

## Legal Aid and the Children Act

The Children Act 1989 comes into effect in October and brings with it many changes which will affect the Board and legal aid practitioners.

We are concerned that delays will not result from the handover of responsibility for legal aid in care and emergency protection proceedings. To this end we are liaising with the Lord Chancellor's Department about the regulations in order to gear up for implementation.

The main changes involving legal aid work will be as follows:

- *Proceedings under the Act will be covered by Civil Legal Aid and the current system of legal aid for care proceedings in the Magistrates' Courts abolished.*
- *The Act removes some of the limitations imposed by the legal aid means test which would normally put some people out of scope. There will be no means test in care and emergency protection cases for children and those with parental responsibility. Similarly, there will be no merits test for these applicants and therefore the solicitor will be able to act on a form of self-certification giving immediate cover under legal aid in care and emergency protection cases. This change enhances the eligibility position of these applicants and avoids any delay. The only requirement will be that the solicitor submits a Legal Aid Board form setting out details of the case.*
- *For other applicants involved in care and emergency protection proceedings - those applying to be joined and parties to the proceedings - there will continue to be the usual Civil Legal Aid means test but no merits test.*



*The Children Act: a coherent approach to children cases.*



To ensure that these means tested cases are dealt with swiftly they will be handled in the same way as telephone emergency applications where authority can be granted over the phone with immediate effect. However, as with other emergency applications if the applicant is subsequently found to be out of financial scope he or she will be liable for any costs incurred on his/her behalf.

- *Other public law cases involving individuals and the state will attract Civil Legal Aid and the usual means and merits tests will apply. An example of this would be applications for contact with children in care.*
- *With private law cases, where individuals are pursuing applications against other individuals, Civil Legal Aid will be available subject to the usual means and merits test and the normal Civil Legal Aid procedures will operate. The new CLA4A and CLA4B forms have made the processing of all legal aid applications much faster with a reduction of about two to three weeks in the time it takes to decide the application. The Board aims to notify solicitors and applicants as quickly as is necessary to meet court dates. Further, emergency legal aid applications can be accepted if time does not allow for full applications.*
- *To help us prioritise these applications new forms will be introduced for Children Act cases in order to distinguish them from other Civil Legal Aid applications. The Law Society will be consulted on forms design to ensure that the appropriate information is contained to satisfy both the applicant/solicitor and the Legal Aid Board.*
- *As well as liaison with the area offices the newly formed "Family Court Business Committees" will provide a forum for discussing the way in which the board is dealing with its additional responsibilities. The Family Court Business Committees have been set up by the Lord Chancellor to oversee the working of the Children Act at a local level.*
- *The Committees will be made up of representatives from the bodies involved in Children Act cases including the judiciary, justices' clerks, local authority and guardian at litem panel as well as a representative from the local legal aid area office. The Committees will work out solutions to local problems which may arise during the implementation of the Act. Some of these committees have already met.*

Having been asked to take on these new responsibilities by the Lord Chancellor we are well aware of the concern which exists over the speed at which applications will be processed. We will endeavour to process applications as quickly as necessary and as part of its preparation for the Children Act, the Board will carry out comprehensive training for area office staff. This will ensure a consistent approach when handling such cases.

Although there will be changes to which practitioners and area office staff will have to adjust there will be certain advantages in responsibility being vested in the Board. Nominating one body as responsible will rationalise the current position where different authorities deal separately with legal aid applications for different problems relating to children. This echoes the spirit of the Children Act which aims to bring children cases under one coherent approach in order to secure their welfare.

It is still several months before the Children Act takes effect and the regulations affecting legal aid have yet to be finalised. But, as new information becomes available, we will report through Legal Aid Focus to keep practitioners as up to date as possible.



### Increases in eligibility limits and dependants' allowances

Increases in the financial eligibility limits and dependants' allowances for legal advice and assistance, civil legal aid and criminal legal aid came into effect on 8 April 1991.

#### Legal advice and assistance (green form scheme)

A new green form key card (No.23) has been issued to legal aid practitioners and other organisations who normally receive key cards. Additional supplies may be obtained from legal aid area offices. The changes in eligibility limits and dependants' allowances are set out below.

