or claiming for Advocacy Assistance outside the scope of the Contract.

“Over-claiming” is defined as claiming more than we determine to be reasonable on Assessment under Part C Rule 1.13, but where discretion arises as to the amount allowable. For instance, claiming one hour for an attendance where on Assessment we consider that 30 minutes is reasonable or claiming a Disbursement where we consider that it was not reasonably incurred.

‘Findings’ for these purposes include not only findings on particular practices (such as failing to assess financial eligibility or charging for administrative work that is not allowable) but in relation to more general matters, such as claiming excessive time for preparation or attendances or the average percentage reduction on Assessment of a sample of your files.

If the sample relates only to a specific group of your files or Unit or Class of Work, then we will only apply the findings to that specific group.

When findings are applied to a Claim under this Rule, then that Claim has been assessed by us.

1.11 Appeals

If you are dissatisfied with any decision of the Director as to the Assessment of the costs of Contract Work, you may appeal to the Assessor. The appeal must be made in writing (setting out full reasons) within 28 days of notification of the decision, and must be accompanied by the file.

The Director will extend the 28-day time limit where you have requested an extension for good reason within 21 days. Any extension of the time limit will be for a maximum further 14 days.

Failure to comply with any of the above requirements means that you accept the decision of the Director and lose your right to dispute it.

Where an appeal is to proceed then the Director will endeavour to list it before the Assessor within a reasonable period and:

- (a) The Director may make a written reply to your full reasons up to 21 days before the listed date.**
- (b) You may respond to this reply in writing up to 7 days before the listed date.**

Any further representations or evidence may only be admitted with leave of the Assessor, who will require good reason.

Subject to the following provisions, the appeal shall be dealt with by the Assessor on a documents only basis.

There is no general right for either party to attend and to be represented on the appeal. However, if either party considers that there are exceptional circumstances which mean that concerns or issues cannot be addressed in writing, they may make a written request (setting out full reasons) for an oral hearing to the Assessor at the same time as (in your case), you submit your written appeal and (in the case of the Director) at the same time as they make any written reply (or, where no written reply is made, during the period allowed for making such reply.)

The Assessor will consider the request and notify both parties of their decision.

If:

- (a) neither party has made a request for an oral hearing but the Assessor believes that their review of some or all of the issues under the appeal cannot be concluded properly without hearing oral submissions; or**
- (b) having considered a party's request for an oral hearing, they are of the opinion that the request should be granted**

they will notify the parties of this. If you do not wish to make oral submissions, the Assessor will deal with the appeal on a documents only basis. If you do wish to attend the appeal to make oral submissions (either in person or through a representative) in order to exercise that right, you

must notify us and the Assessor. In these circumstances we shall also have a right of attendance and representation at the appeal and we shall confirm whether or not we intend to exercise that right.

In any case, whether or not a party has made a request for an oral hearing, if the Assessor is of the opinion that an appeal is of such complexity and / or value that it should not be considered by a single Assessor alone they may, in their sole discretion, refer the appeal to a panel of three Assessors either to deal with on a documents only basis or by way of an oral hearing. If the Assessor is of the opinion that the appeal should be dealt with by way of an oral hearing, the provisions set out in the preceding paragraph apply save that a panel of three Assessors shall deal with the appeal rather than a single Assessor alone.

For the avoidance of doubt, subsequent references in this Rule and its related guidance and in the following Rules and related guidance to “Assessor” shall include “Assessors” in cases where an appeal is dealt with by a panel of three Assessors rather than a single Assessor alone.

Further for the avoidance of doubt, the Assessor may give procedural directions as to the determination of the appeal whether the appeal is to be dealt with on a documents only or an oral hearing basis.

On appeal, the Assessor shall review the Assessment whether by confirming, increasing or decreasing the amount assessed. The Assessor may apply their findings generally across files outside of the sample before them under the terms of Rule 1.10 in this Part. However, no such decision shall apply to any completed Assessments which you have not appealed within the time limit.

Where in dealing with an appeal on a documents only basis the Assessor identifies new issues (i.e. issues which have not been raised by either party under the appeal) the Assessor will, as they consider appropriate in the circumstances, either:

- (a) adjourn the appeal and seek representations from the parties before making their decision; or**
 - (b) remit the matter back to the Director for a new decision.**
1. Your appeal may be in relation to the individual Assessments, or on the basis that you disagree with the application of Rule 1.10 or both. On appeal, the Assessor will consider the Assessments on any individual files before them. Where the findings they make on those files revises the average percentage reduction on the sample of files assessed by the regional office, then unless the Assessor directs otherwise that revised average will apply to your unassessed files under the terms of Rule 1.10. However the Assessor has power to make its own findings under Rule 1.10 and may substitute such findings for those of the Director.

2. If we do not receive an application for an appeal together with the relevant files within the required period, the Assessment stands. If you apply for an appeal within the 28 days, or any extended, period, but a relevant file is not sent within that period, the Assessment on that file stands. Where an Assessment stands, this means that you will have accepted the decision of the Director and waived your right to appeal.
3. Where within 21 days (i.e. at least seven days before the expiry of the 28 day deadline) you request an extension to that deadline, the Director will grant you a further period beyond the 28 days if there was 'good reason' for the request. Good reason in this context would include a situation where for example, a sole practitioner is on holiday at the relevant time, or it is necessary to contact a third party (e.g. a fee earner that has left the firm). We will not grant such an extension where the request was received within 21 days or where there was no good reason for the request. In any event any extension will not go beyond a further 14 days.
4. We will return the files to you either before or at the same time as notifying you of the Assessment results. You will not be deemed to have been notified of the results of the Assessment (and therefore your time limit for appealing will not start to run) until we have also returned the files.
5. The Director may make a written reply to your appeal, which must be sent to you at least 21 days before the date fixed for the Assessor to deal with the appeal. You have the right to respond to this in writing up to seven days before the date fixed for the appeal. The Assessor has discretion to accept further representations outside of these two deadlines but will only do so in exceptional circumstances if they consider there is good reason.
6. The written representations (appeal, reply and response) must set out all matters that the parties wish the Assessor to consider. Where an oral hearing takes place (see below) then permission of the Assessor will be required to raise any new issues not set out in the written representations. In exercising their discretion the Assessor will consider whether there was good reason why the issues could not have been raised previously. If the Assessor concludes that no good reason exists, they will not permit the issues to be raised. However, the Assessor themselves can raise additional or new issues in exercise of their discretion to increase, confirm or reduce the Assessment. If the Assessor identifies new issues when dealing with an appeal on a documents only basis then they will, in their discretion, either adjourn the appeal to seek representations (reply and response) from the parties or remit the matter back to the Director for a new decision.
7. There is no general right for either you or the Director to have an oral hearing of the appeal. If either party considers that there are exceptional circumstances which mean that concerns or issues cannot be addressed in writing, they may make a written request (setting out full reasons) for an oral hearing to the Assessor. In your case you must make the request when you submit your written appeal (i.e. within 28 days of receiving the costs Assessment decision.) In our case, the Director must make their request (setting out full reasons) at the same time as they make any written reply (or, where no written reply is

made, during the period allowed for making such reply). The Assessor will consider the request and, before making a decision on the request (or in the case of a request which they initiate before they make that request) they may in their discretion attempt to deal with the issues giving rise to the request by telephoning, emailing or writing to the parties. Where the Assessor's decision is to grant the request for an oral hearing, the Director will endeavour to arrange the oral hearing within a reasonable period. Where the Assessor grants a request but decides to limit oral submissions to particular points, they will specify those points in writing and notify the parties accordingly. If the Assessor's decision is to refuse the requests for an oral hearing they will give written reasons for their refusal. An oral hearing will only be held where you have indicated that you will attend to make oral submissions either in person or through your representatives. If you have indicated that you will attend the hearing we will also have the right to attend and shall confirm whether or not we intend to exercise that right. Our representative will not be present during any 'in camera' deliberations by the Assessor.

