

**NOTICE OF AMENDMENTS TO GENERAL CRIMINAL CONTRACT
AND GUIDANCE MANUALS**

For implementation on 17 May 2006

The contract amendments set out in this notice, which have been subject to consultation with The Law Society and other representative bodies, will be incorporated into the General Criminal Contract and Guidance Manuals from 17 May 2006.

A copy of this document will be made available on our website www.legalservices.gov.uk along with:

- The original consultation document (including the proposed amendments in appendices);
- A document detailing the outcome of the consultation;
- Updated versions of the guidance manuals.

For ease of reference we have used the same section numbers here as in the other documents.

Summary of changes

A Amendments to General Civil and General Criminal Contracts

[The Civil amendment is not covered in this Notice, which refers to the Crime contract only. If you have a Civil contract, you will have a separate Notice covering this amendment.]

A1 Peer review performance indicator

The introduction of a peer review Performance Indicator set out in an Annex to the Contract for Signature.

A2 Rules on marketing

A minor amendment to the rules on leafleting etc set out in the Specification so that they match the rules on visits and telephone calls.

B Amendments to General Civil Contract Only

[These amendments are not covered in this Notice, which refers to the Crime contract only. If you have a Civil contract, you will have a separate Notice covering these amendments.]

C Amendments to General Criminal Contract and Guidance Manuals

C1 Expansion of scope: Advocacy Assistance and Court Duty Solicitor

New provision for individuals facing orders under the Sexual Offences Act 2003 and some other civil orders made in criminal courts.

Note: These changes have retrospective effect and cover any work done after 31 October 2005. References to restraining orders on acquittal and intervention orders take effect when the relevant sections come into force (they have not at time of writing).

C2 Expansion of scope: Incidental proceedings in civil courts
(and clarification of High Court rates)

New provision for work in the county court (incidental to a criminal case) to be covered, and clarification of the rates for similar work in the High Court.

C3 Wasted Costs

[The Commission is not proceeding with these amendments at this time.]

C4 Postal applications and Distant solicitors rules

Clarification of the rules on distant solicitors.

C5 References to Revenue and Customs

Changes in terminology regarding Revenue and Customs officers.

D Amendments to Criminal Guidance Manuals Only

D1 Work done in connection with the Proceeds of Crime Act 2002

Guidance on when money laundering compliance work can be claimed.

D2 Video links

Guidance on when video link expenses can be claimed.

D3 Defendants' attendance: reminder letters

Guidance on when reminder letters can be claimed.

A Amendments to General Criminal Contract

A1 Contract for Signature – Performance Indicator Annex

Add an Annex to the Contract for Signature as shown below:

The quality of your Contract Work in any Category of Work, as determined by the Independent Peer Review process specified by us, is a Performance Indicator.

The quality of your Contract Work in any Category of Work must be either Rating 1, Rating 2 or Rating 3 as determined by that Independent Peer Review process.

If the quality of such Contract Work is Rating 4, as determined by that Independent Peer Review process, this is a breach of Contract.

If the quality of such Contract Work is Rating 5, as determined by that Independent Peer Review process, this is a Fundamental Breach.

The specified Independent Peer Review Process is that managed by the Institute of Advanced Legal Studies.

For the purpose of this Performance Indicator “Contract Work” includes such other publicly funded work that you are authorised to perform by this Contract e.g. Representation in the Crown Court, Court of Appeal and House of Lords.

General Criminal Contract Specification

Amend Part A 1.2.5 as shown below:

For the purposes of regulation 13(1)(b) of the CDS (General) (No.2) Regulations 2001 (and subject to regulations 13.2 and 11 of those regulations) you are authorised to provide representation in the Crown Court, Court of Appeal and House of Lords (this Contract being a crime franchise contract for the purposes of those regulations) and in providing such representation (and any other representation funded by us under the Act that is not covered by another contract between you and us) you must comply with this Contract and comply with the Contract Standard Terms and any Performance Indicators as if such representation were Contract Work.

