

# Focus

## ON CDS

### CONTENTS

GENERAL CRIMINAL CONTRACT CHANGES	02/03
CRIMINAL JUSTICE ACT 2003	04
EXTRADITION ACT 2003	04
MANAGING VERY HIGH COST CRIMINAL CASES	05
IDENTIFICATION CARDS REMINDER	06
INFORMATION SHEETS FOR POLICE STATION REPRESENTATIVES	06
CDS DIRECT PILOT SCHEME	06
LAST CALL FOR LEGAL AID LAWYER OF THE YEAR NOMINATIONS	06

- **GENERAL CRIMINAL  
CONTRACT CHANGES**

FOUR KEY CHANGES ARE BEING MADE TO THE GENERAL CRIMINAL CONTRACT IN THE FIRST HALF OF 2004. FOR DETAILS OF THESE CHANGES, PLEASE TURN TO PAGES 02 AND 03.

- **CRIMINAL JUSTICE ACT 2003**

FOR CHANGES TO TARIFF SETTING PROCEDURES AND IMPLICATIONS FOR FUNDING UNDER THE CRIMINAL JUSTICE ACT 2003, PLEASE SEE PAGE 04.

- **EXTRADITION ACT 2003**

FOR IMPLICATIONS FOR FUNDING UNDER THE EXTRADITION ACT 2003, WHICH CAME INTO FORCE ON 1 JANUARY 2004, PLEASE SEE PAGE 04.

- **VERY HIGH COST  
CRIMINAL CASES**

FOR DETAILS OF HOW ALL VERY HIGH COST CRIMINAL CASES ARE TO BE MANAGED FROM APRIL 2004, PLEASE TURN TO PAGE 05.



Very high cost cases (VHCC) account for around a quarter of the criminal legal aid budget – approximately £250 million a year. In recent years, their cost has increased relentlessly by 12% per annum. The Government is now taking action, through the Commission, to control this increase.

From April 2004, our Criminal High Cost Cases Unit will be responsible for managing all very high cost criminal cases.

## MANAGING VERY HIGH COST CRIMINAL CASES

### Very high cost cases:

- cost £150,000 or more per defence team (including profit costs, counsels' fees, disbursements and VAT); or
- last more than 25 days at trial.

### How the Very High Cost Contracting Scheme works

#### Notification

Under the Criminal Defence Service (General) (No. 2) Regulations 2001, SI 2001/1437, all solicitors' firms are required to notify the Criminal High Cost Cases Unit, in writing, of all VHCC cases they are instructed in.

If there is any doubt about whether a case is a VHCC, it should be referred to the Unit who will make the decision.

Firms dealing with a VHCC case should notify the:

- London Unit: if their office is based in the Commission's London, South Eastern, South Western, Eastern, West Midlands or Wales region.
- Liverpool Unit: if their office is based in the Commission's Merseyside, East Midlands, Yorkshire and Humberside, North Western or North Eastern region.

If the Unit decides that a case is VHCC, it will inform the firm of its intention to contract.

#### The Contract

Once the Unit has made the decision to contract, the solicitors and barristers working on the case may only continue to do so if they agree to enter into an individual case contract.

If they do not wish to do so, the Unit can apply to the court to have the Representation Order transferred to a solicitor who is willing to work under the VHCC Contracting Scheme (Criminal Defence Service (Choice in Very High Cost Cases) Regulations 2001, SI 2001/1169).

There is no opt out from the Contracting Scheme once the case has been designated a VHCC case.

The Unit will assign a dedicated contract manager to each defence team (solicitors and instructed counsel). That person will manage the individual case contract with the firm and counsel.

It is worth noting that if there is more than one defendant in a case, the Unit will assign a different contract manager to the other firm(s) representing the co-defendant(s) in the interests of confidentiality.

The contract manager will attend a meeting with the solicitors and counsel at which:

- Both parties are asked to sign an individual case contract.
- The defence team is asked to draft a case plan, which sets out an overview of both the prosecution and defence case.
- The defence team is asked to draft a stage plan and task list, which sets out what specific work the defence team, as a whole, intends to conduct over the next three months.

