

FOCUS

March 2001

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Legal Services Commission: One Year On

It is now 12 months since the Legal Services Commission was established as a successor body to the Legal Aid Board. Over that 12 months we have seen the launch and development of the Community Legal Service and we are about to see the introduction of the Criminal Defence Service.

Some major developments have taken place over this time. In the Community Legal Service, the number of Partnerships has grown rapidly and many are now on the point of finalising their strategic plans. These will inform funding decisions to be made not only by the Legal Services Commission but local authorities and others. We have seen a significant expansion in methods of delivery with more second tier contracts about to be let and we are in the middle of a process that will let contracts for telephone advice across many parts of England and Wales where access to face to face services is difficult. The Special Cases Unit is now fully operational and deals with all cases where the cost is likely to exceed £25,000.

We can look forward to significant increases in eligibility for Legal Help in October and, ultimately, the alignment of eligibility levels between Legal Help and Representation.

In crime, we were, at the last moment, able to reach agreement with the Law Society and the Negotiating Group on the implementation of the CDS contract. As part of this agreement we are setting up a body which will review the practical impact

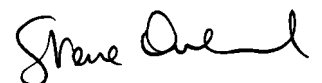
of the contract on defence services.

We have launched the Public Defender Service which will come into being in four locations in May and will be extended to six locations later in the year.

Generally, we have seen the growth of electronic data interchange between practitioners and ourselves and, of course, we have seen the first increases in remuneration for many years. The Commission has also agreed to set up a small group which will monitor spending across the whole of legal aid in the context of anticipated spend as set out in our Corporate Plan. This is a significant development as it will assist the Law Society and others in formulating any future case for further remuneration increases.

By the end of the coming year I expect us to have taken decisions on how we will take over determinations from the Crown Court and further costs assessment from County Court. Ideally I would like to see all of these within the Commission's area of responsibility from 1 April 2002 but, clearly, an effective transfer can take place only if we are satisfied we have the resources and the experience to make a good job of it.

It has been a turbulent year but I suggest the future looks brighter than it has for some time.



Steve Orchard CBE
LSC Chief Executive

E-Business Update

SPOCC (System for the Payment of Criminal Contracts) Online

The e-business version of the imminent SPOCC criminal contracting system will go into a pilot phase on 1 July 2001. This will last for up to 3 months, and involves around 12 suppliers. A full launch of the system is expected in late autumn.

The new system will also provide improved access to the SPAN e-business service, which now has close to 200 suppliers registered to use the system.

Benefits again include the guaranteed monthly payment once the reports have been submitted through the system. More financial and management reports will also be available.

SPAN EDI Registration: On-Line Only

Please note that the paper registration forms for SPAN EDI (printed in *Focus* 32, page 9) are no longer valid.

If you would like to register for the service, please go direct to the website at: www.legalservices.gov.uk/ebusiness then select the **Register** option, and have your Account and Contract numbers to hand.

For more information on our e-business services, please contact the Business Support Unit on 020 7759 1110 or 020 7759 1113.

Second Tier Support for Criminal Practitioners

As part of the Methods of Delivery (MOD) Pilot, Liberty provide specialist support and advice to General Civil Contract holders in the area of human rights.

Community Legal Service - Financial Conditions for Funding by the LSC

The Lord Chancellor's Department (LCD) has published a paper setting out the government's conclusions following consultation on changes to the financial conditions for CLS. It has also published a further consultation paper on revised eligibility limits. Under the revised proposals an estimated five million more people in England and Wales will qualify for free legal advice. The proposals are intended to be effective from 1 October 2001. Key changes include:

- Increase in eligibility limits for income for most levels of service, to a level of 75% of the difference between the current eligibility limits for Legal Representation and Legal Help. At a later date, the Government proposes to increase eligibility limits for these services further, bringing them to the same level as those for Legal Representation, which will mean a further two million people becoming eligible.
- A contributory scheme for Legal Help will not be introduced.
- Increase in the capital limit for Legal Help and Help at Court to £3,000.
- Increase in the exemption from the statutory charge to £3,000 in matrimonial cases.
- Increase in the capital limit of £8,000 for all other levels of service, aligned with Income Support levels.
- Simplification of the means test, including the introduction of a gross income cap and revised allowances counted against income to calculate disposable income.

- Relaxation of the test for recovering costs from the CLS Fund by a non-funded opponent from "severe financial hardship" to "financial hardship". This will apply to individuals but not to businesses or corporate bodies.
- Proposals to seek contributions from anyone with equity in their property of more than £3000 will not be introduced.

The simplified means test will apply to all levels of service. Contracted suppliers will be required to apply the test in Legal Help, Help at Court and Controlled Legal Representation cases. The LSC will issue revised means forms, guidance and training materials for the profession once the means test has been finalised. Training will also be offered to the profession by regional offices.

Copies of both papers are available at the LCD website www.open.gov.uk/lcd or can be obtained by telephoning Helen Johns at LCD on 020 7210 8788 or e-mail at hjohns@lcdhq.gsi.gov.uk. The closing date for responses to the consultation paper on eligibility limits is 1 May 2001.

The Legal Services Research Centre has also published a research paper "Means Assessment: Options for Change" which is available via the LSC website and the LSRC website www.lsrc.org.uk or by telephoning Seeq Nong at LSC Head Office on 020 7759 0495.

See also new civil eligibility limits from April 2001 (pages 15-16)

The LSC is extending Liberty's second tier contract to enable criminal franchisees or contractors to access the service, and receive advice and assistance in connection with human rights issues in criminal proceedings.

For advice to civil and criminal contract holders and franchisees on all aspects of human rights, call Liberty's advice line on 0808 808 4546. The line is open as follows:

Monday and Wednesday 2.00 pm to 5.00 pm

Tuesday and Thursday 10.00 am to 1.00 pm

This advice is free under the Methods of Delivery Pilot.

For further information on this, or the MOD Pilot in general, please contact Seema Sharma, CLS Policy Team, in the first instance on 020 7759 0456.

The Public Defender Service

The White Paper 'Modernising Justice' enabled the Criminal Defence Service (CDS) to employ lawyers directly as salaried defenders in addition to contracting with those in private practice. A consultation paper was issued in June 2000 proposing the development of a salaried defender service and a summary of the responses will be available on the LCD and LSC websites by the end of March. After careful study of the responses and the information from public defender systems in other jurisdictions, the Commission is now ready to introduce the service in England and Wales.

The service will begin in May 2001 and independent researchers will compare the services of privately contracted criminal lawyers and those of the directly employed lawyers. The new service will be called the Public Defender Service, a term chosen as it reflects the work of the service and is already understood by the general public. The Public Defender Service will offer the full range of criminal services from the police station through to the Crown Court. Individuals will be able to choose the services of a public defender or a lawyer in private practice. There is no requirement to use the Public Defender Service and individuals requiring services will be free to choose between a Public Defender and a contracted private practice firm.

It is believed that a mixed provision of public and private services will produce better value for money as the two will complement one another.

There will be six offices opened in the first phase and the Commission plans to open at least three sites in May. On 13 March at the launch event, the Lord Chancellor introduced the people who have been appointed as heads of the



← Newly appointed Public Defender Service Heads: Richard Whitehead, Lee Preston, Romano Ferrari and Nick Darwin.

offices in Liverpool, Middlesbrough, Swansea and Birmingham. They are:

Richard Whitehead - Liverpool Public Defender Office

Richard Whitehead is a 40 year old, teetotal football fan. He completed his Law Society finals at the College of Law, Guildford before returning to Liverpool where he has practised criminal law for the past 11 years, appearing in the majority of magistrates' courts in the North West. He was an equity partner for six years before becoming a consultant. He is married to a chartered accountant and has a four year old son.

Nick Darwin - Middlesbrough Public Defender Office

Nick Darwin is a 38 year old enthusiastic follower of Middlesbrough Football Club. He is married with a young son and specialised in criminal defence work at an early stage in his career with over 13 years experience as a Defence Advocate. He graduated from Sheffield University and is currently a partner of a firm of solicitors in York. In the past, he has served on Duty Solicitor and local court users' committees.

Romano Ferrari – Swansea Public Defender Office

Romano Ferrari is a partner in the

respected South Wales solicitors firm of Marchant Harries. He is a duty solicitor and a former member of the South Wales Regional Duty Solicitor Committee. As a member of the Test Board at the Centre for Professional Legal Studies at the Cardiff University Law School he is involved in the training of duty solicitors and accredited police station representatives.

Lee Preston - Birmingham Public Defender Office

Lee Preston has practised as a criminal solicitor for the last fifteen years in Birmingham, Kidderminster and Dudley, appearing in most of the magistrates' courts in the region as well as many further afield. He has law degrees from Wolverhampton and Akron University in the United States. He is 49 and married to a Birmingham barrister.

If you want any further information about the Public Defender Service, please contact Jill Saville at the Legal Services Commission, 85 Gray's Inn Road, London WC1X 8TX or by e mail at jill.saville@legalservices.gov.uk.

IAA Interpreters

The LSC has been asked by the Immigration Appellate Authority (IAA) to point out to our immigration contractors that IAA interpreters are not permitted to translate written documents, as they are not assessed on their written translation skills. It seems that IAA interpreters are being asked to translate written documents in court.

Any queries please contact Marie Burton on 020 7759 0000.

Guidance on Applying for Civil Certificates or Granting Emergency Certificates under Devolved Powers from 1 April 2001

From 1 April 2001, (subject to the transitional arrangements set out below) a civil certificate cannot be granted unless you are authorised to provide the relevant work by a contract with a Commission. This is a consequence of Article 3(1) of the Community Legal Service (Funding) Order 2000.

Unless we have agreed to an exceptional individual case contract, you will therefore need to hold a General Civil Contract authorising you to provide Licensed Work in the appropriate category.

