

# FOCUS

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## Contents

Contracting for all Civil Representation	1-2
Legal Help and Controlled Legal Representation: Contracting Policy	2
Financial Conditions Consultation	3
Incentives for Firms in Immigration Asylum	4
LSC Defends Costs Limitations Challenge	4
MOD Pilot Update	4
Information for Family Law Practitioners Undertaking Publicly Funded Work	5
The LSC Manual	5
LSC - First Corporate Plan	6
Narey Travel and Waiting Costs	6
Consultation on CDS General Criminal Contract	6
VHCCC Pilot Scheme	7
Notification of VHCCC	7
Commission Launches e-commerce	8-9
Advocacy Graduated Fee Scheme	10
Human Rights Act 1998	11
Very High Cost Civil Cases	12-13
Late Submission of Costs Claims	13
Franchise Category Revision: 'Actions Against the Police, etc'	14
Funding for Representation of Children - Public Law Children Act Proceedings	15
Retrospective Amendments to Certificates under the Legal Aid Act 1988	15
Public Interest Advisory Panel Reports	16-17
Point of Principle	18
Crime Franchise Panel	19-20
General Authority - Crime	20-21
Guidance on meaning of "Employed"	22-23
Football (Disorder) Act 2000	23
Abolition of Means Test for Criminal Legal Aid in the Magistrates Court	24
Changes to Rules on Assignment of Counsel in Criminal Legal Aid Proceedings	24
Regulations	25-31

## Contracting for all Civil Representation from 1 April 2001

In August the Commission issued a consultation paper on its proposals for the introduction of contracting for all civil certificated work from 1 April 2001. The deadline for responses is 27 October 2000.

The consultation paper sets out what civil certificated work organisations will be allowed to do after 1 April 2001.

In essence, work in:

- family,
- immigration,
- personal injury, and
- clinical negligence

is treated differently from any other category of work, whether or not a franchise category exists. Everything other than the categories in a) to d) above is referred to as the remaining categories.

An office which has passed a preliminary audit in any category of law will qualify for a licence contract to undertake civil certificated work in that category. For the categories in a) to d) above this is merely a continuation of the current arrangements. In addition that office will qualify for a licence contract to do work in any of the remaining categories. This means, for example, that an office that has passed a preliminary audit in

the family category will qualify for a licence to do family certificated work and any work in the remaining categories, but not work in the immigration, personal injury or clinical negligence categories.

If the office has passed a preliminary audit in housing it would qualify for a licence contract in housing and all the other remaining categories but not for the categories in a) to d) above.

The consultation paper proposes special rules for judicial review cases by setting down requirements for supervisors to enable the licence to encompass that work and requires the involvement of barristers or solicitors with higher rights of audience in individual cases who have experience in public law.

The Commission is keen to know if the rules summarised above would prejudice experienced litigators who do not meet the supervisors' standards in any specific category of law. The Commission is prepared to consider ways in which such litigators can be brought into a fully contracted scheme.

Transitional arrangements covering the continuation of existing cases, deadlines for submitting applications after 1 April

2001 and changes of solicitor are also covered in the consultation paper. It needs to be emphasised that these proposals do not limit the numbers of certificated cases that can be started or what can be paid either by payments on account or otherwise, or the methods of payment. These will remain as now although it is possible that we will, over time, move to a system of regular

monthly payments. Also, there is no deadline for applying after which we will not award further licence contracts. However, if you want a licence from 1 April 2001 you must have applied for a Specialist Quality Mark in the relevant category by 30 November 2000.

Responses to the consultation paper should be made to: Civil Contracting

Team, 6th Floor, 29/37 Red Lion Street, London, WC1R 4PP, e-mail: [civil.contracting@legalservices.gov.uk](mailto:civil.contracting@legalservices.gov.uk).

Copies of the consultation paper may be obtained from this address, by telephoning 020 7404 2603 or from the Commission's regional offices. The consultation paper can also be found on our website at [www.legalservices.gov.uk](http://www.legalservices.gov.uk) ■

## Legal Help and Controlled Legal Representation: Contracting Policy

The Commission issued a consultation paper in April 2000 setting out its proposals for changes in Controlled Work contracts and for dealing with the planned review of contract awards in the period April - July 2000. A summary of the responses and conclusions was widely circulated in July together with the necessary changes to the Contract.

The Changes to Schedule Payment Limits and New Matter Starts (NMS) were actioned for contractors in July with a few exceptions.

The consultation paper, paras 28 - 31, set out our proposals in relation to new firms. The summary, para 30, confirmed our position. For the avoidance of doubt we wish to make it clear that the position in relation to our willingness to contract with new firms applies equally to existing firms wishing to expand into different categories of law.

The current position is that we will, as a matter of contracting policy, give Controlled Work contracts to any organisation that passes a preliminary audit in the following categories of law:

- a) immigration,
- b) mental health,
- c) community care,
- d) education,
- e) public law, and
- f) actions against the police.

The size of the contracts will be at the discretion of the Regional Director.

Regional Directors will also have a discretion not to award a contract on the passing of a preliminary audit in the following circumstances:

- a) On access grounds. In some circumstances Regional Directors may be satisfied that sufficient supply already exists to ensure that there is access to specialist services that the award of a further contract in a particular zone or zones is not appropriate. It is expected that this discretion will be rarely exercised for the time being in any of these categories of law, given the policy of encouraging further supply. It may, for example, sometimes be appropriate in the mental health category in zones where clients have good access to local supply. However, the mere fact that there may already be a supplier or suppliers in the same zone with contracts in the same category should not lead to a refusal where the firm seeking the contract offers a genuinely specialist service which is accessed by clients outside the zone.
- b) Where the firm's record in contracting, franchising or claims assessment is such as, in the opinion of the Regional Director, justifies the refusal of a contract. Thus, a firm which has only recently had their General Civil Contract terminated in a category because of a failure of a pre-franchise or post-franchise audit will be most unlikely to be awarded a contract simply on passing another preliminary audit.
- c) Where the firm's past record or the

preliminary audit itself raises serious concerns as to quality falling short of those justifying either the failure at the preliminary audit or an outright refusal under (b) above. In those circumstances the Regional Director may delay the award of a contract until a pre-franchise audit is passed where the work concerned can continue to be performed by the firm in a tolerance. In other categories where the work cannot be performed in a tolerance, such as immigration, the Regional Director may decide to restrict the size of the contract until the pre-franchise audit.

The consultation paper, para 26, dealt with the position where any organisation runs out of NMS prior to 31 March 2001. In particular, para 16 dealt with the position where any new matter fell within paras 3 or 4 of the Lord Chancellor's Priorities Direction of 1 February 2000 (see *Focus 29* page 17). The changes to the contract circulated with the summary of the responses and conclusions to the consultation dealt with para 16(a) of the consultation paper. The current position is that increases in NMS will not be turned down if the matter falls within para 4 of the Lord Chancellor's Direction, irrespective of any capacity there might be in the Bid Zone. Also, it is unlikely that requests for increases in NMS for matters falling outside paras 3 and 4 of the Direction will be refused in the period up until 31 March 2001 on budgetary grounds alone. They may be refused for other reasons. ■

# Financial Conditions Consultation Paper

The Lord Chancellor's Department has issued a consultation paper proposing a package of reforms to the financial conditions for the grant of Community Legal Service funding by the LSC. This paper is available on the LCD website at [www.open.gov.uk/lcd](http://www.open.gov.uk/lcd) or by telephoning Sean Langley on 020 7210 0601.

## What is the main purpose of these proposed changes?

The changes have three main aims:

- to align the eligibility levels for publicly funded legal services;
- to simplify the means testing arrangements;
- to ensure that the balance between publicly and privately funded litigants is as fair as possible.

## Will the proposals increase or reduce eligibility?

Eligibility for Legal Help will be increased to match that for Legal Representation. New eligibility limits will be set for all levels of service to take account of the revised means test, but, with the exception of the increase for Legal Help, they will be calculated to preserve broadly the same eligibility as now.

## When will the new eligibility conditions be implemented?

Consultation on the proposals closes on 20 October. The Government will publish its revised proposals, taking account of consultation, together with draft regulations and proposed eligibility limits early next year. It is intended that changes will come into effect in April 2001.

## Summary of key points

### 1. Financial eligibility and contributions

- The same eligibility limits for income will apply for all levels of service. The Legal Help limit will be **increased** to match that for Legal Representation.
- The same eligibility limits for capital will apply for the majority of levels of service and will be aligned with the Income Support levels.
- Contributions from income for Legal

Help will be re-introduced. These will be fixed one-off contributions and will be calculated according to income. There will be a free limit below which no contributions are payable. In addition, no contributions will be payable if the problem can be resolved within 2 hours' work. No contributions from capital will be payable for Legal Help. No contributions from either income or capital will be payable for Help with Mediation or Family Mediation.

- The way in which contributions are calculated for Legal Representation will be changed.

### 2. Means testing

- The aim of the proposals is to simplify the means test by reducing the number of allowances counted against income to calculate disposable income. It will be simpler for suppliers (who administer the means test for certain levels of service) and applicants to understand.
- There will be a gross income cap which will act as an initial filter. Applicants whose annual gross income exceeds the level of the cap will not be eligible for civil funding, whatever their outgoings. Where an applicant's income is below the cap, the new test will take into account gross income, net of tax, National Insurance contributions and certain benefits (as now). To calculate disposable income, allowances will be made for housing, dependants and work expenses. People with dependants will be allowed actual housing costs (subject to the current cap of £100,000 of mortgage debt); people without dependants will be subject to a lower cap.
- The eligibility limits will be recalculated to take account of the fact that the allowances have been changed.
- The system is based on detailed research carried out by the Legal Services Research Centre (LSRC); the research report was published at the same time as the consultation

paper. The LSRC will be calculating the new eligibility limits on the basis of the latest data; these will be the subject of further consultation.

- The paper also proposes a change in the passporting rules. It proposes that recipients of Working Families Tax Credit and Disabled Person's Tax Credit will no longer be automatically passported for the income limb for certain levels of service. Income Support and income-based Job Seekers Allowance will remain passporting benefits for all levels of service.

### 3. Other changes

- The current statutory charge allowance, which enables people to retain the first £2,500 of their damages in matrimonial cases exempt from the statutory charge, will be abolished. Instead, there will be a combined allowance of £3,000 for the statutory charge and capital contributions in all types of civil case.
- It is proposed that equity in a person's home should be subject to a contribution, subject to the free limit of £3,000.
- It is proposed that the interest rate for statutory charge and contributions should be fixed with reference to mortgage rates and should be amended annually if the rate changes by more than 2%.
- It is proposed that, in deciding whether to order costs against a funded client's home, the court should disregard any value in the funded client's home up to £3,000 plus any contribution from equity due to the Commission.
- It is proposed to relax the test for recovering costs from the Community Legal Service Fund by a non-funded opponent. At present, a successful non-funded opponent can obtain costs from the Fund provided they were the defendant in the case and they would otherwise suffer "severe financial hardship". The Government proposes to relax this test to "financial hardship". ■

## Incentives for Firms to Expand in Immigration Asylum

In early July 2000 the Commission made a package of incentives available to its Regional Directors to encourage firms to expand in immigration asylum in areas of need. The aim of the package is not only to facilitate expansion by existing franchise suppliers but to encourage other firms to move into this area of law. The measures available to the firms which are awarded the package (via a bidding process) include:

1. Grants for the recruitment of new staff to work on asylum matters (£2,000 for external recruits and £1,000 for internal recruits).
2. £1,000 towards administration costs where two or more new fee earners are recruited.

3. An increase of £45,000 per year for three years to firms' Schedule Payment Limits for each fee earner recruited under the package with a guarantee that any difference between this figure and the income from chargeable work carried out by the fee earner will be met by the Commission.
4. Provision for extra payments to meet the costs of the LAFQAS supervision of the extra fee earners. This includes arrangements whereby firms not yet franchised in immigration can pay for firms with existing immigration contracts to provide supervision and can reclaim the cost from the Commission.

The need for the package is being

assessed on a region by region basis, with particular emphasis on dealing with regions where the pattern of dispersal of asylum seekers has caused problems with existing contracted capacity. So far, the Commission's North-East, East and West Midlands, Merseyside and Wales offices have invited bids for expansion contracts under the package but other regions are actively considering sending out formal invitations to bid.

Practitioners with any queries in relation to the availability or details of the package or who wish to bid in areas where invitations have already been sent out should contact the Contracting Team in their regional office. ■

## Legal Services Commission Successfully Defends Costs Limitations Challenge

On 28 July 2000 the High Court upheld the Commission's authority to impose costs limitations on legal aid certificates issued under the 1988 Legal Aid Act. In judicial review proceedings brought by David Burrows solicitors of Bristol it was alleged that costs limitations were unlawful under the 1988 Act.

In dismissing the application Stanley Burnton J considered that "the conclusion

that legal aid for representation may lawfully be granted under the 1988 Act subject to financial limitations is one that I am happy to make." He added "...a financial limit on representation is a highly effective means of controlling expenditure". It was held that a limitation on representation to a specified cost is a limitation on representation and that section 15(4) of the Legal Aid Act 1988 authorises limitation on

representation by reference to cost.

At the time of going to press the Commission is aware that an appeal may be made but permission has not yet been granted.

The legal proceedings only affect 1988 Act cases, as cost limitations in relation to 1999 Act applications are specifically authorised by C33 of the Funding Code Procedures. ■

## MOD Pilot Update - Letting of Further Second Tier Contracts

The Commission is considering letting further contracts for second tier services in order to provide more specialist support to civil contract holders.

The Commission is currently consulting with its regional offices and RLSCs as part of its consideration of the need for further second tier contracts. In particular, we are asking them to consider whether there are any categories of law or specific client groups (e.g. the elderly, those affected by HIV/AIDS,

etc) where they feel civil contract holders could benefit from the support of a second tier service. Once this process is complete, we will undertake a tendering process. A national advertisement will be placed and all previous bidders or those who have since expressed an interest will be notified. We expect to be in the position to advertise by the end of September / beginning of October 2000.

Additionally we are considering extending

the availability of second tier services to suppliers with a crime franchise (and ultimately to those suppliers with a general criminal contract) once the crime panel is introduced in October 2000 and the Human Rights Act comes into force. At present only those suppliers with a civil contract can use the services.

