

VERY HIGH COST CASE (CRIME) PANEL

DRAFT CONTRACT ANNEXES FOR PANEL ADVOCATES

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ANNEX 1

SELECTION CRITERIA FROM THE TENDER EXERCISE

A copy of the Selection Criteria from the tender exercise is contained in the Information for Applicants document which can be downloaded from our website at www.legalservices.gov.uk.

ANNEX 2

VHCC CONTRACTING PROCESS TIMETABLE

- 1.1 Extensions to the deadlines imposed in this Annex may be granted by agreement between the Defence Team's Case Manager and the CCU's Contract Manager.
- 1.2 Where the Defence Team is required to submit written documentation to the CCU, all documents must be typed unless otherwise agreed with the Contract Manager. Submission of handwritten documents may result in a delay to the process.
- 1.3 Template documents referred to in this Annex will be provided to Panel Members and Panel Advocates (as members of the Defence Team) by the CCU – e.g. the VHCC Notification Request Form, Case Plan, Task List and Case Category Assessment Sheet.
- 1.3A The Defence Team need not be complete at the time of notification. Any subsequent additions or changes must be notified to the Contract Manager (and are subject to approval in the case of a Non-Panel Advocate).

1.4 NOTIFICATION and CONTRACTING DECISION	
1.	The Defence Team must continually review the nature and status of a case in light of the likely duration of the case at trial. The Defence Team must notify the CCU by submitting a VHCC Notification Request Form as soon as it appears that the case will be, or is likely to be, a VHCC and, in any event, within five working days of the sooner of (a) the Plea and Case Management Hearing or (b) the Defence Team having identified that the case will be or is likely to be a VHCC.
2.	The CCU will decide whether the case is a VHCC within ten working days of receipt of a completed VHCC Notification Request Form and any other supporting documentation.
3.	The CCU will send a Contract Decision Letter to the Defence Team stating (a) its decision, (b) the reasons for that decision, and (c) if contracted, the name of the Contract Manager - within two working days of decision being made.

1.5 CASE PLANNING

1. The Defence Team must nominate a Case Manager to have overall responsibility for the VHCC and to liaise with the CCU's nominated Contract Manager.

2. The Defence Team must prepare a Case Plan, Case Category Assessment Sheet and Stage 1 Task List and submit to the CCU no later than ten working days from the date of the Contract Decision Letter.

Case Plan, Case Category Assessment Sheets and Task List templates will be provided to Defence Teams by the CCU. All submissions must be made using these templates. Submission of these documents in any other format will not be accepted by the CCU.

The Case Plan and Task List must reflect all the necessary work of that Defence Team for that stage.

All members of the Defence Team must reach agreement on the content of each Task List prior to submission to the Contract Manager for authorisation.

The Defence Team must also (as part of the Task List) provide a summary of the work undertaken in the previous stage (Stage 0).

The Case Plan and Task List must be signed by the Case Manager.

The category of a VHCC can be reviewed at the start of each stage of a VHCC. Please see the General Notes on Category Criteria at Annex 3.

1.6 NEGOTIATION MEETINGS	
1.	If a meeting is appropriate, the Contract Manager will contact the Case Manager within two working days of receiving a fully completed Case Plan, Case Category Assessment Sheet and Stage 1 Task List to arrange a Stage 1 meeting.
2.	<p>If a meeting is appropriate, the Stage 1 meeting will take place within ten working days of receipt of the completed Case Plan, Case Category Assessment Sheet and Stage 1 Task List. The meeting will take place at the offices of the Case Manager. Where this is not possible, the meetings will take place at a mutually agreed location. The meetings will be attended by the Case Manager and the Contract Manager. The CCU will reimburse the Case Manager for attending the meeting according to the rates of pay set out in the Criminal Defence Service (Very High Cost Cases) (Funding) Order 2013. Any other Defence Team members may attend if they wish, but the CCU will not reimburse them for their attendance.</p> <p>At this meeting, the Case Manager and Contract Manager will negotiate the items on the Task List and the category of case.</p> <p>VHCC Work undertaken prior to the Stage 1 meeting will be deemed Stage 0 work.</p>
3.	<p>After considering your proposals and negotiating with you if necessary on these proposals, we will request an updated Task List from you, specifying the VHCC Work to be done and the hours for each fee-earner and Advocate (including Panel Advocates).</p> <p>If so requested, the Defence Team will update the Stage 1 Task List reflecting the tasks and hours agreed during the Stage 1 meeting and resubmit this to the CCU within two working days of the Stage 1 meeting.</p>
4.	<p>The CCU will check the updated Stage 1 Task List and, if accurate, the CCU will sign-off the documents and confirm sign-off to the Defence Team within two working days of receipt of the completed Stage 1 Task List.</p> <p>Only once such a document has been received and signed by both parties (the Case Manager on behalf of the Defence Team and the</p>

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	Contract Manager) will the hours for Stage 1 be deemed to be agreed.
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1.7 DURING STAGES

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| 1. | You must regularly review and, if necessary, notify us of any changes to the VHCC Work required. |
| 2. | <p>The Defence Team will make all requests for amendments to the tasks or hours to the CCU.</p> <p>Where the amendment request relates to extending the time already agreed on an existing task on the current Task List, the request must be made to the CCU prior to the expiry of the agreed hours for that task.</p> <p>Where the amendment request relates to a new task not listed on the current Task List, the request must be made to the CCU prior to any work commencing on that task.</p> <p>Requests for amendments to the Task List (including an extension of a task) can be made orally or in writing. Where a request is made orally, the Defence Team must record such an amendment in writing and keep that record on file. Depending on the nature and extent of the change, a Contract Manager may request the Defence Team to update the current Task List and submit it to the CCU.</p> <p>The Case Manager must ensure that all those involved in the VHCC are aware of what VHCC Work is now required, by whom and by when, and that they know where the latest version of what is to be done (i.e. the most current Task List) is recorded.</p> |
| 3. | <p>The CCU (not necessarily the Contract Manager with conduct of the VHCC) will respond to any such requests within two working days of receipt of the request. Further information may be sought by the CCU in order for it to respond fully.</p> <p>Any amendments made in writing, whether in the form of a new or updated Task List or otherwise, must be approved by the CCU in the usual manner.</p> |
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4.	The Defence Team will update the current Task List with any amendments made. Defence Teams are not confined to a deadline for this task. Defence Teams are encouraged, however, to amend the Task List contemporaneously following an agreed amendment.
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1.8 AT STAGE END – FUTURE STAGE PLANNING

1.	<p>The Defence Team must prepare a Task List for the next stage and submit this to the CCU no later than ten working days before the stage end date (i.e. the end date of the previous stage) for consideration.</p> <p>Task Lists must be submitted to the CCU in advance of any stage negotiation meetings with the CCU.</p> <p>At the same time, the Defence Team must also provide a summary of the VHCC Work undertaken in the previous stage.</p> <p>The Case Plan and Task List must be signed by the Case Manager.</p>
2.	If a meeting is required, the Contract Manager will contact the Case Manager within two working days of receiving a fully completed Task List to arrange a meeting.
3.	If a meeting is required, it will take place within ten working days of receipt of the completed Task List and therefore no later than the stage end date.
4.	<p>After considering your proposals and negotiating with you if necessary on these proposals, we will request an updated Task List from you, specifying the VHCC Work to be done and the hours for each fee-earner and Advocate (including Panel Advocates).</p> <p>If so requested, the Defence Team will update the Task List reflecting the tasks and hours agreed during the meeting and will resubmit this to the CCU within two working days of the meeting.</p>

5.	<p>The CCU will check the updated Task List and, if accurate, the CCU will sign-off the documents and confirm sign-off to the Defence Team within two working days of receipt of the updated Task List.</p> <p>Only once such a document has been received and signed by both parties (the Case Manager on behalf of the Defence Team and the Contract Manager) will the hours for Stage 2 be deemed to be agreed.</p>
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1.9 STAGE 0 AUDIT

Stage 0 work (work performed from the date the Representation Order was granted until the date first covered by your first proposed Task List) will also be audited by us and is also payable at the rates (set out in [the Criminal Defence Service \(Very High Cost Cases\) \(Funding\) Order 2013](#)).

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Should the CCU require further information, we will, in the first instance, assess the attendance notes or work logs provided, request further information on specific items (briefs to counsel, advices, other work products) to support the summary of hours worked.

1.	<p>The Defence Team will prepare a Stage 0 Audit Bundle and submit this to the CCU within 20 working days of the Stage 1 start date for assessment.</p> <p>To enable us to perform an audit of Stage 0 work, you must make available to us (or, at our request, send to us) the following documents:</p> <ul style="list-style-type: none"> - all attendance notes (Panel Members) or work logs (Advocates, including Panel Advocates), with supporting documentation (i.e. schedules produced and notes taken); and - a summary of hours worked. <p>Audit Bundles must be submitted in this format. If your Audit Bundle is not submitted in this format, it will be returned and no payment will be made for your claim.</p>
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2.	If the Audit Bundle is submitted in the format as set out above, the CCU will assess the Audit Bundle and complete its assessment within 20 working days of receipt of the Audit Bundle. If further information is required, the CCU will request such information and may return the Audit Bundle with such a request.
3.	Provided the assessment has been made, the CCU will send to the Defence Team its assessment report and the necessary forms for signature within 20 working days of receipt of the Audit Bundle.
4.	<p>If the Defence Team agrees with the assessment made by the CCU, the payment form should be signed and returned to the CCU within ten working days of the date on the assessment report.</p> <p>If the Defence Team disagrees with any part of the assessment made by the CCU, it should submit written appeal representations to the CCU. For further information on the appeals process please refer to Annex 10.</p> <p>If you submit an appeal on any part of the assessment, the remaining parts of the assessment will be considered to be agreed. No payment will be made for the part of the assessment in dispute. Payment will be made for the part(s) of the assessment not in dispute.</p>
5.	The payment will be processed in time to meet a settlement run deadline. In order to do so, the signed payment form must be received by the CCU no later than one working day prior to the corresponding settlement run deadline.

1.10 AT STAGE END – CLAIMING

The CCU will not pay for any VHCC Work that is not specified in a Task List, except where permitted by this Contract.

1. The Defence Team must update the Task List for that stage and reconcile the hours worked against the hours agreed and submit this to the CCU as part of the Audit Bundle.

The Audit Bundle must be submitted to the CCU within 20 working days of the stage end date.

The Audit Bundle must contain the following documents:

- an updated Task List for that stage detailing all amendments agreed throughout the stage;
- a summary of hours worked against each item (either as a separate document or as part of the updated Task List); and
- attendance notes or work logs relating to the stage.

Attendance notes and work logs must hold the following information:

- date;
- time of day;
- name and level of fee earner (or Advocate's / Panel Advocate's role);
- task number;
- comprehensive description of VHCC Work completed; and
- total hours.

Audit Bundles must be submitted in this format. If your Audit Bundle is not submitted in this format, it will be returned and no payment will be made for this claim. Any delay resulting from an insufficient audit submission is likely to cause a delay to any audit assessment to be undertaken and any payment that may follow.

For trial stages, the CCU will request the trial log from the court. Whilst the CCU will make every effort to obtain such information, the expediency of the Court in responding to requests may delay the auditing process. Any such delay will be communicated to the Defence Team.

2.	If the Audit Bundle is submitted in the format as set out above, the CCU will assess the Audit Bundle and complete its assessment within 20 working days of receipt of the Audit Bundle. If further information is required, the CCU will request such information and may return the Audit Bundle with such a request.
3.	Provided the assessment has been made, the CCU will send to the Defence Team its assessment report and the necessary forms for signature within 20 working days of receipt of the Audit Bundle.
4.	<p>If the Defence Team agrees with the assessment made by the CCU, the payment form should be signed and returned to the CCU within ten working days of the date on the assessment report.</p> <p>If the Defence Team disagrees with any part of the assessment made by the CCU, it should submit written appeal representations to the CCU. For further information on the appeals process please refer to Annex 10.</p> <p>If you submit an appeal on any part of the assessment, the remaining parts of the assessment will be considered to be agreed. No payment will be made for the part of the assessment in dispute. Payment will be made for the part(s) of the assessment not in dispute.</p>
5.	The payment will be processed in time to meet a settlement run deadline. In order to do so, the signed payment form must be received by the CCU no later than one working day prior to the corresponding settlement run deadline.

