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Funding Code Update

As we reported in *Focus 36* (Recent Funding Developments, page 3) we are not planning any major changes to the Funding Code this April. We expect the Code Criteria to remain unchanged. Following the minor changes to the Code Procedures which came into effect in December we have no plans for further amendments to the Procedures other than a possible clarification of our powers in relation to embargoing work and the show cause procedure (see below).

We also intend to keep future guidance changes to a minimum, although there will of course need to be regular updates to deal with changes in the law or to deal with any problems with our existing guidance as identified by practitioners or our regional offices. Current guidance changes under consideration, which include guidance on how we intend to approach issues for alternative funding in public interest cases, can be found in the Civil Consultation section of our website at www.legalservices.gov.uk. Consultation runs to 22 February with a view to amendments in April.

Alternative Dispute Resolution - the Importance of Avoiding Litigation

We are also intending to include references in our guidance on ADR and on judicial review cases to the recent Court of Appeal decision in Frank Cowl & others v Plymouth City Council, 14 December 2001 (Times Law Report 8 January 2002). Lord Woolf's judgment emphasises that judicial review is a last resort which should only be used when any alternatives, including pursuing any available complaints system or use of ADR, have first been tried. If necessary the court may require parties to attend to explain why a complaints procedure or ADR has not been used or adapted to resolve or reduce the issues which are in dispute. Lord Woolf asked that the Legal Services Commission cooperate in support of this approach.

We will therefore expect the section of forms CLS APP1 or CLS APP8 headed

'Alternatives to Litigation' to be completed in detail when we are considering applications to grant or extend certificates for judicial review. The issue will be whether a reasonable private paying client would go to court rather than seek to pursue alternatives, taking into account the likely effectiveness of the alternatives, the attitude of the opponent and all the other circumstances. However we recognise that the three month time limit for applying for judicial review may make it impracticable to pursue ADR prior to applying.

A Pre-action Protocol for Judicial Review Cases

We have also included in our guidance a reference to the pre-action protocol for judicial review cases which is due to come into effect on 4 March 2002. The protocol contains detailed guidance about what should be contained in a claimant's letter before action (except where the urgency of the case makes this impossible). We will expect all funded judicial review cases to be conducted in accordance with the protocol. The text of the protocol will be included in volume 3 of the Civil Procedure Rules.

The Show Cause Procedure and Embargoes

It has always been the practice of the Commission, and the Legal Aid Board before it, to place embargoes on certificates when issuing a show cause letter with a view to a discharge. The standard form of embargo is an instruction to carry out no further work under the certificate without the specific consent of the regional office. This serves to protect the fund in cases where funding is likely to be withdrawn whilst retaining a discretion to authorise further work (for example to cover applying to adjourn a hearing) if the circumstances justify it.

The legality of this long standing practice was challenged in the case of Machi v LSC, CA, 20 December 2001. The majority decision of the Court of

Appeal was that there was no power to impose the current form of embargo under the 1989 legal aid regulations for substantive certificates. There was however no problem in relation to emergency certificates where embargoes are expressly authorised under regulation 75(6) of the Civil Legal Aid (General) Regulations 1989.

We are discussing the implications of the case with the Lord Chancellor's Department with a view to amending the 1989 regulations to authorise the imposition of embargos on substantive certificates. Although the Machi case only dealt with certificates issued under the Legal Aid Act 1988 we are also considering an amendment to the Funding Code Procedures for the avoidance of doubt specifically to authorise embargoes on 1999 Act certificates. We are seeking such regulation and code changes by April 2002

Meanwhile we have amended the standard wording of our show cause letters both for 1988 and 1999 Act cases. In the letter to the solicitor we have replaced the existing embargo wording with the following:

"Pending the decision on the continuation of funding you should not do any further work unless it is essential. If you have any queries about this please contact the office."

The effect of this wording is that although there is no legal embargo prohibiting work, solicitors will need to consider carefully whether any further work is justified because of the urgency of the case. Any unnecessary or unreasonable work may be disallowed on assessment of costs.

During this interim period we also reserve the right to restrict work by means of a formal amendment to the certificate in appropriate cases (Limitation EB001). We will also where necessary shorten the time period for responding to the show cause letter and/or expedite any appeal to the Funding Review Committee.

London Region Civil Finance Business Moving to Newcastle

The supplier survey 2001 (see pages 8-10 in this edition of *Focus*) identifies a number of key areas that the Commission must address to improve its performance. The Commission is determined to make every effort to improve our services where we can.

With this in mind the London Regional Office is reorganising its civil bills work. We are gradually moving this work to a dedicated team of staff based in our Newcastle Regional Office. From 1 June this team will do all London region work related to civil bills.

Our Newcastle office has a solid foundation of staff experienced in this area, and has also been recruiting and training additional people to build on that strength.

London staff have been assisting in the preparation and training of this team. Training sessions have placed particular emphasis on issues around travelling time and enhancement rates.

Whilst all civil bills and related telephone calls and correspondence will be dealt with in Newcastle, we will continue to hold costs appeal meetings in London for practitioners who wish to attend.

We believe that these changes will provide a sustainable high quality service to our suppliers. In particular we hope the new arrangements will improve the quality and consistency of decision-making, improve our



telephone service and improve written communications. We will be reallocating resources from the London civil finance teams into our legal and contracting departments and seeking similar service improvements in these crucial areas. For the time being London practitioners should continue to send civil bills to the London Regional Office. We will be contacting all London suppliers individually with more details of the changes nearer the time.

