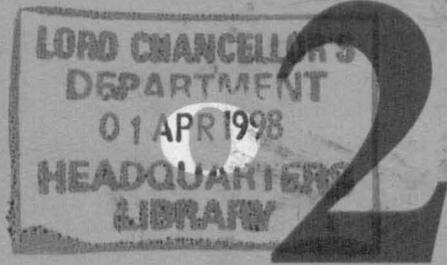
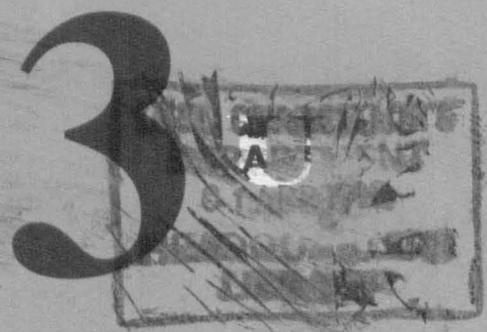


F



C



S

T W E N T Y T H I R D I S S U E

A P R I L ' 9 8

'Access to Justice with Conditional Fees' – the Lord Chancellor's Consultation Paper

On March 4, the Lord Chancellor published a consultation paper setting out, and inviting comment on, his proposals for the reform of the legal aid scheme. The reform programme will be delivered in stages and this paper, 'Access to Justice with Conditional Fees', looks at the first stage. The Lord Chancellor aims, subject to consultation, to complete this first stage by the middle of this year. A White Paper will be published this summer detailing longer term plans for the reform programme.

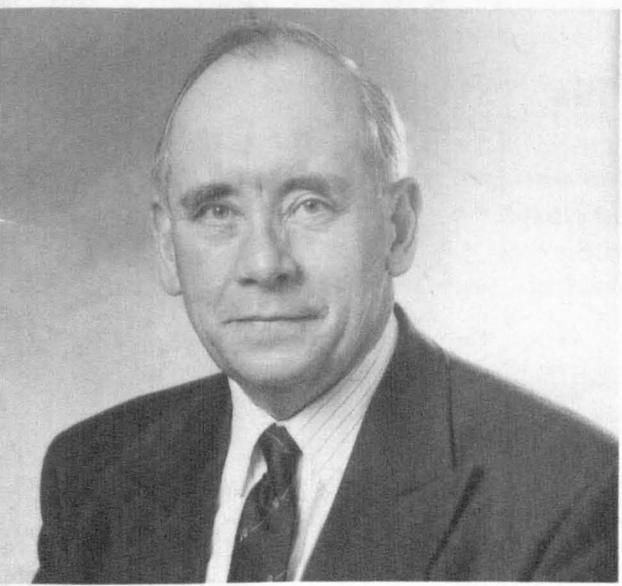
The consultation paper proposes that all legal aid work be restricted to providers of legal services who have contracts with the Legal Aid Board. It proposes a tougher merits test. It invites views on the extension of conditional fee agreements to all except family and criminal cases. In order to target legal aid provision, the Lord Chancellor proposes removing a number of categories from the scope of the legal aid scheme, to be covered instead by conditional fee agreements. It is expected that most personal injury actions will come out of scope and, at a later stage, most other money claims. Housing and judicial review will stay in scope. Legal aid for defendants of

civil claims will not be affected.

The Lord Chancellor addresses the handling of medical negligence cases. He proposes that they should stay in scope for the time being but should be conducted only by practitioners contracted by the Board who have demonstrated expertise in the field and invites comments on how this could be achieved.

Comments are also invited on setting up a limited transitional fund. This would provide support in cases where there are high investigative costs in establishing the merits of a case, or where the costs of carrying a case are very high, or where there is a strong public interest in funding the case.

If you would like a copy of the consultation paper or have any queries or comments about the proposals it contains, please contact Ms Bridget Lee, Lord Chancellor's Department, 3rd Floor, Selborne House, 54/60 Victoria Street, London SW1E 6QW, telephone: 0171 210 8774. Copies of the paper are also available on the internet at www.open.gov.uk/lcd. Comments should arrive by Thursday 30 April 1998.



Philip Ely

Chair appointed for RLSCs in the South East

Philip Ely has been appointed Chair of the three Regional Legal Services Committees (RLSCs) which cover the areas served by the Board's London, Brighton and Reading area offices. This means that the Board has now successfully appointed Chairs for all of the 13 RLSCs which are being established throughout England and Wales.

Philip Ely became a member of the Legal Aid Board in November 1996. He is a private practice solicitor with wide-ranging experience of most areas of law. He has also served as a member of the Law Society's council and as President of the Law Society.

Legal Aid Board



Legal Advice and Assistance and Supervision

Practitioners should note the decision of the Divisional Court in *R v Legal Aid Board ex p Rafina* (12 February 1998 – unreported) which involved an application for judicial review by a firm of solicitors which specialised in immigration work.

The Board had concerns about the use of unsupervised representatives by the firm to provide immigration advice under the Legal Advice and Assistance Scheme. The Board placed a temporary stop on the firm's legal aid account while it investigated. The area office disallowed a number of claims after determining that the firm's supervisory arrangements did not satisfy Regulation 20 of the Legal Advice and Assistance Regulations 1989. The area committee upheld the decision of the area office on appeal. The solicitors appealed to the Costs Appeals Committee which certified a point of principle of general importance known as LAA12.

The solicitors challenged the Board's interpretation of Regulation 20, the failure of the area committee to give proper reasons for its decision and the Board's decision to impose a temporary stop on the solicitor's account. The firm's application for judicial review was dismissed by the Court.

Mr Justice Latham upheld the Costs Appeals Committee's interpretation of Regulation 20 as set out in the point of principle. This means that if unqualified representatives undertake work under the Legal Advice and Assistance Scheme, they must be competent and responsible, and either be employed in a solicitor's office under a

contract of service or be under the immediate supervision of a solicitor. It is not sufficient for an unqualified person to be employed in a solicitor's office as an independent contractor unless the person is being immediately supervised by a solicitor.

The Court adopted an interpretation of "immediate supervision" put forward by the Law Society, which is as follows:

The Society's interpretation of "immediate supervision" is that it requires the solicitor be empowered to direct the work of the clerk and to review it as necessary. If the solicitor is able to direct the work of the representative, is able to monitor its quality, and to take immediate and effective action if the quality is unsatisfactory as well as being able to insist that the representative cease to act as necessary then in the Society's view adequate and immediate supervision has taken place'.

