

FOCUS on CDS

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Police Station Payment Scheme

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We have now published details of the proposed new police station payment scheme for consultation. The consultation paper was posted on the Commission's website on 1 March and on the Law Society, LAPG and CLSA websites. Copies are also being sent in the post to all CDS suppliers. We are allowing more than the agreed six week consultation period with consultation running to 3 May. We plan to implement any resulting amendments to the current payment scheme on 17 June.

As will be recalled, at the time of the introduction of the General Criminal Contract the Commission agreed to allow two systems for paying for police station advice to run side by side for a limited period of time. About one third of offices are currently operating under a system of fixed payments for all police station telephone calls whilst two thirds of offices are operating under the old system of separate fixed item payments for advice and routine calls.

As part of the agreement reached at this time, terms of reference were agreed between the Commission and the profession's negotiating group which provided for us to work together to create a new payment scheme for this work within the existing financial provision. In the absence of any

agreed new scheme arising from these discussions the terms of reference provided for the Commission to simply implement nationally the single fixed telephone payment scheme which one third of offices are already operating under.

The profession's representatives on the Criminal Contract Consultative Group have been fully involved in the development of the proposals and themselves advocated many aspects of it, for example removing the distinction between duty and own solicitor rates.

In addition to the consultation paper there is available, on the Commission's website, a paper which sets out the basis on which the costings have been undertaken and a spreadsheet to help firms undertake their own costing exercises.

In responding to the consultation it would be helpful, if there are aspects of the proposed scheme which give rise to concern, if these particular aspects were identified. Similarly, if particular aspects of the proposals are supported it would be helpful if these were identified. Being specific in this way will help us consider, jointly, whether aspects of the proposed scheme can be improved.

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

Extended Court Sitting Hours Pilots

Pilots of extended court sitting hours are planned to commence in Manchester and London (Bow Street) in April. We are discussing, with local practitioners and their representatives in these two locations, the practical issues arising from the pilots and the remuneration arrangements for them. We expect to publish a contract amendment notice shortly setting out the remuneration rates for practitioners undertaking work in these pilots.

Any practitioners seeking further information on the pilots or wishing to discuss the arrangements should contact either, Hilary Moufid (CDS Manager Manchester, e-mail hilary.moufid@legalservices.gov.uk) or Robert Loughlin (CDS Manager London, e-mail robert.loughlin@legalservices.gov.uk).

Monthly Payments

Indications are that, for the year as a whole, the overall reconciliation of criminal contracts will place the total value of claims made under the contract at between 90% and 95% of the total value of payments made. This is the position we have been

aiming to achieve throughout the year. Underlying that overall position, individual firms will be in a range of situations, with some firms having claims below 90% of payments and some having claims above 95% of payments.

We are undertaking a national review of monthly payments with a view to resetting monthly payment levels from May onwards.

For those firms that are in the correct range at present, monthly payments in year two will be set at a level to broadly track the value of claims made, so that the positive balance of 5 to 10% of one year's payments, accrued in year one, will merely roll forward and be kept "in hand" by the firm.

For those firms who have been paid more than 10% above the value of claims made in year one, monthly payments in year two will need to be set below the value of claims being made so as to bring the positive balance held by the firm down into the correct 5 to 10% range.

For firms who have a positive cash balance of less than 5% above the annual value of claims being made we will need to make payments at a rate which will put them into the correct range. This may either be done by adjusting monthly payments to run

above the level of claims being made or by making a one-off payment to bring the account into balance and then make monthly payments which track the level of claims.

At any point in time, firms should have between 5 and 10% of the value of a year's claims in hand. If claims increase, payments will increase, and if claims reduce, payments will reduce in order to keep this balance.

Following the May adjustment we do not plan further national reconciliation exercises which affect all firms at the same time as we have done in the first year of contracting. CDS Managers and Account Managers will keep payments and claims under review and make adjustments, as and when appropriate, to individual firms. Now that the payment system has settled down, our aim in year two of the contract will be to give firms greater stability of payments and make fewer interventions.

All of the immediate work set out above will be done under the existing Monthly Payment Rules. We have published revised Monthly Payment Rules for consultation which we plan to bring into operation from 17 June. The new Rules are designed to shorten and simplify the existing rules but do not provide for fundamental changes to the current system.

Fifth Office for the Public Defender Service

We have successfully recruited a head of office for the Cheltenham area, Gaynor Ogden, who was previously a partner in the firm of Baches in West Bromwich. We plan to open the office in April and negotiations are ongoing for suitable premises so that Gaynor and her team can open for business. Recruitment of solicitors and accredited representatives has been finalised and we have also appointed a quality manager.

