

Franchising Update

There have been a number of concerns facing legal aid practitioners in recent weeks, not least of which relate to remuneration rates, the detail, and even the concept of franchising. This has affected discussions over franchising and issues such as the contract and the manual. We want to take the opportunity of looking at a number of these areas here.

We began talking to the Law Society about the franchise contract last summer and significant progress has been made.

There are three issues outstanding on the contract, which we are discussing further with the Law Society and aim to reach agreement in time to sign the first contracts in August. However, first a general point.

At first sight the contract may appear one sided in favour of the Board. In reality, however, practitioners have a great deal of freedom because having signed a contract they can end it at any time, without giving any reason.

Signing the contract does not commit a practitioner to any particular volume of legal aid work or indeed, to continuing to do legal aid work at all. On the other hand, the Board can end a

contract only on the specific grounds set out in the contract.

The three issues outstanding on the contract are:

- (a) the Lord Chancellor's right to end all contracts;
- (b) inclusion of a requirement that franchisees comply with the solicitors' practice rules, and a clause to the effect that nothing in the contract will conflict with this;
- (c) the Board's ability to change the specification during the life of the contract.

The first issue is one which is outside our direct control. We have asked the Lord Chancellor, who must approve the form of any contract, whether he wishes to include a provision enabling him to end contracts at any time; we expect an answer shortly.

We are willing to include a clause covering (b) above in the contract provided we have an authoritative definition of the meaning of relevant Practice Rules from the Law Society.

As far as changing the specification during the life of the contract is concerned, there are two potential changes only that we envisage. We are quite happy to agree that we will not introduce any other new requirements, unless by

agreement, during the life of the first contracts. The two changes that we do want to introduce, are those which we indicated in the franchising specification – compliance levels with transaction criteria, and criteria related to the average cost of cases and measures of case outcome. We have gathered enough evidence over the past few months to be confident that competent organisations, even without seeing the transaction criteria, will score highly against them and have no difficulty in meeting our requirements. However, in order to meet any concerns we will

- (a) ensure that the level of compliance is set before the first contracts are signed;
- (b) not change the required level of compliance for two years;
- (c) after the two years is up give existing contract holders at least 6 months notice of changes. Existing contract holders will have until the periodic audit after the notice period to demonstrate compliance.
- (d) hand organisations copies of the transaction criteria forms completed by our auditors so that they can carry out their own audits; and

(e) introduce a system whereby the organisation can appeal to a group of fellow practitioners where the Board seeks to end a contract on grounds of non-compliance with the transaction criteria alone.

We believe that this offers very comprehensive safeguards.

As to average costs and outcome measures we are some way from being able to put forward concrete proposals, so, again, we will not make any changes for at least two years and then give a minimum of six months' notice to contract holders of any changes. Existing contract holders will have until the periodic audit after the notice period to demonstrate compliance. Our approach to average costs criteria will be to compare the costs of cases of franchisees in terms of category of law, degree of difficulty or complexity and, where appropriate, outcome for the client. We believe that, over a number of cases, the average cost between franchisees will be roughly the same. Where one franchisee's average costs are significantly higher or significantly lower it is, we believe, reasonable to ask why and compare the outcomes

achieved for the higher and lower costs with the average. Thus, lower costs with poorer outcomes would cause the same concern as higher costs with the same outcomes. We do believe, however, that higher costs may be justified on the grounds of significantly better outcomes.

There are two other areas of concern that have surfaced over recent weeks. These relate to the green form costs guidelines in the franchise manual and to work rejected by the Board which is included in the pre-contract monitoring.

There is a separate article in this issue of Focus dealing with the costs guidelines in the franchise manual. Meetings have already been arranged with a variety of different groups to ensure their views are taken on board during the consultation process. In the meantime it is important that there is sufficient information on applications and costs claims to ensure that appropriate costs in non-standard cases can be assessed.

Organisations may be worried about the effect on their applications where the guidelines have had the effect of increasing the number of green form

extensions refused or claims provisionally assessed. Practitioners are reminded that this will result in liaison managers discussing with them the arrangements for supervising devolved powers. Organisations will therefore have ample opportunity to explain the circumstances to liaison managers who are, in turn, fully aware of the situation in relation to the costs guidelines and the associated consultation exercise.

