

## 2010 VHCC Specification (for self-employed Advocates)

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## 1. Preliminary

- 1.1 This is the Specification of the 2010 VHCC Contract (for self-employed Advocates). It is one of the key Contract Documents set out in **Clause 12** of the Standard Terms which you must comply with.
- 1.2 Unless otherwise stated, the Standard Terms apply to the performance of VHCC Work.
- 1.3 This Specification sets out the rules under which VHCC Work must be carried out by you, the Service Standards applicable to you. The provisions governing Payment Rates for the VHCC Work are set out in the Criminal Defence Service (Very High Cost Cases) (Funding) Order 2013.
- 1.4 The work that you carry out under this Contract must fall within the Access to Justice Legislation and the scope of this Contract. You must also refer to any LSC Guidance in respect of VHCC Work.
- 1.5 You must perform VHCC Work in accordance with this Contract, Case Plan and Task List.

## 2. Interpretation

2.1 Unless otherwise stated, definitions that are set out in the VHCC Arrangements 2010, Standard Terms and Access to Justice Legislation apply to this Contract and are not repeated here.

2.2 Where there is a conflict between the definitions in Paragraph **2.3** of this Specification and those outlined in the Arrangements, the definitions of this Specification will apply.

2.3 In this Contract the following expressions have the following meanings:

*“2010 VHCC Contract (for self-employed Advocates)”* means this Contract. It includes all VHCC Contract Documents and commences on the Contract Start Date as specified in your Contract for Signature;

*“Advocate”* means a barrister (self-employed or employed) or a solicitor-advocate (self-employed or employed) who meets the Service Standards outlined in **Section 3** of this Specification, unless otherwise expressly stated in this Specification;

*“Agent”* means an individual engaged by you to undertake legal work under this Contract in accordance with the provisions of the Specification;

*“AGFS”* means the Advocates Graduated Fee Scheme, a payment scheme for non-VHCC crown court cases administered by the LSC;

*“Appeals Committee”* means the appeals committee who will hear appeals made in accordance with **Section 6**;

*“Appeals Form”* means the current standard form provided by CCU for VHCC Providers to use when submitting an appeal within the terms of this Specification. This form is available on request or on the LSC Website;

*“Assessment Bundle”* means the documents that are submitted as part of a Claim under this Contract and consists of:

- a completed Task List for the relevant Stage including a reconciliation of the hours worked against the hours agreed with the VHCC Contract Manager for that Stage
- confirmation that the work has been done and the time expended in the form of attendance notes, worklog or other agreed document along with any other supporting evidence;

*“BIS”* means Department for Business Innovation and Skills;

*“Case”* means proceedings against a Client or Clients on one or more counts of a single indictment, of which you have been instructed as their legal representative and the work you undertake for such Client(s) will be governed by this Contract;

*“Contract Period”* means as specified in the Contract for Signature;

*“Counsel”* has the same meaning as Advocate above;

“*Declassification*” means where the case is no longer regarded as a VHCC and “*declassified*” has the same meaning;

“*Disbursement*” means monies paid out by you for travel expenses in the course of undertaking VHCC Work that is authorised by your VHCC Contract Manager;

“*Distant Travel Rule*” means where your Office, as specified in your Case Plan, is located more than one hour away from the court in this Case and there is an Advocate within one hour of the court available;

“*Litigator*” means an individual (employed by your instructing organisation) who has a legal qualification and experience in accordance with the 2010 VHCC Contract (for organisations);

“*LSC Guidance*” means our manual comprising of information relevant to the performance of VHCC Work under this Contract, which is published on the LSC Website;

“*Matter*” has the same meaning as Case;

“*Office*” means a building which is registered with your regulatory body, is suitable to cater for the needs of your Clients, enabling you to satisfy all relevant Health and Safety legislation and the quality and service standards of this Contract and to protect Client confidentiality. The requirements of an Office as stated in the Specification must also be met;

“*Paragraph*” means, unless otherwise specified, one of the Paragraphs of this Specification;

“*Payment Rates*” means the scale of payment rates applicable to VHCC Work as set out in the Criminal Defence Service (Very High Cost Cases) (Funding) Order 2013;

“*Practising Certificate*” means a document issued by the Relevant Professional Body entitling you to provide legal services;

“*Restraint Proceedings*” means proceedings under sections 42 and 58(2) and (3) of the Proceeds of Crime Act 2002, section 78 of the Criminal Justice Act 1988 and s27 of the Drug Trafficking Act 1994;

