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

■ General Civil Contract - Immigration

The Commission proposes changes to the guidance in the General Civil Contract to strengthen the application of the merits test for Controlled Legal Representation. The time standards in the Contract for immigration work are also being updated. (See page 2)

■ Debit Notes

From September 2002, contract payments will automatically be offset against any outstanding debit note on your account. All firms and barristers still with debit balances are advised to plan their cash flow accordingly and make repayment immediately. (See page 6)

■ Civil Contract Awards 2003/4

The current three year General Civil Contracts come to an end in March 2003. This article sets out our approach to contracts after that date. Solicitors' contracts will be renewed on broadly current terms. (See page 7)

■ Statutory Charge: exempt costs and property

This article clarifies whether the charge applies to: pension transfers in ancillary relief proceedings; the former matrimonial home; and Criminal Injuries Compensation Authority awards. (See page 11)

■ CLS Eligibility – new gross income cap

There are small but significant changes to the financial eligibility regulations, effective from 5 August. (See pages 12-13)

■ Guidance on family graduated fees

A large number of issues have been raised during the first year of the scheme's operation. In this article we provide answers to frequently asked questions. (See pages 14-17)

Immigration advice at police stations

Criminal solicitors are often called out through the duty scheme to advise those detained at police stations on a matter involving immigration law. The LSC recognises that duty solicitors or representatives at police stations may not have the necessary expertise in immigration law to be able to advise clients of their rights.

We therefore plan to set up a pilot scheme to provide specialist support by telephone to criminal representatives at police stations on immigration matters. The scheme would work on a rota basis and participants would agree to be available on a 24-hour basis to receive calls from representatives with immigration law queries. We are inviting applications from suppliers, either solicitors or from the

not for profit sector, to contract with the LSC to provide this service for an initial period of 6 months with the likelihood of extension thereafter if successful. Those applying must have a current contract with the LSC in immigration. We are likely to want to contract with up to seven suppliers.

If you are interested in this scheme please write to register your interest with Rebecca Bowry, Asylum Contracts Co-ordinator at Civil Contracting Policy Unit, 85 Gray's Inn Road, London WC1X 8TX or e-mail rebecca.bowry@legalservices.gov.uk. The closing date to register your interest is Friday 23 August 2002. Those who register will receive an application pack including further details of the contract terms, the selection process and timetable.

General Civil Contract: Immigration news

The Commission has published proposals to:

1. Clarify guidance on the application of the merits test for Controlled Legal Representation, specifically in relation to asylum cases. We are concerned that the merits test is not being correctly applied in relation to cases where the prospects of success are in reality poor.

The intention of the proposed changes is that public funding will be more effectively targeted on those cases where there is a reasonable prospect of achieving a positive outcome for the client.

We will monitor, via audit, the grant of CLR by practitioners. Decisions to grant CLR under devolved powers will not be disallowed on merits grounds. However claims for individual items of costs will be subject to assessment as to reasonableness in the normal way. If following audit the Commission considers that the guidance on CLR is routinely being misapplied then the Commission may take steps to remove

a firm's power to grant CLR. The firms concerned will have to apply to the Commission for prior authority.

2. Update the immigration time standards in section 12 of the Solicitors Contract Specification. The new draft reflects some of the numerous procedural changes that have taken place since the first version was published.

The time standards are not part of the Not for Profit General Civil Contract. Not for Profit providers are however being sent a copy of the standards so that they can have regard to them when carrying out immigration work.

Responses to the consultation paper should be sent to Zoë Farrant, Civil Contracting Policy Unit, Legal Services Commission, 85 Gray's Inn Road, London, WC1X 8TX, email: zoe.farrant@legalservices.gov.uk by 8 September 2002.

Additional copies of the paper are available from the LSC website www.legalservices.gov.uk.

Bar Asylum Advocacy Project

The LSC is to fund a project to train junior members of the bar in asylum and immigration law. This will enable them to represent eligible clients in asylum hearings before Adjudicators and the Immigration Appeal Tribunal (I.A.T). This project, undertaken in conjunction with the Bar Council, is in response to the announcement by the government that the number of appeals dealt with by the Immigration Appellate Authority will be increased from 4,000 to 6,000 per month from November 2002.

The LSC will pay the costs of training barristers selected for the project. Training will be provided by a recognised legal training provider. Participants will then be subject to assessment, which will also be open to those outside the scheme. On successful completion of the assessment, participants will agree to undertake a specified number of hours of advocacy before the I.A.A in return for the LSC agreeing to guarantee a minimum level of earnings for an initial period. Their services and the services of all those who successfully complete the assessment will be notified by the Commission to those with immigration contracts.

It is intended that the invitation to apply for participation in the Bar Asylum Advocacy Project will be advertised in Autumn 2002 in *Focus* and other relevant publications.

Any further queries or requests for further information should be directed to Zoë Farrant on: 020 7759 0337

Steve Orchard, CBE



Steve Orchard to retire

Steve Orchard, Chief Executive, recently announced that he will retire in March 2003.

Mr. Orchard has worked for over 40 years with the Lord Chancellor's Department, Legal Aid Board and Legal Services Commission. He was appointed chief executive when the LSC was established in April 2000. He was previously chief executive of the Legal Aid Board, which the LSC

replaced. He was made a CBE in 1999. The process of selecting a successor will begin in the Autumn of this year. It is expected that a new chief executive will be appointed early in 2003. Mr Orchard's post will be filled by open competition.

Supplier Survey

The third annual supplier survey will be carried out this Autumn.

The questionnaire aims to cover all aspects of your relationship with the Legal Services Commission. It is a valuable source of information that, together with our other performance monitoring, provides a clear picture of our strengths and areas where we can improve.

Last year's survey received over 1000 responses and we hope to increase this number in the current year.

Many of the areas identified in previous surveys are being addressed. We are conducting a programme of consistency exercises to feed into and

focus further training on decision-making and we are also working to improve our telephone service. We will be looking to assess the effectiveness of the work we have already done through the results of this survey.

The results will be published, together with details of the actions undertaken to address national issues, in an edition of *Focus* towards the end of this year.

We very much want to know your views. Without understanding what you think of our performance we cannot achieve our objective of improving our quality and efficiency.

Equality Scheme

The Legal Services Commission has published an Equality Scheme setting out how we will meet new duties under the Race Relations (Amendment) Act 2000, to ensure that we promote race equality in the delivery of our services.

The Scheme outlines our arrangements for assessing, consulting, monitoring and reporting on the impact of the Commission's policies on the promotion of race equality. It also sets out our arrangements for ensuring public access to information and services by us, and training our staff on diversity issues. The LSC has voluntarily extended the scope of the Scheme to include gender and disability issues where relevant, in advance of anticipated legislation in these areas.