Community Legal Service Financial Conditions - Frequently Asked Questions

Following the introduction of the new financial conditions on 3 December 2001 the Commission has issued the first set of responses to common questions raised by suppliers. Issue 1 of Frequently Asked Questions is reproduced below and was posted on the Commission's website (www.legalservices.gov.uk) in December following the supplier training briefings held by the Commission's regional offices. Further issues of Frequently Asked Questions will be posted on the website as well as being distributed via Focus. In addition the guidance for suppliers contained in Volume 2 of the Commission's manual will be updated where appropriate. The next update to the guidance is planned for April 2002. Further information or queries relating to the new financial conditions can be obtained by writing to Neil Tyson, Means Assessment Policy Co-ordinator, Policy and Legal Department, 85 Gray's Inn Road, London WC1X 8TX, or e-mail neil.tyson@legalservices.gov.uk.

Financial Conditions Frequently Asked Questions

Will suppliers get paid for the work involved in assessing means?

There is no change to the current practice in terms of allowing time reasonably claimed for initial interview whilst recognising in practice that will include time spent filling in the form and completing the assessment.

Will contracts be amended to reflect the increased eligibility for Legal Help?

Matter starts in all categories except Mental Health and Immigration were increased by 10% in April 2001 to take account of this planned increase in eligibility.

Legal Representation before the Mental Health Review Tribunal is available without reference to means and eligibility levels for immigration matters is already very high. It is not anticipated that the changes to financial conditions will impact on eligibility levels in these 2 categories.

Should Council Tax Benefit and Housing Benefit be included as gross income?

Although technically there is nothing to prevent these two benefits being included in the gross income test, for all of the following reasons our guidance is that both Housing Benefit and Council Tax Benefit should be

excluded from the gross income calculation.

Firstly Council Tax Benefit and Housing Benefit are not strictly 'income' as they simply reduce the amount of a particular expense. Secondly there may be practical difficulties in establishing the amount of such benefits received by clients. Also clients in receipt of either of these benefits are unlikely to have gross income exceeding £2000.

When assessing disposable income Council Tax Benefit should be ignored in the calculation. The rent or mortgage allowed as a deduction against income should be that actually paid by the client net of any housing benefit received. This is consistent with the treatment of housing costs in the guidance.

Is there still a requirement for clients to report a change in financial circumstances?

There are no changes in the requirements in this respect. Clients therefore continue to be under a duty to notify the Commission forthwith where there has been a change in their means. There continues to be provision for the Commission to reassess entitlement to Legal Representation at any point during the life of a certificate when a client's means change.

Where the supplier is responsible for assessing means e.g. Legal Help, Help at Court etc, there continues to be no provision to reassess entitlement for a particular matter when a client's means change.

Will parents' means be included in the assessment of child applicants undertaken by the Commission for Legal Representation?

For Legal Representation there is no general provision for taking parents' means into account in the assessment. In exceptional cases the Commission may continue to assess parents resources under Regulation 11(4) of the Community Legal Service

(Financial) Regulations 2000. This is different to the provisions for other levels of service assessed by suppliers whereby parents' means are generally included in the assessment of childrens' applications in accordance with Regulation 11(3).

What if the rent payable by the client includes a fixed sum for water rates?

If there is a clearly identifiable amount relating to water rates included in the rent payable by the client then this should not be included as rent. However it is not necessary for suppliers to routinely seek clarification as to whether or not the rent declared by the client includes a sum for water rates.

What if the rent or mortgage payments include a payment for arrears of rent/mortgage?

The amount to be allowed in the assessment is the monthly rent or mortgage payable. In practical terms it may not be easy to identify separately arrears of mortgage payments, as the client will generally declare these as a single revised monthly mortgage payment. If the client has already come to an arrangement to pay off arrears by increasing their monthly rent or mortgage payment, then, provided those increased payments are actually being paid by the client, that increased rent or mortgage payment can be treated as the monthly rent or mortgage payable in the assessment.

This is different from a situation whereby a client has commenced paying off arrears in order to reduce their disposable income with a view to qualifying for funding. Such a situation would be regarded as intentional deprivation of income and only the normal monthly rent or mortgage payments should be allowed in the assessment in such circumstances.

Where an ex-partner pays maintenance direct to a third party on behalf of the client e.g. pays

the mortgage on the former matrimonial home direct to the lender, does that count as gross income in the hands of the client?

Any payments made direct to third parties on behalf of the client will count as part of the client's gross income by virtue of Regulation 11(4)(b) of the Community Legal Service (Financial) Regulations 2000. When determining disposable income the relevant mortgage payment should be allowed against income as a housing cost in accordance with the rules for that particular allowance.

Are Benefits in Kind e.g. company car benefits or any other benefits paid by an employer other than in cash, included in the assessment of gross income?

1/12 of the annual taxable value of the Benefit in Kind will be treated as income by the Commission when assessing entitlement for Legal Representation. Suppliers will not generally have sufficient information available to them at the time of making the assessment and therefore these payments will not be included in the assessment undertaken by them.

Do the new financial eligibility rules apply to free standing criminal advice and assistance?

No the new assessment rules only apply to civil cases funded from the Community Legal Service fund.

Are there any special rules for pensioners when assessing equity in the main dwelling?

No, equity is assessed in the same way for all clients for all levels of service. There are however special disregards for pensioners on low incomes when the Commission is assessing capital for Legal Representation.

Full details of the new financial conditions were published on pages 16-23 of *Focus 36*.

News !

Interest on the Statutory Charge

From **1 April 2002**, new rules govern the rate of interest on statutory charges registered on former clients' homes.

Regulations have fixed the rate at 8% simple since 1 September 1993. On 1 April it will change to 1% above the Bank of England's official rate for the time being. It will remain simple - there is no interest on interest. The new rate will apply to all interest bearing charges.

On 1 April in each subsequent year, if the Bank's official rate has changed by 1% or more since the previous year, the rate of interest on the charge will automatically adjust to 1% above the new official rate.

This change will make the rate of interest on the Commission's registered charges fairer and closer to the rates available from lenders in the market. It was brought about in 2001 as part of the Lord Chancellor's changes to the financial conditions for public funding.