Baroness Scotland visited the Liverpool office last October and she

congratulated the team for their successful start. All four PDS offices are continuing to build up a steady caseload from their original positions of zero cases. One of the key indicators for us is retaining satisfied customers. 45% of new matters in Swansea for the months October to December 2001 came from existing/former clients of the PDS lawyers or recommended by another client.

A consultation paper on the research methodology to be used in the PDS pilot was issued in February to national legal organisations with an interest in

Crime and also published on the LSC website.

If anyone is interested in the work of the Public Defender Service, please contact jill.saville@legalservices.gov.uk or the individual offices, which have the format mail@office.pds.gov.uk; for example, Liverpool office is mail@liverpool.pds.gov.uk.



Public Defender Service

CDS7 Processing

There are a number of steps that you can take to ensure that your non-standard fee claim is processed more efficiently and thereby reduce the time until the assessed value of the claim is credited to you.

You might like to pass this article on to your accounts department as the basis for a pre-submission checklist.

1. Submit your claim at any time

Unlike the CDS6, the CDS7 can be submitted at any time of the month. Currently, the tendency is for firms to submit their CDS7s and CDS6s together. This creates a peak of claims and results in a backlog. Please submit your claim as soon as it has been finalised as this will smooth out the peak and reduce the backlog of claims, enabling the CDS7 to be processed earlier.

2. Always send the original representation order

All magistrates' courts should now be

issuing LSC copies of representation orders. A copy of the order should always be attached to the CDS7, as this is our authority to pay the costs. Please check that you have attached the order before you submit the claim to avoid having the claim rejected.

3. Always enter the Unique File Number

It is common for CDS7s to be rejected because the Unique File Number (UFN) has not been entered on page 1. It is a contractual requirement that the UFN is used for all claims (rule 1.4 of Part B of the General Criminal Contract Specification); therefore please ensure that the UFN is completed in the appropriate box.

4. Ensure that attendance and preparation are entered separately

Some software packages currently treat preparation and attendance as one item and record it in a single column. For the purposes of

assessment, these should be shown separately. We are currently clarifying the position with the software suppliers, but please ensure, where possible, that you have recorded attendance and preparation time in separate columns.

5. Send your claim to the right processing centre

If you submit your claim to the wrong processing centre, this will cause a delay to the processing of that claim. The appropriate processing centre can be determined from the table below.

6. Send files securely packaged

When you include your file of papers with the CDS7, please ensure that all papers are securely wrapped. We cannot be responsible for what happens to the papers between your office and the processing centre. Sometimes the packages arrive in less than pristine condition and there is always a possibility that enclosures have been lost in transit.

Your Regional Office	Your 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 cost appeals)	Liverpool
Manchester (Blackpool, West Lancashire, Fylde, South Ribble, Wyre and Preston)	Liverpool
Manchester (all other areas)	Chester
Newcastle	Chester
Nottingham	Nottingham
Reading	Nottingham

Responses to Consultation on the PACE Guidance Costs Assessment Manual and Criminal Bills Assessment Manual (CBAM)

In early August 2001 the Commission invited comments on its revised crime costs assessment guidance that would apply to contract compliance audits and non-standard fee claim assessments. Consultation closed in November 2001 and the Commission received a total of 13 responses from a mixture of contracted suppliers, professional representative bodies and government departments. A large number of detailed and constructive comments were received, many of which have been incorporated into the final versions of the two documents. We are most grateful to all who took the trouble to respond.

The summary below highlights the key areas where changes have been made. The final versions of both manuals have been published on the Commission's website. The website (www.legalservices.gov.uk) includes both clean and revision marked versions so that suppliers can identify changes that have been made following consultation. The revised guidance will come into effect for all audits and non-standard fee assessments undertaken by the Commission on or after 1 April 2002. A more detailed summary of the comments received and the Commission's response to the consultation is available in the consultation section of the LSC website.

