

GENERAL CRIMINAL CONTRACT – 1 JULY 2004

INTRODUCTION

This document contains a full set of the revised Standard Terms and Contract Specification effective from the 1 July 2004. The document has been produced for CDS Suppliers to use pending the update of the Legal Services Commission Manual in December 2004.

Changes to the Standard Terms effective from 1 July 2004 are shown in revision marks for ease of reference.

The Contract Specification incorporates the following amendments:

- 1 February 2004 – implementation of police station telephone advice fixed fee for all suppliers and restriction of duty solicitor rates (Notice of Contract Amendment issued December 2003).
- 17 May 2004 – implementation of scope changes announced by the DCA in February 2004 (Notice of Contract Amendment issued March 2004).
- 1 July 2004 – implementation of changes that were consulted on along side the changes to Standard Terms. Changes effective from 1 July 2004 are shown in revision marks for ease of reference.
- The further change introduced from 1 July 2004 (retrospectively applying from 17 May 2004) that enables up to one hours work to be claimed in circumstances where an application for a Representation Order is made and subsequently refused.

Details of amendments to the Specialist Quality Mark (SQM) effective from 1 July 2004 are also included after this introduction.

Due to the number of amendments made to both the Contract Standard Terms and Contract Specification, the Contract Overview needs to be substantially revised and is therefore not included in this version of the Contract. The Contract overview does not impose any obligations on you and is not a formal part of the contractual relationship between contracted organisations and us. The revised Contract Overview will be published in the December 2004 update of the Legal Services Commission Manual.

**Legal Services Commission
July 2004**

General Criminal Contract

General Criminal Contract - 1 July 2002

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Contracts for Signature

Legal Services Commission - General Criminal Contract

Contract for Signature Number <Contract number>

Between:

1. **The Legal Services Commission** ("we/us") whose head office is at:

85 Gray's Inn Road, LONDON WC1X 8TX

- and -

2. **[XXXXXX XXXXXX]** ("you") whose office is at:

<Supplier address>

Contract Period

This Contract will start on <Start Date>. It will end on **31 March 2007** unless it is lawfully ended or extended before then. On 31 March 2007 and on each 31 March thereafter it will be automatically extended to the following 31 March either on the Contract Standard Terms applicable to this Contract immediately before the date of the extension or on the Contract Standard Terms specified by us after no less than three-months consultation with The Law Society and one month's notice to you (unless we have given you at least a year's notice that there will be no extension or we have grounds for terminating it).

Contract Documents

The terms of this Contract are set out in the Contract Documents, which comprise: (a) this Contract for Signature; (b) the Contract Standard Terms; (c) the Specification; and (d) the SQM.

Provisional SQM Holders

If you are a Provisional SQM Holder, this Contract will terminate on the earliest of: (a) the end date (stated above); (b) the date twelve months from the Start Date (if you have not, by then, passed a Pre-SQM Audit); or (c) such date as we may specify (if you fail the Pre-SQM Audit).

Category 3 Assessments

Contracts for Signature will not be awarded to organisations that have had their Claims Assessed as "category 3" for a second consecutive time since such date as may be prescribed by us ("the prescribed date") unless either: (a) the period for appealing the Assessment has yet to expire; or (b) within that period, an appeal has been made but has not been finally determined. If, either before or after the Start Date, your Claims are Assessed as "category 3" for a second, consecutive time since the prescribed date and either you do not appeal the Assessment within the period for doing so, or you appeal unsuccessfully i.e. the Claims remain Assessed as "category 3", this Contract will terminate on such date as we specify. (If the period for appealing the Assessment ends before the Start Date, and you do not appeal within it, this Contract shall not come into force on the Start Date.)

The prescribed date shall be a date that is no more than three years before the date of the second, consecutive "category 3" Assessment (for the avoidance of doubt, not the date of an unsuccessful appeal against the "category 3" Assessment).

Governing Act

This Contract is governed by the Access to Justice Act 1999. This Contract may be extended for such period or periods as you and we may agree in writing either on the Contract Standard Terms applicable to this Contract immediately before the date of the extension or on the Contract Standard Terms specified by us after no less than three-months consultation with The Law Society and the Not For Profit Consultative Body and one month's notice to you.

Individual Case Contracts

If work for any Client becomes the subject of an individual contract with us, it ceases to be Contract Work (under this Contract) from the date it is covered by the individual contract.

Contract Work

Subject to any special Clauses set out below and to the terms of any Schedule:

You may perform Contract Work in the Class(es) of Work designated "YES" in the table below; and

if "All Classes" is designated "YES" you may perform Contract Work in all Classes of Work.

Classes of Contract Work that you may perform			
All Classes	YES	Prison Law	YES
Appeals, Reviews and Variations (includes Criminal Cases Review Commission)			YES

Monthly Payments	
Your monthly payment for Contract Work is	£XXXX

Special Clauses and Conditions
Special Clauses and conditions may be specified in this box or in an annex to this Contract for Signature, with an appropriate reference in this box.
Category 3 Assessments: The prescribed date is 1 November 2001 or the date three years before the date of the second, consecutive "category 3" Assessment, whichever is more recent.

Amendments

If, in accordance with this Contract, any provision in this Contract for Signature is amended, we will issue a Schedule setting out the new provision.

Guarantees & Indemnities

If you are not a partnership or a sole principal, we may, at any time while this Contract is in force, require appropriate guarantees and indemnities from appropriate members of your personnel.

Signed for us by:

Name:

Signature:

Status:

Signed for you by:

Name:

Signature:

Status:

[Partner/Principal/Director/Other (please state)]

State type of Organisation:

e.g. Partnership, Incorporated Practice, Limited Liability Partnership

This Contract must be signed for you by a person who can bind you to it. If you are a partnership a partner must sign. If you are a sole practitioner solicitor, the sole practitioner (principal) must sign. If you are a company, a director must sign.

This Contract is valid only if it is signed by one of our Regional Directors or another person with the specific written authority of our Chief Executive.

Legal Services Commission - General Criminal Contract - London

Contract for Signature Number <Contract number>

Between:

1. **The Legal Services Commission** ("we/us") whose head office is at:

85 Gray's Inn Road, LONDON WC1X 8TX

- and -

2. **[XXXXXX XXXXXX]** ("you") whose office is at:

<Supplier address>

Contract Period

This Contract will start on <Start Date>. It will end on **30 June 2005** unless it is lawfully ended or extended before then.

Contract Documents

The terms of this Contract are set out in the Contract Documents, which comprise: (a) this Contract for Signature; (b) the Contract Standard Terms; (c) the Specification; and (d) the SQM.

Provisional SQM Holders

If you are a Provisional SQM Holder, this Contract will terminate on the earliest of: (a) the end date (stated above); (b) the date twelve months from the Start Date (if you have not, by then, passed a Pre-SQM Audit); or (c) such date as we may specify (if you fail the Pre-SQM Audit).

Category 3 Assessments

Contracts for Signature will not be awarded to organisations that have had their Claims Assessed as "category 3" for a second consecutive time since such date as may be prescribed by us ("the prescribed date") unless either: (a) the period for appealing the Assessment has yet to expire; or (b) within that period, an appeal has been made but has not been finally determined. If, either before or after the Start Date, your Claims are Assessed as "category 3" for a second, consecutive time since the prescribed date and either you do not appeal the Assessment within the period for doing so, or you appeal unsuccessfully i.e. the Claims remain Assessed as "category 3", this Contract will terminate on such date as we specify. (If the period for appealing the Assessment ends before the Start Date, and you do not appeal within it, this Contract shall not come into force on the Start Date.)

The prescribed date shall be a date that is no more than three years before the date of the second, consecutive "category 3" Assessment (for the avoidance of doubt, not the date of an unsuccessful appeal against the "category 3" Assessment).

Governing Act

This Contract is governed by the Access to Justice Act 1999. This Contract may be extended for such period or periods as you and we may agree in writing either on the Contract Standard Terms applicable to this Contract immediately before the date of the extension or on the Contract Standard Terms specified by us after no less than three-months consultation with The Law Society and the Not For Profit Consultative Body and one month's notice to you.

Individual Case Contracts

If work for any Client becomes the subject of an individual contract with us, it ceases to be Contract Work (under this Contract) from the date it is covered by the individual contract.

Contract Work

Subject to any special Clauses set out below and to the terms of any Schedule:

You may perform Contract Work in the Class(es) of Work designated "YES" in the table below; and

if "All Classes" is designated "YES" you may perform Contract Work in all Classes of Work.

Classes of Contract Work that you may perform			
All Classes	YES	Prison Law	YES
Appeals, Reviews and Variations (includes Criminal Cases Review Commission)			YES

Monthly Payments	
Your monthly payment for Contract Work is	£XXXX

Special Clauses and Conditions
Special Clauses and conditions may be specified in this box or in an annex to this Contract for Signature, with an appropriate reference in this box.
Category 3 Assessments: The prescribed date is 1 November 2001 or the date three years before the date of the second, consecutive "category 3" Assessment, whichever is more recent.

Amendments

If, in accordance with this Contract, any provision in this Contract for Signature is amended, we will issue a Schedule setting out the new provision.

Guarantees & Indemnities

If you are not a partnership or a sole principal, we may, at any time while this Contract is in force, require appropriate guarantees and indemnities from appropriate members of your personnel.

Signed for us by:

Name:

Signature:

Status:

Signed for you by:

Name:

Signature:

Status:

[Partner/Principal/Director/Other (please state)]

State type of Organisation:

e.g. Partnership, Incorporated Practice, Limited Liability Partnership

This Contract must be signed for you by a person who can bind you to it. If you are a partnership a partner must sign. If you are a sole practitioner solicitor, the sole practitioner (principal) must sign. If you are a company, a director must sign.

This Contract is valid only if it is signed by one of our Regional Directors or another person with the specific written authority of our Chief Executive.

Contract Standard Terms

Part A - Introduction

1. Definitions

Foreword

A The Commission has a statutory obligation to establish, maintain and develop the CLS and the CDS - sections 4(1) and 12(1) of the Act. In funding services as part of the CLS or CDS, it has a statutory obligation to aim to obtain the best possible value for money – sections 5(7) and 18(3) of the Act. In relation to the CDS, it has statutory obligations to secure access to such advice, assistance and representation as the interests of justice require – section 12(1). In relation to the CLS, it has statutory obligations to secure (within the resources made available, and priorities set in accordance with part 1 of the Act) that individuals have access to services that effectively meet their needs section 4(1).

B The Commission may also accredit persons or bodies providing services under the CLS or CDS. Any system of accreditation must include provision for the monitoring of the services provided by accredited persons or bodies and for the withdrawal of accreditation from any providing services of unsatisfactory quality – sections 4(8) and 12(4) of the Act.

C To ensure that the Commission meets these obligations, the following are key conditions of this Contract:

- The standard of the services you provide to clients must, at least, meet that required by this Contract;
- If you are a Provisional SQM holder, you must pass (and must not fail) a Pre-SQM Audit and, if you are a SQM holder, you must continue to hold the SQM in at least one Category of Work at all times while this Contract is in force;
- You may claim payment for Contract Work only in accordance with the provisions of this Contract.

1. In this Contract the following words and expressions have the following meanings.

“Access to Justice Legislation” includes any Acts of Parliament, Statutory Instruments, directions of the Lord Chancellor applying to this Contract, Arrangements and the Funding Code;

“Accredited Representative” means an individual (including a Solicitor or barrister) whose name is included on the Police Station Register and who is accredited by a body recognised by us as competent to do so;

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

“Advice and Assistance” means advice and assistance within the meaning of section 13 of the Act;

“Advocacy Assistance” means Advice and Assistance by way of advocacy within the meaning of s.13 of the Act;

“Approved Supplier” means any person, firm or company approved by you to supply services to you in accordance with ~~LAFQAS~~[the SQM](#);

“Arrangements” means any arrangements made under the Act by us;

“Assessed Claim” means a Claim which has been subject to Assessment;

“Assessment” means an assessment, under this Contract or by a competent court, of the amount which (subject to the provisions of this Contract) is due in respect of any Claim (on an appeal or otherwise) and “Assess” has the associated meaning;

“Authorised Level of Service” means a level of service, described in the Specification, that may be performed as Contract Work;

“Back-up” means a system by which the Call Centre Service (when a Duty Solicitor on a Rota is unable to accept a request for Police Station Advice and Assistance) seeks to contact another Duty Solicitor;

“BACS” means BACS Ltd (formerly known as Bankers’ Automated Clearing Services);

“Call Centre Service” means the telephone service established by the Commission to receive initial requests for Advice and Assistance from individuals at Police Stations;

“Case” has the meaning described in the Specification;

“Category of Work” means work that may be provided under the Act within a ~~franchise~~[SQM](#) category specified by us;

“CDS Supplier” means an office of a firm of solicitors in respect of which it holds a General Criminal Contract or an office of the Public Defender Service;

“CEDR” means the Centre for Dispute Resolution;

“Certificate” means a document issued by us granting a Right to Representation or funding under the Funding Code;

~~“Change of Control” means a change of control (as defined by section 416 of the Income and Corporation Taxes Act 1988) in you or your Parent Company;~~

“Change of Control” means, in the case of a company, a change of control (as defined by section 416 of the Income and Corporation Taxes Act 1988 (“ICTA”)) in you or your Parent Company and, in the case of a limited liability partnership, has a like meaning but as if:

(a) for all references to “the company” (other than in sub-section (6) of ICTA) there were substituted references to “the limited liability partnership”;

(b) in sub-section (2)(a) of ICTA the words “of the share capital or issued share” were omitted;

(c) in sub-section (2)(b) of ICTA for the words “such part of the issued share capital of the company” there were substituted “such entitlement to the profits of the limited liability partnership”;

(d) in sub-sections (2)(b) and (c) and (6) of ICTA for the word “participators” there were substituted “members”; and

(e) in sub-section (6) of ICTA

(i) for all but the last reference to “company” there were substituted “company or limited liability partnership”;

(ii) for the reference to “companies” there were substituted “companies or limited liability partnerships (as the case may be)”; and

for the last reference to “company” there were substituted “limited liability partnership”.

“Claim” means a claim for payment for Contract Work;

“Class of Work” means work that may be provided under the Act within a class specified by us in the Specification;

“Clause” means a clause of these Contract Standard Terms;

“Client” means an individual for whom you are performing (or have performed) Contract Work (and Former Client means a person for whom you have performed work under the Act or the Legal Aid Act 1988);

“Constable” means a police officer, a British Transport Police officer, an officer of HM Customs and Excise and any other official with a power of arrest;

“Contract” means this Contract between you and us which shall be known as the General Criminal Contract;

“Contract Documents” means the documents (including any schedules and annexes to them) comprising this Contract which are (a) the ~~One Year or Three Year Contract for Signature~~; (b) the Contract Standard Terms; (c) the Specification; and (d) ~~LAFQAS the SQM~~;

“Contract for Signature” means the Contract Document designated as such by us;

“Contract Review Body” means the body appointed by us for the purpose of determining reviews under this Contract, comprising two members nominated by us and a nominee of The Law Society (who shall be a solicitor practising in a ~~Franchisee Crime SQM holder~~). At our option, the Contract Review Body may also include a further member of a ~~Franchisee SQM holder~~;

“Contract Schedule” and “Schedule” mean a Schedule to this Contract;

“Contract Standard Terms” means these General Criminal Contract Standard Terms;

“Contract Work” is all the work you may perform under this Contract;

“Contract Work Report Form” means any of our forms for providing information about Contract Work or for claiming payment for Contract Work;

“Contractor” means a party (except us) to a General Criminal Contract;

“Costs Appeals Committee” means the committee of the Legal Services Commission appointed for the purpose of determining appeals against Assessments on Points of Principle of General Importance;

“Costs Committee” means a committee appointed under Arrangements to consider appeals and applications for reviews of Assessments in accordance with this Contract;

“Counsel” means a practising barrister or any authorised advocate as defined by section 119(1) of the Courts and Legal Services Act 1990;

“Crime Desktop Audit” means an audit by us of an organisation which is seeking to become a Provisional Crime [Franchisee SQM holder](#) and which is designated as such by us;

“Crime [FranchiseSQM](#)” means the type of [franchiseSQM](#) held by a Crime [Franchisee SQM holder](#);

“Crime [Franchisee SQM holder](#)” means, in respect of an Office, an organisation which has passed a Crime Pre-[FranchiseSQM](#) Audit and which holds a [FranchiseSQM](#) Certificate for the Crime category of Work and such an office is a Crime [Franchised-OfficeSQM Office](#);

“Crime Pre-[FranchiseSQM](#) Audit” means an audit by us of a Provisional Crime [Franchisee SQM holder](#) which is seeking to become a Crime [Franchisee SQM holder](#) and which is designated as such by us;

“Crime Preliminary [FranchiseSQM](#) Audit” means an audit by us of an organisation which is seeking to become a Provisional Crime [Franchisee SQM holder](#) and which is designated as such by us;

“Criminal Investigations” has the same meaning as in section 13(1) of the Act;

“Criminal Proceedings” has the meaning given in section 12(2) of the Act;

“Devolved Powers” means the powers and functions listed as such in the Specification that we have authorised you to exercise and discharge under this Contract (and which you must exercise and discharge unless we have directed you otherwise and which we may modify, suspend or terminate on notice to you in accordance with this Contract);

“Disbursement” means travelling and witness expenses and other out of pocket expenses properly incurred by you (and which, apart from this Contract, would be properly chargeable to a client) in performing Contract Work;

“Duty Period” means a period during which a Duty Solicitor is required to be available to give Advice and Assistance or Advocacy Assistance under a Duty Solicitor scheme;

“Duty Solicitor” means a Solicitor or employed barrister who is admitted to a Local Scheme under Arrangements;

“~~Franchise~~SQM Certificate” means a current certificate designated as such and issued by us to you;

“~~Franchise~~SQM Promotional Items” means the Logo and ~~Franchise~~SQM Certificate and any or all of such other logos, signs, display materials, information, literature and other promotional items, supplied or approved by us in connection with ~~the SQM~~franchising;

“~~Franchised Office~~SQM Office” means an office holding a ~~Franchise~~SQM Certificate;

“~~Franchisee~~SQM holder” means, in respect of an office, an organisation which has passed a Pre-~~Franchise~~SQM Audit and which holds a ~~Franchise~~SQM Certificate and such an office is a ~~Franchised Office~~SQM Office;

“Fundamental Breach” means a serious breach of this Contract, which may be further described in Guidance in the Specification;

“Funding Code” means the code under Clause 9 of the Act;

“Funding Review Committee” means a committee appointed under Arrangements to exercise the jurisdiction set out in Part C, Section 16 of the Funding Code or conferred under this Contract and to exercise any jurisdiction (except in relation to costs) exercisable by area committees under the Legal Aid Act 1988;

“Governor” has the meaning given by Rule 2 of the Prison Rules 1999;

“Guidance” means such guidance as we may issue from time to time, to form part of the Specification (and which you and we must follow) on the completion of forms, on how Contract sanctions may be applied, on the extent of Contract Work, on the scope of Classes of Work, Categories of Work and Units of Work and (without limitation) on other issues relating to the meaning and operation of (and compliance with) this Contract;

“Interests of Justice Criteria” mean the factors set out in paragraph 5 of Schedule 3 to the Act;

“Key Personnel” means all ~~franchise representative~~Quality Representatives and supervisors under ~~LAFQAS~~the SQM;

“~~LAFQASSQM~~” means our quality assurance standard which is currently the ~~Legal Aid Franchise Quality Assurance Standard~~Specialist Quality Mark (SQM) (plus ~~any~~the Quality and Performance Standards set out in the Specification that are ~~stated to be~~ part of ~~LAFQASSQM~~ for the purposes of this Contract) which we may amend from time to time in accordance with this Contract;

“Legal Representative” means an authorised litigator or an authorised advocate as defined by section 119(1) of the Courts and Legal Services Act 1990;

“Local Scheme” means a scheme covering one or more magistrates’ courts or one or more Police Stations within a geographical area defined by us, which is usually a petty sessions area;

“the Logo” means our logo for use by [Franchisee Crime SQM holders](#);

“Matter” has the meaning described in the Specification;

“Notice to Terminate” means a notice to that effect;

“Office” means your Office described in your ~~One Year or Three Year~~ [Contract for Signature](#) from which you may perform Contract Work;

“Official Investigation” means any investigation (of which you are aware) (a) into suspected serious professional misconduct, breaches of the Act (or the Legal Aid Act 1988) or regulations, or dishonesty by you or your personnel, being carried out by or authorised by (i) any organisation (such as in the case of a contractor which is a firm of solicitors, the Office for the Supervision of Solicitors) which is responsible for regulating or disciplining you or your personnel or (ii) the Legal Services Commission’s Investigation Section; or (b) any investigation (of which you are aware) by the police into suspected criminal offences relevant to your operations; or (c) any investigation (on reasonable grounds) by the Legal Services Commission’s Investigation Section into suspected serious breaches of this Contract (that would be grounds for termination);

~~“One Year Contract” means a Contract designated as such by us;~~

“Order” and “Representation Order” means a document issued by a court granting a Right to Representation;

“Own Solicitor” means a Solicitor who provides Advice and Assistance to a Client other than as a Duty Solicitor;

“Panel” and “Panel Case” means an arrangement by which the Call Centre Service telephones Duty Solicitors in sequence to identify a Duty Solicitor available to provide Advice and Assistance at a Police Station;

“Parent Company” means any company which is your ultimate holding company and any company which has the same ultimate holding company as you [and in this definition “company” includes a limited liability partnership](#);

“Parole Board” has the meaning given by section 32 of the Criminal Justice Act 1991;

“Patient” means a person who by reason of mental disorder within the meaning of the Mental Health Act 1983 is incapable of managing and administering his property or affairs;

“Performance Indicators” means such measures of your performance as we may specify (and may include transaction criteria, case outcome measures, fundamental case issues measures, time spent measures and case cost measures);

“Points of Principle of General Importance” means decisions on appeals against Assessments that are determined by the Costs Appeals Committee to be such;

“Police Station” means a police station or any other place where a Constable is present and, except where expressly excluded by the Specification or any Arrangements, any place where a Services Person is assisting with an investigation by Services Police;

“Police Station Advice and Assistance” means Advice and Assistance given either by Police Station Attendance or by Police Station Telephone Advice;

“Police Station Attendance” has the meaning defined in the Specification;

“Police Station Register” is the list of Accredited and Probationary Representatives maintained by the Commission or the Law Society;

“Police Station Telephone Advice” has the meaning defined in the Specification;

“Probationary Representative” means a person (including a Solicitor or barrister) who is, under Arrangements, registered with the Legal Services Commission as a Probationary Representative and who has not yet passed the relevant accreditation tests to provide Police Station Advice and Assistance;

“Provisional Crime ~~Franchisee~~[SQM holder](#)” means, in respect of an Office, an organisation which has applied for (but has not yet been granted) approval of that Office as a Crime ~~Franchised Office~~ [SQM Office](#), which has passed either a Crime Desktop Audit or a Crime Preliminary [FranchiseSQM](#) Audit such an Office is a “Provisionally Crime ~~Franchised Office~~ [SQM Office](#)”;

“Public Defender Service” means the service provided by employed lawyers, funded directly by the Legal Services Commission as part of the Criminal Defence Service, to provide Advice and Assistance and Representation to individuals;

“Qualifying Client” means an individual who has been assessed (by a competent person or body) as a person for whom Contract Work may be performed under the Act;

“Qualifying Criteria” mean the criteria set out in this Contract used to determine whether an individual will be a Qualifying Client;

“Quality and Performance Standards” are those standards set out in Part D of the Specification which form part of [LAFQAS](#) [the SQM](#) for the purpose of this Contract.

“Region”, “Regional Director” and “Regional Office” have the meanings given in the Legal Services Commission Regional Arrangements 2000;

“Regulation” means a Regulation under the Act;

“Remainder Work” means Contract Work which, in accordance with this Contract, we permit you to continue after this Contract (or part of it) has ended;

“Report” means a report about you or your personnel from one or more of the organisations which may carry out an Official Investigation or from the Solicitors’ Indemnity Fund;

“Representation” has the meaning given in section 26 of the Act;

“Representation Order” and “Order” means a document issued by a court or the Commission granting a Right to Representation;

“Representative” means an Accredited Representative or a Probationary Representative who is, under Arrangements, registered with the Legal Services Commission;

“Researcher” means a person appointed by us to carry out research into the operation of this Contract;

“Right to Representation” means a right granted to an individual under Schedule 3 to the Act;

“Rota” means a rota of Duty Solicitors to provide Advice and Assistance or Advocacy Assistance at magistrates’ courts and Advice and Assistance at Police Stations;

“Schedule” and “Contract Schedule” mean a Schedule to this Contract;

“Scheme” means a Duty Solicitor scheme operating under any Arrangements covering one or more courts or Police Stations;

“Sentence” means any order made on the conviction of an individual for an offence;

“Serious Arrestable Offence” has the meaning given by section 116 of the Police and Criminal Evidence Act 1984;

“Serious Service Offence” means an offence under any of the Army Act 1955, the Air Force Act 1955 or the Naval Discipline Act 1957 which cannot be dealt with summarily or which appears to interviewing Services Police to be serious;

“Services Person” means a person assisting with an investigation by the Services Police;

“Services Police” means members of the Royal Navy Regulating Branch, members of the Royal Military Police, Royal Air Force Provost Officers or members of the Royal Air Force Police;

“Solicitor” means a Solicitor of the Supreme Court;

“Solicitors’ Chambers” means an organisation, recognised as such by us, which has a contractual arrangement with a number of Solicitors’ Chambers Members for the purpose of sharing certain resources and procedures (whilst not prejudicing the independence of those Solicitors’ Chambers Members) which was not created solely or substantially for the purpose of applying for a Contract;

“Solicitors’ Chambers Member” means a Crime [FranchiseeSQM holder](#) or a Provisional Crime [Franchisee_SQM holder](#) which, under a contractual arrangement with a Solicitors’ Chambers is a member of it, and which has, unless we otherwise direct, an Office near the Solicitors’ Chambers (and any reference to “you”, where the context so requires, includes a Solicitor’s Chambers Member);

“Specification” means the specification designated as such by us (which may include rules and Guidance) which we may amend from time to time in accordance with this Contract;

“Supplier Development Group” means our head office function responsible for the consideration of requests for internal reviews;

~~“Three Year Contract” means a Contract designated as such by us;~~

“UK” means the United Kingdom of Great Britain and Northern Ireland;

“Unassigned Counsel” means Counsel who is not assigned under a Representation Order in the magistrates’ court, but who is instructed by the assigned Solicitor;

“Unit of Work” and “Unit” have the meaning described in the Specification;

“Volunteer” has the meaning given in the Criminal Defence Service (General) (No.2) Regulations 2001.

~~“Volunteer” means a person who, for the purposes of assisting with an investigation, attends voluntarily at a Police Station or accompanies a Constable to a Police Station or any other place without having been arrested;~~

“we” and “us” mean the Legal Services Commission (and “our” has the associated meaning);

“you” means ~~the Contractor which has entered into the current party to~~ this Contract with us (and “your” has the associated meaning).

Interpretation

2.13. Clause headings in this Contract are inserted for convenience only and do not affect its interpretation.

3.14. Words denoting the masculine include the feminine and the neuter and words denoting the singular include the plural and vice versa.

4.15. Reference to “day”, “week”, ~~“month”~~ or “year” means a calendar day, week, ~~month~~ or year, as appropriate and reference to a working day means any day except Saturday, Sunday and any bank holiday. Reference to “month” means a calendar month unless the context requires otherwise when it shall mean a named month as in January or February etc.

5.16. Reference to any legislation, Regulations or Arrangements is, as the context requires, a reference to any substitute for, or re-enactment of, such legislation, Regulations or Arrangements and includes any new legislation, Regulations or Arrangements arising at any time.

6.17. References to “approving” or “approval” means approving or approval as provided by this Contract or, if no express provision is made by this Contract, to approving or approval in writing.

- 7.18. References to “authorising” or “authority” means authorising or authority as provided by this Contract or, if no express provision is made by this Contract, to authorising or authority in writing.
- 8.19. References to “directing” or “direction” means directing or direction as provided by this Contract or, if no express provision is made by this Contract, to directing or direction in writing.
- 9.20. References to “notifying”, “notification” or “notice” means notifying, notification or notice as provided by this Contract or, if no express provision is made by this Contract, to notifying, notification or notice in writing.
- 10.21. Any obligation relating to the completion and submission of any form designated or specified by us, or to “our form”, includes the obligation properly to complete and submit the form in such a format (electronic, paper or otherwise) as we may specify.
- 11.22. Unless otherwise specified, reference to any Contract Document or to any “current” document or other provision means the Contract Document, document or other provision in its current form from time to time and not merely as at the date this Contract comes into force.
- 12.23. Reference to a “current” payment rate or other provision means a payment rate or other provision in its current rate or provision from time to time and not merely as at the date this Contract comes into force.
- 13.24. Where this Contract imposes an obligation on you, you must comply with it and must use reasonable endeavours to ensure that your personnel and contractors comply with it. Similarly, where this Contract imposes an obligation on us, we must comply with it and must use reasonable endeavours to ensure that our personnel and contractors comply with it.
- 14.25. Any obligation on you to have systems, procedures or controls includes the obligation effectively to operate them.
- 15.26. Where, in relation to any options available to us under any Clause, those options are joined by the word “and” (as in we may “a”, “b” and “c”), our choice is not restricted to selecting all options or no options but extends to selecting any one or more of them.
- 16.27. Any reference to this Contract, or any part of it, ending or terminating means (unless otherwise stated) ending in any manner and not merely by effluxion of time or otherwise.
- 17.28. Any reference to this Contract, or any part of it, expiring means (unless otherwise stated) expiring by effluxion of time (and “expiry” has the associated meaning).
- 18.29. Where Regulations refer to a “franchise contract” that reference includes this Contract (so that this Contract is a franchise contract for the purposes of the Regulations). This Contract is governed by English Law.

30. References to “documents”, “records”, “files”, “information” and similar references to items commonly committed to paper includes documents, records, files, information etc stored in other media e.g. in electronic format, digitally, on disk, on computer etc. and references to “auditing” include auditing items in such other media.
31. References to “company” includes, except where the context requires otherwise, a limited liability partnership.
32. References to “personnel” include partners (partnership) directors (company) and members (limited liability partnership).
33. References to “partner” include a person held out as a partner of a partnership.
34. References to a “director” include a “member” of a limited liability partnership, except where the context requires otherwise.

Precedence of Contract Documents

19.35. Unless one provision is stated expressly to override, or to be subject to, another then, in the event of any conflict between any of the provisions of the Contract Documents, the conflict will be resolved according to the following order of priority: (a) the ~~One Year or Three Year~~ Contract for Signature; (b) the Contract Standard Terms; (c) the Specification; and (d) ~~LAFQAS~~the SQM.

Scope of Standard Terms

20.36. Unless any ~~One Year or Three Year~~ Contract for Signature expressly provides otherwise, all these Contract Standard Terms apply to all Contract Work.

Continuity

37. If this Contract replaces a previous General Criminal Contract held by you, the terms of this Contract apply (and apply to all work in progress and Claims to be Assessed) from the Start Date. In all other respects this Contract is to be treated as continuing the previous contract. This means that e.g. (and without limitation):
- (a) any monies payable under the previous contract are payable under this Contract (and any credit or debit balance, on your account with us under the previous contract, is a credit or debit balance under this Contract);
 - (b) any notices issued (and any audits and Assessments) under the previous contract have effect under this Contract;
 - (c) any appeals or applications for review continue under this Contract and any consequent decisions have effect under this Contract;
 - (d) work carried out from the Start Date is counted against this Contract, even if the relevant case or matter began under the previous contract; and
 - (e) the Remainder Work provisions in Clause 12C of the previous contract do not apply on that contract’s ending.

However, work covered by the Legal Aid Act 1988 remains covered by that Act and by regulations under it.

~~27. We may amend this Contract to give effect to amendments consequent on the consultation entitled “Consultation Paper Contract Terms 1 April 2004 Consultation” and to such amendments as are necessary to harmonise with the General Civil Contract.~~

Amendments

~~28.27. We may amend this Contract at The Law Society’s request.~~

2. Relationship

Reasonableness and good faith

1. In funding services as part of the Criminal Defence Service we are bound by section 18(3) of the Act to aim to obtain the best possible value for money. Without prejudice to more specific provisions of this Contract and to your professional obligations in respect of Clients, you and we agree to work together in mutual trust and co-operation to achieve this aim.
2. In complying with this Contract, in exercising your rights under it and in performing Contract Work, you must act reasonably and in good faith.
3. In exercising our rights under this Contract, and in complying with it, we must act in good faith and as a responsible public body required to discharge its functions under the Act, having regard to the professional duties owed by you to your Clients.
4. Clauses 2.1 ~~to 2.3~~ ~~and 2.2~~ above do not relieve either you or us from the requirement to comply with express provisions of this Contract and are subject to all such express provisions.

Are you our partner or agent?

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

Do you have to perform this Contract yourself?

7. This Contract is personal to you. You must not give, bargain, sell, assign (or otherwise dispose of) the benefit of any of its rights, or sub-contract (or otherwise delegate) any of your obligations under this Contract without our written consent. This Contract does not prohibit you from instructing Approved Suppliers in accordance with normal practice and in compliance with this Contract and with the Act and Regulations. ~~but~~ However, if you instruct solicitor agents, they must be a Contractor with a contract that would permit them to perform such work (unless it is impracticable to instruct such a Contractor in which case, you must record on the Client's file why it is impracticable) or be a solicitor advocate (with or without higher court advocacy rights) instructed in that capacity (instead of counsel).

Does this Contract create any third party rights?

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

3. Your main rights and obligations

What work may you perform?

1. You may perform, for Qualifying Clients, the Contract Work specified in your ~~One-Year or Three-Year~~ Contract for Signature, while it is in force.

How must you perform the Contract Work?

2. You must perform all Contract Work and exercise your Devolved Powers in a timely manner and with all reasonable skill, care and diligence. You must perform your obligations to record and report data accurately. Your Claims must be true, accurate and reasonable.
3. In performing (and claiming payment for) Contract Work, in exercising your Devolved Powers and in complying with LAFQAS the SQM you must achieve such level of performance, as measured by the Performance Indicators, as we may require.

What must you comply with?

4. You must comply with all relevant legislation, including all Access to Justice Legislation, with any relevant Points of Principle of General Importance and with the following documents:
 - (a) the ~~One-Year or Three-Year~~ Contract for Signature;
 - (b) the Contract Standard Terms;
 - (c) the Specification; and
 - (d) LAFQAS the SQM.

How must you demonstrate compliance?

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

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

6. You must allow our representatives to have prompt access to your premises and equipment: (a) in order to audit or assess whether you are complying with this Contract; (b) in order to verify the accuracy of information you hold concerning Contract Work and your compliance with this Contract; ~~(c)~~ to perform Assessments or otherwise discharge our functions under the Act; and ~~(d)~~ to facilitate an Official Investigation. Access to equipment does not give us the right of access to information about private clients. but it does allow us, for example, to access your running record of costs (maintained on a computer or I.T. system) but we will exercise this right only to facilitate an Official Investigation.

7. Unless an Official Investigation is being conducted (when, if we request it, you must give immediate access) we will require access for our representatives only during normal business hours and we will give you five working days notice of the date when we require such access (unless you agree a shorter period of notice).

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

8. You must make available to our representatives such information, assistance and facilities (including, without limitation, photocopying and interviewing facilities) and such documents or parts of documents, including the Case and Matter files and file records of any Clients and Former Clients, as we may require.
9. You must comply with Clause 3.8 above:
 - (a) as quickly as reasonably practicable (and, in any event, within 24 hours or such longer period as we may agree with you) if an Official Investigation is being conducted;
 - (b) without unreasonable delay (and in any event within 14 days) during an audit or assessment by our representatives, or for the purposes of an Assessment;
 - (c) within such period as we may specify (being not less than 14 days) on such other occasions as we may require for the purposes set out in this Contract.

Do you have to [Co-operate with Researchers](#)?

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

What forms do you have to complete?

11. You must complete and return to us, in accordance with the Specification, such Contract Work Report Forms as we may specify. We will give at least 28 days notice of the introduction of any new Contract Work Report Forms or of any amendments to any Contract Work Report Forms.

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

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

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

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

Can we require you not to remove documents?

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

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

15. When required for the purposes of this Clause 3 (except for Clause 3.10), we may remove, require you to send us or require the secure, sealed retention of (in such manner and for such period as we may specify) documents or parts of documents (including the Case and Matter files and file records of Clients and Former Clients).

How long must you keep closed Case files for?

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

May we carry out Client satisfaction surveys?

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

What material changes do you have to tell us about?