The legislative authority is:
Regulation 99(4) Civil Legal Aid
(General) Regulations 1989 as
amended by Regulation 3 Civil
Legal Aid (General) (Amendment
No 2) Regulations 2001 (SI No
3735) for 1988 Act cases and
Regulation 53(3)(b) Community
Legal Service (Financial)
Regulations 2000 as amended by
Regulation 22 Community Legal
Service (Financial) (Amendment No
3) Regulations 2001 (SI No 3663)
for 1999 Act cases.

Partnership Innovation Budget

The Legal Services Commission has approved a further 9 projects for funding under the Partnership Innovation Budget (PIB). 66 projects, out of 228 proposals, were announced as successful in September 2001. The additional 9 brings the total number of projects to be supported through this initiative to 75.

The 9 additional projects to be funded are:

Organisation	Project Name
London Borough of Hillingdon, London Borough of Hounslow	Heathrow Advice Project
Ashford and Shepway CLSP	On-line Advice Service for Young People
Durham County Council	Guidance On-line
Rotherham Citizen's Advice Bureau & Rotherham Advice & Information Network	Rotherham Outreach & Representation Project
Derby Council for Voluntary Service	Capacity Building Voluntary Sector Advice Providers in Derby
Leicestershire Trading Standards Service	Alternative Dispute Resolution Officer
Watford Women's Centre	Opening Doors Project
Castle Point Citizen's Advice Bureau	Young People's Support, Advice and Information Service
Garston Citizen's Advice Bureau	Access to Advice

Bids were invited for funding in May 2001 for initiatives intended to improve the delivery of legal services in innovative ways. The approved projects will be partfunded from the Partnership Innovation Budget (PIB) announced by the Lord Chancellor in December 2000 as a key element in developing the Community Legal Service. A full list of approved projects is available on the LSC website's news page (www.legalservices.gov.uk/misl/news/index.htm).

Approximately £12.8 million of the original £15 million budget has been committed to date, though this figure is still subject to confirmation. Consultation on the procedures and focus for the anticipated next round of the PIB will begin in Spring 2002. This will include proposals for expenditure of the balance of the original £15 million PIB announced in December 2000. A formal announcement of the details of the next round will be made in the Autumn when the details of the available funding have been finalised. For more information please contact Helen Perkins in the Civil Policy Team on 020 7759 0459.

Forms Update

Practitioners will be aware that over the last two years there have been significant amendments to the forms masterpack following the creation of the Commission, introduction of the Funding Code, establishment of the Criminal Defence Service, introduction of the Family Graduated Fees Scheme and reform of the civil means test. We now intend to keep amendments to the masterpack to a minimum for at least the next six months to allow these changes time to settle down. A full review of the forms will then be undertaken in the second half of 2002.

Methods of Delivery Pilot

- New Telephone Advice Contracts on the way

The Methods of Delivery telephone advice pilot was launched in early 2000. The pilot began following a report by the Policy Studies Institute, 'Access to Legal Services - the Contribution of Alternative Approaches', which gave a preliminary assessment of the effectiveness of three nontraditional approaches to providing legal services. The Lord Chancellor responded to the report, stating that: "...A wider range of services will enable providers to give their clients the most appropriate help for the issue at stake, and ensure that the tax payer is receiving value for money".

Telephone advice pilot contractors provide a full casework service in various categories of law, as far as possible, just as a typical face-to-face Legal Help provider would. Contractors are required to comply with the Specialist Quality Mark, together with

Quality Mark "Additional Requirements and Guidance for Telephone Services". Because telephone advice can be provided from any location to any other, the Commission is looking to use telephone advice to plug any gaps between the need we have identified for legal services, and the contracted provision that we have in place.

Three telephone advice contracts were let in the first round, together with two combined contracts for both telephone and 'outreach' work (advice services provided at alternative venues such as doctors' surgeries or local libraries). Three contracts are in the Debt category, and the combination contracts are in Immigration and Welfare Benefits. The providers have performed well, and the Commission currently expects to renew their contracts at the end of the financial year.

We are now expanding the pilot and will be issuing new contracts to meet the need we have identified. We hope that these can start as soon as possible after April 2002. Two existing contractors have bid for expanded contracts in this second round, and with the completion of interviews with each of the applicants held in December 2001 we expect that ten or more contracts will be let in total. These may include a national commercial call centre, firms of solicitors, local authorities, CABx, and other NfPs. They will cover areas of law including Debt, Welfare Benefits, Employment, Education and Housing in regions where there is a high demand. With such a wide range of providers and areas of work we anticipate that 2002/03 will teach us a great deal about the merits and limitations of telephone advice.

Just Ask! Website

Just Ask! (www.justask.org.uk) is the website of the Community Legal Service. It was developed by the Lord Chancellor's Department and on 1 October 2001 responsibility for the management of the site was transferred to the Legal Services Commission. At present Just Ask! displays information about the Community Legal Service, details of the Community Legal Service Partnerships, an electronic version of the CLS Directory and Advice Search which is a portal to websites containing substantive legal information.

A major project has been the improvement of the Advice Search function of the site. A search of this section of the site will quickly retrieve substantive legal information held on linked external websites that is relevant to a user's query. To facilitate this a Legal Advice Metadata System (LAMS) was produced. The content

classification system has been implemented on over 260 sites referenced by Advice Search and the changes went live at the end of January.

The LAMS can be used to classify legal information displayed on a website so that it can be accurately retrieved by the search engine. Software was developed and is now available through Just Ask! to owners of legal websites to enable them to classify their information. The use of the LAMS will be a requirement of the new Legal Services Commission Quality Mark for legal websites.

The LSC works in partnership with external organisations on major projects to develop the Just Ask! site. These partners include the Advice Services Alliance, National Association of Citizens Advice Bureaux, London Advice Services Alliance and the Law Works Pro-Bono Project.



The Legal Services Commission recognises the value of input from external organisations. We aim to establish a consultative panel consisting of representation of members from suppliers and other organisations. Members of this panel will influence the future of the website by giving constructive feedback on proposals for developments, including use of and amendments to the LAMS.

