

## 2018 Individual Case Contract (High Cost Case) Specification

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### Preliminary

- 1.1 This is the Specification of this Contract. The Standard Terms and Sections 1 to 6 of the Specification of the 2018 Standard Civil Contract as applicable to the Category of Law under the Certificate (except so far as they are inconsistent or we expressly state otherwise) apply to the performance of Contract Work under this Specification and are not repeated here.
- 1.2 The work that you carry out under this Contract must be permitted by Legal Aid Legislation and the scope of this Contract. You must also have regard to any Contract Guide in respect of Contract Work, which we may issue from time to time.
- 1.3 The terms of this Contract are in addition to all other requirements that apply to the Certificate, unless otherwise stated.

### 2. Interpretation

- 2.1 In this Contract the following expressions have the following meanings:

*“Costed Case Plan”* means as described in regulation 55 of the Procedure Regulations and set out in your Schedule;

*“Counsel”* means either a barrister in independent practice or (as applicable in this Contract) a solicitor, in another organisation, with higher court advocacy rights;

*“Junior Counsel”* has the meaning given in regulation 7(5) of the Civil Legal Aid (Remuneration) Regulations 2013;

*“Key Stage”* means a stage of a Costed Case Plan, approved by us as set out in your Schedule, in which the work to be done and by whom and its cost, may be specified (the duration of Key Stages may vary but will commonly be about six months);

“*Legal Aid Only Costs*” has the meaning given at paragraph 5.7 of this Specification;

“*Payment Rates*” means the scale of payment rates applicable to work carried out under this Contract as set out in section 7 of this Specification;

“*Practising Certificate*” means a document issued by the Relevant Professional Body entitling you to provide legal services;

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

“*Senior Counsel*” has the meaning given in regulation 7(5) of the Civil Legal Aid (Remuneration) Regulations 2013.

### **3. Service Standards**

#### **General**

- 3.1 Service Standards must be complied with by you as a whole organisation and by each of your Offices, unless we agree otherwise.
- 3.2 You must only use appropriately qualified and skilled personnel on Contract Work.
- 3.3 You must notify us immediately in writing if you no longer meet any of the Service Standards.
- 3.4 Failure to meet the Service Standards is a Fundamental Breach.

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

#### **General**

- 4.1 Your case will be managed through a series of Key Stages until the Contract End Date.
- 4.2 Before you perform Contract Work, you must send us a Costed Case Plan setting out satisfactory proposals for progressing the litigation as described in any relevant Guidance. Your proposals must include a Key Stage and, in appropriate cases (in accordance with the Payment Rates) must identify any work for which you Claim enhanced rates.
- 4.3 If we agree your proposals, we will approve a Key Stage, specify the payment for it and apply a (further) corresponding costs limitation to the Certificate. If we agree only a modified form of your proposals, we will set this out in the Costed Case Plan. All the work specified in a Key Stage must be completed. If any step becomes unnecessary, you must apply to us to amend the Key

Stage (the specified payment and the costs limitation). If the actual cost of completing a Key Stage is 95% (or above) of the specified payment, the specified payment (only) is payable. If the actual cost is between 50% and 95% of the specified payment, the actual cost plus 5% of the specified payment is payable. If the actual cost is 50% (or below) of the specified payment, only the actual cost is payable.

- 4.4 If an extra tranche of work must be done before the end of a Key Stage, you may ask us to increase the specified payment and the costs limitation (and to amend the Key Stage). However, we will increase the specified payment and costs limitation only if the extra tranche of work was not reasonably foreseeable when we specified the payment and applied the costs limitation (e.g. if a trial has lasted longer than predicted) or if there are exceptional circumstances and only if the cost of the extra tranche of work will exceed 5% of the specified payment. We will not pay for any work after the Contract Start Date that is not included in a Key Stage.
- 4.5 When you initially instruct Counsel to undertake any work covered by a Key Stage or otherwise in accordance with this Contract, you must give them either a copy (which may be electronic) of your Contract for Signature and Schedule (which includes Costed Case Plans and/or Key Stages relevant to Counsel) or information about the Contract, which is relevant to Counsel (including information about payment, Costed Case Plans and/or Key Stages) and obtain their signature to our Counsel Acceptance Form. You must refer Counsel to the Standard Terms and Specification which can be found on our website and provide Counsel with information about any changes to your Contract that may affect them. Subject to paragraph 5.4 of this Specification, we will pay Counsel direct for any Contract Work they perform.
- 4.6 You must notify us of any material change to the person or team (including experts and Counsel) identified in your Costed Case Plan as responsible for Contract Work and any material breach of this requirement will be deemed to be a Fundamental Breach. If we consider that the change means that your proposals for progressing the litigation are no longer satisfactory, we may amend the Certificate to prevent further work.
- 4.7 You do not have any Delegated Functions unless we specifically delegate them to you in accordance with an Authorisation.
- 4.8 If the Client has more than one Certificate in the case, we may amend this Contract to cover both, or all, of them.
- 4.9 You must send your Client copies of all Costed Case Plans and Key Stages and explain to them how your costs may affect any party and party costs recovered because of the impact of the statutory charge.
- 4.10 If this Contract ends before the case ends you must, without delay, transfer all case papers to such other organisation as we may nominate. You must as a minimum provide a copy (which may include an electronic version) of your Schedule (or the information in it) within 21 days of any such transfer.

