

Focus on CDS

Issue 5 - May 2001

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No Return - No Payment See Stop Press on Page 8

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

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The Ten CDS6 Golden Rules

To ensure that your CDS6 can be processed accurately and promptly, please check that you comply with the following rules both when completing the form and before you submit it.

Please note that where any line of your form has been completed incorrectly or is illegible, it will not be entered and will be returned to you. You can re-submit any rejected line on the next return. If you submit a photocopy of the original CDS6 you must copy and submit the whole form. A number of forms have been received where the supplier number has been wholly or partially omitted, thus making the form impossible to process, meaning that the next month's payment will not be prompted.

Full guidance on completing form CDS6 is available in the Trainers Resource Pack in module 6. Additional copies of the Trainers Resource Pack can be downloaded from our website at www.legalservices.gov.uk/cds/training.htm

If you have any questions regarding the completion of form CDS6, please contact your regional CDS team.

1. DO NOT FAX YOUR CDS6

The processing centres will no longer be able to accept CDS6 forms by fax.

Do not, under any circumstances, rely on faxing CDS6. Any faxed CDS6 will not be processed. If you think that you are likely to miss the submission deadline, contact your processing centre and let them know so that they can help you.

Faxed CDS6 forms are very hard to read and increase the risk of errors in data entry.

Please ignore all previous guidance on the faxing of CDS6's.

2. ENSURE THAT ALL CLAIMS ARE LEGIBLE

You must ensure that the CDS6 is completed legibly. If the supplier number cannot be read, the CDS6 cannot be entered on the computer system. If an individual line cannot be read, then that line will not be entered. Please also ensure that you enter the correct supplier number. If the wrong number is used, we will not be able to identify your firm and therefore will be unable to enter the claim. As a result your next payment will not be prompted.

3. ENSURE THAT PRE-CONTRACT CLAIM CODES ARE USED FOR PRE-CONTRACT WORK

If the work that you are reporting on the CDS6 commenced prior to 2 April 2001, then you must use the following Claim Codes:

- 6A** Pre-contract work – Lower standard fee
- 6B** Pre-contract work – Higher standard fee
- 6C** Pre-contract work – Non standard fee
- 6D** Pre-contract work – CLAIM 10 advice and assistance
- 6E** Pre-contract work – Court Duty Solicitor / Duty Solicitor of choice
- 6F** Pre-contract work – Police station advice and assistance
- 6G** Pre-contract work – Duty Solicitor Standby
- 6H** Pre-contract work – ABWOR
- 6I** Pre-contract work – Civil applications arising from criminal proceedings

You should select the appropriate claim code by determining which old claim form you would have used to submit the claim.

4. SUBMIT ONE SET OF CDS6 FORMS ONCE A MONTH

Once you have submitted your CDS6 and it has been entered on to the system, we will not process any further CDS6s that you submit until the next month. Therefore you must ensure that you have entered all the data that you wish to report for a particular month on the CDS6 that you are submitting to the processing centre. Should you wish to report any further work you must carry it over until the next month.

5. ENSURE THAT THE NUMBERS FOR THE CLAIM AND OUTCOME CODES MATCH

You must ensure that you use the appropriate claim code for the Class of Work that you are claiming. The number on the claim code shows the Class of Work. The key is as follows:

- 1 = Criminal Investigations
- 2 = Criminal Proceedings
- 3 = Appeals and Reviews
- 4 = Prison Law
- 5 = Associated CLS Work

When you are required to report an outcome code as well, the two numbers must match. That is, a Criminal Investigation claim code should only be used with a Criminal Investigation outcome code.

For example when submitting a claim for the Criminal Investigations Class of Work, you should not use an outcome

code that ends in a 2. Therefore 1A/A1 would be an acceptable combination, whereas 1A/A2 would not be.

6. DO ENSURE A UNIQUE FILE NUMBER / FILE REFERENCE IS RECORDED

A unique file number must be provided for every line completed on the CDS6. The only exceptions to this rule are where the claim relates to:

- a) Police station standby
- b) Court duty solicitor attendance
- c) File review
- d) Pre-contract work

Where the claim you are making falls under (d), enter your case reference on the CDS6 after you have entered the client's surname and initial. Do not enter anything in the UFN field.

7. DO NOT ENTER CDS7 CLAIMS ON CDS6 FORMS

You must not enter non-standard fee claims on the CDS6. These must be submitted on the CDS7. Therefore where you are using either 2G or 6C as claim codes, you must complete the CDS7.

The costs information that you put on the CDS7 will be entered directly in to the computer system by LSC caseworkers.

