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THE FUTURE OF VERY HIGH COST CASES

A Consultation Paper

December 2008

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Summary information regarding this consultation

- To:** Anyone with an interest in the procurement of very high cost criminal defence services in England and Wales. This includes legal firms, legal representative bodies, client interest groups and other organisations across the criminal justice system.
- Closing date:** 18 February 2009
- Enquiries to:** Claire McNamara, 020 7783 7486 or vhccproject@legalservices.gov.uk
- How to respond:** Online by clicking this link: www.legalservices.gov.uk
- In writing to:
- VHCC Project Team
CDS Policy
Legal Services Commission
4 Abbey Orchard Street
London SW1P 2BS
- Or by email to: vhccproject@legalservices.gov.uk
- Additional ways to contribute your views:** Views can also be submitted through representative groups.
- After the consultation:** The Legal Services Commission will publish a response to this consultation exercise in early 2009 at www.legalservices.gov.uk. If you have registered to complete this consultation online you will be automatically notified of this.
- Compliance with the Code of Practice on Consultation:** This document and the consultation process have been planned to adhere to the Code of Practice on Consultation and is in line with six of the seven consultation criteria set out at Annex 6. Please note that some key elements of the future VHCC scheme (like the fact that there will be a panel of litigators) have already been consulted on, and there have been extensive information discussions with the VHCC Working Group leading up to the formal consultation. On this basis, the duration of this consultation exercise will be eight weeks.
- Topic of this consultation:** The main topic of this consultation is alternative payment mechanisms for VHCCs. Please see Chapter 1 for more information.

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Scope of this consultation:

The LSC is consulting on the following: the VHCC payment mechanism, VHCC panel, VHCC quality assurance, procurement of advocacy services and contracting with advocates. There are areas of the scheme that are not subject to consultation; the selection criteria and the method and process of procurement.

Impact Assessment:

An Initial Impact Assessment of each of the options set out in this paper is included at Annex 5.

Getting to this stage:

Having learned lessons from the 2007 VHCC tendering exercise, we recognise that there is a need to implement a more sustainable VHCC scheme. Therefore, the LSC has worked closely with representative bodies since May 2008 to ensure this goal is achieved.

Previous engagement:

The LSC has been working with The Law Society, The Bar Council, the Crown Prosecution Service and Ministry of Justice (MoJ) as part of a VHCC working group since May 2008. In addition, the LSC has maintained regular contact by means of online forums and email correspondence in order to involve stakeholders and agree on key issues.

A MoJ analyst and an independent analyst have undertaken data extraction exercises from historical VHCC cases in order to propose alternative and sustainable funding options.

The VHCC Project team has worked closely with other LSC departments to ensure consistency and to share best practice.

Foreword

Legal aid practitioners play a crucial role in ensuring there is an effective justice system that the public can trust. The Legal Services Commission (LSC) is committed to ensuring good quality services for clients and value for money for the taxpayer.

On 14 January 2008 the LSC introduced its first Best Value Very High Cost (Crime) Cases Panel (the Panel). Since the introduction of the Panel, the LSC has been working with practitioners to develop the next scheme that will succeed the Panel on 14 July 2009.

The LSC believes there is scope to achieve a more efficient system for both the LSC and our providers. In our view this needs to be a system where we question the value of payment on an hourly basis and explore the best way to encourage team working whilst taking careful consideration of the quality of VHCC litigators and advocates.

After extensive cooperation with the representative bodies, we outline the options for a replacement scheme within this paper and invite anyone with an interest in the procurement of very high cost criminal defence services in England and Wales to respond to this consultation.

The LSC is committed to creating a fair and accessible system for all. Therefore it is of the utmost importance that all parties express their opinions on the proposals set out in this paper and help create a policy that is validated and endorsed by those who use it.

The LSC finds the opinions and ideas of its stakeholders invaluable and realises the importance of working together to arrive at the best possible outcome for all.

We look forward to hearing from you and continuing to work with you.



Carolyn Regan
Chief Executive, Legal Services Commission

December 2008

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Executive Summary

Since May 2008, the LSC has been working with colleagues at the Bar Council, The Law Society, the Crown Prosecution Service and the Ministry of Justice (MoJ) (VHCC Working Group) to explore proposals for the next VHCC scheme. This consultation outlines those ideas in the following five topics.

Consultation topic 1: payment mechanisms

Chapter 1 explores the following two options for a future payment mechanism for VHCCs.

Option 1: a new VHCC scheme

The VHCC Working Group proposes a replacement scheme that offers two separate payment mechanisms for litigators and advocates. However, both mechanisms rely on a fundamental move away from hourly rate negotiation to a unit-based approach.

Unit

Whereas at present VHCC work is paid through a fairly complex series of hourly rates for different case categories, levels of lawyer and different branches of the profession, the Working Group suggests a new unified unit of account termed unit.

The Working Group suggests that a unit should correspond to one hour of a Level C fee earner's time. A unit has differing implications in terms of the implied time input for different levels of fee earner and for different roles performed by advocates.

Case categories

Whereas under the current scheme each VHCC is assigned a case category on a scale of one to four; the Working Group propose that appropriately defined and remunerated tasks should form the basis of the new scheme. The Working Group therefore proposes the removal of case categorisation from the future scheme.

Remuneration

The Working Group suggests that the most acceptable remuneration option appears to be based upon dividing the legal team along the lines of the branches of the profession and to maintain separate remuneration for leader and led advocates.

How much is a unit worth?

The Working Group suggests that the equivalent monetary value for each unit (ie one Level C fee earner hour) is £66.00. Table 2 on page 14 sets out the corresponding rate per hour for each fee earner level/advocate role.

Pre-trial work

The Working Group recognised that there is a robust distinction between preparation and trial phases and thus concentrated on pre-trial work. The Working Group suggests that pre-trial VHCC work can be divided into two elements: core tasks and non-core negotiated tasks.

Core tasks

Through a number of discussions with practitioners at the various VHCC experts meetings, it was agreed that there are a set of core tasks that occur in all VHCCs. Contributors at the experts meetings have produced a list of core tasks, which is set out in Table 3 on page 15.

Remunerating Core Tasks

In broad terms, the Working Group has explored two payment mechanisms for the remuneration of core tasks. The first places emphasis on graduation and upon the potential measures of core tasks and their historic averages. The Working Group is of the view that this mechanism would be preferable to advocates. We therefore refer to this mechanism as Advocate Core Graduation.

The second mechanism defines 'base level' units for each core task. This mechanism supposes that this base level can be supplemented by negotiation over further units, akin to the process and flexibility under the current VHCC scheme. The Working Group is of the view that this mechanism would be preferable to litigators. We therefore refer to this mechanism as Litigator Augmented Graduation.

Non-core tasks

Due to the nature of VHCCs not every item of work that might occur can be considered core. Non-core tasks might include but are not limited to:

- dealing with unused material;
- analysis of defence expert reports;
- drafting applications to dismiss; and
- many other case specific tasks.

Non-core tasks would also include work undertaken in preparation for sentence and/or confiscation.

There is wide variation in and low occurrence of case specific non-core tasks in VHCCs. The Working Group suggests that non-core tasks should be dealt with by way of negotiation similar to the current VHCC scheme but using a unit-based negotiation as opposed to an hourly rate negotiation.

Trial Work

A view emerged early on in the Working Group's discussions that provided preparation is appropriately remunerated the trial phase of a case contract can be

dealt with in a similar way to the existing system. This is the purpose of specifying in detail core and non-core pre-trial tasks.

This consultation paper sets out two options for remunerating advocate trial work:

Option 1 - apart from converting the existing daily refresher and preliminary hearing rates into equivalent units, this is a no-change option to the current scheme.

Option 2 - this option explores an increase in the refresher units to incorporate all new daily preparation during and outside of court hours. No additional units would be available.

For litigator's attendance at court (behind advocate) the existing system could be applied albeit with converted unit values.

Option 2: current VHCC payment mechanism at £145 rates

Apart from reverting to the rates of pay achieved through the 2007 VHCC tendering exercise (ie £145 per hour for Level A/QC on a category 1 case), this is a no change option.

Consultation topic 2: panel of litigator firms

Chapter 2 considers the extent of any restriction on a panel of litigator firms. We set out three options:

Option 1: a closed panel – whereby only those firms that apply during the tender process and are awarded membership will be able to do VHCC work for the life time of that panel

Option 2: open – whereby firms will be able to apply for panel membership at any point

Option 3: closed but with access point(s) – whereby only those firms that apply during the tender process and are awarded membership will be able to do VHCC work for the life time of that panel but there will be a second opportunity to join the panel part-way through the term.

Consultation topic 3: quality assurance

Chapter 3 discusses appropriate levels of quality assurance for litigators and advocates wishing to conduct VHCC work. It also raises for discussion the function and remit of the Post Case Review Committee.

Litigator quality

The LSC proposes that the appropriate level of quality assurance for litigators would include a minimum rating of Peer Review three as an entry criterion. In addition, the LSC considers there is merit in requiring those litigators to provide confirmation of case experience. This would not necessarily be based around time spent on a matter, but rather focussed on demonstration of skills on VHCC or similar matters already undertaken prior to and during the current panel term.

Advocate quality

The LSC proposes that advocates wishing to undertake VHCC work would undertake a self-assessment against a competency framework. Advocates would need to indicate as part of the assessment their ability to lead cases. This self-assessment would need to be endorsed in order for accreditation to be achieved.

Post Case Review Committee

This paper sets out our intention to implement the PCRC in time for the next VHCC scheme in July 2009 and explains the function and remit of the Committee. The PCRC Arrangements are included at Annex 4. In summary, the PCRC would be an advisory committee and its function would be to:

- identify and promulgate Best Practice Guidance;
- identify systemic issues in the management of VHCCs which adversely impact on the management of VHCCs;
- identify any indicators of non-compliance with the VHCC Contract to the CCU; and
- identify any indicators of professional misconduct to the CCU.

Consultation topic 4: procurement of advocacy services

Chapter 4 discusses the LSC's proposal for the future procurement of advocacy services for VHCC Work. The LSC's preference would be for advocates to satisfy certain quality criteria in order to undertake VHCC work through a self-assessment exercise. Under this option advocates would be allowed to demonstrate their eligibility at any time prior to undertaking VHCC work. Advocates would not be required to sign a contract until they are instructed to represent a client in a VHCC.

Consultation topic 5: Contracting for advocacy services

Chapter 5 looks at how the LSC should contract with advocates to provide VHCC work in the future. The LSC's preferred option would be to treat litigator firms and advocates differently when it comes to contracting. Under our preferred option, advocates would only be required to sign a contract/agreement to do VHCC work on a particular case when they are due to be instructed on that case. That advocate would need to satisfy certain quality criteria in order to be eligible to sign the contract/agreement.

Whilst the contract/agreement would only apply to the advocate's work on that particular case, in order to verify that work had been properly carried out the advocate will be required to produce the appropriate evidence.

For advocates, the length of the actual VHCC matter will dictate contract/agreement length.

Introduction

Background to this consultation

In 2007, the LSC carried out a competitive tendering exercise, in which we invited tenders for membership of the Very High Cost Case (Crime) Panel (the Panel). Successful applicants were appointed to a panel of providers contracted to provide criminal defence work to clients on VHCCs and were required to sign up to the VHCC Panel Contract.

The Panel was formed in January 2008 and runs for a term of 18 months. It is due to end on 13 July 2009, subject to an extension clause of up to twelve months. The LSC offered contracts to 330 litigator firms and 2,300 advocates. However, a low number of barristers signed contracts. As a result, the LSC issued amended contracts which allowed for the instruction of non-Panel Advocates on VHCCs if no Panel Advocate is available.

On 24 October 2008 Lord Chancellor and Secretary of State for Justice, Jack Straw announced interim provisions to ensure that VHCCs are dealt with effectively and economically until July 2009.

For more information on the current VHCC scheme please go to the LSC website: www.legalservices.gov.uk

We have established a VHCC Working Group to explore proposals for the next VHCC scheme to replace the current Panel when the Panel Contract expires in July 2009 (subject to our right to extend). Representatives of the Legal Services Commission, the Bar Council, the Law Society, the Crown Prosecution Service and Ministry of Justice (MoJ) officials are members of that group.

For further information about the VHCC Working Group and/or their discussions please visit the LSC website and follow the links: Criminal Defence Service (CDS)>Crime contracts>Very High Cost Case Contracts.

A copy of the Working Group's Terms of Reference is included at Annex 3.

This document sets out the detail of how we plan to deliver a scheme to replace the Panel. Through our detailed work and discussion with the principal representative bodies, and having learned lessons from the current Panel, we have identified a number of options that may present a more long-term approach to contracting for VHCCs. In Chapter 1 we explore a number of payment mechanisms for VHCCs. Chapter 2 discusses the principle of a panel of litigator firms and identifies two alternatives to a continuation of a closed panel. We then set out our proposals for quality assurance measures for any future VHCC scheme in Chapter 3 and how we might procure services from those quality providers in Chapter 4. Finally, in Chapter 5 we explore a different approach to contracting with advocates for their work on VHCCs.

Please note, the tables set out in this consultation paper contain figures based on calculations made by Professor Martin Chalkley, a Bar Council appointed analyst, and Simon Hayllar, a MoJ analyst. These two experts will continue their analysis of the case data they have collected and will produce figures based on their final calculations in time for our response to this consultation. In the meantime, we have produced an initial impact assessment (at Annex 5) based on the data set out in this paper.

Why are we carrying out this consultation?

The current VHCC scheme is due to expire on the 13 July 2009. It is essential to have a new scheme in place to ensure a smooth transition in July 2009. This consultation outlines the ideas that the LSC and the representation bodies have drawn together and plays an integral part in implementing a satisfactory successive scheme.

Scope of consultation

The scope of this consultation can be divided into five topics:

1. What is/are the appropriate payment mechanism(s) for VHCCs?
2. Should the panel of litigator firms be open or closed?
3. What is the appropriate level of quality assurance for VHCC work?
4. How should the LSC procure VHCC work undertaken by advocates?
5. How should the LSC contract with advocates to provide VHCC work?

There are however certain policy decisions which are not part of this consultation and we set out these out below.

Definition of a VHCC – we are not proposing to change the current definition of VHCCs.

Panel of litigator firms – whilst we accept the operation of the current Panel has not run as smoothly as it was intended, we still take the view that a quality-based panel of litigator firms is important for the future of VHCC legal services.

Framework contract for litigator firms – whilst we are consulting on our method of contracting with advocates we do not propose a change to the current framework (or Panel) method of contracting we have with litigator firms. We do intend to make changes to the content of that contract and we will run a separate contract consultation with the representative bodies in March 2009.

Manual – we intend to create a guidance manual that captures the operational aspects of the day-to-day management of VHCCs. This manual will be distributed to litigator firms and advocates working on VHCCs.