Your Contract Schedule will confirm which categories are authorised, but the two basic principles of Licensed Work from 1 April 2001 are as follows:

- i) You can only carry out work in the Immigration, Personal Injury, Clinical Negligence or Family franchise categories (the 'exclusive categories') if you are a Franchisee or Provisional Franchisee in the category concerned. (Note – this rule repeats the restrictions already applying to the exclusive categories prior to April 2001).
- ii) Subject to the points made below, Licensed Work is authorised in all other civil categories or in the Residual List if you are a Franchisee or Provisional Franchisee in any civil franchise category (the Residual list is the list of civil matters not falling within any other franchise category).

There are however two points to note when work falls within more than one category:

- iii) Where civil franchise categories overlap – then the work can be performed in either category.
- iv) Where the overlap is with an exclusive category you will need to be a Franchisee or Provisional Franchisee in either the exclusive category or the other category concerned.

Thus:

- (a) Matters that fall within both the Public Law category and one of the exclusive categories can only be performed if you are a Franchisee or Provisional Franchisee in either Public Law or the other franchise category concerned. Therefore you can only bring a judicial review in an immigration matter if you are franchised or have passed a preliminary audit in either Public Law or Immigration.
- (b) Matters that fall within both the Actions Against the Police etc category and either the Personal Injury or Clinical Negligence category can only be performed if you are a Franchisee or Provisional Franchisee in either the Actions Against the Police etc category or the other category concerned.
- (v) Work within the Public Law franchise category that also falls within the Crime franchise category ("Associated CLS Work") will only be authorised if you are a Franchisee or Provisional Franchisee in the Public Law category or Crime category. Associated CLS Work comprises Investigative Help and Legal Representation in actual or proposed proceedings for judicial review (including under the Human Rights Act 1998) or habeas corpus, arising from any matter within the Crime category of Work (see Contract Specification Appendix C). Other than by this exception, work within the Crime category is not authorised as part of Licensed Work.

The above rules must also be applied when exercising your devolved power to grant certificates or making applications to change solicitor in relation to certificates granted after 1 April 2001.

Transitional Arrangements

The above rules (other than (i), which

came into effect from 1 April 2000) will not apply to any application to the Commission that has been signed on or before 31 March 2001 **and** is received by us by **17 April 2001**. The Commission will apply the new rules to any application received thereafter, whenever it is signed.

Where devolved powers are exercised to grant a certificate, the new rules will apply unless the grant itself was made on or before 31 March 2001 **and** the notification of grant was received by the Commission by **17 April 2001**. This does not affect the existing requirements to submit notifications within 5 working days and the Commission's power to refuse payment if notification is not received within that period.

Note:

Licensed Work comprises all certificated work. Broadly, this is:

- a) Legal Representation in any civil franchise category or the Residual List
- b) Approved Family Help and Support Funding.

Licensed Work does not include Controlled Legal Representation or Individual Case Contracts as defined in the Funding Code.

New LSC Leaflet Line

New versions of the LSC public information leaflets on CLS and CDS funding, along with new leaflets covering a range of legal topics will be available from the start of April from:

LSC Leaflet Line

St Ives Direct, Enterprise Way,
Edenbridge, Kent, TN8 6HF

Tel: 0845 3000 343

Fax: 01732 860 270

E-mail:

LSCLeafletline@direct.st-ives.co.uk

Further details will be contained in the next issue of *Focus*.

Clinical Negligence and ADR: Update

In *Focus 33* (page 6) we explained our proposal to encourage the wider use of non-family mediation and other forms of ADR, especially in the field of clinical negligence. We consulted on changes to our general ADR guidance, as well as specific proposals to be included in our clinical negligence guidance. This guidance asked practitioners and clients to consider the use of mediation or early neutral evaluation at certain key stages of a clinical negligence case and to report whether ADR had been pursued (and why) when applying to the regional office to extend a certificate. The regional office would reserve the right, if necessary, to limit a certificate to allow ADR to be pursued.

These consultations are now complete. Responses were almost all supportive of the principle that ADR has a useful role in resolving clinical negligence disputes. However a wider range of

different views were put forward as to how proactive the Commission should be in encouraging or requiring ADR to be considered. Mediation providers and a number of solicitors' firms strongly supported the proposed approach while other consultees, including AVMA, were strongly opposed. In light of all these responses we have decided to amend our guidance in a number of respects, in particular to clarify and expand on the circumstances in which mediation might not be appropriate in an individual case. For example we emphasise the need to demonstrate in each case whether ADR will be a cost effective step compared to negotiation or litigation. However we have decided to retain the broad approach proposed in the draft guidance but to keep this area under review. We will also be exploring with the NHS Litigation Authority and others a proposal to fund early neutral evaluation reports in a

sample of clinical negligence cases.

The finalised guidance will be placed on our website in Sections 7 and 18 of the Funding Code decision making guidance. It will be included in the next update of our Manual to be issued in May. The guidance will come into operation on 1 June 2001.

We strongly welcome further comments or feedback on how this approach is working in practice. Meanwhile we will continue to work closely with the Clinical Disputes Forum which is proposing to issue for consultation a guide to the use of mediation in clinical negligence disputes. At the end of this year we propose to issue a questionnaire to find out more about how the guidance is working in practice. For further information on these matters contact Colin Stutt at the Commission's Policy and Legal Department on 020 7759 0000.

New Tribunals Brought Within Scope

The Lord Chancellor is proposing to bring three new tribunals within the scope of public funding for the first time. These are the Protection of Children Act Tribunal, the VAT and Duties Tribunal and the General and Special Commissioners of Income Tax.

A direction has been issued for consultation which would allow Legal Help, Help at Court and Legal Representation to be provided for certain proceedings before these tribunals with effect from 2 April 2001. Funding may be provided even if the proceedings relate to the client's business. Any firm with a General Civil Contract will be authorised to carry out such work. Legal Representation will be licensed work but all applications for a certificate must be made to the Commission's Eastern Regional Office at 62-68 Hills Road, Cambridge CB2 1LA. All the normal rules for certificated work will apply, including financial eligibility and cost protection. It is likely that remuneration under the certificates will be at the same rates as apply to

Mental Health Review Tribunal representation. The rates decided upon after consultation will be reflected in amendments to the General Civil Contract Specification.

The Protection of Children Act Tribunal (PoCAT) is brought fully into scope by the direction. It is a new tribunal which came into operation in October 2000 under the Protection of Children Act 1999. Under that Act the Secretary of State maintains lists of people considered unsuitable to work as child care workers or teachers. A person placed on the list can appeal against the Secretary of State's decision to the tribunal. Applications to fund legal representation for PoCAT will be considered under the criteria in the General Funding Code (Section 5). Cases before the tribunal will often have overwhelming importance to the client, especially where the client's livelihood depends on the outcome. However applications for certificates will be refused if the prospects of a successful appeal to PoCAT are poor,

for example because the client has serious criminal convictions which clearly justify the Secretary of State's decision.

The VAT and Duties Tribunal and the General and Special Commissioners of Income Tax have wide jurisdictions but are only brought into the scope of CLS funding in the limited circumstances specified in the direction. These are:

- (i) the proceedings concern penalties that the courts have declared to be criminal in ECHR terms (or where the appellant reasonably seeks to argue that issue);
- (ii) it is in the interests of justice for the client to be legally represented.

This approach is in line with recent decisions of the VAT and Duties Tribunal that certain penalties should be regarded as criminal for the purposes of Article 6(3) of the Human Rights Convention. The Inland Revenue and Customs and Excise have certain statutory powers to impose substantial penalties on

taxpayers, beyond the assessed liability of a taxpayer, typically on the grounds that he or she has acted dishonestly in avoiding tax and duties. Once it is established that a particular hearing is criminal in nature as required by the direction, it will usually be in the interests of justice for a certificate to be granted provided the client is financially eligible under the normal rules.

Applications will be subject to the criteria in the General Funding Code although when applying prospects of success criteria we will give a wide meaning to what counts as a successful outcome for the client. Either avoiding or mitigating the penalty imposed may constitute a successful outcome in these circumstances. It is unlikely that the direction and

supporting guidance will be finalised in time for inclusion in the next update of our Manual but the direction and guidance will be placed on our website. For further information on funding for the new tribunals contact either Colin Stutt in the Policy and Legal Department on 020 7759 0000 or Simon Mason in the Cambridge Regional Office on 01223 417800.

CLSP Conference Held on Merseyside

On 12 February 2001 the Merseyside Legal Services Committee (MLSC) held a conference for members of Community Legal Service Partnership (CLSP) Steering Groups on Merseyside, with David Lock MP, Minister responsible for the CLS, as keynote speaker. Representatives from all 5 CLS Partnerships attended, including those from established CLSPs in Knowsley, Liverpool, Wirral and St Helens, as well as Sefton.

Juliet Herzog, Chair of MLSC, welcomed CLSP members to the conference and spoke about the developing relationships between the Regional Legal Services Committee and CLS Partnerships.

David Lock talked about how the work on Merseyside fits into the national picture and updated members on the latest policy developments affecting the CLS. He acknowledged the significance of the conference, noting that MLSC is one of the first to bring together all CLS Partnerships within its area and to explore issues affecting their future developments.

The morning session was rounded off by speakers from each CLS Partnership, outlining the approach they had each taken and highlighting significant issues and developments along the way to establishing a CLSP.

In the afternoon, a series of workshops gave the opportunity for more in-depth discussions on topics such as "A Co-ordinated Approach to Needs", "The CLS - a seamless service?" and

"Access and Equality issues".

Following the success of the first conference, MLSC hope to make this an annual event in future years.

Merseyside Legal Services Committee Vacancy

MLSC has a vacancy for a member with knowledge and experience of legal help in private practice. Members must work or reside in Merseyside, and the Committee would particularly welcome applications from areas outside of Liverpool.

Members will be expected to contribute at a strategic level to the development of accessible and quality assured legal services, working through and with the Community Legal Service Partnerships now established in each of the 5 local authority areas on Merseyside.

