

## 2013 VHCC Specification (for organisations)

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## 1. Preliminary

- 1.1 This is the Specification of the 2013 VHCC Contract (for organisations). 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 and all the rates and procedures governing payment for the work which you must abide by.
- 1.4 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 VHCC Work.
- 1.5 You must perform VHCC Work in accordance with this Contract, Case Plan and Task List(s).

## 2. Interpretation

2.1 Unless otherwise stated, definitions that are set out in the VHCC Arrangements 2013, Standard Terms 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 Arrangements, the definitions of this Specification will apply.

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

*“2013 VHCC Contract (for Organisations)”* 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 or organisation engaged by you to undertake legal work under this Contract in accordance with the provisions of the Specification;

*“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 us for VHCC Providers to use when submitting an appeal within the terms of this Specification. This form is available on request or on our 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 Case 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;

*“Billing Guides”* means any method of recording time or work done that can be or is used to prepare a bill and provide evidence to substantiate the bill;

*“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, where you have been instructed as 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;

*“Disbursement”* means monies paid out by you to an Agent or Approved Third Party or for travel expenses in the course of undertaking VHCC Work that is authorised by your VHCC Case Manager;

*“Distant Travel Rule”* means the restriction of travel costs where your Office, as specified in your Case Plan, is more than one hour away from the Client or where you have instructed an employed Advocate, is more than one hour from the court in this Case and there is a VHCC Provider within one hour travel of the Client available or there is an Advocate within one hour travel of the court available;

*“Expert”* means an individual or organisation with specialist skills, expertise or knowledge;

*“Fellow of the Institute of Legal Executives”* means a member of the Institute of legal executives (ILEX) who has successfully completed a period of qualifying employment, as specified by ILEX that enables them to hold themselves out as a legal executive lawyer;

*“Graduated Fee”* means the fee designated as such (and paid in the circumstances set out and the levels set out) in the Criminal Legal Aid (Remuneration) Regulations 2013;

*“Litigator”* means an individual (employed by the organisation) who has a legal qualification and experience in accordance with **Section 3** of this Specification;

*“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;

*“Payment Rates”* means the scale of payment rates applicable to VHCC Work as set out in **Section 7** of this Specification;

*“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 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 place of the instructed Advocate;

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

*“Task List”* means the standard document prepared by you detailing the VHCC Work to be undertaken and must also be used as the Contract Report Form;

*“VHCC Appeals Panel”* means those members appointed under the VHCC Appeals Panel Arrangements 2013 to hear VHCC appeals made in accordance with **Section 6**, either as a Single Adjudicator or as part of an Appeals Committee;

*“VHCC Case Manager”* means an individual nominated by us who will be responsible for the day to day management 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 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; 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 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 organisations set out in Annex A of the Arrangements.
- 3.3 You must only use appropriately qualified and skilled staff on VHCCs.

#### **Supervisor standards**

##### **General**

- 3.4 You must employ within your organisation a VHCC Supervisor to undertake VHCC Work.
- 3.5 You must notify us in writing if your VHCC Supervisor leaves your organisation, ceases to meet the VHCC Supervisor standards set out in this Specification or fails to perform their duties as a VHCC Supervisor in a timely manner and with all reasonable skill, care and diligence. Where your VHCC Supervisor ceases to meet the VHCC Supervisor standards or fails to perform their duties in the manner described, such member of your personnel must immediately cease acting as a VHCC Supervisor.
- 3.6 Where Paragraph **3.5** applies, you must:
  - (a) immediately replace the VHCC Supervisor with another person within your organisation that meets the standards set out in Paragraph **3.10**; or
  - (b) if you do not have a person within your organisation that meets the standards set out in Paragraph **3.10**, within six weeks appoint a new VHCC Supervisor and in the interim period nominate a person to act as a temporary Supervisor in accordance with Paragraph **3.12**.
- 3.7 Your VHCC Supervisor(s) must meet the VHCC Supervisor standards as set out in Paragraph **3.10** at the time of being appointed as VHCC Supervisor and continue to do so during the Contract Period.
- 3.8 A VHCC Supervisor must supervise all VHCC Work.
- 3.9 You must ensure that there are arrangements in place to ensure compliance with appropriate standards of supervision at an equivalent level to that outlined in the Relevant Professional Bodies' Code of Conduct.

