

Focus on CDS

Issue 6 - September 2001

www.legalservices.gov.uk

Claims and Payments under the General Criminal Contract

Contents

Claims and Payments under the General Criminal Contract	1
Remuneration for Representation in Proceedings which are sent for trial under Section 51 of the Crime and Disorder Act 1998	2
File Review Claims	2
Contract Audits and the CDS Contract	3-5
The Public Defender Service	6
Forms Update	6
Duty Solicitor Arrangements - London	7
Services Cases Abroad	7
Draft Guidance Manual Issued for Consultation	7
Proposed Payment Dates	8

We now have complete information on the value of claims and payments submitted and made under the General Criminal Contract for the first four months (April, May, June and July) of the year. These figures have already been provided to, and discussed with, the profession's representatives at the monthly meetings of the Contract Consultative Group.

For these four months we have made

standard monthly contract payments to suppliers totalling some £39m a month - some £156m in total.

We have received a total value of claims for these four months of just over £114m: 73% of the value of payments.

We have seen the value of claims rise progressively over this period, as follows -

Month	Value of claims submitted in month	Value of month's claims as % of months payments	Cumulative value of claim	Cumulative value of claims as % of cumulative value of payments
April	£14.8m	38%	£14.8m	38%
May	£26.7m	68.5%	£41.5m	53.2%
June	£36.5m	93.6%	£78m	66.7%
July	£36.6m	93.8%	£114.6m	73.5%

We have expected the build up of claims to follow this pattern given the very high volume of individual case claims submitted for payment outside of the contract prior to 10 April. In April and May we have paid firms some £65m in respect of claims which firms chose to have paid outside of the contract. Given this volume, it has been clear that firms had billed a large proportion of claims that would normally have been submitted in April and May and which would therefore

have supported the value of contract payments that have been made.

The first review of payments and claims under the contract commenced in July, at which stage we had information on three complete months of claims and payments. This review was undertaken in accordance with the Contract and Monthly Payment Rules except that instead of reconciling the cumulative value of claims to 90% of the value of payments, as provided by

Focus on CDS is produced by the LSC's Press Office.

Please contact Lucy Dodsworth on 020 7759 0492 or e-mail lucy.dodsworth@legalservices.gov.uk

the Contract and Rules, we reconciled to 80%. This was to move firms progressively to the correct range. Adjustments to future monthly payments have been made, where necessary, from the September monthly payment: the sixth contract monthly payment.

This is a first step in moving firms into the 90% to 95% band required by the Contract and Rules. Although payments and claims are monitored on an ongoing basis we will be conducting a second formal review in October/November when we have the full claim and payment data for the first six months of the contract (April to September). Adjustments to future monthly payments arising from this review are planned to take effect from

the December payment onwards. As required by the Contract and Rules our aim is to ensure that for the year as a whole offices receive contract payments at a level such that the cumulative value of contract claims submitted represents 90% to 95% of the cumulative value of contract payments made.

In accordance with the Contract and Rules, suppliers can apply for an increase in future payments if the cumulative value of their claims rises above 95% of the cumulative value of claims submitted for the same months.

If you have any questions on these issues please do not hesitate to contact your Account Manager or CDS Manager.

File Review Claims

We will be writing individually to each office to explain how to make the claim for file reviews shortly.

Please note you should not have claimed for any file reviews up to now. All file review claims for the period since the start of the General Criminal Contract must be made during the months of October and November

Remuneration for Representation in Proceedings which are sent for Trial under Section 51 of the Crime and Disorder Act 1998

A number of queries have arisen about the correct remuneration rates for work undertaken in indictable only proceedings which are sent for trial directly to the Crown Court. For guidance on the general procedures see Focus 33, page 16.

Work done in the magistrates' court under a representation order granted on or after 2 April 2001 in such proceedings falls outside the scope of the General Criminal Contract (Part A, paragraph 3.2.1(c) and Part E, paragraph 3.5.3 (note) Contract Specification). The Contract provides that remuneration in such proceedings shall be assessed and paid by the Crown Court. This is reiterated in Article 4 of the Criminal Defence Service (Funding) Order 2001.

For transitional cases i.e. those covered by a legal aid order granted prior to 2 April 2001 where work continues after that date, the Legal Aid in Criminal and Care Proceedings (Costs) (Amendment) Regulations

2001 (SI 2001/1180) provide "transitional rates" which may be claimed by firms that have a contract with the Commission that undertake work on or after 2 April 2001 under a legal aid order granted under the Legal Aid Act 1988. These rates are set out in the supplement to Focus on CDS 5 which also contains the applicable supporting guidance. Work done prior to 2 April 2001, or work undertaken on a 1988 Act case where the solicitor does not have a contract with the Commission, will continue to be remunerated at the old rates set out in paragraph 1 (1)(a) and 1A of Schedule 1, Part 1 of the Legal Aid in Criminal and Care Proceedings (Costs) Regulations 1989.