ANNEX 3

CATEGORY CRITERIA

1. General notes

1.1 In relation to the categorisation of cases in both fraud and non-fraud cases, there are a number of important points to note outside of the Block A and Block B criteria:

1.1.1 The CCU shall decide whether a case is a fraud VHCC or a non-fraud VHCC and which category that case it falls into.

1.1.2 Defence Teams will use the Case Category Assessment Sheet to provide their full and detailed representations on the category of case. A template Case Category Assessment Sheet will be issued to Panel Members and Panel Advocates (as members of the Defence Team). The CCU will consider representations in this format only.

1.1.3 The category of the case is assessed against the criteria set out below and discussed at the first negotiation meeting. The CCU is only able to assess the Category Criteria against the evidence provided at that date.

The assessment of category will be based on information that the Defence Team and the prosecution can confirm as current fact, not what might happen at some time in the future.

A different category may apply at different stages of a VHCC - for example, the prosecution may present more evidence than expected, or may drop one of a number of charges.

1.1.4 The Defence Team and/or the CCU may review the category of a VHCC at the start of any stage when the CCU considers a Task List. If the CCU agrees to amend the category, the date on which the re-categorisation applies is the date on which the request for a re-categorisation is made (either by the Defence Team or the CCU). A request for re-categorisation must be made using the Case Category Assessment Sheet, which should include full and detailed representations on category.

1.1.5 Circumstances may arise where co-defendants within the same VHCC will be assigned different categories in order to reflect each defendant's involvement in the VHCC.

A Defence Team will need to demonstrate that their defendant's VHCC is able to meet the relevant criteria and provide supporting evidence for each criterion they believe the VHCC satisfies.

1.1.6 Evidence that is submitted in support of one criterion cannot be used to support submissions for meeting the requirements of a second criterion.

2. Criteria for setting hourly rates for fraud VHCCs

2.1 Block A

1. The defendant's case is likely to give rise to:
national publicity; and
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.

2.2 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 3 months

2.3 Categorisation of cases

- 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.

3. Criteria for setting hourly rates for non-fraud VHCCs

3.1 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.
 - a) Where the offence is of a violent or sexual nature, there must be multiple victims;
 - 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;
 - c) if the case involves drugs, their total value is estimated by the prosecuting authority to exceed £10m;
 - 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.

3.2 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:
 - 10,000 pages
 - 5,000 pagesUnused 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

3.3 Categorisation of cases

- 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.

ANNEX 4

BEST VALUE PROTOCOL

In this annex, “Advocates” includes, for the avoidance of doubt, Panel Advocates (i.e. self employed Barristers and Solicitor Advocates).

1. Introduction

- 1.1 Lord Carter’s report on the review of legal aid procurement made a number of recommendations directly concerning VHCCs.
- 1.2 Recommendation 4.22 of the report stated that designing a Best Value Protocol was critical to embedding best practice in VHCCs. The aim of this Protocol is to set out best practice for case preparation.
- 1.3 The Best Value Protocol (“the Protocol”) has been formulated through joint consultation between the LSC, the Law Society, the Bar Council and individual lawyers.
- 1.4 The Protocol operates alongside and, as far as is reasonably possible, supports the following:
 - The Lord Chief Justice’s Heavy Fraud and Complex Case Protocol¹;
 - The Attorney General’s guidelines on disclosure²;
 - The Criminal Procedure Rules³; and
 - All other relevant and updated guidelines.
- 1.5 The Protocol is an Annex to this Contract. By signing the Contract, the parties confirm acceptance of the principles set out within this Protocol.
- 1.6 The Protocol is a Contract document and must be adhered to – i.e. the Protocol is not simply a guide to best practice when carrying out VHCC Work; it is a binding document that must be followed. If there are particular features of an individual VHCC which make it unsuitable for certain parts of the Protocol to be applied it, we and the Panel Member may agree in writing to disapply these parts in relation to that individual VHCC only.
- 1.7 We will monitor your performance against the Protocol.
- 1.8 The following sets out the key principles and working practices of what we deem to be the “best value Defence Team”.
- 1.9 This Protocol does not in any way operate as a ‘blueprint’ for Defence Teams detailing the correct approach to conducting a VHCC.

¹ “Control and Management of Heavy Fraud and Other Complex Criminal Cases – A Protocol issued by the Lord Chief Justice of England and Wales – 22 March 2005”:
http://www.judiciary.gov.uk/docs/control_and_management_of_heavy_fraud_and_other_complex_criminal_cases_1803.pdf

² http://cps.gov.uk/legal/section20/chapter_c.html

³ 2005 No. 384 (L.4) Supreme Court of England and Wales – Magistrates’ Courts, England and Wales - The Criminal Procedure Rules 2005: <http://www.opsi.gov.uk/SI/si2005/20050384.htm>

- 1.10 Negotiations between the Defence Team and the nominated Contract Manager will still be required. However, this Protocol will offer clear direction to those involved in VHCCs describing alternative ways of working derived from experienced VHCC practitioners and the CCU.
- 1.11 The CCU will expect all Panel Advocates to achieve the standards of the most efficient Panel Advocates.
- 1.12 Case preparation is contingent upon the effective operation of other agencies. Quality and efficiency of case preparation can be affected and driven by the form in which the evidence is served.

2. Phase 1: Case planning

2.1 Early identification of key issues

2.1.1 An essential part of effective case planning and preparation is the early identification of the key issues in the case.

2.1.2 Case planning conference

2.1.2.1 Based on the information held at the time, the Defence Team should endeavour to work together to identify the key issues in the VHCC at the earliest opportunity. An effective method of doing so is to hold a case planning conference.

2.1.2.2 All members of the Defence Team would normally be expected to take part in at least the first conference and make the following decisions:

- Nominate a Case Manager;
- Discuss the case against the client(s) based on the information held at that time and identify, where possible, the key issues in the case;
- Discuss the work to be undertaken in line with those key issues; and
- Formulate a "Case Plan" (which will incorporate the key issues of the case) and "Stage 1 Task List" for submission to the nominated Contract Manager.

2.1.2.3 The Defence Team may consider it appropriate to invite the Contract Manager to such a conference in order to discuss the key issues in the case.

2.1.3 Case Manager

2.1.3.1 A Defence Team will nominate a Case Manager. The Case Manager should be either:

- a supervising Litigator or the main fee earner (minimum Level B) in the case; or
- Leading Advocate (or Advocate if junior alone).

2.1.3.2 The Case Manager will act as a representative for the Defence Team and will be responsible for the efficient running of the Contract. He/she will also be responsible, in conjunction with the Lead Advocate (if different), for the overall conduct of the defence case. The Case Manager, together with the Lead Advocate, would normally be expected to lead the Defence Team in planning the VHCC in line with the key issues identified.

2.1.3.3 The Case Manager will also be responsible for liaison with the nominated Contract Manager. Unless there are exceptional circumstances to justify attendance by additional Defence Team members, only the Case Manager should attend negotiation meetings and will be responsible for negotiating the hours for all work proposed in the Task List.

2.1.4 Case planning

2.1.4.1 When planning the VHCC, the Defence Team would ordinarily be expected to consider the following:

- Is the work payable under the Contract?
 - Is the task being proposed fee earner work?
 - Is the task necessary to further prepare the defence case?
 - If the task is necessary, should it be undertaken at this stage?
 - What level of fee earner should undertake the work?
 - How many hours are reasonable to undertake the work?
- 2.1.4.2 In all circumstances, the Defence Team should endeavour to plan its case in the context of its client's instructions and focus on the key issues in its client's case.
- 2.1.5 Conspiracy / joint charges
- 2.1.5.1 Contract Managers will work with the Defence Team to understand the relationship between the defendants in order to assist in their assessment of the time requested.
- 2.1.5.2 The Defence Team might want to consider conducting regular case planning meetings in order to discuss new evidence and the required approach.
- 2.2 Advocates**
- 2.2.1 One crucial element of case planning and preparation is the effective timing of instructing Advocates.
- 2.2.2 A Defence Team would normally be expected to:
- instruct Advocates within 14 days of the Representation Order granting the appropriate authority; and
 - involve instructed Advocates in initial case planning meetings to set out the approach to preparing the defence case.
- 2.2.3 When planning the VHCC, the Defence Team should work together to decide on the roles of leading and junior Advocates where there are two Advocates instructed. It would not normally be considered reasonable for the junior Advocate to duplicate the work of the Leading Advocate in order to act as a substitute for the Leading Advocate in his/her absence.
- 2.2.4 The Defence Team should not allocate the same task to both Advocates except for reading of primary served evidence or unless it is considered appropriate to do so in order to further the preparation of the defence case.
- 2.2.5 When considering the instruction of a second Advocate, the Defence Team should notify the Contract Manager as soon as possible.
- 2.2.6 The Defence Team would normally be expected to consider the following options when determining the need to instruct a second Advocate:
- Continue with junior alone;
 - Apply for:
 - o two junior Advocates;
 - o QC alone; or
 - o QC and junior Advocate.

- 2.2.7 Where the Representation Order authorises the instruction of two Advocates, the Defence Team should take all reasonable steps to keep the position under review, in accordance with the Regulations.
- 2.2.8 The Defence Team would normally be expected to apply to amend the Representation Order where two Advocates are no longer needed in the case. For example, in some cases, there may only be a need to instruct one Advocate for the confiscation or sentencing stage.
- 2.2.9 Where the Representation Order grants authority for two Advocates, the Defence Team may wish to consider whether both Advocates are required to attend court for all hearings. The Case Manager and Leading Advocate should endeavour to work together to determine who would be most appropriate to attend hearings.
- 2.2.10 The Defence Team may wish to consider the instruction of pupils (supervised) or second juniors on VHCCs where the type or amount of work justifies the need.
- 2.2.11 Depending upon the nature and complexity of the VHCC, the CCU may consider requests for a second Advocate and, if it is deemed appropriate, may submit comments to the court for their consideration.

2.3 Multiple defendants

- 2.3.1 When accepting instructions from more than one defendant in a VHCC, the Defence Team should consider their position in relation to potential conflict and duplication, in accordance with their professional codes of conduct. Please see Clause 10 for further information.
- 2.3.2 When representing more than one defendant, the Defence Team will be required, at the outset, to provide in writing to the Contract Manager, a statement confirming that having reviewed each client's position, there is no conflict and that they cannot foresee the potential of a conflict arising in the light of such information as is known at that time to the Defence Team.
- 2.3.3 As the VHCC progresses, the Defence Team will be expected to review the position of each client and confirm to the Contract Manager at each stage meeting that no such conflict exists.
- 2.3.4 The Defence Team should make every effort to eliminate unnecessary duplication when representing more than one defendant. For example, representing two defendants does not automatically result in each defendant being represented by a separate fee earner.

2.4 Selection and instruction of experts

- 2.4.1 The Defence Team would normally be expected to consider, at the outset of the case, the need to instruct experts and should endeavour to keep the position under review throughout the case. The Case Manager should notify the Contract Manager of the potential need to instruct an expert on a particular matter at the earliest possible opportunity.

2.4.2 Where the prosecution have served expert evidence, the Defence Team would ordinarily be expected to discuss any likely areas of contention with the Contract Manager.