If you are interested in joining this panel please contact the e-CLS Policy Team at the LSC on 020 7759 1020 or e-mail the Just Ask! site on webadmin@justask.org.uk.

Family Advice and Information Networks

The Family Advice & Information Networks project team held a series of one-day introductory seminars in each of the six pre-pilot areas during November and December 2001.

The aim of the seminars was to present an overview of the key messages of the project and the mechanics of the pre-pilot, whilst addressing potential supplier issues. The seminars provided the opportunity to gather local information and knowledge pertinent to the pre-pilot areas, in order to finalise the shape of the pre-pilot for the launch in Spring 2002.

The seminar delegates consisted of contracted solicitor firms, mediation providers, advice sector representatives, local council members, CAFCASS (Children and Family Court Advisory and Support Service) officers and representatives from the Legal Services Commission regional offices. The Law Society was also represented at each of the events.

The delegates contributed to some lively syndicate group discussions which yielded a wealth of useful information for the project team. The

topics discussed included how local referral networks operate in the regional areas, the criteria for supplier selection, local funding initiatives, service gaps, communication requirements and how the delegates felt that the networks could operate in their area.

For those interested, this information will soon be available to view on the Legal Services Commission website.

The project team is currently in the process of appointing suppliers for the pre-pilot phase of the Family Advice & Information Networks.

Following a very positive response to the consultation document issued in 2001, all the feedback has been reviewed and the final project document has been finalised. All parties who submitted consultation responses will be sent a copy of the final document. Anyone who would like to see the final project document can view it on the Legal Services Commission website, www.legal-services.gov.uk or can request a copy from the Family Law & Mediation team at Gray's Inn Road by telephoning 020 7759 0315.

Consultation Paper on Risk

In February, the Commission will issue a consultation paper on pre-contract enquiries, official investigations carried out under contracts, and on sharing information with other appropriate bodies when it is in the public interest to do so. Consultation will last three months. The paper will be sent to professional bodies, practitioners' groups and other usual consultees. It will also be placed on the Commission's website (www.legalservices.gov.uk). If you do not have access to the website and would like a copy, please contact Simon Morgans (simon.morgans@legalservices.gov.uk) at our Head Office at 85 Gray's Inn Road, London WC1X 8TX.

Advice Services Alliance Courses

CLS Support

Advice Services Alliance (ASA) has asked us to inform suppliers that they are running an independent project, called CLS Support, which will be running four courses during Spring/Summer 2002 on issues relating to Specialist Quality Mark and General Civil Contract requirements. These one day courses are aimed at not-for-profit organisations operating CLS Fund contracts (either NfP or solicitor).

Course 1: "Time Recording: Making every minute count"

Monday 4 March - London Wednesday 27 March - Birmingham Monday 8 April - York

Course 2: "Sufficient Benefit Test"

Wednesday 17 April - Bristol Tuesday 30 April - London Thursday 23 May - Birmingham

Course 3: "Practicalities of Meeting the Specialist Quality Mark"

Tuesday 14 May - Manchester Tuesday 11 June - Birmingham Monday 1 July - London

Course 4: "Monitoring Performance: Supervision, File Review & Appraisal"

Monday 17 June - Cardiff Tuesday 9 July - Birmingham Thursday 1 August - London

For more information please contact ASA on 020 7236 6022 or e-mail: admin@asauk.org.uk.

Alternative Dispute Resolution

ASA are also running half day courses on ADR during March in Manchester, Birmingham and London. For more information contact Val Reid on 020 7236 6026 or e-mail: val.reid@asauk.org.uk.

Supplier Survey 2001

Last autumn the Legal Services Commission conducted its second survey of LSC funded suppliers. We would firstly like to thank the 1025 suppliers who completed and returned the survey. The results are being addressed at every level of the LSC and we will make every effort to improve where we can, starting with further analysis of problem areas. Outcomes will form part of the Commission and regional office business plans. The main findings of the survey and our response (to date) to issues highlighted by the results on a national level (results varied from region-to-region) are outlined below:

The Survey

The survey asked 99 questions under the following headings:

- LSC audits
- Contracting
- Operational performance
- Your relationship with your regional office
- Finance operations
- Communication on important issues

There was also a section for suppliers to add their own comments. Approximately 6000 surveys were distributed to suppliers with a civil franchise/contract and/or a criminal contract.

Results Overview

We were disappointed to see that the 2001 results followed a very similar pattern to last year's and that if anything results were less positive. We are working hard to resolve many of the issues raised by the 2000 and 2001 surveys and we hope that we will be successful in changing suppliers' perception of our performance in problem areas.

Recipients completed the survey using a sliding scale from 1-5. A score of '1' indicated strong agreement with a positive statement and '5' strong disagreement. The overall average score for the survey was 2.58 compared to 2.5 last time.

Positive Outcomes

LSC Audits

- The average score for the LSC Audits section was 1.9.
- 83% of suppliers agreed or strongly agreed with statements such as:
 "We felt the audit was carried out in a constructive manner".
- It was pleasing to see this trend, set in last year's survey, continue and we hope that this result reflects our commitment to building good relationships with suppliers.
- However, suppliers perceived the time taken to return suppliers' files after cost compliance audits less positively.
- The graph (below) shows how the results were spread across this category.

Regional Office Workshops and Open Days

It was pleasing to see that this work is having a positive impact. 66% of suppliers agreed or strongly agreed with: "We find regional workshops and briefings, open days or similar events to be worthwhile and accessible". Only 13% of suppliers disagreed or strongly disagreed. The overall score for this question was 2.34.

Staff Politeness

- The average score for questions that referred to staff politeness was 2.0.
- An example of a statement posed

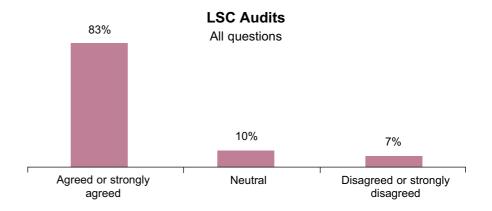
was: "Regional office staff are polite" - 90% of suppliers agreed or strongly agreed with this statement. We are pleased that we continue to be seen as courteous.

