

**LEGAL SERVICES COMMISSION RESPONSE TO  
CONSULTATION:**

**Proposed Amendments to The Duty Solicitor Manual,  
Criminal Bills Assessment Manual and Police Station  
and Court Duty Solicitor (PACE) Costs Assessment  
Manual**

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***Legal Services Commission***  
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## **Legal Services Commission Response to Consultation on Proposed Amendments to The Duty Solicitor Manual Criminal Bills Assessment Manual and Police Station and Court Duty Solicitor (PACE) Costs Assessment Manual**

### **Introduction**

The Legal Services Commission proposed revisions to the above manuals to take account of the amendments to the General Criminal Contract of 1<sup>st</sup> February 2004, 17<sup>th</sup> May 2004 and 1 July 2004. These changes have already been the subject of separate consultation.

A joint response to the consultation was submitted by the Law Society, CLSA and LCCSA. This is reproduced below and the Legal Services Commission response is shown following each point raised.

Two further responses were received from individual practitioners.

We appreciate the time taken by all those who contributed to these responses.

Post consultation versions of all three manuals are now available on our website at [www.legalservices.gov.uk](http://www.legalservices.gov.uk).

## **DUTY SOLICITOR MANUAL**

### **Court Scheme**

#### **Scope of Court Duty Solicitor Scheme:**

##### **Para. 2.5.2:**

This is badly phrased and appears to be conjunctive ie in custody and charged with an imprisonable offence. We understand that the changes are not conjoined and the aim is to provide representation for all defendants in custody and those on bail who are charged with imprisonable offences. The guidance would be improved if this was made clearer. Further it should also include the caveat that such defendants have not previously received advice from a duty solicitor to reflect paragraph 8.3.4 of the amended contract.

#### **Legal Services Commission Response:**

*We agree that the wording needs improvement and have amended paragraph 2.5.2 as follows:*

*“From 17 May 2004, a court duty solicitor will only be able to advise individuals who are either in custody or charged with an imprisonable offence. On any adjourned hearing the court duty solicitor (acting as such) shall not provide assistance to an individual who has previously received assistance from a court duty solicitor in the same case. The only exceptions to this are where the individual is before the court as a result of failure to pay a fine or other sum ordered or to obey an order of the court, and such failure may lead to the individual being at risk of imprisonment”*

##### **Para. 2.11.1:**

In practice the court usher will check whether the defendants waiting actually have solicitors or not, since some of them may in fact be waiting for their own solicitor to arrive. The wording should be amended to reflect this. The phrase “apparently unrepresented defendants” should be amended to “those who have indicated to the usher that they have no solicitor”. Enquiries also need to be made as to whether or not they have previously been represented by the Duty Solicitor, as they are only entitled to this representation once.

#### **Legal Services Commission Response:**

*The wording of this paragraph has not been amended as part of this consultation; however, we have given consideration to the issue raised. Paragraph 2.13 covers how defendants may be directed to the court duty solicitor. Paragraph 2.11 clarifies that there is no professional impropriety in duty solicitors approaching apparently unrepresented defendants. As practice varies between courts we consider it inappropriate to amend this paragraph as suggested.*

*Further, we would suggest enquiries as to whether the client has received advice previously on the matter before the court are best made by the duty solicitor and not the usher.*

**Para. 2.13.1:**

This section lists other situations in which a duty solicitor can provide advocacy assistance and gives a list of examples where a Court Duty Solicitor may provide Advice and Assistance (including Advocacy Assistance). It is not clear whether or not these examples also apply to a Duty Solicitor of choice. It would be helpful if this section could be re-worded to make this clearer.

The first bullet point is unclear, & we believe this should read; ".....failure to pay a fine or other sum, **or** ordered to obey an order....."

***Legal Services Commission Response:***

*Duty Solicitor of Choice has now ceased to be used as a definition; however, Advocacy Assistance may be provided on an own client basis. We would suggest this is adequately covered by the General Criminal Contract and should not be covered in the Duty Solicitor Manual.*

*We have amended the wording of the first bullet point as suggested.*

**Monitoring Visits to Courts and Police Stations**

**Para. 2.21:**

This section deals with Court monitoring visits. This no longer seems to be simply about making sure that the system works and runs smoothly but an extra paragraph has been added on to the end, namely ".How does the cost per client advised compare with other Courts?"

We are unclear as to whether this is relevant for a Court monitoring visit and whether this information would be available to a Court monitor. The Regional Duty Solicitor Committee may well have this information and it may well be appropriate for it to be considered there.

Viewed in isolation, this could lead to very misleading comparisons. It refers to "cost" rather than "value for money" and would not take into account the differences between a rural court and an urban court. For example, a rural court may have fewer defendants and therefore a greater cost per client, but at the same time fewer Solicitors available locally and therefore a greater need for the Court Duty Solicitor. On the other hand, a comparatively busy urban court may have a greater number of defendants, less cost per case but less need for a Duty Solicitor to be available due to the greater availability of other Solicitors locally who would be available to act as "own Solicitor". If the regional Duty Solicitor Committee / Court Monitoring Group is going to look at cost per client, then they also need to look at other issues such as access to Solicitors in the area.

Any comparison of relative costs is a complicated exercise, requiring access to all of the above information, and we do not believe that the guidance as currently drafted is likely to produce information of any value.

***Legal Services Commission Response:***

*Having considered the points raised we have deleted paragraph (s).*

**General:**

There are many references to local committees in this section, but these are pretty much defunct in many areas. If, as seems to be accepted here, they have a useful role to play due to local knowledge should not there be an obligation on the CDS or the court to ensure they are maintained and available for consultation?

**Legal Services Commission Response:**

*Local committees have continued to exist where local members feel there is a need to maintain such a group. Regional Offices have a variety of communication methods to meet local needs and we do not see the value of mandating that local committees should continue if other arrangements are proving useful.*

**3. Police Station Scheme****Para. 3.3.3:**

The following needs to be added to this sentence; "... unless you are the Rota Duty Solicitor for that police station on the return bail date".

**Legal Services Commission Response:**

*We agree and have amended this paragraph as suggested.*

**Para. 3.21 & 3.23:**

The relaxation of the performance standards in 3.21 removes the requirement that 90% of work is provided by designated fee earners while preserving the requirement that 80% of police station attendances must be completed by designated fee earners.

The intention seems to be to restrict the use of freelance agencies that are not subject to the same supervision as the duty solicitor. The deletion of clause (a) at paragraph 3.23 removes the ability of those agencies to self regulate. It seems on the face of it that their attendances will be treated as attendances by non designated staff unless there is an arrangement to share supervision. If this is indeed the intention it should be spelt out more clearly for the avoidance of doubt as it could have serious consequences for firms on audit.

