

# FOCUS on CDS

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## Criminal Contract Update

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As you will know by now, the Legal Services Commission and the Law Society have reached agreement over the introduction of the Criminal Defence Service contracts on 2 April. The Law Society has recommended that criminal practitioners should sign the contract.

The key point of the agreement is that the Commission has postponed introduction of its proposals for restructuring of telephone payments for police station work until at the latest 1 January 2002. This will give time for further discussions over alternatives to the Commission's proposals.

The most important aspect for practitioners is as follows. If you have signed the contract by 13 March and submitted it to the Commission by 14 March you have a choice. You can either work under the contract that you have signed or you can opt for the alternative approach in the amended contract sent to you on 12 March. However, you have until 2 April only to make your choice and, once made, it cannot be changed.

If you did not sign your contract by 13 March and return it to the Commission by 14 March you must work under the amended contract sent to you on 12 March. The key difference between

the contracts is that the amended contract retains the current method of payment for police station telephone advice.

While this was the issue that hit the headlines in the discussions between the negotiating group and the Commission there are other important matters that deserve to be highlighted. First, the Commission and the Law Society have agreed to set up a monitoring group to ensure that the operation of the contract achieves its objectives. The group will be able to make recommendations for changes in the light of experience.

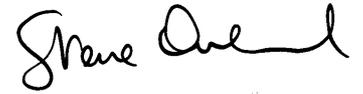
Also, for the first time, the Law Society will be represented on a small group which will discuss trends in expenditure across both civil and criminal work against the overall budget that the Lord Chancellor has given the Commission for both civil and criminal cases. This will assist the Law Society in discussing priorities for any remuneration increases in the future.

Finally, I must emphasise the importance of signing and returning your contract by 19 March at the very latest. The Commission has a duty to ensure that there are effective duty solicitor arrangements in place from 2 April onwards both in the police station

and in the magistrates' courts. As those slots can only be filled by those who have signed contracts there will be considerable activity over the last two weeks of March ensuring that the slots from 2 April onwards are filled by those who have signed. You can avoid difficulties for us and yourselves if you have returned your contract by 19 March.

By the time you receive this the training events across the whole of England and Wales will be well underway. If you have not attended one of those events but there is still an opportunity in your region then I strongly recommend you should sign up as quickly as possible. The contract, in either form, makes some fundamental changes, not least in the way you

should submit your claims for work done. The more these are understood the less likelihood of confusion over the next few months.



Steve Orchard CBE  
LSC Chief Executive

# Criminal Contract Processing Centres

**This guidance applies to forms CDS4 Application For Prior Authority To Incur Disbursements In Criminal Cases, CDS5 Application For Extension Of Upper Limit, CDS6 Contract Work Report Form, CDS7 Non-Standard Fee Contract Work Assessment Form, CDS8 Assigned Counsels' Fee Note In Criminal Cases and to all costs appeals and appeals to the Funding Review Committee.**

The Commission has three processing centres for claims and applications made under the General Criminal Contract. The London office continues to consider requests for prior authority and upper limit extensions for those suppliers in the London Region only. The table below shows you where to send your claims and applications. If your office is located in the region in the left hand column you should send work covered by this guidance to the processing centre shown in the right hand column.

If you wish to attend a Committee hearing you should make the application to your processing centre. The processing centre will contact your regional office, the hearing will be arranged at a venue local to you and you will be advised of the necessary details.

Please note that the Manchester region is served by either our Chester or Liverpool office depending on where

your firm is based. Please check the table to ensure that your forms are sent to the appropriate office.

The London region also has two processing centres, in this case dependent upon the type of application that is made. Again, please ensure that you send the work to the appropriate office.

