

Franchising Update

The detail of our franchising proposals has developed rapidly since the last issue of Focus (7th Issue, December 1992). This issue updates you on the current position.

Franchising Specification

The Lord Chancellor has approved our proposals for franchising and we are now publishing the full franchising specification, in draft, for consultation. Like Focus, the draft specification is being sent to all solicitors with account numbers automatically and you will receive a copy in the next few days. Comments on the specification should be made to the Law Society (or other relevant bodies) to enable the Board to receive comments from the relevant groups no later than 21 May 1993. We hope to publish the final specification in June 1993.

Law Society's Practice Management Standards

We welcome the Law Society's draft Practice Management Standards and relevant sections have been incorporated into the franchising specification.

Applications

We originally proposed to invite applications for franchises from 1 July 1993. However, the Law Society requested a postponement to allow more time for consultation over their own draft Practice Management Standards and to give practitioners more time to prepare once we had published the specification. We have agreed to this and will therefore invite applications for franchises from 1 October 1993. Application forms will be available later in the year. There is no date by which applications must be received and no limit to the number of franchises that will be granted, either by category of work or by geographical area. It is important that organisations wishing to apply for franchises do not submit premature applications. A hastily prepared application could have serious resource consequences both for the applicant and the Board and could prejudice the applicant in that failed applicants are likely to have to wait sometime before we are able to process any second or subsequent applications. To

assist applicants to measure their readiness the Board will issue a self-assessment audit check-list for use with the final specification.

Questionnaire

With the specification will be a questionnaire asking for an indication of organisations' plans for submitting applications for franchises. We need this information for planning purposes only and will not link responses to any subsequent applications for franchises.

Financial Incentives

The following incentives are being discussed with the Law Society:

- payment of £250 upon the exercise of devolved powers to proceed under emergency civil legal aid;
- payment of £150 upon the exercise of devolved powers to proceed under ABWOR;
- payment for two hours or three hours work as appropriate upon the exercise of devolved powers to proceed beyond the green form financial limit;
- payment of the lower standard fee upon grant of a criminal legal aid order;

- payment of 75% of costs incurred after nine months from the issue of a civil legal aid certificate, and thereafter at nine months intervals. This will apply to certificates issued no more than three months before the date the franchise contract is signed;
- abolition of the “claw back” for duty solicitor claims.

Welfare Benefits Courses for Franchising

The franchising proposals require all franchisees to ensure that all caseworkers/advisors in franchised categories of work are able to recognise the need for welfare benefits advice. We realise that all caseworkers/advisors may not have this expertise at the moment and so we will award franchises providing the organisation has one individual suitably qualified to recognise the need for welfare benefits advice either by being able to qualify as a welfare benefits supervisor (i.e. having two years' experience in welfare benefits work) or by attendance at a course specifically approved for these purposes. Procedures should then be put in place to ensure that all caseworkers/advisors are able to recognise the need for welfare benefits advice. This might be through in-house training. The franchising specification gives more detail of this requirement.

It is important to note, however, that the Law Society will be approving courses specifically for the purposes of meeting the franchising requirements. (Details of other national advice network organisations able to approve courses for this purpose will be available from the Board later in the year.)

Courses approved by the Law Society for the purposes of continuing development hours alone will not satisfy the requirements and practitioners should ensure that any course they attend for the purpose of meeting the franchising welfare benefits requirement

is properly accredited. The Law Society will issue details of approved courses in due course.

Transaction Criteria

We published transaction criteria covering green form, emergency civil legal aid and ABWOR in December 1992 (Transaction Criteria HMSO 1992 ISBN 0 11 380068 1). Our researchers are now developing further transaction criteria covering personal injury litigation; crime, including duty solicitor work at the police station; and matrimonial litigation. This work is being done in consultation with relevant Law Society Committees, individual practitioners specialising in the relevant areas and with reference to Law Society publications such as “Advising a Suspect at the Police Station”. Once this work is complete the Board will publish a single set of criteria covering the advice and assistance stage and the litigation stage of personal injury and matrimonial work and, for crime, a single set of criteria covering advice and assistance, duty solicitor work in the police station and the preparation and presentation of cases in the magistrates' courts. The criteria covering green form work only will continue to be relevant for work which does not extend to certificated legal aid and for organisations which, in the future, might be authorised to do green form legal aid work, e.g. non-solicitor advice agencies.

