

FOCUS

July 2000

www.legalservices.gov.uk

Contents

CDS Consultation Papers	1-2
Launch of Public Interest Advisory Panel	2
Statements of Statutory Charge Liability	2
Increases in Remuneration Under the General Civil Contract (Solicitors)	3
Contract Management	4
Revised Telephony Implementation Dates	5
Merseyside Launches the CLS	5
Public Information Leaflets	5
Methods of Delivery Pilot Update	6-8
Devolved Powers	8
Requirements to hold a Crime Category Franchise from October 2000	9
Supplier Survey 2000	10
Ancillary Relief Procedural Changes	10
Review of Civil Contracting – Consultation Paper	10
Advocacy Graduated Fee Scheme for Family Cases	11
Prior Authorities – Family Cases	12
Law Costs Draftmen's Fees	12
Family Proceedings: Help at Court under the General Civil Contract	12
Serious Fraud Panel	13
VAT and Certificated Work	14
Costs Assessment Issues	15-19
Proposed Payment Dates	20

Criminal Defence Service Consultation Papers

The Government has published consultation papers on two important aspects of the Criminal Defence Service which will be introduced in April 2001.

Salaried Defence Services

In “*Establishing a Salaried Defence Service and Draft Code of Conduct for Salaried Defenders Employed by the Legal Services Commission*” the Lord Chancellor’s Department has set out plans for the development, by the Commission, of a salaried defence service. Salaried defenders will form part of a mixed system of provision with contracted private practice lawyers within the Criminal Defence Service.

The decision to develop a mixed system of provision is informed by the available evidence of the operation of different systems in other countries (and on the limited evidence available from within the UK – including the pilot currently operating in Edinburgh). Researchers and commentators have expressed differing views on the worth of individual salaried defence service schemes. However, there is a balance of opinion that salaried defence services *are capable* of delivering better outcomes than other delivery systems, and a consensus that the best systems are those where services are provided through a mixed system, involving both salaried services and services provided by private practice lawyers.

We will begin to provide salaried services from April 2001. The salaried

service will consist of individuals employed by the Commission, but in a structure wholly separate from our existing network of regional offices. The salaried service will be an independent, stand-alone, service within the Commission, responsible solely for delivering criminal defence services to the public.

Our first step will be to identify and appoint researchers and agree the research programme with them. Working with the researchers we will identify the cities and towns in which to establish the first salaried defence service offices. Initially we will establish salaried offices at six locations. We will then recruit professional, solicitor, heads for each salaried service office and then work with those office heads to establish their own offices – including the identification and acquisition of offices and the recruitment of their staff.

The head of each salaried defence service office will be responsible for the delivery of professional services by their office and for the management of their office – in terms of supervision, budgetary control, etc.

The salaried service offices will be separate from our existing operational structure, including existing regional offices. However, the heads of the salaried service offices will be supported by our central services.

Clients wishing to receive publicly funded criminal defence services will

have a free choice of using the services of a salaried defence office or of a contracted private practice lawyer.

As a part of the consultation paper the Government is also consulting on a Code of Conduct for Salaried Defenders. We are required, by s.16 Access to Justice Act 1999 to prepare such a Code to be observed by salaried defenders. The Code is subject to approval by the Lord Chancellor and by both Houses of Parliament.

Choice of Representative

In "*Criminal Defence Service: Choice of Representative*" the Government has set out its proposals on how a defendant or suspect will choose a representative when the CDS comes into being in April 2001.

The consultation paper addresses the question of choice in three areas –

- ▶ advice and assistance and work done by solicitors in the magistrates' courts
- ▶ representation in the Crown Court and above
- ▶ very high cost cases.

The key proposals are that -

- ▶ in the majority of cases the client will be able to choose any defence lawyer who has a contract with the Commission or a salaried defender
- ▶ in certain special and limited circumstances, choice will be restricted to those particularly qualified to undertake the work, e.g. for serious fraud trials.
- ▶ once a client has selected a solicitor to represent them following the grant of a Right to Representation by a court there will be a presumption – subject to a seven day period to

reflect on the choice made and, if desired, select a different representative – that the selected lawyer will continue to represent them throughout the lifetime of the case unless there is a compelling reason for change.

Availability of Papers and Consultation Period

Both consultation papers are available from David Bloom, Lord Chancellor's Department, Selborne House, Victoria Street, London SW1E 6QW (tel: 020 7210 8754). The papers are also available on the LCD website, www.open.gov.uk/lcd. The consultation period runs to 22 September 2000.

The contact at the Commission for both of these issues is Richard Collins, Head of Criminal Defence Services, tel: 020 7759 0469 or email richard.collins@legalservices.gov.uk. ■

Launch of Public Interest Advisory Panel

One of the most important considerations in the new Funding Code is whether a case has a significant wider public interest. This can affect whether a case is within scope and how the merits, cost benefit and affordability of a case should be approached. The Commission has therefore established an advisory panel to assist regional offices in decisions on cases which may have a public interest element.

The Public Interest Advisory Panel is chaired by Commission member Juliet Herzog and includes another Commission member, Yvonne Mosquito, and representatives from the Consumers Association, Law Society, Bar Council, Liberty, Justice and the Public Law Project. Applications or existing cases can be referred to the Panel by the Commission at any stage. The Panel will provide the Commission and the

client with an opinion on the public interest of each case referred to it. Whilst the opinion will be advisory only, it will always be taken into account in funding decisions.

For further information on the Panel, please contact Colin Stutt of the Commission's Policy & Legal Department on 020 7759 0000 or at 85 Gray's Inn Road, London WC1X 8TX ■

Statements of Statutory Charge Liability

Practitioners and agencies may find that from this summer they get more enquiries than usual from people who have charges registered on their homes because they had legal aid in the past and the statutory charge arose.

The systems operated by the Law Society and the Legal Aid Board did not always provide regular statements of people's liability to repay charges. The Commission is about to start sending former clients, whose homes

are charged, annual statements. The statements will set out the principal sum, and the current rate and level of interest on those charges where interest is payable.

The Commission is concerned not to cause unnecessary anxiety among people who get statements when they have not heard about their charges for some time. For that reason, we are sending out notices with the statements which will explain, in simple terms, what they mean. In

particular, it is important for people to understand that the statements are not a demand for immediate payment. As long as the conditions under the regulations are met and the property is the person's home (or their dependant's), the Commission will not ask for the charge to be repaid.

Practitioners and agencies who wish to make an enquiry about this initiative or a particular case should ring 020 7759 0000 and ask for the Land Charges Department. ■

Increases in Remuneration Under the General Civil Contract (Solicitors)

Legal Help and Help at Court

Annex A to the Contract Schedule sets out the remuneration payable for work under the General Civil Contract (Solicitors). From 1 January 2000, Legal Help and Help at Court have been remunerated at the rates formerly payable for CLAIM10 advice and assistance set out in paragraphs 1 and 2 of Schedule 6 to the Legal Advice and Assistance Regulations 1989. The rates for advocacy and attending court with counsel do not apply to Legal Help or Help at Court.

The Community Legal Service (Funding) (Amendment) Order 2000 which comes into force on 1 July 2000 authorises the Commission to increase the rates payable for Legal Help and Help at Court in certain specific franchise categories by 8% for those within the London region and 5% outside.

The franchise categories are immigration/nationality, mental health, public law, community care and actions against the police. The increases can only apply where the contractor has a category specific contract in the relevant category in which the work is being performed.

We have therefore consulted the Law Society on proposals to amend Annex

A to the Contract Schedule to increase the rates under contract. The increased rates will apply not only for Legal Help and Help at Court commenced after 1 April 2000 but will also apply to relevant work done on Transitional Matter Starts and Old Matter Starts under the contract. However, the increases will only apply to work carried out on or after 1 July 2000 and only where a category specific contract is held in the relevant category. Contracted suppliers should apply the increased rates detailed below with effect from 1 July. It should be noted that the travel and waiting rates set out below have been increased from the proposed rates published in part E of volume 2 of the LSC Manual (second update) as they have been amended as a result of consultation. You should therefore keep a copy of this article with your Manual.

The Commission therefore gives notice that in respect of work carried out under Legal Help or Help at Court under the General Civil Contract (Solicitors) on or after 1 July 2000 in the franchise categories of immigration/nationality, mental health, education, public law, community care and actions against the police, then provided you have a category specific contract in the relevant category the following rates will apply:

- * Rates are in £ per hour except for letters and telephone calls which are £ per item.
- ** Non franchised rates apply to work performed while you are a provisional franchisee – see Contract Schedule Annex A paras 1-3.

