

**2017 Standard Crime Contract**  
**Specification**

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## 1. Introduction to Contract Work

### Definitions

1.1 Unless otherwise stated, definitions that are set out in Legal Aid Legislation and the Standard Terms apply to this Specification and are not repeated here.

1.2 In this Specification, the following expressions have the following meanings:

*"Accreditation"* means accreditation under the Law Society's Criminal Litigation Accreditation Scheme;

*"Accredited Representative"* means an individual whose name is included on the Police Station Register and who is accredited by a body recognised by us as competent to grant such accreditation;

*"Advice and Assistance"* means advice and assistance provided under section 13 or 15 of the Act (as applicable);

*"AGFS" or "Advocates' Graduated Fee Scheme"* has the meaning given to it in the Criminal Remuneration Regulations;

*"Armed Forces Criminal Legal Aid Authority"* means the single authority which manages the provision of, and advises and executes the policy for, civilian criminal legal representation for all eligible service personnel and civilians;

*Armed Forces Legal Aid Scheme"* means, in relation to Paragraph 6.23, work carried out on a criminal military case in England and Wales under JSP (Joint Service Publication) 838 (Armed Forces Legal Aid Scheme), as amended from time to time, and as administered by the Armed Forces Criminal Legal Aid Authority;

*"Assigned Counsel"* means Counsel or in-house advocate who is assigned under a Representation Order in accordance with regulation 16 and 17 of the Criminal Legal Aid (Determinations by a Court and Choice of Representative) Regulations 2013;

*"Back-up"* means a system by which the DSCC seeks to contact another Duty Solicitor when a Duty Solicitor on a Rota is unable to accept a request for Police Station Advice and Assistance;

*"Call In" or "Call In Scheme"* means the magistrates' court Panel Duty Scheme which is operated by a court contracting the Duty Solicitor directly as and when he or she is required at court;

*"Caseworker"* means an employee who is not a Supervisor, but who is a fee-earner who regularly undertakes criminal defence work to whom a specific caseload of Contract Work is allocated and is responsible for the progression of those cases, within their specific caseload, under supervision. Caseworker includes paralegals;

*"Category A Inmate"* means an inmate whose escape would be highly dangerous to the public, the police or national security, and for whom the aim is to make escape impossible;

"*Category A Inmate Review*" means a review of an Inmate's classification pursuant to rule 4 (classification of inmates) of the Young Offender Institution Rules 2000 as a Category A Inmate or as a Restricted Status Inmate;

"*Category A Prisoner*" means a prisoner whose escape would be highly dangerous to the public, the police or national security, and for whom the aim is to make escape impossible;

"*Category A Prisoner Review*" means a review of a prisoner's classification pursuant to rule 7 (classification of prisoners) of the Prison Rules 1999 as a Category A Prisoner or as a Restricted Status Prisoner;

"*Child*" means an individual under the age of 18;

"*Civil Financial Regulations*" means regulations made under section 21 of the Act that relate to civil Legal Aid;

"*Civil Procedure Regulations*" means the Civil Legal Aid (Procedure) Regulations 2012;

"*Civil Remuneration Regulations*" means regulations made under section 2(3) of the Act that relate to civil Legal Aid;

"*Close Supervision Centre*" means any cell or other part of a prison designated by the Secretary of State for holding prisoners who are subject to a direction given under rule 46(1) of the Prison Rules 1999;

"*Contract Guide*" means a guide issued by us specifically in relation to the Contract and published on our website;

"*Contribution Order Regulations*" means the Criminal Legal Aid (Contribution Orders) Regulations 2013 and any other regulations made under section 23 of the Act that relate to criminal Legal Aid;

"*Controlled Work*" has the meaning given to it in regulation 21(2) of the Civil Procedure Regulations;

"*Costs Limitation*" means the limitation setting out our maximum liability as to costs (including profit costs, Disbursements and Counsels' fees but excluding VAT and the costs of Assessment) imposed by the Director, and described as an Upper Limit in respect of a Representation Order granted in respect of Prescribed Proceedings in the Crown Court;

"*CJS Area*" means the areas into which England and Wales is divided for the purposes of administering the CJS, the CJS areas being based on the police areas as set out in Schedule 1 of the Police Act 1996;

"*Criminal Defence Direct Fixed Acceptance Fee*" means the fee set out in the Criminal Remuneration Regulations which is claimable in an Escape Fee Case if a former Criminal Defence Direct case is referred to you to provide Police Station Advice and Assistance;

"*Criminal Defence Direct Matter*" means Police Station Advice and Assistance which is not within the scope of this Specification and may only be undertaken by a Criminal Defence Direct Telephone Adviser, unless an exception as set out in Section 9 applies;

*"Criminal Defence Direct Telephone Adviser"* means a person approved by us to be employed or engaged specifically to provide telephone advice for the purposes of Criminal Defence Direct, the minimum qualification for whom shall be the Law Society's Police Station Qualification;

*"Criminal Defence Work"* means, in relation to Paragraph 6.23, defence work performed for clients in relation to a criminal investigation, criminal proceedings or a prison law matter. It includes Contract Work, work on AGFS, VHCC and the Armed Forces Legal Aid Scheme as well as privately funded work on the same types of matter that would be funded under criminal legal aid save for the client not meeting the relevant means eligibility criteria or choosing to pay privately. Work performed for a client in cross-examining a witness under Section 38 of the Youth Justice and Criminal Evidence Act 1999 is also included;

*"Criminal Financial Regulations"* means the Criminal Legal Aid (Financial Resources) Regulations 2013 and any other regulations made under section 21 of the Act that relate to criminal Legal Aid;

*"Criminal Litigation Accreditation Scheme"* or *"CLAS"* means the Law Society criminal litigation accreditation scheme;

*"Criminal Remuneration Regulations"* means the Criminal Legal Aid (Remuneration) Regulations 2013 and other regulations made under section 2(3) of the Act that relate to criminal Legal Aid;

*"Designated Area(s)"* means the CJS Areas of:

London,  
Greater Manchester,  
Merseyside,  
West Midlands, and the local authority areas of:  
Brighton & Hove,  
Bristol,  
Cardiff,  
Derby & Erewash,  
Kingston upon Hull,  
Leeds & Bradford,  
Leicester,  
Nottingham,  
Portsmouth,  
Newcastle-upon-Tyne & Sunderland (including Gateshead, North Tyneside and South Tyneside),  
Sheffield, and  
Southampton;

*"Designated Area Standard Fee"* has the meaning given to it in Section 10;

*"Designated Fee Earner"* means a person who is designated by you to undertake Contract Work under this Specification (including Agents) in accordance with Paragraphs 2.32 to 2.38;

*"Disbursement(s)"* means out of pocket expenses properly incurred by you (and which, apart from this Contract, would be properly chargeable to a Client) in performing Contract Work;

*"Disciplinary Case"* means Advocacy Assistance on a Matter, which falls under Section 12, and is within scope of regulation 12(2)(f) of the Criminal Legal Aid (General) Regulations 2013;

*"Disciplinary Hearing"* means adjudications that are heard before the Prison Governor or an Independent Adjudicator where offences against the Prison Rules 1999 or Young Offender Rules 2000 that are alleged to have been committed by the prisoner are dealt with;

*"DSCC"* is the "Defence Solicitor Call Centre" (as may be superseded or replaced from time to time) provided on behalf of us by independent contractors to deal with requests for Advice and Assistance at the Police Station;

*"Duty Period"* or *"Duty Slot"* means a period during which a Duty Solicitor is required to be available to give Advice and Assistance or Advocacy Assistance under a Duty Scheme;

*"Duty Solicitor Postcode Tool"* means the tool on our website which sets out the geographical ambit of Duty Schemes by reference to postcodes;

*"Early Cover"* has the meaning given to it in Section 10;

*"ECrime System"* means our online system for managing the electronic transmission of information between us and Providers (including any Counsel or other third parties you appoint in accordance with Clause 3 in connection with Contract Work that is part of the online service;

*"Engaged"* means meeting the requirements of Paragraphs 6.22 to 6.24;

*"Escape Fee Cases"* means a Case or Matter which would otherwise be paid under a Fixed Fee but which is payable in full or in part on Hourly Rates because of the extent by which the Claim exceeds the relevant fee;

*"Escape Fee Case Costs"* is the remuneration payable in a case which would otherwise be paid by a Fixed Fee but where your costs exceed the specified Escape Fee Case Threshold and are assessed by us;

*"Escape Fee Case Threshold"* means the extent to which your costs must exceed a Fixed Fee so as to entitle you to have your costs assessed by us as an Escape Fee Case;

*"Financial Eligibility Tests"* means such test of the Client's financial resources as are applicable under the Criminal Financial Regulations;

*"Findings"* include not only findings on particular practices (such as failing to Assess financial eligibility or charging for administrative work that is not allowable) but in relation to more general matters, such as claiming excessive time for preparation or attendances or the average percentage reduction on Assessment of a sample of your files;

*"Fixed Fee"* means any payment under this Specification for Contract Work on the basis of a specified fee rather than on Hourly Rates;

*"Free Standing Advice and Assistance"* is Advice and Assistance provided under section 15(2)(a) of the Act and which is claimed in accordance with this Specification;

*"Full Time Equivalent"* or *"FTE"* means the equivalent of one individual working 35 hours in a standard 7 day week (excluding breaks). More than one individual may together make up the FTE requirement;

"*Graduated Fee*" means a fee designated as such (and paid in the circumstances set out and at the levels set out) in the Criminal Remuneration Regulations;

"*Higher Courts*" means the Court of Appeal and the Supreme Court of England and Wales;

"*Higher Fee*" has the meaning given to it in Section 10;

"*Higher Fee Limit*" means a specified amount of costs of preparation above which you are entitled to have your costs assessed by us and paid at Hourly Rates;

"*Higher Standard Fee*" has the meaning given to it in Section 10;

"*Higher Standard Fee Limit*" means in relation to the Prison Law Class of Work only, a specified amount of costs of preparation above which you are entitled to have your costs assessed by us and paid on a Non-Standard Fee basis;

"*Hourly Rates*" means payment on the basis of hours of Contract Work as set out in the Criminal Remuneration Regulations;

"*Immigration Offence*" means a breach of legislation relating to immigration in force from time to time and such breaches shall include illegal entry, overstaying leave to enter or remain, or breaching a condition of leave or failure to observe a condition of temporary admission or release. This list is not exhaustive;

"*Incidental Proceedings*" means proceedings which are specified in regulation 19 of the Criminal Legal Aid (General) Regulations 2013;

"*Independent Adjudicator*" in the Prison Law Class has the same meaning as in Rule 2 of the Prison Rules 1999;

"*Inmate*" means a person who is required to be detained in a young offender institution;

"*Intensive Paper Review*" means the process used by the Parole Board where following an initial consideration by the Panel the case is directed to an oral hearing, but it is not possible or appropriate to progress the matter as an oral hearing either face to face or by remote means. In these cases, the Panel will make a decision on the papers and any written representations submitted on behalf of the prisoner;

"*Interests of Justice Test*" means the factors set out in section 17(2) of the Act;

"*Lower Fee*" has the meaning given to it in Section 10;

"*Lower Fee Limit*" has the meaning given to it in Section 10;

"*Lower Standard Fee*" has the meaning given to it in Section 10;

"*Lower Standard Fee Limit*" has the meaning given to it in Section 10;

"*Mandatory Electronic Working*" means information in relation to Contract Work that you must provide to the Director or us electronically through the ECrime System in accordance with the Specification. Without limitation,

examples of the type of information you must provide to us electronically are:

- (a) making applications for determinations;
- (b) making requests for withdrawals or transfers for Representation;
- (c) submitting requests for prior authorities and Payments on Account;
- (d) submitting Claims for Contract Work;
- (e) appealing or reviewing decisions made by us on Claims; or
- (f) reviewing or appealing determinations about whether an individual qualifies for criminal legal services;

*"Minimum Term Review"* means an application to the High Court to review a prisoner's minimum term and consider a reduction in the prisoner's tariff;

*"Mis-Claiming"* means claiming in a manner that is clearly contrary to the Contract and where no discretion arises as to payment. For instance, claiming using the wrong rates, failing to claim post charge Advice and Assistance provided on the same Matter as part of the Standard Fee or claiming for Advocacy Assistance outside the scope of this Specification;

*"Monthly Payment Protocol"* means the document of that name published on our website, setting out our approach to reconciliation and to review and amendment of Monthly Payments due under this Specification;

*"Non-Standard Fee"* is a fee payable in respect of costs which have been assessed by us because your case costs have exceeded the Higher Standard Fee Limit; or because the case falls outside the Standard Fee payment scheme;

*"Over-Claiming"* means claiming more than we determine to be reasonable on Assessment under Section 8, but where discretion arises as to the amount allowable. For instance, claiming one hour for an attendance where on Assessment we consider that only 30 minutes would have been reasonable or claiming a Disbursement where we consider that it was not reasonably incurred;

*"Own Client"* means a Client other than a Client who is advised under a Duty Scheme;

*"Own Solicitor"* means a lawyer who provides Advice and Assistance to a Client other than as a Duty Solicitor;

*"Panel"* or *"Panel List"* means an arrangement by which the DSCC telephones Duty Solicitors on a Duty Scheme in sequence to identify a Duty Solicitor available to provide Advice and Assistance at a Police Station;

*"Parole Board"* means the independent executive non-departmental public body that carries out risk assessments on prisoners to determine whether they can be safely released into the community;

*"Parole Board Case"* means Advice and Assistance or Advocacy Assistance (including any subsequent Advocacy Assistance provided in respect of a Parole Board Reconsideration Hearing) on a Matter which falls under Section



12 and is within scope of regulation 12(2)(g) of the Criminal Legal Aid (General) Regulations 2013;

*"Parole Board Hearing"* means a hearing that is heard before the Parole Board;

*"Parole Board Reconsideration Hearing"* means a reconsideration hearing (whether heard orally or on the papers) before the Parole Board which falls under Section 12 of this Specification and as described in rule 28 of the Parole Board Rules 2019, as amended;

*"Police Station Advice and Assistance"* means Advice and Assistance given either by Police Station attendance or by Police Station Telephone Advice under section 13 of the Act;

*"Police Station Attendance Fixed Fee"* means the fee payable for all work done on the Matter relating to Police Station attendance, including time spent advising the Client, travelling to and from the Police Station and waiting in relation to initial and subsequent visits to the Police Station. It also includes all letters and telephone calls and other work done outside the Police Station in relation to a Matter where at least one Police Station attendance has been given;

*"Police Station Qualification"* or *"PSQ"* means the qualification which must be attained before a Solicitor or Counsel or Accredited Representative is eligible to provide Police Station Advice and Assistance;

*"Police Station Register"* means the list maintained by us of all Accredited Representatives;

*"Police Station Telephone Attendance Fixed Fee"* means the fee payable for all telephone calls for a Matter advising the Client in custody for which the Matter does not also include attendance at the Police Station;

*"Pre-Order Cover"* has the meaning given to it in Section 10;

*"Prescribed Proceedings"* means proceedings which have been prescribed by Regulations as criminal for the purposes of Legal Aid by virtue of section 14(h) of the Act and are listed under regulation 9 of the Criminal Legal Aid (General) Regulations 2013;

*"Prison Governor"* has the meaning given by Rule 2 of the Prison Rules 1999;

*"Probationary Representative"* means a person (including a Solicitor or employed barrister) who is, under the Police Station Register Arrangements 2001 (as amended), registered with us as a Probationary Representative and who has not yet passed the relevant accreditation tests to provide Police Station Advice and Assistance;

*"Protected Party"* means a party or intended party who lacks capacity to conduct proceedings in accordance with the Mental Capacity Act 2005;

*"Qualifying Criteria"* means the criteria outlined in Section 3 and which is used to determine whether an individual is eligible to receive criminal Legal Aid;

*"Representation"* has the meaning given to it in section 42(1) of the Act;

"*Representation Authority*" means us, the court or a court officer or anyone to whom a function has been delegated under section 5 of the Act;

"*Representative*" means an Accredited Representative or a Probationary Representative who is, under the Police Station Register Arrangements 2001 (as amended), registered with us;

"*Restricted Status Inmate*" means an Inmate whose escape would present a serious risk to the public;

"*Restricted Status Prisoner*" means a prisoner whose escape would present a serious risk to the public;

"*Rota*" means a list of Duty Solicitors to provide Advice and Assistance or Advocacy Assistance at magistrates' courts and Police Station Advice and Assistance over a given period;

"*Sentence Case*" means Advice and Assistance on a Matter, which falls under Section 12 and is within scope of regulation 12(2)(d) of the Criminal Legal Aid (General) Regulations 2013;

"*Separation Centre*" means any part of a prison for the time being used for holding prisoners who are subject to a direction under rule 46A(1) of the Prison Rules 1999;

"*Serious Service Offence*" means an offence under the Armed Forces Act 2006 which cannot be dealt with summarily or which appears to interviewing Services Police to be serious;

"*Service Standards*" means the requirements set out in Section 2;

"*Solicitor*" means a Solicitor of the Senior Courts of England and Wales;

"*Special Request*" is a request identified to you as such by the DSCC. Special Requests may include, for example: requests where Criminal Defence Direct consider that, because of a conflict of interest, the request should be handled by you (instead of by a Criminal Defence Direct Telephone Adviser); or considers that Advocacy Assistance is required; or considers that one of the other exceptions in Section 8 applies;

"*Standard Fee*" means a fee designated as such (and paid in the circumstances set out and at the levels set out) in this Specification;

"*Sufficient Benefit Test*" has the meaning given to it in Paragraph 3.10;

"*Unassigned Counsel*" means Counsel or in-house advocate who is not assigned (within the meaning of regulation 16 and 17 of The Criminal Legal Aid (Determinations by a Court and Choice of Representative) Regulations 2013 under a Representation Order in the magistrates' court, but who is instructed by you acting under that Representation Order;

"*Undesignated Area Standard Fee*" has the meaning given to it in Section 8;

"*Unique File Number*" or "*UFN*" means the file number to be allocated by you to a Matter or Case or as otherwise specified in this Specification pursuant to Paragraph 4.40 and in accordance with Paragraph 4.41;

"*Unit of Work*" and "*Unit*" means a unit of work described as such in Paragraph 1.3;

*"Upper Limit"* means a specified maximum amount of costs which may be claimed under a Unit of Work, but which may be extended on application. An Upper Limit operates in the same way as a Costs Limitation;

*"VHCC"* or *"Very High Cost Case"* has the meaning given to it in the Criminal Remuneration Regulations;

*"Virtual Court Advocacy Assistance"* means Advice and Assistance within the meaning of section 13 of the Act, as set out in the Specification;

*"Virtual Court Appearance Fee"* means the appearance fee set out in the Criminal Remuneration Regulations;

*"Virtual Court Duty Solicitor"* means a Duty Solicitor who is admitted to a Virtual Court Duty Scheme; and

*"Volunteer"* has the meaning set out in regulation 12(3) of the Criminal Legal Aid (General) Regulations 2013.

## Scope of the Specification

1.3 This Specification applies to the following Classes of Work and Units of Work:

<b>CLASS OF WORK</b>	<b>UNIT OF WORK</b>	
<b>Criminal Investigations</b>	Work conducted at the Police Station	<b>Police Station Advice and Assistance</b>
	Work conducted outside the Police Station	<b>Free Standing Advice and Assistance</b>
		<b>Advocacy Assistance on a warrant of further detention provided under section 15(2)(b) of the Act</b>
		<b>Advocacy Assistance for armed forces custody hearings provided under section 15(2)(b) of the Act</b>
		<b>Advocacy Assistance in the magistrates' court in connection with an application to vary police bail conditions provided under section 15(2)(b) of the Act</b>
		<b>Advocacy Assistance in the magistrates' court in connection with an application to extend pre-charge bail provided under section 15(2)(b) of the Act</b>
<b>Criminal Proceedings</b>	<b>Advocacy Assistance and Advocacy Assistance by a court Duty Solicitor provided under section 15 (2)(b) of the Act</b>	
	<b>Advocacy Assistance at the Virtual Court provided under section 15(2)(b) of the Act</b>	
	<b>Representation in the magistrates' court provided under section 16 of the Act</b>	
	<b>Pre-Order Cover Early Cover Means test form completion</b>	
	<b>Representation in Prescribed Proceedings in the Crown Court other than in appeals from the magistrates' court provided under section 16 of the Act</b>	

	<p><b>Representation in the Crown Court under a Representation Order in mainstream Criminal Proceedings provided under section 16 of the Act</b></p>
	<p><b>Representation in the High Court or county court</b></p>
	<p><b>Representation in the Higher Courts</b></p>
	<p><b>Representation in relation to proceedings for breach of injunctions arising under Part 1 of the Anti-Social behaviour, Crime and Policing Act 2014</b></p>
<b>Appeals and Reviews</b>	<p><b>Advice and Assistance on appeals against conviction or sentence (where a newly instructed representative is not covered by an existing determination) or applications to the Criminal Cases Review Commission (CCRC) provided under section 15(2)(c) of the Act</b></p>
	<p><b>Representation on an appeal by way of case stated provided under section 16 of the Act</b></p>
	<p><b>Representation in the Crown Court under a Representation Order in Prescribed Proceedings on appeal from the magistrates' court provided under section 16 of the Act</b></p>
<b>Prison Law</b>	<p><b>Sentence Cases – Advice and Assistance provided under section 15(2)(c) of the Act</b></p>
	<p><b>Disciplinary Cases – Advice and Assistance or Advocacy Assistance provided under section 15(2)(c) of the Act</b></p>
	<p><b>Parole Board Cases – Advice and Assistance or Advocacy Assistance provided under section 15(2)(c) of the Act</b></p>
<b>Associated Civil Work carried out under the provisions governing civil Legal Aid in Part 1 of the Act</b>	<p><b>Legal Help and civil Legal Representation - Proceeds of Crime Act 2002</b></p>
	<p><b>Legal Help and civil Legal Representation - judicial review or habeas corpus</b></p>

	<b>Civil Legal Services in relation to proceedings for injunctions sought in respect of alleged anti-social behaviour arising under Part 1 Section 1 of the Anti-Social Behaviour Crime and Policing Act 2014</b>
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### **Structure of the Specification**

- 1.4 Sections 1 to 8 apply to all Classes of Work. Sections 9 to 13 set out the specific rules which apply to each Unit of Work. Unless otherwise stated, where there is any conflict between Sections 1 to 8 and Sections 9 to 13, Sections 1 to 8 shall take precedence. You will notify us of any conflicts between Sections of which you become aware promptly upon becoming aware of the same.

## **2. Service Standards**

### *General*

- 2.1 You must, at all times whilst this Contract is in operation, meet the Supervisor requirements set out in Paragraphs 2.3 to 2.31.
- 2.2 Subject to Paragraphs 2.27 and 2.28, if you cease to meet the requirements of Paragraph 2.1 your right to undertake Contract Work in the relevant Class of Work will cease. Any breach of Paragraph 2.1 shall be a Fundamental Breach.
- 2.3 Where your Schedule authorises you to undertake Contract Work in the Criminal Investigations and Criminal Proceedings Classes of Work you must Employ a minimum of one Full Time Equivalent Supervisor who meets the supervisor standards set out in Paragraphs 2.20 to 2.21.
- 2.4 Where your Schedule authorises you to undertake Contract Work in the Prison Law Class of Work you must Employ at least one Full Time Equivalent Supervisor who meets the supervisor standards set out in Paragraphs 2.22 to 2.25.
- 2.5 Where your Schedule authorises you to undertake Contract Work in the Appeals and Reviews Class of Work only; you must Employ at least one Full Time Equivalent Supervisor who meets the supervisor standards set out in Paragraph 2.26.
- 2.6 Supervisors who qualify may act as a Supervisor for more than one Class of Work.
- 2.7 Supervisors must at all times during their working hours (except as required for the proper performance of their role such as attending court and/or Clients) work from one or any combination of your Offices.
- 2.8 Supervisors may act as a Supervisor at a maximum of two of your Offices.
- 2.9 Save in respect of Prison Law which is the subject of Paragraph 2.10 an individual may not act as a Supervisor for you if they act as a Supervisor for another Provider.
- 2.10 A Prison Law Supervisor may also act as a Supervisor for a maximum of one other Provider.
- 2.11 You must notify us if any Supervisor leaves your organisation, ceases to meet the Supervisor standards set out in this Specification or fails to perform their duties as a Supervisor in a timely manner and with all reasonable skill, care and diligence. Where your Supervisor ceases to meet the Supervisor standards or fails to perform their duties in the manner described, such member of your personnel must immediately cease acting as a Supervisor.
- 2.12 A Supervisor may delegate functions to an employee who does not meet all the Supervisor standards in this Specification to act as their deputy Supervisor. However, the Supervisor must continue to supervise the deputy Supervisor and have a training and development plan to provide the necessary skills and experience for the deputy Supervisor to become a Supervisor in future.

- 2.13 Your Supervisor(s) must meet the Supervisor standards in this Specification at the time of being appointed as Supervisor and continue to do so in any 12 month period thereafter.
- 2.14 Your Supervisor(s) must take account of any changes in legislation and case law.

*Supervision standards*

- 2.15 All Supervisors must meet one of the following supervisory skills standards:
- (a) have supervised at least one Full Time Equivalent Designated Fee Earner or Caseworker in the relevant Class of Work for at least one year in the previous five year period; or
  - (b) have completed such training covering key supervisory skills we approve from time to time in the previous 12 month period; or
  - (c) have achieved Level 3 or higher National Vocational Qualification NVQ standard (or any replacement from time to time) in supervising in the previous five year period.

The supervision standard in this Paragraph 2.15 will be measured as at the time a person becomes a Supervisor and at any point during the Contract Period when we request confirmation that they meet the supervision standards.

- 2.16 A Supervisor must ensure that all persons performing Contract Work under this Contract have a professional legal qualification or, where a professional legal qualification is not required in respect of Contract Work, that such persons perform a minimum of 12 hours of Contract Work each week in the relevant Class of Work.
- 2.17 Arrangements must be in place to ensure that each Supervisor is able to conduct their role effectively including, but not limited to, the following:
- (a) designating time to conduct supervision of each Designated Fee Earner or Caseworker;
  - (b) designating time to be in Offices where Contract Work is being conducted; and
  - (c) ensuring that the level of supervision provided reflects the skills, knowledge and experience of the individual Designated Fee Earner or Caseworker.
- 2.18 Each Supervisor must conduct file reviews for each Designated Fee Earner or Caseworker they supervise. The number of file reviews must reflect the skills, knowledge and experience of the individual. The Supervisor must record the outcome of file reviews, together with the details of corrective action taken (if any).
- 2.19 Where a Designated Fee Earner or Caseworker undertakes Contract Work in a location other than where their Supervisor is based, the Supervisor must conduct, as a minimum, face-to-face supervision at least once per calendar month.



*Supervisor qualification: Criminal Investigations and Criminal Proceedings*

- 2.20 Each Supervisor must during the Contract Period, have in the previous 12 months undertaken at least 350 hours of direct casework which may include direct (documented) supervision. Where a Supervisor works part-time this requirement is to be read as 1050 hours of direct casework which may include direct (documented) supervision in the previous five years.
- 2.21 All Supervisors must have the following:
- (a) CLAS; and
  - (b) a current non-conditional practising certificate for the previous three years; and
  - (c) at any time during the Contract, in the previous 12 months have undertaken a minimum of six Police Station Advice and Assistance cases (of which no more than two can be Police Station Telephone Advice where there is no subsequent Police Station attendance); and
  - (d) at any time during the Contract, in the previous 12 months have undertaken:
    - (i) a minimum of 20 magistrates' court Representations and advocacy (which may include Representation of a Client during a magistrates' court Duty session with one session counting as one Representation only); or
    - (ii) undertaken a minimum of 10 magistrates' court Representations and advocacy and five Crown Court Representations and advocacy.

*Supervisor qualification: Prison Law*

- 2.22 Each Supervisor must during the Contract Period, have in the previous 12 months undertaken at least 350 hours of direct casework which may include direct (documented) supervision. Where a Supervisor works part-time this requirement is to be read as 1050 hours of direct casework which may include direct (documented) supervision in the previous five years.
- 2.23 To substitute another Prison Law Supervisor under this Contract, your new Prison Law Supervisor must have in the previous 12 months undertaken at least 350 hours of direct casework which may include direct (documented) supervision. Where a Supervisor works part-time this requirement is to be read as 1050 hours of direct casework which may include direct (documented) supervision in the previous five years and meet the requirement in Paragraph 2.24.
- 2.24 All Supervisors must have, in the previous 12 months, undertaken a minimum of four Representations for four Clients before the Parole Board or the Independent Adjudicator/Prison Governor.
- 2.25 A Supervisor in the Prison Law Class does not have to be legally qualified. However, he or she must meet the Supervisor standards in this Specification.

*Supervisor qualification: Appeals and Reviews*

- 2.26 Each Supervisor must:
- (a) have held a current non-conditional practising certificate for the previous three years; and
  - (b) during the Contract Period, have in the previous 12 months undertaken at least 350 hours of direct casework which may include direct (documented) supervision. Where a Supervisor works part-time this requirement is to be read as 1050 hours of direct casework which may include direct (documented) supervision in the previous five years

*Temporary Supervisor absence*

- 2.27 If your Supervisor is for any reason temporarily unable to act as such you may for a period of up to six weeks, either:
- (a) nominate an employed Designated Fee Earner or Caseworker who does not meet all the Supervisor standards set out in this Section to supervise; or
  - (b) nominate an external Supervisor to supervise.
- 2.28 If you estimate that your Supervisor may be unable to supervise for more than six weeks, or following completion of the six week temporary period described in Paragraph 2.27 the Supervisor is not able to resume Supervision, you must immediately inform us and we will decide at our discretion what appropriate action to take. This may include:
- (a) extending the use of an employed Designated Fee Earner or Caseworker as Supervisor for a limited period;
  - (b) formalising the external Supervision arrangement for a limited period;
  - (c) by written notice specifying that you must put in place another employed Supervisor by such period as the notice specifies; or
- applying a Sanction.

*Supervisor ratios*

- 2.29 A FTE Supervisor who only undertakes supervision in the Prison Law Class of Work only may supervise a maximum of six Designated Fee Earners or Caseworkers.
- 2.30 A FTE Supervisor who undertakes supervision in the:
- (a) Criminal Investigations and Criminal Proceedings and/or Appeals and Reviews Classes of Work; or
  - (b) Prison Law and any other Class of Work
- may supervise a maximum of four Designated Fee Earners or Caseworkers.

- 2.31 Individuals who only undertake administrative tasks (which you may not claim for under this Contract) or only conduct triage (early diagnosis of the Client's overall legal problem(s)) prior to a matter being opened are not Caseworkers for the purpose of these ratios or otherwise.

### **Designated Fee Earners**

- 2.32 You are required to have a document that identifies all staff, their current jobs, and lines of responsibility. This must cover all Designated Fee Earners and must show:
- (a) whether the fee-earner is a Duty Solicitor, Solicitor, an Accredited Representative, a Probationary Representative or other non-Solicitor personnel; and
  - (b) any fee-earner codings or PIN numbers used by them.
- 2.33 Where any Designated Fee Earner is a Duty Solicitor, you must maintain evidence of compliance with the Duty Solicitor rules in Section 6.
- 2.34 Where a Designated Fee Earner is an Accredited Representative, you must maintain a record of the evidence of compliance with the requirements needed to maintain Accredited Representative status.
- 2.35 The information required in Paragraphs 2.32 to 2.34 above must be retained on a personnel file for each Designated Fee Earner. Alternatively, you must retain the information for all staff together in a single location.
- 2.36 You must designate all fee earners who regularly undertake Contract Work under this Contract for you. For the purposes of designation only, when identifying fee-earners, you may disregard any fee-earning work (which may be Contract Work) which is basic or routine, such as the completion of standard forms, making routine telephone calls, and dispatching standard letters. In addition, you do not have to designate staff who only occasionally undertake a limited amount of work i.e. less than three hours a month.
- 2.37 You must designate all Supervisors that carry out Contract Work, Filex Supervisors, Duty Solicitors, Accredited Representatives and Probationary Representatives employed by you.
- 2.38 You may designate fee-earners not employed by you but whom you instruct regularly.

### **Percentage of Contract Work that must be performed by Designated Fee Earners**

- 2.39 In relation to Contract Work we require:
- (a) 80% of instances of Police Station Advice and Assistance (both attendances and telephone advice) to be conducted by Designated Fee Earners; and
  - (b) 50% of instances of Advocacy Assistance or Representation at the magistrates' court to be conducted by Designated Fee Earners.
- 2.40 We will assess compliance with Paragraph 2.39 over any period of not less than three months (but not exceeding 12 months). However, we will not do so until the number of equivalent cases undertaken or reported is at least 20.

## **Office requirements**

- 2.41 Your Offices are specified in your Schedule. Your Schedule will confirm if you are eligible to undertake Duty Solicitor work from each specific Office.
- 2.42 Each Office specified in your Schedule must be located in England or Wales.
- 2.43 You must ensure that there are arrangements in place to ensure compliance with appropriate standards of supervision at an equivalent level to that outlined in the Relevant Professional Body's code of conduct.

### *Individual Office requirements*

- 2.44 Each of your Offices (of which you must have at least one) must:
- (a) satisfy any professional requirements of your regulator and be registered as appropriate;
  - (b) provide you with a constant right of access at any point during Business Hours;
  - (c) be open and accessible to Clients, prospective Clients and other interested parties during normal Business Hours on each Business Day and be permanently staffed by a representative of your organisation (who need not be directly employed by you) for the purpose of arranging appointments and other meetings and where appropriate arranging advice in emergency cases;
  - (d) be able to arrange Client appointments during Business Hours (subject to personnel availability);
  - (e) contain suitable facilities to interview Clients, witnesses and any other persons in a private interview room;
  - (f) contain sufficient infrastructure to enable you to deliver Contract Work; and
  - (g) meet any relevant health and safety standards, quality standards, service standards together with additional standards set out in this Contract.

### *Storage of confidential information.*

- 2.45 Every Office which is used for the storage of confidential information such as Client files must be secure and meet Data Protection Legislation, Legal Aid Legislation and your professional obligations.

### *Shared and serviced Offices*

- 2.46 Where you operate an Office in a shared building such as another legal services provider's premises or in a serviced office arrangement you must have a right of access to the Office at all times during Business Hours for the purpose of providing face-to-face legal services at that Office. Any breach of this Paragraph is a Fundamental Breach and we may serve a notice on you terminating your Contract;

### *Contacting your Office(s)*

- 2.47 During Business Hours Clients or prospective Clients who telephone must be able to arrange appointments and other meetings and where appropriate arranging advice in emergency cases.
- 2.48 During non-Business Hours Clients or prospective Clients who telephone must be able to access information about opening hours and who to contact in an emergency. This may be by use of a voice mail message system.
- 2.49 You may operate a single or central contact number regardless of the number of Offices you maintain.
- 2.50 You may not use premium rate numbers.
- 2.51 You must be contactable (through a reasonable medium) at any time by the DSCC for the purpose of notification of Own Client matters or receipt of instructions.

### *Excluded Arrangements*

- 2.52 The following locations do not constitute an Office for the purposes of this Contract:
  - (a) hotels;
  - (b) vehicles;
  - (c) residential property;
  - (d) virtual offices or any such similar arrangement whereby all communication (written, electronic or by telephone) is referred to another location;
  - (e) serviced premises, shared premises or similar where you do not have exclusive use of a designated space meeting the requirements of Paragraph 2.44; or
  - (f) serviced premises, shared premises or similar which are not staffed by a representative of your organisation (whether employed by you or not) who is able to arrange appointments and other meetings and where appropriate arranging advice in emergency cases.