Templates for these documents can be downloaded from the VHCC section of the Commission's website: [www.legalservices.gov.uk/cds/contracting\\_process.htm](http://www.legalservices.gov.uk/cds/contracting_process.htm)

The contract manager will consider the defence team's plans and attend a meeting, with solicitors and counsel, to negotiate what work will be authorised over the three-month period. This includes agreeing a reasonable number of hours of work that each member of the defence team will conduct. Only work agreed in advance with the contract manager will be paid under the contract.

#### Payment

At the end of the three-month period, the contract manager will meet the solicitor and counsel to assess the attendance notes of work done against the plan of agreed work. All work done within the agreed allowance will be paid for at this point. The contract manager will also negotiate the hours of work for the next three months.

The rate of payment is based on the category of the case. The category depends on the case's seriousness and complexity. For instance:

- In a category one case, a QC or a senior solicitor receives £180 per hour for preparing work.
- In a category four case, they receive £100 per hour.

More information about the VHCC Cases Contracting Scheme is available on our website: [www.legalservices.gov.uk/cds/vhcc.htm](http://www.legalservices.gov.uk/cds/vhcc.htm). Alternatively, you can call the Unit on: 020 7759 1535.

## IDENTIFICATION CARDS REMINDER

Several police forces are requesting that solicitors and representatives show their identification cards when attending police stations.

You can obtain an identification card from the London Criminal Courts Solicitors' Association and the Criminal Law Solicitors' Association. An application form can be downloaded from our website: [www.legalservices.gov.uk/cds/index.htm](http://www.legalservices.gov.uk/cds/index.htm) (appendix 3F of the Duty Solicitor Manual).

## INFORMATION SHEETS FOR POLICE STATION REPRESENTATIVES

Information sheets for police station representatives and their supervising solicitors are now available from our website at: [www.legalservices.gov.uk/cds/infosheetrep.pdf](http://www.legalservices.gov.uk/cds/infosheetrep.pdf) and

[www.legalservices.gov.uk/cds/infosheetsup.pdf](http://www.legalservices.gov.uk/cds/infosheetsup.pdf)

These contain useful information to help representatives and supervising solicitors understand the requirements that apply to police station accreditation.

## CDS DIRECT PILOT SCHEME

Recently, we announced our plans to develop and pilot an enhanced police station call centre service. This service will receive requests for lawyers and, then, deploy them. It will also carry out initial diagnosis and provide telephone advice. Calls will only be referred on to contracted suppliers where and when attendance at the police station is necessary.

We believe that this service will provide significant benefits, including:

- quicker telephone advice;
- better value for money;
- enhanced cover in rural areas; and
- a significant reduction in the incidence of lawyers being disturbed for minor matters.

We plan to publish a consultation paper on the CDS Direct pilot this April.

For more information, contact: John Sirodcar, National Duty Solicitor Manager, CDS Directorate, e-mail: [johnsirodcar@legalservices.gov.uk](mailto:johnsirodcar@legalservices.gov.uk)

## Last Call for Legal Aid Lawyer of the Year Nominations!

The closing date for nominations for this year's Legal Aid Lawyer of the Year awards (LALYS) is 31 March 2004.

The LALYS were launched last year by Independent Lawyer magazine and the Legal Aid Practitioners Group; and are sponsored by legal publishers, Jordans. This year's categories are:

### Young Legal Aid Lawyer of the Year

Sponsored by the Legal Services Commission

### Criminal Defence Lawyer of the Year

Sponsored by Anya Designs

### Legal Aid Team of the Year

Sponsored by recruitment consultants, Graham Gill

### Family Legal Aid Lawyer of the Year

Sponsored by Solicitors Family Law Association

### Mental Health Lawyer of the Year

Sponsored by Matrix

### Social and Welfare Lawyer of the Year

Sponsored by JRS Consultants

### Immigration Legal Aid Lawyer of the Year

Sponsored by The Law Society

There will also be a judges' special award for the **Legal Aid Personality of the Year** (sponsored by Law Abroad).

