

# Focus

July 2001

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## News

Financial Conditions for CLS funding	2-3
Exceptional Funding	3
LSC Manual Update	3
ILPA Asylum Caseworker Training	4
Advance notice of changes to LSC forms	4
Birmingham Public Defender Service	4
CLS Legal Information Leaflets	5
Methods of Delivery Pilot	6
e-Business update	7
Mystery shopping planned	7
Criminal Point of Principle	7
Transaction Criteria update	8-9
Specialist Quality Mark	9
Client Feedback pilot	10
LSC Annual Report Published	10
IALS Research	10
Supplier Survey	11-12

## Civil Guidance/Development

Family Graduated Fees Update	14-15
Costs Assessment	15-16
Developing the Funding Code	17-18
General Civil Contract Update	18
Immigration Update	19
Authority to Recover Other Sides Costs	19-20
Orders for Costs Against the LSC	20-21
Valuation of the Statutory Charge	21
Review Panel Arrangements 2000	22
Housing Possession Court Duty Scheme Pilot - Consultation	23-25
Debt Recovery Update	25
PIAP Reports	26-30
Lord Chancellor's Guidance	30-31
Proposed Payment Dates	32

## A round up of some of the key articles in this issue

### ■ CLS Financial Conditions

Final consultation on detailed regulations, forms and guidance for the new means test launched, prior to implementation of the package on 3 December, page 2.

### ■ Family Graduated Fees

Some guidance changes effective now, and some commonly asked questions, page 14.

### ■ Civil Costs Assessment

Clarification of guidance on completing means forms and providing evidence of means for Controlled Work, and other costs assessment issues, page 15.

### ■ Help with Mediation

Proposed new devolved power for family contractors to grant Help with Mediation certificates by the end of the year, page 17.

### ■ Immigration

Stage billing to be extended but £400 payment on account scheme to be withdrawn as no longer needed, page 19.

### ■ Housing Possession Court Duty Scheme Pilot

Final arrangements established and pilot scheme to run from October, page 23.

### ■ Exceptional Funding following the Jarrett case

The new approach explained and draft new guidance from the Lord Chancellor for consultation, pages 3 and 30.

### ■ Debt Recovery Reminder

Contributions continue to be payable until certificates are discharged. The Commission will not itself recover costs from the other side where a statutory charge has been registered against the client's home, page 25.

# Changes to Financial Conditions for CLS Funding

In July 2000 the Lord Chancellor's Department issued a consultation paper proposing a package of reforms to the financial conditions for the grant of CLS funding by the LSC. The proposals had three main aims:

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

Consultation closed in October 2000, and the LCD's response paper setting out revised proposals was published in March 2001. Key points included:

- The eligibility limits for income will be increased for Legal Help, Help at Court and Controlled Legal Representation, with a view to equalising the limits with those of Legal Representation at a later stage. The limits for all other levels of service will be equalised with those for Legal Representation.
- A new sliding scale for calculating contributions from income will be introduced for Legal Representation. The Government considered the arguments put forward during the consultation period and decided not to seek contributions from equity towards the costs of a funded client's case, nor to introduce a contributory scheme for Legal Help and Help at Court.
- The means test will be simplified, with the introduction of a gross income cap and revised allowances counted against income to calculate disposable income. This will mean that the same rules can be applied to all levels of service, which will reduce the administrative burden for suppliers and will be easier

for applicants/clients to understand.

- The allowance against the statutory charge for matrimonial cases will be increased to £3000.
- The interest rate for the statutory charge will be fixed at a value of 1% above the bank base rate and will change annually if there is variation of 1% or more.
- The test for recovering costs from the CLS Fund by a non-funded opponent will change from "severe financial hardship" to "financial hardship".

Under the proposals, an estimated five million more people in England and Wales will qualify for Legal Help significantly assisting people on the lowest incomes.

At a later date, the Government intends to increase eligibility limits for these services further, bringing them to the same level as those for Legal Representation, which will mean a further 2 million people becoming eligible.

In March 2001 the LCD also published a consultation paper setting out revised eligibility limits, and consultation on this ran until 1 May 2001. Further work on the proposals was held in abeyance during the general election, but the LCD and LSC have now issued consultation papers on the detailed proposals for implementation, now timetabled for **3 December 2001**.

## Current LCD consultation

The LCD has now issued responses to the consultation which closed on 1 May, and draft regulations for consultation. Copies of all LCD consultation papers and responses to date are available on the LCD website at [www.lcd.gov.uk](http://www.lcd.gov.uk), or by contacting Helen Johns at the address below:

Public Legal Services Division  
Lord Chancellors Department  
Selborne House  
54-60 Victoria Street  
London SW1E 6QW  
DX: 117000 London  
Telephone: 020 7210 8788  
e-mail: [helen.johns@lcdhq.gsi.gov.uk](mailto:helen.johns@lcdhq.gsi.gov.uk).

Consultation will run until 12 September 2001.

## Current LSC consultation

The LSC has sent out a consultation pack to each supplier holding a General Civil Contract, and organisations on our standard list of consultees. The pack contains:

- Proposed amendments to guidance in the LSC Manual on means assessment, cost protection and the statutory charge.
- Minor amendments to the General Civil Contract for Solicitors and Not for Profit agencies to reflect the changes in forms used.
- Summary of changes to LSC forms and drafts of the forms affected, including a new two page means form for suppliers to complete in all cases where they are responsible for the assessment of means, the CLSMEANS6.
- Copy draft regulations for information.

The pack will be available on the LSC website. Hard copies are also available from Nick Leamy, Policy and Legal department, LSC Head Office (tel: 020 7759 0000). Responses should be sent to Sarah Green, Project Manager, LSC Policy and Legal department, LSC head office by post or e-mail [sarah.green@legalservices.gov.uk](mailto:sarah.green@legalservices.gov.uk) so as to reach her by 12 September 2001.

## Next steps

Responses to the consultation papers

will be considered in September. If the proposed implementation date of 3 December 2001 is confirmed, the regulations will be passed in October/November and final versions of the guidance and contract amendments will be published in October.

The amended means forms will be distributed to suppliers at the start of November. A training pack on the new means test will also be published in November, and local training sessions organised by LSC regional offices - further details will be given in the next

edition of *Focus* and on the LSC website.

Revised versions of the LSC information leaflets affected by the amendments will also be published at the end of the year.

## Exceptional Funding

### Jarrett v Legal Services Commission and the Lord Chancellor's Department

There will be a new approach to applications for exceptional funding for individual excluded cases, following a recent judicial review.

The Jarrett case (CO/4365/00), brought by Irwin Mitchell, was a challenge to the exclusion of director disqualification cases under Schedule 2 of the Access to Justice Act 1999. The case raised the important issue of the extent to which Article 6 of the European Convention on Human Rights, the right to a fair hearing, requires the provision of legal aid in civil cases. Giving judgment on 22 May 2001, the court made no substantive order on Mrs Jarrett's application. Therefore all the rules of CLS funding, including the exclusions themselves and the Lord Chancellor's directions on scope, remain unchanged. The case does not therefore affect any applications for funding to regional offices.

However the court did go on to say that, in considering exceptional funding under Section 6(8)(b) of the 1999 Act the Legal Services Commission and Lord Chancellor should consider an individual case on a wider basis than had previously been adopted. The Lord Chancellor's current guidance on exceptional funding is at Section 3.4 of the Funding Code decision-making guidance in Volume 3 of the Manual and on the website (but see also Section 3.12 of that guidance and the article at pages 14-15 of *Focus* 33). Under the existing guidance exceptional funding will normally only be recommended in cases which have

either a significant wider public interest or overwhelming importance to the client. Both these concepts are quite narrowly defined. The court in Jarrett held that a third category of case should also be considered for exceptional funding. Individual cases should be considered:

"in exceptional circumstances, namely where the withholding of legal aid would make the assertion of a civil claim practically impossible, or where it would lead to an obvious unfairness of the proceedings ... "

This new test, based on Article 6 case law, involves looking at all the circumstances of the case, including the circumstances of the client and the complexity and subject matter of the dispute. The test does not apply to funding of representation at inquests or other proceedings at which Article 6 rights are not determined.

The Lord Chancellor has issued for consultation draft guidance on Section 6(8)(b) funding to reflect the new test following the Jarrett case. This guidance is printed at page 30 of this edition of *Focus* and is on our website. While the guidance is subject to consultation we will nevertheless be giving clients the benefit of the new approach in Section 6(8)(b) applications with immediate effect. For further information on such funding contact Colin Stutt in the Policy and Legal Department, 85 Gray's Inn Road, London, WC1X 8TX or DX 328 London. Telephone: 020 7759 0000.

## LSC Manual Update

The second of the three 2001 updates to the LSC Manual will be published in September 2001. It will be Release 4. The final update for this year, Release 5, will be published in December 2001. Volume 4 containing Criminal Defence Service material was published in June 2001 with a first update in Release 5 in December.

A loose-leaf publication with an optional CD-ROM and an updating service allows the Commission to update the material in the Manual regularly. The four-volume Manual is designed to contain all the key documentation relating to both the CLS and the CDS. Sweet & Maxwell publish the Commission's Manual and updates and if you require details you should contact them on 020 7449 1111.

The Commission's key documentation is also available on our website at [www.legalservices.gov.uk](http://www.legalservices.gov.uk). In some circumstances our guidance is subject to immediate amendment, for example, if affected by a decision of the court. We post up-to-date material on our website and subsequently update our Manual in the next Release.

We shall continue to use both our website and *Focus* to ensure that suppliers are provided with details of all new materials for the CLS and the CDS (including consultation papers) as soon as possible.

# ILPA Asylum Caseworker Training Project

The LSC is funding the Immigration Law Practitioners' Association (ILPA) to run training courses for asylum caseworkers.

Under the project, participants from LSC contracted suppliers, who obtain their certificate of attendance, will have their course fees reimbursed.

The purpose of the project is to increase the capacity of suppliers to provide a quality assured service to asylum seekers. It is particularly targeted at support workers and clerks, currently working for suppliers in the dispersal areas. LSC contractors are given priority booking arrangements for the courses held in their region. The first four courses took place in June in Newcastle, Liverpool and Leeds. The next batch will be held in September in Manchester, Birmingham and Cardiff.

Each course lasts five days initially, followed by three follow-up days a few weeks later. The courses cover both the technical and practical aspects of asylum casework.

Course dates are shown below. Course times are 9.30am-4.30pm and strict attendance is required.

Fees: £400 for contracted suppliers  
£600 for others

Contact Jane Savory at ILPA for a

booking form. Tel 020 7250 3757, Fax 020 7251 8384, e-mail [info@ilpa.org.uk](mailto:info@ilpa.org.uk)

**NB:** We have had a number of queries about how fees are reimbursed.

Participants should send their cheque for the course fees to ILPA as normal when booking a place on the course. The cheques of contracted suppliers are not cashed and are returned to them at the end of the course, provided the participant has received their certificate of attendance.

Location	Dates of initial course	Follow up days
Manchester	3-7 September	28 September, 5,19 October
Birmingham	12,13,14,17,18 September	8,15,22 October
Cardiff	20,21,24,25,26 September	11,18,25 October

## Advance notice of changes to LSC forms

Please note that the master pack is likely to be revised in November 2001 to reflect changes to financial conditions, currently timetabled to take effect on 3 December 2001 (see page 2). Existing forms affected by the changes are: CLSMEANS1 & 3, L17, CW1 & 2, CLSAPP6, CLSMean 1 The Guide, Keycard 33 and a new form CLSMEAN6. We may also amend the existing equal opportunities monitoring questions on civil application forms to adopt the new classifications in the latest census at the same time.

Suppliers are advised not to duplicate large numbers of the forms in advance of these changes.

## Birmingham Public Defender Service

Following the launch of the first three pilot Public Defender Offices in Middlesbrough, Swansea and Liverpool in May 2001, the fourth office has now opened in Birmingham. The new office is based at:

34 Colmore Circus  
Birmingham B3 2QD

DX 13001  
BIRMINGHAM 1

Tel: 0121 237 6900

It is expected that two more locations will be added to the service before April 2002.

For more information on the Public Defender Service please contact Jill Saville at the Legal Services



The new Public Defender Service heads (l-r) Liverpool's Richard Whitehead, Birmingham's Lee Preston, Swansea's Romano Ferrari and Middlesbrough's Nick Darwin

Commission, 85 Gray's Inn Road,  
London WC1X 8TX or by e-mail at  
[jill.saville@legalservices.gov.uk](mailto:jill.saville@legalservices.gov.uk).





# CLS Legal Information Leaflets

A key aim of the Community Legal Service is to provide better access to quality assured information and advice. This year saw the start of an innovative project to create a new series of public information leaflets on legal issues, paid for by CLS funds and produced by the Consumers' Association. The Consumers' Association is collaborating with experts in every area to produce up to date, consumer focussed information on issues like dealing with debt, divorce and separation and welfare benefits.

## The following leaflets are now available:

### 1. Dealing with debt

Written by the Consumers' Association in association with Birmingham Settlement.

### 2. Employment

Written by the Consumers' Association in association with Ian Hunter, a solicitor specialising in employment law and a partner at Bird & Bird.

