



The Duty Solicitor Manual

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The Duty Solicitor Manual

Contents

1	Duty Solicitor Manual	1
1.1	Introduction	1
2	Court Scheme	3
	Attendance And Call-In Schemes	3
2.1	Introduction:	3
2.2	Definition of “busy” and “less busy” courts:	3
2.3	Attendance schemes:	3
2.4	Call-in schemes:	3
2.5	Scope of Court Duty Solicitor Scheme:	3
	Duty Solicitor Cover	4
2.6	Number of duty solicitors on duty:	4
2.7	Youth court cover:	4
2.8	Assistance from another duty solicitor:	5
2.9	Local instructions:	5
2.10	Review of attendance/call-in schemes:	5
	Access To Defendants	6
2.11	Approaches to unrepresented defendants:	6
2.12	Defendants in custody:	6
2.13	Defendants on bail:	6
2.14	Badges:	7
2.15	Posters and other publicity:	7
	Closure Of Courts	8
2.16	Weekend/Bank holiday closure:	8
2.17	Permanent court closures:	8
2.18	Movement of work between courts:	10

Miscellaneous	11
2.19 Telephones:	11
Monitoring Visits To Courts And Police Stations	11
2.20 Introduction:	11
2.21 The purpose of court monitoring visits:	11
2.22 The purpose of police station monitoring visits:	12
2.23 Frequency of visits:	13
2.24 Who can conduct the visits:	13
2.25 Follow up action:	13
2.26 Expenses:	13
2.27 Records:	14
3 Police Station Scheme	15
Extent Of Cover	15
3.1 Suspects who are covered:	15
3.2 Suspects who are not covered:	15
3.3 Scope of Police Station Scheme:	15
3.4 Notice to detained person:	16
3.5 Police station posters:	16
Services Provided	17
3.6 Police stations:	17
3.7 Services establishments:	17
3.8 Definition of rota and panel:	17
3.9 Options for deploying duty solicitors:	17
3.10 Limitation on rota:	18
3.11 Informal rota for panel schemes:	18
3.12 Simultaneous court attendance and police station rotas:	18
3.13 Cover over Bank Holidays:	18
3.14 Local instructions:	18

3.15	Police station closures:	18
3.16	Approval of new or revised scheme:	18
3.17	Review of standby payments:	19
	Police Station Agencies And Designation	19
3.18	Introduction:	19
3.19	Background:	19
3.20	Agency work by duty solicitors and representatives:	19
3.21	Performance standards:	20
3.22	Options available to suppliers:	20
3.23	Designation and supervision:	20
3.24	Sub-contracting work to another supplier:	20
	Miscellaneous	21
3.25	Identity cards:	21
3.26	Use of hotels:	21
	Call Centre Service For Police Station Scheme	21
3.27	Duty Solicitor Call Centre Service:	21
3.28	Reasons for having a Call Centre Service:	21
3.29	Contacting the Call Centre Service:	21
3.30	Information to be supplied to Call Centre Service:	22
3.31	Outcome codes:	22
3.32	Monthly regional statistics:	22
3.33	Duty Solicitor Not Available Reports	23
3.34	Approaching another solicitor in duty solicitor's supplier:	23
3.35	Rota operation:	23
3.36	Batching of cases:	23
3.37	Suppliers wishing to set up their own telephone referral system:	24
3.38	Acceptance of calls by other than the named duty solicitor:	24
4	Selection	27

Police Station Accreditation	27
4.1 Introduction:	27
4.2 Services provided by representatives:	27
4.3 Overview of police station accreditation process:	28
4.4 Register:	28
4.5 Assessment organisations:	28
4.6 Application for police station accreditation:	29
4.7 Completing the accreditation process:	29
4.8 Suspension and other problems:	29
Duty Solicitor Accreditation	30
4.9 Introduction:	30
4.10 Duty solicitor police station accreditation:	30
4.11 Duty solicitor court accreditation:	30
4.12 Re-accreditation:	31
4.13 Assessment organisations:	32
Requirement For Membership Of Both Police Station And Court Schemes	32
4.14 Introduction:	32
4.15 Benefits of requiring membership of both schemes:	32
4.16 Waiver of requirement:	32
4.17 Waiver and competence:	34
4.18 Appeals against refusal of waiver:	34
Processing Applications From Solicitors Wishing To Join Duty Solicitor Schemes	35
4.19 Checking application form:	35
4.20 Selection Criteria:	35
4.21 Change in Travel Times:	39
4.22 Timing of application:	39
4.23 Time scale:	40

4.24	Reasons for refusal:	40
4.25	Ethnic origin:	40
	Special Rules	40
4.26	Introduction:	40
4.27	Relaxation of standard rules:	40
4.28	Special rules:	40
4.29	Requirement to be a member of the police station and court scheme:	41
4.30	Consultation:	41
5	Temporary And Permanent Withdrawal From Schemes	43
5.1	Introduction:	43
5.2	Responsibilities of suppliers and duty solicitors:	43
5.3	Temporary withdrawal:	43
5.4	Permanent withdrawal:	43
5.5	Transferring to another supplier:	43
5.6	Transferring to another supplier outside the solicitor's current scheme:	44
6	Suspension And Removal Of Duty Solicitors	45
6.1	Introduction:	45
	The Link With Specialist Quality Mark	45
6.2	Specialist Quality Mark audits:	45
6.3	Discussion with quality representative:	45
6.4	Decision to suspend and remove:	45
6.5	Communication with the supplier:	46
6.6	Failing a Specialist Quality Mark audit:	46
	Suspension And Removal	46
6.7	Length of suspension and conditions:	46
6.8	Removal:	46
6.9	Appeals:	46
	Powers To Suspend And Remove	47

6.10	Training (Arrangements 5.1(a)):	47
6.11	Duties allocated (Arrangements 5.1(b)):	47
6.12	Criminal defence work generally (Arrangements 5.1(c)):	48
6.13	Unreasonable failure to attend police station (Arrangements 5.4(a)):	48
6.14	Inappropriate use of representative (Arrangements 5.4(b)):	48
6.15	Failure to accept panel cases (Arrangements 5.4(c)):	48
6.16	Failure to accept rota cases (Arrangements 5.4(d)):	49
6.17	Failure to carry out duties (Arrangements 5.4(e)):	49
6.18	Investigation of duty solicitor (Arrangements 5.5(f)):	49
6.19	Competence (Arrangements 5.4(g)):	49
6.20	Geographical location following review (Arrangements 5.4(h)):	50
6.21	Designated fee earner (Arrangements 5.4(i)):	50
6.22	Requirement to be court and police station duty solicitor (Arrangements 5.4(j));	50
6.23	Other good reason (Arrangements 5.4(k)):	50
6.24	Effect on rota slots already allocated:	50
6.25	Membership of other schemes:	50
6.26	Effect on the Contract:	51
6.27	Duty solicitor and own client work:	51
6.28	Pregnancy:	51
7	Appeals	53
7.1	Introduction:	53
7.2	Decisions which can be appealed:	53
7.3	Decisions which cannot be appealed:	53
7.4	Time Limit:	54
7.5	What happens after an appeal is received:	54
7.6	Re-consideration of initial decision:	54
7.7	Administration of appeal process:	54
7.8	Regional committee or sub-committee to hear appeal:	54

7.9	Letter about appeal arrangements:	55
7.10	Quorum and members participating in appeal hearing:	55
7.11	Circulation of papers:	56
7.12	Appeal hearing:	56
7.13	Advising appeal committee:	57
7.14	Minuting:	57
7.15	Techniques for Minuting:	58
7.16	Committee expenses for appeals:	58
7.17	Record of appeals:	58
7.18	Appeals going against the CDSM's decision:	58
8	Committees	61
8.1	Introduction:	61
8.2	Decision on local committee:	61
8.3	Position where there is no local committee:	61
	Local Committees	62
8.4	Process for establishing a local committee:	62
8.5	Members representing contracted suppliers:	62
8.6	Procedure for identifying local committee supplier membership:	62
8.7	Procedure for identifying other local committee members:	63
8.8	Terms of reference:	63
8.9	Initial meeting:	63
8.10	Local committee meetings:	63
8.11	Meetings with more than one local committee:	63
8.12	Role of CDSM:	64
	Regional Committees	64
8.13	Membership:	64
8.14	Initial meeting:	65
8.15	Attendance of substitutes:	65

8.16	Information for new members:	65
8.17	Regional committee meetings:	65
8.18	Role of CDSM:	66
8.19	Tabling papers at meetings:	66
8.20	Pre-meeting with Chair:	66
8.21	Sub-Committee:	66
	Expenses	66
8.22	Non allowable expenses:	66
8.23	Allowable expenses:	67
8.24	Data Retention:	67
9	Own Client/Duty Solicitor Cases	69
9.1	Introduction:	69
9.2	Background:	69
9.3	Accepting initial call for police station work:	69
9.4	Providing initial advice by telephone for police station cases:	69
9.5	Attendance at the police station:	69
9.6	<u>Persons</u> permitted to deal with police station cases:	70
9.7	“Conversion” of cases to own solicitor:	71
9.8	Own client solicitor not available:	71
9.9	Duty solicitor representatives approved by local committees:	72
10	Rota Production	73
10.1	Introduction:	73
10.2	Promis:	73
	Availability Of Duty Solicitors	73
10.3	Duty solicitor holidays:	73
10.4	Bank Holidays/Christmas:	73
10.5	Options to obtain cover:	74
10.6	Suppliers’ responsibilities:	74

10.7	Swaps:	74
10.8	Information for solicitors on Promis:	74
10.9	Barristers:	74
10.10	Distribution of rotas:	74
10.11	Target for issue of rotas:	75

Appendices 77

Appendix 2C	Local Instructions April 2001	78
Appendix 2D	Reproduction of the court poster in English and ethnic minority languages.	80
Appendix 2E	Reproduction of the court poster in English and European languages.	81
Appendix 2F	Reproduction of the court poster in English and Welsh.	82
Appendix 3A	Notice to Detained Person April 2001	83
Appendix 3B	Reproduction of the police station poster in English and ethnic minority languages.	85
Appendix 3C	Reproduction of the police station poster in English and European languages.	86
Appendix 3D	Reproduction of the police station poster in English and European languages.	87
Appendix 3E	Calculation to see if standby payment for police station scheme is justified April 2001	88
Appendix 3F	Identity card application form August 2002	89
Appendix 3G	Reasons for having Duty Solicitor Call Centre April 2001	91
Appendix 3H	Letters from ACPO April 2001	92
Appendix 3I	Outcome codes used by Call Centre April 2001	96
Appendix 3J	Explanation of Call Centre Monthly Report April 2001	99
Appendix 3K	Suggested letter to be used for the duty solicitor not available report	100
Appendix 3L	Suggested letter to be sent for duty solicitor not available report when no further action proposed	101

Appendix 3M Questionnaire where non-duty solicitor to receive Call Centre calls April 2001	102
Appendix 4A Police Station Advice In Indictable-Only Cases	105
Appendix 4B Police Station Register Arrangements 2001.	106
Appendix 4C Letter requesting additional information re: waiver request May 2001	110
Appendix 4D Letter notifying grant of waiver April 2001	111
Appendix 4E Letter accepting an application April 2001	112
Appendix 4F Letter refusing an application April 2001	113
Appendix 4G Resources to assist in determining public transport times May 2001	114
APPENDIX 4H An example letter explaining the geographical requirements for joining a second or subsequent scheme.	116
Appendix 4I Application To Join Additional Duty Solicitor Scheme	119
Appendix 6A Letter to duty solicitors who have had their CLAS membership revoked by The Law Society	121
Appendix 6B Letter explaining immigration cases under the CDS Contract	122
Appendix 7A Letter where appeal not possible April 2001	123
Appendix 7B Letter setting out appeal arrangements April 2001	124
Appendix 7C Letter where appeal is allowed April 2001	126
Appendix 7D Letter where appeal is dismissed April 2001	127
Appendix 7E Record of appeals April 2001	128
Appendix 7F Notes on Appeal Committee Hearings	129
Appendix 8A Letter to existing local administrators April 2001	133
Appendix 8B Letter to suppliers when local committee wishes to continue April 2001	134
Appendix 8C Letter to suppliers where local committee does not wish to continue April 2001	135
Appendix 8D Letter about ballot & ballot form April 2001	136
Appendix 8E Terms of reference for local committees April 2001	138
Appendix 8F Lay member application form April 2001	139

Appendix 8G Terms of reference for regional committees	April 2001	142
Appendix 8H Background information for CDS committee members	April 2001	143
Appendix 8J Suggested Regional Committee Meeting Agenda		148
Appendix 10A Note explaining Promis	April 2001	150
Appendix 10B Record of dates rotas issued	April 2001	152
Appendix 10C Sense Checking Of Rotas		153

1 Duty Solicitor Manual

1.1 Introduction

The following “shorthand” is used in the Manual:

Arrangements: The LSC’s Duty Solicitor Arrangements 2001 (as amended)

CDS: Criminal Defence Service

CDS Direct Pilot: CDS Direct is the name given to a project which is piloting the provision of telephone advice to detained clients by employed advisors

CDSM : Regional Criminal Defence Service Manager

CLAS: The Law Society’s Criminal Litigation Accreditation Scheme

Contract: The CDS General Criminal Contract

DCA: Department for Constitutional Affairs

LAB: Legal Aid Board (now replaced by LSC)

LSC: Legal Services Commission

MCQ: Magistrates’ Court Qualification

PACE: Police and Criminal Evidence Act 1984

PSQ: Police Station Qualification

2 Court Scheme

Attendance And Call-In Schemes

2.1 Introduction:

1. Courts are identified as “busy” or “less busy” with a duty solicitor being required to be in attendance at “busy” courts at times when defendants are likely to make their first appearance in court. Such schemes are often referred to as “attendance schemes” whilst, for “less busy” courts, the duty solicitor will be called-in by the court if required. These schemes are referred to as call-in schemes. The benefit of an attendance scheme is that, as the solicitor should be readily available at court, more defendants are likely to receive assistance. The disadvantage is that the Commission has to pay for the solicitor’s attendance even if no defendants require assistance.

2.2 Definition of “busy” and “less busy” courts:

1. “Busy” courts are defined as those dealing with more than 1,250 non-motoring adult and youth defendants per annum. Information concerning busy and less busy courts is held locally by Regional Offices. However, courts may be regarded as “busy” even if they only sit one day a week if they deal with an average of 10 or more non-motoring adult and youth defendants on days when the court does sit. The essential criterion is whether there are sufficient defendants before the court when it does sit to justify having a duty solicitor in attendance.

2.3 Attendance schemes:

1. One court duty solicitor on duty at any one time for an attendance scheme will normally be sufficient. It may also be appropriate to have a duty solicitor in attendance where a court is “busy” on the day or days that it does sit (see 2.2.1).

2.4 Call-in schemes:

1. Some call-in schemes (particularly the busier ones) have a rota so that it is clear to the court which solicitor should be called in. All other call-in schemes will have a list of the duty solicitors on that particular scheme which is made available to the court. The court clerk will then be able to ask any solicitor on the list who is present in court dealing with one of his or her own cases if he or she is willing to assist the defendant requiring the duty solicitor. The list arrangement should usually avoid delay in the court having to call a solicitor from his or her office and reduces any reluctance on the part of the court in involving a duty solicitor on account of delay.

2.5 Scope of Court Duty Solicitor Scheme:

1. Service requirements for court duty solicitors are contained in the Contract (Contract Part B, Section 8.3).

2. From 17 May 2004, a court duty solicitor will only be able to advise individuals who are either in custody or charged with an imprisonable offence (with limited exceptions listed in paragraph 2.13 below). On any adjourned hearing the court duty solicitor (acting as such) shall not provide assistance to an individual who has previously received assistance from a court duty solicitor in the same case. The only exceptions to this are where the individual is before the court as a result of failure to pay a fine or other sum ordered or to obey an order of the court, and such failure may lead to the individual being at risk of imprisonment. The court duty solicitor may not act for a client who has his or her own solicitor (whether under a Representation Order or otherwise) unless the court session takes place on a non-business day and the court is unable to secure the own solicitor's attendance (or is unable to determine whether the client has his or her own solicitor, e.g. whether a Representation Order has been granted).
3. All work done by court duty solicitors, when acting as such, must be included in a single claim for the court duty solicitor session. Detailed guidance on claiming for court duty solicitor work is contained in the Police Station and Court Duty Solicitor Cost Assessment Manual.

