

FOCUS Legal Aid

Quarterly newsletter
11th Issue
August 1994

Focus on Franchising

It is difficult to believe after all the activity of the last few months that franchising was conceived as a result of events that occurred six years ago this month. In July 1988 the Legal Aid Board was formed in a shadow capacity with a view to taking over the administration of legal aid on 1 April 1989. In July 1988 the Lord Chancellor wrote to John Pitts, Chairman of the Legal Aid Board, saying that the Government considered there might be advantages in using the skills of advice agencies to provide at least some categories of advice currently available under the green form scheme. He insisted that any arrangements that emerged should ensure good quality advice.

As a result of that letter we set up a small group of Board members to consider how the Lord Chancellor's objectives could be achieved. As a result of their deliberations we issued a first stage consultation document about the green form scheme on 1 December 1988. We reported on the outcome of that consultation and gave our views about the development of advice agency involvement in the green form

scheme in our first report to the Lord Chancellor published in mid 1989. It was from this that the concept of franchising started to develop.

It was in our first annual report covering the year 1989/90 that we further developed the concept of franchising. We also announced



Steve Orchard, Chief Executive

the start of a franchising experiment in two parts. The first part involved two solicitors' firms in the Birmingham area who were given devolved powers. We used them to test out some of the ideas that we had developed. The second part of the experiment lasted 12 months and was designed to involve as many firms and

advice agencies as wanted to join in a designated area in Birmingham. It is interesting to note on re-reading those reports that although the original intention was to limit franchising to green form the principles that we had established and much of the thinking that went into those reports is still relevant today and is reflected in the final franchise specification.

The experiment went very well thanks to the co-operation of practitioners in the Birmingham area. However, it did not succeed in one of its main objectives which was to involve non-solicitor advice agencies. By this time thinking about franchising in the Board had developed to such an extent that we began to see that if we were to set quality criteria for advice agencies then those same criteria should be relevant to the legal profession in the delivery of a legally aided service. It was always our intention to use franchising as a means to involve the advice agencies but there was clearly a shift of emphasis at this point to concentrate upon quality standards within the profession. That was hardly surprising

because the solicitors' profession was and remains overwhelmingly the majority supplier of Legal Aid services to the public. This was reflected in the document we issued in October 1992 called 'Franchising: The Next Steps'. That document, like all the others we published about quality, generated a lively debate. In that document we set out, for the first time, our objectives in promoting franchising and again, it is interesting to note that those objectives remain broadly the same although they have been expanded somewhat in the light of developments since.

It was as a result of the debate over the Next Steps document that we began to put together the Franchising Specification which was published in July 1993. By this time the research that we had commissioned into the Birmingham franchising experiment was beginning to show there was a direct link between many of the quality criteria that we had set down and the quality of service provided to clients. Also, the Birmingham experiment saw the birth of transaction criteria. Transaction criteria are now an integral part of the franchising process and they have been developed with an enormous amount of input from the Law Society, specialist groups and individual practitioners.

Once we had got to this stage in July 1993 it was obvious that what we were proposing was unique in the world of legal services and had to be handled with great care if it was to gain the confidence of legal practitioners. We felt at around this time that we were involved in a very delicate balancing act. We were convinced that franchising was the way forward for a number of very good reasons. There was considerable debate and controversy around legal aid remuneration and many of the arguments revolved around the relationship between remuneration and quality. However, there was no definition

of quality in existence other than what was emerging from franchising. We always felt that the debate was essentially sterile without some understanding of what quality meant in practical terms and once the definition existed then it would be possible to reward it in a way that ensured its continuance.

Therefore, we took the view that we had to press ahead with the introduction of franchising with some determination but make every effort to explain the theoretical background for it and its practical advantages. Without a high profile debate led by members of the Board we would not have achieved the increasing acceptance of franchising which we now see.

The Franchise Specification was published in July 1993 and we geared ourselves up to deal with applications and the whole administrative infrastructure that goes with it. At the same time the debate about the precise terms raged within the profession and there were times when the whole concept was called into question, not least when the issues of exclusivity and competitive tendering came into the open. There have undoubtedly been times when we have wondered whether we would ever get the national franchising scheme off the ground. However, thanks to the support of many members of the profession and our own willingness to respond constructively to concerns expressed to us by the Law Society, we are now in a position where we have an amended Specification which reflects all the debate over the last six months or so and a contract which will be offered to all those organisations that meet the specification requirements.

Perhaps most significantly we also have a full Specification we can apply to the advice sector and we are about to embark on a major project which could lead to non-solicitor advice agencies across England and Wales delivering a legally aided service. The implications

of that for the public and their access to legal services could be enormous and very positive.

We have clearly reached an important point in the development of franchising. I think it is best described as the end of the beginning. There is still much to do. Because the whole concept is at the leading edge of quality assurance then we at the Board must be prepared to respond to well informed opinion within the profession. We must work with the Law Society and franchised firms to ensure that they reap the full benefits that franchising can bring. We want to reduce bureaucracy and increase devolved powers available to franchisees. We want to see an increase in preferential payment terms between franchised and non-franchised firms; not to penalise the non-franchised but to encourage them to become franchised. We want quality to be part of the remuneration debate and we want franchising to be recognised as the quality floor, not the quality ceiling, that organisations should achieve in order to give an assurance both to the public, the Board and to Government that value for money is being obtained. To achieve these objectives will require sensitivity and commitment on our part.

