

Focus on CDS

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- **Prison Law** *Interim Arrangements for Parole Board Reviews*

This article sets out the interim arrangements for dealing with Parole Board Reviews of prisoners serving mandatory life sentences as a consequence of the ECHR judgement in the Case of Stafford. The interim arrangements will apply until new legislation is brought in. (See page 3)

- **General Criminal Contract Amendments**

The Contract has been amended (as of 2 December 2002) to bring into scope video identification procedures when the suspect is not at the police station. Supplemental claims may be submitted by suppliers for any work done between April 2002 and November.

New proceedings for interim Anti Social Behaviour Orders and interim Sex Offender Orders have also been brought into scope. (See page 2)

- **Consultation on Amendments to the Criminal Bills and PACE Cost Assessment Manuals**

Both manuals have been updated to take into account recent developments including the amendments to the General Criminal Contract introduced in mid-August 2002. Consultation is underway. Responses should be in by 10 February 2003. Further details inside. (See page 5)

- **Amendments to Serious Fraud Panel and Very High Cost Criminal Cases Arrangements 2001**

Major changes to the Serious Fraud Panel Arrangements and minor changes to the Very High Cost Criminal Cases Arrangements came into effect on 1 December 2002. The article sets out the key changes. (See page 6)

Criminal
Defence Service



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COMMISSION

General Criminal Contract Amendments

video identification procedures and interim anti-social behaviour/sex offender orders

Amending regulations (Criminal Defence Service (General) (No. 2) (Amendment No. 2) Regulations 2002) came into effect on 2 December 2002

These regulations bring back into the scope of the police station advice and assistance scheme work undertaken in relation to video identification procedures when the client is not in attendance at the police station with a lawyer, e.g. when a witness views the video images. A consequential amendment to the General Criminal Contract extends the scope of the police station advice and assistance scheme to cover such attendances by either an own or duty solicitor. The contract amendment has been consulted on with the Law Society and took effect on the same date as the regulation changes.

The Commission is aware that in some parts of the country video identification procedures were introduced in April 2002. Any supplier that has had costs for attendances relating to police station video identification procedures disallowed or that undertook such work without making a claim on the fund on the basis that it fell out of scope during the period between April to November 2002 may submit a supplemental consolidated claim to their regional CDS Manager for any disallowed or unclaimed work. A special form has been developed for this purpose and has been sent to each crime supplier together with guidance on how to complete the form and a copy of the contract amendment notice.

The amending regulations also make a minor change to bring into scope new proceedings for interim Anti Social Behaviour Orders and interim Sex Offender Orders. These provisions were introduced by the Police Reform Act 2002 and came into effect on the same date. Consequential amendments to the General Criminal Contract have been made which extend the scope of self granted advocacy assistance in respect of the interim orders and amend the scope of the crime franchise category.

Non-payment of Unassigned Counsel

Contractors are reminded of their obligations to make payment to unassigned counsel where counsel has provided magistrates' court Representation.

Rule 5.9 of Part B of the General Criminal Contract provides that:

"You are responsible for direct payment of Unassigned Counsel's fee in accordance with the Contract Standard Terms."

The Contract Standard Terms require:

"Clause 12A.11 Subject to Clause 12A.12, you must pay Unassigned Counsel within 30 days of receipt of their fee note. If you fail to do so we may, without prejudice to our other rights, pay them direct and recoup the amount of our payment from subsequent payments to you. Where Counsel has been assigned under a Representation Order, we will pay Counsel direct."

"Clause 12A.12 You need not pay Counsel or third parties in accordance with Clause 12A.9 or Clause 12A.11 if there is good reason that would justify non-payment."

Please ensure that you comply with these requirements. If you have a reason for non-payment, please notify your Account Manager as soon as possible, otherwise unassigned counsel must be paid in a timely manner.

It has been drawn to our attention that a small number of suppliers have not been complying with the contractual requirements and we will be taking action in individual cases.

Prison Law

Interim Arrangements for Parole Board Reviews

In Focus on CDS 8 (August 2002), we highlighted the fact that the European Court of Human Rights (ECHR) judgement in the case of Stafford v. the United Kingdom has implications with regard to the release of prisoners serving mandatory life sentences. The ECHR ruled that the release of mandatory lifers should be determined by a court-like body and not the Secretary of State. The ECHR has previously accepted that the Parole Board is a court-like body.

Prison Law – Interim administrative arrangements for Parole Board reviews as a consequence of the ECHR judgement in the case of Stafford

New legislation dealing with the release of mandatory lifers is in development and is expected to be introduced in Autumn 2003. Until then, interim arrangements will apply.

