

Focus on CDS

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> General Criminal Contract

For a summary of the amendments to the General Criminal Contract (GCC) from 17 May 2006 and how the LSC intends to deal with GCCs from 31 March 2007, see page 2.

> CDS Direct

Earlier this year, representatives from professional bodies visited the CDS Direct pilot to see it in operation. Details of their visit can be found on page 3.

> CDS Act 2006

For information on how the Criminal Defence Service Act 2006 will re-introduce means testing in criminal legal aid, turn to page 4.

> Court Duty Solicitor Claims

For details of the LSC review of court duty solicitor schemes and guidance on claiming for court duty solicitor work, turn to page 5.

> Own Client Attendances and the PSQ

For more details of the relationship between own client police station attendances and the Police Station Qualification, see page 6.

> Claiming News

For details of new claiming codes, see page 7.

General Criminal Contracts

The LSC wrote to all holders of General Criminal Contracts on 31 March 2006 to inform them of how we intend to deal with these Contracts from 31 March 2007.

Outside of London the current contract ends on 31 March 2007 and the terms provide that it will be automatically extended from 31 March 2007 to 31 March 2008, unless the LSC gives at least a year's notice that there will be no extension. The LSC has decided not to give this notice.

Lord Carter of Coles is currently undertaking a review of legal aid purchasing and the LSC wants providers to be aware that there is a significant prospect that implementation of Lord Carter's recommendations will begin before April 2008, and that implementation will follow a notice under clause 20.2 of the Contract Standard Terms. This clause provides that, following a Direction from the Lord Chancellor, the Commission may give six months' notice of contract termination. The situation is slightly different in London. Although these contracts can be terminated following notice under clause 20.2, they may also be terminated following a three month notice period.

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legal services
COMMISSION

General Criminal Contract Amendments May 2006

Contract notices have been issued to all holders of the General Criminal Contract which detail changes to be implemented from 17 May 2006. The Commission has consulted with The Law Society and other professional bodies and a copy of the outcome of consultation is available on our website (www.legalservices.gov.uk).

Full details are contained in the contract notice but a summary of the key changes is provided below. There are also a number of changes to claim codes (see page 7).

Expansion of Scope – Advocacy Assistance

The scope of the Contract has been increased to include the following proceedings:

- Notification Orders, Sexual Offences Prevention Orders, Foreign Travel Orders and Risk of Sexual Harm Orders under the Sexual Offences Act 2003.
- Parenting Orders for failing to comply with orders under the Powers of Criminal Courts (Sentencing) Act 2000, in cases of exclusion from school, and in respect of criminal conduct and anti-social behaviour.

Although not in force yet, changes have also been made to bring the following orders within scope from the time of their commencement:

- Intervention Orders in cases where an Anti-social Behaviour Order has been made under the Drugs Act 2005.
- Restraining Orders against a defendant who has been acquitted, under the Protection from Harassment Act 1997 (as amended by the Domestic Violence, Crime and Victims Act 2004).

Expansion of Scope – Incidental Proceedings in Civil Courts

The Contract has been amended to cover proceedings in the County Court that might be regarded as incidental to

criminal proceedings. This will principally be where an application must be made to obtain papers from a civil case that are relevant to the criminal proceedings.

Other changes include:

- Amendments to rules on marketing with respect to leaflets, letters or circulars.
- Clarification with respect to Advice and Assistance applications for 'distant' clients.
- Amendments to reflect the introduction of the Commissioners for Revenue and Customs Act 2005.

Guidance Manuals

Amendments are also made from the same date to the Criminal Bills Assessment Manual, Duty Solicitor Manual and Police Station and Court Duty Solicitor Cost Assessment Manual to reflect the above. Additional guidance has been added to the Criminal Bills Assessment Manual covering work done in connection with the Proceeds of Crime Act 2002, remuneration for use of video links and payment for reminding clients of impending court appearances.

If you have any questions about the above changes you should contact the regional office responsible for managing your Contract.

