

8. Claims, Costs, Assessments and Reviews

Claims

- 8.1 You must submit Claims to us in accordance with the specific provisions applicable to each Unit of Work in this Contract.
- 8.2 To make a Claim for Contract Work you must, within 20 days of the end of each month, submit a Contract Report Form to us claiming an amount to be reconciled against the payments made to you under the Contract (a "Credit") based on the appropriate Hourly Rates, Fixed Fee or Standard Fee applicable to the Contract Work carried out, plus disbursements, and VAT.
- 8.3 Except where a warrant of arrest is issued in magistrates' court proceedings, you must submit your Claim for payment to us within three months (or such longer period as we may direct) of the Matter or Case or Duty Period ending.
- 8.4 All Claims made under the same Representation Order or relating to the same Case or Matter must be submitted together (other than the Sending Hearing Fixed Fee which is claimable after a Case is sent to the Crown Court).
- 8.5 If the Claim form is not properly completed, your Claim will be rejected. The original submission date remains the relevant date for the purpose of any Sanctions to be applied under Clause 24.
- 8.6 If you are acting for more than one Client in the same Case and that Case concludes at a different time for each Client, then you must submit a single Claim once the Case covering all relevant Claims has concluded. The trigger date for submitting a Claim is the latest date on which the proceedings concluded for all Clients.
- 8.7 Subject to the provisions of Section 12 of this Specification in relation to Parole Board Reconsideration Hearings, the Parole Board Set Aside Process and Parole Board Set Aside Hearings, if you have already submitted a Claim and the same Client seeks further Advice and Assistance, Advocacy Assistance or Representation from you on the same Matter or Case, then any subsequent work will be treated as supplemental to the original Claim and, where relevant, the original limit (as extended) will continue to apply. You must notify us at the time that you submit the supplemental Claim that a Claim has been made previously.
- 8.8 When a supplemental Claim is submitted in accordance with Paragraph 8.7 above, the UFN which was assigned to the original Claim must be used.
- 8.9 Where a Client seeks further Advice and Assistance, Advocacy Assistance or Representation on the same Matter you may need to consider an extension to the costs limit, where appropriate, unless the previous limit was not exhausted. The Upper Limit will continue to apply to the cumulative costs throughout the lifetime of the Matter.

Inter partes costs

- 8.10 In accordance with section 28(2) of the Act, where an agreement or order provides for costs to be paid by any other party in favour of a Client for whom you have been providing Representation in the High Court, county court, Crown Court or magistrates' court under this Contract then you may retain the element of any costs recovered under that agreement or order which exceeds the amount paid

or payable to you by us in relation to the relevant dispute or proceedings under the terms of this Contract.

- 8.11 Where interest has been received on the costs, you may retain a proportion of the interest which equates to the proportion of the total costs recovered which you are authorised to retain under Paragraphs 8.10 to 8.12.
- 8.12 The balance of any costs and interest after you have retained any element authorised by Paragraphs 8.10 and 8.11 above must be forwarded to us immediately.

Assessment of Claims – general

- 8.13 When your Claims are assessed, the test for the assessor determining a Claim is whether the work appears to have been reasonably done and the time as claimed (excluding time spent on routine letters and calls) is reasonable.
- 8.14 Where an Assessment is carried out after a credit has been given in relation to any Matter or Case, then that credit may be adjusted by us accordingly.
- 8.15 The setting off of credits against your Monthly Payments will be without prejudice to our right to assess your Claims.

Applying Findings generally on Assessment

- 8.16 When we Assess a sample of Claims, we may apply any Findings to your other Claims for payment for Contract Work.
- 8.17 When we apply Findings in this way, we may do so for all Matters and Cases commenced under this Contract (or any Previous Contract it has replaced) where costs have been claimed from us either:
- (a) in the case of Mis-Claiming, at any time within the two years following its submission to us or within six years if (i) an Official Investigation is underway or (ii) we have received a report that we reasonably consider requires us to Assess such Claims; or
 - (b) in the case of Over-Claiming or other claiming issues:
 - (i) since the date of the last Contract compliance Audit; or
 - (ii) from a date 12 months immediately preceding the date the file sample was requested for Assessment,

whichever is the most recent.

- 8.18 If the sample relates only to a specific group of your files or Unit or Class of Work, then we will only apply the Findings to that specific group.
- 8.19 When Findings are applied to a Claim under Paragraphs 8.16 to 8.18, then that Claim has been assessed by us.

Appeals

- 8.20 If you or Counsel are dissatisfied with any decision of ours as to the Assessment of the costs of Contract Work, you may appeal to an Independent Costs Assessor ("the Assessor"). For the avoidance of doubt, subsequent references in this rule

and its related Contract Guide include "Assessors" in cases where an appeal is dealt with by a panel of three Assessors rather than a single Assessor alone.