### **Office Moves**

- 2.53 You must ask for our consent under Clause 13 of the Standard Terms if you propose to relocate any Office outside the postcode area(s) listed in your Schedule during the life of this Contract. If we consent, we will update your Schedule to show your new Office address.
- 2.54 If we give our consent:
  - (a) we will update your Schedule to show your new Office address;
  - (b) we will remove you from membership of any Duty Schemes you are no longer eligible for by virtue of your new Office address;

- (c) you will only remain eligible for Duty Schemes you joined by virtue of your original Office address where your new Office address is also within the geographical ambit of that Scheme; and
- (d) you will not be eligible to join any additional or new Duty Scheme by virtue of your new Office address.

### **Referral arrangements**

2.55 You must have appropriate arrangements in operation so that you can refer a Client or potential Client to another Provider where:

- (a) you do not provide the services that the Client requires;
- (b) you have so much work that you are unable to provide appropriate services to a Client within a reasonable time;
- (c) there is a conflict of interest between two or more Clients or potential Clients wishing to access your services; or
- (d) you are required to make a referral under the professional conduct rules of your Relevant Professional Body.

2.56 If you need to refer a Client after you already have an established Client relationship, have undertaken work on a current case or hold case information or documents, you must inform the Client of any cost implication of referral. Information about Advice and Assistance already given and any relevant documentation must be forwarded to the new Provider.

2.57 Where you make a referral to another Provider you must ensure, so far as practicable, that the Provider is authorised by us to provide services in the Category of Law or Class most relevant to the Client's problem.

2.58 Where you refer an existing Client, such referral should be undertaken in a manner which does not prejudice the Client. You must also keep the Client informed in respect of the progress of such referral. If you are unable (or cease to be able) to perform Contract Work for Clients and you are unable to make any referral to another Provider, your procedures must ensure that you make reasonable endeavours to ensure that your Clients' rights are protected, that they suffer no damage and they are provided with all relevant information.

### **KPIs**

2.59 The KPIs are set out in the table in Paragraph 2.65. However, if you do not satisfy a KPI we will not apply any Sanction unless this is authorised under the procedures set out in Clause 11.

2.60 The KPIs depend on fair and accurate recording and reporting to us. You must ensure you report appropriately in accordance with our forms and Contract Guide. Material or persistent failure to report outcomes appropriately may lead to Sanctions under Clause 24.

2.61 KPIs must be complied with both by your organisation as a whole and also by any Office for which we have issued you with a Schedule.

2.62 When assessing compliance with KPI 1 we will consider all relevant cases concluded and reported by you over any period of not less than three months (but not exceeding 12 months). We will consider cases over a period longer

than three months if there are insufficient cases to satisfy the minimum volumes set out in Paragraph 2.64 or, if we are not satisfied that the volume of cases concluded within three months is sufficient to reach conclusions about your KPI compliance.

- 2.63 Where we have assessed your compliance with KPI 1 over a period (“the first period”) under Paragraph 2.62, in any future assessment of your compliance with that KPI we will not take into account any period which overlaps with the first period.
- 2.64 The minimum volume of cases we will take into account for the purposes of KPI 1 will be 20.
- 2.65 KPIs will be based on cases concluded within the Contract Period, including those started under any Previous Contract (where applicable).

<b>KPI Number</b>	<b>The Key Performance Indicators that you must meet in performing Contract Work in any three month rolling period</b>
1	<p>To avoid a reduction of more than 15% of your costs on Assessment on any of your Claims for:</p> <ul style="list-style-type: none"> <li>• Police Station Advice and Assistance (Escape Fee Cases);</li> <li>• Free Standing Advice and Assistance Claims;</li> <li>• Advocacy Assistance Claims;</li> <li>• Magistrates’ court non-Standard Fees;</li> <li>• Prison Law Escape Fee Cases;</li> <li>• Prison Law non-Standard Fees.</li> </ul> <p>If your costs are reduced by more than 15% on Assessment in any 3 month rolling period, then you have not met KPI 1.</p>
2	<p>To accept and deal appropriately with a minimum of 90% of communications (howsoever received) from the DSCC for Police Station Advice and Assistance when you are the allocated Provider on a Duty Solicitor Scheme Rota.</p> <p>If you do not accept 90% of communications from the DSCC in any three month rolling period when you are the allocated Provider on a Rota, then you have not met KPI 2.</p>
3	<p>Where you are a member of a Virtual Court Duty Scheme:</p> <p>To ensure your Duty Solicitors accept a minimum of 90% of the calls you receive to attend a Virtual Court hearing.</p> <p>If you do not accept 90% of the communications you receive in any three month rolling period when you are the allocated Provider on a Rota, then you have not met KPI 3.</p>
4	<p>To ensure that 95% or more of your Cases conclude before any change of Provider under the Contract.</p>

### **3. Qualifying Criteria**

#### **General Criteria**

- 3.1 Each Unit of Work may be subject to Qualifying Criteria as set out below. When a Unit of Work is subject to Qualifying Criteria, you must apply it in the following circumstances:
- (a) when the application from the prospective Client is made to you; and
  - (b) (except in relation to the Financial Eligibility Tests) when further Contract Work is provided throughout the Matter or Case.
- 3.2 You must refuse to act in respect of any work that does not meet the relevant Qualifying Criteria.
- 3.3 In applying the Qualifying Criteria, you must have regard to any Contract Guide.
- 3.4 The Qualifying Criteria are:
- (a) Financial Eligibility Test; and/or
  - (b) the "Sufficient Benefit Test"; and/or
  - (c) the "Interests of Justice Test"; and/or
  - (d) additional eligibility criteria as set out for each Unit of Work in Sections 9 to 13.

#### **Financial Eligibility**

- 3.5 Where Financial Eligibility Tests apply to the provision of Advice and Assistance or Advocacy Assistance in this Specification, satisfactory evidence as described in the Contract Guide must be provided to you by the Client before you assess their financial eligibility, subject to Paragraph 3.6. The evidence (or a copy of it) must be retained on the file.
- 3.6 You may assess the prospective Client's means without the accompanying evidence only where:
- (a) it is not practicable to obtain it before commencing the Contract Work; or
  - (b) pre-signature telephone advice is given; or
  - (c) exceptionally, the personal circumstances of the Client make it impracticable for the evidence to be supplied at any point during the Matter or Case.
- 3.7 Unless Paragraph 3.6(c) applies, you must require the Client to provide the evidence as soon as practicable. If satisfactory evidence as described in the Contract Guide of the Client's financial circumstances is not subsequently supplied, then work which is payable by Fixed Fee or Standard Fee may not be claimed. Where work is payable on an Hourly Rates basis, any work carried out by you above two hours cannot be claimed by you as Contract Work. In such circumstances, a note must be made on file.



- 3.8 You may accept clean copies of any evidence described in the Contract Guide as satisfactory evidence. The evidence must be supplied in relation to both the Client and his or her partner if their means are aggregated.
- 3.9 Time spent applying Financial Eligibility Tests and completing the appropriate application form(s) is not remunerated under this Contract unless this Specification provides otherwise, or a fee is claimable under Criminal Remuneration Regulations.

### **The Sufficient Benefit Test**

#### *Advice and Assistance*

- 3.10 The Sufficient Benefit Test for Advice and Assistance is set out below and must be satisfied in order to provide Advice and Assistance under this Contract.

**Advice and Assistance may only be provided on legal issues concerning English (or Welsh) law and where there is sufficient benefit to the Client, having regard to the circumstances of the matter, including the personal circumstances of the Client, to justify work or further work being carried out.**

- 3.11 This test applies both when the application is granted by you and when further Advice and Assistance is provided throughout the Matter. It must therefore be considered whenever work is carried out on the Matter. Prison Law has a more detailed Sufficient Benefit Test which is set out in Section 12 and which must be applied when undertaking work in the Prison Law Class.
- 3.12 If it becomes apparent that the Sufficient Benefit Test is no longer satisfied then the Advice and Assistance must cease and the Client must be so advised.
- 3.13 You must not claim for Advice and Assistance where the Client is seeking advice on non-legal issues. In such cases, you should generally refuse to provide Advice and Assistance at all or, if necessary, cease to provide Advice and Assistance once the issue becomes clear, which would often be at the first interview.
- 3.14 You must not carry out Contract Work, beyond taking initial instructions and advising the Client of his or her options, unless on the evidence available to you at the time the Advice and Assistance is being provided, the Client's case involves a legal issue.
- 3.15 You must also apply the Sufficient Benefit Test to determine the extent of the advice that is required (including whether an attendance is necessary and the length of time which should be spent).
- 3.16 In relation to Police Station Advice and Assistance the Sufficient Benefit Test is satisfied automatically where a Client has a right to legal advice or is a Volunteer under PACE or the equivalent legislation applying to the armed forces in the case of military investigations. This only applies to initial advice at the Police Station and you must still apply the test to determine the extent of the advice, which is required.

## *Advocacy Assistance*

- 3.17 Before commencing Advocacy Assistance on an Own Client Matter, you must apply one of the following tests (where appropriate):
- (a) you must refuse to make a determination that an individual qualifies for Advocacy Assistance if it appears unreasonable that a determination should be made in the particular circumstances of the case. When determining whether an individual qualifies for Advocacy Assistance, the interests of justice, prospects of success and merits of making a determination should be taken into account as well as whether the Client has reasonable grounds for contesting the proceedings; or
  - (b) if the relevant Qualifying Criteria are not met, then you must not make a determination that an individual qualifies for Advocacy Assistance.

## **Independent Funding Adjudicator**

- 3.18 You must notify the Client of the right to apply to the Independent Funding Adjudicator for a review of your decision not to make a determination that the Client qualifies for, or to withdraw Advocacy Assistance, or our decision not to extend the relevant Upper Limit (see Section 5). If your Client decides to do this, you must inform him or her of the time limit and the approved form required and must keep a record of this on file.
- 3.19 Where work is undertaken within Associated Civil Work, the applicable rights of review are those set out in the current civil specification, the Civil Procedure Regulations and not under this Contract. Applications to the Independent Funding Adjudicator are subject to the rules set out in the Civil Procedure Regulations.
- 3.20 You must inform the Client that a refusal to make a determination in the Client's favour in the magistrates' court may be reviewed in accordance with the Criminal Financial Regulations (if the refusal relates to the Client being financially ineligible), or the Criminal Legal Aid (General) Regulations 2013 (if the refusal is on the grounds that the Interests of Justice do not require Representation before the magistrates' court).

## **4. Carrying out Contract Work**

### **General Powers**

- 4.1 For Advice and Assistance, Advocacy Assistance and Legal Help under Associated Civil Work, the decisions to provide legal services are taken by you on behalf of the Director in accordance with an Authorisation.

### **Delegated Functions**

- 4.2 Delegated Functions extend to all Contract Work and must be exercised by you on behalf of the Director in accordance with the terms of an Authorisation.

- 4.3 The Director may remove any Delegated Functions in accordance with an Authorisation.

- 4.4 Subject to Paragraphs 4.2 and 4.3 above, you may carry out the following actions on behalf of the Director in accordance with an Authorisation:

- (a) accept an application directly from a Child under Paragraphs 4.28 to 4.30;
- (b) accept an application on behalf of a Child or Protected Party under Paragraphs 4.25 to 4.27;
- (c) accept an application by post where permitted in this Specification for particular Units of Work;
- (d) accept an application for Advice and Assistance from a Client who has received Advice and Assistance from you or another Provider within six months where permitted in this Specification for particular Units of Work;
- (e) grant (or refuse to grant) Advocacy Assistance;
- (f) authorise the instruction of Counsel or in-house advocate when Advocacy Assistance is given as permitted under this Specification;
- (g) grant, refuse, amend or refuse to amend a determination that a Client qualifies for authorised Representation provided on an emergency basis in Associated Civil Work. This power does not extend to judicial review proceedings unless we so authorise, and is subject to any relevant Lord Chancellor's Guidance and does not allow you to grant an application on the ground that the case has a significant wider public interest. Decisions on significant public interest are taken by us; and
- (h) amend or refuse to amend certain limitations to which a determination in respect of Legal Representation made in Associated Civil Work is subject. This power is subject to any relevant Lord Chancellor's Guidance.

- 4.5 You must exercise the Delegated Functions in every appropriate case and the decision may not be referred to your Contract Manager although advice may be sought in cases of difficulty or doubt, especially when the Contract Guide does not cover the particular situation.

- 4.6 The Delegated Functions described in Paragraph 4.4 are available provided they have not been removed by notice to you and are only available in a Unit of Work, which you are authorised to perform (as indicated by your Schedule) in accordance with an Authorisation.
- 4.7 When you exercise a Delegated Function, you must provide such details of the reasons justifying the exercise of the Delegated Function as may be required by an Authorisation.

### **Mandatory Electronic working**

- 4.8 All communications with the Director or us relating to Contract Work must be made electronically unless we have notified you that we are prepared to receive communications on paper or otherwise.
- 4.9 Mandatory Electronic Working is in force under this Contract and the ECrime System is our primary method of communication with you for Contract Work. You will submit associated evidence or requested documentation to the Director and/or us in any manner we may reasonably specify.
- 4.10 Pursuant to Paragraph 4.9:
- (a) we or the Director may reject any evidence you provide to us which is not submitted in the form we or the Director require;
  - (b) where we or the Director request copies of original documentation, you must make a copy (scanned or photocopy) of the original evidence;
  - (c) where we ask you to obtain a declaration from your Client we will require you to retain a copy of the original declaration and Client signature on your file. We may request a copy of the original signed declaration at any time during or after the Contract Period but no later than six years from the date the Contract ends; and
  - (d) you must keep copies of any evidence you could be reasonably expected to retain as evidence of work conducted on the case. We may request the evidence at any time during or after the Contract Period but no later than six years from the date the Contract ends.

### **Use of Agents, Counsel and Approved Third Parties**

- 4.11 You may instruct Agents, Counsel or Approved Third Parties to carry out or assist with Contract Work where you are satisfied that it is in the interests of your Client to do so, subject to your compliance with Clause 3.
- 4.12 You may not entrust an entire Matter or Case to Agents or Counsel save for Police Station Advice and Assistance Matters, where you may as provided in this Contract, subject to your compliance with Clause 3 of the Standard Terms.
- 4.13 Where you instruct an Agent or Counsel you may Claim payment for the work as if you had carried it out directly in accordance with the terms of this Specification. Where you instruct an Agent or Counsel to carry out services which are covered by a Fixed Fee, Standard Fee or Graduated Fee, any fees or costs related to your use of the Agent or Counsel will be included in the Fixed Fee, Standard Fee or Graduated Fee and may not be claimed separately. This Paragraph does not apply to Assigned Counsel.

- 4.14 It is your responsibility to pay the Agent's or Counsel's fees directly, out of the amount you receive from us by way of the Fixed Fee, Standard Fee or the Graduated Fee. The fee which you agree to pay the Agent or Counsel may not be included in your calculation of costs to determine whether a case is claimable as an Escape Fee Case. This Paragraph does not apply to Assigned Counsel.
- 4.15 You must not rely on the use of any Agent or Counsel as evidence of satisfying any of the Service Standards in this Specification.

### **In-house advocates**

- 4.16 An in-house advocate (either a barrister or Solicitor with higher court advocacy rights) whether employed by you or another Provider may be instructed to give an opinion or to perform advocacy.
- 4.17 An in-house advocate instructed by you to give an opinion must be from a different organisation from your instructing Solicitor unless undertaking advocacy on the same case. The use of such an advocate who must not be a partner in, or employed by, or a consultant to your organisation will ensure that any opinion obtained is independent and objective (in the same way that an external opinion would be).
- 4.18 Opinions from in-house advocates must comply with the Relevant Professional Bodies' guidelines. They must also be dated and state the advocate's name and, if a Solicitor, include a statement confirming that they have higher court advocacy rights.
- 4.19 Instructions to in-house advocates must:
- (a) include a copy of the Representation Order and any amendments to it and any authorities to incur costs; and
  - (b) be endorsed with the reference number of the Representation Order and the Unique File Number, but no fees will be marked on any set of papers so delivered.

### **Application rules**

- 4.20 In addition to the application rules set out in Paragraphs 4.21 to 4.39, application rules relating to specific Units of Work are set out in Sections 9 to 13.

#### *Application forms*

- 4.21 Unless the terms of this Specification or we expressly provide otherwise in writing, you must not provide Contract Work unless the Client is within the jurisdiction, and has completed the relevant application form.
- 4.22 Where an application form is required, except in relation to a determination that a Client qualifies for Criminal Proceedings, a copy of the completed form must be kept by you on the file, and its correct completion will be checked upon Audit.
- 4.23 We may prescribe different application forms for different Classes or Units of Work or Clients.
- 4.24 Failure to complete properly the requisite form may lead to the costs of the Matter or Case being disallowed on Assessment. The Financial Eligibility Test

(where relevant) and the Client details must be fully completed and the form signed by the Client in your presence. Work carried out before the completion and signing of the form will not be remunerated. Limited exceptions to these principles for Advice and Assistance are contained in Sections 9 to 13 for specific Units of Work.

#### *Application on behalf of a Child or Protected Party*

4.25 You may only accept an application for Contract Work on behalf of a Child or Protected Party from:

- (a) in the case of a Child, a parent or guardian or other person in whose care he or she is; or
- (b) in the case of a Protected Party, from a deputy or attorney under the Mental Capacity Act 2005; or
- (c) in the case of a Child or Protected Party, an appropriate adult or any other person acting for the purposes of any proceedings as his or her litigation friend; or
- (d) in the case of a Child or Protected Party, any other person where there is good reason why none of the persons specified in (a) to (c) above can make the application (and that good reason is noted on the file), provided that:
  - (i) there is sufficient connection between the Child or Protected Party and the other person to ensure that the other person is likely to act responsibly in the interests of the Child or Protected Party; and
  - (ii) the other person has sufficient knowledge of the Child or Protected Party, the problem and the Child's or Protected Party's financial circumstances (where relevant) to give proper instructions to you; and
  - (iii) no application may be accepted under Paragraph 4.25(d) if made by a member, director, partner, shareholder, associate or employee of your organisation.

4.26 Where you accept an application under Paragraph 4.25, the application will be in the name of the Child or Protected Party but signed on his or her behalf. The form should be completed in the name of the Child or Protected Party but signed by the person who is applying on behalf of the Child or Protected Party with an annotation to that effect.

4.27 Where relevant, the appropriate means, of the Child or Protected Party and, in appropriate cases, those who have care and control of, or are liable to maintain, or usually contribute substantially to the Child or Protected Party's maintenance, must be taken into account in applying the Financial Eligibility Test.

#### *Instructions directly from a Child*

4.28 You may accept instructions directly from a Child in the following circumstances:

- (a) by exercising the Delegated Function in relation to proceedings which that Child is entitled to defend without a litigation friend; or

- (b) where only Police Station Advice and Assistance is sought; or
  - (c) where:
    - (i) there is good reason why none of the persons specified in Paragraphs 4.25(a) to (d) can make the application on the Child's behalf; and
    - (ii) the Child is old enough to give instructions and understand the nature of the advice and proceedings.
- 4.29 Where Advice and Assistance (other than Police Station Advice and Assistance) or Advocacy Assistance is provided to a Child:
- (a) the Child must sign the application form him/herself; and
  - (b) you must consider whether it is just and equitable not to aggregate the Child's means with those of the person liable to maintain him or her.
- 4.30 The presumption is that there should be aggregation but you can decide not to aggregate (and assess only the Child's means) if, having regard to all the circumstances, including the age and resources of the Child (and to any conflict of interest), it appears just and equitable to do so. Non-aggregation is more likely to be justified where there is a conflict between the Child and the person liable to maintain him or her.

*Postal applications*

- 4.31 You may exercise the Delegated Function to accept an application for Advice and Assistance by post from a Client where it is reasonable to do so, but not where the Client is resident outside the European Union unless;
- (a) such residence is purely temporary and the Client cannot can without serious disadvantage delay the application until he or she has returned to England or Wales; or
  - (b) the Advice and Assistance could not be applied for on the same Matter by a person resident in England or Wales; or
  - (c) it is otherwise reasonable to accept the application.
- 4.32 The Delegated Function to grant an application for Advocacy Assistance will apply to all proceedings for which it is available, as specified in Sections 9 to 13.
- 4.33 Where you use the Delegated Function to grant an application for Advocacy Assistance, a written application is granted by the signature of a practising Solicitor who is a Designated Fee-Earner in your organisation or your Supervisor (including your Prison Law Supervisor in relation to Prison Law Matters) on the "Declaration and Grant" section of a properly completed application form. The application section of the form must be fully completed and signed by the Client before signature by you. The grant will not operate retrospectively.
- 4.34 If a written application is not required under this Specification, a check should be made that the Client satisfies any scope limitations and Qualifying Criteria and a note should be made on file.

- 4.35 The Delegated Function to grant Advocacy Assistance carries with it the corresponding duty to refuse it when any applicable Qualifying Criteria are not satisfied. When refusing, you should make it clear that you are doing so on behalf of us and applying the terms of the Contract.
- 4.36 The Delegated Function to self-authorise the instruction of Counsel in Advocacy Assistance proceedings must be exercised in accordance with the provisions relating to the instruction of Counsel set out in this Specification.
- 4.37 The Delegated Functions set out in Paragraph 4.4(g) and (h) above which only apply to Associated Civil Work must be exercised in accordance with the Civil Merits Regulations and Civil Procedure Regulations. You must only exercise these Delegated Functions if your Office meets the Quality Standard, in accordance with an Authorisation.
- 4.38 Where you are authorised to exercise the Delegated Function to accept an application for Advice and Assistance from a Client who has received Advice and Assistance from you or another Provider within six months under Paragraph 4.4(d) in respect of the same Matter, as previous Advice and Assistance has already been received, it must only be reasonable for you to incur limited further costs. Although this will depend on all the circumstances of the case, on a second or subsequent change of Provider the actual provision of Advice and Assistance is less likely to be justified and the costs, which are likely to be considered reasonable, will reduce.
- 4.39 The Delegated Function in Paragraph 4.4(d) above does not operate retrospectively. Work done prior to the date of exercise of the Delegated Function cannot be remunerated and should be disregarded in the calculation of work done when submitting a costs Claim.

#### **Unique File Numbers (UFN) and filing requirements**

- 4.40 Before your first point of contact with us on any Matter or Case, you must assign a UFN in the format set out in Paragraph 4.41 to each separate Matter or Case other than those involving only the provision of Contract Work by a court Duty Solicitor acting as such.
- 4.41 The UFN must be calculated with reference to the date on which you first undertook Contract Work for the Client (which may be earlier than the date on which the UFN is actually assigned). You must use the following UFN format, which is:
- (a) the date on which Contract Work was first undertaken for the Client in the Matter or Case set out in the six digit numerical format of DDMMYY; followed by
  - (b) a "/" followed by; and
  - (c) a sequential number unique to that day. The numerical sequence part of the UFN will return to 001 at the beginning of each day.

#### **Boundaries between Classes and Units of Work**

- 4.42 Advice and Assistance does not extend to cover Representation, no matter what the circumstances of the Client or the Matter or Case. Where a determination has been made you must not Claim for, or grant, further Advice and Assistance or Advocacy Assistance to the Client on the same Matter, which gave rise to the Criminal Proceedings, unless a Criminal Investigation is ongoing in respect of other offences relating to the same



Matter. Where Representation is available, you must make an application at the earliest opportunity.

- 4.43 Work for the same Client may be treated as a separate Matter if it involves the provision of Advice and Assistance or Advocacy Assistance under this Contract on a legal issue which amounts to a genuinely separate problem requiring a separate application (where relevant) and which can be claimed separately in accordance with this Specification.
- 4.44 You must identify, and record on the appropriate Matter or Case file, any point at which the work, which you are performing for a Client, becomes a separate Matter or Case.
- 4.45 Where two or more separate Matters or Cases arise, each one must be the subject of a separate application form and determination (where relevant). You must decide whether you may Claim the work under this Contract and the appropriate Qualifying Criteria will apply to each Matter or Case.
- 4.46 Where two Matters are genuinely different problems requiring separate advice at the same time on one occasion only, then they must be treated as the same Matter, despite the fact that they would normally be treated as separate Matters.
- 4.47 Where two or more Matters arise from the same set of circumstances, they must not be treated as separate Matters for the purposes of Police Station Advice and Assistance, or Free Standing Advice and Assistance.
- 4.48 Where two or more Cases would be dealt with under one determination or as part of the same Case, one application form must be completed and the Case must be treated as one matter.
- 4.49 In each Matter or Case, a single application form must be completed to identify the issues and provide general, preliminary advice. If one legal issue is identified then the original, single application should be used for the provision of any further Advice and Assistance. The following points should be noted:
- (a) the fact that you may be giving initial advice to the Client about potentially different outcomes arising from the same set of originating circumstances does not in itself mean they are separate Matters; and
  - (b) the fact that circumstances have changed or developments have occurred as the case has progressed will not mean that a separate Matter arises if the Advice and Assistance continues to be provided on the same overall legal issue.
- 4.50 Where multiple application forms are used then you must record the reasons on file and be able to justify your decision on Assessment or Audit.
- 4.51 Duplicated work must not be claimed on related files.
- 4.52 Where different fee-earners undertake work for the same Client on different Matters, care must be exercised to ensure that no duplication of work takes place. If it subsequently comes to light that more than one fee-earner has undertaken work for the same Client on the same Matter then a check must be made to ensure that there has been no duplication. If duplicated work has been claimed in error, you must notify us.

- 4.53 If a Client seeks advice as to whether he or she should change Provider from a Provider already providing Advice and Assistance it is not justified to consider this as a separate Matter to the advice being given by the previous Solicitor. Paragraph 4.38 must be applied before any advice is given as a separate Matter.
- 4.54 Charges laid at the same time which are dealt with under one determination, or are heard together, or form part of the same Case, must be dealt with as one Case.
- 4.55 Advice given on related issues, which could be considered to be a "series of offences", must be dealt with as a single case, rather than separate cases.
- 4.56 Advice and Assistance in respect of a referral to the CCRC constitutes a separate Matter from Advice and Assistance given in respect of the original proceedings, including any previous appeal.

### **Matter or Case ends**

- 4.57 A Matter or Case ends when any of the following events occurs:
- (a) where work is undertaken in the Criminal Investigations Class, when the Investigation has concluded, either by way of the Client being charged or reported for summons, released without bail, or the Matter being disposed of in any other way;
  - (b) when you are notified that no further action is being taken in relation to a Criminal Investigation (or that the Investigation will not proceed for some other reason);
  - (c) when you are notified that Criminal Proceedings are discontinued, withdrawn, discharged or that no evidence is offered (or that the Proceedings will not proceed for some other reason);
  - (d) where Advice and Assistance is given in the Appeals and Reviews Class of Work, on an appeal against conviction or sentence, when a Representation Order is granted by the court on an appeal by way of case stated;
  - (e) where Legal Help is given in Associated Civil Work under Section 13, when a determination that an individual qualifies for Legal Representation is made for the same Client arising from the same Matter;
  - (f) the Matter or Case has concluded;
  - (g) the Client decides to act in person;
  - (h) it is known that no further work will be undertaken for the Client in the same Matter or Case;
  - (i) it is unclear whether further work will be required or not and/or the Client fails to give instructions for two months (unless the Matter is on hold);
  - (j) the Matter or Case begins to be paid outside this Contract (save for circumstances in which you have applied for prior authority to instruct an expert, or a Queen's Counsel (QC), that prior authority application

has been refused, and the Client wishes to use his or her own money to pay for that expert or QC);

- (k) you have informed the Client that the provision of Contract Work is no longer justified and no appeal is submitted or pending;
- (l) in the Criminal Proceedings Class of Work only, when it comes to your knowledge that a determination that an individual qualifies for Representation has been withdrawn;
- (m) you can no longer act due to a conflict of interest or the Client is referred to, or instructs, another Solicitor. The Matter or Case ends either on the date of referral or when a new Solicitor is instructed, whichever occurs first;
- (n) you are notified that the Case has been classified as a VHCC;
- (o) the Client is no longer competent to give instructions; or
- (p) the Client dies.

4.58 The reason for a Matter or Case ending must be evident from your file. You must submit your Claim for payment in accordance with the provisions of Section 3 to us within three months of the Matter or Case ending.

4.59 Where you have agreed with the Client that the Matter or Case is on hold, Paragraph 4.57(h) above will not be satisfied. The Matter will, however, end under that Paragraph where instructions are required from the Client and he or she fails to respond.

### **Continuity of service**

4.60 Where you commence Contract Work for a Client then, unless any circumstances arise which would prevent you from acting in accordance with an express provision of this Contract or any relevant rules of professional conduct, you must continue to advise, assist or represent that Client until the Matter or Case ends.

4.61 Paragraph 4.60 does not override the circumstances in which a retainer may be terminated as set out in your professional code of conduct.

### **Change of Provider**

4.62 The provisions set out in regulation 14 of the Criminal Legal Aid (Determinations by a Court and Choice of Representative) Regulations 2013 apply in relation to a change of Provider.

4.63 If you have provided Contract Work to a Client and:

- (a) that Client chooses to instruct another Provider with regard to the same Matter or Case; or
- (b) a new Provider is assigned by an amendment to a determination that an individual qualifies for Representation,

you must without delay send all relevant papers and other material in your possession relating to the proceedings to the new Provider.

- 4.64 If a determination that an individual qualifies for Representation is amended to show a new Provider, the date on which the amendment came to the knowledge of the original Provider is deemed to be the date on which the Case ends for the purposes of any Claim.
- 4.65 Where there is a change of Provider, the provisions of Sections 9 to 13 apply when determining which fees may be claimed.
- 4.66 Paragraphs 4.62 to 4.66 must be read in conjunction with the specific provisions on Units of Work in Sections 9 to 13.

### **Misrepresentation by Clients**

- 4.67 If you know or suspect that a Client has:
- (a) failed without good reason to provide information or documents relevant to either your decision to carry out Contract Work on his or her behalf; or
  - (b) in providing required information or documents in relation to Contract Work has made a statement or representation knowing or believing it to be false,
- then you must immediately cease work and report the relevant circumstances to your Contract Manager.
- 4.68 We may require you to submit your entire file of papers to us.
- 4.69 You may submit a Claim for work carried out up until that point. The application form signed by the Client will incorporate an agreement by the Client to repay to us any costs we pay out to you in the matter in the event of the Client having withheld or misrepresented information with the intention of appearing to qualify for Contract Work.

## **5. Remuneration for Contract Work**

- 5.1 Fees for Contract Work you undertake are set out in the Criminal Remuneration Regulations.
- 5.2 The basis on which we assess Claims is set out in Section 8.
- 5.3 Payment for Contract Work undertaken under this Contract is based on Hourly Rates, Fixed Fees, Graduated Fees or Standard Fees, depending on Classes or Units of Work. The Criminal Remuneration Regulations sets out the payment structure and limits on claims for each Unit of Work.
- 5.4 All payment rates set out in the Criminal Remuneration Regulations are hourly, except where otherwise indicated and exclusive of VAT.
- 5.5 London rates specified in the Criminal Remuneration Regulations apply to a fee-earner whose Office is situated in the London CJS Area. If an Office situated outside the London CJS Area instructs an Office within that region to act as Agent, the London rates apply to the Agent's work. If a London based Office instructs an Office outside London to act as Agent, the national rates apply to the Agent's work.

### **Time standards**

- 5.6 For the purposes of claiming under this Specification, you must calculate the cost of Contract Work in six minute units with numbers of letters written and telephone calls made or received calculated by reference to the appropriate remuneration rate.
- 5.7 When your Claims are assessed, the test for the Assessor determining a Claim is whether the work appears to have been reasonably done and the time as claimed (excluding time spent on routine letters and calls) is reasonable.

### **Upper Limits on Claims**

- 5.8 You may Claim Contract Work only up to the amount of any Upper Limit set out in the Criminal Remuneration Regulations. Representation Orders issued in Prescribed Proceedings in the Crown Court are subject to an Upper Limit which applies in the same way as a Costs Limitation. If you consider that your costs will exceed the Upper Limit you must apply to us for a formal extension under Paragraphs 5.9 to 5.14. You must continue to have regard to any Qualifying Criteria throughout the Matter or Case, and must only perform such work as is reasonable in each Matter or Case. Paragraphs 5.6 and 5.7 and any relevant provisions in the Costs Assessment Manual will be applied on Assessment.
- 5.9 You will not be paid more than the Upper Limit unless that limit has previously been extended by us in accordance with the provisions of this Specification (or in the case of Associated Civil Work, the provisions of the current civil Specification).
- 5.10 An application for authority to exceed the Upper Limit must be made to us on a form specified by us.
- 5.11 In order that we can monitor high cost matters you must not exceed the Upper Limit without our authority. The Director may grant or refuse such authority on our behalf. If authority is granted, the Director will set a new

Upper Limit on the Matter, above which payment will not be made unless you have applied for and been granted further authority.

- 5.12 Authority will not be granted by the Director unless the work carried out to date and the further work proposed is reasonable in accordance with the Contract Guide and the Sufficient Benefit Test (where applicable) and any other relevant Qualifying Criteria continue to be satisfied.
- 5.13 Extensions cannot be granted retrospectively. When circumstances change such that it is necessary to carry out substantively different work from that envisaged in the extension granted, a separate extension will need to be considered.
- 5.14 Where the Sufficient Benefit Test applies to a Unit of Work, you must reapply the Sufficient Benefit Test before any extension is sought in relation to that Unit of Work.
- 5.15 If authority is granted to exceed the Upper Limit you may claim at the appropriate payment rate in the Criminal Remuneration Regulations for the work actually and reasonably carried out in accordance with the Sufficient Benefit Test (where it applies), up to a maximum of the amount authorised by us in the particular Matter or Case.
- 5.16 If we refuse to grant an extension to the Upper Limit, a right of review arises to an Independent Funding Adjudicator in accordance with Section 3.
- 5.17 The Upper Limits set by us may vary according to the type of Contract Work provided by individual Providers.
- 5.18 The Upper Limits set out in the Criminal Remuneration Regulations are inclusive of profit costs, Disbursements and Counsel's fees properly incurred by you in connection with the Contract Work, but exclusive of VAT.
- 5.19 You will not be paid under this Contract for any work undertaken in excess of the upper limit if an extension has not been obtained. Where an extension to the Upper Limit has been granted on the basis of certain work being undertaken, then the costs (including Disbursements) of other work not previously specified may be disallowed as it does not fall within the scope of the extension granted, unless there are circumstances which justify the unanticipated work as reasonable. This is an issue for determination on Assessment.

### **Monthly Payments**

- 5.20 Subject to Paragraphs 5.21 and 5.22 we will make Monthly Payments in respect of the following Contract Work in accordance with the Monthly Payment Protocol:
  - (a) in the Criminal Investigations Class of Work, all Units of Work;
  - (b) in the Criminal Proceedings Class of Work, all Units of Work including Crown Court Representation in Prescribed Proceedings or as specified in Paragraph 10.132 or 11.62, but excluding Crown Court Representation where the payment is governed by the Criminal Remuneration Regulations;

- (c) in the Appeals and Reviews Class, all Units of Work except for Representation under a Representation Order;
  - (d) in the Prison Law Class of Work, all Units of Work; and
  - (e) in Associated Civil Work, all Units of Work except for Legal Representation under a Certificate.
- 5.21 Each Monthly Payment is triggered by our receipt from you, within 20 days after the end of the previous month, of the appropriate Contract Report Forms. Late receipt by us of the Contract Report Forms will delay your next Monthly Payment and may result in you failing to receive your Monthly Payment until the following month.
- 5.22 If we reasonably anticipate at the start of a Schedule that you will claim the annual equivalent of £2,500 or less for Monthly Payments work in the period of that Schedule and where you have not opted to receive Variable Monthly Payments, we will not pay you Standard Monthly Payments in respect of this work but will instead pay you following submission of Claims for this work made in accordance with this Contract.
- 5.23 We will set the amount of Standard Monthly Payments with the aim of making good any underpayments and recovering any overpayments arising under any previous Schedule.
- 5.24 Your Monthly Payments may be reviewed and amended but only where this is consistent with the Monthly Payment Protocol. We will only amend the Monthly Payment Protocol during the Contract Period by agreement with the Consultative Bodies or in accordance with the principles and procedures set out in Clause 13 (as if the Monthly Payment Protocol were a Contract Document).