19. Without prejudice to Part D, Clause 18 of these Contract Standard Terms, you must notify us of any material alteration:

- (a) to any material information you have provided to us (including information which you provided in seeking to become a Contractor); and
- (b) to the manner in which you perform the Contract Work (including material alterations to your management systems).

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

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

- 20. Immediately you become aware of them, you must notify us (and provide details) of (a) any professional disciplinary proceedings and (b) any criminal charges in relation to any alleged Serious Arrestable Offence that might be relevant to the performance of Contract Work or any alleged offence of dishonesty or deception concerning (i) you, (ii) any of your personnel who have been, or may be, involved in Contract Work (iii) any of your partners, or (iv) any of your directors.

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

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

Are we authorised by you to obtain a Report?

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

Part B - The Specialist Quality Mark~~Franchise Quality Standard~~

4. ~~Crime Franchisee~~ SQM holders and Provisional ~~Crime Franchisee~~ SQM holders

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

Crime Franchisees

- ~~1. Crime Franchisees will have passed a Crime Pre Franchise Audit and will have Three Year Contracts.~~

Provisional Crime Franchisees

- ~~2. Provisional Crime Franchisees will have passed a Crime Desktop Audit or a Crime Preliminary Franchise Audit and will have One Year Contracts.~~
- ~~3. If you are a Provisional Crime Franchisee, you must not:
(a) use the Logo; or
(b) hold yourself out as a Crime Franchisee;
unless we agree, in writing, that you may.~~

What happens to the franchise contract?

- ~~4. If you hold a franchise contract (i.e. a contract incorporating the Franchise Contract Standard Terms) then that contract terminates on the date this Contract starts. Any provision in the franchise contract standard terms that is stated to have effect after the franchise contract has ended, is cancelled.~~
- ~~4. When your franchise contract is terminated under Clause 4.4 above, any work within the Crime Franchise Category of Work that is not Contract Work (e.g. Crown Court Work) which was covered by your franchise contract is subject to the requirement in this Contract to comply with LAFQAS (apart from the additional Quality and Performance Standards set out in the Specification that are part of LAFQAS for the purposes of Contract Work only).~~

5. Advertising and promotion

Are there any restrictions on how you may advertise?

1. If you are a Provisional Crime [FranchiseeSQM holder](#), unless we grant you prior written permission, you must not in any way imply that you are, or will be, a Crime [FranchiseeSQM holder](#). If we do grant such prior written permission, you must comply with such terms as to publicity as we may specify.
2. You may publicise and promote your status as a Crime [FranchiseeSQM holder](#), or Provisional Crime [FranchiseeSQM holder](#), in any reasonable manner consistent with the spirit and intention of this Contract.
3. You must not say or do anything which is or is likely to be misleading to Clients or potential Clients regarding your status as a Crime [FranchiseeSQM holder](#) or Provisional Crime [FranchiseeSQM holder](#).
4. If we consider that you are publicising or promoting in a manner which is not consistent with the spirit and intention of this Contract, or may be misleading to Clients (or potential Clients), we may direct you to cease such publicity or promotion. If we do so direct, you must comply with such direction without delay.

Are there any restrictions on your use of [FranchiseSQM](#) Promotional Items?

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

~~9.If you are a Franchisee you may make use of the Logo in accordance with our conditions as to use.~~

6. LAFQASThe SQM

What is LAFQASthe SQM?

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

May we amend LAFQASthe SQM?

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

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

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

LAFQASThe SQM - **Urgent amendments to parts which impose obligations or requirements**

6. If we consider that there is an urgent need to amend any part of LAFQASthe SQM which imposes obligations or requirements on you:
 - (a) consultation need last no longer than 21 days; and
 - (b) after consultation has concluded, we will give you no less than six weeks notice of the date when the amendment will come into effect.

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

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

7. **FranchiseSQM** Certificates

When will we issue a **FranchiseSQM** Certificate?

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

What information will a **FranchiseSQM** Certificate include?

2. Each **FranchiseSQM** Certificate will state the address of the **Franchised OfficeCrime SQM Office**. It may also specify the **SQMfranchised** Categories of Work applicable to the Office, ~~any Devolved Powers that you are not approved to exercise from it~~ and such other information as we consider should be included in it.

In what circumstances will we issue a replacement **FranchiseSQM** Certificate?

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

8. Performance Indicators

How do the Performance Indicators affect you?

1. In performing Contract Work, in exercising the Devolved Powers and in complying with [LAFQAS the SOM](#), you must achieve such level of performance, as measured by the Performance Indicators, as we may require. ~~A serious failure to achieve the required level of performance may amount to a Fundamental Breach.~~

~~When~~ **May we amend the Performance Indicators?**

2. We may, from time to time, amend the Performance Indicators and introduce new Performance Indicators. In doing so, we will have regard to the professional duties owed by you to Clients.
3. Before we amend the Performance Indicators or introduce new Performance Indicators, we will consult with The Law Society.

What about urgent amendments?

4. If we consider that there is an urgent need to amend the Performance Indicators or to introduce new Performance Indicators:
 - (a) consultation need last no longer than 21 days; and
 - (b) after consultation has concluded, we will give you no less than six weeks notice of the date when the amendment will come into effect.

What about non-urgent amendments?

5. If we wish to amend the Performance Indicators or to introduce new Performance Indicators but do not consider that there is an urgent need to do so:
 - (a) consultation need last no longer than ten weeks; and
 - (b) after consultation has concluded, we will give you no less than ten weeks notice of the date when the amendment will come into effect.

9. Devolved Powers

What Devolved Powers do you have?

1. The Devolved Powers capable of being exercised by Contractors are set out in the Specification. ~~Your Franchise Certificate will specify any of these Devolved Powers that have not been granted to you or which have been withdrawn under this Contract. We will notify you if you have not been granted any of these Devolved Powers or if, in accordance with this Contract, any of them have been suspended or terminated.~~

May we amend the Devolved Powers?

2. We may, from time to time, amend, increase or reduce the Devolved Powers that we may grant under this Contract. In doing so, we will have regard to the professional duties owed by you to your Clients.
3. Before we amend, increase or reduce the Devolved Powers that we may grant under this Contract, we will consult with The Law Society.

What about urgent amendments?

4. If we consider that there is an urgent need to amend the Devolved Powers:
 - (a) consultation need last no longer than 21 days; and
 - (b) after consultation has concluded, we will give you no less than four weeks notice of the date when the amendment will come into effect.

What about non-urgent amendments?

5. If we wish to amend the Devolved Powers but do not consider that there is an urgent need to do so:
 - (a) consultation need last no longer than six weeks; and
 - (b) after consultation has concluded, we will give you no less than six weeks notice of the date when the amendment will come into effect.

Part C - Contract Work

10. Schedules

What are Schedules for?

1. When, in accordance with this Contract, any amendment is made to the provisions contained in the Contract ~~for Signature Document that you signed (either your One-Year or Three-Year Contract)~~ we will issue a Schedule specifying the amendment.
2. If we apply a Contract sanction we may make an appropriate, consequent amendment to your Schedule or Contract for Signature.

11. Specification

What is the Specification?

1. The Specification is one of the Contract Documents. It contains rules and Guidance and a description of the work covered by this Contract. It also specifies the payment rates for different types of Contract Work.
2. The rules in the Specification are concerned, generally, with how you must (and must not) perform, record and report Contract Work and Claim payment for it.
3. Guidance in the Specification may be Guidance on the rules in it or Guidance on the completion of forms, on how Contract sanctions may be applied, on the extent of Contract Work, on the scope of Classes of Work, Categories of Work and Units of Work and (without limitation) on other issues relating to the meaning and operation of (and compliance with) this Contract. Like you, we must comply with Guidance.

May we amend the Specification?

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

What must we do before we amend the Specification?

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

When must you comply with amendments to the Specification?

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

April and October Compliance

10. Subject to Clauses 11.11 and 11.12, we will require compliance with any amendments to the Specification with effect from either of two points during each year – April or October.

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

12. A – Payment - General

What payments are you entitled to?

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

What payments are you not entitled to?

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

Are we entitled to Assess your Claims?

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

How will we pay you?

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

Do payments include VAT?

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

What if you owe us any money?

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

When must you pay third parties?

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

Can we specify payment rates for third parties?

10. We may specify the maximum payments (by way of hourly rates and otherwise) which Contractors may agree with experts and other third parties whom they instruct. Any such rates will be included in the Specification and may be exceeded only in accordance with Specification and Guidance or on a case by case basis with our specific written permission. We may also require that experts or other third parties must possess such qualifications, or be members of such panel, or hold such accreditation as we may specify in the Specification and may name experts or other third parties who may not be instructed.

What about Counsel?

11. Subject to Clause 12A.12, you must pay Unassigned Counsel within 30 days of receipt of their fee note. If you fail to do so we may, without prejudice to our other rights, pay them direct and recoup the amount of our payment from subsequent payments to you. Where Counsel has been assigned under a Representation Order, we will pay Counsel direct.

When may you delay payment to counsel or other third parties?

12. You need not pay Counsel or third parties in accordance with Clause 12A.9 or Clause 12A.11 if there is a good reason that would justify non-payment.

When are monies payable by you?

13. If we have made an overpayment to you or, in respect of a case or matter, you have breached this Contract and, as a result of the breach, we have incurred (or will incur) a financial loss, we may send you a notice (or debit note) specifying the amount of the overpayment or financial loss (and an explanation of both the amount and either why the overpayment was made or of the breach).

14. A notice (or debit note) under Clause 12A.13 has the effect of making the amount specified in it payable to us. An “overpayment” under Clause 12A.13 includes (without limitation) (a) a payment made in error; (b) a payment made in respect of a case or matter, the payment for which is subsequently reduced on Assessment or in respect of which we are not required to pay (or you are not entitled to payment) for some or all of the work that you have carried out; and (c) payments for Contract Work that are unlikely to be recovered by us within six months by adjusting your monthly payments and the submission of your Claims for Contract Work. Where the provisions of this Clause apply because of a reduction on Assessment then, unless we consider that there is a risk to public funds, we will not apply it until any appeal against the Assessment has concluded.

No payments for referrals of introductions

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

12. B – Payment - Specific

How frequently and what sums will we pay you for Contract Work?

1. We will make monthly payments to you on account of your Contract Work. These payments are inclusive of amounts claimed, or to be claimed, for Disbursements and any fees of Unassigned Counsel. They are also inclusive of VAT. The amount of the monthly payments is based on our determination of the average monthly amount payable in respect of your Claims together with an amount towards your work in progress. Your initial monthly payment is specified in your ~~One Year or Three Year~~ Contract [for Signature](#).

What are the due dates for payment?

2. We will make the first monthly payment within 30 days of the date this Contract starts. We will then make a monthly payment to you in each calendar month thereafter.

When and how may your monthly payments be amended during a Contract year to 31 March?

3. We may ~~amend your monthly payments~~ [increase or reduce a monthly payment](#) at any time [if we redetermine the average monthly amount payable in respect of your Claims. We but](#) will not reduce [a monthly payment](#) ~~your monthly payments~~ unless [\(either in the period since the previous 1 April or in the previous 12 months\)](#) the amount payable in respect of your Claims is at least 10% less than the amount of your monthly payments paid in respect of Claims [or the reduction is in exercise of our rights under another provision of this Contract](#).
4. You may apply to us to amend your monthly payments at any time that you consider it is appropriate to do so and we will consider your request within 21 days.
5. If we amend your monthly payment, we will send you a Contract Schedule specifying the new monthly payment.

What if you submit one or more very large Claims?

6. If, in any month, you submit one or more Claims that is significantly larger than your average Claim we may add the amount of the Claim or Claims (before or after Assessment) to the next monthly payment (or, if this is not practicable, to the monthly payment after that). If we do so, no Contract Schedule need be issued and we will not normally include that amount when we redetermine the average monthly amount payable in respect of your Claims.

How will we balance the payments we have made and the claims you have submitted at the end of a Contract year to 31 March?

7. Within the two months before or after 31 March in any year, and at the end of this Contract, we will normally perform a reconciliation of the value of your Claims (whether or not Assessed) and of the value of the payments we have made to you under this Contract. If we do so, we may redetermine the average monthly amount payable in respect of your Claims.

8. If, following a reconciliation under Clause 12B.7 above, there has been an overpayment, we may adjust subsequent monthly payments to recover it within no fewer than three of them. If there has been an underpayment, we will make good the underpayment within one month. This Clause is subject to our right to apply Contract sanctions.
9. The fact that we have made a payment to you does not mean that any Claim has been Assessed. We reserve the right to Assess a Claim at any time within the two years following its submission to us (or within six years if: (a) an Official Investigation is underway; or (b) we have received a Report that we reasonably consider requires us to Assess such Claims).

What payment rates are you entitled to?

10. The payment rates are set out in the Specification.

Are monthly payments dependent upon the submission of Contract Work Report Forms?

11. On one occasion only for each month, you must complete and submit to the Regional Office nominated by us, one or more Contract Work Report Forms for the Claims you are ready to submit.
12. Your submission of Contract Work Report Forms for any month must be received by the appropriate Regional Office within ten days of the start of the following month (i.e. by 10th of the month). We expect you not to make your submission until after the month has ended, but you may do so earlier in exceptional circumstances.

May you place monthly payments in your Office Account?

13. You may place monthly payments in your office account ~~unless we direct that some or all of the payments must be paid into the client account, in which case such money will be client money held to our account. If we make such a direction, you must notify your reporting accountant.~~

Is there a right of review against the amount of monthly payments?

14. If you do not agree the amount of your initial monthly payment or any subsequent amendment to it, you may, within 14 days of notification of the initial monthly payment or subsequent amendment to it, apply for an internal written review under Clause 23 ~~by the Regional Director.~~

12. C – Payment - Remainder Work

What if we do not permit Remainder Work?

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

What if we do permit Remainder Work?

3. When we permit you to perform Remainder Work then, subject to the provisions of this Contract, provided you comply with such requirements as we may specify, we will either:
 - (a) continue to make monthly payments to you on the same basis as for other Contract Work (and may appropriately amend your monthly payments, from time to time, to reflect the fact that you will not be starting any new Cases or Matters as Contract Work and to make good any underpayments or overpayments); or
 - (b) pay you on a Case by Case, and Matter by Matter, basis within six weeks of receipt of each Claim or, if it is Assessed, within six weeks of the date of the Assessment, also making good any underpayments or overpayments.

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

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

Part D - General Terms

13. Confidential information

What information must we keep confidential?

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

What information must you keep confidential?

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

What information is not covered by this Clause?

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

- (d) information which, to the extent that it must be so disclosed, is required to be disclosed by any court, tribunal or other administrative body with such power or which is disclosed by us for the purposes of providing information to Parliament;
- (e) information which we reasonably consider necessary to be disclosed for the purposes of an Official Investigation; or
- (f) information which is already in the public domain.

6. For the avoidance of doubt, the obligation of confidentiality set out in Clauses 13.1 and 13.2, above does not apply to information about:

- (a) the award of this Contract (or Schedules under it) to you;
- (b) the terms (including payment terms) of this Contract (or Schedules under it);
- (c) the payments that we have made to you (by category, class or otherwise);
- (d) the numbers of Matters and Cases that you have started and completed (by category, class or otherwise);
- (e) your status as a Provisional SQM holder or SQM holder; or
- (f) about contract decisions concerning you (or your personnel), taken by us, or the reasons for such decisions.

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

~~6. For the avoidance of doubt, the obligation of confidentiality set out in Clauses 13.1 and 13.2 above does not apply to information about the award of this Contract to you, about the terms of this Contract, about your status as a Provisional Crime Franchisee or a Crime Franchisee or about contract decisions concerning you, taken by us; and we may disclose any or all of the information referred to in this Clause 13.6.~~

What information about this Contract may we publish?

- 7. Except in respect of any information which we are bound by this Clause 13 to treat as confidential, we are entitled to publish at our discretion such information in relation to this Contract as we may consider appropriate for publication from time to time. This means that we may, for example, publish the names of any Contractors (and the names of their partners and directors, or the name of their sole principal) whose Contracts we have terminated and the names of any personnel whom we have excluded from Contract Work, and why, and you are required to make your personnel aware of this provision.:

Does the obligation to keep information confidential end when this Contract ends?

8. Both your and our obligations and rights under this Clause 13 continue after this Contract has ended.

Disclosure in the Public Interest

9. We may disclose any information concerning you, your affairs and business if we consider that the public interest in making the disclosure outweighs the obligation of confidentiality. Where we intend to disclose in the public interest, we will notify you of our intention before doing so (unless this would prejudice a lawful investigation e.g. by the police or by The Law Society).

14. Warranties

What warranties do you give?

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

What warranties do we give?

2. We warrant that, to the best of our knowledge and belief:
 - (a) all information which we have provided to you in writing specifically to assist you in seeking to become a Contractor was, when given, true and accurate in all material respects;
 - (b) no information has been omitted which would make that which has been provided misleading or inaccurate;
 - (c) no circumstances have since arisen which materially affect the truth and accuracy of such information.
3. As a condition of entering into this Contract, both you and we are entitled to rely upon, and shall be deemed accordingly to have relied upon, such information referred to in Clauses 14.1 or 14.2 above as was provided to the other.

15. Indemnity

What indemnity must you give us?

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

What expenses are not covered by the indemnity?

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

16. General

Entire agreement

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

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

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

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

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

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

7. If the circumstances described in Clause 16.6 above arise, but do not appear to be of a temporary nature, either party may give the other notice of termination of this Contract within such period as is reasonable in the circumstances (which shall be no shorter than one month).

8. Any notice under Clause 16.7 above shall not take effect if the party that was prevented from complying with this Contract (or complying with it in a timely manner) is able, to the other party's satisfaction, to comply with its obligations and duties under this Contract within the period of notice specified in accordance with Clause 16.7 above.

What general provisions limit Contract Work and payment for it?

9. You can do work under this Contract only within the scope of the Contract Work specified in your ~~One-Year or Three-Year~~ Contract [for Signature](#).
10. You are not entitled to any payment under this Contract for any work which you perform outside this Contract.
11. Payment for Contract Work is governed solely by the provisions of this Contract and you are not entitled to any payment for it outside this Contract.
12. Work done on Cases and Matters is Contract Work from the date this Contract starts even if the Case or Matter began under the Act (or under the Legal Aid Act 1988) before the date on which this Contract came into force, unless we direct otherwise. ~~The Specification specifies when a Case or Matter has begun for the purposes of this Clause 16.12.~~ The effect of this Clause is that such Contract Work must be performed in accordance with this Contract and is payable at the rates that apply under this Contract and that payment for the Case or Matter is made under this Contract (although cases commenced under the Legal Aid Act 1988 will not be governed by Part A, Sections 1 to 6 of the Specification and are subject to transitional provisions in the Specification). Even if no work is done on a Case or Matter after the date this Contract starts, if you submit a Claim for it after the date this Contract starts (or such later date as we may agree), payment for the Case or Matter is made under this Contract (and included in your monthly payments).

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

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

15. If, in your reasonable opinion, the effect of Clause 16.13 above (following a decision of a competent authority) is such that your position is prejudiced, you may ask us to agree a suitable amendment to this Contract.

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

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

What if other legislation affects this Contract?

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

~~Before amending Contract Documents do we have to consult on minor matters?~~

~~19. THIS CLAUSE HAS BEEN INTENTIONALLY OMITTED.~~

Interventions and Receivers

19. This Clause applies if there is an intervention in you by The Law Society (or by any other organisation that may lawfully do so) that has the effect of preventing you carrying out work under this Contract or if a receiver is appointed for you, with a view to closing you. In these circumstances, you must:

- (a) Without delay, assist in transferring open matters and cases to any new organisations that Clients may select to continue their matters and cases (providing us with details of the costs you have incurred on each matter and case);
- (b) Within one month of the date of the intervention or appointment of a receiver, give us a list of all your matters and cases, distinguishing between those that are open and those that are closed and showing the present position on each;
- (c) Within six months of the date of the intervention or appointment of a receiver, submit bills and claims for assessment (by the court or by us as appropriate) and claims for payment by us on all matters and cases on which this may be done;

and if you fail to comply with this Clause we may apply a payment suspension order under Clause 22.

19A. In respect of any Matter or Case in respect of which you have failed to comply with Clause 16.19, we are not required to pay for any work you have carried out on it or for any costs (including disbursements) you may have incurred on it. In addition, the amount by which the monthly payments that we have made to you exceeds the value of the Claims that you have submitted to us, is repayable to us.

19B. Unless there is a risk to public funds, or exercising our right of set-off will not recover monies payable under Clause 16.19A within a reasonable period, we will not normally require the immediate, actual repayment of such monies and, instead, will merely exercise our right of set-off against other monies payable to you by us.

What amendments to Contract Documents may we make after consultation?

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

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

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

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

22. For the purpose of examination and certification of our accounts, or any examination under section 6(1) of the National Audit Act 1983 as to the economy, efficiency and effectiveness with which we have used our resources, the Comptroller and Auditor General may examine such documents as he may reasonably require which are owned, held or otherwise within your control and may require you to provide such oral or written explanations as he may reasonably require for those purposes. You must give all reasonable assistance to the Comptroller and Auditor General for those purposes.

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

Do you have to provide information under any other legislation?

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

In what form may information be required?

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

Can you claim payment from Clients or Former Clients?

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

Who has rights in work and files?

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

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

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

What if we commission research on this Contract?

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

What special provisions apply to Solicitors' Chambers?

31. If you are a Solicitors' Chambers:
- (a) unless otherwise agreed in writing between you and us, we will make payments under this Contract as if you were one firm of solicitors;
 - (b) only Solicitors' Chambers Members may perform Contract Work;

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

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

32. It is your responsibility to check any Representation Orders and any Certificates and authorities that any of our Regional Offices or courts issue to you in connection with Contract Work. If after checking an Order or a Certificate or authority you have any concerns, you may raise them with the issuing office or court or the Regional Office concerned. No matter what sum is assessed by a court as costs incurred under a Certificate, we have no obligation to pay you for any work that is outside the scope of a Certificate, or which is in excess of that covered by a limitation on a Certificate, and if any such payment is made to you an equal sum is repayable by you to us.

Will these Contract Standard Terms be reviewed?

33. We will review these Contract Standard Terms in operation and, after consultation with The Law Society, ~~may substitute new Contract Standard Terms for~~ may amend them with effect from no sooner than 1 April 2005³ ~~(which is when the General Civil Contract ends and will enable the terms to be harmonised) to reflect any amendments that may be made to the General Civil Contract Standard Terms.~~ We will give you at least two months' notice of the date when any ~~new Contract Standard Terms~~ amendments will come into effect.

Data Protection Act

34. In respect of personal data, you must comply with your obligations under the Data Protection Act 1998. You must hold, process, use, store and disclose personal data in accordance with the Data Protection Act 1998. You must have and operate, appropriate measures to prevent both:

(a) unauthorised or unlawful processing of; and

(b) loss or destruction of, or damage to,

any personal data you hold or process.

35. If we make any personal data available to you, you must comply with any appropriate direction we may make in respect of it, or as otherwise required by law.

36. You must ensure that your personnel (including your partners and directors) are aware of the information that we may disclose and publish in accordance with Clause 13 and of the list of excluded individuals that we may maintain as specified in Clause 22.
37. In this Clause, the term "personal data" has the same meaning as in the Data Protection Act 1998.

17. Giving Contract notices

What form do notices have to be in?

1. Any notice or other information required or authorised by this Contract to be given by either party to the other must be in writing and in such current form as we may specify. If no form of notice is specified, notice shall be by properly dated and addressed letter, clearly specifying the name and address of the sender. We may give notice of any amendment to this Contract by specifying the amendment in a document to be kept with your CDS Manual.

How can notice be given?

2. Unless an Official Investigation is being conducted, when notice may be given by any means reasonably effective to bring it to the attention of a partner, director or sole principal, notice or other information required or authorised by this Contract to be given by either party to the other may be given only by hand, by document exchange, by FAX or by pre-paid post. Any notice or other information given by document exchange, FAX or by first class pre-paid post is deemed to have been given on the day following the next working day after it was committed to the document exchange, FAXed or posted, whether or not received.

What if a notice is given in the wrong form or given wrongly?

3. Any notice or other information (or purported notice or other information) required or authorised by this Contract to be given by either party to the other which is not in (or given in) the medium, form or manner required by this Contract is invalid unless the party receiving it elects, in writing, to treat it as valid.

What if a notice is given late?

4. If a notice or other information under this Contract specifies that it takes effect on a date before any required notice period has expired, the notice or information remains valid but does not come into effect until the expiry of the required notice period.

18. **Constitutional and other changes and matters to be notified**

Do you have to tell us of material constitutional changes?

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

Constitutional statements

2. Without prejudice to the generality of your obligations under clause 18.1, whenever required by us, you must complete, sign and submit to us a “constitutional statement form”. This will require details of any of the material constitutional changes specified as examples in Clause 18.1 that have occurred (with the dates they occurred) and confirmation of any novation pursuant to Clauses 18.3 or 18.4 (and such other, similar information as we may require).

Sole Principals and Partnerships - novations

3. Subject to Clause 18.5, if you are a principal or partnership and you take any person into partnership (or any person ceases to be a partner of yours) this Contract is novated, on the date of that event, in favour of the partnership (or principal) as constituted on that date, on the terms set out in Clause 18.6. This Clause 18.3 constitutes your and our express consent to such novation. Any such novation is confirmed by any subsequent submission by you of a Contract Work Report Form and any subsequent payment by us under this Contract.
4. Subject to Clause 18.5, if a competent court or tribunal does not accept Clause 18.3 as novating this Contract, it shall be novated pursuant to this Clause 18.4. The novation shall be on the terms set out in Clause 18.6 and shall be, and shall take effect, in favour of the partnership (or principal) as constituted on the earliest of the following dates accepted by such competent court or tribunal: (a) the date we receive a Contract Work Report Form from you; (b) the date we make a subsequent payment to you under this Contract; or (c) the date of a properly completed, "constitutional statement form" received by us from you.
5. If any of the events specified in Clause 18.1 (e), (f) or (g) has occurred, this Contract shall not be novated and is incapable of being novated without our signed, express consent.
6. Any novation under Clauses 18.3 or 18.4 shall be on the following terms (with "old firm" meaning "you" immediately before the novation and "new firm" meaning "you" immediately after the novation):
 - (a) the new firm, by virtue of the novation, undertakes to comply with this Contract in substitution for the old firm and undertakes to be bound by it in every way as if it had been an original party to it;
 - (b) the partners (or principal) of the old firm are released from liabilities arising under this Contract after the novation, except those arising from the period when the old firm was a party to this Contract and, if they remain in the new firm as principal or a partner, except so far as they may arise as such a principal or partner;
 - (c) nothing in this Contract shall, unless expressly agreed otherwise, affect or prejudice any claim or demand that we may have against the old firm or the old firm may have against us relating to matters arising before the novation;
 - (d) all payments due from us, under this Contract after the novation, shall be paid to the new firm;
 - (e) the new firm shall be liable for any debt or obligation which arose under this Contract before the novation;
 - (f) without prejudice to the generality of Clause 18.6(e) the new firm shall be liable for all monies due to us (whether that liability shall have accrued before or after the novation) under the account set up by us in respect of this Contract and, for the avoidance of doubt, the new firm, by virtue of the novation, acknowledges that:

- i) that account shall be treated and run as a single running account as if the old firm and the new firm had been a single firm; and
 - ii) we may exercise any right to set off against the new firm under the provisions of Clause 12A.8 in respect of any sums due under Clause 18.6(e) or this Clause 18.6(f)
 - (g) in applying any provision of this Contract after the novation, any acts and omissions of the old firm shall, for all purposes, be deemed to be acts or omissions of the new firm;
 - (h) any notice served, suspension or other order made against, or decision or finding of whatsoever nature communicated (whether formally or informally) to the old firm pursuant to the provisions of this Contract before the novation continues in full force and effect after the novation as if it had been served on, made against or communicated to, the new firm;
 - (i) any right or power (whether of termination or otherwise) under this Contract which was exercisable by us against the old firm by reference to any matter arising before the novation shall be exercisable against the new firm after the novation;
 - (j) where, by virtue of any provision of this Clause 18, the old firm and the new firm are liable in respect of the same debt or obligation, the members of the old firm and the members of the new firm are jointly and severally liable for that debt or obligation.
7. Notwithstanding the novation of this Contract pursuant to Clause 18.3 or 18.4, we may at any time require the partners for the time being comprising the partnership (or the principal) to enter into a formal novation agreement with us on such terms as we may reasonably require.
8. If any of the events specified in Clause 18.1 (e), (f) or (g) has occurred, we may agree to enter into a signed, express novation agreement with the new organisation on such terms as we may reasonably specify. However, we will not do so if we consider that either we or Clients would be adversely affected or that doing so would inhibit us from meeting our statutory obligations or exercising our statutory rights in any way.

Partnerships –what else do you have to tell us about?

9. If you are a partnership you must also notify us:
- (a) before or within fourteen (14) days of any change in the composition of the partnership which has, or may have, a material direct or indirect bearing on the performance of Contract Work;
 - (b) immediately in the event of the service of a notice dissolving or purporting to dissolve the partnership;
 - (c) immediately in the event of an application being made to the court or an arbitrator for the dissolution of the partnership under the Partnership Act 1890;

- (d) immediately on any dissolution of the partnership which requires or results in a winding up of its affairs;
 - (e) immediately if circumstances arise which enable the court to make a winding up order in respect of the partnership under the Insolvency Act 1986 (as applied by the Insolvent Partnerships Order 1994);
 - (f) immediately on the appointment of a receiver, manager or administrator in respect of the partnership.
10. Where you are a partnership then, except as expressly provided in Clause 18.6(j), the partners are jointly and severally liable to meet your obligations under this Contract.

If you are a limited liability partnership or a company, what else do you have to tell us about?

11. If you are a limited liability partnership or a company, you must also notify us:
- (a) before or within fourteen (14) days of any change in your members, directors or shareholders which has, or may have, a material direct or indirect bearing on the performance of Contract Work;
 - (b) immediately if you pass a resolution or the court makes an order, that you or your Parent Company be wound up;
 - (c) immediately if a receiver, manager or administrator is appointed for you or your Parent Company on behalf of a creditor;
 - (d) immediately if circumstances arise which might entitle a creditor or a court to appoint a receiver, manager or administrator for you or your Parent Company;
 - (e) immediately if circumstances arise which enable the court to make a winding up order in respect of you or your Parent Company;
 - (f) immediately if you or your Parent Company are unable to pay your debts within the meaning of Section 123 of the Insolvency Act 1986 or any similar event occurs under the law of any other jurisdiction;
 - (g) immediately if there is a Change of Control.

Notification of interventions

12. You must notify us immediately if there is an intervention by The Law Society (or by any other organisation that may lawfully do so) that has the effect of preventing you from carrying out Contract Work.
13. You must notify us immediately if there is an intervention by The Law Society into the practice of any solicitor whom you employ or who is a partner, member or director of yours.

Notification of insolvencies

14. You must notify us within seven days if any insolvency proceedings concerning you or any of your partners, members or directors are commenced.

Notification of criminal proceedings

15. You must notify us within seven days if any criminal proceedings for an arrestable offence are commenced against any of your partners, members or directors.

What if you are not sure whether to tell us about something?

16. If you have any reasonable doubt as to whether a particular event is covered by this Clause, you must notify us of the event in question before or within 14 days of its happening.

~~1. You must notify us as soon as possible before any anticipated material constitutional change, of which you are aware, which might affect you. You must notify us on, or within fourteen (14) days of, any material constitutional change which affects or might affect you. Examples of material constitutional change are:~~

~~(a) any sale, merger, acquisition by (or of), or transfer of your business or advisory service;~~

~~(b) the closure or planned closure of any Office; and~~

~~(c) any change of Key Personnel.~~

If you are a partnership, what else do you have to tell us about?

~~2. Any Contractor which is a partnership must also notify us:~~

~~(a) of such change of partnership as we may, in writing, request notification;~~

~~(b) before or within fourteen (14) days of any change of partnership which has, or may have, a material direct or indirect bearing on the performance of Contract Work;~~

~~(c) forthwith if any dissolution of the partnership takes place;~~

~~(d) forthwith if any dissolution of the partnership is ordered by a court, tribunal or arbitrator;~~

~~(e) forthwith on the happening of any event which makes it unlawful (i) for the business of the firm to continue or (ii) for the members of the firm to carry on in partnership;~~

~~(f) forthwith if the partnership is dissolved and steps are taken to wind up its affairs.~~

What other obligations do partnerships have?

~~3. Where you are a partnership you must:~~

~~(a) on request by us, provide us with a list of the names of all your partners;~~

~~(b)ensure that all new partners (who become partners after this Contract has come into force) are bound automatically by this Contract (by virtue of your partnership deed or otherwise).~~

~~4. Where you are a partnership, the partners are jointly and severally liable to meet your obligations under this Contract.~~

~~If you are a company, what else do you have to tell us about?~~

~~5. Where you are a company you must also notify us:~~

~~(a)forthwith if you pass a resolution or the court makes an order, that you or your Parent Company be wound up;~~

~~(b)forthwith if a receiver, manager or administrator is appointed for you or your Parent Company on behalf of a creditor;~~

~~(c)forthwith if circumstances arise which might entitle a creditor or a court to appoint a receiver, manager or administrator for you or your Parent Company;~~

~~(d)forthwith if circumstances arise which enable the court to make a winding up order in respect of you or your Parent Company.~~

~~(e)forthwith if you or your Parent Company are unable to pay your debts within the meaning of section 123 of the Insolvency Act 1986 or any similar event occurs under the law of any other jurisdiction.~~

~~(f)forthwith if there is a Change of Control.~~

~~What if you are not sure whether to tell us about something?~~

~~6. If you have any reasonable doubt as to whether a particular event is covered by this Clause, you must notify us of the event in question before or within 14 days of its happening.~~

19. Prohibited gifts

What must you not do?

1. You must not try to bribe any of our personnel, or any person who may perform services for, or who is associated (in any way) with, the Legal Services Commission.

What may happen if you breach this Clause?

2. Any breach of this Clause 19 by you or by anyone employed, or otherwise engaged, by you acting on your behalf (whether with or without your knowledge) entitles us forthwith to terminate this Contract.

Part E - Ending the Contract, Sanctions and Reviews

20. How the Contract can be ended

How can you end this Contract? Termination by Three and Six Months' Notice

1. You may, at any time, serve no less than three-months notice on us terminating this Contract.
2. Subject to Clause 20.3, if at any time while this Contract is in force, we are directed in writing by the Department of Constitutional Affairs to implement new approaches to contracting under the Act we may, to enable us to give effect to the direction, serve no less than six-months notice on you terminating this Contract (or part of it).
3. Unless the direction by the Department of Constitutional Affairs expressly states otherwise, notices under Clause 20.2 are confined to notices affecting (a) all Contractors in a specified geographical area; or (b) all Contractors able to perform Contract Work in a specified Class of Work, or (c) all Contractors in a specified geographical area able to perform Contract Work in a specified Class of Work.
4. Within 14 days of receiving a direction under Clause 20.2, we will send a copy of it to The Law Society.
5. Any new approaches to contracting under the Act will be subject to consultation before implementation.

How can we end this Contract?

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

When will this Contract terminate immediately?

3.7. If, at any time after you have signed this Contract, but before its start date:

- (a) your application for approval as a Crime FranchiseeSQM holder is suspended, withdrawn, refused, lapses or otherwise ends; or
- (b) you fail a Crime Preliminary FranchiseSQM Audit; or
- (c) you fail a Crime Pre-FranchiseSQM Audit; or
- (d) you are a Crime FranchiseeSQM holder and we have grounds for terminating your franchiseSQM contract or your franchiseSQM contract is terminated or otherwise ends,

this Contract immediately lapses and shall not come into force on its start date.

Immediate termination

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

When might there be urgent termination?

