

11 Appeals and Reviews

Advice and Assistance on appeals against conviction or sentence (where a newly instructed representative is not covered by an existing determination) or applications to the Criminal Cases Review Commission (CCRC) provided under section 15(2)(c) of the Act

Scope

- 11.1 This Unit of Work relates to free standing Advice and Assistance in relation to an appeal against conviction or sentence, including an appeal by way of case stated or an application to vary an order or sentence where not covered by an existing determination (as evidenced by a Representation Order). 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.
- 11.2 This Unit of Work also covers an application to the Criminal Cases Review Commission (CCRC).
- 11.3 Where the Client has a determination in the magistrates' court or the Crown Court, it covers obtaining advice on appeal and the preparation of any application for leave to appeal or giving notice of appeal against conviction or sentence. It also covers steps relating to the stating of a case by the magistrates' or the Crown Court. It is not appropriate for you to complete a separate application form for Advice and Assistance under this Unit of Work in those circumstances.
- 11.4 Where the Client does not have a determination in the magistrates' court or Crown Court, he or she may require advice on the prospects of an appeal. You should provide confirmation of the grounds of an appeal.
- 11.5 If the Client has received an adverse opinion on appeal and wishes to obtain a further opinion, you must consider how long it was since the first opinion was given. If recent, and it appears that all issues have been considered, no further work may be undertaken.
- 11.6 Where there is further evidence or the Solicitor can point to some defect in the opinion or the proceedings, then further work may be justified for a further opinion, regardless of when the first opinion was obtained.
- 11.7 Where advice is sought in connection with an appeal to the Court of Appeal and you have undertaken all authorised steps under any Crown Court Representation Order or there has been a change of Provider, you must consider whether a grant of Legal Aid is available directly from the Court of Appeal to cover further work. If so, you should make the appropriate application to that court, rather than providing Advice and Assistance. Advice and Assistance should not be used as an alternative or supplement to the Court of Appeal's powers to grant legal Representation, where only Counsel has been authorised.

Qualifying Criteria

- 11.8 The Sufficient Benefit Test must be satisfied in order to provide Advice and Assistance under this Unit of Work.

Financial Eligibility Tests

- 11.9 You must assess your Client's financial eligibility in accordance with the Criminal Financial Regulations and must not provide assistance in this Class of Work to a person who is not financially eligible.

Application procedures

11.10 An application form must be completed in accordance with this Specification.

Postal applications

11.11 You may exercise the Delegated Function to accept an application for Advice and Assistance by post from a Client only where there is good reason to do so (such as where the Client is in prison) in accordance with an Authorisation.

11.12 Any reliance on a good reason must be noted on the file.

Telephone advice

11.13 You may only Claim payment for advice given to a Client over the telephone before that Client has signed the application form 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 has subsequently signed the application form.

11.14 You must consider whether it is in all the circumstances appropriate to provide advice to a Client over the telephone before that Client has signed the application form.

11.15 The good reason relied upon must always be noted and kept on the file.

Outward travel

11.16 You may only Claim for the mileage or cost of public transport for outward travel (but not travelling time, except as allowed under Paragraph 11.17) to visit a Client away from your Office before the application form is signed where:

- (a) the visit is justified for good reason (and a note on the file is made specifying that good reason); and
- (b) the Client meets the Qualifying Criteria for this Unit of Work and does subsequently sign the application form.

11.17 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 the Paragraph 11.16 will need to be satisfied for any Claim to be made.

11.18 Costs must be reasonably incurred taking account of all the circumstances.

Transcripts

11.19 If you seek a transcript of part or all of the evidence, then a specific justification must be provided.

Criminal Cases Review Commission

11.20 You must take instructions from the Client to establish whether the case is one which the CCRC could consider. You must bear in mind that the CCRC is a last resort and an application to the CCRC may only be made if the Client has either

appealed against the original conviction or leave to appeal has been refused or where there are exceptional circumstances justifying the CCRC reviewing the case.

