FOCUS 17

Legal Aid

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Legal Aid Reform News

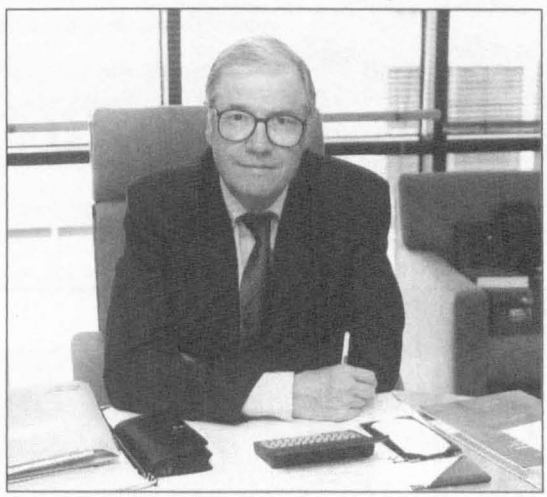
Legal Aid Board Publishes 'Franchising Family Mediation Services'

The Legal Aid Board published its approach to the piloting of franchise contracts for the provision of family mediation services last month.

The Legal Aid Board is required to secure the provision and availability of family mediation services for clients eligible for legal aid by the Family Law Act 1996. The Act will stimulate demand for family mediation services to resolve issues relating to children, property and finance matters for divorcing couples.

Sir Tim Chessells, Chairman of the Legal Aid Board, said:

"We are taking the first steps down a road that could lead to a more amicable resolution of family disputes. Progress will depend on the co-operation and commitment from mediators and the legal profession".



Sir Tim Chessells, Chairman

> ***"We are taking the first steps down a road that could lead to a more amicable resolution of family disputes."***

Brian Harvey, Director of Resources and Supplier Development, who is running the project for the Board, comments:

"The Board welcomes the opportunity to extend its proven franchising approach to the provision of family mediation services. We are confident this will facilitate the expansion of mediation to meet the demand created by the Family Law Act 1996".

'Franchising Family Mediation Services' sets out in detail:

- The Board's approach to the pilot project. How the pilot project will operate and the arrangements for monitoring and evaluating it.
- The Draft Code of Practice. The Family Law Act 1996 requires the Board to ensure arrangements are in place to deal with issues of violence, children matters, reconciliation and information on the need for independent legal advice. The Draft Code of Practice also covers other important arrangements for family mediators.
- The Draft Family Mediation Franchise Specification. This incorporates the Board's requirements for family mediation services to work towards developing best practice and delivering a high quality family mediation service.

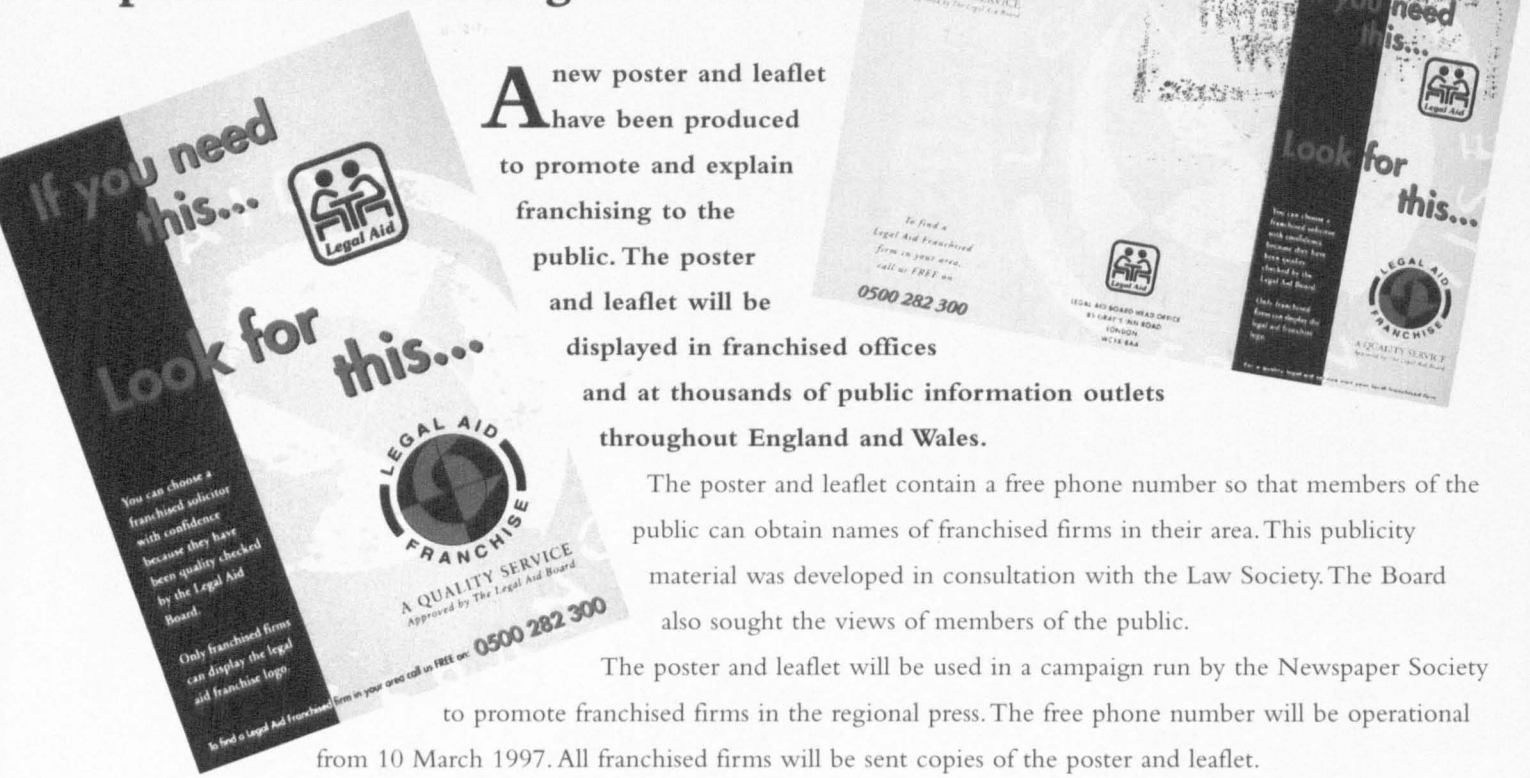
There has been wide consultation in drawing up the approach with the lead representative bodies. This document includes comments made on the draft proposals issued last year.

The Board will continue to seek the views of all those committed to quality assured family mediation services during the pilot project. The Legal Aid Board has appointed a consortium of independent researchers, led by Professor Gwynn Davis of Bristol University and Social Community Planning Research (SCPR), the research organisation, to monitor and evaluate the pilot. The Board expects to enter into pilot contracts for Phase I in May 1997.

Copies of 'Franchising Family Mediation Services' are available from Barbara Holburn, Legal Aid Board, telephone 0171 813 1000 extension 8560.

Legal Aid

New poster and leaflet to promote franchising



A new poster and leaflet have been produced to promote and explain franchising to the public. The poster and leaflet will be displayed in franchised offices and at thousands of public information outlets throughout England and Wales.

The poster and leaflet contain a free phone number so that members of the public can obtain names of franchised firms in their area. This publicity material was developed in consultation with the Law Society. The Board also sought the views of members of the public.

The poster and leaflet will be used in a campaign run by the Newspaper Society to promote franchised firms in the regional press. The free phone number will be operational from 10 March 1997. All franchised firms will be sent copies of the poster and leaflet.

Report on Multi-Party Actions and High Cost Cases

A consultation paper on the Board's strategy for dealing with group actions and other very high cost civil cases will be published shortly. The report 'When the Price is High' arose from a six-month internal review of high cost actions in light of the White Paper on legal aid and Lord Woolf's inquiry into civil justice.

Board Commissions Research into Advice and Assistance in Criminal Matters

The Board has now appointed Lee Bridges of Warwick University to assist in designing and researching advice and assistance in criminal matters, including duty solicitor cover. He will be assisted by Ed Cape, a solicitor and author of the Legal Action Group's 'Defending Suspects at Police Stations', and Chris Bennett of the Warwick Business School.

Three possible legal aid areas are under consideration so that piloting can start later this year. Discussions will then take place with the Law Society and potential contractors in the chosen legal aid areas.

It is likely that only firms with criminal franchises will be able to obtain a contract but non-franchisees will not be excluded from any scheme where the pilot is in operation.

Legal Aid Reform News

Civil Non-Family Advice and Assistance

The Board is working towards the objective of providing all advice and assistance through block contracts with the private profession and not-for-profit sector which achieve appropriate access to quality assured legal advice and assistance and provide optimum value for money from the financial resources available. In all the reform pilots the Board is in the process of setting up we are using the pilots themselves and the associated research projects to enable us to explore the most effective means of achieving this objective.

The Pilot Process

The Board uses the term 'pilot' to describe a developmental process. The process begins with a broadly defined project and associated research. As experience and information from the research and other sources is built up, successive phases of pilots move towards the final definition of a fully implemented scheme. The Board's experience of running pilots in this way has shown that the process enables both the Board and practitioners to work together to find the most practical and effective means of achieving the objectives.

Solicitors in Private Practice

We invited expressions of interest in being involved in the research phase of the pilot in December 1996. Only offices franchised in at least one of the relevant categories of work qualify for participation. Over 850 offices expressed interest but we did not have capacity to involve all those who were interested and so we have reduced the numbers involved at this stage to a more manageable 145 in four legal aid areas: London, Leeds, Liverpool and Nottingham. Contracts in this phase are scheduled to start in April 1997.

The current intention is to expand the number of offices in the next phase of the pilot and it will be important particularly to enhance the regional coverage to ensure that regional variation in approach and local practice is fully explored. We are aware of the importance of smaller firms in providing services outside the main urban areas and that there are differences, often marked, in the need for legal services in different parts of the country. We will want to ensure that there is a mix of such firms in the next phase of the pilot, due to start in early 1998. The research needs to observe how possible contract models will operate within different environments, however, the initial phase is not designed to test any contract models at all, it is purely a research phase designed to provide robust data which will enable the second phase to begin to consider possible contract models in more detail.