### **Payment for Crown Court Representation and Appeals and Reviews Representation**

- 5.25 Where a Representation Order is issued for Crown Court work (excluding Prescribed Proceedings or as specified under Paragraph 10.132) or in respect of Appeals and Reviews Representation under a Representation Order issued by the Court of Appeal (Criminal Division), or Administrative Court, you must submit your claim in accordance with the Criminal Remuneration Regulations.

### **Payment for Legal Representation in Associated Civil Work**

- 5.26 We will pay for Legal Representation in Associated Civil Work in accordance with the terms of the current civil contract.

### **Prior authority**

- 5.27 Where you consider it necessary for the proper conduct of Criminal Proceedings for costs to be incurred under a Representation Order by taking any of the following steps:
- (a) obtaining a written report or opinion of one or more experts;
  - (b) employing a person to provide a written report or opinion (otherwise than as an expert);

- (c) obtaining any transcripts or recordings, including police questioning of suspects;
- (d) in magistrates' courts only, where a determination provides for the services of Solicitor and Counsel, instructing a QC alone without junior Counsel; or
- (e) performing an act which is either unusual in its nature or involves unusually large expenditure,

you may apply to us for prior authority before the expenditure is incurred.

- 5.28 If an application for prior authority is refused or partially refused by us, the application will automatically be referred to an Assessor. If the Assessor refuses an application, there is no right of appeal but a fresh application may be made at any time.
- 5.29 The effect of obtaining a prior authority is that no question as to the step taken or the amount authorised will be raised on Assessment of your claim, unless you knew or ought reasonably to have known before incurring the costs, that the purpose of the authority had failed or become irrelevant or unnecessary.
- 5.30 An application for prior authority must be made by application to the Director using the relevant form approved by us and applying any relevant Contract Guide.
- 5.31 An application for prior authority cannot be granted retrospectively. Any application must be made in advance of the relevant expenditure being incurred.
- 5.32 Applying for prior authority is not mandatory. If permission to incur the expenditure is not sought or refused, the costs may still be allowed on Assessment if the expenditure was reasonably incurred. The same principle applies if the amount authorised is exceeded.
- 5.33 Amounts claimed in respect of expert fees, if authorised, will be in accordance with the rates and provisions set out in the Criminal Remuneration Regulations. The prior authority will specify the type of expenditure authorised, a maximum amount and may specify a maximum rate. This prior authority must be submitted with any Claim for payment.
- 5.34 An application for prior authority will be granted if the expense is necessary and reasonable having regard to the nature of the proceedings. The application may be granted subject to such terms and conditions as are appropriate.
- 5.35 An application for prior authority will be refused:
  - (a) where the application is for tendering expert evidence or the reports in question have been or could be ordered by the court in consideration of a disposal under the Mental Health Act 1983 or community order with a requirement for treatment and would thus be payable out of central funds;
  - (b) where the application is in respect of a medical assessment for which it would be reasonable to expect alternative funding to be used;



- (c) for photocopying done "in house" which is an Office overhead, unless the circumstances are unusual, or the documents to be copied are unusually numerous in relation to the nature of the case;
  - (d) where the application is for a conference with Counsel to obtain Counsel's written opinion (unless Counsel is instructed as an expert);
  - (e) where the application is to attend a distant court this is a matter for costs Assessment;
  - (f) where the application is to cover witness expenses; or
  - (g) where the application is for a second expert report where the Client disagrees with the findings of the first expert's report.
- 5.36 The circumstances in which you may be paid other than under this Contract where a prior authority is refused are set out in Section 8.

### **Disbursements**

- 5.37 We may prescribe types of Disbursements, which may or may not be incurred in the provision of Advice and Assistance, Advocacy Assistance or Representation. Payment of Approved Third Party fees incurred by you in relation to any Contract Work will not exceed any maximum rates set by us, unless authority has been granted to exceed the limit in the particular case. We may specify maximum rates payable by reference to type of expert and activity (such as reports, attending conferences or court hearings). Subject to any such limits and the provisions set out in the Criminal Remuneration Regulations the amounts claimed for expert fees should be justified on Assessment by us in the normal way.
- 5.38 Disbursements may be incurred where it is in the best interests of the Client to do so and it is reasonable for you to incur the Disbursement for the purpose of giving Advice and Assistance, Advocacy Assistance or Representation to the Client and the amount of the Disbursement is reasonable.
- 5.39 The rules relating to payment and claims of Disbursements in the Prison Law Class are set out in Section 12 and override this part of the Specification.
- 5.40 Disbursements will form part of your Claims. We will monitor your use of Disbursements via Audit and Assessment and may seek explanations and justifications as necessary. You must only incur Disbursements where it is in the Client's best interests to do so in the particular circumstances, subject to the provision as to reasonableness and to the Contract Guide. You must produce a receipted invoice or voucher in support of any Disbursement claimed.
- 5.41 A non-exhaustive list of Disbursements, which may or may not be incurred in the provision of Advice and Assistance (including Advocacy Assistance) appears in the table below. Any Disbursements appearing in section A of the table below can only be incurred in any circumstances if it is reasonable to do so for the purposes of providing Advice and Assistance in relation to that Matter and if the amount is reasonable.

<b>Section A</b> <b>Disbursements which may be incurred</b>
Birth and other certificates
Counsel's fees
Enquiry Agents' and interpreters' fees
Experts' fees including medical reports
Fees recoverable on oaths
Newspaper advertisements
Photographers' accounts
Provider's travelling expenses

<b>Section B</b> <b>Disbursements which may not be incurred</b>
Clients' travelling and accommodation expenses
Court fees unless for a search/photocopies
Accommodation/hotel expenses incurred by Duty Solicitors
Any separate administration fee charged by an expert, where 'administration fee' includes but is not limited to a fee in respect of offices and consultation rooms, administrative support including typing services, subsistence and couriers
A cancellation fee charged by an expert where the notice of cancellation was given to the expert more than 72 hours before the relevant hearing or appointment

- 5.42 If you are considering incurring a Disbursement which appears in neither table then you must consider whether the Disbursement is recoverable or not by reference to its purpose.
- 5.43 The cost of the provision of legal advice by a person who is neither a lawyer nor supervised by a lawyer must not be treated as a Disbursement. The assistance of a non-lawyer can be sought but you must absorb this as an overhead rather than charge it as a Disbursement.
- 5.44 Except where Police Station Advice and Assistance is provided, an Agent cannot be employed to provide Advice and Assistance either as a Disbursement or as an element of profit costs (but see the position of in-house advocates set out in Section 4). If you are not in a position to undertake work yourself then the matter should be referred. In appropriate cases you can obtain the opinion of Counsel. A Solicitor Agent may be used where Advocacy Assistance is provided (excluding court Duty Solicitor work).
- 5.45 In deciding whether the amount sought is reasonable regard must be had to all the circumstances including the purpose of the Disbursement in the context of the particular case (that is, having regard to the justification and need for it as against the value and importance of the case), the particular service involved, the extent to which there is a choice of alternative service providers and whether all elements of the service are justified in the particular case and at the particular time.
- 5.46 Where the opinion of Counsel or another expert is required on a question of foreign law, this cannot be covered by Advice and Assistance. In appropriate cases, an application for Legal Representation should be made.

#### *Witness expenses*

- 5.47 Payment to a witness attending court to give evidence in Criminal Proceedings cannot be claimed under this Contract, unless there is a direction from the court that the witness expenses may not be claimed from

central funds and they are not recoverable from any other source. If the court does so direct, you must still satisfy us that the expense was reasonably incurred.

#### *Mileage rate*

5.48 Where you are permitted to claim travel costs under this Specification, the mileage rate is 45p per mile.

#### *Mileage and travel time for experts*

5.49 Where you instruct an expert, we will not pay in excess of:

- (a) 45p per mile travelling costs; or
- (b) £40 per hour travelling time.

#### **In-house advocates - remuneration**

5.50 Where an in-house advocate undertakes advocacy in the higher courts, their costs must be claimed under the appropriate remuneration scheme as provided for under Legal Aid Legislation.

5.51 Where an in-house advocate is used to provide an opinion pursuant to Paragraphs 4.16 to 4.18, their charges must be:

- (a) included as a disbursement in your Claim; and
- (b) claimed at the rates the instructed in-house advocate is entitled to charge and not the rate the instructing Solicitor is entitled to charge.

5.52 Where an in-house advocate undertakes advocacy in the magistrates' court their charges must be included in your Claim as profit costs. Where the in-house advocate is employed by another Provider this will be as a Solicitor agent subject to the exception in Paragraph 5.53.

5.53 Where a Representation Order includes instruction of Assigned Counsel and an in-house solicitor advocate is instructed they may claim advocacy and preparation costs at the rates set out in the Criminal Legal Aid (Remuneration) Regulations 2013. The rates claimable shall be those applicable to a Solicitor undertaking the advocacy and not the rate applicable to Counsel.

#### **Non-chargeable work**

5.54 Save as otherwise provided by this Specification, payment will not be made under it for the time you spend on purely administrative matters.

5.55 You will only be paid under this Contract for work directly involved in the provision of legal services to the Client. Thus you will not be paid for time spent in opening and setting up files, the maintenance of time or costing records or in meeting the administrative requirements of your Contract and completing the Claim for costs. You may charge for work done in the exercise of Delegated Functions and recording of such exercise.

5.56 Unless the case involves a novel, developing, unusual or difficult point of law, justifying either legal research by you or the obtaining of an opinion

from Counsel or an in-house advocate, time spent on legal research will not normally be paid for as Contract Work.

### **Standards of Contract Work**

- 5.57 Contract Work must be undertaken by a competent and experienced adviser in accordance with this Contract. Any Contract Work which is not appropriate for you to do must be referred by you to another Provider in accordance with this Specification.
- 5.58 Paragraphs 5.56 and 5.57 do not prevent you from undertaking reasonable checks of the current law in the normal course of Contract Work and does not prevent payment for the application of the law to the facts of the case, provided that the time spent is reasonable.
- 5.59 Where additional work has been undertaken as a result of your error or omission, resulting in additional costs being incurred unnecessarily, you must not Claim payment under this Specification.

## **6. Duty Solicitor Provisions**

### **Overview**

- 6.1 The obligation to undertake work on Duty Schemes is yours and not that of the individual Duty Solicitor(s) Engaged by you.
- 6.2 Your Schedule will list the Duty Schemes on which you may undertake Duty Solicitor work. Subject to Paragraph 6.32, to maintain Duty Scheme membership you must, at all times during the Contract Period, have at least one Duty Solicitor registered on each Duty Scheme you are a member of and provide Duty Solicitor services on that Scheme. If you cease to meet this requirement we will ordinarily remove your Duty Scheme membership from any affected Scheme.
- 6.3 You cannot apply to join any Duty Schemes during the Contract Period unless we invite you to apply. Invitations will only be issued where there is a reduction in Scheme membership necessitating such an invitation or as a result of amendment to Scheme boundaries in accordance with Paragraph 6.60.
- 6.4 The geographical location of your Office(s) determines which Scheme(s) you are eligible to be a member of. The Duty Solicitor Postcode Tool on our website sets out the geographical ambit of each Scheme by reference to postcodes so that you can determine which Scheme(s) you are eligible for by virtue of each Office.
- 6.5 The number of Duty Solicitors Engaged by you determines the number of Duty Slots which are allocated to you on relevant Schemes. The number of Duty Slots you are allocated is also dependent on the number of Duty Slots available on that Scheme, and on the number of other Providers who have also joined and whose Duty Solicitors have applied to do Duty Solicitor work.
- 6.6 Your Duty Solicitors may only apply for membership of Schemes from a single Office for a single Provider.
- 6.7 If you are a member of a Scheme, your Duty Solicitors are entitled to undertake Back-up work from the DSCC on that Scheme and also, if required, on neighbouring Schemes on which they may not be a member.
- 6.8 If you wish to withdraw voluntarily from a Scheme (and have your Schedule amended accordingly) you must notify us in accordance with Clause 21.9 of the Standard Terms and you must give us at least three months' written notice.
- 6.9 You must ensure that all Duty Slots allocated to you (in respect of both Police Station and magistrates' court work) are covered by you. If you are unable to meet this obligation, you must notify us that you no longer require the Slot so that we may reallocate it to another Provider.
- 6.10 We will use Back-up to deploy Duty Solicitors from neighbouring Schemes if membership of a particular Scheme becomes so reduced during the Contract Period that the Scheme becomes unviable. In these circumstances, a consultation in accordance with Paragraph 6.60 will follow where we will consider increasing the postcode area to increase Scheme membership.

*Police Station Duty Scheme membership: London CJS Area*

- 6.11 Duty Solicitors undertaking Duty Solicitor work from an Office in the London CJS Area must join the Duty Scheme (as set out in the Duty Solicitor Postcode Tool) related to the London Borough in which that Office is situated.
- 6.12 A Duty Solicitor may also apply to join the additional Duty Scheme(s) linked (as set out in the Duty Solicitor Postcode Tool) to the London Borough in which the relevant Office is situated.

#### *Magistrates' court Duty Scheme Membership; London CJS Area*

- 6.13 Duty Solicitors undertaking magistrates' court Duty Solicitor work from an Office in the London CJS Area must join the Duty Scheme (as set out in the Duty Solicitor Postcode Tool) related to the London Borough in which that Office is situated.
- 6.14 A Duty Solicitor may also apply to join a maximum of one additional magistrates' court Duty Scheme linked (as set out in the Duty Solicitor Postcode Tool) to the London Borough in which the relevant Office is situated and any associated youth court Duty Schemes.

#### **Competence Requirements for becoming a Duty Solicitor**

- 6.15 You must ensure that your Duty Solicitors are competent and suitably qualified in accordance with the provisions of this Contract to undertake Duty Solicitor work and you must maintain a Record of the evidence of compliance with the requirements needed to maintain Duty Solicitor status.
- 6.16 We will verify that your Duty Solicitors are competent to undertake Duty Solicitor work by checking their Accreditation (when we consider it is appropriate to do so).
- 6.17 You must notify us, using form CRM12, of the Office from which your Duty Solicitor(s) work. You may only notify us of one such Office for each Duty Solicitor. This rule does not prevent a Duty Solicitor from being used as an Agent or a locum by another Provider or undertaking Contract Work for you from any other Offices you may have.
- 6.18 Your Duty Solicitors must serve on the Police Station and the magistrates' court Schemes, for which you are a member.
- 6.19 Your Duty Solicitors must also serve on Virtual Court Duty Schemes for which you are a member.
- 6.20 Your Duty Solicitors (and any Accredited Representatives used by your Duty Solicitors) must not be special constables.

#### **Employment status of Duty Solicitors Engaged by you**

- 6.21 Duty Solicitors may be either your employees or self-employed persons or seconded from another organisation etc, however, they must in all cases be Engaged by you and comply with the requirements of Paragraphs 6.22 to 6.24.

#### **Engagement of Duty Solicitors and continued entitlement to retain Duty Slots and deploy Duty Solicitors**

- 6.22 Your entitlement to deploy Duty Solicitors to undertake Duty Solicitor work and retain Duty Slots issued to you in their name under this Contract is dependent on them each:

- (a) meeting any professional development requirements of your Relevant Professional Body on issues relevant to the law, practice and procedure in the Police Station or magistrates' courts;
- (b) undertaking a minimum of 36 court hearings and Police Station attendances in each rolling 12 month period to include:
  - (i) a minimum of 12 magistrates' court hearings;
  - (ii) a minimum of 12 Police Station attendances (excluding telephone advice); and
  - (iii) a further 12 hearings or attendances which may be made up of any combination of:
    - i. Crown Court hearings;
    - ii. magistrates' court hearings;
    - iii. Police Station attendances; or
    - iv. magistrates' court Duty Slots including the representation of at least one client

with at least three magistrates' court or Crown Court hearings and at least three Police Station attendances in each rolling three month period; and

- (c) continuing to undertake Duty Solicitor work generally by, in each rolling 12 months period, undertaking Police Station Duty Solicitor attendances (excluding telephone advice) on no less than four Duty Slots allocated by us in that Duty Solicitor's name.

6.23 Subject to Paragraph 6.24, all Duty Solicitors you use to obtain Duty Slots must undertake a minimum of 14 hours' Criminal Defence Work for you per week from the Office for which those Duty Slots have been obtained. You must be able to sufficiently evidence the work undertaken in respect of each Duty Solicitor for it to count towards the 14 hours' requirement, as per Clause 8.3 (o) of the Standard Terms.

6.24 The 14 hours' requirement in Paragraph 6.23 will be measured on a rolling monthly basis to accommodate different working patterns.

6.25 You may retain Duty Slots allocated in respect of Duty Solicitors where the named Duty Solicitor is:

- (a) absent as a result of a period of maternity or paternity leave up to a maximum of 12 months from the date of absence provided you have not been informed they do not intend to return; or
- (b) absent as a result of period of sick leave up to a maximum of six months from the date of first absence.

6.26 Retaining Slots issued in a Duty Solicitor's name who does not meet the requirements in Paragraphs 6.22 to 6.25 is a material breach of Contract and entitles us to issue a Sanction under Clause 24 of the Standard Terms. You are not eligible to receive payment for any work undertaken on Duty Slots obtained as a result of such a breach and payments made as a result shall be an "overpayment or mispayment" as defined in Clause 14.

6.27 You must maintain a Record in accordance with the provisions in Clause 8 of the evidence of compliance with Paragraphs 6.22 to 6.25.

### **Removal from Duty Schemes**

6.28 Where we remove you from membership of a Duty Scheme under Paragraph 2.54, the removal will be effective immediately.

### **Changes in circumstances – Duty Solicitors**

6.29 You must notify us immediately if any of the following circumstances arises:

- (a) a Duty Solicitor gives notice of leaving or leaves your employment or otherwise ceases or is to cease being Engaged by you as a Duty Solicitor;
- (b) when a Duty Solicitor commences maternity or paternity leave and when it is known a Duty Solicitor will be absent as a result of maternity or paternity leave for a period of greater than 12 months from the date of first absence;
- (c) a Duty Solicitor is absent as a result of sick leave for at least two months and for any period in excess of six months from the date of first absence;
- (d) any of your Duty Solicitors are under investigation for, or have been charged with, a criminal offence;
- (e) any proceedings have been instituted before the Adjudication Committee of the Solicitors Regulation Authority, the Solicitors' Disciplinary Tribunal or another Relevant Professional Body; or
- (f) the Adjudication Committee of the Solicitors Regulation Authority or the Solicitors' Disciplinary Tribunal has made an adverse finding.

6.30 A failure to notify us under Paragraph 6.29 which results in additional Rota Duty Slots being allocated to you to the detriment of the other members of the Scheme will result in an equivalent reduction in the number of Duty Slots being allocated to you when the next Rota is drawn up.

6.31 Where a Duty Solicitor ceases to be Engaged by you and the date they will cease to be Engaged is after the deadline for the provision of Rota information pursuant to Paragraph 6.35 but before the start of the following Rota period we will remove all Duty Slots allocated in respect of the Duty Solicitor from that following Rota and redistribute them.

6.32 Where a Duty Solicitor ceases to be Engaged by you during a Rota period but before the deadline for the provision of Rota information pursuant to Paragraph 6.35 relating to any subsequent Rota period we will not remove Duty Slots allocated in respect of that Duty Solicitor for the current Rota period.

6.33 Where a Duty Solicitor is absent in the circumstances and for the periods specified in Paragraphs 6.29(b) and (c) we will remove all Duty Slots allocated in respect of that Duty Solicitor at the conclusion of that specified period in accordance with Paragraphs 6.47 to 6.49.



- 6.34 Where we receive notification of any of the events specified in Paragraphs 6.29(d), (e) and (f) we will decide whether that Duty Solicitor should be excluded or suspended from acting as a Duty Solicitor.

### **Duty Solicitors within or joining your organisation**

- 6.35 If you wish to add new Duty Solicitors to Schemes you are a member of you must apply for them to undertake Duty Solicitor work by completing a CRM12 form for each of them by the deadline notified by us on our website. A properly completed CRM12 will allow that Duty Solicitor's name to be entered on the Rota or Panel of the Schemes you are a member of and will result in you being allocated Duty Slots on that Scheme when Rotas are next issued.

- 6.36 New Duty Solicitors who are Engaged by you and for whom you submit a CRM12 form may undertake Back-up work and cover Duty Slots already allocated to you, be included on the subsequent Rota or Panel (if the CRM12 form is received before the cut-off date for the next Rota) or be added to the list of Panel members (if the Scheme is a Panel Scheme) only once you have received confirmation we have approved their application.

- 6.37 You may not submit a CRM12 form or seek to obtain Duty Slots in respect of Duty Solicitors who:

- (a) will not be Engaged by you during the Rota period or who do not meet the competence requirements in Paragraphs 6.15 to 6.20; or
- (b) are not habitually resident in England and Wales unless you have received our express written approval to submit a CRM12 form; or
- (c) notwithstanding any other provision in this Contract, receive a payment for the use of their details on a CRM12 form for the purpose of obtaining additional Slots but are not Engaged and integrated into your organisation and used to deliver Criminal Defence Work. Such persons are commonly referred to as "ghosts"; or
- (d) are temporary staff engaged to cover periods of maternity or paternity leave of a Duty Solicitor of up to 12 months (because you will have access to Slots allocated in respect of that Duty Solicitor on maternity or paternity leave); or
- (e) are temporary staff engaged to cover periods of sick leave of a Duty Solicitor you have used to obtain Duty Slots whilst you have the benefit of Duty Slots issued their name.

Any breach of this Paragraph 6.37 is a Fundamental Breach. You are not eligible to receive payment for any work undertaken on Slots obtained as a result of such a breach and payments made as a result shall be an "overpayment or mispayment" as defined in Clause 14.

- 6.38 You must not submit a CRM12 for a Duty Solicitor during any period of his or her suspension or exclusion from Duty Scheme work.

- 6.39 Where a Duty Solicitor:

- (a) is under investigation, faces an outstanding criminal charge or has been convicted of a criminal offence which is not treated as spent under the Rehabilitation of Offenders Act 1974; or

- (b) has been the subject of any adverse findings by the Adjudication Committee of the Solicitors Regulation Authority or by the Solicitors' Disciplinary Tribunal, or where any complaint or application to either body has not been determined,

we may refuse the CRM12 for that Duty Solicitor, provided that we give you and the Duty Solicitor written reasons for our decision.

#### *Approval of applications*

- 6.40 Where we approve a CRM12, we will notify you and the Duty Solicitor within 30 days of the date of receipt of the application.

#### *Refusal of applications*

- 6.41 If we do not approve a CRM12 we will notify you and provide a statement of reasons for the decision within 30 days of receipt of the application. If you disagree with the decision to refuse to approve a CRM12 then you may have that decision reviewed under the provisions of Clause 27 of the Standard Terms.
- 6.42 A refusal of an application under Paragraph 6.41 will be on the basis that we do not have adequate evidence that the Duty Solicitor who is the subject of that CRM12 is properly qualified or Accredited.
- 6.43 There is no right of appeal to us against a refusal, revocation or suspension of Accreditation by the Law Society. Such appeals should be directed to the relevant accreditation assessment organisation or to the Law Society.

#### **Suspension or exclusion of Duty Solicitors from undertaking Duty Solicitor work**

- 6.44 We may suspend for a period of up to 12 months or exclude a Duty Solicitor from undertaking work on the Scheme or Schemes of which you are a member if he or she fails to meet any of the criteria in Paragraphs 6.22 to 6.24 in relation to a Scheme. On suspension, we may impose conditions, which must be met before that Duty Solicitor resumes undertaking work on the relevant Scheme or Schemes.
- 6.45 Where we suspend or exclude a Duty Solicitor we shall remove all Duty Slots issued in their name.
- 6.46 We will not suspend or exclude a Duty Solicitor from undertaking Duty Solicitor work on a Scheme or Schemes where any of the criteria in Paragraph 6.22 to 6.24 is not met for some reasonable justification.
- 6.47 Without limitation to our rights under Clauses 24 and 25 of the Standard Terms, we may, by way of a Sanction, suspend or remove your entitlement to use a particular Duty Solicitor to undertake Duty Solicitor work under this Contract on a Scheme or Schemes where that Duty Solicitor: -
  - (a) is under investigation, faces an outstanding criminal charge or has been convicted of a criminal offence or is the subject of an investigation by their Relevant Professional Bodies; or
  - (b) does not demonstrate, or no longer demonstrates, the level of competence required for Accreditation or Accreditation has been suspended or revoked or (it transpires) has never been accredited); or

- (c) becomes medically unfit to undertake Duty Solicitor work; or
  - (d) is no longer Engaged by you.
- 6.48 Where we are considering suspending or excluding one of your Duty Solicitors from undertaking Duty Solicitor work, we will:
- (a) notify you and the Duty Solicitor of our reasons in writing; or
  - (b) offer you and the Duty Solicitor an opportunity to make written representations against our decision.
- 6.49 Where a Duty Solicitor is suspended from undertaking Duty Solicitor work on a Scheme under Paragraph 6.47 you may apply to us using form CRM12 once the suspension period has expired for that Duty Solicitor to be able to undertake Duty Solicitor work again. The reasons for the Duty Solicitor's suspension or exclusion may be considered by us in deciding whether to approve that CRM12.
- 6.50 We will not suspend or exclude a Duty Solicitor from undertaking Duty Solicitor Work until any appeal by you has been concluded unless we consider that it is reasonable to suspend or exclude the Duty Solicitor prior to the outcome of the informal reconsideration. You and the affected Duty Solicitor will be notified in writing of our decision under this Paragraph.

## **Management of Duty Schemes**

### *Rotas, Panels and Call Ins*

- 6.51 We shall decide:
- (a) whether there should be attendance or Call In (whether by Rota or Panel) cover, or a combination of both, for each magistrates' court Scheme; and
  - (b) whether there should be Rota or Panel cover, or a combination of both, for each Police Station Scheme; and

the times during which such arrangements shall be in operation. For the avoidance of doubt, if we wish to amend these arrangements, in both instances we will also consult in accordance with Paragraph 6.60.

### *Slot allocation*

- 6.52 For each Scheme (run by Rota) we shall create a list of Duty Slots. Providers who are members of that Scheme will be allocated Duty Slots on the Rota in proportion to the number of Duty Solicitors who submitted properly completed CRM12 forms for that Provider by the deadline notified by us on our website.
- 6.53 For Police Station Schemes run by Panel, Providers who are members of that Scheme will be allocated one place on the Panel List for every Duty Solicitor Engaged by them and who have submitted properly completed CRM12 forms.

### *Rotas*

- 6.54 If additional Duty Solicitors are required at short notice to respond to unusual demands, the DSCC will call Providers on that Scheme using Back-up.
- 6.55 We will normally produce Rotas covering a period of three to six months and will normally issue Rotas one month before the start date of the Rotas. Operational requirements may necessitate Rotas of a shorter length being produced.
- 6.56 We may amend the last three months of a six-month Rota (or second half of a Rota of shorter length) to correct errors or omissions of Duty Slot allocation in the first two months of that Rota (or equivalent period in a Rota of shorter length). One month's notice will be given of any such amendment unless operational reasons outside our control necessitate having to give a shorter period of notice.
- 6.57 Copies of any Scheme list showing Rota Duty Slot allocation (or list for a Call In Scheme) will be sent, as appropriate, to the magistrates' court, the DSCC and each Provider who is a member of that Scheme.

#### *Panels*

- 6.58 Duty Solicitors who are new to a particular Scheme, which is operated by Panel, (as opposed to Rota) will be added to the end of the Panel List within 7 days of our approval of their CRM12.
- 6.59 Panel work will be allocated by the DSCC (for Police Station Advice and Assistance) in a consecutive sequence. Magistrates' Court Panel schemes may be organised by a 'rota' arrangement, whereby the members of that Panel are told in advance when they are to attend the court, or by way of a Call In Scheme, whereby the court telephones the members in a consecutive sequence when they are required to attend.

#### *Amending Scheme boundaries during the Contract Period*

- 6.60 We may, by prior consultation for at least three weeks with the relevant Providers who are members of affected Schemes, change the postcode boundaries of Schemes if a magistrates' court closure or a Police Station closure (whether temporary or permanent), or reduction in membership of a Scheme necessitates such a change.

#### *Client awareness*

- 6.61 We will take steps to ensure that potential Clients are made aware of the availability of the Duty Scheme at Police Stations and magistrates' courts.

#### *Services cases*

- 6.62 We may introduce a special panel for cases where Services Persons require Advice and Assistance and Advocacy Assistance.

#### *Client's right to instruct another Solicitor*

- 6.63 You must ensure that all staff undertaking Police Station Duty Solicitor work carry an identification card as specified by us for production when attending Police Stations.

- 6.64 In all matters, a Duty Solicitor (or Accredited Representative as appropriate) must inform every Client that he or she is not obliged to instruct the Duty Solicitor.
- 6.65 If a Client wishes another Solicitor to act, the Duty Solicitor (or Accredited Representative as appropriate) must not act unless the named Solicitor is not available and the Client asks the Duty Solicitor to act on that occasion.
- 6.66 If a Duty Solicitor (or Accredited Representative as appropriate) does not continue to act for a Client, he or she must make available to any Solicitor subsequently instructed any relevant information or papers.
- 6.67 Subject to Paragraph 6.69 below, a Duty Solicitor (including a Virtual Court Duty Solicitor) must not act for a Client who has his Own Solicitor unless
- (a) the court session takes place on a non-Business Day; or
  - (b) the Client is unable to secure his Own Solicitor's attendance; or
  - (c) the court is unable to determine whether the Client has his Own Solicitor (because no determination has been made).
- 6.68 If a court Duty Solicitor represents a Client in the circumstances mentioned in Paragraph 6.66 above, he must take all reasonable steps to notify the Client's Own Solicitor as soon as possible after the hearing.
- 6.69 A court Duty Solicitor may act as an Agent for a Client's Own Solicitor, but this cannot not be claimed as Duty Solicitor work.

## **7. Very High Cost Cases (VHCCs)**

- 7.1 For the avoidance of doubt, VHCC work is not within the scope of this Contract and is subject to separate contracting arrangements. However, you must comply with the obligations set out below in this Specification in relation to cases that may become VHCCs.
- 7.2 Any question as to whether a case should be classified as a VHCC within the meaning of Criminal Remuneration Regulations will be referred to and decided by us.
- 7.3 You must notify us in writing of a potential VHCC as soon as it appears that the case will be, or is likely to be, a VHCC within the meaning of Criminal Remuneration Regulations. If it does, or if you are in any doubt, you must notify us within five Business Days of:
- (a) the earliest hearing at which the court sets a trial estimate; or
  - (b) you identifying that the case will be or is likely to be a VHCC.
- 7.4 You must make a note on file to confirm that you have complied with Paragraph 7.3.
- 7.5 You must not carry out any further Contract Work under this Contract on a case which we classify as a VHCC from such date as we may specify and must not make any claim for any further work under this Contract on that VHCC.
- 7.6 Where we instruct you to pass the VHCC to another Provider, you may only claim under the terms of the Criminal Remuneration Regulations for work properly done up to the date of such instruction by us.
- 7.7 Where Paragraph 7.6 applies, if you retain the case on a pro-bono basis then you must provide us with a signed confirmation from the Client that he or she agrees to you continuing to represent them on a pro-bono basis and that they understand that they could, if they so wish, have their Representation Order transferred to another Provider that is authorised by us to undertake VHCC work.

## **8. Claims, Costs, Assessments and Reviews**

### **Claims**

- 8.1 You must submit Claims to us in accordance with the specific provisions applicable to each Unit of Work in this Contract.
- 8.2 Unless this Contract otherwise provides, at the conclusion of any Matter or Case or Duty Period, you must submit a Claim for costs to the Director on the Contract Report Form claiming an amount to be reconciled against the payments made to you under the Contract (a "credit"). The Claim must be submitted on a form and in a format approved by us. Credits claimed will be set off against the Monthly Payments. The UFN must be inserted on each Claim. You must retain the information specified in Paragraphs 4.40 and 4.41 and in the Contract Guide on file. We may call upon you to produce this either for Audit or Assessment purposes. You must supply such further particulars, information and documents in support of your Claim as we may require.
- 8.3 Except where a warrant of arrest is issued in magistrates' court proceedings, you must submit your Claim for payment to us within three months (or such longer period as we may direct) of the Matter or Case or Duty Period ending.
- 8.4 All Claims made under the same Representation Order or relating to the same Case or Matter must be submitted together.
- 8.5 If the Claim form is not properly completed, your Claim will be rejected. The original submission date remains the relevant date for the purpose of any Sanctions to be applied under Clause 24.
- 8.6 If you are acting for more than one Client in the same Case and that Case concludes at a different time for each Client, then you must submit a single Claim once the Case covering all relevant Claims has concluded. The trigger date for submitting a Claim is the latest date on which the proceedings concluded for all Clients.
- 8.7 Subject to the provisions of Section 12 of this Specification in relation to Parole Board Reconsideration Hearings, if you have already submitted a Claim and the same Client seeks further Advice and Assistance, Advocacy Assistance or Representation from you on the same Matter or Case, then any subsequent work will be treated as supplemental to the original Claim and, where relevant, the original limit (as extended) will continue to apply. You must notify us at the time that you submit the supplemental Claim that a Claim has been made previously.
- 8.8 When a supplemental Claim is submitted in accordance with Paragraph 8.7 above, the UFN which was assigned to the original Claim must be used.
- 8.9 Where a Client seeks further Advice and Assistance, Advocacy Assistance or Representation on the same Matter you may need to consider an extension to the costs limit, where appropriate, unless the previous limit was not exhausted. The Upper Limit will continue to apply to the cumulative costs throughout the lifetime of the Matter.

### **Inter partes costs**

- 8.10 In accordance with section 28(2) of the Act, where an agreement or order provides for costs to be paid by any other party in favour of a Client for whom you have been providing Representation in the High Court, Crown

Court or magistrates' court under this Contract then you may retain the element of any costs recovered under that agreement or order which exceeds the amount paid or payable to you by us in relation to the relevant dispute or proceedings under the terms of this Contract.

- 8.11 Where interest has been received on the costs, you may retain a proportion of the interest which equates to the proportion of the total costs recovered which you are authorised to retain under Paragraphs 8.10 to 8.12.
- 8.12 The balance of any costs and interest after you have retained any element authorised by Paragraphs 8.10 and 8.11 above must be forwarded to us immediately.

### **Assessment of Claims – general**

- 8.13 Where an Assessment is carried out after a credit has been given in relation to any Matter or Case, then that credit may be adjusted by us accordingly.
- 8.14 The setting off of credits against your Monthly Payments will be without prejudice to our right to assess your Claims.