Where work in Section 51 proceedings is undertaken under a representation order granted on or after 2 April 2001, a question has arisen as to the applicable payment rates that govern remuneration when it is assessed by the Crown Court taxing teams at the

conclusion of the Crown Court proceedings. Both the Contract and the Funding Order are currently silent on this point. The Lord Chancellor's Department has indicated that the Criminal Defence Service (Funding) Order 2001 will be amended to provide that work undertaken in the magistrates' court in Section 51 cases under a representation order granted on or after 2 April 2001 will be remunerated at the rates set out in Part E, Section 3.5 of the General Criminal Contract i.e. the contract rates for representation in the magistrates' court.

The Lord Chancellor's Department has directed determining officers to pay contract rates as opposed to the transitional rates in Section 51 cases where the above criteria are met.

Any queries on this should be addressed to your local Crown Court taxing team.

Contract Audits and the CDS Contract

We have received several enquiries seeking guidance on key issues to consider before the Commission undertakes audit visits against the General Criminal Contract. We hope that if practitioners work their way through the following they will find it useful:

INDIVIDUAL FILES

Police Station

- The table at the end of this article is a reminder of who is permitted to undertake police station work.
- The advice given must be recorded (this is an existing LAFQAS requirement).
- The time claimed must be justified by attendance notes e.g. if police station attendance of 3 hours is claimed and the only note is of a 20 minute interview this is not acceptable.
- Form CDS1 is needed unless the information required by the CDS1 is shown clearly on the file. CDS1 is always needed when the financial means test applies.
- Form CDS11 is needed for all matters except telephone only advice when the “fixed rate” option of payment has been chosen.
- Mileage rate is 36p.
- If operating under per call telephone advice option advice calls must demonstrate that they have materially progressed the case.
- Attendance at the police station is mandatory for duty and own client work if (General Criminal Contract Part B paragraph 8.2 and 3.1):
 - ◆ Client has been arrested for an arrestable offence under section 24 of PACE
 - ◆ There is a identification parade, group or video identification or confrontation

- ◆ The client complains of serious maltreatment by police
- ◆ The client is a youth (under 17) or person at risk
- Non-attendance for the above would be exceptional and must be justified on the file (General Criminal Contract Part B paragraph 8.2.8)
- The following times should be recorded:
 - ◆ Time call accepted
 - ◆ Time of initial call to client
 - ◆ Time of any decision to attend
 - ◆ Time of first attendance on client
- If “per call” option has been chosen the police station hourly rates are :

	NATIONAL	LONDON
ATTENDANCE		
Duty (Unsocial)	67.93	67.93
Duty (Other hours)	51.15	55.28
Own solicitor	51.15	55.28
TRAVELLING AND WAITING		
Duty (Unsocial)	67.93	67.93
Duty (Other hours)	51.15	55.28
Own solicitor	28.33	28.33
ATTENDANCE CALL	23.38	24.20
ROUTINE CALL	3.96	4.13

- If “fixed rate” option applies the police station hourly rates are:

	NATIONAL	LONDON
ATTENDANCE		
Duty (Unsocial)	69.05	69.05
Duty (Other hours)	52.00	56.20
Own solicitor	52.00	56.20
TRAVELLING AND WAITING		
Duty (Unsocial)	69.05	69.05
Duty (Other hours)	52.00	56.20
Own solicitor	28.80	28.80
FIXED TELEPHONE FEE	30.25	31.45

Court Duty Solicitor

Note that no CDS1 or CDS11 or UFN is required.

Court duty solicitor work must record:

- Name and address of each client advised.
- Date.
- Start and finish time (for whole session – no need to split for each client).
- Venue i.e. court.
- Confirmation matter falls within scope:
 - ◆ if guilty plea that client has not received assistance before unless this is the one sentencing hearing.
 - ◆ if bailed client that client charged with an imprisonable offence unless exceptional circumstances apply.
 - ◆ if bail application that client has not received Advocacy Assistance previously on a bail application.
 - ◆ early hearings (previously known as Narey). Cases commenced by summons are not covered. Case commenced by charge are limited to one hearing and, if the defendant enters a guilty plea and the case is adjourned for sentencing, at one sentencing hearing. If more hearings are required then an application for a representation order should be submitted. [General Criminal Contract Part B Rule 3.2.1(b)(i)]. Payment is at the Advocacy Assistance hourly rates but must not exceed the value of a Category One Lower Standard fee.
 - ◆ Advocacy Assistance at a committal hearing or not guilty trial can not be provided.