This should be read in conjunction with Note for Guidance 2-51 in the 1997/98 edition of the Legal Aid Handbook p40-42.

The Court confirmed that the consequences of a breach of Regulation 20 are that there will be no entitlement to any payment under the Legal Advice and Assistance Scheme. It prevents payment of both profit costs and disbursements, for example interpreter's fees.

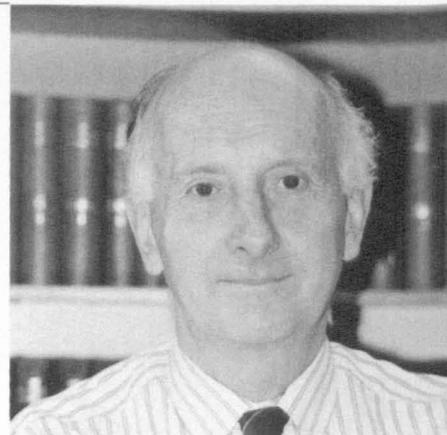
This case also determined that area committees have an obligation to provide reasons for their decisions on appeals. The Board has been looking into this issue for some time and will shortly be issuing new guidance to area offices.

The Board took action in the interests of the Fund, the tax-payer and the legally-aided client. The judgment implicitly accepts that the Board has power to impose a temporary stop on a solicitor's account where appropriate.

OBE for Board Member

David Sinker, the longest serving Board member, has been awarded an OBE for his services to the Legal Aid Board.

David Sinker joined the Legal Aid Board in 1988. He is Chair of the Board's Duty Solicitor Committee and in 1997 became Chair of the three Regional Legal Services Committees based in Birmingham, Nottingham and Cambridge. He is a chartered accountant and a magistrate.



David Sinker OBE

Access to Justice with Conditional Fees – the Lord Chancellor's Consultation Paper	1	The Special Investigations Unit and Criminal Legal Aid	4	Legal Aid Handbook 1998/9	7
Chair Appointed for RLSCs in the South East	1	Family Mediation Pilot	4-5	CIS Implementation Update	7
Legal Advice and Assistant and Supervision	2	Supplies of Legal Aid Forms	5	Amendments to Guidance: Exercise of Devolved Powers	8-9
OBE for Board Member	2	Transaction Criteria	6	Civil Legal Aid: Guide to Assessing Financial Eligibility	10-11
Solicitors Surveyed	3	Means Assessment	6	Legal Aid Eligibility 1998 – General Information	12
Courts to use Registered Interpreters in Criminal Cases	3	New Mental Health Franchise	7	Legal Aid Eligibility from 6 April 1998	12-13
Reforming the Civil Advice and Assistance Scheme	3	Duty Solicitor Representatives	7	Proposed Payment Dates	14
		Error in Solicitors' Regional Directory	7		

Solicitors surveyed

A recent survey revealed that solicitors across England and Wales rate the quality and content of Focus very highly.

Over 1300 solicitors in the 13 legal aid areas of England and Wales received the questionnaire sent out last year. The results of the survey also revealed that over 84% of respondents believe that the Legal Aid Board is committed to quality improvements and that 80% believe that we care about the quality of what we do.

The survey also raised some constructive points about areas in which solicitors are less satisfied. It was encouraging to learn from the analysis of the survey that initiatives are already in place to improve our performance in most areas of work which solicitors considered to be only 'satisfactory' or 'below satisfactory'. An example is our new customer service and complaints procedure which was launched in February. A series of recommendations for further action has been drawn from the results in areas such as actioning correspondence. A comprehensive analysis of the survey will appear in the next issue of Focus.

The Legal Aid Board is committed to improving the quality of our service. We take the views of the profession very seriously and welcome any comments about Focus or any other aspect of our work. For details of the survey please write to Robert Woodhouse at the Reading Area Office, 80 King's Road, Reading, Berks, RG1 4LT or DX 4050 Reading. Your comments about Focus should be sent to Sophia Swithern, Press and Publications Office, Legal Aid Head Office, 85 Gray's Inn Road, London WC1X 8AA or DX 450 London.

Courts to use registered interpreters in criminal cases

Criminal justice agencies have agreed to secure all their interpreters, wherever possible, from an approved national register by the year 2002. Police, courts and other legal agencies will aim to use the Institute of Linguists' National Register of Public Service Interpreters (NRPSI) for criminal cases in England and Wales. They hope to curb the widespread practice of using relatives, including children, or other unqualified individuals as interpreters and so to prevent miscarriages of justice resulting from communication problems.

The National Register was established in 1994 with Home Office support and backing from the Nuffield Foundation. Its purpose is to improve standards of interpreting for police and courts and other legal agencies as well as health care and local government.

Only interpreters who are qualified and/or experienced in public service interpreting may enter the Register. One accepted qualification is the Diploma in Public Service Interpreting which has a legal option requiring interpreters to be competent in two languages, have interpreting skills and also a knowledge of legal procedures. All NRPSI interpreters are bound by a code of conduct.

The sixth edition of the Register will be published this month. It will contain details of approximately 530 interpreters, about half of whom can work in the legal field. A total of 73 languages is represented. If you would like to obtain a copy of the Register, or require further information, please contact Valerie Vauthier at the Institute of Linguists on 0171 940 3115.

Reforming the civil advice and assistance scheme

In January 1998, the Lord Chancellor asked the Legal Aid Board to prepare a plan to deliver exclusive contracting for all civil advice and assistance work by the end of 1999.

The Legal Aid Board's consultation paper, 'Reforming the civil advice and assistance scheme - exclusive contracting, the way forward' is being finalised and we expect to publish it shortly. There will be a six week consultation period. The Lord Chancellor has asked for the final plan to be submitted to him in May 1998.

The consultation paper will make proposals in four key areas:

- **The allocation of funds to regions**
This section will explore the options for determining how the available money should be divided between area offices for the purpose of letting contracts.
- **The contracting process**
This will cover the process for letting contracts, including the basis of selection and competition, as well

as opportunities for new suppliers to enter contracts.

- **The development of franchising**
The guaranteed period for the current franchise contract ends on 31 July 1999. This section will outline the proposed changes to the franchise specification as it will underpin the new scheme.
- **Regional Legal Services Committees (RLSCs)**
This will set out the constitution and methods of working of the 13 RLSCs. The RLSCs have a key role in ensuring that contracts let in an exclusive scheme operating within a predetermined budget establish an effective framework for provision.

