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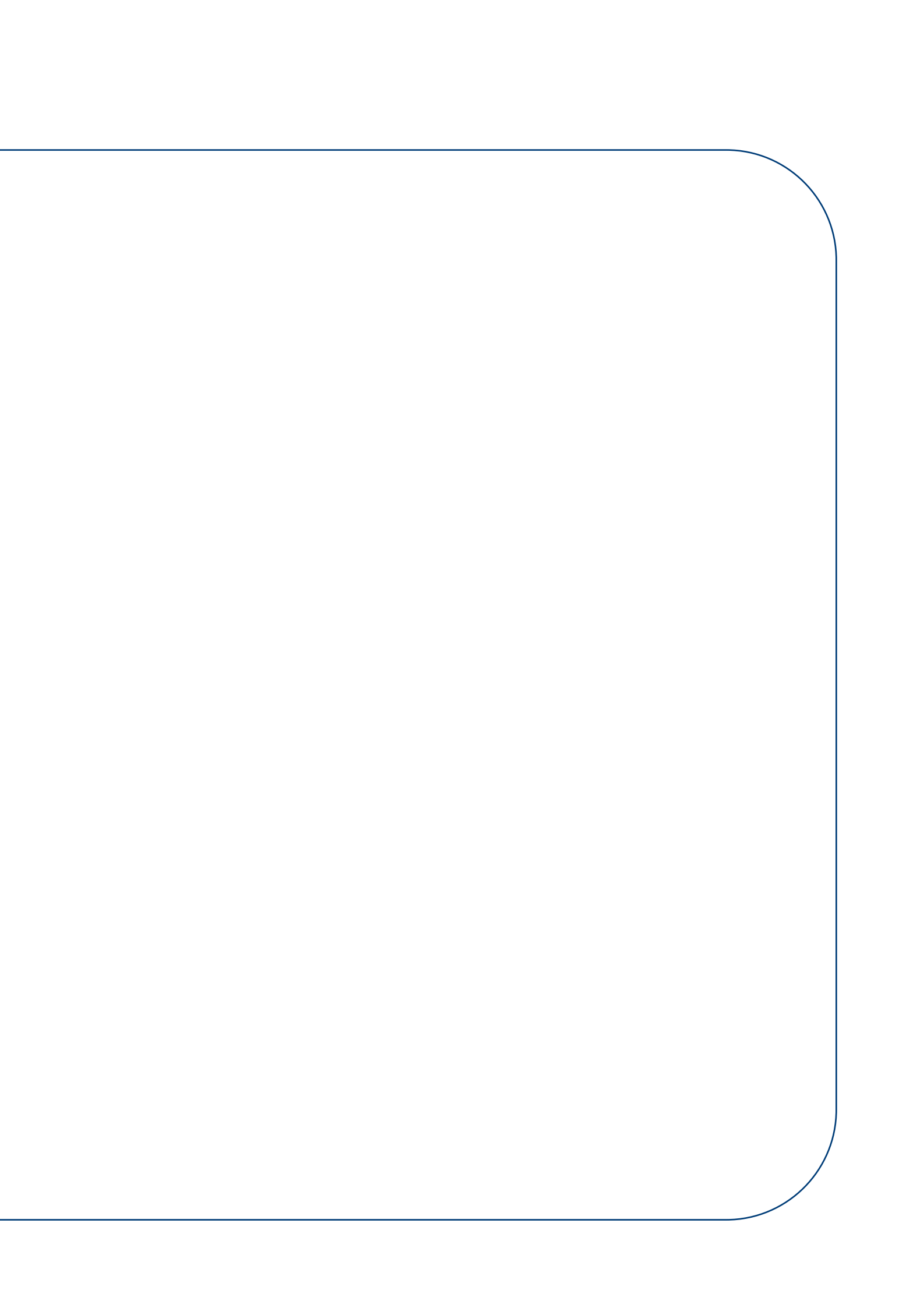
Northern Ireland Court Service
Criminal Very High Cost Cases Contracting System
Advocate's Contract (Annex C)

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Parties

The Northern Ireland Legal Services Commission whose office is at 2nd Floor, Waterfront Plaza, 8 Laganbank Road, Mays Meadow, Belfast BT1 3BN

and

The Advocate whose details appear in the box below.

Name of Advocate	
NILSC Ref Number (if applicable)	

Recital

A Very High Cost Case contract has been developed to facilitate the management of VHCCs.

Each advocate who is self-employed is required to sign a personal advocate's contract.

1 Definitions

1.1 In this contract the words and expressions below will be interpreted to have the meanings adjacent to them:

“2005 Rules” means the Legal Aid for Crown Court Proceedings (Costs) Rules (Northern Ireland) 2005;

“advocate” means a barrister, an advanced solicitor advocate or an advanced solicitor advocate QC;

“Audit Bundle” means the documents that the Defence Team must collate and provide to the VHCCU to enable the VHCCU to assess the payment due for completed VHCC work;

“barrister” means someone who is a member of the Bar of Northern Ireland;

“Best Value Protocol” means the document attached to this Contract as annex 3;

“billing guides” means any method of recording time or work done that can be or is used to prepare a bill and provide evidence to substantiate the bill;

“Case Manager” means the solicitor or advocate nominated to lead members of the Defence Team;

“Case Plan” means the document to be submitted to the VHCCU at the start of stage 1 with the Stage 1 Task List;

“closed VHCC” means a VHCC in respect of which all work by all Defence Teams working on that VHCC has been claimed, assessed, paid accordingly and concluded on the VHCCU finance system;

“consultative bodies” means the Law Society, the Bar Council, (and any other body we may agree with you to consult with in accordance with this Contract);

“Contract” means this Very High Cost Case (Criminal) Contract;

“Contract Amendment Notice” means the notice setting out any amendments to this Contract, as contained at annex 10;

“Contract Decision Letter” means the letter that the VHCCU will send the Defence Team if the VHCCU certifies that the case is a VHCC;

“Contract Manager” means the nominated VHCCU representative who will be responsible for the day-to-day running of this Contract on behalf of the Northern Ireland Legal Services Commission (NILSC);

“Defence Team” means the team of lawyers put forward as being available to work on the VHCC;

“fundamental breach” means:

- (a) a breach of a provision that is so important that it justifies termination;
- (b) two or more breaches which, together, are so serious that termination is justified; and
- (c) one or more breaches, from which the VHCCU may reasonably infer that performance will continue to be so substandard as to justify termination.

“guidance” means guidance issued by the VHCCU to Solicitors from time to time in connection with VHCC work;

“key members of the Defence Team” means senior solicitor, solicitor or an advocate;

“Legal Aid Certificate (Certificate)” means legal aid given under a criminal aid certificate granted under article 29, or deemed to have been granted under article 36(2) of the Order;

“NILSC” means the Northern Ireland Legal Services Commission;

“Order” means the Access to Justice (Northern Ireland) Order 2003 or the Legal Aid, Advice and assistance (Northern Ireland) Order 1981 as appropriate;

“quality standards” means such quality standards as the NILSC may introduce after consultation with the profession;

“senior executive” in the case of the NILSC means a Contract Manager within the VHCCU and in the case of “senior executive (solicitor)” means a person who can bind the firm to this contract;

“senior solicitor” means a solicitor who, in the judgement of the VHCCU has the skill, knowledge and experience to deal with the most difficult and complex of cases;

“solicitor” means someone who is a member of the Law Society of Northern Ireland;

“stage 1” means the first period of a VHCC (normally 12 weeks) for which the NILSC and the Defence Team will agree a plan of VHCC work;

“Stage 1 Task List” means the document prepared by the Defence Team detailing, on an item by item basis, the VHCC work to be undertaken by that team during stage 1 of the VHCC;

“substitute advocate” means any advocate who attends court on behalf of a client on a VHCC in place of the instructed advocate;

“Task List” means the document prepared by the Defence Team detailing, on an item by item basis, the VHCC work in each stage;

“TUPE” means the Transfer of Undertakings (Protection of Employment) Regulations 2006;

“VHCC” means a case certified by the VHCCU under rule 16 of the 2005 Rules;

“VHCC Appeals Authority” means the authority established to adjudicate on issues relating to payment and funding under this Contract;

“VHCC Application Form” means the form provided by the VHCCU for a solicitor to use when applying to the VHCCU for certification;

“VHCCU” means the Very High Cost Case Unit, the unit within the NILSC responsible for managing VHCC contracts;

“VHCC work” means criminal defence work carried out under this Contract;

“we” and “us” means the VHCCU (on behalf of the NILSC) and “our” has the associated meaning; and

“you” means the Advocate named at the beginning of this Contract and “your” has the associated meaning.

2 The Contract

- 2.1 Under the Contract, you are entitled to provide defence services to **(insert name of defendant(s))** who is/are being tried for **(insert summary of offence(s))** at **(insert name of applicable Crown Court)**, in accordance with the terms and conditions set out herein.

3 Contract Documents

- 3.1 All annexes referred to in this Contract form part of the Contract.

4 General Matters Associated with this Contract

- 4.1 Clause and paragraph headings in this Contract are inserted for convenience only and do not affect its interpretation.
- 4.2 Words denoting any particular gender include all other genders. Words denoting the singular include the plural and vice versa.
- 4.3 In this Contract, all references to any statute or statutory provision shall be deemed to include references to any statute or statutory provision which amends, extends, consolidates or replaces the same and shall include any orders, regulations, codes of practice, instruments or other subordinate legislation made there under and any conditions attaching thereto.
- 4.4 References to “approval” mean approval as provided by this Contract or, if no express provision is made by this Contract, to approval in writing.

5 Conditions Imposed by the New VHCC Scheme

5.1 How the new VHCC scheme will operate

5.2 The VHCCU will manage VHCCs and will be responsible for ensuring that you conduct the case according to this Contract.

5.3 A senior executive (solicitor) is responsible for identifying the Defence Team to carry out VHCC work. Having allocated that work, senior executives are responsible and accountable for the VHCC work carried out by the Defence Team.

5.4 The Defence Team must appoint a Case Manager to lead the members of the Defence Team. This person would normally, but not exclusively, be a senior solicitor or solicitor nominated to act in a leading role.

5.5 Unless expressly provided otherwise in this Contract or inferred by the different professional responsibilities of solicitors and advocates, where this Contract imposes obligations and liabilities on the Defence Team, the solicitor and those advocates who are listed as key members of the Defence Team and who have signed the advocates' Contracts ("the co-obligors") shall be jointly and severally liable for those obligations and liabilities.

5.6 The NILSC may take action against, or release or compromise the liability of, any co-obligor, or grant time or other indulgence, without affecting the liability of any other co-obligor.

6 VHCC Contracting Process Timetable

6.1 The timetable at annex 1 sets out all the stages of the VHCC contracting process through to the conclusion of the case.

6.2 Each stage of the timetable includes a number of tasks to be carried out by the VHCCU and the Defence Team and the deadlines imposed.

7 Conflicts Of Interest

- 7.1 Advocates must check for conflicts of interest at the outset of a VHCC and as the VHCC progresses. If a conflict appears during the progression of a VHCC, the conflicted party is obliged to notify the VHCCU in writing immediately and to cease work on the VHCC immediately.
- 7.2 In addition to notifying the VHCCU, if an advocate is the conflicted party, the advocate has an obligation to inform the client that he has ceased work and make the required representations to the Court.

8 Relationship

- 8.1 In funding services as part of free legal aid we are bound by article 37.2 of the 1981 Order, as amended, to aim to obtain the best possible value for money. Without prejudice to more specific provisions of this Contract and to your professional obligations in respect of clients, you and we agree to work together in mutual trust and co-operation to achieve this aim.
- 8.2 In relation to this Contract, you and we will act in good faith and we will act as a responsible public body required to discharge functions under the Order.

