FOCUS Q12

Legal Aid

Quarterly newsletter
12th Issue
December 1994

FRANCHISING – THE FUTURE

There are a number of important changes in the pipeline which will further increase the benefits franchising can offer. The Lord Chancellor will shortly send his proposals to the Law Society for the 1995/96 remuneration round. We expect him to differentiate between franchised and non-franchised organisations particularly in the field of criminal legal aid. We have pressed, and will continue to press, the Lord Chancellor to emphasise his commitment to franchising by increasing the differentials between franchised and non-franchised firms when it comes to remuneration.

The Board has put to the Law Society proposals for increasing control of the green form scheme where there has been evidence of abuse of the Regulations over the past 12 months. Under the proposals, non-franchised firms would, in the future, have to give the Board much more detail of the work done under green forms and would be required to seek prior authority from the Board before any second or subsequent green form could be opened for the same client over a period of 12 months. These control systems would not apply to franchised firms. The proposal to exempt franchisees from the main effects of these changes is in keeping with the Board's confidence in franchisees and its intention to increase devolved powers and financial incentives as franchising becomes established. Further, the Board hopes to pilot within the next few months a much simpler system for claiming under the green form scheme by franchised firms. We have yet to finalise the details of this but it may involve franchised firms not having to submit green forms at all but, instead, simply retaining sufficient information upon files for the Board to carry out sample assessments of claims.

The Board is seeking, through its Liaison Managers to identify best practice among franchise firms and where this is possible to publish the results. We will also be building on the public awareness created with the launch of franchising which saw hundreds of local newspapers carrying news reports and features on firms who had obtained a legal aid franchise in their areas. We will promote franchising through the consumer press who are particularly interested in the client care aspects of franchising and the assurance it provides to the legal aid client in choosing a solicitor. A poster featuring franchising will be launched together with a leaflet explaining the benefits of franchised firms to the public. These will be distributed widely in a bid to advertise franchising across England and Wales.

Finally, the Lord Chancellor's Department is in the middle of its fundamental review of legal aid and we expect a Green Paper to be published in the Spring or early Summer. It is clear that any significant changes to the scheme will be underpinned by franchising because it is the only quality assurance scheme in existence that would give the Lord Chancellor confidence that the Government and the taxpayer are receiving value for money for the funds that are expended on legal aid.

NEWS ROUNDUP

Franchising Publications

In August the Board published the research report from the Birmingham franchising pilot.

Copies of the research report, entitled "Lawyers – The Quality Agenda" (Volume One) can be obtained from HMSO at a cost of £7.95 (ISBN: 0-11-380084-3).

The pilot, which concluded in 1992, was the first step in the practical development of franchising and transaction criteria. The research was carried out by Professor Avrom Sherr and Richard Moorhead of Liverpool University, and Professor Alan Paterson of Strathclyde University.

Transaction criteria form an important part of the Board's quality assurance measures in franchising. The research report chronicles their development during the Birmingham pilot and explores the key question for the Board and practitioners: "Do transaction criteria indicate real quality?". The report also looks at other aspects of quality assurance and assessing competence. In a sense this work is only the beginning. Quality standards are always proxies for the true quality of a service. Vigilance in their use and ingenuity in developing additional measures able to explore other aspects of quality will be important to the further development and refinement of notions of legal competence. Within the context of franchising such work is imperative if quality is to be assured against ever increasing pressure to control costs. We hope that transaction criteria will engender open debate about the nature and detail of legal work and become essential tools for trainers and teachers leading to an accepted standard for consistently competent legal work in all areas of law.

The fully updated transaction criteria, entitled "Lawyers – The Quality Agenda" (**Volume Two**) are also available from HMSO at a cost of £14.95 (ISBN: 0-11-380083-5). For all telephone orders: 071 873 9090.