A2 Rules on leaflets etc – Amendment to the Specifications

General Criminal Contract Specification

Amend Part B Rule 7.1 as follows:

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

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

B Amendments to General Civil Contract Only

[These amendments are not covered in this Notice, which refers to the Crime contract only. If you have a Civil contract, you will have a separate Notice covering these amendments.]

C Amendments to General Criminal Contract and Guidance Manuals

C1 Expansion of scope: Advocacy Assistance

General Criminal Contract Specification

Amend Part A 3.2.1 as follows:

1. This Class includes all work undertaken for a Client during Criminal Proceedings in a Matter or Case from the date of charge or summons. The following Units of Work fall within this Class:
 - (a) **Advice and Assistance** to a Client who is eligible for help from the court Duty Solicitor acting as such under Part B, Section 8.3;
 - (b) **Advocacy Assistance in the magistrates' court** in the following circumstances:

By any solicitor (including a court Duty Solicitor acting as such)

 - (i) to an individual at risk of imprisonment in civil proceedings for failure to pay a fine or other sum ordered or to obey an order of a magistrates' court;
 - (ii) to a respondent in proceedings under sections 1, or 1D, ~~2 or 2A~~ of the Crime and Disorder Act 1998 relating to an anti-social behaviour order ~~or sex offender order~~ (including an application to vary or discharge such an order);
 - (iii) to a respondent in proceedings under sections 2 and 5 of the Anti-social Behaviour Act 2003 relating to ~~the making or extension of a~~ closure order;
 - (iv) to a respondent in proceedings under section 8(1)(b) of the Crime and Disorder Act 1998 relating to a parenting order made where an anti-social behaviour order or a sex offender order is made in respect of a child or young person (including an application to vary or discharge such an order);
 - (v) to a respondent in proceedings under section 8(1)(c) of the Crime and Disorder Act 1998 relating to a parenting order made on the conviction of a child or young person (including an application to vary or discharge such an order);
 - (vi) to a respondent in proceedings under section 14B (banning orders made on complaint), an applicant in proceedings under section 14G (variation of a banning order) or section 14H (termination of a banning order) of the Football Spectators Act 1989;
 - (vii) to a respondent in proceedings under sections 20 and 26 of the Anti-Social Behaviour Act 2003 relating to parenting orders in cases of exclusion from school and parenting orders in respect of criminal conduct and anti-social behaviour;
 - (viii) to a respondent in proceedings under sections 97 and 100 of the Sexual Offences Act 2003 relating to notification orders and interim notification orders;
 - (ix) to a respondent in proceedings under sections 104, 108 and 109 of the Sexual Offences Act 2003 relating to sexual offences prevention orders and interim sexual offences prevention orders;
 - (x) to a respondent in proceedings under sections 114 and 118 of the Sexual Offences Act 2003 relating to foreign travel orders;

- (xi) to a respondent in proceedings under sections 123, 125 and 126 of the Sexual Offences Act 2003 relating to risk of sexual harm orders and interim risk of sexual harm orders;
- (xii) to a respondent in proceedings under Part 1A of Schedule 1 to the Powers of Criminal Courts (Sentencing) Act 2000 relating to parenting orders for failure to comply with orders under section 20 of that Act;
- (xiii) from such date as the relevant section takes effect, to a respondent in proceedings under section 5A of the Protection from Harassment Act 1997 relating to restraining orders on acquittal;

By a court Duty Solicitor acting as such

- (xiv) subject to Part B, paragraph 8.3.1(b) at any bail application where the defendant is held in custody;
- (xv) to a defendant not in custody provided it is in connection with an imprisonable offence;
- (xvi) to a parent or guardian at risk of being bound over under section 150 of the Powers of Criminal Courts (Sentencing) Act 2000 or in breach of such an order;
- (xvii) to a recipient of a notice under section 21B(2) of the Football Spectators Act 1989;
- (xviii) to an individual at risk of imprisonment in Criminal Proceedings for failure to pay a fine or other sum ordered or to obey an order of a magistrates' court.

