

## **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.
- 6.3 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.
- 6.4 We will only allocate Duty Slots on a Duty Scheme where you have at least one Duty Solicitor registered on that Scheme. The number of Duty Solicitors Engaged by you determines the number of Duty Slots which are allocated to you on relevant Schemes.
- 6.5 You may apply to join any Duty Schemes you are eligible to be a member of at any point during the Contract Period.
- 6.6 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.
- 6.7 Your Duty Solicitors may only apply for membership of Schemes from a single Office for a single Provider.
- 6.8 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.
- 6.9 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.
- 6.10 We will use Back-up to deploy Duty Solicitors from neighbouring Schemes where we reasonably consider this is necessary.

#### *Police Station Duty Scheme membership: London CJS Area*

- 6.11 Duty Solicitors undertaking Duty Solicitor work from an Office in the London CJS Area may 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 may 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 (and any Accredited Representatives used by your Duty Solicitors) must not be special constables.

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

- 6.20 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 6.21 to 6.23.

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

- 6.21 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 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) in each rolling 12-month period;
  - (c) undertaking in each rolling 12-month period:
    - (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) a minimum of 10 magistrates' court Representations and advocacy and five Crown Court Representations and advocacy; and

(d) continuing to undertake Duty Solicitor work generally by, in each rolling 3 months period, undertaking at least one Police Station Duty Solicitor attendance (excluding telephone advice) or one Duty Slot allocated by us in that Duty Solicitor's name.

6.22 Subject to Paragraph 6.23, all Duty Solicitors you use to obtain Duty Slots must undertake a minimum of 50 hours' Criminal Defence Work for you per calendar month 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 50 hours' requirement, as per Clause 8.3(n) of the Standard Terms.

6.23 The 50 hours' requirement in Paragraph 6.22 will be measured on a rolling three monthly basis to accommodate different working patterns.

6.24 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.

6.25 Retaining Slots issued in a Duty Solicitor's name who does not meet the requirements in Paragraphs 6.21 to 6.24 is a material breach of Contract and entitles us to issue a Sanction under Clause 24 of the Standard Terms, except where retention of Duty Slots is permitted in accordance with Paragraph 6.31. 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.

6.26 You must maintain a Record in accordance with the provisions in Clause 8 of the evidence of compliance with Paragraphs 6.21 to 6.24.

### **Removal from Duty Schemes**

6.27 Where we remove you from membership of a Duty Scheme under Paragraph 2.50, the removal will be effective immediately.

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

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

(a) a Duty Solicitor 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, the Solicitors' Disciplinary Tribunal or any other body regulating the professional conduct of any Duty Solicitor has made an adverse finding.

6.29 A failure to notify us under Paragraph 6.28 which results in additional Rota Duty Slots being allocated to you to the detriment of the other members of the Scheme gives us the right to reduce the number of Duty Slots allocated to you Rota by an equivalent amount.

6.30 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 6.34 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.

6.31 Where a Duty Solicitor ceases to be Engaged by you during a Rota period we will not remove Duty Slots allocated to you in respect of that Duty Solicitor for the current Rota period provided always that you have satisfied the requirements of Paragraphs 6.28(a) to (c) in respect of that Duty Solicitor.

6.32 Where a Duty Solicitor is absent in the circumstances and for the periods specified in Paragraphs 6.28(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 6.45 to 6.47.

6.33 Where we receive notification of any of the events specified in Paragraphs 6.28(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**

6.34 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 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.

6.35 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.

- 6.36 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 6.19; 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 6.36 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.

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

- 6.38 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, the Solicitors' Disciplinary Tribunal or any other body regulating the professional conduct of any Duty Solicitor, 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*

- 6.39 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*

- 6.40 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.
- 6.41 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**

- 6.42 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 6.21 to 6.23 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.
- 6.43 Where we suspend or exclude a Duty Solicitor we shall remove all Duty Slots issued in their name.
- 6.44 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 6.21 to 6.23 is not met for some reasonable justification.
- 6.45 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.
- 6.46 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.
- 6.47 Where a Duty Solicitor is suspended from undertaking Duty Solicitor work on a Scheme under Paragraph 6.45 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.

- 6.48 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*

- 6.49 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
  - (c) the times during which such arrangements shall be in operation.

For the avoidance of doubt, if we wish to amend these arrangements we will also consult in accordance with Paragraph 6.60.

- 6.50 Where we reasonably consider that it is required, we may deploy one or more additional Duty Solicitors at a Magistrates Court where the court's workload is such that the business of the court would likely be impeded by the existing Duty Solicitor deployment.

### *Slot allocation*

- 6.51 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.
- 6.52 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*

- 6.53 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.
- 6.54 We may amend the last three months of a six-month Rota (or second half of a Rota of shorter length) to reflect a relevant change in circumstances which may include the correction of errors or omissions of Duty Slot allocation in the first three 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.
- 6.55 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.

- 6.56 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.

#### *Panels*

- 6.57 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.
- 6.58 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.
- 6.59 Where a Duty Solicitor ceases to be a member of a particular Scheme they shall immediately be removed from the Panel List.

#### *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 we reasonably consider that such a change is necessary resulting from matters such as, but not limited to, a magistrates' court closure or a Police Station closure (whether temporary or permanent), changes in court listing procedures or reduction in membership of a Scheme.

#### *Services cases*

- 6.61 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*

- 6.62 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.
- 6.63 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.
- 6.64 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.
- 6.65 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.
- 6.66 Subject to Paragraph 6.68 below, a 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).

6.67 If a court Duty Solicitor represents a Client in the circumstances mentioned in Paragraph 6.65 above, he must take all reasonable steps to notify the Client's Own Solicitor as soon as possible after the hearing.

6.68 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.

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