There is also a concern that the Board has been rejecting forms (application and bills) and returning them to solicitors in a much stricter way since franchise monitoring started. We have been investigating this because it was never our intention that this should be the case. We will issue any guidance necessary to ensure that franchise applicants and others are treated fairly during the monitoring period.

We designed franchising to provide a quality assured legal aid service to clients which gives value for money. Franchising is not, and never can be, about cost cutting. We aim to work in partnership with the profession to meet these objectives. We remain wholly committed to achieving this end.

Civil legal aid – introduction of prescribed hourly rates

New Regulations of remuneration in civil legal aid cases have been implemented. These regulations are the Civil Legal Aid (General) (Amendment) Regulations 1994, the Legal Aid in Civil Proceedings (Remuneration) Regulations 1994, and the Legal Aid in Family Proceedings (Remuneration) (Amendment) Regulations 1994. These regulations came in to force on 25 February 1994 and apply in respect of civil legal aid certificates (emergency or full) issued on or after that date.

The existing remuneration arrangements continue to apply in respect of certificates issued before 25 February 1994 even if an amendment is made to the certificate after that date. If two

or more legal aid certificates are issued to two or more assisted persons represented by the same solicitor in the same proceedings and at least one was issued prior to 25 February all claims will be taxed and assessed under the old system.

Put simply, if the legal aid fund will be paying the costs the solicitor will be paid in accordance with the prescribed rates. If the opponent is paying the costs the solicitor may claim from the opponent the "private" rate. The prescribed items and hourly rates are set out in full in the Schedule to the Legal Aid in Civil Proceedings (Remuneration) Regulations 1994 (see table below).

On taxation or assessment of a bill for work done under a certificate to which prescribed rates apply solicitors may in

appropriate cases seek enhancement of the prescribed rates. The relevant provisions are set out in Regulation 5 Legal Aid in Civil Proceedings (Remuneration) Regulations 1994, which specifies when enhanced rates may be claimed, and the factors which must be taken into account in determining the percentage by which fees may be enhanced. In most cases enhancement is limited to 100% but in respect of certain high court cases the limit is 200%.

The Regulations also provide that if, in a prescribed case, the inter partes costs have been agreed and paid in full, the solicitor may make a claim for what will be known as "legal aid only costs". Whether those costs fall to be assessed or taxed depends on whether the legal

aid only costs are within the assessment limits, regardless of the amount of the agreed and paid inter partes costs.

In prescribed rates cases, application for payments on account must be calculated by reference to the prescribed hourly rates unless the applicant is the holder of a franchise for the category of work to which the certificate relates. If this is the case an application for payment on account at enhanced rates may be made if this is justified.

The Board will be introducing a new form CLA 32 to be used on assessments of legal aid only costs. This form may also be used if appropriate for taxation of legal aid only costs.

Legal aid only costs will either be in respect of items for which there is no inter partes order or items which are covered by an inter partes order but for which the paying party will not accept full responsibility. The onus is on the solicitor to justify claiming such costs from the fund. New procedures will shortly be introduced for handling claims for legal aid only costs.

The Chief Taxing Master with the concurrence of the Lord Chancellor and others will shortly be issuing a practice direction which will have effect in the High Court, County Courts and the Principal Registry of the Family Division which will set out the new taxation procedures. The Board and the Law Society have participated in a Joint Court Working Party with the intention of ensuring that procedures in all the different courts (and in assessment cases) are as similar as possible.

A further development coincidental with the introduction of prescribed rates is the abolition of allocators in their present form. They are to be replaced by a certificate legal aid taxation. It is anticipated this will be available from late April 1994.

An amendment to Regulation 90 Civil Legal Aid (General) Regulations 1989 requires solicitors to identify whether sums paid into the Fund relate to costs or damages. Where a solicitor sends monies without identifying this, the monies will be returned together

Column 1

TABLE A

Column 2
High Court

Column 3
County Court

WORK

1. Routine letters out	£7.40 per item	£6.50 per item
2. Routine telephone calls	£4.10 per item	£3.60 per item
3. All other preparation work including any work which was reasonably done arising out of or incidental to the proceedings, interviews with client, witnesses, and other parties; obtaining evidence; preparation and consideration of, and dealing with, documents, negotiations and notices; dealing with letters written and received and telephone calls which are not routine.	£74.00 per hour (£78.50 per hour)	£65.00 per hour (£69.00 per hour)*
4. Attending counsel in conference or at the trial or hearing of any summons or application at court, or other appointment.	£36.40 per hour	£32.00 per hour
5. Attending without counsel at the trial or hearing of any cause or the hearing of any summons or other application at court, or other appointment.	£74.00 per hour	£65.00 per hour
6. Travelling and waiting in connection with the above matters.	£32.70 per hour	£28.75 per hour

* Where solicitor's office is situated within legal aid area 1

with a standard form requiring identification of what these monies relate to. Failure to identify monies accurately may lead to delay.