Work Covered

Work under contracts will cover ***all*** civil non-matrimonial work (and not Family and Crime). One of the aims of this pilot is to ascertain the extent to which green form work is being done outside the main franchise categories, to enable the Board to consider the best way of specifying the contract requirements relating to this work. Therefore, the contracts will not be limited to work falling within franchise categories. However, it is an important principle of the pilot that all work provided under the contract must be done to the franchised standards. For example, contracts will cover mental health work and education, for which no current franchise category exists; and a firm franchised in housing and debt alone, but which also provides green form advice and assistance in employment and welfare benefits, would provide all this advice under the contract arrangements and to the franchise requirements.

Contract Length

The initial pilot contracts will be for two years. Offices involved in the first phase of the pilot will have the opportunity to move to working under any new contracts introduced in the second phase. Contracts will be free standing under Part II of the Legal Aid Act 1988.

Contracting in the Not-for-Profit Sector

Applications are being invited for new contracts in the second phase of the pilot, developing contracting in the not-for-profit (NFP) sector, in which all Board area offices are involved. This pilot also covers civil non-family advice and assistance but is at a different stage in its development from the private practice contracting pilot. The Board's eventual aim is to bring both strands of the pilots covering civil non-family work together. For this reason the information which is being collected through the matter reporting form, which will take the place of the green form in the pilot, is the same. This will allow comparable data to be collected between different types of providers.

The contract unit at this stage in the NFP pilot is time. 1100 hours' work is required from each full time caseworker the Board funds. The funding is derived from a formula related to the salary costs of the caseworker and half time administrative support, together with a fixed amount for running costs, management and supervision (in some circumstances).

Organisations without a franchise will be eligible to enter 12 month pre-franchise contracts if they meet a number of criteria, particularly related to areas of geographical priority need and initial compliance with the franchise requirements at preliminary audit.

Regional Legal Services Committees

Work is going ahead on the implementation of Regional Legal Services Committees (RLSCs) across England and Wales. As part of the Lord Chancellor's reforms of the legal aid system the committees will advise the Board on how local needs and priorities can be met in their geographical area within the available budget.

Key staff are being appointed to work with the committees and pave the way for recruitment of committee members later this year. These senior staff – Regional Legal Services Advisers – are now in post in Reading, Cardiff, Birmingham, Manchester, Leeds, Newcastle and Cambridge. Advisers to be based in our other six area offices should be in post mid summer. The process of identifying Board Members to chair the 13 RLSCs is also well advanced.

We recognise that the pace of development of RLSCs will vary from area to area. We will put out information both nationally and locally so that as we build up to the launch of each committee individuals and organisations will have an opportunity to register their interest in contributing to the work of the committees.

L17 – Statement of Earnings Forms

The Legal Aid Assessment Office (Benefits Agency) has been receiving an increasing number of queries from new applicants requesting L17 (Statement of Earnings) forms which have not been supplied by their solicitor.

Legal Aid practitioners are reminded that these forms must be issued with means forms CLA4A etc to all applicants or partners who are employed. The Legal Aid Assessment Office can not supply these forms.

Please also note that all CLA4A means forms which carry a print date prior to June 1996 are obsolete and will be rejected on receipt at the area office.

Practitioners are reminded that a civil legal aid applications check list may be found on pages 563 to 567 of the Legal Aid Handbook 1996/97.

Police Station Accreditation

From 1 February the Board's Police Station Representative's Accreditation Scheme was extended to include Trainee Solicitors and all Duty Solicitor Representatives. Any non-solicitor representative wishing to attend the police station to give advice and assistance and submit claims for payment from the Legal Aid Fund must first have registered with the scheme and obtained a personal identity number.

Registration forms are available from:
The Duty Solicitor Section, Policy & Secretariat,
Legal Aid Board, 85 Gray's Inn Road,
London WC1X 8AA.

Or by telephone on: 0171 813 1000 ext. 8561/2.

Franchising – Developments in Transaction Criteria and New Franchised Categories of Work

THE Legal Aid Board has recently conducted a project to update and develop transaction criteria in a limited number of areas. Within the project, existing sets of criteria in the Welfare Benefits category have been updated and expanded to cover many more benefit types, while a new set of criteria has been drafted in homelessness, as part of an extension to audit scope in the Housing category. The project, managed by the Board's Franchise Development Group, tested the concept of developing criteria in-house, in close consultation with the profession. This was particularly successful, with many solicitors and other legal advisers keen to provide relevant case-files, expertise and comment throughout the project. In addition to commenting on text, consultees have also contributed to key developments such as the inclusion of notes for guidance, which aim to aid understanding about what is required to achieve compliance; these have been produced for all revised and new sets of criteria and appear as footnotes in the booklets. Practitioner associations and other representative organisations are currently being consulted about the final draft sets; a general invitation to comment was extended to all practitioners in the Law Society Gazette in December. The new and revised sets of criteria are scheduled to be introduced in Spring this year.

Encouraged by the success of the recent transaction criteria development project, the Board now plans to use the same methodology to update and extend the audit scope of the remaining transaction criteria and to produce new criteria to accompany additional franchised categories of work in Mental Health, Medical Negligence and Childcare. Development of the new criteria, and review of all existing sets of criteria, will be carried out during 1997.

We are particularly interested in views on how specific sets of criteria should be developed; presented in narrative, or by amendments and notes on the existing booklets. Additionally, copies of any checklists, training or reference material, for any of the areas covered by new or existing criteria, would be of interest. Development work will begin in April with initial concentration on Mental Health, Medical Negligence, Childcare, Debt, Crime and Employment. Revised sets of criteria are likely to be introduced in January 1998. Within the current draft development plan, this is also the timescale for the proposed new franchised categories of work and accompanying transaction criteria.

If you are interested in being involved in the development of any of the sets of transaction criteria, or if you have comments or documents that you think would be of use during development, please send them, at your earliest convenience, to Louise Collins, Franchise Development Adviser, Franchise Development Group, Legal Aid Board, 85 Gray's Inn Road, London WC1X 8AA (DX328 London).

Prisoners detained at Her Majesty's pleasure: Provision of representation for Parole Board reviews

1 Background

1.1 From 1 August 1996 prisoners detained at Her Majesty's Pleasure for murder (i.e. as juveniles) have, through interim administrative arrangements made by the Home Secretary, been entitled to a review hearing before the Parole Board (also known as the HMP Panel) which reviews the detention and may recommend their release.

1.2 The Home Secretary confirmed that legal representation would be available in such cases from 23 July 1996.

1.3 The Lord Chancellor's Department have laid draft Regulations before Parliament to make ABWOR available for representation at HMP Panels. Regulation 9 of the Legal Advice and Assistance (Scope) Regulations 1989 will be amended to include these proceedings so that the "legal merits" test set out in Regulation 22(5) of the Legal Advice and Assistance Regulations 1989 will not apply. The ABWOR means test and reasonableness limb of the ABWOR merits test will be applied.

1.4 It is anticipated that the amended Regulations will come into effect on 1 April 1997. In the meantime the Lord Chancellor has decided that special payments to cover the cost of representation of detainees in these proceedings should be made out of the legal aid fund under Section 6(2)(d) of the Legal Aid Act 1988. It has been left to the Board to decide how to administer these payments.

1.5 Pending the amendment of the Regulations, it has been decided that the best approach is for special payments to be made available from the legal aid fund as though ABWOR itself had already been made available i.e. as if the amended Regulations had already come into effect.

2 The position post 1 April 1997

2.1 Applications should be made in the normal way for ABWOR approval. The legal merits test will not be applied but the application may be refused if it appears unreasonable that approval should be granted in the particular circumstances of the case.

2.2 The ABWOR application will be amended in due course to include the new category. In the meantime solicitors should use the "Other" box in the form and indicate that the proceedings were "Her Majesty's Pleasure Panel". A new standard wording for ABWOR approval will be used as follows:-
"To be represented in proceedings before Her Majesty's Pleasure Panel."

2.3 Payment for work done will be assessed in accordance with the Legal Advice and Assistance Regulations 1989 but on the basis that the higher payment rate applicable to Mental Health Review Tribunal and Discretionary Life Panels cases applies.

3 Interim Arrangements prior to 1 April 1997

3. 1 Special payments under Section 6(2)(d) of the Legal Aid Act 1988 will be payable, in cases where the provisions of the Legal Advice and Assistance Regulations 1989 are followed, as if the amended Regulations had already come into force. Costs incurred in such proceedings on or after 23 July 1996 may be allowed for payment, even where they pre-date any application to one of the Board's area offices or any approval.

3. 2 In order to apply for special payment approval and obtain payment the following conditions will apply:-

(i) Solicitors seeing new clients after the date of the publication of these interim arrangements should seek ABWOR approval in the normal way as soon as they are instructed.

To qualify for a special payment for work carried out before **1 April 1997,** an ABWOR 1 must be completed by the solicitor and applicant and submitted to the area office at the latest by that date. Any application received after 1 April 1997 will be treated as an application under the new Regulations and will not carry entitlement to any retrospective special payment. Solicitors who have already commenced work before seeking ABWOR approval should therefore complete and submit the ABWOR 1 application form as soon as possible.

(ii) The ABWOR means test must be administered by the solicitor.

(iii) The legal merits test will not be applied but the application may be refused if it appears unreasonable that approval should be granted in the particular circumstances of the case. Such a refusal will be exceptional bearing in mind the subject matter and circumstances of the application.

(iv) The ABWOR approval form will be issued with the additional standard wording "To include costs incurred from 23 July 1996 to the date hereof" and the solicitor can apply for payment of costs assessed on the basis of the provisions of the Legal Advice and Assistance Regulations 1989 (including as to a review by the Area Committee/appeal to the Costs Appeal Committee).

3.3 Solicitors should submit applications on the standard form ABWOR 1. For the time being under section 1 on the form relating to the type of proceedings, the box marked "Other" should be used and the solicitor should describe the proceedings as Her Majesty's Pleasure Panel proceedings.

