

2010 Standard Crime Contract Guidance (for Specification)

References to “Guidance” in the 2010 Standard Crime Contract Specification are to this document. This document covers any guidance previously in the Unified Contract Specification (July 2008) that we have removed, seeks to clarify further certain contractual provisions and assist you generally, when working in accordance with the Specification. This document is for information only and does not cover the Standard Terms.

*To understand your obligations for carrying out criminal publicly funded work for 2010 from 14 July 2010, you **must** read the Contract Documents.*

PART A – GENERAL PROVISIONS

References to “*have or employ*” in the Specification mean where there is a contract of employment for at least two full days per week. For the avoidance of doubt, this includes partners and sole principals of an organisation and excludes consultancy agreements.

Supervisor Standards (2.1 to 2.26)

Full Time Supervisor Absence

A full time Supervisor who has extended periods of absence may have difficulty meeting the case involvement requirements in the Specification. Where a Supervisor has been absent for sickness, maternity or compassionate reasons:

- Continuously for a period of three months or more; or
- For a total of 90 days or more within any of the three defined 12 month periods;

in the three years prior to the date when a Supervisor’s compliance with the standard is assessed, they may qualify as a Supervisor by demonstrating a minimum Case Involvement of 1050 hours over the last five years.

A full time Supervisor who has extended periods of absence may have difficulty meeting the portfolio route of the supervisors standard. Where a Supervisor has been absent for sickness, maternity or compassionate reasons:

- Continuously for a period of three months or more; or
- For a total of 90 days or more within any of the three defined 12 month periods;

They may qualify as a Supervisor by demonstrating the range of cases over the 12-month period preceding the date the absence commenced.

Paragraph 2.12

A person who holds “a professional legal qualification” is someone who has successfully completed a period of qualifying employment, as required by the Relevant Professional Bodies (which includes ILEX).

Paragraph 2.16

You may use evidence from private client files (subject to you securing prior consent) to count towards the requirements for the supervisor standards.

Office Location (2.36 to 2.42)

Office Location is an important factor when performing Crime Contract Work under this Specification.

Provider offices should be physically accessible to clients but where they are not for e.g. where the office is above a row of shops, providers must make reasonable adjustments to ensure that the publicly funded criminal defence services are delivered to these clients at no extra costs. Such adjustments may mean that providers visit their client's homes or alternative suitable venue.

In every Matter or Case you should consider whether it is in all the circumstances appropriate to accept instructions having regard to the service to be provided to the Client and the costs of providing that service.

You may travel from your Office to attend on Counsel, experts, witnesses or site inspections where it is appropriate to do so as part of the provision of Crime Contract Work.

Even where there is good reason, you should consider whether it will be a more appropriate use of funds to advise without the need for personal attendance (e.g. through a postal application and telephone advice). However, where it will be necessary for you to travel to see a Client who is at a distance from you, then you should consider whether it is reasonable to refer that Client to a more local Provider, rather than accept instructions.

It is unlikely to be reasonable for you to accept instructions from such a Client where the one way travelling time for you to visit the Client will be more than one hour.

You may exceed the allowable travelling time set by the LSC in any Client Matter or Case if:

- (a) there is no other more local Provider available (including, if necessary, at short notice); or
- (b) the Client's problem is so specialised that, in your reasonable view, there is no more local Provider with the expertise to deal with the Matter or Case; or
- (c) you have significant previous knowledge of the Matter or Case or dealings with the Client in relation to the issues raised by the Matter or Case so as to justify renewed involvement even though the Client is at a distance; or
- (d) your local court or the remand centre where the Client is located is more than one hour's travelling time away.

These factors must be balanced against the distance between you and the Client in terms of accessibility for the Client and increased costs of travel/travelling time. The greater the distance, the greater the justification, which will be required.

In the absence of exceptional circumstances, we will not authorise a claim involving a one way travelling time of more than two hours. A claim for travelling time of up to two hours might be reasonable where you are already engaged on a matter and the Client having been in custody at a centre local to you, is moved to a prison further away. Even where a longer time could be apportioned between a number of Clients on a particular occasion, this will not justify a longer travelling time because it will not necessarily always be possible to apportion in the same way on all occasions.

A longer travelling time of up to three hours one way may only be justified if you are acting for a prisoner and at least one of the criteria in (a) to (c) above is satisfied. A written file note setting out how these criteria were satisfied must be on the file to justify travelling time of up to three hours one way.

