

Remuneration Rates Increased

Major incentives for holders of Controlled Work contracts were announced by the Lord Chancellor at the launch of the Community Legal Service on 3 April. These were:

- ▶ Remuneration increases to come into effect from **1 July 2000** of **8% in London** and **5% elsewhere** in hourly rates for Legal Help and Help at Court in the following categories of law:

Immigration; Mental Health; Community Care; Education; Public Law; and Actions against the Police. For firms inside London, the hourly rate will increase from £48.25 to £52.11 (£45.50 to £47.78 outside London).

The increase only applies to contractors with category specific contracts in these areas of law and *not* to any work done in tolerances. It does *not* apply to Controlled Legal Representation. An increase from £45.50 to £54.50 for preparation for Controlled Legal Representation for matters before the Immigration Adjudicators and the Immigration Appeal Tribunal and from £57.25 to £66.25 for advocacy in these cases was announced by the Lord Chancellor on 2 March 2000. We will increase contract Schedule Payment Limits to reflect the likely additional value of the claims that will be submitted for the part of the year remaining to 31 March 2001.

- ▶ Additional new matter starts for solicitors' contracts and expansion of not-for-profit

sector contracts, particularly in immigration. Allocation of the money to pay for additional new matter starts will be consulted upon shortly.

- ▶ Improved cash flow arrangements for *all* contractors. All Schedule Payment Limits (SPL) will be increased by one twelfth for the year 1 April 2000 to 31 March 2001. Any reconciliation between bills submitted and payments made will leave a balance in the contractors' favour of one twelfth of the value of the claims submitted between 1 April 2000 and 31 March 2001, except if the contract ends, when the reconciliation must be exact.

In addition to this, Immigration contractors will receive increases in SPL such that any reconciliation will give a balance in the contractor's favour of £400 for each Asylum case started but not billed.

- ▶ The Lord Chancellor announced that he had given the Legal Services Commission authority to fund training courses in Immigration, Community Care and Mental Health. The Commission is already discussing suitable courses with the Immigration Law Practitioners Association (ILPA). Discussions with the Law Society and others will take place shortly over the appropriate way forward for courses in Community Care and Mental Health. Further announcements will be made about the availability of these courses.

- ▶ The Commission has been given authority to extend its Methods of Delivery pilot by involving new contractors and extending existing contracts. All applications made for funding at the time the pilot was advertised will be revisited.
- ▶ The Commission will invite applications to provide a subscription service for country of origin background material for the purposes of asylum claims, and will pay the subscription to the service for *all* holders of contracts in the Immigration category.
- ▶ The Commission will progress all the above as quickly as it possibly can. However, changes to SPLs will be complex and will also need to take into account changes as a result of the second quarter review of the contracting scheme. We expect to have completed the exercise by the end of July 2000. If any contractor is in financial difficulties, however, they should approach the Commission immediately.
- ▶ The Commission will consider urgently arrangements for contracts to provide a duty solicitor service on housing possession days in certain county courts. Once the way forward is agreed, these contracts should be available both to solicitors and the not-for-profit sector. Discussions will take place with the Court Service over the best locations for a service and with other interested parties.
- ▶ The Lord Chancellor also announced improvements affecting the not-for-profit sector alone. The Commission will be setting up additional consultancy services to help agencies reach the specialist Quality Mark Standard. This is as well as additional funding through the Advice Services Alliance (ASA) to extend the existing Franchise Support Project to provide training, guidance and support targeted on NFP organisations working at or towards the General Help and Specialist level Quality Mark, which has already been agreed. Further announcements about the availability of consultancy services will be made after discussions with ASA and other interested parties. ■

Asylum Screening Unit Interviews

The Home Office has confirmed plans to re-introduce substantive interviews at the Asylum Screening Unit (ASU) for “straightforward cases”. However, Immigration and Nationality Directorate (IND) has confirmed such interviews will *not* take place following screening where the applicant has engaged a legal representative. Contracted suppliers may wish to give clients proof that they are acting. Applicants who are substantively interviewed at the ASU will have 5 days within which to submit further material (when they may obtain legal advice). The LSC continues in discussions with the Home Office about the position of legal representatives in processing asylum claims efficiently and effectively. ■

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The Quality Mark

On 3 April 2000 the Lord Chancellor launched the Community Legal Service. He also unveiled the Community Legal Service Quality Mark logo. Packs containing window stickers of the logo, artwork and a style guide were sent to all franchised firms in March.

The Quality Mark requirements replace the franchising quality standards which have been developed and enhanced.

The Quality Mark can be awarded at three different levels. The nearest to the old franchising scheme is the Specialist Help level. This seeks to identify solicitors' offices and advice agencies which can act in one or more areas of law from beginning to end in most cases likely to arise in that area of law including representation. The key change from franchising is the toughening up of the referral arrangements which will ensure that clients end up with someone competent to deal with their particular problem. All franchised firms have been passported in to the Specialist Help Quality Mark level.

The second level of the Quality Mark covers General Help. This seeks to identify organisations, both solicitors and advice agencies, which can provide general advice over a wide range of legal issues and even some level of casework in one or more areas of law, but have not the depth of expertise that would qualify them at the Specialist Help level. These organisations can play an increasingly important role and many will develop to become Specialist Help suppliers.

The final level is about information giving. This can vary from simply having leaflets available to what is called assisted information whereby people are specially trained to help the client find the right place to have his or her problem dealt with.

All levels of the Quality Mark will be administered by the Legal Services Commission. The Commission will monitor the standards and make changes to them as necessary. It will be responsible for auditing CLS members or potential members against the standard. This will involve an initial audit to ensure the organisation meets the standards and then annual audits to ensure that standards are maintained. The Commission has specially trained staff to carry out this process. The audits will be positive and constructive in that they will not be straightforward pass or fail. Some organisations may fail but only marginally and they will be assisted towards meeting the standard fully. However, the Quality Mark can be removed if standards are not met.

In addition, the Commission will be able to certify other organisations which might themselves carry out audits. In those circumstances the Commission would monitor the performance of the certifying organisation by

checking regularly that it was applying the right standards to the right levels of compliance.

The public will benefit by being able to identify from the CLS logo an organisation that has met rigorous standards and has been subject to regular audits.

Copies of The Quality Mark Standard are available from Regional Offices and on our website at:

www.legalservices.gov.uk

Use of Logos on Stationery

The picnic logo

The picnic logo will eventually be phased out altogether. We expect that after April 2001 the picnic logo will be obsolete.



Civil cases

The new CLS Quality Mark logo replaces the picnic logo and the franchise logo for civil cases.

Community
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Crime

Franchised criminal practitioners can use the franchise logo and picnic logo until they are replaced with the Criminal Defence Services logo. Non franchised criminal practitioners should continue to use the picnic logo.



A QUALITY SERVICE
Approved by The Legal Aid Board

Legal Services Commission logotype

The Legal Services Commission logotype will only be used by the Legal Services Commission. It is not

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COMMISSION

a service mark and will not be available for use by providers as this would not be appropriate.

We expect the picnic logo and franchise logos to be phased out gradually. Practitioners should be reassured that existing stationery can continue until their supplies are exhausted. However, if you are considering printing new stationery you should be aware of the above. ■

New Public Information Leaflets

A set of public information leaflets have been produced to reflect the work of the Legal Services Commission (LSC) from 1 April 2000. The following leaflets are available:

“The Community Legal Service”

This leaflet has been produced jointly by the Lord Chancellor’s Department and the LSC. It replaces the Legal Aid Board leaflet “How to get free or low cost legal help” and provides a brief overview of the help available through the Community Legal Service.

“A Practical Guide to Community Legal Service funding by the Legal Services Commission”

This leaflet provides a detailed summary of the new levels of service funded by the LSC in civil matters under the Access to Justice Act 1999. It includes information on financial eligibility, contributions and the statutory charge.

“Criminal Legal Aid at the Police Station and in Court” and “A Practical Guide to Criminal Legal Aid”

These provide an updated guide to criminal legal aid, which from 1 April 2000 has been administered by the LSC but remains under the 1988 Legal Aid Act.

“Paying back the Legal Services Commission – the statutory charge”

This leaflet provides a brief guide to the operation of the statutory charge.

“Customer Service”

This leaflet gives information on LSC’s complaints procedures.

“Representations”

This leaflet provides a guide to making representations about the issue of funding certificates in LSC funded cases.

“Special Investigations Unit”

This leaflet provides a brief guide to the work of the SIU in investigating financial eligibility in special cases.

LEAFLET DISTRIBUTION

For copies of the main publicity leaflets – “The Community Legal Service”, “A Practical guide to CLS funding by the LSC”, “A Practical Guide to Criminal Legal Aid” and “Criminal legal aid at the police station and in court” – please contact:

Legal Services Commission Publicity Distribution,
PO Box 447, Croydon, CR9 1WU

Copies of the other leaflets are available from your local regional office, except for the “Special Investigations Unit” leaflet which can be obtained from:

SIU, 29-37 Red Lion Street, London, WC1R 4PP

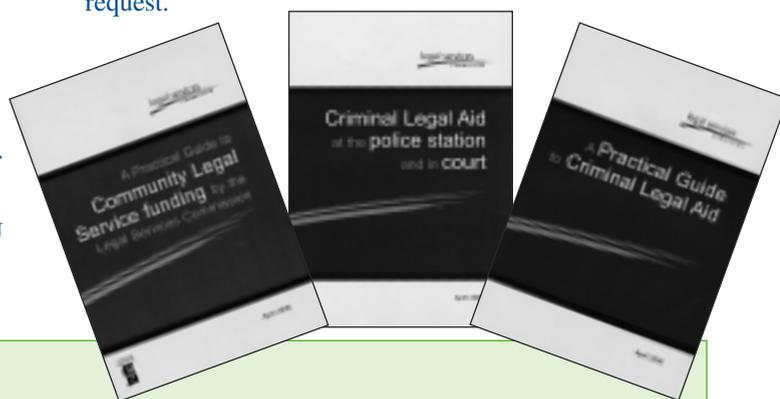
The leaflets are also available on the LSC website at www.legalservices.gov.uk

WHAT TO GIVE CLIENTS

Clients applying for CLS funding by the LSC (civil cases) must be given a copy of “Paying back the LSC” if there is a possibility of the statutory charge arising in their case. Such clients may also be given a copy of either “The Community Legal Service” or if more detailed information is required “A Practical Guide to CLS funding by the LSC”.

Clients receiving help in criminal matters should be given copies of either “Criminal Legal Aid at the Police Station and in Court” or “A Practical Guide to Criminal Legal Aid” as appropriate.

Other leaflets should be given to clients as appropriate on request.



SUMMARY

LAB leaflet	Replaced by
“How to get free or low cost legal help”	“The Community Legal Service”
“A Practical Guide to Legal Aid”	“A Practical Guide to CLS funding by the LSC” (civil only) “A Practical Guide to Criminal Legal Aid” (crime only)
“Criminal legal aid at the police station and in court”	“Criminal legal aid at the police station and in court” (updated version)
“Paying back the LAB – the statutory charge”	“Paying back the LSC – the statutory charge” (updated version)
“Customer Service”	“Customer Service” (updated version)
“Representations”	“Representations” (updated version)
“Special Investigations Unit”	“Special Investigations Unit” (updated version)
“What happens next”	No longer issued (see Practical Guides instead)
“If you need this look for this”	No longer issued (see “The Community Legal Service” leaflet instead). ■

Legal Services Commission website launched

The Legal Services Commission has launched a new website to provide information on the work of the Commission. The site is primarily aimed at legal services suppliers, but will contain information of interest to the public. The site already provides access to statutory material, the Funding Code, contracting documentation, the franchise standard, consultation papers, copies of the new LSC public information leaflets and information about the Quality Mark. The site will be regularly updated.

The old Legal Aid Board site (www.legal-aid.gov.uk) remains open for the time being to provide historical information about the legal aid scheme under the 1988 Legal Aid Act but will not be updated. Links will direct visitors between the two sites.

The address of the new LSC site is:
www.legalservices.gov.uk

Links also operate between the LSC site and the Community Legal Service site (www.justask.org.uk) which is a separate site, intended for general public use. The Community Legal Service Directory can also be found at the CLS site. ■

Changes to LSC computing systems

The Legal Services Commission's computerised information system has been updated to enable us to process civil applications under the new scheme created by the Access to Justice Act 1999.

One significant change is the creation of new look "CLS Funding Certificates" with standard wordings which replace the old legal aid certificates for civil cases started after 1 April. These have been designed to incorporate many of the helpful suggestions we have received as to how to improve the clarity of certificates.

All our standard letters and information sheets have been redrafted so that they are relevant to civil cases started either under the 1988 Legal Aid Act or the Access to Justice Act 1999. Wherever possible generic wordings have been used such as "public funding" rather than "legal aid funding" or "CLS funding" to ensure that the changeover to new terminology is effected as smoothly as possible.

Fewer changes have been made to processes dealing with criminal matters, which will continue to operate under the 1988 Legal Aid Act for the time being. All standard letters, both criminal and civil, have however been "re-branded" with the Legal Services Commission letterhead, and further systems changes are likely to be required when the Criminal Defence Service is created. ■

Stop Press

Please note that there is an omission in the Certification section of the Commission's new application forms which will be corrected at the first update. Although the forms refer only to "A Solicitor" in the bracket, the certification can be signed either by a solicitor or by a Fellow of the Institute of Legal Executives as was the practice prior to 1 April 2000.

Correction

remuneration rates under the General Civil Contract

**Paragraph 2A-064 of volume 2 of the LSC Manual (at page 2A-38) contains two misprints:
At 7(a) (Legal Help and Help at Court) 'Paras 3 and 4' should read 'Paras 1 and 2'.
At 7(b) (i)(Controlled Legal Representation) 'Paras 1 and 2' should read 'Paras 3 and 4'.**

Civil Remuneration Rates from April 2000

This is a summary of the payment rates applicable to the different levels of service. The legal definitions of the levels of service can be found in section 2.1 of the Funding Code Criteria (Volume 3 of the LSC Manual). See also information on front page about remuneration increases.

A Remuneration under the General Civil Contract

The following levels of service may only be provided under contract between the LSC and its approved suppliers:

1. **Legal Help** (Controlled Work);
2. **Help at Court** (Controlled Work);
3. **Approved Family Help** whether General Family Help or Help with Mediation (Licensed Work);
4. **Legal Representation** in respect of **Specified Family Proceedings** that is all Family Proceedings in magistrates' courts, other than proceedings under the Children Act 1989 or Part IV of the Family Law Act 1996 (Licensed Work);
5. **Legal Representation** before the Immigration Adjudicators and the Immigration Appeals Tribunal (Controlled Work);
6. **Legal Representation** before the Mental Health Review Tribunal (Controlled Work);
7. **Legal Representation** provided as Licensed Work in Family, Clinical Negligence, Immigration and Personal Injury.

Remuneration for all levels of service is set by the contract (see Annex A to the Schedule). Article 5 of The Community Service (Funding) Order 2000 sets the maximum rates which contracts may provide. The contract provides for remuneration to be paid at this maximum amount as follows:

- (i) Levels of Service **1 & 2** at the rates provided in Schedule 6 paragraphs 1 & 2 of the Legal Advice and Assistance Regulations 1989. (These are the old green form rates.)
- (ii) Levels of Service **3 (Help with Mediation only) & 6** at the rates provided in Schedule 6 paras 3 & 4 of the Legal Advice and Assistance Regulations 1989. (These are the higher MHRT ABWOR rates.)
- (iii) Level of Service **5** at the rates provided in Schedule 6 paras 3 & 4 of the Legal Advice and Assistance Regulations 1989. (These are the higher MHRT ABWOR rates except that the rates for attending court with counsel do not apply. No claim may be

made for time spent accompanying counsel at a hearing. Counsel is entitled to reasonable remuneration and is not bound by the rates prescribed for solicitors. This is a change from rule 12.7 in the Burgundy version of the Contract Specification.)

- (iv) Level of Service **3 (General Family Help only)** at the rates provided by the Legal Aid in Family Proceedings (Remuneration) Regulations 1991.
- (v) Level of Service **4 (Specified Family Proceedings)** at the rates provided by the Legal Aid in Family Proceedings (Remuneration) Regulations 1991. Note that although these cases were previously provided as ABWOR, remuneration for these proceedings is now at the old civil legal aid rates. In fact by virtue of Regulation 9(2) of the Civil Legal Aid (General) (Amendment) Regulations 2000 all civil cases in the Magistrates' Court (whether or not family cases) as from 20 March 2000 are governed by the Legal Aid in Family Proceedings (Remuneration) Regulations 1991. Previously non-family cases were governed by the Legal Aid in Criminal and Care Proceedings (Costs) Regulations 1989.
- (vi) Level of Service **7 (Legal Representation under Licence)** at the rate determined either by the Legal Aid in Family Proceedings (Remuneration) Regulations 1991 or the Legal Aid in Civil Proceedings (Remuneration) Regulations 1994 as applicable to the proceedings.

B Legal Representation provided without contract

All certificated cases which are not Family, Personal Injury, Clinical Negligence or Immigration are, for the moment, not subject to the contracting regime unless they become high cost cases. Article 3 of the CLS (Funding) Order allows this to continue until 1 April 2001.

