

10. Criminal Proceedings

Advice and Assistance and Advocacy Assistance by a court Duty Solicitor provided under section 15(2)(b) of the Act

Scope

- 10.1 This Unit of Work may only be undertaken for a Client who is involved in Criminal Proceedings or is the subject of police bail.

Qualifying Criteria

- 10.2 The Sufficient Benefit Test is set out below and must be satisfied in order to provide Advice and Assistance or Advocacy Assistance under this Unit of Work.

Advice and Assistance and Advocacy Assistance may only be provided on legal issues concerning English (or Welsh) law and where there is sufficient benefit to the Client, having regard to the circumstances of the matter, including the personal circumstances of the Client, to justify work or further work being carried out.

Application procedures

- 10.3 A court Duty Solicitor may make a determination that an individual qualifies for Advocacy Assistance or Advice and Assistance under this Unit of Work only where the Case falls within the scope of this Unit of Work and any other limitations on scope are satisfied.
- 10.4 A determination that an individual qualifies for Advocacy Assistance and/or Advice and Assistance under this Unit of Work may be made by the court Duty Solicitor without an application form provided that a note of the determination (in accordance with Paragraph 10.5) is made on the file either before the Advocacy Assistance or Advice and Assistance is to be provided or, if provided at short notice, as soon as practicable thereafter.
- 10.5 You must record the following on file:
- (a) the Client's name and address;
 - (b) details of the relevant Unit of Work;
 - (c) whether the Client is in custody or charged with an imprisonable offence;
 - (d) the date, time and venue of the court appearance; and
 - (e) a summary of the work undertaken on behalf of the Client.

Service requirements

- 10.6 A Duty Solicitor must not provide Advocacy Assistance to a Client at a not guilty trial, nor Advocacy Assistance to a Client in connection with a non-imprisonable offence.

- 10.7 A Duty Solicitor at a magistrates' court must, where applicable provide the following services to any defendant who wishes to receive Advocacy Assistance:
- (a) Advice and Assistance and/or Advocacy Assistance for a Client who is in custody on a plea of guilty where the Client wishes the Case to be concluded at that appearance in court, unless the Duty Solicitor considers that the Case should be adjourned in the Interests of Justice of the Client;
 - (b) Advice and Assistance and/or Advocacy Assistance to a Client who is before the court as a result of failure to pay a fine or other sum ordered or to obey an order of the court, and such failure may lead to the Client being at risk of imprisonment;
 - (c) Advice and Assistance and/or Advocacy Assistance to any other Client who is not in custody provided it is in connection with an imprisonable offence where, in the opinion of the Duty Solicitor, such a Client requires Advocacy Assistance;
 - (d) help to a Client who is eligible for assistance from the court Duty Solicitor to make an application for a determination that an individual qualifies for Representation in respect of any subsequent appearance of the Client before the court. Where such an application is made the Duty Solicitor must enquire whether the Client wishes to instruct another Solicitor to act for him or her.
- 10.8 Notwithstanding Paragraph 10.1 a Duty Solicitor must provide Advocacy Assistance in the following circumstances:
- (a) advice to an individual who is in custody;
 - (b) making of a bail application unless the individual has received such assistance on a previous occasion;
 - (c) advice to an individual who is involved in Prescribed Proceedings;
 - (d) applying to vary police bail conditions (including "street bail" conditions) imposed by the police under sections 30BC or 47(1E) of PACE, as amended by the Criminal Justice Act 2003; and
 - (e) help to an individual subject to an application by the police to extend police bail under sections 47ZF or 47ZG of PACE.
- 10.9 When a hearing is adjourned to another day, a Duty Solicitor must not, as Duty Solicitor, provide Advice and Assistance or Advocacy Assistance to a defendant to whom he or she or any other Duty Solicitor has provided services in the same Case. This Paragraph does not prevent a Duty Solicitor from representing the same Client again if that Client's Case is adjourned to a later time that same day.
- 10.10 A Duty Solicitor must not advise or represent a Client at a sitting when any member of his or her organisation is representing the Crown Prosecution Service in the same hearing.
- 10.11 A Duty Solicitor must remain at the court during the Duty Period until it is clear to him or her that Advice and Assistance or Advocacy Assistance is not likely to

be required by any defendant. Where it is not clear whether such help is needed, he or she must consult the clerk of the court or other suitable person.

- 10.12 A Duty Solicitor is required, where requested by the court, to provide Duty Solicitor services in any court room during the Duty Period at a specified Magistrates' court and not only at a specific room listed on any rota document or similar.
- 10.13 A Duty Solicitor must wear an identification badge during his or her Duty Period at court where required to do so by the magistrates' court or local instructions.
- 10.14 An application for a determination that an individual qualifies for Representation must not be made by you (or anyone working under your Contract) for any Case that concludes or is sent to the Crown Court on the same day as the court Duty Solicitor session where you have acted as court Duty Solicitor on that Case. Such work must be Claimed at the court Duty Solicitor rates set out in the Criminal Remuneration Regulations unless the Case was not within the scope of this Unit of Work. For the avoidance of doubt, when acting as Magistrates' court Duty Solicitor, where the case is sent to the Crown Court, you may make an application for Representation in the Crown Court, but you may not Claim the Sending Hearing Fixed Fee.
- 10.15 Where a court prevents the defendant from cross examining a witness under section 38 of the Youth Justice and Criminal Evidence Act 1999 and the court appoints a Duty Solicitor to represent the defendant for the purposes of cross examination, the Duty Solicitor is under a duty to undertake that work unless there are exceptional circumstances that prevent them from doing so. The Duty Solicitor will be paid out of central funds.
- 10.16 A Duty Solicitor may undertake Own Client Contract Work during a Magistrates' court Duty Period only where this does not prevent or delay the provision of Duty Solicitor services and any such work shall not be included within any Claim for Duty Solicitor services.

Preparation and follow up work

- 10.17 The scope of Advocacy Assistance under this Unit of Work, which you must comply with, only includes:
- (a) the giving of any notice of any appeal or making an application to the magistrates for them to state a case within the ordinary time limit and matters preliminary to that; and
 - (b) reasonable preparation and follow up work (this may include advising before the hearing (including reasonable preparation correspondence and telephone calls) and advising the Client of the consequences of the outcome),

except that reasonable advice and preparation must only be remunerated when provided during the court duty session.