### **Applying findings generally on Assessment**

- 8.15 When we Assess a sample of Claims, we may apply any Findings to your other Claims for payment for Contract Work.
- 8.16 When we apply Findings in this way, we may do so for all Matters and Cases commenced under this Contract (or any Previous Contract it has replaced) where costs have been claimed from us either:
- (a) in the case of Mis-Claiming, at any time within the two years following its submission to us or within six years if (i) an Official Investigation is underway or (ii) we have received a report that we reasonably consider requires us to Assess such Claims; or
  - (b) in the case of Over-Claiming or other claiming issues:
    - (i) since the date of the last Contract compliance Audit; or
    - (ii) from a date 12 months immediately preceding the date the file sample was requested for Assessment,
- whichever is the most recent.
- 8.17 If the sample relates only to a specific group of your files or Unit or Class of Work, then we will only apply the Findings to that specific group.
- 8.18 When Findings are applied to a Claim under Paragraphs 8.15 to 8.18, then that Claim has been assessed by us.

### **Appeals**

- 8.19 If you or Counsel are dissatisfied with any decision of ours as to the Assessment of the costs of Contract Work, you may appeal to an Independent Costs Assessor ("the Assessor"). For the avoidance of doubt, subsequent references in this rule and its related Contract Guide include "Assessors" in cases where an appeal is dealt with by a panel of three Assessors rather than a single Assessor alone.



- 8.20 The appeal must be made in writing (setting out full reasons) within 28 days of notification of the Assessment decision, and must be accompanied by the file. We will only extend the 28 day time limit where it is reasonable for you to have requested an extension within 21 days. Any extension of the time limit will be for a maximum of a further 14 days.
- 8.21 If you fail to comply with any of the requirements set out in Paragraph 8.20 you must accept our decision and lose your right to dispute it.
- 8.22 Where an appeal is to proceed, we also have the right to make written representations (in addition to those contained in the original assessment) to the Assessor. If we do so, these will be sent to you not less than 21 days before the appeal papers are sent to the Assessor. If you receive such further representations from us then you may, within 14 days, provide a written response to them.
- 8.23 The appeal must be dealt with by the Assessor on the papers only. There is no general right for either party to attend or to be represented on the appeal. However, if either party considers that there are exceptional circumstances which mean that concerns or issues cannot be addressed in writing, they may make a written request (setting out full reasons) for an oral hearing, to the Assessor. Such an application must be made at the same time as:
- (a) in your case, you submit your written appeal; and
  - (b) in our case at the same time as we make any written reply (or, where no written reply is made, during the period allowed for making such reply).
- 8.24 The Assessor must consider the request and notify both parties of his or her decision.
- 8.25 If:
- (a) neither party has made a request for an oral hearing but the Assessor believes that his or her review of some or all of the issues under the appeal cannot be concluded properly without hearing oral submissions; or
  - (b) having considered a party's request for an oral hearing, s/he is of the opinion that the request should be granted,
- he or she must notify the parties of this. If either party chooses to attend at an oral hearing, having been given permission from the Assessor, the other party will also have a right of attendance and Representation at the appeal and must confirm whether or not they intend to exercise that right.
- 8.26 In any case, whether or not a party has made a request for an oral hearing, if the Assessor is of the opinion that an appeal is of such complexity and/or value that it should not be considered by a single Assessor alone s/he may, in his or her sole discretion, refer the appeal to a panel of three Assessors either to deal with on the papers only or by way of an oral hearing. If the Assessor is of the opinion that the appeal must be dealt with by way of an oral hearing, the provisions set out in Paragraph 8.25 apply save that a panel of three Assessors will deal with the appeal rather than a single Assessor alone.

- 8.27 For the avoidance of doubt, the Assessor may give procedural directions as to the determination of the appeal whether the appeal is to be dealt with on the papers only or an oral hearing basis.
- 8.28 On appeal, the Assessor must review the Assessment whether by confirming, increasing or decreasing the amount assessed. In a Controlled Work Assessment, applicable to Associated Civil Work, the Assessor may apply his or her Findings generally across files outside the sample before him or her under the terms of Paragraphs 8.15 to 8.18. However, no such decision will apply to any completed Assessments that you have not appealed within the time limit.
- 8.29 Where in dealing with an appeal on the papers only the Assessor identifies new issues (those which have not been raised by either party under the appeal) the Assessor will, as s/he considers appropriate in the circumstances, either:
- (a) adjourn the appeal and seek representations from the parties before making his or her final decision; or
  - (b) refer the matter back to us for a new decision.

### **Basis of Assessments and appeals**

- 8.30 All Assessments of Contract Work are to be on the Standard Basis as defined by the Civil Procedure Rules, Rule 44.4(2), subject to the other provisions of this Specification and any Contract Guide.
- 8.31 You must only Claim for work that has been actually and reasonably done and Disbursements actually and reasonably incurred in accordance with the provisions of the Contract and that is supported by appropriate evidence on the file at the time of the Claim and Assessment.
- 8.32 The relevant remuneration rates in the Criminal Remuneration Regulations will then be applied to the time allowed and the resulting sum will be added to any Disbursements allowed and to any VAT to produce a figure for the costs of the case. Allowance will not be made for work which was not evidenced on the file at the time the Claim was made in the form of timed and dated attendance notes, and where appropriate by relevant documentation, such as copies of documentation drafted or perused.
- 8.33 We may ask you to provide an attendance note or other record of time spent. If your Claim is not supported by written evidence, then it will not be paid under the Contract.
- 8.34 When assessing Claims we will apply the Contract Guide and the Costs Assessment Manuals including "Points of Principle" certified before this Contract was introduced. Our published guidance on the Assessment of costs of Controlled Work will apply to the provision of Free Standing Advice and Assistance so far as it is consistent with the terms of this Contract. You must be familiar with the contents of these manuals and any other Contract Guide on criminal costs assessment produced by us and ensure that Claims are made in accordance with the Contract Guide.
- 8.35 Whilst we reserve the right to assess all Claims, for the avoidance of doubt, Claims for Police Station Advice and Assistance will not be reduced on Assessment to below the level of the relevant Fixed Fee (unless the attendance was not justified or the matter was out of the scope of Contract Work).

- 8.36 Claims for Escape Fee Cases claimed under this Contract may be reduced on Assessment but will not be reduced to less than the value of the relevant Fixed Fee (unless the attendance was not justified or the matter was out of the scope of Contract Work).

### **Appeal by Assigned Counsel**

- 8.37 Where Assigned Counsel's fees have been reduced on any Assessment by us, Paragraphs 8.15 to 8.29 above will apply to any appeal by Assigned Counsel.
- 8.38 Assigned Counsel will have a direct right of appeal when his or her fees have been reduced on an Assessment. This does not apply in a magistrates' court Standard Fee case where Counsel is unassigned. Paragraphs 8.15 to 8.29 will apply to such an appeal by Assigned Counsel.

### **Payment of costs**

- 8.39 Once we have assessed the amount of costs payable under this Specification to you and any Counsel instructed, payment will be authorised by us, subject to any provisions elsewhere in this Contract.
- 8.40 Where the costs payable are varied as a result of a review, redetermination or appeal in accordance with this Contract, then:
- (a) where costs are increased, we will authorise payment of the increase; or
  - (b) where the costs are decreased, you or Counsel will repay to us the amount of such decrease.

### **Payment other than through this Specification**

- 8.41 Subject to Paragraph 8.43 below, you must not charge a fee to the Client or any person for the services provided under this Specification or seek reimbursement from the Client or any other person for any Disbursements incurred as part of the provision of such services. This Paragraph does not apply to services you provide which cannot be paid under this Contract or the Act, but which are in connection with a Matter or Case.
- 8.42 Where you have been carrying out Contract Work on behalf of a Client, you may not accept instructions to act privately in the same matter from that Client unless the Client has been first advised by you in writing of the consequences of ceasing to be in receipt of services and as to the further services which may be available under criminal Legal Aid, whether from you or another Provider, (including the possibility of an extension of the limit for Advice and Assistance or Advocacy Assistance, an application for Representation or the availability of Advocacy Assistance or the Duty Solicitor and has nevertheless elected to instruct you privately.
- 8.43 Where an application for prior authority for costs to be incurred under a determination has been refused and the Client has expressly authorised you to:
- (a) prepare, obtain or consider any report, opinion or further evidence, whether provided by an expert witness or otherwise; or
  - (b) obtain or prepare any transcripts or recordings of any criminal investigation or proceedings, including police questioning; or

- (c) instruct Counsel other than where an individual is entitled to Counsel (as may be determined by the court) in accordance with regulation 16 and 17 of the Criminal Legal Aid (Determinations by a Court and Choice of Representative) Regulations 2013,

then Paragraph 8.41 will not apply to payment by the Client on a private basis for that work.

- 8.44 You must not charge the Client for the provision of Contract Work or seek payment of Disbursements incurred from the Client unless an exception under this Contract applies. All payments for Contract Work must come through us. You cannot be retained to act for the Client in the same Matter or Case under this Contract and on a privately paying basis at the same time. Where a Client elects to instruct you privately in relation to a Matter or Case in which you have been providing Contract Work, a copy of the letter dealing with the requirements of Paragraphs 8.41 to 8.44 must be kept on the file.

### **Wasted costs**

- 8.45 Where a wasted costs order has been made under section 19 of the Prosecution of Offences Act 1985 (or any regulations made under it) against you or Counsel instructed by you in proceedings in which Advocacy Assistance or Representation is provided under this Contract, you must submit a copy of the order with your Claim.
- 8.46 If the court orders that you are not entitled to be paid for Contract Work, then that Contract Work must not be included in your Claim.
- 8.47 On Assessment, we may disallow the amount of work done to which the wasted costs order relates. In those circumstances, the amount disallowed will be that amount or the amount of the wasted costs order, whichever is the greater.
- 8.48 If a wasted costs order is made in your favour and you have received payment, you must deduct the amount of wasted costs paid from your Claim. Where you can show that the costs to which the wasted costs order made in your favour relates to costs which would not otherwise be claimable from or payable from public funds, you are entitled to keep those costs, provided you set out in writing to us the circumstances in which the wasted costs order was made, and we confirm that you may keep those costs in addition to the costs payable for that Contract Work.
- 8.49 If you have not received payment of wasted costs at the time you submit your Claim, you may Claim the full sum due and pay us the amount of any wasted costs as soon as they are received by you. In proceedings' claims that would normally be claimed under a Standard Fee these remaining costs should be claimed as a Non Standard Fee, which will be the difference between the Standard Fee and the sum of wasted costs received should be claimed as a Non-Standard Fee.
- 8.50 The fact that a wasted costs order has been made against you or Counsel is a factor which we may take into account on Assessment.

### **Payment from central funds**

- 8.51 If you have made, or will make, a Claim for costs from central funds, in proceedings funded under this Specification, you must notify us when you submit a Claim to us.

8.52 If you can Claim for the work done under this Specification, then you must do so, prior to making any Claim from central funds.

**Recovery of overpayments**

8.53 Where following an Assessment you or Counsel are to be paid under this Contract and, for whatever reason, you or Counsel are paid an amount greater than that sum, we may either:

- (a) require immediate repayment of the amount in excess of the amount due ("the excess amount") and you or Counsel will on demand repay the excess amount to us; or
- (b) deduct the excess amount from any other sum which is or becomes payable to you or Counsel under this Contract.

8.54 Paragraph 8.53 applies notwithstanding that you or Counsel to whom the excess amount was paid is exercising, or may exercise, a right of appeal under Paragraphs 8.19 to 8.29.

## **9. Criminal Investigations**

### **Work conducted at the Police Station: Police Station Advice and Assistance**

#### **Scope**

- 9.1 You may provide Police Station Advice and Assistance under this Unit of Work to a Client (including a Volunteer) on an Own Client basis or as a Police Station Duty Solicitor during a Criminal Investigation, unless the Matter is a Criminal Defence Direct Matter which is excluded from the scope of this Specification (see Paragraphs 9.8 to 9.13).
- 9.2 You must not include in your Claim for Police Station attendance for an ineffective bail to return if you did not check prior to the attendance to establish whether it would be effective.

#### **Witnesses**

- 9.3 You can only provide Advice and Assistance to a witness if there is a complicating factor (as set out in the Contract Guide).
- 9.4 Providing Advice and Assistance to a witness may only be claimed as Free Standing Advice and Assistance under Paragraphs 9.113 to 9.140, and not under the Police Station Advice and Assistance Fixed Fee scheme.

#### **Complaints of maltreatment by the police**

- 9.5 Complaints of maltreatment by the police should be dealt with as part of the general advice on the overall case, and no separate Fixed Fee may be claimed for providing such advice.
- 9.6 The only time a separate determination that an individual qualifies for Free Standing Advice and Assistance under Paragraphs 9.113 to 9.140 may be made (in addition to advice provided under this Unit of Work) is where the nature of the complaint raises a serious and proper issue which cannot be dealt with within the context of the general criminal advice being given.
- 9.7 These cases must not be confused with claims against the police in relation to wrongful arrest, false imprisonment or malicious prosecution for which an application for a determination for Associated Civil Work must be made to us. Complaints of serious wrongdoing or abuse of position or power, are also paid by us as Associated Civil Work as claims against public authorities and not by criminal Legal Aid.

#### **Criminal Defence Direct**

- 9.8 Matters which fall within the scope of Criminal Defence Direct are excluded from the scope of this Contract.
- 9.9 The following matters fall within the scope of the Criminal Defence Direct scheme. They are not covered by the scope of this Contract and you cannot claim for Police Station Advice and Assistance provided in these circumstances unless one of the exceptions in Paragraph 9.10 applies:
- (a) Client detained in relation to any non-imprisonable offence;
  - (b) Client arrested on a bench warrant for failing to appear and being held for production before the court, except where you have clear documentary evidence available that would result in the Client being

released from custody, in which case attendance may be allowed provided that the reason is recorded on file;

- (c) Client arrested on suspicion of:
  - (i) driving with excess alcohol, who is taken to the Police Station to give a specimen (Section 5 Road Traffic Act 1988);
  - (ii) failure to provide a specimen (Sections 6, 7 and 7A Road Traffic Act 1988); or
  - (iii) driving whilst unfit/drunk in charge of a motor vehicle (Section 4 Road Traffic Act 1988); or
- (d) Client detained in relation to breach of police or court bail conditions.

9.10 You may claim for Police Station attendance on any Matter falling within Paragraph 9.9 above if one of the following exceptions applies and the Sufficient Benefit Test is satisfied:

- (a) an interview or an identification procedure is going to take place;
- (b) the Client is eligible for assistance from an appropriate adult under the PACE codes of practice;
- (c) the Client is unable to communicate over the telephone;
- (d) the Client complains of serious maltreatment by the police;
- (e) the investigation includes another alleged offence which does not fall within Paragraphs 9.9(a) to (d) above;
- (f) you are already at the same Police Station, in which case you may attend the Client but may not claim more than the Police Station Telephone Advice Fixed Fee;
- (g) the advice relates to an indictable offence; or
- (h) the request is a Special Request.

9.11 If any of the exceptions in Paragraph 9.10 apply then you must endorse the reasons for attendance on file, otherwise you may not make any Claim under this Contract.

9.12 If Criminal Defence Direct is unable to provide Police Station Telephone Advice in a Criminal Defence Direct Matter then that Matter is not a Criminal Defence Direct Matter for the purposes of this Specification and you may provide Police Station Advice and Assistance in accordance with this Specification. This Paragraph does not apply in circumstances where a Client simply refuses to accept advice from Criminal Defence Direct.

9.13 If Criminal Defence Direct refers a Matter to a Client's Own Solicitor to attend at the Police Station, the Matter ceases to be a Criminal Defence Direct Matter and the normal service requirements in this Section apply.

### **Qualifying Criteria**

9.14 The Sufficient Benefit Test is deemed to be satisfied in circumstances where a Client has a right to legal advice, for example under PACE or the Terrorism

Act 2000, at the Police Station and has requested such advice. The right to non-means tested legal advice arises where a suspect is to be interviewed either at a Police Station or another location and includes advice to a person detained under schedule 7 of the Terrorism Act 2000 in accordance with schedule 8 thereof, either at a port or in a Police Station. On subsequent attendances in the same Investigation you must ensure that the Sufficient Benefit Test is satisfied before continuing with the Matter.

- 9.15 There is no Financial Eligibility Test for this Unit of Work.
- 9.16 You may provide further legal advice to a Client immediately following charge. However, attendance upon the Client thereafter whilst fingerprints, photographs and swabs are taken will not meet the Sufficient Benefit Test except where the Client requires further assistance owing to his or her particular circumstances in which case the relevant factors must be noted on file. You may remain at the Police Station if you are required to make representations about bail, provided that this justification is noted on file.

### **Interview/identification procedures**

- 9.17 If the police or the DSCC indicate that an interview or identification procedure will take place at a specified time, initial Police Station Telephone Advice may be provided to the Client. You must attend the Police Station in sufficient time prior to the allotted time to undertake reasonable steps that directly relate to the interview or identification procedure.

### **Applications, instructions from the DSCC and first contact with the Client**

- 9.18 Subject to Paragraph 9.20, all instructions for Police Station Advice and Assistance must be received from the DSCC who will then contact the Provider from whom the Advice and Assistance is sought or the Duty Solicitor if so requested.
- 9.19 Subject to Paragraph 9.20, you must not make any Claim for payment for Police Station Advice and Assistance given to a Client in relation to whom you have received your instructions directly, rather than through the DSCC, and any work carried out on this basis is not Contract Work.
- 9.20 Paragraphs 9.18 and 9.19 above do not apply if:
- (a) a Client attends the Police Station by prior agreement with the Police and requests you to represent him or her, provided that you inform the DSCC within 48 hours of the first attendance at the Police Station, and you actually represent him or her at the Police Station; or
  - (b) your instructions are received from a member of the Client's immediate family or third party of similar status (including an appropriate adult under the PACE codes of practice), provided that you report the Matter to the DSCC prior to telephoning or attending the client; or
  - (c) you are already at the Police Station as Own Solicitor or Duty Solicitor when a Client requests advice from you provided that you report the matter to the DSCC within 48 hours of receiving instructions.
- 9.21 You must record and keep on file details of the reference number which the DSCC provide to you as evidence that your instructions to provide Police Station Advice and Assistance were received from the DSCC.



- 9.22 You must ensure that the contact details of your staff are kept up to date via the DSCC website.
- 9.23 Subject to Paragraph 9.24, each time you are first notified that a Client has been arrested and has requested advice from you, and you have accepted the Matter, you must endeavour to contact the Client (whether in person or on the telephone) within 45 minutes of the call. This standard applies only to the first contact with the Client and does not include subsequent instances of Advice and Assistance at a Police Station. This standard applies to both Own Solicitor and Duty Solicitor work.
- 9.24 You must meet the target set out in Paragraph 9.23 in at least 80% of Matters. Setting the target at this level will account for those instances where you are unable to meet the target for reasons beyond your control.
- 9.25 All Police Station advice files must contain a note of the time at which the instructions were accepted (either from the DSCC or directly from the Client) and the time at which first contact was made with the Client. Where a fee-earner does not contact the Client within 45 minutes of accepting the case, that fee-earner must note the reason on the file. On Audit, we will take a sample of files and calculate your performance against the requirement in Paragraph 9.23 above. Where no times are noted we will assume that the target was not met. However, before recording non-compliance, we will consider the particular circumstances (including whether any omission to record times was an isolated incident) surrounding any failure.

### Use of Accredited Representatives

- 9.26 Own Solicitor Police Station Advice and Assistance, where not undertaken by a Solicitor, must only be undertaken under this Contract by an Accredited Representative or a Probationary Representative who is registered with us.
- 9.27 Duty Solicitor Advice and Assistance, where not undertaken by a Solicitor must only be undertaken under this Contract by an Accredited Representative who is registered with us, and not by a Probationary Representative.
- 9.28 Those persons in the table may only perform the services set out in the table below.

Duty Work	Duty Solicitor	Accredited Representative	Probationary Representative	Solicitor with PSQ	Solicitor Without PSQ
*Accept initial call from the DSCC requesting Duty Solicitor	Yes	Yes	No	Yes	No
Provide initial telephone advice or attend in person	Yes	Yes	No	Yes	No
<b>Own Client Work</b>					
Accept initial call from the DSCC; provide initial telephone	Yes	Yes	Yes	Yes	Yes

advice or attend in person					
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\*must be Engaged by you. For the purposes of assessing whether Accredited Representatives are Engaged, only Paragraph 6.22 (b) will be considered, and any reference to court hearings will be disapplied. A minimum of 24 Police Station Attendances in each rolling 12 month period is required for Accredited Representatives.

9.29 Subject to Paragraph 9.28 and Section 2, you may use staff who are not employed by you. Any work conducted for you by staff (whether or not they are employed by you) is subject to the Service Standards and your obligations under this Contract which must be met. This includes work conducted by Designated Fee-Earners or Caseworkers and staff who are not designated.

9.30 When you delegate work to a Representative:

- (a) you must ensure that the Representative is competent to do the work; and
- (b) you must ensure that the Representative is appropriately supervised; and
  - (i) if a Fixed Fee is payable, the travel time is counted for the purposes of assessing whether the matter is an Escape Fee Case; or
  - (ii) if the Matter is claimable as an Escape Fee Case, the time claimed for travel must not exceed 45 minutes each way.

Where this Paragraph is applied the fares and/or mileage claimed should not exceed that which would have been paid had the journey lasted less than 45 minutes.

9.31 Before attending the Police Station, the Representative must have the telephone number of his or her supervising Solicitor (including an out of office hours number if appropriate). The Representative must be able to contact the supervising Solicitor (or another Solicitor in the organisation with sufficient experience of Police Station work) in case the Representative requires guidance as to how to proceed with the Matter when providing Police Station Advice and Assistance.

9.32 A written report on each Matter must be submitted by the Representative to the conducting Solicitor once the Matter has concluded and at the latest by the next working day.

9.33 A Solicitor supervising Representatives must document, within 7 days of the Representative's inclusion on the Police Station Register:

- (a) the dates by which each test(s) must be passed in the preceding 12 months in order to avoid suspension from the Register; and
- (b) the process that the supervising Solicitor will use to ensure that the Representative's work is quality assured.

Failure to comply with this requirement will be construed as a serious shortcoming in supervision justifying suspension under Paragraph 9.37 below.

- 9.34 A Probationary Representative must not provide Police Station Advice and Assistance on an indictable only offence.
- 9.35 A Probationary Representative must only provide Police Station Advice and Assistance for the Provider at which his or her supervising Solicitor is based.
- 9.36 A Representative must not be employed as a special Constable or in any other capacity that may cause a conflict of interest when undertaking Contract Work.
- 9.37 A Solicitor may be suspended from acting as a Supervisor of Representatives if serious shortcomings in supervision have been identified and remedial action has not been taken or is ineffective.

### **Mandatory Attendance**

- 9.38 Subject to Paragraph 9.40, you must provide the following services once a Matter has been accepted:
  - (a) attendance at the Police Station to provide advice and attend all police interviews with the Client where the Client has been arrested in connection with an offence;
  - (b) attendance at any identification parade, group identification or confrontation; and
  - (c) attendance at the Police Station where the Client complains of serious maltreatment by the police.
- 9.39 If exceptional circumstances exist which justify non-attendance at the Police Station, the Solicitor or Representative must record his or her decision not to attend, including details of the exceptional circumstances and the reasons for the decision on the case file.
- 9.40 Attendance at video identification parades is at your discretion. Where attendance is justified this is within the scope of this Unit of Work and the costs of which may be included in a claim for a Police Station Attendance Fixed Fee and, if applicable, in a claim for your costs to be assessed by us if the Matter is claimable as an Escape Fee Case.

### **Additional service requirements for Duty Solicitors**

- 9.41 You must comply with the provisions of Section 6.
- 9.42 Subject to Paragraphs 9.43 and 9.44 below, the following services must be provided once a case has been accepted:
  - (a) initial advice by a Duty Solicitor (or, if appropriate in the circumstances of the Matter, an Accredited Representative) personally by speaking to the Client either on the telephone or, advice in person if the Duty Solicitor (or Accredited Representative) is at or near to the Police Station and can immediately advise the Client. Where the police refuse to permit the suspect to speak to the Duty Solicitor (or Accredited Representative) on the telephone, the Duty Solicitor (or Accredited Representative) may attend the Police Station. If the Client is incapable

of speaking to the Duty Solicitor (or Accredited Representative), initial advice may be postponed. The Duty Solicitor (or Accredited Representative) must make arrangements to provide initial advice as soon as the Client is capable of speaking to him or her;

- (b) the provision of advice where a Client is to be charged with an offence on the implications of the caution which will be given when the Client is charged. Consideration must also be given as to whether attendance should take place at that time bearing in mind whether it is possible to give confidential telephone advice and the possible consequences of not making a statement when being charged; and
- (c) if a police interview and any identification parade, group identification or confrontation is postponed to a time when the Duty Solicitor is no longer on duty or, if on a Panel, where it is no longer convenient to act as a Duty Solicitor, he or she must make arrangements to ensure that the Client continues to receive advice either by another Duty Solicitor or as the Client's Own Solicitor. The Duty Solicitor may continue to act on an Own Solicitor basis if instructed to do so.

9.43 Subject to Paragraph 9.44 below, attendance is mandatory under Paragraph 9.42(c) above. In all other Matters, when assessing whether attendance is necessary the Duty Solicitor must consider whether advice can be given over the telephone with sufficient confidentiality and if he or she can communicate effectively with the Client by this means.

9.44 If exceptional circumstances exist which justify non-attendance at the Police Station, the Duty Solicitor (or, if appropriate in the circumstances of the Matter, an Accredited Representative) must record his or her decision not to attend, including details of the exceptional circumstances and the reasons for the decision on the case file.

9.45 Before advice is given, the Client must be informed of the status of the Duty Solicitor or Representative.

9.46 Where required by local instructions, all staff undertaking Police Station Duty Solicitor work must carry an identification card as specified by us for production when attending Police Stations.

9.47 If a Duty Solicitor (or Accredited Representative as appropriate) is already at the Police Station when a Client requests the Duty Solicitor, he or she must inform the DSCC of this fact when a request for advice is accepted. If a conflict of interest arises the case must be referred back to the DSCC.

9.48 Where you accept a Matter referred by the DSCC you must be able to arrange attendance at the Police Station, if necessary, within 45 minutes.

9.49 You must use all reasonable endeavours to accept Panel and Back-up Matters referred by the DSCC.

9.50 You may use non-Duty Solicitors, Accredited Representatives or Solicitors holding the PSQ to receive calls from the DSCC, and such staff may accept a referral from the service provided that:

- (a) we are satisfied that the staff concerned have been effectively trained to undertake such a role; and
- (b) there are clear procedures in place for such staff to follow which ensure that referrals are not accepted unless there is a Duty Solicitor,

Accredited Representative or Solicitor holding the PSQ available to make first contact with the Client immediately and which ensure that referrals are passed to such individual immediately; and

- (c) a Duty Solicitor, Accredited Representative or Solicitor holding the PSQ must be available to make first contact with the Client immediately and able to arrange attendance at the Police Station, if necessary, within 45 minutes.

### **Retaining Matters until the Investigation is concluded**

- 9.51 You must retain a Matter once it has been accepted and must, subject to the provisions below, continue to act for that Client until the end of the Investigation.
- 9.52 Duty Solicitor Matters, once accepted, may only be handed back to the DSCC before you have finished providing Police Station Telephone Advice or Police Station attendance in the following circumstances:
  - (a) you are unable to continue to act personally and there is no other suitable person in your organisation able to act and you are unable to instruct a suitable Agent; or
  - (b) the Client removes or rescinds their instructions from your organisation; or
  - (c) your organisation is unable to act because you have legitimate concerns about a breach of your professional code of conduct; or
  - (d) you confirm that you will not claim a Police Station Advice and Assistance Fixed Fee or any other remuneration for the case.
- 9.53 Where a Matter is handed back to the DSCC, the reasons must be clearly recorded on the file. You must keep a record of all Matters handed back to the DSCC.

### **Special Cases**

#### *Investigations by non-police agencies*

- 9.54 You may not claim for Police Station Advice and Assistance if you attend a Client making a voluntary attendance in connection with an investigation by an agency other than the police unless a Constable is present. If you provide Advice and Assistance to a Volunteer in circumstances where a Constable is not present, then you cannot claim for the work as Police Station Advice and Assistance. The Contract Work must be claimed as Advice and Assistance under Paragraph 9.113 to 9.140 if the Client satisfies the relevant Qualifying Criteria.
- 9.55 An interview with a Volunteer may take place in a location other than a Police Station.
- 9.56 Where a Client is asked to attend an interview for questioning by a non-police body, regarding possible criminal charges, Advice and Assistance may be given under Paragraphs 9.113 to 9.140 if the Client satisfies the Qualifying Criteria. Any extension would depend upon factors such as the nature and complexity of the investigation, the distance to travel and the likely length of the interview.

### *Investigations by Services Police*

- 9.57 If the Client is a Services Person at a services establishment or elsewhere in the UK assisting with an investigation by the Services Police or suspected of a Serious Service Offence where:
- (a) the investigation involves any offences which cannot be dealt with summarily; or
  - (b) the offence appears to the interviewing Services Police to be serious,
- an Own Solicitor or Duty Solicitor or employed barrister or Accredited Representative may attend personally upon the Client where he or she considers that such attendance is necessary for the protection of the Client's interests.
- 9.58 If the Client is a Services Person requiring Advocacy Assistance within England and Wales at a custody hearing before a judicial officer under the Armed Forces Act 2006, an Own Solicitor or Duty Solicitor or employed barrister or Accredited Representative must attend personally upon the Client to provide Advice and Assistance including Advocacy Assistance.
- 9.59 This Unit of Work does not include any matter in connection with an investigation by Services Police where an attendance takes place outside England and Wales.
- 9.60 The services described in Paragraph 9.58 and 9.59 above may only be provided by an Own Solicitor or Duty Solicitor or employed barrister or an Accredited Representative (save that in the case of Paragraph 9.59, an Accredited Representative must also be a Solicitor or employed barrister) where the Matter has been referred by the DSCC or accepted as a Duty Solicitor Matter at the services establishment.

### *Immigration Advice*

- 9.61 Subject to Paragraph 9.65 below, where you give Police Station Advice and Assistance and it is apparent, or becomes apparent, that an immigration issue arises, you must give Advice and Assistance to the Client up until the point where the immigration authorities take over conduct of the investigation and it has been confirmed that no criminal offence or charge is being pursued.
- 9.62 You may continue to advise after this point if the Client remains in detention and requires advice in relation to a criminal offence (which may include an Immigration Offence).
- 9.63 In relation to any non-criminal immigration issue unless the Client chooses to instruct his/her lawyer you must either:
- (a) refer the issue back to the DSCC (who will arrange for the provision of telephone advice by one of our civil Providers with a contract to provide immigration advice to individuals detained at the Police Station); or
  - (b) consider whether it is practical to refer the immigration issue to a Provider with a contract in the Immigration and Asylum category of work in the local area (which may include your organisation).
- 9.64 You must not give Police Station Advice and Assistance where:

- (a) an individual is detained after entry and is served with illegal entry papers or a notice of intention to deport; or
  - (b) an individual is detained by the immigration authorities on entry; or
  - (c) an individual is arrested by police on behalf of the immigration authorities where no criminal allegations are made and is detained under the immigration authorities' administrative powers.
- 9.65 You must treat an investigation as taken over by the immigration authority once you have verified (by confirmation from the Police or Immigration Officer) that:
- (a) the immigration authorities will take over; and
  - (b) the police are not intending to interview until the immigration authorities take over; and
  - (c) there is no other criminal offence or other reason for detention; and
  - (d) the police have confirmed to you that they intend to do no more than simply hold the detainee until the arrival of the immigration authorities.
- 9.66 You must have a clear policy and procedure(s) for referral in accordance with Section 2. We expect organisations to build links with immigration providers and document details of appropriate providers to which you will refer Clients.

### **Previous Police Station Advice and Assistance**

- 9.67 You must not make a Claim under this Contract for Police Station Advice and Assistance given to a Client who has received Police Station Advice and Assistance for the same Matter from another Provider within the six months preceding the application, except where:
- (a) there is a gap in time and circumstances have changed materially between the first and second or subsequent occasions when the Police Station Advice and Assistance was sought;
  - (b) the Client has reasonable cause to transfer from the first Provider; or
  - (c) the first Provider has confirmed to you that he or she will make no claim for payment for the Police Station Advice and Assistance.
- 9.68 You must make reasonable enquiries of your Client, before you provide Police Station Advice and Assistance to ascertain whether they have received previous Police Station Advice and Assistance in the same Case in the last six months, and record this on your file. If in doubt, you must assume that previous Advice and Assistance has been given and ensure that any work you carry out reflects the fact that some work may already have been done on the Matter to ensure that there is no element of repetition.
- 9.69 If a Client changes Designated Fee Earner within the same organisation or a Designated Fee Earner moves to work for a different Provider and continues to advise the Client, then there will not have been Police Station Advice and Assistance from 'another Provider' for the purposes of Paragraph 9.67, but to the extent the Designated Fee Earner moves to work for a different Provider the second or subsequent Provider may not make a Claim for Police Station Advice and Assistance in addition to the first Provider. However, if

the Client instructs another Provider and the same Solicitor does not continue to provide Police Station Advice and Assistance to the Client, this will be Advice and Assistance from 'another Provider'.

- 9.70 You must not provide and claim for Police Station Advice and Assistance under the terms of any of the exceptions contained at Paragraph 9.67 above where:
- (a) the Client simply disagrees with the first advice and wants a second opinion;
  - (b) there is only a short time between the first and second occasions when the Police Station Advice and Assistance is sought and no material change of circumstances has occurred;
  - (c) the change requested is from a second to a third Provider (unless exceptionally it is reasonable for a further change); or
  - (d) there is no reasonable explanation for the Client seeking further Police Station Advice and Assistance from a new Provider.
- 9.71 Where Police Station Advice and Assistance is provided in contravention of the terms of this Section, then the work undertaken must not be claimed or paid as Contract Work.
- 9.72 If the Client has received previous Advice and Assistance but you are permitted to provide further Police Station Advice and Assistance under Paragraph 9.67, you must assign a new UFN and must make a note on the file to confirm that another Provider has given Police Station Advice and Assistance previously. In addition, the Client must complete a fresh application form and must meet the Qualifying Criteria. This rule applies equally where previous Advice and Assistance has been provided by an Own Solicitor or a Duty Solicitor.
- 9.73 It is your responsibility to ascertain whether previous Police Station Advice and Assistance has been provided in the same Matter by making reasonable enquiries of your Client at the earliest opportunity. If the Client has received Police Station Advice and Assistance, and the circumstances at 9.709.70(a) to (c) do not apply, you may either provide Police Station Advice and Assistance and not make a Claim for it, or should require the Client to contact the Provider who provided the original Police Station Advice and Assistance.

#### **Further instructions after a Matter ends or a Claim has been submitted**

- 9.74 Where you have claimed a Police Station Advice and Assistance Fixed Fee, you may not make any further Claim in the same Matter for Free Standing Advice and Assistance.
- 9.75 Where you have previously provided Advice and Assistance to a Client in relation to a Matter, and you have already claimed for the Matter in a Claim submitted to us in accordance with the terms of this Specification, then any further Advice and Assistance provided to the Client in relation to the same Matter (including where a Client is released without bail and subsequently subject to further investigation in relation to the same Matter) must be the subject of a separate application. You must not claim a second Fixed Fee, but the original costs (as recorded) will be relevant in determining whether the Matter subsequently qualifies as an Escape Fee Case and for the additional costs to be paid as such, in addition to the Fixed Fee or Escape Fee Case Costs already paid.



- 9.76 You must not provide Advice and Assistance in relation to a Matter where you have previously provided it unless there are substantive issues outstanding from the first occasion when Advice and Assistance was provided or there has been a material development or change in the Client's circumstances such that further Advice and Assistance is now required.