2.4.3 In cases where expert advice is necessary the Defence Team should endeavour to:

- focus on the work required;
- particularise the issues on which expert advice is sought;
- draft initial instructions to the expert on the work for which he/she is invited to quote and issue such instructions to three selected experts. The Defence Team should use any advice on expert evidence produced by counsel to form the initial instructions;
- as far as is reasonably possible, request a quote for all work to be undertaken. If it is considered more appropriate to request a quote on a part-by-part basis the Defence Team should discuss this approach with the Contract Manager;
- obtain three independent quotations for the proposed work;
- submit all three quotations to the Contract Manager with a covering note indicating the views of the Defence Team of the quotes in general and their favoured expert;
- negotiate the details of the quote with the selected expert in order to meet the LSC requirements;
- continue working with the expert to ensure they are working within the boundary of instructions and should request further funding as is deemed necessary from the Contract Manager;
- upon completion of work and submission of an invoice from the expert, that all work claimed is within the hours (item by item) agreed and that the hourly rate corresponds with that which was agreed at the outset; and
- unless the invoice is of a significant value, submit the invoice as a disbursement with the Panel Member's audit bundle at the end of the current stage. (Invoices of significant value may be submitted independently and paid as non-stage specific.)
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2.4.4 Please refer to the list of CCU guideline expert rates for use by Defence Teams when requesting quotes and selecting experts.

2.4.5 Upon receipt of a quotation from a Panel Member requesting authority to instruct an expert, the Contract Manager may consult other LSC departments to help determine whether the work and time requested is reasonable and necessary.

2.4.6 The Defence Team should take all reasonable steps to not put themselves in the position where late consideration of the need for experts has an impact on the cost of preparing the defence case.

2.5 Sharing of costs with co-defendant's legal team

2.5.1 The product of certain types of work may be of use to more than one Defence Team. Examples of the types of work might include:

Document translation of parts of the served evidence; and
Court transcripts for hearings and trials.

- 2.5.2 When determining the need to conduct certain types of work, the Defence Team should also take the view that the product of such work will be shared with other teams unless there are circumstances not to share such work (i.e. conflict).
- 2.5.3 In situations where there is a conflict of interest between defendants, each Defence Team would still be expected to work with their Contract Manager to consider ways by which costs might still be shared.
- 2.5.4 The Defence Teams should be aware that the CCU does not have authority to instruct experts. In a situation whereby a joint expert is instructed, one Defence Team should be nominated to instruct the selected expert. The same Defence Team would normally be expected to liaise with that expert.
- 2.5.5 The Case Manager and Contract Manager should not permit inflated hourly rates on the basis that the expert is providing a service for more than one defendant. Any additional time required must be reasonable and necessary and should be addressed in the expert's estimated completion time.

3. Phase 2: Case preparation

3.1 Case preparation is contingent upon the effective operation of other agencies. The quality and efficiency of case preparation can be affected and driven by the form in which the evidence is served.

3.2 Categories of evidence

3.2.1 Categorising evidence is a key part of case planning in order to decide the most efficient and effective way of approaching served prosecution evidence. The Defence Team should endeavour to use the following category definitions when case planning:

3.2.2 Primary served evidence

3.2.2.1 Material served by the prosecution (e.g. witness statements, exhibits, interview transcripts etc) that supports the prosecution case.

3.2.3 Primary disclosure

3.2.3.1 Material, not used by the prosecution which, having been reviewed, it is felt the evidence either:

- undermines the prosecution case; or
- supports the defence case.

3.2.4 Secondary disclosure

3.2.4.1 Following submission of the defence case statement, any further material, not used by the prosecution which, having been reviewed, it is felt the evidence either:

- undermines the prosecution case; or
- supports the defence case.

3.2.5 Other unused material

3.2.5.1 All other material seized throughout the investigation that the prosecution say does not support their case, undermine their case, or support the defence case.

3.3 Approach to disclosed prosecution evidence

3.3.1 Upon initial consideration of the material, the Defence Team should, based on experience, endeavour to:

- determine the nature and content of the material; and
- determine the relevance (or potential relevance) of such material in light of the key issues of the defence case. This is subject to continuous review as further information becomes available.

3.3.2 Following the initial consideration of the material, the Case Manager, in conference with other members of the Defence Team, would normally be expected to:

- allocate work to the appropriate Defence Team member;

- allocate a reasonable amount of time to undertake such work; and
- determine the approach to take with this material, i.e. use of schedules, need to sift etc.

3.3.3 Core bundle

3.3.3.1 It may be appropriate for the Defence Team to create a core bundle of documents that can then be used to brief other Defence Team members about the key issues in the VHCC. The necessity to do such a task should be discussed with the Contract Manager and if it is agreed as necessary, an appropriate amount of time should be agreed between the Case Manager and Contract Manager for such a bundle to be prepared and for the appropriate member(s) of the Defence Team to read and consider this core bundle.

3.3.4 Reading and considering

3.3.4.1 The time requested to read and consider material should ordinarily include time for noting and cross-referencing to other parts of the evidence.

3.3.4.2 The Defence Team, in deciding on the appropriate Defence Team member and amount of time required, would normally be expected to abide by the following principles:

- The amount of time requested by the Defence Team should ordinarily reflect the level of relevance to the identified key issues; and
- The Defence Team should work together to avoid any unnecessary duplication of work.

3.3.4.3 If the Representation Order grants authority for one Advocate (who may be a Panel Advocate), that Advocate, once instructed, would normally be expected to read and consider the required material in conjunction with the identified key issues.

3.3.4.4 If the Representation Order grants authority for two Advocates (one or both of which may be Panel Advocates), both Advocates should work together to eliminate any unnecessary duplication of work. One such effective method would be for junior Advocate and the main Litigator in the VHCC to work together and act as an 'evidence filter' for the Leading Advocate. Such a filtering exercise would not apply to the core evidence bundle.

3.3.4.5 The Litigator responsible for taking the client's instructions would ordinarily be expected, if deemed appropriate, to provide the Advocate(s) with any relevant comments made by the client in order to assist the Advocate(s) with preparation.

3.3.4.6 Defence Teams might also want to consider sifting material where they feel it would be appropriate to do so (i.e. large volumes of material) and should discuss such an approach with the Contract Manager.

3.3.5 Use of schedules

3.3.5.1 In deciding whether schedules are reasonable and necessary, the Defence Team should endeavour to consider:

- how the schedule will assist in further work?
- how other Litigators and Advocates will use the schedule in their work?
and
- the appropriate Defence Team member to undertake the work.

3.3.6 Dramatis personae / chronologies

3.3.6.1 The Defence Team would ordinarily be expected to consider whether the preparation of a Dramatis Personae and/or a chronology is likely to further the preparation of the defence case. In doing so, the Case Manager would normally be expected to demonstrate that any request for time to conduct such a task is reasonable and necessary; that it would benefit the preparation of the defence case; and that there is a likely saving on time and/or cost on further work in the VHCC.

3.3.7 Electronic based evidence (i.e. hard drives, CD/DVD)

3.3.7.1 Provided the service of electronic based evidence is accompanied by a schedule of contents, the Case Manager should endeavour to use that schedule with the material to determine the relevance of the material to the defendant's case.

3.3.7.2 Where no schedule of contents is served, the Case Manager, in the first instance, would normally be expected to take all reasonable steps to obtain such information from the prosecution and if necessary by Judge's order.

3.3.7.3 When dealing with the material itself, the Case Manager may wish to consider the following:

- Is it possible to access the information in electronic format?
 - o i.e. what software packages/licenses are required?
 - o What types of hardware are required?
- Does the Panel Member or Counsel have the level of knowledge/expertise to access this information and/or undertake the task of analysing/considering this information in relation to the defence case?
and
- Would it be more time and cost effective to instruct an expert?

3.3.8 Interviews

3.3.8.1 When undertaking work on interview material, the Defence Team may consider it appropriate to undertake the following tasks:

- Accuracy checks against interview tapes;
- Redacting;
- Reading and considering; and
- Summarising / scheduling (only if necessary).

3.3.8.2 The Defence Team should endeavour to make every effort to avoid unnecessary duplication of work when allocating these tasks. For example, the Defence Team may consider it appropriate to request time for junior counsel to read and consider the interview material and to check the accuracy of the transcripts.

3.3.9 Surveillance evidence

3.3.9.1 In the absence of a supporting schedule, the Defence Team would normally be expected to continue preparing the VHCC with the information held at that time. Should the Defence Team consider it appropriate and necessary to do so, the Defence Team may request such a schedule from the prosecution (whether by means of a court hearing or directly) detailing the contents of the media served and any schedule of analysis they may have formulated.

3.3.9.2 If such a schedule or other supporting documentation has been provided, the Defence Team should endeavour to identify the key parts of the surveillance evidence that are relevant to the defendant's case.

3.3.9.3 The Defence Team may also wish to consider the use of technology to streamline the material. For example, specific computer software packages are available that enable the user to identify only those parts of the audio evidence where conversations take place. This preliminary exercise would strip out those parts of the evidence where the recording device has simply captured background noise. The Defence Team should discuss this approach with the Contract Manager.

3.3.10 Linked cases

3.3.10.1 Where the VHCC involves evidence from another case (whether another VHCC or non-VHCC), the Defence Team should discuss with the Contract Manager:

- how the case is materially linked to their client's case; and
- how the material identified will either support their case; or
- will undermine the prosecution case.

3.3.10.2 The Defence Team should agree with the Contract Manager a reasonable and necessary amount of time to consider the evidence that is relevant to the defendant's case.

3.3.11 Defence generated material (3rd party disclosure)

3.3.11.1 The Defence Team should only request access to third party material where they are able to identify a specific purpose for accessing that material. In doing so, the Defence Team would normally be expected to bear in mind the test of relevance.

3.4 Taking client's instructions

3.4.1 The taking of the client's instructions should ordinarily be conducted by the most appropriate level of fee earner having regard to the nature and complexity of the VHCC.

3.4.2 The Defence Team may wish to consider the use of technology when taking instructions in order to assist with future tasks such as preparing the client's proof of evidence and reducing/eliminating the time required for dictation.

3.4.3 The extent of instructions

- 3.4.3.1 Identifying such evidence should normally be part of the case planning phase and the Case Manager would ordinarily be expected to identify the parts of the evidence upon which instructions need to be taken.
- 3.4.4 How long should it normally take?
- 3.4.4.1 The Defence Team may be able to plan their stages based upon the client's instructions already taken during the pre-contract stage and the need to take further instructions on other parts of the evidence.
- 3.4.4.2 The Defence Team may wish to consider whether it would be beneficial to send a copy of the case papers to the client. This would give the client the opportunity to consider the case against him/her and be in a better position to answer questions or comment on specific parts of the evidence. The Defence Team may wish to consider the use of technology (i.e. scanning of papers) when doing so.
- 3.4.5 Foreign language speakers
- 3.4.5.1 The Defence Team may consider it appropriate to instruct an interpreter where they are able to justify the need on the following basis:
- The client's understanding of the case against him would be at risk without such an explanation being available in his/her primary language; or
 - Whilst the client understands the case against him/her, the time involved in taking instructions (i.e. asking questions and obtaining explanations or comments) is likely to be extended because of his/her understanding of the English language.
- 3.4.5.2 The Defence Team would normally be expected to take into consideration when planning the VHCC whether it would be appropriate and more time/cost effective to allocate work to a particular Defence Team member based on their linguistic ability.
- 3.4.5.3 The Defence Team might also wish to consider whether translating particular parts of the evidence into the client's primary language would assist in terms of taking instructions. Being provided with the translated documents may assist the client to prepare for meetings with the fee earner and in turn reduce the time required in attendance.
- 3.4.6 Availability of DVD/CD equipment
- 3.4.6.1 In cases where evidence is served electronically the Defence Team would normally be expected in the first instance to make every effort (and be able to demonstrate such effort) to obtain access to such necessary equipment or be granted permission to bring the necessary equipment into prison.
- 3.4.6.2 If permission is refused, the Defence Team should endeavour to inform the court and the prosecution of the problems which it has encountered and in the meantime address other parts of the evidence.
- 3.4.6.3 It is recognised, however, that due to security constraints, it may not be possible to take such equipment into prison. Therefore, the Defence Team need only demonstrate that such attempts were made.

3.4.6.4 When clients are on bail and can freely attend a Panel Member's offices to give instructions, the Defence Team would ordinarily be expected to ensure that all the necessary equipment is available for them to conduct an efficient meeting with the client.