##### **Supervision standards**

- 3.10 Your VHCC Supervisor must meet the following supervisory skills standards:
  - (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.

3.11 You must provide evidence that these hours have been met (by way of Billing Guides) to us upon request.

### **Temporary Supervisor absence**

3.12 If your VHCC Supervisor is for any reason temporarily unable to act as a VHCC Supervisor, you may for a period of up to six weeks nominate an employed Litigator who meets the criteria in Paragraph **3.14**.

3.13 If your VHCC Supervisor is unable to supervise for more than six weeks, or following completion of the six week temporary period specified in Paragraph **3.12** 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 the temporary employed Litigator as Supervisor for a limited period;
- (b) By written notice specifying that you must put in place another employed VHCC Supervisor by such period as the notice specifies; or
- (c) Requesting that the Case be transferred to another VHCC Provider; or
- (d) Applying a Sanction.

### **Litigator standards**

3.14 A 'Level A' Litigator (including Level A solicitor-advocates) must:

- (a) be a partner/solicitor/solicitor-advocate or employed barrister; and
- (b) have 8 years' post-qualification experience; and either:
  - (i) during the last three years, have conducted a total of 1,050 hours of working on other Serious Crime Cases; or
  - (ii) in any two of the last three years, have conducted a total of 700 hours working on other Serious Crime Cases; or
  - (iii) have a particular specialism that is relevant and important to the case; or
  - (iv) have a combination of (b)(i) and (b)(iii), or (b)(ii) and (b)(iii).
  - (v) For (b)(i) and (b)(ii) above, evidence that these hours have been met (by way of Billing Guides) must be provided to the us upon request.

3.15 A 'Level B' Litigator (including Level B solicitor-advocates) must:

- (a) be a partner/solicitor/solicitor-advocate or employed barrister; or
- (b) be a Fellow of the Institute of Legal Executives; or
- (c) have substantial knowledge and experience of criminal defence casework. This would be expected to include ten years' experience of criminal defence casework and experience of serious and complex criminal cases.

3.16 A 'Level C' fee-earner must be employed and:

- (a) be a trainee solicitor; or
- (b) be a pupil barrister; or
- (c) be any other person conducting fee-earning work.

- 3.17 You are obliged to inform us if any of your Litigators have their Practising Certificate revoked.
- 3.18 You must comply with the Quality Standard specified in your Contract for Signature throughout the Contract Period.

### **Advocacy standards**

- 3.19 You must ensure you instruct an appropriately qualified and skilled Advocate who complies with the Relevant Professional Body's code of conduct.
- 3.20 Advocates must have a current Practising Certificate from the Relevant Professional Body.
- 3.21 You must inform us as soon as you are aware that an Advocate has had their Practising Certificate revoked or if they have been disbarred or suspended.
- 3.22 Failure to meet the organisation, supervisor or advocacy standards as outlined in this Specification is a Fundamental Breach of this Contract.

### **Office Location**

- 3.23 You must have an Office from which you deliver VHCC Work. This information must be included in your Case Plan.
- 3.24 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 is able to 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**

- 3.25 You must have appropriate arrangements in operation so that you can refer (this includes transfer) or signpost a Client or potential Client to another VHCC 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.
- 3.26 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.
- 3.27 If you need to refer a Client after you already have an established Client relationship, have undertaken VHCC 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 VHCC Provider.

- 3.28 Where you make a referral to another VHCC Provider you must ensure, so far as practicable, that the Provider is authorised by us to provide VHCC Work.
- 3.29 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 VHCC Work for the Client and you are unable to make any referral to another VHCC 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 Extensions, or any other variation to the deadlines imposed in this Section, may be granted by agreement between you and the VHCC Case Manager.
- 4.2 Where you are required to submit written documentation to us, all documents must be typed, unless otherwise agreed with the VHCC Case Manager.
- 4.3 Work undertaken from the date of determination that a Client qualifies for Criminal Legal Aid, 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 **5.20** applies.
- 4.7 You must use the standard forms provided by your VHCC Case Manager for the Case Plan and Task List. Submission of these documents in any other format will not be accepted.
- 4.8 Where you have instructed an employed Advocate, and the instruction of two Advocates is permitted, your employed Advocate must not unreasonably duplicate the work of the other Advocate.