4.9. We are entitled, at any time, to serve notice on you terminating this Contract (or any part of it) with effect from such date as may be specified by us in such notice if:

- (a) you are a Provisional Crime FranchiseeSQM holder and:
 - i) your application for approval as a Crime FranchiseeSQM holder is suspended, withdrawn, refused, lapses or otherwise ends; or
 - ii) you fail a Crime Preliminary Audit; or
 - iii) you fail a Crime Pre-FranchiseSQM Audit;
- (b) you are under Official Investigation or we receive a Report and, in either case, consider that termination is required to protect Clients or us from possible serious harm or to protect public funds or Clients' interests, or if a Report identifies that there has been such a serious breach of Contract or of legislation or such serious professional misconduct or dishonesty that, in all the circumstances, termination is justified;
- (c) your financial situation is such that we consider that we or Clients are at risk of financial loss or other material prejudice;
- (d) you are in breach of Part D, Clause 19 (prohibited gifts) of these Contract Standard Terms;
- (e) you are in breach of your warranty in Part D, Clause 14 of these Contract Standard Terms, we consider such breach to be material and we are not reasonably satisfied that, at all relevant times:
 - i) you believed such information to be true and accurate in all material respects;
 - ii) you were unaware of any omissions which made the information supplied misleading or inaccurate; and
 - iii) you believed that no circumstances had arisen which materially affected the truth and accuracy of such information;
- (f) you have failed to provide documents or access to premises in accordance with ~~Part A~~, Clause 3.86 or Clause 3.98 of these Contract Standard Terms.;

(g) this Contract (which will not normally come into force until we have received satisfactory replies to all our pre-contract enquiries) has come into force before we have received such replies and, despite all reasonable endeavours on our part, we subsequently do not receive such replies within a reasonable period.

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

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

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

What about termination for failure to comply with LAFQAS~~the SQM~~

7.12. If, in accordance with procedures in LAFQAS~~the SQM~~, you have been issued with a Notice to Terminate, we may, on the date specified in the Notice to Terminate (or on such later date as we may subsequently specify) terminate:

- (a) this Contract;
- (b) approval of your Office;
- (c) approval of any or all of your Classes of Work.

Can there be suspension of a Contract?

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

Termination for Fundamental Breach

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

21. Consequences of termination

What are the consequences of this Contract ending?

1. Subject to Clause 21.2 below and to any direction by us, when this Contract ends all rights, authorisations and licences granted under this Contract by us to you (and to any of your personnel) end immediately.
2. Unless we otherwise agree in respect of any Contract Work, when this Contract ends you must stop all work on Cases and Matters that you were performing under it as Contract Work and must stop holding yourself out as able to perform Contract Work.
3. Subject to Clause 21.4 and Clause 21.6 below, when this Contract ends our obligation to make payments to you under it ceases.
4. Subject to the provisions of this Contract, the ending of this Contract is without prejudice to any of your or our accrued rights (including, without limitation, our rights to assess your Claims and to recover any overpayments to you and your rights to recover in respect of any underpayments by us).
5. Upon termination of this Contract under Clause ~~20.4(b)~~ [\(except Clauses 20.1 to 20.5\) in this Part](#), neither you nor any of your partners, shareholders, directors, executive officers or senior personnel who, we determine, were responsible for the circumstances leading to the termination, may (for such period ~~of up to two years~~ as we may prescribe) apply to us for a contract under the Act. [Where termination was under Clause 20.95\(b\), the prescribed period will be at least two years and, normally, longer.](#) This prohibition continues to have effect after this Contract has ended.
6. Any provision of this Contract which relates to, or governs your or our acts after it ends, remains in full force and effect and is enforceable even though the Contract has ended.

What happens to Clients and files if this Contract ends?

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

What if part of the Contract ends?

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

22. Other Contract Sanctions

When may we apply the sanctions in this Clause?

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

Curtailing Contract Work

5. We may issue a Schedule amending your Contract so as to curtail the Classes of Work in which you may perform Contract Work and so as to impose restrictions on the Contract Work that you may perform.

What is a payment reduction or non-payment order?

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

What is a monthly payment amendment order?

7. We may serve you with an order reducing the amount of, or suspending, one or more of your monthly payments.

What is a payment suspension order?

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

What is a constraint order?

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

What is a promotional restraint notice?

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

What is a Devolved Powers notice?

11. We may serve notice on you suspending (with effect from such date as we may specify) approval of your Devolved Powers if we consider either that:
- (a) you have not been exercising the Devolved Powers appropriately; or
 - (b) suspension is necessary to protect Clients (or potential Clients) or public funds.

Can individuals be excluded from performing Contract Work?

12. If any of your personnel is, or has been, a cause or subject of an Official Investigation, Report or Contract sanction while they were with you, or the cause or subject of such a, or any similar, investigation, report or sanction while they were with any other supplier of legal services we may, if we reasonably consider that such a step is necessary to protect Clients' interests or to protect us from material harm, require that the person concerned shall not (for such period as we may reasonably specify) (a) be a supervisor of Contract Work; and (b) be involved in your performance of Contract Work.
13. Clause 22.12 has effect even if the requirement was made before the person concerned was a member of your personnel. Therefore, we will not pay for any Contract Work that you carry out in breach of a requirement under clause 22.12 (whether the requirement was made while the person concerned was one of your personnel or not) or for work carried out by any of your personnel who, at the time they carried it out, were lawfully prohibited from doing so by any organisation with such power.
14. We will maintain a list (accessible by you) of individuals whom we have required not to be supervisors of Contract Work or involved in the performance of Contract Work.
- ~~1.If you are in breach of this Contract or if we may terminate this Contract under Clause 20 in this Part then, without prejudice to any of our other rights, we may apply one or more of the sanctions set out in this Clause. Such sanctions shall come into force on such date, and be subject to such conditions, as we may state in the notice of sanctions which we will serve on you.~~

~~What is a rectification notice?~~

~~2. We may serve you with a notice requiring you to rectify any non-compliance with this Contract within a stated period, which shall be reasonable in all the circumstances (and which, except where it relates to a failure to comply with LAFQAS, shall be not less than 28 days).~~

~~What is a payment suspension order?~~

~~3. If you are under Official Investigation or your financial situation is such that we consider that there is a risk to Clients or to public funds, we may serve you with a payment suspension order which has the effect of suspending some or all payments due from us to you under this Contract for such period as may be stated in the order.~~

~~What is a constraint order?~~

~~4. If you are under Official Investigation, we may serve you with a constraint order which has the effect of prohibiting you (and your personnel) from starting any new Cases or Matters under this Contract, unless we otherwise direct.~~

~~What is a payment reduction or non payment order?~~

~~5. We may serve you with a notice declaring that you will not be paid for specified work.~~

~~What is a monthly payment amendment order?~~

~~6. We may serve you with a notice reducing the amount of, or suspending, your monthly payments.~~

~~What is a promotional restraint order?~~

~~7. We may serve notice on you suspending (with effect from such date as we may specify) your entitlement under this Contract to use Franchising Promotional Items and to hold yourself out or to promote yourself as a Crime Franchisee, for such period as:~~

~~(a) any of your solicitors engaged in Contract Work and required under the Solicitors' Act 1974 to have a valid practising certificate, ceases to have one;~~

~~(b) you are under Official Investigation;~~

~~(c) an internal review, review (or mediation) or arbitration under this Contract is under way.~~

~~Can your Devolved Powers be taken away?~~

~~8. We may serve notice on you suspending (with effect from such date as we may specify) approval of your Devolved Powers if we consider either that:~~

~~(a) you have not been exercising the Devolved Powers appropriately; or~~

~~(b) suspension is necessary to protect Clients (or potential Clients) or public funds.~~

~~Can Classes of Work be curtailed and restrictions imposed?~~

~~9. We may issue a Schedule amending your One Year or Three Year Contract so as to curtail the Classes of Work in which you may perform Contract Work and so as to impose restrictions on the Contract Work that you may perform.~~

~~Can individuals be excluded from performing Contract Work?~~

~~10. If any of your personnel (including partners and directors) is, or has been, a cause or subject of an Official Investigation Report or Contract sanction while they were with you, or the cause or subject of such a, or any similar, investigation, report or sanction while they were with any other supplier of legal services we may, if we reasonably consider that such a step is necessary to protect Clients interests or to protect us from material harm, require that the person concerned shall not (for such period as we may reasonably specify) (a) be a supervisor of Contract Work; and (b) be involved in your performance of Contract Work.~~

23. Internal review, review, mediation and arbitration

What matters are subject to internal review?

1. All disputes between you and us concerning:
 - (a) alleged breaches of this Contract;
 - (b) Contract sanctions;
 - (c) decisions by us on the scope of Contract Work authorised by ~~the a One-Year or Three-Year~~ Contract for Signature; and
 - (d) notices by us under Clauses 22.107 and 22.118 in this Part;

are subject to internal review. (For the avoidance of doubt, decisions on individual Client Cases, Matters or Claims are excluded from this Clause 23). For the purposes of this Clause 23, Contract sanctions comprise termination and suspension under Clauses 20.94 to 20.148 in this Part, and any Contract sanctions specified in Clauses 22.653 to 22.96 ~~and 22.59 and to~~ in Clause 22.120 in this Part (and include any notice of intention to apply such a sanction). For the purposes of this Clause 23, alleged breaches of this Contract do not include any alleged breach relating to the issue of a Contract notice unless and until we subsequently apply a Contract sanction consequent on the notice.

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

2. All disputes between you and us concerning:
 - (a) alleged breaches of this Contract;
 - (b) Contract sanctions; and
 - (c) decisions by us on the scope of Contract Work authorised by ~~a One-Year or Three-Year~~ the Contract for Signature,

are subject to internal review, review (mediation by agreement) and arbitration. We will give written reasons for any decision we make to apply a Contract sanction (and for any decision we make to issue a notice under Clauses 22.107 or 22.118). If requested by you, we will give written reasons for any decision as to the scope of Contract Work authorised by ~~a One-Year or Three-Year~~ the Contract for Signature.

Must you apply promptly for internal review etc?

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

Will sanctions be applied immediately?

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

What is the internal review procedure?

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

What is the review procedure?

10. If you have a dispute with us within the scope of Clause 23.2 above, you may within 21 days of the Supplier Development Group giving its decision and reasons following an internal review (or, where you are applying for a review pursuant to Clause 23.5 above, within 21 days of the original decision) apply in writing for a review by the Contract Review Body.
11. The application for review must be submitted to the Regional Director. It may include any further information that you wish to be taken into account.

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

Can mediation be agreed to?

24. Mediation and Arbitration

16.1. If either you or we disagree with the decision of the Contract Review Body the decision shall (if both you and we agree) be referred to a neutral mediator within 14 days of the decision of the Contract Review Body.

17.2. The neutral mediator will be chosen by agreement between you and us. If you and we are unable to agree on the choice of a mediator (or if any chosen mediator will not act) both you and we will apply jointly to a nationally recognised mediation body to appoint a mediator.

18.3. Within 14 days of the appointment of a mediator, you and we must meet him to agree a programme for the exchange of information and a timetable and structure for discussions. If you and we are unable to agree on any issue at the meeting, the mediator may give directions or seek assistance from a nationally recognised mediation body.

19.4. Unless otherwise agreed, all negotiations connected with the dispute and any settlement or agreement relating to it must be conducted in confidence and are without prejudice to either your or our rights in any future proceedings.

20.5. If agreement is reached on the dispute, it shall be put in writing by the mediator for signature by you and us. Once a written agreement has been signed by both you and us it is binding.

21.6. If you and we are unable to reach agreement on the dispute, either party may ask the mediator to provide a non-binding but informative opinion in writing. Such an opinion shall be provided on a without prejudice basis and must not be used in evidence in any proceedings relating to this Contract without both your and our prior written consent.

22.7. If no agreement (or no full agreement) is reached within 60 days of the appointment of the mediator (or such longer period as you and we may agree) the dispute, or any remaining part of it must be referred to arbitration under Clause 23.2324.8 below.

When are disputes subject to arbitration?

23.8. If either you or we disagree with the decision of the Contract Review Body (or if Clause 23.2224.7 applies) the decision of the Contract Review Body shall be referred to arbitration to be decided under the Arbitration Act 1996. The arbitration shall be in accordance with the relevant arbitration scheme run by the Chartered Institute of Arbitrators and shall be final and binding. Notice of intention to enter arbitration must be given in accordance with the terms of the scheme within 21 days of the decision of the Contract Review Body or (if later) the date when Clause 23.2224.7 applies. (For the avoidance of doubt, the “relevant scheme” is the current scheme, established by the Chartered Institute of Arbitrators, for the purpose of determining disputes under the Commission’s contracts for legal services.)

24.9. Both you and we must use reasonable endeavours to ensure that any arbitration is concluded within three months or as soon as practicable thereafter and must provide in a timely manner all reasonable information, assistance, co-operation and responses that may be required.

25.10. We reserve the right to apply any Contract sanction we consider appropriate if:

- (a) the arbitration has not been concluded within three months of the appointment of an arbitrator; or
- (b) for any reason an arbitrator is not appointed within one month of the date of the notice to enter arbitration; or
- (c) after one month has elapsed since the date of the relevant decision, we consider that you are failing to comply with Clause ~~23.24~~24.9 above,

provided that, under (a) the delay has not been caused by us and, under (b) we are not the cause of the failure to appoint an arbitrator.

Contract Specification

Part A Scope and Structure of Contract Work

1. Introduction

1.1 Contract Scope

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

~~2. You may also continue to do work which commenced under the Legal Aid Act 1988 prior to the date of this Contract and falls within the definition of actual or contemplated criminal investigations or proceedings within the meaning of Article 5(1)(b) of the Access to Justice Act 1999 (Commencement No. 3, Transitional Provisions and Savings) Order 2000. Transitional provisions governing this work are set out at Part B, Rule 1.5 of this Specification.~~

1.2 Classification of Contract Work

1. This Contract provides for work to be undertaken within the following Classes of Work:

- i) Criminal Investigations
- ii) Criminal Proceedings
- iii) Appeals and Reviews
- iv) Prison Law
- v) Associated CLS Work

2. Each Class of Work is divided into various Units of Work in respect of which one or more of the following Authorised Levels of Service may be provided:

- i) Advice and Assistance
- ii) Advocacy Assistance
- iii) Representation
- iv) or, in the case of work done within the Associated CLS Class, Legal Help, Investigative Help and Legal Representation funded from the CLS fund.

3. Certain Units of Work are subject to work limitations, but these are not absolute limits. The upper limit may be exceeded on application made to the Commission and extension being granted. The work limitations set out in Sections 2 to 6 of this Part are inclusive of profit costs, Disbursements and Counsels' fees, but exclusive of VAT.

4. Details of the Units of Work that may be undertaken within each Class of Work are set out in Sections 2 to 6 of this Part. A summary of the Classes, the Units of Work within them and the Authorised Levels of Service that may be provided within each Unit of Work are set out in the table below.

Class	Unit of Work	Authorised Levels of Service
Criminal Investigations	Advice and Assistance (where advice not given at the Police Station)	Advice and Assistance
	Police Station Telephone Advice	Advice and Assistance
	Police Station Attendance	Advice and Assistance
	Warrant of further detention	Advocacy Assistance
	Armed forces custody hearings	Advocacy Assistance
Criminal Proceedings	Advice and Assistance when charged or summoned – court Duty Solicitor only	Advice and Assistance
	Magistrates' court Advocacy Assistance	Advocacy Assistance
	Magistrates' court Representation	Representation
	Crown Court Advocacy Assistance	Advocacy Assistance
Appeals and Reviews	High Court Representation	Representation
	Advice and Assistance on appeals against conviction or sentence (including by way of case stated) or for Criminal Cases Review Commission cases	Advice and Assistance
	Representation on an appeal by way of case stated	Representation
Prison Law	Advice and Assistance to prisoners (either post-conviction or on remand) on legal issues arising from their treatment or discipline within the prison system	Advice and Assistance
	Advice and Assistance to prisoners regarding their sentences, (including where released under continuing conditions e.g. on licence or parole)	Advice and Assistance
	Advocacy Assistance before a Governor or other prison authority	Advocacy Assistance
	Advocacy Assistance before the Parole Board	Advocacy Assistance

Class	Unit of Work	Authorised Levels of Service
Associated CLS Work	Legal Help, Investigative Help or Legal Representation for actual or proposed proceedings concerning public law challenges by way of judicial review (including under the Human Rights Act 1998) or habeas corpus	Legal Help Investigative Help Legal Representation

2. Criminal Investigations

2.1 Introduction

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

2.2 Scope of Class

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

The following Units of Work fall within the Class:

- (a) **Advice and Assistance** to a Client involved in a Criminal Investigation, other than Advice and Assistance under paragraphs (b) to (e) below;
- (b) **Police Station Telephone Advice**, that is telephone Advice and Assistance, where there is no attendance at the Police Station, to a Client who:
 - i) is arrested and held in custody at a Police Station; or
 - ii) is a Volunteer; or
 - iii) is being interviewed in connection with a Serious Service Offence; or
 - iv) is detained under Schedule 7 of the Terrorism Act 2000.
- (c) **Police Station Attendance**, that is Advice and Assistance, where there is an attendance at the Police Station, to a Client who:
 - i) is arrested and held in custody at a Police Station; or

- ii) is a Volunteer; or
 - iii) is being interviewed in connection with a Serious Service Offence; or
 - iv) is detained under Schedule 7 of the Terrorism Act 2000; or
 - v) is the subject of an identification procedure carried out by means of video recordings who is not present at a Police Station at the time the procedure is carried out.
- (d) **Advocacy Assistance** in a magistrates' court or before a judicial authority in connection with an application for a warrant of further detention, or for an extension of such a warrant, under sections 43 or 44 of the Police and Criminal Evidence Act 1984 or paragraphs 29 or 36 of Schedule 8 of the Terrorism Act 2000;
- (e) **Advocacy Assistance** before a judicial officer on an application to extend detention in military custody under the Armed Forces Discipline Act 2000.

2.3 Qualifying Criteria

Merits

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

Financial

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

2.4 Rules on Claiming

1. A single Claim must be submitted for all work in this Class undertaken for a Client in the same Matter irrespective of the number of attendances or occasions on which advice is given, or the Units of Work included in the Claim, except where a Claim has been submitted already for the same Matter because paragraph 2.4.2(c) or (d) below applies. The single Claim must be for one, or more, of the Units of Work set out at paragraph 2.2.1 above.
2. A Claim may be submitted when:
 - (a) the Investigation has been concluded, either by way of the Client being charged or summoned, or the Matter has been disposed of in any other way; or

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

2.5 Work Limitations

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

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

3. Criminal Proceedings

3.1 Introduction

1. Advocacy Assistance and Representation may be given to Qualifying Clients involved in Criminal Proceedings in accordance with the terms of this Contract. Advice and Assistance may be provided by a court Duty Solicitor only acting as such in this Class of Work. A full list of Criminal Proceedings is set out in section 12(2) of the Act. Proceedings prescribed under section 12(2)(g) are set out in the Criminal Defence Service (General) (No.2) Regulations 2001.

3.2 Scope of Class

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, 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;](#)
- ~~iii~~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);
- ~~iv~~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);
- ~~v~~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;

By a court Duty Solicitor acting as such

~~vi~~vii) subject to Part B, paragraph 8.3.1(b) at any bail application where the defendant is held in custody;

~~vii~~viii) _____ to a defendant not in custody provided it is in connection with an imprisonable offence

~~viii~~ix) _____ 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;

~~ix~~x) to a recipient of a notice under section 21B(2) of the Football Spectators Act 1989;

~~x~~xi) 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) 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 6 of the Anti-social Behaviour Act 2003 against the making of a closure order;](#)

~~iii~~iii) on an appeal under section 10 of that Act against a parenting order;

~~iii~~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);

~~iv~~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.

- (e) **Representation in the High 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.

3.3 Qualifying Criteria

Merits

1. The Sufficient Benefit Test set out in Part B, Rule 2.5 of this Specification must be met in order to receive Advice and Assistance under paragraph 3.2.1(a) above.
2. The appropriate Advocacy Assistance merits test set out in Part B, Rule 4.3 must be met in order to receive Advocacy Assistance under paragraphs 3.2.1(b)(i) to (v) (other than where this is provided by the court Duty Solicitor acting as such).
3. The appropriate Advocacy Assistance merits test set out in Part B, Rule 4.3 must be met in order to receive Advocacy Assistance under paragraph 3.2.1(d) above.
4. A Client must have been granted a Representation Order by a court (or by the Commission in proceedings prescribed under section 12(2)(g) of the Act) in order to receive Representation under paragraphs 3.2.1(c), (d) or (e) above, except in the case of 3.2.1(c)(iii) where the requirements in Part B, Rule 5.13 must have been met.
5. A Client must have had an application approved by the Contractor under Devolved Powers in accordance with Part B, Rule 4.5 of this Specification in order to receive Advocacy Assistance in the magistrates' court under paragraph 3.2.1(b) above (except where it is being provided by a court Duty Solicitor acting as such) or in the Crown Court under 3.2.1(d) above.

Financial

6. In order to receive Advice and Assistance under paragraph 3.2.1(a) above from the court Duty Solicitor acting as such the Client is not required to satisfy any financial criteria.

3.4 Rules on Claiming – where work undertaken other than as a court Duty Solicitor

1. A single Claim must be submitted for all work in this Class undertaken for a Client in the same Matter or Case except where a Claim has been submitted already in the same Matter or Case because paragraph 3.4.4(c) below applies. The Claim must be for one or more of the Units of Work set out at paragraphs 3.2.1(a) to (e) above.
2. Subject to Part B, Rule 5.13, aA single Claim shall be submitted in respect of all Clients where a Claim is made under paragraph 3.2.1(c) above for Representation provided to two or more Clients in the same Case.
3. A single Claim shall be submitted where one or more Matters become a Case.

4. Subject to paragraphs 3.4.1 to 3.4.3 above, a Claim may be submitted when:
 - (a) the Matter or Case has concluded; or
 - (b) it is known that no further work will be undertaken for the Client in the same Matter or Case; or
 - (c) it is unclear whether further work will be required or not and a minimum of one month has elapsed since the last work in the Matter was undertaken.

3.5 Rules on Claiming – where work undertaken as a court Duty Solicitor

1. Where Advice and Assistance (including Advocacy Assistance) under paragraphs 3.2.1(a) or (b) above is provided by a court Duty Solicitor acting as such, all work undertaken during the court Duty Period must be submitted in a single Claim at the court Duty Solicitor rates set out in Part E Section 3.4.
2. Such a Claim must be submitted separately from a Claim made in this Class for additional work undertaken on the same Matter or Case for the same Client outside of the court Duty Period.

3.6 Work Limitations

1. Subject to any authority to extend the limit granted in accordance with Part B, Rule 2.9 of this Specification, the following work limitations apply (other than to work undertaken by a court Duty Solicitor acting as such):

	<p>Breach of an order, Crime and Disorder, Football Disorder</p> <p>Advocacy Assistance under paragraphs 3.2.1(b)(i) to (v) and (d), including any Advice and Assistance under paragraph 3.2.1(a) required to be included in the same Claim</p>
Upper Limit	£1500

2. These work limitations apply in addition to any limitations appearing on the Representation Order.
3. [The maximum fee payable for Claims under paragraph 3.2.1\(c\)\(iii\) is £49.70 \(national\) £52.55 \(London\) inclusive of travel, waiting and disbursements but exclusive of VAT. Claims should be made at the hourly rates set out in Part E, Section 3.5.](#)

4. Appeals and Reviews

4.1 Introduction

1. Advice and Assistance and Representation may be provided to Qualifying Clients for appeals (including appeals by way of case stated) and reviews of criminal convictions or sentences in accordance with the terms of this Contract.

4.2 Scope of Class

1. This Class includes all work undertaken for a Client under the following Units of Work:
 - (a) Advice and Assistance to a Client in relation to:
 - i) an appeal against conviction or sentence, including an appeal by way of case stated or an application to vary a sentence, where not covered by an existing Representation Order; or
 - ii) an application to the Criminal Cases Review Commission (CCRC);
 - (b) Representation on an appeal by way of case stated, whether from a magistrates' court or the Crown Court.

4.3 Qualifying Criteria

Merits

1. The Sufficient Benefit Test set out in Part B, Rule 2.5 of this Specification must be met in order to receive Advice and Assistance under paragraph 4.2.1(a) above.
2. A Client must have been granted a Representation Order by the relevant court for the purposes of the appeal in order to receive Representation under paragraph 4.2.1(b) above.

Financial

3. In order to receive Advice and Assistance under paragraph 4.2.1(a) above, the Client must satisfy any financial criteria set out in Regulations.

4.4 Rules on Claiming

1. A single Claim must be submitted for all work in this Class undertaken for a Client in the same Matter except where a Claim has been submitted already in the same Matter because paragraphs 4.4.3(c) or (d) below apply.
2. A Claim may not be submitted in respect of work falling within paragraph 4.2.1(a) where Representation has been provided for the same Client in the proceedings in which the conviction or sentence was imposed in a magistrates' court, the Crown Court or the Court of Appeal, and advice on appeal or sentence can be claimed under the Representation Order covering those proceedings (except where the Client has changed Solicitor to another CDS Supplier since the original proceedings).

3. A Claim under paragraph 4.2.1(a) above may be submitted when:
 - (a) the Matter has concluded; or
 - (b) it is known that no further work will be undertaken for the Client in the same Matter; or
 - (c) it is unclear whether further work will be required or not and a minimum of one month has elapsed since the last work in the Matter was undertaken; or
 - (d) in the case of a Claim under paragraph 4.2.1(a)(i) above, where a Representation Order has been granted by the relevant court under paragraph 4.2.1(b) above, as soon as the Representation Order has been granted.

4.5 Work Limitations

1. Subject to any authority to extend the limit granted in accordance with Part B, Rule 2.9 of this Specification, the following work limitations apply to a Claim made under paragraph 4.2.1(a) above:

	Criminal Cases Review Commission Matters	Other Matters
Upper Limit	£500	£300

5. Prison Law

5.1 Introduction

1. Advice and Assistance (including Advocacy Assistance) may be given to prisoners (either post-conviction or on remand) and to prisoners released on licence or parole in accordance with the terms of this Contract.

5.2 Scope of Class

1. This Class encompasses all work undertaken for a Client under the following Units of Work:
 - (a) Advice and Assistance on legal issues arising from his or her treatment or discipline within the prison system other than in respect of actual or contemplated legal proceedings in which there is a claim for damages for personal injury, death or damage to property (which fall within the scope of the Community Legal Service);
 - (b) Advice and Assistance on legal issues arising from his or her sentence;
 - (c) Advocacy Assistance in proceedings before a Governor or other prison authority;
 - (d) Advocacy Assistance to a Client who is:
 - i) a discretionary life prisoner whose case has been referred to the Parole Board under sections 28(6) and (7) or 32(4) of the Crime (Sentences) Act 1997;
 - ii) an automatic life prisoner under section 2 of the Crime (Sentences) Act 1997 whose case has been referred to the Parole Board under sections 28(6) and (7) or 32(4) of the Crime (Sentences) Act 1997;
 - iii) serving a sentence of detention during her majesty's pleasure under section 53 of the Children and Young Persons Act 1933 whose case is referred to the Parole Board under sections 28(6) and (7) or 32(4) of the Crime (Sentences) Act 1997;
 - iv) serving any other sentence where the Parole Board decides to convene an oral hearing.

5.3 Qualifying Criteria

Merits

1. The Sufficient Benefit Test set out in Part B, Rule 2.5 of this Specification must be met in order to receive Advice and Assistance under paragraphs 5.2.1(a) and (b) above. For paragraphs 5.2.1(c) and (d) above, the appropriate Advocacy Assistance merits test set out in Part B, Rule 4.3 must be met.
2. Advocacy Assistance under paragraph 5.2.1(c) above may only be undertaken where permission for legal representation is granted by the Governor or other prison authority.

3. A Client must have had an application approved by the Contractor under Devolved Powers in accordance with Part B, Rule 4.5 of this Specification in order to receive Advocacy Assistance under paragraphs 5.2.1(c) or (d) above.

Financial

4. In order to receive any assistance in this Class of Work, the Client must satisfy any financial criteria set out in Regulations.

5.4 Rules on Claiming

1. A single Claim must be submitted for all work undertaken for a Client in the same Matter except where a Claim has been submitted already in the same Matter because paragraph 5.4.2(c) below applies. The Claim must be for one or more of the Units of Work set out at paragraph 5.2.1 above.
2. A Claim may be submitted when:
 - (a) the Matter has concluded; or
 - (b) it is known that no further work will be undertaken for the Client in the same Matter; or
 - (c) it is unclear whether further work will be required or not and a minimum of one month has elapsed since the last work in the Matter was undertaken.

5.5 Work Limitations

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

	Advice and Assistance under paragraph 5.2.1(a) or 5.2.1(b)	Advocacy Assistance under paragraph 5.2.1(c) or 5.2.1(d) including any Advice and Assistance under paragraphs 5.2.1(a) or 5.2.1(b) required to be included in the same Claim
Upper Limit	£300	£1500

6. Associated CLS Work

6.1 Introduction

1. Legal Help, Investigative Help and Legal Representation, under the Community Legal Service, may be provided to Qualifying Clients on matters of public law arising from any matter within the Crime Franchise category (see Part F) or on civil proceedings under the Proceeds of Crime Act 2002 in accordance with the terms of this Contract.
2. Such work will be undertaken within, and funded by, the Community Legal Service. This Contract provides you with authority to undertake such work with no limitation on the number of matter starts. This work will count as either Controlled Work or Licensed Work within the meaning of the Funding Code and the relevant provisions of the General Civil Contract shall apply except insofar as this Section provides otherwise.

6.2 Scope of Class

1. This Class includes all work undertaken for a Client under the following Unit of Work:
 - (a) Legal Help, Investigative Help and Legal Representation for actual or proposed proceedings concerning public law challenges to the acts, omissions or decisions of public bodies by way of judicial review (including under the Human Rights Act 1998) or habeas corpus, arising from any matter within the Crime Franchise category (see Part F).
 - (b) Legal Help, Investigative Help and Legal Representation for actual or proposed civil proceedings under the Proceeds of Crime Act 2002.

6.3 Qualifying Criteria

Merits

1. To receive Legal Help, Investigative Help or Legal Representation, the relevant criteria in the Funding Code must be satisfied.
2. A Client must be granted a civil funding Certificate in accordance with the Funding Code in order to receive Investigative Help or Legal Representation under Subsection 6.2 above. This may include self grant of an emergency certificate under Devolved Powers (see Part B, Rule 7.3).

Financial

3. To receive Legal Help, Investigative Help or Legal Representation under Subsection 6.2 the Client must meet the financial eligibility criteria set out in Regulations.

6.4 Rules on Claiming

1. A single Claim for Legal Help provided under Subsection 6.2 above must be submitted for all work undertaken for the same Client in the same Matter, except where a Claim has been submitted already in the same Matter because paragraph 6.4.2(c) or (d) below applies.
2. A Claim for Legal Help may be submitted when:
 - (a) the Matter has concluded; or
 - (b) it is known that no further work will be undertaken for the Client in the same Matter; or
 - (c) it is unclear whether further work will be required or not and a minimum of one month has elapsed since the last work in the Matter was undertaken; or
 - (d) a Certificate is granted for Representation for the same Client arising from the same Matter.
3. A Claim may not be made under Subsection 6.2 of this Part where a human rights issue is being argued as an integral part of existing Criminal Proceedings and a Claim has been, or it is known that it will be, made for magistrates' court Representation (or for representation in the Crown Court, Court of Appeal or House of Lords outside of this Contract) for any matter forming part of the same Case.
4. A Claim should be submitted for Investigative Help or Legal Representation in accordance with the rules applicable to civil matters under the General Civil Contract, using the procedures and claim forms specified for civil matters under that contract.
5. A Claim should be submitted for Legal Help using the Contract Work Report Form and procedures specified for work under this Contract.

6.5 Work Limitations

1. Subject to any authority to extend the limit granted in accordance with Part B, Rule 2.9 of this Specification, the following work limitation applies to a Claim for Legal Help made under Subsection 6.2 of this Part:

Upper Limit £500

Summary of Grant Arrangements and Limitations

Claim ref.	Claim	Authority to do work granted by	Limit on value of work to be done without prior authority from LSC	Funded by
2.2.1(a)	Advice and Assistance	Contractor - subject to Qualifying Criteria	£300	CDS
2.2.1(b)	Police Station Telephone Advice	Contractor - subject to Qualifying Criteria	None	CDS
2.2.1(c)	Police Station Attendance	Contractor - subject to Qualifying Criteria	None	CDS
2.2.1(d)	Warrant of further detention	Contractor - subject to Qualifying Criteria	None	CDS
2.2.1(e)	Armed forces custody hearings	Contractor – subject to Qualifying Criteria	None	CDS
3.2.1(a)	Advice and Assistance - court Duty Solicitor acting as such only	Contractor - subject to Qualifying Criteria	None	CDS
3.2.1(b)	Magistrates' court Advocacy Assistance - Own Solicitor or Representation	Contractor on Devolved Power	£1500	CDS
		Legal Services Commission	None	CDS
3.2.1(b)	Magistrates' court Advocacy Assistance - Duty Solicitor	Contractor on Devolved Power	None	CDS
3.2.1(c)	Magistrates' court Representation - lower standard fee	Magistrates' court	None	CDS

Claim ref.	Claim	Authority to do work granted by	Limit on value of work to be done without prior authority from LSC	Funded by
3.2.1(c)	Magistrates' court Representation - higher standard fee	Magistrates' court	None	CDS
3.2.1(c)	Magistrates' court Representation – non-standard fee	Magistrates' court	None	CDS
3.2.1(c)	Magistrates' court Representation – Pre-Order Cover	Contractor – subject to Qualifying Criteria	Maximum Claim (see para. 3.6.3 above): £49.70 + VAT (national) £55.25 + VAT (London)	CDS
3.2.1(d)	Crown Court Advocacy Assistance or Representation	Contractor on Devolved Power Legal Services Commission	£1500 None	CDS CDS
3.2.1(e)	High Court Representation	Relevant court	None	CDS
4.2.1(a)(i)	Advice and Assistance	Contractor – subject to Qualifying Criteria	£300	CDS
4.2.1(a)(ii)	CCRC	Contractor – subject to Qualifying Criteria	£500	CDS
4.2.1(b)	Case stated - Representation	Relevant court	None	CDS
5.2.1(a)	Advice and Assistance - treatment	Contractor – subject to Qualifying Criteria	£300	CDS

Claim ref.	Claim	Authority to do work granted by	Limit on value of work to be done without prior authority from LSC	Funded by
5.2.1(b)	Advice and Assistance - sentence	Contractor – subject to Qualifying Criteria	£300	CDS
5.2.1(c)	Advocacy Assistance before prison governor/prison authority	Contractor on Devolved Power	£1500	CDS
5.2.1(d)	Advocacy Assistance before Parole Board	Contractor on Devolved Power	£1500	CDS
6.2.1	Legal Help – Public Law	Contractor - subject to Qualifying Criteria	£500	CLS
6.2.1	Investigative Help Legal Representation - Public Law	LSC	Individual limitation on certificate applied by LSC	CLS

Part B Rules and Guidance on Performing Contract Work

1. General Rules – all Authorised Levels of Service

Applications

1.1 Application Form

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

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

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

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

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

1.2 Application from a Child

You may exercise the Devolved Power to accept instructions directly from a child in the following circumstances:

- (a) **in relation to proceedings which that child is entitled to begin, prosecute or defend without a litigation friend, i.e. most criminal proceedings; or**

(b) where Police Station Advice and Assistance is sought.

In all other cases there must be good reason why any of the persons referred to in Rule 1.3 below cannot seek advice on the child's behalf and the child must be old enough to give instructions and understand the nature of the advice and proceedings.

1. "Child" for the purpose of this Rule means a person under 16.
2. Where Advice and Assistance is provided to a child under this Rule (other than Police Station Advice and Assistance), the child will sign the application form him/herself and you will need to consider whether it just and equitable not to aggregate the child's means with those of the person liable to maintain him or her. Note that the starting point is that there should be aggregation but you can decide not to aggregate (and assess only the child's means) if, having regard to all the circumstances, including the age and resources of the child and to any conflict of interest, it appears just and equitable to do so. This is a question for you and, although the starting point is aggregation, non-aggregation is likely to be justified where there is a conflict or the child is a non-dependant.

1.3 Application on Behalf of a Child or Patient.

You may accept an application for Contract Work on behalf of a child or Patient from:

- (a) in the case of a child, his parent or guardian or other person in whose care he or she is; or**
- (b) in the case of a Patient, the receiver appointed under Part VII of the Mental Health Act 1983, or the Patient's nearest relative or guardian within the meaning of Part II of the Mental Health Act 1983; or**
- (c) in the case of a child or Patient, a person acting for the purposes of any proceedings as his or her litigation friend; or**
- (d) in the case of a child or Patient, any other person where there is good reason why none of the persons specified in paragraphs (a) to (c) above can make the application, provided that:**
 - i) there is sufficient connection between the child or Patient and the other person to ensure that the other person is likely to act responsibly in the interests of the child/Patient; and**
 - ii) the other person has sufficient knowledge of the child or Patient, the problem and the child's or Patient's financial circumstances (where relevant) to give proper instructions to you; and**
 - iii) no application may be accepted under this Rule if made by a member, associate or employee of your firm.**

The acceptance of an application under Rule 1.3(d) is a Devolved Power.

1. "Child" for the purposes of this Rule means a person under 16.