The Scheme is more than just a way of satisfying our legal responsibilities under the 2000 Act. It is a framework of standards and principles that will be applied across the full range of our functions to ensure that we deliver quality public services in a manner which is fair for all sectors of the community, that our staff are treated fairly and that our workforce reflects the communities we serve.

The Scheme documents are available on our website at www.legalservices.gov.uk. Hard copies are also available free on request from the LSC Secretariat department, LSC Head Office, 85 Gray's Inn Road, London WC1X 8XT (020 7759 0000). If you require copies in different formats (audio, Braille etc) or languages, please advise the Secretariat department of this when making your request. The published Scheme is a living document, and we welcome feedback and suggestions, which should be sent to our Secretariat department.

Revised fees for Chairs and Members of LSC Committees

Effective from 1 April 2002

The Commission has received advice from the Lord Chancellor's Department of revisions in the fees for part-time Judicial and Tribunal appointments which form the basis of fee payments to LSC Committee Chairs and Members. The old and new rates of attendance fee payable are set out below:

	old rates		new rates (1 April 02)	
	half day rate (£)	full day rate (£)	half day rate (£)	full day rate (£)
Chairs	129.00	258.00	133.50	267.00
Members	102.50	205.00	106.00	212.00

Housing Possession Court Duty Scheme Pilot

The schemes participating in the pilot provide advice, assistance and representation before the Court to those at risk of losing their homes. Although it is preferable that defendants seek advice prior to attending these hearings, in many cases this does not happen. The duty schemes therefore provide the opportunity to obtain last minute, and often vital, advice and representation. The assistance provided at court under the schemes is not means tested and is free.

The schemes participating in the pilot are based in the County Courts serving the following areas: Birmingham, Brighton, Central London, Coventry, Hull, LB Lambeth, Liverpool, Norwich, Nottingham, Portsmouth, Sheffield, Swansea and Tameside. Clients needing to use these schemes should arrive at court 30 minutes before the time on their court papers and inform the court usher that they need some advice. They should bring their court papers and any correspondence that they have had with their landlord. They should also bring information about their income, expenditure and any other debts that they may have.

Following the hearing, an advice letter is sent to each client seen under the scheme, confirming what happened and the outcome of the hearing. Additionally, those clients who need further help, such as with debt or welfare benefits problems, are made appointments at advice agencies or provided with appropriate referral information. After this, any further work carried out for the client has to be funded separately.

“The duty schemes therefore provide the opportunity to obtain last minute, and often vital, advice and representation”

In order to assist the development of the pilot, visits are being made between June and August to each of the schemes to review their progress and discuss any issues that have arisen over the first few months.

Any queries or requests for further information about the pilot should be directed to:

Mary Burkinshaw
Tel 020 7759 1172.

Statutory Charge statements update

As reported in the April 2002 edition of *Focus*, a project is underway to resume sending out statements of statutory charge liability to clients on a rolling basis, annually on the anniversary of first registration of the charge.

Pilot

The first stage of the project is now complete, and we will be sending out a limited number of statements to clients during August 2002. We will then evaluate the operation of the new systems and consider any feedback we have received before hopefully going live nationally later this year.

Likely queries from clients

Statements will be sent out under a covering letter from the LSC Land Charges Department at Head Office (address below) with explanatory notes. If you or your clients have any queries, these should be directed to the Land Charges Department in the first instance. We would also welcome comments on the format and presentation of the statements, which should be sent to the same address.

Further information and contact details

We will provide further information and guidance before the project goes live nationally. In the meantime all comments and queries should be sent to:

Land Charges Department
Legal Services Commission
Head Office
85 Gray's Inn Road
London WC1X 8TX

Tel 020 7759 0000.

Civil Contracting Cost Compliance Guidance

The Commission published version 1 of the "Guidance on the assessment of Costs for Controlled Work" in November 2001. Suppliers were advised to apply the guidance as soon as practicable after receipt, as much of it was a consolidation of existing guidance (see *Focus 36* page 29).

Nevertheless, the Commission felt that it was important to give practitioners the opportunity to comment on the guidance and suggest areas for improvement. Copies of the guidance were sent to all suppliers with a Legal Help contract, to the Law Society and other representative bodies and the document was posted on the Legal Services Commission website.

The Commission received a number of responses from contracted suppliers and professional representative bodies including the Law Society, the Legal Aid Practitioners Group and the Immigration Law Practitioners Association. We subsequently met with those bodies to discuss their responses. A large number of detailed and constructive comments were received. The Commission was pleased to note that the majority of respondents viewed the publication of the guidance positively.

In May 2002 we therefore sent out a revised version of the guidance to all of our civil contractors, and were pleased to be able to incorporate many of the suggestions made on consultation. There were no fundamental changes of principle and most of the amendments were clarifications requested by the profession.

The revised guidance is included as Annex E to the General Civil Contract (Solicitors) Specification in update 7 of Volume 2 of the LSC manual which suppliers should receive in August.

Transfer of Exceptional funding applications

Exceptional funding can be applied for under section 6(8)(b) of the Access to Justice Act 1999 to cover cases which would normally be outside the scope of CLS funding. This can cover representation at inquests or tribunals or in types of proceedings that are normally excluded, such as business cases. Guidance on the principles and procedures for exceptional funding can be found at sections 3.4, 3.12 and 3.13 of the Funding Code decision making guidance in Volume 3 of our manual and on the website.

Until recently applications for exceptional funding have been dealt with by our Policy & Legal Department at 85 Gray's Inn Road,

London WC1X 8TX. However all applications relating to inquests, including police custody inquests covered by section 3.13 of the guidance, are now dealt with by the Special Cases Unit at 29-37 Red Lion Street, London WC1R 4PP. Non-inquest applications should continue to be made to the Policy & Legal Department for the time being.

However, as from Monday 2 September 2002, all exceptional funding applications should be made to the Special Cases Unit at the above address. The Policy & Legal Department will deal with reviews of applications refused by the Special Cases Unit.

Community Legal Service Leaflets

It is of vital importance to the LSC that the 24 CLS Public Information Leaflets remain both accurate and relevant. The Consumers' Association, in conjunction with independent experts, will therefore review each leaflet at least twice a year and where necessary they will be updated.

Please note that the following CLS Public Information leaflets have recently been updated and reprinted: number 8 'Claiming Asylum' in May 2002, number 13 'Problems with goods & services' in July 2002 and number 24 'Family mediation' in June 2002. The version date for each leaflet can be found at the bottom of

the back page of each leaflet.

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

If you have any queries or comments concerning 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



ILPA Asylum Caseworker Training Project

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

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

The purpose of the project is to increase the capacity of suppliers to provide a quality assured service to asylum seekers. It is particularly targeted at support workers and clerks, currently working for suppliers in the dispersal areas. LSC contractors are

given priority booking arrangements for the courses held in their region.