- 11.21 If your Client's Case is suitable to be considered by the CCRC, you must consider whether the case may be able to meet the referral criteria applied by the CCRC.
- 11.22 Once the basic information has been obtained by way of a statement from the Client, you must carry out an initial screening of the case to determine whether an application to the CCRC should be made. This process enables you to screen out weak claims which would not meet the CCRC's referral criteria. Although the information available at this stage may be very limited, the decision as to whether the costs of further investigation are justified must be made by you in the light of the available information and using your professional judgement.
- 11.23 Advice and Assistance in respect of a referral to the CCRC constitutes a separate Matter from Advice and Assistance given in respect of the original proceedings, including any previous appeal.
- 11.24 If a Client qualifies for Advice and Assistance, initial case screening will cover taking instructions, considering any relevant papers or records (if any are available at that stage) and the provision of initial advice as to law and procedure. You must reject a case following initial screening if there is no reasonable prospect that it will meet the CCRC referral criteria. Clearly, uncertainty over the merits at the initial screening stage would not necessarily result in you refusing to take forward an application, particularly where you consider that further investigations are necessary to establish whether the referral criteria are met.

Counsel – (CCRC matters)

- 11.25 You may seek Counsel's opinion or instruct Counsel in CCRC matters where it falls outside your expertise and it is reasonable for you to seek specialist advice from Counsel or in-house advocate. The expense of any Disbursement or Counsel's advice will count towards costs for the purposes of calculating whether an extension to the upper limit is necessary.
- 11.26 It may be necessary for you to exceed the upper limit depending on the individual circumstances of the case. In these circumstances, an application must be made by you to us in accordance with this Specification. There is no other form of Legal Aid available for this type of work although the CCRC will, in considering the application, make what further enquiries it considers appropriate to enable it to investigate the case and reach a decision.

Previous Advice and Assistance

- 11.27 You must not Claim for Advice and Assistance provided 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; 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.
- 11.28 When providing Advice and Assistance in the circumstances set out in this Paragraph you must record the justification for doing so on the file. This is particularly important under this Unit of Work, as a Provider who acted under a Representation Order in respect of the proceedings from which the appeal is being made should have advised the Client under the terms of that Representation Order. For the avoidance of doubt, this is a Delegated Function.
- 11.29 If a Client changes Solicitor 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 11.27 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' under Paragraph 11.27.
- 11.30 You must not Claim for Advice and Assistance under the terms of any of the exceptions contained in Paragraph 11.27(a) to (c) 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.
- 11.31 Where Advice and Assistance is provided in contravention of the terms of Paragraph 11.27, then the work undertaken cannot be claimed or paid as Contract Work.
- 11.32 If in doubt, you must assume that previous Advice and Assistance has been given and ensure that any work carried out reflects the fact that some work may have already been done on the matter to ensure that there is no element of repetition, particularly if you are instructed within six months of the Client's conviction, as any Representation Order issued to provide for his or her Representation at the trial includes payment to those who acted under that Representation Order for an advice on appeal.
- 11.33 If the Client has received previous Advice and Assistance but you are permitted to provide further Advice and Assistance under Paragraph 11.27, 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. We may monitor the number of instances in which you provide Advice and Assistance under Paragraph 11.27.
- 11.34 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 in Paragraph 11.27(a) to (c) do not apply, you must either provide Advice and Assistance and not make a Claim for it, or should require the Client to contact the Provider who provided the original Advice and Assistance.

- 11.35 It is only reasonable to incur limited further costs where previous Advice and Assistance has been received.
- 11.36 If you provide Advice and Assistance where previous Advice and Assistance has been given for the same matter in accordance with Paragraph 11.29 then any work undertaken by the previous Provider will not count for the purposes of the Upper Limit specified in the Criminal Remuneration Regulations.