2. Good reason for the purposes of paragraph (d) above will include situations where there is a conflict of interest or where a child needs separate representation. Where Contract Work is carried out under this Rule, the application will be in the name of the child/Patient but signed on his/her behalf. The form should be completed in the name of the child/Patient but signed by the person who is applying on behalf of the child/Patient with an annotation to that effect. Where relevant, the appropriate means, that is, those of the child/Patient and, in appropriate cases, those who have care and control or are liable to maintain him/her or usually contribute substantially to his/her maintenance, must be taken into account in applying the financial criteria.

Files

1.4 Unique File Number

You must assign a unique file number (UFN) to each separate Matter or Case other than those involving only the provision of Advice and Assistance or Advocacy Assistance by a court Duty Solicitor acting as such. (The definition of a “Matter” is contained in Rule 2.11 in this Part. The definition of a “Case” is in Rule 5.8 in this Part.)

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

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

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

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

1. The UFN must be formulated in accordance with the Guidance below.
2. The UFN must be unique and must be recorded on each file, any correspondence or applications sent to the Commission and the Claim form.
3. Where a Client receives Advice and Assistance on a Matter from which Criminal Proceedings arise, the UFN assigned to that Matter must be used where Advocacy Assistance or Representation is subsequently provided. For example, if a Police Station Attendance results in a Client being charged with offences for which a Representation Order is subsequently granted in the magistrates' court, the same UFN must be assigned to both the Police Station Attendance and the magistrates' court Representation.
4. If more than one Matter gives rise to a single Case, you must use the UFN assigned to the earliest Matter in time as the UFN for the Case.

5. If one Matter gives rise to more than one Case, you must assign a new UFN to the second and subsequent Cases.
6. Where you take over a Matter or Case from another CDS Supplier, you shall assign a new UFN. The relevant date for the purposes of formulating the UFN is the first occasion on which you undertake Contract Work for the Client following a change of Solicitor.
7. If the Client seeks further advice on the same Matter or Case after you have submitted a Claim, the original UFN must be used if you undertake any further work.

Filing of Case Information and UFNs

8. The following file management principles apply:
 - (a) subject to paragraphs (c) and (d) below, you must retain on a separate case file, or on linked files retained together, records of each individual Matter or Case undertaken by you under this Contract;
 - (b) where a Matter in the Criminal Investigations Class of Work becomes a Case in the Criminal Proceedings Class of Work, all papers relating to work done within both Classes of Work must be retained on a single file or in linked files retained together. The same principle applies when Legal Help or Investigative Help is provided under Part A, Section 6 and the Matter subsequently gives rise to a grant of Legal Representation;
 - (c) papers and records arising from court Duty Solicitor work must be retained and filed by individual Duty Period. Where you subsequently commence a Matter or Case for a Client for whom work was initially undertaken in the same Matter or Case as a court Duty Solicitor, a copy of any relevant papers arising from the court duty session must be placed on the individual Client case file. A UFN must be assigned based on the first date when Contract Work is undertaken otherwise than as court Duty Solicitor;
 - (d) where a Matter concludes after a single attendance where only Police Station Telephone Advice is provided, then a separate file need not be opened, but relevant papers must be retained safely on a collective file as they may be called for on audit or Assessment. A UFN must be allocated to each separate Matter for claiming purposes;
 - (e) each separate Matter or Case shall be identified by a UFN assigned by you and formulated in accordance with paragraph (f) below. Although papers relating to more than one UFN may be maintained on a single file or a set of linked files (e.g. where they relate to the same Client), you must ensure that all records relating to any one UFN are held on the same file or set of linked files in a way that can be readily identified by both you and the Commission's staff.
 - (f) the UFN format is:
 - i) the date on which Contract Work was first undertaken for the Client in the Matter or Case set out in the six digit numerical format of DDMMYY;

- ii) a forward slash;
- iii) a sequential number unique to that day. The numerical sequence part of the UFN will return to 001 at the beginning of each day, i.e. from midnight onwards.

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

020401/001

The next number in sequence will be:

020401/002

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

030401/001

and then 030401/002 etc.

- (g) the UFN will apply for the life of the Matter or Case, and where a Matter becomes a Case (because paragraph (b) above applies) the UFN allocated to the Matter also applies to the Case.
 - (h) you are not required to use the UFN as your sole file numbering system. A UFN must be assigned in accordance with these rules to Contract Work. It will be used by us as the only reference number for the purposes of correspondence, applications, Claims and audits at all Authorised Levels of Service.
9. The UFN will be used to identify all the work done throughout the Criminal Investigations Class of Work for a single Client on a single Matter and will be reported on the Claim made at the conclusion of the work done in that Class.
 10. A separate UFN must be assigned to each individual Client who you act for in a Matter, even if they are co-suspects at the Police Station. A separate Claim will be made for each Client and the time spent must be apportioned where necessary.
 11. If a Client is charged with an offence and a Representation Order is granted in the magistrates' court, the same UFN applies to all work done by you under the Criminal Proceedings Class of Work and you must make the Claim for work done in that Class under that UFN.
 12. Where a Representation Order has been granted in the magistrates' court and a Case involves more than one Client, a UFN must be allocated to each individual Client, but for claiming purposes you must select a "lead" Client i.e. the Client assigned the first UFN in time, and use the UFN assigned to that Client as the single reference number for a standard or non-standard fee Claim.

e.g. you are instructed by three co-suspects at the Police Station on 7 June 2001. You will assign a separate UFN to each of them e.g. 070601/001, 070601/002, 070601/003 and make separate Claims for the work undertaken for each Client under the Criminal Investigations Class of Work. All three Clients are subsequently charged with offences which will form a single Case for standard fee purposes. Each Client will retain the individual UFN assigned during the Investigations Class. However, when a Claim is submitted for work undertaken in the Proceedings Class, the UFN assigned first in time will be used as the lead UFN for the Claim i.e. 070601/001.

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

Purpose

~~13.14.~~ The filing of all relevant papers on a single file or linked files maintained together is a quality issue. Criminal cases often pass between a number of fee-earners, each of whom must have access to all up-to-date and relevant information. This requirement also enables the Commission to link Clients in the same Matter or Case and identify files for the contract management audit.

Transitionals

1.5 Transitional Provisions

~~Subject to the provisions of this Rule, this Contract applies to all work which commences under the Act, i.e. on or after 2 April 2001 (the "relevant date"), when the relevant parts of the Act will come into force and to all work commenced prior to the relevant date under the Legal Aid Act 1988 which relates to actual or contemplated criminal investigations or proceedings within the meaning of Article (5)(1)(b) of the Access to Justice Act 1999 (Commencement No. 3, Transitional Provisions and Savings) Order 2000. For the purposes of this Rule, work commences under the Act provided one of the following events takes place on or after 2 April 2001:~~

~~(a) an application form for Advice and Assistance is signed by the Client;~~

~~(b) you grant an application for Advocacy Assistance;~~

~~(c) where a written application for Advice and Assistance or Advocacy Assistance is not required, you first undertake Contract Work for the Client. This provision applies to all Duty Solicitor work, Own Solicitor Police Station Advice and Assistance, Advocacy Assistance at early hearings, applications for a warrant of further detention or for an extension of such a warrant and armed forces custody hearings;~~

~~(d) when a Certificate is granted by us or by you under Devolved Powers or a Representation Order is granted.~~

~~All work which is undertaken on or after the relevant date will be subject to the Quality and Performance Standards prescribed in this Specification, whether the Matter or Case itself commenced before or after the relevant date.~~

~~Claims for Contract Work in Matters or Cases which commenced prior to the relevant date, will be determined in accordance with the Legal Aid Act 1988 and its supporting regulations. A Claim made under the 1988 Act will be assessed and paid individually, provided that we receive it by 10 April 2001. Any Claim for work under the 1988 Act received after that date shall be made on the Contract Work Report Form and will not be paid individually but as part of the monthly payments under this Contract. These Claims will be assessed in accordance with the regulations made under the 1988 Act and the Rules on Claiming set out in Part A, Sections 2 to 6 of this Specification will not apply. A Unique File Number need not be assigned to Claims made under the 1988 Act.~~

~~Where an office holds a General Criminal Contract, the Authorised Litigators employed in the office, who have either been accepted by us as supervisors in the relevant franchise category or are under the supervision of such a supervisor, are members of the Crime Franchise Panel for the purposes of the "criminal proceedings" specified under the Legal Aid (Prescribed Panels) (Amendment) Regulations 2000.~~

~~1. The effect of this Rule is that where work began before commencement of the relevant parts of the Act, all Claims and Assessment will be subject to the Legal Aid Act 1988 and its supporting regulations, irrespective of the date on which the work commenced. Work will only fall within Part A, Sections 2 to 6 of this Specification if it is under the new Act, i.e. if it began after the relevant date set out in this Rule. For example, if Advice and Assistance is given to a Client before 2 April 2001 and that Matter gives rise to proceedings for which a Representation Order is granted on 3 April 2001, the Advice and Assistance may be claimed separately under the 1988 Act if the Claim reaches us by 10 April 2001. If we receive the Claim after that date, it must be made on the Contract Work Report Form and will be paid through the monthly payments system. The work under the Representation Order must be claimed in accordance with this Contract. The Rules on combining Claims in Part A, Sections 2 to 6 of this Specification do not apply unless all work on the Matter and any Case arising from that Matter was undertaken on or after 2 April 2001.~~

~~2. It is not possible to submit a Claim for the same Matter or Case under both Acts. Where more than one Representation Order is granted in Criminal Proceedings in the magistrates' court which would constitute a Case for standard fee purposes, all Representation Orders associated with the Case must have been granted on or after the relevant date to bring the Case within Part A, Sections 2 to 6 of this Specification. If at least one of the orders was granted prior to the relevant date, the entire Case will be determined under the Legal Aid Act 1988 and its supporting regulations as regards Claims and Assessment. However, a Claim for any work not claimed by 10 April 2001 must be made on the forms specified by us for work under this Contract and will be paid through the monthly payments system.~~

4.61.5 Transitional Provisions Applying to Scope Changes Implemented on 17 May 2004

The following transitional provisions apply to the changes set out in the Contract Notice of Amendment which took effect on 17 May 2004:

Amendment	Transitional Arrangements
Restrict scope of Police Station Advice and Assistance to telephone advice only in some circumstances (Part B, paragraph 8.2.17)	Applies to all acts of Police Station Advice and Assistance that take place after 00:01 17 May 2004
Limit post charge attendance at the police station (with exception provision) (Part B, paragraph 8.2.22)	Applies to all Police Station Attendances that take place after 00:01 17 May 2004
Remove stand alone Advice and Assistance from the Criminal Proceedings Class (Part A, paragraph 3.2.1(a))	No Advice and Assistance may be provided in the Criminal Proceedings Class of Work after 00.01 17 May 2004
Reintroduction of former Regulation 44(7) (backdating of Representation Orders – Part B, Rule 5.6)	Applies to all Cases in the Criminal Proceedings Class of Work when the application for a Representation Order was received by the court on or after 17 May 2004
Amend scope of Court Duty Solicitor Scheme (Part B, Section 8.3)	Applies to all Court Duty Solicitor sessions that take place on or after 17 May 2004
Prevent Court Duty Solicitor claiming under a Representation Order where matter is disposed of while acting as Court Duty Solicitor (Part B, paragraph 8.3.9)	Applies to all Court Duty Solicitor sessions that take place on after 17 May 2004
Abolish Advocacy Assistance for early hearings (Part A, Section 3.2)	Applies to all hearings that take place on or after 17 May 2004
<u>Introduce pre Order cover (Part B, Rule 5.13)</u>	<u>Applies to all Cases in the Criminal Proceedings Class of Work when a properly completed application for a Representation Order was received by the court or refused on or after 17 May 2004</u>

The Contract as amended by notice from 17 May 2004 will apply to all work undertaken since commencement of the above provisions. Work that was undertaken prior to the commencement of the above provisions will be subject to the Contract rules which applied prior to the notice of amendment i.e. as if the contract notice had not taken effect on 17 May 2004.

2. Advice and Assistance

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

Applications

2.1 Postal Applications

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

- (a) such residence is purely temporary and the Client can without serious disadvantage delay the application until he or she has returned to England and Wales; or**
 - (b) the Advice and Assistance could be applied for on the same Matter by a person resident in England and Wales; or**
 - (c) it is otherwise unreasonable to accept the application.**
1. Good reason for the purposes of this Rule is as described 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 in the Guidance to Rule 7.9 in this Part.
2. The reason relied upon must always be noted by you and kept on the file.
3. If the Client provides written authority, a copy should be kept by you. The form should be signed by the authorised person on the Client's behalf and should be annotated indicating the full name of the person signing and to make it clear that the application signed was in accordance with this Rule.
4. If the authorisation was by telephone, an attendance note should be made and retained on file. The form should be signed by the authorised person on the Client's behalf and should be annotated indicating the full name of the person signing and to make it clear that the application signed was in accordance with this Rule.
5. Work in respect of the authorisation should not be included in your Claim for costs.

2.3 Telephone Advice

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

- (a) **the Client cannot for good reason attend your office; and**
- (b) **the Client meets the Qualifying Criteria for the provision of Advice and Assistance (including the financial criteria) and has subsequently signed the application form.**

1. Good reason is as defined in the Guidance to Rule 7.9 in this Part. The reason relied upon should always be noted by you and kept on the file.
2. Your Client does not have to attend your office to sign the application form after having been given the telephone advice. Instead, you may send the form to your Client, after you have given the advice, for signature and return.

2.4 Outward Travel

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

- (a) **the visit is justified for good reason; and**
- (b) **the Client meets the Qualifying Criteria for the provision of Advice and Assistance (including financial criteria) and has subsequently signed the application form.**

1. Good reason is as defined in the Guidance to Rule 7.9 in this Part.
2. Where you are visiting the Client in detention, prison or hospital then you may also claim the travelling time at the appropriate rate. The provisions of paragraph (b) of this Rule will need to be satisfied for any Claim to be made.

3. Costs must be reasonably incurred taking account of all the circumstances including, for example, the distances involved as against the availability of advice from a more local Contractor and the justification for travelling to attend on the Client at all, bearing in mind that telephone advice can be given and applications accepted by post.

Qualifying Criteria

2.5 Sufficient Benefit Test

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

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

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

Sufficient Benefit and specific Units of Work

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

Witnesses

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

Police Station Advice and Assistance

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

2.6 Financial Criteria

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

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

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

1. Regulations do not impose any financial criteria in relation to the following Units of Work:
 - (a) Police Station Advice and Assistance under Part A, paragraphs 2.2.1(b) and (c) of this Specification;
 - (b) magistrates' court Advocacy Assistance under Part A, paragraph 2.2.1(d) of this Specification (warrants of further detention);
 - (c) Advocacy Assistance at an armed forces custody hearing under Part A, paragraph 2.2.1(e) of this Specification;
 - (d) all other Advocacy Assistance in the magistrates' court or the Crown Court (including court Duty Solicitor work);
 - (e) Advice and Assistance provided by a court Duty Solicitor acting as such.
2. Satisfactory financial evidence will need to be supplied where the financial criteria apply.

3. Satisfactory evidence in support of disposable income would be the most recent pay slip if the Client is employed, or the most recent tax assessment or accounts if the Client is self-employed. In the case of a Client in receipt of benefit, his or her benefit book, ~~signing on card~~, notification or any relevant correspondence from the paying agency in the Client's possession would be satisfactory evidence. It will therefore generally, except in cases of doubt, be unnecessary to obtain a specific letter from the Benefits Agency confirming that the benefit remains in payment.
4. Satisfactory evidence of disposable capital would normally be the Client's signed statement on the application form. Written evidence of disposable capital need only be supplied in cases of doubt. In such cases, up to date bank statements or savings books should be supplied where relevant.
5. You may accept clean copies of any of the above as satisfactory evidence. The evidence must be supplied in relation to both the Client and his or her partner if their means are aggregated.
6. You may assess the Client's means without the accompanying evidence where it is not practicable to obtain it before commencing the Advice and Assistance, or where pre-signature telephone advice is given. In such cases, the Client must be required to provide the evidence as soon as practicable, unless exceptionally the personal circumstances of the applicant (such as the Client's age, mental disability or homelessness) make it impracticable for the evidence to be supplied. Otherwise, if satisfactory evidence of the Client's financial circumstances is not subsequently supplied, then any work carried out by you above two hours shall not be claimed by you as Contract Work. In such circumstances, a note must be made on file.
7. Time spent applying the financial criteria for Advice and Assistance and completing the application form is not remunerable under the Contract.

Refusal to Give Advice and Assistance

2.7 Refusal to Give Advice and Assistance – Good Cause

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

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

Limits on Work

2.8 Initial Limit

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

2.9 Upper Limit

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

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

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

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

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

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

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

1. The cost of Advice and Assistance (including Advocacy Assistance) for the purposes of this Rule consists of:
 - (a) the fees which are properly claimable by you in respect of the Advice and Assistance under the terms of the Contract;
 - (b) any Disbursements, including Counsel's fees, properly incurred by you in connection with the giving of Advice and Assistance or Advocacy Assistance.

VAT is not included.

2. In order that we can monitor high cost matters you must not exceed the upper limit without our authority. The Regional Director may grant or refuse such authority on our behalf. If authority is granted, the Regional Director will set a new upper limit on the matter, above which payment will not be made unless you have applied for and been granted further authority. Application for authority must be made on the appropriate form.
3. Authority to exceed the limit is unlikely to be granted in any case where Advice and Assistance is in relation to proceedings or potential proceedings for which Advocacy Assistance or Representation would be available. In such cases the appropriate way to proceed once the limit for Advice and Assistance (other than Advocacy Assistance) is reached would usually be by an application for Advocacy Assistance or Representation.
4. In general, authority will not be granted unless the work carried out to date and the further work proposed is reasonable in accordance with any Guidance and the Sufficient Benefit Test (where applicable) and any other relevant merits test continues to be satisfied. It would not be reasonable to include any work which has to be undertaken as a result of your obvious error or omission and any such work should not be included as part of a Claim for costs.
5. Extensions cannot be granted retrospectively and do not operate retrospectively. When circumstances change such that it is necessary to carry out substantively different work from that envisaged in the extension granted, a separate extension will need to be considered.
6. You will not be paid under this Contract for any work undertaken in excess of the upper limit if an extension has not been obtained. Where an extension to the upper limit has been granted on the basis of certain work being undertaken, then the costs (including Disbursements) of other work not previously specified may be disallowed as it does not fall within the scope of the extension granted, unless there are circumstances which justify the unanticipated work as reasonable. This is an issue for determination on Assessment.
7. The level of the upper limits will be set by us from time to time and will vary by reference to the type of Advice and Assistance or Advocacy Assistance provided. However, a Regional Director may also vary the limit for individual Contractors. A Regional Director may, for example, increase the limits applicable to matters commenced by a Contractor where its franchise record and its record of work carried under the Contract justifies this. Likewise, a Regional Director may decrease the limits for a Contractor where he or she has concerns about the work carried out by that Contractor, including any concerns which have arisen as a result of the Assessment of Claims or in relation to Devolved Powers.

2.10 Refusal to Grant an Extension

THIS RULE HAS BEEN INTENTIONALLY OMITTED

Separate Matters and Boundaries between Classes of Work

2.11 Separate Matters and Boundaries between Classes of Work

- (a) In the Criminal Investigations Class, all Advice and Assistance and Advocacy Assistance provided to one Client in respect of a Criminal Investigation constitutes a single Matter, whether or not that Investigation is extended to include other alleged offences;**
- (b) where a Client is in receipt of Advocacy Assistance, any Advice and Assistance associated with the Advocacy Assistance forms part of the same Matter;**
- (c) in the Appeals, Reviews and Variations Class, all Advice and Assistance to a Client shall constitute a single Matter if the convictions or sentences arose from a single Case.**

Work for the same Client may be treated as a separate Matter if it involves the provision of Advice and Assistance or Advocacy Assistance under this Contract on a legal issue which amounts to a genuinely separate problem requiring a separate application (where relevant) and which can be claimed separately in accordance with the Rules in Part A, Sections 2 to 6 of this Specification.

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

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

1. This Rule and the Guidance below must be read in conjunction with the Guidance on specific Units of Work in Section 6 of this Part.
2. If any work will constitute a separate Matter, you must decide whether you may perform it under your Contract.
 - (a) a single application form should be completed to identify the issues and provide general, preliminary advice. If one legal issue is identified then the original, single application should be used for the provision of further Advice and Assistance. The following points should be noted:
 - i) the fact that you may be giving initial advice to the Client about potentially different remedies arising from the same set of originating circumstances does not in itself mean they are separate Matters;
 - ii) the fact that circumstances have changed or developments have occurred as the case has progressed will not mean that a separate Matter arises if the Advice and Assistance continues to be provided on the same overall legal issue;

- (b) where multiple application forms are used then you must record the reasons on file and be able to justify your decision on Assessment or audit. Duplicated work should not be claimed and work undertaken under one Matter may affect the reasonableness of subsequent work in separate Matters (for example, less preliminary work may be necessary under the second Matter as a result of your existing knowledge of the Client and his or her circumstances). Where different fee-earners undertake work for the same Client on different Matters, care should be exercised to ensure that no duplication of work takes place. If it subsequently comes to light that more than one fee-earner has undertaken work for the same Client on the same Matter then a check should be made to ensure that there has been no duplication. If duplicated work has been claimed in error, you must notify us;
 - (c) where the two Matters are genuinely different problems requiring separate advice at the same time on one occasion only, then they should be treated as the same Matter, despite the fact that they would normally be treated as separate Matters;
 - (d) where two or more Matters arise from the same set of circumstances, the chances of them being separate Matters diminish;
 - (e) where two Matters or more lead to a single application or appeal, one application form should be completed and the case should be treated as one Matter;
 - (f) where two or more Matters would be dealt with under one Representation Order or as part of the same Case, one application form should be completed and the case should be treated as one Matter;
 - (g) if a Client seeks advice as to whether he or she should change Solicitor from a Solicitor already providing Advice and Assistance it is not justified to consider this as a separate Matter to the advice being given by the previous Solicitor. The provisions of Rule 2.12 below should be applied before any advice is given as a separate Matter.
3. Charges laid at the same time which are likely to be dealt with under one Representation Order, or are likely to be heard together, or are likely to form part of the same Case, should be dealt with as one Matter.
 4. Advice given on related issues which could be considered to be a “series of offences” should be dealt with as a single Matter, rather than separate Matters.
 5. Advice and Assistance in respect of a referral to the Criminal Cases Review Commission constitutes a separate Matter from Advice and Assistance given in respect of the original proceedings, including any previous appeal.
 6. Work in the Prison Law or Associated CLS Class will normally constitute a separate Matter from work for the same Client in other Classes of Work.

2.12 Previous Advice and Assistance

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

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

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

1. If a Client changes Solicitor within the same firm, or the Solicitor changes firm and continues to advise the Client, then there will not have been Advice and Assistance from 'another Solicitor' for the purposes of this Rule. However, the Rule will apply if the Client changes firms and the same Solicitor does not continue to provide Advice and Assistance to the Client.
2. You should not provide Advice and Assistance under the terms of any of the exceptions contained at (a) to (c) above where:
 - (a) the Client merely finds the first advice unpalatable and wants a second opinion;
 - (b) there is only a short time between the first and second occasions when Advice and Assistance is sought and no material change of circumstances has occurred;
 - (c) the change requested is from a second to a third Solicitor (unless exceptionally there is good reason for a further change);
 - (d) there is no reasonable explanation for the Client seeking Advice and Assistance from a new Solicitor.
3. If in doubt, you should assume that previous Advice and Assistance has been given and ensure that any work you carry out reflects the fact that some work may already have been done on the Matter to ensure that there is no element of repetition.
4. Prior to giving Advice and Assistance under the Rule, the Client must complete a fresh application form and must meet the Qualifying Criteria.

5. Where Advice and Assistance is provided in contravention of this Rule, then the work undertaken cannot be claimed or paid as Contract Work.
6. You must assign a new unique file number and must make a note on the file to confirm that Advice and Assistance has been given to the Client previously by another Solicitor.
7. If you provide further Advice and Assistance in accordance with this Rule, then any work undertaken by another Solicitor previously will not count for the purposes of the upper limits specified in Part A, Sections 2 to 6 of this Specification.

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

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

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

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

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

2.14 Boundary between Advice and Assistance and Representation

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

1. Where Representation is available, you must normally make an application at the earliest opportunity.

2. Where an application for a Certificate for Associated CLS Work has been made to us, no further work should be undertaken under Legal Help unless there is likely to be a delay before the application is determined or further work needs to be done without which the Client's position would be prejudiced or there is an ongoing Criminal Investigation relating to that Matter. The reasons should be noted on the file in such circumstances. You shall not generally undertake more than two hours work.
3. Once a Representation Order has been granted, any [pre Order cover \(Part B, Rule 5.13\) Advice and Assistance](#) given to the Client on issues which form part of the Case covered by the Representation Order must be claimed under the Order in accordance with the Rules set out in Part A, Section 3 of this Specification [and Part B, Rule 5.13](#).
- ~~4. An extension to the upper limit to cover representation will be refused. "Assistance" extends to all assistance short of actual representation (R. v Legal Aid Board ex parte Higgins, unreported, QBD, October 15, 1993). Assisting the Client in the gathering of evidence may be justified in the particular case. It may also be reasonable to advise the Client on conduct of the hearing itself, including preparing a written submission.~~
- ~~5. Costs which arise directly out of Representation will not normally be met under Advice and Assistance.~~

3. Police Station Advice and Assistance – Own Solicitor

3.1 Rules Applying

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

~~Paragraphs 8.2.6(b) to (e), 8.2.8, 8.2.14 to 22 and Subsection 8.6 (Duty Solicitor Service) of this Part also apply as if the words “Duty Solicitor” are substituted by “Own Solicitor” and “Accredited Representative” by “Representative”.~~

3.2 Applications

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

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

3.3 Use of Representatives

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

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

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

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

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

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

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

If work is delegated to a Representative or agent who is not an employee of the firm, the travel time claimed shall not exceed 45 minutes each way.

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

1. You may use staff not employed by you, subject to the Performance Standards. Any work conducted for you by staff not employed by you is subject to the Quality Standards. This includes work conducted by staff who are designated by you and those who are not.
2. If you deploy a Representative not employed under a contract of service by your firm, you must be satisfied that the Representative is competent to do the work i.e. has the necessary skill, knowledge and experience. The Representative must be a Solicitor or currently registered as a Probationary or Accredited Representative.
3. Before attending the Police Station, the Representative must have the telephone number of the conducting Solicitor (including an out of hours number if appropriate).
4. The Representative must be able to contact the conducting Solicitor (or another Solicitor in the firm with sufficient experience of Police Station work) in case the Representative requires guidance as to how to proceed with the case when advising and assisting at the Police Station.
5. A written report on the case must be submitted to the conducting Solicitor by the Representative once the attendance at the Police Station has concluded and at the latest by the next working day.

3.4 Serious Service Offences/Armed Forces Custody Hearings

A Representative who is not a Solicitor shall not advise a Client who is being investigated in connection with a Serious Service Offence or at an application to extend detention in military custody before a judicial officer under the Armed Forces Discipline Act 2000.

1. Military suspects being investigated for military offences other than summary only must receive Advice and Assistance from a Solicitor and shall not be advised by a non-Solicitor Representative.
2. The Armed Forces Discipline Act 2000 amends the relevant Service Acts by introducing an entitlement for services personnel to be legally represented at a pre-charge custody hearing. Representation at such hearings must be provided by a Solicitor, not a non-Solicitor Representative.

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 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, 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.

3.6 Immigration Advice

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

1. For the purposes of this Rule, an "immigration offence" means a breach of the Immigration Acts, such as illegal entry, overstaying leave to enter or remain, breaching a condition of leave, an offence under the Asylum and Immigration Appeals Act 1993 or failure to observe a condition of temporary admission or release. This list is not exhaustive.
2. For the purposes of this Rule, an "immigration issue" arises where an individual is arrested or attends the Police Station as a Volunteer in relation to alleged criminal conduct and it is apparent, or becomes apparent, that an immigration offence may have been committed or there is some other issue regarding the Client's immigration status.
3. You may not generally give Police Station Advice and Assistance under this Contract where:
 - (a) an individual is detained after entry and is served with illegal entry papers or a notice of intention to deport;
 - (b) an individual is detained by the immigration authorities on entry;

- (c) an individual is arrested by police on behalf of the immigration authorities where no criminal allegations are made and is detained under the immigration authorities' administrative powers.
- 4. Where the Client remains in detention and advice is required and it is not practicable to refer the Client to an immigration franchisee, you may continue to provide Advice and Assistance. A full note of the relevant circumstances must be made on the file. The advice you may give includes any urgent advice required covering immigration status and procedure.
- 5. ~~LAFQAS requirement~~ ~~z~~The SQM requires that you have a clear policy and procedures for referral. We would expect organisations to build links with immigration suppliers and document details of appropriate suppliers to which you will refer Clients.

3.7 Service Requirements for Own Solicitor Police Station Advice and Assistance

- 1. Subject to paragraph 3.7.2 below the following services shall be provided once a case has been accepted:
 - (a) attendance at the Police Station to provide advice and to attend all police interviews with the Client where the Client has been arrested in connection with an arrestable offence under section 24 of the Police and Criminal Evidence Act 1984;
 - (b) attendance at any identification parade, group or video identification or confrontation;
 - (c) attendance at the Police Station where the Client complains of serious maltreatment by the police;
 - (d) attendance at the Police Station where the Client is a youth or person at risk;
- 2. If exceptional circumstances exist which justify non-attendance at the Police Station, the Own Solicitor or Representative shall record his or her decision not to attend, including details of the exceptional circumstances and the reasons for the decision on the case file. Exceptional circumstances could arise if a Client expressly instructs the Own Solicitor or Representative not to attend. Exceptional circumstances are less likely to arise in the case of paragraphs 3.7.1(c) and (d).
- 3. You shall only attend the Police Station when the Sufficient Benefit Test set out in Part B, Rule 2.5 is satisfied. The circumstances when this test will be satisfied include:
 - (a) to provide advice prior to and during interview;
 - (b) to advise at an identification procedure (including a video identification procedure when the Client is not present);
 - (c) when appropriate, to advise a Client who is a youth or person at risk;
 - (d) when appropriate, to advise on the implications of the caution when the Client is charged with an arrestable offence;

- (e) to advise when the advice may materially affect the outcome of the investigation and goes significantly beyond initial advice;
- (f) to advise a Client who complains of serious maltreatment by the police.
4. On Assessment of your Claims for Police Station Advice and Assistance we will take into account the factors above when determining whether it was reasonable for you to attend. If none of these are satisfied then further justification shall be provided on file. If one or more of the factors are met, then the attendance will normally be justified, however we may still reduce the Claim if we consider that the time spent was not reasonable.
5. Any attendance must be for the purposes of providing legal advice that could not be given over the telephone to the Client. You may not claim for an attendance when the advice could have been provided reasonably by way of telephone advice. If we consider that the advice could have been provided reasonably over the telephone, we may disallow the costs of any attendance at the Police Station, however, we will take into account any evidence on file that attendance was considered necessary at the time the decision to attend was made. The file must show that the attendance was expected to materially progress the case beyond initial advice. If you were already at the same Police Station, we may cap your Claim to no more than the value of the Police Station Telephone Advice fixed fee if we consider that advice could have been provided reasonably over the telephone.
6. In the following cases, you may provide Police Station Telephone Advice only and you shall not claim from public funds for any Police Station Attendance unless one of the exceptions in paragraph 7 below applies:
- (a) Client detained in relation to a non-imprisonable offence;
- (b) Client arrested on a bench warrant for failing to appear and being held for production before the court, except where the solicitor has clear documentary evidence available that would result in the client being released from custody in which case attendance may be allowed provided that the reason is justified on file;
- (c) Client arrested on suspicion of:
- i) driving with excess alcohol who is taken to the Police Station to give a specimen (Section 5 Road Traffic Act 1988);
- ii) failure to provide a specimen (Sections 6, 7 and 7A Road Traffic Act 1988);
- iii) driving whilst unfit/drunk in charge of a motor vehicle (Section 4 Road Traffic Act 1988).
- (d) Client detained in relation to breach of police or court bail conditions.
7. You may attend the Police Station to advise on any Matter falling within paragraph 6 above if one of the following exceptions applies and the Sufficient Benefit Test is satisfied:
- (a) An interview or an identification procedure is going to take place;

- (b) The Client is eligible for assistance from an appropriate adult under the PACE Codes of Practice;
- (c) The Client requires an interpreter or is otherwise unable to communicate over the telephone;
- (d) The Client complains of serious maltreatment by the police;
- (e) The investigation includes another alleged offence which does not fall within paragraphs 6 (a) to (d) above;
- (f) You are already at the same Police Station, in which case you may attend the Client but may not claim more than the Police Station Telephone Advice fixed fee.

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

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

3.8 Non-Discrimination

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

4. Advocacy Assistance

4.1 Rules Applying

Save for Rule 2.5 (Sufficient Benefit Test), the Rules in Sections 1 and 2 of this Part apply to Advocacy Assistance, together with the Rules in this Section and Rule 5.12 for the purposes of any review.

Applications

4.2 Availability of Advocacy Assistance

You may grant Advocacy Assistance in accordance with the Rules in this Specification, provided that your Contract permits you to carry out Contract Work in the relevant Class. You may only grant Advocacy Assistance where the Qualifying Criteria are met. This is a Devolved Power.

The types of Advocacy Assistance available are set out in Part A, Sections 2 to 5 above.

Qualifying Criteria

4.3 Advocacy Assistance Merits Test

Before commencing work you must apply one of the following merits tests (where appropriate):

- (a) Magistrates' court Advocacy Assistance provided by an Own Solicitor under Part A, paragraph 3.2.1(b)(i) (breach of a civil order) and paragraphs 3.2.1(b)(ii) - (v) (Crime and Disorder Act 1998, Football Spectators Act 1989) and 3.2.1(d)(iii) (parenting orders in the Crown Court) of this Specification.

Advocacy Assistance may not be provided if:

- i) it appears unreasonable that approval should be granted in the particular circumstances of the case (for instance, because Advocacy Assistance could be given by the Duty Solicitor); or
- ii) the Interests of Justice Criteria set out in Schedule 3 of the Act are not met (for instance, the applicable law is not unduly complex or there is no real risk of imprisonment).

In applying the Interests of Justice Criteria for the purpose of this Rule the following additional factor may be taken into account:

- whether there is a real risk of an order being made which if breached could deprive the individual of his or her liberty.

- (b) Advocacy Assistance under Part A, paragraphs 3.2.1(d)(i), (ii) and (iv) (appeals to the Crown Court under the Crime and Disorder Act 1998, and the Football Spectators Act 1989) of this Specification.

Advocacy Assistance may not be provided if:

- i) it appears unreasonable that approval should be granted in the particular circumstances of the case; or
 - ii) the Client does not have reasonable grounds for taking, defending or being a party to any prospective or actual proceedings.
- (c) Advocacy Assistance under Part A, paragraphs 5.2.1(c) and (d) of this Specification (Prison Discipline/Parole Board).

Advocacy Assistance may not be provided if:

- i) it appears unreasonable that approval should be granted in the particular circumstances of the case; or
- ii) permission to be legally represented has not been granted by a Governor or other prison authority, where appropriate.

When applying the Advocacy Assistance merits tests you should refer to the Guidance on Specific Units of Work contained in Section 6 of this Part.

There is no merits test for the Units of Work listed in Rule 4.6 which do not require a written application.

4.4 Financial Criteria

There are no financial criteria for Advocacy Assistance (except where it is undertaken in the Prison Law Class of Work) (see Rule 2.6 in this Part).

Grant

4.5 Grant of Advocacy Assistance

You shall only grant Advocacy Assistance where the relevant Qualifying Criteria in Rules 4.3 and 4.4 above and the Guidance on Specific Units of Work in Section 6 of this Part are met. You shall cease to provide Advocacy Assistance where the Criteria are no longer satisfied. You may grant Advocacy Assistance to a Client to whom you have previously refused it where further information arises or circumstances change such that the Criteria are now satisfied.

Subject to Rule 4.6 below, Advocacy Assistance will be granted by your signature on the “Declaration and Grant” section on a properly completed application form and will take effect from the date of such signature. The “Declaration and Grant” must only be signed by a qualified Solicitor, who is a designated fee-earner (see Part D, Rule 3.2), or by your franchise supervisor in the relevant category.

