

FOCUS

ON CDS

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- **CHANGES TO THE GCC**

A NEW GENERAL CRIMINAL CONTRACT WAS INTRODUCED ON 1 JULY AND SCOPE CHANGES ANNOUNCED BY THE DEPARTMENT FOR CONSTITUTIONAL AFFAIRS HAVE BEEN IMPLEMENTED. FOR THE DETAILS PLEASE SEE PAGES 02–03.

- **CDS GUIDANCE CHANGES**

BECAUSE OF THE NUMEROUS RECENT CHANGES TO THE GENERAL CRIMINAL CONTRACT, CDS GUIDANCE MANUALS HAVE BEEN UPDATED TO REFLECT THE ALTERATIONS. FOR A SUMMARY OF THE CHANGES, PLEASE TURN TO PAGE 04.

- **ANTI-SOCIAL BEHAVIOUR ORDERS**

FOR DETAILS OF HOW ANTI-SOCIAL BEHAVIOUR ORDERS ARE FUNDED UNDER THE GENERAL CRIMINAL CONTRACT, PLEASE TURN TO PAGE 05.

- **CONFISCATION, RESTRAINT AND RECEIVERSHIP PROCEEDINGS**

THE PROCEEDS OF CRIME ACT 2002 SETS OUT NEW PROCEDURES TO RECOVER ASSETS REPRESENTING THE PROCEEDS OF CRIME FROM DEFENDANTS IN CRIMINAL PROCEEDINGS. FOR MORE DETAILS, SEE PAGE 06.



CHANGES TO THE GENERAL CRIMINAL CONTRACT

There have been two significant changes to the General Criminal Contract (GCC) since *Focus on CDS 14* was published in March 2004. A new GCC has been introduced from 1 July 2004 and scope changes announced by the Department for Constitutional Affairs (DCA) have been implemented.

NEW GENERAL CRIMINAL CONTRACT – 1 JULY 2004

A summary of the changes is provided on page 03. All CDS Suppliers were provided with a new Contract for Signature and a copy of the revised Contract Standard Terms and Contract Specification. These changes will be incorporated into the Legal Services Commission Manual by December 2004.

All existing GCCs had already been extended to 30 June 2004 to enable further consultation with The Law Society and other representative bodies. Since the documentation was issued it was agreed that two of the amendments would not come into effect before 1 October 2004. Details are contained in the summary and in a letter dated 1 June 2004 sent to CDS Suppliers.

In the London Region, all CDS suppliers have been issued a one year Contract that ends on 30 June 2005. This is to enable the Commission to undertake a review of contracting arrangements in London and hold a criminal bid round. A consultation document will be issued on how we intend to proceed. All other Contracts will end on 31 March 2007.

CDS SCOPE CHANGES

Following consultation last year, the DCA announced on 2 February 2004 a number of changes to the scope of the CDS to be implemented from 17 May 2004 by amending the GCC.

In addition the Contract has been amended to allow work to be claimed prior to the grant of a Representation Order. This change broadly reinstated the former regulation 44(7) of the Legal Aid in Criminal and Care Proceedings (General) Regulations 1989, SI 1989/344.

In April 2004, a 'concession' was agreed which enables work undertaken for a client to be claimed in cases where the solicitor determines that the Interests of Justice Test is met and an application for a Representation Order is submitted, but subsequently refused. A claim is capped at the equivalent of one hour's work at preparation rates, although the work undertaken could involve advising a client, travel to and waiting at court and representing the client at an early hearing. A new claim code, 2P, has been allocated for Pre-Order Cover.

The Commission wrote to all CDS suppliers on 1 June 2004 to provide Contract amendments to implement the above concession. This also extended the scope of the Contract to make funding available to respondents facing proceedings under sections 2, 5 and 6 of the Anti-social Behaviour Act 2003 (which covers the making or extension of closure orders and appeals against such orders). Both amendments apply from 1 July 2004 but operate retrospectively from 17 May 2004.

A summary of the Contract changes introduced on 1 February and 17 May 2004 has been provided which can be removed and retained for reference at page 09. This will also be available on our website (www.legalservices.gov.uk).

As a result of the changes to the GCC this year, it has been necessary to make a number of amendments to published guidance. Consultation took place on these changes earlier this year and a summary of the key changes is provided at page 04.

For further information please contact Maryvonne Islip, CDS Project Manager, e-mail: maryvonne.islip@legalservices.gov.uk

Latest News... Latest News... Latest News... Latest News... Latest News... Latest News... Latest News...