For all such cases Article 4 of the CLS (Funding) Order provides that Regulation 107A of the Civil Legal Aid (General) Regulations 1989 applies. This means that the remuneration rate will be determined either by the Legal Aid in Family Proceedings (Remuneration) Regulations 1991 or the Legal Aid in Civil Proceedings (Remuneration) Regulations 1994 as applicable to the proceedings.

C Other contracted work

Legal Representation in a multi party action, or high cost case will be provided under contract. As these are contracts awarded in relation to a particular case,

remuneration is purely a matter for the Commission under its contracts (see Article 5(1)(b) CLS (Funding) Order 2000). The rates applicable are set out within the contract. Further information will be circulated on the standard form contract for high cost cases and the payment rates in due course – they are currently subject to consultation.

Note: **Family Mediation** is always funded as “other contracted work” through family mediation contracts entered into directly between the Commission and Family Mediators.

D Support Funding

Support Funding is funded as licensed work under the General Civil Contract unless or until funding is continued under a multi party action or high cost case contract (see Funding Code Procedures C26.1). The application form for Support Funding (CLS APP 2) also contains additional terms and conditions concerning issues such as payment and apportionment of costs and damages.

The remuneration rates for Support Funding will be set out in an amended Annex A to the General Civil Contract Schedule. These are still subject to negotiation. ■

legal services

COMMISSION

New Commission Members

Peter G. Birch CBE



The Legal Services Commission (LSC) was launched at the beginning of April with **Peter G. Birch CBE** as its Chair. We published a profile of the LSC Chair in *Focus 29*. The Commission also has eight non executive and three executive members. Four of the non executives and

two of the executives were members of the Legal Aid Board.

Michael Barnes CBE was an MP for eight years and Legal Services Ombudsman from 1991 to 1997. He joins the Commission after 18 months as a Board member. He chairs the RLSCs for the East and West Midlands. Michael has held a range of appointments including that of Chief Executive of the UK Immigrants Advisory Service from 1984 to 1990. He has considerable experience in the not-for-profit sector including chairing the Advice Services Alliance. He is currently a member of the Board of the Financial Ombudsman Service.



Michael Barnes CBE

Richard Buxton (executive member) is the Commission’s Operations Director. He took up that post with the Legal Aid Board in August 1998. He has a background in the management of change in public sector organisations. Prior to taking up appointment he

was responsible as Director of Housing for restructuring housing services in the City of Westminster.

Anthony Edwards



Anthony Edwards is a solicitor and senior partner of TV Edwards, a firm well known for its practice in criminal, civil litigation, family and social welfare law. It holds legal aid franchises in six areas of work. Anthony also devotes a great deal of his time to training as he is a specialist in professional conduct and the management of criminal law work. He contributes to a range of professional texts. Anthony is currently Honorary President of the Criminal Law Solicitors’ Association.

Philip Ely a solicitor, takes up his appointment after three years’ service as a Board member. He chairs the RLSCs for the London and Southern regions. Philip is a former President of the Law Society. He has now largely retired from private practice where he was senior partner in a multi-specialist firm in Southampton. He retains a consultancy with the firm, Paris Smith and Randall which holds franchises from the LSC and has a significant litigation practice. Philip is a Chairman of the Police Disciplinary Appeals Tribunal.



Philip Ely

Brian Harvey



Brian Harvey (executive member) is the Commission's Director of Resources and Supplier Development. He joined the Board in May 1989 as Human Resources Director and took up his present post in April 1996. He is responsible for finance, human resources, Supplier Quality Assurance and civil contracting. Before joining the Board Brian held senior HR and general management posts in industry and has extensive commercial experience.

Sheila Hewitt began her career in international banking. She was a member of the Board and chairs the RLSCs for the Eastern and South Eastern regions. Sheila is a member of the Immigration Appeals Tribunal and serves as a magistrate.

She holds a number of other appointments including membership of the Radio Authority and the Grants committee of the King's Fund. She particularly enjoys acting as a mentor to other ethnic minority members of public organisations based on her experience as first ethnic minority member of the Board.



Sheila Hewitt

Juliet Herzog



Juliet Herzog is a former Liverpool City Councillor with extensive experience of community work. She chairs the RLSCs for the North Western and Merseyside regions. A solicitor and currently an associate partner with Silverbeck Rymer in Liverpool, she manages a

personal injury litigation defendant unit. Juliet played a key role in assisting her previous firm to gain franchises in a number of areas of work. She is currently a member of the Council of Management of Merseyside Trades Union, Community and Unemployed Resource Centre.

Yvonne Mosquito is a Birmingham City Councillor and member of the Council's executive committee. She also serves as Chair of the People and Organisation (personnel) Committee. Yvonne is the Council's lead member on the



Yvonne Mosquito

West Midlands Police Authority. She has been in senior management positions in the voluntary and statutory sectors for over ten years. She was the youngest and first female Chair of the Council of Black Led Churches from 1993 to 1994. Yvonne is currently a non executive Director of the Birmingham Health Authority.

Steve Orchard CBE



Steve Orchard CBE (executive member), the Commission's Chief Executive is a former civil servant. He became the Board's Chief Executive in May 1989 and a member of the Board in January 1992. He has wide experience of the legal system and has spent his entire career in the public service.

Richard Penn joins the Commission after a career in local government administration. He chairs the RLSCs for Wales and South Western England. His last local government appointment was as Chief Executive of the City of Bradford Council. Richard has moved back to Wales, where he was raised and educated. He is a member of the Equal Opportunities Commission, also sitting on its committee for Wales. He has recently become the Independent Adviser for Standards to the National Assembly for Wales.



Richard Penn

Jim Shearer



Jim Shearer had a long career with British Coal, working across the UK before retiring as Head of Commercial Services in 1996. He joined the Board in 1997 and will continue to chair the RLSCs for the North East and Yorkshire and Humberside regions. Jim has in-depth experience

of the regions from his work in the North East for British Coal. He is a Trustee of the Coal Industry Social Welfare Organisation. Jim is a magistrate and Chairman of the East Midlands Committee of the Further Education Funding Council.

Eligibility Limits

The eligibility limits for the new levels of service from 1 April 2000 are provided below. These rates will also apply to reassessments on certificates (other than Personal Injury (PI) cases) issued under the Legal Aid Act 1988. The upper limit for reassessments of PI certificates issued under the 1988 Act will continue to be £8751 for income and £8560 for capital.

Level of Service	Income Limit	Capital Limit
Legal Help, Help at Court, and Legal Representation before Immigration adjudicators and the Immigration Appeal Tribunal.	£84 per week Passported if in receipt of Income Support, Income based JSA, *Working Families or Disabled Person's Tax Credits.	£1000 No passporting on capital must be assessed in all cases.
Family Mediation, Help with Mediation, and Legal Representation in respect of specified family proceedings before a magistrates' court (other than proceedings under the Children Act 1989 or Part IV of the Family Law Act 1996).	£180 per week Passported if in receipt of Income Support, Income based JSA, *Working Families or Disabled Person's Tax Credits.	£3000 Passported if in receipt of Income Support or Income based JSA
Other Legal Representation, General Family Help and Support Funding.	£8067 per annum Passported if in receipt of Income Support, Income based JSA	£6750 Passported if in receipt of Income Support or Income based JSA

* *passported only if the amount (if any) 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.*

Contributions

The contribution systems again mirror the current provisions as follows:

Level of Service	Income	Capital
Legal Help, Help at Court, and Legal Representation before Immigration adjudicators and the Immigration Appeal Tribunal.	No contributions for these levels of service.	No contributions for these levels of service.
Family Mediation, Help with Mediation, and Legal Representation in respect of specified family proceedings before a magistrates' court (other than proceedings under the Children Act 1989 or Part IV of the Family Law Act 1996).	There is no contribution system for either Family Mediation or Help with Mediation. For Legal Representation in respect of family proceedings before a Magistrates' Court there is a weekly contribution of $\frac{1}{3}$ of excess income over £76. No contribution is payable if income below £76 per week.	There is no contribution from capital for any of these levels of service.
Other Legal Representation, General Family Help and Support Funding.	There is a monthly income contribution of $\frac{1}{36}$ of excess annual income over £2,723.	There is a lump sum contribution from capital of any excess capital over £3,000. ■

Financial Eligibility

Regulation Changes April 2000

Introduction

The relevant regulations are the Community Legal Service (Financial) Regulations 2000. These regulations combine the different assessment of resources regulations applicable to the 1988 Act into one set of financial regulations applicable to all levels of service under the new Act. That is not to say that all levels of service under the new Act are assessed in the same way. Some individual regulations will only apply to certain levels of funding.

The basic approach is that the levels of service, as defined in the Funding Code, are split into 3 groups for the purposes of determining financial eligibility. Those groups are as follows:

1. Legal Help, Help at Court, and Legal Representation before immigration adjudicators and the Immigration Appeal Tribunal.
2. Family Mediation, Help with Mediation, and Legal Representation in respect of family proceedings before a magistrates' court (other than proceedings under the Children Act 1989 or Part IV of the Family Law Act 1996).
3. Other Legal Representation, General Family Help and Support Funding.

These 3 groups equate to the previous levels of service: Advice and Assistance, ABWOR and Civil Legal Aid respectively. In most respects the financial regulations mirror the previous provisions subject to annual uprating. The key changes are outlined in this article.

As was the position before 1 April 2000, the providers of the levels of service will be responsible for determining financial eligibility for groups 1 and 2. The Commission is responsible for determining financial eligibility for group 3 only.

It should be noted that some services will be provided without reference to a financial eligibility test. These services are:

- a) Provision of general information about the law and legal system and availability of legal services (for which no payment is made).
- b) Initial legal advice consisting of such amount of Legal Help authorised under contract to be provided without reference to the client's financial resources. It should be noted that only 'not-for-profit' sector contracts contain such authority.
- c) Legal Representation in Special Children Act and Related Proceedings.
- d) Legal Representation in proceedings before a Mental Health Review Tribunal under the Mental Health Act 1983.
- e) Legal Representation for applications pursuant to

sections 3(2) or 14(2) of the Child Abduction and Custody Act 1985 and for the registration of or the refusal to register a foreign maintenance order or the registration of a judgement.

Aggregation of Resources

For all levels of service covered by the Community Legal Service (Financial) Regulations 2000 there is a new definition of partner. Partner is now defined as anyone with whom the applicant resides as a couple and includes partners of the same sex. Although not conclusive it would be usual for there to be some evidence of a pooling of financial resources and the parties must regard themselves as a couple. It would not be appropriate to aggregate the resources of say a brother and sister, or flatmates who are not living as a couple.

This new definition will not apply to either reassessments on certificates issued under the 1988 Act or to new applications for criminal legal aid. In both of these scenarios aggregation will only apply where a man and a woman are living as husband and wife.

Self Employed Income

For practical purposes where means are assessed by the service provider, this income can now be assessed as the drawings taken out of the business for personal use.

Where means are assessed by the Commission the normal basis will continue to be to assess the net profits from the business. Exceptionally income will be assessed by reference to the drawings where it is thought this more accurately reflects the income derived from the business.

Capital Value of property where applicant owns more than one property

Where the applicant has more than one property it is no longer relevant whether the applicant resides in the second property or not. The total amount which can be allowed in respect of mortgages and charges on all the properties cannot exceed £100,000. A further change is that the mortgage for the main dwelling is deducted last when applying the £100,000 mortgage disregard. There continues to be no equity disregard for the second property.

Example:

The client has a main dwelling worth £150,000 and a second dwelling worth £100,000. Each has a mortgage of £80,000.

The second property after allowing for the mortgage has a net equity of £20,000. The value of the main dwelling must be taken into account but only £20,000 can be deducted for the mortgage. This is because £80,000 of mortgage has already been taken into account on the second property leaving only £20,000 (of the £100,000 allowable maximum) to be allowed against the main dwelling.

The equity in the main dwelling would therefore be £130,000. The first £100,000 of equity in the main dwelling is disregarded giving equity in that property of £30,000. The total capital would therefore be £50,000. The client would not be eligible for funding.

Value of second property:	£100,000
Deduct mortgage up to maximum allowable:	£80,000
Amount of equity in second property:	£20,000
Value of main dwelling:	£150,000
Deduct mortgage up to available outstanding of the maximum allowable:	£20,000
Deduct disregard for main dwelling	£100,000
Amount of main dwelling to be taken into account in assessing financial eligibility:	£30,000
Total value of property assessed	£50,000

This new rule will not apply to reassessments on certificates issued under the 1988 Act.

Dependants' Allowances

The present 3 rates of allowances for dependent children have been reduced to 2 following changes to the income support regulations. In addition it is no longer necessary to look at the age of the child on the September before the application. Instead it is simply the age of the child on the date the computation period commences which determines the appropriate rate. The following rates are applicable:

	<i>weekly</i>	<i>annual</i>
Partner	£29.75	£1551
Child aged 15 or under	£26.60	£1387
Child aged 16 or over	£31.75	£1656

These new rates will also apply to reassessments on certificates issued under the 1988 Act. ■

New telephone numbers

The Legal Services Commission is currently updating their nationwide telephony systems. As part of this all LSC offices will be issued with new telephone numbers. Installation of new systems has already taken place in London and the new system will be rolled out nationwide by the end of July 2000. The new numbers and their implementation dates are listed below. Transitional arrangements have been made for six months.

Office	New switchboard number	Implementation date
Head Office (Gray's Inn Road)	020 7759 0000	10 April 2000
Regional Offices		
London (Red Lion Street)	020 7759 1500	17 April 2000
Wales (Cardiff)	029 2064 7100	2 May 2000
Southern (Reading)	0118 955 8600	8 May 2000
South Eastern (Brighton)	01273 878800	15 May 2000
West Midlands (Birmingham)	0121 665 4700	22 May 2000
South Western (Bristol)	0117 302 3000	5 June 2000
Eastern (Cambridge)	01223 417800	12 June 2000
East Midlands (Nottingham)	0115 908 4200	19 June 2000
North Western (Manchester)	0161 244 5000	26 June 2000
Merseyside (Liverpool)	0151 242 5200	10 July 2000
North East (Newcastle)	0191 224 5800	17 July 2000
Yorkshire and Humberside (Leeds)	0113 390 7300	24 July 2000
Chester processing centre	0124 440 4500	31 July 2000

First Update to the New LSC Manual

Sweet & Maxwell will be publishing the first update to the Commission's new Manual at the beginning of June. If you have already purchased a subscription you will receive this update. If you do not have a copy of the Manual and wish to obtain details, Sweet & Maxwell can be contacted on 020 7449 1111.

The first update will contain the orders, regulations and

directions which were not finalised when the Manual first went to press. (These were all reproduced in *Focus 29* which was published in March.) Also included will be the various notices relating to the CLS Funding Certificate, CIS wordings, additional narrative and commentary and revisions to the Funding Code Decision Making Guidance arising from the further consultation period which ended on 28 February. ■

CORRECTION

The article 'How the Access to Justice Act 1999 will affect the statutory charge' in *Focus 29* (pages 11-13) contained an error.

Under the heading 'Is the property exempt?' on page 12, please note that only the first £2,500 of a lump sum or property adjustment order made or deemed to be made under section 31(7A) or (7B) Matrimonial Causes Act 1973, or an agreement having the same effect, is exempt.

London Gears Itself up for the Community Legal Service

Over 80 local authority members joined broadcaster Esther Rantzen and David Lock MP, Parliamentary Secretary at the Lord Chancellor's Department, recently for the London region's Community Legal Service (CLS) launch. All of London's 33 local authorities were represented at this jointly convened Local Government Association and Legal Aid Board conference held in March.

In introducing the day, the Minister outlined the Government's vision of a local network of quality advice, supported by co-ordinated funding and based on priority need. He went on to emphasise the pivotal role the Community Legal Service "partnerships" will play in planning local legal services. Representatives from the London boroughs of Southwark and Hammersmith and Fulham both spoke of the challenges involved in tackling London's "advice deserts and mazes" and the opportunities presented by the setting up of local CLS partnerships.

The broad and inclusive approach of the CLS was illustrated by the range of speakers that followed. Graham Fisher from the Federation of Independent Advice Centres (FIAC) spoke about matching access

with quality and Mark Stephens of Finers Stephens Innocent, Law Society Conference Chairman, highlighted the benefits to the legal profession of being fully involved in the Community Legal Service.

We were very pleased that CLS Champions Esther Rantzen and Lincoln Crawford, former Chair of the Bar Race Relations Committee, were able to join us and give support to this successful, well attended event. ■



Left to right:
 Brian Briscoe (Chief Executive, Local Government Association),
 Mark Stephens (Law Society Conference Chairman),
 Esther Rantzen (Broadcaster and CLS Champion),
 David Lock MP (Parliamentary Secretary, Lord Chancellor's Department),
 Graham Fisher (London Regional Director, FIAC)
 Lincoln Crawford (Barrister and CLS Champion)

Avoid Delays to your Contracted Monthly Payment...

From January suppliers awarded a Civil Advice and Assistance contract have needed to report all matters opened and closed each month. These reports are made on 'Matter Start Forms' and 'Consolidated Matter Report Forms', together known as SPAN forms. The timely submission of these forms is the trigger for monthly payments through the SPAN payments system. We have now completed our first internal review of reasons why we have had to return some of these SPAN forms to suppliers. The most common reasons are shown below along with tips on how our need to return these to you can be prevented, and delay in your monthly payments avoided.