### Stage 1

- 4.9 The VHCC Supervisor must seek authority for all work undertaken by you from the Contract Start Date in advance by contacting your VHCC Case Manager.
- 4.10 We will consider requests for Tasks and hours based on whether the work is necessary, reasonable and with reference to the Contract Guide.
- 4.11 The VHCC Case Manager will contact you following receipt of a fully completed Task List (which you would have submitted Pre-Contract), within five Business Days 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) Unless otherwise agreed, VHCC Work will only be negotiated and agreed with the VHCC Supervisor;
- (d) your attendance will be remunerated unless otherwise agreed with your VHCC Case Manager.

4.13 At the Stage meeting, the VHCC Supervisor and the VHCC Case Manager will:

- (a) confirm the contents of the Case Plan (for a Stage 1 meeting);
- (b) negotiate the items on the Task List/s;
- (c) agree the category of the case; and
- (d) agree Stage dates.

4.14 The VHCC Supervisor must send an updated Task List to the VHCC Case Manager specifying the VHCC Work to be done and the agreed hours within five Business Days of the Stage meeting, if required by the VHCC Case Manager.

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

### **Category criteria**

4.16 Where you have not done so already, the VHCC Supervisor must fully complete the VHCC Category Assessment Sheet, which is available on our website. We will not consider category representations in any other format.

4.17 The VHCC Supervisor is unable to use representations in support of one category criterion as specified in Paragraph **4.22**, to support a second category criterion when completing the VHCC Category Assessment Sheet.

4.18 We will assess the category of the Case on information that you and the prosecution can confirm as current fact, and not what might happen at some time in the future.

4.19 We may assign different categories to co-defendants on the same indictment as your Client, who are represented by another organisation.

4.20 Both parties may review the category at any time and make a request for re-categorisation using the VHCC Category Assessment Sheet.

4.21 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.

4.22 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 60 days.

### **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**

4.23 Unless agreed otherwise:

- (a) The VHCC Supervisor must prepare a Task List for each Stage and submit this to the VHCC Case Manager prior to undertaking any work and within ten Business Days of the start of the Stage;

- (b) Task Lists must include advocacy work where the case has been classified as a VHCC for Advocates and you are providing advocacy services;
  - (c) Task Lists must be submitted by you to the VHCC Case Manager in advance of any negotiations with us; and
  - (d) The VHCC Supervisor must provide a summary of the VHCC Work undertaken in the previous Stage with the Task List.
- 4.24 With the exception of the Pre-Contract Stage, both parties can request that Stages be shortened or extended before the date that the Stage is due to end.
- 4.25 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.
- 4.26 Following receipt of a fully completed Task List for all subsequent Stages after Stage 1, Paragraphs **4.11 to 4.15** apply.

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

- 4.27 Unless otherwise agreed, the VHCC Supervisor must obtain authority from us for all Task List amendments.
- 4.28 The VHCC Supervisor must make all requests for amendments to the Tasks or hours to your VHCC Case Manager. If the VHCC Case Manager is unavailable, the VHCC Supervisor must make the request to another VHCC Case Manager. 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.
- 4.29 The VHCC Supervisor 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.
- 4.30 The VHCC Supervisor must send an updated Task List to the VHCC Case Manager before the end of the Stage to which the Task List relates.
- 4.31 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.
- 4.32 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 **4.28** 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.
- 4.33 The VHCC Supervisor 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.

## **Trial Stage**

- 4.34 The VHCC Supervisor must contact the VHCC Case Manager every four weeks during the trial to discuss changes to the VHCC arising from the trial and if necessary, to agree additional work.
- 4.35 Paragraphs **4.27** to **4.33** apply to any amendments to the Task List during the trial stage.

