

# **VHCC Appeals Panel Arrangements 2010**

**30 July 2010**

## VHCC Appeals Panel Arrangements 2010

### 1. Introduction

- 1.1 The VHCC Appeals Panel Arrangements formally establish the VHCC Appeals Panel.
- 1.2 The VHCC Appeals Panel Arrangements are made by the LSC under section 3(4) of the Act and apply to cases where the Representation Order is granted on or after 14 July 2010. Cases where the Representation Order is granted before 14 July 2010 will operate under the previous VHCC panel contracting system.
- 1.3 We will only amend the VHCC Appeals Panel Arrangements by agreement with the Consultative Bodies or in accordance with the principles and procedures set out in Clause 13 of the 2010 VHCC Contracts Standard Terms (as if the VHCC Appeals Panel Arrangements was a contract document).

### 2. Definitions

- 2.1 In these VHCC Appeals Panel Arrangements the following expressions have the following meanings:

*“2010 VHCC Contracts”* means the 2010 VHCC Contract (for organisations) and the 2010 VHCC Contract (for self-employed Advocates);

*“Act”* means the Access to Justice Act 1999;

*“Annual General Meeting”* means the meeting of the VHCC Appeals Panel members referred to in section **19** of the VHCC Appeals Panel Arrangements **and** *“AGM”* has the same meaning;

*“CCU”* means the Complex Crime Unit, the department within the LSC responsible for managing VHCCs;

*“Committee”* means subject to paragraph **17.2** of the VHCC Appeals Panel Arrangements, a committee of three Panel members appointed under these VHCC Appeals Panel Arrangements to hear a VHCC appeal;

*“Committee Chair”* means the Panel member appointed by the LSC or the Committee to chair the appeal hearing;

*“Director”* means the High Cost Cases Director of the LSC;

*“LSC”* means Legal Services Commission established under section 1 of the Act;

*“Panel Chair”* means the Panel member appointed by the VHCC Appeals Panel at the AGM;

*“Single Adjudicator”* means the Panel member appointed under these VHCC Appeals Panel Arrangements to hear a VHCC appeal;

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*“Training Event”* means a training event run by the LSC (or provider approved by the LSC) including training on the appeal process and role of Single Adjudicators and Committees;

*“VHCC”* means Very High Cost (Criminal) Cases as defined in the Criminal Defence Service (General) (No. 2) Regulations 2001 (as amended);

*“VHCC Appeals Panel”* mean those members appointed under these VHCC Appeals Panel Arrangements to hear VHCC appeals made under the 2010 VHCC Contracts and Panel has the same meaning;

*“VHCC Appeals Panel Arrangements”* means these VHCC Appeals Panel Arrangements made under the Act by us and *“VHCC Appeals Panel Arrangements 2010”* has the same meaning.

### 3. General

- 3.1 Appeals under the VHCC scheme as specified in paragraph 6.4 of the 2010 VHCC Contracts Specifications will be dealt with by a designated member of the Panel or a Committee.
- 3.2 The rights of appeal and the process for lodging an appeal are set out in the 2010 VHCC Contracts.
- 3.3 Membership of the Panel and the roles and responsibilities of the members of that Panel are governed by these VHCC Appeals Panel Arrangements.
- 3.4 In performing their duties and in exercising any discretion under these VHCC Appeals Panel Arrangements, the Panel Chair and the Director shall have regard to the VHCC Appeals Panel guidance.
- 3.5 There shall be a Panel from which individuals will be appointed to determine VHCC appeals either as a Single Adjudicator or as part of a Committee.
- 3.6 The Panel shall be made up of no fewer than 16 and no more than 120 members.
- 3.7 Members of the Panel shall be appointed at the Annual General Meeting of the Panel.
- 3.8 The Panel Chair may appoint temporary members of the Panel where in his or her view it is appropriate to do so for the exercise of the Panel's functions. Any such temporary member shall cease to be a member of the Panel at the date of the next Annual General Meeting (AGM) unless he or she is appointed as a member by that Annual General Meeting under paragraph 3.7 of these VHCC Appeals Panel Arrangements.
- 3.9 No person may be appointed under paragraph 3.8 above who having been appointed on a previous occasion as a temporary member did not have his or her appointment renewed at the next Annual General Meeting.

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- 3.10 Unless otherwise authorised by the LSC, only members who meet the LSC's criteria for membership as published from time to time may be appointed (including as temporary members) to the Panel.
- 3.11 The Director may delegate authority to the CCU to carry out his/her functions under these VHCC Appeals Panel Arrangements.