8. ENTER THE DATE THE CLASS OF WORK CONCLUDED

You must complete this box for all claims on the CDS6 apart from claims relating to:

- a) Police station standby

- b) File review

The date reported on CDS6 must be the date that that claim was triggered under one of the claiming rules defined in the General Criminal Contract. Please see rule 10 below.

9. ALWAYS RECORD THE NUMBER OF ATTENDANCES

You must always complete the number of attendances that you have made on a client. For the purposes of telephone only advice, you should record one attendance. The only exceptions to this rule are claims relating to:

- a) Free standing Advice and Assistance (claim codes 1A, 2A, 6D)
- b) Standby
- c) Court duty solicitor attendance
- d) File review
- e) All work under Appeals and Reviews Class of Work
- f) All work under Prison Law Class of Work
- g) Associated CLS Legal Help

10. ONLY PUT CLAIM ON CDS6 WHEN IT CAN BE CLAIMED IN ACCORDANCE WITH CLAIMING RULES

The claiming rules for each Class of Work can be found under the following references in the Contract Specification:

Criminal Investigations
Part A, paragraph 2.4.2

Criminal Proceedings
Part A, paragraph 3.4.4

Appeals and Reviews
Part A, paragraph 4.4.3

Prison Law
Part A, paragraph 5.4.2

Associated CLS Work
Part A, paragraph 6.4.2

Claims relating to file reviews (claim code 7A) can only be made in the months of October and November. Where this claim code is used at any other point in the year, the line will be rejected.

Claiming for Police Station Work

This article clarifies the rates that you should be claiming for Police Station Advice and Assistance, depending on whether you are working under the amended version of the General Criminal Contract or not.

The details of the amended contract were covered in Steve Orchard's letter of 12 March, which was sent to all firms that had been offered a criminal contract in February.

Your regional Criminal Defence Service Manager will have contacted you to confirm which option you are working under, but if you have any doubts, please contact your regional CDS team.

All contract rates are printed in Part E of the General Criminal Contract. If you do not have the amended version of Part E, this can be downloaded from our website at www.legalservices.gov.uk/cds/index.htm.

Police Station Advice and Assistance Rates (Unamended)

These are the rates that were included in the original contract. You will be operating under these rates if:

- you signed the contract on or before 13 March and you lodged the signed contract with the Commission on or before 14 March and you have not confirmed that you wish to operate under the amended version of the contract

Table 2.2, Part E General Criminal Contract

	National	London
Availability during Duty Period	4.20 (to a max of 100.80)	4.25 (to a max of 102.00)
Police Station Advice and Assistance other than by telephone		
- Duty Solicitor (unsocial hours)	69.05	69.05
- Duty Solicitor (other hours)	52.00	56.20
- Own Solicitor	52.00	56.20
Travelling and waiting		
- Duty Solicitor (unsocial hours)	69.05	69.05
- Duty Solicitor (other hours)	52.00	56.20
- Own Solicitor	28.80	28.80
Telephone advice fixed fee	30.25	31.45

Police Station Advice and Assistance Rates (Amended)

These are the rates that were introduced by the amendment to the contract made in March. You will be operating under these rates if:

- you signed the contract after 13 March
- the signed contract was lodged with the Commission after 14 March
- you signed the contract on or before 13 March and the signed contract was lodged with the Commission on or before 14 March and you have elected in writing to the Commission by 2 April 2001 to operate under the amended contract

Table 2.2a, Part E General Criminal Contract

	National	London
Availability during Duty Period	4.20 (to a max of 100.80)	4.25 (to a max of 102.00)

Police Station Advice and Assistance other than by telephone

- Duty Solicitor (unsocial hours)	67.93	67.93
- Duty Solicitor (other hours)	51.15	55.28
- Own Solicitor	51.15	55.28

Travelling and waiting

- Duty Solicitor (unsocial hours)	67.93	67.93
- Duty Solicitor (other hours)	51.15	55.28
- Own Solicitor	28.33	28.33

Advising and assisting over the telephone 23.38 per item 24.20 per item

Routine telephone calls 3.96 per item 4.13 per item

The differential between the two sets of Police Station Advice and Assistance rates arise from the ‘savings’ that would have been made from the move to a fixed telephone advice fee no longer being re-cycled in to the hourly rates. These savings equated to a further 1.8% increase in addition to the 10% uprating. Those claiming the fixed telephone advice fee gain the benefit of the re-cycled monies.

Immigration Cases at the Police Station

Some solicitors are uncertain about the provision of Police Station Advice and Assistance for immigration cases at the police station.

The CDS Contract (Contract Specification Part B Rule 3.6) requires that, where Police Station Advice and Assistance is being given and an immigration offence or issue arises, advice must be given up to the point where the immigration authorities take over the conduct of the investigation. This requirement effectively applies where you are acting as duty or own solicitor and the Commission will pay for such help.