Region	Processing Centre
Birmingham	Nottingham
Brighton	Nottingham
Bristol	Chester
Cambridge	Nottingham
Cardiff	Liverpool
Chester	Chester
Leeds	Liverpool
Liverpool	Liverpool
London (requests for prior authority/ upper limit extensions)	London
London (claims and costs appeals)	Liverpool
Manchester (Blackpool, West Lancashire, Fylde, South Ribble, Wyre and Preston)	Liverpool
Manchester (all other areas)	Chester
Newcastle	Chester
Nottingham	Nottingham
Reading	Nottingham

# Extension of Crime Franchise Panel Arrangements to Criminal Proceedings in the Higher Courts

The consultation paper "Criminal Defence Service: Choice of Representative" issued by the Lord Chancellor's Department in June 2000 contained proposals to restrict the choice of defendants in the Crown Court to those firms who hold a crime franchise (irrespective of whether they also hold a General Criminal Contract). The aim of this proposal was to ensure that the provision of criminal defence services in the Crown Court is subject to the same basic quality assurance standards as magistrates' court work. Since 2 October 2000, the provision of all crime work funded by the Commission has been limited to those suppliers that are franchised, or have passed a preliminary audit and are on the way to becoming fully franchised (see article in *Focus* 32).

The Lord Chancellor's Department has decided to implement this change for

criminal proceedings in the higher courts. The relevant provisions are contained in the Criminal Defence Service (General) Regulations 2001 which will take effect from 2 April 2001. These regulations have been subject to consultation with the Law Society, Bar Council and other professional bodies and will be published in full in a *Focus on CDS* supplement this month.

Regulation 13 provides that representation under a representation order in criminal proceedings in the Crown Court, Court of Appeal (Criminal Division) and the House of Lords may only be provided by legal representatives from offices which hold a crime franchise contract with the Commission. This is a restriction on the normal right of choice of representative to act under a representation order provided for

by the Act. For the purpose of this regulation, a crime franchise contract means either a General Criminal Contract or a full or provisional crime franchise. These provisions will apply where the client exercises his or her choice of representative on or after 2 April 2001 i.e. where an application for Advice and Assistance, Advocacy Assistance or Representation is made on or after that date. They also cover applications made on or after 2 April to change a solicitor.

There is no need to apply for authority under this regulation. The form of authority set out below will apply automatically to all those meeting the criteria. Where work is undertaken that does not fall within the terms of the authority given, there is no entitlement to payment from public funds for that work.

## Form of Authority

While a franchised, or provisionally franchised, office holds a franchise or provisional franchise in the crime franchise category or a General Criminal Contract that covers all classes of contract work, the authorised litigators employed in the office, who have either been accepted by the Commission as supervisors in that category or are under the supervision of such a supervisor are authorised for the purposes of Regulation 13 of the Criminal Defence Service (General) Regulations 2001 to provide representation in criminal proceedings as defined in section 12(2)(a) to (e) of the Access to Justice Act 1999 in the Crown Court, Court of Appeal (Criminal Division) and House of Lords.

The above authority does not apply to proceedings for contempt committed or alleged to have been committed by an individual in the face of a court under section 12(2)(f) of the Act. There is no restriction of choice of representative in these type of proceedings.

Proceedings specified under section 12(2)(g) of the Act in regulation 3(1) of the Criminal Defence Service (General) Regulations 2001 fall within the scope of the General Criminal Contract and may only be undertaken by legal representatives from offices

that hold a Contract.

Agents may continue to be instructed on the current basis after 2 April. This is because the agent is selected by the legal representative rather than the client. The guidance on the

meaning of "employed" published in *Focus 32* at p. 22 will apply.

The General Authority published at p. 20-21 of *Focus 32* will continue to apply to cases that commenced under the Legal Aid Act 1988 after 2 April 2001 where a client wishes to change solicitor.

In very high cost serious fraud cases, the grant of a right to representation is

limited to legal representatives who are members of the Serious Fraud Panel which is the panel appointed under arrangements made by the Commission to deal with such cases. A very high cost serious fraud case means a case which:

- a) if it proceeded to trial, that trial would be likely to last 25 days or longer; or
- b) the defence costs relating to any one defendant or a group

of defendants represented by the same firm of solicitors are likely to amount to £150,000 or more (including solicitor's fees and disbursements, advocate's fees and VAT); and

- c) the offence with which the defendant is charged is primarily or substantially founded on allegations of fraud or other serious financial impropriety, or involves complex financial transactions.

# The Public Defender Service

The Lord Chancellor's Department and the Commission have made a series of announcements about forthcoming developments in the implementation of a salaried defence element within the CDS.

The new service will be called the Public Defender Service, a term chosen as it reflects the work of the service and is already understood by the general public. The Public Defender Service will offer the full range of criminal services from the police station through to the Crown Court. As previously announced, individuals seeking publicly funded criminal defence services will have a free choice between a contracted private practice lawyer or a Public Defender.