(c) **Representation in a magistrates' court** pursuant to a Representation Order including:

- (i) advice on an appeal;
- (ii) any related bail proceedings in the Crown Court or High Court,
- (iii) pre-Order cover provided in accordance with Part B, Rule 5.13 of this Specification,

but excluding any proceedings that are sent for trial under section 51 of the Crime and Disorder Act 1998 (except proceedings in a magistrates' court following a remittal under paragraphs 10(3)(a) or 13(2) of Schedule 3 to the Crime and Disorder Act 1998);

(d) **Advocacy Assistance (or Representation pursuant to a Representation Order granted by the Commission) in the Crown Court:**

- (i) on an appeal under section 4 of the Crime and Disorder Act 1998 against an anti-social behaviour order ~~or a sex offender order;~~
- (ii) on an appeal under section 10 of that Act against a parenting order;
- (iii) on an appeal under section 6 of the Anti-social Behaviour Act 2003 against the making of a closure order;
- (iv) to a respondent under section 8(1)(c) of that Act relating to a parenting order made on the conviction of a child or young person in the Crown Court (including an application to vary or discharge such an order);
- (v) on an appeal under section 14D (banning orders made on complaint) or section 21D (compensation following refusal of a banning order) of the Football Spectators Act 1989;
- (vi) on an appeal under sections 22 and 28 of the Anti-Social Behaviour Act 2003 relating to parenting orders in cases of exclusion from school and parenting orders in respect of criminal conduct and anti-social behaviour;
- (vii) on an appeal under section 101 of the Sexual Offences Act 2003 relating to notification orders and interim notification orders;

AMENDMENTS TO GENERAL CRIMINAL CONTRACT AND GUIDANCE MANUALS

- (viii) on an appeal under section 110 of the Sexual Offences Act 2003 relating to sexual offences prevention orders and interim sexual offences prevention orders;
- (ix) on an appeal under section 119 of the Sexual Offences Act 2003 relating to foreign travel orders;
- (x) on an appeal under section 127 of the Sexual Offences Act 2003 relating to risk of sexual harm orders and interim risk of sexual harm orders;
- (xi) on an appeal under Part 1A of Schedule 1 to the Powers of Criminal Courts (Sentencing) Act 2000 relating to parenting orders for failure to comply with orders under section 20 of that Act;
- (xii) from such date as the relevant section takes effect, on an appeal under section 5A of the Protection from Harassment Act 1997 relating to restraining orders on acquittal.

Amend Part B 8.3.2 as follows:

8.3 Service requirements for court Duty Solicitor cases

1. A Duty Solicitor at a magistrates' court shall provide the following services to any defendant who wishes to receive Advice and Assistance or Advocacy Assistance:
 - (a) advice to a Client who is in custody;
 - (b) the making of a bail application unless the Client has received such assistance on a previous occasion.
2. The Duty Solicitor may subject to paragraph 8.3.3 below also provide:
 - (a) Advice and Assistance (including Advocacy Assistance) to a Client who is in custody on a plea of guilty where the Client wishes the case to be concluded at that appearance in court, unless the Duty Solicitor considers that the case should be adjourned in the interests of justice or of the Client;
 - (b) where necessary, Advice and Assistance (including Advocacy Assistance) to a Client who 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 Client being at risk of imprisonment;
 - (c) Advice and Assistance and, where appropriate, Advocacy Assistance to any other Client who is not in custody provided it is in connection with an imprisonable offence where, in the opinion of the Duty Solicitor, such a Client requires Advice and Assistance or Advocacy Assistance;
 - (d) help to a Client who is eligible for assistance from the court Duty Solicitor to make an application for a Representation Order in respect of any subsequent appearance of the Client before the court. Where such an application is made the Duty Solicitor shall enquire whether the Client wishes to instruct another Solicitor to act for him or her. If the Client does so wish, the Duty Solicitor shall insert the name of that Solicitor in the application form;
 - ~~(e) Advice and Assistance and, where appropriate, Advocacy Assistance to a parent or guardian in connection with a proposal by the court to bind over the parent or guardian under section 150 of the Powers of Criminal Courts (Sentencing) Act 2000 or in breach of such an order;~~
 - ~~(e) Advice and Assistance and, where appropriate, Advocacy Assistance to a Client in circumstances described in Part A 3.2.1 (b) of the Specification: respondent in proceedings under sections 1 or 1D (anti-social behaviour order), 2 or 2A (sex offender order) or 8 (1) (b), (c) or (d) (parenting order) of the Crime and Disorder Act 1998 or an applicant or respondent in proceedings to vary or discharge an order made against that person;~~
 - ~~(g) Advice and Assistance and, where appropriate, Advocacy Assistance, to a respondent in proceedings under section 14B (banning orders made on complaint, an applicant in proceedings under section 14G (variation of a banning order) or section 14H (termination of a banning order) and a recipient of a notice under section 21B (2) of the Football Spectators Act 1989.~~
 - (f) Advice and Assistance and, where appropriate, Advocacy Assistance to an individual applying to vary bail conditions imposed by police under Section 47 (1E) of the Police and Criminal Evidence Act 1984, as amended by the Criminal Justice Act 2003.