Each course lasts five consecutive working days initially, followed by 3 follow-up days a few weeks later. The courses cover both the technical and practical aspects of asylum casework.

Course details are shown below. Course times are 9.30am – 4.30pm. Strict attendance is required and all coursework must be completed.

Contact Jane Savory at ILPA for a booking form. Tel 020 7250 3757, Fax 020 7251 8384, e-mail: actproject@ilpa.org.uk

course code	location	course dates	follow-up days
LEE3	Leeds	29 July - 2 Aug	21 - 23 Aug
BIR2	Birmingham	12 - 16 Aug	2 - 4 Sept
NOT2	Nottingham	9 - 13 Sept	30 Sept - 2 Oct
LON1	London	23 - 27 Sept	9 - 11 Oct

Oxford CLSP helps winning student Pro Bono Project

The Oxford City Community Legal Service Partnership (CLSP) has in recent months helped two students from the Oxford Institute of Legal Practice to implement an innovative project, created as part of the Solicitors Pro Bono Group Student Challenge. Brid Jordan and Kate Borrowdale, identified the mutual benefits possible from a scheme whereby students from the College worked with local advice-giving agencies, providing research and other support, but obviously not front line advice. A call to the Regional Planning & Partnership Consultant for Oxford City enabled the students to present to the CLSP Executive Group, who then took the idea forward, suggesting local advice agencies that may be interested in participating. Oxford Citizens Advice Bureau, one of the agencies involved, has been

hugely impressed by the students' input and commitment. Over 200 hours volunteer time has been provided to the CAB alone in the first four months. With a succession plan for next year and the expansion of the project to another Oxford college and possibly other areas in the country, Brid and Kate's idea offers yet more potential. The strength of their project was recognised recently when they were presented with first prize in the Solicitors Pro Bono Group Student Challenge.

Further information from Diane Robson, Planning & Partnership Consultant, Legal Services Commission, 80 Kings Rd, Reading, RG1 4LT 0118 955 8628 e-mail: diane.robson@legalservices.gov.uk

Debit Notes

In *Focus* 36, we alerted firms to the credit chasing activities that were being stepped up to reduce the growth of Debit Notes. We also referred to the forthcoming system changes that would result in Contract payments being automatically offset against any outstanding Debit Note on the account. Both of these activities are proceeding, with the Contract payment offset due to take effect in September (subject to system changes being completed in time). If an offset occurs, the Contract payment(s) will appear on the Debit Note statement along with other transactions. Contract payments may be comprised of Legal Help, Crime or Mediation payments. All firms and barristers still with Debit Balances are advised to plan their cash flow accordingly and make repayment immediately.

Debit Notes are produced at the time of each settlement run and contain a tear-off slip giving details of where payments should be sent. Please note that unless it is expected that claims on the subsequent payment run will clear the balance, all Debit Notes should be repaid on receipt. Any queries contact Master Index section on 020 7759 0261.

Commission Open Day

The Commission's second open public meeting will take place on Tuesday 30 July 2002. The meeting will provide an overview of the Commission's work in its second year and will also cover key elements of the Commission's role in developing the Community Legal Service and launching the Criminal Defence Service.

The meeting will start at 1.00pm (reception open from 12.30pm) and will be held at: The Methven Room, The CBI Conference Centre, Centre Point, 103 New Oxford Street, London WC1A 1DU.

For further information please contact Barbara Holburn (T) 020 7759 1135

Civil Contract Awards 2003/04

The current three year General Civil Contracts for solicitors and Not-for-Profit (NfP) organisations will come to an end on 31 March 2003.

Solicitors

The Legal Services Commission proposes to extend the General Civil Contract for solicitors by one year to 2004 on current terms, with some changes to improve the costs compliance process and other minor amendments where necessary. We anticipate that our approach to the issue of schedules from 1 April 2003 will be broadly similar to that taken from 1 April 2002.

We propose to move to a one year rolling contract from 1 April 2004, on a similar basis to that operating for criminal contractors. At that date we do not intend to make any other significant changes of principle, but we will take the opportunity to simplify the

structure and language of the document, and remove transitional provisions where no longer relevant.

NfPs

The Legal Services Commission intends to issue new NfP contracts from 1 April 2003 in order to introduce some necessary changes, including a revised contract compliance process. We will also simplify the structure and language of the documentation, and remove transitional provisions where these are no longer relevant. We anticipate retaining the three-year duration period for NfP contracts. We will consult fully on our proposals during 2002.

New Contracts

We have published a consultation paper with our proposals for:

- Setting our regional priorities for civil contracting through the production of Regional Legal Services Committees' reports and Regional Directors' contracting strategies effective from 1 April 2003.
- Updated bid rules for the award of General Civil Contracts (Solicitors and Not-for-Profit) for Controlled Work from 1 November 2002.

The consultation paper has been sent to all Community Legal Service Partnerships, to representative bodies of the legal profession and advice sector, and to all our civil contracted suppliers. The paper is also available on our website at www.legalservices.gov.uk. Responses are due by 1 October 2002.

Changes to the guidance on retrospective amendment of costs limitations

Following discussions with the Law Society our guidance on costs limitations has been expanded to clarify the situations in which retrospective amendment is likely to be granted. The text below is effective immediately and will be published in release 7 of the LSC Manual [paragraph 3.41.14 Part D of Volume 1]. An amendment should be applied for when the future work to be done is likely to exceed the costs limitation imposed. Any decision to amend must be based on whether it is justifiable. Regional offices will, when considering amendment requests for future work, make a decision as to the reasonable level of costs to be incurred for that work in relation to the scope of the certificate. Whilst it is not correct to say any amendment to the costs limitation will not operate retrospectively, an increase will not be

granted merely because the existing limitation has been exceeded.

Any decision to amend retrospectively must be exceptional and made before discharge or costs assessment when the certificate will be final. Regional offices will exercise their discretion on the facts of each case where the circumstances justify it. A retrospective amendment is more likely to be granted where costs were incurred by events outside of the solicitor's control. In any event all requests for extension should be made in a timely manner. If a solicitor exceeds the limitation by reason other than the circumstances of the case or the request for amendment is made many months later or on preparation of the bill of costs, the amendment is less likely to be granted. Some examples of when it may be

reasonable for a costs limitation to be amended retrospectively are:

- Urgent injunction work requiring weekend work when the regional office is closed.
- During the final hearing or up to five days prior to its commencement:
 - unexpected witnesses appear;
 - issues which were thought to be agreed turn out not to be agreed;
 - witnesses take longer than estimated to give their evidence;
 - large amounts of unexpected new evidence are received from the opponent;
 - it becomes clear the hearing will last for longer than estimated.