4 Prior Authorities and use of Counsel in the interim period

4.1 Solicitors should seek prior authority following the issuing of the ABWOR approval in the normal way as if Regulations 22(7) and 23 of the Legal Advice and Assistance Regulations 1989 applied.

4.2 Where such costs have already been incurred by the solicitor prior to the publication of these interim arrangements and the grant of approval by the Board, the requirement for prior authority for counsel and the condition requiring prior authority for experts or unusual expenditure should be treated as not applying to work carried out between 23 July 1996 and the date of the ABWOR application.

4.3 In such cases the area office will assess the costs on the basis of whether they have been actually and reasonably incurred taking into account all the relevant circumstances of the case including the nature, importance, complexity or difficulty of the work and the time involved.

Trusts of Land and Appointment of Trustees Act 1996

Applications under Section 30 of the Law of Property Act 1925 have been replaced as of 1 January 1997 by applications under Section 14 of the Trusts of Land and Appointment of Trustees Act 1996.

A new standard wording for certificates has therefore been issued as follows:-

"To take proceedings under Section 14 of the Trusts of Land and Appointment of Trustees Act 1996".

Certificates issued before 1 January 1997 to take proceedings under Section 30 of the Law of Property Act 1925 do not require amendment, since the courts have powers to make Orders under the new Act in existing Section 30 applications.

PERSONAL INJURY PRACTITIONERS

Access to Health Records Act 1990 (AHRA)

Personal injury practitioners will have noticed, with increasing concern, that Hospital Trusts have been making significant increases in the charges they make for providing copies of patients' health records. Some Trusts have been making standard charges of up to a hundred pounds, and sometimes more.

After forceful representations by both the Board and The Law Society, the NHS Executive has now accepted that, even where copies of health records are required for the purposes of proceedings, if solicitors apply, specifically under the AHRA, for copies, the Trust must provide them in accordance with the provisions of that Act. Although the AHRA does not ensure access to records in all cases, in most cases, an application under the AHRA will secure all necessary records.

The charge for access to such records under AHRA is a maximum of only £10 (s.3(4)). Where a copy of a record is supplied, Trusts may also charge "a fee not exceeding the cost of making the copy and (where applicable) the cost of posting it" (s.3(4)).

Following the Board's and The Law Society's representations, the NHS Executive has now amended its guidance to hospital Trusts to reflect this position. The new guidance specifically states that Trusts must not make the standard charges they have been making.

One issue, however, remains. What is meant by "the cost of making the copy"? The Board and The Law Society take the view that what is envisaged are charges of a few pence per page for copying and have asked the NHS Executive to recommend a realistic figure. Although the interpretation section of the Act (s.11) provides that the word "make" in relation to a health record, includes "compile" (ie make up from various sources or materials), the word "make" in connection with copying is used directly in relation to the copy and not the record. Compiling should not be an additional charge. Any compiling would have to be done for the purpose of access anyway and, therefore, come within the (maximum) £10 access fee.

The next edition of Focus will carry the response of the NHS Executive. In the meantime, save money and apply for copies of health records under the AHRA whenever practicable.

Costs Assessments – Points of Principle of General Importance

This is a list of the decisions of the Costs Appeals Committee between January 1996 and January 1997.

1 CRIME

CRIMLA 50 (Amended) – 24 June 1996
Magistrates' Court Standard Fees
– Series of Offences.

Whilst offences may, subsequent to committal, appear on separate indictments, that does not of itself mean that they cannot form a series of offences and be classed as one case although it is a strong indication that they are separate cases. A similar approach should be adopted for offences triable either way that are committed.

In summary only matters or either way offences tried by magistrates, where the Magistrates have determined that the offences are incapable of being tried together, although it is a strong indication they are separate cases it is possible for a series of offences to be established.

CRIMLA 56 – 25 January 1996
Magistrates' Court Standard Fees
– Claim for enhanced rate (31 October 1994).

When a claim for enhancement is made under paragraph 3 of Part 1 of Schedule 1 of the Legal Aid in Criminal and Care Proceedings (Costs) Regulations 1989 the determining officer should first consider whether the case is "exceptional" and justifies enhancement. If the claim for enhancement is refused, the solicitor should be notified that the case is not exceptional and given reasons. If the determining office considers the claim for enhancement to be justified the costs should be assessed on the broad average direct cost of the work with an appropriate percentage uplift.

CRIMLA 57 – 27 February 1996
Magistrates' Court Standard Fees
– Definitions of the case.

Having regard to Part III of Schedule I of the Legal Aid Criminal & Care Proceedings (Costs) Regulations 1989 a charge of escape from lawful custody can be a separate case.

CRIMLA 58 – 20 May 1996
Magistrates' Court Standard Fees
– Change of solicitor.

Where a defendant is charged with an indictable only offence and the legal aid order is transferred to another solicitor before the committal takes place the work undertaken by the solicitor falls within a Category 3 fee.

CRIMLA 59 – 23 September 1996
Enhancement rates for legal aid orders granted on or after 1 October 1994.

In determining the percentage due under para 3 of Part 1 of Schedule 1 to the Legal Aid in Criminal and Care Proceedings (Costs) Regulations 1989 regard should be had to the Lord Chancellor's Directions for Determining Officers.

Guidance to Point of Principle:
CRIMLA 59 Enhancement Rates for Legal Aid Orders Granted on or after 1 October 1994

1. When determining a claim for enhancement under para 3 of Part 1 to Schedule 1 of the Legal Aid in Criminal and Care Proceedings (Costs) Regulations 1989 the assessing officer must first consider whether or not the case is "exceptional" and justifies enhancement. The Regulations provide that it may be appropriate to allow an enhancement for any item or class of work where, taking into account all the circumstances of the case, it can be established that :-
   (a) the work was done with exceptional competence, skill or expertise;
   (b) the work was done with exceptional dispatch; or
   (c) the case involved exceptional circumstances or complexity.

2. The proper test of "exceptional" within the phrase "exceptional circumstances" is the ordinary and actual meaning of the word "exceptional", i.e., "out of the ordinary" [R -v- Legal Aid Board ex.p R M Broudie & Co [1994] 138 S J 94].

3. If the assessing officer considers that an enhancement should be applied to any item of work he must apply what he considers to be the appropriate percentage uplift to the prescribed legal aid rate applicable to that item of work.

   In determining the percentage regard should be had to:-
   (a) the degree of responsibility accepted by the solicitor and his staff;
   (b) the weight and complexity of the case; and
   (c) the care, speed and economy with which it was prepared.

4. The percentage by which the prescribed rate may be enhanced shall not exceed 100% except for where the proceedings relate to serious or complex fraud where the percentage may not exceed 200%. Such cases are, for example, those conducted by the Serious Fraud Office or those transferred under section 4 of the Criminal Justice Act 1987.

5. Having considered whether any item of work should be enhanced the assessing officer must first consider what hourly rate and percentage uplift would have been applied if the legal aid order had been made before 1 October 1994 when the 'Backhouse' principle applied. Once that composite figure is known (the hourly BADC rate plus appropriate uplift) the assessing officer should then ensure that the relevant percentage applied in the assessment of that item of work provides a figure not lower than the composite rate, subject always to the maxima provided by the regulations.

Examples

If a solicitor (based in London), on a case that was not a complex or serious fraud, would have obtained under the 'Backhouse' principle of broad average direct costs an hourly rate of £65.00 for preparation and an uplift of 40% then the 'composite rate' would be £91.00 per hour. The prescribed rate for preparation of £47.25 would need to be uplifted by 92.6% in order to give an uplift of £43.75 (making a total of £91.00 per hour) to reach the figure which would have been achieved under the Backhouse calculation.

If a solicitor (based outside London) in an identical case would have obtained under a 'Backhouse' calculation an hourly preparation rate of £65.00 and an uplift of 40% then the same exercise would need to be undertaken. The prescribed preparation rate for a solicitor practising outside London is £44.75. To achieve a figure close to the composite rate of £91.00 per hour a percentage in excess of 100% would need to be applied. As the regulations prescribe a maximum of 100% that would need to be applied and thus a figure of £89.50 would be the maximum allowable.

If the solicitor conducts a serious or complex/fraud case to which para 3(2) would apply the same calculation would be undertaken but applying a maximum percentage of 200%.

6. If an assessing officer decides that enhancement should be applied to a case he may apply the percentage to particular items of work. If an enhancement is allowed for one item of work it does not have to be allowed for other items. It will depend on the circumstances of the case. Enhancement may be applied to any item of work including travel and waiting.

7. If an assessing officer receives a claim for enhancement but decides not to allow an enhancement the solicitor should be notified of the reasons why the case was not considered to fall within the criteria set out in the Regulations.

CRIMLA 60 – 23 September 1996
Magistrates' Court Standard Fees – Enhancement – Series of complex fraud.

When a claim for enhancement is made under Paragraph 3 of Part 1 of Schedule of the Legal Aid in Criminal and Care Proceedings (Costs) Regulations 1989 the fact that the case was transferred to the Crown Court under Section 4 of the Criminal Justice Act 1987 is a relevant factor in the determining officer's decision on whether the case involved exceptional circumstances.

CRIMLA 61 – 23 September 1996
Uncontested breach of proceedings.

Having regard to Part 3 of Schedule 1 of the Legal Aid in Criminal and Care Proceedings (Costs) Regulations, a legal aid order granted for breach proceedings which are uncontested can be a separate case.

CRIMLA 62 – 9 December 1996
Work undertaken in a foreign country under criminal legal aid order.

When a solicitor undertakes work in a foreign country he may be remunerated for what is reasonable waiting time depending on the facts and circumstances of the case including whether, prior to leaving the United Kingdom, the solicitor made all reasonable efforts to contact witnesses and, where possible, make convenient appointments.

In respect of enhancement on travelling and waiting times, the solicitor may be allowed an enhancement in accordance with point of principle CRIMLA51.

Where an authority has been granted for reasonable travel and accommodation costs, the authority may include the directly consequential costs of the journey, eg. entry visa charges and inoculation costs.

CRIMLA 63 – 23 September 1996
Magistrates' Court Standard Fees

– Driving whilst disqualified – Series of Offences.

