

FOCUS

November 2001

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

■ Exceptional Funding

Final guidance from the Lord Chancellor following consultation, including new direction on representation at inquests, pages 2 and 25-28.

■ Funding Developments

Outcome of consultation on changes to the Funding Code, new devolved power for Help with Mediation and revised Actions Against the Police etc franchise category, pages 3 and 30.

■ Costs Assessment Guidance

Costs Assessment under the General Civil Contract (Solicitors) - costs assessment audit procedure and the appeals procedure, pages 29-30.

■ CLS Financial Conditions

Quick guide to new civil means test and eligibility levels from 3 December 2001 on pages 4-5 and full guidance on pages 16-23. Revised guidance on the operation of the statutory charge and costs protection, pages 23-24.

■ Specialist Quality Mark

Implementation of the Specialist Quality Mark delayed until April 2002. Guidance on the audit approach to be taken until then on requirements which will be reduced, simplified or removed, pages 9-11.

■ Quality Mark Timetable

Timetable for all Quality Mark Standards, page 12.

General Civil Contracts from 1 April 2002

We will shortly be issuing a consultation paper on the principles we plan to apply to producing third year contract schedules and related matters. Copies of the paper will be sent to civil suppliers and their representative bodies, and will be available on the LSC website.

Exceptional Funding

Lord Chancellor Announces New Approach and Streamlined Procedure for Funding Inquests

In *Focus 35* (page 3) we gave notice of a new approach to applications for exceptional funding for individual excluded cases, following the recent judicial review of Jarrett. The Lord Chancellor issued draft guidance for consultation which was also printed in *Focus 35*.

That consultation is now complete. The guidance was finalised and came into effect on Thursday 1 November 2001. The guidance was generally welcomed on consultation and a number of the issues raised by consultees have been clarified in new expanded guidance on processing exceptional funding applications.

Representation at inquests following

death in police or prison custody have been the most common type of case so far funded under the Section 6(8)(b) exceptional funding procedure. The Lord Chancellor has now issued a direction which streamlines the procedure for funding representation at such inquests by giving the Commission power to fund directly, instead of requiring each individual case to be referred to ministers. Applications should still be made to the Commission's Head Office but it will now be possible to give decisions more quickly in death in custody cases.

The full text of the Lord Chancellor's guidance, our guidance and the new direction on inquests is contained in this edition of *Focus* at pages 25-28.

LSC Awarded Beacon Status

The Legal Services Commission has been awarded "Beacon" status - the recognition of new and improved ways of developing public service - for its work to develop Community Legal Service Partnerships (CLSPs).

One of a select band of 16 central Government organisations to be awarded Beacon status this year, the LSC has achieved the award in recognition of its innovation and good practice in the field of "partnership and joined-up working".

The LSC, in particular its Planning and Partnership function, has worked hard over the past 18 months to establish CLSPs and has achieved almost complete coverage over England and Wales.

CLSPs bring together public, private and voluntary sector organisations with an interest in legal and advice services, and involve funders, providers and users of those services in making recommendations about how the services are delivered to the local community.

The role of beacons is to share their innovative approach and the lessons they have learned with other parts of Government whose role may be different but for whom the practical challenges of service delivery are similar. Over the next two years the LSC will be spending time demonstrating good practice to visitors from other parts of central government and the wider public sector.

Steve Orchard, LSC Chief Executive, said of the award: "Partnership is one of the cornerstones of the Community Legal Service, where we aim to ensure access to high quality legal advice, based on local assessment of need. I am delighted that the excellent work of our Regional Planning and Partnership teams in establishing CLS Partnerships has been recognised with Beacon status."

For more information on the Central Government Beacon scheme visit the website at www.cgbs.org.uk.

Criminal Mileage Rates

The Criminal Law Solicitors Association (CLSA) and London Criminal Courts Solicitors Association (LCCSA) had been granted permission by the High Court to judicially review the Legal Services Commission over mileage rates, but following fruitful discussions between them, the application has now been withdrawn. The Commission has accepted the case for an increase in rates from 1 April 2002 after taking into account representations from the President of the Law Society and the Associations.

LSC Chief Executive, Steve Orchard, said: "We recognise there is an anomaly that needs to be put right and we will recommend that the Lord Chancellor does that from 1 April 2002, if it is affordable within the current provision for legal aid."

In deciding about this and other changes in rates from 1 April 2002, the Lord Chancellor must take into account the statutory factors in the Access to Justice Act 1999, and will listen to representations from the Bar, the Law Society, and other interested bodies. It is clear that the CLSA, LCCSA and the Law Society see the removal of this anomaly as a priority.

Steve Wedd, Secretary of CLSA added: "While the new contracts are still bedding in, there are bound to be some frictions. The mileage differential is a small issue, but generated much concern in practice. We are pleased that, through negotiation, an acceptable way forward has been found."

Recent Funding Developments

Outcome of Consultation

In *Focus 35* (page 17) we announced a consultation on a number of minor changes to the Funding Code Procedures and guidance, and we also asked for views about the future development of the Funding Code generally. At the same time we consulted about two separate issues, namely a proposed expansion of the definition of the scope of the Actions against the Police etc Franchise Category and introducing a new devolved power to grant Help with Mediation in family cases.

The consultations are now complete and our documentation is being finalised. Elsewhere in this edition of *Focus* we give details of changes to the procedure for exceptional funding. The following is a summary of the other changes.

Code Procedures and Guidance

The proposed minor changes to the Code Procedures were generally welcomed by consultees and subject to some minor drafting changes, the proposed amendments as set out on our website will be coming into effect on Monday 3 December 2001.

Similarly the proposed changes to our decision-making guidance, which were mostly points of drafting and clarification were generally welcomed on consultation. Some consultees did not agree with our proposed re-drafting of guidance on what is meant by “overwhelming importance to the client”. We understand such concerns but feel it is important to make it clear that this concept applies to exceptional cases only, both for the purpose of the Funding Code and exceptional funding applications, and does not generally extend to debt cases where there is only an

indirect risk of the home being in issue.

The most significant change to our guidance was in relation to standard limitations placed on judicial review certificates. We proposed that a new range of certificate limitations be set up to ensure that each certificate covers only one step of the process of applying for permission. A specific amendment is needed to each certificate to go on to the next stage, whether from paper application, oral hearing or thereafter renewed application to the Court of Appeal. Generally consultation responses were sympathetic to these changes but we have agreed to make a change suggested by the Law Society to clarify that, in cases where there is an urgent application for interim relief, it will sometimes be necessary to proceed straight to an oral hearing. This point has now been included in revised guidance.

Help with Mediation – New Devolved Power

Consultees were universally supportive of this change. Contract amendments have therefore been issued to give all family franchisees the power to self-grant Help with Mediation certificates. This will also take effect from 3 December 2001. The procedure is exactly the same as for grants for authorised representation for family proceedings in the magistrates’ court. The supplier can self-grant Help with Mediation, subject to the criteria and cost limitations set out in our existing guidance, but must submit form CLS App4 to the regional office within five working days of the decision to grant.

Actions against the Police etc Franchise Category

The proposed changes to the scope of this franchise category found a wide

measure of support among consultees. We have therefore proceeded with our proposal to include child abuse whilst in the care of a public authority within the scope of the Actions against the Police etc category. In addition, as a result of consultation we have added two further types of case to the category. These are applications to the Home Office under Section 133 of the Criminal Justice Act 1988 or the ex gratia scheme for compensation for wrongful conviction, and also claims to the Criminal Injuries Compensation Authority arising out of any matter falling within the franchise category.

Contract amendments have been issued to give effect to the new definition with effect from 3 December 2001. The full text of the new definition of the Actions against the Police etc franchise category is set out on page 30 of this edition of *Focus*.

Future Development of the Code

In *Focus 35* we asked for any proposals for amendment to the Funding Code criteria. We highlighted some individual issues, in particular the future of support funding for high cost personal injury cases. Consultation responses were generally in favour of support funding being retained but there were calls for the thresholds for funding to be lowered. The point was made that it is still too soon to consider the removal of support funding from the scheme given the long time personal injury cases will take to build up costs to the necessary thresholds.

We are inclined to accept these arguments. In all the circumstances we do not at present intend to make any changes to the Funding Code Criteria for next April, but if any amendments to the Code are considered necessary we will consult further at the appropriate time.

Community Legal Service Financial Conditions - The New Means Test

As previously announced a new unified means test for all levels of funding for civil work will apply to applications for funding made on or after 3 December 2001. At the same time, there is a substantial increase in the eligibility level for Legal Help.

By the time of reading this article suppliers may well have already attended one of the supplier briefing sessions being run by the Commission's regional offices throughout November.

A summary of the key changes is provided below, a copy of the full guidance for suppliers can be found on pages 16-23 of this edition of *Focus*. This guidance will also be published in the next update of the LSC Manual in December. Suppliers may also wish to refer to Keycard no 34, which provides a quick reference guide to the new eligibility limits, and can be easily copied for individual use. The keycard will be distributed as part of the November update to the forms masterpack (see below) and will also be available on the Commission's website.

The means test

Passporting remains in place for those in receipt of income support or income-based jobseekers' allowance as follows:

Level of Service	Income	Capital
Legal Help	Passported	Not passported – must be assessed in all cases
Help at Court		
Controlled Legal Representation		
All other levels of service	Passported	Passported

Working Families Tax Credit and Disabled Person's Tax credit will no longer provide any form of passporting.

The new means test switches from focusing on weekly figures to monthly. It has a gross income cap of £2000 per month. Anyone whose income exceeds this level (including all income that would be disregarded in the application of the means test) is automatically excluded from eligibility.

For those with less than £2000 per month gross income, a calculation of disposable income and capital will be made. Certain state benefits are disregarded, including for the first time Invalid Care Allowance and War Pensions. As now when calculating disposable income, deductions can be made against income for Tax, National Insurance,

dependants, and maintenance paid by the client.

In addition allowances can be made for rent or mortgage payments, including payments/premiums for any endowment policy or other "instrument which will be used to repay the capital sum borrowed". For a single applicant with no dependants the maximum allowance for housing costs will be £545 per month.

Where the applicant and/or their partner is receiving a wage or salary, there will be a fixed allowance of £45 per month for each wage earner in the assessment to cover employment related expenses such as travel costs. In addition to which all actual childcare expenses can be deducted.

Eligibility

The following eligibility limits will apply.

Level of Service	Income Limit	Capital Limit
Legal Help	Gross Income £2000 p.m. Disposable Income £601 p.m.	£3000
Help at Court		
Controlled Legal Representation		
All other levels of service	Gross Income £2000 p.m. Disposable Income £683 p.m.	£8000

As now Legal Help, Help at Court, Controlled Legal Representation, Family Mediation, and Help with Mediation are all non-contributory.

For other levels of service a client with disposable income in excess of £259 per month and up to £683 per month will be liable to pay a monthly contribution of a proportion of the excess over £255. Such contributions will be assessed in accordance with the following bands depending on the level of the assessed income.

Band	Monthly disposable income	Monthly contribution
A	£260 to £380	1/4 of income in excess of £255
B	£381 to £505	£31.25 + 1/3 of income in excess of £380
C	£506 to £683	£72.91 + 1/2 of income in excess of £505

- So if disposable income is £295 per month, the contribution will be in band A, the excess income is £40 and therefore the monthly contribution will be £10 per month.
- If the disposable income was £395 per month, the contribution would be in band B, the excess income would be £15 (£395 - £380), and the monthly contribution would therefore be £36.25 i.e. £31.25 + £5.
- If the disposable income was £525 per month, the contribution would be in band C, the excess income would be £20 (£525 - £505), and the monthly contribution would therefore be £82.91 i.e. £72.91 + £10.

A client whose disposable capital exceeds £3,000 is required to pay a contribution of either the capital exceeding that sum or the likely maximum costs of the funded service whichever is the lesser.

What hasn't changed?

- There are no changes to responsibility for performing the financial eligibility tests.

Suppliers remain responsible for performing the test for Legal Help, Help at Court, Legal Representation before the Immigration Adjudicators and the Immigration Appeal Tribunal, Family Mediation, Help with Mediation, and Legal Representation in Specified Family Proceedings i.e. family proceedings before a Magistrates' Court other than proceedings under the Children Act 1989 or Part IV of the Family Law Act 1996.

The Commission will continue to perform the test for Legal Representation (other than those outlined above), Support Funding, and General Family Help.

- There are no changes to responsibility for assessing/collecting contributions.

As now suppliers remain responsible for assessing and collecting contributions for Legal Representation in Specified Family Proceedings i.e. family proceedings

before a Magistrates' Court other than proceedings under the Children Act 1989 or Part IV of the Family Law Act 1996. (As was previously the case under ABWOR).

The Commission remains responsible for assessing and collecting contributions in all other cases.

- There are no changes to the evidence required when assessing means. This is set out in Rule 2.5 of the General Civil Contract.

Practitioners will not as a matter of course be required to obtain evidence of expenditure claimed by the client. The client's declaration will generally be sufficient. However, where the housing costs or childcare expenses claimed by an applicant appear unduly high, some evidence will be required. Similarly, the present rule that the client's declaration of his/her capital is sufficient evidence will be retained.

Forms

A number of forms are being changed, including the MEANS1 (Means form for certificated funding), L17 (Statement of Earnings), CW1 and 2 (Controlled Work forms) and CLS APP6 and MEANS6 (Fax Emergency Application). It was proposed that there would be a new form for the supplier to complete to determine financial eligibility in any cases where the supplier is responsible for carrying out the means test. Following consultation with suppliers however this proposal has been dropped and instead there is an integral means assessment section within each of the application forms. The revised forms will form part of an update to the Legal Services Commission Forms Masterpack, which will be distributed to suppliers during November.

