

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 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 9.2 to 9.7).

Criminal Defence Direct

9.2 Matters which fall within the scope of Criminal Defence Direct are excluded from the scope of this Contract.

9.3 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 9.4 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.

9.4 You may claim for Police Station attendance on any Matter falling within Paragraph 9.3 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 9.3 (a) to (d) above;
- (f) the advice relates to an indictable offence; or
- (g) the request is a Special Request.

If you are already at the same Police Station, and none of the exceptions apply, you may attend the Client but may not claim more than the Police Station Telephone Advice Fixed Fee.

- 9.5 If any of the exceptions in Paragraph 9.4 apply then you must endorse the reasons for attendance on file, otherwise you may not make any Claim under this Contract.
- 9.6 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.
- 9.7 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

- 9.8 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.
- 9.9 There is no Financial Eligibility Test for this Unit of Work.
- 9.10 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

- 9.11 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

- 9.12 Subject to Paragraph 9.14, 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.
- 9.13 Subject to Paragraph 9.14, 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.
- 9.14 Paragraphs 9.12 and 9.13 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.
- 9.15 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.
- 9.16 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.
- 9.17 You must ensure that the contact details of your staff are kept up to date via the DSCC website.
- 9.18 Subject to Paragraph 9.19, 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 use reasonable endeavours to contact the Client (whether in person or on the telephone, directly or indirectly via custody staff) 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.
- 9.19 You must meet the target set out in Paragraph 9.18 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.
- 9.20 You must use all reasonable endeavours to accept Panel and Back-up Matters referred by the DSCC.
- 9.21 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 9.18 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.

- 9.22 Where you instruct an Agent or Accredited Representative to provide Police Station Advice and Assistance you must ensure you receive a written report on each Matter once the Matter has concluded and at the latest by the next working day.

Use of Accredited Representatives

- 9.23 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.
- 9.24 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.
- 9.25 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
Provide Police Station Advice and Assistance on an indictable only offence	Yes	Yes	No	Yes	No
Own Client Work					
Accept initial call from the DSCC; provide initial telephone advice or attend in person	Yes	Yes	Yes	Yes	Yes

Provide Police Station Advice and Assistance on an indictable only offence	Yes	Yes	No	Yes	Yes
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*must be Engaged by you. For the purposes of assessing whether Accredited Representatives are Engaged, only Paragraph 6.21(c) 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.

9.26 When you delegate work to a Representative:

- (a) you must, where you instruct a Representative through an agency or similar arrangement, make reasonable enquiries to satisfy yourself which specific Representative will be deployed; and
- (b) you must ensure that the specific Representative is on the Police Station Register; and
- (c) you must ensure that the specific 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.

9.27 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.

9.28 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 following 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 9.32 below.

9.29 A Probationary Representative must not provide Police Station Advice and Assistance on an indictable only offence.

- 9.30 A Probationary Representative must only provide Police Station Advice and Assistance for the Provider at which his or her supervising Solicitor is based.
- 9.31 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.
- 9.32 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.
- 9.33 If you identify any issues with any Representative you have instructed including, without limitation, the:
- (a) quality of advice;
 - (b) conduct, behaviour or professionalism; or
 - (c) any other reasonable concerns regarding the service provided,
- you must notify us and the Representative's supervising solicitor within 5 Business Days setting out the nature of these concerns so any issues can be addressed.

Mandatory Attendance

- 9.34 Subject to Paragraph 9.36, 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.
- 9.35 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.
- 9.36 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

- 9.37 Subject to Paragraphs 9.38 and 9.39 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 police have informed them that 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.

9.38 Subject to Paragraph 9.39, attendance is mandatory under Paragraph 9.37(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.

9.39 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.

9.40 Before advice is given, the Client must be informed of the status of the Duty Solicitor or Representative and the Provider they represent.

9.41 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.

9.42 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

- 9.43 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.
- 9.44 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.
- 9.45 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.

Witnesses

- 9.46 You can only provide Advice and Assistance to a witness if there is a complicating factor.
- 9.47 Providing Advice and Assistance to a witness may only be claimed as Free Standing Advice and Assistance under Paragraphs 9.134 to 9.136 and not under the Police Station Advice and Assistance Fixed Fee scheme.

Complaints of maltreatment by the police

- 9.48 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.
- 9.49 The only time a separate determination that an individual qualifies for Free Standing Advice and Assistance under Paragraphs 9.134 to 9.136 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.
- 9.50 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.

