

# **VHCC Appeals Panel Arrangements 2013**

**1 April 2013**

## 1 Introduction

- 1.1 These Arrangements which come into effect on 1 April 2013 are made under section 2 (1) of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (“the Act”), and succeed the VHCC Appeals Panel Arrangements 2010.
- 1.2 These Arrangements apply to cases which are classified as VHCCs on or after 1<sup>st</sup> April 2013. The appeal process of any case classified as a VHCC before 1<sup>st</sup> April 2013 will be governed by the applicable provisions of the VHCC scheme in accordance with which it was classified.
- 1.3 VHCC Appeal Panel members appointed in accordance with these Arrangements will have the power to hear all VHCC appeals on or after April 1<sup>st</sup> 2013, whether those appeals are governed by these Arrangements or by the provisions of previous VHCC schemes.

## 2 Definitions

- 2.1 In these Arrangements the following expressions have the following meanings:

“*2013 VHCC Contracts*” means the 2013 VHCC Contract (for organisations) and the 2013 VHCC Contract (for self-employed Advocates);

“*Act*” means the Legal Aid, Sentencing and Punishment of Offenders Act 2012;

“*Appeals Panel*” means the VHCC (Crime) Appeals Panel, and “*Panel*” has the same meaning

“*Arrangements*” mean these Arrangements made under the Act by us

“*Committee*” means committee of at least two Panel members appointed under these Arrangements to hear a VHCC appeal;

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

“*CEO*” means the Agency’s Chief Executive Officer, or his or her nominee. The Legal Aid Agency’s CEO may also hold the office of Director of Legal Aid Casework;

“*Director*” means the Director of Legal Aid Casework

“*LAA*” means Legal Aid Agency, and “*Agency*” shall have the same meaning

“*Panel Chair*” means the Panel member appointed by the CEO as Appeals Panel Chair in accordance with paragraph 4.1 of these Arrangements.

“*Single Adjudicator*” means the Panel member appointed under these Arrangements to hear a VHCC appeal; and “*Adjudicator*” has the same meaning

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

*“VHCC”* means Very High Cost (Criminal) Cases as defined in the Criminal Legal Aid (Remuneration) Regulations 2013;

### **3 General**

- 3.1 Appeals under the VHCC scheme concerning payment and funding issues as specified in paragraph 6.4 of the 2013 VHCC Contract Specification will be dealt with by a designated member of the Panel or a Committee made up of at least two Panel members.
- 3.2 The rights of appeal and the process for lodging an appeal are set out in the 2013 VHCC Contracts.
- 3.3 Membership of the Panel and the roles and responsibilities of the members of that Panel are governed by these Arrangements.
- 3.4 In performing their duties and in exercising any discretion under these Arrangements, the Panel Chair and the Agency’s CEO shall have regard to the VHCC Appeals Panel guidance.

### **4 Constitution of the VHCC Appeals Panel**

- 4.1 Members of the Appeals Panel, including the Panel’s Chair, shall be appointed by the Agency’s Chief Executive on behalf of the Lord Chancellor.
- 4.2 The Agency’s CEO may nominate temporary members, or a temporary Chair of the Appeals Panel where in his or her view it is appropriate to do so for the exercise of the Appeal Panel’s functions. Any such temporary member or Chair shall cease to be a member of the Appeals Panel after a specified period no longer than 12 months unless he or she is appointed as a member under paragraph 4.1.
- 4.3 Only members who meet the criteria for membership set out in Schedule 1 of these Arrangements may be appointed (including appointments as temporary members) to the Appeals Panel.

### **5 Applications for membership of the Appeals Panel and maintaining the Appeals Panel**

- 5.1 The Agency’s CEO shall secure applications for membership of the Panel by:
  - (a) notification to the General Council of the Bar, the Law Society, and the Chartered Institute of Legal Executives; and
  - (b) such other measures (if any), as the CEO considers practicable and reasonable, having regard to the qualifying criteria set out in Schedule 1 to these Arrangements.

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- 5.2 The CEO shall maintain a schedule of Appeals Panel members.
- 5.3 The CEO will provide updated information to the Panel Chair each year as to the numbers of members comprising the panel. Where any question arises as to the entry onto or removal from the panel, that question shall be resolved by the CEO.

### **6 Selection of Adjudicators and Committees**

- 6.1 When selecting an Adjudicator or convening a Committee, the CEO will select the Adjudicator, or in the case of a Committee, the Chair and other Panel members, in rotation from the Appeals Panel, having regard to any potential conflict of interest.
- 6.2 Where an Adjudicator, having agreed to consider appeals either as part of Committee or acting as Single Adjudicator, is no longer able to give his or her time to the appeal(s) he or she must inform the Agency in a timely manner so that the work can be allocated to another Panel member. The Agency will expect Panel members to complete appeals without requesting substitutions save in exceptional circumstances.

