

Focus on CDS

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● Revised CDS6 Guidance

This article provides guidance on the revised CDS6. From 1 December 2002 it will be mandatory to submit all your claims for non-assessed work on the revised form. The only change to CDS6 is the inclusion of a control total box in the bottom right hand corner of the page, marked as "total page value". The revised form must be used for reporting work completed in November onwards. (See page 2)

● CLS/CDS financial eligibility changes

There are small but important changes to the allowances within the financial assessment. This article sets out these changes. (See page 7)

● CDS form amendments

A number of CDS forms were amended in October. This article describes the changes which have been made to the forms and any additional action that you might need to take. Please ensure that anyone who has involvement with CDS forms sees this article. (See page 3)

● Prison law update

On 23 September, we wrote to inform all suppliers of the changes to the Prison Adjudication System and of the implications for CDS funding in such matters. The letter is reproduced inside. (See page 4)

Criminal
Defence Service



legal services
COMMISSION

Revised CDS6 Guidance

This article provides guidance on the revised CDS6. It is important that whoever is responsible for preparing your CDS6 for submission reads this article and is aware of the new requirements.

From 1 December 2002 onwards it will be mandatory to submit all your claims for non-assessed work on the revised version of CDS6. The new version is marked as 'Version 3 October 2002'. The only change to the form is the inclusion of a control total box in the bottom right hand corner of the form, marked as "Total Page Value". For each CDS6 page that you submit, you must complete the total page value box. This will contain the total value of all profit costs, disbursements, travel and waiting on each of the lines that have been completed on that CDS6.

The revised form must be used for reporting work completed in November onwards, i.e. the claims which are submitted in December.

The purpose behind the total page value box is to reduce the possibility of data errors. From December, LSC data entry clerks will now enter the total page value as completed on CDS6 before commencing any other data entry of that page. They will then proceed to enter the rest of the form. Once they have completed the data entry, the computer system will then total the values entered for that page and compare it to the total page value entered at the beginning of the data entry of that page. If the two totals balance, the caseworker will be able to enter the next page, repeating the above process. If the totals do not balance then the caseworker will review the figures which they have entered and correct any that may have been entered incorrectly. The system will check the balance again and if the figures now match, the caseworker will progress to the next page. If the figures still do not match and they match the figures completed on the form, the caseworker will reject the page so that

the total page value can be calculated again and re-submitted the next month. Where the old version of the form has been completed or the new version has been completed but the total page value has not been filled in, CDS6 will be rejected. However, for the first three months after the introduction of the new form, the submission will be lodged as a nil return to ensure that a standard monthly payment is made.

To support the introduction of the new form, there is an Excel spreadsheet version of CDS6 that can be downloaded from our website at www.legalservices.gov.uk. This is a simple version of CDS6 but includes a box to perform the calculations required to complete the total page value box. The pages can then be saved and printed off and sent to your processing centre for data entry. Instructions are provided at the website on how to complete the spreadsheet.

For those firms who submit their CDS6 claims online, no change will be required.

New CDS6 completion checklist

Please use the attached checklist to help ensure that your CDS6 submission for December is not rejected.

- Are you using the correct CDS6 form - version 3 October 2002?
- Has the total page value box been completed?
- Has the total value of work claimed been double checked?

CDS form amendments

A number of CDS forms were amended during the October forms update. This article describes the changes which have been made to the forms and any additional action that you might need to take. Please ensure that anyone who has involvement with CDS forms sees this article.

If you hold the LSC Forms Masterpack, you will have received the updates to bring your file up to date in the middle of October. All software suppliers have been supplied with revised electronic versions of the forms. If you don't think that you have received the updated forms, please contact the Business Operations Team on 020 7759 1786.

CDS1

The 'Equal Opportunities Monitoring' section has been amended slightly. The 'Other' section has been broken up into two distinct ethnic origin groups of 'Chinese' and 'Any other Ethnic origin'. The disability status check boxes have been removed and replaced with a specific question. The completion of the 'Equal Opportunities Monitoring' section remains voluntary. The new version of the form is Version 4 October 2002.

CDS3

The 'Other' box has been removed from the 'Type of Proceedings' section. The change has been made to prevent any confusion about the type of proceedings for which advocacy

assistance is available. The option of 'Other' was originally placed on the form to allow for future changes in legislation, but inadvertently it caused confusion over the scope of advocacy assistance. Form CDS3 must only be used for the proceedings listed on that form. For further guidance on the grant of advocacy assistance, please see Rule 4.5 in Part B of the General Criminal Contract Specification. The new version of the form is Version 4 October 2002.