Panel term – when considering the length of a litigator firm contract we would propose a three year contract term that covers all work started under the contract. This, in our view, would be of sufficient length to obtain a balance between costs of procurement, maintenance of a sustainable market, competition and certainty for the contract holders.

Selection criteria – whilst we discuss quality assurance measures in Chapter 3 of this paper and ask for views on Peer Review and appropriate experience measures, the actual wording of the selection criteria will not be defined until after consultation. We want to consider the views of the respondents to inform our policy decisions with regard to selection criteria. We will issue a table of selection criteria as part of our Information for Applicants at the start of the tender process.

Procurement method and process - having learned lessons from the tender process of the Panel in 2007, any method of procurement for the future of VHCCs needs to be:

- electronic based - avoiding the extensive paper submissions; and
- as simple and user friendly as possible.

Any procurement method for VHCCs in 2009 will be purely based on quality not price.

What happens next?

Following the close of this consultation, the LSC will carefully analyse all of the responses received. We will then publish a summary of the responses and state how these views will help us shape the policy development. An indicative timetable can be found at page 30.

In addition to this formal consultation, the LSC will also be organising regional consultation events where the topics in this paper will be discussed. If you are interested in attending such an event, please email:

vhccproject@legalservices.gov.uk

We will be conducting a separate contract consultation in March 2009.

Chapter 1: Payment mechanisms

There is a desire on the part of all those involved to formulate a reimbursement mechanism for VHCCs that is sustainable, economises on resources and encourages efficient case management.

This chapter presents two options for the future payment mechanism for VHCCs. Option 1 is a new scheme that has been developed by the VHCC Working Group and is its proposal for a scheme to replace the current Panel in July 2009. Option 2 is the continuation of the current payment mechanism. The Working Group has agreed that any replacement scheme will deliver savings of the same magnitude as the 2007 Panel tendering exercise delivered.

Option 1: a new VHCC scheme

The current VHCC scheme, based on hourly rates, involves both LSC and legal teams in negotiating the fine detail of each item of work and the time allowed for the many and varied tasks required in a case. Sometimes this can be significant. The VHCC Working Group proposes the following payment mechanism for the future of VHCCs.

The Working Group has been careful to ensure that the scheme does not alter the balance in LSC funding between advocates and litigators. Provided that working practices do not change, this scheme should maintain that balance.

Measuring lawyer input

The Working Group started by discussing a prerequisite of the proposed fee mechanism – a unified measure of input that we term simply the ‘unit’.

At present VHCC work is paid through a fairly complex series of hourly rates for different case categories, levels of lawyer and different branches of the profession. When submitting plans to the LSC, practitioners have to estimate how much and what kind of work is required and who is to undertake that work. That is difficult, and may discourage flexibility. The LSC’s view is that we need a change from this way of specifying work. Consequently, the Working Group to recommended a break from hourly rates in a new remuneration system.

To establish such a break the two analysts suggested a new unified unit of account. The Working Group adopted this as an appropriate way forward.

The Working Group uses the term ‘unit’ to refer to a measure of the input of legal services that is required in order to undertake the various tasks that make up a case. This unit would remove the different levels of fee earner, harmonising the rate of pay. For example, a firm would not be assigned 10 hours at Level A, 10 hours at Level B and 5 hours at Level C. Instead, they would be assigned a certain number of units. How that firm allocates those units is entirely its decision.

In order to facilitate a transition from hourly rates to a new remuneration regime there needs to be a clear relationship between hours of work (that which is measured in

the present scheme) and units (that which the Working Group proposes will be remunerated in the new scheme). The Working Group has chosen to base the discussion on a unit that corresponds to one hour of a Level C fee earner's time.

The units of input concept and its relationship to hours of work are important for understanding the remainder of this chapter and the proposed new remuneration mechanisms. The value of different tasks (their extent and complexity) may be measured in terms of units. Thus the unit serves as an accounting device.

For different levels of fee earner and for different roles performed by advocates a unit has differing implications in terms of the implied time input, but, importantly, this remains implied. Calculation, negotiation and remuneration could be determined in terms of units without necessarily having to refer to that implied time input. The Working Group has used the existing relativities between hourly rates to calculate the implied number of units a particular member of the legal team will generate for each hour of work they undertake. These are set out in Table 1 below.

Table1 Conversion between time inputs and units

Fee earner levels/advocate roles	Units implied by one hour of input
Level C fee earner	1
Level B Litigator	1.43
Level A Litigator	1.6
QC	1.75
Leading Junior	1.3
Junior (alone)	1.08
Led Junior	1.06
2 nd Led Junior	0.84
Pupil	0.63

With the exception of Table 2 in this chapter the figures set out in the tables are based on calculations made by Professor Martin Chalkley, a Bar Council appointed analyst, and Simon Hayllar, a MoJ analyst in an exercise whereby they analysed data from 88 VHCC contract files. Table 2 was produced by the MoJ following a separate exercise analysing data from all closed VHCC contracts. The two experts will continue their analysis of the case data collected and will produce figures based on their final calculations in time for our response to this consultation. In the meantime, we have produced an initial impact assessment (at Annex 5) based on the data set out in this paper.

The unit may serve as a convenient simplification, over hourly rates, in determining required remuneration. The Working Group proposes that it can serve as a direct replacement of hourly rates for core tasks in VHCCs and can act as the basis for all remuneration in VHCCs.

Question 1

What are your views about moving to a system based on units?

Case categories

Under the current scheme each VHCC is assigned a case category on a scale of one to four. The category will determine the hourly rate of remuneration for each fee earner and advocate working on that VHCC. The criteria for each category of case can be found at Annex 4 of the VHCC Panel Member Contract. See www.legalservices.gov.uk

The Working Group therefore proposes the removal of case categorisation from the future scheme. The consensus view of the Working Group is that appropriately defined and remunerated tasks should form the basis of the new scheme.

Question 2

To what extent do you agree with the Working Group's proposal to remove case categorisation?

Please give reasons.

Membership and remuneration of the legal team

It is accepted that the delivery of legal services in VHCCs is a team activity but that the legal team has important constituent parts. The critical issue for the remuneration structure is how the team should be partitioned for the purposes of remuneration. At one extreme is a 'one-team-one-fee' view, at the other there is separate remuneration for each member of the team.

After detailed discussion with existing practitioners, the Working Group suggests that the most acceptable option appears to be based upon dividing the legal team along the lines of the branches of the profession and to maintain separate remuneration for leader and led advocates.

For example:

'In a case contract, litigators were allowed 75 units, the QC in the case contract was allowed 50 units and the led junior was allowed 30 units to undertake core tasks.'

Where an advocates role changes in the course of a contract (through an amendment to the representation order) the graduated fee would be split with any evidence related units or time related units being paid according to the role that advocate had at the time. Evidence served and time elapsed after the role had changed would attract the rates corresponding to the changed role.

How much is a unit worth?

There is also a natural way to convert from units to monetary values and, hence, to determine financial remuneration. Once a monetary value is placed on a unit, remuneration is determined simply by multiplying that value by the number of units for a task or group of tasks.

Based on the unit ratios set out at Table 1, the Working Group suggests that the equivalent monetary value for each unit is £66.00. In table 2 below we set out the corresponding rate per hour for each fee earner level/advocate role. Following a separate exercise analysing data from all closed VHCC contracts, the MoJ has produced the figures in this table. These figures have been calculated using a dataset containing 2.3 million litigator and advocacy hours conducted on closed cases. The figures produced are an average of all payments across all cases, by fee earner level or advocate role.

Table 2 Monetary value per hour equivalent

Fee earner levels / advocate roles	Hourly rate equivalent
Level C fee earner	£66
Level B Litigator	£94
Level A Litigator	£106
QC	£116
Leading Junior	£86
Junior (alone)	£72
Led Junior	£70
2 nd Led Junior	£56
Pupil	£42

Pre-trial work

The Working Group recognised that there is a robust distinction between preparation and trial phases. Once the trial on a case has started there is consensus that trial advocates can be remunerated on the basis of daily rates. Litigator involvement is also amenable to relatively simple payment. We discuss trial work later in this chapter.

The Working Group thus concentrated on pre-trial work and focussed their empirical work on a task-based break-down of that work. The Working Group discussion has indicated that pre-trial VHCC work can be divided into two elements:

- core tasks
- non-core negotiated tasks.

Core tasks

The tasks that need to be done by litigators and/or advocates on VHCCs vary significantly from one case contract to another even where these relate to the same case. However, through a number of discussions with practitioners at the various VHCC experts meetings, it was agreed that there are a set of core tasks that occur in all VHCCs. Contributors at the experts meetings have produced a list of core tasks, which is set out in table 3 below.

Table 3 Core Tasks¹

Reference	Description	Potential Measure
CT2/3/14	Conference with litigator, advocate, client, LSC	D/M
CT6	Considering brief	F
CT16	Perusing preliminary proof	M
CT18	Perusing served crown schedules	M
CT19	Perusing served exhibits	M
CT20	Perusing served interview transcripts	M
CT22	Perusing prosecution case summary/opening note	M
CT23	Perusing served witness statements	M

A table of definitions for each of the core tasks listed above is contained at Annex 2.

The Working Group suggests that core tasks can be grouped naturally as follows:

- M tasks - suitable to be measured in terms of amount of material
- D tasks - measured in terms of duration, eg stage length
- F tasks - with a fixed measure.

Based on the Working Group's analysis of data held by the CCU, it is estimated that more than 50% of pre-trial working time corresponds to core-tasks.

The desire is that the definition of core tasks is sufficiently broad (and that exceptions can be defined sufficiently narrowly) so that a large proportion of the resources required on a case contract can be defined and agreed ex-ante. Decisions about how to undertake those core tasks are then left as far as possible to the discretion of the legal team.

Question 3

To what extent do you agree with the split of core and non-core tasks explained above?

Please explain your reasoning.

¹ The approach to converting electronic evidence for the purposes of calculation requires future consideration.

Remunerating core tasks

Through their analysis, the Working Group has considered a number of options of how such a scheme might operate.

The Working Group discussed the possibility of running two separate payment mechanisms for litigators and advocates and the LSC sees no practical reason why different approaches to core task payment cannot be adopted.

In broad terms, the Working Group has explored two payment mechanisms for the remuneration of core tasks. The first places emphasis upon the potential measures of core tasks. The Working Group is of the view that this mechanism would be preferable to advocates. We therefore refer to this mechanism as Advocate Core Graduation.

The second mechanism defines 'base level' units for each core task. This mechanism supposes that this base level can be supplemented by negotiation over further units; more akin to the process and flexibility under the current VHCC scheme. The Working Group is of the view that this mechanism would be preferable to litigators. We therefore refer to this mechanism as Litigator Augmented Graduation.

The over-riding objection to applying different mechanisms to the two branches of the profession was a concern that such an arrangement is likely to incur a risk of work being shifted from the more fixed remuneration branch to the more flexibly remunerated branch with a resultant increase in costs. However, the risk of work being shifted is largely mitigated by the controlled list of core tasks.

These two mechanisms are described in more detail below together with the advantages and issues compared with the current VHCC scheme (set out as option 2 on pages 22 and 23).

Advocates Core Graduation

Starting point	<p>The CCU Contract Manager will use a formula to determine a number of units they will allow for each of the core tasks listed in Table 3 above. For example, the number of pages of prosecution statements will be multiplied by a specific number ('multipliers') and will determine the number of units for CT23 Perusing statements.</p> <p>These multipliers are set out in Table 9 at Annex 1 and have been derived through analysis of 88 VHCC contract files by the Working Group. They are, in essence, averages of the time spent on each core task by each advocate role.</p> <p>When the units have been determined, contract managers would not further intervene to monitor or regulate the use of these units. There would also be no opportunity to request additional units for the core tasks. However, there would be a mechanism to ensure</p>
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	that tasks had been completed, ie through specification of appropriate deliverables (to be defined) before payment is made.
Benefits	Given the complexity of VHCC work, this approach comes as close as possible to achieving the efficiency savings that follow from a formulaic approach without negotiation and monitoring.
Issues	This mechanism relies on the reasonableness of the averages when applied across all VHCCs.

The data in support of this mechanism is included at Annex 1.

Litigator Augmented Graduation

Starting point	<p>The CCU Contract Manager will use the base levels set out in Table 10 at Annex 1 to determine the minimum number of units they will allow for each of the core tasks listed in Table 3 above. For example, the number of pages of prosecution statements will be multiplied by a specific number ('base level') and will determine the minimum number of units for CT23 Perusing statements.</p> <p>These base levels are the minimum units that would be agreed for the core tasks if they were requested under the current scheme and the LSC agrees to use these for that purpose. These base levels will not be used by the LSC as the agreed norm for each core task.</p> <p>Contract managers would monitor the use of these units. Provided litigator firms are able to evidence their use of these units through attendance notes and the production of other certain deliverables (ie proof of evidence) payment will be made.</p>
Augmentation	Where the units for a core task are exhausted or where the case manager feels at the outset that there are not enough units, the case manager and contract manager would meet to negotiate further units. The contract manager would not monitor the details of who carried out tasks – only the total units expended.
Benefits	<p>This approach replicates some of the flexibility of the present arrangements and allows the detailed variation across case contracts to be reflected in the units allowed (and hence remuneration). The close analogy with the present system allows for a similar degree of budgetary control as at present.</p> <p>A second benefit with this mechanism is that it allows litigators to start work knowing that they will be paid the minimum.</p>
Issues:	Moving to a unit based approach could just be seen as an over

	complication of the current scheme. Another issue with this approach is its reliance on negotiation and monitoring.
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A table of the core task base levels is included at Annex 1.

Question 4

To what extent do you agree with the Working Group's view that having two separate payment mechanisms is the correct approach for the future of VHCCs?

Please give your reasoning.

Non-core tasks

There are potentially many tasks performed in the course of a VHCC case contract by litigators and/or advocates that do not readily fall under the headings in Table 3. Due to the nature of VHCCs, not every item of work that might occur can be considered core. For example, where the primary charge is drugs related, a VHCC might require analysis and scheduling of telephone records. However, this would not be the case for all VHCCs. In fact, it may not even be the case for all drugs related VHCCs.

Non-core tasks might include but are not limited to:

- dealing with unused material;
- analysis of defence expert reports;
- drafting applications to dismiss; and
- many other case specific tasks.

Non-core tasks would also include work undertaken in preparation for sentence and/or confiscation.

There is wide variation in the case specific non-core tasks in VHCCs. The Working Group suggests that non-core tasks should be dealt with by negotiation, similar to the current VHCC scheme. A significant amount of pre-trial preparation consists of non-core tasks, so there will still be a significant bespoke element of each VHCC that will be subject to the flexibility of negotiation.

