

2013 ICC Contract Specification (for organisations)

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1. Preliminary

- 1.1 This is the Specification of the 2013 ICC Contract. 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 ICC Work.
- 1.3 This Specification sets out the rules under which ICC Work must be carried out by you and the Service Standards applicable to you.
- 1.4 All the rates and procedures governing payment for the work are set out in the Criminal Legal Aid (Remuneration) Regulations 2013, which you must comply with.
- 1.5 The work that you carry out under this Contract must be permitted by Legal Aid Legislation and the scope of this Contract. You must also refer to any Contract Guide in respect of ICC Work.
- 1.6 You must perform ICC Work in accordance with this Contract.

2. Interpretation

2.1 Unless otherwise stated, definitions that are set out in the 2010 Standard Crime Contract Specification, Standard Terms, VHCC Arrangements 2013, Criminal Legal Aid (Remuneration) Regulations 2013, and Legal Aid 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 VHCC Arrangements 2013, the definitions of this Specification will apply.

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

“2010 Standard Crime Contract Specification” means the Specification of the 2010 Standard Crime Contract, which is published on our website;

“2013 ICC Contract” means this Contract that will be issued for cases which are classified by us on or after 1st April 2013, where the case satisfies the VHCC definition and the trial would in our opinion be likely to last for less than 61 days. It includes all ICC Contract Documents and commences on the Contract Start Date as specified in your ICC 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 or organisation engaged by you to undertake legal work under this Contract in accordance with the provisions of the Specification;

“Case” means proceedings against a Client or Clients on one or more counts of a single indictment, where you have been instructed as the legal representative for such Client(s) 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;

“Crime Category Supervisor” has the meaning set out at Paragraph **3.14 to 3.17** of the Specification;

“ICC Case Manager” means an individual nominated by us who will be responsible for the day to day management of this Contract;

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

“ICC Supervisor” is a partner, principal or employee of your 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. The ICC Supervisor may be a Crime Category Supervisor or a VHCC Supervisor;

“ICC Work” means work reasonably and actually undertaken from the date of determination that an individual qualifies for Criminal Legal Aid in accordance with the applicable regulations and with the terms and conditions of this Contract;

“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 and employees, 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;

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

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

“Solicitor” means a Solicitor of the Senior Courts of England and Wales; and

“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.

3. Service Standards

Organisation standards

- 3.1 You must ensure you meet the Eligibility Criteria for organisations set out in Annex C of the VHCC Arrangements 2013.
- 3.2 You must only use appropriately qualified and skilled staff in ICC Work.

Supervisor standards

General

- 3.3 You must have or employ within your organisation an ICC Supervisor.
- 3.4 To qualify as an ICC Supervisor, a person must for the duration of this Contract comply with:
 - (a) the requirements set out in Paragraphs **3.5 to 3.13**; and
 - (b) either:
 - (i) the Crime Category Supervisor Standards set out in Paragraphs **3.14 to 3.17**;
or
 - (ii) the VHCC Supervisor Standards as set out in Paragraph **3.18**.
- 3.5 You must notify us if an ICC Supervisor leaves your organisation, ceases to meet the Supervisor standards set out in this Specification or fails to perform their duties as a Supervisor in a timely manner and with all reasonable skill, care and diligence. Where your ICC Supervisor ceases to meet the Supervisor standards or fails to perform their duties in the manner described, such member of your personnel must immediately cease acting as a Supervisor.
- 3.6 An ICC Supervisor may delegate functions to an employee who does not meet all the Supervisor standards in this Specification to act as their deputy Supervisor. However, the ICC Supervisor must continue to supervise the deputy Supervisor and have a training and development plan to provide the necessary skills and experience to become an ICC Supervisor in future.
- 3.7 Your ICC Supervisor must meet the Supervisor standards in this Specification at the time of being appointed as an ICC Supervisor and continue to do so in any 12 month period thereafter.
- 3.8 Your ICC Supervisor must take account of any changes in legislation and case law.
- 3.9 All ICC Work must be supervised by an ICC Supervisor and a failure to ensure this is a Fundamental Breach of this Contract.
- 3.10 An ICC Supervisor must ensure that all persons performing Contract Work under this Contract have a professional legal qualification (as described in the Contract Guide) or, where a professional legal qualification is not required in respect of Contract Work, that such persons perform a minimum of 12 hours of Contract Work each week.