### 3. Divorce and separation

Written by the Consumers' Association in association with Imogen Clout, a solicitor specialising in family law.

### 4. Renting and letting

Written by the Consumers' Association in association with Shelter.

### 5. Buying and selling property

Written by the Consumers' Association in association with Shelter.

### 6. Losing your home

Written by the Consumers' Association in association with Shelter.

### 7. The Human Rights Act

Written by the Consumers' Association



in association with Liberty.

### 8. Claiming asylum

Written by the Consumers' Association in association with ILPA (Immigration Law Practitioners Association) and Mick Chatwin, a solicitor specialising in immigration law.

### 9. Welfare benefits

Written by the Consumers' Association in association with NACAB (National Association of Citizens Advice Bureaux).

### 10. Wills and Probate

Written by the Consumers' Association in association with Paul Elmhirst, a solicitor specialising in wills and probate matters.

### 11. Dealing with the Police

Written by the Consumers' Association in association with Liberty.

### 12. No-win, no-fee actions

Written by the Consumers' Association.

Note: leaflet 13, "Problems with goods and services" will be available in August 2001.

### 14. Medical accidents

Written by the Consumers' Association in association with AVMA (Action for Victims of Medical Accidents).

### 15. Equal opportunities

Written by the Consumers' Association in association with the Equal Opportunities Commission.

### 16. Racial discrimination

Written by the Consumers' Association in association with the Commission for Racial Equality.

Note: leaflet 17, "Personal Injury" will be available in August 2001.

### 18. Rights for People with disabilities

Written by the Consumers' Association in association with the Disability Rights Commission.

## Following in August 2001:

- 13. Problems with goods and services
- 17. Personal injury
- 19. Community care
- 20. Education
- 21. Immigration and nationality
- 22. Mental health
- 23. Alternatives to Court
- 24. Family Mediation

The leaflets are available free of charge to the public and legal services suppliers, through the LSC's new Leaflet Line (telephone: 0845 3000 343). The leaflets will also be available for download from the internet at the LSC's website ([www.legalservices.gov.uk](http://www.legalservices.gov.uk)), the JustAsk! site ([www.justask.org.uk](http://www.justask.org.uk)) and the Consumer's Association site ([www.which.net](http://www.which.net)).

The leaflets will be updated as and when required to ensure that the information remains accurate and relevant. Over time, we hope to expand both the range of leaflets offered and the variety of formats used to ensure that they are fully accessible to all sectors of the community.

If you have any queries or comments about the leaflets please contact the LSC Press Office at Head Office, 85 Gray's Inn Road, London WC1X 8TX.

# Methods of Delivery Pilot

## Specialist Support Line Numbers

As part of the Methods of Delivery Pilot, the following organisations continue to offer specialist support and advice to General Civil Contract holders:

Organisation	Categories	Telephone no.	Opening times
Joint Council for the Welfare of Immigrants	<b>Immigration</b>	<b>0845 602 1020</b>	Mon-Fri, 10am-1pm
Liberty/Public Law Project	<b>Human Rights &amp; Public Law</b>	<b>0808 808 4546</b>	Mon & Wed, 2pm-5pm Tues & Thurs, 10am-1pm
NACAB Specialist Support Unit	<b>Employment</b>	<b>0808 808 3681</b>	Mon-Thurs, 10.30am-1pm, 2pm-4pm
Shelter	<b>Housing</b>	<b>020 7505 4688</b>	Mon-Fri, 9am-5pm (closed alternate Weds 9am-12.30pm)
Two Garden Court Chambers	<b>Housing</b> <b>Immigration</b> <b>Employment</b>	<b>020 7415 6340</b> <b>020 7415 6350</b> <b>020 7415 6360</b>	Mon-Fri, 2pm-5pm Mon-Fri, 2pm-5pm Wed & Fri, 2pm-5pm
Tyndallwoods Solicitors	<b>Immigration</b> <b>Community Care &amp; Health</b>	<b>0121 246 9029</b> <b>0121 246 9027</b>	Both lines open: Tues 2pm-4.30pm, Thurs 2pm-4.30pm

This advice is free under the Pilot.

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

# e-Business update

## Business

“‘E’ may not stand for easy but we are entering an era of realisation where it is becoming an integral part of business.”

(Confederation of British Industry, 2001)

Legal suppliers exactly mirror the situation in many other sectors as far as take-up and skill levels go for the internet and e-Business. There is a lot of interest, considerable concern, overwhelming enthusiasm - and much steady, practical progress.

Smaller firms can find the area especially fraught, but advice and support is available. One pioneering project in Wales for smaller legal firms has been run from the LSC's Cardiff office. This was a workshop providing a basic background to IT, e-Business and Government/European funding support - run on 13 July. More workshops are being considered.

## UK Government

The LSC is well ahead in reaching Government targets and goals. Our approach reflects that taken by the

Office of the e-Envoy - being driven by business needs, not technology. The webmaster for the e-Envoy has a very simple and pragmatic view of the guiding principles for e-Business within Government:

- We have new opportunities, risks and challenges
- Electronic services are not a substitute for ethics or choice
- We must be realistic about the scope

## LSC services

**Intranet** - the LSC's new internal communication and information-sharing system is about to be launched. The intranet provides an excellent way to circulate knowledge and data amongst our 1600 staff and 13 offices. The improved information-sharing will benefit our customers too.

**Civil contracting claims** - the *SPAN-EDI* system allows civil contract claims to be submitted to us directly using the Internet. This has been running since November 2000 and now has nearly 300 users. *SPAN-EDI* will

become '*SPAN online*' towards the end of this year, offering a new and improved way of sending your claims in electronically.

**Criminal contracting claims** - the new '*SPOCC online*' system to process criminal contract claims via the internet began a 3-month pilot in mid-July. 14 firms are taking part in this test of the second generation of e-Business services at the LSC. The full online system, for both civil and criminal claims, should be available to all by the end of 2001.

**Web sites and e-mail** - increasing use is being made of the LSC website [www.legalservices.gov.uk](http://www.legalservices.gov.uk) and e-mail to communicate with the public and with legal suppliers. The Community Legal Service Just Ask! website ([www.justask.org.uk](http://www.justask.org.uk)) will be fully managed by the LSC from 1 October 2001.

## Further information

Sharon Penfold, e-Business Project Manager, tel: 020 7759 0132, e-mail: [sharon.penfold@legalservices.gov.uk](mailto:sharon.penfold@legalservices.gov.uk).

## Mystery shopping planned

A Mystery Shopping programme for Quality Marked Information Points will be launched in November this year. One LSC regional office working in partnership with local information points will pilot this new method of quality assessment.

By acting as prospective clients seeking information and advice, a team of trained mystery shoppers will undertake a series of visits to observe, experience and measure access to services and client care. Model clients/mystery shoppers have been used previously in the medical profession to look at general practitioner issues and more recently by the Consumers' Association to monitor the quality

of advice given by solicitors.

One Trading Standards Officer who had taken part in the National Consumer Council's mystery shopping exercise for telephone consumer advice commented that, "We identified particular problems that clients experienced in accessing our service. In addition, the reports produced by the mystery shoppers on our overall customer service enabled us to feed-back positive aspects of our customer service to staff and enabled us to make improvements in our client care."

If you would like further information on Mystery Shopping, please contact Sue Hodgkinson, 020 7759 0377, e-mail [susan.hodgkinson@legalservices.gov.uk](mailto:susan.hodgkinson@legalservices.gov.uk)

## Costs Appeals Committee

### Criminal Point of Principle

#### DS8 - 1 December 2000 Availability During Duty Period

Under paragraph 3(a) to the Schedule to the Legal Advice and Assistance at Police Stations (Remuneration) Regulations 1989, a standby payment is allowed for availability during a duty period. In this context, "available" means "available to accept the initial call from the police station". It does not mean that the solicitor must respond immediately.

# Transaction Criteria Update

## Family Category

The consultation period for the new criteria for Ancillary Relief and Children Act cases ended on 20 April. Responses are currently being considered and final versions drafted. It is anticipated that these will be in use on audits from 20 August. Organisations who already hold a Specialist Quality Mark (Franchise) in the Family category will be given a ten week 'grace' period after the introduction of these new booklets.

## Public Law Childcare

A first draft of the transaction criteria for Public Law Childcare cases has now been completed. This is currently being reviewed and amended. It is not anticipated that this booklet will be ready for consultation until later in the year: updates will be provided in *Focus* and on the LSC website.

## Crime

The transaction criteria for general Crime cases has been re-drafted to take into account the changes in funding and procedure introduced with the Criminal Defence Service. Responses to the consultation are currently being considered and a final version is expected to be in use on Crime audits from Autumn 2001. Practitioners currently holding a Specialist Quality Mark (Franchise) in Crime will be given ten weeks notice of the introduction of the new booklets.

Until the new criteria are introduced, auditors will continue to use the existing Crime booklet – issue date: April 2000 (issue number 3a or 4). The questions in the criteria which relate to funding will need to be applied differently to files on which a Legal Aid or Representation order was granted on or after 2 October 2000. Crime practitioners should be aware of the following guidance on applying these questions, which has been issued to auditors in regional offices:

## Guidance for Practitioners and Auditors: Applying the Funding Questions: Crime Transaction Criteria:

1) For all files on which an application for Legal Aid or Representation was made on or after 2 October 2000:

### Section I (i); General Information:

Answer 'Not Applicable' to the following questions:

- 1.5 The client's National Insurance number
- 1.6 Whether the client is married/cohabiting
- 1.7 Whether the client has dependants, and if so.... (etc)
- 1.8 The amount of income and its source
- 1.9 The amount of capital owned by the client
- 1.10 Whether the adviser has addressed the need for Welfare Benefits advice.

### Section V; Costs and Funding:

2) Question 54.1:

This guidance applies to ALL files opened on or after 2 April 2001: The Note for Guidance for this question should now be applied as follows:

*"The client must be given an explanation at the outset of the case. For Legal Help/Advice and Assistance work the client must be informed that the adviser is only allowed to carry out a limited amount of work, and that guidance must be consulted before any further work is undertaken. The client must also be advised of the limits on representation".*

3) Question 55:

For cases where an application was made for Legal Aid or Representation on or after

2nd October 2000,

Question 55 and all sub-questions should be applied only to summonses in the Magistrates' Court and to Crown Court cases, or those committed to the Crown Court. For all other cases, answer n/a.

For all Magistrates' Court cases where an application was made for Representation on or after 2 April 2001, answer n/a.

## New Categories

Transaction Criteria are currently being drafted in the following categories:

- Actions Against the Police etc.
- Education
- Public Law
- Community Care

These will be subject to a period of consultation and piloting, and are expected to be in use by the end of the year.

## Quality Mark: General Help with Casework

The Transaction Criteria in the following categories have been re-drafted and amended for use at General Help with Casework level:

- Welfare Benefits
- Consumer/General Contract
- Debt
- Housing
- Employment
- Immigration.

The scoring methodology for these is currently being developed, and it is expected that the criteria will be in use on General Help with Casework audits from Autumn 2001. Practitioners at General help with Casework level will be given a period of one year's 'grace'



before the Transaction Criteria scores are included in the audit result.

Copies of the Transaction Criteria in all categories can be accessed via the Legal Services Commission website:

[www.legalservices.gov.uk](http://www.legalservices.gov.uk). Alternatively, paper copies may be obtained from your local regional office.

For further information/queries relating to Transaction Criteria, please contact:

Clare Powell-Evans  
Supplier Development Group  
Legal Services Commission  
85 Gray's Inn Road  
London WC1X 8TX  
[clare.powell-evans@legalservices.gov.uk](mailto:clare.powell-evans@legalservices.gov.uk)

## Specialist Quality Mark

The Specialist Quality Mark (SQM) consultation document was published in June 2001. This document will replace all versions of LAFQAS. A copy of the document has been sent to all existing SQM holders (formerly known as franchisees). The document is also available on the LSC website [www.legalservices.gov.uk](http://www.legalservices.gov.uk). The consultation period will run until 28 September 2001, and we expect to publish the final document in October 2001. Subject to the relevant notices, we expect the revised standard to be effective from January 2002.

The new standard is essentially a reformatting of LAFQAS into the Quality Framework, but we have also taken the opportunity to clarify some existing requirements. We believe that anyone who meets the current LAFQAS requirements will meet the new SQM, and although there are also a small number of additional requirements, these (subject to consultation) will not come into effect until October 2002.

We have been running a series of seminars throughout the country since June. The purpose of the seminars is to enable understanding of the revised standard, and includes an overview of the proposed changes, and the impact they will have. In addition we also give an overview of likely future developments of the SQM standard and audit process. These include our plans to move from the same audit every time for all suppliers towards an audit based upon identified risk factors

**Community  
Legal Service**



**Criminal  
Defence Service**



and a form of supplier rating system. We also touch on our plans to move from a standard based primarily upon organisation quality criteria, to one that includes criteria associated with the actual quality of advice and competency of individual advisers. We envisage that the next phase of development will cover:

- **Access to information** - the legal reference material the adviser uses to ensure the advice they give is up-to-date and appropriate.
- **Training** - has the adviser been trained in the individual area of law they are working in.
- **Individual competence** - this can be demonstrated by panel membership or equivalent, or formal qualifications such as occupational standards, which would enable advisers in the advice sector to achieve a recognised technical qualification. We will be working closely with the DfES (Department for Education and Skills - formerly the Department for Education and Employment), Law Society, Advice

Services Alliance and all interested parties on these issues.