### **7 The decision making process**

- 7.1 VHCC funding disputes may be resolved by a Single Adjudicator or a hearing by a Committee.
- 7.2 An appeal will be determined on the papers by a Single Adjudicator unless either:
- 7.2.1 The Adjudicator considers that it is in the interests of justice to hear oral representations; or
  - 7.2.2 The Director or Adjudicator considers that the appeal is of such exceptional complexity or significance that it should be referred to a Committee.
- 7.3 Where a matter is referred to a Committee, the CEO shall make arrangements for members of the Panel to meet as required. The parties to the appeal may attend to make oral representations.
- 7.4 Each Committee shall have a Committee Chair. Unless nominated by the CEO the Committee Chair shall be elected by the members of the Committee present from their number, having regard to the criterion in Schedule 1, paragraph 3 of these arrangements.
- 7.5 Except insofar as the procedure of any Committee is regulated by these Arrangements, the Committee shall have power to regulate its own procedure and the ruling of the Committee Chair on any issue of procedure arising at any hearing shall be final.
- 7.6 Subject to paragraph 7.7, three members of the Panel shall form a Committee unless a member becomes unavailable at short notice.

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- 7.7 Where the Committee is made up of two members, they shall form a quorum and have power to deal with all matters before the Committee on which they are in agreement as to the decision to be made.
- 7.8 Any decision if not unanimous will be that of the majority. In situations of no majority decision, the decision will be that of the Chair. A member with a dissenting view may require that that is noted in the decision recorded of the meeting made under paragraph 7.12.
- 7.9 The Adjudicator or Chair of any committee must ensure that proper and adequate reasons are given for decisions.
- 7.10 The Adjudicator or Chair of any Committee is responsible for making, signing and dating a record of the decision relating to any paper adjudication made or Committee held under these Arrangements.
- 7.11 The record of the decision shall be retained by the Agency in accordance with the provisions of its Document Retention Policy.
- 7.12 A clerk will assist the Committee at every appeal. The role of the clerk is to assist the Committee in performing its functions. As well as making arrangements for appellants and their representatives who attend an appeal, the clerk will be able to provide information requested by the Committee.
- 7.13 The clerk will keep a record of the appeal and will record the decision. However, it is the Committee Chair's responsibility to draft the final decision and forward this to the clerk for distribution to the appellant and respondent.
- 7.14 The clerk will also co-ordinate appeals that are to be heard by a Single Adjudicator
- 7.15 The clerk will not take part in the decision making process.

## **8 Conflicts of interest**

- 8.1 It is the responsibility of each Adjudicator or Committee member to be alert to the possibility in any matter of a conflict of interest and, if he or she identifies a conflict of interest or possible conflict of interest, to declare it forthwith.
- 8.2 Where a Panel member decides that any interest declared is in conflict with their role as Adjudicator or Committee member in an appeal allocated to them, they must withdraw from that appeal immediately. Where necessary, the Panel member must return the appeal papers to the Agency for reallocation to a different Adjudicator, or withdraw from the Committee, whichever is appropriate.
- 8.3 Where a potential interest is identified but the Panel Member does not withdraw from the appeal in accordance with paragraph 8.2, it is for the parties to the appeal to decide whether the interest declared is material, or whether the appeal may proceed without the Panel member withdrawing. Where the parties cannot reach agreement it is for the CEO to decide.

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- 8.4 Where it is decided in accordance with paragraph 8.3 that an Adjudicator has a conflict of interest in any appeal allocated to them he or she shall return the papers to the Agency for re-allocation to a different Adjudicator.
- 8.5 Where it is decided in accordance with paragraph 8.3 that a member of a Committee has a conflict of interest in any matter, he or she shall withdraw entirely from the hearing while the matter is considered, and shall not return until the Committee Chair permits him or her to do so.
- 8.6 The decision on each matter shall record the names of any member who has a conflict of interest or has declared a conflict of interest or potential conflict of interest. The decision shall record the matter in respect of which the conflict or potential conflict of interest arose and what steps were taken in respect of that conflict or potential conflict of interest.

## **9 Indemnity for Adjudicators and Committee Members**

- 9.1 The Agency will indemnify Adjudicators and Committee members in carrying out their functions under these Arrangements provided that they have acted honestly in good faith and in accordance with the statutes, regulations and procedures applicable to the decisions they have made.
- 9.2 Adjudicators and Committee members who have acted in accordance with paragraph 9.1 will not have to meet any personal liability that is incurred in the execution of their function out of their personal resources, save where they have acted recklessly.
- 9.3 The CEO will determine the applicability of the indemnity according to the facts of any particular case.

## **10 Term of appointment**

- 10.1 Members of the Appeals Panel, including those holding the position of Chair, shall be removed from the panel after a period to be agreed by the CEO which shall be no more than 3 years consecutive service.
- 10.2 Every removed member shall be eligible for re appointment. In considering reappointment, the CEO should have regard to the skill sets existing within the Appeals Panel, the needs of the business, the availability of suitable candidates to fill any skill gaps, the retiring member's performance against the criteria in Schedule 1 of these Arrangements, and any specialist skills the retiring member possesses.
- 10.3 No reappointment shall be made under paragraph 10.2, above, that provides for a continuous term of office exceeding ten years.
- 10.4 A member of the Appeals Panel may resign by giving two months' notice in writing to the CEO.