**Legal Services Commission Response:**

*The amendments do not change the options unavailable to suppliers to use or not use freelance agencies. It is agreed that the Commission no longer intends to pursue the issue of police station agencies "self regulating" by achieving a quality standard. This still allows suppliers to designate fee earners not in the full time or part time employment of the firm.*

**Para. 3.34 & 3.37:**

These set out guidance for calls for one duty solicitor accepting calls for another one from the same firm. The intention appears to be to speed up acceptance but lays down a strict procedure to be followed to ensure such acceptance does not lead to delay. This seems reasonable.

**Legal Services Commission Response:**

*Noted.*

**4. Selection**

**Para. 4.2:**

Again the intention appears to be to discourage agencies. As from April 2003 probationary reps can only be remunerated for work carried out on behalf of a firm at which their supervising solicitor is based. This would seem reasonable as probationary reps need higher levels of supervision. Neither can one firm ask a probationary representative of another firm to look after a case.

The amendments to the General Criminal Contract propose substantial changes to the practice of attendances at the police station both in limiting the provision of free police station advice in certain cases to telephone advice only (Part B para. 8.2 14ff). Further attendance post charge is restricted. Guidance on these changes which will have a great effect on police station duty solicitor work should be provided in this manual whether or not it is also provided elsewhere. It is accepted that the other limitations created by the amendments (e.g. re bail to return ) are not strictly relevant to duty solicitor work.

**Legal Services Commission Response:**

*The amendment is not directly related to police station agencies and simply updates the Manual on a change that has previously been made to the General Criminal Contract.*

*We are not clear what additional value there is to duplicating the information on changes to the Police Station Scheme in the Duty Solicitor Manual. The scope of the scheme and restrictions are contained in the General Criminal Contract and guidance is provided in the revised Police Station and Court Duty Solicitor Costs Assessment Manual.*

**Para. 4.14:**

Clarification is sought as to whether the deletion of the last sentence in this paragraph means that linking and reverse linking now applies to London. We are unclear as to whether the effect of this will be to remove the special arrangements for London, and whether there is another document which justifies the removal of this section.

**Legal Services Commission Response:**

*The amendment results from the introduction of Special Rules for London from January 2003 (which were the subject of separate consultation in 2002) Section 8 of these special rules states:*

*“A duty solicitor must be a member of both a court and police station scheme unless the Commission has exercised its discretion to waive this requirement under paragraph 4.19 of the Duty Solicitor Arrangements 2001 in accordance with the guidance published in the Duty Solicitor Manual. For duty solicitors based in London, court and police station membership need not be on the same London scheme. This requirement will apply to all new applications received on or after 10 March 2003; for duty solicitors*

*based outside London who are existing members of London schemes, this requirement will come into effect on 2 June 2003; for duty solicitors who are based in London and are existing members of schemes, this requirement will come into effect on 1 April 2004.”*

**Para. 4.20.7 (c)(ii)**

This inserts a new requirement that the 20 minutes travelling time is by public transport. This only applies to "busy" schemes and will probably not be thought to be relevant in rural areas. Definition of a scheme as busy or not, with the implications for travel for solicitors is a matter of local perspective. We believe it would be better if items such as this were left to a Local Duty Solicitor Committee who would be more aware of the local situation "on the ground" with regards to transport etc. However this is currently not possible as the Local Duty Solicitor Committee (where it still exists) has no powers. In the circumstances it would therefore be preferable if the input of Regional Duty Solicitor Committees were sought, where at least there will be some input from local Solicitors. There is here is a right of appeal to a Regional Duty Solicitor Committee and it may well be that this will be a sufficient safeguard.

***Legal Services Commission Response:***

*The insertion of "by public transport" is not a change to the selection criteria in practice as these words were contained in the original version which was agreed by The Society. The words had been deleted in error in subsequent revisions. The change only reflects what has been taking place both in regional offices and for appeal committees.*

**Para. 4.20.7(g)**

This covers dual scheme membership where there are multiple Courts / police stations in one of the scheme areas. It seems to be up to the Regional CDS Manager to specify what will / will not be acceptable. It would be better if this power were to be in the hands of the Regional Duty Solicitor Committee although a right of appeal lies to that Committee.

***Legal Services Commission Response:***

*The selection of individual duty solicitors are outside the remit of Regional Duty Solicitor Committees but a right of appeal against refusal does exist to the Regional Duty Solicitor Committee.*

## **POLICE STATION AND COURT DUTY SOLICITOR (PACE) COSTS ASSESSMENT MANUAL**

### **Introduction:**

**Para. 1.1.1:** The PACE manual has hitherto been classed as guidance, and as such its key function is to expand upon and explain the contract. We do not therefore agree that it should now form part of the contract itself, since this will have the effect of making the guidance binding on contract holders. An explanatory document cannot have such a function.

“Suppliers are required... to ensure that claims for work under the Contract are made in accordance with the published guidance”. We suggest that there should be a provision here for exceptional circumstances where it may not be practical to follow the guidance.

### ***Legal Services Commission Response:***

*We have decided not to proceed with the incorporation of this guidance manual into the General Criminal Contract with effect from 1 July 2004 and have amended this paragraph accordingly. However, this is something that we do want to progress and will wish to discuss it further with you.*

### **Regulatory Framework:**

**Para. 2.2.1 (a):** The words ‘or other place of detention’ should be inserted after ‘police station’.

**Para. 2.2.1 (b):** Add the words: ‘if at a police station or other place of detention’.

### ***Legal Services Commission Response:***

*These paragraphs replicate the scope of the Criminal Investigations Class contained in the General Criminal Contract (Part A, Section 2.2). We will therefore not make the amendments suggested at this stage but will consider making amendments to the General Criminal Contract when it is next amended.*

### **Clients Entitled to Advice at the Police Station:**

**Para. 3.1.1:** We would like to re-iterate the point we have made in previous consultation responses; it is not clear why interviews with Benefits Agency staff are excluded from these provisions, nor why the presence of a police officer should be the trigger for PACE. Benefits Agency fraud investigation officers interview suspects under caution, and serious criminal charges with substantial custodial sentences can result from admissions made in these interviews. It is crucial that suspects have access to legal advice at this early stage in the process, and not when they may already have incriminated themselves.

### ***Legal Services Commission Response:***

*No changes to this section have been proposed by the Commission. The amendment suggested has indeed been raised by the professional bodies previously and we would*

*re-iterate our view that this is a matter for the Department of Constitutional Affairs to consider. Given the current budgetary pressures it is unlikely that the proposed extension of scope would be agreed.*

**Para. 3.2.2:** The definition of 'Volunteer' needs to be widened; self-incrimination should not be the only criteria for meriting advice.

***Legal Services Commission Response:***

*The current Regulations (4(i) General Regulations) limit advice to a witness that may be at risk of self-incrimination. Given the current budgetary pressures, we are not convinced that extending scope for witnesses is a priority.*

**Duty and Own Solicitors and Representatives:**

**Para. 4.11.1 (d):** The word 'Must' needs to be replaced with 'Should'. There may be many reasons why it may not be practical for a written report to be submitted the next day.