CDS4

The CRIMAPP7 has been merged with the CDS4. Please use the amended CDS4 when applying for prior authorities either for the magistrates' courts or Crown Court from the date that the revised forms become mandatory on 18 November 2002. The CRIMAPP7 must no longer be used. The change has been made to reduce the number of criminal forms. You must now indicate which court the matter is being heard in, but otherwise the CDS4 remains unchanged. The new version of the form is Version 2 October 2002.

CDS6

A total page value box has been introduced. This will ensure a reduction in potential data entry errors. Full guidance on use of the revised form is on the page opposite. This should be read as a matter of priority. The revised form will become mandatory from 1 December 2002 i.e. the revised CDS6 must be used when reporting November's work onwards. The new version of the form is Version 3 October 2002.

CDS7

Space to record a DX address has been added to the 'Solicitor's details' section and an additional question relating to indictable only proceedings has been added to the 'Case details' section. The new version of the form is Version 3 October 2002.

CDS10

Amendments have been made to the title and guidance notes to clarify the purpose and use of the form. This form must only be used where the Legal Services Commission has refused an application for a representation order made on CDS3 or where you have refused or withdrawn advocacy assistance in accordance with Rule 4.11 in Part B of the General Criminal Contract Specification. The new version of the form is Version 2 October 2002.

CDS12

The Duty Solicitor Application Form has been added to the Forms Masterpack for the first time. The form has been amended at Sections 1, 3, 4 and 5. The new version of the form is Version 3 October 2002.

Future changes

Additionally, the LSC intends to add the application form for claiming accreditation costs to the Forms Masterpack in the next update. This is being done as a continuance of the policy of bringing all CDS forms together in one place. The application form will become form CDS13.

Prison law update

revised prison adjudication system

On 23 September 2002, we wrote to inform all suppliers of the changes to the Prison Adjudication System and of the implications for CDS funding in such matters. The letter is reproduced here.

“The recent European Court of Human Rights (ECHR) judgement in the case of *Ezeh & Connors v. the United Kingdom* has led to changes to the arrangements for prison disciplinary hearings where the potential penalty is the award of additional days in custody as a punishment for breaches of prison rules. In response to this judgement, the Prison Service is introducing changes to the system.

The purpose of this letter is to inform you of these changes and the implications for CDS funding in such matters.

The Revised System

The Prison Service has summarised the revised system as follows:

“A prisoner who commits an offence against Prison or YOI Rules must be charged, save in exceptional circumstances, within 48 hours of the offence being discovered. The subsequent adjudication is opened by the Governor no later than the next day, unless that is a Sunday or public holiday.

If the offence is comparatively minor, the Governor may choose to complete the hearing. If a finding of guilt is reached, the Governor has a range of punishments which can be imposed. If the offence is a more serious one, the Governor may choose to adjourn the adjudication for referral to an independent adjudicator. Prisoners have a right to be legally represented at hearings conducted by independent adjudicators.

The role of the adjudicator, whether a member of Prison Service staff or an independent adjudicator, is the same. It is the responsibility of the adjudicator to enquire into a report of an alleged offence and to decide whether a breach of Prison or YOI Rules has been established beyond reasonable doubt. The style of the hearing is inquisitorial but in most other respects it is like a court of law. The adjudicator must ascertain the facts and must be prepared to question, in a spirit of impartial inquiry, the accused, the person bringing the charge and any witnesses. The principles of natural justice apply. The adjudicator must ensure at all times that the prisoner understands what is happening.”

Practitioners may require a copy of the Prison Service Discipline Manual. This is available on the Prison Service website, www.hmprisonservice.gov.uk.

Funding and Reporting

Representation in prison disciplinary matters 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 in proceedings before a Governor or other prison authority. An adjudication before an independent adjudicator is deemed to be proceedings before a prison authority.

An application for Advocacy Assistance may be 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). As set out at Part B, Rule 4.4, the financial qualifying criteria must be met before Advocacy Assistance is granted. With regard to the merits qualifying criteria, where the alleged offence is such that the matter is referred to an independent adjudicator because of the seriousness of the matter the merits test set out at Part A, paragraph 5.3 will be met and representation under Advocacy Assistance may be provided. Where the offence is dealt with by the Governor (and therefore additional days may not be awarded under the new arrangements), representation under Advocacy Assistance may only be provided where permission is specifically granted by the Governor. Given the new arrangements we would consider that such instances will be extremely rare.

Advocacy Assistance conducted in proceedings before a Governor or other prison authority is subject to a work limit of £1500 and should be reported using claim code 4B. That claim code should be used for all adjudications, those heard by a prison Governor and those heard by an independent adjudicator.

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 work limit of £300 and should be reported using claim code 4A.

We will monitor the operation of adjudications and will review the arrangements for funding this work in the near future.