### **4. Applications for membership of the Panel**

- 4.1 The Director shall secure applications for membership of the Panel by:
- (a) notification to the General Council of the Bar and to the Law Society; and
  - (b) subject to any directions given by the Annual General Meeting, such other measures (if any), as he or she considers practicable and reasonable.

### **5. Appointing Panel members to determine appeals**

- 5.1 The Director will be responsible for appointing members of the Panel to determine appeals as a Single Adjudicator or as a Committee.
- 5.2 The Director shall maintain:
- (a) a list of members of the Panel who are best qualified to be the chair of a Committee, and
  - (b) separate lists of members who have specialist experience or knowledge in particular areas of law and types of proceeding.
- 5.3 The Annual General Meeting may give directions as to the maintenance and content of such lists. Subject to any such directions, where any question arises as to entry on or removal from a list, that question shall be resolved by the Panel Chair.
- 5.4 When appointing a Single Adjudicator or convening a Committee, the Director shall select members in rotation from the Panel, subject to the VHCC Appeals Panel guidance.
- 5.5 Where, exceptionally, it appears to the Panel Chair to be in the interests of good administration for the procedure in paragraphs **5.3** and **5.4** above not to be followed (having regard to guidance and matters arising from the agenda such as potential conflicts of interest or the exceptional complexity of the subject matter) then the Panel Chair may select the Single Adjudicator or Committee. He or she may do so by selection of such members of the Panel as he or she considers to be the most appropriate to deal with the matters on the agenda.

### **6. Reasons**

- 6.1 It is the responsibility of the Single Adjudicator or the Committee Chair to ensure that proper and adequate reasons are given for decisions.

## **7. The Committee Clerk**

- 7.1 A clerk will assist the Committee at every appeal. The role of the clerk is to assist the Committee in performing its functions. As well as making VHCC Appeals Panel Arrangements for appellants and their representatives who attend an appeal, the clerk will be able to provide information requested by the Committee.
- 7.2 The clerk will keep a record of the appeal and will record the decision. However, it is the Committee Chair's responsibility to draft the final decision and forward this to the clerk for distribution to the appellant and respondent.
- 7.3 The clerk will also co-ordinate appeals that are to be heard by a Single Adjudicator.
- 7.4 The clerk will not take part in the decision making process.

## **8. Declaring an interest**

- 8.1 It is the responsibility of each member of the Panel selected to determine an appeal to declare an interest to the clerk as soon as the Panel member identifies the interest or considers that an interest may exist.
- 8.2 A Panel member must declare an interest or a possible interest if:
  - (a) they or their organisation are instructed by a co-defendant in the same VHCC or a linked case; or
  - (b) they have anything more than a passing friendship or relationship with any of the parties involved in the appeal; or
  - (c) they have employed any of the parties involved in the appeal in the last 12 months; or
  - (d) they are involved with any of the parties involved in the appeal in any other way; or
  - (e) they or their organisation stand to gain direct benefit from the appeal outcome.
- 8.3 If any member of the Panel declares an interest, that Panel member must immediately withdraw and return the appeal bundle. If an interest is declared on the day of the appeal hearing, the appellant and/or respondent has the right to insist that the Committee member shall not hear the appeal.
- 8.4 The clerk shall record the names of any Panel member who has declared an interest.

## **9. Retirement**

- 9.1 On 31 March each year, one fifth (or if the number of members is not a multiple of five, then the nearest to one fifth) of the members of the Panel shall retire from the Panel.
- 9.2 The members so to retire shall be those who on 31 March have been members for the longest period since they were last appointed or re-appointed. If two or more such members have been members for an equal time both or all such members shall retire.

## **10. Re-appointment**

- 10.1 Every retiring member shall be eligible for re-appointment.
- 10.2 The provisions of paragraphs **3.6** to **3.10** inclusive shall apply to the re-appointment of members.

## **11. Lapse of membership**

- 11.1 The membership of any member of the Panel who has not attended a Training Event before his or her appointment will automatically lapse unless that member attends a Training Event within 12 months of the date of such appointment.
- 11.2 Any member whose Panel membership has lapsed in accordance with paragraph **11.1** will be eligible for re-appointment if he or she subsequently attends a Training Event.

## **12. Resignation and notice**

- 12.1 A member of the Panel may resign by giving two months' notice in writing to the Director.
- 12.2 Panel members must notify the Director if they cease to be in private practice or of any other matter which is material to their membership of the Panel, such as any disciplinary findings made against them or any bankruptcy proceedings.