Professional Bodies Visit CDS Direct

Representatives from The Law Society, LAPG, CLSA and LCCSA visited the Duty Solicitor Call Centre (DSCC) in Purley earlier this year to view the CDS Direct pilot at work.

CDS Direct uses centrally employed legal advisers to provide telephone advice to suspects detained at the police station who ask for the duty solicitor. The scope of the pilot covers, nationally, duty cases that are restricted to telephone advice by the General Criminal Contract (eg non-imprisonable offences), and all duty cases in the Merseyside and Boston and Spalding schemes (with the exception of indictable only offences). The CDS Direct pilot was launched on 31 October 2005 and will run for a minimum of 6 months. Any decision regarding inviting tenders to provide the service will be based on a full and open evaluation of the pilot.

DSCC

Before turning their attention to CDS Direct the representative bodies were given a short presentation on the DSCC by Mark Coles, the FirstAssist manager responsible for the DSCC contract. The presentation focused on the scale of the DSCC's operation, where delegates discovered that there are over 365 local duty solicitor schemes covering over 1,800 police stations, customs offices and military establishments. There are 5,900 duty solicitors and the DSCC deals with 340,000 requests for a duty solicitor per year which leads to 1.4m calls being made each year.

The achievements of the DSCC were also highlighted over 2004/05 – 99% of calls were answered within 20 seconds, 98% of rota deployments were made within 30 minutes, 92% of panel deployments were made within 30 minutes were some of the successes mentioned and all were above the contract target.

CDS Direct

John Sirodcar, Head of Direct Services at the LSC, gave the CDS Direct presentation which focused on CDS Direct's operations during the first three months of the pilot. John told delegates that CDS Direct handled a total of 18,863 calls during that period which averages out at 205 per day.

During the period 31 October 2005 to 26 January 2006, 24 complaints were received, which equates to 0.2% of cases handled. Of these complaints, 15 were justified, 7 unjustified and 2 under investigation. There were two main causes for these complaints; not capturing all non-imprisonable cases (as a result the system was reviewed and significantly improved at the end of November to resolve this) and not passing all relevant details to the deployed solicitor. As from 19 January, a revised process is in place to improve the detail passed to deployed solicitors.

In the first two months of the pilot, 57 cases were designated 'police concern' cases. Issues being followed up with local police forces include; clients detained unnecessarily overnight for warrants, police refusing to allow confidential telephone advice and difficulty in contacting the police – in 15% of cases the police do not answer the telephone or an answering machine is connected.

After the presentations, the representatives were given a tour of both the DSCC and CDS Direct operations and had the opportunity to ask questions and give feedback to John Sirodcar and Michael Burdett (CDS Direct's supervising solicitor).

The question-and-answer session produced a frank and productive exchange

of views during which the LSC reaffirmed its commitment to a full and open evaluation of the pilot. Although CDS Direct has projected savings of £600,000 over 12 months, the LSC is determined that savings should not come at a cost of a reduced service to clients. As part of that evaluation process the quality of advice of given by CDS Direct is being peer reviewed and later this year the LSC intends to publish a consultation paper sharing the full details, including the peer review, of the first six months of the pilot.

Helen Cousins from CLSA commented: "It was an interesting and informative day. I was impressed by the professionalism of the staff in the DSCC, and the technology was awe-inspiring."

Richard Miller from LAPG remarked: "Thanks again for organising the trip to CDS Direct. I did think it was very worthwhile, and gave me a much better understanding of how the system operates. While I do still have reservations about the system, they are more focused on the obstructions to getting the system to work caused by the police, and the costs issues, than the quality concerns or the ability of the service to cope."

In addition, we have also recently received the following quote from a police sergeant: "I feel CDS Direct are a great help and a great idea. I don't know why this was never thought of sooner. You respond almost immediately and it assists custody officers in making a quick decision as to how the allegation can be dealt with."

Further information

For further information on CDS Direct please contact Mary Burkinshaw on 020 7759 0283.

Legal Aid Procurement Review

On 9 February, Lord Carter of Coles unveiled his interim report on legal aid procurement.

