

NEWS 1-14 INCLUDING:

IMMIGRATION NEW DEVELOPMENTS	02
SIMPLIFYING THE QUALITY AUDIT PROCESS	04
ANTI SOCIAL BEHAVIOUR ORDERS	06
CLS FINANCIAL ELIGIBILITY	08
CDS FINANCIAL ELIGIBILITY	09
CIVIL GUIDANCE/DEVELOPMENT	
REPORTING CASE OUTCOMES	15
THE NEW LATE CLAIMS SANCTIONS	16
CIVIL CONTRACTING UPDATE	18
SCOPE AND FUNDING UPDATE	19
PIAP SUMMARIES	21
PROPOSED PAYMENT DATES	28

- **IMMIGRATION NEW DEVELOPMENTS**

THIS ARTICLE GIVES A ROUND-UP ON REMOVAL OF DEVOLVED POWERS AND RETROSPECTIVE FUNDING IN RELATION TO JUDICIAL AND STATUTORY REVIEW; UPDATE ON NON-SUSPENSIVE APPEALS AND NO MERITS CERTIFICATES (SEE PAGES 2-3).

- **ELIGIBILITY UPDATE**

NEW CLS AND CDS ELIGIBILITY LIMITS FROM 7 APRIL 2003, INCLUDING UPDATED KEYCARDS (SEE PAGES 8-14).

- **REPORTING CASE OUTCOMES**

THE LSC IS IMPROVING THE WAY IT RECORDS AND REPORTS THE OUTCOME OF CIVIL CASES. WE ARE ALSO INTRODUCING A RANGE OF NEW OUTCOME CODES FROM APRIL, DETAILS OF WHICH ARE PUBLISHED HERE (SEE PAGE 15).

- **NEW LATE CLAIMS SANCTIONS**

AFTER CONSULTATION WITH THE LAW SOCIETY AND LAPG GUIDANCE HAS NOW BEEN FINALISED AND APPLIES TO ALL COSTS CLAIMS ASSESSED ON OR AFTER 17 FEBRUARY 2003, DETAILS PUBLISHED HERE (SEE PAGE 16).

- **CIVIL CONTRACTING UPDATE**

THE GENERAL CIVIL CONTRACT (SOLICITORS) IS BEING RENEWED FOR A YEAR FROM 1 APRIL 2003 AND SCHEDULES HAVE BEEN SENT OUT TO SUPPLIERS. THE MAIN CHANGES ARE DETAILED HERE (SEE PAGE 18).

- **SCOPE AND FUNDING CODE UPDATE**

THIS ARTICLE PROVIDES AN UPDATE ON CODE PROCEDURE CHANGES; JUDICIAL REVIEWS CONCERNING EDUCATION; PROCEEDS OF CRIME ACT 2002; AND USE OF GENERAL FAMILY HELP (SEE PAGE 19).

IMMIGRATION *New Developments*

1) REMOVAL OF DEVOLVED POWERS AND RETROSPECTIVE FUNDING IN RELATION TO IMMIGRATION JUDICIAL AND STATUTORY REVIEW

On 10 February 2003 we wrote to all contracted immigration suppliers regarding certain changes in the way the Commission intends to deal with the funding of immigration cases following consultation with the profession. A summary of those changes is set out below.

Applications for certificates in immigration cases and removal of devolved powers

From 1 April 2003 the following measures will take effect in relation to all applications for certificates in immigration cases:

- a) *Suppliers will no longer have devolved powers to grant or amend emergency certificates in relation to applications for judicial or statutory review (or any other proceeding considered under section 7 of the Funding Code) in an immigration matter.*
- b) *All applications for funding, both emergency and substantive, should be submitted for the attention of the Immigration Department at the London Regional Office 29-37 Red Lion Street, London WC1R 4PP, telephone number 020 7759 1591.*

In the case of firms which have a good record on audit (and are not category 3 at cost assessment) and which the Commission is satisfied have a good record of success at judicial and statutory review, we will consider granting back devolved powers.

Suppliers will be notified in writing if they are to be allowed to use devolved powers in these cases and should not seek to exercise their devolved powers unless and until they receive confirmation of this in writing from the Commission.