The transaction criteria were developed specifically as an audit tool applicable to transactions occurring frequently in major categories of work. They cover only those aspects of a case which would be observable on the case file. Although the method of developing the transaction criteria means that they are a good indicator of steps which should be carried out in particular cases, they are not intended to be an exhaustive check list of issues which must be addressed, neither are they intended to indicate the

only way in which work on a case should be structured. These are professional decisions for the lawyer/advisor. It follows that it is not necessary for files to contain check lists based on the transaction criteria.

The franchising specification gives details about how we will use the transaction criteria in auditing.

Competitive Tendering and Exclusivity

There has been some discussion in the legal press about the Lord Chancellor's allusions to the possibility of competitive tendering in relation to franchising. Our proposals do not address issues of exclusivity or competitive tendering and we have received no request from the Lord Chancellor formally or informally to reconsider these issues which we first explored, and rejected, in our report to the Lord Chancellor back in 1989. If the Board is asked by the Lord Chancellor to consider exclusivity and competitive tendering as a consequence of franchising then the Board will do so and advise the Lord Chancellor accordingly. Our advice will be given in the context of continuing realisation of the Board's objectives for franchising – the provision of an accessible and quality assured legal aid service to clients giving improved value for money to the tax payer. Access is a key issue here and the Board will seek to ensure that any future developments can only be made in the light of full knowledge of their likely effect on access.

Further Information

Queries on franchising should be addressed to local area offices wherever possible. Alternatively, you may contact Allison McGarrity at Legal Aid Head Office on 071-831-4209.

Improved Payments on Account for Barristers

From 1st April 1993, barristers will be able to apply earlier for payments on account under the Regulation 100 payment on account scheme. At present payments can be made when a certificate is 18,30 and 42 months old; from April payments can be made when a certificate is 12,24 and 36 months old. However, the maximum payment percentage will remain at 62% for 1993-1994. Subject to the transitional arrangements mentioned below, the new scheme will come into operation immediately so that a certificate issued in April 1992 will become eligible for its first payment on April 1993. The

“window” during which applications under Regulation 100 can be made remains at a period of two months before or four months after the eligible date.

Transitional Arrangements

Special arrangements exist for certificates which would have become eligible for payment under the old system in the 6 months after April. During the transitional period of 1st April 1993 to 31 May 1993, additional applications may be made for certificates issued in the periods October 1989 to March 1990, October 1990 to March 1991 and

October 1991 to March 1992.

Applications in all these transitional cases must be received by 31 May 1993. If a certificate has become eligible for payment under the old system before April, but the time limit for applying has not yet expired and no claim has been made, an application will be accepted within that time limit but no later than 31 May 1993.

Chambers using the Ace computer system are advised to contact Ace as soon as possible to ensure that applications under Regulation 100 are automatically generated at the correct time.

New Costs 1 Form

Copies of the new Costs 1 Form were sent to all legal aid account holding solicitors on 24 March. Starting from 5 April, we ask solicitors to send a completed Costs 1 Form with their claim for costs in civil cases where costs and/or damages have been awarded but have not been recovered in full. This will mean that we will have details of the costs or damages and details of the debtor much earlier than we used to, giving us the best possible chance of recovering the debt.

From 5 April 1993, all practitioners must complete the new Costs 1 Form and send it to the appropriate area office with the claim for costs in all civil cases where an order for costs or judgement is made in favour of the client (including where practitioners have entered monies in section 2 of Form CLA 16 or where practitioners have entered monies as distinct from property in section 3). Where there is more than one debtor, complete a separate form for each.

Please give all relevant details of the debtor. Where he or she is a member of the armed forces, give the rank and service number. If other solicitors have been instructed to continue the proceedings, please give their name, address and reference.