Copies of the consultation paper will be sent automatically to all franchisees and those in the application process. Copies will be available from area offices and from Jasmine Gill-Khan, Policy and Legal Department, 85 Gray's Inn Road, London WC1X 8AA, telephone 0171 813 1000 ext. 8557.

The Special Investigations Unit and Criminal Legal Aid

The Lord Chancellor has decided to extend the role of the Board's Special Investigations Unit (SIU). It will now assist criminal courts in the means assessment of applicants for legal aid orders where the case is likely, if it proceeds, to be tried in the Crown Court and the applicant has a complex financial profile.

The Special Investigations Unit was established to deal with civil means assessments for applicants with complex finances and who are apparently wealthy. It was set up in 1995 by the Benefits Agency at the Legal Aid Assessment office in Preston and re-established in April 1997 with new staff in the Board's London area office, in advance of the transfer of means assessment.

On 1 April 1998, a new Regulation 22A of the Legal Aid Criminal and Care Proceedings (General) Regulations 1989 ('the Criminal Regulations') will come into effect. This regulation will allow court staff to refer an applicant for a criminal legal aid order, or a person already in receipt of an order, to the Board for a report into his or her financial circumstances. The Board will have the power to investigate the financial resources of the applicant or appropriate contributor, to

require him or her to provide further information or evidence and to report back to the court.

The decisions as to the grant, withdrawal or revocation of legal aid orders and the determination of contributions will remain with the courts. The Board's role, through SIU, will be limited to carrying out an investigation and preparing a report designed to assist the court in its decision-making process. It is recognised that it will often be necessary for courts to carry out the initial financial assessment so that legal aid can be granted to deal with any urgent matters before the case is referred to SIU. Consequential amendments to Regulations 32 and 33 of the Criminal Regulations will allow the courts to make a redetermination of means in these circumstances following receipt of SIU's report.

Initially, referrals of applicants will take place from a few selected courts under a pilot scheme in accordance with criteria similar to those adopted for SIU referrals in civil cases. The pilot scheme is expected to begin in April and details of the courts selected will be made available as soon as arrangements have been finalised. Users of the courts taking part in the pilot will have access to a leaflet explaining how the referrals will work. Individual applicants and their legal representatives will be informed if they are to be referred to SIU. Applicants will also be supplied with a breakdown of the financial assessment.

If the pilot project is successful, it is envisaged that the scheme will be extended to cover magistrates' courts and Crown Court centres throughout England and Wales.

If you have any queries about the regulations or the process, or would like to know whether the pilot is likely to operate in your area, please contact Patrick Reeve at Legal Aid Board Head Office, 85 Gray's Inn Road, WC1X 8AA, 0171 813 1000.

Family Mediation Pilot

The Legal Aid Board's Family Mediation pilot was set up in May 1997. This was in response to the Family Law Act 1996 which requires the Board to secure the provision and availability of family mediation services for clients eligible for legal aid. The pilot is testing different ways of providing family mediation services to resolve issues relating to children, property and finance matters for separating and divorcing couples.

The pilot has been running in Newcastle upon Tyne,

Durham, Manchester, Birmingham, Coventry, Northampton, Cambridge, Peterborough, Bristol, Cardiff, Bromley and some areas in London. Further pilot areas and suppliers have been short listed for the second phase of the pilot and potential participants will be visited by the Board's representatives over the next few months.

In March the Board began piloting section 29 of the Family Law Act as part of the project. Section 29,

subject to some important exceptions, requires a legal aid applicant to attend a meeting with a mediator, before the Board considers an application for civil legal aid for proceedings. The mediator will explain the mediation process and will assess whether mediation is suitable in all the circumstances for the people involved and the particular case. Legal advice and assistance under the green form scheme will continue to be available for eligible clients without having to attend a meeting first.

The implementation of section 29 is being piloted in two areas, Northamptonshire and Bristol. These areas have been selected for a number of reasons. They include both 'not-for-profit' and 'for-profit' services as well as a geographical mix of large cities and smaller towns. There is also a variety of approaches to mediation

available and we believe the services will be able to meet the predicted volume of work.

Section 29 is being implemented initially within a 1km catchment area around each of the mediation suppliers in the two pilot areas. All solicitors practising family work with offices within the 1km catchment area will be affected.

The pilot implementation in Bristol and Northamptonshire will inform the most effective way of implementing section 29 throughout the 13 legal aid areas in England and Wales.

If you have any queries about the Family Mediation Pilot please contact the Mediation Pilot Project, 29-37 Red Lion Street, London, WC1N 4PP, telephone: 0171 813 5300.

Supplies of Legal Aid Forms

The Board is currently discussing with the Law Society new arrangements for the supply of legal aid forms. Legal Aid forms will be available for purchase on disk from this spring, in order to address a growing demand from the profession. A recent survey of legal aid practitioners revealed that 86% of respondents would welcome the introduction of forms on disk. The initiative is part of the Board's continuing commitment to new technology for a more efficient service.

The Board will be granting licences to a number of companies to supply forms on disk, including all forms relating to CIS and means assessment. Subscribers to any one of these companies' services will receive an original disk and any updates produced during their subscription period. Practitioners will then be able to produce individual forms whenever needed, and no longer have to manage stocks of paper forms. Copies of forms will also be available in 'master packs', which will be available on request for those unable to use disks. The Board is also investigating the feasibility of making forms available on the internet.

The Board will accept versions of the forms generated by practitioners on their own systems from the disks,

scanned in from the master packs, directly entered into their systems (provided that the format, style, font and other specifications match those of the official forms) or photocopied from the master packs. The Board's current view is that once the disks and master packs have come into effect, it will cease to provide stocks of printed forms, except for the forms listed below.

The only forms that **will not** be made available on disk and which will remain available from area offices as at present, will be those relating to:

- non-CIS systems
- the operation of franchises
- applications to join area committees, which must still be ordered from the area office concerned.
- applications to become a Duty Solicitor, which must still be ordered from Legal Aid Board head office.

The names of the companies who will be awarded licences to provide forms on disk will be published shortly. They will also be advertising their services and providing details of their individual packages. The four licensees will each provide different packages, so that practitioners will be able to choose the one most suited to their needs.