Criminal Bills Assessment Manual

Amend paragraph 1.3.2 as follows:

1. Certain proceedings have been prescribed under Section 12(2)(g) as criminal proceedings by Regulation 3(2) of the General Regulations:
 - (a) civil proceedings in a magistrates' court arising from failure to pay a sum due or to obey an order of that court where such a failure carries the risk of imprisonment;
 - (b) proceedings under Sections 1, 1D, ~~2, 2A~~ and 4 of the 1998 Act relating to anti-social behaviour orders ~~or sex offender orders~~;
 - (c) proceedings under Section 8(1)(b) of the 1998 Act relating to parenting orders made where an anti-social behaviour order or a sex offender order is made in respect of a child;
 - (d) proceedings under Section 8(1)(c) of the 1998 Act relating to parenting orders made on the conviction of a child;
 - (e) proceedings under Section 9(5) of the 1998 Act to discharge or vary a parenting order made as mentioned in sub-paragraph (c) or (d);
 - (f) proceedings under Section 10 of the 1998 Act to appeal against a parenting order made as mentioned in sub-paragraph (c) or (d);
 - (g) proceedings under Sections 14B, 14D, 14G, 14H, 21B and 21D of the Football Spectators Act 1989 (banning orders and references to a court);
 - (h) proceedings under Sections 2, 5 and 6 of the Anti-Social Behaviour Act 2003 relating to ~~the making or extension of a closure orders, and appeals against such an order.~~
 - (i) proceedings under sections 20, 22, 26 and 28 of the Anti-Social Behaviour Act 2003 relating to parenting orders in cases of exclusion from school and parenting orders in respect of criminal conduct and anti-social behaviour;
 - (j) proceedings under sections 97, 100 and 101 of the Sexual Offences Act 2003 relating to notification orders and interim notification orders;
 - (k) proceedings under sections 104, 108, 109 and 110 of the Sexual Offences Act 2003 relating to sexual offences prevention orders and interim sexual offences prevention orders;
 - (l) proceedings under sections 114, 118 and 119 of the Sexual Offences Act 2003 relating to foreign travel orders;
 - (m) proceedings under sections 123, 125, 126 and 127 of the Sexual Offences Act 2003 relating to risk of sexual harm orders and interim risk of sexual harm orders;
 - (n) proceedings under Part 1A of Schedule 1 to the Powers of Criminal Courts (Sentencing) Act 2000 relating to parenting orders for failure to comply with orders under section 20 of that Act; and
 - (o) from such date as the relevant section takes effect, proceedings under section 5A of the Protection from Harassment Act 1997 relating to restraining orders on acquittal.

(The 1998 Act means the Crime and Disorder Act 1998).