The 1st of August 1994 is the official implementation date for franchising. It has been a long and at times difficult journey. However, we are very pleased that the Board and the Law Society can now go forward in partnership to develop franchising in the way that the Board has always said it intends. We want to modify the scheme where that is necessary in the light of developments in the law and in good practice. We hope that the effort that successful franchise applicants have put in will be rewarded and their commitment to quality will be recognised not just by the general public but in the rewards available to them.

Steve Orchard

Franchising Specification Amendments

July 1994



Introduction

This document sets out amendments to the Franchising Specification July 1993 and needs to be read in conjunction with that version of the Specification. The two documents together form the document referred to as the "Specification" in the franchise contract.

Only those paragraphs that have been modified and new paragraphs have been included in this document. A composite version of the Specification incorporating these amendments will be published in the Autumn.

All amendments are in **Univers bold type** and where necessary for clarification relevant sentences from the current version have been included in *Times New Roman (Italic) type*.

Amendments

Para

- 1.2(e) (Replace current clause with)
an effective appeal procedure where the decision is to refuse suspend or terminate a franchise and additionally, a binding arbitration procedure where the decision is to suspend or terminate a franchise.

Para

- 1.5 (First sentence amended)

*Franchises may be granted **initially** in up to nine major categories of work. (see paras **1.9 & 4.1.**)*

Para (Clause amended)

- 1.6(c) **parts of** *this specification as amended from time to time.*

Para (Paragraph amended)

- 1.7 *It isexperience is gained. Thus the contracts will allow for changes to be introduced AFTER consultation **with the Law Society or relevant professional bodies. Due notice will be given to all***

contract holders. The details of proposed and planned changes are set out in the relevant sections of the specification.

Para (Add to existing paragraph)

- 1.9 **These will be introduced progressively. Organisations with franchises in personal injury or matrimonial/family which currently embrace medical negligence and child care respectively, which the Board may introduce as new categories, will not be able to hold themselves out as franchised in these new categories, or be able to exercise devolved powers, or obtain the related financial incentives in the new category, after 1 August 1996, or 6 months after the new category is introduced, whichever is the later, unless they are granted a franchise in the new category. If other new categories are introduced which are currently covered by an existing franchise category, the franchisee will be able to continue to operate as a franchisee in the new category until 31 July 1999 (the end of the first contract period), after which they will be required to obtain a franchise in the new category. For totally new franchise categories not covered by existing franchises, organisations will be able to apply in the normal way as soon as the new categories are introduced.**

Para (Clause amended)

- 1.11(c) **monitor the franchisee's**

work *submitted to area offices during the contract to ensure that the work remains in conformance with the standards required.*

Para (Listed under membership delete the Board's Access Committee chair and

1.15(f) replace with)

The Board's Supply and Delivery of Legal Services Committee Chair

Para (Clause amended)

- 1.23(a) **the extension of the** *transaction criteria;*

Delete **July 1993**

Para (New paragraph)

- 1.24 **The Franchise Manual Information relevant to franchisees is contained in a variety of publications, including the Legal Aid Handbook, the Franchising Specification, and the Franchise Agreement. The Board's aim is to bring all its published guidance together to form a "legal aid kit" which can be regularly updated where appropriate. The sections which relate to franchisees form the "Franchise Manual" including components covering guidance on the exercise of devolved powers and procedural guidance and information for franchisees; for example on the use of franchise forms, the checklists for technical rejects which relate to the monitoring requirements, or the administrative**

arrangements for claiming payments on account.

Para (Paragraph amended)
2.1 *Successful applicants ("franchisees") will have devolved powers to take certain decisions, within the franchised categories of work, which would otherwise have to be referred to the area office. The Board will issue a Franchise Manual which will include guidance on the exercise of devolved powers. **Franchisees must exercise devolved powers in line with the guidance published. The Board will not disallow, on legal merits, decisions to exercise devolved powers, unless the decision was ultra vires, but claims for costs will be subject to assessment or taxation on the reasonableness of costs. However, the Board will monitor the exercise of devolved powers (see paragraph 2.25)***

Para (Paragraph amended)
2.12 *When exercising the devolved powers franchisees **must follow the published guidelines and must impose a financial limit upon themselves in accordance with regulation 21(3) of the Legal Advice and Assistance Regulations 1989. When that limit is reached further extensions may be self authorised. However, no further payment on account will be made. If the final green form bill is not submitted within 18 months the payment on account will be automatically recouped and the organisation notified of that recoupment.***

If the franchisee has a long running case which will not enable them to submit the final bill within 18 months of receiving the payment on account they should notify the area office so

that the automatic recoupment of the payment of account can be prevented.

Para (Paragraph amended)
2.16 *ABWOR: A franchisee will have full authority to commence ABWOR proceedings without reference to the area office **but must follow the guidelines published by the Board. Within seven days of exercising the devolved power the franchisee must submit the appropriate form, giving brief reasons for exercising the devolved power and, if required, a claim for a payment on account of £150.***

If this is done, the payment of £150 will be made, normally within 28 days, and an ABWOR approval will be issued and dated the day of exercise of the devolved power.

Entitlement to payment for work done will run from the date of exercise of the devolved power.

If the franchisee submits the appropriate form more than seven days after exercising the devolved power a written explanation for the delay must also be submitted. The area office will have discretion to allow the payment on account and the costs incurred in the light of the explanation. If costs are disallowed for late submission an appeal can be made to the Area Committee in the normal way.