The first four offices will be located in Birmingham, Liverpool, Middlesbrough and Swansea and the offices will begin to open in May 2001. The intention remains to open six offices in the first phase and the locations of the additional two offices are under consideration.

The heads of the first four offices have been appointed. They are:

## **Richard Whitehead - Liverpool Public Defender Office**

Richard Whitehead completed his Law Society finals at the College of Law, Guildford before returning to Liverpool

where he has practised criminal law for the past 11 years, appearing in the majority of magistrates' courts in the North West. He was an equity partner for six years before becoming a consultant.

## **Nick Darwin - Middlesbrough Public Defender Office**

Nick Darwin specialised in criminal defence work at an early stage in his career and has over 13 years experience as a defence advocate. He graduated from Sheffield University and is currently a partner of a firm of solicitors in York. In the past, he has served on Duty Solicitor and local court users' committees.

## **Romano Ferrari - Swansea Public Defender Office**

Romano Ferrari is a partner of a firm of solicitors in South Wales. He is a duty solicitor and a former member of the South Wales Regional Duty Solicitor Committee. As a member of the Test Board at the Centre for Professional Legal Studies at the Cardiff University Law School he is involved in the training of duty solicitors and accredited police station representatives.

## **Lee Preston - Birmingham Public Defender Office**

Lee Preston has practised as a criminal solicitor for the last fifteen years in Birmingham, Kidderminster and Dudley, appearing in most of the

magistrates' courts in the region as well as many further afield. He has law degrees from Wolverhampton and Akron University in the United States.

The external research team has been appointed following an open tender process and has commenced its work. The research team will be headed by Professors Lee Bridges and Avrom Sherr with Richard Moorhead and Ed Cape as senior researchers.

The Code of Conduct for Public Defenders, required by the Access to Justice Act, has been amended in the light of consultation. Subject to its approval by Parliament it will be available on the Commission's website [www.legalservices.gov.uk](http://www.legalservices.gov.uk).

A full analysis of responses to the Lord Chancellor's Department's consultation paper on the establishment of Public Defender offices will be published this month.

If you want any further information about the Public Defender Service, please contact:

Jill Saville  
Legal Services Commission  
85 Gray's Inn Road  
London WC1X 8TX

or by e-mail at [jill.saville@legalservices.gov.uk](mailto:jill.saville@legalservices.gov.uk).

# Recovery of Defence Costs Orders (RDCOs)

RDCOs are governed by Section 17 of the Access to Justice Act 1999. The regulations setting out how the scheme will operate are The Criminal Defence Service (Recovery of Defence Costs Orders) Regulations 2001. These will come into effect on 2 April 2001 along with the remainder of the Criminal Defence Service provisions of the Access to Justice Act and the General Criminal Contract.

The scheme for the RDCOs is a new arrangement to collect costs incurred in publicly funded representation of any individual who appears in criminal proceedings before any court other than the magistrates' court. It applies to all proceedings other than committals for sentence and appeals against sentence.

Under the Legal Aid Act 1988 in order to qualify for legal aid an applicant had to pass both a means test and an interest of justice test. Means testing was both costly and complex. Cases were often delayed while defendants provided documentary evidence of income, outgoings or savings, or receipt of certain benefits. The total value of contributions collected was barely enough to pay for the direct costs of running the system. When the indirect costs of delay were also taken into account, the old system of legal aid represented poor value for money.

The new arrangements will not delay proceedings as the means test has been abolished for representation before the criminal courts. The new system of RDCOs will allow the efforts of court staff and the Legal Services Commission to be targeted on those few defendants who are likely to be able to pay some or all of the costs incurred for the representation they received.

## When will an RDCO be made?

The judge has a duty to consider

making an RDCO at the end of the case and after all other financial orders or penalties that may be made. The judge will consider whether it is reasonable in all the circumstances of the case, including the means of the defendant, to do so. The Order is not dependent on the defendant being convicted and does not form part of the sentence, although an Order against an acquitted defendant will be exceptional. The Order can be for any amount up to the full costs incurred in representing the defendant, and can include costs incurred in other courts.