Key changes include:

- Updating the guidance on use of interpreters in both manuals to reflect the introduction of new joint CJS guidance.
- If a solicitor agent or representative is instructed to undertake police station work, a presumption will operate on assessment that the travelling time and expenses allowed shall not generally exceed those that would have been incurred had the supplier undertaken the work directly.
- The guidance in both manuals on payment for post-charge work at the police station has been extensively rewritten and updated.
- The guidance on the time limit for submission of claims now takes into account the effect of the monthly submission deadline for form CDS6. The late claims guidance has been amended to make it clear that a late claims reduction will not be imposed without prior discussion with the supplier via the Account Manager.
- The guidance on applying assessment findings generally across more than one file has been removed from the CBAM and will be published separately.
- Further guidance has been added to the CBAM to clarify the Commission's approach to evidence based auditing, payment for administrative work and claims for legal research.
- The CBAM now allows for standardised letters produced using modern technology to be remunerated separately at the routine letter rate.
- The guidance on assessment of e-mails has been amended so that they are treated in the same way as a letter. The crime guidance is now consistent with the civil controlled work costs assessment guidance that has recently been subject to consultation.
- The guidance on representing young offenders now accepts that it will normally be necessary for solicitors to spend a reasonable time attending and advising parents, guardians or other relatives.
- A more flexible approach has been adopted towards payment for legal visits to clients held in custody.
- The guidance on waiting at court has been subject to significant amendment. The file must now contain a brief note explaining the circumstances if waiting exceeds two hours (rather than 30 minutes).
- References to the supplier either being released from court or being treated differently if practising in near proximity to the court have been removed. In future, waiting time will be monitored on a quarterly basis through management reports. These will identify the amount of waiting time claimed at particular courts by particular suppliers. Firms that are outside the average profile will be subject to a review by their Account Manager. If a particular court generates more waiting time than the regional average then the Regional CDS Manager will consider whether to raise this issue via the local criminal justice liaison network. The Commission hopes this will be a more effective and less burden-some approach for suppliers than that originally proposed.
- The rules on apportioning time between separate claims for work undertaken on the same day have been clarified.
- Additional guidance on payment for file review has been inserted.
- The CBAM now recognises that there are often reasons why it is necessary for a solicitor to attend a committal hearing.
- A category 2 standard fee may be claimed if a case cracks at the pre-trial review stage, *provided that it was listed and fully prepared for trial*.
- Section 3.9 CBAM on remuneration for indictable only offences has been subject to significant amendment and updating.
- Additional guidance has been added in several places to the CBAM to caution assessors against applying the benefit of hindsight.
- The guidance in CBAM (4.2) setting out the additional information required in support of an application for prior authority has been amended to remove the require-

ment for the solicitor to canvass the need for an expert's report before a judge at a pre-trial hearing. A summary of the defence case may now be provided as an alternative to a signed statement by the client.

- The guidance on the purchase of interview tapes has been clarified to make it clear that the supplier need not produce evidence of possession

of the tape and if a charge is levied for supplying the tape then that may be claimed as a disbursement. Where the client damages or mislays a tape then the reasonable cost of obtaining a replacement may be claimed as a disbursement.

- An exception to the in-house photocopying limit of 500 pages has been added where the Crown does

not provide a second set of prosecution papers or where counsel is assigned in the magistrates' court.

- New guidance has been added on payment arrangements for remitted cases.
- The circumstances in which a change of solicitor fee may be claimed have been clarified.

Crime Specialists for Funding Review Committees and Costs Committees

The Commission would like to hear from individual practitioners who are members of firms that hold a General Criminal Contract and are willing to sit on committees determining appeals under the contract. There is a need for expert crime practitioners to sit on Costs Committees particularly as the contract compliance and costs assessment auditing process is now underway. Criminal specialists are also required to participate in Funding Review Committees to review other decisions under the contract, such as appeals against refusal by the Commission to extend an upper financial limit.

Prospective applicants must be either a solicitor or a barrister and have three years experience of legal aid work since qualifying. Solicitor applicants must hold a current practising certificate. Barristers must be approved by the General Council of the Bar. The Commission is keen to encourage applications from minority groups within the legal profession such as women and ethnic minorities. An attendance fee and travel expenses are payable to committee members. Attendance at committee meetings attracts CPD points.

The need for new members varies from region to region so interested parties are asked to contact their Regional CDS Manager in the first instance.

Revised Criminal Graduated Fee Scheme

The Criminal Defence Service (Funding) (Amendment No. 3) Order 2001, S.I. 2001 No. 3341 came into force on 29 October 2001. The principal effect of the new regulations is to alter the Criminal Graduated Fee Scheme for advocates appearing in the Crown Court as follows:

- To extend the qualifying criteria for trials to cases lasting up to 25 days (and up to 30 days where at the plea and directions hearing the trial estimate was 25 days or less but the trial lasted up to 30 days)
- To capture all indictable offences
- To remove the page and witness thresholds for trials
- To bring re-trials where the same advocate appeared at both trials within the scheme
- To provide for the separate payment of attendances by the trial advocate at conferences with the client. Conferences not held at court are restricted in number and capped in length
- To establish a payment scheme for advocates appointed to cross-examine vulnerable witnesses under ss.34 and 35 of the Youth Justice and Criminal Evidence Act 1999, and those assigned for certain other specific purposes
- To remove the possibility of claiming interim refreshers in graduated fee cases
- To introduce a fixed fee for attendance by the trial advocate at court where the trial did not proceed because of an application for postponement