Exceptional circumstances will include the particular circumstances of the client e.g. youth, disability etc the nature of the proceedings e.g.

complexity or the consequences of a conviction for the client e.g. the loss of a driving licence leading to the loss of employment. If exceptional circumstances apply, these must be recorded (General Criminal Contract Part A Section 3.3.3).

Other Files

- The time claimed must be justified by attendance notes.
- Form CDS1 is needed unless the information required by the CDS1 is shown clearly on the file. CDS1 is always needed when financial means test applies.
- Form CDS11 is needed.
- Mileage rate is 36p.
- A reminder that early hearings (previously known as Narey hearings) must not be claimed separately from any other claim for Criminal proceedings involving the same matter.
- For stand alone advice and assistance (previously Claim 10 work) confirmation of the client's financial eligibility should be placed on the file e.g. copy of benefits book. This may not be available at the first interview (General Criminal Contract Part B Rule 2.6).

GENERAL ISSUES

Performance Standards

For police station work, you should consider how you are performing for the following:

- For 80% of calls to telephone a client at the police station within 45 minutes of accepting the call.
- For 90% of calls to attend within 45 minutes of the decision to attend.

You need not analyse your performance (although many suppliers do) as we will determine performance from a sample of files.

For work conducted by fee earners you

supervise (also known as designated fee earners) you should consider how you are performing for the following:

- What percentage of police station attendances for your office are conducted by those fee earners i.e. what percentage of attendances are conducted by non designated representatives that you do not supervise/designate. Target is for 80% to be conducted by designated fee earners.
- What percentage of magistrates' court advocacy for your office is conducted by those fee earners i.e. what percentage of magistrates' court advocacy is conducted by other solicitor agents and/or barristers. Target is for 50% to be conducted by designated fee earners.
- What percentage of police station attendances are conducted by probationary representatives. Target is for no more than 20% to be conducted by probationary representatives.
- 90% of contracted work must be undertaken by designated fee earners.

If you are not achieving the above targets then consider either conducting more work using fee earners that you do supervise/designate OR designate more fee earners. Remember you can designate fee earners that do not work for your office but they must then be supervised – see below.

Designation of fee earners

Document (ideally in office manual) which fee earners you designate. A suggested format is:

- Name of Fee earner (and any reference/PIN number used).
- Status (i.e. whether Duty Solicitor, Accredited Representative, Probationary Representative, Solicitor, Other, Supervisor).
- Class Category of Work Undertaken (i.e. Police Station, Magistrates' Court Advocacy,

Magistrates' Court Preparation, Criminal Cases Review Commission, Prison Law, Public Law).

Remember that designated fee earners must have a job description; appraisals; training records (and complete 6 hours crime training per annum); have their work sampled by file review.

If you designate a fee earner not employed by your firm then you can share the requirements of designation above with any other supplier that also holds a General Criminal Contract. You must be able to demonstrate (for example by having copies of file review appraisals, training records) that you have ensured that they meet the requirements of the contract. E.g. a

representative works for 4 suppliers. Supplier A completes file review etc and sends copies to other suppliers. Suppliers B, C and D can then designate the representative.

File Review

Remember that:

- Minimum of two files per fee earner per month (one for supervisor).
- Each quarter, 50% of file reviews to be face to face with conducting fee earner.
- If suppliers work on "pool or team" basis then total number of files to be reviewed must equal the sum if each individual was to be reviewed.
- Must ensure that range of work (see designation) is covered on an annual basis.

- Must analyse results annually and document.
- Must feed results into appraisal process.
- Cannot just be "Y" "N" answers e.g. should summarise the legal issues and decide whether these have been correctly addressed by the fee earner.
- Consider whether performance standards have been achieved for that file (not mandatory).

Supervision

Remember that you need to:

- Have evidence of providing legal and procedural updates.
- Have system (not just file review) to assess the quality of fee earners' work.