The final amendments to rule 1.5 of the General Civil Contract can be found on the

LSC website at www.legalservices.gov.uk and will appear in the next update of the LSC manual.

The removal of devolved powers does not apply to other areas of licensed work within the immigration category, such as appeals from the Immigration Appeal Tribunal to the Court of Appeal. However it will rarely be appropriate to exercise devolved powers in such cases. Applications should instead be made to the London Regional Office which will determine the application as quickly as possible and in any event within three working days. In the event that devolved powers are exercised in such cases the scope of the grant must be limited to applying to the Court of Appeal for permission to appeal on the papers. Funding will only be available for the purposes of any renewed oral application to the court if this is authorised by the regional office.

STATUTORY REVIEW

Under the provisions of s101 of the Nationality, Immigration and Asylum Act 2002 where an application for leave to the Immigration Appeal Tribunal is refused, any further right of appeal will be by way of a statutory review.

Any application for statutory review will require an application for funding as part of Licensed Work. Under the amendment to rule 1.5 of the General Civil Contract suppliers will not be authorised to exercise devolved powers to grant, amend or refuse emergency certificates for a statutory review.

Statutory review is a more simple and streamlined procedure than judicial review. Applications for statutory review will be dealt with by the court on the papers without a separate permission stage. Applications for certificates to cover statutory review will be considered under section 7 of the Funding Code, under the criteria which apply to cases where there is no permission stage.

In practice the key criterion in funding statutory review applications is prospects of

success. For this purpose we will be considering the prospects of the court granting the statutory review (not whether the case is subsequently successful in the Immigration Appeal Tribunal). In cases which are of overwhelming importance to the client and/or raise significant human rights issues we will grant where the prospects of success are at least borderline.

Guidance on statutory review will be included in the next update to Volume 3 of the LSC Manual and on the LSC website.

RETROSPECTIVE FUNDING

Following consultation we have introduced Funding Code Procedures amendments to allow retrospective funding in relation to judicial and statutory reviews in certain specified circumstances.

The power to fund retrospectively will arise in cases where the court has confirmed that the case has merit, i.e.

- i) in relation to judicial review where the court grants permission,
- ii) in relation to statutory review where the court grants the review.

For judicial review the power is also restricted to cases where the "presumption of funding" applies, i.e. where the case has a significant wider public interest, is of overwhelming importance to the client or raises significant human rights issues. However most immigration judicial reviews will come into this category.

In those cases a retrospective grant may be made where either:

- a) the application for legal aid has been refused and the solicitor has applied for a review of that decision (and the review has not been refused), or
- b) the solicitor has acted with all due expedition but was unable to get a decision from the Commission on the emergency grant of funding.

The effect of this amendment and the related guidance is that if through no fault of the supplier or client it was not possible to hear an appeal against the refusal of funding in time; or where for example a firm has been instructed shortly before removal directions and the supplier is unable, despite reasonable efforts, to contact the Commission in time, the solicitor can still be paid from public funds if they decide to lodge the application for judicial review or statutory review at their own or the client's expense and permission is subsequently granted.

Where permission has been granted and a supplier wishes to apply for the grant of retrospective funding the supplier should immediately and before further work is undertaken send to the London Regional Office:

- a) the client's completed application for public funding (if this has not been done already) and
- b) copy of the court order granting permission or allowing the application for statutory review.

When the certificate for funding is issued the Commission will confirm whether retrospective funding is to be granted and specify the date from when it applies. In general we will be prepared to confirm retrospective funding whenever a case satisfies the above conditions as set out in the Code Procedures and the client is eligible for legal aid.

The amended Funding Code Procedures will be placed on the website at www.legalservices.gov.uk and will appear in the next update of the LSC manual.

(2) OTHER IMMIGRATION NEWS

UPDATE ON NON-SUSPENSIVE APPEALS

On the 7 February 2003 the Government announced that an additional seven countries will be subject to the non-suspensive appeal procedure under s115 of the Nationality, Immigration and Asylum Act 2002.

Suppliers should note that all judicial review cases relating to these countries and which are subject to a non-suspensive appeal will be

dealt with by the London regional office under procedures set out in the Commission's letter to suppliers dated 25 October 2002. Details can also be found in *Focus* 40 at page 10.