Consequences of ECHR judgement (Stafford v. the United Kingdom) - update

In *Focus on CDS 8* (August 2002), we highlighted the ECHR judgement in the case of Stafford. This ruling has implications with regard to the release of mandatory life prisoners.

The article explained two points. First, that the Government is considering the consequences of the judgement. Second, that once the Government has announced its response, the Commission will consider the impact in terms of funding and will provide further guidance.

To date, the Government has not made any announcement. Once it has done so, we will contact you further. ”

‘An application for Advocacy Assistance may be granted by a contracted supplier as a devolved power. It must satisfy the rules in the General Criminal Contract Specification (Part B, Section 4).’

Travel costs for representatives

There has been some confusion regarding what travelling costs may be claimed when a representative, not in the employment of a General Criminal Contract holder, undertakes police station work.

Part B 3.3 of the Specification of the General Criminal Contract says: *"If work is delegated to a representative or agent who is not an employee of the firm, the travel time shall not exceed 45 minutes each way".*

7.13.6 of the PACE manual says: *"If a solicitor agent or freelance representative is instructed by the supplier then the travelling time and expenses incurred should not generally exceed those that would have been incurred by the supplier had a member of staff undertaken the case".*

The combination of these requirements is that the travelling charged must be no more than if the supplier had undertaken the work AND must be to a maximum of 45 minutes. This reflects the performance standard at Rule 5.2 of Part D of the General Criminal Contract Specification, which requires the first personal attendance on the client in police station cases to normally be within 45 minutes of the request to attend.

This change effectively applies a maximum fee principle to police station travel time and disbursements where work is delegated to a freelance representative who is not in the employment of a supplier.

Contributing towards accreditation costs

The Commission has previously announced that it will contribute towards the cost of accreditation for duty solicitors and accredited representatives.

The contribution will be £400 for accredited representatives and £1000 for duty solicitors (reduced to £600 if a contribution has already been made for the individual as an accredited representative).

The date of accreditation must be on or after 1 April 2002. For duty solicitors, the contribution will be paid to the employing supplier and not to the individual. For accredited representatives, the contribution will be paid to the contracted supplier employing the supervising solicitor at the time of accreditation.

A new claim form (CDS13) has been introduced for such claims. Individuals who achieved accreditation on or after 1 April 2002 have been sent the claim form directly and future claim forms will be sent at the time that accreditation is achieved.

If you have not received the CDS13 and believe you are entitled to claim, a copy can be obtained from the Commission's website. By the end of the year this form will be included in the Forms Masterpack.

CLS/CDS financial eligibility changes

There are small but important changes to the allowances within the financial assessment which are outlined below. These changes will apply to all levels of service, for all applications for funding, where a means test applies, made on or after 14 October 2002.

In summary the changes are:

1. The allowance in respect of the maintenance of a dependant child will increase in line with the equivalent

income support allowance, for all levels of service, from 14 October 2002.

2. There is no change to the allowance in respect of the maintenance of a partner.

Guidance on applying the dependants allowance

For the purpose of the dependants allowance, a dependant child is defined as anyone for whom the client and/or

their partner (if client and partner's resources are being aggregated) receives Child Benefit. The relevant allowance can be ascertained by reference to the table below.

The eligibility calculator has been updated to incorporate these changes. A revised keycard was circulated as an update to the Forms Masterpack earlier this month.