- ✘ Supplier number not provided / illegible
- ✘ Only one part of matter type recorded
- ✘ No end points / invalid combinations of characters in end point fields
- ✘ No of cases starts recorded not whole numbers (e.g. 1.33 matrimonial case starts recorded)
- ✘ Matter start form received with no consolidated matter report forms attached
- ✘ Consolidated matter report forms received with no matter start form attached
- ✘ Total of cases reported as controlled work on matter start form does not equal number of cases actually reported on the attached consolidated matter report forms
- ✘ More than one set of forms submitted in month by supplier
- ✘ Incorrect month or year recorded on form
- ✘ Not providing client name and initials
- ✘ Not providing supplier case reference

We apologise that some forms were returned to suppliers in error. We have issued more detailed guidance to our processing offices to prevent re-occurrence.

As a reminder:

- ✓ Only one set of forms (i.e. one matter start form, with the appropriate number of pages of consolidated matter report forms attached) may be processed per supplier per month
- ✓ The consolidated matter report forms should be securely fastened to the matter start form
- ✓ The forms must be returned on a monthly basis. To be received by the processing office within 7 days of the end of each month (e.g. forms containing data about cases opened and closed in May should be received no later than 7 June)
- ✓ Forms must be submitted even in months where there is no work to report (i.e. a nil return)
- ✓ Once a form has been received by the processing office no changes or amendments may be requested/made to the submission
- ✓ All fields must be complete for the forms to be accepted

If your forms are rejected please return them fully completed as soon as possible to minimise the risk of delay in monthly payments.

For detail on how to complete the SPAN forms please see 'Guidance for Reporting work under General Civil Contracts: Controlled work the SPAN system'. Further copies may be obtained by telephoning the Business Support Unit 020 7759 0000. ■

Funding for the representation of children in Public Law Children Cases other than Special Children Act Proceedings

The Funding Code Decision Making Guidance appears on the Commission's website at www.legalservices.gov.uk and also in the Legal Services Commission's Manual published by Sweet & Maxwell.

Section 11.9 of the Funding Code Criteria contains the criteria which apply to Public Law Children cases (other than Special Children Act proceedings). The Decision Making Guidance explains how decisions will be made under the Funding Code. As a result of its consideration of responses to consultation the Commission has revised its approach to the application of criterion 5.4.2 (refusal on the ground of availability of alternative sources of funding). This means that paragraphs 20.4.4 and 20.15.5

of the Decision Making Guidance have been revised and that funding in these cases will be granted unless prospects of success are poor (criterion 11.9.2), representation is not necessary (criterion 5.4.5) or it is unreasonable to fund (criterion 11.9.3). Criterion 5.4.2 will not result in a refusal of funding to a child in proceedings under the Children Act where a panel guardian is or will be involved notwithstanding the decision in *R v Legal Aid Board ex parte W and others (Minors)* reported in The Times on 25 November 1999.

If you require further details of the Commission's Manual please contact Sweet & Maxwell on 020 7449 1111. ■

Methods of Delivery Pilot:

training courses and other specialist support for General Civil Contract holders

The specialist consultancy services launched in *Focus 29* continue to offer support to solicitors and advice agencies with a General Civil Contract. The support services include training courses, specialist consultancy lines and complex cases taken on referral. The areas of law covered in the pilot are:

Human Rights and Public Law; Housing; Immigration and Employment.

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

Training Courses

The Legal Services Commission (formerly the Legal Aid Board) has funded within the pilot the development and delivery of training courses for General Civil Contract holders. The courses are available at special rates to contract holders.

Immigration and Asylum Law courses

The **Joint Council for the Welfare of Immigrants (JCWI)** will be providing training courses designed by the team who contribute to the leading publication in this field: the annual JCWI Immigration Law Handbook. Each course comes with a bound user-friendly training pack. The courses will cover a wide spectrum of immigration law including:

- ▶ How to prepare an asylum application – workshop
- ▶ Representation at immigration appeals
- ▶ Basic immigration and nationality law
- ▶ New Benefits and Asylum support arrangements – the 1999 Act
- ▶ Human Rights Act: relying on the ECHR in Immigration and Asylum Cases

For the course programme and further details: tel: 020 7553 7466/7469 fax: 020 7251 8707 email: training@jcwi.org.uk

The immigration team at **Two Garden Court Chambers** will be providing training in three locations around the country (provisionally Birmingham, Manchester and London). The training will deal with the most difficult aspects of the *Immigration and Asylum Act 1999* which advisers now need to know about:

- ▶ the support arrangements;
- ▶ the new appeals scheme (including human rights appeals).

They will provide accurate and up-to-date information on legislation and caselaw as well as advice on possible challenges.

Further details of course content, dates and locations will be sent to contract holders and will shortly be available on their website: www.2gardenct.law.co.uk

Housing Law courses

Shelter will be running introductory and advanced courses across the country. The courses will cover many aspects of housing law including:

- ▶ Possession proceedings
- ▶ Homelessness
- ▶ Security of tenure
- ▶ Disrepair

The queries that the Shelter consultancy line receive will inform how the courses are developed. General Civil Contract holders may suggest areas for inclusion or development in these courses. The consultancy line is: 020 7505 4688.

Two Garden Court Chambers will be presenting their *Housing Law 2000* full-day training course in three venues – Bristol, Leeds and London – later this year. Tailor-made for contract holders with significant “housing” matter starts, the course combines plenary sessions on the current issues in:

- ▶ Allocations and Homelessness
- ▶ Possession Procedure
- ▶ Disrepair
- ▶ Housing and Human Rights

with seminar workshops allowing an opportunity to focus on practice and procedure in those subject areas and others.

Details will be mailed direct to all contract holders and will be posted on their website: www.2gardenct.law.co.uk

Employment Law courses

NACAB Specialist Support Unit, producers of the *Adviser* magazine, will be running four 1 day Law Society accredited courses at different venues nationwide. The courses will be at introductory to intermediate level and each participant will receive a comprehensive training pack. Each course will cost £50 per individual. Telephone enquiries can be made on 01902 310568. The courses are as follows:

Working Time Regulations

23 June – Manchester
 14 July – Nottingham
 18 Sept – London
 25 Sept – Leeds
 24 Nov – Swindon

Employee Rights on Insolvency

28 June – Manchester
 21 July – Nottingham
 19 Sept – London
 27 Sept – Leeds
 24 Jan – Exeter

Transfer of Undertakings

15 Sept – Nottingham
 11 Oct – Manchester
 24 Oct – London
 15 Nov – Leeds
 25 Jan – Exeter

Sex Discrimination

22 Sept – Nottingham
 20 Oct – Manchester
 25 Oct – London
 10 Nov – Swindon
 16 Nov – Leeds

Two Garden Court Chambers will be presenting their *Challenging Workplace Discrimination* full-day training course in three venues – Bristol, London and Sheffield – later this year. Tailor-made for contract holders with significant “employment” matter starts, the course will cover the current issues in Sex, Race, Disability and Sexuality Discrimination.

Details will be mailed direct to all contract holders and will be posted on their website:

www.2gardenct.law.co.uk

Human Rights and Public Law

The Public Law Project and **Liberty** will be providing a training course with the aim of identifying public law challenges in the context of the Human Rights Act. This will include considering:

- ▶ Is it lawful? Identifying a judicial review case in the context of the Human Rights Act.
- ▶ The impact of the Human Rights Act on public law remedies, including judicial review, complaints systems and ombudsman schemes.

The course will be run in the following locations:

- ▶ London
- ▶ Cardiff
- ▶ Leeds
- ▶ Birmingham

The enquiries received on the consultancy line will inform how the course is developed. Suggestions from General Civil Contract holders will be welcome.

Consultancy Lines and Complex Cases on Referral

The lines are staffed by experts in their field who can offer support on practical and procedural problems, help with difficult tactical decisions and advice on substantive law. Legal reference materials can be provided and advice can be followed up in writing.

The national service telephone numbers, days and times of opening can be found on the back page of *Focus 29*.

Where all parties agree, it will be possible to refer complex cases (where the client is financially eligible) to the specialists, who will then take on the conduct of the case.

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

West Midlands Service

Introducing a specialist support service for solicitors and advice agencies in the West Midlands (the LSC’s Birmingham region)

Advisers with a General Civil Contract in this region can call *Tyndallwoods Solicitors* on the following consultancy lines:

Immigration 0121 246 9029

Welfare Benefits 0121 246 9057

Community Care & Health 0121 246 9027
 (not clinical negligence)

All three lines are open: Tuesdays 12.00 pm – 2.00 pm,
 Thursdays 10.00 am – 1.00 pm

Have the following information ready:

- ▶ General Civil Contract number
- ▶ case reference
- ▶ a summary of the facts and the questions you want answered

The advisers on the lines are well placed to deal with both **practical and procedural** problems and to help with difficult **tactical decisions** as well as with **substantive law**. In addition to the telephone consultancy service, they can also provide more detailed written advice and help with drafting precedents, identifying and finding the appropriate case law, legislation and regulations or guidance. Advice can be confirmed in writing, and relevant references, precedents, case details and other documentation can be provided.

Tyndallwoods will also be providing training courses in the West Midlands including:

Immigration – new asylum cases and Human Rights (the conduct of an asylum case from initial instructions through to the appeals system and beyond).

Welfare Benefits – preparing for appeals and post appeals steps with particular reference to the impact of the Social Security Act 1998.

Community Care – introducing community care and Human Rights, covering assessment and service provision, including challenging resource led decisions, charging for services and capacity. These courses are aimed at advisers who work in housing with older clients, families and mental health patients who may not hitherto have seen community care as part of their work, as well as those already undertaking community care cases.

For more information contact Jean Gould at Tyndallwoods on 0121 243 3150

For further information about any aspect of the Methods of Delivery pilot, please contact Sarah Maclean on 020 7759 0463. ■

The Special Cases Unit (SCU) and Individual Very High Cost Civil Cases

This article sets out the Commission’s procedures for Very High Cost Civil Cases. They are still subject to consultation, but this will give a clear idea of the likely approach.

The Funding Code, contracts and the SCU

The Funding Code (Criteria Section 6 “Very Expensive Cases”) includes extra criteria for very high cost civil cases. In particular, they are subject to an “affordability test” and the proposals put forward for progressing the litigation must be satisfactory. Once referred to SCU, there must be a proper case plan and proposal for a fully costed stage. Each case will have an individual contract based on the agreed case plan and the price for each fully costed stage. The contract will allow progression of the case stage by stage, with an agreed price for each stage.

Details of what must be included in a case plan and a fully costed stage, and how they should be used, are set out in Section 15.3 of The Funding Code – Decision Making Guidance (Vol. 3 of the Legal Services Commission Manual).

The Commission has established the SCU, based in the Brighton Regional Office, to manage these cases. The SCU may manage cases from Brighton.

Alternatively, the SCU will assign one of ten case managers, drawn from the most experienced solicitors in the regional offices, to each case.

What cases are covered?

Cases subject to these provisions are those with projected total costs to disposal (ie trial or earlier settlement) of over £25,000 (excluding VAT) or total costs to, and including, trial of over £75,000 (excluding VAT). Typically, they will be public law Children Act cases covering several children and requiring experts’ reports; clinical negligence cases and actions against the police. In addition all applications relating to multi-party actions and all applications for litigation support (see separate article on pages 19-30) will be referred to SCU. The

Commission anticipates that only a few thousand cases each year will be subject to these provisions.

What forms are used and how do cases get to the SCU?

If you identify a case as potentially very high cost at the start and seek Legal Representation, you should still apply to your regional office on the standard application forms (CLSAPP1 in non-family cases, CLSAPP3 for family cases, or CLSAPP5 for Special Children Act cases). If you identify it when a certificate for Investigative Help or Full Representation has already been issued, you should still apply to your regional office, using amendment form CLSAPP8. You must complete the relevant questions with the estimates of costs to settlement and trial and include a case plan with a proposed fully costed stage.

If, however, you apply for Litigation Support (which will only be available for unusually expensive personal injury cases) you should apply direct to the SCU on form CLSAPP2. For these cases, you will be required to provide evidence of the conditional fee agreement and legal expenses insurance as well as a case plan with a proposed fully costed stage.

A regional office receiving an application will refer the case to the SCU which may deal with the case itself but, where possible, will arrange for cases to be dealt with by your nearest regional office, to build links between firms and case managers. Case managers have the power to use new case management tools. They may obtain independent counsel’s opinion, seek representations from opponents against funding, attend conferences with counsel and experts and require specific issues to be put to them where appropriate.

What decisions are made?

The case manager will decide, applying the Funding Code criteria, whether the case justifies funding. If the application is refused funding there is a right of

appeal to the funding review committee, which has replaced the area committee. If the case is approved for funding the case manager will agree the first stage of the case and place a costs limitation on the certificate. The agreed price for the work will be based on the appropriate charging rates.

When does the contract start?

The contract starts when the SCU first limits the certificate to the work set out in the fully costed stage of the case plan. It stays in force while the certificate is in force. At a convenient point soon after your contract has started, you should send the SCU your claim for payment for the work already done. That will be assessed and paid (less any payments on account already made) as a final payment for that work.

Once the contract has started, the case will be managed through a series of fully costed stages until it ends. Each fully costed stage will state the cost of the stage broken down into disbursements, profit costs and advocacy costs. Once approved, the costs limitation on the certificate will be increased to reflect the cost of the approved stage.

If the SCU does not agree the work proposed in a fully costed stage or the proposed price for it, there is a right of appeal to the funding review committee. But there is no right of appeal if the SCU rejects a fully costed stage because all the information required has not been supplied.

When do contract rates apply?

Whether or not it is done under the contract, work up to the first £25,000 (excluding VAT) of solicitors costs, disbursements and counsel's fees under the certificate are payable at usual current rates. If that first £25,000 includes less than £3,000 (excluding VAT) in counsel's fees, further work by counsel – up to a total value under the certificate of £3,000 (excluding VAT) – is payable at the usual current rates. After that, work is payable at the contract rates. All this is still the subject of consultation with the Law Society and the Bar Council.

Can the agreed price be increased?

The SCU will amend the certificate to increase the agreed price for a fully costed stage only in exceptional circumstances (eg if extra work that was not reasonably foreseeable when the stage was approved has to be done) and only if the cost of the

extra work will exceed 5% of the price. A typical situation where an increase might be justified is where there have been new directions by the judge in a Children Act case.

If the actual cost of completing a stage is 95% (or above) of the agreed price, the agreed price is payable. If the actual cost is between 50% and 95% of the price the actual cost plus 5% of the price is payable. If the actual cost is 50% (or below) of the price, only the actual cost is payable. Costs will be assessed by the Commission, with the usual rights of appeal. There will be no detailed assessments by the court.

What about barristers?

If barristers will do any work in a fully costed stage, the solicitor must include them in preparing it, must give them a copy of the contract and must obtain their signature to a form agreeing to the contract payment terms.

What are the contract payment terms?

Once a contract is in force, full payments on account will be made at the end of each fully costed stage and, if a stage will last more than six months, after each six month period.

At the end of the case, you may choose between the costs payable under the certificate and the costs (if any) to be paid by the other side. If you choose the certificate costs, all the costs from the other side are payable to the Commission.

If you choose costs from the other side, no further payments are due from the Commission and all payments made under the certificate are repayable to the Commission. In making that choice, you must take into account the fact that barristers and previous solicitors under the certificate are entitled to whichever amount is, for them, higher (ie costs under the certificate or costs from the other side for the work they have done) and that you are responsible for making up any shortfall.

Review

At the end of the case you and the case manager may review how the case has progressed to identify whether there is any scope for improving the management of similar cases or future liaison between you and the SCU. ■

Restrictions on Travel Under General Civil Contracting Rule 2.9 of the Contract Specification

As part of its review of civil contracting the Commission is looking at ways of improving access to specialist suppliers in certain categories of law. The Commission is consulting the profession and others on proposed changes to the contract, including proposals in relation to both suppliers' and clients' travel expenses, with a view to amendments being in place from August 2000. However, in the interim period, the Commission will allow the following relaxation to the provisions set out in paragraphs 4 to 5 of the guidance to Rule 2.9 of the Specification in both the Solicitors and NFP contracts:

1. In relation to work within the franchise categories of community care, education, public law and actions against the police, where the client is in custody or detention or in hospital or where a home visit is justified within the meaning of paragraph 2 of Rule 2.9 of the Specification, then the clinical negligence travel rules set out in paragraphs 2 to 4 of CN3.11 (in section 15 of the Specification in the solicitors contract) will apply in place of paragraphs 4 to 5 of the guidance to Rule 2.9. This will in effect allow one way travel of up to 3 hours, exceptionally longer travel may be justifiable in a particular case.
2. In relation to the mental health and immigration franchise categories, where the client is in custody, in detention or in hospital or a home

visit is justified within the meaning of paragraph 2 of Rule 2.9, then paragraphs 2 to 4 of the rules applicable to clinical negligence will apply in place of paragraphs 4 to 5 of the guidance to Rule 2.9, but with the substitution of 2 hours for 3.

