



Legal Aid
Agency

Duty Solicitor Guidance 2018

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1. Overview

- 1.1 The 2017 Standard Crime Contract requires that Duty Solicitors undertake specific compliance requirements. These requirements were introduced to address the issue of 'ghost' Duty Solicitors and ensure a meaningful connection between individuals used by legal aid firms to obtain Duty Slots and the office those Slots are allocated against. The introduction of the requirements followed complaints of certain organisations seeking to gain an unfair competitive advantage by expanding their own share of Duty Slots through the use of Duty Solicitors that were not delivering criminal defence work.
- 1.2 The purpose of this document is to provide clarification on the operation of Section 6 of the 2017 Standard Crime Contract Specification, which deals with the "Engaged" requirements for Duty Solicitors, as set out in Paragraphs 6.22 – 6.24 of the Specification.
- 1.3 This guidance has been produced to assist Providers following a number of queries raised in relation to Duty Solicitor compliance with the Engaged requirements, which were new provisions under the 2017 Standard Crime Contract, and sets out how the LAA will interpret those provisions in practice.
- 1.4 Specifically, it deals with the general operation of Section 6, including Slot allocation and swaps, how a Duty Solicitor is Engaged, how the appropriate Sanctions should be applied and in what circumstances, and a Provider's Scheme membership.
- 1.5 A number of amendments were made to Section 6 of the 2017 Standard Crime Contract Specification in July 2018, most significantly to create a definition of "Criminal Defence Work" which is capable of being relied upon for the purposes of Paragraph 6.23 of the Specification, if appropriately documented as per Clause 8(3)(o) of the Standard Terms and provided all other Duty Solicitor requirements are met. "Criminal Defence Work" is defined as, in relation to Paragraph 6.23, defence work performed for clients in relation to a criminal investigation, criminal proceedings or a prison law matter. It includes Contract Work, work on AGFS, VHCC and the Armed Forces Legal Aid Scheme as well as privately funded work on the same types of matter that would be funded under criminal legal aid save for the client not meeting the relevant means eligibility criteria or choosing to pay privately. Work performed for a client in cross-examining a witness under Section 38 of the Youth Justice and Criminal Evidence Act 1999 is also included. It should be noted that, whilst the types of work which may count towards the 14 hours' requirement in Paragraph 6.23 has broadened, all Duty Solicitors are still required to meet the remaining Engaged requirements, including those in Paragraph 6.22.
- 1.6 Whilst the Specification places Providers under specific notification obligations in respect of the Duty Solicitor requirements, the LAA also expects Providers to approach notification in an open and honest way, reflective of the aim of working in good faith and partnership with the LAA in delivering a public service. A proactive approach by Providers to notification in cases where, for example, there may be genuine difficulties for an individual Duty Solicitor in meeting the Engaged requirements, provides the LAA with a greater opportunity (and the information needed) to consider how the contract should be applied.
- 1.7 Having regard to this approach, the performance of 14 hours' Criminal Defence Work should not be the only consideration, but a gateway to look at the factual position in any individual case, with each case to be judged on its own merits. The LAA has a responsibility to act reasonably and proportionately, taking into account all aspects of the contract and the individual circumstances, applying measures only where necessary and proportionate to the situation.
- 1.8 The LAA expects Providers to fully comply with the Contract provisions; however, it recognises that there may be some circumstances which result in a Duty Solicitor/s being unable to meet the Engaged requirements, and where the LAA should exercise its discretion not to take remedial action

(including the application of Sanctions) in respect of the failure to comply with the requirements, for example, if there is insufficient Duty Solicitor work in a particular area for a particular period that prevents Duty Solicitors in that Scheme from complying with the Duty Solicitor requirements (this would exclude situations where a Provider has a significant number of Duty Solicitors compared to other Providers on that Scheme and their Duty Solicitors cannot meet the requirements). Paragraphs 6.25 (a) and (b) also provide an exemption for Duty Solicitors in cases of maternity, paternity or sick leave (discussed further below). Any remedial action which the LAA takes (including the imposition of Sanctions) will always be considered in the specific circumstances and against the LAA's duty to act reasonably and proportionately.