***Legal Services Commission Response:***

*We agree and have made the suggested amendment.*

**Para. 4.15.1:** The manual needs to be clearer as to what the 'limitations' are (column one of the table).

***Legal Services Commission Response:***

We agree and have added a cross reference to GCC Part B, 8.2.17.

**Payment for Police Station Work:**

**Para. 7.2.1:** We do not believe it is equitable for the same rate to be paid irrespective of the time of day or night that the advice is provided. It is generally accepted practice for businesses to pay a higher overtime rate for unsocial hours, and we do not see why duty solicitor work should be any different. The differential for night work should be enlarged to allow for a proper overtime rate, and the first sentence of this paragraph should be deleted.

***Legal Services Commission Response:***

*This is a general remuneration issue which is outside the scope of this consultation.*

**Para. 7.5.1:** The National Minimum Wage must apply to out of hours standby payments. This is currently £4.50 an hour, due to increase to £4.85 an hour from October 2004.

***Legal Services Commission Response:***

*We do not consider that the minimum wage applies to rota standby payments.*

*We have examined the detail available on the Department of Trade and Industry's website and consider the following points to be relevant:*

- *Section 1(1) of the National Minimum Wage Act 1998 makes it clear the employer is responsible for payment of the minimum wage. We are clear that the Commission is not the employer.*
- *Section 1(1) also says that the national minimum wage is payable over a "reference period" which for monthly paid workers is one month (section 10(1) of the Minimum Wage Regulations 1999 refers). Over such a period, the hourly rate paid by the Commission for CDS work undertaken will clearly be in excess of the minimum wage.*

**Para. 7.6.8:** The first sentence of this paragraph contains several double-negatives, making the sense somewhat confusing. It would be helpful if it could be re-drafted to make the sense clearer, and some examples provided.

It is also unclear whether the 'telephone call' referred to needs to be an advice call or can be a routine call.

***Legal Services Commission Response:***

*We agree and have amended this paragraph as follows:*

*"If the solicitor or representative accepts the matter whilst already at the police station, a police station telephone advice fixed fee may only be claimed if the matter continues beyond that attendance and police station telephone advice is provided at a later stage. In order for a police station telephone advice fixed fee to be claimed at least one telephone call, necessary to progress the case, must be made"*

*The relevance of "advice" or "routine" calls ceased on implementation of the police station telephone advice fixed fee for all suppliers.*

**Para. 7.6.9:** Provision needs to be made to allow for payment in the situation where a further allegation or investigation arises after charge. This will be a completely new matter and will require further work.

***Legal Services Commission Response:***

*We are unclear why further clarification is needed given that section 7.6.4 makes it clear that a police station telephone advice fixed fee is payable per investigation.*

**Para. 7.6; item 5 – deleted (page 25):** We believe that there is value in maintaining the distinction between routine and advice calls, regardless of the payment structure. It is important to record the work that is being done, whether or not the calls are being paid for separately. We believe it would be helpful to re-instate the guidance here.

***Legal Services Commission Response:***

*We are unclear what benefit there would be from maintaining the distinction and would suggest that retaining this could cause significant confusion.*

**Para. 7.6.11:** A comma needs to be inserted after the word 'cases', otherwise the meaning is somewhat unclear.

***Legal Services Commission Response:***

*We agree and have made the suggested amendment.*

**Para. 7.7.4:** The phrase 'and the file must show...' is unnecessary here. Additional notes should only be required on the file when an attendance has been made in circumstances which are outside the Rules, and the solicitor needs to explain why the attendance was justified. If the circumstances of the attendance comply with the Rules then it should not be necessary to provide additional justification on the file.

***Legal Services Commission Response:***

*This reproduces the General Criminal Contract (Part B, 8.2.16) and therefore we do not consider the suggested amendment to be appropriate.*

**Para. 7.7.5:** We believe that the proposed amendment gives too much discretion to auditors to use hindsight when assessing whether or not advice could have been provided over the telephone. This provision has already been the subject of correspondence between the Law Society and the Legal Services Commission, in the context of changes to the Contract. We believe that the amended wording agreed on was: "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." The wording of the guidance should be amended to reflect this

***Legal Services Commission Response:***

*This wording was agreed after this consultation commenced. We have amended in line with the wording provided above.*

**Para. 7.7.6:** We would like to refer you to the points raised in our letters to Katherine Pears of 12 & 30 March 2004. There is no provision under the rules for such telephone calls to be paid for. The only means by which solicitors can be paid for phone calls when their clients are not in the police station is through means tested Advice and Assistance. This is however dependant upon the client being eligible for this. Clients who are ineligible will not get the Advice and Assistance, and the Commission cannot therefore require a phone call to be made which will not be paid for. In such cases there needs to either be a separate mechanism for paying for the phone call, or a guarantee that any attendance on an ineffective bail-back will be paid for.

Even where the solicitor is prepared to make a phone call to check on the effectiveness of a bail-back, it can be extremely difficult to make contact with the officer in the case. We note that the proposed wording says 'telephone **checks**' (plural). It is not clear how many checks are required here, but we suggest that to satisfy this requirement it should suffice for one phone call to be made to the Custody Officer. We note that the guidance here simply repeats the contract wording, whereas it would be preferable if it could fulfil

its function of providing explanation and clarification of the Rules. We suggest the following wording:

“The LSC recognises that police officers work shifts and have leave and duty patterns quite unlike normal hours and normal days worked by others. For that reason, it will be sufficient if the solicitor records one attempt to make contact with the OIC in the case to see if the bail to return is effective or not. It will only be reasonable to expect the solicitor to have made the enquiries if public funding is available to allow him to do so. It will not be reasonable to require the solicitor to contact the client to see if s/he is going to attend, since to do so may give rise in the clients mind to the possibility of not attending. That would be to create the possibility of perverting the course of justice or encouraging them to fail to return”.

***Legal Services Commission Response:***

*We cannot agree to your proposed amendment to this paragraph.*

*As stated in your response, a process does exist by which the solicitor may be paid for such calls where the client is financially eligible for free standing Advice and Assistance. We have clarified the guidance on this point. We will write to DCA requesting amendments to the existing Regulations to include a mechanism for payment under Police Station Advice and Assistance. However, if DCA were to make such a change then inevitably the call would form part of the Police Station Telephone Advice fixed fee claim.*

*With respect to the number of checks that need to be made we agree that further guidance is required and we have amended this paragraph as follows:*

*“An attendance at the police station for an ineffective bail to return may be disallowed unless at least one telephone call was made prior to attendance to establish whether or not it would be effective.”*

**Para. 7.13.4:** The words ‘if there was no reasonable alternative’ should be deleted. Solicitors in large cities should not have to justify every occasion they need to use a taxi, given the unreliability and inconvenience of public transport, and the need, as outlined in the guidance, to transport bulky and confidential documents safely. Trains and buses do not normally stop right outside the door of the police station, and there may be heavy files to be transported. Driving is not always the best option either, since there are not always convenient or cheap parking places. Further, there should be an explicit exemption from the requirement to use public transport for female duty solicitors travelling to a police station at night, on personal safety grounds.