You may continue to advise after this point if the client remains in detention and requires advice but consideration must be given to whether the case should be referred to a local immigration contractor if there is one.

If you have an immigration case at the police station you will find it helpful to read Rule 3.6.

Hearing Codes Guidance

A change is being made to page 4 of CDS7 that will amend the Work Type Code(s) to read Hearing code(s). In the meantime if you have used the hearing codes previously to complete the old CLAIM8, you should continue to use them when completing the CDS7. For ease of reference, the codes are listed here.

Codes to identify person attended upon:

INDIVIDUAL	CODE
Client	C
Other defence solicitor	D
Expert witness	E
Probation	PR
Prosecution/police	P
Witness	W
Surety	S
Other	O

Codes to identify hearing type:

HEARING TYPE	CODE
Defence bail application	DB
New offence(s)	NO
Crown Court bail application	CB
Cracked Trial	CT

Plea	PL
High Court bail application	HB
Summary trial	ST
Varied bail conditions	VB
Sentence	SE
Prosecution bail application (including judge in chambers)	PB
Transfer to Crown Court	TR
Formal remand (in custody)	FR
S.6(1) Committal (CPIA 1996) (including discontinuance or withdrawal)	SD
Adjournment (client on bail)	AD
S.6(2) Committal (including discontinuance/withdrawal)	SW
Mode of trial	MT
Case remitted from Crown Court to magistrates’ (S.51 Crime and Disorder Act 1998)	RE

In due course we will be seeking to extend their use by encouraging those firms who do not currently use them to adopt them. These codes not only clarify what work is being claimed for on a particular line but also allow for an easier understanding of what is being claimed.

CDS Frequently Asked Questions

This article covers the questions that have been asked regularly at the training events run by the Legal Services Commission in March and at subsequent meetings. The questions have been laid out so that they match the modules in the Trainers Resource pack that was distributed at the training events. If you do not have a copy, it can be downloaded from the Internet at: www.legalservices.gov.uk/cds/training.htm

The list on the Internet will be updated regularly, so please check it on a regular basis. Additionally, please feel free to copy and circulate this article to all relevant staff.

Module 1 Contract Overview

1. Will there be another print of the Criminal Contract to include all changes since December?

There won't be another print run of the contract but it will appear as fully amended in volume 4 of the LSC manual, which will be published in June. We are arranging for the latest amendments to be incorporated into the version of the contract on the web so that is always current.

Module 2 Monthly Payment Rules

2. The monthly payments that are received, can they be paid into the office account?

The Law Society has produced a guide on the Criminal Contract for firms. This guidance includes an appendix on Account Rules from the Institute of Legal Cashiers.

The guide is available for download from the Law Society's website at www.lawsociety.org.uk

3. What is the appropriate tax point for VAT under the contract?

Please see the above answer.

4. How often will I receive a financial statement showing me what claims have been processed?

Currently we are working on the basis that the financial statements will be issued quarterly. However, a firm can ask for a financial statement at any time they wish from their Regional Office. Additionally, the facility to review their current statement online will be available later in the year.

5. If we are overpaid under the contract at the end of the year, will you be asking us for repayment in one instalment?

We will aim to recoup the overpayment over the first three months of next year of the contract by adjusting your monthly payment. We will also be reviewing your contract regularly to make sure that any overpayment is minimised.

Module 3 UFNs, File Management and Forms

6. What information needs to be kept / recorded for Court Duty Solicitor attendances?

The contract details the information that should be recorded on file (Guidance note 1, Rule 4.6 Part B). As a minimum we consider that the duty solicitor must record the names of the individuals that he or she saw, the date of duty, basic details of advice given and the value of the claim.

7. Where a warrant for arrest has been issued and a claim has already been made when the client has been arrested, do I allocate a new UFN?

No, you should send us a supplemental claim under the existing UFN. Please see question 22.

8. Where there is a breach of conditional discharge, do I use the existing UFN or allocate a new one?

Breach of conditional discharge is treated either as uncontested breach proceedings that attract a category 1 standard fee or

contested breach proceedings that attract a category 2 standard fee. The guidance to Rule 5.8 in Part B of the Contract (paragraph 8) makes a small change to the existing rules. A breach of a court order can be treated as part of a series of offences if the defendant is before the court for other reasons, in which case a separate standard fee will not be payable. If breach proceedings are heard alone then they will attract a separate standard fee. Breach proceedings are treated as separate from the original proceedings when the order was imposed so a separate UFN must be assigned.