New Statutory Charge Leaflet

A new leaflet about the statutory charge will be available from area offices at the end of January 1995. It is called 'Paying Back the Legal Aid Board'. It provides more detailed information to the client about how the charge works and possible exemptions. It was developed in consultation with the Law Society, NCC and the SFLA.

Legal Aid Handbook 1994

The new Legal Aid Handbook, the official guide to legal aid practice in England and Wales, was published in October 1994 by Sweet and Maxwell. The updated version also includes the Board's performance targets and the text of leaflets regarding complaints and the statutory charge as well as forms checklists. It costs £12.25 and may be obtained by ringing Sweet and Maxwell on 0264 342899. The ISBN number of this year's handbook is 0–421–52730–7.

New National Register of Interpreters

On 14 December 1994, a national register of interpreters was published. For the first time experienced interpreters trained to work in the law courts, police stations, probation and other public services may be found easily and speedily.

The register offers an assurance of competence and reliability because all registered interpreters are bound and protected by a code of conduct.

The register is the result of consultation and campaigning by the Nuffield Interpreter Project. The work received support from the Royal Commission on Criminal Justice in 1993. The Legal Aid Board, Home Office, Crown Prosecution Service and the Lord Chancellor's Department have contributed to and supported the production of the register.

Further information can be obtained from Sarah de Mas, Nuffield Interpreter Project on Tel. 071 631 0566.

Chairman of the Legal Aid Board

The Lord Chancellor has appointed Sir Tim Chessells to be Chairman of the Legal Aid Board for 3 years from 4 May 1995, with a prior appointment as a Member of the Board with effect from 1 January 1995. Sir Tim will take over from John Pitts who has served as Chairman since the Legal Aid Board was first set up in 1988.

Caroline O'Dwyer

HRH Princess Anne visits the LAB's stand at the National Association of Citizens Advice Bureaux which was held in York in September

Lord Chancellor Issues Consultation Paper on Legal Aid

On 20 December the Lord Chancellor issued a consultation paper seeking views on the grant of legal aid to people who lead apparently affluent lifestyles. There has been a small number of high-profile and expensive cases recently where apparently wealthy individuals have been granted help under the legal aid scheme.

On issuing the consultation paper, the Lord Chancellor's Department said: "By definition those who qualify for legal aid are at the lower end of the scale of wealth. Legal aid is not there to be exploited by the wealthy. Nor is it there to cushion still further those who claim to have no money available to them, but still somehow manage to lead the kind of life that is the envy of the vast majority of the population.

The Government's firm intention is to ensure that help under the legal aid scheme is provided only to those for whom the scheme is intended, and that the money spent on legal aid should be targeted towards those whose need is greatest."

The consultation paper sets out a number of options for tightening up the rules on the grant of legal aid to prevent abuse and to address what many people see as the unfairness of the present scheme.

Among specific proposals on which views are sought are:

- that more should be done to develop the idea of legal aid as a loan;
- that it should be possible for legal aid to be refused if an individual is leading what appears to be an affluent lifestyle;
- that there should be a limit on the amount of equity value in a house that is ignored for legal aid means assessments;
- that applicants for criminal legal aid should be liable to have any undisclosed assets confiscated;
- that applicants for criminal legal aid should be liable to have their assets frozen, with legal aid costs being recovered from them if the applicant is subsequently convicted; and
- that, for civil legal aid, assets which are under dispute, or frozen by the courts, should be included in the means assessment.

The consultation paper also deals with the question of legal aid for non-UK citizens, and seeks views on the Government's present view that it would not be right to impose nationality restrictions on the availability of criminal or civil legal aid.

Copies of the consultation paper are available from the Lord Chancellor's Department, Legal Aid Division, Trevelyan House, 30 Great Peter Street, London SW1P 2BY. Telephone orders can be placed on 071-210 8826.

Responses to the paper are sought by 1 March 1995.