Duty Solicitor Manual

Amend paragraph 2.13 as follows:

2.13 Defendants on bail:

1. These defendants may miss the opportunity to see the duty solicitor because they may arrive at court at different times. There may be no system for such defendants to report when they arrive at court and duty solicitors may be less interested in such cases as they are less likely to lead on to representation. Particular efforts therefore need to be made to ensure that bailed defendants do not slip through the duty solicitor net. Such arrangements should include a display of duty solicitor posters (see 2.15), may include the wearing of badges by duty solicitors (see 2.14) and, with the co-operation of the court, introducing arrangements whereby defendants are encouraged to report to a member of the court staff on arrival at the court who will ask them if they wish to see the duty solicitor. Alternatively the court may be able to organise a desk in the foyer of the court clearly marked “duty solicitor” but this is only likely to be relevant in very busy courts where one duty solicitor specifically covers bail cases. Defendants on bail may be assisted by the court duty solicitor if charged with an imprisonable offence, applying to vary bail conditions imposed by police under section 47 (1E) of the Police and Criminal Evidence Act, or in the circumstances described in Part A 3.2.1 (b) of the Contract Specification.~~or if he or she is:~~

[Remove list]

Police Station and Court Duty Solicitor Costs Assessment Manual

Amend paragraph 10.3 as follows:

1. The scope of court duty solicitor work is defined in the Criminal Proceedings Class of Work (GCC Part A Section 3.2).
2. Service requirements for court duty solicitor cases are detailed within the Contract (GCC Part B Section 8.3) and are reproduced at **Appendix 10** of this manual.

[Remove list]

C2 Expansion of scope: Incidental proceedings in the County Court (and clarification of High Court rates)

General Criminal Contract Specification

Amend Part A 3.2.1 (e) as follows:

- (e) **Representation in the High Court or (if approved in advance by us) the County Court** in any proceedings arising from Criminal Proceedings (including applications in the High Court arising from Criminal Proceedings funded under the Legal Aid Act 1988) except bail proceedings under paragraph 3.2.1(c)(ii), appeals by way of case stated under paragraph 4.2.1(b) and Associated CLS Work under Section 6 of this part. You must obtain prior approval from us to undertake County Court work under this section.

Amend Part C 1.7 as follows:

1.7 Claims for High Court or (if approved) County Court Representation

The procedures under this Contract for the Assessment of remuneration for Representation in the High Court or (if approved by us) the County Court for a Claim under Part A, paragraph 3.2.1(e) (certain High Court or County Court proceedings arising from Criminal Proceedings), 4.2.1(b) (appeals by way of case stated) or Subsection 6.2 (Associated CLS Work) of this Specification shall be the same as those contained in regulations 48, 84, 104 to 107A, 108 to 110, 112, 113 (1), (2) and (4) - (7), 119 (1) and 122 of the Civil Legal Aid (General) Regulations 1989 and prior authority may be applied for and granted in accordance with Part B, Rule 5.2 of this Specification.

Claims for Representation in the High Court under Part A, Section 6 (Associated CLS Work) shall be made in accordance with the rules applicable under the General Civil Contract.

1. The reference in this Rule to the Civil Legal Aid (General) Regulations 1989 refers to those regulations as amended by the Civil Legal Aid (General) (Amendment) Regulations 2000 and the Access to Justice Act 1999 (Commencement No. 3 and Transitional Provisions and Savings) Order 2000.
2. The references in Regulations 104 and 107A of the Civil Legal Aid (General) Regulations to the Legal Aid in Civil Proceedings (Remuneration) Regulations 1994 and the Legal Aid in Family Proceedings (Remuneration) Regulations 1991 mean these regulations as amended by and subject to the Commencement No. 3 Order.