- **Peer review** - this is probably the best measure of the quality of advice. Many safeguards are required to ensure consistency and reasonableness of assessment. It is an expensive measure of quality and will have to be used sparingly. Further information on this element is contained in the research report, *"Quality and Cost, the final report on the contracting of civil, non-family advice and assistance pilot"* recently published by Institute of Advanced Legal Studies (available from the Stationery Office on 0870 600 5522, [www.thestationeryoffice.com](http://www.thestationeryoffice.com), price £25.95) (see also page 10).
- **Mystery shopping or model clients** - there are some aspects of a service that can only be assessed by this method, especially signposting and referral that are difficult to assess at audit. This is also covered by the research mentioned above.
- **Client care** - building on the client satisfaction surveys, it encompasses all aspects of the service a client receives

The seminars last approximately 2 hours and carry 2 CPD hours. All SQM holders should have received a letter offering them a place on a seminar near them. If you would like to attend a seminar please contact the Supplier Development Group, 85 Gray's Inn Road, London WC1X 8TX or e-mail [qualitymark@legalservices.gov.uk](mailto:qualitymark@legalservices.gov.uk).

## Client Feedback pilot

The LSC has been consulting on a draft client feedback questionnaire to meet the new requirement 'AA' (Client Satisfaction) of the Specialist Quality Mark, currently LAFQAS (see *Focus 33*). Following the consultation exercise, the LSC is now conducting a pilot with specialist, and general help with casework providers. The pilot started in June and is being conducted in three phases until August. Participants are asked to send out the questionnaire to all clients whose cases are closed and then return an evaluation form on the ease of use of the questionnaire and analysis tool.

The questionnaire is also available in French, Farsi, Turkish, Albanian, Arabic and Welsh.

There has already been a positive response to the client feedback questionnaire, with one CAB stating that:

*"it is the best form of client feedback analysis that we've seen, and I shall certainly be using it."*

Following the pilot, the final version of the questionnaire will be available from October 2001 both from Supplier Development Group, and on the LSC website.

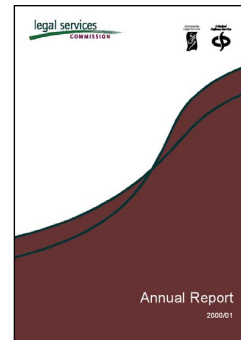
The new requirement for client feedback in the Specialist Quality Mark (currently LAFQAS) will be effective from April 2002.

Organisations do not have to use the LSC questionnaire, providing their own process covers the requirements in the Specialist Help Quality Mark.

For further information, contact Sue Hodgkinson on 020 7759 0377, or e-mail [susan.hodgkinson@legalservices.gov.uk](mailto:susan.hodgkinson@legalservices.gov.uk).

## LSC Annual Report Published

The Legal Services Commission's first Annual report was published on 12 July. The report gives an account of the progress made towards fulfilling the Lord Chancellor's objectives of improving access to justice and targetting resources to those most in need. It covers the development of the Community Legal Service and the establishment of the



Criminal Defence Service and also includes the accounts of the Commission, audited by the National Audit Office.

Copies of the report are available from The Stationery Office, priced £18.50, at [www.thestationeryoffice.com](http://www.thestationeryoffice.com) or on 0870 600 5522. It is also available on the LSC's website [www.legalservices.gov.uk](http://www.legalservices.gov.uk).

## Institute of Advanced Legal Studies Research

The publication of the results of a two year pilot into civil contracting by the Institute of Advanced Legal Studies includes important findings which will affect the future development of contracting.

The research involved 100 solicitors offices and 43 not-for-profit agencies and looked at more than 80,000 closed cases, carrying out peer reviews on over 700 of these cases.

The key findings of the report were:

- The time spent on a case and the level of experience of the adviser are key predictors of quality.
- The introduction of competitive price tendering could result in a reduction of quality.
- LAFQAS has led to improvements in quality assurance but there are areas where further development is necessary.
- Organisations in the not-for-profit sector took significantly longer than private practice solicitors to carry out their work but achieved higher levels of quality.
- Referral levels are found to be

poor and are consistently made late.

- Contractees generally, and nfps in particular, need to address the problems experienced by clients gaining access to their services.

The findings support the LSC's view that franchising has contributed positively to the quality of legal services but that further development is necessary. As part of this development the LSC intends to implement the recommendation that peer review be incorporated in the quality assurance process. The selection and training of appropriately qualified peer reviewers is essential if peer review is to work as an effective element of quality assurance, so the LSC plans to work closely with the Law Society and the Advice Services Alliance to develop this part of the scheme.

Copies of the report "Quality and Cost. Final report on the contracting of civil non-family advice and assistance" are available from the Stationery Office priced £25.95, at [www.thestationeryoffice.com](http://www.thestationeryoffice.com) or on 0870 600 5522.

# Supplier Survey

Last autumn the Legal Services Commission began a survey of LSC funded solicitors. Approximately one thousand surveys were distributed to a cross section of suppliers. The sample of firms was determined by the type of work done and by their draw on the Fund. In total, 279 completed surveys were returned.

83 questions were asked under the following headings:

- Operational performance
- Finance operations
- Contracting
- Communication on important issues
- Franchise audits
- Time targets

The results have given us some important information on suppliers' views and priorities. This exercise has also helped us to define our own objectives with regard to improving the quality and efficiency of the Commission's services. We will be better able to assess how well we are doing when further surveys have been carried out and the results can be compared.

Recipients completed the survey using a sliding scale from 1-5. A score of '1' indicated strong agreement with a positive statement and '5' strong disagreement. The overall score for the survey was 2.50. The results are summarised below:

## POSITIVE OUTCOMES

### Franchise audits

- The average score for 'Franchise audits' was 1.68.
- 92% of suppliers who responded agreed or strongly agreed with statements such as: "Overall, we found the audit team to be professional in their approach and application".
- We were encouraged to find that suppliers viewed the conduct of

franchise audits very positively and that the results reflect our commitment to building up a good relationship with suppliers.

### Contracting

- The average score for 'Contracting' was 2.27.
- 71% of suppliers who responded agreed or strongly agreed with positive statements regarding the work of contracting teams, such as: "The regional office contracts team deal with queries about contracting in a reasonable time" and "The regional office contracts team is knowledgeable".
- We hope that these results prove to be the basis for very good scores in the next survey.

### Staff politeness

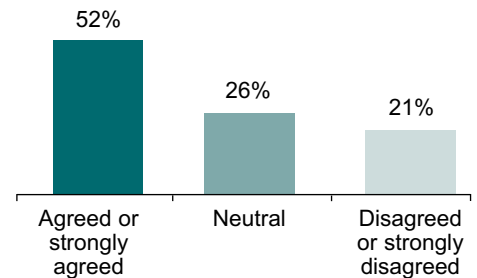
- The average score for questions that referred to staff politeness was 2.00.
- An example of a statement posed was: "Regional office staff are polite" - 91% of suppliers who responded agreed or strongly agreed with this statement.

## AREAS FOR IMPROVEMENT

### Time taken to process work (Operational performance)

- The average score for questions that referred to the time taken to process civil/criminal applications, amendments, bills and appeals was 2.76.
- Overall, results were mixed for questions such as: "Urgent amendments are dealt with in a reasonable time". The graph (above right) suggests that there was either a wide range of expectations on how long work should take, or a lack of consistency with regard to the service provided.
- There were positive exceptions. For example, emergency [civil] applications had a particularly good

Time Taken



average score of 2.26 and "[criminal] bills are paid in a reasonable time" scored 2.46.

- We recognise that there are many areas that need improvement to provide a consistently good service and that we do not always meet suppliers' expectations.
- Performance also varies in different regions. Therefore, regional offices have made a conscientious effort to address individual problems.

### Consistency of decision-making (Operational performance)

- The average score for questions that referred to the consistency of decision-making on applications, amendments, bills and representations was 2.81.
- 45% of suppliers who responded agreed or strongly agreed with statements such as: "Decisions on representations are consistent". 22% of suppliers disagreed or strongly disagreed with such statements.
- Action: We will address areas of concern revealed by the survey by carrying out a 'national consistency exercise'.
- The Commission is also examining the way staff are trained with a view to improving consistency.

### Application/bill rejection (Operational performance)

- Overall, suppliers appeared dissatisfied with the reasons given for bill/application rejection - the

average score was 3.23.

- 40% of suppliers who responded disagreed or strongly disagreed with positive statements such as: "Reasons for rejecting applications are reasonable". 27% of suppliers agreed or strongly agreed with such statements.
- Several comments indicated that suppliers would like to be given more specific reasons for rejection and that the Commission could communicate more effectively to avoid unnecessary rejections. A typical comment was: "On occasions we feel that our application form/enclosures have not been properly read. This results in unnecessary rejections or appeals".
- Action: Regional offices are developing their own approach to working with suppliers to tackle this problem. Part of the solution is to isolate the most common reasons for rejection and to work towards the prevention of all causes. In some regions you may have been invited to visit your regional office or to participate in meetings that will address this issue. Elsewhere, open days, local newsletters and additional training events will concentrate on this topic.

### Contacting the LSC by telephone (Operational performance & Finance operations)

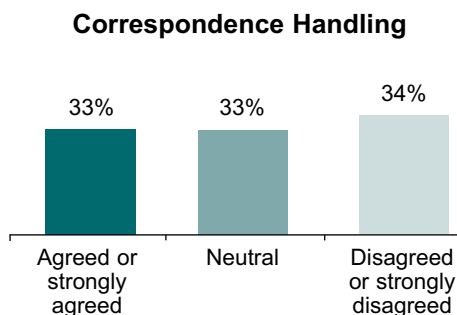
- The average score for questions that referred to telephone calls was 2.91.
- This is an important area where there is considerable room for improvement - 20% of suppliers disagreed or strongly disagreed with the positive statements posed, whilst 34% agreed or strongly agreed.
- The average score for "Telephones are answered in a reasonable time [at regional offices]" was 3.00 – 36% of suppliers who responded disagreed or strongly disagreed with this statement.
- One supplier commented: "The time taken to answer the telephone is not acceptable. Once we have got

through to the switchboard, the time for holding for an extension is often 20 minutes or more. This is not satisfactory and must be stressful for LSC staff who - to their enormous credit - are always polite".

- Action: In the last twelve months, the Commission has taken steps to improve the technical aspects of the telephone system in regional offices. Several regional offices have, or are in the process of developing new telephone systems. We hope that this enables us to manage calls more efficiently and that suppliers now receive a better service.
- Internal surveys are carried out into the quality of advice given over the telephone and the time taken to deal with calls on a regular basis.
- The Commission is committed to providing training that will help staff to provide a good service.

### Correspondence handling (Operational performance & Finance operations)

- The average score for questions that referred to correspondence handling was 3.11. This score reflects the significant delays that occurred in the months before and during the survey period.



- Overall, results were split evenly for statements such as: "General correspondence is answered in a reasonable time". The graph (above) suggests that there was a wide range of expectations with regard to correspondence handling, or a lack of consistency with regard to the

service provided.

- Many problems can be attributed to the inexperience of staff and moreover, regional resource deficiencies.
- Action: The Commission is working on ways of adapting the way correspondence is managed in every regional office and resolving common problems that can generate correspondence.

### Communication on important issues

- The average score for 'Communication on important issues' was 2.76.
- Questions that referred to regional office newsletters and workshops scored 2.49.
- Head office publications and LSC guidance scored 3.02. For example: "The LSC gives sufficient notice of significant changes" scored 3.22 - 44% of respondents disagreed or strongly disagreed with this statement, whilst 37% agreed or strongly agreed.
- One supplier commented: "We feel inundated with too much information - the voluminous manual supported by newsletters, memos, updates and a detailed magazine are too much to keep up with" and another: "The pace of change and variety of terminology used is such that it makes it difficult to keep up with new initiatives".
- Action: We aim to develop a more effective method of communicating significant developments on a regional and national basis by addressing 'communication' across the organisation at Executive Board level.

### Next survey

This has been a valuable exercise and we hope to carry out a similar survey every year. Although the response rate to the survey was encouraging, we will be expanding the next survey. This should arrive with your Franchise Representative in early Autumn 2001.



# Civil Guidance and Development

*Community  
Legal Service*



# Family Graduated Fees Update

Following the implementation of the Family Graduated Fee Scheme on 1 May 2001 draft guidance was published in the May 2001 Release 3 update to Volume 1 of the Legal Services Commission's Manual.

The Commission consults with representative bodies on all its guidance. However, due to the deadline for the delivery of material for Release 3 the draft guidance as published only reflects the changes made to the Scheme before implementation. It does not include the changes made as a result of the responses to an informal consultation exercise with the Bar Council, Supreme Court Costs Office, the Law Society and others. These changes have now been included and the revised guidance can be found on the Commission's website at [www.legalservices.gov.uk](http://www.legalservices.gov.uk). It will also be included in Release 4 of the Legal Services Commission's Manual (due to be published in September 2001).

