

Focus on CDS

Contents including:

London Crime Competitive Tendering	2
General Criminal Contract	2
CDS Bill Update	3
CDS Direct Pilot	3
Funding for Prescribed Proceedings	4
Survey of Delay in the Criminal Justice System	4
Criminal Litigation Accreditation Scheme Consultation	4
Own Client Police Station Work	5
Duty Solicitor Call Centre Satisfaction Surveys	5
Duty Solicitor Call Centre Internet Pilot	6
Unnecessary Applications for Prior Authority - CCRC Appeal and Reviews	6
Completing the CDS5 Application form	7

- > **General Criminal Contract**
A Notice of Contract amendment comes into force on 31 October 2005. For the key changes, please turn to page 2.
- > **CDS Direct Pilot**
For the latest update on the Criminal Defence Service Direct pilot, please see page 3.
- > **Funding for Prescribed Proceedings**
For information on funding for prescribed proceedings, turn to page 4.
- > **Publicly Funded Own Client Police Station Work**
For the latest guidance following the GCC amendments on this area of work, turn to page 5.
- > **Duty Solicitor Call Centre**
For news on the DSCC satisfaction survey and internet pilot, go to pages 5 and 6.
- > **Unnecessary Applications for Prior Authority**
For guidance on applications for Prior Authority following a recent appeal case, see page 6.

London Crime Competitive Tendering

Over 350 responses have been received to the consultation paper - *Improving Value for Money for Publicly Funded Criminal Defence Services in London*.

The closing date for responses was 27 May 2005 and responses came from professional bodies, practitioners, members of the criminal justice system and other interested parties and the project team is carefully considering them.

In addition, around 200 solicitors attended a series of workshops that gave them a chance to engage directly with members of the project team. The views expressed at the workshops will be considered as part of the ongoing consultation process.

Information on the Internet

The competitive tendering page of the CDS website www.legalservices.gov.uk/criminal/lcct/lcct.asp now contains information on the volume and value of work reported under the General Criminal Contract in the various police stations and magistrates' courts in London from January to December 2004. The information will be expanded and updated at regular intervals.

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For editorial queries, or to order back issues or extra copies, please contact Christopher Davies on 020 7759 0523 or e-mail christopher.davies@legalservices.gov.uk

legal services
COMMISSION

General Criminal Contract

The Commission issued a Notice of Contract amendment on 8 September to all CDS Suppliers. All amendments are effective from 31 October 2005. The Commission issued a consultation paper in December 2004 on amendments to be implemented to the Contract from April 2005 but these were deferred until October 2005. A further consultation paper was issued in June 2005 containing additional amendments also to be implemented from October 2005.

All amendments have been subject to consultation with The Law Society and other representative bodies. In addition both consultation papers were posted on the Commission's website. The Commission has produced "outcome of consultation" documents for both consultations.

In addition, the Commission has consulted separately on some policy changes that have resulted in some of the amendments to the Contract, namely the CDS Direct Pilot and Police Station Representatives and Solicitors attending the Police Station.

The Notice contains a summary of all changes, as well as the actual contract amendments, and it is recommended that all practitioners become familiar with all the amendments prior to implementation.

Key Changes

Some of the key changes are detailed below, however, there are a number of additional changes that are not covered by this article but these are summarised in the Contract Notice.

CDS Direct Pilot

The Commission is introducing the CDS Direct Pilot on 31 October 2005. The pilot will provide telephone advice to clients detained at the police station in specified situations. The Contract amendments support the implementation of this pilot and include the introduction of a Fixed Acceptance Fee as well as limiting when a Police Station Telephone Advice Fixed Fee may be claimed. Further information on the pilot is contained in the article on page 3.

Police Station Accreditation

These amendments result from a consultation paper *Police Station Representatives and Solicitors Attending the Police Station* that was issued in November 2004. The proposals concerning police station attendances in own solicitors cases have since been extended to include police station telephone advice. These changes have been made to ensure that advice is given by sufficiently

qualified individuals. There are transitional arrangements that apply to this change that are covered in more detail in the article on page 5.

Pre-Charge Bail Conditions

The Criminal Justice Act 2003 introduced a facility for the police to impose bail conditions pre-charge which can be challenged in court. These amendments increase the scope of Advocacy Assistance and the service requirements of Court Duty Solicitor cases to cover applications to vary bail conditions imposed by police.