Amend Part E 3.6 as follows:

3.6 High Court and (if approved) County Court Representation under a Representation Order (excluding applications to the High Court for bail)

[Remove table and replace with the following table]

	<u>High Court</u>	<u>County Court</u>
<u>WORK</u>		
<u>1. Routine letters out.</u>	<u>£7.50 per item</u>	<u>£6.60 per item</u>
<u>2. Routine telephone calls.</u>	<u>£4.15 per item</u>	<u>£3.65 per item</u>
<u>3. All other preparation work including any work which was reasonably done arising out of or incidental to the proceedings, interviews with client, witnesses, and other parties; obtaining evidence; preparation and consideration of, and dealing with, documents, negotiations and notices; dealing with letters written and received and telephone calls which are not routine.</u>	<u>£75.00 per hour (£79.50 per hour where solicitor's office situated within legal aid area 1)</u>	<u>£66.00 per hour (£70.00 per hour where solicitor's office situated within legal aid area 1)</u>
<u>4. Attending counsel in conference or at the trial or hearing of any summons or application at court, or other appointment.</u>	<u>£37.00 per hour</u>	<u>£32.50 per hour</u>
<u>5. Attending without counsel at the trial or hearing of any cause or the hearing of any summons or other application at court, or other appointment.</u>	<u>£75.00 per hour</u>	<u>£66.00 per hour</u>
<u>6. Travelling and waiting in connection with the above matters.</u>	<u>£33.25 per hour</u>	<u>£29.20 per hour</u>

Note:

The above table summarises the standard hourly rates. The remuneration provisions which govern this work are the same as those rates (including enhanced rates) which are payable from time to time for Legal Representation in accordance with the General Civil Contract.

C3 Wasted Costs and Central Funds

[The Commission is not proceeding with these amendments at this time.]

C4 Advice and Assistance applications for 'distant' clients

General Criminal Contract Specification

Amend Part B 2.1 and 2.2 as follows:

2.1 Postal Applications

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

- (a) such residence is purely temporary and the Client can without serious disadvantage delay the application until he or she has returned to England and Wales; or**
 - (b) the Advice and Assistance could be applied for on the same Matter by a person resident in England and Wales; or**
 - (c) it is otherwise unreasonable to accept the application.**
1. Good reason for the purposes of this Rule ~~is as described~~ should take into account all factors mentioned in the Guidance to Rule 7.9 in this Part.
 2. It would not be reasonable to accept a postal application on behalf of a person outside of England and Wales if the Client could be expected to attend personally in any event, for example, because of a forthcoming or regular visits to England and Wales.
 3. This Rule sets out the only circumstances in which you may accept an application for Advice and Assistance from a Client outside England and Wales, except for Police Station Advice and Assistance.

2.2 Attendance on Client's Behalf

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

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

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

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

1. Good reason for the purposes of this Rule ~~is as described~~ should take into account all factors mentioned in the Guidance to Rule 7.9 in this Part.
2. The reason relied upon must always be noted by you and kept on the file.

3. If the Client provides written authority, a copy should be kept by you. The form should be signed by the authorised person on the Client's behalf and should be annotated indicating the full name of the person signing and to make it clear that the application signed was in accordance with this Rule.
4. If the authorisation was by telephone, an attendance note should be made and retained on file. The form should be signed by the authorised person on the Client's behalf and should be annotated indicating the full name of the person signing and to make it clear that the application signed was in accordance with this Rule.
5. Work in respect of the authorisation should not be included in your Claim for costs.

C5 References to Revenue and Customs

General Criminal Contract Specification

Amend Part B 3.5 as follows:

3.5 Investigations by Non-Police Agencies

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

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

Other references in the guidance manuals need to be amended so that references to 'officer/s of HM Customs and Excise' become 'officer/s of HM Revenue and Customs'. These amendments are numerous and technical in nature and have not therefore been reproduced in full here. Amended versions of the guidance manuals will be made available on our website.