We will provide further details of these arrangements, including a timetable for their introduction, once we have completed our discussions with the Law Society. Any questions on this issue should be addressed to Jayne Elliot, Quality Assurance Department, 12 Roger Street, London, WC1N 2JL.

Transaction Criteria

The Board has been conducting a review of transaction criteria. In all franchise categories, except Matrimonial/Family, the existing transaction criteria have been updated. In the Housing, Employment, and Consumer and General Contract franchise categories, and in the new Mental Health franchise category, additional sets of criteria have been developed.

The **revised** sets of criteria replace earlier issues and come into effect on introduction. The **new** sets of criteria have been introduced on a pilot basis. Files audited against these sets of criteria will not count towards the audit result for a limited period of time.

The transaction criteria in the Matrimonial/Family franchise category will be revised later in 1998. If you would like to be involved in development and consultation please contact the Franchise Development Group at Legal Aid Board Head Office, 85 Gray's Inn Road, London WC1X 8AA.

Below is a list of the current sets of criteria, for clarification. Pilot status has been indicated with an asterisk.

Matrimonial/Family

Family

(Issue 2: February 1995)

Matrimonial and Family

(Issue 1: February 1994)

Personal Injury

Non-medical Negligence

(Issue 2: March 1998)

Medical Negligence

(Issue 2: March 1998)

Crime

Crime

(Issue 3: March 1998)

Welfare Benefits

Medical Appeal Tribunals, Social Security Appeal Tribunals and Disability Appeal Tribunals

(Issue 1: May 1997)

Overpayments – Benefits Agency

(Issue 1: May 1997)

Overpayments – Local Authority

(Issue 1: May 1997)

Applications for Late Claims and Backdating of Benefits

(Issue 1: May 1997)

Disability Living Allowance (and Attendance Allowance)

(Issue 2: March 1998)

Housing

Defending Possession Proceedings

(Issue 2: March 1998)

Mortgage Repossession

(Issue 2: March 1998)

Homelessness

(Issue 2: March 1998)

Housing Disrepair

(Issue 2: March 1998)

Breach of Covenant for Quiet Enjoyment/ Wrongful Eviction / Trespass

(Issue 1: March 1998)*

Consumer and General Contract

Consumer

(Issue 2: January 1998)

Poor Workmanship / Building Disputes

(Issue 2: January 1998)*

Debt

Debt

(Issue 2: January 1998)

Mortgage Repossession

(Issue 2: March 1998)

Employment

Unfair Dismissal

(Issue 2: January 1998)

Wrongful Dismissal

(Issue 2: January 1998)

Unauthorised Deductions

(Issue 1: January 1998)*

Immigration

Advising clients seeking asylum

(Issue 3: January 1998)

Advising clients with relatives seeking leave to enter

(Issue 3: January 1998)

Advising clients seeking indefinite leave to remain

(Issue 3: January 1998)

Mental Health

Mental Health Review Tribunals

(Issue 1: March 1998)*

Copies of all sets of criteria are available from your local area office.

Means Assessment

- The Board's area offices have now completed the take-over of responsibility for processing means assessment for civil legal aid from the Benefits Agency. The Legal Aid Assessment Office in Preston closed on 27 March 1998.

If you have any queries relating to means assessment, you should now contact the area office concerned.

- All applications for civil legal aid should now be made using the new MEANS series of financial application forms. The Board has produced a booklet to help applicants complete form MEANS1. The booklet, called 'MEANS1 – the guide', should be given to applicants with the MEANS1 form. Packs of the new forms and booklet have been distributed by area offices and additional supplies can be ordered from them.
- The Board has also reviewed the criteria for rejecting applications, with the aim of completing assessments from the information given, whenever this is possible. The Board's revised checklist (Reference CK3) can be obtained from area offices.
- To avoid delays in processing applications, practitioners are reminded to make applicants aware how important it is that they correctly identify which particular state benefit they receive. Problems occur when applicants incorrectly state receipt of a passported benefit and complete the incorrect application form, which the Board then has to reject. (see *Focus 22*, p.17).
- All applicants will automatically receive a breakdown of the assessment with their offer or refusal of legal aid.

If you have any questions about the Board's approach to civil legal aid means assessment please contact Neil Tyson, Means Assessment Policy Co-ordinator, Legal Aid Board, Policy and Legal Dept., 85 Gray's Inn Road, London WC1X 8AA. Tel. 0171 813 1000 Ext 8568.

New Mental Health Franchise

A new Mental Health category was added to the Board's franchising scheme in January, following extensive consultation with the profession. Mental Health is the first additional category to be introduced since the franchise scheme was launched in 1994.

During 1997, the Board has worked closely with specialist mental health solicitors. Together they have developed the mental health franchise qualifying criteria which include rigorous standards for firms' supervisors, to assure the quality of advice and service given. The successful consultative approach taken in the Mental Health category will be applied to future development of franchising standards.



A QUALITY SERVICE
Approved by The Legal Aid Board

The devolved powers given to franchisees are particularly useful for Mental Health solicitors. Often they are asked to visit clients in urgent circumstances – with devolved powers they can start work for the client straight away, without needing to contact their area office first.

The first franchise contract in Mental Health was awarded to Alsters, a firm of solicitors in the Leamington Spa area, after they successfully completed the franchise audit and checking processes. If you are interested in applying for a Mental Health Franchise please contact your area office, for an information and application pack.

Duty Solicitor Representatives

We have received some queries about remuneration claims from duty solicitor representatives who have failed to obtain accreditation and have been suspended from the Board's Police Station Accreditation Register.

Under the 'advice at police stations' scheme, the Board is unable to pay for advice given by such representatives for both duty and own solicitor cases. Such representatives may also be suspended or excluded by their local duty solicitor committee as they are in breach of the selection criteria.

If you have any queries please contact Simon Hillyard on 0171 813 8675.

Error in Law Society's Solicitors' Regional Directory

There is an error in the current edition of the Solicitors' Regional Directory, 1998, published by the Law Society. It incorrectly describes every firm that undertakes legal aid work as a franchise holder.

The firms which do hold a franchise are listed by franchise category in the 'Legal Aid Franchise' appendix in each volume. This list is accurate and contains details of all firms in England and Wales which hold a franchise, and in which category of work. Readers are asked to refer to this to determine which firms have a legal aid franchise.