### **Remuneration**

- 9.77 Where you provide Police Station Telephone Advice followed by Police Station attendance in the same Matter, you must not claim the Police Station Telephone Advice Fixed Fee in addition to the Police Station Attendance Fixed Fee.
- 9.78 The Police Station Attendance Fixed Fee covers any telephone advice followed by subsequent attendance. However, in such circumstances, you can use both the Police Station Telephone Advice Fixed Fee and the Police Station Attendance Fixed Fee in your calculation for Escape Fee Cases.

### **More than one Investigation**

- 9.79 If a Client is subject to an Investigation for which a Police Station Telephone Advice Fixed Fee is claimable and a further Investigation(s) in relation to an arrest or warrant for breach of bail is commenced at the same time, you may make only one Claim for Police Station Telephone Advice in relation to all Investigations.
- 9.80 If you represent a Client at the Police Station, and that Client is under investigation for a number of different offences, the starting point is that you may only claim one Police Station Attendance Fixed Fee for that Investigation. You may claim more than one Fixed Fee in circumstances where your Client has genuinely separate legal problems requiring separate advice. A file note should set out your justification for this.
- 9.81 If a Client is bailed to return to a Police Station, that is a continuation of the same Investigation.
- 9.82 If there is more than one offence being investigated in a Matter and one of these Investigations concludes (whether by charge or otherwise but not including circumstances in which a Matter is discontinued or no further action is taken) and the Client is bailed to return to the Police Station in relation to other ongoing investigations, then the attendance on that return date entitles you to claim another Fixed Fee.
- 9.83 If you advise more than one Client during the course of a single Investigation, one Police Station Attendance Fixed Fee may be claimed for each Client whom you advise at the Police Station in that Investigation.

### **Police Station Telephone Advice and calculating Escape Fee Cases**

- 9.84 When you are assessing whether your Police Station Advice and Assistance work in a Matter should be paid as an Escape Fee Case rather than by Fixed Fee you must include one Police Station Telephone Advice Fixed Fee in your calculation provided that the Matter is not a Criminal Defence Direct Matter and you have provided at least one telephone call with the Client during the Investigation.

### **Payment for Police Station Attendance Fixed Fees**

- 9.85 A Police Station Attendance Fixed Fee must be paid for all Police Station attendance undertaken on a Matter where a Solicitor, employed barrister, Accredited Representative or Probationary Representative attends a Client in the Police Station, unless that Matter qualifies as an Escape Fee Case.
- 9.86 One Police Station Attendance Fixed Fee must be claimed for each Matter in respect of which you have provided Police Station attendance, irrespective of how many instances of Police Station Advice and Assistance (Police Station attendance and/or Police Station Telephone Advice) are given.
- 9.87 When a number of charges or Investigations arise out of one set of circumstances, then you must only claim one Police Station Attendance Fixed Fee.
- 9.88 When a number of Clients are subject to police Investigations in relation to the same set of circumstances, you must claim separate Police Station Attendance Fixed Fees in respect of each Client (but only provided you are able to act without conflict or breach of this Contract or your professional obligations).
- 9.89 If you are instructed by the DSCC to represent two or more Clients at the Police Station and it becomes apparent that you will not be able to act for both (or more) without being in conflict, you may only claim one Police Station Attendance Fixed Fee.
- 9.90 Where the Client raises several legal issues during a Police Station attendance, a single Fixed Fee must be claimed, even if they do not concern the same set of circumstances.
- 9.91 You must continue to record and report all profit costs, and the cost of waiting time to us when you make a Claim for Police Station attendance and you must use the correct Claim/stage reached codes notified to you in the Contract Guide.
- 9.92 You must not make a separate claim for:
- (a) a Police Station Telephone Advice Fixed Fee; or
  - (b) a Criminal Defence Direct Fixed Acceptance Fee in addition to claiming a Police Station Attendance Fixed Fee or remuneration for an Escape Fee Case (because these sums have already been included in the Police Station Attendance Fixed Fee).

The Criminal Defence Direct Fixed Acceptance Fee is only applicable when calculating whether a Matter is an Escape Fee Case.

### **Police Station Fixed Fees – multiple investigations**

- 9.93 There are circumstances outlined in the Contract Guide which allow you to claim Police Station Fixed Fees for multiple investigations.

### **Criminal Defence Direct Fixed Acceptance Fee**

- 9.94 Where a former Criminal Defence Direct Matter is referred to you for Police Station attendance, you must include one Criminal Defence Direct Fixed Acceptance Fee in your calculations for Escape Fee Cases. The Criminal Defence Direct Fixed Acceptance Fee applies to any and all telephone calls you may undertake on the former Criminal Defence Direct Matter in the

Criminal Investigations Class, and is applicable irrespective of the number or nature of calls made.

### **Payment for Police Station attendances - Escape Fee Cases**

- 9.95 Where in any Matter the total value of Police Station attendance added to the value of any Police Station Telephone Advice Fixed Fee and Criminal Defence Direct Fixed Acceptance Fee is above the Escape Fee Case Threshold you will be eligible for remuneration on an exceptional basis for that Matter as an "Escape Fee Case".
- 9.96 For each Scheme, there is an Escape Fee Case Threshold level which is specified in the Criminal Remuneration Regulations. If a Police Station attendance in a Matter, recorded at the Hourly Rates set out in the Criminal Remuneration Regulations exceeds the applicable Escape Fee Case Threshold, you may apply to claim all work above this threshold at the appropriate Hourly Rate.
- 9.97 Work up to the threshold level will attract the relevant Police Station Attendance Fixed Fee for that Scheme and this, together with the Hourly Rates you may make a Claim for, will constitute the Escape Fee Case Fee.

### **Using Duty Solicitor rates in your calculation for Escape Fee Cases**

- 9.98 You may only use the Duty Solicitor rates set out in the Criminal Remuneration Regulations in your calculation for Escape Fee cases only when a Duty Solicitor or Accredited Representative is acting as such in accordance with this Contract and the Claim relates to:
- (a) attendances throughout a Duty Period; or
  - (b) attendances that take place after acceptance of a Matter up until the point when a Client is released from the initial continuous period of custody.

Any subsequent Police Station Advice and Assistance provided by you on the same Matter outside the Duty Period must be calculated at the Own Solicitor rates which are set out in the Criminal Remuneration Regulations.

### **Duty Solicitor serious offence rates**

- 9.99 You may use the Duty Solicitor serious offence rates in your calculation for Escape Fee Cases provided that:
- (a) The attendance is to advise a Client under arrest for one or more of the following serious offences, either as a principal or as a secondary party, or who has been arrested on a warrant for failing to answer bail or an extradition warrant in respect of a case in which he or she is accused of such an offence:
    - i. treason (common law);
    - ii. murder (common law); soliciting to murder (s.4 Offences Against the Persons Act 1861);
    - iii. manslaughter (Homicide Act 1957 and common law);
    - iv. causing death by dangerous driving(s.1 Road Traffic Act 1988);
    - v. rape (s.1 Sexual Offences Act 1957);
    - vi. rape (s.1 Sexual Offences Act 2003);
    - vii. assault by penetration (S.2 Sexual Offences Act 2003);

- viii. penetration of a child under 13 (S. 6 Sexual Offences Act 2003);
- ix. assault of a child under 13 by penetration (S. 6 Sexual Offences Act 2003);
- x. robbery (S. Theft Act 1968);
- xi. assault with intent to rob (common law);
- xii. arson (Sections 1(1), 1(2) or 1(3) Criminal damage Act 1971);
- xiii. perverting the course of public justice (common law);
- xiv. conspiracy to defraud (common law);
- xv. kidnapping (common law);
- xvi. wounding or grievous bodily harm (Sections 18 and 20 Offences against the Person Act 1861);
- xvii. conspiracy to commit any of the above offences (s.1 Criminal Law Act 1977);
- xviii. soliciting or inciting to commit any of the above offences (common law);
- xix. attempting to commit any of the above offences (Sections 1 or 1A Criminal Attempts Act 1981);
- xx. any offence if the Client is accused of possessing a firearm, shotgun or imitation firearm;
- xxi. any offence if the Client is detained under S.41 of the Terrorism Act 2000;

- (b) Duty Solicitor rates would normally be payable;
- (c) the attendance is personally undertaken by a Duty Solicitor who is Engaged by you;
- (d) the attendance is undertaken during a Duty Period; and
- (e) the attendance takes place after acceptance of a Matter up until the point when the Client is released from the initial continuous period of custody.

9.100 You must not claim at the Duty Solicitor serious offences rate if you have had your Claims assessed at "category 3" (or equivalent) at the last Audit prior to the Police Station unless:

- (a) the time limit for appealing the Assessment has yet to expire; or
- (b) within that time limit, an appeal has been made but has not been finally determined.

### **Rules on Claiming**

9.101 The rates in the Criminal Remuneration Regulations apply to work undertaken by an Accredited Representative deployed in accordance with the terms of this Specification. Advice and Assistance given by a Representative on your behalf must not be claimed under this Contract unless he or she is registered with us and meets the requirements of this Specification and the Police Station Register Arrangements when the advice is given.

9.102 In a Police Station Advice and Assistance Matter which is claimable as an Escape Fee Case, we will not allow on Assessment any claim of more than 45 minutes travelling time (whether by you or an Accredited Representative).

- 9.103 A single Police Station Advice and Assistance Fixed Fee Claim on a Contract Report Form must be submitted for all work undertaken for a Client on the same Matter. If you give Advice and Assistance or further Police Station Advice and Assistance on the same Matter, you must use the same UFN. This Paragraph should be read with Paragraph 9.135.
- 9.104 A Claim must only be submitted when:
- (a) the Criminal Investigation has been concluded, either by way of the Client being charged or reported for summons, or the Matter has been disposed of in any other way; or
  - (b) it is known that no further work will be undertaken for the Client in the same Matter; or
  - (c) it is unclear whether further work will be required and a minimum of one month has elapsed since the last work in the Matter was undertaken. This provision will not apply where a Client has an outstanding bail back in the Matter, unless it is known that further work will not be undertaken on that occasion; or
  - (d) post-charge work has been undertaken that is within the scope of this Unit of Work, and is not the subject of a claim under the Representations Unit of Work.
- 9.105 If post-charge work is claimed in this Class of Work where the Client is already represented on the same Matter or Case in the Criminal Proceedings Class of Work then the same UFN must be assigned as for the substantive proceedings. Any post-charge work done outside the Police Station must be undertaken and claimed in the Criminal Proceedings Class of Work.
- 9.106 Travel, waiting and attendance at the Police Station must be recorded for the purposes of determining whether a Matter qualifies as an Escape Fee Case where post-charge work is undertaken within the scope of this Unit of Work but no post-charge telephone calls (whether routine, advice or fixed fee) must be claimed under the Criminal Investigations Class except where the Client is arrested for breach of bail conditions or on a warrant following failure to appear at the magistrates' or Crown Court.
- 9.107 If Police Station Advice and Assistance is claimed and you subsequently provide Advocacy Assistance to the same Client on the same Matter, then the same UFN must be assigned and the Advocacy Assistance work must be claimed at the appropriate rate separately from any claim for Police Station Advice and Assistance.
- 9.108 Where you have advised or assisted more than one Client in respect of the same Investigation, you must submit a separate Claim for a Police Station Advice and Assistance Fixed Fee for each Client using the Contract Report Form. You must apportion the time spent between each Claim and retain on file a breakdown of the total time spent and the work undertaken for each individual Client. You must assign a separate UFN to each Client in accordance with the rules in Section 4 and the Contract Guide.

### **Payment for Police Station Telephone Advice**

- 9.109 Police Station Telephone Advice is paid as part of the Police Station Attendance Fixed Fee, except as outlined in Paragraph 9.112.

- 9.110 You must not claim for Police Station Telephone Advice if Criminal Defence Direct have given telephone advice.
- 9.111 You may make a Claim for payment of a Police Station Telephone Advice Fixed Fee only in the following circumstances, where:
- (a) the Matter is not a Criminal Defence Direct Matter; and
  - (b) you do not attend the Client at the Police Station and you make no Claim for Police Station Advice and Assistance Fixed Fee; and
  - (c) you provide at least one telephone call with the Client during the Investigation; or
  - (d) the circumstances set out at Paragraph 9.10(f) apply.
- 9.112 You must not make more than one Claim for payment of Police Station Telephone Advice in each Investigation irrespective of the number of telephone calls to the Client, police or other parties in the course of the Investigation.

## **Work conducted outside the Police Station: Free standing Advice and Assistance (Own Solicitor)**

### **Scope**

9.113 You may provide Free Standing Advice and Assistance under this Unit of Work to a Client during a Criminal Investigation. You should note that an Upper Limit specified in the Criminal Remuneration Regulations applies to work undertaken under this Unit of Work and operates as a Costs Limitation.

### **Qualifying Criteria**

9.114 The Sufficient Benefit Test set out in Section 3 must be satisfied in order to provide Free Standing Advice and Assistance.

9.115 Regulations impose a Financial Eligibility Test which must be satisfied in order to provide Free Standing Advice and Assistance. Documentary evidence as to the Client's means must be kept on your file.

### **Witnesses**

9.116 You may only provide Advice and Assistance to a witness if there is a complicating factor (as specified in the Contract Guide).

### **Complaints of maltreatment by the Police**

9.117 These complaints must be dealt with as part of the general advice on the overall case. The only time a separate application for Advice and Assistance must be signed is where the nature of the complaint raises a serious and proper issue which cannot be dealt with within the context of the general criminal advice being given.

9.118 These cases must not be confused with claims against the police in relation to wrongful arrest, false imprisonment or malicious prosecution for which an application for a determination for Associated Civil Work must be made to us.

### **Case Starts and Ends**

#### **Application procedures**

9.119 The CRM1 and CRM2 application forms must be completed in accordance with Section 4.

#### **Postal applications**

9.120 You may only exercise the Delegated Function to accept an application for Advice and Assistance by post from a Client where there is good reason to do so. You must note the good reason on your file.

#### **Telephone advice**

9.121 You may Claim payment for advice given to a Client over the telephone before that Client has signed the application form only where:

- (a) the Client cannot for good reason attend your Office; and
- (b) the Client meets the Qualifying Criteria for the provision of Advice and Assistance (including the Financial Eligibility Test); and

- (c) the Client has subsequently signed the application form.

### **Outward Travel**

- 9.122 You may Claim for the mileage or actual cost of public transport for travel but not travelling time, except as allowed below to visit a Client away from your Office before the application form is signed, where:
- (a) the visit is justified for good reason (and you note that good reason on your file); and
  - (b) the Client meets the Qualifying Criteria for this Unit of Work and has subsequently signed the application form.
- 9.123 Where you are visiting the Client in detention, prison or hospital then you may also claim the travelling time at the appropriate rate. The provisions of Paragraphs 9.122(a) and (b) above will need to be satisfied before any Claim is made.
- 9.124 Costs must be reasonably incurred taking account of all the circumstances including, for example, the distances involved as against the availability of advice from a more local contractor and the justification for travelling to attend on the Client at all, bearing in mind that telephone advice can be given and applications accepted by post.

### **Previous Advice and Assistance**

- 9.125 You may not make a Claim for Advice and Assistance given to a Client who has received Advice and Assistance for the same Matter from another Provider within the six months preceding the application, except where:
- (a) there is a gap in time and circumstances have changed materially between the first and second occasions when the Advice and Assistance was sought, for example, a Client has been charged or convicted in the intervening period; or
  - (b) the Client has reasonable cause to transfer from the first Provider e.g. conflict of interest; or
  - (c) the first Provider has confirmed to you that he or she will be making no Claim for payment for the Advice and Assistance; or
  - (d) Advice and Assistance was originally given at a Police Station.

When providing Advice and Assistance in the circumstances set out in this Paragraph you must record the justification for doing so on the file. For the avoidance of doubt, this is a Delegated Function.

- 9.126 If a Client changes Designated Fee Earner within the same organisation or a Designated Fee Earner moves to work for a different Provider and continues to advise the Client, then there will not have been Advice and Assistance from 'another Provider' for the purposes of Paragraph 9.125 and the second or subsequent Provider may not Claim for Advice and Assistance in addition to the first Provider. However, if the Client instructs another Provider and the same Solicitor does not continue to provide Advice and Assistance to the Client, this will be Advice and Assistance from 'another Provider'.



- 9.127 You cannot Claim for Advice and Assistance under the terms of any of the exceptions contained in Paragraphs 9.125(a) to (d) above where:
- (a) The Client simply disagrees with the first advice and wants a second opinion;
  - (b) There is only a short time between the first and second occasions when the Advice and Assistance is sought and no material change of circumstances has occurred;
  - (c) The change requested is from a second to a third Provider (unless exceptionally it is reasonable for a further change); or
  - (d) There is no reasonable explanation for the Client seeking further Advice and Assistance from a new Provider.
- 9.128 Where Advice and Assistance is provided in contravention of the terms of Paragraph 9.125, then the work undertaken must not be claimed or paid as Contract work.
- 9.129 If the Client has received previous Advice and Assistance but you provide further Advice and Assistance under Paragraph 9.125, you must assign a new UFN and must make a note on the file to confirm that Advice and Assistance has been given previously by another Provider. In addition, the Client must complete a fresh application form and must meet the Qualifying Criteria.
- 9.130 You must ascertain whether previous Advice and Assistance has been provided in the same Matter by making reasonable enquiries of your Client at the earliest opportunity. If the Client has received Advice and Assistance, and the circumstances at 9.125(a) to (d) do not apply, you must either provide Advice and Assistance and not make a Claim for it, or require the Client to contact the Provider who provided the original Advice and Assistance.
- 9.131 If you provide Advice and Assistance where previous Advice and Assistance has been given for the same Matter by another Provider then any work undertaken by the previous Solicitor will not count for the purposes of the Upper Limit applicable for this Unit of Work.

#### **Further instructions after a Matter ends or a Claim has been submitted**

- 9.132 Where you have previously provided Advice and Assistance to a Client in relation to a Matter, and you have already claimed for the Matter in a Claim submitted to us in accordance with the terms of this Specification, then any further Advice and Assistance provided to the Client in relation to the same Matter must be the subject of a separate application. The original Upper Limit (as extended) will continue to apply, where relevant.
- 9.133 It will not be reasonable to provide Advice and Assistance in relation to a Matter where you have previously provided it unless there are substantive issues outstanding from the first occasion when Advice and Assistance was provided or there has been a material development or change in the Client's circumstances such that further Advice and Assistance is required.
- 9.134 If you provide further Advice and Assistance under Paragraph 9.132 then:
- (a) the Client must complete a further application form and you must establish that any Qualifying Criteria are met, where relevant;

- (b) your file must make reference to any previous closed file and the files must be kept together for Audit purposes;
- (c) you must assign a new UFN to the new Matter; and
- (d) you may need to consider an extension to the upper limit where appropriate, unless the previous limit was not exhausted.

### **Rules on claiming**

9.135 If you provide Free Standing Advice and Assistance where you have attended a Police Station in accordance with the Police Station Advice and Assistance Unit of Work, you must not make a separate Claim other than for the Police Station Attendance Fixed Fee for that work. A single Claim must be submitted for all Advice and Assistance work undertaken in the Criminal Investigations Class of Work for a Client in the same Matter irrespective of the number of attendances or occasions on which advice is given, except where a Claim has been submitted already for the same Matter because Paragraph 9.136(c) or (d) apply.

9.136 A Claim must be submitted when:

- (a) the Investigation has been concluded, either by way of the Client being charged or reported for summons, or the Matter has been disposed of in any other way; or
- (b) it is known that no further work will be undertaken for the Client in the same Matter; or
- (c) it is unclear whether further work will be required and a minimum of one month has elapsed since the last work in the Matter was undertaken. This provision will not apply where a Client has an outstanding bail back in the Matter, unless it is known that further work will not be undertaken on that occasion; or
- (d) post charge work at the Police Station has been undertaken that is within the scope of this Unit of Work.

9.137 Where you have advised or assisted more than one Client in respect of the same Investigation, you must submit a separate Claim for each Client using the Contract Report Form. You must apportion the time spent between each Claim and retain on file a breakdown of the total time spent and the work undertaken for each individual Client. You must assign a separate UFN to each Client in accordance with this Specification and Contract Guide.

9.138 If Free Standing Advice and Assistance is claimed and you subsequently provide Advocacy Assistance to the same Client on the same Matter, then the same UFN must be assigned but the Advocacy Assistance work must be claimed at the appropriate rate and separately from any claim for Advice and Assistance.

### **Limits on Claims**

9.139 Subject to any extensions to the Upper Limit granted following an application made under Paragraphs 5.8 to 5.19, the Upper Limit specified in the Criminal Remuneration Regulations applies to Claims.

**Payment**

9.140 You must claim for work undertaken in this Unit of Work at the Hourly Rates as set out in the Criminal Remuneration Regulations.

**Work conducted outside the Police Station: Advocacy Assistance on a warrant of further detention provided under section 15(2)(b) of the Act**

**Scope**

9.141 You may only provide Advocacy Assistance under this Unit of Work to a Client who during a Criminal Investigation is the subject of an application for a warrant of further detention in a magistrates' court or the High Court, before a judicial authority or a senior judge in connection with an application for a warrant of further detention, or for an extension of such a warrant, under sections 43 or 44 of PACE or paragraphs 29 or 36 of Schedule 8 of the Terrorism Act 2000. You should note that an Upper Limit specified in the Criminal Remuneration Regulations applies to work undertaken under this Unit of Work and operates as a Costs Limitation.

**Qualifying Criteria**

9.142 The Sufficient Benefit Test is deemed to be satisfied if you are instructed by a Client who is the subject of an application for a warrant of further detention.

9.143 There is no Financial Eligibility Test under this Unit of Work.

**Application Procedures**

9.144 A determination that an individual qualifies for Advocacy Assistance under this Unit of Work may be made without an application form provided that a note of the determination (in accordance with Paragraph 9.146) is made on the file either before the Advocacy Assistance is to be provided or, if provided at short notice, as soon as practicable thereafter. The determination must be made by a qualified Solicitor who is a Designated Fee Earner, or a Supervisor (excluding a Prison Law Supervisor).

9.145 You may make a determination that an individual qualifies for Advocacy Assistance under this Unit of Work only where the Matter falls within the scope of this Unit of Work.

9.146 You must record the following on file:

- (a) the Client's name and address;
- (b) the UFN;
- (c) the date, time and venue of the court appearance; and
- (d) details of the relevant Unit of Work and confirmation that the Matter falls within any limitations on scope.

**Preparation and follow up work**

9.147 The scope of Advocacy Assistance under this Unit of Work includes any reasonable preparation and follow up work.

**Counsel**

9.148 You may instruct Counsel or in-house advocate in relation to this Unit of Work if the application is before the High Court or a senior judge. You are expected to undertake the advocacy on a warrant of further detention hearing which is before a magistrates' court or judicial authority.

## **Rules on claiming**

- 9.149 A single Claim must be submitted for all Advocacy Assistance undertaken under this Unit of Work for a Client in the same Matter irrespective of the number of attendances or occasions on which advice is given, or the Units of Work included in the Claim.
- 9.150 A Claim must be submitted when:
- (a) the Investigation has been concluded, either by way of the Client being charged or reported for summons, or the Matter has been disposed of in any other way; or
  - (b) it is known that no further work will be undertaken for the Client in the same Matter.

## **Limit on Claims**

- 9.151 Subject to any extensions to the Upper Limit granted following an application made under Paragraphs 5.8 to 5.19, the Upper Limit specified in the Criminal Remuneration Regulations applies to Claims.

## **Payment**

- 9.152 You must Claim for work carried out under this Unit of Work before a magistrates' court or judicial authority at the rates specified in the Criminal Remuneration Regulations.
- 9.153 You must Claim for work carried out under this Unit of Work before the High Court or a senior judge at the rates specified in the Criminal Remuneration Regulations.

**Work conducted outside the Police Station: Advocacy Assistance for armed forces custody hearings provided under section 15(2)(b) of the Act**

**Scope**

- 9.154 You may provide Advocacy Assistance under this Unit of Work to a Client during a Criminal Investigation who is the subject of an application to extend detention in military custody. You should note that an Upper Limit specified in the Criminal Remuneration Regulations applies to work undertaken under this Unit of Work and operates as a Costs Limitation.
- 9.155 This Unit of Work does not include any matter in connection with an investigation by Services Police where an attendance takes place outside England and Wales.

**Qualifying Criteria**

- 9.156 The Sufficient Benefit Test is deemed to be satisfied if you are instructed by a client who is the subject of an application to extend detention in military custody.
- 9.157 There is no Financial Eligibility Test under this Unit of Work.

**Application procedures**

- 9.158 A determination that an individual qualifies for Advocacy Assistance under this Unit of Work may be made without an application form provided that a note of the determination (in accordance with Paragraph 9.159 below) is made on the file either before the Advocacy Assistance is to be provided or, if provided at short notice, as soon as practicable thereafter. The determination must be made by a qualified Solicitor who is a Designated Fee Earner, or a Supervisor (excluding a Prison Law Supervisor) under this Contract.
- 9.159 You must record the following on file:
- (a) the Client's name and address;
  - (b) the UFN;
  - (c) the date, time and venue of the hearing; and
  - (d) details of the relevant Unit of Work and confirmation that the Matter falls within any limitations on scope.

**Preparation and follow up work**

- 9.160 The scope of Advocacy Assistance under this Unit of Work only includes the giving of any advice on appeal.

**Counsel**

- 9.161 You must not instruct Counsel in relation to this Unit of Work.

**Rules on claiming**

- 9.162 A single Claim must be submitted for all Advocacy Assistance undertaken under this Unit of Work for a Client in the same Matter irrespective of the number of attendances or occasions on which advice is given, or the Units

of Work included in the Claim, except where a Claim has been submitted already for the same Matter because Paragraph 9.163(c) applies.

- 9.163 A Claim must be submitted when:
- (a) all work in connection with the Armed Force Custody Hearing has been concluded, either by way of the Client being charged or reported for summons, or the Matter has been disposed of in any other way; or
  - (b) it is known that no further work will be undertaken for the Client in the same Matter; or
  - (c) it is unclear whether further work will be required and a minimum of one month has elapsed since the last work in the Matter was undertaken.
- 9.164 If Advocacy Assistance is claimed in this Class where the Client has already received Police Station Advice and Assistance or Free Standing Advice and Assistance on the same Matter, then the same UFN must be assigned and the work must be claimed at the appropriate rate separately from any claim for Advice and Assistance.

### **Limit on Claims**

- 9.165 Subject to any extensions to the Upper Limit granted following an application made under Paragraphs 5.8 to 5.19, the Upper Limit specified in the Criminal Remuneration Regulations applies to Claims.

### **Payment**

- 9.166 You must claim for work carried out under this Unit of Work at the rates specified in the Criminal Remuneration Regulations.

**Work conducted outside the Police Station: Advocacy Assistance in the magistrates' court in connection with an application to vary police bail conditions provided under section 15(2)(b) of the Act**

**Scope**

9.167 You may provide Advocacy Assistance under this Unit of Work as own Solicitor or having represented the Client as Police Station Duty Solicitor during the Criminal Investigation of a Matter. This Unit of Work relates to an application to vary police bail conditions (including "street bail" conditions) imposed by the police under sections 30CB or 47(1E) of PACE, as amended by the Criminal Justice Act 2003. You should note that an Upper Limit specified in the Criminal Remuneration Regulations applies to work undertaken under this Unit of Work and operates as a Costs Limitation.

**Qualifying Criteria**

9.168 There are no Qualifying Criteria for you to comply with but you must check that the Matter falls within the scope of this Unit of Work.

**Application procedures**

9.169 A determination that an individual qualifies for Advocacy Assistance under this Unit of Work may be made without an application form provided that a note of the determination (in accordance with Paragraph 9.170) is made on the file either before the Advocacy Assistance is to be provided or, if provided at short notice, as soon as practicable thereafter. The grant must be made by a qualified Solicitor who is a Designated Fee Earner, or the Supervisor (excluding a Prison Law Supervisor).

9.170 You must record the following on file:

- (a) the Client's name and address;
- (b) the UFN;
- (c) the date, time and venue of the court appearance; and
- (d) details of the relevant Unit of Work and confirmation that the Matter falls within any limitations on scope.

**Preparation and follow up work**

9.171 The scope of Advocacy Assistance under this Unit of Work only includes any reasonable preparation and giving of any advice on an appeal.

**Counsel**

9.172 You may not instruct Counsel in relation to this Unit of Work.

**Rules on Claiming**

9.173 A single Claim must be submitted for all Advocacy Assistance undertaken under this Unit of Work for a Client in the same Matter irrespective of the number of attendances or occasions on which advice is given, or the Units of Work included in the Claim, except where a Claim has been submitted already for the same Matter because Paragraph 9.174(c) applies.

9.174 A Claim must be submitted when:



- (a) the Criminal Investigation has been concluded, either by way of the Client being charged or reported for summons, or the Matter has been disposed of in any other way; or
- (b) it is known that no further work will be undertaken for the Client in the same Matter; or
- (c) it is unclear whether further work will be required and a minimum of one month has elapsed since the last work in the Matter was undertaken.

9.175 If Advocacy Assistance is claimed in this Class where the Client has already received Police Station Advice and Assistance or Free Standing Advice and Assistance on the same Matter, then the same UFN must be assigned and the work must be claimed at the appropriate rate separately from any claim for Advice and Assistance.

### **Limit on Claims**

9.176 Subject to any extensions to the Upper Limit granted following an application made under Paragraphs 5.8 to 5.19, the Upper Limit specified in the Criminal Remuneration Regulations applies to Claims.

### **Payment**

9.177 You must claim for work carried out under this Unit of Work at the rates which apply to Advocacy Assistance in a magistrates' court (other than by a court Duty Solicitor acting as such which should be Claimed under Paragraph 10.1) which are specified in the Criminal Remuneration Regulations.

**Work conducted outside the Police Station: Advocacy Assistance in the magistrates' court in connection with an application to extend pre-charge bail provided under section 15(2)(b) of the Act**

**Scope**

9.178 You may provide Advocacy Assistance under this Unit of Work as own Solicitor or having represented the Client as Police Station Duty Solicitor during the Criminal Investigation of a Matter. This Unit of Work relates to representing a Client who is subject to an application to a magistrates' court to extend pre-charge bail, either on written evidence or at an oral hearing, under sections 47ZF or 47ZG of PACE. You should note that an Upper Limit specified in the Criminal Remuneration Regulations applies to work undertaken under this Unit of Work and operates as a Costs Limitation.

**Qualifying Criteria**

9.179 There are no Qualifying Criteria for you to comply with but you must check that the Matter falls within the scope of this Unit of Work.

**Application procedures**

9.180 A determination that an individual qualifies for Advocacy Assistance under this Unit of Work may be made without an application form provided that a note of the determination (in accordance with Paragraph 9.181) is made on the file either before the Advocacy Assistance is to be provided or, if provided at short notice, as soon as practicable thereafter. The grant must be made by a qualified Solicitor who is a Designated Fee Earner, or the Supervisor (excluding a Prison Law Supervisor).

9.181 You must record the following on file:

- (e) the Client's name and address;
- (f) the UFN;
- (g) the date, time and venue of the court appearance; and
- (h) details of the relevant Unit of Work and confirmation that the Matter falls within any limitations on scope.

**Preparation and follow up work**

9.182 The scope of Advocacy Assistance under this Unit of Work only includes any reasonable preparation and giving of any advice on an appeal.

**Counsel**

9.183 You may not instruct Counsel in relation to this Unit of Work.

**Rules on Claiming**

9.184 A separate Claim may be submitted for Advocacy Assistance undertaken under this Unit of Work for each separate application to extend pre-charge bail under sections 47ZF or 47ZG of PACE.

9.185 If Advocacy Assistance is claimed in this Class where the Client has already received Police Station Advice and Assistance or Free Standing Advice and Assistance on the same Matter, then the same UFN must be assigned and

the work must be claimed at the appropriate rate separately from any claim for Advice and Assistance.

**Limit on Claims**

9.186 Subject to any extensions to the Upper Limit granted following an application made under Paragraphs 5.8 to 5.19, the Upper Limit specified in the Criminal Remuneration Regulations applies to Claims.

**Payment**

9.187 You must claim for work carried out under this Unit of Work at the rates which apply to Advocacy Assistance in a magistrates' court (other than by a court Duty Solicitor acting as such which should be Claimed under Paragraph 10.1) which are specified in the Criminal Remuneration Regulations.

## **10. Criminal Proceedings**

### **Advice and Assistance and Advocacy Assistance by a court Duty Solicitor provided under section 15(2)(b) of the Act**

#### **Scope**

- 10.1 This Unit of Work may only be undertaken for a Client who is involved in Criminal Proceedings or is the subject of police bail.

#### **Qualifying Criteria**

- 10.2 The Sufficient Benefit Test is set out below and must be satisfied in order to provide Advice and Assistance or Advocacy Assistance under this Unit of Work.

**Advice and Assistance and Advocacy Assistance may only be provided on legal issues concerning English (or Welsh) law and where there is sufficient benefit to the Client, having regard to the circumstances of the matter, including the personal circumstances of the Client, to justify work or further work being carried out.**

#### **Application procedures**

- 10.3 A court Duty Solicitor must check that the Case falls within the scope of service of court Duty Solicitor work before accepting instructions to act.
- 10.4 A determination that an individual qualifies for Advocacy Assistance and/or Advice and Assistance under this Unit of Work may be made by the court Duty Solicitor without an application form provided that a note of the determination (in accordance with Paragraph 10.6) is made on the file either before the Advocacy Assistance or Advice and Assistance is to be provided or, if provided at short notice, as soon as practicable thereafter.
- 10.5 A court Duty Solicitor may make a determination that an individual qualifies for Advocacy Assistance or Advice and Assistance under this Unit of Work only where the Case falls within the scope of this Unit of Work and any other limitations on scope are satisfied.
- 10.6 You must record the following on file:
- (a) the Client's name and address;
  - (b) details of the relevant Unit of Work;
  - (c) whether the Client is in custody or charged with an imprisonable offence; and
  - (d) the date, time and venue of the court appearance.

#### **Service requirements**

- 10.7 A Duty Solicitor at a magistrates' court must provide the following services to any defendant who wishes to receive Advocacy Assistance:
- (a) advice to an individual who is in custody; and
  - (b) the making of a bail application unless the individual has received such assistance on a previous occasion; and

- (c) advice to an individual who is involved in Prescribed Proceedings.
- 10.8 The Duty Solicitor must, subject to Paragraph 10.9, also provide:
- (a) Advice and Assistance and/or Advocacy Assistance to a Client who is in custody on a plea of guilty where the Client wishes the Case to be concluded at that appearance in court, unless the Duty Solicitor considers that the Case should be adjourned in the Interests of Justice of the Client;
  - (b) where necessary, Advice and Assistance and/or Advocacy Assistance to a Client who is before the court as a result of failure to pay a fine or other sum ordered or to obey an order of the court, and such failure may lead to the Client being at risk of imprisonment;
  - (c) Advice and Assistance and, where appropriate, Advocacy Assistance to any other Client who is not in custody provided it is in connection with an imprisonable offence where, in the opinion of the Duty Solicitor, such a Client requires Advice and Assistance and/or Advocacy Assistance;
  - (d) help to a Client who is eligible for assistance from the court Duty Solicitor to make an application for a determination that an individual qualifies for Representation in respect of any subsequent appearance of the Client before the court. Where such an application is made the Duty Solicitor must enquire whether the Client wishes to instruct another Duty Solicitor to act for him or her. If the Client does so wish, the Duty Solicitor must insert the name of that Duty Solicitor in the application form;
  - (e) Advice and Assistance and, where appropriate, Advocacy Assistance to a Client in circumstances described in Paragraph 10.7 above;
  - (f) Advice and Assistance and, where appropriate, Advocacy Assistance to an individual to apply to vary police bail conditions (including "street bail" conditions) imposed by the police under sections 30BC or 47(1E) of PACE, as amended by the Criminal Justice Act 2003; or
  - (g) Advice and Assistance, and where appropriate, Advocacy Assistance to an individual subject to an application by the police to extend police bail under sections 47ZF or 47ZG of PACE.
- 10.9 A Duty Solicitor must not provide Advocacy Assistance in committal proceedings or at a not guilty trial, nor, subject to Paragraph 10.8(e), (f) and (g) above, Advice and Assistance and/or Advocacy Assistance to a Client in connection with a non-imprisonable offence.
- 10.10 When a hearing is adjourned to another day, a Duty Solicitor must not, as Duty Solicitor, provide Advice and Assistance or Advocacy Assistance to a defendant to whom he or she or any other Duty Solicitor has provided services in the same Case. This Paragraph does not prevent a Duty Solicitor from representing the same Client again if that Client's Case is adjourned to a later time that same day.
- 10.11 A Duty Solicitor must not advise or represent any Client at a sitting when that Duty Solicitor or any member of his or her organisation is representing the Crown Prosecution Service in the same court building.

