

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 4.23 and 4.24;
 - (b) accept an application on behalf of a Child or Protected Party under Paragraphs 4.20 to 4.22;
 - (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 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.

Use of Agents, Counsel and Approved Third Parties

- 4.8 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.
- 4.9 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.
- 4.10 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.
- 4.11 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.
- 4.12 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

- 4.13 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.
- 4.14 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).
- 4.15 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.
- 4.16 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

Application forms

- 4.17 Unless the terms of this Specification or we expressly provide otherwise in writing, you must not provide Contract Work unless the Client is within England and Wales, and has completed the relevant application form.
- 4.18 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.
- 4.19 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

- 4.20 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 in the case of a Protected Party their financial circumstances (where relevant) to give proper instructions to you; and

- (iii) no application may be accepted under Paragraph 4.20 (d) if made by a member, director, partner, shareholder, associate or employee of your organisation.

- 4.21 Where you accept an application under Paragraph 4.20, 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.
- 4.22 Where relevant, the appropriate means, of the Protected Party and, in appropriate cases, those who have care and control of, or are liable to maintain, or usually contribute substantially to the Protected Party's maintenance, must be taken into account in applying the Financial Eligibility Test.

Instructions directly from a Child

- 4.23 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 4.20 (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.
- 4.24 Where Advice and Assistance (other than Police Station Advice and Assistance) or Advocacy Assistance is provided to a Child. The Child must sign the application form him/herself. The Child will not be subject to any Financial Eligibility Test.

Postal applications

- 4.25 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 England and Wales 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.
- 4.26 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.
- 4.27 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.

- 4.28 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.
- 4.29 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.
- 4.30 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.
- 4.31 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.
- 4.32 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.
- 4.33 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

- 4.34 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 4.35 to each separate Matter or Case other than those involving only the provision of Contract Work by a court Duty Solicitor acting as such.
- 4.35 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

- 4.36 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 that an individual qualifies for Representation 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.
- 4.37 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.
- 4.38 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.
- 4.39 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.
- 4.40 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.
- 4.41 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.
- 4.42 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.
- 4.43 Duplicated work must not be claimed on related files.
- 4.44 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.

- 4.45 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 4.32 must be applied before any advice is given as a separate Matter.
- 4.46 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

- 4.47 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 King's Counsel (KC), that prior authority application has been refused, and the Client wishes to use his or her own money to pay for that expert or KC);

- (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.

4.48 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.

4.49 Where you have agreed with the Client that the Matter or Case is on hold, Paragraph 4.47(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

4.50 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.

4.51 Paragraph 4.50 does not override the circumstances in which a retainer may be terminated as set out in your professional code of conduct.

Change of Provider

4.52 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.

4.53 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 or give electronic access to all relevant papers and other material in your possession relating to the proceedings to the new Provider.

4.54 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.

Misrepresentation by Clients

4.55 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.

4.56 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.