Non-Solicitor Agencies Franchising Pilot

September saw the Board launching a new pilot scheme to explore issues for advice agencies providing legal services. The pilot involves 42 organisations made up of citizens advice bureaux and independent advice agencies from across England and Wales – all of which are affiliated to the Advice Services Alliance. The pilot has three key objectives:

- to investigate whether non-solicitor agencies can meet the franchise quality standard for legal aid work;
- to investigate the effect of being franchised on non-solicitor agencies for example, on their methods of working, their clients, their relationships with other agencies/practitioners/funders;
- to evaluate the benefits of extending legal aid funding to non-solicitor agencies where payment is made on a block rather than a case-by-case basis.

When the Board first piloted Franchising for solicitors in Birmingham, part of its aim then was to test whether non-solicitor agencies could meet the same quality standard. The sample of non-solicitor agencies proved too small to draw conclusions and so we are looking at the issues again. In some parts of England and Wales agencies are the only source of help in the so-called areas of 'social welfare law' (housing, debt, welfare benefits, employment, immigration and consumer) because lawyers are not providing services in these categories of law. This seems to be borne out by the relatively low number of applications for franchises the Board has received in the categories of welfare benefits and immigration. Thus the Board's interest in the advice sector. We have a responsibility to provide advice, assistance (and representation) to those in need in all areas of law. Solicitors in private practice work mainly in crime, family/matrimonial and personal injury matters. Agencies, often the first port of call for those needing help, have developed expertise in the other areas of law. Thus, the pilot is designed to see if the quality of advice is at least on a par with that of franchised solicitors so that we can open up access to these areas of law. We still see solicitors as being the main source of legal services but want to explore the extent to which agencies can take on more of the work for which they are qualified.

Another important feature the advice sector offers is its flexibility of approach towards clients. The green form scheme constrains solicitors, in that it forces them to treat clients as separate 'green formable' issues with cases which stop short of representation. Because their current funding is not constrained in this way agencies have been able to adopt a more holistic approach and deal with clients' problems across a variety of areas of work. Unlike solicitors, they are able to carry on working on a case without being restricted to two hours work or the limits of cover for representation. Thus, agencies have developed expertise in representation at tribunals allowing them to take cases right the way through. We want to explore the benefits of this approach.

Agencies in the pilot are required to meet the franchising specification. In addition, there are initial qualifying

continued on page 4

standards for non-solicitor supervisors. These are six standards developed for the pilot by independent researchers. The standards cover subject knowledge, training, and experience, general knowledge of the law, and supervision training and experience. These standards also require a formal referral procedure and this is another requirement specific to the pilot. Note that agencies' franchises cover work which is currently within the scope of the green form scheme in the areas of social welfare law. Full legal aid to cover representation at court will still be available only to lawyers and this is one of the main reasons why the agencies are required to have a proper referral procedure.

After the initial selection process there is a further pre-contract audit (the preliminary audit) before contracts are signed to run from 1 January 1995 for a twelve month period. There will be a post-contract audit 3–6 months into the contract (including a transaction criteria audit) and a final audit at the end of the year.

Simultaneously, a research project will run to investigate the key issues in the pilot. The project will carry out a comparison of work undertaken by the agencies with that which we would expect to be done by solicitors. It will look at the cost of the advice, and productivity. It will also look at the added value provided by agencies' way of working. The research is timed to give an interim report in June to enable us to go to the Lord Chancellor in July with an initial recommendation. If we are in a position to make a positive recommendation at this stage, we hope that we will be able to continue the funding for the agencies in the pilot until the detail of a national scheme is worked out. This continued funding will apply only for agencies which fully meet the franchise requirements. The final report of the research is due in March 1996. We hope to be able to work out the details of a national scheme shortly thereafter.

Implications for solicitors

If the scheme gets underway then we hope to open up its benefits to all franchisees. The assurances provided by franchising would enable the Board to recommend to the Lord Chancellor the removal of some of the constraints of the green form scheme. We want to see franchised agencies complementing the work of solicitors, developing two-way referral links with firms, particularly those who will provide representation in litigious matters. In this way we hope clients will received an efficient and effective service from the most appropriate provider.