For all other Legal Help and Help at Court the relevant rates set out in paragraphs 1 and 2 of Schedule 6 to the Legal Advice and Assistance Regulations 1989 will continue to apply.

The increased rates do not apply to:

- ▶ any work carried out before 1 July 2000;
- ▶ any work carried in franchise categories other than those listed above;
- ▶ any work carried out in tolerances even if within the franchise categories listed above;
- ▶ any work carried out on matters started before 1 April 2000 unless it is within one of the franchise categories listed above **and** you have a category specific contract in that franchise category.

Controlled Legal Representation in immigration

For work carried out between 1 January 2000 and 31 March 2000, Controlled Legal Representation in immigration is remunerated at the rates set out in paragraphs 1 and 2 of Schedule 6 to the Legal Advice and Assistance Regulations 1989 save that rates for attending court with counsel do not apply.

For work carried out from 1 April 2000 (whether or not the matter started before that date), the rates payable are those set out in paragraphs 3 and 4 of Schedule 6 to the Legal Advice and Assistance Regulations 1989 save that rates for attending court with counsel do not apply.

STOP PRESS IMMIGRATION

Incentives to expand legal services in dispersal areas will be announced in the next few weeks.

Franchised		
Class of Work	Rate*	Rate* (fee earner whose office is in the Commission's London region)
Preparation	47.77	52.11
Travel and waiting	26.77	27.54
Routine letters written and telephone calls	3.72	3.99
Non-Franchised**		
Class of Work	Rate*	Rate* (fee earner whose office is in the Commission's London region)
Preparation	46.20	50.22
Travel and waiting	25.72	26.46
Routine letters written and telephone calls	3.57	3.83

Contract Management

The introduction of General Civil Contracting brought about a fundamental shift in the way the Legal Aid Board, now the Legal Services Commission, funded eligible matters of Advice and Assistance, now Legal Help. Every contracted supplier has a regular monthly or quarterly payment based on timely receipt of monthly reports. Feedback to date suggests the monthly reports are straightforward, benefiting the administration in both the Commission and Legal Help suppliers. We highlighted in *Focus 30* some of the main problems faced by both parties and it is encouraging to note that, although individual errors remain on both sides, the evidence is that we are all getting better.

This new way of doing business allows us the opportunity to re-visit the way we control public expenditure. Within the area of Legal Help, formerly Advice and Assistance, this used to be done by individual bill assessment. There was of course additional comfort to be drawn from the franchise audit process to determine the quality of the systems in place at each site visited. Whereas this was successful it was often seen as two separate processes, failing to co-ordinate lessons learned from both activities. It also meant a certain amount of double handling at suppliers' offices and within the Commission.

We are now changing from the position of individual assessment on each bill to one where we look at both the assessment of bills and the franchise transaction audit as one process. To do this, we will move the assessment of costs onto the same sampling methodology as suppliers will have experienced in the franchise process. This is not to say that we move from the annual audit visits to all suppliers, but move to the position

where we may conduct much of the file audit at our own offices, rather than doing all work on site. The management audit and conclusions reached from all aspects of the file audit will normally continue to be discussed at the closing meeting. The outcome of this discussion may lead to reduction of costs.

Some suppliers will already have seen and participated in this revised way of conducting audits. For them it has meant providing around 20 files per legal help contract category. Where suppliers also have a family licence and the regional office has a list of closed files, then a request will be made to provide a further small sample of files from that certificated work. These files will normally be called for by the regional office managing the contract around 6-8 weeks before the audit is due to take place. In the transition to the new system, files may still be audited at your premises at the annual audit or may be called for after the annual audit. Regional offices undertake to clear these files within 10 working days, i.e. received on a Monday and despatched on the second Friday. The results of the assessment and the transaction testing are provided to the Contract Manager for discussion with suppliers normally at the next scheduled audit. The supplier can exercise the opportunity to dispute any result of the file audit at this point.

This process allows the Commission to take a more proactive role in establishing matters properly due for public funding under the terms of the Funding Code. At all times our auditors seek to establish there is sufficient benefit to the client to progress the matter through public funding. Equally we must all be assured that the client is financially

eligible and ensure that all suppliers are able to demonstrate to our satisfaction that evidence is on file to help us confirm both the above matters.

Of equal importance to us are the costs claimed in individual matters. Our work to date in this area suggests that some suppliers remain unclear for what items of work they may legitimately claim. Our regional offices continue to supplement the advice and guidance available in this area (see also *Focus 27*, pages 24 – 47 on assessment rules) but it may also assist to highlight the most common errors found to date.

- ▶ Claiming for completion of the Legal Help form
- ▶ Claiming for file administration (opening and closing files)
- ▶ Claiming for more letters and telephone calls than were evidenced on the file
- ▶ Failing to reduce the claim on CMRF when payment on account had been made

We all acknowledge this is early days in taking forward the contract audit provisions contained in the General Civil Contract but continued co-operation on both sides will make this work. It may be that individual regional offices will wish to make arrangements that, whilst meeting the above criteria, use a more flexible system to achieve the requirement of annual audits.

Should any recipient wish to discuss the general principles of this update, they should in the first instance contact their Regional Contract Managers. The Contract Manager in respective regional offices will be contacting you within the next three months to discuss what these provisions will mean to you. ■

Revised Telephony Implementation Dates

The implementation dates for the new telephone numbers at LSC regional offices published in *Focus 30* (page 11) have been amended to allow further system amendments and enhancements. The revised dates are published in the table below. Transitional arrangements remain in place for six months.

Office	New switchboard number	Date
Already implemented		
Head Office (Gray's Inn Road)	020 7759 0000	
London (Red Lion Street)	020 7759 1500	
Southern (Reading)	0118 955 8600	
Wales (Cardiff)	029 2064 7100	
East Midlands (Nottingham)	0115 908 4200	
To be implemented		
South Eastern (Brighton)	01273 878800	July 2000
West Midlands (Birmingham)	0121 665 4700	mid July 2000
South Western (Bristol)	0117 302 3000	August 2000
Eastern (Cambridge)	01223 417800	mid August 2000
North Western (Manchester)	0161 244 5000	September 2000
Chester	0124 440 4500	mid September 2000
Merseyside (Liverpool)	0151 242 5200	October 2000
North East (Newcastle)	0191 224 5800	mid October 2000
Yorkshire and Humberside (Leeds)	0113 390 7300	November 2000

Merseyside Launches the Community Legal Service

Representatives from Local Authorities, Merseyside Regional Legal Services Committee (MRLSC) and Community Legal Service Partnership (CLSP) Steering Groups joined together with the Regional Office for Merseyside to signal their commitment to the Community Legal Service at a Breakfast Launch on 3 April.

Juliet Herzog, Chair of MRLSC, welcomed those present and invited Roger Phillips from Radio Merseyside to unveil the CLS logo and launch the concordat. All participants signed the concordat demonstrating their willingness to work together to improve access to legal information and advice provision within each CLSP and across the region. John Mills, Regional Director, formally signed on behalf of the Legal Services Commission for Merseyside.

The regional launch of CLS on 3 April was followed by

the high profile launch of Liverpool CLSP on 17 April where speakers included Professor Hazel Genn; Professor Richard Susskind; Jane Kennedy MP, Parliamentary Secretary at the Lord Chancellor's Department; and Mike Storey, Leader of Liverpool City Council.

Another regional event was held at 'Advocacy in Wirral' where Stephen Maddox, Chief Executive of Wirral MBC; Councillor Phil Davies, Chair of Economic Regeneration and John Mills, Regional Director of LSC attended its launch as a Quality Marked CLS provider.



Merseyside Community Legal Service Launch.

Public Information Leaflets

To simplify the leaflet ordering procedure we have made a number of changes to the arrangements. Solicitors/advice agencies etc will now be able to order all of the following leaflets directly from LSC Publicity Distribution and do not have to go through regional offices. Up to 30 of each leaflet can be ordered on each occasion.