Duty Solicitor Cover

2.6 Number of duty solicitors on duty:

1. The busiest courts may need more than one duty solicitor. A request for an extra duty solicitor should prompt the following considerations:
 - (a) normally an extra duty solicitor should be deployed where there is an average of more than 7 defendants per court sitting wishing to see the duty solicitor each day;
 - (b) it may be possible to identify particular days each week when there is a need for an extra duty solicitor (for instance, if the court lists certain cases on the same day each week) with the remaining court days being covered by a single duty solicitor;
 - (c) ensuring that bailed defendants are assisted as the duty solicitor may prioritise the custody cases (as the clients are in custody and also as the work is more likely to lead on to a representation order) to the disadvantage of bailed defendants;
 - (d) consultation with the court and any local committee or other local consultation arrangements e.g. local law society or court user group.

2.7 Youth court cover:

1. The duty solicitor covering the adult court will normally be expected to cover the youth court. However, if the youth court sits at a different time or place from the adult court at which the duty solicitor is required to be in attendance, there should be a clear arrangement as to how duty solicitor cover will be provided. In exceptional cases this may involve rostering a duty solicitor to cover the youth court only.

2.8 Assistance from another duty solicitor:

1. Occasionally the rota duty solicitor may be overwhelmed and should therefore enlist the assistance of another duty solicitor on the same scheme in which case that additional solicitor may be remunerated as duty solicitor. As guidance, it would be expected that court duty solicitors should seek the assistance of an additional court duty solicitor where it is unlikely that initial contact with a client can be established within 30 minutes and full advice given in good time before the case is called. This guidance is not contained within the Contract and as such cannot be enforced. It is however recommended as good practice and court staff can be advised that an additional duty solicitor can be involved if there are longer delays than 30 minutes.

2.9 Local instructions:

1. All duty solicitors should be supplied with a completed copy of the “local instructions” at **Appendix 2C** and of any subsequent amendments, which need to be sent to solicitors giving them reasonable notice of any changes. A copy should be supplied to the court and any senior police representative with whom liaison is established. It may be sensible not to copy the local instruction to each relevant police station in case this encourages any direct contact between the police and a duty solicitor rather than using the Duty Solicitor Call Centre Service. Paragraph 6.13 of the Arrangements covers the issue of local instructions which set out how the duty solicitor service is to be provided at the particular police station and magistrates’ court. The content of local instructions must not conflict with the Arrangements. For example, a local instruction cannot change the location rules set out in paragraphs 4.9 to 4.12 of the Arrangements. Local instructions may be amended following local consultation. Regional committees should also usually be consulted. Any breach by a duty solicitor of the requirements in the local instructions should be taken up with the supplier via the Account Manager and, if appropriate, consideration given to raising the issue at audit.

2.10 Review of attendance/call-in schemes:

1. Cover at all courts should be reviewed annually with a view to identifying any need for change. It may be appropriate to complete this task at the same time as court monitoring visits are scheduled (see 2.20 to 2.27). The following factors need to be taken into account:
 - (a) ascertain whether schemes have changed from “less busy” to “busy” or vice-versa,
 - (b) if an attendance scheme, whether attendance is still justified and/or whether there are particular days of the week when a call-in scheme would be sufficient. The arrangements for notifying defendants of the availability of the duty solicitor should be reviewed,
 - (c) where a scheme is not classified as “busy” but, when it does sit, there are sufficient defendants to justify an attendance scheme e.g. 10 or more defendants per sitting,
 - (d) where the court is “less busy” but a high proportion of defendants require the services of the duty solicitor thus justifying an attendance scheme,

- (e) where a “busy” scheme has more than one solicitor on duty, whether the extra duty solicitor(s) are still justified,
- (f) what arrangements exist for calling in the duty solicitor at times when the solicitor is not required to be in attendance,
- (g) the views of the court and the local committee.

Access To Defendants

2.11 Approaches to unrepresented defendants:

1. There is no professional impropriety in duty solicitors who are on duty approaching apparently unrepresented defendants at court to ask whether they wish to receive advice and representation.

2.12 Defendants in custody:

1. Ideally duty solicitors should have direct access to custody defendants. This will be facilitated if the court supplies the court duty solicitor with a copy of the court list. However, some courts have very co-operative jailers and, as an alternative, they may ask defendants if they wish to see the duty solicitor. This is an acceptable arrangement where there is trust between the duty solicitors and the jailers’ staff.

2.13 Defendants on bail:

1. These defendants may miss the opportunity to see the duty solicitor because they may arrive at court at different times. There may be no system for such defendants to report when they arrive at court and duty solicitors may be less interested in such cases as they are less likely to lead on to representation. Particular efforts therefore need to be made to ensure that bailed defendants do not slip through the duty solicitor net. Such arrangements should include a display of duty solicitor posters (see 2.15), may include the wearing of badges by duty solicitors (see 2.14) and, with the co-operation of the court, introducing arrangements whereby defendants are encouraged to report to a member of the court staff on arrival at the court who will ask them if they wish to see the duty solicitor. Alternatively the court may be able to organise a desk in the foyer of the court clearly marked “duty solicitor” but this is only likely to be relevant in very busy courts where one duty solicitor specifically covers bail cases. Defendants on bail may ~~only~~ be assisted by the court duty solicitor if charged with an imprisonable offence or if he or she is:
 - before the court as a result of failure to pay a fine or other sum ordered or to obey an order of the court and such failure may lead to imprisonment;
 - a parent or guardian in connection with a proposal by the court to bind over the parent or guardian under Section 150 of the Powers of Criminal Courts (Sentencing) Act 2000 or in breach of such order;

- a respondent in proceedings under Sections 1 or 1D (anti-social behaviour order), 2 or 2A (sex offender order) or 8(1)(b), (c) or (d) (parenting order) of the Crime and Disorder Act 1998 or an applicant or respondent in proceedings to vary or discharge an order made against that person;
- a respondent in proceedings under Section 14B (banning orders made on complaint), an applicant in proceedings under Section 14G (variation to a banning order) or Section 14H (termination of a banning order) or a recipient of a notice under Section 21B(2) of the Football Spectators Act 1989’
- a respondent in proceedings under Sections 2 and 5 of the Anti-Social Behaviour Act 2003 relating to the making or extension of a closure order.
- An individual applying to vary bail conditions imposed by police under section 47 (1E) of the Police and Criminal Evidence Act 1984, as amended by the Criminal Justice Act 2003.

2.14 Badges:

1. The Contract requires that duty solicitors wear an identification badge during his or her Duty Period at court where required to do so by the court or local instructions (Contract Part B, paragraph 8.3.8).

2.15 Posters and other publicity:

1. The following posters are available for display at courts:
 - (a) DS17: Court poster in English and ethnic minority languages, (Arabic, Punjabi, Urdu, Hindi, Gujerati, Bengali, and Chinese).
 - (b) DS18: Court poster in English and European languages (Italian, Portuguese, German, Norwegian, Danish, Polish, Swedish, Turkish, Dutch, French, Spanish and Greek).
 - (c) DS19: Court poster in English and Welsh.

These posters can be obtained by contacting the National Duty Solicitor Administrator on 020 7759 1067

Reproductions of the 3 posters are at **Appendices 2D, E and F.**

2. DS9 (not illustrated) can be used to label the door of a duty solicitor interview room etc.
3. There is also a Commission leaflet “Criminal Legal Aid at the Police Station and in Court” which can be made available to defendants.

Closure Of Courts

2.16 Weekend/Bank holiday closure:

1. There is a tendency for court cases to be concentrated on certain courts on Saturdays so that it is not necessary to staff several courts. This can cause difficulties where e.g. duty solicitors who cover the court which is closed wish to travel to the court which is open to provide cover for defendants who would otherwise appear at their court. The advantage of the duty solicitor covering the "closed" court travelling to the open court is that he or she would probably be more accessible to defendants if the defendant wishes to instruct that duty solicitor to continue to act. It may also be that it is better for the duty solicitor covering the "closed" court to become the defendant's solicitor as that solicitor will be involved in less travel for all future appearances which will probably be at the "closed" court and thus there will be a saving on the costs claimed. However, the above points have to be balanced against the extra cost to the CDS of having more than one duty solicitor at the court which remains open on a Saturday or Bank holiday.
2. In the light of the above, it is recommended that:
 - (a) the CDS will only expect to pay for one duty solicitor to be on duty unless the amount of work will justify the deployment of two duty solicitors (see 2.6),
 - (b) the CDSM should discuss with the local committees effective methods by which defendants who are initially represented by the duty solicitor covering the open court are, subject to the wishes of the defendant, returned to a solicitor covering the "closed" court.

2.17 Permanent court closures:

1. Courts and police stations generally close for two reasons:
 - (a) refurbishment: such closures are temporary for a fixed period of time until the necessary work has been completed,
 - (b) consolidation: such closures are intended to be permanent and usually involve moving work from one or more locations to another existing location.

In addition, some courts consolidate for specific types of work such as Customs and Excise work.

2. Role of CDS:

- (a) Courts and police forces should usually consult with users prior to closure. Until the establishment of the CDS, the LAB/LSC was not always included in this consultation. As CDSMs forge relationships with other criminal justice agencies, it is expected that the CDS will be included. As a non-departmental public body sponsored by the DCA, the CDS should not be seen to externally express any view regarding whether the proposed consolidation is agreed or opposed in principle but feedback may well be provided direct to the DCA. It is likely that consolidation will increase expenditure from the CDS budget CDSMs should attempt, to determine what additional cost is likely to be incurred by the CDS budget and feed this information into the local consultation.
 - (b) The role of the CDS should generally be confined to:
 - i) ensuring that there are effective methods of communication to CDSMs so that early notification is given of any proposed change,
 - ii) consulting with local and regional committees, to ensure the best arrangements for cover,
 - iii) acting as a communication channel with the local contracted suppliers who will be affected,
 - iv) ensuring that there is no extra cost to the CDS unless it can be justified e.g. by avoiding having 2 duty solicitors on duty if 2 schemes are merged.
3. The options:
- (a) Taking the example of court A closing and all work transferring to court B, where A and B have separate schemes. The effect of the closure is that the Petty Session Areas (PSA) of A and B cease to exist as separate entities and a new PSA (A and B combined) is formed. CDSMs will need to assess local circumstances and should consider the following options:
 - i) allow any duty solicitor on scheme A who has an office within the PSA of the newly combined A and B courts to automatically join the scheme. This is the preferred option in the majority of cases,
 - ii) requiring any duty solicitor who was a member of scheme A but has an office outside the new PSA to meet the criteria that the office is readily accessible to scheme B (Arrangements 4.9 or 4.10(b)). If not, after consultation with the supplier, they will be removed. This decision can be appealed,
 - iii) explore the possibilities of all clients previously served by court A being served in future by a separate court sitting in court B which would just deal with the cases which would have come before court A. This would minimise change and additional travel costs.

The CDS would not expect to pay for more than one duty solicitor to be on duty unless the criteria for an additional duty solicitor is met (see 2.6).

4. Other issues to be considered by CDSMs:

- (a) The CDSM will also wish to consider if schemes are merged:
 - i) the attendance pattern needed for court work,
 - ii) the attendance pattern for police station work,
 - iii) whether existing rotas need to be changed,
 - iv) whether PROMIS (see 10.2) software will need amending,
 - v) local instructions (see 2.9) for the scheme may need to be changed,
 - vi) do local committees need to be merged? Is the new local committee too large and a ballot needed (Arrangements 7.25),
 - vii) the representative for the local committee who attends the regional committee may need to be re-selected.
- (b) The CDSM must then consult the local committee(s) affected by the decision and the regional committee. The CDS Policy Team must also be notified so that Schedule 1 of the Arrangements can be amended.

2.18 Movement of work between courts:

1. Court services are often moving work between courts (in conjunction with or separately from closing courts).

For example, three courts (A, B and C) remain open.

Court A says “we are so busy, we are going to move all Customs and Excise cases to B”

Court B says “On Wednesdays we will hear all early hearing cases for all three courts”

Court C says “We will hear all youth courts cases for all three courts on Monday and Friday”.

2. CDSMs will need to consider the following aspects:
 - (a) Usually only allow one duty solicitor per court unless more are justified (see 2.6.1) – SPOCC will start to build up data,
 - (b) Can have different arrangements for different days/courts,
 - (c) Court merge all three schemes (careful re extract travelling costs and client convenience),
 - (d) Could have special rules,
 - (e) Having a rota of all duty solicitors from the schemes covering the three courts for e.g. early hearings cases,

- (f) The need to consult local and regional committees before any change (paragraphs 6.2 and 6.5 of Arrangements). If little notice is given of the change, a decision may have to be made and consultation follows.

Miscellaneous

2.19 Telephones:

- 1. The policy of the DCA is that the provision of a telephone for use by duty solicitors is a matter for the relevant magistrates' court committee to decide in conjunction with its paying local authority and provided that the expenditure is kept within the court's DCA cash limit. The magistrates' court committee has first to agree to incur expenditure on the installation and running costs of the telephone. The committee then has to get the agreement of the local authority. If such agreement is forthcoming the local authority is reimbursed 80% of the total cost by the DCA provided that the court is within its DCA cash limit.

Monitoring Visits To Courts And Police Stations

2.20 Introduction:

- 1. This guidance provides a framework for monitoring visits.

2.21 The purpose of court monitoring visits:

- 1. The areas to be discussed during monitoring visits to courts are:
 - (a) Are court staff aware of local instructions (see 2.9)?
 - (b) Are any amendments to the local instructions required?
 - (c) Are there any areas in the local instructions which are not being complied with either by duty solicitors or any other agency including court service? If so, is this a general issue or confined to individuals? What action has the court service taken?
 - (d) Are courts represented on local and regional committees? If they are, how useful are these meetings considered? If not, do they wish to be?
 - (e) Are duty solicitor services advertised in the court?
 - (f) What statistics are held by the court about volumes of cases? Does this show that any change is needed to current arrangements?
 - (g) What issues arose during previous monitoring visits? Are these no longer an issue?
 - (h) Are any issues relevant to the court the subject of continued discussion with local or regional committees?
 - (i) How often are court users meetings held? Does a representative from the local committee usually attend?
 - (j) Are any difficulties identified in assisting bailed clients and fine defaulters?

- (k) Are court duty solicitor badges worn where required by the court or local instructions?
- (l) If more than one duty solicitor is on duty, how is work divided?
- (m) Any difficulties in the solicitor gaining access to defendants in custody?
- (n) How does the duty solicitor know which clients need assistance?
- (o) Is there an opportunity for duty solicitors to speak with clients prior to appearing in court?
- (p) Are interview facilities adequate?
- (q) Does the duty solicitor's own client work interfere with duty matters?
- (r) Are there any duty solicitors who attend infrequently?

2.22 The purpose of police station monitoring visits:

1. CDSMs may seek to agree with police authorities and Customs and Excise authorities (where appropriate) that monitoring visits can be made to custody suites. CDS monitoring visits are distinct from lay visitor schemes, which are focused upon the treatment of detained people. It must be remembered that CDS has no statutory authority to require the police to agree to such visits but it is expected that, once the purpose of such visits is agreed, the police will see the benefits.
2. The areas to be discussed during monitoring visits to police stations are:
 - (a) Are custody staff aware of the local instructions?
 - (b) Are any amendments to the local instructions required?
 - (c) Are there any areas in the local instructions which are not being complied with either by duty solicitors or any other agency including the court? If so, is this a general issue or confined to individuals? What action has the court taken?
 - (d) Are the police represented on local and regional committees? If they are, how useful are these meetings considered? If not, do they wish to be?
 - (e) Is a poster displayed in the custody area (see 3.5)?
 - (f) Do the Call Centre Service statistics show that any change is needed to current arrangements?
 - (g) What issues arose during previous monitoring visits? Are these no longer an issue?
 - (h) Are any issues relevant to this custody area the subject of continued discussion at local or regional committees?
 - (i) Are identity badges required to be shown? If so, are these usually available?

(j) ~~Are any records held for the speed of duty solicitors establishing attempting telephone contact with clients within 45 minutes?~~

(j) Are any records held for the speed of duty solicitors attending for interview within 45 minutes of the police being ready to proceed?

(k) Are there any duty solicitors who attend infrequently?

2.23 Frequency of visits:

1. Regional Offices will decide upon the frequency of monitoring visits to be undertaken.

2.24 Who can conduct the visits:

1. Members of CDSM teams and regional committee or local committee members can conduct monitoring visits. It is likely that CDSM teams will conduct the majority of visits.

2.25 Follow up action:

1. Standard report forms will be prepared for completion after a monitoring visit. These will be prepared by CDS Policy Team following consultation with Regional Committees. A copy of this report must be provided to the established liaison point for the court or police station (depending on which is visited), the local committee and regional committee. The regional committee will oversee the completion of any corrective action required.