## **Conflicts of Interest**

- 4.36 You must check for conflicts of interest throughout the Case in accordance with the Relevant Professional Body's code of conduct. This includes checking for conflicts of interests with Approved Third Parties, Agents and Advocates.
- 4.37 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 us in writing and the Client as soon as practicable; and
- (a) where the conflict is one which can be resolved by the following of procedures acceptable to the Relevant Professional Body, immediately implement such procedures prior to continuing work on the Case;
  - (b) if you are undertaking work for more than one Client and the conflict would be resolved by you ceasing work for one of the Clients, you must immediately notify us in writing which of the Clients you wish to transfer and cease work for that Client immediately;
  - (c) if the conflict is incapable of being resolved as set out in Paragraph **4.37(a)** or **4.37(b)**, you must cease work on the Case immediately.
- 4.38 Where you are required to cease undertaking VHCC Work you must make the required representations to the court to transfer the Representation Order to an appropriate VHCC Provider and follow the procedure for referrals set out in Paragraph **3.26 to 3.29** of this Specification.
- 4.39 If we reasonably consider that there is risk of a conflict of interest arising, we may raise it with the Relevant Professional Body and/or the court.
- 4.40 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.

## **Continuity of service**

- 4.41 If you do not have sufficient capacity within your organisation to undertake the Case, you must:
- (a) use all reasonable endeavours in accordance with **Section 3** to refer the Case to another VHCC Provider; and
  - (b) inform us if you are unable to refer the matter to a VHCC Provider with the appropriate level of skill, expertise, capacity and ability to conduct the Case in accordance with the terms of this Contract.

- 4.42 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 this Case. You and the VHCC Case Manager will agree on a strategy acceptable to both us and any new VHCC Provider taking on any of your VHCC Work.
- 4.43 We will agree the exit management strategy on the basis that there is no unreasonable duplication of costs.
- 4.44 Where a Case is transferred from you for any reason, and a new VHCC Provider instructed, you will not be paid for any VHCC Work done after the date on which you cease to be on record as acting for the Client.

### **Appointing Agents and Approved Third Parties**

#### **Approved Third Parties and Agents**

- 4.45 You must notify the VHCC Case Manager of the need to instruct an Approved Third Party or Agent to provide services to you on this Case and you must seek prior approval in writing before instructing an Approved Third Party or Agent.
- 4.46 You will be responsible for managing the amount and quality of work of Approved Third Parties and Agents and for paying them.

#### **Where an Approved Third Party is an Expert**

- 4.47 Where the Approved Third Party you wish to appoint is an Expert, you must provide a minimum of three quotes (unless otherwise agreed) but we may request more, unless exceptional circumstances apply.
- 4.48 The VHCC Supervisor must not instruct the Expert until you have received authority in writing from us.
- 4.49 Experts' travel Disbursements such as rail fare or mileage may be claimed by you under **Section 5** of this Specification provided those disbursements are agreed in advance.
- 4.50 You must ensure that all work claimed by an Expert is within the hours agreed and that the hourly rate is the rate approved by us.
- 4.51 If you have failed to instruct an Expert within a reasonable time period and this has had any impact on the costs for the defence case, we may disallow or only approve costs, which would otherwise have been incurred if the Expert had been instructed in a timely manner.

#### **Provision of Advocacy Services**

- 4.52 Where you have instructed a self-employed Advocate prior to the Stage 1 Start Date, we will not agree any VHCC Work for the Stages following Stage 1 until both you and the self-employed Advocate have submitted a Task List and a copy of the 2013 VHCC Contract (for self-employed Advocates), signed by the self-employed Advocate.