“*Section*” means, unless otherwise specified, one of the sections of this Specification;

“*Service Standards*” means the quality requirements set out in **Section 3** of this Specification;

“*Single Adjudicator*” means the VHCC Appeals Panel member appointed to hear a VHCC appeal made in accordance with **Section 6**;

“*Stage End Date*” means the agreed end date of a Stage;

“*Substitute Advocate*” means an Advocate who attends a hearing or trial in your place;

“*Task*” means an individual item or activity specified in the Task List;

“*Task List*” means the standard LSC document prepared by you detailing the VHCC Work to be undertaken and is the Contract Report Form;

“*VHCC Appeals Panel*” means those members appointed under the VHCC Appeals Panel Arrangements 2010 to hear VHCC appeals made in accordance with **Section 6**, either as a Single Adjudicator or as part of an Appeals Committee;

“*VHCC Contract Manager*” means the CCU representative who will be responsible for the day-to-day running of this Contract;

“*VHCC Provider*” means an organisation that meets the Service Standards in **Section 3** of this Specification;

“*VHCC Supervisor*” is a partner, principal or employee of your instructing organisation who is authorised to and actively supervise(s) staff and meets all the Supervisor standards in **Section 3** of this Specification and is also the Contract Liaison Manager for your instructing VHCC Provider;

“*employ*” and “*employment*” means where a contract of employment exists for at least two full days per week. For the avoidance of doubt, this includes partners and (sole) principals of an organisation but excludes consultancy agreements.

“*we*” or “*us*” means the LSC (or the CCU as an administrator of this Contract for the LSC) (and “*our*” has the associated meaning);

“*you*” means the Advocate named on the Contract for Signature (and “*your*” has the associated meaning).

### **3. Service Standards**

#### **Advocacy Standards**

- 3.1 You must notify us immediately in writing if you no longer meet any of the Service Standards set out in this Section.
- 3.2 You must ensure you meet the Eligibility Criteria for self-employed Advocates set out in Annex B of the Arrangements.
- 3.3 You must be an appropriately qualified and skilled Advocate and must comply with the Relevant Professional Body's code of conduct.
- 3.4 You must have a current Practising Certificate.
- 3.5 You must inform us if you have had your Practising Certificate revoked or if you have been disbarred or suspended.
- 3.6 Failure to meet the advocacy standards as outlined in this Section is a Fundamental Breach of this Contract.

#### **Office Location**

- 3.7 You must have an Office from which you deliver VHCC Work. This information must be included in your Case Plan.
- 3.8 Your Office must be physically accessible for Client/s (except where they are in prison) each day from Monday to Friday. Hotels, retail outlets and vehicles cannot count as Offices for these purposes.

#### **Welsh language requirements**

- 3.9 If you provide services under this Contract in Wales, you must ensure, in accordance with the Welsh Language Act 1993, that those services are accessible to and understandable by Clients whose language of choice is Welsh.

## 4. Carrying out Contract Work

### General Powers

- 4.1 Extensions, or any other variation to the deadlines imposed in this Section, may be granted by agreement between you and the VHCC Contract Manager.
- 4.2 Where you are required to submit written documentation to the CCU, all documents must be typed, unless otherwise agreed with the VHCC Contract Manager.
- 4.3 Work undertaken from the date of the Representation Order up to the Stage 1 start date will be deemed Pre-Contract work.
- 4.4 The deadlines in this Section will also apply to telephone, e-mail and letter negotiation of a Task List/s or amendments.
- 4.5 In the case of fax or email, if a message is sent by either party which:
- (a) specifies that the message cannot be read for technical reasons, it is not deemed received;
  - (b) specifies that the message has not been read, and the query is an urgent request, alternative arrangements must be made in order to reach an agreement in respect of Paragraph **4.1** of this Specification.
- 4.6 Silence cannot be taken as agreement or confirmation of any request made under this Specification unless Paragraph **5.19** applies.
- 4.7 You must use the LSC standard forms for the Case Plan and Task List. Submission of these documents in any other format will not be accepted.
- 4.8 Where the Representation Order allows the instruction of two Advocates, an Advocate must not unreasonably duplicate the work of the other Advocate.