An errata will be sent to all those who already have copies of the directory, and will be included in all directories ordered in the future. The directory will be reprinted early in 1999. Any queries about the directory should be referred to the Directories Section at the Law Society, 113 Chancery Lane, London WC2A 1PL. Telephone: 0171 242 1222 ext 3091.

Legal Aid Handbook 1998/9

The 1998/9 Legal Aid Handbook will be published later this year. Publication will be later than usual to accommodate any changes in the availability of Legal Aid and the Notes for Guidance arising from the Lord Chancellor's review. The financial eligibility changes taking effect in April 1998 are included in this issue of Focus.

CIS Implementation Update

The Board is continuing its programme to implement the Corporate Information System (CIS) in all of its 13 area offices. Nottingham was the first area office to go live in November 1997, followed by Chester in February 1998; Brighton and Reading are next.

The introduction of the new system in Nottingham did expose a number of problems which had to be solved. A system can be finally tested only in a live environment and as is to be expected with a new system of this complexity, there has been a learning process to go through. The introduction of CIS in Chester went much more smoothly with all the benefits of the lessons learned in Nottingham.

Practitioners in Brighton and Reading have been fully briefed about the changes involved in the introduction of CIS in their areas. Over the last two months, the Board has been holding well attended seminars to explain the new CIS forms in various venues throughout both areas. Supplies of forms have been sent out to all account holders. Reading Area Office also has a dedicated telephone number specifically for CIS form queries.

Practitioners in Brighton who have any queries about CIS should contact their area office on 01273 699 622, those in the Reading area should telephone the CIS query line on 0118 958 1620.

Practitioners in other areas will be kept informed by their area offices.

Amendments to Guidance: Exercise of Devolved Powers

- GENERAL – LEGAL ADVICE & ASSISTANCE
- GENERAL – ABWOR
- GENERAL – EMERGENCIES
- CRIME – LEGAL ADVICE & ASSISTANCE

The Guidance: Exercise of Devolved Powers is to be updated from 6 April 1998 to reflect the financial eligibility changes covered in this issue of Focus. A number of other changes are being made which are of relevance to practitioners generally. The new/amended guidance appears below (with amendments to existing text shown in bold type), but the following is a summary:-

1. New guidance is given on distant solicitors under Legal Advice & Assistance. This is relevant to practitioners generally, both in relation to accepting instructions from clients at a distance and costs assessment. This new guidance reflects the guidance already given to support the new mental health franchise category which was introduced in January 1998.
2. Some minor changes have been made in relation to the signature of applications for legal advice and assistance (green form) where the client cannot, for good reason, attend on the solicitor. This reflects the information already given in an item which appeared in Focus 22 (January 1998).
3. Guidance has been given in relation to advice and assistance in respect of living wills. This reflects the decision of the Costs Appeals Committee reference LAA8.
4. Guidance has been given to confirm the basis of costs assessment in relation to legal advice and assistance, indicating that although solicitors may adopt 6 minute units for time recording purposes, the determining officer will allow such time as is considered reasonable.
5. The guidance now confirms that approvals of ABWOR do not operate retrospectively.
6. In relation to emergency certificates the guidance now confirms that even where completed postal forms are dated after the date of the grant of an emergency certificate (by telephone or fax) the certificate will be dated with the date of the grant (rather than the date of the completion of the forms).
7. The guidance, in relation to the Criminal Cases Review Commission, was expanded in the January 1998 update to the Guidance: Exercise of Devolved Powers. The full, amended text, is reproduced below.

● General – Legal Advice & Assistance

1.5 Distant Solicitors

- 1.5.1 Clients may be at a distance from the solicitor/ adviser.
- 1.5.2 Special arrangements are available to franchisees (but not other practitioners) which make it administratively easier to accept an application for advice and assistance where issues of access can be demonstrated. These are postal applications, telephone advice and the payment of outward travel disbursements but not travelling time. General guidance on the use of these special arrangements is given at Section 1, General – Advice & Assistance – paragraph 9.2.
- 1.5.3 Franchisees considering using one of these arrangements, as well as other practitioners generally, should consider whether it is, in all the circumstances, appropriate to accept instructions having regard to the service to be provided to the client and the costs of providing that service. Factors in favour of accepting instructions will include:
 - a) any legitimate expectation of the client of specialist assistance i.e. by an adviser with appropriate expertise, particularly in an unusual subject area;
 - b) the lack of availability (including, if necessary, at short notice) of that expertise in the client's geographical area;
 - c) the nature, complexity and/or significance of the subject matter such as to justify the involvement of a distant solicitor;
 - d) for franchisees only, the possibility of advising without the need for personal attendances; and
 - e) significant previous knowledge/dealings with the client such as to justify renewed involvement even though the client is at a distance.

These factors need to be balanced against the distance between the client and solicitor/adviser in terms of accessibility for the client and increased costs of travel/travelling time. The greater the distance the greater the justification which will be required.

- 1.5.4 It is unlikely to be justified for a solicitor/adviser to travel to attend on a client at a significant distance from his office, involving say a one way travelling time of more than 2 hours, on the basis that it would be more appropriate for the matter to be dealt with by a solicitor/ adviser local to the client. This will, however, depend on all the circumstances of the case. Even where a longer time could be apportioned between a number of clients on a particular occasion this will not justify a longer travelling time because it will not necessarily always be possible to apportion in the same way on all occasions.
 - 1.5.5 Where a franchisee does consider a longer travelling time to be justified in a particular case (e.g. possibly where a client moves (or is moved) away but the franchisee's continued personal involvement is justified) an appropriate note should be made and retained on the file. Where the franchisee does not consider this to be justified he should consider what assistance he can provide in ensuring that the client is referred to an appropriate source of information regarding advisers with relevant expertise, who are more local to the client.
- ### 2.4 Applications on behalf of Children/Patients and attendances on behalf of others
- 2.4.4 Where a client cannot, for good reason, attend on the

solicitor in order to apply for advice and assistance and authorises another person to attend on his behalf in accordance with Regulation 10 Legal Advice and Assistance Regulations 1989, the application is completed in the name of the client and the means assessment is based on the client's means. The form is signed by the authorised person on the client's behalf and the signature should be annotated indicating the full name of the person signing and to also make it clear that the application was signed in accordance with Regulation 10 (e.g. "signed by Mary Louise Smith with the client's authority").