- 8.21 The appeal must be made in writing (setting out full reasons) within 28 days of notification of the Assessment decision, and must be accompanied by the file. We will only extend the 28 day time limit where it is reasonable for you to have requested an extension within 21 days. Any extension of the time limit will be for a maximum of a further 14 days.
- 8.22 If you fail to comply with any of the requirements set out in Paragraph 8.21 you must accept our decision and lose your right to dispute it.
- 8.23 Where an appeal is to proceed, we also have the right to make written representations (in addition to those contained in the original assessment) to the Assessor. If we do so, these will be sent to you not less than 21 days before the appeal papers are sent to the Assessor. If you receive such further representations from us then you may, within 14 days, provide a written response to them.
- 8.24 The appeal must be dealt with by the Assessor on the papers only. There is no general right for either party to attend or to be represented on the appeal. However, if either party considers that there are exceptional circumstances which mean that concerns or issues cannot be addressed in writing, they may make a written request (setting out full reasons) for an oral hearing, to the Assessor. Such an application must be made at the same time as:
- (a) in your case, you submit your written appeal; and
 - (b) in our case at the same time as we make any written reply (or, where no written reply is made, during the period allowed for making such reply).
- 8.25 The Assessor must consider the request and notify both parties of his or her decision.
- 8.26 If:
- (a) neither party has made a request for an oral hearing but the Assessor believes that his or her review of some or all of the issues under the appeal cannot be concluded properly without hearing oral submissions; or
 - (b) having considered a party's request for an oral hearing, s/he is of the opinion that the request should be granted,
- he or she must notify the parties of this. If either party chooses to attend at an oral hearing, having been given permission from the Assessor, the other party will also have a right of attendance and Representation at the appeal and must confirm whether or not they intend to exercise that right.
- 8.27 In any case, whether or not a party has made a request for an oral hearing, if the Assessor is of the opinion that an appeal is of such complexity and/or value that it should not be considered by a single Assessor alone s/he may, in his or her sole discretion, refer the appeal to a panel of three Assessors either to deal with on the papers only or by way of an oral hearing. If the Assessor is of the opinion that the appeal must be dealt with by way of an oral hearing, the provisions set out in Paragraph 8.26 apply save that a panel of three Assessors will deal with the appeal rather than a single Assessor alone.

- 8.28 For the avoidance of doubt, the Assessor may give procedural directions as to the determination of the appeal whether the appeal is to be dealt with on the papers only or an oral hearing basis.
- 8.29 On appeal, the Assessor must review the Assessment whether by confirming, increasing or decreasing the amount assessed. In a Controlled Work Assessment, applicable to Associated Civil Work, the Assessor may apply his or her Findings generally across files outside the sample before him or her under the terms of Paragraphs 8.16 to 8.19. However, no such decision will apply to any completed Assessments that you have not appealed within the time limit.
- 8.30 Where in dealing with an appeal on the papers only the Assessor identifies new issues (those which have not been raised by either party under the appeal) the Assessor will, as s/he considers appropriate in the circumstances, either:
- (a) adjourn the appeal and seek representations from the parties before making his or her final decision; or
 - (b) refer the matter back to us for a new decision.

Basis of Assessments and appeals

- 8.31 All Assessments of Contract Work are to be on the Standard Basis as defined by the Civil Procedure Rules, Rule 44, subject to the other provisions of this Specification and any Contract Guide.
- 8.32 You must only Claim for work that has been actually and reasonably done and Disbursements actually and reasonably incurred in accordance with the provisions of the Contract and that is supported by appropriate evidence on the file at the time of the Claim and Assessment.
- 8.33 The relevant remuneration rates in the Criminal Remuneration Regulations will then be applied to the time allowed and the resulting sum will be added to any Disbursements allowed and to any VAT to produce a figure for the costs of the case. Allowance will not be made for work which was not evidenced on the file at the time the Claim was made in the form of timed and dated attendance notes, and where appropriate by relevant documentation, such as copies of documentation drafted or perused.
- 8.34 We may ask you to provide an attendance note or other record of time spent. If your Claim is not supported by written evidence, then it will not be paid under the Contract.
- 8.35 When assessing Claims we will apply the Contract Guide and the Costs Assessment Manuals including "Points of Principle" certified before this Contract was introduced.
- 8.36 Claims for Escape Fee Cases claimed under this Contract may be reduced on Assessment but will not be reduced to less than the value of the relevant Fixed Fee (unless the attendance was not justified or the matter was out of the scope of Contract Work).

Appeal by Assigned Counsel

- 8.37 Where Assigned Counsel's fees have been reduced on any Assessment by us, Paragraphs 8.16 to 8.30 above will apply to any appeal by Assigned Counsel.