The Working Group suggests moving towards a unit based negotiation as opposed to an hourly rate negotiation. Under such a scheme tasks would be assessed and remunerated by reference to a single measure of legal input (units). The same calculations used to convert time into units set out in Table 1 above would be used and agreed in advance with the CCU Contract Manager at three-monthly intervals, subject to amendment throughout the stage.

An alternative approach would be to continue negotiating time for non-core tasks on an hourly rate basis. Then the CCU Contract Manager simply converts hours to units for the purposes of remuneration. Such an approach would still allow flexibility in allocating work as following negotiation of the time required and the unit conversion, litigator firms would be entitled to manage at their own discretion who in their team undertakes that work.

Question 5

To what extent do you agree with the Working Group's suggested approach to dealing with non-core tasks?

Please give your reasoning.

Trial work

A view emerged early on in the Working Group's discussions that provided preparation is appropriately remunerated the trial phase of a case contract can be dealt with in a similar way to the existing system. This is the purpose of specifying in detail core and non-core pre-trial tasks.

Remuneration of advocacy services at trial has been accomplished traditionally through daily refreshers. The rates set for refreshers reflect both time spent in court and makes allowance for up to two hours of additional preparation required through the late arrival of new material and other preparation.

Option 1

The Working Group proposes that the unit concept described above could also accommodate this approach. Thus for each day in court the relevant component(s) (leader, junior or led junior) of the legal team can be credited with a number of units. As in the present system the number of units (the value of the refresher) would reflect the responsibility and experience of the team member(s). Additional preparation, negotiated with the contract manager could similarly be reflected in additional units. Table 4 sets out the unit equivalent for each advocate role.

Table 4 Advocacy units

Advocate role	Preliminary hearing (units)	Half day (units)	Full day (units)
QC	1.71	3.61	7.21
Leading Junior	1.30	2.95	5.91
Junior (alone)	1.02	2.17	4.32
Led Junior	0.88	1.91	3.82
2 nd Led Junior	0.52	0.97	1.94
Noter	0.44	0.83	1.65

Separate arrangements would need to be in place for time at court waiting for the jury to return. The LSC's proposal would be to treat this time in the same way as under the current scheme (ie half day refresher plus waiting time).

Option 2

An alternative means of remunerating advocate trial work would be similar to that set out above but would involve an increase in the refresher units to incorporate all new daily preparation during and outside of court hours. No additional units would be available. Separate arrangements would need to be in place for time at court waiting for the jury to return. The LSC's proposal would be to treat this time in the same way as under the current scheme (ie half day refresher plus waiting time).

The LSC also proposes including units for a non-sitting day. For example, where a juror is taken ill, further evidence is served and as a result the court does not sit, advocates would be allocated units appropriate to their role in that case. The units

correspond to four preparation hours at each advocate role. Time waiting for the jury to return is not considered a non-sitting day.

Table 5 below sets out the unit equivalent for such a scheme.

Table 5 Advocacy units

Advocate role	Half day (units)	Full day (units)	Non-sitting day (units)
QC	7.11	10.71	7.00
Leading Junior	5.55	8.51	5.20
Junior (alone)	4.33	6.48	4.32
Led Junior	4.03	5.94	4.24
2 nd Led Junior	2.65	3.62	3.36
Noter	0.83	1.65	0.00

Question 6

Which of the two options set out for trial work remuneration do you prefer?

Please give your reasoning.

For litigator's attendance at court (behind advocate) a similar system could be applied albeit with different unit values. Table 6 below sets out the unit equivalent per hour for each fee earner level. Additional litigator preparation would be treated as non-core tasks and therefore subject to the negotiation approach set out above.

Table 6 Attendance at court units

Fee earner level	Attendance at court (units (£) per hour)
Level A litigator	0.64015 (£42.25)
Level B litigator	0.5151 (£34.00)
Level C fee earner	0.3106 (£20.50)

Question 7

To what extent do you agree with the assessment of impact outlined in Annex 5?

Question 8

Do you have any evidence of impacts that we have not yet considered?

Option 2: Current VHCC payment mechanism at £145 rates

The second option for a future payment mechanism for VHCCs would be to stay with the current scheme.

Summary of scheme

At the outset of the case the defence team and the CCU Contract Manager assigned to the VHCC will enter negotiations on the category of case. A VHCC will fall into one of four categories. The category will determine the hourly rate of remuneration for each fee earner and advocate working on that VHCC. The criteria for each category of case can be found at Annex 4 of the VHCC Panel Member Contract. See www.legalservices.gov.uk

The current scheme operates on the principle that all work to be done on a VHCC must be agreed in advance of the work being undertaken. Having agreed the category, the case is divided into three-monthly stages and at the start of each stage the defence team submit a task list setting out, item by item, the work required and time to conduct that work in order to further the defence case over the course of the three-month period.

The assigned Contract Manager then meets with the case manager and/or lead advocate to negotiate the work and hours requested based on reasonableness and necessity. Throughout the stage, the defence team and the Contract Manager will then amend the task list (by agreement) to take account of new and/or further items of evidence or additional work that was not foreseeable at the outset of the stage.

At the end of each stage the defence team then submit their claim for the work done. Provided the work done falls within the item of work and time agreed, the CCU would pay the claim. With their claim for work, the defence team will also submit a new task list for the next three-monthly stage of the case and the negotiation starts afresh.

The stage of the case that includes the work at trial will follow the same general principle but tends to offer greater flexibility to those conducting the work at this stage. For example, rather than agreeing very specific items of work, Contract Managers will tend to agree weekly allowances and/or ratios for reading evidence served. This is to avoid any unnecessary and often burdensome administration during the trial stage of the case.

The current VHCC scheme also includes work undertaken post trial, at sentencing and/or confiscation hearings. These are dealt with as separate stages of the case and will follow the same strict principles as pre-trial stages.

The hourly rates of pay for this option would be those rates offered at the conclusion of the 2007 Panel tendering exercise (ie £145 per hour for Level A/QC preparation work on a category 1 VHCC and all proportionate values for other fee earners/advocate roles.) A full table of rates can be found at Annex 7 of the current VHCC Panel Member Contract.

For a full description of the current VHCC Panel Scheme please read the VHCC Panel Member Contract, available on the LSC website.

Question 9

Which of the two payment mechanisms set out in this chapter do you prefer:

Option 1: the new payment mechanism by the VHCC Working Group

Option 2: the current VHCC payment mechanism?

Chapter 2: Panel of litigator firms

It remains the LSCs view that having a panel of quality assured litigator firms is an effective means of ensuring only those firms skilled and experienced to undertake VHCC work do so.

We accept that the current VHCC Advocates Panel has not run as smoothly as we had intended and we address ways of resolving the situation in this paper at Chapter 4.

Unlike the Advocates Panel, we do intend to have a panel of litigator firms, whereby those applicants satisfying certain quality criteria (explored in detail in Chapter 3) would be granted panel membership.

The topic for consideration in this chapter is whether that panel is:

Option 1: closed – whereby only those firms that apply during the tender process and are awarded membership will be able to do VHCC work for the life time of that panel (eg the current VHCC scheme). Firms will not be able to join the panel part-way through its life;

Option 2: open – whereby firms will be able to apply for panel membership at any point during the life time of that panel and subject to satisfying certain quality criteria would be offered such membership for the remainder of the panel term; or

Option 3: closed but with access point(s) – whereby only those firms that apply during the tender process and are awarded membership will be able to do VHCC work for the lifetime of that panel (eg the current VHCC scheme) but there will be a second opportunity to join the panel part-way through the term (eg a half way access point).

Question 10

Which of the following three options would be your preferred choice:

Option 1: closed panel

Option 2: open panel

Option 3: closed panel but with access point(s)?

Question 11

If your choice is option 3: closed panel but with access point(s), if the panel term was three years at what point would you allow other firms to apply for membership:

(a) half way through (ie at the 18 month period)

(b) at the end of the second year

(c) other (please specify)?

Chapter 3: Quality Assurance

The LSC envisages that the quality assurance aspects of a new VHCC scheme will move away from assessing hours spent on cases as a determinate of quality and instead be based around the principles of independent Peer Review (PR) and accreditation. However, the LSC still sees a proxy link between experience and effectiveness and quality and we discuss this below.

Litigator quality

PR is a quality assessment tool, which directly measures the quality of advice and legal work carried out by legal aid providers and experienced by legally aided clients. Trained peers undertake these assessments with requisite experience in each area of law.

The PR process does not look specifically at VHCC matters. The review of the general crime category is taken as a general indicator of quality to undertake publicly funded criminal defence work. Utilising the PR mechanism for general crime as an indicator of quality provides access to the market for developing or new firms.

There are also a small number of providers who operate an exclusively VHCC caseload that are not able to take part in the general crime PR process. Those providers would be subject to a PR of their VHCC work. This is a review of VHCC files conducted by specialist VHCC peer reviewers. In the 2007 tendering exercise, these providers were assessed at either pass or fail, with a pass demonstrating a PR3 rating. The LSC wishes to continue assessing the quality of work conducted by these providers and is considering the appropriate assessment level.

All providers who bid for work during the first tender had to demonstrate a PR3 rating – Threshold Competence, to be awarded a full VHCC (Crime) Panel Contract.

Those who had not, at the time of applying, had a PR assessment or who were making representations on previous ratings and met all other criteria were awarded conditional contracts. The LSC would use this same process in the tender for the next panel.

The specialised nature of some VHCC cases naturally lend themselves to the quality indicators demonstrated at PR 2 - Competence Plus. Whilst it is the long-term aim of the LSC to move to a PR2 threshold as a minimum entry criterion, we will not be in a position to do so in time for any panel tender for the next VHCC scheme.

It is the LSCs proposal therefore that the minimum Peer Review entry criterion for VHCCs ought to be PR3.

Question 12

Do you accept the LSC's proposal that the minimum Peer Review entry criterion for VHCCs ought to be PR3?

Please give your reasons.

Confirmation of case experience

The LSC considers that in addition to the minimum entry criteria set out above there is merit in litigators who wish to undertake VHCC work providing confirmation of case experience. Experience, we feel, is a useful proxy for quality. This would not necessarily be based around time spent on a matter, but focused rather on demonstration of skills on VHCC or similar matters already undertaken prior to and during the current Panel term. Further work on determining suitable methods of capturing experience is being undertaken by the VHCC Project Team. In doing so, we will apply any such criteria to potential new entrants and existing Panel Members in relation to their access to this work.

Question 13

What appropriate measures of experience do you feel we ought to consider when assessing the quality of litigator firms?

Advocate quality

The LSC is committed to quality assurance of advocates in VHCC work. It considers that the following options will provide quality assurance mechanisms for advocates undertaking VHCC work both on self-assessment of competencies and informal recommendation by experienced practitioners.

It is our proposal that advocates wishing to undertake VHCC work would undertake a self-assessment against a competency framework. Advocates would need to indicate as part of the assessment their ability to lead cases. This self-assessment would need to be endorsed by a number of instructing litigators in order for accreditation to be achieved. For employed advocates (ie in-house barristers and solicitor-advocates that work only for their employer), that are only able to provide an endorsement by one instructing litigator, their self-assessment would also need to be endorsed. This would be done by either an advocate that has led them previously in an appropriate case or a leading advocate that has worked alongside them in an appropriate case.

We also would propose that any advocates wishing to undertake VHCC work take part in any agreed quality assessment framework, eg Quality Assurance for Advocates (QAA)².

The self-assessment design will ensure that assessments are kept to a minimum while also adding value to the advocate, the purchaser and the client.

If, following the pilot and consultation of any QAA scheme, such a scheme were implemented within the next VHCC cycle then entitlement to undertake VHCC work will, from that point, be based on the QAA scheme and not self-assessment. Only advocates who have been accredited under such a scheme (at the level appropriate to the VHCC on which they are to be engaged) will be eligible to undertake that

² Work on the QAA scheme is currently underway with a pilot scheduled for 2009.

VHCC. Whilst no final decision has yet been made, the introduction of a QAA scheme may require those advocates with accreditation through the VHCC self-assessment process to undergo a separate review under the QAA competency framework.

Question 14

To what extent do you agree with the LSC proposal to assess an advocate's quality through a self-assessment mechanism with endorsement(s)?

Please give your reasoning.

Post Case Review Committee

The Post Case Review Committee (PCRC) was originally recommended by Lord Carter³. We subsequently consulted on the idea of a PCRC (previously termed Post Case Audit Board) in our consultation paper *Best Value Panel for VHCCs* published in February 2007.

In our response to that consultation we explained that because of a number of issues raised by respondents, it was sensible to remove the contract annex concerning the Audit Board from the contracts at that time. Some respondents were concerned that the powers for the board to examine the work of individual Panel Members went beyond their understanding that the role of the board was confined to identifying improvements to the VHCC contracting system.

This paper sets out our intention to implement the PCRC in time for the next VHCC scheme in July 2009 and explains the function and remit of the Committee.

The Post Case Review Committee is an advisory committee of the LSC created by arrangements made under section 3(4) and Schedule 1, paragraph 12 of the Access to Justice Act 1999. The PCRC Arrangements are included at Annex 4.

Question 15

To what extent do you agree with the proposed function and remit of the Post Case Review Committee?

Please give your reasoning.

³ Recommendation 4.22 *The Legal Services Commission should make improvements to case management by the Complex Crime Unit (outlined in paragraph 96 of Chapter 4 and detailed in Annex 4.7) by recruiting qualified practitioners, establishing a referral and a post case audit panel and designing a very high cost criminal cases best value team protocol by October 2007.*

Chapter 4: Procurement of advocacy services

Having experienced the difficulties in procuring advocacy services in the 2007 tendering exercise, we have, through a number of discussions with the Bar Council, explored an alternative means of procurement.

The LSC's preference would be to offer a flexible approach to advocates when it comes to doing VHCC work. advocates would need to satisfy certain quality criteria in order to undertake VHCC work. Under this option however, advocates would be allowed to demonstrate their eligibility at any time prior to undertaking VHCC work.

Advocates would not be required to sign a contract until they are instructed to represent a client in a VHCC. We discuss the proposed Advocate Contract in Chapter 5.

This may be attractive to some advocates in that they will be pre-approved to undertake the work without being asked to sign a contract/agreement until instructed. Others may find that it suits them to seek approval only when they are due to be instructed on a particular VHCC.

The principle would be that once an advocate had been approved, they would be entitled to do VHCC work from thereon, subject to any change in circumstances.

If a QAA scheme is implemented within the lifetime of the next VHCC cycle, the advocate Contract/Agreement would be amended following consultation so that eligibility and remuneration are based on accreditation under that scheme.

Question 16

To what extent do you agree with the proposed method of procurement for advocacy services?

Please give your reasoning.

Chapter 5: Contracting for advocacy services

This section of the paper sets out our preferred contracting option for the future of VHCCs. A separate contract consultation with the Consultative Bodies will take place in March 2009.

