

12 Prison Law

Scope

- 12.1 This Unit of Work may only be undertaken for a Client who is involved in a Prison Law matter. Provided a Matter passes the Qualifying Criteria, you may provide assistance under this Unit of Work to a prisoner who is either on remand or serving a prison sentence.

Qualifying Criteria

The Sufficient Benefit Test

- 12.2 The Sufficient Benefit Test must be satisfied before you commence, or continue, to work on a Matter under this Specification. The test is as follows:

Advice and Assistance or Advocacy Assistance may only be provided on legal issues concerning English and 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.

There should be a realistic prospect of a positive outcome that would be of real benefit to the Client.

- 12.3 The Sufficient Benefit Test will not be satisfied where the Matter does not raise a significant legal or human rights issue.
- 12.4 The Sufficient Benefit Test must be applied as a cost benefit test namely, whether a notional reasonable private paying client of moderate means would pay for the legal advice and assistance or advocacy assistance.
- 12.5 Cases that have no realistic prospect of success or positive outcome for the Client do not meet the Sufficient Benefit Test. Where you consider that a Case has minimal, or borderline prospects of success, but you consider that there is still some real benefit to the Client you must set out clearly your justification on a file note.
- 12.6 In all cases a file note must set out how the Sufficient Benefit Test has been met, and how it continues to be met.
- 12.7 Claims for payment will be refused where you do not comply with Paragraph 12.6 and/or your file does not demonstrate how the Sufficient Benefit test is met.

Financial Eligibility

- 12.8 All Units of Work in this Class of Work are subject to the Client being financially eligible (unless the Client is a Child).
- 12.9 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

- 12.10 Subject to Paragraphs 12.11 and 12.83 to 12.85, you may not undertake Contract Work in this Class of Work unless the Client has signed the application forms and is financially eligible to receive assistance.

Postal rules

- 12.11 This Paragraph overrides Paragraphs 4.25 to 4.33. Unless the Client's Matter is such urgency that there is not sufficient time for the application to be posted and returned or there is some other good reason you must arrange for the Client to complete the application forms by post, after you receive instructions and, subject Paragraphs 12.83 to 12.85, before you commence work.
- 12.12 Where, pursuant to Paragraph 12.11, you undertake Contract Work prior to receiving a completed application form you must only undertake such work as is absolutely necessary until you receive a properly completed application form.
- 12.13 In Advice and Assistance Matters, unless the matter is too urgent to be conducted by way of correspondence and no video or telephone slots are available or there is some other good reason you must conduct the matter by way of correspondence with the Client, or by video link or telephone. Personal attendance must be justified on a file note.

Telephone advice before application forms are signed

- 12.14 You may only Claim for time spent giving advice to a Client over the telephone before that Client has signed the application form where the Client:
- (a) meet the Financial Eligibility Test and you are satisfied that the Sufficient Benefit Test is met; or
 - (b) subsequently signs the relevant application forms and is financially eligible.
- 12.15 If you provide advice under Paragraph 12.2 you must send the application forms to your Client, after you have given the advice, to be signed and returned to you.
- 12.16 You must not make any Claim in this Class of Work if your Client has not signed the application forms or has been properly determined by you as not being financially eligible.
- 12.17 You must not make a Claim in this Class of Work in circumstances where you provide ad-hoc telephone advice to a Client on an issue which develops no further or is resolved during the course of that telephone call, or is resolved by writing an ad-hoc piece of correspondence in the circumstances outlined in Paragraph 12.57(c) below.

General Provisions on Starting a New Matter

- 12.18 These provisions govern when a Matter may be commenced and when it is legitimate to commence more than one Matter for one Client. Where Advice and Assistance is paid for under a Fixed Fee, and Advocacy Assistance is paid for under a Standard Fee, you must ensure that additional Matters are not artificially created or used for work which should in accordance with these Paragraphs be carried out under a single Matter. Conversely, you must not include clearly unrelated work to a single Matter.