9 General Conditions of Carrying Out VHCC Work

- 9.1 Please see annex 6 for specific provisions for advocates relating to VHCC work.
- 9.2 In addition to other requirements set out in this Contract, you will:
- (a) comply with all relevant legislation, including any Acts of Parliament, Statutory Rules, Orders in Council, Acts of the Assembly and Directions of the LCJ and the Minister responsible for Legal Aid in NI, applying to this Contract;
 - (b) perform the VHCC work with reasonable skill, care and diligence;
 - (c) perform your obligations to record and report data accurately; and
 - (d) inform us immediately if you are unable to or expect to become unable to provide VHCC work of a satisfactory standard.
- 9.3 Your claims must be true, accurate and reasonable.

10 Provision Of Information

- 10.1 You agree to give us information we request relating to VHCC work to enable us to manage this Contract as soon as reasonably practicable, subject to confidentiality constraints as specified herein and applicable at law (including but not limited to advocate-client privilege).
- 10.2 Notwithstanding clause 10.1, if requested by the NILSC you will provide to any person, authorised by the NILSC to request it, such information or documentation as the NILSC may from time to time require for the purpose of discharging its functions under the Order.
- 10.3 Subject to clause 10.4, the information we may request under clause 10.1 includes access to any Defence Team member's electronic case management and/or time recording records for VHCC work but excludes access to electronic/paper diaries.
- 10.4 You are not required to provide information on any client not in receipt of legal aid. If your records contain details regarding both legally aided and non-legally aided clients, you will edit the records so as to remove any reference to any non-legally aided party.
- 10.5 We agree to give you any information you reasonably request as soon as reasonably practicable, subject to confidentiality constraints (see clause 29 on 'Confidentiality').

11 Accepting Instructions To Act Privately

- 11.1 Where you have been carrying out VHCC work on behalf of a client, you may not accept instructions to act privately in the same matter for a client unless the client has been first advised by you in writing of the consequences of ceasing to be in receipt of services and as to the further services which may be available under this Contract, whether from you or another advocate, and has nevertheless elected to instruct you privately.

12 Previous Work Conducted For The Same Client On The Same Matter

12.1 Where you have previously advised the client on the same matter, you must make all records relating to that matter (including any records of work carried out under insurance contracts and billing guides) available to the VHCCU.

12.2 This clause applies to work for which a claim for payment has already been made, and that for which you have yet to submit a claim for payment.

13 Best Value Protocol

13.1 The Best Value Protocol forms part of this Contract and must be adhered to, unless you have agreed otherwise in writing with your Contract Manager – i.e. the Best Value Protocol is not simply a guide to best practice when carrying out VHCC work; it is a binding document that must be followed, except where it has been varied by agreement, in writing, by both parties. An advocate wishing to vary any element of the Best Value Protocol must make representations to the Contract Manager as part of their stage negotiations.

14 Rates of Pay

14.1 The provisions relating to the rates of pay for VHCC work are set out in annex 4.

15 Payment and Disbursements

15.1 The provisions relating to payment for VHCC work and disbursements are set out in annex 5. Provisions on auditing your claims for payment are set out in annex 1.

15.2 The VHCCU will not pay for VHCC work that is not agreed in advance and confirmed as such as set out in this Contract, unless one of the exceptions set out in annex 5 applies.

15.3 For the avoidance of doubt, notwithstanding any delay by us in agreeing to the relevant Case Plan, Task List or any other document or fact requiring our confirmation, the advocate shall be entitled to payment for all VHCC work from the date legal aid was granted, in accordance with the provisions set out in annex 1.

16 Communication and Key Contacts

16.1 We and the solicitor will agree a list of key contacts that will manage the Contract.

16.2 The VHCCU will have named a Contract Manager, who will be responsible for the day-to-day running of the Contract. The Contract Manager will liaise with the solicitor's Case Manager. The VHCCU will assess the VHCC work carried out by the Defence Team, as set out in annex 1, and the Case Plan and Task List. Both parties will have identified a senior executive, responsible for dealing with strategic issues.

17 IT Requirements

17.1 You should have access to the necessary IT resources to:

- (a) prepare this case adequately;
- (b) keep computerised time recording systems detailing time spent preparing this case (where this is not immediately possible manual records should be kept in a format agreed with the VHCCU); and
- (c) transact with the VHCCU in an efficient manner.

17.2 The essential IT resources required are:

- (a) access to e-mail and the internet (to communicate with the VHCCU and prosecution agencies);
- (b) Microsoft Word and Excel (or comparable);
- (c) a CD ROM / DVD player; and
- (d) in cases agreed with the VHCCU, access to trained personnel who can use IT skills to achieve great efficiencies in searching large amounts of prosecution material.

18 Appeals And Dispute Resolution

18.1 Any disputes under this Contract concerning payment and funding issues will be dealt with by the VHCC Appeals Authority, as set out in annex 8.

18.2 A system for handling complaints made by you or the VHCCU about one another is set out in annex 9 on complaints.

19 Amendments to the Contract

19.1 The amendments covered by this section are those that are externally driven and become necessary or desirable for the effective operation of the contract. Obvious examples are those brought about by changes in government policy or legislation. This section does not relate to provisions relating to changes to your Task List as set out in annex 1.

20 Ongoing changes – from us

20.1 After reasonable notice (which shall be the longer of 20 working days or any specific notice period specified herein) we may, with your prior written agreement, amend any term of this Contract (including its annexes).

20.2 Subject to the provisions of this clause, we have the right to amend the Contract from time to time if:

- (a) we consider it necessary or desirable to do so in order to facilitate a change in government policy;
- (b) our proposed amendments have been approved by Consultative Bodies;
or
- (c) our proposed amendments are permitted under the clause below or any other provision of this Contract authorising us to make amendments.

20.3 We may make such amendments to this Contract as we consider necessary in the circumstances to comply with, or take account of, any U.K. legislation or any EU legislation having direct effect, or as a result of any decision of a U.K.

court or tribunal, or a decision of the European Court of Human Rights or of the European Court of Justice or any other institution of the European Union, or to comply with the requirements of any regulatory body or tax or similar authority. Such amendments may include (without limitation) changes to payment provisions, imposing controls not previously imposed, and amending procedures in the Contract.

- 20.4 Except for amendments made under any other provision of this Contract authorising us to make amendments, we may not amend the Contract without prior consultation in accordance with this clause.
- 20.5 If we consider that there is an urgent need to make the amendment, consultation with the consultative bodies may last no longer than 15 working days. Otherwise it may last no longer than 30 working days.
- 20.6 We wish to use each consultation period as a period during which consultation actually takes place, and will be willing to engage with the consultative bodies during this period to ensure that we are able to take full account of their views. After consultation, we will explain what decisions we have made, and why we have made them.
- 20.7 After consultation, we may amend the document as originally proposed, or in a modified form, or leave it un-amended and any amendment made by us shall be binding on you.
- 20.8 You must comply with any amendment from such date as we may specify for it. Subject to any other provision of this Contract authorising us to make amendments on other notice, such date shall be not less than 20 working days after notice of the amendment is given if we consider that there is an urgent need for compliance with it and shall be not less than 30 working days after notice of the amendment is given in any other case.
- 20.9 If you wish to terminate this Contract following an amendment you may do so at any time before the amendment comes into effect and any such notice shall take effect on the day before the day on which the amendment would otherwise have come into effect.

20.10 Any changes to this Contract will be recorded by means of a Contract Amendment Notice (see annex 10). On such occasions, where it is appropriate, we will amend and re-issue the relevant annex. Any new annex issued will replace the earlier version.

20.11 Such changes will come into effect on the 'effective date' set out in the Contract Amendment Notice.

21 Breaches of Contract

21.1 Failure to comply with any of the terms and conditions contained in this Contract and its annexes will put you in breach of this Contract. Some breaches may be so serious that they may result in immediate termination of this Contract. In other cases, breaches may be minor and may, or may not, be remediable. In the case of any breach, which we allow you time to remedy, we may withhold your next payment until the breach has been rectified to our satisfaction.

Irremediable breaches

21.2 If you have breached this Contract and the breach is not capable of remedy, we may write to you requiring you not to repeat the breach.

Remediable breaches

21.3 If you have breached this Contract and the breach is capable of remedy, we may write to you requiring you to remedy the breach within such period as we may specify, normally not less than 20 working days.

Fundamental breach

21.4 There are some breaches that are so serious that they go to the heart of the Contract and are considered not to be capable of remedy. In such cases, without offering you an opportunity to remedy the breach, we may terminate this Contract with effect from such date as we may specify in the notice.

22 Termination

22.1 If you wish to terminate the contract, while continuing to represent the client, you may do so by serving on us a notice of termination. The contract will be terminated in three months, or such shorter time, as agreed between you and us. Your remuneration will then be governed by the 2005 Rules.

Immediate termination

22.2 This Contract terminates immediately if there is an intervention by the Law Society, in respect of solicitor advocates, or the Bar Council, in respect of barristers, or by any other organisation that may lawfully do so that has the effect of preventing you from carrying out work under this Contract.

Urgent termination

22.3 We are entitled, at any time, to write to you terminating this Contract with effect from such date as may be specified by us if:

- (a) you are under official investigation or we receive a report and, in either case, we consider that termination is required to protect clients or us from possible serious harm or to protect public funds or clients' interests;
- (b) a report identifies that there has been such a serious breach of legislation or such serious professional misconduct or dishonesty by you that, in all the circumstances, termination is justified;
- (c) you have committed a fundamental breach of contract; or
- (d) you have failed to provide documents in accordance with annexes 1 and 5 of this Contract.

Termination on notice

22.4 If you have breached this Contract and the breach is capable of remedy, we are entitled to write to you, at any time, requiring you to remedy the breach within such period as we may specify, normally not less than 20 working days. If you fail to remedy the breach to our reasonable satisfaction, we may write to you terminating this Contract with effect from such date as we may specify in the letter.

22.5 If you have breached this Contract and the breach is not capable of remedy, we are entitled to write to you requiring you not to repeat the breach. If you repeat the breach or we write to you on two further occasions in connection with any breach, we may write to you terminating this Contract with effect from such date as we may specify in the letter.

22.6 Whenever we are entitled to terminate this Contract or we have referred any matter to the court e.g. conflict of interest, we may suspend the Contract. We will set out the effects of any suspension in a letter to you.

22.7 If you have committed a Fundamental Breach, we may write to you terminating this Contract with effect from the date specified in the letter.

Consequences of this Contract ending

22.8 When this Contract ends all rights, authorisations and licences granted under it by us to you end immediately.

22.9 Subject to clauses 22.14 and 22.15, when this Contract ends our obligation to make payments to you under it ceases.

22.10 Subject to the provisions of this Contract, the ending of this Contract is without prejudice to any of your or our accrued rights (including, without limitation, our rights to assess your claims and to recover any overpayments to you and your rights to recover any underpayments by us).

22.11 Where this contract is terminated before the disposal of the case and you continue to represent the client, the following apply:

- (a) where the amount of the payments made is less than the amount that would have been payable had the 2005 Rules applied, we will pay the difference; or
- (b) where the amount of the payments made exceeds the amount that would have been payable had the 2005 Rules applied, any amount that exceeds that amount may be recoverable by us.

22.12 Any provision of this Contract which relates to, or governs your or our acts after it ends, remains in full force and effect and is enforceable even though the Contract has ended.

23 Guidance

23.1 We may issue you with guidance under this Contract. Examples of guidance we may issue include: standard forms and documents and notes on how to complete them; internal management manuals used by VHCCU Contract Managers; guideline rates for experts and other disbursements; and (without limitation) guidance on other issues relating to the meaning and operation of, and compliance with, this Contract.