Just as with the procurement method, our preferred option would be to treat litigator firms and advocates differently when it comes to contracting. This respects the way litigators and advocates work differently and as a result have different relationships with the LSC. The way in which we contract with litigators is not a topic for this consultation. We do however present our proposals for the future contracting of with advocates to deliver VHCC work.

Under our preferred option, advocates would only be required to sign a contract/agreement to do VHCC work on a particular case when they are due to be instructed on that case. That advocate would need to satisfy certain quality criteria in order to be eligible to sign the contract/agreement.

The contract/agreement would apply to the advocate's work on that particular case only. In order to verify that work had been properly carried out on the case the advocate will be required to produce an appropriate deliverable for each core task. For non-core tasks the advocate will be required to provide a work record (similar to the work log provided under the current scheme). Where the LSC suspects serious professional misconduct, breaches of the Act (or other legislation), or dishonesty by any contracted advocate, we reserve the right to request access to all relevant material (including case management systems) held by that advocate. Further details concerning this provision will be contained in the contract consultation we will be conducting separately.

The contract/agreement for advocates would be very different to the VHCC Panel Contract used now. It would be our preference to have a terms and conditions section for signature by the advocate at the time of instruction, with an accompanying specification shorter than that for litigator firms.

For advocates, the length of the actual VHCC matter will dictate contract/agreement length.

Question 17

To what extent do you agree with the proposed contracting approach for advocate work on VHCCs?

Please give your reasoning.

Indicative timetable

The timetable below sets out the key consultation dates.

Consultation paper published	19 December 2008
Consultation closes	18 February 2009
Response to consultation published	13 March 2009
VHCC Panel Member and VHCC Panel Advocate Contracts expire	13 July 2009

Summary of questions

Question 1

What are your views about moving to a system based on units?

Question 2

To what extent do you agree with the Working Group's proposal to remove case categorisation? Please give reasons.

Question 3

To what extent do you agree with the split of core and non-core tasks explained in Chapter 1? Please explain your reasoning.

Question 4

To what extent do you agree with the Working Group's view that having two separate payment mechanisms is the correct approach for the future of VHCCs? Please give your reasoning.

Question 5

To what extent do you agree with the Working Group's suggested approach to dealing with non-core tasks? Please give your reasoning.

Question 6

Which of the two options set out for trial work remuneration do you prefer? Please give your reasoning.

Question 7

To what extent do you agree with the assessment of impact outlined in Annex 5?

Question 8

Do you have any evidence of impacts that we have not yet considered?

Question 9

Which of the two payment mechanisms set out in this chapter do you prefer:

Option 1: the new scheme proposed by the VHCC Working Group

Option 2: the current VHCC payment mechanism?

Question 10

Which of the following three options would be your preferred choice:

Option 1: closed panel

Option 2: open panel

Option 3: closed panel but with access point(s)?

Question 11

If your choice is Option 3: closed panel but with access point(s); if the panel term was three years, at what point would you allow other firms to apply for membership?

- (a) half way through (ie at the 18 month period);
- (b) at the end of the second year; or
- (c) other (please specify).

Question 12

Do you accept the LSC's proposal that the minimum Peer Review entry criterion for VHCCs ought to be PR3? Please give your reasons.

Question 13

What appropriate measures of experience do you feel we ought to consider when assessing the quality of litigator firms?

Question 14

To what extent do you agree with the LSC proposal to assess an advocate's quality through a self-assessment mechanism with endorsement(s)? Please give your reasoning.

Question 15

To what extent do you agree with the proposed function and remit of the Post Case Review Committee? Please give your reasoning.

Question 16

To what extent do you agree with the proposed method of procurement for advocacy services? Please give your reasoning.

Question 17

To what extent do you agree with the proposed contracting approach for advocate work on VHCCs? Please give your reasoning.

Additional comments

Do you have any additional comments on this consultation?

Responding to this consultation

All responses to this consultation must be submitted by 18 February 2009.

Those wishing to respond to this consultation can do so via our online consultation tool. To do so please visit the LSC website and follow the links to: Criminal Defence Service (CDS) > Consultations.

Use of the online consultation tool is our preferred method for responding to this consultation. Alternatively, you can send responses to:

Email: vhccproject@legalservices.gov.uk

Address: VHCC Project Team
CDS Policy
Legal Services Commission
4 Abbey Orchard Street
London SW1P 2BS

Electronic versions of this document can be found at <http://www.legalservices.gov.uk>
We are able to supply copies of this consultation document in alternative formats (such as large print) where a reasonable request is made.

For enquiries or comments about our consultation process, you can also contact Cate Jolley, Consultation Coordinator, via email at consultation@legalservices.gov.uk or on 020 7783 7200.

Please attach any supporting evidence to support your response. Representative groups are asked to give a summary of the people and organisations they represent, and where relevant who else they have consulted in reaching their conclusions, when they respond. Individual contributions will not be acknowledged unless specifically requested.

Information provided in response to this consultation, including personal information, may be published or disclosed in accordance with the access to information regimes (primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004). The LSC will process your personal data in accordance with the DPA.

If you want the information that you provide to be treated as confidential please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply. The Code deals, amongst other things, with obligations of confidence. In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the LSC.

Your opinions are valuable to us. Thank you for taking the time to read this document and respond.

Annex 1: Data for a new VHCC scheme**Advocate Core Graduation**

Relevant to the core tasks of advocates, the Working Group was able to deduce the average number of units per VHCC.

The following table summarises the total number of units (recall that these are defined in terms of the equivalent of a Level C fee earner hour), by role of advocate in the sample of 88 cases.

Table 7 Number of advocacy units in the sample case contracts

Task	QC	Leader units⁴	Led units	Alone units
Conference with litigator, advocate, client, LSC	747	1127	1300	268
Considering brief	52	8	58	25
Perusing preliminary proof	38	41	54	37
Perusing crown schedules	23	64	116	17
Perusing exhibits	1963	5797	4768	1679
Perusing interview transcripts	1278	878	1694	1096
Perusing prosecution case summary	69	87	242	44
Perusing statements	1220	1203	1699	1091

Since not all cases have advocates involved and of those that do have advocates involved some are cases with Junior Alone and some are Leader – Led the calculation of averages per case needs to be made by dividing total units by the relevant number of cases. These figures are set out at Table 8 below.

Table 8 Average number of units of advocacy core tasks in sample cases

Task	QC	Leader units	Led units	Alone units
Conference with litigator, advocate, client, LSC	8.48864	12.8068	24.07	10.32
Considering brief	0.59091	0.09091	1.08	0.95
Perusing preliminary proof	0.43182	0.46591	0.99	1.41
Perusing crown schedules	0.26136	0.72727	2.15	0.65
Perusing exhibits	22.3068	65.875	88.3	64.56
Perusing interview transcripts	14.5227	9.97727	31.38	42.14
Perusing prosecution case summary	0.78409	0.98864	4.48	1.69
Perusing statements	13.8636	13.6705	31.46	41.95
Total	61.25	104.6023	183.91	163.67

⁴ 'Leader units' in tables 7, 8 and 9 is a figure amalgamating and averaging QC and leading junior data

From the data collected, the Working Group was also able to deduce the average number of units per page of material for each of the 'perusal' tasks above. These figures are set out at Table 9.

Table 9 Average number of units per page of material for each advocate perusal task

Task	QC	Leader units	Led units	Alone units
Perusing preliminary proof	0.0298	0.0223	0.0186	0.0360
Perusing crown schedules	0.0132	0.0099	0.0174	0.0040
Perusing exhibits (up to 20,000 pages ⁵)	0.0219	0.0163	0.0069	0.0095
Perusing interview transcripts	0.0249	0.0186	0.0169	0.0185
Perusing prosecution case summary	0.0403	0.0301	0.0569	0.0300
Perusing statements	0.0362	0.0270	0.0215	0.0243

Litigator Augmented Graduation

The following table sets out the base levels for each litigator core task. In essence, these are the minimum units that would be agreed for the core tasks if they were requested under the current scheme.

Table 10 Base levels for litigator core tasks

Reference	Description	Base level	Equates to
CT1	Attendance on client	¼ of perusal time for CT18,19,20,22 and 23.	¼ of perusal time for CT18,19,20,22 and 23.
CT2/3/14	Conference with litigator, advocate, LSC	0.71 units per week	30 mins at Level B per week
CT6	Considering brief	Not applicable to litigators	Not applicable to litigators
CT16	Perusing preliminary proof	Not applicable to litigators	Not applicable to litigators
CT18	Perusing crown schedules	0.0119 units per page	30 secs/pg at Level B
CT19	Perusing exhibits	0.0039 units per page (up to 10,000 pages)	10 secs/pg at Level B (up to 10,000 pages)
CT20	Perusing interview transcripts	0.0238 units per page	1 min/pg at Level B
CT22	Perusing prosecution case summary/opening note	0.0476 units per page	2 min/pg at Level B
CT23	Perusing statements	0.0317 units per page	1½ min/pg at Level B

⁵ thereafter by negotiation

Please note the calculation made to convert minutes to units and vice versa is as follows:

- 1 unit = 60 minutes at Level C
- 1.43 units for an hour at Level B (from table 1)
- 1 unit = 42 minutes at Level B ($60/1.43 = 42$)
- 1 minute at Level B = 0.0238 units ($1/42 = 0.0238$)

For example, 2 minutes per page at Level B equates to 0.0476 units per page (2 x 0.0238).

Worked examples for how each scheme would operate in practice are included on the following pages.

Worked Examples

Note on example: each of these examples is informed by data on actual cases. Whilst no example is an actual case, the page counts, trial durations and time spent on preparation are based on cases that actually appear in CCU database. We have used rounded figures for convenience.

This case is chosen to show the impact of the proposals on a category one VHCC. If this case were assigned a different category (ie two, three or four) the impact on cost would be lower. In fact, if this were a category three case, litigators and advocates would see an increase in remuneration. Please note that historically the majority of VHCCs have been assigned a category three.

This is a terrorism (category one) VHCC which has more than 12 defendants. The defendant who is the subject of the case-contract analysed here is found guilty after a lengthy trial (80 days). In this case there were 1500 pages of statements, 2500 pages of transcripts and 7500 pages of other exhibits.

Litigators

Option 2: Current VHCC payment mechanism at £145 rates

In total, the litigator firm for defendant X spends the following hours on the case and receives the resulting fees as set out in Table 11 below:

Table 11

Fee earner level	Preparation hours	Hours of Attendance	Hourly Rate	Total Fee
Level A	200	0	£145	£29,000
Level B	1,000	0	£127	£127,000
Level C	500	0	£84	£42,000
Level C	0	250	£20.50	£5,125
TOTAL	1,700	250		£203,125

Option 1: A new VHCC scheme

Litigator core task remuneration

The first step in calculating the spend under the new Working Group scheme is to convert the time required into units. The hours requested by the litigator firm for each core task are set out in Table 12 below:

Table 12

Core task	Hours required	Units
Attendance on client	Level A: 43.75	62.56 (¼ time permitted for perusal tasks)
Conference with litigator, advocate, LSC	Level B: 39	55.8
Perusing exhibits	Level B: 62.5	89.4
Perusing interview transcripts	Level B: 62.5	89.4
Perusing statements	Level A: 50	80
TOTAL	257.75	377.16

Under existing arrangements (option 2 in the consultation paper) these core tasks would attract fees totalling to: £33,634.

Under the Working Group scheme (option 1 in the consultation paper) there would be an initial allocation of base level units to each core task (as defined in Table 10). The firm would then negotiate with the CCU Contract Manager for additional units.

Based on the page count stated above, the base level units for each core task are set out in Table 13 below.

Table 13

Core task	Page count	Base level	Units
Attendance on client	N/A	¼ of perusal time	34.08
Conference with litigator, advocate, LSC	N/A	0.71 units per week	0.71 units per week
Perusing exhibits	7500	0.0039 units per page (up to 20,000 pages)	29.25
Perusing interview transcripts	2500	0.0238 units per page	59.5
Perusing statements	1500	0.0317 units per page	47.55

In this case, the units requested by the litigator firm (as set out in Table 12 above) exceed the base level units (as set out in Table 13 above). The difference in units would therefore be subject to negotiation with the CCU Contract Manager.

Based on the units for core tasks totalling 377.16 and the value per unit being £66 the total remuneration for core tasks will be: $377.16 \times £66 = £24,893$

Litigator non-core task remuneration

In addition to the core tasks detailed above, a number of non-core tasks are required for this case. In this case the total hours for non-core tasks are set out in Table 14 below.

Table 14

Fee Earner Level	Hours	Units
Level A	150	240
Level B	792.3	1,132.9
Level C	500	500
Level C attendance	250	77.7
TOTAL		1,950.6

Non-core tasks account for 1,950.6 units. At the proposed £66 per unit the total is £128,737.

In the above example, the total remuneration under the current scheme (option 2) would be £203,125. Under the Working Group scheme (option 1) this would fall to £153,625.

Litigator summary

The following table sets out the impact on spend if in the above example the case category were different. For example, if the example above were a category three VHCC, the firm would see a £25,800 increase compared to the £145 rates.

Table 15

	Core tasks		Non-core tasks		Total	
	£145 rates	New scheme	£145 rates	New scheme	£145 rates	New scheme
Cat 1	£33,634	£24,887	£169,491	£128,737	£203,125	£153,625
Cat 2	£26,425		£133,800		£160,225	
Cat 3/4	£20,962		£106,863		£127,825	

Advocates**Option 2: Current VHCC payment mechanism at £145 rates**

The instructed advocates for defendant X spend the following hours on the case and receive with resulting fees as set out in Table 16 below:

Table 16

Advocate	Preparation hours	Advocacy	Rate	Sub total
QC	560.5	0	£145/hour	£81,273
QC	0	80 days	£476/day	£38,080
TOTAL				£119,353
Led junior	519.1	0	£91/hour	£47,238
Led junior	0	40 days	£252/day	£10,080
TOTAL				£57,318

Option 1: A new VHCC scheme**Advocacy core task remuneration**

Under the Working Group scheme (option 1) the QC would be assigned 280.9 units and the led junior 126.4 units. This is broken down using the Advocate Core Graduation mechanism as follows:

Table 17

Advocate	Core task	Page count	Units/page	Units
QC	Perusing exhibits	7500	0.0219	164.3
QC	Perusing interview transcripts	2500	0.0249	62.3
QC	Perusing statements	1500	0.0362	54.3
TOTAL				280.9
Led junior	Perusing exhibits	7500	0.0069	51.8
	Perusing interview transcripts	2500	0.0169	42.3
	Perusing statements	1500	0.0215	32.3
TOTAL				126.4

Under existing arrangements, these would be remunerated as:

Table 18

Advocate	Units	Hours	Hourly rate	Total fee
QC	280.9	160.5	145	£23,273
Led junior	126.4	119.1	91	£10,838

In this case the formula gives rise to a reduction in the number of units that would be paid to both the QC Leader and the led junior, but it should be noted that the per page unit figures reflective of the average claims on VHCCs.