## Changes to the guidance

The guidance, as amended, is effective immediately. The changes to paragraphs in the draft guidance in Volume 1 Part D of the Manual are as follows:

- **10.3.1** - now reflects the fact that not all family work was remunerated under the Legal Aid in Family Proceedings (Remuneration) Regulations 1991 in that some family work carried out under certificates issued before 1 May 2001 will be remunerated under the Legal Aid in Civil Proceedings (Remuneration) Regulations 1994.
- **10.15.4** - is amended to delete the second sentence.
- **10.17.2** - now fully describes function F1, includes a reference to free standing post issue work that does not fall within any other function and provides examples.
- **10.17.8** - is deleted because the first appointment hearing in ancillary relief proceedings is paid as a function F3 and not as F2.
- **10.23** - now reflects the fact that Article 8(1) of the Funding Order refers to any hearing but that Article 8(1)(b) refers only to the main hearing.
- **10.26.2** - is amended to correct the figures used within Example 2.
- **10.26.3** - now has additional text in order to clarify the position relating to special issue payments (SIPs) as follows - "With regard to function F2 and F3 where more than one of these function hearings has taken place, whilst counsel may apply in each for SIPs to be verified, counsel must specify which single particular hearing in each function that SIP payments should be made for."
- **10.26.13** - is re-written to confirm that "in circumstances in which certain assets of the parties are not under their exclusive control (pensions, trust, company assets, etc) or where third parties claim entitlement to or interest in an asset (that would otherwise be available for distribution) it may be possible to justify a special issue payment but not if the assets in question, by being kept out of the equation, have no effect on the outcome".
- **10.27.5** - is a new paragraph confirming that in the event that there is no court bundle (either in a non-hearing function or where no hearing took place) payment is made on the basis of the number of pages within counsel's brief.
- **10.31.2** - is amended to delete the reference to "or" at the end of 2(b).
- **10.42.1** - is amended to clarify that where a maximum fee calculation is

to be undertaken counsel will be expected to provide a breakdown of the time spent in the case.

## Commonly Asked Questions

### Q: Where should I send my claim form?

A: Each regional office will process the claims relating to the certificates it has issued. You can identify the correct regional office by looking at the first page of the public funding certificate.

### Q: Do I have to send the whole brief as an enclosure to my costs claim?

A: It is only necessary to provide the front pages of the brief, (which contain the solicitor's description of the case and their instructions to counsel) plus the back page as endorsed by counsel with the work done. It is not necessary to send in the enclosures to the brief.

### Q: If an emergency certificate was granted before 1 May 2001 and the substantive after 1 May 2001, how is the work to be paid?

A: The scheme makes no distinction between an emergency and a substantive certificate. The Funding Order refers only to the date the certificate is granted. Consequently, if an emergency certificate is granted before 1 May 2001, the work done in relation to the emergency certificate, and any subsequent substantive certificate will fall outside the Family Graduated Fee Scheme. If the emergency certificate is granted on or after 1 May 2001 all work done will be paid under the Family Graduated Fee Scheme.

### Q: How are my fees paid if I appear in the Family Proceedings Court?

A: If the funding certificate is issued on or after 1 May 2001 the case will fall within the Family Graduated Fee Scheme. Magistrates' are judges for the purposes of verifying special issue payments and special preparation fees. Regulation 59 of the Civil Legal Aid

(General) Regulations 1989 remains effective. Where a family matter is heard in the Family Proceedings Court, counsel's fees will not be paid without authority within the certificate for the use of counsel. Where the use of counsel is neither authorised nor

considered to be justified, the costs assessment is undertaken on the basis of the maximum fee principle i.e. a notional assessment is undertaken as if the solicitor undertook all the work. The work done by counsel is always paid as a family graduated fee but the

solicitor only receives the balance of the monies due. In order to assist the Commission to undertake a maximum fee calculation, counsel will be asked to provide a breakdown of the time spent where authority has not been granted on the face of the certificate.

## Cost Assessments under the General Civil Contract (Solicitors)

We are now in the process of preparing updated and expanded guidance on the assessment of costs of Controlled Work. Our aim is to provide codified guidelines for the benefit of both the Commission's staff and of suppliers that reflects and deals with the issues that have arisen in the first 18 months of the General Civil Contract. We expect to complete this process in the autumn of 2001 at which time the guidance will also be published to the profession.

Publication will be on the basis that the guidance sets out the Commission's approach to the assessment of contract work. It will be based on the rules and guidance already contained in the Contract and elsewhere and practitioners should therefore apply the guidance as soon as practicable after they receive it. Nevertheless, we think it important that practitioners should be given the opportunity to make comments on the guidance and suggestions as to how it can be improved. Therefore there will be a three-month period after publication of the guidance for practitioners and their representative groups to make representations to the Commission about it. This will not prevent the application of the guidance in the interim period but will allow amendments to be made in due course after the consultation is complete.

Details of the closing date by which comments will be sought will be contained in the pack when the guidance is sent out. In the meantime

practitioners should continue to apply the guidance set out in the General Civil Contract and in *Focus 27* in so far as it relates to Controlled Work. Further interim guidance is set out below on a number of specific issues that have impacted on cost assessments of Controlled Work to date and this should be applied by practitioners with immediate effect.

### 1. Forms

Practitioners must fully complete the relevant parts of the application forms for Controlled Work (CW1 and CW2) - see rule 2.1 of the Contract Specification. The form must be signed and dated by the client and kept on the file. The means assessment section of the form must be clearly and fully completed so that it can be demonstrated that the client's financial eligibility has been properly assessed. The question in the declaration section as to whether the client has received Legal Help within the preceding six months must be answered.

### 2. Evidence of means

Rule 2.5 of the Contract Specification requires that evidence of means must be obtained as soon as practicable when Controlled Work is granted. The evidence obtained must relate to the client's and, if aggregated, their partner's, circumstances during the period of computation. Subject to the exceptions set out below, evidence of income will always be required but documentary evidence of capital will not be required unless the practitioner

has some reason (e.g. from his or her personal knowledge of the circumstances or some detail from the case) to query the account of capital given by the client.

The client should be asked to bring the financial evidence with him or her to the first interview. If they do not or cannot do so then work can be carried out, but save in exceptional circumstances, no more than two hours work will be allowed on assessment unless evidence of means has subsequently been obtained.

The exceptional circumstances are where the personal circumstances of the applicant (such as their age, mental disability or homelessness, but there will be other examples) make it impracticable for the evidence as to their means as at the time of application to be obtained at all and not just at the first interview. A note should be placed on the file of the circumstances arising so that this will be apparent on assessment. The onus will be on the firm to show that the exception was considered and properly applied.

Whether or not it is impracticable to obtain evidence in a particular case is a question of fact and a reasonable allowance will be made for the practitioner's discretion provided the circumstances are recorded. In the case of asylum seekers, for example, there will be a difference between those who have just arrived in the

country and have not yet been assessed for vouchers and who may not have evidence of means and those who have been in the country a few months, long enough to receive vouchers and/or benefits, who can be expected to provide such evidence.

Some clients will state that they have no access to any income or capital. It will be for the supplier to decide whether such a statement was credible and whether or not it is therefore impracticable to obtain evidence of means. However, a note of the circumstances should be kept on the file. Clients without any income at all are likely to be those whose circumstances have recently changed. This might be where, for example, they have just separated from a partner and have applied for benefits or have just arrived in this country and applied for asylum. If a client states that a relative is supporting them, a letter from the relative should be obtained identifying the nature and extent of support.

Where firms are failing to obtain evidence of means or alternatively record justification as to exceptional circumstances in more than a small number of cases then the entire costs of relevant cases may be disallowed. This is because the contract only allows work to be carried out without evidence of means where it is not reasonably practical to obtain it either within the first two hours or later. Firms cannot rely on this exemption if they make no attempt to obtain evidence at all.

### 3. Attendance Notes

Rule 2.18 of the Contract Specification states that "Allowance shall only be made for work claimed which is supported by appropriate evidence on the file". The guidance goes on to say that allowance will not be made for work which is not evidenced on the file in the form of timed and dated attendance notes and, where appropriate, by relevant documentation such as copies of documents drafted or perused.

It may well be that in a particular case a firm has acted reasonably and that all the work they have carried out is entirely proper but if the attendance notes do not record the work then inevitably costs will be reduced on assessment. It is to everyone's benefit therefore that attendance notes properly record the work done.

In general, attendance notes should show who attended on the client (or witness etc), the date they did so, the time taken and the action carried out. Where the reason for the attendance is not self-evident particularly where an unusual step is to be taken in the case, then brief justification for the attendance must also be included. Handwritten notes are acceptable provided they are legible.

The detail required in the attendance note will depend on the circumstances. Clearly the longer an attendance is claimed the more detail will be required. A very brief note will usually suffice for attendance of one or two units.

In some cases, the attendance note itself may be brief, but the time claimed may be backed up by other evidence on the file. Where a document is prepared then the attendance note need only state the date, the time taken and the name of the fee earner concerned provided that there is a copy of the document itself on the file as evidence of the work carried out.

Where a client's detailed instructions are taken, the note should have a record of those instructions or there must be other evidence of them on the file e.g. in the form of a statement or through specific instructions confirmed in detail in a letter to the client.

Although attendances may be rounded into six minute units, where longer attendances are concerned then firms who claim the same amount of time for the same activity regardless of circumstances (e.g. one hour for every initial interview) will have costs reduced

on the basis that the actual time has not been recorded. This will be even where the time is claimed on or under the time standards set out in the Category Specific Guidance in the Specification as those standards are intended to be an estimate only and may vary according to the circumstances of the case.

### 4. Letters

Practitioners are reminded that payment is not made for perusing routine letters in. The rate set for letters written is intended to include an allowance to reflect the time taken in considering routine letters received and no separate amount is payable. If a particularly complex letter or enclosure is received (e.g. an expert's report) then time spent considering it may be charged as preparation.

As to letters out, when the same letter is sent in both fax and hard copy then only one letter out may be claimed. The rate allowed for letters out is intended to cover preparation time. Time spent sending a fax is administrative work that can be carried out by a non fee earner and is not remunerable under the Contract.

### 5. Interpreters

The use of fee-earners as interpreters is an issue frequently arising in immigration matters. We wish to encourage firms who employ fee-earners who can speak different languages and who therefore do not need interpreters. In normal circumstances, where such a fee-earner has expertise in the matter concerned they can be expected to act both as interpreter and fee-earner and one claim will be made. However, a member of the firm's staff (A) may act as interpreter to another fee earner (B) if the particular case does not fall within A's legal expertise and an external interpreter would otherwise be required. In such a scenario, B's costs should be claimed at fee earner rates as normal. A's costs should be claimed at interpreter rates as a disbursement on the file.



# Developing the Funding Code

Now that the Code has been in operation for over a year it is a good opportunity to take stock of how the new funding rules have worked and how they could be improved and developed for the future. Unlike the merits test under the Legal Aid Act 1988, the Code, and related funding rules such as the Lord Chancellor's scope directions, are not fixed in statute. They can be improved and developed over time to meet changing needs and priorities.

We have now published our Annual Report giving details of services funded in the first year of the scheme. The removal of personal injury cases from scope has had a major impact on the range of cases funded. Family is now the dominant area for certificated work - 80% of certificates issued under the Funding Code in the year 2000/2001 were family cases. Within non-family cases, housing is by far the largest area, followed by clinical negligence. Judicial review also accounts for a significant proportion of the certificates issued. This new pattern of funding needs to be borne in mind when considering what aspects of the Code and guidance should be developed for the future.

## Recent Scope and Guidance Changes

In May practitioners received the latest update to the Commission's Manual. This included the Lord Chancellor's new direction on scope and related guidance on exclusions (Section 3 of the Code decision-making guidance). The new direction simplified the rules on scope and allowed more funding in certain types of case including judicial review, professional negligence and hearings where the liberty of the client is in issue.

Other guidance changes included

the new guidance on ADR in clinical negligence cases which came into operation on 1 June. All this guidance is also on our website at [www.legalservices.gov.uk](http://www.legalservices.gov.uk) together with our guidance on the new tribunals brought into scope by the Lord Chancellor (see *Focus 34* page 5).

## Amendment to Code Procedures, Guidance and Devolved Powers

We have issued for consultation some proposed changes to the Code Procedures and decision-making guidance. The draft amendments are on our website. The Code changes will not represent any significant change of policy or practice but will clarify certain procedures including those relating to the granting of emergency representation and the powers of Public Defenders to carry out associated CLS work.

Similarly, the proposed guidance changes are mostly points of clarification and updating. However there are more significant changes to our guidance and standard limitations for judicial review certificates. This follows some judicial criticism of weak cases which have been refused permission on the papers but nevertheless secured funding to make oral applications for permission or renewed applications on appeal to the Court of Appeal. We therefore propose new standard limitations and guidance to ensure that merits are considered at each stage of a judicial review application and cases are only funded for the next stage where the merits justify this.