## **11 Removal from office**

- 11.1 If it appears to the CEO that any Panel member either:
- (a) No longer meets the criteria in paragraph 4, above; or

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- (b) Has misconducted him or herself in relation to his or her duties as Panel Member

the CEO may terminate his or her membership with two months' notice, notifying the Panel Chair.

11.2 In the event that the Panel Chair is removed under paragraph 11.1, the CEO may nominate a replacement in accordance with paragraph 4.2, until such time as an appointment process is completed.

11.3 No member of the appeals panel shall be removed from office under paragraph 11.1 unless a written report upon which the decision to remove is based has been disclosed to them and they have been given a reasonable period (of not less than 14 days) after such disclosure to make representations to the CEO.

11.4 If a member of the Appeals Panel

- (a) makes a composition with his or her creditors
- (b) is the subject of a receiving order in bankruptcy; or
- (c) becomes of unsound mind

the CEO may terminate his or her membership by disqualification. Such disqualification shall take effect at the expiry of 14 days from the date of service of a notice by the CEO specifying the grounds for disqualification.

11.5 It shall be the duty of any Panel member to inform the CEO in a timely manner if they find themselves in any circumstances covered by paragraph 11. 1 (a), 11.1. (b) or 11.4.

## **12 Remuneration, attendance fees and expenses**

12.1 Appeals Panel members attending hearings or dealing with appeals and carrying out their functions under these Arrangements will be paid such fees and such travelling and other proper expenses and subsistence allowances as the Agency may from time to time authorise.

## **13 Appeal Panel meetings**

13.1 the CEO may in consultation with the Panel Chair convene such meetings as they consider necessary to provide:

- (a) information on the composition and performance of the Appeals Panel
- (b) information on the performance of the Agency that is considered relevant to the role of the Appeals Panel training for Panel members

13.2 The CEO and Panel Chair shall agree the format and agenda of any meeting convened under paragraph 13.1 and may require Panel members' attendance.

## **14 Annual declaration of eligibility**

14.1 All Panel members will be required to submit a standard form declaration to the CEO every 12 months, declaring that he or she continues to meet all the criteria for membership of the Appeals Panel.

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14.2 The CEO will remove any Panel members where:

- no satisfactory response is received
- The criteria in schedule 1 are no longer met

14.3 The schedule of Panel members will be revised on the basis of these annual declarations

## **SCHEDULE 1**

### **1 Primary Criteria**

- 1.1 The criteria which prospective members of the Appeals Panel must meet before they may be appointed are set out below.
- 1.2 An applicant must be a solicitor or barrister or FILEX with three years' experience of criminal or civil legal aid work since qualifying.
- 1.3 An applicant who is a solicitor in private practice must hold a current practising certificate.
- 1.4 An applicant who is a solicitor in private practice must not have any committee decisions currently recorded against them at the Solicitors Regulatory Authority or Consumer Complaints Service of the Legal Ombudsman.
- 1.5 An applicant who is a barrister must hold a current practising certificate issued by the Bar Standards Board.
- 1.6 An applicant who is a barrister must not have any complaints currently recorded against them by the Bar Standards Board.
- 1.7 An applicant who is a FILEX must not have any complaints currently recorded against them by the Ilex Professional Standards, Professional Conduct Panel.

### **2 Standards and competencies**

- 2.1 An applicant who is a solicitor or FILEX must be able to demonstrate a sound working knowledge of Legal Aid Contracts and Regulations, in particular those relating to criminal VHCCs and a proven record of accurate, timely and successful submissions for funding and claims for costs.
- 2.2 An applicant who is a barrister must be able to demonstrate a sound working knowledge of Legal Aid Contracts and Regulations in particular those relating to criminal VHCCs and a proven record of high quality advice on legally-aided cases and accurate, timely and successful claims for fees.
- 2.3 An applicant must be able to demonstrate experience of objective decision-making against a set of criteria that requires both adherence to rules and the reasonable and impartial exercise of discretion.
- 2.4 An applicant must be committed to valuing diversity, and must demonstrate effective interpersonal and communications skills, including succinct and effective report-writing.

### **3 Further criteria**

- 3.1 In appointing members of the Panel, regard shall be had, so far as practicable:

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- 3.1.1 To the desirability not only of retaining members with experience of Panel work, but also the desirability of bringing in new members;
- 3.1.2 To ensuring that the Panel includes members with broad, general legal experience and an understanding of Criminal Legal Aid regulations and policies, especially those applicable to criminal VHCCs.
- 3.1.3 To ensuring that the Panel includes members from among groups who are in a minority in the legal profession such as women, members of ethnic minorities and people with a disability.
- 3.1.4 To ensuring that the Panel includes members of the Bar, the Law Society, and the Chartered Institute of Legal Executives.

### **3.2 Committee Chair**

- 3.2.1 When a Committee is convened a Chair will be selected.
- 3.2.2 Committee members will be asked to indicate whether they would wish to sit as a Committee Chair and will be asked to provide evidence of acting in a position of authority and responsibility, in particular with regard to decision making.