Whether two or more offences of driving whilst disqualified constitute a series of offences will depend on the circumstances of each case and whether there is sufficient evidential or factual nexus between them. The fact that the offences are tried or listed for trial separately may be a relevant factor in the determining officer's decision whether there is one or more cases.

CRIMLA 64 – 9 December 1996
Magistrates' Court Standard Fees – Bail Act Offences – Series of Offences.

Two or more offences under either section 6(1) or section 6(2) of the Bail Act 1976 may constitute a series of offences, depending on the circumstances of each case and whether there is an evidential or factual nexus between them.

CRIMLA 65 – 9 December 1996
Magistrates' Court Standard Fees
– Serious or complex fraud.

A criminal case may be serious or complex under paragraph 3(5) of Part 1 to Schedule I of the Legal Aid in Criminal and Care Proceedings (Costs) Regulations 1989 even if not conducted by the Serious Fraud Office.

2. CIVIL

CLA 1 (Amended) – 20 January 1997
Meaning of the limitation "Limited to obtaining Counsel's Opinion".

A certificate bearing a limitation containing the words "Limited to obtaining Counsel's Opinion" covers the obtaining of one opinion only (which may follow a conference). Work undertaken by a solicitor to clarify a genuine ambiguity in the Opinion itself could, however, be allowed. If at the time of receipt of counsel's written Opinion, counsel is not in a position to advice on the settling of proceedings no further work can be carried out until the limitation is removed or amended to allow either a further written Opinion from counsel or further work by the solicitor.

CLA 5 (Amended) – 23 September 1996
Rates to be allowed on assessment following Regulation 105 of the Civil Legal Aid (General) Regulations 1989.

Costs assessed under Regulation 105 Civil Legal Aid (General) Regulations 1989 should be assessed to ensure that the costs allowed are those which would, not should, be allowed on a taxation on the standard basis under rules of court. The rates which would be allowed are those which are being allowed in the court where the litigation was or most likely would have been issued and conducted. The expense rate chargeable will be the broad average direct cost of doing the work as allowed by the local taxing officer or District Judge.

Regard may be had to the local Law Society survey on expense rates to determine the broad average direct cost. In areas where the survey expresses an hourly rate by one single composite figure this is only an average figure. The seniority and expertise required by the particular case will be relevant to the hourly rate allowed to reflect the true broad average direct cost of the case.

CLA 8 (Amended) – 23 September 1996
Prescribed Rates: Enhancement: Membership of the Law Society's Children Panel.

Membership of the Law Society's Children Panel is itself an exceptional circumstance under Regulation 3(4)(c)(iii) of the Legal Aid in Family Proceedings (Remuneration) Regulations 1991 which gives a discretion to the assessing officer to allow a larger amount than that specified where it appears to him to be reasonable to do so in any particular part of the bill of costs in question.

As a general rule, where a solicitor appeared as an advocate, this is not an exceptional circumstance. Where, however, a Children Panel solicitor appeared as an advocate in care proceedings, this will be an exceptional circumstance. Whether this justifies of itself allowance of a "larger amount" is a question for the exercise of discretion, in consideration of all the circumstances of the case. An uplift in hourly rate for panel membership in cases properly lasting more than two days would normally be justified.

CLA 9 (Amended) – 23 September 1996
Prescribed Rates: Exceptional circumstances: Membership of the Law Society's Children Panel.

When considering a claim for enhanced rates on the basis of Regulation 3(4)(c)(iii) Legal Aid in Family Proceedings (Remuneration) Regulations 1991 consideration should, when deciding if there are "any other exceptional circumstances" of the case, be given to whether any of the following exist:-

(A) Factors which might raise an exceptional circumstance:

(i) innate difficulties of communication with the client, eg. mental health problems, deaf, speech-impaired, or

autistic clients, or clients requiring an interpreter (although attention should first be given as to whether this has been covered by longer than normal hours of attendance being claimed);

(ii) a conflict of detailed expert evidence (as opposed to merely contested expert evidence, and/or a proliferation of expert witnesses);

(iii) a hearing in excess of two days without counsel;

(iv) conflict between the guardian ad litem and the child, where the child instructs his own solicitor.

(B) Factors which might but not necessarily would raise exceptional circumstances:-

(i) detailed contested allegations of sexual or serious abuse;

(ii) a large number of parties with competing applications;

(iii) involvement of children with different needs.

The transfer of the case to a care centre or from a care centre to the High Court is indicative of complexity and weight only and are not conclusive of exceptional circumstances.

Where exceptional circumstances are said to arise there must be a factor, or combination of factors in the particular case which is exceptional or are unusual in care proceedings.

The factors set out above are a non-exhaustive list. They relate to the circumstances of the case itself and not to claims for enhanced rates based on Regulations 3(4)(c)(i) and (ii) Legal Aid in Family Proceedings (Remuneration) Regulations 1991 which have regard to the manner in which the work was done.

Where exceptional circumstances are sought to be established and solicitors seek remuneration on the basis of the exercise of the assessing officer's discretion pursuant to Regulation 3(4)(c) the solicitor must precisely identify the exceptional circumstances and those specific items of work in respect of which enhancement is sought.
[see *Re: Children Act 1989 (Taxation of Costs)* [1994] 2 FLR 934.]

3. GREEN FORM

LAA 7 (Amended) – 25 January 1996
Application for advice and assistance under the Legal Advice and Assistance Regulations 1989.

The combined effect of Regulations 9(1), 9(3), 9(4) and 9(6) of the Legal Advice and Assistance Regulations 1989 is that the making of the application for advice and assistance includes the provision of the financial information, both capital and income, as required by Regulation 9(4). The application must be made in person and the information which is part of that application must be provided at the same time as the completion, including signing and dating, of a form approved by the Board.

On attendance on behalf of the client under Regulation 10 of the Legal Advice and Assistance Regulations 1989 the person so authorised should attend to make the application on behalf of a client. The making of that application must include a personal attendance by the person so authorised, the provision of the information required by the Regulations and completion of the form approved by the Board.

If the date inserted on the signing of the form is incorrectly recorded or omitted it shall be permissible to provide to the Board satisfactory evidence to show the date in which the form was actually signed. Extraneous evidence cannot be provided in respect of the mandatory information required by the Regulations.

LAA 11 – 23 September 1996
No previous green form – Assisted person misled solicitor.

Where an applicant has deliberately misled his solicitor that no Green Form has been signed previously, or that any previous advice was not provided by a solicitor and, even though the solicitor has no information that a Green Form has been signed, no payment is able to be made given the mandatory nature of Regulation 16(1) of the Legal Advice and Assistance Regulations 1989.

Solicitors should exercise great care when questioning the client whether previous advice has been given. If a solicitor has received any indication that any previous advice has been given, it would be reasonable to expect the solicitor to check whether it was a solicitor who previously provided that advice and how such advice was funded. If there is any indication previous advice may have been given, or if in doubt the solicitor should assume one has been signed. The onus will be the solicitor advising to satisfy the Board that no Green Form has previously been signed.

If, after providing advice, it becomes clear that the applicant has deliberately misled his solicitor and the solicitor has taken all reasonable steps payment may not be made under the Legal Advice and Assistance Regulations but it may be appropriate for an extra statutory payment to be made.

LAA 12 – 21 October 1996
Regulation 20 and Supervision.

The words "employed in his office" within Regulation 20

refer to those persons employed by the solicitor or firm under the normal principles of employment, including payment of PAYE. Those persons who carry out some work within a solicitor's office who are, for example, self-employed, or those who work outside of the office must be under the solicitor's immediate supervision.

A breach of Regulation 20 of the Legal Advice and Assistance Regulations prevents payment for the advice and assistance work undertaken including any disbursements directly connected with it, e.g. interpreter's fees. Costs claims for such work will thus be disallowed.

LAA 13 – 21 October 1996
Persons resident outside of England and Wales and the interaction between Regulations 10 and 15 of the Legal Advice and Assistance Regulations.

Notwithstanding the provision of Regulation 15 of the Legal Advice and Assistance Regulations if a person who resides outside England and Wales is able to satisfy the criteria under Regulation 10 "another person" may be instructed to attend upon the solicitor on his or her behalf.

LAA 14 – 9 December 1996
Error or mistake in assessment.

Paragraph 11 of Schedule 2 to the Legal Advice and Assistance Regulations 1989 indicates that if it appears there has been some error or mistake the solicitor may, but not must, amend the means assessment but is not obliged to do so. If the solicitor decides not to amend he/she must specify when submitting their claim for costs precisely why that decision was made and may have regard in respect of a spouse to whether in all the circumstances of the case it would be inequitable or impractical to do so.

LAA15 – 20 January 1997
Insertion of capital and income details on to the green form

The combined effect of Regulations 9(4) and 9(6) of the Legal Advice and Assistance Regulations 1989 are to make it mandatory for a solicitor to obtain capital and income details from the person applying to be assisted and to furnish that information on the green form.

In order to comply with those mandatory requirements solicitors must ensure that both sections for income and capital details are completed on the green form using words and/or figures as appropriate. A tick or striking through of the income or capital detail boxes does not furnish information as required by the Regulations.

4. ABWOR

ABWOR 8 – 25 January 1996
Allowance for checking and signing the report on case.

On the assessment of an ABWOR claim for costs, where a claim is made for preparing and signing the Report on Case, consideration should be given to making a small allowance for the solicitor's time in checking and signing the Report on Case. Normally an allowance of 5 - 10 minutes would be appropriate.

ABWOR 9 – 27 February 1996
Mental Health Review Tribunal Work – Hospital Manager's Appeals.

ABWOR approval for Mental Health Tribunal work does not cover work only carried out for a Hospital Manager's Appeal including representation on the appeal itself. However, if work is properly carried out in preparation for the representation on the Mental Health Review Tribunal it should not be disallowed if it incidentally assists on the Hospital Manager's Appeal. The ABWOR approval does not cover representation on the Hospital Manager's Appeal in any event.

ABWOR 10 – 22 April 1996
Deferred conditional discharges in Mental Health Review Tribunal proceedings.