Rules on Claiming

- 10.18 Where Advice and Assistance and/or Advocacy Assistance is provided by the court Duty Solicitor acting as such under this Class of Work, all work undertaken during the court Duty Period must be submitted in a single Claim at the court Duty Solicitor rates set out in the Criminal Remuneration Regulations.

- 10.19 Such a Claim must be submitted separately from a Claim made in this Class for additional work undertaken on the same Matter or Case for the same Client outside of the court Duty Period.

Representation in the magistrates' court provided under section 16 of the Act

Scope

- 10.20 This Unit of Work covers Representation in a magistrates' court in criminal proceedings (including Prescribed Proceedings) under a Representation Order and includes:

- (a) advice on an appeal; and
- (b) related bail proceedings in the Crown Court or High Court.

It excludes proceedings that are sent for trial under section 51 of the Crime and Disorder Act 1998 (except proceedings in a magistrates' court following a remittal under paragraphs 10(3)(a) or 13(2) of Schedule 3 to the Crime and Disorder Act 1998).

Qualifying Criteria

- 10.21 In order for you to provide Representation under this Unit of Work:
- (a) the Client must satisfy the Financial Eligibility Test. The Client's eligibility will be assessed by the Representation Authority; and
 - (b) the Client must have a determination that they qualify for Representation by the Representation Authority.

Application procedures

- 10.22 You may not Claim for Representation unless a Representation Order has been issued by a Representation Authority following the appropriate application procedure.
- 10.23 Where a Representation Order is applied for and the Client needs assistance with completing the relevant forms, you may only spend up to 30 minutes providing such assistance. This item of work may then be included in your calculation of costs to determine the appropriate Standard Fee, or to be assessed if the Case is Claimed as a non-Standard Fee.
- 10.24 You must retain a copy of the Client's signed declaration on file.
- 10.25 You must inform the Client that a refusal to make a determination in the Client's favour in the magistrates' court may be reviewed in accordance with the Criminal Financial Regulations (if the refusal relates to the Client being financially ineligible), or the Criminal Legal Aid (General) Regulations 2013 (if the refusal is on the grounds that the Interests of Justice do not require Representation before the magistrates' court).
- 10.26 Pursuant to Paragraph 10.27, you must identify, and record on the appropriate Matter or Case file, any point at which the work, which you are performing for a Client, becomes a separate Case.

10.27 Pursuant to Paragraph 10.26, where two or more separate Cases arise, each one must be the subject of a separate application form and determination (where relevant). You must decide whether you may Claim the work under this Contract and the appropriate Qualifying Criteria will apply to each Case.

Pre-Order work

10.28 A Claim for work under this Unit of Work covers all work undertaken from the date on which the Representation Order is issued. It also covers any legal advice or Representation given on the same Case before an Order is granted if the following three conditions are met:

- (a) the interests of justice require that the advice or Representation is provided as a matter of urgency i.e., there is a court hearing within ten working days or less of the date when initial instructions are taken;
- (b) there is no undue delay in making an application for Representation which must be submitted no more than five working days after initial instruction; and
- (c) the Pre-Order advice or Representation is given by you and you are subsequently assigned as evidenced in the Representation Order.

10.29 If you provide Representation under this Unit of Work, then any Claim must include any Pre-Order work. Where a Standard Fee is payable, it will apply to all the work required to be included in the same Claim.

10.30 In order to enable us to decide whether Pre-Order work may be Claimed and/or allowed, you must note on file the date of initial instruction; the date the application for a determination that an individual qualifies for Representation was lodged with the court and the date of the court hearing.

Counsel

10.31 If you instruct Counsel, the instructions delivered must include a copy of the Representation Order and you must notify Counsel of the UFN, and any amendments made to the Representation Order.

Assigned Counsel

10.32 Where an individual is entitled to Counsel (as may be determined by the court) in accordance with regulation 16 and 17 of The Criminal Legal Aid (Determinations by a Court and Choice of Representative) Regulations 2013, Assigned Counsel must be paid directly by us in accordance with the rates set out in the Criminal Remuneration Regulations and must complete a separate Claim form.

10.33 You must provide Assigned Counsel with details of the UFN which must be inserted on Counsel's Claim. You must submit Counsel's Claim at the same time that you submit your Claim. The time limits for Claims which apply to you also apply to Counsel's Claim.

Unassigned Counsel

10.34 You may instruct Counsel on an unassigned basis to provide magistrates' court Representation where a determination that an individual qualifies for

Representation has been made. If you do this, you must agree a fee with Counsel in writing and notify Counsel of the relevant UFN.

- 10.35 In proceedings for which a Standard Fee is Claimed, Counsel's agreed fee must also include any fees agreed between you and Counsel in respect of Counsel's travelling and waiting time and travelling costs. Counsel's travelling and waiting costs cannot be Claimed separately from us.
- 10.36 You must Claim your costs (including the time spent by Counsel in preparation, attendance and advocacy) on the Contract Report Form as a Standard Fee (unless the Case is claimable as a non-Standard Fee Claim). When working out the appropriate Standard Fee, the calculation must be made using the maximum fee principle and on the basis that the case was conducted without Counsel. You must use the rates set out in the Criminal Remuneration Regulations applicable for this Unit of Work to determine the correct level of Standard Fee and you must retain on file details of the amount agreed in respect of Unassigned Counsel's fees (if Unassigned Counsel is instructed).
- 10.37 A Non-Standard Fee Claim will be assessed or audited using the maximum fee principle, on the basis that you conducted the Case without Counsel.
- 10.38 You must pay Unassigned Counsel's fees. You must agree a fee with Counsel and to make appropriate arrangements for Counsel to be paid in accordance with the Contract. We have no liability to pay Counsel who is instructed on an Unassigned Counsel basis.
- 10.39 The costs payable in respect of Counsel's agreed fee will only be reduced on Assessment on Non-Standard Fees where, and to the extent that, they exceed the costs that would be allowed if you had conducted the case without Counsel.
- 10.40 The professional relationship between you and Counsel will be the same as in a privately funded case.
- 10.41 If more than one Counsel is instructed in the same proceedings, you must reach a separate agreement with each Counsel on fee and payment arrangements.
- 10.42 If you fail to pay Unassigned Counsel within 30 days of receipt of his or her fee note, then Unassigned Counsel may apply to us to be paid directly. We will make enquiries directly with you to establish whether any payment has been or will be made. You must provide us with the relevant UFN and written confirmation of the fee agreed, together with Unassigned Counsel's fee note.
- 10.43 If we are satisfied that Unassigned Counsel has not been paid and agree to pay Unassigned Counsel directly, we will recoup the relevant amount from subsequent payments to you. We will only use this power as a remedy where you have not shown any justified reason for non-payment.