## **5. Claims, Assessment and remuneration**

- 5.1 Work under this Contract by solicitors and Counsel is payable at the Payment Rates and is subject to the thresholds and “ring fence” provisions in them as set out in your Schedule.

### **Payments on account**

- 5.2 When this Contract starts, you may, within a reasonable period, send us form CIVCLAIM1 setting out a claim for all the costs already incurred under the Certificate for which payment has not already been made (if any) unless we specifically require otherwise. If your case has been submitted online via the client and cost management system (CCMS) you must submit your claim through CCMS. Subject to paragraph 5.12 of this Specification, we will then pay these costs in accordance with the Contract. Whenever you incur, or are about to incur, one or more disbursements totalling £100 or more, you may send us form CIVPOA1 or apply through CCMS. If a Key Stage lasts for more than six months, you may send us form CIVPOA1 or apply through CCMS every six months from its start. At the end of each Key Stage, you may send us form CIVCLAIM1 or a claim through CCMS within a reasonable period unless we specifically require otherwise. Subject to paragraph 5.12 of this Specification, when we receive claims, we will make a payment on account of your profit costs, any Counsel’s fees and disbursements, as appropriate.

### **Final payment choice**

- 5.3 Within 3 months of the end of the case, unless we agree otherwise, you must send us form CIVCLAIM1 or CIVCLAIM2 or submit your claim through CCMS. If another person is ordered, or agrees, to pay some or all of your costs, you must indicate whether you choose to take payment under that order or agreement (“payment from the other side”) instead of payment under the Certificate (“payment from us”). Subject to paragraphs 5.7 to 5.11 of this Specification, your choice and thus your claim, must be notified to us in accordance with this Contract.
- 5.4 Whichever choice you make, any Counsel or previous solicitors under the Certificate are entitled to payment of whichever, for them, is higher and you are responsible for paying them any shortfall between the two amounts where the work was reasonably undertaken to achieve the stated purpose and objective of the litigation.
- 5.5 If you choose to take payment from the other side, all payments under the Certificate are repayable to us immediately when you receive a payment from them. If you choose to take payment from us, you must pay us any costs you receive as a result of any order or agreement except that, where any of the costs are a success fee, only our share of it (and not the whole success fee) is payable to us with the other costs. If you choose to take payment from us, you must take any reasonable enforcement and costs recovery proceedings (payable at Payment Rates) that we instruct you to take.

- 5.6 Any costs received before the choice described in paragraph 5.3 of this Specification is made must be paid to us upon receipt.
- 5.7 If you wish to choose to take payment from the other side, you may also apply to us for our agreement to authorise payment by us at the Payment Rates (subject to paragraph 5.12 of this Specification) for Contract Work in respect of which 100% inter partes costs were not ordered, or are unlikely to be ordered, to be paid by the other party (whether pursuant to a settlement or final court order).
- 5.8 Pursuant to paragraph 5.7 of this Specification, an application for our agreement may be made at any time including:
- (a) prior to incurring costs; and/or
  - (b) prior to the conclusion of the case; and/or
  - (c) after the conclusion of the case.
- 5.9 We will grant an application made under paragraph 5.7 of this Specification where:
- (a) you have:
    - (i) submitted a Costed Case Plan to us in a timely manner prior to the work being undertaken; and
    - (ii) the Costed Case Plan details the basis of the claim, or defence to a claim, and the legal grounds on which it will be or is being maintained and is agreed by us (such agreement to be given within a reasonable time of delivery of the Costed Case Plan); and
    - (iii) the work is or was necessary to achieve the stated purpose and objective of the litigation; and
    - (iv) where applicable, the Client agrees to a quantified statutory charge in advance; or
  - (b) an order or part order for costs, including any interlocutory order, was based on the misconduct of another party.
- 5.10 We may grant an application made under paragraph 5.7 of this Specification where, for any other reason, 100% costs have not been awarded (or are unlikely to be awarded) in respect of:
- (a) work reasonably undertaken but not in principle recoverable between the parties; or
  - (b) an issue or issues reasonably pursued

and the application will be granted where the work was undertaken, or the issue was pursued, to achieve the stated purpose and objective of the litigation as identified in the Costed Case Plan.