24 Compliance with Legal and Regulatory Rules

24.1 You must comply with the rules of all relevant regulatory bodies e.g. the Bar Council. Barristers who are members of the Defence Team must be members of the Bar of Northern Ireland and have a current practicing certificate. Solicitor-advocates must have a current practising certificate.

24.2 It is your responsibility to ensure you are complying with any relevant regulatory and legal rules and requirements relating to carrying out work on this VHCC.

25 Sub-contractors

25.1 Except in exceptional circumstances, and only with our prior written approval, you are not permitted to sub-contract work on this case.

25.2 If you are using sub-contractors (as agreed by us) to provide work under this Contract, you accept that this Contract is between you and us. We do not have a direct contractual relationship with any organisation or individual you may have a relationship with. For example, we will not pay any sub-contractor directly; we will not review any sub-contractor's claims for payment; and we will not receive any reports from a sub-contractor.

25.3 You will remain our contractor throughout the Contract. If your sub-contractor ceases providing services to you in connection with this Contract, you are responsible for ensuring that you continue to carry out work on this case in accordance with the Contract. You must also notify us of this fact immediately.

25.4 If we do agree to your sub-contracting any work on this case to another, this will always be on the condition that you remain solely responsible for the performance of that work, even when carried out by another. You cannot abrogate your responsibility to the client.

26 Non-assignment

26.1 You must not give, bargain, sell, assign (or otherwise dispose of) the benefit of the rights of the contract, or sub-contract (or otherwise delegate) any of your obligations under it (other than as specified in the previous clause) without our written consent.

27 Insurance

27.1 Self-employed solicitor-advocates must have current professional indemnity insurance as required pursuant to section 63 of the Solicitors (Northern Ireland) Order 1976 and comply with current solicitors' indemnity insurance rules (as evidenced by indemnity insurance that complies with minimum terms and conditions, and, where appropriate, a current practising certificate).

27.2 All practicing barristers are required to obtain professional indemnity insurance as required by the Code of Conduct for the Bar of Northern Ireland.

28 Notices

28.1 Any notice or other communication given under this Contract shall be in writing and shall be served by delivering it personally, sending it by DX, sending it by pre-paid first class post, recorded delivery or registered post, sending it by fax, or sending it by e-mail to the address and for the attention of the key contact

set out in annex 7 (unless otherwise specifically stated). Any such notice shall be deemed to have been received:

- (a) if delivered personally, at the time of delivery;
- (b) in the case of DX, pre-paid first class post, recorded delivery or registered post, 48 hours from the date of posting;
- (c) in the case of fax, at the time of transmission (as verified by the fax transmission report); or
- (d) in the case of e-mail, 4 hours after the e-mail was sent, provided no automatic response e-mail denoting non-receipt is received within 12 hours by the party sending the original e-mail.

28.2 Notices terminating this Contract (from us or you) shall not be validly served if sent solely by e-mail. If either party elects to give notice of termination (see Clause 22) by e-mail, that party must also give notice by another method set out in this clause (e.g. by recorded delivery or registered post).

29 Confidentiality

29.1 You and we:

- (a) shall treat all confidential information belonging to the other as confidential and safeguard it accordingly;
- (b) shall not disclose any confidential information belonging to the other party to any other person without the prior written consent of the other party, except to such persons and to such extent as may be necessary for the performance of this Contract or except where disclosure is otherwise expressly permitted by the provisions of this Contract; and
- (c) shall not use any confidential information received from the other party otherwise than for the purposes of this Contract.

29.2 The provisions of clause 29.1 shall not apply to any confidential information received by one party from the other which:

- (a) is or becomes public knowledge (otherwise than by breach of this clause);
- (b) was in the possession of the receiving party, without restriction as to its disclosure, before receiving it from the disclosing party;

- (c) is received from a third party who lawfully acquired it and who is under no obligation restricting its disclosure;
- (d) is independently developed without access to the confidential information; or
- (e) must be disclosed pursuant to a statutory, legal or parliamentary obligation placed upon the party making the disclosure, including any requirements for disclosure under the Freedom of Information Act 2000 (“the FOIA”), unless it is exempt under the FOIA.

30 Freedom of Information

30.1 You acknowledge that we are obliged to act openly and transparently and are subject to the requirements of the FOIA and shall assist and cooperate with us to enable us to comply with these information disclosure requirements.

30.2 You further acknowledge and agree that we are responsible for determining at our absolute discretion whether any information in our possession or under our control is either exempt from disclosure or is to be disclosed. If the information that we propose to disclose relates to you and, in our view, could be subject to any of the FOIA exemptions referred to in clause 30.4 (a-f), we will give you 5 working days written notice prior to disclosure to enable you to make representations under clause 30.4.

30.3 You shall and shall procure that your sub-contractors (if any) shall:

- (a) transfer any request for information to us as soon as practicable after receipt and in any event within 5 working days of receiving it;
- (b) provide us with a copy of all information in your possession or power in the form that we require within 5 working days (or such other period as we may reasonably specify) of our requesting it; and
- (c) provide all necessary assistance as reasonably requested by us to enable us to respond to a request for information within the time for compliance set out in the FOIA.

30.4 If you object to the disclosure of any information held by us then, having been given notice under clause 30.2 you must, within 5 working days, write to us identifying the information that you wish us not to disclose, setting out your full and detailed reasons for objecting to the disclosure. You should specifically refer to the relevant FOIA exemption(s), which may be one or more of the following:

- (a) that the information is information in respect of which a claim to legal professional privilege could be maintained in legal proceedings under section 42(1) of the FOIA;
- (b) that the information constitutes a trade secret and is eligible for exemption under section 43(1) of the FOIA;
- (c) that the disclosure of the information would prejudice the commercial interest of any person under section 43(2) of the FOIA;
- (d) that the information will be disclosed by you to the NILSC and that the nature of the information, or the circumstances in which it is imparted or the circumstances are otherwise such, as to justify the acceptance by the NILSC of an obligation of confidence in respect of it under section 41(1) of the FOIA;
- (e) that the information is personal data or otherwise relates to the private life of an individual which is appropriate for protection under section 40 of the FOIA; or
- (f) any other specific exemption under the FOIA.

30.5 We shall be responsible for determining at our absolute discretion whether any commercially sensitive information and/or any other information:

- (a) is exempt from disclosure in accordance with the provisions of the FOIA;
or
- (b) is to be disclosed in response to a request for information.

30.6 In no event shall you respond directly to a request for information unless we expressly authorise you in writing to do so.

30.7 You acknowledge that we may, acting in accordance with the Secretary of State's Code of Practice on the Discharge of Functions of Public Authorities

under section 45, Part I of the FOIA, be obliged under the Code or the FOIA to disclose information:

- (a) without consulting you; or
- (b) following consultation with you and having taken your views into account.

30.8 If we determine that information must be disclosed we shall notify you of that decision at least 5 working days before disclosure.

30.9 You shall ensure that all information produced in relation to all your work on this case is retained for disclosure and shall permit us to inspect such records as requested from time to time.

30.10 You acknowledge that any lists or schedules provided by you outlining confidential information are of indicative value only and that we may nevertheless be obliged to disclose confidential information in accordance with clause 30.7.

31 General

31.1 This Contract constitutes the entire agreement and understanding of the parties and supersedes any rights relating to the subject matter of this Contract.

31.2 This Contract and any dispute or claim arising out of or in connection with it or its subject matter shall be governed by and construed in accordance with the law of Northern Ireland.

31.3 Nothing in this Contract is intended to or shall operate to create a partnership or joint venture of any kind between the parties, or to authorise either party to act as agent for the other, and neither party shall have authority to act in the name or on behalf of or otherwise to bind the other in any way (including but not limited to the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).

31.4 A person who is not a party to this Contract shall not have any rights under or in connection with it.

31.5 No failure or delay by a party to exercise any right or remedy provided under this Contract or by law shall constitute a waiver of that (or any other) right or remedy, nor preclude or restrict its further exercise. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that (or any other) right or remedy.

31.6 If any provision of this Contract shall be found by any court or administrative body of competent jurisdiction to be invalid or unenforceable, such invalidity or unenforceability shall not affect the other provisions of this Contract which shall remain in full force and effect.

31.7 If any provision of this Contract is so found to be invalid or unenforceable but would be valid or enforceable if some part of the provision were deleted, the provision in question shall apply with such modification(s) as may be necessary to make it valid and enforceable.

Signed for the Northern Ireland Legal Services Commission by: 	Signed by:
Print Name:	Print Name:
Status:	Status: Barrister/Solicitor-advocate
Date:	Date:
This Contract is valid only if a person signs it with the specific written authority of the Commission's Chief Executive	

VHCC Contracting Process Timetable

- 1.1 Extensions to the deadlines imposed in this annex may be granted by agreement between the Defence Team's Case Manager and the VHCCU's Contract Manager.
- 1.2 Where the Defence Team is required to submit written documentation to the VHCCU, all documents should be typed unless otherwise agreed with the Contract Manager. Submission of handwritten documents may result in a delay to the process.
- 1.3 Template documents referred to in this annex will be provided to solicitors and advocates (as members of the Defence Team) by the VHCCU e.g. Case Plan or Task List.

1.4 Case Planning

1. The Defence Team must nominate a Case Manager to have overall responsibility for the VHCC and to liaise with the VHCCU's nominated Contract Manager.
2. The Defence Team must prepare a Case Plan, Stage Plan and a stage 1 Task List and submit to the VHCCU no later than 10 working days from the date of the Contract Decision Letter.

Case Plan, Stage Plan and Task List templates will be provided to Defence Teams by the VHCCU. All submissions must be made using these templates. Submission of these documents in any other format will not be accepted by the VHCCU.

The Case Plan, Stage Plan and Task List must reflect all the necessary work of the Defence Team for that stage.

All members of the Defence Team must reach agreement on the content of each Task List before submitting it to the Contract Manager for authorisation.

The Defence Team must also (as part of the Task List) provide a summary of the work undertaken in the previous stage (stage 0).

The Case Plan, Stage Plan and Task List must be signed by the Case Manager.

1.5 Negotiation Meetings

1. If a meeting is appropriate, the Contract Manager will contact the Case Manager within 2 working days of receiving a fully completed Case Plan, Stage Plan and stage 1 Task List to arrange a stage 1 meeting.
2. If a meeting is appropriate, the stage 1 meeting will take place within 10 working days of receipt of the completed Case Plan, Stage Plan and stage 1 Task List. The meeting will take place at the offices of the Case Manager. Where this is not possible, the meetings will take place at a mutually agreed location. The meetings will be attended by the Case Manager and the Contract Manager. The VHCCU will reimburse the Case Manager for attending the meeting according to the rates of pay set out in annex 4. Any other Defence Team members may attend if they wish, but the VHCCU will not reimburse them for their attendance.

At this meeting, the Case Manager and Contract Manager will negotiate the items on the Task List.

VHCC Work undertaken prior to the stage 1 meeting will be deemed stage 0 work.

3. After considering the Defence Team's proposals and negotiating with the Case Manager, if necessary, on these proposals, we will request an updated Task List from the Case Manager, specifying the VHCC work to be done and the hours for each fee-earner and advocate.

If so requested, the Defence Team will update the stage 1 Task List reflecting the tasks and hours agreed during the stage 1 meeting and resubmit this to the VHCCU within 2 working days of the stage 1 meeting.

4. The VHCCU will check the updated stage 1 Task List and, if accurate, the VHCCU will sign-off the documents and confirm sign-off to the Defence Team within two working days of receipt of the completed stage 1 Task List.

Only once such a document has been received and signed by both parties (the Case Manager on behalf of the Defence Team and the Contract Manager) will the hours for stage 1 be deemed to be agreed.