NO MERITS CERTIFICATE

As from 1 April 2003 the Commission intends to amend Section 12 of the General Civil Contract Specification. This follows consultation with the profession in December 2002.

This amendment applies to certificates issued by the court under s101(3)(d) of the Nationality, Immigration and Asylum Act 2002, or issued by an adjudicator or the Immigration Appeal Tribunal pursuant to rules made under s106(3)(f) of that Act.

If such a certificate is issued in relation to work carried out by a supplier under their Contract that supplier must send a copy of the certificate to the Commission (whether or not it is intended to make any claim under the Contract for work carried out in the case). Any such certificate must also be made available on any assessment of costs for such work, whether the assessment is carried out by the court or by the LSC.

Certificates are issued under the Act where an adjudicator, tribunal or court considers that the particular application before it has no merit. The fact that the certificate has been issued does not automatically mean that the supplier will not be paid for work done on the case. However the certificate will be taken into account on assessment of costs in determining what sum if any it is reasonable to pay. In general it will not be reasonable to pay solicitor or counsel fees for work carried out in such a case after it should have been clear to the legal representatives concerned that the case had no merit. In some cases it may be appropriate to treat solicitors' and counsel's fees differently in the assessment according to who was responsible for the case proceeding despite its lack of merit.

Suppliers should also note that if a significant number of no merit certificates are issued in respect of their contract work, the Commission may take that as evidence that such work is not being carried out with

reasonable skill and care, such that there may have been a breach of other obligations in the Contract – see in particular Rule 2.14 of the Specification (in relation to Controlled Work) and Standard Terms Rule 2.1 and 3.2.

ACT TRAINING

Suppliers should note that as from 1 April 2003 the College of Law will be running the Asylum Caseworker Training. For further details please see page 05.

ADVISING CLIENTS ABOUT COST -V- BENEFIT AND RISK

WHEN THE SQM WAS PUBLISHED IN APRIL LAST YEAR WE TOOK THE OPPORTUNITY TO CONFIRM THAT COST -V- BENEFIT AND RISK WERE REQUIRED TO BE DISCUSSED WITH THE CLIENT AND CONFIRMED IN WRITING, AS PART OF ADVANCE COST ADVICE GIVEN IN EVERY CASE IN WHICH COSTS ADVICE WAS APPROPRIATE AND WHERE THE SERVICE PLANNED OR DELIVERED WENT BEYOND ONE-OFF ADVICE.

Auditors are reporting that a year on from that clarification many civil suppliers are still failing to cover these aspects with their clients. To date, auditors have taken a soft approach, reiterating the requirement and highlighting the guidance. However this is a key requirement in terms of quality client care and Fund propriety, and so future non-compliances will be identified and reported as such.

For reference, the relevant requirement is part of F1.2(c) in the SQM Standard, and the accompanying guidance appears on page 89 in the SQM Guidance. In summary, the guidance confirms that cost -v- benefit and risk can be explained to the client in the same broad percentage bands set out in the legal aid application and amendment forms, or otherwise, in terms of more precise likely prospects of success. It also reminds solicitors of the requirement to advise and update clients on cost -v- benefit and risk as part of Practice Rule 15, and of the sanctions that are available to the OSS if the standard is breached.

NEED A BARRISTER TO PROVIDE REPRESENTATION ON APPEALS IN PUBLICLY FUNDED ASYLUM WORK?

Would you like to instruct one who has completed a dedicated training course and assessment at the College of Law?

If the answer is yes then you may like to contact one of the barristers listed on pages 26-27.

As a minimum each of the barristers has undertaken a dedicated immigration and asylum course and assessment. For some participants the course has complemented their existing expertise and experience.

This dedicated course and assessment was funded by the Legal Services Commission and designed in partnership with the College of Law and Bar Council.

Each barrister has agreed to make themselves available for a minimum of 500 hours Controlled Legal Representation for 12 months from 1 March 2003.

They will bill the Commission directly for any asylum Controlled Legal Representation work during that 12 month period. If you instruct them then you do not need to pay them directly or bill the Commission for their fees. They will however issue you with a receipted fee note which can be kept on your file for audit purposes. This fee note will also assist you to ensure that your costs, including counsel's fees, do not exceed the Controlled Legal Representation financial limit.