If, in the view of the area office, the devolved power has been exercised inappropriately the ABWOR approval will be issued, dated the day of exercise of the devolved power, but with an

amendment which may limit the ABWOR approval to all work done before the date of the area office decision. Notice of withdrawal of ABWOR may also be given. In these circumstances the client will have the usual right of appeal against the area office decision.

*Any disbursements may be incurred by the franchisee, including the use of counsel, where it can be justified, without reference to the area office. At the end of the case the bill of the proceedings should be submitted to the area office for assessment. The area office will look particularly carefully at cases where counsel has been used. If the bill is reduced an appeal can be made **in the normal way** to the Area Committee.*

Para (Paragraph amended)
2.17 *Emergency Legal Aid: A franchisee will have full authority to take action under an emergency legal aid certificate without reference to the area office **but must follow the guidelines published by the Board. Within seven days of exercise of the devolved power the franchisee must submit to the area office an application for emergency legal aid and for full legal aid and if required a claim for £250 payment on account on the appropriate form.***

If this is done, the £250 will be paid, normally within 28 days, and an emergency certificate will be issued and dated the day of exercise of the devolved power. Entitlement to payment for work done will run from the date of exercise of the devolved power.

If the franchisee submits the applications for

	emergency and full legal aid more than seven days after exercising the devolved powers a written explanation for the delay must also be submitted. The area office will have discretion to allow the payment on account and costs incurred in the light of the explanation. If costs are disallowed for late submission an appeal can be made to the Area Committee in the normal way.		account will be automatically recouped and the organisation will be notified of that recoupment.		approach would the Board consider suspending the franchisee's right to claim enhanced rates for payments on account.
	If in the view of the area office the devolved powers have been exercised inappropriately an emergency certificate will be issued and dated the day of exercise of the devolved power. This may be amended from the date of the area office decision limiting the emergency legal aid to all work done before the date of the area office decision. There will be no right of appeal against the area office decision but, if circumstances change so that legal aid is urgently required, an application for an amendment to the emergency legal aid certificate may be made.	Para 2.20	(Paragraph amended) <i>Crime franchisees who make claims for police station advice and assistance will not have to justify to the Board exceeding the £90 costs limit where the interests of justice require advice and assistance to be given as a matter of urgency (regulation 5(6) Legal Advice and Assistance at Police Stations (Remuneration) Regulations 1989).</i>	Para 2.23	(Add to end of paragraph) In the unlikely event of a franchisee attempting to exercise a devolved power in a way which is ultra vires the Legal Aid Act and regulations eg."excepted proceedings" under Part II Schedule 2 Legal Aid Act 1988, the area office will not be able to issue a certificate or ABWOR approval or to pay for the work done. However, the franchisee will have a right of appeal to the Area Committee against the area office view which, if successful, will enable a certificate or ABWOR approval to be issued and payment to be made.
Para 2.18	(Paragraph amended) <i>Payment of Lower Standard Fee on Issue of a Criminal Legal Aid Order: Crime franchisees can apply, on a simple form to be supplied, for payment of the category I lower standard fee as soon as a criminal legal aid order is granted to them covering proceedings in a magistrates' court. Payment will be made, normally within 28 days. If the final bill for a legal aid order is not submitted within 18 months, the payment on</i>	Para 2.21	(Add to end of paragraph) Franchisees may, when claiming a payment on account, apply enhanced rates if they believe such enhanced rates will be allowed on taxation or assessment. The Board will be monitoring claims for payments on account at enhanced rates. Where an enhanced rate is not allowed on assessment or taxation, or is allowed at a lower rate than that claimed, the Liaison Manager will discuss the matter with the franchisee with the objective of ensuring that enhanced rates for payments on account are applied for only where they can be justified. Only after this	Para 2.25	(Paragraph amended) <i>The Board will be monitoring the exercise of devolved powers and will notify the franchisee when it believes the devolved powers have been exercised inappropriately. These will be discussed with the franchisee with the objective of ensuring devolved powers are exercised appropriately in the future. Only after this would the Board consider suspending devolved powers until the necessary safeguards had been introduced by the franchisee. The Area Manager will be able to suspend the devolved powers immediately in exceptional circumstances. In extreme cases of the inappropriate exercise of devolved powers, which amount to deliberate</i>

upon, for example, the experience of the caseworker or the complexity of the case. Although the file review must cover the work of supervisors the Board recognises that organisations may find it appropriate to carry out a review on a smaller proportion of files handled by supervisors than would be appropriate for less experienced staff.

Para (Paragraph amended)
3.58 *Case files that have been reviewed must be noted to that effect even where no action is to be taken as a result of that review. Where action is to be taken a note of the action required must appear on the file.*
The organisation must demonstrate that there are arrangements in operation to ensure the action is taken within a reasonable time. This is particularly important when the action is an error or omission. The evidence that actions have been followed up must be recorded on the file or on a central record of reviews.

Para (Clause amended)
3.62(a) *have a system which enables them to identify all open and closed legal aid cases* **including green form, from the time of making their application for a franchise (PMS F2).**

Para (Clause amended)
3.70(e) *advice to the client* **on the best information possible about likely total cost of the matter and any potential liability for costs** *(Written Professional Standard: Information on Costs for Clients a(ii) (e) (ii) and (iii))*

Para (Add to end of paragraph)
3.73 **In respect of 3.71 organisations must, unless**

there are exceptional circumstances, confirm matters 3.70 a - g in writing to the client. If this is not practical there must be other evidence of confirmation with the client; for example, by the client's signature on the attendance note or case record.