1.6 During Stages

1. The Defence Team must regularly review and, if necessary, notify us of any changes to the VHCC work required.
2. The Defence Team will make to the VHCCU all requests for amendments to the tasks or hours.

Where the amendment request relates to extending the time already agreed on an existing task on the current Task List, the request should be made to the VHCCU prior to the expiry of the agreed hours for that task.

Where the amendment request relates to a new task not listed on the current Task List, the request must be made to the VHCCU prior to any work commencing on that task.

Requests for amendments to the Task List (including an extension of a task) can be made orally or in writing. Where a request is made orally, both parties must record such an amendment in writing and keep that record on file. Depending on the nature and extent of the change, a Contract Manager may request the Defence Team to update the current Task List and submit it to the VHCCU.

The Case Manager must ensure that all those involved in the case are aware of what VHCC work is now required, by whom and by when, and that they know where the latest version of what is to be done (i.e. the most current Task List) is recorded.

3. The VHCCU (not necessarily the Contract Manager with conduct of the case) will respond to any such requests within 2 working days of receipt of the request. Further information may be sought by the VHCCU to enable it to respond fully.

Any amendments made in writing, whether in the form of a new or updated Task List or otherwise, must be approved by the VHCCU in the usual manner.

4. The Defence Team will update the current Task List with any amendments made. Defence Teams are not confined to a deadline for this task. Defence Teams are encouraged, however, to amend the Task List contemporaneously following an agreed amendment.

1.7 At Stage End – Future Stage Planning

1. The Defence Team must prepare a Stage Plan and Task List for the next stage and submit this to the VHCCU no later than 10 working days before the stage end date (i.e. the end date of the previous stage) for consideration.

Stage Plans and Task Lists must be submitted to the VHCCU in advance of any stage negotiation meetings with the VHCCU.

At the same time, the Defence Team must also provide a summary of the VHCC Work undertaken in the previous stage. The Case Plan, Stage Plan and Task List must be signed by the Case Manager.

2. If a meeting is required, the Contract Manager will contact the Case Manager within 2 working days of receiving a fully completed Stage Plan and Task List to arrange a meeting.
3. If a meeting is required, it will take place within 10 working days of receipt of the completed Stage Plan and Task List and therefore no later than the stage end date.
4. After considering the Defence Team's proposals and negotiating with the Case Manager if necessary on these proposals, we will request an updated Task List from the Case Manager, specifying the VHCC work to be done and the hours for each fee-earner.

If so requested, the Defence Team will update the Task List reflecting the tasks and hours agreed during the meeting and will resubmit this to the VHCCU within 2 working days of the meeting.

5. The VHCCU will check the updated Task List and, if accurate, the VHCCU will sign-off the documents and confirm sign-off to the Defence Team within 2 working days of receipt of the updated Task List.

Only once such a document has been received and signed by both parties (the Case Manager on behalf of the Defence Team and the Contract Manager) will the hours for the next stage be deemed to be agreed.

1.9 Stage 0 Audit

Stage 0 work (work performed from the date the criminal aid certificate was granted until the date first covered by your first proposed Task List) that has not been assessed before the contract start date will be audited by us and is payable at the Contract rates (set out in annex 4).

Should the VHCCU require further information, we will, in the first instance, assess the attendance notes or work logs provided, request further information on specific items (e.g. briefs to counsel, advices, other work products) to support the summary of hours worked.

- 1.** The Defence Team will prepare a stage 0 Audit Bundle and submit this to the VHCCU within 20 working days from the stage 1 start date for assessment.

To enable us to perform an audit of stage 0 work, Defence Teams must make available to us (or, at our request, send to us) the following documents:

- (a)** all attendance notes or work logs (advocates), with supporting documentation (e.g. schedules produced and notes taken); and
- (b)** a summary of hours worked.

Audit Bundles must be submitted in this format. If your Audit Bundle is not submitted in this format, it will be returned and no payment will be made for your claim until it is re-submitted in this format.

- 2.** If the Audit Bundle is submitted in the format as set out above, the VHCCU will assess the Audit Bundle and complete its assessment within 20 working days of receipt of the Audit Bundle. If further information is required, the VHCCU will request such information and may return the Audit Bundle with such a request.
- 3.** Provided the assessment has been made, the VHCCU will send to the Defence Team its assessment report and the necessary forms for signature within 20 working days of receipt of the Audit Bundle.
- 4.** If the Defence Team agrees with the assessment made by the VHCCU, the payment form should be signed and returned to the VHCCU within 10 working days of the date on the assessment report.

If the Defence Team disagrees with any part of the assessment made by the VHCCU, it should submit written appeal representations to the VHCCU. For further information on the appeals process please refer to annex 8.

If you submit an appeal on any part of the assessment, the remaining parts of the assessment will be considered to be agreed. No payment will be made for the part of the assessment in dispute. Payment will be made for the part(s) of the assessment not in dispute.

5. The payment will be made as quickly as possible, and not later than 10 working days from the receipt of the correctly completed payment form.

1.10 At Stage End – Claiming

The VHCCU will not pay for any VHCC Work that is not specified in a Task List, except where permitted by this Contract.

1. The Defence Team must update the Task List for that stage and reconcile the hours worked against the hours agreed and submit this to the VHCCU as part of the Audit Bundle.

The Audit Bundle must be submitted to the VHCCU within 20 working days from the stage end date.

The Audit Bundle must contain the following documents:

- (a) an updated Task List for that stage detailing all amendments agreed throughout the stage;
- (b) a summary of hours worked against each item (either as a separate document or as part of the updated Task List); and
- (c) attendance notes or work logs relating to the stage.

Attendance notes and work logs must hold the following information:

- (a) date;
- (b) time of day;
- (c) name and level of fee earner (or Advocate's role);
- (d) task number;
- (e) comprehensive description of VHCC Work completed; and
- (f) total hours.

Audit Bundles must be submitted in this format. If an Audit Bundle is not submitted in this format, it will be returned and no payment will be made for this claim. Any delay resulting from an insufficient audit submission is likely to cause a delay to any audit assessment to be undertaken and any payment that may follow.

For trial stages, the VHCCU will request the trial log from the court. Whilst the VHCCU will make every effort to obtain such information, the expediency of the Court in responding to requests may delay the auditing process. Any such delay will be communicated to the Defence Team.

2. If the Audit Bundle is submitted in the format as set out above, the VHCCU will assess the Audit Bundle and complete its assessment within 20 working days of receipt of the Audit Bundle. If further information is required, the VHCCU will request such information and may return the Audit Bundle with such a request.
3. Provided the assessment has been made, the VHCCU will send to the Defence Team its assessment report and the necessary forms for signature within 20 working days of receipt of the Audit Bundle.
4. If the Defence Team agrees with the assessment made by the VHCCU, the payment form should be signed and returned to the VHCCU within 10 working days of the date on the assessment report.

If the Defence Team disagrees with any part of the assessment made by the VHCCU, it should submit written appeal representations to the VHCCU. For further information on the appeals process please refer to annex 8.

If you submit an appeal on any part of the assessment, the remaining parts of the assessment will be considered to be agreed. No payment will be made for the part of the assessment in dispute. Payment will be made for the part(s) of the assessment not in dispute.

5. The payment will be made as quickly as possible, and not later than 10 working days from the receipt of the correctly completed payment form.

Category Criteria

Categorisation of cases

The VHCCU will determine the category of each case as follows.

Category 1: Class A or Class G cases uplifted from Category 2.

Category 2: All cases defined as Class A* (Homicide and related grave offences), D (Serious sexual offences, offences against children) and G** (Other offences of dishonesty) in Schedule 3 to the Legal Aid for Crown Court Proceedings (Costs) Rules (Northern Ireland) 2005 (the 2005 Rules).

Category 3: All cases defined as Class B (Offences involving serious violence or damage, and serious drug offences) in Schedule 3 to the 2005 Rules.

Category 4: All cases defined as Class C (Lesser offences involving violence or damage, and less serious drug offences, E (Burglary etc.), F (Other offences of dishonesty), H (Miscellaneous lesser offences) and I (Offences against public justice and similar offences) in Schedule 3 to the 2005 Rules.

* For Class A cases, where the following criteria are met, the case will be uplifted to category 1.

1. The volume of prosecution documentation, which consists of:
 - (a) witness statements;
 - (b) exhibits;
 - (c) interview transcripts;
 - (d) pre-interview disclosure/advance information; and
 - (e) Notices of Further Evidence (“NFEs”),

exceeds 5,000 pages (unused material will not be considered for the purposes of this criterion, nor will evidence which has yet to be served).

2. The total costs of representing the defendant(s) are likely to exceed £200,000.
3. The main offence with which the defendant is charged, whether at common law or under any statutory enactment, is primarily founded on allegations of terrorism as defined in the Terrorism Act 2000.

** For Class G fraud cases, where all of the following criteria are met, the case will be uplifted to category 1.

1. The value of the fraud as described in the indictment and/or the prosecution case statement/summary exceeds £2m.
2. The volume of prosecution documentation, which consists of:
 - (a) witness statements;
 - (b) exhibits;
 - (c) interview transcripts;
 - (d) pre-interview disclosure/advance information; and
 - (e) Notices of Further Evidence (“NFEs”),exceeds 10,000 pages (unused material will not be considered for the purposes of this criterion, nor will evidence which has yet to be served).
3. The total costs of representing the defendant(s) are likely to exceed £250,000;.
4. The defendant’s case requires legal, accountancy and investigative skills to be brought together.
5. The length of the trial is estimated at over 3 months.

For Category 3 and 4 cases, if the case is primarily founded on allegations of terrorism, apply an uplift of one category.

Best Value protocol

1 Introduction

- 1.1 A Best Value Protocol was formulated in England and Wales through joint consultation by the Legal Services Commission (LSC), with the Law Society (LS), the Bar Council (BC) and individual lawyers. That Protocol forms a basis for this document, which has been developed for Northern Ireland.
- 1.2 The Protocol operates alongside and as far as is reasonably possible supports the following:
 - (a) Attorney General's Guidelines on Disclosure;
 - (b) court Rules;
 - (c) Trial Status Reports; and
 - (d) all other relevant and updated guidelines.
- 1.3 The Protocol is an annex to the VHCC Contract. By signing the VHCC Contract, you confirm acceptance of the principles set out within this document.
- 1.4 Adherence to the principles set out within the Protocol will form part of the VHCC Contract.
- 1.5 The following sets out the key principles and working practices of what we deem to be the best practice in conducting a VHCC.
- 1.6 This Protocol does not in any way operate as a 'blueprint' for firms and/or advocates detailing the correct approach to conducting a VHCC.
- 1.7 Negotiations between the Defence Team and the nominated Contract Manager will still be required. However, this Protocol will offer clear direction to those involved in VHCCs.

2 Phase 1: Case Planning

2.1 Early identification of key issues

2.2 An essential part of effective case planning and preparation is the early identification of the key issues in the case.

2.3 Case planning conference

2.4 Based on the information held at the time, the Defence Team should endeavour to work together to identify the key issues in the case at the earliest opportunity. An effective method of doing so is to hold a case planning conference.

2.5 All members of the Defence Team would normally be expected to take part in at least the first conference to:

- (a) nominate a Case Manager;
- (b) discuss the case against the client(s) based on the information held at that time and identify, where possible, the key issues in the case;
- (c) discuss the work to be undertaken in line with those key issues; and
- (d) formulate a “Case Plan” and “Stage 1 Task List” for submission to the nominated Contract Manager.

2.6 The Defence Team may consider it appropriate to invite the Contract Manager to such a conference in order to discuss the key issues in the case.

2.7 Case Manager

2.8 The Defence Team should nominate a Case Manager. The Case Manager should be either:

- (a) a supervising solicitor or the main fee earner in the case; or
- (b) a leading advocate (or advocate if junior alone).