- 8.38 Assigned Counsel will have a direct right of appeal when his or her fees have been reduced on an Assessment. This does not apply in a magistrates' court Standard Fee case where Counsel is unassigned. Paragraphs 8.16 to 8.30 will apply to such an appeal by Assigned Counsel.

Payment of costs

- 8.39 Once we have assessed the amount of costs payable under this Specification to you and any Counsel instructed, payment will be authorised by us, subject to any provisions elsewhere in this Contract.
- 8.40 Where the costs payable are varied as a result of a review, redetermination or appeal in accordance with this Contract, then:
- (a) where costs are increased, we will authorise payment of the increase; or
 - (b) where the costs are decreased, you or Counsel will repay to us the amount of such decrease.

Payment other than through this Specification

- 8.41 Subject to Paragraph 8.43 below, you must not charge a fee to the Client or any person for the services provided under this Specification or seek reimbursement from the Client or any other person for any Disbursements incurred as part of the provision of such services. This Paragraph does not apply to services you provide which cannot be paid under this Contract or the Act, but which are in connection with a Matter or Case.
- 8.42 Where you have been carrying out Contract Work on behalf of a Client, you may not accept instructions to act privately in the same matter from that Client unless the Client has been first advised by you in writing of the consequences of ceasing to be in receipt of services and as to the further services which may be available under criminal Legal Aid, whether from you or another Provider, (including the possibility of an extension of the limit for Advice and Assistance or Advocacy Assistance, an application for Representation or the availability of Advocacy Assistance or the Duty Solicitor and has nevertheless elected to instruct you privately.
- 8.43 Where an application for prior authority for costs to be incurred under a determination has been refused and the Client has expressly authorised you to:
- (a) prepare, obtain or consider any report, opinion or further evidence, whether provided by an expert witness or otherwise; or
 - (b) obtain or prepare any transcripts or recordings of any criminal investigation or proceedings, including police questioning; or
 - (c) instruct Counsel other than 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,

then Paragraph 8.41 will not apply to payment by the Client on a private basis for that work.

- 8.44 You must not charge the Client for the provision of Contract Work or seek payment of Disbursements incurred from the Client unless an exception under this Contract applies. All payments for Contract Work must come through us. You cannot be retained to act for the Client in the same Matter or Case under this Contract and on a privately paying basis at the same time. Where a Client elects to instruct you privately in relation to a Matter or Case in which you have been providing Contract Work, a copy of the letter dealing with the requirements of Paragraphs 8.41 to 8.44 must be kept on the file.

Wasted costs

- 8.45 Where a wasted costs order has been made under section 19 of the Prosecution of Offences Act 1985 (or any regulations made under it) against you or Counsel instructed by you in proceedings in which Advocacy Assistance or Representation is provided under this Contract, you must submit a copy of the order with your Claim.
- 8.46 If the court orders that you are not entitled to be paid for Contract Work, then that Contract Work must not be included in your Claim.
- 8.47 On Assessment, we may disallow the amount of work done to which the wasted costs order relates. In those circumstances, the amount disallowed will be that amount or the amount of the wasted costs order, whichever is the greater.
- 8.48 If a wasted costs order is made in your favour and you have received payment, you must deduct the amount of wasted costs paid from your Claim. Where you can show that the costs to which the wasted costs order made in your favour relates to costs which would not otherwise be claimable from or payable from public funds, you are entitled to keep those costs, provided you set out in writing to us the circumstances in which the wasted costs order was made, and we confirm that you may keep those costs in addition to the costs payable for that Contract Work.
- 8.49 If you have not received payment of wasted costs at the time you submit your Claim, you may Claim the full sum due and pay us the amount of any wasted costs as soon as they are received by you. In proceedings' claims that would normally be claimed under a Standard Fee these remaining costs should be claimed as a Non-Standard Fee, which will be the difference between the Standard Fee and the sum of wasted costs received should be claimed as a Non-Standard Fee.
- 8.50 The fact that a wasted costs order has been made against you or Counsel is a factor which we may take into account on Assessment.

Payment from central funds

- 8.51 If you have made, or will make, a Claim for costs from central funds, in proceedings funded under this Specification, you must notify us when you submit a Claim to us.
- 8.52 If you can Claim for the work done under this Specification, then you must do so, prior to making any Claim from central funds.

Recovery of overpayments

- 8.53 Where following an Assessment you or Counsel are to be paid under this Contract and, for whatever reason, you or Counsel are paid an amount greater than that sum, we may either:
- (a) require immediate repayment of the amount in excess of the amount due ("the excess amount") and you or Counsel will on demand repay the excess amount to us; or
 - (b) deduct the excess amount from any other sum which is or becomes payable to you or Counsel under this Contract.
- 8.54 Paragraph 8.53 applies notwithstanding that you or Counsel to whom the excess amount was paid is exercising, or may exercise, a right of appeal under Paragraphs 8.20 to 8.30.

DRAFT