- ▶ The Community Legal Service
- ▶ A Practical Guide to Community Legal Service funding by the Legal Services Commission
- ▶ A Practical Guide to Criminal Legal Aid
- ▶ Criminal legal aid at the police station and in court
- ▶ Paying back the Legal Services Commission – The Statutory Charge
- ▶ Representations
- ▶ Customer Services

LSC Publicity Distribution is contactable by post at:
PO Box 447, Croydon CR9 1WU
or by fax on: 020 8681 8857

Other formats

Braille, audio format and large print versions of "The Community Legal Service" and "A Practical Guide to Community Legal Service funding by the LSC" are now available. We will consider any other requests of this nature. We are also working on producing these two leaflets in a range of foreign languages. Please contact Lucy Dodsworth on 020 7759 0492 with any requests for the leaflets in other formats.

STOP PRESS

FORMS MASTERPACK

The masterpack has been updated to take into account many of the helpful suggestions received from practitioners, and the new version will be sent out at the end of July.

Methods of Delivery Pilot: An Update

The specialist consultancy lines launched in *Focus 29* have been providing support on a variety of issues to solicitors and advice agencies with a General Civil Contract. In addition, where all parties agree, complex cases can be referred to the specialists. The areas of law covered are: Human Rights and Public Law, Housing, Immigration and Employment.

Remember: In order to use the service, your contract does not have to be in the specific category of law as you may be dealing with a case under the tolerance in your contract.

Important: The consultancy lines are for General Civil Contract Holders to use. The telephone numbers should not be passed to clients.

For details of training courses, please see *Focus 30*.

This update includes some case studies drawn from the pilot participants. If you have a General Civil Contract you can benefit from this sort of support too.

Joint Council for the Welfare of Immigrants

JCWI provide expert advice in relation to asylum and immigration matters. The JCWI Handbook is the leading publication in this field and is well known for its practical advice. JCWI has up to date information on new legislation, recent cases and policies which you can access via the consultancy line. The telephone number is: **0845 602 1020**. The line is open Monday to Friday 10.00 am - 1.00 pm.

The Public Law Project and Liberty

The Human Rights and Public Law Line is designed to be a sounding board for the profession to assist in identifying cases with a human rights and/or public law angle. The number

to call is: **0808 808 4546**. It is open Monday and Wednesday 2.00 pm - 5.00 pm and Tuesday and Thursday 10.00 am - 1.00 pm.

The most striking aspects of the line have been the sheer variety of calls, covering a large number of subject areas and raising differing grounds of legal challenge in the field of public law.

Queries received range from procedure and tactics to Human Rights challenges, with the matters being dealt with in a variety of ways, e.g. telephone consultancy, research and written advice, on-going support and case referrals:

Procedure

- ▶ The rules of judicial review.
- ▶ Challenges to the apparent retrospective nature of changes to time limits contained in the Civil Procedure Rules.

Tactics

- ▶ Discussion as to the conduct of the respondent in judicial review proceedings, and the attitude of the court.

Grounds

- ▶ Whether an educational establishment is amenable to judicial review and on what grounds.
- ▶ Whether the DVLA was acting unlawfully in its policy towards asylum seekers applying for driving licences.
- ▶ Whether Local Authorities were correct in their policy decisions as to the determination of Housing Benefit claims, or their decision to close down a nursery.
- ▶ Whether General Practitioner assignment procedures were lawful.

Human Rights Act/ Convention challenges

- ▶ Bringing claims against public

bodies that the English courts will not currently entertain – such as the negligence of the Police in the investigation of crime.

- ▶ Judicial discretion being exercised consistently with the Convention.
- ▶ The possible relevance of Convention rights to various areas of law, and advice on the resource and information material available to practitioners.

Some of the problems raised by solicitors and advisers contacting the line are described below. The scenarios have been changed in order to ensure confidentiality:

- ▶ The right to family life in article 8 of the convention may be relevant to a local authority's policy for re-housing people made homeless by a decision to demolish a large tower block. Ms Z was instructed by a number of tenants who complain that the re-housing policy, by which they are being offered one-bedroom flats instead of two bedroom accommodation that they currently occupy, will have the effect of preventing family contact. Where such a decision will have the consequence of disrupting family life, e.g. so that adult children or grandchildren are no longer able to stay overnight, it may be argued that a disproportionate interference with the right to family life has occurred in violation of the Convention and, after 2 October 2000, the Human Rights Act.
- ▶ Client Y consulted an advice agency in relation to the fact that the local authority, which contracts with his employer to provide gardening services in local schools, wants his employer to terminate his employment. Y had been convicted many years before of an offence involving violence, that was not related to children. His life since has been exemplary, as many

character references confirm. This raises issues relating to article 8 and the right to respect for his private life. The local authority policy is designed to ensure the suitability of staff who come into contact with children. It argues that the policy pursues the legitimate aim of protecting the rights and freedoms of others. The test of proportionality will mean that in potential judicial review proceedings the judge will have to decide whether the interference with the gardener's right to privacy is 'necessary in a democratic society' in the sense that it is a proportional response to the legitimate aim, namely protecting children, that the authority pursues.

NACAB Specialist Support Unit

NACAB SSU offer advice on matters relating to employment law. The consultancy line has proved popular with advisers who have commented on the "knowledgeable response and helpful attitude" of the consultants. The Unit's team of four specialist employment lawyers can provide assistance with drafting pleadings, tactical strategies and calculating quantum. The team have access to the latest case reports, and an extensive reference library of text and materials on employment law. The number to call is: **0808 808 3681**. The line is open Monday to Thursday 10.30 am - 1.00 pm and 2.00 pm - 4.00 pm.

NACAB have received the following comments from St Paul's Advice Centre, a community based organisation in Bristol:

"I used the NACAB SSU Employment phonenumber when preparing for an employment tribunal. I was feeling out of my depth and needed an outside opinion on my client's case. I was very impressed with the knowledgeable response and helpful attitude of the adviser. She not only advised me on the phone several times over the course of a few days, but faxed me a clear and comprehensive set of guidelines as to the steps I needed to take to present the case to its best advantage at tribunal. I felt very supported and that she was taking a real interest in the progress and result

of the case. It gave me the confidence to successfully negotiate a settlement with the employers which met all of my client's demands." (Advice Worker)

Shelter

Shelter's Legal Services Team are providing a specialist housing support service. They offer advice and support on all sorts of housing issues, for example homelessness, security of tenure, disrepair, rent, mortgage arrears and relationship breakdown. The number to call is: **0207 505 4688** Monday to Friday 9.00 am - 5.00 pm (closed alternate Wednesdays 9.00 am - 12.30 pm).

Some examples of the queries Shelter has dealt with:

- ▶ Solicitor's firm called regarding possession proceedings which had been issued against X. She had moved into accommodation several years ago. She then moved out and, with her landlord's consent, let others in. She returned some years later. The landlord issued a claim against her and all the other occupiers on the basis of rent arrears. The county court made a possession order and a money judgement. She wished to set aside the money judgement as she felt she should not be liable for the arrears accrued while she was absent from the premises. Shelter advised the solicitor that X had surrendered her tenancy when she first left and she had accepted a regrant of the tenancy on her return. As a result she had good prospects of setting aside the money judgement.
- ▶ A solicitor's client had been sued for arrears of service charges and he wanted to know whether there was a possible defence. Shelter considered several statutes, including the Apportionment Act 1870 and the Landlord and Tenant (Covenants) Act 1995 and a number of Court of Appeal decisions. They established that the client had a defence to the action and wrote a detailed letter to the solicitor setting out the advice and the reasons for the defence.

Two Garden Court Chambers

Two Garden Court has Housing, Immigration and Employment advice lines. The numbers for solicitors and NFP contractors to call are:

Housing **0207 415 6340**
Monday to Friday 2.00 pm - 5.00 pm

Immigration **0207 415 6350**
Monday to Friday 2.00 pm - 5.00 pm

Employment **0207 415 6360**
Wednesday & Friday 2.00 pm - 5.00 pm

The following are case studies received on the Housing Advice Line and Immigration Advice Line:

- ▶ Asylum seeker arrived in the country. Claimed asylum at port. Wife came later. She is now pregnant. Both have family in London. They have received medical treatment from the Medical Foundation for Victims of Torture. A homeless application was made to a London local authority. Decision from local authority was that their duty was discharged because the clients had refused accommodation in Birmingham. Solicitor requested review of decision and Medical Foundation made representations. Local authority agreed to reconsider. Further review decision confirmed original decision. The local authority is saying that medical treatment can be obtained anywhere for the client; it need not be in London. The Medical Foundation disputes that. Two Garden Court advised that it would be appropriate to appeal to the County Court against the review decision. The local authority has failed to have regard to guidance about exceptional reasons not to refer outside London. Emergency legal representation was obtained and counsel drafted papers.
- ▶ Tenant of a registered charity consulted solicitors. The charity was seeking to be removed from Housing Corporation. They wanted to know whether there would be any effect on the tenant's security of tenure, rent setting and right to buy. Two Garden Court advised that the charity will remain under the control of the charity

commission and still be subject to the ombudsman scheme. Little difference in practice as will remain assured tenants. May be a difference regarding the right to buy and also in the practice of the landlord. Registered social landlord less likely to impose market rents or use all of the grounds of possession. Referred case to complex case referral scheme.