You should always consider whether using a video link (if available) between a court and the prison to conduct an interview with your Client would be a reasonable, cost-effective alternative to attending your Client at prison. This is particularly so where you are considering a one-way journey time to prison of more than two hours and a video link is accessible to you within a shorter travel time. If you decide not to use a video link because you consider a prison visit is necessary, you should note your reasons on the file. It is unlikely to be justified for you to attend prison if this is less cost-effective than a video link, unless your Client suffers from a disability or there are other exceptional circumstances, which make using a video link impracticable.

If on Assessment we consider that Disbursements are abnormally large by reason of the distance of the court or the Client's residence or both from your Office(s), we may only allow an amount which is reasonable having regard to all the circumstances.

Paragraph 2.51

The relevant guidance can be found in CBAM (*or here if we decide CBAM comes within this guidance*).

Paragraph 3.5

Satisfactory evidence is:

- (a) disposable income would be the most recent pay slip if the Client is employed, or the most recent tax assessment or accounts if the Client is self employed. In the case of a Client in receipt of benefit, his or her benefit book, notification or any relevant correspondence from the paying agency in the Client's possession would be satisfactory evidence. It will therefore generally, except in cases of doubt, be unnecessary to obtain a specific letter from the Benefits Agency confirming that the benefit remains in payment; and
- (b) disposable capital would normally be the Client's signed statement on the application form. Written evidence of disposable capital need only be supplied in cases of doubt. In such cases, up to date bank statements or savings books should be supplied where relevant.

The Sufficient Benefit Test (3.10 to 3.17)

In practice, this test should filter out cases that do not merit Legal Aid, and should also operate as a nominal private client test – would a client of moderate means paying privately consider the work you are undertaking a good use of his or her money?

The Sufficient Benefit Test is not intended to prevent you from providing Advice and Assistance merely because the Client's Case has poor prospects of success. For example, a Client may be entitled to advice about appealing out of time even if it becomes clear that there are no legal grounds for pursuing an appeal.

Application rules (4.19 to 4.38)

In respect of Paragraph 4.23 of the Specification, please refer to rules on postal applications, telephone advice and outward travel in Part B of the Specification.

Unique File Numbers (UFN) and filing requirements (4.39 to 4.40)

You must record the UFN on the Claim Form, on each file and on any correspondence or applications sent to us.

The same UFN must be used for all Claims arising out of the same Matter or Case concerning the same Client. If a Matter involving the same Client develops into a Case, then the same UFN must be assigned to both the Matter and the Case.

Where a Client receives Advice and Assistance on a Matter from which Criminal Proceedings arise, the UFN assigned to that Matter must be used where Advocacy Assistance or Representation is subsequently provided. For example, if a Police Station Attendance results in a Client being charged with offences for which a Representation Order is subsequently granted in the magistrates' court, the same UFN must be assigned to both the Police Station Attendance and the magistrates' court Representation.

If one Matter gives rise to more than one Case, you must assign a new UFN to the second and subsequent Case(s).

If more than one Matter gives rise to a single Case, you must use the UFN assigned to the earliest Matter in time as the UFN for the Case.

Subject to the paragraph below, if you act for two or more Clients during the course of a single Matter or Case, then a separate UFN must be assigned to each Client, even if they are co-suspects at the Police Station. A separate Claim will be made for each Client and the time spent must be apportioned where necessary.

Where a Representation Order has been granted in the magistrates' court and a Case involves more than one Client, a UFN must be allocated to each Client, but for claiming purposes you must select a "lead" Client i.e. the Client assigned the first UFN in time, and use the UFN assigned to that Client as the single reference number for a Standard or Non-Standard Fee Claim.

For example, if you were instructed by three co-suspects at the Police Station on 7 August 2010. You would assign a separate UFN to each of them e.g. 070808/001, 070808/002, 070808/003 and make separate Claims for the work undertaken for each Client under the Criminal Investigations Class of Work. All three Clients are

subsequently charged with offences, which will form a single Case for Standard Fee purposes in accordance with the rules on claiming at paragraph **10.58**, and in the provisions at paragraph **10.75**. Each Client will retain the Client UFN assigned during the Criminal Investigations Class. However, when a Claim is submitted for work undertaken in the Proceedings Class, the UFN assigned first in time will be used as the lead UFN for the Claim i.e. in the example above: 070808/001.

Where you take a Matter or Case from another CDS Provider, you must assign a new UFN to that Matter or Case.

If a Client seeks further Contract Work on the same Matter or Case after you have submitted a Claim, the original UFN must be used if you undertake any further work. You should note that there are limits on the circumstances in which you are permitted to conduct further work after a Claim has been submitted, contained in **Part B** of this Specification.

Subject to paragraphs below, you must retain on a separate Case file, or on linked files retained together, records of each Client Matter or Case undertaken by you under this Contract.