An RDCO may **not** be made against an individual who:

- only appears in the magistrates' court
- who has been committed for sentence to the Crown Court
- is appealing against sentence to the Crown Court
- has been acquitted other than in exceptional circumstances

## How do defendants apply for representation?

Applications for publicly funded representation are governed by The Criminal Defence Service (General) Regulations 2001. Applicants must complete an application form, Form A. These forms will be available from the court. This application will be made in the majority of cases in the magistrates' court. Form A will allow the court to determine whether it is in the interests of justice for representation to be granted. The appropriate officer will grant or refuse representation on the interests of justice test. If representation is granted it will be issued in the form of a "representation order". If the application is refused the court must give reasons for refusal to the applicant or to the solicitor, and a renewed application may be made.

Where the defendant applies for

representation to cover proceedings in the Crown Court, the court will provide the defendant with Form B, a statement of means. This form should be returned at or before the first hearing in the Crown Court, which will usually be either the preliminary hearing or a Pleas and Directions Hearing. Failure to return this form, which provides details of the defendant's means and those of his partner, could result in an RDCO being made at the conclusion of the case for the full costs.

Notwithstanding the relationship between the solicitor and the applicant, it is the solicitor's duty to report to the appropriate officer if he suspects that the applicant has intentionally failed to mention any relevant fact or comply with any of the regulations: Regulation 24 of The Criminal Defence Service (General) Regulations 2001.

## How will applications for RDCOs be considered?

In the event that the defendant does not return Form B to the court or fails to provide any other information required, either after a judge has ordered it, or at the request of the Court, then the RDCO will be made for the full costs incurred unless there are exceptional circumstances.

Cases will be referred by the court to the Special Investigations Unit (SIU) at the Legal Services Commission where the defendant is judged to have complex financial affairs. SIU will investigate the defendant's financial circumstances and report its findings to the court.

In all cases a report will be prepared for the trial judge outlining the income and capital available to the defendant. That report will also be made available to the defence. The judge will then consider the report at the conclusion of the case and determine whether to make an RDCO. The judge may

require the solicitor acting to provide an estimate of the costs likely to be incurred in the proceedings. If it later turns out that the actual costs incurred were less than the amount of the RDCO, the balance must be repaid. The judge will make an order specifying the amount that the defendant is ordered to pay and the terms of its payment. The court has specific new powers to make an order freezing the defendant's assets where it is appropriate to do so in support of

the RDCO provisions. Payments of RDCOs are to be made to the Commission. The Commission may enforce an order as if it was a civil debt.

**What assets are taken into account?**

In deciding how much should be paid under a RDCO the court takes into account the resources of the defendant together with the resources of his or her partner. The resources of other people who have been making funds

available to the defendant can also be considered. Generally an order will not be made against the first £3000 of any capital available. The defendant's main dwelling may be treated as capital for the purposes of an RDCO but the first £100,000 of any equity (i.e. the market value less any outstanding mortgages) in that property will be disregarded. In most cases RDCOs will be made on the basis of capital rather than income. Income will only be taken into account if the defendant's gross annual income exceeds £24,000.

# Payment for Cases which Straddle 2 April 2001

Please see Rule 1.5 in Part B of the General Criminal Contract for the transitional provisions. The effect of this rule is that you must claim for your work under either the Legal Aid Act 1988 or the Access to Justice Act 1999. You cannot claim under both.

The rule is that where work commenced under the Legal Aid Act 1988 before 2 April and will continue after 2 April, it will be remunerated under the 1988 Act rules and payment rates for all work undertaken up to 2 April. After 2 April the 1988 Act payment structure will continue to apply, but with the rates uprated by 3% generally and 10% for police station advice and assistance for those with a General Criminal Contract. This will be provided for by an uprating to the 1988 Act regulations.

This guidance enables you to determine how to apply this rule to the work that you started before 2 April, which will not conclude until after the commencement of the General Criminal Contract.

**Advice and Assistance**

Where your client signed the CLAIM10 before 2 April and you will be continuing to provide Advice and Assistance after the commencement of the General Criminal Contract you must apply the rates shown in the table below:

Work Carried Out	Up to 1 April 2001		2 April 2001 onwards	
	National	London	National	London
Preparation	45.50	48.25	46.87	49.70
Travel and Waiting	25.50	25.50	26.27	26.27
Routine Letters and Telephone Calls	3.55	3.70	3.66	3.81

When you submit your CDS6, you must ensure that the rates have been correctly applied and that CDS11 has been completed showing the value of the work done before and after 2 April (See CDS11 guidance).