- ▶ Several asylum-seekers who had been dispersed to a town had been arrested and charged with an offence in the hostel. They had been held by police and appeared before a magistrates' court. The responsible authority had faxed the court to say it was not providing further support or accommodation. On that basis, the magistrates refused bail as there was no bail address. Two Garden Court advised that a letter be written before the action threatening judicial review on the basis that the council could not withdraw support without hearing the asylum seekers' version of events. The response was that they had made themselves 'intentionally destitute' by their actions, as reported to the council by the hostel staff and the police. Judicial review lodged on the basis that (a) not enough

information to conclude that the asylum seekers were intentionally destitute; (b) wording of interim regulations strongly suggested that this ground could not be relied on after acceptance; (c) no adequate investigation or natural justice; (d) decision interfered with liberty by preventing the asylum seekers from obtaining bail and was disproportionate. Judicial review settled day before permission application (temporarily) on basis that council accepted it had not carried out adequate investigation and should have obtained the asylum seekers' version of events; agreed to provide further support and accommodation pending full investigation.

Tyndallwoods Solicitors

Tyndallwoods is one of the major providers of publicly funded legal services in the West Midlands. It has developed a number of specialisms and, as a result, is able to offer specialist advice to both solicitors and NFP contractors in Welfare Benefits, Community Care/ Health and Immigration. This local pilot project is now advertising its services nationally. However the emphasis remains a local one; Tyndallwoods has asked the Commission to consider a proposal to develop work in the

region in the next few months to assist the Commission in assessing local need for training and second tier advice. The telephone numbers are:

Immigration 0121 246 9029

Welfare Benefits 0121 246 9057

Community Care & Health

(not clinical negligence)

0121 246 9027

All lines are open:

Tuesdays 12.00 pm - 2.00 pm

Thursdays 10.00 am - 1.00 pm

Tyndallwoods is also offering Birmingham based training in Welfare Benefits, Community Care and Immigration. The emphasis of the training is very much on practical and procedural aspects of conducting cases in each of these areas. These courses are designed by practitioners for practitioners and the course format reflects that emphasis. The courses will take place on 10, 11 and 12 July. For further information and booking forms, contact Debbie Rean on 0121 243 3141. Fax: 0121 243 3125. E-mail: Deborah_Rean@tyndallwoods.co.uk.

For further information about the Methods of Delivery pilot, please contact Carol Taylor on 020 7759 0461. ■

Devolved Powers

The guidelines contained in the Guidance on the Exercise of Devolved Powers Manual (GEDP) have been re-written for new cases to reflect the introduction of civil contracting, the Access to Justice Act and the Funding Code. Section 4 of LAFQAS now sets out the extent of devolved powers and directs practitioners to the appropriate guidance as follows:

Guidance on granting amendments to substantive funding certificates is contained in section 4 of LAFQAS itself in volume 2 of the LSC Manual.

Guidance on granting and amending emergency funding certificates is contained in section 12 of the Funding Code Guidance in volume 3 of the LSC Manual.

Guidance on the exercise of devolved powers in relation to Controlled Work under civil contracts is contained in Appendix B of the General Civil Contract (Solicitors) in volume 2 of the LSC Manual.

For a transitional period, the guidance in the GEDP will still need to be followed by practitioners as set out below:

1. In relation to criminal cases pending the introduction of the Criminal Defence Service.
2. In relation to civil advice and assistance cases commenced before the introduction of civil contracting on 1 January 2000.
3. In relation to emergency and substantive civil certificates granted before the implementation of the Access to Justice Act on 1 April 2000. ■

Requirements to hold a Crime Category Franchise from October 2000

On 17 May we wrote to all firms undertaking criminal legal aid work to inform them of the revised timetable for the introduction of the Criminal Defence Service (CDS) and of CDS contracts. In that letter we confirmed that the previously announced date – 2 October 2000 – will be maintained as the time from which it will be necessary to hold a Crime category franchise in order to be eligible to undertake new criminal legal aid work funded by the Commission.

This policy will be implemented by the creation of a panel under s.32(7) Legal Aid Act 1988. The panel will consist of solicitors employed in offices which hold a Crime category franchise and offices which have passed a preliminary audit in the Crime category. Panel membership for solicitors employed in an office will lapse on the office losing its franchise or on its application for a franchise being withdrawn or refused.

All offices which applied for a franchise in accordance with the published application timetable will, subject to their own satisfactory performance, have reached, at the least, the preliminary audit stage of the franchise process by 2 October.

The new arrangements will be implemented as follows:

- ▶ offices with a Crime category franchise will be issued, under their franchise contract, with an authority for their solicitors to undertake panel work;
- ▶ offices that have applied for a Crime category franchise and passed a

preliminary audit will be issued with a temporary contract for their solicitors to undertake panel work which will lapse either on the issue of a franchise or a failure in the franchise application process.

We plan to send these documents automatically to all firms in both of the above groups on 1 September 2000. No separate applications need to be made to go onto the panel.

The scope of work covered by the panel will be the same as currently encompassed by the Crime franchise category, only it will be limited to cases funded by the Commission. This excludes legal aid orders in the higher courts (Crown Court and above) but includes proceedings in the High Court such as judicial review, and all criminal advice and assistance and ABWOR.

New firms

To enable new offices to begin to undertake criminal legal aid work we are proposing that, subject to certain conditions, the successful completion of an initial “desktop” audit of the franchise application and the provision of evidence that there is a suitable qualified supervisor for the work shall be treated as equivalent to passing a preliminary audit for the purpose of enabling solicitors to join the panel and do panel work. Further details of any such arrangements will be published at a future point.

Civil contract holders undertaking criminal legal aid work

There are a small number of areas of work falling within the Crime franchise category which are also undertaken

by practitioners within the scope of civil franchise categories as well. These overlaps between the civil and criminal franchises are, firstly, “Benham” hearings and certain magistrates’ court cases arising from the Crime and Disorder Act which can be undertaken by Debt and Family contract holders respectively. They are secondly, public law and other cases arising out of criminal matters and proceedings which fall within the new Public Law franchise category. We will also be sending out notices to make it clear that possessing a General Civil Contract in the Debt, Family or Public Law categories will qualify solicitors at the contracted office as members of the Crime franchise panel, but only for the purposes of matters falling within both their own franchise category and the Crime franchise. In the case of Family, either a controlled work or licensed work contract will be sufficient to qualify solicitors as panel members to do Crime and Disorder Act matters which are common to both the Crime and Family franchise categories (see *Focus 28* page 17).

Transitional arrangements

The new arrangements will apply to applications made, either for advice and assistance or representation under a legal aid order or certificate, on or after 2 October 2000. They will continue in force until the implementation of the CDS provisions of the Access to Justice Act 1999 in April 2001, when they will be replaced by equivalent rules under that Act.

Further information

We will be publishing the panel rules and guidance on them at the end of August following consultation. ■

Supplier Survey 2000

Your franchise representative may have recently received a copy of a questionnaire called 'Supplier Survey 2000'. It is being sent to between 1,000 and 2,000 suppliers representing a cross-section of firms, both those who take a large annual amount from the fund and those whose fund take is smaller.

We hope to carry out a similar survey every year or every two years. The questions cover the performance of the regional offices in relation to contracting and operational processes. In this year's survey there will be a small number of questions related to contracting, mainly about the suppliers' relationship with the regional office contracting team. We will expand this part of the questionnaire in later surveys to match the expansion of contracting.

The new survey is based on one we

carried out in late 1997 and on a franchise audit questionnaire that was introduced last year. We used the latter as a pilot for the Supplier Survey 2000. When drafting the new questionnaire we contacted a number of suppliers who had completed the audit questionnaire and sought their views on the questions and about what they thought we should be asking them.