9. If I see a client as court duty solicitor, but I am later instructed by that client, what is the relevant date for the UFN?

The relevant date is the date on which the solicitor was first instructed as own solicitor.

10. Do I need to give old cases (started pre 2 April) UFNs?

No, just put in the old style reference number on the CDS6 after you have entered the client's surname and initial. Do not enter anything in the UFN field.

11. Do I need to open a file if I give police station telephone advice only and will I need to complete a separate CDS11 for each call?

No, where you have given just telephone advice, the telephone note should be held in a central file. Each telephone note will require a UFN to be assigned to it.

You will only need to complete a CDS11 if you have elected to take up the amended contract, i.e. you continue to make separate claims for advice and routine calls. If this is the case, you should enter two lines showing the total value claimed for routine and advice calls respectively.

If you have elected to claim a fixed fee for all police station telephone calls, then there is no need to complete the CDS11. You should record on the bottom of your telephone note that no other claim has been made in relation to the matter.

Module 4 Application Procedures

12. Why is Advocacy Assistance limited to 2 hearings? When a solicitor is waiting for information such as previous offences, or a matter is being heard at a different court, which is out of the solicitors' control, how are these claimed?

Advocacy Assistance is limited to one hearing and one subsequent sentencing hearing if the client pleads guilty at the first hearing. Advocacy Assistance is available to enable representation to be provided quickly, without application by the court of the full interests of justice merits test. It is therefore limited and is not a substitute for representation under an order. If a case requires an adjournment then an application for representation should be made, where appropriate.

13. If there is a 1st hearing and the 3rd hearing is sentencing, can the 1st and 3rd but not the 2nd hearings be claimed under the Contract?

Yes, Part A, paragraph 3.2.1(b)(i) specifies that Advocacy Assistance may be provided at one appearance at an early hearing and, if the defendant enters a guilty plea at that hearing and the case is adjourned for sentence, at one sentencing hearing.

14. When you are dealing with a case under Advocacy Assistance, what happens when the prosecution are not ready and the case is adjourned? How is this claimed, as Advocacy Assistance is limited to 2 court attendances?

Prosecution and police have entered various protocols to ensure that cases are effectively fast-

tracked. The courts are required to proactively manage these types of case to avoid repeat adjournments. If repeat adjournments are a problem in particular areas then this issue should be raised with the courts, Local Trials Issues Groups or the local CDS manager. An application for representation may be made at any stage.

15. Can I continue to provide Advocacy Assistance at an early hearing if an application for representation is refused?

No, if representation is refused, Advocacy Assistance must be withdrawn. See Rule 4.11(c) in Part B of the General Criminal Contract.

16. How do I get cover for an appeal by way of case stated to the High Court?

If the representation order was issued after 2 April 2001, then representation is covered by the Order. If the client does not have a current order, then a representation order covering the appeal can be issued by the High Court. The application must be made on Form A. This can be downloaded from the Internet at www.courtservice.gov.uk/fandl/forms/5131.pdf. Alternatively, the Court will be able to issue the form.

Where your client has a legal aid order that was granted prior to 2 April 2001, it will not cover proceedings in the High Court. You can choose either to have the legal aid order discharged and then apply for a new representation order or make the application direct to the High Court on Form A.

Module 5 Applications During the Life of a Case

17. On refusal to issue a representation order by the court is there a right of appeal to the LSC?

No, the right of appeal to the Area Committee ceased after 2 April 2001 and became a court function (see the CDS (Representation

Order Appeals) Regulations 2001 published in *Focus on CDS 4*).

Module 6 Submission of Claims

18. Is court duty work claimed separately?

Yes. A separate line is recorded on the CDS6 for each court duty solicitor session. Please see paragraph 6.15.22 in module 6 of the CDS Trainers Resource Pack.

19. Can the CDS6 form be faxed in?

No. We are unable to accept faxed CDS6's.

20. Is there still the 3 month time limit for submission of criminal bills upon conclusion of the proceedings in the magistrates court? Anything submitted over the 3 month time limit, without good reason, was reduced on a percentage basis, depending on the lateness of the claim. Will this still happen?

The time limit for submitting claims is still 3 months from the conclusion of the proceedings (see Part C, Rule 1.2). That rule also contains the percentage deduction that we may make for late claims. However, the guidance to this rule has been significantly amended in the light of consultation and it is unlikely that a penalty would be imposed where a reasonable explanation is provided. If an office has a history of persistently submitting late claims then a penalty may be imposed.

21. Does Duty Solicitor work have to be claimed in the month done, is it excluded from the 3 month rule?

No, it is not excluded from the three month rule and does not have to be claimed in the month that it was carried out.

