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Focus

ON CDS

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- **CRIMINAL HIGH COST CASES**

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A SECURE E-MAIL SYSTEM IS BEING SET UP BETWEEN CRIMINAL JUSTICE AGENCIES WITH THE HELP OF THE GOVERNMENT ORGANISATION CRIMINAL JUSTICE INFORMATION TECHNOLOGY. SEE PAGE 04 FOR MORE INFORMATION.

- **OUTCOME OF CONSULTATION ON CRIMINAL CLAIMS ASSESSMENT MANUALS**

DETAILS OF THE RESPONSE TO THE LSC'S CONSULTATION ON REVISIONS TO ITS COSTS ASSESSMENT GUIDANCE ARE AVAILABLE ON PAGE 04.

CRIMINAL HIGH COST CASES UNIT

SOLICITORS ARE OBLIGED UNDER REGULATION 23 OF THE CRIMINAL DEFENCE SERVICE (GENERAL) (No. 2) REGULATIONS 2001 TO NOTIFY THE COMMISSION OF CASES THAT MIGHT BE VERY HIGH COST CASES

A Very High Cost Case (VHCC) is one that is likely to last for 25 days or more at trial and/or the total defence costs in respect of the defendant represented in the case (or group of defendants represented by the same firm of solicitors) amounts to or is likely to amount to £150,000 or more. The total defence case costs include solicitors' costs, counsels' fees, experts' fees, disbursements and VAT. Firms will need to notify us in writing of the following:

- The client's name and nature of charges faced
- Name and contact details of the prosecuting authority
- Name of the case
- Date representation order granted
- Charges faced
- A summary description of the case
- Current status of the case
- Probable timetable by which the case will proceed

- Work done to date in terms of hours and/or costs
- Names of other co-defendants and their representatives, if known
- Estimated total defence costs, including counsel's fees and disbursements
- Estimated trial length
- Volume of prosecution documentation

The Unit must be notified of Very High Cost Cases as soon as the solicitor becomes aware that a case is likely to meet the VHCC criteria. The Unit will assess whether the case in question meets the criteria under the Criminal Defence Service (General) (No. 2) Regulations 2001 and whether or not it is a case that the Unit is in a position to contract. The firm will then be provided with written confirmation of the Unit's decision. Firms who fail to notify the Unit of a VHCC are in breach of the Regulations and their Criminal Contract.

If you have any further queries please do not hesitate to contact Kavita Makkar, Legal Services Commission, Criminal High Cost Cases Unit, 29/37 Red Lion Street, London, WC1R 4PP (DX 170 London/Chancery Lane) telephone 020 7759 1532 or e-mail kavita.makkar@legalservices.gov.uk

LEGAL AID REVIEW TO ENSURE VALUE FOR MONEY

THE LORD CHANCELLOR'S DEPARTMENT, NOW CALLED DEPARTMENT FOR CONSTITUTIONAL AFFAIRS(DCA), PUBLISHED A CONSULTATION PAPER ON 5 JUNE 2003 SETTING OUT PROPOSED CHANGES TO THE CRIMINAL DEFENCE SERVICE. THE PAPER IS ENTITLED "DELIVERING VALUE FOR MONEY IN THE CRIMINAL DEFENCE SERVICE" (CODE NO. CP 05/03) AND IS AVAILABLE AT WWW.LCD.GOV.UK

This consultation paper contains a number of important proposals that will affect the work undertaken by CDS suppliers. Practitioners are encouraged to read and consider the implications of these proposals and to respond directly to the DCA. Consultation closes on 1 August 2003.

**Criminal
Defence Service**



The Commission published its own consultation paper recently, focusing on the means of implementing the proposed changes. This separate consultation contains details of how the various proposals made by the DCA might be implemented through changes to the General Criminal Contract. Copies of the LSC consultation paper will be sent to all relevant professional bodies and posted on our website (www.legalservices.gov.uk). We welcome comments from practitioners on this paper, although comments on the policy itself should be sent to DCA. The LSC consultation closes on the same date i.e. 1 August 2003. The date of implementation will not be before 1 October 2003.

GENERAL CRIMINAL CONTRACT FROM APRIL 2004

ALL SUPPLIERS HAVE BEEN NOTIFIED THAT THERE WILL BE NO AUTOMATIC EXTENSION OF THE GENERAL CRIMINAL CONTRACT FROM APRIL 2004. WE WILL BE OFFERING SUPPLIERS A REVISED CONTRACT FROM THAT DATE.

The revised contract will incorporate amendments to the current arrangements arising from the decisions made in the current consultations on the CDS scheme (see article to the right): although these changes are likely to be implemented before that date by way of amendments to the current contract. The revised contract will also contain some changes to the contract specification which we will be consulting on in the autumn. We will also

seek to implement any changes arising from the Simplification Project (see page 04) which will benefit the profession without themselves giving rise to major implementation issues for suppliers. Other than these changes we do not plan a major rewrite or restructuring of the contract at this time.