3.5 Approach to unused material

3.5.1 The Defence Team should endeavour to use the following process when considering unused material:

3.5.2 Stage 1 – unused material schedule (MG6C)

3.5.2.1 The Defence Team ought initially to consider the unused material schedule. The main fee earner in the case or counsel would ordinarily undertake this task. The purpose of such a task would be to identify, where possible, those parts of the unused material that, based on the description given in the schedule or some other independent knowledge of such material, are likely to either undermine the prosecution case or support the defence case.

3.5.3 Stage 2 – disclosure requests

3.5.3.1 Having identified those parts of the unused material it needs to see, the Defence Team may choose to then request access to or copies of that material. In the first instance, such a request should be made to the prosecution. If the material is not forthcoming, then the Defence Team should consider making an application to the court for disclosure in accordance with the CPIA⁴ and the Protocol on the Disclosure of Unused Material⁵.

3.5.3.2 Where the entries or descriptions on the schedule are unclear, further information should be sought.

3.5.4 Stage 3 – relevance / value assessment

3.5.4.1 Upon receipt of the requested material, provided it is appropriate and time permitting, the Defence Team would ordinarily be expected to then assess the material and determine the relevance or value of such material to the defendant's case.

3.5.5 Stage 4 – reading and considering material

3.5.5.1 Once the relevance/value assessment has taken place, the Defence Team may then be in a position to determine the appropriate amount of time required to read and consider the relevant material and the appropriate Defence Team member(s) to conduct such a task (whilst at all times making every effort to eliminate unnecessary duplication). This task would ordinarily be allocated to the main fee earner in the case and junior counsel. If second counsel is to be instructed, the main fee earner and junior counsel would

⁴ CPIA: Criminal Procedure and Investigations Act 1996

⁵ 'Disclosure: a protocol for the control and management of unused material in the Crown Court' (20/02/06 issued by HMCS)

normally be expected, as part of their reading and considering task, to filter that material for leading counsel.

3.5.6 Large volume of unused material

3.5.6.1 In VHCCs where there is a large volume of unused material (see 'Categories of evidence'), the Defence Team may wish to consider whether viewing the material at the storage location would be more efficient.

3.5.6.2 If a decision were made to view the material in the first instance, the Defence Team would ordinarily be expected to obtain authority from the court to view that material. Only once such authority has been obtained should the Defence Team approach the Contract Manager to request the time required.

3.5.6.3 In determining the time required, the Defence Team might choose to take the following approaches into consideration:

- Initial perusal of any unused material schedule served to determine which parts can be eliminated from the viewing;
- Conduct a preliminary view by the main fee earner and/or junior counsel (depending upon the quantity of material) to determine the volume and basic content;
- Subject to the outcome of the preliminary view, the Defence Team should determine whether further attendance is required, by whom and for how long.

4. Phase 3: Preparation for trial, during trial and post trial

4.1 Preparation for trial

4.1.1 When preparing for trial, the Defence Team should, in conjunction with their defence case statement, incorporate all work undertaken in preparation for trial (by Litigators and Advocates) into the proposed Task Lists.

4.1.2 The Defence Team should endeavour to plan the final pre-trial stages early in the VHCC in order to minimise duplication that might be caused by having to refresh memories, changes in evidence etc. For example, properly prepared summaries and schedules may shorten this process.

4.1.3 The Defence Team would normally not reread prosecution papers as an independent task. Reviewing prosecution evidence and notes made during previous stages is part and parcel of preparing for cross-examination or closing speech etc. These are tasks in their own right.

4.1.4 The Defence Team would not normally be expected to request time (outside of their refresher preparation) to read and consider their notes or 'livenote' transcripts in order to prepare for the next day unless they can justify the need to address specific parts of the notes/transcripts in order to properly prepare for a legal argument or for cross examination. In doing so, the Defence Team would normally be expected to identify those specific parts of the evidence that require review.

4.1.5 Preparation of skeletons/submissions

4.1.5.1 The Defence Team should endeavour to identify, where possible, one Advocate to undertake the main work involved in preparing skeleton arguments and/or legal submissions. The Defence Team should work together to determine the most effective and efficient means of preparing skeleton arguments and/or other legal submission documents.

4.1.6 Jury bundles

4.1.6.1 The Defence Team may wish to distinguish between:

- checking prosecution jury bundles; and
- deciding on the content of defence jury bundles; and
- collating documents into jury bundle format.

4.1.6.2 The Defence Team should endeavour to allocate the above tasks to the appropriate level of Litigator or Advocate.

4.2 Preparation during trial

4.2.1 Attendance at court

4.2.1.1 When planning their trial stage, the Defence Team may wish to consider:

- the need for a Litigator or Level C fee earner to attend trial; and
- the level of fee earner required to attend.

4.2.1.2 Unless there are circumstances to justify attendance by a Level A or Level B Litigator, the Defence Team would normally be expected to allocate a Level C fee earner to attend the trial.

4.2.1.3 The Defence Team might also want to consider the instruction of an agency clerk to attend the trial. In doing so, the Case Manager should endeavour to negotiate the best rate available, pursuant to satisfying quality standards, and provided it equates to no more than that payable at Level C attendance at court, the Defence Team should request authority from the Contract Manager.

4.2.2 Agreeing preparation time during trial

4.2.2.1 When planning their trial stage the Defence Team may wish to consider how they may most effectively manage the Advocate's preparation time throughout the stage. One option open to the Defence Team is to:

- propose a 'basket' of hours per week to cover all preparation work. This would be in addition to the preparation hours included within the daily refresher. The Case Manager will update the Contract Manager once every four weeks and the 'basket' amended as is deemed reasonable and necessary. The Defence Team should conduct a full review of this agreement with the Contract Manager at the end of the prosecution case.

ANNEX 5

NOT USED

Deleted: RATES OF PAY – AMENDED

Deleted: These Rates of Pay apply to work undertaken pursuant to the Very High Cost (Crime) Panel Contract for Panel Advocates on or after the Effective date specified in Contract Amendment Notice number 1.

Preparation (hourly rates)

... [1]

|

|



Deleted: ¶
¶
Travelling and waiting¶
£25 per hour regardless of
Litigator Level or Advocacy
role¶
¶
Mileage¶
£0.45 per mile¶

ANNEX 6

PAYMENT AND DISBURSEMENTS

Please read this Annex in conjunction with Annex 2, particularly the section on auditing your claims for payment.

1. Payment

- 1.1 Payment for work on VHCCs, where the Representation Order is granted on or after the Panel Start Date, will be governed solely by the terms of this Contract.
- 1.2 All payments for VHCC Work must be claimed in accordance with this Contract. You may only claim payment for VHCC Work under this Contract. You may not claim payment for VHCC Work under any other payment scheme.
- 1.3 All claims for payment for VHCC Work will be audited by us. The audit of VHCC Work is to determine whether it was actually and reasonably done and whether it was within the hours agreed and specified in a Task List.
- 1.4 Under this Contract, we will pay you for VHCC Work specified in a Task List which you have performed. Payment will be made after the end of each stage.
- 1.5 For the avoidance of doubt, the CCU will not pay for VHCC Work that is not agreed in advance and confirmed as such as set out in this Contract, unless one of the following exceptions apply:
 - a) it arises from the service of further papers in a category of documentation already agreed (e.g. notices of additional evidence, additional served exhibits, interview transcripts, served unused material, audio tapes and videos.) Authority will be implied for the consideration of all such material served within the life of the stage at the same minute per page formula as originally agreed. That authority will be at the same hourly rate as agreed for the original material;

OR

- b) it falls within an item agreed in a Task List, and
 - (i) it is within a tolerance of 10% of the hours agreed for that item in that Stage; and
 - (ii) it is reasonable and necessary for the work to be done (assessed as part of the end stage audit); and all genuine efforts have been made to contact a Contract Manager in the CCU. Defence Teams must be able to demonstrate (i.e. provide evidence) that an email had been sent to the Contract Manager assigned to the VHCC and evidence of attempts to contact the CCU to seek authority for any amendments;

OR

- c) it arises as an 'emergency' piece of work (i.e. work that needs to be done by the next working day) and prior authority cannot be sought from the CCU because the need for the task is only identified outside CCU office hours or for example, during trial (i.e. the work was not foreseeable on the previous working day or earlier);

OR

- d) it is work by a Panel Advocate undertaken during the trial, including preparation undertaken during the course of the court day. The CCU agrees that 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 its being satisfied that such work could not have been included when planning their trial stage Task List (see Annex 9 'Instructing Advocates').

1.6 All VHCC Work carried out by all Defence Team members (including Key Members) will be paid at the hourly rate(s) specified in [the Criminal Defence Service \(Very High Cost Cases\) \(Funding\) Order 2013](#).

Deleted: Annex 5 on 'rates of pay'

1.7 If you are registered for VAT, we will pay VAT on top of your hourly rate. Any VAT charges must be set out in your claim for payment (by claim for payment, we are referring to the Audit Bundle you submit at the end of a Stage). If, through your error, we are not informed of your VAT registration, we will not be liable for any backdated VAT charge that you later inform us of.

1.8 The hourly rate(s) are fixed for the Panel Term. There will be no review of hourly rates between the Panel Start Date and the Panel End Date.

1.9 Payment is subject to our receiving the required Audit Bundle at the end of a stage, as this triggers the payment and is necessary to allow us to monitor this Contract.

1.10 We will make all payments by BACS transfer after completion of the assessment. The timing of payment for VHCC Work is governed by this Contract alone.

1.11 We will pay Panel Members directly for all VHCC Work carried out by them and their employees. We will pay Panel Advocates (self-employed Barristers and self-employed solicitor-advocates) directly.

1.12 If it becomes apparent that you have been overpaid, we reserve the right to recoup any money paid to you in excess of the amount due. We may set off against any amount payable by us to you under this Contract or otherwise, any amount payable by you to us under this Contract or otherwise. This clause continues to have effect after this Contract has ended.

1.13 If you have spent more hours providing the VHCC Work than is authorised under this Contract, you will not receive payment for such hours unless one of the exceptions set out at clause 1.5 above applies.

Specific work that is paid for/ not paid for under this Contract:

Appeals (work related to appeals against conviction and/or sentence to the Court of Appeal)	The CCU will only pay for negative advice on appeal against conviction and/or sentence (i.e. a short meeting and/or a short written advice to the client). The CCU will not pay for work related to a positive advice on appeal (i.e. drafting grounds of appeal). This would instead be billed to the Court of Appeal Criminal Division.
Routine correspondence	Panel Advocates are not entitled to any allowance for routine correspondence.
Training	The CCU will not pay for any training of Panel Advocates.

2. Panel Advocate error or omission

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.

3. Disbursements

The following table sets out various disbursement types. The list is not exhaustive.

Travel	Travel time is paid for all attendances at prison, at court and to conferences for Panel Advocates (including pupils). This is subject to the conditions set out under 'VHCC Distant Travel rules' below. For the purposes of taking instructions, clients must attend the Litigator or Panel Advocate at his/her organisation's offices unless they are in custody, suffering from a serious illness or at a location under control orders imposed by the court. Where the client is suffering from a serious illness, any request to attend upon the client must be supported by a letter from a GP. Where the client is subject to control orders, the Litigator and/or Panel Advocate must obtain prior written consent from the Contract Manager to attend the client at his/her location.
Waiting	The CCU will pay for waiting time when the Panel Advocate is waiting at prison to see the client or at court waiting for the court to sit. Any time spent by the Panel Advocate at court when waiting for the jury to return its verdict will be paid as waiting time subject to an assessment of the half-day refresher fee.
VHCC Distant Travel rules	The Panel will be a national panel (providing criminal defence services across England and Wales) and Panel Advocates are not restricted to offering their defence services in any particular geographical location. However, the CCU will apply the following VHCC Distant Travel rules where there is a more local Panel Advocate available.