Some of you will have taken part in the survey we carried out in late 1997 when we asked a sample of 100 suppliers in each legal aid area to complete a written questionnaire giving their views on the service provided by their local office. The results gave us valuable information on suppliers' views and highlighted some issues of national concern that we published and took action on to resolve. An example was the review and amendment of the rejects policy

with which a large number of solicitors had expressed dissatisfaction. We think that a regular written questionnaire like the 1997 survey is the best way of obtaining our suppliers' views and identifying concerns.

If you have been selected to take part in the Supplier Survey 2000, we very much want to know your views, even if you have recently completed one of the franchise audit questionnaires. Without knowing what you think of our performance we cannot achieve our objective of improving the quality and efficiency of the Commission's services.

We will publish the results of this year's survey, together with details of an action plan to address national issues identified from the responses in an edition of Focus later this year. ■

Ancillary Relief Procedural Changes – Scope of General Family Help

Practitioners will be aware that new Family Proceedings Rules are now in force in relation to ancillary relief proceedings. The Commission's Family Decision Making Guidance is being revised to reflect the changes in particular in relation to the availability and scope of General Family Help (see the June update to the LSC Manual).

We are amending our standard scope limitation for General Family Help (Code FM044) so that it expressly

confirms that cover extends to all steps up to and including the Financial Dispute Resolution hearing and any interim Financial Application(s) dealt with at or before that hearing. This change is, however, by way of confirmation. Practitioners holding a General Family Help certificate previously issued and covering ancillary relief proceedings by way of the previous standard limitation do not need to apply for an amendment.

Although General Family Help extends to any Financial Dispute Resolution, the guidance as to whether ancillary relief proceedings should be funded or not remains the same. Sufficient benefit must be shown for the grant of General Family Help and funding for a fully contested, final hearing under Legal Representation will not be granted unless the prospects of success and the cost benefit criteria at Funding Code 11.12.5 and 6 are met. ■

Review of Civil Contracting: Consultation Paper

The deadline for responses to the Commission's proposals for the review of contracting expired on 31 May 2000. A report on the second quarter review including the final version of the contract amendments and the summary of consultation responses will be sent out to all contracted suppliers. Copies of the consultation paper are available on the LSC website at www.legalservices.gov.uk. ■

Advocacy Graduated Fee Scheme for Family Cases

The Lord Chancellor is proposing to introduce a new payment scheme for barrister advocates who undertake family work later this year.

Discussions between the Lord Chancellor's Department, the Law Society and the Bar Council on the structure of the scheme, the rates to be applied and implementation issues remains ongoing.

A brief outline of the proposals, as they currently stand, is set out below:

Family work is to be divided into four categories: domestic violence injunctions; public law children; private law children and all other family work. Whilst family certificated work may contain a number of proceedings, and therefore a mix of categories, counsel will be asked to choose one category when applying for payment.

The scheme will not apply to appeals to the Divisional Court, Court of Appeal or House of Lords, or cases where the final trial or hearing exceeds 10 days, which will continue to operate under the existing payment arrangements.

Under the scheme, counsel will be able to claim a base fee for defined pieces of work ("a function fee") – see below. Special payments can be claimed linked to these function fees if certain criteria are satisfied. Incidental expenses will also be paid for hotel and travel expenses where justified, and for the consideration of video or audio tapes.

There will be five function fees for the following work:

- F.1 pre issue work
- F.2 injunctive, declaratory or enforcement work
- F.3 interim or review hearings
- F.4 the main conference
- F.5 final trial or hearing

The base fees for each function will include all related advice, any conferences, drafting or other work performed as well as advocacy (where relevant).

F1 and F4 will only be paid once during the case. There may be more than one F2 and F3 payments. F5 will only be paid once per proceeding and the scheme builds in provision for split hearings.

To provide an incentive to settle, a settlement bonus may be paid where the case has settled at any time before the second day of the final trial or hearing.

Irrespective of the number of functions performed, there will be two fixed payment points at which counsel can request payment from the Commission. Where however counsel is without instructions for more than three months an application for payment to cover the work done to date can be made. The payments made are not payments on account but final payments and should be treated as such for VAT accounting purposes.

Solicitors will need to be familiar with the fee scheme as they will be

required to verify the work done and report to their client on the running costs of the case, which will include counsels' fees under the scheme. Solicitors will also continue to be responsible for the monitoring of the costs limitation which will be inclusive of the fees due to counsel under the new scheme.

Several steps need to be taken before the scheme can be implemented. Draft regulations will be issued for consultation by the Lord Chancellor's Department, following which the Commission will issue guidance on the implementation of the scheme. New claims forms will also be drafted by the Commission together with forms for solicitors to complete to verify work done by counsel. If you wish to take part in the Lord Chancellor's consultation process on the regulations please contact Helen Bateman at the Lord Chancellor's Department, Selborne House, 54-60 Victoria Street, London SW1E 6QW by telephone on 020 7210 8763 or by e-mail at HBATEMAN@lcdhq.gsi.gov.uk. If you wish to be consulted on the Commission's draft guidance or forms please contact Sarah Green on 020 7759 0000 or by e-mail at Sarah.Green@legalservices.gov.uk.

For further information on the scheme you should contact your professional body. Further updates will be published on the scheme as it progresses, both in *Focus* and on the LSC website at www.legalservices.gov.uk.

Prior Authorities – Family Cases – Guidance

The June update to the LSC Manual will contain guidance on prior authorities in Volume 1.

This will largely reflect the guidance previously given by the Legal Aid Board and contained in the Legal Aid Handbook 1998/99. However, specific guidance is given on those cases where the leave of the court is required for the child to be examined or assessed and on the relevance of section 38(6) directions in Children Act public law proceedings.

The guidance is reproduced below:

In Children Act proceedings where the court makes or could reasonably be

expected to make an interim care order or interim supervision order (in response to an application or otherwise) prior authority for an assessment of the child within section 38(6) Children Act 1989 (including a residential assessment of the child and others) will generally be refused. This is because it is generally reasonable to expect the costs of such an assessment to be borne fully by the local authority involved in the proceedings as part of the care plan and where the court declines to make a section 38(6) direction it would not be reasonable for the costs of the assessment to be borne under a certificate of representation. Representation on an application for a section 38(6) direction

does not require a specific amendment to a certificate covering the proceedings.

In Children Act cases where the leave of the court is required for the child to be medically or psychiatrically examined or otherwise assessed, then prior authority for an expert's fees may be applied for but authority will not be given until that leave has been obtained. When applying for prior authority the solicitor should indicate that leave has been obtained and give full details of the expenditure sought, including information as to joint instruction and apportionment between the parties (to avoid any delay arising from the application for authority being refused). ■

Law Costs Draftsmen's Fees

The Civil Legal Aid (General) (Amendment) Regulations 2000 contain a new Regulation 119(3). An identical provision is contained in Regulation 40(4) of the Community Legal Services (Financial) Regulations 2000. Both of these regulations were set out in full in *Focus 29*. The regulations clarify the relationship between law costs draftsmen's fees and the statutory charge.

The costs of drawing up a bill of costs is not part of the costs of detailed assessment proceedings as the costs are incurred before the commencement of those proceedings. Consequently law costs draftsmen's fees are **not** part of the exemption, relating to the costs of detailed assessment proceedings, when calculating the statutory charge.

It is important that the client is aware of the costs of drawing up the bill of costs and that these costs are added to the statutory charge amount. The Commission's current internal guidance on the amounts to be allowed for law costs draftsmen in cases where the Commission assesses the costs due was set out in *Focus 28*. ■

Family Proceedings: Help at Court under the General Civil Contract

The Commission is currently consulting on proposals to amend the General Civil Contract to provide further guidance on the provision of Help at Court in family cases, with particular reference to acting for respondents in domestic violence injunction applications or committal applications. Pending the outcome of consultation, practitioners may apply the following guidance in place of the current guidance set out at F4.3 in section 7 of the Family Guidance in the General Civil Contract (Solicitors) Specification:

Help at Court – Proceedings

1. Help at Court is dealt with in detail at section 4 of the General Civil Contract Specification. It is available in family cases and will be particularly appropriate for those

cases where a hearing relates to enforcement of an existing order, and it would be appropriate to represent the client by way of mitigation (for example, enforcement of maintenance arrears in the county court).

2. Help at Court should not be used to make domestic violence injunction applications or committal applications, as an application for Legal Representation would be more appropriate in those circumstances.