- *During the last few months we have continued to focus on controlling costs so that our limited fund goes further in meeting clients' needs. For example, our spend on Very High Cost Criminal Cases (VHCCCs) has been increasing by 12% each year, significantly reducing the amount we can spend on countering social exclusion. We have introduced a system of contracting for barristers working on these cases which includes the agreement of a plan for managing each case and set rates of pay. You will no doubt have heard a lot about the discussions with the Bar over the introduction of this system. We have arrived at an agreement which will continue to deliver a significant reduction in the cost of VHCCCs and improved control over future spending. The agreement will reduce the level of savings from that originally estimated, but it must be stressed that it is a reduction in savings and not an increase in remuneration. There will be a further consultation in the autumn to bring trials that end in a guilty plea within the graduated fees scheme. We expect the introduction of this scheme to make a significant additional saving.*
- *Subject to a formal consultation by the Department for Constitutional Affairs, it is proposed that duty solicitors attending police stations for more serious offences be paid at an enhanced attendance rate. More serious offences include murder, rape, terrorism and other serious offences which will be defined as part of the consultation process. This proposal recognises the level of accreditation achieved by duty solicitors and better rewards greater skill by encouraging experienced practitioners to attend the most serious cases. It has been welcomed by the Law Society.*

NEW GENERAL CRIMINAL CONTRACT – 1 JULY 2004 – SUMMARY OF AMENDMENTS

On Thursday 1 July 2004, following extended consultation, the new General Criminal Contract came into force. On the same day, similar amendments to the General Civil Contract (Solicitors) came into force.

All Criminal Contractors have been sent a copy of the new Contract showing the amendments. Few of the amendments affect the day-to-day performance of Contract Work. The following table sets out the most significant amendments.

Description of Amendment	Clauses
Key Amendments	
Emphasis of three key contract terms – standard of services, Specialist Quality Mark and payment claiming rules	Foreword
LSC and contractors to work together to achieve best possible value for money	Clause 2.1
Amendments to Specification normally confined to April and October	Clause 11
To enable piloting different methods of contracting, if DCA directs, LSC may terminate all contracts in a specified geographical area, or in specified categories or classes of law, on at least six months' notice	Clause 20
Client and Public Interest Amendments	
Complete ban on all referral fees for publicly funded work	Clause 12A
LSC may disclose information about contractors (not about clients) where it is in the public interest to do so	Clause 13
LSC has right to access information held on IT system for an official investigation	Clause 3
Technical Amendments	
Technical changes to cover LLPs, incorporated practices and automatic novations for most changes of partnership (but not for changes of more than one third of membership in past 12 months). Provision for annual 'constitutional statements' to verify membership	Clause 18
Where there is an intervention or a receiver is appointed with a view to closing a contractor, a list of open and closed cases must be provided, open cases must be promptly transferred and bills for assessment and outstanding claims for payment must be submitted	Clause 16
LSC has no obligation to pay for work outside the limitation on a certificate even where a court assessment has overlooked the limitation	Clause 16
Where contractor fails to pay a third party without good reason, LSC may pay, and deduct from contractor's payments	Clause 12A
Contract ends immediately if there is an intervention by The Law Society	Clause 20
LSC (as well as contractor) may make oral representations at a CRB review	Clause 23
Amendments to Crime Specification	
Removal of some performance standards	Part D, Rules 5.1 to 5.5
Specific obligation to notify LSC of very high cost cases	Rule 7.12
Amendments deferred to 1 October 2004	
<i>The amendments below – though shown in the new contract documents – will not come into effect before 1 October 2004 and, in the meantime, further discussions with representative bodies are underway</i>	
Amendments to the Costs Assessment and Appeals procedure	Specifications Rules - Civil 2.14 to 2.18 Crime C1.1 & C10 to C.13
Second technical amendment described above (list of open and closed cases, etc) will not apply to interventions before 1 October 2004	Clause 16

Criminal Defence Service Guidance – Summary of Changes

Due to the number of recent changes to the General Criminal Contract (GCC) effective from 1 February, 17 May and 1 July 2004, it has been necessary to amend guidance contained in the PACE Cost Assessment Manual, Criminal Bills Costs Assessment Manual and the Duty Solicitor Manual. The Legal Services Commission consulted on these changes earlier this year and final versions of the manuals are now published on our website (www.legalservices.gov.uk). A joint response to the consultation was submitted by the Law Society, the Criminal Law Solicitors' Association and London Criminal Courts Solicitors' Association and this is reproduced on the website with the Commission's response to each point raised. We are grateful for the constructive comments received.

A summary of the key changes to each of the manuals is given below.

CRIMINAL BILLS COSTS ASSESSMENT MANUAL

This manual has been amended to reflect the changes to the GCC introduced from 17 May 2004. A number of other amendments have been made by way of general updating.