The Commission will continue to accept applications for full Legal Representation using the existing forms until 2 January 2002. However any applications received by the Commission on or after Monday 3 December 2001 will be assessed by the Commission using the new rules

of assessment irrespective of which forms have been completed.

Where it is clear to the supplier that an application signed by the client before 3 December 2001 will not reach the Commission until after 3 December 2001 then the supplier can request that the Commission assess the case using the existing (pre 3 December) regulations where they feel this would be more equitable, for example, where the client's gross monthly income exceeds £2000. Such applications must be received by the Commission on or before Friday 14 December 2001. Suppliers must make this request at the time of submitting the application.

All applications received by the Commission on or after 2 January 2002 must be made using the new forms irrespective of when the application was signed. Applications using old forms received by the Commission on or after 2 January 2002 will be rejected causing delay to the processing of the application.

All applications for funding made to the supplier, where the supplier is responsible for the assessment of means, on or after 3 December 2001 must be assessed in accordance with the new assessment rules.

Further information

Additional information and a Frequently Asked Questions section will be posted on the Legal Services Commission website www.legalservices.gov.uk. Further information regarding training events for suppliers can be obtained from your local Legal Services Commission Regional Office. Revised editions of the LSC's public information leaflets containing information on eligibility will be available free on the LSC's website and from the LSC Leaflet Line (0845 3000 343) from December. For further information regarding the means test please contact Neil Tyson in the Commission's Policy and Legal Department on 020 7759 0369 neil.tyson@legalservices.gov.uk.

See also dependants' allowances on page 6.

CLS and CDS Financial Eligibility - Dependants' Allowances Increase

The amount that can be made as an allowance against income in respect of dependant children has increased as follows:

Child aged 15 or under:
£32.95 per week

Child aged 16 or over:
£33.75 per week

This change arises from changes to the Income Support regulations and applies to assessments in respect of all applications for funding made on or after 22 October 2001.

ILPA Asylum Caseworker Training Project

The LSC has been funding the Immigration Law Practitioners' Association (ILPA) to run training courses for asylum caseworkers. Courses are being held in Oxford and Leicester in November, and in Cambridge, Leeds and Liverpool between January and March 2002. Each course lasts for five days with three follow-up days and will cover both the technical and practical aspects of asylum casework. Local LSC contractors are given priority when booking the courses.

The course fee for LSC contracted suppliers is £400 but participants who obtain their certificate of attendance will have this reimbursed. The fee for all others is £600. If you are from an LSC contracted supplier you must still send your cheque for your course fee to ILPA when you book, they will not cash it and will return it to you when you receive your certificate of attendance.

If you are interested in attending a future course or want further information please contact Jane Savory at ILPA: Tel 020 7250 3757 Fax 020 7251 8384 E-mail info@ilpa.org.uk.

Note to Solicitors and Barristers Regarding Legal Aid Payment Demands (Debit Notes)

In January we issued guidance on our approach to debit notes. We explained that where debit notes are likely to remain outstanding for some time, the Commission would undertake formal credit chasing. Due to unprecedented growth in debit notes we will be stepping up our repayment activity in relation to debit balances and legal services suppliers should expect an increase in requests for repayment.

A significant proportion of debit notes involve contracted suppliers. We have decided additionally to modify our systems of payment such that standard monthly payments for criminal and civil contract work (SPAN and SPOCC payments) will be offset automatically against debit notes, as allowed under Clause 12A.8 of the contracts.

Because the process will be automatic and because the value of debit notes has risen significantly over the past few months, it is possible that individual suppliers may be faced with a significant recoupment all at once. In order to alleviate the position individual suppliers are encouraged to refund at least part of their debit balances now in order to reduce the effects of a one-off recoupment. It will be possible for individual suppliers to apply for a hardship payment if they are particularly badly affected by the introduction of this approach to collecting debits, which is in effect, a return to the position before contract payments were made separately.

If you have any queries please contact Gareth Britten on 020 7759 0000.

Model Clients and Referrals: Finding the Benchmark

Community Legal Service Partnerships (CLSPs) have now been established across the majority of local authorities in England and Wales. One of their primary areas of work has been to encourage the development of referral networks. At the heart of this is the recognition that organisations should focus on their own area of expertise but operate within a seamless whole for the benefit of clients.

This is supported by the requirements of the Community Legal Service Quality Mark, which demand that: members of staff know when to signpost and refer clients; that they have in place procedures and processes to do so, and that records are maintained and reviewed. Many CLSPs have been working to develop local referral networks, protocols and accompanying referral documentation that comply with these requirements.

To date there has been little work to benchmark across the CLS the level of referral activity actually taking place. To

fill this gap the Commission is planning a model client project to assess the extent to which clients are being directed to the most appropriate source of help. This will set the context against which the work of the CLSPs will bring improvements over time.

Model clients will visit randomly selected organisations that hold the Quality Mark at the general help level or above. They will record their experiences against set criteria intended to capture information on whether they were signposted or referred. The project is not intended to identify individual organisations or named individuals working within them and no information from model clients will be used to identify individual organisations to the Commission in any way.

The project will be completed by February 2002 and the results shared with CLSPs. The work will provide the first benchmark figures on the level of referral and signposting activity taking place within the Community Legal Service.

Methods of Delivery Pilot - Second Tier Services

Solicitors and advice agencies that have a General Civil Contract with the LSC are reminded that they are able to access specialist second tier services. These services comprise:

- Consultancy lines
- Complex cases on referral
- Training courses

Consultancy Lines

The phone lines are staffed by experts in their field who can offer support in the following ways:

- Help with practical and procedural problems
- Help with difficult tactical decisions and advice on substantive law
- Access to legal reference materials

This service is free of charge but please have your contract account number ready when you call one of the lines. Please note that in order to use the service your contract does not have to be in the specific category of law as you may be dealing with a case under the tolerance in your contract (with the exception of Immigration which is a

tolerance-barred category). The phone numbers and opening times for the consultancy lines are below.

Complex Cases on Referral

In addition to the consultancy line service, where all parties agree, it is possible to refer complex cases (where the client is financially eligible) to the specialists. The second tier service will then take on the conduct of the case.

Please note that rather than taking on complex cases, Two Garden Court Chambers are funded to provide pieces of written advice (counsel's opinion).

Training

The organisations involved in the pilot also offer training courses. Courses are offered at special reduced rates for those holders of a General Civil Contract. Please contact the organisations direct if you wish to enquire about the training courses.

For further information about the Methods of Delivery Pilot, please contact Carol Taylor on 020 7759 0461 or e-mail carol.taylor@legalservices.gov.uk.

For Support in Immigration:

JCWI	0845 602 1020	Mon-Fri, 10am-1pm
Two Garden Court Chambers	020 7415 6350	Mon-Fri, 2pm-5pm
Tyndallwoods Solicitors	0121 246 9029	Tues & Thurs, 2pm-4.30pm

For Support in Employment:

NACAB Specialist Support Unit	0808 808 3681	Mon-Thurs, 10.30am-1pm & 2pm-4pm
Two Garden Court Chambers	020 7415 6360	Wed & Fri, 2pm-5pm

For Support in Housing:

Shelter	020 7505 4688	Mon-Fri, 9am-5pm (closed alternate Weds 9am-12.30pm)
Two Garden Court Chambers	020 7415 6340	Mon-Fri, 2pm-5pm

For Support in Human Rights* & Public Law:

Liberty / Public Law Project	0808 808 4546	Mon & Wed, 2pm-5pm Tues & Thurs, 10am-1pm
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* Please note: Criminal contract holders may also access this service.

For Support in Community Care & Health:

Tyndallwoods Solicitors	0121 246 9027	Tues & Thurs, 2pm-4.30pm
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Mental Health Initiative

A key aim of the Community Legal Service is to provide better access to quality assured information and advice, particularly for marginalised groups. As part of this initiative all London Mental Health Units have been supplied with details of organisations in their area which have a specialist Quality Mark in Mental Health, together with copies of the CLS leaflet (no. 22) on Mental Health. It is hoped that the information will be used by hospital staff, patients and their families. If you would like further information please contact Michael Adewolu, Senior Caseworker: Tel: 020 7759 1939, E-mail: michael.adewolu@legalservices.gov.uk

To order copies of the CLS Leaflet (no. 22) on Mental Health please contact the LSC Leaflet Line on: 0845 3000 343 Fax: 01732 860 270 E-mail: LSCLeafletline@direct.st-ives.co.uk.

Housing Possession Court Duty Scheme Pilot – Update

The application process and timetable of the above pilot has been revised. Following requests from applicants, the deadline for receipt of fully costed shortlisted bids was extended from 12 September to 28 September 2001. Additionally, it was felt that the selection process would benefit from an interview stage. Interviews with applicants started in October and will continue throughout November 2001. This will be the final stage of the application process and we aim to start letting contracts from November 2001. However, to avoid any disruption being caused to the pilot by the Christmas period, the contracts will be for duty schemes to start in January 2002. It remains the case that contracts will be let for 12 months in the first instance.

Any queries on the pilot should be directed to Marie Burton on 020 7759 0474 or Mary Burkinshaw on 020 7759 0478.

Family Advice & Information Networks

In Spring 2002 the Legal Services Commission will be implementing a project to examine the most appropriate and effective ways of providing information, advice and referral to people involved in divorce, separation and family breakdown.

The **Family Advice & Information Networks** project will be managed by the Family Law & Mediation department based at Gray's Inn Road.

The project team are currently preparing for a pre-pilot which will run for approximately six months, and which will involve testing the Family Advice & Information Networks concept in six pilot areas of the country. These areas have been selected on a range of criteria, including geographical location, demographics, and existing supplier base across a range of information and advice organisations. The areas are: Cardiff, Exeter, Milton Keynes, Newcastle upon Tyne, Nottingham and Portsmouth.

How will the Networks operate? The

Family Advice & Information Networks will build on existing best practice and existing services, enabling people and families experiencing relationship difficulties to access a range of services through a single point of reference. In the first instance this is likely to be a family law specialist. They will act as a manager for the client's case, offering direction through a range of appropriate options and services. The aim is that the first meeting will establish an overview of the client's case, both in terms of legal requirements and other issues associated with family breakdown, which are impacting on the client.

The networks will aim to:

- Provide tailored information to those seeking help and advice.
- Help to identify issues requiring legal action and advice
- Encourage the use of relationship counselling for those who want it
- Encourage the use of mediation services where appropriate
- Offer support to parents in talking to

children

- Offer support to children who need it, through referral to expert children's services.

The consultation document was issued in July 2001 and the consultation period ended on 19th October 2001. The feedback and comments have been extensive and generally very positive and the team would like to thank all those who took the time to forward their comments on the Paper.

All feedback will be carefully considered and the revised document will be available on the Legal Services Commission website www.legalservices.gov.uk by late Autumn 2001.

There will be continuing full and active consultation at all stages of the project.

There is a Family Advice & Information Networks e-mail address for any questions or comments which you may have. Please e-mail the team at fains@legalservices.gov.uk. The project team will be answering all e-mails on a weekly basis.

CLS Legal Information Leaflets

The complete series of Community Legal Service Leaflets are now available free of charge to the public and legal services suppliers. The Consumers' Association produced the leaflets, for the Legal Services Commission, in conjunction with independent experts. This was to ensure that the leaflets were independent and were consumer focused in their approach to various legal topics.

The following leaflets are available:

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|--|--|
| <ol style="list-style-type: none"> 1 Dealing with debt 2 Employment 3 Divorce and separation 4 Renting and letting 5 Buying and selling property 6 Losing your home 7 The Human Rights Act 8 Claiming asylum 9 Welfare benefits 10 Wills & Probate | <ol style="list-style-type: none"> 11 Dealing with the police 12 No-win, No-fee actions 13 Problems with goods and services 14 Medical accidents 15 Equal opportunities 16 Racial discrimination 17 Personal injury 18 Rights for people with disabilities 19 Community care 20 Education 21 Immigration and nationality 22 Mental health 23 Alternatives to court 24 Family mediation |
|--|--|

Some of the leaflets are also available in the following alternative formats:

- Leaflets 1-9 are available in Welsh (others will follow later), Braille and Audio versions
- Leaflet 18 'Rights for People with Disabilities' is available in Braille



and Audio versions

- Leaflet 8 'Claiming Asylum' should be available in Arabic, French, Farsi, Turkish, Albanian and Urdu by mid-November.

To order copies of the leaflets please contact the LSC Leaflet Line on: 0845 3000 343 Fax: 01732 860 270 E-mail: LSCLeafletline@direct.st-ives.co.uk.

If you have any queries or comments on the leaflets please contact Catriona Myers Wilson, Policy & Legal Department, Head Office, 85 Gray's Inn Road, London, WC1X 8TX or e-mail catriona.myers@legalservices.gov.uk.

Specialist Quality Mark - Consultation, Implementation and Audit Guidance in the Interim

Consultation on the Specialist Quality Mark (SQM) ended on 28 September 2001, and we received more than 70 responses. Overall, reaction to the draft standard was very favourable with many positive and constructive comments about the proposed requirements and also the consultation roadshows that had been held to present the changes. We would like to thank every organisation that took time to respond and attend our roadshows.