Para (Replace current paragraph with)
3.74 **Advance information on the likely cost of the matter, or the best estimate available at the time (which may be within a range) must, with certain exceptions, be given to all legal aid clients for two reasons:**

- i) the Board believes it is important that legally aided clients are aware of the likely cost so that they are better able to make informed decisions; and
- ii) in all but a small number of types of cases the legally aided client has a potential cost liability and it is important that this is understood by the client. Lack of advice and information on this issue is one of the most frequent causes of complaint from legally aided clients.

The Board accepts that there are specific types of cases when this requirement need not apply and these are:

non means/non merit tested cases i.e. public law child care cases, Child Abduction and Custody Act 1985 cases and registration of certain foreign order and judgement proceedings under regulations 14 and 15, Civil Legal Aid (General)

Regulations 1989, non contributory criminal cases, and green form advice and assistance up to the prescribed limit (i.e. the initial two or three hours' work).

Clients must be informed of the likely total cost of the matter as near to the beginning of the case as possible.

In green form matters, at the stage that the franchisee either exercises devolved powers or receives authority from the area office to extend the green form, the client must be told the likely cost (including disbursements) for that stage. This may be the amount granted or applied for in the extension. If the franchisee believes that further extensions will be necessary, or there will be an application for a full certificate, the client must be informed and, if possible, estimates of the potential total costs should be provided. The Board recognises that estimates may need to be revised as the franchisee becomes better informed about the cost of necessary work.

There may be instances where the most helpful way of giving the information to the client is to give estimates of the likely cost of adopting specific options for progressing the matter. These estimates must then be refined as work progresses, and the franchisee advises the client on the best way forward. In these circumstances clients need

to have costs information to inform their choices.

The Board recognises that information on costs may confuse or distress a small number of clients; for example those with learning difficulties, or in a particularly confused or distressed state. The franchisee has discretion in these circumstances to consider the most appropriate time and means of giving the information to clients and may even, in exceptional cases, decide not to give the information. However, the Board's objective is that costs information must be given to all clients. Confusion and distress can arise simply from a misunderstanding of what has been said or written to clients. Franchisees should always have regard to the use of plain English in communications with clients. Where, on an individual case, a franchisee decides not to provide costs information until later in the case or not at all, they must justify that decision on the file.

Para (Final sentence amended)
3.78 Evidence will be sought that the client had been informed of any change in the likely cost of the matter and in his or her potential cost liability, particularly in matters that have been live for more than six months.

Para (Third sentence amended)
3.90 The Board will accept as evidence of compliance a certificate from an accountant, who is independent of the organisation, that systems to provide the relevant information

within the organisation are in place and in operation.

Para (Penultimate sentence add)
3.94 However, the Board will be analysing its existing data on average cost of cases and where there are significant deviations from the average for the area office as a whole will be seeking an explanation from applicants and Franchisees.

Para (Add to end of paragraph)
3.96 No criteria relating to the average costs of cases will be introduced as a mandatory requirement either before 1 August 1996 for new applicants or the first periodic audit after 1 August 1997 for franchisees.

Para (Sentence amended)
3.97 Organisations must document the skills, knowledge and experience required of all staff including partners, caseworkers/ advisers and support staff, directly or indirectly involved in work in the franchise category and the tasks that they are required to perform, usually in the form of a job description or person specification. (PMS D 1).

Para (Sentence amended)
3.98 Organisations must have documented recruitment arrangements which evaluate the skill, knowledge and experience possessed by applicants for posts in the organisation, and their integrity and suitability (PMS D 2).

Para (Paragraph amended)
3.99 Organisations must have documented arrangements to provide an induction process for new postholders. (PMS D 3)

Para (Paragraph amended)
3.100 Organisations must have procedures to:
a. document the responsibilities and

objectives of all personnel in the organisation

- b. evaluate the performance of staff at least annually against those responsibilities and objectives; and
- c. record in writing the performance appraisal.

These procedures must be documented

Para (Paragraph amended)
3.104 There must be job descriptions or some other documentation for all personnel (including partners and support staff) directly or indirectly involved in legal aid work in the categories for which a franchise is applied for or held. The job description or other documentation must set out clearly the job purpose, general responsibilities and tasks, and lines of accountability of the postholder.

Para (Add to end of paragraph)
3.108 It is not a requirement that these arrangements apply to partners but the Board recommends that they should.

Para (Paragraph amended, 3rd and 2nd from last sentences)
3.109 There must be a documented training plan for the whole organisation or department which must be reviewed at least annually and appropriate arrangements made for the training of individual personnel. A written training record must be kept, recording for individuals directly or indirectly involved in work in the franchise category, at least the dates of any courses attended, the course titles, the names of course providers and the number of continuing development hours, if applicable.