On a deferred conditional discharge, the Mental Health Review Tribunal proceedings are not concluded when the deferred conditional discharge decision is given, but when either the Tribunal is reconvened to consider the discharge arrangements and makes a final determination or the recommendation lapses by expiry of time. The ABWOR approval will continue until either the date on which the Tribunal makes a final determination, or the date of expiry, whichever is the earlier.

5. DUTY SOLICITOR

DS 6 – 20 May 1996
Interviews during an investigation by non-police agency.

A solicitor attending a client making a voluntary attendance at a place other than a Police Station in connection with an investigation by an Agency other than the Police Force is not covered by the advice and assistance at the Police Station scheme unless a Constable is present and taking part in the proceedings.

Additional copies of Focus can be obtained from
Karen Bobbin. Please write to the
Press and Publications Office, Legal Aid Head Office,
85 Gray's Inn Road, London WC1X 8AA.
Any comments about Focus should be sent to
Caroline O'Dwyer at the same address.

FOCUS 17

Supplement

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EMERGENCY CERTIFICATES

Introduction

From 1 April 1997 the Board's area offices, as well as franchisees, will be applying revised guidance in relation to emergency applications/certificates. The introduction of this guidance follows extensive consultation with practitioner groups, both general and specialist, as well as cascade training in the area offices. The external consultees included The Law Society, Law Centres Federation, ILPA, Solicitors Family Law Association, Housing Law Practitioners Group, Association of Lawyers for Children, Disability Law Service, Social Security Law Practitioners Association, Community Care Practitioners Group and London Criminal Courts Solicitors Association.

The complete guidance will be published in the new edition of the Legal Aid Handbook, which will be published by Sweet & Maxwell in the summer, as well as through an update to the Board's Guidance: Exercise of Devolved Powers, which is being issued to franchisees. Extracts of the main points appear below for the use of non-franchised firms who will need to be aware of the new guidance and procedures, which will be applied from the implementation date.

The key changes to present procedures represent an increase in control, both before and after the grant of an emergency certificate, to reflect the statutory tests for the grant of emergency legal aid and the risks to both the legal aid fund and the assisted person, which arise from the fact that emergency legal aid is granted without certainty that the applicant is financially eligible, will co-operate with the means assessment or accept an offer of legal aid, should a contribution be required.

Emergency applications will generally be made in writing by post or fax depending on the urgency of the case. Telephone applications will only be accepted in the most urgent of circumstances including where there is no time to access a fax machine. Additional fax machines are currently being installed in the area offices to reflect the revised guidance.

A new standard fax emergency application form and means form will be used to deal with fax and telephone applications. These have been designed to ensure that all the appropriate information is ascertained and recorded prior to any grant of a certificate and will include relevant means information to enable the area office to decide whether the applicant is likely to qualify financially. The forms will be circulated to practitioners prior to implementation of the revised guidance and must be used in appropriate cases from 1 April 1997.

It is expected that application forms will be correctly and fully completed and be supported by relevant documentation.

Limitations

Any emergency certificate granted will be limited as to scope, duration and costs. It will cover only the urgent steps to be undertaken in the case, will normally run for six weeks from the date of issue (subject to any extension which may be granted) and will contain a costs limitation (normally £1,200 where the nominated solicitor's office is outside London legal aid area and £1,500 where the nominated solicitor's office is within the London legal aid area). The costs figure is inclusive of disbursements and any Counsel's fees but excludes VAT. Practitioners should note that this will not be a costs condition but a limitation.

As certificates will be limited by scope, duration and costs, both the area office and the nominated solicitor will need to have regard to the cover available on an emergency basis and the justification for it. The limitations by time and cost reflect the likely time and costs which would normally pass/be incurred prior to the issue of a full, substantive certificate and, to that extent, the significant majority of cases will be unaffected by the limitations which are designed to have an impact in only a minority of cases (where the means assessment takes longer than six weeks to obtain or the costs incurred are unusually high).

Controls during the lifetime of certificates

Controls during the lifetime of emergency certificates will be strengthened. All requests for amendments to emergency certificates will be decided by reference to the urgency criteria and regard will be had to the position in relation to the obtaining of a means assessment and the consequent issue of a full, substantive certificate.

Franchisees

Franchisees will apply the same guidance as area offices in applying their devolved powers. They may, however, grant emergency certificates with a costs limit up to £10,000.

Franchisees will also have a new devolved power to amend emergency certificates where they exercised their devolved powers to grant the certificate itself.

This summary does not seek to deal with the position of franchisees in detail, given the full guidance which is contained in the Guidance: Exercise of Devolved Powers.

Summary

The summary of the complete guidance, which appears below, uses the references contained in the guidance itself. The guidance is not reproduced in full here as it is primarily intended to be a training and reference tool for caseworkers and franchisees.

Further copies of this supplement can be obtained from the Board's Press and Publications Section at Legal Aid Head Office, 85 Gray's Inn Road, London WC1X 8AA (DX No.328) – telephone 0171 813 1000 ext. 8676. Any comments on the guidance should be made to Franchise Development Group at the same address.

Summary

1. EMERGENCY CERTIFICATES

1.1 OVERALL APPROACH

1.1.1 The emergency certificate procedure is an important part of the legal aid scheme in that it allows a person in need of legal aid as a matter of urgency to apply for, and receive if the statutory tests are met, civil legal aid more quickly than would normally be the case.

1.1.5 When considering applications, and controlling emergency certificates, the area offices will consider all the circumstances of the application, including the means of the applicant, the merits of the application, the urgency of the matter, potential cost, potential risk to the legal aid fund and the nature of the case. Overall the area offices must seek to reach decisions that are in accordance with the Legal Aid Act, regulations and Guidance and justifiable to all the Board's stakeholders.

1.1.6 Applications should be made by written postal application, fax or telephone depending on the urgency of the case. Area offices will initially decide whether the urgency of the case justifies the method of application used. Telephone applications will rarely be justified as they will only be necessary where work must be undertaken within a few hours including where the solicitor does not have immediate access to a fax machine. Fax applications will only be justified where work must be undertaken within a working day (3pm to 3pm for this purpose). Written postal applications should be submitted in all other circumstances.

2. INITIAL GRANT DECISION – BASIC TESTS

2.1 INITIAL DECISION

2.1.1 The rules relating to decision-making on an application for emergency legal aid are set out in regulations 19 and 20 of the Civil Legal Aid (General) Regulations 1989. They require that an applicant must provide the information, and any supporting documents, necessary for the area office to determine the nature of the proceedings for which legal aid is sought, and the circumstances in which it is required and to determine:

a) whether the applicant is likely to be financially eligible for legal aid, co-operating in the means assessment process and accepting any offer made;
b) whether the case passes the usual merits test; and
c) whether it is in the interests of justice that the applicant should as a matter of urgency be granted legal aid.

2.1.2 Save in relation to means tested only Children Act applications, all of these tests must be applied by the area office and passed before an emergency certificate can be granted. Guidance on the application of these three tests is set out below. Means tested only Children Act applications have to satisfy the financial eligibility test and urgency test.

2.1.3 Applications are considered in the light of all the circumstances of the case. It is necessary to consider the degree of likelihood that the applicant is financially eligible for legal aid.

2.2 FINANCIAL ELIGIBILITY TEST

2.2.1 The Legal Aid Assessment Office has responsibility for means assessment and as such the application of the regulations (including the application of discretionary powers) and complex calculations to administer the means test rest with them. The Guide to Assessing Financial Eligibility and fax emergency application means form should be used to assist in applying the test to emergency applications.

2.3 URGENT APPLICATIONS

2.3.1 For applications by fax the fax emergency application form and means form are designed to take solicitors through an assessment process which will generally allow an informed decision to be made on the likelihood of entitlement being established on a full means assessment. Only in the extreme cases will applications be accepted by telephone (ie where work is required within a few hours, probably on the same day the application is made, including where the solicitor does not have immediate access to a fax machine) and then the area office will obtain the information contained in the fax emergency application and, if appropriate, means form from the solicitor.

2.4 AGGREGATION

2.4.1 The resources of spouses and partners are required to be aggregated and taken into account, subject only to certain limited exceptions (contrary interest in the dispute or living separate and apart, in a legal and not merely physical sense).

2.5 INCOME SUPPORT AND INCOME BASED JOB SEEKERS ALLOWANCE

2.5.1 Applicants on income support or income based job seekers allowance should be given a full certificate if the case passes the merits test as the receipt of benefit is a "passport" to civil legal aid, free of contribution.

2.6 FAMILY CREDIT AND DISABILITY WORKING ALLOWANCE

2.6.1 Applicants in receipt of either of the above benefits are likely to be eligible on income. However, these benefits are not a passport to legal aid and income and capital should be should be checked before an emergency certificate is granted.

2.7 INCOME

2.7.1 The figures used to decide eligibility are on a weekly basis and may need to be converted. For example, if the applicant's salary is paid monthly, the net salary should be converted to a weekly figure (multiply by 12 and divide by 52). Similarly where interest is paid yearly or half yearly, this should be divided by either 52 or 26 respectively.

2.8 EXPENDITURE

2.8.1 Again figures should, if necessary, be converted to a weekly basis as for income. Care should be taken to ensure housing costs are net of housing benefit. i.e. rent £50, housing benefit £10, net rent £40.

2.8.2 Area offices will not generally make allowances which would be dependent upon the exercise of the assessment officer's discretion in accordance with the Civil Legal Aid (Assessment of Resources) Regulations 1989. However, an area office may in a borderline case, where the exercise of discretion would be likely to materially affect eligibility and which otherwise satisfies all the tests for the issue of an emergency certificate, seek a view from the assessment officer as to the likely exercise of any relevant discretion.

2.9 MERITS TEST INCLUDING REASONABLENESS

2.9.1 The merits test is dealt with at Note for Guidance 7 Legal Aid Handbook 1996/97 and must be applied in accordance with that guidance. Paragraph 7-03.34 deals with the applicant's legal aid history which is relevant and could lead the area office to refuse an emergency certificate (having regard to a previous non co-operation/revocation).