***Legal Services Commission Response:***

*We cannot agree that the cost of a taxi will always be justified. Section 7.13 as a whole contains clear guidance to cost assessors and suppliers on claiming for travel. We consider that the guidance is sufficiently flexible to accommodate the point raised concerning female duty solicitors.*

**Para. 7.13.5:** The time required to research every available route in order to determine which is the cheapest is likely to be considerable, given the vast number of cut-price airline companies and the variety of different train companies. There is currently no

provision for any of this time to be paid for. We suggest that if the Commission is keen for the very cheapest fare to be found, that there should be some mechanism for this research to be remunerated, and we suggest the insertion of the following wording:

“It will be reasonable for a solicitor to claim for time spent in research by telephone or internet or other means to identify the most competitive route”.

Given that airline fares in particular often vary from one day to another, we are unclear as to how the assessor will be able to determine which was the cheapest route on a particular date, given that the file is likely to be audited some months later.

***Legal Services Commission Response:***

*No changes have been proposed by the Legal Services Commission as part of this consultation, however, the guidance does not require the cheapest alternative to be used and contains a clear statement that “The most economical fare might not always be appropriate”.*

*We do not consider it unreasonable to expect alternative quotes to be obtained and for this to be an office overhead.*

**Relationship Between Advice and Assistance and Representation Orders:**

**Para. 8.3.1:** Whilst we appreciate that it is good practice to confirm the outcome of an attendance in writing, this work is no longer paid for and is not therefore a contract requirement. We note that it is still a requirement of the Transaction Criteria, and therefore suggest that the Criteria are amended to exclude this point. We suggest the following wording: ‘it is good practice to confirm it in writing *if public funding is available*’ (after ‘it is good practice’ – line 3, and ‘If it is reasonable to do so’ – line 8).

***Legal Services Commission Response:***

*We agree and have made the proposed changes.*

**Para. 8.3.2:** The proposed inclusion of ‘it will not be reasonable to remain at the police station....’ Should be amended to read ‘it may be reasonable.....’. As currently worded, it appears to contradict the following sentence which outlines the circumstances in which it may be reasonable to remain at the police station.

***Legal Services Commission Response:***

*The wording in this paragraph is reproduced from the General Criminal Contract (Part B, 8.2.22). We do not believe the proposed amendment improves the clarity. The intention is that it will generally not be reasonable to remain at the police station.*

**Para. 8.3.3:** Mandatory drug testing should be treated as a totally new offence.

We propose the following amendments:

“Any advice to a suspect on provision of a sample, and any resulting charge as a result of a refusal to provide the sample, *is a new offence, having no connexion with the matter for which the client was arrested. It may will be treated as part of the same a new as matter distinct from* the original police station attendance and will **not** therefore form part of the same claim using the same UFN as the work relating to the substantive investigation”.

**Legal Services Commission Response:**

*We do not agree with the proposed amendment. We have added the following at the end of this paragraph to avoid any misunderstanding.*

*“No separate police station telephone advice fixed fee may be claimed in relation to mandatory drug testing, or any subsequent offence arising from the testing. Where the client is charged with failing to provide a sample and court proceedings ensue, this is treated as a separate offence. However, it is likely to be considered part of a 'series of offences' with the substantive matter charged, and therefore part of the same case for the purposes of claiming and calculating any standard fee.”*

**Assessment:**

**Para. 9.2.2:** Please see our comments on paragraph 7.7.6 above. If there cannot be any provision for remuneration of the proposed checks on the bail to return, the guidance should make it clear that one phone call to the police station will suffice to meet this requirement.

**Legal Services Commission Response:**

*We believe the amendment to paragraph 7.7.6 referred to above covers this point.*

**Para. 9.5.2 (e) (iv):** ‘Must’ should be replaced with ‘should’ in this paragraph.

**Legal Services Commission Response:**

*We disagree. Any claim for remaining at the police station after charge must be justified and therefore the reasons for remaining must be recorded on the file.*

**Para. 9.5.2 (e) (viii):** This paragraph addresses issues of cost only, and we are concerned at the potential for a reduction in the quality of the service provided to the client where suppliers are encouraged to compete against each other to provide the cheapest service. There are also numerous reasons why the services provided by one firm may be more expensive than another, including the nature of the cases they undertake and the make-up of the firm. We would expect that all the circumstances of the firm and of individual cases would be taken into account before any decision was made that an individual firm’s costs were unreasonable high.

We suggest the following amendments to the proposed wording (our insertions in red):

‘In assessing whether claims are reasonable.....average costs incurred by other *similar* CDS Suppliers in the same part of the region. In addition, average costs for travel, waiting and attendances may be monitored on a quarterly or more regular basis through management reports generated by the LSC. *To enable suppliers to identify where they*

*may be on the costs spectrum of comparative suppliers in comparative towns/places/cases, the Legal Services Commission publishes the data publicly.'*

**Legal Services Commission Response:**

*We do not agree that the proposed amendment aids clarity and has the potential to cause significant confusion. The guidance does not require suppliers to compete against each other. We believe that this paragraph adequately explains the approach the Legal Services Commission will take prior to any action being taken.*

**Court Duty Solicitor:**

**Para. 10.3.1:** The wording should read: "..... includes *but not limited to* the following units of work".

**Legal Services Commission Response:**

*The manual replicates the scope from Part A section 3.2 of the General Criminal Contract.*

*We have therefore amended the wording by removing "and includes the following units of work".*

**Para. 10.3.1 (b):** The following wording appears to be missing from the list: *"To an individual at risk of imprisonment or remand in custody in criminal proceedings"*

**Legal Services Commission Response:**

*We believe that these are covered sections 10.3.1 (b) (vi) and (vii).*

**Para.10.5.1:** We suggest the following slight amendments to the proposed wording, for clarification (Our insertions in red):

- "making a bail application for a client who has received such assistance *from that or another duty solicitor* on a previous occasion".
- "providing Advice and Assistance and Advocacy Assistance to a client in connection with a non-imprisonable offence *save in exceptional circumstances*. (see Appendix 11 for examples of non-imprisonable offences). *Justification for such Advice and Assistance and Advocacy Assistance should be recorded on file*".