Withdrawal of a determination that an individual qualifies for Representation

- 10.44 You may Claim for work undertaken up until the date of withdrawal of a determination that an individual qualifies for Representation.
- 10.45 The time limit for submission of a Claim runs from the date on which withdrawal of the determination that an individual qualifies for Representation came to your knowledge.

10.46 Where a determination that an individual qualifies for Representation is withdrawn, you must send without delay all papers and other material in your possession relating to the proceedings to the Client, but retain copies on file for Assessment purposes.

Rules on Claiming

10.47 Subject to the provisions in relation to Claiming below, a single Claim must be submitted for all work undertaken in the Criminal Proceedings Class of Work for a Client in the same Case except where a Claim has been submitted already in the same Case because Paragraph 10.50 below applies. The single Claim must be for one or more of the Units of Work within the Criminal Proceedings Class of Work. Where a Standard Fee is payable, it will apply to all the work required to be included in the same Claim.

10.48 A single Claim must be submitted in respect of all Clients where a Claim is made under this Unit of Work for Representation provided to two or more Clients in the same Case.

10.49 A single Claim must be submitted where more than one Case is joined.

10.50 Subject to Paragraphs 10.48 and 10.49, a Claim may only be submitted when:

- (a) the Case has concluded; or
- (b) it is known that no further work will be undertaken for the Client in the same Case; or
- (c) it is unclear whether further work will be required or not and a minimum of one month has elapsed since the last work in the Case was undertaken.

10.51 Once a Representation Order has been issued, any Pre-Order work given to the Client on issues which form part of the Case covered by the Representation Order must be claimed under the Representation Order.

10.52 Where you act for more than one Client in Criminal Proceedings which form a single Case, your Claim for payment must cover all Clients represented. Where you undertake work for more than one Client on the same Case, you must assign the same UFN to each Client for Claiming purposes. The work undertaken will form a single Claim to which you must assign the UFN of the "lead" Client in accordance with the Contract Guide. You must retain on file a breakdown of the time spent with each Client which may be requested by us for Assessment or Audit purposes. This information must be submitted as part of your Claim in a Non-Standard Fee Case.

10.53 Where sentence is deferred in the magistrates' court, a Claim must be submitted within three months of the date of deferment. A separate Claim may be made for work done only following the deferment. This must be submitted within three months of the Client's reappearance for sentence and must be Claimed as a category 1B or category 1A Standard Fee as appropriate to the offence.

10.54 Where proceedings in a magistrates' court have not been concluded but a warrant of arrest has been issued, a Claim for costs in respect of work done under a Representation Order must be made not earlier than six weeks and not later than 19 weeks from the date of issue of the warrant. A Claim amendment may be made

for any further work undertaken after the original Claim has been submitted if the Client is arrested or surrenders. The original Claim will then be recalculated.

- 10.55 In Criminal Proceedings in the magistrates' court covered by a Representation Order, a Standard Fee will be paid to you in accordance with the Contract for a Case in accordance with the payment rates set out in the Criminal Remuneration Regulations.
- 10.56 Where the proceedings involve more than one offence, the definition of Case consists of three independent elements or tests. One or more of the following three tests will need to be satisfied to determine whether a Claim for a single Standard Fee, or whether two or more Standard Fees may be Claimed. If the answer to any of one of these tests is "yes", then only one Standard Fee may be Claimed:
- (a) are the charges or informations preferred or laid at the same time?;
 - (b) are the charges or informations founded on the same facts? The test here is whether the charges have a common factual origin; or
 - (c) are the charges or informations part of a series of offences? The test here is whether the offences exhibit some similar feature which would allow them to be described as a series of offences.
- 10.57 For the purposes of the definition of a series of offences, a breach of a community penalty or other court order must be treated as an offence. If the defendant is before the court for other reasons, then no separate Standard Fee payment will be made for breach proceedings in respect of a community penalty or other court order, irrespective of whether there is any link between such breach proceedings and any other proceedings being heard at the same time. If breach proceedings are heard alone then they will attract a separate Standard Fee.
- 10.58 We will not pay you for any work done in relation to a defendant who is charged with an offence under s12 of the Drugs Act 2005 (failure to attend an initial assessment or stay for its duration) and is before the court for other matters.
- 10.59 It is your obligation to satisfy us that charges against a defendant or co-defendants constitute more than one Case such as to entitle you to Claim more than one Standard Fee.
- 10.60 Where you make a Crown Court or High Court bail application, the work will form part of a "Case" for the purpose of Standard Fees and must be Claimed as part of the Claim for work undertaken in the magistrates' court in accordance with this Specification.

Non-Standard Fee Claims

- 10.61 A Claim for a Non-Standard Fee for Representation in the magistrates' court must not be included in your Contract Report Form. Each Claim must be submitted on the appropriate Claim form and will be assessed individually. You must submit the following with your Claim:
- (a) all the information specified in Paragraph 4.34 to 4.35, where relevant; and

- (b) where enhanced rates are sought under Paragraph 10.82, you must provide full details of how the work meets the criteria for enhancement.

10.62 Claims for payment from Assigned Counsel must also comply with the Paragraphs under the heading "Rules on Claiming" above, and must contain the same UFN and be submitted with your Claim. You must notify Counsel of the UFN number.