#### Disposable income

From 8 April 1991 the figure below which no contribution will be payable will be £70 per week rather than £64 per week. The contributions will be as follows:

<i>Weekly disposable income</i>		<i>Contribution</i>
More than £70	but not exceeding £74	£5
More than £74	but not exceeding £78	£12
More than £78	but not exceeding £84	£19
More than £84	but not exceeding £90	£25
More than £90	but not exceeding £96	£32
More than £96	but not exceeding £102	£38
More than £102	but not exceeding £108	£45
More than £108	but not exceeding £114	£51
More than £114	but not exceeding £120	£58
More than £120	but not exceeding £125	£64
More than £125	but not exceeding £130	£70
More than £130	but not exceeding £135	£75

### Dependants' allowances

From 8 April 1991 the weekly dependants' allowances for legal advice and assistance will be as follows:

<i>Partner:</i>	£39.06
<i>Dependants:</i>	
<i>Under 11</i>	£16.69
<i>11 to 15 years</i>	£24.69
<i>16 to 17 years</i>	£29.56
<i>18 and over</i>	£38.94

#### Disposable capital

The capital limits for advice and assistance remain £935 for a client with no dependants, £1270 for a client with one dependant, £1470 for a client with two dependants plus £100 for each additional dependant. The capital limit for ABWOR remains at £3000 for a client with no dependants, £3335 with one dependant, £3535 with two dependants plus £100 for each additional dependant. All clients in receipt of income support are eligible for ABWOR, regardless of capital.

**Disposable income**

From 8 April 1991 the limit for free legal aid increased from £2645 to £2860 per year and the limit above which legal aid is unavailable will remain £6350 per year (in cases including a claim in respect of personal injuries £7000 per year).

**Dependants' allowances**

Increases in annual dependants' allowances came into effect from 8 April 1991 as follows:

Partner:	£2037
Dependants:	
Under 11	£870
11 to 15 years	£1287
16 to 17 years	£1541
18 and over	£2030

**Disposable capital**

The limit below which no contribution from capital is required remains £3000 and the upper limit remains £6310 (in cases including a claim in respect of personal injuries £8000). All clients in receipt of income support are eligible for civil legal aid, regardless of capital.

**Examples of total gross weekly incomes which qualify for legal aid**

	<i>For free civil legal aid</i>	<i>For civil legal aid with a contribution</i>
<b>Rented home</b>		
Single person	£100	£202
<b>Lone parent with two children aged 4 and 12</b>		
Couple	£154	£256
<b>Couple with two children aged 4 and 12</b>		
	£209	£311
<b>Owner-occupied home</b>		
Single person	£218	£319
<b>Lone parent with two children aged 4 and 12</b>		
Couple	£272	£373
<b>Couple with two children aged 4 and 12</b>		
	£326	£425

*The table is based on people who pay a weekly rent of £26 or a mortgage repayment of £412 per month and a community charge of £240 per adult.*

**Disposable income**

From 8 April 1991 the limit for free legal aid in criminal proceedings is increased from £55 to £60 per week. The contributions payable are as follows:

The weekly instalment of contribution will be increased by £1 for each £4, or part of £4, by which the average weekly disposable income exceeds £85.

**Normal disposable weekly income**

<i>More than contribution</i>	<i>But not exceeding</i>	<i>Weekly</i>
£60	£65	£2
£65	£69	£3
£69	£73	£4
£73	£77	£5
£77	£81	£6
£81	£85	£7

**Disposable capital**

The limit at which no contribution is required remains at £3000.

# Remuneration Rates 1991 Increase

## Green form

	Rate from 1.4.90 to 31.3.91	New rate from 1.4.91
	£	£
Hourly rate:	39.25 (41.75)	42.00 (44.50)
Routine letters and telephone calls	3.05 (3.15)	3.25 (3.40)

The figures in brackets are the London rates - applicable to a fee-earner whose office is in the London Legal Aid Area.

## ABWOR

	Rate from 1.4.90 to 31.3.91	New rate from 1.4.91
	£	£
Preparation	39.25 (41.75)	42.00 (44.50)
Advocacy	49.50	53.00
Attendance at court where counsel assigned	26.25	28.50
Travelling and waiting	22.00	23.50
Routine letters and telephone calls	3.05 (3.15)	3.25 (3.40)

The figures in brackets are the London rates - applicable to a fee-earner whose office is in the London Legal Aid Area.