**Legal Services Commission Response:**

*We agree that the first proposal improves clarity and we have amended the first bullet point of 10.5.1 as suggested.*

*We cannot agree to the second proposal. From 17 May 2004 a court duty solicitor will not be able to provide assistance where there are exceptional circumstances and the proposed amendment extends the scope of the court duty solicitor scheme beyond that defined by the General Criminal Contract.*

Having reviewed this bullet point we have made the following amendment for clarification.

*“providing Advice and Assistance and Advocacy Assistance to a client in connection with a non-imprisonable offence **unless they are in custody**”*

**Para. 10.5.2:** An improvement to the proposed wording of this paragraph might be:

“ Where a client wishes another solicitor to act, the court duty solicitor may assist providing the named solicitor is not available (but not where the reason for unavailability is caused by refusal of grant of or delay in grant of a representation order) and the client asks the court duty solicitor to act on that occasion only”.

**Legal Services Commission Response:**

*We agree that the proposed change would be an improvement but the guidance would go significantly beyond the General Criminal Contract on this point. We will consider making this change when the Contract is next amended.*

**Para. 10.7.6:** The column headed ‘London’ should be extended to include the Home Counties of Hertfordshire; Essex; Kent; Sussex; Surrey.

We are not clear why an enhanced rate for applicable days is not included in the table. We suggest the following insertion into the table on page 49:

Enhanced Rate Travelling (only payable where the Duty Solicitor is called out (including being called to return) to the court from the office or attends on a day that is not a business day. Reasonable travel expenses may also be claimed (where relevant)).	26.30 + 25%	26.30 +25%
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**Legal Services Commission Response:**

*This is a general remuneration issue which is outside the scope of this consultation.*

**Appendix 1 Contract Specification Part B Section 8.2 and Rule 3.1:**

**Para. 8.2.4:** Replace ‘Must’ with ‘Should’.

**Para. 8.2.16:** We do not consider it reasonable for the Commission’s auditors to second-guess the solicitor’s reasons for attending at the police station, and we have expressed our concerns regarding the training of auditors and their level of legal knowledge on several occasions previously. Suppliers already have to justify any attendance on the file, and the first 2 sentences of this paragraph express this adequately. We would like to see the following sentences deleted from this paragraph; from “ If we consider that the advice..... “ to the end of the paragraph.

**Para. 8.2.18 (final paragraph):** Replace ‘must’ with ‘should’.

**Para. 8.2.21:** Please see our comments in relation to paragraph 9.5.2 (e) (viii) above. We do not believe that making a comparison of the average costs of other suppliers within the region is either helpful or relevant, and we proposed deleting the second sentence of this paragraph.

***Legal Services Commission Response:***

*This appendix reproduces a section of the General Criminal Contract for ease of reference and is therefore outside the scope of this consultation.*

**Appendix 3 Contract Specification Part E – Remuneration Under the General Criminal Contract:**

**Table 2.2:** (First box) It is not acceptable that remuneration for Availability during Duty Period should be below the National Minimum Wage. This is currently £4.50 an hour, due to increase to £4.85 an hour from October 2004.

The Home Counties listed above at paragraph 10.7.6 should be included in the column headed 'London'.

***Legal Services Commission Response:***

*Please see our responses to 7.5.1 and 10.7.6 above.*

**Additional Post Consultation Change**

The LSC has received a number of enquiries from practitioners as to whether GCC, Part B, 8.5.2 should be strictly applied for court sessions that occur on a Saturday or Bank Holiday. We have decided to provide further guidance on this point and have therefore added the following guidance to the Manual from section 10.5.3 onwards:

3. If a defendant has been granted a representation order the court duty solicitor must not act unless instructed to act as agent for the CDS Supplier named on the representation order. The Court Duty Solicitor should obtain confirmation from court staff as to whether or not the defendant has been granted a Representation Order prior to agreeing to act as Court Duty Solicitor. If a Representation Order exists but does not cover the current offence the Court Duty Solicitor may not act (unless as agent) if the new offence would be considered to be ancillary to the specified proceedings.
4. For Court sessions that take place on a Saturday or Bank Holiday it may not be possible for the Court Duty Solicitor to establish whether a Representation Order has been granted. Where it is not possible to establish, having taken reasonable steps, whether a Representation Order has been granted the Court Duty Solicitor may act for the defendant on that occasion only. In these circumstances reasonable steps would normally include asking the defendant, attempting to contact a representative of the instructed solicitors and, where possible, checking with court staff.

## CRIMINAL BILLS ASSESSMENT MANUAL

<u>Page No.</u>	<u>Reference</u>	<u>Comments</u>
1	1.1.1	<p>The 'manual forms part of the General Criminal Contract Specification' is not acceptable. The effect of this amendment would be to make the guidance compulsory. This in turn would effectively prevent any firm from appealing a decision to a Cost Committee or Cost Appeal Committee as compliance with the guidance would be a contractual obligation. This proposal must be considered ill conceived at best and is in conflict with CRIMLA 12 which clearly sets out the status of the guidance.</p> <p><b><i>Agreed, we have covered this issue in our response to the 2004 contract negotiations but will revisit in the future following discussions with you.</i></b></p>
5	14.1	<p>The system remains inequitable and illogical whilst firms are working under two different sets of rules regarding assessments according to whether the matter is conducted before the Magistrates Court or the Crown Court.</p> <p><b><i>We do not understand the reference quoted. Assuming it is intended to refer to 1.4.1, Point of Principle CRIMLA 37 (Section 11.4) covers the interrelationship between taxing masters and costs committee decisions. This issue will diminish over time once the General Criminal Contract is extended to cover Crown Court work.</i></b></p>
8	2.2.3	<p>There appears to be some contradiction between this paragraph and the guidance contained at 10.8 on the application of 'Singh' which makes it clear that the application of 'Singh' will only be undertaken in 'wholly exceptional' circumstances. However this paragraph seems to be saying that the assessor should consider the application of 'Singh' more generally</p> <p><b><i>We have removed the sentence: “The assessor should consider whether the overall amount claimed is reasonable when looked at in the round as well as or on a “per item” basis.”</i></b></p>
10	2.4.2	<p>The reference to secretaries is misleading. It is not who undertakes the work that is an issue but whether the work undertaken is chargeable. It would be unreasonable to suggest that a telephone call made by a secretary is not chargeable as it is an office overhead, yet the same work done by a clerk is rightly chargeable. This does not accord with the guidance contained at paragraph 2.3.1. which clearly states the position. As such this paragraph is misleading and adds nothing to the clarity of the guidance.</p> <p><b><i>We have added a cross reference stating that the guidance in paragraph 2.3.1 should be applied.</i></b></p>
11	2.5.2	<p>The word unnecessary should be inserted in the sentence ' As well as looking carefully.....in order that any <b>unnecessary</b> duplication of work.....' This would bring the paragraph into line with other areas of the manual e.g. 8.2.2(a).</p> <p><b><i>Agreed</i></b></p>