Areas for improvement

Although these areas for improvement are split into sub-categories problems are not being examined in isolation. For example we know that if suppliers are not satisfied with rejection decisions this can generate more correspondence, which can in turn generate more telephone calls as suppliers chase correspondence.

Communication and Change

- Getting the way we manage change and our communication of change right is of crucial importance to suppliers and the Commission.
- 2% of the suppliers who returned the survey commented on the way the LSC manages change. One comment was: "Too many changes too fast. Very difficult to keep up to date"
- 38% of suppliers disagreed or strongly disagreed with the following statement, which scored 3.09 overall: "The LSC gives sufficient notice of significant changes".
- Some comments also related to form changes. For example: "Far too many changes of form, for no apparent reason. Far too little notice of such".
- It has been decided that amendments to the forms master



- pack will be kept to the absolute minimum for the next six months to allow the recent changes time to settle down.
- An extensive 'bureaucracy review' covering change management is currently being conducted.
- The Commission is also carrying out a thorough review of its timetable of future changes to ensure they are scheduled in a way that does most to assist suppliers in their implementation.
 We will be approaching suppliers' representatives to discuss these proposals.
- The Commission will be running a series of supplier seminars to launch the Specialist Quality Mark in April 2002. The seminars will include a broad-based briefing covering the full range of developments planned by the Commission.

Communication on important issues

- Numerous suppliers commented upon the way the LSC communicates guidance and important news (including giving notice of change).
- "Website not always up-to-date" was one such comment.
- Only 38% of suppliers agreed or strongly agreed with the following statement, which had an overall score of 2.74: "I find the information on the LSC website to be both accessible and relevant".
- 27% of suppliers disagreed or strongly disagreed with this statement: "Guidance on important issues given in regional office newsletters or other publications is clear and comprehensive". The overall score for this question was 2.88.
- "Guidance is comprehensive but too bulky in far too much detail" was one of the comments made on 'quidance'.
- In terms of the way the Commission communicates important issues in general there were slight improvements in terms of the survey results from last year to this. However, the score for: "Guidance on important

issues given in the LSC head office publication such as *Focus* is clear and comprehensive" (2.82) suggests that improvement is needed. We are debating the best way forward.

Criminal Contracting

- The overall score for questions on criminal contracting was 2.89.
- The least positively perceived aspect of criminal contracting was the training provided. 50% of suppliers disagreed or strongly disagreed with this statement: "We were provided with sufficient training on the criminal contract" (overall score 3.45).
- The LSC recognises that the change imposed by the introduction of the criminal contract was huge. At every stage we sought to keep the profession advised of every change, often including direct correspondence, and released finalised material as early as possible to allow firms to plan as far in advance as possible.
- We have drawn a number of lessons on where we can improve the implementation process, for example combining all aspects of consultation rather than holding separate exercises. However, all suppliers were offered the opportunity to attend training sessions and those who attended said that they helped tremendously.
- Throughout the drafting of the criminal contract, we have sought to reduce, as much as possible, the burden of administration on contractors. The number of forms required has been reduced from 15 to 11, with the overall number of pages more than halved.
- We meet monthly with the Law Society and other representative organisations to review how the criminal contract is working and in what ways it can be improved.

LSC Manuals

 There were no questions that directly addressed the manuals, but one comment was: "The LSC

- manual is just too big and confusing for me to find out what to do!"
- We accept the LSC manual can be improved significantly. It will be reviewed this year and suppliers will be asked for their suggestions for change. The next release (April 2002, Release 6) will include lists of contents at the beginning of each part of each volume as well as the lists of contents at the beginning of each volume which will help users find their way around. This has been highlighted as a major weakness.
- Replacing the annual paperback "Handbook" and the other guidance manuals such as the "Guidance on the Exercise of Devolved Powers" with an integrated four volume manual was an important step, in part necessitated by the switch to contracting, and because the public funding system under the 1999 Access to Justice Act is more targeted and responsive to identified priorities. All the material relating to both contracting and the Quality Mark must be included. Moreover we have made our decision making more transparent by including detailed guidance on the Funding Code and on all aspects of funding on which we base our decisions. This means that suppliers now have access to the material we use when making decisions, which is important if devolved powers are to be exercised appropriately.

Rejection decisions

- Overall, suppliers remain dissatisfied with the reasons given for bill/ application rejection - the average score for related questions was 3.17, which indicated only a slight improvement on last year's results.
- Only 25% of suppliers agreed or strongly agreed with statements such as: "Reasons for rejecting applications are reasonable".
- One supplier commented:
 "Applications and costs assessments are rejected far too quickly, with no real consideration of the individual matter or the covering letter explaining the position".
- We have also had many 'data

- integrity' related complaints. We are addressing the issue of data being incorrectly entered, which causes applications to be rejected.
- One initiative at a regional office has been to second staff to local suppliers so that Commission staff and suppliers can gain greater understanding of how the other works. The experience of this office will be monitored to see whether the Commission will introduce this initiative more generally.

Consistency of decision-making

- Results suggested that suppliers perceived the consistency of the LSC's decision making less positively than last year. The overall score for statements such as: "Decisions on further assessments are consistent" was 2.91.
- Only 32% of suppliers agreed or strongly agreed with statements that had a 'consistency theme'.
- The score for "We receive consistent advice [from regional office staff]" (2.94) continued this trend in results.
- One supplier commented: "We do find there is a lack of consistency in decision making when amending certificates and dealing with costs assessments".
- The Commission is conducting an extensive consistency exercise designed to analyse the problems both suppliers and the Commission have. This is part of a long-term strategy, which we are determined to conclude successfully.