More information about these aspects of the MOD Pilot will be in the next edition of *Focus*. ■



# Important Information for Family Law Practitioners Undertaking Publicly Funded Work

The requirement to attend a meeting with a mediator before making an application for General Family Help or Legal Representation for a Family Matter (Funding Code Procedures Part C 27 - 29) is currently being piloted in areas across England and Wales. This pilot will be extended to cover a number of new areas on 25 September 2000. Please see the list below. The Implementation of the pilot should be completed by the end of this year.

Working within a pilot area has the following results:

- Before an application is made for General Family Help, or Legal Representation in certain family matters, the applicant will be required to attend a meeting with a mediator in

order to assess whether mediation will be suitable to the parties, the dispute and all the circumstances;

- where an application is made for General Family Help or Legal Representation which is subject to Funding Code Procedures Part C 27 - 29, and the applicant does not fall within any of the exceptions to the requirement to attend a meeting with a mediator (please see form CLS APP7), the application will be rejected unless the applicant has attended a meeting with a mediator; and
- where mediation is suitable, and the applicant is financially eligible, they will receive publicly funded family mediation.

In order to ensure that family law

practitioners at your firm are aware of the requirements under Funding Code Procedures Part C 27 - 29, and that they understand the procedures involved when practising under this requirement, please ensure that you read the chapter on Family work in "The Funding Code - Decision Making Guidance" (at Section 20 in Volume 3 of the LSC Manual). If you do not have a copy of the Funding Code or the guidance you will find it on the LSC website at [www.legalservices.gov.uk](http://www.legalservices.gov.uk).

We have already written to all mediation services and family solicitors who will be affected but should you have any queries regarding the implementation please contact your LSC regional office or Catriona Myers Wilson at the Family Mediation Project on 020 7404 2569.

LSC Area	Postcodes to be added in
Birmingham	B13, B17, B29, B32, HR8, HR9, WR2, WR9, WR14
Brighton	CT4-CT6, KT19, ME12, ME13, SM1, SM3, TN9, TN31
Bristol	BA4, BS22, BS23, BS31, DT11, EX36, EX38, EX39, TA18, TA19, TQ6, TQ9, TQ13
Cambridge	AL10, CM24, CO10, HP4, HP23, IP7, IP8, IP14, IP20, IP27, IP28, PE10, PE11, PE12, PE13, PE15, PE16, RM1-RM14, SG7, SG12-SG14, SG17
Cardiff	CF38, LL11, LL14, LL32, LL34, LL55, LL57, LL59, NP1, SY21, SY16
Chester	LL32, LL34, LL55, LL57, LL59, ST3, ST6-ST10, ST13, SY13, TF9
Leeds	DN1- DN6, DN8, DN9, S63, S64, S72, YO15-YO18, YO25, YO42
London	E6, E7, E12, E13, E15, E16, SE3, SE7, SE18, SM1-SM4, SM7, SW19, SW20
Manchester	BB10, BB18, BL0, BL1, HX7, LA12, LA14, M29, M34, M35, M43, M46, OL10, OL11, SK17, SK22, OL13, OL14, WA3, WA14 - WA16, WN1, WN4-WN8
Newcastle	DL8, NE4, NE7, NE9, NE10, NE12, NE15, NE16, NE20, NE21, NE25, NE26, NE37, NE38, NE40, NE42
Nottingham	DE11, DE14, DN21, DN22, DE6, LE65, LE67, NG10, S21, S44
Reading	GU13, PO7, PO9, PO13, PO15, PO17
Liverpool	L32

## The Legal Services Commission Manual

The LSC Manual is the Commission's new loose-leaf publication with an optional CD-ROM. The first three volumes were issued in April 2000. The Manual is the official guide to public funding under the Community Legal Service and the Criminal Defence Service.

An updating service allows the Commission to update the material in the Manual regularly. A first update was issued in July and a second will follow in November. As from 2001 there will be three updates a year - in March, July and November. Volume 4 which will contain CDS material will be issued in June 2001.

Although all relevant material will be added to the Manual in its regular updates, the Commission will continue to use *Focus* (as well as its website at [www.legalservices.gov.uk](http://www.legalservices.gov.uk)) to ensure that suppliers are provided with details of all new materials for the CLS and the CDS as soon as possible. ■

## Legal Services Commission - First Corporate Plan

The Access to Justice Act 1999 requires the Legal Services Commission to prepare an annual plan for the approval of the Lord Chancellor (Schedule 1, para 15). Once approved it is to be laid before the Houses of Parliament and published by the Commission.

The Act specifies that the plan should set out:

"..how it intends in that year-

- a) to fund services from the Community Legal Service Fund,
  - b) to fund services from the Criminal Defence Service Fund, and
  - c) to exercise its other functions"
- (Schedule 1, para 15 (1))

It should also include a summary of what the Commission has ascertained about the need for, the provision of, and quality of services provided which comprise the Community Legal Service.

The Act exempts the Commission from

the requirement to prepare a plan in the first year of its existence - this current financial year. However, with the agreement of the Lord Chancellor's Department, the Commission has decided to prepare an annual plan for this current year in order to set out the Commission's planned activities in 2000/01 and to inform the production of its first statutory plan for 2001/02.

The plan is published for consultation, and is also available on the Commission's website at [www.legalservices.gov.uk](http://www.legalservices.gov.uk). Comments are sought on the plan's content, structure and style by **13 October 2000**.

To receive a copy of the plan, please contact Chris Smith by post, DX or e-mail at:  
Legal Services Commission, Head Office,  
85 Gray's Inn Road, London WC1X 8TX.  
DX 328 London / Chancery Lane. E-mail:  
[chris.smith@legalservices.gov.uk](mailto:chris.smith@legalservices.gov.uk) ■

## Consultation on the Criminal Defence Service (CDS) General Criminal Contract

On 30 August we published for consultation:

- the General Criminal Contract
- the Duty Solicitor Arrangements 2001

Copies of these documents, together with a synopsis of the reports on the research conducted into the Criminal Contracting Pilot, have been sent to all firms with a Crime category franchise or who have applied for such a franchise. They have also been sent to the profession's relevant representative organisations.

Further copies of the consultation documents are available on request from Sian Jones on 020 7759 0465.

We will be holding meetings in all regions during September and October to explain and discuss the proposals and to receive responses from solicitors directly. Regional offices will be contacting all Crime category franchisees during the next few weeks with details of these meetings.

In addition we will be holding detailed discussion with the Law Society and other representative organisations from September onwards.

We will review the contract and Arrangements in the light of comments received and the discussions. It is our intention to issue final, revised, versions of the documentation before Christmas in order to allow firms time to prepare for implementation of the new systems in April.

It is our intention to provide information and support to firms (during the period January to March 2001) to assist in the implementation of the contract and we will provide further details of these arrangements later in the year. ■

## Narey Travel and Waiting Costs

In December 1999, a letter giving further guidance on the introduction of Early First and Early Administrative Hearings was circulated. Paragraph 5 set out the rates paid for duty solicitor of choice hearings. The final sentence of that paragraph noted that "A duty solicitor of choice is entitled to claim travel and waiting at enhanced rates for weekends and bank holidays." This is incorrect with regard to travel. This note should be taken as a statement of the correct position.

Regulation 5(3) of the Legal Advice and Assistance (Duty Solicitor) (Remuneration) Regulations 1989 allows a 25% enhancement for all work done on a day which is not a business day. The work which attracts enhancement is defined in Regulation 5(1)(a) as "...work done, including attendance and waiting, at a magistrates' court...". The

enhancement excludes travel, which will continue to be remunerated at the normal rate.

Where you are acting as the duty solicitor of choice, travel is claimable as if the solicitor has been called out to the court to act as a duty solicitor, in accordance with Regulation 5(1)(b).

The applicable travel rates are shown below:

### Court Duty Solicitor - Travelling

Franchisees	£25.50
Non-franchisees	£25.00

If you have any questions concerning this, please contact your Criminal Defence Service Manager in your regional office. ■

# Very High Cost Criminal Cases Pilot Scheme

The Commission's pilot of individual case contracts for very high cost criminal cases is now in progress. The first contract was signed with David Philips & Partners, a firm of solicitors in Liverpool. We are grateful to this firm for the co-operation and help they have provided. The process of agreeing this first contract was significantly assisted by the firm's well developed approach to the management of cases using case plans.

It is anticipated that, by the end of September, some 12 pilot contracts will have been signed.

The Individual Case Contract (ICC) team will progressively increase the number of pilot contracts. From April 2001, the Commission will have the power to require that a case meeting the criteria must proceed by way of contract only. By April 2002 all new cases meeting the criteria will proceed only by way of contract.

The ICC team will be reviewing all

potential contract cases reported to the Commission under the new reporting arrangements (see article below) with a view to selecting appropriate cases for pilot contracts.

In addition firms may contact the ICC team to discuss potential pilot cases which they would like to propose for a contract.

## Guidelines on Submissions of Potential Pilot Cases

Any firm with a criminal franchise may potentially pilot a VHCC case. However, only Serious Fraud Panel firms may sign a pilot contract for a VHCC fraud case.

Pilot cases should be contracted at an early stage, for example just post-committal or transfer.

Pilot cases should be likely to reach approximately £150,000 total defence costs (i.e. solicitors costs, disbursements and Counsel's fees) or have a trial lasting 25 days or longer.

New pilot cases should be unlikely to come to trial before April 2001.

## Next Steps

If you feel you have a case that would be ideal for piloting, either:

- complete a brief one page summary of the case and submit it to the VHCC team or
- contact Kirsten Alderson or Nigel Field for more information.

## Contact Details

### Address:

VHCC Unit, Criminal Defence Service, Legal Services Commission, 85 Gray's Inn Road, London, WC1X 8TX

### Telephone:

Kirsten Alderson - 020 7759 0454  
Nigel Field - 020 7759 0451

### E mail:

[kirsten.alderson@legalservices.gov.uk](mailto:kirsten.alderson@legalservices.gov.uk) or [nigel.field@legalservices.gov.uk](mailto:nigel.field@legalservices.gov.uk) ■

## Notification of Very High Cost Criminal Cases

The Legal Aid (Notification of Very High Cost Cases) Regulations 2000 came into force on 1 August 2000, requiring solicitors to notify the Legal Services Commission, in writing, of all new criminal cases that are likely to become a Very High Cost Case. Such cases are defined as where the total costs (solicitors, disbursements and counsel) are likely to reach £150,000 or, if the case were to go to trial, it is likely to last 25 days or longer.

Firms are required to inform the LSC of cases in which they have been instructed **on or after** 1 August 2000. The LSC should not be notified of cases that have already commenced prior to that date.

Details required by the LSC include:

- the client(s) name(s)
- the prosecuting authority
- the name of the case
- relevant case references (e.g. legal aid order number, prosecuting authority's reference)
- names and other relevant details of co-defendants and the names of their representing firms
- the charges faced
- a summary description of the case, including the reason it is considered the case is a VHCC case
- the current status of the case
- whether legal aid has been applied

for (or is to be applied for) and, if granted, where and when granted

- the work undertaken by the firm to date
- whether the firm wishes to undertake the case<sup>1</sup>

If you wish to notify the LSC of a VHCC case, please complete the above details and send them to: VHCC Unit, Criminal Defence Service, Legal Services Commission, 85 Gray's Inn Road, London, WC1X 8TX. Telephone: 020 7759 0451/4.

<sup>1</sup>From 1 April 2001 it is planned that VHCC fraud cases can only be undertaken by firms on the Serious Fraud Panel. ■

# Commission Launches e-commerce for Contracted Suppliers

Since 1 May we have been piloting the electronic transfer of contract management (SPAN) reports between suppliers and the Commission. So far 17 suppliers, from both private practice and the not-for-profit sector, have been involved. We are grateful for their support in developing this work and we are now in a position to invite more organisations to apply to take part.

## What you need

The service operates across the internet with access available from a standard internet browser. All you need is:

1. A General Civil Contract with the Commission
2. A computer with Windows (95,98 or NT) operating system
3. A modem
4. An ISP account
5. Dial up software (minimum internet connection at 28.8 Kbps)
6. A browser (Netscape 3 or 4 and Internet Explorer 4 or 5)
7. E-mail addresses for each user

Please note that participants in the project will need to provide the above equipment from their own funds.

The Commission will provide any bespoke software required. Currently this is restricted to 'bulk load' software used by all offices submitting more than 10 completed matters per month. We will assist all offices with installation of "Sun's JRE 1.2.2." the software currently used for bulk loading. We will also provide a Service Desk support facility to assist users having problems transferring or receiving contract information from us.

## How it works

The system is built on the success of the

SPAN contract management system. It takes the manual forms completed monthly, Matter Start Forms and Consolidated Matter Report Forms and allows suppliers to transfer this data over the internet. Users can input data when convenient and then confirm that data to the Commission at the end of the month. Users are given confirmation of the successful transmission. This guarantees the following month's payment will be sent automatically to their bank. Users are then given access to on-line reports, statistics and their previous submissions.

## Security

Security is maintained at the user end by password control and transmission by Secure Sockets Layer (a high standard internet security system to encrypt data) and by a high security firewall protecting the Commission's internal (SPAN) system. Users can have absolute confidence that once we have received their data it will be equally as secure as data submitted on paper.

## Benefits

- Supplier has full control over all contract management submissions to the Commission.
- Checks and validations are made at points of entry; invalid data is never processed.
- Increased data availability through access to on-line reports, statistics and previous submissions.
- Access to the internet can be from anywhere, without being restricted to suppliers' offices.
- Secure method of sending data and confirmed receipt of this data from the Commission.
- Participation in developing this initiative across all the Commission's activities.

## How do I join?

Membership is free! Registration will take place on a first come first served basis. You can now register by post or from 6 November we also expect to offer an on-line version of the registration form on our website at [www.legalservices.gov.uk](http://www.legalservices.gov.uk).

## Registering by mail

Please photocopy and complete the application form on the opposite page to register your interest. Please send completed forms to Legal Services Commission, Business Support Unit, EDI Registration, 85 Gray's Inn Road, London, WC1X 8TX. We will contact you as soon as we possibly can, telling you when we are able to include you on this system, what you need do to come on-line, and to confirm the last day of your manual form completion.

## Registering on-line

Submit your details using the on-line application form. Each firm registering on-line will then receive an e-mail confirming the first month they will use the service. Each individual user will also receive a welcome letter within 7 days of their registration confirming their password details.