Para (Paragraph amended 2nd sentence)

3.121Procedures must exist for updating the manual regularly and recording dates of amendments. The Board.....	There is no closing date for applications and there is no limit to the number of franchises that will be granted either by category of work or geographical area. It is therefore in the best interests both of the Board and of organisations wishing to obtain a franchise that valuable resources are not wasted on premature applications. Applications will be processed in chronological order of receipt in the area office.	address, fully, all relevant mandatory requirements of the franchising specification.
Para	(Add to end of sentence)		Para (Replace current paragraph with)
3.126in the Franchise Manual or otherwise published by the board.		5.3 The preliminary audit will be carried out by a Liaison Manager and will focus on the detail of the documented procedures developed by the organisation. The Liaison Manager will compare the procedures point by point with the Franchising Specification seeking evidence that the mandatory points are addressed. The Liaison Manager will ask the organisation to provide further documentation supporting the application during the preliminary audit such as specific forms, work instructions, plans and insurance cover. The Liaison Manager will also wish to ensure that the systems are in operation by observations and discussions with some of the organisation's staff. The purpose of this is to assess the understanding of the procedures by the staff and the effectiveness of implementation. This will reassure the Liaison Manager that the organisation has a reasonable prospect of meeting the general and management requirements at the pre-contract audit.
Para			
4.1	(Add to end of paragraph) These categories may be amended (see paragraph 1.9)	Para 4.11 Now para 4.9	
Para			
4.2	(Delete 2nd & 3rd sentences - paragraph now reads) <i>Organisations which apply for a crime franchise and which are involved in either of the duty solicitor schemes must meet the criteria for both criminal and duty solicitor work. Applicants for crime franchises should note, in particular, the requirements for file management and review (see Section 3).</i>	Para (Paragraph amended) 4.12 Now para 4.10 Delete sentence "Organisations should note that the prioritisation arrangements set out in paras 4.8 and 4.9 above still operate only for applications accepted by 29 October 1993."	
Para		Para	
4.3	(Paragraph amended) <i>Applicants for a franchise will be expected to complete an application form. The Board will supply applicants with a self-assessment audit check list for use with the specification. The purpose of this is to assist applicants to assess their readiness for applying. The completed check-list will need to be submitted with each application, together with the documented procedures and arrangements for all the relevant mandatory requirements.</i>	Para (Paragraph amended) 4.14 Now para 4.11 Delete from first sentence "from 1 October 1993"	
	Delete (a) to (i)	Para (Clause amended) 4.15(g) Now para 4.12 (g) post contract periodic audit and monitoring (section 9)	
Para		Para (Replace current paragraph with)	
4.8	Delete	5.1 The process of monitoring and the pre-contract and post-contract audits are resource intensive for the Board and for applicants. To ensure that these resources are used effectively the preliminary audit is used to ensure that there is, at least, initial evidence that the applicant has the required systems in place. This audit is designed to make sure that the organisation's documented procedures	
Para			Para (Paragraph amended)
4.9	Delete		5.7 <i>Only major non compliances that cannot be rectified within 21 days will result in a decision to refuse to accept the organisation into the monitoring period probably with advice on when a further application might be made.</i>
Para	(Paragraph amended)		Para (Replace current Paragraph with)
4.10	Now para 4.8. Delete final two sentence		

5.8	<p>The Board recognises that there are four types of major non-compliance: major-(a); major-(b); major-(c); and major (d). These are defined as follows:</p> <p>A major-(a) non-compliance is where there is no written plan, procedure or arrangement for one of the mandatory general and management requirements set out in Section 3 above;</p> <p>A major-(b) non-compliance is where a written plan, procedure or arrangement exists but it does not meet the mandatory general and management requirements in Section 3 above;</p> <p>A major-(c) non-compliance is where there is no or insufficient evidence that a plan, procedure or arrangement that is a mandatory general and management requirement in Section 3 above is in effective operation.</p> <p>A major-(d) non-compliance is where the organisation is not able to comply with one of the following mandatory requirements :</p> <ul style="list-style-type: none"> i) monitoring (see sections 6 and 9); ii) transaction criteria (see section 7.19 and 7.35); iii) average cost criteria see (sections 3.94-3.96, 6.10, 6.11 and 9.1); iv) outcome measures (see section 7.30). 	<p>Amended Title</p> <p>Section 6: Monitoring Arrangements and Mandatory Monitoring Requirements</p> <p>Para (Paragraph amended, delete last two sentences)</p> <p>6.3 <i>“While the Board will continue..... to the organisation.”</i></p> <p>Para (Paragraph amended, delete first sentence and first word of second sentence)</p> <p>6.4 <i>“As with green form exercised. Accordingly,”</i></p> <p>Para (Paragraph amended - add)</p> <p>6.6 (f) technical deficiencies in emergency applications (g) technical deficiencies in ABWOR applications</p> <p>Para (Paragraph amended - add)</p> <p>6.9 (c) Number of nil assessments</p> <p>Para (Add to existing paragraph)</p> <p>6.11 No new criteria relating to the average cost of cases will be introduced as mandatory requirements either before August 1996 for new applicants or the first periodic audit after 1 August 1997 for franchisees.</p> <p>Para</p> <p>6.13 (Now para 6.16)</p> <p>Para (New paragraph)</p> <p>6.13 Emergency Applications Rejected because of Technical Deficiency.</p> <p>The Board will be introducing this monitoring progressively as its new computer systems are developed. If more than 5% of an organisation’s applications in the category of work for</p>	<p>which the application for a franchise is made are consistently rejected because of technical deficiency, then the grant of a franchise will be postponed until the reject rate is reduced below that figure. Rejects can cause delay to the assisted person. The Board will be issuing guidelines to assist in the correct completion of applications.</p> <p>Para (New paragraph)</p> <p>6.14 ABWOR Applications Rejected because of Technical Deficiency</p> <p>The Board will be introducing this monitoring progressively as its new computer systems are developed. If more than 5% of an organisation’s applications in the category of work for which the application for a franchise is made are consistently rejected because of technical deficiency, then the grant of a franchise will be postponed until the reject rate is reduced below that figure. Rejects can cause delay to the assisted person. The Board will be issuing guidelines to assist in the correct completion of applications.</p> <p>Para (New paragraph)</p> <p>6.15 For monitoring purposes rejects and refusals do not have to be reviewed immediately they are received by the organisations although they can do so if they wish. It may be more helpful to discuss them in general terms with the Liaison Manager to see if there are</p>
Para	(Paragraph amended, delete from 2nd sentence)		
5.16	<i>“other than those identified in the self assessment audit check list for implementation on a specific date”</i>		