At the same time as consulting on these Code and guidance changes, we will also consult on the two following separate issues:

1. Proposed changes to the Actions

Against the Police etc franchise category to include claims for malicious prosecution and claims for deliberate abuse of vulnerable people whilst in care, such as child abuse, within that category. This will mean that child abuse claims, which as personal injury claims can currently only be undertaken by practitioners with a Personal Injury franchise, could in future be pursued by firms with either a Personal Injury or Actions Against the Police etc franchise.

2. We are considering introducing a new devolved power in family cases. It is proposed that family franchisees should have the power to grant certificates for Help with Mediation rather than having to apply to the Regional Office in each case. These would be processed in much the same way as devolved grants of Authorised Representation in the magistrates' court.

All the consultation documents are set out on the website. Comments are requested by Friday 14 September 2001. Subject to consultation any changes to Code Procedures and guidance are likely to come into operation in October 2001. Any changes to the franchise categories and devolved powers would come into operation as soon as practicable thereafter.

## Future Development of the Code

We welcome views from practitioners at any time about either the Code criteria or procedures. In particular we wish to consider whether there are criteria changes which should be considered for next April 2002. Some of the issues which could be looked at include the following:

- i. **General Family Help** Are the definition and criteria for this level

appropriate, taking into account the development of family protocols?

- ii. **Support funding for personal injury cases** Is there a need for this form of funding to continue and if so, should the existing criteria be changed?

- iii. **CFA availability** In what categories of case should the Commission have power to refuse funding on the grounds of the availability of conditional fee agreements or other private funding alternatives and what approach should be adopted in our guidance?

We would be grateful if any proposals for reform of the Funding Code could be received by Friday 14 September 2001. Thereafter we will consult further over any draft amendments to the Code prior to implementation in the following April.

## General Civil Contract Update

### Granting Emergency Certificates or amending Certificates under Devolved Powers

Contractors are reminded that they can only grant an emergency certificate under their Devolved Powers if they are a Franchisee in the category of law concerned. An emergency certificate may not be self granted in a category where the contractor is either not franchised or is still a Provisional Franchisee.

Rule 1.5 of the General Civil Contract (Solicitors) Specification (as amended with effect from 1 April 2001) provides that: 'You may exercise Devolved Powers in Licensed work only in those civil franchise categories in which you hold a franchise'.

The same principles apply where an existing emergency or substantive certificate is to be amended – see also LAFQAS paragraph 4.6.

For the avoidance of doubt the article that appeared on page 4 of *Focus 34* 'Guidance on applying for Civil Certificates or granting Emergency Certificates under Devolved Powers from 1 April 2001' was not intended to extend the above principles or to imply that an emergency certificate could be self granted in any category of law in which the contractor is not a Franchisee. The purpose of the article was to describe the principles upon which Licensed Work can be

undertaken from 1 April 2001 and to confirm that an appropriate General Civil Contract Schedule is required before new work can be undertaken.

### Increase in mileage rate in civil cases

The Commission's mileage rate for travel by fee earners has been increased for all levels of service in civil matters from 36 pence per mile to 45 pence per mile with effect from 2 April 2001. The increased rate may be applied to any justified travel carried out on or after that date in any civil matter. This will include Controlled Work under the General Civil Contract

### Abolition of Initial Legal Help Limit

Contractors are also reminded that the initial financial limit for Legal Help and Help at Court set by Rule 3.5 of the General Civil Contract Specification (Solicitors) has been abolished for all ongoing or new cases from 1 April 2001.

Solicitors may now perform Legal Help and Help at Court up to the amount of the upper financial limit set by Rule 3.6 of the Specification without the need of any formal extension or extensions. They should continue to apply the 'sufficient benefit' test throughout the matter and should only perform such work as is reasonable in the particular case. They must also continue to apply the guidance in the contract on the reasonableness of the work to be done

and the time to be spent, even where such guidance currently appears under the heading of guidance on Rule 3.5 in the category specific sections of the Specification. The existing guidance on time standards will continue to be applied by regional offices on costs assessments of work carried out after 1 April 2001 although formal extensions of the initial financial limit will not be required. It will still be necessary to make an application to the Commission for an extension before the upper financial limit is reached.

### Return of Monthly Report Forms

As from the first of June 2001, the General Civil Contract (Solicitors) has been amended to increase the time for submitting Matter Start Forms and Consolidated Matter Report Forms from seven days to ten days from the end of each month.

Notice of the appropriate amendment to clause B6 of the Contract Schedule was sent out to holders of solicitors contracts in April 2001 and the amended version will appear in the next update to Volume 2 of the LSC Manual due out in the Autumn of this year.

Any report forms received after the 10<sup>th</sup> of each month will not be processed during that month with the result that no Standard Monthly Payment will be made at the beginning of the following month.

# Immigration Update

## Payments on Account and stage billing – solicitor contracts

In April 2000, as part of a package of remuneration measures introduced on the launch of the CLS we announced that: “immigration contractors will receive increases in Schedule Payment Limits such that any reconciliation will give a balance in the contractor’s favour of £400 for each asylum case started but not billed” - see *Focus 30* page 1. The specific intention of the provision was to improve cash flow in the light of the fact that the General Civil Contract no longer allowed immigration suppliers to submit interim bills, as had been their practice prior to the introduction of contracting in January 2000.

In fact stage billing for asylum cases was reintroduced by a change to the contract in October 2000 and the rationale for the creation of a payment on account scheme has therefore disappeared.

We have consulted the Law Society, LAPG and ILPA on our proposal to

abolish payments on account with effect from 1 October 2001. The principles of reconciliation of payments against claims under the general Civil Contract are, therefore, likely to be the same in future across all categories of law including immigration.

Our consultation also contains a proposal to extend stage billing in asylum (also with effect from 1 October 2001) in order to further improve firms’ capacity to bill during the course of a case. This will be by the addition of an extra stage to allow an additional interim claim in those cases where the matter will go through the decision-making process or appeal process twice - such as where the Immigration Appeal Tribunal refers a case back to the adjudicator for a further decision.

In the meantime questions have emerged about current Stage (a) in rule 12.9 in the General Civil Contract (Solicitors) Specification. The rule states that the first stage bill may be

submitted after: “The date an asylum application is completed: to include submission of any asylum questionnaire and up to and including the completion of any substantive interview”. The key date which triggers the stage is the completion of the asylum application – although this will usually be after the submission of the questionnaire and the completion of an interview, if in fact an interview is not to take place (i.e. the application is to be completed without one) then a bill can still be submitted at Stage (a).

## Immigration Expansion

We are continuing to encourage the supply of immigration contractors through the use of the expansion package (see *Focus 32*, page 4). Contracts are now being signed in London with 16 successful bidders for the package. In the meantime 5 contracts have been signed in Wales; and the Eastern Region have invited all offices on their regional bid panel to submit a bid for the immigration incentives.

# Authority to Recover Other Sides Costs

Some solicitors and barristers have asked for confirmation about the amounts they can recover from opponents in successful civil cases under the Access to Justice Act 1999. Is the amount recoverable from the other side limited by the rates payable from the Fund or the cost limit on the certificate? Does the indemnity principle restrict recovery?

The answer to these questions is “no”. Remuneration rates for funded work and cost limits on certificates exist to protect the client and the Community Legal Service fund. They do not restrict any sums by way of costs ordered or agreed to be paid by the other side. Such costs are instead determined by agreement or assessment by the court in the same

way as for privately funded cases.

The basis for the current approach is Section 22(2)(b) of the 1999 Act, under which the Commission has a general power to authorise suppliers to recover costs beyond those payable from the fund. This approach is reinforced by Regulation 15 of the CLS (Costs) Regulations 2000, which makes it clear that the indemnity principle does not restrict recovery from the other side when the Commission has authorised the supplier to recover more from the other side than is payable from the fund.

The Commission has authorised such recovery for all civil certificates under the 1999 Act by means of a standard notice in all civil applications. This notice is in the following terms:

“Legal representatives providing services under a certificate issued pursuant to this application are authorised to take payment by way of costs paid by an opponent where to do so is in accordance with the Regulations and any guidance issued by the Commission.”

We confirm that this authorisation applies to all civil cases (family and non-family) and covers not just the conducting solicitor but any barrister or other legal representative acting under the certificate or contract.

The authorities given to date have directly covered all certificated work. We confirm that the same principles however, apply to all levels of service including Controlled Work under the General Civil Contract. Where costs

are recovered from an opponent on behalf of a client who has been assisted through Controlled Work, a supplier may retain those costs (which may exceed what would have been payable for that work under the contract) but if so the supplier may not then make any claim for that work from the fund under the contract. This notice constitutes authority under Section 22(2)(b) to recover costs from opponents in Controlled Work cases, provided such recoveries are taken into account when claiming costs from the fund. There are three possible scenarios for Controlled Work:

1) The costs are recovered before the claim is made on the CMRF (consolidated matter report form). In those circumstances, the costs so recovered may be retained but any claim for the costs of the Controlled Work must only be for the difference (if any) between those costs and

the costs recovered. If the costs recovered equal or exceed the costs of the Controlled Work, then no claim must be made on the CMRF.

- 2) The costs are recovered after a claim has been made on the CMRF, but not under a certificate. The costs recovered may be retained but the regional office should be informed of the amount of the recovery by letter and of the amount claimed for the case on the CMRF. The regional office will then net off the amount recovered from the CMRF claim for that particular matter.
- 3) The costs of the Controlled Work are recovered under a certificate. Any such costs will form part of the statutory charge in the normal way, and the supplier must give details of the costs of the Controlled Work in the appropriate place on the

CIS claim form.

We will be expanding our guidance under Rule 1.9 of the General Civil Contract Specification to reflect this approach in due course.

Note that the above authority is concerned only with the recovery of costs from an opponent or potential opponent. Nothing in the above authority or in any previous authority authorises “topping up” from the client. Except in the case of Support Funding a funded client may not be required to pay any sum in addition to any contribution due from him or her under regulations.

The above rules apply to work under the 1999 Act only. For 1988 Act certificates the right to recover costs from the other side is set out in Regulation 107B of the Civil Legal Aid (General) Regulations 1989.

## Orders for Costs Against the Commission

The Court of Appeal’s decision in *R -v- SSHD ex parte Gunn* (TLR 20 June 2001) has clarified the law and procedure where a non-funded party applies for costs against the Commission under S18 Legal Aid Act 1988 or Regulation 5(3) of the Community Legal Service (Cost Protection) Regulations 2000. It therefore applies to funded proceedings under both the Legal Aid Act 1988 and the Access to Justice Act 1999.

The Court looked at three questions:

- How does the new procedure under Regulations 9 and 10 of the Community Legal Service (Costs) Regulations 2000 work?
- Can the Court make an order against the Commission if the receiving party is a publicly funded body?
- On what basis does the Court decide whether it is just and equitable to make an order against the Commission?

On the question of procedure, the

Court of Appeal decided that if a non-funded party applies for an order against the Commission, the Costs Judge or District Judge, rather than the trial Court, must decide whether to make that order. The Master of the Rolls said:

“In the cases before us, this Court should not have usurped the function of the Costs Judge – in these cases the Taxing Master – in deciding that it was just and equitable to make a costs order against the Commission ... This practice must no longer be followed, whether in the County Court, the High Court or the Court of Appeal.”

In future, whether the application follows a first instance or appeal hearing, the Costs Judge or District Judge will: (i) decide whether it is just and equitable to make an award against the Commission; (ii) in first instance cases, decide whether the non-funded party will suffer severe financial hardship if it does not do so; (iii) if the trial court has not already done so, determine the funded client’s ability to pay the non-funded party’s

costs; and (iv) if the trial court has not done so summarily, determine the full costs payable under the order.

If the Court makes an order against the Commission, it will normally be for payment of the shortfall between what the funded client can afford to pay, and the full costs. This is why it is sensible for these matters to be dealt with together.

The procedure for assessing costs against the Commission is governed by the Costs Regulations and not by the CPR: see CPR Part 44 Rule 17. The parties must not engage on a parallel detailed assessment procedure under Court Rules. In particular, the receiving party should not try to get a default costs certificate.

The Court of Appeal emphasised something that many non-funded parties are unaware of: that the Costs Regulations impose a three-month time limit after the order against the funded client, within which the receiving party has to make the application for the



order against the Commission. The court currently has no power at all to extend that limit. The Lord Chancellor's Department has issued for consultation amended regulations which would include a power to extend it 'for good reason'; but the amended regulations will not come into force until December according to the current timetable.

The judgment also says that Costs Judges should follow the practice set out in Re: O (A Minor) Costs: Liability of Legal Aid Board 1997 1 FLR 465 CA. If the non-funded party has made

an application for wasted costs against the funded client's legal representatives - or even if it has not, but should have done - the Costs Judge has to have disposed of that application before considering any application against the Commission.

In relation to the question whether the Court can make an order in favour of a body which is itself publicly funded, the Court of Appeal followed earlier authorities in saying that it can.

Lastly, the Court of Appeal considered

whether the new Regulations affect the "just and equitable" test. It decided that the test remains the same as before: "Costs Judges should proceed on the premise that it is just and equitable for the Commission to stand behind their "client" unless they are aware of circumstances that render that result unjust or inequitable".

More detailed guidance on the procedure governing costs orders against the Commission appears in Volume 1D of the Manual and on the Commission's website.