	<p>For Panel Advocates, where this rule applies, the CCU will pay a maximum of two hours (by whatever method of transportation) and, if travelling by car, a distance of 50 miles each way.</p> <p>When applying the VHCC Distant Travel rules, the CCU will consider requests for additional travel time and cost on a case-by-case basis, using discretion where it is considered by the CCU to be appropriate to do so.</p>
Accommodation and subsistence	<p>Only in exceptional circumstances will the CCU pay for overnight accommodation and/or subsistence. If exceptional circumstances do present themselves and the acceptance of instructions or a brief is reasonable, overnight expenses should be based on a reasonable local rate – subject to any discounts that can be negotiated. Where this applies, the CCU will pay subsistence up to £20 per day. Receipts must support subsistence claims.</p>
Photocopying / Scanning / Copying electronic material	<p>The CCU will pay for all photocopying if it is reasonable to do so, regardless of the amount being copied but would not expect to pay more than four pence per page for black and white copying. For colour photocopies, a higher rate per page may apply and Defence Teams should seek to obtain the best available price.</p> <p>If the Crown serve evidence on disk/CD Rom the CCU will pay for the cost of copying these media provided it is necessary to do so and the cost is reasonable.</p> <p>Where the prosecuting authority has provided evidence in hard copy and the Defence Team wishes to utilise a software package, a disbursement for scanning the papers will be considered. The CCU would not expect to pay more than 5 pence per page.</p>

Provisions on your rights to appeal certain decisions related to payment and disbursements are set out in Annex 10.

ANNEX 7

ADVOCATES – SPECIFIC PROVISIONS RELATING TO VHCC WORK

1. General

- 1.1 Work on VHCCs can only be carried out by employees of the Panel Member, Panel Advocates or Non-Panel Advocates approved by the CCU. Other than this, anyone else who is self-employed cannot conduct work on VHCCs without the CCU's express prior written permission.
- 1.2 You were nominated by a Panel Member (or more than one Panel Members) as a Key Member of its/ their defence Team during the 2007 tendering exercise. As such, your name is listed as a Key Member of the Defence Team of that/ those Panel Member/s. A Panel Member is obliged to inform us whenever any Key Members of the Defence Team change. If a Panel Advocate leaves the Panel, the Defence Team is not permitted to replace that Panel Advocate during the Panel Term without the prior written consent of the CCU. Any replacement Panel Advocate would need to meet, as a minimum, the essential criteria met by the Panel Member when it tendered.
- 1.3 Panel Advocates who are solicitor-advocates must have a current Practising Certificate. Panel Advocates who are Barristers must be registered with The Bar Council of England and Wales as practising barristers. You are obliged to inform us if your Practising Certificate is revoked (if you are a solicitor-advocate) or if you are 'disbarred' (if you are a Barrister).
- 1.4 Responsibility for identifying and instructing Panel Advocates lies with the Panel Member. The Case Manager is responsible for managing a Panel Advocate's contribution to the work of the Defence Team.
- 1.5 The courts will remain responsible for decisions on the number and level of Panel Advocate(s) that can be appointed to act on any VHCC. This will be formalised in the Representation Order for that client. Both you and the CCU must operate within these decisions. The CCU does not have any discretion to go behind the Representation Order and therefore can only pay Panel Advocates at the appropriate rates for their level as specified on that Representation Order at the date the Panel Advocate conducted the work.

2. Trial Stage

- 2.1 Panel Advocates must carry out all reasonable and necessary work to represent the lay client properly. They will be paid daily advocacy rates during the trial. This includes two hours' preparation during a full court day and one hour during a half-day (see [the Criminal Defence Service \(Very High Cost Cases\) \(Funding\) Order 2013](#) for information on full and half days). It is acknowledged that such time will regularly be expended during the trial in consulting with the lay client, instructing solicitors, prosecution counsel, co-defending counsel and others. All such preparation will be deemed to have taken place between 9.00 am and 5.00 pm (the court day).
- 2.2 Any preparation for the trial stage that can be identified before the start of the trial or during the trial can and should be negotiated and agreed in advance

Deleted: Annex 5 'Rates of pay'

with the Contract Manager. Preparation that is necessary during the course of the trial should be undertaken either during the court day or after the court day. Work that might be undertaken during the court day includes (this list is not exhaustive):

- the reading of served material requiring immediate attention;
- conferences with the client;
- meetings with instructing solicitors; and
- meetings with the prosecution.

- 2.3 Work that might be undertaken after the court day might include preparation which requires drafting or research, or is likely to require a long period of uninterrupted preparation or the use of a computer.
- 2.4 Panel Advocates should prepare work logs for all preparation undertaken during the trial, including preparation undertaken during the course of the court day. The CCU agrees that all work properly and reasonably undertaken by the Panel Advocate and accounted for in their work log will be paid at the appropriate rate, subject to its being satisfied that such work could not have been included when planning their trial stage Task List.
- 2.5 The specific agreement of the Contract Manager to any significant item of additional work may be sought at any time throughout the trial stage. The Case Manager (or leading Panel Advocate, if the two are not the same) should contact the Contract Manager every two weeks during the trial to discuss changes to the VHCC arising from the trial and to highlight additional work being undertaken.

3. Substitute Panel Advocates

- 3.1 Where it is necessary for a Substitute Panel Advocate to undertake any VHCC Work, that Substitute Panel Advocate will be treated as a subcontractor.
- 3.2 Claims for any work undertaken by a Substitute Panel Advocate must be submitted, by separate invoice, with the instructed Panel Advocate's claim for work as part of the Defence Team's Audit Bundle (see Annex 2). A template invoice for this purpose will be provided by the CCU. A claim in any other format will be not be considered by the CCU and will not be paid.
- 3.3 The CCU will make a total payment to the instructed Panel Advocate, inclusive of VAT (assuming s/he is VAT registered).
- 3.4 The instructed Panel Advocate will be liable to account to HMRC for that VAT, but may deduct any VAT which is paid by him/her to a Substitute Panel Advocate, as input tax.
- 3.5 Appropriate records must be kept for VAT inspection, including copies of VAT invoices issued by the instructed Panel Advocate and VAT invoices issued to the instructed Panel Advocate by any Substitute Panel Advocate.

4. Return of Brief

- 4.1 Where the Contract Manager decides it is reasonable for a Panel Advocate to return a brief all reasonable costs will be paid upon production of an Audit Bundle. Please refer to Annex 2 for further information on auditing requirements.
- 4.2 A reasonable return of brief might include:
- where the Panel Advocate withdraws due to professional embarrassment;
 - where the trial dates of the VHCC 'clash' with a case upon which the Panel Advocate was instructed prior to the instruction on the VHCC;
 - where the Panel Advocate is sacked by the client but not as a result of improper behaviour on the part of the Panel Advocate; or
 - where the Panel Advocate succumbs to a serious illness. This should be substantiated wherever possible or reasonable with a doctor's note or similar.
- 4.3 If the CCU concludes that it was unreasonable for a Panel Advocate to return a brief, costs may be withheld or, if already paid, recouped.
- 4.4 An unreasonable return of brief might include:
- where the trial dates of a new case 'clash' with a VHCC upon which the Panel Advocate was instructed prior to the instruction on the new case. To do so might be unreasonable as the Panel Advocate should return the brief of the case that was accepted last;
 - where the Panel Advocate is sacked by the client as a result of improper behaviour and this can be proven - for example, failure to turn up to court without reasonable justification;
 - where the Panel Advocate takes a planned sabbatical (i.e. the Panel Advocate has planned to take a length of time off knowing they are holding the brief for a VHCC);
 - where the Panel Advocate does not accept the category assigned to the case and returns the brief as a result; or
 - where the Panel Advocate does not accept the hours agreed by the Contract Manager (or CCU) and returns the brief as a result.
- 4.5 The CCU will consider each return of brief on a case-by-case basis in line with the CCU and Bar Council guidelines.
- 4.6 If the CCU decides that a Panel Advocate has unreasonably returned a brief, the Panel Advocate will be deemed to be in breach of this Contract. Please refer to Annex 9 on breaches of contract for further details.

ANNEX 8

KEY CONTACTS

	Legal Services Commission's representatives	Defence Team's representatives
	Contract Manager	Case Manager
Name		
Address		
Email		
Telephone no		
Fax no		
	Senior Executive	Senior Executive
Name	Head of the Complex Crime Unit	
Address	Complex Crime Unit Legal Services Commission 11 th Floor Exchange Tower 2 Harbour Exchange Square London E14 9GE DX 170 Chancery Lane	
Email	ccu@legalservices.gov.uk	
Telephone no	0207 718 8035	
Fax no	0207 718 8018	

ANNEX 9

BREACHES OF CONTRACT

- 1.1 The following table sets out potential breaches of this Contract, the corrective action we would require to be carried out and by when, and any consequences of a failure to meet the deadline for corrective action. Some breaches may be so serious they may result in immediate termination of this Contract (the consequences for each breach of contract are set out in the table below. We are likely to suspend payments until any breaches have been rectified, if they are capable of being rectified.
- 1.2 We will keep a log of any breaches of this Contract and note for future tendering exercises. These will be noted as part of performance monitoring.
- 1.3 **NOTE:** In the case of any breach which we allow you time to remedy, we may withhold your next payment until the breach has been rectified to our satisfaction. This right to withhold payment is in addition to the steps we may take as set out in the table below. The right to withhold payment applies to any payment due on the VHCC you are working on under this Contract in respect of which the alleged breach of contract has arisen. Payment in respect of all other VHCCs is unaffected and will be payable in accordance with the terms of this Contract.

2. Irremediable breaches

If you have breached this Contract and the breach is not capable of remedy, we may write to you requiring you not to repeat the breach. If you repeat the breach, or we write to you in connection with any other breach, we may terminate this Contract, or any part of it, with effect from such date as we may specify in the notice.

3. Remediable breaches

- 3.1 If you have breached this Contract and the breach is capable of remedy, we may write to you requiring you to remedy the breach within such period as we may specify, normally not less than 20 working days.
- 3.2 If you fail to remedy the breach to our reasonable satisfaction within the timescale, we may terminate this Contract, or any part of it, with effect from such date as we may specify in the notice.

4. Fundamental breach

There are some breaches that are so serious that they go to the heart of the Contract and are not considered to be capable of remedy. In such cases, without offering you an opportunity to remedy the breach, we may terminate this Contract, or any part of it, with effect from such date as we may specify in the notice.

Breach	Remedial action and time limits	Consequence(s)
Misrepresentation of any information during the tendering exercise that allowed you to gain an advantage and entry onto the Panel.	No remedial action, immediate Contract termination.	<ul style="list-style-type: none"> - Immediate recoupment of all VHCC funding under this Contract; and - the CCU may terminate this Contract.
Fraudulent claiming (including over claiming).	No remedial action, immediate Contract termination.	<ul style="list-style-type: none"> - Immediate recoupment of any VHCC funding which is the subject of the fraudulent claiming; and - the CCU may terminate this Contract.
Misrepresentation of any information during the Panel Term that allows you to access funding you would not ordinarily have been able to access (by misrepresentation we mean fraudulent or negligent misrepresentation).	No remedial action.	<ul style="list-style-type: none"> - Recorded under performance monitoring; and - immediate recoupment of any VHCC funding which is the subject of the misrepresentation; and - if repeated, the CCU may suspend Contract⁵.
Misrepresentation of the CCU to the client or court (by misrepresentation we mean fraudulent or negligent misrepresentation).	No remedial action.	<ul style="list-style-type: none"> - Recorded under performance monitoring; and - if repeated, CCU may suspend Contract.

⁵ If the CCU suspends a Contract, the Panel Advocate will not be able to take on any new VHCCs and may, subject to the seriousness of the breach, be prohibited from working on any existing VHCCs. The CCU, acting responsibly, reserves the right to stop a Panel Advocate carrying out any VHCC Work in certain very serious situations.