12	2.5.5	<p>This paragraph concludes "In the absence of either such detail or of other appropriate supporting evidence, it would normally be appropriate to reduce the attendance allowed to two units". This would be better phrased to the effect that the time allowed would be commensurate with the detail of the attendance note.</p> <p><b><i>This point has been raised by the Law Society previously. We reiterate our response to the previous consultation (June 03) namely that we consider that the point made is covered by the paragraph already i.e. the longer the attendance claimed, the more detail would be expected (para 40 – June 03).</i></b></p>
12	2.5.7	<p>It is also necessary to remember that Solicitors have to time manage and as part of that will need to book interview rooms in advance. This they may have to do before they have read the relevant documentation. It may not be possible to simply extend an appointment by half an hour to continue to take instructions and therefore there will often be cases where a second appointment will be necessary.</p> <p><b><i>Noted, but we do not believe the guidance should be extended to cover this point which is essentially administrative. This issue was raised by the Law Society and dealt with by the LSC in the June 03 consultation (para 45).</i></b></p>
16	2.6.20	<p>This refers to time allowed being limited in re-reading a file with which one is already familiar, even after an absence of several months. The presumption is that it would not take very long for a fee earner to re-familiarise themselves with the case. However, this does not take into account the logistics of attending at Magistrates' Court where the fee earner with responsibility for the preparation of the case is not always the person who attends at Court. Consequently, it may well be legitimate for individuals to have to familiarise themselves with the file after Court hearings where they were not the fee earner in attendance as otherwise key steps may not be followed through. Furthermore, in complex cases more than a brief familiarisation may be required. The guidance should be amended to reflect the needs of running cases under legal aid..</p> <p><b><i>We have adopted your proposal re complex cases. We do not consider that a private client would be expected to meet the additional costs generated by the use of multiple fee earners, therefore we do not believe that this principle should apply to publicly funded work. See also LSC response to June 03 consultation (para 53).</i></b></p>
17	2.6.21	<p>If it is justified that two fee earners work on specific elements of a case and it is justified that an inter-fee earner conference takes place it must follow that it is justified that both fee earners are remunerated. An example might be e.g. when two fee earners are dealing with a terrorist case at a police station with attendances over prolonged periods up to 2 weeks. It would be impossible for 1 fee earner to undertake each and every attendance and perform their role competently. Hence 2 solicitors may work in shifts. It would be expected that they keep each other informed of developments that have taken place between each session and they would be considered negligent if they did not. It is unreasonable that in such circumstances that only one of the fee earners can be remunerated and would not be in the interests of justice if as a result they did not communicate with each other.</p> <p><b><i>Scenarios where it would be usual or reasonable for multiple fee earners to work on a magistrates' court case will be relatively rare. The proposed</i></b></p>

		<b><i>change would amount to a significant extension of the guidance with costs consequences attached which we do not consider would be generally justifiable for magistrates' court level work. See also our response to consultation June 03 – para 54.</i></b>
17	2.6.23/ 2.6.24	<p>Solicitors should always listen to tapes of interview in contested matters unless the Solicitor was present at the Police interview and has sufficiently detailed notes. However, in reality, the number of occasions that a fee earner would be willing to rely on his hand written notes as properly reflecting every detail of an interview are rare. It should be remembered that the addition or deletion of one word can totally change the context or meaning of a sentence. The prosecution are entitled to rely on evidence provided in interview and a solicitor conducting a trial who did not have a comprehensive knowledge of the contents of an interview would be found to be at fault by a court and would not be able to say they could not listen to the tape because another fee earner thought that the police transcript was broadly accurate if it later transpired that one crucial amendment had not been identified.</p> <p><b><i>See below (2.6.25)</i></b></p>
18	2.6.25	<p>It is not reasonable to expect a solicitor to rely on a client's belief that the transcript of an interview is accurate. The obvious example would be the client asked in interview whether they had taken an item from a store without paying. The client answers 'Yes. I had forgotten that I had the item'. In the example quoted (which is an every day occurrence) the client has put forward a defence and yet time and time again the transcript will stop at 'Yes'. The client would not normally be aware of the significance of what had been left out and may genuinely believe in those circumstances that they are guilty automatically by virtue of their arrest having left the store without payment.</p> <p><b><i>2.6.23, 24 and 25 – this guidance was subject to significant revision when it was last consulted on (see our response to consultation – June 03 paras 57 and 58). We believe that the current wording is sufficiently flexible to accommodate the issues raised. If a solicitor chooses to listen to an entire tape or is unsure about the client's account, then he or she may be remunerated for doing so provided it is reasonable to do so in all the circumstances and justification is provided on file.</i></b></p>
20	2.7.2	<p>This is unreasonable. There is no time allowed for reading incoming post and a six minute unit for outgoing routine items cannot be arbitrarily increased to cover all items which take less than 10 minutes to dictate. Anything over 1 unit moves into a second unit and should be paid as such.</p> <p><b><i>We disagree, this issue has been raised previously. The current 10 minute figure is simply used as a benchmark. The current guidance reflects the position for both civil and crime. This point was dealt in the LSC's June 03 consultation response (para 60).</i></b></p>
22	2.7.13	<p>It is stated that no separate claim can be made for a hard copy and a faxed copy of a letter being sent out as there is no additional fee earning work. However, the firm should not be expected to have to pay double overheads in circumstances where, through no fault of their own, they have got to send a letter by fax because of urgency but the recipient also requires a hard copy sent in the post.</p>