2.10 URGENCY TEST

2.10.1 The urgency test may be met in any of the following

circumstances if there is insufficient time for an application for substantive legal aid to be processed:

a) Representation (or other urgent work for which civil legal aid would be needed) justified in injunction or other emergency proceedings;
b) Representation (or other urgent work for which civil legal aid would be needed) justified in relation to an imminent hearing in existing proceedings; or
c) A limitation period is about to expire.

2.10.2 However, failure by the applicant/solicitor to apply for legal aid at the earliest appropriate opportunity, including in a court action which has been ongoing for some time, will not constitute grounds for granting an application for emergency legal aid where there has been an unjustifiable delay which has created or helped to create the emergency.

2.10.3 The area office must be satisfied that it is in the interests of justice that the applicant should, as a matter of urgency, be granted legal aid before issuing an emergency certificate. The following general matters will fall to be considered under this head:

a) Is there a hearing date before expiry of the time a full legal aid application would take to process, and, if so, would an adjournment be possible without undue difficulty to the applicant, the opponent or the court? If so, an emergency certificate is not appropriate; the adjournment should be arranged and the full application for a substantive certificate take its course.
b) Has there been any unjustifiable delay on the part of the solicitor or the applicant which has helped to create the emergency? If there has, it is not reasonable to grant an emergency certificate.
c) Is the applicant's liberty threatened? If it is, it is likely to be in the interests of justice for the emergency certificate to be granted.
d) Would any delay cause a significant risk of miscarriage of justice, or unreasonable hardship to the applicant, or irretrievable problems in handling the case? If it will, it is likely to be in the interests of justice for the emergency certificate to be granted.
e) The imminence of a court hearing does not of itself constitute an emergency situation sufficient to satisfy the urgency test. The area office must be satisfied that all reasonable steps were taken to obtain legal aid at the earliest appropriate opportunity and that there has been no unjustifiable delay taking all the circumstances into account.

2.10.4 All the circumstances of the particular case must be considered but the following are among the factors which will usually fall to be considered in balancing the absence of a means assessment and the urgency of the case:

a) Unless the nature of the case and the work envisaged is urgent as against the time which a substantive application would be likely to take to process, the test will not be satisfied. For example an emergency certificate would not be granted for work to be carried out in a period of weeks rather than days, to cover commencing proceedings for a contact order or defending ancillary relief proceedings short of a final hearing. The time limit for applying for leave for judicial review would not of itself justify a grant - this will depend on the remaining time available, the urgency of the case and the time it is likely to take for the ordinary application to be processed.
b) Unless the significance of the work envisaged and the consequences of not undertaking it are serious the test will not be satisfied. For example, the likely loss of an applicant's liberty, the nature of the particular case, including the real risk of significant harm to mental or physical health, the irretrievable loss of significant evidence (e.g. through destruction, deterioration or repair) or the inability to pursue a claim due to the limitation period would be likely to satisfy the test whereas a delay in undertaking work which would have lesser consequences would not (e.g. undertaking a particular item of preparation which could be delayed or interviewing a particular witness who would continue to remain available).
c) Unless no other appropriate options would be available to deal with the emergency the test will not be satisfied. Other options include:
   - Seeking an adjournment of a hearing or an extension of time.
   - Dealing with an outstanding matter by way of agreement (e.g. directions by consent between the parties).
   - Dealing with the urgent work in person (with assistance under the green form if appropriate).
d) The conduct of the applicant in relation to the case will be relevant. If there has been an unreasonable delay on his or her part which has created or helped to create the emergency then the application is likely to be refused.

2.10.5 If an application is refused but the matter becomes more urgent due to a change of circumstances (which may include the passage of time) then the application, supported by relevant information/documents, can be renewed. In addition to the usual tests/factors, any failure to submit a full application, the position in any on-going means assessment as well as the applicant's

conduct in co-operating with that process would be relevant.

2.11 APPLICANTS WITH COMPLEX MEANS / ACCESS TO ASSETS

2.11.1 Before an emergency certificate will be granted an applicant will need to satisfy the area office that they are likely to be financially eligible for legal aid.

2.11.4 Applicants with access to or control of resources such as apparently substantial capital, a significant income (albeit potentially off-set by significant outgoings) and/or whose means involve complex issues such as interests in companies, trusts or the assessment of third party assets would be likely to have their applications refused as the area office would consider them unlikely to satisfy the means test. Where assets are frozen by injunction the area office would look at the monies available to the applicant under the order (both generally and for legal costs) and, as to scope, would consider whether an application should be made to vary the order.

2.12 HIGH COST CASES

2.12.1 The majority of cases for which emergency legal aid is sought are short in duration and relatively low in cost. However, there are a small number of applications where because of the work involved the area office is being asked to commit substantial sums immediately and with little opportunity of controlling the costs incurred once the emergency certificate has been granted. These cases often arise where an application for emergency legal aid is received shortly before an expensive and/or lengthy hearing (often in the High Court) is about to commence.

2.12.2 The imminence of a hearing, even a High Court hearing, is not of itself enough to meet the "urgency" test for the grant of an emergency certificate (see 2.10 above). Even if it is considered that the urgency test is met it is necessary - in considering whether it is reasonable in all the circumstances of the case to grant legal aid - to consider the relationship between the potential cost to the fund if the application is granted alongside the timing of the application and the degree of likelihood about whether the applicant is likely to be financially eligible for legal aid.

2.12.4 If the area office considers that the applicant is unlikely to qualify or that it would be unreasonable to grant, it will refuse the application. The likelihood of a refusal increases with the complexity of the applicant's means as the area office may conclude that the applicant is unlikely to qualify.

2.12.5 In a high cost case clearly involving costs in excess of the standard costs limitation but where, in the view of the area office, an applicant is unlikely to qualify financially but nonetheless wishes to pursue his/her application which otherwise satisfies all the tests for the issue of an emergency certificate (ie both as to urgency and merits), the area office may refer such means information as is available to the assessment officer for a view as to whether the applicant is likely to qualify financially. In that small minority of cases where such a referral is made and the assessment officer considers that the applicant is likely to qualify, then the area office may issue an emergency certificate. In such cases, however, the area office will limit the duration of the certificate to a short period only, usually a week, extendable on application by further limited periods (again usually of a week). This will go towards ensuring that the assisted person co-operates as speedily as possible in the means assessment and will give the area office an opportunity to check the position with the assessment office.

2.13 INCOMPLETE INFORMATION

2.13.1 It is the responsibility of the applicant and/or the solicitor to submit the correct forms, fully and correctly completed and supported by relevant documentation before the area office can decide whether to grant an emergency legal aid certificate.

2.13.2 If the urgency or the nature of the situation dictates that the applicant or solicitor is unable to submit the forms fully completed then the following exceptions can be made:

a) The urgency of a situation will sometimes prevent the applicant from being able to produce a form L17 (employer's statement). In those circumstances, wage slips will be acceptable but it/they must cover, as a minimum, the immediately previous 6 week period, ie the previous 6 slips if the applicant is paid weekly or the last 2 slips if paid monthly. Fewer slips will normally be acceptable only if it/they contain cumulative information covering the previous 6 weeks. Where fewer or no wage slips are speedily available having regard to the circumstances of the case (e.g. the applicant cannot get access to the place where they are kept and copies could not be quickly obtained), then emergency legal aid will only be granted when justified by the urgency, gravity and all the other circumstances of the case.

b) It will sometimes be reasonable to entertain an application by fax or telephone.

2.14 UPGRADES WHEN AN ORDINARY APPLICATION IS PENDING

2.14.1 It may become necessary to make an emergency application in a case where an ordinary application has already been submitted. The general guidance in this section will apply subject to the following paragraphs.

2.14.2 The emergency application should be made by postal forms, fax or telephone depending on the urgency of the case. The standard emergency application form should be used. The fax emergency application form should not be used (even for faxed applications) as the relevant merits information will have already been provided in the full application previously submitted.

2.14.3 In relation to means, where the ordinary application was submitted less than two working weeks previously and the applicant is not in receipt of income support or income based jobseekers allowance, a fax emergency application means form duly completed as to his/her means must be submitted for both postal and faxed applications. In the case of a telephone upgrade, the information covered by the fax emergency means form must be provided over the telephone.

2.14.4 Where the ordinary application was submitted two working weeks or more previously, a fax emergency means form need not be submitted in the first instance as the area office may, if otherwise minded to grant the emergency application, contact the Assessment Office for information regarding the means assessment outcome/applicant's co-operation in the means assessment process to date. Where the assessment outcome is not imminent but the applicant has co-operated up to the submission of the emergency application, it may then be necessary for the area office to obtain the means information contained in the fax emergency means form (by fax or otherwise) to decide whether the applicant is likely to qualify financially.

3. METHODS OF APPLYING

3.1 POSTAL APPLICATIONS

3.1.1 Incorrect, unsigned or incorrectly dated forms will be returned to the solicitor. Where the solicitor has a fax number the area office will send a fax to the solicitor to notify him. If the solicitor faxes or telephones an application to the area office, pending receipt and return of the corrected forms, the area office will start from the premise that the application should be refused on the basis that the urgency is self created. The area office may, however, decide to grant an application, by fax or telephone particularly in cases where the applicant is at immediate personal risk.

3.1.2 Where the means form is correct but the legal application form is incomplete e.g. if the solicitor has failed to estimate costs or prospects of success, or supporting documentation has not been provided, the application will be accepted for processing.

3.1.3 The area office should telephone (or fax) the solicitor to obtain missing information. However, if sufficient information cannot be gathered the application will be refused. The decision will be faxed to the solicitor.

3.1.4 Where the means form is incomplete, for example, if the applicant has failed to tick a box or to confirm how much he/she pays in rent or no L17 or insufficient wage slips have been supplied, the forms will be returned to the solicitor. Where the solicitor has a fax number the area office will send a fax to the solicitor to notify him. If the solicitor faxes or telephones an application to the area office, pending receipt and return of the corrected forms, the area office will start from the premise that the application should be refused on the basis the urgency is self created. The area office may, however, decide to grant an application by fax or telephone, particularly in cases where the applicant is at immediate personal risk. Exceptionally, where insufficient wage slips are speedily available having regard to the circumstances of the case (e.g. the applicant cannot get access to the place where they are kept and copies could not be quickly obtained), then emergency legal aid will only be granted when justified by the urgency, gravity and all the other circumstances of the case.