1. Advocacy Assistance is granted not by an application to the Commission, but by your signature on the “Declaration and Grant” section on the application form specified by us. The application must be fully completed in accordance with Rule 1.1 of this Part and the Client must have been assessed as meeting the relevant Qualifying Criteria before your signature takes place. The original application form must be kept on the file for audit and Assessment purposes, but there is no need to register the grant with the Commission. Where more than one hearing is required, there is no need for a fresh application form to be signed, but the Qualifying Criteria must be reapplied.

2. Where you have been providing Advice and Assistance to the Client in relation to the same Matter previously, then the granting of Advocacy Assistance under this Rule means that the Advice and Assistance must be claimed with the Advocacy Assistance as a single Claim in accordance with the Rules in Part A, Sections 2 to 6 of this Specification and the same UFN must be assigned to both the Advice and Assistance and the Advocacy Assistance work.
3. The second paragraph of this Rule applies to all Classes of Work where a written application for Advocacy Assistance is required (see Rule 4.6 below).
4. A grant of Advocacy Assistance does not operate retrospectively and cannot be backdated.
5. The Client may have a right of review to the Funding Review Committee if you refuse to grant Advocacy Assistance (see Rule 5.12 in this Part).

4.6 Application and Grant without a written application

Advocacy Assistance may be granted for a hearing without an application form in the circumstances set out in this Rule. The grant must be made by a qualified Solicitor, who is a designated fee-earner (see Part D, Rule 3.2), or a franchise supervisor in the relevant category. A note of any grant under this Rule must be made on the file.

This Rule applies to:

- (a) **magistrates' court Advocacy Assistance given under Part A, paragraph 2.2.1(d) of this Specification (warrants of further detention);**
 - (b) **Advocacy Assistance at an armed forces custody hearing under Part A, paragraph 2.2.1(e) of this Specification;**
 - (c) **magistrates' court Advocacy Assistance given by a court Duty Solicitor acting as such.**
1. No application form is required to grant Advocacy Assistance under this Rule. There are no Qualifying Criteria. The advocate must check that the Matter falls within the scope of one of the Units of Work set out above and that any other limitations on scope are satisfied e.g. the Client falls within the scope of service of the court Duty Solicitor scheme. A record must be made on file, either before the Advocacy Assistance is to be provided or, if provided at very short notice, as soon as practicable thereafter. Details recorded should include the Client's name, address, UFN, date, time and venue of court appearance, the relevant Unit of Work and confirmation that the matter falls within any limitations on scope. Where work is undertaken under (c) above as court Duty Solicitor the details should also indicate whether the Client is in custody or charged with an imprisonable offence.
 2. If the matter proceeds to more than one hearing you should always check that the Client continues to satisfy the scope requirements set out above and record the further details on the file.
 3. There is no right of review if you refuse to provide Advocacy Assistance under this Rule. The Client may seek help from another Solicitor.

4.7 Preparation and Follow Up work

Advocacy Assistance granted under Rules 4.5 and 4.6 above will include any reasonable preparation and follow up work (except where a court Duty Solicitor is acting as such in which case reasonable advice and preparation may only be remunerated when provided during the court duty session).

1. This may include advising before the hearing (including reasonable preparation and attendance in the office, correspondence and telephone calls) and advising the Client of the consequences of the outcome. Relevant remuneration rates for preparation and advocacy are set out in Part E.

Counsel

4.8 Counsel

You may not instruct Counsel in any of the cases in which a written application for the grant of Advocacy Assistance is not required under Rule 4.6 above.

Where Advocacy Assistance has been granted for any other Unit of Work and you consider that the proper conduct of proceedings requires Counsel, you may instruct Counsel. This is a Devolved Power.

If you instruct Counsel then the rate which you agree must not exceed the hourly rates set out in Part E of the Specification which are applicable to a Solicitor providing Advocacy Assistance in the same Unit of Work.

You may not make any Claim for time spent accompanying Counsel at the hearing.

You are responsible for direct payment of Counsel's agreed fee in accordance with Clause 12A.11 of the Contract Standard Terms (see also Rule 5.9 below).

1. When instructing Counsel, you should inform him or her of the payment rates and ensure that Counsel's fee note will contain a breakdown of the time claimed at the appropriate rates.
2. You may claim any time spent instructing Counsel as Contract Work. However, if you choose to accompany Counsel to any hearing, neither the time spent at the hearing nor the travelling and waiting can be recorded as Contract Work.
3. You are responsible for agreeing and paying any fee to Unassigned Counsel in accordance with the Contract Standard Terms. The fee agreed must not exceed the relevant hourly rates payable to a Solicitor undertaking that Work.

Change of Solicitor

4.9 Change of Solicitor

The provisions set out in Regulations apply.

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

Limits on Work

4.10 Advocacy Assistance Financial Limit

You may only provide Advocacy Assistance where the costs do not exceed the relevant upper financial limit (where applicable) set by us from time to time for the costs of Advocacy Assistance, inclusive of profit costs, Counsel's fees and Disbursements, but excluding VAT, in relation to any one Matter unless we have given authority to exceed that limit. Rule 2.9 in this Part applies.

1. The upper limit includes Disbursements. You cannot incur expenditure if it would exceed the upper limit without first having obtained an extension to that limit in accordance with Rule 2.9 in this Part. If you fail to obtain an extension where necessary you will not be paid under this Contract if any Disbursement or Contract Work exceeds the upper limit.

Withdrawal of Advocacy Assistance

4.11 Withdrawal of Advocacy Assistance

You shall withdraw Advocacy Assistance where:

- (a) it is unreasonable for Advocacy Assistance to continue to be given;
- (b) the relevant Qualifying Criteria are no longer satisfied;
- (c) an application for Representation has been made and refused (unless the application was made to the Commission under Part B, Rule 5.7 and that refusal was based on the availability of Advocacy Assistance for the proceedings in question);
- (d) information comes to light which, if known at the time would have meant that the original application would have been refused;
- (e) the Client dies;
- (f) the Client fails to give instructions for two months (unless the matter is on hold for a specific reason);
- (g) the Client decides not to proceed or to act in person;
- (h) the Client consents; or
- (i) there is any other good reason;

Where the Client is taking proceedings i.e. as an appellant under Part A, paragraphs 3.2.1(d)(i), (ii) or (iv) (Crime and Disorder Act 1998/Football Spectators Act 1989 appeals) the following additional criteria apply:

- (j) circumstances have changed so that the Client no longer has reasonable grounds for continuing or reasonable prospects of success;**
- (k) the Client refuses to accept advice not to proceed.**

When Advocacy Assistance is withdrawn, you shall forthwith:

- i) inform your Client in writing, except where (e), (g), or (h) above applies; and**
 - ii) if proceedings have commenced, notify the court (if the court has a record that you are acting) and any other party to the proceedings in writing;**
 - iii) record the reasons for withdrawal on the file.**
1. Withdrawal of Advocacy Assistance shall not affect or prejudice any subsequent application for Representation or for Advocacy Assistance in respect of the same proceedings.
 2. The date on which the Matter ends i.e. from which the time limit for submission of a Claim runs is the date of withdrawal of Advocacy Assistance or, in the case of (e), (g) or (i) above, when the reason for withdrawal arises, or when you first became aware of the reason if later.
 3. The consequences of withdrawal are that the Client ceases to be represented from the date of withdrawal.
 4. The Client may have a right of review to the Funding Review Committee following withdrawal (see Rule 5.12 in this Part).

Category Boundaries

4.12 Boundary Between Advocacy Assistance, Advice and Assistance and Representation

The scope of Advocacy Assistance includes giving notice of any appeal or applying for a case to be stated within the ordinary time limit and matters preliminary to that.

5. Representation under a Representation Order

5.1 Rules Applying

The Rules in Section 1 and Rule 2.14 (Boundary between Advice and Assistance and Representation) ~~and 4.12 (Boundary between Advocacy Assistance, Advice and Assistance and Representation)~~ of this Part apply, together with the Rules in this Section. The Rules in this Section do not apply to representation provided under the Associated CLS Class of Work which is governed by the Rules in the General Civil Contract.

Prior Authorities and Counsel

5.2 Prior Authorities

Where you consider it necessary for the proper conduct of Criminal Proceedings, within the scope of this Contract, in the magistrates' court or High Court, for costs to be incurred under a Representation Order by taking any of the following steps:

- (a) obtaining a written report or opinion of one or more experts;
- (b) employing a person to provide a written report or opinion (otherwise than as an expert);
- (c) obtaining any transcripts or recordings, including police questioning of suspects;
- (d) in magistrates' courts only, where a Representation Order provides for the services of Solicitor and Counsel, instructing a Queen's Counsel alone without junior Counsel; or
- (e) performing an act which is either unusual in its nature or involves unusually large expenditure,

you may apply to the Regional Director for prior authority before the expenditure is incurred.

If prior authority is refused or partially refused (i.e. the full amount sought is not granted) by the Regional Director, the application will automatically be referred to the Costs Committee. If the Costs Committee refuse an application, there is no right of appeal but a fresh application may be made at any time.

The effect of obtaining an authority is that no question as to the step taken or the amount authorised will be raised on Assessment at the conclusion of the proceedings, unless you knew or ought reasonably to have known, before incurring the costs, that the purpose of the authority had failed or become irrelevant or unnecessary.

1. An application under this Rule must be made by application to the Regional Director using the relevant form approved by us and applying any relevant Guidance.
2. Authority cannot be granted retrospectively. Any application must be made in advance of the relevant expenditure being incurred.

3. Applying for authority is not mandatory. If permission to incur the expenditure is not sought or refused, the costs may still be allowed on Assessment if the expenditure was reasonably incurred. The same principle applies if the amount authorised is exceeded. If an application is refused or partially granted, it will automatically be referred to the Costs Committee. You may make a further application to us at any time. Such applications are only likely to be granted if there has been a change of circumstances or fresh information is provided in support.
4. Amounts authorised will usually be in accordance with guideline rates issued from time to time by the Lord Chancellor's Department. The authority will specify the type of expenditure authorised, a maximum amount and may specify a maximum rate. This authority must be submitted with any Claim for payment.
5. Authority will be granted if the expense is necessary and reasonable having regard to the nature of the proceedings. The application may be granted subject to such terms and conditions as are appropriate.
6. Authority will be refused where the application is for tendering expert evidence or the reports in question have been or could be ordered by the court in consideration of a disposal under the Mental Health Act or probation order with treatment and would thus be payable out of central funds.
7. Authority will be refused where the application is in respect of a medical assessment for which it would be reasonable to expect alternative funding, e.g. through the NHS or Home Office, to be used.
8. Authority will be refused for photocopying done "in house" which is an office overhead, unless the circumstances are unusual, or the documents to be copied are unusually numerous in relation to the nature of the case.
9. Authority will be refused where the application is for a conference with Counsel to obtain Counsel's written opinion (unless Counsel is instructed as an expert).
10. Authority will be refused where the application is to attend a distant court. This is a matter for costs Assessment.
11. Authority will be refused where the application is to cover witness expenses.
12. The circumstances in which you may be paid other than under this Contract where a prior authority is refused are set out in Part C, Rule 1.20 of this Specification.

5.3 Payment on Account of Disbursements

You may submit an application for payment on account of a Disbursement for which you have incurred liability in Criminal Proceedings, within the scope of this Contract, in the magistrates' court or High Court, provided that the following conditions are satisfied:

- (a) you have obtained prior authority to cover the amount sought; and
- (b) you have incurred liability for the Disbursement under that authority; and

- (c) **the amount of a single Disbursement (including VAT) is likely to exceed the value of your next monthly payment which falls due after the liability for the Disbursement has been incurred.**

An application under this Rule shall not exceed the maximum amount authorised under the prior authority.

An application may be made at any time before you submit your final Claim for costs.

An application for a payment on account shall be made in such manner as we may direct and shall be accompanied by a copy of all relevant prior authorities and any invoices or other documents to establish that the liability has been incurred.

We will authorise a payment on account, subject to the prior authority limit, if it appears to have been reasonably incurred in accordance with the prior authority. This does not prevent you from seeking more than the amount authorised by the prior authority on costs Assessment.

1. If we authorise payment on account of the Disbursement, then it will usually be paid through the monthly payment system.
2. If we refuse to authorise payment, there is no right of appeal, but you may still seek to recover the Disbursement on costs Assessment.
3. This Rule is designed as an exceptional mechanism, particularly for small firms which may, on occasion, be faced with a Disbursement which is very large in comparison with the level of monthly payments. It is not intended to be the normal route for the payment of Disbursements as these are reflected in your monthly payments.
4. Where you undertake work in the High Court under the Associated CLS Class of Work this Rule does not apply, nor does it override any current provisions enabling a civil payment on account to be claimed.

5.4 Counsel

When you instruct Counsel, the instructions delivered shall include a copy of the Representation Order or Certificate and you must notify Counsel of any amendments made to the Order or Certificate. You must also notify the UFN to Counsel. The onus is on Counsel to check that any work undertaken is covered by the scope of the Order or Certificate.

When Counsel is instructed to appear in High Court proceedings within the scope of this Contract, the applicable rules and payment rates are those set out in the General Civil Contract and Counsel's claim for payment shall be made in accordance with Part C, Rule 1.7 of this Specification.

Change of Solicitor

5.5 Change of Solicitor

The provisions set out in Regulations apply.

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

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

Pre Order Work

5.6 Pre Order Work

A Claim for work under any Unit of Work designated as Representation covers all work undertaken from the date on which the Order was granted. It also covers any legal advice or representation given on the same Case before an Order was granted if the following three conditions are met:

- (a) the interests of justice required that the advice or representation was provided as a matter of urgency i.e. there is a court hearing within ten working days or less of the date when initial instructions were taken;
- (b) there was no undue delay in making an application for Representation i.e. the application was submitted no more than five working days after initial instruction;
- (c) the pre-Order advice or representation was given by the CDS Supplier who was subsequently assigned under the Representation Order.

If a Representation Order is granted by the magistrates' court (or by us) the date of grant for the purposes of this Rule is deemed to be the date on which a properly completed application was received by the court (or us) (even if the actual date of grant was later).

If a Representation Order is initially refused, the date of grant for the purposes of this Rule is the date on which the original properly completed application was received, provided that the appeal is successful.

1. Before commencing work, the Client must meet the Qualifying Criteria for the relevant Authorised Level of Service for that Unit of Work, as set out in Part A, Sections 2 to 6 of this Specification.
2. The effect of the Rules on Claiming in Part A, Subsection 3.4 of this Specification is that if you provide Representation in the magistrates' court under Part A, paragraph 3.2.1(c), then any Claim must include any pre-Order work. Where a standard fee is payable, it will apply to all the work required to be included in the same Claim i.e. all work undertaken in the Criminal Proceedings Class of Work.

3. This Rule enables backdating of the grant of a Representation Order to the date on which it was received by the magistrates' court (or us) but it only applies when a properly completed application is received. If we or the court reject an application because it is defective, the effective date is the date it is received by the court (or us) and accepted as being in order. The same principle applies if an appeal against refusal of Representation is successful, the effective date will be the date on which the properly completed application was originally received. This Rule also enables pre-Order work to be claimed provided that all the criteria set out above are met.
4. The time periods mentioned in this Rule are computed on the basis that time starts to run on the day following initial instruction, and that Saturdays, Sundays and Bank Holidays are excluded.
5. In order to enable us to decide whether pre-Order work is allowable, you must note on file the date of initial instruction, the date the application for Representation was lodged with the court and the date of the court hearing.

Applications

5.7 Applications

You may not provide Representation in the magistrates' court under this Contract unless a Representation Order has been granted by the court or in cases prescribed under section 12(2)(g) of the Act by us following the appropriate application procedure.

Where proceedings are prescribed under section 12(2)(g) of the Act, the Commission has power to grant a Representation Order, subject to the Interests of Justice Criteria. This includes proceedings in the Crown Court under Part A, paragraph 3.2.1(d).

In determining whether an application for a Representation Order meets the Interests of Justice Criteria, we will take into account the availability of Advocacy Assistance. We will normally refuse to grant a Representation Order in cases where Advocacy Assistance is available unless there are exceptional reasons why Advocacy Assistance is not appropriate.

An application to us for a Representation Order shall be made on the form and in the manner prescribed by us.

Definition of a "Case"

5.8 Definition of a "Case"

Case means all the work carried out in Criminal Proceedings in the magistrates' court under this Contract under a Representation Order for all Clients represented by you in those Proceedings in respect of:

- (a) **one offence (that is an offence for which the Client is charged or summoned or otherwise required to appear in court); or**

(b) more than one offence, where one or more charges or informations are preferred or laid at the same time, or where the offences are allegedly founded on the same facts or form part of a series of offences.

1. In Criminal Proceedings in the magistrates' court covered by a Representation Order, a standard fee is payable for a "Case" in accordance with the payment rates and Guidance in Part E of this Specification. The above definition does not extend to Advocacy Assistance in the magistrates' court or the Crown Court or Representation in the High Court.
2. Where the proceedings involve more than one offence, the definition consists of three independent elements or tests. One or more of the three tests will need to be satisfied to form a Case in respect of which a Claim for a single standard fee must be made. They are:
 - (a) where the charges or informations are preferred or laid at the same time;
 - (b) where the charges or informations are founded on the same facts;
 - (c) where the charges or informations form part of a series of offences.

Preferred or laid at the same time

3. This element of the definition is self-explanatory. Where a Solicitor represents a defendant suspected of burglary who is also found in possession of proscribed drugs, only one standard fee will be payable if the two charges are preferred together. If, however, the defendant was bailed back to await a drugs analysis, the terms of this first test would not have been satisfied and other elements should be tested.

Same facts

4. The test here is whether the charges have a common factual origin. It would cover substituted and alternative charges such as theft and handling. For example, where a charge such as section 47 assault is withdrawn and a section 39 offence is substituted, the test would be satisfied and only one standard fee would be payable.

Series of offences

5. The test here is whether the offences exhibit some similar feature which would allow them to be described as a series of offences. Questions which might help are: "would these allegations have been tried together on a single indictment?" or "could the defendants properly be placed in the dock together?". A sufficient nexus may be demonstrated by the following facts:
 - (a) that the charges are based on a system of conduct;
 - (b) that the charges are similar in their nature and could have been tried together (e.g. burglaries and thefts);
 - (c) that the evidence of one offence would be admissible at the trial of another.

6. But the test is not restricted to these possibilities. The following factors would not in themselves prevent a series of offences being established:
 - (a) some separate hearings, possibly in different magistrates' courts;
 - (b) the fact that the offences were committed some years apart;
 - (c) evidence of one offence was not admissible at the trial of one of the other offences;
 - (d) the fact that the offences were committed in different places or on different days;
 - (e) the fact that there was more than one Representation Order for the offences;
 - (f) the fact that the offences are tried separately by magistrates;
 - (g) the fact that the offences appear on separate indictments at the Crown Court.
7. The following factors would not in themselves make two or more charges part of a series:
 - (a) that all hearings were at the same court;
 - (b) that only one Representation Order exists;
 - (c) that offences were committed on the same day or dates close to each other.

Completion of a series of offences

8. A series of offences can be regarded as having ended when all outstanding charges or informations in respect of a defendant, or co-defendants, have been disposed of in some way by the court. For the purposes of the definition of a series of offences, a breach of a community penalty or other court order shall be treated as an offence. If the defendant is before the court for other reasons, then no separate standard fee payment will be made for breach proceedings, irrespective of whether there is any link between the breach proceedings and any other proceedings being heard at the same time. If breach proceedings are heard alone then they will attract a separate standard fee.

Representation Orders

9. The practice as to granting Representation Orders may vary between different magistrates' courts. Some courts issue Orders for each charge, whereas others grant Orders for a number of charges even though they might constitute more than one Case. The definition of a "Case" is not currently tied to the charges, offences or breach covered by a single Representation Order. It will, therefore, be possible to have more than one Representation Order attached to a Case, or for a Representation Order to cover more than one Case.
10. The onus will be on you to satisfy us that charges against a defendant or co-defendants constitute more than one Case.

Crown Court and High Court Bail

11. Representation to cover an application for bail to the Crown Court or the High Court (judge in chambers) is ancillary to Criminal Proceedings in the magistrates' court and is consequently covered by a Representation Order granted by the magistrates' court in Criminal Proceedings. Where a Crown Court or High Court bail application is made, the work will form part of a "Case" for the purpose of standard fees and must be claimed as part of the Claim for work undertaken in the magistrates' court in accordance with the Rules in Part C of this Specification.

Counsel

5.9 Unassigned Counsel

You may instruct Unassigned Counsel to provide magistrates' court Representation where a Representation Order has been granted. You must agree a fee with Counsel in writing and notify Counsel of the relevant UFN.

In proceedings for which a standard fee is claimed, Counsel's agreed fee shall also include any fees agreed in respect of Counsel's travelling and waiting time and travelling costs.

You must claim your costs (including the time spent by Counsel in preparation, attendance and advocacy) on the Contract Work Report Form (unless the Case attracts a non-standard fee) at the rates set out in Part E of this Specification and you must retain on file details of the amount agreed in respect of Unassigned Counsel's fees. Your Claim will be assessed or audited using the maximum fee principle, i.e. on the basis that you conducted the case without Counsel.

Where exceptionally a Representation Order is granted by us in proceedings prescribed under section 12(2)(g) of the Act, the basis on which you may instruct Counsel and the relevant rates are as set out in Rule 4.8 in this Part.

You are responsible for direct payment of Unassigned Counsel's fee in accordance with the Contract Standard Terms.

1. The costs payable in respect of Counsel's agreed fee shall only be reduced on Assessment where, and to the extent that, they exceed:
 - (a) the costs that would be allowed if you had conducted the case without Counsel; or
 - (b) where a standard fee is payable, the total of the relevant standard fee plus the travelling and waiting time of the Solicitor and Unassigned Counsel, plus Disbursements and Counsel's travelling costs.
2. The Commission has no liability to pay Counsel in an Unassigned Counsel case. The onus is on you to agree a fee with Counsel and to make appropriate arrangements for Counsel to be paid in accordance with the Contract Standard Terms (Clause 12A.11).
3. The professional relationship between you and Counsel will be the same as in a privately funded case.

4. If more than one Counsel is instructed in the same proceedings, you must reach a separate agreement with each barrister on fee and payment arrangements.
5. If you fail to pay Unassigned Counsel within 30 days of receipt of his or her fee note, then Counsel may apply to us to be paid directly. We will require the relevant UFN and written confirmation of the fee agreed, together with Counsel's fee note. We will make enquiries directly with you to establish whether any payment has been or will be made. If we are satisfied that Counsel has not been paid and agree to pay Unassigned Counsel direct in accordance with Clause 12A.11 of the Contract Standard Terms, we will recoup the relevant amount from subsequent payments to you. We will only use this power as a remedy where you have not shown any justified reason for non-payment.

5.10 Assigned Counsel

Where Counsel is assigned in the magistrates' court in accordance with Regulations assigned Counsel is entitled to be paid directly by us in accordance with the rates set out in Part E of this Specification and must complete a separate Claim form in accordance with Part C, Rule 1.4. You shall provide assigned Counsel with details of the UFN which must be inserted on Counsel's Claim. You must submit Counsel's Claim at the same time that you submit your Claim. The time limit in Part C, Rule 1.2 of this Specification applies to Counsel's Claim.

Withdrawal of Representation

5.11 Withdrawal of a Representation Order in the magistrates' court

You may claim for work undertaken up until the date of withdrawal of a Representation Order.

The time limit for submission of a Claim runs from the date on which withdrawal of an Order came to your knowledge.

Where a Representation Order is withdrawn, you shall send without delay all papers and other material in your possession relating to the proceedings to the Client, but retain copies on file for Assessment purposes.

Funding Review Committee

5.12 Rights of Review

The Client is entitled to seek a review of a decision by the Funding Review Committee (FRC) in accordance with the Guidance which supports this Rule in the following circumstances:

- (a) where the Regional Director refuses to extend the relevant upper limit under Rule 2.9 in this Part for any Authorised Level of Service;**
- (b) where you refuse to grant Advocacy Assistance under Rule 4.5 in this Part;**
- (c) where you withdraw Advocacy Assistance under Rule 4.11 in this Part;**

- (d) where we refuse to grant a Representation Order in proceedings prescribed under section 12(2)(g) of the Act under Rule 5.7 in this Part.

You must notify the Client of the right to a review and must keep a record of this on file.

If so requested, you will provide the Client with a review notification form.

Any application shall be made on an approved form within 14 days of receipt of the decision and shall be submitted to the relevant Regional Office. Where you have refused or withdrawn Advocacy Assistance, you must complete the relevant section of the review notification form recording your reasons for the refusal or withdrawal.

There is no right of review where you refuse to grant Advocacy Assistance in the Units of Work set out in Rule 4.6 in this Part.

Where Work is undertaken within the Associated CLS Class of Work, the applicable rights of review are those set out in the General Civil Contract and the Funding Code Procedures. Hearings before the FRC are subject to the rules set out in Section 3 of Part D of the Funding Code Procedures.

Any application for a review under this Rule will be treated as a renewed application. Prior to referral to the FRC, the Regional Director shall review the application. If it appears to the Regional Director that the relevant criteria are satisfied, then he or she may immediately grant the application. If the Regional Director considers that the application does not satisfy the criteria, then he or she shall refer it to the FRC.

1. The Funding Review Committee (FRC) may review any decision made by you or the Regional Director which has been referred to it under this Rule.
2. The Client or any person authorised by the Client may attend before the FRC to make representations.
3. The applicant shall supply such further particulars, information and documents as the FRC may require.
4. On a review the FRC shall consider the application and any further particulars, information or documents submitted to it and either allow it or refuse it.
5. The decision of the FRC shall be final and the result shall be notified to the Client and the Solicitor. The FRC shall give reasons for its decision.
6. Refusal of Representation by the courts may be appealed in accordance with Regulations.

5.13 Pre Order Cover

Where an application for a Representation Order is made and refused, you may claim a limited amount of work at the applicable rates for magistrates' court Representation (see Part E Section 3.5) provided that all of the following conditions are met:

- (a) A qualified Solicitor who is a designated fee-earner (see Part D, Rule 3.2) or a quality mark supervisor in the crime category has determined that the case meets the interests of justice criteria set out in Schedule 3 of the Access to Justice Act 1999 and has documented on file the reasons why (either by retaining a copy of the application for Representation or by some other means).
- (b) The effective date of refusal is the date on which you are first notified of refusal by the court in writing or by other means. If you appeal against the court's decision to refuse, then any work reasonably undertaken in relation to lodging the appeal may be claimed as pre Order Cover provided that it does not exceed the maximum fee set out in (c) below. Further work undertaken on the case itself once an appeal has been lodged may not be claimed if the appeal is unsuccessful. If a Representation Order is granted on appeal then all the work undertaken since the date on which the original properly completed application was received by the court, including any pre Order work, shall be claimed under the Order as part of the standard fee Claim. A copy of the court's written notification of refusal of the Representation Order must be available on file.
- (c) The work done may include any combination of preparation, advocacy, routine letters and telephone calls, travel and waiting claimed at the applicable rates in Part E Section 3.5 but the maximum fee claimed and payable shall not exceed a total of £49.70 (national) or £52.55 (London). This figure includes any travel, waiting and disbursements but is exclusive of VAT.
- (d) Any pre Order work undertaken for a Client who is granted a Representation Order shall be included as part of the standard or non-standard fee Claim under that Order and may not be claimed separately. If you act for more than one Client in the same Case and if one or more of those Clients is not granted a Representation Order a separate claim for pre Order cover may be made for each Client and the maximum fee above will apply to each separate Claim. You must assign a separate UFN to each Claim.
- (e) Pre order cover may not be claimed by a court duty solicitor for work undertaken during the court duty period. Any work undertaken that falls within scope of the court duty solicitor scheme shall be included in a single claim for the duty period at the applicable court duty solicitor rates set out in part E section 3.4 of this Specification.

6. Guidance on Specific Units of Work

6.1 General Guidance on Time Standards

1. The cost of the work should be calculated in six minute units with numbers of letters written and telephone calls made or received calculated by reference to the appropriate remuneration rate. Costs limits are exclusive of VAT.

Costs Guidelines

2. Although each case must be considered on its merits, the Guidance which appears in this Section is intended to assist you as to the units of time (and therefore the costs) which are likely to be considered reasonable if an extension is sought to the upper limit or when a Claim is made for payment. If the information available does not justify a grant or partial grant, then the application should be refused and the reason(s) made clear.
3. The guidelines can be no more than indicators. The exact time indicated may not be reasonable in every case within the particular legal subject area. There will be cases where spending less or more time will be justified. The guidelines are based on competent and experienced Legal Representatives working on cases of average complexity or difficulty for Clients without special needs, such as learning difficulties, material physical disabilities or lack of English. Such special needs may increase the time which has to be spent with the Client to progress the case.
4. Guidance is not given for every area of work but only for those areas which are most common or where there are standard steps or procedures to be taken or followed.
5. The existence of the Guidance should in no way encourage you to work or to claim up or down to it. The costs in each case must be justified in the usual way. The Sufficient Benefit Test will need to be met in each case if Advice and Assistance (other than Advocacy Assistance) is to be provided or to continue to be provided.
6. The test for the assessor determining a costs Claim is whether the work appears to have been reasonably done and the time as claimed (excluding time spent on routine letters and calls) is reasonable. Whilst Solicitors may adopt six minute units for time recording purposes, on Assessment we will allow such time as is considered reasonable rather than notional time with reference to units. The Guidance is intended to include any reasonable letters and telephone calls, but not Disbursements. It does not allow for travelling, waiting or a home visit which would have to be justified in any particular case.

Complexity

7. The following are factors which may set the particular case outside the Guidance so that the costs which would be necessary, and therefore reasonable, would be in excess of the Guidance:
 - (a) the complexity of the subject matter itself;

- (b) difficult or novel point(s) of law outside the mainstream of work in that subject area of law;
 - (c) the volume of documentation required to be considered;
 - (d) difficulty in obtaining standard documentation or undertaking standard steps, either through practical difficulties such as obtaining papers lost or held by someone else or the delay, obstruction or lack of co-operation from the other side or any relevant administrative body such as the Home Office, e.g. as to service or progressing the case;
 - (e) the nature of the Client leading directly to an increase in costs because of his/her particular characteristics or needs. For example, if the Client has learning difficulties, is disabled, has insufficient knowledge of English to communicate with the Solicitor or is particularly vulnerable or difficult to take instructions from. If, however, Clients are unreasonably demanding, it may be unreasonable for additional costs to be incurred. It is expected that you should decline to provide further Advice and Assistance in such circumstances.
8. This list is not exhaustive and one or more factors may be present in any particular case. Ultimately, you must decide whether it is reasonable for the Advice and Assistance to be given and whether the costs incurred are reasonable given the particular circumstances.
9. The fact that a particular case involves a difficult or novel point justifying either legal research by the Solicitor or the obtaining of an opinion from Counsel is a factor which may place a particular case outside the guidelines. However, we are entitled to assume that the work is being undertaken by a competent and experienced Legal Representative and therefore that basic legal research should not be included in any costs but rather treated as a training need (and therefore as an office overhead) (see Part B, Rule 1.16). In any event, research is not just of particular applicability. It could be used in other appropriate cases and will form part of the firm's legal reference data. As such it will be an overhead particularly if Disbursements are incurred to obtain law reports.

Cases of less than average complexity

10. The guideline times are an indication of the figure up to which costs in a case of average complexity or difficulty would normally be justified. However, just as there are cases where spending more time will be justified there are cases where spending less time may reasonably be expected.
11. Factors which may justify allowing an amount less than the guidelines include economies of scale (resulting for example from the use of a single expert to provide reports in a number of cases); the use of working methods which reduce the time spent (e.g. the use of questionnaires to establish facts and issues), the use of pro formas to take instructions, the use of modern technology e.g. to carry out calculations and to produce standard documentation. Where standard pro forma letters are used the "routine letter" rate will be applied and you should minimise rather than maximise the number of letters (amalgamating information or requests for information where possible).

6.2 Criminal Investigations

Police Station Advice and Assistance

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

Advice and Assistance

Pre Charge

2. Where the Client is asked to attend an interview for questioning by a non-police body, such as the DSS, regarding possible criminal charges e.g. falsely claiming benefits, Advice and Assistance may be given if the Client satisfies the Qualifying Criteria. Any extension would depend upon factors such as the nature and complexity of the investigation, the distance to travel and the likely length of the interview. Police Station Advice and Assistance only covers interviews conducted by the police or customs.
3. Where the Client is released without charge or detained pending further investigations by the police into the offence, you may need to do urgent work to protect the Client's interests. An example might be to obtain evidence to forestall a police charge such as tracing an alibi witness, or you may need to take statements from witnesses likely to disappear. This is likely to be the exception and not the rule. It may occasionally be necessary to undertake further work for a second post mortem where a charge of murder is likely and the body is to be interred.
4. Prior to the grant of Representation, it may be necessary to apply for a variation of police bail conditions. This is covered by Advice and Assistance. Such an application can be made in writing unless there is good reason for you to actually attend at the Police Station to make oral representations.
5. The costs which are likely to be considered as reasonable will depend on your existing knowledge of the Client or the proceedings, the seriousness or complexity of the case and whether work needs to be undertaken prior to the grant of Representation.

Complaints

6. When arrested the individual concerned may make allegations about the manner of his or her arrest, treatment in the Police Station etc. These type of complaints may often be dealt with whilst in the Police Station although they may not be raised until the Client sees you in the office afterwards. The Client's comments and complaints should be dealt with as part of the general advice on the overall case. The only time a separate application for Advice and Assistance should be signed is where the nature of the complaint raises a serious and proper issue which cannot be dealt with within the context of the general criminal advice being given. The specific advice relating to the complaint may cover obtaining evidence, the benefits and disadvantages of making a complaint, maybe even writing the letter of complaint on a Client's behalf to the police.
7. The investigating officer nominated by the police to address the complaint takes a statement from the complainant, so it may not always be necessary for you to take a full statement. You should consider whether you need to be present during the making of that statement. If the Police Complaints Authority does become involved then you may need to see the Client again to discuss obtaining photographs, section 9 statements, tapes of interviews (depending on the nature of the complaint) in order to assist the Client further. In these circumstances it may be that further work of up to an hour (up to 10 units) may be required for further assistance. However, complaints taken up by the Police Complaints Authority form a very small proportion of cases and therefore this is likely to be the exception and not the rule.
8. These cases should not be confused with claims against the police in relation to wrongful arrest, false imprisonment or malicious prosecution for which an application for funding can be made to the Commission as part of the Community Legal Service.

6.3 Criminal Proceedings

Magistrates' Court Advocacy Assistance

Breach of a financial order in the magistrates' court - Advocacy Assistance

1. These provisions apply to civil proceedings arising out of breach of a financial order of that court. In criminal cases, such as non payment of fines ordered on conviction, the applicant is entitled to apply to the magistrates' court for a Representation Order. As civil proceedings in the magistrates' court arising from a failure to pay a fine or to obey an order of the court are prescribed under section 12(2)(g) of the Act, a Representation Order may also be sought on application to us under Rule 5.7 of this Part. Advocacy Assistance should not be refused simply on the grounds that a Right to Representation is also available. An application for a Representation Order which is submitted to us will be determined in accordance with the Interests of Justice Criteria. The availability of Advocacy Assistance will be a relevant factor which we will take into account, and hence our general approach is likely to be to refuse a Representation Order unless there are exceptional reasons why Advocacy Assistance is not appropriate.

2. The following questions should be considered when determining whether a Client meets the Advocacy Assistance merits test:

(a) *Is the applicant before the magistrates' court in civil proceedings as a result of a failure:*

i) *to pay a fine or other sum which he or she was ordered to pay; or*

ii) *to obey an order of the court?*

where such failure is likely to lead to the applicant being at risk of imprisonment?

If “no”, the application should be refused. If “yes”, go on to the next question. If the applicant is in breach of an order or penalty imposed by the court sitting in its criminal jurisdiction, Advocacy Assistance is not available and shall not be granted. Part A, paragraph 3.2.1(b)(i) does not extend to breach of an order or penalty imposed by the court sitting in its criminal jurisdiction as a grant of Representation may be sought from the magistrates' court to cover such cases. This paragraph makes Advocacy Assistance available only for proceedings in the magistrates' court arising from breach of a civil order. This includes civil financial default e.g. council tax non-payment and civil enforcement in family proceedings where there is a risk of imprisonment and a grant of Representation would not be available.

(b) *Could the case be dealt with by the Duty Solicitor?*

If it appears that the Duty Solicitor could deal with the case by providing the degree of Representation needed by the applicant, Advocacy Assistance should normally be refused.

Clearly if the court in question has no Duty Solicitor Scheme, or if no Duty Solicitor will be available for the hearing, Advocacy Assistance should not be refused on this ground. The courts have been issued with guidance to encourage these cases to be listed at times when the Duty Solicitor will be available.