2.26 Expenses:

1. If local or regional committee members undertake monitoring visits, the following expenses will be available:
 - (a) travelling costs,
 - (b) subsistence,
 - (c) an attendance allowance.[See LSC Finance Manual]

2.27 Records:

1. The records of monitoring visits will be kept for two years.

3 Police Station Scheme

Extent Of Cover

3.1 Suspects who are covered:

1. The following categories of suspects are covered:
 - (a) arrested suspects, including those detained by Customs and Excise,
 - (b) volunteers i.e. those who are free to leave the police station if they so wish,
 - (c) Services (Armed Forces) personnel unless an attendance takes place outside the UK.
 - (d) persons arrested under powers in the Immigration Acts,
 - (e) persons arrested for breach of a bail condition,
 - (f) persons arrested for breach of a matrimonial or domestic violence injunction,
 - (g) persons arrested under a warrant issued for default in paying a fine or maintenance,
 - (h) prisoners where the police are called into a prison to investigate an alleged offence by one prisoner upon another e.g. assaults,
 - (i) prisoners being investigated by the police other than for (h) above.

3.2 Suspects who are not covered:

1. The PACE Codes of Practice apply to a very wide range of investigations (see section 67(9) PACE 1984). Obvious examples are investigations by the Metropolitan and provincial constabularies, specialist police forces e.g. British Transport, Ministry of Defence, Services etc. Less obvious examples involve investigations by Immigration Officers, Customs and Excise, Serious Fraud Office but many also include consumer protection officers, Post Office investigators, store detectives and gas, water and electricity investigators. It does not follow that, simply because an investigation has to comply with the Codes of Practice, the advice at police stations scheme necessarily covers the suspect. In fact, where an investigation involves a non-police investigator who does not have a power of arrest, advice at police stations will not be available unless a constable (which include a Customs Officer) is present. The only alternative means of funding is Advice and Assistance which is means tested and subject to an upper limit which may not be exceeded without prior authority from the LSC. For full details see the Criminal Contract specification which sets out the position in more detail.

3.3 Scope of Police Station Scheme:

1. The scope of the Duty Solicitor service and service obligations are included in the Contract (Contract Part B, Section 8).

2. With effect from 1 February 2004 the police station telephone advice fixed fee has been implemented for all suppliers.
3. Also with effect from 1 February 2004 duty solicitor rates have been restricted to the initial period of custody. Any subsequent attendances are at own solicitor rates unless you are the Rota Duty Solicitor for that police station on the return bail date.
4. From 17 May 2004 certain cases will be restricted to telephone advice only although there are some exceptional circumstances that could justify attendance.
5. Detailed guidance on claiming for police station work is contained in the Police Station and Court Duty Solicitor Cost Assessment Manual.

3.4 Notice to detained person:

1. All suspects who have been detained must be given a notice by the police (**Appendix 3A**) which includes information about their right to free legal advice (Code of Practice C 3.2). On the reverse of this notice is information for a person attending voluntarily at a police station. These notices are printed by each police force for use in their police stations.
2. The Home Office issues translations of the notice to detained persons in French, German, Italian, Spanish, Portuguese, Polish, Greek, Turkish, Bengali, Gujarati, Hindi, Punjabi, Mandarin, Cantonese, Arabic, Albanian and Welsh. Further information is available from the Home Office's Police Powers and Procedures Section 020 7273 2698. The Metropolitan Police also issue the Notice in additional languages: Albanian, Bulgarian, Croat, Czech, Dutch, Farsi, Japanese, Russian, Romanian, Serbian, Somali, Tamil and Vietnamese. Further information is available from the Metropolitan Linguistic and Forensic Medical Services Branch (fax no. 020 7230 7343).

3.5 Police station posters:

1. Under PACE Code of Practice C 6.3 a poster must be prominently displayed in the charging area of every police station. A range of three posters in A2 size are available and copies are supplied direct from the printers employed by CDS Policy Team to police forces. Police forces order additional copies via Head Office. The range of posters is as follows:
 - (a) DS20: Police station poster in English and ethnic minority languages (Arabic, Punjabi, Urdu, Hindi, Gujarati, Bengali and Chinese)
 - (b) DS21: Police station poster in English and Welsh
 - (c) DS22: Police station poster in English and European Community languages (Italian, Portuguese, German, Norwegian, Danish, Polish, Swedish, Turkish, Dutch, French, Spanish and Greek)
2. Reproductions of the 3 posters are at **Appendices 3B, C and D**.
3. It is important to note that all the above posters are printed on special paper which, when the backing sheet is removed, have a self-adhesive backing.

Services Provided

3.6 Police stations:

1. Duty solicitor cover should be provided at every police station where a suspect is ever likely to require advice even though the bulk of suspects will be taken to “designated” stations (for definition see Section 30 Police and Criminal Evidence Act 1984) i.e. those suitably equipped to hold suspects for more than 6 hours.

3.7 Services establishments:

1. Services establishments should be covered by the appropriate police station scheme. This will normally be the scheme covering the nearest civilian police station.
2. Pre-charge advice under Section 2.2 of Part A of the Contract Specification is also available for Services personnel abroad. Such personnel will be offered assistance from lawyers employed by another service (e.g. a soldier will be offered assistance from an RAF lawyer) or, if a services lawyer is not available, they will be able to ask for a named solicitor or the duty solicitor.
3. Where the duty solicitor is requested, the Call Centre will deploy the case to the duty solicitor covering the base at which the Services person would be located whilst in England.
4. Paragraph 6.5 of the Police Station and Court Duty Solicitor Costs Manual offers guidance on such cases.

3.8 Definition of rota and panel:

1. Duty solicitors can be deployed by:
 - (a) a rota where an identifiable duty solicitor is on duty who must accept a case except where the solicitor is engaged at the police station on another case or at a warrant of further detention hearing (Contract Part B, paragraph 8.2.2), or
 - (b) a panel arrangement where the Call Centre Service telephones the duty solicitor who was approached the longest time ago until finding one willing to advise the suspect requesting the duty solicitor. The Call Centre Service instructions to start with the next duty solicitor on the panel for the next suspect requiring assistance and so on unless otherwise directed. A panel solicitor is not obliged to accept a call, but see 6.15.

3.9 Options for deploying duty solicitors:

1. The following options are available for deploying duty solicitors:
 - (a) a rota covering the whole of each 24 hour period,
 - (b) a panel arrangement throughout the whole of each 24 hour period, or
 - (c) a mixture of rota and panel e.g. a rota for out of office hours including all day Saturday and Sunday with a panel arrangement during office hours.

3.10 Limitation on rota:

1. The question of whether a rota is appropriate for a particular scheme will be settled by whether or not there will be compliance with the standby target. **Appendix 3E** shows how calculations can be made to assess whether a rota is appropriate.

3.11 Informal rota for panel schemes:

1. A few police station schemes which cannot justify operating a rota because they would not comply with the standby target nevertheless operate an informal rota so that only one of their members is subject to duty solicitor call outs. No objection should be taken to such an arrangement. If such a scheme wishes to move to a formal rota (attracting the standby payment) then it would have to ensure that it complied with the standby target (see 3.10).

3.12 Simultaneous court attendance and police station rotas:

1. Some schemes provide court and police station cover by a simultaneous rota i.e. where the same duty solicitor is in attendance at court as duty solicitor and is also on police station rota duty. Although these arrangements operate satisfactorily, new simultaneous schemes should not be allowed without taking into consideration such local factors as limited numbers of solicitors, proximity of the court and police station and the views of the local and regional committee.

3.13 Cover over Bank Holidays:

1. Some rota schemes have been in the habit of operating a panel over Bank Holidays. This is unlikely to be in the public interest and rotas should be issued covering all Bank Holidays if a rota would normally (i.e. in a mixed rota/panel scheme) cover such days.
2. Very occasionally it is proposed to run a rota over Bank Holidays where normally there would only be panel cover. Where the scheme provides rota/panel cover (i.e. it is busy enough to justify a rota at certain times during the week) such schemes should be allowed to extend the rota cover over Bank Holidays and other periods when offices are closed e.g. on the day following a Bank Holiday. In the case of panel only schemes, discretion should be exercised whether such schemes should operate a rota over Bank Holidays.

3.14 Local instructions:

1. See 2.9.

3.15 Police station closures:

1. The same issues apply as for the closure of courts (see 2.17).

3.16 Approval of new or revised scheme:

1. Before approving a new or amended scheme the CDSM should, before consulting the local and regional committee, be satisfied on the following points:
 - (a) the service to be provided covers the whole of each 24 hour period,

- (b) the proposed arrangements for deploying police station duty solicitors by rota or panel are sufficient to meet the likely demand for duty solicitors from suspects and, where a rota is proposed, the CDSM must be satisfied that:
 - i) there are likely to be sufficient suspects to justify having a solicitor on rota duty and that consequently a standby payment should be paid,
 - ii) if it is proposed that there should be more than one duty solicitor on duty at any one time, that this proposal is justifiable,
 - iii) the proposed arrangements are likely to be satisfactory to the police,
 - iv) all duty solicitors will have received a copy of the local instructions (see 2.9).

3.17 Review of standby payments:

1. Each police station scheme should be reviewed at least annually to see if the standby payment is still warranted and, where a panel exists, whether this justifies conversion to a rota (see **Appendix 3E**).

Police Station Agencies And Designation

3.18 Introduction:

1. This guidance provides advice as to how designation required by Part D of the Contract Specification could be applied when a supplier is using an agency to undertake police station work. A supplier can designate fee earners whether or not employed by the supplier.

3.19 Background:

1. In order to be allocated rota slots a duty solicitor must be employed by a contracted supplier (Contract Part B, Section 8.7). In principle it is recommended that CDSMs do not become involved in the intricacies of the employment situation but rather concentrate upon the requirement that a duty solicitor can only be employed by one supplier (Arrangements 4.14) and the effectiveness of supervision.

3.20 Agency work by duty solicitors and representatives:

1. A duty solicitor (but not a court only duty solicitor) can, as well as his or her duty solicitor work, also undertake work for an agency as an equivalent to an accredited police station representative.
2. An accredited representative can also undertake duty solicitor and own client work for more than one supplier.
3. An agency may be established which will receive work from a contracted supplier and allocate that work to representatives which for:
 - (a) duty solicitor work must be a police station duty solicitor or an accredited representative,

- (b) own client work can be either of the above or probationary representatives or solicitors ~~who are not duty solicitors~~ who hold the Police Station Qualification (see 4.1).

3.21 Performance standards:

1. The following performance standard is relevant:
 - (a) 80% of police station attendances must be completed by designated fee earners (Contract Part D, Rule 5.2).

3.22 Options available to suppliers:

1. If the supplier is able to achieve the performance standard shown above (see 3.21) by using designated employed fee earners then no action is needed. If the supplier cannot achieve the performance standards, then either more work must be conducted in house or more fee earners must be designated.

3.23 Designation and supervision:

1. If a fee earner is designated then the supplier must comply with the supervision requirements associated with designation. If a supplier allocates work to an agency employing several representatives then it may be difficult for the supplier to meet the supervision requirements and it may be more appropriate for the agency itself to undertake these requirements. For example if a supplier allocates work to an agency employing 30 representatives any one of whom can be used for the supplier's work, the supplier may find it difficult to complete appraisals, file review etc. for all representatives used on its cases. In such circumstances there are two alternatives for the supplier to consider:
 - (a) the Contract (Part D, paragraph 3.2.8) allows suppliers to "share" the responsibilities of designation so that not each supplier needs to complete the requirements itself,
 - (b) the fee earner may not be designated. This can apply where the supplier can achieve the performance standard without designating that individual.

3.24 Sub-contracting work to another supplier:

1. Having accepted a call (either rota or panel) and having provided the initial advice (usually by telephone) a duty solicitor may then pass the matter to an accredited representative, or another duty solicitor, in another supplier. However:
 - (a) only the original supplier may bill the LSC for the work done (see Arrangements 4.14);
 - (b) the performance standards contained within the Contract remain the responsibility of the original supplier (see Arrangements 4.14).

A fuller explanation can be found at **Appendix 3M**.

Miscellaneous

3.25 Identity cards:

1. Identity cards are issued by the London Criminal Courts Solicitors' Association (for London) and the Criminal Law Solicitors' Association (for London and the provinces) An application form for an LCCSA/CLSA police station identity card is at **Appendix 3F**. It is not mandatory that identification badges for police station attendances be obtained unless specified in local instructions (see 2.9).

3.26 Use of hotels:

1. Solicitors who live at some distance from the police station can claim reasonably incurred hotel expenses where a rota is in operation (Contract Part E, paragraph 2.2).

Call Centre Service For Police Station Scheme

3.27 Duty Solicitor Call Centre Service:

1. FirstAssist is the current supplier of the police station Duty Solicitor Call Centre Service. All calls for the duty solicitor must be made via the Call Centre Service except where the duty solicitor is already at a police station and another suspect requires advice. In the latter event it is the responsibility of the duty solicitor to notify the Call Centre Service (Contract Part B, paragraph 8.2.2). It is unnecessary for a 24 hour rota to be supplied to the police as only the Call Centre Service requires this information.

3.28 Reasons for having a Call Centre Service:

1. There are a number of reasons for having the Call Centre Service which are set out in Appendix 3G.

3.29 Contacting the Call Centre Service:

1. The relevant numbers for FirstAssist are as follows:
 - (a) calls from the police: 08457 500640
 - (b) calls from duty solicitors: 08457 500620
 - (c) Call Centre Manager: 020 8763 3412
 - (d) Duty solicitors can notify change information to FirstAssist by:
 - i) phoning 08457 500620
 - ii) faxing 020 8763 3191
 - iii) writing to: DX 59609 Purley
 - iv) writing to: Duty Solicitor Call Centre Service,
FirstAssist Ltd,
32 High Street, Purley,
Surrey CR8 2PP

3.30 Information to be supplied to Call Centre Service:

1. The Association of Chief Police Officers recommended in 1986 that the Call Centre Service should only be supplied with the custody number, the location of the police station, time of arrest, name of the police officer, the nature of the offence and, for volunteers, their name (as there will be no custody number). Letters from ACPO dated 8 October and 8 December 1986 are at **Appendix 3H**. Fortunately many police forces supply additional information such as the client's name and this should not be discouraged.

3.31 Outcome codes:

1. The outcome codes used by the Call Centre Service and their descriptions are at **Appendix 3J**.

3.32 Monthly regional statistics:

1. An explanation of the columns in the Call Centre Service's monthly regional statistics is at **Appendix 3K**.
2. The monthly regional statistics should be presented to regional committees
3. If the monthly regional statistics show a scheme to be under performing the relevant regional office should consider whether this is atypical (in which case no action need be taken) or whether this is a trend of under performing. If the latter, the following action should be considered and documented:
 - (a) Obtaining reasons for non-acceptance by the rota duty solicitor (see paragraph 7.16).
 - (b) Additional rota duty solicitors should be provided at specific times if failures are grouped around certain times.
 - (c) For panel cases, taking disciplinary action under the Duty Solicitor Arrangements (see Arrangements 7.15), if individual duty solicitors are not accepting a reasonable number of calls.
 - (d) If the underperformance is continuing:
 - i) to merge a poorly performing scheme with an adjoining scheme
 - ii) to consider a back up to an adjoining scheme if such an arrangement is not already in operation.

Note that the Call Centre Service will also include a count of the number of duty solicitors on that scheme. If the numbers shown on the regional office's Access database do not agree with that shown by the Call Centre Service (remembering that some duty solicitors may have joined and left in the month), the Call Centre Service should be asked to supply individual duty solicitor names for comparison.

3.33 Duty Solicitor Not Available Reports

1. The Call Centre Service produce reports whenever a duty solicitor is not available on three separate occasions in the past 3 months. The duty solicitor's name and the call histories are sent to the regional offices.

The letter at **Appendix 3L** should be sent to such solicitors and followed up. The letter at **Appendix 3M** can be used for this purpose.

3.34 Approaching another solicitor in duty solicitor's supplier:

1. If the solicitor approached during office hours is not available the Call Centre Service operator will ask whether any other duty solicitor in that supplier is available. This could include a duty solicitor employed by the supplier but at a different office provided they are able to arrange attendance, where necessary, at the police station within 45 minutes. If one is available, then the case is passed to that solicitor. This procedure has been adopted as it speeds the deployment of cases and also avoids turning down any alternative duty solicitor offered, only to run the risk of the Call Centre Service ringing back shortly thereafter when that solicitor is reached on the panel list. Both the original solicitor approached and the one who actually took the case then drop to the bottom of the panel.
2. If the duty solicitor is the only one employed by the supplier then it is not possible for that solicitor to pass the case to another duty solicitor.