2. General Operation of the Duty Solicitor Schemes

Registered Duty Solicitors

- 2.1 In order for a Provider to have at least one Duty Solicitor registered on each Duty Scheme of which they are a member, each Duty Solicitor must meet the “Engaged” requirements at Paragraphs 6.22 to 6.24 of the Specification (see below).

Allocation of Duty Solicitor Slots

- 2.2 Slots are allocated to Providers based on the number of Duty Solicitors whom they Engage, depending on the number of Slots available and the number of other Providers on that Scheme (Paragraph 6.5 of the Specification).
- 2.3 Each Duty Solicitor can only be allocated Slots for one Office and for one Provider (Paragraph 6.6 of the Specification). A Provider will be allocated Slots for any Schemes they are eligible for at that Office location.
- 2.4 It remains the obligation of the Provider to cover any Slots allocated to them on any Scheme rather than that of the individual Duty Solicitor (Paragraph 6.1 of the Specification).

Swapping Duty Solicitor Slots

- 2.5 Paragraph 6.9 of the Specification confirms that should a Provider be unable to meet their obligations to cover a Slot, then they must notify the LAA who will consider any arrangements to cover these Slots or reallocate to other Providers as appropriate.
- 2.6 For the avoidance of doubt, the LAA is content for Providers to continue to swap individual Slots amongst themselves if they are unable to cover specific times due to other commitments. Any swaps can only be with other Providers who are eligible for that Scheme.

3. Engaged Duty Solicitors

Eligibility to be deployed as a Duty Solicitor

- 3.1 A Provider's Compliance Officer for Legal Practice ("COLP") must declare upon submission of a CRM12 that their Duty Solicitors meet the requirements of the 2017 Standard Crime Contract and must maintain a Record of ongoing compliance to maintain Duty Solicitor status (Paragraph 6.15 of the Specification). Accurate records of compliance with the Engaged requirements will, in most cases, be essential in allowing Providers to demonstrate compliance with the Contract and it is of utmost importance that Providers are aware of their obligations in this respect.
- 3.2 Paragraph 6.6 of the Specification confirms that a Duty Solicitor may only be a member of Duty Schemes from a single Office for a single Provider, and Paragraph 6.5 confirms that the number of Duty Solicitors Engaged by a Provider determines the number of Duty Slots which are allocated to that Provider on a particular Scheme. Where more than one Provider submits a CRM12 or seeks to obtain Duty Slots for the same named Duty Solicitor, the LAA will consider, on the balance of probabilities, for which Provider the Duty Solicitor will be Engaged as at the commencement of the relevant Rota. Following the allocation of the Duty Slots and the commencement of the relevant Rota, the LAA may conduct verification activity to confirm that the Duty Solicitor in question was in fact Engaged by the relevant Provider at the commencement date, and continued to be so Engaged, and take any remedial action which is reasonable and proportionate in the circumstances.
- 3.3 Where the LAA has not allocated any Duty Slots in respect of a named Duty Solicitor, it will consider any appropriate remedial action in respect of the Provider who is able to demonstrate that the Duty Solicitor was in fact Engaged by them at the start, and throughout, the relevant Rota period. Any remedial action taken by the LAA will be dependent upon the individual circumstances in each case, and may take the form of allocating the Provider additional Duty Slots on a subsequent Rota.
- 3.4 Paragraph 6.32 of the Specification confirms that where a Duty Solicitor moves from being Engaged with one Provider to another Provider during a Rota period, the Provider who has already been allocated Duty Slots for that Duty Solicitor may retain them for the remainder of that Rota period. Duty Solicitors may not take any Duty Slots allocated in their name with them when they move to a new Provider. Paragraph 6.1 of the Specification confirms it is the obligation of the Provider, not the individual Duty Solicitor, to cover any allocated Duty Slots.
- 3.5 A Provider must be able to demonstrate compliance and provide the LAA with relevant records, if requested. The LAA will ask how the COLP satisfies themselves that compliance is maintained and may request to view a sample of such records. The LAA considers best practice to be for the COLP to regularly review the records to monitor that the Provider's Duty Solicitors remain compliant throughout the Rota period and the records should be capable of being used by the Provider to immediately notify the LAA where a Duty Solicitor ceases to meet the Engaged requirements.