22. Where work continues after 2 April 2001, what rates should be claimed? Can the new standard fee rate be claimed for all work done, or should this be apportioned and if so how?

An interim set of rates have been published by the LSC. These appear on pages 85 to 88 of the CDS Trainers Resource Pack and in *Focus on CDS 3*. Additionally, a comprehensive rates document is being issued as a supplement to this edition of *Focus on CDS*. Effectively all rates for work commenced prior to 2 April have been increased by 3% apart from Police Station Advice and Assistance which has been increased by 10%.

The enhanced rates for lower and higher standard fees can be claimed for all work that commenced before 2 April and concludes after 2 April. Please note that the upper limits and core rates have also increased by 3% for standard fees.

23. Where the solicitor has been on standby and is reporting a consolidated monthly standby claim, which code should be entered in the police station/court identifier box if several stations/courts have been attended? Is there a general code for say, Leeds police station/ courts?

A number for any police station on the scheme should be entered in the box.

24. When unassigned counsel is used, is the claim still assessed on a maximum fee basis?

Yes.

25. When can I submit my claim where a warrant for arrest has been issued?

There is no change to the current rule. A claim shall be made not earlier than 6 weeks and not later than 19 weeks from the date of issue of the warrant (see Part C, Rule 1.2).

26. If my client is charged with several offences, which offence code should I use?

The main offence or the most serious.

27. Do I enter my non standard fee claims on the CDS6?

No. They should be entered on a CDS7 and sent to your processing centre.

28. Should I send you my file for my non-standard fee claims?

You do not have to submit your file provided you send us a fully completed claim form. We will ask for your file if we need it. If your file is submitted with the claim we will always consider it.

29. How do I record my costs on a CDS11 where I am claiming under a lead case?

Record costs on one CDS11 and place that on the lead case file. The remaining files must be cross-referenced to the lead case.

30. If I elect the "per call" option for police station calls, how do I claim this on the CDS6?

Where the claim is for telephone advice only, you should use claim code 1B and complete the CDS6 as normal. Where the claim is for both telephone advice and attendance, you should use claim code 1C.

In addition you should complete the CDS11 to show the number of routine and advice calls that have been made.

31. What do I do if the police station/court code is not on the list?

In the first instance you should look at the most recent list of Police Station and Court codes on the LSC website at: [www.legalservices.gov.uk/cds/Police\(region\).pdf](http://www.legalservices.gov.uk/cds/Police(region).pdf)

If the code is not on that list, contact your regional Criminal Defence Service manager who will arrange for a number to be allocated and advise you accordingly.

32. Who is a section 51 sending for trial case claimable from? Is it still under the contract?

The recent changes made following the national rollout of the indictable

only initiative remain. If a case is "sent" for trial, then the Crown Court is the determining authority for all the work undertaken in the magistrates' court and the Crown Court. A consolidated bill should be submitted to the Crown Court taxing team at the conclusion of the proceedings in the Crown Court.

The only exceptions to this rule are where a case is remitted back to the magistrates' court from the Crown Court in which case the LSC will assess the magistrates' court element of the bill and in the unusual circumstances where a representation order is not granted at the first hearing, the attendance at court may be claimed as Advocacy Assistance using the early hearing provisions in the Contract. (For further information, please article on page 16 of *Focus 33*).

33. Who is responsible for paying unassigned Counsel in 1988 Act cases?

If we received the claim after 10 April, the solicitor is responsible.

34. What transitional rates does a supplier use for 'straddle cases' for ABWOR Matters started before the 2 April 2001, but not concluded until after the commencement of contracting?

The straddle rates for ABWOR were published in *Focus on CDS 3* at p.7 and are in the rates supplement issued with this edition of *Focus on CDS*. The rate would be the magistrates' court ABWOR rate (excluding Duty Solicitor), unless it's a Prison Law case where higher rates apply. Please see the separate table in *Focus on CDS 3* p.7 (and supplement with this issue).

35. How will you account for any payments on account made on cases that commenced prior to 2 April?

You must enter the figure you are claiming net of any payments on account that you have received.

36. Does a CDS11 have to be completed on a file which only has work recorded upon it up to 1 April 2001 but is reported on the CDS 6? On the same issue, if a file continues past the 2 April 2001 which will be reported on the CDS6, does a CDS11 need to be completed for the entire case or will their own printouts suffice?
The CDS11 will have to be completed on both occasions.

37. What police station code should we use where the interview is conducted by the police, but not at a police station, in an administrative police office, for example?
A code has now been set up to cover non-police station sites. You should use P9998.