Where inter partes costs are taxed but remain unpaid the debt recovery unit of the Board will, where appropriate, undertake enforcement action. Where inter partes costs at prescribed rates have been paid out of the Fund solicitors may not take enforcement action without the prior authority of the Area Director. In cases where there is no deficiency to the Fund it will be for solicitors and their clients to take whatever steps are

necessary to enforce any outstanding costs or damages.

Further information with regard to the prescribed rates system, the new form CLA 32 and the new recovery procedures will be contained in a briefing pack to be sent to all legal aid account holders shortly.

Apart from the introduction of prescribed hourly rates, the Lord Chancellor has decided that all other legal aid fee rates will remain at their current levels for 1994/95.*

Customer Service Standard

In the December issue of Focus we published a statement of our Customer Service Standards in accordance with the principles of the Citizen's Charter.

Part of those standards were our performance targets for processing legal aid work in 1993/4. We have now reviewed those targets following consultation with the Law Society, National Consumer Council and the Bar Council and set ourselves improved targets as well as new targets for 1994/95.

Listed below are our performance targets for 1994/95 with the 1993/94 targets in brackets for comparison. Indications are that we will meet all or most of our targets for 1993/94.

Civil legal aid certificates

We will decide 75% of civil legal aid certificates within 2 weeks and 90% within 4 weeks (70% in two weeks and 90% in 6 weeks).

Civil bills

We will pay 75% of civil legal aid bills within 5 weeks and 90% within 8 weeks (75% in 6 weeks).

Criminal bills

We will pay 97.5% of standard fee

claims within 4 weeks and 90% of other criminal bills within six weeks (this is the same as the current target which was only introduced in January 1994).

Other bills

We will pay 93% of other legal aid bills within 6 weeks (92% within 6 weeks).

Applications to amend or for prior authority in civil legal aid, criminal legal aid and ABWOR

We will decide 80% of applications within 2 weeks and 95% within 4 weeks. (70% in 2 weeks and 95% in 4 weeks – in addition this target now applies to criminal legal aid matters).

Appeals by assisted persons or applicants for legal aid

All appellants will be offered an area committee hearing of their appeal on a date within eight weeks of the receipt of their appeal. Appeals are heard at a number of different locations in some areas and it may not always be possible to offer an appellant a hearing at the location closest to where they live within the target time. However, we feel that in these circumstances it is appropriate for the appellant to have the choice between having their appeal dealt with speedily (especially having regard to the fact that they may not wish to

attend) or dealt with close to their home. This is a new target for 1994/95.

Emergency certificates

We will maintain our existing commitment to give emergency applications a high priority. We expect to provide the applicant with a decision within 24 hours of receipt by us.

However, in exceptional cases it may take up to 48 hours to reach a decision.

Complaints

All complaints will be treated as urgent and will be actioned within five working days. If a substantive response cannot be sent in that time an acknowledgement will be sent indicating when a substantive response may be expected.

General correspondence

All general correspondence, ie. correspondence not covered by any of the above targets, will be answered within four weeks of receipt. This is a new target for 1994/95.

Citizen's Charter Standards

We will be incorporating these improved targets in our revised statement of Citizen's Charter Standards which we will shortly be publishing in leaflet form for assisted persons.

Proposed payment dates

There are two payment dates to solicitors and counsel each month. The proposed payment dates for this financial year are set out opposite. Please note that these dates are subject to amendment by the Board should it be necessary but, where possible, you will be told of changes in advance.

If you are paid by BACS (Bank Automated Clearing Service) the PPD shown is the date on which you will receive a payment in your bank. For

some smaller banks the BACS credit may appear a day later. The PPD will also be the last date that cheque/remittance advices are despatched from the Accounts Department.