- 12.19 You must not begin more than one Sentence Case, or more than one Parole Board Case for a Client at any one time. If you commence a Sentence Case and a Parole Board Case concurrently, you must claim for each Matter separately.

Where you provide Advice and Assistance and then Advocacy Assistance

- 12.20 Where you are instructed in circumstances where it is clear that there will be an oral hearing, you must start the Case as Advocacy Assistance.
- 12.21 Where you are instructed on a Case in circumstances where it is not clear that there will be an oral hearing, you must start the Case on the basis that you will be providing Advice and Assistance. If that Matter is subsequently directed or listed for an oral hearing, then you must claim the Advice and Assistance costs at that point, and start a separate Advocacy Assistance Matter.

Matter Boundaries

- 12.22 Where the Client raises several issues at the first meeting, a single Matter must be commenced to identify the issues and to provide general, preliminary advice. If one legal issue is identified then the original, single Matter must be used for the provision of further Advice and Assistance.
- 12.23 For the avoidance of doubt, Paragraph 12.22 applies irrespective of whether you purport to limit your retainer to only part of the stages, aspects or issues of a Matter or Matters that should properly be covered by a single Matter.
- 12.24 Any application to the Parole Board for a Parole Board Reconsideration Hearing (or an application pursuant to rule 28A of the Parole Board Rules 2019 as amended) will form part of the same Parole Board Case. Paragraphs 12.87 to 12.103 set out the Advice and Assistance or Advocacy Assistance available.
- 12.25 Where a decision is made to adjourn or defer the progress of a Parole Board Matter, then any subsequent work will be a continuation of the same Matter or Case.

Travel and waiting costs

- 12.26 You may only Claim for the mileage or the actual cost of public transport for travel as a Disbursement (but not travelling or waiting time, because this is included in the Fixed Fee or Standard Fee applicable to that Unit of Work) to visit a Client who is in prison.
- 12.27 Waiting time only counts towards your costs to determine whether or not you have reached the Escape Fee Case Threshold in a Case payable by Fixed Fee, or to determine whether you are able to claim the Lower or Higher Standard Fee, or whether your Case is claimable as a Non-Standard Fee.
- 12.28 Travel time may only be claimed separately on an Escape Fee Case or a case in which you are claiming a Non-Standard Fee. Travel costs must not be included in your costs to determine whether a claim is assessable as an Escape Fee Case (in Advice or Assistance) or a Non-Standard Fee (in Advocacy Assistance).
- 12.29 Where a Case qualifies as an Escape Fee Case, you may only claim one-hour travel on each journey at the hourly rate specified in this Contract.
- 12.30 The only circumstance where you may Claim more than one hour's travel where a Case qualifies as an Escape Fee Case is if you commence a Case for a Client,

who is during that Case moved to another prison establishment which is further away from your Office. In these circumstances, you may claim a maximum of three hours travel time on each journey (making a total of six hours in any one day).

- 12.31 Paragraph 12.30 above only applies if the Client moves at a time when your costs on that Matter have already reached the Escape Fee Case Threshold.

Disbursements

- 12.32 You must apply to us for prior authority before incurring a Disbursement over £500.
- 12.33 On any Matter, unless you can clearly demonstrate the Sufficient Benefit Test is met, you must not instruct more than one expert to provide a report on the same issue.

Instructing Counsel

Advice and Assistance

- 12.34 If you instruct Counsel to advise your Client under Advice and Assistance, you must arrange to agree Counsel's fees and pay Counsel out of the Fixed Fee.
- 12.35 Counsel's fees under Advice and Assistance may not be Claimed as a Disbursement unless the case qualifies as an Escape Fee Case.
- 12.36 When working out whether a Case is claimable as an Escape Fee Case, Counsel's fees should be included and must be calculated using the maximum fee principle (i.e. 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 and you must retain on file details of the amount agreed in respect of Counsel's fees.
- 12.37 If Counsel is instructed to provide advice under Advice and Assistance and the Case reaches the Escape Fee Case Threshold you may, when claiming your fees on the basis of Hourly Rates, claim payment from us of Counsel's fees only as if such fees were a Disbursement incurred by you. However, in that situation the amount claimed from us in respect of Counsel's fees must not exceed the sum which would have been payable by us if you had spent the same amount of time in providing the advice.