Benzodiazepine Update and Proposals for Reform

Legal Aid was withdrawn from around 1200 claimants following a decision by the Manchester legal aid area committee. The claimants had been pursuing actions against Wyeth, the manufacturers of the tranquillizer drug Ativan.

Ativan is one of the family of drugs known as Benzodiazepines – the generic name for the group of tranquillizer drugs marketed by a number of drug companies under a range of proprietary brand names such as Valium, Librium, Mogadon, Ativan and Halcion. Widely prescribed since the early 1960s to alleviate anxiety claimants alleged that manufacturers failed to give adequate warnings of the potential harmful side effects of the drugs leading to over prescribing and dependency.

The Benzodiazepine litigation has been the largest multi-party action ever brought in this country. Since 1988, about 17,000 people applied for legal aid. Some 13,000 legal aid certificates were granted initially. This number reduced steadily as individual claims were investigated and reviewed.

Thus, for last year legal aid was withdrawn for Valium, Librium and Mogadon. The Halcion claims, which involve different causes of action, are under review.

The outcome of the Benzodiazepine action thus far is disappointing. A lot of hard work has gone into these claims yet it looks likely that none of them will come to trial. Given the costly and uncertain nature of litigation, it is inevitable that complex and expensive actions will run into difficulties. The board and the courts have developed some new procedures for handling these actions and some improvements have been made. However, it is clear that there are fundamental problems with the existing procedures for multi-party actions.

The courts and the legal aid system were designed to look at individual claims, not at groups of similar claims as a whole and this is the key area which needs to be reviewed.

In order to improve the chances of success of multi-party actions it is clear that court rules must be changed to make provision for mass action and to target resources towards a sample of cases.

To address these concerns the Board published its report to the Lord Chancellor calling for wide-ranging reform of multi-party litigation and setting out recommendations for change. The report analyses the problems facing large multi-party actions and proposes reforms both in the legal aid and court systems. Some of the main recommendations are:

- to place greater emphasis on progressing the central issues in the action, rather than on investigating every individual claim in detail
- new rules of court tailored to regulate modern multi-party litigation
- specialist investigative tribunals to deal with some disputes outside of the existing court system

It is hoped that the report will lead to a thorough review of how these difficult cases are dealt with both by the legal aid system and the courts and avoid a repeat of the disappointing outcome of the Benzodiazepine litigation.

Anyone who would like a copy of the report "Issues arising for the Legal Aid Board and the Lord Chancellor's Department from Multi-party actions" should contact Legal Aid Head Office on 071 813 1000 extn. 8560.

Franchising – Taxation and Assessment of Costs

This paper sets out the principles applicable to the taxation/assessment of costs of franchised firms and gives specific guidance on the Franchising Specification's mandatory requirements. Guidance cannot cover every possible situation, so there may be exceptional circumstances where it might be appropriate to depart from it.

Paragraph numbers relate to the Franchising Specification (as amended by the Franchising Specification Amendments in July 1994).

Principles

Legal aid work done by franchised firms is taxed or assessed in the same way and is subject to the same principles as work done by non-franchised firms. The test throughout is one of reasonableness.

The fact that the Franchising Specification requires franchised firms to have specified systems e.g. for supervision and file review does not make the costs of having them or operating them recoverable on taxation or assessment – costs are chargeable only to the extent that they would be chargeable subject to usual principles.

The costs of establishing office systems and procedures are not chargeable.

Whether work done on a case is chargeable depends upon whether it was reasonably done having regard to the needs of the case. In the ordinary case, supervision and file review are part of good practice management and are not chargeable. However, in some cases, in accordance with the usual principles of taxation, the costs of supervision and coordination may be chargeable – because of the needs of the case. In such cases where supervision costs are claimed, an explanation of the reasons why the nature of the case made the supervisor's participation necessarty and of the occasion, duration and circumstances of his participation must be provided.