2.9 The Case Manager should act as a representative for the Defence Team and will be responsible for the overall conduct of the defence case. The Case

Manager would normally be expected to lead the Defence Team in planning the case in line with the key issues identified.

- 2.10 The Case Manager will also be responsible for liaison with the nominated Contract Manager. Unless there are exceptional circumstances to justify attendance by additional Defence Team members, only the Case Manager should attend contract negotiation meetings and he will be responsible for negotiating the hours for all work proposed in the Task List.
- 2.11 Case Planning
- 2.12 When planning the case, the Defence Team will ordinarily be expected to consider the following questions:
- (a) is the work payable under the VHCC Contract?
 - (b) is the task being proposed fee earner work?
 - (c) is the task necessary to prepare further the defence case?
 - (d) if the task is necessary, should it be undertaken at this stage?
 - (e) what level of fee earner should undertake the work? and
 - (f) how many hours are reasonable to undertake the work?
- 2.13 In all circumstances, the Defence Team will endeavour to plan the case in the context of the client's instructions and focus on the key issues in the client's case.
- 2.14 Conspiracy/Joint charges
- 2.15 The Contract Manager will work with the Defence Team to establish a clear understanding of the relationship between defendants. This will enable him to assist the Defence Team in its assessment of the time requested.
- 2.16 The Defence Team might want to consider conducting regular case planning meetings in order to discuss new evidence and the required approach.

3 Advocates

- 3.1 One crucial element of case planning and preparation is the effective timing of instructing advocates.
- 3.2 A Defence Team would normally be expected to:
 - (a) instruct advocates within 14 days of the granting of the criminal aid certificate; and
 - (b) involve instructed advocates in initial case planning meetings to set out the approach to preparing the defence case.
- 3.3 When planning the case, the Defence Team should work together to decide on the roles of leading and junior advocates where two advocates are instructed in the case. It would not normally be considered reasonable for the junior advocate to duplicate the work of the leading advocate in order to act as a substitute for the leading advocate in his absence.
- 3.4 Apart from the reading of primary material the Defence Team should not allocate the same task to both advocates. Exceptionally, where it is considered appropriate to do so in order to further the preparation of the defence case this should be agreed in advance with the Contract Manager.
- 3.5 Where the criminal aid certificate authorises the instruction of two advocates, the Defence Team should take all reasonable steps continuously to review the position.
- 3.6 The Defence Team would normally be expected to apply to amend the criminal aid certificate where two advocates are no longer needed in the case. For example, in some cases, there may be a need to instruct only one advocate for the confiscation or sentencing stage.
- 3.7 Where the criminal aid certificate grants authority for two advocates, the Defence Team may wish to consider whether both advocates are required to attend court for all hearings. The Case Manager and leading Advocate should work together to determine which advocate is most appropriate to attend hearings.
- 3.8 The Defence Team may wish to consider the instruction of pupils or second juniors on cases where the type or amount of work justifies the need.

4 Multiple defendants

- 4.1 When accepting instructions from more than one defendant in a case, the Defence Team should consider its position in relation to potential conflict and duplication.
- 4.2 The Defence Team may consider it appropriate to presume that a conflict exists between defendants at the outset.
- 4.3 When representing more than one defendant, the Defence Team will be required, at the outset, to provide in writing to the Contract Manager, a statement confirming that having reviewed each client's position, there is no conflict and that it cannot foresee the potential of a conflict arising in the light of such information as is known at that time to the Defence Team.
- 4.4 As the case progresses, the Defence Team would ordinarily be expected to review the position of each client and confirm to the Contract Manager at each stage meeting that no such conflict exists.
- 4.5 The Defence Team should make every effort to eliminate unnecessary duplication when representing more than one defendant. For example, representation of two defendants does not automatically require representation by two fee earners.

5 Selection and instruction of experts

- 5.1 The Defence Team would normally be expected to consider, at the outset of the case, the need to instruct experts and should continue to review the position throughout the case. The Case Manager should notify the Contract Manager of the potential need to instruct an expert on a particular matter at the earliest possible opportunity.
- 5.2 Where the prosecution has an expert, the Defence Team would ordinarily be expected to consider the evidence provided by this expert and discuss the areas of contention with the Contract Manager.

5.3 In cases where expert advice is necessary the Defence Team should:

- (a) define clearly the work required;
- (b) draft initial instructions to the expert on the work for which he is invited to quote and issue such instructions to three selected experts, where practical. The Defence Team should use any advice by an advocate on expert evidence in formulating the initial instructions;
- (c) request, as far as is reasonably possible, a single quote for all work to be undertaken. If it is considered more appropriate to request quotes on a part-by-part basis the Defence Team should discuss this approach with the Contract Manager;
- (d) obtain three independent quotes for the proposed work, where practical;
- (e) submit all quotes to the Contract Manager with a covering note indicating the views of the Defence Team on the quotes in general and its favoured expert;
- (f) negotiate, through the Case Manager, the details of the quote with the selected expert in order to meet the NILSC requirements;
- (g) continue to work with the expert to ensure they are working within the boundary of instructions and should request further funding as is deemed necessary from the Contract Manager;
- (h) upon completion of work and submission of an invoice from the expert, ensure that all work claimed is within the hours (item by item) agreed and that the hourly rate corresponds with that which was agreed at the outset; and
- (i) submit the invoice as a disbursement with their audit bundle at the end of the current stage.

5.4 Upon receipt of a quotation from the Defence Team requesting authority to instruct an expert, the Contract Manager will assess whether the work and time requested is reasonable and necessary.

5.5 The Defence Team should take all reasonable steps to avoid a position where late consideration of the need for experts has an impact on the cost of preparing the defence case.

6 Sharing of costs with co-defendant's legal team

6.1 The product of certain types of work may be of use to more than one Defence Team. Examples of the types of work might include:

- (a) document translation of parts of the served evidence; and
- (b) court transcripts for hearings and trials.

6.2 When determining the need for certain types of work, the Defence Team should share work with other teams unless there is good reason not to do so.

6.3 In situations where there is a conflict of interest between defendants, each Defence Team would normally be expected to work with the Contract Manager to consider ways by which costs might still be shared.

6.4 The Defence Teams should be aware that the NILSC does not have authority to instruct experts. In a situation whereby a joint expert is instructed, one Defence Team should be nominated to instruct the selected expert. That Defence Team would normally be expected to conduct all liaisons with that expert.

6.5 The Case Manager and Contract Manager should not make any allowances for inflated hourly rates on the basis that the expert is providing a service for more than one defendant. Additional time required that is deemed reasonable and necessary should ordinarily be addressed in the expert's estimated completion time.

7 Phase 2: Case Preparation

7.1 Case preparation can be affected by the operation of other agencies. The quality and efficiency of case preparation can be affected and driven by the form in which the evidence is served.

8 Categories of evidence

- 8.1 Categorising evidence is a key part of case planning in order to decide the most efficient but effective way of approaching served prosecution evidence. The Defence Team should endeavour to use the following category definitions when case planning.
- 8.2 Prosecution evidence
- 8.3 Material served by the prosecution (witness statements, exhibits, interview transcripts etc.) that supports the prosecution case.
- 8.4 Disclosure material
- 8.5 All other material, having been reviewed by the prosecution where it is felt the material either undermines the prosecution case or assists the defence case.
- 8.6 Unused Material
- 8.7 All other material retained throughout the investigation that the prosecution chooses not to use as evidence and considers does not meet the test for disclosure.

9 Approach to prosecution evidence and disclosure material

- 9.1 Upon initial consideration of the material, the Defence Team should, based on experience:
- (a) determine the nature and content of the material; and
 - (b) determine the relevance (or potential relevance) of such material in light of the key issues of the defence case. This is subject to constant review as further information becomes available.
- 9.2 Following the initial consideration of the material, the Case Manager, in conference with other members of the Defence Team, and subject to the

agreement of the Contract Manager, would normally be expected to:

- (a) allocate work to the appropriate Defence Team member;
- (b) allocate a reasonable amount of time to undertake such work; and
- (c) determine the approach to take with this material, e.g. use of schedules, need to sift etc.

9.3 Core Bundle

9.4 It may be considered appropriate for the Defence Team to create a core bundle of documents that can be used to brief other Defence Team members about the key issues in the case. An appropriate amount of time should be agreed between the Case Manager and Contract Manager for such a bundle to be prepared and for each member of the Defence Team to read and consider this core bundle.

9.5 Reading and considering

9.6 The time requested to read and consider material should ordinarily include time for noting and cross-referencing to other parts of the evidence.

9.7 The Defence Team, in deciding on the appropriate Defence Team member and amount of time required, would normally be expected to abide by the following principles:

- (a) the amount of time requested by the Defence Team should ordinarily reflect the level of relevance to the identified key issues; and
- (b) the Defence Team, where possible, should work together to avoid any unnecessary duplication of work.

9.8 If the criminal aid certificate grants authority for one advocate, that advocate, once instructed, would normally be expected to read and consider the required material in conjunction with the identified key issues.

9.9 If the criminal aid certificate grants authority for two advocates, both advocates should work together to eliminate any unnecessary duplication of work. One such effective method would be for the junior advocate and the main solicitor

in the case to work together and act as an 'evidence filter' for the leading advocate. Such a filtering exercise would not apply to the core evidence bundle.

9.10 The solicitor responsible for taking client's instructions would ordinarily be expected, if deemed appropriate, to provide the advocate(s) with any relevant comments made by the client in order to assist the advocate(s) with preparation.

9.11 The Defence Team might also want to consider sifting material where it feels it would be appropriate to do so (e.g. large volumes of material) and should discuss such an approach with the Contract Manager.

9.13 Scheduling

9.14 When considering whether scheduling is reasonable and necessary, the Defence Team should consider:

- (a) how the schedule will assist in further work?
- (b) how the schedule will be used by other solicitors and advocates in their work? and
- (c) which Defence Team member should undertake the work?

9.15 Dramatis personae / Chronologies

9.16 The Defence Team would ordinarily be expected to consider whether such a product can further the preparation of the defence case. In doing so, the Case Manager would normally be expected to demonstrate the likely saving on time and/or cost on further work in the case and the benefit to the preparation of the defence case.

9.17 Interviews

9.18 When undertaking work on interview material, the Defence Team may consider it appropriate to undertake the following tasks:

- (a) accuracy checks against interview tapes;
- (b) redacting;
- (c) reading and considering; and
- (d) summarising/Scheduling (only if necessary).

9.19 The Defence Team should make every effort to avoid unnecessary duplication of work when allocating these tasks. For example, the Defence Team may consider it appropriate to request time for the junior advocate to read and consider the interview material and to check the accuracy of the transcripts.

9.20 Surveillance evidence

9.21 In the absence of a supporting schedule, the Defence Team would normally be expected to continue preparing the case with the information held at that time. Should the Defence Team consider it appropriate and necessary to do so, the Defence Team may choose to request such a schedule from the prosecution (whether by means of a court hearing or directly) detailing the contents of the media served and any schedule of analysis they may have formulated.

9.22 If such a schedule or other supporting documentation has been provided, the Defence Team should identify the key parts of the surveillance evidence that are relevant to the defendant's case.

9.23 The Defence Team may also wish to consider the use of technology to streamline the material. For example, specific computer software packages are available that enable the user to identify only those parts of the audio evidence where conversations take place. This preliminary exercise would strip out those parts of the evidence where the recording device has simply captured background noise. The Defence Team should discuss this approach with the Contract Manager.

9.24 Linked cases

9.25 In a case involving evidence from another case, the Defence Team should discuss with the Contract Manager how:

- (a) the case is linked to its client's case;
- (b) the material identified will either support its case; or
- (c) the material will undermine the prosecution case.