It should be assumed that Duty Solicitors are experienced in helping people regarding non-payment of fines and assisting people in explaining their financial position to the court or putting forward mitigation for any failure. Therefore Advocacy Assistance should only be granted in preference to allowing the Duty Solicitor to deal with the case if the case is unusual, particularly in the sense that it raises complicated issues of fact, law or procedure.

The fact that the applicant may have many debts or complicated finances, would not make Advocacy Assistance necessary, unless the whole circumstances of the case were so complex that it would not be feasible to expect a Duty Solicitor to assimilate all the facts to present a necessary defence or mitigation to the court.

Advocacy Assistance should generally be granted if the case genuinely raises some new or complex issue of law.

If the case is not suitable for the Duty Solicitor, consider the next question.

(c) Is it in the interests of justice for Advocacy Assistance to be granted?

The Interests of Justice Criteria applicable to Advocacy Assistance are those set out in Schedule 3 to the Act but with the addition of one extra factor which is whether there is a real risk of an order being made which if breached could deprive the individual of his or her liberty (see Rule 4.3 in this Part). Once the legal and factual complexity of the case has been considered as above, in practice the most important element of the interests of justice test will be the likelihood of imprisonment.

The mere fact that at the hearing in question the applicant could in theory be committed to prison for non-payment should not automatically lead to the grant of Advocacy Assistance. The issue is whether there is a real risk of imprisonment. It is for you to note on the application form that there is such a risk with your justification. As a general rule a person is unlikely to be committed to prison on the first occasion they are brought before the court for failure to pay a fine or obey an order. Imprisonment will become more likely in cases where there have been a number of appearances, or where the court has issued a clear warning that the applicant is likely to be sent to prison.

If it is concluded that it is not in the interests of justice for Advocacy Assistance to be granted, the application should be refused. Otherwise consider the next question.

(d) Is it reasonable in all circumstances for Advocacy Assistance to be granted?

If it is decided that it is in the interests of justice for Advocacy Assistance to be granted, it will almost certainly be reasonable in all the circumstances for Advocacy Assistance to be granted. However, each case must be considered on its own facts and one cannot identify in advance every possible factor which may be relevant to the reasonableness of the grant.

For example, in some cases, it may be clear that the applicant is before the court solely because of his or her deliberate decision not to pay or obey an order, as opposed to a case where the applicant feels unable to comply or has a legal defence to the allegation against him. If, for example, an applicant was refusing to pay a particular charge solely because he felt on moral grounds that the charge or tax was wrongful, it might not be reasonable for Advocacy Assistance to be granted if this would lead to public funds being spent to argue a political or moral point of view rather than a legal defence.

If the case is not one that can appropriately be dealt with by the Duty Solicitor, it is in the interests of justice to be granted and there is nothing about the case which shows that it is unreasonable for Advocacy Assistance to be granted, the application should be granted.

Applications under the Crime and Disorder Act 1998 (including applications to vary or discharge an order) – Advocacy Assistance

3. You may grant Advocacy Assistance using Devolved Powers on an application for a sex offender order (SOO) or an anti-social behaviour order (ASBO) or an application to vary or discharge a SOO or ASBO. Breach of an order is a criminal offence and a Representation Order may be sought. You may also grant Advocacy Assistance on an application for a parenting order under sections 8(1)(b) or 8(1)(c) of the Act. You may also self grant Advocacy Assistance for an appeal to the Crown Court. When determining whether Advocacy Assistance should be granted the Advocacy Assistance merits test for this Unit of Work (see Rule 4.3 of this Part) should be applied as follows:
 - (a) It may be reasonable to grant Advocacy Assistance if the case raises complicated issues of fact, law or procedure. Examples of more complex cases include a contested application for a SOO or an ASBO made against an individual who is known to suffer from a mental disorder; a contested ASBO hearing involving disputed evidence from a “professional” witness (such as a police officer or local authority representative, used where another witness is too frightened to be identified and give evidence); a contested ASBO hearing raising the statutory defence of reasonableness or contested applications for ASBOs made against a group of named individuals. The estimated length of the hearing may also be a relevant consideration. An assessment of the factual, legal and procedural complexity of the case should be made to determine whether it would be reasonable for Advocacy Assistance to be granted;
 - (b) The next stage is to consider whether it is in the interests of justice for Advocacy Assistance to be granted. If it is considered that the interests of justice test set out in Rule 4.3 of this Part is not met, then Advocacy Assistance should not be granted. The interests of justice test is the same as the test set out in paragraph 2(c) above. An assessment should be made of whether the Client is at real risk of an order being made, where breach could lead to deprivation of liberty. If so, the interests of justice test is likely to be satisfied.
 - (c) if the interests of justice test is satisfied, it will almost certainly be reasonable in all the circumstances for Advocacy Assistance to be granted. However, each case must be considered on its own facts and merits.
4. For the purpose of proceedings in the Crown Court the test is slightly different:
 - (a) the merits test is based **only** on the general reasonableness test, i.e. an application for Advocacy Assistance may be refused if it appears unreasonable that approval should be granted in the particular circumstances of the case. When determining an application for Advocacy Assistance for an appeal, the prospects of success and merits of the appeal should be taken into account as well as whether the Client has reasonable grounds for taking the proceedings;
5. The relevant upper limit applies to work authorised.

6. As these proceedings are prescribed under section 12(2)(g) of the Act, a Representation Order may be sought on application to us under Rule 5.7 in this Part. In deciding whether to grant an application we will adopt the same approach as that set out in paragraph 1 above.

6.4 Appeals, Reviews and Variations

Appeals – Advice and Assistance

1. Where the Client has a Representation Order in the magistrates' court or the Crown Court, it covers obtaining advice on appeal and the preparation of any application for leave to appeal or giving notice of appeal against conviction or sentence. It also covers steps relating to the stating of a case by the magistrates' or the Crown Court. It is not appropriate to complete a separate application form for Advice and Assistance in those circumstances.
2. Where the Client did not have a Representation Order in the magistrates' court or Crown Court, he or she may require advice on the prospects of an appeal. You should provide confirmation of the grounds of an appeal. It may take 1 - 3 hours (10 - 30 units) to prepare the instructions to Counsel or a Solicitor advocate. Where Counsel or a Solicitor advocate advises favourably, allow 3 units for an application for a Representation Order for the purpose of an appeal.
3. If the Client has received an adverse opinion on appeal and wishes to obtain a further opinion, consider how long it was since the first opinion was given. If recent, and it appears that all issues have been considered, no further work should normally be undertaken.
4. However, where there is further evidence or the Solicitor can point to some defect in the opinion or the proceedings, then further work may be justified for a further opinion, regardless of when the first opinion was obtained. Allow up to 3 hours (30 units) for the preparation of the instructions to Counsel or a Solicitor advocate.
5. Where advice is sought in connection with an appeal to the Court of Appeal and you have undertaken all authorised steps under any Crown Court Representation Order or there has been a change of Solicitor, you shall consider whether a grant of funding is available directly from the Court of Appeal to cover further work. If so, you should make the appropriate application to that Court, rather than providing Advice and Assistance. Advice and Assistance should not be used as an alternative or supplement to the Court of Appeal's powers to grant legal representation, for instance as a means of funding Disbursements or representation by a Solicitor, where only Counsel has been authorised.

Criminal Cases Review Commission – Advice and Assistance

6. The Criminal Cases Review Commission (CCRC) has the power to refer cases back to the Court of Appeal under the Criminal Appeals Act 1995 where it considers that there is a real possibility that a conviction, verdict, finding or sentence would not be upheld. The CCRC's role is to review and investigate suspected miscarriages of justice, and to determine in each case whether or not a referral to the Court of Appeal is appropriate.

7. In most cases, the Solicitor considering the making of the application to the CCRC will not be the Solicitor who handled the defence preparation work/trial. In order that the convicted defendant can be given advice on the possibility and merits of the application it is likely to be necessary for the new Solicitor to obtain and consider a transcript of the judge's summing up (in Crown Court cases) and the defence Solicitor's file of papers.
8. At the first attendance you should take instructions from the Client to establish whether the case is one which the CCRC could consider. You should bear in mind that the CCRC is a last resort and an application to the CCRC may only be made if the Client has either appealed against the original conviction or leave to appeal has been refused. The CCRC's jurisdiction is confined to England, Wales and Northern Ireland and it can review any of the following:
 - (a) a conviction and sentence made by the magistrates' court or the Crown Court;
 - (b) a verdict of not guilty by reason of insanity;
 - (c) a finding that a person is under a disability but did the act charged.
9. If the Client is able to satisfy the above criteria, you must then go on to consider whether the case may be able to meet the referral criteria applied by the CCRC, i.e. whether it has a **real possibility** of succeeding if given a further hearing in an appeal court. The CCRC apply these criteria as follows:
 - (a) **Convictions:** (including verdicts of not guilty by reason of insanity and findings of unfitness to plead) there has to be an argument or evidence which was not raised during the trial or appeal or exceptional circumstances (such as a change in the law);
 - (b) **Sentences:** there has to be a legal argument or information about the Client or the offence which was not raised during the court hearing or any appeal.
10. It may or may not be possible to consider police and prosecution papers, the defence file and details of the original proceedings and appeal at this stage. Once the basic information has been obtained by way of a statement from the Client, you should carry out an initial screening of the case to determine whether an application to the CCRC should be made. This process enables you to screen out weak claims which would not meet the CCRC's referral criteria. Although the information available at this stage may be very limited, the decision as to whether the costs of further investigation are justified must be made by you in the light of the available information and using your professional skill and common sense.

11. If a Client qualifies for Advice and Assistance, initial case screening will normally be carried out within 20 units (two hours). It may not be possible to complete case screening within this time if the Client is located at a distant prison. The initial case screening will cover taking instructions, considering any relevant papers or records (if any are available at that stage) and the provision of initial advice as to law and procedure. You should reject a case following initial screening if there is no reasonable prospect that it will meet the CCRC referral criteria. Clearly, uncertainty over the merits at the initial screening stage would not necessarily result in you refusing to take forward an application, particularly where you consider that further investigations are necessary to establish whether the referral criteria are met.
12. These cases will often involve novel or unusual kinds of evidence. Some investigation may be necessary on behalf of the convicted defendant before any application is made, possibly including further forensic testing, the obtaining of witness statements and Counsel's opinion. If an application is to be made to the CCRC, then the Solicitor will be involved in gathering and rationalising the material, preparing a chronology of events, and preparing the submission of any legal arguments required.

Transcripts

13. A full trial transcript is rarely necessary to support a CCRC application. It may be reasonable to seek a transcript of the judge's summing up only, rather than the evidence at trial. If the Solicitor is seeking a transcript of part or all of the evidence, then a specific justification must be provided, e.g. an unreliable witness. Before authorising the expense of a fresh transcript, enquiries must be made to establish whether a transcript has previously been obtained, e.g. for the purposes of an appeal. If so, the original transcript must be used.

Counsel

14. It would be unusual to instruct Counsel prior to lodging an application to the CCRC. However, where specialist advice is required which falls outside the Solicitor's own expertise, it may be reasonable to seek an opinion, e.g. specialist advice on whether the judge properly directed the trial jury in his or her summing up. The expense of any Disbursement or Counsel's advice will count towards costs for the purposes of calculating whether an extension to the upper limit is necessary.
15. The Solicitor is also likely to need to advise and assist the convicted Client after the application is submitted to the CCRC by assisting the CCRC with specific queries, making further submissions (if appropriate) arising from the material disclosed by the CCRC in the course of the review and investigation, liaising with the CCRC as to its approach and progress and advising the Client in relation to any decisions made by the CCRC in the case. It may be necessary for the Solicitor to meet the CCRC's representatives on more than one occasion in a complex case.

16. It may be necessary to exceed the upper limit depending on the individual circumstances of the case. In these circumstances, an application must be made to the Regional Director in accordance with Rule 2.9. There is no other form of funding available for this type of work although the CCRC will, in considering the application, make what further enquiries it considers appropriate to enable it to investigate the case and reach a decision.

6.5 Prison Law

Advice and Assistance to Prisoners on Sentences – Advice and Assistance

1. Where the Client has been imprisoned for a mandatory life sentence, the judge recommends a period that he/she should serve (the tariff), but the Home Secretary fixes the tariff. The Client may make representations to the Home Office against the fixing of that tariff and up to 3 hours (30 units) work may be appropriate where the Solicitor was instructed during the trial. Any time beyond that should be closely justified. Where the Solicitor was not instructed for the original trial a period in excess of 3 hours (30 units) may be appropriate to familiarise him/herself with the case.

Hearings before the Parole Board, Governor or other Prison Authority – Advice and Assistance/Advocacy Assistance

2. You may grant Advocacy Assistance using Devolved Powers for disciplinary proceedings before Prison Governors or other prison authorities and, for discretionary life prisoners and automatic life prisoners for proceedings before the Parole Board under sections 28(6) and (7) or 32(4) of the Crime (Sentences) Act 1997. Advocacy Assistance may also be granted to cover representation in respect of Parole Board Reviews for prisoners detained at her majesty's pleasure and any other prisoner where the Parole Board decides to convene an oral hearing.
3. If the Prison Governor or other prison authority has granted permission for the prisoner to be represented the defendant is entitled to Advocacy Assistance subject to meeting the relevant Qualifying Criteria.
4. If the Prison Governor or other prison authority has not granted permission for Representation, it is unlikely that further work could be justified. Up to 20 units (two hours) should be sufficient to supply all necessary Advice and Assistance.
5. In the case of a discretionary life prisoner or automatic life prisoner, the proceedings must be within sections 28(6) and 28(7) or 32(4) of the Crime (Sentences) Act 1997. A discretionary life sentence is one imposed for a serious violent or sexual offence as opposed to a mandatory life sentence for murder. After a part of the sentence has been served, the lifer may ask the Parole Board to consider his/her release. Advocacy Assistance is available, subject to the relevant Qualifying Criteria.
6. In the case of her majesty's pleasure panels, the proceedings must be within sections 28(6) and 28(7) or 32(4) of the Crime (Sentences) Act 1997. The detention of a prisoner detained at her majesty's pleasure for murder can be reviewed by her majesty's pleasure panel of the Parole Board. Advocacy Assistance is available, subject to the relevant Qualifying Criteria.

Guidance on Time Standards

Type of Work	Suggested time in units (1 unit = 6 min.)
Further enquiries for complaints against the Police	Up to 10
Preparation of brief to Counsel to advise on appeal	Up to 30
Representations to the Home Secretary re. tariff	Up to 30
Preparation of application to Criminal Cases Review Commission	Up to 100

7. Supplementary Rules – all Authorised Levels of Service

Marketing

7.1 Cold Calling and Marketing

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

The marketing of contracted services via leaflets, letters or circulars should not be undertaken without our express permission.

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

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

Devolved Powers

7.2 Exercise of Devolved Powers

Devolved Powers shall extend to all Contract Work and shall be exercised by you in accordance with Guidance in all appropriate cases. The relevant Regional Director may modify, suspend or terminate any Devolved Powers granted to you.

1. Devolved Powers are as listed in Rule 7.3 below unless we have notified you otherwise. Devolved Powers must be exercised in every appropriate case and the decision may not be referred to the Regional Office although advice may be sought in cases of difficulty or doubt, especially when the Guidance given by us does not cover the situation referred to. Devolved Powers must be exercised in accordance with the Contract and Guidance.

7.3 List of Devolved Powers

Unless we otherwise direct, your Devolved Powers will be the powers to, as part of Contract Work:

- (a) **accept an application from a child direct under Rule 1.2 in this Part who is entitled to begin, prosecute or defend proceedings without a litigation friend or on behalf of a child or patient under Rule 1.3(d) in this Part;**
 - (b) **accept an application for Advice and Assistance or Advocacy Assistance by post from a Client resident outside England and Wales under Rule 2.1 in this Part;**
 - (c) **accept an application for Advice and Assistance from a Client who has received Advice and Assistance from another Solicitor within six months under Rule 2.12 in this Part;**
 - (d) **grant (or refuse) Advocacy Assistance under Rules 4.2, 4.5 and 4.6 in this Part;**
 - (e) **authorise the instruction of Counsel when Advocacy Assistance is given in accordance with Rule 4.8 in this Part;**
 - (f) **grant, refuse, amend or refuse to amend an emergency Certificate granted in the Associated CLS Class of Work (full Crime Franchisees only);**
 - (g) **amend or refuse to amend a limitation on a substantive Certificate issued in the Associated CLS Class of Work (full Crime Franchisees only).**
1. The Devolved Powers which are described in this Subsection are available provided they have not been withdrawn by notice to you and are only available in a Class of Work which you may perform under your Contract. You may exercise the powers set out in (a) to (e) above provided that you have passed a preliminary audit in the Crime category and you have been awarded a one year Contract or if you hold a three year Contract. The Powers set out in (f) to (g) above may only be exercised if you hold a full franchise in crime and a three year Contract.
 2. When you exercise any of your Devolved Powers you must do so in accordance with the relevant Rules and Guidance. You must provide details of the reasons justifying the exercise of the Devolved Power in the appropriate section of the Application and Record Form.

Applications by Children Direct (that is, those under 16 years of age)

3. The Power to authorise acceptance in relation to proceedings which that child is entitled to begin, prosecute or defend without a litigation friend under that Rule is not classed as a Devolved Power and will not be monitored as such.

Applications on Behalf of Children/Patients

4. The acceptance of applications under paragraphs (a) to (c) of Rule 1.3 does not count as the exercise of a Devolved Power and will not be monitored as such.

Clients Resident Outside England and Wales

5. Accepting a postal application from a Client resident within England and Wales does not count as the exercise of a Devolved Power and will not be monitored as such.

Advice and Assistance From More Than one Solicitor

6. It should be remembered that as previous Advice and Assistance has been received, it may only be reasonable to incur limited further costs. Furthermore, although this will depend on all the circumstances of the case, on a second or subsequent change of Solicitor the actual provision of Advice and Assistance is less likely to be justified and the costs which are likely to be considered reasonable will reduce.
7. The exercise of the Power to authorise the signing of an application form does not operate retrospectively. Work done prior to the date of exercise of the Power cannot be remunerated and should be disregarded in the calculation of work done when submitting a costs Claim.

Advocacy Assistance

Applications

8. The Devolved Power to grant an application for Advocacy Assistance will apply to all proceedings for which it is available (see Rules 4.2, 4.5 and 4.6 in this Part).

(a) Granting an application

Rule 4.5 in this Part provides that a written application is granted by the signature of the “Declaration and Grant” section on a properly completed application form by a practising Solicitor who is a designated fee-earner in your firm or your franchise supervisor in the relevant category. The application section of the form must be fully completed and signed by the Client before your signature. The grant will not operate retrospectively.

If a written application is not required (see Rule 4.6 in this Part), a check should be made that the Client satisfies any scope limitations and a note should be made on file.

(b) Refusing an application

The Devolved Power to approve Advocacy Assistance carries with it the corresponding duty to refuse it when the Criteria are not satisfied. When refusing you should make it plain that you are doing so on behalf of the Commission and applying the Criteria and the Rules and Guidance set out in this Contract.

Instructing Counsel

9. The Devolved Power to self authorise the instruction of Counsel in Advocacy Assistance proceedings must be exercised in accordance with Rule 4.8.

Legal Representation

10. The Devolved Powers set out in (f) to (h) above which only apply to Contract Work in the Associated CLS Class of Work must be exercised in accordance with the Funding Code Guidance (see section 12 for emergency certificates). You may only exercise these Powers if your office holds a full Crime Franchise.

Information

7.4 Information to Clients

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

1. This Rule deals firstly with information of a standardised nature relating to Client care issues, such as details of how complaints may be dealt with. We may provide a standardised format for the provision of this information, or may, for example, specify that all such information should be provided in one initial letter.
2. The Rule also requires you to make available any standard information leaflets that we supply you with. These will cover general guides to the services funded by the Criminal Defence Service or the Commission. Such leaflets should be made available as appropriate to any person who contacts your office, whether or not they become a Client for the purposes of this Contract. The provision of such leaflets will not be claimable by you as part of the costs of Contract Work.

7.5 Furnishing Information

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

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

Errors and Omissions

7.6 Contractor Error or Omission

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

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

7.7 Unnecessary Expenditure of Public Funds

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

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

7.8 Misrepresentation

If it comes to your attention that a Client has wilfully failed to provide information relevant to your decision to carry out Contract Work on his or her behalf or has knowingly made a false statement or false representation and after this failure or false statement or false representation has occurred, you have carried out Contract Work on the Client's behalf, then you should report the matter forthwith to the relevant Regional Director.

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

Distant Solicitors

7.9 Distant Solicitors

Contract Work must generally be provided from your office. Subject to the Guidance below, Contract Work may be provided to a Client on an individual basis where he or she for good reason cannot attend your office and it is reasonable in the circumstances for you to accept instructions from that Client.

Nothing in this Rule prevents you from giving Police Station Advice and Assistance, Advocacy Assistance or Representation at the appropriate court or tribunal or from travelling from your office to attend on Counsel, experts, witnesses or site inspections where it is appropriate to do so as part of the provision of Contract Work.

1. You should consider whether it is in all the circumstances appropriate to accept instructions having regard to the service to be provided to the Client and the costs of providing that service. There must be a good reason why the Client cannot be seen at your premises. Good reason will be where:
 - (a) the Client is in custody or detention, for example in a prison, Police Station, immigration detention centre or mental hospital;
 - (b) the Client is in hospital;
 - (c) a home visit is justified – this will be where the Client is elderly, ill or disabled or is caring for another person who is elderly, ill or disabled and in either case the Client is as a result unable to travel to your office. Note that a home visit is unlikely to be justified if the incapacity is temporary and the provision of Contract Work could be postponed without prejudice to the Client.
2. The reason relied upon must always be noted by you and kept on the file.
3. Even where there is good reason, you should consider whether it will be a more appropriate use of funds to advise without the need for personal attendance, (e.g. through a postal application and telephone advice). However, where it will be necessary for you to travel to see a Client who is at a distance from you, then you should consider whether it is reasonable to refer that Client to a more local Contractor, rather than accept instructions. Subject to paragraphs 4 and 5, it is unlikely to be reasonable for you to accept instructions from such a Client where the one way travelling time for you to visit the Client will be more than one hour.
4. You may exceed the allowable travelling times set in paragraph 3 above in any individual case if:
 - (a) there is no other more local Contractor available (including, if necessary, at short notice); or
 - (b) the Client's problem is so specialised that, in your reasonable view, there is no more local Contractor with the expertise to deal with the case; or
 - (c) you have significant previous knowledge of the case or dealings with the Client in relation to the issues raised by the case so as to justify renewed involvement even though the Client is at a distance; or
 - (d) your local court or the remand centre where the Client is located is more than one hour's travelling time away.

These factors must be balanced against the distance between you and the Client in terms of accessibility for the Client and increased costs of travel/travelling time. The greater the distance the greater the justification which will be required.

5. It is unlikely to be justified in any event for you to travel to attend on a Client at a significant distance from you, involving a one way travelling time of more than two hours in the absence of exceptional circumstances, for example where you are already engaged on a matter and the Client having been in custody at a centre local to you, is moved to a prison further away. Even where a longer time could be apportioned between a number of Clients on a particular occasion, this will not justify a longer travelling time because it will not necessarily always be possible to apportion in the same way on all occasions. A longer travelling time of up to three hours one way may be justified if you are acting for a prisoner and at least one of the criteria in paragraphs 4(a) to (c) above is satisfied. You should always consider whether using a video link (if available) between a court to the prison to conduct an interview with your Client would be a reasonable cost effective alternative to attending your Client at prison. This is particularly so where you are considering a one way journey time to prison of more than 2 hours and a video link is accessible to you within a shorter travel time. If you decide not to use a video link because you consider a prison visit is necessary, you should note your reasons on the file. It is unlikely to be justified for you to attend prison if this is less cost effective than a video link, unless your client suffers from a disability or there are other exceptional circumstances which make using a video link impracticable.
6. The reason for you accepting instructions and or making the journey when the Client is at a distance from you should be noted and kept on the file.
7. Where you do not consider that accepting instructions from a Client at a distance is justified, you should refer the Client to an appropriate source of information (such as the relevant Regional Office) regarding Contractors with relevant expertise who are more local to the Client.
8. If on Assessment we consider that Disbursements are abnormally large by reason of the distance of the court or the Client's residence or both from your office(s), we may only allow an amount which is reasonable having regard to all the circumstances.

Time Limits

7.10 Time Limits

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

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

Continuity of Service

7.11 Continuity of Service

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

1. This Rule aims to ensure that Contractors provide a comprehensive service to the Client. It is particularly important where you provide Advice and Assistance to a Client during a Criminal Investigation and he or she wishes to be represented in subsequent proceedings arising from that Investigation. A Contractor must be able to provide that service, unless there is a specific reason not to do so arising from this Specification. Examples of relevant Rules include Rule 2.7 (Refusal to Give Advice and Assistance - Good Cause), Rule 2.9 (Extend Upper Limit), Rules 4.9 and 5.5 (Change of Solicitor), Rules 4.11 and 5.11 (Withdrawal of Advocacy Assistance/Representation) and Rule 8.5 (Duty Solicitor Work).
2. This Rule does not override the circumstances in which a retainer may be terminated as set out in the Guide to the Professional Conduct of Solicitors.
3. Whilst we expect holders of an “All Classes” General Criminal Contract to be able to provide a comprehensive service within the Criminal Investigations and Criminal Proceedings Classes (see Part A, Sections 2 and 3), we recognise that not all Contractors will be specialists in the remaining Classes, i.e. Appeals and Reviews (especially CCRC Work), Prison Law and Associated CLS Work. If an individual Contractor lacks the appropriate expertise to undertake a Unit of Work falling into one or more of those Classes, then the Client must be referred to a Contractor which is a specialist in the relevant area of law.

Very High Cost Cases

4.7.12 Very High Cost Cases

A CDS Supplier which has conduct of a case that is a very high cost case shall notify the Commission in writing as soon as is practicable.

A very high cost case is a case with regard to which:

- (a) If the case proceeds to trial, that trial would be likely to last for 25 days or longer; or
- (b) The defence costs with regard to any one defendant (or group of defendants represented by the same firm of solicitors) are likely to amount to £150,000 or greater (such sum to include the solicitor’s fees and disbursements, advocate’s fees and VAT).

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

Once a case has been committed, transferred or sent to the Crown Court for trial you shall consider whether the case satisfies or may satisfy the definition of a very high cost case. If it does or if you are in any doubt, you shall refer it to us within 7 days of committal, transfer or sending or any later date on which the criteria for a very high cost case are satisfied for the first time. A note should be available on file to confirm that you have complied with this Rule. Failure to do so will be treated as a breach of contract.

8. Scope of Duty Solicitor Service and Service Obligations

8.1 Compliance with the Duty Solicitor Arrangements

1. It is your responsibility to comply with the provisions of the Duty Solicitor Arrangements 2001 and the Legal Advice and Assistance at Police Stations Register Arrangements 2001 and to ensure that all members of staff, including Duty Solicitors and Representatives, comply with the provisions of the Arrangements.

8.2 Service requirements for Police Station Duty Solicitor work

1. In Police Station Duty Solicitor cases the services set out in this Section shall be provided by a Police Station Duty Solicitor or an Accredited Representative in the full or part-time employment of, or a partner in the same firm or organisation as, the Duty Solicitor. You may deploy an Accredited Representative to undertake Police Station Duty Solicitor work in accordance with paragraph 8.2.11 below. For Guidance on what we mean by employment, see Subsection 8.7 below.
2. Cases referred by the Call Centre Service to you whilst one of your Duty Solicitors is on Rota duty must be accepted unless the Duty Solicitor named on the Rota is already engaged in connection with another Client at a Police Station or at a hearing of an application for a warrant of further detention or an extension of such a warrant or at an armed forces custody hearing or a conflict of interest arises. If the Duty Solicitor is already at the same Police Station when a Client requests the Duty Solicitor, he or she shall notify the Call Centre Service when a request for advice is accepted. If a conflict of interest arises the case must be referred back to the Call Centre Service.
3. You may accept a case referred by the Call Centre Service if the Duty Solicitor named on the Rota is unavailable for one of the reasons set out in paragraph 8.2.2 above but you have another Duty Solicitor available to accept the case without delay who is able to arrange attendance at the Police Station, if necessary, within 45 minutes.
4. You may accept Panel and Back-up cases referred by the Call Centre Service and must use all reasonable endeavours to do so.
5. With written prior approval from us you may use non-Duty Solicitor staff to receive calls from the Call Centre Service, and such staff may accept a referral from the Service provided that:
 - (a) we are satisfied that the staff concerned have been effectively trained to undertake such a role; and
 - (b) there are clear procedures in place for such staff to follow which ensure that referrals are not accepted unless there is a Duty Solicitor available to make first contact with the Client immediately and which ensure that referrals are passed to such Solicitors immediately; and

- (c) a Duty Solicitor is available to make first contact with the Client immediately and is able to arrange attendance at the Police Station, if necessary, within 45 minutes.
6. Subject to paragraph 8.2.8 below, the following services shall be provided once a case has been accepted:
- (a) initial advice by a Duty Solicitor personally by speaking directly to the Client on the telephone unless the Solicitor is at or adjacent to the Police Station and can immediately advise the Client in person, or the police refuse to permit the suspect to speak to the Duty Solicitor on the telephone, in which case he or she may attend the Police Station. If the Client is incapable by reason of drunkenness or violent behaviour of speaking to the Solicitor, initial advice may be postponed. Other circumstances in which initial advice may be postponed include sleep periods or where an interpreter is required. The Duty Solicitor shall make arrangements to provide initial advice as soon as the Client is capable of speaking to him or her;
 - (b) attendance at the Police Station to provide advice and to attend all police interviews with the Client during the Duty Period where the Client has been arrested in connection with an arrestable offence under section 24 of the Police and Criminal Evidence Act 1984;
 - (c) attendance at any identification parade, group or video identification or confrontation;
 - (d) attendance at the Police Station where the Client complains of serious maltreatment by the police;
 - (e) attendance at the Police Station where the Client is a youth or person at risk;
 - (f) the provision of advice where a Client is to be charged with an arrestable offence on the implications of the caution which will be given when the Client is charged. Consideration must also be given as to whether attendance should take place at that time bearing in mind whether it is possible to give confidential telephone advice and the possible consequences of not making a statement when being charged;
 - (g) representation in connection with an application for a warrant of further detention under Part A, paragraph 2.2.1(d) of this Specification;
 - (h) if a police interview and any identification parade, group or video identification or confrontation is postponed to a time when the Duty Solicitor is no longer on duty or, if on a Panel, where it is no longer convenient to act as Duty Solicitor, he or she must make arrangements to ensure that the Client continues to receive advice either by a Duty Solicitor or Own Solicitor. The Duty Solicitor may continue to act on an Own Solicitor basis.

7. The Duty Solicitor shall give initial advice. On giving initial advice under 8.2.6(a) above, the Duty Solicitor shall exercise his or her discretion whether it is in the interests of the Client for him or her or, if appropriate, an Accredited Representative to attend the Police Station. Attendance is mandatory under paragraphs 8.2.6(b) to (e) and (g) above, unless exceptional circumstances exist (see paragraph 8.2.8 below). In assessing whether attendance is necessary the Duty Solicitor shall consider whether advice can be given over the telephone with sufficient confidentiality and if he or she can communicate effectively with the Client by this means.
8. If exceptional circumstances exist which justify non-attendance at the Police Station, the Duty Solicitor shall record his or her decision not to attend, including details of the exceptional circumstances and the reasons for the decision on the case file. Exceptional circumstances could arise if a Client expressly instructs the Duty Solicitor not to attend. Exceptional circumstances are less likely to arise in the case of paragraphs 8.2.6(d) and (e).
9. If the Client is a Services Person at a services establishment or elsewhere assisting with an investigation by the Services Police and suspected of offences contrary to the Services Discipline Acts where:
 - (a) the investigation involves any offences which cannot be dealt with summarily; or
 - (b) the offence appears to the interviewing Services Police to be serious,

the Duty Solicitor shall attend personally upon the Client where he or she considers that such attendance is necessary for the protection of the Client's interests.
10. If the Client is a Services Person requiring representation at a custody hearing before a judicial officer under the Armed Forces Discipline Act 2000, the Duty Solicitor shall attend personally upon the Client to provide Advice and Assistance (including Advocacy Assistance).
11. The services described in paragraph 8.2.6 above shall be provided as follows:
 - (a) initial advice under paragraph 8.2.6(a) above shall be provided by a Duty Solicitor where the case has been referred by the Call Centre Service or accepted as a Duty Solicitor case at the Police Station;
 - (b) the services referred to at paragraphs 8.2.6(b) to (f) above shall be provided by a Duty Solicitor or, where appropriate, by an Accredited Representative;
 - (c) the services referred to at paragraphs 8.2.6(g) to (h), 8.2.9 and 8.2.10 above may only be provided by a Duty Solicitor or an Accredited Representative who is a Solicitor where the case has been referred by the Call Centre Service or accepted as a Duty Solicitor case at the Services establishment.

If services are provided under (b) or (c) above by an Accredited Representative or Solicitor who is not an employee of the firm, the travel time claimed shall not exceed 45 minutes each way.

12. The Client shall be informed before advice is given of the status of the individual giving such advice.
13. Where required by local instructions, all staff undertaking Police Station Duty Solicitor work must carry an identification card as specified by us for production when attending Police Stations.
14. You shall only attend the Police Station when the Sufficient Benefit Test set out in Part B, Rule 2.5 is satisfied. The circumstances when this test will be satisfied include:
 - (a) to provide advice prior to and during interview;
 - (b) to advise at an identification procedure (including a video identification procedure when the Client is not present);
 - (c) when appropriate, to advise a Client who is a youth or person at risk;
 - (d) when appropriate, to advise on the implications of the caution when the Client is charged with an arrestable offence;
 - (e) to advise when the advice may materially affect the outcome of the investigation and goes significantly beyond initial advice;
 - (f) to advise a Client who complains of serious maltreatment by the police.
15. On Assessment of your Claims for Police Station Advice and Assistance we will take into account the factors above when determining whether it was reasonable for you to attend. If none of these are satisfied then further justification shall be provided on file. If one or more of the factors are met, then the attendance will normally be justified, however we may still reduce the Claim if we consider that the time spent was not reasonable.
16. Any attendance must be for the purposes of providing legal advice that could not be given over the telephone to the Client. You may not claim for an attendance when the advice could have been provided reasonably by way of telephone advice. If we consider that the advice could have been provided reasonably over the telephone, we may disallow the costs of any attendance at the Police Station, however, we will take into account any evidence on file that attendance was considered necessary at the time the decision to attend was made. The file must show that the attendance was expected to materially progress the case beyond initial advice. If you were already at the same Police Station, we may cap your Claim to no more than the value of the Police Station Telephone Advice fixed fee if we consider that advice could have been provided reasonably over the telephone.
17. In the following cases, you may provide Police Station Telephone Advice only and you shall not claim from public funds for any Police Station Attendance unless one of the exceptions in paragraph 18 below applies:
 - (a) Client detained in relation to a non-imprisonable offence;

- (b) Client arrested on a bench warrant for failing to appear and being held for production before the court, except where the solicitor has clear documentary evidence available that would result in the client being released from custody in which case attendance may be allowed provided that the reason is justified on file;
 - (c) Client arrested on suspicion of:
 - i) driving with excess alcohol who is taken to the Police Station to give a specimen (Section 5 Road Traffic Act 1988);
 - ii) failure to provide a specimen (Sections 6, 7 and 7A Road Traffic Act 1988);
 - iii) driving whilst unfit/drunk in charge of a motor vehicle (Section 4 Road Traffic Act 1988).
 - (d) Client detained in relation to breach of police or court bail conditions.
18. You may attend the Police Station to advise on any Matter falling within paragraph 17 above if one of the following exceptions applies and the Sufficient Benefit Test is satisfied:
- (a) An interview or an identification procedure is going to take place;
 - (b) The Client is eligible for assistance from an appropriate adult under the PACE Codes of Practice;
 - (c) The Client requires an interpreter or is otherwise unable to communicate over the telephone;
 - (d) The Client complains of serious maltreatment by the police;
 - (e) The investigation includes another alleged offence which does not fall within paragraphs 17(a) to (d) above;
 - (f) You are already at the same Police Station, in which case you may attend the Client but may not claim more than the Police Station Telephone Advice fixed fee.

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

19. An attendance at the Police Station for an ineffective bail to return may be disallowed if telephone checks were not made prior to the attendance to establish whether it would be effective.
20. If the police indicate that an interview or identification procedure will take place at a specified time, Police Station Telephone Advice may be provided to the Client. You should attend the Police Station in sufficient time prior to the allotted time to undertake reasonable steps that directly relate to the interview or identification procedure e.g. taking instructions from the Client, obtaining disclosure of evidence, attending the officer in the case.