3.35 Rota operation:

1. Where a rota solicitor is not available, the operator will not ask whether there is another duty solicitor available in the supplier's office. However, if that facility is suggested by the supplier the offer will be accepted in the interests of passing the case quickly. The available duty solicitor could be employed by the same firm as the supplier but in a different office, provided that they are able to arrange, if necessary, attendance at the police station within 45 minutes (Contract Part B, paragraph 8.23).

3.36 Batching of cases:

1. During the logging process the system will check if there are any outstanding cases for either the same police station or the same scheme and, if so, will attach the new case to the other cases in a deployment batch. This enables a number of cases to be deployed at the same time. For this reason when messages are left on pagers or answering machines the unique case reference given to each case by the Call Centre is not used by the Call Centre. By the time the solicitor responds there may have been changes to the individual cases comprising the batch e.g. one of the cases in the batch may have been accepted by a solicitor but not all of them or an additional case may have come in. The duty solicitor's PIN number is therefore used and when it is input to the system it will bring up a screen showing the last batch for which that solicitor was being approached.

3.37 Suppliers wishing to set up their own telephone referral system:

1. Suppliers handling significant volumes of police station work may wish to establish their own telephone referral system to increase their flexibility in using the duty solicitors they have available to take cases. This will allow a member of their staff who is not a duty solicitor to take calls from the Call Centre Service and then refer the call to one of the supplier's duty solicitors who is available.
2. Suppliers can only introduce such an arrangement with the written consent of the CDSM. Consent should only be given where there is compliance with the Contract Specification (Contract Part B, paragraph 8.2.5).
3. To apply for consent the supplier must complete **Appendix 3M** and the CDSM must be satisfied with the answers. The Supplier's office manual should cover the following points:
 - (a) the names of staff who have been or will be trained to receive calls from the Call Centre,
 - (b) the procedure for receiving such calls and that calls are not accepted unless a duty solicitor is available,
 - (c) that calls are passed to the duty solicitor immediately and that the name of the duty solicitor accepting the matter is recorded,
 - (d) that a duty solicitor will be available to contact the client immediately and, if necessary, to arrange attendance at the police station within 45 minutes, the procedure for handling back cases to the Call Centre if a duty solicitor is not available, and
 - (e) that any calls handed back to the Call Centre or where it has taken more than 10 minutes from receipt of the call to acceptance by a duty solicitor must be reported to a supervisor in your office who will record in a central register and consider action to minimise reoccurrence.
4. The Call Centre Service must be advised of such an arrangement together with the telephone number it is to use to contact the supplier.

3.38 Acceptance of calls by other than the named duty solicitor:

1. If a named duty solicitor is shown as allocated to a slot, the supplier may accept the call intending that another duty solicitor employed by that supplier will take the case provided that this solicitor is able to attend the police station within 45 minutes (Contract Part B, paragraph 8.2.3). In such circumstances, the duty solicitor who accepts the case need not be a member of the local scheme for which the call originated.

3.38 Swaps

1. The Call Centre has to cope with over 50,000 swaps each year. It is a critical administrative task to ensure that all these swaps are correctly entered in the database. Duty solicitors should notify the Call Centre of such swaps by using the "Duty Solicitor Call Centre Service Duty Swap Notification form" (which is included in the Commission's Forms Master pack) or by letter, fax or telephone.

2. All suppliers should be encouraged to use the swap form. If CDSMs receive complaints about swaps not having been implemented properly, a check should be made that the supplier is using the official form.

4 Selection

Police Station Accreditation

4.1 Introduction:

1. The LSC can only pay for advice given by non-solicitors (which includes solicitors without a practising certificate and trainee solicitors) if they are accredited or registered with the LSC under the Police Station Representative Scheme. Police station accreditation may also be relevant to solicitors who do not have sufficient experience to become duty solicitors as accreditation will allow them to have duty solicitor cases referred to them by a duty solicitor in their supplier. ~~Solicitors do not have to be accredited to do o~~Own solicitor cases i.e. cases where the client has asked for the solicitor or his or her supplier by name or from the list of solicitors held by the police as required by PACE Code C, Note for Guidance 6B rather than asked for the duty solicitor, may only be undertaken by a representative (including a Solicitor who is also a representative), or:

- (a) (for work done before 00.01 on 1 November 2005) any Solicitor;
- (b) (for work done after 00.01 on 1 November 2005 but before 00:01 on 1 November 2006) a Solicitor who is on the Police Station Register and has not been suspended;
- (c) (for work done after 00.01 on 1 November 2006) a Solicitor holding the Police Station Qualification under the Law Society's Criminal Litigation Accreditation Scheme;
- (d) (for work done on or after 00.01 on 1 November 2005, where the firm is a member of the Specialist Fraud Panel and the offence for which the client has been arrested is primarily or substantially based on allegations of fraud or other serious financial impropriety or involves complex financial transactions or records) a Solicitor.

Accreditation for duty solicitors is dealt with in paragraphs 4.9 to 4.13 below.

4.2 Services provided by representatives:

1. Probationary representatives can give preliminary advice and attend the police station on own solicitor cases (see 4.1) but the LSC cannot pay for them to do indictable only cases and they must not advise on duty solicitor cases. As from 1 April 2003 a probationary representative can only be remunerated by the LSC for police station work undertaken by the firm at which their supervising solicitor is based. If a case starts as an allegation of a summary-only or either-way offence but turns into indictable only whilst the representative is at the police station, a probationary representative can continue to deal with the matter and will be paid for by LSC. The Law Society's guidance on probationary representatives and indictable only cases is at **Appendix 4A**. An accredited representative can give preliminary advice and attend the police station in own solicitor cases and, in duty solicitor cases where the duty solicitor must always give the preliminary advice, attend the police station. The duty solicitor has an unrestricted right to delegate to an accredited representative as no limitation on delegation is imposed by the Contract (Contract Part B, Rule 3.3).

4.3 Overview of police station accreditation process:

1. The LSC maintains a register of police station representatives. For attendances to be paid by the LSC they must be undertaken by a representative who is on this register or, in some circumstances, by a solicitor (see 4.1).
2. To be entered on the register a representative must first pass a written test. This requirement does not apply to representatives who have passed the Legal Practice Course, barristers, and Fellows and members of the Institute of Legal Executives who have passed the Institute's Level 4 Professional Higher Diploma in Law (previously known as the Part 2 examinations), which must include the criminal law and criminal litigation papers.
3. A representative must pass one of the tests (not including the written test) within 6 months or he or she will be suspended; he or she may be reinstated if he or she passes a test subsequently. He or she has a total of 12 months from registration (or 6 months from reinstatement) to pass all the tests or he or she will be suspended; again, he or she can be reinstated if he or she passes all the tests subsequently. Suspended representatives are treated as if they are not on the register and so payment will not be made for their attendances.

4.4 Register:

1. The registration process for police station accreditation for which the LSC is responsible is governed by the Police Station Register Arrangements 2001 (**Appendix 4B**).

4.5 Assessment organisations:

1. Applications must be made to an assessment organisation approved by the Law Society for the PSQ. These organisations are currently:

Central Law Training
Wrens Court
52-54 Victoria Road
Sutton Coldfield
Birmingham B72 1SX (0121-355 0900)
E-mail: jbutlin@centlaw.com.

Centre for Professional Studies
University of Wales
PO Box 294
Cardiff CF1 3UX (02920 876948)
E-mail: Devereux@cardiff.ac.uk or DaviesDC@cardiff.ac.uk

Datalaw
27 Dale Street
Liverpool
L2 2HD
Tel: 0151 236 1234
Fax: 0151 236 5678
E-mail: info@datalaw.co.uk

BPP Professional Education
The Granary
50 Barton Road

Worsley
M28 2EB
Tel: 0845 226 2422
E-mail: enquiries@bpp.com

4.6 Application for police station accreditation:

1. A form provided by the chosen testing organisation must be completed and submitted to the testing organisation with the first four portfolio cases (Part A of the portfolio) completed. The first two of these cases involve the representative watching a solicitor (not necessarily the supervising solicitor) advising at a police station and the second two involve the supervising solicitor watching the representative advising. If satisfied with the application and the portfolio cases submitted the testing organisation issues a date-stamped ADMIN 2 form which is completed by the applicant and submitted to the Police Station Reps Service, First Assist, 32 High Street, Purley, Surrey, CR8 2PP. Tel: 0845 600 1022 Fax: 0208 763 3191 E-mail: policestationreps@firstassist.co.uk within three months of the date on the form. The testing organisation must also confirm that the representative has passed or is exempt from the written test. The applicant is then registered as a probationary representative on the LSC police station register. The representative then has 12 months from the date the application is registered by the LSC to complete the accreditation process.
2. General accreditation queries should be referred to the Law Society Information Service:
Telephone 0870 606 2555
Fax 01527 500018
E Mail panels@lawsociety.org.uk

4.7 Completing the accreditation process:

1. Within six months of registration with the LSC the representative must pass one of the following tests:
 - (a) Part B of the portfolio. This involves five cases without a solicitor being present, or
 - (b) The critical incidents test. This simulates police station situations on tape to which the candidate has to respond on tape within a limited time, ~~or~~

4.8 Suspension and other problems:

1. There are provisions in the Register Arrangements (**Appendix 4B**) allowing representatives to be voluntarily suspended from the register in which case the 12 month period to obtain accreditation (or the 6-month period following reinstatement) stops running. Representatives should be referred to the Police Station Reps Service, First Assist, 32 High Street, Purley, Surrey, CR8 2PP. Tel: 0845 600 1022 Fax: 0208 763 3191 E-mail: policestationreps@firstassist.co.uk for advice on this and any other registration problems which can get quite complicated. Problems about the process of getting accredited are normally dealt with by the assessment organisation. Complaints about assessment organisations should be referred to the relevant testing organisation or, in serious cases, to the Law Society which is responsible for approving and monitoring the assessment organisations.

Duty Solicitor Accreditation

4.9 Introduction:

1. The accreditation of duty solicitors is covered by Stage 1 of the Law Society's Criminal Litigation Accreditation Scheme (CLAS). Stage 1 is in two parts covering the necessary police station and court skills to be a duty solicitor. These parts are now known as PSQ (Police Station Qualification) and MCQ (Magistrates' Court Qualification).
2. A duty solicitor who is only qualified as a police station or only as a court duty solicitor will, unless the requirement in paragraph 4.19 of the Arrangements is waived in his or her favour, have 12 months from 2 April 2001 to pass whichever of the tests is relevant e.g. a solicitor who is only a police station duty solicitor on 2 April 2001 will have 12 months in which to pass the MCQ. The Law Society's scheme will cover the competence of the solicitor to be a duty solicitor whilst the LSC will determine which schemes the solicitor may join.
3. Information regarding CLAS can be obtained from the Law Society. Contact details can be found in paragraph 4.6.2 above.

4.10 Duty solicitor police station accreditation:

1. To be awarded the PSQ a solicitor must have:
 - (a) been "passported" i.e. the solicitor must have been a police station duty solicitor for all or part of the period between 1 January and 1 April 2001 (Arrangements 4.6). Note that membership for a minimum of one day during this period meets this requirement, or
 - (b) been an accredited representative under the police station accreditation scheme (see 4.1 to 4.8) or
 - (c) passed Part 1 of Stage 1 (the PSQ) of the Law Society's Criminal Litigation Accreditation Scheme.
2. The requirements for the PSQ accreditation are similar to police station accreditation for non-solicitors (see 4.1 to 4.8). The candidate must register with an assessment organisation followed by a:
 - (a) portfolio of 5 cases
 - (b) critical incidents test (see 4.7)

4.11 Duty solicitor court accreditation:

1. To pass the MCQ requirement the solicitor must have:
 - (a) been "passported" i.e. the solicitor must have been a court duty solicitor for all or part of the period between 1 January and 1 April 2001 (Arrangements 4.6). Note that membership for a minimum of one day during this period meets this requirement; or
 - (b) passed the MCQ.

2. The requirements for the MCQ accreditation are that the candidate must have 12 months experience of criminal defence work and pass:
 - (a) a portfolio consisting of short notes on 20 cases and full notes on 5 cases, and
 - (b) the Interview and Advocacy Assessment test in which the candidate is assessed conducting a simulated interview and a simulated appearance in a magistrates' court.
3. The Law Society require the MCQ to be passed within 3 years of the award of the PSQ. Please note that this does not affect the LSC's requirement that existing duty solicitors who are qualified only as a police station duty solicitor or only as a court duty solicitor must obtain Stage 1 membership of CLAS by 2 April 2002 unless the CDSM agrees a waiver.

4.12 Re-accreditation:

1. The LSC has asked the Law Society that Stage 2 of CLAS should be developed before decisions are made about reaccrediting duty solicitors.

4.13 Assessment organisations:

1. Application must be made to an assessment organisation approved by the Law Society for the PSQ. These organisations are listed in 4.5.1.

Requirement For Membership Of Both Police Station And Court Schemes

4.14 Introduction:

1. Paragraph 4.19 of the Arrangements requires that duty solicitors should normally serve on both the local police station and court schemes. The following paragraphs explain how this requirement can be waived in respect of individual solicitors.

4.15 Benefits of requiring membership of both schemes:

1. There are a number of benefits of being a member of both the police station and court schemes:
 - (a) the provision of a service by solicitors who are likely to have offices reasonably near to clients asking for the duty solicitor. It may well be easy for a solicitor who has a car to get to the police station but it may be a different matter for a client, who wishes to continue to instruct the duty solicitor, to get to the solicitor's office using public transport both in terms of time, convenience and cost. Many clients are in receipt of benefit and it is important to minimise the cost and inconvenience to them,
 - (b) the provision of a speedier service to clients as the solicitor is likely to have to travel less distance to get to the police station and court,
 - (c) a reduction in any temptation for duty solicitors to give telephone only advice to suspects at the police station as this may be less onerous for solicitors than making a journey to the police station particularly during the night,
 - (d) it helps ensure that there are a sufficient number of solicitors on the court scheme given that the police station scheme is now seen as the more attractive option for membership,
 - (e) any reduction in travel time and expenses will reduce cost to the CDS,
 - (f) helps to ensure that duty solicitors have current experience of both police station and court work by appearing more regularly.

4.16 Waiver of requirement:

1. The requirement does not apply to applicants with rights of audience in the higher courts. This policy is intended to encourage solicitors to obtain higher rights of audience and is at the request of the Solicitors' Association of Higher Courts Advocates (SAHCA).
2. The CDSM may consider waiving the requirement in paragraph 4.19 of the Arrangements in the following circumstances:

- (a) Where a scheme might, in the view of the CDSM, become unviable by reducing the number of duty solicitors remaining on it to too low a level. It would generally be unwise not to waive the requirement if the number of duty solicitors on a particular police station or court scheme dropped below 10 even though the applicant is only willing to serve on one of those schemes. The exact circumstances will need to be determined by the CDSM based upon the needs of the particular scheme. If the requirement is waived for one solicitor on a particular scheme then the CDSM must be prepared to waive the requirement in respect of other members of the same scheme.
- (b) This, in itself, may be a good reason for not agreeing to a waiver except where absolutely essential to maintain numbers if it is considered that allowing an extra solicitor onto one scheme (court or police station) will bring the scheme into compliance with targets laid down by the CDS. CDSMs should be aware that agreeing to a waiver for this reason for one solicitor may result in similar requests from other solicitors already on the scheme which may result in a deterioration in meeting targets. CDSMs should therefore be careful only to agree to a waiver for this reason where they are thoroughly convinced that it is essential to improve performance.
- (c) In rural areas in particular where, perhaps because of court closures, the court is in a distant town but the solicitor wishes to continue to provide police station cover.
- (d) The applicant has genuine physical difficulties or a medical condition which prevents him or her acting as duty solicitor at a court or police station e.g. the applicant's mobility is by wheelchair and the police station has no reasonable access.
- (e) The applicant has genuine personal responsibilities as a carer and wishes to apply to the court scheme.

A letter that CDSM teams can use to gain additional information when necessary is shown at **Appendix 4C**.

- 2. CDSMs should not normally waive the requirement in paragraph 4.19 of the Arrangements where:
 - (a) The applicant wishes to join a police station scheme but not a court scheme because of caring responsibilities. The police station scheme will often require attendance at different times during the day and night and there can therefore be no guarantee that caring responsibilities will not be affected.
 - (b) The applicant does not want the inconvenience of attending the police station out of hours e.g. a "senior practitioner".
 - (c) The applicant's request is based solely on his or her personal preference not to be a member of both schemes.
 - (d) The applicant disagrees in principle with the need for this requirement.