8. For the avoidance of doubt, nothing in this Rule relates to the presence at the appeal of a clerk supplied by the regional office to carry out administrative functions under the Review Panel Arrangements 2000.

In all cases where an Assessor is of the opinion that an appeal is of such complexity and / or value that it should not be considered by a single Assessor alone they may, in their sole discretion, refer the appeal to a panel of three Assessors either to deal with on a documents only basis or by way of an oral hearing.

1.12 Costs Appeals Committee

At any point after the submission of an appeal to the Assessor, but not later than 21 days after receipt of the Assessor's final decision, either you, the Director or the Assessor may seek certification of a Point of Principle of General Importance.

An application for certification of a Point (or Points) of Principle of General Importance must be made as follows:

- (a) **(in your case) by sending your application to the Director and, if one has already been appointed and their identity notified to you, to the Assessor. The Director will, within seven days of receipt of your application, forward that application to the LSC's Legal Director and, if an Assessor has been appointed but their identity not notified to you, to the Assessor also;**
- (b) **(in the case of the Director) by sending an application directly to the LSC's Legal Director and copying that application to you and to the Assessor (if appointed);**
- (c) **(in the case of the Assessor) by sending the application to the Director. The Director will, within seven days of receipt, send the application to the LSC's**

Legal Director and notify you that the Assessor is seeking certification of a Point of Principle of General Importance.

All applications for certification of Points of Principle of General Importance, whether made by you, the Director or the Assessor, must set out the exact wording of the Point of Principle of General Importance being sought and explain, in detail, the basis of the application.

Upon receipt of an application for certification of a Point of Principle of General Importance the LSC's Legal Director will decide whether the matter should progress to the Costs Appeals Committee. If the LSC's Legal Director decides that the matter should not progress to the Costs Appeals Committee for certification then they will send their reasons for refusal to the Chair of the Costs Appeals Committee for approval and, if approved, to you, the Director and where appropriate the Assessor.

If the LSC's Legal Director or the Chair of the Costs Appeals Committee consider that the matter should proceed for certification to the Costs Appeals Committee then the matter will be listed for consideration by that Committee.

Applications for certification of Points of Principle of General Importance are, unless permission to attend is granted by the Chair of the Costs Appeals Committee, considered by that Committee on a documents only basis.

On considering an application under this Rule, the Costs Appeals Committee will either:

- (a) decide whether to certify the Point of Principle of General Importance sought and / or, where appropriate, amend any of the Assessments of the Assessor to give effect to this determination, or refer the matter back to the Assessor for them to do so; or**
- (b) determine that there is no Point of Principle of General Importance raised by the application before it and refuse the application accordingly.**

You, the Director and, where appropriate, the Assessor will be notified of the decision of the LSC's Legal Director or the Costs Appeals Committee.

1. This Rule gives you the right to seek a determination on a Point of Principle of General Importance when dissatisfied with the Director or Assessor's decisions on Assessment of your costs. Since it is essential that there is consistency of interpretation across all Regions and the Rule therefore also allows the Director or Assessor to refer the matter to the Costs Appeals Committee where in his or her view a Point of Principle of General Importance has been raised by a review which requires a definitive decision. However, the Director will require the consent of the LSC's Legal Director (or the Chair of the Costs Appeals Committee where they did not approve the LSC's Legal Director's decision to refuse permission to proceed) who will have to agree that there is a general principle raised by the case before making the referral.

2. Clause 3.2 of the Standard Terms requires compliance with Points of Principle of General Importance.
3. The general principle which should be followed is that where a point is apparent at the outset of the Assessment process, an application for determination of a Point of Principle of General Importance must be sent to the Director at the same time as the appeal of the Director's Assessment is made.
4. Where permission has been given for your application to proceed, we will endeavour to arrange for the Costs Appeals Committee to determine it within a reasonable period.
5. The Cost Appeals Committee (or Assessor hearing an appeal under Rule 1.11) will adjourn an appeal hearing only for "good reason". If a party has given notice that they wish to attend or be represented on the appeal and then seek an adjournment, a Committee may determine the appeal in their absence unless it is satisfied that there is good reason to grant an adjournment.
6. Difficulty in attending a hearing because of other commitments will not normally be "good reason". However, if the relevant member of your personnel is involved in a trial on, or very close to, the appeal hearing date, that will normally be good reason (unless you were aware of this commitment and the Committee consider that you should have contacted us earlier to agree a fresh date for the hearing of the appeal). Unexpected illness will normally be accepted as "good reason" if supported by a medical certificate.
7. If you seek certification of a Point of Principle of General Importance by the Costs Appeals Committee, the onus is on you to clearly identify the point sought when you submit the appeal. Failure to do so may result in your appeal being rejected pending clarification of the point sought.

1.13 Basis of Assessments and Appeals

Any Assessment made by the Director under Rule 1.1 of this Part, any application to the Assessor under Rule 1.11 of this Part and any appeal considered by the Costs Appeals Committee under Rule 1.12 of this Part shall take place on the basis of determining on the Standard basis, whether work was actually and reasonably done and disbursements actually and reasonably incurred and whether the time spent is reasonable in accordance with the requirements of the Contract and Guidance and applying the remuneration rates set out in Part E of this Specification to each Class of Work. You must only claim for, and allowance shall only be made for, work actually and reasonably done, and disbursements actually and reasonably incurred in accordance with the provisions of this Contract, and that is supported by appropriate evidence on the file at the time the claim was submitted. You are not entitled to claim payment for unrecorded time.

Disbursements will be assessed on the basis of determining whether they were reasonably incurred and are reasonable in amount subject to any prior authority granted.

1. Determining reasonableness will involve, in general terms, taking into account all the relevant circumstances of the case including the nature, importance, complexity or

difficulty of the work and the time involved; and allowing a reasonable amount of time in respect of all Contract Work actually and reasonably done in accordance with terms of this Contract (including in particular the Rules and Guidance in this Specification). “Reasonable” means what is reasonable for the proper conduct of the case.