Payment

10.63 Any proceedings that are committed to or sent to the Crown Court for trial under s51 of the Crime and Disorder Act 1998 (except proceedings in a magistrates' court following a remittal under paragraph 10(3)(a) or 13(2) of Schedule 3 to the Crime and Disorder Act 1998 and proceedings at any bail application where the defendant is held in custody) are paid in accordance with the provisions in the Criminal Remuneration Regulations and must not form part of any Claim for remuneration under this Specification, except for the Sending Hearing Fixed Fee claimable for the Unit of Work at paragraph 10.114.

10.64 Work Claimed under this Unit of Work is paid by us either by way of Designated Area or Undesignated Area Standard Fees or Hourly Rates. The applicable fees vary depending on:

- (a) the Category of Work and type of proceedings (as set out in the table after Paragraph 10.75); and;
- (b) the location of your Office/the magistrates' court at which work is carried out. Two different sets of Standard Fees apply in this respect:
 - i. "Designated Area Standard Fees"; or
 - ii. "Undesignated Area Standard Fees"

as set out in the Criminal Remuneration Regulations.

10.65 The Standard Fees do not apply to a Case in which Counsel has been assigned under a Representation Order. Payment for Assigned Counsel is dealt with below.

Items of Work covered by the Standard Fees

10.66 The items of work included in the Designated and Undesignated Area Standard Fees are as follows, which are known as core costs and include the costs of any Advocacy Assistance required by this Contract to be Claimed under the Order:

- (a) any preparation;
- (b) routine letters written and routine telephone calls;
- (c) advocacy;
- (d) work done by a fee-earner acting as Agent for the Solicitor named in the Representation Order; and
- (e) Unassigned Counsel's preparation and advocacy.

10.67 Travel and waiting time cannot be claimed separately if you undertake a Case in a Designated Area, or if your Office is in a Designated Area.

- 10.68 Where you act for more than one Client in proceedings forming a single Case, the Claim for payment of a Standard Fee must cover all the Clients represented by you under one or more Representation Orders.
- 10.69 Where a Representation Order is issued to a Client in respect of more than one charge, offence or information, the Claim for payment of a Standard Fee must cover all the charges, offences or information that form part of one Case.

Costs additional to the Standard Fees

- 10.70 The following costs are payable by us in addition to the Undesignated Area Standard Fee:
- (a) reasonable travelling and waiting time of fee-earners and Unassigned Counsel, which is payable at the rate provided in the Criminal Remuneration Regulations; and
 - (b) Disbursements.
- 10.71 Disbursements are payable by us in addition to the Designated Area Standard Fee.
- 10.72 Travelling and waiting time of fee-earners and Unassigned Counsel is not payable by us in addition to any Designated Area Standard Fee or in respect of any Designated Area Non-Standard Fee.
- 10.73 You must record all travel and waiting time of fee-earners and Unassigned Counsel in respect of each Standard Fee Claimed. You must report the cost of that travel and waiting time to us when you make each Claim and you must ensure that you use the correct Claim codes in the Contract Guide.

Higher and Lower Standard Fees

- 10.74 Where the core costs, if they had been assessed on the Hourly Rates set out in the Criminal Remuneration Regulations:
- (a) do not exceed the Lower Standard Fee Limit, as appropriate, then the appropriate Lower Standard Fee will be payable;
 - (b) exceed the Lower Standard Fee Limit, as appropriate, but do not exceed the Higher Standard Fee Limit, the appropriate Higher Standard Fee will be payable;
 - (c) exceed the Higher Standard Fee Limit, as appropriate, the core costs should be Claimed based on the Hourly Rates set out in the Criminal Remuneration Regulations.

Determining the Category and type of proceedings

- 10.75 You must determine the category and type of proceedings in accordance with the table below and apply the relevant rules.

Categories and Types of Proceedings

Category 1B	Category 1A	Category 2
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Guilty pleas (summary).	Guilty pleas (either way).	Contested trials.
Uncontested proceedings arising out of a breach of an order of a magistrates' court (including proceedings in a magistrates' court relating to a breach of a Crown Court community rehabilitation order, community punishment order or suspended sentence).	Guilty pleas in proceedings for low-value shoplifting as defined in section 22A(3) of the Magistrates Court Act 1980(d) (low-value shoplifting).	Proceedings which were listed and fully prepared for trial in a magistrates' court but are disposed of by a guilty plea on the day of trial before the opening of the prosecution case.
Proceedings relating to summary offences which are discontinued or withdrawn or where the prosecution offer no evidence.	Proceedings relating to either way offences or low value shoplifting which are discontinued or withdrawn or where the prosecution offer no evidence.	Proceedings which were listed and fully prepared for trial in a magistrates' court but are discontinued or withdrawn or where the prosecution offers no evidence or which result in a bind over on the day of trial before the opening of the prosecution case.
Proceedings relating to summary offences which result in a bind over.	Proceedings relating to either way offences or low value shoplifting which result in a bind over.	Contested proceedings relating to a breach of an order of a magistrates' court (including proceedings relating to a breach of a Crown Court community rehabilitation order, community punishment order or suspended sentence).
Proceedings arising out of a deferment of sentence (including any subsequent sentence hearing) under Chapter 1 of Part 2 of the Sentencing Code.	Indictable only cases heard in the Youth Court.	Proceedings where mixed pleas are entered.
Proceedings prescribed under Regulation 9 of the Criminal Legal Aid (General) Regulations 2013, except where the Case was listed and fully prepared for a contested hearing to decide		Proceedings prescribed under Regulation 9 of the Criminal Legal Aid (General) Regulations 2013, where the Case was listed and fully prepared for a contested hearing to decide whether an order should be made.

whether an order should be made.		
Proceedings relating to either way offences which must be tried in a magistrates' court in accordance with section 22 of the Magistrates' Courts Act 1980.		