The amended manual text will also clarify how the limitation applies in linked cases [paragraph 3.41.15].

Developing Expertise in the Community Legal Service

The Methods of Delivery (Specialist Support) pilot is expanding its range of services over the next 3 months. This pilot was established in 2000 to provide the help of expert and experienced legal professionals to all LSC civil contract holders.

In *Focus 38* we advertised for applicants to participate in the expansion of the Specialist Support pilot taking place over 2002-3. The selection process has now finished and we are increasing the number of services from 7 to 26.

Specialist Support is available to all LSC civil contract holders for telephone advice, casework support and training in selected categories of law. Services are available both nationally and in some selected regions of England.

In response to requests from non-contracted organisations in the CLS we are piloting making specialist support available to a wider range of organisations. To start with, General Help with Casework organisations who are in the West Midlands may also use these services. We will be reviewing the impact of this in a few months.

We are also making the Community Care Specialist Support Services available to General Help with Casework organisations who deal with Community Care issues. This is being done in recognition of the lack of contract holders in the community care category of law and the large number of General Help with Casework organisations who deal with clients affected by community care legal issues. The original 7 Specialist Support services will continue to give support in England and Wales. Their details are on the facing page.

In July, 3 services commenced working in Wales. These services operate a rota system, offering advice in Housing, Debt and Welfare Benefits for all LSC civil contract holders in Wales. The timetable for advice in Wales is

also on the facing page. Later in the year new services will begin work in some regions of England. There will also be additional national services in the categories of public law, human rights, community care and mental health. Below is a list of the organisations involved, the categories of law they will give support with and start dates for services.

In August we will be sending all eligible organisations details of the phone numbers and advice times for these new services. If you require information about any of these services before this, please contact Keetha Thanabalasingham or Carol Taylor in the CLS Policy Team on 020 7759 0476.

category of law	catchment	organisation	start date
employment	North West Region	Garden Court North	October 2002
employment	East Midlands Region	Chesterfield Law Centre	September 2002
welfare benefits	Eastern Region	Child Poverty Action Group	December 2002
		Hertfordshire Money Advice Unit	October 2002
welfare benefits	East Midlands Region	Leicester Law Centre	October 2002
welfare benefits	Yorkshire and Humberside Region	Howells Solicitors	September 2002
welfare benefits	London	London Advice Services Alliance	October 2002
debt	London	Balsara and Co Solicitors	September 2002
		Mary Ward Legal Centre	September 2002
housing	Yorkshire and Humberside Region	Shelter / HARP / Howells	September 2002
mental health	National	MIND	October 2002
		Scott-Moncrieff, Harbour and Sinclair Solicitors	September 2002
HIV/AIDS (employment, welfare benefits, housing, immigration)	National	Terrence Higgins Trust	October 2002
human rights	National	Doughty Street Chambers	October 2002
community care/public law	National	Christian Fisher Khan	September 2002
community care	National	Disability Law Service	October 2002

Specialist Support Services

category of law	advice times	Tel no	organisation
community care	Tues 2pm - 4.30pm Thur 2pm - 4.30pm	0121 246 9027	Tyndallwoods Solicitors
employment	Mon - Thur 10.30am - 1pm 2pm - 4pm	0808 808 3681	NACAB Specialist Support Unit
employment	Wed, Thur and Fri 2pm - 5pm	020 7415 6360	Two Garden Court Chambers
housing	Mon - Fri, 9am - 5pm (closed alternate Wed 9am - 12.30pm)	020 7505 4688	Shelter
housing	Mon - Fri, 2pm - 5pm	020 7415 6340	Two Garden Court Chambers
human rights	Mon and Wed 2pm - 5pm, Tues and Thur 10am - 1pm	0808 808 4546	Liberty
immigration	Mon - Fri, 10am - 1pm	0845 602 1020	Joint Council for the Welfare of Immigrants
immigration	Mon - Fri, 2pm - 5pm	020 7415 6350	Two Garden Court Chambers
public law	Mon and Wed 2pm - 5pm, Tues and Thur 10am - 1pm	0808 808 4546	Public Law Project
debt	Mon - Fri 10am - 12.30pm, 1pm - 3.30pm	0845 602 3450	Morgans Solicitors NACAB
housing	Mon - Fri 10am - 12.30pm, 1pm - 3.30pm	0845 602 3449	Morgans Solicitors Shelter Cymru
welfare benefits	Mon - Fri 10am - 12.30pm, 1pm - 3.30pm	0845 602 3451	Morgans Solicitors NACAB



Community Legal Service



The Statutory Charge: Exempt Costs and Property

This article gives guidance on some commonly occurring problems, including how the charge applies to pension transfers in ancillary relief proceedings, and in Criminal Injuries Compensation Authority cases.

For the statutory charge to arise, the costs of funding the service must be among those that give rise to the charge, and the property recovered or preserved must not be exempt.

Legal Help and Help at Court costs do not go towards the charge unless they are for family, personal injury or clinical negligence work. Family Mediation and Help with Mediation costs never go towards the charge. See Regulation 43(3) and (4) Community Legal Service (Financial) Regulations 2000.

The costs of detailed assessment proceedings do not go towards the charge. However, the expression 'costs of detailed assessment proceedings' does not cover drawing up the bill, so these costs will form part of the charge. If the costs of drawing up the bill are included in Box C (headed 'Costs of Assessment') on the Legal Services Commission Certificate of Assessment, either the regional office will have to adjust the figures, or the office may return the form and ask for it to be amended and re-sealed before paying the solicitor's claim. See Regulation 119 (2) and (3) Civil Legal Aid (General) Regulations 1989 as amended and Regulation 40(4) Community Legal Service (Financial) Regulations 2000.

Even where the costs of the service go towards the charge, the property may nevertheless be exempt. The list of exempt property is set out in Regulation 94 Civil Legal Aid (General) Regulations 1989 and Regulation 44 Community Legal Service (Financial) Regulations 2000. Practitioners are, in general, familiar with it. The following areas have given rise to uncertainty:

1. The former matrimonial home, as long as it is the client's 'main or only

dwelling', is exempt where the funded service was only Legal Help or Help at Court. But if the client recovers or preserves the home in family proceedings after the Commission has granted a certificate in the same matter, the exemption does not apply, and the costs that give rise to the charge will include those incurred on Legal Help or Help at Court. See Regulations 44(1) (g) and 45(2) and (3) Community Legal Service (Financial) Regulations 2000.