D Amendments to Criminal Guidance Manuals Only

D1 Work done in connection with the Proceeds of Crime Act 2002

Criminal Bills Assessment Manual

Insert the following as paragraph 2.5 and renumber subsequent paragraphs accordingly:

2.5 Work done in connection with the Proceeds of Crime Act 2002

Introduction

1. In *Bowman v Fels* [2005] EWCA Civ 226 the Court of Appeal considered how s 338 of the Proceeds of Crime Act 2002 (POCA) affected lawyers involved in litigation. The Court of Appeal concluded that: ‘... the proper interpretation of s 338 is that it is not intended to cover or affect the ordinary conduct of litigation by legal professionals.’
2. As a direct result of the *Bowman* judgment, certain activities are excluded from the remit of the s 328 arrangements offence. In practical terms, this means that suppliers conducting litigation, including preparatory stages, settlements, negotiations, and all forms of alternative dispute resolution, including the mediation process, are not involved in s 328 arrangements. Solicitors, mediators and others do not need to make authorised disclosures.
3. Whilst the litigation and related processes are outside of the ambit of the offence, the property itself remains ‘criminal property’. Future dealings with it after a judgment or settlement may need to be considered separately. Sham litigation will remain within the remit of the section. Additionally, solicitors may still need to advise the client about their own position.
4. It is likely there will be a reduced number of reports made by litigation lawyers but reports and other POCA work cannot be discounted altogether. The Commission has set out its approach to remuneration for work done under POCA. Full guidance on the impact of this legislation and *Bowman v Fels* can be found on The Law Society’s website.
5. Work done by a supplier to comply with POCA and the money laundering regulations generally, including an internal consultation, is a product of a professional requirement, as such is administrative work, and is not claimable from the legal aid fund.
6. Work that is client-specific however (and not an internal consultation), is more likely to be work that is directly involved in the provision of contracted legal services to the client and so may be claimed from the fund, subject to reasonableness.
7. Set out below is the Commission’s view of what may be allowed against the Fund.

Checking identity and making a risk assessment

8. Checking the identity of a client is a preinstruction procedure whereby the solicitor must ensure they obtain proof of the client’s identity. The cost of identification procedure will be borne by the supplier in any event, as it is a preliminary step to determine whether instructions can be accepted from that client.

Advice to the client about the solicitor's responsibilities under POCA

9. To what extent these costs are chargeable will depend on why the work is being done and when. The Law Society recommends that solicitors change their client care letters to explain the law in this area so that the client understands at the outset what steps can be taken and, that when taken, they are directly chargeable to the client. It would be an amendment to the firm's standard client care letter and should not form a separate letter. The Law Society advises that the explanation should be in general terms without reference to the client's particular circumstances.
10. After initial instructions are received there may be other points at which the solicitor and client spend time on POCA issues, for example, considering another party's finances. Such time is chargeable to the fund, subject to the reasonableness.

Taking further instructions on whether an offence has or will be committed, considering whether to make a NCIS report, making a report to NCIS

11. Reflecting on whether an offence has been committed and what steps to take may be driven by a number of reasons, including
 - (a) to avoid the solicitor committing the offence of failing to disclose;
 - (b) to determine whether the client's or someone else's assets are criminal property in the context of assessing financial eligibility; or
 - (c) to obtain consent from NCIS where the firm is to receive monies from (or otherwise becoming concerned in financial arrangements) the client or another.
12. If the purpose of the work is to consider how to avoid an offence by the solicitor of failing to disclose, it is not allowable against the fund. This work does not benefit the client, and its performance has no effect on the question of whether the firm can continue acting.
13. In contrast, if the firm has made a report to NCIS and has to also consider whether it can continue acting and how to advise without 'tipping off', this work would be claimable, subject to reasonableness.
14. If the purpose of the work is to obtain a consent from NCIS (and therefore a defence to substantive money laundering offences) because the firm is to receive monies from or otherwise concerned in suspected financial arrangements, it is claimable if the transaction or settlement is in the context of the case. This work can be properly described as directly involved in the provision of contracted legal services, as it may be a necessary part of the process.
15. If the reason for receiving monies or becoming concerned in arrangements is the collection of private payment for legal services, then by definition it is nothing to do with the Commission and is therefore not claimable.

