

Legal Services Commission

Complex Crime Unit: March 2010

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Welcome to the second edition of the Complex Crime Unit newsletter. The purpose of this newsletter is to update you regarding any changes to work in the office and to provide you with what we hope is useful information on our audit processes. We would be very grateful if you would please circulate this leaflet around all of your legal aid fee-earners. We hope to provide this information regularly and would greatly appreciate any comments you have on its usefulness to you.

Sub Contracting

Where a case is designated a VHCC, the presumption will be that the defence team will be comprised of fee earners detailed in the Panel Member's bid and employed by the Panel Member firm, and will not include sub contractors. In limited circumstances, the LSC may give consideration to the use of defence team sub-contractors who are not VHCC Panel Members (or their employees) in accordance with s 32.2 of the Panel Member's contract.

Where the CCU consents to the use of defence team sub contractors who are not VHCC Panel Members (or their employees), it is anticipated that those sub contractors will be involved only in a specific aspect or aspects of case preparation, and that the Panel Member will retain control of the case as a whole.

As a prerequisite, the Panel Member must be able to demonstrate to the LSC's reasonable satisfaction, that the experience and competence of the proposed sub contractor is sufficient to undertake that work which is envisaged for the sub contractor.

Additionally, one or more of the following must apply:-

- (i) ***The case requires specific expertise***
Where the Panel Member can satisfy the LSC that the sub-contractor proposed possesses particular skills and expertise not available in existing Panel Members **and** that the preparation of the defendant's case, for which public funding is now sought, requires specific use of such expertise.
- (ii) ***Significant previous involvement with the defendant and/or relevant proceedings***
Where the Panel Member is able to demonstrate that the sub contractor has an established significant history over a period of time in representing the defendant in the proceedings for which public funding is now sought, or in other directly related proceedings where there is a significant overlap of information.
- (iii) Any other circumstances in which the CCU considers it appropriate to consent to sub contracting

To support an application for sub contracting

To support an application for sub contracting it is recommended that the Panel Member making the request provide the following as a minimum

- (a) Specialist knowledge/expertise that sub contractor is providing;
- (b) Details of any past history between the proposed sub contractor and the client;
- (c) If there is a particular history between the sub contractor and the client, details of how use of the sub contractor by the Panel Member will result in cost or time savings
- (d) If special reasons, such as client vulnerability or specific mental health or health conditions, are given to support the use of a sub contractor - confirmation from an appropriately qualified professional supporting the need for the client to either have a working relationship with the proposed sub contractor or continue his or her working relationship with the proposed sub contractor.
- (e) Details setting out how much of the case the sub contractor will be undertaking and how the Panel Member will retain overall control and supervision of the case.

Notifications

All our suppliers are reminded of their obligation to notify the Complex Crime Unit of any case where the trial is likely to last at least 25 days (see paragraph 8.2 of the panel member's contract). There are two types of cases, which the CCU may classify as VHCC's. The first is where the trial is likely to last 41 days or more, and there are no exceptional circumstances. The second is where the trial is likely to last between 25 and 40 days, and certain remaining contractual criteria apply (please see s 9 of the panel member's contract for full details of this.) For shorter cases, as with those over 40 days, the CCU also needs to consider whether there are any exceptional circumstances. Exceptional circumstances for these sorts of cases are very unusual factors which could justify not classifying the case as a VHCC.

What factors could make up exceptional circumstances?

Factors that may be taken into account by the CCU when considering exceptional circumstances include, but are not limited to:

- the level of disruption that could be caused on transfer of representation from a non panel firm, where that non panel firm has had extensive involvement with the defendant, either in these proceedings or previous linked proceedings;
- a non panel firm's unique or exceptional suitability to conduct a particular defendant's case, for example because of an unusual skill or knowledge necessary to deal with a particular defendant and/or a particular case;
- the proximity of trial where a case is seen to fulfil VHCC criteria very late in proceedings, at which point it may be of limited benefit to apply contractual arrangements and, if appropriate, to insist on transfer of representation

Where a single defendant's team in a multi handed case puts representations forward, those representations are considered in the context of the case as a whole.

This is not an exhaustive list and it is important to note that each case is treated according to its own particular circumstances. In considering exceptional circumstances, the CCU always tries to strike the optimum balance between the interests of justice and those of the public purse.

Please note exceptional circumstances only apply if you think a case should **NOT** be classified as a VHCC. If you think a case should be conducted as a VHCC, there is no need to make representations on this point.

If you need to notify the CCU of a potential VHCC, you will need to complete a VHCC notification request form which is located on the LSC website: http://www.legalservices.gov.uk/docs/forms/Notification_request_form_141108..pdf

Please read the form and all explanatory notes carefully. If you do not supply relevant information within the required time limit it may not be possible to take into account your submissions before making a decision on case classification.

When should I notify the CCU of a potential VHCC case?

You should notify us as soon as it appears the trial is likely to be in excess of 25 days, but in any event within five working days of the Plea and Case Management Hearing (PCMH). You can then send the complete notification request form marked for Boudicca Atkins attention either via direct e-mail to boudicca.atkins@legalservices.gov.uk or to the London office's fax number which is 0207 718 8018 or by post (please use just one method to avoid duplication of paperwork).

Where to find the VHCC Panel Members list on the LSC website:

[http://www.legalservices.gov.uk/docs/cds_main/Panel_Members_List_-_sorted_by_firm_name_-_220709\(1\).pdf](http://www.legalservices.gov.uk/docs/cds_main/Panel_Members_List_-_sorted_by_firm_name_-_220709(1).pdf)

Very High Cost (Crime) Cases 2010 Consultation Paper

This consultation has now closed. Thank you to those who responded.

The LSC's post-consultation response will be published after we have completed the analysis of responses.