## Rates of remuneration for magistrates' court criminal legal aid, court duty solicitor and police station advice

Class of work	Rate		New rate
	from 1.4.90	to 31.3.91	
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(A) Magistrates' court	£		£
Preparation	39.25 (41.75)		42.00 (44.50)
Advocacy	49.50		53.00
Attendance at court	26.25		28.50
Travelling & waiting	22.00		23.50
Letters & telephone calls - per item	3.05 (3.15)		3.25 (3.40)
(B) Crown Court	Grade		
Preparation	A	46.00 (48.50)	50.00 (52.00)
	B	39.50 (41.75)	42.25 (44.50)
	C	26.00 (30.00)	28.00 (32.00)
Advocacy	A	57.00	61.00
	B	49.50	53.00
Attendance at court	A	37.75	40.00
	B	29.50	32.00
	C	18.25	19.50
Travelling & waiting	A	22.00	23.50
	B	22.00	23.50
	C	11.00	11.75
Letters & telephone calls - per item		3.05 (3.15)	3.25 (3.40)
(C) Court duty solicitor*		35.75	38.25
Travelling		22.00	23.50
(D) Police station advice			
Standby availability		3.15 to 75.60 max (3.20 to 76.80 max)	3.40 to 81.60 max (3.45 to 82.80 max)
Duty solicitor (unsocial hours)		52.25	56.00
Duty solicitor ( other hours)		39.25 (41.75)	42.00 (44.75)
Own solicitor (all hours)		39.25 (41.75)	42.00 (44.75)
Own solicitor travelling and waiting**		22.00	23.50
Telephone (advice) per item		17.75 (18.25)	19.00 (19.50)
Telephone (routine) per item		1.90 (2.00)	2.10 (2.15)

London rates are given in brackets. The London rates apply to work done by a fee-earner whose office is in the London Legal Aid Area. \*Increased by 25% when attending court on a Saturday, Sunday or Bank holiday. \*\*Travel by a duty solicitor is at the same rate as advice.

## ABWOR applications for warrants of further detention

The hourly rates for work done on or after 1 April 1991, where a solicitor has provided ABWOR on an application by the police for a warrant of further detention or the extension of such a warrant, are as follows:

	Standard rate £	London rate £
<b>(a) Advocacy</b>		
(i) by a duty solicitor in unsocial hours	70.67	-
(ii) by a duty solicitor in all other hours	53.00	-
(iii) by an own solicitor	53.00	-
<b>(b) Preparation</b>		
(i) by a duty solicitor in unsocial hours	56.00	59.33
(ii) by a duty solicitor in all other hours	42.00	44.50
(iii) by an own solicitor	42.00	44.50
<b>(c) Travelling and waiting</b>		
(i) by a duty solicitor in unsocial hours	31.33	-
(ii) by a duty solicitor in all other hours	23.50	-
(iii) by an own solicitor	23.50	-
<b>(d) Letters written and telephone calls - per item</b>		
(i) by a duty solicitor in unsocial hours	4.33	4.53
(ii) by a duty solicitor	3.25	3.40
(iii) by an own solicitor	3.25	3.40

The London rate applies to work done by a fee-earner whose office is situated in the London Legal Aid Area.

## Legal aid for magistrates' court care cases

	Rate from 1.4.90 to 31.3.91 £	New rate from 1.4.91 £
Preparation	47.25	50.50
Preparation - London	50.50	54.00
Attendance with counsel	30.00	32.00
Advocacy	57.00	61.00
Travel & waiting	26.50	28.50
Routine letters and telephone calls - per item	3.40	3.60

The London preparation rate applies to work done by a fee-earner whose office is in the London Legal Aid Area.

## Independent social workers

From 1 April 1991 the fees payable to independent social workers have been increased by the Legal Aid Board as follows:

Preparation	£16.00 per hour
Travel	£10.50 per hour

This increase is by 7% which is the same percentage increase as in the criminal legal aid remuneration rates.

### Conciliation reports

From 1 April 1991 the amount allowable when a solicitor makes a referral to a conciliation service was increased to £31.50. This is broken down as to:

Report	£22.50
Solicitor's Costs	£9.00

This increase is by 7% which is the same percentage increase as in the criminal legal aid remuneration rates.

### Mileage

As previously shown in the Gazette the mileage rate was increased from 34.4p per mile to 35.7p per mile with effect from 26 November 1990.