The judges are:

- Cherie Booth – QC Chair
- Fiona Bawdon – Editor, Independent Lawyer
- Benedict Birnberg – Veteran Civil Liberties Lawyer
- Richard Egan – Winner of last year's LALY for Criminal Defence
- Judge Henry Hodge – Chief Immigration Adjudicator
- Steve Hynes – Chair, Law Centres Federation
- Doreen Lawrence – Stephen Lawrence Trust
- Roy Morgan – Chair, LAPG
- Sajid Sheikh – Committee Member, LAPG
- Rodney Warren – Director, Criminal Law Solicitors Association

For more information and a nomination form, see [www.independent-lawyer.com](http://www.independent-lawyer.com)



# GENERAL CRIMINAL CONTRACT CHANGES

**In the first half of 2004, four key changes are being made to the General Criminal Contract:**

**1. Contract Specification amendments were implemented on 1 February.**

These involved:

- a. implementing the police station telephone fixed fee for all suppliers; and
- b. restricting duty solicitor rates to the end of the initial period of custody.

**2. Further Contract Specification amendments will be made on 17 May.**

These involve implementing changes announced by the Department of Constitutional Affairs on 2 February 2004.

**3. The current General Criminal Contract has been extended to 30 June.**

**4. A new General Criminal Contract will be introduced on 1 July.**

This will include revised Standard Terms.

## THE FOUR CHANGES IN MORE DETAIL

### 1. Contract Specification amendments implemented on 1 February

*A fixed fee for police station telephone calls for all suppliers; and restrictions to police station duty solicitor rates to the end of the initial period of custody.*

In December 2003, we sent suppliers information on the amendments to Part E of the General Criminal Contract that were necessary to implement the above changes. A copy of the amended contract is available from our website: [www.legalservices.gov.uk/cds/index.htm](http://www.legalservices.gov.uk/cds/index.htm)

#### a. A fixed fee for police station telephone calls

This change only affects CDS suppliers who claim individual advice and routine telephone calls. It applies to all claims where work in the Criminal Investigations Class commenced after 00:01, 1 February 2004.

**For work starting on or after 1 February 2004:**

- Suppliers must claim the single police station fixed fee for telephone calls (they must not claim for individual calls). We provide guidance on claiming this fixed fee in the notes that follow table 2.2 in Part E of the amended contract.
- All police station attendances may be claimed at the higher rates in table 2.2 (Part E, General Criminal Contract).

**For work started before 1 February 2004:**

- Individual telephone calls and all police station attendances should be claimed at the rates in table 2.2a (Part E, General Criminal Contract) until the investigation concludes, irrespective of when the work is undertaken.

#### b. Restrictions to police station duty solicitor rates

This change affects all CDS suppliers and applies to all police station attendances that took place after 00:01, 1 February 2004 (irrespective of when work commenced in the Criminal Investigations Class).

Duty Solicitor rates can only be claimed for attendances made when the client is in custody for a continual initial period, following the acceptance of the call. All subsequent attendances – for example, to attend a bail back – will be at own solicitor rates.

Since the implementation of these two changes, we have received enquiries about claiming for matters that started before 1 February 2004 but continue after that date. The following example should clarify the situation.

#### Example:

On 25 January 2004, a call was accepted from the duty solicitor call centre. The duty solicitor provided telephone advice and, subsequently, attended the police station. As a result, the client was released on bail until 7 February 2004. On 7 February, the duty solicitor and their client attended the police station and the client was charged.

*Supplier A opted to claim individual advice and routine telephone calls.*

- The supplier should claim for all advice and routine calls made, including those after 1 February 2004.
- The first attendance at the police station should be claimed at duty solicitor rates but the second attendance should be claimed at own solicitor rates.
- All attendances should be claimed at the rates in table 2.2a (Part E, General Criminal Contract).