## **13. Disqualification**

- 13.1 The membership of any member of the Panel is terminated by disqualification if he or she makes a composition with his creditors or a receiving order in bankruptcy is made against him or her or he or she becomes of unsound mind.
- 13.2 Any disqualification under paragraph **13.1** will take effect at the expiry of 14 days from the date of service of a notice by the Panel Chair specifying the grounds of disqualification.

## **14. Removal from Office**

- 14.1 If it appears to the Director that any Panel member either:

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- (a) no longer meets the criteria for the appointment of Panel members; or
- (b) has not properly conducted his or her duties as a Panel member in accordance with the VHCC Appeals Panel Arrangements;

the Director may make a written report to that effect and remove that Panel member from office.

- 14.2 The Panel Chair may remove from office any member of the Panel who has been given reasonable notice of an allocation of an appeal and has, without the consent of the Director or Panel Chair failed to conduct an appeal or attend a meeting of a Committee without good reason.

### **15. Attendance Fees and expenses**

- 15.1 There shall be paid to any Panel members attending meetings or dealing with appeals and carrying out their functions under these VHCC Appeals Panel Arrangements such fees and such travelling and other proper expenses and subsistence allowances as the LSC may from time to time authorise.

### **16. Committee Hearings**

- 16.1 The LSC shall make arrangements for members of the Panel to meet as required to make decisions in relation to VHCCs.
- 16.2 This may be a hearing by a Single Adjudicator or a hearing by a Committee.
- 16.3 The LSC may refer the appeal straight to a Committee where the appeal is exceptionally complex or significant.
- 16.4 A Single Adjudicator must refer the appeal to a Committee if they consider that it is in the interests of justice.
- 16.5 Each Committee shall have a Committee Chair. Unless nominated by the LSC the Committee Chair shall be elected by the members of the Committee present from their number.
- 16.6 Except in so far as the procedure of any Committee is regulated by these VHCC Appeals Panel Arrangements or by the LSC, the Committee shall have power to regulate its own procedure and the ruling of the Committee Chair on any issue of procedure arising at any meeting shall be final.

### **17. Appeal Decisions**

- 17.1 Subject to paragraph **17.3**, Committee decisions shall be by a majority of members present and voting and, in the event of a tie, the Committee Chair of the meeting shall have the casting vote.
- 17.2 Subject to paragraph **17.3**, three members of a Panel shall form a Committee unless a member becomes unavailable at short notice.
- 17.3 Where the Committee is made up of two members, they shall form a quorum and have power to deal with all matters before the Committee on which they are in agreement as to the decision to be made.

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- 17.4 It is the responsibility of the Committee Chair to ensure that reasons are given as required under the rules in these VHCC Appeals Panel Arrangements.
- 17.5 Any defect in the appointment or continued membership of a Panel member shall not affect the validity of any decision by a Committee.

## **18. VHCC Appeals Panel meetings and Panel Chairs**

- 18.1 It is the responsibility of the Director in consultation with the Panel Chair to convene meetings and to give written notice to members of such meetings.
- 18.2 At the first meeting of the Panel after the coming into effect of these VHCC Appeals Panel Arrangements and thereafter on the date of each AGM (or on such other earlier date as it may determine), the Panel shall elect a Panel Chair and one Vice-Chair or two Vice-Chairs (who shall exercise the functions of the Panel Chair in his or her absence or unavailability) to hold office until the date of the following AGM (or such earlier date as the Panel may determine). Any Panel Chair or Vice-Chair shall be eligible for re-election at the expiration of such period provided that no Panel Chair or Vice-Chair shall hold office for more than three consecutive periods.
- 18.3 Any decisions taken by the Panel shall be made by the majority of members present and voting and in the case of equality of votes, the Panel Chair shall have a second or casting vote. In the absence of the Panel Chair or Vice-Chair from any such meeting, a chair of the day should be elected by the members present from their numbers.
- 18.4 A temporary member of the Panel under paragraph **3.8** may attend the AGM that is to consider his or her appointment as a member but may not vote at that meeting unless and until he or she has been appointed as a member. He or she should not be present at the meeting during the consideration of his or her appointment.

## **19. Annual General Meetings**

- 19.1 An AGM shall be convened once in each calendar year. There should be no more than 18 months between the dates of any two AGMs.
- 19.2 The business of each AGM shall normally (without limitation) include:
- The election of the Panel Chair and Vice-Chair(s)
  - A review of the membership of the Panel, including the appointment or re-appointment of members, and directions to the Director as to methods of securing new members
  - A report by the Director on the administration and development of the LSC

and may include a Training Event, a review of the performance of the Single Adjudicators and Committees and such other business as it, the Director and the Panel Chair considers appropriate.