Module 7 Quality and Performance Standards

38. Do the file reviews have to be split 50/50 between face to face and files? Can 100% of reviews be face to face and therefore claimed at the higher rate?
The requirement is that 50%

of reviews be face to face. Suppliers should not undertake a lower proportion or claim for a higher proportion.

39. For sole practitioners all reviews have to be face to face. Can all reviews therefore be claimed at the higher rate?
A sole fee-earner conducting a review of their own work is not a face-to-face review. Sole fee-earners are exempted from the face to face requirement (see Part D 3.6(15)). However if a sole practitioner has an arrangement with another firm to review the files under the Supervision requirement of LAFQAS, and the review was conducted face to face, the higher rate may be claimed.

40. In the case of a sole practitioner who is also the only fee earner and supervisor, is it necessary to carry out the number of supervisor file reviews quoted in the Quality Standards?
Yes. A supervisor (whether they are a sole fee-earner or not) must have 1 file reviewed per month.

41. There is a minimum number

of file reviews, is there a maximum number?
No. However, the volume and frequency of reviews must be agreed with the Commission (LAFQAS M1.2). It will be difficult for a supplier to justify why the number of reviews should be increased where that number has been satisfactory for a previous number of years. Part C, Rule 1.26(7) (re paying for file review) explains that we may reduce or disallow payment for file review where the number of reviews claimed exceeds the number set out in the office manual or the number reasonably necessary to demonstrate compliance with LAFQAS.

42. The percentages for the Performance Standards, are they over a 12 month period?
The requirement is to meet the standards over any period. Usually we will look at performance over a 12 month period or since the previous audit. Initially we will only consider performance after 2 April 2001. It is extremely unlikely that we will consider periods of less than 3 months.

STOP PRESS No Return – No Payment

The LSC has automatically made two payments to contract holders. We will not make any further payments unless form CDS6 has been submitted and in line with the Golden Rules listed on pages 1&2. You must return CDS6 to your processing office by 10th of the month. This will ensure that you are paid in the first week of the following month.

Last month over 500 offices failed to meet this deadline. Around 240 offices did submit CDS6, later in the month and we did manage to process them, but from July the cut off date of the 10th of the month will be strictly enforced.

Relaxation of the rules for this month still left us with 266 offices where we still had no return. None of these offices will receive a payment in June. All other 2632 offices will have their payment in their bank accounts by 6th June

All solicitors offices affected have been contacted to re-iterate our position on this and explain the effect to them. We will of course have regard to claims of hardship this may cause some firms but this has to be seen in the light of our payments made to contracted criminal practitioners which have almost doubled in the last two months from around £36m to around £62m. Although all practices may not have

benefited from this increase, CDS Managers will have regard to individual circumstances.

In order to secure June and July Standard Monthly Payments are processed for the payment date of 4 July (i.e. double payment made), solicitors offices who did not receive their June payment should send a copy of their April CDS6 attached to their May CDS6 to their processing office as soon as possible. For those offices from who we may have received a May return without the April return, your processing office will contact you direct to request the relevant CDS6 be posted direct to them.

The Public Defender Service

In *Focus on CDS 3*, we announced the names of the heads of the four pilot Public Defender Offices and explained that the service would open in May. We can confirm that the following offices opened as planned in the locations set out below:

Liverpool - 14 May
14 North John Street,
Liverpool, L2 4SH.
Tel: 0151 243 5100.

Middlesbrough - 17 May
121-123 Albert Road,
Middlesbrough, TS1 2PQ.
Tel: 01642 499 790.

Swansea - 21 May
4 & 6 Orchard Street,
Swansea, SA1 5AG.
Tel: 01792 633 280.

Birmingham
June - To be confirmed

Clients are able to choose the services of a public defender or a lawyer in private practice; there is no requirement to use the Public Defender Service.

The Code of Conduct for Public Defenders has been approved by Parliament and is available from the Stationery Office www.thestationeryoffice.com.

A full analysis of responses to the Lord Chancellor's Department's consultation paper on the establishment of the Public Defender Service is available on the Department's website www.open.gov.uk/lcd.

If you want any 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.