Duty Solicitor Requirements

- 3.6 Paragraph 6.21 of the Specification sets out that Duty Solicitors may be either employees or self-employed persons or seconded from another organisation etc, however, they must in all cases be Engaged by a Provider, and comply with the requirements of Paragraphs 6.22 to 6.24. "Engaged" is defined as "meeting the requirements of Paragraphs 6.22 to 6.24".
- 3.7 All Duty Solicitors must either hold CLAS or be a previous member of a Duty Solicitor Scheme (Clause 1.1 of the Standard Terms).

- 3.8 They must also continue to meet any professional development requirements of their Relevant Professional Body on issues relevant to the law, practice and procedure in the Police Station or magistrates' courts (Paragraph 6.22 (a) of the Specification).
- 3.9 Under Paragraph 6.22 (b) of the Specification, Duty Solicitors must undertake a minimum of 36 court hearings and Police Station attendances in each rolling 12-month period to include:
- (i) a minimum of 12 magistrates' court hearings;
 - (ii) a minimum of 12 Police Station attendances (excluding telephone advice); and
 - (iii) a further 12 hearings or attendances which may be made up of any combination of:
 - i. Crown Court hearings;
 - ii. magistrates' court hearings;
 - iii. Police Station attendances; or
 - iv. magistrates' court Duty Slots including the representation of at least one client
- with at least three magistrates' court or Crown Court hearings and at least three Police Station attendances in each rolling three-month period.
- 3.10 Paragraph 6.22 (c) requires Duty Solicitors to continue to undertake Duty Solicitor work generally by, in each rolling 12-month period, undertaking Police Station Duty Solicitor attendances (excluding telephone advice) on no less than four Duty Slots allocated by us in that Duty Solicitor's name.
- 3.11 Police Station attendances may be from Duty work, own client work and/or private work, and may be for attendances at Police Stations both inside and outside of the Duty Scheme(s) on which the Duty Solicitor is registered. If a Duty Solicitor wishes to rely on private work at Paragraph 6.23 of the Specification s/he must be able to provide demonstrable evidence of compliance and maintain a record of the same (Paragraphs 6.15 and 6.27 of the Specification).
- 3.12 If a Duty Solicitor swaps a Duty Slot with another Duty Solicitor via the DSCC and undertakes a Police Station Duty Solicitor attendance (excluding telephone advice) on that swapped Slot, that Police Station Duty Solicitor attendance counts towards 1 of the 4 Police Station Duty Solicitor attendances that the Duty Solicitor must do under Duty Slots allocated in his or her name (under Paragraph 6.22 (c) of the Specification). Swaps can also apply to court Duty work and where the court Duty Solicitor acts as back up, where at least 1 Client was represented.
- 3.13 Court hearings may be a mix of legal aid and private work. Where a Duty Solicitor includes a magistrates' court Duty Slot where they represented at least one Client towards the minimum of 36 court hearings and Police Station attendances, it only counts as 1 hearing/attendance irrespective of the number of Clients represented during the Slot.

14 Hours' Requirement

- 3.14 Paragraph 6.23 of the Specification requires Duty Solicitors to undertake a minimum of 14 hours' Criminal Defence Work per week from the Office for which those Duty Slots have been obtained.
- 3.15 "Criminal Defence Work", in relation to Paragraph 6.23, is defined as defence work performed for clients in relation to a criminal investigation, criminal proceedings or a prison law matter. It includes Contract Work, work on AGFS, VHCC and the Armed Forces Legal Aid Scheme as well as privately funded work on the same types of matter that would be funded under criminal legal aid save for the client not meeting the relevant means eligibility criteria or choosing to pay privately. Work performed for a client in cross-examining a witness under Section 38 of the Youth Justice and Criminal Evidence Act 1999 is also included.