3. However where the client is the respondent to a domestic violence injunction application or committal application, Help at Court may be provided to contest applications

where there is sufficient benefit to the client (which includes prospects of success) but the issues or allegations are not serious enough to justify the grant of Legal Representation. It may also be used where the client may substantially admit the allegations but mitigation is required (provided the client has no defence which would justify an application for Legal Representation). In either case, Help at Court should only be provided if attendance at the hearing is an appropriate and cost effective step, as compared to restricting help to advising the client and writing a letter to the other side or to the court. The latter approach is more appropriate where the matter is likely to be dealt with by consent. ■

Serious Fraud Panel

The Serious Fraud Panel was formally established by the Legal Services Commission on 23 May 2000 in order to control the defence costs of very high cost fraud cases (VHCC frauds). These include all cases with defence costs totalling in excess of £150,000 or with an expected trial length of over 25 days' duration. All solicitors' firms across England and Wales which have the experience and expertise in dealing with complex and expensive frauds are invited to apply. Whilst there is no necessity to apply for a place on the Panel, all firms should be aware that from April 2001, only firms on the Panel will be able to run VHCC fraud cases.

In order to apply to join the Panel, firms should complete both a Firm Application and a Supervisor Application, available from the Criminal Defence Service of the Legal Services Commission. Firms will need to demonstrate substantial involvement in VHCC fraud cases over the past five years and should identify a Supervisor with experience of supervising at least three VHCC frauds over the same period. The full criteria required to be met can be found in the application packs available.

There is no deadline for applications to join the Panel. The following firms have already successfully met the requirements:

AMS Law	Glaisyers Solicitors	Offenbach & Co
Attridge Solicitors	Graham Dobson & Co	O'Keefe Solicitors
Barker Gillette	Gupta & Partners	Olliers
Bassra Solicitors	Hallinan Blackburn Gittings & Nott	Ormerods
Bechelet Bivona Ltd	Henry & Co	Pannone & Partners
Betesh Fox & Co	Hickman & Rose	Paul Ross & Co
Bindman & Partners	Hodkinsons	Pearson Fielding Partnership
Bishop & Light	Howes Percival	Peters & Peters
Bobbetts Mackan	Iliffes Booth Bennett	Quinn Melville
Breeze Benton	Irwin Mitchell	Ralph Haeems & Co
Burton Copeland	Janes Solicitors	Reynolds Dawson
Canter Levin & Berg	Kaim Todner	Russell Jones & Walker
Carvers	Kingsley Napley	Saunders & Co
Chadwyck-Healey & Co	Lewis Nedas & Co	Simons Muirhead & Burton
David Charnley & Co	Longrigg Harris	Stephen Fidler & Co
David Phillips & Partners	Mackesys	Stokoe Partnership
Douglas & Partners	Magrath & Co	Titmuss Sainer Dechert
Duthie Hart & Duthie	Maidments	Tranters
Edward Fail Bradshaw & Waterson	McCormacks	TV Edwards
Farleys	McCormicks	Twichen Musters & Kelly
Foinette Quinn	MJP Solicitors	Walker Morris
Forbes	Moss & Co	Whitelock & Storr
Freeman & Co	Nelsons	Wilson & Co
Garstangs		

This list of Panel members is continually expanded and an up to date list will be found on the Legal Services Commission website. Alternatively, copies of the list may be obtained from the Criminal Defence Service.

Firms who wish to apply to join the Serious Fraud Panel should contact Kirsten Alderson or Nigel Field on 020 7759 0454 / 0451 to request an application pack. Alternatively, firms may write to them at: VHCC Contract Managers, Criminal Defence Service, Legal Services Commission, 85 Gray's Inn Road, London WC1X 8TX.

VAT and Certificated Work – Some Problem Areas

This note is a guide to VAT where services are supplied under a legal aid or funding certificate. There has however been a change in approach towards the charging of VAT on legal services since the introduction of the Practice Direction to Part 43 of the Civil Procedure Rules. The change relates to whom the supply is made. This note is to assist practitioners in deciding whether to charge VAT on their claim for costs in particular areas of difficulty.

Para 3.13 of that Practice Direction states:

“VAT will be payable in respect of every supply made pursuant to a Legal Aid Certificate provided only that the person making the supply is a taxable person and that the assisted person is not resident outside of the European Union. Where the assisted person is registered for VAT and the legal services paid for by the Legal Aid Board are in connection with the assisted person’s business the VAT on those services will be payable by the Legal Aid Board only”

Generally

VAT is chargeable on any supply of goods and services in the United Kingdom where it is a taxable supply by a taxable person in the course or furtherance of business.

VAT should be charged on all services supplied in the United Kingdom except where the supplier is not liable for VAT registration. The Practice Direction should be read in an identical way for costs relating to funding certificates under the Access to Justice Act 1999.

Overseas clients

Where the client is resident outside of the UK the supply is not zero rated but deemed to be supplied in the client’s country of residence. Where services are supplied to a client in their personal capacity they belong where they have their usual place of residence (where they actually live irrespective of homes in other countries, where their family is or where their job is: Tribunal decision in USAA Ltd Lon/92/19504). Where an individual or business receives services for business purposes they are treated as belonging where they have their only

business or fixed establishment and, if one does not exist, their usual place of residence.

The exception to this rule, when VAT is always chargeable, is where the supply is in relation to land within the UK. Examples of when VAT will be charged, irrespective of the client’s place of residence, will be possession proceedings, other landlord and tenant cases or cases involving declaration of ownership of land. This would not include services relating to the administration of a deceased’s estate or where the services relating to the land are incidental to a larger transaction.

Where solicitors represent a client who is overseas (subject to the exception above), VAT should not be charged on the bill of costs for any period the client is not resident in the UK. If the client changed their residence during the case the bill of costs should be apportioned appropriately and VAT added, e.g.

Mrs X started divorce proceedings in England against Mr X in August 1994. At that time she was living in England but due to harassment from Mr X she left to live in America, temporarily, in December 1995. Shortly after arriving there she met someone. They got married in February 1996 when her residence became permanent. The litigation settled in June 1997. When the bill of costs was prepared, the period August 1994 to December 1995 was calculated with VAT and the latter period without, thus showing the relevant periods when Mrs X resided in the UK and America respectively. It should be noted that usual place of residence does not have to mean permanent residence although length of stay is a factor.

Business clients

Where services supplied relate directly to the client’s business the VAT element can be treated as output tax and offset against any input tax paid by the client. This becomes particularly important when a funded client is successful and the losing party is responsible for the payment of all or part of the client’s legal fees.

In such cases, the losing party will only be due to pay the net costs because of

the client’s ability to offset the VAT payment. Consequently, solicitors should charge VAT but accept payment for the net value of the legal services. Section 15(6) and Regulation 64 of the Legal Aid Act 1988 ensure that the Commission is obliged to pay the unrecovered VAT element. This sum will form part of the deficit to the fund where the statutory charge applies. Solicitors should explain what VAT payments are due from the Commission when claiming payment. The client can obtain a credit from HM Customs & Excise by receiving from the solicitor an invoice for the legal services rendered clearly marked as payable by the opponent or Commission as applicable.

Paragraph (h) of Schedule 2 to the Access to Justice Act 1999 excludes funding for cases that arise in the course of business and therefore business related VAT issues should only affect 1988 Act cases.

Disbursements

Where a solicitor’s legal service to his client attracts VAT then he/she must charge VAT where payment to third parties has been made as an integral part of the supply of services.

There is a difference between expenditure that can be charged as a disbursement for VAT purposes and those which are included as part of the solicitors own supply, normally expenses incurred in performing the legal service. This will obviously include taxi fares, petrol, rail tickets and parking charges. These items will be treated as part of the supply and will attract VAT even where the original payment did not. Where the client has difficulty understanding English the performance of the legal service will include transcription or interpreting services as a fundamental part of the supply.

Note: Solicitors are fully responsible for ensuring they are familiar with the relevant provisions of VAT law and how this applies to legal services. Law Society publications have a simple guide to VAT law. If in doubt on any VAT issue and how it applies in a particular case, solicitors should obtain a ruling from H M Customs & Excise. ■

Costs Assessment Issues

The Civil Legal Aid (General) (Amendment) Regulations 2000 combined a number of changes, (see *Focus 29* pages 55 to 57) which include:

- (i) terminology changes consequential to the Civil Procedural Rules;
- (ii) simplification of the procedure for appeals against detailed assessment;
- (iii) amending Regulation 105 to provide time limits for submitting costs claims for assessment to the Commission and imposing a sanction for late submission;
- (iv) amending Regulation 104 so that all civil cases in the magistrates' court (whether or not within the definition of family proceedings) are remunerated under the Legal Aid in Family Proceedings (Remuneration) Regulations 1991 as if it was family work.