		<b><i>The Commission does not fund overhead expenses and has responded to this point previously (June 03 – para 65).</i></b>
22	2.7.15	<p>This is not accepted. A routine item was never an average. It is either something that takes less than 6 minutes or more than 6 minutes. In any event if it was an average there is no good reason to suppose that 10 minutes would be an appropriate cut off point.</p> <p><b><i>See response to paragraph 2.7.2 above.</i></b></p>
22	2.7.16	<p>The important part of this paragraph is that the Assessor should look at the work done rather than the title of the person who did it. Thus, telephone calls and messages taken by secretaries may well be allowed if they are fee earning work as is indicated in paragraph 2.4.2. Also calls and messages taken by fee earners will be disallowed if they are not fee earning work. Consequently, the example given at the end of this paragraph is unhelpful as it seeks to undermine the contents of paragraph 2.3 and the judgement made in R-v-Duxberry.</p> <p><b><i>We do not consider that this paragraph conflicts with 2.4.2.</i></b></p>
23	2.7.18	<p>The Society seeks clarification of the authority upon which this paragraph is based as it appears to be in direct contradiction to divisional court guidance. Furthermore, it is accepted that if a fee earner undertakes the work it would be chargeable but if, having considered the need for e.g. making a prison visit and considering the time frame in which a visit must be undertaken the solicitor leaves the actual call to his secretary the call mysteriously becomes administrative. It also appears to be inconsistent with 2.4.2 because if work was chargeable if undertaken by a fee earner, it would also be chargeable if done by the secretary.</p> <p><b><i>Please provide us with the divisional court guidance and we will review. This guidance is unchanged from last time round.</i></b></p>
23	2.7.19	<p>This paragraph implies a level of perfection that is not realistically achievable, particularly within the constraints of legal aid. It is inevitable that solicitors may overlook things. Who in reviewing their notes has not thought 'I should have asked ....'? The way in which legal aid is set up does not cater for perfection (Steve Orchard said we are not buying a Rolls Royce service) and some latitude needs to be built in. Furthermore, it will be nearly impossible for an assessor to know what a solicitor's 'state of knowledge at the time' was.</p> <p><b><i>We believe that the guidance as drafted is sufficiently flexible to cover the scenario raised. Discretion will be applied on assessment. See also our response to consultation June 03 para 73.</i></b></p>
23	2.1.20	<p>We ask that the LSC who act as advisors to the Department of Constitutional Affairs in relation to setting legal aid rates provide us with figures to support this assertion that this element was taken into consideration when remuneration rates were set.</p> <p><b><i>We assume this refers to paragraph 2.7.20. The point is outside the scope of this consultation exercise.</i></b></p>
24	2.8.2	<p>The Society seeks confirmation that in circumstances where the client attends and is dealt with quickly, e.g., for reassurance, this should always be remunerable because if the relationship breaks down between the firm and the client it is likely that the client will seek a transfer with additional costs to the Legal Aid Fund</p>

		<p>a transfer with additional costs to the Legal Aid Fund.</p> <p><b><i>This provision was removed from the guidance when we last consulted following discussions with the Society.</i></b></p>
27	2.9.1	<p>This is at odds with what actually happens at court. The CPS are rarely in a position to agree anything prior to the date of the hearing and do not as a matter of course inform the defence of problems they are likely to encounter on proceeding until they are in court. Indeed, in such circumstances the defence may well wish to make an application to dismiss. Furthermore, in many courts the justices clerks do not get their papers in advance and are not therefore in a position to deal with applications in the way suggested. Also, defence solicitors whilst on the record as acting for a defendant are under a duty to the court and will be heavily criticised if they are not in attendance when e.g. their clients fails to attend. If a warrant is erroneously issued it will add to legal costs. Often, CPS records are defective or lacking in detail of what has previously transpired and there would be concern that in such circumstances and, in the absence of the defence, errors would be made which would adversely effect defendants.</p> <p><b><i>In practice, our assessors will not use this paragraph to penalise solicitors who have attended court in good faith. It is designed to cater for the situation where there is prior knowledge that a hearing will be ineffective.</i></b></p>
28	2.12.4	<p>If a Solicitor Agent is used because it is cheaper for that agent to be employed than to spend the time in travel, it is not reasonable to include the time necessary for that agent to consider the documentation prior to the hearing as part of the core costs to the firm. This is because the Solicitor Agent is likely to be paid on a timed basis whilst the conducting Solicitors are being paid on a standard fee basis. As the agent is being used to save money from the Fund, it would be reasonable to expect such costs to be paid alongside travel and waiting outside of the core costs.</p> <p><b><i>This point has been raised previously and we responded in June 03 (para 78). The agent stands in the shoes of the solicitor. Time spent preparing for a hearing is chargeable as part of the core costs. This proposal does not reflect agency principles and would generate additional costs to the fund.</i></b></p>
30	2.13.1	<p>This makes reference to one hour's travelling time which is unreasonable in London.</p> <p><b><i>This issue has been considered previously . The guidance at para 2.12.5 was amended to require assessors to take into account London travel problems following consultation last time. We will reproduce this at 2.13.1.</i></b></p>
30	2.13.5	<p>Comparing the number of hearings with the total time spent in travel and waiting will not provide an indication of the average time spent in travel and waiting for each hearing as travel and waiting associated with attending a client in custody, site visits and attending to obtain witness statements would bias the average. Clarification is sought as to how this information is being monitored and how variables such as those indicated are being taken into account?</p> <p><b><i>This information is not being monitored. It merely suggests a rough rule of thumb.</i></b></p>

32	2.15.1	<p>This system is not realistically practical. For example, if you are at court for three clients and the first is seen after 1 hours waiting but during that time you have taken instructions for 12 minutes on another client this would require the 48 minutes left being divided three ways. The second case is called on one hour later but in the interim there has been 12mins advocacy and 18mins instructions. The two remaining cases should each therefore have 15 minutes waiting added on. The third case is held over to the afternoon during which time a client asks you to act on his behalf because he is currently unrepresented. At that stage further waiting time has to be added to client 3 and then further waiting time should be divided between client 3 and client 4 after the lunch period has been deducted. It is likely that the complexity of this calculation will result in many errors and it is unreasonable for solicitors to be penalised as a consequence.</p> <p><b><i>This was raised on consultation on the last occasion and was amended to reflect the Society's comments (June 03 – para 88).</i></b></p>
37	3.1.1	<p>The main concern with this paragraph is that firms may be penalised for attending at court for what turns out to be a formal remand because no progress can be made, but where there had been a legitimate expectation that something would happen.</p> <p><b><i>The onus is on the firm to endorse relevant circumstances on file. Firms will not be penalised in the circumstances described above if this is made clear on file.</i></b></p>
39	3.3.3	<p>States that a Solicitor should be able to ascertain whether a prima facie case exists by more rapid consideration of the documents than would be required where they are seeking to clear the higher hurdle, i.e., at Trial. However, on page 42 paragraph 3.3.18 it is made clear that if it is necessary to take a witness statement, the firm would be considered negligent not to take a detailed statement from the Defendant as early as possible in the case. In order to do this it will be essential to have read through the Committal bundle in detail. These two paragraphs are in conflict with each other and this paragraph should be amended to reflect 3.3.18.r.</p> <p><b><i>This point was considered on consultation last time. We do not consider the two paragraphs to be incompatible.</i></b></p>
40-41	3.3.13	<p>The reality is that the number of occasions where an attendance is not going to be required are few. Even if the case is properly prepared it is not possible for the defence to predict with certainty what will happen at the committal hearing. In most cases it will be necessary for the defence to ask for bail to continue on the same basis as originally granted and, if only for this for this reason, attendance will be mandatory.</p> <p><b><i>We accept this point.</i></b></p>
53-57	3.14 – 3.15	<p>This is not appropriate for guidance in a cost manual as it is simply an explanation of the law.</p> <p><b><i>We disagree. The manual is used by our costs assessors as a reference tool and the new sections explain how such work is remunerated. The ASBO guidance has been added in response to the high volume of queries that we receive from the profession on these issues.</i></b></p>