The revised guidance applies to all contract compliance audits and non-standard fee assessments where the work was undertaken on or after 17 May 2004. Where guidance has been changed to give effect to amendments to the GCC from 17 May 2004, the transitional arrangements at GCC, Part B, Rule 1.5 will be used to determine whether the previous version of this guidance should apply (June 2003).

- Clarification has been added regarding when a mixed plea standard fee may be claimed (Section 3.4).
- New guidance has been added on youth detention and training orders (Section 3.14).
- New guidance has been added on Anti Social Behaviour Orders (Section 3.15).
- In future all applications for prior authority relating to electronic evidence/livenote applications will be handled by the Criminal High Cost Case Unit (Sections 4.9 and 4.10).

- Section 5 of the manual has been substantially rewritten to reflect changes to the GCC and the reintroduction of back-dating provisions under a Representation Order.
- Wasted cost guidance (Section 10.5) has been clarified.
- CRIMLA 12 has been updated to reflect the recent amendment made by the Cost Appeals Committee (Section 10.8).
- New guidance has been added to clarify the interaction between publicly and privately funded work (Section 10.14).

PACE COST ASSESSMENT MANUAL

This manual has been substantially revised to reflect amendments to the GCC from 1 February 2004 and 17 May 2004.

The revised guidance applies to all contract compliance audits and non-standard fee assessments where the work was undertaken on or after 17 May 2004. Where guidance has been changed to give effect to amendments to the GCC from 17 May 2004, the transitional arrangements at GCC, Part B, Rule 1.5 will be used to determine whether the previous version of this guidance should apply (June 2003).

Similarly, where guidance has been amended to give effect to amendments to the GCC from 1 February 2004, the transitional arrangements at GCC, Part E, Table 2.2 (notes below) will be used to determine whether the previous version should apply.

- The manual has been renamed the Police Station and Court Duty Solicitor Cost Assessment Manual due to the inclusion of guidance on court duty solicitor work for the first time.
- Transitional arrangements have been added to section 1.
- The definition of 'volunteer' in section 3 has been amended to match the definition in the Criminal Defence Service (General) No 2 Regulations 2001, SI 2001/1437.
- Sections 4, 7, 8 and 9 have been substantially amended as a result of changes made to the GCC on 1 February and 17 May 2004.
- A new section has been added to provide guidance on undertaking and claiming for court duty solicitor work (Section 10).

DUTY SOLICITOR MANUAL

This manual has been amended to reflect the changes to the GCC introduced from 1 February and 17 May 2004. The changes made to the GCC on 1 July 2004 have also been incorporated. A number of other amendments have been made by way of general updating.

The revised guidance applies from 17 May 2004.

- Amendments to the scope of the court duty solicitor scheme (new Section 2.5 and amended Section 2.13).
- Amendments to the scope of the police station scheme (new Section 3.3).
- Restriction of duty solicitor rates to initial period of custody (Section 9.7).
- Amendments in anticipation of changes to the requirement that court duty solicitors wear badges (Section 2).
- Amendments in anticipation of changes to remove some of the performance standards (Section 3).
- Information on volumes of cases by court and the list of busy courts will no longer be contained in the manual (delete Appendices 2A and 2B; amendments to Section 2).
- New section has been added to clarify the position with respect to pregnancy (Section 6.28).
- Changes resulting from amendments to the Duty Solicitor Arrangements in June 2003 have been made (Section 4.30 and 7.2. Delete Appendix 5A).
- Clarification of requirements for membership of a second or subsequent scheme (Section 4.20).
- Clarification of approach if there are changes to travel times once an application has been accepted (new Section 4.21).
- Clarification of requirements for suppliers setting up their own telephone referral system (Section 3.36).
- Some requirements were only relevant during the establishment of the Criminal Defence Service and are therefore no longer relevant. These requirements have been deleted or amended (mainly Section 8).

Anti-Social Behaviour Orders – How are they funded under the General Criminal Contract?

Anti-Social Behaviour Orders (ASBOs) imposed under the Crime and Disorder Act 1998 (sections 1, 1C, 1D, 2 or 2A) can be funded under the General Criminal Contract (GCC).

Section 1C of the 1998 Act covers orders sought in either the magistrates' or the Crown Court, following conviction for an offence where the court considers that the defendant has acted in an anti-social manner and an order is necessary to protect the public from further anti-social acts.

Proceedings under section 1C are treated as incidental to the main proceedings and are funded by the Legal Services Commission under the representation order granted for the main proceedings. There is no financial upper limit. At the conclusion of the case, this work forms part of the claim for the main proceedings and should be claimed as part of either the standard or non-standard fee claim. It does not attract a separate fee.