- 10.76 Subject to Paragraph 10.77, where proceedings forming one Case fall within more than one Category, the proceedings will be treated as forming part of the higher or highest in value of the Categories concerned.
- 10.77 Subject to Paragraph 10.78, where there is a change of organisation assigned under a Representation Order, the proceedings will be treated as category 1B or category 1A proceedings, as appropriate to the type of offence, for the purposes of a Claim for costs in respect of work done under the Representation Order by the Provider formerly assigned. This paragraph does not apply if a Representation Order is transferred before a hearing at which the proceedings are committed to or sent to the Crown Court for trial under s.51 of the Crime and Disorder Act 1998.
- 10.78 Where there is a change of Provider assigned under a Representation Order the provisions for payment to the Provider originally assigned ("the old Provider") and the newly assigned Provider ("the new Provider") will be as follows:
- (a) except in the circumstances described in sub-Paragraph (b) below, the old Provider and the new Provider may each submit Claims for costs. However, for the purposes of the old Provider's Claim for costs under the Representation Order the proceedings will be treated as category 1B or category 1A proceedings as appropriate to the type of offence.
 - (b) where:
 - (i) the conducting Solicitor moves from the old Provider to the new Provider (e.g. becomes a partner in, or employee of, the new Provider); or
 - (ii) the old Provider and the new Provider are, or will shortly be, closely related (e.g. the old Provider has restructured to facilitate the creation of the new Provider or there has been, or will shortly be, a merger of the old Provider and the new Provider or an acquisition of the old Provider by the new Provider); or
 - (iii) the old Provider is unable to continue representing the Client following the termination of all, or part, of its Contract (or, in anticipation of this, ceases to represent the Client),

payment will be as if one Provider had been assigned throughout and only the new Provider may submit a Claim for costs;

- (c) where the new Provider submits a Claim under Paragraph 10.78(b) above, it will do so taking account of both its costs and the costs of the old Provider, but payment will be made only to the new Provider. The old Provider and the new Provider must agree any division of monies between themselves.

10.79 Where proceedings have not been concluded but a warrant of arrest has been issued, the proceedings will be treated as category 1B or category 1A proceedings as appropriate to the type of offence.

Proceedings

10.80 For the purposes of this Unit of Work, any proceedings specified in the Categories and types of Proceedings table above ("the specified proceedings") will be treated as including all Incidental Proceedings in respect of which a Representation Order is in force, whether or not the Order is the same as that in force in respect of the specified proceedings. Where a Standard Fee is payable in respect of the specified proceedings:

- (a) no separate fee will be payable in respect of the ancillary proceedings; but
- (b) all work done or costs incurred in the ancillary proceedings will be treated as done or incurred in the specified proceedings.

Reduced and Enhanced Rates

10.81 Only in respect of non-Standard Fee Claims, we may allow Claims at less than the Hourly Rates specified in the Criminal Remuneration Regulations where it appears to us reasonable to do so having regard to the competence and dispatch with which the work was done.

10.82 Only in respect of non-Standard Fee Claims, we may allow Claims at more than the Hourly Rates specified in the Criminal Remuneration Regulations where it appears to us, taking into account all the relevant circumstances of the case, that:

- (a) the work was done with exceptional competence, skill or expertise; or
- (b) the work was done with exceptional dispatch; or
- (c) the case involved exceptional circumstances or complexity,

and we may have regard to the generality of proceedings to which these provisions apply in determining what is exceptional.

10.83 Where we consider, in accordance with the Paragraph 10.82 above, that any item of work should be allowed at more than the specified Hourly Rates, we will apply to that item of work a percentage enhancement in accordance with Paragraphs 10.84 to 10.85.

10.84 In determining the percentage by which fees should be enhanced in accordance with Paragraph 10.82, we will have regard to:

- (a) the degree of responsibility accepted by you and your personnel;
- (b) the care, speed and economy with which the case was prepared; and

- (c) the novelty, weight and complexity of the case

10.85 The relevant Hourly Rate will not be enhanced by more than 100%.

Payment for Assigned Counsel

10.86 Work undertaken by Assigned Counsel under this Unit of Work must be claimed at the rates specified in the Criminal Remuneration Regulations.

10.87 These rates only apply under this Unit of Work where an individual is entitled to Counsel (as may be determined by the court) in accordance with regulation 16 and 17 of the Criminal Legal Aid (Determinations by a Court and Choice of Representative) Regulations 2013. The rates are the maximum amounts allowable per item except where expressed as Hourly Rates. Where an Hourly Rate is specified we will determine any fee for such work in accordance with that Hourly Rate, provided that the fee determined must not be less than the minimum amount specified.

10.88 Where a refresher fee is claimed in respect of less than a full day, we will allow such fee as appears reasonable having regard to the fee which would be allowed for a full day.

10.89 Where we consider (taking into account all the relevant circumstances of a Case), that the exceptional circumstances of a Case mean that the rates set out in the Criminal Remuneration Regulations would not provide reasonable remuneration for some or all of the work allowed, we may allow such amounts as appear to us to be reasonable remuneration for the relevant work.

Payment on Account of Disbursements

10.90 You may submit an application for Payment on Account of a Disbursement for which you have incurred liability in Criminal Proceedings, within the scope of this Section, provided that the following conditions are satisfied:

- (a) you have obtained prior authority to cover the amount sought; and
- (b) you have incurred liability for the Disbursement under that authority; and
- (c) the amount of a single Disbursement (including VAT) is likely to exceed the value of your next Monthly Payment which falls due after the liability for the Disbursement has been incurred.

10.91 An application for Payment on Account may be made at any time before you submit your final Claim for costs and must:

- (a) not exceed the maximum amount authorised under the prior authority; and
- (b) be made in such manner as we may direct and must be accompanied by a copy of all relevant prior authorities and any invoices or other documents to establish that the liability has been incurred.

10.92 We will authorise a Payment on Account, subject to the prior authority limit, if it appears to have been reasonably incurred in accordance with the prior authority.

This does not prevent you from seeking more than the amount authorised by the prior authority on costs Assessment.

- 10.93 If we authorise and pay a request for a Payment on Account of the Disbursement, then it will usually be paid through the Monthly Payment system.
- 10.94 If we refuse to authorise a request for a Payment on Account, there is no right of appeal, but you may still seek to recover the Disbursement on costs Assessment. You may also submit a fresh application for a Payment on Account, to provide additional information or to explain a change in circumstances.

Own Client Work: Pre-Order Cover, Early Cover and means test form completion

Scope and Qualifying Criteria

- 10.95 You may only Claim for Pre-Order Cover or Early Cover if an application for a determination that an individual qualifies for Representation has been made in the magistrates' court and refused and the requirements under the heading Pre-Order Cover or the heading Early Cover are satisfied.
- 10.96 You must only Claim for means test form completion where the requirements of Paragraph 10.105 are satisfied.
- 10.97 You can only make a Claim for either:
- (a) Pre-Order Cover; or
 - (b) Early Cover; or
 - (c) a means test form completion fee.