9.26 The Defence Team should agree with the Contract Manager a reasonable and necessary amount of time to consider the evidence that is relevant to the defendant's case.

9.27 Defence generated material (3rd party disclosure)

9.28 The Defence Team should request access to third party material only where it is able to identify a specific purpose for accessing that material. In doing so, the team would normally be expected to bear in mind the test of relevance.

10 Taking Client's Instructions

10.1 The taking of the client's instructions should ordinarily be conducted by the most appropriate level of fee earner having regard to the nature and complexity of the case.

10.2 The Defence Team may wish to consider the use of technology when taking instructions in order to assist with future tasks such as preparing the client's proof of evidence and reducing/eliminating the time required for dictation.

10.3 What to take instructions on

10.4 Identifying such evidence should normally be part of the case planning phase and the Case Manager would ordinarily be expected to specifically identify the parts of the evidence upon which instructions need to be taken.

10.5 How long should it normally take?

10.6 The Defence Team may be able to plan its stages based upon the client's instructions already taken during the pre-contract stage and an assessment of the need to take further instructions on other parts of the evidence.

10.7 The Defence Team may wish to consider whether it would be beneficial to send a copy of the case papers to the client. This would give the client the opportunity to consider the case against him and be in a better position to answer questions or comment on specific parts of the evidence.

10.8 Foreign language speakers

10.9 The Defence Team may consider it appropriate to instruct an interpreter where it is able to justify the need on the following basis:

- (a) the client's understanding of the case against him would be at risk without such an explanation being available in his primary language; or
- (b) whilst the client understands the case against him, the time involved in taking instructions (i.e. asking questions and obtaining explanations or comments) is extended on the basis of his understanding of the English language.

10.10 The Defence Team would normally be expected to take into consideration when planning the case whether it would be appropriate and more time/cost effective to allocate work to a particular Defence Team member based on his linguistic ability.

10.11 The Defence Team might also wish to consider whether translating particular parts of the evidence into the client's primary language would assist in terms of taking instructions. Being provided with the translated documents may assist the client to prepare for meetings with the fee earner and in turn reduce the time required in attendance.

10.12 Availability of DVD/CD equipment

10.13 In cases where evidence is served electronically the Defence Team would normally be expected in the first instance to make every effort (and be able to demonstrate such effort) to obtain access to such equipment in prison or be granted permission to bring the necessary equipment into prison.

10.14 It is recognised however that due to security constraints, it may not be possible to take such equipment into prison. Therefore, the Defence Team need only demonstrate that such attempts were made. It would be in exceptional circumstances only that the VHCCU would pay for such evidence to be transcribed.

10.15 When clients are on bail and can freely attend Solicitor's offices to give instructions, the Defence Team would ordinarily be expected to ensure that all the necessary equipment is available for them to conduct an efficient meeting with the client.

11 Approach to unused material

11.1 The Defence Team should endeavour to use the following process when considering unused material:

11.2 Stage 1 – Non Sensitive Schedule of Unused Material

11.3 The Defence Team ought initially to consider the unused material schedule. The main fee earner in the case or the leading advocate would ordinarily undertake this task. The purpose of such a task would be to identify, where possible, those parts of the unused material that based on the description given in the schedule or some other independent knowledge of such material, are likely to either undermine the prosecution case or assist the defence case.

11.4 Stage 2 – Disclosure requests

11.5 Having identified those parts of the unused material it needs to see, the Defence Team may choose then to request access to such material or copies of it. In the first instance, such a request should flow through normal communication channels with the prosecution. Should it be required, the Defence Team might choose to request authority from the court to gain access to this material.

11.6 It may also be necessary to request access to material where the entries or descriptions on the schedule are unclear.

11.7 Stage 3 – Relevance/Value assessment

11.8 Upon receipt of the requested material, provided it is appropriate and time permitting, the Defence Team would ordinarily be expected then to assess the material and determine the relevance or value of such material to the defendant's case.

11.9 Stage 4 – Reading and considering material

11.10 Once the relevance/value assessment has taken place, the Defence Team may then be in a position to determine the appropriate amount of time required to read and consider the relevant material and the appropriate Defence Team member(s) to conduct such a task (whilst at all times making every effort to eliminate unnecessary duplication). This task would ordinarily be allocated to the main fee earner in the case and the junior advocate. If second advocate is to be instructed, the main fee earner and junior counsel would normally be expected, as part of their reading and considering task, to filter that material for the leading advocate.

11.11 Large volume of unused material

11.12 In cases where there is a large volume of unused material it may be agreed by the prosecution or ordered by the court that the Defence Team should view particular items of the material at the storage location.

11.13 Only once such agreement has been made or order made should the Defence Team approach the Contract Manager to request the time required.

11.14 In determining the time, the Defence Team might choose to take the following approaches into consideration:

- (a) initial perusal of any unused schedule served to determine which parts can be eliminated from the viewing; and
- (b) conducting a preliminary view by the main fee earner and/or the junior Advocate (depending upon the quantity of material) to determine the volume and basic content. (Subject to the outcome of the preliminary view, the Defence Team should determine whether further attendance is required, by whom and for how long).

12 Phase 3: Preparation for trial, during trial and post trial

12.1 Preparation for trial

12.2 The Defence Team should incorporate all work to be undertaken in preparation for trial (by solicitors and advocates) into the proposed task lists.

12.3 The Defence Team should endeavour to plan the final pre-trial stages early in the case in order to minimise duplication that might be caused by having to refresh memories, changes in evidence etc. For example, properly prepared summaries and schedules may shorten this process.

12.4 The Defence Team would normally not reread prosecution papers as an independent task. Reviewing prosecution evidence and notes made during previous stages is part and parcel of preparing for cross-examination or closing speech etc. These are tasks in their own right.

12.5 Preparation of skeletons/submissions

12.6 The Defence Team should endeavour to identify, where possible, one advocate to undertake the main work involved in preparing skeleton arguments and/or legal submissions. The Defence Team should work together to determine the most effective and efficient means of preparing skeleton arguments and/or other legal submission documents.

12.7 Jury bundles

12.8 The Defence Team may wish to distinguish between:

- (a) checking prosecution jury bundles;
- (b) deciding on the content of defence jury bundles; and
- (c) collating documents into jury bundle format.

12.9 The Defence Team should allocate the above tasks to the appropriate level of solicitor or advocate.

13 Preparation during trial

13.1 Solicitor attendance at court

13.2 The Defence Team may wish, when planning its trial stage, to consider the need for a solicitor to attend trial.

13.3 Unless there are circumstances to justify attendance by a senior solicitor or a solicitor, the Defence Team would normally be expected to allocate an apprentice or fee earner of an equivalent experience to attend the trial.

13.4 Agreeing preparation time during trial stage

13.5 The Defence Team would not normally be expected to request time (outside of its refresher preparation) to read and consider its notes in order to prepare for the next day unless it can justify the need to address specific parts of the notes/transcripts in order to prepare properly for a legal argument or for cross examination. In doing so, the Defence Team would normally be expected to identify those specific parts of the evidence that require review.

Rates Of Pay

Hourly rates for preparation

	Category 1 £	Category 2 £	Category 3 £	Category 4 £
Solicitor				
Senior Solicitor	145	113	91	91
Solicitor	127	100	79	79
An apprentice or fee-earner of equivalent experience	84	65	51	51
Counsel				
Queens Counsel	145	113	91	91
Leading Junior	127	100	79	79
Led Junior	91	73	61	61
Sole Junior	100	82	70	70
Solicitor Advocate				
Certified	100	82	70	70
Uncertified	50	41	35	35

Hourly rates for non-preparatory work

	Rate £
Attendance at Court	
Senior Solicitor	42.25
Solicitor	34.00
An apprentice or fee-earner of equivalent experience	20.50
Travel and waiting	
Senior Solicitor	25.00
Solicitor	25.00
An apprentice or fee-earner of equivalent experience	25.00

Daily Rates for Advocacy

Daily rate	Full Day £	Half Day £
Counsel		
Queens Counsel	476	238
Leading Junior	390	195
Led Junior	252	126
Sole Junior	285	143
Solicitor Advocate		
Certified	285	143
Uncertified	143	71.50

A full daily rate from the range set out in the table above will be allowed if the advocate was in court for more than 3.5 hours; half that rate will be allowed if he was in court for 3.5 hours or less.

Preliminary hearings

	Amount payable for hearing
Counsel	
Queens Counsel	113
Leading Junior	86
Led Junior	58
Sole Junior	67
Solicitor Advocate	
Certified	67
Uncertified	33.50

The rates in the above table will only apply where the hearing lasted 2 hours or less; otherwise the daily or half daily rate payable under the table for daily rates for advocacy will apply.

Payment And Disbursements

1. Please read this annex in conjunction with annex 1, particularly the section on auditing your claims for payment.

- 2. Payment**
 - 2.1 Payment for work on VHCCs will be governed solely by the terms of this Contract.
 - 2.2 All payments for VHCC work must be claimed in accordance with this Contract. You may only claim payment for VHCC work under this Contract. You may not claim payment for VHCC work under any other payment scheme.
 - 2.3 All claims for payment for VHCC work will be audited by us. The audit of VHCC work is to determine whether it was actually and reasonably done and whether it was within the hours agreed and specified in a Task List.
 - 2.4 Under this Contract, we will pay you for VHCC work specified in a Task List which you have performed. Payment will be made after the end of each stage.
 - 2.5 For the avoidance of doubt, the VHCCU will not pay for VHCC work that is not agreed in advance and confirmed as such as set out in this Contract, unless one of the following exceptions apply:
 - a) it arises from the service of further papers in a category of documentation already agreed (e.g. notices of additional evidence, additional served exhibits, interview transcripts, served unused material, audio tapes and videos). Authority will be implied for the consideration of all such material served within the life of the stage at the same minute per page formula as originally agreed. That authority will be at the same hourly rate as agreed for the original material; or
 - b) it falls within an item agreed in a Task List, and

- (i) it is within a tolerance of 10% of the hours agreed for that item in that Stage; and
 - (ii) it is reasonable and necessary for the work to be done (assessed as part of the end stage audit); and
 - (iii) all genuine efforts have been made to contact a Contract Manager in the VHCCU. Defence Teams must be able to demonstrate (i.e. provide evidence) that an email had been sent to the Contract Manager assigned to the VHCC and evidence of attempts to contact the VHCCU to seek authority for any amendments; or
- c) it arises as an 'emergency' piece of work (i.e. work that needs to be done by the next working day) and prior authority cannot be sought from the VHCCU because the need for the task is only identified outside VHCCU office hours or for example, during trial (i.e. the work was not foreseeable on the previous working day or earlier); or
- d) it is work by an advocate during the trial stage and is not included within the advocate's daily rates for advocacy (see annex 6).

2.6 All VHCC Work carried out by all Defence Team members (including key members) will be paid at the rate(s) specified in annex 4 on 'rates of pay'.

2.7 If you are registered for VAT, we will pay VAT on top of your hourly rate. Any VAT charges must be set out in your claim for payment (by claim for payment, we are referring to the Audit Bundle you submit at the end of a stage). If, through your error, we are not informed of your VAT registration, we will not be liable for any backdated VAT charge that you later inform us of.

2.8 Payment is subject to our receiving the required Audit Bundle at the end of a stage, as this triggers the payment and is necessary to allow us to monitor this Contract.

2.9 We will make all payments by BACS transfer after completion of the assessment. The timing of payment for VHCC work is governed by this Contract alone.

2.10 We will pay advocates directly for any VHCC work carried out.

2.11 If it becomes apparent that you have been overpaid, we reserve the right to recoup any money paid to you in excess of the amount due. We may set off against any amount payable by us to you under this Contract or otherwise, any amount payable by you to us under this Contract or otherwise. This clause continues to have effect after this Contract has ended.