- 5.11 We will not grant an application made under paragraph 5.7 of this Specification where:
- (a) you have failed to submit a Costed Case Plan which outlines in sufficient detail the grounds for the Client's claim or defence and the arguments you intend to rely upon in the proceedings (you may wish to provide a skeleton argument although a Costed Case Plan detailing the work will still be required); or
  - (b) you have included or propose to include significant arguments which (in a case where an order has been made) are superfluous to the main grounds of the proceedings and are or were merely included to 'give weight' which led to the partial costs order, save where to do so was, or would be, reasonable in increasing the prospects of overall success; or
  - (c) due to your conduct or that of the Client, costs were not ordered, or are not likely to be ordered, on a 100% basis.

### **Assessments and final payment**

- 5.12 All claims for payment from us will be assessed by us and not by the court. The basis of our assessment is to determine whether the work was within the scope of the Certificate, was actually and reasonably done and whether it achieved the stated purpose and objective of the litigation. If, at the end of the case, you do not choose to take payment from the other side, we will make a final assessment of the balance of costs due from, or to, us. Payment from us in respect of claims is due 30 days after assessment.
- 5.13 Paragraph 6.36 (b) of the 2018 Standard Civil Contract Specification does not apply to this Contract.
- 5.14 If you choose to take costs from the other side and regulation 17 of the Civil Legal Aid (Statutory Charge) Regulations 2013 applies, you are responsible for paying any former solicitor (provided you have been given notice of the former solicitor's interest).
- 5.15 When this Contract ends, Clause 14.11 of the Standard Terms continues to have effect and paragraphs 5.3 to 5.14 of this Specification continue to have effect except that, if a subsequent contractor acts for the Client in the case, the choice under paragraph 5.3 of this Specification is theirs and you are bound by it.

## **6. Appeals and reviews**

- 6.1 All disputes other than those specified in paragraph 6.2 of this Specification will be dealt with in accordance with Clause 27 and Clause 28 of the Standard Terms.
- 6.2 There is no right to appeal to the Special Controls Review Panel from our decision that a Costed Case Plan is incomplete and that the conditional determination, as described in regulation 55 of the Procedure Regulations, cannot take effect. A Costed Case Plan is incomplete if it does not comply with the requirements for a Costed Case Plan set out in any relevant Guidance or if it fails to include details that we consider are necessary.

## **7. Payment Rates**

### **Civil Work**

#### **Payment**

- 7.1 Payment below £25,000 (ex-VAT) will be made in accordance with the Civil Legal Aid (Remuneration) Regulations 2013, as amended. The relevant schedules of those regulations are:
- (a) Solicitors: Schedule 1.
  - (b) Counsel: Schedule 2.
  - (c) Experts: Schedule 5.

#### **Risk rates**

- 7.2 For cases where we consider that 'party and party' costs can be expected to be ordered, costs above £25,000 (ex-VAT) will be paid at the following rates, known as risk rates:
- (a) Solicitors: £70/hr
  - (b) Junior Counsel: £50/hr
  - (c) Senior Counsel: £90/hr
  - (d) Travel: 1/4qtr of the relevant rate set out in this paragraph 7.2.
- 7.3 Not used.

### Non-party and party cost cases

- 7.4 Where we consider that 'party and party' costs cannot be expected to be ordered, or where the Client is defending a win on appeal, payment will be made in line with the regulatory rates referred to in paragraph 7.1 of this Specification.

### Ring-fence

- 7.5 If the first £25,000 of costs includes less than £5,000 in Counsel's fees, further work by Counsel up to a total of £5,000 will be 'ring-fenced' and paid in accordance with the regulatory rates referred to in paragraph 7.1 of this Specification. If there are 2 Counsel instructed the 'ring-fence' will be shared £2,500 to each Counsel. The principle is that this is to allow Counsel to appraise themselves of the case before deciding to proceed with the case at risk rates.

### Funding checklists

- 7.6 If the case is remunerated using a relevant funding checklist the enhancements and overall hourly rates for solicitor will be as specified in the checklist. The 5% rule will not apply as there is not a Costed Case Plan setting out the Key Stages.