

# Legal Services Commission Very High Cost Criminal Cases Arrangements 2004

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## Part 1 - Preliminary

### Introduction

- 1.1 These Arrangements are made by the Legal Services Commission. They set out the arrangements that apply to cases that are, or are likely to become, Very High Cost Cases - so that such cases may be covered by individual case contracts.
- 1.2 The CCU will carry out the functions under these Arrangements, in accordance with any guidance and directions issued by the Commission.

### Interpretation

The definitions in the Contract Specification apply to these Arrangements.

- 1.3 In these Arrangements:

"Barrister" or "Counsel" includes a solicitor with higher court advocacy rights;

"Commission" means the Legal Services Commission;

"Committee" means the committee with the function of determining appeals under these Arrangements, the membership of which will be drawn from the Review Panel in accordance with the Legal Services Commission Review Panel Arrangements 2000;

"CCU" means the Legal Services Commission's Complex Crime Unit;

"ICC" means an individual case contract;

"Fraud Case" means a case in which the offence with which the defendant is charged is primarily, or substantially, founded on allegations of fraud or other serious financial impropriety or involves complex financial transactions or records;

"Terrorism Case" means a case in which the main offence with which the defendant is charged, whether at common law or under any statutory enactment, is primarily, or substantially, founded on allegations of terrorism as defined in the Terrorism Act 2000;

"Very High Cost Case" means a case with regard to which if the case proceeds to trial, that trial would be likely to last for 41 days or longer;

"Very High Cost Fraud Case" means a case that is a Fraud Case and a Very High Cost Case.

## Part 2 - Notifying cases to the CCU

### Introduction

- 2.1 Annex A sets out guidance on defining criminal cases that are likely to become Very High Cost Cases and Very High Cost Fraud Cases.

### When to notify

- 2.2 A solicitor, acting under a Representation Order, must notify the CCU as soon as it appears that the case will be, or is likely to be, a Very High Cost Case.

### What to notify

- 2.3 The solicitor's notification must include the following information:
- (a) the client(s) name(s);
  - (b) the prosecuting authority;
  - (c) the name of the case;
  - (d) relevant case references (e.g. Representation Order number, prosecuting authority's reference);
  - (e) names and other relevant details of co-defendants and the names of their representing solicitors' firms;
  - (f) the charges faced;
  - (g) a summary description of the case, including an opinion on whether the case is a Very High Cost Case or a Very High Cost Fraud Case (see Annex A) and, if so, why;
  - (h) the current status of the case;
  - (i) the probable timetable by which the case will proceed;
  - (j) the date of the Representation Order;
  - (k) the work undertaken by the solicitor's firm to date and, if publicly funded, the value of work undertaken; and
  - (l) whether the solicitor's firm wishes to undertake the case.

## **Part 3 - The decision to enter into a contract**

### **Decision**

- 3.1 On receipt of a notification, the CCU will decide (a) whether the case meets the Annex A criteria or whether the position is unclear; and (b) whether, if the solicitor's firm wishes to undertake the case, they have the experience and resources to conduct the case and, if it is a Very High Cost Fraud Case, they are a member of the Specialist Fraud Panel.

### **If “no” or “unclear”**

- 3.2 If the CCU decides that the case does not meet the Annex A criteria or that the position is unclear, the case will continue without an ICC but the solicitor may be required to report to the CCU at a later date.

### **If “yes”**

- 3.3 If the CCU decides that the case does meet the Annex A criteria, it will decide on a case by case basis, with regard to its capacity to manage ICCs and the extent to which the case has already progressed, whether or not an ICC should be entered into.
- 3.4 If the CCU notifies the solicitor that it wishes to enter into an ICC with the solicitor's firm and the solicitor's firm wishes to undertake the case, the solicitor must, as soon as is practicable and in any event within 14 days, submit a case plan and first stage plan to the CCU.
- 3.5 On receipt of the case and stage plans the CCU will appoint a Contract Manager who will arrange a meeting with a representative of the solicitor's firm to discuss the case and, if satisfied, agree the stage plan and sign the contract.

### **Which firm?**

- 3.6 If the solicitor's firm does not wish to undertake the case or if the CCU serves notice that it does not intend to enter into a contract with the client's current representatives or, if it is a Very High Cost Fraud Case, the firm is not a member of the Specialist Fraud Panel, the firm shall notify the client of his or her right to select another solicitor's firm to undertake the case. In these circumstances, unless the CCU directs otherwise, no further costs will be payable to the solicitor's firm in respect of the case from such date as the CCU specifies.