The Commission's guidance on detailed assessment by the court and the submission of late claims has been the subject of a consultation exercise. The finalised guidance is set out in full below and will appear in Update 1 of the Legal Services Commission Manual at Part D:3 of volume 1. Solicitors should particularly note the guidance on the late submission of costs claims which will be implemented on 31 July 2000:

A: Detailed assessment by the court

“3.34 Generally:

1. Costs that fall to be determined by way of detailed assessment through the courts will need to comply with the provisions of Part 47 of the Civil Procedure Rules (CPR).

3.35 Time Limits:

1. CPR 47.17(2) sets a three month time limit, from the date on which the right to detailed assessment arose, for the commencement of detailed assessment proceedings. CPR 47.14 also introduces a time limit for requesting a detailed

assessment hearing.

2. CPR 47.8 contains sanctions for delay in the commencement of detailed assessment proceedings. A paying party is entitled to apply to the court for an order that the receiving party commences the detailed assessment procedure. The court may direct that unless the proceedings are commenced within a specified period then all or part of the defaulting party's costs may be disallowed. Where the receiving party commences proceedings late, but no application has been made by the paying party, the court may disallow interest on costs for the relevant period. In legally aided cases CPR 47.8 applies as if the Commission is the paying party.
3. Where delay is brought to the Commission's attention the regional office will make applications to the court under CPR 47.8. This provision is to enable counsel to be paid his/her fees for the client's case to be balanced and monies released where the solicitor has failed to commence detailed assessment proceedings promptly. Counsel is not entitled to commence detailed assessment proceedings in his/her own right. Regional offices will, once notified, write first to the defaulting firm warning of a CPR 47.8 application. If the detailed assessment is not then commenced within the time frame given, the Commission will make the application and the solicitor's costs may be put at risk.

Appealing from Assessment of Costs:

3.36 Recent changes to Procedure:

1. Until 18 March 2000, anyone

wishing to:

- (a) carry in objections to the taxation of their costs in a pre-CPR case;
- (b) apply for review of a pre-CPR taxation; or
- (c) appeal against the assessment of their costs under the CPR.

in a legal aid case needed authority from the Legal Aid Board under either Regulation 113 or 114 Civil Legal Aid (General) Regulations 1989.

2. Regulation 16 Civil Legal Aid (General) (Amendment) Regulations 2000 came into effect on 18 March 2000. It substitutes Regulations 113 to 118 with new provisions so that **solicitors no longer need the authority of the Board or the Commission at any level to take any of these steps** on behalf of themselves or counsel.
3. Part 52 of the CPR now deals with such appeals rather than Part 47. In all cases except those where:
 - (a) the bill was taxed before 26 April 1999; or
 - (b) the appeal is against a decision of an authorised court officer.

the solicitor needs **permission** under CPR 52.3 **to appeal against a detailed assessment**. If the court gives permission and the solicitor appeals, the solicitor must notify the Lord Chancellor in writing. This is to enable the Lord Chancellor to decide whether to appoint a solicitor to intervene in the proceedings under Regulation 122 Civil Legal Aid (General) Regulations 1989 as amended: Regulation 113(4) Civil Legal Aid (General) Regulations 1989 as amended. In a publicly funded case where the appeal

court has refused permission to appeal without a hearing, the Practice Direction to Part 52 states the solicitor should send a copy of the court's refusal reasons to the Commission.

4. The solicitor notifies the Lord Chancellor by writing to:
The Lord Chancellor's Department
Legal Aid Division
Selborne House
Victoria Street
London SW1E 6QB

with a copy of the request for permission to appeal and one copy of the bill of costs: Regulation 113(5) Civil Legal Aid (General) Regulations 1989 as amended. When the solicitor files notice of appeal with the court, they must submit a copy of the letter to the Lord Chancellor giving notice of the appeal: Regulation 113(6) Civil Legal Aid (General) Regulations 1989 as amended.

5. In the event that the Lord Chancellor appoints a solicitor to intervene, the procedure is set out in Regulation 112 Civil Legal Aid (General) Regulations 1989 as amended.

3.37 Costs of appealing against a detailed assessment:

1. Accompanying the removal of the requirement for authority, there is now **no presumption that the solicitor will recover their costs from the fund** where a solicitor appeals against the assessment of their costs under CPR Part 52. The costs will only be recoverable to the extent that the court hearing the appeal so orders: Regulation 113(2) Civil Legal Aid (General) Regulations 1989 as amended, extended to cases funded under the Access to Justice Act 1999 as well as those funded under the Legal Aid Act 1988 by Article 4 Community Legal Service (Funding) Order 2000.
2. A solicitor who wishes to appeal against the detailed assessment of their costs in a

funded case must therefore consider whether, having regard to factors such as:

- (a) the amount in issue;
- (b) the merits of their argument; and
- (c) any wider principle involved.

the appeal will succeed and the court will award costs against the fund, if not the opposing party.

3. The **client** is not a party to the proceedings. In reality any appeal will be brought by the solicitor and not the client in any event. Since there is now no presumption that the certificate covers the costs of the appeal, the client has no protection under either Section 17 Legal Aid Act 1988 or Section 11(1) Access to Justice Act 1999 in respect of their opponent's costs of the appeal. In the event that the client has a financial interest and has pursued the appeal, an order for costs could be made against the client. The Court, however, could order that the costs of the appeal are covered by the certificate (Regulation 113(2)).
4. The new rule on recovery of costs does **not** apply to **pre-CPR cases** where the solicitor's bill was taxed before 26 April 1999 rather than having been assessed in detail on or after that date. Regulation 113 Civil Legal Aid (General) Regulations 1989, as amended by the Civil Legal Aid (General) (Amendment) Regulations 2000, affects only "detailed assessment" proceedings. In a pre-CPR case the court's discretion on costs, not being affected by any provision specific to funded cases, is the same as it would be in a non-funded case.
5. If the court orders that the solicitor's and/or counsel's costs be paid out of the fund:
 - a) the client does not have to pay a contribution in

- b) the costs do not add to the statutory charge: Regulation 113(3) Civil Legal Aid (General) Regulations 1989 as amended.

B: Delay in submitting costs claims to the Commission:

Following consultation the Commission has finalised its guidance on how the time limits will be interpreted and what percentage deductions will be applied.

"3.38 Generally:

1. To reflect the fact that the courts now sanction those who delay in submitting bills of costs for detailed assessment, the Commission has been given power to sanction those who delay in submitting costs claims to the commission for assessment. This power is introduced by the amendments to Regulation 105 of the Civil Legal Aid (General) Regulations within the Civil Legal Aid (General) (Amendment) Regulations 2000. Whilst this regulation was effective from 18 March 2000 it will not be implemented until 31 July 2000.
2. The amended regulations provide as follows:
"105(3A) an application for an assessment under this regulations shall be made:
 - (a) *Where paragraph (2) applies within three months of the termination of the solicitor's retainer;*
 - (b) *Where paragraph (2A) or (3) applies:*
 - (i) *if the certificate is revoked or discharged, within three months of the termination of the solicitor's retainer;*
 - (ii) *otherwise, within the period specified by the CPR rule 47.7 for the commencement of detailed assessment proceedings if the costs fall to be determined by way of detailed assessment".*

REGULATION	TIME LIMIT APPLICABLE
Retainer determined before proceedings begun – costs must be assessed by LSC (Regulation 105(2)).	Within three months of determination of the solicitor's retainer.
Proceedings begun costs not more than £500 – costs must be assessed by LSC (Regulation 105(2A)) or	All other cases: If the certificate revoked or discharged within three months of the termination of the retainer. Otherwise, within the period CPR 47.7 would have specified.
Proceedings begun and costs not more than £1,000 – costs may be assessed by LSC (Regulation 105(3)(2)) or	
Special circumstances (Regulation 105(3)(c)) or	
Following direction/order for detailed assessment, recovery costs are incurred (Regulation 105(3)(d)).	

3. Termination of retainer:

(a) Generally:

Professional conduct rules require that the solicitor may terminate a retainer for good reason and upon reasonable notice. Examples of good reasons include where there is a serious breakdown in confidence or difficulty obtaining instructions. The retainer may also be determined by operation of law either by the client's or solicitor's bankruptcy or mental incapacity. Reasonable notice is not defined and left to the solicitor to exercise discretion in the individual case.