Breach	Remedial action and time limits	Consequence(s)
Failure to comply with any time limits set out in the VHCC contracting process timetable set out in Annex 2.		<ul style="list-style-type: none"> - Recorded under performance monitoring; and - if repeated, CCU may impose limits (e.g. suspension of payments on some or all VHCCs running under this Contract until failure rectified); and - persistent failure to meet the deadlines specified in Annex 2 (meaning on three or more occasions in respect of one VHCC, provided that not meeting a deadline as a result of a force majeure event or as a result of an act or omission of the CCU or the LSC shall not constitute a failure to meet a deadline) may result in termination of this Contract.
Failure to maintain any material Quality Standards.	<ul style="list-style-type: none"> - CCU will issue guidance on how to rectify this breach; - time limit to be specified. 	<ul style="list-style-type: none"> - Recorded under performance monitoring; and - if not rectified, CCU may suspend Contract; and - if substantial failure, CCU may terminate this Contract.
Investigation by any regulatory body that results in your suspension, striking off or disbarring.	No remedial action.	<ul style="list-style-type: none"> - Recorded under performance monitoring; and - if not rectified, CCU may suspend Contract; and - if substantial failure to rectify, CCU may terminate this Contract; and - immediate recoupment of any funding resulting from disciplinary action.

Breach	Remedial action and time limits	Consequence(s)
Unreasonable return of brief.	No remedial action.	<ul style="list-style-type: none"> - Recorded under performance monitoring; and - if repeated – CCU may remove Panel Advocate from VHCC Advocate List; and - CCU may report incident to Bar Council/ Bar Standards Board/ Law Society/ Solicitors Regulation Authority (as appropriate for barristers/ solicitor-advocates); and - immediate recoupment of any funding resulting from the unreasonable return of brief.
Wasted cost order(s) made against you and confirmed after any appeal.	No remedial action.	<ul style="list-style-type: none"> - Recorded under performance monitoring; and - Immediate recoupment of the relevant portion of funding which was the subject of such an order.
Failure to notify CCU of a case being a VHCC at all.	No remedial action.	<ul style="list-style-type: none"> - CCU may suspend Contract; and - if repeated, CCU may terminate this Contract; and - immediate recoupment of any funding resulting from such a breach.
VHCC Work has been subcontracted without prior written authority from the CCU.	No remedial action.	<ul style="list-style-type: none"> - Depending on the seriousness of the breach, the CCU may deal with the issue as an irremediable breach (see rule 2); or - CCU may suspend Contract; and - if wholly unreasonable or unjustifiable subcontracting, CCU may terminate this Contract.

ANNEX 10

VHCC APPEALS COMMITTEE

- 1.1 This Contract establishes the VHCC Appeals Committee (“the Committee”). Members of the Committee shall hear appeals relating to payment and funding issues brought under this Contract.
- 1.2 Where the Defence Team disagrees with a decision made by a Contract Manager or any other member of the CCU or LSC, the Defence Team has a right to appeal that decision to the Committee.
- 1.3 If the Defence Team appeals a decision made by a Contract Manager, the CCU or LSC, the Defence Team, without prejudice to the appeal, should continue to work on the VHCC and continue to comply with the terms and conditions of this Contract. For the avoidance of doubt, an appeal by a Defence Team to the Committee is an appeal against a decision not to provide funding and should not affect the proper preparation of the defence case.

2. Right to appeal

- 2.1 You have a right of appeal to the Committee under this Contract on the following issues only:
 - a) individual tasks disputed on the submitted Task List;
 - b) the category assigned to the VHCC and notified to you by the CCU;
 - c) hours in dispute within the submitted Task List;
 - d) the level of fee-earner/ Panel Advocate allowed for any item of VHCC Work;
 - e) disbursements;
 - f) where the CCU decides to reduce payment under the Contract as a result of the Representation Order being amended to show another Panel Member as the nominated firm, either as a result of the client’s request or because you wish to cease acting. Where a Panel Advocate is required to return the brief in either of these circumstances, the CCU may take similar action and the right of appeal will be available to the party concerned in the same manner;
 - g) where the CCU decides to delay or withhold payment to a legal representative in accordance with its powers under the applicable regulations; or
 - h) where an assessment is made by the CCU whilst conducting an audit of VHCC Work, and the assessment results in the refusal of payment on some or all of the VHCC Work based on any reason other than the points below in rule 2.2. This excludes the application of a Panel Advocate’s role as specified on the Representation Order (please see point (g) below).
- 2.2 You do **not** have a right of appeal to the Committee under this Contract on the following issues:
 - a) where VHCC Work was agreed on the basis of false or misleading information and payment has therefore been refused;
 - b) where a Task List is not approved due to the omission of the required details and information;

- c) where VHCC Work was not agreed (subject to the exceptions set out in rule 1.5 in Annex 6) and a decision is made by the CCU not to make payment for that VHCC Work;
- d) where the total hours worked for a task exceed the hours agreed for that task and the CCU makes a decision not to pay for those exceeded hours;
- e) where you have missed the ten working day deadline (see 'appeal process' below) to appeal the decision made by the Contract Manager (or an extended deadline agreed by the CCU) and the CCU refuses to accept your appeal representations on such a basis;
- f) where the VHCC has been re-categorised at the start of any stage throughout the life of the VHCC, the date on which the new category applies (please see rule 1.1.4 of Annex 3);
- g) where the CCU has applied the Advocate levels as specified on the Representation Order and you are not working at that level. The CCU does not have any discretion to go behind the Representation Order;
- h) where the CCU has decided to suspend or terminate your Contract; or
- i) any other matter that is not covered by 2.1 a) to h) above (including a decision by the CCU to terminate your Contract, for which see clause 28.3 of this Contract).

3. Appeal process

3.1 The following table sets out a number of tasks to be carried out by the CCU and the Defence Team and the deadlines imposed. Extensions to the imposed deadlines may be granted by agreement between the Case Manager and the Contract Manager.

3.2 Where the Defence Team is required to submit written documentation to the CCU, all documents must be typed unless otherwise agreed with the Contract Manager. Submission of handwritten documents may result in a delay to the process and any such delay caused solely by the Defence Team will be recorded under performance monitoring.

Task	Deadline
<p>The appeal must be made in writing (by fax, email or post), using the 'appeal representations' document provided to you by the CCU. Your appeal will not be lodged if your representations are submitted in any other form.</p> <p>Your appeal representations (using the appeals document provided to you by the CCU) should include:</p> <p>background to the VHCC; details of the item(s) in dispute; and full reasons why you disagree with the Contract Manager's decision.</p>	<p>Any appeal must be lodged with the Committee clerk within ten working days of receipt of the original decision.</p> <p>For the purposes of this Contract, the original decision will be deemed to be made when the Contract Manager verbally conveys his/her decision or when the Contract Manager conveys his/her decision in writing, whichever is the sooner.</p>

Task	Deadline
<p>On receipt of the appeal representations (copy provided by the Committee clerk) the Contract Manager shall give his or her reasons for the decision in writing and shall lodge these with the Committee clerk. The reasons for the decision will be set out in the appeal response template provided by the CCU.</p>	<p>The Committee clerk will provide the Contract Manager's appeal response in writing to the appellant within ten working days of receipt of the appeal representations.</p>
<p>CCU to list an appeal hearing and communicate the hearing date to the appellant.</p>	<p>The Committee clerk will communicate the date of the appeal hearing to the appellant within ten working days of the date of the CCU's appeal response.</p>
<p>Appeal bundle prepared and issued.</p> <p>The appeal bundle will consist of:</p> <ul style="list-style-type: none"> - appeal representations; - appeal response; - case summary; - indictment; and - any other supporting documentation. <p>And will be copied and issued to:</p> <ul style="list-style-type: none"> a) the appellant; b) the respondent; and c) the Committee members. 	<p>The Committee clerk will prepare an appeal bundle and issue copies of the bundle ten working days prior to the appeal hearing.</p>
<p>Appeal hearing</p> <p>(See below for further information on the appeal hearing).</p>	<p>The Committee clerk will convene an appeal hearing within six weeks (30 working days) from the date on the appeal response.</p>
<p>Decision</p> <p>The final decision of the Committee will be made and communicated in writing to the appellant and the respondent within five working days of the appeal hearing.</p>	<p>The Committee clerk will communicate the decision of the Committee to the appellant and the respondent in writing within five working days of the appeal hearing.</p>
<p>Website</p> <p>The decision of the Committee will be published on the LSC website.</p>	<p>The decision will be available on the LSC website within 30 working days of the date of the decision.</p>

4. The Committee

- 4.1 The Committee appointed under this Contract deals with applications for appeal against a payment/ funding decision made by the CCU as provided for by this Contract.
- 4.2 Membership of the Committee and the roles and responsibilities of the members of that Committee are set out in a separate document, which is available upon request.
- 4.3 The appeals manager will be responsible for convening the Committee. It is the responsibility of the appeals manager to maintain a list of Committee members. The appeals manager shall select Committee members for each appeals hearing from this list.

5. The Committee Clerk

- 5.1 A clerk will assist the Committee at every appeal. The role of the clerk is to assist the Committee in performing its functions. As well as making arrangements for appellants and their representatives who attend the appeal, the clerk will be able to provide information requested by the Committee.
- 5.2 The clerk will keep a record of the appeal and will record the decision. However, it is the Chair's responsibility to draft the final decision and forward this to the clerk for distribution to the appellant and respondent.
- 5.3 The clerk will not take part in the decision making process.

6. Declaring an interest

- 6.1 It is the responsibility of each member of the Committee selected for a hearing to declare an interest to the clerk as soon as the Committee member identifies the interest or considers that an interest may exist.
- 6.2 A Committee member must declare an interest or a possible interest if:
 - a) they or their organisation are instructed by a co-defendant in the same VHCC or a linked case; or
 - b) they have anything more than a passing friendship or relationship with any of the parties involved in the appeal; or
 - c) they have employed any of the parties involved in the appeal in the recent past; or
 - d) they are involved with any of the parties involved in the appeal in any other way; or
 - e) they or their organisation stand to gain direct benefit from the appeal outcome.
- 6.3 If any member of the Committee declares an interest, that Committee member must immediately withdraw and return the appeal bundle. If an interest is declared on the day of the appeal hearing, the appellant and/or respondent has the right to insist that the Committee member shall not hear the appeal.
- 6.4 The clerk shall record the names of any Committee member who has declared an interest.

7. The appeal hearing

- 7.1 Appeal hearings will usually take place at the LSC's offices in London. There may be circumstances where videoconference is used. The Committee, appellant and respondent will be informed of such arrangements.
- 7.2 Prior to the appeal hearing, the Committee will have been provided with copies of the appeal bundle consisting of:
- the Defence Team's appeal representations;
 - the CCU's appeal response;
 - case summary;
 - indictment; and
 - any other supporting documentation.
- 7.3 Where appellants wish to provide material that is not included in the original appeal bundle, this extra material should be provided, in the form of written submissions and supporting documentation, to the CCU, at least three working days in advance of the appeal hearing. If the appellants do not do this, but still seek to rely on fresh material, the CCU has the right to ask the Committee:
- a) to grant more time so that the CCU can consider and respond to the fresh material; or
 - b) to proceed with the appeal relying only on information provided in the original appeal bundle.
- 7.4 The Committee shall adjudicate the issue having regard to the interests of justice and the need to proceed expeditiously.
- 7.5 The Committee may request further information to be provided prior to the appeal hearing. If further information is provided and the appellant, the respondent and/or the Committee require additional time to consider (and if required, respond to) such further information, the appeals manager will be asked to reconvene the appeal hearing (if necessary) at the next available opportunity.
- 7.6 The Committee may ask the appellant and the respondent to attend the appeal hearing and may invite either party to provide further oral submissions. Any oral submissions must be based solely on the appeal grounds as set out in the appeal bundle.
- 7.7 The appellant and/or the respondent are entitled to instruct another party to represent them at the appeal hearing but in doing so accept any cost involved in instructing such representative. For the avoidance of doubt, the CCU/LSC will not pay for the cost of representation. The appellant must notify the appeals manager no later than 10 working days prior to the appeal hearing if they are to be represented at the hearing.
- 7.8 If either the appellant or the respondent does not attend the appeal hearing, the Committee may consider the appeal based solely on the papers contained within the bundle and make their decision accordingly.