Advocacy Assistance

- 12.38 If you instruct Counsel to advise your Client under Advocacy Assistance, you must arrange to agree Counsel's fees and pay Counsel out of the Standard Fee.
- 12.39 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, Counsel's fees should be included and must be calculated using the maximum fee principle (i.e. 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 Counsel's fees.

- 12.40 You must not make any Claim for time spent accompanying Counsel at a hearing.
- 12.41 Counsel's fees in a Non-Standard Fee Claim will be assessed or audited using the maximum fee principle (i.e. on the basis that you conducted the Case without Counsel).
- 12.42 You must pay 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.
- 12.43 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.
- 12.44 The professional relationship between you and Counsel will be the same as in a privately funded case.
- 12.45 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.
- 12.46 If you fail to pay Counsel within 30 days of receipt of his or her fee note, then 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 Counsel's fee note.
- 12.47 If we are satisfied that Counsel has not been paid and agree to pay 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.

Previous Advice and Assistance

- 12.48 You may not Claim for Advice and Assistance or Advocacy Assistance provided to a Client who has received Advice and Assistance or Advocacy 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, or Advocacy 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 or Advocacy Assistance given.

When providing Advice and Assistance in the circumstances set out in this Paragraph you must record the justification for doing so on the file.

- 12.49 If a Client changes Designated Fee Earner within the same organisation or a Designated Fee Earner moves to work for a different Provider and continues to advise the Client, then there will not have been Advice and Assistance from 'another Provider' for the purposes of Paragraph 12.48 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 12.48.

- 12.50 You cannot Claim for Advice and Assistance under the terms of any of the exceptions contained in Paragraph 12.48 where:
- (a) the Client simply disagrees with the first advice and wants a second opinion; or
 - (b) there is less than six months between the first and second occasions when the Advice and Assistance is sought, and no material change of circumstances has occurred; or
 - (c) the change requested is from a second to a third Provider (unless exceptionally there is good reason for a further change); or
 - (d) there is no reasonable explanation for the Client seeking further Advice and Assistance from a new Provider.

Where Advice and Assistance is provided in contravention of Paragraph 12.48, the work undertaken cannot be claimed for or paid as Contract Work.

- 12.51 If the Client has received previous Advice and Assistance but you are permitted to provide further Advice and Assistance under Paragraph 12.48, 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 and a brief explanation for commencing a new matter for that Client. In addition, the Client must complete a fresh application form and must meet the Qualifying Criteria.
- 12.52 You must ascertain whether previous Advice and Assistance has been provided in the same Matter by making reasonable enquiries of your Client at the earliest opportunity. If the Client has received Advice and Assistance, and the circumstances at Paragraphs 12.50(a) to(d) apply, you must either provide Advice and Assistance and not make a Claim for it, or require the Client to contact the Provider who provided the original Advice and Assistance.

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

- 12.53 Where you have previously provided Advice and Assistance (or Advocacy Assistance) to a Client in relation to a Matter, and you have already claimed a Standard Fee 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 will normally be assumed to be covered by the Standard Fee already claimed.
- 12.54 If you have completed a Matter, whether under this Specification or any previous Specification, you may not subsequently commence a Matter in relation to the same problem. The only exceptions are where:
- (a) a period of at least six months has elapsed since you submitted your claim for that Matter; or
 - (b) there has been a material development or change in the Client's instructions; and