Further instructions after a Matter ends or a Claim has been submitted

- 11.37 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.
- 11.38 It is not 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 now required.
- 11.39 If you provide further Advice and Assistance under Paragraphs 11.37 and 11.38 above 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 should make reference to any previous closed file and the files should be kept together for Audit purposes;
 - (c) you must assign the same UFN number 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

- 11.40 A single Claim must be submitted for all work undertaken in the Appeals and Reviews Class of Work for a Client in the same Matter or Case except where a Claim has been submitted already in the same Matter or Case because Paragraphs 11.42(c) or (d) below apply.
- 11.41 A Claim must not be submitted in respect of work falling within this Unit of Work where Representation has been provided for the same Client in the proceedings in which the conviction or sentence was imposed in a magistrates' court, the Crown Court or the Court of Appeal, and advice on appeal or sentence can be claimed under the Representation Order covering those proceedings (except

where the Client has changed Solicitor to another Provider since the original proceedings).

11.42 A Claim under this Unit of Work may only be submitted when:

- (a) the matter has concluded; 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 or not and a minimum of one month has elapsed since the last work in the matter was undertaken; or
- (d) in the case of a Claim for Advice and Assistance on an appeal against conviction or sentence, including an appeal by way of case stated or an application to vary a sentence: where a determination is made by the relevant court, as soon as the Representation Order has been issued.

Limits on Claims

11.43 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.

Representation on an appeal by way of case stated provided under section 16 of the Act

Scope

11.44 This Unit of Work only covers an application under s111 of the Magistrates' Court Act 1980 or s28 of the Senior Courts Act 1981 for the magistrates' court or Crown Court (respectively) to state a case.

11.45 The application to the magistrates' court or Crown Court to state a case is covered and paid for under the Representation Order in existence in the relevant proceedings.

11.46 Where a court refuses to state a case, you should without delay apply for permission to bring judicial review, seeking either a mandatory order to compel the court to state a case or an order quashing the decision under challenge.

11.47 An application for judicial review in the circumstances described in Paragraph 11.46 may only be made under the Associated Civil Work part of this Contract.

11.48 If the magistrates' court or Crown Court does state a case, you must apply to the High Court (Administrative Court) for a determination that an individual qualifies for Representation in respect of the High Court appeal proceedings.

Qualifying Criteria

11.49 In order to provide Representation under this Unit of Work, the Client must have been issued with a Representation Order by the High Court for the purposes of the appeal.

Rules on claiming

- 11.50 A single Claim must be submitted to the Senior Court Costs Office for all work undertaken for a Client in an appeal by way of case stated in the Appeals and Reviews Class of Work in the same Matter or Case except where a Claim has been submitted already in the same Matter or Case because Paragraph 11.51(c) below applies.
- 11.51 A Claim under this Unit of Work may only be submitted when:
- (a) the matter has concluded; 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 or not and a minimum of one month has elapsed since the last work in the matter was undertaken.
- 11.52 You must claim for work undertaken in the High Court (Administrative Court) under this Unit of Work at the rates specified in the Criminal Remuneration Regulations.

Payment for Counsel under the Representation Order

- 11.53 Work undertaken by Counsel under this Unit of Work must be claimed at the rates specified in the Criminal Remuneration Regulations.
- 11.54 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.
- 11.55 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.

Representation in the Crown Court under a Representation Order in Prescribed Proceedings on appeal from the magistrates' court provided under section 16 of the Act

Scope

- 11.56 This Unit of Work may only be undertaken for a Client in appeals from the magistrates' Court in Prescribed Proceedings. You should note that an Upper Limit specified in the Criminal Remuneration Regulations applies to work undertaken under this part of the Contract and operates as a Costs Limitation.

Qualifying Criteria

- 11.57 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.

Application Procedures

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

Counsel

11.59 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.

11.60 You must pay Counsel's agreed fee to Counsel directly, in accordance with this Contract.

11.61 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.

11.62 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 must be recorded or claimed as Contract Work.

Rules on claiming

11.63 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 11.65(c) applies. The Claim must be for one or more of the Units of Work covered by this Class.

11.64 A single Claim must be submitted in respect of all Clients where a Claim is made under this Unit of Work where you represent two or more Clients in the same Case.

11.65 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

11.66 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

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

DRAFT