**Police Station Advice and Assistance**

The relevant date for police station advice and assistance is the date that advice was given. Where the attendance/telephone advice commenced prior to 2 April, the old rates and payment structure will apply to any claim. Where the attendance/telephone advice commenced on or after 2 April, the new contract rates and payment structure will apply.

Where you made your first attendance on your client prior to 2 April, but your client is bailed back to attend after 2 April, the

new contract rates and payment structure will apply from that next police station attendance.

Where you commence an attendance on 1 April that continues without interruption on 2 April, the rates shown in the column headed '2 April 2001 onwards' will apply for all work that is conducted after midnight. The next attendance will be made under the new rates and payment structure. The applicable hourly rates are:

Work Carried Out	Up to 1 April 2001		2 April 2001 onwards	
	National	London	National	London
Availability	3.80	3.85	4.18	4.24
<b>Advice and Assistance by</b>				
Duty solicitor	46.50	50.25	51.15	55.28
Duty solicitor in unsocial hours	61.75	61.75	67.93	67.93
Own solicitor	46.50	50.25	51.15	55.28
<b>Travel and waiting by</b>				
Duty solicitor	46.50	50.25	51.15	55.28
Duty solicitor in unsocial hours	61.75	61.75	67.93	67.93
Own solicitor	25.75	25.75	28.33	28.33
Telephone Advice	21.25	22.00	23.38	24.20
Routine Telephone Calls	3.60	3.75	3.96	4.13

It is strongly recommended that you submit all claims for police station attendances and telephone calls that took place or commenced before 2 April by 10 April in order to ensure payment by 10 May.

#### Magistrates' Court ABWOR (other than Duty Solicitor)

Work Carried Out	Up to 1 April 2001		2 April 2001 onwards	
	National	London	National	London
Preparation	45.50	48.25	46.87	49.70
Advocacy	57.25	57.25	58.97	58.97
Attendance at court where counsel assigned	31.00	31.00	31.93	31.93
Travel & waiting	25.50	25.50	26.27	26.27
Routine letters written and telephone calls	3.55	3.70	3.66	3.81

#### ABWOR in relation to Prisoner Cases

Work Carried Out	Up to 1 April 2001		2 April 2001 onwards	
	National	London	National	London
Preparation	54.50	58.25	56.14	60.00
Advocacy	66.25	66.25	68.24	68.24
Attendance at court where counsel assigned	31.00	31.00	31.93	31.93
Travel & waiting	25.50	25.50	26.27	26.27
Routine letters written and telephone calls	3.90	3.90	4.02	4.02

Note that the cut-off for applications for ABWOR under the 1988 Act (whether for magistrates' court or prisoner cases) is as follows:

- i) the application must be signed prior to 2 April 2001 and received by the Commission by 10 April 2001, or
- ii) the application must have been granted by the solicitor under devolved powers prior to 2 April 2001 and notification received by the Commission by 10 April 2001.

Any cases after these dates will be for Advocacy Assistance under the contract at the rates prescribed in the contract.

### Court Duty Solicitor

The commencement of the General Criminal Contract will produce no overlap of Court Duty Solicitor work. 1 April will be the last date that the current rates apply and 2 April will be the first date that the contract rates apply i.e. the effective date is the date on which you attended clients as the Court Duty Solicitor.

You are strongly advised to submit all your completed CLAIM13's by the 10 April deadline to ensure payment on an individual case claim by 10 May.

### Early Hearings

The first hearing on or after 2 April that you provide own solicitor cover for will be deemed to fall under the contract and will therefore be subject to the contract rates and payment structure.

It must be noted that the concept of the 'duty solicitor of choice' will end from 2 April.

### Standard Fees

In accordance with the Criminal Bills Manual guidance covering a rate increase, the Commission will pay the Standard Fees shown below provided that some of the work was carried out on or after 2 April.

Therefore where a legal aid order is issued to your client before 2 April and the case concludes after the commencement of the General Criminal Contract you should apply the uprated standard fees and fee limits as shown below.