any underlying problems or misunderstandings.

The Liaison Manager will take account of incorrect rejects or refusals by the Board at any point during the monitoring period before the organisation's performance over that period is determined.

Para 6.13 (Now paragraph 6.16)
Heading: Extension to the Monitoring Period
(In the second and last sentences which refer to paras 6.6 - 6.9 and 6.12 add to both sentences)
"and when introduced para 6.10 & 6.11. "

Para 7.1 (Sentence amended)
6.6 - 6.9 and 6.12 and when introduced 6.10 - 6.11 above.

Para 7.11 (Paragraph amended - delete current final sentence and add)
The following type(s) of major non compliances identified in the pre or any post contract audit or monitoring would lead to a decision to refuse, suspend or terminate the franchise: (see para 5.8 and 8.2 for definitions)

- where a major (a) or (b) non compliance had been identified and notified at the preliminary audit and had not been rectified;
- where a major (a) or (b) non compliance has been identified and notified at the pre contract or subsequent post contract audit and had not been rectified within the required period (see below);
- any major (c) non compliance; and
- any major (d) non compliance.

If major (a) and (b) non compliances are identified and notified at the pre or post contract audit and these had not been identified at any previous audit the organisation will be given at least 21 days to comply. Compliance will need to be notified to the Liaison Manager within an agreed period and the relevant requirements will be audited at the next post contract audit.

(Amend heading prior to paragraph 7.19 to)
Transaction Criteria Mandatory Requirement

Para 7.21 (Paragraph amended, delete from first sentence)
"Once the work is completed" and replace with The Board has published

Para 7.30 (Replace current paragraph with)
The Board recognises that the application of the transaction criteria requires a close collaboration with the profession in order to determine how best the criteria can be used to assess the competence of legal work. Consultation will be ongoing with the profession on their content and how they can best be applied as a quality assurance mechanism. The transaction criteria compliance rates for Housing, Employment, Debt, Consumer/General Contract and Welfare Benefits will be 65% and for Personal Injury, Matrimonial/Family, Crime and Immigration/ Nationality not less than 65% or may be raised to 70%. These compliance

rates will be confirmed, following further consultation, by 1 October 1994. Compliance with the transaction criteria at these levels will become a mandatory requirement for all organisations undergoing a pre contract audit on or after the 1st October 1994. Once confirmed, the transaction criteria compliance rates will be increased only to assure the required level of quality and not to restrict arbitrarily the number of franchised organisations. The compliance rate will not, in any event, be increased before 1 August 1996 for new applicants. Existing franchisees will not be required to comply with any increased rate until their next periodic audit after 1 February 1997.

The Board is continuing with its research on "outcome measures" which, if they can be successfully developed as an audit tool, will be applied in conjunction with the transaction criteria audit. Pending the outcome of the research into outcome measures, and their confirmation as a valid quality assurance tool, they will not by themselves be introduced as a mandatory requirement for existing franchisees until after 1 August 1999. Once established, new applicants would need to meet any requirements introduced but this will not be before 1 August 1996.

Para 7.31 (New paragraph)
The compliance rates are based on the scores

achieved by organisations in the first round of pre-contract audits.

7.32 The compliance rates and the statistical methodology used to determine an organisation's compliance rate takes account of the natural variability of the auditing technique and ensures that any benefit of doubt is in the organisation's favour. A detailed explanation of the methodology is available on request.

7.33 In addition the following safeguards are available if the organisation does not meet the compliance rate and that is the only reason for refusal, suspension or termination of a franchise.

- the audit will be re-checked jointly with the representative of the organisation and the score adjusted if necessary;
- the individual files of fee earners no longer with the organisation may be discounted;

- a new sample of more recent files may be audited including, if necessary, open files using the relevant sections of the transaction criteria;

- the files audited may be reviewed by a panel of specialist franchised solicitors who will advise the Board if, in their view, the case files reflect the acceptable level of competence regardless of the transaction criteria score.**

Para (New paragraph)

7.34 The Board will continue to apply its own quality control on the transaction criteria audit process by re-auditing a sample of files. The quality control data will be made available to the Law Society and franchised organisations.

.....and Arbitration

Para (Add to end of current paragraph)

8.2 and additionally an arbitration procedure where the Board intends to suspend or terminate a franchise

8.7 Following dealing with any appeals from the first phase of applicants the Board will normally hear an appeal within 6 weeks of receiving all the written information submitted by the organisation. Any appeal scheduled outside this time will be by agreement with the appellant.