Remittance advices are despatched using DX or first class post.

If you are still being paid by cheque, we recommend that you change your payment method to BACS. BACS offers a more efficient way of receiving your payments. It provides payment

direct into a bank account whilst still receiving a remittance advice. This removes the need to handle cheques, unlike paying in across a bank counter. BACS provides immediately cleared funds unlike cheque clearance which can take four to six days. If you require any advice or assistance about payment by BACS, please contact the Master Index Section by telephone on 071 405 4333.

If you need to ask about the despatch

Proposed Payment Dates for 1 April 1994 – 31 March 1995

<i>First Payment date of the Month</i>	<i>Second Payment date of the Month</i>
Wednesday 13 April	Thursday 28 April
Friday 13 May	Thursday 31 May
Monday 13 June	Tuesday 28 June
Wednesday 13 July	Thursday 28 July
Monday 15 August	Tuesday 30 August
Tuesday 13 September	Wednesday 30 September
Thursday 13 October	Friday 28 October
Monday 14 November	Monday 28 November
Tuesday 13 December	Thursday 22 December

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Friday 13 January	Monday 30 January
Monday 13 February	Tuesday 28 February
Monday 13 March	Tuesday 28 March

of your advice, please contact the Solicitor/Counsel Settlement Section on the same number. These are both matters for the Board's Account Department in London.

But, if you have a query regarding an individual item shown on a remittance advice, you should contact the relevant area office, which authorises and processes all such bills.

Keeping us up to Date

Names, addresses, DX, fax and telephone numbers and bank details for BACS payments are held on the Board's Master Index database.

Please send any changes relating to your firm or chambers to the Master Index Section which is located in the Accounts Department, Greencroft House, 12 Roger Street, London WC1N 2JL.

Costs Assessments – Points of Principle of General Importance

Since April 1989, solicitors and counsel have had the right of appeal to the Board from an Area Committee's review of costs assessment. Issue nine of Legal Aid Focus carried the decisions made by the Board's Costs Appeals Committee covering the period April 1993–November 1993. Listed below are the decisions of the Costs Appeals Committee on points of principle of general importance for the period December 1993–March 1994. We hope this will be of help to practitioners when claiming costs.

Abortive Visit to Police Station

A legal representative who attends by prior appointment at a Police Station for the purpose of giving advice and assistance is entitled to be paid for work actually and reasonably done even though the purpose of the attendance is

thwarted, for example because the client does not attend or the appointment has been cancelled without notice. (Ref: DS4 – 22.3.94)

Magistrates' Court Standard Fees – Definition of a Case Series of Offences

For the purposes of interpreting the definition of a case as set out in Schedule 1 Part III Legal Aid in Criminal and Care Proceedings (Costs) Regulations 1989, the following factors:

(a) that all the offences are ones of dishonesty; or

(b) that all the offences are finally disposed of at the same hearing would not of themselves establish that two or more charges or informations form or are part of a series of offences. (Ref: CRIMLA40 – 22.3.94)

New Ruling on Enhanced Rates: Meaning of "Exceptional Circumstances of the Case"

Following proceedings before the divisional court, the Costs Appeal Committee's decision CRIMLA 36 of 10 May 1993 entitled "Enhanced Rates" meaning of "exceptional circumstances of the case" has been quashed with effect from Thursday 17 March. The divisional court has remitted this matter for reconsideration by the Costs Appeal Committee in the near future. It was however, accepted that the proper test of "exceptional" within the phrase "exceptional circumstances of the case" in paragraph 3(b) Part 1 Schedule 1 of the Legal Aid in Criminal and Care Proceedings (Cost) Regulations 1989, is the ordinary and actual meaning of the word "exceptional" ie unusual or out of the ordinary.

Legal aid eligibility from 11 April 1994

The following eligibility limits apply to legal aid applications made on or after Monday 11th April 1994. Note that capital limits remain unchanged. However, most income limits are rising by about 4%, although the Green Form income limit is rising by 15%.

ABWOR before Mental Health Review Tribunals is now available regardless of means, so from 11th April 1994 solicitors should cross out the income and capital sections of form ABWOR 1 when applying for ABWOR for Mental Health Review Tribunals.