Note that these changes only apply to suppliers with a specific contract in the categories mentioned above. They do not apply to work carried out in tolerances.

The rationale for the distinction between mental health and the other specialist franchises is that there are far more mental health contractors and it is very likely that, for any distances above 2 hours travelling or more, a local specialist practitioner will be available to deal with the matter. Further, the speed of response required in dealing with detainees under the Mental Health Act is a factor in favour of local specialists. Nevertheless, it will be possible to go over the usual 2 hour or 3 hour limit in a particular case, especially where there is in practice no closer specialist practitioner. Where this is so a note outlining the justification must be made and retained on the client's file.

This new guidance is, of course, subject to the requirement to act reasonably and not to incur unnecessary travelling costs where more local practitioners with the necessary expertise are available. ■

An Overview of the New Civil Funding Scheme

1. INTRODUCTION

This article provides a general overview of the new civil scheme created by the Access to Justice Act and the Funding Code. It is intended to assist practitioners by way of an introduction. It is not part of the Funding Code Guidance and should not be a substitute for careful reading of the Funding Code and the Funding Code Guidance which are both available in Volume 3 of the Commission's loose leaf Manual published by Sweet & Maxwell and on the Commission's website at www.legalservices.gov.uk. The Guidance is now being amended following consultation. Revisions to the Guidance will be issued shortly.

In this article, the letters "FC" followed by a number refer to Funding Code criteria. The letters "FP" followed by a letter and a number refer to Funding Code procedures and the word "Guidance" refers to the Funding Code guidance.

"The Act" refers to the Access to Justice Act 1999.

2. THE KEY DOCUMENTATION

The Access to Justice Act is a radical new scheme, easily the most important reform of legal services funding for 50 years. A passive funding scheme based on entitlement is replaced by a flexible scheme based on funding priorities and quality assurance. The Access to Justice Act provides the framework and detailed rules are set out in the contracts, regulations and the Funding Code.

The key provisions of the Access to Justice Act are as follows:

Section 1	Establishes Legal Services Commission (LSC)
Section 4	Establishes Community Legal Service (CLS)
Section 4(2)	Services covered by the CLS
Section 4(4)	Statutory duties under-pinning the CLS
Section 4(6)	Duty on LSC to identify legal need
Section 4(7)	Power to set and monitor standards
Section 6	Power to set priorities and to fund services
Section 8	Establishes the Funding Code – Criteria and Procedures for individual funding decisions
Section 11	Costs
Schedule 2	Exclusions

In addition to the Act itself, you will need to be familiar

with the Directions, Orders and Regulations made under the Access to Justice Act.

Focus 29 and the Commission's website both contain the text of most of the relevant orders and regulations. An overview is contained at pages 28 -29 of *Focus 29*. This edition of *Focus* contains the Commencement Order which brought the LSC and CLS into effect on 1 April 2000, and includes transitional provisions (see pages 38-41).

It is also essential to familiarise yourself with the Funding Code and Guidance. The Code is divided into Criteria (which also define the level of service available) and Procedures (most of which cover similar ground to the Civil Legal Aid (General) Regulations). Guidance has increased status under the new scheme and must be taken into account by all persons making decisions under the Code.

3. LEVELS OF SERVICE

The Funding Code prescribes seven levels of service – three of which have two alternative forms. Each application for funding must be for a particular level of service and different levels of service may be provided in different ways and may attract different eligibility and remuneration.

The levels of service are as follows:

1. Legal Help
2. Help at Court
3. Approved Family Help:
 - either General Family Help or Help with Mediation
4. Legal Representation:
 - either Investigative Help or Full Representation
5. Support Funding:
 - either Investigative Support or Litigation Support
6. Family Mediation
7. Such other services as are authorised by specific orders or directions from the Lord Chancellor.

The Funding Code Procedures set out how each Level of Service will be funded. Legal Help, Help at Court and Legal Representation before the Mental Health Review Tribunal, Immigration Adjudicator or Immigration Appeal Tribunal ("Controlled Legal Representation") are

classified as Controlled Work. Controlled Work is work which can only be carried out by those with a General Civil Contract and contracted providers are fully responsible for granting and withdrawing help in these cases. These decisions are made in accordance with the criteria in the Code and the guidance included in the contract documentation.

However, funding for Legal Representation (other than Controlled Legal Representation), Approved Family Help and Support Funding will be based on certificates granted by the Commission. The process of applying for and being granted a certificate is similar in most respects (including devolved powers) to previous civil legal aid procedures. Only providers licensed to do so under a General Civil Contract will be able to apply for certificates in family, clinical negligence, immigration and residual personal injury cases remaining within the scheme. For a transitional period non contracted firms will be able to apply for certificates in other areas of work but the Commission will move to a fully contracted scheme by April 2001.

As now, certificates will be obtainable for emergency Legal Representation. This is not a separate level of service but has its own criteria under the Funding Code, in addition to the criteria which apply to the subject matter and type of case. FC 5.5.1 provides that an application for Legal Representation may only be granted as a matter of urgency where it appears in the interests of justice to do so. FC 5.5.2 allows emergency representation to be granted where only limited information is available, if it seems likely that the standard criteria for Legal Representation will be satisfied. Solicitors with a General Civil Contract who are fully franchised in the category in question can exercise devolved powers to grant emergency certificates where the criteria are met. An emergency procedure is not necessary in relation to Controlled Legal Representation or representation in certain proceedings in the magistrates court known as Specified Family Proceedings as these can be self granted by a solicitor with a General Civil Contract (Specified Family Proceedings are all family proceedings in the magistrates court except proceedings under the Children Act 1989 or Part IV of the Family Law Act 1996 – see section 6 of the General Civil Contract Specification.)

4. EXCLUDED SERVICES

Paragraph 1 of Schedule 2 of the Access to Justice Act provides eight categories of services in relation to which the provision of help (beyond basic information) is excluded under the new scheme. These are as follows:

- (a) Allegations of negligently caused injury, death or damage to property (apart from allegations relating

to clinical negligence);

- (b) Conveyancing;
- (c) Boundary disputes;
- (d) The making of wills;
- (e) Matters of trust law;
- (f) Defamation or malicious falsehood;
- (g) Matters of company or partnership law; or
- (h) Other matters arising out of the carrying on of a business.

These services are excluded at all levels of help (including Legal Help under the Commission’s General Civil Contract) except where brought back in to scope by the Lord Chancellor’s Scope Direction made under Section 6(8) of the Act – see pages 20 -23 of *Focus 29*.

In considering the exclusions, it is important to read the Commission’s guidance (see Guidance 3.5 onwards) and also to look at the basis of the claim and not the way it is pleaded or to be pleaded.

When deciding whether the Lord Chancellor’s Direction brings a matter back into scope for **Legal Representation**, which would otherwise be excluded by Schedule 2 then you should consider the following:

1. If the matter falls within one of the following four types of case, then it is likely to remain within scope for Legal Representation even if it consists of or includes any of the excluded issues (other than matters arising from the carrying on of a business).
 - (a) Housing – the majority of excluded issues within housing cases (as defined in section 10 of the Code) are brought within scope. However, if a housing claim arises under a business tenancy, this will be excluded unless the Direction on mixed cases applies.
 - (b) Family – Family Proceedings are defined in section 2.2 of the Code and will almost always remain within scope but the Lord Chancellor’s authorisation does not bring back within scope every exclusion in paragraph 1 of Schedule 2, e.g. allegations of defamation.
 - (c) Proceedings under Section 14 of the Trusts of Land and Appointment of Trustees Act 1996. Such proceedings concerning the ownership or possession of the only or main dwelling of the person in respect of whom services are funded are brought back in, even though they are matters of trust law.
 - (d) Claims against public authorities – excluded issues within such claims (as defined in section

8 of the Code but including for this purpose judicial reviews) are brought within scope, provided the proceedings concern serious wrongdoing, abuse of position or power or significant breach of human rights.

2. If the matter does not fall into one of the four types of case listed above then it may be brought back in for Legal Representation if one of the circumstances listed below applies in the particular case:
 - (a) The excluded issue is minor or incidental to the case.
 - (b) The excluded issue is introduced into proceedings which are otherwise within scope by a person other than the client.
 - (c) Genuinely mixed claims, provided that the three conditions set out in the Lord Chancellor's Direction are satisfied.
 - (d) If the excluded issue is conveyancing this can be covered if the conveyancing is necessary to give effect to a court order in funded proceedings or (in family proceedings only) to an agreement reached to settle or avoid funded proceedings.
 - (e) The case has a significant wider public interest (other than cases arising out of the carrying on of a business).

In relation to **Legal Help**, the Scope Direction is more restrictive and only brings back into scope the following:

- ▶ Housing, family and Section 14 of the Trusts of Land and Appointment of Trustees Act 1996 cases as set out in 1(a) to (c) above.
- ▶ Conveyancing Services to give effect to a court order or agreement as set out in 2(d) above.
- ▶ Wills for certain categories of client (broadly, those over 70 and the disabled).

For guidance on all these issues, refer to Guidance 3.5 – 3.10.

5. PERSONAL INJURY CLAIMS

The great majority of personal injury claims are excluded from the scheme under paragraph 1(a) of Schedule 2 as set out above. Even personal injury claims which do not concern negligently caused injury are unlikely to receive funding by virtue of the criteria in the Code allowing for the refusal of funding where a case is of a type suitable for a conditional fee agreement (CFA).

Therefore, in practice, funding for personal injury claims will be available only in the following limited circumstances.

- (a) Clinical negligence claims. These are expressly

not excluded by Schedule 2 and remain fully within scope. Legal Representation in clinical negligence proceedings is Licensed Work and may only be undertaken by firms with a clinical negligence contract.

- (b) Housing claims. Under the Lord Chancellor's Directions housing claims as defined in section 10 of the Funding Code remain within scope even if they include an element of personal injury, e.g. ill health arising in a housing disrepair claim. Legal Representation in housing cases is Non-Contracted Work and may be undertaken by any firm pending the introduction of a fully contracted scheme in April 2001.
- (c) Claims against public authorities. Where a claim for personal injury is brought against a public authority on the basis of serious wrongdoing, abuse of position or power or a significant breach of human rights, the Lord Chancellor's Scope Direction ensures that it is within scope and will be considered under section 8 of the Funding Code Criteria. Actions against the police alleging injury caused by assault are likely to be the most common type of claims in this category. A personal injury claim of this type may be carried out only by firms who have a contract for either personal injury or actions against the police.
- (d) Public interest cases. Legal Representation may be granted in a personal injury claim if it has a significant wider public interest, as defined in the Code. Such cases would be considered under the Criteria in the General Funding Code and Legal Representation could be refused if, in the particular circumstances, the case was suitable for a CFA. Only firms with a personal injury contract may apply for Legal Representation in public interest personal injury cases but, if the case forms part of a multi-party action, representation may be restricted to firms on the Commission's Multi-Party Action Panel in accordance with the multi-party action tendering procedures.
- (e) Support Funding. This new type of funding is discussed in part 10 below. Only firms with a personal injury contract may apply for Support Funding.

6. CASE CATEGORIES IN THE CODE

Applications for funding will be considered under the General Funding Code except to the extent that different criteria are specified for particular categories of case or proceedings. After determining whether the services may be funded, and what level of help is applied for, it is

necessary to consider which criteria apply. The criteria are divided as follows:

Section 4 : Standard Criteria

These apply to all cases under the Code. An example is FC 4.3 which provides that an application for the provision of excluded services will be refused.

Section 5 : The General Funding Code

This is the centrepiece of the Code. It applies (in addition to the criteria in Section 4) to any application for funding, save to the extent that different criteria are applied for specific categories of case or proceedings. Section 5 includes criteria for Emergency Representation, all forms of Legal Representation and Support Funding.

Sections 6 to 13: Category Specific Criteria

Sections 6-13 of the Funding Code Criteria set out the following additional category specific criteria:

- Section 6 Very expensive cases
- Section 7 Judicial review
- Section 8 Claims against public authorities
- Section 9 Clinical negligence
- Section 10 Housing
- Section 11 Family
- Section 12 Mental Health
- Section 13 Immigration

If there is an issue about which category a case falls into, the Commission will apply the criteria which appear to it to be most relevant to the substance of the application. Likewise if an application for Legal Representation or Support Funding relates to proceedings covering more than one category the Commission may apply the criteria which appear to it to be most appropriate for the proceedings as a whole. If proceedings have not commenced the Commission may consider each aspect of the case and the criteria relevant to it and may apply appropriate restrictions on any grant (for example it may only grant funding for part of the claim).

The position of franchise categories should be noted. Case categories are given their own criteria in the Funding Code where it is necessary to reflect a different priority for that type of case or where the criteria in the General Funding Code are not appropriate to the case. Franchise categories, which reflect different areas of legal expertise, provide a more comprehensive range of categories.

Case categories are particularly important in family, immigration, clinical negligence and personal injury cases where Legal Representation is restricted to

franchise providers with a contract. The definition of all the franchise categories was published in *Focus 28* and these categories form part of the General Civil Contract (Appendix C to the Specification).

Some franchise categories will include cases which are dealt with under different criteria. For example, criteria for immigration in Section 12 of the Funding Code cover Legal Representation before the Immigration Adjudicator or Tribunal and any further appeals from that Tribunal to the Court of Appeal or the House of Lords. However other proceedings within the immigration franchise category will normally be judicial review and therefore subject to the criteria in Section 7 of the Funding Code.

Applying the Code criteria will always mean considering, to some extent, the prospects of success and costs benefit. These are therefore key criteria when making Funding Code decisions.

7. LEGAL REPRESENTATION: PROSPECTS OF SUCCESS AND COST BENEFIT

“Prospects of success” is the likelihood of the client obtaining a successful outcome in the proceedings, assuming the case is determined at trial or other final hearing (see FC 2.3). In other words, the test is an objective legal view as to how likely the case would be to succeed before the judge or the Tribunal. For the purposes of the prospects of success criteria, the prospect of settlement from the other side is irrelevant. In most cases the issue is whether the case will be successful at the first instance final hearing. It is not necessary to take into account whether it is likely that the case would subsequently be appealed.

What is meant by a successful outcome depends on the nature of the case. It is a question of considering what in substance the case is all about from a reasonable client’s point of view. However, for money claims, a successful outcome means:

- (a) Obtaining judgement for substantive damages or, if a payment into court has been made, obtaining judgement for an amount greater than the payment into court.
- (b) If the client is a defendant to the proceedings, then a successful outcome is defined as having the claim dismissed, a substantial reduction in the claim against the client or improving any offer to settle made (see Guidance 4.2).

Categories of Prospects of Success

These are defined by FC 2.3 as follows:-

- a) Very good (80% plus)
- b) Good (60%-80%)

- c) Moderate (50%-60%)
- d) Borderline (because of disputes of fact, law or expert evidence – but better than poor)
- e) Poor (clearly less than 50% so that the claim is likely to fail)
- f) Unclear (cannot categorise because further investigation is needed)

The effect of these criteria is to fix minimum merits hurdles in the Code.

- As a general rule, at least 50% prospects of success are required.
- Borderline prospects are enough in specific circumstances (see below).
- If prospects are poor then the application should be refused.
- If prospects are unclear then Investigative Help will be the only appropriate level of service, but note the special rules for family, judicial review, mental health and immigration cases.

When are borderline prospects enough?

A case has a borderline prospect of success where the prospects are not poor but, because of a difficult dispute of fact, law or expert evidence, it is not possible to say that prospects of success are better than 50%. Funding may be granted if the prospects are only borderline if the case:

- has overwhelming importance to the client
- has a significant wider public interest
- raises significant human rights issues and is a judicial review or claim against a public authority (as defined in sections 7 and 8 of the Code)
- is a housing possession case
- is a family domestic violence case
- is a family private law children case

These reflect the Lord Chancellor’s priorities under the Code. Overwhelming importance to the client is defined at FC 2.4 as a case which has exceptional importance to the client, beyond the monetary value (if any) of the claim because the case concerns the life, liberty or physical safety of the client or his or her family or a roof over their heads. “Life” in this sense means danger to life, not quality of life. A case should not be regarded as of overwhelming importance to the client merely because the subject matter of the incident originally complained of concerned life or liberty. For example, a false imprisonment case arising from alleged deprivation of liberty will not qualify if the liberty of the client will not

be affected by the outcome of the proceedings i.e. they have already been released. (See Guidance 4.10.)

Cost Benefit

The Funding Code criteria provide various types of cost benefit test. This will often involve comparing likely costs with likely damages. FC 2.3 defines “likely costs” as an estimate of likely total gross costs to be incurred on behalf of the client to disposal of the proceedings including counsel’s fees, disbursements and any enhancement or uplift. Costs should be calculated by reference to the standard or prescribed remuneration rates. Likely costs and all cost thresholds specified in the Code are exclusive of VAT.

“Likely damages” means a realistic estimate of the size of any money award the client would receive if substantially successful at trial or final hearing, after allowing for any likely reduction for contributory negligence or otherwise. Likely damages should be discounted (by anything up to 100%) if there is doubt as to whether the opponent will be able to pay the money award.