Sections 1 and 1D of the 1998 Act cover applications for orders made by the relevant authority in respect of any person aged 10 or over, where it appears to that authority that the person has acted, since the commencement date, in an anti-social manner and that the making of such an order is necessary for protection from further anti-social acts.

Sections 2 and 2A of the 1998 Act deal with applications for sex offender orders where that person has acted, since the relevant date, in such a way as to give reasonable cause to believe that an order is necessary to protect the public from serious harm.

Proceedings under sections 1, 1D, 2 and 2A are treated as criminal proceedings and are funded through Advocacy Assistance (GCC, Part A, para 3.2.1(b)). Such work is subject to an extendable financial limit of

£1,500. Advocacy Assistance is self granted by the supplier on completion of Form CDS 3. Remuneration rates can be found at GCC, Part E, Section 3.3.

A breach of an ASBO is a criminal offence for which the maximum punishment is a term of imprisonment. Breach proceedings are criminal proceedings as defined by section 12(2) of the Access to Justice Act 1999, and so a representation order may be obtained from the relevant court. This work should be claimed as breach proceedings, ie as a separate matter attracting its own standard fee when dealt with alone or as part of a series of offences if the defendant is before the court for other reasons (GCC, Part B, Rule 5.8.8).

Appeal against an ASBO lies to the Crown Court under section 4 of the 1998 Act. Appeal proceedings are also funded as self-granted Advocacy Assistance. The position on funding, forms, etc, is the same as for magistrates' court Advocacy Assistance. The only difference on claiming payment for this work on Form CDS 6 is that a different claim code is used – 2H.

In exceptional situations the Commission has power to grant a representation order, however, applications will usually be refused because Advocacy Assistance is available. Applications for a representation order should be made to the relevant process centre on Form CDS 3. At the conclusion of the case the work is billed as non-standard fee.

There is no financial limit on the work done under the order nor any need to apply for financial extensions, however, in all other respects this work is governed by the Advocacy Assistance rules. For example, solicitors will not be paid for attending to sit behind counsel.

Anti-Social Behaviour Orders not funded under the General Criminal Contract

Section 1B(5) deals with applications to vary or discharge orders that are made to the county court. Such applications are funded by the Community Legal Service and are not within the scope of the GCC.

Orders made under the Anti-social Behaviour Act 2003

The 2003 Act introduces three new types of order, which can be obtained by the police or local authorities on application to the courts independently from criminal proceedings:

- Closure Orders (section 2).
- Parenting Orders (section 20).
- Parenting Orders in respect of criminal conduct and anti-social behaviour (section 26).

From 17 May 2004, Closure Orders, made or applied for under sections 2, 4 and 5 of the 2003 Act, can be funded using Advocacy Assistance in the same way as orders made under the 1998 Act.

Section 20 and 26 parenting orders are not within scope of either the Criminal Defence Service or Community Legal Service Schemes. Funding can only be secured via the exceptional funding scheme. Applications should be made on Form CLS APP1 to the London Regional Office, 29/37 Red Lion Street, London, WC1R 4PP.

Confiscation, Restraint and Receivership Proceedings Before and After the Proceeds of Crime Act 2002

The Proceeds of Crime Act 2002 sets out new procedures for the State to recover assets representing the proceeds of crime from defendants in criminal proceedings and from other individuals.

Parts of the 2002 Act came into force in March 2003, but some proceedings will still be brought under previous legislation, principally the Drug Trafficking Act 1994 and the Criminal Justice Act 1988. Broadly speaking, funding is usually available for a firm with a General Criminal Contract to undertake work in such proceedings before or after the 2002 Act. However, the way in which such work is funded varies according to which legislation it is brought under and the specific proceedings involved.

In the context of criminal proceedings, the basic structure of proceedings under both the 2002 Act and previous legislation is as follows. If a defendant is convicted, the prosecuting authority can apply to the court for a Confiscation Order requiring him to pay (on pain of imprisonment), a sum representing either the benefit he has received from criminal activity or the amount available from his assets, whichever is smaller. In order to protect its interests prior to a conviction, the prosecuting authority can apply for a Restraint Order which prevents the defendant and others dealing with assets that may be confiscated. If necessary, the court can appoint a receiver to protect the assets' value.