- 3.11 Arrangements must be in place to ensure that an ICC Supervisor is able to conduct their role effectively including but not limited to the following: -
- (a) designating time to conduct supervision of each Designated Fee Earner or Case-worker;
 - (b) designating time to be in Offices where Contract Work is being conducted; and
 - (c) ensuring that the level of supervision provided reflects the skills, knowledge and experience of the individual Designated Fee Earner or Case-worker.
- 3.12 An ICC Supervisor must conduct file reviews for each Designated Fee Earner or Case-worker they supervise. The number of file reviews must reflect the skills, knowledge and experience of the individual. The ICC Supervisor must record the outcome of files reviews, together with the details of corrective action taken (if any).
- 3.13 Where a Designated Fee Earner or Case-worker undertakes ICC Work in a location other than where their ICC Supervisor is based, the ICC Supervisor must conduct, as a minimum, face-to-face supervision at least once per calendar month.

Crime Category Supervisor Standards

- 3.14 A Crime Category Supervisor must meet one of the following supervisory skills standards:
- (a) Have supervised at least one full-time Designated Fee Earner or Case-worker for at least one year in the five year period prior to such person undertaking Contract Work as a Crime Category Supervisor; or
 - (b) Have completed training covering key supervisory skills we approve no earlier than 12 months prior to the Contract Start Date; or
 - (c) Have achieved Level 3 or higher NVQ standard (or any replacement) in supervision no earlier than five years prior to the Contract Start Date.
- 3.15 An individual must qualify under one of the following routes:

Route 1 – Duty Solicitor

- (a) The Supervisor must be either:
 - (i) a current Police Station and court Duty Solicitor; or
 - (ii) a current Police Station Duty Solicitor and at any time in the previous 12 months have undertaken a minimum of six magistrates' court representations and advocacy on criminal Legal Aid cases; or
 - (iii) a current court Duty Solicitor and hold the PSQ part of CLAS.

Route 2 – Duty Solicitor equivalent

- (b) The Supervisor must:
 - (i) have held a current non-conditional practising certificate for the previous three years; and

- (ii) hold the PSQ part of CLAS; and
- (iii) at any time during the Contract, in the previous 12 months have undertaken a minimum of 20 magistrates' court representations and advocacy under a Representation Order (of which no more than 10 can relate to claims for category 1 proceedings as defined in the 2010 Standard Crime Contract Specification).

Route 3 – 350 hour casework route

(c) The Supervisor must:

- (i) have held a current non-conditional practising certificate for the previous three years; and
- (ii) at any time during the Contract, in the previous 12 months, have undertaken a minimum of six Police Station Advice and Assistance cases (of which no more than two can be Police Station Telephone Advice where there is no subsequent Police Station attendance); and
- (iii) at any time during the Contract, in the previous 12 months, have undertaken a minimum of six magistrates' court representations and advocacy under a Representation Order (of which no more than two can be Claims for category 1 proceedings); and
- (iv) at any time during the Contract in the previous 12 months have undertaken at least 350 hours of direct casework (this may include direct (documented) supervision).

3.16 An ICC Supervisor who qualifies under route 3 (see Paragraph **3.15**) of the Crime Category Supervisor requirements must, during the Contract, have in the previous 12 months have undertaken at least 350 hours of direct casework supervision (in accordance with the rules set out in this Specification).

3.17 In the case of a part time ICC Supervisor, the requirement in Paragraph **3.16** is to be read as 1,050 hours of direct casework supervision in the previous five years.

VHCC Supervisor Standards

3.18 An individual must meet the following:

- (a) Have eight years' post-qualification experience; and either
- (b) for non-fraud VHCCs, 1,050 hours on Serious Crime Cases within the last three years; or
- (c) for fraud VHCCs, 1,050 hours on Serious Crime Cases, with at least 700 of those hours on Serious Fraud Work within the last three years.