You must not Claim for more than one of the above in relation to a Case.

Pre-Order Cover

- 10.98 Where an application for a determination that an individual qualifies for Representation is made in the magistrates' court and refused on the Interests of Justice Test (irrespective of whether the Client passes or fails the Financial Eligibility Test), you may only Claim a limited amount of work carried out on that Matter or Case as Pre-Order Cover at the rates set out in the Criminal Remuneration Regulations, subject to the limit set out in the Criminal Remuneration Regulations. A qualified solicitor who is a Designated Fee Earner or a Supervisor (excluding a Prison Law Supervisor) must have decided that the Case met the Interest of Justice Test and has documented on file the reasons why (either by retaining a copy of the determination that an individual qualifies for Representation as evidenced by the Representation Order or some other means).
- 10.99 You must not make any Claim for Early Cover in addition to making a Claim for Pre-Order Cover.
- 10.100 The effective date of refusal is the date on which the court notifies you in writing or by other means.
- 10.101 An appeal may be made under Regulation 28 of the Criminal Legal Aid (General) Regulations 2013 against the decision not to issue a Representation Order.

10.102 If you appeal the court's decision, in the circumstances outlined in Paragraph 10.101, then any work undertaken in relation to lodging the appeal is covered by the Pre-Order Cover Fixed Fee. If the appeal against the decision not to issue a Representation Order is unsuccessful, you will not be able to Claim any further work undertaken on the Case itself.

10.103 If a Representation Order is issued on appeal then all the work undertaken since the date on which the original properly completed application was received by the court, including any Pre-Order Work, must be Claimed under the Representation Order as part of the Standard Fee Claim. A copy of the court's written notification of the refusal to issue the Representation Order must be available on file.

10.104 The Pre-Order Cover Fixed Fee only includes any combination of preparation, advocacy, routine letters and telephone calls, travel and waiting at the applicable rates, up to the limit set out in the Criminal Remuneration Regulations.

Early Cover

10.105 Where an application for a determination that an individual qualifies for Representation is made and refused because the Client has failed the Financial Eligibility Test you may Claim one Early Cover Fixed Fee in respect of work carried out on that Matter or Case provided that all of the following conditions are also met:

- (a) a properly completed application for Representation has been received by the Representation Authority by 9am on the sixth Business Day following the date of first instruction (provided that the date of first instruction is on or before the date of the first hearing);
- (b) you have taken all reasonable steps to assist the Client complete and submit the application with the appropriate supporting evidence;
- (c) the application had not been granted or refused by the start of the first hearing;
- (d) you represent the Client at the first hearing;
- (e) the first hearing moves the Case forward and any adjournment is justified; and
- (f) the final decision is that the Case passes the Interests of Justice Test but not the Financial Eligibility Test.

10.106 In cases where the first hearing takes place before the Client has been able to submit an application you may still Claim an Early Cover Fixed Fee provided that:

- (a) the conditions in Paragraphs 10.105(d) and (e) have been met; and
- (b) the Client proceeds to submit an application in accordance with the conditions in Paragraphs 10.105(a) and (b); and
- (c) the subsequent determination of the application satisfies the condition in Paragraph 10.105(f).

Means test form completion

10.107 You may only Claim a means test form completion fee as specified in circumstances where:

- (a) you have completed an application for a determination that a Client qualifies for Representation; and
- (b) neither Pre-Order Cover nor Early Cover is Claimed; and
- (c) you have advised the Client that, although their Case is one which would, in all probability, satisfy the Interests of Justice Test, they would not satisfy the means test; and
- (d) you advised the Client within 10 working days of the day on which the Client was charged or summonsed with the offence in question; and
- (e) you have recorded on file why you considered the Case would satisfy the Interests of Justice Test (but you will not need to make the application for a determination that an individual qualifies for Representation to court); and
- (f) the Client does not proceed to instruct you as a private client in respect of that Case.

Pre-Order Cover, Early Cover and means test form completion

10.108 Payment for Pre-Order Cover, Early Cover or means test for completion must not be Claimed by a court Duty Solicitor for work undertaken during the court Duty Period.

10.109 Where you act for co-defendants and provide Pre-Order Cover, Early Cover or means test form completion, separate Claims must be submitted for each Client represented.

Limits on Claims

10.110 You must comply with the upper limit for Claims for Pre-Order Cover as specified in the Criminal Remuneration Regulations. The figures include any travel, waiting and Disbursements but are exclusive of VAT.

Payment

10.111 Claims for Pre-Order Cover must be made at the Hourly Rates specified in the Criminal Remuneration Regulations, subject to the limit also set out in the Criminal Remuneration Regulations.

10.112 You cannot Claim for Disbursements, travel or waiting in addition to the Early Cover Fixed Fee, specified in the Criminal Remuneration Regulations.

10.113 You cannot Claim any Disbursements, or travel or waiting costs in addition to the refused means test form completion fee, which is a Fixed Fee, specified in the Criminal Remuneration Regulations.

Representation in the magistrates' court under a Representation Order in Proceedings that are sent to the Crown Court for trial

Scope

10.114 This Unit of Work covers preparation and attendance in relation to proceedings that are committed to or sent to the Crown Court for trial under section 51 of the Crime and Disorder Act 1998.

Qualifying Criteria

10.115 In order for you to provide Representation under this Unit of Work:

- (a) the Client must satisfy the Financial Eligibility Test. The Client's eligibility will be assessed by the Representation Authority; and
- (b) the Client must have a determination that they qualify for Representation by the Representation Authority.

Remuneration

10.116 A Claim may be made for a Sending Hearing Fixed Fee for Representation in the magistrates' court where the proceedings are committed to or sent to the Crown Court for trial under s51 of the Crime and Disorder Act 1998. Payment for all other work in proceedings committed to or sent to the Crown Court for trial under s51 of the Crime and Disorder Act 1998 is paid in accordance with the provisions in the Criminal Remuneration Regulations and must not form part of any Claim for remuneration under this Specification.