For proceedings brought under legislation prior to the 2002 Act, although Crown Courts have jurisdiction to deal with defendants post-conviction, certain procedures (including those concerning Restraint Orders and receivers) take place in the High Court, with any appeal going to the Court of Appeal (Civil Division) and the House of Lords. The Criminal Defence Service (General) (No 2) Regulations 2001, SI 2001/1437, stipulate that such proceedings are to be 'regarded as incidental to the criminal proceedings from which they arise'. This means that any Representation Order granted for the substantive criminal proceedings will cover the confiscation, restraint and receivership proceedings as well, despite the fact that they occur in civil courts.

High Court work in this context can be claimed from the Commission under the GCC (Part B, Section 3.2.1(e)). This applies whether or not the substantive case has been committed to the Crown Court. The High Court rates are in Part E, Section 3.6. If the claim is under £2,500 it should be claimed as a civil bill using Form CLSCLAIM1 and will be assessed by the Legal Services Commission (Newcastle office). Once assessed, the amount allowed is claimed using Form CDS6 (claim code 2I). If it is over £2,500, the civil bill should be sent to the High Court. The court will assess it and issue a legal aid assessment certificate. You should then claim the amount allowed on a CDS6 using claim code 2I.

Where proceedings continue to the Court of Appeal (Civil Division), the work done is not covered by the GCC but will still be covered by the Representation Order for the substantive criminal proceedings. Where they continue to the House of Lords, you should apply to the Court of Appeal for a separate Representation Order. The bill should be sent to the relevant court and you should refer to them for the applicable forms and rates.

If there is no Representation Order in place, for instance because the substantive proceedings have ended, then an application should be made to the court for one using Form A. The definition of criminal proceedings in the Access to Justice Act 1999, section 12(2), includes proceedings before a court dealing with an individual convicted of an offence including proceedings in respect of a sentence or order, so any court dealing with such matters post-conviction (such as the enforcement of a Confiscation Order, or an application for a Certificate of Inadequacy if the defendant is unable to pay) has the power to grant a Representation Order.

For proceedings brought under the 2002 Act against a defendant in the context of criminal proceedings, the venue is always

the Crown Court. Any Representation Order granted to cover the substantive case will also cover the relevant work at the usual Crown Court rates. The work should be claimed as part of the Crown Court bill.

However, the 2002 Act also provides for proceedings that can be taken against individuals other than criminal defendants. For such proceedings funding is not available from the Criminal Defence Service, but it may be available from the Community Legal Service (CLS) using the applicable CLS forms and rates. Civil proceedings under the 2002 Act are treated as Associated CLS Work and can therefore be carried out by any firm with a GCC (Part A, Section 6.2.1(b)).

Applications for civil funding should be sent to the London regional office using Form CLS APP1. The merits and financial eligibility criteria and procedures vary according to what applications are involved. In appropriate circumstances, you may self-grant an emergency certificate using devolved powers (Part B, Rule 7.3). For full details of what work can be funded and how, follow the CLS Funded Work link in the Guidance section of the LSC website at www.legalservices.gov.uk/guid/proceeds_of_crime_act.pdf

Due to their complex nature, the Commission has developed a special procedure to consider applications for funding in civil proceedings under the 2002 Act involving the Assets Recovery Agency. These are handled by the Special Cases Unit based at the London regional office. The Commission has produced specific guidance for solicitors in these cases. It is available on the LSC website at www.legalservices.gov.uk/guid/poca_and_ara_guidance_may04.pdf

If you require further assistance please contact John Binns at john.binns@legalservices.gov.uk

Draft Criminal Defence Service Bill

The Department for Constitutional Affairs (DCA) published a consultation paper on 24 June called *The Criminal Defence Service Bill (Code CP 17/04, Command Paper CM 6194)*. It can be found at www.dca.gov.uk/consult/crimdefser/crimdefserbill.htm

This consultation paper contains a proposal to transfer the responsibility for granting criminal legal aid from the magistrates' courts to the Legal Services Commission, and to re-introduce a means assessment test for representation orders.

The paper suggests three possible models for a means assessment test, and invites suggestions for alternatives:

- **Model 1**

A return to the disposable income test formerly operated by the courts with a one off contribution to be paid by the client depending on the cost of the case.

- **Model 2**

A simple gross income cap of £25,000, below which the client will receive free legal aid and above which s/he will pay privately.

- **Model 3**

A series of gross income bands with a fixed contribution of between nil for the lowest paid and £5,000 for incomes of £45,000 or more where the case appears in the Crown Court.

Practitioners are encouraged to read and consider the implications of these proposals and to respond directly to the DCA. Consultation closes on 6 August 2004.

To prevent delays in representation orders being granted if the process does move to the Commission, we will be requiring all suppliers to submit applications to us electronically. This will enable us to get a decision back to you within 24 hours.

We appreciate that you will need time to get your practices geared up to this way of working and we will be publishing more information about how this will work and what internet access you will need over the coming months.