Mandatory Requirements of the Specification

The costs of complying with the mandatory requirements of the Specification are not chargeable unless the necessary work would be chargeable whether or not it is required by the Specification.

Work in complying with paragraphs 3.3 to 3.5, 3.9, 3.18 and 3.19, 3.24, 3.29 to 3.31, 3.33, 3.38, 3.44 and 3.45, 3.47 and 3.48 is not chargeable.

Supervision and file review, in compliance with paragraphs 3.49 and 3.50 are not chargeable unless, in any particular case, they would be chargeable subject to usual principles (see above). Paragraph 3.50 does not require every case file to be reviewed by file review arrangements must be justifiable (see paragraphs 3.56 and 3.57). As such, compliance is part of good practice management. Similarly, while there must be a supervisor for every file, the extent of supervision will vary depending on, among other things, the experience of the caseworker. Again, such compliance is merely part of good practice management.

Work in complying with paragaphs 3.51 to 3.53 is not chargeable.

Work in complying with paragraphs 3.62 (a) to (i) is not chargeable. Work in complying with paragraph 3.62(j) and in exercising the devolved powers is chargeable in principle. However, as the amount of work required is small, costs will not be great. Costs are likely to be no more than those which would have been chargeable for applying to a legal aid area office for a power to be exercised.

Work in operating (but not establishing) procedures in compliance with paragraphs 3.70 to 3.72 is chargeable subject to usual principles, as good practice i.e. what a normally efficient firm would be expected to do in each case.

Work in operating (but not establishing) procedures in compliance with paragraphs 3.76 and 3.79 is chargeable subject to usual principles, as good practice i.e. what a normally efficient firm would be exptected to do in each case.

Work in operating (but not establishing) procedures in compliance with paragraph 3.81 (b), (d) and (e) is chargeable subject to usual principles as good practice i.e. what a normally efficient firm would be exptected to do in each case.

Work in complying with paragraph 3.81 (a) (c) (f) and (g) is not chargeable, though the work of actually making a payment of fees [3.81(f)] as required in an individual case and the work of actually selecting a barrister, agent or expert [3.81(g)] as required in an indiviudal case is chargeable subject to usual principles.

Work in complying with paragraphs 3.85 to 3.89, paragraphs 3.97 to 3.101, paragraphs 3.111 to 3.113, paragraph 3.120, paragraphs 3.122 and 3.123 and paragraph 3.126 is not chargeable except to the extent that completing forms [3.126] as required in individual cases may be chargeable subject to usual principles.

Legal Update

Regulation Changes

These amendment regulations came into force on 1 October 1994 and amended the Legal Aid in Criminal and Care Proceedings (Costs) Regulations 1989.

The amendments relate to enhanced rates claims, and claims for the waiting and travelling time and travel costs incurred by unassigned counsel in magistrates' courts .

Enhanced Rates

Now, claims may only be made on the basis of the prescribed rates plus enhancement limited to a maximum of 100%. This applies to all cases except serious or complex fraud proceedings where the maximum enhancement is 200%. The criteria for determining when enhanced rates apply have also been amended.

Unassigned counsel's travel and waiting

Unassigned counsel's waiting time no longer forms part of the solicitor's core costs. The solicitor may now claim for the time spent by unassigned counsel in travelling and waiting and for the travel costs. As before, the amount to be paid to counsel must be agreed between the solicitor and counsel prior to the submission of the claim.

These provisions apply in respect of legal aid orders granted on or after 1 October 1994. The claim forms have been amended and all legal aid account holders should by now have received a pack containing copies of the new forms, together with an information notice on their use. If you have not received a copy or would like further copies, contact Michelle Gill at Legal Aid Head Office on 071 813 1000 ext 8661.