10.117 Proceedings in a magistrates' court following a remittal under paragraph 10(3)(a) or 13(2) of Schedule 3 to the Crime and Disorder Act 1998 may be Claimed separately under the appropriate Unit of Work.

10.118 Travel and waiting time cannot be Claimed separately for this Unit of Work.

10.119 Disbursements are payable by us in addition to the Sending Hearing Fixed Fee.

Rules on Claiming

10.120 You may only submit a Claim for this Unit of Work when your client's sending hearing has concluded. Payment may be Claimed before the conclusion of the Crown Court proceedings.

10.121 You may not make a Claim for a Sending Hearing Fixed Fee when representing a youth whose case stays at the Youth Court/magistrates' court.

10.122 Where a Representation Order is issued to a Client in respect of more than one charge, offence or information, the Claim for payment of a Sending Hearing Fixed Fee covers all the charges, offences or informations that form part of one Case.

10.123 Only one Sending Hearing Fixed Fee is claimable where you represent a number of defendants whose cases are sent to the Crown Court for trial at the same hearing.

10.124 Where you represent multiple defendants and some of their cases are sent to the Crown Court and some remain in the magistrates' court (for example a youth), you may only Claim one Sending Hearing Fixed Fee plus the Litigator's Graduated Fee for the cases that are sent to the Crown Court, and the appropriate Standard Fee for the cases that remain in the magistrates' court.

10.125 Where there is a change of organisation assigned under a Representation Order between the date of first appearance and the scheduled date that the case is sent to the Crown Court for trial, both the original Provider and the new Provider are entitled to Claim the Sending Hearing Fixed Fee.

Representation in Prescribed Proceedings in the Crown Court other than in appeals from the magistrates' court provided under section 16 of the Act

Scope

10.126 This Unit of Work may only be undertaken for a Client in Prescribed Proceedings, or for a Client who wishes to make a free standing application to the Crown Court to vary or have discharged a sentence or order in circumstances where the fees are not specified in the Criminal Remuneration Regulations. 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

10.127 Contribution Order Regulations may require your Client to repay some or all of his or her defence costs under a contribution order during his or her Case and after the Case concluding. You must advise your Client about the scheme of Crown Court means testing at the outset of his or her Case.

Application Procedure

10.128 In order for you to provide Representation under this Unit of Work, your Client must have had a Representation Order issued by the Representation Authority by completing our CRM14 and 15 forms.

Counsel

10.129 If you instruct Counsel then you must agree Counsel's fee, and the rates which you use to agree Counsel's fee must not exceed the Hourly Rates which are applicable to a Solicitor undertaking the advocacy at the relevant Hourly Rates specified in the Criminal Remuneration Regulations for this Unit of Work.

10.130 You must pay Counsel's agreed fee directly in accordance with this Contract.

10.131 When instructing Counsel, you must inform him or her of the payment rates and ensure that Counsel's fee note contains a breakdown of the time Claimed at the appropriate rates.

10.132 You may Claim any time spent instructing Counsel as Contract Work. However, if you choose to accompany Counsel to any hearing, neither the time spent at the hearing nor the travelling and waiting can be Claimed or paid as Contract Work.

Rules on Claiming

10.133 A single Claim must be submitted for all work undertaken in the Criminal Proceedings Class of Work for a Client in the same Case, including except where a Claim has been submitted already in the same Matter or Case because Paragraph 10.135(c) applies. The Claim may be for one or more of the Units of Work covered by this Class.

10.134 A single Claim must be submitted in circumstances where more than one application is consolidated into one Case.

10.135 A Claim may only be submitted when:

- (a) the Case has concluded; or
- (b) it is known that no further work will be undertaken for the Client in the same Case; or
- (c) it is unclear whether further work will be required or not and a minimum of one month has elapsed since the last work in the Case was undertaken.

Limits on Claims

10.136 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.

Payment

10.137 You must Claim for Representation provided under this Unit of Work at the rates which are specified in the Criminal Remuneration Regulations.

Representation in the Crown Court under a Representation Order in mainstream Criminal Proceedings provided under section 16 of the Act

Scope

10.138 You can only undertake Criminal Proceedings work (in cases which are not classified as VHCCs) in the Crown Court by virtue of having this Contract and if your Client has been issued with a Representation Order following a determination that an individual qualifies for Representation by the Representation Authority.

Qualifying Criteria

10.139 Cases which have been committed to or sent to the Crown Court by the magistrates' court are automatically treated as passing the Interests of Justice Test.

10.140 Contribution Order Regulations may require your Client to repay some or all of his or her defence costs under a Representation Order, during his or her Case and after the Case concluding. You must advise your Client about the Crown Court means test at the outset of his or her Case.

Service requirements

10.141 You must take into account the Contract Guide on case planning when conducting a Crown Court case.

Remuneration

10.142 Where you undertake work in the Crown Court under a Representation Order properly granted by the Court, if it transpires that it is not possible to Claim under the Criminal Remuneration Regulations for the work you undertook, you must

contact us. We will make arrangements for you to be remunerated as though the work were conducted under Paragraph 10.126 to 10.137.

Payments on Account of Disbursements

10.143 Applications for Payments on Account in the Crown Court are governed by the Criminal Remuneration Regulations.

Counsel

10.144 If you instruct Counsel or in-house advocate, you must do so in accordance with the Criminal Remuneration Regulations and we may require you to appoint only such persons who possess such experience, qualifications, or membership of such panel, or hold such accreditation as we may specify.

Representation in the High Court or County Court

Scope

10.145 This Unit of Work covers only civil proceedings in the High Court or (if approved by us) the county court in any proceedings arising from Criminal Proceedings except bail proceedings, appeals by way of case stated or Associated Civil Work. You must obtain prior authority from us to undertake work under this Unit of Work.

10.146 This Unit of Work covers civil proceedings that may be regarded as incidental to Criminal Proceedings (e.g. an application to obtain papers from a civil case that are relevant to Criminal Proceedings).