Dependant's Allowances

Applications/reassessments received on/after 14.10.02

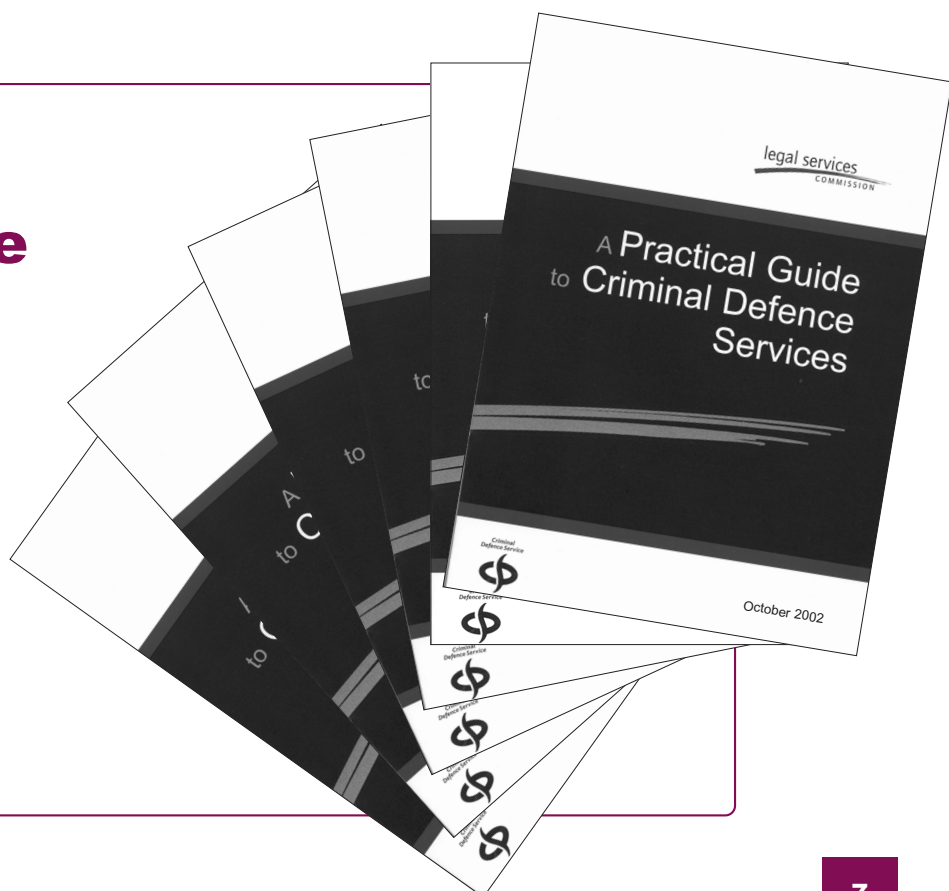
Child aged 15 or under	£160.77 per month	(£37.00 per week)
Child aged 16 or over	£164.25 per month	(£37.80 per week)
Partner	£133.40 per month	(£30.70 per week)

Amended CDS leaflet available

The CDS leaflet "A Practical Guide to Criminal Defence Services" has been updated to reflect the new changes detailed above.

They are available from the leaflet line. To order copies of LSC leaflets contact the LSC Leaflet line on 0845 3000 343 or e-mail lscleafletline@direct.st-ives.co.uk or Fax: 01732 860 270

Up to 30 copies of each leaflet can be ordered on each occasion.



Point of principle

crimla 41 magistrates' court standard fees: cracked trials: time of discontinuance and guilty pleas: category of case

For the purposes of magistrates' court standard fees (set out in the General Criminal Contract part E paragraph 3.5):

1. Category 2.2 - it is not essential for the change of plea to be notified on the day of trial provided that the proceedings were listed and fully prepared for trial.

2. Category 2.3 - it is not essential for the proceedings to be discontinued on the day of trial provided that proceedings were listed and fully prepared for trial.

3. In relation to each category, a case is to be treated as "listed for trial" whenever it is adjourned following a "not guilty" plea.

Guidance on crimla 41

In all cases where a solicitor claims a Category 2 standard fee in these categories, the solicitor must show that the case was, in fact, fully prepared, and that it was reasonable in all the circumstances for the solicitor to prepare the case fully at the time.

In determining whether a case is to be treated as having been fully prepared for trial following adjournment after a not guilty plea, there should be available, proportionate to the charges to be tried: a proof from the defendant dealing with each of the points to prove; observations on and analysis of the prosecution evidence; consideration of disclosure issues; consideration of the identification of defence witnesses and at least, attempts to contact them: but a case may be fully prepared whether or not those witnesses have been warned to give evidence.

Criteria for second and subsequent scheme membership

Following consultation with the relevant professional bodies, the guidance contained in the Duty Solicitor Manual relating to second and subsequent duty solicitor scheme membership has been amended to clarify membership of second and subsequent schemes. This change takes effect from 16 August 2002. The criteria for a busy scheme (more than 1250 non-motoring offences per annum) are:

- i. the cost of travel by public transport from the court to the applicant's office should generally not exceed £2.50 each way (or £5.00 return at peak times i.e. when the cost is greatest), and
- ii. the journey should generally not take more than 20 minutes by public transport each way including walking to and from the station or bus stop, and
- iii. the convenience of the journey including that it should generally not be necessary to change e.g. from one bus to another and that the public transport service should be reasonably frequent.

The criteria for each less busy scheme (less than 1250 non-motoring offences per annum) are set by Regional Criminal Defence Managers following consultation with the regional duty solicitor committee.

A full copy of the guidance can be obtained from the CDS section of the Commission's website.

London duty solicitor special rules

The Commission is consulting on the rules that should apply to new and existing members of the London region duty solicitor schemes. A consultation paper has been sent to all holders of the General Criminal Contract who have members on a London duty solicitor scheme and responses are sought by Monday 2 December 2002.

A copy of the consultation paper can be obtained from the CDS section of the Commission's website.

Focus on CDS is produced by the **Legal Services Commission** Press Office.

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