The Commission hopes this initiative will make it easier to find barristers willing to take on this type of work and help to deal with the increased number of appeals being processed by the IAA. The barristers listed on pages 26-27 will add to the pool of barristers already doing valuable work in this complex and important area of law.

Simplifying the QUALITY AUDIT PROCESS

THE SUPPLIER DEVELOPMENT GROUP OF THE LEGAL SERVICES COMMISSION HAS BEGUN WORK ON AN AUDIT SIMPLIFICATION PROJECT TO CONSIDER HOW TO MAKE BEST USE OF EXISTING, NEW AND YET TO BE DEVELOPED PROCESSES DESIGNED TO IDENTIFY QUALITY SUPPLIER PERFORMANCE.

This will enable us to:

- reward stronger performers with a simpler, more efficient working relationship with the Legal Services Commission, and
- develop a benchmark against which strong supplier performance can be assessed, looking in particular at the quality of advice provided.

The audit project is set within the context of the soon to be implemented supplier management process. We believe this new process will enable us to develop a unique relationship with suppliers, by tailoring audits to individual performance. The process will be structured around a combination of screening data (which is initially largely costs related), followed by contract compliance/file assessment information. These performance triggers will together determine whether a supplier has a liaison or a control audit.

Building on this work, the audit project aims to make best use of new quality of advice developments that we are currently working on (Case Outcomes, Development of National Occupational Standards, File Assessment 2, Peer Review and New Law Society Panels), by identifying how to incorporate them into the supplier management process. Particularly, we will be looking at how they can be used as 'equivalents' or 'alternatives', to the SQM requirements that we currently audit. The project's wider objective is to also reduce the existing level of bureaucracy for all suppliers, which can result from compliance with the SQM and its audit. Additionally, a final objective is to work with, and reward better suppliers by simplifying, to the maximum extent possible, their quality assurance processes.

We will be working closely, and linking in where possible, with a recently initiated Criminal Defence Service project – details of which are outlined below, in order to reduce any duplication in research or consultation with suppliers. Therefore, information collected will be joined up, and shared between projects, where appropriate.

Details of the CDS simplification project are due to be published in *Focus on CDS*, Issue 11, however, to summarise, the project has the key objective of simplifying as far as possible all arrangements under which CDS suppliers undertake work on behalf of the LSC. This is therefore a fundamental review of all the relevant requirements and guidance in order to reduce the administrative burden on suppliers and to make the arrangements simpler, more straightforward and easier to understand.

The scope of the project is wide ranging, but seeks to identify 'quick wins' that can be introduced quickly with the minimum of change for suppliers and the Commission, in addition to more radical changes that may need to be introduced over a longer period of time.

In both projects it is our intention to be as radical as possible in simplifying the current arrangements, whilst retaining a system that provides assurance of quality of advice and service to clients, propriety expenditure and value for money.

A similar project is also planned for Civil Contracting. If you have any suggestions of how the current CDS arrangements could be simplified please get in touch with your account manager or contact: Maryvonne Islip, Project Manager CDS Simplification Project, on 0121 665 4737 or e-mail maryvonne.islip@legalservices.gov.uk Alternatively, if you wish to contribute feedback specifically relating to the audit simplification project, please contact: Alison Brown, Project Coordinator Audit Simplification Project on 020 7759 0379 or e-mail alison.brown@legalservices.gov.uk

ASYLUM CASEWORKER TRAINING PROJECT

THE ASYLUM CASEWORKER TRAINING PROJECT IS MOVING TO THE COLLEGE OF LAW ON 1 APRIL 2003. THE ASYLUM CASEWORKER TRAINING PROJECT HAS BEEN RUNNING SUCCESSFULLY FOR TWO YEARS. IT IS FUNDED BY THE LSC AND WAS BASED AT THE IMMIGRATION LAW PRACTITIONERS' ASSOCIATION FROM APRIL 2001 TO MARCH 2003.

The purpose of the project is to train new or recently recruited asylum caseworkers to provide, under supervision, quality advice and representation for asylum seekers.

