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FOCCUS on CDS

• Amendments to the Criminal Contract

For details of changes to the General Criminal Contract, to be implemented from 1 February 2004, see page 02.

CRIMINAL HIGH COSTS CASES UNIT

FROM 1 APRIL 2004, ALL VERY HIGH COST CRIMINAL CASES WILL BE RUN UNDER CONTRACT. FOR DETAILS OF HOW TO INFORM THE CRIMINAL HIGH COST CASES UNIT OF SUCH A CASE, PLEASE TURN TO PAGE 03.

• Eligibility Update Guarantee State Pension Credit

For details of changes to financial eligibility regulations regarding the Guarantee State Pension Credit and updated Keycard, see pages 05-07.

• Contacting the CDS

For an up-to-date guide on the best points of contact for CDS queries at the Legal Services Commission, please see page 08.



AMENDMENTS TO THE GENERAL CRIMINAL CONTRACT EFFECTIVE FROM 1 FEBRUARY 04

The Department for Constitutional Affairs (DCA) published a consultation paper, "Delivering Value for Money in the Criminal Defence Service", on 5 June, setting out proposed changes to the Criminal Defence Service. The Legal Services Commission (LSC) also published a consultation paper, primarily focusing on contract amendments necessary to implement the DCA proposals. The consultation period for both papers ended on 1 August 2003. A Government decision is awaited on the outcome of the DCA consultation.

The LSC consultation paper (published on 20 June 2003), contained some additional proposals and it has been agreed that these changes will be implemented separately, with effect from 1 February 2004. All CDS Suppliers will have received a contract notice and covering letter detailing these changes. Due to the Christmas holiday, eight weeks notice has been given of these changes.

The LSC received a number of extremely helpful responses to the consultation paper and these have been taken into account when finalising the following changes:

Implement the Police Station Fixed Fee for Telephone Calls for all CDS Suppliers

Approximately one third of CDS Suppliers have successfully operated under the fixed fee arrangements since April 2001. This change will remove the dual system of claiming for telephone calls and has been the subject of a previous consultation process.

Suppliers who are currently claiming individual advice and routine calls will have to claim a single Telephone Advice Fixed Fee instead for all Criminal Investigations Matters that commence on or after 1 February 2004. In addition, they will be able to claim the higher hourly rates for attending the police station. The relevant rates are replicated below for ease of reference.

Restrict availability of police station duty solicitor rates to the end of the initial period of detention at the police station

The original proposal restricted duty solicitor rates to attendances that commenced during the duty period. Having considered the responses to consultation, this proposal has been amended. It allows duty solicitor rates to be claimed for all attendances from the acceptance of a matter by the duty solicitor, up until the point when the detainee is released from the initial continual period of custody. Any subsequent attendances, for example, bail backs, will be claimed at own solicitor rates. This amendment overrides point of principle DS1, and will apply to all police station attendances that commence on or after 1 February 2004.

The LSC's consultation also included a further proposal to prevent a claim for police station advice and assistance being submitted, if the duty or own solicitor had not acted until the conclusion of the investigation. Having carefully considered some of the practical issues raised by consultees, particularly sole practitioners and smaller firms, the LSC has decided not to proceed with this proposal at this stage.

The contract notice and covering letter are available in the CDS section of the LSC website at www.legalservices.gov.uk

	national (£)	london (£)
availability during duty period	4.20*	4.25**
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
police station telephone advice fixed fee (including all telephone calls whether "routine" or "advice")	30.25 per claim	31.45 per claim

Criminal Defence Service



* to a max of 100.80, ** to a max of 102.00

CRIMINAL HIGH COST CASES UNIT OBLIGATION TO NOTIFY VERY HIGH COST CASES

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 (VHCC).

Having started as a pilot project in 2000, the Criminal High Cost Cases Unit (CHCCU) is now moving towards being fully operational by April 2004. This means that all Very High Cost Criminal Cases will be run under contract from 1st April 2004. In preparation for this, the Unit has recently increased its staffing capacity.

The majority of notified cases are now being run under contract. It is, therefore, vital for firms to keep the CHCCU fully up-to-date regarding any criminal cases that do, or may, fall within the Very High Cost Case criteria. This message has been reiterated recently in a letter from Richard Collins, Director of the CDS, to all CDS Suppliers.