(Heading) **Arbitration**

Para (New paragraph)

8.11 **If an organisation is**

Para (New paragraph)

8.12 The main elements of the procedure are:

(b) the arbitrator shall be appointed by the Chairman of the Chartered Institute or Arbitrators:

- (i) to require the application for appointment of an arbitrator to specify that the arbitrator shall be experienced in the principles of quality assurance;
- (ii) to provide for the making of findings as to whether or not the appeal body's decision was right; and
- (iii) to require, where practicable, bearing in mind the interests

of justice, the arbitration to be concluded within three months from the date of appointment of the arbitrator; and

(d) the parties must use their best endeavours to ensure that the arbitration is concluded within three months or as soon as practicable thereafter and must provide in a timely manner all reasonable information, assistance, cooperation and responses as may be required.

(e) the Board reserves the right to suspend a franchise:

(i) if the arbitration has not been concluded within three months from the date of appointment of the arbitrator; or

(ii) if for any reason an arbitrator is not appointed within three months of the Franchise Appeal Body's decision. Subject to this, once a matter has been referred to arbitration and unless the Board considers that suspension or termination is urgently required to protect the legal aid fund, clients or the Board's interests, the Board will suspend or terminate the franchise only in two circumstances. First, if the arbitrator

confirms the Franchise Appeal Body's decision or otherwise finds that it would be right for the Board to suspend or terminate. Second, if after three months have elapsed since the Franchise Appeal Body's decision or the appointment of the arbitrator (whichever is later) the Board reasonably considers that the franchisee is failing to comply with the requirement in paragraph 18.12(D) above.

Para (New paragraph)
8.13 (Heading) **Suspension and Termination**

Where the Board refers to suspending or terminating a franchise, this could mean terminating a contract or suspending or terminating the Board's approval of a franchised office or a franchised category of work. Similarly, where the Board refers to suspending devolved powers, this might mean suspending or terminating the Board's approval of one or more of the organisation's devolved powers, possibly in one particular category of work only.

Para (Clause amended)
9.1(a) *the number and nature of green form extensions where in the Board's view the devolved powers were exercised inappropriately.*

Para (Clause amended)
9.1(f) *the number and nature of emergency legal aid*

Clause (New clause)

9.1(i) **the number of emergency applications in the franchised category rejected because of technical deficiencies;**

Clause (New clause)

9.1(j) **the number of ABWOR applications in the franchised category rejected because of technical deficiencies;**

Para (Final paragraph amended from 3rd sentence onwards)

9.1 **In particular in respect of (b), (c) (d) (g) (i) and (j) above the Board will expect franchisees to meet the levels of performance set out in paras 6.7, 6.8, 6.12 6.9 6.13 and 6.14 respectively. In respect of (h) above initially the procedure in para 6.10 will be followed until average cost criteria become a mandatory requirement. In respect of (a) and (f) above the procedure set out in paragraph 2.25 will apply.**

Para (Add to end of paragraph)

9.2 **If, after providing the organisation with advice and a reasonable period of time to comply with the monitoring requirements 9.1 (b) (c) (d) (g) (i) and (j) and this is not achieved, the franchise may be suspended pending the organisation introducing the necessary controls to meet the monitoring requirements. Normally, this will happen only where the Board considers that there is a risk to clients or to the Legal Aid Fund. The Board's general approach will be to follow a graded procedure which allows the franchisee time to address any problems.**

	The procedure is set out in para 9.6.	allows the franchisee time to address any problems. The procedure is set out in para 9.6	franchise and, if that appeal fails, wishes to proceed with arbitration, the franchise will continue, unless there are extreme circumstances where the Board needs to suspend or terminate the franchise to protect the Fund or the clients' interests.
Para 9.4	(Amend final sentence) <i>The first periodic audit will take place six to 12 months after the grant of the contract and then at approximately 12- month intervals.</i>	Para 9.6 (Delete final sentence) <i>"If the concern is over the exercise of devolved powers the Area Manager may suspend the operation of those powers or any single power forthwith."</i>	
Para 9.5	(Replace current paragraph with) The Board may consider that there is an urgent need to suspend or terminate the franchise. Normally, this will happen only where the Board considers there is a risk to clients or to the Legal Aid Fund. The Board's general approach will be to follow a graded procedure which	(Amend Heading before paragraph 9.9) "Appeals and Arbitration (Section 8)	If the franchisee seeks to appeal against the decision to suspend the operation of devolved power the suspension will continue until the appeal is determined. There is no recourse to arbitration for the suspension of devolved powers.
		Para 9.9 (Replace current paragraph with) If the franchisee appeals against the decision to suspend or terminate a	

Statutory Charge Update

At the same time as the regulation changes bringing about franchising, important changes are being made to the rules on postponement of enforcement of the statutory charge. The changes give the Board wider powers to postpone enforcement and change the rules under which interest runs on postponed charges. The most important changes are that:

1. The Board now has power to postpone enforcement of the statutory charge in any case where a home is recovered or preserved, regardless of the nature of the proceedings. The most common cases affected will be disputes between unmarried couples under section 30 of the Law of Property Act 1925, landlord and tenant cases and mortgage possession actions.
2. In cases where money is recovered which is to be used to purchase a home, in addition to the existing classes of proceedings, the Board may postpone enforcement of the charge over the money and the home in proceedings under section 30 of the

Law of Property Act 1925 and under Part III of the Matrimonial and Family Proceedings Act 1984 (orders for financial provision following divorce overseas).