3. It is for the applicant to justify “exceptional reasons” in support of his or her application not to join both court and police station schemes. If an application to waive paragraph 4.19 of the Arrangements is agreed, CDSMs should send the letter at **Appendix 4D**. As with any other application, if it is refused, full reasons must be given to the applicant (see 4.24).
4. **Appendix 4D** requires the duty solicitor to notify the CDSM if the reason for granting the waiver changes. If, as a result, the waiver is withdrawn, a solicitor who has been “passported” must be given reasonable time to gain the PSQ/MCQ. At least six months should be allowed for this purpose.
5. If a waiver is granted relating to an application to join a second or subsequent scheme, the applicant must meet the geographical criteria applicable to applicants who have not requested a waiver.

4.17 Waiver and competence:

1. Duty solicitors who have been “passported” under paragraphs 4.6 (a) or (c) of the Arrangements and have obtained a waiver under paragraph 4.19 are not required to obtain accreditation in respect of the scheme of which they will not be a member. For example, if a solicitor prior to 2 April 2001 was a member of the police station but not the court scheme, he or she would be “passported” under paragraph 4.6(c) of the Arrangements and, provided he or she obtained a waiver of paragraph 4.19 to continue on the police station scheme only, would not have to obtain the MCQ. However, solicitors who wish to become duty solicitors after 2 April 2001 will, even if they get a 4.19 waiver, have to obtain both the PSQ and the MCQ as they will be subject to paragraphs 4.6(b) and (d) and “accreditation” is defined in paragraph 2.1 to 2.4 as requiring both the PSQ and MCQ.

4.18 Appeals against refusal of waiver:

1. Applicants have the right to appeal if they do not agree with the decision of the CDSM (see Section 7). CDSMs will keep a register of all requests for waiver; whether the request is granted or refused and the reasons for the decision.

Processing Applications From Solicitors Wishing To Join Duty Solicitor Schemes

4.19 Checking application form:

1. The application form for applying to join schemes is contained within the LSC Forms Masterpack, which can be obtained from Service Delivery Support by calling 020 7759 0000. The form will also be available in the CDS Section of the LSC website: www.legalservices.gov.uk. The following paragraphs set out the considerations, which need to be taken into account when an application is received.

4.20 Selection Criteria:

1. Evidence of accreditation: The applicant must produce a Stage 1 CLAS certificate issued by the Law Society.
2. Evidence of experience: Paragraph 4.5 of the Arrangements requires 12 months experience of police station and court work. It is the responsibility of the assessment organisations (see 4.15) to ensure that candidates have the 12 months and so the CDSM can assume such experience on presentation of the applicants' PSQ/MCQ certificates. If a CLAS certificate is dated more than 12 [see amendment to Arrangements 4.7] months ago, the applicant will be asked to demonstrate how they meet the requirements of paragraph 4.5 of the Arrangements. As a guide, we would expect an applicant to be able to demonstrate a range of court and police station work over the last 12 months including (a) 25 court appearances including some not guilty pleas for court work (b) 25 police station appliances.
3. If in the CDSM's view an applicant may not meet the geographical criteria, the letter at Appendix 4J should be sent.
4. Membership of first scheme: The applicant is entitled to join the scheme covering the area in which his or her office is located. This is the office in which the applicant is "normally based for the majority of the working week". The applicant may only nominate one such office (Arrangements 4.8 and 4.9). It would therefore be expected that the applicant would be based at that office for more than 50% of the working week.
5. Membership of an alternative first scheme: Applicants can alternatively apply to join another scheme covering a nearby area as their first scheme if they can demonstrate that the court and police station are "more readily accessible". This will normally be based on distance i.e. the court/police station served by the nominated scheme are closer to the office (see 4.20.4) than the court/police station of the Petty Session Area in which the office is actually located. Alternatively the CDSM may take into account the convenience of members of the public in getting from anywhere in the nearby PSD to where the office is located. Convenience includes availability of public transport, cost, time spent in travel and need to e.g. change buses.

6. Membership of second or subsequent police station scheme: For schemes which serve only a police station and not also a court, CDSM teams may wish to use the resources shown at Appendix 4H. The applicant must be able to attend the police station within 45 minutes (Arrangements 4.10(a)) if the application is to join a police station scheme as a second scheme (see Arrangements 4.19.4). The applicant's office (see Arrangements 4.20.3(a)) will be the location from which the attendance is assessed. If there is doubt as to whether attendance within 45 minutes is achievable, CDSMs may check with a route planner via the Internet such as www.theaa.co.uk or obtain local advice. The applicant's home should also be within 45 minutes of the police station but it will usually be appropriate to accept the assurance given by the quality representative that the supplier is aware of the contractual requirement regarding police station attendance. The Arrangements do not, as used to be the case, permit an application to be based upon an applicant's home address unless that is also the office address.

7. Membership of second or subsequent schemes:
 - (a) Paragraphs 4.8 to 4.11 of the Arrangements set out the geographical (location) selection requirements. It is important to understand that these requirements exist for the following reasons:
 - i) the footnote in the Arrangements to the heading "Location – General Rules" (section 4 of the Arrangements) explains that these rules exist so that duty solicitors can attend the court and police stations promptly and that clients can easily attend the solicitor's office if further work is necessary,
 - ii) the geographical rules help achieve fairness between solicitors in which scheme they may join and they also aim to achieve national consistency i.e. that solicitors should be treated so far as possible in the same way whichever scheme they apply to for membership,
 - iii) every solicitor is guaranteed a place on at least one scheme. The guidance at sub-paragraphs (c) and (d) below only applies where a solicitor wishes to join an additional scheme under 4.10 of the Arrangements,
 - iv) it is often the case that solicitors' offices are near to each other. Therefore a decision on the geographical proximity of one may affect a number of others as well. Allowing a solicitor to join a scheme where e.g. he or she exceeds the travel time by only 25% may result in many other solicitors from that town also demanding to join the scheme with the result that solicitors take longer to get to court and police stations, and inconvenience is caused to clients,
 - v) the effect of the requirements is that individual duty solicitors may be members of fewer schemes but this should mean that there are likely to be fewer solicitors on their "home" scheme and thus that they will be on duty more frequently.
 - (b) Our approach to an application to:
 - i) join a second or subsequent police station scheme, or

- ii) both a court and police station scheme,

will depend on whether the relevant scheme is classified as “busy” or “less busy”.

“Busy” and “less busy” schemes are identified by whether the court deals with more or less than 1,250 defendants prosecuted for non-motoring cases in the last year for which statistics are available. The applicant must be based at an office of a CDS supplier for whom he or she undertakes criminal work.

- (c) for a “busy” scheme, the office is the one identified in paragraph 4.9 of the Arrangements and the office must be “readily accessible” to the court covering the scheme the applicant wishes to join. In considering whether the applicant is “readily accessible” all three criteria set out below must be taken into consideration. Normally the applicant should be in full compliance with all three criteria. If, exceptionally, this is not considered possible then any decision to depart from the criteria should give priority to the interests of the clients and not, for instance, the business interest of the applicant who wishes to be on as many duty schemes as possible. Where the guidance is not precisely followed, reasons must be given for not doing so. The criteria are:

- i) the cost of travel by public transport from the court to the applicant’s office where they are normally based which should generally not exceed £2.50 each way(or £5 return) at peak times i.e. when the cost is greatest, and
- ii) the journey from the court to the applicant’s office should generally not take more than 20 minutes by public transport each way including walking to and from the station or bus stop, and
- iii) the convenience of the journey including that it should generally not be necessary to change e.g. from one bus to another and that the public transport shall be reasonably frequent.

- (d) An example where it may be considered appropriate for the applicant not to be in full compliance with all three criteria:

- Travelling time including walking at either end is 23 minutes
- The cost of the single journey by public transport is £1.00
- The journey is frequent and convenient

i.e. one of the criteria is marginally exceeded but compensated by a significant reduction in the other two criteria.

- (e) A letter seeking further information so that there is sufficient information for the CDSM to make a decision about the geographical criteria is at **Appendix 4H**

- (f) for a “less busy” scheme, the office may be the one identified in paragraph 4.8 of the Arrangements or another office of the same CDS Supplier. The office must be “accessible” to the relevant court (Arrangements 4.10(b)(ii)) rather than the more demanding “readily accessible” required for “busy” schemes. “Accessible” is measured in terms of the solicitor’s travel time and not the convenience of the client. This is because additional duty solicitors may be needed at “less busy” courts. If the solicitor chooses, when applying to a less busy scheme, to nominate an office other than his or her main office as permitted by paragraph 4.9 of the Arrangements, the office nominated must also be an office of the same supplier and must also hold a General Criminal Contract. The time to be allowed for travel will be set by the CDSM for each less busy scheme following consultation with the Regional Committee.
- (g) If a scheme contains more than one court or police station, the CDSM will specify in local instructions how applications from duty solicitors based outside the court area will be considered. The following list, which is not exclusive, contains some of the options:
- Require applicants to be “readily accessible” or “accessible” (depending on whether the court is busy or less busy) to both courts;
 - To consider each court as a separate application and allow applicants to join one or more court schemes and to be “readily accessible” or “accessible” to those courts applied to;
 - Require applicants to be “readily accessible” or “accessible” to the busiest court and thereby to join all court schemes.
 - Require applicants to be able to travel to the police station within 45 minutes from the nominated office.
8. Other checks on applications:
- (a) The application form also needs to have the following points checked:
- i) Practising certificate (Arrangements 4.15): the applicant must hold a current practising certificate. If the certificate has any conditions attached the nature of the conditions must be considered. For example:
 - If the condition requires the solicitor not to have access to a client account, this would usually not affect the duty solicitor application.
 - If the condition requires the solicitor to work at all times under supervision, it would usually be appropriate to refuse the application. The applicant could, as an alternative, apply to become an accredited representative (see 4.6.1) and thus take duty solicitor cases at police stations.
 - ii) Special constable (Arrangements 4.16): applicants must not be special constables. If the applicant answers “yes” on the application form the application must be refused.

- iii) Suspension (Arrangements 4.17): applications cannot be submitted whilst the applicant is suspended or excluded from any other scheme. Exclusion for geographical reasons will not be a bar to an application for another scheme.
- iv) Criminal offence (Arrangements 4.18(a)): an applicant may be refused if he or she is under investigation or has been convicted of an offence which is not spent. The CDSM must take into account that, at the time of application, the applicant may not have been convicted and that refusal could have a serious impact on the applicant's income. Against this the CDSM has to balance whether those asking for the duty solicitor would consider it acceptable that the applicant should represent them as duty solicitor. For example, if the applicant has been charged with a minor motoring offence then this would probably not be objectionable. If on the other hand, the applicant has been charged with an offence involving dishonesty or some other serious matter then consideration should be given to refusing the application. The advice of CDS Policy Team should be sought in each such circumstance, except for minor motoring offences.
- v) Office for the Supervision of Solicitors (Arrangements 4.18(b)): applications may be refused if there are adverse findings or a matter is awaiting adjudication by the Office for the Supervision of Solicitors or the Solicitors' Disciplinary Tribunal. The CDSM should obtain background and any supporting documentation and the advice of CDS Policy Team should be sought prior to any refusal.
- vi) Other good reason (Arrangements 4.18(c)): great care should be taken before considering using this reason for refusing an application as it should usually be possible to address any concerns via another requirement. If an application is refused on this ground, the advice of CDS Policy Team must be sought prior to refusal.
- vii) Solicitor's employment (Arrangements 4.14): applicants must not be employed as a duty solicitor by more than one supplier. Provided the applicant confirms this is the case on the application form it is recommended that the intricacies of his or her employment situation are not investigated further, unless there are reasonable grounds for believing that this requirement may not be satisfied.

4.21 Change in Travel Times:

1. Unless travel times have changes significantly (by more than 10 minutes) once an application is accepted from the duty solicitor, future applications from that locality will usually be accepted.

4.22 Timing of application:

1. Rota slots can only be allocated from the date the solicitor starts employment with a supplier. However, provided sufficient notice is given to the CDSM the solicitor may be included on a rota from the date when a supplier confirms that they are to employ the solicitor.

4.23 Time scale:

1. Although paragraphs 4.20 and 4.21 of the Arrangements do not specifically require this, a decision whether to approve or refuse an application should be made within 30 days of receipt of the application. If the CDS12 form has not been properly completed then the 30 days will run from the date when the form is properly completed.

4.24 Reasons for refusal:

1. If the decision is to refuse the application then full reasons must be given. Any decision to refuse an application will provide a right of appeal by the applicant. **Appendix 4E** is a standard letter, which can be used when an application is accepted and **Appendix 4F** is a standard letter when an application is refused. Refused applications must be retained for 3 years and, each year, an analysis produced of the ethnic origin of failed applications.

4.25 Ethnic origin:

1. If the CDS12 is incomplete (including the ethnic origin details), the form should be returned to the applicant with a request for the missing details are provided.
2. If the applicant declines to provide ethnic monitoring information, the application should be processed and “unknown” entered to the database re: ethnic origin.

Special Rules

4.26 Introduction:

1. Paragraphs 4.11 and 4.12 of the Arrangements allow the CDS to implement scheme membership rules which differ from the standard rules.

4.27 Relaxation of standard rules:

1. Paragraph 4.11 allows the CDS to relax the rules for a particular scheme. For example a rural area may have an insufficient number of solicitors to meet the normal requirements for the court scheme for being readily accessible/accessible. In these circumstances the CDSM may consider taking a very flexible view of “accessible” (see Arrangements 4.10(b)) for duty solicitors for whom paragraph 4.19 of the Arrangements has not been waived.

4.28 Special rules:

1. Paragraph 4.12 of the Arrangements allows the CDS to replace the standard geographical requirement set out in paragraphs 4.8 to 4.10 of the Arrangements with special rules for a particular scheme or schemes. The only current example of this power being used is in London where special rules apply to all schemes serving that area.

4.29 Requirement to be a member of the police station and court scheme:

1. Paragraph 4.19 of the Arrangements requires applicants normally to join both the police station and court scheme (see 4.13 to 4.17). Where there is a relaxation of the selection requirements under paragraph 4.11, consideration should also be given to waiving the requirement in paragraph 4.19. Where there are special rules (Arrangements 4.13), which are most likely to apply to urban areas, it is unlikely that the requirement in paragraph 4.19 would be waived.

4.30 Consultation:

1. The introduction of special rules under paragraph 4.12 requires consultation with the relevant regional and local committees (Arrangements 4.13). There is no equivalent requirement in connection with a relaxation under paragraph 4.11. It would, however, be good practice to consult regional and local committees on proposed relaxation of the rules as well as the introduction of special rules. There are references to consultation in paragraphs 7.1(b) and 7.23 of the Arrangements. The Arrangements require that 6 weeks notice must be given before special rules under paragraph 4.13 can be introduced, but this does not apply to a relaxation under paragraph 4.11. It is recommended that the CDS Policy Team be consulted when either paragraph 4.11 or 4.13 is intended to be introduced before consultation starts with local and regional committees. The CDS Policy Team will retain a list of any such arrangements and the justification.

5 Temporary And Permanent Withdrawal From Schemes

5.1 Introduction:

1. The following paragraphs provide guidance on paragraphs 6.9 to 6.10 of the Arrangements which cover the temporary and permanent withdrawal from a scheme by a duty solicitor.

5.2 Responsibilities of suppliers and duty solicitors:

1. Rota slots are allocated to suppliers not individual duty solicitors (Arrangements 6.3). Part B of the Contract paragraph 8.4.3 says that “at all times it remains your responsibility to ensure that allocated rota duty solicitor slots are covered ... unless exceptional circumstances arise, such as staff illness”. Once a slot is allocated it is therefore a contractual responsibility of the supplier to cover that slot. In addition, duty solicitors can be subject to discipline if they fail to undertake rota and panel cases (see 6.16).

5.3 Temporary withdrawal:

1. A duty solicitor may request withdrawal from a scheme for up to 3 months (Arrangements 6.10). To prevent a series of such withdrawals by the same duty solicitor, such requests may only be made once in a 12 month period. The duty solicitor will automatically be restored to the scheme after the agreed withdrawal period has expired. The 3 month withdrawal period can be extended provided the duty solicitor continues to comply with the accreditation and other membership requirements.
2. Effect on rota slots of temporary withdrawal: Any rota slots already allocated remain the responsibility of the contracted supplier to cover either by one of its other duty solicitors or by swapping duties with other suppliers.