We plan to offer the revised contract to all Category 1 and Category 2 suppliers. Suppliers in Category 3, including those subject to a Contract Notice, will be offered a temporary contract which will be extended should performance on a re-audit improve such that the Contract Notice would be removed.

CHANGES TO COST ASSESSMENT RULES

NEW RULES WERE INTRODUCED UNDER THE GENERAL CIVIL CONTRACT FROM 1 APRIL 2003 AND SIMILAR PROVISIONS WILL COME INTO EFFECT ON 21 JULY 2003 FOR THE GENERAL CRIMINAL CONTRACT.

The following approach will be adopted in relation to all civil costs audits where the date of notification of the results is on or after 1 May, and to all criminal audits where the date of notification of the results is on or after 21 July this year.

The position is essentially the same for crime and civil, subject to one point covered below. This should make the procedure easier to operate, including at costs committees.

Generally, there will be no extrapolation of costs assessments for Category 1 suppliers. We have taken into account the views expressed in the consultation on the crime contract amendments. This should facilitate good partnership working and encourage more suppliers to attain this Category.

However, there are cases where we have found a supplier to be Category 1, but the files audited show some misclaiming where no discretion is available on assessment. This could be as a result of wrong rates being used, failing to heed a costs limit, or claiming for something outside the scope of the contract. This problem is particularly prevalent in crime where there are more detailed rules about the claims allowable due to the broader range of work covered. Where we find this to be the case, we will point it out on audit and will give a warning that the position needs to be addressed. If the problem is found to persist on a second audit we will reserve the right to extrapolate and reclaim any money that has been misclaimed.

In the contract change coming in for crime on 21 July we reserve the right to recover misclaiming of this nature for up to two years in the past, rather than one year as in civil. This is the main difference between the approach on civil and criminal, which we consider to be justified by the differences in

practice between the costs rules in the two contracts.

We will now extrapolate in Category 2 and Category 3 cases. However, in order to minimise the cost and expense of appeals, we will extrapolate at 5 percentage points below the assessment in all cases where there is no appeal. Thus a supplier which is assessed at 15% overall on the sampled files will have 10% recovered from its population of claims subject to audit. In general terms the claims to which extrapolation will apply will be all claims submitted after the date files were called for in connection with the previous audit, up to the date files were called for in connection with the current audit, subject to not going back earlier than 12 months if there is a longer period between audits, or two years in the event of misclaims under a crime contract.

If there is an appeal, that is a final and independent determination of the proper assessment rate, and we shall extrapolate at the full rate found. Essentially therefore, it will usually only be worth the trouble of appealing if there are issues which lead the supplier to believe there is overall a greater margin of error in our assessments than the 5 percentage points offered. We hope this will be seen as a valuable concession which will save considerable resources on both sides.

A supplier's categorisation will continue to be determined by its assessment results even though extrapolation will be at 5 percentage points less. Hence a supplier assessed at 24% will be classed as Category 3 even though extrapolation will be at only 19%.

We shall maintain the position that suppliers found to be in Category 3 will receive a contract notice on the first occasion, which will be a formal warning that a second consecutive finding of Category 3 if confirmed will result in contract termination.

Suppliers have the right of appeal against our assessment findings. Any supplier wishing to appeal must comply strictly with the 21 day time limit, or apply for a short extension before that deadline expires. That right includes the right to appeal on the grounds that the sample taken is not truly representative of the supplier's work over the relevant period. Specific evidence that the audited sample is not representative is likely to lead to further files being audited.

Once we have notified the assessment results to any Category 2 or 3 firms, we shall wait 21 days in case of any appeal, unless we are notified no appeal is intended. We shall then arrange to meet with the supplier concerned and discuss the result of the audit and how to implement the appropriate recovery.

In essence recovery will be effected by a reduction in the claims to be reconciled against the contract payments. Contract monthly payments may therefore be reduced both:

- to effect recovery of the extrapolation amount over a period to be determined in the light of the circumstances of the supplier. This should generally be within the current financial year, but if there are significant extenuating grounds it could be over the next following financial year as well. It should never exceed that period.
- where appropriate, to reflect the fact that over claims are not expected to continue in the future.

If you have any queries about the approach being taken in your case, please contact your local Account Manager or Contract Manager.

FOCUS ON CDS IS PRODUCED BY THE LEGAL SERVICES COMMISSION PRESS OFFICE.

PLEASE CONTACT CHRIS DAVIES ON 020 7759 0523 OR E-MAIL christopher.davies@legalservices.gov.uk

SECURE E-MAIL PROGRAMME

CRIMINAL JUSTICE INFORMATION TECHNOLOGY (CJIT), A GOVERNMENT ORGANISATION, IS WORKING WITH CRIMINAL JUSTICE AGENCIES ON THE IMPLEMENTATION OF A SECURE E-MAIL PROGRAMME. THIS WILL LOOK TO INCLUDE DEFENCE LAWYERS AND OTHERS SUCH AS YOUTH OFFENDING TEAMS AND VICTIMS AND WITNESSES ORGANISATIONS, IN ADDITION TO THE CORE PROSECUTION AND SUPPORT AGENCIES.