## Valuation of the Statutory Charge

Some of the first cases funded under the Access to Justice Act 1999 are now coming to an end, and where the client has recovered or preserved property a statutory charge will arise. Practitioners should be aware of a change in the way the regulations determine the value of the charge arising under the 1999 Act. The change will affect cases where:

- at the end of the case, the property to which the charge attaches is worth less than the cost of the funded services, and
- the Commission agrees to postpone enforcement by registering the charge on the client's home.

To appreciate the effect of the change, it is necessary to keep in mind what the charge is. A charge is a debt secured against an item of property. The Commission's statutory charge secures:

- the deficiency on the funded client's account with the Commission
- against property the client has recovered or preserved in the proceedings.

As with any other charge, the amount of the debt or deficiency may be more or less than the property is worth at any given time.

For instance, in a matrimonial dispute

the only item of value may be the matrimonial home. The deficiency on the client's account with the Commission may amount to several thousand pounds, while the share of the matrimonial home he or she recovers or preserves may be worth little or nothing at the time.

In these circumstances, the practice the Legal Aid Board followed was to treat the value of the charge as either the extent of the deficiency, or the value of the property subject to the charge, whichever was less. Regulation 99(6) Civil Legal Aid (General) Regulations 1989 supported this approach. So in the example given, the charge itself was limited, or might not arise at all, for instance in the case of negative equity. The Commission continues to value the charge this way if the client's certificate was granted before 1 April 2000.

In the new regulations, Parliament has removed what was seen as the anomaly that the client would avoid having to meet the full cost of the funded services even if the value of the recovered or preserved property went up substantially in the future. So under the new regulations, if the property is worth less than the deficiency, that no longer limits the amount of the charge. The Commission is to be in the same

position as any other chargee.

If the client repays the charge straight-away, the change makes no difference. The Commission cannot enforce the charge on the client's assets in general, only against the property recovered or preserved to which it attaches. But if the Commission secures the charge by registration on the funded client's home, and the home subsequently increases in value, when the client comes to sell the property we may recover the charge up to the full extent of the increased value.

The statutory charge serves several purposes. It puts the funded client in the same position as one who is paying privately; it ensures that those who can afford to pay towards the cost of the funded services do so; and it deters clients from running up costs unnecessarily. This development should reinforce the way the charge gives clients a stake in the cost of the proceedings, and discourages them from carrying on expensive litigation over assets that do not justify it.

The relevant regulations are the Community Legal Service (Financial) Regulations 2000, Regulations 40, 42 and 43. If you need advice about the effect in a particular case, contact your regional office.

# Amendments to the Legal Services Commission Review Panel Arrangements 2000

At its meeting on 27 March 2001 the Legal Services Commission approved amendments to the Review Panel Arrangements ("the Arrangements") with effect from 2 April 2001. The Review Panel is the body of independent solicitor and barristers from private practice from which Funding Review Committees and Cost Committees are appointed to hear appeals against the Commission's decisions on funding applications and costs respectively. The Review Panel is divided into Regional Panels – one for each of the Commission's regional offices.

The amendments were made to reflect the creation of the CDS and to increase the independence of the Review Panel structure. The revised Arrangements are available on the Commission's website on [www.legalservices.gov.uk](http://www.legalservices.gov.uk).

The main change is that new members of the Review Panel will be appointed by the Annual General Meeting (AGM) of the Regional Panel concerned, rather than as was previously the case, by the Regional Director. Where the need for new members arises in between AGMs then temporary appointments can be made by the Regional Panel Chair pending approval by the next AGM.

One fifth of the Review Panel membership will continue to retire automatically every year but they now will be eligible for reappointment by the AGM (or by the Regional Panel Chair as temporary members).

The existing requirement for new members of the Review Panel to attend a training event run by the

Commission within their first year has been maintained in a slightly amended form. The training event will usually be on the Funding Code, but now need not necessarily be so where, for example, specialist training events for criminal issues are needed.

The longstanding practice of selecting members for individual Funding Review or Costs Committees by rotation has now been formalised in the Arrangements. Separate rotas will continue to be maintained for separate venues and for members with particular specialisms. The Regional Panel Chair has power in exceptional circumstances to appoint a committee without using the rota system. Such a power may be exercised where for example it is necessary to empanel members from another region to hear the case because of a potential conflict of interest or where it is necessary to keep together a particularly specialised committee that has dealt with a very high cost case on a previous occasion.

The new Arrangements also provide that the appointment of a chair for each Funding Review or Costs Committee will now be a matter for the committee itself to determine. However it is appreciated that, in practice, it is important that regional offices are at least able to nominate someone as chair (subject to the committee overruling if it wishes) so that person can prepare with the expectation of chairing the meeting in mind. It is also important that someone with experience of acting as a chair is available at each committee meeting where possible. For those reasons the requirement to maintain list of chairs has been maintained in the

Arrangements. In practice, therefore, when the agenda is sent out one member of each committee will be informed that they have been provisionally nominated as chair subject to confirmation by the committee when it meets.

The criteria for the appointment of Review Panel members have remained unchanged and are set out at the end of the Arrangements. Solicitor members will continue to be able to claim up to 75% of their CPD points for attending committee meetings. The remuneration rates have been increased as from 1 April 2001 to £129 for chairs and £102.50 for other members per half day meeting.

Solicitors or barristers who are interested in becoming part of the Regional Panel should contact their regional office for details. The Commission is concerned to ensure that suitable expertise exists amongst Panel members to deal with specialist issues. This is especially so in relation to criminal costs, and the Commission would particularly welcome applications from criminal practitioners.

## File Review

Rule 1.15 of the General Civil Contract Specification introduced 1 April 2001 allows claims to be made for LAFQAS file reviews. A summary one line claim should be submitted on a CMRF (consolidated matter report form) for October or November 2001. Details of how to complete this and the codes to use will be sent out nearer the time.

# Housing Possession Court Duty Scheme Pilot - Consultation

## Summary of Responses and Conclusions

This article is a summary of the full document. For copies of the full Summary of Responses and Conclusions, please contact Mary Burkinshaw on 020 7759 0478. Marie Burton is leading on the pilot and can be contacted on 020 7759 0474.

The consultation paper was issued at the end of February and received 80 responses from a range of organisations. The responses were overwhelmingly in support of the pilot and mainly referred to the detail of proposals.

The pilot will be on a small scale at first with approximately 10 schemes across England and Wales. The detail of the arrangements will be developed throughout the life of the pilot and the LSC will retain sufficient flexibility to explore the most effective way of contracting for the provision of a housing possession duty scheme service.

In May 2001, the Invitation to Tender for the pilot was issued, requesting applications to run duty schemes in courts serving 23 local authorities/ counties in England and Wales. It is intended that contracts will be let from October 2001 for one year in the first instance. The contracts will then be reviewed, subject to the availability of funds.

Key matters addressed in the Summary of Responses and Conclusions include:

### Location of Schemes

Areas without Community Legal Service Partnerships will not be excluded from applying. Our intention is that the pilot should take place in areas of identified need, although it cannot be the sole mechanism for addressing unmet need for housing advice. The LSC will identify areas

where it is interested in funding pilots and invite applications from those areas. A scheme for a court with a substantial amount of work from a specified area will be able to apply for funding. The importance of court support and co-operation from both the judiciary and court staff and the need for the use of an interview room and telephone is also recognised.

The guideline of approximately 1000 cases per year issued in a court will be retained. This is to target resources at courts likely to produce a reasonable level of demand. However, consideration will be given to an existing scheme, in an area where need has been identified, which serves several smaller courts over a wider geographical area.

### New and Existing Schemes

The inclusion of both new and existing schemes in the pilot is generally accepted.

### Multiple and Single Agency Schemes

The funding of both multiple and single agency schemes also finds general agreement. There are a number of issues to be clarified with regard to the way a multiple agency scheme will operate:

- **The contract**

In a multiple agency bid, the lead agency will contract with the LSC to provide the duty service. The LSC will approve the other organisations participating in the scheme and there will be a specification that these organisations will have to meet.

- **Supervision**

The lead agency will be responsible for the overall supervision and management of the scheme, but not

necessarily the direct supervision of every individual on the scheme. The other participating organisations will be able to supervise their own staff provided they meet the Housing Specialist Level Quality Mark supervisor standards. Where this is not the case, other supervision arrangements will be necessary.

- **Supervision, co-ordination, induction, training and appraisal costs**

The lead agency will be required to manage and monitor the supervision, induction, training and appraisal requirements under the scheme. This will be checked on audit. It has been decided that the lead agency should receive four hours per month payment for this.

The lead agency will be paid for four hours' work per month for co-ordinating the scheme. It is not proposed to raise the amount paid for this aspect of the scheme. This is administrative work, which should be paid at a lower hourly rate and the level of remuneration is therefore considered sufficient, although the number of hours and the hourly rate may be adjusted.

There will not be any additional funding for the other participating agencies for supervision, induction, training and appraisal.

- **Participants**

In respect of participants in schemes, a range of skills and expertise will be needed and may include debt as well as housing specialists. Local authority advice agencies will not be prevented from participating in a scheme, but the scheme will have to demonstrate that it will meet independence requirements.

### Financial Eligibility

The court duty scheme service will be provided to defendants regardless of eligibility. The use of the proxy eligibility test is to check that the service is reaching financially eligible defendants.

It will be at the discretion of the adviser whether a defendant should be able to use the scheme on more than one occasion. Those in genuine need should not be refused assistance. A warrant application will usually be considered a separate matter for the purposes of the scheme and defendants who have sought advice in advance of the hearing will not be prevented from using the duty scheme service. The duty scheme should not however be used as a substitute for Help at Court or Legal Representation, where it is available to the defendant.

### Activities Funded by the Scheme

The scheme will not be extended to cover accelerated possession proceedings, post-eviction advice and debt or to give early advice to tenants and people with mortgages to prevent the issue of proceedings. The service will only be provided to defendants to possession proceedings and not to landlords or mortgage lenders.

The preparation of an advice letter will be the only work done outside the court session that will be funded under the duty scheme service. It is considered the one hour limit will be sufficient in most cases. The advice letter will be able to serve as the Rule 15 letter required from solicitors under their professional conduct rules. This will not attract additional remuneration to that already allowed.

The preference for General Civil Contract holders will be retained for the purposes of the pilot. The lead agency in a multiple agency bid or the sole agency in a single agency bid will have to have a housing contract, but this will not necessarily be the case for all other participants.

The duty scheme should not be a reason to prevent the grant of

Emergency Legal Representation (ELR) prior to the hearing where it would otherwise be justified. The grant of ELR by the duty adviser at the court hearing is only likely to take place in exceptional circumstances.

Funding social policy work or the prevention of possession proceedings is considered beyond the scope of this pilot.

### Funding

The amount paid under the contract will be a block fee. This will be based on a per session, not per client basis. A simple formula has been chosen to give certainty of funding to both the Commission and the participants. All time spent under the contract will be monitored and payment methods will be refined in future as appropriate. If possible, payment will be made in line with current contracting arrangements (monthly for solicitor contracts and quarterly for NfPs).

A scheme will normally be funded for one adviser to attend each session. However, the volume of work on the scheme will be taken into account in deciding the appropriate level of funding.

The hourly rate will be a composite rate based on the Controlled Legal Representation (CLR) rates. It will not be at the prescribed rates for Legal Representation.

Based on the new CLR rates from 2 April 2001, the hourly rate payable for work done under the scheme will be as follows:

	Hourly rate	Travel rate
<i>London</i>	£62.60	£30.30
<i>Outside London</i>	£59.35	£29.45

The travel time allowance will normally be limited to one hour. Travel costs and disbursements will not be paid.

Set up costs, such as books and

equipment, may be payable for a new scheme.

### Proceedings Covered by the Scheme

It is generally accepted that a scheme should cover rented and mortgage possession cases and also, where possible, applications to suspend warrants. Various suggestions were made about dealing with warrant applications under a duty scheme.

### Quality Standards

It is proposed that, in multiple agency schemes, preference will be given to applications where, in addition to the lead agency, other participating agencies have the LSC Housing Specialist Level Quality Mark (HSQM). It will also be a requirement that the scheme should be supervised by an individual or individuals able to meet the HSQM supervisor standards.

A broad range of opinions was received in respect of this issue. Some respondents felt that the Quality Mark (QM) requirements were unnecessary, while others felt that they were essential. The LSC remains of the view that the HSQM is essential for the lead agency in a multiple agency scheme and the sole agency in a single agency scheme to assure the quality of the scheme. Nevertheless, the LSC recognises the important contribution of debt and money advisers to duty schemes and organisations without the HSQM will still be able to participate in multiple agency schemes. These organisations should have the General Help QM and also, preferably, have the Specialist Level QM in another relevant area.

In relation to case management and transaction criteria requirements, the LSC is aware of the need to strike a balance between having sufficient information to ensure quality and overburdening the adviser. Complying with these requirements is seen as an integral part of the casework of the scheme and will not attract additional funding. A variety of suggestions were made regarding adjustments to these



requirements. We will be consulting with Advice Services Alliance and the Law Society regarding these adjustments.