The purpose of this article is to inform you of these interim arrangements and the implications for CDS funding in such matters.

The Revised System

The interim arrangements introduced by the Prison Service will apply to mandatory lifers who are already, or about to become, tariff-expired whose next Parole Board review begins on or after 1 January 2003.

Ordinarily, the Parole Board will provide a provisional recommendation on the basis of an initial paper review. If the prisoner or Secretary of State wishes to contest that provisional recommendation on the question of release, an oral hearing will follow.

It will be open to prisoners to ask for an oral hearing in the first instance. In these circumstances, prisoners will be expected to provide reasons as to why their cases should be dealt with this way. It will then be for the Parole Board to consider whether to proceed in this way.

The Parole Board decision will not be made any earlier than if the case had first been considered as a paper review.

The Prison Service is considering extending these arrangements to all oral hearings.

The Prison Service has published a timetable for cases affected by these interim arrangements. The review process will take a maximum of 19 weeks, depending on whether the case is decided on the papers or by an oral hearing. Paper reviews should be completed within 7 weeks, so long as there are no delays in prisoners submitting representations.

Funding and Reporting

Representation at these oral hearings is available as Advocacy Assistance under the General Criminal Contract Specification, Part A, paragraph 5.2.1(d)(iv). That paragraph states that Advocacy Assistance is available to a client who is serving a sentence where the Parole Board decides to convene an oral hearing.

An application for Advocacy Assistance may be self-granted by a contracted supplier as a devolved power. Such an application must be approved in accordance with the relevant rules in the General Criminal Contract Specification (Part B, Section 4). The relevant merits test (Part B, Rule 4.3) and the financial qualifying criteria (Part B, Rule 4.4) must be met before Advocacy Assistance is granted.

Claim Codes Amendments

Advocacy Assistance provided under paragraph 5.2.1(d)(iv) is subject to a work limit of £1500 and should be reported using claim code 4C.

Where representation is not provided, the matter cannot be claimed as Advocacy Assistance. In these circumstances Advice and Assistance may be given, subject to the merits qualifying criteria at Part B, Rule 2.5, and the financial qualifying criteria at Part B, Rule 2.6, being met. This work is subject to a financial limit of £300 and should be reported using claim code 4A.

Once new legislation is in place, we will review these funding arrangements.

Further Information and Enquiries

Any enquiries about the new arrangements and the processes for funding and reporting should be directed as follows:

For case specific enquiries about the new arrangements, contact the relevant Lifer Unit caseworker. For general enquiries about the new arrangements, contact:

Jim Watt, Lifer Unit,
Prison Service 020 7217 5226

Paul Jackson, Lifer Unit,
Prison Service 020 7217 5785

Vicky Bassill, Lifer Unit,
Prison Service 020 7217 5526

For enquiries about the funding and reporting arrangements, contact:
Gary Winter, CDS Team, Legal Services Commission, 85 Gray's Inn Road, London WC1X 8TX (DX 450 London), telephone 020 7759 0455, or e-mail gary.winter@legalservices.gov.uk

This article informs you of some minor amendments to the claim codes further to the changes in Focus on CDS issue 8 (August 2002). The amended claim codes are listed below for ease of reference.

There has been confusion between the claim code that must be used for armed forces personnel and those for civilians. To provide clarification we have moved 'Armed Forces Personnel only' to the front of the wording for both 1D and 1F.

1D	Armed Forces Personnel only - Police station attendance (including a&a and telephone advice where given)
1F	Armed Forces Personnel only - Warrant of further detention (including a&a and any other police station advice where given)

The wording relating to the post-charge investigation claim for arrest on a warrant has been amended to include Crown Court warrants.

1I	Arrest on warrant following failure to appear at the magistrates' / Crown court
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These wordings take immediate effect. A full list of claim codes can be obtained from the CDS section of the Commission's website and will also appear in the next update to Volume 4 of the Legal Services Commission Manual, scheduled for April 2003.

Consultation on amendments

to the Criminal Bills and PACE Cost Assessment Manuals

Both manuals have been updated to take into account recent developments including the amendments to the General Criminal Contract introduced in mid-August 2002.

Consultation with the professional bodies is underway and a copy of the revised manuals is available in the consultation section of the LSC website (www.legalservices.gov.uk). The guidance supports the Contract and is used by Commission staff undertaking cost assessment. The PACE Costs 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). Practitioners are required when formulating claims under the Contract to make them in accordance with published Legal Services Commission guidance (General Criminal Contract Specification Part C Rule 1.13). The key changes to the Criminal Bills Assessment Manual are summarised below:

Amended Points of Principle (CRIMLA 28, 31 and 41)

Section 2: Additional guidance on the evidence based approach to auditing, updating to reflect the final version of the civil Controlled Work guidance, new guidance on multiple fee earners (2.6.21), text messages (2.7.21) and video links (2.18).