In cases where costs or monies were awarded you should send to the area office:

- Form CLA 16 Claim for Costs
- Taxation certificate
- Counsel's fee notes
- Order(s) for inter parties costs
- Separate completed Costs 1 Forms for each debtor
- Any costs you have already recovered

In cases where damages were awarded you should also send:

- The Court Judgement

If you do not send the Costs 1 Form or other relevant documents in appropriate cases your claim for costs will be rejected.

You will **not** need to send a Costs 1 Form where:

- Costs or monies have been recovered and paid into the Legal Aid Fund
- The costs recovered have been agreed and paid to you by the other side
- Costs or monies have been recovered and are in your possession

Where the only item of work outstanding is enforcement of the order for costs, you should file a notice of change in favour of:

The Legal Aid Board
Debt Recovery Unit
Greencroft House
12 Roger Street
London WC1N 2JL

You can get copies of the Costs 1 Form from your area office. The new form has been produced in consultation with the Law Society through the Board's Forms Working Party Committee.

The Legal Aid in Criminal and Care Proceedings (Costs) (Amendments) Regulations 1983 will come into force in two stages.

Stage I

The Provisions set out below will come into force on 26 April 1993:

1. Interim Payment of Disbursements in the Crown Court

In Crown Court cases where the Criminal Legal Aid Order was granted after 26 April 1993, where a solicitor has obtained prior authority from the Legal Aid Area Office to incur a disbursement of £100 or more and then has incurred a liability to pay £100 or more in respect of that disbursement, the solicitor may apply to the Crown Court (supplying the authority and the invoice) for an interim payment of that disbursement. If the Crown Court Determining Officer approves the application, payment will be made to the solicitor and notification of the payment will be given to the expert. It should be remembered that whether or not a solicitor has received, or can receive, a payment on account, his or her liability to pay the expert instructed in accordance with the agreement with the expert is not affected.

2. Interim Payments in Crown Court Cases Awaiting Determination

Solicitors and barristers will be entitled to claim interim payments in respect of claims for costs. Solicitors will be able to claim where their total claim for costs (i.e. fees and disbursements) is for £4,000 or more (excluding VAT). Barristers will be able to claim where their basic fee claimed is £4,000 or more (excluding VAT). Entitlement to an interim payment arises after three months have elapsed from the date on

which the bill, having been received for determination by the appropriate authority, is ready to tax.

An exception to this is where there are "related proceedings" or "related claims for costs" (which are defined in the regulations) for which specific provision is made. Where the required conditions are met, the amount payable to the claimant, (solicitor or barrister) shall be 40% of the total claim for costs less any sum already paid.

3. Recovery of Over-Payment

Where on determination of the claim for costs it is ascertained that the solicitor or barrister is entitled to be paid a sum less than the amount already paid, the appropriate authority may require immediate repayment of the amount paid in excess of the amount due, or may deduct the excess amount from any other sum due to the solicitor or barrister under the regulations.

Stage II: Standard Fees in Magistrates Court

It is anticipated that the provisions set out below will come into force on 1 June 1993.

Standard fees will apply to all cases falling within one of three categories which are as follows:

Category 1: guilty pleas and similar matters

Category 2: contested trials (including cracked trials), other contested proceedings and proceedings where mixed pleas are entered, and

Category 3: section 6(2) committals and proceedings transferred under Section 4 CJA 1987 or Section 52 CJA 1991.

Standard fees will not apply to proceedings in which counsel has been assigned under the legal aid order, proceedings in which costs are allowed

at an enhanced rate, extradition proceedings or Section 6(1) committals. Where standard fees apply, the framework will be similar to that already used for Crown Court cases. Where the core costs (ie. all profit costs excluding travel and waiting) as determined, do not exceed the lower limit, a lower standard fee will be paid. Where the core costs as determined, exceed the lower limit but do not exceed the higher limit, a higher standard fee will be paid and if they exceed the higher limit, the costs will be determined on a non-standard (ex post facto) basis. Set out at Table 1 opposite are the categories and types of proceedings to which standard fees will apply. Set out at Table 2 opposite are the standard fees which will be payable. Payment will be made at the London rate in respect of solicitors whose offices are situated within Legal Aid Area 1.