## Standard fees for criminal legal aid work in the Crown Court

Preparation Type of proceedings	Lower standard fee		Lower fee limit		Principal standard fee		Upper fee limit	
	Rate from	New rate	Rate from	New rate	Rate from	New rate	Rate from	New rate
	1.4.90 to 31.3.91	from 1.4.91	1.4.90 to 31.3.91	from 1.4.91	1.4.90 to 31.3.91	from 1.4.91	1.4.90 to 31.3.91	from 1.4.91
	£	£	£	£	£	£	£	£
<b>Jury trials (including prepared for trial with no jury sworn)</b>								
London rate	114.00	122.00	157.00	168.00	220.00	235.00	274.00	293.00
Guilty pleas	121.00	130.00	163.00	175.00	229.00	246.00	287.00	307.00
London rate	72.00	77.00	96.00	103.00	154.00	165.00	198.00	212.00
Appeals against conviction	76.00	82.00	100.00	107.00	160.00	172.00	207.00	222.00
London rate	45.00	48.25	60.00	64.00	135.00	144.50	204.00	218.00
Appeals against sentence	47.00	51.00	62.00	66.00	140.00	150.00	214.00	229.00
London rate	32.00	34.25	46.00	49.00	82.00	88.00	115.00	123.00
Committal for sentence	34.00	37.00	48.00	51.00	86.00	92.00	119.00	127.00
London rate	37.00	40.00	45.00	48.00	86.00	92.00	124.00	133.00
London rate	39.00	42.00	47.00	50.00	90.00	97.00	128.00	137.00
<b>New hourly rates from 1.4.91</b>								
Attendance at court and waiting	20.25							
Travelling	17.50							
Advocacy in respect of bail applications (including waiting)	24.50							
London rate	27.00							

Additional standard fee: preparation in cases where counsel is briefed to appear unattended: £28.00 (£30.00 in London). Additional standard fee for listening to tape of police interview: £10.15 for every 10 minutes of the total running time of all tapes or parts of tapes listened to and by the same amount for any remaining period.

## Rates of remuneration for matrimonial legal aid

		Rate from 1.4.90 to 31.3.91	New rate from 1.4.91
Writing routine letters	HC*	3.75	4.00
	CC	3.25	3.50
Receiving routine letters	HC	1.85	2.00
	CC	1.60	1.75
Routine telephone calls	HC	3.75	4.00
	CC	3.25	3.50
Preparation SE circuit	HC	41.50	44.50
	CC	36.50	39.00
Other circuits	HC	39.00	41.75
	CC	34.50	37.00
Care and conduct uplift to above items		+50%	+50%
Travelling and waiting	HC	28.50	30.50
	CC	26.25	28.00
Attendance with counsel	HC	33.00	35.50
	CC	29.00	31.00
Attendance without counsel (advocacy)	HC	50.00	53.50
	CC	47.00	50.50
Preparing bill for taxation and completing taxation	HC	28.50 to 80.00	30.50 to 85.50
	CC	28.50 to 45.50	30.50 to 48.75
Preparing for and attending taxation		Discretionary	Discretionary
*HC = High Court CC = county court			

# UPDATE

## Legal

### Cost Assessments

Issue one of Legal Aid Focus carried decisions made by the Board's Costs Appeals Committee. Since April 1989, solicitors and counsel have had the right of appeal to the Board from an area committee's review of costs assessment. Listed here are the most recent decisions of the Costs Appeals Committee on points of principle of general importance which we hope will be of help to practitioners when claiming costs.

#### **ENHANCED RATES - REPRESENTATION OF SEVERAL DEFENDANTS DOES NOT OF ITSELF JUSTIFY ENHANCED RATES.**

The fact that a solicitor is representing several defendants does not of itself justify the payment of an enhanced rate within paragraph 3 of Part I Schedule 1 Legal Aid in Criminal and Care Proceedings (Costs) Regulations 1989. (Ref: CRIMLA 17 11.2.91)

#### **ENHANCED RATES - IMMINENT HEARING - EXCEPTIONAL COMPETENCE CANNOT BE INFERRED**

Where a solicitor takes over a case from previously instructed solicitors which requires work at short notice for an imminent hearing this will usually constitute exceptional despatch within paragraph 3 (a) of Part I Schedule 1 of the Legal Aid in Criminal and Care Proceedings (Costs) Regulations 1989 but whether exceptional competence is involved will depend on the circumstances of the case and cannot be inferred. (Ref: CRIMLA 18 11.2.91)

#### **TRANSCRIPTION OF TAPED INTERVIEWS**

Where a solicitor applies for prior authority to transcribe a tape using an outside agency and satisfies the area committee that such a transcript is necessary then authority should normally be granted. Where a solicitor chooses to transcribe a tape in-house the work of transcription would not normally be regarded as fee earner's work and will not therefore be remunerated under the Legal Aid Order. Consideration of the tapes to decide whether any part of them should be transcribed and the checking of the accuracy of any transcripts obtained constitute fee earner's work which may be remunerated as such. (Ref: CRIMLA 19 11.3.91 - This decision replaces and incorporates decision CRIMLA 10 which appeared in Issue one of this publication).