### Reporting Mechanisms and Evaluation

We will produce a standard reporting form for participants. Evaluation is an

essential part of the project and participants will be expected to be involved in this element of the pilot. We recognise the importance of ensuring that any requirements are not too onerous. Reporting and the evaluation process will not attract additional remuneration. Suggestions of evaluative methods and measures will

be taken into account in forming the evaluative framework of the project.

### Other issues

Publicity for the schemes and a possible website for duty advisers are other matters that arose under the consultation.

## Debt Recovery Update

Article reproduced from *Focus 27* - September 1999

### Client's Contributions.

Clients must not be advised to cease their monthly contributions until confirmation has been received from the Legal Services Commission regional office that their certificate has been discharged. Currently many practitioners are advising their clients to stop paying contributions the moment proceedings are at an end, thus building up arrears of contribution that are then passed to the Debt Recovery Unit for collection. The problem is further exacerbated where solicitors fail to ask for the certificate to be discharged and delay some time before submitting their final bill. When the bill comes in, the certificate is discharged by default, sometimes years after proceedings have ended, once again leaving their clients with arrears of contribution for the gap between the end of proceedings and submission of their final bill.

### Costs Recovery Policy

Many practitioners are still not aware of the Commission's policy in relation to costs recovery on certificates where a statutory charge has been registered against the client's property. The debt recovery unit will not pursue costs debtors in cases where the deficiency to the fund is covered by the statutory charge. This was communicated in an article in *Focus 27* a copy of which is set out to the right:

### Notice to practitioners regarding the Board's Debt Recovery Unit

This Notice is intended to make clear to practitioners the extent to which the Board's Debt Recovery Unit will pursue or enforce awards of costs and/or damages in favour of an assisted person.

The Debt Recovery Unit will become involved in a case where, and so long as, money is due and owing to the Legal Aid Board. Where costs are due from the assisted person's opponent the Debt Recovery Unit will only accept a case if all or part of the statutory charge amount is outstanding and/or unsecured.

This means that if the assisted person has agreed to the registration- of a charge on their property or damages sufficient to cover the deficit on the assisted person's account have been paid into the fund the Debt Recovery Unit will not take on the case. This is the position even if there are outstanding damages and/or orders for costs.

Where only part of the sums outstanding are payable to the Board, the Debt Recovery Unit will attempt to recover the total sum due from the opponent but will cease any enforcement action once the Board's interest is protected or recovered.

If the Debt Recovery Unit is involved in a case it will consider all the circumstances and make a commercial decision as to the appropriate action necessary to enforce the sums due. That decision will be based on the size of the debt, the chances of successful recovery and the likely costs involved. The Debt Recovery Unit may conclude that it would not be justified to incur further costs or take any enforcement action.

Where the Board's interest has been protected, recovered, or alternatively a decision made not to take any action, the assisted person is free to do what they can to enforce. It should be noted that if the Board's interest has not been recovered or recovered in full the assisted person must pay into the fund all sums they successfully recover until the deficit has been repaid in full.

Whilst legal aid is potentially available it is unlikely to be granted where the enforcement procedures to be used are straightforward and/or where the Debt Recovery Unit has made a decision that either enforcement is unlikely to be successful or that a private client would not pursue the debt given the costs and/or risks involved.

# Public Interest Advisory Panel Reports

The Public Interest Advisory Panel reports to the Commission on cases which are alleged to raise public interest issues.

These reports are then taken into account by the Commission in decisions under the Funding Code. For more information on the Panel see the article in *Focus 31* (page 2) and Section 5 of the Funding Code Decision-Making Guidance in Volume 3 of the LSC Manual and on the website at [www.legalservices.gov.uk](http://www.legalservices.gov.uk).

The Panel has recently been concerned at the quality of some applications which have been referred to it. Where an application for funding relies on alleged public interest it is important that the nature of the potential benefits to the public are made clear on the application form. The Commission's guidance on public interest should be taken into account. When a case seeks to establish a new point of law the legal issue should be clearly identified. Where a case seeks to benefit an identifiable group or section of the public, this group should be described, together with details of the nature of the benefits and approximate numbers affected.

Summaries of cases considered by the Panel were contained in *Focus 32-34* and are set out in Section 5.8 of the Guidance. A summary of the cases which have since been referred to the Panel is set out below. These are taken from the full reports of the Panel, but omitting individual client details. In each case the Panel gives an opinion as to whether or not the case has a significant wider public interest. Cases which have a significant wider public interest are usually assessed in one of three categories, namely "exceptional", "high" or simply in the general category of "significant" wider public interest.

## PIAP/01/34

### Nature of Case

Personal injury proceedings. Issue

as to whether airlines can be held responsible for deep vein thrombosis suffered by travellers on long-distance flights.

### Report of Panel

The Panel was of the view that a duty of care may be established on the part of the airlines in respect of this issue in some form from some point in time. Furthermore such a duty would be likely to benefit a significant class of air travel passengers who might be particularly at risk from deep vein thrombosis.

Because the case raised a range of difficult issues the Panel recommended that the Commission should keep under review the likelihood of the case to establish a precedent which would be of significant wider public interest.

If this case is to be funded, the Panel recommended that the Commission should consider whether it might be appropriate to impose the condition envisaged in paragraph c46.1 of the Funding Code Procedures, i.e. that the consent of the Commission should be sought prior to settlement.

### Conclusion

Significant wider public interest  
Rating: Significant

## PIAP/01/35

### Nature of Case

Judicial review proceedings. Proposed challenge to the Police Complaints Authority's failure to disclose statements/ documents to complainants and to give adequate reasons for non-disclosure.

### Report of Panel

The Panel considered separately the position of the three potential defendants against whom there are said to be causes of action arising from the failure to disclose witness statements.

Dealing firstly with the Police Complaints Authority, the Panel considered that there were arguments both in domestic law and in the Convention jurisprudence to suggest that the investigation of serious complaints involving allegations of criminal behaviour including assault on the part of the police should be conducted fairly. The question is whether a fair procedure can be had or a proper investigation conducted if the complainants are not entitled to see the statements of independent witnesses to the matters of which complaint is made.

The Panel considered there was a significant wider public interest in this issue as it goes to the heart of the police complaints system. If there is a requirement to disclose, this will require a significant change in the practice of the Police Complaints Authority which could potentially benefit a significant number of people who have cause to complain about police behaviour. Furthermore, the proper scope of s80 of the Police Act 1996 and its compatibility with Convention rights is an important issue raised by this case.

The Panel noted that no final decision has yet been made concerning disclosure, and hence this question should be resolved one way or another before litigation proceeds. However, on the basis of the assertion that disclosure is routinely refused in these circumstances, the Panel was content to make its finding on public interest.

The Panel took a different view of the position of the CPS, which has decided not to mount a prosecution in this case. The basic complaint here is the paucity of the reasons given for reaching that decision, rather than the failure to disclose the evidence on which it was based. It is apparently accepted that if proper reasons had been given, then the case for disclosure would fall away. In these circumstances, the Panel concluded there was no public interest

in proceedings for disclosure against the CPS.

Finally, the Panel considered the position of the police. It appears that they have taken the view that as the matter rests with the CPS and the PCA, they have left the decision concerning disclosure in their hands. The Panel concluded that there was no major point of public interest in challenging what is essentially a procedural deference on the part of a police force to those bodies charged with taking the crucial decisions affecting the applicants in this case, i.e. the CPS and the PCA.

### Conclusion

Significant wider public interest  
Rating: Significant

### PIAP/01/36

#### Nature of Case

Representation at inquest. Death of the applicant's daughter following alleged wrongful detention by the police under a warrant that had previously been executed but not recorded on the police computer. Application for exceptional funding under Section 6(8)(b) of the Access to Justice Act 1999.

#### Report of the Panel

The Panel considered that several aspects of this case gave rise to a public interest. First of all, it is apparently common knowledge that warrants of arrest can be executed without the fact of execution being properly recorded. This appears to be a defect in the system which appears to have contributed to the disastrous outcome in this case. Secondly, there is a public interest in the treatment of those who are ill or otherwise vulnerable during periods of detention, and questions arise as to the operation of the appropriate checks and balances in this case. Thirdly, the deceased was, it seems, unlawfully removed from an environment in which she was receiving some care and control, and to which she had been committed as a condition of bail pending sentencing by the court. This raises a further serious question as to the duty on

those responsible for this state of affairs to ensure she was returned to that safe environment.

The Panel considered that no other person likely to be represented at the inquest would obviously share the same interest as the applicant in these issues being fully explored. Representation might therefore assist the Coroner in making recommendations on these matters which could be of benefit to future cases. The Panel was therefore satisfied that this case has a significant wider public interest.

### Conclusion

Significant wider public interest  
Rating: Significant

### PIAP/01/37

#### Nature of Case

Proposed County Court proceedings claiming damages under the Race Relations Act 1976.

#### Report of the Panel

The Panel noted that this case concerned a claim for damages under the Race Relations Act 1976 based on racist comments allegedly made to the applicant by a local authority leisure centre manager. However, the defendants were disputing that the remarks had been said at all.

The Panel considered that this case was one which would be decided on its own facts. There was no likelihood of the case establishing any new rights for clients generally or leading to any change in the policy of the local council. Therefore, whilst the case was no doubt important to the individual client the Panel was not satisfied that it had any significant wider public interest as that term is defined in the Funding Code.

### Conclusion

No significant wider public interest

### PIAP/01/38

#### Nature of Case

Judicial review of Criminal Injuries Compensation Authority. Meaning of

"crime of violence" in compensation scheme. Appeal to House of Lords.

### Report of Panel

The principal issue before the House of Lords concerns the meaning of the phrase: "crime of violence" for the purpose of awards by the Criminal Injuries Compensation Authority. An authoritative decision on this would clearly benefit large numbers of other claimants. The Panel's concern was that as the case of *ex parte Brown* was proceeding to the House of Lords to consider these points, it was harder to see that there was any significant wider public interest in the present case.

The Panel however noted the distinguishing features of the client's case, most importantly the question of consent and whether such consent is a complete bar to the categorisation of a case as a crime of violence. The resolution of this issue could benefit wider groups of victims, including for example child prostitutes.

In all the circumstances the Panel was persuaded that this individual case has a significant wider public interest, above and beyond the central issues already being raised in *ex parte Brown*.

### Conclusion

Significant wider public interest  
Rating: Significant

### PIAP/01/39

#### Nature of Case

Judicial review of decision by local authority to refuse to waive charges for home care services.

#### Report of the Panel

The Panel considered the issues raised in this challenge to the refusal of the local authority to waive a charge for home care services under Section 17 of the Health and Social Services and Social Security Adjudication Act 1983. The Panel noticed that the case raised issues not just as to whether the charge to this individual client should have been waived, but as to the whole procedure adopted by the council in

deciding whether charges should be waived or not. The case sought to establish that such a determination by a council amounts to the determination of a civil right so that the council's procedures would need to be compliant with Article 6 of ECHR. The Panel agreed with the submissions of solicitors and counsel that if successful it is likely that the local authority would be obliged to introduce some form of independent review procedure. This could have implications nationally for the way such cases are dealt with and could help to ensure that those who are unable to pay the charges are not required to. In all the circumstances the Panel was satisfied that the case did have a significant wider public interest.

### Conclusion

Significant wider public interest  
Rating: High

### PIAP/01/40

#### Nature of Case

Judicial review of Environment Agency concerning legal framework relating to disposal of nuclear waste at military site. SECOND REFERRAL.

#### Report of the Panel

This case had previously been before the Panel (PIAP 00/04). Since then the judicial review had been unsuccessful at first instance and permission was sought to appeal to the Court of Appeal. The Panel therefore considered the issues as they were likely to be raised in the appeal. The Panel remained of the view that the case as a whole raised important legal issues as to the procedures for production and decommissioning of nuclear warheads. The case remained in the middle band of public interest, namely with a rating of "High".

The Panel noted that the Special Cases Unit requested the Panel to assess public interest in relation to three specific issues. The Panel was concerned that it is not always feasible to look at a particular issue in isolation from others and ascribe a particular public interest to it. The Panel also noted that it was open to the court at the permission stage to limit the

substantive appeal to one or more of the matters put forward.

Nevertheless, in reaching the conclusion that the appeal as a whole had a high public interest the Panel was most impressed by the arguments as to justification and whether Chapter 3 of the Eurotom Treaty was applicable to military activities. By contrast the public interest of the arguments as to international law was less straightforward. These were the most difficult and controversial arguments being raised in this appeal. The issue before the Court of Appeal is not to determine whether Trident is lawful under international law, but instead whether it is a requirement that the Environment Agency should consider that issue in discharging its functions. Although an important issue, the practical benefits of this question to the public are less apparent than other aspects of the case.

### Conclusion

Significant wider public interest  
Rating: High

### PIAP/01/41

#### Nature of Case

Judicial review of local authority decision to demolish prominent building in local conservation area.

#### Report of the Panel

The Panel considered first whether this judicial review might establish a legal issue on a point of principle of general importance concerning how this authority or planning authorities generally approached their decision to authorise the demolition of buildings. The Panel was not satisfied that this case was likely to have such an effect. The challenge was essentially based on the individual background and circumstances leading to this planning decision. The case would be decided primarily on its own particular facts.