Special Cases

Investigations by non-police agencies

- 9.51 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 9.134 to 9.136 if the Client satisfies the relevant Qualifying Criteria.
- 9.52 An interview with a Volunteer may take place in a location other than a Police Station.
- 9.53 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 9.134 to 9.136 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

- 9.54 If the Client is a Services Person at a services establishment or elsewhere in the England and Wales 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.
- 9.55 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.
- 9.56 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.
- 9.57 The services described in Paragraph 9.55 and 9.56 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 9.56, 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

- 9.58 Subject to Paragraph 9.62 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.
- 9.59 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).
- 9.60 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).
- 9.61 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.
- 9.62 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.
- 9.63 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

- 9.64 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.
- 9.65 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.
- 9.66 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 9.64, 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'.
- 9.67 You must not provide and claim for Police Station Advice and Assistance under the terms of any of the exceptions contained at Paragraph 9.64 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.
- 9.68 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.
- 9.69 If the Client has received previous Advice and Assistance but you are permitted to provide further Police Station Advice and Assistance under Paragraph 9.64, 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.
- 9.70 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 9.67(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

- 9.71 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.
- 9.72 Where you have previously provided Advice and Assistance to a Client in relation to a Matter, and you have already claimed for the Matter then any further Advice and Assistance provided to the Client in relation to the same Matter must be the subject of a separate Sufficient Benefit Test and 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.
- 9.73 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

- 9.74 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.
- 9.75 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

- 9.76 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.
- 9.77 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.
- 9.78 If a Client is bailed to return to a Police Station, that is a continuation of the same Investigation. Similarly, if a client is Released Under Investigation and then re-interviewed this is a continuation of the same Investigation.
- 9.79 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

your attendance is subsequently required at the Police Station in relation to other ongoing investigations in respect of that Matter (including, subject to Paragraph 9.89, where the Client is bailed to return to the Police Station) you may claim a second Fixed Fee.

- 9.80 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. 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.

Police Station Telephone Advice and calculating Escape Fee Cases

- 9.81 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

- 9.82 A Police Station Attendance Fixed Fee must be paid for all Police Station attendance undertaken on a Matter unless that Matter qualifies as an Escape Fee Case.
- 9.83 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.
- 9.84 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.
- 9.85 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).
- 9.86 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.
- 9.87 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.
- 9.88 You must continue to record and report all profit costs, and the cost of travel and 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.
- 9.89 You must not include in your Claim for Police Station attendance for an ineffective bail to return if you have not used reasonable endeavours to check prior to the attendance to establish whether it would be effective.

- 9.90 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.

Criminal Defence Direct Fixed Acceptance Fee

- 9.91 Where a former Criminal Defence Direct Matter is referred to you for Police Station attendance, you may not claim a Criminal Defence Direct Fixed Acceptance Fee. 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

- 9.92 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".
- 9.93 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.
- 9.94 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

- 9.95 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

9.96 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 1956);
 - (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.

9.97 You must not claim at the Duty Solicitor serious offences rate if you have had your Claims assessed at Category 3 (or an overall reduction of 20.01% or more) at the last contract compliance 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

- 9.98 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.
- 9.99 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).
- 9.100 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 9.131.
- 9.101 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 includes where the Client has been Released Under Investigation or on pre-charge bail and it is unclear whether further work will be required. For the avoidance of doubt, where a Client has an outstanding bail back this will form part of the same Matter as the original attendance; 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.
- 9.102 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.
- 9.103 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.

9.104 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.

Payment for Police Station Telephone Advice

9.105 Police Station Telephone Advice is paid as part of the Police Station Attendance Fixed Fee, except as outlined in Paragraph 9.107.

9.106 You must not claim for Police Station Telephone Advice if Criminal Defence Direct have given telephone advice.

9.107 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) you are already at the same Police Station and none of the exceptions of Paragraph 9.4 apply.

9.108 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.

Advice and Assistance for Pre-Charge Engagement provided in accordance with the Attorney General's Guidelines on Disclosure

Scope

9.109 This Unit of Work covers Advice and Assistance to a Client on Pre-Charge Engagement only. You may only provide Advice and Assistance after the first PACE interview and where:

- (a) there is no agreement to undertake Pre-Charge Engagement and:
 - (i) preparatory work has been undertaken which determines Pre-Charge Engagement would be beneficial but the prosecution and/or investigators refuse to agree to Pre-Charge Engagement; or
 - (ii) preparatory work has been undertaken which determines that Pre-Charge Engagement would not be beneficial; or
 - (iii) the prosecutors and/or investigators initiate Pre-Charge Engagement and you undertake preparatory work which determines Pre-Charge Engagement would not be beneficial; or

- (b) there is an agreement (either formally or informally) between the Client and the prosecutors and/or investigators to undertake Pre-Charge Engagement.