Time Taken

- The results told us that suppliers continue to perceive the time we take to complete work to be too long. In particular, the following areas had negative scores:

 Refunds, appeals, amendments, non-urgent applications, further assessments, representations and debt recovery. The overall score for questions that referred to time taken was 2.89 compared to 2.8 last year.
- Even though there is some statistical evidence to show that we

- are improving in some areas, we accept that perception is reality and that we must improve.
- Time taken questions were asked in most sections of the survey. The time taken to process work, deal with correspondence and answer telephones were the least positively perceived areas. The graph (below) shows how results were spread across the 'time taken' questions.

Correspondence handling

- The survey results told us that correspondence handling (particularly in terms of time taken) remains one of the Commission's least positively perceived services because the overall score (3.09) was very similar to last time.
- Results were relatively evenly spread across each possible answer for statements such as: "General correspondence is answered in reasonable time [at regional offices]".
- This trend suggests that some suppliers continue to have a less than consistent experience in this area.
- One comment was: "Delay in dealing with correspondence is far too long".
- The Commission is striving to end 'fire-fighting' in terms of its correspondence management and working towards effective long-term solutions.

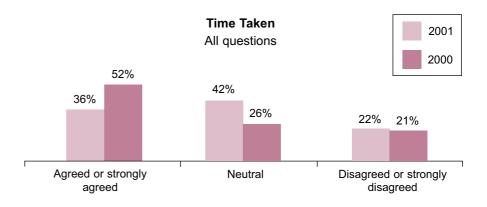
Contacting the LSC by telephone

 Suppliers' perception of our performance in this area has not improved universally since the last survey in terms of the overall

- results. 7 out of the 13 regional offices did have the same or better results than last time the point being that performance varies across the regions. This pattern was broadly reflected in internal surveys of telephone performance.
- As with correspondence, the results showed a relatively even spread across the five possible scores for statements such as: "Telephone calls [at regional offices] are answered in a reasonable time" (the overall score for this question was 3.24). This points towards an inconsistency of service.
- One supplier commented:
 "Telephone calls [are] answered quickly but then [we are] left waiting for [a] connection (at our expense) for unjustifiable lengths of time".
- Research into this problem is being undertaken at regional offices. One resolution has been to use supplierbased focus groups to see which of the changes already made or proposed is beneficial.
- At another office an independent agency has found that when callers get through to the office they get the right answer to their query but getting through is the major problem. It is also clear that a large proportion of calls are made to us because suppliers are reluctant to wait for us to handle their written applications and are trying to fast track their written correspondence. This research is being used to determine how to progress in improving liaison with the profession.

Next Survey

The next survey is likely to be conducted in Autumn 2002.



Quality Mark for Mediation

The consultation period for the Mediation standard has now ended. A large number of responses have been received containing a number of constructive suggestions that will inform the final standard. The responses are currently being analysed and will be available on the Legal Services Commission's website (www.legalservices.gov.uk) once this is finished. The steering group will meet this month to discuss the consultation responses and finalise the standard.

It is anticipated that the final version of the standard will be available from May/June and will be audited against immediately.

For more information contact <u>sarah.</u> <u>davidson@legalservices.gov.uk</u> or 020 7759 0394.

Client Feedback Questionnaire

The final versions of the questionnaire and supporting documentation were distributed to all suppliers just before the Christmas period. The questionnaire has been sent to suppliers in English and Welsh but is also available in several other languages. Albanian, Arabic, Farsi, French, Turkish and Urdu versions can either be downloaded from the Legal Services Commission's website (www.legalservices.gov.uk) or are available on request from the Supplier Development Group. Bengali, Somali, Hindi, Gujerati, Punjabi and Spanish versions of the Client Feedback questionnaire will also be put on to the Legal Services Commission's website in due course.

For further information contact janene.mulvaney@legalservices. gov.uk or 020 7759 0397.

Mapping of other Quality Assurance Standards against the Quality Mark

Since the launch of the Community Legal Service (CLS) in April 2000, the Supplier Development Group has been committed to working with other existing organisational standards.

We have been working closely with an independent consultant who has liaised with representatives from each of the major network organisations to map their standards against the CLS Quality Mark. It is our intention that organisations already possessing a network standard will be able to see the common features between the standards when using the templates, and therefore will not have to duplicate their efforts when applying for the Quality Mark.

This exercise has now been completed and mapping templates including instructions for use have been produced for the following standards:

- Association of London Government
 Quality Assurance Measures
- Age Concern Organisation Standard

- The Commission for Racial Equality Core Standards
- DIAL UK Quality Standard
- Federation of Information and Advice Centres (FIAC) - Quality Standards Self-Assessment
- MIND Quality Management in MIND
- PQASSO Practical Quality Assurance System for Small Organisations
- Telephone Helplines Association -Quality Standard
- Youth Access Quality Standards for Youth Information, Advice, Counselling and Support Services

These templates are now available on the Legal Services Commission website, at http://www.legalservices.gov.uk/gmark/intro forms.htm.

For further information contact scott.taylor@legalservices.gov.uk or 020 7759 0380.

Specialist Quality Mark

Following an extensive consultation process, including a national round of seminars, the final publication of the Specialist Quality Mark (SQM) standard will be circulated to the profession at the end of this month.

The SQM standard will become operational on 30 April 2002 and organisations applying for certification at the Specialist level for the first time will be expected to meet all requirements from this date.

For existing providers the following applies:

[1] Clarifications of guidance from LAFQAS (list 2) will be audited from

October 2002 but observations will be noted against them on audit from April 2002.

[2] New requirements as detailed in list 3 and highlighted in bold throughout the standard will be audited from October 2002.

The Legal Services Commission will be setting up seminars and training workshops during March, April and May 2002 to present the final standard. These will be held across the country and details will be sent to SQM providers in due course.

For further information contact qualitymark@legalservices.gov.uk.