There are four types of cost benefit test:

- (i) Strict cost benefit ratios (the matrix). This applies under the General Funding Code when the claim is primarily a claim for damages by the client and does not have a significant wider public interest. Where the matrix applies, then funding may not be granted unless it is met. The matrix is set out in FC 5.73 of the General Funding Code as follows:

Prospects of Success	Minimum Damages to Cost Ratio
80% plus	1:1
60%-80%	2:1
50%-60%	4:1

It should be noted that different ratios apply to clinical negligence – see FC 9.3.2.

- (ii) The private client test. This applies to unquantifiable claims and private law children claims. Funding will only be granted if the likely benefits to be gained from the proceedings justify the likely cost such that a reasonable privately paying client would be prepared to litigate, having regard to the prospects of success and all the other circumstances.
- (iii) The public interest test for cost benefit. This only applies in cases where there is a significant wider public interest. Wider public interest is defined in FC 2.3 and means the potential of the

proceedings to produce real benefits for individuals other than the client (other than the benefits to the public at large which normally flow from proceedings of the type in question). FC 5.7.5 provides that Full Representation may be refused in a case with a significant wider public interest unless the likely benefits of the proceedings to the applicant **and others** justify the likely costs having regard to the prospects of success and all the other circumstances. In assessing this it will be necessary to consider all the circumstances including how many people there are likely to benefit from the case, the nature of the benefits they receive and how directly they will benefit (see Guidance 5.4). The ability to take into account significant wider public interest in individual funding decisions is a crucial change from the previous legal aid scheme.

- (iv) The general costs benefit test. This provides that likely benefits must justify likely costs with regard to the prospects of success and all the other circumstances. This applies to judicial review cases, claims against public authorities, housing and domestic violence cases.

8. INVESTIGATIVE HELP AND FULL REPRESENTATION

Separate levels of service

Investigative Help and Full Representation are separate levels of service. A certificate covers only one or the other at any one time, but an Investigative Help certificate can be amended to cover Full Representation without the need for a fresh application for a separate certificate (FP C34.2). The distinction between the two levels of service is whether the prospects of success are “unclear”. If they are, only Investigative Help may be granted. If they are not, only Full Representation may be granted. Investigative Help is not available in family proceedings, mental health or immigration proceedings as special rules apply in those categories. For all other proceedings Full Representation is available only where the prospects of success are clear.

Investigative Help

Only a minority of cases will go through the Investigative Help stage. Whilst, in a general sense, prospects of success could be said to be unclear in almost every case – only limited information is available at the outset of a case and prospects of success may only really be clear shortly before trial – the meaning of the term in the Code is more restrictive. The Code defines “unclear” by reference to the need for further investigation (see FC 2.3). Therefore cases should only be put into this

category if there are specific steps which need to be taken, probably at a very early stage, after which a reasonable estimate of the strength of the case can be made. The point at which prospects of success cease to be unclear for the purposes of the Code can be equated to the point at which a private paying client would feel able to make a decision whether or not to litigate or a lawyer would decide whether or not to proceed under a CFA.

There is no assumption in the Code that most cases should go through the stage of Investigative Help before they receive Full Representation. Further, a case should not be regarded as having unclear prospects of success merely because further investigation is needed to establish the size of the claim.

It is also important to distinguish between the categories of borderline and unclear. In a case where prospects of success are borderline under the Code, it may well be difficult to give a precise estimate of prospects. However, it is likely to remain difficult to estimate prospects of success right up until trial simply because of disputes of fact, law and expert evidence in the case. By contrast, in a case where the prospects of success are unclear, significantly greater clarity will be achieved when the initial investigative work has been carried out.

Investigative Help is a limited form of help covering investigation of the strength of the proposed claim. It covers the issue and conduct of the proceedings in only limited circumstances – usually to obtain disclosure (e.g. pre-action discovery), or in existing proceedings to protect the client’s position (e.g. where the client is a defendant) or issuing proceedings for limitation purposes.

Investigative Help may only be granted where substantial investigative work is required. This is defined in Guidance 10.3 as six hours work or £400 disbursements (or 2 hours work or £100 disbursements if the client is not eligible for Legal Help).

If the client’s claim is primarily a claim for damages with no significant wider public interest, Investigative Help will be refused unless the damages are likely to exceed £5,000.

Full Representation

Full Representation covers legal representation in proceedings including those activities previously within the scope of civil legal aid. However, a certificate for representation will still contain such limitations or conditions as is necessary, even ones restricted (except business cases) to investigation. The criteria for representation in the General Funding Code address the availability of conditional fee agreements, prospects of success and cost benefit. Applications for Full Representation to which the General Funding Code

applies must be considered under one, and only one, of the three possible cost benefit criteria as follows:

1. For quantifiable claims the cost benefit matrix should be used.
2. For unquantifiable claims the private client test will apply (including claims where the client is a defendant or where the matter is of overwhelming importance to the client).
3. The special criterion for cost benefit applies to public interest cases.

Conditional Fee Agreements (CFAs)

Under the General Funding Code, Legal Representation (either Investigative Help or Full Representation) will be refused if a CFA is a more appropriate way forward. Where Legal Representation is refused on the grounds that the case is suitable for a CFA, the Commission will send the client an information leaflet about CFAs and will ensure that the client has information about firms in the client's area who undertake CFA work. Initially, certificates will only be refused on this ground in those residual personal injury cases which are not out of scope and which are considered under the General Funding Code.

In a personal injury case, Support Funding may also be available (see below).

9. FAMILY PROCEEDINGS

Levels of Service

The Funding Code creates two separate levels of service which exist only in family cases. These are Approved Family Help, which can be either General Family Help or Help with Mediation, and Family Mediation.

Family proceedings are widely defined in FC 2.2 as proceedings which arise out of family relationships including proceedings in which the welfare of children is determined (other than judicial review proceedings). The definition also includes all the specific proceedings listed in FC 2.2 (including the Matrimonial Causes Act 1973 and Part IV of the Family Law Act 1996). The main purpose of this definition is to identify those cases which fall to be determined under the family criteria in section 11 of the Funding Code and which cases are eligible for the new levels of service as set out above. All family disputes and proceedings under the Code will fall into the family franchise category.

All work falling within the Funding Code definition of family disputes or proceedings which consist of Legal Representation or Approved Family Help is defined as "Licensed Work" under the Funding Code (save where it may become high cost). Licensed Work may only be carried out where a person is authorised to supply such

services under a General Civil Contract.

Help with Mediation, General Family Help and Legal Representation in family proceedings can therefore only be carried out by those with a General Civil Contract with the Commission which licenses them in the family category.

Approved Family Help

This may consist of either Help with Mediation or General Family Help. These new levels of service under the Funding Code generally limit work in family cases to work short of a final contested hearing unless and until it becomes clear that the matter cannot be resolved either through mediation or negotiation. This approach is based on section 8 of the Access to Justice Act and is in line with the anticipated rule changes following the pilot scheme for ancillary relief.

Help with Mediation is only available if a client is actually participating in Family Mediation or has successfully reached an agreement or settlement as a result of Family Mediation and is in need of legal assistance (FC 11.2.1). It is limited to advice to the client in support of the Family Mediation, help in drawing up any agreement reached in mediation and, where appropriate, help in confirming such an agreement in a court order. It will not include the mediators fees which are paid directly under Family Mediation.

Investigative Help is not available in family disputes because investigative work to determine the strength of the claim and to identify the issues in disputes can be carried out under General Family Help.

General Family Help includes all services within the definition of Approved Family Help contained at FC 2.1 and therefore includes help in relation to a family dispute including assistance in resolving that dispute through negotiations or otherwise. It may also include the issue of proceedings and representation in proceedings where necessary to obtain disclosure of information from another party or to obtain a consent order following settlement of part or all of the dispute. This will allow solicitors to issue proceedings or to respond to proceedings issued by the other side in ancillary relief cases in accordance with the new ancillary relief procedures taking effect in June 2000 up to and including the Financial Dispute Resolution Hearing.

Approved Family Help, in either form, requires an application to the Commission.

Legal Representation

An application for Legal Representation in a family dispute will be refused unless it can be demonstrated that a genuine attempt has been made to resolve the dispute by way of negotiation (FC 5.4.4). Where, following

negotiations, there is no reasonable prospect of a settlement in relation to a dispute in which Full Representation is required, then an application for Legal Representation will be appropriate.

Although it will often be the case that General Family Help is granted before Legal Representation (i.e. negotiations are carried out under General Family Help), this is not strictly necessary. Therefore, where negotiations have already been conducted (possibly under Legal Help) so that the test has been satisfied, then an application for Legal Representation will be appropriate and there is no need to apply for General Family Help first.

Where a client is in receipt of General Family Help and it is appropriate to apply for Legal Representation, this can be done by way of an application to amend the certificate to cover Legal Representation.

Family Mediation

This is a separate level of service under the Code available only to family mediators contracted with the Commission. The mediator should carry out an assessment of suitability and of financial eligibility (see also FC 11.4.1).

Criteria

The criteria for Family Proceedings are set out in section 11 of the Code with separate criteria for Help with Mediation, General Family Help, Help with Mediation, special Children Act proceedings, related proceedings, other public law children cases, domestic violence cases, private law children cases, financial provision, child abduction cases and registration of foreign orders and judgements.

10. SUPPORT FUNDING

Support Funding is an entirely new form of funding in which public funds are used to top up the costs of a case which is otherwise proceeding privately under or with a view to a CFA. Although Support Funding is administered through certificates and contracts in the same way as Legal Representation, Support Funding gives rise to different rights for the client and the solicitor. There is no cost protection save in restricted circumstances – see below.

Support Funding is available only for personal injury claims. The criteria for grant of Support Funding limit it to those cases which are unusually expensive. The Lord Chancellor's Direction allows it to be granted for those personal injury claims otherwise excluded under Schedule 2 as well as for the remainder within scope but refused on the ground that a CFA is suitable. Support Funding may be granted in two distinct forms:

- Investigative Support covers some of the costs of investigating a potential personal injury claim to see whether it is suitable to proceed under a CFA. There is cost protection for the client only if the proceedings are not pursued.
- Litigation Support provides some public funding in some ongoing high cost personal injury cases already proceeding under a CFA. There is no cost protection for the client.

The grant of a certificate provides a limited banking and insurance function. Payments will only be made in excess of the cost threshold (see below) and at set rates. If the case is successful, the conducting solicitor will be able to recover costs at the full inter partes rates from the other side.

All applications for Support Funding, whether for Investigative Support or Litigation Support, must be made on a special application form CLS APP2. This form includes the rules on the payment of costs, damages and success fees in Support Funding cases, and operates (in conjunction with the terms of the General Civil Contract) as a contract between the solicitor and the Commission. Support Funding may be limited to funding disbursements only.

The criteria for Investigative Support are as follows:

1. The reasonable costs of investigating the prospects of success are such that disbursements including counsel's fees are or are likely to exceed £1,000 or solicitor's profit costs are or are likely to exceed £3,000.
2. There must be minimum damages of £5,000.
3. There must be reasonable prospects after investigation of proceeding under a CFA.

Litigation Support is only available for high cost ongoing cases under an existing CFA and is otherwise subject to criteria similar to those for Full Representation in the General Funding Code. The criteria are as follows:

1. The costs of the investigation must exceed the £5,000 disbursement threshold (excluding counsel) or £15,000 profit costs and counsel's fees threshold.
2. There must be a CFA in place.
3. There must be adequate insurance in place to cover the other side's costs.
4. The case must have at least 50% prospects of success.
5. The cost benefit matrix of the General Funding Code applies unless there is significant wider public interest.

If Litigation Support covers profit costs and counsel's fees

and is successful, the Commission may retain a share of the uplift recovered from the other side under the CFA. The details of this are set out in the application form.

11. PUBLIC INTEREST

Public interest is an important new consideration in public funding. The term is sometimes used to describe types of case with a wider public interest but the Code is primarily concerned with cases which have a significant wider public interest.

Cases with a significant wider public interest have preferential treatment under the Code and the Lord Chancellors Scope Direction:

1. A case otherwise excluded from scope by Schedule 2 will be brought back in by the Lord Chancellor's Scope Direction for the purposes of Legal Representation or Support Funding (except business cases – see Guidance 3.6).
2. The case may be funded with only borderline prospects of success.
3. The public interest cost benefit criterion applies, i.e. the likely benefits of the proceedings to the applicant and to others must justify the likely costs having regard to the prospects of success and all other circumstances. The cost benefit matrix or the private client test will not apply.
4. Public interest is highly material to the application of the affordability criterion for cases referred to the Special Cases Unit and funded out of the central budget (see Guidance Section 15).
5. The Commission has the power to waive the statutory charge in public interest cases (see Regulation 47 of the Community Legal Services (Financial) Regulations 2000).

Wider public interest means the potential of the case to produce real benefits for individuals other than the client (other than benefits to the public at large which normally flow from proceedings of the type in question.) There is a wide range of types of case, broadly:

- protection of life and human rights;
- direct financial benefit;
- potential financial benefit (test cases to establish liability);
- intangible benefits such as health, safety and quality of life.

In order to receive preferential treatment under the Code, any wider public interest arising must be “significant” – see Guidance 5.3. In order for wider public interest to be significant, much will depend on the nature of the

benefits alleged and how directly other persons may benefit. The more intangible and indirect the benefits are, the harder it will be to show there is a significant wider public interest. The mere possibility that a case outcome could conceivably benefit other members of the public is not sufficient. The Code sets no limit or minimum on the number of people who must benefit before significant wider public interest can be established as this will vary according to the nature of the benefit. However, it must carry with it the sense that large numbers of people must be affected. As a general guideline, it will be unusual to regard a case as having significant wider public interest if fewer than 100 people would benefit from its outcome.

Where a test case is funded on public interest grounds, the client may be required to agree not to settle the case without the consent of the Commission. In a public interest case, the Commission is entitled to waive the statutory charge to protect the individual client chosen to bring the case. A Public Interest Advisory Panel has been established to assist in important decisions of public interest, particularly in potential high cost cases.

12. HUMAN RIGHTS

The Human Rights Act 1998 will come into force in October 2000 and will make Convention rights directly enforceable in our courts. The 1998 Act will establish new causes of action, including the power to seek declarations as to the compatibility of legislation with the Convention. Such cases will from October be considered under section 7 of the Code Criteria (Judicial Review).

However, even before the Human Rights Act 1998 comes into force, the Lord Chancellor's Directions and the Funding Code will take account of and give priority to human rights cases. The Lord Chancellor's Directions ensure that any case (other than a business case) which concerns a significant breach of human rights in a judicial review or other claim against a public authority will be within scope. Further, human rights issues are expressly recognised in the criteria which apply to Legal Representation in judicial review cases (section 7 of the Code) or damages claims against public authorities (section 8). In these parts of the Code a case may be funded with only borderline prospects of success if it raises significant human rights issues.

It will therefore be important from 1 April for practitioners to identify those cases falling in sections 7 and 8 of the Code which genuinely raise significant human rights issues. The impact of human rights on the Code is discussed in section 6 of the Guidance. This Guidance makes it clear that a human rights issue will only be regarded as “significant” under the Code if the issues are material to the case, in the sense that they are likely to carry weight with the court and if there are

reasonable prospects of being able to show that human rights have been breached. Details of human rights issues should be set out on the application form for Legal Representation CLS APP1.

13. ALTERNATIVE DISPUTE RESOLUTION

A change in emphasis

The Access to Justice Act and Funding Code ensure that the new ADR approaches are of equal value to court proceedings. The aim of the Legal Services Commission is to achieve swift and final resolution of disputes without any unnecessary or unduly protracted court proceedings – see section 4(4) of the Act. The Act also provides that where more than one description of service is available under the Funding Code, the Commission must ensure that the service funded is the one that is the most appropriate in the circumstances and the Commission has a duty to obtain the best value for money when obtaining legal services.

This will often mean that funding of ADR will be more appropriate than legal proceedings.

Direct Funding

Initially the only form of ADR directly funded by the Commission will be Family Mediation. This may change over time. Other forms of ADR will generally be funded indirectly as disbursements incurred under Legal Help or Full Representation. The issues for the Commission are:

- (a) When the costs of ADR should be funded; and
- (b) When the availability of an ADR should lead to refusal or suspension of Legal Representation.

The Funding Code Criteria

FC 5.4.3 provides that an application may be refused if there are complaint systems, ombudsman schemes or forms of alternative dispute resolution which should be tried before litigation is pursued. The Commission will encourage the use of complaints schemes and ombudsmen to resolve disputes where schemes are available and offer an effective solution.

Any help that is required in pursuing a complaint should come within Legal Help. However, generally complaints schemes are straightforward enough to follow without a solicitor and Legal Help should only be supplied where there is sufficient benefit to the client to justify work being carried out. If a complaint has been taken up, the Commission will need to know the outcome before assessing an application for Legal Representation and the Commission will consider this when assessing prospects of success.

Refusal of funding may therefore take place when no

complaint has been pursued. The issue is not whether the complaints procedure / ombudsman can provide the same remedy as litigation as it often won't, but whether it will be a sensible course which a reasonable private client would have taken. Refusal is more likely in the following types of cases:

1. Financial services.
2. Housing.
3. Lower value clinical negligence cases.

In other types of case Legal Representation will not generally be refused unless appropriate to the circumstances of the case, but it would not be appropriate where there are limitation issues or where the case is of overwhelming importance to the client.