New members will be joining the Committee at a time of transition as the CLS comes into effect, with the role of the RLSCs evolving to meet new challenges.

You will be required to commit up to 24 days per year, for which you will be remunerated.

For more information, contact Alison Gibbon, Regional Planning & Partnership Manager, on 0151 242 5276 or e-mail alison.gibbon@legalservices.gov.uk.

To apply, please send covering letter



l-r Maureen Guy, St Helens MBC; John Mills, Regional Director, MLSC; Juliet Herzog, Chair, MLSC; David Lock, Parliamentary Secretary, Lord Chancellors Department; Paul Cummins, Knowsley MBC; Roger Pontefract, Sefton MBC

and CV marked 'MLSC Vacancy' to: Legal Services Commission, Merseyside Regional Office, 2nd Floor, Cavern Court, 8 Mathew Street, Liverpool L2 6RE, to arrive no later than 18 April 2001.

St Helens CLSP awarded £180,000 Invest To Save grant.

St Helens CLSP has been awarded an Invest To Save grant of £180,000 to develop IT resources to assist the partnership to deliver its objectives. The aim of this project is to pilot innovative methods of service delivery using electronic means that will ensure that the public and partnership organisations gain access to more effective, economic and higher quality services. The project will provide that all these organisations can use IT to facilitate communication, access to information databases, data collection, client referral, provision mapping and needs analysis and to explore increased public access to services through electronic information points/access points, websites and video conferencing. Having only just heard we have the money the next job is to come up with a detailed business plan. We will update all CLSPs on the progress of this venture.

Family Mediation - New Procedures for Mediation Assessment Meetings

Changes are proposed to the rules which prohibit certain clients from obtaining a certificate in family proceedings until they have first attended upon a family mediator to assess the suitability of the case for mediation. These are often referred to as the "Section 29" rules as they were introduced by Section 29 of the Family Law Act. However the current rules are contained in the Funding Code, in particular Section 7 of Part C of the Code Procedures.

The recently published research report "Monitoring Publicly Funded Family Mediation" confirmed the widely held view that the existing family mediation procedures are not always effective at directing clients to mediation at the right time and under the right circumstances. We have therefore been consulting on making significant changes to the relevant part of the Code Procedures. Subject to consultation the amendments and related guidance will come into effect on 2 April 2001. The proposed new text of the relevant part of the Code Procedures is set out on page 23 of this edition of *Focus*.

The most important change proposed is the introduction of an exemption from the procedures in cases where the mediator is satisfied that the other party to the dispute is unwilling to attempt mediation. Under the old rules each client had to attend an assessment meeting with the mediator (previously referred to as an "intake assessment") even if it was clear that the other party had no intention of participating in mediation. This led to many fruitless mediation assessments. The proposed system will allow the mediator first to make enquiries of the other party to see if they may be willing – if not the mediator can confirm that the case is unsuitable for mediation allowing the client to apply straight away for a certificate in the normal way.

Other proposed changes to the rules include the following:

- i) the scope of the procedures has

been slightly expanded in line with the wide definition of family proceedings under the Funding Code. The rules apply to most private law family proceedings other than emergency cases, domestic violence and proceedings under the Inheritance Act;

- ii) the domestic violence exemption has been re-drafted so that it is now called "domestic abuse". The exemption applies only where the domestic abuse is the causative reason for the client being unwilling to mediate;
- iii) the rule exempting grandparents and other extended family members from the mediation requirement has been deleted;
- iv) a mediator will be treated as not available to a client if it would take the client more than one and a half hours each way to reach the mediator (the previous guideline was two hours each way);
- v) an exemption applies where the client is a respondent and has a court date fixed within 8 weeks (the

previous time period specified was 3 months);

- vi) the procedures and guidance place more emphasis on mediation during a family certificate, rather than the assumption that mediation should always take place at the very outset. In appropriate cases the regional office may limit a certificate to prevent further work until a mediation assessment takes place. This is most likely to be considered where mediation is actively proposed by the court or the other party.

The consultation period on these changes ran to 23 March 2001. The procedures and guidance are now being finalised and will be published on the LSC website shortly, although it is unlikely that the changes will be included in the next update of the Manual. The operation of the family mediation rules will be kept under review and further changes will be made if necessary in due course. For further information on these procedures contact Eleanor Druker of the Family Law and Mediation Section on 020 7759 0000.

Family Graduated Fees: Update

The Lord Chancellor's Department (LCD) has published a paper summarising the responses received to the consultation papers issued by the LCD and the LSC and outlining the revised proposals for the structure of the scheme. The papers are available on the LSC website www.legalservices.gov.uk (News section).

The implementation date for the scheme will be 1 May 2001. This will be introduced by the Community Legal Service (Funding) (Counsel in Family Proceedings) Order 2001, which will be laid before Parliament in March. Two new forms, the CLSCLAIM5 (for completion by barristers claiming family graduated fees) and the CLSADMIN5 (for completion by solicitors only in cases where no hearing has taken place) will be issued in the April edition

of the forms masterpack. These forms must be completed in cases covered by the scheme where a funding certificate is issued on or after 1 May 2001.

- The LSC will publish briefing packs for solicitors and barristers in late March/early April which will contain:
 - a copy of the new regulation
 - amendments to the General Civil Contract
 - guidance
 - CLSCLAIM5 and CLSADMIN5

These will be sent direct to all solicitor's offices with a family contract and to all counsel's chambers which include family practitioners and will also be available on the LSC website. The guidance will be incorporated into the LSC Manual later this year.

Community Legal Service Directory incorporating the Criminal Defence Service

The Community Legal Service (CLS) Directory is now into its 3rd Edition. Split into 13 regional directories, the CLS Directory gives details of all legal advice and information providers within the Community Legal Service and incorporates the Criminal Defence Service. At present, to be included in the Directory, organisations need to have either been awarded a Quality Mark, have applied for a Quality Mark or provided a written commitment to actually apply for the Quality Mark by October 2001.

In future, further editions of the Directory will be limited to organisations that have actually been awarded a Quality Mark. Organisations who have committed to apply but who have not actually done so by October 2001 will not appear in future editions of the Directory. However organisations who are applying for the Telephone Helpline Quality Mark or the other Quality Marks which will be rolled out throughout 2001, will still be able to commit to apply for these

Quality Marks and be included in the Directory.

There have been changes to the 3rd Edition of the Directory as a result of the feedback we have received from users. The most substantial of those changes are:

- Mediation Services will be included in main Directory entries and not as a separate section.
- Assisted Information suppliers will be appearing in the 3rd Edition of the Directory for the first time.
- The information explaining whether people will be charged for services and information has been simplified.

To ensure that the information the Directory contains is as up to date as possible, questionnaires are sent out to all organisations appearing in the Directory. It is therefore essential that organisations return these questionnaires, making the necessary amendments. An erratum is sent out a month after the Directory is published

containing any corrections or amendments that appear after publication. The CLS website (www.justask.org.uk) and the CLS Call Centre (0845 608 1122), which both provide the same information as the Directory, are updated at least weekly. Both incorporate the Criminal Defence Service suppliers.

All organisations listed in the Directory received a free copy of the Regional Directory in which they appear. National Organisations receive a national set. Anyone else wanting to request a copy of the Directory can contact:

Resource Information Service
The Basement
38 Great Pulteney Street
London, W1F 3NU
Tel: 020 7494 2408
There is a £15.00 charge for each Directory ordered.

For further information please contact Nikki Duru on 020 7759 0381.

Quality Mark for Websites

The consultation period for the proposed Quality Mark standard for websites closed on 28 February. The responses received came from a wide range of organisations who provide legal information and advice through the medium of the internet. We will publish a report on the consultation responses in the near future and amend the standard in the light of the opinions received. The Quality Mark for Websites aims to ensure that web users can make informed choices about which sites to access and trust when seeking legal information or advice.

For further details please contact Clare Powell-Evans on 020 7759 0397.

Client Feedback Questionnaire: Update

The consultation period has now been completed and an overview of the responses received will be available on the LSC website at www.legalservices.gov.uk.

Following the consultation period, it is clear that it would be beneficial to conduct a pilot before launching the final questionnaire. The questionnaire will be piloted with 300 organisations at the specialist, general, and general with casework level. Following this consultation, the final version of the questionnaire will be produced in October 2001.

The new requirement 'AA' in LAFQAS

will be fully audited from April 2002. If an organisation has an audit between now and April 2002 the auditor will make observations on either any current client feedback processes that are in place already, or any planned processes, including whether or not the organisation will be adopting the LSC client feedback package.

If you require further information on the client feedback questionnaire, or are interested in being involved in the pilot, please contact Sarah Davidson at the Supplier Development Group on 020 7759 0394 or by e-mail to sarah.davidson@legalservices.gov.uk.

Specialist Quality Mark

The Specialist Quality Mark is currently being written to replace LAFQAS and nfp LAFQAS. Essentially, the new standard is a reformatting of LAFQAS, to incorporate it into the family of Quality Mark standards. These standards should cover all members of the Community Legal Service and Criminal Defence Service, and the ways in which their services are offered.

The Specialist Quality Mark will benefit organisations that are currently franchised, as it will show in a clear and comprehensive manner the minimum level of compliance that should be achieved to meet the requirements. We have also responded to past comments that organisations sometimes find it difficult to interpret LAFQAS and to differentiate between guidance and mandatory requirements.

Subject to consultation, there are likely to be some additional requirements that will be introduced, to ensure consistency with the other standards in the Quality Mark family and in response to research we have carried out on quality service provision. These additions will be highlighted in the Specialist Quality Mark and will come into effect 12 months after the publication of the final version (likely to be October 2002). Between the time that the standard is published and the new requirements becoming effective, auditors will record observations against these

requirements on audit to further highlight the new areas.

There will also be a number of current requirements that will be moved from LAFQAS into the General Civil or Criminal LSC contracts. These requirements relate only to cases that are funded by the LSC, and their removal extends the scope of the Specialist Quality Mark, making it available to organisations that do not have an LSC contract.