Qualifying Criteria

10.147 The Client must have been issued with a Representation Order by the Representation Authority or High Court.

10.148 There is no Financial Eligibility Test for this Unit of Work.

Rules on Claiming

10.149 The procedures under this Specification for the Assessment of remuneration for Representation under this Unit of Work are the same as those contained in section 6 of the current civil specification and prior authority may be applied for and granted in accordance with this Unit of Work.

Payment

10.150 You must Claim for work undertaken under this Unit of Work at the rates specified in the Criminal Remuneration Regulations.

10.151 The remuneration provisions which govern this work are the same as those rates (including enhanced rates) which are payable for Legal Representation in accordance with the current civil specification.

Payment for Assigned Counsel

10.152 Work undertaken by Assigned Counsel under this Unit of Work must be Claimed at the rates specified in the Criminal Remuneration Regulations.

- 10.153 The rates set out in the Criminal Remuneration Regulations only apply where Counsel is assigned under a Representation Order under this Unit of Work. The rates are the maximum amounts allowable per item except where expressed as Hourly Rates. Where an Hourly Rate is specified we will determine any fee for such work in accordance with that Hourly Rate, provided that the fee determined will not be less than the minimum amount specified.
- 10.154 Where a refresher fee is Claimed in respect of less than a full day, we will allow such fee as appears reasonable having regard to the fee which would be allowed for a full day.
- 10.155 Where we consider (taking into account all the relevant circumstances of a Case), that the exceptional circumstances of a Case mean that the rates set out in the Criminal Remuneration Regulations would not provide reasonable remuneration for some or all of the work allowed, we may allow such amounts as appear to us to be reasonable remuneration for the relevant work.

Payment on Account of Disbursements

- 10.156 You may submit an application for Payment on Account of a Disbursement for which you have incurred liability by following the rules at Paragraphs 10.90 to 10.94.

Representation in the Higher Courts

- 10.157 This unit of Work covers Representation on a Case in the Higher Courts.

Qualifying criteria

- 10.158 The Client must have been issued with a Representation Order by the Representation Authority.

Rules on Claiming

- 10.159 Claims for Representation on a Case in Higher Courts must be submitted to the relevant Higher Court in accordance with its requirements.

Representation in relation to proceedings for breach of injunctions arising under Part 1 of the Anti-Social Behaviour, Crime and Policing Act 2014

- 10.160 This unit of Work covers Representation in relation to proceedings for breach of injunctions arising under Part 1 of the Anti-Social Behaviour, Crime and Policing Act 2014 in any civil or criminal court.

Qualifying criteria

- 10.161 There is no Financial Eligibility Test for this Unit of Work where the work is undertaken in a civil court. However, if the work is undertaken in a criminal court, then the Financial Eligibility Test set out in the Criminal Financial Regulations must be applied.
- 10.162 The Client must have been issued with a Representation Order by the Representation Authority.

Application procedures

- 10.163 You must not Claim for Representation unless a Representation Order has been issued by a Representation Authority following the appropriate application procedure.
- 10.164 Where a Representation Order is applied for and the Client needs assistance with completing the relevant forms, you may only spend up to 30 minutes providing such assistance. This item of work may then be included in your calculation of costs to determine the appropriate Higher Fee, or Lower Fee, or to be assessed if the Case is Claimed at Hourly Rates.

Remuneration

- 10.165 Travel and waiting time will be paid in accordance with and at the rates specified in the Criminal Remuneration Regulations.

Determining which fees apply

- 10.166 The items of work included in the Higher Fee and Lower Fees under this Unit of Work are as follows, which are known as the core costs and include the costs of any Advocacy Assistance required by this Contract to be Claimed under the Representation Order:

- (a) any preparation;
- (b) routine letters and telephone calls;
- (c) advocacy;
- (d) work done by a fee-earner acting as Agent for the solicitor named in the Representation Order; and
- (e) Unassigned Counsel's preparation and advocacy.

- 10.167 The following costs are payable by us in addition to the Higher Fee or Lower Fee under this Unit of Work:

- (a) reasonable travelling and waiting time of fee-earners and Unassigned Counsel, which is payable at the rate specified in the Criminal Remuneration Regulations; and
- (b) Disbursements.

- 10.168 You must record all travelling and waiting time of fee-earners and Unassigned Counsel in respect of each fee Claimed under this Unit of Work. You must report the cost of that travelling and waiting time to us when you make each Claim and you must ensure that you use the correct Claim codes in the Contract Guide.

Higher Fees and Lower Fees

- 10.169 Where the core costs, if they had been assessed on the Hourly Rates set out in the Criminal Remuneration Regulations:

- (a) do not exceed the Lower Fee Limit, as appropriate, then the appropriate Lower Fee will be payable;
- (b) exceed the Lower Fee Limit, as appropriate, but do not exceed the Higher Fee Limit, the appropriate Higher Fee will be payable;

- (c) exceed the Higher Fee Limit, as appropriate, the core costs should be Claimed based on the Hourly Rates set out in the Criminal Remuneration Regulations.

Representation in relation to proceedings in civil court venues

- 10.170 This Unit of Work covers Representation in relation to committal proceedings in any civil court venue. Such proceedings are prescribed as criminal proceedings under section 14(h) of the Act and include civil contempt of court and other proceedings that involve the determination of a criminal charge for the purposes of Article 6(1) of the European Convention on Human Rights.
- 10.171 Proceedings for contempt committed in the face of the court (within the meaning of section 14(g) of the Act) are not within the scope of this Unit of Work and are outside the scope of this Contract. Such proceedings have a designated funding mechanism which is set out in the Criminal Remuneration Regulations.
- 10.172 Only work that is directly related to challenging the application for committal is in scope of this Unit of Work.

Qualifying criteria

- 10.173 There is no Financial Eligibility Test for this Unit of Work.
- 10.174 The Client must have been issued with a Representation Order by the Representation Authority.

Application procedures

- 10.175 You may not Claim for work undertaken under this Unit of Work unless a Representation Order has been issued by a Representation Authority following the appropriate application procedure.

Remuneration

- 10.176 You may Claim for work undertaken under this Unit of Work in accordance with and at the applicable rates specified in the Criminal Remuneration Regulations.
- 10.177 Travel and waiting time will be paid in accordance with and at the rates specified in the Criminal Remuneration Regulations.

Limits on Claims

- 10.178 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.