**Note** - until you start to use the service you should continue manual completion of the SPAN forms.

## Further information

If you would like further information on this facility please contact the Business Support Unit on 020 7759 0000. Any queries you may have about the running of your contract and how you continue to use reporting facilities should be directed to the Contract Manager at your local regional office.



Please photocopy this form and when completed send to: Legal Services Commission, Business Support Unit, EDI Registration, 85 Gray's Inn Road, London, WC1X 8TX.

# EDI Registration Form

Name, address and postcode of supplier \_\_\_\_\_  
\_\_\_\_\_

Contract Number \_\_\_\_\_

Contact point and telephone number \_\_\_\_\_

User 1 - name \_\_\_\_\_

E-mail address \_\_\_\_\_

User 2 - name \_\_\_\_\_

E-mail address \_\_\_\_\_

Type/Model of Computer intended to be used \_\_\_\_\_

Operating System \_\_\_\_\_

Modem \_\_\_\_\_

Internet Service Provider and Browser \_\_\_\_\_

I do/do not require installation of Sun JRE 1.2.2 \_\_\_\_\_

I confirm that this firm/organisation wishes to participate in the Legal Services Commission initiative of transferring data over the internet. I would like to sign up for this service as soon as possible.

**Signed** \_\_\_\_\_

**Name** \_\_\_\_\_

**Position in firm/organisation** \_\_\_\_\_

## Index to *Focus*

An index has been produced containing an alphabetical listing by subject of all articles published in *Focus* since issue 1 in Spring 1991. It can be found on the LSC website at [www.legalservices.gov.uk](http://www.legalservices.gov.uk) in the news section along with issues of *Focus* from number 26 to 32 in PDF format. For older issues or to obtain hard copies please contact the Legal Services Commission's Press Office (see back cover for contact details). ■

## New Address Details

In mid-October the Civil Contracting and Family Law and Mediation teams will be moving to LSC Head Office at 85 Gray's Inn Road, London, WC1X 8TX.

Their new telephone numbers will be:

**Civil Contracting** 020 7759 0333

**Family Law and Mediation** 020 7759 0315

These changes will take effect from 16 October.

# Advocacy Graduated Fees Scheme for family cases - an update

As explained in *Focus* 31 (page 11), the Lord Chancellor's Department (LCD) proposes a new payment scheme for barristers who undertake family work from 1 December 2000. The scheme provides a separate payment regime for counsel during the lifetime of family cases brought with the assistance of public funding. The scheme will operate alongside the existing arrangements for paying solicitors' profit costs and disbursements.

Family barristers will need to be familiar with the new payment scheme. Similarly, solicitors will need to be familiar with the fee scheme when they report to their client on the running costs of the case, calculate costs for the purpose of the costs limitation, or verify counsel's claim.

The LCD has now published the following for consultation:

- Schedule of proposed rates of payment for counsel under the Family Graduated Fees Scheme (published 4 July 2000)
- Draft regulations to enable the scheme to come into force on 1 December 2000 (published 1 August 2000)
- Revised structure document (published 1 August 2000)

The draft regulations, proposed rates, and structure document are available from the LCD (telephone 020 7210

8871). The consultation period will close on **22 September 2000**.

The Legal Services Commission separately issued the following draft documentation for consultation on 18 August 2000:

- Guidance for LSC suppliers on the operation of the scheme (to be read in conjunction with the draft regulations issued by the LCD)
- Proposed changes to the General Civil Contract for solicitors and not-for-profit agencies (family licensed work). The changes provide guidance on payments on account and rules regarding the use of counsel in family proceedings.
- New claim form for completion by counsel (CLSCLAIM5). It is proposed that counsel completes this form each time a claim for payment under the scheme is made.
- New verification form (CLSADMIN5) for completion by instructing solicitors in support of counsel's claims
- Summary of proposed amendments to six forms issued to solicitors in the LSC forms masterpack (CLSAPP3,4 and 8, CLSCLAIM1-3)

Copies of these documents have been sent to all solicitors firms holding a General Civil Contract for family work, the Law Society, the Bar Council, the Advice Services Alliance and the Association of District Judges. Copies were also sent to

all organisations and individuals which had expressed interest in participating in the consultation. If you wish to participate in the consultation and can provide comments within the deadline given below please contact Sarah Green at LSC Head Office on 020 7759 0000.

The Commission's consultation documents are also available on the LSC website at [www.legalservices.gov.uk](http://www.legalservices.gov.uk). Responses to the proposed amendments may be sent by post, DX or e-mail ([sarah.green@legalservices.gov.uk](mailto:sarah.green@legalservices.gov.uk)) so as to reach Sarah Green by **29 September 2000**.

Comments received after 29 September may not be considered by the LSC given the timetable for implementation of the scheme. The draft version of the guidance, contract amendments, regulations and rates will be contained in the next update of the LSC Manual and placed on our website. Final versions of these and the new and revised forms will be made available in time for the launch of the new scheme from 1 December 2000, and (with the exception of the forms) will be published in the next available update to the Manual and on the website.

For further information on the scheme you should contact your professional body. Further updates will be supplied as the scheme progresses both in *Focus* and on the LSC website. ■

# Human Rights Act 1998

## The Rights have been brought home - now how do we fund them?

As everyone knows, the Human Rights Act comes into force on 2 October. It makes Convention Rights directly enforceable under United Kingdom law. This will affect the work of the Legal Services Commission in many different ways. Our staff have already had training on human rights issues as part of their training on the Funding Code and further training on the Human Rights Act will take place this month.

Human rights issues have already been taken into account in designing the new Civil Funding Scheme which came into effect in April. In particular:

- The Lord Chancellor's Directions on scope ensure that non-business cases against public authorities (including judicial review proceedings) are within the scope of funding if they allege significant breach of human rights.
- Special criteria in the Funding Code apply to actions against public authorities, whether judicial review proceedings or damages claims, which raise significant human rights issues. Such cases can be funded even if prospects of success are only in the borderline category.
- In such cases we also have a wider discretion on cost benefit issues and are not bound by the strict cost benefit matrix in the General Funding Code.
- The Funding Code Guidance encourages significant human rights issues to be taken into account whenever discretions are exercised under the Code, for example in relation to non-quantifiable cost benefit.

In general, the Human Rights Act allows Convention issues to be raised in any proceedings, rather than creating entirely new court procedures for human rights challenges. Proceedings under the Human Rights Act to strike down secondary legislation or to seek a declaration of incompatibility of primary legislation with the Convention will usually be by the judicial review procedure. Funding for such cases will be considered under Section 7 of the Funding Code. Claims for damages against public authorities based on breach of Convention rights will usually proceed in the normal way in the multi-track or fast-track and will usually be considered for funding under Section 8 of the Code.

When applications for CLS funding are made relying on Convention issues, clear details of the arguments, specifying relevant Convention articles, must be set out on the application form. Practitioners should consider carefully when to raise Convention points in applications for funding, just as they should do in litigation. The Commission's primary interest is in cases which genuinely raise "significant human rights issues". Guidance on this concept is at Section 6.5 of the Funding Code Decision Making Guidance. Convention points should only be raised where they have reasonable prospects of success and are material to the case i.e. they would carry weight with the Court. For example, almost all family proceedings relate to people's right to family life, but this consideration will only affect the Commission's decision on whether or not to grant a certificate where there is a real point to be argued under Article 8 of the Convention which could affect the outcome.

The new Act enables arguments under the Convention to be used to develop the existing state of the law. No doubt after October many cases will be brought to establish important new principles of law, many of which will have a significant wider public interest, in the sense that they will produce real benefits for a significant number of other people facing the same problem. Our aim will be to support such cases by granting legal representation where appropriate, but we also need to ensure that such funding is properly controlled and targeted. We wish to avoid funding a multiplicity of proceedings on the same issue in different parts of the country.

We have a central reporting system which allows regional offices to notify high profile and public interest cases. We will use this system to monitor cases seeking to establish new legal principles under the Human Rights Act. For some applications we may need to check before determining the application whether the issues being raised are already being pursued in another case. If so, we are likely to refuse funding on the grounds that it is unreasonable to fund in the light of the existence of other proceedings (see Funding Code para 5.4.5). We will of course try to ensure such decisions are made with the minimum of delay.

The Convention is not intended to guarantee rights that are theoretical or illusory but rights that are practical and effective. Our aim in funding cases which raise important issues under the Convention is to make sure that we achieve this. ■

# Very High Cost Civil Cases

1. The Commission has now completed consultation with The Law Society and Bar Council on the major elements of the new arrangements for managing very high cost civil cases. You may obtain copies of the key documentation by contacting the Special Cases Unit (SCU) at the Brighton Regional Office on telephone number 01273 878870. It comprises:
  - A Solicitor's Information Pack.
  - Standard Case Plans for use with the range of cases.
  - A Barrister's Information Pack.
2. The Very High Costs Case requirements apply to: Investigative Help or Full Representation cases where costs are likely to exceed £25,000, and Litigation Support cases where a Conditional Fee Agreement is in place and funding is sought for costs above £15,000 or disbursements above £5,000.
3. The Funding Code Criteria - Section 6 "Very Expensive Cases" - set out the extra requirements for very high cost civil cases. In particular, they are subject to an "affordability test" and the proposals put forward for progressing the litigation must be satisfactory. Once referred to the SCU, there must be a proper Case Plan and proposal for a fully costed stage. Each case will have an individual contract based on the agreed Case Plan and the price for each fully costed stage. The contract will allow progression of the case stage by stage, with an agreed price for each stage. The Case Plan will change as the case develops; in the early stages of a case future events will be more difficult to predict and will contain fewer details.
4. Details of what must be included in a Case Plan and a fully costed stage, and how they should be used, are set out in the information pack. Criteria for funding Very High Cost Cases are set out in Section 6 of The Funding Code Criteria and guidance is provided in Section 15 of the Decision Making Guidance (Vol. 3 Part C of the Legal Services Commission Manual).
5. The price will be fixed in advance by agreement, stage by stage. It will be made up of the proposed solicitors' profit costs, counsel's fees, experts' costs and other disbursements. There will be no need for detailed assessment by the court on conclusion of the case except in inter partes costs cases where costs cannot be agreed. Costs paid by the fund will be those agreed in the case plans. Payment will be made on submission of the report without the delay of detailed assessment by the court.
6. It will be possible to amend the price of a stage by agreement to cover additional work which could not reasonably have been foreseen or in other exceptional circumstances. Typically this will be where opponents produce more statements than expected in judicial review proceedings, or more parties are joined than expected in Children Act cases. If the final court hearing runs longer than predicted payment will be made in line with the contract rates.
7. At the end of the case, if the opponents are not ordered or do not agree to pay costs in full there will be 'Community Legal Service only' costs. These will be paid in line with the agreed case plan. The statutory charge will apply to these costs. Therefore clients must be provided with copies of the case plans and their likely liability for costs to be paid out of their damages must be explained to them.
8. The first £25,000 costs of any case will be paid for at the present regulatory rates. After this initial "risk assessment" stage, the contract rates will vary depending on whether the case is expected to result in an order for inter partes costs.
9. For cases where inter partes costs are expected to be paid if the case is successful, for example, clinical negligence cases, the Commission will pay at the following rates: solicitors £70 per hour, junior counsel £50 per hour and senior counsel £90 per hour. There will be no mark-up.
10. For cases where inter partes costs are expected to be paid if the case is successful but the case has only borderline prospects and is only to be funded because of overwhelming importance to the client, or wider public interest, or because of human rights issues which a solicitor would not pursue at risk, the Commission will pay a 30% uplift to the contract rates to reflect the additional financial risk, i.e. at £91, £65 and £117 per hour respectively.
11. For cases where inter partes costs are not expected to be paid even where the case is successful, for example, Children Act and family cases, the Commission will pay in line with current remuneration rates. The Commission will also pay in line with current rates if an appeal in a successful case is being defended, or to defend an appeal against an interim order. The hourly rates will be those presently applied by the courts from the district surveys. The mark-up will be applied based on the skill level of the solicitor primarily undertaking the work, and the complexity of the case. Members of The Law Society Children Panel and solicitors accredited by the SFLA will receive mark-up to reflect their higher level of competence. In terms of complexity Cazalet J's criteria will be applied to Children Act cases.
12. There are five standard Case Plan formats attached to the Solicitors' Information Pack. Each plan sets out a description of the case, an assessment of its prospects, the legal and factual issues to be investigated and resolved, details of costs to date, and the selection of counsel and experts to be used on the case. They include a Fully Costed Stage Plan for the next stage of work to be undertaken. The standard Case Plan



formats are for use in the following five types of case:

- Public Law Children Act cases.
- Private Law Children Act cases.
- Ancillary Relief and other family property cases.
- All other cases such as Judicial Review, Appeals, Clinical Negligence, Personal Injury and other cases pursued through the Woolf multi-track procedures.
- Investigative Help funding cases.

Clearly, the stages must reflect the type of case, the usual case management requirements of the courts and the opportunities for continuation of funding to be considered. Typically these will be in line with the judge's directions in Children Act cases or the court stages in Woolf multi-track clinical negligence cases.

At the end of the case the solicitor will be able to seek additional payment for exceptional expedition.

13. Investigative Help funding is typically needed in Clinical Negligence cases. It is recognised that, before completion of the investigation, the plans for future stages are less reliable. As a result the Case Plan beyond the investigative stage would be expected to include your views as

to the possible options for the outcome, the major steps and the likely costs. In these types of case, options for the outcome on which you will be asked to state a view would be, settling on acceptance of liability, proceeding to a hearing on quantum alone, or proceeding to a full hearing with disputed liability. You should estimate the costs for these options by reference to the cost of previous similar cases, providing evidence by way of bills in those cases.

However, for the Investigation Help stage we will require details of the work to be done at that stage and its cost which will inform costs and other limitations to be placed on the certificate for Investigative Help.

14. Litigation Support is available for very expensive Personal Injury cases where the case is proceeding under a conditional fee agreement and the costs (solicitor's profit costs and counsel's fees at prescribed rates excluding other disbursements) will exceed £15,000 OR disbursements will exceed £5,000 (excluding counsel's fees). It is expected that the solicitors will fund the first £15,000 and the Commission will fund costs over and above this sum. The solicitor will be expected to have obtained £100,000 of insurance cover for their

client against the other side's costs. This is so the Community Legal Service Fund is not liable for other parties' costs.