In order to give proper consideration to the comments made and to ensure that as much notice of changes is given as possible, the decision has been taken to delay implementation of the SQM until April 2002. Copies of the final version of the standard will be sent to

all SQM (formerly franchise) holders before that date. In the interim, we will be circulating information about some of the more significant changes that were suggested in consultation. After that we will consider how best to highlight the final requirements and key changes so that you are aware of what action needs to be taken, by when. Finally, we will also make available a summary of consultation comments on the LSC website (www.legalservices.gov.uk), once analysis of these is complete.

For immediate consideration, suppliers will be aware that there are a number of requirements which, when the SQM is introduced, are either reduced, simplified or removed from LAFQAS

(as shown on List 1 of the documents you received with the consultation pack). We have reviewed these current LAFQAS requirements to establish the audit approach to be taken between now and April 2002 whilst still auditing against LAFQAS. It should be noted that where the requirements have been removed, reduced or simplified, organisations are under no compulsion to change their systems to reflect this – you can choose to continue with your current systems and make changes when you review your systems to your usual timetable.

The following table shows the approach that will be taken with immediate effect when auditing these requirements:

SQM Req.	Requirements Reduced, Simplified or Removed	LAFQAS Req.	Audit Approach until April 2002
D2.1	No requirement to have a written procedure describing the induction process.	J1.3	Auditors will not look for a written procedure, but will discuss the process used with staff and seek evidence of compliance of the process through induction records.
D2.2	No requirement to have a written procedure describing the appraisal process.	J1.44	Auditors will not look for a written procedure, but will discuss the process used with staff and seek evidence of compliance of the process through appraisal records.
D2.3	No longer a requirement for an organisational training and development plan.	J1.5 (NFP J1.6)	Requirement for an organisational training and development plan will not be audited as long as training and development plans are in place for all members of staff (see glossary in SQM).
D3.2	Legal Competence standards – alternative route and exemption (Supervisor Standards)	L2.1	<p>Alternative routes to meet supervisor standards (route b and c for niche and new and emerging categories) are not yet available.</p> <p>Annexe A now shows the allowable breakdown of the 350 hours / year for Route A. Generally, this is 235 hours direct casework, with the remaining 115 hours comprised of file review, documented supervision, research and publications etc. Some areas of law (Crime and Public Law) are different - you will need to refer to Annexe A in the SQM document.</p> <p>Where an organisation now meets the 350hrs under the new arrangements the 350hr breakdown can be used.</p>

D3.4	Legal Training	L2.3	3 courses a year requirement stays in place until April 2002. After this alternative ways of meeting the standard as described in the SQM will be introduced.
D4.1/2	No requirement to document systems of work allocation and supervision	L4.1	Auditors will not look for a written procedure, but will discuss the process used with staff to evidence compliance of the process.
D4.5	Updating legal information to staff	L2.4	Auditors will require you to demonstrate how you have become aware of any changes in the law – it need not be through an external training course.
E2.1b	Files must reflect range of work conducted by individual – File Review – the minimum requirement to review 3 files where this is all the fee earner holds is removed.	M1.2	File review sample sizes will not be audited differently until April 2002 when the minimum sample sizes as shown in the Guidance document are introduced.
E2.5	Review records – File Review – records can be held centrally or on personal files.	M1.5	Auditors will not seek a central record from now as long as file review records are held on personal files.
F1.1	No requirement to have a written procedure describing the process for recording and agreeing basic information at the start of a case.	P1.1	Auditors will not look for a written procedure, but will discuss the process used with staff and evidence compliance of the process through review of files.
F1.1	No requirement to give the name of case supervisor in outset letter.	P1.1.8	Removal of this requirement is effective now.
F1.1	Requirement to confirm information in writing now limited to case-files only; not one-off advice with immediate effect.	P1.2	Change to this requirement is effective now for one-off advice – see definitions of what is a case, p 81 SQM
F1.2	No requirement to have a written procedure describing the process used for recording and agreeing further information and confirmation in writing (during the case).	P1.2	Auditors will not look for a written procedure, but will discuss the process used with staff and evidence compliance of the process through review of files.
F2.1	No requirement to have a written procedure describing the process used for complex case plans.	S1.1	Auditors will not look for a written procedure, but will discuss the process used with staff and evidence compliance of the process through review of files where appropriate.
F3.1	No requirement to have a written procedure describing the process used to inform the client in writing at the end of the case.	T1.1	Auditors will not look for a written procedure, but will discuss the process used with staff and evidence compliance of the process through review of files.
F5.2	No requirement to have a written procedure describing the process used to select approved suppliers. Organisations can maintain either a central register of suppliers with evidence of assessment criteria or show that suppliers have been assessed by another organisation (e.g. AVMA)	U1.1 U1.1.1	Auditors will not look for a written procedure, but will discuss the process used with staff to evidence compliance of the process, and review the central record. New routes to 'approve' suppliers introduced from now should you wish to use them.

G3.1/2	No requirement to have a written procedure describing the process used to appoint the Quality Representative and update Quality Processes	W1.2	Auditors will not look for a written procedure, but will discuss the process used with staff to evidence compliance of the process.
N/A	Specific requirements to obtain 2 CPD points annually in Welfare Benefits training removed.	B	Effective from now, however, individual competence of caseworkers must be reviewed by supervisors – training implemented where required (i.e. where there has been a change in WB law, training needs must be considered).
N/A	Specific requirements for awareness of Family Mediation removed	C	Effective from now. Supervisors must ensure that where necessary there is an awareness of mediation and that it is considered in overall training needs.

Court Service Awarded Quality Mark

Over 234 Courts have been awarded the CLS Quality Mark as Information Points. The public visiting courts will be signposted to the most appropriate legal help and will have access to the CLS Directory.

This takes the total number of Information Point applications to approximately 1400 nationwide.

No October 2001 CLS/CDS Directory

The Legal Services Commission agreed that the CLS/CDS Directory would not be published in October 2001. As the new criteria to appear in the Directory would not be reflected in an October 2001 version, and given the high cost of producing each edition, the Legal Services Commission felt it would be more appropriate to concentrate its resources on further enhancing the Directory, for publication in April 2002. We will continue to take on board users feedback in order to improve it. The directory on the CLS website (www.justask.org.uk) and the CLS Directory Call Centre (0845 608 1122), will continue to be updated daily.

Mystery Shopping Pilot for Information Points in Eastern Region

The mystery shopping pilot project for Quality Marked Information Points is now running in the Eastern Region. The pilot is being conducted throughout August to December and will involve three visits to each place. Information Points will be assessed by trained mystery shoppers posing as members of the public seeking information or advice.

The shopper will find out how the service performs in relation to a tailor-made checklist. This will cover compliance with the Information Level Quality Mark Standard including

whether the CLS Directory and CLS logo are on display and whether the client is offered advice. The findings will be recorded.

Following completion of the pilot, the results will be reported back to the organisations and there will be a national programme of mystery shopping covering Self-Help and Assisted Information Points from April next year.

For further information on the mystery shopping programme contact Janene Mulvaney on 020 7759 0397, or e-mail janene.mulvaney@legalservices.gov.uk.

Client Feedback Questionnaire Published

The pilot project has now been completed and the deadline for participants to return their evaluation forms has passed. Participants were invited to comment on the format and content of the questionnaire, report on response rates and use of the client feedback analysis tool.

Organisations were keen to provide feedback on their experience of the questionnaire and the analysis tool. Of the 167 organisations involved in the pilot, 67% returned their evaluation forms, the remainder of participants already had their own methods of assessing client satisfaction.

The results of the pilot are now being compiled and the results will be published on the LSC website.

The final version of the questionnaire was sent to all General, General with Casework, and Specialist Quality Marked suppliers at the end of October 2001 and copies are available from regional offices and will be on the LSC website. The new requirement 'AA' (Client Satisfaction), contained in Section G of the Quality Mark, will be audited from April 2002.

For further information, contact Janene Mulvaney on 020 7759 0397, or e-mail janene.mulvaney@legalservices.gov.uk.

Quality Mark Standards Timetable

The development of an integrated set of Quality Marks applicable to all levels of legal information, advice and types of delivery is progressing. To date the Quality Mark for Information and General Help services, additional requirements and guidance for telephone services and the Quality Mark for Websites have been published. Other Quality Marks for Specialist Help, Mediation and the Bar are being (or have been) consulted on.

The table below outlines the key dates for the implementation of the Quality Mark standards. Regular updates will be available in subsequent issues of *Focus*.

Standards	Consultation period	Publication date	Date effective	Commitment date	Application deadline (to be included in the April '02 CLS Directory)
Quality Mark - Information	Autumn 1999	Apr 2000	Apr 2000	Oct 2000	31 Oct 2001
Quality Mark - General Help	Autumn 1999	Apr 2000	Apr 2000	Oct 2000	31 Oct 2001
Quality Mark - Specialist Help	Ended 28 Sept 2001	Feb 2002	Apr 2002	n/a	n/a
Additional Requirements and Guidance for Telephone Services	Summer 2000	Dec 2000	Dec 2000	1 Aug 2000	tba
Quality Mark for Websites	Winter 2000	Oct 2001	Jan 2002	n/a	n/a
Quality Mark Standard for Mediation	Ends 2 Nov 2001	Jan 2002	Jan 2002	n/a	Organisations that have passed the Family Mediation Quality Assurance standard will be passported, no deadline has been set for Community Mediators
Quality Mark for the Bar	Ends 30 Nov 2001	Jan 2002	Jan 2002	n/a	n/a
Guidance on the Quality Mark for Outreach advice	Spring 2001	tba	tba	tba	tba
Quality Mark for Support Services	To be consulted on	tba	tba	tba	tba

CLS Quality Mark Mapped Against Other Standards

Since the launch of the Community Legal Service in April 2000, the Legal Services Commission has taken steps towards ensuring that the CLS Quality Mark complements existing relevant organisational standards. The mapping of standards will allow organisations to identify common features between their current standards and the

Quality Mark, and to determine what additional policies or procedures they will have to complete in order to meet the Quality Mark. It will also prevent these organisations from duplicating their efforts when applying for the Quality Mark. This project has involved extensive work with representatives from each of the major network organisations to map their standards

against the CLS Quality Mark. Mapping of standards at the Specialist Level will commence now that the consultation period on the Specialist Quality Mark has closed.

For further details please contact Alison Brown by e-mail at alison.brown@legalservices.gov.uk or by telephone on 020 7759 0379.

Want to Take Advantage of New Technology?

The LSC already has one system allowing you to enter civil contracting forms (Controlled Matter Start Forms and Controlled Matter Report Forms) via the Internet.

SPAN-EDI has a steadily growing number of users and has the major benefit of triggering your monthly payment as soon as you submit the report. No paper, no queries from us, no delays in the post. And you have until the 20th of the month to submit reports.

A criminal contracting version - **SPOCC online** for CDS6 forms - is currently in a pilot phase and will be available to all early in 2002. The new and improved systems is better, faster and easier to use.

SPOCC online is now planned to be available for registration from February 2002. We will be adding more suppliers to the pilot system from November, so if you are interested please contact: sharon.penfold@legalservices.gov.uk.

Find more about SPAN-EDI at: www.legalservices.gov.uk/ebusiness (Note that SPAN-EDI will be upgraded to become SPAN *online* in February, so you will be able to enter both SPAN and SPOCC forms through the same system).

Many other ways of communicating electronically are being investigated by the LSC. These will speed up the exchange of information and queries, to and from the LSC. Look out for further announcements, and expect more information from your contract managers about new services.

Getting the best out of IT

To make the most effective use of your technology and our Internet systems, there are two key areas which it can be difficult to get objective advice on, security and cost. Some brief pointers

are given below, but you will need to seek advice from expert sources.

Security

The LSC has developed strong levels of security to protect your information, but your system security is also vital.

- Sending confidential information via e-mail involves a risk. **Encryption** has to be seriously considered.
- **Firewalls** are vital to stop a very skilled and extensive collection of hackers getting into your systems. One danger is that your Internet server could be hijacked to send out 'spam' or junk e-mails (or far worse).
- **Digital signatures** are also important for confidential and binding agreements. However you should be aware that it is possible to alter details in documents and e-mails to show different dates or people's names.
- Most computer crime is committed by people within the organisation. Keeping passwords confidential, and not leaving machines logged in when not at your desk, all help to maintain basic levels of security.

Return on Investment (ROI)

Investment doesn't have to be huge - it needs to be right. Real benefits and a good return will only result if the right business planning is behind it. A clear idea of what the firm needs to do is essential before buying any new technology. You need to be aware of conflicting demands: the need to establish a foundation that will last for at least a few years; systems which will cater for your immediate needs - and are capable of being upgraded as business and technology change.

Further information

Sharon Penfold, e-Business Project Manager. Tel: 020 7759 0132. e-mail: sharon.penfold@legalservices.gov.uk.

Partnership Innovation Budget

On 7 September the LSC announced plans to fund local innovation projects worth £16m over the next three years. Bids were invited earlier in the year for initiatives intended to improve the delivery of legal services in innovative ways. Approved projects will be part-funded from the Partnership Innovation Budget (PIB) announced by the Lord Chancellor in December 2000 as a key element in developing the Community Legal Service.

All the projects have been sponsored by local Community Legal Services Partnerships (CLSPs) and have funding from other sources as well as the PIB itself. 228 proposals were submitted through CLSPs after the LSC invited bids for funding in May 2001, 64 have been approved in principle.

Proposals cover a wide range of ideas for example, a virtual law centre, projects to work with health care professionals to bring legal advice to hard to reach groups, and a scheme for increasing the availability of trained lawyers in specific categories of social welfare law. The full list of approved projects is available on the LSC website.