## Wasted Cost Orders In Criminal Cases From May 1 1991

Section 111 of the Courts and Legal Services Act 1990 amends the Prosecution of Offences Act 1985 by inserting a new Section 19A which enables Courts to make "wasted costs orders" in criminal proceedings against legal or other representatives where:

- *costs are incurred by a party as a result of any improper, unreasonable or negligent act or omission on the part of any representative or his employee, or*
- *which, in the light of any such act or omission occurring after they were incurred, the court considers it unreasonable to expect that party to pay.*

The Section will apply to legal aid cases both as to orders against prosecution representatives and against those acting under legal aid orders. The Costs in Criminal Cases (General) (Amendment) Regulations 1991 deal with the procedure for making orders and the Legal Aid in Criminal and Care Proceedings (Costs) (Amendment) (No. 2) Regulations 1991 deal specifically with the disallowing of legal aid costs. Both sets of Regulations will come into force on 1 May 1991.

## Representation in Contempt Proceedings

From 1 May 1991 non means tested representation will be available under Section 29 Legal Aid Act 1988 to people liable to be committed or fined -

- By a Magistrates' Court under Section 12 of the Contempt of Court Act 1981 (wilfully insulting the justice(s), any witness or court officer, solicitor or barrister in court or going to/returning from court or wilfully interrupting or otherwise misbehaving in court);*
- By a county court under Section 14, 92 or 118 of the County Court(s) Act 1984 (assaulting an officer of the court in the execution of his duty; rescuing or attempting to rescue goods seized by the bailiff; wilfully insulting the judge, any juror or witness or court officer in court or going to/returning from court or wilfully interrupting the proceedings or otherwise misbehaving in court);*
- By any superior court for contempt in the face of that or any other court.*

The relevant provisions are Section 29 and 30(3) Legal Aid Act 1988, The Legal Aid Act 1988 (Commencement No. 4) Order 1991 and The Legal Aid in Contempt Proceedings (Remuneration) Regulations 1991, all of which came into force on 1 May 1991.

There is no means test for this representation which is granted by the court where it appears "to be desirable to do so in the interests of justice". Representation can be granted in any proceedings where a person may be dealt with within the provisions of Section 29 Legal Aid Act.

Representation may be either by a solicitor or barrister and payment is by way of a standard fee for each day, or part day, of appearance. The fee is currently £68, plus VAT.

The Board is the paying authority for all courts except the Court of Appeal, Criminal Division, and the Crown Court exercising its criminal jurisdiction. Where the Board is the paying authority grants of representation will be confirmed by the granting court on a form (RCP1) issued by the Board to the courts. The solicitor or barrister making a claim will then submit the Board's copy of the form direct to the Board's Accounts Department for payment.

## VAT CHANGES AFFECTS BILLS ASSESSMENT

*Solicitors should apply VAT at the old rate of 15% to all bills relating entirely to work done and disbursements paid before 1 April, and at 17.5% to bills relating entirely to work done and disbursements paid after that date.*

*For split bills the procedure is to draw the bill or complete the claim form, if not in two parts, at least in such a way that the assessing officer can readily identify and arrive at separate totals for the assessed costs of work undertaken and disbursements paid (a) before 1 April and (b) after that date. VAT at 15% is then applied to the former and at 17.5% to the latter. Further guidance has been published in the Law Society's Gazette - Wednesday 17 April 1991.*

## New forms

Following the introduction of the new assessment procedure for Civil Legal Aid, mentioned in the last edition of Legal Aid Focus, the Board has issued an amended CLA4A and new form CLA4B to take into account suggestions from the profession as to how the system could be further simplified.

Area offices were rejecting some CLA4As on the basis that they were incomplete. There was also a call for a separate one page form for people on Income Support which could be used instead of the more bulky CLA4A. The revised CLA4A form will further clarify the information the Board requires from applicants and will also carry a help line number to assist self employed applicants.

Legal Aid Board area offices will send out the CLA4B on request. Amended CLA4A forms will follow when existing stocks of CLA4As have been used up. If a client or client's partner is in receipt of Income Support, they can complete the new CLA4B or the existing CLA4A. The amended CLA4A will not be relevant to applicants on Income Support. The form L17 (employers statement of earnings) will remain unchanged.

It is important for solicitors to check the CLA4As to avoid the risk of applications being rejected. For guidance please refer to the CLA4A Checklist which appeared in issue one of Legal Aid Focus.

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## TIME LIMIT FOR DUTY SOLICITORS

*From April 1st duty solicitors at court and police stations must submit claims for payment within three months of providing assistance.*

*Payments will be reduced or refused altogether if claims are not submitted within this period.*