Types of funding that count towards the 14 hours' requirement

3.16 The important consideration is that only work performed for Clients may count as Criminal Defence Work and towards the 14 hours' requirement at Paragraph 6.23. Work performed for clients may be funded in a number of ways including the following:

- Contract Work;
- Litigators Graduated Fee Scheme (which is Contract Work as set out in the table at Paragraph 1.3 of the Specification);
- Advocates Graduated Fee Scheme;
- Criminal Very High Cost Cases;
- The Armed Forces Legal Aid Scheme for criminal military cases in England and Wales;
- Privately funded work on the same types of matter that would be funded under criminal legal aid save for the client not meeting the relevant means eligibility criteria or choosing to pay privately; and
- Work paid out of Central Funds for cross-examining a witness under section 38 of the Youth Justice and Criminal Evidence Act 1999.

Types of work that count towards the 14 hours' requirement

3.17 Work performed for a Client including preparatory work, advocacy, litigator attendance at court, travel and waiting (irrespective of whether it is claimable under the appropriate criminal legal aid fee) may count towards the 14 hours' requirement. File reviews conducted by a Supervisor, as required by the Contract (Paragraph 2.18 of the Specification), where advice is given which progresses the Client's case, may also count if justified/documentated.

3.18 The LAA cannot provide an exhaustive list of individual types of work that would not count towards the 14 hours' requirement, but the following are provided as illustrative, non-exhaustive, examples of types of work that we would not consider to be work performed for a Client. For example, general supervision, general file reviews that do not progress the case, appraisals, billing, costs appeals and time spent corresponding with the LAA on compliance issues. For the avoidance of doubt, time spent on Police Station Rota standby may not be counted towards the 14 hours' requirement, nor may time spent on any internal Own Client standby rota set up by the Provider.

Documenting the 14 hours' requirement

3.19 Providers must be able to sufficiently evidence the work undertaken in respect of each Duty Solicitor for it to count towards the 14 hours' requirement. Providers must also maintain records evidencing compliance with these requirements to maintain Duty Solicitor status (Paragraph 6.15 of the Specification). There is no prescribed format for evidencing this work, other than it must meet the requirement at Clause 8.3(o) of the Standard Terms that you maintain "true, accurate and complete records". Work performed for clients under either LGFS or AGFS must be sufficiently documented for it count towards the 14 hours' requirement, even though the work may not need to be recorded for the LGFS or AGFS claim itself. For any privately funded work that is used towards the 14 hours' requirement, it is the Provider's responsibility to ensure that they are able to disclose sufficient evidence of the work done to the LAA, including obtaining any necessary Client permissions. Where Providers are unable to disclose such evidence, the work cannot count towards the 14 hours' requirement.

Reviews of the Duty Solicitor Requirements

3.20 A Duty Solicitor is required to undertake 14 hours of Criminal Defence Work per week measured over a rolling month (paragraph 6.24 of the Specification).

Why a rolling monthly period and how does it operate?

- 3.21 The 14 hours requirement is measured on a rolling monthly basis to provide flexibility in accommodating different working patterns. However, setting the measurement at more than a rolling month would risk allowing “ghost” duty solicitors back onto the rotas.
- 3.22 In practice, when considering compliance with the Engaged requirements, the LAA may take account of a wider period of time if necessary. When considering any remedial action, the LAA will also only apply any Sanction to the extent that it is reasonable and proportionate for it to do so, and this may include not enforcing Sanctions against a Provider in respect of a Duty Solicitor’s failure to meet the Engaged requirements if there are justifiable reasons to do so. This is echoed in the wording of Paragraph 6.46, discussed in further detail below.
- 3.23 There is not an exhaustive list of what constitutes a justifiable reason for the LAA applying its discretion, but an example may include the Duty Solicitor being on annual leave for a reasonable period of time. The Provider will need to document the reason and, in general, be able to demonstrate that the Duty Solicitor has been consistently averaging 14 hours’ Criminal Defence Work per week previously. Please note that where a Duty Solicitor has not met the Engaged requirements and the LAA has exercised its discretion, we do not expect that Duty Solicitor to make the hours up during later weeks.