2. The relevant remuneration rates in Part E of this Specification will then be applied to the time allowed and the resulting sum or standard fee will be added to any Disbursements allowed and to any VAT to produce a figure for the costs of the Case. Allowance will not be made for work which was not evidenced on the file at the time the claim was made in the form of timed and dated attendance notes, and where appropriate by relevant documentation, such as copies of documentation drafted or perused.
3. We may ask you to provide an attendance note or other record of time spent. If your Claim is not supported by written evidence, then it will not be paid under the Contract.
4. When assessing Claims we will apply our published Guidance, except where it is expressly overridden by this Contract, which currently includes the Police Station and Court Duty Solicitor Costs Assessment Manual and the Criminal Bills Assessment Manual. The Commission’s published Guidance on the assessment of costs of controlled work will apply to the provision of freestanding Advice and Assistance so far as it is consistent with the terms of this Contract. You must be familiar with the contents of these manuals and any other Guidance on criminal costs Assessment produced by us and ensure that Claims are made in accordance with the published Guidance. The Guidance may be amended from time to time by us, for example, to reflect new decisions made by either the courts or the Costs Appeals Committee.

1.14 Assigned Counsel

Where assigned Counsel’s fees have been reduced on any Assessment by us under Rule 1.1 of this Part the provisions of Rules 1.10 to 1.12 inclusive of this Part will apply to any appeal by assigned Counsel.

1. Assigned Counsel will have a direct right of appeal when his or her fees have been reduced on an Assessment. This does not apply in a magistrates’ court standard fee case where Counsel is unassigned, in which case you must agree a fee with Unassigned Counsel and you are responsible for paying Counsel directly. Rules 1.10 to 1.12 of this Part will apply to such an appeal by assigned Counsel, save that the time limit for the purposes of Rule 1.12 will be 21 days from the date of receipt by Counsel of the notification of the Assessment.
2. References to Counsel for the purposes of this Rule include reference to a Solicitor with higher rights of audience practising in another firm where you have instructed that Solicitor as part of the provision of Contract Work to carry out work which would otherwise be carried out by assigned Counsel.

SCOPE OF CONTRACT WORK

1.15 Administrative Work

Save as otherwise provided by this Contract, payment will not be made under this Contract for the time you spend on purely administrative matters.

1. You will only be paid under the Contract for work directly involved in the provision of contracted legal services to the Client. Thus you will not be paid for time spent in opening and setting up files, the maintenance of time/costing records or in meeting the administrative requirements of your Contract and completing the Claim for costs. Solicitors may charge for work done in the exercise of Devolved Powers and recording of such exercise.
2. See Rule 1.26 in this Section for Claims for payment for file review.

1.16 Legal Research

Unless the case involves a novel, developing, unusual or complex point of law, justifying either legal research by you or the obtaining of an opinion from Counsel/a Solicitor with higher rights of audience, time spent on legal research will not normally be paid for as Contract Work.

1. We are entitled to assume that the work has been undertaken by a competent and experienced adviser and that work which is not appropriate for you to do will be referred by you. This Rule does not prevent you from undertaking brief checks of the current law in the normal course of Contract Work.
2. This Rule does not prevent payment for the application of the law to the facts of the case, provided that the time spent is reasonable.

Disbursements

1.17 Expert's Fees

Payment of expert's fees incurred by you in relation to any Contract Work will not exceed any maximum rates set by us from time to time, unless authority has been granted to exceed the limit in the particular case.

1. We may specify maximum rates payable, by reference to type of expert and activity (such as reports, attending conferences or court hearings). Subject to any such limits, the amounts claimed for expert's fees should be justified on assessment by us in the normal way. Authority is likely to be granted to exceed the maximum rates in any matter where the complexity of the issues or the difficulties of securing the availability of a suitable expert in the relevant field justify this.

1.18 Disbursements

Disbursements may be incurred where it is in the best interests of the Client to do so and it is reasonable for you to incur the Disbursement for the purpose of giving Advice and Assistance, Advocacy Assistance or Representation to the Client and the amount of the Disbursement is reasonable.

We may in Guidance prescribe types of Disbursements which may or may not be incurred in the provision of Advice and Assistance, Advocacy Assistance or Representation.

1. Disbursements will form part of Claims to be paid. We will monitor your use of Disbursements via auditing and Assessment and may seek explanations and justifications as necessary. You should therefore incur Disbursements where it is in the Client's best interests to do so in the particular circumstances, subject to the provision as to reasonableness and to Guidance. You must produce a receipted invoice or voucher in support of any Disbursement claimed.
2. A non-exhaustive list of Disbursements which may or may not be incurred in the provision of Advice and Assistance (including Advocacy Assistance) appears below. Remember that any Disbursements appearing in Section A can only be incurred in any circumstances if it is reasonable to do so for the purposes of providing Advice and Assistance in relation to that Matter and if the amount is reasonable.

Section A Disbursements which may be incurred	Section B Disbursements which may not be incurred
Birth and other certificates	Clients' travelling and accommodation expenses
Counsel's fees	Court fees unless for a search/photocopies
Enquiry agents' and interpreters' fees	
Experts' fees including for medical reports	
Fees recoverable on oaths	
Newspaper advertisements	
Photographers' accounts	
Travelling expenses of a Solicitor, including a Solicitor in the capacity of McKenzie friend	

3. If you are considering incurring a Disbursement which appears in neither list then you must consider whether the Disbursement is recoverable or not by reference to its purpose (that is, is it for the purpose of providing Advice and Assistance). For example, an accountant's fees for the preparation of outstanding accounts will not be recoverable as they are incurred not for the purpose of giving Advice and Assistance but for the purpose of putting the Client's outstanding records in order. This contrasts with the position where the accountant is providing a report as an expert.
4. The cost of the provision of legal advice by a person who is neither a lawyer nor supervised by a lawyer cannot be treated as a Disbursement. The assistance of a non-lawyer can be sought but you must absorb this as an overhead rather than charge it as a Disbursement.
5. Except where Police Station Advice and Assistance is provided, a Solicitor agent cannot be employed in relation to the provision of Advice and Assistance, either as a Disbursement or as an element of profit costs, (but see the position of Solicitors with higher rights of audience set out in paragraph 9 below). If you are not in a position to undertake work yourself then the matter should be referred. In appropriate cases you can obtain the opinion of Counsel. A Solicitor agent may be used where Advocacy Assistance is provided (excluding court Duty Solicitor work).
6. In deciding whether the amount sought is reasonable regard must be had to all the circumstances including the purpose of the Disbursement in the context of the particular case (that is, having regard to the justification/need for it as against the value/importance of the case), the particular service involved, the extent to which there is a choice of alternative service providers and whether all elements of the service are justified in the particular case/at the particular time.
7. If a Disbursement is abnormally large by reason of the distance of the court or the Client or both from your office, payment may be limited to what would otherwise be reasonable, having regard to all the circumstances. If the amount claimed is unreasonable, a lesser sum may be allowed. If the Disbursement was not reasonably incurred, the whole sum may be disallowed.
8. It will not be usual to instruct Counsel as part of the provision of Advice and Assistance unless it is reasonably necessary to do so. Where it is clear that there are issues which would justify steps, including proceedings, being taken on the Client's behalf but the reasonably competent Solicitor cannot, based on his or her expertise, identify those steps, then it may be appropriate to allow Counsel's opinion to be obtained under Advice and Assistance to identify the precise steps or proceedings.
9. References to Counsel for the purposes of the Guidance to this Rule include reference to a Solicitor with higher rights of audience practising in another firm where that Solicitor is carrying out work which would otherwise be carried out by Counsel.