Entitled 'Procurement of Criminal Defence Services: Market Based Reform', the report focused on reforms to publicly funded criminal defence services.

Lord Carter's full report on legal aid procurement, including his final recommendations, should be published in late Spring 2006.

The LSC welcomes Lord Carter's recommendations, and specifically the way

he has built on the LSC's existing direction of travel and the thinking in our Preferred Supplier proposals. We look forward to working with Lord Carter's team on a detailed and fully costed implementation plan. This will enable us to radically reform the way legal aid services are purchased, building on our work so far, including the efficiency improvements and savings we had planned as a result of the Preferred Supplier scheme.

A copy of the interim report, along with details of Lord Carter's review, can be found at www.legalaidprocurementreview.gov.uk

Preferred Supplier Consultation

The consultation on the Preferred Supplier scheme proposals was launched on 20 March 2006. The consultation will close on 12 June 2006.

The consultation paper is available to download from the LSC website (www.legalservices.gov.uk) and all firms with a current legal aid contract have also been sent a copy by mail. If you have not received a copy, please contact our Preferred Supplier team on preferred.supplier@legalservices.gov.uk

More information about the consultation and the proposed scheme appeared in *Focus 50*, April 2006.

New Police Station Posters

The LSC has produced new legal aid posters for police stations.

The posters inform those detained at the police station, of their right to free advice. The LSC has produced three versions – an English-Welsh poster; a poster for speakers of European languages (Danish, Dutch, French, German, Greek, Italian, Norwegian, Polish, Portuguese, Spanish and Swedish); and a poster for those who speak non-European languages (Arabic, Bengali, Chinese, Hindi, Gujarat, Punjabi, Turkish and Urdu). A full set of posters has been sent to each police station in England and Wales with a letter outlining which languages the posters are produced in.

Further copies of the posters will be available from the Head of Internal Communications for each police force, who will be able to order them from paul.thorn@legalservices.gov.uk. If you feel that any additional languages should appear on the two ethnic community posters or if you have any other comments, please contact Dane Johnson by e-mail, dane.johnson@legalservices.gov.uk, who will consider amendments and comments for future copies.

Criminal Defence Service Act 2006

The Criminal Defence Service Bill has received Royal Assent and is now the Criminal Defence Service Act 2006.

The Act will enable the transfer the responsibility for the grant of criminal legal aid from Her Majesty's Court Service (HMCS) to the LSC and to re-introduce means testing in the determination of criminal legal aid. This is intended to commence for magistrates' court cases from October 2006. In practice, the LSC will delegate the grant of representation orders process back to HMCS through a service level agreement. Means testing will be extended to the Crown Court in 2007/08.

The LSC will involve legal service providers in the development of the new arrangements. As part of this process, a stakeholder group has been formed with key organisations, including The Law Society and the Legal Aid Practitioners Group, to provide feedback on progress of the project. The stakeholder group will be involved in, and consulted about, the best way to implement the changes, including process design and training of legal service providers working with the new arrangements on a regular basis.

The level of bureaucracy and checking will be minimised. For example, the requirement to produce 13 weeks pay slips to evidence declared income was a feature of previous means testing; this created difficulties in administering the test and often resulted in delay. The new system will be less onerous with evidence requirements

based on a risk based sampling process. In addition, we expect the court staff to have an extended arrangement with the Department for Work and Pensions (DWP) whereby confirmation of receipt of certain state benefits can be checked directly with the DWP, thus avoiding the need to produce income evidence at all in those cases.

There will also be provision for exceptional funding in the very few cases that are not effectively covered by the regulations. The LSC is setting up a dedicated unit of specialist staff who will be able to quickly consider exceptional circumstances. This will better ensure that the LSC is sensitive to individual circumstances and that those who genuinely believe they cannot afford to pay for their own representation are given special consideration.