### **Which rates?**

- 4.1 The CCU shall assign each Very High Cost Case to one of the four categories referred to in Schedule 5 of the Criminal Defence Service (Funding) Order 2001 in accordance with the criteria set out in Annex B of these Arrangements. It may also elect to apply the provisions for remuneration in Schedules 2 and 4 of the Criminal Defence Service (Funding) Order 2001 to the whole or part of any Very High Cost Case if the Representation Order was made on or before 1 July 2004.
- 4.2 The CCU shall assign each solicitor or other fee-earner (other than a barrister acting as an advocate) providing funded services in relation to a case that is a Very High Cost Case to one of the three levels referred to in Schedule 5 of the Criminal Defence Service (Funding) Order 2001 in accordance with the criteria set out in Annex C of these Arrangements.



## Part 4 - Appeals

- 4.1 Where the Contract Manager and firm of solicitors cannot agree a stage plan the Contract Manager will determine a stage plan which he or she is prepared to contract.
- 4.2 Where clause 4.1 applies the Contract Manager will give oral reasons for the decision at the time.
- 4.3 The contracted firm, or Counsel instructed under the contract, may appeal to the Committee against any decision that the Contract Manager makes regarding individual items on a stage plan. Pending appeal and without prejudice to it, the contracted firm or Counsel may enter the contract on the basis of the stage plan approved by the Contract Manager in order to enable work to continue.
- 4.4 The appeal shall be in writing, setting out details of the item(s) in dispute and giving reasons why the firm or Counsel disagree with the Contract Manager's decision.
- 4.5 Any appeal must be lodged with the CCU within 14 days of receipt of the original decision.
- 4.6 On receipt of the appeal the Contract Manager shall give his or her reasons for the decision in writing within 14 days.
- 4.7 The appellant shall have a right to attend the appeal hearing.
- 4.8 The Committee may ask an appellant to attend and may require submission of any further evidence it requires.
- 4.9 Where the appellant attends, the Contract Manager also has a right to attend.
- 4.10 The Committee will consider the following: these Arrangements, any relevant guidance and regulations, the Contract Manager's reasons, the appellant's reasons, any oral submissions and any other relevant matters.
- 4.11 The Committee may (a) dismiss the appeal or (b) allow the appeal in whole or in part. The Committee shall give reasons for its decision.
- 4.12 The decision of the Committee will be a majority decision. Where there is no majority, the chair will have a second or casting vote. The decision of the Committee shall be final and binding on all parties. However, the Committee may invite any party to submit further information before it makes its decision. Any such information must be supplied within 14 days of notification of the request unless the Committee specifies a different deadline.
- 4.13 Where the decision is any other than to allow the appeal in full, the Committee shall give written reasons.

## **Part 5 - At the end of the contract**

- 5.1 The contract will normally terminate when the case is disposed of (including where appropriate advice is given on any appeal) but may terminate before then, in accordance with its terms.
- 5.2 At the end of every case the CCU and contracted solicitors will conduct a post-case review of the performance of the CCU and of the contracted solicitors under the contract with a view to identifying learning points to improve performance under future contracts.

## **Annex A**

### **Part 1 - Guidance on Very High Cost Cases**

A1.1 Factors that indicate that a case is likely to become a Very High Cost Case may include the following:

- (a) the case raises complex issues of law, fact or procedure;
- (b) detailed consideration of extensive documentary evidence or unused material is necessary;
- (c) the defendant is charged with a large number of offences;
- (d) there are many defendants;
- (e) the case is investigated or prosecuted by the Department of Trade and Industry, CPS Special Casework Section, the Inland Revenue or Customs and Excise (or is being undertaken by a specially established, dedicated unit within one of these or similar organisations); or
- (f) the case is a Terrorism Case.

### **Part 2 - Guidance on Very High Cost Fraud Cases**

A2.1 In addition to the factors listed in A1.1 above, other factors that indicate that a case is likely to become a Very High Cost Fraud Case may include the following:

- (a) substantial sums of money are involved;
- (b) the case raises complex issues of law, fact or procedure involving issues such as access to bank accounts, breaches of revenue or tax laws, foreign law jurisdictional issues, conspiracy charges or substantial forensic accountancy work; or
- (c) the prosecuting authority is the Serious Fraud Office (with the exception of prosecutions arising under section 2 of the Criminal Justice Act 1987).

## **Annex B**

### **Criteria for setting hourly rates for Very High Cost Fraud Cases**

The CCU shall decide whether a case is a Very High Cost Fraud Case and which category it falls into. The CCU may review and amend its decision each time it reviews a stage plan. The contracted firm, or Counsel instructed under the contract, may appeal under Part 4 of these Arrangements against such a CCU decision. A different category may apply at different stages of a case, for example, the prosecution may present more evidence than expected, or may drop one of a number of charges. The CCU may publish further guidance on interpretation of the criteria in this Annex.