Where:

- (a) a Matter in the Criminal Investigations Class of Work becomes a Case in the Criminal Proceedings Class of Work; or
- (b) Legal Help or Investigative Help is provided under the Associated CLS Class of Work and the Matter subsequently gives rise to a grant of a Legal Aid Certificate.

all papers relating to work done within both Classes of Work must be retained on a single file or in linked files retained together.

Papers and records arising from court Duty Solicitor work must be retained and filed by individual Duty Solicitors. Where you subsequently commence a Matter or Case for a Client for whom work was initially undertaken in the same Matter or Case as a court Duty Solicitor, a copy of any relevant papers arising from the court Duty session must be placed on the Client case file. A UFN must be assigned based on the first date when Contract Work is undertaken otherwise than as court Duty Solicitor.

Where a Matter concludes after only Police Station Telephone Advice is provided, then a separate file need not be opened, but relevant papers must be retained safely on a collective file as they may be called for on Audit or Assessment. A UFN must still be allocated to each separate Matter for claiming purposes.

Each separate Matter or Case must be identified by a UFN assigned by you and formulated in accordance with the contractual rules on UFN and filing requirements and this guidance. Although papers relating to more than one UFN may be maintained on a single file or a set of linked files (e.g. where they relate to the same Client), you must ensure that all records relating to any one UFN are held on the same file or set of linked files in a way that can be readily identified by both you and the LSC's staff.

You are not required to use the UFN as your sole file numbering system but it will be used by us as the only reference number for the purposes of correspondence, applications, Claims and Audits.

Each file assigned a UFN must contain the following information:

- a. a copy of the original application for Advice and Assistance or Advocacy Assistance, where applicable, and any subsequent applications for a further Unit of Work (excluding an application for a Representation Order);
- b. where the Sufficient Benefit Test has to be satisfied as part of the Qualifying Criteria, a brief file note specifying how the Sufficient Benefit Test has been satisfied;
- c. a breakdown of the work undertaken within each Unit of Work in respect of which payment is claimed;
- d. the dates on which each item of work was done, the time taken, the amount claimed and whether the work was done for more than one Client;
- e. a list of any Disbursements claimed, the circumstances in which they were incurred and the amounts claimed;
- f. the original Representation Order or notice of refusal, together with any amendments (where relevant);
- g. supporting invoices, receipts, vouchers and grants of prior authority or extensions to the upper limit (where relevant);
- h. a record of any fees agreed with Counsel; and
- i. details of any special circumstances relevant to Assessment.

Paragraphs (c), (d) and (e) will be satisfied by completing the appropriate form and retaining it on file.

The information required by the contract and guidance may be called for by the Director for the purposes of Assessment. It will also be required on Audit.

Continuity of service (4.59 to 4.60)

Paragraph **4.59** aims to ensure that Providers provide a comprehensive service to the Client. It is particularly important where you provide Advice and Assistance to a Client during a Criminal Investigation and he or she wishes to be represented in subsequent proceedings arising from that Investigation. You must be able to provide that service, unless there is a specific reason not to do so arising from this Specification. For example: if you refuse to give Advice and Assistance or Advocacy Assistance for good reason where permitted to do so under **Part B** of the Specification or you are unable to carry out work due to our refusal to grant an extension to an upper limit.

Disbursements (5.38 to 5.51)

In relation to Paragraph 5.42 (Section B Disbursements which may not be incurred), in respect of cancellation fees charged by an expert, if notice of cancellation is given less than 72 hours before the relevant hearing or appointment then this may be

treated as a disbursement which can be incurred, provided it is recoverable by reference to its purpose in accordance with the terms of the contract.

In relation to Paragraph 5.44, if you are considering incurring a Disbursement which appears in neither list then you must consider whether the Disbursement is recoverable or not by reference to its purpose (that is, is it for the purpose of providing Advice and Assistance). For example, an accountant's fees for the preparation of outstanding accounts will not be recoverable as they are incurred not for the purpose of giving Advice and Assistance but for the purpose of putting the Client's outstanding records in order. This contrasts with the position where the accountant is providing a report as an expert.

Duty Solicitor Rules (6.1 to 6.63)

Introduction to the Duty Solicitor Schemes

England and Wales have been divided into the CJS Regions which are set out in the tender documents for this Contract and on our website, and which is available to see on our website.

Within each CJS Region we have established Duty Solicitor Schemes, which are also listed in the tender documents and on our website for this Contract, and have identified which magistrates' courts and Police Stations are covered by a particular Scheme.

The Schemes

We operate Duty Solicitor Schemes as part of the CDS. These comprise:

- (a) Police Station Duty Solicitor Schemes;
- (b) Magistrates' court Duty Solicitor Schemes;
- (c) Virtual Court Duty Solicitor Schemes.