As the LSC moves towards the final period of implementing the new policy into the magistrates' court, the process of applying means assessment to the Crown Court will get underway. The CDS Bill framework document and supplement provide an overview of a Crown Court scheme and the initial work to flesh out the policy in detail will happen over the next six months. More details of means testing in the Crown Court will be available at the end of 2006/07.

PDS Launches Improved E-Manual

During February the Public Defender Service launched a fully revised electronic version of their Office Manual.

The result of an extensive review, it remains compliant with, and takes into account all changes to, the General Criminal Contract, Specialist Quality Mark and other relevant documentation.

Each section is now supplemented with interactive links to relevant website pages and documents which direct the user to a comprehensive range of further information.

Available to download in PDF format, it can be used as a starting point for more research, or as a template for your own office manual.

You can visit the new manual at www.legalservices.gov.uk/docs/pds/PDS_Office_Manual_Nov_05.pdf. For more information contact Sarah Acikgoz on 0121 237 5580 or e-mail sarah.acikgoz@legalservices.gov.uk

Freedom of Information Requests

Since Lord Carter's interim report on 'Procurement of Criminal Defence Services' was published (see page 3) we have received a number of requests for information about the size, location and nature of existing contractors; average case costs by provider/region; number of duty solicitors on each scheme; and volume of work going through each police station or court.

Whilst we appreciate the value of this information to service providers who are seeking to prepare themselves for potential changes as a result of Lord Carter's recommendations, the material is very time consuming to produce on an ad hoc basis. We wish to ensure that any information we publish is as accurate as possible and that it is structured and timed to best help service providers. We therefore intend to make a large volume of information available to all suppliers via the LSC website rather than responding to firms individually.

Suppliers in the London Region will be aware that we previously took a similar approach, in anticipation of Competitive Tendering, when we published details of the number of cases and amounts claimed in every police station and magistrates' courts across London from January 2004 – December 2004. We will look to publish detailed information to assist all service providers (civil and crime) as soon as possible following the publication of Lord Carter's final report.

Court Duty Solicitor Claims

You may be aware that the LSC has been conducting a review of court duty solicitor schemes. This ensures that court duty solicitor sessions are closely aligned with the times when a duty solicitor is required.

Regional offices are reviewing schemes at a local level and, where necessary, working with the local court and duty solicitor scheme to change the existing arrangements to ensure they operate as effectively as possible.

These reviews have resulted in (or are likely to result in) one or more of the following: changes from attendance to call-in schemes on some days, changes to start times and changes to arrangements for release of the court duty solicitor by the court.

All of these changes require amendments to the Local Instructions, which the LSC has to consult on. As well as a formal period of consultation on the changes, the LSC will endeavour to involve representatives of the local scheme or Local Committees (where these still exist). Consultation is in writing to all members of the scheme and lasts a minimum of 28 days. It is anticipated that this period will be more than sufficient for the majority of changes but will be extended at the discretion of the regional office for any that are particularly contentious.

Similar issues have arisen during reviews of a number of court schemes and we would therefore ask that all Duty Solicitors note the following.

Requesting Early Release

In October 2005, an amendment was made to the General Criminal Contract to make it clear that court duty solicitors have an obligation to check whether they are needed in order to reduce the time spent waiting at court. The

duty solicitor should seek release from the court at the earliest opportunity once there are no longer any defendants that are likely to require their assistance.

Recording of Information

When submitting claims for court duty solicitor work to the LSC, solicitors must remember to:

- Use the correct court identifier codes – a list of these can be found at www.legalservices.gov.uk/criminal/forms/cds.asp.
- Record the number of eligible defendants assisted at each session in the "number of suspects/defendants" box on form CDS6. It is essential that this information is accurate so that the LSC can identify which scheme may need to be reviewed.
- Ensure that the date concluded entered on the CDS6 is the actual date of the court duty solicitor session.

Please also remember that travel is not payable for court duty solicitor work unless the court session takes place on a day that is not a business day, a call-in scheme is in operation, or a court duty solicitor on an attendance scheme is requested to return to court, after being released, to assist a defendant.