Disability Discrimination Act 1995

The Disability Discrimination Act 1995 places an obligation on service providers to make reasonable adjustments so that they can assist clients with disabilities. The supplier as service provider is therefore obliged to provide a sign language interpreter for clients who are deaf or hard of hearing, where it would be reasonable to do so. The Contract has been amended to clarify that the Commission will no longer pay sign language interpreters' fees, except where they go beyond 'reasonable adjustments' under the Act.

Guidance Manuals

The following guidance manuals have also been amended:

- > Criminal Bills Assessment Manual
- > Police Station and Court Duty Solicitor Cost Assessment Manual
- > Duty Solicitor Manual.

Many of the changes, but not all, are consequential to the Contract amendments. A summary of the changes to these manuals is contained at the end of the Contract notice.

Additional Information

All of the documents referred to in this article are available from our website at www.legalservices.gov.uk. Updated versions of the General Criminal Contract and the above manuals are also available. Any queries relating to these changes should be directed to the Regional Office responsible for managing your contract.

CDS Bill Update

The Criminal Defence Service (CDS) Bill will deliver two key enabling powers, which in turn facilitate:

- > the transfer of responsibility of the power to grant representation from the courts to the Legal Services Commission; and,
- > the reintroduction of a test of financial eligibility (means test) for criminal legal aid.

The implementation of the provisions contained in the CDS Bill will:

- > Ensure that those who can pay for their own criminal defence do pay.
- > Bring the cost of criminal legal aid under better control by delivering improved regulation of grant.
- > Focus the limited resources available for legal aid funding of defence services in criminal cases more closely on the people who need it most.
- > Ensure that publicly funded legal help and advice can go to those who most need it to resolve their disputes and problems, by re-focusing finite resources on priority need.
- > Provide savings in the region of £35m per year.

As reported in *Focus on CDS 17* (April 2005), the CDS Bill was published in December 2004 but failed to complete its passage in the curtailed session before the General Election. The Bill has recommenced its passage through Parliament and the second reading in the House of Lords was on 13 June, with the committee stage concluded on 28 June. Full details of relevant documents, including a revised framework document outlining details of the proposed scheme in the magistrates' court, can be found at www.dca.gov.uk/legist/crimdefence.htm

The Bill is expected to continue to report stage in the autumn and then move to the House of Commons, with Royal Assent expected no earlier than the end of December 2005.

As the powers conferred by the Bill extend to the Crown Court, it is our intention to provide more detail about the impact on the higher court, along with draft regulations, in time for consideration at the report stage in the House of Lords. We anticipate consulting with all stakeholders later in the year.

Preferred Supply latest news

In *Focus 48*, we reported on the Preferred Supplier pilot and the plans for rolling out the scheme nationally, beginning with a consultation.

We said we planned to issue a consultation paper on 29 September 2005.

Preferred Supplier is a major undertaking which will radically change the way we do business with organisations providing legal aid. Plans for the national scheme continue to be developed, but we want to take our time to get it absolutely right. For that reason, we are reviewing the timetable for the launch of the consultation paper and anticipate that it will now be published before the end of the year.

To remain updated on the progress of Preferred Supplier please visit the project pages on our website at www.legalservices.gov.uk/civil/how/psp.asp

Criminal Defence Service Direct

The Commission has announced that the pilot for CDS Direct will go live on Monday 31 October 2005. The pilot will last for at least six months and will provide advice in the following circumstances:

- > When a person is detained at a police station in Liverpool or Boston (Lincolnshire), regarding a non-indictable only crime, such as shoplifting or being drunk and disorderly, and where the time of interview is not known when the request for a duty solicitor is made.
- > When a person is detained at any police station in England and Wales where the matter is restricted to telephone advice only, such as driving with excess alcohol or a warrant.

The pilot has the potential to deliver a number of benefits for solicitors, the police, the Commission and most importantly, clients, including:

- > improved speed of contact with detained clients
- > a reduction in the overall time that

- detained clients are held in detention
- > increased value for taxpayers' money
- > an end to solicitors being called out in the middle of the night when a client requests legal advice but no interview is planned until the next morning.