3. Where interest runs on postponed charges, it will only run on the amount outstanding on the charge from time to time, in other words no interest will be charged before the Board has paid the relevant bill following taxation or assessment.

These regulations come into force on 1st August 1994 but do not affect any cases where interest is already running under an agreement signed before that date. However, the new rules will apply to cases where property has already been recovered and preserved before 1st August 1994 and the charge remains outstanding. In these transitional cases postponement may take place even if the order or agreement did not provide for the property to be used as a home. In cases where no power to postpone previously existed, interest will not be charged for any period before 1st August 1994. There are many cases

where the Board has been delaying taking enforcement action awaiting these new regulations. The Board will now be contacting the assisted person in such cases and seeking interest agreements to ensure that postponement can take place.

The existence of wider powers to postpone enforcement of the charge is particularly important given the decision of the Court in *Parkes v Legal Aid Board* (Times, 24 May 1994). This case establishes that the statutory charge applies whenever an assisted person manages to avoid an order for sale of the property, even if ownership was not in dispute. Therefore the charge applies in cases of preservation of possession as well as to recovery of possession (see *Curling v The Law Society* [1985] 1WLR, 470).

For full details of these regulation changes see the Civil Legal Aid (General) (Amendment) (No.2) Regulations 1994, SI No. 1822. Details will also be included in the 1994 Legal Aid Handbook which is to be published in the autumn.

Franchising Publicity

The Board has initiated a number of publicity projects to mark the implementation of franchising. Franchised firms will be issued with a franchise logo pack over the next few days. The pack will contain a window sticker and a bromide sheet of the franchise logo. The pack is a comprehensive guide to using the logo on stationery, business cards and window displays.

On 1 August the Board will hold a press conference to which members of the national press and specialist legal press will be invited. Franchised firms will receive a copy of the press release on the 1st August 1994. In addition to this, to raise awareness of franchising amongst the public the Board has contacted the Newspaper Society who have agreed to coordinate a local newspaper campaign in August/September. Solicitors who have obtained a legal aid franchise may be contacted by local newspapers to see if they wish to take advertising. The adverts will be placed around a small feature about franchising.

Later this year the Board will produce a poster about franchising aimed at the public. This will be distributed widely by the Board. Copies will also be made available to franchised firms.

Birmingham Research and New Transaction Criteria

This month the Board publishes the full report on the Birmingham Pilot between 1990 and 1992 and the research which led to the development of the transaction criteria. The research and the up to date transaction criteria are available from HMSO bookshops (general enquiries 071-873 0011, telephone orders 071-873 9090). Published in two separate volumes "Lawyers – The Quality Agenda, Assessing and Developing Quality and Competence in Legal Aid, Volume One: The Report of the Birmingham Franchising Pilot" [ISBN – 0 11 380084 3] and "Volume Two: Transaction Criteria" [ISBN – 0 11 380083 5]. The research report gives an essential insight into the development of concepts of

competence in franchising but more particularly into the development of the transaction criteria. The researchers explain how transaction criteria work and how they provide quality assurance in the context of the other measures in franchising. Understanding the way the criteria have been developed will help practitioners to comply with the requirements of legal aid franchising. Volume Two contains transaction criteria in the nine categories of law in which franchises may be obtained; it provides fully updated versions of the audit checklists used by the Board to audit files in the areas of Personal Injury, Family/ Matrimonial, and Crime up to full certificate litigation stage; and for green form advice and assistance in the remaining six franchise categories. A section on outcome measures is included to give practitioners early sight of these draft criteria, which remain the subject of further research. The volumes cost £7.95 and £14.95 respectively.



Franchise Manual

In October 1993, to coincide with the first franchise applications, the Board published a Franchise Manual giving guidance on the way that area offices exercise their powers to grant and refuse legal aid. That Manual was issued to all franchise applicants accepted into the monitoring period, but extracts from it were also published in Focus and in the Gazette.

The Manual has now been revised and expanded after consultation with the Law Society, special interest groups,

and users, and has been re-issued to franchise applicants. We now use the term "Franchise Manual" as a generic term to cover all guidance relating to franchisees, including not only the specific guidance on the use of devolved powers, but also the Legal Aid Handbook and the Franchise Specification. It does not include guidance on the use of the legal aid logo which is dealt with in a special pack and is available from your franchise liaison manager. There is a new document called "Guidance on the exercise of devolved powers" including procedural information on the use of forms and on claiming payments. It also contains revised green form costs guidance; in particular the Immigration guidance has been revised and we are grateful to members of the Immigration Law Practitioners' Association for their help with this.

The guidance will be used by both area office staff and franchisees when making decisions, but contains much of both use and interest to other firms/organisations who either undertake legal aid work or who intend to apply for a franchise at some later stage.

The Board is therefore happy to supply copies on request to your firm or organisation who should write to the address below.

Firms who have been using the previously published guidance should note that the new guidance comes into force on the 1st August 1994 and from that date they should no longer refer to the first version of the Manual.

The guidance should always be read in conjunction with the latest available versions of the Legal Aid Handbook and the Franchising Specification.

Copies of the Guidance may be obtained from:

Steve Smith
No 6 (West Midlands) Legal Aid Area Office
Centre City Podium
5 Hill Street
Birmingham
B5 4UD
DX 13041 Birmingham 1