Under the new Working Group scheme (option 1) the advocate core-task would be remunerated as:

Table 19

Advocate	Units	Unit rate	Total fee
QC	280.9	£66	£18,539
Led junior	126.4	£66	£8,342

Advocate non-core task remuneration

In addition to the core tasks detailed above, a number of non-core tasks are required for this case. In this case the total hours for non-core tasks are:

Table 20

Advocate	Hours	Multiplier	Units	Unit rate	Total fee
QC	400	1.75	700	£66	£46,200
Led junior	400	1.06	424	£66	£27,984
TOTAL					£74,184

The advocacy daily rates (for trial) will be preserved under the Working Group scheme (option 1), so that the advocates would continue to be remunerated as follows:

Table 21

Advocate	Advocacy days	Daily rate	Total fee
QC	80	£476	£38,080
Led junior	40	£252	£10,080
TOTAL			£48,160

In the above example, the total remuneration for pre-trial preparation under the current scheme (option 2) would be £81,273 for the QC and £47,238 for the Led Junior. Under the Working Group scheme (option 1) this would fall to £64,739 for the QC and £36,326 for the Led Junior.

Advocate summary

The following table sets out the impact on spend (excluding advocacy) if in the above example the case category were different. For example, if the example above were a category three VHCC, the QC would see a £13,733 increase and the Led Junior would see a £4,661 compared to the £145 rates.

Table 22

		Core tasks		Non-core tasks		Total	
		£145 rates	New scheme	£145 rates	New scheme	£145 rates	New scheme
QC	Cat 1	£23,273	£18,539	£58,000	£46,200	£81,273	£64,739
	Cat 2	£18,137		£45,200		£63,337	
	Cat 3/4	£14,606		£36,400		£51,006	

Table 23

		Core tasks		Non-core tasks		Total	
		£145 rates	New scheme	£145 rates	New scheme	£145 rates	New scheme
LJ	Cat 1	£10,838	£8,342	£36,400	£27,984	£47,238	£36,326
	Cat 2	£8,694		£29,200		£37,894	
	Cat 3/4	£7,265		£24,400		£31,665	

Annex 2: Core task definitions

Core task	Definition
Conference with litigator, advocate, client, LSC	This task includes all combinations of conferences between litigator, advocate, client and LSC.
Considering brief	This task is advocate specific and includes reading and noting the brief and cross-referencing that brief to other evidence.
Perusing preliminary proof	This task is advocate specific and includes reading and noting the preliminary proof of evidence and cross-referencing that preliminary proof to other evidence.
Perusing crown schedules	This task includes reading, noting and considering the nature of the served crown schedules (if any) and cross-referencing those schedules to other evidence.
Perusing exhibits	This task includes reading, noting and considering the nature of the prosecution documentary exhibits (excluding bank statements, telephone logs, interview transcripts etc) and cross-referencing such to other evidence.
Perusing interview transcripts	This task includes reading, noting and considering the nature of the served interview transcripts and cross-referencing those transcripts to other evidence.
Perusing prosecution case summary/opening note	This task includes reading and noting the prosecution case summary and/or opening note and cross-referencing such to other evidence. Consideration as to whether the summary/note accurately reflects the evidence served and the matters of law that need to be addressed prior to facts being opened to the jury.
Perusing statements	This task includes reading, noting and considering the nature of the served prosecution witness statements and cross-referencing those statements to other evidence.

Annex 3: VHCC Working Group Terms of Reference

To agree, if possible, proposals by Tuesday 8 July 2008 for a future payment structure for defence VHCCs, in sufficient detail to be put out for consultation.

Success criteria

1. Adequately defines a Very High Cost Case by type and category by reference to agreed appropriate significant features.
2. Promotes effective team working and collaboration between litigators and advocates to focus efforts and avoid duplication of tasks between the two disciplines.
3. Attractive to sufficient numbers of litigators and advocates of sufficient, definable quality; that will provide fair remuneration to both litigators and advocates at each stage of the case.
4. Administratively simple to operate for both LSC and service providers, thereby reducing the total cost of contract management.
5. Promotes efficiency in the criminal justice system.
6. Based on a panel system with well defined quality criteria.
7. Delivers certainty about costs both globally, for the scheme as a whole, and in relation to individual cases, based on agreed objective variables, to deliver savings of the same magnitude as Panel 1 delivered.
8. The payment structure will fit proportionately with existing fee schemes.
9. Fees to be based on objective proxies and clearly defined variations to deal with individual defendants.
10. Auditable and open to objective scrutiny by the LSC.
11. Meets with the approval of interested parties; namely the Bar, the Law Society, the MoJ and the LSC.

15 May 2008
(confirmed 4 June 2008)

Annex 4: Post Case Review Committee Arrangements

1. Introduction

1.1. These arrangements are made by the Legal Services Commission (LSC) under section 3(4) of the Access to Justice Act 1999. They set out the composition, powers and procedures of the Post Case Review Committee (PCRC).

1.2. The PCRC is an advisory committee to the LSC.

1.3. In these arrangements:

‘Advocate’ means a barrister or solicitor advocate who undertakes VHCCs

‘Best Practice Guidance’ means guidance on methodologies or efficiencies, which are best practice in the conduct of criminal cases

‘CCU’ means the Complex Crime Unit of the Legal Services Commission

‘CJS’ means the criminal justice system in England and Wales

‘Commission’ means the Legal Services Commission

‘Defence Team’ means the Litigators and Advocates involved in a VHCC

‘Litigator’ means the solicitor or solicitors’ firm, which has been awarded a VHCC Contract

‘PCRC’ means the Post Case Review Committee

‘PCRC Member Contract’ means the contract attached as Appendix 2

‘PCRC Members’ shall have the meaning given in paragraph 3.1.1

‘Regulatory Bodies’ means the Bar Council, The Bar Standards Board, The Law Society, The Solicitors’ Regulation Authority and the Solicitors’ Disciplinary Tribunal

‘VHCC’ means very high cost crime case

‘VHCC Contract’ means a contract, which authorises the undertaking of work on VHCCs

‘Website’ means the Legal Services Commission’s website found at www.legalservices.gov.uk.

- 1.4. The PCRC has been established to undertake the audit of a sample of Very High Cost Cases (VHCCs). Its creation was recommended in Lord Carter's Review of Legal Aid Procurement⁶.
- 1.5. The purpose of these arrangements is to set out the scope and functions of the PCRC.

2. Function of the PCRC

2.1 Aims

2.1.1. The PCRC has two aims:

- (a) to provide an advisory function to the LSC with powers to make recommendations only
- (b) to provide a retrospective system of quality assurance for litigators and advocates undertaking VHCC work and offer Best Practice Guidance where appropriate.

2.1.2. While undertaking this work, the PCRC will provide the following functions:

- (a) identifying and promulgating Best Practice Guidance, identifying innovation in the management of VHCCs (which will be published on the website)
- (b) to identify systemic issues (with supporting evidence) in the management of VHCCs which adversely impact on the management of VHCCs (such issues will be published on the website)
- (c) identify any indicators of non-compliance with the VHCC Contract to the Complex Crime Unit (CCU)
- (d) identify any indicators of professional misconduct to the CCU.

3. PCRC membership

3.1. Appointment

3.1.1. The LSC shall appoint a pool of members, external to the LSC (the PCRC Members), who have agreed to be available to participate in the PCRC to carry out functions under these arrangements.

3.1.2. The PCRC Members shall be made up of the following:

⁶ Recommendation 4.22 *The Legal Services Commission should make improvements to case management by the Complex Crime Unit (outlined in paragraph 96 of Chapter 4 and detailed in Annex 4.7) by recruiting qualified practitioners, establishing a referral and a post case audit panel and designing a very high cost criminal cases best value team protocol by October 2007.*

- (a) representatives from The Law Society
- (b) representatives from the Bar Council
- (c) senior lawyers in private practice having experience of complex crime cases and/or VHCCs
- (d) members of the Judiciary
- (e) senior prosecutors with significant experience in complex crime cases and/or VHCCs.

3.1.3. Each PCRC must contain:

- (a) a representative from The Law Society
- (b) a representative from the Bar Council
- (c) a senior lawyer in private practice
- (d) a member of the Judiciary
- (e) a senior prosecutor.

3.1.4. The Head of the CCU or his or her nominee, who will serve ex officio, will also participate in each PCRC.

3.1.5. PCRC Members shall be appointed by the Head of the CCU, with the prior approval of the Head of the High Cost Cases Group (or their successors or replacements in the event of a reorganisation of the LSC's management structure).

3.1.6. PCRC Members shall be bound by the PCRC Member Contract.

3.1.7. PCRC Members shall be appointed for a period of up to four years to be determined at the discretion of the Head of the CCU.

3.2. PCRC remuneration

3.2.1. All PCRC Members who are not funded by the Government, or in the employment of a government department or government sponsored agency, will be remunerated at published rates for their work as a PCRC Member. These rates are published at Appendix 1.

3.3. Confidentiality

3.3.1. All PCRC Members will be bound by the confidentiality provisions set out in the PCRC Member Contract.

3.4. Conflict of interest of PCRC Members

3.4.1. All PCRC Members should have regard to their obligations for actual or potential conflicts of interest with the cases to be reviewed.

3.4.2. If a PCRC Member does identify a conflict of interest or a conflict of interest is identified by any other party to the process and accepted by the PCRC, the PCRC Member would be expected to withdraw from the review process and immediately return any papers relating to the case in his or her possession.

3.4.3. PCRC Members shall be excluded from participating in the review process where:

- (a) if a barrister, they are a member of the same chambers as an advocate in the case
- (b) if a solicitor, they are an employee, partner or consultant of the litigator
- (c) there is some other issue, which under their professional conduct rules would normally exclude them from participation in a case.

3.5. Qualifications to act as a PCRC Member

3.5.1. PCRC Members shall be required to have knowledge or experience of VHCC matters.

3.6. Removal or disqualification of PCRC Members

3.6.1. A PCRC Member, shall automatically cease to be a PCRC Member where:

- (a) he or she is under investigation, faces an outstanding criminal charge or has been convicted of a criminal offence which is not treated as spent under the Rehabilitation of Offenders Act 1974
- (b) if a solicitor, he or she has been the subject of any adverse findings by the Adjudication Committee of the Solicitors Regulation Authority or by the Solicitors' Disciplinary Tribunal, or where any complaint or application to either body has not been determined
- (c) if a barrister, he or she has been the subject of any adverse findings by the Bar Council or by The Bar Standards Board, or where any complaint or application to either body has not been determined
- (d) some other good reason arises which makes the PCRC Member's membership of a PCRC incompatible with the aims of the PCRC.

3.6.2. A PCRC Member shall automatically cease to be a PCRC Member where:

- (a) if a solicitor, he or she is subject to an intervention by the Solicitors Regulation Authority; or
- (b) if a barrister he or she is subject to any action by the Bar Council or The Bar Standards Board equivalent to an intervention.

3.6.3 Upon removal or disqualification the PCRC Member will be required to return to the LSC all papers relating to any VHCC considered by him or her.

4. Role of the Secretariat

4.1. The LSC shall provide and manage the administrative requirements of each PCRC.

4.2. These activities will include the following:

- (a) collation and circulation of submission papers

- (b) preparation of cost distortion analysis documents to assist the PCRC
- (c) managing information requests made by the PCRC
- (d) liaison with all parties if appropriate
- (e) disseminating Review Reports to all parties in a matter
- (f) issuing and indexing Best Practice Guidance.

5. Selection of cases for review

5.1. The following processes will instigate the review process:

- (a) Cases referred by CCU or CCU lawyers
- (b) Cases selected by the PCRC

5.2. Cases referred by CCU or CCU lawyers

5.2.1. CCU lawyers may refer cases that have generated concerns in previous audits or negotiations undertaken by the CCU under the VHCC Contract.

5.2.2. The CCU may refer cases to the PCRC if the case raises concerns as to the cost distortions either between providers and/or stages.

5.2.3. Cases may be referred which the CCU view as raising significant wider issues as to a litigator(s) and/or advocates' competence, or because there may be issues of wider significance to VHCC contract management.

5.3. Cases selected by the PCRC for review

5.3.1. In order to have a broader oversight of best practice in the management of VHCCs and to monitor issues of wider CJS significance, the PCRC may select any VHCC for review based on its complexity, size, difficulty, expense or special features.

5.3.2. The PCRC will focus on closed VHCC matters, these are matters on which there are no proceedings outstanding. However, any Best Practice Guidance issued by the PCRC will be applicable to all live VHCC matters after the date of its issue and litigators and advocates will be encouraged to take account of such Best Practice Guidance.

5.3.3. The CCU shall periodically circulate to the PCRC members, details of current and closed VHCCs.

5.3.4. Where any member of the PCRC pool of members notifies the CCU that he or she believes that a case notified under paragraph 5.3.3 above or that any case falls within the scope of paragraph 5.3.1 should be reviewed, that case shall be subject to review if at least two other PCRC Members agree to the review.

6. Review Process and Report

6.1 Review Process

- 6.1.1. Once a case has been selected for review, the following process will take place in accordance with the timetable set out at Appendix 3: Review Process Timetable.
- 6.1.2. A case is referred for review by the PCRC.
- 6.1.3. All parties to the case will be contacted by the PCRC administrator and notified that their case is to be reviewed.
- 6.1.4. All parties will have an opportunity to make written submissions to the PCRC.
- 6.1.5. If any party chooses not to make a written submission the process will continue without their input.
- 6.1.6. All parties will also be provided with a list of documents relevant to the case under review, which must be provided to the PCRC. The provision of this information shall be mandatory.
- 6.1.7. A party requested to provide documents or written submissions will have a maximum of 28 days from the date the request is made to provide such information.
- 6.1.8. Once this deadline has passed, the PCRC will consider all documents submitted.
- 6.1.9. Each PCRC will determine if a meeting is necessary and how often. If it determines that a meeting is not necessary, the PCRC Members shall determine amongst themselves how to proceed with the review.
- 6.1.10. If necessary, the PCRC will request any further documents or information it reasonably deems necessary to progress the review.
- 6.1.11. A party requested to provide further documents or information shall have a maximum of 28 days from the date of the request to provide this further information.
- 6.1.12. The PCRC will review all information deemed appropriate in accordance with the Review Criteria.
- 6.1.13. Once the review is complete, the PCRC will draft its Review Report using the specimen report attached at Appendix 4.
- 6.1.14. The Review Report will be circulated in the first instance to all to Defence Teams in the case for further comment. If there are recommendations that concern one Litigator or Advocate only, those recommendations will only be shared with the Litigator or Advocate concerned.