*Supplier B opted to claim the telephone fixed fee.*

- The supplier should claim for the telephone fixed fee and for attendances at the rates in table 2.2 (Part E, General Criminal Contract).
- The first attendance at the police station should be claimed at duty solicitor rates but the second attendance should be claimed at own solicitor rates.

### 2. Further Contract Specification amendments will be made on 17 May

As a result of the DCA's announcement on 2 February 2004, the following changes will be made on 17 May 2004:

- In certain cases, free police station advice will be limited to telephone advice (with some exceptions).
- Post-charge advice and assistance will be abolished for criminal proceedings (except when it is provided by the court duty solicitor).
- Advocacy assistance will be abolished for early hearings.
- The scope of the court duty solicitor scheme will be restricted to remove access for clients who are not in custody and who are charged with non-imprisonable offences.
- Suppliers will be able to claim for work carried out prior to the granting of a Representation Order. This amendment will broadly reinstate the former Regulation 44(7) Legal Aid in Criminal and Care Proceedings (General) Regulations 1989, SI 1989/344.

We have already consulted on the amendments to the General Criminal Contract that are needed to implement these changes. When drafting the final amendments, we took into account the many helpful and detailed responses we received.

We will publish these amendments on our website shortly. We will also send CDS suppliers notification of the amendments at least six weeks prior to implementation.

We will consult on changes to the Cost Assessment and Duty Solicitor Manuals, which support the above changes, in early March 2004. Although this consultation will primarily involve representative bodies, we are putting the revised manuals on our website and responses from individual solicitors are also welcomed.

### 3. The current General Criminal Contract has been extended to 30 June

#### 4. A new General Criminal Contract will be introduced on 1 July

In March 2003, we gave all CDS suppliers notice that the General Criminal Contract would terminate on 31 March 2004. Then, in November 2003, we consulted on the new General Criminal and General Civil Contracts. This consultation ended on 13 January 2004.

- Our consultation proposed:
  - Amendments to the Contract Standard Terms that would address practical contract operation issues.
  - Amendments to the Specification.
  - Minor amendments to the Specialist Quality Mark.

The Law Society (in its own right, and on behalf of the Criminal Law Solicitors' Association and the London Criminal Courts Solicitors' Association) and the Legal Aid Practitioners Group have responded to the proposals. To allow time to discuss the proposals in more detail, we have agreed to extend all General Criminal Contracts by three months.

We have sent CDS suppliers a letter offering an extension of their Contract to 30 June 2004. CDS suppliers do not need to take any action to accept the offer, other than continue to undertake work.

We plan to send CDS suppliers the final Standard Terms, Contract Amendments and Contract for signature in mid-May. The new Contract will be commence on 1 July 2004.

*For more information, contact: Maryvonne Islip, Project Manager, CDS Directorate  
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### Consultation on Criminal Contract Changes

*On 5 June 2003, the Department of Constitutional Affairs (DCA) published their consultation paper: 'Value for Money in the Criminal Defence Service'. This proposed a number of changes to the scope of the Criminal Defence Service (CDS). On 2 February 2004, the DCA announced a number of changes as a result of this consultation. We will implement these changes on 17 May 2004.*

*On 20 June 2003, the Legal Services Commission (LSC) published a consultation, primarily to consider changes to the General Criminal Contract arising from the above-mentioned DCA consultation. The Commission also consulted on two additional proposals, introduced on 1 February 2004.*



# CRIMINAL JUSTICE ACT 2003

## CHANGES TO TARIFF SETTING PROCEDURES AND THE FUNDING IMPLICATIONS

The Criminal Justice Act 2003 received Royal Assent on 20 November 2003. Under the Act, judges – not the Secretary of State – fix the minimum tariffs for defendants receiving a mandatory life sentence.

The provisions on sentencing came into effect on 1 January 2004. Transitional provisions, set out in Schedule 22 of the Act, were implemented from 18 December 2003.