Use of Logos

From 30 April 2002, the use of the logos shown below will no longer be permitted as they have been replaced by the CLS Quality Mark and CDS logo. If this causes a problem, please contact your Account Manager. We recognise that there may be some organisations that have old logos that are not easy to remove e.g. in signage above their offices and the aim is for a sensible agreement to be reached between them and their Account Manager.





Organisations with a Specialist Quality Mark (previously a franchise) in any area of civil law may display the CLS Quality Mark logo. Organisations with a Specialist Quality Mark (previously a franchise) in Crime may display the Criminal Defence Service logo. Logo packs containing guidelines on the use of the logos are available from your local regional office

For further information contact qualitymark@legalservices.gov.uk.

Quality Mark for the Bar

The consultation period for this standard has now ended and the responses have been analysed. The steering group met in January to discuss the consultation responses and the standard is expected to be finalised in February/March. Applications are anticipated from April onwards.

For more information contact sarah.davidson@legalservices.gov. uk or 020 7759 0394.

Quality Mark for Websites

The Quality Mark standard for Websites is the innovative new standard for legal information. The standard is available on-line at www.legalservices.gov.uk. This Quality Mark supports the work of the Web Standards Project for improving the accessibility of on-line information and increased access for the visually impaired. The standard was launched in association with the London Advice Services Alliance at a very successful public event in November 2001. A project is now under way to

define the audit process for the standard and any applications will be audited on a pilot basis.

An application form will be available on the Legal Services Commission's website this month, at which point organisations may apply for the Quality Mark for Websites.

For further information contact <u>clare.powell-evans@legalservices.</u> gov.uk.

Hartlepool CLS Advice Fair

Hartlepool advice seekers recently had the chance to put their questions to advice providers in a novel venue - the town's shopping centre.

The advice fair was part of a continuing campaign to raise awareness of the Community Legal Service among local residents. One visitor was the town's MP, Peter Mandelson, who visited the fair to find out about the ongoing work of the CLSP and offer his support. He was particularly interested in the CLSP's referral protocol as he often receives or makes referrals on matters of legal advice.

A total of 10 organisations were involved in the fair and each of them answered up to 30 queries.

This event successfully raised the profile of the CLS in Hartlepool and the LSC's North East Regional Planning and Partnership Team are planning further such events in partnership with local advice providers in the future.



(right) I-r Attendees Phil Mitchell, McArdles Solicitors; Lee Cranston, Regional Planning & Partnership Consultant; Les Courtnell, LSC Regional Director; and Peter Mandelson, MP. (left) Exhibitors at the Hartlepool Advice Fair

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 32-36 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/01/71

Nature of Case

Proposed appeal to the House of Lords in a personal injury case concerning a road traffic accident.

Report of Panel

This case was unusual in that the

proposed appeal to the House of Lords was seeking to challenge the way in which the Court of Appeal had interfered with a decision on the facts of a road traffic accident case determined in favour of the claimant at first instance. The Panel had much sympathy with the position of the claimant and indeed could see much force in the criticisms being made of the way the Court of Appeal had dealt with the matter.

Clearly it was important for there to be clarity as to the extent to which the Court of Appeal should interfere with findings of fact by a trial judge. However the role of the Court of Appeal had already been considered and guidelines laid down by the House of Lords in earlier cases, including Pickford v ICI referred to in Counsel's Opinion. The Panel did not accept that any further appeal in the present case had any reasonable likelihood of changing or developing those guidelines. Rather the appeal would be a matter of seeking to show that, in this individual case, the Court of Appeal did not follow the correct approach. There would be no significant wider public interest in the House of Lords re-stating existing law. Further the Panel did not feel there was any realistic prospect of success for arguments under the Human Rights Act that the current appeals system did not provide an effective right of appeal. Nor was this appeal likely to develop the general law of negligence.

With regret therefore the Panel concluded that this case had no significant wider public interest.

Conclusion

No significant wider public interest

PIAP/01/62

Nature of Case

Representation before the Pensions Appeal Tribunal to consider whether the applicant's schizophrenia was caused or aggravated by her military service. Exceptional funding application.

Report of Panel

The Panel agreed that to establish as an issue of general principle that schizophrenia could arise from the applicant's conditions of service would be a matter of great public importance. The Panel's concern was whether this issue would be resolved in a way which would be promulgated and be of benefit to others, particularly as it appeared that the Ministry of Defence would not be bound by a decision of the tribunal in this respect.

On balance the Panel was persuaded, in particular by the representations from MIND, that this case was one of significance. If a decision favourable to the claimant were reached by the Pensions Appeal Tribunal, MIND and other organisations would ensure that it was promulgated so that others in a similar situation could have claims for a pension or else a cause of action against their employers. In all the circumstances the Panel was satisfied that the case had a significant wider public interest.

Conclusion

Significant wider public interest Rating: Significant

PIAP/01/74

Nature of the Case

Multi-party action against the police seeking damages for false imprisonment and unlawful searches carried out on the occasion of the May Day protests.

Report of the Panel

The Panel considered the cases before it as illustrative of the large number of clients who might have potential claims arising out of police action in dealing with the May Day protests. The Panel did not consider it necessary to see the papers from each and every individual client in order to consider the issues of principle relating to public interest.

The Panel was satisfied that these cases had the potential to clarify the powers of the police to restrict the

movement of crowds attending a lawful demonstration. These cases could benefit the large numbers of people who were detained in the Oxford Circus area on the day of the protest. Further, the cases had the potential to influence future police policy at other large scale demonstrations. The Panel was not persuaded that it was likely that these cases would establish wholly new principles of law, but rather that the cases would clarify the application of existing law to demonstrations such as the May Day protests.

Conclusion

Significant wider public interest Rating: High

PIAP/01/73

Nature of the Case

Negligence claim against social services following injury to the applicant whilst in father's care.

Report of the Panel

The Panel expressed great sympathy for the applicant, however it was considered that the law relating to the duty of a local authority in this area was already firmly established. The present case was likely to be decided on its own facts and would not serve to clarify the law in any way, nor change the practice of this or any other authority.