9.110 This Unit of Work only includes:

- (a) Advice and Assistance in relation to Pre-Charge Engagement and does not include any communication with the prosecutors and/or investigators outside the scope of Paragraph 9.109; and
- (b) the activities listed in (or similar activities conducted in accordance with) Paragraph 4 of Annex B of the Attorney General's Guidance on Disclosure (as amended, replaced or otherwise updated from time to time).

Qualifying Criteria

9.111 The Sufficient Benefit Test set out in Section 3 must always be satisfied before providing any Advice and Assistance under this Unit of Work.

9.112 The Sufficient Benefit Test is satisfied only where:

- (a) there is an (either formal or informal) agreement between the Client and the prosecutors and/or investigators to undertake Pre-Charge Engagement; or
- (b) preparatory work is undertaken to determine whether it would be beneficial to the Client to undertake Pre-Charge Engagement and you maintain a record on the Client's file to demonstrate your reasons for undertaking such preparatory work including:
 - (i) the potential benefits listed in Paragraph 10 of Annex B of the Attorney General's Guidance on Disclosure (as amended, replaced or otherwise updated from time to time) or any other reasonable ground for potentially undertaking Pre-Charge Engagement; and
 - (ii) what information was obtained during the Client's interview or subsequently which indicated Pre-Charge Engagement may be beneficial.

Application Procedures

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

9.114 You are delegated the function to self-grant Legal Aid in Matters in this Unit of Work, subject to the Matter passing the Sufficient Benefit Test.

9.115 A determination that an individual qualifies for Advice and Assistance under this Unit of Work may be made without an application form provided that a note of the determination (in accordance with Paragraph 9.116) is made on the file either before the Advice and 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).

- 9.116 You may make a determination that an individual qualifies for Advice and Assistance under this Unit of Work only where the Matter falls within the scope of this Unit of Work. You must record the following on file:
- (a) the Client's name and address;
 - (b) the UFN; and
 - (c) details of the relevant Unit of Work and that the Matter falls within the scope of Paragraphs 9.109 to 9.110.

Previous Advice and Assistance

- 9.117 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; 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.

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.

- 9.118 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 9.117 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'.
- 9.119 You cannot Claim for Advice and Assistance under the terms of any of the exceptions contained in Paragraphs 9.117 (a) to (c) 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.
- 9.120 Where Advice and Assistance is provided in contravention of the terms of Paragraph 9.117, then the work undertaken must not be claimed or paid as Contract Work.
- 9.121 If the Client has received previous Advice and Assistance but you provide further Advice and Assistance under Paragraph 9.117, 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 meet the Qualifying Criteria.
- 9.122 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 9.117(a) to (c) 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.
- 9.123 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

- 9.124 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.
- 9.125 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.
- 9.126 If you provide further Advice and Assistance under Paragraph 9.124 then:
 - (a) 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

- 9.127 A single Claim must be submitted for all Advice and 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, except where a Claim under this Unit of Work has been submitted already for the same Matter because Paragraph 9.129 (c) below applies.

- 9.128 If Police Station Advice and Assistance is claimed and you also provide Advice and Assistance to the same Client on the same Matter under this Unit of Work, then the same UFN must be assigned but the Pre-Charge Engagement advice and Assistance work must be claimed at the appropriate rate and separately from any Claim for Police Station Advice and Assistance and/or Free Standing Advice and Assistance.
- 9.129 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 under this Unit of Work will be undertaken for the Client in the same Matter; or
 - (c) it is unclear whether further work will be required under this Unit of Work and a minimum of one month has elapsed since the last work in the Matter was undertaken.
- 9.130 Where you have provided Advice and Assistance under this Unit of Work to 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.
- 9.131 If Advice and Assistance for Pre-Charge Engagement 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.
- 9.132 You must claim for work undertaken in this Unit of Work at the Hourly Rates as set out in the Criminal Remuneration Regulations. Disbursements may be claimed under this Unit of Work. Travel and waiting time may not be claimed.
- 9.133 Subject to any extensions granted following an application made under Paragraphs 5.5 to 5.16, the Upper Limit specified in the Criminal Remuneration Regulations applies to work undertaken under this Unit of Work and operates as a Costs Limitation. This includes where multiple Claims are submitted for the work pursuant to Paragraph 9.129(c). It does not extend to work undertaken under any other Unit of Work for the Client in the same Matter.