Further information will be published once the consultation period has closed, but in the meantime, if you have any queries please contact Maryvonne Islip, CDS Project Manager, e-mail: maryvonne.islip@legalservices.gov.uk

Stop Press...Stop Press...

A recent check of CDS6s submitted to our Processing Centres has identified two claiming issues. The details are provided below – please ensure anyone involved with preparing claims for submission to the Legal Services Commission is aware of them.

New Outcome Codes

The Z2 outcome code must only be used for magistrates' court representation order cases that finished before 17 May. It must not be used for cases that finished on or after 17 May. It must not be used for investigations work. Magistrates' court representation order cases that finish on or after 17 May should use the new outcome codes A2 – P2. Investigations work that finishes on or after 17 May 2004 should use the codes A1 – F1. Please see the article on page 11 for detailed guidance.

Police Station Telephone Advice Fixed Fee

The Police Station Telephone Advice fixed fee was implemented for all suppliers on 1 February 2004. A review of claims submitted has identified examples of the fixed fee being claimed incorrectly. The circumstances in which a fixed fee can be claimed are detailed in the notes following table 2.2 (General Criminal Contract, Part E), however, the following should be noted.

- Only one fixed fee may be claimed per investigation irrespective of the number of telephone attendances on the client, police or other parties.
- The relevant rates for the fixed fee are:

National	£30.25 (excl. VAT)	£35.54 (incl. VAT)
London	£31.45 (excl. VAT)	£36.95 (incl. VAT)

Outcome of ETMP Revised Fee Structure Consultation

In Focus on CDS 13, we reported that the Department for Constitutional Affairs (DCA) had issued its consultation paper 'Proposed Changes to Criminal Defence Service Fee Structures' in November 2003.

The consultation paper covered the DCA's proposals to improve pre-trial preparation and case progression as part of the Effective Trial Management Programme. In December 2003, the LSC circulated draft contract amendments to support the DCA's proposals for re-structuring standard fees in magistrates' courts. The new structures were to be piloted in six areas (West Midlands, West Yorkshire, North Wales, Bedfordshire, Greater Manchester and Essex) from February 2004.

After considering the consultation responses and meeting with the Bar Council and the Law Society, we have decided that the proposals for the re-structuring of standard fees and interventions for persistent poor performance will not go ahead. The current fee structure set out in Part E, Section 3.5 of the General Criminal Contract remains unaltered and these fees should continue to be claimed on Form CDS6. Meanwhile, the six pilot sites are piloting new processes and revised court procedures on a local basis.

CDS Direct

On 4 May 2004, the Legal Services Commission published a consultation paper proposing a pilot of a project named CDS Direct. A copy of the consultation paper was sent to the professional bodies and all suppliers in the intended pilot sites of Liverpool, London and Boston. The pilot aims to: improve value for money in the Criminal Defence Service; enhance the service provided at police stations for those detained and the police and ensure that duty solicitors are called out on cases at the right time.

A copy of the consultation is available via www.legalservices.gov.uk/misl/news/index.htm

The consultation period closed on 16 June and many helpful responses have been received. Meetings with suppliers in the proposed pilot areas have proved most useful in identifying issues that the Commission will consider. The Commission intends to publish the outcome to the consultation in September 2004.

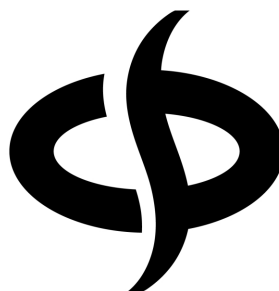
The consultation proposed a pilot covering non-indictable only matters whereby clients would receive initial legal advice by telephone from CDS Direct employees, who will be accredited police station representatives, or solicitors holding the Law Society's Police Station Qualification and have recent experience of police station work.

Non-indictable only cases would only be passed onto a Criminal Defence Service solicitor when the police confirm to CDS Direct that a time has been set for a duty solicitor interview or an identification.

If the pilot goes ahead following the consultation, it will cover police stations in London, Liverpool and Boston (Lincolnshire) from this autumn and run for at least six months. The Commission then intends to seek tenders from those organisations who will be able to meet defined quality standards including the ability to manage a significant volume of requests.