- 7.9 Prior to and at the appeal hearing, the Committee may consider the following:
- a) this Contract;
 - b) the Defence Team's appeal representations;
 - c) the CCU's appeal response;
 - d) the case summary;
 - e) the indictment;
 - f) any other supporting information; and
 - g) any oral submissions made at the hearing.
- 7.10 If, by oral or written submission, any information is provided by either the appellant or the respondent at the appeal hearing that has not previously been provided, then either party has the right to request an adjournment of the appeal hearing. Unless there are exceptional circumstances that preclude an adjournment, the Committee should grant the request and allow a reasonable amount of time to consider the further information.
- 7.11 In making their decision on the appeal, the Committee may not take the following into consideration:
- a) earlier Committee decisions;
 - b) earlier decisions made under any other LSC committee hearing; and/or
 - c) decisions made by Contract Managers for co-defendants on the same VHCC.
- 7.12 Following all submissions, the Committee may:
- a) dismiss the appeal;
 - b) allow the appeal in whole; or
 - c) allow the appeal in part.
- 7.13 The decision of the Committee will be a majority decision. Where there is no majority, the Chair will have a second or casting vote. The decision of the Committee shall be final and binding on all parties. There is no further internal right of appeal.
- 7.14 The Committee shall give full, written reasons for its decision. If required, the Committee clerk may ask the Committee to provide further written information in support of the reasons for its decision.
- 7.15 Decisions made by a Committee do not set a precedent for any future Committee but may be produced by the appellant or the respondent at their appeal hearing.

ANNEX 11

COMPLAINTS

1. This Annex sets out the procedure regarding complaints made:
 - about the CCU by Panel Advocates; and
 - about Panel Advocates by the CCU.
- 2. What is a complaint?**
 - 2.1 A complaint is an expression of dissatisfaction about the service provided by one party to another.
 - 2.2 A complaint is to be differentiated from someone simply having a heated conversation or 'letting off steam'. A complaint is more serious than that; it is where one party has decided to lodge a formal complaint against the other.
 - 2.3 Complaints should also be differentiated from appeals under this Contract see clause 28).
- 3. How may complaints be made?**
 - 3.1 Complaints may be made:
 - by letter;
 - in person;
 - by telephone;
 - by fax; or
 - by e-mail
 - 3.2 Complaints must be clearly marked "complaint" on the face of the correspondence, if made via correspondence. If the complaint is made verbally (i.e. in person or over the telephone), the complainant must make it clear during the conversation that s/he is making an actual complaint and not simply 'letting off steam'. Oral complaints must be followed up by putting the complaint in writing and submitting the written complaint to the 'complaints administrator'.
- 4. Procedure for handling complaints**
 - 4.1 Once a complaint is received, the party receiving the complaint will check that it is a formal complaint (i.e. that it is clearly marked "complaint" in the correspondence or was stated to be a complaint during the conversation).
 - 4.2 If it is not a formal complaint, the correspondence / verbal communication should be handled reasonably, responsibly and in the most appropriate way.
 - 4.3 If the complaint is a formal complaint, the following procedure must be followed:
 - 4.3.1. An administrator will identify the complaint as a formal complaint on receipt.
 - 4.3.2. All written complaints will be forwarded to a 'complaints administrator', who will register the complaint in a 'Complaints Log'. This will comprise of a spreadsheet showing:

- the date of the complaint (i.e. date of conversation or letter);
- the date the complaint was received (i.e. date letter received);
- the complainant;
- the complainant's organisation;
- the person against whom the complaint is made and where they are based;
- the particular VHCC the complaint refers to (if relevant);
- a brief summary of the complaint; and
- the action requested by the complainant (if any).

The Complaints Log will contain further columns which will be completed at a later stage:

- the date the complaint was passed to the relevant line manager;
- any holding letter sent (and the reasons why);
- the date the response was sent;
- by whom;
- a summary of the response (including the deadline for any corrective action); and
- (if relevant) the date the response was sent (and by whom) confirming that the corrective action had been completed.

4.3.3. The complaints administrator will pass the complaint to an appropriate person, who will then consider, investigate and respond to the complaint by the deadline given to them by the administrator. The appropriate person will be the line manager of the person who is the subject of the complaint. In the case of a complaint being made against the CCU by a Panel Advocate, the procedure is as follows:

Complaints made against:	Response by:
Contract Support Officer	Contract Manager
Contract Manager	Senior Contract Manager
Senior Contract Manager	Regional Manager
Operations Manager	Head of CCU
Regional Manager	Head of CCU

4.3.4. In the case of a complaint being made against a Panel Advocate by the CCU, the Panel Advocate must put in place an appropriate procedure, so as to ensure that a line manager investigates and responds to the complaint.

4.3.5. Complaints must be responded to in writing within three working days of receipt of the complaint (not three working days from the date the complaint is forwarded to the person who shall respond to it).

4.3.6. If the person compiling the response is unable to finalise that response within three working days (e.g. due to holiday/ sickness), the complaints administrator will contact the complainant immediately explaining why this is and giving a revised deadline for the response (which shall be reasonable and as soon as practically possible).

4.3.7. A written response will be forwarded to the complainant by the deadline. If appropriate, the response will contain proposals for corrective action and a deadline by which this will be achieved.

- 4.3.8. If no corrective action is proposed, the complaint will be closed when the response is sent to the complainant, and the result logged in the Complaints Log (i.e. the date the response was sent, by whom and a summary of the response).
- 4.3.9. If corrective action is proposed, the complaint will be closed when the corrective action has been finalised, a letter sent to the complainant confirming this has been done, and the result logged in the Complaints Log.

ANNEX 13

EXTRACTS OF THE GENERAL CRIMINAL CONTRACT APPLICABLE TO VHCC WORK

20. How the Contract can be ended

How can we end this Contract?

5. We may (without limitation) end this Contract as provided by its terms. The main provisions for termination are set out in this Clause 20.

When will this Contract terminate immediately?

6. If, at any time after you have signed this Contract, but before its start date:
 - (a) your application for approval as a Crime SQM holder is suspended, withdrawn, refused, lapses or otherwise ends; or
 - (b) you fail a Crime Preliminary SQM Audit; or
 - (c) you fail a Crime Pre-SQM Audit; or
 - (d) you are a Crime SQM holder and we have grounds for terminating your SQM contract or your SQM contract is terminated or otherwise ends, this Contract immediately lapses and shall not come into force on its start date.

Immediate termination

7. This Contract terminates immediately if there is an intervention by the Law Society (or by any other organisation that may lawfully do so) that has the effect of preventing you from carrying out work under this Contract.

When might there be urgent termination?

8. We are entitled, at any time, to serve notice on you terminating this Contract (or any part of it) with effect from such date as may be specified by us in such notice if:
 - (a) you are a Provisional Crime SQM holder and:
 - (i) your application for approval as a Crime SQM holder is suspended, withdrawn, refused, lapses or otherwise ends; or
 - (ii) you fail a Crime Preliminary Audit; or
 - (iii) you fail a Crime Pre-SQM Audit;

- (b) you are under Official Investigation or we receive a Report and, in either case, consider that termination is required to protect Clients or us from possible serious harm or to protect public funds or Clients' interests, or if a Report identifies that there has been such a serious breach of Contract or of legislation or such serious professional misconduct or dishonesty that, in all the circumstances, termination is justified;
- (c) your financial situation is such that we consider that we or Clients are at risk of financial loss or other material prejudice;
- (d) you are in breach of Part D, Clause 19 (prohibited gifts) of these Contract Standard Terms;
- (e) you are in breach of your warranty in Part D, Clause 14 of these Contract Standard Terms, we consider such breach to be material and we are not reasonably satisfied that, at all relevant times:
 - (i) you believed such information to be true and accurate in all material respects;
 - (ii) you were unaware of any omissions which made the information supplied misleading or inaccurate; and
 - (iii) you believed that no circumstances had arisen which materially affected the truth and accuracy of such information;
- (f) you have failed to provide documents or access to premises in accordance with Clause 3.6 or Clause 3.8 of these Contract Standard Terms;
- (g) this Contract (which will not normally come into force until we have received satisfactory replies to all our pre-contract enquiries) has come into force before we have received such replies and, despite all reasonable endeavours on our part, we subsequently do not receive such replies within a reasonable period.

When might there be termination on notice and how will this work?

9. If you have breached this Contract (except for any failure to comply with the SQM) and the breach is capable of remedy, we are entitled to serve a rectification notice on you, at any time, requiring you to remedy the breach within such period as we may specify, being not less than 28 days. If you fail to remedy the breach to our reasonable satisfaction, we may serve notice on you terminating this Contract (or any part of it) with effect from such date as we may specify in the notice.

10. If you have breached this Contract (except for any failure to comply with the SQM) and the breach is not capable of remedy, we are entitled to serve a notice on you requiring you not to repeat the breach. If you repeat the breach or we serve you with two further notices (one or each of which may be a rectification notice) in connection with any breach, we may serve notice on you terminating this Contract (or any part of it) with effect from such date as we may specify in the notice.

What about termination for failure to comply with the SQM

11. If, in accordance with procedures in the SQM, you have been issued with a Notice to Terminate, we may, on the date specified in the Notice to Terminate (or on such later date as we may subsequently specify) terminate:
 - (a) this Contract;
 - (b) approval of your Office;
 - (c) approval of any or all of your Classes of Work.

Can there be suspension of a Contract?

12. Whenever we are entitled to terminate this Contract (or any part of it) we may suspend this Contract (or any part of it). We will set out the effects of any suspension (which shall be less serious than termination) in a notice to you.

Termination for Fundamental Breach

13. If you have committed a Fundamental Breach, we may serve a notice on you terminating this Contract (or any part of it) with effect from the date specified in the notice.

21. Consequences of termination

What are the consequences of this Contract ending?

1. Subject to Clause 21.2 below and to any direction by us, when this Contract ends all rights, authorisations and licences granted under this Contract by us to you (and to any of your personnel) end immediately.
2. Unless we otherwise agree in respect of any Contract Work, when this Contract ends you must stop all work on Cases and Matters that you were performing under it as Contract Work and must stop holding yourself out as able to perform Contract Work.

3. Subject to Clause 21.4 and Clause 21.6 below, when this Contract ends our obligation to make payments to you under it ceases.
4. Subject to the provisions of this Contract, the ending of this Contract is without prejudice to any of your or our accrued rights (including, without limitation, our rights to assess your Claims and to recover any overpayments to you and your rights to recover in respect of any underpayments by us).
5. Upon termination of this Contract under Clause 20 (except Clauses 20.1 to 20.5) neither you nor any of your partners, shareholders, directors, executive officers or senior personnel who, we determine, were responsible for the circumstances leading to the termination, may (for such period as we may prescribe) apply to us for a contract under the Act. Where termination was under Clause 20.9(b), the prescribed period will be at least two years and, normally, longer. This prohibition continues to have effect after this Contract has ended.
6. Any provision of this Contract which relates to, or governs your or our acts after it ends, remains in full force and effect and is enforceable even though the Contract has ended.

What happens to Clients and files if this Contract ends?

7. We will make reasonable endeavours to make arrangements, with which both you and we must comply, to enable any Cases and Matters which you may not continue after any suspension or ending of this Contract to be transferred to one or more other Contractors.
8. Arrangements under Clause 21.7 will allow you to continue to perform such work as may be required by the rules of your professional body and may require you to provide reasonable information about individual Cases and Matters so as to enable an orderly transfer.
9. Arrangements under Clause 21.7 above may require you to transfer the Clients' files to such other Contractors as we may specify.

What if part of the Contract ends?

10. When part of this Contract ends (for example your ability to perform a particular Class of Work is ended) this Clause 21 has effect in respect of that part.

22. Other Contract Sanctions

When may we apply the sanctions in this Clause?

1. If you have breached this Contract or we may apply any Contract sanction under Clause 20 we may (without prejudice to any of our other rights) serve one or more of the notices and orders and apply one or more of the sanctions set out in this Clause 22.
2. We may also (without prejudice to any of our other rights) serve a notice or order or apply a sanction, as specified in Clauses 22.8 to 22.12.
3. Notices, orders and sanctions take effect from the date specified in the notice or order served by us and may be subject to conditions.