14 Hours’ Requirement – From the Office from which the Slots have been obtained

- 3.24 Work that counts towards the 14 hours’ requirement at Paragraph 6.23 may be undertaken outside of the Office but must have resulted or been obtained from that Office. For example, a Police Station duty attendance or representation in court would count as Criminal Defence Work for the Office from which the work was originally generated.
- 3.25 Demonstrating that work has been derived “from the Office” is made more complex with the introduction of AGFS, VHCC, Armed Forces Legal Aid Scheme work, privately funded work and Section 38 cross-examinations, as the LAA is aware that some Providers operate centralised Offices for these types of work. The LAA’s general position is that a Provider may freely decide how they wish to organise their business but work will be treated as being linked to the Office in the Scheme area in which the work was originally generated (i.e. the Police Station Scheme, or the Magistrates Court from which the Representation Order was generated).

4. Applying Sanctions & Suspending Duty Solicitors

Where a Duty Solicitor fails to meet the Contract Requirements

- 4.1 Section 6 of the Specification provides the LAA with various measures which can be taken against a Provider whose Duty Solicitor/s do not meet the Engaged requirements. The measure taken will depend on the specific circumstances, including the length of any delay in notifying the LAA, for example, by waiting to the next Contract Management visit. In all cases, the LAA will (and does) take a holistic view, and the LAA will only apply a Sanction to the extent that it is proportionate to the circumstances, having regard to any wider concern that the LAA may have as to a Provider's capability as a result of the number and/or range of the breaches (Clause 24.4 of the Standard Terms). The LAA must, however, be mindful of the impact on other Providers on a Scheme, where a Provider has obtained Duty Slots in respect of Duty Solicitors who have not met the Engaged requirements, and the commercial advantage which may have been derived as a result.
- 4.2 Where a Duty Solicitor does not meet the Engaged requirements (Paragraphs 6.22 to 6.24 of the Specification), the LAA may suspend or exclude that Duty Solicitor from any Duty Solicitor Work (as per Paragraph 6.44 of the Specification) and remove the Duty Slots issued in their name (under Paragraph 6.45 of the Specification, subject to Paragraphs 6.31 and 6.32).
- 4.3 Paragraph 6.26 of the Specification also allows the LAA to consider non-payment of work conducted under Duty Solicitor Slots allocated for a Duty Solicitor who does not meet the Engaged requirements.
- 4.4 Under Paragraph 6.30 of the Specification, the LAA may consider removing Slots allocated to a Duty Solicitor from future Rotas.
- 4.5 Paragraph 6.25 of the Specification confirms that a Provider may retain Slots allocated to Duty Solicitors who are absent as a result of maternity or paternity leave (up to twelve months) or as a result of sick leave (up to a maximum of six months). Providers must be aware of the requirements to notify the LAA in such circumstances, as set out in Paragraph 6.29 (b) and (c) of the Specification. Please see paragraphs 4.10 and 4.11 of this guidance for more detail on the notification requirements. Paragraph 6.33 of the Specification confirms that where a Duty Solicitor is absent as a result of maternity/paternity leave or sick leave, the LAA will remove all Duty Slots allocated in respect of that Duty Solicitor at the conclusion of that specified period in accordance with Paragraphs 6.47 to 6.49 of the Specification.
- 4.6 When the LAA is considering suspending or excluding any Duty Solicitor for failing to meet the Engaged requirements, the LAA will have regard to Paragraph 6.46 of the Specification, which confirms that the LAA should not suspend or exclude a Duty Solicitor where there is a reasonable justification for not meeting the Engaged requirements. As discussed previously, the LAA will always consider the specific circumstances in the round, and will act reasonably and proportionately when considering any remedial action.

Notifying the LAA

- 4.7 Paragraph 6.29 of the Specification sets out specific notification requirements for Providers in respect of Duty Solicitors, which are discussed further below. In addition to the specific notification requirements, Clause 21.9 of the Standard Terms requires a Provider to notify the LAA within 21 days of any significant changes in a Provider's personnel deployed in Contract Work and of any other changes affecting a Provider such as might reasonably be expected to significantly affect a Provider's ability to perform Contract Work. Clause 21.14 of the Standard Terms also requires a

Provider to notify the LAA immediately (and provide details) if it becomes aware of any event which would entitle the LAA to terminate the Contract and/or to apply a Sanction. The requirement of Providers (and the LAA) to act in good faith (under Clause 2.3 of the Standard Terms) may be relevant when a Provider is considering whether a notification should be made to the LAA in respect of Duty Solicitors (or any other matter). Proactive notification is essential to the concept of working in good faith and partnership with the LAA.