The Specialist Quality Mark consultation document is scheduled to be published in June 2001. A copy will be sent to all existing Quality Mark specialists (formerly franchisees) and it will be available on the LSC website at www.legalservices.gov.uk.

Half-day seminars will be run during the consultation period in every LSC region to introduce the Specialist Quality Mark and explain the new format and additional requirements, as well as to obtain feedback on the standard. We recommend someone from your organisation attends one of these seminars. Details of the dates, locations and booking arrangements will be published nearer the time.

For further information about the Specialist Quality Mark, contact the Supplier Development Group at the Legal Services Commission, 85 Gray's Inn Road, London WC1X 8TX or e-mail qualitymark@legalservices.gov.uk.

Family Transaction Criteria: Update

Ancillary Relief and Children Act booklets

Following a period of internal consultation, draft Transaction Criteria booklets for the above types of cases were placed on the LSC website at the beginning of March 2001 for general consultation. The consultation period will last until Friday 13 April 2001. It is anticipated that following the consultation period, the final versions of the booklets will be in use from mid-June 2001. Anyone wishing to participate in the consultation process may access the booklets on the LSC website, at www.legalservices.gov.uk

Copies of the consultation drafts are also available from Chris Chapman at the Supplier Development Group, Legal Services Commission, on 020 7759 0382, or chris.chapman@legalservices.gov.uk

Any comments or suggestions regarding the draft booklets should be directed to Alice Mutasa at:

Supplier Development Group
Legal Services Commission
85 Gray's Inn Rd
London
WC1X 8TX
(DX 328 London, Chancery Lane)

alice.mutasa@legalservices.gov.uk

Quality Mark for the Bar

The Legal Services Commission is currently extending the scope of the Quality Mark to include different types of service and methods of delivery. A good example of this can be seen in the Quality Mark for the Bar. The Quality Mark for the Bar introduces quality assurance for barristers in chambers. The Commission is working closely with the Bar Council and the Crown Prosecution Service to draft the standard and a final version for formal consultation is expected in April 2001. Consultation will run for twelve weeks, and part of the consultation process will include seminars throughout England and Wales explaining the aims and impact of the standard.

For further information please contact Sara Kovach-Clark on 020 7759 0387 or by e-mail on sara.clark@legalservices.gov.uk

Remuneration Changes 2001

In the last edition of *Focus*, we published the Lord Chancellor's intended civil remuneration changes for 2001. Since then the proposals have been the subject of consultation and are now finalised. They will take effect from 2 April 2001 in relation to both new and ongoing matters conducted by firms with a General Civil Contract but will only apply to work done **on or after** that date.

The changes are brought into effect by amendments to the General Civil Contract Schedule (which sets the levels of remuneration subject to the amounts authorised by regulation) and by the relevant amendment regulations. These are the Community Legal Service (Funding) (Amendment) Order 2001, The Legal Advice and Assistance (Amendment) (No.2) Regulations 2001 and The Legal Aid in Family Proceedings (Remuneration) (Amendment) Regulations 2001. These regulations will be available from the Commission's website and contained in update 2 of 2001 of the LSC Manual.

The amendments to the contract Schedule will be received by each supplier in advance of 2 April and will be contained in update 1 of 2001 of the LSC Manual to be published in early May.

This article outlines the changes for each level of service affected and sets out the revised rates. As the increases only apply to firms with a General Civil Contract, the distinction between rates paid to franchisees and provisional franchisees has been removed for future work under paragraphs A to D below so that any qualifying work done after 2 April 2001 by a contracted firm can be claimed at the new rates.

A. Legal Help and Help at Court

The cumulative effect of the changes is that there are now three sets of rates of remuneration for Legal Help and Help at Court carried out on or after 2 April 2001.

LEGAL HELP AND HELP AT COURT: TABLE 1

Immigration, Mental Health, Actions against the Police etc, Public Law, Education and Community Care

	London £	Outside London £
Preparation	57.35	52.55
Travel/Waiting	30.30	29.45
Letters written/Telephone Calls	4.40	4.10

(Table 1) These rates apply to work done at these levels of service in the Immigration, Mental Health, Action Against the Police etc, Public Law, Education and Community Care franchise categories provided that the supplier has a

category specific contract in the category in which the work has been performed. This means that they must have passed at least a preliminary audit in the category concerned **and** been awarded Matter Starts in that category. The rates incorporate increases of around 10% to the previous levels. This is to further encourage supply in these specialist areas and builds on the remuneration increases that took effect in July 2000.

LEGAL HELP AND HELP AT COURT: TABLE 2

Family, Housing and Employment

	London £	Outside London £
Preparation	53.10	50.05
Travel/Waiting	28.05	28.05
Letters written/Telephone Calls	4.10	3.95

(Table 2) These rates apply to those categories which were not up-rated in July 2000 but which have been identified as further priority areas for public funding, namely family, housing and employment provided that the supplier has a category specific contract in the category in which the work has been performed (as in 1 above). These rates also incorporate an increase of around 10% on previous levels.

LEGAL HELP AND HELP AT COURT: TABLE 3

All categories of work not falling within tables 1 or 2 above or work carried out under contract tolerances

	London £	Outside London £
Preparation	50.70	47.80
Travel/Waiting	26.80	26.80
Letters written/Telephone Calls	3.90	3.75

(Table 3) Legal Help and Help at Court in all other categories of work, or within the categories in tables (1) or (2) when the work is performed within a contract tolerance are paid at these rates which incorporate increases of around 5% on previous levels.

The appropriate rate therefore depends on the category of work and whether the supplier has a contract with Matter Starts in that specific category. If the work is done within contract tolerances or within a category of law that is not covered by tables 1 or 2 then the correct rates are those in table 3.

For suppliers with a General Civil Contract with the

Commission who have ongoing advice and assistance work under the Legal Aid Act 1988 the Legal Advice and Assistance Regulations 1989 have been amended so that work carried out on or after 2 April 2001 may be remunerated at these new higher rates in accordance with the same restrictions and principles. Thus the higher rates in tables 1 and 2 above will only be payable where the supplier has a specific contract with Matter Starts in the relevant category. The increases do not apply to any work still being carried out on advice and assistance cases by non-contracted firms.

B. Help with Mediation

The remuneration rate for this level of service has been increased by 10% for work done from 2 April 2001.

HELP WITH MEDIATION

	London £	Outside London £
Preparation	64.10	59.95
Travel/Waiting	28.05	28.05
Letters written/Telephone Calls	4.30	4.30

C. Controlled Legal Representation

Remuneration for representation before the immigration adjudicator, Immigration Appeal Tribunal and the Mental Health Review Tribunal has been increased by around 5% for work done from 2 April 2001. Higher percentage increases have been applied to rates for travel and routine letters and telephone calls in order to equalise them with the Legal Help rates in table A1 above.

CONTROLLED LEGAL REPRESENTATION – IMMIGRATION, MENTAL HEALTH & OTHER AUTHORISED TRIBUNAL WORK

	London £	Outside London £
Preparation	61.20	57.25
Travel/Waiting	30.30	29.45
Letters written/Telephone Calls	4.40	4.10
Advocacy	69.60	69.60
Attending tribunal with counsel (Does not apply to Immigration)	32.55	32.55

From 2 April 2001 the scope of publicly funded work will be extended to include certain work before the following Tribunals: the VAT & Duties Tribunal, the General and Special Income Tax Commissioners and the Protection of

Children Act Tribunal. Such work will be Licensed Work. The costs will be assessed by the Commission and it is intended (subject to consultation) that payment will be at the above Controlled Legal Representation rates.

D. Family Certificated Work

Remuneration for General Family Help and Legal Representation in those family cases that fall within The Legal Aid in Family Proceedings (Remuneration) Regulations 1991) is increased by around 10% for work done from 2 April 2001.

Rates in care proceedings for attending without counsel (at trial or hearing of any cause or hearing of any summons or other application at court, or other appointment) have been increased by a higher percentage in order to equalise them with preparation rates.

The increased rates also apply to relevant work done after 2 April 2001 on continuing certificates which were issued under Part IV of the Legal Aid Act 1988 provided the supplier has a General Civil Contract with the Commission which authorises them to carry out family work. The increases will thus not apply to non-contracted firms continuing work on certificates under the Legal Aid Act 1988.

The enhancement provisions within the Legal Aid in Family Proceedings (Remuneration) Regulations 1991 (LAFP(R)R) have been amended so that cases where enhancement is currently available now attract a guaranteed minimum enhancement of 15% where the work is done by a fee earner who is on the accredited specialist panels of the Solicitors Family Law Association (SFLA) or the Law Society's Children Act Panel but higher amounts may still be obtained if justified. The enhancement is available to all work done in a family case by a member of the accredited specialist panel of the SFLA. For a member of the Law Society's Children Act Panel the enhancement is available for all work done under a certificate that includes proceedings relating to children (as defined below). This will mean that if a certificate covers both children proceedings and ancillary relief all the work done by the specialist fee earner under the certificate will attract the minimum enhancement. This is not so if the certificate only covers ancillary relief. Proceedings relating to children are defined as "proceedings within which the welfare of children is determined, without limitation, proceedings under the Children Act 1989 or under the inherent jurisdiction of the High Court in relation to children".

The minimum guaranteed enhancement is not available for supervision nor to work done by other fee earners. Whilst such work is not subject to the guaranteed minimum enhancement it may attract enhancement on assessment in the normal way if the criteria in regulation 3(4)(c) are satisfied. When preparing a bill for detailed assessment the narrative should clearly state the fee earner for whom the enhancement is claimed and the basis of the enhancement

under the amended regulations.

Counsel's fees will be paid under the existing provisions of the LAFP(R)R unless affected by the Community Legal Service (Funding) (Counsel in Family Proceedings) Order 2001 which will be implemented in May 2001 and become effective for certificates granted on or after 1 May 2001.