Legal Aid provision for Genetic Parents in Surrogacy cases

Section 30 Human Fertilisation and Embryology Act 1990 was brought into force on **1 November 1994**. Section 30 enables a married couple, at least one of whom is the genetic parent of a child carried by a surrogate mother, to seek a court order (a "parental order") providing for the child to be treated in law as theirs, rather than as the child of the woman who carried it during pregnancy.

Means and merits tested **civil legal aid** will be available for section 30 proceedings and paragraph 2 of Part I of Schedule 2 Legal Aid Act 1988 is being amended by the **Legal Aid (Scope) Regulations 1994** so that legal aid is available in every level of court, including the Family Proceedings Court. Section 30 proceedings will be dealt with like Children Act care proceedings for the purposes of forum. This will mean that proceedings will be commenced in the Family Proceedings Court and can be transferred upwards in accordance with the Children (Allocation of Proceedings) Order 1991 which has been amended (with effect from 1 November) to achieve this. No condition as to forum will therefore be included in any civil legal aid certificates issued. ABWOR is not available.

Although civil legal aid has been made available it is unlikely that the merits test will be satisfied in the absence of unusual circumstances which justify the grant of legal aid.

Given the active role of the guardian ad litem in the proceedings and the fact that the agreement of the father and the woman who carried the child is required before an order may be made, it is unlikely that the grant of civil legal aid will be justified **to make the application** if the matter is **unopposed**.

Where the making of an order is **opposed**, section 30(5) (as to consent by the father and the woman who carried the child) will not be satisfied and an order will not be made. The grant of legal aid to make the application would therefore not be normally justified.

The grant of legal aid may be justified where the applicant is asking the court to **dispense with the consent** required under Section 30(5) on the basis that the person cannot be found or, to a lesser extent, is incapable of giving consent.

Applications may be made by **respondents** wishing to oppose the making of an order but this is unlikely as where there is no consent, Section 30(5) will not be fulfilled. It is, however, possible that a birth parent may maintain that, although consent has been given, it does not satisfy the particular requirements of Section 30(5) or 30(6). Birth parents and anyone who has parental responsibility will be a respondent to the application and a person with parental responsibility may wish to oppose the making of an order.

continued on page 7

Legal Update

When making applications for section 30 cover form **CLA5** (Application for Legal Aid for Freestanding Children Act Cases, Wardship and Adoption) should be used.

An emergency application may also be submitted, using form CLA3. These applications are within the matrimonial franchise category.

Section 30 proceedings will be remunerated under schedule 2 of the Legal Aid in Family Proceedings (Remuneration) Regulations 1991 (under Schedule 2(a) or 2(b) depending on the level of court).

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 ten of Legal Aid Focus carried the decisions made by the Board's Costs Appeals Committee covering the period December 1993 – March 1994. Listed below are the decisions of the Costs Appeals Committee on points of principle of general importance for the period April 1994 – September 1994. We hope this will be of help to practitioners when claiming costs.

Status of Medico-Legal Assistants as Fee Earners

Work carried out by an in-house medico-legal assistant will generally be fee earning work. The hourly rate and mark up applicable will be what is appropriate in all the circumstances having regard to the nature of the work carried out and the special skills and qualifications possessed by the person concerned. (Ref: CLA 12 - 17.5.94).

Preparation of Attendance Notes

In principle, the time taken in recording and preserving information necessary to be recorded and preserved for the proper conduct of a client's affairs is allowable on assessment. (Ref: CLA 13 – 17.5.94)

Assisted Person's and other Witnesses' Travelling (and similar) Expenses

On the assessment of a bill, in respect of which, if it had been taxed, the County Courts Rules would have applied, when considering a claim for travel or other expenses, the appropriate authority shall allow, on the assessment, such expenses as would have been allowed under Order 38 Rule 15 County Courts Rules on taxation.