10. Where the opinion of Counsel or another expert is required on a question of foreign law, this cannot be covered by Advice and Assistance. In appropriate cases, an application for Representation should be made.
11. Advice and Assistance should not be used as a vehicle to secure the funding of Disbursements. Where the only work undertaken is incurring the Disbursement and passing the service on to the Client, it is likely that the costs will be disallowed on Assessment if the Client receives no oral or written legal advice.

Payment Outside the Contract

1.19 Witness Expenses

Payment to a witness attending court to give evidence in criminal proceedings shall not be claimed under this Contract, unless there is a direction from the court that the witness expenses may not be claimed from central funds and they are not recoverable from any other source. If the court does so direct, you must still satisfy us that the expense was reasonably incurred.

1.21 Wasted Costs

Where a wasted costs order has been made under section 19 of the Prosecution of Offences Act 1985 against you, your firm or Counsel instructed by you in proceedings in which Advocacy Assistance or Representation is provided under this Contract, then you must submit a copy of the order with your Claim.

If the court orders that you are not entitled to be paid for Work, that that Work must not be included in your Claim.

On Assessment, the CCU may disallow the amount of work done to which the wasted costs order relates. In those circumstances, the amount disallowed will be that amount or the amount of the wasted costs order, whichever is the greater.

If a wasted costs order is made in your favour and you have received payment, you must deduct the amount of wasted costs paid from your Claim. If you have not received payment of wasted costs at the time you submit your Claim, you may Claim the full sum due and pay us the amount of any wasted costs as soon as they are received by you.

1. The fact that a wasted costs order had been made against you, your firm or Counsel is a factor which we may take into account on Assessment.

1.25 Recovery of Overpayments

Where following an Assessment you or Counsel are entitled to be paid a certain sum (“the amount due”) under this Contract and, for whatever reason, you or Counsel are paid an amount greater than that sum, we may either:

- (a) require immediate repayment of the amount in excess of the amount due (“the excess amount”) and you or Counsel shall on demand repay the excess amount to us; or
- (b) deduct the excess amount from any other sum which is or becomes payable to you or Counsel under this Contract.

1.26 File Review

Claims may be made for the SQM file reviews carried out by you on Contract Work files in accordance with the following conditions:

- (a) The file review has been undertaken in accordance with the provisions of the SQM Requirement E2, this Contract and your office manual.
 - (b) Claims (other than for face to face reviews) may be made at the rate of £18.71 (exclusive of VAT) per file review. However, no Claim may be made under this Rule for any such file review that is claimed as part of the costs of the Case.
 - (c) Claims for face to face file reviews may be made by the supervisor at the rate of £31.18 (exclusive of VAT) per file review. However, no Claim may be made under this Rule for any such file review that is claimed as part of the costs of the Case.
 - (d) The number of file reviews claimed for any relevant period must not exceed the number set out in your office manual and in any event must not exceed the number reasonably necessary to demonstrate compliance with the SQM Requirement E2 and Part D of the Contract Specification.
 - (e) All file reviews claimable under this Rule must be combined into a single Claim for payment to be submitted by you in October or November of each year. The Claim shall include all claimable file reviews for the relevant period.
1. A Claim for payment under this Rule should not be made on the individual file, instead a combined Claim for payment for all file reviews to which the Rule applies must be submitted in October or November of each year. The Claim must include all claimable file reviews in the ‘relevant period’. This will normally be the 12 months up to the 30 September immediately preceding the claim. However, for claims made in October or November of 2001, the relevant period for the purposes of paragraphs (d) and (e) above will be the 6 months up to 30 September 2001.
 2. This Rule applies to reviews carried out in the relevant period on Contract Work files or ongoing matters commenced under the Legal Aid Act 1988.

3. No Claim for payment should be made under this Rule where payment for the time spent on the review is claimed as part of the costs of the individual Matter. Such costs may be claimed on the basis that the file review comprises Contract Work on the file i.e. if it coincides with the stage in the proceedings at which the file would normally be reviewed and the work done would be recoverable on assessment as work reasonably done having regard to the needs of the case. In the case of a face to face file review, it may be permissible for the time of the supervised person to be claimed as part of the costs of the Case where this principle applies, even though the supervisor has claimed a fixed payment under this Rule.
4. For the purposes of this Rule one Matter or Case cannot count as more than one case file.
5. For the avoidance of doubt, this Rule does not alter in any other way the obligations contained in the SQM (or any commitment given in your office manual) as to file review.
6. Payment may not be claimed under this Rule for any file checks undertaken under the SQM Requirement E1.2(e) (checking files for inactivity at pre-determined intervals).
7. The total payment claimed by you for file review may be reduced or disallowed (as appropriate) by us where we reasonably consider:
 - (a) that the number of file reviews claimed for exceeds either the number set out in your office manual or the number reasonably necessary to demonstrate compliance with the SQM requirements (see Part D of this Specification). (Whilst we will allow some flexibility in the latter regard, further Guidance on the volume of file reviews which may be reasonably required will be issued in due course); and/or
 - (b) that any file reviews claimed for have not been properly carried out in accordance with the terms of the SQM, Part D of this Specification or this Rule.
8. Where corrective action is required as a result of a file review, this is treated as a continuation of the original review and is not a separate activity.

2. Requirements formerly set out in LAFQAS that have not moved to the SQM

Quality and Performance Standards

2.1 Financial control (see SQM Requirement C2) and time recording – formerly parts of LAFQAS paragraph K1.3

Requirement

1. You must claim payment only for work that you have reasonably done. To ensure that you are able to comply with this requirement, you must have appropriate systems in place. These must include, in an appropriate I.T. system so that the information can be quickly processed and received:

- (a) A time recording system for all Matters and Cases;
 - (b) An up to date record of the value of your work in progress (including disbursements shown separately) on each Matter and Case;
 - (c) An up to date record of the total costs of each Matter and Case.
2. This information must be made available to the Commission when required.

Guidance

3. When the payment rate depends on the activity type e.g. preparation or travelling, your system should take this into account. You may find identifying the activity in this way useful even when there are not payment consequences as it will indicate the usual activities in different types of Case and how much time is spent on them.
4. You may also find it helpful to analyse the average cost to you of carrying out different types of Case and to analyse any variations in the averages, at regular periods. This will help you better to understand the cost to you of performing work and to observe the effects of any changes e.g. changes in personnel or in the way that work is being performed.
5. Many organisations monitor the cost to them of carrying out their activities, broken down by type of activity. Having the above systems would make this much simpler.
6. It is important for caseworkers to record time accurately on the file as soon as practicable. Otherwise there is a risk of inaccurate times being recorded and unreasonable claims for payment being made. This should also help to ensure that any reasons why an activity took a particularly long time is recorded and may be something that the supervisor would wish to consider at file review or as part of supervision.
7. You should ensure that what is recorded is accurate. Checking by a partner, manager or supervisor may provide appropriate assurance that you have control over bills submitted.

2.2 Legal reference materials (see SQM Requirement D4.4) – formerly LAFQAS Paragraph X

Requirement

1. Contractors must ensure that all staff who may perform Contract Work have ready access to an up-to-date version of the Legal Services Commission's Manual.

