

FOCUS

ON CDS

AMENDMENT

Unfortunately, an incorrect version of 'Costs Appeals Committee Point of Principle CRIMLA 12' was printed on page 3 of Focus on CDS 13, December 2003. The correct version is printed below.

**CRIMLA 12, 4 SEPTEMBER 1990,
AMENDED ON 22 SEPTEMBER 2003**

Determination of costs

Point of Principle

The process of costs assessment is similar whether a case is conducted in the Crown Court, under the Criminal Defence Service Funding Order 2001 or in the magistrates' court, under the General Criminal Contract Specification Part C, Rule 1.13, and the approach to both is defined by the same words. Assessment under the General Criminal Contract is assisted by the guidance contained in the Criminal Bills Assessment Manual. For that reason, in magistrates' court assessments, the application of the decision in *Ex parte John Singh* will be wholly exceptional. The procedure will be as follows:

- (i) to conduct a line-by-line assessment;
- (ii) to stand back from that exercise and look at the size of the claim as a whole; and
- (iii) when considering the claim as a whole, to apply a judgment of what was reasonably required for the preparation of a proper defence for the client.

Where the Commission disallows a specific item for a specific reason, the item should be identified and the reason given, but the Commission is not precluded from reducing claims for classes of work without specifically identifying particular items of work. If there is a reduction in the claim, whether on a line-by-line or overall basis, reasons must always be given sufficient to enable the solicitor to identify the relevant issues. Reasons should be given for any judgment under (iii) above which

are separate from, and additional to, reasons for decisions under (i) above. A mere statement that the overall bill was unduly high is not enough. Where, in determining costs, the Commission has taken into account some specific factor or factors other than the nature, importance, complexity or difficulty of the work and time involved, it should indicate that factor or factors.

A Costs Committee may determine a review of an assessment without considering the solicitor's file of papers if the solicitor has either declined or failed to send the file in response to a written invitation to do so.

Guidance

Cases in the magistrates' courts will be determined by line-by-line assessment. An overall review may be used wholly exceptionally. Relevant factors in deciding the overall reasonableness of a bill include (relative to the nature of the case):

- (a) the total number of hearings;
- (b) the length of time the case took; and
- (c) the extent to which the solicitor took reasonable steps to ensure continuity of representation at court.

The fact that a claim is unduly high, relative to other cases where the charge is the same or similar, does not necessarily justify a round sum assessment. Whereas a round sum reduction of a claim that is significantly higher without apparent reason, than those incurred on behalf of other defendants to the same proceedings, may be justified.

A period of 14 days after receiving the request is sufficient opportunity for a solicitor to respond to a request to send a file so that a Costs Committee can review the assessment of a claim.

The Legal Services Commission would like to apologise for this error and any confusion caused.