Steve Orchard CBE, LSC Chief Executive, said: "I am delighted that we are able to cement relationships with our local partners though working together on these innovative projects. I hope these projects provide opportunities to explore a wide range of ways of enhancing the provision of legal services that will bring long term benefit to the Community Legal Service and those most in need of help."

A further round of PIB bids will be announced next year. For more information contact Helen Perkins in the Civil Policy Team on 020 7759 0459.

Immigration Advice Event in the Eastern Region

On 13 September 2001, the Eastern Region built on earlier events by hosting its first multi-agency action-planning event, focusing on immigration advice - the next step in its move towards creating a regional strategy ensuring access to justice for asylum seekers.

Sheila Hewitt, Chair of Eastern Legal Services Committee, welcomed solicitors, not-for-profit advice providers, refugee support groups, voluntary organisations and other participants, saying that the LSC was glad to be able to provide a forum for best practice to be shared. Speakers from the LSC, East of England Consortium for Asylum Seeker Support, Luton Law Centre, Immigration Advisory Service, and local solicitor, Zoe Stevens, developed the theme "emerging challenges, visions of the future". The morning session



Attendees at the Eastern Region Immigration Event with Sheila Hewitt, Chair of the Eastern Legal Services Committee (centre)

culminated in a presentation by Ruth Wilson, independent researcher and author of the Joseph Rowntree Charitable Trust report "Dispersed". Ruth presented the report's key findings and recommendations, which highlight the importance of access to good quality immigration advice. Each participant received a free copy of the report.

In the afternoon, a series of workshops provided an opportunity for in-depth discussion on "Mapping need, meeting demand", "Sharing immigration advice best practice", "Building access to advice", and "Towards a regional strategy". Participants generated ideas and action points, and many volunteered for a regional steering group.

The regional office will continue to work with partners in taking a regional strategy forward.

For more information and copies of the event report, contact Loretta Hurley, Regional Planning & Partnership Consultant, on 01223 417936 or e-mail loretta.hurley@legalservices.gov.uk. The executive summary of "Dispersed" can be downloaded from www.jrct.org.uk.

Civil Guidance and Development

*Community
Legal Service*



Financial Conditions for CLS Funding by the LSC

Reproduced below is an advance copy of the amended guidance on the assessment of financial eligibility for CLS funding from 3 December 2001, as it will appear in the December update of the LSC Manual.

PART C FINANCIAL ELIGIBILITY

1. Introduction

- The following provides detailed guidance to suppliers on the assessment of financial eligibility for the following levels of service for which the supplier is responsible for the assessment of financial eligibility.

Non Contributory

- Legal Help;
- Help at Court;
- Legal Representation before immigration adjudicators and the Immigration Appeal Tribunal (Controlled Legal Representation);
- Family Mediation;
- Help with Mediation; and

Contributory

- Legal Representation in Specified Family Proceedings i.e. family proceedings before a Magistrates' Court other than proceedings under the Children Act 1989 or Part IV of the Family Law Act 1996.

Legal Representation other than the categories above is not covered in this guidance as the Commission is the assessing authority in such cases. To aid transparency in the decision making process however details of the key guidance given to the Commission's assessment officers is provided in Volume 3D of this manual for information.

- The financial limits and method of assessment for the various levels of service are fixed in the Community Legal Service (Financial) Regulations 2000. Those regulations have been substantially amended under the Community

Legal Service (Financial) (Amendment No.3) Regulations 2001. References to regulations in this guidance are references to those amended regulations unless otherwise stated. This guidance constitutes the Commission's guidance in accordance with Regulation 9 of the Community Legal Service (Financial) Regulations 2000.

2. How are the means assessed?

- The basis of means assessment is the same across all levels of service for which the supplier is the assessing authority. There are both income and capital limits which are different for different levels of service. These limits are set out in Regulation 5 and are summarised below (see paragraph 2C-003).
- Under Regulation 3 some cases are exempt from the requirement to assess the client's means, these are:
 - Services consisting exclusively of the provision of general information about the law and legal system and availability of legal services.
 - Initial legal advice consisting of such amount of Legal Help and Help at Court authorised under contract to be provided without reference to the client's financial resources. It should be noted that of the general civil contracts, only the "Not for Profit" sector version contains such authority.
 - Legal Representation in Special Children Act and related proceedings.
 - Legal Representation in proceedings before a Mental Health Review Tribunal under the Mental Health Act 1983, where the client's case or application to the tribunal is, or is to be, the subject of the proceedings.
 - Legal Representation for applications pursuant to sections 3(2) or 14(2) of the Child

Abduction and Custody Act 1985 and for the registration of or the refusal to register a foreign maintenance order or the registration of a judgement.

- Such services as are funded through grants under section 6(3)(c) of the Act unless the conditions of grant state otherwise.
- The provider of the service has, as a first step, to determine the client's financial eligibility on information provided by the client. This should be done on the requisite form provided by the Commission.
 - The forms must be completed in full and sufficient information held on file to allow the assessment to be checked if necessary. See also General Civil Contract Rule 2.5.
 - Reasonable steps, for instance requesting sight of a pay slip, must be taken to verify the information provided by the client. It is good practice to emphasise to clients the importance of giving a full and fair picture when they are applying for funding. See General Civil Contract Rule 2.5 for the detailed requirements as to evidence.

3. Does the client qualify financially?

- For all levels of service the client's gross income must be £2000 per month or less. If the client's gross income exceeds this level then they are ineligible for assistance and the application should be refused. This makes eligibility far more transparent than under previous regulations. A client who is directly or indirectly in receipt of Income Support or Income Based Jobseeker's allowance automatically satisfies the gross income test for all levels of service. Gross income for this purpose means the total income from all sources before the deduction of tax, National Insurance or any other allowances or disregards. This gross income cap acts as a filter and a client

- whose gross income is below £2000 per month must then have their disposable income and disposable capital assessed in order to determine eligibility.
2. Both disposable income and disposable capital must be within the eligibility limits in force at the time the application form is signed. Disposable income and capital refer to the income and capital after prescribed allowances and disregards have been applied. If either disposable income or disposable capital are above the limits, the client will not be eligible for funding and the application must be refused.
 3. A client who is directly or indirectly in receipt of Income Support or Income Based Jobseeker's allowance automatically satisfies the disposable income test for all levels of service. Such applicants will also automatically satisfy the disposable capital test for Family Mediation, Help with Mediation, and Legal Representation in Specified Family Proceedings. There is no such 'passporting' on disposable capital for Legal Help, Help at Court and Legal Representation before Immigration Adjudicators and the Immigration Appeal Tribunal; clients for these levels of service must have their capital assessed in all cases.
 4. The relevant limits for disposable income and capital are set out below for each level of service.
 5. For Legal Representation in Specified Family Proceedings the upper capital limit may be exceeded if the costs incurred under the certificate are likely to exceed £5,000. Such cases must be referred to the Commission for authorisation prior to the granting of funding.
 6. Clients who are/were funded for Family Mediation automatically qualify financially for Help with Mediation in respect of that mediation. Clients who are seeking Help with Mediation but who did not receive funding for Family Mediation should have their financial eligibility assessed by the applying solicitor in accordance with the eligibility rules for Family Mediation outlined above and the guidance that follows. There are no contributions with Help with Mediation. The applying solicitor will confirm financial eligibility when submitting the application to the Commission who will decide whether funding for Help with Mediation should be approved.
 7. For Legal Help, Help at Court, Controlled Legal Representation, Family Mediation, and Help with Mediation provided both disposable income and disposable capital are within the limits no contribution can be called for.
 8. For Representation in Specified Family Proceedings a client may have to pay a contribution from income or capital or both as set out below.

Calculating contributions for Legal Representation in Specified Family Proceedings

9. The only level of service for which contributions can be sought is Legal Representation in Specified Family Proceedings. However provided that the client's gross income is below the prescribed limit (set out in section 3 paragraph 1 above) then clients with a disposable income of £259 or below per month will not need to pay any contributions from income but may still have to pay a contribution from capital.
10. A client with disposable income in excess of £259 and up to £683 per month will be liable to pay a monthly contribution of a proportion of the excess over £255. Such contributions will be assessed in accordance with the following bands depending on the level of the assessed income.

So if disposable income is £295 per month, the contribution will be in band A, the excess income is

Level of Service	Income Limit	Capital Limit**
Legal Help, Help at Court, and Legal Representation before Immigration Adjudicators and the Immigration Appeal Tribunal	Gross income not to exceed £2000 per month Disposable income not to exceed £601 per month Passported if in receipt of Income Support or Income Based Job Seekers' Allowance	£3000 No passporting capital must be assessed in all cases
Family Mediation, Help With Mediation, and *Legal Representation in Specified Family Proceedings i.e. family proceedings before a magistrates' court other than proceedings under the Children Act 1989 or Part IV of the Family Law Act 1996	Disposable income not to exceed £683 per month Passported if in receipt of Income Support or Income Based Job Seekers' Allowance Gross income not to exceed £2000 per month	£8,000 Passported if in receipt of Income Support or Income Based Job Seekers' Allowance

* may be subject to contribution from income and/or capital (see section 3 paragraphs 9 to 12 below)

** The capital limit is a single limit as there are no longer additional capital limits based on number of dependants.

Band	Monthly disposable income	Monthly contribution
A	£260 to £380	$\frac{1}{4}$ of income in excess of £255
B	£381 to £505	£31.25 + $\frac{1}{3}$ of income in excess of £380
C	£506 to £683	£72.91 + $\frac{1}{2}$ of income in excess of £505

£40 and therefore the monthly contribution will be £10 per month.

If the disposable income was £395 per month, the contribution would be in band B, the excess income would be £15 (£395 - £380), and the monthly contribution would therefore be £36.25 i.e. £31.25 + £5.

If the disposable income was £525 per month, the contribution would be in band C, the excess income would be £20 (£525 - £505), and the monthly contribution would therefore be £82.91 i.e. £72.91 + £10.

11. A client whose disposable capital exceeds £3,000 is required to pay a contribution of either the capital exceeding that sum or the likely maximum costs of the funded service whichever is the lesser.
12. Contributions should be calculated by the supplier at the beginning of the case. Such contributions are due from the date that funding is approved until either the proceedings are concluded or funding is withdrawn. The supplier and client may agree on the most convenient method for making contribution payments. The supplier should bill the Commission for the net cost of the work undertaken in accordance with General Civil Contract Specification Rule 6.2. This will be the amount of the costs less the amount of contribution due from the client (whether or not paid) and the amount of the statutory charge (if any).
13. There are no powers to re-assess the contribution due to a change in the client's financial circumstances but an assessment can be amended where an error in the original assessment occurred or new information comes to light

which is relevant to the assessment (see also sections 10 and 11 below)

4. General Principles of Assessment

Period of Calculation

1. The period of calculation when determining income is the calendar month up to and including the date of the application for funding. For example if the application is made on 8 December then the computation period will commence on 9 November 2001. In practical terms when income and/or allowances do not vary month on month then the relative amounts can be taken by reference to the most recent month's or week's payments e.g. the most recent monthly wage slip.

Aggregation of Means

2. Regulation 11 contains a general provision that the income and capital of the client's partner must be taken into account and added to those of the client. Partner is defined as anyone (including a person of the same sex) with whom the applicant lives with as a couple, and includes a person with whom the person concerned is not living but from whom he is not living separate and apart.
3. This means that just because the client and their partner are physically separated i.e. they live in separate properties, does not necessarily mean that they are living separate and apart for the purpose of the regulations. The fact that both terms are used (i.e. "separate" and "apart") means that more than mere physical separation is required if the partners' means are not to be aggregated. Living separate and apart is well defined

in the context of matrimonial law and refers to a breakdown in the relationship. In other words, the parties must be living separate and apart because at least one of them regards the relationship as at an end and not due purely to financial or practical reasons e.g. job location or the fact that one of the parties is in prison, hospital, residential care etc. (see also guidance volume 2 Part A section 14 para MH2.5 in the case of Mental Health category cases). In many asylum cases there may be occasions where the client is physically separated from their partner due to the partner still being abroad, but the relationship is still intact. In such cases the normal rules of aggregation still apply and the client and their partner will still be treated as a couple for aggregation purposes. However in such cases it may be necessary to consider whether the assets and income of the partner, together with any of the client's assets that have been left behind, are currently truly 'disposable' as far as the client is currently concerned. In such cases the supplier should make reasonable enquiries of the client to determine to what extent that income and those assets are available. If it is decided in an individual case that the partner's income and assets are not available to the client and therefore excluded from the assessment then it would not be appropriate to make any dependant's allowance for the partner (see section 6 below).

4. Further in general the term separate and apart refers to physical separation i.e. the parties are living in separate properties. However, this may not always be the case. It is possible for former partners to live separate and apart in the same household. This would be the case if they regarded their relationship as at an end but remained living in the same property simply waiting for the property to be sold before going their separate ways.
5. In addition for unmarried couples, although not conclusive it would

be usual for there to be some evidence of a pooling of financial resources and they must regard themselves as a couple. It would not be appropriate to aggregate the resources of say a brother and sister, or flatmates who are not living as a couple. Further evidence of living as a couple may include joint care of a child of the couple. Issues may arise where a couple are married according to English law but have not undergone their traditional cultural ceremony and thus are not and never have been actually living together. In the eyes of each other and their family and community they are not yet married. In such cases it would be appropriate to treat them as though they were not married and therefore to not aggregate the resources in the assessment.