It should be noted, however, that the requisite criteria for VHCC categorisation requires that the total defence costs are anticipated to reach \pounds 150,000 for each individual defendant or group of defendants represented by the same solicitor. This figure

should not be calculated by including the total cumulative defence costs for all co-defendants in a case.

The following section outlines the VHCC criteria and also the steps to be taken when notifying the CHCCU.

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

- Client name and nature of the charges faced
- Name and contact details of the prosecuting authority
- Name of the case
- Date representation order granted
- Charges faced
- 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 (including any payments on account from the National Taxing Team)
- Names of any co-defendants and their representatives, if known
- Estimated total defence costs, including counsel's fees and disbursements
- Estimated trial length
- Volume of prosecution documentation (received and/or anticipated)

The Unit must be notified of a VHCC as soon as the solicitor becomes aware that a case is likely to meet the VHCC criteria. The Unit will assess whether the case meets the criteria under the regulations and 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 General Criminal Contract. If you have any queries, please contact the CHCCU. Tel: 020 7759 1901 E-mail – CHCCU@legalservices.gov.uk Post – Criminal High Cost Cases Unit, 29-37 Red Lion Street, London, WC1R 4PP.

COSTS APPEALS COMMITTEE POINT OF PRINCIPLE

CRIMLA 12, 4 September 1990, Amended on 22 September 2003

Determination of Costs

Point of Principle

The process of costs assessment is the same 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. The approach to both is defined by the same words, and regard may be had in exceptional cases to the decision in *Ex parte John Singh*, 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;
- (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-byline, 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 failed to send the file in response to a written invitation to do so.

Guidance

Whilst most cases in the magistrates' courts

will be determined by line-by-line assessment, an overall review may be used, for instance, to avoid trimming individual items by predominantly small amounts. Relevant factors in deciding the overall reasonableness of a bill include:

- (1) the total number of hearings;
- (2) the length of time the case took;
- (3) 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 than those incurred on behalf of other defendants to the same proceedings may be justified. A period of 14 days 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.

FORM CHANGES

This article describes changes made to the CDS forms as part of the recent forms update. Unless otherwise stated, the use of the amended forms is now mandatory. Please ensure that anyone responsible for preparing forms for submission to the LSC sees this article.

Full guidance on the completion of CDS forms can be found in Part E, 'Reference Materials' of Volume 4 of the LSC Manual.

CDS1 Page 2 of the form has been changed to reflect the changes in eligibility described in Focus 38, April 2002.

CDS4 An additional check box for recording whether the Prior Authority is required for a youth court matter has been added. This change will support improved decision making by our processing centres.

CDS11 Three changes have been made to this form. The first amends a typographical error that occurred in the notes at the top of the form. A field to record your reference has also been added as feedback suggested that this would be useful. Finally, at the bottom of the form, a checkbox has been added to indicate that pre-order work has been included in the claim. There is also space to record the date that the Representation Order was issued.

These changes have been made in anticipation of changes being made to the General Criminal Contract. This part should not be completed until the relevant changes to the contract have been made.

COURT DUTY Solicitor Travel

A reminder that travelling to and from a court duty solicitor attendance scheme (one which operates with a rota) cannot be claimed unless:

- the attendance is for a non-business day (Saturday, Sunday or bank holiday); or
- you are called back, having been released by the court (if this occurs suppliers are advised to record this reason on the attendance note).

HIGH COST CASES UNIT CONSULTATION

The Criminal High Cost Cases Unit is consulting on proposed changes to the arrangements, regulations and contract documentation relating to Very High Cost Criminal Cases following the government consultation on "Delivering Value for Money in the Criminal Defence Service".

All crime suppliers are invited to comment on the proposals which are available in the CDS section of the Commission's website: www.legalservices.gov.uk. The consultation package has been sent to the Law Society, Bar Council, CLSA, LCCSA and LAPG.

We have highlighted a number of key questions in the consultation paper on which we particularly seek respondents' views. However, comments are welcome on any of the proposed changes.

We invite comments no later than Friday 2 January 2004. It is envisaged that the changes will come into effect in the New Year.

Please direct your responses to: Ms Kavita Makkar, Criminal High Cost Cases Unit, Legal Services Commission, 29-37 Red Lion Street, London WC1R 4PP or DX 170 London Chancery Lane. e-mail: kavita.makkar@legalser vices.gov.uk

General Criminal Contract April 2004

In March 2003, the Legal Services Commission gave all CDS Suppliers notice that the General Criminal Contract would terminate on 31 March 2004.