Arbitration

Arbitration could not be funded under the Legal Aid Act, but may be funded under the Funding Code. Legal Representation may cover arbitration where there is a specific reference on the certificate or it is otherwise authorised by the Regional Director. A certificate will not automatically cover arbitration – see FP C35.3.

A request for an amendment to cover arbitration should therefore be made when all parties have agreed to arbitration in a dispute or an issue within the proceedings. It will usually be granted if:

- (a) The arbitration is cost effective;
- (b) The arbitrator's fees are reasonable; and
- (c) The arbitrator has appropriate training.

If in doubt, the Commission will refer to the Chartered Institute of Arbitrators.

The funding certificate will cover an appropriate share of the fees and reasonable disbursements together with the solicitor's preparation for arbitration but not advocacy within that arbitration.

Initially there will be no refusals on the basis that arbitration should be attempted. The Commission will consider the particular schemes in due course to see whether they offer an effective alternative.

Early Neutral Evaluation

This can be covered by Legal Help, Legal Representation, Support Funding or Family Help. No specific approval is required, but the cost is only allowable on assessment if it is a reasonable step to take in all the circumstances, all parties are in favour and the costs incurred are reasonable. If, however, the opponent has made an offer to submit any issue to ENE, the client must notify the Commission if he or she refuses the

offer. The Commission can decide whether to limit the certificate so as to require participation unless there is good reason not to do so. If ENE takes place but the case is not settled, the opinion must be disclosed to the Commission.

Non-Family Mediation

In non-family cases, mediation may be funded as a disbursement connected with Legal Help, Legal Representation and Support Funding. No prior authority is required but it must be reasonable in all the circumstances. It should only be funded if it is cost effective and the fees for mediation are reasonable. Remuneration rates for mediators are the subject of ongoing discussions.

Further guidance is likely to follow. Until then, the fees of a mediator should not exceed the prescribed rate available for a conducting solicitor for advocacy under the certificate. Only mediators recognised as trained or suitable by the Commission will qualify as disbursements.

The Commission has power to restrict a certificate to cover participation in mediation only. Initially this will be considered in ongoing individual cases, for example where representations are received from an opponent who is willing to mediate and, for cases in the Central London County Court Mediation Scheme.

For the position in family cases -see part 9 above.

14. WITHDRAWAL OF FUNDING

The effects of discharge and revocation under the Funding Code are broadly the same as under the Legal Aid Regulations. Revocation has very serious consequences for the client because the client must repay to the Commission all the costs paid or payable under the certificate and will lose any cost protection in relation to the other side. Discharge simply means that further funding ceases with no additional penalty on the client.

The criteria for withdrawal of funding are set out at FC Section 14. The procedures are set out in FP Section 15. C55 sets out the extent of the requirement on the Regional Director to 'show cause' before discharging or revoking a certificate

Reviewable decisions

Decisions to withdraw funding on the following grounds will carry a right of review to the Funding Review Committee (see part 12 below):

- 1) Discharge on the merits, on the basis ;
 - (i) that the Funding Code Criteria are no longer satisfied.

- (ii) that it is unreasonable for funding to continue
- (iii) of the withdrawal of Investigative Help or Investigative Support where it appears that sufficient work has been carried out to enable prospects of success to be determined (and in the case of Investigative Help the certificate is not to be extended to cover Full Representation).
- (iv) of the bankruptcy of the client

2. Discharge or revocation on the basis that it is unreasonable for funding to continue in the light of the conduct of the client. This is dealt with by FP C.53. The two situations covered are:
 - (i) Where the client has failed without good cause to provide information or documents or attend a meeting where required to do so under Procedures or Regulations.
 - (ii) Where the client has made an untrue or misleading statement or failed to disclose a material fact (either when making an application or when supplying information under Procedures or Regulations) and it is considered that the client has failed to use reasonable care when doing so. This is the replacement of Regulation 78 of the Civil Legal Aid (General) Regulations 1989, and is a similar test.

Non reviewable decisions

The withdrawal of funding on the following grounds will not carry a right of review to the Funding Review Committee:

- death of the client
- consent of the client
- all authorised work completed
- revocation or discharge of an emergency certificate on the grounds of financial eligibility, failure to accept an offer or expiry of the time limit on the certificate
- financial grounds.

15. THE REVIEW PANEL

The Review Panel Arrangements 2000 (contained in Volume 1 of the Commission's loose-leaf manual) set out the administrative provisions relating to the replacement of area committees under the Access to Justice Act. These Arrangements create a national Review Panel, from which Regional Directors will appoint:

- Funding Review Committees to consider reviews of refusals or withdrawal of funding
- Costs Committees to hear reviews of the Commission's costs decisions.

Funding Review Committees

The Funding Review Committee procedures and jurisdiction are set out in Section 16 part C of the Funding Code procedures. Current Area Committee powers in relation to the grant or withdrawal of funding are significantly changed by the Funding Code.

Under the legal aid scheme, area committees consisting of independent lawyers have the final say on individual funding decisions. Such an approach would be quite inconsistent with the new scheme in which the Commission's general responsibility is to manage the limited public funds available to best effect.

Funding Review Committees do however, have a very important role in the new scheme. Like area committees they are made up of independent lawyers and will bring their legal expertise to bear in individual funding decisions. The rights to have a case reviewed by the Funding Review Committee and to attend to make oral representations will arise in essentially the same circumstances as the right to appeal to an area committee under the existing legal aid regulations.

The difference, which is essential to the new scheme, is that the Funding Review Committee will not be able to grant or reinstate funding but will instead have power to refer cases back to the office for the decision to be re-taken in the light of any determination by the Committee. However, as part of the review, the Funding Review Committee has power to determine certain key issues under the Funding Code such as prospects of success and cost benefit and the Regional Director will be bound by any such determination when retaking the decision. The Committee may also refer back the Regional Directors decisions on other issues (such as whether the case has a significant wider public interest) on the basis that the decision was improper or unreasonable.

Costs Committees

Cost Committees will take over area committee costs jurisdiction in relation to civil and criminal work.

The costs of Legal Help, Help at Court and Controlled Legal Representation provided under the Commission's General Civil Contract are determined by the Regional Office with a right of review to the Costs Committee and subsequently to the Costs Appeal Committee. The Contract Specification Rules 2.14 – 2.19 set out the basis for assessments of costs and review.

The procedures for review of assessments of costs for certificated work as well as the principles of assessment will be largely unchanged from 1 April 2000. This is because the regulations under the Access to Justice Act and the licence provisions of the General Civil Contract save the relevant assessment provisions of Part XII of the Civil Legal Aid (General) Regulations 1989 (including regulations 104 and 105) and apply the Legal Aid in Civil Proceedings (Remuneration) Regulations 1994 and the Legal Aid in Family Proceedings (Remuneration) Regulations 1991 to CLS certificated work.

Transitional arrangements

In relation to cases that began before the implementation of the Access to Justice Act on 1 April 2000, the Funding Review / Cost Committees will, (except where the terms of the General Civil Contract provide otherwise in relation to Controlled Work) determine the applications before them on the basis of the Legal Aid Act and Regulations which will continue to apply to such cases. Until the Criminal Defence Service is implemented, the Funding Review/Cost Committee will exercise a jurisdiction under the 1988 Act and Regulations in criminal matters. For an explanatory table – see *Focus 28* page 30. ■

COSTS APPEALS COMMITTEE

Points of Principle of General Importance

CRIMLA 69 – 22 September 1997, amended 28 February 2000

MAGISTRATES' COURTS STANDARD FEES: BAIL ACT OFFENCES: FEE CATEGORY

Offences under section 6 of the Bail Act 1976 are treated as ancillary to the substantive proceedings if legal aid was granted in respect of the specified proceedings on or after 1 December 1998. The plea to a Bail Act offence may determine the standard fee category claimed, but cannot give rise to a separate fee.

Where a defendant is charged with offences under both sections 6(1) and 6(2) of the Bail Act, and has legal aid for both matters, and pleads guilty to one, and pleads not guilty to the other, the whole matter, including any specified proceedings, should be treated as a category 2 mixed plea for standard fee purposes. ■

Costs Orders Against a Funded Client and the Commission

COST PROTECTION

S.11 of the Access to Justice Act 1999 provides the funded client in most funded proceedings with protection against liability for costs. Funded proceedings means proceedings which are funded wholly or in part for a client by the Legal Services Commission (LSC) as part of the Community Legal Service (CLS). Any costs ordered against a funded client must not exceed the amount which is reasonable to pay having regard to all the circumstances including:

- (a) the financial resources of all the parties to the proceedings, and
- (b) their conduct in connection with the dispute to which the proceedings relate.

The detailed provisions relating to costs protection can be found in the Community Legal Service (Cost Protection) Regulations 2000. The procedure for ordering costs against the client and/or the LSC is contained in the Community Legal Service (Costs) Regulations 2000.

Exclusions

Costs protection does not apply where:

- (a) the funded client receives Help at Court or Litigation Support;
- (b) the funded client receives Investigative Support (except where the proceedings for which Investigative Support was given are not pursued after the certificate is discharged) (see **Support Funding**);
- (c) the funded client receives Legal Help only i.e. where the solicitor is advising, but not representing a litigant in person.

However, where the funded client receives Legal Help e.g. to write a letter before action, but later receives Legal Representation or Approved Family Help in respect of the same dispute, costs protection **does** apply to all costs incurred by the receiving party in the funded proceedings or prospective proceedings i.e. including steps funded by Legal Help.

Pre Certificate Costs

Where work is done before the issue of a certificate, costs protection does not apply to those costs, except where:

- (a) pre-action Legal Help is given and the funded client subsequently receives Legal Representation or Approved Family Help in the same dispute; or
- (b) where urgent work is undertaken immediately before the grant of an emergency certificate when no emergency application could be made as the LSC's offices were closed, provided that the solicitor seeks an emergency certificate at the first available opportunity and the certificate is granted.

Revocation

If a funded client's certificate is revoked, costs protection does not apply to either work done before or after revocation. This does not prevent the client's solicitor from recovering costs from the CLS fund.

Discharge

If a funded client's certificate is discharged, costs protection only applies to costs incurred before the date on which funded services ceased to be provided under the certificate. This may be a date before the date on which the certificate is formally discharged by the LSC.

Termination of Retainer

The retainer of a legal representative acting under a certificate terminates when the certificate is discharged or revoked, but this does not take effect until any procedures under the Funding Code for review of the decision to withdraw funding are considered and the decision confirmed (see Code Procedures, rules C55-65). The retainer does not terminate until the relevant notices have been served (rule C56.5).

Security for Costs

Where a funded client is required to give security for costs in any proceedings, the amount of that security shall not exceed the amount (if any) which is reasonable having regard to all the circumstances, including the client's financial resources and conduct. Unlike the equivalent legal aid regulation, this limitation is not expressed in terms of the protection under S.11 of the Act, so it is not necessary to consider the opponent's resources or follow the procedures that apply to costs orders against funded clients (see **Procedure**).

Assessing Funded Client's Resources

The first £100,000 of the value of the funded client's interest in the main or only home is disregarded when assessing his or her financial resources for the purposes of S.11 and cannot be the subject of any enforcement process by the receiving party. The receiving party cannot apply for an order to sell the funded client's home, but could secure the debt against any value exceeding £100,000 by way of a charging order.

The court may only take into account the value of the funded client's clothes, household furniture, tools and implements of trade to the extent that it considers that having regard to the quantity or value of the items, the circumstances are exceptional.

The funded client's resources include the resources of his or her partner, unless the partner has a contrary interest in the dispute in respect of which funded services are provided.

Party acting in a Representative, Fiduciary or Official Capacity

Where a party is acting in a representative, fiduciary or official capacity, the court shall not take the personal resources of the party into account for the purposes of either a S.11 order or costs against the Commission, but shall have regard to the value of any property or estate or the amount of any fund out of which the party is entitled to be indemnified, and may also have regard to the resources of any persons who are beneficially interested in the property, estate or fund.

The purpose of this provision is to ensure that any liability is determined with reference to the value of the property or fund being used to pay for the litigation, and the financial position of those who may benefit from or rely on it.

COSTS AGAINST THE COMMISSION

The circumstances in which costs may be ordered against the LSC are governed by the Community Legal Service (Cost Protection) Regulations 2000. Regulation 7 provides that no order for costs in favour of a non-funded party shall be made against the LSC except in accordance with these Regulations. This includes wasted costs. The Regulations form a complete code. Any costs awarded against the LSC under these provisions are payable out of the Community Legal Service Fund.

Regulation 5 governs when costs can be awarded against the LSC. This provision only applies where cost protection applies and the costs awarded against the

funded client do not fully meet the costs that would have been awarded against him or her if cost protection did not apply.

The court has a discretion whether to make an order for payment by the LSC to the non-funded party of the whole or any part of the costs incurred by him or her in the proceedings (other than costs that the funded client is required to pay under S.11). Where a client is funded for only part of the proceedings, the costs incurred by the non-funded party are confined to the part of the proceedings which were funded.

Criteria For Making an Order Against the LSC

The following criteria set out in Regulation 5 must be satisfied before the LSC can be ordered to pay the whole or any part of the costs incurred by a non-funded party:

- (a) Funded services have been provided to a client in proceedings; and
- (b) The proceedings are finally decided in favour of a non-funded party; and
- (c) Cost protection applies and a S.11 costs order has been made against the funded client and the amount of the costs (if any) which the client is required to pay under the order is less than the amount of the "full costs" (see below); and
- (d) The court is satisfied that it is just and equitable in the circumstances that provision for the costs should be made out of public funds; and
- (e) The non-funded party provides written notice of intention to seek an order against the LSC within three months of the making of a S.11 costs order (see **Procedure**).
- (f) Where costs are incurred in a court of first instance, the following additional criteria must also be met:
 - (i) the proceedings were instituted by the funded client; and
 - (ii) the non-funded party will suffer severe financial hardship unless the order is made. This means that companies and public bodies will not usually be able to recover costs from the LSC.

In determining whether conditions (d) and (f) are satisfied, the court shall take into account the resources of the non-funded party and his or her partner (unless the partner has a contrary interest).

Effect of Appeals

An order for costs can only be made against the LSC when the proceedings (including any appeal) are finally decided. Therefore, where a court of first instance decides in favour of a non-funded party and an appeal lies, any order made against the LSC shall not take effect until:

- (a) Where permission to appeal is required, the time limit for permission to appeal expires, without permission being granted.
- (b) Where permission to appeal is granted or is not required, the time limit for appeal expires without an appeal being brought.

This rule means that, if the funded client appeals, any earlier order against the LSC can never take effect. If the appeal is unsuccessful, the court can make a fresh order.

PROCEDURE

Regulations 8-13 of the CLS (Costs) Regulations 2000 set out the procedures for seeking costs against a funded client and the Commission. They are designed to ensure that the court has the necessary information to apply S.11 of the Act, and that decisions about the full costs of the case, the amount the funded client should have to pay and any costs against the LSC are taken promptly and, so far as possible, together. Under these procedures, a costs order will be made against a funded client whenever an order would have been made against that person but for S.11. However, the amount which the funded client is ordered to pay may be less than the opponent's "full costs" or nothing at all. In most cases, the order will also state the court's assessment of the opponent's full costs (that is the amount it would have ordered but for S.11). This figure is relevant if the opponent later applies for a variation of the order under Regulation 12.

Statement of Resources

Any party opposing a funded client in proceedings may at any time make and file a statement of resources (as defined in Regulation 2 of the Costs Regulations). Regulation 8 of the Costs Regulations provides a mechanism to avoid delay by ensuring that sufficient information is available to the court at the final hearing to enable it to award and quantify costs where appropriate. This is relevant where:

- (i) but for the requirement under S.11 to take account of both parties' resources, costs would be awarded immediately by way of summary assessment; or
- (ii) it is clear to the court that the full costs

would be higher than the amount it is appropriate for the funded client to pay, and the court can therefore order costs against the funded client immediately without waiting for the full costs to be determined by detailed assessment.

A copy of the statement of resources must be served on the funded client or his or her solicitor. Where a statement of resources is made by the opponent and served at least 7 days before a hearing the funded client must prepare a statement of resources and produce it at the hearing. Failure to do so could lead to the funded client being penalised in costs (under the conduct ground in S.11) if the failure to co-operate necessitates a further hearing under the procedure in Regulation 10.

If the funded client's financial circumstances have not changed significantly since his or her resources were assessed under the Financial Regulations, he or she may use the same information as the statement of resources with a declaration that there has been no significant change. A copy of the application forms used to assess financial eligibility should be retained for this purpose.

How to Apply for S.11 Costs and/or Costs against the LSC

This is governed by Regulation 9 of the Costs Regulations.

When making a S.11 costs order the court must first consider the order it would have made if the funded client did not have the benefit of cost protection.

If the court considers that it would have made an unquantified costs order, it shall make the S.11 order, but may specify the amount (if any) which the funded client must pay under it, only if (a) it has sufficient information to determine what is a reasonable amount to pay and (b) it is satisfied that the amount would not exceed the full costs. Otherwise the court must make an unquantified costs order.