5.4 Permanent withdrawal:

1. If a duty solicitor leaves a scheme permanently then any allocated slots will remain the responsibility of the supplier to cover (Contract Part B, paragraph 8.4.3) providing that the supplier continues to employ at least one duty solicitor. If no duty solicitor continues to be employed, the slots revert to the CDS who will reallocate. The supplier and duty solicitor are responsible for ensuring that the CDSM is advised of when a duty solicitor leaves (Arrangements 6.9).
2. If a duty solicitor is moving offices within the same supplier but to a different duty scheme, the solicitor will have to apply on form CDS 12 in the usual way.

5.5 Transferring to another supplier:

1. The supplier that has been employing the solicitor may keep any slots allocated to that solicitor provided they still employ another duty solicitor. The solicitor/supplier must notify the CDSM of the change in office (Arrangements 5.10(a) and (b)). The solicitor will need to ask the LSC to allocate slots on the next rota to him or her.

- 2 The solicitor does not have to reapply for membership of a scheme of which he or she is already a member where he or she moves to another supplier or another office of the same supplier where the office complies with paragraph 4.8 of the Arrangements. However, the CDSM will need to check that the new office to which the solicitor moves complies with the geographical selection criteria (Arrangements 4.8, 4.9 or 4.10(b)). The following points should be noted:
 - (a) Duty solicitors can be removed on geographical grounds under paragraph 5.4(h) of the Arrangements
 - (b) The solicitor can be removed if he or she is not currently a member of both the court and police station schemes (Arrangements 4.19).
 - (c) If a solicitor is a member of both schemes and, after the move to another office, wishes only to be a court or only a police station duty solicitor then paragraph 4.19 of the Arrangements applies and the procedure in 4.16 will apply.

5.6 Transferring to another supplier outside the solicitor's current scheme:

1. The solicitor/supplier must notify the CDSM of any change in office (Arrangements 5.10(a) and (b)). If the solicitor wishes to join a new scheme then an application using the CDS 12 form will be required.
2. This will effectively be a permanent withdrawal from the current scheme and paragraph 5.4 above will apply.

6 Suspension And Removal Of Duty Solicitors

6.1 Introduction:

1. This section of the Manual provides guidelines as to how CDSMs will apply Section 5 of the Arrangements concerning the suspension and removal of a duty solicitor.
2. It is important to note that the LSC does not intend to use the powers in the Arrangements to suspend or remove duty solicitors inappropriately. In the majority of instances, discussions with the supplier will resolve any issue without the need for formal action. Nevertheless, particularly where informal discussions have not resolved the issue, it may be necessary to consider suspension/removal.

The Link With Specialist Quality Mark

6.2 Specialist Quality Mark audits:

1. The majority of the occasions which can lead to CDSMs considering action under Section 5 of the Arrangements will arise:
 - (a) during a Specialist Quality Mark audit and/or,
 - (b) as a result of a complaint from the court, the Duty Solicitor Call Centre Service, a client, other criminal justice agency or local solicitors and/or,
 - (c) analysis of statistics by the CDSM's team which are relevant to the requirements suppliers have to meet.

6.3 Discussion with quality representative:

1. In many instances discussion with the quality representative will be the most appropriate first action to take when a concern arises. If this discussion can take place in an open manner the supplier may take action which the CDSM finds acceptable without the need to start formal action under Section 5 of the Arrangements (or the Contract).

6.4 Decision to suspend and remove:

1. The decision to suspend or remove a duty solicitor should normally only be taken by the CDSM or his or her deputy. If an issue is discovered during an audit, the auditor will report to the CDSM who will consider the matter.

6.5 Communication with the supplier:

1. It would be usual for the CDSM to discuss the matter with the quality representative before commencing any formal action. If this discussion does not resolve the matter the CDSM will consider writing to the duty solicitor (with a copy to the quality representative) documenting the concerns and explaining what action is proposed. A letter must be sent prior to removal/suspension except where it is necessary to suspend or remove immediately under paragraphs 5.4 (e), (f), (g), (i) or (j) of the Arrangements. If immediate suspension/removal takes place then a letter documenting the reasons why immediate suspension/removal was necessary must be sent as soon as possible after suspension/removal. In such circumstances all reasonable efforts must be made to advise both the individual and the contracted supplier of the decision by telephone.

6.6 Failing a Specialist Quality Mark audit:

1. Paragraph 6.4 of the Arrangements provides that: “Rota slots will be allocated to CDS Suppliers in accordance with the slots on the local scheme list”. Paragraph 2 of the Arrangements defines a “CDS Supplier” as “an office of a firm of solicitors in respect of which it holds a General Criminal Contract or an Office of the Public Defender Service”. If a supplier fails an audit, Contract Standard Terms Part E paragraph 22.7 applies and the contract may be terminated. Once a contract is terminated, any rota slots allocated must be removed from the supplier and reallocated.

Suspension And Removal

6.7 Length of suspension and conditions:

1. Paragraph 5.2 of the Arrangements provides that the maximum period of suspension is 12 months. It also allows the CDSM to impose conditions prior to reapplication.

6.8 Removal:

1. If removed, the duty solicitor must obtain accreditation (see 4.1) before re-applying. Note that unless the duty solicitor is removed from CLAS by the Law Society, in practice the LSC cannot require re-accreditation.

6.9 Appeals:

1. Paragraph 5.7 of the Arrangements provides for a right of appeal if the CDSM decides to suspend or remove a duty solicitor, subject to the CDSM reviewing the decision (Arrangements 7.15). If a condition is imposed (Arrangements 5.2) the solicitor may apply to the LSC for restoration to the scheme if unable to fulfil the condition (Arrangements 5.5).

Powers To Suspend And Remove

6.10 Training (Arrangements 5.1(a)):

1. A duty solicitor is required to complete 2 hours CPD annually on police station and court issues. Note that the SQM D 5.1 requires all designated fee earners to undertake 6 hours training per annum on criminal defence matters. Suspension/removal will usually only be considered if the duty solicitor has not completed 2 hours CPD relating to police station and court issues and not if the 6 hours CPD overall has not been completed. If the latter has not been completed then non-compliances or contract sanctions can be considered. If training is booked for completion within a reasonable period, prior to the issue being raised with the supplier then usually no further action will be appropriate.
2. CDSMs may consider suspension from a scheme for, say, 3 months if the 2 hour training requirement for duty solicitor work has not been completed. Usually this option will be considered only if this training requirement has not been completed for 2 years. If suspension is decided upon then this will be activated even if the training requirement is completed in the intervening period. If training has not been completed for one year then usually the issue of non-compliance at audit and/or an undertaking from the supplier will suffice.

6.11 Duties allocated (Arrangements 5.1(b)):

1. The duty solicitor is required to undertake personally a number equivalent to the majority of rota sessions allocated to that solicitor. The period is not specified but 12 months should be taken as a guide. For example, if 12 police station rota duties are allocated in a year, the duty solicitor can swap these duties (either inside or outside the supplier) but must undertake at least 51% of the total allocated during the year (either their own duties or those which someone else has swapped to them) which in this example is seven.
2. If a duty solicitor is a member of more than one scheme then the total duties allocated could be considered and not those for one scheme alone. Alternatively CDSMs could consider compliance for each scheme separately. It would be acceptable to allow a duty solicitor to withdraw from one scheme on which he or she is under performing and indeed this should be encouraged.
3. This is to prevent the situation where a duty solicitor is allocated rota duties and does not undertake a reasonable proportion of those duties personally but reallocates the duties to another member of the supplier.
4. Promis (the rota production software) will show the volume of slots allocated to a duty solicitor. During audit, the number of police station and court sessions actually undertaken by that duty solicitor should be compared with those allocated.

6.12 Criminal defence work generally (Arrangements 5.1(c)):

1. Duty solicitors are required to undertake criminal defence work generally. This can best be demonstrated at audit when the number of cases conducted by each duty solicitor can be observed. The types and volumes of cases undertaken together with the volume of court and police station duties conducted will need to be assessed. The 12 police station cases referred to can be own or duty solicitor cases.

6.13 Unreasonable failure to attend police station (Arrangements 5.4(a)):

1. The Contract Specification Part B, paragraphs 8.2.6(b) to (e) specifies those occasions when attendance at the police station, rather than telephone advice only, should be provided. If attendance has not taken place for good reason, this must be detailed on the file.

6.14 Inappropriate use of representative (Arrangements 5.4(b)):

1. The Contract Specification Part B, paragraph 8.2.7 requires duty solicitors to consider when it is appropriate to attend themselves or when an accredited representative could be sent. Note that there are no express criteria in the Contract defining when an accredited representative should not be used and, if the duty solicitor considers it is appropriate to send an accredited representative, it is generally a matter for his or her individual judgment.
2. Nevertheless it may be appropriate to ask a duty solicitor why he or she considered it appropriate to send an accredited representative e.g. if the representative has only recently become accredited and a suspect is charged with serious indictable offences.

6.15 Failure to accept panel cases (Arrangements 5.4(c)):

1. The duty solicitor must accept a reasonable number of panel calls within a particular scheme. The Call Centre Service will provide reports of all schemes' performance on a 6 monthly basis and the percentage of panel calls accepted by each duty solicitor will be shown. Those that deviate significantly from the average within a scheme should be considered for action. Alternatively a complaint may be received about an individual solicitor which will initiate this investigation.
2. Suppliers will not receive reports as to their performance against this target until under-performance is identified. The principle to be adopted by the LSC is that the under-performance must be advised to the supplier and time allowed for the supplier to implement any corrective action before any suspension/removal is considered.

6.16 Failure to accept rota cases (Arrangements 5.4(d)):

1. Again no numerical target exists for individual duty solicitors, however, the CDS expects a duty solicitor to accept all rota calls whilst being paid standby unless that duty solicitor is already dealing with a duty solicitor matter (Contract Part B, paragraph 8.2.2). The solicitor may undertake own solicitor work whilst on rota duty but not so as to interfere with his or her ability to respond to rota cases. On a first occasion, where duty calls are not accepted without good reason, it will usually be appropriate to warn the duty solicitor rather than to consider suspension. Suspension and removal do, however, remain an option for a series of such instances.
2. Please note that the General Criminal Contract covers cases where police station advice is required by clients being held in connection with the investigation of an immigration offence. The requirement for duty solicitors to accept all rota calls whilst being paid standby, as outlined above, includes the acceptance of such immigration cases referred to them by the Duty Solicitor Call Centre. An example letter explaining this position can be found at **Appendix 6B**.

6.17 Failure to carry out duties (Arrangements 5.4(e)):

1. The CDSM may consider suspension or removal if a duty solicitor fails to comply with any requirement in the Arrangements or local instructions (see 2.9) or any Contract requirement.

6.18 Investigation of duty solicitor (Arrangements 5.5(f)):

1. CDSMs will need to approach the issue of a duty solicitor under investigation sensitively. The CDSM must take into account that, at the time the decision is being made, the duty solicitor will usually not have been convicted and that suspension or removal could have a serious impact on the solicitor's income. Against this the CDSM has to balance whether those asking for the duty solicitor would consider it acceptable that the solicitor should represent them as duty solicitor. For example, if a duty solicitor was charged with a minor motoring offence, no action would be taken by the CDSM. If a duty solicitor is charged with sexual offences, the CDSM may consider suspension appropriate until the matter is resolved. The guidance at paragraph 6.3 should be considered as should discussion with the CDS Policy Team. Particular care must be taken not to seek guidance from members of the regional committee as the committee may need to act as the appellate body.

6.19 Competence (Arrangements 5.4(g)):

1. Concerns about the competence of a duty solicitor may be drawn to the CDSMs attention by other duty solicitors, the court, police or a client.
2. Competence may include non-legal issues such as falling asleep in interview (this could alternatively be considered as an 'other good reason' (see 6.23) or legal issues such as incompetent legal advice.

3. The duty solicitor should be sent details of the concerns about his or her competence and given the opportunity to respond. If the CDSM remains concerned about the solicitor's competence the matter should be referred to the Law Society's Criminal Litigation Accreditation Scheme (which is now responsible for duty solicitor accreditation) via CDS Policy Team.
4. Where the Law Society has removed a duty solicitor from accreditation under CLAS the letter at Appendix 6A should be sent.

6.20 Geographical location following review (Arrangements 5.4(h)):

1. This allows CDSMs to remove a duty solicitor if he or she no longer meets the location requirements (see 4.20).

6.21 Designated fee earner (Arrangements 5.4(i)):

1. "Designated Fee Earner" is defined in Part D of the Contract.

6.22 Requirement to be court and police station duty solicitor (Arrangements 5.4(j)):

1. The requirement to serve on both a court and police station scheme (Arrangements 4.19) may be waived (see Arrangements 4.14 to 4.18).

6.23 Other good reason (Arrangements 5.4(k)):

1. Although this provides a "catch all" provision, great care should be taken in its use. If a concern arises, it will usually be possible to use other paragraphs from Section 5.4 of the Arrangements. It is recommended that careful consideration be given before using this paragraph. It will usually be sensible to consult CDS Policy Team prior to any action.

6.24 Effect on rota slots already allocated:

1. If a duty solicitor is suspended or removed, any slots allocated should be redistributed by the CDSM. This may include allocating slots to a successful new applicant who has not been allocated slots on the current rota. Slots should not be reallocated within the same supplier as the suspended duty solicitor

6.25 Membership of other schemes:

1. When considering suspension or removal, CDSMs should consider whether this should apply to other schemes in the CDSM's region for which the duty solicitor is also a member. If the duty solicitor is also a member of a scheme in another region, early consultation should take place with that scheme's CDSM.

6.26 Effect on the Contract:

1. If a duty solicitor who is also a supervisor is suspended or removed, the CDSM must confirm with the contracted supplier how supervisor standards will be achieved. The CDSM may agree arrangements for a temporary supervisor while full supervisor requirements are achieved within a reasonable period. If the Contract may be suspended, consultation with CDS Policy Team is recommended. If the supervisor requirements cannot be achieved then termination of the Contract under Clause 20.7 (GCC Standard Terms Part E) must be considered. The Regional Director must approve this decision.

6.27 Duty solicitor and own client work:

1. The requirements in the Arrangements apply only to duty solicitor work. This means that if:
 - (a) a duty solicitor breaches the requirements in the Arrangements for a duty solicitor matter, then sanctions in the Arrangements apply.
 - (b) an accredited representative gives cause for concern, this will be dealt with under the Police Station Register Arrangements 2001 (**Appendix 4B**) or the Contract.
 - (c) a duty solicitor conducts own client work and demonstrates an unsatisfactory level of competence, it may be appropriate to consider sanctions under the Arrangements on the ground that a satisfactory level of competence cannot be assured for duty solicitor work (see 6.18).
 - (d) a solicitor only undertakes own client work and shows an unsatisfactory level of competence, the sanctions in the Arrangements cannot apply and the concern must be resolved through the Specialist Quality Mark/Contract requirements.

6.28 Pregnancy:

1. A number of queries have arisen regarding duty solicitors who are on maternity leave. The approach agreed with the Law Society is as follows:
 - (a) The CLAS certificate lasts for five years, therefore the LSC will continue to allocate duty slots to the supplier, providing they have at least one other duty solicitor;
 - (b) The individual should report to The Law Society (as required by CLAS) whenever they no longer undertake criminal defence work generally. The Society will consider suspending CLAS membership (and advising the LSC) but this is very unlikely in the case of maternity leave;
 - (c) Both The Law Society and the LSC will diary to review with the individual annually. Each case will be considered on its merits but an absence of two or more years is likely to trigger suspension. Depending on how long the absence is after two years we may consider refresher training and undertaking some own client work prior to re-establishing as a duty solicitor; again each case will be considered on its merits;

7 Appeals

7.1 Introduction:

1. This section provides guidance about how appeals should be handled under the Duty Solicitor Arrangements 2001. This guidance does not cover any appeal against the application of a Contract sanction or appeals against non-accreditation by an assessment organisation (Arrangements 4.23).