- (c) a period of at least three months has elapsed since you submitted your claim for that Matter and have claimed as a result of your Client failing to give instructions; or
 - (d) the Advice and Assistance provided on the problem formed only a minor part of the previous Matter, such that the problem did not qualify as a separate and distinct legal problem.
- 12.55 For the avoidance of doubt, for the purposes of Paragraph 12.54 the fact that the Client has failed to give instructions shall not constitute or give rise to a change in the Client's instructions.
- 12.56 Where a Matter has been closed and has been claimed for but further work is necessary and a separate Matter is not justified:
 - (a) the work already undertaken, and the further work, should be taken into account in determining whether the Matter is an Escape Fee Case that escapes from the Fixed or Standard Fee provisions. If we agree to pay the matter as an Escape Fee Case, we will take into account any payments already made by way of the Standard Fee;
 - (b) you may claim further disbursements, subject to prior approval by us, as part of the Matter where appropriate;
 - (c) where the Matter has already been paid as an Escape Fee Case, the further work is payable on an Hourly Rate basis, subject to Assessment;
 - (d) unless the matter is accepted as an Escape Fee Case, the further work carried out will be included in any calculation of average costs per Matter.
- 12.57 A new Matter is not justified in the following circumstances:
 - (a) providing information to Clients or to other persons contacting your organisation on behalf of Clients; or
 - (b) supplying a new Provider with a former Client's file or a copy, or information about the circumstances of termination of the retainer; or
 - (c) writing brief ad hoc correspondence on a one-off matter at the request of the Client, which does not achieve any tangible result or results in no further action.
- 12.58 For the avoidance of doubt, where Advice and Assistance or Advocacy Assistance has already been carried out for a Client then a separate Matter would not be justified in the following circumstances:
 - (a) Advice and Assistance in relation to an issue in a Matter on which Advice and Assistance has already been provided; or
 - (b) Advice and Assistance in relation to a review, or an appeal in a Matter on which Advice and Assistance has already been provided; or
 - (c) if a Client seeks advice as to whether (s)he should change Provider from a Provider already providing Advice and Assistance on a Matter within this Specification. The provisions from 12.18 onwards under the

heading "General Provisions on Starting a New Matter" should be applied before any work is provided under a new Matter.

- 12.59 Any work undertaken on a case by an Agent on your behalf will form part of the same Matter as the parts of the Case handled by you.
- 12.60 You must not provide Advice and Assistance (or Advocacy Assistance) on a Matter where you have previously provided it. An exception to this rule is where there are substantive issues outstanding from the first occasion when Advice and Assistance (or Advocacy Assistance) was provided (this will often be the case where the Client has simply failed to give instructions for a period) or there has been a material development or change in the Client's circumstances such that further Advice and Assistance is now required.
- 12.61 If you provide further Advice and Assistance under Paragraphs 12.54 or 12.56 then:
- (a) the Client must complete a further application form and you must establish that any Qualifying Criteria are met, where relevant; and
 - (b) your case file must make reference to any previous closed file and the files must be cross-referenced and retrievable for Audit purposes,
- you must assign a new UFN to the new Matter.

Payment

Advice and Assistance

- 12.62 Advice and Assistance under this Section is paid as a Fixed Fee. If your profit and waiting time costs (calculated using hourly rates), but not travelling time, exceed the Fixed Fee by a specified amount (the Escape Fee Case Threshold), your case is claimable as an Escape Fee Case where your costs will be paid following Assessment by us.
- 12.63 You must not claim a Fixed Fee in Prison Law Class on a case, which has involved fewer than eight units of time.

Advocacy Assistance

- 12.64 Advocacy Assistance for cases under this Section is paid under a Standard Fee scheme only which operates as follows:
- (a) if your profit costs and waiting time costs (calculated by reference to Hourly Rates), but not travelling time, are within the Lower Standard Fee Limit, then you may Claim the Lower Standard Fee;
 - (b) if your profit costs and waiting time costs (calculated by reference to Hourly Rates), but not travelling time, exceed the Lower Standard Fee Limit, you are entitled to claim the Higher Standard Fee. Time spent travelling may not be included in your costs to determine whether you have exceeded the Lower Standard Fee Limit;
 - (c) if your profit costs and waiting time costs (calculated using hourly rates), but not travelling time exceed the Higher Standard Fee Limit, your case is claimable as a Non-Standard Fee Case where the costs will be paid following Assessment by us.