It should be noted that in all cases where unassigned counsel is used, including Section 6(1) committals, extradition cases and cases where enhanced rates are claimed, the solicitor will be required to agree the fee to be paid to counsel. The solicitor's core costs claim will include the work done by unassigned counsel (excluding travel). Counsel will be paid the agreed sum and the solicitor will receive the balance of the costs as determined, after deduction of unassigned counsel's fees.

It has been necessary to prepare new claim for payment forms as a result of the implementation of Magistrates' Court Standard Fees. Further guidance on the specific provisions of the Regulations relating to Magistrates' Courts Standard Fees will be issued prior to 1 June. All practitioners will be supplied a package containing all the new forms, instructions on their use and a checklist during May 1993.

TABLE 1 Categories and Types of Proceedings

<u>Category 1</u>	<u>Category 2</u>	<u>Category 3</u>
1. guilty pleas	1. contested trials	1. committal proceedings under section 6(2) of the Magistrates' Courts Act 1980
2. uncontested proceedings arising out of a breach of an order of a magistrates' court (including proceedings in a magistrates' court relating to a breach of a Crown Court probation order, community service order or suspended sentence)	2. proceedings which were listed and fully prepared for trial in a magistrates' court but disposed of as a guilty plea on the day of trial before the opening of the prosecution case	2. proceedings which are discontinued or withdrawn, which would otherwise have led to committal proceedings under section 6(1) or 6(2) of the Magistrates' Courts Act 1980
3. proceedings (other than committal proceedings) which are discontinued or withdrawn	3. proceedings which were listed and fully prepared for trial in a magistrates' court but are discontinued or withdrawn, or where the prosecution offers no evidence or which result in a bind over on the day of trial before the opening of the prosecution case	3. proceedings transferred under section 4 or the Criminal Justice Act 1987 or section 53 of the Criminal Justice Act 1991
4. proceedings (other than committal proceedings) relating to summary or either way offences which result in a bind over	4. contested proceedings relating to a breach of an order of a magistrates' court (including proceedings relating to a breach of a Crown Court probation order, community service order or suspended sentence)	
5. proceedings arising out of a deferment of sentence (including any subsequent sentencing hearing) under section 1 of the Powers of Criminal Courts Act 1973	5. proceedings where mixed pleas are entered	

TABLE 2

Type of proceedings	Lower standard fee	Lower limit	Higher standard fee	Higher limit
Category 1	£140	£261	£336	£451
(London Rate)	£180	£335	£427	£565
Category 2	£247	£447	£566	£745
(London Rate)	£317	£567	£711	£908
Category 3	£223	£395	£505	£689
(London Rate)	£282	£479	£593	£733

All income and capital figures are "disposable".

Green Form

Income Limit : £61 per week.

Weekly Dependants' Allowances:

Partner	£25.00
Dependants – under 11	£15.05
11–15	£22.15
16–17	£26.45
18 & over	£34.80

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 £61.
 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.

Abwor

Income Limit : £147 per week.

Weekly Dependants' Allowances : as for Green Form

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 £61. If between £61 and £147 weekly contribution of one-third of excess income over £61.

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.

Civil Legal Aid

	£ per year
Lower Income Limit	£2,294
Upper Income Limit	£6,800
	£7,500
for personal injury	
Lower Capital Limit	£3,000
Upper Capital Limit	£6,750
	£8,560
for personal injury	
Yearly Dependants' Allowances:	
Partner	£1304
Dependants – under 11	£785
11 – 15	£1155
16 – 17	£1379
18 and over	£1815

Capital Disregards for Pensioners

Annual disposable income (excluding net income derived from capital)	Amount of 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
£1871–2294	£5,000

Contribution System : contribution from capital of excess over £3,000. Ongoing monthly contribution from income of 1/36th of excess over £2,294 for the life of the certificate.
 State Benefits : automatically qualify for civil legal aid free of contribution if on income support.

Criminal Legal Aid

Free legal aid income limit:	£45	Contribution system : contributions
Free legal aid capital limit:	£3,000	from capital of the excess over £3,000.
No upper income or capital limit		Weekly contributions from income of
Weekly Dependants Allowances: as for Green Form		£1 for every £3 or part of £3 by which weekly disposable income exceeds £44.