2.3 File Management (see SQM Requirement E1) – formerly LAFQAS Paragraph N1.1

Requirement

1. Contractors must maintain the information required by SQM Requirement E1 (File Management) in an effective I.T. system so that it can be easily and quickly processed and retrieved.

2.4 File Review (see SQM Requirement E2) – formerly LAFQAS Paragraph M1.7

Requirement

1. Contractors must ensure that the file review arrangements required by SQM Requirement E2 include, within the sample of files reviewed, files on which Contract Work has been performed.

4. Performance Standards – Overview

Quality and Performance Standards

4.1 Introduction

1. Performance Standards apply in the following areas:
 - (a) first contact with the Client in Police Station advice cases;
 - (b) limitations on work conducted by non-designated staff;

4.2 Approach

1. This section introduces Performance Standards. Each standard includes a target against which the performance of offices will be measured.
2. On audit, we will look at a sample of files in order to check performance against the relevant Performance Standards. We will also use other information available to us, for example, data from the Commission's own systems and from the police station Duty Solicitor Call Centre. With your agreement, and where this is available, we may also make use of information you have available using your own time-recording and computer systems. Using this information, we will consider the level of performance of your office.
3. The Performance Standards apply to all Contract Work undertaken on or after 2 April 2001, irrespective of when the Matter or Case commenced. In the period 2 April to 31 December 2001 we will monitor and audit compliance with the Performance Standards. In circumstances where the Standards are not met we will not institute formal non-compliance action as provided for by the SQM. Provided that there is evidence that the requirements of the Standards are being implemented (e.g. recording of attendance times as required by paragraphs 5.1(3) and 5.2(3) of this Part) we will simply notify you of the non-compliance identified for information. We will also discuss the issues arising with you to identify and understand the reasons for non-compliance.
4. We will also use the information gathered during this period to inform us as to the most appropriate future approach to the management of these requirements. Before any changes resulting from this review are implemented, either in terms of the level at which the

standards are set or the audit approach taken, they will be the subject of consultation with the Law Society. In order to facilitate this consultation we will make statistical information arising from our monitoring of these Standards available to the Law Society.

5. We are aware there may be reasons beyond your control for failing to meet a target. Where you are unable to meet the performance target we will discuss the matter with you. Where you are unable to meet the target for reasons within your control, you may be required to introduce measures to improve your performance.
6. Where you fail to meet the Performance Standards (unless for reasons beyond your control), or fail to introduce effective performance improvement measures, we may record a non-compliance.
7. In addition to using the Performance Standards to improve performance, they may also be used to identify other issues. For example, weaknesses in a duty solicitor scheme, poor practice at a police station, or to highlight unusual regional practice.

5. Performance Standards

Quality and Performance Standards

5.1 First Contact With The Client In Police Station Advice Cases

Each time you are first notified that a Client has been arrested and has requested advice, and you have accepted the Matter, we expect you normally to contact the Client (whether in person or on the telephone) within 45 minutes of the call.

We will normally expect you to meet this target in at least 80% of Cases.

1. This Standard applies only to the first contact with the Client and does not include subsequent instances of Advice and Assistance at a Police Station, for example at bail-backs or other pre-arranged police station attendances, in the same Matter. The Standard applies to both own client and Duty Solicitor work.
2. There may be legitimate reasons why you are unable to contact the Client within 45 minutes, for example, the Client is asleep, or contact with the Client may be impossible in some circumstances. Due to these difficulties, we have set the target compliance at 80%. Setting the target at this level will account for those instances where you are unable to meet the target for reasons beyond your control.

How will we audit?

3. All Police Station advice files must contain a note of the time at which the call was accepted (either from the Duty Solicitor Call Centre or directly from the Police Station) and the time at which first contact was made with the Client. Where a fee-earner does not

contact the Client within 45 minutes of accepting the case, that fee-earner must note the reason.

4. On audit we will take a sample of files. We will then calculate your performance. Where no times are noted we will assume that the target was not met. Before recording a non-compliance, we will consider the particular circumstances surrounding any failure.

5.2 Limitations On Work Conducted By Non-Designated Staff

We will expect most work to be conducted by designated fee-earners.

In particular:

- (a) **we will expect 80% of instances of Police Station Advice and Assistance (both attendances and telephone advice) to be conducted by designated fee-earners; and**
 - (b) **we will expect 50% of instances of advocacy at the magistrates' court to be conducted by designated fee-earners.**
1. It is accepted that, in order to have flexibility in the management of work and in the changing demands upon fee-earners and their time, you may need to use non-designated staff. We have taken this into account in setting the level of target compliance.
 2. Where a non-designated fee-earner is used, you must ensure that the fee-earner is competent and that they are effectively supervised.
 3. A designated fee-earner may or may not be employed by you.

How will we audit?

4. On audit we will take a sample of files. We will then calculate your performance. Before recording a non-compliance, we will consider the particular circumstances surrounding any performance failure. We accept there may be short periods where it is justifiable for an office to fail to meet the performance standard.

Part E Remuneration under the General Criminal Contract

1. The rates that apply to Contract Work

Remuneration under the Contract

1. The rates set out in this Part apply to Contract Work undertaken by suppliers that hold a one year or three year General Criminal Contract. Other than the file review payment, they do not apply to work that commenced under the Legal Aid Act 1988. Such work will continue to be remunerated at the rates set out in regulations made under that Act (see Part B, Rule 1.5 Transitional Provisions).
2. The basis on which we assess Claims is set out in Part C, Rule 1.13.

Note:

All rates are hourly, except where otherwise indicated. “Unsocial hours” means between the hours of 5.30 pm and 9.30 am on any business day and any time on a day which is not a business day. “Business day” means any day other than a Saturday, a Sunday, Christmas Day, Good Friday or a bank holiday under the Banking and Financial Dealings Act 1971. The London rates apply to a fee-earner whose office is situated within the Commission’s London region.

If an office situated outside the London region instructs an office within that region to act as agent, then London rates apply to the agent’s work. If a London-based office instructs an office outside London to act as agent, then that work must be charged at national rates.

2. Work undertaken in the Criminal Investigations Class

Remuneration under the Contract

2.1 Advice and Assistance (other than Police Station Advice and Assistance)

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

2.2 Police Station Advice and Assistance

	National	London
Availability during Duty Period	4.20 (to a max of 100.80)	4.25 (to a max of 102.00)
Police Station Advice and Assistance other than by telephone		
– 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
Police Station Telephone Advice fixed fee (including all telephone calls whether “routine” or “advice”, (except CDS Direct Pilot Cases for which no such fee may be claimed)).	30.25 per Claim	31.45 per Claim
Fixed Acceptance Fee (former CDS Direct Pilot Cases referred to a Duty Solicitor for Police Station Attendance only).	8.00 per case	8.00 per case

The provisions set out below apply to all Criminal Investigations that commence after 00:01 on 1 February 2004 (except that the reference to CDS Direct Pilot Cases applies from 00.01 31 October 2005):

1. Except in the case of CDS Direct Pilot Cases (in respect of which no Police Station Telephone Advice fixed fee is claimable by you) one Police Station Telephone Advice fixed fee may be claimed by you per investigation provided that you undertake at least one telephone call during the investigation. An “investigation” is defined as all the work undertaken for one Client in respect of an arrest or arrests made at the same time. No further fixed fee may be claimed by you if any further arrest of the same Client takes

place any time at a Police Station or other place of detention whilst the investigation continues.