Considering whether the firm can continue to act and whether 'tipping off' has been committed and seeking guidance from the court

16. Any application for an adjournment within proceedings is generally within the scope of the certificate. If a firm has to seek directions and guidance from the court as to whether or not they should continue as the client's solicitor, this will fall within the scope of proceedings. Whilst this is not a usual step, in the sense that it is not common within the proceedings, it arises out of the solicitor's professional obligation

to appear as they are on the court record as the acting solicitor. It is anticipated that directions would only be sought where there was a pending hearing and the solicitor was unsure whether to continue to act. In such cases, this is client specific work. However, an amendment to the scope of the certificate may be required if the existing scope limitation is not wide enough to cover this work.

17. Whilst considering whether the firm can continue to act is client specific work, and will be allowed subject to reasonableness, considering whether the firm has ‘tipped off’ is not client specific.

Complying with Production Orders

18. Once NCIS has conducted an investigation the Assets Recovery Agency (ARA) may decide to initiate proceedings. This can include a production order served on a firm for the release to ARA of client documentation.
19. Whether this is chargeable will depend on the funding position. If the client is a former client, with no current relationship existing between client and solicitor, the work in complying with the order will be borne by the firm. Where however the client is a current client with the benefit of public funding, compliance with the order would be client specific.

D2 Video links

Criminal Bills Assessment Manual

Amend paragraph 2.19 as follows:

2.19 Video Links

1. The Crime and Disorder Act 1998 permits certain pre-trial hearings in the magistrates’ court to take place via live video link between the court and prison. The court has discretion over whether hearings should be conducted via a link. These measures have been piloted in certain areas and are likely to be rolled out nationally over time. The link saves the cost of transporting the defendant to court and the consequential security issues. Consultation booths are available at the court and the prison to enable conferences to take place between the solicitor and client before or after a video link hearing.
2. Only certain courts have such facilities and in non-urban areas this may mean that defence solicitors have to travel further if a case is transferred to a “video conference” court. There is likely to be additional waiting time and more prison visits may be required. In appropriate circumstances, the use of local agents should be considered by the solicitor. The assessor shall have regard to the availability of video links in the area before deciding whether or not an agent should have been used (see section 4.18). On assessment of such claims, existing guidance should be applied, i.e. Points of Principle CRIMLA 21 (see paragraph 2.8.10) and CRIMLA 34 (see section 2.12).
3. Video links may also be installed at suppliers’ offices. The costs of installation and rental of the telephone line are not client-specific and may not therefore be claimed from us. The time spent on a conference with a client conducted by video link may be claimed insofar as it is reasonable. If individual call charges are paid for the conference, then such charges are considered administrative overheads and may not be claimed as a disbursement.

4. Notwithstanding the above, the Commission accepts that video link facilities could lead to savings and is keen to encourage their use. In current circumstances we consider it appropriate to allow the reasonable costs of accessing video link facilities outside the firm's offices, where this is a less expensive option than attending the client in person, to be paid as a disbursement. This does not affect the principle that the costs of in-house video link facilities are an overhead and will not be remunerated by us.

3 Defendants' attendance: reminder letters

Criminal Bills Assessment Manual

Insert the following at the end of paragraph 2.7:

Defendants' attendance: reminder letters

32. The LSC is currently engaged with partner CJS agencies in an attempt to reduce the number of ineffective hearings caused by the non-attendance of defendants. Following discussions within the inter-agency Defendant Attendance Steering Group, it has been agreed that solicitors should be encouraged to remind their client of an impending court appearance and that this reminder may take the form of a telephone reminder or a letter.
33. Therefore, from 3 October 2005, where a solicitor telephones their client (or writes a letter) reminding the client of an impending court appearance, the solicitor may claim the standard rate for the telephone call or letter. This reminder telephone call / letter is in addition to the current requirement to inform the client of the next court hearing (as required by the Specialist Quality Mark standard F1.2.)
34. The reminder call (or letter) does not need to take place on a specific day (e.g. the day before the court appearance) but should take place between the date that the client is first informed of the next court hearing and the actual date of the hearing (including the day of the hearing in the event of a telephone call.)
35. For the avoidance of doubt, reminders by email or text message are also covered by the provisions of this section and may be remunerated as if they were telephone calls or letters.