- 10.12 A Duty Solicitor must remain at the court during the Duty Period until it is clear to him or her that Advice and Assistance or Advocacy Assistance is not likely to be required by any defendant. Where it is not clear whether such help is needed, he or she must consult the clerk of the court or other suitable person.
- 10.13 A Duty Solicitor must wear an identification badge during his or her Duty Period at court where required to do so by the magistrates' court or local instructions.
- 10.14 An application for a determination that an individual qualifies for Representation must not be made by you (or anyone working under your Contract) for any Case that concludes on the same day as the court Duty Solicitor session where you have acted as court Duty Solicitor on that Case. Such work must be claimed at the court Duty Solicitor rates set out in the Criminal Remuneration Regulations unless the Case was not within the scope of this Unit of Work.
- 10.15 Where a court prevents the defendant from cross examining a witness under section 38 of the Youth Justice and Criminal Evidence Act 1999 and the court appoints a Duty Solicitor to represent the defendant for the purposes of cross examination, the Duty Solicitor is under a duty to undertake that work unless there are exceptional circumstances that prevent it from doing so. The Duty Solicitor will be paid out of central funds.
- 10.16 You must comply with Section 6 of this Specification.

### **Preparation and follow up work**

- 10.17 The scope of Advocacy Assistance under this Unit of Work, which you must comply with, only includes:
- (a) the giving of any notice of any appeal or making an application to the magistrates' for them to state a case within the ordinary time limit and matters preliminary to that; and
  - (b) any reasonable preparation and follow up work (this may include advising before the hearing (including reasonable preparation and attendance in the Office, correspondence and telephone calls) and advising the Client of the consequences of the outcome),

except that reasonable advice and preparation must only be remunerated when provided during the court duty session.

### **Rules on claiming**

- 10.18 Where Advice and Assistance and/or Advocacy Assistance is provided by the court Duty Solicitor acting as such under this Class of Work, all work undertaken during the court Duty Period must be submitted in a single Claim at the court Duty Solicitor rates set out in the Criminal Remuneration Regulations.
- 10.19 Such a Claim must be submitted separately from a Claim made in this Class for additional work undertaken on the same Matter or Case for the same Client outside of the court Duty Period.

## **Payment**

- 10.20 You must claim for Advocacy Assistance and/or Advice and Assistance provided under this Unit of Work at the rates specified in the Criminal Remuneration Regulations.

**Advocacy Assistance at the Virtual Court provided under section 15(2)(b) of the Act**

**Scope**

- 10.21 This Unit of Work may only be undertaken for a Client during Criminal Proceedings at the Virtual Court.
- 10.22 You may represent the Client at the Police Station or at the court building.

**Qualifying Criteria**

- 10.23 The Sufficient Benefit Test is deemed to be satisfied if the Police have decided that a Case is suitable to be dealt with in the Virtual Court.
- 10.24 There is no Financial Eligibility Test for this Unit of Work.

**Application procedures**

- 10.25 You may make a determination that an individual qualifies for Advocacy Assistance under this Unit of Work only where the Case falls within the scope of this Unit of Work.
- 10.26 You must record the following on file:
- (a) the Client's name and address;
  - (b) the date, time and venue of the Virtual Court appearance; and
  - (c) details of the relevant Unit of Work.

**Preparation and follow up work**

- 10.27 The scope of Advocacy Assistance under this Unit of Work only includes:
- (a) reasonable preparation;
  - (b) all telephone calls;
  - (c) advising the Client of the consequences of the outcome; and
  - (d) completion of any subsequent application for a determination that an individual qualifies for Representation.

**Rules on claiming**

- 10.28 You may claim for Virtual Court work provided under this Unit of Work only if:
- (a) the case is disposed of at the Virtual Court hearing (or a subsequent hearing on the same day where the case is adjourned for pre-sentence reports);
  - (b) the case is adjourned to a second hearing and the defendant fails the means test or does not meet the Interests of Justice Test;
  - (c) you decide not to represent the Client further and no application for a determination that an individual qualifies for Representation is made; or



- (d) you attend the Client, and advise the Client not to participate in the Virtual Court scheme, and do not subsequently represent the Client at a second hearing (whether because the Client fails the means test, does not meet the Interests of Justice Test, or declines to instruct you further).
- 10.29 If the Case is not disposed of at the Virtual Court, and you go on to represent the Client under a Representation Order, then the Virtual Court Appearance Fee must not be claimed. The work undertaken on the Virtual Court hearing can be included in the calculation of the core hours to determine the final value of the Standard Fee.
- 10.30 If the Client already has a Representation Order and the Virtual Court hearing concerns a breach of bail or arrest on a warrant in connection with the same Case that the Representation Order has been issued for, no separate Virtual Court appearance fee is claimable.
- 10.31 You may not represent a Client at a Virtual Court hearing who already has a Representation Order issued on the same matter.

#### **Payment – Virtual Court appearance fee**

- 10.32 Except where Paragraphs 10.29 and 10.30 apply, you must claim for work carried out under this Unit of Work at the Fixed Fees which apply to Virtual Court Advocacy Assistance and which are specified in the Criminal Remuneration Regulations.
- 10.33 Unless expressly authorised in this Contract, you must not Claim any other amount for work carried out in connection with a Virtual Court hearing.

#### **Additional service requirements**

- 10.34 If you accept a call to attend a Virtual Court hearing, you must attend the relevant Police Station (or magistrates' court) at a reasonable time before the Virtual Court hearing time.
- 10.35 If you are a member of a Virtual Court Duty Scheme, you must ensure your Duty Solicitors accept a minimum of 90% of the calls you receive to attend a Virtual Court hearing. You must maintain a record of the evidence of compliance with this requirement. If you fail to meet this requirement, we may remove you from the Scheme unless you provide reasons for your failure which are reasonably satisfactory to us. You may ask us to reconsider our decision on this under Clause 27 of the Standard Terms.

## **Representation in the magistrates' court provided under section 16 of the Act**

### **Scope**

10.36 This Unit of Work covers Representation in a magistrates' court in criminal proceedings (including Prescribed Proceedings) under a Representation Order and includes:

- (a) advice on an appeal; and
- (b) related bail proceedings in the Crown Court or High Court.

It excludes proceedings that are sent for trial under section 51 of the Crime and Disorder Act 1998 (except proceedings in a magistrates' court following a remittal under paragraphs 10(3)(a) or 13(2) of Schedule 3 to the Crime and Disorder Act 1998).

### **Qualifying Criteria**

10.37 In order for you to provide Representation under this Unit of Work:

- (a) the Client must satisfy the Financial Eligibility Test. The Client's eligibility will be assessed by the Representation Authority; and
- (b) the Client must have a determination that they qualify for Representation by the Representation Authority.

### **Application procedures**

10.38 You may not claim for Representation unless a Representation Order has been issued by a Representation Authority following the appropriate application procedure.

10.39 Where a Representation Order is applied for and the Client needs assistance with completing the relevant forms, you may only spend up to 30 minutes providing such assistance. This item of work may then be included in your calculation of costs to determine the appropriate Standard Fee, or to be assessed if the case is claimed as a non-Standard Fee.

### **Pre-Order work**

10.40 A Claim for work under this Unit of Work covers all work undertaken from the date on which the Representation Order is issued. It also covers any legal advice or Representation given on the same Case before an Order is granted if the following three conditions are met:

- (a) the interests of justice require that the advice or Representation is provided as a matter of urgency i.e., there is a court hearing within ten working days or less of the date when initial instructions are taken;
- (b) there is no undue delay in making an application for Representation which must be submitted no more than five working days after initial instruction; and
- (c) the Pre-Order advice or Representation is given by you and you are subsequently assigned as evidenced in the Representation Order.

10.41 If you provide Representation under this Unit of Work, then any Claim must include any Pre-Order work. Where a Standard Fee is payable, it will apply to all the work required to be included in the same Claim.

10.42 In order to enable us to decide whether Pre-Order work may be claimed and/or allowed, you must note on file the date of initial instruction; the date the application for a determination that an individual qualifies for Representation was lodged with the court and the date of the court hearing.

### **Counsel**

10.43 If you instruct Counsel, the instructions delivered must include a copy of the Representation Order and you must notify Counsel of the UFN, and any amendments made to the Representation Order.

### **Assigned Counsel**

10.44 Where an individual is entitled to Counsel (as may be determined by the court) in accordance with regulation 16 and 17 of The Criminal Legal Aid (Determinations by a Court and Choice of Representative) Regulations 2013, Assigned Counsel must be paid directly by us in accordance with the rates set out in the Criminal Remuneration Regulations and must complete a separate Claim form.

10.45 You must provide Assigned Counsel with details of the UFN which must be inserted on Counsel's Claim. You must submit Counsel's Claim at the same time that you submit your Claim. The time limits for Claims which apply to you also apply to Counsel's Claim.

### **Unassigned Counsel**

10.46 You may instruct Counsel on an unassigned basis to provide magistrates' court Representation where a determination that an individual qualifies for Representation has been made. If you do this, you must agree a fee with Counsel in writing and notify Counsel of the relevant UFN.

10.47 In proceedings for which a Standard Fee is claimed, Counsel's agreed fee must also include any fees agreed between you and Counsel in respect of Counsel's travelling and waiting time and travelling costs. Counsel's travelling and waiting costs cannot be claimed separately from us.

10.48 You must Claim your costs (including the time spent by Counsel in preparation, attendance and advocacy) on the Contract Report Form as a Standard Fee (unless the Case is claimable as a non-Standard Fee Claim). When working out the appropriate Standard Fee, the calculation must be made on the basis that the case was conducted without Counsel. You must use the rates set out in the Criminal Remuneration Regulations applicable for this Unit of Work to determine the correct level of Standard Fee and you must retain on file details of the amount agreed in respect of Unassigned Counsel's fees (if Unassigned Counsel is instructed).

10.49 A Non-Standard Fee Claim will be assessed or audited using the maximum fee principle, on the basis that you conducted the Case without Counsel.

10.50 You must pay Unassigned Counsel's fees. You must agree a fee with Counsel and to make appropriate arrangements for Counsel to be paid in accordance with the Contract. We have no liability to pay Counsel who is instructed on an Unassigned Counsel basis.

- 10.51 The costs payable in respect of Counsel's agreed fee will only be reduced on Assessment on Non-Standard Fees where, and to the extent that, they exceed the costs that would be allowed if you had conducted the case without Counsel.
- 10.52 The professional relationship between you and Counsel will be the same as in a privately funded case.
- 10.53 If more than one Counsel is instructed in the same proceedings, you must reach a separate agreement with each Counsel on fee and payment arrangements.
- 10.54 If you fail to pay Unassigned Counsel within 30 days of receipt of his or her fee note, then Unassigned Counsel may apply to us to be paid directly. We will make enquiries directly with you to establish whether any payment has been or will be made. You must provide us with the relevant UFN and written confirmation of the fee agreed, together with Unassigned Counsel's fee note.
- 10.55 If we are satisfied that Unassigned Counsel has not been paid and agree to pay Unassigned Counsel directly, we will recoup the relevant amount from subsequent payments to you. We will only use this power as a remedy where you have not shown any justified reason for non-payment.

### **Withdrawal of a determination that an individual qualifies for Representation**

- 10.56 You may claim for work undertaken up until the date of withdrawal of a determination that an individual qualifies for Representation.
- 10.57 The time limit for submission of a Claim runs from the date on which withdrawal of the determination that an individual qualifies for Representation came to your knowledge.
- 10.58 Where a determination that an individual qualifies for Representation is withdrawn, you must send without delay all papers and other material in your possession relating to the proceedings to the Client, but retain copies on file for Assessment purposes.

### **Rules on claiming**

- 10.59 Subject to the provisions in relation to claiming below, a single Claim must be submitted for all work undertaken in the Criminal Proceedings Class of Work for a Client in the same Case except where a Claim has been submitted already in the same Case because Paragraph 10.62 below applies. The single Claim must be for one or more of the Units of Work within the Criminal Proceedings Class of Work. Where a Standard Fee is payable, it will apply to all the work required to be included in the same Claim.
- 10.60 A single Claim must be submitted in respect of all Clients where a Claim is made under this Unit of Work for Representation provided to two or more Clients in the same Case.
- 10.61 A single Claim must be submitted where more than one Case is joined.
- 10.62 Subject to Paragraphs 10.60 and 10.61, a Claim may only be submitted when:
- (a) the Case has concluded; or

- (b) it is known that no further work will be undertaken for the Client in the same Case; or
  - (c) it is unclear whether further work will be required or not and a minimum of one month has elapsed since the last work in the Case was undertaken.
- 10.63 Once a Representation Order has been issued, any Pre-Order work given to the Client on issues which form part of the Case covered by the Representation Order must be claimed under the Representation Order.
- 10.64 Where you act for more than one Client in Criminal Proceedings which form a single Case, your Claim for payment must cover all Clients represented. Where you undertake work for more than one Client on the same Case, you must assign the same UFN to each Client for claiming purposes. The work undertaken will form a single Claim to which you must assign the UFN of the "lead" Client in accordance with the Contract Guide. You must retain on file a breakdown of the time spent with each Client which may be requested by us for Assessment or Audit purposes. This information must be submitted as part of your Claim in a Non-Standard Fee Case.
- 10.65 You must retain a copy of the Client's signed declaration on file.
- 10.66 Where sentence is deferred in the magistrates' court, a Claim must be submitted within three months of the date of deferment. A separate Claim may be made for work done only following the deferment. This must be submitted within three months of the Client's reappearance for sentence and must be claimed as a category 1B or category 1A Standard Fee as appropriate to the offence.
- 10.67 Where proceedings in a magistrates' court have not been concluded but a warrant of arrest has been issued, a Claim for costs in respect of work done under a Representation Order must be made not earlier than six weeks and not later than 19 weeks from the date of issue of the warrant. A supplemental Claim may be made for any further work undertaken after the original Claim has been submitted if the Client is arrested or surrenders. The original Claim will then be recalculated.
- 10.68 In Criminal Proceedings in the magistrates' court covered by a Representation Order, a Standard Fee will be paid to you in accordance with the Contract for a Case in accordance with the payment rates set out in the Criminal Remuneration Regulations.
- 10.69 Where the proceedings involve more than one offence, the definition of Case consists of three independent elements or tests. One or more of the following three tests will need to be satisfied to determine whether a Claim for a single Standard Fee, or a whether two or more Standard Fees may be claimed. If the answer to any of one of these tests is "yes", then only one Standard Fee may be claimed:
- (a) are the charges or informations preferred or laid at the same time?;
  - (b) are the charges or informations founded on the same facts? The test here is whether the charges have a common factual origin; or
  - (c) are the charges or informations part of a series of offences? The test here is whether the offences exhibit some similar feature which would allow them to be described as a series of offences.

- 10.70 For the purposes of the definition of a series of offences, a breach of a community penalty or other court order must be treated as an offence. If the defendant is before the court for other reasons, then no separate Standard Fee payment will be made for breach proceedings in respect of a community penalty or other court order, irrespective of whether there is any link between such breach proceedings and any other proceedings being heard at the same time. If breach proceedings are heard alone then they will attract a separate Standard Fee.
- 10.71 We will not pay you for any work done in relation to a defendant who is charged with an offence under s12 of the Drugs Act 2005 (failure to attend an initial assessment or stay for its duration) and is before the court for other matters.
- 10.72 It is your obligation to satisfy us that charges against a defendant or co-defendants constitute more than one Case such as to entitle you to claim more than one Standard Fee.
- 10.73 Where you make a Crown Court or High Court bail application, the work will form part of a "Case" for the purpose of Standard Fees and must be claimed as part of the Claim for work undertaken in the magistrates' court in accordance with this Specification.

### **Non-Standard Fee Claims**

- 10.74 A Claim for a Non-Standard Fee for Representation in the magistrates' court must not be included in your Contract Report Form. Each Claim must be submitted on a CRM7 form and will be assessed individually. You must submit the following with your Claim:
- (a) all the information specified in Paragraph 4.40 to 4.41, where relevant; and
  - (b) where enhanced rates are sought under Paragraph 10.99, you must provide full details of how the work meets the criteria for enhancement.

The relevant Director must Assess the Claim.

- 10.75 Claims for payment from Assigned Counsel must also comply with the Paragraphs under the heading "Rules on Claiming" above, and must contain the same UFN and be submitted with your Claim. You must notify Counsel of the UFN number.

### **Payment**

- 10.76 Any proceedings that are committed to or sent to the Crown Court for trial under s51 of the Crime and Disorder Act 1998 (except proceedings in a magistrates' court following a remittal under paragraph 10(3)(a) or 13(2) of Schedule 3 to the Crime and Disorder Act 1998 and proceedings at any bail application where the defendant is held in custody) are paid in accordance with the provisions in the Criminal Remuneration Regulations and must not form part of any Claim for remuneration under this Specification.
- 10.77 Work claimed under this Unit of Work is paid by us either by way of Designated Area or Undesignated Area Standard Fees or Hourly Rates. The applicable fees vary depending on:
- (a) the category of work and type of proceedings (as set out in the table in Paragraph 10.90); and;

- (b) the location of your Office/the magistrates' court at which work is carried out. Two different sets of Standard Fees apply in this respect:
  - i. "Designated Area Standard Fees"; or
  - ii. "Undesignated Area Standard Fees"

as set out in the Criminal Remuneration Regulations.

10.78 The Standard Fees do not apply to a Case in which Counsel has been assigned under a Representation Order. Payment for Assigned Counsel is dealt with below.

### **Items of Work covered by the Standard Fees**

10.79 The items of work included in the Designated and Undesignated Area Standard Fees are as follows, which are known as core costs and include the costs of any Advocacy Assistance required by this Contract to be claimed under the Order:

- (a) any preparation;
- (b) routine letters written and routine telephone calls;
- (c) advocacy;
- (d) work done by a fee-earner acting as Agent for the Solicitor named in the Representation Order; and
- (e) Unassigned Counsel's preparation and advocacy.

10.80 Travel and waiting time cannot be claimed separately if you undertake a Case in a Designated Area, or if your Office is in a Designated Area.

10.81 Where you act for more than one Client in proceedings forming a single Case, the Claim for payment of a Standard Fee must cover all the Clients represented by you under one or more Representation Orders.

10.82 Where a Representation Order is issued to a Client in respect of more than one charge, offence or information, the Claim for payment of a Standard Fee must cover all the charges, offences or information that form part of one Case.

### **Costs additional to the Standard Fees**

10.83 The following costs are payable by us in addition to the Undesignated Area Standard Fee:

- (a) reasonable travelling and waiting time of fee-earners and unassigned Counsel, which is payable at the rate provided in the Hourly Rates table in the Criminal Remuneration Regulations; and
- (b) Disbursements.

10.84 Disbursements are payable by us in addition to the Designated Area Standard Fee.

- 10.85 Travelling and waiting time of fee-earners and Unassigned Counsel is not payable by us in addition to any Designated Area Standard Fee or in respect of any Designated Area non-Standard Fee.
- 10.86 The rules for claiming travel and waiting are set out in Section 5.
- 10.87 You must record all waiting time of fee-earners and Unassigned Counsel in respect of each Standard Fee Claimed. You must report the cost of that waiting time to us when you make each Claim and you must ensure that you use the correct Claim codes in the Contract Guide.

### Higher and Lower Standard Fees

- 10.88 Where the core costs, if they had been assessed on the Hourly Rates set out in the Criminal remuneration regulations:
- (a) do not exceed the Lower Standard Fee Limit, as appropriate, then the appropriate Lower Standard Fee will be payable;
  - (b) exceed the Lower Standard Fee Limit, as appropriate, but do not exceed the Higher Standard Fee Limit, the appropriate Higher Standard Fee will be payable;
  - (c) exceed the Higher Standard Fee Limit, as appropriate, the core costs should be claimed based on the Hourly Rates set out in the Criminal Remuneration Regulations.

### Determining the Category and type of proceedings

- 10.89 You must determine the category and type of proceedings in accordance with the table below and apply the relevant rules.
- 10.90 For the avoidance of doubt, you may only claim a Category 3 Fee in circumstances where your Client's Case is discontinued or withdrawn at the committal hearing.

### Categories and Types of Proceedings

Category 1B	Category 1A	Category 2	Category 3
Guilty pleas.	Guilty pleas (either way).	Contested trials.	Committal proceedings which are discontinued or withdrawn.
Uncontested proceedings arising out of a breach of an order of a magistrates' court (including proceedings in a magistrates' court relating to a breach of a Crown Court community rehabilitation order,	Guilty pleas in proceedings for low-value shoplifting as defined in section 22A(3) of the Magistrates Court Act 1980(d) (low-value shoplifting).	Proceedings which were listed and fully prepared for trial in a magistrates' court but are disposed of by a guilty plea on the day of trial before the opening of the prosecution case.	



Category 1B	Category 1A	Category 2	Category 3
community punishment order or suspended sentence).			
Proceedings (other than committal proceedings) which are discontinued or withdrawn or where the prosecution offer no evidence.	Proceedings (other than committal proceedings) which are discontinued or withdrawn or where the prosecution offer no evidence.	Proceedings which were listed and fully prepared for trial in a magistrates' court but are discontinued or withdrawn or where the prosecution offers no evidence or which result in a bind over on the day of trial before the opening of the prosecution case.	
Proceedings (other than committal proceedings) relating to summary offences which result in a bind over.	Indictable only cases heard in the Youth Court.	Contested proceedings relating to a breach of an order of a magistrates' court (including proceedings relating to a breach of a Crown Court community rehabilitation order, community punishment order or suspended sentence).	
Proceedings arising out of a deferment of sentence (including any subsequent sentence hearing) under section 1 of the Powers of Criminal Courts (Sentencing) Act 2000.		Proceedings where mixed pleas are entered.	
Proceedings prescribed under Regulation 9 of the Criminal Legal Aid (General) Regulations 2013, except where the Case was listed and fully prepared for a contested hearing to decide whether an		Proceedings prescribed under Regulation 9 of the Criminal Legal Aid (General) Regulations 2013, where the Case was listed and fully prepared for a contested	

Category 1B	Category 1A	Category 2	Category 3
order should be made.		hearing to decide whether an order should be made.	
Proceedings relating to either way offences which must be tried in a magistrates' court in accordance with section 22 of the Magistrates' Courts Act 1980(c).			

10.91 Subject to Paragraph 10.92, where proceedings forming one Case fall within more than one Category, the proceedings will be treated as forming part of the higher or highest in value of the Categories concerned.

10.92 Subject to Paragraph 10.93, where there is a change of organisation assigned under a Representation Order, the proceedings will be treated as category 1B or category 1A proceedings, as appropriate to the type of offence, for the purposes of a Claim for costs in respect of work done under the Representation Order by the Provider formerly assigned.

10.93 Where there is a change of Provider assigned under a Representation Order the provisions for payment to the Provider originally assigned ("the old Provider") and the newly assigned Provider ("the new Provider") will be as follows:

(a) except in the circumstances described in sub-Paragraph (b) below, the old Provider and the new Provider may each submit Claims for costs. However, for the purposes of the old Provider's Claim for costs under the Representation Order the proceedings will be treated as category 1B or category 1A proceedings as appropriate to the type of offence.

(b) where:

(i) the conducting Solicitor moves from the old Provider to the new Provider (e.g. becomes a partner in, or employee of, the new Provider); or

(ii) the old Provider and the new Provider are, or will shortly be, closely related (e.g. the old Provider has restructured to facilitate the creation of the new Provider or there has been, or will shortly be, a merger of the old Provider and the new Provider or an acquisition of the old Provider by the new Provider); or

(iii) the old Provider is unable to continue representing the Client following the termination of all, or part, of its Contract (or, in anticipation of this, ceases to represent the Client),

payment will be as if one Provider had been assigned throughout and only the new Provider may submit a Claim for costs;

- (c) where the new Provider submits a Claim under Paragraph 10.93 (b) above, it will do so taking account of both its costs and the costs of the old Provider, but payment will be made only to the new Provider. The old Provider and the new Provider must agree any division of monies between themselves.

10.94 Where proceedings have not been concluded but a warrant of arrest has been issued, the proceedings will be treated as category 1B or category 1A proceedings as appropriate to the type of offence.

### **Proceedings**

10.95 For the purposes of this Unit of Work, any proceedings specified in the Categories and Types of Proceedings table above (“the specified proceedings”) will be treated as including all Incidental Proceedings in respect of which a Representation Order is in force, whether or not the Order is the same as that in force in respect of the specified proceedings. Where a Standard Fee is payable in respect of the specified proceedings:

- (a) no separate fee will be payable in respect of the ancillary proceedings; but
- (b) all work done or costs incurred in the ancillary proceedings will be treated as done or incurred in the specified proceedings.

10.96 Proceedings will be treated for the purposes of this Section as forming part of one Case where they relate to one or more charges or information which are preferred or laid at the same time or which are founded on the same facts or which form or are part of a series of offences.

10.97 Where a warrant of arrest has been issued and a Claim has been made prior to the final disposal of the proceedings, any costs which would have been payable upon the final disposal of the proceedings will be reduced to the extent that they formed part of the costs previously claimed.

### **Reduced and Enhanced Rates**

10.98 Only in respect of non-Standard Fee Claims, we may allow Claims at less than the Hourly Rates specified in the Criminal Remuneration Regulations where it appears to us reasonable to do so having regard to the competence and dispatch with which the work was done.

10.99 Only in respect of non-Standard Fee Claims, we may allow Claims at more than the Hourly Rates specified in the Criminal Remuneration Regulations where it appears to us, taking into account all the relevant circumstances of the case, that:

- (a) the work was done with exceptional competence, skill or expertise; or
- (b) the work was done with exceptional dispatch; or
- (c) the case involved exceptional circumstances or complexity,

and we may have regard to the generality of proceedings to which these provisions apply in determining what is exceptional.

10.100 Where we consider, in accordance with the Paragraph 10.99 above, that any item of work should be allowed at more than the specified Hourly Rates, we

will apply to that item of work a percentage enhancement in accordance with Paragraphs 10.101 to 10.102.

10.101 In determining the percentage by which fees should be enhanced in accordance with Paragraph 10.99, we will have regard to:

- (a) the degree of responsibility accepted by you and your personnel;
- (b) the care, speed and economy with which the case was prepared; and
- (c) the novelty, weight and complexity of the case

10.102 The relevant Hourly Rate will not be enhanced by more than 100%.

### **Payment for Assigned Counsel**

10.103 Work undertaken by Assigned Counsel under this Unit of Work must be claimed at the rates specified in the Criminal Remuneration Regulations.

10.104 These rates only apply under this Unit of Work where an individual is entitled to Counsel (as may be determined by the court) in accordance with regulation 16 and 17 of the Criminal Legal Aid (Determinations by a Court and Choice of Representative) Regulations 2013. The rates are the maximum amounts allowable per item except where expressed as Hourly Rates. Where an Hourly Rate is specified we will determine any fee for such work in accordance with that Hourly Rate, provided that the fee determined must not be less than the minimum amount specified.

10.105 Where a refresher fee is claimed in respect of less than a full day, we will allow such fee as appears reasonable having regard to the fee which would be allowed for a full day.

10.106 Where we consider (taking into account all the relevant circumstances of a Case), that the exceptional circumstances of a Case mean that the rates set out in the Criminal Remuneration Regulations would not provide reasonable remuneration for some or all of the work allowed, we may allow such amounts as appear to us to be reasonable remuneration for the relevant work.

### **Payment on Account of Disbursements**

10.107 You may submit an application for Payment on Account of a Disbursement for which you have incurred liability in Criminal Proceedings, within the scope of this Section, provided that the following conditions are satisfied:

- (a) you have obtained prior authority to cover the amount sought; and
- (b) you have incurred liability for the Disbursement under that authority; and
- (c) the amount of a single Disbursement (including VAT) is likely to exceed the value of your next Monthly Payment which falls due after the liability for the Disbursement has been incurred.

10.108 An application for Payment on Account may be made at any time before you submit your final Claim for costs and must:

- (a) not exceed the maximum amount authorised under the prior authority; and

(b) be made in such manner as we may direct and must be accompanied by a copy of all relevant prior authorities and any invoices or other documents to establish that the liability has been incurred.

10.109 We will authorise a Payment on Account, subject to the prior authority limit, if it appears to have been reasonably incurred in accordance with the prior authority. This does not prevent you from seeking more than the amount authorised by the prior authority on costs Assessment.

10.110 If we authorise and pay a request for a Payment on Account of the Disbursement, then it will usually be paid through the Monthly Payment system.

10.111 If we refuse to authorise a request for a Payment on Account, there is no right of appeal, but you may still seek to recover the Disbursement on costs Assessment. You may also submit a fresh application for a Payment on Account, to provide additional information or to explain a change in circumstances.

### **Own Client Work: Pre-Order Cover, Early Cover and means test form completion**

#### **Scope and Qualifying Criteria**

10.112 You may only claim for Pre-Order Cover or Early Cover if an application for a determination that an individual qualifies for Representation has been made in the magistrates' court and refused and the requirements under the heading Pre-Order Cover or the heading Early Cover are satisfied.

10.113 You must only claim for means test form completion where the requirements of Paragraph 10.122 are satisfied.

10.114 You can only make a Claim for either:

- (a) Pre-Order Cover; or
- (b) Early Cover; or
- (c) a means test form completion fee.

You must not Claim for more than one of the above in relation to a Case.

#### **Pre-Order Cover**

10.115 Where an application for a determination that an individual qualifies for Representation is made in the magistrates' court and refused on the Interests of Justice Test (irrespective of whether the Client passes or fails the Financial Eligibility Test), you may only claim a limited amount of work carried out on that Matter or Case as Pre-Order Cover at the rates set out in the Criminal Remuneration Regulations, subject to the limit set out in the Criminal Remuneration Regulations. A qualified solicitor who is a Designated Fee Earner or a Supervisor (excluding a Prison Law Supervisor) must have decided that the Case met the Interest of Justice Test and has documented on file the reasons why (either by retaining a copy of the determination that an individual qualifies for Representation as evidenced by the Representation Order or some other means).

- 10.116 You must not make any claim for Early Cover in addition to making a claim for Pre-Order Cover.
- 10.117 The effective date of refusal is the date on which the court notifies you in writing or by other means.
- 10.118 An appeal may be made under Regulation 28 of the Criminal Legal Aid (General) Regulations 2013 against the decision not to issue a Representation Order.
- 10.119 If you appeal the court's decision, in the circumstances outlined in Paragraph 10.118, then any work undertaken in relation to lodging the appeal is covered by the Pre-Order Cover Fixed Fee. If the appeal against the decision not to issue a Representation Order is unsuccessful, you will not be able to claim any further work undertaken on the Case itself.
- 10.120 If a Representation Order is issued on appeal then all the work undertaken since the date on which the original properly completed application was received by the court, including any Pre-Order Work, must be claimed under the Representation Order as part of the Standard Fee Claim. A copy of the court's written notification of the refusal to issue the Representation Order must be available on file.
- 10.121 The Pre-Order Cover Fixed Fee only includes any combination of preparation, advocacy, routine letters and telephone calls, travel and waiting at the applicable rates, up to the limit set out in the Criminal Remuneration Regulations.

### **Early Cover**

- 10.122 Where an application for a determination that an individual qualifies for Representation is made and refused because the Client has failed the Financial Eligibility Test you may claim one Early Cover Fixed Fee in respect of work carried out on that Matter or Case provided that all of the following conditions are also met:
- (a) a properly completed application for Representation has been received by the Representation Authority by 9am on the sixth Business day following the date of first instruction (provided that the date of first instruction is on or before the date of the first hearing);
  - (b) you have taken all reasonable steps to assist the Client complete and submit the application with the appropriate supporting evidence;
  - (c) the application had not been granted or refused by the start of the first hearing;
  - (d) you represent the Client at the first hearing;
  - (e) the first hearing moves the Case forward and any adjournment is justified; and
  - (f) the final decision is that the Case passes the Interests of Justice Test but not the Financial Eligibility Test.
- 10.123 In cases where the first hearing takes place before the Client has been able to submit an application you may still claim an Early Cover Fixed Fee provided that:

- (a) the conditions in Paragraphs 10.122(d) and (e) have been met; and
- (b) the Client proceeds to submit an application in accordance with the conditions in Paragraphs 10.122(a) and (b); and
- (c) the subsequent determination of the application satisfies the condition in Paragraph 10.122(f).

### **Means test form completion**

10.124 You may only Claim a means test form completion fee as specified in circumstances where:

- (a) you have completed an application for a determination that a Client qualifies for Representation; and
- (b) neither Pre-Order Cover nor Early Cover is claimed; and
- (c) you have advised the Client that, although their Case is one which would, in all probability, satisfy the Interests of Justice Test, they would not satisfy the means test; and
- (d) you advised the Client within 10 working days of the day on which the Client was charged or summonsed with the offence in question; and
- (e) you have recorded on file why you considered the Case would satisfy the Interests of Justice Test (but you will not need to make the application for a determination that an individual qualifies for Representation to court); and
- (f) the Client does not proceed to instruct you as a private client in respect of that Case.

### **Pre-Order Cover, Early Cover and means test form completion**

10.125 Payment for Pre-Order Cover, Early Cover or means test for completion must not be claimed by a court Duty Solicitor for work undertaken during the court Duty Period.

10.126 Where you act for co-defendants and provide Pre-Order Cover, Early Cover or means test form completion, separate Claims must be submitted for each Client represented.

### **Limits on Claims**

10.127 You must comply with the upper limit for Claims for Pre-Order Cover as specified in the Criminal Remuneration Regulations. The figures include any travel, waiting and Disbursements but are exclusive of VAT.

### **Payment**

10.128 Claims for Pre-Order Cover must be made at the Hourly Rates specified in the Criminal Remuneration Regulations, subject to the limit also set out in the Criminal Remuneration Regulations.

10.129 You cannot claim for disbursements, travel or waiting in addition to the Early Cover Fixed Fee, specified in the Criminal Remuneration Regulations.

10.130 You cannot claim any disbursements, or travel or waiting costs in addition to the refused means test form completion fee, which is a Fixed Fee, specified in the Criminal Remuneration Regulations.



## **Representation in Prescribed Proceedings in the Crown Court other than in appeals from the magistrates' court provided under section 16 of the Act**

### **Scope**

10.131 This Unit of Work may only be undertaken for a Client in Prescribed Proceedings, or for a Client who wishes to make a free standing application to the Crown Court to vary or have discharged a sentence or order in circumstances where the fees are not specified in the Criminal Remuneration Regulations. You should note that an Upper Limit specified in the Criminal Remuneration Regulations applies to work undertaken under this Unit of Work and operates as a Costs Limitation.