2. An investigation ends either when the Client is charged or summoned, or the investigation concludes in any other way e.g. no further action by police.
3. An arrest or warrant for breach of bail is a separate investigation and attracts a separate Police Station Telephone Advice fixed fee, except where the arrest is made at a Police Station or other place of detention during an investigation for which a fixed fee payment is already claimable.
4. Only one Police Station Telephone Advice fixed fee may be claimed per investigation, irrespective of the number of telephone attendances on the Client, police or other parties during the course of the investigation.
5. If a Client is bailed to return to the Police Station, that is a continuation of the same investigation and no further fixed fee may be claimed.
6. If you advise more than one Client during the course of a single investigation, one fixed fee may be claimed for each Client who receives Police Station Telephone Advice.
7. A Police Station Telephone Advice fixed fee shall not be claimed if the Solicitor or Representative accepts a Matter whilst already in attendance at the same Police Station unless the investigation has not concluded following that attendance.

Examples of a single investigation i.e. one fixed fee is claimable:

- (a) Client is arrested for handling a stolen credit card and is bailed from the Police Station. On the bail to return he is rearrested for a series of obtaining by deception offences.
- (b) Client is arrested for assault and burglary and taken to the Police Station. At the Police Station drugs are found and he is arrested for this new offence
- (c) Client is arrested for theft and taken to the Police Station where he is further arrested on an old warrant for criminal damage.

Examples of more than one investigation i.e. more than one fixed fee is claimable:

- (a) Client is arrested for theft from a shop and is bailed to return to the Police Station. The next day he is arrested for another theft from a shop.
 - (b) Client is arrested for burglary, he fails to appear at court and is arrested on the street for failing to appear.
8. Both of the above Cases would attract two separate fixed fee claims as each amounts to two separate investigations.

The provisions set out below apply to all Police Station Attendances that take place after 00:01 on 1 February 2004:

9. Duty Solicitor rates may be claimed only when a Duty Solicitor or Accredited Representative is acting as such in accordance with this Contract and The Duty Solicitor Arrangements 2001 (as amended) and the Claim relates to:
 - (a) attendances undertaken throughout a Duty Period; or
 - (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.
10. Any subsequent Police Station Advice and Assistance provided by the same firm on the same Matter e.g. if the Client is bailed to return to the Police Station, shall be claimed at Own Solicitor rates.

The provisions set out below apply to Police Station Attendances that commence after 00:01 on 31 October 2004:

11. Duty Solicitor serious offence rates may be claimed for Police Station Attendances provided that:
 - (a) the attendance is to advise a client under arrest for one or more of the following serious offences, either as a principal or as a secondary party, or who has been arrested on a warrant for failing to answer bail or an extradition warrant in respect of a case in which he or she is accused of such an offence:
 - (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;
 - (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.
12. These 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.
 13. There are no serious offence rates for Telephone Advice, travelling or waiting. These rates remain the same whether or not serious offences are involved.
 14. These rates may not be claimed by CDS Suppliers that have had their Claims assessed at “category 3” at the last audit prior to the Police Station Attendance unless either:
 - (a) the time limit for appealing the Assessment has yet to expire; or
 - (b) within that time limit, an appeal has been made but has not been finally determined.

How to identify Duty Solicitor work

15. Duty Solicitor work attracts higher rates than Own Solicitor work, and entails different service obligations (for instance, it may not be undertaken by a Probationary Representative). If work is deemed to be Duty Solicitor work, then Duty Solicitor rates apply and you must comply with the relevant service obligations.
16. Work is always deemed to be Duty Solicitor work if both (a) and (b) below apply:
 - (a) The case is accepted from the Call Centre Service or accepted at the Police Station as a Duty Solicitor case and notified to the Call Centre; and
 - (b) The work takes place before the end of the Duty Period (for rota cases) or is initial advice (for Panel and Back-up cases).
17. You may deem work to be Duty Solicitor work if either (a) or (b) below applies:
 - (a) The work takes place during a Duty Period (however the case was accepted); or
 - (b)
 - (i) The case is accepted from the Call Centre Service or accepted at the Police Station as Duty Solicitor and notified to the Call Centre Service; and
 - (ii) The work is undertaken during the initial continuous period of custody.
18. All other attendances shall be treated as Own Solicitor.

Examples of the split between Duty and Own Solicitor work:

- (a) Duty Solicitor is on rota from 6 pm to 6 am: a case is accepted from the Call Centre Service at 4 am and continues after the end of the rota period at 6 am. If the CDS Supplier continues to meet the requirements of the Duty Solicitor Arrangements and other contractual requirements for Duty Solicitor work, then Duty Solicitor rates can be claimed until the end of the Client's initial period of detention. Alternatively, once the Duty Period ends at 6 am and initial advice has been provided by the Duty Solicitor (or Accredited Representative if CDS Direct Pilot has been involved), the CDS Supplier may convert to an Own Client basis, send a Probationary Representative if the Matter is non indictable only and claim Own Client rates from that point.
- (b) For Panel and Back-up calls, once initial advice has been provided by the Duty Solicitor, the CDS Supplier may continue to meet the requirements for Duty Solicitor work and claim Duty Solicitor rates or may convert to an Own Client basis and claim Own Client rates.

Note:

Hotel expenses actually and reasonably incurred may be claimed as a Disbursement by a Duty Solicitor whilst on a Police Station Duty Solicitor Rota.

The rates in the above table also apply to work undertaken by an Accredited or Probationary Representative deployed in accordance with the Rules in this Specification and the Duty Solicitor Arrangements 2001. Advice and Assistance given by a Representative will not be remunerated unless he or she was registered and met the requirements of the Contract and the Arrangements when the advice was given.

Where Police Station Advice and Assistance is provided by a Representative or Solicitor who is not an employee of the firm, the travel time claimed shall not exceed 45 minutes each way.

Part F SQM Category Definitions

1. General Guidance

1.1 Judicial Review

1. Public Law challenges to the acts, omissions or decisions of public bodies, in particular, challenges by way of judicial review (including under the Human Rights Act 1998) and habeas corpus are covered by the SQM category in which the principal matter or proceedings appear or by the SQM category which relates to the underlying substance of the case.

2. If arising in respect of matters or proceedings within the Crime SQM category, these cases will also fall within the Crime SQM category even though they are funded as part of the Community Legal Service. Crime practitioners are authorised to take these cases as “Associated CLS Work” under the terms of their General Criminal Contract from 2 April 2001. where “Associated CLS Work” falls within the Public Law SQM category as well, only those who are SQM holders, or have passed a preliminary audit, in the Public Law category are authorised under the General Civil Contract to perform it.