### Stage 1

- 4.9 You must seek authority for all work undertaken by you from the Contract Start Date in advance by contacting your VHCC Contract Manager.
- 4.10 We will consider requests for work based on whether the work is necessary, reasonable and with reference to the VHCC Guidance.
- 4.11 The VHCC Contract Manager will contact you following receipt of a fully completed Task List to either:
- (a) agree the contents of the Task List or
  - (b) arrange a Stage meeting.
- 4.12 Where Paragraph **4.11(b)** applies:

- (a) the Stage meeting will take place within a reasonable and agreed time;
- (b) the meeting may take place at your Offices, a mutually agreed location or by phone or email;
- (c) VHCC Work will only be negotiated and agreed with you;
- (d) your attendance will be remunerated unless otherwise agreed with your VHCC Contract Manager.

4.13 At the Stage meeting, you and the VHCC Contract Manager will:

- (a) confirm the contents of the Case Plan (for a Stage 1 meeting);
- (b) negotiate the items on the Task List/s.

4.14 You must send an updated Task List to the VHCC Contract Manager specifying the VHCC Work to be done and the agreed hours within five Business Days of the Stage meeting.

4.15 The VHCC Contract Manager will check the updated Task List and, if accurate, the VHCC Contract Manager will confirm the validity of the Task List by email.

### **Category criteria**

4.16 We will apply the category of the Case agreed with your instructing VHCC Provider.

4.17 We may assign different categories to co-defendants on the same indictment as your Client.

4.18 Both parties may review the category at any time and make a request for re-categorisation using the VHCC Category Assessment Sheet. You must have permission from your instructing VHCC Provider to seek re-categorisation.

4.19 If seeking re-categorisation, you are unable to use representations in support of one category criterion, as specified in Paragraph **4.21**, to support a second category criterion when completing the VHCC Category Assessment Sheet.

4.20 If amending the category is agreed, the date on which the re-categorisation applies is the date on which the request for a re-categorisation was made.

4.21 We will assess the category of the Case against the criteria set out below:

### **Fraud VHCC**

- Category 1: all 4 criteria from Block A are met, and all 4 a's from Block B
- Category 2: 2 criteria from Block A are met and at least 2 a's or b's from Block B
- Category 3: All other fraud VHCCs
- Category 4: non-fraud VHCCs only

### **Block A**

1. The defendant's case is likely to give rise to:

- (a) national publicity; and



- (b) widespread public concern;
2. The defendant's case requires highly specialised knowledge;
  3. The defendant's case involves a significant international dimension;
  4. The defendant's case requires legal, accountancy and investigative skills to be brought together.

### Block B

1. The value of the fraud as described in the indictment and/or the prosecution case statement/summary exceeds:

- (a) £10m
- (b) £2m

2. The volume of prosecution documentation, which consists of:

- witness statements
- exhibits
- interview transcripts
- pre-interview disclosure/advance information
- Notices of Further Evidence ("NFEs") exceeds:

- (a) 30,000 pages
- (b) 10,000 pages.

Unused material will not be considered for the purposes of this criterion, nor will evidence which has yet to be served.

3. The total costs of representing the defendant(s) are likely to exceed:

- (a) £500,000
- (b) £250,000.

4. The length of the trial is estimated at:

- (a) over 60days

### **Non-fraud VHCC**

Category 1: Terrorism cases uplifted from category 2.

Category 2: For cases not involving drugs, all 4 criteria from Block A are met and 2 a's from Block B; or for serious drugs cases, 3 criteria from Block A and 2 a's from Block B.

Category 3: 3 criteria from Block A are met and at least 1 a or b from Block B.

Category 4: All other VHCCs.

If the case is primarily founded on allegations of terrorism, apply an uplift of one category.

### Block A

1. Pursuant to statute, the case must be a class 1 or 2 offence.
2. The maximum sentence for the offence is imprisonment for life or over 30 years, per statute.
3. The case is likely to attract national interest.
4. Either:
  - (a) Where the offence is of a violent or sexual nature, there must be multiple victims; or
  - (b) if the offence is of a violent or sexual nature and there is only a sole victim, there must be something significant about the crime; or
  - (c) if the case involves drugs, their total value is estimated by the prosecuting authority to exceed £10m; or
  - (d) the case in which the main offence with which the defendant is charged, whether at common law or under any statutory enactment, is primarily founded on allegations of terrorism as defined in the Terrorism Act 2000.

### Block B

1. The volume of prosecution documentation, which consists of:

- witness statements
- exhibits
- interview transcripts
- pre-interview disclosure/advance information
- Notices of Further Evidence (“NFEs”)

exceeds:

- (a) 10,000 pages
- (b) 5,000 pages

Unused material will not be considered for the purposes of this criterion, nor will evidence which has yet to be served.