Under Litigation Support we can fund disbursements (excluding counsel's fees) above £5,000 and/or costs (solicitor's profit costs and counsel's fees at the contract rate) above £15,000. If you seek funding of profit costs a proportion of the success fee will be payable to the Community Legal Service Fund if the case succeeds. If you are seeking funding of disbursements only, the Commission will not be entitled to a share of the success fee.

15. The following contract rates will apply to all Litigation Support work:
- a) £70 per hour for solicitors.
  - b) £90 per hour for senior counsel where the complexity of the case justifies the use of senior counsel;
  - c) £50 per hour for other counsel.
  - d) Travel time paid at 25% of the above rates.
16. A full Case Plan will be required in all Litigation Support cases to assess effectiveness and to track progress of the case. If disbursements only are being funded detailed cost information on the disbursements only will be needed. ■

## Late Submission of costs claims - an update

The Commission has decided to delay the implementation of sanctions for the late submission of costs claims until 31 October 2000. In so doing the Commission recognises the volume of changes practitioners have had to manage within recent months. It is hoped solicitors will benefit from the extra time to get used to the change.

The guidance has been amended, following consultation, for the second update of the LSC Manual and these changes are summarised below. Any practitioner who would like to comment on the guidance should

contact Ruth Symons on 020 7759 0000 or by post, DX or e-mail: [ruth.symons@legalservices.gov.uk](mailto:ruth.symons@legalservices.gov.uk) before 29 September 2000.

All practitioners should be aware of the guidance and up to date with their costs claims by 31 October to avoid possible deductions.

### Changes to Guidance

The references are to paragraph numbers in Part D of Volume 1 of the LSC Manual.

- 3.38.1 Date amended to 31 October 2000.

- 3.39.3 Date amended to 31 October 2000.

- 3.39.7 Examples of good reason have been expanded to include necessary conveyancing work to implement an ancillary relief order. Where however proceedings have been transferred up to the county court solicitors should justify the need to retain original papers or any inability to meet the deadline for submitting costs claims.

- 3.39.14 The reference to counsel's fees has been removed. ■

# Franchise Category Revision: 'Actions Against the Police, etc'

Following an internal and external consultation exercise, it has been decided that the definition of the Actions against the Police (AAP) franchise category should be widened in a number of respects. To reflect these changes the category will now be called 'Actions Against the Police, etc'.

The revised definition, which appears below, extends the category so that it applies not only to cases concerning the police but also to those against any body or person, public or private, with power to detain or imprison. It includes complaints (other than to a professional body) and claims for damages, whether or not they fall within the Personal Injury or any other franchise category.

There is now a minor overlap with the Clinical Negligence franchise category, concerning medical treatment of (or failure to treat) those in custody or detention. However, the overlap with Clinical Negligence is narrow and two conditions must be satisfied for the matter to fall within the revised AAP category, namely that the clinical negligence claim forms part of a mixed case (i.e. one involving more than just a cause of action in clinical negligence) and that the (proposed) defendant (or one of them) is within the category definition. This recognises the very limited extent to which it is appropriate for a case involving an element of clinical negligence to be undertaken other than by a clinical negligence specialist. Cases involving a cause of action in Clinical Negligence alone will still have to be referred to a specialist Clinical Negligence contractor.

Where there is a claim including Clinical Negligence against a public authority then Section 8 of the Funding Code (Claims against Public Authorities) will generally be applied rather than Section 9 (Clinical Negligence) provided the case

as a whole falls within the scope of Section 8. This is defined at paragraph 8.1 and guidance is given at Section 17 of the Funding Code Decision Making Guidance (paragraph 3C-177 onwards in the Legal Services Commission Manual). The requirement is "serious wrongdoing, abuse of position or power or significant breach of human rights". An allegation of negligence alone does not trigger the application of Section 8 and Section 9 would generally apply.

In order to carry out the Clinical Negligence elements of mixed cases, AAP contractors will require a licence from the Commission. This is because under the Funding Code Procedures Clinical Negligence cases can only be conducted by those with a licence under their General Civil Contracts. Appropriate licences will be sent out to all full and provisional AAP franchisees with a contract before the implementation date.

Claims for damages in respect of alleged professional negligence in the conduct of a matter included in the category also fall within the category.

Although consideration was given to re-naming the category to refer to detaining authorities (to reflect the wider definition) it has been decided to amend the category title to "Actions against the Police, etc". This minor change draws attention to the fact that the category is no longer restricted only to the police but provides an element of continuity and minimises forms and systems changes. Although the formal title of the category will be "Actions against the Police, etc" it is acceptable to refer to the category as "Actions against the Police" provided clear information is given (where necessary) to the effect that the category extends beyond the police.

Practitioners are reminded that inclusion in the category definition does not signify

that proceedings are necessarily within the scope of funding under the Access to Justice Act 1999.

The changes follow submissions to the Commission by practitioners in the field. Six weeks formal notice of the amendment to the franchise category will be given in due course to all civil contractors to take effect on 30 November. Meanwhile we are content for AAP contractors to treat the change as effective from 29 September. This implementation date is in advance of the next LSC Manual update and reflects the importance of the change to practitioners. We are grateful to all those who took part in the consultation exercise.

## Revised Franchise Category Definition Actions Against the Police, etc

Legal Help and proceedings concerning:

- a) assault, trespass, false imprisonment, wrongful arrest, interference with goods, malicious prosecution, personal injury or death in custody, misfeasance in public office or other abuse of authority or neglect of duty against any body or person, public or private, with power to detain or imprison, excluding applications to the Mental Health Review Tribunal or the Immigration Appellate Authorities. Complaints (other than to a professional body) and claims for damages are included whether or not they also fall within the Personal Injury or any other franchise category except Clinical Negligence, unless the clinical negligence forms only part of a claim which includes another cause of action against the body or person with power to detain or imprison.
- b) a claim for damages in respect of alleged professional negligence in the conduct of a matter included in the category. ■

# Funding for Representation of Children - Public Law Children Act Proceedings

Practitioners may be aware that the Court of Appeal has given its judgement in the case of *W and Others and The Legal Services Commission* (reported: *The Independent*, 28 July 2000). Despite the decision of the Divisional Court in the case, reported as *R -v- Legal Aid Board ex parte W and others (Minors)* The Times 25 November 1999, the Commission had previously revised its approach to the application of Funding Code criterion 5.4.2 (refusal on the ground of availability of alternative sources of funding) in its Family Decision Making Guidance: see *Focus 30* (April 2000). That guidance which appears in Volume 3 of the Legal Services Commission Manual states that criterion 5.4.2 will not result in a refusal of funding

to a child in proceedings under the Children Act where a panel guardian is or will be involved.

The Court of Appeal stressed the need for the judiciary to exercise care in the appointment of a guardian ad litem in specified Children Act proceedings and made it clear that the Commission retains a discretion as to whether publicly funded representation should be granted to a child where a guardian ad litem funded by the relevant panel has been appointed. The Court of Appeal indicated that appropriate weight should be attached to the appointment of the guardian (and the consequent mandatory requirement to appoint a solicitor) and that in those circumstances

a refusal of legal aid (now Legal Representation) will be justified only in exceptional circumstances, although a certificate could be limited in scope.

The Court of Appeal went on to suggest that consideration be given to both the policy and guidance regarding public funding in such cases. As a consequence of the decision the Commission reviewed its guidance and circulated a draft which reflects the judgement for internal and external consultation.

Once finalised, the revised guidance will appear in the next update to the LSC Manual. The guidance will also be available on the LSC website. ■

## Retrospective Amendments to Certificates under the Legal Aid Act 1988

The Court of Appeal held on 17 May 2000 in the case of *R v The Area Director of the Legal Aid Board, Ex parte Edwin Coe (a firm) and another* that an Area Director could amend a certificate under Regulation 51(a) of the Civil Legal Aid (General) Regulations 1989 to correct a mistake, but only if the following three conditions were satisfied:

- (i) the relevant extension to the scope of the certificate must have been applied for;
- (ii) the Legal Aid Board must have understood that and applied its mind to that application; and
- (iii) the Legal Aid Board must have decided to grant such an extension but issued a certificate inconsistent with that decision.

The case concerned a certificate under the 1988 Act where the solicitor had applied to increase the costs condition

but had omitted to make a commensurate application to enlarge the scope of the certificate. The Board agreed to the increase in the costs condition but the original certificate scope remained limited, so that work done under the increased costs authority was beyond the scope of the certificate. The solicitors applied for a retrospective amendment to the scope of the certificate.

The Board took the view that there was no mistake in the certificate as it accurately recorded throughout what was sought by the solicitors. As there was no mistake in the certificate and it could not be amended retrospectively under Regulation 51(a). The Court of Appeal disagreed. In this case as the costs condition had been increased specifically to take further steps beyond the stated scope of the certificate, the amended certificate issued was inconsistent with that decision.

Hence the three conditions were satisfied.

Having identified the three conditions Lord Justice Simon Brown then went on to say:

*“the responsibility for ensuring that the applications are properly made and that the certificate issued properly covers the work proposed remains squarely upon the solicitors applying. And if, as here, retrospective amendment is sought, there will be a heavy burden on the solicitor to satisfy the above three conditions.”*

The Court doubted whether this heavy burden would often be discharged in other cases, and noted that as Regulation 51(a) only conferred a power as opposed to a duty upon the area director, s/he could still exercise discretion not to grant an amendment if it would result in prejudice to the unassisted party, or indeed the assisted party. ■

# Public Interest Advisory Panel Reports

The Public Interest Advisory Panel reports to the Commission on cases which are alleged to raise public interest issues. These reports are then taken into account by the Commission in decisions under the Funding Code. For more information on the Panel see the article in *Focus 31* (page 2) and Section 5 of the Funding Code Guidance - in the LSC Manual and on the website at [www.legalservices.gov.uk](http://www.legalservices.gov.uk).

The following is a summary of cases referred to the Panel to date. These details are taken from the full reports of the Panel, but omitting individual client details. In each case the Panel gives an opinion as to whether or not the case has a significant wider public interest. Cases which have a significant wider public interest are assessed in one of three categories, namely “exceptional”, “high” or simply in the general category of “significant” wider public interest.

## PIAP/001

### Nature of Case

Personal injury proceedings (asbestosis). New application to appeal to House of Lords. Proceedings out of scope unless having significant wider public interest.

### Report of Panel

These proceedings raised important issues of law, concerning what claimants must prove in order to recover full compensation where a disease or condition may have been caused by a cumulative series of acts by different defendants. Whilst the Panel had no clear evidence of numbers it was likely that a large number of claimants with potential claims, especially for industrial injuries, might be adversely affected by the Court of Appeal decision. Many such claims would involve substantial damages and be of considerable importance to the clients concerned. Needing to proceed separately against each potential defendant could significantly increase costs or exposure to costs making it harder to obtain affordable insurance in support of a conditional fee agreement, or indeed harder to proceed under any other form of private funding. The House of Lords is likely to resolve the legal issues one way or another and it is likely that any such decision will govern the law in this area for the

foreseeable future. Whatever the outcome, there will be benefit in clarifying the existing law.

### Conclusion

Significant wider public interest.  
Rating: High

## PIAP/002

### Nature of Case

Representation at inquest. Death in police custody. Application for exceptional funding under Section 6(8)(b) of the Access to Justice Act 1999. Application on behalf of client involved in events leading up to the death.

### Report of Panel

The Panel did acknowledge that there was a general public interest in this inquest, in that it will investigate the circumstances and actions of the police leading up to the death. However, the Panel was not satisfied that there was any significant wider public interest in representation being provided for the client in this case. The Panel noted that there would be very significant representation for other interested parties, and noted the coroner’s views that it was desirable for the client to be represented. Whilst these may add to the client’s understandable desire to have representation, nevertheless they did not make that representation in the public interest. The Panel noted that a certificate for malicious prosecution existed which might cover attendance at the inquest and therefore it is only the additional need for actual representation during the client’s evidence and cross-examination of other witnesses which required to be considered. This did not alter the Panel’s general view that there was no public interest involved in the question of this client’s representation. Finally, the Panel did not accept the contention that representation at the inquest would have a significant effect on police behaviour or on other actions against the police. This could, potentially, be an outcome of the client’s civil action, but was most unlikely to be the result either of the inquest or of the client being represented at it.

### Conclusion

No significant wider public interest.

## PIAP/003

### Nature of Case

Fatal accident claim. Death of child, possibly caused by dangerous bed or mattress. Proceedings out of scope unless having significant wider public interest.

### Report of Panel

The Panel considered carefully the information provided on this particularly tragic case but regretted that on the information provided with the application form, there was insufficient evidence to suggest that this case had a significant wider public interest. The Panel recognised that at this early stage, in the absence of funding, information is bound to be limited, but nevertheless there was insufficient information provided to suggest that this case was likely to produce benefits for significant numbers of people other than the client. In particular there is little evidence to indicate whether any claim is likely to be based on negligent design of widely available equipment (which might possibly have a significant wider public interest) as opposed to individual allegations, for example as to the way in which the equipment was installed (which would have no significant wider public interest). Further there was no evidence that this case was likely to lead to any development in the law.

The Panel would, of course, be prepared to look at this matter again if clearer information were provided as to alleged public interest. The Panel also considered that it may only be after the inquest has taken place that it will be possible to evaluate the public interest of any proposed fatal accident claim.

The Panel drew the client’s attention to the Lord Chancellor’s power to provide exception funding in some inquests under Section 6(8)(b) of the Access to Justice Act 1999.

### Conclusion

No significant wider public interest.

## PIAP/004

### Nature of Case

Judicial review of Environment Agency



concerning legal framework relating to disposal of nuclear waste at a military site.

### Report of Panel

The Panel agreed with the views of the solicitor and counsel for the applicants that this judicial review had a significant wider public interest. The issue of justification in particular raised questions as to the safeguards which are required in the disposal of nuclear waste. This is a matter of great importance, both to those living near military sites and to the public at large. Further, the case has the potential to clarify the role of the Environment Agency as a regulator and its relationship with government, both in relation to military and civil activities.

### Conclusion

Significant wider public interest.  
Rating: High.

### PIAP/005

#### Nature of Case

Judicial review of the Social Security Commissioner who refused to grant leave to the client to appeal a decision of the Social Security Appeal Tribunal.