Work conducted outside the Police Station: Free Standing Advice and Assistance (Own Solicitor)

Scope

9.134 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

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

9.136 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

9.137 You may only provide Advice and Assistance to a witness if there is a complicating factor.

Complaints of maltreatment by the Police

9.138 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.

9.139 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.

Application procedures

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

Postal applications

9.141 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

9.142 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

- 9.143 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.
- 9.144 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 9.143(a) and (b) above will need to be satisfied before any Claim is made.
- 9.145 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

- 9.146 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; 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.

- 9.147 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 9.146 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'.
- 9.148 You cannot Claim for Advice and Assistance under the terms of any of the exceptions contained in Paragraphs 9.146(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.

9.149 Where Advice and Assistance is provided in contravention of the terms of Paragraph 9.146, then the work undertaken must not be claimed or paid as Contract work.

9.150 If the Client has received previous Advice and Assistance but you provide further Advice and Assistance under Paragraph 9.146, 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.

9.151 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 9.146(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.

9.152 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

9.153 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.

9.154 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.

9.155 If you provide further Advice and Assistance under Paragraph 9.153 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

9.156 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. Subject to Paragraph 9.128, 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 9.157(c) or (d) apply.

9.157 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.

9.158 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.

9.159 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

9.160 Subject to any extensions to the Upper Limit granted following an application made under Paragraphs 5.5 to 5.16, the Upper Limit specified in the Criminal Remuneration Regulations applies to Claims.

Advocacy Assistance during a Criminal Investigation

9.161 You may provide Advocacy Assistance under section 15(2)(b) of the Act to a Client during a Criminal Investigation in the following Units of Work:

Unit of Work	Scope
Advocacy Assistance on a warrant of further detention	This Unit of Work may be provided to a Client who 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.
Advocacy Assistance for an armed forces custody hearing	This Unit of Work may be provided to a Client who is the subject of an application to extend detention in military custody. 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.
Advocacy Assistance in the magistrates' court for an application to vary police bail conditions	This Unit of Work may be provided in the magistrates' court to a Client in connection with 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.
Advocacy Assistance in the magistrates' court for an application to extend pre-charge bail	This Unit of Work may be provided to 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.

Qualifying Criteria

- 9.162 The Sufficient Benefit Test is deemed to be satisfied where the scope of the relevant Unit of Work is met.
- 9.163 There is no Financial Eligibility Test under these Units of Work.

Application Procedures

- 9.164 A determination that an individual qualifies for Advocacy Assistance under these Unit of Works may be made without an application form provided that a note of the determination (in accordance with Paragraph 9.166) 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).
- 9.165 You may make a determination that an individual qualifies for Advocacy Assistance under the relevant Unit of Work only where the Matter falls within the scope of the relevant Unit of Work.
- 9.166 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

9.167 The scope of Advocacy Assistance under these Units of Work includes any reasonable preparation and giving of any advice on an appeal.

Counsel

9.168 You may instruct Counsel or in-house advocate in relation to these Units of Work. The costs are assessed by us, and the work is claimed by you using the rates in regulations (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.

Rules on claiming

9.169 A single Claim must be submitted for all Advocacy Assistance undertaken under these Units 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 9.170(d) or (e) applies.

9.170 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) 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
- (c) it is known no further work will be undertaken for the Client in the same Matter; or
- (d) 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.
- (e) A separate Claim may be submitted for Advocacy Assistance undertaken for each separate application to extend pre-charge bail under sections 47ZF or 47ZG of PACE in the relevant Unit of Work.

9.171 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

9.172 Subject to any extensions to the Upper Limit granted following an application made under Paragraphs 5.5 to 5.16, the Upper Limit specified in the Criminal Remuneration Regulations applies to Claims in each Unit of Work. This includes where multiple Claims are submitted for the work pursuant to Paragraph 9.170(d). It does not extend to work undertaken under any other Unit of Work for the Client in the same Matter.

Payment

9.173 You must Claim for work carried out under these Units of Work at the rates specified in the Criminal Remuneration Regulations for each Unit of Work (other than by a court Duty Solicitor acting as such which should be Claimed under Paragraph 10.1).

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