### **Qualifying Criteria**

10.132 Contribution Order Regulations may require your Client to repay some or all of his or her defence costs under a contribution order during his or her Case and after the Case concluding. You must advise your Client about the scheme of Crown Court means testing at the outset of his or her Case.

### **Application Procedure**

10.133 In order for you to provide Representation under this Unit of Work, your Client must have had a Representation Order issued by the Representation Authority by completing our CRIM14 and 15 forms.

### **Counsel**

10.134 If you instruct Counsel then you must agree Counsel's fee, and the rates which you use to agree Counsel's fee must not exceed the Hourly Rates which are applicable to a Solicitor undertaking the advocacy at the relevant Hourly Rates specified in the Criminal Remuneration Regulations for this Unit of Work.

10.135 You must pay Counsel's agreed fee directly in accordance with this Contract.

10.136 When instructing Counsel, you must inform him or her of the payment rates and ensure that Counsel's fee note contains a breakdown of the time claimed at the appropriate rates.

10.137 You may claim any time spent instructing Counsel as Contract Work. However, if you choose to accompany Counsel to any hearing, neither the time spent at the hearing nor the travelling and waiting can be claimed or paid as Contract Work.

### **Rules on claiming**

10.138 A single Claim must be submitted for all work undertaken in the Criminal Proceedings Class of Work for a Client in the same Case, including except where a Claim has been submitted already in the same Matter or Case because Paragraph 10.141(c) applies. The Claim may be for one or more of the Units of Work covered by this Class.

10.139 A single Claim must be submitted in circumstances where more than one application is consolidated into one Case.

10.140 A Claim may only be submitted when:

- (a) the Case has concluded; or
- (b) it is known that no further work will be undertaken for the Client in the same Case; or
- (c) it is unclear whether further work will be required or not and a minimum of one month has elapsed since the last work in the Case was undertaken.

### **Limits on Claims**

10.141 Subject to any extensions to the Upper Limit granted following an application made under Paragraphs 5.8 to 5.19, the Upper Limit specified in the Criminal Remuneration Regulations applies to Claims.

### **Payment**

10.142 You must claim for Representation provided under this Unit of Work at the rates which are specified in the Criminal Remuneration Regulations.

## **Representation in the Crown Court under a Representation Order in mainstream Criminal Proceedings provided under section 16 of the Act**

### **Scope**

10.143 You can only undertake Criminal Proceedings work (in cases which are not classified as VHCCs) in the Crown Court by virtue of having this Contract and if your Client has been issued with a Representation Order following a determination that an individual qualifies for Representation by the Representation Authority.

### **Qualifying Criteria**

10.144 Cases which have been committed to or sent to the Crown Court by the magistrates' court are automatically treated as passing the Interests of Justice Test.

10.145 Contribution Order Regulations may require your Client to repay some or all of his or her defence costs under a Representation Order, during his or her Case and after the Case concluding. You must advise your Client about the Crown Court means test at the outset of his or her Case.

### **Service requirements**

10.146 You must take into account the Contract Guide on case planning when conducting a Crown Court case.

### **Remuneration**

10.147 You will be remunerated for this work in accordance with the Criminal Remuneration Regulations.

10.148 Where you undertake work in the Crown Court under a Representation Order properly granted by the Court, if it transpires that it is not possible to claim under the Criminal Remuneration Regulations for the work you undertook, you must contact us. We will make arrangements for you to be remunerated as though the work were conducted under Paragraph 10.131 to 10.142.

### **Payments on Account of Disbursements**

10.149 Applications for Payments on Account in the Crown Court are governed by the Criminal Remuneration Regulations.

### **Counsel**

10.150 If you instruct Counsel or in-house advocate, you must do so in accordance with the Criminal Remuneration Regulations and we may require you to appoint only such persons who possess such experience, qualifications, or membership of such panel, or hold such accreditation as we may specify.

## **Representation in the High Court or County Court**

### **Scope**

- 10.151 This Unit of Work covers only civil proceedings in the High Court or (if approved by us) the county court in any proceedings arising from Criminal Proceedings except bail proceedings, appeals by way of case stated or Associated Civil Work. You must obtain prior authority from us to undertake work under this Unit of Work.
- 10.152 This Unit of Work covers civil proceedings that may be regarded as incidental to Criminal Proceedings (e.g. an application to obtain papers from a civil case that are relevant to Criminal Proceedings).

### **Qualifying Criteria**

- 10.153 The Client must have been issued with a Representation Order by the Representation Authority or High Court.
- 10.154 There is no Financial Eligibility Test for this Unit of Work.

### **Rules on claiming**

- 10.155 The procedures under this Specification for the Assessment of remuneration for Representation under this Unit of Work are the same as those contained in section 6 of the current civil specification and prior authority may be applied for and granted in accordance with this Unit of Work.

### **Payment**

- 10.156 You must claim for work undertaken under this Unit of Work at the rates specified in the Criminal Remuneration Regulations.
- 10.157 The remuneration provisions which govern this work are the same as those rates (including enhanced rates) which are payable for Legal Representation in accordance with the current civil specification.

### **Payment for Assigned Counsel**

- 10.158 Work undertaken by Assigned Counsel under this Unit of Work must be claimed at the rates specified in the Criminal Remuneration Regulations.
- 10.159 The rates set out in the Criminal Remuneration Regulations only apply where Counsel is assigned under a Representation Order under this Unit of Work. The rates are the maximum amounts allowable per item except where expressed as Hourly Rates. Where an Hourly Rate is specified we will determine any fee for such work in accordance with that Hourly Rate, provided that the fee determined will not be less than the minimum amount specified.
- 10.160 Where a refresher fee is claimed in respect of less than a full day, we will allow such fee as appears reasonable having regard to the fee which would be allowed for a full day.
- 10.161 Where we consider (taking into account all the relevant circumstances of a Case), that the exceptional circumstances of a Case mean that the rates set out in the Criminal Remuneration Regulations would not provide reasonable remuneration for some or all of the work allowed, we may allow such

amounts as appear to us to be reasonable remuneration for the relevant work.

### **Payment on Account of Disbursements**

10.162 You may submit an application for Payment on Account of a Disbursement for which you have incurred liability by following the rules at Paragraphs 10.107 to 10.111.

## **Representation in the Higher Courts**

10.163 This unit of Work covers Representation on a Case in the Higher Courts.

### **Qualifying criteria**

10.164 The Client must have been issued with a representation Order by the Representation Authority.

### **Rules on claiming**

10.165 Claims for Representation on a Case in Higher Courts are made by the Courts themselves but may also be made by Providers to the extent we have notified Providers that they are entitled to make such Claims.

### **Payment**

10.166 You must claim for work undertaken under this Unit of Work at the rates specified in the Criminal Remuneration Regulations.

### **Payment on Account of Disbursements**

10.167 You may submit an application for Payment on Account of a Disbursement for which you have incurred liability by following the rules at Paragraphs 10.107 to 10.111.

**Representation in relation to proceedings for breach of injunctions arising under Part 1 of the Anti-Social Behaviour, Crime and Policing Act 2014**

10.168 This unit of Work covers Representation in relation to proceedings for breach of injunctions arising under Part 1 of the Anti-Social Behaviour, Crime and Policing Act 2014 in any civil or criminal court.

**Qualifying criteria**

10.169 There is no Financial Eligibility Test for this Unit of Work where the work is undertaken in a civil court. However, if the work is undertaken in a criminal court, then the Financial Eligibility Test set out in the Criminal Financial Regulations must be applied.

10.170 The Client must have been issued with a Representation Order by the Representation Authority.

**Application procedures**

10.171 You must not claim for Representation unless a Representation Order has been issued by a Representation Authority following the appropriate application procedure.

10.172 Where a Representation Order is applied for and the Client needs assistance with completing the relevant forms, you may only spend up to 30 minutes providing such assistance. This item of work may then be included in your calculation of costs to determine the appropriate Higher Fee, or Lower Fee, or to be assessed if the Case is claimed at Hourly Rates.

**Remuneration**

10.173 You must claim for work undertaken under this Unit of Work in accordance with and at the rates specified in the Criminal Remuneration Regulations.

10.174 Travel and waiting time will be paid in accordance with and at the rates specified in the Criminal Remuneration Regulations.

Determining which fees apply

10.175 The items of work included in the Higher Fee and Lower Fees under this Unit of Work are as follows, which are known as the core costs and include the costs of any Advocacy Assistance required by this Contract to be claimed under the Representation Order:

- (a) any preparation;
- (b) routine letters and telephone calls;
- (c) advocacy;
- (d) work done by a fee-earner acting as Agent for the solicitor named in the Representation Order; and
- (e) Unassigned Counsel's preparation and advocacy.

10.176 The following costs are payable by us in addition to the Higher Fee or Lower Fee under this Unit of Work:

- (a) reasonable travelling and waiting time of fee-earners and Unassigned Counsel, which is payable at the rate specified in the Criminal remuneration Regulations; and
- (b) disbursements.

10.177 You must record all waiting time of fee-earners and Unassigned Counsel in respect of each fee Claimed under this Unit of Work. You must report the cost of that waiting time to us when you make each Claim and you must ensure that you use the correct Claim codes in the Contract Guide.

#### Higher Fees and Lower Fees

10.178 Where the core costs, if they had been assessed on the Hourly Rates set out in the Criminal Remuneration Regulations:

- (a) do not exceed the Lower Fee Limit, as appropriate, then the appropriate Lower Fee will be payable;
- (b) exceed the Lower Fee Limit, as appropriate, but do not exceed the Higher Fee Limit, the appropriate Higher Fee will be payable;
- (c) exceed the Higher Fee Limit, as appropriate, the core costs should be claimed based on the Hourly Rates set out in the Criminal Remuneration Regulations.



## **11 Appeals and Reviews**

### **Advice and Assistance on appeals against conviction or sentence (where a newly instructed representative is not covered by an existing determination) or applications to the Criminal Cases Review Commission (CCRC) provided under section 15(2)(c) of the Act**

#### **Scope**

- 11.1 This Unit of Work relates to free standing Advice and Assistance in relation to an appeal against conviction or sentence, including an appeal by way of case stated or an application to vary an order or sentence where not covered by an existing determination (as evidenced by a Representation Order). You should note that an Upper Limit specified in the Criminal Remuneration Regulations applies to work undertaken under this Unit of Work and operates as a Costs Limitation.
- 11.2 This Unit of Work also covers an application to the Criminal Cases Review Commission (CCRC).
- 11.3 Where the Client has a determination in the magistrates' court or the Crown Court, it covers obtaining advice on appeal and the preparation of any application for leave to appeal or giving notice of appeal against conviction or sentence. It also covers steps relating to the stating of a case by the magistrates' or the Crown Court. It is not appropriate for you to complete a separate application form for Advice and Assistance under this Unit of Work in those circumstances.
- 11.4 Where the Client does not have a determination in the magistrates' court or Crown Court, he or she may require advice on the prospects of an appeal. You should provide confirmation of the grounds of an appeal.
- 11.5 If the Client has received an adverse opinion on appeal and wishes to obtain a further opinion, you must consider how long it was since the first opinion was given. If recent, and it appears that all issues have been considered, no further work may be undertaken.
- 11.6 Where there is further evidence or the Solicitor can point to some defect in the opinion or the proceedings, then further work may be justified for a further opinion, regardless of when the first opinion was obtained. We will allow you up to three hours (30 units) for the preparation of the instructions to Counsel or in-house advocate.
- 11.7 Where advice is sought in connection with an appeal to the Court of Appeal and you have undertaken all authorised steps under any Crown Court Representation Order or there has been a change of Provider, you must consider whether a grant of Legal Aid is available directly from the Court of Appeal to cover further work. If so, you should make the appropriate application to that court, rather than providing Advice and Assistance. Advice and Assistance should not be used as an alternative or supplement to the Court of Appeal's powers to grant legal Representation, where only Counsel has been authorised.

#### **Qualifying Criteria**

- 11.8 The Sufficient Benefit Test must be satisfied in order to provide Advice and Assistance under this Unit of Work.

#### **Financial Eligibility Tests**

- 11.9 Financial Eligibility Tests set out in the Criminal Financial Regulations must be applied to advice and assistance under this Unit of Work.

### **Application procedures**

- 11.10 An application form must be completed in accordance with this Specification.

### **Postal applications**

- 11.11 You may only exercise the Delegated Function to accept an application for Advice and Assistance by post from a Client where there is good reason to do so in accordance with an Authorisation.

- 11.12 Any reliance on a good reason must be noted on the file.

### **Telephone advice**

- 11.13 You may only Claim payment for advice given to a Client over the telephone before that Client has signed the application form where:

- (a) the Client cannot for good reason attend your Office; and
- (b) the Client meets the Qualifying Criteria for the provision of Advice and Assistance (including the Financial Eligibility Test) and has subsequently signed the application form.

- 11.14 You must consider whether it is in all the circumstances appropriate to provide advice to a Client over the telephone before that Client has signed the application form.

- 11.15 The good reason relied upon must always be noted and kept on the file.

### **Outward travel**

- 11.16 You may only Claim for the mileage or cost of public transport for outward travel (but not travelling time, except as allowed under Paragraph 11.17) to visit a Client away from your Office before the application form is signed where:

- (a) the visit is justified for good reason (and a note on the file is made specifying that good reason); and
- (b) the Client meets the Qualifying Criteria for this Unit of Work and does subsequently sign the application form.

- 11.17 Where you are visiting the Client in detention, prison or hospital then you may also claim the travelling time at the appropriate rate. The provisions of the Paragraph 11.16 will need to be satisfied for any Claim to be made.

- 11.18 Costs must be reasonably incurred taking account of all the circumstances.

### **Criminal Cases Review Commission**

- 11.19 You must take instructions from the Client to establish whether the case is one which the CCRC could consider. You must bear in mind that the CCRC is a last resort and an application to the CCRC may only be made if the Client has either appealed against the original conviction or leave to appeal has

been refused or where there are exceptional circumstances justifying the CCRC reviewing the case.

- 11.20 If your Client's Case is suitable to be heard by the CCRC, you must consider whether the case may be able to meet the referral criteria applied by the CCRC.
- 11.21 Once the basic information has been obtained by way of a statement from the Client, you must carry out an initial screening of the case to determine whether an application to the CCRC should be made. This process enables you to screen out weak claims which would not meet the CCRC's referral criteria. Although the information available at this stage may be very limited, the decision as to whether the costs of further investigation are justified must be made by you in the light of the available information and using your professional judgement.
- 11.22 If a Client qualifies for Advice and Assistance, initial case screening will normally be carried out within 20 units (two hours). It may not be possible to complete case screening within this time if the Client is located at a distant prison. The initial case screening will cover taking instructions, considering any relevant papers or records (if any are available at that stage) and the provision of initial advice as to law and procedure. You must reject a case following initial screening if there is no reasonable prospect that it will meet the CCRC referral criteria. Clearly, uncertainty over the merits at the initial screening stage would not necessarily result in you refusing to take forward an application, particularly where you consider that further investigations are necessary to establish whether the referral criteria are met.

#### **Transcripts – CCRC matters**

- 11.23 If you seek a transcript of part or all of the evidence, then a specific justification must be provided.

#### **Counsel – (CCRC matters)**

- 11.24 You may instruct Counsel in CCRC matters where it falls outside your expertise and it is reasonable for you to seek specialist advice from Counsel or in-house advocate. The expense of any Disbursement or Counsel's advice will count towards costs for the purposes of calculating whether an extension to the upper limit is necessary.
- 11.25 It may be necessary for you to exceed the upper limit depending on the individual circumstances of the case. In these circumstances, an application must be made by you to the Director in accordance with this Specification. There is no other form of Legal Aid available for this type of work although the CCRC will, in considering the application, make what further enquiries it considers appropriate to enable it to investigate the case and reach a decision.

#### **Previous Advice and Assistance**

- 11.26 You must not Claim for Advice and Assistance provided to a Client who has received Advice and Assistance for the same matter from another Provider within the six months preceding the application, except where:
- (a) there is a gap in time and circumstances have changed materially between the first and second occasions when the Advice and Assistance was sought; or

- (b) the Client has reasonable cause to transfer from the first Provider; or
  - (c) the first Provider has confirmed to you that he or she will be making no Claim for payment for the Advice and Assistance.
- 11.27 When providing Advice and Assistance in the circumstances set out in this Paragraph you must record the justification for doing so on the file. This is particularly important under this Unit of Work, as a Provider who acted under a Representation Order in respect of the proceedings from which the appeal is being made should have advised the Client under the terms of that Representation Order. For the avoidance of doubt, this is a Delegated Function.
- 11.28 If a Client changes Solicitor within the same organisation or a Designated Fee Earner moves to work for a different Provider and continues to advise the Client, then there will not have been Advice and Assistance from 'another Provider' for the purposes of Paragraph 11.26 and the second or subsequent Provider may not Claim for Advice and Assistance in addition to the first Provider. However, if the Client instructs another Provider and the same Solicitor does not continue to provide Advice and Assistance to the Client, this will be Advice and Assistance from 'another Provider' under Paragraph 11.26.
- 11.29 You must not Claim for Advice and Assistance under the terms of any of the exceptions contained in Paragraph 11.26(a) to (c) where:
  - (a) the Client simply disagrees with the first advice and wants a second opinion;
  - (b) there is only a short time between the first and second occasions when the Advice and Assistance is sought and no material change of circumstances has occurred;
  - (c) the change requested is from a second to a third Provider (unless exceptionally it is reasonable for a further change); or
  - (d) there is no reasonable explanation for the Client seeking further Advice and Assistance from a new Provider.
- 11.30 Where Advice and Assistance is provided in contravention of the terms of Paragraph 11.26, then the work undertaken cannot be claimed or paid as Contract Work.
- 11.31 If in doubt, you must assume that previous Advice and Assistance has been given and ensure that any work carried out reflects the fact that some work may have already been done on the matter to ensure that there is no element of repetition, particularly if you are instructed within six months of the Client's conviction, as any Representation Order issued to provide for his or her Representation at the trial includes payment to those who acted under that Representation Order for an advice on appeal.
- 11.32 If the Client has received previous Advice and Assistance but you are permitted to provide further Advice and Assistance under Paragraph 11.26, you must assign a new UFN and must make a note on the file to confirm that Advice and Assistance has been given previously by another Provider. In addition, the Client must complete a fresh application form and must meet the Qualifying Criteria. We may monitor the number of instances in which you provide Advice and Assistance under Paragraph 11.26.

- 11.33 You must ascertain whether previous Advice and Assistance has been provided in the same matter by making reasonable enquiries of your Client at the earliest opportunity. If the Client has received Advice and Assistance, and the circumstances in Paragraph 11.26(a) to (c) do not apply, you must either provide Advice and Assistance and not make a Claim for it, or should require the Client to contact the Provider who provided the original Advice and Assistance.
- 11.34 It is only reasonable to incur limited further costs where previous Advice and Assistance has been received.
- 11.35 If you provide Advice and Assistance where previous Advice and Assistance has been given for the same matter in accordance with Paragraph 11.28 then any work undertaken by the previous Provider will not count for the purposes of the Upper Limit specified in the Criminal Remuneration Regulations.

#### **Further instructions after a Matter ends or a Claim has been submitted**

- 11.36 Where you have previously provided Advice and Assistance to a Client in relation to a matter, and you have already claimed for the matter in a Claim submitted to us in accordance with the terms of this Specification, then any further Advice and Assistance provided to the Client in relation to the same Matter must be the subject of a separate application. The original upper limit (as extended) will continue to apply, where relevant.
- 11.37 It is not reasonable to provide Advice and Assistance in relation to a matter where you have previously provided it unless there are substantive issues outstanding from the first occasion when Advice and Assistance was provided or there has been a material development or change in the Client's circumstances such that further Advice and Assistance is now required.
- 11.38 If you provide further Advice and Assistance under Paragraphs 11.36 and 11.37 above then:
- (a) the Client must complete a further application form and you must establish that any Qualifying Criteria are met, where relevant;
  - (b) your file should make reference to any previous closed file and the files should be kept together for Audit purposes;
  - (c) you must assign the same UFN number to the new matter; and
  - (d) you may need to consider an extension to the upper limit where appropriate, unless the previous limit was not exhausted.

#### **Rules on claiming**

- 11.39 A single Claim must be submitted for all work undertaken in the Appeals and Reviews Class of Work for a Client in the same Matter or Case except where a Claim has been submitted already in the same Matter or Case because Paragraphs 11.41(c) or (d) below apply.
- 11.40 A Claim must not be submitted in respect of work falling within this Unit of Work where Representation has been provided for the same Client in the proceedings in which the conviction or sentence was imposed in a magistrates' court, the Crown Court or the Court of Appeal, and advice on appeal or sentence can be claimed under the Representation Order covering

those proceedings (except where the Client has changed Solicitor to another Provider since the original proceedings).

- 11.41 A Claim under this Unit of Work may only be submitted when:
- (a) the matter has concluded; or
  - (b) it is known that no further work will be undertaken for the Client in the same matter; or
  - (c) it is unclear whether further work will be required or not and a minimum of one month has elapsed since the last work in the matter was undertaken; or
  - (d) in the case of a Claim for Advice and Assistance on an appeal against conviction or sentence, including an appeal by way of case stated or an application to vary a sentence: where a determination is made by the relevant court, as soon as the Representation Order has been issued.

### **Limits on Claims**

- 11.42 Subject to any extensions to the Upper Limit granted following an application made under Paragraphs 5.8 to 5.19, the Upper Limit specified in the Criminal Remuneration Regulations applies to Claims.

### **Payment**

- 11.43 You must Claim for work undertaken within this Class of Work at the rates specified in the Criminal Remuneration Regulations.

## **Representation on an appeal by way of case stated provided under section 16 of the Act**

### **Scope**

- 11.44 This Unit of Work only covers an application under s111 of the Magistrates' Court Act 1980 or s28 of the Senior Courts Act 1981 for the magistrates' court or Crown Court (respectively) to state a case.
- 11.45 The application to the magistrates' court or Crown Court to state a case is covered and paid for under the Representation Order in existence in the relevant proceedings.
- 11.46 Where a court refuses to state a case, you should without delay apply for permission to bring judicial review, seeking either a mandatory order to compel the court to state a case or an order quashing the decision under challenge.
- 11.47 An application for judicial review in the circumstances described in Paragraph 11.46 may only be made under the Associated Civil Work part of this Contract.
- 11.48 If the magistrates' court or Crown Court does state a case, you must apply to the High Court (Administrative Court) for a determination that an individual qualifies for Representation in respect of the High Court appeal proceedings.

### **Qualifying Criteria**

- 11.49 In order to provide Representation under this Unit of Work, the Client must have been issued with a Representation Order by the High Court for the purposes of the appeal.

### **Counsel**

- 11.50 When you instruct Counsel, the instructions delivered must include a copy of the Representation Order and you must notify Counsel of the UFN. The onus is on Counsel to check that any work undertaken is covered by the scope of the Order.

### **Rules on claiming**

- 11.51 A single Claim must be submitted to the Senior Court Costs Office for all work undertaken for a Client in an appeal by way of case stated in the Appeals and Reviews Class of Work in the same Matter or Case except where a Claim has been submitted already in the same Matter or Case because Paragraphs 11.52(c) or (d) below apply.
- 11.52 A Claim under this Unit of Work may only be submitted when:
- (a) the matter has concluded; or
  - (b) it is known that no further work will be undertaken for the Client in the same matter; or
  - (c) it is unclear whether further work will be required or not and a minimum of one month has elapsed since the last work in the matter was undertaken; or

- (d) in the case of a Claim for Advice and Assistance on an appeal against conviction or sentence, including an appeal by way of case stated or an application to vary a sentence, where not covered by an existing determination: where a determination that an individual qualifies for Free Standing Advice and Assistance is made by the relevant court, as soon as the Representation Order has been issued.

11.53 You must claim for work undertaken in the Divisional Court under this Unit of Work at the rates specified in the Criminal Remuneration Regulations.

### **Payment for Counsel under the Representation Order**

11.54 Work undertaken by Counsel under this Unit of Work must be claimed at the rates specified in the Criminal Remuneration Regulations.

11.55 Where a refresher fee is claimed in respect of less than a full day, we will allow such fee as appears reasonable having regard to the fee which would be allowed for a full day.

11.56 Where we consider (taking into account all the relevant circumstances of a case), that the exceptional circumstances of a Case mean that the rates set out in the Criminal Remuneration Regulations would not provide reasonable remuneration for some or all of the work allowed, we may allow such amounts as appear to us to be reasonable remuneration for the relevant work.

### **Payment on Account of Disbursements**

11.57 You may submit an application for Payment on Account of a Disbursement for which you have incurred liability in Criminal Proceedings, within the scope of this Contract, in the High Court, provided that the following conditions are satisfied:

- (a) you have obtained prior authority to cover the amount sought; and
- (b) you have incurred liability for the Disbursement under that authority; and
- (c) the amount of a single Disbursement (including VAT) is likely to exceed the value of your next Monthly Payment which falls due after the liability for the Disbursement has been incurred.

11.58 An application under Paragraph 11.57 may be made at any time before you submit your final Claim for costs and must:

- (a) not exceed the maximum amount authorised under the prior authority; and
- (b) be made in such manner as we may direct and must be accompanied by a copy of all relevant prior authorities and any invoices or other documents to establish that the liability has been incurred.

11.59 We will authorise a Payment on Account, subject to the prior authority limit, if it appears to have been reasonably incurred in accordance with the prior authority. This does not prevent you from seeking more than the amount authorised by the prior authority on costs Assessment.

11.60 If we authorise Payment on Account of the Disbursement, then it will be paid through the Monthly Payment system.



11.61 If we refuse to authorise payment, there is no right of appeal, but you may still seek to recover the Disbursement on costs Assessment.

## **Representation in the Crown Court under a Representation Order in Prescribed Proceedings on appeal from the magistrates' court provided under section 16 of the Act**

### **Scope**

11.62 This Unit of Work may only be undertaken for a Client in appeals from the magistrates' Court in Prescribed Proceedings. You should note that an Upper Limit specified in the Criminal Remuneration Regulations applies to work undertaken under this part of the Contract and operates as a Costs Limitation.

### **Qualifying Criteria**

11.63 Contribution Order Regulations may require your Client to repay some or all of his or her defence costs under a Representation Order, during his or her Case and after the Case concluding. You must advise your Client about the Crown Court means test at the outset of his or her Case.

### **Application Procedures**

11.64 In order for you to provide Representation under this Unit of Work, the Client must have had a Representation Order issued by the Representation Authority by completing forms CRM14 and 15.

### **Counsel**

11.65 If you instruct Counsel then you must agree Counsel's fee, and the rates which you use to agree Counsel's fee must not exceed the Hourly Rates which are applicable to a Solicitor undertaking the advocacy at the relevant Hourly Rates specified in the Criminal Remuneration Regulations for this Unit of Work.

11.66 You must pay Counsel's agreed fee to Counsel directly, in accordance with this Contract.

11.67 When instructing Counsel, you must inform him or her of the payment rates and ensure that Counsel's fee note contains a breakdown of the time claimed at the appropriate rates.

11.68 You may Claim any time spent instructing Counsel as Contract Work. However, if you choose to accompany Counsel to any hearing, neither the time spent at the hearing nor the travelling and waiting must be recorded or claimed as Contract Work.

### **Rules on claiming**

11.69 A single Claim must be submitted for all work undertaken in the Criminal Proceedings Class of Work for a Client in the same Case except where a Claim has been submitted already in the same Case because Paragraph 11.71(c) applies. The Claim must be for one or more of the Units of Work covered by this Class.

11.70 A single Claim must be submitted in respect of all Clients where a Claim is made under this Unit of Work where you represent two or more Clients in the same Case.

11.71 A Claim may only be submitted when:

- (a) the Case has concluded; or
- (b) it is known that no further work will be undertaken for the Client in the same Case; or
- (c) it is unclear whether further work will be required or not and a minimum of one month has elapsed since the last work in the Case was undertaken.

### **Limits on Claims**

11.72 Subject to any extensions to the Upper Limit granted following an application made under Paragraphs 5.8 to 5.19, the Upper Limit specified in the Criminal Remuneration Regulations applies to Claims.

### **Payment**

11.73 You must claim for Representation provided under this Unit of Work at the rates which are specified in the Criminal Remuneration Regulations.

## 12 Prison Law

### Scope

- 12.1 To undertake this Class of Work you must Employ a Prison Law Supervisor and your Schedule must also authorise you to do Prison Law work. The provisions in this Section override any conflicting provisions elsewhere this Specification.
- 12.2 Advice and Assistance on a Matter in this Class of Work is paid under a Fixed Fee scheme only, with a mechanism whereby if your costs reach a specified amount which is higher than the Fixed Fee (the Escape Fee Case Threshold), that Matter is assessed by us and paid on an Hourly Rates basis.
- 12.3 Advocacy Assistance on a Matter in this Class of Work is paid under a Standard Fee scheme only, where the amount of your costs determine whether you may claim the Lower Standard Fee, the Higher Standard Fee or whether your costs are assessed by us as a Non-Standard Fee and paid on an Hourly Rates basis.
- 12.4 Provided a Matter passes the Qualifying Criteria, you may provide assistance under this part of the Contract to a prisoner who is either on remand or serving a prison sentence.

### Qualifying Criteria

#### The Sufficient Benefit Test

- 12.5 The Sufficient Benefit Test must be satisfied before you commence, or continue, to work on a Matter under this Specification. The test is as follows:
- Advice and Assistance or Advocacy Assistance may only be provided on legal issues concerning English and Welsh law and where there is sufficient benefit to the Client, having regard to the circumstances of the Matter, including the personal circumstances of the Client, to justify work or further work being carried out. There should be a realistic prospect of a positive outcome that would be of real benefit to the Client.**
- 12.6 In all Matters undertaken in this Class of Work, you must set out briefly in a file note how the Sufficient Benefit Test has been met, and how it continues to be met.
- 12.7 Files which do not have a note setting out how the Sufficient Benefit Test has been met and which do not appear objectively to pass the Sufficient Benefit Test may be nil-assessed by us.
- 12.8 You must not provide Advice and Assistance where the Client is seeking advice on non-legal issues, as this is not Contract Work.
- 12.9 In starting any Matter in this Class of Work, the Sufficient Benefit Test must be applied as a cost benefit test namely, whether a notional reasonable private paying client of moderate means would pay for the legal advice and assistance or advocacy assistance.
- 12.10 The Sufficient Benefit Test will not be satisfied where the Matter does not raise a significant legal or human rights issue.

- 12.11 Cases that have no realistic prospect of success or positive outcome for the Client will not be paid for as Contract Work. Where you consider that a Case has minimal, or borderline prospects of success, but you consider that there is still some benefit to the Client for Advice and Assistance or Advocacy Assistance to be granted, you must set out clearly your justification on a file note.
- 12.12 Cases that have minimal benefit or impact on the Client do not satisfy the Sufficient Benefit Test and must not be claimed for as Contract Work.

### **Financial Eligibility**

- 12.13 All Units of Work in this Class of Work are subject to the Client being financially eligible (unless the Client is a Child).
- 12.14 You must assess your Client's Financial Eligibility in accordance with the Criminal Financial Regulations and must not provide assistance in this Class of Work to a person who is not financially eligible under those regulations.

### **Application procedures**

- 12.15 A properly completed application, signed by the Client, must be kept on your file for Audit purposes. You must not make a Claim in this Class of Work unless the Client has signed the application forms and is financially eligible to receive assistance.

### **Postal rules**

- 12.16 This Paragraph overrides the postal rules in Section 4. Wherever possible, you must arrange for the Client to complete the application forms by post, after you receive instructions and before you commence work.
- 12.17 In Advice and Assistance Matters, you should, wherever possible conduct the matter by way of correspondence with the Client, or by video link or telephone, if such facilities are available. Personal attendance must be justified on a file note.

### **Telephone advice before application forms are signed**

- 12.18 You may only include in your Case costs time spent giving advice to a Client over the telephone before that Client has signed the application form where:
- (a) the Client meets the Financial Eligibility Test and you are satisfied that the Sufficient Benefit Test is met; or
  - (b) the Client subsequently signs the CRM1 and CRM2, or CRM1 and CRM3 application forms and is financially eligible.
- 12.19 If you provide advice under Paragraph 12.5 you must send the application forms to your Client, after you have given the advice, to be signed and returned to you.
- 12.20 You must not make any Claim in this Class of Work if your Client has not signed the application forms or has been properly determined by you as not being financially eligible.
- 12.21 You must not make a Claim in this Class of Work in circumstances where you provide ad hoc telephone advice to a Client on an issue which develops

no further or is resolved during the course of that telephone call, or is resolved by writing an ad hoc piece of correspondence in the circumstances outlined in Paragraph 12.59(c) below.

### **Commencing a Matter in this Class of Work**

- 12.22 When this Contract commences, subject to Paragraph 12.4, you are delegated the function to self grant Legal Aid in Matters in this Class of Work, subject to the Matter passing the Sufficient Benefit Test and the Client being financially eligible.

### **General Provisions on Starting a New Matter**

- 12.23 Advice and Assistance or Advocacy Assistance must be allocated an individual Matter appropriately and in accordance with the provisions set out here.
- 12.24 These provisions govern when a Matter may be commenced and when it is legitimate to commence more than one Matter for one Client. Where Advice and Assistance is paid for under a Fixed Fee, and Advocacy Assistance is paid for under a Standard Fee, you must ensure that additional Matters are not artificially created or used for work which should in accordance with these Paragraphs be carried out under a single Matter. Conversely, you must not include clearly unrelated work to a single Matter.
- 12.25 You must not begin more than one Sentence Case, or more than one Parole Board Case for a Client at any one time. If you commence a Sentence Case and a Parole Board Case concurrently, you must claim for each Matter separately. Any application to the Parole Board for a Parole Board Reconsideration Hearing will form part of the same Parole Board Case. A subsequent Claim for Advocacy Assistance may be made if the Parole Board determines that a Parole Board Reconsideration Hearing shall be listed or directed (whether orally or on the papers).
- 12.26 If you commence a Disciplinary Case for a Client, and are subsequently instructed by that Client on a new, unrelated and distinct Disciplinary Case, you may commence a concurrent Matter. You must set out on a file note on the later Matter your reasons to justify commencing the second case.

### **Where you provide Advice and Assistance and then Advocacy Assistance**

- 12.27 Where you are instructed in circumstances where it is clear that there is going to be an oral hearing, you must start the Case as Advocacy Assistance.
- 12.28 Where you are instructed on a Case in circumstances where it is not clear that there is going to be an oral hearing, you must start the Case on the basis that you will be providing Advice and Assistance. If that Matter is subsequently directed or listed for an oral hearing, then you must claim the Advice and Assistance costs at that point, and then start a fresh Advocacy Assistance Matter.

### **Matter Boundaries**

- 12.29 Each new Matter must be the subject of a separate application form. You must identify, and record on the appropriate Case file, any point at which the work, which you are performing for any Client, becomes two separate Matters and you begin a separate Matter.

- 12.30 Where the Client raises several issues at the first meeting, a single Matter must be commenced to identify the issues and to provide general, preliminary advice. If one legal issue is identified then the original, single Matter must be used for the provision of further Advice and Assistance.
- 12.31 For the avoidance of doubt, the above Paragraphs on Matter start boundaries apply irrespective of whether you purport to limit your retainer to only part of the stages, aspects or issues of a Matter or Matters that should properly be covered by a single Matter.
- 12.31A All work for Parole Board Reconsideration Hearings (regardless of whether a hearing is oral or heard on the papers) must be undertaken as a subsequent Claim for Advocacy Assistance, which will be in addition to any Claim for Advocacy Assistance in the substantive Parole Board Case.