For more information please contact John Sirodcar, Head of Duty Solicitor Schemes, e-mail: john.sirodcar@legalservices.gov.uk

**Criminal
Defence Service**



Summary of Criminal Defence Service Scope Changes from 17 May 2004

Police Station Advice and Assistance

The following cases are limited to telephone advice only: (GCC, Part B, 8.2.17)

- Client detained in relation to a non-imprisonable offence
- Client arrested on a bench warrant
- Client arrested on suspicion of driving with excess alcohol, failure to provide a specimen, driving whilst unfit/drunk in charge of a motor vehicle
- Client detained in relation to breach of bail conditions

Unless one of the following exceptions applies: (GCC, Part B, 8.2.18)

- An interview or ID procedure is going to take place
- The client is eligible for assistance from an appropriate adult
- The client requires an interpreter or is unable to communicate by telephone
- The client complains of serious mistreatment by the police
- The investigation includes another alleged offence which is not limited to telephone advice only
- The solicitor or representative is already at the police station

Note: The reasons for attendance at the police station must be endorsed on file

Applies to all acts of Police Station Advice and Assistance that take place after 00:01 17 May 2004

Other changes (GCC, Part B, 8.2.19-22)

- Attendance for ineffective bail to return may be disallowed if telephone checks are not made (at least one telephone call should be made).
- Post-charge attendance is limited to providing further legal advice immediately following charge, except where a client requires further assistance due to their particular circumstances, or representations about bail are to be made. In such cases, the relevant factors or justification must be noted on file.

Applies to all Police Station Attendances that take place after 00:01 17 May 2004

Advice and Assistance in the Criminal Proceedings Class

Advice and Assistance in the criminal proceedings class is abolished (except for Advice and Assistance provided by the Court Duty Solicitor). (GCC, Part A, 3.2.1 (a))

Advice and Assistance may not be provided in the Criminal Proceedings Class after 00:01 17 May 2004 (irrespective of when the CDS 1/2 were completed)

Advocacy Assistance for Early Hearings

Advocacy Assistance for Early Hearings is abolished.

Advocacy Assistance continues to be available for other cases (GCC, Part A, 3.2.1 (b))

Advocacy Assistance may not be provided at any early hearing on or after 17 May 2004

Pre-Order Work/Pre-Order Cover

Pre Order Work (GCC, Part B, Rule 5.6)

Former regulation 44(7) is broadly reinstated enabling legal advice and representation provided prior to the grant of a Representation Order providing the following conditions are met:

- the interests of justice required that the advice or representation was provided as a matter of urgency
- there is no undue delay in applying for a Representation Order (submitted within five working days of instructions)
- the pre-order advice/representation was given by the CDS Supplier subsequently assigned under the Order.

All work must be included in a single claim under the Representation Order

Applies to all Cases in the Criminal Proceedings Class of Work where the application for a Representation Order was received by the court on or after 17 May 2004

Pre Order Cover (GCC, Part B, Rule 5.13)

The following conditions must be met to claim for Pre Order Cover:

- A qualified solicitor (designated fee-earner) or SQM Supervisor must have determined that the case meets the interests of justice test and documented the reasons why.
- An application must have been submitted for a Representation Order.
- The Representation Order must have been refused (copy of notice of refusal to be retained on file).

All claims for Pre Order Cover are capped at a maximum of £49.70 outside London and £52.55 in London (excl. VAT)

A claim for Pre Order Cover can include any combination of preparation, advocacy, routine letters and telephone calls, travel and waiting.

Applies to all Cases in the Criminal Proceedings Class of Work where the application for a Representation Order was received or refused by the court on or after 17 May 2004

The Scope of the Court Duty Solicitor Scheme from 17 May 2004

Court Duty Solicitor Scheme – GCC, Part A, 3.2.1 (a) and (b) and Part B, 8.3, 8.5

A Duty Solicitor may advise and represent:

- Anyone in custody (must advise).
- Anyone applying for bail (unless they have used a duty solicitor for a previous bail application) (must advise).
- Anyone charged or summonsed with an imprisonable offence (including defendants in extradition proceedings).
- Anyone at risk of imprisonment for:
 - Failing to pay a fine or other sum (including council tax).
 - Failing to obey an order of the court (e.g. breach of community penalty).
- Anyone at risk of, or applying to vary or discharge:
 - Anti-Social Behaviour Orders and Sex Offender Orders (under the Crime and Disorder Act 1998).
 - Football Banning Orders (under the Football Spectators Act 1989).
- Anyone at risk of, or applying to vary a Closure order under the Anti-social Behaviour Act 2003
- Anyone at risk of a parenting order under the Crime and Disorder Act 1998 or being bound over as the parent or guardian of a young offender (Powers of Criminal Courts (Sentencing) Act 2000).
- Including help to make an application for a Representation Order, to cover a subsequent appearance, for an individual in one or more of the above categories.