Temporary Supervisor Absence

3.19 If your ICC Supervisor is for any reason temporarily unable to act as such you may for a period of up to six weeks, either:

- (a) Nominate an employed Designated Fee Earner or Case-worker who does not meet all the ICC Supervisor standards set out in this Section of the Specification to supervise; or
 - (b) Nominate an external Supervisor to supervise.
- 3.20 If you estimate that your Supervisor may be unable to supervise for more than six weeks, or following completion of the six week temporary period described in Paragraph **3.19** the Supervisor is not able to resume Supervision, you must immediately inform us and we will decide at our discretion what appropriate action to take. This may include:
- (a) Extending the use of an employed Designated Fee Earner or Case-worker as Supervisor for a limited period;
 - (b) Formalising the external Supervision arrangement for a limited period;
 - (c) By written notice specifying that you must put in place another employed Supervisor by such period as the notice specifies; or
 - (d) Applying a Sanction.

Minimum Supervisor ratios

- 3.21 The general position is that there is no specified ratio of Supervisors to Designated Fee Earners or Case-workers.
- 3.22 Individuals who only undertake administrative tasks (which you may not claim for under this ICC Contract) or only conduct triage (early diagnosis of the Client's overall legal problem(s)) prior to a Matter being opened are not Case-workers for the purpose of these ratios or otherwise.

Designated Fee Earners

- 3.23 You are required 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.
- 3.24 Where a 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.
- 3.25 The information required in Paragraphs **3.23 to 3.24** above must be retained on a personnel file for each Designated Fee Earner. Alternatively, you must retain the information for all staff together in a single Location.
- 3.26 You must designate all fee earners who regularly undertake Contract Work under this Contract for you. For the purposes of designation only, when identifying fee-earners, you may disregard any fee-earning work (which may be Contract Work) which is basic or routine, such as the completion of standard forms, making routing telephone calls, and dispatching standard letters. In addition, you do not have to designate staff

who only occasionally undertake a limited amount of work as less than three hours a month.

- 3.27 You must designate all Supervisors that carry out Contract Work, Filex Supervisors, Duty Solicitors, Accredited Representatives and Probationary Representatives employed by you.
- 3.28 You may designate fee-earners not employed by you but whom you instruct regularly.

Office Location

- 3.29 You must have an Office from which you deliver ICC Work.
- 3.30 Your Office must be physically accessible for your Client(s) (except where they are in prison) each day from Monday to Friday, and you must have arrangements in place to ensure that during Office opening hours, your Client(s) can speak to a person by telephone to arrange appointments and to contact you about emergency matters. Hotels, retail outlets and vehicles cannot count as Offices for these purposes.

Referral and signposting arrangements

- 3.31 You must have appropriate arrangements in operation so that you can refer (this includes transfer) or signpost a Client or potential Client to another ICC Provider where:
 - (a) you do not or no longer provide the services that the Client requires;
 - (b) you have so much work that you are unable to provide appropriate services to a Client within a reasonable time;
 - (c) there is a conflict of interest between two or more Clients or potential Clients wishing to access your services; or
 - (d) you are required to make a referral under the Relevant Professional Body's code of conduct.
- 3.32 You must refer or signpost a Client at an early stage if it becomes clear that the enquiry concerns a subject which is outside your area of expertise.
- 3.33 If you need to refer a Client after you already have an established Client relationship, have undertaken ICC Work or hold Case information or documents, you must inform the Client of any cost implication of referral. Information about advice and assistance already given and any relevant documentation must be forwarded to the new ICC Provider.
- 3.34 Where you make a referral to another ICC Provider you must ensure, so far as practicable, that the Provider is authorised by us to provide ICC Work.
- 3.35 Where you refer an existing Client, such referral should be undertaken in a manner which does not prejudice the Client. You must also keep the Client informed in respect of the progress of such referral. If you are unable (or cease to be able) to perform ICC Work for the Client and you are unable to make any referral to another ICC Provider, your procedures must ensure that you make reasonable endeavours to

ensure that your Client's rights are protected, that they suffer no damage and they are provided with all relevant information.

4. Carrying out Contract Work

General powers

- 4.1 The decisions to provide legal services in ICC Work are taken by you on our behalf.
- 4.2 You must take into account the Contract Guide on case planning when conducting a Crown Court case.

Electronic working

- 4.3 You must meet the appropriate requirements as set out in **Clause 7** of the Standard Terms.
- 4.4 All written communications with us relating to Contract Work must be made in the manner we specify in the Contract Guide. This will usually be electronic, unless we have confirmed that we are prepared to receive communications on paper or otherwise. References in this Specification to “forms” do not imply that hard copy written forms must be used. Forms include on-line forms and related processes.