7.2 Decisions which can be appealed:

1. Appeals can be made to the regional committee against a:
 - (a) refusal by the CDSM to “passport” a duty solicitor (Arrangements 4.6), e.g. a duty solicitor believes that he or she was a member of a local scheme but the LSC have no such record,
 - (b) refusal of an application to join a first or additional scheme for geographical reasons (Arrangements 4.8 to 4.13),
 - (c) refusal of application for non-geographical reasons (non-acceptance because of conditional practising certificate, criminal investigation or investigation by OSS) (Arrangements 4.15 to 4.18),
 - (d) decision not to allow a request for a solicitor to act as a court or police station duty solicitor only (Arrangements 4.19),
 - (e) suspension or removal from a scheme (Arrangements 5.2 or 5.4),
 - (f) a decision to suspend or remove a police station representative under paragraph 6.4 of the Police Station Register Arrangements 2001,
 - (g) a decision to suspend a solicitor from acting as a supervising solicitor for probationary representatives under Part B, Rule 3.3 of the Contract,
 - (h) a decision to refuse to register a police station representative under paragraph 2.2 of the Police Station Register Arrangements 2001.
2. Where an application is rejected because evidence of competence (accreditation) has not been provided (Arrangements 4.4) there is technically a right of appeal (Arrangements 7.13(a)). However, the regional committee has no power to consider competence in this context (they do under 5.4(g) of the Arrangements where a solicitor is already a duty solicitor) and would have to reject the appeal.

7.3 Decisions which cannot be appealed:

1. An appeal cannot be made to a regional committee against a refusal, revocation or suspension of Accreditation by the Law Society. Appeals should be directed to the relevant Accreditation assessment organisation or to the Law Society (Arrangements 4.23).
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7.4 Time Limit:

1. If the application is refused detailed reasons must be provided to the applicant. An appeal should be received in writing within 30 days of receipt of the decision against which the appeal is to be made (Arrangements 7.14). Regional committees have discretion to accept an appeal after 30 days for good reason. A refusal to allow out of time appeals is likely to cause more work for the CDSM as there is nothing to stop the applicant applying again. The question of whether to accept an appeal out of time must be decided by the regional committee when determining the appeal. When submitting an appeal, the appellant shall submit written representations (Arrangements 7.14).

7.5 What happens after an appeal is received:

1. The appeal should be checked to ensure that:
 - (a) it has been received within 30 days of receipt by the appellant of the decisions against which an appeal is to be made (see 7.4),
 - (b) the decision which is being appealed is capable of being appealed (see 7.2 to 7.3),

If an appeal is received which does not meet these criteria, the letter at **Appendix 7A** may be used.

2. An appellant may insist on the appeal hearing going ahead as it is only the appeal committee which has to power to decide whether to hear an out of time appeal. The appeal committee should not be discouraged from hearing the appeal as, otherwise, the solicitor will simply start the process all over again.

7.6 Re-consideration of initial decision:

1. The papers should be passed to the CDSM who will reconsider the matter afresh and decide whether to change his or her decision or whether the matter should proceed to the regional committee (Arrangements 7.15). This review should be documented. If the decision by the CDSM is to change the original decision, the appellant must be advised in writing. The CDSM will also consider whether any training need for CDSM staff has been suggested by the original decision.

7.7 Administration of appeal process:

1. The CDSM and his or her staff must process the appeal application where reconsideration by the CDSM (see 7.6) has not removed the need to appeal. Where the appeal is to go ahead the CDSM must convene the regional committee or a sub-committee to hear the appeal (see 7.8). The CDSM and his or her staff cannot advise the committee hearing the appeal or minute the appeal.

7.8 Regional committee or sub-committee to hear appeal:

1. There is nothing to prevent the full regional committee hearing an appeal. However, it is intimidating for an appellant to appear before the full committee and, if they do, it is not recommended that members other than solicitor and lay members participate subject to their being a quorum.
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2. The better option is for a sub-committee to hear appeals. The members of the sub-committee must be appointed by the regional committee itself or by the chair of the regional committee (Arrangements 7.9). The CDSM has no power to appoint the sub-committee. A sub-committee should consist of at least three members (Arrangements 7.9). The majority of members of such a committee should be duty solicitor members. A lay member can be selected as the third member of a sub-committee but three duty solicitors and no lay member is acceptable. It is recommended that, wherever possible, appeal meetings should be planned with two duty solicitor members and one lay member. CDSM
3. In rare cases it may be necessary to consider asking another regional committee (Arrangements 7.15) to hear the appeal. This may happen where the members of the regional committee covering the scheme being applied for have conflicts of interest with the appellant or have sat on previous appeal hearings and the appellant is concerned that they may not be impartial.
4. Appeals should be heard within three months (Arrangements 7.16) so CDSMs will need to schedule meetings promptly.

7.9 Letter about appeal arrangements:

1. If the CDSM does not change his or her decision following a reconsideration (see 7.6), a letter (**Appendix 7B**) must be sent to the appellant about the appeal arrangements covering the following points:
 - (a) date, time and place of hearing,
 - (b) whether before the full regional committee or a sub-committee. If the former, a warning about the size of the committee,
 - (c) that the appellant may attend the hearing and that the committee may require the appellant to attend (Arrangements 7.16),
 - (d) that the CDS staff may be present at the appeal (Arrangements 7.16),
 - (e) that the committee will rehear the case (Arrangements 7.18) and that the committee will not be restricted to a consideration of points considered by the CDSM,
 - (f) that if new issues are raised which were not mentioned in the written representations (Arrangements 7.14) the committee has a discretion not to consider them if they are not notified to the CDSM 14 days before the hearing (Arrangements 7.17),
 - (g) the committee may exclude the appellant from other schemes (Arrangements 7.20).

7.10 Quorum and members participating in appeal hearing:

1. The quorum shall be:
 - (a) If the hearing is by the full regional committee, one-third of the members. This should not include any representative of the scheme to which the appeal relates (Arrangements 7.19).
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- (b) If by a sub-committee, at least one third of the members of the sub-committee with a minimum of 2 members.
- 2. A solicitor member of the regional committee representing the scheme to which the appeal relates cannot participate in the appeal (Arrangements 7.19) and, even if a member of a different scheme, a member of the same supplier as the appellant should not participate.

7.11 Circulation of papers:

- 1. Copies of the appeal papers should be sent to each member of the appeal committee about 7 days before the hearing. It is recommended that a copy is sent to the appellant as this is likely to save time at the hearing.
- 2. The appeal papers should include:
 - (a) the CDS12 application form,
 - (b) the CDSM's letter rejecting the application,
 - (c) relevant correspondence between appellant and CDSM,
 - (d) the appellant's written representations when asking for the appeal,
 - (e) the CDSM's letter following the review (Arrangements 7.6),
 - (f) any other relevant documents e.g. timetables, maps, distances, etc.,
 - (g) a copy of **Appendix 7F**,
 - (h) any relevant extracts from the guidance in this Manual.

7.12 Appeal hearing:

- 1. The procedure set out in Appendix 7F should be followed.
 - 2. If other solicitors are likely to be affected e.g. in connection with the interpretation of the geographical criteria if an appeal is successful, the CDSM presenting the case should, when introducing the case, explain to the appeal committee that decisions have been made on a similar basis in respect of a number of other solicitors. The CDSM should, in such cases, provide the committees with the number of duty solicitors remaining on the scheme and how many have been removed or refused admission so that the committee is aware of the wider consequences of its decision. The CDSM should also be able to confirm that he or she is satisfied that the number of duty solicitors remaining available are sufficient to provide cover. The CDSM should also make sure that the committee have a copy of the guidance including the Commission's reasons for having the geographical selection rules (see Arrangements 4.20.8(a)).
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7.13 Advising appeal committee:

1. The CDSM and his or her staff must not advise the committee hearing the appeal. It is essential that the committee comes to an independent decision about the appeal. This independence could be compromised if the CDSM or his or her staff who made the original decision and then reconsidered it were also able to advise the committee on appeal. The following options are available for advising the committee:
2. It is recommended that the advisor to the appeal committee should be a CDSM or another experienced member of staff from another of the LSC's regional offices or a suitably experienced member of staff from CDS Policy Team.
3. An appeal hearing can only consider issues relevant to a solicitor acting as duty solicitor. It is important that both CDSMs and regional committees are only making decisions about issues relating to duty solicitor work e.g. not being available whilst on rota and not issues relating to own solicitor cases.
4. Occasionally a CDSM may make a decision based on a complaint from another duty solicitor, the court or the police. If the duty solicitor concerned appeals this decision, it may be necessary to request that the complainant attend the appeal hearing so that the regional committee can hear both the regional committee and the duty solicitor will be entitled to question the complainant.

7.14 Minuting:

1. The minuting should be undertaken by a member of the CDSM staff whether or not the CDSM is participating under paragraph 7.16 of the Arrangements. A full minute needs to be prepared where the committee dismisses the appeal. Where the appeal is allowed it is probably only necessary to keep a brief note on the file as it is unlikely that the appellant will, once admitted to the scheme applied for, have any further interest in the matter.
 2. The minute of an appeal should include the following information:
 - (a) the date of the hearing,
 - (b) the names of the committee members participating,
 - (c) names of CDS staff in attendance,
 - (d) the name of the appellant,
 - (e) whether the appellant was in attendance,
 - (f) the name of the scheme(s) to which the appeal relates,
 - (g) paragraph number(s) of the Arrangements not complied with,
 - (h) the committee's reasons in detail,
 - (i) evidence for each non-compliance,
 - (j) if necessary, the above for each scheme to which the appeal relates,
 - (k) the point at which the appellant, CDSM and the advisor to the committee withdrew from the appeal hearing so that the committee could consider its decision,
 - (l) if the CDSM was participating under paragraph 7.16 of the Arrangements, that the CDSM withdrew at the same time as the appellant.
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3. The letter at **Appendix 7C** (letter where appeal is allowed) or **Appendix 7D** (letter where appeal dismissed) should be sent to the appellant as soon as the committee has made its decision.
4. Draft minutes should then be prepared where the appeal is refused and should be sent to the chair of the committee for approval and his or her signature. Once approved, a copy should be sent to the appellant in cases where the appeal has been dismissed.

7.15 Techniques for Minuting:

1. It will be noted from 7.12 that the minute will need to be quite detailed. The minuter must either take very careful notes during the hearing and write the minutes up as soon as possible thereafter (the longer this job is left the more difficult it becomes!) or arrangements should be made to tape record the hearing. If this is done then the chair of the committee should point this out to the appellant. If tape recording is going to be used, it is desirable to experiment beforehand to ensure that a satisfactory recording is likely to be made from all around the table at which the committee and the appellant will sit. Some regional offices have experience of tape recording and you may wish to consult them (details from CDS Policy Team). It is extremely advisable not simply to rely on a tape recording but to make at least brief notes during the hearing in case anything goes wrong with the recording.

7.16 Committee expenses for appeals:

(See 8.23).

7.17 Record of appeals:

1. CDSMs must keep a record of any appeals received, the decision being appealed and whether the appeal is successful or not. Appeals should be reviewed annually and any trends of successful appeals analysed to see whether existing guidance needs amendment. **Appendix 7E** can be used for recording this information.
2. If an appeal is allowed by the regional committee the following actions will take place:
 - (a) CDSM to advise the CDS Policy Team,
 - (b) CDSM and national CDS team to consider whether (a) existing guidance needs amendment (b) previous refused/removed applications should be invited to reapply.

7.18 Appeals going against the CDSM's decision:

1. The CDSM should reflect on his or her decision in the light of the appeal committee's decision. If the CDSM considers that his or her original decision was well within the relevant guidance set out in this Manual there is no need to inform other solicitors who might be affected by the appeal decision. If this is not the case then other interested solicitors e.g. those removed from the scheme to which the appeal relates, should be informed.
 2. Where, after an appeal decision, applications are received which rely on grounds similar to those in the successful appeal, CDSM's should consider:
 - (a) continuing to apply the relevant guidance in this Manual irrespective of the appeal decision, or
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- (b) if the appeal decision is not unreasonable, applying the appeal committee's view to subsequent applications, or
- (c) if any of the CDSM's decisions made under (a) are supported by a subsequent appeal committee, consider reviewing the continued membership of the original successful applicant who, if removed or removed for a second time, can appeal again, or
- (d) consider introducing special rules under paragraph 4.12 of the Arrangements. CDS Policy Team must be consulted on this possibility.

8 Committees

8.1 Introduction:

1. The CDS aims to maintain arrangements for consultation with local scheme members (Arrangements 7.23). This aim can be achieved by having:
 - (a) regional committees (Arrangements 7.1), and
 - (b) local arrangements which may consist of:
 - i) a local committee (Arrangements 7.24),
 - ii) a liaison arrangement with e.g. a sub-committee of the local law society,
 - iii) some other effective arrangement.

8.2 Decision on local committee:

1. A letter should be sent to the administrator of every local committee before 2 April 2001 asking whether the local committee wishes to continue. The letter at **Appendix 8A** should be used for this purpose. If the response is “yes” then see 8.4 to 8.12. If the response is “no” then the letter at **Appendix 8C** should be sent to all suppliers on the scheme (and see 8.3).

8.3 Position where there is no local committee:

1. If local solicitors do not wish to continue with a local committee, some other means of consulting the local solicitors about, for example, a change to the local scheme or for getting a representative for the regional committee, will have to be used. It is suggested that:
 - (a) For local consultation, when necessary the CDSM arranges a local meeting (perhaps at the court) and sends a letter to each supplier notifying them of the time and place of the meeting and the subject matter on the agenda;
 - (b) For regional committee representative, the letter at **Appendix 8C** will ascertain whether the existing representative on the regional committee should continue (having first checked whether he or she is willing to do so) or, alternatively, whether the local solicitors wish to nominate another solicitor. If necessary a ballot will have to be undertaken following the procedure in 8.6 below.

Local Committees

8.4 Process for establishing a local committee:

1. The contracted suppliers' members of a local committee are effectively self-appointed and the local committee itself can appoint other members such as CPS police etc. There is no provision in the Arrangements for the regional committee to appoint the local committee members. Local committees will be expected to run themselves (there is no provision for the payment of administrators' expenses).

8.5 Members representing contracted suppliers:

1. The Arrangements (Arrangements 7.24 (a)(i)) provide that membership shall be open to one representative from each supplier holding a General Criminal Contract with a duty solicitor on the local scheme. The member need not be a duty solicitor but could be e.g. the supplier's business manager. If the proposed member is not a duty solicitor, he or she should have sufficient standing within the firm to agree changes that will affect duty solicitors. The CDSM may limit the number of members of a local committee if he or she considers that the committee will be too large for effective consultation and liaison once all suppliers have been consulted to see if they all wish to be represented. In practice, if more than around 20 suppliers wish to be represented (bearing in mind that there may also be other members of the local committee) the CDSM should consider limiting the number of members representing suppliers to not more than 10 (Arrangements 7.25).

8.6 Procedure for identifying local committee supplier membership:

1. The CDSM should adopt the following procedure in respect of local schemes where there is desire for a local committee to continue:
 - (a) If after the closing date for responses the CDSM considers that the number of suppliers wishing to be represented on the local committee is manageable (see 8.5) all nominated members can be appointed to the local committee and the letter at Appendix 8B sent to all suppliers on the scheme. If there are only 1 or 2 nominations then discuss further action with CDS Policy Team;
 - (b) If the CDSM considers that there will be too many supplier members the ballot letter at Appendix 8D must be sent to every supplier (not just those who responded at a) above). This letter must list every suppliers' nominee and specify the maximum number of nominees for whom votes can be cast. This should normally be 10 (Arrangements 7.25). However, the number could be more or less if the CDSM can identify a suitable justification. The return date must be specified which should not be less than 14 days from the despatch of the ballot letter;

- (c) After the return date the CDSM should supervise the counting of the votes received on the completed Appendix 8D ballot form. The elected members will be those receiving the most votes up to the maximum number of members specified in the ballot letter;
- (d) In the event of 2 or more candidates receiving an equal number of votes where there are more candidates than places, it may be necessary for a further ballot to take place using a modified version of Appendix 8D to determine which remaining candidates should be elected.

8.7 Procedure for identifying other local committee members:

- 1. Membership of local committees is also open to other members and it is desirable that there should be consultation with the existing members of the local committee. Non-supplier members can include the Justices' Clerk or his or her representative, a representative of the police force, a nominee of the local Law Society, one or more lay members and such other members as the local committee decides to appoint. The latter might include for example, a representative of the Probation Service. See section 8.13 to 8.21 below for suggestions about identifying possible members.

8.8 Terms of reference:

- 1. The terms of reference for local committees are at **Appendix 8E**.

8.9 Initial meeting:

- 1. At its initial meeting the local committee should elect:
 - (a) a committee member to attend the Court User Group and who will report back to the local committee,
 - (b) a member to attend the regional committee meetings,
 - (c) a chair and, if it so wishes, a vice-chair.

8.10 Local committee meetings:

- 1. Local committees should be encouraged to meet at least once a year or at the request of the regional committee and/or the CDSM. No specific frequency for meetings is laid down in the Arrangements.