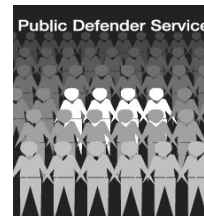
Type of Work	Duty Solicitor	Probationary Representative	Accredited Representative	Solicitor	Someone who is not a Duty Solicitor, Solicitor or Representative
Take initial call (Duty Solicitor)	YES	NO*	NO*	NO*	NO*
Take initial call (Own Solicitor)	YES	YES**	YES	YES	YES
Provide initial telephone advice (Duty)	YES	NO	NO	NO	NO
Provide initial telephone advice (Own)	YES	YES**	YES	YES	NO
Initial attendance at police station (Duty)	YES	NO	YES***	NO	NO
Initial attendance at police station (Own)	YES	YES**	YES	YES	NO

* Unless Regional CDS Manager agrees otherwise in writing - usually large supplier with 24 hour telephone bureau

** Not indictable only (more serious cases Crown court only)

*** Only after duty solicitor has provided initial advice either by telephone or in person

The Public Defender Service



The Public Defender Service (PDS) was established as part of the Criminal Defence Service (CDS), which was introduced in April 2001. The opening of the first four offices, Birmingham, Liverpool, Middlesbrough and Swansea, was announced in earlier editions of Focus and there has been widespread interest in their progress.

Each office has a mix of solicitors, accredited representatives and quality/administrative support in order to maintain the necessary quality 24-hour service. They have now passed their Preliminary audits and the individual teams are working to ensure that they meet the standards of the Specialist Quality Mark. The principal solicitor in each office is responsible for the legal standards, supported by Tony Edwards who is the professional head of the service.

As the PDS has been set up as part of the Legal Services Commission (LSC), their management and quality systems are supported by central services. An

important element of those systems is a Case Management System and Solicitec has been awarded the contract to develop appropriate software for the PDS.

Every PDS solicitor has to meet the criteria for inclusion on relevant Duty Solicitor schemes and compete for clients on the same basis as private criminal lawyers i.e. the police custody officer will offer a PDS solicitor only as part of the overall Duty Solicitor service, not as a separate option.

In order to increase the scope of the pilot, a rural area would be particularly useful for us to understand the particular issues that this would raise. It is also important that we take into account the current provision of criminal defence services so that we can enhance them wherever possible. With this in mind, the head of the CDS, Richard Collins, held a meeting with the criminal practitioners in Wales on 18 September to discuss the future

development of the PDS in rural areas.

The research programme is in its initial evaluation and testing phase and we try to include the independent research team in every activity of the PDS. They will not begin to collect data until April 2002 but they are supporting the development of key reporting systems.

We are planning to open two further offices in this first phase of the pilot and have recently advertised in the Times and Law Society Gazette for high calibre criminal lawyers to lead them. These office heads will be able to build up their own teams in order to open by end March 2002.

If you would like further information about the Public Defender Service, please contact Jill Saville at the Legal Services Commission, 85 Gray's Inn Road, London WC1X 8TX or by e-mail at jill.saville@legalservices.gov.uk.

Forms Update

It has been brought to our attention that some solicitors have been experiencing problems in receiving their monthly contract payment. It appears this has been due to some problems with processing CDS6 forms. After some investigation it has been confirmed that the delay in payment is due to CDS6 forms being submitted with other items, for

example CDS7 forms. This has resulted in Caseworkers not immediately realising that a CDS6 is contained within the pile of forms submitted.

To maintain an efficient process and to ensure all CDS7 and CDS6 forms are dealt with swiftly, please do not save up your CDS7 forms and submit them on a monthly basis. The CDS7 forms should be submitted daily, as you formerly submitted the old-style Criminal Legal Aid claims. By submitting your CDS7 forms on an "as and when" completed basis,

the work will be credited to your running rate earlier.

If at any stage you do need or wish to submit a CDS6 with other items, please place all CDS6 forms in a separate envelope within the main envelope. Please indicate clearly on the front of both envelopes that a CDS6 form is enclosed and mark the envelopes for the immediate attention of the SPOCC team. In doing this we can prevent any CDS6 forms from going astray and any delays occurring.

Duty Solicitor Arrangements - London

As from 2 April 2001 firms operating under a General Criminal Contract were required to adhere to the rules governing duty solicitors as set out in the 'Duty Solicitor Arrangements 2001'.

The Arrangements provided geographical requirements in respect of scheme membership (para 4.8 – 4.11) and confirmed that Duty solicitors will generally be required to serve on both the Local Police Station and Local Magistrates' court scheme (para 4.19).

Prior to the implementation of the Arrangements, the LSC's London office confirmed that those suppliers with duty solicitors on schemes in the London Region would not immediately be subject to the requirements outlined above and that the existing rules would, therefore, remain in place. This decision followed consultation, which identified that there were likely to be additional considerations affecting London contractors.