6. However, there is an important exception to this rule and means are not aggregated where the partner has a contrary interest in the matter in respect of which the client is seeking funding.

Contrary interest in the most obvious sense will mean that the partner is the opponent or potential opponent in proceedings. However, this will not necessarily be the case - the client and their partner could in theory have a contrary interest in a claim made by a third party, such as in the case of a mortgagee seeking possession where undue influence by the partner may be a defence.

In disputes between divorcing or separating couples, whether as to children or property, one partner will by definition have a contrary interest to the other. However, if a client has left his or her spouse and has gone to live with a new partner as a couple in the same household, then the means of the new partner should be aggregated with those of the applicant.

5. Assessing Gross Income

General

1. If the client is directly or indirectly

in receipt of income support or income-based Jobseekers' Allowance, they qualify automatically on income (by virtue of Regulation 4(2)). The client is therefore passported if their partner is in receipt of one of those benefits and the client is included in the partner's benefit claim. Where the partner is in receipt of a passported benefit as a single person (e.g. where the partner is the same sex as the client) then the client is not passported for funding purposes. In such cases the client's means should be assessed and the partner's income support included in the assessment as a source of income for the couple. Working Families Tax Credit and Disabled Person's Tax Credits are no longer passporting benefits. In such cases the client's means should be assessed and the net amount of tax credit received each week included in the assessment as a source of income.

2. For Legal Help, Help at Court and Legal Representation before Immigration Adjudicators and the Immigration Appeal Tribunal, clients in receipt of the above benefits must still have their disposable capital assessed to see if they are eligible.
3. "Income" means the total income from all sources which a person has received or may reasonably expect to receive in respect of the calendar month up to and including the date of the application for funding. 'Gross income' means income before any deductions for Tax, National Insurance or any other deductions made by the employer. In determining gross income there are no deductions or disregards and all income must be included whether from employment, state benefits or elsewhere, e.g. assistance from friends or relatives.
4. To calculate calendar monthly income, multiply by 52 and divide by 12 if payment is weekly and multiply by 13 and divide by 12 if payment is four weekly.

Erratic Income (including the self employed)

5. Where a client's income is erratic (because of bonuses, commission, nature of employment or payment etc.) they may be ineligible for funding one month, but eligible the next as it is the income a client has received or can reasonably expect to receive in respect of the calendar month prior to the application that is taken into account. Where a client has received an annual bonus in the period of calculation then this should be treated as capital.
6. As long as there is no question of the client having deprived themselves of income (see section 8 below) with a view to qualifying, then there would be nothing to stop them from delaying their application for funding until the next month. In these situations, the client should be made aware of the basis of the assessment and the effect of good/bad months. It will be for the client to decide if they wish to proceed immediately on a private fee paying basis if on the previous month's income they are ineligible.
7. It is important to remember that this situation differs from deprivation of income or capital (see section 8 below). This is not allowed and the resources that have been disposed of must still be taken into account in the assessment.
8. The income that should be taken into account should include any that is due or will become due for the period of calculation. If a client has become entitled to money in the previous month which he has not yet received (e.g. he has earned a commission), then that income too must be included in the assessment.
9. In relation to parental contributions to students or student loans these should be treated as income by taking the annual student loan or contribution obtained by the student and dividing by 12.
10. In the case of a self-employed client, it is the level of drawings

taken from the business for personal use that will count as the client's income. There are no special deductions for the self-employed. If no drawings have been taken in the last month, or the most recent month's drawings appear low then consideration should be given as to whether the client has done so with a view to deliberately reducing their income for the purpose of qualifying for funding. In such cases the normal monthly drawings should be established and included in the assessment. If the client states that they have not taken any drawings from the business for their personal use e.g. because it is a new business then enquiries should be made of the client to determine how they have met their day to day living costs during the relevant period. Any income or assistance that has been made available to the client from other sources e.g. assistance from friends or relatives with bills, should be treated as income and included in the assessment.

“No income” cases

11. Situations may arise, especially in the family/matrimonial context, where a client has not received or become entitled to any direct income for part or all of the preceding month. This may be so where the client is living separate and apart from their spouse in the same home, with the client not being employed but the spouse still meeting all outgoings. In some cases particularly where the change occurred during the past month it might not be appropriate to base the assessment on the income received for the whole of the previous month. In such cases an estimate should be made of what the client is likely to receive in the next calendar month based on the income received since the change took place. In some case that will mean the client can be assessed as having no income. If, however, the client is receiving money from the partner, or a friend to pay bills or as maintenance, this must be shown as income.

6. Assessing Disposable income - Allowances against income

(figures are monthly unless otherwise stated)

Disregarded income

1. Certain state benefits are disregarded when determining disposable income, but such income must be included in the determination of gross income as outlined above and the application of the gross income limit. The disregarded benefits are:
 - (a) The following payments under the Social Security Contributions and Benefits Act 1992 namely:
 - Disability living allowance;
 - Attendance allowance paid under Section 64 or Schedule 8 of the Act;
 - Constant attendance allowance paid under Section 104 as an increase to disability pension;
 - Invalid Care Allowance;
 - Severe Disablement Allowance;
 - Council Tax Benefit;
 - Housing Benefit
 Any payment made out of the social fund.
 - (b) Any back to work bonus under Section 26 of the Jobseekers Act 1995;
 - (c) Payments under the Community Care (Direct Payments) Act 1996;
 - (d) Exceptionally Severe Disablement Allowance paid under the Personal Injuries (Civilians) (Amendment) Scheme 1983;
 - (e) War and War widows pensions paid under the Naval, Military, Air Forces etc (Disability & Death) Service Pensions Order 1983
 - (f) Independent Living Fund Payments under the Social Security Contributions and Benefits Act 1994
 - (g) any fostering allowance paid under the Children Act 1989 (to the extent that it exceeds the relevant dependants allowance made under regulation 20(2)(b) see also para 2 below)

Dependants' allowances

2. In determining the disposable income the following deductions can be made in respect of the client's dependants

£131.25 is allowed against income if the applicant has a partner. Note this allowance applies provided the couple are living together, regardless of whether there is a contrary interest but a couple should not be treated as living together if they have been treated as living separate and apart for aggregation purposes.

£143.18 is allowed for each dependent child (including a foster child) or dependent relative of the applicant who is living in the same household and is aged 15 or under.

£146.65 is allowed for each such dependant aged 16 or over.

3. It is the age of the child at the beginning of the period of calculation that determines which rate is appropriate i.e. the age at the start of the calendar month in question.

Tax and National Insurance

4. The following sums should be deducted from total income when calculating the disposable income for the calendar month:
 - (a) Any income tax paid on that income. For the self-employed, a notional income tax figure should be based on 1/12th of the client's income tax liability for the preceding year (i.e. of their last income tax bill). If the client either does not have the information (e.g. because they have not submitted any returns), or because no such payments have been assessed yet e.g. new business, then no allowance should be made.
 - (b) Any National Insurance contributions paid or payable on that income under Part I of the Social Security (Contributions) Act 1992. For the self-employed, a deduction of £8.67 per month can be

made for National Insurance contributions (the class 2 payment).

Maintenance paid by the client

- In calculating disposable income an allowance can be made for Bona fide maintenance payments to a spouse or former spouse, a child or relative, who is not in any such case a member of the household of the client. An allowance can be made whether the payments are being made under a court order, CSA ruling or voluntary agreement. Only payments actually made can be taken into account. This allowance should be the expenditure incurred during the month of calculation. In theory there are no set limits to the amount that can be allowed under this heading but evidence of payments should be sought where the amount claimed appears unreasonable. Maintenance payments could include simply paying an ex-partner's household bills or mortgage.

Housing Costs

- In calculating disposable income an allowance can be made in respect of mortgage or rent payable for the period of calculation in respect of the client's main dwelling. The amount allowed should be net of housing benefit i.e. what the client actually pays from the assessed income (housing benefit being one of the disregarded benefits for the purposes of calculating disposable income). Council Tax, water rates, insurance premiums and other associated housing costs are not allowable deductions in the assessment.

For clients with no dependants i.e. where no dependants allowances have been made (see section 6 paragraph 2 above) the maximum monthly allowance in this respect will be £545. No excess over the amount can be allowed. Where any dependants allowance(s) have been made then the rent or mortgage repayments can be allowed in full.

Mortgage repayments include the

monthly premiums of any linked life insurance/endowment policies, PEPs, or other instruments which will be used to repay the capital sum borrowed.

- Where a client indicates they are paying board and lodging then only the amount in respect of accommodation can be allowed. In those cases where informal arrangements exist, for example lodging with a close family member, and the amount in respect of accommodation cannot be specified by the client then it should be assumed that half of the declared board and lodging element is for accommodation, the remainder is assumed to be for food and other incidentals not covered by the regulations.
- Where the client states expenditure on housing costs which is more than one third of their gross income then documentary evidence (e.g. copy of bank statement, mortgage statement, or rent book) to support the figures stated should be obtained.

Employment related expenses

- Where the client or partner is assessed as receiving a wage or salary i.e. not the self employed, a deduction of £45 for work related expenses should be made in respect of each person so assessed. This is a set figure, and it is therefore unnecessary to obtain details of actual expenses, but see also childminding below.
- Where a client or their partner is assessed as receiving a wage or salary a deduction can be made in respect of actual monthly expenditure on childminding charges incurred as a result of that person's absence from home by reason of his employment. Unless there are exceptional circumstances e.g. disability of the child, it would only be reasonable to make such a deduction in respect of a dependant child aged 15 or under. It would also be unreasonable to make such an allowance where one or other of a couple is available to look after

that child. Where the client states expenditure on child care which is more than £600 per month for someone working full time i.e. 35 hours per week (or part-time equivalent) then documentary evidence (e.g. copy of bank statement, copy of agreement/contract with childminder) to support the figures stated should be obtained.

- Pension contributions (of any description), union fees, professional subscriptions, and any other expenses which the employer may deduct from income at source are not allowable deductions in the assessment of disposable income.

7. Assessing Disposable Capital

- In the case of Family Mediation and Representation in Specified Family Proceedings, those in receipt of income support or income-based Jobseekers' Allowance qualify automatically on capital. In all other cases disposable capital must be assessed.
- "Capital" means the amount or value of every resource of a capital nature, including all savings and any other capital assets (other than the exceptions listed below). Capital derived from a bank loan or borrowing facilities should be taken into account. There are special rules about assessing the value of the client's dwelling and these are set out below.
- The only items of capital which are not taken into account are the following:
 - Household furniture and effects (unless of exceptional value);
 - Clothes;
 - Tools and implements of trade;
 - Back to work bonus received under Section 26 of the Jobseekers' Act 1995;
 - Payments under the Community Care (Direct Payments) Act 1996;
 - capital value of the client's business in the case of the self-employed;

- (g) capital held in trust funds to which the client cannot access.
- (h) cars or other vehicles in regular use (unless of exceptional value)

The client's share of joint assets when the partner is the opponent

4. There will often be assets which are jointly owned by the parties or to which both parties have access. In deciding what should be taken into account for the client a key question is whether the client has access to or control of the asset. For example, if the client has free access to money in a bank account, then that money should be included in the client's assets. There is, however, some scope for discretion. If the client establishes that there is an agreement or understanding about certain assets being split equally, then it would be reasonable only to take into account half the value of the asset.

Subject matter of the dispute

5. Under the regulations the value of the subject matter of any claim in respect of which a person is seeking funding is required to be left out of account in computing the capital of that person.
6. This situation only applies to capital assets. It is a very important rule in the context of family/matrimonial cases. It means that assets which are being fought over in relation to the dispute for which funding is required must not be taken to account when assessing capital.
7. Sometimes it will be obvious that a particular asset is in dispute between the parties, but in the family/matrimonial context the point is more difficult to determine if parties seek funding at an early stage and there are a range of assets which may or may not be at issue. The general approach should be that an asset should not be disregarded as the subject matter of the dispute if the other party has made no specific claim against it and if in practice it is available to the applicant to use as his or her own and could be used to fund legal costs.

8. If the funding is for services on issues about a child/children, then assets cannot be treated as subject matter of the dispute, even if the parties are litigating or otherwise in dispute over those assets (although the assets may be disregarded under any other appropriate heading for example joint assets when the partner is the opponent, and the means of partners are unlikely to be aggregated as the parties are living separate and apart).

Value of property

9. Provided it is not disregarded as subject matter of the dispute, a client's main or only dwelling in which he resides must be taken into account as capital subject to the following rules:
 - (a) The dwelling should be valued at the amount for which it could be sold on the open market;
 - (b) The amount of any mortgage or charge registered on the property must be deducted but the maximum amount that can be deducted for such a mortgage or charge is £100,000; and
 - (c) The first £100,000 of the value of the client's interest after making the above mortgage deduction must be disregarded

Example:

The applicant has a home worth £215,000 and the mortgage is £200,000:

Value of home:	£215,000
Deduct mortgage up to maximum allowable:	£100,000
Deduct exemption allowance:	£100,000
Amount to be taken into account in assessing financial eligibility:	£15,000

In this example the client is ineligible.

10. Where the applicant has more than one property the value of all other properties should be taken into account but the total amount that can be allowed in respect of mortgages and charges on all the

properties cannot exceed £100,000. In applying this rule the mortgage for the main dwelling is deducted last. There is no equity disregard for second properties.