21. When you attend the Police Station you shall seek to minimise the travel, waiting and attendance time that you incur. In assessing whether your Claims are reasonable we may take into account the average costs incurred by other CDS Suppliers in your region.
22. You may provide further legal advice to the Client immediately following charge, but it will not be reasonable for you to continue to attend the Client thereafter whilst fingerprints, photographs and swabs are taken, except where the Client requires further assistance due to his or her particular circumstances, such as youth or vulnerability, in which case the relevant factors must be noted on file. It is reasonable to remain at the Police Station if you are required to make representations about bail provided that the justification is noted on file.

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;

(f) Advice and Assistance and, where appropriate, Advocacy Assistance to a 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 of 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 sections 2 and 5 of the Anti-social Behaviour Act 2003 relating to the making or extension of a closure order;

(g)(h) 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.

3. A Duty Solicitor shall not under paragraph 8.3.2 above provide Advocacy Assistance in committal proceedings or at a not guilty trial, nor subject to paragraphs 8.3.2(e) to (g), Advice and Assistance or Advocacy Assistance to a Client in connection with a non-imprisonable offence.
4. On any adjourned hearing, a Duty Solicitor shall not, as Duty Solicitor, provide Advice and Assistance or Advocacy Assistance to a defendant to whom he or she or any other Duty Solicitor has provided services in the same case except in connection with defendants coming within paragraph 8.3.2(b) above.
5. A court Duty Solicitor shall not advise or represent any Client at a sitting when that Duty Solicitor or any member of his or her firm is representing the Crown Prosecution Service in the same court building.
6. A court Duty Solicitor shall remain at the court until it has become clear to him or her after consulting the clerk of the court where practicable that Advice and Assistance or Advocacy Assistance is not required by any defendant.
7. We may require, for specified Magistrates' Court Local Schemes, that a Solicitor, whilst acting as a Duty Solicitor, may not undertake any cases in connection with which he or she has previously received instructions.
8. A court Duty Solicitor shall wear an identification badge during his or her Duty Period at court where required to do so by the court or local instructions.
9. An application for a Representation Order shall not be made by you (or anyone working under your firm's contract) for any Matter or Case that concludes on the same day as the court Duty Solicitor session where you have acted as court Duty Solicitor on that Matter. Such work shall be claimed at the court Duty Solicitor rates set out in Part E Section 3.4 of this Specification. An exception to this Rule applies where the Matter or Case was not within the scope of service of the court Duty Solicitor scheme.

10. A court Duty Solicitor must check that the matter falls within the scope of service of the court Duty Solicitor scheme before accepting instructions to act. A written record must be made, either before the Advice and Assistance or Advocacy Assistance is provided or, if provided at very short notice, as soon as practicable thereafter. Details recorded should include the Client's name, address, date, time and venue of court appearance, confirmation that the Matter falls within scope and whether the Client is in custody or charged with an imprisonable offence.

8.4 Obligations of Contractors

1. It is your responsibility to ensure that any Rota duty slot allocated to your firm or organisation in a Rota issued by the Commission is covered by you using a Duty Solicitor. A Duty Solicitor may only be employed by one CDS Supplier (see the Duty Solicitor Arrangements 2001).
2. If your firm or organisation is unable to cover a Rota duty slot you may:
 - (a) swap the duty with or give duty to another Duty Solicitor employed by your firm ; or
 - (b) swap the duty with or give the duty to another Duty Solicitor who is a member of the Local Scheme to which the slot has been allocated and is employed by a CDS supplier;

and, where the above applies you must notify:

- i) in the case of a Police Station Local Scheme the Call Centre Service;
or
- ii) in the case of a magistrates' court Local Scheme the magistrates' court clerk,

of the details of the change as soon as possible, and when practicable to do so, at least 24 hours before the Duty Period is due to commence.

3. At all times it remains your responsibility to ensure that allocated Rota Duty Solicitor slots are covered, either by your firm or organisation or in accordance with arrangements made under paragraph 8.4.2 above, unless exceptional circumstances arise, such as staff illness.
4. Duty Solicitors may swap rota duty slots within the firm or organisation as considered appropriate, but must notify the Call Centre Service of any consequential changes of contact details as soon as possible, and when practicable to do so, at least 24 hours before the Duty Period is due to commence.
5. You must consider all requests to accept Panel and Back-up cases and must use all reasonable endeavours to accept them.

8.5 Client's right to instruct another Solicitor

1. A Duty Solicitor must inform every Client that he or she is not obliged to instruct the Duty Solicitor.

2. If a Client wishes another Solicitor to act, the Duty Solicitor shall not act unless the named Solicitor is not available and the Client asks the Duty Solicitor to act on that occasion only. If a Representation Order has been granted to a Client or another CDS Supplier, a court Duty Solicitor shall not act for that Client, unless instructed to act as agent for that CDS Supplier.
3. If the Duty Solicitor does not continue to act for the Client, he or she must make available to any Solicitor subsequently instructed any relevant information or papers.

8.6 Non-discrimination

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

8.7 Meaning of Employment

1. The question whether a Solicitor or Representative is an employee is a question of fact which must be determined according to the individual circumstances of each case.
2. There are various tests in employment law which identify whether an individual is an employee i.e. works under a contract of service (employment contract) or self employed i.e. works under a contract for services as an independent contractor, agent etc. If a person is said to be employed under a contract of service we may require production of the written particulars of employment required by law or the written contract of service itself.
3. If we conclude that the Solicitor or Representative is not employed under a contract of service or there is doubt about employment status, we will go on to consider whether the individual satisfies the “direct supervision” test. There are two elements to this test:
4. **Supervision:** A Solicitor or Representative who is not employed under a contract of service must be under the supervision of your firm. It is generally easier to demonstrate supervision if this takes place regularly, rather than on an ad hoc or individual case basis. It is more difficult to exercise supervision at a distance. The less direct contact there is between the firm and the individual, the less likely there is to be an effective supervisory relationship. Supervision must be exercised directly rather than through a third party.
5. **Integration:** the more fully integrated the Solicitor or Representative is into your firm, the more likely it is that he or she is directly supervised. The greater the degree of continuity in the relationship between the individual and your firm, the more likely it is that the individual is supervised. If the Solicitor or Representative only performs one off or occasional services for you and has done so over a relatively short time period then he or she is less likely to be directly supervised. To demonstrate integration we would normally expect your office to be the individual's primary place of work.

Part C Contract Work – Reporting Assessment and Payment of Claims

1. General Rules – All Authorised Levels of Service Files

1.1 Assessment and Information to be retained on file

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

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

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

1. The above information may be called for by the Regional Director for the purposes of Assessment. It will also be required on audit.
2. The setting off of credits against your Standard Monthly Payments will be without prejudice to our right to assess.

3. Although we have the right to assess every case that you claim for, we will normally assess a sample of your Claims and apply those findings (usually expressed in terms of an average percentage reduction on the sample) by way of Assessment to other files instead. This is on the basis that we would be likely to arrive at a very similar overall result if we assessed every file to which the findings are being applied. This ~~process is to~~ avoids the cost and delay to both you and us that would be caused by our assessing every individual case and allows you to receive regular payments without having to wait for each individual claim to be scrutinised.-
4. Paragraphs (b), (c) and (d) of this Rule will be complied with by completing the form provided by us and retaining it on file.

Claims

1.2 Time Limit for Submission of Claims

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

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

Where sentence is deferred in the magistrates' court, a Claim must be submitted within three months of the date of deferment. A separate Claim may be made for work done following the deferment. This must be submitted within three months of the Client's reappearance for sentence and shall be claimed as a category 1 standard fee.

Where proceedings in a magistrates' court have not been concluded but a warrant of arrest has been issued, a Claim for costs in respect of work done under a Representation Order shall be made not earlier than six weeks and not later than 19 weeks from the date of issue of the warrant. A supplemental Claim may be made for any further work undertaken after the original Claim has been submitted if the Client is arrested or surrenders. The original Claim will then be recalculated.

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

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

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

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

1. A Matter or Case ends for the purposes of this Rule, when one of the events set out in Rule 1.3 below occurs. A Duty Period ends on the date when the Duty Period concludes.
2. Where a Claim is submitted outside the three month limit, an explanation should be provided, stating whether there are circumstances which would justify not imposing a late Claims penalty. In deciding whether there are such circumstances, each case will be judged on its own merits, although regard can be had to your firm's history of late Claims. Such circumstances might relate directly to the conduct of the case itself, e.g. where a co-defendant's case is awaiting disposal, or to the conduct of the firm, e.g. oversight, loss of file, departure of fee-earner. If a firm has a history of late claiming, then the circumstances are less likely to justify not imposing a late Claims penalty.
3. Where the circumstances relate to reasons beyond your control concerning the Case itself a penalty will not be imposed. Where an explanation is provided, we will not generally impose a penalty unless your office has a history or an established pattern of submitting late Claims.
4. Deductions are based on the global bill (including any Counsel's fees and Disbursements) and not just profit costs, but are made from the payment which would otherwise be made to the Solicitor unless Counsel has been responsible for the delay, e.g. late return of papers. Counsel's fees (i.e. the amount you agreed to pay in a standard fee case) are preserved for payment, provided that he or she has not caused or contributed to the delay.
5. If you are acting for more than one Client in the same Case and that Case concludes at a different time for each Client, then you should submit a single Claim once the Case covering all relevant Clients has concluded. The trigger date for submitting a Claim is the latest date on which the proceedings concluded for all Clients.
6. You may appeal to the Costs Committee under Rule 1.11 of this Part against the imposition of any late Claims penalty.

1.3 Matter and Case Ends

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

- (a) where work is undertaken in the Criminal Investigations Class, when the Investigation has concluded, either by way of the Client being charged or summoned, or the Matter being disposed of in any other way;
 - (b) when you are notified that a Criminal Investigation or Criminal Proceedings are discontinued or withdrawn (or do not proceed for some other reason);
 - (c) where Advice and Assistance is given in the Appeals and Reviews Class of Work under Part A, paragraph 4.2.1(a)(i), when a Representation Order is granted by the court under paragraph 4.2.1(b);
 - (d) where Legal Help is given in the Associated CLS Work Class under Part A, Subsection 6.2, when a Certificate is granted for Legal Representation for the same Client arising from the same Matter;
 - (e) the Matter or Case has concluded;
 - (f) the Client decides not to proceed or decides to act in person;
 - (g) it is known that no further work will be undertaken for the Client in the same Matter or Case;
 - (h) it is unclear whether further work will be required or not and the Client fails to give instructions for two months (unless the Matter is on hold, for example, because you are waiting for a third party to act);
 - (i) the Matter or Case begins to be funded outside this Contract;
 - (j) you have informed the Client that the provision of Contract Work is no longer justified and no appeal is submitted or pending;
 - (k) in a Case only, when it comes to your knowledge that a Representation Order has been withdrawn, revoked or discharged;
 - (l) subject to (l) above, you can no longer act due to a conflict of interest or other good reason or the Client is referred to, or instructs, another Solicitor. The Matter or Case ends either on the date of referral or when a new Solicitor is instructed, whichever occurs first.
1. We need to be able to identify when Matters and Cases end so that we can monitor the legal services which are being provided, and to ensure that Claims are submitted promptly.
 2. The reason for a Matter or Case ending must be evident from your file. You must submit your Claim for payment in accordance with the Rules in this Specification to the appropriate Regional Office within three months of the Matter or Case ending.

3. Where you have agreed with the Client that the Matter is on hold, paragraph (i) above will not be satisfied. The Matter will, however, end under this sub-clause where instructions are required from the Client and he or she fails to respond.

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

1.4 Magistrates' court non-standard fee Claims

A Claim for a non-standard fee for Representation in the magistrates' court shall not be included in the Contract Work Report Form. Each Claim must be submitted on a form specified by us and will be assessed individually.

You shall submit the following with your Claim:

- (a) all the information specified in Rule 1.1 of this Part, where relevant;
- (b) where enhanced rates are sought, you must provide full details of how the work meets the criteria for enhancement.

The relevant Regional Director will assess the Claim.

This Rule also applies to Claims for payment from assigned Counsel which must contain the same UFN and be submitted with your Claim. You are responsible for notifying Counsel of the UFN number.

1.5 Claims for Police Station Advice and Assistance

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

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

1.6 Claims for magistrates' court Representation

The costs of any Claim required by Part A, Subsection 3.4 to be submitted with your Claim for magistrates' court Representation shall be applied in calculating the relevant standard fee payable in accordance with Part E of this Specification.

Where you act for more than one Client in Criminal Proceedings which form a single Case, your Claim for payment shall cover all Clients represented. Where you undertake work for more than one Client on the same Case, you must assign the same UFN to each Client for claiming purposes. The work undertaken will form a single Claim to which you must assign the UFN of the "lead" Client in accordance with Part B, Rule 1.4 of this Specification. You shall retain on file a breakdown of the time spent with each Client which may be requested by us for Assessment or audit purposes. This information must be submitted as part of your Claim in a non-standard fee Case.

You must submit a separate Representation Order for each Client with your Claim.

1. When a High Court bail application (judge in chambers) is undertaken, the work forms part of a "Case" for the purposes of the magistrates' court standard fee scheme and must be claimed as part of the standard fee Claim.

1.7 Claims for High Court Representation

The procedures under this Contract for the Assessment of remuneration for Representation in the High Court for a Claim under Part A, paragraph 3.2.1(e) (certain High 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.

1.8 Inter Partes Costs

Where an agreement or order provides for costs to be paid by any other party in favour of a Client for whom you have been providing Representation in the High Court under this Contract then, notwithstanding the provisions of Rule 1.20 of this Part, you may retain the element of any costs recovered under that agreement or order which exceeds the amount paid or payable to you by us in relation to the relevant dispute or proceedings under the terms of this Contract.

Where interest has been received on the costs, you may retain a proportion of the interest which equates to the proportion of the total costs recovered which you are authorised to retain under this Rule.

The balance of any costs and interest after you have retained any element authorised by this Rule must be forwarded to us forthwith.

1. This Rule constitutes the Commission's authority under section 22(2) of the Access to Justice Act 1999 and allows you to retain the excess of inter partes costs over the prescribed rates. It also allows you to retain any proportion of the interest paid on those costs that relates to that excess figure.

1.9 Previous Claims

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

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

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

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

Assessment and Costs Appeals

1.10 Applying Findings Generally on Assessment

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

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

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

whichever is the ~~most~~more recent.

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

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

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

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

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

~~1. When a Claim is reduced on Assessment, it will often be on the basis of a particular practice or interpretation of the Guidance applied by you which will also be an issue in relation to other matters. In those circumstances, which are particularly likely to apply across Matters or Cases in the same Class, it will be appropriate for the Regional Director to make a finding of fact or principle which will then apply to all such Matters or Cases. This does not mean that all the relevant Matters or Cases will necessarily be assessed in the same amount but that the particular issue will be treated the same way on each Assessment. The Rule applies not only to any outstanding Assessments, but to any Claims for Contract Work submitted after the finding has been made, but subject to Clause 12B.9 of the Standard Terms.~~

1.11 Appeals

If you are dissatisfied with any decision of the Regional Director as to the assessment of the costs of Contract Work, you may ~~within 21 days of notification of the decision make written representations~~ appeal to the Costs Committee ~~by way of an appeal provided any such appeal is:~~

- (a) Made within 28 days (or such longer period as we may agree) of the notification of the Regional Director’s decision; and is
- (b) Made in writing and sets out the grounds for your appeal; and is
- (c) Accompanied by the relevant file.

The Regional director may extend the 28-day time limit but only where there are exceptional circumstances for doing so and even then only if the request for an extension is received by us before the 28-day time limit has expired. Failure to comply with any of the above requirements means that you accept the decision of the Regional Director and lose your right to dispute it.

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

~~Either party may attend and be represented on the appeal, provided that notice is given to the other party and the Costs Committee. The Costs Committee may give procedural directions as to the determination of the appeal.~~

~~1. Where you are appealing a number of Assessments, (particularly if your appeal is based on a finding by the Regional Director in accordance with Rule 1.10 of this Part), then the Costs Committee may be asked to deal with the appeal in relation to one or more sample Assessments and to direct that their decision shall apply in relation to some or all of your other outstanding Assessments. This prevents a large number of appeals which raise similar issues from coming before the Costs Committee and reduces the administrative cost to both you and us.~~

1. Your appeal may be in relation to the individual Assessments, or on the basis that you disagree with the application of Rule 1.10, or both. On appeal, the Costs Committee will consider the assessments on any individual files before them. Where the findings they make on those files revises the average percentage reduction on the sample of files assessed by the regional office, then unless the Committee directs otherwise, that revised average will apply to your unassessed files under the terms of Rule 1.10. However, the Committee has power to make its own findings under Rule 1.10 and may substitute such findings for those of the Regional Director.
2. If we do not receive an application for an appeal together with the relevant files within the required period, the Assessment stands. If you apply for an appeal within the 28 days, or extended, period but a relevant file is not sent within that period, the assessment on that file stands, whether or not that file is one of a sample of files that you wish to appeal.
3. “Exceptional circumstances” must be exceptional e.g. fire or theft, or if a file has been transferred to other solicitors, or if it is required to urgently progress the matter for the client. In the latter case we may require you to produce the file on an undertaking from us to copy and return it within a short period (such as 48 hours or less if you require the file for very urgent action). In all cases, we may require documentary proof of the circumstances to be relied on.
4. We will return the files to you either before or at the same time as notifying you of the Assessment results. You will not be deemed to have been notified of the results of the Assessment (and therefore your time limit for appealing will not start to run) until we have also returned the files.

5. When an appeal is submitted, the Regional Office will prepare an agenda for the Committee. Either you or the Regional Director may make further written submissions as to the Assessments or the basis of the appeal prior to the hearing.
6. There is a right for either you or the Regional Director to attend or be represented on the appeal. If you wish to attend, you must give notice when you submit your written appeal (i.e. within ~~28~~ days of receiving the costs assessment decision). If we wish to attend, we must give notice when the agenda is sent out. We will not exercise our right to attend in every case, and will only do so in any event if you have indicated that you will attend the hearing.
- 4.7. The purpose of our attendance will be to respond, during the hearing, to any request for clarification of our decision by the Committee or to any representations made by you. Our representative will not be present during any 'in camera' deliberations by the Committee.
- 5.8. For the avoidance of doubt, nothing in this Rule relates to the presence at the Committee of a clerk supplied by the Regional Office to carry out administrative functions under the Review Panel Arrangements 2000.

1.12 Cost Appeals Committee

If you remain dissatisfied with the decision of the Costs Committee on an appeal you may within 21 days of receipt of notification of the decision, apply in writing to ~~the relevant a~~ **Costs Committee to certify a Point of Principle of General Importance. Your application must set out the wording of the Point (or Points) of Principle of General Importance that you wish the Costs Committee to certify.**

Where a Costs Committee certifies a Point of Principle of General Importance you may, within 21 days of receipt of notification, ~~appeal apply~~ in writing to the Cost Appeals Committee **for it to determine that Point of Principle against the decision of the Costs Committee on the appeal.**

If you do not comply with the above time limits (or any extended period agreed by us) you thereby accept the decision of the Costs Committee under Rule 1.11 and lose your right to dispute it.

We will extend the time limits for applying to the Costs Appeals Committee only if you request an extension before the time limit expires and there are exceptional circumstances.

If the relevant Regional Director is dissatisfied with the decision of a Costs Committee on an appeal brought by you, the Regional Director may within 21 days of that decision certify a Point of Principle of General Importance and **appeal apply** in writing to the Cost Appeals Committee **for them to determine that Point of Principle against the decision of the Costs Committee.** Notice of such appeal will be served on you, and you may, within 21 days of receipt of such notice, make written representations to the Cost Appeals Committee.

On considering an application under this Rule, the Cost Appeal Committee will either:

- (a) determine any Point of Principle of General Importance certified by the Costs Committee or Regional Director and, where appropriate, amend any of the Assessments of the Costs Committee to give effect to this determination or refer the matter back to the Costs Committee for it to do so; or
- (b) determine that there is no Point of Principle of General Importance raised by the application before it and refuse the application accordingly.

~~On an appeal brought under this Rule by either the Regional Director or by you, the Cost Appeals Committee may reverse, affirm or amend the decision of the Costs Committee. The Cost Appeals Committee will usually determine the application on the papers before it but may exceptionally at its discretion grant a request by an appellant to attend and/or be represented on the appeal, provided that the same right is granted to the other party to the appeal.~~

1. This Rule gives you the right to seek a determination on a Point of Principle of General Importance~~a right of appeal~~ when dissatisfied with the Costs Committee's decisions on Assessment of your costs. ~~However~~ Since it is essential that there is consistency of interpretation across all Regions and the Rule therefore also allows the Regional Director to refer the matter to the Cost Appeals Committee where in his or her view a Point of Principle of General Importance has been raised by a review and which requires a definitive decision. However, the Regional Director will require the consent of the Legal Services Commission's Policy & Legal Director (who will have to agree that there is a general principle raised by the case) before making the referral.
2. Clause 3.2 of the Standard Terms requires compliance with Points of Principle of General Importance.
3. The Cost Appeals Committee (or Cost Committee hearing an appeal under Rule 1.11) will adjourn an appeal hearing only for "good reason". If a party has given notice that they wish to attend or be represented on the appeal and then seek an adjournment, a Committee may determine the appeal in their absence unless they are satisfied that there is good reason to grant an adjournment.
4. Difficulty in attending a hearing because of other commitments will not normally be "good reason". However, if the relevant member of your personnel is involved in a trial on, or very close to, the appeal hearing date, that will normally be good reason (unless you were aware of this commitment and the Committee considers that you should have contacted us earlier to agree a fresh date for the hearing of the appeal). Unexpected illness will normally be accepted as "good reason" if supported by a medical certificate.
5. If you seek certification of a Point of Principle of General Importance by the Costs Committee, the onus is on you to clearly identify the point sought when you submit the appeal. Failure to do so may result in your appeal being rejected pending clarification of the point sought.

1.13 Basis of Assessments and Appeals

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

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

1. Determining reasonableness will involve, in general terms, taking into account all the relevant circumstances of the case including the nature, importance, complexity or difficulty of the work and the time involved; and allowing a reasonable amount of time in respect of all Contract Work actually and reasonably done in accordance with terms of this Contract (including in particular the Rules and Guidance in this Specification). “Reasonable” means what is reasonable for the proper conduct of the case.
2. The relevant remuneration rates in Part E of this Specification will then be applied to the time allowed and the resulting sum or standard fee will be added to any Disbursements allowed and to any VAT to produce a figure for the costs of the case. Allowance will not be made for work which ~~was~~ is not evidenced on the file at the time the claim was made in the form of timed and dated attendance notes, and where appropriate by relevant documentation, such as copies of documentation drafted or perused.
3. We may ask you to provide an attendance note or other record of time spent. If your Claim is not supported by written evidence, then it will not be paid under the Contract.
4. When assessing Claims we will apply our published Guidance, except where it is expressly overridden by this Contract, which currently includes the Police Station and Court Duty Solicitor Costs Assessment Manual and the Criminal Bills Assessment Manual. The Commission's published Guidance on the assessment of costs of controlled work will apply to the provision of freestanding Advice and Assistance so far as it is consistent with the terms of this Contract. You must be familiar with the contents of these manuals and any other Guidance on criminal costs Assessment produced by us and ensure that Claims are made in accordance with the published Guidance. The Guidance may be amended from time to time by us, for example, to reflect new decisions made by either the courts or the Costs Appeals Committee.

1.14 Assigned Counsel

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

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

Scope of Contract Work

1.15 Administrative Work

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

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

1.16 Legal Research

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

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

Disbursements

1.17 Expert's Fees

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

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

1.18 Disbursements

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

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

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

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

3. If you are considering incurring a Disbursement which appears in neither list then you must consider whether the Disbursement is recoverable or not by reference to its purpose (that is, is it for the purpose of providing Advice and Assistance). For example, an accountant's fees for the preparation of outstanding accounts will not be recoverable as they are incurred not for the purpose of giving Advice and Assistance but for the purpose of putting the Client's outstanding records in order. This contrasts with the position where the accountant is providing a report as an expert.
4. The cost of the provision of legal advice by a person who is neither a lawyer nor supervised by a lawyer cannot be treated as a Disbursement. The assistance of a non-lawyer can be sought but you must absorb this as an overhead rather than charge it as a Disbursement.
5. Except where Police Station Advice and Assistance is provided, a Solicitor agent cannot be employed in relation to the provision of Advice and Assistance, either as a Disbursement or as an element of profit costs, (but see the position of Solicitors with higher rights of audience set out in paragraph 9 below). If you are not in a position to undertake work yourself then the matter should be referred. In appropriate cases you can obtain the opinion of Counsel. A Solicitor agent may be used where Advocacy Assistance is provided (excluding court Duty Solicitor work).

6. In deciding whether the amount sought is reasonable regard must be had to all the circumstances including the purpose of the Disbursement in the context of the particular case (that is, having regard to the justification/need for it as against the value/importance of the case), the particular service involved, the extent to which there is a choice of alternative service providers and whether all elements of the service are justified in the particular case/at the particular time.
7. If a Disbursement is abnormally large by reason of the distance of the court or the Client or both from your office, payment may be limited to what would otherwise be reasonable, having regard to all the circumstances. If the amount claimed is unreasonable, a lesser sum may be allowed. If the Disbursement was not reasonably incurred, the whole sum may be disallowed.
8. It will not be usual to instruct Counsel as part of the provision of Advice and Assistance unless it is reasonably necessary to do so. Where it is clear that there are issues which would justify steps, including proceedings, being taken on the Client's behalf but the reasonably competent Solicitor cannot, based on his or her expertise, identify those steps, then it may be appropriate to allow Counsel's opinion to be obtained under Advice and Assistance to identify the precise steps or proceedings.
9. References to Counsel for the purposes of the Guidance to this Rule include reference to a Solicitor with higher rights of audience practising in another firm where that Solicitor is carrying out work which would otherwise be carried out by Counsel.
10. Where the opinion of Counsel or another expert is required on a question of foreign law, this cannot be covered by Advice and Assistance. In appropriate cases, an application for Representation should be made.
11. Advice and Assistance should not be used as a vehicle to secure the funding of Disbursements. Where the only work undertaken is incurring the Disbursement and passing the service on to the Client, it is likely that the costs will be disallowed on Assessment if the Client receives no oral or written legal advice.

Payment Outside the Contract

1.19 Witness Expenses

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

1.20 Payment other than through this Contract

Subject to the exceptions below, you must not charge a fee to the Client or any person for the services provided under this Contract or seek reimbursement from the Client or any other person for any Disbursements incurred as part of the provision of such services.

Where you have been carrying out Contract Work on behalf of a Client, you may not accept instructions to act privately in the same matter from a Client unless the Client has been first advised by you in writing of the consequences of ceasing to be in receipt of services and as to the further services which may be available under the Criminal Defence Service, whether from you or another CDS Supplier, (including the possibility of an extension of the limit for Advice and Assistance or Advocacy Assistance, an application for Representation or the availability of Advocacy Assistance or the Duty Solicitor) and has nevertheless elected to instruct you privately.

The exceptions to this Rule arise where an application for prior authority for costs to be incurred under a Representation Order under Part B, Rule 5.2 of this Specification has been refused and the Client has expressly authorised you to:

- (a) prepare, obtain or consider any report, opinion or further evidence, whether provided by an expert witness or otherwise; or
 - (b) obtain or prepare any transcripts or recordings of any criminal investigation or proceedings, including police questioning.
1. This Rule means that you must not charge the Client for the provision of Contract Work or seek payment of Disbursements incurred from the Client unless an exception applies. All payments for Contract Work must come through us. You cannot be retained to act for the Client in the same Matter or Case under this Contract and on a privately paying basis at the same time. Where a Client elects to instruct you privately in relation to a Matter or Case in which you have been providing Contract Work, a copy of the letter dealing with the requirements of this Rule must be kept on the file.

1.21 Wasted Costs

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

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

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

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

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

1.22 Payment from Central Funds

If you have made, or will make, a Claim for costs from central funds in proceedings funded under this Contract, you must notify us when you submit a Claim to us.

If you are entitled to Claim for the work done under this Contract, then you should do so, prior to making any Claim from central funds.

Solicitors with Higher Court Advocacy Rights

1.23 Solicitors with Higher Court Advocacy Rights

A Solicitor with higher court advocacy rights may be instructed to give an opinion or to perform advocacy instead of Counsel. Where a Solicitor with higher court advocacy rights is asked to give an opinion or advice, he or she must be independent of your firm.

1. A Solicitor with higher court advocacy rights instructed under the above Rule must be from a different firm to the instructing Solicitor unless undertaking advocacy only. The use of such a Solicitor who must not be a partner in, or employed by, or a consultant to the conducting Solicitor's firm will ensure that any opinion obtained is independent and objective (in the same way that an external Counsel's opinion would be).
2. Opinions from Solicitors with higher court advocacy rights must comply with the Bar Council's guidelines. They must also be dated and state the Solicitor's name and roll number and include a statement confirming that the Solicitor has higher court advocacy rights.
3. Instructions to Solicitors with higher court advocacy rights must:
 - (a) include a copy of the Representation Order and any amendments to it and any authorities to incur costs; and
 - (b) be endorsed with the reference number of the Representation Order and the UFN, but no fees shall be marked on any set of papers so delivered.
4. When one Solicitor has instructed another (e.g. to attend court), the charges of the instructed Solicitor have always been included in the instructing Solicitor's bill as profit costs. This is still the case, but subject to the following exception.
5. When a Solicitor with higher court advocacy rights (from a different firm) provides an opinion (like Counsel), that Solicitor's charges may be (but do not have to be) included as a Disbursement in the instructing Solicitor's bill. This recognises that the Solicitor with higher court advocacy rights is providing the same service as a barrister.

6. If a Solicitor with higher court advocacy rights acts as an advocate on behalf of his or her own firm or is instructed as an advocate on behalf of another firm when higher court advocacy rights are not required, his or her charges must be included in the instructing Solicitor's bill as profit costs in the normal way. Where, however, he or she acts as an advocate for another firm and higher court advocacy rights are required his or her charges may be included as a Disbursement in the instructing Solicitor's bill.
7. There is no obligation to claim the costs of a Solicitor with higher court advocacy rights as a Disbursement. This is an option and they may still be claimed as profit costs.
8. Payment should be claimed at the relevant "preparation rate". If the payment is properly claimed as a Disbursement the appropriate hourly rate (e.g. London/out of London) depends upon the rate which the Solicitor providing the opinion is entitled to charge. It does not depend upon the rate that the conducting Solicitor is entitled to charge.
9. When advocacy is performed by a Solicitor with higher court advocacy rights, the appropriate rate is that for advocacy by a Solicitor (not Counsel). The fact that the Solicitor has higher court advocacy rights does not affect the amount chargeable. Where advocacy performed by a Solicitor with higher court advocacy rights is properly claimed as a Disbursement the appropriate hourly rate depends upon the rate which the Solicitor performing the advocacy is entitled to charge. It does not depend upon the rate that the conducting Solicitor is entitled to charge.
10. The provisions in Part E of this Specification governing or prescribing payment (and any enhancement or "mark-up" which the instructed Solicitor wishes to claim) apply.
11. On House of Lords costs assessments, payment for preparing petitions for leave to appeal to the House of Lords, and for any advocacy at such leave hearings, will (as is always the case when such work is performed by Counsel) be subject to the maximum rate that would be payable to junior Counsel for such work.
12. When work done by a Solicitor with higher court advocacy rights is properly claimed as a Disbursement that Solicitor must send the conducting Solicitor an invoice for the work.
13. The invoice must detail the work done, the time spent, the payment rate applied (without any element of enhancement or other "mark-up") and VAT. If any enhancement or "mark-up" is claimed, this must be shown separately with reasons why it is claimed.
14. Where the work done was advocacy before a court where higher court advocacy rights were required, this must be stated on the invoice.
15. Disbursements incurred in instructing a Solicitor with higher court advocacy rights are subject to the provisions in this Contract for payment on account of Disbursements. Applications for payments on account must be made by the conducting Solicitor (not the instructed Solicitor) with the receipted invoice.

16. The amount claimed on account should be at the appropriate rate but without any element of enhancement or “mark-up”. Enhancement or “mark-up” will not be paid on account but may be payable after the final bill has been assessed.
17. All payments by us are made to the conducting Solicitor's firm. There is no provision for paying Solicitors with higher court advocacy rights direct.
18. When a conducting Solicitor has included, as a Disbursement in his or her bill, the charges of a Solicitor with higher court advocacy rights, the minimum sum which the conducting Solicitor must pay that Solicitor is the full amount of the payment he or she receives for that work.
19. A Solicitor with higher court advocacy rights is not “Counsel”. However, if an opinion from a Solicitor with higher court advocacy rights has been obtained in proceedings covered by Advocacy Assistance, we will, on Assessment, look carefully at the reasonableness of obtaining the opinion and of the costs incurred.
20. Where work done by a Solicitor with higher court advocacy rights is claimable as a Disbursement by the conducting Solicitor, it should be shown as such in his or her bill and Claim for payment and any Claim for payment on account.
21. In each case, a copy of the receipted invoice should be attached and the form or bill should set out the work that was done and the fact that it was done by a Solicitor with higher court advocacy rights. This is necessary to enable the work to be properly assessed.
22. Value for money should be a consideration for a conducting Solicitor in deciding whom to instruct to provide an opinion or perform advocacy services.
23. This Rule applies to any Contract Work undertaken by a Solicitor with higher court advocacy rights.

Payment

1.24 Payment of Costs

Once we have determined the amount of costs payable under this Contract to you and any Counsel instructed, payment will be authorised by us, subject to any provisions elsewhere in this Contract.

Where the costs payable are varied as a result of a review, redetermination or appeal in accordance with this Contract, then:

- (a) where costs are increased, we shall authorise payment of the increase;**
- (b) where the costs are decreased, you or Counsel shall repay to us the amount of such decrease.**

1.25 Recovery of Overpayments

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

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

This Rule applies notwithstanding that you or Counsel to whom the excess amount was paid is exercising, or may exercise, a right of appeal under Rules 1.11 or 1.12 of this Part.

1.26 File Review

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

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

3. No Claim for payment should be made under this Rule where payment for the time spent on the review is claimed as part of the costs of the individual matter. Such costs may be claimed on the basis that the file review comprises Contract Work on the file i.e. if it coincides with the stage in the proceedings at which the file would normally be reviewed and the work done would be recoverable on assessment as work reasonably done having regard to the needs of the case. In the case of a face to face file review, it may be permissible for the time of the supervised person to be claimed as part of the costs of the case where this principle applies, even though the supervisor has claimed a fixed payment under this Rule.
4. For the purposes of this Rule one Matter or Case cannot count as more than one case file.
5. For the avoidance of doubt, this Rule does not alter in any other way the obligations contained in LAFQAS (or any commitment given in your office manual) as to file review.
6. Payment may not be claimed under this Rule for any file checks undertaken under LAFQAS Requirement N1.2.5 (checking files for inactivity at pre-determined intervals).
7. The total payment claimed by you for file review may be reduced or disallowed (as appropriate) by us where we reasonably consider:
 - (a) that the number of file reviews claimed for exceeds either the number set out in your office manual or the number reasonably necessary to demonstrate compliance with the LAFQAS requirements (see Part D of this Specification). (Whilst we will allow some flexibility in the latter regard, further Guidance on the volume of file reviews which may be reasonably required will be issued in due course); and/or
 - (b) that any file reviews claimed for have not been properly carried out in accordance with the terms of LAFQAS, Part D of this Specification or this Rule.
8. Where corrective action is required as a result of a file review, this is treated as a continuation of the original review and is not a separate activity.

Part D Quality and Performance Standards

Background

~~From the date that the Specialist Quality Mark replaced LAFQAS (30th April 2002) the introduction, requirements and guidance below form the first three paragraphs of Part D of the General Criminal Contract Specification. They were part of LAFQAS (either set out in LAFQAS or set out in the Specification, but as part of LAFQAS) but will not be part of the Specialist Quality Mark because they apply only to work performed under a General Criminal Contract, or other crime contract, with the Commission and not to all crime work, generally.~~

~~Like LAFQAS, the Specialist Quality Mark (and the requirements and guidance set out below) apply to Crown Court work.~~

Details

~~From 30th April 2002, in Part D “Quality and Performance Standards” of the General Criminal Contract Specification, paragraph 1 “Introduction”, paragraph 2 “Amendments to LAFQAS Requirements for Contract Work” and paragraph 3 “Quality standards” are replaced by the following paragraphs.~~

1. Introduction

~~In criminal defence work, in particular, the personal competence of the individuals undertaking the work is a major factor in meeting the responsibility to provide appropriate and quality assured services. The provisions set out in this Part (and elements of the Performance Standards) are directed at this issue. They bring existing requirements together with a small number of additional requirements, and set out a framework within which the information generated by the procedures can be maintained in a way which can be used beneficially by offices and at the same time provide the necessary evidence of compliance for the Commission. The Specialist Quality Mark (and the requirements and guidance set out below) apply to Crown Court work.~~

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

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

Requirement

1. You must claim payment only for work that you have reasonably done. To ensure that you are able to comply with this requirement, you must have appropriate systems in place. These must include, in an appropriate I.T. system so that the information can be quickly processed and received:
 - (a) A time recording system for all matters and cases;
 - (b) An up to date record of the value of your work in progress (including disbursements shown separately) on each matter and case;
 - (c) An up to date record of the total costs of each matter and case.
2. This information must be made available to the Commission when required.