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

Examples of Legal Aid Eligibility

	For free civil legal aid	For civil legal aid with contribution
	Gross weekly and (yearly)	Gross weekly and (yearly)
Rented home		
Single Person	£100.96 (£5,250)	£231.23 (£12,024)
Lone parent with 2 children of 4 and 12	£134.33 (£6,985)	£262.79 (£13,665)
Couple	£126.94 (£6,601)	£256.71 (£13,349)
Couple with 2 children of 4 and 12	£172.60 (£8,975)	£303.90 (£15,803)
Owner occupied home		
Single Person	£120.50 (£6,266)	£251.81 (£13,094)
Lone parent with 2 children of 4 and 12	£153.42 (£7,978)	£283.35 (£14,734)
Couple	£146.08 (£7,596)	£277.27 (£14,418)
Couple with 2 children of 4 and 12	£193.19 (£10,046)	£324.48 (£16,873)

1. The examples given are by way of *illustration only*. Eligibility depends on the circumstances of the particular applicant.
2. The examples for *rented* accommodation are based on a rent of £36.27 per week (£1,885.98) per year) including water rates.
3. The examples for *owner-occupied* accommodation are based on a mortgage of £49.85 per week (£2,592.42) per year including water rates.
4. *All* the examples are based on an expected council tax of £440 per household.

Rates of Remuneration

The rates of remuneration for Green Form legal advice and assistance, ABWOR, Advice and assistance at police stations, Court Duty Solicitor, Contempt, civil and criminal legal aid are as at 1 April 1992.

These rates appear in full on pages 432-438 Legal Aid Handbook 1992 as well as in Legal Aid Focus 5th issue March 1992 and the Law Society's Gazette of 25 March 1992.

Note that the London Court duty solicitor rates are £50.13 (and £62.66 enhanced rate) per hour.

Legal Aid Handbook 1993

The 1993 Legal Aid Handbook will be published in June and will include the updated statutory material relating to the April eligibility changes. In addition to the financial eligibility tables, there will be information on remuneration rates, details of legal aid forms and the Board's Notes for Guidance and Arrangements, including the Multi-Party Action Arrangements.

Advance orders can be placed with the publishers Sweet & Maxwell on 0264 342899.

From 12 April 1993 a new system of contributions will apply to civil legal aid. Instead of the old system of contributions from income being paid over a twelve-month period of computation, legal aid contributions are now payable for the lifetime of the certificate.

This change, together with the new eligibility limits for civil legal aid, apply to applications where the period of computation is on or after 12 April 1993. In practice, to be sure that your client will be assessed and will pay contributions under the existing scheme, the substantive application for legal aid must be received by your area office by Friday, 9 April 1993.

Under the new system disposable income will still be assessed on an annual basis, but this will be used to calculate an ongoing monthly contribution liability. On acceptance of an offer an applicant must pay any contribution from capital, together with the first monthly income contribution. Subject to any reassessment, contributions in respect of income must be made every month until the certificate is discharged or revoked. The following points should be noted:

- (a) You should ensure that certificates are discharged as soon as the work which needs to be done under the certificate has been completed. If there is delay in applying to discharge a certificate, the client will continue to be liable to pay contributions.
- (b) There is no annual or minimum contribution due under the new system, so if a certificate lasts only for six months, only the initial instalment and six monthly contributions are payable.
- (c) Reassessments of income or capital under the new system can take place at any time while the certificate is in

force. Reassessments on changes of means will look at likely income in the twelve months following the request to reassess, rather than being referred back to the original period of computation.