Each course runs for five days followed by three follow-up days a few weeks later. The course covers the substantive and practical areas of asylum casework and concentrates on 'best practice' in all sections of this work. Included in the course is an examination of the 1951 Convention, the Human Rights Act 1998, the Immigration and Asylum Act 1999, the asylum decision process, LSC requirements for case management, clerking a Home Office interview, support for asylum seekers, written representations, preparing an appeal,

detention and bail and post decision work. This year the project ran an update course, open to all who had been on the eight day course, this looked at the new provisions in the Nationality, Immigration and Asylum Act 2002. The Nationality, Immigration and Asylum Act 2002 will be added to the eight day course from April 2003.

Under the project, participants from LSC contracted suppliers, who obtain their certificate of attendance, will have their course fees reimbursed. To gain their certificate of attendance the trainee must attend all eight days of their course, 9.30 am-

4.30 pm and complete all set coursework.

The Asylum Caseworker Training Project has proved to be extremely popular both with the trainees and their supervisors. The next course dates are shown below.

Fees: £400.00 for contracted suppliers
£600.00 for others. Contracted suppliers will be given priority.

For a booking form please contact: Jane Savory, ACT Project, Professional Development Department, The College of Law, 2 Bream's Buildings, Chancery Lane, London, EC4 1PJ, Tel: 020 7611 7441, DX 37 Chancery Lane.

CITY	5 DAYS	3 DAYS
BIRMINGHAM	12, 13, 14, 15, 16 MAY 03	4, 5, 6 JUNE 03
CHESTER	19, 20, 21, 22, 23 MAY 03	17, 18, 19 JUNE 03
CHANCERY LANE	23, 24, 25, 26, 27 JUNE 03	9, 10, 11 JULY 03
YORK	30 JUNE, 1, 2, 3, 4 JULY 03	22, 23, 24 JULY 03
GUILDFORD	28, 29, 30, 31 JULY, 1 AUG 03	20, 21, 22 AUG 03
BIRMINGHAM	11, 12, 13, 14, 15 AUG 03	26, 27, 28 AUG 03

REVIEWING THE FAMILY GRADUATED FEE SCHEME

THE LORD CHANCELLOR IS COMMITTED TO REVIEWING THE OPERATION OF THE FAMILY GRADUATED FEE SCHEME FOLLOWING ITS FIRST 18 MONTHS OF OPERATION.

This review has commenced and the Lord Chancellor's Department is holding regular meetings with both the Bar and the Commission to consider the impact of the scheme and what changes should be made. As the review progresses future articles in *Focus* will highlight any agreed changes.

FORM CHANGES

As part of the review the Commission has considered its verification requirement. From April 2003 CLS form CLS ADMIN 5 will be

abolished. It will no longer be necessary for the work undertaken by counsel in a non-hearing function (or in a hearing function where no hearing has actually taken place) to be verified by the solicitor.

Counsel should be prepared to supply such documentation as the Commission may request to justify the work done. In all hearing functions where a hearing actually takes place, work done and additional payments due will continue to be verified by the judge.

OTHER ISSUES

Solicitors are obliged by contract specification rule 7.2(c) to await confirmation of all fees paid to counsel under the scheme before

submitting their costs for detailed assessment. This is in order to ensure the client's right to make representations at the conclusion of the case (as to both solicitor's and counsel's fees) is protected. Solicitors only have three months to submit their costs for detailed assessment. Both regional offices and the Supreme Court Costs Office have reported difficulties caused by counsel's failure to submit claims promptly. In order to prevent unnecessary hardship to solicitors, counsel is requested to submit all costs claims due under this scheme promptly following either the main hearing or the conclusion of the case.