- To allow the payment of a graduated fee for attendance by advocates at hearings to determine the question of fitness to plead or fitness for trial
- To introduce payment, on an hourly fee basis, for the provision by a trial advocate of written or oral advice
- To provide for the payment of a fixed fee and special preparation fee for appearance by a trial advocate at a sentencing hearing solely to mitigate the client's sentence

No changes have been made to the cracked trial and guilty plea schemes. However, it is intended that the page and witness thresholds for both will eventually be removed bringing all cracked trials and guilty pleas within the scheme. These changes will be introduced some time next year.

Although not part of the new regulations, they, and the existing regulations set out in Schedule 4 of the Criminal Defence Service (Funding) Order 2001, S.I. 2001 No. 855, have formed the basis of an integrated payment scheme for both prosecution and defence advocates in the Crown Court.

The amending regulations also confirm that Crown Court determining officers may allow payment at the rates set out in the General Criminal Contract where a representation order granted on or after 2 April 2001 covers work undertaken in the magistrates' court in indictable only proceedings that are sent for trial under s.51 of the Crime and Disorder Act 1998 (see article on page 2 of *Focus on CDS Issue 6*).

Proposed Amendments to the General Criminal Contract

We have recently issued a consultation paper to all contractors on a package of relatively minor proposed changes to the General Criminal Contract. This paper is separate from the consultation paper on the new police station payment scheme, but we plan to consult on and implement both changes at the same time. The consultation paper covers issues where we are aware that early clarification is required, such as funding of post charge work at the police station, funding of civil breach proceedings and High Court funding arrangements. The consultation paper also contains a package of amendments to the Duty Solicitor Arrangements 2001. These changes largely arise from our practical experience of operating the new Arrangements since April 2001. An eight week consultation period will be followed by six weeks notice prior to implementation of any changes.

Crime suppliers will recently have received a copy of the final version of the Specialist Quality Mark (SQM) together with an appropriate contract notice to bring it into effect on 30 April 2002. Please note that the contract notice makes minor consequential amendments to Part D of the General Criminal Contract Specification. The consequential changes do not involve any new provisions but simply insert requirements into the contract which were formerly part of LAFQAS but have not moved into the SQM as they are specific to crime contractors. These changes have already been consulted on separately as part of the SQM consultation exercise.

All of the above changes have been discussed with the Criminal Contract Consultative Group.

Cost Appeals Committee Points of Principle

CRIMLA 28 - 16 March 1992, 24 September 2001

Review of Assessment of Claim for Costs by Area Committee

An area committee dealing with a review of an assessment deals with it de novo.

When the Committee proposes reaching a decision adverse to the solicitor or counsel either on grounds different from those of the Regional Director, or on an aspect of the assessment that the appellant did not object to, it will allow the appellant the opportunity to make representations upon those grounds or that aspect and if necessary will adjourn the review for that purpose.

CRIMLA 31 (Amended) - 1 June 1992, 27 September 1993 & 24 September 2001

Use of Local Solicitor Agents

In evaluating whether it is appropriate to employ a solicitor agent for any particular hearing, the assigned solicitor should take into consideration all the circumstances of the case, including by way of example:

1. the nature and purpose of the hearing, and/or what could be achieved in furthering the preparation of the case and the efficient and expeditious disposal of the proceedings by personal attendance;
2. the nature, gravity and complexity of the proceedings;
3. the relationship between client and solicitor;
4. whether the client suffers from any disability; and
5. the availability of local agents.

In the absence of any factors justifying the assigned solicitor's attendance, the assigned solicitor will be expected to have regard to the cost effectiveness of employing a local solicitor agent having regard to the time that will be spent by the assigned solicitor in briefing the agent and the agent in preparing for the hearing, compared with the likely cost of attending in person, including the time that would be spent in travel and waiting.

If the assessor considers that it was unreasonable for the solicitor to incur the travel time and cost, the assessor will reduce or disallow travelling costs to the extent that they exceed the costs which would have been allowed if an agent had been instructed. The sum for time and costs in these circumstances will include a notional allowance for:

1. an agent undertaking the work;
2. a fee-earner arranging the agent and preparing a letter or other form of instruction; and
3. considering any reports or correspondence received from the agent.