2.12 If you have spent more hours providing the VHCC work than is authorised under this Contract, you will not receive payment for such hours.

Specific work that is paid for/ not paid for under this Contract:

Appeals (work related to appeals against conviction and/or sentence to the Court of Appeal).	The VHCCU will pay only for negative advice on appeal against conviction and/or sentence (i.e. a short meeting and/or a short written advice to the client). The VHCCU will not pay for work related to a positive advice on appeal (i.e. drafting grounds of appeal). This would instead be billed to the Taxing Master's Office under the Criminal Appeal (Northern Ireland) Act 1980.
Training.	The VHCCU will not pay for any training of advocates or any other member of the Defence Team.
Contract termination – underpayment	Where this contract is terminated before the disposal of the case and you continue to represent the client and the amount of the payments made is less than the amount that would have been payable had the 2005 Rules applied, we will pay the difference.
Contract termination – overpayments	Where this contract is terminated before the disposal of the case and you continue to represent the client and the amount of the payments made exceeds the amount that would have been payable had the 2005 Rules applied, we reserve the right to recover any such sums.

3. Defence Team error or omission

3.1 Where work has been undertaken as a result of your error or omission, you are not entitled to claim payment for it under this Contract and, if any payments are made for it, they are repayable to us.

4. Disbursements

4.1 The VHCCU will issue guidance on guideline rates for experts payable under this Contract. (See also annex 3).

4.2 The following table sets out various disbursement types. The list is not exhaustive.

Travel	Travel time is paid for all attendances at prison, at court and to consultations for both the solicitors and advocates. For the purposes of taking instructions, clients must attend the solicitor at the firm's offices or the solicitor and counsel at the Bar Library unless they are in custody, suffering from a serious illness or at a location under control orders imposed by the court. Where the client is suffering from a serious illness, any request to attend upon the client must be supported by a letter from a GP. Where the client is subject to control orders, the solicitor and/or advocate must obtain prior consent from the Contract Manager to attend the client at their location.
Accommodation and subsistence	Only in exceptional circumstances will the VHCCU pay for overnight accommodation and/or subsistence. If exceptional circumstances do present themselves and the acceptance of instructions or a brief is reasonable, overnight expenses should be based on a reasonable local rate –subject to any discounts that can be negotiated. Where this applies, the VHCCU will pay subsistence up to £20 per day. Receipts must support subsistence claims.
Photocopying/ Scanning/ Copying electronic material	<p>The VHCCU will pay for all photocopying if it is reasonable to do so, regardless of the amount being copied but would not expect to pay more than four pence per page for black and white copying. For colour photocopies, a higher rate per page may apply and Defence Teams should seek to obtain the best available price.</p> <p>If the PPSNI serves evidence on disk/CD Rom the VHCCU will pay for the cost of copying these media provided it is necessary to do so and the cost is reasonable.</p> <p>Where the PPSNI has provided evidence in hard copy and the Defence Team wishes to utilise a software package, a disbursement for scanning the papers will be considered. The VHCCU would not expect to pay more than 5 pence per page.</p>

4.3 Provisions on your rights to appeal certain decisions related to payment and disbursements are set out in annex 8.

Advocates – Specific Provisions Relating To VHCC Work

1. General

- 1.1 Responsibility for identifying and instructing advocates lies with the solicitor. The Case Manager is responsible for managing an advocate's contribution to the work of the Defence Team.
- 1.4 The courts will remain responsible for decisions on the number and level of advocate(s) that can be appointed to act on any VHCC. This will be formalised in the criminal aid certificate for that client. Both you and the VHCCU must operate within these decisions. The VHCCU does not have any discretion to go behind the criminal aid certificate and therefore can only pay advocates at the appropriate rate for their level as specified on the criminal aid certificate at the date the advocate conducted the work.

2. Trial Stage

- 2.1 Advocates must carry out all reasonable and necessary work to represent the assisted person. They will be paid daily advocacy rates during the trial (full day where they are in court for in excess of three and a half hours and half day for any time below that figure) which includes an allowance for preparation. It is acknowledged that such time will regularly be expended during the trial in consulting with the assisted person, instructing solicitors, prosecution counsel, co-defending counsel and others. All such preparation will be deemed to have taken place between 9.00 am and 5.00 pm (the court day) where full day advocacy rate is claimed, or a 4 hour period during the court day where the half day rate is claimed.
- 2.2 Any preparation for the trial stage that can be identified before the start of the trial or during the trial can and should be negotiated and agreed in advance with the Contract Manager. Preparation that is necessary during the course of the trial should be undertaken either during the court day or 4 hour period

mentioned above, or where this is not possible after the court day. Work that might be undertaken during the court day or 4 hour period includes (for example):

- (a) the reading of served material requiring immediate attention;
- (b) consultations with the client;
- (c) meetings with instructing solicitors; and
- (d) meetings with the prosecution.

2.3 Work that might be undertaken after the court day or outside the 4 hour period includes preparation which requires drafting or research, or is likely to require a long period of uninterrupted preparation or the use of a computer.

2.4 Advocates should prepare work logs for all preparation undertaken during the trial, including preparation undertaken during the course of the court day or 4 hour period. The VHCCU agrees that all work properly and reasonably undertaken by the advocate and accounted for in the work log will be paid at the appropriate rate, subject to its being satisfied that:

- (a) the work was undertaken outside the court day or four hour period; and
- (b) such work could not have been included when planning their trial stage Task List.

2.5 The specific agreement of the Contract Manager to any significant item of additional work may be sought at any time throughout the trial stage. The Case Manager, or leading advocate if the two are not the same, should contact the Contract Manager every two weeks during the trial to discuss changes to the VHCC arising from the trial and to highlight additional work being undertaken.

3. Substitute Advocates

3.1 Where it is necessary for a substitute advocate to undertake any VHCC Work, that advocate will be treated as a sub-contractor.

3.2 Claims for any work undertaken by a substitute advocate must be submitted, by separate invoice, with the instructed advocate's claim for work as part of the Defence Team's Audit Bundle (see annex 1). A template invoice for this

purpose will be provided by the VHCCU. A claim in any other format will be not be considered by the VHCCU and will not be paid.

- 3.3 The VHCCU will make a separate payment direct to the instructed advocate, inclusive of any VAT (assuming he is VAT registered).
- 3.4 The instructed advocate will be liable to account to HMRC for that VAT, but may deduct any VAT which is paid by him to a substitute advocate, as input tax.
- 3.5 Appropriate records must be kept for VAT inspection, including copies of VAT invoices issued by the instructed advocate and VAT invoices issued to the instructed advocate by any substitute advocate.

4. Return of Brief

- 4.1 Where the Contract Manager decides it is reasonable for an advocate to return a brief all reasonable costs will be paid upon production of an Audit Bundle. Please refer to annex 1 for further information on auditing requirements.
- 4.2 A reasonable return of brief might include:
 - (a) where the advocate withdraws due to professional embarrassment;
 - (b) where the trial dates of the VHCC 'clash' with a case upon which the advocate was instructed prior to the instruction on the VHCC;
 - (c) where the advocate is sacked by the client but not as a result of improper behaviour on the part of the advocate; or
 - (d) where the advocate succumbs to a serious illness. This should be substantiated wherever possible or reasonable with a doctor's note or similar.
- 4.3 An unreasonable return of brief might include:
 - (a) where the trial dates of a new case 'clash' with a VHCC upon which the advocate was instructed prior to the instruction on the new case. To do so would be unreasonable as the advocate should return the brief of the case that was accepted last;

- (b) where the advocate is sacked by the client as a result of improper behaviour and this can be proven - for example, failure to turn up to court without reasonable justification;
- (c) where the advocate takes a planned sabbatical (i.e. the advocate has planned to take a length of time off knowing he is holding the brief for a VHCC); or
- (d) where the advocate does not accept the hours agreed by the Contract Manager (or VHCCU) and returns the brief as a result.

- 4.4 The VHCCU will consider each return of brief on a case-by-case basis in line with the VHCCU and Bar Council code of conduct.
- 4.5 If the VHCCU decides that an advocate has unreasonably returned a brief, the advocate will be deemed to be in breach of Contract. Where the solicitor advocate is employed by a solicitor's firm, that solicitor will be deemed to be in breach of this Contract. Where the advocate is a barrister (i.e. self-employed) only the barrister will be deemed to be in breach of his Contract.
- 4.6 If the VHCCU concludes that it was unreasonable for an advocate to return a brief, costs may be withheld or, if already paid, recouped.

Key Contacts

	Northern Ireland Legal Services Commission's Representatives	Defence Team's Representatives
	Contract Manager	Case Manager
Name		
Address		
Email		
Telephone no		
Fax no		
	Senior Executive	Senior Executive (Solicitor)
Name		
Address	N I Legal Services Commission 2nd Floor, Waterfront Plaza 8 Laganbank Road BELFAST BT1 3BN	
Email	vhccu@nilsc.org.uk	
Telephone no	028 9040 8888	
Fax no	028 9040 8990	

VHCC Appeals Authority

1

- 1.1 Where the Defence Team disagrees with a decision made by a Contract Manager or any other member of the VHCCU, relating to payment and funding issues brought under this contract, the Defence Team has a right to appeal that decision to the VHCC Appeals Authority.
- 1.2 If the Defence Team appeals a decision made by a Contract Manager, or the VHCCU, the Defence Team, without prejudice to an appeal, should continue to work on the VHCC and continue to comply with the terms and conditions of this Contract. For the avoidance of doubt, an appeal by a Defence Team to the Appeals Authority is an appeal against a decision not to provide funding for a particular task and should not affect the proper preparation of the defence case.

2 Right to appeal

- 2.1 You have a right of appeal to the Appeals Authority under this Contract on the following issues only:
 - (a) individual tasks disputed on the submitted Task List;
 - (b) hours in dispute within the submitted Task List;
 - (c) the level of fee-earner/ advocate allowed for any item of VHCC Work;
 - (d) disbursements;
 - (e) where the VHCCU decides to reduce payment under this Contract;
 - (f) where the VHCCU decides to delay or withhold payment to a legal representative in accordance with its powers under this Contract; or
 - (g) where an assessment is made by the VHCCU whilst conducting an audit of VHCC work, and the assessment results in the refusal of payment on some or all of the VHCC work based on any reason other than the clause 2.2 below. This excludes the application of an advocate's role as specified on the criminal aid certificate (please see point 2.2(g)) below.

2.2 You do not have a right of appeal to the Appeals Authority under this Contract on the following issues:

- (a) where VHCC work was agreed on the basis of false or misleading information and payment has therefore been refused;
- (b) where a Task List is not approved due to the omission of the required details and information;
- (c) where VHCC work was not agreed (subject to the exceptions set out in clause 2.5 in annex 5) and a decision is made by the VHCCU not to make payment for that VHCC work;
- (d) where the total hours worked for a task exceed the hours agreed for that task and the VHCCU makes a decision not to pay for those exceeded hours (see also clause 2.5 in annex 5);
- (e) where you have missed the ten working day deadline (see 'appeal process' below) to appeal the decision made by the Contract Manager (or an extended deadline agreed by the VHCCU) and the VHCCU refuses to accept your appeal representations on such a basis;
- (f) where the VHCC has categorised or re-categorised a case;
- (g) where the VHCCU has applied the advocate levels as specified on the criminal aid certificate and you are not working at that level. The VHCCU does not have any discretion to go behind the criminal aid certificate;
- (h) where the VHCCU has decided to suspend or terminate your Contract;
or
- (i) any other matter that is not covered by 2.1 a) to g).

3. Appeal process

3.1 The following table sets out a number of tasks to be carried out by the VHCCU and the Defence Team and the deadlines imposed.