Example:

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

The second property after allowing for the mortgage has a net equity of £20,000. The value of the main dwelling must be taken into account but only £20,000 can be deducted for the mortgage. This is because £80,000 of mortgage has already been taken into account on the second property leaving only £20,000 (of the £100,000 allowable maximum) to be allowed against the main dwelling. The equity in the main dwelling would therefore be treated as £130,000. The first £100,000 of equity in the main dwelling is disregarded giving equity in that property of £30,000. The total capital would therefore be £50,000. The client would not be eligible for funding.

8. Intentional deprivation of resources

1. Occasionally a person will deliberately transfer or dispose of assets to another person in order to make themselves eligible. This is not permitted. If it appears that a person applying for funding has directly or indirectly deprived himself or herself of any resources or has converted any part of his resources into resources which are to be left out of account wholly or partly under the regulations, the resources which have been transferred or converted must still be taken into account in the assessment. This will normally mean that such a person will not qualify for funding.
2. Note that this rule applies where it appears to the provider that the person concerned has transferred or deprived himself of assets with the intention of reducing the amount of his gross income, disposable

income, or disposable capital, whether for the purpose of becoming eligible or otherwise. Obviously this rule would not apply if the person had lost assets or money without intending to do so.

9. Eligibility of children

1. A child may apply for funding in the circumstances set out in the Funding Code (see also General Civil Contract Specification rule 2.3). When assessing the means of a child, the resources of any person who is liable to maintain the child or who usually contributes substantially to the child's maintenance or who has care and control of the child (other than on a temporary basis) should be taken into account, as well as any assets of the child. There is a discretion not to aggregate assets in this way if it appears inequitable to do so, having regard to all the circumstances including the age and resources of the child and any conflict of interest

between the child and the carer.

10. Mistakes in assessment

1. Sometimes a mistake will be made in assessing a person's financial eligibility or new information will come to light that suggests that an earlier assessment was inaccurate. Where this happens the assessment can and should be re-opened and a revised assessment using the original period of calculation carried out which may mean that a person was never eligible for funding. In such cases funding should cease on the particular matter unless a new assessment of their current circumstances shows that they are now currently eligible. If any dishonesty or improper conduct in relation to disclosure of assets is discovered, the details should be reported to the regional office in accordance with The Funding Code Procedures rule 2.6 (see Part B paragraph 2.6 in volume 3 of this

manual). In such cases the costs incurred prior to such a discovery will be assessed in accordance with the Commission's externally published costs assessments guidance.

11. Changes in circumstances

1. Where on an accurate assessment a client is found financially eligible for funding there is no subsequent re-assessment of means if the client's circumstances change. There is therefore no duty on the client to report improvements in means, except in relation to any fresh application for funding.
2. Where a client is initially ineligible there is nothing to prevent a further application and assessment where a change in circumstances makes him eligible. However, the cover only runs from the date the application form was fully completed and the client was assessed as eligible.

Financial Conditions - The Statutory Charge

Reproduced below is an advance copy of the amendments to the guidance on the operation of the Statutory Charge and costs protection as it will appear in the December update of the LSC Manual.

The Statutory Charge

2.2 Cases under the Access to Justice Act 1999

Is any property exempt?

5. Regulation 44 Community Legal Service (Financial) Regulations 2000 lists exempt property. The exemptions are: periodical payments of maintenance; where the charge is in favour of the supplier, the funded client's home; their personal possessions and tools of trade unless exceptional in number or quality; interim payments in Inheritance Act proceedings; the first £2,500 or, if the application was made on or after 3 December 2001,

£3,000 of any property recovered or preserved in most family proceedings; 50% of any redundancy award; any Employment Appeal Tribunal award; any property subject to a statutory prohibition against assignment (which generally covers state benefits and pensions). If the Commission and the client agree to defer enforcement of the charge by registration on the client's home, the £2,500 or £3,000 exemption, to the extent that it has not been used up on any other asset, will affect both the sum on which interest accrues, and the value of the property to which the charge attaches when the client pays it off: Regulation 44 (1)(d) and 53(3)(e) Community Legal Service (Financial) Regulations 2000 as amended by Regulation 22 Community Legal Service (Financial) Regulations (Amendment No. 3) Regulations 2001.

What is the extent of the charge?

6. The charge consists of:
 - (a) the amount of money the Commission has spent on funding services at all levels in connection with the proceedings or dispute; (note-when a contract does not distinguish the costs of the client's individual case and other cases, the cost is what the Commission specifies in writing)
 - (b) less any costs recovered by the client in the proceedings or dispute;
 - (c) less any payment by the client by way of contribution or otherwise: see section 10 (7) Access to Justice Act 1999.
7. For the purposes of calculating the amount of the charge, the cost of funding services does not include the costs of assessment proceedings under the CPR, or

taxation proceedings in the House of Lords. The costs of drawing up a bill are not part of the costs of assessment proceedings. Those costs will therefore form part of the deficiency to the fund: Regulation 40(4) Community Legal Service (Financial) Regulations 2000.

When a client had a certificate under the 1988 Act, the Commission treated the value of the charge as the value of the property recovered or preserved, or the net deficiency, whichever was less. Regulation 99(6) Civil Legal Aid (General) Regulations 1989 supported this approach. But section 10(7) of the 1999 Act and Regulation 43 Community Legal Service (Financial) Regulations 2000 do not permit the Commission to value the charge in this way. The charge is always the cost of the funded services, less costs and contributions actually received, even if the property to which it attaches is worth less on recovery or preservation.

If the client pays off the charge at the end of the case, the changed approach to valuation is unlikely to make any difference. The Commission cannot seek more than the value of the charged property in satisfaction of the deficiency to the Fund. But if we agree to defer enforcing the charge by securing it on the client's home, and the home increases in value before the client pays off the charge, we may enforce the charge up to its full amount, depending on how much the property is worth at the time.

In determining the value of the property at the time the charge is enforced, the £2,500 or £3,000 exemption in most family proceedings will take effect to the extent that it has not already been used up on any other asset or assets.

8. For details of the charge in relation to Support Funding see section 14 of the Funding Code Guidance in Volume 3 of the Manual.

Can the Commission defer enforcing the charge?

17. The Commission may only defer enforcing the charge if
 - (a) the property subject to the charge is the home of the client or their dependants or, in a family case, money to be used to buy a home for the client or their dependants; and
 - (b) the Commission is satisfied that the home will provide security for the charge; and
 - (c) the charge is registered: Regulation 52 Community Legal Service (Financial) Regulations 2000.

Interest accrues from registration at 8% on the lesser of either: (i) the value of the charge, or (ii) if the value of property was lower at the time of recovery, the value of the property when it was recovered or preserved: Regulation 53(3) Community Legal Service (Financial) Regulations 2000 as amended by Regulation 22 Community Legal Service (Financial) (Amendment No.3) Regulations 2001. In determining the value of the property subject to the charge for the purpose of deciding what sum interest should accrue on, the Commission will take account of the £2,500 or £3,000 exemption in most family cases: Regulation 44(1)(d) and 53(3)(e)(ii) Community Legal Service (Financial) Regulations 2000 as amended by Regulation 22 Community Legal Service (Financial) (Amendment No.3) Regulations 2001.

Unlike under the 1989 Regulations, the client's liability to pay interest does not depend on them having signed a form agreeing to do so.

4. Costs Orders Against Funded Clients and the Commission

4.2 Cases under the Access to Justice Act 1999

Costs against the Commission

Cost Protection Cases

8. In certain circumstances, the court

may make an order against the Commission to meet the shortfall between the amount it has ordered the funded client to pay, and the amount the court would have awarded a non-funded party if their opponent was not funded. The conditions are set out in Regulation 5(1)-(4) Community Legal Service (Cost Protection) Regulations 2000. The court may order costs against the Commission where:

- (a) a funded client has the benefit of cost protection;
- (b) the proceedings are finally (see paragraphs 9-10 below, Effect of an Appeal in Costs Protection Cases) decided in favour of a non-funded party;
- (c) the court has ordered the funded client to pay costs, but
- (d) the costs awarded against the funded client do not cover the full costs (see paragraph 14 below);
- (e) the non-funded party makes a request within three months of the order against the funded client;
- (f) the court is satisfied that it is just and equitable in the circumstances that the costs should be paid out of public funds, and
- (g) if the costs concerned were incurred in a court of first instance:
 - (i) the client instituted the proceedings; and
 - (ii) the court is satisfied that the non-funded party will suffer severe financial hardship unless an order is made.

If the application was made on or after 3 December 2001, and the non-funded party is an individual, the court must be satisfied that they will suffer financial hardship unless an order is made, but the hardship does not have to be 'severe': Regulation 4(2) Community Legal Service (Cost Protection) (Amendment) Regulations 2001.

Lord Chancellor's Revised Guidance on Applications for Exceptional Funding

Final Version - Applying from 1 November 2001

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. With effect from 1 November 2001 I have issued a Direction bringing representation at certain inquests within the normal scope of CLS funding. Cases not covered by that Direction should continue to be dealt with under the section 6(8)(b) procedure in accordance with the following guidance.
 7. 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 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. Any representations by the Coroner on this issue will be taken into account, but there is no requirement to seek the Coroner's views before making an application.
- Exceptional Funding for Other Proceedings**
8. 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.
9. 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 representation 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
10. 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 necessarily 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.

Commission's Guidance on Making Exceptional Funding Applications

Reference to sections of guidance in this article relate to the Funding Code guidance in Volume 3 of the LSC Manual and on the website

1. Section 6(8)(b) of the Act includes a power for the Lord Chancellor to grant funding in an individual case which is excluded by Schedule 2 of the Act and has not been brought back into scope by any of the Lord Chancellor's existing directions (set out in Section 3.3 of this Guidance). Although the final decision to fund an individual excluded case rests with the Lord Chancellor, he can only provide funding under Section 6(8)(b) where such funding is requested by the Commission. Therefore all applications for funding under Section 6(8)(b) must be made to the Commission in the first instance. The procedure for doing so is described below.
2. The Lord Chancellor's guidance on funding individual cases is at Section 3.4. This guidance is taken into account by the Commission in deciding whether funding should be requested from the Lord Chancellor under Section 6(8)(b). Two of the factors which are relevant to 6(8)(b) applications are whether a case has "significant wider public interest" or "overwhelming importance to the client". Guidance on these concepts is at Section 5 and 4.10 respectively.
3. Most successful applications under Section 6(8)(b) have related to representation at inquests following deaths in custody. With effect from 1 November 2001 the Lord Chancellor has issued a direction to bring representation at such inquests within the scope of CLS funding. The text of this direction and guidance upon it is at Section 3.13 below. Applications under this direction can be made directly to the Commission's Head Office, 85 Grays Inn Road, London WC1X 8TX, DX: 328 London/Chancery Lane. Applications for representation at inquests which fall outside the direction should continue to be processed under the Section 6(8)(b) procedure as described below.
4. A case can be funded under Section 6(8)(b) either if it is excluded because of its subject matter (Paragraph 1 of Schedule 2 of the Act) or because funding is requested for representation at an inquest or a tribunal which is not

normally covered (Paragraph 2 of Schedule 2). Note that for cases before the civil courts which are excluded under Paragraph 1 of the Schedule, for example personal injury claims, the Lord Chancellor's general direction at 3.3.10 already brings such cases within the scheme if they have a significant wider public interest. Such cases can therefore be funded in the usual way through the regional office rather than relying on exceptional funding under Section 6(8)(b).

5. The Lord Chancellor has power to authorise any level of service under the Funding Code when funding a case under Section 6(8)(b). If services are excluded under paragraph 2 of Schedule 2 e.g. representation at tribunals and enquiries, the most likely type of funding will be level 7 of the Code which is "such other services as are authorised by specific orders or directions from the Lord Chancellor". This means that funding will not usually involve the issue of a funding certificate as for Legal Representation but will take the form of a one-off grant up to a sum specified by the Lord Chancellor in each case. The grant will cover only advocacy at the hearing, but this may be taken to include, where it is reasonable and justified in the individual case:
 - (i) Counsel or solicitors' fees for acting as advocate at the hearing;
 - (ii) The costs of any other legal representative attending the hearing;
 - (iii) The cost of instructing counsel for the hearing;
 - (iv) The cost of any conference at or immediately before the hearing;
 - (v) Costs in relation to any preliminary hearing at which advocacy is required.

Any other work including work preparatory to the hearing must instead be covered under Legal Help.

6. If services are excluded under

paragraph 1 of Schedule 2 e.g. business cases in the High Court or County Court it is likely that any funding under Section 6(8)(b) will take the form of Legal Representation. The usual remuneration and eligibility rules for Legal Representation will apply.

7. Applications under Section 6(8)(b) come within the category of "Other Grant or Contract Work" under the Code Procedures. The process is set out in Section D4 of the Procedures. Even where the services granted include Legal Representation, the Commission will not usually issue a certificate. The grant itself is the authority for payment.
8. Applications under Section 6(8)(b) should not be made to the Regional Office. Instead all applications should be sent directly to the Commission's Head Office at the following address: Policy and Legal Department, 85 Gray's Inn Road, London WC1X 8TX. The heading to the application letter should state that it concerns an application for exceptional funding.
9. All applications under Section 6(8)(b) must be accompanied by a completed CLSAPP1 form together with all relevant Means forms as if applying for a certificate for Legal Representation. Some parts of the APP1 form will not be relevant to certain applications under Section 6(8)(b). For example, Prospects of Success is not relevant to representation at an inquest. Applications should concentrate on addressing the issues set out in the Lord Chancellor's guidance at section 3.4. One of the considerations in the guidance is whether the case may be suitable for a conditional fee agreement or other private funding. This issue should always be addressed in applications relating to court proceedings, even outside the area of personal injury cases.