The primary objective of these Schemes is to ensure that individuals requiring Advice and Assistance (including Advocacy Assistance) at a Police Station or at a magistrates' court, and who choose not, or are not able, to obtain such help from their Own Solicitor, may have access to the services of a Duty Solicitor.

Work on Police Station Duty Solicitor Schemes is allocated in one of three ways:

- (a) Rotas (where there is a list of Duty Solicitors who are allocated to provide Advice and Assistance during a given time known as a 'Duty Slot');
- (b) Panel (where the DSCC calls Duty Solicitors from the Panel membership in a consecutive sequence to identify a Duty Solicitor to provide Advice and Assistance);
- (c) Back-up (where the DSCC finds that no Rota Duty Solicitor is available, and seeks to contact another Duty Solicitor from that Scheme or another Scheme).

Work on Virtual Court Duty Schemes is allocated by Rota only.

Work on magistrates' court Duty Solicitor Schemes is allocated in one of three ways:

Rotas (where there is a list of Duty Solicitors who are allocated to provide Advice and Assistance for a given time Duty Slot);

Panel (by Rota) (where Duty Solicitors from the Panel membership are called in to the court at the court's request in a sequence set by Rota to provide Advice and Assistance);

Call In Scheme (by list) (where there is a Panel List of Duty Solicitors who are called by the court as and when required to provide Advice and Assistance).

PART B – SPECIFIC PROVISIONS ON CLASSES AND UNITS OF WORK

Witnesses (Paragraphs 9.3 and 9.120)

The complicating factors referred to may include but are not limited to the following:

- Where the witness is at risk of self incrimination.

Payment for Police Station Attendance Fixed Fees (9.94)

The information about the correct claim codes are outlined in CBAM/the LSC Costs Assessment Manual.

Police Station Fixed Fees – multiple investigations (9.96)

Examples of a single investigation i.e. one Police Station Telephone Advice fixed fee and/or one Police Station Attendance Fixed Fee:

- (a) Client is arrested for handling a stolen credit card and is bailed from the Police Station. On the bail to return he is rearrested for a series of obtaining by deception offences.
- (b) Client is arrested for assault and burglary and taken to the Police Station. At the Police Station drugs are found and he is arrested for this new offence.
- (c) Client is arrested for theft and taken to the Police Station where he is arrested again on an old warrant for criminal damage.

Examples of when more than one Police Station Telephone Advice Fixed Fee and/or one Police Station Attendance Fixed Fee:

- (a) Client is arrested for theft from a shop and is bailed to return to the Police Station. The next day he is arrested for another theft from a shop.
- (b) Client is arrested for burglary; he fails to appear at court and is arrested on the street for failing to appear.

The matters above would allow you to claim two separate Police Station Telephone Advice Fixed Fees or Police Station Attendance Fixed Fees.

Costs additional to Standard Fees (10.88)

The information about the correct claim codes are outlined in CBAM/the LSC Costs Assessment Manual.

Representation in the Magistrates' court (10.35 to 10.113)

Representation in criminal proceedings in the magistrates' court under paragraph 10.35 of the Contract includes Prescribed Proceedings (civil proceedings which have been prescribed as criminal under regulation 3(2) of the CDS General No2 Regulations 2001.

Representation in Prescribed Proceedings in the Crown Court other than in appeals from the Magistrates' Court (10.133 to 10.144)

Most cases start in the magistrates' court. However, some applications for an order in prescribed proceedings may be made directly to the Crown Court. Representation in these cases is by Representation Order applied for from the magistrates' court.

Payment is governed by the Contract (and not the CDS Funding Order 2007), and details are set out under paragraph 10.133.

An upper limit of £1,500 applies to this Unit of Work, and so if you think your costs are going to exceed this limit, you should apply for the upper limit to be extended [using form CDS5].

Representation in the Crown Court under a Representation Order in mainstream Crown Court proceedings (10.145 to 10.151)

This section outlines in summary how mainstream Crown Court cases are funded. Paragraph 10.148 refers to Guidance about how we expect Crown Court cases to be planned. This was published in advance for the purposes of the 2010 Standard Crime Contract tender period and is available on the LSC website alongside this document.

Representation in the Crown Court under a Representation Order in Prescribed Proceedings on an appeal from the magistrates' court (11.64 to 11.75)

Representation on an appeal to the Crown Court in prescribed proceedings is by Representation Order, applied for from the magistrates' court.

Payment is governed by the Contract (and not the CDS Funding Order 2007), and details are set out under paragraph 11.64.

An upper limit of £1,500 applies to this Unit of Work, and so if you think your costs are going to exceed this limit, you should apply for the upper limit to be extended [using form CDS5].