6.1.15. The PCRC will then circulate this report, which will be anonymised to remove all information identifying the litigators, the advocates and the clients they represent, to the bodies set out below:

- CCU
- Bar Council
- regulatory bodies
- the relevant prosecution authority.

6.1.16. If the PCRC identifies best practice, Best Practice Guidance will be circulated to the bodies set out above and all signatories of the VHCC Contract. Any such documentation will not identify the litigators, advocates and clients concerned.

6.2. Review documents to be considered

6.2.1. The PCRC will undertake the review by reference to written submissions only and supporting case documents. No party will be entitled to attend a meeting of the PCRC nor have any right to an oral hearing.

6.2.2. The PCRC will consider submissions from the following parties:

- CCU (lawyer referral or further report)
- defence teams whose cases are subject to review
- Prosecution authority in the case
- Trial Judge.

6.2.3. The PCRC will consider the above together with the documents listed below (this list is non-exhaustive):

- case plan, stage plans and task lists
- CCU contract files
- solicitor work product including: schedules, dramatis personae chronologies, timelines and any other schematic or work product produced
- attendance notes
- advices
- prosecution case summary and/or opening note
- defence case statements
- orders and/or judgments made within the case or ancillary to the case
- served evidence as appropriate
- unused evidence on consideration of which public monies have been expended
- clients' instructions
- briefs to counsel
- defence team files
- any contracts appeal committee (or equivalent) decisions relating to the case
- any other document within the case deemed necessary in furtherance of the LSC and thus the PCRC's work in compliance with the Legal Services Commission (Disclosure of Information) Regulations 2000 (as amended).

6.3.Review criteria

6.3.1. When considering cases, the PCRC will have regard to the environment in which VHCCs operate and will review cases against the following criteria:

- cost distortions
- conduct of defence teams
- any external factor affecting the case.

Cost distortions

6.3.2 These are unique or unusual costs which will indicate that a case may be suitable for review. Such costs might be:

- (a) an unusually large expenditure on unused material that has had a significant impact on the costs of a case
- (b) costs which when compared with the costs for work undertaken by litigators on a similar case appear to be significantly higher than those incurred overall on the other case
- (c) costs for any stage of the work done for a case, which when compared with the costs for work undertaken by litigators on a similar case appear to be significantly higher than those incurred for a similar stage on the other case
- (d) costs which when compared with the costs for work undertaken by advocates on a similar case appear to be significantly higher than those incurred overall on the other case
- (e) costs for any stage of the work done for a case, which when compared with the costs for work undertaken by advocates on a similar case appear to be significantly higher than those incurred for a similar stage on the other case.

6.3.3. Information on cost distortions will be provided to the PCRC by the CCU.

Conduct of defence teams

6.3.4. The PCRC will look at the quality of service provided by the Defence Teams based on a review of the information submitted for review including but not limited to:

- case strategy and case planning throughout the case
- experience of fee earners leading the case
- advice to the client
- assessment of weaknesses in the client's case
- negotiation with the prosecution
- management of the case and liaison with the CCU, including quality of information provision to enable the CCU to carry out its functions
- compliance with the terms of the VHCC Contract
- the PCRC may also form a view of the standard of professional competence and conduct shown by suppliers in the performance of their

VHCC. The PCRC will be free to make any recommendations necessary to the regulatory bodies.

Any external factors affecting the management of the case

6.3.5 Any information the PCRC considers relevant to the case, including but not limited to:

- the role of the prosecuting authorities
- service of evidence
- format of evidence served.

6.4. Review outcomes

6.4.1. The Review Report will contain all or a combination of the following review outcomes:

- Best Practice Guidance (including recognising innovation);
- Indication of concern provided to:
 - (a) CCU
 - (b) regulatory bodies (only in exceptional circumstances).

6.4.2. Best Practice Guidance will be circulated to all litigators and advocates on the case and to the wider CJS bodies.

6.4.3. The PCRC's recommendations to the CCU or to the regulatory bodies will remain confidential to the parties concerned.

Best Practice Guidance (including recognising innovation)

6.4.4. The PCRC will identify examples of both good and bad practice and also systemic issues relating to the management of VHCCs.

6.4.5. The PCRC will also be in a position to take a wider view of CJS issues, such as disclosure or the way evidence is managed.

Indicate areas of concern on non-compliance with the VHCC Contract to the CCU

6.4.6. The PCRC will indicate areas of concern and provide evidence in support of these concerns.

6.4.7. The CCU will, on receipt of this evidence, consider whether to progress the contract performance issues identified.

6.4.8. All contract sanctions available are defined in the VHCC Contract.

Identification of concerns to Regulatory Bodies

6.4.9. Where the PCRC identifies a matter to be referred to the Regulatory Bodies, the PCRC will provide evidence of any concerns identified to the CCU.

6.4.10. The CCU will consider any evidence referred by the PCRC and what, if any, action is required under the terms of the VHCC Contract.

Case Management functions of the CCU

6.4.11. The PCRC will make recommendations to the CCU for improvements to VHCC Contract management functions.

7. Response to Review Report

7.1 Where in its Review Report, the PCRC identifies any concerns in areas of professional misconduct, which it recommends should be notified to the regulatory bodies and/or non-compliance with the VHCC Contract, litigators and/or advocates will be given an additional opportunity to make written representations to the PCRC in response to the concerns or recommendations.

7.2 The CCU will notify the litigators and/or advocates upon receipt of the Review Report advising of the right to make further representations.

7.3 The litigators and/or advocates shall have 28 days from receiving notification to make further representations.

7.4 The PCRC shall consider any representations received from the litigators and/or advocates concerned. The PCRC shall have the discretion following review of such representations to amend the Review Report.

Notices

7.5 Where notice, information or request for information is issued under these arrangements they must be in writing and be:

- (a) delivered personally
- (b) sent by fax
- (c) sent by email
- (d) sent by pre-paid first class post, recorded delivery or registered post.

- 7.6 Any notice or information or request for information given under these arrangements is deemed to have been received:
- (a) if delivered personally, at the time of delivery
 - (b) in the case of fax or email, at the time of transmission provided a confirmatory copy is sent pre-paid first class post or by personal delivery before the end of the next business day
 - (c) in the case of email:
 - (i) at the time of transmission provided no automatic response email denoting non receipt is received by the party sending the original email within 12 hours; and
 - (ii) a confirmatory copy is sent by pre-paid first class post or by personal delivery before the end of the next business day (if an automatic response email denoting non receipt is received by the party sending the original email within 12 hours, the confirmatory copy shall be the notice or other information)
 - (d) in the case of pre paid first class post, recorded delivery or registered post, two days from the date of posting,

provided that if deemed receipt under this paragraph would otherwise occur before 9am or after 5pm on a business day or at any time on a day that is not a business day, deemed receipt shall instead be at 9am on the next business day.

Appendix 1: Rates of Remuneration

Role	Half Day Rate (£)	Full Day Rate (£)
Chair	180.85	361.70
Committee Member	143.55	287.10

(These rates are those currently paid by the LSC to the members of the VHCC Appeals Committee).

Appendix 2: Post Case Review Committee Member Contract

[The PCRC Member Contract will be inserted here when the PCRC Arrangements are implemented.]

Appendix 3: Review Process Timetable

STAGE 1:
Case identified/referred for review by PCRC
STAGE 2:
All parties contacted and notified that they may make voluntary written submissions within the 28-day deadline. There will also be a mandatory list of documents to be provided to the PCRC by defence teams.
STAGE 3:
Once this deadline has passed, the PCRC will consider all documents submitted within 28 days.
STAGE 4:
The PCRC will request any further documents or information it deems necessary to progress the review. Litigators/advocates must provide this further documentation within a maximum of 28 days from the date the request is made.
STAGE 5:
The PCRC will review all information requested and provided in accordance with the review criteria.
STAGE 6:
Once the review is complete, the PCRC will draft its Review Report.
STAGE 7:
Any Best Practice Guidance identified will be circulated to all individuals who hold a VHCC Contract.
All parties shall be entitled to submit a response to a Review Report by making additional submissions to the PCRC where concerns as to compliance with the contract or issues of professional conduct have been identified.
If the PCRC provides evidence of non-compliance under the VHCC Contract, the CCU will review this evidence before determining an appropriate course of action.
STAGE 8:
Any sanctions imposed by the CCU will be progressed under the existing provisions within the VHCC Contract.

Appendix 4: Specimen Review Report

[Specimen Review Report will be inserted here when the PCRC Arrangements are implemented.]

Annex 5: Initial Impact Assessment

Summary: Intervention & Options	
Department /Agency: Legal Services Commission	Title: Impact Assessment of The Future of Very High Cost Cases

Stage: Consultation	Version: 1.0	Date: 19 December 2008
Related Publications: The Future of Very High Cost Cases – A Consultation Paper		

Available to view or download at:

<http://www.legalservices.gov.uk>

Contact for enquiries: Claire McNamara

Telephone: 020 7783 7486

Why is government intervention necessary?

The current Very High Cost Case (VHCC) Panel Scheme is due to expire on 13 July 2009. It is essential to have a new scheme in place to ensure a smooth transition to the succeeding scheme.

What are the policy objectives and the intended effects?

There are six broad policy objectives for the LSC:

- provide a quality service to clients
- create a system for delivering publicly funded VHCCs which is sustainable
- create a system that rewards efficiency
- demonstrate value for money for the taxpayer
- create a scheme that helps the Government’s wider agenda for efficiency in the criminal justice system, subject always to the need to protect the rights of the client.

What policy options have been considered?

Chapter 1 of the Consultation Paper presents two options for the future payment mechanism for VHCCs. Option 1 is a new scheme that has been developed by the VHCC Working Group and is its proposal for a scheme to replace the current Panel in July 2009. Option 2 is the continuation of the current payment mechanism.

When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects?

We will monitor and evaluate the impact of the proposals post Panel implementation and report on findings in accordance with our statutory duties and the LSC Equalities Scheme.

LSC Chief Executive / Ministerial Sign-off For Initial Impact Assessment:

I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options

Signed by the LSC Chief Executive / responsible Minister:

.....Date:

Summary: Analysis & Evidence					
Policy Option: 1		Description: A new VHCC scheme			
COSTS	ANNUAL COSTS		Description and scale of key monetised costs by 'main affected groups' LSC/Ministry of Justice (MoJ) : The cost of designing and implementing the scheme and the cost of peer reviewing all bidders. Providers : The one-off cost of preparing bid documentation and going through the peer review quality assessment processes; a possible reduction in the price per contract.		
	One-off (Transition)	Yrs			
	£ Unknown				
	Average Annual Cost (excluding one-off)				
	£ Unknown				
		Total Cost (PV)	£ Unknown		
Other key non-monetised costs by 'main affected groups'					
BENEFITS	ANNUAL BENEFITS		Description and scale of key monetised benefits by 'main affected groups' At a headline level the scheme proposed by the Working Group is costed so that it would maintain the savings that were generated by the last tender before the interim rise in payment levels. In effect this means that it would make an additional 5% saving over the current interim scheme. There is an additional saving of around 0.5% in combining solicitor-advocate and barrister rates.		
	One-off	Yrs			
	£ Unknown				
	Average Annual Benefit (excluding one-off)				
	£ Unknown				
		Total Benefit (PV)	£ Unknown		
Other key non-monetised benefits by 'main affected groups'					
<p>Key Assumptions/Sensitivities/Risks</p> <p>The new scheme has been designed to be cost neutral compared with the tendered scheme⁷. The most significant risk with this option is the acceptance by individual practitioners of the operation of the new payment mechanism.</p>					
Price Base Year 2009	Time Period Years 3	Net Benefit Range (NPV) £	NET BENEFIT (NPV Best estimate) £		
What is the geographic coverage of the policy/option?			National		
On what date will the policy be implemented?			14 July 2009		
Which organisation(s) will enforce the policy?			LSC/MoJ		
What is the total annual cost of enforcement for these			£ Unknown		
Does enforcement comply with Hampton principles?			Yes		
Will implementation go beyond minimum EU requirements?			No		
What is the value of the proposed offsetting measure per year?			£ Unknown		
What is the value of changes in greenhouse gas emissions?			£ Unknown		
Will the proposal have a significant impact on competition?			No		
Annual cost (£-£) per organisation (excluding one-off)		Micro Unknown	Small Unknown	Medium Unknown	Large Unknown

⁷ The tendered scheme is the scheme that practitioners tendered for in 2007 formally known as the Carter VHCC tender

Are any of these organisations exempt?	No	No	N/A	N/A
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Impact on Admin Burdens Baseline (2005 Prices)			(Increase - Decrease)		
Increase	£ Unknown	Decrease	£ Unknown	Net	£ Unknown

Key: Annual costs and benefits: Constant Prices (Net) Present Value

Summary: Analysis & Evidence

Policy Option: 2	Description: Current VHCC payment mechanism at £145 rates
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COSTS	ANNUAL COSTS	Description and scale of key monetised costs by 'main affected groups' This is a return to £145 tendered rates which have been previously been refused by the majority of advocates. Providers would see a 5% cut in fees compared with current interim scheme.	
	One-off (Transition) Yrs £ Unknown		
	Average Annual Cost (excluding one-off) £ Unknown		
	Total Cost (PV)		£ Unknown
	Other key non-monetised costs by 'main affected groups'		

BENEFITS	ANNUAL BENEFITS	Description and scale of key monetised benefits by 'main affected groups' Returning to £145 tendered rates would achieve an additional 5% saving on total spend.	
	One-off Yrs £ Unknown		
	Average Annual Benefit £ Unknown		
	Total Benefit (PV)		£ Unknown
	Other key non-monetised benefits by 'main affected groups'		

Key Assumptions/Sensitivities/Risks
 This scheme is arguably unsustainable as it has already been rejected by the majority of advocates.

Price Base Year 2009	Time Period Years 3	Net Benefit Range (NPV) £ Unknown	NET BENEFIT (NPV Best estimate) £ Unknown
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What is the geographic coverage of the policy/option?	National			
On what date will the policy be implemented?	14 July 2009			
Which organisation(s) will enforce the policy?	LSC/MoJ			
What is the total annual cost of enforcement for these	£ Unknown			
Does enforcement comply with Hampton principles?	Yes			
Will implementation go beyond minimum EU requirements?	No			
What is the value of the proposed offsetting measure per year?	£ Unknown			
What is the value of changes in greenhouse gas emissions?	£ Unknown			
Will the proposal have a significant impact on competition?	Yes			
Annual cost (£-£) per organisation (excluding one-off)	Micro Unknown	Small Unknown	Medium Unknown	Large Unknown
Are any of these organisations exempt?	No	No	N/A	N/A

Impact on Admin Burdens Baseline (2005 Prices)					(Increase - Decrease)
Increase	£ Unknown	Decrease	£ Unknown	Net	£ Unknown

Key: Annual costs and benefits: Constant Prices (Net) Present Value

Evidence Base (for summary sheets)**Introduction**

This initial impact assessment accompanies the consultation paper: *The Future of Very High Cost Cases*.