10. The level of remuneration for work under level 7 of the Code is

discretionary. For the time being representation at inquests will be paid at rates not exceeding those for Crown Court work (page 679 of the 1998/99 Handbook with uplift up to 50%) and representation for other tribunals at mental health review tribunal rates.

11. Every application under Section 6(8)(b) must specify a figure for the total amount of funding required, broken down to specify the hours claimed and rates charged. Grants under Section 6(8)(b) will usually be subject to a binding cost limit specified in the grant. Payment will only be made for work reasonably carried out up to that cost limit.
12. The Lord Chancellor's guidance makes it clear that when considering funding representation at an inquest the applicant should be a member of the deceased's immediate family and it will sometimes be necessary to give information not just about the means of the applicant but also other members of the family. "Family" is a wide concept as described in our family guidance. In practice, the Commission will generally expect to receive the following information:
 - (i) if the deceased was a child, means forms from the parent or parents;
 - (ii) if the deceased was an adult, means forms from his or her partner;
 - (iii) if the deceased was an adult who had no partner, means information concerning the deceased's parents, children and siblings.
13. It is important that applications are made as early as possible to allow time for us to decide whether to request funding from the Lord Chancellor and for the papers to be passed to the Lord Chancellor for a final decision. We will try to deal with applications as quickly as possible but inevitably there will be some cases where a final decision cannot be made before the hearing

has taken place. Since funding under Section 6(8)(b) is usually by way of a one-off grant and does not involve the issue of a certificate, it is within the Lord Chancellor's power to approve funding retrospectively if necessary. However, this will only be considered if the application to the Commission for funding was made at the earliest opportunity. Generally funding will take effect from the date of the Commission

decision to request funding from the Lord Chancellor. However in appropriate cases it may be backdated to the date of the initial application to the Commission.

Policy and Legal Director or by a senior member of the Department. Reasons will be given for all decisions made.

14. If an application to the Policy and Legal Department is refused application can be made within 14 days for the decision to be reconsidered. If so the application will be considered afresh by the

15. If funding is approved by the Lord Chancellor, the case will be passed to the Special Cases Unit at the London Regional Office who will deal with assessment of the bill and payment, up to the cost limit on the Lord Chancellor's grant.

Representation at Inquests - Lord Chancellor's New Direction

1. This is a direction by the Lord Chancellor under Section 6(8) of the Access to Justice Act 1999 ("The Act"). It authorises the Legal Services Commission ("the Commission") to fund in specified circumstances services generally excluded from the scope of the Community Legal Service Fund by Schedule 2 of the Act.
2. The Lord Chancellor authorises the Commission to fund advocacy services on behalf of the immediate

family of the deceased at an inquest concerning a death occurring in police or prison custody or during the course of police arrest, search, pursuit or shooting.

3. Such services may be funded where the Commission is satisfied that funded representation is necessary to assist the coroner to investigate the case effectively and establish the facts. The Commission should have regard to my guidance on funding individual cases under

Section 6(8)(b) of the Act when considering applications under this Direction.

4. Services funded under this Direction should be funded under Level 7 of the Commission's Funding Code (which covers "such other services as are authorised by specific orders or directions from the Lord Chancellor"). Applications under this Direction remain subject to the relevant regulations under the Act and all relevant criteria in the Code.

Representation at Inquests - Commission's Guidance

1. The Commission's experience of applications for exceptional funding under Section 6(8)(b) has been that, for the first 18 months of the new scheme, a clear majority of successful applications under 6(8)(b) relate to representation at inquests following deaths in custody. These have been the category of case most likely to satisfy the requirements of the Lord Chancellor's guidance on exceptional funding.
2. The Lord Chancellor has therefore

issued the above Direction to ensure that applications for funding are processed more quickly than before. The Direction takes death in custody cases out of the 6(8)(b) procedure and into mainstream CLS funding. The application is made to the Commission at Head Office, 85 Grays Inn Road, London WC1X 8TX, DX: 328 London/Chancery Lane, and can be granted directly by the Commission without having to be referred to ministers. The Direction therefore streamlines the procedure for funding represen-

tation at death in custody inquests, but does not itself affect the circumstances in which such representation is funded.

3. Where an application is made for representation at an inquest which falls outside the above Direction, for example because the death did not occur in police or prison custody, the application will be dealt with under the Section 6(8)(b) procedure and may be referred to the Lord Chancellor's Department as described above.

Costs Assessment under the General Civil Contract (Solicitors)

Guidance

Revised and collated guidance on the assessment of costs of Controlled work in civil cases has now been issued to all contracted suppliers (see *Focus 35* page 15). Although the guidance has immediate effect, and should therefore be followed by contractors now, a three-month period has been allowed for comment before the guidance is formally incorporated into the Contract Specification itself.

The guidance is not a substitute for knowledge and understanding of the terms of the General Civil Contract. Familiarity with the Specification (including the category specific sections) in particular is essential for practitioners carrying out Controlled Work. The guidance does however replace that issued in previous editions of *Focus* (e.g. *Focus 27*).

We are carrying out a major training programme for our auditors in order to ensure consistent application of the guidance. The Legal Aid Practitioners' Group has also agreed to be involved in the training with a view to increasing the Regional Office's understanding of the practitioner's perspective. Training for Funding Review Panel Members who sit on Cost Committees will also be provided - the appropriate Regional Office will supply details

Procedure

The costs assessment audits for the second year of contracting are now well under way. Firms will be given the detailed findings in relation to the assessment of their sample files to enable them to respond and to consider whether, and on what basis, to appeal. The Regional Office will review any representations received but any areas where disagreement remain will be put to the Cost Committee.

Firms will be classified into one of three

categories according to the results of their cost assessment audits:

Category 1 - Acceptable.

This means that there are no serious concerns on the audit and any minor issues will generally be addressed in correspondence.

Category 2 - Acceptable after resolution.

Costs will be deducted after assessments and appeal, and issues will be raised for resolution. Future audits will seek to confirm that these issues have been appropriately addressed.

Category 3 - Unacceptable.

Further action will be taken including taking additional samples and in very serious cases contract notices and sanctions. After determination of any appeals the Regional Office will need to take a view on the extent to which the issues identified on the files apply to the remainder of the Contract work carried out by the supplier and therefore the extent to which money will need to be recouped.

There will be some firms who are seeking increased payments because their claims exceed their current Schedule Payment Limit but who are included in Category 3. An increase of the Schedule Payment Limit within year is not automatic, but is a matter for the exercise of the Regional Director's discretion – Clause B (17) of the General Civil Contract Schedule. The Regional Director will need to be satisfied that any monies claimed are properly payable from the fund and Category 3 firms are therefore unlikely to obtain increases in their Schedule Payment Limit until the issues arising from their audit have been resolved.

The Appeal Procedure

Appeals against the assessment of

costs by the Regional Office lie to the Costs Committee under Rule 2.16 of the General Civil Contract Specification. The Costs Committee will assess the reasonableness of the work done in accordance with the terms of the General Civil Contract. They can confirm, increase or decrease the assessment by the Regional Office and can disallow costs that were allowed on the original assessment as well as vice versa. Suppliers who attend Cost Committee hearings should therefore have sufficient familiarity with the files to enable them to deal with any issues that may be raised by the Committee.

Practitioners should be aware that both the Regional Office and the Costs Committee will disallow costs that were not supported by satisfactory evidence on the file itself (see Rule 2.18 of the General Civil Contract Specification) and that the addition of further attendance notes to the file after the assessment will be unacceptable. Firms should therefore keep files complete for audit purposes.

Costs Committees may also make general findings on issues that are suitable to be applied to other files under Rule 2.16 of the Specification. Where the same or substantially the same issue (whether of fact or principle) will apply to any other claims for payment then the Costs Committee may make a finding in relation to those matters even though the cases themselves are not before the Committee. That decision will be binding on those other matters in so far as the relevant issue is concerned and there will be no separate right of appeal to the Committee on that particular point.

In appropriate cases, the Regional Director may seek to be represented before the Cost Committee. There is no

formal right in the Contract for either party to be represented but the Commission takes the view that if suppliers attend or are represented on such appeals then they should be heard. In some cases, particularly where there are issues of extrapolation

and/or particular complexity then a representative may attend on behalf of the Regional Director on the same basis. This will only occur in cases where the supplier has indicated that they will be attending, and the supplier will be informed in advance if it is the

Commission's intention to appear. The contract also provides for a further appeal to the Costs Appeal Committee by either the supplier or the Regional Director following certification of a point of principle of general importance - see Rule 2.17 of the Specification.

Actions Against the Police, etc.

Revised Franchise Category Definition - Applying from 3 December 2001

Legal Help and proceedings concerning:

(a) assault, trespass, false imprisonment, wrongful arrest, interference with goods, malicious prosecution, personal injury or death in custody, misfeasance in public office or other abuse of authority or neglect of duty against any body or person, public or private, with power to detain, imprison or prosecute, excluding applications to the Mental Health Review Tribunal or the Immigration

Appellate Authorities. Complaints and claims for damages are included whether or not they also fall within the Personal Injury or any other franchise category. However, claims for damages for Clinical Negligence are included only if the clinical negligence forms part of a claim which includes another cause of action against a body or person with power to detain or imprison.

(b) personal injury based on an allegation of deliberate abuse of any person whilst in the care of a

public authority or other institution.

(c) applications to the Home Office under Section 133 of the Criminal Justice Act 1988 or the ex gratia scheme for compensation for wrongful conviction.

(d) claims to the Criminal Injuries Compensation Authority arising out of a matter falling within the category.

(e) claims for damages in respect of alleged professional negligence in the conduct of a matter included in the category.

Cost Appeals Committee Point of Principle

CLA27 - 20 August 2001

Late Submission of Civil Bills for Assessment by the Commission

It is a question of fact in every case whether there is good reason, or any exceptional circumstances exist, enabling the Regional Director to extend the time limit in Regulation 105(3A) Civil Legal Aid (General) Regulations 1989. Where proceedings continue without interruption, and there is no point at which it would normally be appropriate, or at which it is in the client's interests, for an interim bill to be prepared (such as on transfer to the County Court), but the client has more than one Certificate, the Regional Director is likely to have good reason for extending the time limit in relation to the claim for work done under the first Certificate.

Adoption Proceedings in the County Court - A Reminder

In county court adoption proceedings issued since April 2001 it has been possible to join the child as a party. An amendment to the Adoption Rules 1984 removed the bar on this but, none the less, regional offices have been continuing to see cases where the children's guardian is made a party and public funding is then applied for in the name of the guardian.

Practitioners are reminded that this is no longer necessary and that, where appropriate, the court may join the child who can then apply for public funding in his/her own name (although the guardian will make the application for funding on the child's behalf – rather than in the guardian's own right).

The Funding Code procedures are being amended so that professional guardians can no longer seek public funding for themselves and practitioners should ensure that applications are made in the name of the child (as opposed to the name of the guardian).

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.

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 32-35* 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/01/44

Nature of Case

Representation at inquest. Child and grandmother killed at dangerous road crossing. Application for exceptional funding.

Report of Panel

The Panel had very great sympathy for the family in the circumstances of this case. Nevertheless, the function of the Panel was to consider whether (at the time the application was made) it was likely that representation at the inquest would produce benefits for others so as to constitute a significant wider public interest. With regret the Panel considered that there was no such wider public interest in representation in this case.

It could not be said that the building of a footbridge over the road, which clearly will improve the safety of local residents and thereby be of public interest, resulted from the representation at the inquest. Indeed it appears that the council had already agreed to construct the bridge before the inquest took place. The Panel therefore could not see that any significant benefits to the public flowed from representation at the inquest.

Conclusion

No significant wider public interest

PIAP/01/50

Nature of Case

Judicial review proceedings – treatment of prisoners' earnings by Prison Service.

Report of Panel

The Panel considered that this case raised important issues as to the accountability of the state in relation to money held on behalf of prisoners. If successful it would affect not just the applicant but a large section of the prison population.

The Panel noted the possibility that the law might be developed if the Prisoners' Earnings Act 1996 were brought into force but as there was no certainty that that Act would be brought into force or that its scope would cover all the issues raised by this case the Panel was satisfied that the case did have a significant wider public interest.

Conclusion

Significant wider public interest
Rating: High

PIAP/01/51

Nature of Case

Personal injury proceedings – contamination of swimming pool.

Report of Panel

Whilst the Panel recognised that standards of pool hygiene were a matter of general public concern, the Panel remained concerned as to the likelihood that this case would do anything to improve such standards, either locally or nationally. There was no clear evidence to suggest that the existing guidelines were themselves defective and therefore it was more likely that this case would be decided on the basis of whether the council had been negligent on the facts of this case.

Further, the Panel considered that the nature of these claims and the relatively small damages at stake meant that it was highly unlikely that this case would come to trial, and more likely that the claims would settle without establishing any precedent.

Conclusion

No significant wider public interest

PIAP/01/52

Nature of Case

Enforcement proceedings – powers and duties of bailiffs in relation to seizure of goods.

Report of Panel

The Panel considered the legal issues arising in this case concerning the powers and duties of bailiffs levying distress against goods. The Panel noted the comments referred to in the judgment that this was an area of law which was "riddled with inconsistencies, uncertainties, anomalies and archaisms". The proposed appeal to the House of Lords raised important issues as to the circumstances in which a debtor could

avoid distress by tendering payment. If successful the greater protection afforded to debtors would be a significant public benefit; in any event, a clarification by the House of Lords would have benefits to both debtors and enforcers.