GENERAL FAMILY HELP AND LEGAL REPRESENTATION IN FAMILY CASES (where work falls within Legal Aid in Family Proceedings (Remuneration) Regulations 1991)

SCHEDULE 1A: CARE PROCEEDINGS

PART I - PREPARATION

Item	High Court	County court or magistrates court
1. Writing routine letters	£4.70 per item	£4.10 per item
2. Receiving routine letters	£2.35 per item	£2.05 per item
3. Routine telephone calls	£4.70 per item	£4.10 per item
4. All other preparation work including any work which was reasonably done arising out of or incidental to the proceedings, interviews with client, witnesses, and other parties; obtaining evidence; preparation and consideration of, and dealing with, documents, negotiations and notices; dealing with letters written and received and telephone calls which are not routine	£73.15 per hour (£77.85 per hour for a fee-earner whose office is situated in the LSC's London Region)	£64.90 per hour (£68.20 per hour for a fee-earner whose office is situated in the LSC's London Region)
5. Travelling and waiting	£35.75 per hour	£32.45 per hour

PART II - CONFERENCES WITH COUNSEL

Item	High Court	County court or magistrates court
6. Attending with counsel in conference	£41.25 per hour	£36.30 per hour
7. Travelling and waiting	£35.75 per hour	£32.45 per hour

PART III - ATTENDANCES

Item	High Court	County court or magistrates court
8. Attending with counsel at trial or hearing of any cause or hearing of any summons or other application at court, or other appointment	£41.25 per hour	£36.30 per hour
9. Attending without counsel at the trial or hearing of any cause or the hearing of any summons or other application at court, or other appointment	£73.15 per hour (£77.85 per hour for a fee-earner whose office is situated in the LSC's London Region)	£71.50 per hour (£71.50 per hour for a fee-earner whose office is situated in the LSC's London Region)
10. Travelling and waiting	£35.75 per hour	£32.45 per hour

PART IV - COUNSELS FEES***PART V - DETAILED ASSESSMENT AND APPEAL IN RELATION TO DETAILED ASSESSMENT (HIGH COURT AND COUNTY COURT ONLY)**

Item	High Court	County court
17. Preparing the bill (where allowable) and completing the detailed assessment (excluding preparing for and attending the hearing of the detailed assessment)	£35.75 - £99.85 per hour	£35.75 - £56.95 per hour
18. Preparing for and attending the hearing of the detailed assessment (including travelling and waiting)	Discretionary	Discretionary
19. Appeal to costs judge, district judge or judge (including preparation)	Discretionary	Discretionary

SCHEDULE 2A: PRESCRIBED FAMILY PROCEEDINGS

(a) High Court and county court proceedings

PART I - PREPARATION

Item	High Court	County court
1. Writing routine letters	£7.05 per item	£6.15 per item
2. Receiving routine letters	£3.50 per item	£3.10 per item
3. Routine telephone calls	£7.05 per item	£6.15 per item
4. All other preparation work including any work which was reasonably done arising out of or incidental to the proceedings, interviews with client, witnesses, and other parties; obtaining evidence; preparation and consideration of, and dealing with, documents, negotiations and notices; dealing with letters written and received and telephone calls which are not routine	Where proceedings were conducted in the divorce registry or in another court on the South Eastern Circuit at the time when the relevant work was done: £78.40 per hour All other circuits: £73.05 per hour	Where proceedings were conducted in the divorce registry or in another court on the South Eastern Circuit at the time when the relevant work was done: £68.50 per hour All other circuits: £64.80 per hour
6. Travelling and waiting time in connection with the above matters	£35.75 per hour	£32.45 per hour

PART II - CONFERENCES WITH COUNSEL

Item	High Court	County court
7. Attending counsel in conference	£41.25 per hour	£36.30 per hour
8. Travelling and waiting	£35.75 per hour	£32.45 per hour

PART III - ATTENDANCES

Item	High Court	County court
9. Attending with counsel at the trial or hearing of any cause or hearing of any summons or other application at court, or other appointment	£41.25 per hour	£36.30 per hour
10. Attending without counsel at the trial or hearings of any cause or the hearing of any summons or other application at court, or other appointment	Where proceedings were conducted in the divorce registry or in another court on the South Eastern Circuit at the time when the relevant work was done: £78.40 per hour All other circuits: £73.05 per hour	Where proceedings were conducted in the divorce registry or in another court on the South Eastern Circuit at the time when the relevant work was done: £68.50 per hour All other circuits: £64.80 per hour
11. Travelling and waiting	£35.75 per hour	£32.45 per hour

PART IV - COUNSELS FEES***PART V - DETAILED ASSESSMENT AND APPEAL IN RELATION TO DETAILED ASSESSMENT**

Item	High Court	County court
18. Preparing the bill (where allowable) and completing the detailed assessment (excluding preparing for and attending the hearing of the detailed assessment)	£35.70 - £99.85 per hour	£35.70 - £56.95 per hour
19. Preparing for and attending the hearing of the detailed assessment (including travelling and waiting)	Discretionary	Discretionary
20. Appeal to the cost judge, district judge or judge (including preparation)	Discretionary	Discretionary

Note: The enhancement provisions within the Legal Aid in Family Proceedings (Remuneration) Regulations 1991 (LAFP(R)R) have been amended so that county court and high court cases attract a guaranteed minimum enhancement of 15% where the work is done by a fee earner who is on the accredited specialist panels of the Solicitors Family Law Association or the Law Society's Children Act Panel.

* Counsels Fees will be paid under the existing provisions of the LAFP(R)R unless affected by the Community Legal Service(Funding)(Counsel in Family Proceedings) Order 2001 which will be implemented in May 2001 and become effective for certificates granted on or after 1 May 2001.

(b) Magistrates' court proceedings

Preparation	£48.95 per hour – (£52.25 per hour for a fee-earner whose office is situated in the Legal Services Commission's London Region)
Advocacy	£61.90 per hour
Attendance at court where counsel assigned	£33.30 per hour
Travelling and waiting	£27.50 per hour
Routine letters and telephone calls	£3.80 per item – (£4.00 per item for a fee-earner whose office is situated in the Legal Services Commission's London Region)

E. Other Civil Certificated Work

These rates are unchanged in 2001. By virtue of the CLS (Funding) Order 2000 and the General Civil Contract Specification the rates in the Legal Aid in Civil Proceedings (Remuneration) Regulations 1994 continue to apply – see LSC Manual Volume 3 Section E for the rates. Note that for this work the distinction between rates for Franchisees and others with only a Provisional Franchise (or no Franchise) in the category has been maintained. Note also that there are separate rates for Support Funding and Very High Cost case contracts.

Civil Eligibility Changes 2001

(Details of criminal eligibility changes were published in *Focus on CDS 3*)

Points to note

1. Eligibility changes will come into effect on 9 April 2001. The income limits and allowances for General Family Help, Full Representation and Support Funding are being raised by about 1.6%. Income limits for Legal Help, Help at Court, Controlled Legal Representation in Immigration, Family Mediation, Help with Mediation and Legal Representation for Specified Family Proceedings in the Magistrates' Court are also to be increased but by about 3.3%.
2. Capital limits will remain the same.
3. An updated copy of the Self Assessment Guide for civil funding will be circulated as soon as available
4. Financial eligibility conditions including a revised structure to the capital limits and allowances will be introduced in October 2001. Further guidance will be provided on those changes later in the year
5. The passporting rules remain unchanged. Those on Income Support or Income Based Job Seekers Allowance are "passporting" on income for all levels of service. In addition for Legal Help, Help at Court, Legal Representation before an Adjudicator or Immigration Appeals Tribunal, Family Mediation, Help at Court or Legal Representation in Specified family Proceedings before the magistrates' Court those in receipt of Working Families Tax Credit (WFTC) or Disabled Persons Tax Credit (DPTC) are also passported on income if the amount to be deducted (under sections 128(5)(b) or 129(5)(b) of the Social Security Contributions and Benefits Act 1992) has been determined at not more than

£70 per week. Those in receipt of Income Support or Income Based Job Seekers Allowance are also passported on capital in Family Mediation, Help With Mediation, Legal Representation in Specified Family Proceedings, General Family Help, Legal Representation other than above and Support Funding.

6. The age ranges for dependants allowances for all levels of service were simplified by The Community Legal Service (Financial) Regulations 2000. There are now effectively only two allowances for dependants, one for those aged 15 or under and one for those aged 16 or over. The allowance to be applied is that for the age of the child at the date of application for funding.

Eligibility From 9 April 2001

1. Legal Help, Help at Court and Legal Representation before Immigration Adjudicators or Immigration Appeal Tribunal.

Income limit:	£87 per week	
Weekly dependants' allowances:	Partner	£30.20
	<u>Dependants</u>	
	Aged 15 years or under	£31.45
	Aged 16 years or over	£32.25
Capital limits:	No dependants	£1,000
	One dependant	£1,335
	Two dependants	£1,535

Plus £100 for each additional dependant

Contribution system:

None. Ineligible if weekly disposable income exceeds £87.

State benefits:

Automatically qualify on income if in receipt of Income Support; Income Based Job Seekers Allowance. Passported if in receipt of Working Families Tax Credit or Disabled Persons Tax Credit only if any abatement from the maximum allowance is not more than £70 per week. May still be out of scope on capital.

2. Help with Mediation, Family Mediation and Legal Representation in specified family proceedings before a magistrates court (authorised representation)

Income limit:	£186 per week	
Weekly Dependants allowances:	Partner	£30.20
	<u>Dependants</u>	
	Aged 15 years or under	£31.45
	Aged 16 years or over	£32.25
Capital limits	<u>Dependants</u>	
	None	£3,000
	One dependant	£3,335
	Two Dependants	£3,535
	Plus £100 for each additional dependant	

Contribution system:

There is no contribution system for either Family Mediation or Help with Mediation so the above limits apply to determine eligibility. For Legal Representation in respect of specified family proceedings before a Magistrates' Court there is a weekly contribution of one third of excess income over £79. No contribution is payable if income is below £79 per week. There is no contribution from capital.