In 2007, the LSC carried out a competitive tendering exercise, in which we invited tenders for membership of the Very High Cost Case (Crime) Panel (the Panel).

Successful applicants were appointed to a panel of providers contracted to provide criminal defence work to clients on VHCCs and were required to sign up to the VHCC Panel Contract.

The LSC offered contracts to 330 litigator firms and 2,300 advocates. However, a low number of barristers signed contracts. As a result, the LSC issued amended contracts which allowed for the instruction of non-Panel Advocates on VHCCs if no Panel Advocates are available.

Unfortunately, advocates were still unwilling to sign the VHCC Contract and as a result some high cost trials were at risk of being disrupted. On 24 October 2008 Justice Secretary and Lord Chancellor, Jack Straw announced interim provisions to ensure that VHCCs are dealt with effectively and economically until July 2009.

The current Very High Cost Case (VHCC) Panel Scheme is due to expire on 13 July 2009. It is essential to have a new scheme in place to ensure a smooth transition to the succeeding scheme.

Primarily, the consultation paper explores the possible payment mechanism options for the future funding of VHCCs. We also raise the following topics for consultation:

- should the panel of litigator firms be open or closed
- what is the appropriate level of quality assurance for VHCC work
- how should the LSC procure VHCC work undertaken by advocates
- how should the LSC contract with advocates to provide VHCC work?

We explore each of these topics in chapters two to five in the consultation paper. In light of the fundamental change to the payment mechanism put forward by the VHCC Working Group, this impact assessment focuses primarily on the effect of such a mechanism and the impact compared with the current VHCC scheme (set out as option 2 on page 22 and 23).

Policy Objectives

There are six broad policy objectives for the LSC:

- provide a quality service to clients
- create a system for delivering publicly funded VHCCs which is sustainable
- create a system that rewards efficiency

- demonstrate value for money for the taxpayer
- create a scheme that helps the Government's wider agenda for efficiency in the criminal justice system, subject always to the need to protect the rights of the client.

The LSC attaches significant importance to ensuring that only practitioners who are of the appropriate experience and quality undertake VHCCs.

The LSC is keen to ensure that any future funding scheme provides services within the LSCs budget, ie at a cost comparable to that delivered by the 2007/8 tendering exercise.

The LSC does not wish to impose excessive and burdensome bureaucracy on providers. However, the LSC does wish to ensure that it has appropriate mechanisms in place to ensure it has control over the cost and quality of supply.

The LSC seeks to ensure that it is able to achieve these objectives and is inviting readers to respond to this consultation. The LSC finds the opinions and ideas of its stakeholders invaluable and realises the importance of working together to arrive at the best possible outcome for all.

Consultation Process

This consultation exercise will run for eight weeks ending on 18 February 2009. Following the close of this consultation, the LSC will carefully analyse all of the responses received. We will then publish a summary of the responses and state how these views will help us shape the policy development. An indicative timetable can be found at page 30 of the consultation paper.

In addition to this formal consultation, the LSC will also be organising regional consultation events where the topics in the consultation paper will be discussed. If you are interested in attending such an event, please email: vhccproject@legalservices.gov.uk.

We will be conducting a separate contract consultation with the representative bodies in March 2009.

Consultation Topic 1: Payment mechanisms – options

Chapter 1 of the Consultation Paper presents two options for the future payment mechanism for VHCCs. Option 1 is a new scheme that has been developed by the VHCC Working Group and is its proposal for a scheme to replace the current Panel in July 2009. Option 2 is the continuation of the current payment mechanism.

Option 1: A new VHCC scheme

Summary of changes

- The use of units as the primary method of calculating remuneration
- Ending of case categorisation and the associated differential payment rates

- Harmonises advocacy rates between barristers and solicitor-advocates
- Introduction of core tasks
- Introduction of an graduation element to advocate payment
- Introduction of minimum 'tariffs' for litigator core tasks

Costs

The new scheme has been designed to be cost neutral and achieves the same level of savings that panel one would have achieved (prior to the recent rate increase).

Benefits

The move away from categorisation removes an area that is the source of a significant number of appeals (25% of all appeals) under the existing scheme. Generally this will be beneficial to a significant number of practitioners though there may be an impact on any with a case mix made up exclusively of higher category cases.

Measurement of lawyers input by reference to units of input required for the various legal tasks that make up a case has advantages as it provides defence teams with freedom to spend their 'unit' allowance in the most efficient way.

Risks

The most significant risk with this option is the acceptance by individual practitioners of the operation of the new payment mechanism.

There is a risk of changes in behaviour causing an increase in costs, eg if advocates do not carry out some of the core tasks within their graduated fee and the litigator sought permission to carry out the same work on an hourly rates basis. This risk can be minimised by clearly defining what work is involved in each of the core tasks and through the contract management process.

Sectors affected

Other than the direct impact on the LSC (operationally and policy), we have identified three main groups or sectors that will be affected by the policy changes set out above. They are:

- VHCC clients
- providers of VHCC legal aid services (litigators and advocates)
- other Criminal Justice System (CJS) agencies.

The potential impact upon these three main groups is discussed in detail below.

VHCC clients

A key objective of any future scheme is to provide clients with a choice of quality assured expertise and experience in handling the specialist characteristics of VHCCs.

Continuing with the current VHCC payment mechanism may have a negative impact on VHCC clients. The current scheme has suffered difficulties as a result of widespread advocate concern. Any proposal that fails to address these concerns may fail to ensure that adequate legal services are in place to provide defendants with legal support appropriate to their needs.

VHCC providers

Chapter 1 of the Consultation Paper discusses two payment mechanisms which have a direct impact on providers (both litigator firms and advocates). The detail of the financial impact on providers is set out in the tables at pages 72 to 74.

Chapters 2 through to 5 discuss a number of other features of any future VHCC scheme including: quality assurance, procurement and contracting. In each of those chapters we set out the LSC preferred options. If taken forward a detailed impact assessment will accompany our response to this consultation.

Whilst we recognise the likely impact on cost under the options set out in Chapter 1 of the consultation paper, our initial assessment of the impact of the additional proposals in Chapters 2 through to 5 is that they will have a positive impact on VHCC providers. We do however invite respondents to this consultation to submit any evidence they have that they feel shows otherwise.

Other CJS agencies

Our initial impact assessment of the proposals set out in the Consultation Paper is that they will have a positive impact on Her Majesty's Court Service, the Judiciary and prosecution agencies.

Compensatory simplification

The Better Regulation Executive asks departments to state the value of the proposed offsetting measure on an annual basis. Departments must actively look for opportunities to simplify or remove existing requirements when they want to introduce new regulation. The aim is to achieve a better balance between the creation of new measures and reducing existing requirements.

As yet reporting and data collection arrangements have not been determined. This work will be carried out as part of the final Impact Assessment prior to the launch of the contract consultation.

Post-implementation review

We will monitor and evaluate the impact of the proposals post-panel implementation and report on findings in accordance with our statutory duties and the LSC Equalities Scheme.

Initial Equalities Impact Assessment

The Equality Impact Assessment (EIA) is a system which considers all our current and proposed activities and policies to ensure they do not disadvantage disabled people, black and minority ethnic people, men, women, transgender people and people of different ages, religion or belief, or sexuality. It also identifies where our policies and activities can be more effective in promoting equality of opportunity and positive attitudes and to build good relations between different groups which is underpinned by the consultation and involvement of external stakeholders.

Black and minority ethnic (BME) groups, the disabled, people of different genders, and people living and/or working in rural communities have a direct interest in any changes to the legal aid scheme, as the owners and/or managers of litigator firms providing legal aid services, as employees of those organisations, as barristers and experts providing services to contracted organisations and as clients of legal aid services.

Research conducted by the Legal Services Research Centre (LSRC) contained in summary form in the tables on pages 75 to 82 has provided information on the ethnicity, gender, age and disability profile of providers of legal aid services, their employees and their clients.

Race equality

LSC Duties

Public authorities in Britain have a legal duty to promote race equality. This means that they must have due regard to how they will:

- eliminate unlawful racial discrimination
- promote equal opportunities
- promote good relations between people from different groups.

The LSC is also under a specific duty to conduct race equality impact assessments of its policies in relation to the public duty to promote race equality and within this, to identify whether there is a differential and adverse impact on particular racial groups.

We do not believe that any of the current proposals will have any differential impact on people based on their race. However, we invite respondents to the consultation to submit any evidence they have that they feel shows otherwise.

Disability equality

LSC Duties

The Disability Equality Duty came into force on 4 December 2006. The LSC has published a Disability Equality Scheme, which is available at our website www.legalservices.gov.uk. This sets out the actions that the LSC will be taking to promote disability equality for legal service providers and the clients they serve, and our staff.

When carrying out our functions, the DCA and LSC must have due regard to the duties placed upon us by the Disability Discrimination Act 2005. These are to:

- promote equality of opportunity between disabled people and other people
- eliminate discrimination that is unlawful under the Disability Discrimination Act
- eliminate harassment of disabled people that is related to their disabilities
- promote positive attitudes towards disabled people
- encourage participation by disabled people in public life
- take steps to take account of disabled people's disabilities, even where that involves treating disabled people more favourably than other people.

From 4 December 2006, the LSC is also under a specific duty to conduct disability equality impact assessments of its policies in relation to the public duty to promote disability equality and within this, to identify whether there is a differential and adverse impact on disabled people and other people.

We do not believe that any of the current proposals will have any differential impact on people based on their disability. However, we invite respondents to the consultation to submit any evidence they have that they feel shows otherwise.

Gender equality

LSC Duties

The Equality Act of 2006 places a statutory duty on all public authorities, when carrying out their functions, to have due regard to the need:

- to eliminate unlawful discrimination and harassment
- to promote equality of opportunity between men and women.

This general duty came into effect on 6 April 2007. From 6 April 2007, the LSC is also under a specific duty to conduct gender equality impact assessments of its policies in relation to the public duty to promote gender equality and within this, to identify whether there is a differential and adverse impact on people of different genders.

We do not believe that any of the current proposals will have any differential impact on people based on their gender. However, we invite respondents to the consultation to submit any evidence they have that they feel shows otherwise.

Age equality

We do not believe that the proposals will have any differential impact on people based on their age. However, we invite respondents to the consultation to submit any evidence they have that they feel shows otherwise.

Religion and belief

The LSC does not hold any information on the religion and belief of clients or people employed by providers of publicly funded legal services. We do not believe that any

of the current proposals will have any differential impact on people based on their religion and belief. However, we invite respondents to the consultation to submit any evidence they have that they feel shows otherwise.

Sexual orientation

The LSC does not hold any information on the sexual orientation of clients or people employed by providers of publicly funded legal services. We do not believe that any of the current proposals will have any differential impact on people based on their sexual orientation. However, we invite respondents to the consultation to submit any evidence they have that they feel shows otherwise.

Overall conclusion

We do not believe that any of the current proposals will have any differential impact on people based on their race, disability, gender, age, religion, belief or sexual orientation. However, we invite respondents to the consultation to submit any evidence they have that they feel shows otherwise.

Other Specific Impact Tests

Competition Assessment

Based on an initial competition assessment, the LSCs view is that the proposals are likely to have little or no effect on competition for litigator firms compared with the current scheme. No one firm has more than 10% of the market, and existing Panel Members will not be at an advantage over new or potential firms. The proposals will not affect set up costs. The scheme will not restrict the ability of firms to offer a range of services.

Small Firms Impact Test

Based on an initial small firms impact assessment we do not believe that there will be an adverse impact on small firms. Indeed, small firms are more likely to undertake category 3 and 4 VHCCs as opposed to category 1 and 2 VHCCs and therefore those that become members of the VHCC panel are likely to see an increase in income from this work. See data tables on page 72 to 74 for evidence of variance between new scheme and current spend per category.

Legal Aid Impact Test

At a headline level the scheme proposed by the Working Group is costed so that it would maintain the savings that were generated by the last tender before the interim rise in payment levels. In effect this means that it would make an additional 5% saving over the current interim scheme. There is an additional saving of around 0.5% in combining solicitor-advocate and barrister rates.

Sustainable development

Based on our initial assessment, the LSC considers the proposed Working Group scheme to be more sustainable than the current interim scheme and option 2.

Rural Proofing

LSC Duties

Public authorities also need to take account of rural circumstances and needs (Rural White Paper, 2000). Rural proofing states that policy makers should systematically:

- consider whether their policy is likely to have a different impact in rural areas, because of particular rural circumstances or needs
- make a proper assessment of those impacts, if they are likely to be significant
- adjust the policy, where appropriate, with solutions to meet rural needs and circumstances.

Where appropriate, the LSC must consider the rural impacts of its policies to identify whether there is a differential and adverse impact on rural areas.

Based on an initial assessment of the impact on rural coverage, we do not believe the proposals will have a significant adverse impact on providers in, or providing services to clients in rural areas. We do however invite respondents to the consultation to submit any evidence they have that they feel shows otherwise.

Specific Impact Tests: Checklist

The following checklist indicates which specific impact tests we have applied to the proposals set out in the Consultation Paper.

Type of testing undertaken	Results in Evidence Base?	Results annexed?
Competition Assessment	Yes	No
Small Firms Impact Test	Yes	No
Legal Aid	Yes	No
Sustainable Development	Yes	No
Carbon Assessment	No	No
Other Environment	No	No
Health Impact Assessment	No	No
Race Equality	Yes	No
Disability Equality	Yes	No
Gender Equality	Yes	No
Human Rights	No	No
Rural Proofing	Yes	No

Supporting data tables

This section of the Initial Impact Assessment contains the supporting data for the statements made in the main body of the Annex. The data set out in the following tables is based on a sample of 1459 concluded VHCC contracts over a seven year period (2000-2007). Please note the historic average spend has been adjusted to reflect the £145 tendered rate change.