On the assessment of a bill, in respect of which, if it had been taxed, Matrimonial Causes (Costs) Rules 1988 would have applied, when considering a claim for travel or other expenses, the appropriate authority shall allow, on the assessment, such expenses as would have been allowed under Rule 17 Matrimonial Causes (Costs) Rules 1988. (Ref: CLA 14-27.6.94)

Preparation of Annual Report on Case

Practice Direction No. 2 of 1992 (Direction 2, paragraph 1.17) states that the drawing of a Bill of Costs is not fee earner work and, save in exceptional circumstances, no charge should be sought for such work.

However, where a claim is made for preparing the Board's annual report on case and claim for costs form (and the case does not itself present exceptional circumstances), consideration should be given to making a small allowance which is for the solicitor's time in preparing and submitting the annual report on case. Normally an allowance of 6 to 12 minutes would be appropriate although a higher allowance may be appropriate for more complex cases. (Ref: CLA 15 – 26.9.94)

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 represent the broad average direct cost of undertaking the work. Factors to be taken into account in identifying this figure may include 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 and evidence of the results of surveys of local solicitors' expense rates.

As to the B figure, 35% should be considered as a starting point in respect

Legal Update

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 an uplift on the A figure. Each case must be considered on its own particular merits, having regard to all the relevant circumstances of the case.

Where enhanced rates apply, they apply to all letters written and telephone calls made or received. For letters and telephone calls which are not times, the method of assessment is to allow them at 1/10th of the hourly rate plus uplift allowed for preparation. (Ref: CRIMLA 13 (Amended) – 17.5.94 and 26.9.94)

Enhanced Rates Meaning of Exceptional

The Proper test of "exceptional" within the phrase "exceptional circumstances of the case" in paragraph 3(b) of Part I Schedule 1 Legal Aid in Criminal and Care Proceedings (Costs) Regulations 1989 is the ordinary and actual meaning of the word "exceptional" i.e. "unusual or out of the ordinary". (Ref: CRIMLA 36 – 26.9.94)

Magistrates' Courts Standard Fees: Cracked Trials – Time of Discontinuance – Category of Case

For the purpose of standard fee category 2.3 (set out in the table annexed to paragraph 2 of schedule 1 Part III Legal Aid in Criminal and Care Proceedings (Costs) Regulations 1989), it is not essential for the proceedings to be discontinued on the day of trial provided that proceedings were listed and fully prepared for trial. (Ref: CRIMLA 41 – 17.5.94)

Magistrates Courts Standard Fees – Bail Act Offences

Proceedings under Section 6 Bail Act 1976 for failure to surrender to custody are incidental to the original proceedings for which bail was granted and do not constitute a separate case. (Ref: CRIMLA 42 – 17.5.94)

Use of Enquiry Agents for Tracing Witnesses

If it is necessary to employ an enquiry agent to trace a potential witness, then the fee for doing so, together with the fee for obtaining a statement from the witness when traced, may be allowable as a disbursement. (Ref: CRIMLA 43 – 27.6.94)

Work undertaken following Detention at a Police Station

The Legal Advice and Assistance Scheme is available for work reasonably and necessarily done for a client following on his/her detention at a police station. (Ref: LAA 4 – 17.5.94)

Travel by Mental Health Review Tribunal Panel Members

In deciding whether, in a case involving mental health review tribunal proceedings work, a claim for travel is reasonable, the appropriate authority shall consider all the relevant circumstances of the case, including:

(a) any legitimate expectation of the assisted person of specialist representation i.e. mental health review tribunal panel member,
(b) the availability of mental health review tribunal panel members, and
(c) the undertaking which is required to be given by a mental health review tribunal panel member to conduct such cases personally.

(Ref: ABWOR 7 – 27. 6.94)

Revised Forms

Legal aid practitioners are reminded that the forms – CLA4A, CLA4B, CLA4C, CLA4E and L17 – have been updated and improved. Use of these forms became mandatory on 1 December 1994. Please note that the employers statement L17 has been printed back to back with L17 (HMF) – for applicants in HM forces – which was previously obtained from the Benefits Agency.