2. Where one of the parties to ancillary relief proceedings has applied for an order attaching or 'earmarking' their spouse's pension, or for a pension-sharing order, the statutory charge position has given rise to a number of queries. Leading Counsel has now advised the Commission that, subject to one significant exemption set out below (paragraph 3), exemptions will generally cover any property affected by the court's decision to make, or decline to make, a pension attachment or sharing order. This is because either it involves periodical payments, or concerns property that cannot be assigned or charged because of a provision under statute. See Regulation 94(c) and (g) Civil Legal Aid (General) Regulations 1989, and Regulations 44 (1)(a) and (h) Community Legal Service (Financial) Regulations 2000.

3. The exception is where the court has awarded an attached or 'earmarked' lump sum. Counsel's view is that the charge will attach to a lump sum recovered in these circumstances just as it does to any other lump sum payment in ancillary relief proceedings, even though the money may come from a pension fund and is payable at some future date. This is because the successful spouse has not recovered a

beneficial interest in a pension scheme, but a right to a lump sum under Section 23 of the Matrimonial Causes Act. It makes no difference if an order is made against trustees of a pension fund, as any payment by trustees is deemed for all purposes to be a lump sum payment by the member of the pension scheme to their former spouse under Section 23 (see Section 25B(6) of the Act).

4. Although the costs of legal help for a claim for compensation to the Criminal Injuries Compensation Authority are in respect of personal injury, and are therefore capable of giving rise to a charge, any award the client gets will be exempt. This is because CICA awards are inalienable under statute. See Regulation 44 (1)(h) Community Legal Service (Financial) Regulations 2000 and Section 7 (1) Criminal Injuries Compensation Act 1995.

If you are still uncertain about the effect of these provisions, please contact your regional office, or Alison Macnair at the Commission's Policy and Legal Department, 85 Gray's Inn Road, London WC1X 8TX, DX No 328 London/Chancery Lane, or e-mail: alison.macnair@legalservices.gov.uk

LSC Annual Report published

The LSC's second Annual Report was published on 22 July. The report covers the continued development of the CLS and the launch of the CDS. The accounts of the Commission, audited by the National Audit Office, are also included. The report is available from The Stationery Office, priced £18.50, on 0870 600 5522. See also the LSC's website.

CLS Financial Eligibility Changes

New Gross Income Cap

There are small but important changes to the financial eligibility regulations which are outlined below. These changes are contained in the Community Legal Service (Financial)(Amendment) Regulations 2002 and will apply to all levels of service. The new regulations apply to all applications for funding made on or after 5 August 2002. A revised keycard will be circulated as an update to the forms masterpack.

In summary the changes are:

- The gross income cap will be increased from £2034 per month to £2250 per month.
- A further increase in the gross income cap will apply where the client has more than 4 dependant children. That further increase will be £145 per month for each additional child in excess of 4 children (i.e. for the 5th child and over).
- The current list of state benefits which are currently disregarded from disposable income will also be disregarded from gross income.

The purpose of these changes is to ensure that the gross income cap does not adversely affect those who have large families or rely heavily on disability benefits. This applies only in a tiny minority of cases overall, so the benefit of transparency which the gross income cap provides remains largely intact.

Guidance on applying the new gross income cap

For the purpose of the new gross income cap a dependant child is defined as anyone for whom the client and/or their partner (if client and partner's resources are being aggregated) receives Child Benefit. The relevant gross income cap can

be ascertained by reference to the table below.

No of dependant Children	Monthly Gross Income Cap from 5.8.02
0 - 4	£2250
5	£2395
6	£2540
7	£2685
8	£2830
9+	Add £145 per month for each additional child

It should be noted that gross income should be calculated in the normal way irrespective of the number of dependant children in the family. Gross income is then compared to the relevant limit for the number of dependant children in the family.

As now a client whose gross income is above the relevant cap will be refused funding without reference to their disposable income. If the gross income is below the relevant cap then the client's disposable income should be calculated in the usual way by deducting the relevant allowances from the assessed gross income. Guidance on assessing gross income and disposable income is contained in Volume 2C of the Legal Services Commission Manual but please see the important note below regarding changes to the treatment of disregarded state benefits.

Disregarded State Benefits

The following state benefits which are currently disregarded when assessing disposable income will now be disregarded when assessing gross income as well. The disregarded benefits are:

- 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.
- Any back to work bonus under Section 26 of the Jobseekers Act 1995;
- Payments under the Community Care (Direct Payments) Act 1996;
- Exceptionally Severe Disablement Allowance paid under the Personal Injuries (Civilian) (Amendment) Scheme 1983;
- War and War widows pensions paid under the Naval, Military, Air

Forces etc (Disability & Death)
Service Pensions Order 1983

- 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)).

Summary of income and capital limits from 5 August 2002

The relevant limits for disposable income and capital do not change and for ease of reference are set out in the table for each level of service.

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 £2250 per month** Disposable income not to exceed £611 per month	£3,000
Family Mediation, Help with mediation, and *other Legal Representation	Gross income not to exceed £2250 per month** Disposable income not to exceed £695 per month	£8,000
* may be subject to contribution from income and/or capital		
**Additional gross income cap for those with more than 4 dependant children (see separate table).		

Guidance on Family Graduated Fees

A large number of issues have been raised during the first year of the scheme's operation. Here we publish guidance on the most common. We have an ongoing discussion link with the Family Bar which has greatly assisted understanding of the scheme. The scheme is set out in the Community Legal Service (Funding) (Counsel in Family Proceedings) Order 2001, Manual Volume 1B paragraph 294. The Commission's guidance on the scheme is set out in Section 10 of Manual Volume 1D.

1. Special Issue Payments

Where the hearing in function F2 or F3 comprises more than one hearing unit, should the % uplift for SIPs be based on the single hearing unit fee, or the fee for the whole hearing?

Leading Counsel's advice to the Lord Chancellor confirms that the Commission is correct to calculate the payment on the single hearing unit. This is because Article 9(4) specifies that the SIP shall equate to the percentage of the single hearing unit fee applicable. This issue will be revisited in the planned review of the scheme.

Where more than one function F2 or F3 hearing takes place in a single set of proceedings, can SIPs be claimed for each hearing?

No. Article 9(7) provides that a SIP shall be made only in respect of one hearing where more than one hearing in function F2 or F3 occurs in a single set of proceedings. It is for counsel to specify in respect of which particular hearing payment should be made. However each special issue applicable may be claimed. This means that other special issue payments certified for that particular hearing may be claimed.

Why is there not an allowance for all SIPs in all categories?

There is no allowance for those special issues which are not appropriate in the type of proceedings. For example, in injunction cases under category 1, no relevant foreign element percentage is specified.

One set of SIPs per F2/F3 in the proceedings or per counsel?

Only one set of special issue payments may be made per F2/F3 in a single set of proceedings. A second special issue payment in those functions may not be claimed even where a second counsel acts within the same proceedings.