### Report of Panel

The Panel considered the issue of law which it was said gave rise to the public interest of this case. This related to the contention that the Commissioner had a general duty to consider the decision as a whole rather than merely relying on the specific issues raised by the applicant. In the view of the panel this proposition was already well established in law. It is already recognised that Commissioners have an inquisitorial duty to consider the whole case rather than merely the points raised by the applicant.

In the light of this the Panel considered that it was unlikely that this individual case would lead to any significant change in the law. It was therefore unlikely that the outcome of this case would produce benefits for persons other than the client.

### Conclusion

No significant wider public interest.

### PIAP/006

#### Nature of Case

Personal injury proceedings. Claim for damages for psychiatric injury from tour operator following traumatic plane

accident. Proceedings out of scope unless having a significant wider public interest.

### Report of Panel

The Panel agreed that these cases raised a significant point of law as to whether damages for psychiatric injury were recoverable from a tour operator, and whether the relevant regulations allow for such liability to be avoided. If the arguments put forward in counsel's opinion were correct, it could open up the possibility of a significant number of claims in the future.

Whilst the Panel recognised that a substantial number of claims might be brought in the future if the issue of law in this case were resolved, nevertheless, the damages in most such cases would tend to be low. If new law is established it is unclear how wide the principle and its practical effect will be.

### Conclusion

Significant wider public interest.  
Rating: Significant.

### PIAP/007

#### Nature of Case

Representation at inquest. Death following spraying by police with CS gas. Application for exceptional funding under Section 6(8)(b) of the Access to Justice Act 1999.

### Report of Panel

The Panel noted the wide public concern about the use of CS gas by the Police. Following the inquest it is possible that further recommendations will be made by the Coroner as to future guidelines or training for officers in the use of CS gas. There could be real benefits to the public, and in particular to individuals particularly vulnerable to CS gas. Further, the Panel was satisfied that in the circumstances of this case, representation for the client would assist in that process.

### Conclusion

Significant wider public interest.  
Rating: High

### PIAP/008

#### Nature of Case

Representation at Inquest. Alleged victim of Dr Harold Shipman. Application for exceptional funding under Section 6(8)(b) of the Access to Justice Act 1999.

### Report of Panel

The Panel was satisfied that there is a very strong public interest in investigating and learning lessons from the Shipman case, which raises many issues concerning protection for the public from harm by medical practitioners. However, these would be matters dealt with in depth in the enquiry. The inquests would be more concerned with the individual circumstances of each death. Whilst those issues are of immense importance to the families concerned, there is no reason to suppose that funding representation at those inquests would be likely to produce additional significant benefits for other members of the public.

However, the Panel noted and supported the decision by the Lord Chancellor to provide funding in any event under Section 6(8)(b) of the Access to Justice Act 1999 in light of the overwhelming importance of the case to the client.

### Conclusion

No significant wider public interest.

### PIAP/009

#### Nature of Case

Proposed appeal from decision of Leasehold Valuation Tribunal to Lands Tribunal. Legal issue as to whether arbitration clause in lease deprives Tribunal of jurisdiction to determine service charge dispute, even if both parties wish Tribunal to resolve it. Application for exceptional funding under Section 6(8)(b) of the Access to Justice Act 1999.

### Report of Panel

The Panel considered the legal point raised in this case as to the jurisdiction of the Leasehold Valuation Tribunal. Whilst this issue may affect a significant number of people, the effect will only be to determine the forum before which issues of reasonableness of charges will be determined. Clients will still have a remedy in such cases. Further, arbitration need not necessarily be more costly or less convenient than proceedings before the Tribunal. The issues are only likely to affect those cases where both sides wish the Tribunal to determine the case. It therefore concerns only a relatively small proportion of all leaseholders.

### Conclusion

No significant wider public interest. ■

# Costs Appeals Committee Point of Principle

## Amendments to CRIMLA74 - 17 July 2000 - Serious or Complex Fraud

The Costs Appeals Committee certified Point of Principle CRIMLA74 in January 1999 (see *Focus 29*, page 16). The Committee has now added to CRIMLA74, the additions appear in bold.

It is a question of fact whether a case is a serious or complex fraud under paragraph 3(5) of Part I Schedule 1 of the Legal Aid in Criminal and Care Proceedings (Costs) Regulations 1989. Each case must be considered according to its particular merits. Factors which may be relevant to the decision include where:

1. a large amount of money is involved, although this does not necessarily make a fraud serious or complex in itself;
2. the fraud has significant consequences for the victim e.g. fraud on individual private investors resulting in loss of life savings or personal bankruptcy;
3. the case raises complex issues of law, fact or procedure, examples of which could include access to bank accounts, foreign law jurisdictional issues, multiple offences/defendants, conspiracy charges and/or substantial forensic accountancy work;
4. detailed consideration of extensive documentary evidence/unused material is necessary;
5. the proceedings are transferred to the Crown Court under section 4 of the Criminal Justice Act 1987;
6. a preparatory hearing is ordered in the Crown Court under section 7 of the Criminal Justice Act 1987;
7. the case is investigated or prosecuted by the SFO, DTI, CPS Special Casework, Inland Revenue or Customs and Excise;
8. **whether a QC has been authorised under Regulation 48(3) Legal Aid in Criminal and Care Proceedings (General) Regulations 1989 because:**
  - a) **in the opinion of the competent authority the case for the legally assisted person involves substantial novel or complex**

**issues of law or fact which could not be adequately presented except by a Queen's Counsel, and;**

- b) **either - (i) a Queen's Counsel or Senior Treasury Counsel has been instructed on behalf of the prosecution, or (ii) the case for the legally assisted person is exceptional compared with the generality of cases involving similar offences.**

None of these factors should be taken alone as a conclusive indication that a case is a serious or complex fraud. Nor should this list of factors be regarded as exhaustive.

**Where a solicitor presents a bill on the basis that the case amounted to a serious or complex fraud within paragraph 3(5), and the regional office or Costs Committee finds otherwise, it shall refer to that finding and explain the basis of the finding in its written reasons for its decision.**

### Head Office Guidance on CRIMLA 74

1. This guidance is issued by the Costs Appeals Committee in the light of the judgement of Mr Justice Buckley dated 14 December 1999 (QBD - unreported) in the taxation appeal relating to the case of *R v Crossley* (Messrs Murria v Lord Chancellor).
2. This appeal concerned the proper construction of paragraph 3(5) of Part 1 of Schedule 1 of the Legal Aid in Criminal and Care Proceedings (Costs) Regulations 1989 which reads:
 

*"Where the proceedings relate to serious or complex fraud, the percentage above the relevant prescribed rate by which fees for*

*work may be enhanced shall not exceed 200%."*

3. The point certified was whether this paragraph should be construed to mean that the defendant must be "charged with" an offence of serious or complex fraud before a 200% uplift can be claimed or whether the test is satisfied if the proceedings "relate to serious or complex fraud".
4. The High Court concluded that the wording of the paragraph meant that the proceedings must be "about" serious or complex fraud, irrespective of the actual charges in the indictment. He suggested that proceedings are "about" serious or complex fraud if it has been necessary for the solicitor to investigate and prepare the case as if the proceedings did involve serious or complex fraud in the sense used in Schedule 1 of the Criminal Justice Act 1989, i.e. did the solicitors have to prepare the fraud issue in as much detail and with as much expertise as if it were a serious or complex fraud trial?
5. If the above test is satisfied, the solicitor may be entitled to claim an enhancement of up to 200%, irrespective of the actual offences charged, provided that the other criteria set out in paragraph 3 of Schedule 1 are also satisfied. The onus is on the solicitor to supply sufficient information to the assessing officer to justify any claim that the usual maximum percentage rate of 100% should be exceeded.
6. If the assessing officer is not satisfied that it was necessary for the solicitor to prepare the fraud issue in as much detail and with as much expertise as if it were a serious or complex fraud trial, then the hourly prescribed rates **cannot** be enhanced by more than 100%. ■

# The Implementation of the Crime Franchise Panel on 2 October 2000

On 17 May we wrote to all offices undertaking criminal legal aid work regarding the introduction of the Criminal Defence Service (CDS). In that letter we confirmed the previously published requirement that, from 2 October 2000, all offices wishing to undertake new criminal legal aid work funded by the Commission would have to be franchised, or have passed a preliminary audit on the way to becoming fully franchised.

In *Focus 31*, published in July 2000, we set out further details of the way in which these changes will be implemented. This is to be by the creation of a panel under s. 32(7) Legal Aid Act 1988.

In this issue of *Focus* we are publishing:

- the Legal Aid (Prescribed Panel) (Amendment) Regulations 2000 (on pages 26-27)
- the General Authority - "Criminal Proceedings" (on pages 20-21)
- Guidance on the Meaning of "Employed" for the Purposes of the Crime Franchise Panel (on pages 22-23)

The General Authority sets out the scope of the work covered by the Crime Franchise Panel and the membership criteria for it.

The Authority provides that, whilst an office holds a franchise in the relevant franchise category, the Authorised Litigators employed in the office who have either been accepted by the Commission as supervisors in that franchise category or are under the supervision of such a supervisor, are members of the Crime Franchise Panel.

There is no need to apply for a General Authority, it will apply automatically to all those meeting the membership criteria.

We have sent a copy of the General Authority to all offices that hold a Crime or Public Law category franchise, or hold a civil contract and have passed a preliminary franchise audit in the Public Law franchise category.

We will not be sending individual copies of the General Authority to other offices whose Authorised Litigators are members of the Panel by virtue of holding franchises in the Family or Mental Health categories, or because they are permitted to undertake Debt work under a General Civil Contract. Such firms should take the Authority produced on pages 20-21 as notice.

In specific circumstances, offices that are in the process of becoming franchised will also be Panel members. Such offices will become Panel members by virtue of signing a Temporary Contract with the Commission.

Offices that have applied for a Crime category franchise, passed a preliminary franchise audit, and are still progressing towards full franchise status will be eligible for a Temporary Contract which will authorise them to provide advice, assistance and representation in all criminal proceedings.

The Temporary Contract provides that, whilst the Contract is in force, those members of the franchise applicant's personnel at the applicant office who are Authorised Litigators and who are either provisional crime supervisors or are under the supervision of a provisional crime supervisor are members of the Crime Franchise Panel and are authorised by the Commission to provide advice, assistance and representation in criminal proceedings.

In limited circumstances we will also issue a Temporary Contract to an office that has applied for a Crime category franchise, passed a desktop audit and has a fee-earner who meets the crime supervisor standard. However, we will only issue a Temporary Contract to an office at this early stage of the franchise application process where it is new, or has a new criminal defence department, and could not have complied with the previously published franchise application timetable.

We have already sent Temporary Contracts to those offices with which we consider it appropriate to enter into a Temporary Contract. If you believe you are eligible for a Temporary Contract, but have not received one, please contact the CDS Manager at your regional office.

## What does "employed by" mean?

The General Authority and Temporary Contract provide that only members of staff and authorised litigators employed in the office are members of the Crime Franchise Panel.

This means only individuals who are:

- either a partner or employed under a contract of service, or;
- otherwise under the direct supervision of the firm.

In considering whether an individual is a member of the Crime Franchise Panel, you should consider the guidance published in this issue of *Focus* on pages 22-23. Where you are in doubt as to whether an individual is a member of the Crime Franchise Panel, you should contact your regional CDS manager.

## The Effect of the Introduction of the Crime Franchise Panel

The Commission may only pay firms with a supervisor who is a member of the Crime Franchise Panel for work done on new cases after 2 October.

## Duty Solicitor Work

Police Station Advice work (whether done as a Duty Solicitor or as an Own Solicitor) and Court Duty Solicitor work fall within the scope of the work that will, from 2 October, be exclusive to members of the Crime Franchise Panel. Therefore, from 2 October, only solicitors employed by offices on the Crime Franchise Panel (as explained above) will be able to act as duty solicitors.

Any duty solicitor who is not a panel member will be omitted from duty solicitor rotas in effect from 2 October. If a duty

solicitor appears on any rotas which have already been issued, that duty solicitor should take steps to arrange for other duty solicitors to cover any slots allocated for after 2 October.

We have written to all duty solicitors who our records suggest will not be a panel member on 2 October. Any duty solicitor who considers that our records are incorrect, or that will be a member of the Crime Franchise Panel by 2 October, should contact their regional CDS manager.

### Use of Agents

Agents may continue to be instructed on the current basis after 2 October. This is because legal representatives selected to act may themselves appoint agents by virtue of Section 32 (10) Legal Aid Act 1988.

### Revised Forms

We have introduced revised forms covering applications and claims relating

to Advice and Assistance, ABWOR, Criminal Legal Aid, and Civil Legal Aid arising from criminal proceedings.

We have made the following key changes:

- We have added a declaration to be signed where work starts after 2 October, requiring the conducting solicitor to certify that he or she is a member of the Crime Franchise Panel;
- In the Solicitor's Details section of some forms, we have added text to confirm that only members of the Crime Franchise Panel will be paid for work started after 2 October;
- On forms CLAIM7 and CLAIM8, we additionally require the conducting solicitor to provide the date the application for legal aid was signed.

Where you use the Legal Services Commission Masterpack, you will receive the amendments from our printers. Where you receive "Forms on Disk", you will receive the amended

forms from your supplier and should contact them if you have any difficulties receiving the revised forms.

You should start to use forms when you receive them, and in any event, for all applications and claims from 2 October. This applies to Panel members and to non-Panel members (who will use the revised forms after 2 October to submit requests for authorities and claims for work started before 2 October). The Legal Aid in Criminal and Care Proceedings (General) (Amendment) (No. 4) Regulations 2000 introduce a revised application form for legal aid. That application form requires the conducting solicitor to declare whether he or she is a member of the Crime Franchise Panel.

### Further Help or Advice

If you have any questions about the Crime Franchise Panel, please contact your Regional Criminal Defence Service Manager. ■

## General Authority - "Criminal Proceedings" The Legal Aid (Prescribed Panels) (Amendment) Regulations 2000

### The Regulations

The Legal Aid (Prescribed Panels) (Amendment) Regulations 2000 ("the Regulations") come into force on 2 October 2000 and amend the Legal Aid (Prescribed Panels) Regulations 1999. They designate the Crime Franchise Panel as a prescribed panel for the purposes of section 32(7) of the Legal Aid Act 1988, in respect of "criminal proceedings" as defined in the Regulations.