3.2 Extensions to the imposed deadlines may be granted by agreement between the Case Manager and the Contract Manager.

Task	Deadline
<p>The appeal must be made in writing (by fax, email or post), using the 'appeal representations' document provided to you by the VHCCU. Your appeal will not be lodged if your representations are submitted in any other form.</p> <p>Your appeal representations (using the appeals document provided to you by the VHCCU) should include:</p> <ul style="list-style-type: none"> a) background to the VHCC; b) details of the item(s) in dispute; and c) full reasons why you disagree with the Contract Manager's decisions. 	<p>Any appeal must be lodged with the Appeals Authority clerk within 10 working days of receipt of the original decision.</p> <p>For the purposes of this Contract, the original decision will be deemed to be made when the Contract Manager verbally conveys his decision or when the Contract Manager conveys his decision in writing, whichever is the sooner.</p>
<p>On receipt of the appeal representations (copy provided by the Appeals Authority clerk) the Contract Manager shall give his reasons for the decision in writing and shall lodge these with the Appeals Authority clerk. The reasons for the decision will be set out in the appeal response template.</p>	<p>The Appeals Authority clerk will provide the Contract Manager's appeal response in writing to the appellant within 10 working days of receipt of the appeal representations.</p>
<p>VHCCU to list an appeal hearing and communicate the hearing date to the appellant.</p>	<p>The Appeals Authority clerk will communicate the date of the appeal hearing to the appellant within 10 working days of the date of the VHCCU's appeal response.</p>
<p>Appeal bundle prepared and issued.</p> <p>The appeal bundle will consist of:</p> <ul style="list-style-type: none"> (a) appeal representations; (b) appeal response; (c) case summary; (d) indictment; and (e) any other supporting documentation. <p>Appeal bundles will be copied and issued to:</p> <ul style="list-style-type: none"> (a) the appellant; (b) the respondent; and (c) the Appeals Authority. 	<p>The Appeals Authority clerk will prepare an appeal bundle and issue copies of the bundle 10 working days prior to the appeal hearing.</p>

Task	Deadline
<p>Appeal hearing (See below for further information on the appeal hearing).</p>	<p>The Appeals Authority clerk will convene an appeal hearing within 6 weeks (30 working days) from the date on the appeal response.</p>
<p>Decision The final decision of the Appeals Authority will be made and sent in writing to the appellant and the respondent within 5 working days of the appeal hearing.</p>	<p>The Appeals Authority clerk will send the decision of the Appeals Authority to the appellant and the respondent in writing within 5 working days of the appeal hearing.</p>
<p>Website The decision of the Appeals Authority will be published on the NILSC website.</p>	<p>The decision will be available on the NILSC website within 30 working days of the date of the decision.</p>

4. The Appeals Authority

- 4.1 The Appeals Authority deals with applications for appeal against a payment/funding decision made by the VHCCU as provided for by this Contract.
- 4.2 Appeals Authority roles and responsibilities are set out in a separate document, which is available upon request.

5. The Appeals Authority Clerk

- 5.1 A Clerk will assist the Appeals Authority at every appeal. The role of the Clerk is to assist the Appeals Authority in performing its functions. As well as making arrangements for appellants and their representatives who attend the appeal, the Clerk will be able to provide information requested by the Appeals Authority.
- 5.2 The Clerk will keep a record of the appeal and will record the decision. However, it is the Appeals Authority's responsibility to draft the final decision and forward this to the Clerk for distribution to the appellant and respondent.
- 5.3 The Clerk will not take part in the decision making process.

6. The appeal hearing

- 6.1 Before the appeal hearing, the Appeals Authority will have been provided with copies of the appeal bundle consisting of:
- (a) the Defence Team's appeal representations;
 - (b) the Contract Manager's/VHCCU's appeal response;
 - (c) the case summary;
 - (d) the indictment; and
 - (e) any other supporting documentation.
- 6.2 Where appellants wish to provide material that is not included in the original appeal bundle, this extra material should be provided in the form of written submissions and supporting documentation, to the VHCCU, at least 3 working days in advance of the appeal hearing. If the appellants do not do this, but still seek to rely on fresh material, the VHCCU has the right to ask the Appeals Authority:
- (a) to grant more time so that the Contract Manager/VHCCU can consider and respond to the fresh material; or
 - (b) to proceed with the appeal relying only on information provided in the original appeal bundle.
- 6.3 The Appeals Authority shall adjudicate the issue having regard to the interests of justice and the need to proceed expeditiously.
- 6.4 The Appeals Authority may request further information to be provided prior to the appeal hearing. If further information is provided and the appellant, the respondent and/or the Appeals Authority require additional time to consider (and if required, respond to) such further information, the appeal hearing would be adjourned to the next available date.
- 6.5 The Appeals Authority may ask the appellant and the respondent to attend the appeal hearing and may invite either party to provide further oral submissions. Any oral submissions must be based solely on the appeal grounds as set out in the appeal bundle.

- 6.6 The appellant and/or the respondent are entitled to instruct another party to represent them at the appeal hearing but in doing so accept any cost involved in instructing such representative. For the avoidance of doubt, the VHCCU will not pay for the cost of representation. The appellant must notify the VHCCU no later than 10 working days before the appeal hearing if they are to be represented at the hearing.
- 6.7 If either the appellant or the respondent does not attend the appeal hearing, the Appeals Authority may consider the appeal based solely on the papers contained within the bundle and make its decision accordingly.
- 6.8 Before and at the appeal hearing, the Appeals Authority may consider the following:
- (a) this Contract;
 - (b) the Defence Team's appeal representations;
 - (c) the Contract Manager's/VHCCU's appeal response;
 - (d) the case summary;
 - (e) the indictment;
 - (f) any other supporting information; and
 - (g) any oral submissions made at the hearing.
- 6.9 If, by oral or written submission, any information is provided by either the appellant or the respondent at the appeal hearing that has not previously been provided, then either party has the right to request an adjournment of the appeal hearing. Unless there are exceptional circumstances that preclude an adjournment, the Appeals Authority should grant the request and allow all parties a reasonable amount of time to consider the further information.
- 6.10 In making its decision on the appeal, the Appeals Authority is not bound by:
- (a) its earlier decisions;
 - (b) earlier decisions made under any other NILSC committee hearing; and/or
 - (c) decisions made by a Contract Manager for co-defendants on the same case.

6.11 Following all submissions, the Appeals Authority may:

- (a) dismiss the appeal;
- (b) allow the appeal in whole; or
- (c) allow the appeal in part.

6.12 The decision of the Appeals Authority shall be final and binding on all parties. There is no further internal right of appeal.

6.13 The Appeals Authority shall give full, written reasons for its decision. If required, the Appeals Authority Clerk may ask the Appeals Authority to provide further written information in support of the reasons for its decision.

6.14 Decisions made by an Appeals Authority do not set a precedent but may be used by the appellant or the respondent to support their appeal representations.

Complaints

1. This annex sets out the procedure regarding complaints made:
 - (a) about the VHCCU by solicitors and/or any other individual members of their Defence Team; and
 - (b) about solicitors and/or any other individual members of their Defence Team by the VHCCU.

2. **What is a complaint?**
 - 2.1 A complaint is an expression of dissatisfaction about the service provided by one party to another.
 - 2.2 A complaint is to be differentiated from someone simply having a heated conversation or 'letting off steam'. A complaint is more serious than that; it is where one party has decided to lodge a formal complaint against the other.
 - 2.3 Complaints should also be differentiated from appeals under this Contract (see annex 8).

3. **How may complaints be made?**
 - 3.1 Complaints must be made in writing. Complaints may be made:
 - (a) by letter;
 - (b) by fax; or
 - (c) by e-mail
 - 3.2 Complaints must be clearly marked "complaint" on the face of the correspondence.

4. Procedure for handling complaints against the VHCCU

4.1 Once a complaint is received, the VHCCU will check that it is a formal complaint.

4.2 If it is not a formal complaint, the correspondence should be handled reasonably, responsibly and in the most appropriate way.

4.3 If the complaint is a formal complaint, the following procedure must be followed.

4.3.1. The VHCCU will identify the complaint as a formal complaint on receipt.

4.3.2. All complaints will be forwarded to a Complaints Clerk, who will register the complaint in a Complaints Log recording the following details:

- (a) the date the complaint was received;
- (b) the name of the complainant;
- (c) the complainant's organisation;
- (d) the person against whom the complaint is made;
- (e) the particular case to which the complaint refers;
- (f) a brief summary of the complaint; and
- (g) the action requested by the complainant (if any).

The Complaints Log will contain further information which will be recorded at a later stage:

- (a) the date the complaint was passed to the relevant line manager;
- (b) the date any holding letter was sent (and the reasons why);
- (c) the date the response was sent and by whom;
- (d) a summary of the response (including the deadline for any corrective action); and
- (e) (if relevant) the date the response was sent (and by whom) confirming that the corrective action had been completed.

4.3.3. The Complaints Clerk will pass the complaint to an appropriate person, who will then consider, investigate and respond to the complaint by the deadline given. The appropriate person will be the line manager of the person who is the subject of the complaint.

Complaints made against:	Response by:
Support Staff	Contract Manager
Contract Manager	Senior Contract Manager
Senior Contract Manager	Director of Operations

4.3.5. Complaints must be responded to in writing within 5 working days of receipt of the complaint.

4.3.6. If the person compiling the response is unable to finalise that response within 5 working days (e.g. due to holiday/ sickness), the Complaints Clerk will contact the complainant immediately explaining why this is and giving a revised deadline for the response (which shall be reasonable and as soon as practically possible).

4.3.7. A written response will be forwarded to the complainant by the deadline. If appropriate, the response will contain proposals for corrective action and a deadline by which this will be achieved.

4.3.8. If no corrective action is proposed, the complaint will be closed when the response is sent to the complainant, and the result logged in the Complaints Log.

4.3.9. If corrective action is proposed, the complaint will be closed when the corrective action has been finalised, a letter sent to the complainant confirming this has been done, and the result logged in the Complaints Log.

5 Procedure for handling complaints against Solicitors/Advocates

5.1 Once a complaint is made, it will be forwarded to the Complaints Clerk, who will register the complaint in a Complaints Log in a similar manner as described in clause 4.3.2 above.

5.2 The Complaints Clerk will then refer the complaint to the appropriate body, which will be a Committee of three members, comprising a solicitor, a barrister and a NILSC Commissioner. This Committee will then consider, investigate and respond to the complainant by the deadline given. The deadline set will be reasonable in all the circumstances, including consideration of the availability of Committee members.

5.2.1 A written response will be forwarded by the Committee to the complainant by the deadline. If appropriate, the response will contain proposals for corrective action, including referring the complaint to the Law Society or Bar Council, where appropriate.

5.2.2 If no corrective action is proposed, the complaint will be closed when the response is forwarded to the complainant, and the result logged in the Complaints Log.

5.2.3 If corrective action is proposed, the complaint will be closed when the corrective action has been finalised, a letter sent to the complainant confirming this has been done, and the result logged in the Complaints Log.

Contract Amendment Notice

Contract Amendment Notice Number:	
Date of Contract Amendment Notice:	
Effective date (date amendment comes into effect):	
<p>Details of amendments to the Contract (Minor changes will be listed in this box. If the amendment involves substantial changes to the text of the Contract, the relevant pages, showing the changes in “tracked changes” will be attached to this Notice; any new annex will be attached to this Notice, stating which annex it replaces):</p>	
Signed:	<p>-----</p> <p>Contract Manager On behalf of the Commission</p>



NORTHERN IRELAND
**COURT
SERVICE**



INVESTOR IN PEOPLE

For further information on the work of the
Northern Ireland Court Service please contact

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Belfast BT2 7LT

Telephone 028 9032 8594

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