Conclusion

No significant wider public interest

PIAP/01/76

Nature of the Case

Application for funding to obtain a declaration of incompatibility with ECHR of domestic law relating to the rights of families of victims of dangerous driving to make representations in criminal proceedings brought against the driver.

Report of the Panel

The Panel found no reference in the application to a particular legislative provision that the applicant sought to have declared incompatible. It appeared that the current procedure adopted by the courts was for the Court of Appeal to inform the victim's

family through the Crown Prosecution Service so that the family may attend the hearing.

The Panel noted that the current application was brought after the hearing of the appeal on sentencing, notification of which was not given to the victim's family. It appears that this was due to a failure in communication between the CPS and the Court of Appeal. The Panel felt it unlikely that, given the prejudice to the defendant in having his sentence reviewed again, the courts would order a further hearing in order to allow the victim's family an opportunity to be heard. That being the case, the Panel was not satisfied that any public benefits would come from seeking to challenge what occurred in this individual case. The Panel noted that, should the issue arise in a future case, a challenge might be supportable on public interest grounds, especially if the application for funding were made in advance of sentencing.

Conclusion

No significant wider public interest

PIAP/01/77

Nature of the Case

Proposed appeal to the House of Lords in a case involving injury caused to a pedestrian by a speeding police vehicle answering an emergency call.

Report of the Panel

The Panel decided that the case provided the House of Lords with the opportunity to clarify the nature of the duty owed by drivers of police vehicles to pedestrians when answering emergency calls. The Court of Appeal judgments appear to have been based, at least in part, upon policy arguments against imposing too onerous a duty on the police and other emergency services in such cases.

Conclusion

Significant wider public interest Rating: Significant

PIAP/01/78

Nature of the Case

Proposed proceedings against the police and magistrates' court seeking

damages for trespass to land and a declaration of incompatibility with Article 8 ECHR of domestic law concerning the procedure by which a search warrant is obtained.

Report of the Panel

The Panel noted that whilst the issue was potentially one of wider public interest, the present case showed no grounds for the argument that the current safeguards in the procedure are insufficient to protect the public. Nor had the applicant provided evidence to show that the current procedure had been improperly followed in the present case. Therefore the Panel was not satisfied that this case had any potential to change procedures for obtaining search warrants in a way which might benefit the public.

Conclusion

No significant wider public interest

PIAP/01/79

Nature of the Case

Claim of discrimination against the applicant by a local housing authority contrary to the Disability Discrimination Act 1995.

Report of the Panel

The Panel noted that the allegedly discriminatory policy was that the Council considered disabled applicants for housing only for accommodation already adapted to a disabled person's needs. There being a far smaller supply of adapted accommodation, the effect of the policy was that disabled persons would have to wait much longer to be housed. The Panel noted the arguments under the Disability Discrimination Act 1995 and under Articles 8 and 14 of ECHR.

The Panel considered that the case had the potential to affect all disabled applicants applying to the local authority for housing. In addition, the Panel felt that a decision of the County Court in the applicant's favour might affect the housing policy adopted towards disabled people by other local authorities. The case could therefore be said to have significant wider public interest.

Conclusion

Significant wider public interest Rating: Significant

PIAP/01/80

Nature of the Case

Proposed application to the House of Lords for permission to appeal Divisional Court's order that male offender be detained in Young Offenders Institute.

Report of the Panel

The Panel noted that the applicant alleged the incompatibility of the statutory provisions providing for detention of young male offenders, but not their female equivalents, in Young Offenders Institutes. By failing to provide an equivalent place of detention for girls, the statutory provisions were alleged to be discriminatory.

It not being apparent from the papers before it, the Panel remained in doubt as to exactly what discriminatory effect the difference in treatment of the sexes allegedly had. The Panel also noted that the Applicant would not personally benefit from a successful appeal on this point of law. Nevertheless, the Divisional Court had certified the issue as one of general public importance

and the Panel found that benefits may be afforded to other young offenders were the appeal to succeed, possibly in the form of increased resources. The Panel's majority decision was therefore that the point was one of significant wider public interest. However the minority view of the Panel was that it would be difficult to show that any real benefits would flow from this case, even if successful, and that therefore no significant wider public interest existed.

Conclusion

Significant wider public interest Rating: Significant

PIAP/01/81

Nature of the Case

Proposed appeal from Court of Appeal in relation to duty of care owed by police to suspects attempting to escape arrest. Application of the doctrine ex turpi in tort cases.

Report of the Panel

The Panel considered all the papers in this case including the further submissions by the solicitors dated 28 November 2001. The Panel noted the request that the matter be adjourned to permit oral representations. However the Panel felt able to

consider the public interest issues in this case on the basis of the papers before it.

This proposed appeal to the House of Lords concerned the extent of the application of the principle of *ex turpi causa non oritur actio*, under which a claim in negligence could not under existing law be founded upon the claimant's own illegal act.

Whether and to what extent this principle should continue to apply was clearly a matter of great importance. A House of Lord's decision favourable to the claimant might open up the possibility of significant numbers of future claims. The Panel noted in particular the dissenting judgment in the Court of Appeal concerning the applicability of the illegality defence and also the Law Commission's Consultation Paper No. 160 on the same subject. It was not however clear how many clients might benefit from a change in the law in this respect.

The unanimous decision was that this was a point of wider public interest.

Conclusion

Significant wider public interest Rating: Significant to High

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Proposed Payment Dates

The proposed payment dates for February 2002 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 Feb 2002 - Jun 2002

Contract Payments	First Settlement of the Month	Second Settlement of the Month
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.

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

It is important that *Focus* is seen by everyone in your firm who is involved in LSC work. To help you circulate *Focus*, you may make as many photocopies as you need. Issues from number 26 to 37 are also available in PDF format on the LSC website at www.legalservices.gov.uk.

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

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