	LSF		Lower Limit		HSF		Higher Limit	
	National	London	National	London	National	London	National	London
Cat1	152.70	196.73	284.28	364.62	367.71	466.59	492.34	615.94
Cat2	270.12	346.34	488.22	620.06	619.03	777.65	813.70	991.89
Cat3	243.60	308.23	430.54	522.21	552.08	647.87	751.90	801.34

The core rates will be as follows and should be applied for all work done on or after 2 April 2001:

	Current Rates		Increased Rates	
	National	London	National	London
Preparation	46.00	48.50	47.38	49.96
Advocacy	57.75	57.75	59.48	59.48
Attendance at court where counsel assigned	31.50	31.50	32.45	32.45
Travel and waiting	25.50	25.50	26.27	26.27
Routine letters and telephone calls	3.55	3.70	3.66	3.81

In determining the standard fee applicable, you must apply the new lower and higher limits.

You must show on CDS11 the split between work conducted before and after 2 April together with the relevant rates.

### Individual Case Claims

Note that any claim for work under the 1988 Act must be submitted so as to reach the Commission by 10 April in order to receive an individual case payment. Any received after that date will be credited against your contractual monthly payment and not paid individually.

## Combined Representation Orders

Where a legal aid order is granted prior to 2 April and a Representation Order is granted on or after 2 April which together with the legal aid order constitutes a single case for standard fee purposes, the case is dealt with under the 1988 Act rules and rates. The table below shows the applicable Act.

When orders issued which form part of the same case	Applicable Act
All orders issued before 2 April 2001	1988 Legal Aid Act
All orders issued after 2 April 2001	1999 Access to Justice Act
Orders issued before and after 2 April 2001	1988 Legal Aid Act

# Guide to the Very High Cost Criminal Case Contract

## This is a step by step guide to running a VHCC case.

- The solicitor is instructed with a case that could potentially become a VHCC case. This means that the case is likely to last 25 days or more at trial, or that the case (inclusive of all defendants for the firm in question) is likely to accrue more than £150K total defence costs, including disbursements and counsels fees. The solicitor notifies the Criminal High Cost Cases (CHCC) Unit. If the case is a VHCC fraud then the firm will only be able to run the case if it is a member of the Serious Fraud Panel.
- The CHCC Unit acknowledges the notification and states whether or not a contract will be entered into for that case (after April 2002 all VHCC cases will be the subject of a VHCC contract). If the case is to be the subject of an individual case contract, the CHCC Unit will provide the firm with template case and stage plans which must be completed immediately.
- The solicitor completes the case plan. This involves providing information such as the type of case, the (likely) charges, the projected timescale of events, the proposed defence team etc.
- The solicitor completes the 1st stage plan. This involves providing detailed information on the work that the solicitor proposes to undertake on the case for the next 'stage'. A stage can be any length of time but would generally be at least two months.
- The CHCC Unit appoints a Contract Manager. The Contract Manager will examine the case and stage plan. The case plan provides evidence of the seriousness and complexity of the case which will indicate the hourly rate at which the case should be remunerated<sup>1</sup>. The correct rate will be selected from different bands of rates to be prescribed in the Criminal Defence Service (Funding) Order 2001. The stage plan will be discussed, negotiated and agreed between the Contract Manager and the supervising solicitor to decide what work the firm will undertake in the next stage and how long that work will take.
- A contract signing meeting is arranged to take place at the firm. The Contract Manager will agree and pay for any work reasonably undertaken by the firm prior to signing the contract, including completing the stage and case plans. The contract will be signed and the next stage plan agreed.
- If, during the stage, something unexpected occurs, the solicitor may wish to amend the stage plan. The solicitor must contact the Contract Manager to discuss and agree the change. This discussion must take place prior to any proposed new work being undertaken.
- At the end of the stage, the Contract Manager will review the work undertaken, pay for all the agreed work completed under that stage and negotiate and agree the next stage of the contract.
- The final stage of the contract will be the trial itself. The last payment for a VHCC case should be made within 2 weeks of the end of the trial.
- If a stage is lengthy, the solicitor can opt for monthly payments instead of waiting until the end of the stage for payment. As long as this is feasible, the Contract Manager will agree monthly payments. These payments will comprise of the total payment of the work likely to be undertaken in that month, less 25%. The balance will be paid at the end of the stage.
- The Contract Manager will need to audit the solicitor's attendance notes prior to paying for work undertaken. This will take place at the solicitor's office.
- Further information will be available to solicitors to assist in the running of VHCC cases. This will be in the form of a Solicitors' Manual which is currently being drafted.