2. The total costs of representing the defendant(s) are likely to exceed:

- (a) £400,000
- (b) £200,000

### **Subsequent Stages**

4.22 Unless agreed otherwise:

- (a) You must prepare a Task List for each Stage and submit this to the VHCC Contract Manager prior to undertaking any work and within ten Business Days of the start of the Stage;
  - (b) Task Lists must be submitted by you to the VHCC Contract Manager in advance of any negotiations with the CCU; and
  - (c) You must provide a summary of the VHCC Work undertaken in the previous Stage with the Task List.
- 4.23 You must not request a variation to the Stage End Date.
- 4.24 Neither party can assume hours for Tasks that were agreed in a previous Stage will automatically rollover into the next Stage. If a Task that was agreed in a previous Stage, has not been completed by the Stage End Date, and it must still be completed in the next or subsequent Stage, the hours for incomplete Tasks must still be incorporated into the Task List and agreed for the next Stage.
- 4.25 Following receipt of a fully completed Task List for all subsequent Stages after Stage 1, Paragraphs **4.11 to 4.15** apply.
- 4.26 You must ensure you have, at all times, an updated copy of your and your instructing Litigators' Task List.
- 4.27 You must provide a copy of your agreed Task List to your instructing VHCC Provider for every Stage.
- 4.28 We will not agree any VHCC Work for the Stages following Stage 1 until both you and your instructing VHCC Provider have submitted a Task List.
- 4.29 Where two Advocates are no longer needed in the Case, you must take reasonable steps to ensure your instructing VHCC Provider applies to amend the Representation Order.

#### **Amendments to the Task List**

- 4.30 You must obtain authority from the CCU for all Task List amendments.
- 4.31 We may agree an amendment with the VHCC Supervisor if they request on your behalf.
- 4.32 You (or the VHCC Supervisor) must make all requests for amendments to the Tasks or hours to your VHCC Contract Manager. If the VHCC Contract Manager is unavailable, you must make the request to another member of the CCU. Requests for amendments to the Task List (including an increase in time for an agreed Task that does not fall within the relevant exceptions in this Specification) can be made orally or in writing. Where a request and agreement is made orally, both parties shall each record the amendment in writing and keep that record on file. Where a request and agreement is made in writing, the written form will be a record of the amendment.
- 4.33 You must update the Task List with any agreed amendments including the date that the amendment was agreed. Depending on the nature and extent of the change, we may request an updated copy of the Task List.

- 4.34 You must send an updated Task List to the VHCC Contract Manager before the end of the Stage to which the Task List relates.
- 4.35 We will respond to any amendment requests within five Business Days of receipt of the request. Where we are unable to fully resolve each request or query within five Business Days we will request further information or give an indication that it will require further time to consider the matter.
- 4.36 Where an amendment request relates to extending the time already agreed on an existing Task on the current Task List, the request must be made in accordance with Paragraph **4.32** prior to the expiry of the agreed hours for that Task. Where an amendment request relates to a new Task not listed on the current Task List, the request must be made prior to any work commencing on that Task.
- 4.37 You must ensure that all those involved in the Case are aware of what VHCC Work is required, by whom and by when, and that they know where the latest version of the Task List is recorded.
- 4.38 Where an amendment is agreed between you and the VHCC Contract Manager, you must ensure your VHCC Supervisor is either (a) copied into the email if the agreement is made by email or (b) inform your VHCC Supervisor promptly after the agreement has been made.
- 4.39 You must ensure that the VHCC Supervisor and any other Advocate instructed on the Case are aware of what VHCC Work is required by you and by when, and that they know where the latest version of what is to be done (i.e. the most current Task List/s) is recorded.

### **Trial Stage**

- 4.40 You must prepare work logs for all preparation undertaken during the trial, including preparation undertaken during the course of the court day.
- 4.41 You must contact the VHCC Contract Manager every four weeks during the trial to discuss changes to the VHCC arising from the trial and if necessary, to agree additional work.
- 4.42 Paragraphs **4.30 to 4.39** apply to any amendments to the Task List during the trial stage.

### **Conflicts of Interest**

- 4.43 You must check for conflicts of interest throughout the Case in accordance with the Relevant Professional Body's code of conduct.
- 4.44 In the event that a conflict becomes apparent at any time during the course of the Case you must take appropriate action under the Relevant Professional Body's code of conduct and also notify the CCU in writing and the Client as soon as practicable.
- 4.45 Where you are required to cease undertaking VHCC Work you must make the required representations to the Court, inform the VHCC Contract Manager and return the instructions in accordance with the Relevant Professional Body's code of conduct.