- 4.53 Where you instruct a self-employed Advocate after the Stage 1 Start Date, you must inform the self-employed Advocate that the Case has been classified as a VHCC for Advocates.
- 4.54 You must provide a copy of your agreed Task List to the Advocate for every Stage.
- 4.55 Where you have instructed a self-employed Advocate, you must obtain a copy of their Task List for every Stage.
- 4.56 Upon instruction of a second Advocate, you must notify the VHCC Case Manager as soon as possible.
- 4.57 Where two Advocates are no longer needed in the Case, you must take reasonable steps to make an application for the scope of Legal Aid funding in the case to be amended accordingly.
- 4.58 You must use reasonable endeavours to ensure that the Advocate instructed will be available throughout the Case, including confiscation proceedings or other relevant follow on proceedings.
- 4.59 You must inform the VHCC Case Manager within a reasonable period if you become aware that the instructed Advocate may not be available.
- 4.60 You must ensure that the employed Advocate you instruct returns the instructions only in accordance with the Relevant Professional Bodies' code of conduct rules.
- 4.61 Where the instructed Advocate returns the instructions, we may reasonably request information to determine whether the return of instructions was reasonable.
- 4.62 Where we decide it was reasonable for an Advocate to return the instructions all reasonable costs will be paid after an Assessment of an Assessment Bundle has been completed.
- 4.63 If it was unreasonable for an Advocate to return the instructions, costs may be withheld or, if already paid, recouped.
- 4.64 We will consider each return of instructions in line with the Contract Guide and Representative Body guidelines.
- 4.65 If you instruct an Advocate who is employed by you, you must ensure:
- (a) it is in the best interests of the Client; and
  - (b) the level of experience or seniority of that Advocate enables them to represent the Client in accordance with the scope of Legal Aid funding in the case.
- 4.66 Where you have instructed an employed Advocate prior to the Contract Start Date, we will agree VHCC Work only where we have received a Task List for you and the employed Advocate.
- 4.67 Where you instruct an employed Advocate after the Contract Start Date and after you have had the Stage 1 Task List agreed, you must submit a Task List for VHCC Work being undertaken by the employed Advocate within ten Business Days of instruction.
- 4.68 Employed Advocates must prepare work logs for all preparation undertaken during the trial, including preparation undertaken during the course of the court day. We will

pay for all work properly and reasonably undertaken by the employed Advocate and accounted for in their work log, subject to it being satisfied that such work could not have been included when planning the trial Stage Task List.

- 4.69 If we decide that the employed Advocate has unreasonably returned instructions, you will be deemed to be in breach of this Contract.
- 4.70 Where Legal Aid funding for a Client authorises the instruction of an advocate, or advocates, at a specified level, you may claim payment only in accordance with that authorisation, and we will make payment at the appropriate rate accordingly, taking into account also the rate for work agreed in the Case Plan and/or Task List.

### **Substitute Advocates**

- 4.71 Where an employed Advocate is not available to attend a hearing or trial, and where two Advocates are instructed, and the other Advocate is not available, a Substitute Advocate may be used with our prior approval.
- 4.72 Where it is necessary for a Substitute Advocate to undertake any VHCC Work, that Advocate will be treated as an Agent and will have to comply with the advocacy standards set out in **Section 3** of this Specification.
- 4.73 Where the instruction of two Advocates is permitted, an Advocate must not unreasonably duplicate the work of the other Advocate in order to act as a substitute for the other Advocate in his/her absence.

### **Declassification**

- 4.74 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 we 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, we may consider Declassification.
- 4.75 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 applicable Graduated Fee Scheme
  - (c) recoup any money paid to you under this Contract.