State Benefits:

Automatically qualify on income and capital if in receipt of

Income Support or Income Based Job Seekers Allowance. Passported on income if in receipt of Working Families Tax Credit or Disabled Persons Tax Credit only where the amount to be deducted is determined at not more than £70 per week but may still be ineligible on capital.

3. General Family Help, Full Representation and Support Funding

Income limits	£ per year
Lower income limit	£2,767
Upper income limit	£8,196

Capital limits	
Lower capital limit:	£3,000
Upper capital limit	£6,750

Yearly dependants' allowance:	Partner	£1575
	Dependants 15 or under	£1640
	16 or over	£1682

Capital disregards for pensioners:

Annual disposable income (excluding net income derived from capital)	Amount of capital
up to £370	£35,000
£371 - £670	£30,000
£671 - £970	£25,000
£971 - £1,270	£20,000
£1,271 - £1,570	£15,000
£1,571 - £1,870	£10,000
£1,871 - £2,766	£5,000

Contributions system:

Contribution from capital of excess over £3000. Ongoing monthly contribution from income of 1/36th of excess over £2767 for the life of the certificate.

State benefits:

Automatically qualify for public funding free of contributions if in receipt of Income Support or Income Based Job Seekers Allowance.

New Immigration Contracts in London

In our December 2000 consultation paper 'General Civil Contracts from 1 April 2001' we confirmed the continuation of our policy of generally awarding Controlled Work contracts on the passing of a preliminary audit in certain specialist categories of law – including immigration. We stated that this was on the basis that we had identified an overall lack of supply in those categories – but that Regional Directors retained the discretion to

decide that sufficient supply already exists in a zone or region such that the award of further contracts is not appropriate.

The London Regional Director has now received over 140 bids for expansion from existing suppliers in London (see *Focus* 33 page 15). In addition, a number of new immigration contracts have been awarded in the region in recent months. Therefore, whilst the

effect of these increases in supply is assessed, the London Regional Office will now consider applications for new Controlled Work contracts for immigration on a case-by-case basis. Prospective contractors will need to demonstrate that they will fulfil a particular need for immigration services not otherwise being catered for in the zone or region before a contract is awarded. Suppliers who are considering applying for a new

immigration contract should therefore contact the London Regional Office for a preliminary discussion before entering into commitments.

The Regional Director will also take into account quality issues when considering whether to award a contract and may also refuse to do so where the firm's record in contracting, franchising or claims assessment is such as, in the opinion of the Regional Director, to justify the refusal. Thus, for example, a firm which had only

recently had its General Civil Contract terminated in the immigration category because of failure of a pre-franchise audit would be most unlikely to be awarded a contract simply on passing another preliminary audit.

A further discretion will be exercised in cases where a firm has demonstrated a need for its service such that a contract would normally be awarded, but where its past record or the preliminary audit itself raises serious concerns as to quality falling short

of those justifying either the failure of the audit or an outright refusal. In those cases the Regional Director may limit the size of the immigration contract awarded (in terms of new Matter Starts) at least until such period as the pre-franchise audit is passed. Sufficient matter starts will of course be awarded to allow the firm to maintain the work during the pre-franchise period – but the Regional Director may well not agree to an increase in that figure until the quality concerns had been met.

Family Visit Visa Appeals

A number of queries have arisen over the availability of CLS funding for family visit appeals. Guidance is currently being prepared for consultation and inclusion in the General Civil Contract in due course. In the meantime the Commission's views are set out below.

Controlled Legal Representation (CLR) may be granted to provide representation on appeals against refusals of family visit visas subject to the application of the appropriate merits and means criteria.

Sections 4 (Standard Criteria) and 13 (Immigration) of the Funding Code Criteria apply.

The client for CLR purposes will be the family visitor and not the sponsor. The family visitor is the person who has applied for entry clearance to come to the United Kingdom in order to visit a qualifying member of his or her family - see the Immigration Appeals (Family Visitor) Regulations 2000.

The client must be financially eligible and must sign an application form CW2. The application can be sent to and returned by the client by post or fax in accordance with General Civil Contract Specification Rule 5.3. Where the sponsor has made resources available to the client then such resources should also be taken into account (i.e. added to the client's resources for the purpose of the assessment) when assessing the client's means (see Regulation 11(4) of the Community Legal Service (Financial) Regulations 2000).

The normal presumption in family visit

cases is that in the event of winning at appeal, both the applicant, his or her spouse and any children under the age of 18 who have applied to travel at the same time will also be issued visas. It would not therefore normally be reasonable to grant CLR for separate appeals to be submitted for spouses and dependants.

Further details on the merits test for CLR are contained in Section 5 of the General Civil Contract Specification. CLR may be granted if the appellant is more likely than not to win at appeal. It should not be granted where you would advise the appellant that their appeal is more likely to fail than to succeed.

CLR should not be granted unless the likely benefits to be gained from the proceedings justify the likely costs such that a reasonable privately paying client would be prepared to take proceedings, having regard to the prospects of success and all the other circumstances.

Addressing the cost benefit issue will include consideration of whether an application on the papers or an oral hearing is appropriate – see below. In most cases, a paper application would be sufficient. An oral hearing would normally only be justified if there were some special circumstances requiring the provision of oral evidence by the sponsor. However evidence as to financial resources or arguments as to the law can normally be adequately presented in writing.

If CLR is validly granted then the fee

for the appeal will be a recoverable disbursement. There is a higher fee for an oral hearing – and incurring this must be justified on assessment of costs in light of the considerations set out above.

Arrangements will need to be made to remit the fee to the embassy or consulate concerned in local currency (currently it cannot be paid in this country or in sterling). A banker's draft may be arranged in local currency made out to the embassy or consulate and sent to the same or sent to the appellant (assuming that the draft is payee only). The charge for the banker's draft (typically £10.00) is allowable as a disbursement on the case. Please note that overseas posts are not able to accept electronic transfers.

There may be a few currencies where a banker's draft in the local currency is not possible. In those circumstances, the embassy or consulate will need to be contacted to see what alternative arrangements – such as a Western Union cash transfer - can be made. Again any reasonably associated costs will be recoverable.

Under no circumstances should cash be sent to the client or sponsor or a cheque or draft be sent in the client's or sponsor's name.

Legal Help will also be available (subject to financial eligibility) for initial advice to the client or to the sponsor for advice on his or her own position. However, Legal Help cannot be used to provide representation or to pay the appeal fee.

Costs Appeals Committee – Points of Principle

**CRIMLA45 - 27 February 1995,
amended 17 July 2000**

Magistrates' Court Standard Fees: Claims Which Attract a Standard Fee

A claim for costs is only to be dealt with in accordance with the standard fee regime if the claim falls within one of the categories specified in the table set out in paragraph 2(2) of Part III Schedule 1 of the Legal Aid in Criminal and Care Proceedings (Costs) Regulations 1989. Claims which do not fall into any of those categories attract a non-standard fee.

If the court withdraws or revokes a legal aid order during the course of proceedings, and there has been no guilty plea or other specified case outcome (so the proceedings are not among the types of proceedings listed in the table in Part III Schedule 1 Legal Aid in Criminal and Care Proceedings (Costs) Regulations 1989), the solicitor should claim a non-standard fee.

If the court re-instates the order or grants a fresh order in the same proceedings, any further work will form part of the same 'case' for the purpose

of the standard fee scheme.

Head Office Guidance on CRIMLA45

1. The solicitor should calculate the total costs of the case, including the work done under both the revoked order and the fresh or re-instated order. The costs should not include any work done when no legal aid order was in force. He or she should then submit a claim for the appropriate standard or non-standard fee in respect of the total costs, accompanied by a statement of the amount already paid, so that the regional office can calculate the amount allowable for the total costs of the case, deduct that already paid in respect of the revoked order, and pay the solicitor the balance at the conclusion of the proceedings.
2. If the solicitor claims a lower standard fee for the total costs of the case, he or she should state that the claim is a supplemental claim in a covering letter or on the back of the form and enclose a copy of the previous claim.
3. If the solicitor claims a higher standard fee or non-standard fee for

the total costs of the case, he or she should indicate that the claim is a supplemental claim under the heading 'Claim details' and enclose a copy of the previous claim.

CLA26 – 2 November 2000

Whether Indexing and Pagination is Fee-Earner or Administrative Work

In determining the extent to which indexing and pagination of disclosed medical records is fee-earner work or administrative, it is relevant to consider whether the work involves only indexing and paginating, or also includes analysis of the contents of the disclosed documents, identification of missing documents and parts of documents, and consideration of how the disclosed documents should be presented to make the issues clear. While merely listing and numbering pages should not be remunerated as fee-earner work, the elements of the work which demand more than administrative skills can properly be charged at fee-earner rates. It is for the solicitor in each case to justify a claim for work done at fee-earner rates.

Recouping Payments on Account in 2001

A recoupment exercise has just begun covering all certificated work where a payment on account has been made more than 18 months ago but no final bill has been received. Payments on account to franchisees for claim 10 cases and criminal legal aid work where no bill has been received will also be included.

As in previous exercises, each firm will receive a list of certificate or payment references together with details of the payments made. A standard questionnaire must be returned for each item listed, together with either a claim for costs or other relevant documentation. A response is requested within 42 days. If no reply is received, a second letter will be sent as a reminder, giving a further 21 days. At that point the regional office will also be contacting any previous firm or counsel involved in the case, and the client, to

ensure all possible enquiries are made before action is taken.

If a response is still not received from the conducting solicitor, the regional office will discharge the certificate and/or close the case by entering a zero value bill that will automatically recoup the payments made on account.

The recoupment exercise is designed to monitor and control certificates so if work has been completed, and can be billed, it will be assessed and paid in accordance with the regulations. If the case is continuing, discharge and recoupment would be inappropriate and instead the case will be reviewed and an appropriate costs limitation applied. The sanction of discharge or case closure only happens if no response is received and therefore a timely and informative response may prevent unnecessary recoupment.