NEW SELECT COMMITTEE ON THE LCD

A NEW PARLIAMENTARY SELECT COMMITTEE ON THE LORD CHANCELLOR'S DEPARTMENT HAS BEEN ESTABLISHED TO EXAMINE THE EXPENDITURE, POLICY AND ADMINISTRATION OF THE LCD AND ASSOCIATED PUBLIC BODIES. THE REMIT OF THE COMMITTEE INCLUDES AMONGST OTHER THINGS:

- civil justice and the legal services market, including: legal aid and the Legal Services Commission; private legal services and the Legal Services Ombudsman; civil court procedure and civil law; alternative dispute resolution; law reform and the Law Commission
- family justice and the vulnerable, including: marriage, divorce and relationship support; family breakdown and arrangements for children; Children and Family Court Advisory and Support Service (CAFCASS); international child abduction; mental incapacity; the Public Guardianship Office; the Official Solicitor and Public Trustee
- criminal justice, including: policy and legislation affecting the criminal courts (as distinct from criminal law, which does not fall within the committee's remit)
- the courts and tribunals (excluding individual cases)
- judicial matters, including: judicial appointments, training and conduct; appointments to tribunals; appointment of QCs (excluding individual appointments)

Information on the work of the committee is available on its pages on the Parliamentary website at www.parliament.uk

ANTI SOCIAL BEHAVIOUR ORDERS (ASBO)

THE POLICE REFORM ACT 2002 (PRA) WILL COME INTO FORCE ON 1 APRIL 2003. THE PRA WILL AMEND THE CRIME AND DISORDER ACT 1988 BY EXTENDING THE CIRCUMSTANCES IN WHICH ASBOs CAN BE MADE. AT PRESENT ASBOs ARE AVAILABLE ONLY IN THE MAGISTRATES' COURT ON THE APPLICATION OF EITHER THE LOCAL AUTHORITY OR THE CHIEF CONSTABLE OF POLICE.

ASBOs are only made if an individual has acted in an anti-social manner and an order is necessary for the protection of the public. The PRA will allow ASBO applications to be brought within existing county court civil proceedings. It is anticipated that this is most likely to affect housing proceedings. After 1 April 2003 registered social landlords will also be able to apply for an ASBO. Such applications will be equivalent to securing an injunction or any other ancillary order by way of an application within the existing proceedings.

Although ASBOs are civil sanctions, to date they have been deemed 'criminal' for funding purposes and ASBO proceedings have been primarily conducted in the criminal courts by suppliers holding a General Criminal Contract. The extension from the magistrates' to the county court means that it will now be necessary to consider applications for representation in relation to ASBOs in existing civil proceedings from suppliers with a General Civil Contract. Civil representation may cover the making of the order or any appeal against an order. Breach of either an interim or full order is a criminal offence and is heard in the magistrates' or Crown Courts and can only be dealt with by suppliers with a General Criminal Contract.

Any work undertaken in relation to ASBOs in the county court is not automatically covered under the scope of an existing civil funding certificate and an amendment will be required to extend the scope to cover the ASBO application.

Generally the Legal Services Commission (LSC) will be prepared to extend funding certificates on an application to amend the certificate where representation can be shown to be in the interests of justice. In these cases normal civil financial eligibility rules will apply. In cases where certificated work is not justified or where mitigation is required at court, Help at Court may be appropriate.

LSC HAS NEW CHIEF EXECUTIVE

Clare Dodgson has been appointed Chief Executive of the LSC. Clare is currently acting Chief Executive at Jobcentre Plus, Department for Work and Pensions. Clare's early career was in the National Health Service. She joined the Employment Service in 1999 as Director of Jobcentre Services and then became Chief Operating Officer of Jobcentre Plus.

Clare was due to take up the post at the start of April. She has had to postpone her start date at the Commission due to senior civil service movement in Whitehall but she looks forward to joining the LSC as soon as possible. In the meantime, Steve Orchard has agreed to stay on beyond 1 April.



CLARE DODGSON

ADVICE SERVICES ALLIANCE COURSES

Advice Services Alliance (ASA) has asked us to inform suppliers that its project, CLS Support, will be running five courses from Spring through to Autumn 2003 on issues relating to the Specialist Quality Mark and Not-for-Profit contract. Please note that these one-day courses are aimed specifically at Not-for-Profit General Civil Contract holders.