Duty Solicitor Update

Performance Standards and Police Station Agencies

The General Criminal Contract (Specification Part D Paragraph 5.4) requires 80% of police station attendances to be conducted by designated fee earners.

We are considering, if an agency employing police station representatives is able to demonstrate the supervision requirements for designated fee earners, whether file review, appraisals and training can be undertaken within the agency. This would allow suppliers to include any police station attendances by such representatives as contributing towards the 80% target.

Therefore for the time being, our advice to our auditors is as follows:

If the 80% target would be achieved if a police station agency was designated then no non compliance action should be taken. The position should be noted by recording an observation.

Police Station Representatives

Certificate Of Fitness

Representatives are no longer required to obtain a certificate of fitness from

their supervising solicitor and provide this to the LSC as a matter of routine. A certificate is only needed if specifically requested in writing by the LSC.

Training Requirement

The training requirement for representatives is now covered by the General Criminal Contract (Specification Part D Paragraph 3.4) if the representative is a designated fee earner i.e. six hours crime training per annum.

Change in Circumstances

It is particularly important that you advise us if your address or supervising solicitor changes. Failure to do so can result in suspension from the police station register.

Applications to Become a Representative

Any enquires about the accreditation process, or indeed applications, should be directed to the assessment organisations who are currently:

- Central Law Training
Wrens Court 52-54 Victoria Road
Sutton Coldfield
Birmingham B72 1SX
(0121 355 0900)
E-mail: jbutlin@centlaw.com.

- Centre for Professional Legal Studies
University of Wales
PO Box 294
Cardiff CF10 3UX
(Diane Davies: 029 2087 6948)
E-mail: Devereux@cardiff.ac.uk.
or DaviesDC@cardiff.ac.uk.

Accreditation for Own Solicitor Work

The General Criminal Contract Overview para. 3.5.39 makes clear the Commission's intention "to enhance these standards from April 2002 by requiring that all solicitors undertaking police station advice for own clients must meet the duty solicitor accreditation standard or be a duty solicitor".

Discussions with the Law Society are continuing concerning accreditation and reaccreditation of duty solicitors and representatives. Once these discussions are concluded, we will present our initial proposals to the Society regarding own solicitor work.

We will give at least six months notice of any change in requirements and hence can confirm that no changes to own solicitor work will come into effect in April 2002.

Proposed Payment Dates for Mar 2002 - Jun 2002

Contract Payments	First Settlement of the Month	Second Settlement of the Month
Tuesday 5 March 2002	Monday 11 March 2002	Tuesday 26 March 2002
Thursday 4 April 2002	Wednesday 10 April 2002	Thursday 25 April 2002
Friday 3 May 2002	Friday 10 May 2002	Monday 27 May 2002
Friday 7 June 2002	Tuesday 11 June 2002	Wednesday 26 June 2002

Forthcoming Changes to CDS Regulations

The Lord Chancellor's Department are making a number of minor changes to the CDS regulations. These will take effect from 8 April 2002.

The CDS (General) (No. 2) Regulations 2001 will be amended in order to bring appeals to the Court of Appeal from a decision of the Financial Services and Markets Tribunal within the scope of the CDS and to provide for representation in respect of such appeals. The tribunal was established under section 132 of the Financial Services and Markets Act 2000. Proceedings before the tribunal itself are funded through its own scheme. This work falls outside of the scope of the General Criminal Contract. Funding will be made available through the grant of a representation order by the Court of Appeal and costs will be claimed from and assessed by the court at the rates

set out in the CDS (Funding) Order 2001. Consequential amendments will be made to the CDS (Representation Order Appeals) Regulations 2001 and the CDS Funding Order.

Regulation 6 of the General Regulations will be amended to extend the class of individuals to whom advice and assistance may be granted to those who have been detained under Schedule 7 of the Terrorism Act 2000. This change will be supported by a contract amendment to bring the work into scope of the police station advice scheme.

The General Regulations are also being amended to reflect the annual uprating to eligibility limits for Advice and Assistance and Advocacy Assistance. Full details of the new limits will be published in *Focus 38* shortly.

A number of amendments will be made to Form A (the form used to apply for the grant of a representation order) to enable this form to be used for certain proceedings in the higher courts, to amend the declaration to clarify who signs on behalf of the chosen representative and to incorporate a separate declaration to be signed by public defenders.

The CDS (Recovery of Defence Costs Orders) Regulations 2001 will be amended to increase the level of income a funded defendant must have before his or her income is taken into account for the purpose of calculating financial resources from £24,000 to £24,500. There remains the general discretion for judges to consider income below this limit in exceptional circumstances.