Where CDS Direct has been involved, cases will only be passed on to a Criminal Defence Service solicitor when the police confirm to CDS Direct that a time has been set for an interview or identification procedure. All offices with a General Criminal Contract will be sent a separate briefing covering the key points in relation to CDS Direct. This document will be sent out at the beginning of October. If any solicitor has not received this by 24 October, a copy may be requested from alex.nash@legalservices.gov.uk

Derek Hill, the new Director of the CDS at the LSC, said: "The LSC is committed to ensuring we obtain the best value for money for the services we fund. The CDS Direct pilot will help us in this aim and will enable the CDS to explore an alternative method of service delivery. By providing advice over the phone, it also promises to reduce unnecessary duty solicitor attendances at police stations, which are a drain on solicitors called out in the middle of the night and the public purse. We are committed to sharing the evaluation of the pilot with the professional bodies."

Funding for Prescribed Proceedings

As reported in *Focus on CDS* 17 (April 2005), a project has been set up to look at and devise a new fee structure to pay for Anti-Social Behaviour Order (ASBO) cases and other prescribed proceedings.

Currently, the funding arrangements relating to the representation of individuals facing such proceedings are complex and a sustainable model needs to be developed. The new model will need to take into account the likely growth in the number of such cases.

A project advisory group has been set up to provide input, feedback and practical expertise for the project. The first meeting of the advisory group took place on Friday 15 July and was attended by representatives from private practice, the Public Defender Service, our Regional Offices, the Legal Aid Practitioners Group, the Department for Constitutional Affairs, the Law Society, the Office for Criminal Justice Reform, Her Majesty's Court Service and the Deputy Director of the Anti-Social Behaviour Unit at the Home Office. The meeting focused on outlining the terms of reference of the project, examining relevant practice and procedures in ASBO cases, and identifying areas of expertise and how these could beneficially feed into the project.

The Commission is now in the process of examining management information and calling in files from practitioners and the Public Defender Service in order to gather data on average case length and cost as well as any regional variations. Possible fee structures will be devised and considered, prior to a final structure being sent out for consultation.

For more information, please contact denise.bradshaw@legalservices.gov.uk

Survey of Delay in the Criminal Justice System

On 5 July 2005, the Criminal Law Solicitors Association (CLSA) began the second round of its exercise to record the causes of delay in the Criminal Justice System. The Commission, recognising the value of this exercise, has given it full support including contributing to the administration of the exercise and undertaking to conduct the statistical analysis in association with the Legal Services Research Centre.

Unlike the first exercise, run in early 2004 which provided a national snapshot, the exercise in July concentrated on eight specific locations in order to provide a representative sample of data. The sites were Birmingham, Sheffield, Ipswich, Plymouth, Exeter, Bristol, Chippenham and Retford. The exercise lasted for one week and covered the defence experience at the police station, magistrates' court and Crown Court.

Defence solicitors were asked to complete a simple form each time there was a delay to the progress of the case in which their client was involved. They identified the cause of the delay and quantified what the impact of the delay was on the proceedings. The

completed forms are now in the process of being collated and returned to the Commission to be analysed.

When the analysis is complete, the database will be shared between the CLSA and the Commission. Both parties hope to identify areas of inefficiency where all partners in the Criminal Justice System can work together to make a positive change. The Department for Constitutional Affairs is also supportive of the exercise and is keen to see the outcome of the results.

A further exercise is planned to take place in the near future. For more information please contact tim.collieu@legalservices.gov.uk

Criminal Litigation Accreditation Scheme Consultation

The Law Society has recently consulted to obtain views on possible ways to develop and implement a process for the re-accreditation of members of the Criminal Litigation Accreditation Scheme (CLAS).

The Law Society's consultation paper can be downloaded from their web site www.lawsociety.org.uk by following the links on the home page. The consultation period closed on 30 September 2005 and the Society will publish its response in due course.

Membership of all of the Society's accreditation schemes is granted for a fixed period of time, usually three or five years, after which time members must apply for re-accreditation. The Criminal Litigation Accreditation Scheme was introduced in 2001. At its launch, it was stated that re-

accreditation would be a feature of the scheme, although to date, it has not been introduced. Membership of the scheme lasts for five years and many members who were accredited in 2001 will be due for re-accreditation in 2006. It is important, therefore, to ensure that a suitable process for re-accreditation is in place before that date.