## 5. Claims, 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 act for the Client following a determination that the Client qualifies for Criminal Legal Aid;
  - (b) you are authorised to undertake VHCC Work; and
  - (c) the work is remunerable under **Section 4** of this Specification.
- 5.3 You may:
- (a) submit a Claim at the end of a Stage. Your Claim must cover all VHCC Work undertaken during that Stage and must include all expenses and Disbursements incurred during that Stage; or
  - (b) at any time during a Stage, and if we consider it reasonable and appropriate, submit an interim Claim for agreed expenses and Disbursements.
- 5.4 You must submit an Assessment Bundle to claim payment.
- 5.5 You must separate all attendance notes with supporting documentation by the relevant Task number. Attendance notes must contain the following information:
- (a) Date
  - (b) Time of day
  - (c) Name and level of fee earner (or Advocate's role)
  - (d) Task number
  - (e) Comprehensive description of VHCC Work completed
  - (f) Total time spent
  - (g) Volume/page count of material considered.
- 5.6 Unless otherwise agreed, Advocate 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.
- 5.7 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.
- 5.8 The Assessment Bundle must be submitted to us within twenty Business Days of the Stage end date.
- 5.9 We will, by way of Assessment determine whether the work included in your Claim was actually and reasonably done and for Stages other than Pre-Contract, whether it was within the hours agreed and specified in a Task List.
- 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 On Assessment, we will calculate payment using the applicable Payment Rates.
- 5.12 Following Assessment, we will send you our report on the Assessment.
- 5.13 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.
- 5.14 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.
- 5.15 For trial Stages, we 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.
- 5.16 Where there is no court record of any part or all of the trial in this Case for the purposes of assessing a Claim, we will assess and pay the preparation and court days that can be objectively assessed, in accordance with this Specification.
- 5.17 Payment will be made in the payment run following completion of the Assessment.
- 5.18 Where payment is made on an interim Claim, if following Assessment of your final Claim for the relevant Stage, it is determined that the amount of your interim Claim, which we have paid, exceeds the actual amount due to you for VHCC Work or expenses or Disbursements during that Stage, the excess shall be recoverable by us as a debt due.
- 5.19 We 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 us because either:
    - (i) the need for the task is only identified outside our office hours and the work was not foreseeable; or
    - (ii) you have been unable to contact any VHCC Case Manager 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 our 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 Case 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, your employees and any Approved Third Parties or Agents. We will pay self-employed Advocates direct.

- 5.22 Unless a mid Stage payment has been authorised, Experts fees will be paid at the conclusion of the Stage in which the Experts fees have been incurred, along with all other Stage costs.
- 5.23 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.
- 5.24 If a Substitute Advocate is used in place of an employed Advocate, their work must be submitted as part of your Claim.
- 5.25 If a Substitute Advocate is used in place of a self-employed Advocate, their work must be submitted as part of the self-employed Advocate's Claim and not your Claim.
- 5.26 A Substitute Advocate Claim in any other format will be not be considered by us and will not be paid.
- 5.27 Your Claim must include VHCC Work undertaken by employed Advocates.
- 5.28 Where your employed Advocate is a barrister, you must ensure that they have your bank account details recorded against their legal aid account number by contacting our provider records team.
- 5.29 VHCC Work undertaken by employed Advocates will be paid to your legal aid account.

### **Disbursements**

- 5.30 Disbursements may only be incurred where
- (a) it is in the best interests of the Client to do so
  - (b) it is reasonable for you to incur the Disbursement for the purpose of undertaking VHCC Work; and
  - (c) you have received prior approval from the VHCC Case Manager to incur Disbursements and expenses.
- 5.31 Claims for expenses and Disbursements must include original or copies of receipts for each expense claimed.
- 5.32 Where subsistence is considered necessary and reasonable, we will not authorise more than £21 subsistence per day.
- 5.34 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.
- 5.35 You may provide criminal Legal Aid across England and Wales and are not restricted to offering your services in any particular geographical location. However, we may apply the VHCC Distant Travel Rule.
- 5.36 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 or Advocate being distant, travel costs will be restricted to the maximum above.

- 5.37 Travel time and expenses will not be considered reasonable based solely on the following grounds:
- (a) Where the Client had specifically asked for you or the Advocate in question;
  - (b) Where you or the Advocate had acted for the Client in an unrelated case of no relevance to this Case.
- 5.38 In exceptional circumstances, we may allow travel time and expenses to be paid outside of the VHCC Distant Travel Rule.
- 5.39 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.
- 5.40 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).
- 5.41 First class and business class flights will not be remunerated under any circumstances.
- 5.42 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 Case Manager.
- 5.43 Unless there are exceptional circumstances, we will not pay for your Client's travel expenses.
- 5.44 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.
- 5.45 Subject to the Contract Guide 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**

- 5.46 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 Case 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.
- 5.47 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) restraint and confiscation proceedings in relation to family members
- (h) enforcement proceedings in the magistrates court.