- 4.46 If CCU reasonably considers that there is risk of a conflict of interest arising, the CCU may raise it with the Relevant Professional Body and/or the court.
- 4.47 If the court or the Relevant Professional Body declares that there is a conflict of interest, and you continue to represent the Client, this will be a Fundamental Breach.

#### **Return of instructions/Continuity of Service**

- 4.48 You must inform us within a reasonable period if you become aware that you may not be able to continue working on the Case.
- 4.49 You may only return the instructions and withdraw from the Case in accordance with the Relevant Professional Body's code of conduct.
- 4.50 Where you return the instructions, you must provide written reasons and supply any information we may reasonably request that will assist us in determining whether the return was reasonable.
- 4.51 Where we decide it was reasonable for you to return the instructions all reasonable costs will be paid after an Assessment of an Assessment Bundle has been completed.
- 4.52 If we decide that it was unreasonable for you to return the instructions, costs may be withheld or, if already paid, recouped.
- 4.53 We will consider each return of instructions in line with the CCU and Relevant Professional Body's code of conduct.
- 4.54 Where a VHCC is transferred from your instructing VHCC Provider, and you are not instructed by the new VHCC Provider, you will not be paid for any further VHCC Work from the date of the amendment of the Representation Order.
- 4.55 Where you return the Case you must return all the VHCC papers and any other material in your possession relating to it to your instructing VHCC Provider.
- 4.56 If you stop providing VHCC Work through termination of this Contract at any Stage, for any reason, we will agree an exit management strategy with you for the Case. The VHCC Contract Manager will agree on a strategy acceptable to both of us and if applicable, the new Advocate.

#### **Substitute Advocates**

- 4.57 Where you are not available to attend a hearing or trial, and where two Advocates are instructed, the other Advocate is not available, a Substitute Advocate may be used with our prior approval.
- 4.58 You must ensure the Substitute Advocate meets the Service Standards in **Section 3** of this Specification.
- 4.59 Where it is necessary for a Substitute Advocate to undertake any VHCC Work, that Advocate will be treated as an Agent.

- 4.60 If you are using a Substitute Advocate to provide work under this Contract, you accept that this Contract is between you and us and that you remain solely responsible for the performance of all VHCC Work.

### **Declassification**

- 4.61 Subject to the completion of any appeal or review against a classification, once a case has been classified as a VHCC, the presumption will be that it will remain so until the conclusion of proceedings, and the CCU shall be under no obligation to review the Case's classification. In exceptional circumstances and where there is new information and a change in circumstances, which could make it unreasonable for the Case to remain a VHCC, the CCU may consider Declassification.
- 4.62 Where a Case is declassified, we will:
- (a) terminate this Contract in accordance with **Clause 25** of the Standard Terms;
  - (b) allow payment under the AGFS;
  - (c) recoup any money paid to you under this Contract.

## 5. Claiming, Assessment and Remuneration

5.1 You must submit Claims to us in accordance with this Contract.

5.2 You may only make Claims for payment for VHCC Work:

- (a) where you are authorised under a Representation Order for the Client;
- (b) you are authorised to undertake VHCC Work under this Contract; and
- (c) the work is remunerable under **Section 4** of this Specification.

5.3 You must submit a Claim at the end of a Stage. Your Claim must cover all VHCC Work undertaken during that Stage and must include all receipts for travel and subsistence expenses incurred during that Stage.

5.4 You must submit an Assessment Bundle to Claim payment.

5.5 Unless otherwise agreed, your worklogs must contain the following information:

- (a) Date
- (b) Time of day
- (c) Task Number
- (d) Comprehensive description of VHCC Work completed
- (e) Total time spent
- (f) Volume/page count of material considered.

5.6 Assessment Bundles not submitted in accordance with this Contract will be returned and any Claim relating to the Assessment Bundle will remain unpaid until an Assessment Bundle is received in the correct format.

5.7 The Assessment Bundle must be submitted to the CCU within twenty Business Days of the Stage end date.

5.8 We will, by way of Assessment determine whether the work included in your Claim was actually and reasonably done and for Stages other than the Pre-Contract, whether it was within the hours agreed and specified in a Task List.