The Legal Services Commission has considered the proposal carefully and our response is available on our website at www.legalservices.gov.uk/criminal/docs_for_consultation/criminal.asp

Own Client Police Station Work

Following amendments to the GCC, to be implemented in October 2005, the LSC will require that all solicitors who conduct publicly funded own client work at police stations are either a Representative or hold the Police Station Qualification (PSQ), which is part of the Criminal Litigation Accreditation Scheme.

These amendments do not affect solicitors who:

- > are current police station duty solicitors, or:
- > will have passed the PSQ prior to 1 November 2005.

Those solicitors who have not passed the PSQ by 1 November 2005 and who wish to continue to undertake own client work will have to register with the Criminal Defence Service for inclusion on the police station register by no later than 1 November 2005. Once registered they will be able to continue to advise own clients at the police station but will have to complete the full qualification process by 1 November 2006. These changes do not require the solicitor to join their local police station duty solicitor scheme.

Please note that this requirement does not apply to those solicitors who received CLAS

membership as a result of being "passported" into the scheme in 2001, although those solicitors that were granted a waiver to only act as Court Duty Solicitors, will need to obtain the PSQ if they wish to provide police station advice and assistance.

The assessments for the PSQ are provided by organisations authorised by the Law Society. Details of the current organisations can be found on the Law Society's website at www.panels.lawsociety.org.uk by selecting 'criminal litigation accreditation scheme - assessment organisations'.

Guidance on the completion of the police station portfolio and the other assessments can be obtained from the above website or from the Law Society's Information Services Department on 01527 504433.

Solicitors who wish to register with the Criminal Defence Service for inclusion on the police station register should complete the appropriate application form (Admin2a), and return it to the Police Station Reps Service at:

Police Station Reps Service
First Assist, 32 High Street,
Purley, Surrey, CR8 2PP
DX 59609 Purley
Tel: 0845 600 1022
E-mail: policestationreps@firstassist.co.uk

The form can be obtained from any of the assessment organisations or by contacting the Police Station Reps Service directly.

Duty Solicitor Call Centre Satisfaction Surveys

Every month the Duty Solicitor Call Centre (DSCC), contacts ten duty solicitors and ten custody staff who the call centre has had recent contact with in order to monitor the service provided. The results of these surveys (detailed below for solicitors) for the period between May 2004 and May 2005 show that the vast majority of solicitors questioned rated the service as "very good" or "good".

- > 100% of solicitors said the DSCC answered the telephone promptly
- > 93% of solicitors said the DSCC used the correct telephone number
- > 100% of solicitors said that the DSCC were polite and professional
- > 44% of solicitors rated the DSCC service overall as "very good"
- > 47% of solicitors rated the DSCC service overall as "good"
- > 9% of solicitors rated the DSCC service overall as "average"
- > No solicitors rated the DSCC Service overall as "below average" or "poor".

In addition to asking solicitors to respond to specific questions, the DSCC also welcomes comments on operational matters and the overall service provided. Examples of some of the comments received over the last year and the DSCC's response are given below:

It should be possible for custody staff to accept cases on behalf of a duty solicitor who is

attending an interview at the time.

DSCC operational policies have been changed so that operators will now always ask custody staff if the duty solicitor is at the police station and, if so, a message will be left for the duty solicitor to contact the DSCC. In addition, the DSCC knows if a duty solicitor has accepted a call in the previous two hours and (for rota cases), will try the relevant police station before sending the case to back-up.

Would it be possible to use a text messaging service as solicitors may be able to accept cases but unable to accept calls at the time due to outside factors such as an interview or court appearance?

A text messaging service has been considered but not implemented because:

- > text messages can often take a long time to be delivered, particularly at certain peak times, eg at the end of the school day; and
- > it would be detrimental to the service provided to have to field a large number of calls from solicitors trying to accept cases that, due to the call not being accepted

in time, have already been offered to and accepted by other solicitors.

It would be helpful if the DSCC could use caller identification so that solicitors knew who was calling.

The DSCC cannot use Caller Line Identification to show the DSCC is calling because:

- > there are many hundreds of outgoing telephone lines in the First Assist building which are used by several other groups within First Assist that do not work for the DSCC; and
 - > again it would be detrimental to the service provided to have to field a large number of calls from solicitors trying to accept cases that, due to the call not being accepted in time, have already been offered to, and accepted by, other solicitors.
- The DSCC will always consider any suggestions as to how the service can be improved and these can be sent to [alex.nash@legalservices.gov.uk](mailto:nash@legalservices.gov.uk)

Duty Solicitor Call Centre Internet Pilot

The Legal Services Commission is launching a pilot project entitled the Duty Solicitor Call Centre Internet Project. This project allows duty solicitors for the first time, to access online management information reports held by the DSCC. These reports will provide both up-to-the-minute and historical information on the performance of individual solicitors and firms as a whole.

