

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 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

- 5.4 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.

Upper Limits on Claims

- 5.5 You may only Claim Contract Work up to the amount of any Upper Limit:
- (a) set out in the Criminal Remuneration Regulations; or
 - (b) applying to Representation Orders issued in Prescribed Proceedings in any court which applies in the same way as a Costs Limitation (save for those Prescribed Proceedings in the magistrates' court/youth court),
- and in all cases must only perform such work as is reasonable in each Matter or Case having regard to any Qualifying Criteria throughout the Matter or Case.
- 5.6 If you consider that your costs will exceed the Upper Limit you must apply to us for a formal extension under Paragraphs 5.7 to 5.12.
- 5.7 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).
- 5.8 An application for authority to exceed the Upper Limit must be made to us on a form specified by us.
- 5.9 You must not exceed the Upper Limit without our authority. If authority is granted, we 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.
- 5.10 Authority will not be granted by us 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.
- 5.11 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.

- 5.12 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.
- 5.13 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.
- 5.14 If we refuse to grant an extension to the Upper Limit, a right of review arises to an Independent Funding Adjudicator.
- 5.15 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.
- 5.16 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

- 5.17 Subject to Paragraphs 5.20 and 5.21 we will make Monthly Payments in respect of the following Contract Work in accordance with the Variable Monthly Payments Guidance or SMP Reconciliation Protocol as applicable for:
- (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 10.127 or 11.56, 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.
- 5.18 Unless you have elected to receive Standard Monthly Payments you will be paid by Variable Monthly Payments.
- 5.19 Where applicable we will specify the amount of any Standard Monthly Payments (and of any Schedule Payment Limit) in your Schedule. We will set the amount of any Standard Monthly Payments (and of any Schedule Payment Limit) so as to pay or recover any amounts underpaid or overpaid under any previous Schedule.
- 5.20 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.

- 5.21 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 that period then you may not elect to receive Standard Monthly Payments but will instead be paid on the basis of Variable Monthly Payments.
- 5.22 Your Monthly Payments may be reviewed and amended but only where this is consistent with the relevant rules and guidance in relation to Variable Monthly Payments or Standard Monthly Payments as applicable.

Payment for Crown Court Representation and Appeals and Reviews Representation

- 5.23 Where a Representation Order is issued for Crown Court work (excluding Prescribed Proceedings or as specified under Paragraph 10.127) 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

- 5.24 We will pay for Legal Representation in Associated Civil Work in accordance with the terms of the current Civil Contract.

Prior authority

- 5.25 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 KC 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.

- 5.26 If an application for prior authority is refused or partially refused by us, you may submit an appeal against this decision. We will consider any appeal submitted and if the application is refused or partially refused after our reconsideration, we will refer the application to an Independent Costs Assessor. If the Independent Cost Assessor refuses an application, there is no right of appeal but a fresh application may be made at any time.

- 5.27 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.
- 5.28 An application for prior authority must be made by application to us using the relevant form approved by us and applying any relevant Contract Guide.
- 5.29 An application for prior authority cannot be granted retrospectively. Any application must be made in advance of the relevant expenditure being incurred.
- 5.30 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.
- 5.31 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.
- 5.32 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.
- 5.33 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 and 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.
- 5.34 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

- 5.35 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.
- 5.36 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.
- 5.37 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 produce a receipted invoice or voucher in support of any Disbursement claimed.
- 5.38 A non-exhaustive list of Disbursements, which may or may not be incurred in the provision of Advice and Assistance (including Advocacy Assistance) and Representation 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 and if the amount is reasonable.

Section A
Disbursements which may be incurred
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
Section B
Disbursements which may not be incurred
Clients' travelling and accommodation expenses
Court fees unless for a search/photocopies or relating to civil court venues
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

- 5.39 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.

- 5.40 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).
- 5.41 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.

Witness expenses

- 5.42 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

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

Mileage and travel time for experts

- 5.44 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

- 5.45 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. Where an in-house advocate is used to provide an opinion pursuant to Paragraphs 4.13 to 4.15, 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.
- 5.46 Subject to Paragraph 5.47, 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 5.47 and these Claims are subject to the maximum fee principle.
- 5.47 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.

Non-chargeable work

- 5.48 Save as otherwise provided by this Specification, payment will not be made under it for the time you spend on purely administrative matters.
- 5.49 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.
- 5.50 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

- 5.51 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.
- 5.52 Paragraphs 5.50 and 5.51 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.
- 5.53 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.