3.1.5 The area office should, where the urgency of the case justifies it, telephone the solicitor to clarify information relevant to means, for example if the missing/unclear information is limited, such as e.g. the address of the local benefits office, dates of birth of dependent children rather than means information itself.

3.2 FAXED APPLICATIONS

3.2.1 Standard Faxed Emergency Application Forms

3.2.1.1 Faxed emergency applications will only be accepted if submitted on the fax emergency application form and, unless the applicant is in receipt of a benefit

which constitutes a passport (ie income support or income based job seekers allowance), the fax emergency means form. The intention of the forms is to assist the solicitor in providing the information (concerning the urgency of the situation, the merits of the case and the means of the applicant) necessary to determine an emergency application. The supporting statement should be succinct but cover all the relevant points. Documents should not be sent in support.

3.2.1.2 Where postal application forms (currently CLA3 + CLA1/2 or 5, + CLA4A/B/C or F) have been completed these should form a postal application. and must not be faxed to the area office. In circumstances where the postal forms have been completed but the urgency of the situation is such that a faxed emergency application can be justified, the fax emergency application form will still be required and postal application forms must not be faxed. Any postal applications which are incorrectly faxed to the area office will be destroyed on receipt and not actioned. However, any statement prepared for submission with a postal application can be submitted in support of the fax emergency application form (and vice versa).

3.2.2 Urgency criteria

3.2.2.1 A faxed emergency should only be made in circumstances where it meets both of the following urgency criteria:

a) to justify making an emergency application (see para. 2.10.1 et seq), and

b) to justify consideration of that emergency application without a fully completed postal application being made (ie the urgency of the situation is such that a decision is required before a postal application could reasonably be processed). Generally a fax application will only be justified where work must be undertaken within a working day (3pm to 3pm for this purpose).

3.2.2.2 Only in circumstances where a faxed application can be justified, should the fax emergency application form and, if appropriate, means form be completed in full (by the solicitor) and faxed to the area office.

3.2.3 Means and Merits criteria

3.2.3.1 If, on consideration of the information provided, the area office is not satisfied that the matter is sufficiently urgent to justify a faxed emergency application or that the applicant is likely to satisfy the means or merits tests, the application will be refused (see section 3.2.5).

3.2.3.2 Where the solicitor is unable to provide all of the income or capital information necessary to complete the fax emergency means form in full, it is for the solicitor to satisfy the area office that the client is, nonetheless, likely to be financially eligible for civil legal aid, e.g. an applicant with low capital and on low earnings who is unable to provide full details on water rates, council tax etc immediately but who can provide full details of capital and income is likely to qualify, whereas the area office cannot be satisfied of this if full details of capital and income are not available.

3.2.4 Returning faxed emergency applications

3.2.4.1 Applications which have not been signed by the solicitor will be returned to the solicitor and postal applications incorrectly faxed to the area office will be destroyed on receipt. However, where the area office is not satisfied that sufficient information has been provided on which to base a decision about the urgency of the situation, or the merits of the case (e.g. where the information requested in the fax emergency application form is incomplete) further information should be sought by telephoning the solicitor in the first instance, or if unsuccessful, by returning the fax indicating the information required. A decision will not be made until all outstanding information has been obtained. See also para 3.1.4 regarding means information.

3.2.5 Refusing faxed emergency applications

3.2.5.1 Where the area office is satisfied that sufficient information has been provided (ie all information requested in the fax emergency application form including, if appropriate, the means form) but on the basis of that information the application does not satisfy all the tests, including for a faxed application, the application will be refused.

3.2.5.2 The refusal decision will be faxed back to the solicitor, giving details of the reason(s) for refusal. There is no appeal against the refusal of an emergency application. Further applications including by post can be made in the same matter and any previous decision to refuse will have no bearing on a further application (although in the absence of a change of circumstances the application would again be refused).

3.2.6 Granting faxed emergency applications

3.2.6.1 A copy of the decision form, confirming the description and limitation wordings, will be faxed back to the solicitor within a working day from

receipt (3pm to 3pm for this purpose).

3.3 TELEPHONE APPLICATIONS

3.3.1 Determining Applications

3.3.1.1 Emergency applications for legal aid will not be considered over the telephone unless the area office is satisfied that a decision is required before a faxed or written application could reasonably be processed (see para 3.2.2.1) or very urgent work is required and the solicitor does not have immediate access to a fax machine (ie he is away from his office and could not be expected to get access to a fax machine). This means that in all instances where the solicitor has time to do so having regard to the urgency of the case, an emergency application should be made in writing to the area office or by fax rather than by telephone.

3.3.1.2 Telephone applications will only be accepted in rare and extremely urgent circumstances (eg where work must be undertaken within a few hours, probably on the same day the application is made including where the solicitor is telephoning from the court) and where the solicitor is able to provide the area office with adequate information relating to the means of the applicant and the merits of the case.

3.3.1.3 In circumstances where the urgency of the situation is such that a telephone application can be justified, the information contained in the fax emergency application form and, if appropriate, the fax emergency means form must be provided to the area office caseworker over the telephone. Where telephone emergency legal aid is granted a copy of the decision will be faxed to the solicitor as confirmation.

3.3.2 Urgency criteria

3.3.2.1 In circumstances where a telephone emergency application can be justified (see para 3.3.1.2), the information required by the fax emergency application form and, if appropriate, the fax emergency means form should be obtained in as much detail as possible, by the area office caseworker. Consideration will then be given to the application on the basis of the information provided over the telephone. The caseworker will consider the urgency of the case first as, if the urgency test for a telephone application is not met, the application will not be granted and the rest of the information need not be obtained.

3.3.2.2 A telephone application will not be justified only on the basis that previous forms have been returned by the area office. Where application forms have been returned, if the solicitor makes a telephone (or fax) application pending receipt and return of the corrected forms the area office will start from the premise that the application should be refused on the basis that the urgency is self created. The area office may, however, decide to grant an application by fax or telephone in exceptional circumstances, particularly where the applicant is at immediate personal risk.

3.3.3 Means and Merits criteria

3.3.3.1 If, on consideration of the information provided, the area office is not satisfied that the applicant is likely to satisfy the means and merits tests, the application will be refused.

3.3.3.2 Where the solicitor is unable to provide all of the income and/or capital information which would be necessary to complete a fax emergency application form in full the application will be refused unless the area office can otherwise be satisfied that the application is likely to meet the means test, eg applicants with low capital and on low earnings who are unable to provide full details on water rates, council tax etc immediately.

3.3.4 Refusing telephone emergency applications

3.3.4.1 Where the caseworker has accepted the telephone emergency application as meeting the urgency criteria, but is not satisfied that sufficient information has been provided on which to base a decision, either about the means of the client or the merits of the case (ie where the information requested on the fax emergency application form cannot be completed and/or the caseworker has not been otherwise satisfied as to eligibility) the application will not be granted.

3.3.4.2 Information will be obtained in as much detail as possible up until the point at which the lack of material information becomes clear. At that point the solicitor will be advised about the information which is needed and of the options to call again within the same day or make another application once the information is available. The fact that a telephone emergency application has previously been refused on the basis of lack of information is not in itself justification for a further application by telephone.

3.3.4.3 Where the caseworker is satisfied that sufficient information has been provided (ie all of the information requested in the fax emergency

application form) but on the basis of that information the urgency test for the grant of an emergency certificate has not been met or a substantive application would not be granted, the application will be refused.

3.3.4.4 Where the application is refused, the solicitor will be informed of the reason for refusal. There is no appeal against the refusal of an emergency application. However, a further postal application or application by fax can, if appropriate, be made in the same matter depending on the urgency of the case.

3.3.5 Granting telephone emergency applications

3.3.5.1 Where the area office grants a certificate the solicitor will be given the description and limitation wordings over the telephone, and asked to agree to the conditions applied (as quoted from the certification statement and conditions in the fax emergency application). A telephone emergency application will not be granted unless the solicitor is able to confirm agreement to abide by the conditions which apply.

3.3.5.2 A copy of the decision reached will be faxed to the solicitor within the same working day.

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

4.1 It is a condition of a decision to grant a telephone or faxed emergency application, that:

a) the full and completed postal forms must be received by the area office within 5 working days of the grant; and

b) the information provided in the postal forms must be consistent in all material respects with that provided/confirmed in the fax emergency application form/telephone conversation.

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.

4.3 Where it is immediately clear or becomes clear that the forms cannot be submitted within the usual 5 day period an amendment or extension of the period may be sought having regard to the circumstances of the particular case. Extensions must be applied for before the expiry of the time period and amendments/ extensions will only be granted for a limited period. In those cases where otherwise completed forms are available but limited information/supporting documents are still awaited from the client it will be preferable to liaise with the area office regarding the immediate submission of the forms so that the assessment process can be put in hand. The area office will have regard to the circumstances of the case leading to the unavailability of information/ documents (see para. 3.1.4)

4.4 If a postal application is submitted which is materially different as against the information provided/confirmed in the fax emergency application form/telephone conversation, the fax/telephone emergency grant decision will not stand because the solicitor has failed to meet the conditions of the grant. In this context "materially" means affecting eligibility as to means or merits (so that the application would not have been granted). Any new but material information received by the solicitor after the fax/telephone grant should be referred to the area office immediately so that the status of the grant can be considered.

5. LIMITATIONS ON THE INITIAL GRANT

5.1 SCOPE LIMITATIONS

5.1.2 Once a decision has been made that the grant of an emergency certificate is justified the area office will look at the particular steps which need to be taken as a matter of urgency. This is the work which must be undertaken in the very immediate future and the area office will limit the scope of the certificate to the minimum required in the interests of justice.

5.1.3 What is necessary and justified will depend on the circumstances of the particular case but the scope limitation imposed will always be specific (e.g. as to particular, specified work or a specified hearing on a particular date) rather than open-ended (e.g. to be represented on a particular hearing and any adjournment of that hearing). This means that the solicitor may need to seek an amendment to extend scope and at that point the area office will consider all the circumstances of the case again and the extent to which an amendment is justified.