If you have any concerns about operational issues within your local courts or any suggestions for improving the efficiency of your local scheme, please contact billie.lever-taylor@legalservices.gov.uk.

CDS Keycard

A new Keycard, No 42a, April 2006, has now been published in *Focus 50*, April 2006, and is also available on the LSC website (www.legalservices.gov.uk). The main eligibility limits do not change and remain as published in CDS Keycard 41a(2) (see *Focus 49*, December 2005). The fixed rate allowances made for dependants when determining a client's disposable income have changed and are shown below:

Fixed rate allowances (per week) from 10 April 2006

Dependants allowances

Partner	£32.65
Child aged 15 or under	£45.58
Child aged 16 or over	£45.58

Immigration Advice at the Police Station – Telephone Advice Pilot Scheme

The LSC will be piloting the provision of immigration advice at police stations. At the time of going to press we anticipate the pilot commencing in June 2006. The purpose of the scheme is to ensure that individuals have access to independent legal advice in relation to non-criminal immigration matters while subject to detention at the police station.

For some time the LSC and practitioners have been concerned that the crime Duty Solicitor is not best placed to provide advice to individuals held at police stations for non-criminal immigration matters. Criminal specialists will not usually be able to advise on non-criminal immigration law, and may be unable to effectively refer these individuals to an appropriately qualified immigration lawyer, particularly if it is out of normal office

hours. The pilot scheme will provide clients at the police station with access to a 24-hour advice service providing specialist legal advice by telephone on non-criminal immigration matters.

It must be remembered that some individuals may be under investigation in relation to immigration related criminal offences. The pilot scheme will not cover these cases. A client who is subject to a

criminal investigation (in relation to an immigration offence), will continue to be entitled to advice and assistance from the Duty Solicitor Scheme operated by the CDS.

Further information regarding the pilot can be obtained from immigrationservices@legalservices.gov.uk. Guidance on immigration offences can be found on the Immigration Law Practitioners website at www.ilpa.org.uk.

Own Client Police Station Attendances and the PSQ

The General Criminal Contract was amended, after consultation, on 31 October 2005, to require that all solicitors attending own clients at the police station from 1 November 2006 hold the Police Station Qualification (PSQ). The Specialist Quality Mark Supervisor Standards were also amended, again after consultation, to reflect this change in policy. The effect on duty solicitors and supervisors is as follows:

Duty Solicitors

Those Serving on Police Station and Court Schemes

The change will have no effect on duty solicitors who serve on both police and court schemes. Such solicitors will have either passed both the PSQ and Magistrates' Court Qualification (MCQ) and thus have full CLAS membership, or they will have been 'passported' onto the schemes in 2001 and, as a result, are deemed to hold both qualifications.

Those with an Exemption to Serve on Police Station or Court Scheme Only

Solicitors who have been given an exemption to serve on the police station scheme only will be unaffected by the change. These solicitors will (as above) either have passed the PSQ or be deemed to hold it as a result of being 'passported'

onto the police station scheme. In contrast, solicitors who have been given an exemption to serve on the court scheme only will have to pass the PSQ by 1 November 2006 in order to represent own clients at the police station. However, this will not affect their exemption and they will not be required to join the police station duty scheme (although they will be able to do so should they wish).

Solicitor Supervisors

Changes to the Specialist Quality Mark mean that from 1 November 2006 there are the following changes to the Crime Supervisor Standards:

Duty Solicitor Route – for court only duty solicitors, replace "6 examples of police station advice and assistance" with "must hold the PSQ".

Duty Solicitor Equivalent Route – replace "10 examples of police station advice and assistance" with "must hold the PSQ".

350 Hour Casework Route – replace "6 examples of police station advice and assistance" with "must hold the PSQ".

Retired Duty Solicitors

Solicitors who were members of the police station scheme at any point since 2001 (either as a result of passing the PSQ or being 'passported') are, for these purposes, deemed to still hold the qualification and are unaffected by the new requirement. However, this may change if any form of re-accreditation is introduced.