Use of Agents, Counsel and Approved Third Parties

- 4.5 You may instruct Agents, Counsel or Approved Third Parties to carry out or assist with Contract Work where you are satisfied that it is in the interests of your Client to do so, subject to your compliance with **Clause 3** of the Standard Terms.
- 4.6 You may not entrust an entire Matter or Case to Agents or Counsel for ICC work.
- 4.7 Where you instruct an Agent or Counsel you may Claim payment for the work as if you had carried it out directly in accordance with the terms of this Specification in accordance with the Criminal Legal Aid (Remuneration) Regulations 2013. Where you instruct an Agent or Counsel to carry out services which are covered by a Fixed, Standard or Graduated Fee, any fees or costs related to your use of the Agent or Counsel will be included in the Fixed, Standard or Graduated Fee and may not be claimed separately.
- 4.8 It is your responsibility to pay the Agent’s or Counsel’s fees directly, out of the amount you receive from us by way of the Fixed, Standard or the Graduated Fee.
- 4.9 You must not rely on the use of any Agent or Counsel as evidence of satisfying any of the Service Standards in this Specification.

Solicitors with higher court advocacy rights

- 4.10 A Solicitor with higher court advocacy rights may be instructed to give an opinion or to perform advocacy.
- 4.11 Solicitor with higher court advocacy rights instructed by you to give an opinion must be from a different organisation from your 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 your organisation will ensure that any opinion obtained is independent and objective (in the same way that external Counsel’s opinion would be).

- 4.12 Opinions from Solicitors with higher court advocacy rights must comply with the Relevant Professional Bodies' 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.
- 4.13 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 Unique File Number, but no fees will be marked on any set of papers so delivered.

Continuity of service

- 4.14 Where you commence Contract Work for a Client then, unless any circumstances arise which would prevent you from acting in accordance with an express provision of this Contract or any relevant rules of professional conduct, you must continue to advise, assist or represent that Client until the Matter or Case ends.
- 4.15 Paragraph **4.14** does not override the circumstances in which a retainer may be terminated as set out in your professional Code of Conduct.

Change of Provider

- 4.16 The provisions set out in regulation 14 of the Criminal Legal Aid (Determinations by a Court and Choice of Representative) Regulations 2013 apply in relation to a change of Provider under a Representation Order.
- 4.17 If you have provided Contract Work to a Client and:
- (a) that Client chooses to instruct another Provider with regard to the same Matter or Case; or
 - (b) a new Provider is assigned to represent the Client following an amendment that is made to the determination that an individual qualifies for representation you must without delay send all relevant papers and other material in your possession relating to the proceedings to the new Provider.
- 4.18 If a determination that a Client qualifies for criminal Legal Aid is amended to show a new Provider, the date on which the amendment came to the knowledge of the original Provider is deemed to be the date on which the Case ends for the purposes of any Claim.

Misrepresentation by Clients

- 4.19 If you know or suspect that a Client has:
- (a) failed without good reason to provide information or documents relevant to either your decision to carry out Contract Work on his or her behalf; or

(b) in providing required information or documents in relation to Contract Work has made a statement or representation knowing or believing it to be false then you must immediately cease work and report the relevant circumstances to your ICC Case Manager.

4.20 We may require you to submit your entire file of papers to us.

4.21 You may submit a Claim for work carried out up until that point. 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.

5. Claims and Remuneration

5.1 You will claim and be remunerated for ICC work undertaken under this Contract in accordance with the Criminal Legal Aid (Remuneration) Regulations 2013.

6. Appeals

- 6.1 Where you disagree with a decision relating to those matters referred to in the Criminal Legal Aid (Remuneration) Regulations 2013 you have a right to appeal that decision in accordance with the Criminal Legal Aid (Remuneration) Regulations 2013 Any Matter, which is referred to or heard by the costs judge following the process outlined in the Criminal Legal Aid (Remuneration) Regulations 2013 may not then be disputed under **Clause 27 and Clause 28** of the Standard Terms.
- 6.2 All disputes, other than those referred to in paragraph **6.1** of this Specification, will be dealt with under **Clause 27 and Clause 28** of the Standard Terms, as appropriate.