Rules on claiming

- 12.65 A single Claim must be submitted for all work undertaken for a Client in the same Matter except where a Claim has been submitted already in the same Matter because Paragraph 12.66(c), 12.68 or 12.69 applies. The Claim must be for one or more of the Units of Work within the Prison Law Class of Work (as set out in this part of the Contract).
- 12.66 Subject to Paragraphs 12.67 to 12.69 below, a Claim may 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 three months has elapsed since the last work in the Matter was undertaken.
- 12.67 A Parole Board Matter will not have concluded until the time period for making an application for reconsideration or an application to set aside a Parole Board decision has lapsed or such an application has been dismissed or when the prisoner has been released.
- 12.68 Where the Parole Board lists or directs a Parole Board Reconsideration Hearing, the rules on submitting a Claim are set out at Paragraphs 12.94 to 12.98.
- 12.69 Where the Parole Board Set Aside Panel directs a Parole Board Set Aside Hearing, the rules on submitting a Claim are set out at Paragraphs 12.99 to 12.103.

Sentence Cases

Scope

- 12.70 This Unit of Work covers Advice and Assistance and Advocacy Assistance (where authorised) to a Client on legal issues arising in the following Sentence Cases:

| | Advice and Assistance | Advocacy Assistance |
|---|-----------------------|---------------------|
| Sentence Calculations | ✓ | ✗ |
| Minimum Term Review | ✓ | ✓ |
| Referrals to Close Supervision Centres | ✓ | ✗ |
| Referrals to Separation Centres | ✓ | ✗ |
| A prisoner's classification as a Category A Prisoner or as a Restricted Status Prisoner | ✓ | ✓ |
| An Inmate's classification as a Category A Inmate or as a Restricted Status Inmate | ✓ | ✓ |

- 12.71 Making representations to the Independent Safeguarding Authority against the inclusion of a Client on the children’s barred list or adult’s barred list is not within the scope of this Contract.
- 12.72 Advice on recall to prison following breach of licence is not within the scope of this Unit of Work, but may be funded as a Parole Board Case in appropriate circumstances as outlined in that Unit of Work under Paragraph 12.91.
- 12.73 Advice and Assistance on a sentence calculation dispute must not be given to a Client within six months of the date of their sentence hearing. Such advice is expected to be given to a Client by the Provider who represented them at the time of their sentencing hearing.
- 12.74 Under this Unit of Work an application for a Minimum Term Review to the High Court will generally be claimable as Advice and Assistance. Where, exceptionally, representation is required in the High Court, such representation will be covered by the Standard Fees, which may be claimed for Advocacy Assistance given on cases falling under regulation 12(2)(d) as specified in the Criminal Remuneration Regulations and must be claimed for accordingly.

Qualifying Criteria

- 12.75 The Client must be financially eligible as assessed under the Criminal Financial Regulations before Advice and Assistance or Advocacy Assistance may be given under this Unit of Work.
- 12.76 The Sufficient Benefit Test for each Sentence Case must be met in the following ways:

| | Sufficient Benefit Test |
|---|--|
| Sentence Calculations | Paragraph 12.2 plus: (i) the date of release is disputed; and (ii) the Client has been unsuccessful in resolving their complaint through the prison’s internal complaints procedure. |
| Minimum Term Review | Paragraph 12.2. |
| Referrals to Close Supervision Centres | Paragraph 12.2 which: (i) is deemed to be met for the initial referral; (ii) must be met in respect of any ongoing monthly or quarterly reviews. |
| Referrals to Separation Centres | Paragraph 12.2 which: (iii) is deemed to be met for the initial referral; (iv) must be met in respect of any ongoing monthly or quarterly reviews. |
| A prisoner’s classification as a Category A Prisoner or as a Restricted Status Prisoner | Paragraph 12.2. |