A Duty Solicitor must not advise or represent (even if they are otherwise entitled to help):

- Anyone in connection with
 - A trial.
 - A hearing to commit a case to the Crown Court.
 - A bail application (if they have used a duty solicitor for a previous bail application).
 - A non-imprisonable offence (unless they are in custody).
- Anyone who has their own representative or is expecting a representative to arrive (including anyone with a Representation Order).
- Anyone at an adjourned hearing (if they used a duty solicitor for a previous hearing in this case) unless they are at risk of imprisonment for:
 - Failing to pay a fine or other sum (including council tax).
 - Failing to obey an order of the court (e.g. breach of community penalty).
- Anyone to make an application for a Representation Order to cover a non-imprisonable offence (unless they are in custody).
- Anyone at court for any other reason.

Note: Subject to local scheme rules, the person acting as Duty Solicitor may also act:

- for a client of his/her own firm;
- for a client of another firm (if he is instructed by them as their agent); or
- for any other person who is not already represented.

providing he/she does not claim for the above work under the Duty Solicitor scheme and as long as he/she remains available for duty solicitor work.

Imprisonable offences include

- Obstructing a police officer
- School non-attendance (parent at fault) s 444 (1A)
- Social security – false representation to obtain benefit
- Threatening behaviour (s 4 Public Order Act)
- Vehicle interference

Football-related offences

- Possession of liquor while entering or trying to enter ground

Driving offences

- Dangerous driving
- Driving while disqualified
- Excess alcohol
- Failing to stop/report
- Fraudulent use/vehicle excise licence
- Refuse evidential specimen

Non-imprisonable offences include

- Disorderly conduct (s 5 Public Order Act)
- Drunk and disorderly
- School non-attendance (parent not at fault) s 444 (1)
- Taxi touting
- TV licence payment evasion

Football-related offences

- Being drunk in, or while trying to enter, the ground
- Going onto playing area or adjacent area to which spectators are not admitted
- Throwing missiles
- Ticket touting/unauthorised sale of ticket

Driving offences

- Careless driving
- No insurance
- Speeding

REVISED OUTCOME CODES

On 17 May 2004, the outcome codes that apply to matters and cases in the Criminal Investigations Class of Work (1A to 1F and 1L) and magistrates' court representation under a Representation Order in the Criminal Proceedings Class of Work (2E to 2G), were revised. Some new codes were added and other, existing codes, had their definitions changed. This article explains the use of the new codes.

The outcome codes were revised to give the Legal Services Commission more information about the actual outcomes of matters and the stage in the matter at which the outcome is reached. In particular, the revised codes will give the Commission a lot more information about the significance of the outcome to the client. For example, with the new codes the Commission will, for the first time,

know in all applicable cases whether the client was convicted or not.

The codes will also highlight wider issues in the Criminal Justice System, as the Commission will now have more detailed information on proceedings that are discontinued and we will be able to monitor the number of committal proceedings that are discharged. The revised codes are set out below:

Further guidance on the use of outcome codes can be found on our website at [www.legalservices.gov.uk/cds/criminalcontract/outcome_code_guidance\(22_03_04\).pdf](http://www.legalservices.gov.uk/cds/criminalcontract/outcome_code_guidance(22_03_04).pdf) and has appeared in the updated LSC Manual.

If you have any questions on the use of the codes please contact Freddie Hurlston, e-mail freddie.hurlston@legalservices.gov.uk

Code	Description
<i>Criminal Investigations</i>	
A1	No further instructions received from client
B1	Change of solicitor
C1	Client not a suspect/defendant on a criminal charge
D1	No further action to be taken
E1	Client released following reprimand/warning/caution
F1	Client charged with/summoned for a criminal offence
<i>Criminal Proceedings</i>	
A2	Arrest warrant issued/adjourned indefinitely
B2	Change of solicitor
C2	Representation order withdrawn
D2	Acquitted at trial of all contested Matters
E2	Convicted at trial of some contested Matters but acquitted of other contested Matters
F2	Convicted at trial of all contested Matters
G2	Proceedings discontinued where the Matter has not been listed for trial
H2	Proceedings discontinued where the Matter has been listed for trial
I2	Guilty plea to all Matters put where the Matter has not been listed for trial
J2	Guilty plea to all Matters put where the Matter has been listed for trial
K2	Mix of guilty plea(s) and discontinuance or not guilty plea accepted where the Matter has not been listed for trial
L2	Mix of guilty plea(s) and discontinuance or not guilty plea accepted where the Matter has been listed for trial
M2	Committal and transfers for trial to Crown Court (election by client)
N2	Committal and transfers for trial to Crown Court (direction of the court)
O2	Committal proceedings that are discharged
P2	Extradition
Z2	Matter concluded on or before 16 May 2004 and reported on or after 17 May 2004