<sup>1</sup> As the case progresses, more information may show that the case is either more or less serious than it was first considered. The rate of pay can then be altered to reflect the changes in the case.

### Criminal Contract Training Materials On-Line

The Trainers Resource Pack for the General Criminal Contract is now available from the CDS section of the LSC website in addition to the packs that have been circulated to each criminal office:

[www.legalservices.gov.uk/cds/index.htm](http://www.legalservices.gov.uk/cds/index.htm)

Please feel free to download additional copies to support your in-house training.

The Trainers Pack contains the following modules:

- Contract Overview
- Monthly Payment Rules
- UFN's, File Management and Forms
- Application Procedures
- Applications During the Life of a Case
- Submission of Claims
- Quality and Performance Standards
- Duty Solicitor Arrangements 2001 and Related Issues
- Forms

A 'PowerPoint' presentation will shortly be available as a further resource for in-house training.

All Regional Offices are running CDS training events during March. Please contact your local Regional Office for the current availability of these courses.

### LCCSA Training

The training arm of LCCSA (London Criminal Courts Solicitors' Association) is providing training seminars in all areas of criminal work including contracting.

For further information contact Julia Holman on 020 8995 1652 or e-mail [juliaholman@freeuk.com](mailto:juliaholman@freeuk.com)

# Undertaking work at the police station

We have received several enquiries about who can undertake work at the police station from 2 April and the position is as follows:

For a duty solicitor case the initial advice must be given by the duty solicitor whether by telephone or in person. For own solicitor cases, the initial advice may be given by a solicitor (whether a duty solicitor or not) or an accredited or probationary representative. A probationary representative must not advise in connection with an indictable only case.

Attendance at the police station on a duty solicitor case can only be made by the duty solicitor or an accredited representative. On own client cases, the attendance can be by a solicitor (whether or not a duty solicitor) or an accredited or probationary representative.

With the exception of duty solicitors, who can only undertake duty solicitor work for one firm, other fee earners can undertake work for more than one firm. Suppliers will, however, need to bear in mind the performance standard requirements in the contract for designated fee earners.

## CDS Logo Guidelines

The CDS Quality Mark logo guidelines have been completed and are currently being printed. Practitioners will receive the guidelines and a window sticker later this month.

As reported in *Focus on CDS* issue 2, existing stationery can continue to be used until supplies are exhausted.



# CDS - The Regulatory Framework

Although the contract sets out the most important rules concerning CDS work a number of statutory instruments are being made to underpin the new scheme. The regulations deal with matters such as criminal remuneration outside the scope of our contracts, financial eligibility for advice and assistance and a number of procedural provisions many of which are similar to those under the Legal Aid Act 1988.

We will therefore be publishing separately to all practitioners copies of all relevant statutory instruments together with a brief guide to the regulations.

# Criminal Financial Eligibility From 2 April 2001

The Criminal Defence Service (General) Regulations 2001 provide that the following advice and assistance (including advocacy assistance) may be granted without reference to the financial resources of the individual:

- (a) advocacy assistance before a magistrates' court or the Crown Court;
- (b) advice and assistance (including advocacy assistance) provided by a court duty solicitor acting as such;
- (c) police station advice and assistance provided to a client who:
  - i) is arrested and held in custody at a police station; or
  - ii) is a volunteer; or
  - iii) is being interviewed in connection with a serious service offence, that is, an offence under the Army Act 1955<sup>(1)</sup>, the Air Force Act 1955<sup>(2)</sup> or the Naval Discipline Act 1957<sup>(3)</sup> which cannot be dealt with summarily.
- (d) advocacy assistance on an application to extend detention in military custody under the Armed Forces Discipline Act 2000;
- (e) advocacy assistance on an application for a warrant of further detention or for an extension of such a warrant.