## PRESENT FUNDING SITUATION

The General Criminal Contract (Part A, Section 5.2.1) provides that Advice and Assistance, including Advocacy Assistance, may be given to qualifying prisoners in the Prison Law Class of Work.

These legislative changes eliminate the distinction in the sentencing and tariff-setting procedures between mandatory lifers and HMP prisoners; and automatic lifers and discretionary lifers.

In all cases, the court will set prisoners' tariffs and there will be a right of appeal from this decision.

## FUNDING OF LEGISLATIVE CHANGES

When the court sets a tariff at the sentencing stage, there is no longer any need to make separate representations to the Home Office. The Representation Order, granted in the substantive proceedings, will cover representations made on the defendant's behalf.

In light of this change, Part B, paragraph 6.5.1 of the General Criminal Contract becomes obsolete and will be removed in due course.

## APPLICATIONS AND REFERRALS TO THE HIGH COURT UNDER SCHEDULE 22

Applications and referrals in transitional cases (under Schedule 22 of the Act) fall within the scope of the Prison Law Class of the General Criminal Contract. Part A, paragraph 5.2.1(b), provides for: 'Advice and assistance on legal issues arising from his or her sentence'.

This work is subject to an extendable £300 upper limit. The client must be financially eligible and the case must meet the Sufficient Benefit Test.

The Act provides that such applications are determined by a single High Court judge without an oral hearing. Therefore, the work should relate to the preparation of a paper-based hearing only.

## ADVICE, ASSISTANCE AND REPRESENTATION AT PAROLE BOARD HEARINGS

The legislative changes and current case law provides that mandatory lifers can elect to have an oral hearing to consider their release. Work carried out for Parole Board hearings is within the scope of the Prison Law Class of the General Criminal Contract (Part A, paragraph 5.2.1(d)).

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# THE EXTRADITION ACT 2003

## FUNDING IMPLICATIONS

The Extradition Act 2003 received Royal Assent on 20 November 2003 and came into force on 1 January 2004. It reforms and streamlines the procedures under the Extradition Act 1989.

The former Act will continue to apply to defendants for whom warrants of arrest were issued before 1 January 2004. Although the procedures under the new Act remain broadly the same, there are some reforms – particularly to the appeal stage – that will have funding implications.

Extradition proceedings at the police station and at court, including bail hearings, continue to be covered by the General Criminal Contract under the Criminal Investigations and Criminal Proceedings classes respectively.

Police station work should be claimed in the same way as a criminal investigation. Applications for a Representation Order should be made to the magistrates' court using Form A. Advice and

assistance for such cases can also be provided under CDS1/2 if the defendant is eligible.

Where an order for the defendant's extradition is made, the defendant has seven days to appeal on a question of law or fact to the High Court and, thereafter, to the House of Lords.

The High Court proceedings will also be classed as criminal proceedings under the General Criminal Contract. Applications for Representation Orders should be made to the High Court (not to the magistrates' court).

Representation on appeal to the House of Lords will be funded separately, by an application to the relevant court, in accordance with Regulation 10 of the Criminal Defence Service (General) (No. 2) Regulations 2001, SI 2001/1437. These procedures are intended to replace the old route of habeas corpus, which was classed as Associated Community Legal Service (CLS) work.

Proceedings to deliver defendants to the International Criminal Court will now also be

dealt with under the 2003 Act. Such proceedings are, like extradition, classified as criminal proceedings for the purposes of the Access to Justice Act 1999. Therefore, they will be funded in the same way.

The aim of the Act is to simplify and expedite proceedings, particularly for EU countries. However, extradition remains specialised work and a Representation Order is still likely to be granted in such cases, with enhanced rates payable where appropriate.

The 2003 Act provides that human rights issues should be heard in the same tribunal as the substantive proceedings, so there should be no need to fund these separately as Associated CLS work.

Finally, if the court orders the defendant's discharge, there is provision in the Act for their costs to be paid out of money provided by Parliament.

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