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|--|-----------------|
| An Inmate's classification as a Category A Inmate or as a Restricted Status Inmate | Paragraph 12.2. |
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Payment

12.77 Payment is as specified at Paragraphs 12.62 to 12.69.

Disciplinary Cases – Advice and Assistance or Advocacy Assistance provided under section 15(2)(c) of the Act

Scope

12.78 This Unit of Work covers Advice and Assistance and Advocacy Assistance to a Client on legal issues arising in the following Disciplinary Cases:

| | Advice and Assistance | Advocacy Assistance |
|--|-----------------------|---------------------|
| Disciplinary proceedings before a Prison Governor | ✓ | ✓ |
| Disciplinary proceedings before other prison authority (the Independent Adjudicator) | ✓ | ✓ |

12.79 Advocacy Assistance under this Unit of Work must not be provided if:

- (a) it appears unreasonable that approval should be granted in the particular circumstances of the Matter or Case; or
- (b) permission to be legally represented has not been granted by a Governor or other prison authority, where appropriate.

12.80 If you commence a Disciplinary Case for a Client and are subsequently instructed by that Client on a new, unrelated and distinct Disciplinary Case, you may commence a concurrent Matter. You must set out on a file note on the later Matter your reasons to justify commencing the second case.

Qualifying Criteria

12.81 The Client must be financially eligible as assessed by you under the Criminal Financial Regulations before Advice and Assistance or Advocacy Assistance may be given under this Unit of Work.

12.82 The Sufficient Benefit Test for each Disciplinary Case must be met in the following ways:

| | Sufficient Benefit Test |
|---|-------------------------|
| Disciplinary proceedings before a Prison Governor | Paragraph 12.2. |

| | |
|--|---|
| Disciplinary proceedings before other prison authority (the Independent Adjudicator) | Paragraph 12.2 which is deemed to be met for these proceedings. |
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Pre-Signature work

- 12.83 A Claim under this Unit of Work covers all work undertaken from the date on which the application forms are completed. It also covers any Advocacy Assistance given on the same Case before the application forms are completed if the following conditions are met:
- (a) the Client meets the Financial Eligibility Test, and you are satisfied that the Sufficient Benefit Test is met;
 - (b) the hearing before the Prison Governor or the Independent Adjudicator takes place via video link and the interests of justice require that the Advocacy Assistance is provided as a matter of urgency i.e., there is a hearing within 28 calendar days from the date when initial instructions are taken; and
 - (c) there is no undue delay in posting the application forms, which must be completed and signed by the Client no more than 28 calendar days after initial instruction.
- 12.84 If you provide Advocacy Assistance under this Unit of Work, then any Claim must include any pre-signature work. Where a Standard Fee is payable, it will apply to all the work required to be included in the same Claim.
- 12.85 In order to enable us to decide whether pre-signature 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 Advocacy Assistance was sent to the Client and the date of the hearing.

Payment

- 12.86 Payment is as specified at Paragraphs 12.62 to 12.69.

Parole Board Cases – Advice and Assistance or Advocacy Assistance provided under section 15(2)(c) of the Act

Scope

- 12.87 This Unit of Work covers Advice and Assistance or Advocacy Assistance for all cases referred to the Parole Board for their consideration.
- 12.88 For the avoidance of doubt, this Unit of Work does not cover Advice and Assistance or Advocacy Assistance for:
- (a) Guittard cases involving indeterminate sentence prisoners applying to be moved to open conditions; and
 - (b) sentencing planning work other than the pre-tariff sift.

Qualifying Criteria

- 12.89 The Client must be financially eligible as assessed under the Criminal Financial Regulations before Advice and Assistance may be given under this Unit of Work.
- 12.90 Subject to Paragraph 12.91, the Sufficient Benefit Test (as set out under Paragraph 12.2) will be deemed to be satisfied.
- 12.91 Where a Client is recalled to prison for breaching the conditions of their licence:
- (a) Advice and Assistance may only be provided if the Sufficient Benefit Test (as set out under Paragraph 12.2) is met; and
 - (b) Advocacy Assistance may only be provided where the Parole Board directs or lists an oral hearing at which you represent the Client, or the case proceeds under the Intensive Paper Review process. The Sufficient Benefit Test is deemed to be satisfied in these circumstances.