2.4.5 Failure to complete the application form (green form) appropriately or to annotate a signature (other than the client's) with the relevant details may lead to queries or to costs claims being disallowed.

3. EXTENSIONS TO THE FINANCIAL LIMIT (considered pursuant to Regulation 21(2) Legal Advice and Assistance Regulations 1989)

3.1 Availability of Advice and Assistance

3.1.4 b) Advice and assistance is available in respect of living wills (also known as advance directives about medical treatment decisions) but particular circumstances must have arisen requiring advice to be given. This might be so if it can be shown that such a directive may be needed, i.e. based on the individual's current medical state there is a real probability of medical treatment being required in the future or the individual holds a relevant strong religious or moral belief (see Costs Appeals Committee decision LAA8 and accompanying guidance).

4. COSTS GUIDELINES

4.5 The guidelines are given in terms of units and time so that they do not have to be updated with changes in the remuneration rates. They have been calculated by reference to 6 minute units as it is recognised that many solicitors' practices use this recording system. **Note, however, that the test for the costs assessor determining a costs claim is whether the work appears to have been reasonably done and the time as claimed (excluding time spent on routine letters and calls) is reasonable. Whilst solicitors may adopt 6 minute units for time recording purposes the determining officer will allow such actual time as is considered reasonable rather than notional time with reference to 6 minute units.** The guidelines are intended to include any necessary letters and telephone calls but not disbursements. They do not allow for travelling/waiting or a home visit which would have to be justified in any particular case.

● General – ABWOR

1.2.3 Granting an application for approval

1.2.3.1 Approvals of ABWOR **do not operate retrospectively and** must include only the aspects of the case and the steps which are justified in accordance with the relevant legal decision making guidance (given in the Legal Aid Handbook and the relevant sections in this manual [GEDP]).

● General – Emergencies

4. SUBSEQUENT SUBMISSION OF POSTAL FORMS FOLLOWING THE GRANT OF A TELEPHONE OR FAX APPLICATION

4.2 If the condition is not met the telephone/fax emergency grant decision will not stand and no emergency certificate will be issued because the solicitor has failed to meet the conditions of the grant. **Even where, unusually, the completed postal forms are dated after the date of the grant of an emergency certificate, the certificate will itself be dated with the date of the grant but only provided the condition has been met.**

● Crime – Advice & Assistance

1.4.5 Should an extension be allowed where solicitors say there has been a miscarriage of justice?

1.4.5.1 The Criminal Cases Review Commission has the power to refer cases back to the Court of Appeal under the Criminal Appeals Act 1995 where it considers that there is a real possibility that a conviction, verdict, finding or sentence would not be upheld. The Commission's role is to review and investigate suspected miscarriages of justice, and to determine in each case whether or not a referral to the Court of Appeal is appropriate.

1.4.5.2 In most cases, the solicitor considering the making of the application to the Commission will not be the solicitor who handled the defence preparation work/trial. In order that the convicted defendant can be given advice on the possibility and merits of the application it is likely to be necessary for the new solicitor to obtain and consider a transcript of the judge's summing up (in Crown Court cases) and the defence solicitor's file of papers.

1.4.5.3 These cases will often involve novel or unusual kinds of evidence. Some investigation may be necessary on behalf of the convicted defendant before any application is made, possibly including further forensic testing, the obtaining of witness statements and counsel's opinion. If an application is to be made to the Commission, then the solicitor will be involved in gathering and rationalising the material, preparing a chronology of events, and preparing the submission of any legal arguments required.

1.4.5.4 The solicitor is also likely to need to advise and assist the convicted defendant after the application is submitted to the Commission by assisting the Commission with specific queries, making further submissions (if appropriate) arising from material disclosed by the Commission in the course of the review and investigation, liaising with the Commission as to its approach and progress and advising the client in relation to any decisions made by the Commission in the case. It may be necessary for the solicitor to meet the Commission's representatives on more than one occasion in a complex case.

1.4.5.5 It may be necessary to allow more than **10 hours (100 units)** depending on the individual circumstances of the case. There is no other form of legal aid available for this type of work although the Commission will, in considering the application, make what further enquiries it considers appropriate to enable it to investigate the case and reach a decision. It is suggested that cases of this nature should be referred up to a solicitor/ senior member of staff.

CIVIL LEGAL AID:

Guide to Assessing Financial Eligibility

The following is intended as a general guide only and does not guarantee an individual applicant's entitlement to a full certificate.

Note that the assessment officer may take into account the assets of others where they have transferred resources to the client, maintained the client in the proceedings or have made resources available to the client.

Step One: Identify clients in receipt of income support/income-based job seekers allowance

Applicants properly in receipt of income support/income-based job seekers allowance are eligible for free civil legal aid. There are two ways to check eligibility which are by:

- (1) Sight of notification from the Benefits Agency – this will be in the form of a letter of entitlement (issued either when income support/income-based job seekers allowance was awarded or when benefit was uprated in April).
- (2) Proof of payment – either from bank statements showing the benefit paid in or by sight of the orderbook.

If the client is not in receipt of income support/income-based job seekers allowance (this includes cases where the applicant has applied for but not received a decision on entitlement to the passported benefit) move on to step two. Other types of benefit, such as family credit and disability working allowance, do not give automatic entitlement.

Step Two: Work out capital

Add together all the capital of the client (and partner if appropriate).

Capital includes:

- land and buildings other than the client's home and including interests in timeshares although the market value of the client's home in excess of £100,000 after allowing for any outstanding mortgage or £100,000 (whichever is the lesser) must be included and a maximum of £100,000 allowed in respect of the total mortgage debt on any property or properties that the client resides in;
- money in the bank, Building Society, premium bonds, Post Office, National Savings certificates, etc.;
- investments, stocks and shares;
- money that can be borrowed against the surrender value of insurance policies;
- money value of valuable items, for example, boat, caravan, antiques, jewellery (but not wedding or engagement rings or usually the client's car, unless of exceptional value);
- money owing to the client;
- money due from an estate or Trust Fund;
- money that can be borrowed against business assets;

Do not include any savings, valuable items or property the ownership of which is the specific subject of the court case, for example, a holiday cottage would normally count but not if it was under attack as part of a disputed divorce settlement.