2. Calculation of F2/F3 hearing units

Does the calculation run from listing time or from the actual start of the case?

The calculation starts from the time of listing and ends at the conclusion of the hearing. The time spent is reduced by the court's lunch adjournment. No deduction is made for adjournments or the time spent in negotiations or other discussions during that time.

If counsel has to work later than 5pm, does that justify the extra half hearing fee?

No. The hearing itself must conclude after 5 p.m. to justify the extra half hearing fee.

3. Local Bar/Travel Expenses

How do solicitors know when they may instruct counsel from outside the local bar?

Local counsel should be used unless the local Bar contains an insufficient number of counsel to cover all the daily lists in the local courts or the local Bar does not have suitably specialist counsel available for the particular

case. If local counsel decline the family graduated fee case they will be treated as not being available. In such circumstances counsel from outside the local Bar may be instructed, and they will be reimbursed for reasonable travel time and expenses.

4. Conferences

Selection – whose choice?

It is entirely counsel's decision which conference to claim the function F4 payment for. Counsel may choose to claim for the first conference held or wait to see whether a subsequent conference justifies more special issue payments or a special preparation claim.

What if other counsel are instructed subsequently?

The F4 payment may only be made once so, where counsel has claimed for that function, it is not possible for second or subsequent counsel to claim such payment. If it has not already been claimed, subsequently instructed counsel can make their own choice about claiming an F4 payment.

What if a conference was arranged but the client did not attend?

If a conference is arranged but does not take place because the client did not attend, there should be no claim for an F4.

5. F5 main hearing

If a directions hearing turns into a main hearing, should it be paid as an F5 even though not initially listed as a final hearing?

No. Article 2 provides that “the main hearing” means the hearing at which the substantive issues are listed to be determined and are considered by the court. If a case is originally listed as a directions hearing but turns into the main hearing where the case is disposed of, it is not possible to claim an F5 payment. In the circumstances above the hearing will have been listed for directions rather than as the main hearing.

6. Early Settlement Payments

Can a case be settled if the court has to determine the issue?

For a settlement supplement to be payable, Article 12 requires a settlement to take place which leads to the resolution of the set of proceedings. If the proceedings are determined by the court they cannot be settled by the discussions between counsel.

For example, in committal proceedings the court must always consider the breach of the order. An agreement to accept undertakings would not constitute settlement of the set of proceedings. This may be contrasted with the case where counsel agree between themselves the terms of a consent order, which the court then merely endorses by way of approving the settlement. In the committal example, the court determines the issues between the parties and, irrespective of the fact that certain issues may have been resolved, the proceedings are not settled by counsel.

Is the settlement supplement increased where there is more than one hearing unit?

No. Article 12 (1) confirms the settlement supplement is paid as a percentage of the base fee or hearing unit fee applicable to the function in which settlement takes place.

7. Committal cases

How are these paid?

Committal is an enforcement procedure on the breach of a court order. It is a function F2 falling within

the same category as the substantive proceedings.

8. Hague Convention Cases and the Local Bar

Do specialist London counsel have to be used in all Hague Convention cases?

It would be usual for specialist counsel to be used in Hague Convention cases. The question of whether the local Bar is sufficiently specialised should be considered before instructing London counsel.

9. Public Law Care Cases

How are finding of fact hearings paid under the scheme?

Finding of fact hearings are generally payable as function F5 as they are usually part of the main hearing.

What about split hearings?

Split hearings are dependent on the outcome of the finding of fact hearing and are therefore a continuation of the main hearing. They are paid as secondary hearing units in function F5.

What about subsequent review or directions hearings?

On the making of a care order the court may decide to review the position in some months time. That subsequent review hearing is not a continuation of the main hearing but a review or a directions hearing and is therefore a function F3. It may make further directions or continue or vary the care order. None of these circumstances turn that later hearing into a continuation of the main hearing or a new main hearing. If the court gives directions for a contested trial of issues, the hearing at which those issues are listed for disposal may be a main hearing.

Multiple or out of sequence hearings?

There may be some care cases that have multi purpose or ‘out of sequence’ hearings, e.g. a finding of fact hearing may be followed by a further directions hearing, which is followed by a resumption of the main

hearing. What function each hearing falls into is a question of fact. It would be helpful if as much information is provided as possible when claiming payment. If the position is unclear the Regional Office may raise queries on the claim.

Threshold/disposal hearings: what are they and how are they paid?

The threshold hearing determines whether the threshold factors for the making of a care order have been satisfied. If the case for a care order is not made out, the case will conclude at this point. If the threshold is met, the court will arrange a disposal hearing which will consider the nature and terms of any care order or other arrangement for the care of the child(ren).

What is the effect of the new Practice Direction on care cases and the impact of agreeing directions on payment under the scheme?

The new Practice Direction in High Court care cases places emphasis on agreeing directions before the case management conference.

If counsel agree directions sufficiently to avoid the case management conference the remuneration is a half hearing unit fee because the hearing does not take place. There is no additional remuneration for meeting prior to the case management conference to resolve issues that will arise at that hearing.

How are Child Abduction Act cases paid under the scheme?

Cases issued under the above Act are not category 2 cases as they do not come within the definition of public law children cases. They fall within “all other family proceedings” in category 4.

10. Long or Very High Cost Cases

Cases exceeding ten days?

The escape from the scheme for long cases provided by Article 4(3) only applies where cases actually exceed ten days, i.e. they must have run into an eleventh day.

If the case is subject to an individual high cost case contract, the family graduated fee scheme will apply, subject to the same escape rule for long cases.

11. Detailed Assessment by the Courts

In maximum fee cases, what obligation is there on counsel to provide a breakdown of time spent?

Counsel is requested to provide a full breakdown of the time spent in order that the maximum fee calculation can be undertaken in Family Proceedings Court (FPC) cases. This request will be made of counsel on receipt of the family graduated fee claim, rather than at a later date when the solicitor's claim is received.

Why include FGF payments in the solicitor's bill if the client has no financial interest?

All FGF payments are included in the final bill, even if the client has no financial interest, so that the court can exercise its discretion to consider whether sums paid to counsel are unreasonable or excessive. This also allows the court to consider whether costs should be deducted from the solicitors, e.g. for over-reliance on counsel.

12. Solicitors' Issues

Impact of FGF on late claims.

The family graduated fees scheme should have no impact on the late claims treatment of the solicitor's bill. Non-receipt of counsel's fee note, or late claims by counsel or late payment by the Commission of the final FGF payment are good reasons for a delay in submission of the solicitor's bill. The solicitor will not be penalised for late submission.

When should the Admin 5 be submitted – are we paid for checking claims?

Admin 5 must be submitted for any function that does not involve a hearing as well as those where a hearing is avoided. The form is not very clear on

this and is in the process of amendment. Solicitors may claim in their bill of costs for completing the Admin 5.