5.9 You and the CCU must operate within the courts determination of the number and level of Advocate(s) contained in the Representation Order for this Case. We do not have any discretion to go behind the Representation Order and therefore can only pay Advocates at the appropriate rates for their level as specified on that Representation Order and/or Case Plan and/or Task List at the date the Advocate conducted the VHCC Work.

5.10 We will undertake to complete an Assessment within twenty Business Days of receipt of the Assessment Bundle. If further information is required, we will request such information and may return the Assessment Bundle with such a request.

5.11 Following Assessment, we will calculate payment using the applicable Payment Rates.

- 5.12 Following Assessment, we will send you our report on the Assessment and a payment form.
- 5.13 If you agree with the Assessment made by us, the payment form must be signed by you and returned to the CCU within ten Business Days of the date on the Assessment report.
- 5.14 If you disagree with any part of the Assessment made by us, you may appeal using the appeals process set out in **Section 6** of the Specification.
- 5.15 If you submit an appeal on only a part of the Assessment, the remaining parts of the Assessment will be considered to be agreed. Payment will be made for the part(s) of the Assessment not in dispute. No payment will be made for the part of the Assessment in dispute.
- 5.16 For trial Stages, the CCU will request the trial log from the court for the purposes of assessing a Claim. Whilst we will make every effort to obtain such information, the speed of the court in responding to requests may delay Assessment.
- 5.17 Where there is no court record of any part or all of the trial in this Case for the purposes of assessing a Claim, the CCU will assess and pay the preparation and court days that can be objectively assessed, in accordance with this Specification.
- 5.18 Payment will be made in the payment run following receipt of a signed payment form in accordance with Paragraph **5.13**.
- 5.19 The CCU will not pay for VHCC Work that was not agreed in advance, unless one of the following exceptions apply:
- (a) The work needs to be done by the next Business Day, it is reasonable and necessary, and prior authority cannot be sought from the CCU because either:
    - (i) the need for the task is only identified outside CCU office hours and the work was not foreseeable; or
    - (ii) you have been unable to contact any VHCC Contract Manager within the CCU and your attempt to make contact can be evidenced;
  - (b) it is work undertaken by an Advocate during the trial, including preparation undertaken during the course of the court day and/or work ordered by the court. All work properly and reasonably undertaken by the Advocate and accounted for in their work log will be paid at the appropriate rate, subject to the CCU being satisfied that such work could not have been included when planning their trial stage Task List and/or as part of the agreement for baskets of trial preparation hours;
  - (c) where the VHCC Contract Manager agrees there will be implied authority for the consideration of certain further material served within the life of the stage.
- 5.20 We will make all payments by BACS transfer.



- 5.21 We will pay you direct for all VHCC Work carried out by you and any Substitute Advocate.
- 5.22 Where work has been undertaken as a result of your error or omission, you are not entitled to claim payment for it under this Contract and any payments made for it are repayable to us.
- 5.23 If a Substitute Advocate is used, their work must be submitted as part of your Claim.
- 5.24 A Substitute Advocate Claim in any other format will be not be considered by the CCU and will not be paid.
- 5.25 You must only make Claims for payment for VHCC Work if you are authorised to undertake VHCC Work.
- 5.26 You must have a Legal Aid account number and you must ensure that your account details are up to date with Master Index of the LSC.

### **Travel time and travel expenses**

- 5.27 All travel time and travel expenses must be agreed in advance with your VHCC Contract Manager.
- 5.28 The LSC may apply the VHCC Distant Travel Rule.
- 5.29 Where the VHCC Distant Travel Rule applies, we will pay a maximum of one hour (by whatever method of transportation) and, the equivalent Disbursement of 25 miles each way. Where other travel costs such as site visits, are inflated due to you being distant, travel costs will be restricted to the maximum above.
- 5.30 Travel time and expenses will not be considered reasonable based solely on the following grounds:
- (a) Where the Client had specifically asked for the Advocate in question;
  - (b) Where the Advocate had acted for the Client in an unrelated case of no relevance to this Case.
- 5.31 In exceptional circumstances, we may allow travel time and expenses to be paid outside of the VHCC Distant Travel Rule.
- 5.32 Subject to any VHCC Distant Travel Rule, if staying overnight is more expensive than the agreed daily commute, we will only authorise a contribution to the accommodation up to the value of the agreed daily commuting costs.
- 5.33 Claims for Disbursements must include original or copies of receipts for each expense claimed.
- 5.34 Where subsistence is considered necessary and reasonable, we will not authorise more than £20 subsistence per day.