1. Green form

Income limit: £70 per week

Weekly dependants' allowances: partner £26.00

Dependants	under 11	£15.65
	11-15	£23.00
	16-17	£27.50
	18 & over	£36.15

Capital limits:	No dependants	£1000
	One dependant	£1335
	Two dependants	£1535
	Plus £100 for each additional dependant.	

Contribution system: none. Ineligible if weekly disposable income exceeds £70.

State benefits: automatically qualify on income if on income support, family credit or disability working allowance, but may still be out of scope on capital.

2. ABWOR

Income Limit: £153 per week

Weekly dependants' allowances: as for green form – see above

Capital Limits:	No dependants	£3000
	One dependant	£3335
	Two dependants	£3535
	Plus £100 for each additional dependant.	

Contribution system: free if weekly disposable income up to £63. If between £63 and £153 weekly contribution of one-third of excess income over £63.

State benefits: automatically qualify on income free of contribution if on income support, family credit, or disability working allowance. Automatically qualify on capital if on income support.

3. Civil legal aid

	£ per year
Lower income limit	£2382
Upper income limit	£7060
	£7780 for personal injury

Lower capital limit	£3000
Upper capital limit	£6750
	£8560 for personal injury

Yearly dependants' allowances: partner	£1356
Dependants under 11	£816
	11-15 £1199
	16-17 £1434
	18 and over £1885

Capital disregards for pensioners:	
Annual disposable income (excluding net income derived from capital)	Amount of capital disregard
up to £370	£35,000
£371-£670	£30,000
£671-£970	£25,000
£971-£1270	£20,000
£1271-£1570	£15,000
£1571-£1870	£10,000
£1871 and above	£5000

Contribution system: contribution from capital of excess over £3000. Ongoing monthly contribution from income of 1/36th of excess over £2382 for the life of the certificate.

State benefits: automatically qualify for civil legal aid free of contribution if on income support.

4. Criminal legal aid

Free legal aid income limit:	£47
Free legal aid capital limit:	£3000
No upper income or capital limit	

Contribution system: contributions from capital of the excess over £3000.

Weekly contributions from income of £1 for every £3 or part of £3 by which weekly disposable income exceeds £46.

State benefits: automatically eligible free of contribution if on income support, family credit or disability working allowance.

A guide to carrying out assessments under the new limits will be contained in the 1994 Legal Aid Handbook.

Green Form Legal Advice and Assistance Cost Guidelines

In the supplement to the December issue of Focus (Q9) the Board published its Green Form Legal Advice and Assistance Cost Guidelines taken from the Franchise Manual. The guidelines are primarily intended to give an indication of when franchisees with devolved powers would be likely to consider an extension to the costs limit appropriate, but they also provide a helpful indication to all practitioners of whether an extension is likely to be granted and a costs claim allowed.

The guidelines are intended to be indicators for standard cases but each case is considered on its merits. However, some practitioners have expressed concern about the content of the guidelines and we have withdrawn the guidelines in the subject area of Immigration/Nationality. We have consulted the Immigration Law Practitioners' Association regarding new guidelines.

The guidance in other subject areas

will continue to be applied for standard cases but practitioners should note that it is for him/her to make out the case for the amount of costs to be incurred (or incurred already on a costs claim) in each particular case. In the absence of such information, the guideline times will be applied. While we are encouraging practitioners to provide the necessary information, this does not mean that lengthy explanations are required but salient points must be made clear.

We are now working on a second issue of the Franchise Manual which we hope to publish in the Summer following a period of wide consultation on the guidelines. We are seeking comments from key organisations such as LAPG, the Law Society, the Law Centres Federation, and the National Consumer Council, as well as from the major subject representatives such as the Association of Personal Injury Lawyers, and the Solicitors' Family Law

Association. A consultative group including representatives from The Law Society, LawNet, the Advice Services Alliance and LAPG has already been established. A series of meetings with specialist practitioners has been arranged and in addition to obtaining comments from those accepted into the monitoring phase of franchising, the Board is also obtaining feedback through its own staff contact with practitioners. All this information will be considered in the preparation of the next issue of the Franchise Manual.

A questionnaire is being issued as part of the consultation process and will assist us in obtaining and analysing comments. Practitioners wishing to comment on the Franchise Manual or the green form costs guidelines, may obtain the questionnaire from the Legal Department (reference DT), 85 Gray's Inn Road, London WC1X 8AA (DX 450 London), telephone 071-813-1000 ext 8547.