Consultation on the new General Criminal and General Civil Contracts has begun. A copy of the consultation is available on the LSC's website at www.legalservices.co.uk. The consultation period ends on 13 January 2004.

Few of the amendments proposed in the consultation paper will affect the day-to-day provision of services under contracts. In the main, amendments are to the Standard Terms and address technical issues encountered in operating the contracts.

The consultation also contains a number of measures flowing from the CDS simplification project that we believe will benefit practitioners. For example, the abolition of many of the current performance standards.

Trial Management **Programme**

On 7 November, the Department of Constitutional Affairs (DCA) issued a consultation document to the Law Society and the Bar Council on changes to Criminal Defence Service fee structures that will form part of the Effective Trial Management Programme.

The consultation period is set to close on 19 December. The consultation paper proposes to make changes to advocates' fees in the Crown Court and solicitors' fees in magistrates' courts. The DCA is seeking to pilot the proposals in six areas in early 2004. The pilot sites fall in the following regions: Essex, Bedfordshire, West Midlands, North Wales, Greater Manchester and West Yorkshire. Copies of the consultation paper can be obtained from the Public Legal Services Division of the DCA on 020 7210 8754.

To compliment the proposed changes, the LSC has published draft contract amendments necessary to support the DCA's proposed changes for the course of the pilot. The contract amendments were included as part of the DCA consultation package provided to the Law Society and the Bar Council. Additionally, the LSC has sought the views of the CLSA, LCSSA and the LAPG. The proposed contract amendments can be downloaded from the LSC website at www.legalservices.gov.uk/devel /criminal.htm

Should you have any comment on the content of the proposed contract amendments, they should be addressed to Dane Johnson, Legal Services Commission, Criminal Defence Service, 4th Floor, 85 Gray's Inn Road, London WC1X 8TX (DX: 328 London/Chancery Lane) or by e-mail to: dane.johnson@legalservices. gov.uk

Any comments on the DCA's consultation paper should be e-mailed to: nigel.mayer@dca.gsi.gov.uk

Anti-Social Behaviour Orders

Anti-Social Behaviour Orders (ASBOs) were introduced by Part 1 of the Crime and Disorder Act 1989. Guidance setting out the present legal aid position is now available on the Commission's website at www.legalservices.gov.uk/guid/cds.htm



General

This card is intended as a quick reference point for assessing financial eligibility for Advice and Assistance, and Advocacy Assistance. Full guidance on the assessment of means is set out in Part E of Volume 4 of the Legal Services Commission Manual. References in this card to volume and section numbers, e.g. volume 4E-section 1, are references to the relevant parts of that guidance. Practitioners should note the general provisions set out in guidance volume 4E-section 3, particularly those set out in sub-paragraph 2, regarding the documentation required when assessing means. This keycard and the guidance are relevant to all applications for funding made on or after 6 October 2003.

ELIGIBILITY LIMITS

The summary of the main eligibility limits from 6 October 2003 are provided below:

Level of Service	Income Limit	Capital Limit
Advice and Assistance	Disposable income not to exceed	£1,000 FOR THOSE WITH NO
	£91 PER WEEK	DEPENDANTS
	Passported if in receipt of Income	£1,335 FOR THOSE WITH ONE
	Support, Income Based Job Seekers' Allowance, Guarantee State	DEPENDANT
	ALLOWANCE, GUARANTEE STATE Pension Credit, Working Tax	£1,535 FOR THOSE WITH TWO
	Credit plus Child Tax Credit* or	DEPENDANTS WITH £100 INCREASE
	Working Tax Credit with disability element*	FOR EACH EXTRA DEPENDANT
	*Gross income not to exceed	No passporting - capital must
	£14,213 for passporting	BE ASSESSED IN ALL CASES
Advocacy Assistance	DISPOSABLE INCOME NOT TO EXCEED	£3,000 FOR THOSE WITH NO
	£192 PER WEEK	DEPENDANTS
	Passported if in receipt of Income	£3,335 FOR THOSE WITH ONE DEPENDANT
	Support, Income Based Job Seekers'	£3,535 FOR THOSE WITH TWO
	Allowance, Guarantee State	DEPENDANTS WITH £100 INCREASE
	Pension Credit, Working Tax Credit plus Child Tax Credit* or	FOR EACH EXTRA DEPENDANT
	Working Tax Credit with disability	Passported if in receipt of
	ELEMENT*	Income Support, Income Based Job Seekers' Allowance or
	*Gross income not to exceed £14,213 for passporting	Guarantee State Pension Credit

STEP BY STEP GUIDE TO ASSESSMENT

STEP ONE Determine whether or not the client has a partner whose means should be aggregated for the purposes of the assessment (see guidance in volume 4E-section 4).