- (d) The present system of a “maximum” and an “actual” contribution will no longer apply, and the full assessed contribution must be paid on acceptance of the offer. However, a point may come where the contributions paid exceed the likely total costs of the proceedings. If so, you may apply to the Area Office for future contributions to be waived under Regulation 52(2) of the General Regulations as amended. An example of where this power might be used is a case where proceedings have become dormant pending the outcome of some other test case or generic trial. Note that there is no power to waive contributions on general grounds such as hardship. Further, it is not enough if total contributions paid are likely to exceed costs to date; further contributions can only be waived if those already paid appear to the Area Office to exceed the likely total costs of the proceedings. Waived contributions may be revived.
- (e) When a person has more than one certificate in force, those certificates will be linked and only one contribution will be sought from him/her. The monthly contribution will continue to be payable until the last certificate is discharged. When a second certificate is applied for, means will be reassessed and the contribution due under the original certificate may be amended, but only if means have changed beyond the bounds set out in Regulation 12

of the Assessment of Resources Regulations. Whenever a new certificate is applied for it is important that details of all existing certificates are given on the application form and on form CLA4A.

- (f) Note that the above system applies only to certificates where the original period of computation in assessment of means was on or after 12 April 1993. For certificates issued under the old system, contributions will continue to be payable only during the period of computation, and that period will be used for the purpose of any reassessments following change of means within the period of computation (Regulation 12 of the Assessment of Resources Regulations in its unamended form).

Advice and Assistance

Contributory Green Form will be abolished with effect from 12 April 1993. Green Form will then only be available to those in receipt of income support, family credit, or disability working allowance, or with weekly disposable income not exceeding £61, who will pay no contribution.

A contributions system will continue for ABWOR but the present one-off contribution will be replaced by ongoing contributions for the lifetime of the case. A client with weekly disposable income between £61 and £147 must pay his solicitor one-third of the excess over £61. This can be paid in weekly contributions or by any other instalments that may be agreed.

Contributions are payable from the date ABWOR is approved until either it is withdrawn or the proceedings are concluded. The full contribution history must be set out in form ABWOR 3 when costs are claimed. ■

Civil Legal Aid – Payments on Account

In the December 1992 issue of Focus we drew attention to the insertion of a costs condition in new civil non family, non matrimonial certificates from September 1992. The Board has extended this (as of February 1993) to cover non matrimonial certificates where payments on account under the permanent scheme indicate costs in excess of £5,000.

This has involved a change in the handling of payment on account claims in excess of £5,000 under the permanent scheme. The change applies to non matrimonial certificates only. The claims are no longer referred by the Accounts Department to the area office for authorisation. Instead, payment on account is made by the Accounts Department on application. This will result in an improvement in the speed of handling of payments on account.

A weekly list is sent to area offices of non matrimonial cases where these costs

considerations apply. The listed files are referred to the Legal Manager or his/her deputy for checking. If on checking it appears that the certificate is already subject to an appropriate limitation no further action is taken.

However, if the certificate is unlimited or additional information appears necessary for any other reason the area office sends a standard letter and questionnaire to the solicitor and diarises the file. The standard letter explains the reason for the request for information and informs the solicitor that a notice to show cause against the discharge of the certificate may be issued if a reply is not received within 21 days. The information requested on the questionnaire enables the area office to review the continuation of the certificate as against the statutory criteria for the grant/continuation of civil legal aid.

On review of the information on

prospects, quantum and costs, it may appear that the statutory criteria are no longer satisfied. In these circumstances the show cause procedure is put in hand with a view to discharging the certificate. In other cases where this review indicates that the certificate should continue, an appropriate limitation may be applied. It is not proposed to impose costs conditions on certificates issued before 14 September 1992.

The changes will improve speed of handling of permanent payments on account and will not involve practitioners in completing the questionnaire in the majority of cases. Requests for information will be confined to those cases where the certificate is unlimited or the area office considers that additional information not contained in the file is required to consider the continuation of the certificate.

Legal Aid Forms Produced on Solicitors' Software

Many solicitors' firms with wordprocessing and graphics software are keen to set up versions of standard legal aid forms on their computer systems to avoid having to complete our forms by hand or typewriter.

At present, we are happy to accept computer-produced copies of any Legal Aid Board form where the original form is a black and white form such as the GF3 (Green Form Extension Application form), GF5 (Application for Authority under the Green Form Scheme) or CLA 28 (Application for

Payment on Account). To be acceptable, solicitors' versions of these forms must have the same wording and be in exactly the same format.