Criminal Proceedings in the High Court

High Court Bail Proceedings - Clarification of Transitional Arrangements

The effect of the Access to Justice Act 1999 (schedule 3 paragraph 2(2)) is that a grant of representation in criminal proceedings made on or after 2 April 2001 automatically covers representation for the purpose of any related bail proceedings. This means that representation in Crown Court or High Court bail proceedings falls within scope of the original grant of representation by the magistrates' court and no separate application procedure is required. The General Criminal Contract provides that the costs arising from a High Court bail application are claimed from the Commission on form CDS6 (or CDS7 in non-standard fee cases) as part of the standard fee claim for representation under the magistrates' court representation order (Specification Part B, Rule 5.8 guidance note 11). Such costs are claimed at magistrates' court hourly prescribed rates and form part of the core costs calculation for standard fee purposes. Where a bail application is made to the High Court under a Crown Court representation order, the same principles apply but the work will be claimed as part of the Crown Court bill at the applicable Crown Court rates. Where a High Court bail application is made in proceedings where the magistrates' granted a criminal legal aid order prior to 2 April 2001, the scope of the order does not automatically extend to cover this type of application. Prior to the implementation of the CDS a separate application for civil legal aid would have been made to the Commission under the 1988 Act. This is no longer possible as the old regulations have now been replaced by the new CDS regulations (see *Focus on CDS 4*). This means that in those types of cases a fresh application must be made to ensure that the bail proceedings are covered. There are

two possible ways of achieving this. Practitioners can either:

- (i) apply to the magistrates' court to replace the existing legal aid order with a new representation order under the 1999 Act. This will then cover the bail proceedings automatically; or
- (ii) apply to the High Court for a representation order covering the bail proceedings only. The same application form is used as in the magistrates' court i.e. Form A. The work will be subject to assessment in accordance with Part C, Rule 1.7 i.e. detailed assessment by the High Court provided that the work exceeds the Commission's in house assessment limit and the work may be claimed at civil prescribed rates. The Contract is presently silent on the transitional provisions for these cases. It will be amended later this year to reflect these changes and the Commission will deem this amendment to have taken effect from the 2 April 2001.

High Court Proceedings - Appeal by way of case stated

As from 2 April 2001 appeals by way of case stated in the High Court are criminal proceedings under section 12(2)(a) or (b) of the 1999 Act. They must therefore be covered by a representation order granted by the court and cannot be covered by CLS funding. However, representation in the High Court will not be within the scope of any legal aid order or representation order in the magistrates' or Crown Court. Therefore in all High Court case stated proceedings the application for a representation order must be made to the High Court itself. Form A may be used for this purpose. The work can then be undertaken within the Appeals and Reviews class of work under the General Criminal Contract.

Police Station Register Arrangements

The Register Arrangements which control the registration of probationary and accredited police station representatives have been amended from 2 April. The main amendments are:

- the CPD requirement has been removed as training is now covered in the CDS Contract (Contract Specification Part D3.4)
- possible suspension where a representative has not undertaken a minimum of 12 police station cases annually
- the definition of “supervising solicitor” is now limited to a police station duty solicitor failing which a solicitor who meets the crime category supervisor standard
- the 2 yearly certificate of fitness requirement has been dropped (accredited representatives are likely to become subject to a 5 yearly reselection requirement)
- more stringent disciplinary powers.

Custody Hearings for Armed Forces Personnel

Prior to April informal arrangements were introduced providing for the representation of armed force personnel at custody hearings before judicial officers with the claim form being sent direct to the relevant Service for payment rather than to the Commission. The position has now changed and such cases are now covered by the CDS Contract (Specification Part A 2.2.1 (e)) and claims should therefore be submitted on form CDS 6 to the Commission. The following claim codes must be used:

- 1D Police station attendance (including advice and assistance and telephone advice, Armed Forces personnel only).
- 1F Warrant of further detention (including advice and assistance and any other police station advice, Armed Forces personnel only).

Forms Update

The Criminal Contract forms were first issued in January 2001. Subsequent minor amendments were made to the CDS1 and CDS11 as part of the April update to the forms masterpack. A further update will be made to the forms in July that will encompass a number of minor changes to some of the forms. This article seeks to give advance warning of the changes and to give details of some potential longer term amendments. The amended forms will be distributed to all masterpack holders during the latter part of July and will be passed to all software companies as soon as they have been finalised for the printers.

CDS1

Ethnic monitoring data will be added to page 1 of the form. Completion of this information will be voluntary and will appear at the bottom of the form. We now have to collect this information as a requirement of the Race Relations (Amendment) Act 2000.

The CDS logo will be added to page 1 of the form.

The financial test form will be amended to differentiate between applications for Advice and Assistance and Advocacy Assistance. The change will be made in the Capital Details box. After the ‘Yes’ checkbox, the wording ‘Ignore the rest of this page’ will be deleted. Underneath will be inserted the following instructions:

“If you are applying for Advocacy Assistance, ignore the rest of this page.

If you are applying for Advice and Assistance, complete the rest of this page.”

CDS3

The word client will be inserted after ‘Date first instructed by your’ in the Client’s Involvement box on page 1.

The CDS logo will be added to

page 1 of the form.

Clarification will be made that it is the ‘Solicitor’s details’ section that must be completed when an application for a representation order is being made on page 3.