This project will offer a number of services to duty solicitors over the internet including:

- > The ability to display and amend contact telephone numbers for each duty solicitor employed by a supplier.
- > The ability to make any duty solicitor employed by that supplier unavailable for any period up to three months.
- > The ability to display details of duty solicitor calls offered and accepted.
- > The ability to list the times/days that duty solicitor calls have been offered but not accepted.

Some of these reports have already been made available to suppliers involved in the Commission's Preferred Supplier pilot. Early indications are that the reports provide real benefits as action can be taken to increase the volume of calls accepted.

The Commission believes that there are

a number of significant benefits that can be realised from this project. Suppliers can take positive steps to improve the efficiency of their offices and the provision of this information demonstrates the Commission's commitment to working in partnership with suppliers.

Internet access to DSCC information will initially be restricted to a pilot group of approximately 30 suppliers, including nominees from professional bodies and regional offices, who will, over the next six months, assist in developing the service before it is offered to all suppliers undertaking duty solicitor work.

Once internet access is available to all suppliers a facility will exist to allow duty solicitors to enter swaps and offer duties for swap online.

An effective mechanism for recording and processing swaps is essential to the effective

running of the duty solicitor scheme as a whole. The DSCC receive approximately 60,000 swap notices per year (of which around 70% are received 24 hours or less before the duty being swapped).

The ability for duty solicitors to swap their own duties online will reduce errors and be of real benefit to the solicitors themselves, the DSCC and the duty solicitor scheme.

Anyone who is interested in this project will be able to obtain further information, including more details on the types of reports, by logging onto the following website: www.dutysolicitors.org. On the site there is also the option to express your interest or pre-register prior to the service being more widely available. The project is managed by the CDS Policy Team and the DSCC. Requests for further information and other queries should be directed to alex.nash@legalservices.gov.uk

Unnecessary Applications for Prior Authority - CCRC Appeal & Reviews

In a recent appeal case, following a change of solicitor, the new firm applied to the Commission for a prior authority to obtain a full trial transcript of the case. The application stated that prior authority was necessary to enable them to properly advise and assist the client, as they did not have access to the original firm's files.

The authority to fund the obtaining of the transcript was granted by the Commission. When the bill was submitted to the National Taxing Team (NTT) they did not allow the payment. Their refusal was made on the basis that the original solicitors claimed to have made their papers available to the new firm thereby obviating the need to obtain a full trial transcript.

The firm successfully applied to judicially review this refusal on the grounds that, once prior authority had been granted, payment thereof was mandatory and the NTT's approach was therefore unfair.

This case, and the decisions made, have clear implications for the way in which the Commission grants prior authorities. This article is intended as guidance for practitioners as to the approach that is to be

adopted by Regional Offices in processing such applications.

1. Before granting prior authority, the officer dealing with the application must be satisfied that the proposed work is 'necessary'. 'Necessary', in this context means, firstly, that there is no other way of obtaining the desired information and, secondly, that the proposed work will progress the case. Therefore, practitioners must make these points clear on the form. A failure to be specific is likely to result in the form being returned for further information.

2. Firms must evidence their application and show explicitly that the work for which they seek funding is 'necessary' as per the definition above; this might include providing copies of correspondence from the previous firm to

demonstrate that the original papers no longer exist.

3. At least two quotes should be sought for the work to be performed under prior authority. If the more expensive source is chosen, detailed reasoning must be provided to support this decision. If only one quote is provided, reasoning as to why must again be provided.

4. On Appeals, Reviews and CCRC matters, no automatic authority for trial transcripts will be made. Grants will only be made when it is clearly evidenced that the information is not available from any other source.

If you require any additional information please contact Denise Bradshaw at denise.bradshaw@legalservices.gov.uk

The YJS - Good Defence Practice Course

This intensive and innovative course, generously subsidised by the Youth Justice Board and the Law Society, is designed to equip delegates with the specialist knowledge and skills necessary for effective working in the Youth Court, which requires a very different body of knowledge from that required in the magistrates' court.