### **Police Station Work**

- 5.48 Where you hold a separate Legal Aid contract with us entitling you to attend the police station and give advice and assistance, you must claim payment for the provision of these services in accordance with your other contract.
- 5.49 Where you do not hold a separate Legal Aid contract governing work done prior to the determination that an individual qualifies for representation, you may claim for such work undertaken on this Case only, under this Contract.
- 5.50 Where Paragraph **5.49** applies, we will pay Legal Aid police station rates.

### **Declassification Administration Fee**

- 5.51 Where we declassify a VHCC, we will pay you an administration fee at the agreed VHCC Supervisor rate. The fee will be calculated as three hours work for every stage except for Pre-Contract, or part of a stage up to the date on which the case ceases to be a VHCC.

## 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 us;
  - (c) hours in dispute within the submitted Task List;
  - (d) the level of Litigator/Advocate allowed for any item of VHCC Work;
  - (e) Disbursements;
  - (f) where the VHCC Case Manager decides to reduce payment under the Contract as a result of funding in the case being amended to authorise the instruction of another nominated Litigator;
  - (g) where an Assessment carried out by us, 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 **5.20**.
- 6.5 You do **not** have a right of appeal in accordance with Paragraph **6.1** on the following issues, where in our view:
- (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 **5.20** and a decision is made by us not to make payment for that VHCC Work);
  - (d) the total hours worked for a task exceed the hours agreed for that task and we make 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 Case Manager (or an extended deadline agreed in writing by us) and the VHCC Case Manager refuses to accept your appeal representations on such a basis;
  - (f) we have applied the Advocate levels as recorded on the Representation Order and authorised by the Case Plan to the Payment Rates you are entitled to Claim;
  - (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 the Single Adjudicator considers it to be in the interests of justice for oral representations to be heard before a decision is made, he or she may adjourn the matter for such representations to be heard.
- 6.8 Where either we or the Single Adjudicator consider a matter to be exceptionally complex or significant, that matter must be referred to a Committee.
- 6.9 You and the VHCC Case Manager may seek an extension to any of the deadlines in this Section.
- 6.10 Any appeal must be lodged via email to such e mail address as we may specify 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 Case Manager orally conveys his/her decision or when the VHCC Case 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 us. 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 Case 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 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 Case 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 Case 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 Case 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 our website.

## 7. Payment Rates

7.1 All fees in this Section are exclusive of VAT.

### Preparation (hourly rates)

	Category 1 £	Category 2 £	Category 3 £	Category 4 £	Standard Rates £
<b>Litigator</b>					
Level A	145	113	91	91	55.75
Level B	127	100	79	79	47.25
Level C	84	65	51	51	34.00
Pupil/junior <sup>1</sup>	45	36	30	30	
<b>Barrister</b>					
QC	145	113	91	91	
Leading junior	127	100	79	79	
Led junior	91	73	61	61	
Junior alone	100	82	70	70	
2nd Led junior	63	50	43	43	
<b>Solicitor Advocate</b>					
Leading level A	145	113	91	91	
Led level A	127	100	79	79	
Leading level B	127	100	79	79	
Led level B	104	86	66	66	
Level A alone	131	109	88	88	
Level B alone	113	95	75	75	
Second advocate	63	50	43	43	

### Advocacy<sup>2</sup>

Advocacy rates for Advocates are paid per hearing or per day depending upon the duration of the court sitting time. Advocacy rates are non-category specific.

	Preliminary hearing	Half day	Full day
QC	113	238	476
Leading junior	86	195	390
Led junior	58	126	252
Junior alone	67	143	285
Second led junior	34	64	128
Noter	29	55	109

<sup>1</sup> This is to cover situations where the scope of Legal Aid funding cannot be amended to provide for a second junior counsel but the VHCC Supervisor determines that to achieve value for money certain items of work should be done by a third counsel.

<sup>2</sup> Solicitor-Advocates will be paid the appropriate rate for a leading junior, a led junior, or a junior alone.

**Attendance at court with Advocate (hourly rates for Litigators)**

Level A	£42.25
Level B	£34.00
Level C	£20.50

**Travelling and waiting**

£25 per hour regardless of Litigator level or Advocate role

**Mileage**

£0.45 per mile