The Panel then considered the subject matter of this judicial review and whether the decision whether or not to demolish the building could itself be said to be a matter of public interest. Although clearly the issue

was important to some local residents and the concept of wider public interest in the Funding Code is a wide one, on balance the Panel was not satisfied that the issue was of sufficient importance to give rise to a significant wider public interest in terms of the Funding Code.

### Conclusion

No significant wider public interest

### PIAP/01/42

#### Nature of Case

Judicial review of local authority failure to provide accommodation for disabled child. Situation of individual client likely to be resolved prior to trial.

#### Report of the Panel

The Panel considered this to be a judicial review in circumstances where the position of the individual client had largely been resolved, so that further funding could be justified only if the case might establish an issue of general public importance. The principal issue in this case is an important one, concerning the extent of the duty to provide accommodation following a request from a local authority pursuant to section 27 of the Children Act 1989. However the Panel did not consider that this was likely to establish new law unless new duties were established under Article 8 of ECHR. It may be that Article 8 would not add significantly to the protection afforded by domestic law, unless it were established that damages should be paid in such cases under the Human Rights Act. This could have an important effect on others in a similar position to this case.

The Panel was however concerned that the present case was unlikely to be a suitable vehicle to establish those issues. If the situation of the individual client is resolved prior to a final hearing it is only in exceptional circumstances that a court will proceed to decide the legal issues raised. The question of liability for damages under Article 8 is less likely to be addressed, because of the relatively short time within which the matter was resolved (though the Panel accepted that, in the case of a



newborn child in these circumstances, the time delay is significant). The Panel considered that in the circumstances of this case it is unlikely that the court could be persuaded to give a definitive ruling one way or another so as to clarify or develop the law of benefit to others. In those circumstances, with regret, the Panel concluded that this case did not have a significant wider public interest.

### Conclusion

No significant wider public interest

### PIAP/01/43

#### Nature of Case

Hearing before Social Security Commissioner. Compatibility of Social Security Appeal Tribunal with ECHR.

#### Report of Panel

The Panel noted that this hearing concerned the important question of whether Social Security Appeal Tribunals are compliant with Article 6 of ECHR. The Panel agreed that the importance of this issue had not been diminished by the House of Lords decision in *Alconbury* which had dealt with a different decision making process. If it were determined that the tribunal was not compliant with Article 6 and lacked the necessary independence and impartiality, significant changes would need to be made to the procedures and nature of the tribunal. This would affect about 250,000 people a year. These legal issues clearly had a wider public interest.

### Conclusion

Significant wider public interest  
Rating: High

### PIAP/01/45

#### Nature of Case

Potential claim relating to disposal of stillborn baby.

#### Report of Panel

The Panel accepted that the circumstances of this case were extremely distressing for the client. However the Panel's function was to consider whether any potential claim might

benefit others. The Panel noted that the events complained of went back to 1983. Not only did this give rise to significant legal difficulties but there are likely to have been significant changes in practice and procedure in the NHS since that date. It was therefore unlikely that this case would lead to any significant change in practice for the future.

Further, there was no clear evidence that there were large numbers of other cases where foetuses had been disposed of without consent or consultation. The Panel were of the view that if this case proceeded it would be considered on its own facts and was unlikely to establish any entitlement to compensation for a larger group of people. Accordingly, with regret the Panel concluded that this case had no significant wider public interest.

### Conclusion

No significant wider public interest

### PIAP/01/46

#### Nature of Case

Judicial review of Environment Agency decision to grant waste management licence to permit storage of meat and bone meal.

#### Report of Panel

The Panel considered first the potential of this judicial review to develop the law. The Panel was concerned that some of the arguments being raised had been overtaken by events or would be resolved in other cases. In particular, in light of the *Alconbury* decision, the Panel considered it unlikely that this case would significantly develop the law relating to Article 6 of the Convention. Similarly, the arguments being raised under Article 4 of the Waste Framework Directive are also being pursued in the cases of *Thornby Farms* and *Murray* which we understand will be heard by the Court of Appeal in due course. The Panel were therefore not persuaded that these issues alone raised any significant wider public interest.

The Panel noted however that this

case raised other legal issues, in particular the arguments concerning the obligation to provide an environmental impact assessment, and to a lesser extent arguments as to consultation. The environmental impact assessment argument appeared to be a significant point which, if established, would require the Environment Agency to undertake assessments in a wider range of cases. Therefore these legal issues would benefit the public and had a wider public interest.

The Panel also considered public interest in the sense of the importance of the issues to the local community. There was clearly local concern at the storing of the carcasses of slaughtered animals and concern as to resultant health risks although there was no clear evidence before the Panel of actual risk to health. The Panel concluded that the subject matter of this case did give rise to a wider public interest for the local community although that interest was perhaps less than in some of the other environmental cases which the Panel had previously considered.

### Conclusion

Significant wider public interest  
Rating: Significant

### PIAP/01/47

#### Nature of Case

Proceedings challenging police removal and storage of stolen vehicle. Whether vehicle was "abandoned".

#### Report of Panel

The Panel noted that leave to appeal was given in this case on the basis of the legal argument as to when a vehicle can be treated as "abandoned" giving the police power to remove it and to charge for its return. The Panel felt that even if the applicant succeeded in his argument it did not follow that there would necessarily be any significant change in police practice. The evidence in the present case, and presumably general police practice, was that on finding a vehicle abandoned by thieves the police make attempts to contact the owner before arranging for the vehicle to be removed.

Whether the police acted reasonably or correctly in this individual case was of course a matter of concern to the applicant but was not a matter of any wider public interest.

In all the circumstances the Panel was not satisfied that this appeal had the potential to produce benefits for others and therefore concluded that the case had no significant wider public interest.

### Conclusion

No significant wider public interest

### PIAP/01/48

#### Nature of Case

Personal injury claim. Child injured while sleepwalking on school camping trip.

#### Report of Panel

The Panel first considered whether the case had any potential to clarify or expand the law. The Panel considered this unlikely as the case would be decided on the normal principles of negligence. The issue was therefore

whether this claim might affect the guidelines or general standards of supervision to be applied by schools when organising camping trips. The Panel considered that existing guidelines for schools were reasonably clear so that this case would be determined on its own particular facts. It was not likely that the case would establish a precedent of general significance and therefore the Panel was not satisfied that the claim had any significant wider public interest.

### Conclusion

No significant wider public interest

### PIAP/01/49

#### Nature of Case

Judicial review of prison disciplinary proceedings. Whether compliant with ECHR.

#### Report of Panel

The Panel recognised as it had in previous cases (see PIAP 00/22) that the compliance of prisoner disciplinary proceedings with ECHR was a matter

of great significance. However these matters were already before the courts, in particular the case of *Greenfield v Secretary of State for the Home Department*. That case, which the Panel was informed was proceeding to the Court of Appeal, would analyse the impact of Article 5 and Article 6 of ECHR on prison disciplinary proceedings. Although each case would be different on its facts the Panel considered the present case unlikely to develop the law on those Articles. Further the Panel were of the view that there was no prospect of the present case progressing the law in relation to Article 3. In the circumstances the Panel considered it unlikely that the present case would produce any benefits to other prisoners facing such proceedings. The Panel was also concerned that because it was unclear whether the client had in fact suffered loss of liberty as a result of the matters complained of this case would not be a good vehicle to argue points of principle.

### Conclusion

No significant wider public interest

## Lord Chancellor's Draft Guidance on Exceptional Funding

### 3.4 Individual cases

#### 3C-021

1. Section 6(8)(b) of the Act empowers the Lord Chancellor to authorise funding in individual cases, following a request from the Commission. The Lord Chancellor has issued the following guidance to the Commission under section 23 of the Act, to indicate the types of case he is likely to consider favourably under this power:
2. "Schedule 2 of the Act, together with the general exceptions I have authorised, is designed to ensure that money is not spent on cases that do not have sufficient priority

to demand a share of the available resources. I would therefore expect it to be extremely unusual for me to authorise the Commission to fund an individual case that remained outside scope.

3. Schedule 2 excludes funding for personal injury cases because they are generally suitable for conditional fees. I have authorised the Commission to fund personal injury cases with very high investigative or total costs, because this may not always be true of these cases. If a particular client was having difficulty finding a solicitor to take a case that was objectively suitable for a conditional fee, that

is a case with reasonable prospects of success but not requiring very high costs, I would generally expect the Commission, through the Community Legal Service, to advise the applicant about solicitors willing to take cases under conditional fee agreements, rather than apply to me for exceptional funding.

4. The other categories in paragraph 1 of Schedule 2 are excluded because they are of low priority.

**However I do accept that within those categories there will be exceptional individual cases which may justify funding under the approach described below.**

5. Paragraph 2 of Schedule 2 excludes the provision of advocacy services before coroners' courts and most tribunals. Coroners' courts are excluded because the inquisitorial nature of the process means that public funding for legal representation is not usually appropriate. Historically, most tribunals have been excluded from legal aid on the grounds that their procedures are intended to be simple enough to allow people to represent themselves. The 1999 Act excludes advocacy before the Lands Tribunal and Commons Commissioners for the first time because they do not have sufficient priority to justify public funding.

### Exceptional Funding for Representation at Inquests

6. It is only advocacy before the coroner which is excluded by paragraph 2 of Schedule 2. Therefore any funding under 6(8)(b) would take the form of a grant (under level 7 of the Funding Code) to cover only attendance on the day and the incidental costs (where appropriate) of instructing counsel, such as conferences. Preparatory work to will be covered under Legal Help. Before requesting such funding the Commission must be satisfied that the client is financially eligible for Legal Representation, according to the eligibility limits set out in regulations, and that no source of alternative funding is available. If so I would consider funding if either there was a significant wider public interest in the client being represented at the inquest or if the following conditions applied:

- i) The client is a member of the deceased's immediate family (but if there are other family members some of whom are not financially eligible it may be appropriate to refuse funding or restrict it to a proportion of the costs of representation) and
- ii) The circumstances of the death appear to be such that funded representation is necessary to

assist the coroner to investigate the case effectively and establish the facts. For most inquests, the coroner will be able to carry out an effective investigation without the need for funded representation, but such representation may well be needed for inquests concerning agencies of the state such as deaths in prison or police custody.

### Exceptional Funding for Other Proceedings

7. Before requesting funding for an individual case under section 6(8)(b), for proceedings other than inquests, the Commission must first be satisfied in each case that:

- i) The services applied for are services which are excluded under Schedule 2 of the Act and are not covered by any of my general directions under section 6 (8)
- ii) The client is financially eligible for Legal Representation
- iii) All relevant criteria in the Funding Code are satisfied. Usually these will be the criteria for Legal Representation in the General Funding Code, but certain criteria will not be relevant in certain types of case. For example prospects of success criteria may not be appropriate for inquisitorial proceedings such as a public inquiry.
- iv) The client has produced evidence to demonstrate clearly that no alternative means of funding is available, whether through conditional fees or otherwise.

8. Where the Commission is so satisfied I would be prepared to consider funding under section 6(8) (b) where any of the following apply:

- i) There is a significant wider public interest (as defined in the Funding Code) in the resolution of the case and funded represen-

tation will contribute to it. This will only need to be considered for cases which are not within the scope of paragraph 10 of my general Direction on exclusions, which authorises the funding of non-business public interest cases before the courts.

- ii) The case is of Overwhelming Importance to the Client as defined in the Code.
- iii) There is convincing evidence that there are other exceptional circumstances such that without public funding for representation it would be practically impossible for the client to bring or defend the proceedings, or the lack of public funding would lead to obvious unfairness in the proceedings.

9. I should emphasise that each of these considerations is exceptional in nature. When considering funding under paragraph 8(iii) above the nature of the case and particular circumstances of the client need to be taken into account. But the fact that the opponent is represented or has substantial resources does not make the proceedings unfair. Courts are well used to assisting unrepresented parties in presenting or defending their cases. Similarly most tribunals are designed to be accessible to unrepresented clients. Language difficulties alone are very unlikely to be a justification for funding legal representation, since if the client has no friend or family able to act as interpreter, the court or tribunal concerned will normally be able to assist. There must be something exceptional about the client or the case such that for the client to proceed without public funding would be practically impossible or would lead to obvious unfairness. I will use as a benchmark those very exceptional cases where the ECHR at Strasbourg has indicated that the right of access to the courts has effectively been denied because of the lack of public funding.

# Proposed Payment Dates

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

If you are paid by BACS (Bank Automated Clearing System) the proposed payment date shown is the date on which you will receive a

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

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

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

## Keeping us up to date

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

## Proposed Payment Dates for July - December 2001

Contract Payments	First Settlement of the Month	Second Settlement of the Month
Wednesday 4 July 2001	Thursday 12 July 2001	Friday 27 July 2001
Friday 3 August 2001	Monday 13 August 2001	Wednesday 29 August 2001
Wednesday 5 September 2001	Tuesday 11 September 2001	Wednesday 26 September 2001
Wednesday 3 October 2001	Thursday 11 October 2001	Friday 26 October 2001
Monday 5 November 2001	Monday 12 November 2001	Tuesday 27 November 2001
Wednesday 5 December 2001	Tuesday 11 December 2001	Monday 24 December 2001

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*Focus* is produced by the Legal Services Commission's Press Office,  
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