In any other cases the client's disposable income and disposable capital must be below the following limits:

<b>Advice and Assistance</b>	Income limit:	£87 per week
	Capital limits:	No dependants £1,000 One dependant £1,335 Two dependants £1,535 Plus £100 for each additional dependant
<b>Advocacy Assistance</b>	Income limit:	£186 per week.
	Capital limits:	No dependants £3,000 One dependant £3,335 Two Dependants £3,535 Plus £100 for each additional dependant

There are no contributions for either of these levels of service

Clients automatically qualify on income for both levels of service if they receive Income Support, Income based Job Seekers Allowance (JSA(IB)), Working Families Tax Credit or Disabled Persons Tax Credit only if any abatement from the maximum allowance is more than £70 per week.

In addition clients automatically qualify for advocacy assistance on capital if in receipt of Income Support or Income based Job Seekers Allowance.

The following weekly allowances against income can be made in respect of dependants:

<b>Partner</b>		£30.20
<b>Dependants</b>	Aged 15 or under	£31.45
	Aged 16 or over	£32.25

Where a right to representation is sought in accordance with the Access to Justice Act 1999 (and its supporting regulations), all applicants will need to satisfy the interests of justice test set out in Schedule 3 of the Act, but the current universal means test will be replaced by the power to make an order for the recovery of defence costs which will be made at the conclusion of proceedings in the crown court by a judge.

<sup>(1)</sup> 1955 c. 18. This Act, together with the Air Force Act 1955 and the Naval Discipline Act 1957, was amended by the Armed Forces Discipline Act 2000 (c. 4).

<sup>(2)</sup> 1955 c. 19.

<sup>(3)</sup> 1957 c. 53.

# Very High Cost Criminal Cases

From April 2001, the Very High Cost Criminal Case contracting system goes live. This means that the responsibility for paying for VHCC cases, under individual case contracts, moves to the Criminal High Cost Cases (CHCC) Unit of the Legal Services Commission. A Very High Cost Criminal Case is one that is likely to last for 25 days or more at trial, or is likely to incur total defence costs of £150K or more. Should the CHCC Unit wish to contract for a VHCC case with a firm after 1st April 2001, it can insist on doing so.

The CHCC Unit has been running a pilot system to introduce contracting for

Very High Cost Cases. So far 30 cases have been the subject of a VHCC contract. As the system is introduced from April 2001, not all cases will be the subject of an individual case contract with the CHCC Unit. Cases that are not contracted for will be remunerated under the current taxation system by submission of a bill, post-trial, to the National Taxing Team.

Cases that are the subject of a contract will be managed under that contract by the supervising solicitor and a contract manager from the CHCC Unit. It will be for the solicitor and the contract manager to discuss the case and agree

payments for work undertaken (see 'Guide to the VHCC Contract' on page 9).

In order that the CHCC Unit can sign contracts for VHCC cases, the unit must be notified of such cases as soon as the solicitor is instructed in the case. Firms are reminded that under The Legal Aid (Notification of Very High Cost Cases) Regulations 2000, there is an obligation for all firms to notify the CHCC Unit of all new VHCC cases received after 1 August 2000. Equivalent notification regulations apply to new cases commencing after 2 April 2001. Firms failing to do so may not be remunerated for work undertaken.

# Serious Fraud Cases

After 1 April 2001, Very High Cost Criminal cases which are fraud cases can only be undertaken by Serious Fraud Panel member firms. Non-Panel member firms that are approached by potential clients with VHCC fraud cases cannot accept the case but must inform the client that they must instruct a Serious Fraud Panel firm. Lists of firms are available from the Legal Services Commission Criminal High Cost Cases (CHCC) Unit. As soon as a non-Panel

member firm is approached by a client with a VHCC fraud case, they should request a list of Serious Fraud Panel firms from the CHCC Unit. A new list should be requested with each new case to ensure that the most up to date list is supplied.

From April 2001, lists can be obtained from:

**CHCC Unit**  
Criminal Defence Service

29-37 Red Lion Street  
London WC1R 4PP  
Tel: 020 7759 1532/1533

Or via e-mail from:  
[martin.brown@legalservices.gov.uk](mailto:martin.brown@legalservices.gov.uk)  
[john.hargraves@legalservices.gov.uk](mailto:john.hargraves@legalservices.gov.uk)

Applications to join the Serious Fraud Panel are also available from the CHCC Unit. There is no closing date for the submission of the completed application forms.



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