8.11 Meetings with more than one local committee:

- 1. The CDSM may, if numbers are appropriate and if there are issues of common interests, arrange local committee meetings with representatives of more than one local committee. This will not require local schemes to be combined as they may be organised on an ad hoc basis.

8.12 Role of CDSM:

1. The CDSM or representative should try to attend meetings of, at least, the local committees covering busy schemes (see 2.1) once a year.

Regional Committees

- 1.

8.13 Membership:

1. Members of a regional committee are appointed by the committee itself (Arrangements 7.2). Members should be identified as follows:
 - (a) Local scheme: The local committee or other liaison group will usually be represented by one duty solicitor member (Arrangements 7.2(a)) on the regional committee. The local committee could be represented by more than one duty solicitor but only if the regional committee approves. If there is no local committee then the approach in 8.3 above should be followed.
 - (b) Justice of the Peace: More than one may be appointed. The existing nominee(s) of the Magistrates' Association might be invited to join the new regional committee. Alternatively the local branch of the Magistrates' Association should be consulted.
 - (c) Justices' Clerks: More than one may be appointed. The existing nominee(s) of the Justices' Clerks' Society should be invited to continue, failing which the members of the regional committee might be able to suggest a suitable replacement should be consulted.
 - (d) Police: The current police representative(s) may be willing to continue. Otherwise ask the Chief Constable to nominate an officer. It may be necessary to ascertain, where the region covers more than one police force area, whether the representative can represent all the forces or whether there should be a representative from each.
 - (e) Lay members: It is suggested that at least two lay members should be appointed. It would be good practice to consult the Regional Planning and Partnership Team in the regional office for contacts. Other possible sources for lay members are NACAB area offices, advice agencies, social services departments, Racial Equality Councils, NACRO and lay visitor schemes. The latter might be helpful in monitoring the duty solicitor arrangements at police stations.

2. The view may, however, be taken that only former lay visitors may join the regional committee as the Home Office have said that there could be a conflict of interest if a serving lay visitor becomes involved. Lay members should complete **Appendix 8F** with details of their experience which the regional committee should consider when deciding whether to appoint the lay member.
 - (a) Probation service: Approach Chief Probation Officer in same way as the police representative,
 - (b) CPS: Duty solicitor members of the committee may be able to suggest a suitable name. The CPS office covering the region should be asked to formally approve,
 - (c) District Judge (formerly Stipendiary Magistrate): Again, duty solicitor members may be able to suggest a name. No approval for such an appointment is required,
 - (d) Other members: The regional committee is given a general discretion to appoint other members. Such additional appointments might include a member of the Funding Review Committee.

8.14 Initial meeting:

1. At its initial meeting the regional committee will:
 - (a) select a chair,
 - (b) select a vice chair,
 - (c) start to consider how best to begin to fulfil its terms of reference which are shown at **Appendix 8G**,
 - (d) continue to resolve outstanding issues.

8.15 Attendance of substitutes:

1. It is preferable for the same member to attend each meeting as this aids continuity. However, where e.g. police representation is concerned it may be better for the chair of the committee to allow another representative of the relevant service to attend rather than to have no representative.

8.16 Information for new members:

1. New members and those who are considering joining a regional committee should be given the background information in **Appendix 8H**.

8.17 Regional committee meetings:

1. Regional Committee will meet a minimum of twice a year excluding any appeal meetings. The Committee itself can determine the exact number of meetings.

8.18 Role of CDSM:

1. The CDSM will have a vital role in the effectiveness - and therefore the continuation – of the regional committees. Particular care will need to be given to drawing up agendas for meetings which should consist of:
 - (a) information about CDS developments (Head Office will try to supply information in a format which can be included in regional committee agendas),
 - (b) consulting on CDS proposals,
 - (c) considering the operation of schemes within the region,
 - (d) considering any other matters which members of the committee have brought to the CDSMs attention or about which there are concerns.
2. The CDSM should ensure that a member of his or her staff is present to take a minute which must record all decisions but also needs to achieve a balance between briefly summarising any discussion which took place but avoiding becoming too lengthy. A minute of two or three pages at the most should normally be sufficient.

8.19 Tabling papers at meetings:

1. It is often impossible to avoid tabling some papers at meetings. However, such papers are usually not read properly. It may also give the impression that the agenda has been inadequately prepared.

8.20 Pre-meeting with Chair:

1. If possible, arrangements should be made for the chair to arrive half an hour early so that there is time to run through the agenda and to ensure that he or she understands what decisions are required, upon whom pressure should be placed to get on with implementing a change etc. The chair should be reminded of the importance of encouraging non-solicitor members to participate.

8.21 Sub-Committee:

1. The Arrangements provide regional committees with a power to appoint a sub-committee to which they may delegate all decisions. Sub-committees must consist of at least 3 members, one of whom must be a duty solicitor and one a lay member (Arrangements 7.8).

Expenses

8.22 Non allowable expenses:

1. No expenses can be paid to local committee members for attending local committee meetings (except child care for lay members as shown at 8.23.2(c)) nor to the chair for distributing paperwork. CDSM teams can assist in this regard if assistance is needed.

8.23 Allowable expenses:

1. Only duty solicitors, lay members and Justices of the Peace will normally be eligible to claim attendance and travelling payments. However, if the CDSM agrees, these payments may be made to other representatives. The reasoning is that other members will usually be undertaking their duties as members of the committee whilst they are in receipt of a salary from their employer.
2. The following expenses are allowable (for details see LSC Finance Manual):
 - (a) Chair's attendance at regional committee
 - (b) Member's attendance at regional committee (see 8.23.1 above)
 - (c) Lay member's child care costs for attending local or regional committee (reasonable expenses)
 - (d) Travelling and subsistence for lay members attending local committee meetings: car mileage allowance plus car parking or actual cost for public transport
 - (e) Travelling and subsistence for all members and chair attending regional committee: mileage allowance plus car parking or actual cost for public transport (see 8.23.1 above)
 - (f) Travelling and subsistence for prospective lay member attending regional committee for interview plus car parking or actual cost for public transport
3. Lay members are no longer required to show loss to claim regional attendance.

8.24 Data Retention:

1. Below is a guide as to how long different categories of data should be retained on file for:
 - (a) Three years for non-decision making matters e.g. regional committee minutes.
 - (b) Five years for decision-making matters e.g. appeal committees.
 - (c) Indefinite for special rules (proposal, consultation responses, decision, advising of the introduction).

9 Own Client/Duty Solicitor Cases

9.1 Introduction:

1. This guidance explains the differences between own client and duty solicitor work.

9.2 Background:

1. Clients at the police station are given the choice of naming a solicitor (which we refer to as “own solicitor”), the duty solicitor or choosing a solicitor from a list (see PACE Code of Practice C Note for Guidance 6A and **Appendix 3A**). For police station cases, the police will ring the Duty Solicitor Call Centre (3.27) who will arrange for a duty solicitor to be allocated or, where appropriate, engage the CDS Direct Service. For own client cases, the police will ring the solicitor direct and not involve the Call Centre Service.
2. For court work, clients will arrange attendance direct with their own solicitor who may be a solicitor the client has instructed on a previous occasion or the police station duty solicitor who has, in the past few hours advised him or her at the police station or the court will direct them to where the court duty solicitor is in the court building or arrange for one to attend.

9.3 Accepting initial call for police station work:

1. A police station duty solicitor who is on rota duty (or a colleague who is a member of the local scheme or any other scheme) must accept the case from the Duty Solicitor Call Centre. Police station duty solicitors on panel are under no obligation to accept duty solicitor cases. A case should be accepted from the Call Centre Service personally by the duty solicitor who takes the case unless the CDS has agreed in writing that a supplier can utilise a non-duty solicitor member of staff to accept duty solicitor calls (3.37).
2. For own client work anyone from the supplier can accept a request from a client.

9.4 Providing initial advice by telephone for police station cases:

1. For duty solicitor cases, only the duty solicitor may give the initial advice which may be provided over the telephone or, if more conveniently, at the police station. The only exception to be where CDS Direct has been involved in which case initial contact with the client by the supplier can be undertaken by either a Duty Solicitor or an Accredited Representative.
2. For own client cases, initial telephone advice must be provided by a solicitor who holds the Police Station Qualification (see 4.1 above)~~(who may or may not also be a duty solicitor)~~, or a probationary or accredited representative.

9.5 Attendance at the police station:

1. For duty solicitor work, once the duty solicitor has given preliminary advice, any attendance at the police station must be undertaken by a duty solicitor or an accredited representative.

2. For own client work paid for by the CDS, initial attendance must be undertaken by a solicitor complying with 4.1 above (whether or not a duty solicitor), a probationary or accredited representative. A probationary representative cannot attend for indictable only cases.

9.6 Persons permitted to deal with police station cases:

1. The following table summarises which persons may be involved with a police station case if the LSC is to pay for that assistance and the requirements in the Arrangements and the Contract are not to be breached:

	Duty solicitor case	Own solicitor case
Receiving the initial call from the Call Centre (duty solicitor case) or police station (own solicitor case)	i) Duty solicitor on relevant rota or panel (Contract Pt B 8.2.2/4) ii) Another police station duty solicitor employed by the supplier 3.5.11) (Contract Pt B 8.2.3) iii) <u>Where CDS Direct has been involved the call may be accepted by either a Duty Solicitor or an Accredited Representative.</u>	Any person
Giving initial advice	i) Duty solicitor on relevant rota or panel (Contract Pt B 8.2.11(a)) ii) Another police station duty solicitor employed by the supplier (Contract Pt B 8.2.3) iii) <u>Where CDS Direct has been involved initial contact with the client can be undertaken by</u>	Any solicitor with a practising certificate <u>complying with section 4.1 above</u> Probationary representative Accredited representative

	<u>either a Duty Solicitor or an Accredited Representative.</u>	
Attending at police station	i) Duty solicitor (as above) (Contract Pt B 8.2.11(b)) ii) Accredited representative (Contract Pt B 8.2.11 (b+c))	(as above)

9.7 “Conversion” of cases to own solicitor:

1. A question may arise as to whether a duty solicitor case can be “converted” to own solicitor. A supplier may wish to “convert” so that they can send a probationary representative to the police station even if this means the supplier is paid less than the duty solicitor rate. ~~It is unfortunately not possible to explicitly say that “conversion” is improper but, in most cases, the supplier should not “convert” as there are a series of requirements in the Contract (Part B, paragraph 8.2.6(a) to (h)) which require a client who has requested the duty solicitor to continue to be served by the duty solicitor or an accredited representative. This can be done after the end of the duty period or, for back-up or panel cases, after the initial advice is given.~~
2. Amendments to the General Criminal Contract effective from 00:01 on 1 February 2004 restrict duty solicitor rates to (a) attendances undertaken throughout a duty period or (b) attendances that take place after acceptance of the matter up until the point when the Client is released from the initial period of continuous period of custody. Any subsequent Police Station Advice and Assistance provided by the same firm on the same matter, e.g. client is bailed to return to the Police Station, shall be claimed at own solicitor rates. This amendment applies to all duty solicitor cases whether accepted as rota, panel or back-up cases.

9.8 Own client solicitor not available:

1. If a client asks for their own solicitor and that solicitor cannot be contacted, the client can then request the police station or court duty solicitor. Alternatively it is acceptable that, if the own solicitor advises the client that they cannot attend, the client should ask for the duty solicitor.
2. Where a solicitor who is currently on police station duty is requested by one of his or her clients to act on an own client basis, it is acceptable for the solicitor to claim to be remunerated at the duty solicitor rate (this avoids the solicitor refusing to accept instructions and advising the client to ask for the duty solicitor in which case the solicitor (as he or she is on rota duty) will then be contacted by the Call Centre).

9.9 Duty solicitor representatives approved by local committees:

1. Prior to the Arrangements 2001, local committees were able to approve applications from a solicitor to be accepted as a “duty solicitor representative”. This duty solicitor representative would then be able to conduct the same work as an accredited representative.
2. The classification of “duty solicitor representative” no longer exists. A solicitor who is not a duty solicitor or an accredited representative cannot be involved where the client has requested the duty solicitor (but see 9.5).

10 Rota Production

10.1 Introduction:

1. Duty solicitor rota production will be undertaken by LSC Regional Offices using the Promis (Personnel Rostering & Overtime Management Information System) software provided by Software Enterprises (UK) Ltd.

10.2 Promis:

1. The principle is that Promis will extract data from the Access database in our Regional Offices. Promis needs data entered about how rotas should be built (how many people on duty, what times slots are in place etc). Promis then builds rotas such that each duty solicitor will be allocated duties as fairly as possible. A duty solicitor cannot be allocated more than one slot in the same region at the same time.
2. If mandatory fields needed by Promis are not entered in the correct format in our Access database then upload to Promis stops. Software is installed at the front end of Access so that each time Access is opened, the software will report any corrupted fields. A further piece of software will be available that will, once the rota has been prepared, allow this to be sent to the quality representative or another nominated person by fax or E-mail thus no printing and posting of the rota will be required. The quality representative, or other nominated person, should be reminded to supply their duty solicitors with a copy of the received rota.

Availability Of Duty Solicitors

10.3 Duty solicitor holidays:

1. We do not actively seek information as to when duty solicitors will not be available. Nevertheless it is recommended that CDSMs note on the Promis system those dates when duty solicitors advise us that they will not be available. This can include any specific ongoing non-availability agreed by the LSC such as religious commitments. If a solicitor would have received more than one slot during his or her holiday period, he or she will only be compensated for one slot when he or she returns.

10.4 Bank Holidays/Christmas:

1. There are different views as to whether CDSMs should seek advice from suppliers prior to issuing a rota for the Christmas period and Bank Holidays (particularly Easter). The decision is one for CDSMs to take. A request for volunteers could confirm whether there is a duty solicitor who would be prepared to accept a rota slot for this period. The request for this information could be contained in the covering sheet when the rota prior to the period in question is issued. If sufficient volunteers cannot be identified then the rota slots will be allocated by Promis irrespective of intended availability.

10.5 Options to obtain cover:

1. It is not desirable to change a rota arrangement to a panel during public holidays. LSC have the option to change existing duty solicitor arrangements to obtain cover during specified periods (see paragraph 6.16 of the Arrangements). This could include temporarily obtaining cover from another scheme or including a duty solicitor as a member of a scheme, changing a rota from say one 12 hour period to two 6 hour periods, changing from a panel to a rota or allocating additional slots as an inducement to obtain volunteers.

10.6 Suppliers' responsibilities:

1. The Contract Part B, paragraph 8.4.1 places the responsibility on the supplier to cover allocated slots "unless exceptional circumstances arise such as staff illness".

10.7 Swaps:

1. A supplier can swap a duty with another supplier providing that the court (for court duty) or the Duty Solicitor Call Centre Service (for police duty) are advised (Contract Part B paragraph 8.2). A supplier may also swap rota duty slots within the supplier, and also within "the firm or organisation" (Contract Part B, paragraph 8.4.4). Therefore, it is possible for a supplier to swap an allocated duty slot with a duty solicitor from another scheme whom is employed by the same firm, but in a different office. The LSC does not need to be informed of such swaps and will not enter any such data on the Promis system to change future allocation of duties.

10.8 Information for solicitors on Promis:

1. **Appendix 10A** is a note for solicitors explaining how Promis works.

10.9 Barristers:

1. It is possible that a very few barristers who are employed in solicitors' offices may become duty solicitors. This is provided for in the definition of "duty solicitor" in paragraph 1 of the Arrangements. Barristers will have to be included in the Access database using their 5 digit identity number issued by the Bar Council prefixed with the letters "BAR" to distinguish them from solicitors.

10.10 Distribution of rotas:

1. The rotas are shown on a screen in Promis ready for distribution. There are two buttons on this screen. The Print button will call up a print dialog in the normal way to produce hardcopy which can be faxed or posted. Alternatively the save button will call up a file save dialog where the user selects a directory in which to save a file and types in the name to use. The type of file is already pre-selected as an E-mail (*.htm) file (after the first save the directory will also default to the directory that was used on the previous save).

2. It is suggested that the file name should be chosen so as to indicate to a recipient that it contains the rota e.g. ROTA_CARDIFF_SPRING. When a user has saved the file then they will only need to run their normal E-mail and attach the file that has been saved out of Promis, adding into the text the relevant scheme and rota name(s), and then send the E-mail in the normal way. When received, the user will see the attachment and open it.

10.11 Target for issue of rotas:

1. The LSC's Corporate Plan includes a target of 95% of rotas being issued one month in advance of the commencement date. CDSM's must therefore keep a record of the dates rotas are issued based on **Appendix 10B**.