What is a payment reduction or non-payment order?

6. We may serve you with a payment reduction, or non-payment, order with the effect that you are not entitled to payment for some or all of the work specified in it.

What is a payment suspension order?

8. If you are under Official Investigation or your financial situation is such that we consider that there is a risk to Clients or to public funds, we may serve you with a payment suspension order (or a “vendor hold”) which has the effect of suspending some or all payments due from us to you under this Contract for such period as may be stated in the order.

What is a constraint order?

9. If you are under Official Investigation, we may serve you with a constraint order, which has the effect of prohibiting you (and your personnel) from starting any new Cases or Matters under this Contract, unless we otherwise direct.

What is a promotional restraint notice?

10. We may serve a notice on you suspending (with effect from such date as we may specify) your entitlement under this Contract to use SQM Promotional Items and to hold yourself out or to promote yourself as a Crime SQM holder, for such period as:

- (a) any of your solicitors engaged in Contract Work and required under the Solicitors' Act 1974 to have a valid practising certificate, ceases to have one;
- (b) you are under Official Investigation;
- (c) an internal review, review (or mediation) or arbitration under this Contract is under way.

Can individuals be excluded from performing Contract Work?

- 12. If any of your personnel is, or has been, a cause or subject of an Official Investigation, Report or Contract sanction while he or she was with you, or the cause or subject of such a, or any similar, investigation, report or sanction while he or she was with any other supplier of legal services we may, if we reasonably consider that such a step is necessary to protect Clients' interests or to protect us from material harm, require that the person concerned shall not (for such period as we may reasonably specify) (a) be a supervisor of Contract Work; and (b) be involved in your performance of Contract Work.
- 13. Clause 22.12 has effect even if the requirement was made before the person concerned was a member of your personnel. Therefore, we will not pay for any Contract Work that you carry out in breach of a requirement under clause 22.12 (whether the requirement was made while the person concerned was one of your personnel or not) or for work carried out by any of your personnel who, at the time he or she carried it out, were lawfully prohibited from doing so by any organisation with such power.
- 14. We will maintain a list (accessible by you) of individuals whom we have required not to be supervisors of Contract Work or involved in the performance of Contract Work.

23. Internal review and review

What matters are subject to internal review?

- 1. All disputes between you and us concerning:
 - (a) alleged breaches of this Contract;
 - (b) Contract sanctions;
 - (c) decisions by us on the scope of Contract Work authorised by the Contract for Signature; and
 - (d) notices by us under Clauses 22.10 and 22.11 in this Part;

are subject to internal review. (For the avoidance of doubt, decisions on individual Client Cases, Matters or Claims are excluded from this Clause 23). For the purposes of this Clause 23, Contract sanctions comprise termination and suspension under Clauses 20.9 to 20.14 in this Part, and any Contract sanctions specified in Clauses 22.5 to 22.9 or in Clause 22.12 in this Part (and include any notice of intention to apply such a sanction). For the purposes of this Clause 23, alleged breaches of this Contract do not include any alleged breach relating to the issue of a Contract notice unless and until we subsequently apply a Contract sanction consequent on the notice.

What matters are subject to internal review, review and arbitration?

2. All disputes between you and us concerning:
 - (a) alleged breaches of this Contract;
 - (b) Contract sanctions; and
 - (c) decisions by us on the scope of Contract Work authorised by the Contract for Signature,are subject to internal review, review (mediation by agreement) and arbitration. We will give written reasons for any decision we make to apply a Contract sanction (and for any decision we make to issue a notice under Clauses 22.10 or 22.11). If requested by you, we will give written reasons for any decision as to the scope of Contract Work authorised by the Contract for Signature.

Must you apply promptly for internal review etc?

3. If you do not pursue your rights under this Clause 23 or Clause 24 within the periods of time specified (or such longer periods of time as we may agree) you thereby accept the position and lose your right to dispute it.

Will sanctions be applied immediately?

4. Pending any internal review, review (mediation by agreement) or arbitration any Contract sanction applied, or to be applied, by us shall be suspended unless we consider that, because of a risk to Clients or to public funds, such sanction must have effect pending any internal review, review (mediation by agreement) or arbitration.
5. Whenever we have determined that any Contract sanction shall continue to have effect pending any internal review, review (mediation by agreement) and

arbitration you may apply in writing for a review direct to the Contract Review Body without first applying for an internal review.

What is the internal review procedure?

6. If you have a dispute with us within the scope of Clause 23.1 above, you may write to the Regional Director setting out your reasons and requesting an internal review of our decision. Your reasons must be received by the Regional Director within 21 days (or such longer period as we may agree) of the decision and may include any further information that you wish to be taken into account.
7. If the Regional Director receives a written request for an internal review pursuant to Clause 23.6 above, he will, within 7 days of receipt, forward it to the Supplier Development Group. The Supplier Development Group will, within 14 days of receipt, either (a) review the decision in the light of the information available including the reasons for the decision and your reasons for disagreeing with it or (b) where the dispute is within Clause 23.2, may refer it to the secretary to the Contract Review Body, as an application for a review by the Contract Review Body, in which case, Clauses 23.13 to 23.15 shall apply. The Supplier Development Group will not consider any documents that you have not already seen.
8. Neither you nor we have a right to make oral representations on an internal review.
9. On an internal review, the Supplier Development Group may uphold the original decision, overturn the original decision or substitute a fresh decision for the original decision and if it does so, it will give written reasons for its decision.

What is the review procedure?

10. If you have a dispute with us within the scope of Clause 23.2 above, you may within 21 days of the Supplier Development Group giving its decision and reasons following an internal review (or, where you are applying for a review pursuant to Clause 23.5 above, within 21 days of the original decision) apply in writing for a review by the Contract Review Body.
11. The application for review must be submitted to the Regional Director. It may include any further information that you wish to be taken into account.
12. The application for review must state your grounds for disagreeing with the decision(s). When your application for a review is received by the Regional Director, it will be forwarded to the secretary to the Contract Review Body, within

7 days, with the original decision and the reasons for it and (unless your application is pursuant to Clause 23.5 above) with your reasons for requesting an internal review and the Supplier Development Group's internal review decision and reasons.

13. The secretary to the Contract Review Body will consider the information received within 14 days of receipt and, if the secretary considers that the Contract Review Body would be assisted by further written information, the secretary will forthwith seek to obtain it from the Regional Director, from you and from such other person as he considers appropriate, within 14 days thereafter. Any further information received from the Regional Director, from you or from any other person will be disclosed to the Regional Director and to you in writing and you and the Regional Director will be given the option to comment in writing on it within seven days. The secretary to the Contract Review Body will also ask you whether you will wish to make oral representations to the Contract Review Body.
14. On a review, you and we may make oral representations, for a maximum of fifteen minutes or such longer period as may be permitted by the Contract Review Body.
15. The Contract Review Body may allow the review, dismiss the review or make a different decision. The Contract Review Body may give directions to the Regional Director. The Contract Review Body may also recommend that a fresh decision is made after a specified period. The Contract Review Body will give written reasons for its decision. The Contract Review Body may award interest (from the date of suspension) at the judgment debt rate if a decision for review was to suspend payment and the review is allowed.

24. Mediation and Arbitration

1. If either you or we disagree with the decision of the Contract Review Body the decision shall (if both you and we agree) be referred to a neutral mediator within 14 days of the decision of the Contract Review Body.
2. The neutral mediator will be chosen by agreement between you and us. If you and we are unable to agree on the choice of a mediator (or if any chosen mediator will not act) both you and we will apply jointly to a nationally recognised mediation body to appoint a mediator.
3. Within 14 days of the appointment of a mediator, you and we must meet him to agree a programme for the exchange of information and a timetable and

structure for discussions. If you and we are unable to agree on any issue at the meeting, the mediator may give directions or seek assistance from a nationally recognised mediation body.

4. Unless otherwise agreed, all negotiations connected with the dispute and any settlement or agreement relating to it must be conducted in confidence and are without prejudice to either your or our rights in any future proceedings.
5. If agreement is reached on the dispute, it shall be put in writing by the mediator for signature by you and us. Once a written agreement has been signed by both you and us it is binding.
6. If you and we are unable to reach agreement on the dispute, either party may ask the mediator to provide a non-binding but informative opinion in writing. Such an opinion shall be provided on a without prejudice basis and must not be used in evidence in any proceedings relating to this Contract without both your and our prior written consent.
7. If no agreement (or no full agreement) is reached within 60 days of the appointment of the mediator (or such longer period as you and we may agree) the dispute, or any remaining part of it must be referred to arbitration under Clause 24.8 below.

When are disputes subject to arbitration?

8. If either you or we disagree with the decision of the Contract Review Body (or if Clause 24.7 applies) the decision of the Contract Review Body shall be referred to arbitration to be decided under the Arbitration Act 1996. The arbitration shall be in accordance with the relevant arbitration scheme run by the Chartered Institute of Arbitrators and shall be final and binding. Notice of intention to enter arbitration must be given in accordance with the terms of the scheme within 21 days of the decision of the Contract Review Body or (if later) the date when Clause 24.7 applies. (For the avoidance of doubt, the “relevant scheme” is the current scheme, established by the Chartered Institute of Arbitrators, for the purpose of determining disputes under the Commission’s contracts for legal services.)
9. Both you and we must use reasonable endeavours to ensure that any arbitration is concluded within three months or as soon as practicable thereafter and must provide in a timely manner all reasonable information, assistance, co-operation and responses that may be required.
10. We reserve the right to apply any Contract sanction we consider appropriate if:

- (a) the arbitration has not been concluded within three months of the appointment of an arbitrator; or
- (b) for any reason an arbitrator is not appointed within one month of the date of the notice to enter arbitration; or
- (c) after one month has elapsed since the date of the relevant decision, we consider that you are failing to comply with Clause 24.9 above, provided that, under (a) the delay has not been caused by us and, under (b) we are not the cause of the failure to appoint an arbitrator.

These Rates of Pay apply to work undertaken pursuant to the Very High Cost (Crime) Panel Contract for Panel Advocates on or after the Effective date specified in Contract Amendment Notice number 1.

Preparation (hourly rates)

	Category 1 £	Category 2 £	Category 3 £	Category 4 £	Standard Rates £
Solicitor					
Level A sol	152.50	119.00	95.50	95.50	55.75
Level B sol	133.00	104.50	83.50	83.50	47.25
Level C sol	88.50	69.00	54.00	54.00	34.00
Pupil/junior ¹	48.00	38.50	31.50	31.50	
Counsel					
QC	152.50	119.00	95.50	95.50	
Leading junior	133.00	104.50	83.50	83.50	
Led junior	95.50	76.00	65.00	65.00	
Junior alone	104.50	85.50	74.00	74.00	
2nd Led junior	67.00	53.00	46.00	46.00	
Solicitor advocate					
Leading level A	152.50	119.00	95.50	95.50	
Led level A	133.00	104.50	83.50	83.50	
Leading level B	133.00	104.50	83.50	83.50	
Led level B	110.00	90.50	69.00	69.00	
Level A alone	138.00	115.00	93.50	93.50	
Level B alone	116.00	99.50	78.50	78.50	
Second advocate	67.00	53.00	46.00	46.00	

Advocacy²

Advocacy rates for counsel 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	119.00	250.00	500.00
Leading junior	90.50	205.25	410.50
Led junior	61.00	132.75	265.50
Junior alone	70.00	150.00	300.00
Second led junior	35.50	67.50	135.00

¹ This is to cover situations where the Representation Order cannot be amended to provide for a second junior counsel but the Case Manager determines that to achieve value for money certain items of work should be done by a third counsel.

² Solicitor-advocates will be paid the appropriate rate for a leading junior, a led junior, or a junior alone.

Noter	30.50	57.50	115.00
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Attendance at court with counsel (hourly rates for solicitors)

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