- 5.35 For subsistence Claims, you should pay for your own meals and get your own itemised receipts, even if dining with other people. Alcoholic beverages will not be remunerated.
- 5.36 Where hotel accommodation has been allowed, we will not pay for unreasonable subsistence expenses even if they are within the daily allowance agreed with your VHCC Contract Manager.
- 5.37 First class rail travel will not be permitted unless it can be evidenced, before travel, that this represented better value for money than a standard class fare plus travel time using the most economical ticket available (including advance purchase tickets).
- 5.38 First class and business class flights will not be remunerated under any circumstances.
- 5.39 Unless there are exceptional circumstances, we will not pay for your Client's travel expenses.
- 5.40 Where travel is permitted to visit the Client for medical reasons, you should submit evidence produced from the Client's general practitioner or other medical practitioner demonstrating why the Client is unfit to travel.
- 5.41 Subject to any guidance or orders to the contrary, we will not pay any monies owed under a defendant's costs order or for a prosecution witness attending to give evidence. Such monies shall be paid through funds administered by the courts.

#### **Work Incidental to VHCC Work**

- 5.42 We may pay for some elements of work that are considered incidental to the criminal proceedings of this Case and they have been agreed in advance with your VHCC Contract Manager. These may include but shall not be limited to:
- (a) preparation for and attendance of confiscation proceedings;
  - (b) limited preparation for restraint proceedings;
  - (c) reasonable conference time to discuss the prospect of a negative appeal conviction or sentence.
- 5.43 We will not pay for the following under this Contract:
- (a) pastoral care
  - (b) legal advice for anyone other than the client named on the representation order
  - (c) representation of the defendant in non-criminal (but possibly incidental) proceedings brought by BIS
  - (d) preparation for judicial review proceedings
  - (e) preparation for a positive appeal against conviction or sentence
  - (f) civil asset recovery proceedings
  - (g) work done in relation to requests for information made by SIU
  - (h) restraint and confiscation proceedings in relation to family members
  - (i) enforcement proceedings in the magistrates court.

## 6. Appeals

- 6.1 Where you disagree with a decision relating to those matters set out in Paragraph **6.4** below, made by us, you have a right to appeal that decision. Your appeal will be considered either by one member of the VHCC Appeals Panel on the papers, or a Committee with the opportunity for you to attend and make oral representations. Any matter, which is referred to or heard by a member of the VHCC Appeals Panel or the Committee, may not then be disputed under **Clause 27 and Clause 28** of the Standard Terms.
- 6.2 All disputes (including those in Paragraph **6.5**) other than those specified in Paragraph **6.4** below will be dealt with under **Clause 27 and Clause 28** of the Standard Terms, as appropriate.
- 6.3 If you dispute any decision made by us in relation to this Contract, you must, without prejudice to the dispute, continue to work on the Case and continue to comply with the terms and conditions of this Contract.

### Right to appeal

- 6.4 You have a right of appeal in accordance with Paragraph **6.1** on the following issues only:
- (a) individual Tasks disputed on the submitted Task List;
  - (b) the category assigned to the VHCC and notified to you by the CCU;
  - (c) hours in dispute within the submitted Task List;
  - (d) the level of Advocate allowed for any item of VHCC Work;
  - (e) Disbursements;
  - (f) where the CCU decides to reduce payment under the Contract as a result of the Representation Order being amended to show another nominated Litigator;
  - (g) where an Assessment carried out by the CCU, results in the refusal of payment on some or all of the VHCC Work based on any reason other than the reasons set out in Paragraph **5.19**.
- 6.5 You do **not** have a right of appeal in accordance with Paragraph **6.1** on the following issues, where in the view of the LSC:
- (a) VHCC Work was agreed on the basis of false or misleading information and payment has therefore been refused;
  - (b) a Task List is not approved due to the omission of the required details and information;
  - (c) VHCC Work was not agreed (subject to the exceptions set out in Paragraph **5.19** and a decision is made by the CCU not to make payment for that VHCC Work);
  - (d) the total hours worked for a task exceed the hours agreed for that task and the CCU makes a decision not to pay for those exceeded hours;
  - (e) you have missed the ten Business Day deadline to appeal the decision made by the VHCC Contract Manager (or an extended deadline agreed in writing by the CCU) and the CCU refuses to accept your appeal representations on such a basis;

- (f) the CCU has applied the Advocate levels as specified on the Representation Order and the Case Plan to the Payment Rates you are entitled to Claim and you are working at a higher or lower level which has the effect of distorting your Claims.
- (g) this Contract has been suspended or terminated;
- (h) a matter relating to this Contract upon which you have initiated an appeal has previously been settled, either by adjudication in front of a committee or by expiry of appeal deadlines, and there has been no significant change in circumstances;
- (i) a VHCC has been declassified; or
- (j) the matter is not covered by Paragraph 6.4.