- 4.8 Paragraph 6.29 (a) of the Specification requires a Provider to tell the LAA immediately when a Duty Solicitor gives notice of leaving or leaves the Provider's employment or otherwise ceases or is to cease being Engaged by the Provider as a Duty Solicitor. If a Duty Solicitor ceases to be Engaged during a Rota period, under Paragraph 6.32 of the Specification the Provider retains the Duty Solicitor Slots until the end of the current Rota period. A Provider must have at least one Duty Solicitor registered on the Duty Scheme, as discussed below.
- 4.9 Where a failure to immediately notify the LAA under Paragraph 6.29 (a) to (f) results in additional Slots being allocated to a Provider, the LAA may consider applying Paragraph 6.30. Where a Provider's failure to immediately notify the LAA of a change in circumstances is at Paragraph 6.29 (a) – (c), the LAA will consider applying Paragraph 6.26 or Paragraph 6.30, or both, as appropriate to the specific circumstances.
- 4.10 A Provider must notify the LAA immediately when a Duty Solicitor commences maternity or paternity leave, and when it is known that a Duty Solicitor will be absent as a result of maternity or paternity leave for a period of greater than 12 months from the date of first absence (Paragraph 6.29 (b) of the Specification). Should the Provider fail to notify the LAA once 12 months of leave have elapsed and the Duty Solicitor has not returned to work, the LAA will consider applying either Paragraph 6.26 or Paragraph 6.30, or both, as appropriate to the specific circumstances.
- 4.11 Similarly, Paragraph 6.29 (c) requires a Provider to notify the LAA a Duty Solicitor is absent as a result of sick leave for at least 2 months and for any period in excess of 6 months from the date of first absence. Should the Provider fail to notify the LAA, the LAA will consider applying either Paragraph 6.26 or Paragraph 6.30, or both, as appropriate to the specific circumstances.
- 4.12 Where a failure to notify the LAA results in additional Duty Slots being allocated to the Provider to the detriment of other Providers, the LAA will ordinarily apply Paragraph 6.30 and make an equivalent reduction in the Duty Slots allocated to the Provider on a future Rota.

Suspending or Excluding Duty Solicitors

- 4.13 As indicated at Paragraph 6.26 of the Specification, Clause 24 of the Standard Terms allows the LAA to apply Sanction No. 6 (suspend or remove your Rota Allocation) where a Provider persistently fails to comply with the Duty Solicitor requirements.
- 4.14 In general, the LAA will consider "persistent failure" to mean a failure to comply with the Engaged requirements over a number of rolling months.
- 4.15 Sanction No. 6 allows the LAA to suspend or remove Duty Slots from relevant Rotas. These may be historic Rotas and the equivalent number of Slots may be removed from future Rotas and/or the LAA may treat any claims for such Slots as overpayments (Paragraph 6.26 of the Specification).
- 4.16 Where a Duty Solicitor ceases to be Engaged during a Rota period, Paragraph 6.32 of the Specification allows the Provider to retain the Slots allocated in that Duty Solicitor's name until the end of the current Rota period. Paragraph 6.32 does not apply where a Duty Solicitor ceased to be Engaged in a previous Rota period. If there has been a breach by a Provider in failing to notify the LAA that a Duty Solicitor has ceased to be Engaged, the LAA may remove from the Provider under Sanction No. 6 some or all of the Duty Slots allocated to them in the relevant Rotas.

4.17 For the avoidance of doubt, a Provider cannot rely upon the submission of their CRM12 for the next Rota to notify the LAA that a Duty Solicitor will cease to be Engaged nor wait until the next Contract Management visit. Neither constitute notification. Notification should be by email to a Provider's Contract Manager.