Payment

- 12.92 Payment is as specified at Paragraphs 12.62 to 12.69.
- 12.93 Parole Board Cases, including where a Client is recalled to prison for breaching the conditions of their licences, determined on the papers are only paid for under Advice and Assistance, except where the case has been directed or listed for an oral hearing, including, but not limited to when the case proceeds under the Intensive Paper Review process.

Parole Board Reconsideration Hearings

- 12.94 Any application to the Parole Board for a Parole Board Reconsideration Hearing will form part of the same Parole Board Case. Any work done in connection with making an application for reconsideration must be billed as part of the existing Advice and Assistance or Advocacy Assistance Matter.
- 12.95 Where the Parole Board lists or directs a Parole Board Reconsideration Hearing, a Claim may be submitted for the existing Advice and Assistance or Advocacy Assistance provided in the Parole Board Case up to that point, even though the Matter has not concluded.
- 12.96 All work after a Parole Board Reconsideration Hearing has been directed (regardless of whether a hearing is oral or heard on the papers) must be undertaken as a subsequent Claim for a separate Advocacy Assistance fee, which will be in addition to any Claim for Advocacy Assistance fee in the substantive Parole Board Case.
- 12.97 Where the provisions of Paragraph 12.48 apply in relation to previous Advice and Assistance, and you have been instructed after a Parole Board Hearing but prior to a Parole Board Reconsideration Hearing being listed or directed, you may provide Advice and Assistance in connection with making an application for reconsideration (subject to Paragraph 12.63). Where you are instructed in circumstances where a Parole Board Reconsideration Hearing is already listed or directed any further work must be provided as Advocacy Assistance.
- 12.98 Where the Client has not received Advice and Assistance or Advocacy Assistance in connection with their Parole Board Case you may provide Advice and Assistance in connection with making an application for reconsideration.

Parole Board Set Aside Hearings

- 12.99 Any application pursuant to rule 28A of the Parole Board Rules 2019 as amended will form part of the same Parole Board Case. Any work done in connection with the Parole Board Set Aside Process (including an application to set aside a final decision) must be billed as part of the existing Advice and Assistance or Advocacy Assistance Matter.
- 12.100 Where the Parole Board Set Aside Panel directs a Parole Board Set Aside Hearing (either orally or on the papers), a Claim may be submitted for the existing Advice and Assistance or Advocacy Assistance provided in the Parole Board Hearing, and/or Parole Board Reconsideration Hearing Case, up to that point, even though the Matter has not concluded.
- 12.101 All work after the Parole Board Set Aside Panel directs the Matter for a Parole Board Set Aside Hearing (regardless of whether a hearing is oral or heard on the papers) must be undertaken as a subsequent Claim for a separate Advocacy Assistance fee, which will be in addition to any Claim for Advocacy Assistance in the Parole Board Hearing and/or Parole Board Reconsideration Hearing.
- 12.102 Where the provisions of Paragraph 12.48 apply in relation to previous Advice and Assistance, and you have been instructed after a Parole Board Hearing or Parole Board Reconsideration Hearing but prior to a Parole Board Set Aside Panel directing that a Parole Board decision should be set aside, you may provide Advice and Assistance in connection with the Parole Board Set Aside Process, subject to Paragraph 12.63. Where you are instructed in circumstances where a Parole Board Set Aside Panel has already directed that a decision should be set aside then any further work must be provided as Advocacy Assistance.
- 12.103 Where the Client has not received Advice and Assistance or Advocacy Assistance in connection with their Parole Board Case you may provide Advice and Assistance in connection with setting aside the Parole Board final decision.