Because of the size of the exercise and its potential impact on practitioners, regional offices will phase the exercise over the next 13 months. Each request for information will be limited to allow the supplier to respond in full within six weeks. This staggered approach will continue with each firm until all queries have been dealt with.

Some common issues that may concern suppliers:

Can the Commission claim repayment if the payment on account was made more than 6 years ago?

Some solicitors have suggested that the statute of limitations applies so as to prevent this. However, the point from which time runs for Limitation Act purposes is not the date of making the payment on account because, at that point, the Commission's right of action to recover it has not yet arisen. The

Law Society has previously advised practitioners that time does not start to run until the Commission has assessed the bill, received a report following settlement or received a claim for payment after assessment by the court. In the Commission's view, the right to recover a payment on account will also arise when a practitioner makes it clear expressly or otherwise that he or she will not submit a claim.

What if I have destroyed my files?

Paragraph 4 of Annex 12A of the Solicitors Guide to Professional Conduct 1999 suggests it is advisable to retain all files for a minimum of six years from when the subject matter was wholly completed. At the end of the six-year

period solicitors are advised to review the files again according to the nature of the transactions, and the likelihood of any claims arising.

Regulations 100(7) and (8) of the Civil Legal Aid (General) Regulations 1989 oblige solicitors to submit a bill of costs for assessment at the conclusion of a case in which payments on account have been made and to repay any balance due to the fund.

It is the Commission's view that a file cannot be treated as completed purely on the basis there is no further legal work to do on behalf of the client. There should be an order for detailed assessment or a discharge of the certificate, which is the determination

of the solicitor's retainer. The solicitor remains obliged to seek assessment of costs. If this has not been done a solicitor is not truly in a position to consider the matter wholly completed and the file should not have been destroyed.

We will be relying on our records as primary evidence that repayment is due. If solicitors have destroyed their files but consider that our records are inaccurate such other evidence should be provided as may be sufficient to show sums were never received or were repaid, e.g. bank statements or accounting records. We will consider all the documentation available and decide whether repayment is due on the facts available.

Devolved Powers Clarification

Practitioners should note that a number of common errors are being made in relation to the use of devolved powers, for both Legal Aid Act 1988 and Access to Justice Act 1999 cases. The most common errors are:

- Amending a certificate where there is no power to do so as the certificate does not contain a limitation capable of amendment under devolved powers.
- Adding additional proceedings (a very common error on family certificates).
- Adding enforcement proceedings (including Committal).
- Amending the costs limitation alone. (A costs limitation can only be amended in association with an amendment to the scope of a certificate.)
- Amending costs limitations on cases where costs already exceed or are likely to exceed £10,000.
- Amending Judicial Review certificates.
- Amending certificates relating to matters going forward on appeal. (The only exceptions are appeals against local authority decisions regarding homelessness under the Housing Act 1996.)

In all of the above cases, solicitors do not have a devolved power to make the amendment. Furthermore, devolved powers do not extend to amendments to change solicitors. Neither can prior authorities be granted under devolved powers.

The certificates, which may be amended, are those containing the following scope limitations:

- for civil non-family certificates - CV079, CV080, CV081, CV082, CV083, CV084, CV085, CV086, CV091, CV092, CV095, CV096, CV097, CV099.
- for civil family certificates - AA022, AA025, FM036, FM038, FM039, FM040, FM041, FM042, and FM043.

These limitations are included among the CIS standard wordings in Part F of Volume 3 of the LSC Manual.

Amendments may be made as to scope by the substitution of a new scope limitation enabling a case to proceed to the next appropriate stage justified by counsel's opinion or solicitor's report. An amendment may include a final contested hearing where counsel's opinion or solicitor's report is given at the final stage prior to hearing and justifies such an amendment.

A solicitor's report i.e. a report from the conducting solicitor may only be filed as an alternative to counsel's opinion where the limitation specifically so provides. If a certificate is limited only to counsel's opinion a report from the conducting solicitor is not an acceptable alternative.

Full guidance can be found in Volume 2 of the LSC Manual, Part B: LAFQAS,

paragraphs 2B-032.1 – 2B-032.4.

Certificates issued prior to the introduction of the Access to Justice Act 1999 are still governed by the Legal Aid Act 1988. In these cases practitioners should refer to Section 01 of the Guidance on the Exercise of Devolved Powers Manual, "Guidance in General Issues: Civil Legal Aid".

This guidance lists the scope limitations which can be amended as follows:

- for civil non-family certificates - CV079, CV080, CV081, CV082 (only when used in conjunction with CV080 or CV081), CV091, CV089, CV096, CV083, CV084, CV097, CV085, CV08, CV094, CV095, CV099, CV097, CV092.
- for civil family certificates - AA020, AA022, FM036, FM037, FM038, FM039, FM040, FM041, FM042, FM043.

Certificates issued under the Legal Aid Act 1988 and limited to a solicitor's report i.e. a report from the conducting solicitor, may only be amended by the regional office.

Regional Office decisions on the exercise of devolved powers to amend certificates are made on the same basis as those relating to emergency certificates. Full details are set out at paragraph 2B-032.4 in Volume 2 of the LSC Manual.

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 Decision-Making Guidance in Volume 3 of the LSC Manual and on the website at www.legalservices.gov.uk.

Summaries of cases considered by the Panel were contained in *Focus 32* and *33* and are set out in Section 5.8 of the Guidance. A summary of the cases which have since been referred to the Panel is set out below. These 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 usually assessed in one of three categories, namely “exceptional”, “high” or simply in the general category of “significant” wider public interest.

PIAP/01/29

Nature of Case

Asylum case. Legal issue as to the date at which the Home Office’s decision to refuse entry should be considered as final for welfare benefits purposes.

Report of Panel

This potential challenge concerned entitlement to welfare benefit payments for asylum seekers and whether that entitlement ceases on the date that the Secretary of State determines and records the asylum application, the date on which that decision is communicated or on which leave to enter is granted or refused. The Panel agreed that this was an important issue although it would need to be considered at the level of the House of Lords in light of the Court of Appeal decision of *Salem v SSHD 1999 2WLR1*.

This issue was however only relevant in the present case to those who claimed asylum before 3 April 2000 after which new regulations apply.

Nevertheless a substantial pool of asylum seekers would be affected although the Panel suspect that the numbers were less than those suggested in the application. The amount of the benefit lost in each case would vary but would often be quite small.

The Panel asked for enquiries to be made concerning another case, *ex parte Paulo*, on which permission had been granted and which might deal with the same arguments. The Panel was informed that the *Paulo* case concerned a challenge to the new regulations after April 2000 and so was unlikely to deal directly with the issues raised in the present application.

Conclusion

Significant wider public interest
Rating: Significant

PIAP/01/30

Nature of Case

Proceedings under the Charities Act 1993. Dispute between members of the Royal British Legion and their Head Office. Proposed challenge to the right of the Head Office to transfer ownership of certain Legion property from the branch to the centre.

Report of Panel

It was clear to the Panel that certain members of the branch felt very strongly about the issues in dispute. However the Panel was unable to conclude that there was objective evidence that proceedings on these matters would produce any real benefits to members of the branch, let alone the wider public.

The Panel went on to consider the legal issues which might be raised in any proceedings but thought that these would be likely to turn on interpretation of the particular articles of the associations concerned, not on any wider point of law of general importance. The Panel further considered it unlikely that ECHR Article 6 rights were engaged in these disputes.

Conclusion

No significant wider public interest

PIAP/01/31

Nature of Case

Judicial Review proceedings. Application for declaration of incompatibility under the Human Rights Act of the legislation covering widows’ pensions.

Report of Panel

This case concerned a judicial review to seek a declaration of incompatibility of provisions of the Social Security Contributory Benefits Act 1992 with the Human Rights Convention. This concerns benefits which are payable to widows, but not to widowers. The Panel accepted that these were important issues but the government had already accepted that earlier regulations were not compatible and new regulations were being introduced with effect from April 2001. Under these widowers would be entitled to the same benefit as widows. However these new provisions were not retrospective and did not provide for payment of lost benefits for widowers prior to April 2001. There were no doubt a very large number of men in this category.

The Panel’s concern, however, was that even if these proceedings successfully secured a declaration of incompatibility, that would be of no tangible benefit to the public. The High Court would have no power in such proceedings to award damages for lost benefits during the period of incompatibility.

It therefore appeared that the only route to compensation might lie in bringing a claim to Strasbourg, particularly if the UK government continued to be prepared to settle in such cases, though it is by no means clear that they will continue to do so. If there was any evidence that bringing incompatibility proceedings in this jurisdiction would make it easier for clients to pursue claims for compensation the Panel might well have concluded that there was a strong public interest in this

case, but as matters stood the Panel concluded, with regret, that no significant wider public interest had been established in these proceedings.

Conclusion

No significant wider public interest

PIAP/01/32

Nature of Case

Representation before Special Education Needs Tribunal. Application for exceptional funding under section 6(8)(b) of the Access to Justice Act 1999. Issue as to whether hydrotherapy treatment for a disabled child can be regarded as educational provision.

Report of Panel

The Panel agreed that if there were some general ruling that hydrotherapy treatment can be regarded as educational provision, that might well have a wider public interest. However the Panel considered that such a ruling was unlikely to emerge from this case. The case of Bromley had already established that there is no clear legal dividing line between educational and non-educational provision. Therefore any decision in this case is more likely to be decided as a question of fact, namely whether hydrotherapy has such benefits that it should be regarded as educational provision in this individual case. The Panel suggested other avenues which might be pursued, including a possible application under section 2 of the Chronically Sick and Disabled Persons Act 1970.

Conclusion

No significant wider public interest

PIAP/01/33

Nature of Case

Judicial review proceedings. Proposed challenge to a planning decision to allow the building of a waste disposal incinerator.