STEP Two (A) Determine whether the client directly or indirectly receives either Income Support, Income Based Job Seekers' Allowance or Guarantee State Pension Credit to determine whether the client automatically satisfies the relevant financial eligibility test, as indicated by the 'passported' arrangements stated in the table on reverse.

STEP Two (B) Assess gross income for all other cases. Determine whether the client directly or indirectly receives Working Tax Credit with Child Tax Credit or Working Tax Credit with disability element. The client will be 'passported' on income where the gross limit of £14,213 is not exceeded.

STEP THREE For cases that are not 'passported', determine the client's disposable income (see guidance in volume 4E-section 5). Fixed allowances are made for dependants and these are set out in the table below. Other allowances can be made for: tax, national insurance and maintenance paid. Certain sources of income can be disregarded. If the resulting disposable income is above the relevant limit, funding should be refused across all levels of service without any further calculations being necessary.

Fixed rate allowances (per week) from 7 April 2003

Dependants' Allowances

Partner	£31.10
Child aged 15 or under	£38.50
Child aged 16 or over	£38.50

STEP FOUR Where a client's disposable income is below the relevant limit, it is necessary to calculate the client's disposable capital (see guidance in volume 4E-section 6). If the resulting capital is above the relevant limit, then the application should be refused.

STEP FIVE For clients whose disposable income and disposable capital has been assessed as being below the relevant limits, the client can be awarded funding for all levels of service.

FINANCIAL ELIGIBILITY PENSION CREDIT OCTOBER 2003

The Criminal Defence Service (General) (No 2) (Amendment No 2) Regulations 2003, SI No 2378, provide for the following changes to financial eligibility. These changes apply to all applications for funding made on or after 6 October 2003.

Clients who directly or indirectly* receive the new Guarantee State Pension Credit (under section 1(3)(a) of the State Pension Credit Act 2002) will be 'passported', i.e. deemed to automatically satisfy the financial qualification criteria on income and/or capital, under the Criminal Defence Service Advice and Assistance/Advocacy Assistance Schemes.

(*A person is deemed to be indirectly receiving a benefit through their inclusion as a dependant on the benefit claim.)

The passporting arrangements for clients who receive the Guarantee State Pension Credit will exactly mirror the existing arrangements for clients who receive Income Support and Income Based Job Seekers' Allowance.

Advice and Assistance

Clients who receive Income Support, Income Based Job Seekers' Allowance, Guarantee State Pension Credit, Working Tax Credit plus Child Tax Credit*, or Working Tax Credit plus a disability element*, will continue to be automatically eligible on income. However their capital will still need to be assessed.

(*Gross income not to exceed £14,213 for passporting.)

Advocacy Assistance

Clients who receive Income Support, Income Based Job Seekers' Allowance or Guarantee State Pension Credit, will continue to be automatically eligible on both income and capital.

Clients who receive Working Tax Credit plus Child Tax Credit*, or Working Tax Credit plus a disability element*, will continue to be automatically eligible on income. However their capital will still need to be assessed.

(*Gross income not to exceed £14,213 for passporting.)

There are no changes to the eligibility limits outlined in April 2003.

Recovery of Defence Costs Orders

There are no regulation changes for the purposes of Recovery of Defence Costs Orders as there is no passporting under this scheme. Guidance will be issued to courts to consider the Guarantee State Pension Credit as a means-tested benefit, in the same way as Income Support and Income Based Job Seekers' Allowance.

Pension Credits Explained

The State Pension Credit Act received Royal Assent in July 2002. It is made up of two elements:

- Guarantee Credit for people who are 60 or over (their partner can however be aged under 60 years); and
- Savings Credit to reward people who are
 65 or over who have made a modest
 provision for their retirement.