The Regulations, which are set out on pages 26-27, provide that an Assisted Person's right to select an Authorised Litigator for the purpose of Advice, Assistance or Representation funded by the Commission, in respect of "criminal proceedings", is limited to members of the Crime Franchise Panel.

The Regulations apply to applications made on or after 2 October 2000: for

Advice and Assistance, for ABWOR or for Representation under a legal aid order or certificate. They also cover applications made on or after 2 October 2000 to change a solicitor. They affect only cases that are funded by the Commission. Therefore, legal aid orders for higher courts (Crown Court and above) are not affected.

The Regulations refer to "Authorised Litigator". This has the meaning given in section 119(1) of the Courts and Legal Services Act 1990 but only solicitors may be selected under the Legal Aid Act 1988.

### Authority

This General Authority comes into effect on 2 October 2000. It will end on 31 March 2001 as the Commission's General Criminal Contract will come into effect on 1 April 2001, under the Access

to Justice Act 1999, with arrangements similar to those made by this General Authority.

The Authorised Litigators described in the Table below are members of the Crime Franchise Panel for the purposes of the "criminal proceedings" specified in the Table and are authorised by the Commission to provide Advice, Assistance (including ABWOR) and Representation for the purposes of such proceedings.

### Notes

There is no need to apply for Panel membership. It is conferred automatically by this General Authority in accordance with the Table.

For the purposes of the Regulations, the Legal Aid Franchise Quality Assurance Standard Contract, the General Civil



Contract and the Temporary Contract for Crime Franchise Applicants are franchising contracts.

holds a General Civil Contract and has passed a preliminary franchise audit in that franchise category.

Aid Act 1988 and regulations made under it and none of them is within the scope of the General Civil Contract. Until 1 April 2001, none of them is covered by the Access to Justice Act 1999.

An office holds a provisional franchise (see Table) in a franchise category if it

Until 1 April 2001, all "criminal proceedings" are covered by the Legal

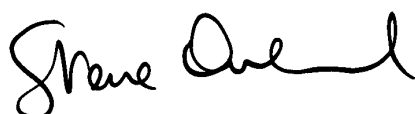
While a Franchised, or Provisionally Franchised, Office holds a franchise or a provisional franchise in a family, mental health or public law franchise category or a franchise in the crime franchise category, the Authorised Litigators employed in the office, who have either been accepted by the Commission as supervisors in the relevant franchise category or are under the supervision of such a supervisor, are members of the Crime Franchise Panel for the purposes of the "criminal proceedings" specified against the relevant franchise category.

While an office holds a General Civil Contract, under which work (even in a tolerance) may be performed in the debt franchise category, the Authorised Litigators employed in the office are members of the Crime Franchise Panel for the purposes of the "criminal proceedings" specified against the debt franchise category.

Relevant Franchise Category	Specified "Criminal Proceedings"
<b>Crime</b>	All "criminal proceedings" as defined in the Regulations
<b>Family</b>	<p>Proceedings under sections 1, 2 and 4 of the Crime and Disorder Act 1998 relating to anti-social behaviour orders or sex offender orders in respect of a child</p> <p>Proceedings under section 8(1)(b) of the Crime and Disorder Act 1998 relating to parenting orders made where an anti-social behaviour order or a sex offender order is made in respect of a child</p> <p>Proceedings under section 8(1)(c) of the Crime and Disorder Act 1998 relating to parenting orders made on the conviction of a child [NB but only where a conflict of interest requires a parent to be separately represented]</p>
<b>Public Law</b>	Proceedings for judicial review or habeas corpus or under the Human Rights Act 1998 arising from criminal investigations, criminal proceedings or any other "criminal proceedings" that are within the public law franchise category
<b>Mental Health</b>	Advice and assistance to prisoners who may be the subject of directions made or to be made by the Home Secretary under the Mental Health Act 1983
<b>Debt</b>	Proceedings in a magistrates' court arising from a failure to obey an order of that court made in civil proceedings where such failure carries the risk of imprisonment

This published General Authority is sufficient notice of Panel membership. However, to ensure they are aware of it, we have sent copies of this General Authority to each office with a crime or public law franchise or provisional franchise. We shall not send individual forms of General Authority to other offices covered by this General Authority as only limited categories of proceedings are affected.

Signed by



Steve Orchard CBE, Chief Executive, Legal Services Commission

# Guidance on the Meaning of “Employed” for the Purposes of the Crime Franchise Panel

## Purpose

1. The purpose of this Guidance is to provide guidance on the interpretation of the term “employed” within the context of the creation of the Crime Franchise Panel on 2 October 2000.
2. After 2 October, only those who are members of the Panel will be able to undertake new cases in respect of “criminal proceedings” as defined in the Legal Aid (Prescribed Panels) (Amendment) Regulations 2000 (see pages 26-27).
3. The purpose of the Panel Regulations is to ensure that criminal advice and assistance and legal aid work funded by the Commission is undertaken by quality assured suppliers. The General Authority limits panel members to those Authorised Litigators employed at the relevant office and who comply with LAFQAS supervision requirements or who are under the supervision of such an individual. Similar arrangements apply to firms operating under the Temporary Contract.
4. We are aware that there are a number of different types of relationships between criminal legal aid firms and the solicitors who undertake work for them. As long as those solicitors are, genuinely, integrated members of the firms in question, properly controlled and supervised by them, we do not wish to interfere with the technical nature of any relationship that exists between solicitor and firm. However, with the move to the introduction of a Panel for criminal legal aid work funded by the LSC, we are concerned that some non-franchised firms may seek to continue to undertake this work by establishing a relationship with a Panel office, and billing work done by them through the Panel office: essentially a device to circumvent the requirement to be franchised. Any arrangement of this type would not be acceptable to the Commission.
5. This Guidance provides guidance on the identification of acceptable arrangements which meet the

“employed” requirement.

6. This Guidance applies only for the life of the Crime Franchise Panel. We will discuss with the professions’ representative bodies the arrangements that should apply under the CDS and the General Criminal Contract which will be introduced in April 2001.

## The Crime Franchise Panel

7. The General Authority for Franchisees provides that whilst an office holds a franchise in the relevant franchise category, the Authorised Litigators “employed in the office”, who have either been accepted by the Commission as supervisors in that franchise category or are under the supervision of such a supervisor are members of the Crime Franchise Panel for the purposes of the work specified in the Authority.
8. The Temporary Contract for Crime Franchise Applicants provides that, whilst the Contract is in force, those members of the franchise applicant’s personnel at the applicant office who are Authorised Litigators and who are either provisional crime supervisors or are under the supervision of a provisional crime supervisor are members of the Crime Franchise Panel.
9. The Commission interprets this to mean that the individual solicitor (or other member of staff) must:
  - a) either be a partner in or employed by the Panel firm under a contract of service; **or**
  - b) otherwise be under the direct supervision of the franchised firm.

## Contract of Employment

10. The question whether a solicitor is an employee of a Panel firm is a question of fact which must be determined according to the individual circumstances of each case.
11. There are various tests in employment law which identify whether an individual is an employee i.e. works under a contract of service (employment contract) or self employed i.e. works under a contract for services as an

independent contractor, agent etc. If a person is said to be employed under a contract of service we may require production of the written particulars of employment required by law or the written contract of service itself.

## Direct Supervision

12. If the conclusion is reached that the solicitor is not employed under a contract of service by the firm or there is doubt about employment status, the regional office must then go on to consider whether the individual satisfies the “direct supervision” test. There are two elements to this test:

**Supervision:** A solicitor who is not employed under a contract of service must be under the supervision of the Panel firm. It is generally easier to demonstrate supervision if this takes place regularly, rather than on an ad hoc or individual case basis. It is more difficult to exercise supervision at a distance. The less direct contact there is between the firm and the solicitor, the less likely there is to be an effective supervisory relationship. Supervision must be exercised directly rather than through a third party.

**Integration:** the more fully integrated the solicitor is into the firm, the more likely it is that he or she is directly supervised by the firm. The greater the degree of continuity in the relationship between the individual and the firm, the more likely it is that a solicitor is supervised. If the solicitor only performs one off or occasional services for the firm and has done so over a relatively short time period then he or she is less likely to be directly supervised. To demonstrate integration we would normally expect the Panel office to be the solicitor’s primary place of work.

## Franchising

13. Any individual “employed by” a Crime Franchise Panel office must be fully integrated into the office’s quality management systems which it operates in order to be compliant with

the requirements of LAFQAS.

14. The Commission will need to be satisfied that the member of staff plays an appropriate role in the office. We will seek to establish that the member of staff is familiar with, and follows, the operations, systems and procedures of the office.
15. In addition we will need to be satisfied that the individual:
- has a job description/person specification (in accordance with LAFQAS J1.1);

- is subject to appraisals (in accordance with LAFQAS J1.4);
- has had their training needs assessed and a record of any training undertaken (in accordance with LAFQAS J1.5);
- is effectively supervised (in accordance with LAFQAS L4.1);
- is subject to file review (in accordance with LAFQAS M).

16. On audit we may focus upon the supervision of members of staff who

are not employed under a contract of service.

17. Where a franchised office characterises an individual without a contract of employment as being employed by it for the purposes of Crime Franchise Panel membership, and it is found on audit or otherwise that this is not the case and that they are not subject to the requirements of LAFQAS within the office, that office's franchise status and, consequently, membership of the Crime Franchise Panel may be at risk. ■

# Football (Disorder) Act 2000

This Act makes a number of modifications to the scope of the legal aid scheme through the Football (Disorder)(Legal Advice and Assistance) Order 2000 (SI 2000 No. 2127) (see page 26). These came into effect on 28 August 2000. The Act introduces a number of changes to the Football Spectators Act 1989 to introduce tougher measures to control football hooliganism.

Section 14A enables the court to make a banning order where a person is convicted of a relevant offence. Representation in such circumstances may be available either under a criminal legal aid order or by the court duty solicitor. Section 14B enables the police to make an application for a banning order by way of a complaint to a magistrates' court where a person has at any time been involved in any violence or disorder in the United Kingdom or elsewhere. If the court is satisfied that the individual has previously been involved in violence and there are reasons to believe that making a banning order would help to prevent violence or disorder at regulated football matches then the court must make a banning order. The Duty Solicitor Arrangements 2000 will be amended to enable the court duty solicitor to represent the respondent. Alternatively, an application for ABWOR may be made to the Commission and the following merits test will apply. ABWOR will be refused if:

- a) It appears unreasonable that approval should be granted in the particular circumstances of the case (because, for example, the duty solicitor is able to provide representation), or
- b) It is not in the interests of justice that

approval should be granted (because, for example, the applicable law is not unduly complex or there is no real risk of imprisonment).

Applications for ABWOR will be subject to the usual financial eligibility criteria.

An appeal lies to the Crown Court against the making by the magistrates' court of a banning order (Section 14D). Commission granted ABWOR is available to an appellant subject to the following test:

An application for approval may be refused if it appears unreasonable that approval should be granted in the particular circumstances of the case.

An application to vary a banning order may be made under Section 14G to the court which made the order and an application to terminate the order may be made under Section 14H. In either event, the same merits test will be applied by the Commission as for appeals under Section 14D. Breach of a banning order is a criminal offence for which criminal legal aid may be available or representation by the court duty solicitor

Section 21B introduces new summary measures which enable a constable to serve notice on an individual during any "control period" in relation to a regulated football match requiring him or her to appear before a magistrates' court within 24 hours, not to leave England and Wales and to surrender his other passport if the control period relates to a match outside the United Kingdom. The test to be applied by the police is the same as the Section 14B test for banning orders. The service of such a notice is

treated as an application for a banning order under Section 14B.

Where a person receives a notice issued under Section 21B, he or she is entitled to representation by a court duty solicitor only. Commission granted ABWOR is not available. The reasoning behind this is that it would not be possible for the Commission to grant ABWOR in the short timescale between the service of the notice and the requirement to attend court. Failure to comply with the notice is a criminal offence for which criminal legal aid may be available or representation by the court duty solicitor.

Section 21D introduces a discretion for the court to award compensation from central funds to a person who has received a Section 21B notice if the court refuses an application for a banning order. If the magistrates' court refuses to award compensation, there is a right of appeal to the Crown Court (Section 21D(2)) Commission granted ABWOR is available to fund such an appeal, subject to the same merits test as appeals under Section 14D.

The scope of the crime franchise category will be extended to cover these types of proceedings, so that franchisees will be able to exercise devolved powers. However, the power to grant ABWOR for appeals to the Crown Court will remain with the Commission and will not be devolved. This constitutes formal notice of the change to the franchise category which will take effect on 30 November, however criminal practitioners should treat this change as if it had immediate effect. ■

# Abolition of the Means Test for Criminal Legal Aid in the Magistrates' Court

The Legal Aid Act 1988 (Modification) Regulations 2000 (see page 25) come into effect on 2 October. These regulations modify the Legal Aid Act 1988 to abolish the criminal legal aid means test for certain types of cases. This change applies to applications for legal aid made on or after 2 October 2000 where the individual has been charged with an offence at a police station, appears before the magistrates' court either on bail or in custody and the court is considering the grant of criminal legal aid for that or another offence. These provisions extend to individuals appearing before a youth court. They also apply to early administrative hearings

under Section 50 of the Crime and Disorder Act 1998.

The effect of this change is that criminal legal aid will in future be available in the above types of proceedings subject only to the merits test as set out in Section 22 of the Act. A statement of means will not be required for these cases and no contribution will be payable towards the costs of representation.

These changes do not apply to indictable only offences or any other offence for which an individual will be "sent" to the Crown Court for trial under Section 51 of

the Crime and Disorder Act 1998. These cases will continue to be subject to the means test.

The Lord Chancellor's Department will be making amendments to the criminal legal aid application forms to reflect this change (see the Legal Aid in Criminal and Care Proceedings (General) (Amendment No.4) Regulations 2000). Further consequential amendments are made by the Legal Aid in Criminal and Care Proceedings (General) (Amendment) (No.3) Regulations 2000 (see page 31) which disapply the relevant means assessment provisions. ■

# Changes to the Rules on Assignment of Counsel in Criminal Legal Aid Proceedings

The Lord Chancellor's Department has made a number of changes to the arrangements for representation by more than one advocate or a Queen's Counsel alone in the higher courts. These came into effect on 1 September 2000. The Legal Aid in Criminal and Care Proceedings (General) (Amendment) (No.2) Regulations 2000 (see page 29-31) make changes to Regulation 48 which have the effect of restricting the use of Queen's Counsel alone in the Crown Court to cases where the defence case involves substantial, novel or complex issues of law or fact which, in the opinion of the Court, require presentation by a Queen's Counsel and either the prosecution has instructed a Queen's Counsel or Senior Treasury Counsel or the defence case is exceptional when judged against other cases of the same type.