Do not include:

- loans or grants from the Social Fund;
- home contents, for example (unless exceptionally valuable) furniture and household effects;
- personal clothing;
- personal tools and equipment of trade;
- back to work bonus under section 26 Job Seekers Act 1995;
- payments under the Community Court Direct Payment Scheme;
- any capital disregard for pensioners (men and women over 60):

Annual disposable income (excluding net income derived from capital)	Amount of capital (disregarded)
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 – £2625	£5,000
Total Disposable Capital	£.....

Step Three: Does the disposable capital qualify the client for Civil Legal Aid?

If under £3,000 → no contribution from capital.

If between £3,000 and £6,750 (personal injury £8,560) → Civil Legal Aid subject to a capital contribution.

Over these limits the client will not get Civil Legal Aid unless the area office considers the probable costs would exceed the contribution payable.

Step Four: Work out the size of the client's likely capital contribution

Total disposable capital (Step 2)	£.....
deduct £3,000 to give	
Capital Contribution	£.....

Step Five: Work out weekly income

Add together the client's weekly gross income (i.e. before tax) and that of his/her partner if appropriate.

Income includes:

- weekly earnings or profits from business;
- maintenance payments;
- pensions;
- all welfare benefits except housing benefit, attendance allowance, disability living allowance, constant attendance allowance, back to work bonus under section 26 Job Seekers Act 1995, payments made

under the Earnings Top-up Scheme and the Community Care Direct Payment Scheme;

- income from savings and investments;
- dividends from shares;
- monies received from friends and relatives;
- student grants and loans.

Weekly Income £.....

Step Six: Work out deductible allowances and expenses

Deduct the following from *weekly* income:

- Income Tax; National Insurance contributions; pension scheme contributions; trade union membership;
- council tax;
- maintenance payments made;
- fares to and from work;
- child care expenses incurred because of work;
- housing costs:
 - rent (less any housing benefit), water rates and mortgage repayments (interest and capital) although, the amount allowed if the client's mortgage debt exceeds £100,000 will be reduced in proportion (e.g., if the client's mortgage debt is £200,000 only half the amount actually paid can be deducted).
 - £5.29 weekly for necessary repairs and house insurance (where payable by the client owner-occupier);
 - endowment policy premiums (if paid in connection with a mortgage);
 - actual costs of accommodation if the client is neither a tenant nor owner-occupier
 - ground rent and any other applicable charges; and service charges which have to be paid as part of a lease or tenancy agreement;
- fixed amounts for each dependent relative (adult and child) living with the client.

The *weekly* amounts of allowances for dependants are:

- £28.65 for a partner
- £17.30 for each child aged up to 11*
- £25.35 for each child aged 11-16*
- £30.30 for each child aged 16-18*
- £30.30 for each child or dependant aged 19 or over*

For children and dependants aged 11 or 16 at the time legal aid is applied for, the following rules apply:

- 11 year olds – if applying for legal aid before 7 September 1998, the allowance is £25.35 only if the child became 11 before 1 September 1997. If applying on or after 7 September 1998 the allowance is £25.35 only if the child became 11 before 7 September 1998. In other cases the allowance is £17.30.
- 16 year olds – if applying for legal aid before 7 September 1998, the allowance is £30.30 only if the child became 16 before 1 September 1997. If applying on or after 7 September 1998 the allowance is £30.30 only if the child became 11 before 7 September 1998. In other cases the allowance is £25.35.

Total of all Deductions £.....

Note that other deductions may be made, e.g. for membership of professional associations connected with employment, fines and judgments, and payments of arrears of tax, mortgage, gas or electricity.

Step Seven: Work out yearly disposable income

Weekly income £.....
(step 5)

minus deductions £..... to give
(step 6)

Weekly disposable income £.....
multiply by 52 to give

Yearly Disposable Income £.....

Note that if there are known changes of circumstances (e.g. a pay rise, applicant having a baby or returning to work after sickness) which will affect the income of the applicant during the next 52 weeks then these will be taken into account in the assessment by the assessment officer when determining the actual level of annual disposal income.

If the yearly disposable income for pensioners (men and women over 60) excluding net income derived from capital is under the lower income limit (£2,625) there is a sliding scale of capital disregards (see Step 2).

Step Eight: Does the yearly disposable income qualify the client for Civil Legal Aid?

If under £2,625 → no contribution from income.

If between £2,625 and £7,777 (£8,571 in personal injury claims) → Civil Legal Aid subject to a contribution from income.

Step Nine: Work out amount of contribution from income

Yearly disposable income £.....
(step 8)

deduct £2,625 = £.....

divide by 36 to give
Monthly Contribution £.....

Step Ten: Work out total initial contribution

Add together:

Monthly Contribution £.....
(step 9)

and Capital Contribution £.....
(step 4)

to give **Total Initial Contribution** £.....

Legal Aid Eligibility 1998

General information

New eligibility limits will take effect from 6 April 1998. A new updated keycard will be sent to all account holders shortly.

Income limits for both criminal and civil legal aid have been increased by about 2.4%. Income limits for advice and assistance/ABWOR will increase by about 3.6%. All capital limits remain unchanged.

Dependants' allowances remain in line with Income Support rates which will also change. The dependants' allowance for over 19's has been reinstated.

Dependants' allowances

It should be noted that benefits are aligned to school years so children aged 11 or 16 could fall into one of two bands depending on when their birthday falls. The rules are as follows:

11 year olds

use the lower allowance "up to 11" if applying before 7 September 1998 (the first Monday in September). After 7 September 1998, 11 year olds should use the higher rate of "11 to 16", if they became 11 before 7 September 1998, and the lower rate "up to 11" if they became 11 on or after that date.

And:

16 year olds

use the lower allowance of "11 to 16" if applying before 7 September 1998. After 7 September 1998, 16 year olds should use the higher rate of "16 to 18", if they became 16 before 7 September 1998, and the lower rate "11 to 16" if they became 16 on or after 7 September. The "16 to 18" rate is used from the September following the child's sixteenth birthday until the day before the child's nineteenth birthday.

19 and over

where a dependent child/relative is aged 19 or over the rate to apply is the rate which would have been applicable immediately before that dependant reached 19.

Civil legal aid

- pensioners

The eligibility for pensioners' capital disregards have been equalised so they are now available to both men and women aged **60** and over.