5.1.4 The area office may consider that only some of the work anticipated is sufficiently urgent and justifies cover under the certificate. The grant of an emergency certificate does not of itself mean that

cover will be given for all future work in the case during the lifetime of the certificate but rather that the minimum steps will be covered. In particular the area office may decide that, for example, a single written document should be prepared or a single step should be taken pending a full means assessment. Where a hearing date has been fixed the area office may, nonetheless, consider that attempts should be made to adjourn that hearing or to deal with the matter in another way e.g. by consent or by the applicant in person.

5.2 COST LIMITATIONS

5.2.1 Every emergency certificate will contain a cost limitation which will limit the costs which can be incurred within the scope of the certificate. This will be for a maximum figure of £1,200 outside London and, for cases being dealt with by a solicitor whose office is in the London legal aid area, a maximum of £1,500. This sum includes profit costs, counsel's fees and disbursements but not VAT. This is not a ceiling to be worked towards, as in most cases the reasonable costs of the work within the scope of the limitation will be less than the limitation. Costs will fall to be taxed/assessed and the limitation is intended to ensure that, in the minority of cases where the limitation figure is approached, an amendment application must be made to cover future work in excess of the limitation. This is so that the urgency and merits tests as well as the position in relation to means assessment will be reconsidered. Emergency certificates will not contain a costs condition.

5.2.2 In those exceptional cases where it is apparent that the urgent steps to be covered by the emergency certificate will involve greater costs than the standard figure, a cost limitation specifically related to the scope limitation will be inserted.

5.2.3 The solicitor will put forward a cost estimate as part of the application but it will be for the area office to fix the limitation. There is no right of appeal against the limitation but the solicitor can apply for an amendment to that limitation if the circumstances change or further, fresh information can be made available regarding the likely costs of the work to be covered (ie to indicate the work cannot be undertaken within the limitation). An amendment to the scope of an emergency certificate or to a cost limitation will not automatically carry with it an amendment to the cost limitation or scope of the certificate respectively. Each must be applied for and the grant of one will not necessarily lead to the grant of the other.

5.2.4 When dealing with any request for an increase to the cost limitation or when applying a non standard cost limitation, careful consideration will be given to the justifiability of such an increase/limitation having regard to all the circumstances of the case. These will include:-

- the reason(s) for the request including any change in circumstances in the case directly affecting the likely costs;
- the urgent work to be undertaken and the consequences of not undertaking it;
- the time which it is likely to take for the substantive application to be dealt with;
- the position in relation to the outstanding means assessment, including the applicant's conduct in co-operating in the assessment process and the degree of certainty regarding the applicant's/assisted person's financial eligibility.

5.2.5 Where an offer is outstanding, the applicant would, save in the most exceptional circumstances (e.g. an apparently clear error in the assessment directly affecting the applicant's contribution) be expected to accept it (and an amendment to the emergency certificate refused), so that further work could then be undertaken under his or her substantive certificate. Where there is an indication that the applicant/assisted person is not co-operating in the means assessment it would not be reasonable to grant further emergency cover. The area office will, if relevant information is not already available to it, seek urgent information regarding the position as to the means assessment.

5.3 TIME LIMITATIONS

5.3.1 Every emergency certificate will contain a time limitation. This will be 6 weeks from the date of issue of the certificate (save in a minority of cases where a shorter period will be applied so as to particularly ensure the applicant's cooperation in the means assessment). This is so that certificates do not run unchecked for a long period of time.

5.3.2 The emergency certificate expires when that time period is reached (Regulation 22(c)).

5.3.4 The area office has a discretion whether to extend the duration of the emergency certificate. In accordance with the Regulations it is only where the extension is on the basis of exceptional circumstances that further work can be permitted under the certificate. In all other cases, although the existence of the emergency

certificate is preserved (eg as to costs protection and topping up) by an extension, no further work may be done under it (even if the work would otherwise have fallen within the scope of the certificate). It is for the solicitor to apply for an amendment to extend the life of the certificate and an extension based on an outstanding offer/appeal against the terms of an offer or a possible appeal against the refusal of the application for a full certificate only preserves the certificate (but does not allow work under it). (Regulation 24(2) and 23 Civil Legal Aid (General) Regulations 1989).

5.3.5 The area office will consider all the circumstances of the case to decide whether an emergency certificate should be extended and if so on what basis. Its decision is final and there is no right of appeal. The applicant's co-operation in the means assessment process and the urgency of any further work will be relevant. In the event that the area office decides to extend the certificate this will be for a limited time period of days or weeks reflecting the circumstances of the particular case after which the process can, if necessary, be repeated by the solicitor making a further application. The extension would reflect the time it would be likely to take to accept an outstanding offer, to process an outstanding appeal or the particular, exceptional circumstances justifying the extension. In cases involving outstanding offers, regard would be had to when the offer was made and whether acceptance has been delayed for good reason, eg in the caseworker's view an apparent error has been made in the assessment. It is for the solicitor dealing with the case to be aware of the time limit contained in the certificate and to seek an appropriate amendment in good time. If he fails to do so then the certificate will no longer be in force (Regulation 22(c) Civil Legal Aid (General) Regulations 1989).

5.3.6 Where the duration of an emergency certificate is extended, further work will only be covered if it is within the scope and limitation of the certificate, i.e. there is no automatic amendment to the scope and limitation in the certificate.

5.3.7 Where a certificate expires and does not merge with a substantive certificate following continuous existence of the emergency certificate there will be a period between the expiry of the emergency certificate and the issue of the substantive certificate when there will be a break in legal aid cover. This means that, during that period, the assisted person is not protected against a full costs order and that private client funding could be accepted without a breach of Regulation 64.

6. CONTROL DURING THE LIFE OF THE CERTIFICATE

6.2 If an amendment is requested to the description of legal aid, a scope or cost limitation, the area office must:-

a) re-apply the initial merits test, especially with regard to the urgency criteria.

b) check the present position with regards to the means assessment. If there is an outstanding offer, the offer should normally be accepted (eg in the absence of a clear error in the assessment). If any delay in concluding the means assessment is due to the applicant not fully co-operating (which may lead to an embargo being placed on the certificate), then the amendment should be refused.

c) consider the particular circumstances of the case.

This guidance will be applied generally including as to limitations in scope, cost and time. There is no right of appeal against the decision of the area office regarding an amendment.

6.3 Amendment applications should be made by written postal application, fax or telephone depending on the urgency of the case. Area offices will initially decide whether the urgency of the case justifies the method of application used. Telephone applications will rarely be justified as they will only be necessary where work must be undertaken within the next few hours. Fax applications will only be justified where work must be undertaken within a working day (3pm to 3pm for this purpose). Written postal applications should be submitted in all other circumstances.

6.4 Where a certificate is embargoed, whether by way of the show cause procedure, an embargo or a restrictive amendment, the area office will, if asked to allow further work, look at all the circumstances of the case. The basis of the request and the urgency of the further work envisaged will be considered to balance whether allowing further work would be justified against the concern which led to the restriction on work. In the absence of good reason (ie evidence or information) to explain/address the original concern further work is unlikely to be allowed. For example, where an applicant alleges he has co-operated in the means assessment process a bare assertion (as opposed to say the use of an incorrect/incomplete address or a history of lost post to an address occupied by other people as well as the assisted person) will not suffice. Even if the area office agrees to allow further work it will consider the work envisaged and cover only the urgent steps.

8. BRINGING EMERGENCY CERTIFICATES TO A CLOSE

8.2 OFFERS OF FULL LEGAL AID

8.2.1 Where an emergency certificate has been issued and a means assessment is obtained requiring the collection of a contribution, an offer of full legal aid will be made in the usual way. Where an offer is outstanding the area office may extend the time limitation contained in the emergency certificate (Regulation 24(1)(a)). This is discretionary and where a certificate is extended on this basis no further work may be done unless/until a full certificate is issued.

8.2.2 The effect of an extension is to preserve only the existence of the emergency certificate (and not to enable work to be undertaken) with a view to the offer being accepted and the emergency certificate merging in a full, substantive certificate. Any extension granted would be of only sufficient, limited time to enable the outstanding offer to be accepted (this would normally be for a period of days rather than weeks). More than one extension of time would be unlikely to be granted on this basis in view of the opportunity given to the assisted person to consider and accept the offer. Where an emergency certificate is in force it is reasonable to expect the assisted person to react speedily to the making of an offer and the area office may decline to extend the certificate or restrict the scope of the certificate where that is not done.

8.2.3 Once an offer of full legal aid has been made it is unlikely that any extension of cover as to scope or costs will be justified until the assisted person accepts the offer of legal aid which has been made to him/her. This means that the solicitor will only be able to work within the existing limitations applicable to the particular certificate.

8.3 REVOKING OR DISCHARGING EMERGENCY CERTIFICATES

8.3.1 An emergency certificate can be discharged or revoked in accordance with the Civil Legal Aid (General) Regulations 1989 Regulations 74 to 86 but see 8.3.6 below.

8.3.6 Until the means assessment process has been completed (including by possible non-co-operation by the assisted person) the area office will not discharge an emergency certificate on the merits or by applying any of its general powers (e.g. with the assisted person's consent). This is because revocation may ultimately be more appropriate.

8.3.7 There is no right of appeal against the discharge or revocation of an emergency certificate. Where a former assisted person submits that the certificate was wrongly discharged/revoked the area office should look at all the circumstances of the case including the basis of discharge/revocation and the reason(s) for the assisted person's view. In the absence of a clear error or good reason (ie evidence or information) sufficient to make the decision unjustifiable the discharge/revocation should not be withdrawn. For example a bald assertion of co-operation in the means assessment process as opposed to say the use of an incorrect/incomplete address or a history of lost post to an address occupied by other people as well as the former assisted person will not suffice. Where the area office is prepared to withdraw the discharge/revocation it will decide what further work, if any, should be allowed having regard to all the circumstances, including the urgency criteria, and bearing in mind the absence of a means assessment.

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