Franchising – Welfare Benefits Courses

The following courses to satisfy the Franchising Mandatory Welfare Benefits requirement had been approved by the Law Society at 8 March 1994.

Practitioners are reminded that courses must be specifically approved for these purposes. General Law Society trainers' accreditation is not sufficient.

Provider	Telephone	Contact
Central Law Training Ltd., Sutton Coldfield	021 355 0900	Nigel Wilkinson
Child Poverty Action Group, London	071 253 3406	Alison Garnham
G C Legal Training, Leeds	0532 736703	Nigel Grizzard
Lawyers' Planning Services, Cardiff	0222 398161	John Loosemoore Roger Cruwys (Bookings)
Legal Action Group, London	071 833 2931	Beverley Slaney
Express Training Associates, Bath	0225 447768	John Eames
University of Glamorgan (Dept. of Law & Finance), Pontypridd	0443 480480	Robert East
Eastern Region, The Law Society Cambridge	0223 328924	Andrew Heywood
BLS Training Services Ltd., Birmingham	021 643 6256	Richard Black
Southampton University, Faculty of Law	0703 592376	Jill Elliott
University of the West of England, Bristol	0272 763863	Frank Southworth

Forms Update

Within the next six months the following forms are due to be reissued or updated. This is being done to take account of changes in procedure, and to provide clearer guidance and clarification.

Green Form and ABWOR Key Card

Solicitors will receive two copies of the new key card during the week beginning April 11 to coincide with the eligibility changes.

Means Assessment Forms

Re-designed forms due May 1994

CLA4A Financial application

CLA4B Financial application – person receiving income support

CLA4C Financial application – person resident outside UK

CLA4E Change in circumstances – capital

L17 Employer's statement

Amendment Application Forms

Redesigned forms due June 1994

CLA30 Application for amendment

CLA31 Application for prior authority

Amendments for Franchise Payments

Redesigned forms due June 1994

CLA 28 Application for civil payment on account

GF1 Green Form

CRIM19 Criminal payments on account (Franchise firms only)

DSPS2 Advice at police stations standby claim

Criminal Claim Forms

Redesigned forms due August/September 1994

We are revising all the standard fee claim forms (CRIM 11 to CRIM 15 and the check list).'

We will, when implementing the revised forms, send a small supply to each legal aid account holder together with a notice explaining the amendments.

If you have any queries please contact Ann Lucas 071 813 8643

Police Station Representatives

The details of the advice at police stations accreditation scheme should be fairly well known by now. The Board will not pay for any police station advice by a non-solicitor representative after 1 February 1995 unless the representative is on the Board's register of representatives. Only trainee solicitors and duty solicitor representatives are exempt from this requirement.

Representatives will be registered as accredited or as probationers. Probationers will be restricted to advising on summary and either way cases. No formal training is required and there is no obligation to attend a course. Probationers will be given 12 months to obtain accreditation. They will have to complete a three stage accreditation:

- submit a portfolio of nine cases to a testing organisation which must

notify the Board within six months of the probationer's registration that the portfolio is satisfactory;

- once a satisfactory portfolio has been submitted, the probationer must pass a written test on criminal law and procedure, his/her role at the police station and the skills necessary to perform that role;
- the critical incidents test which simulates police station situations on an audio cassette. The candidate will have to respond on tape to a given situation in a limited time.

If the probationer does not complete the three stage accreditation process within 12 months the Board will not pay for any further work done by that representative until he/she has obtained full accreditation.

Representatives have the best part

of a year to obtain full accreditation before 1 February 1995. The following information may be useful:

- Information pack can be obtained from Practice Advice Service, Legal Practice Directorate, The Law Society, 50 Chancery Lane, London WC2X 1SX DX 56 Lond/Chancery Ln Tel: 071 242 1222.
- Law Society Training Kit "Police Station Skills for Legal Advisers" £110 from The Law Society Book Shop, 227-228 Strand, London WC2R 1BA Tel: 071 242 1222.
- The Register application form will shortly be available from the Policy and Secretariat Department, Legal Aid Board, 85 Gray's Inn Road, London WC1X 8AA DX 450 London. Tel: 071 813 1000 extn 8562.