Why can't solicitors negotiate counsel's fee in the magistrates court?

Counsel's fees in cases heard by the FPC were previously set by The Legal Aid in Family Proceedings (Remuneration) Regulations 1991. Under those regulations, counsel's fees were not prescribed for non-care cases. As no fee was stipulated in relation to non-care cases in the FPC, these were capable of agreement between the solicitor and counsel prior to the introduction of the family graduated fees scheme. Now that the amount is prescribed by statute, counsel is obliged to charge the statutory amount. In maximum fee cases, counsel will be paid the family graduated fee.

Should a detailed fee note be provided to the solicitors?

Counsel should supply sufficient information to the solicitor to facilitate the cost assessment at the conclusion of the case. Guidance on this issue will continue to develop.

13. Scope of the certificate

If a final order is made and then the case is re-listed for directions, is this still within scope and how should it be paid under the family graduated fee scheme?

Work done following a final hearing other than implementation work does not constitute new proceedings for the purposes of the family graduated fee scheme. However it will require an amendment to the certificate to be in scope. Article 15 provides that a further hearing will be paid at the appropriate function rate. It could be a further F3 but if it is a new main hearing it will be an F5. If it varies or substitutes an order or directs further work to be done it is an F3.

14. Appeals falling within the Scheme

How are the stages paid?

These count as new proceedings - see Article 15(2). The directions hearing will be an F3, and the substantive appeal hearing an F5. The result of the appeal hearing might be the ordering of a re-hearing which will be an F5 and a further F3 if there are any directions in the interim.

15. Commission's Assessment Limit

Does the assessment limit of £1,000 include family graduated fees?

The assessment limit of £1,000 includes all counsel's fees, including those paid under the family graduated fees scheme (even if already assessed by the Commission).

16. Inter partes costs

If inter partes costs are awarded does counsel still claim at family graduated fee rates?

Counsel is entitled to claim market rates where an inter partes costs order has been made and is not restricted to payments of the family graduated fee.

17. What if counsel does not have a copy of the funding certificate?

Counsel's continuing duty to the fund includes bringing to the Commission's attention any matter which might affect the client's entitlement to funding or the terms of the certificate, whenever that matter may arise. In order to comply with that duty, counsel should ensure that solicitors provide a copy of the certificate. Counsel will also want to be satisfied that their work is within the terms of the certificate.

18. Special preparation

Is advice on appeal remunerated as F1 in appeal proceedings or included within function F5 work?

Counsel's initial advice on appeal will generally form part of the work included within function F5. Where appeal proceedings are actually issued, any subsequent advice will then form part of the work within

function F1 in the appeal proceedings. Any special preparation fee claimed for advice on appeal will fall within the relevant function.

19. Incidental expenses

If we can't claim travel expenses can we claim travel time?

Travel time will not be paid if travel expenses are not justified.

20. Which Regional Office?

How does counsel know which Regional Office to submit his/her claim to?

Generally claims are submitted to the Regional Office from which the certificate was issued, which will be apparent from the face of the funding certificate. However, in relation to London and Reading, family graduated fee claims are processed by the South Eastern Regional Office and should be submitted directly to Brighton.

21. Single set of proceedings?

If counsel spends half a day on an injunction then half a day on an ancillary relief claim in the same case does this count as a single set of proceedings?

No. These would count as category 1 followed by category 4 proceedings and are paid as separate proceedings.

22. Hearings

Does the hearing actually have to take place or can the court direct alternatives?

The Civil Procedure Rules and subsequent Practice Directions have encouraged judges to direct various methods of hearing. Judges may use video conferences or telephone conference calls to hold hearings, or alternatively may consider a hearing on paper without attendance. If such a hearing is directed and does take place, this counts as a hearing and should be paid at the full hearing unit rate.

23. Injunction cases

What is the main hearing?

The main hearing in category 1 (injunctions) is the "on notice" hearing

Is an adjournment of the return date an F5 or F2?

If the court has not considered the substantive issues and adjourns for the respondent to obtain legal advice or because papers have been incorrectly served, it is an F2. If the court considers the substantive issues and adjourns the hearing, it is an F5. It is a question of fact in each case.

24. Does the solicitor need prior authority to instruct counsel in the FPC?

The existing guidance on prior authorities in the magistrates court continues to apply. The solicitor may apply for prior authority. If it is not granted or is not applied for, the failure to obtain prior authority will usually mean the maximum fee principle is applied.

25. Can the certification on the CLS CLAIM5 be amended or altered?

Counsel should not amend or alter the certification on the claim form. If counsel completes the certification but indicates objection to the wording of the certification on the form, it will not be rejected.

26. Transitional cases

What happens if counsel acts for two clients: one certificate pre-dating the scheme and the other post-dating it? How is counsel paid?

In pre FGF cases, counsel acting for two clients would be advised to apportion the fees due between the clients. Under the FGF scheme counsel may only claim one fee for acting for two children in the same proceedings. In transitional cases, where one certificate pre-dates and the other one post-dates the scheme, counsel may legitimately claim under

each remuneration regime. Counsel may therefore claim a fee under the Legal Aid in Family Proceedings (Remuneration) Regulations 1991 for the work done under the certificate that pre-dates the family graduated fee scheme and a separate family graduated fee for the work done under the certificate that falls within the scheme.

27. Court Bundle Payments

Article 11 (1) (c) provides that the court bundle payment is paid as a special preparation fee in accordance with Article 16 where the court bundle comprises more than 700 pages. Article 11 does not allow a court bundle payment for the first 1-699 pages and an additional special preparation fee for the balance. Article 11 (1) (a)-(c) uses the phrase the "court bundle comprises" which means only one subparagraph can apply, depending on the number of pages. Hence, if the bundle is in excess of 700 pages, it can only be paid under 11 (1) (c).

The special preparation fee under Article 11(1)(c) is at the discretion of the Judge. Article 16 (3) ensures the special preparation fee for the court bundle is awarded for preparation in excess of the amount normally carried out. Article 16 (5) makes the Judge's decision final save as to a point of law.

Anyone seeking general advice on interpretation of the Funding Order can contact Ruth Symons at ruth.symons@legalservices.gov.uk or alternatively seek the views of the Family Law Bar Association at 1 King's Bench Walk DX LDE 20 LONDON

PIAP Summaries

The Public Interest Advisory Panel reports to the Commission on cases which are considered 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.

Please note that, as from September 2002, summaries of Panel reports will no longer be included in the Manual. They will however be available on the website. New reports will continue to be published in *Focus*.

Summaries of cases considered by the Panel were contained in *Focus* 32-38. 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/02/103

Nature of Case

Proposed challenge to the limitation period for personal injury proceedings set out in the Limitation Act 1980.