Tables 24 and 25 Average litigator prep hours per concluded VHCC contract by category and by case type

Category	Average litigator prep hours per concluded VHCC contract		
	Level A	Level B	Level C
1	679	978	1413
2	538	829	698
3	246	300	153
4	175	225	140

Case type	Average litigator prep hours per concluded VHCC contract		
	Level A	Level B	Level C
Carousel fraud	319	458	302
Drugs	157	225	136
Money laundering	438	695	619
Murder	269	297	143
Other	210	295	190
Other fraud	327	453	483
Other violence	231	199	145
Phoenix fraud	617	283	108
Rape	154	282	84
Terrorism	706	638	256
VAT fraud	346	565	268

Table 26 Forecast litigator prep spend per VHCC contract under new scheme (excl. VAT) compared with option 2

Category	Forecast at £145 rates - option 2	Forecast under new scheme – option 1	Variance of option 1 to option 2	
1	£341,353	£257,114	-£84,239	-24.68%
2	£189,064	£180,989	-£8,075	-4.27%
3	£53,889	£64,406	£10,517	19.52%
4	£40,840	£48,937	£8,097	19.83%

Tables 27 and 28 Average advocate hours per concluded VHCC contract by category and by case type

Category	Average advocate prep hours per concluded VHCC contract			
	QC	Leading Junior	Led Junior	Junior Alone
1	1102	638	1116	126
2	687	698	751	154
3	417	378	412	165
4	312	323	356	206

Case type	Average advocate prep hours per concluded VHCC contract			
	QC	Leading Junior	Led Junior	Junior Alone
Carousel fraud	362	452	528	148
Drugs	312	317	374	187
Money laundering	435	445	614	168
Murder	357	316	429	184
Other	360	411	455	213
Other fraud	655	406	508	179
Other violence	269	264	333	198
Phoenix fraud	0	0	124	0
Rape	376	406	305	102
Terrorism	630	614	905	111
VAT fraud	560	493	667	150

Tables 29 Forecast advocate prep spend per VHCC contract under new scheme (excluding VAT) compared with option 2

Cat	Forecast at £145 tendered rates - option 2				Forecast under new scheme (variance to option 2)							
	QC	Ldg J	Led J	J AI	QC		Ldg J		Led J		J AI	
1	£159,790	£81,026	£101,556	£12,600	£127,832	-£31,958	£54,892	-£26,134	£78,132	-£23,424	£9,043	-£3,557
2	£77,631	£69,800	£54,823	£12,628	£79,692	£2,061	£60,037	-£9,763	£52,591	-£2,232	£11,070	-£1,558
3	£37,947	£29,862	£25,132	£11,550	£48,372	£10,425	£32,536	£2,674	£28,809	£3,677	£11,864	£314
4	£28,392	£25,517	£21,716	£14,420	£36,192	£7,800	£27,811	£2,294	£24,926	£3,210	£14,819	£399

Equalities data**All crime suppliers by ethnicity, disability, gender, age**

The equalities statistics detailed below are drawn from the LSRC provider survey dataset and LSC claims data. Data is provided at LSC region level and at CJS area level. Because of the low number of offices in some areas, and the correspondingly low number of matches against the LSRC dataset, provider equality data has been provided at the larger, region level.

In the tables below the headings 'All Barristers', 'Self-Employed' and 'Employed' refer to the corresponding data produced by the QAA Bar Survey. 'Solicitor Advocate' refers to the data supplied by the Law Society as reported in the Solicitor Advocate Workforce Profile paper. 'VHCC' refers to the data gathered during the 2007 VHCC tendering exercise. Please note, we will conduct an analysis of each area for advocates by case category during the consultation period and issue this with our response to consultation. Based on the data we do have we do not believe the proposals will have a disproportionate impact on advocates under each of the following heads.

Race

Table 30: This table shows the proportion of offices in each region that have majority White British, BME and Split ownership and control. For example, in 2006/07, 16% of firms based in the Midlands region have majority BME ownership and control.

LSC Region	White British			BME			Split		
	2006/07	2007/08	Jul-08	2006/07	2007/08	Jul-08	2006/07	2007/08	Jul-08
London & South East	54%	53%	52%	36%	36%	38%	10%	10%	10%
Midlands	78%	77%	78%	16%	16%	17%	6%	6%	5%
North East	91%	91%	92%	7%	7%	7%	3%	2%	1%
North West	93%	93%	93%	4%	4%	4%	4%	4%	3%
South & West	93%	93%	94%	3%	2%	3%	4%	4%	4%
Wales	91%	91%	92%	6%	6%	6%	3%	3%	2%
National	80%	80%	80%	15%	15%	15%	5%	6%	5%

Source: LSRC

Table 31: This table shows the proportion of those offices with majority White British, BME, and Split ownership and control that are situated in each region. For example, in 2007/08, 57% of BME owned and controlled firms were based in London and South East.

LSC Region	White British			BME			Split		
	2006/07	2007/08	Jul-08	2006/07	2007/08	Jul-08	2006/07	2007/08	Jul-08
London & South East	15%	16%	14%	56%	57%	55%	43%	43%	47%
Midlands	24%	23%	23%	26%	26%	26%	25%	26%	25%
North East	19%	19%	19%	8%	8%	8%	8%	7%	3%
North West	17%	17%	17%	3%	3%	4%	9%	9%	10%
South & West	14%	14%	15%	2%	2%	2%	9%	9%	10%
Wales	11%	11%	12%	4%	4%	4%	5%	5%	5%

Source: LSRC

Table 32: This table shows the proportion of VHCC Panel applicants with majority White, Mixed, Asian/Asian British, Black/Black British and Chinese ownership and control

White	Mixed	Asian/Asian British	Black/Black British	Chinese
67.99%	3.6%	17.8%	4.55%	0.76%

Table 33: This table shows the proportion of VHCC Panel applicants with majority White, Mixed, Asian/Asian British, Black/Black British and Chinese ownership and control broken down by category. For example, a majority White owned firm will have an average case profile consisting of 4% cat1, 13% cat2 etc.

	White	Mixed	Asian/Asian British	Black/Black British	Chinese
Category 1	4%	15%	10%	10%	0%
Category 2	13%	29%	5%	1%	0%
Category 3	34%	14%	29%	21%	0%
Category 4	50%	42%	56%	68%	100%
TOTAL	100%	100%	100%	100%	100%

Table 34: This table shows the proportion of barristers and solicitor advocates by ethnicity

	All Barristers	Self-Employed	Employed	Solicitor Advocate	VHCC
White	87.4%	88.3%	83.9%	86.4%	85.7%
Mixed	3.0%	3.2%	2.0%	No analogous category	2.5%
Asian	4.8%	4.0%	8.2%	8.5%	7.5%
Black	2.5%	2.1%	4.2%	2.8%	4.0%
Chinese	0.4%	0.5%	0.3%	0.3%	0.2%
Other	1.8%	1.9%	1.4%	2.0%	No analogous category

Table 35: This table shows the proportion of VHCC Advocate applicants by ethnicity and broken down by category. For example, a White Advocate will have an average case profile consisting of 6.82% cat1, 15.59% cat2 etc.

	White	Mixed	Asian/Asian British	Black/Black British	Chinese
Category 1	6.82%	18.10%	11.09%	2.24%	25.00%
Category 2	15.59%	12.73%	10.30%	5.13%	0.00%
Category 3	33.39%	37.22%	24.85%	52.24%	0.00%
Category 4	44.20%	31.95%	53.76%	40.38%	75.00%
TOTAL	100%	100%	100%	100%	100%

Disability

Table 36: This table shows the proportion of offices with majority ill/disabled, non-ill/disabled, and split ownership and control

Majority control	2006/07	2007/08	July 2008
Ill/disabled	1%	1%	1%
Non-ill/disabled	99%	99%	98%
Split	1%	1%	1%

Source: LSRC

As only a small number of offices in the LSRC dataset are majority owned or controlled by ill/disabled people, we have not broken down these figures by region.

Table 37: This table shows the proportion of offices in each region that have no ill/disabled managers, and those that have one or more ill/disabled managers

LSC Region	No disabled managers			1 or more disabled manager		
	2006/07	2007/08	Jul-08	2006/07	2007/08	Jul-08
London & South East	97%	97%	97%	3%	3%	3%
Midlands	96%	96%	95%	4%	4%	5%
North East	95%	94%	94%	5%	6%	6%
North West	97%	97%	97%	3%	4%	3%
South & West	97%	96%	96%	4%	4%	4%
Wales	93%	95%	95%	7%	5%	5%
National	96%	96%	96%	4%	4%	4%

Source: LSRC

Table 38: This table shows the proportion of VHCC Panel applicants where one or more persons with managerial control of your firm or organisation have a long term illness, health problem or disability that limits their daily activity or the work they can do. This is also broken down by the firm’s historic case category profile. For example, a firm that answered yes to this question will have an average case profile consisting of 4% cat1, 24% cat2 etc.

	Yes	No
Category 1	4%	6%
Category 2	24%	11%
Category 3	43%	31%
Category 4	29%	52%
TOTAL	100%	100%

Table 39: This area showed a large differential between the QAA survey results and the VHCC data. This could be due to the QAA question on this issue being much broader, with a list of disabilities such as hearing, visual or speech. In comparison the VHCC form asked, ‘Do you consider yourself to have a disability?’ with a Yes/No answer.

	All Barristers	Self-Employed	Employed	VHCC
Yes	7.9%	7.2%	10.5%	0.2%
No	92.1%	92.8%	89.5%	99.8%

No of self-employed crime practitioners with a disability: 295 (16.7%)
 No of self-employed crime practitioners without a disability: 1470 (83.3%)

Table 40: This table shows the proportion of VHCC Advocate applicants answering the following question: Do you consider yourself to have a disability? This is also broken down by average case category profile. For example, an Advocate that answered yes to this question will have an average case profile consisting of 8.33% cat1, 8.33% cat2 etc.

	Yes	No
Category 1	8.33%	7.34%
Category 2	8.33%	15.05%
Category 3	8.33%	33.18%
Category 4	75.00%	44.44%

TOTAL	100%	100%
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Gender

Table 41: This table shows the proportion of offices in each region that have majority male and female ownership and control

LSC Region	Male			Female			Split		
	2006/07	2007/08	Jul-08	2006/07	2007/08	Jul-08	2006/07	2007/08	Jul-08
London & South East	66%	66%	66%	19%	19%	18%	15%	16%	16%
Midlands	73%	72%	72%	12%	12%	12%	16%	16%	16%
North East	74%	73%	73%	9%	9%	9%	17%	17%	18%
North West	75%	75%	77%	12%	11%	10%	13%	13%	13%
South & West	72%	73%	74%	11%	10%	10%	17%	17%	17%
Wales	78%	78%	79%	10%	9%	8%	12%	12%	12%
National	72%	72%	73%	13%	12%	12%	15%	15%	15%

Source: LSRC

Table 42: This table shows the proportion of offices with majority male and female ownership and control by region

LSC Region	Male			Female			Split		
	2006/07	2007/08	Jul-08	2006/07	2007/08	Jul-08	2006/07	2007/08	Jul-08
London & South East	21%	21%	20%	34%	35%	34%	22%	23%	22%
Midlands	24%	23%	23%	22%	22%	23%	25%	24%	23%
North East	18%	17%	17%	13%	13%	13%	19%	19%	20%
North West	15%	15%	16%	14%	14%	13%	13%	13%	12%
South & West	12%	12%	13%	10%	10%	10%	14%	13%	14%
Wales	10%	10%	11%	7%	7%	7%	8%	8%	8%

Source: LSRC

Table 43: This table shows the proportion of VHCC Panel applicants with majority male and female ownership broken down by the firm’s historic case category profile.

	VHCC Panel applicants (firms)
Male	78.77%
Female	21.23%

Table 44: This table shows the proportion of VHCC Panel applicants with majority male and female ownership broken down by the firm’s historic case category profile. For example, a majority male owned firm will have an average case profile consisting of 6% cat1, 13% cat2 etc

	Male	Female
Category 1	6%	3%
Category 2	13%	10%
Category 3	32%	37%
Category 4	50%	49%
TOTAL	100%	100%

Table 45: This table shows the proportion split of barristers and solicitor advocates by gender

	All Barristers	Self-Employed	Employed	Solicitor Advocates	Crime Barristers	VHCC Advocates
Male	67.1%	70.7%	51.9%	69.9%	72.7%	77.1%
Female	32.9%	29.3%	48.1%	30.0%	27.3%	22.9%

Table 46: This table shows the proportion of VHCC Advocate applicants by gender and broken down by case category profile. For example, a male Advocate will have an average case profile consisting of 6% cat1, 13% cat2 etc.

	Male	Female
Category 1	7.27%	7.54%
Category 2	15.77%	12.80%
Category 3	33.37%	32.01%
Category 4	43.60%	47.65%

TOTAL	100%	100%
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Age

Table 47: This table shows the proportion of offices with majority ownership and control by age of those with ownership and control

Age	2006/07	2007/08	Jul-08
18-24	0%	0%	0%
25-34	11%	11%	12%
35-49	51%	51%	52%
50-59	31%	31%	30%
60-64	6%	6%	5%
65-70	1%	1%	1%
70+	0%	0%	0%

Source: LSRC

Table 48: This table shows the proportion split of barristers and solicitor advocates by age

Age	All Barristers	Self-Employed	Employed	Solicitor Advocates	VHCC
16-25	1%	-	-	0.2%	0.5%
26-35	26%	-	-	22.3%	24.3%
36-45	32%	-	-	35.6%	33.7%
46-55	26%	-	-	28.7%	28%
56-65	12%	-	-	11.8%	11.9%
65+	3%	-	-	1.5%	1.6%

Annex 6: Government Code of Practice

This document and the consultation process have been planned to adhere to the Code of Practice on Consultation issued by the Cabinet Office and are in line with six of the seven consultation criteria. Please note that some key elements of the future VHCC scheme (like the fact that there will be a panel of litigators) have already been consulted on, and there have been extensive information discussions with the VHCC Working Group leading up to the formal consultation. On this basis, the duration of this consultation exercise will be eight weeks. The seven criteria are:

Criterion 1: When to consult

Formal consultation should take place at a stage when there is scope to influence the policy outcome.

Criterion 2: Duration of consultation exercises

Consultations should normally last for at least 12 weeks with consideration given to longer timescales where feasible and sensible.

Criterion 3: Clarity of scope and impact

Consultation documents should be clear about the consultation process, what is being proposed, the scope to influence and the expected costs and benefits of the proposals.

Criterion 4: Accessibility of consultation exercises

Consultation exercises should be designed to be accessible to, and clearly targeted at, those people the exercise is intended to reach.

Criterion 5: The burden of consultation

Keeping the burden of consultation to a minimum is essential if consultations are to be effective and if consultees' buy-in to the process is to be obtained.

Criterion 6: Responsiveness of consultation exercises

Consultation responses should be analysed carefully and clear feedback should be provided to participants following the consultation.

Criterion 7: Capacity to consult

Officials running consultations should seek guidance in how to run an effective consultation exercise and share what they have learned from the experience.

Annex 7: Interested stakeholders

This consultation document may be of particular interest to anyone with an interest in the procurement of very high cost criminal defence services in England and Wales. This includes legal firms, legal representative bodies, client interest groups and other organisations across the criminal justice system. Representative bodies and agencies are asked to alert their key stakeholders as to the launching of this consultation exercise.

Please feel free to forward this document, a link to it or the contact details set out at the beginning of this document to any organisations or individuals who you think might be interested.

We look forward to receiving a wide range of views.