Similar provisions apply to the use of two junior advocates, but in addition the case

must consist of more than eighty prosecution witnesses or the number of pages of prosecution evidence must exceed one thousand. Judges will be asked to endorse a written application stating how the criteria are met. The power to assign three counsel continues to be limited to proceedings arising from a prosecution brought by the Serious Fraud Office. The decision about the level of counsel to assign will remain a matter for the court.

Where a defendant is charged with murder, the magistrates' court will have power to grant legal aid for the Crown Court proceedings which provides for the services of a Queen's Counsel alone. The magistrates' court may also authorise use of a Queen's Counsel with one junior counsel where the prosecution is brought by the Serious Fraud Office and the case is transferred to the Crown Court for trial. These are the only circumstances in which a magistrates' court may make

an order under this regulation.

Another change made by these regulations is to remove the Commission's power to authorise a Queen's Counsel alone (where the legal aid order provides for the services of solicitor and counsel) in Crown Court proceedings under Regulation 54(1)(d) of the Legal Aid in Criminal and Care Proceedings (General) Regulations 1989. From 1 September, this power will be confined to proceedings in the magistrates' court and the Commission will have no role in authorising the use of counsel in the Crown Court.

The Legal Aid in Criminal and Care Proceedings (Costs) (Amendment) (No. 2) Regulations 2000 permit a Queen's Counsel to act in a case where the legal aid order only provides for the services of a junior counsel or two junior counsel provided that the Queen's Counsel is remunerated at the rates applicable to junior counsel. ■



# The Legal Aid (Functions) Order 2000

The Lord Chancellor, in exercise of the powers conferred on him by section 3(4) of the Legal Aid Act 1988, makes the following Order, a draft of which has, in accordance with section 36(2)(b) of that Act, been laid before and approved by resolution of each House of Parliament:

## Citation and commencement

1. This Order may be cited as the Legal Aid (Functions) Order 2000 and shall come into force on 1st August 2000.

## Interpretation

2. In this Order, unless the context requires otherwise:
  - “the Act” means the Legal Aid Act 1988;
  - “the Board” means the Legal Aid Board;

“the Commission” means the Legal Services Commission established under section 1 of the Access to Justice Act 1999; and

“costs” means, in the case of a solicitor, the fees and disbursements payable under section 25 of the Act and, in the case of counsel, the fees payable under that section.

## Functions under Part V of the Legal Aid Act 1988

3. (1) The general function conferred on the Board by section 3(2) of the Act shall include all such functions mentioned in subsection (4)(b) of that section as are required to be exercised by the Commission to enable it to determine and authorise the work

to be carried out, the costs, and the method of payment of such costs, in respect of representation which is provided by means of a contract under Part II of the Act in respect of a Very High Cost Case.

- (2) A Very High Cost Case is a case with regard to which, in the estimation of the Commission:
  - (a) if the case proceeds to trial, that trial would be likely to last for 25 days or longer; or
  - (b) the defence costs with regard to any one defendant (or group of defendants represented by the same firm of solicitors) are likely to amount to £150,000 or greater (such sum to include the solicitor’s costs and counsel’s fees and VAT). ■

# The Legal Aid Act 1988 (Modification) Regulations 2000

The Lord Chancellor, in exercise of the powers conferred on him by sections 34 and 43 of the Legal Aid Act 1988, and with the consent of the Treasury, hereby makes the following Regulations: -

## Citation and commencement

1. These Regulations may be cited as the Legal Aid Act 1988 (Modification) Regulations 2000 and shall come into force on 2nd October 2000.

## Interpretation

2. In these Regulations -
  - “the Act” means the Legal Aid Act 1988;
  - any reference to a section by number alone means the section so numbered in the Act;
  - any reference to a person appearing or being brought before a magistrates’ court includes a person appearing or being brought before a justices’ clerk acting under section 50 of the

Crime and Disorder Act 1998 (early administrative hearings).

## Transitional provisions

3. These Regulations shall apply to applications for legal aid made on or after 2nd October 2000, and any application for legal aid made before that date shall be treated as if these Regulations had not come into force.

## Modifications to the Legal Aid Act 1988

4. (1) For the purposes of the application of the Act in the circumstances set out in paragraph (2) or (3) below, the Act shall have effect as if the following provisions were omitted:
  - (a) in section 21(2), the words “Subject to subsection (5) below,”;
  - (b) section 21(5) and (6);
  - (c) sections 23 and 24;

(d) section 26(3).

- (2) The circumstances in this paragraph exist where: -
  - (a) a person who has been charged with an offence at a police station appears or is brought before a magistrates’ court;
  - (b) that court is considering the grant of representation under Part V of the Act, for that or another offence; and
  - (c) the proposed representation does not relate to -
    - (i) an offence triable only on indictment; or
    - (ii) any other offence for which he will be sent to the Crown Court for trial under section 51 of the Crime and Disorder Act 1998.
- (3) The circumstances in this paragraph exist where a person appears or is brought before a youth court. ■

# The Football (Disorder) (Legal Advice and Assistance) Order 2000

The Secretary of State in exercise of the powers conferred upon him by section 3 of the Football (Disorder) Act 2000, and all other powers enabling him in that behalf, hereby makes the following Order:

## Citation and commencement

1. This Order may be cited as the Football (Disorder) (Legal Advice and Assistance) Order 2000 and shall come into force on 28th August 2000.

## Interpretation

2. (1) In this Order -
  - (a) a reference to a section by number alone means the section so numbered in the Football Spectators Act 1989;
  - (b) "the 1988 Act" means the Legal Aid Act 1988;
  - (c) "ABWOR" means assistance by way of representation, which has the same meaning as in the 1988 Act;
  - (d) "section 14B respondent" means a respondent in proceedings in a magistrates' court under section 14B (banning orders made on a complaint);
  - (e) "section 14D appellant" means an appellant in an appeal to the Crown Court under section 14D (banning orders made on a complaint: appeals);
  - (f) "section 14G applicant" means a person applying

under section 14G(2) (additional requirements of orders) for variation of a banning order made under section 14B;

- (g) "section 14H applicant" means a person applying under section 14H (termination of orders) to terminate a banning order made under section 14B;
- (h) "section 21B recipient" means a person to whom a notice is given under section 21B(2) (summary measures: reference to a court); and
- (i) "section 21D appellant" means an appellant in an appeal to the Crown Court under section 21D(2) (summary measures: compensation).

## Modification of Legal Aid Act 1988 and related regulations

3. The 1998 Act, the Legal Advice and Assistance (Scope) Regulations 1989 and the Legal Advice and Assistance Regulations 1989 shall be modified as set out in the following articles.
4. Section 32 of the 1988 Act shall be read as if it did not apply to ABWOR given to a section 21B recipient.
5. (1) The modifications to the Legal Advice and Assistance (Scope) Regulations 1989 referred to in article 3 are set out in the following paragraphs of this article.
  - (2) The definition of "criminal proceedings" in regulation 3(3) shall be read as also including proceedings under sections 14B, 14D, 14G, 14H, 21B and 21D.
  - (3) Part III shall be read as if it also included a regulation providing that Part III of the 1988 Act applied to ABWOR given to a section 14B respondent, a section 14D appellant, a section 14G applicant, a section 14H applicant, a section 21B recipient or a section 21D appellant.
6. (1) The modifications to the Legal Advice and Assistance Regulations 1989 referred to in article 3 are set out in the following paragraphs of this article.
  - (2) Regulation 7(1) shall be read as if it also referred to ABWOR given to a section 14B respondent or a section 21B recipient.
  - (3) ABWOR given to a section 21B recipient shall be available only under arrangements made as if under regulation 7(1), and regulation 22 shall accordingly not be applied to such ABWOR.
  - (4) Regulation 22(3) and the exception to regulation 22(5) shall be read as if they also referred to ABWOR given to a section 14B respondent, a section 14D appellant, a section 14G applicant, a section 14H applicant or a section 21D appellant.
  - (5) Regulation 22(6A) shall be read as if it also referred to ABWOR given to a section 14B respondent. ■

# The Legal Aid (Prescribed Panels) (Amendment) Regulations 2000

The Lord Chancellor, in exercise of the powers conferred on him by sections 32(7) and 43 of the Legal Aid Act 1988, makes the following Regulations, a draft of which has been laid before and approved by resolution of each House of Parliament:

## Citation and commencement

1. These Regulations may be cited as the Legal Aid (Prescribed Panels) (Amendment) Regulations 2000 and shall come into force on 2nd October 2000.

## Interpretation

2. In these Regulations, a regulation referred to by number alone means the regulation so numbered in the Legal Aid (Prescribed Panels) Regulations 1999.

### Amendments to the Legal Aid (Prescribed Panels) Regulations 1999

3. In regulation 2, after the definition of “Clinical Negligence Franchise Panel” the following shall be inserted:

“the Commission” means the Legal Services Commission established under section 1 of the Access to Justice Act 1999.

“Crime Franchise Panel” has the meaning given in regulation 9.

“criminal proceedings” has the meaning given in regulation 10.”.

4. After regulation 8 the following shall be inserted:

#### “ Right to select legal representative in criminal proceedings funded by the Commission

9. There shall be a panel of authorised litigators, called the Crime Franchise Panel, which shall comprise those authorised litigators who from time to time are authorised by the terms of a franchising contract with the Commission to provide advice or assistance or representation in relation to some or all of the matters to which regulation 10 applies.

10. (1) This regulation applies to advice and assistance and representation funded by the Commission in relation to actual or contemplated criminal investigations or proceedings.

(2) “criminal proceedings” means:

(i) the proceedings mentioned

in section 12(2) of the Access to Justice Act 1999;

(ii) applications for judicial review or habeas corpus relating to criminal investigations or proceedings;

(iii) prison disciplinary hearings;

(iv) representations to prison governors and other prison authorities regarding the status, security classification, discipline, transfer and treatment of prisoners;

(v) representations to the Home Office relating to mandatory life sentences and other parole reviews;

(vi) Parole Board proceedings;

(vii) representations to the High Court against a voluntary bill of indictment;

(viii) proceedings under the Criminal Procedure and Investigations Act 1996 to quash an acquittal;

(ix) proceedings under RSC Order 115 in Schedule 1 to the Civil Procedure Rules 1998 for confiscation or forfeiture in connection with criminal proceedings;

(x) proceedings in a magistrates’ court arising from failure to pay a fine or to obey an order of that court where such failure carries the risk of imprisonment;

(xi) proceedings under sections 1, 2 and 4 of the Crime and Disorder Act 1998 relating to anti-social behaviour orders or sex offender orders;

(xii) proceedings under section 8(1)(b) of the Crime and Disorder Act 1998 relating to parenting orders made where an anti-social behaviour order or a sex offender order is made in respect of a child;

(xiii) proceedings under section 8(1)(c) of the Crime and Disorder Act 1998 relating to parenting orders made on the conviction of a child; and

(xiv) applications to the Criminal Cases Review Commission.

(3) The right conferred by section 32(1) of the Act, as regards advice or assistance or representation by an authorised litigator in respect of any proceedings to which this regulation applies, shall be exercisable only in relation to authorised litigators who are for the time being members of the Crime Franchise Panel in respect of the proceedings in question.

(4) Paragraph (3) shall not affect the Commission’s powers under section 32(3) or (8) of the Act. ■

## The Legal Aid (Notification of Very High Cost Cases) Regulations 2000

The Lord Chancellor, in exercise of the powers conferred on him by sections 34(1) and 43 of the Legal Aid Act 1988, makes the following Regulations:

### Citation and commencement

1. These Regulations may be cited as the Legal Aid (Notification of Very High Cost Cases) Regulations 2000 and shall come into force on 1 August 2000.

### Interpretation

2. In these Regulations:

“costs” means, in the case of a solicitor, the fees and disbursements payable under section 25 of the Legal Aid Act 1988 and, in the case of counsel, the fees payable under that section; and

“the Legal Services Commission”

means the Legal Services Commission established under section 1 of the Access to Justice Act 1999.

### Notification of Very High Cost Cases

3. (1) This regulation applies to Very High Cost Cases where representation is provided under Part V of the Legal

Aid Act 1988.

(2) A Very High Cost Case is a case with regard to which:

(a) if the case proceeds to trial, that trial would be likely to last for 25 days or longer; or

(b) the defence costs with regard to any one defendant (or group of defendants represented by the same firm of solicitors) are likely to amount to £150,000 or greater (such sum to include the solicitor's costs and

counsel's fees and VAT).

(3) Any solicitor who has conduct of a case which is a Very High Cost Case shall notify the Legal Services Commission in writing accordingly as soon as is practicable. ■

## The Legal Aid in Criminal and Care Proceedings (Costs) (Amendment) Regulations 2000

The Lord Chancellor, in exercise of the powers conferred on him by sections 25(2), 34 and 43 of the Legal Aid Act 1988, having had regard to the matters specified in section 34(9), and having consulted the General Council of the Bar and the Law Society, and with the consent of the Treasury, hereby makes the following Regulations:

### Citation and commencement

1. These Regulations may be cited as the Legal Aid in Criminal and Care Proceedings (Costs) (Amendment) Regulations 2000 and shall come into force on 1st August 2000.

### Interpretation

2. In these Regulations, any reference to a regulation by number alone is a reference to the regulation so numbered in the Legal Aid in Criminal and Care Proceedings (Costs) (Regulations) 1989.

### Amendments to the Legal Aid in Criminal and Care Proceedings (Costs) Regulations 1989

3. In regulation 2, after the definition of "legal executive" the following shall be inserted:  
" "the Legal Services Commission" means the Legal Services Commission established under

section 1 of the Access to Justice Act 1999;"

4. (1) The following words shall be inserted at the beginning of regulation 4(1): "Subject to paragraph (3),".  
(2) The following paragraph shall be inserted after regulation 4(2):  
" (3)These Regulations shall not apply to costs in proceedings in relation to which the Legal Services Commission has granted a contract which determines costs, except to the extent that the terms of the contract provide otherwise." ■

## The Legal Aid in Criminal and Care Proceedings (Costs) (Amendment) (No. 2) Regulations 2000

The Lord Chancellor, in exercise of the powers conferred on him by sections 34 and 43 of the Legal Aid Act 1988, having had regard to the matters specified in section 34(9) and having consulted the General Council of the Bar and the Law Society and with the consent of the Treasury, hereby makes the following Regulations:

### Citation and commencement

1. These Regulations may be cited as the Legal Aid in Criminal and Care Proceedings (Costs) (Amendment) (No. 2) Regulations 2000 and shall come into force on 1st September 2000.