CDS6

The requirement to record the ‘Supplier Number’ in the top left hand corner of the form will be deleted and will be replaced by a requirement to record the CDS contract number.

CDS7

The ‘Schedule of time spent’ on page 4 will be amended so that the column headed ‘Work type code(s)’ reads as ‘Hearing codes’.

CDS9

The total boxes at the bottom of the page will be re-arranged in a more logical fashion.

CDS11

The greatest amount of feedback concerning the new criminal forms that has been received relates to this form. There is a potential for the form to be substantially revised, but rather than rush through changes we intend to review the comments and suggested amendments received and put out any revised form for consultation before it is introduced formally. Therefore, for the July update there will be only some minor changes made to CDS11.

The ‘UFN’ and ‘Client Surname and initial:’ will be reversed so that they follow the CDS6.

A total column will be introduced for the profit costs, disbursements, travel and waiting sections. This will allow the calculation of the total amount (including VAT) that will appear on the CDS6.

A mileage rate line will be added to the disbursements section.

Breach Proceedings

This article clarifies how breach proceedings are treated and funded by the Legal Services Commission under the General Criminal Contract. It is important to distinguish between breach of a civil order and breach of a criminal order as this affects the type of funding that is available. Criminal breach proceedings continue to be funded under the grant of a representation order and payment through the standard fee scheme.

Where a breach of a criminal court order/penalty arises as part of ongoing criminal proceedings, all work done in relation to any subsequent breach proceedings must be claimed under the standard fee scheme in accordance with paragraph 8 of the guidance to Part B, Rule 5.8. If no representation order is in place, then an application may be made to obtain one to cover the breach proceedings.

Proceedings arising from bail applications are treated as ancillary to the main order and will form part of the same case as the main proceedings for standard fee purposes (see definition of ancillary proceedings in Part E, paragraph 3.5.3).

The General Criminal Contract does not enable representation in criminal breach proceedings to be funded by

Advocacy Assistance (unless the early hearing provisions apply). Therefore you must not complete form CDS3 under your devolved powers to authorise this work. The scope of work covered by form CDS3 is set out in Part A, paragraph 3.2.1(b) of the Contract Specification. The 'Other' category is intended to cover any future changes in scope that may require Advocacy Assistance to fund them. It is not a "catch all" additional category.

Paragraph 3.2.1(b)(ii) in Part A of the General Criminal Contract does not extend to breach of a criminal court order as a grant of representation is available from the magistrates' court to cover such cases. This paragraph makes Advocacy Assistance available for proceedings in the magistrates' court arising out of breach of a civil order which includes civil financial default and civil enforcement in family proceedings where there is a risk of imprisonment and a grant of representation would not be available.

Where we find on audit/assessment that Advocacy Assistance has been incorrectly granted to cover criminal breach proceedings, this work will be disallowed as it falls outside of the scope of Advocacy Assistance in the Contract.

CDS Focus Corrections

Issue 3 (March 2001) – page 7

Please note that on the first table (Police Station Advice and Assistance) the figures for 'availability' National and London 2 April 2001 onwards are incorrect. The figure for National is £4.20 (not £4.18) and the figure for London is 4.25 (not £4.24).

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Criminal Financial eligibility from 2 April 2001

Please note there is an omission. The paragraph beginning "Clients automatically qualify" should read: 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 not more than £70 per week.

Criminal High Cost Cases Unit Contact Details

The Criminal High Cost Cases Unit has now moved from Gray's Inn Road and is based at the LSC's London Regional Office.

Please ensure that all correspondence is sent to the new address.

Criminal High Cost Cases Unit
29-37 Red Lion Street
London
WC1R 4PP

DX 170 London/Chancery Lane

The new telephone numbers for the CHCC Unit are:

Nigel Field	020 7759 1531
Kirsten Alderson	020 7759 1530
Martin Brown	020 7759 1532
John Hargraves	020 7759 1533
Donna Lucas	020 7759 1534
Andrea Parry	020 7759 1535
FAX	020 7759 1518

Proposed Payment Dates

The proposed payment dates for June 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. From 1 April payments for criminal cases have been 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 despatched from the Financial Services Settlement section. Remittance advices are despatched 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 the 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 June - December 2001

Contract Payments	First Settlement of the Month	Second Settlement of the Month
Tuesday 5 June 2001	Wednesday 13 June 2001	Wednesday 27 June 2001
Wednesday 4 July 2001	Thursday 12 July 2001	Friday 27 July 2001
Friday 3 August 2001	Monday 13 August 2001	Wednesday 29 August 2001
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

No Return - No Payment See Stop Press on Page 8

legal services
COMMISSION

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