However, we do not insist on the legal aid logo being shown. Where the pre-printed form is in three or four parts and carbonized, like form CLA28, we do not expect solicitors to send carbonized versions but solicitors must send the required number of copies of the completed form, fastened together. Area offices will reject forms which do not comply

with these requirements.

At present, we have restricted acceptance of solicitor's own computer-produced forms to those of our forms which are printed in black and white. This is because colour plays an important part in sorting procedures in the area office. Colour distinguished forms allow applications and claims to be fast tracked. However, we will be considering how to enable solicitors to produce more of our forms without losing the advantages of fast tracking procedures.

Practitioners will be aware that the Child Support Act 1991 comes into force on 5 April 1993. There are a number of legal aid implications.

A summary of the position is as follows:

Legal Advice and Assistance

Green Form legal advice and assistance is available in relation to child maintenance and the Child Support Agency only to the extent that it constitutes the application of a matter of English law and will only be remunerated provided that it is reasonable for the solicitor to undertake the work involved. This means that solicitors must justify the reasonableness of the work which they do in the usual way. However, the Board would not consider it reasonable for the solicitor to complete the Child Support Agency's forms where there are no direct legal issues in that work and it would be reasonable for the client to complete the form for him/herself. A separate Green Form should only be signed where advice on child maintenance/Child Support Agency assessment constitutes a separate matter from other matters on which the client may be receiving advice. Where the client is receiving matrimonial/family or welfare benefits advice then advice on child maintenance/Child Support Agency assessment would not constitute a

separate matter. The Legal Aid Handbook 1993, to be published in June, will include updated detailed Notes for Guidance on this aspect but please note:

- Where there is a Green Form signed in respect of matrimonial advice or proceedings, advice on child maintenance (including in connection with an application for assessment by the Child Support Agency) is not a separate matter and must be dealt with under that Green Form.
- Advice on welfare benefit entitlement and on child maintenance assessments by the Child Support Agency (including a benefit reduction) must be dealt with under a single Green Form.
- Unless the six months' rule applies whereby a matter is treated as separate (that is where the same solicitor is asked to give further advice on the same matter more than six months after the submission for payment of a Green Form), a single Green Form must be used for advice on child maintenance assessments. This will, where applicable, be the Green Form used for matrimonial advice and/or welfare benefit entitlement.

A solicitor undertaking a child maintenance calculation must justify the need for this in the particular circumstances of the case. Where advice is only being given in relation

to a Child Support Agency assessment the solicitor will normally be expected to advise within the initial Green Form financial limit, having regard to the availability of assistance/information from the Agency's telephone enquiry lines and the possible use of modern technology.

Availability of Civil Legal Aid

Civil legal aid is to be made available for proceedings under sections 20 and 27 of the Act. Section 20 deals with appeals to the court against decisions made by Child Support Officers as to parentage (paternity) and section 27 deals with applications to the court for declarations of parentage for the purposes of the Child Support Act only. Applications should be made on form CLA5 (the Children Act application form).

The usual civil legal aid means and merits tests will be applied and certificates will not specify the court in which the proceedings are to take place as jurisdiction will be in accordance with the Children (Allocation of Proceedings) Order 1991 as amended.

These proceedings will constitute "prescribed family proceedings" for remuneration purposes so that payment will be in accordance with Schedule 2 Legal Aid in Family Proceedings (Remuneration) Regulations 1991.

Although no specific legal change is required to achieve this, civil legal aid will also be available for appeals to the Court of Appeal from the Child Support Commissioner on a question of law (as well as for garnishee and charging order proceedings in the County Court by way of enforcement of Child Support Agency assessments). Form CLA1 (the general civil legal aid application form) should be used to apply to the area office.

Civil legal aid applications in respect of child maintenance will be refused where the Child Support Agency has jurisdiction. Civil legal aid certificates issued on or after 5 April 1993 covering contested matrimonial proceedings, maintenance or ancillary relief will no longer cover representation in respect of child maintenance (except in respect of step-children of the absent parent) unless this is expressly stated. This is to reflect the limited jurisdiction of the courts in relation to child maintenance. Solicitors seeking legal aid cover in respect of child maintenance will need to make this entirely clear in the application, indicating the basis upon which the court, rather than the Agency, will have jurisdiction in the particular case. Similarly certificates/amendments will not be granted for the purposes of

enforcement of child maintenance where the Child Support Agency has jurisdiction.