The Commission reasonably expects solicitors, when faced with a breakdown in confidence, possible breaches of practice rules, breaches of principles of conduct, or when without clear and prompt instructions, to write warning the client that if instructions are not

provided or the situation rectified within 14 days, the retainer will terminate.

(b) Revocation/discharge:

Regulation 4 of Community Legal Service (Costs) Regulations 2000 determines that where funding is withdrawn by revocation or discharge the solicitor's retainer determines immediately, subject only to the solicitor complying with any procedures requiring the service of notice and/or any appeal against the decision to withdraw funding being concluded (Funding Code Practice C.58).

This replicates the position for cases under the 1988 Act: see Regulations 82 and 83 of the Civil Legal Aid (General) Regulations 1989, save that the 2000 regulations use the term immediately rather than forthwith.

(c) The Commission's approach: When calculating the period

for cases where the certificate has been revoked or discharged, the Commission will calculate three months either from the date of discharge/revocation or from the date of the Funding Review Committee's decision to dismiss any appeal.

In cases where the solicitor has terminated the retainer, the Commission will calculate the three month period from the expiry of the 14 day warning period, unless the solicitor can provide information showing that the retainer determined on a later date with an explanation for the same.

(d) All other cases:

Where regulations 105(2A) or (3) apply and the certificate has not been either revoked or discharged, the three month period runs as if CPR 47.7 applies.

CPR 47.7 provides the following:

SOURCE OF RIGHT TO DETAILED ASSESSMENT	TIME BY WHICH DETAILED ASSESSMENT PROCEEDINGS MUST BE COMMENCED
Judgement, direction, order, award or other determination.	Three months after the date of the judgement etc but where detailed assessment is stayed pending an appeal, three months after the date of the Order lifting the stay.
Discontinuance under Part 38.	Three months after the date of service of notice of discontinuance under rule 38.3 or three months after the date of the dismissal of any application to set the notice of discontinuance aside under rule 38.4.
Acceptance of an offer to settle or a payment into court under Part 36.	Three months after the date when the right to the costs arose.

3.39 How the Commission will apply the time limits:

1. Regulation 105 of the Civil Legal Aid (General) Regulations 1989 has been amended by the insertion of new sub paragraphs (9) - (11) as set out below:

“(9) Subject to paragraph (10), the time limit in paragraph (3A) may, for good reason, be extended by the Regional Director.

(10) Where a solicitor or counsel without good reason has failed (or, if an extension were not granted, would fail) to comply with the time limit in paragraph (3A), the Regional Director may, in exceptional circumstances, extend the time limit and shall consider whether it is reasonable in the circumstances to reduce the costs: provided that costs shall not be reduced unless the solicitor or counsel has been allowed a reasonable opportunity to show cause in writing why the costs should not be reduced.

(11) A solicitor or counsel may appeal to the area costs

committee against a decision made by the Area Director under paragraph (9) or (10) and such an appeal shall be commenced within 21 days of the decision by giving notice in writing to the Area (Costs) Committee specifying the grounds of appeal”.

2. This new power permits the Commission to reduce costs as a sanction against late submission of the claim. The power is identical to that already in existence in relation to criminal and PACE bills.
3. The Commission’s guidance on the reduction as set out below has been subject to consultation and will be implemented for costs claims **received on or after 31 July 2000.**

Guidance

4. There are now strict limits for the submission of civil bills. The legal provisions are set out in Regulation 105 (as amended) of the Civil Legal Aid (General) Regulations 1989.
5. Although claims may be submitted out of time, a fair

balance has to be achieved between the interests of the Community Legal Service in securing prompt submission of bills and those of the profession in not being deprived, merely due to late submission, of costs for work properly carried out.

6. It will, however, generally be reasonable to expect solicitors to be aware of and to comply with the time limits, particularly as time limits already apply to the submission of bills for detailed assessment and in relation to other types of costs claims. Firms will wish to obtain payment as soon as possible and should have access to appropriate support systems to monitor their cashflow.
7. The three month time limit for the submission of claims may be extended for “good reason”. A common example may be where linked or related actions are awaiting final disposal or where the court has delayed in sending the final order. What constitutes “good reason” is a question of fact in every case, although regard can be had to the particular firm’s history of

- late claims, particularly where the “good reason” put forward relates to the firm’s own conduct.
8. To avoid difficulties on assessment, the solicitor should apply to the regional office for an extension to the time limit **before** it expires. However, the regional office may still extend the time limit, on receipt of costs claim after the three month period, provided the solicitor can show “good reason”. Where “good reason” has been shown, the solicitor’s costs should not be reduced only because of late submission.
 9. Where the solicitor is unable to show “good reason”, the regional office must then go on to consider whether there are “exceptional circumstances”, which would justify extending the time in the particular case. Each case will be judged on its own merits, although regard can be had to the particular firm’s history of late claims.
 10. Where the regional office decides that there were “exceptional circumstances” it must then go on to consider whether to impose a penalty for late submission. Deductions will be imposed to a maximum of:
 - ▶ 5 per cent for bills submitted up to three months out of time;
 - ▶ 10 per cent for bills submitted up to six months out of time;
 - ▶ 15 per cent for bills submitted up to nine months
- out of time.
11. Generally, it should be possible for late claims to be submitted within twelve months of the conclusion of the matter (i.e. up to nine months out of time) but there may be truly exceptional circumstances where the claim is submitted so late that higher deductions may be warranted.
 12. Where a solicitor has failed to show either “good reason” or “exceptional circumstances”, his claim for costs will be disallowed in full. He may then appeal to the Costs Committee.
 13. Deductions are calculated on the total of the solicitor’s profit costs. The deductions will be made from the solicitor unless counsel has been responsible for the delay. Counsel’s fees are preserved provided he/she has not caused or contributed to the delay.
 14. Where costs are disallowed in full the solicitor is still bound to discharge both counsel’s and (any) experts fees. It is the Commission’s view that payment in these circumstances would not breach Regulation 64 of the Civil Legal Aid (General) Regulations 1989.
 15. Many queries over apparent non-payment of claims which are raised with the regional offices may arise from cases where payment has in fact been made but solicitors have not posted the payment. It is reasonable to expect solicitors to monitor the receipt of payments on a regular basis
- and therefore to be in a position to raise such queries promptly after having posted payments and checked remittance advices. Except in a small minority of cases, civil bills are paid by the Commission within a maximum of four to six weeks of receipt of the claim for costs. The solicitor should therefore only make an enquiry of the regional office if payment is not received within two months of submission of the claim.
16. Before raising a query with the relevant regional office the solicitor should specifically check for payment and, if an enquiry of the regional office is appropriate, should confirm that all remittance advices since the submission of the original claim have been checked for the appropriate payment and a copy of the claim previously submitted together with any proof of receipt should be forwarded to the regional office. The process of the solicitor checking for payment and the inclusion of a copy of the claim (and any supporting documents available) will reduce unnecessary queries and assist the regional offices in dealing with such queries as are received. Where the solicitor cannot provide proof of receipt of the claim by the regional office, the matter may be treated as a late claim (see above).
- For further information please contact Ruth Symons of the Commission’s Policy & Legal Department on 020 7759 0000

Proposed Payment Dates

The proposed payment dates for July 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 into 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 July – December 2000

General Civil Contracting Payment	First Settlement of the Month	Second Settlement of the Month
Wednesday, 5 July 2000	Tuesday, 11 July 2000	Tuesday, 25 July 2000
Thursday, 3 August 2000	Wednesday, 9 August 2000	Thursday, 24 August 2000
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.

Focus is distributed using the names and addresses of all LSC account holders, details of which are held on our Master Index database. If you have not received a copy of *Focus* it may be because you have not alerted the Master Index Section to changes to your name, address or DX. Please make sure you send any relevant changes to them at 85 Gray's Inn Road, London, WC1X 8TX or fax them to 020 7759 0525. Please quote your LSC account number.

It is important that *Focus* is seen by everyone in your firm who is involved in LSC work. To help you circulate *Focus*, you may make as many photocopies as you need.

Focus is produced by the Legal Services Commission's Press Office, 85 Gray's Inn Road, London WC1X 8TX. DX 450 London.

Please contact
Lucy Dodsworth

020 7759 0492 or

lucy.dodsworth@legalservices.gov.uk