Guidance

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

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

Requirement

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

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

Requirement

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

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

Requirement

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

3. Quality Requirements in the Specification that have not moved to the SQM

Designation of Fee-Earners

3.1 You must designate all crime fee-earners

1. You must designate all fee-earners who regularly undertake fee-earning criminal defence work under this Contract for you.
2. For the purposes of designation only, when identifying such fee-earners you may disregard any fee-earning work (which may be chargeable work in accordance with the provisions of this contract) which is basic or routine, such as the completion of standard forms, making routine telephone calls, and despatching standard letters.
3. You may also, if you wish, not designate staff within your office who only, occasionally, undertake a limited amount of fee-earning criminal defence work under the Contract. We regard a limited amount of work as less than 3 hours a month.
4. You must designate all Crime Supervisors and all FILEX Supervisors. You must designate all Duty Solicitors and Accredited and Probationary Representatives employed by you.
5. The Contract Performance Standards (General Criminal Contract, Contract Specification, Part D, Section 5) set targets for the proportions of fee-earning work that should be undertaken by designated staff. We accept that not all work will be undertaken by designated staff because of the existing patterns of work within this field where outside individuals are used to undertake, in particular, some police station advice work and advocacy in the magistrates' court.
6. You may designate fee-earners not employed by you, especially where they undertake work for you on a regular basis. You may need to do this to comply with the Performance Standards. Where you do so, that fee-earner is subject to the same requirements as all other designated staff.
7. A fee-earner may be designated by more than one contractor. This is most likely to occur where an agent is regularly instructed by several contractors. In these circumstances each contractor is responsible for ensuring that the fee-earner meets each of the requirements relevant to a designated fee-earner. That is not to say, each supplier must actually conduct each of those requirements. Contractors may decide to divide these responsibilities or come to some other arrangement. Your records in respect of such a designated fee-earner must set out these arrangements.
8. SQM requirement C.1.1 requires you to have a document that identifies all staff, their current jobs and lines of responsibility. This must cover all designated fee-earners and must show:
 - (a) whether the fee-earner is a Duty Solicitor, a Solicitor, an Accredited Representative, a Probationary Representative or other non-Solicitor staff; and

- (b) any fee-earner codings or PIN numbers used by them.

3.2 Records for Designated Fee-Earners

- (a) **Where the designated fee-earner is a Duty Solicitor, you must maintain a record of details of the schemes of which they are a member and evidence of compliance with the paragraph 5.1 of the Duty Solicitor Arrangements 2001.**
 - (b) **Where the designated fee-earner is an Accredited Representative, you must maintain a record of the evidence of compliance with the requirements needed to maintain Accredited Representative status (see the Legal Services Commission Advice and Assistance at Police Stations Register 2001).**
1. You may comply with this requirement by maintaining the above information on a personal file for each designated fee-earner. We believe the use of personal files will maximise the use of information held by you to ensure and improve the competence of your staff undertaking work under this Contract. This is our preferred approach as it should reduce duplication of bureaucracy.
 2. Alternatively you may retain the above information elsewhere. However, where this approach is taken the records for all staff must be retained together in a single location. A common approach must be taken in respect of the same category of information for all staff.
 3. Nothing in this requirement requires you to maintain copies of the same record in more than one location. Neither does it prevent you doing so for your own management purposes.

4. Performance Standards – Overview

4.1 Introduction

1. Performance Standards apply in the following areas:
 - (a) first contact with the Client in Police Station advice cases;
 - ~~(b) first personal attendance on the Client in Police Station advice cases;~~
 - ~~(c) Duty Solicitor availability—acceptance of Rota calls;~~
 - ~~(d)(b) limitations on work conducted by non-designated staff;~~
 - ~~(e) limitations on work conducted by Probationary Police Station Representatives.~~

4.2 Approach

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

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

5. Performance Standards

5.1 First Contact With The Client In Police Station Advice Cases

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

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

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

How will we audit?

3. All Police Station advice files must contain a note of the time at which the call was accepted (either from the Duty Solicitor Call Centre or directly from the Police Station) and the time at which first contact was made with the Client. Where a fee-earner does not contact the Client within 45 minutes of accepting the case, that fee-earner must note the reason.
4. On audit we will take a sample of files. We will then calculate your performance. Where no times are noted we will assume that the target was not met. Before recording a non-compliance, we will consider the particular circumstances surrounding any failure.

~~5.2 First Personal Attendance on the Client In Police Station Advice Cases~~

~~Each time you are requested to attend a Client at the Police Station in person for the first time in a new Matter, and you decide to attend, we expect you normally to do so within 45 minutes.~~

~~We will normally expect you to meet this target in at least 90% of cases.~~

- ~~1. This Standard applies only to the first attendance on the Client and does not include subsequent instances of Advice and Assistance at a Police Station, for example at bail-backs or other pre-arranged police station attendances, in the same Matter.~~
- ~~2. There may be legitimate reasons why you are unable to attend the Client within 45 minutes, for example, you may be involved at an interview of another Client. Setting the target at 90% will account for those instances where you are unable to meet the target for reasons beyond your control. In assessing performance in these cases we will not take into account cases where the 45 minute target was not met because:~~

- ~~(a) the Client was unavailable or not ready to see you or your attendance was not necessary until a later point (e.g. at an interview not yet due to commence);~~
- ~~(b) you were attending an own Client who had requested your attendance at a distant police station which could not be reached in 45 minutes;~~
- ~~(c) you were attending as a Duty Solicitor at a Police Station where we had accepted that you were not within 45 minutes of that station but you had been accepted onto the Scheme in order to ensure that there was Duty Solicitor coverage for it.~~

~~How will we audit?~~

~~3. All Police Station advice files must contain a note of the time at which the decision that you will attend is notified to the police and the time at which you attended the client. Where the 45-minute target was not met, the reason must be noted.~~

~~4. On audit we will take a sample of files. We will then calculate your performance. Where a case to which the target applies has no note of the relevant times we will assume the target was not met. Before recording a non-compliance, we will consider the particular circumstances surrounding any failure.~~

5.3 Duty Solicitor Availability – Acceptance Of Rota Calls

~~We will expect you to accept 80% of all case offered to you by the Call Centre Service during periods when you have Police Station Duty Solicitors on rota call.~~

~~1. Setting the target at this level will account for those instances where you are unable to meet the target for reasons beyond your control, for example, you are busy on another call.~~

~~How will we audit?~~

~~2. We will use information held by the Call Centre Service to consider your performance.~~

~~3. Before identifying this as an issue, we will take steps to validate the information with you. Before recording a non-compliance, we will consider the particular circumstances surrounding any performance failure.~~

5.45.2 Limitations On Work Conducted By Non-Designated Staff

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

In particular,:

~~we will expect, 90% of fee-earning hours conducted under this Contract to be conducted by designated fee-earners;~~

we will expect 80% of instances of Police Station Advice and Assistance (both attendances and telephone advice) to be conducted by designated fee-earners.

~~(c) we will expect 50% instances of advocacy at the magistrates' court to be conducted by designated fee-earners.~~

1. It is accepted that, in order to have flexibility in the management of work and in the changing demands upon fee-earners and their time, offices may need to use non-designated staff. We have taken this into account in setting the levels of target compliance.
2. Where a non-designated fee-earner is used, the office must ensure that the fee-earner is competent and that they are effectively supervised.
3. A designated fee-earner may or may not be employed by the offices.

How will we audit?

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

~~5.5 Limitations On Work Conducted By Probationary Police Station Representatives~~

~~We will expect 80% of instances of Police Station Advice and Assistance (both attendances and telephone advice) to be conducted by Solicitors and Accredited Representatives.~~

- ~~1. There is a need to allow Probationary Representatives to undertake some Police Station advice work in order to gain experience and demonstrate compliance with the accreditation standards. Taking this into account, we have set the target compliance at 80%.~~
- ~~2. Probationary Representatives will normally only conduct Police Station Advice and Assistance as part of their development and to demonstrate their own personal competence to do this work.~~

~~**How will we audit?**~~

- ~~3. On audit we will take a sample of files. We will then calculate your performance. Before recording a non-compliance, we will consider the particular circumstances surrounding any performance failure. We accept there may be short periods where it is justifiable for an office to fail to meet the performance standard.~~

Part E Remuneration under the General Criminal Contract

1. The rates that apply to Contract Work

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

Note:

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

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

2. Work undertaken in the Criminal Investigations Class

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

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

2.2 Police Station Advice and Assistance

	National	London
Availability during Duty Period	4.20 (to a max of 100.80)	4.25 to a max of 102.00)
Police Station Advice and Assistance other than by telephone		
- Duty Solicitor (unsocial hours)	69.05	69.05
- Duty Solicitor (other hours)	52.00	56.20
- Own Solicitor	52.00	56.20
Travelling and waiting		
- Duty Solicitor (unsocial hours)	69.05	69.05
- Duty Solicitor (other hours)	52.00	56.20
- Own Solicitor	28.80	28.80
Police Station Telephone Advice fixed fee (including all telephone calls whether "routine" or "advice")	30.25 per Claim	31.45 per Claim

The provisions set out below apply to all Criminal Investigations that commence after 00:01 on 1 February 2004:

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

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

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

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

- (a) Client is arrested for theft from a shop and is bailed to return to the Police Station. The next day he is arrested for another theft from a shop.
- (b) Client is arrested for burglary, he fails to appear at court and is arrested on the street for failing to appear.

8. Both of the above cases would attract two separate fixed fee claims as each amounts to two separate investigations.

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

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

Note:

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

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

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

2.3

Advocacy Assistance on a Warrant of Further Detention or at an Armed Forces Custody Hearing

	National	London
Preparation		
- Standard Rate	46.90	49.70
- Enhanced Rate	62.50	66.30
Advocacy		
- Standard Rate	59.00	59.00
- Enhanced Rate	78.65	78.65
Travelling and waiting		
- Standard Rate	26.30	26.30
- Enhanced Rate	35.05	35.05
Routine letters written and telephone calls	per item	per item
- Standard Rate	3.70	3.85
- Enhanced Rate	4.90	5.10

Note:

The enhanced rate applies to Duty Solicitors providing Advocacy Assistance in unsocial hours only. The standard rate applies to Advocacy Assistance provided by Duty Solicitors outside unsocial hours and Own Solicitors at any time.

3. Work undertaken in the Criminal Proceedings Class

3.1 THIS TABLE HAS BEEN DELIBERATELY OMITTED

3.2 THIS TABLE HAS BEEN DELIBERATELY OMITTED

3.3 **Advocacy Assistance in a magistrates' court (other than by a court Duty Solicitor acting as such) or Crown Court**

	National	London
Preparation	49.70	52.55
Advocacy	62.35	62.35
Travelling and waiting	26.30	26.30
Routine letters written and telephone calls	3.90 per item	4.05 per item

Note:

No Claim may be made for accompanying Counsel at a hearing (see Part B, Rule 4.8).

3.4 **Advocacy Assistance by a court Duty Solicitor acting as such**

	National	London
Standard Rate (attendance and waiting at a magistrates' court)	53.85	55.15
Enhanced Rate (only payable in respect of work done on a day which is not a business day)	67.30	68.90
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	26.30

3.5 Magistrates' Court Representation (including Pre Order Cover under Part B, Rule 5.13)

Hourly Rates

	National	London
Preparation (including taking instructions, interviewing witnesses, ascertaining the prosecution case, advising on plea and mode of trial, preparing and perusing documents, dealing with letters and telephone calls which are not routine, preparing for advocacy, instructing Counsel and expert witnesses, conferences, consultations, views and work done in connection with advice on appeal or case stated)	49.70	52.55
Advocacy (including applications for bail and other applications to the court)	62.35	62.35
Attendance at court where Counsel assigned (including conferences with counsel at court)	34.00	34.00
Travelling and waiting	26.30	26.30
Routine letters written and telephone calls	3.90 per item	4.05 per item

Note:

The rates above are used to calculate the appropriate standard fee where one applies (see paragraphs 3.5.1 to 3.5.3 below) and are used as the standard hourly rate where a non standard fee is claimed (subject to paragraphs 3.5.18 to 3.5.24 below). They also apply to any work undertaken under a Representation Order granted by the Commission.

Standard Fees

1. A standard fee is payable for work undertaken in proceedings which are specified in the table below. Proceedings shall be treated for the purposes of this Section as forming part of one Case where they relate to one or more charges or informations which are preferred or laid at the same time or which are founded on the same facts or which form or are part of a series of offences (see Part B, Rule 5.8).
2. For the purposes of this Section, any proceedings specified (“the specified proceedings”) shall be treated as including all ancillary proceedings in respect of which a Representation Order is in force, whether or not the Order is the same as that in force in respect of the specified proceedings. Where a standard fee is payable in respect of the specified proceedings:
 - (a) no separate fee shall be payable in respect of the ancillary proceedings; but

- (b) all work done or costs incurred in the ancillary proceedings shall be treated as done or incurred in the specified proceedings.
3. “Ancillary proceedings” means:
- (a) proceedings preliminary or incidental to the specified proceedings whether before that or another court, including related bail proceedings either in a magistrates' court, the Crown Court or the High Court;
 - (b) proceedings arising from bail applications within (a) above, including appeals against the grant or refusal of bail and proceedings for offences under the Bail Act 1976;
 - (c) proceedings for contempt alleged to have been committed in the specified proceedings.
 - (d) proceedings in the Crown Court following committal for sentence by a magistrates' court;
 - (e) proceedings to quash an acquittal under the Criminal Procedure and Investigations Act 1996;
 - (f) proceedings under RSC Order 115 in Schedule 1 to the Civil Procedure Rules 1998 for confiscation or forfeiture.

Note:

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 paragraph 10(3)(a) or 13(2) of Schedule 3 to the Crime and Disorder Act 1998 and proceedings under Part A, Rule 3.2.1(b)(i)) shall be assessed and paid by the Crown Court and shall not form part of any Claim for remuneration under this Part.

Table: Categories and Types of Proceedings

Category 1	Category 2	Category 3
1.1 guilty pleas	2.1 contested trials	3.1 committal proceedings including those which are discontinued or withdrawn
1.2 uncontested proceedings arising out of a breach of an order of a magistrates' court (including proceedings in a magistrates' court relating to a breach of a Crown Court community rehabilitation order, community punishment order or suspended sentence)	2.2 proceedings which were listed and fully prepared for trial in a magistrates' court but are disposed of by a guilty plea on the day of trial before the opening of the prosecution case.	3.2 proceedings transferred under section 4 of the Criminal Justice Act 1987 or section 53 of the Criminal Justice Act 1991

Category 1	Category 2	Category 3
1.3 proceedings (other than committal proceedings) which are discontinued or withdrawn or where the prosecution offer no evidence.	2.3 proceedings which were listed and fully prepared for trial in a magistrates' court but are discontinued or withdrawn or where the prosecution offers no evidence or which result in a bind over on the day of trial before the opening of the prosecution case.	
1.4 proceedings (other than committal proceedings) relating to summary or either way offences which result in a bind over	2.4 contested proceedings relating to a breach of an order of a magistrates' court (including proceedings relating to a breach of a Crown Court community rehabilitation order, community punishment order or suspended sentence)	
1.5 proceedings arising out of a deferment of sentence (including any subsequent sentence hearing) under section 1 of the Powers of Criminal Courts (Sentencing) Act 2000	2.5 proceedings where mixed pleas are entered	

The standard fee levels for each category and the relevant limits are set out below. The figures in square brackets are the London rates:

	Lower Standard Fee	Lower Limit	Higher Standard Fee	Higher Limit
	£	£	£	£
Category 1	173.45 [223.25]	298.45 [382.90]	417.20 [529.25]	517.10 [646.85]
Category 2	306.25 [392.95]	512.70 [651.00]	702.40 [882.65]	854.40 [1041.60]
Category 3	276.50 [349.75]	452.20 [548.25]	626.50 [735.30]	789.50 [841.55]

4. Subject to paragraph 3.5.5, where proceedings forming one case fall within more than one category, the proceedings shall be treated as forming part of the higher or highest in value of the categories concerned.
5. Where a Case includes proceedings referred to in the Table of Categories and Types of Proceedings at items 3.1 and 3.2, the Cases shall be treated as if all the proceedings were category 3 proceedings.
6. Subject to paragraph 3.5.5, where there is a change of firm assigned under a Representation Order in proceedings to which the standard fee table applies, the proceedings shall be treated as category 1 proceedings for the purposes of a Claim for costs in respect of work done under the Representation Order by the firm formerly assigned.
7. Subject to paragraph 3.5.5, where proceedings have not been concluded but a warrant of arrest has been issued, the proceedings shall be treated as category 1 proceedings.

Proceedings to which standard fees do not apply

8. Standard fees shall not apply to proceedings:
 - (a) in which Counsel has been assigned under a Representation Order; or
 - (b) in which costs are allowed at an enhanced rate.

Items of Work covered by the standard fee

9. The items of work included in the standard fee calculation are as follows:
 - (a) any preparation within the meaning set out in the Hourly Rates table in section 3.5 including listening to, or viewing, any tape or video recording of interviews or evidence;
 - (b) routine letters written and routine telephone calls;
 - (c) advocacy, including bail applications made in a magistrates' court, the Crown Court or the High Court;
 - (d) work done by a fee-earner acting as agent for the Solicitor assigned under the Representation Order;
 - (e) unassigned Counsel's preparation and advocacy.
 - (f) These are known as the "core costs" and include the costs of any Advocacy Assistance required by the Contract to be claimed under the Order.

Standard Fees: Further Provisions

10. Where you act for more than one Client in proceedings forming a single Case, the Claim for payment of a standard fee shall cover all the Clients represented by you under one or more Representation Orders.

11. Where a Representation Order is granted to a Client in respect of more than one charge, offence or information, the Claim for payment of a standard fee shall cover all the charges, offences or informations that form part of one Case.

Costs additional to the Standard Fee

12. The following costs shall be payable in addition to the standard fee:
 - (a) travelling and waiting time of fee-earners and unassigned Counsel, which shall be payable at the rate provided in the Hourly Rates table in section 3.5; and
 - (b) Disbursements.

Allowance of Standard Fees

13. A lower standard fee will be allowed where the core costs would not, if they had been assessed, have exceeded the lower limit.
14. Where the core costs claimed exceed the lower limit, the core costs will be assessed in accordance with hourly prescribed rates and, if the core costs allowed:
 - (a) do not exceed the lower limit, the lower standard fee will be payable;
 - (b) exceed the lower limit but do not exceed the higher limit, the higher standard fee will be payable;
 - (c) exceed the higher limit, the core costs will be allowed as assessed.
15. The hourly rates specified in the Hourly Rates table in section 3.5 shall apply to the costs claimed, subject to the provisions of paragraphs 3.5.18 to 3.5.24.
16. The costs payable in proceedings to which these provisions apply shall (subject to any deductions or reductions made in respect of wasted costs or late claims) be:
 - (a) the relevant standard fee together with the costs determined as costs additional to the standard fee; or
 - (b) where the core costs allowed exceed the higher limit of the relevant standard fee, the costs as assessed on an ex post facto basis.
17. Where a warrant of arrest has been issued and a Claim has been made prior to the final disposal of the proceedings, any costs which would have been payable upon the final disposal of the proceedings shall be reduced to the extent that they formed part of the costs previously claimed.

Reduced and Enhanced Rates

18. In respect of any individual item of work, we may allow fees at less than the relevant basic prescribed rates specified in the Hourly Rates table in section 3.5 where it appears to us reasonable to do so having regard to the competence and dispatch with which the work was done.

19. We may allow fees at more than the relevant prescribed rates specified in the Hourly Rates table in section 3.5 where it appears to us, taking into account all the relevant circumstances of the case, that:
 - (a) the work was done with exceptional competence, skill or expertise; or
 - (b) the work was done with exceptional dispatch; or
 - (c) the case involved exceptional circumstances or complexity.
20. Where we consider that any item of work should be allowed at more than the prescribed rate, we shall apply to that item of work a percentage enhancement in accordance with the provisions below.
21. In determining the percentage by which fees should be enhanced above the prescribed rate we shall have regard to:
 - (a) the degree of responsibility accepted by the solicitor and his or her staff;
 - (b) the care, speed and economy with which the case was prepared;
 - (c) the novelty, weight and complexity of the case.
22. Except in proceedings that relate to serious or complex fraud, the percentage above the relevant prescribed rate by which fees for work may be enhanced shall not exceed 100 per cent.
23. Where proceedings relate to serious or complex fraud, the percentage above the relevant prescribed rate by which fees for work may be enhanced shall not exceed 200 per cent.
24. We may have regard to the generality of proceedings to which these provisions apply in determining what is exceptional.

Counsel assigned under a Representation Order in a magistrates' court

25. The rates set out in this table only apply where Counsel is assigned under a Representation Order in the magistrates' court. The rates in the table are the maximum amounts allowable per item except where expressed as hourly rates. Where an hourly rate is specified we shall determine any fee for such work in accordance with that hourly rate, provided that the fee determined shall not be less than the minimum amount specified.
26. Where a refresher fee is claimed in respect of less than a full day, we shall allow such fee as appears reasonable having regard to the fee which would be allowed for a full day.
27. Where it appears in respect of any item of work, taking into account all the relevant circumstances of the case, that owing to the exceptional circumstances of the case the amount payable in accordance with the table below would not provide reasonable remuneration for some or all of the work allowed, we may allow such amounts as appear to us to be reasonable remuneration for the relevant work.

Table: Assigned Counsel

	Junior Counsel	Queen's Counsel
Basic fee (for preparation including preparation for a pre-trial review and, where appropriate, the first day's hearing including, where they took place on that day, short conferences, consultations, applications and appearances (including bail applications, views and any other preparation))	maximum amount: 468.00	maximum amount: 4,446.00
Refresher fee (for any day or part of a day during which a hearing continued, including, where they took place on that day, short conferences, consultations, applications and appearances (including bail applications), views and any other preparation)	maximum amount: 162.00 per day	maximum amount 297.00 per day
Subsidiary fees:		
Attendance at consultations, conferences and views not covered by the basic fee or the refresher fee	29.25 per hour minimum amount: 14.50	54.50 per hour minimum amount: 28.00
Written work (on evidence, plea, appeal, case stated or other written work)	maximum amount: 51.25	maximum amount: 105.00
Attendance at pre-trial reviews, applications and other appearances (including bail applications and adjournments for sentence) not covered by the basic fee or the refresher fee	maximum amount: 94.00	maximum amount: 205.00

3.6

High Court Representation under a Representation Order (excluding applications to the High Court for bail)

	National £	London £
Routine letters out	7.75 per item	7.75 per item
Routine telephone calls out	4.30 per item	4.30 per item
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	77.25 per hour	81.90 per hour
Attending Counsel in conference or at the trial or hearing of any summons or application at court, or other appointment	38.15 per hour	38.15 per hour
Attending without Counsel at the trial or hearing of any cause or the hearing of any summons or application at court, or other appointment	77.25 per hour	81.90 per hour
Travelling and waiting	34.25 per hour	34.25 per hour

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.

4. Work undertaken in the Appeals and Reviews Class of Work

4.1 Advice and Assistance

1. The same rates as in table 2.1 above apply.

4.2 Representation in the Divisional Court on an Appeal by way of Case Stated

1. The same rates as in table 3.6 above apply.

5. Work Undertaken in the Prison Law Class of Work

5.1 Advice and Assistance

1. The same rates as in table 2.1 above apply.

5.2 Advocacy Assistance

	National	London
Preparation	56.15	60.00
Advocacy	68.25	68.25
Travelling and waiting	26.30	26.30
Routine letters written and telephone calls	4.05 per item	4.05 per item

6. Work undertaken in the Associated CLS Class of Work

1. The applicable rates are those payable from time to time in accordance with the General Civil Contract.

7. File Review

1. The following rates are payable for file review carried out in accordance with Part D of the Specification. The Rules for claiming payment for file review are set out in Part C, Rule 1.26.

	£
Face to face file review	31.18 per file review
Paper file review	18.71 per file review

8. Disbursements

1. Further Guidance and a list of allowable Disbursements for Advice and Assistance and Advocacy Assistance is set out in Part C, Rule 1.18. The basis on which we assess Disbursements is set out in Part C, Rule 1.13.

9. Mileage

1. The mileage rate is 45p per mile.

Part F Franchise Category Definitions

1. General Guidance

1.1 Judicial Review

1. Public Law challenges to the acts, omissions or decisions of public bodies, in particular, challenges by way of judicial review (including under the Human Rights Act 1998) and habeas corpus are covered by the franchise category in which the principal matter or proceedings appear or by the franchise category which relates to the underlying substance of the case.
2. If arising in respect of matters or proceedings within the Crime Franchise category, these cases will also fall within the Crime Franchise even though they are funded as part of the Community Legal Service. Crime practitioners are authorised to take these cases as “Associated CLS Work” under the terms of their General Criminal Contract from 2 April 2001-where “Associated CLS Work” falls within the Public Law franchise category as well, only those who are franchised, or have passed a preliminary audit, in the Public Law category are authorised under the General Civil Contract to perform it.

1.2 Minor Civil/Criminal Overlaps

1. Work falling within the Crime Franchise category is excluded from any other franchise category, with seven minor exceptions:
 - (a) Legal Help to prisoners who may be subject to directions made or to be made by the Home Secretary under the Mental Health Act 1983 also falls with the Mental Health category;
 - (b) Legal Help to prisoners concerning their treatment by the prison authorities or those arrested concerning their treatment by the police may also fall within the Actions Against the Police etc. franchise category;
 - (c) Enforcement proceedings in the magistrates' court arising out of the breach of an order of that court made in family proceedings where there is a risk of imprisonment also fall within the Family franchise category;
 - (d) Civil proceedings in the magistrates' court arising out of the breach of a financial order of that court where there is a risk of imprisonment also fall within the Debt franchise category;
 - (e) Proceedings against a child for an Anti-Social Behaviour Order or Sex Offender Order, and any associated Parenting Order, and for a Parenting Order made on the conviction of a child where the parent cannot reasonably be represented by the child's solicitor, also fall within the Family franchise category;
 - (f) “Associated CLS Work” including civil proceedings under the Proceeds of Crime Act 2002.

- (g) Proceedings for an anti-social behaviour order sought by a local authority against a tenant or a person living with him or her, or by way of an appeal against such an order to the Crown Court, also fall within the Housing franchise category.
- 2. All six exceptions are authorized to be carried out by relevant contractors under the General Civil Contract, as well as by criminal practitioners under the General Criminal Contract.
- 3. The undertaking of civil proceedings is excluded from the crime category unless specifically referred to in the Crime Franchise category definition. Civil actions against prison authorities are included in the Actions Against the Police etc. civil franchise category. Advice and Assistance concerning the treatment of prisoners by prison authorities is included in the Crime category other than in respect of actual or contemplated civil proceedings for damages for personal injury or property damage which, if in scope, remain within the CLS. This wording is intended to allow crime practitioners to advise Clients on prison complaints procedures and prison ombudsman cases where a legal issue arises, for example, in respect of property loss or confiscation etc, but not to take resulting civil proceedings for damages.

1.3 Complaints

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

2. Crime Franchise Category Definition

1. All criminal proceedings (including Advice and Assistance in relation to those proceedings).
2. All matters relating to criminal investigation, prosecution, sentence, length of imprisonment, detention or parole including applications to the Criminal Cases Review Commission.
3. All appeals in relation to such proceedings including applications for case stated arising out of criminal proceedings.
4. Advice and Assistance (including Advocacy Assistance) relating to the status, security classification, transfer, discipline or other treatment of prisoners by the prison authorities, other than in respect of actual or contemplated civil proceedings in which there is a claim for damages for personal injury, death or damage to property.
5. For the avoidance of doubt, the following proceedings (including Advice and Assistance in relation to those proceedings and related appeals) are included in the franchise category:
 - (a) extradition;
 - (b) applications for bail including applications to the High Court;
 - (c) applications to the High Court concerning representations against the grant of a voluntary bill of indictment;
 - (d) proceedings under RSC Order 115 in Schedule I to the Civil Procedure Rules 1998 for confiscation or forfeiture in connection with criminal proceedings;
 - (e) proceedings to quash an acquittal under the Criminal Procedure and Investigations Act 1996;
 - (f) proceedings where a party risks imprisonment for failure to pay a fine or obey an order of a magistrates' court;
 - (g) the following proceedings under the Crime and Disorder Act 1998 (including Advice and Assistance in relation to those proceedings and related appeals or applications to vary or discharge an order):
 - i) sections 1 and 1D (Anti-Social Behaviour Orders);
 - ii) sections 2 and 2A (Sex Offender Orders);
 - iii) section 8 (Parenting Orders) other than orders made following a Child Safety Order under section 8(1)(a);
 - iv) all proceedings relating to the breach of any of the above orders including a Parenting Order made following a Child Safety Order;

(h) proceedings under sections 2, 5 and 6 of the Anti-social Behaviour Act 2003 (including Advice and Assistance in relation to those proceedings and related appeals or applications to vary or discharge an order);

(h)(i) public law challenges to the acts, omissions or decisions of public bodies, in particular judicial review (including under the Human Rights Act 1998), and habeas corpus which arise in respect of any matter or proceeding within the Crime Franchise;

(h)(j) proceedings under section 14B and 21D of the Football Spectators Act 1989 (banning orders and appeals against refusal to award compensation) and applications to vary or terminate a banning order.

(h)(k) any proceedings under the Proceeds of Crime Act 2002.

6. Generally the undertaking of civil proceedings is excluded from the Crime category unless specifically referred to above. Proceedings for the variation or discharge of an order made in criminal proceedings under section 5 of the Protection from Harassment Act 1997 are excluded. Proceedings brought under the Environmental Protection Act 1990 for a statutory nuisance where the Client is the complainant are also excluded.

Part G Guidance on Contract Sanctions

1. General

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

1. This Guidance is descriptive. It does not attempt to define every different type of breach or when sanctions always will, and always will not, be applied, but gives examples. Given the range of situations that might arise, a definitive approach would not be practicable. As the Guidance is descriptive, it applies to similar situations in similar ways.
2. At its simplest, the purpose of Contract sanctions is to protect clients and public funds and to ensure that Contracts are held only by organisations that comply with them. The more serious the breach of Contract and the longer it has continued, the more serious the appropriate Contract sanction is likely to be, and vice versa.
3. While we recognise that the termination of a Contract may have serious consequences for the Contractor, we must have regard to clients' interests and ensure the provision of competent, and value for money, legal services for publicly funded clients. Removing Contractors that fail to meet acceptable standards allows those that are performing well to expand.
4. Any Contractor may, occasionally, fail to comply with the Contract requirements in a minor way. This would not normally give rise to Contract sanctions unless, for example, the breach caused a financial loss, which might be recovered by a sanction. Issues would be addressed by informal discussions (or correspondence) between the Contractor's Quality Representative and the Commission's Account Manager, at any time, or by more formal discussions and the audit report, after an audit. This is part of normal Contract management.
5. When, on audit, we find non-compliances with the SQM, the Contract specifies detailed procedures to be followed. However, if we find other breaches of the Contract, on audit or otherwise, the procedures depend on the seriousness of the breach.
6. More serious breaches of Contract (apart from those relating to the SQM) will normally result in the issue of a notice, under Clause 20 of the Contract Standard Terms and, perhaps, a sanction under Clause 22. We will normally issue a notice when we consider that the breach is so serious that termination, or another sanction, will be justified if the breach is not remedied, or if it is repeated.
7. However (as under the common law) in some circumstances a breach may be so serious that it amounts to a breach that entitles us to end the Contract without issuing a notice. In this Contract, such a serious breach is referred to as a Fundamental Breach.

Fundamental Breach

8. Fundamental Breaches of this Contract include:

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

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

EXAMPLE

9. Clause 2 of the Contract Standard Terms provides that the Contract is personal to the Contractor, who must not assign it or sub-contract etc.
10. Any breach of this provision is a Fundamental Breach. We must be able to select our Contractors after carrying out pre-contract enquiries and audits.

EXAMPLE:

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

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

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

EXAMPLE:

16. Clause 3.2 of the Contract Standard Terms provides that “You must perform all Contract Work and exercise your Devolved Powers in a timely manner and with all reasonable skill, care and diligence. You must perform your obligations to record and report data accurately”.
17. A breach of this requirement may be identified by a number of routes e.g. an Official Investigation, a Contract Compliance audit, a SQM audit, or peer review. Peer review is a review of a Contractor’s case files by a practitioner who is skilled in the relevant area of law. If such a review or other evidence shows that there has been a serious failure to comply with Clause 3.2, there will have been a Fundamental Breach.
18. We will be likely to conclude that there has been such a serious failure where, based on a sample of files, the peer review or other evidence demonstrates that Contract Work has been conducted at a standard below that which clients are reasonably entitled to expect from a solicitor. Where a peer review or other evidence shows only occasional lapses below the required standard, we will normally either serve a Contract notice or write to the Contractor outlining our concerns. Occasional lapses below the required standard will not normally be a Fundamental Breach. Where the breach relates to the performance of Contract Work, the Commission will not usually rely only on the opinion of a non-legally qualified auditor but will normally obtain the opinion of a peer reviewer before forming a view.

EXAMPLE:

19. Part C Rule 1.13 of the Contract Specification provides “... you may only claim for work that has been reasonably done in accordance with the provisions of the Contract and that is supported by appropriate evidence on file”
20. The Commission makes payments to Contractors on the basis of information they have provided. It needs to ensure that such payments have been properly made. It is accountable for its expenditure and has a statutory obligation to aim to secure the best possible value for money (Ss.5(7) & 18(3) of the Act).
21. Through its auditing, the Commission has identified some Contractors that have been significantly over claiming. The Commission accepts that there may be legitimate differences of opinion as to the amount properly payable for a case. However, for these disputes, the Contract provides rights of appeal, concluding with consideration by the Costs Committee, membership of which is drawn from a panel of independent solicitors.

22. Under the Contract, we carry out Contract Compliance audits, during which batches of case files, and the claims for costs made on them, are assessed. The batches are of such a size as to be indicative of the Contractor's work. This process results in Contractors' batches of costs claims being categorised. Contractors whose claims are assessed down by an average of 0% to 10% are "Category 1", which means that, generally (and particularly where the assessment down is closer to 0% than to 10%) the difference between the claims and the assessment is within the scope of legitimate differences of opinion. Contractors whose costs claims are reduced by an average of more than 10% to 20% are "category 2" and those whose costs claims are reduced by an average of more than 20% are "category 3". Neither category 2 nor category 3 is acceptable.
23. Any Contractor who is assessed as category 3 in one or more Units or Classes of Work will be sent a Contract notice. There may also be circumstances where assessment as category 2 will result in the issue of a notice, for example where there are persistent claims for an item that is not permitted under the Contract. Such over claiming is not acceptable but it is right that there should be an opportunity for corrective action. However, if the Contractor is assessed as category 3 a second time, termination will normally follow.
24. The Commission has identified a very small number of Contractors whose samples of files show over claiming by significantly in excess of 20%. Generally (but not always) we have found, at the same time, that the quality of Contract Work is poor. Such over claiming is a Fundamental Breach.
25. In respect of all costs assessments, the Contractor has a right of appeal to the Costs Committee. If a Regional Director's decision to terminate is made on the basis of over claiming, the Contract Review Body will not normally consider a review of the decision to terminate until after the Costs Committee has dealt with the relevant costs appeals.

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

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

Fundamental Breach 4: Dishonesty

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

Publication of Contract Decisions

31. The Commission may publish information about the Contract decisions it makes about Contractors (Clauses 13.6 & 13.7 of the Contract Standard Terms).
32. We do not intend to publish details of every Contract decision made. We will, however, publish (on our website or otherwise) the names and office addresses of any Contractor whose Contract we have terminated.
33. We will not publish the names of any Contractor that chooses to end their Contract before we have made a decision, unless there are exceptional circumstances.