If the court considers that if the funded client did not have the benefit of costs protection, it would have made a quantified costs order (i.e. by summary assessment):

- (a) It shall make an order specifying the amount to be paid (if any) only if it has sufficient information to determine what amount is reasonable for the funded client to pay under S.11. The order must also state the full costs.
- (b) Otherwise it shall make a costs order that does not specify the amount the funded client must pay, but that does state the full costs.

"Full costs" means the full amount that the client would

be ordered to pay, but for S.11 of the Act. The purpose of stating the full costs is to ensure that if an application is made subsequently to vary the order then the maximum amount of the costs is known.

Where the amount of the funded client's liability is unquantified, the amount of costs to be paid by the funded client and/or the LSC must be determined in accordance with Regulation 10.

Where the court makes an unquantified S.11 order it may also make findings of fact e.g. concerning the parties' conduct, relevant to the determination. These may be taken into account by the court at a subsequent hearing to quantify the liability.

The court cannot make an order against the LSC immediately at the conclusion of the proceedings as it must first determine the extent to which S.11 costs are appropriate and the LSC is entitled to advance notice from the non-funded party.

Regulation 10

If the amount (if any) to be paid by the funded client is not quantified at the time that a S.11 order is made, then the procedure set out in Regulation 10 can be used. This is also the way in which an application for costs against the Commission is determined.

The receiving party may within three months of the S.11 order apply to determine the client's costs liability. The request must be accompanied by:

- (a) if the S.11 order does not state the "full costs", the receiving party's bill of costs. This will not be necessary if the full costs have already been determined by summary assessment.
- (b) a statement of resources; and
- (c) if the receiving party intends to seek costs against the LSC, written notice to that effect. If the funded client's liability under a S.11 order has already been determined (and is less than the full costs), the application will be for costs against the LSC only. If the funded client's liability has not yet been determined, the non-funded party must indicate if costs will be sought against the LSC if the funded client's liability is determined as less than the full costs.

The receiving party must file these documents with the court and at the same time serve copies on the funded client if a S.11 determination is sought and on the Regional Director if a notice is given under (c) above.

Failure to lodge a request within the 3 months time limit specified in regulation 10(2) is an absolute bar on

seeking costs against the LSC.

Once these documents have been served, the funded client must make a statement of resources which must be filed at court and served on the non-funded party (and the Regional Director where costs are sought against the LSC) within 21 days of receipt of the receiving party's statement of resources. The funded client may also file and serve written points of dispute at the same time e.g. if the total amount of the bill is disputed.

If the funded client fails to file a statement of resources without good reason, the court shall determine his or her liability under S.11 (and the amount of full costs if relevant) having regard to the statement of the receiving party only. No oral hearing is required.

If the funded client files a statement or the period for doing so expires or if S.11 costs have already been determined, the court must fix a hearing date and give parties at least 14 days notice, including the Regional Director if costs are or may be sought against the LSC. The court may fix a hearing immediately if S.11 has already been dealt with and only costs against the LSC are sought, in which case the funded client need not be notified of the hearing date by the court.

If costs are awarded against the client and/or the LSC, the non-funded party may seek the costs of the application itself.

Rights of Appeal

Regulation 11 sets out the limited grounds on which it is possible to appeal against a decision under these procedures.

Any party with a financial interest in an assessment of the full costs may appeal using the same rights of appeal as are available under the relevant court rules.

Where the funded client has been ordered to pay a specified amount but the full costs have not been determined, the client may seek to have the full costs assessed on the ground that the amount ordered exceeds the full costs, in which case the funded client will only be required to pay the amount of the full costs.

The receiving party or the LSC may appeal on a point of law against the making or refusal to make a costs order against the LSC (including the amount of costs which the LSC is required to pay).

Rights to Appear

The Regional Director may appear at any hearing at which a costs order may be made against the LSC. Instead of appearing, he or she may lodge a written statement at court and serve a copy on the receiving

party not less than seven days before the hearing.

Variation of a S.11 Costs Order

Where the court makes a S.11 order and the amount which the funded client is required to pay (if any) together with any costs ordered against the LSC is less than the full costs, the receiving party may apply to the court for a variation of the amount which the funded client is required to pay on the ground that there has been a significant change in the client's circumstances since the date of the order.

The order may be varied as the court thinks fit, but shall not exceed the amount of full costs (if stated), but may include the costs of the application to vary. (The full costs may also fall to be assessed at this stage.)

Where the court has not ordered the funded client to pay a specified amount under S.11 and the receiving party has not applied within the three month time limit to have the client's liability quantified under Regulation 10, the receiving party may on the following grounds apply for a determination of the amount which the funded client is required to pay (but costs may not be sought against the LSC under this regulation):

- (a) there has been a significant change in the funded client's circumstances since the date of the order; or
- (b) material additional information about the funded client's financial resources is available which could not with reasonable diligence have been obtained by the receiving party at the relevant time (i.e. the non-funded party reasonably but mistakenly thought that it was not worth pursuing the funded client for costs); or
- (c) there were other good reasons for the failure by the receiving party to make an application within the time limit.

The LSC itself may make an application under this regulation where the receiving party has also received funded services in relation to the proceedings. This provision may be used where both parties have been funded and the unsuccessful party receives a financial windfall. The successful party's bill will have been paid from the CLS Fund and he or she may have no personal interest in pursuing the costs. The purpose of this regulation is to protect public funds in such circumstances.

The overall time limit for making an application under this section is six years from the date on which the S.11 order was made.

SUPPORT FUNDING

The regulations provide different rules where the funded client receives Support Funding. Support Funding provides partial funding for personal injury cases where the proceedings are pursued privately under or with a view to obtaining a conditional fee agreement. When Support Funding is provided the LSC does not take over general responsibility for funding the costs of the proceedings. Cases generally continue on a private basis but the LSC provides a limited banking and insurance function once costs exceed prescribed thresholds. It supports litigation by making payments on account to the solicitor and it guarantees a limited amount of payment should the case ultimately fail.

Support Funding is provided at two levels:

Investigative Support is limited to investigation of the strength of a proposed claim with a view to obtaining a conditional fee agreement (CFA). Once a CFA is entered into or sufficient investigative work has been done to estimate prospects of success, no further work will be funded. Cost protection is not available unless the proceedings funded by Investigative Support are discontinued as soon as the certificate is discharged. If the case proceeds privately then any costs incurred by the opponent at the investigative stage can be met through an insurance policy.

Litigation Support covers representation in proceedings where a CFA is in place. It is only available where the costs of the litigation are exceptionally high. Cost protection does not apply. It is a condition of Litigation Support that adequate insurance arrangements must be taken out to protect the funded client against an adverse costs order.

If the funded client is receiving Litigation Support and:

- (a) the funded client has insured against liability for costs or has made equivalent arrangements and the amount insured is subject to a maximum approved by the LSC; and
- (b) a costs order is made against the funded client in favour of a non-funded party which exceeds the insured maximum,

the amount of any excess shall be paid by the LSC, limited to the period during which Litigation Support was provided. The amount of the LSC's liability shall not exceed the reasonable costs of the non-funded party during the period for which Litigation Support funding was provided.

The LSC is not liable for costs where the certificate is revoked or where costs are incurred after discharge. ■

Community Legal Service: Transitional Arrangements

On 20 March, the Lord Chancellor signed the Commencement Order which brought the Community Legal Service into effect on 1 April 2000. The text of this Order (apart from the schedule) is set out on pages 38-41.

As well as commencing the relevant sections of the Access to Justice Act, Article 2 (together with the Schedule to the Order) repeals the Legal Aid Act 1988 (except those sections that deal solely with criminal legal aid or set out the relevant definitions and powers of the Legal Aid Board).

Article 5 therefore provides for the legal aid scheme under the Legal Aid Act 1988 to remain in force for:

- ▶ criminal cases, including those technically civil cases that will be funded as part of the Criminal Defence Service because they are essentially part of the criminal justice system; and
- ▶ pre-existing civil cases. These are excluded from CLS funding under the Funding Code.

Meaning of Criminal Cases

The definition of “criminal proceedings” for this purpose is set out in Article 1(2). Advice, assistance and representation remains available under the relevant part of the legal aid scheme in respect of anything in this list (which corresponds to the redefined crime franchise category set out in *Focus* 28). In particular, ABWOR remains available for prison discipline and Parole Board (items (iii) and (vi)), “Benham” cases (item (x)); and certain Crime and Disorder Act proceedings (items xi-xiii).

Similarly, civil legal aid remains available for the High Court proceedings listed at (ii) and (vii) – (ix), as well as appeals by way of case stated and bail applications to the High Court (which fall within (i)). This will include judicial review and habeas corpus proceedings concerning any matter within (i) – (xiv) of article 1(2), which therefore will all proceed by way of application for civil legal aid under the 1988 Act. Applications for civil legal aid in “criminal cases” must be made using the new

forms designed for the purpose (CRIMAPP 1 & 2) and the CLS means forms (see the article on forms in *Focus* 29).

Meaning of Pre-existing Civil Cases

Article 5(1)(c)-(f) defines what counts as a pre-existing civil case.

For advice and assistance, this depends on the date that the application form was signed (or, in the case of clients resident abroad, the date when prior authority to accept a postal application was given). An application form for a personal injury or clinical negligence matter (CLAIM10 or CW1) must have been signed on or before 31 March 2000. Any other CLAIM10 application form (other than in a criminal matter) must have been signed on or before 31 December 1999. After those dates, civil advice and assistance can only be provided by way of Legal Help under the terms of a General Civil Contract.

The definition of pre-existing civil legal aid cases and (civil) ABWOR cases depends on whether the decision to grant is taken by the Legal Aid Board (or Legal Services Commission from 1 April), or by a solicitor exercising devolved powers to grant emergency legal aid or ABWOR.

- ▶ An application to the Board/Commission must have been signed on or before 31 March 2000 **and** received before 2 May 2000. The Commission may not accept applications received on or after 2 May, whenever they were dated. It will be necessary to make a fresh application for Legal Representation or another level of service under the Funding Code.
- ▶ Where devolved powers are exercised, the grant itself must have been made on or before 31 March 2000 **and** the notification of grant received before 2 May. The Commission can only pay claims in relation to devolved grants of which notification was received before 2 May. This does not affect the existing requirement to submit notifications within 5 working days, or

the Commission's discretion to refuse to pay if the notification is not received within 5 working days.

Note that ABWOR for Mental Health Review Tribunal cases was replaced by Controlled Legal Representation under General Civil Contracts on 1 January 2000.

Transitional Arrangements for Article 5(1) cases

The 1988 Act, and the regulations under it, continue to apply for the duration of all criminal cases (including those civil cases that fall within the definition of "criminal proceedings") and pre-existing civil cases, subject to the changes in terminology in Article 5(2) & (3) and the exceptions set out below.

Regulation 5 of the Community Legal Service (Financial) Regulations 2000 sets out the up-rated financial eligibility limits that apply from 1 April (see *Focus 29*). Article 7 provides for these up-rated figures to apply in most cases where eligibility is assessed under the Civil Legal Aid (Assessment of Resources) Regulations 1989. This applies to further or amended assessments in pre-existing civil cases and all assessments for civil legal aid in the "criminal" High Court proceedings described above. An exception is made where the existing legal aid limits are higher than those in the new regulations. This will only apply to further assessments in pre-existing personal injury or clinical negligence cases. The higher eligibility limits for these cases have not been replicated in the new regulations, so pre-existing cases continue to attract the higher limits.

Article 8 provides for the new *procedures* for awarding costs against an assisted person to apply also to all Article 5(1) cases (see the CLS (Costs) Regulations 2000 in *Focus 29*). The change does not take effect until **5 June**. It affects cases in which costs against an assisted person fall to be determined under regulation 124 of the Civil Legal Aid (General) Regulations on or after that date. The main changes to note about the new procedures are that:

- ▶ where an opponent seeks a hearing to determine the costs payable by an assisted person, the assisted person must respond with a statement of

resources or lose his right to an oral hearing (new regulation 10 (5)-(8)); and

- ▶ there is a strict **3 month time limit** for a successful unassisted opponent to apply for costs against the Fund (regulation 10(2); regulation 12(1) provides for applications out of time for costs against the client but not the Fund).

Article 11 deals with pre-existing applications for advice and assistance. Paragraph (3) sets a **5 month time limit for submitting old CLAIM10 bills** for payment once work has been completed. The Commission will only pay late bills if a good reason for the delay is provided. (This does not affect the provision in the General Civil Contract that allows the Commission to reduce payment on claims submitted after more than 3 months.)

Paragraph (1) of Article 11 gives the Commission new powers to refuse an application to extend the financial limit on green form advice, in addition to those in regulation 21 of the Legal Advice and Assistance Regulations 1989. It will do this in two circumstances.

- ▶ Where the case would pass old 1988 Act guidelines for green form advice but not the Funding Code criteria for Legal Help (or any other level of service). In practice, it is expected that refusals under this ground will be rare.
- ▶ Where the case is being taken by a non-contracted firm, and a significant amount of work is still needed. The Commission can require the client to apply for Legal Help under the new scheme, with the effect that they will have to switch to a quality-assured provider.

The Commission intends to adopt a similar approach where approval for a change of solicitor is sought in a pre-existing civil legal aid case. Where the case falls in one of the categories that are restricted to contracted firms under the new system (family, immigration, clinical negligence and personal injury), the Commission will impose a limitation on the certificate requiring the assisted person to select his or her new representative from a contracted firm. (The Commission's power to do this derives from sections 15(4) and 32(2) of the Legal Aid Act. That is why the Commencement Order does not mention it.) ■

The Access to Justice Act 1999 (Commencement No. 3, Transitional Provisions and Savings) Order 2000

The Lord Chancellor, in exercise of the powers conferred on him by section 108(1) of, and paragraphs 1(1) and 8 of Schedule 14 to, the Access to Justice Act 1999, and all other powers enabling him in that behalf, makes the following Order:

Citation and interpretation

1. (1) This Order may be cited as the Access to Justice Act 1999 (Commencement No. 3, Transitional Provisions and Savings) Order 2000.

(2) In this Order:

(a) “the Act” means the Access to Justice Act 1999 and references to a section, Part or Schedule by number alone mean the section, Part or Schedule so numbered in the Act;

“authorised” means authorised under regulation 15 of the Legal Advice and Assistance Regulations 1989 (clients resident abroad);

“clinical negligence proceedings” means proceedings which include:

- (i) a claim for damages in respect of breach of a duty of care or trespass to the person committed in the course of the provision of clinical or medical services (including dental or nursing services); or
- (ii) a claim for damages in respect of professional negligence in the conduct of such a claim;

“the Commission” means the Legal Services Commission established under section 1 of the Act;

“criminal proceedings” means:

- (i) the proceedings mentioned in section 12(2) of the Act;
- (ii) applications for judicial review or habeas corpus relating to criminal investigations or proceedings;
- (iii) prison disciplinary hearings;
- (iv) representations to prison governors and other prison authorities regarding the status, security classification, discipline, transfer and treatment of prisoners;

- (v) representations to the Home Office relating to mandatory life sentences and other parole reviews;
- (vi) Parole Board proceedings;
- (vii) representations to the High Court against a voluntary bill of indictment;
- (viii) proceedings under the Criminal Procedure and Investigations Act 1996 to quash an acquittal;
- (ix) proceedings under RSC Order 115 in Schedule 1 to the Civil Procedure Rules 1998 for confiscation or forfeiture in connection with criminal proceedings;
- (x) proceedings in a magistrates’ court arising from failure to pay a fine or to obey an order of that court where such failure carries the risk of imprisonment;
- (xi) proceedings under sections 1, 2 and 4 of the Crime and Disorder Act 1998 relating to anti-social behaviour orders or sex offender orders;
- (xii) proceedings under section 8(1)(b) of the Crime and Disorder Act 1998 relating to parenting orders made where an anti-social behaviour order or a sex offender order is made in respect of a child;
- (xiii) proceedings under section 8(1)(c) of the Crime and Disorder Act 1998 relating to parenting orders made on the conviction of a child; and
- (xiv) applications to the Criminal Cases Review Commission;

“the Funding Code” means the Funding Code approved under section 9 of the Act;

“funded services” means services which are provided directly for a client and funded for that client by the Commission under sections 4 to 11 of the Act as part of the Community Legal Service;

“the 1988 Act” means the Legal Aid Act 1988; and

“personal injury proceedings” means proceedings (excluding proceedings for

clinical negligence) for damages for personal injuries to, or the death of, the claimant or any other person, and “personal injuries” includes any disease and any impairment of a person’s physical or mental condition;

- (b) subject to paragraph (c), unless the context requires otherwise, words and expressions defined in the Act shall have the same meaning in this Order;
- (c) the following words and phrases shall have the same meaning as in the 1988 Act:
 - (i) “representation”;
 - (ii) “advice”;
 - (iii) “assistance”; and
 - (iv) “Legal Aid Board”.