Secure e-mail will improve the flow of information between the various criminal justice agencies and practitioners, making it more efficient, reliable and faster. Eventually the intention is for authorised users, including defence solicitors, to access each other's relevant information electronically, enabling them to work more effectively. This fully developed system will be known as CJS EXCHANGE.

Recent secure e-mail pilots in Avon & Somerset, Essex and Warwickshire have demonstrated successfully the potential benefits of secure e-mail between agencies and

a programme of national roll-out across all 42 CJS areas begins later this month.

The potential benefits to defence solicitors include the creation of a permanent audit trail of communications between the agencies concerned. For those defence advocates who regularly experience frustration when seeking timely information from prosecuting authorities, secure e-mail will (amongst other important benefits) allow practitioners to build up a history of, for instance, failures to comply with directions or to produce information in good time. It will demonstrate how effective defence solicitor practice contributes to the overall performance of the criminal justice system and just how well most defence firms perform.

Most defence solicitors have an e-mail facility already but this forthcoming initiative will make it more desirable to be e-mail capable so as not to be at a disadvantage when dealing with others in the system. For more information visit www.cjit.gov.uk

CDS SIMPLIFICATION PROJECT

WORK CONTINUES ON THE SIMPLIFICATION PROJECT (SEE FOCUS ON CDS 11). WE HAVE BEEN LIAISING WITH THE PROFESSION, ASKING FOR YOUR HELP IN IDENTIFYING PROBLEM AREAS AND SUGGESTIONS FOR IMPROVING AND SIMPLIFYING THE WAY WE DO BUSINESS WITH YOU.

Common issues have been raised such as too much information from us and the difficulty finding the correct sources of information. There is also a demand for more concise, easy-to-use information.

This project links closely to the Supplier Development Group SQM Audit Simplification Project. Information collected during this first phase of the project has been used to inform both projects.

The feedback from the profession has been invaluable. We are now considering how we can take suggestions forward.

Comments are still welcome, please contact Maryvonne Islip, Project Manager CDS Simplification Project, on 0121 665 4737 or e-mail maryvonne.islip@legalservices.gov.uk

INVESTIGATIONS BY NON-POLICE AGENCIES

IF YOUR CLIENT ATTENDS VOLUNTARILY AT ANY PLACE IN CONNECTION WITH AN INVESTIGATION BY AN AGENCY OTHER THAN THE POLICE OR CUSTOMS, YOU MAY CLAIM THE WORK AS POLICE STATION ADVICE AND ASSISTANCE ONLY IF A POLICE CONSTABLE OR CUSTOMS OFFICER IS PRESENT.

If the above criteria are not met, you may fund the work as freestanding Advice and Assistance using forms CDS 1 and 2, provided that your client qualifies financially and the sufficient benefit test is met.

If the case does not satisfy the criteria for funding under either of the above, then the work may not be claimed from the Criminal Defence Service. You may act on a private client basis. For further guidance please refer to the General Criminal Contract Specification Part B Rule 3.5 (Investigations by Non-Police Agencies) and the PACE Guidance on Costs Assessment Manual Section 3.2 (both are available on our website at www.legalservices.gov.uk).

OUTCOME OF CONSULTATION ON THE CRIMINAL CLAIMS ASSESSMENT MANUALS

THE COMMISSION INVITED COMMENTS ON REVISIONS TO ITS COSTS ASSESSMENT GUIDANCE APPLICABLE TO CONTRACT COMPLIANCE AUDITS AND NON-STANDARD FEE CLAIM ASSESSMENTS. BOTH THESE MANUALS HAVE BEEN UPDATED TO TAKE INTO ACCOUNT RECENT DEVELOPMENTS, INCLUDING AMENDMENTS TO THE GENERAL CRIMINAL CONTRACT INTRODUCED SINCE MID-AUGUST 2002.

The guidance supports the Contract and is used by Commission staff undertaking cost assessments and audits. 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 by the Contract to apply the guidance in the manuals when formulating claims under the Contract (General Criminal Contract Specification Part C Rule 1.13).

The revised documents were published for comment in early November 2002 and a supplementary consultation was issued in January 2003. Consultation closed in mid-February 2003.

The Commission received detailed and constructive comments on the manuals, many of which have been incorporated into the revised versions. These are now available on our website (www.legalservices.gov.uk) with revision markings showing the changes made following consultation, together with a summary of the Commission's response. We are grateful to all those who participated in the consultation. The new guidance will apply to all contract compliance audits and non-standard fee assessments undertaken on or after 1 July 2003.