Civil legal aid

- business borrowings

The eligibility rules for civil legal aid have been amended so that the value

of a business, when calculated on its borrowing capacity, is such sum as could be borrowed without **substantially** injuring the commercial credit of the business.

Criminal legal aid

- capital

The eligibility rules for criminal legal aid have been amended so that a capital resource that is subject to a restraining order (e.g., a *mareva* injunction) is not disregarded unless a request has been made for its release, in order to fund the defence of the criminal proceedings, and that request has been refused.

Civil & Criminal legal aid

- Duty to inform of change of circumstances

The assisted person's duty to inform the Board or the Court of any change in financial circumstances has now been amended so that the duty arises **forthwith**. Notification should be given immediately the change takes place.

Civil legal aid

- self assessment guide

As an aid to all practitioners this guide is being reproduced in this issue of Focus.

Legal Aid eligibility from 6 April 1998

1. Green Form - Legal Advice and Assistance

Income limit: £80 per week

Weekly dependants' allowances:

Partner		£28.65
Dependants	Up to 11*	£17.30
	11 to 16*	£25.35
	16 to 18*	£30.30
	19* and over	£30.30

*See text above for 11, 16 and 19 year olds.

Capital limits: no change	No dependants	£1000
	One dependant	£1335
	Two dependants	£1535

Plus £100 for each additional dependant

Contribution system: none. Ineligible if weekly disposable income exceeds £80.

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

2. ABWOR

Income limit: £172 per week.

Weekly dependants' allowances:

as for green form – see above.

Capital Limits:	No dependants	£3000
	One dependant	£3335
	Two dependants	£3535

Plus £100 for each additional dependant

Contribution system:

free if weekly disposable income up to £72. If between £72 and £172, weekly contribution of one-third of excess income over £72.

State benefits:

automatically qualify on income free of contribution if in receipt of income support, income-based job seekers allowance, family credit, or disability working allowance. Automatically qualify on capital if in receipt of income support or income-based job seekers allowance.

3. Civil legal aid

	£ per year
Lower income limit	£2625
Upper income limit	£7777
	(£8571 for personal injury)
Lower capital limit	£3000
Upper capital limit	£6750
	(£8560 for personal injury)

Yearly dependants' allowances:

Partner		£1494
Dependants	Up to 11*	£902
	11 to 16*	£1322
	16 to 18*	£1580
	19* and over	£1580

*See text above for 11, 16 and 19 year olds.

Capital disregards for pensioners:

Annual disposable income (excluding net income derived from capital)	Amount of capital (disregarded)
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 - £2625	£5,000

Contribution system:

contribution from capital of excess over £3,000. Ongoing monthly contribution from income of 1/36th of excess over £2625 for the life of the certificate.

State benefits:

automatically qualify for civil legal aid free of contribution if in receipt of income support or income-based job seekers allowance.

4. Criminal Legal Aid

Free legal aid income limit:	£50
Free legal aid capital limit:	£3,000

No upper income or capital limit.

Weekly dependants' allowances: as for green form.

Contribution system:

contributions from capital of the excess over £3,000.

Weekly contributions from income of £1 for every £3 or part of £3 by which weekly disposable income exceeds £50. No contribution is payable if the disposable income is less than £51 per week.

State benefits:

automatically eligible free of contribution if in receipt of income support, income-based job seekers allowance, family credit or disability working allowance.

5. Family Mediation Pilot

* This only concerns those practitioners/organisations who have contracted with the Board to take part in the pilot and their clients' eligibility for mediation.

Advice and assistance for mediation in family matters is covered by a pilot scheme. Eligibility is set at the ABWOR rate but is non-contributory. The income limit is due to increase in 1998 but the exact commencement date is not yet fixed. When the date is known those involved in the pilot will be informed directly by the Board's Mediation Project. It should be stressed that the dependants' allowances are tied to the benefit changes and so the increased allowances will be effective for mediation from 6 April 1998 but the new income limit will not. The increased rates are set out below.

Income Limit	1997/8	1998/9
	£166 per week	£172 per week *

* timing of increase to be advised

Weekly dependants' allowance: as green form to increase from 6 April 1998

Capital Limits: no change

No dependants	£3000
One dependant	£3335
Two dependants	£3535
Plus £100 for each additional dependant	

Contribution System: none, ineligible if income limit exceeds the amount set.

State Benefits: as ABWOR

Proposed Payment Dates

There are two payment dates for solicitors and counsel each month. The proposed payment dates for the first six months of the 1998/99 financial year are set out below. These dates may be subject to amendment, but we will inform you of changes in advance where possible.

If you are paid by BACS (Bank Automated Clearing System) the proposed payment date shown is the date on which you will receive a payment in your bank. For some smaller banks the BACS credit may appear a day later. The proposed payment date will also be the date by which the last of the cheque/remittance advices are despatched from the Financial Services Settlement section. Remittance advices are despatched using DX or first class post.

If you are still being paid by cheque, we recommend that you change to BACS, which is a more efficient payment method. With BACS, the payment is made directly into your bank account avoiding cheque-handling and you also receive a remittance advice. BACS provides immediately cleared funds, unlike cheques which can take four to six days to clear. If you have any queries about payment by BACS, please telephone the Master Index section on 0171 813 8626.

Details of the amount due to you may be obtained by contacting either the area office or the Solicitors/Counsel Settlement section on 0171 813 8625. However, if you have a query regarding an individual item shown on a remittance advice, you should contact the relevant area office, which authorises and processes all such bills.

Keeping us up to date

Names, addresses, DX, fax and telephone numbers and bank details for BACS payments are held on the Board's Master Index database. Please send any relevant changes relating to your firm or chambers to the Master Index section at 85 Gray's Inn Road, London, WC1X 8AA, or at DX 328 London.

Proposed Payment Dates for April 1998 - September 1998

First Payment of the Month	Second Payment of Month
Tuesday, 14 April 1998	Tuesday, 28 April 1998
Wednesday, 13 May 1998	Friday, 29 May 1998
Friday, 12 June 1998	Monday, 29 June 1998
Monday, 13 July 1998	Tuesday, 28 July 1998
Thursday, 13 August 1998	Friday, 28 August 1998
Monday, 14 September 1998	Monday, 28 September 1998

Additional copies of Focus can be obtained from Sophia Swithern.
Please write to the Press and Publications Office, Legal Aid Head Office,
85 Gray's Inn Road, London WC1X 8AA or DX 450 London.