Commencement of provisions in Access to Justice Act 1999

2. The following provisions of the Act shall come into force on 1st April 2000:

- (a) in Part I (Legal Services Commission):
 - (i) sections 1 to 11, 19 to 23, 25 and 26;
 - (ii) subject to articles 3 and 4, the following provisions of Schedule 4 (amendments consequential on Part I): paragraphs 1, 2, 10(1) and (3)(b), 11 to 15, 19, 20, 26, 31 to 34, 36, 37, 41 to 46, 48, 50 to 52, and 56;
 - and
 - (iii) section 24 so far as it relates to the provisions of Schedule 4 referred to in sub-paragraph (ii) above;
- (b) in Part II, sections 27, 29 and 30; and
- (c) in Part VII:
 - (i) the repeal or revocation, in Part I of Schedule 15 of, or (as the case may be) of words in, the provisions specified in the Schedule to this Order;
 - and
 - (ii) section 106 so far as it relates to the provisions of Schedule 15 referred to in sub-paragraph (i) above.

Transitional provisions and savings

3. Until section 12 of the Act comes into force, paragraph 10(3)(b) of Schedule 4 to the Act shall be modified so that section 47(2A)(a) of the Solicitors Act 1974 reads as follows:

“his conduct, including conduct in the capacity of agent for another solicitor, in connection with the provision for any person of services under the Legal Aid Act 1988; or funded by the Legal

Services Commission as part of the Community Legal Service; or”

- 4. (1) In this article, “the 1985 Act” means the Administration of Justice Act 1985.
- (2) Until section 12 of the Act comes into force, paragraphs 33, 34, and 36 of Schedule 4 to the Act shall be modified so that the provisions of the 1985 Act referred to in paragraphs (3) to (5) respectively read as set out in those paragraphs.
- (3) Section 40(1) of the 1985 Act shall read:

“For the purposes of this Part of this Act a legal aid complaint is a complaint relating to the conduct of a barrister or solicitor in connection with the provision for any person of services under the Legal Aid Act 1988 or funded by the Legal Services Commission as part of the Community Legal Service, including in the case of a solicitor, provision for any person of such service in the capacity of agent for that person’s solicitor.”;
- (4) Section 41(2) of the 1985 Act shall read:

“Subject to any exclusion or restriction made by those provisions, any disciplinary tribunal which hears a legal aid complaint relating to the conduct of a barrister may, if it thinks fit and whether or not it makes any other order, order that any fees-

 - (a) otherwise payable in connection with his services under or in accordance with the Legal Aid Act 1988, or
 - (b) otherwise chargeable in connection with his services in respect of advice or assistance made available under Part III of that Act, or
 - (c) otherwise payable by the Legal Services Commission in connection with services provided for him as part of the Community Legal Service

shall be reduced or cancelled.”;
- (5) Section 43(3) of the 1985 Act shall read:

“On the hearing of a legal aid complaint against a solicitor the Tribunal may, if it thinks fit and whether or not it makes any other order on the hearing, order that any costs-

 - (a) otherwise payable under or in accordance with the Legal Aid Act 1988, or
 - (b) otherwise chargeable in respect of advice or assistance made available under Part III of that Act

in connection with services provided by the solicitor, or

 - (c) otherwise payable by the Legal Services Commission in connection with services provided by the solicitor as part of the

- Community Legal Service shall be reduced or cancelled.”.
- 5.** (1) Subject to paragraphs (2) and (3), and articles 7, 8, and 11, nothing in the provisions commenced by this Order or the transitional provisions of this Order shall take effect in relation to any of the following:
- (a) the application, by virtue of the Community Legal Service (Funding) Order 2000, of regulations made under the 1988 Act to funded services;
 - (b) representation, advice and assistance or assistance by way of representation under any part of the 1988 Act relating to actual or contemplated criminal investigations or proceedings;
 - (c) representation under Part IV of the 1988 Act:
 - (i) where the application is signed before 1st April 2000 and received by the Legal Aid Board before 2nd May 2000; or
 - (ii) where an emergency certificate is granted by a solicitor before 1st April 2000 and notified to the Legal Aid Board before 2nd May 2000;
 - (d) except where sub-paragraph (e) or (f) applies, advice and assistance under Part III of the 1988 Act where the application is signed (or authorised) before 1st January 2000;
 - (e) except where sub-paragraph (f) applies, advice and assistance under Part III of the 1988 Act relating to proceedings for personal injury or clinical negligence or to a dispute which may give rise to such proceedings, where the application is signed (or authorised) before 1st April 2000; or
 - (f) assistance by way of representation under Part III of the 1988 Act:
 - (i) where the application is signed before 1st April 2000 and received by the Legal Aid Board before 2nd May 2000; or
 - (ii) which is granted by a solicitor before 1st April 2000 and notified to the Legal Aid Board before 2nd May 2000.
- (2) Any reference to the following in regulations made under the 1988 Act, in so far as they remain in force, shall be construed in relation to the services mentioned in paragraph (1) as though they were amended as follows:
- (a) any reference to an “Area Director” shall be replaced by a reference to a “Regional Director”, as defined in the Legal Services Commission Regional Arrangements 2000, as amended from time to time;
 - (b) any reference to a “legal aid area” shall be replaced by a reference to a “Legal Services Commission Region” as defined in the Legal Services Commission Regional Arrangements 2000, as amended from time to time;
 - (c) any reference to an “area committee” or an “appropriate area committee” shall be replaced by a reference to a “Committee” as defined in, and appointed in accordance with, the Legal Services Commission Review Panel Arrangements 2000, as amended from time to time;
 - (d) any reference to work “done by a person or body (other than the Board) acting under the terms of a franchising contract which was entered into by the Board pursuant to its powers under section 4 of the Legal Aid Act 1988” shall be construed to include work done under a contract entered into by the Commission pursuant to its powers under section 6 of the Act, where the work was done within the scope of a Franchise Certificate designated as such by the Commission; and
 - (e) for the purposes of paragraph (1)(a), any reference to a “certificate” shall be construed to include a certificate issued under the Funding Code.
- (3) Any reference to the “Legal Aid Fund” in the 1988 Act, and regulations made under it, shall be construed in relation to the services mentioned in paragraph (1), except any which fall within sub-paragraph (b), as though it were replaced by a reference to the “Community Legal Service Fund”.
- (4) Without prejudice to paragraph (1), the repeal of sections 34 and 36 of the 1988 Act shall not affect the power under that Act to make regulations in relation to the services mentioned in paragraph (1).
- Consultation**
- 6.** (1) Consultation undertaken by the Legal Aid Board in relation to the Funding Code before this Order was made is deemed to be consultation by the Commission under section 8(8) of the Act notwithstanding that at the time of that consultation section 8(8) was not in force.
- (2) Consultation undertaken by the Lord Chancellor in relation to any remuneration order made under the Act is deemed to be consultation by the Lord Chancellor under section 25(2) of the Act notwithstanding that at the time of that consultation section 25(2) was not in force.

Assessment of resources

7. (1) In this article,
- (a) “Legal Aid Assessment Regulations” means the Civil Legal Aid (Assessment of Resources) Regulations 1989; and
 - (b) “CLS Financial Regulations” means the Community Legal Service (Financial) Regulations 2000.
- (2) With effect from 1st April 2000, on any assessment, or further or amended assessment of resources under the Legal Aid Assessment Regulations in respect of the services mentioned in article 5(1)(b) or (c):
- (a) the assisted person’s financial eligibility and contribution shall be calculated by reference to the higher of the relevant figures in the Legal Aid Assessment Regulations and the equivalent figures for the time being in the CLS Financial Regulations, as set out in the following table:

Legal Aid Assessment Regulations	CLS Financial Regulations
4(2)	5(6)
4(2)(a)	5(6)(i)
4(3)	5(6)
4(3)(a)	5(6)(i)
4(4)(a)	38(2)(a)
4(4)(b)	38(2)(b)

- (b) regulation 20 of the CLS Financial Regulations shall apply.

Costs

8. (1) In this article,
- (a) “Legal Aid General Regulations” means the Civil Legal Aid (General) Regulations 1989; and
 - (b) “CLS Costs Regulations” means the Community Legal Service (Costs) Regulations 2000.
- (2) Paragraph (3) applies where services mentioned in article 5(1)(c) have been provided in proceedings, and the amount of the assisted person’s liability for costs falls to be determined under regulation 124 of the Legal Aid General Regulations.
- (3) With effect from 5th June 2000, subject to paragraph (4), regulations 127 to 130 and 134 to 147 of the Legal Aid General Regulations shall not apply, and the amount of the assisted person’s liability and any application for an order under section 18 of the 1988 Act shall be determined in accordance with regulations 2 and 9 to 13 of the CLS Costs Regulations.

- (4) References in the CLS Costs Regulations to “client”, “section 11(1)” and “a costs order against the Commission” shall be construed, respectively, as references to “assisted person”, “section 17(1) of the 1988 Act” and “an order under section 18 of the 1988 Act”.

Exclusion from Community Legal Service work

9. With effect from 1st April 2000, the exclusion from legal aid work before that date of any barrister by virtue of section 42 of the Administration of Justice Act 1985 or of any solicitor by virtue of section 47(2) of the Solicitors Act 1974 shall also take effect as an exclusion from providing funded services.

Prohibitory directions

10. With effect from 1st April 2000, any prohibitory direction made under regulation 41 of the Civil Legal Aid (General) Regulations 1989 shall also take effect as if it had been made in accordance with the Funding Code.

Advice and assistance

11. (1) Subject to paragraph (2), the Commission may refuse an application to exceed the financial limit on the prospective costs of advice or assistance under section 10(1) of the 1988 Act, if it considers that:
- (a) the provision of funded services would be more appropriate; or
 - (b) any application for funded services would be refused.
- (2) Paragraph (1) does not apply to applications for advice and assistance relating to actual or contemplated criminal investigations or proceedings.
- (3) Subject to the provisions of any contract, all claims for payment in respect of advice and assistance mentioned in article 5(1)(d) and (e) shall be submitted so as to be received by the Commission by whichever is the later of five months after the completion of the work for which payment is claimed and:
- (a) in relation to any claim other than for personal injury or clinical negligence, 30th June 2000; and
 - (b) in relation to any claim for personal injury or clinical negligence, 30th September 2000.
- (4) Subject to paragraph (5), the Commission may refuse claims for payment mentioned in paragraph (3) which are received late without good reason.
- (5) No claim for payment shall be refused unless the solicitor has been given a reasonable opportunity to show why it should not be refused. ■

Community Legal Service

Glossary of terms

Legal Services Commission (LSC) – the non-departmental public body, established under the Access to Justice Act 1999 (“the Act”), responsible for establishing, maintaining and developing the Community Legal Service (CLS).

Community Legal Service Fund – the fund from which the LSC itself funds services as part of the Community Legal Service.

Community Legal Service Partnership (CLSP) – voluntary local partnerships consisting of the LSC, the local authority, other funders of legal services, and providers of legal service. CLSPs are responsible for planning and co-ordinating the funding and supply of legal services in its area according to national and local priorities.

CLS Partner – any organisation operating formally within a *CLSP*.

CLS Funder – a funding *CLS partner*

CLS Member – any organisation with the *Quality Mark*.

CLS Provider – an organisation which is a *CLS Member* or a providing *CLS Partner* (or both). (Eventually the terms member and provider will become synonymous.)

CLS Supplier – an organisation with a LSC contract.

CLS Quality Mark – a form of accreditation for providers of legal services awarded by the LSC (or bodies authorised by the LSC to award it). There are currently three standards:

Information – the standard for organisations providing up-to-date information to the public about the law, the legal system and the availability of legal services. The standard has two levels. An **information service** simply provides access to leaflets and other information. An **assisted information service** has staff on hand to help people to find and interpret relevant information.

General Help – the standard for organisations that

provide basic advice and assistance to people with legal problems. It may be supplemented by accreditation covering the provision of more detailed casework in particular categories of work.

Specialist Help – the standard for organisations providing specialist legal services in defined categories of work. All LSC contracts are with organisations that meet this standard.

Information Point – an organisation holding an *Information Quality Mark*.

Help Point – an organisation holding a *Quality Mark* covering *General* or *Specialist Help* (or a combination of both covering different categories of work).

Regional Legal Services Committee – regional committees established by the LSC to advise it about the allocation of the resources of the *CLS Fund*. RLSCs also undertake some of the functions of *CLSPs* in areas where a *CLSP* is yet to be established.

Funding Priorities – the national priorities for the *CLS Fund*, set by the Lord Chancellor by a direction made under section 6(1) of the Act. The LSC will set its more detailed priorities within this framework.

Priority Legal Needs – categories in which the Government particularly wishes to promote better access to legal services in order to underpin its wider social policies. The list includes all the *Funding Priorities* as well as other categories. It will be used in the planning of provision by *CLS Partnerships* and as the basis for assessing the success of the Government’s policies in extending access to legal services (however funded).

Funded services – any services funded by the LSC as part of the Community Legal Service.

Funded client – a person who receives *funded services*.

Funding Code – a Code drawn up by the LSC under

section 8 of the Act, setting out the Criteria for deciding whether to provide funded services in a particular case. Where funding is granted, it takes the form of one of nine levels of service:

Legal Help – provides initial advice and assistance about a legal problem, not including representation or advocacy in proceedings. This level of service covers work previously carried out under the advice and assistance or ‘green form’ scheme.

Help at Court – allows for somebody (a solicitor or adviser) to speak on the client’s behalf at certain court hearings, without formally acting for them in the whole proceedings.

Family Mediation – covers mediation for a family dispute, including finding out whether mediation appears suitable or not.

Legal Representation – provides legal representation for a client taking or defending court proceedings. This is the same level of service previously called Civil Legal Aid. This is available in two forms: **Investigative Help** (funding is limited to investigation of the strength of a claim) or **Full Representation** (funding is provided to represent a client in legal proceedings).

Approved Family Help – provides help in relation to a family dispute, including assistance in resolving that dispute through negotiation or otherwise. This includes the services covered by Legal Help, but also includes issuing proceedings and representation where necessary to obtain disclosure of information from another party, or to obtain a consent order following agreement of matters in dispute. It is available in two forms: **Help with Mediation** (legal advice and assistance for clients attending family mediation) or **General Family Help** (legal advice and assistance on family matters where the client is not attending family mediation).

Support Funding – partial funding of very expensive cases which are otherwise funded privately, under a conditional fee agreement. It is available in two forms: **Investigative Support** (funding is limited to investigation of the strength of a claim with a view to a conditional fee agreement) or **Litigation Support** (provide partial funding of high cost proceedings under a conditional fee agreement).

General Civil Contract – the form of contract that covers all *Controlled* and *Licensed Work* (see below).

Other contracted work – other LSC contracts cover *Family Mediation* and *Certificated Work* in very expensive individual cases.

Non-contracted work (until April 2001) – *Legal Representation that is not Controlled Work or Licensed Work*.

Controlled Work – services provided under the terms of the LSC’s *General Civil Contract*, where the decision about whether to provide services in a particular case is for the supplier, but the contract limits the total number of cases that can be taken. Controlled Work consists of all *Legal Help* and *Help at Court*, and *Legal Representation* before Mental Health Review Tribunals and the Immigration Appeal Tribunal and immigration adjudicators. Controlled Work is funded from a **Controlled Budget**, set by the Lord Chancellor within the overall *CLS Fund*.

Certificated Work – services provided under a certificate, granted by or on behalf of the LSC, that defines the scope of the work to be done. Certificated Work may also be subject to the terms of an LSC contract. Certificated Work consists of all *Approved Family Help* and *Support Funding*, and *Legal Representation* that is not *Controlled Work*.

Authorised Representation – *Legal Representation* where the supplier has been delegated authority to grant a *certificate* on behalf of the LSC. Authorised Representation covers *Legal Representation* in a case of emergency and in certain family proceedings in a magistrates’ court.

Licensed Work – *Certificated Work* which may only be provided by a specialist supplier with a licence (granted under a *General Civil Contract*) in the relevant category. Licensed Work currently consists of all *Approved Family Help* and *Support Funding*, and *Legal Representation* in family, immigration, clinical negligence and personal injury cases, except for very expensive cases conducted under individual contracts. It will be extended to cover all other *Legal Representation* from April 2001.

More detailed terminology relating to the Quality Mark, funded services and contracts can be found in the relevant documentation produced by the LSC. ■

Proposed Payment Dates

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

If you are paid by BACS (Bank Automated Clearing System) the proposed payment date shown is the date on which you will receive a payment into your bank. For some smaller banks the BACS credit may appear a day later. The proposed payment date will also be the date by which the last of the cheque/remittance advices are despatched from the Financial Services Settlement section. Remittance advices are despatched using DX or first class post.

If you are still being paid by cheque, we recommend that

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

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

Keeping us up to date

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

Proposed Payment Dates for July – December 2000

General Civil Contracting Payment	First Settlement of the Month	Second Settlement of the Month
Wednesday, 5 July 2000	Tuesday, 11 July 2000	Tuesday, 25 July 2000
Thursday, 3 August 2000	Wednesday, 9 August 2000	Thursday, 24 August 2000
Tuesday, 5 September 2000	Friday, 8 September 2000	Monday, 25 September 2000
Wednesday, 4 October 2000	Tuesday, 10 October 2000	Tuesday, 24 October 2000
Friday, 3 November 2000	Wednesday, 8 November 2000	Thursday, 23 November 2000
Tuesday, 5 December 2000	Friday, 8 December 2000	Friday, 22 December 2000

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

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Please contact Lucy Dodsworth

020 7759 0492