61	4.2.5	<p>This seems a sensible suggestion subject to adequate resources being made available to deal with the applications received.</p> <p><b>Noted</b></p>
61	4.2.6(a)	<p>There remains considerable unease about some aspects of this. In particular it is not felt appropriate to send a copy of the client's signed statement or case summary as there are not the same requirements of client confidentiality placed on members of the Commission's staff as are placed on solicitors. Particularly in high profile cases there remains concern that inappropriate information could be leaked.</p> <p><b>Commission staff are under a statutory duty of confidentiality under S.20 Access to Justice Act 1999. Breach is a criminal offence.</b></p>
61	4.2.6(d)	<p>Where a firm has used an expert on previous occasions and is happy with the quality of the work undertaken it should not be necessary to obtain a second quotation where the expert's rates have not gone up. This provision only serves to increase the costs to the Legal Aid fund.</p> <p><b>The exception caters for this.</b></p>
62	4.2.9	<p>A 'typo'. The word 'merits' has been deleted in error from the end of the sentence. <b>Noted.</b></p>
63	4.2.13	<p>The preparation time suggested for making an application for prior authority is unrealistic. Whilst some are simple and do not take long the average is between 30-48 minutes and the guidance should be amended to reflect this.</p> <p><b>The guidance is flexible enough to accommodate this and already distinguishes between simple and complex applications.</b></p>
68	4.3.13	<p>This amendment is not appropriate in all circumstances. In circumstances where the client lives some way from a court and the expert lives local to a court where evidence is to be given, or the client does not need to meet the expert, the consideration of why an expert has been appointed who is not 'local' to the client is meaningless.</p> <p><b>This provision has been added at the request of the NTT and we will amend to include court location as an extra factor.</b></p>
75	4.8.3.c	<p>There does not need to be a dispute about admissibility to make it necessary to obtain a transcript of a tape. It could be important e.g. for mitigation purposes. What other way would there be for adducing the evidence on a tape without a transcript? Questions could be asked of the interviewing officers but as they would be working from a summary it would be impossible for the defence to rely on the officers' memory.</p> <p><b>This scenario set out here is catered for by paragraph 4.8.3(d).</b></p>
76	4.8.9	<p>There are occasions when a solicitor's copy of a tape is found to be defective and the only other copy is the 'master tape'. On such occasions it may be appropriate for a fee earner to oversee the copying of the master tape to ensure that there has been no interference with the tape. In such cases costs should be allowable.</p> <p><b>See CRIMLA 49.</b></p>

81	4.12.1	<p>On what precedent do the LSC base their view that 500 pages and below should be considered an office overhead? A more realistic figure would be 100 pages.</p> <p><b><i>This has been raised on previous consultations and we are not prepared to reopen discussions. See our response to consultation June 03 – para 104.</i></b></p>
93	5.3.2	<p>We would draw the LSC's attention to locally run pilot schemes where defendants are being issued with early A.I e.g. witness statements at the time of being charged. Unless solicitors are being paid to read this information they will not be able to properly complete an application for a Representation Order. As legal aid status may not be resolved until the date of the first hearing the relevance of continuing such pilots must be questioned. The LSC are also asked to consider whether it is appropriate for firms to be involved in obtaining the release of clients property from the police at the end of the case. This has traditionally been done under CDS1&amp;2 funding. If so how should this be claimed in future? The LSC are also asked to be aware that there are numerous cases involving minor charges where solicitors make successful representations to the CPS to have matters discontinued or dealt with by way of caution. The letters/ phone calls made in such cases used to be claimed on CDS1&amp;2. Such work will no longer be remunerated and will result in unrepresented clients needlessly wasting court time.</p> <p><b><i>This paragraph reflects decisions made by the DCA following consultation on “Delivering Value for Money in the Criminal Defence Service”. Prior to implementation, the DCA undertook a CJS impact assessment to identify the effect that these changes would have on the police, courts and other agencies. The LSC will continue to monitor the impact of these changes post implementation.</i></b></p>
94	5.3.24	<p>The example provided is misleading. If the matter was one where the grant of legal aid was borderline there is a real risk that the work would be unremunerated. Consequently, this danger needs to be spelt out with the same clarity.</p> <p><b><i>We assume the reference should say 5.3.8. This point has been superseded by the announcement of a concession by DCA that would enable one hours post charge work to be remunerated if representation is refused.</i></b></p>
110	6.4.10	<p>This should not apply to cases that have been fully prepared for trial when, without the time spent in advocacy, the core costs would justify a Category 2 Higher Standard Fee.</p> <p><b><i>See Part E General Criminal Contract paragraphs 3.5.5 and 3.5.7.</i></b></p>
116	7.1.2	<p>This guidance is not agreed. The Divisional Court determines that exceptional means <u>unusual</u> and out of the ordinary, and that exceptional means exceptional when compared with an ordinary criminal case. An exceptional charge will not be able to be compared with other cases of the same type and, if compared with an ordinary case must be considered 'unusual and out of the ordinary'. The guidance as it stands is not clear and is not correct.</p> <p><b><i>Please see LSC response to consultation June 2003 (para 114).</i></b></p>

116	7.1.6	<p>There is an obvious conflict between this paragraph and the reported case of Alwan (see 7.1.7). It would be helpful therefore if the Commission would explain the basis of the guidance given in this paragraph and provide examples of when enhancements are allowable for routine items and when they are not.</p> <p><b><i>The case of Alwan did not establish that enhancement should be allowed as a matter of course on letters and telephone calls. A judgment must be reached based on the particular circumstances of the case.</i></b></p>
117	7.1.7	<p>This paragraph lacks clarity.</p>
139	10.4.8	<p>Provision needs to be made on the CDS6 for firms to identify claims that are submitted late. However, in self certifying such claims the LSC should take a more reasonable approach to late claims than simply reducing all of them. Instead it is suggested that the rule should be that any firm claiming more than e.g. 1% of claims outside of the 3 month target will have a 25% reduction made to the bills submitted. 2% = 50% reduction and 3% + will have a 90% reduction. In this way the LSC will have accurate figures on how efficiently firms are billing without being overly punitive of genuine delays e.g. where a police station file has been essential to a case at the magistrate and crown court and its billing has been overlooked until the conclusion of the case at the crown court.</p> <p><b><i>This paragraph reflects the contractual provisions; however, we will review our approach to late claims with a view to updating the guidance next time round. For the moment we have removed the final two sentences of paragraph 10.4.11 as they do not accord with current practice in regional offices.</i></b></p>
139	10.4.8	<p>As CDS6 submissions are only made once per month it may be that the file has been billed within the three month time period but details are not received by the Commission until after the time frame for submission. Guidance on how the LSC will act in this scenario is required.</p> <p><b><i>See paragraph 10.4.9.</i></b></p>
156	11.3.	<p>The entire appeals procedure is in need of review which should be the basis of a separate consultation</p> <p><b><i>Separate consultation is ongoing.</i></b></p>