Misconceptions about CDS Funding

This article has been provided to clarify certain areas of CDS funding that continue to confuse and generate queries.

Appealing a Refusal to Grant Legal Aid

From time to time the LSC receives appeals from practitioners against refusals by the magistrates' courts to grant legal aid. Where the magistrates' court refuses to grant a representation order in criminal proceedings it is no longer possible to appeal that decision to "the appropriate area committee". This right of appeal existed under Regulation 15 of the Legal Aid in Criminal and Care Proceedings (General) Regulations 1989, SI 1989/344. This enabled a refusal to grant legal aid to be considered by an area committee after the first consideration of the application by the magistrates' court.

Since the enactment of the Access to Justice Act 1999, the position has altered. Regulation 3 of the Criminal Defence Service (Representation Order Appeals) Regulations 2001, SI 2001/1168 (as amended), now provides for persons to make a renewed application to the body which refused the application. In the courts this can mean that the renewed application is referred by the appropriate officer to a judge for consideration. Where it is the LSC which refuses to grant the representation order, a renewed application can be made to the Funding Review Committee.

Paying for Psychiatric Reports

The LSC continues to receive a large number of prior authority applications for funding to pay for reports that have been requested by the court in connection with the possible sentencing of defendants under provisions of the Mental Health Act 1983 (ie to determine whether a Hospital or Guardianship Order should be made). Such applications are and shall continue to be rejected.

Where the court directs that such reports be prepared, the cost of that work should be borne by Her Majesty's Court Service (HMCS) and funding exists for this purpose. It is accepted by the HMCS that where the court requires the preparation of the report, it is central funds that pay for it, since it has been commissioned to assist the court in deciding the appropriate disposal of the

matter. Accordingly, neither the defence or the prosecution should be required to fund this work.

Funding in Appeals by Way of Case Stated

The LSC continues to receive many questions regarding the funding of these appeals. These proceedings in the High Court are criminal for funding purposes. An application to fund this level of service, ie representation before the High Court, should be made on Form A and submitted with the appeal papers to the High Court who will consider the application.

A £200 fee is payable at the time of lodgement and this cannot be funded under the General Criminal Contract (Specification Part C, Rule 1.18.2 details disbursements which may not be incurred). Where there is a representation order extant in the original proceedings, that will extend to, and fund advising on any possible appeal, along with the preparation work required in order to lodge the appeal papers and an application for funding the next stage of the proceedings.

Where there is no such order, the preliminary work, including advising the client of the appropriateness of appealing and progressing the case to the High Court, can be provided under the Appeals and Reviews class of work as Advice and Assistance. Practitioners should remember that such funding is subject to financial eligibility.

Calling Witnesses From Abroad

The LSC has been contacted by the Home Office and Crown Prosecution Service with regard to the increase in the number of individuals arriving in the UK and securing visas on the basis that they are required to attend to give evidence in criminal trials. A number of them have then gone on to remain beyond the expiry of the visa, illegally. Suppliers are reminded that such requests should only be made where the witnesses' evidence cannot be secured and agreed in any other form, ie either as a section 9 statement or via a video link.

Claiming News

New Claim Code

The following claim code has been introduced from 30 April 2006 to support a review of funding for orders under the Sexual Offences Act 2003 following the increase in scope of the General Criminal Contract:

2S – Magistrates' and Crown court Advocacy Assistance relating to orders under the Sexual Offences Act 2003

(Note: Offence and outcome codes are not required for claims made under this claim code.)

Changes to Outcome Codes

Two additional outcome codes have been added and a previous code amended as a result of new disposals introduced by the Criminal Justice Act 2003.

New codes:

G1 – Client released following issue of fixed penalty notice.

H1 – Client released following conditional caution.

Code E1 has been amended as follows:

Previous description: Client released following reprimand/warning/caution.

New description: Client released following reprimand/warning/simple caution.

The above changes apply to all claims made after 30 April 2006.

A full list of claim codes and outcome codes can be found in the LSC Manual, Volume 4, Part E – Reference Material.