However, if proceedings are concluded by a consent order which deals with child maintenance as part of a global settlement, finalising that agreement and embodying it in the consent order may be remunerated within the scope of a certificate covering contested matrimonial proceedings, maintenance or ancillary relief. Such remuneration will be subject to taxation/assessment.

Although the existence and amount of a Child Support Agency assessment may have implications for proceedings covered by certificates in respect of financial provision, obtaining an assessment and paying any Agency fee is **not** within the scope of a certificate – it does not constitute a step in the proceedings. It is, however, accepted that solicitors will need to advise on the implications of an assessment and its amount in the context of the proceedings and be remunerated for this, subject to taxation/assessment.

ABWOR

ABWOR approvals covering child maintenance will not be granted where the Child Support Agency, rather than the court, has jurisdiction and ABWOR approvals, granted on or after 5 April 1993, in

respect of financial provision will not include cover as to child maintenance (except in relation to step-children of the absent parent), unless this is expressly stated.

Solicitors seeking ABWOR cover in respect of child maintenance must make this clear, indicating the basis upon which the court, rather than the Agency, has jurisdiction. Court granted ABWOR is available where the requirements of Regulation 7(1)(b) or 8 Legal Advice and Assistance (Scope) Regulations 1989 are satisfied. Where the court does grant ABWOR then the grant may be confirmed by the endorsement of a completed form ABWOR 1, a county court order or a letter from the court. Note that the new form ABWOR 1 (ABWOR application form) must be completed and signed by the client **in all cases** in order to confirm the client's financial eligibility. However, no statement of case is required. The confirmation of grant must be forwarded to the area office with any claim for payment on form ABWOR 3 (ABWOR report on case form). The Green Form advice and assistance costs limit (£86.50 [£91.50 London]) applies to this form of ABWOR irrespective of any previous Green Form costs incurred.

Costs Assessments – Points of Principle of General Importance

Issue seven of Legal Aid Focus carried a decision made by the Board's Costs Appeals Committee covering the period July – October 1992. Since April 1989, solicitors and counsel have had the right of appeal to the Board from an Area Committee's review of costs assessment. Listed below are the decisions of the Costs Appeals Committee on points of principle of general importance for the period November 1992 – March 1993. We hope this will be of help to practitioners when claiming costs.

Enhanced Rates in Criminal and Care Cases

Where the criteria for paying enhanced rates in criminal proceedings under the Legal Aid in Criminal and Care Proceedings (Costs) Regulations 1989 are met such claims will be assessed on the basis of broad average direct cost of the work (the A figure) to which is added a percentage uplift (the B figure) to take into account all the relevant circumstances of the case.

The A figure will be reached with regard being had to the rate likely to be allowed in an enhanced rates case by the appropriate Crown Court for the relevant level of fee earner at the time to which the costs claim relates.

As to the B figure 35% should be considered as a starting point in respect of preparation. Solicitor advocacy would normally be expected to carry an uplift of 40–60% and attendances with counsel 20%. Travel and waiting would not normally be expected to attract enhanced rates. Each case must be considered on its own particular merits, having regard to all the relevant circumstances of the case.

Routine letters and telephone calls should be allowed at the scale rate per item with non-routine letters remunerated according to length and content on a time basis and timed telephone calls which represent attendances whereby material progress is made also being allowed on a time basis. (Ref. CRIMLA 13 – amended – 9 March 1993).

Assessment of Costs: Location of Solicitor's Office

The fact that the firm of solicitors assigned under a legal aid order is not local to the court does not in itself mean that their costs must be assessed as if they were a firm local to the court. Guidance has already been given on the correct approach in decisions CRIMLA 21 and 31. (Ref. CRIMLA 34 – 2.2.93).

Time Spent Listening to Taped Interviews

It is reasonable in principle for solicitors to listen to tape-recordings of police interviews where the client cannot confirm that the summary is correct. (Ref. CRIMLA 35 – 9.3.93).