Section 3: Revised guidance on Crown Court work undertaken prior to committal (3.3.18), cracked trials (3.7), Section 51 indictable only cases (3.9) and new guidance on youth referral orders (3.13).

Section 4: Fully updated and new guidance on computer aided transcripts

and electronic presentation of evidence (4.9 and 4.10), revisions to travel time to remove the presumption that public transport is the most economical method and to remove the entitlement to claim first class travel (4.13), further guidance on special measures for vulnerable witnesses (4.18).

Section 5: Updating to fully reflect the Contract amendments (August 2002) in respect of post-charge Police Station Advice and Assistance and backdating of appeals.

Section 6: Further clarification of the meaning of ancillary proceedings (6.5.8).

Section 9: Further clarification provided on the status of solicitor advocates (9.6) and new guidance on funding counsel privately (9.8).

Section 11: Updating of the appeals section to reflect Contract changes.

All changes to the guidance have been highlighted using revision marks to assist consultees.

Responses to this consultation should be sent to Miss Dane Johnson at the address below by 10 February 2003:

Legal Services Commission
Criminal Defence Service
4th Floor, 85 Gray's Inn Road
London WC1X 8TX

DX: 450 London

or by email to
dane.johnson@legalservices.gov.uk

Amendments to Serious Fraud Panel

and very high cost criminal cases arrangements 2001

Following a recent consultation exercise with the Law Society, Bar Council, Serious Fraud Association, LCCSA and CLSA, the Arrangements governing membership of the Serious Fraud Panel and Very High Cost Criminal Cases have been amended. The new Arrangements came into effect on 1st December 2002. The changes made to the Very High Cost Criminal Cases Arrangements were minor, but substantial alterations have been made to the Serious Fraud Panel Arrangements.

The key changes are as follows:

- the criteria for new or developing firms have been clarified so that firms are aware of the requirements they must meet to be considered new or developing.
- the types of cases eligible and ineligible for consideration under F2 and S1 of the membership criteria have been specified in detail.
- under S2, discretion has been added to allow a supervisor who has spent fewer than 700 hours on fraud cases in any 2 of the last 3 years to be considered.
- the S4 requirements have been clarified so that a supervisor with fewer than 8 years' post-qualification experience may be considered, provided that he or she has a minimum of 6 years' PQE.
- further guidance has also been

added to allow firms the opportunity of employing a part-time supervisor, who may also work for another firm. The circumstances when this would be accepted by the LSC have been specified clearly.

- finally, the procedure for reviewing a rejected application has been removed in order to speed up the appeal process.

The Panel will now be known as the Specialist Fraud Panel, and the new Arrangements will apply to those firms with membership of the Panel, and to any firms wishing to apply for membership in the future. Applications received on or after 1st December 2002 will be dealt with under the new Arrangements.

Both sets of revised Arrangements, together with a paper summarising the consultation responses and changes made, can be obtained from the CDS section of the Commission's website. For an application pack to join the Specialist Fraud Panel, please contact a member of the Criminal High Cost Cases Unit on 020 7759 1901 or write to the CHCCU at 29-37 Red Lion Street, London WC1R 4PP (DX 170 LON/CH'RY LN WC2)

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Please contact **Patrick Bos Coe** on **020 7759 0492** or e-mail **patrick.boscoe@legalservices.gov.uk**

Proceeds of Crime Act 2002

This Act received Royal Assent in July 2002. The main provisions will come into effect in February 2003, however measures for cash forfeiture (Part 5) apply from 30 December 2002. Anti-money laundering powers (Part 7) will also be introduced this year.

Part 5 of the Act introduces new civil procedures in the High Court, Crown Court and magistrates' court for the detention and forfeiture of the proceeds of crime. Certain provisions have been brought into scope of the CLS. For further information about this change see the article entitled "Scope and Funding Code Update" in Focus 40. The Commission is prepared to grant CLS funding for these cases to firms who hold a General Civil Contract or a General Criminal Contract. All applications for CLS funding under the Proceeds of Crime Act 2002 should be made to the Commission's Special Cases Unit at its Brighton Office at Invicta House, Trafalgar Place, Brighton, BN1 4FR.

We are currently considering whether amendments to the General Criminal Contract are necessary to enable crime suppliers to conduct other proceedings under the Act. We will publish further information about this in the new year.