The key issues affecting any decision

to restructure the existing arrangements within London include the following:

- Proposed changes to the Magistrates Court service and structure by the Greater London Magistrates Court Authority (GLMCA).
- The recommendations of the Auld report.
- Reports, particularly from the GLMCA, are expected shortly. Any changes adopted are likely to have a significant impact upon London Duty Solicitors.

We have, therefore, decided that any change to the existing duty solicitor arrangements would be premature at this time. We will, of course, consult prior to affecting any changes should we believe these appropriate in the future.

Please contact Robert Loughlin, the London Regional Criminal Defence Service Manager for further information.

Draft Guidance Manuals Issued for Consultation

The PACE and Criminal Bills Assessment Manuals have been fully revised to take into account the changes made by the introduction of the Criminal Defence Service and the General Criminal Contract on 2 April 2001. These manuals are currently subject to external consultation with representative bodies for a three month period until 9 November 2001. The draft guidance manuals have been used by Commission staff from 1 August 2001 when undertaking non-standard fee assessments and audits under the contract. The PACE Cost Assessment Manual is used to assess police station own solicitor and duty solicitor claims. The Criminal Bills Assessment Manual covers all work undertaken under a representation order (including non-standard fee claims). Separate guidance on the assessment of Advice and Assistance claims under the contract has not yet been produced as it is intended that this type of work will be incorporated into separate costs assessment guidance which will be subject to a separate consultation exercise. Final versions of both manuals will be produced towards the end of this year incorporating consultation responses.

Individual suppliers who wish to participate in the consultation process may do so either through their representative bodies or by downloading the manuals from the LSC website. Responses to consultation should be sent to Robert Heard at Legal Services Commission, Criminal Defence Service, 4th Floor, 85 Gray's Inn Road, London WC1X 8TX, DX 328 London/Chancery Lane, or by e-mail to robert.heard@legalservices.gov.uk. Consultation closes on Friday 9 November.

Services Cases Abroad

Following discussions between the Ministry of Defence and the Commission, it has been agreed that pre charge advice under Section 2.2 of Part A of the General Criminal Contract Specification will be available to Services personnel abroad. Such personnel will be offered assistance from lawyers employed by another Service e.g. a soldier will be offered assistance from an RAF lawyer, failing which they will

be able to ask for a named solicitor or the duty solicitor.

Where the duty solicitor is requested, our Call Centre will deploy the case to the duty solicitor covering the base at which the Services person would be located whilst in England.

The draft PACE Guidance on Costs Assessment Manual, which is currently out for consultation with the Law Society etc, includes guidance on such cases (see para 6.5). A copy of the draft can be accessed on the Commission's website.

Proposed Payment Dates

The proposed payment dates for September to December 2001 are set out below. These dates may be subject to amendment, but we will inform you of changes in advance where possible. Since 1 April payments for criminal cases are made to firms with general criminal contracts in the General Civil and Crime Contracting payment run at the start of each month.

If you are paid by BACS (Bank Automated Clearing System) the proposed payment date shown is the date on which you will receive a

payment in your bank. For some smaller banks the BACS credit may appear a day later. The proposed payment date will also be the date by which the last of the cheque/remittance advices are dispatched from the Financial Services Settlement section. Remittance advices are dispatched using DX or first class post.

If you are still being paid by cheque, we recommend that you change to BACS, which is a more efficient payment method. With BACS, the payment is made directly into your bank account avoiding cheque handling and you also receive a remittance advice. BACS provides immediately cleared funds, unlike cheques which can take four to six days to clear. If you have any queries about payment by BACS, please telephone the Master Index section on 020 7759 0261.

Details of the amount due to you may be obtained by contacting either your regional office or the Solicitors/Counsel Settlement section on 020 7759 0260 but no earlier than the day before the proposed payment date. However, if you have a query regarding an individual item shown on a remittance advice, you should contact the relevant regional office, which authorises and processes all such bills.

Keeping us up to date

Names, addresses, DX, fax and telephone numbers and bank details for BACS payments are held on the Commission's Master Index database. Please send any relevant changes relating to your firm or chambers to the Master Index section at 85 Gray's Inn Road, London, WC1X 8TX, or at DX 328 London.

Proposed Payment Dates for September - December 2001

Contract Payments	First Settlement of the Month	Second Settlement of the Month
Wednesday 5 September 2001	Tuesday 11 September 2001	Wednesday 26 September 2001
Wednesday 3 October 2001	Thursday 11 October 2001	Friday 26 October 2001
Monday 5 November 2001	Monday 12 November 2001	Tuesday 27 November 2001
Wednesday 5 December 2001	Tuesday 11 December 2001	Monday 24 December 2001