1.2 Minor Civil/Criminal Overlaps

1. Work falling within the Crime SQM category is excluded from any other SQM category, with seven minor exceptions:
 - (a) Legal Help to prisoners who may be subject to directions made or to be made by the Home Secretary under the Mental Health Act 1983 also falls with the Mental Health category;
 - (b) Legal Help to prisoners concerning their treatment by the prison authorities or those arrested concerning their treatment by the police may also fall within the Actions Against the Police etc. SQM category;
 - (c) Enforcement proceedings in the magistrates’ court arising out of the breach of an order of that court made in family proceedings where there is a risk of imprisonment also fall within the Family SQM category;
 - (d) Civil proceedings in the magistrates’ court arising out of the breach of a financial order of that court where there is a risk of imprisonment also fall within the Debt SQM category;
 - (e) Proceedings against a child for an Anti-Social Behaviour Order or Sex Offender Order, and any associated Parenting Order, and for a Parenting Order made on the conviction of a child where the parent cannot reasonably be represented by the child’s solicitor, also fall within the Family SQM category;
 - (f) “Associated CLS Work” including civil proceedings under the Proceeds of Crime Act 2002.
 - (g) Proceedings for an anti-social behaviour order sought by a local authority against a tenant or a person living with him or her, or by way of an appeal against such an order to the Crown Court, also fall within the Housing SQM category.
2. All six exceptions are authorized to be carried out by relevant contractors under the General Civil Contract, as well as by criminal practitioners under the General Criminal Contract.
3. The undertaking of civil proceedings is excluded from the crime category unless specifically referred to in the Crime SQM category definition. Civil actions against prison authorities are included in the Actions Against the Police etc. civil SQM category. Advice and Assistance concerning the treatment of prisoners by prison authorities is included in the Crime category other than in respect of actual or contemplated civil proceedings for

damages for personal injury or property damage which, if in scope, remain within the CLS. This wording is intended to allow crime practitioners to advise Clients on prison complaints procedures and prison ombudsman cases where a legal issue arises, for example, in respect of property loss or confiscation etc, but not to take resulting civil proceedings for damages.

1.3 Complaints

1. Even where a SQM category definition indicates that complaints are within the category, work should only be undertaken where the complaint involves a legal issue or issues and the provision and amount of work is justified in the particular case.

2. Crime SQM Category Definition

SQM Category Definitions

1. All criminal proceedings (including Advice and Assistance in relation to those proceedings).
2. All matters relating to criminal investigation, prosecution, sentence, length of imprisonment, detention or parole including applications to the Criminal Cases Review Commission.
3. All appeals in relation to such proceedings including applications for case stated arising out of criminal proceedings.
4. Advice and Assistance (including Advocacy Assistance) relating to the status, security classification, transfer, discipline or other treatment of prisoners by the prison authorities, other than in respect of actual or contemplated civil proceedings in which there is a claim for damages for personal injury, death or damage to property.
5. For the avoidance of doubt, the following proceedings (including Advice and Assistance in relation to those proceedings and related appeals) are included in the SQM category:
 - (a) extradition;
 - (b) applications for bail including applications to the High Court;
 - (c) applications to the High Court concerning representations against the grant of a voluntary bill of indictment;
 - (d) proceedings under RSC Order 115 in Schedule I to the Civil Procedure Rules 1998 for confiscation or forfeiture in connection with criminal proceedings;
 - (e) proceedings to quash an acquittal under the Criminal Procedure and Investigations Act 1996;
 - (f) proceedings where a party risks imprisonment for failure to pay a fine or obey an order of a magistrates' court;
 - (g) the following proceedings under the Crime and Disorder Act 1998 (including Advice and Assistance in relation to those proceedings and related appeals or applications to vary or discharge an order):

- (i) sections 1 and 1D (Anti-Social Behaviour Orders);
 - (ii) sections 2 and 2A (Sex Offender Orders);
 - (iii) section 8 (Parenting Orders) other than orders made following a Child Safety Order under section 8(1)(a);
 - (iv) all proceedings relating to the breach of any of the above orders including a Parenting Order made following a Child Safety Order;
- (h) proceedings under sections 2, 5 and 6 of the Anti-social Behaviour Act 2003 (including Advice and Assistance in relation to those proceedings and related appeals or applications to vary or discharge an order);(i) public law challenges to the acts, omissions or decisions of public bodies, in particular judicial review (including under the Human Rights Act 1998), and habeas corpus which arise in respect of any matter or proceeding within the Crime SQM;
- (j) proceedings under section 14B and 21D of the Football Spectators Act 1989 (banning orders and appeals against refusal to award compensation) and applications to vary or terminate a banning order.
- (k) any proceedings under the Proceeds of Crime Act 2002.
6. Generally the undertaking of civil proceedings is excluded from the Crime category unless specifically referred to above. Proceedings for the variation or discharge of an order made in criminal proceedings under section 5 of the Protection from Harassment Act 1997 are excluded. Proceedings brought under the Environmental Protection Act 1990 for a statutory nuisance where the Client is the complainant are also excluded.

Part G - Guidance on Contract Sanctions

1. General

Guidance on Contract Sanctions

The Commission will take a responsible and proportionate approach to the application of Contract sanctions, consistent with its public functions.

1. This Guidance is descriptive. It does not attempt to define every different type of breach or when sanctions always will, and always will not, be applied, but gives examples. Given the range of situations that might arise, a definitive approach would not be practicable. As the Guidance is descriptive, it applies to similar situations in similar ways.
2. At its simplest, the purpose of Contract sanctions is to protect clients and public funds and to ensure that Contracts are held only by organisations that comply with them. The more serious the breach of Contract and the longer it has continued, the more serious the appropriate Contract sanction is likely to be, and vice versa.

3. While we recognise that the termination of a Contract may have serious consequences for the Contractor, we must have regard to clients' interests and ensure the provision of competent, and value for money, legal services for publicly funded clients. Removing Contractors that fail to meet acceptable standards allows those that are performing well to expand.
4. Any Contractor may, occasionally, fail to comply with the Contract requirements in a minor way. This would not normally give rise to Contract sanctions unless, for example, the breach caused a financial loss, which might be recovered by a sanction. Issues would be addressed by informal discussions (or correspondence) between the Contractor's Quality Representative and the Commission's Account Manager, at any time, or by more formal discussions and the audit report, after an audit. This is part of normal Contract management.
5. When, on audit, we find non-compliances with the SQM, the Contract specifies detailed procedures to be followed. However, if we find other breaches of the Contract, on audit or otherwise, the procedures depend on the seriousness of the breach.
6. More serious breaches of Contract (apart from those relating to the SQM) will normally result in the issue of a notice, under Clause 20 of the Contract Standard Terms and, perhaps, a sanction under Clause 22. We will normally issue a notice when we consider that the breach is so serious that termination, or another sanction, will be justified if the breach is not remedied, or if it is repeated.
7. However (as under the common law) in some circumstances a breach may be so serious that it amounts to a breach that entitles us to end the Contract without issuing a notice. In this Contract, such a serious breach is referred to as a Fundamental Breach.

Fundamental Breach

8. Fundamental Breaches of this Contract include:
 - (a) a breach of a provision that is so important that breach of it justifies termination (Fundamental Breach 1);
 - (b) more than one breach which, together, are so serious that termination is justified (Fundamental Breach 2);
 - (c) one or more breaches, from which we may reasonably infer that performance will continue to be so substandard as to justify termination (Fundamental Breach 3); and(d) dishonesty (Fundamental Breach 4).