#### **Block A**

1. The defendant's case is likely to give rise to national publicity and widespread public concern.
2. The defendant's case requires highly specialised knowledge.
3. The defendant's case involves a significant international dimension.
4. The defendant's case requires legal, accountancy and investigative skills to be brought together.

#### **Block B**

The value of the fraud exceeds:

- a) £10m
- b) £2m.

The volume of prosecution documentation (excluding unused material) exceeds:

- a) 30,000 pages
- b) 10,000 pages.

The total costs of representing the defendant(s) is likely to exceed:

- a) £500,000
- b) £250,000.

The length of the trial is estimated at:

- a) over 20 weeks.

#### **Categorisation of cases**

- Category 1: 4 criteria from Block A are met, and 4 a's from Block B.
- Category 2: 3 criteria from Block A are met and at least 2 a's or b's from Block B.
- Category 3: All other Very High Cost Fraud Cases.
- Category 4: *non-fraud Very High Cost Cases only*

## Criteria for setting hourly rates for Non-Fraud Very High Cost Cases

### Block A

1. Must be a class 1 or 2 offence or be a serious drug case.
2. The maximum sentence for the offence is imprisonment for life or over 30 years.
3. The case is likely to attract national interest.
4. If the offence is of a violent or sexual nature, there are multiple victims or if a sole victim, there is something significant about the crime. If the case involves drugs, their total value is estimated to exceed £10m.

### Block B

The volume of prosecution documentation (excluding unused material) exceeds:

- a) 10,000 pages
- b) 5,000 pages.

The total costs of representing the defendant(s) is likely to exceed:

- a) £400,000
- b) £200,000.

## Categorisation of cases

- Category 1: Terrorism Cases
- Category 2: 4 criteria from Block A are met and 2 (a) factors from Block B.
- Category 3: 3 criteria from Block A are met and at least 1 (a) or (b) factor from Block B .
- Category 4: all other Very High Cost Cases

## Annex C

### Definition of levels of fee-earner

A fee-earner is someone who performs work for a firm of solicitors for which it is reasonable to charge a fee. We will decide which level a fee-earner falls into and will consider the level of each fee-earner each time we review a stage plan. A right of appeal arises against any decision of the Contract Manager as to the level of a fee-earner in accordance with Part 4 of these Arrangements. A fee-earner may be at different levels in different cases.

### Very High Cost Fraud Cases

#### A Level A fee-earner must:

- FA1 be a solicitor or employed Barrister; and
- FA2 have 8 years post-qualification experience; and
- FA3 either:
  - (a) meet Requirements S2 of the Legal Services Commission's Specialist Fraud Panel Arrangements Annex 1b; or
  - (b) have a particular specialism that is relevant and important to the case.

#### Notes:

At FA3, if the fee-earner is not currently a supervisor at a Specialist Fraud Panel firm, that fee-earner will be required to provide evidence – by way of billing guides, to show that he or she has fulfilled criterion S2 of Annex B of the Specialist Fraud Panel Arrangements 2002. FA3(b) requires the fee-earner to have a recognised qualification in a particular field which is relevant to a significant aspect of the defence case, or otherwise the fee-earner must be able to show clear specialist experience in this field.

### Non-Fraud Very High Cost Cases

#### A 'Level A' fee-earner must:

- NFA1 be a solicitor or employed Barrister; and
- NFA2 have 8 years post-qualification experience; and
- NFA3 either:
  - (a) during the last 3 years, have conducted a total of 1,050 hours of working on other serious crime cases; or
  - (b) in any 2 of the last 3 years, have conducted a total of 700 hours working on other serious crime cases; or
  - (c) have a particular specialism that is relevant and important to the case; or
  - (d) have a combination of NFA3(a) and NFA3(c), or NFA3(b) and NFA3(c).

Notes:

For NFA 3(a) and (b), evidence that these hours have been met (by way of billing guides) must be provided to the CCU.

**All Very High Cost Cases**

A 'Level B' fee-earner must

B1 either:

- (a) be a solicitor or employed Barrister; or
- (b) be a Fellow of the Institute of Legal Executives; and
- (c) have substantial knowledge and experience of criminal defence casework. Generally this would be expected to include 10 years experience of criminal defence casework and some experience of serious and complex criminal cases.

A 'Level C' fee-earner must

C1 either:

- (a) be a trainee solicitor; or
- (b) be a legal executive (although note B1(b) above); or
- (c) be any other person conducting fee-earning work.