### Transitional provisions

2. These Regulations shall apply to work

done under a legal aid order made on or after 1st September 2000, and costs payable in respect of work done under a legal aid order made before that date shall be determined as if these Regulations had not come into force.

### Amendments to the Legal Aid in Criminal and Care Proceedings (Costs) Regulations 1989

3. After paragraph (7) of regulation 9 of the Legal Aid in Criminal and Care Proceedings (Costs) Regulations 1989 there shall be inserted the following: -

"(8) Where

(a) a legal aid order provides for

representation by a sole advocate other than a Queen's Counsel and a Queen's Counsel agrees to appear as the sole advocate, or

(b) a legal aid order provides for representation by two advocates other than Queen's Counsel and a Queen's Counsel agrees to appear as a leading junior

that Queen's Counsel shall be treated for all the purposes of these Regulations as having been instructed under that order; and his remuneration shall be determined as if he were not a Queen's Counsel." ■



# The Legal Aid in Criminal and Care Proceedings (General) (Amendment) (No. 2) Regulations 2000

The Lord Chancellor, in exercise of the powers conferred on him by sections 2, 34 and 43 of the Legal Aid Act 1988, hereby makes the following Regulations:

## Citation and commencement

1. These Regulations may be cited as the Legal Aid in Criminal and Care Proceedings (General) (Amendment) (No. 2) Regulations 2000 and shall come into force on 1st September 2000.

## Interpretation

2. In these Regulations a regulation or Schedule referred to by number alone means a regulation or Schedule so numbered in the Legal Aid in Criminal and Care Proceedings (General) Regulations 1989.

## Amendment of the Legal Aid in Criminal and Care Proceedings (General) Regulations 1989

3. For regulation 48 there shall be substituted the following: -

“48.(1) A legal aid order may provide for the services of a Queen’s Counsel or of more than one advocate in respect of the whole or any specified part of any proceedings only in the cases specified and in the manner provided for by the following paragraphs of this regulation; and in this regulation “junior counsel” means any authorised advocate other than a Queen’s Counsel.

- (2) Subject to paragraphs (3) to (9), a legal aid order may provide for the services of a Queen’s Counsel or of more than one advocate in any of the following terms: -
  - (a) a Queen’s Counsel alone;
  - (b) where two advocates are required -
    - (i) a Queen’s Counsel with a junior counsel, or
    - (ii) a Queen’s Counsel with a noting junior counsel, or

- (iii) two junior counsel, or
  - (iv) a junior counsel with a noting junior counsel;
- (c) where three advocates are required -
    - (i) in any of the terms provided for in subparagraph (b) plus an extra junior counsel, or
    - (ii) in any of the terms provided for in subparagraph (b) plus an extra noting junior counsel.

- (3) A legal aid order relating to proceedings in the Crown Court may be made in the terms of paragraph (2)(a) if and only if -
  - (a) in the opinion of the competent authority the case for the legally assisted person involves substantial novel or complex issues of law or fact which could not be adequately presented except by a Queen’s Counsel, and

- (b) either -
  - (i) a Queen’s Counsel or senior Treasury counsel has been instructed on behalf of the prosecution, or
  - (ii) the case for the legally assisted person is exceptional compared with the generality of cases involving similar offences.

- (4) A legal aid order relating to proceedings in the Crown Court may be made in the terms of paragraph (2)(b)(iii) or (iv) if and only if -
  - (a) in the opinion of the competent authority the case for the legally assisted person involves substantial novel or complex issues of law or fact which could not be adequately presented by a single advocate, and
  - (b) either -

- (i) two or more advocates have been instructed on behalf of the prosecution, or
- (ii) the case for the legally assisted person is exceptional compared with the generality of cases involving similar offences, or
- (iii) the number of prosecution witnesses exceeds 80, or
- (iv) the number of pages of prosecution evidence exceeds 1,000

and for this purpose the number of pages of prosecution evidence shall be computed in accordance with paragraph 1(2) of Schedule 3 to the Legal Aid in Criminal and Care Proceedings (Costs) Regulations 1989.

- (5) A legal aid order relating to proceedings in the Crown Court may be made in the terms of paragraph (2)(b)(i) or (ii) if and only if -
  - (a) in the opinion of the competent authority the case for the legally assisted person involves substantial novel or complex issues of law or fact which could not be adequately presented except by a Queen’s Counsel assisted by junior counsel; and
  - (b) either
    - (i) the case for the legally assisted person is exceptional compared with the generality of cases involving similar offences, or
    - (ii) a Queen’s Counsel or senior Treasury counsel has been instructed on behalf of the prosecution and one of the conditions in paragraph (4)(b)(i), (iii) or (iv) is satisfied.

- (6) A legal aid order may be made in the terms of paragraph (2)(c) if and only if -
- the proceedings arise from a prosecution brought by the Serious Fraud Office;
  - the court making the order considers that three advocates are required; and
  - in the case of proceedings in the Crown Court, the conditions in paragraph (4) or (5) are satisfied.
- (7) The fact that a Queen's Counsel has been or is proposed to be assigned under this regulation shall not by itself be a reason for making an order in any of the terms provided for by paragraph (2)(b) or (c).
- (8) Where a Queen's Counsel has been or is proposed to be assigned under this regulation, no order in any of the terms provided for by paragraph (2)(b) or (c) shall be made where the case relates to an appeal to the Court of Appeal or to the House of Lords and it appears to the court at the time of making the order that representation can properly be undertaken by a Queen's Counsel alone.
- (9) No order shall be made or amended so as to provide for representation -
- in the terms of paragraph (2)(b) unless the court making the order is of the opinion that the assisted person could not be adequately represented under an order in the terms of paragraph (2)(a);
  - in the terms of paragraph (2)(b)(i) unless the court making the order is of the opinion that the assisted person could not be adequately represented under an order in the terms of paragraph (2)(b)(ii), (iii) or (iv);
  - in the terms of paragraph (2)(b)(ii) unless the court making the order is of the opinion that the assisted person could not be adequately represented under an order in the terms of paragraph (2)(b)(iii) or (iv);
  - in the terms of paragraph (2)(b)(iii) unless the court making the order is of the opinion that the assisted person could not be adequately represented under an order in the terms of paragraph (2)(b)(iv);
  - in any of the terms provided for by paragraph (2)(c)(i) unless the court making the order is of the opinion that the assisted person could not be adequately represented under the corresponding order under paragraph (2)(c)(ii).
- (10) Every application for a legal aid order in any of the terms provided for by paragraph (2) or for an amendment under paragraph (15) or (16) shall be in writing specifying -
- the terms of the order sought and the grounds of the application; and
  - which of the conditions in paragraphs (3), (4), (5), (6) and (9) is relied upon in support of the order sought, and on what grounds it is contended that each such condition is fulfilled.
- (11) A court may, before making a legal aid order in the terms provided for by paragraph (2) or amending the order under paragraph (15) or (16), require written advice from any advocate already assigned to the applicant on the question of what representation is needed in the proceedings.
- (12) A court making a decision whether to make an order under paragraph (2) or to amend an order under paragraph (15) or (16) shall make annotations to the written application under paragraph (10), stating whether each of the conditions relied upon in support of the order made or sought is fulfilled.
- (13) Subject to paragraph (14), a decision to make or amend a legal aid order so as to provide for the services of a Queen's Counsel or of more than one advocate may only be made: -
- in the course of a trial or of a preliminary hearing, pre-trial review or pleas and directions hearing, by the judge presiding at that trial or hearing;
  - where the proceedings are in the Crown Court, by a High Court judge, the resident judge of the Crown Court or (in the absence of the resident judge) a judge nominated for that purpose by the presiding judge of the circuit; or
  - where the proceedings are in the Court of Appeal, by a High Court judge or a judge of the Court of Appeal.
- (14) A magistrates' court which is competent as respects any proceedings in the Crown Court by virtue of section 20(4) or (5) of the Act may make: -
- a legal aid order providing for the services of a Queen's Counsel without a junior counsel where the proceedings are a trial for murder and the order is made upon committal or transfer or sending for trial, or
  - a legal aid order providing for the services of a Queen's Counsel with one junior counsel where the prosecution is brought by the Serious Fraud Office and the order is made upon receiving a notice of transfer under section 4 of the Criminal Justice Act 1987.
- but shall have no other power to make an order under this regulation.
- (15) In proceedings to which paragraph (3), (4) or (5) applies, a legal aid order which provides -
- for one junior counsel only may be amended to provide for the services of a Queen's Counsel or of more than one advocate in any terms provided for by paragraph (2);

- (b) for two advocates in any terms provided for by paragraph (2)(b) may be amended to provide for the services of the same number of advocates but in other terms provided for by that paragraph, or for a Queen's Counsel alone, or for one junior counsel only in accordance with regulation 47.
- (16) In proceedings to which paragraph (6) applies, a legal aid order which provides -
- (a) for one junior counsel only may be amended to provide for the services of a Queen's Counsel or of more than one advocate in any terms provided for by paragraph (2)(b) or (c);
- (b) for two advocates in any terms provided for by paragraph (2)(b) may be amended to provide for the services of three advocates in any terms provided for by paragraph (2)(c), for two advocates but in other terms provided for by paragraph (2)(b), or for a Queen's Counsel alone, or for one junior counsel only in accordance with regulation 47;
- (c) for three advocates in any terms provided for by paragraph (2)(c) may be amended to provide for the same number of advocates but in other terms provided for by paragraph (2)(c), or for two advocates in any terms provided for by paragraph (2)(b), or for a Queen's Counsel alone, or for one junior counsel only in accordance with regulation 47.
- (17) In every case in which a legal aid order is made under this regulation for the provision of services in terms provided for by paragraph (2)(b) or (c), it shall be the duty of -
- (a) each legal representative -
- (i) to keep under review the need for more than one advocate to be present in court or otherwise providing services; and
- (ii) to consider whether the legal aid order should be amended as provided for in paragraph (15) or (16);
- (b) Queen's Counsel, where the services of a Queen's Counsel are provided, to keep under review whether he could act alone.
- (18) It shall be the duty of each legal representative, if of the opinion that the legal aid order should be amended as provided for in paragraph (15) or (16), to notify that opinion in writing
- (a) to the other legal representatives for the assisted person, and
- (b) to the court;
- and the court shall, after considering the opinion and any representations made by any other legal representatives for the assisted person determine whether and in what manner the legal aid order should be amended."
4. At the beginning of paragraph (1)(d) of regulation 54 there shall be inserted "(in magistrates' courts only)". ■

## The Legal Aid in Criminal and Care Proceedings (General) (Amendment) (No. 3) Regulations 2000

The Lord Chancellor, in exercise of the powers conferred on him by sections 21, 23, 34 and 43 of the Legal Aid Act 1988, and with the consent of the Treasury, hereby makes the following Regulations: -

### Citation and commencement

- These Regulations may be cited as the Legal Aid in Criminal and Care Proceedings (General) (Amendment) (No. 3) Regulations 2000 and shall come into force on 2nd October 2000.

### Interpretation

- In these Regulations a reference to any regulation or Schedule by number alone means the regulation or Schedule so numbered in the Legal

Aid in Criminal and Care Proceedings (General) Regulations 1989.

### Transitional provisions

- These Regulations shall apply to applications for legal aid made on or after 2nd October 2000, and applications before that date shall be treated as if these Regulations had not come into force.

### Amendments to the Legal Aid in Criminal and Care Proceedings (General) Regulations 1989

- In the Arrangement of Regulations, after the entry for regulation 3 there shall be inserted: -

" 3A. Cases where assessment of

financial resources is not required."

- After regulation 3 there shall be inserted the following new regulation: -
- " Cases where assessment of financial resources is not required
- 3A. In the circumstances set out in regulation 4(2) and (3) of the Legal Aid Act 1988 (Modification) Regulations 2000 the following provisions of these Regulations shall not apply: -
- (a) regulation 11(3);
- (b) regulation 13;
- (c) regulation 14(7);
- (d) Part III;
- (e) Schedules 3 and 4." ■

# Proposed Payment Dates

The proposed payment dates for September to December 2000 are set out below. These dates may be subject to amendment, but we will inform you of changes in advance where possible.

If you are paid by BACS (Bank Automated Clearing System) the proposed payment date shown is the date on which you will receive a payment in your bank. For some smaller banks

the BACS credit may appear a day later. The proposed payment date will also be the date by which the last of the cheque/remittance advices are despatched from the Financial Services Settlement section. Remittance advices are despatched using DX or first class post.

If you are still being paid by cheque, we recommend that you change to BACS, which is a more efficient payment method. With BACS, the payment is made directly into your bank account avoiding cheque-handling and you also receive a remittance advice. BACS provides immediately cleared funds, unlike cheques which can take four to six days to clear. If you have any queries about payment by BACS, please telephone the Master Index section on 020 7759 0261.

Details of the amount due to you may be obtained by contacting either the regional office or the Solicitors/Counsel Settlement section on 020 7759 0260 but no earlier than the day before the proposed payment date. However, if you have a query regarding an individual item shown on a remittance advice, you should contact the relevant regional office, which authorises and processes all such bills.

## Keeping us up to date

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

## Proposed Payment Dates for Sept 2000 - Dec 2000

General Civil Contracting Payment	First Settlement of the Month	Second Settlement of the Month
Tuesday, 5 September 2000	Friday, 8 September 2000	Monday, 25 September 2000
Wednesday, 4 October 2000	Tuesday, 10 October 2000	Tuesday, 24 October 2000
Friday, 3 November 2000	Wednesday, 8 November 2000	Thursday, 23 November 2000
Tuesday, 5 December 2000	Friday, 8 December 2000	Friday, 22 December 2000

## Focus

*Focus* is sent automatically to all LSC account holders, free of charge. It is usually published four times a year. It is not strictly quarterly as it is produced whenever we need to communicate important information to the profession, rather than according to a rigid timetable.

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