Report of Panel

The Panel considered the two aspects of the case giving rise to public interest. The first concerns the extent to which Article 6 of the European Convention on Human Rights applies to planning decisions, in this case a decision to approve the development of

a large municipal waste incinerator.

The Panel was satisfied that this aspect of the case raised important issues, both in terms of the potential public health implications of the decision and more significantly the important legal issues. If it were established that planning decisions of this type were required to be taken by an independent and impartial tribunal, separate from the County Council, that would have very great significance for the entire process.

The Panel did have some concern as to whether this issue might be resolved in other cases before this application came to trial (see for example an earlier case before the Panel, PIAP/00/4). The Panel therefore recommended that if funding is available the solicitors should immediately report to the regional office any decided authority which might affect the merits or the potential public interest of this case.

The Panel went on to consider the wider issues raised in this case, in particular the scope of judicial review challenges following the Human Rights Act 1998. This concerned the extent to which the court on judicial review needed to examine the merits and proportionality of the decision-taking in far greater depth than has traditionally been the case. The Panel accepted that this was an issue of the utmost importance but were very doubtful that it was an issue that would be resolved by the present case. It is understood that the Alconbury case would be heard in the House of Lords in late February 2001. Whilst this case concerned the extent to which the availability of judicial review could make an administrative process as a whole compatible with Article 6, the House of Lords was also likely to consider in greater detail the specific role of the court in judicial review.

For these reasons it was primarily the first ground, Article 6, on which the Panel was satisfied that this case had a significant wider public interest.

Conclusion

Significant wider public interest
Rating: High

LSC Corporate Plan Published



The Legal Services Commission's second Corporate Plan, and the first to be laid before the Houses of Parliament, will be published at the end of March 2001. This plan meets the requirement of the Access to Justice Act 1999 for the Commission to prepare an annual plan for the approval of the Lord Chancellor (Schedule 1, 15).

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 as part of the Criminal Defence Service, and
(c) to exercise its other functions"
(Schedule 1, 15 (1))

It also includes 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 plan will be available on the Commission's website www.legalservices.gov.uk, or by contacting Chris Smith at: LSC Head Office, 85 Gray's Inn Road, London WC1X 8TX DX 328 London/Chancery Lane E mail: chris.smith@legalservices.gov.uk.

Costs Limitations Decision

On 12 February 2001 the Court of Appeal considered the legality of costs limitations under the 1988 Act and particularly the Legal Aid Board's power to impose them in non-means non-merits cases.

In the case of *R -v- The Legal Aid Board ex parte David Burrows* the Master of the Rolls Lord Phillips, together with Lord Justices Kennedy & Dyson, resolved any confusion as to the vires of placing a financial limitation on the work to be done under a legal aid certificate under the Legal Aid Act 1988.

The Appellant had argued that the imposition of a costs limitation was ultra vires the Board's powers and that even if the power existed it could not apply to public law cases under section 15(3C) of the Act.

Dyson LJ gave the leading judgment and in dismissing the appeal said, "...the word "limitations" in section 15(4) is wide enough to encompass a financial limitation as well as a "scope limitation" "...I can find nothing in the other provisions of the 1988 Act...which indicates that Parliament intended that the word "limitations" in section 15(4) should be given anything other than

its ordinary natural meaning."

He also commented that the imposition of financial limits in advance of expenditure being incurred was a salutary discipline to the legal profession and that whilst representatives would know the ultimate sanction was assessment, assessment itself is lengthy, expensive and difficult to predict. The imposition of a cost limitation in advance removes some of that uncertainty and is a useful incentive for the legal representative to avoid unreasonable expenditure of costs.

Dyson LJ added, "There is nothing unreasonable or unjust about this... a legal representative can seek an amendment to the certificate to raise the financial limit and if he is dissatisfied can appeal the Board's decision".

Reports of the case have suggested that the decision meant solicitors would be forced to do pro bono work whilst amendments were applied for and appeals heard. It is the Commission's view that given the ability to amend a limitation where justified, and the right of appeal, a limitation should not cause problems to solicitors or their clients. It will only penalise those who have failed

to ensure costs remain within the limitation imposed and fail to seek an amendment.

Whilst an amendment is generally available for future costs, practitioners are also reminded that the costs limitation may exceptionally be amended retrospectively before discharge or assessment where the circumstances justify such an increase. It is a matter for discretion in the facts of each case. A retrospective amendment is more likely to be granted where the costs were incurred by events outside of the solicitor's control, e.g. an urgent injunction requiring weekend work when regional offices are closed or a hearing taking longer than anticipated, provided amendment requests are timely. If a solicitor exceeds the limitation but requests retrospective amendment many months later or on preparation of the bill of costs the amendment is less likely to be justified.

The decision was only in relation to costs limitation imposed on certificates granted under the 1988 Act. For cases granted under the Access to Justice Act 1999 there is an express power to impose costs limitations contained in paragraph C33 of The Funding Code Procedures.

Recovering Costs Against a Public Authority

The Court of Appeal in its decision in *O -v- London Borough of Wandsworth* [unreported 22 June 2000] raised an issue as to whether costs should be pursued when both parties are public bodies.

Practitioners are asked to note the more recent judgment in *R -v- Mayor and Burgesses of the London Borough of Waltham Forest ex parte Boxall and Boxall* [21 December 2000] which clarifies the position.

Scott Baker J stated "quite apart from the statutory principle that legally aided litigants should not be treated differently from those who are not, the failure of a legally aided litigant to obtain a costs order against another party may have serious consequence in several respects:

1. where legal aid is subject to a contribution he may be out of pocket;
2. the level of remuneration for the lawyers is different between a legal aid and inter partes determination of

cost. This is said in part to reflect the risk lawyers take in backing a publicly funded case that turns out to be unsuccessful;

3. it is important for the Legal Services Commission to recoup where it can the cost of litigation it has funded. It has, in the end, a finite budget. It needs the funds to finance other deserving cases."

The judgment helpfully sets out the

principles for judges to apply when deciding costs in such cases:

- i) the court has power to make a costs order when the substantive proceedings have been resolved without a trial but the parties have not agreed about costs
- ii) it will ordinarily be irrelevant that the Claimant is legally aided
- iii) the overriding objective is to do justice between the parties without incurring unnecessary court time and consequently additional cost
- iv) at each end of the spectrum there will be cases where it is obvious which side would have won had the

substantive issues been fought to a conclusion. In between, the position will, in differing degrees, be less clear. How far the court will be prepared to look into the previously unresolved substantive issues will depend on the circumstances of the particular case, not least the amount of costs at stake and the conduct of the parties

- v) in the absence of a good reason to make any other order the fall back is to make no order as to costs
- vi) the court should take care to ensure that it does not discourage parties from settling judicial proceedings for example by a local authority making

a concession at an early stage.”

Whilst CPR 44.12A provides a mechanism for recovery of costs when a settlement has been reached prior to proceedings there is no similar procedure for the administrative court. The case of **Boxall** has particular relevance to recovery of costs in judicial review cases when a settlement has been reached or the proceedings are rendered unnecessary by subsequent events. The Commission urges all publicly funded practitioners to consider the judgement when deciding whether costs should be pursued in such circumstances.

Revised Funding Code Procedures

Consultation Draft to Replace Section 7 of Part C of the Procedures

Section 7 - Referral to Family Mediation

C27. Scope of the Mediation Requirement

27.1 This Section applies to:

- (i) applications for Legal Representation in those Family Proceedings specified in Rule 28 below;
- (ii) applications for General Family Help in relation to disputes which concern or might give rise to such proceedings.

27.2 In applications to which this Rule applies, the client must attend an assessment meeting with a mediator before the application can be granted, unless it appears to the Regional Director or Authorised Solicitor that any of the circumstances set out in Rule 29 below apply.

27.3 Without prejudice to Rule 33 the Regional Director may place a limitation on a certificate for General Family Help or Legal Representation in Family

Proceedings preventing further work, other than provision of relevant advice, until the client has attended an assessment meeting with a mediator

C28. Specified Proceedings

The proceedings in which the requirement to see a mediator applies are those Family Proceedings which are within the scope of Section 11.11 or 11.12 of the Criteria other than proceedings under:

- (i) Section 37 of the Matrimonial Causes Act 1973;
- (ii) the Inheritance (Provision for Family and Dependents) Act 1975.

C29. Exemptions

29.1 Where it is in the interests of justice that Legal Representation be granted as a matter of urgency and the criteria for emergency representation are satisfied (whether or not any certificate is in fact granted as an emergency certificate).

29.2 Where there is no recognised mediator available to the applicant or any other party to the proceedings to hold the assessment meeting. The Commission may issue guidance, either generally or in individual cases, as to circumstances which may be regarded as amounting to availability for the purpose of this Rule.

29.3 Where the mediator is satisfied that mediation is not suitable to the dispute because another party to the dispute is unwilling to attempt mediation.

29.4 Where Family Proceedings are already in existence and the client is a respondent who has been notified of a court date which is within eight weeks of the date of the notification.

29.5 Where the applicant has a reasonable fear of domestic abuse from a potential party to the mediation and is therefore unwilling and in fear of participating in mediation with them.

Proposed Payment Dates

The proposed payment dates for April to June 2001 are set out below. These dates may be subject to amendment, but we will inform you of changes in advance where possible. From 1 April payments for criminal cases will be made to firms with general criminal contracts in the General Civil and Crime Contracting payment run at the start of each month.

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 Commission'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 April 2001 - June 2001

General Civil and Crime Contracting Payment	First Settlement of the Month	Second Settlement of the Month
Wednesday, 4 April 2001	Thursday, 12 April 2001	Friday, 27 April 2001
Thursday, 3 May 2001	Monday, 14 May 2001	Wednesday, 30 May 2001
Tuesday, 5 June 2001	Wednesday, 13 June 2001	Wednesday, 27 June 2001

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. Issues from number 26 to 34 are also available in PDF format on the LSC website at www.legalservices.gov.uk.

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