## Appeal process

- 6.6 Subject to Paragraphs 6.7 and 6.8 of this Specification, appeal decisions will be made on the papers by a Single Adjudicator.
- 6.7 Where we consider the appeal is exceptionally complex or significant, or where the Single Adjudicator considers it to be in the interests of justice, the matter will be referred to the Appeals Committee.
- 6.8 Where the Single Adjudicator considers that it is in the interests of justice to hear oral representations before making a determination, you may attend to make such representations.
- 6.9 You and the VHCC Contract Manager may seek an extension to any of the deadlines in this Section.
- 6.10 Any appeal must be lodged via email to [ccuappeals@legalservices.gsi.gov.uk](mailto:ccuappeals@legalservices.gsi.gov.uk) within ten Business Days of receipt of the original decision. For the purposes of this Contract, the original decision will be deemed to be made when the VHCC Contract Manager verbally conveys his/her decision or when the VHCC Contract Manager conveys his/her decision in writing, whichever is the sooner.
- 6.11 Your appeal must be made in writing, using the Appeals Form provided by the CCU. Your appeal will not be lodged if your representations are submitted in any other form. Your appeal representations should include:
  - (a) background to the VHCC;
  - (b) a Case Summary (if available);
  - (c) a copy of the indictment;
  - (d) details of the item(s) in dispute; and
  - (e) full reasons why you disagree with our decision.
- 6.12 Where you are required to submit written documentation, all documents must be typed unless otherwise agreed with the VHCC Contract Manager.
- 6.13 We will provide you with a copy of our appeal response in writing within ten Business Days of receipt of your appeal representations.
- 6.14 Where the appeal is to be determined by a Single Adjudicator, the appeal bundle will be sent to them within ten Business Days.

- 6.15 The Single Adjudicator will determine the appeal within ten Business Days.
- 6.16 The decision made by the Single Adjudicator will be communicated in writing within five Business Days of the decision.
- 6.17 Where the Single Adjudicator or the CCU decides that the appeal should be heard by the VHCC Appeals Committee, then we will arrange an appeal hearing in accordance with Paragraph **6.18**.
- 6.18 We will arrange the date of the appeal hearing within twenty Business Days of the date of our appeal response pursuant to Paragraph **6.13** or the date of the decision made by the Single Adjudicator, pursuant to Paragraph **6.7**.
- 6.19 We will offer you an appeal hearing date within thirty Business Days from the date of our appeal response.
- 6.20 We will prepare the appeal bundle with the following:
- (a) appeal representations;
  - (b) appeal response;
  - (c) Case Summary;
  - (d) indictment; and
  - (e) any other supporting documentation
- 6.21 We will provide members of the Committee with a copy of the appeal bundle no later than five Business Days prior to the appeal hearing
- 6.22 Where an appeal has been listed, and you have further discussions with your VHCC Contract Manager and still disagree with their decision, further supporting evidence may be added to your appeal bundle but the Appeals Committee has discretion as to whether to consider this further information if it is submitted within three Business Days prior to the appeal date or at the appeal.
- 6.23 Further written representations may not be added to your bundle without the consent of the VHCC Contract Manager.
- 6.24 Further supporting evidence must be provided at least three Business Days prior to the agreed appeal hearing date. If not, either party may request an adjournment.
- 6.25 Attendance in person is optional and the appeal may be heard from the papers in the absence of you and the VHCC Contract Manager. If you wish to attend you may make oral representations to the Appeals Committee. We will only make oral representations to the Appeals Committee ourselves if you do.
- 6.26 The decision of the Appeals Committee will be made and communicated in writing to the appellant and the respondent within five Business Days of the appeal hearing, subject to any reasonable delay by the Appeals Committee members finalising their decision.
- 6.27 Neither party shall seek further reasons from the Appeals Committee unless there is ambiguity.

- 6.28 The Appeals Committee or Single Adjudicator decision is final and there is no further right of appeal under this Contract.
- 6.29 The Appeals Committee or Single Adjudicator decision is only binding on the single appeal made under this Contract.
- 6.30 An anonymised version of the decision will be published on the LSC Website.

## 7. Not used