The clientele also requires specialist skills. The unique collaboration between LCCSA Training, the Law Society and the Youth Justice Board provides an integrated multi-disciplinary approach. The course is supported by exceptionally extensive course notes and handouts, including an up-to-date, comprehensive and accessible guide to the current law which will provide an invaluable reference resource. The numbers attending this course will be limited; it quickly sold out when it was offered in London in November 2004 and again in May 2005 so early booking is advised. Topics: Culture of

the Youth Court; Mode of trial/Jurisdiction; Bail and secure remands; Special measures for young witnesses; Referral Orders; Community sentences; ISSPs; Custodial sentences; ASBOs; Developmental needs of young people; Identifying mental health issues; Communication skills – your client; Communication skills – the court.

Speakers: Naomi Redhouse – Solicitor Advocate, Mark Ashford – Solicitor and Youth Court specialist, Fionnuala Mullin – Specialist in Child Development and a local Youth Offending Team Member. Venues: will be central and convenient for public transport.

Booking forms and further details from: Sandra Dawson, LCCSA Administrator, P O Box 6314, London N1 0DL, DX 122249, Upper Islington. Phone & Fax: 020 7837 0069. E-mail: sandra@admin4u.org.uk

Visit www.youth-justice-board.gov.uk, www.lccsa.org.uk, www.lawsociety.org.uk

21/10/05 Newcastle

04/11/05 Southampton

9:30 for 9:45 am – 5:15 pm

5.5 CPD Hours

£115.00 including VAT (£97.88 ex VAT)

Completing the CDS5 Application Form

Over the past six months the Commission has had to refuse an increasing number of applications for extensions of funding on purely procedural grounds; the forms on which such applications have been made have either been improperly completed or there has been insufficient information on the form for a reasoned decision to be made.

The guidance in this article is designed to help solicitors to ensure that their applications are properly and comprehensively completed. The CDS5 is used for applications to undertake work beyond the upper costs limits contained within the General Criminal Contract.

Guidance on Completing CDS5

The two sections below illustrate the key reasons for the refusal or return of applications and how to avoid this.

These points are in addition to the guidance set out in Section E of the LSC Manual, Volume 4 and should therefore be read alongside the Manual, not in isolation.

1. The CDS5 requires solicitors to provide details of work completed to date and further work required, as well as justification for this further work. It is this section that often causes problems, in particular in the Appeals and Reviews and CCRC classes.
- > When completing this section, reasonably substantial information is needed. The sufficient benefit test should be borne in mind and justification should be made on the basis of the benefit of the proposed work to the client.

- > Often the justification simply states, for example: "*Client has come to us for advice on appeal, 36 lever arch files to consider before advice can be given. Work done to date has been to visit client, sign legal aid forms and obtain papers from previous solicitors*". Where a firm receives a large volume of papers in a case, it should not be assumed that all of the papers must be read before advice can be given. There must be a methodical sifting of all relevant and known information. This will enable justification to be made when applying for funding to carry out additional work.
- > There is clear guidance in the Contract as to reasonable units of time for sifting and assessing evidence in such cases. The Commission recognises that many cases will involve new evidence and sometimes novel points of law, and additional advice from Counsel or further research may take cases over the initial costs limit. However, we cannot fund re-examining cases from scratch, in the absence of any instructions as to an appeal or possible appeal.
2. Firms sometimes apply for extra funding for papers to be re-examined where a member of staff (often a very junior

caseworker) has examined the file without the benefit of any instructions or direction from a more senior member of staff or even Counsel.

- > Cases where an extension of the Upper Limit is required are often complex and difficult. The General Criminal Contract, Specification Part B, Rule 7.11, recognises that not all Contractors will be specialists in all classes of work and, that where they do not have the appropriate expertise, the client must be referred to a specialist in the relevant area of law.
 - > Under the Contract, the Commission will not pay for work that is being duplicated due to lack of expertise or experience. It is stated that: "*If a solicitor agrees to undertake a particular case, he or she should have sufficient expertise to deal with it properly ... A solicitor without suitable experience could easily spend large amounts of time wading through irrelevant documents in detail, but the fund should not be expected to meet the extra cost incurred by reason of inexperience*" (see Criminal Bills Assessment Manual, 2.6.13).
- Further information can be obtained by contacting Denise Bradshaw at denise.bradshaw@legalservices.gov.uk