Conclusion

Significant wider public interest
Rating: Significant

PIAP/01/53

Nature of Case

Representation before Planning Inspectorate. Application to authorise land for residential use. Exceptional funding application.

Report of Panel

The Panel recognised the importance of these hearings to the clients and the complexity of the legal arguments. However the Panel's function was to consider the likelihood of the decision in these cases producing benefits for gypsies and travellers in similar circumstances to the applicants. The Panel considered carefully the solicitors' submissions to that effect. The Panel concluded, with regret, that it was not likely that the outcome of this appeal to the Planning Inspectorate would significantly affect future planning and enforcement decisions taken by planning authorities. The Panel considered it more likely that the issues in this case would be determined on their own merits without establishing any general precedent.

In the circumstances the Panel was not satisfied that there was any significant wider public interest in representation being provided before the Planning Inspectorate. However the Panel did not rule out the possibility that if these matters were to come to the High Court the possibility of establishing a precedent on the legal issues might in principle have a wider public interest.

Conclusion

No significant wider public interest

PIAP/01/54

Nature of Case

Personal injury proceedings – claim for

compensation for "bodily injury" under Warsaw Convention.

Report of Panel

The Panel noted that the proposed appeal to the House of Lords related to an important legal issue, namely whether the liability to compensate passengers for "bodily injury" under Article 7 of the Warsaw Convention could cover psychological damage. The resolution of this issue could benefit significant numbers of people and clearly has a wider public interest.

However, the Panel's concern was whether there was any significant wider public interest in funding being provided for this appeal when a similar point was already being raised in another case, *King v Bristow Helicopters*, which was due to be heard by the House of Lords in November. The Panel accepted counsel's arguments that the two cases were distinguishable and it was desirable for both to be heard together so that the House of Lords could consider the full range of issues. Accordingly the Panel was satisfied that there was a significant wider public interest in funding being provided in the present case.

Conclusion

Significant wider public interest
Rating: Significant

PIAP/01/55

Nature of Case

Judicial review proceedings. Refusal of local authority to allow direct access to its employees to give statements to solicitors in child care proceedings.

Report of Panel

The Panel noted that this was an unusual judicial review seeking to challenge the policy of a local authority in controlling or restricting access by solicitors to social services personnel. In the context of taking statements from personnel for the purpose of care proceedings there was a clear public interest in avoiding secrecy or defensiveness in obtaining evidence. This might in some cases affect the fairness of hearings determining issues of fundamental importance to children.

Conclusion

Significant wider public interest
Rating: High

PIAP/01/56

Nature of Case

Representation before Social Security Commissioner – Welfare Benefit Scheme – application for exceptional funding.

Report of Panel

The Panel noted that this case concerned important legal issues as to whether certain elements of Jobseekers' Allowance benefit were discriminatory against men. The case had already been considered by the Court of Appeal which had decided that Jobseekers' Allowance does fall within the scope of Directive 79/7, but the case had been remitted back to the Social Security Commissioner to consider the evidence on the question of discrimination.

If successful it is likely that the benefit rules would be changed and increased benefits might well be payable to fathers. However, there was of course no guarantee that the overall level of benefit would be increased even if this case were successful. The case might however have implications for benefits other than Jobseekers' Allowance, including aspects of Income Support.

Conclusion

Significant wider public interest
Rating: Significant

PIAP/01/57

Nature of Case

Representation at a public inquiry into disposal of special waste in disused salt mines. Exceptional funding application.

Report of Panel

The Panel was of the view that this inquiry was clearly of importance to local residents on environmental grounds. Further, the Panel recognised that this was the first inquiry of its type and might well be a precedent for similar applications elsewhere in the country. Whilst there was therefore clearly a significant wider public

interest in the issues before the inquiry the Panel had to consider further whether there was any such interest in representation being provided on behalf of the applicant. The Panel noted that there were other persons before the inquiry with similar interests to the applicant. Those other persons might well provide environmental expertise to assist in the inquiry but it did not appear likely on present information that any other body would be legally represented during the inquiry. The Panel was satisfied that there was a significant wider public interest in legal representation being provided at the inquiry to deal with any legal issues arising and make the presentation of the environmental arguments more effective.

In all the circumstances the Panel was satisfied that there was a significant wider public interest in legal representation for the applicant being funded. The Panel however expressed no concluded view as to whether alternative funding might be available from some other source to provide such representation. That would be a matter for the Commission's Head Office or the Lord Chancellor to consider in relation to the exceptional funding application.

Conclusion

Significant wider public interest
Rating: Significant

PIAP/01/58

Nature of Case

Malicious prosecution proceedings – liability of Home Office for actions of private security firm.

Report of Panel

The Panel noted that malicious prosecution proceedings had been brought both against the Home Office and Group 4 Security Limited, to whom the Home Office had contracted out the running of a new detention centre. The claim against the Home Office had been struck out under normal contractual principles that there was no vicarious liability for the acts of an independent contractor. This raised the interesting point of law as to whether the Home Office did indeed have

power to exclude liability in relation to public functions of this nature.

However, the issue for the Panel was whether there was any significant wider public interest in this issue of law being determined. In general clients would have no greater remedy against the government than they would against the private company. In this case the client clearly had a cause of action against the private company in question.

Further, because there would be no tangible benefits for the client proceeding separately against the Home Office, the Panel considered that the court would be very reluctant to revive the claim and use this case as a vehicle to resolve legal issues of principle. The Panel therefore decided that there was no significant wider public interest in the proposed proceedings.

Conclusion

No significant wider public interest

PIAP/01/59

Nature of Case

Judicial review proceedings – compatibility of agricultural tenancies with Human Rights Act.

Report of Panel

This case concerns a proposed challenge under the Human Rights Act to the rules regarding the termination of agricultural tenancies. Unlike residential tenancies in which the court sometimes has a wider discretion as to awarding possession, the rules on agricultural tenancies are generally stricter which can result in clients losing their homes and livelihood when they are unable to pay their debts immediately.

Whilst expressing no view on the merits of the case, which would involve knowing more of the policy justification behind the current statutory scheme, the Panel agreed that these issues were of importance and a successful challenge on human rights grounds might lead to changes which increased the protection for agricultural tenants.

Conclusion

Significant wider public interest
Rating: Significant

PIAP/01/60

Nature of Case

Judicial review proceedings – right of prisoner to artificially inseminate his wife.

Report of Panel

This case concerned the rights of a prisoner serving a long-term sentence to artificially inseminate his wife. It raised issues under Articles 8 and 12 of the ECHR. The case had been unsuccessful at first instance and in the Court of Appeal and permission was sought to take the matter to the House of Lords.

The majority view of the Panel was that these were important issues, the resolution of which had a significant wider public interest. Quite apart from the specific issue of the right to artificially inseminate, the case had wider implications concerning the state's powers to restrict otherwise lawful activities of prisoners and the nature of prison punishment.

The minority view of the Panel was that, given the relatively low numbers of prisoners who were likely to be affected by the case and the fact that the Home Office did not in any event operate a blanket prohibition on artificial insemination, it could not be said that the benefits to the public of resolving these issues were significant.

Conclusion

Significant wider public interest
Rating: Significant

PIAP/01/63

Nature of Case

Judicial review against the police concerning their decision to retain the applicant's fingerprints following his acquittal of a criminal offence.

Report of Panel

The Panel noted that this was a proposed challenge to the provisions of Section 82 of the Criminal Justice and Police Act 2001 concerning the right of

the police to retain fingerprints following a defendant's acquittal. If the challenge were successful in showing that this practice was contrary to Article 8 of ECHR, this could lead to changes in the law and/or important changes in police practice in relation to the retaining of fingerprint evidence. Accordingly the Panel was satisfied that the challenge had a significant wider public interest.

Conclusion

Significant wider public interest

Rating: Significant

PIAP/01/64

Nature of Case

Proposed claim for negligence against the Prison Service following accidental injury to a prisoner. Alleged failure to provide appropriate health and safety advice.

Report of Panel

The Panel had to consider whether the outcome of this claim might lead to establishing a legal precedent or some change of policy in the prison service in relation to the provision of health and safety advice about the use of protective clothing. The Panel was however not convinced that it was likely that this case would produce any such change. In the Panel's view this was a relatively standard personal injury claim which, if it had merit, would probably settle at some stage and was unlikely to establish any form of precedent of benefit to other persons. Accordingly the Panel was not satisfied that this matter had any significant wider public interest.

Conclusion

No significant wider public interest

PIAP/01/66

Nature of Case

Representation at an appeal to the Social Security Commissioners against the Benefits Agency discontinuing benefits in regard to the applicant's property on the grounds that he was non-resident. Exceptional funding application.

Report of Panel

The importance of the hearing was said to be that it would resolve the legal issue of whether benefit can lawfully be stopped in relation to a period of imprisonment where the conviction leading to that imprisonment is subsequently quashed on appeal. The Panel agreed that this was an important issue and that any definitive finding as to whether the current benefit rules were inconsistent with either the Criminal Justice Act 1968 or the Human Rights Act 1998 would be a matter of great importance. However, the applicant would face difficulties in his arguments under the Human Rights Act 1998 to the extent that the events complained of pre-dated the coming into force of that Act.

The Panel was very doubtful that these issues were likely to be effectively resolved at this stage of the present case. Firstly the Panel noted that the tribunal considered only the period from July onwards. This was because the applicant did not make (or re-make) his income support claim until October and it can only be backdated by up to three months. It therefore appeared to the Panel that the Commissioner would only consider the period of imprisonment (and hence the legal issue referred to above) if this procedural problem could be overcome.

Secondly the applicant could only succeed in his argument if he first established on the facts that the property in question was his home during the relevant period. Whilst it is open to the Commissioner to make his own findings of fact and deal with all the issues there was no guarantee that this would occur. The hearing before the Commissioner might simply refer the matter back to a fresh tribunal hearing, especially as it was accepted that the first hearing was defective on procedural grounds.

In all the circumstances, and with some regret, the Panel was not persuaded that it was likely that the hearing before the Commissioner would resolve legal issues of general public importance

and accordingly the Panel was not satisfied that this matter had a significant wider public interest.

Conclusion

No significant wider public interest

PIAP/01/67

Nature of Case

Claim against the police for assault and false imprisonment which seeks to challenge the police's use of "Stop and Search" powers.

Report of Panel

This case concerned a challenge as to the compatibility of existing police stop and search powers with ECHR, in particular, Article 5. The Panel agreed that this was an area on which there was at present little clear authority. It was therefore important that these issues be clarified by the courts. In the circumstances the Panel was satisfied that this matter had a significant wider public interest.

Conclusion

Significant wider public interest

Rating: High

PIAP/01/68

Nature of Case

Petition to the House of Lords in a claim that negligence led to applicant's bankruptcy.

Report of Panel

The proposed appeal to the House of Lords in this matter would clarify the law of bankruptcy and in particular the extent to which an individual can bring a personal claim and when the right to do so vested only in the trustee in bankruptcy. There would be an opportunity for the House of Lords to consider the correctness of the approach contained in the Court of Appeal decision of *Ord v Upton*. The Panel was satisfied that these were important issues which would affect significant numbers of bankrupt individuals and accordingly the case has significant wider public interest. The Panel noted also that there was a subsidiary argument of some general

importance as to the extent to which a County Court judgment can bind persons who are not parties to the proceedings.

Conclusion

Significant wider public interest

Rating: Significant

PIAP/01/69

Nature of Case

Appeal to the House of Lords against a local authority injunction restricting the applicant's movements.

Report of Panel

The Panel considered this to be an important case on the power of local authorities to obtain injunctions restricting the movement of individuals. If the Court of Appeal judgment states the current law, it is clear that local

authorities have wider powers than previously thought, not just in relation to individuals suspected of dealing in drugs. The Panel agreed that there was a significant wider public interest in these matters being considered by the House of Lords.

Conclusion

Significant wider public interest

Rating: Significant

PIAP/01/70

Nature of Case

Appeal to the House of Lords concerning the financial liability of an innocent purchaser of fraudulently obtained goods.

Report of Panel

This proposed appeal to the House of Lords concerned the rights of an

individual who innocently purchased goods unaware that those goods had been obtained fraudulently. Although the facts of this case were very common, concerning an individual buying a car which had been obtained by fraud from a finance company, it was surprising that the law was still very unclear. The Panel noted the views of Lord Justice Brooke in the Court of Appeal that the law in this area is in a sorry condition. The House of Lords would be in a position to clarify the law and potentially enhance the rights of innocent purchasers of goods in such circumstances. Accordingly the Panel was satisfied that this matter had a significant wider public interest.

Conclusion

Significant wider public interest

Rating: Significant

Proposed Payment Dates

The proposed payment dates for December 2001 to June 2002 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 Dec 2001 - June 2002

Contract Payments	First Settlement of the Month	Second Settlement of the Month
Wednesday 5 December 2001	Tuesday 11 December 2001	Monday 24 December 2001
Friday 4 January 2002	Wednesday 9 January 2002	Wednesday 23 January 2002
Tuesday 5 February 2002	Thursday 7 February 2002	Friday 22 February 2002
Tuesday 5 March 2002	Monday 11 March 2002	Tuesday 26 March 2002
Thursday 4 April 2002	Wednesday 10 April 2002	Thursday 25 April 2002
Friday 3 May 2002	Friday 10 May 2002	Monday 27 May 2002
Friday 7 June 2002	Tuesday 11 June 2002	Wednesday 26 June 2002

Focus

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

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Focus is produced by the Legal Services Commission's Press Office,
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London, WC1X 8TX
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