Report of the Panel

The Panel concluded that it would be extremely difficult to challenge the principles of limitation periods as they operate for personal injury claims under the Limitation Act 1980. Limitation periods were not inconsistent with Article 6 which specifically requires disputes to be "resolved" within a reasonable time. It

would be particularly difficult to challenge the existing rules given the wide discretion which already exists in respect of personal injury claims under Section 33 of the 1980 Act.

The Panel was also doubtful that there would be any significant public benefit in effectively extending limitation periods indefinitely. There were equally powerful policy arguments in favour of finality. Further, the Panel was not satisfied that this was an appropriate test case in any event to test these issues. On current information it appeared likely that this case would face considerable causation difficulties even if it were allowed to proceed at this stage.

Conclusion

No significant wider public interest

PIAP/02/105

Nature of Case

Defence of claim for breach of copyright/confidence brought by a company involved in animal research. The applicant, a campaigner against animal research, published documents belonging to the claimants on a website. The documents were subsequently quoted in the national media.

Report of the Panel

The Panel considered that this case raised important questions as to the public's right to information concerning medical research. The case was significant firstly for the legal issue as to the application of Article 10 of the Convention, the right to freedom of expression. Further, the case raised more general issues as to public accountability in research activity. The Panel was therefore satisfied that the significance of the case extended beyond the particular field of animal experimentation, although that area was of course recognised as one of high public concern.

Conclusion

Significant wider public interest

Rating: High

PIAP/02/106

Nature of the Case

Proposed judicial review of the Prison Service's decision not to allow time spent by the applicant in custody in relation to offence A to count towards time spent in custody in relation to offence B.

Report of the Panel

The Panel noted that the applicant sought funding to have the decision in *Sorhaindo* reviewed in the light of HRA, however, the Panel could find no realistic ground for any challenge, including a challenge based on ECHR Article 5, as it appeared that any such challenge would be validly met by a defence that the legislation pursues a legitimate aim and is proportionate.

In any event, the Panel noted that the applicant sought to challenge the decision of the Prison Service rather than the court's decision on sentencing and the Panel felt that the proposed course of action was inappropriate. Given the clear decision in *Sorhaindo* it appeared that the appropriate course of action would be to challenge the sentence given by the court, using the detention for offence A as an argument in mitigation, rather than challenging the Prison Service's refusal to bring forward the release date.

In the light of the Panel's opinion that the challenge was ill-founded it was unable to conclude that there was any significant wider public interest in the case.

Conclusion

No significant wider public interest

PIAP/02/107**Nature of the Case**

Application for exceptional funding for representation at inquest into death in hospital of overdose victim. Alleged systemic failure in hospital system for treatment of patients.

Report of the Panel

The Panel expressed their deep sympathy for the family in this case but unfortunately could not find that funding for representation before the coroner was of any significant wider public interest.

The Panel considered that whether or not the death might give rise to a civil claim against the health authority, there did not appear to be any benefits to the wider public that would flow from the family's representation at the inquest. In particular, although the applicant's solicitors contended that the death illustrated a systemic failure in the system of care at the hospital, the Panel was unable to agree with that proposition. The Panel could not identify in this case any evidence of such systemic failure.

Nor did the Panel feel that it was likely that the coroner would be persuaded to make any recommendation under Rule 43 of the Coroners Rules so as to benefit the wider public.

Conclusion

No significant wider public interest

PIAP/02/96**Nature of Case**

Proposed declaration of incompatibility with the Human Rights Act 1998 of the Criminal Injuries Compensation Act 1995. Failure of CICA to meet the costs of an application made on behalf of a child.

Report of the Panel

The Panel was greatly assisted by counsel's submissions in setting out the scope of the proposed challenge and statistics indicating the number of

children and other persons who might benefit from the introduction of a costs regime for CICA.

The Panel noted that this matter had been before the Funding Review Committee which had determined that the prospects of success of the judicial review were borderline. That determination was binding on the Commission. In those circumstances it was not necessary or appropriate for the Panel to consider further the legal merits of the case. The Panel's function instead was to consider the potential public interest of the proposed challenge in light of that assessment of the merits.

The Panel agreed that if there were provision to recover costs in addition to a CICA award that could benefit significant numbers of applicants, especially those with the more complex cases or where the costs of pursuing the application would amount to a significant proportion of the award. Further, if the judicial review established that the requirements of Article 6 meant not merely that the procedure before CICA must be practical and effective, but that the net recovery of compensation must be safeguarded, in the sense that applicants should not have to make any deduction for reasonable costs incurred, that decision would have wide implications. It would potentially affect a whole range of decision-making tribunals covering such subject matter as welfare benefits etc.

Conclusion

Significant wider public interest

Rating: High

PIAP/02/108**Nature of Case**

Proposed appeal, under ECHR Article 8, seeking to establish a child's independent right to claim damages for distress and inconvenience where a child residing with parent suffers such damages as a consequence of local authority's breach of its contractual obligation to repair housing.

Report of the Panel

The Panel noted that the applicants accepted that in cases such as the present the law already provides a means by which a parent may obtain compensation on behalf of a child for the child's inconvenience, stress and anxiety. It was therefore unclear how a child would benefit from directly being able to bring a claim seeking compensation for such injuries.

The Panel noted the applicant's contention that if a child were able to bring the claim instead of claiming through a parent the quantum of damages awarded might be greater. The Panel considered that there was no evidence to support that contention. The Panel also noted the contention that if children were able to recover compensation in their own right the monies would be managed and invested by the court rather than paid out to the parent. Whilst the Panel accepted that this might be the case it was not persuaded that preventing the parent from obtaining the award would cause a benefit to the child of a nature significant enough to bring the proposed appeal within the Funding Code definition of significant wider public interest.

Conclusion

No significant wider public interest

Proposed Payment Dates

The proposed payment dates for July 2002 to December 2002 are set out below. These dates may be subject to amendment, but we will inform you of changes in advance where possible. 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 that 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 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 notify 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 Jul 2002 - Dec 2002

contract payments	1 st settlement of the month	2 nd settlement of the month
Wednesday 3 July 2002	Thursday 11 July 2002	Friday 26 July 2002
Monday 5 August 2002	Monday 12 August 2002	Wednesday 28 August 2002
Wednesday 4 September 2002	Wednesday 11 September 2002	Thursday 26 September 2002
Thursday 3 October 2002	Friday 11 October 2002	Monday 28 October 2002
Tuesday 5 November 2002	Tuesday 12 November 2002	Wednesday 27 November 2002
Wednesday 4 December 2002	Thursday 12 December 2002	Tuesday 24 December 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 are also available in PDF format on the LSC website at www.legalservices.gov.uk.

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