### **Travel and waiting costs**

- 12.32 You may only Claim for the mileage or the actual cost of public transport for travel as a Disbursement (but not travelling or waiting time, because this is included in the Fixed Fee or Standard Fee applicable to that Unit of Work) to visit a Client who is in prison.
- 12.33 Waiting time only counts towards your costs to determine whether or not you have reached the Escape Fee Case Threshold in a Case payable by Fixed Fee, or to determine whether you are able to claim the Lower or Higher Standard Fee, or whether your Case is claimable as a Non-Standard Fee.
- 12.34 Travel time may only be claimed separately on an Escape Fee Case or a case in which you are claiming a Non-Standard Fee. Travel costs must not be included in your costs to determine whether a claim is assessable as an Escape Fee Case (in Advice or Assistance) or a Non-Standard Fee (in Advocacy Assistance).
- 12.35 Where a Case has become assessable as an Escape Fee Case, you may only claim one-hour travel on each journey at the hourly rate specified in this Contract.
- 12.36 The only circumstance where you may Claim more than one hour's travel where a Case has become assessable as an Escape Fee Case is if you commence a Case for a Client, who is during that Case moved to another prison establishment which is further away from your Office. In these circumstances, you may claim a maximum of three hours travel time on each journey (making a total of six hours in any one day).
- 12.37 Paragraph 12.36 above only applies if the Client moves at a time when your costs on that Matter have already reached the Escape Fee Case Threshold.

### **Disbursements**

- 12.38 You must apply to us for prior authority in accordance with this Specification, using the online Form CRM4 before incurring a disbursement over £500.
- 12.39 On any Matter, unless you can clearly demonstrate Sufficient Benefit, you must not instruct more than one expert to provide a report on the same issue. We accept that there may be Sufficient Benefit if more than a year has elapsed, but in any Matter where an additional expert report is sought, your application for prior authority must set out clear justification on why you consider an additional report is necessary.

## **Instructing Agents**

- 12.40 You may instruct an Agent to carry out work on your behalf, provided that:
- (a) you assume total responsibility for ensuring that their work is properly supervised and complies with all the terms of this Contract;
  - (b) you are able properly to supervise their work;
  - (c) you are responsible for all payments to them in respect of this work; and
  - (d) the use of such an Agent does not increase the costs payable by us.

This Paragraph is specifically aimed at assisting you to take instructions from Clients who are in prisons which are a distance from your Office should personal attendance be required and justified.

## **Instructing Counsel**

### **Advice and Assistance**

- 12.41 If you instruct Counsel to advise your Client under Advice and Assistance, you must arrange to agree Counsel's fees and pay Counsel out of the Fixed Fee.
- 12.42 Counsel's fees under Advice and Assistance do not count as a Disbursement unless the case is claimable as an Escape Fee Case. Counsel's fees must not be taken into account when you determine whether a Case is claimable as an Escape Fee Case.
- 12.43 If Counsel is instructed to provide an advice under Advice and Assistance and the case reaches the Escape Fee Case Threshold you may, when claiming your fees on the basis of Hourly Rates, claim payment from us of Counsel's fees only as if such fees were a Disbursement incurred by you. However, in that situation the amount claimed from us in respect of Counsel's fees must not exceed the sum which would have been payable by us if you had spent the same amount of time in providing the advice.
- 12.44 Assessment of Counsel's fees will be subject to reasonableness.

### **Advocacy Assistance**

- 12.45 Under Advocacy Assistance, Counsel's fees are included within and paid from the Standard Fee. You must agree a fee with Counsel.
- 12.46 If the case exceeds the Higher Standard Fee Limit, and is claimable as a Non-Standard Fee Case, the costs are assessed by us, and the work is claimed by you using your contractual hourly rates (as though Counsel were instructed by you as an Agent). This is the same system, which applies where Counsel is instructed on an Unassigned basis under a determination as evidenced by a Representation Order in the magistrates' court.
- 12.47 You must not make any Claim for time spent accompanying Counsel at a Hearing
- 12.48 You must arrange the direct payment of Counsel's agreed fee in accordance with the rules specified in this Specification.



- 12.49 When instructing Counsel, you should inform him or her of the payment rates and ensure that Counsel's fee note contains a breakdown of the time claimed at the appropriate rates specified in the Criminal Remuneration Regulations.

### **Previous Advice and Assistance**

- 12.50 You may not Claim for Advice and Assistance or Advocacy Assistance provided to a Client who has received Advice and Assistance or Advocacy Assistance for the same Matter from another Provider within the six months preceding the application, except where:

- (a) there is a gap in time and circumstances have changed materially between the first and second occasions when the Advice and Assistance, or Advocacy Assistance was sought; or
- (b) the Client has reasonable cause to transfer from the first Provider; or
- (c) the first Provider has confirmed to you that he or she will be making no Claim for payment for the Advice and Assistance or Advocacy Assistance given.

When providing Advice and Assistance in the circumstances set out in this Paragraph you must record the justification for doing so on the file. For the avoidance of doubt, this power is a Delegated Function.

- 12.51 If a Client changes Designated Fee Earner within the same organisation or a Designated Fee Earner moves to work for a different Provider and continues to advise the Client, then there will not have been Advice and Assistance from 'another Provider' for the purposes of Paragraph 12.50 and the second or subsequent Provider may not Claim for Advice and Assistance in addition to the first Provider. However, if the Client instructs another Provider and the same Solicitor does not continue to provide Advice and Assistance to the Client, this will be Advice and Assistance from 'another Provider' under Paragraph 12.50.

- 12.52 You cannot Claim for Advice and Assistance under the terms of any of the exceptions contained in Paragraph 12.50 where:

- (a) the Client simply disagrees with the first advice and wants a second opinion; or
- (b) there is less than six months between the first and second occasions when the Advice and Assistance is sought, and no material change of circumstances has occurred; or
- (c) the change requested is from a second to a third Provider (unless exceptionally there is good reason for a further change); or
- (d) there is no reasonable explanation for the Client seeking further Advice and Assistance from a new Provider.

Where Advice and Assistance is provided in contravention of Paragraph 12.50, the work undertaken cannot be claimed for or paid as Contract Work.

- 12.53 If the Client has received previous Advice and Assistance but you are permitted to provide further Advice and Assistance under Paragraph 12.50, you must assign a new UFN and must make a note on the file to confirm that Advice and Assistance has been given previously by another Provider and a

brief explanation for commencing a new matter for that Client. In addition, the Client must complete a fresh application form and must meet the Qualifying Criteria.

- 12.54 You must ascertain whether previous Advice and Assistance has been provided in the same Matter by making reasonable enquiries of your Client at the earliest opportunity. If the Client has received Advice and Assistance, and the circumstances at Paragraphs 12.52(a) to (d) apply, you must either provide Advice and Assistance and not make a Claim for it, or require the Client to contact the Provider who provided the original Advice and Assistance.
- 12.54A Where the provisions of Paragraph 12.50 apply, and you have been instructed after an initial Parole Board Hearing but prior to a Parole Board Reconsideration Hearing being listed or directed, you may provide Advice and Assistance in connection with making an application for reconsideration (subject to paragraph 12.108). Where you are instructed in circumstances where a Parole Board Reconsideration Hearing is already listed or directed any further work must be provided as Advocacy Assistance.

#### **Further instructions after a Matter ends or a Claim has been submitted**

- 12.55 Where you have previously provided Advice and Assistance (or Advocacy Assistance) to a Client in relation to a Matter, and you have already claimed a Standard Fee for the Matter in a Claim submitted to us in accordance with the terms of this Specification, then any further Advice and Assistance provided to the Client in relation to the same Matter will normally be assumed to be covered by the Standard Fee already claimed.
- 12.56 If you have completed a Matter, whether under this Specification or any previous Specification, you may not subsequently commence a Matter in relation to the same problem. The only exceptions are where:
- (a) a period of at least six months has elapsed since you submitted your claim for that Matter; or
  - (b) there has been a material development or change in the Client's instructions; and
  - (c) a period of at least three months has elapsed since you submitted your claim for that Matter and have claimed as a result of your Client failing to give instructions; or
  - (d) the Advice and Assistance provided on the problem formed only a minor part of the previous Matter, such that the problem did not qualify as a separate and distinct legal problem.
- 12.57 For the avoidance of doubt, for the purposes of Paragraph 12.56 the fact that the Client has failed to give instructions shall not constitute or give rise to a change in the Client's instructions.
- 12.58 Where a Matter has been closed and has been claimed for but further work is necessary and a separate Matter is not justified:
- (a) the work already undertaken, and the further work, should be taken into account in determining whether the Matter is an Escape Fee Case that escapes from the Fixed or Standard Fee provisions. If we agree to pay the matter as an Escape Fee Case, we will take into account any payments already made by way of the Standard Fee;

- (b) you may claim further disbursements, subject to prior approval by us, as part of the Matter where appropriate;
- (c) where the Matter has already been paid as an Escape Fee Case, the further work is payable on an Hourly Rate basis, subject to Assessment;
- (d) unless the matter is accepted as an Escape Fee Case, the further work carried out will be included in any calculation of average costs per Matter.

12.59 A new Matter is not justified in the following circumstances:

- (a) providing information to Clients or to other persons contacting your organisation on behalf of Clients; or
- (b) supplying a new Provider with a former Client's file or a copy, or information about the circumstances of termination of the retainer; or
- (c) writing brief ad hoc correspondence on a one-off matter at the request of the Client, which does not achieve any tangible result or results in no further action.

12.60 For the avoidance of doubt, where Advice and Assistance or Advocacy Assistance has already been carried out for a Client then a separate Matter would not be justified in the following circumstances:

- (a) Advice and Assistance in relation to an issue in a Matter on which Advice and Assistance has already been provided; or
- (b) Advice and Assistance in relation to a review, or an appeal in a Matter on which Advice and Assistance has already been provided; or
- (c) if a Client seeks advice as to whether (s)he should change Provider from a Provider already providing Advice and Assistance on a Matter within this Specification. The provisions from 12.23 onwards under the heading "General Provisions on Starting a New Matter" should be applied before any work is provided under a new Matter.

12.61 Any work undertaken on a case by an Agent on your behalf will form part of the same Matter as the parts of the Case handled by you.

12.62 You must not provide Advice and Assistance (or Advocacy Assistance) on a Matter where you have previously provided it. An exception to this rule is where there are substantive issues outstanding from the first occasion when Advice and Assistance (or Advocacy Assistance) was provided (this will often be the case where the Client has simply failed to give instructions for a period) or there has been a material development or change in the Client's circumstances such that further Advice and Assistance is now required. A further exception to this rule is where a Parole Board Reconsideration Hearing is listed or directed in a Parole Board Case, in which case a subsequent Claim for Advocacy Assistance may be made.

12.63 If you provide further Advice and Assistance under Paragraphs 12.56 or 12.58 then:

- (a) the Client must complete a further application form and you must establish that any Qualifying Criteria are met, where relevant; and

- (b) your case file must make reference to any previous closed file and the files must be cross-referenced and retrievable for Audit purposes,  
you must assign a new UFN to the new Matter.

## **Payment**

### **Advice and Assistance**

12.64 Advice and Assistance under this Section is paid as a Fixed Fee. If your profit and waiting time costs (calculated using hourly rates), but not travelling time, exceed the Fixed Fee by a specified amount (the Escape Fee Case Threshold), your case is claimable as an Escape Fee Case where your costs will be paid following Assessment by us.

### **Advocacy Assistance**

12.65 Advocacy Assistance for cases under this Section is paid under a Standard Fee scheme only which operates as follows:

- (a) if your profit costs and waiting time costs (calculated by reference to Hourly Rates), but not travelling time, are within the Lower Standard Fee Limit, then you may Claim the Lower Standard Fee;
- (b) if your profit costs and waiting time costs (calculated by reference to Hourly Rates), but not travelling time, exceed the Lower Standard Fee Limit, you are entitled to claim the Higher Standard Fee. Time spent travelling may not be included in your costs to determine whether you have exceeded the Lower Standard Fee Limit;
- (c) if your profit costs and waiting time costs (calculated using hourly rates), but not travelling time exceed the Higher Standard Fee Limit, your case is claimable as a Non-Standard Fee Case where the costs will be paid following Assessment by us.

### **Rules on claiming**

12.66 A single Claim must be submitted for all work undertaken for a Client in the same Matter except where a Claim has been submitted already in the same Matter because Paragraph 12.23 applies. The Claim must be for one or more of the Units of Work within the Prison Law Class of Work (as set out in this part of the Contract).

12.67 Subject to Paragraph 12.67A below, a Claim may be submitted when:

- (a) the Matter has concluded; or
- (b) it is known that no further work will be undertaken for the Client in the same Matter; or
- (c) it is unclear whether further work will be required or not and a minimum of three months has elapsed since the last work in the Matter was undertaken.

12.67A Where the Parole Board lists or directs a Parole Board Reconsideration Hearing (either orally or on the papers), a Claim may be submitted for the initial Advocacy Assistance provided in the Parole Board Case up to that point, even though the Matter has not concluded. A subsequent Claim for Advocacy Assistance may be made for the further work undertaken in relation to the Parole Board Reconsideration Hearing from that point onwards.

**Sentence Cases, Part I: Advice and Assistance provided under section 15(2)(c) of the Act on legal issues in relation to matters in regulation 12(2)(d)(i), (ii), (iv) and (v) of the Criminal Legal Aid (General) Regulations 2013**

**Scope**

12.68 This Unit of Work only covers Advice and Assistance to a Client on legal issues arising in matters in relation to disputes in Sentence Calculations (regulation 12(2)(d)(i), (ii)), referrals to Close Supervision Centres (regulation 12(2)(d)(iv)) and referrals to Separation Centres (regulation 12(2)(d)(v)).

**Qualifying Criteria**

12.69 The Client must be financially eligible as assessed under the Criminal Financial Regulations before Advice and Assistance may be given under regulation 12(2)(d)(i) (ii), (iv) and (v) of the Criminal Legal Aid (General) Regulations 2013.

12.70 The Sufficient Benefit Test (as set out under Paragraph 12.5) must be satisfied in order to provide Advice and Assistance under this Unit of Work.

12.71 The Sufficient Benefit Test (as set out under Paragraph 12.5) is capable of being satisfied only if the work done on that Client's behalf is in connection with matters described in regulation 12(2)(d)(i) and (ii) of the Criminal Legal Aid (General) Regulations 2013 where

- (a) the date of release is disputed; and
- (b) the Client has been unsuccessful in resolving their complaint, which relates to matters described in regulation 12(2)(d) (i) and (ii) of the Criminal Legal Aid (General) Regulations 2013, through the prison internal complaints procedure.

12.72 The Sufficient Benefit Test (as set out under Paragraph 12.5) is deemed to be met if the work done on that Client's behalf is in connection with matters described in regulation 12(2)(d)(iv) or (v) of the Criminal Legal Aid (General) Regulations 2013, and the work relates to an initial referral to a Close Supervision Centre or to a Separation Centre. However, the Sufficient Benefit Test is not deemed automatically to be met in respect of any work relating to any ongoing monthly or quarterly reviews. Work done in relation to any such ongoing monthly or quarterly reviews would need to satisfy the Sufficient Benefit Test.

12.73 You must ensure that there is a file note setting out how the Sufficient Benefit Test has been satisfied under this Unit of Work.

12.74 Making representations to the Independent Safeguarding Authority against the inclusion of a Client on the children's barred list or adult's barred list is not within the scope of this Contract.

12.75 Advice on recall to prison following breach of licence is not within the scope of this Unit of Work, but may be funded as a Parole Board Case in appropriate circumstances as outlined in that Unit of Work under Paragraph 12.105.

- 12.76 Advice and Assistance under regulation 12(2)(d)(i) and (ii) must not be given to a Client within six months of the date of his sentence hearing. Such advice is expected to be given to a Client by his or her Provider who represented him or her at the time of his sentencing hearing with the benefit of a determination that they he or she qualifies for Advice and Assistance.
- 12.77 Under this unit of work an application for a Minimum Term Review to the High Court will generally be claimable as Advice and Assistance. Where, exceptionally, representation is required in the High Court, such representation will be covered by the Standard Fees, which may be claimed for Advocacy Assistance given on cases falling under regulation 12(2)(d) as specified in the Criminal Remuneration Regulations and must be claimed for accordingly.

### **Payment**

- 12.78 The Fixed Fee, which applies for Advice and Assistance given on a Sentence Case is as specified in the Criminal Remuneration Regulations and must be claimed for accordingly.
- 12.79 For cases where your profit costs exceed the applicable Escape Fee Case Threshold amount the work is claimable as an Escape Fee Case, which is subject to Assessment, and you must Claim for work undertaken within this Class of Work at the rates set out in the Criminal Remuneration Regulations.
- 12.80 You must not claim a Fixed Fee under this Unit of Work on a case, which has involved fewer than eight units of time.

**Sentence Cases, Part II: Advice and Assistance and Advocacy Assistance provided under section 15(2)(c) of the Act** on legal issues in relation to matters in regulation 12(2)(d)(iii) and (vi) of the Criminal Legal Aid (General) Regulations 2013

### **Scope**

- 12.81 This Unit of Work covers Advocacy Assistance or Advice and Assistance on legal issues arising in relation to (a) a prisoner's classification as a Category A Prisoner or as a Restricted Status Prisoner (regulation 12(2)(d)(iii)); (b) an Inmate's classification as a Category A Inmate or as a Restricted Status Inmate (regulation 12(2)(d)(vi)).

### **Qualifying Criteria**

- 12.82 The Client must be financially eligible as assessed by you under the Criminal Financial Regulations before Advice and Assistance or Advocacy Assistance may be given under this Unit of Work.
- 12.83 The Sufficient Benefit Test (as set out in Paragraph 12.5) must be satisfied in order to provide Advice and Assistance or Advocacy Assistance in relation to the matter described in regulation 12(2)(d)(iii) and (vi) of the Criminal Legal Aid (General) Regulations 2013.
- 12.84 Advocacy Assistance under this Unit of Work must only be provided in relation to those matters described in regulation 12(2)(d)(iii) and (vi) of the Criminal Legal Aid (General) Regulations 2013 and where you have set out in a file note how the Sufficient Benefit Test has been met.

## **Payment**

- 12.85 The Fixed Fees for Advice and Assistance given on cases falling under regulation 12(2)(d)(iii) and (vi) are as specified in the Criminal Remuneration Regulations and must be claimed for accordingly.
- 12.86 For cases where your profit costs exceed the applicable Escape Fee Case Threshold amount the work is claimable as an Escape Fee Case, which is subject to Assessment, and you must Claim for work undertaken within this Class of Work at the rates set out in the Criminal Remuneration Regulations.
- 12.87 You must not claim a Fixed Fee under this Unit of Work on a case, which has involved fewer than eight units of time.
- 12.88 The Standard Fees, which may be claimed for Advocacy Assistance given on cases falling under regulation 12(2)(d)(iii) and (vi), are as specified in the Criminal Remuneration Regulations and must be claimed for accordingly.
- 12.89 To determine whether you may claim the Lower Standard Fee, the Higher Standard Fee or whether your costs have exceeded the Escape Fee Case Threshold you must calculate your costs using the rates specified in the Criminal Remuneration Regulations.



## **Disciplinary Cases – Advice and Assistance or Advocacy Assistance provided under section 15(2)(c) of the Act**

### **Scope**

12.90 This Unit of Work covers Advocacy Assistance (or Advice and Assistance) in proceedings before a Prison Governor or other prison authority (the Independent Adjudicator) in relation to those matters described in regulation 12(2)(f) of the Criminal Legal Aid (General) Regulations 2013.

### **Qualifying Criteria**

12.91 The Client must be financially eligible as assessed by you under the Criminal Financial Regulations before Advice and Assistance or Advocacy Assistance may be given under this Unit of Work.

12.92 The Sufficient Benefit Test (as set out under 12.5) will be deemed to be satisfied in relation to the matter described in regulation of 12(2)(f)(i) of the Criminal Legal Aid (General) Regulations 2013.

12.93 The Sufficient Benefit Test (as set out in Paragraph 12.5) must be satisfied in order to provide Advice and Assistance or Advocacy Assistance in relation to the matter described in regulation 12(2)(f)(ii) of the Criminal Legal Aid (General) Regulations 2013.

12.94 Advocacy Assistance under this Unit of Work must not be provided if:

- (a) it appears unreasonable that approval should be granted in the particular circumstances of the Matter or Case; or
- (b) permission to be legally represented has not been granted by a Governor or other prison authority, where appropriate.

12.95 Advocacy Assistance under this Unit of Work must only be provided in relation to those matters described in regulation 12(2)(f) of the Criminal Legal Aid (General) Regulations 2013 and where you have set out in a file note how the Sufficient Benefit Test has been met.

### **Payment**

12.96 The Fixed Fees for Advice and Assistance given on a Disciplinary Case is as specified in the Criminal Remuneration Regulations and must be claimed for accordingly.

12.97 For cases where your profit costs exceed the applicable Escape Fee Case Threshold amount the work is claimable as an Escape Fee Case, which is subject to Assessment, and you must Claim for work undertaken within this Class of Work at the rates set out in the Criminal Remuneration Regulations.

12.98 You must not claim a Fixed Fee under this Unit of Work on a case, which has involved fewer than eight units of time.

12.99 The Standard Fees, which may be claimed for Advocacy Assistance given on a Disciplinary Case are as, specified in the Criminal Remuneration Regulations and must be claimed for accordingly.

12.100 To determine whether you may claim the Lower Standard Fee, the Higher Standard Fee or whether your costs have exceeded the Escape Fee Case

Threshold you must calculate your costs using the rates specified in the Criminal Remuneration Regulations.

## **Parole Board Cases – Advice and Assistance or Advocacy Assistance provided under section 15(2)(c) of the Act**

### **Scope**

12.101 Subject to 12.105 below, this Unit of Work covers Advice and Assistance or Advocacy Assistance and can only be provided in relation to matters described in regulation 12(2)(g) of the Criminal Legal Aid (General) Regulations 2013. All cases referred to the Parole Board for their consideration will now be in scope. This includes cases referred to the Parole Board for their advice following a prisoner's return to closed conditions, and Parole Board Reconsideration Hearings.

### **Qualifying Criteria**

12.102 The Client must be financially eligible as assessed under the Criminal Financial Regulations before Advice and Assistance may be given under this Unit of Work.

12.103 The Sufficient Benefit Test (as set out under Paragraph 12.5) will be deemed to be satisfied in proceedings under regulation 12(2)(g) of the Criminal Legal Aid (General) Regulations 2013

12.104 Parole Board Cases which are determined on the papers are only paid for under Advice and Assistance at the same Fixed Fee as Sentence Cases, except where the case has been directed or listed for an oral hearing, including, but not limited to when the case proceeds under the Intensive Paper Review process.

12.105 You may only provide Advice and Assistance to Clients who are recalled to prison for breaching the conditions of their licence if:

- (a) representations are submitted which result in the Parole Board directing or listing an oral hearing at which you represent the Client, or you provide additional written representations under the Intensive Paper Review process. In these circumstances the Matter is claimable as Advocacy Assistance; or
- (b) having submitted written representations, the Parole Board do not convene an oral hearing. In these circumstances you may only Claim the Case as an Advice and Assistance Fixed Fee (or Escape Fee Case).

### **Payment**

12.106 The Fixed Fee which applies for Advice and Assistance given on a paper based Parole Board Hearing is as specified in the Criminal Remuneration Regulations and must be claimed for accordingly.

12.107 For cases where your profit costs are above the Escape Fee Case Threshold for this work, the work is claimable as an Escape Fee Case, which is subject to Assessment, and you must Claim for work undertaken within this Class of Work at the rates set out in the Criminal Remuneration Regulations.

12.108 You must not claim a Fixed Fee under this Unit of Work on a case, which has involved fewer than eight units of time.

12.109 The pre-tariff sift can be claimed under Advice and Assistance under this unit of work. For the avoidance of doubt, only work done in relation to the pre-tariff sift is claimable and no other sentence planning work is covered.

- 12.110 For the avoidance of doubt this unit of work does not include Guittard cases involving indeterminate sentence prisoners applying to be moved to open conditions.
- 12.111 The Standard Fees apply for Advocacy Assistance given on a Parole Board Case and Parole Board Reconsideration Hearings are as specified in the Criminal Remuneration Regulations and must be claimed for accordingly.
- 12.112 To determine whether you may claim the Lower Standard Fee, the Higher Standard Fee or whether your costs have exceeded the Escape Fee Case Threshold you must calculate your costs using the rates specified in the Criminal Remuneration Regulations.
- 12.113 As further provided in the Parole Board Rules 2019, the Parole Board proceedings will not have concluded until the time period for making an application for reconsideration has lapsed or such an application has been dismissed. Any work done in connection with making an application for reconsideration must be billed as part of the existing Advice and Assistance or Advocacy Assistance Matter.
- 12.114 Where the Client has not received Advice and Assistance or Advocacy Assistance in connection with their Parole Board Case you may provide Advice and Assistance in connection with making an application for reconsideration.
- 12.115 A separate Advocacy Assistance fee is claimable in circumstances where the Parole Board lists or directs the matter for a Parole Board Reconsideration Hearing.

## **13. Associated Civil Work**

### **Legal Help and Legal Representation – judicial review or habeas corpus**

#### **Scope**

- 13.1 This Unit of Work concerns Legal Help or Legal Representation for actual or proposed proceedings concerning public law challenges to the acts, omissions or decisions of public bodies by way of judicial review (including under the Human Rights Act 1998) or habeas corpus, arising from any matter within the Crime Category.
- 13.2 This Specification provides you with authority to undertake such work. This work will count as either "Controlled Work" or "Licensed Work" within the meaning of the Civil Procedure Regulations and the relevant provisions of the current civil contract apply except insofar as this Specification provides otherwise.
- 13.3 You must apply the Civil Merits Regulations and Civil Procedure Regulations when undertaking work under this part of the Contract.

#### **Qualifying Criteria**

- 13.4 In order to provide Legal Help or Legal Representation under this Unit of Work, the relevant requirements in the Civil Merits Regulations and Civil Procedure Regulations must be satisfied.
- 13.5 In order to provide Legal Representation, a Client must be granted a Certificate in accordance with the Civil Procedure Regulations. This may include a determination that a Client qualifies for authorised Representation provided on an emergency basis under your Delegated Functions.
- 13.6 To provide Legal Help or Legal Representation under this Unit of Work the Client must meet the applicable Financial Eligibility Test.

#### **Application Procedures**

- 13.7 You must ensure that your Client completes the relevant civil application forms. To apply for a determination that a Client qualifies for Associated Civil Work, the Client must complete the CIV APP1 and CIV MEANS 1 forms.

#### **Rules on claiming**

- 13.8 A single Claim for Legal Help provided under this Unit of Work must be submitted for all work undertaken for the same Client in the same Matter, except where a Claim has been submitted already in the same Matter because Paragraph 13.9(c) or (d) below applies.
- 13.9 A Claim for Legal Help may only be submitted when:
  - (a) the Matter has concluded; or
  - (b) it is known that no further work will be undertaken for the Client in the same Matter; or
  - (c) it is unclear whether further work will be required or not and a minimum of one month has elapsed since the last work in the Matter was undertaken; or

- (d) a determination that the Client qualifies for Representation is made for the same Client arising from the same Matter.
- 13.10 A Claim must not be made under this Unit of Work where a human rights issue is being argued as an integral part of existing Criminal Proceedings and a Claim has been, or it is known that it will be, made for magistrates' court Representation (or for Representation in the Crown Court, Court of Appeal or Supreme Court) for any Matter forming part of the same Case.
- 13.11 A Claim should be submitted for Legal Help using the Contract Report Form and procedures specified for work under this Specification.
- 13.12 A Claim must be submitted for Legal Representation in accordance with the rules applicable to civil matters under the current civil contract, using the procedures and claim forms specified for civil matters under that contract.
- 13.13 The procedures under this Specification for the Assessment of remuneration for Representation under this Unit of Work are the same as those contained in section 6 of the current civil specification and prior authority may be applied for and granted in accordance with the current civil specification.
- 13.14 Claims for Representation in the High Court under this Unit of Work must be made in accordance with the rules applicable under the current civil specification.
- 13.15 Where an application for a determination that an individual qualifies for Associated Civil Work has been made to us, no further work can be claimed under Legal Help unless there is likely to be a delay before the application is determined or further work needs to be done without which the Client's position would be prejudiced or there is an ongoing Criminal Investigation relating to that Matter. You must note the reasons on the file in such circumstances. You must not undertake more than two hours work on making the application for Legal Help.

### **Limits on Claims**

- 13.16 Subject to any extension granted in accordance with this Specification the rates set out in the Civil Remuneration Regulations apply to this Unit of Work.

### **Payment**

- 13.17 The applicable Legal Help Fixed Fee is the Public Law Category Fixed Fee.
- 13.18 You must claim for work undertaken in the Associated Civil Class of Work at such rates as are specified in the Civil Remuneration Regulations.

## **Legal Help and Legal Representation – Proceeds of Crime Act 2002**

### **Scope**

- 13.19 This Unit of Work may only be undertaken for a Client in civil proceedings under the Proceeds of Crime Act 2002. This Specification provides you with authority to undertake such work. This work will count as either "Controlled Work" or "Licensed Work" within the meaning of the Civil Procedure Regulations and the relevant provisions of the current civil contract apply except insofar as this Specification provides otherwise.
- 13.20 If your Client requires legal assistance to respond to the Crown Court under the terms of a restraint order (prior to being charged with an offence) to serve a witness statement of means and assets, this work is paid for under Legal Help under this Unit of Work.
- 13.21 You may only apply for Associated Civil Work on behalf of a Client who is subject to a restraint order under s41 of the Proceeds of Crime Act 2002 to make an application to vary or discharge that restraint order in circumstances where the Client is not charged with a criminal offence or the subject of Criminal Proceedings.
- 13.22 If your Client is subsequently charged with a criminal offence, Associated Civil Work will cease to be available because a determination made in the Criminal Proceedings will extend to any work done in respect of the restraint proceedings.
- 13.23 You may only apply for a determination that an individual qualifies for Associated Civil Work in respect of forfeiture proceedings under Part 5 of the Proceeds of Crime Act 2002 (forfeiture of cash in the magistrates' court), subject to your Client passing the means and merits test to be eligible for Associated Civil Work.
- 13.24 You must refer to any relevant Lord Chancellor's Guidance in relation to this Unit of Work.

### **Qualifying Criteria**

- 13.25 In order to provide Legal Help or Legal Representation under this Unit of Work, the relevant criteria in the Civil Merits Regulations and Civil Procedure Regulations must be satisfied.
- 13.26 In order to provide Legal Representation, a Client must be issued with a Certificate in accordance with the Civil Procedure Regulations.
- 13.27 To provide Legal Help or Legal Representation under this Unit of Work the Client must meet the Financial Eligibility Test set out in the Civil Financial Regulations.

### **Applications Procedures**

- 13.28 You must ensure that your Client completes the relevant civil application forms. To apply for a determination that an individual qualifies for Representation evidenced in a Certificate, the Client must complete the CIV APP1 and CIV MEANS 1 forms.

## **Rules on claiming**

- 13.29 A single Claim for Legal Help provided under this Unit of Work must be submitted for all work undertaken for the same Client in the same Matter, except where a Claim has been submitted already in the same Matter because Paragraph 13.30(c) or (d) below apply.
- 13.30 A Claim for Legal Help may only be submitted when:
- (a) the Matter has concluded; or
  - (b) it is known that no further work will be undertaken for the Client in the same Matter; or
  - (c) it is unclear whether further work will be required or not and a minimum of one month has elapsed since the last work in the Matter was undertaken; or
  - (d) a determination that a Client qualifies for Representation is made for the same Client arising from the same Matter.
- 13.31 A Claim must not be made under this Unit of Work where a human rights issue is being argued as an integral part of existing Criminal Proceedings and a Claim has been, or it is known that it will be, made for magistrates' court Representation (or for Representation in the Crown Court, Court of Appeal or Supreme Court) for any Matter forming part of the same Case.
- 13.32 A Claim must be submitted for Legal Help using the Contract Report Form and procedures specified for work under this Specification.
- 13.33 A Claim must be submitted for Legal Representation in accordance with the rules applicable to civil matters under the current civil contract, using the procedures and claim forms specified for civil matters under the current civil contract.
- 13.34 The procedures under this Specification for the Assessment of remuneration for representation under this Unit of Work are the same as those contained in section 6 of the current civil specification and prior authority may be applied for and granted in accordance with the provisions of the current civil specification.
- 13.35 Claims for Representation in the High Court under this Unit of Work must be made in accordance with the rules applicable under the current civil specification.
- 13.36 Where an application for a determination that an individual qualifies for Associated Civil Work has been made to us, no further work must be claimed under Legal Help unless there is likely to be a delay before the application is determined or further work needs to be done without which the Client's position would be prejudiced or there is an ongoing Criminal Investigation relating to that Matter. The reasons must be noted on the file in such circumstances. You must not undertake more than two hours work on making the application for the determination.

## **Limits on Claims**

- 13.37 Subject to any extension granted in accordance with this Specification, the rates set out in the Civil Remuneration Regulations apply to this Unit of Work.



## **Payment**

- 13.38 The Legal Help Fixed Fee for Proceeds of Crime Act work is the Fixed Fee for the Miscellaneous Category of Work.
- 13.39 You must claim for work undertaken in the Associated Civil Class of Work at such rates as are specified in the Civil Remuneration Regulations.

**Civil Legal Services in relation to proceedings for injunctions sought in respect of alleged anti-social behaviour arising under Part 1 section 1 of the Anti-social Behaviour, Crime and Policing Act 2014**

**Scope**

13.40 This Unit of Work concerns Civil Legal Services in relation to proceedings for an injunction sought in respect of alleged anti-social behaviour arising under Part 1 of the Anti-Social Behaviour, Crime and Policing Act 2014. For the avoidance of doubt this includes Civil Legal Services in actual proceedings for such injunctions in the Youth Court and provision of Civil Legal Services to a parent in relation to a parenting order where the child is the subject of an injunction granted under Part 1 of the Anti-Social Behaviour, Crime and Policing Act 2014.

13.41 When undertaking work under this Unit the relevant provisions of the civil Contract apply except insofar as this Specification provides otherwise. For the purposes of this Paragraph 13.41, the relevant civil Contract is the one in force at the date you commence the civil matter.

**Qualifying criteria**

13.42 In order to provide Civil Legal Services under this Unit of Work, the criteria in the Civil Merits Regulations and Civil Procedure Regulations must be satisfied. In order to provide Civil Legal Services, a Client must be issued with a Certificate in accordance with the Civil Procedure Regulations. This may include a determination that a Client qualifies for authorised representation provided on an emergency basis under your Delegated Functions.

13.43 To provide Civil Legal Services under this Unit of Work the Client must meet the Financial Eligibility Test set out in the Civil Financial Regulations.

**Application Procedures and rules on claiming**

13.44 You must apply for Civil Legal Services and Claim for work undertaken in this Unit of Work in accordance with the rules applicable to civil Matters under the civil Contract, using the procedures and claim forms specified for civil Matters under the civil Contract in force at the time.

**Payment**

13.45 You will be remunerated for work undertaken in this Unit of Work in accordance with and at such rates as are set out in the Civil Remuneration Regulations.

13.46 Travel and waiting time will be paid in accordance with the Civil Remuneration Regulations. For the avoidance of doubt, travel and waiting time is payable for civil Legal Representation but it is only payable (in addition to the fixed fee) if the case escapes.