5. A Provider's Duty Scheme membership

Requirements to maintain Duty Scheme membership

- 5.1 Under Paragraph 6.2 of the Specification, to maintain Duty Scheme membership, a Provider must at all times during the Contract Period have at least one Duty Solicitor registered on each Duty Scheme they are a member of and provide Duty Solicitor services on that Scheme.
- 5.2 If a Provider ceases to have any Duty Solicitors who meet the Engaged requirements (at Paragraphs 6.22 – 6.24 of the Specification), they will not be in breach of Paragraph 6.2 of the Specification for the remainder of the current Rota period, provided that the Provider informs the LAA immediately and puts in place satisfactory arrangements to cover their remaining Duty Slots (Paragraphs 6.32 and 6.9 of the Specification).
- 5.3 In such circumstances, a Provider would need to submit a CRM12 for Duty Solicitors it reasonably considers will be able to meet the Engaged requirements for the next Rota, in order to maintain their Duty Scheme membership.
- 5.4 If a Provider ceases to have any Duty Solicitors who meet the Engaged requirements as a result of their Duty Solicitors going on either maternity/paternity leave or sick leave, the LAA will consider a Provider to have at least one Duty Solicitor registered on the Duty Scheme, as Paragraph 6.25 (a) and (b) allow a Provider to retain the Slots for Duty Solicitors who are absent as a result of maternity/paternity leave for up to 12 months, or who are absent as a result of sick leave for up to 6 months.
- 5.5 In such circumstances, a Provider must put in place satisfactory arrangements to cover their remaining Duty Slots. In addition to having at least one Duty Solicitor registered on the Duty Scheme, Paragraph 6.2 places an obligation on the Provider to provide Duty Services on their allocated Duty Slots. Paragraph 6.37 also places an obligation on a Provider not to submit a CRM12 application for any Duty Solicitor the Provider engages as temporary staff to cover the Slots of a Duty Solicitor on maternity leave, paternity leave or sick leave under Paragraph 6.25 of the Specification.

Removing Duty Scheme membership

- 5.6 If a Provider ceases to have at least one Duty Solicitor registered on a Duty Scheme and does not provide Duty Solicitor services on that Scheme, the LAA will ordinarily remove the Provider's membership of that Duty Scheme (Paragraph 6.2 of the Specification).

Exceptional Circumstances

- 5.7 Where a Provider does not have at least one Duty Solicitor registered on a Scheme and is not providing Duty Solicitor services on that Scheme, a Provider may be able to retain Duty Scheme membership if exceptional circumstances apply. Paragraph 6.2 of the Specification says that the LAA will **ordinarily**, rather than absolutely, remove a Provider's Duty Scheme membership.
- 5.8 Exceptional circumstances will be specific to each case, but may include unforeseen circumstances that resulted in a Provider not having a Duty Solicitor registered on a Scheme and delivering Duty Services, for example, if a sole practitioner Duty Solicitor goes unexpectedly on sick leave and, as a consequence, is unable to arrange cover immediately for his or her Slots. In such unforeseen circumstances, if the remedial action proposed by a Provider is reasonable and timely in the circumstances, the LAA may allow the Provider to retain their Duty Scheme membership.

5.9 If the LAA applies Sanction No. 6 (suspend or remove your Rota allocation), and suspends/removes all of a Provider's Duty Slots, this will not necessarily mean that the Provider's authorisation to conduct Duty work, as per their Schedule, will be removed because they are failing to deliver Duty Services. Each application of this Sanction will be dealt with on a case by case basis.

Can a Provider re-join a Duty Scheme?

5.10 If a Provider's membership of a Duty Scheme is removed from their Contract Schedule under Paragraph 6.2 of the Specification, the Provider cannot re-apply to go back on that Duty Scheme for the remainder of the Contract Period, as confirmed at Paragraph 6.3 of the Specification. Paragraph 6.3 provides for one very limited exception, where the LAA invites Providers to apply for Duty Scheme membership, either because there is a reduction in Scheme membership or as a result of an amendment to Scheme boundaries.

5.11 Paragraph 6.3 of the Specification applies whether a Provider's Duty Scheme membership was removed because of a LAA decision or at the Provider's request.