The Guarantee Credit broadly replaces the current Minimum Income Guarantee (MIG), i.e. Income Support for those aged 60 years or over. It is possible to receive either type of Pension Credit by itself or a combination of both elements. The applicant is passported if the Guarantee Credit is in payment by itself, or is combined with the Savings Credit. The applicant is **not** passported under the CDS scheme where the client is in receipt of the Savings Credit only, and the Savings Credit will be treated as income.

Satisfactory Evidence

Clients will receive an Award Letter and Award Calculation Sheet for Pension Credit, which are system produced notifications that confirm their entitlement to Pension Credit. The calculation sheet will identify if the award is for Guarantee Credit and/or Savings Credit. It also shows a breakdown of any income the client has and any capital where applicable. The Award Letter will show which method of payment is being used. Forms PC12 and A14N(PC) are the clerical version of the Award Letter and the Award Calculation Sheet.

In accordance with Rule 2.6 of the General

Criminal Contract, satisfactory financial evidence will need to be supplied. The Award Letter together with the Award Calculation Sheet (or the clerical versions of these forms), should be accepted as satisfactory evidence of claim. Otherwise, any relevant correspondence from the paying agency in the client's possession would be acceptable, such as a Statement of Entitlement which explains how the client's Pension Credit has been worked out. (The Award Letter, or the 'short version' Statement of Entitlement, will not be accepted by themselves as evidence that Guarantee Credit is in payment where the form does not specify the type of Pension Credit received.)

Update packs have been sent to suppliers who hold a copy of the forms Masterpack and updated forms have been posted on the Commission's website. For an updated Keycard (No 39A) see pages 05 and 06. LSC Manual, volume IV will be updated in due course.

For more information regarding the changes please contact: Grace Nicholls, Means Assessment Policy Adviser, 29-37 Red Lion Street, London WC1R 4PP. Tel: 020 7759 1776, e-mail: grace.nicholls@legalservices. gov.uk

> Criminal Defence Service



TELEPHONE CALLS REGIONAL CONTACT POINTS

This article provides guidance on LSC regional contact points for queries on CDS issues such as questions about the General Criminal Contract, processing of forms, current consultations and other issues. Our aim is to ensure that you receive the best customer service. Please ensure that anyone who contacts the LSC from your firm has sight of this article.

Initially, the best point of contact is your account manager. They are best placed to deal with the majority of your queries. If they are unable to resolve an issue immediately, they will get back to you as soon as they have an answer. Alternatively, please contact your regional office's CDS team.

If the matter relates to the processing of your current CDS6, or other forms, you should contact your processing centre.

If the matter relates to a question on forthcoming changes to the Contract, or associated documentation, or concerns any current consultation document, please use the contact details shown in the relevant document.

For ease of reference a list of all regional office contact numbers is given in table (A).

Those offices marked with an asterisk are also processing centres where you must send your monthly returns, non-standard fee claims, requests for prior authorities and applications for extensions to upper limits. The processing centre that you use is dependent upon where your regional office is located.

office	unit	number
birmingham	CDS Team	0121 665 4826
brighton	CDS Team	01273 878825
bristol	CDS Team	0117 302 3172
cambridge	CDS Team	01223 417 841/842
cardiff	CDS Team	02920 647 253
chester*	CDS6/7 enquiries	01244 404 671
leeds	CDS team	0113 390 7461
liverpool*	CDS enquiries	0151 242 5372
london*	contract team	020 7759 1750
manchester	CDS enquiries	0161 244 5076
newcastle	CDS team	0191 244 5911/5921
nottingham*	CDS team	0115 908 4312
reading	CDS team	0118 955 8617

regional office	processing centre
birmingham (stoke-on-trent and north staffordshire, east staffordshire, stafford, staffordshire moorlands and shropshire only)	chester
birmingham (all other areas)	nottingham
brighton	nottingham
bristol	chester
cambridge	nottingham
cardiff	liverpool
leeds	liverpool
liverpool	liverpool
london (prior authority / upper limit extension applications)	london
london (claims and costs appeals)	liverpool
manchester (blackpool, west lancashire, fylde, south ribble, wyre and preston)	liverpool
manchester (all other areas)	chester
newcastle	chester
nottingham	nottingham
reading	nottingham

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