Fundamental Breach 1: Examples of a breach of a provision that is so important that breach of it justifies termination

Example

9. Clause 2 of the Contract Standard Terms provides that the Contract is personal to the Contractor, who must not assign it or sub-contract etc.

10. Any breach of this provision is a Fundamental Breach. We must be able to select our Contractors after carrying out pre-contract enquiries and audits.

Example:

11. Clause 3 of the Contract Standard Terms requires Contractors to assist us in carrying out compliance audits e.g. by giving us access to their premises and by providing documents.
12. Any **refusal** of access, or **refusal** to provide documents, is a Fundamental Breach. Legal services under the Contract are not provided to the Commission, so we are not able to assess them as they are provided. We rely on auditing to determine whether what we have paid for is being provided as required, and to the appropriate standard.
13. Having established a system of accreditation (the SQM) the Commission is required, by the Act, to have the quality of the accredited services monitored and to withdraw accreditation from Contractors that provide services of unsatisfactory quality (Ss. 4(8) & 12(4) of the Act). Without access and documents, the Commission cannot do this properly.

Fundamental Breach 2: Examples of more than one breach which, together, are so serious that termination is justified

14. Termination for Fundamental Breach 2 will normally be justified in such cases even if the Contractor takes corrective action, such as replacing relevant personnel.
15. There may be occasions when there has been a serious breach that, alone, would not justify termination but where there are also other breaches e.g. breaches of the SQM. In these circumstances the Commission may look at all the breaches together and may terminate if the other breaches “tip the scales” so that, considering the breaches overall, termination is justified.

Example:

16. Clause 3.2 of the Contract Standard Terms provides that “You must perform all Contract Work and exercise your Devolved Powers in a timely manner and with all reasonable skill, care and diligence. You must perform your obligations to record and report data accurately”.
17. A breach of this requirement may be identified by a number of routes e.g. an Official Investigation, a Contract Compliance audit, a SQM audit, or peer review. Peer review is a review of a Contractor’s case files by a practitioner who is skilled in the relevant area of law. If such a review or other evidence shows that there has been a serious failure to comply with Clause 3.2, there will have been a Fundamental Breach.
18. We will be likely to conclude that there has been such a serious failure where, based on a sample of files, the peer review or other evidence demonstrates that Contract Work has been conducted at a standard below that which clients are reasonably entitled to expect

from a solicitor. Where a peer review or other evidence shows only occasional lapses below the required standard, we will normally either serve a Contract notice or write to the Contractor outlining our concerns. Occasional lapses below the required standard will not normally be a Fundamental Breach. Where the breach relates to the performance of Contract Work, the Commission will not usually rely only on the opinion of a non-legally qualified auditor but will normally obtain the opinion of a peer reviewer before forming a view.

Example:

19. Part C Rule 1.13 of the Contract Specification provides "... you may only claim for work that has been reasonably done in accordance with the provisions of the Contract and that is supported by appropriate evidence on file...."
20. The Commission makes payments to Contractors on the basis of information they have provided. It needs to ensure that such payments have been properly made. It is accountable for its expenditure and has a statutory obligation to aim to secure the best possible value for money (Ss.5(7) & 18(3) of the Act).
21. Through its auditing, the Commission has identified some Contractors that have been significantly over claiming. The Commission accepts that there may be legitimate differences of opinion as to the amount properly payable for a Case. However, for these disputes, the Contract provides rights of appeal, concluding with consideration by the Costs Committee, membership of which is drawn from a panel of independent solicitors.
22. Under the Contract, we carry out Contract Compliance audits, during which batches of case files, and the claims for costs made on them, are assessed. The batches are of such a size as to be indicative of the Contractor's work. This process results in Contractors' batches of costs claims being categorised. Contractors whose claims are assessed down by an average of 0% to 10% are "Category 1", which means that, generally (and particularly where the assessment down is closer to 0% than to 10%) the difference between the claims and the assessment is within the scope of legitimate differences of opinion. Contractors whose costs claims are reduced by an average of more than 10% to 20% are "category 2" and those whose costs claims are reduced by an average of more than 20% are "category 3". Neither category 2 nor category 3 is acceptable.
23. Any Contractor who is assessed as category 3 in one or more Units or Classes of Work will be sent a Contract notice. There may also be circumstances where assessment as category 2 will result in the issue of a notice, for example where there are persistent claims for an item that is not permitted under the Contract. Such over claiming is not acceptable but it is right that there should be an opportunity for corrective action. However, if the Contractor is assessed as category 3 a second time, termination will normally follow.
24. The Commission has identified a very small number of Contractors whose samples of files show over claiming by significantly in excess of 20%. Generally (but not always) we

have found, at the same time, that the quality of Contract Work is poor. Such over claiming is a Fundamental Breach.

25. In respect of all costs assessments, the Contractor has a right of appeal to the Costs Committee. If a Regional Director's decision to terminate is made on the basis of over claiming, the Contract Review Body will not normally consider a review of the decision to terminate until after the Costs Committee has dealt with the relevant costs appeals.

Fundamental Breach 3: Examples of one or more breaches, from which we may reasonably infer that performance will continue to be so substandard as to justify termination.

26. In these circumstances, for Fundamental Breach 3, if a Contractor has already taken corrective action, such as replacing relevant personnel, we will take that into account in deciding whether there remains an inference that performance will continue to be so substandard as to justify termination.
27. Less serious breaches than those described as Fundamental Breach 2, which keep recurring and are such that the standard in Clause 3.2 has regularly not been met, may justify termination on this ground, because the continued recurrence indicates that such, or similar, breaches are likely to continue to recur. If so, we may reasonably infer that performance will continue to be so substandard as to justify termination. Where breaches relate to the performance of Contract Work, the Commission will not usually rely only on the opinion of a non-legally qualified auditor and will normally obtain the opinion of a peer reviewer before forming a view.

Fundamental Breach 4: Dishonesty

28. Dishonesty would normally justify termination of the contract under the common law. However, dishonesty is a Fundamental Breach.
29. On some occasions, we have found case files for which backdated, timed attendance notes have been created prior to an audit by personnel who did not have any real evidence as to whether an attendance had taken place or, if so, how long it took and who, therefore, were unable honestly to create them. Such attendance notes are false and such behaviour is dishonest and, unless the instances are isolated, will normally result in termination.
30. We have also found case files that have had backdated letters placed on them e.g. client care letters to, falsely, give the impression that the file was managed in accordance with the SQM. Such behaviour is also dishonest and, unless the instances are isolated, may result in termination.

Publication of Contract Decisions

31. The Commission may publish information about the Contract decisions it makes about Contractors (Clauses 13.6 & 13.7 of the Contract Standard Terms).

32. We do not intend to publish details of every Contract decision made. We will, however, publish (on our website or otherwise) the names and office addresses of any Contractor whose Contract we have terminated.
33. We will not publish the names of any Contractor that chooses to end their Contract before we have made a decision, unless there are exceptional circumstances.
34. For the avoidance of doubt, if we obtain any information that we consider may indicate that there is or has been professional misconduct, we are likely to decide that it will be in the public interest to disclose it to the Law Society (Clause 13, Standard Terms).