COURSE 1	WORKING UNDER AN NFP CONTRACT: <i>An introduction to the key issues</i>
	4 TH JUNE LONDON
	1 ST JULY BIRMINGHAM
	5 TH AUGUST YORK
	2 ND SEPTEMBER LIVERPOOL

COURSE 2	MONITORING PERFORMANCE: <i>An introduction to supervision, file review and appraisal</i>
	17 TH JUNE BIRMINGHAM
	17 TH JULY MANCHESTER
	19 TH AUGUST LONDON
	25 TH SEPTEMBER NEWCASTLE

COURSE 3	THE EFFECTIVE SUPERVISOR
	26 TH JUNE LONDON
	22 ND JULY BIRMINGHAM
	28 TH AUGUST YORK
	18 TH SEPTEMBER LIVERPOOL

COURSE 4	MAKING EVERY MINUTE COUNT: 2003!
	24 TH APRIL LONDON
	6 TH MAY LONDON
	8 TH MAY YORK
	14 TH MAY BIRMINGHAM
	29 TH JULY BIRMINGHAM
	27 TH MAY MANCHESTER
	29 TH MAY BRISTOL
24 TH JUNE NEWCASTLE	

COURSE 5	SUFFICIENT BENEFIT TEST: <i>Principles and Practice</i>
	11 TH JUNE LONDON
	8 TH JULY YORK
	14 TH AUGUST BRISTOL
	9 TH SEPTEMBER BIRMINGHAM

For more information please contact ASA on 020 7378 6428 or email info@asauk.org.uk. Details can also be found on the ASA website at www.asauk.org.uk

UPDATED CLS LEAFLETS

Updated versions of the following CLS Public Information leaflets will become available in April 2003: number 1 'Dealing with Debt', number 3 'Divorce & separation' and number 23 'Alternatives to court'.

The version date for each leaflet can be found at the bottom of the back page of each leaflet and the correct version date for each leaflet is printed on the leaflet order form.

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

For queries or comments please contact:

Catriona Myers Wilson, Policy & Legal, Head Office, 85 Gray's Inn Road, London, WC1X 8TX or e-mail catriona.myers@legalservices.co.uk.

LSC HAS NEW CHAIRMAN

Philip Ely has been appointed the new chairman of the LSC, succeeding Peter Birch who steps down in April after three years service.

Philip, a former Law Society President, has served on the LSC since it was created in April 2000 and before that was also a member of the Legal Aid Board. Philip is chair of the London regional legal services committee and was made an OBE in the New Year Honours for services to publicly funded legal services.



PETER G BIRCH CBE



PHILIP ELY OBE

FILE ASSESSMENT

WE CURRENTLY REVIEW OR AUDIT CLIENT FILES IN A NUMBER OF DIFFERENT WAYS. WE CALL FOR THE FILES AS PART OF THE GENERAL CIVIL OR CRIMINAL CONTRACT COMPLIANCE PROCESS BUT THIS IS PRIMARILY FOR COST ASSESSMENT AS WE CHECK THAT THEY HAVE BEEN MANAGED IN ACCORDANCE WITH THE CONTRACT SPECIFICATION AND COST GUIDANCE.

Also, as part of the Specialist Quality Mark (SQM) Management Audit carried out by our auditors, we audit the files to ensure that they meet the client care requirements specified in the SQM, including confirming instruction and action etc.

We believe that combining the two processes would lead to a more efficient and integrated audit activity. Therefore, from 1 April 2003 whenever we review files for cost assessment the audit will be extended to include quality and Client Care requirements of the SQM and the contract.

In addition, for criminal suppliers the file audit will include a sample of court duty work. This aspect of the audit will focus almost exclusively on the quality requirements of the SQM and the Contract. Therefore, where we call for files as part of the contract compliance process, we may also ask for your records or attendance notes for one or more court duty sessions.

If our auditors identify any potential Quality Concerns, the result of the audit will be reviewed by your Account Manager or Lead Assessor and discussed with you at any subsequent audit.



COMMUNITY LEGAL SERVICE

Financial Eligibility from 7 April 2003

The Community Legal Service (Financial) (Amendment) Regulations 2003 provide for the following changes in financial eligibility limits. These changes will apply to all applications for funding made on or after 7 April 2003. The Commission will also apply these rates when it reassesses certificates under Regulation 15 of the Community Legal Service (Financial) Regulations 2000. This uprating represents a 1.7% increase.

In addition to this uprating, existing Tax Credits will be replaced by New Tax Credits for people in work (NTCs) from April. The LSC's policy relating to the treatment of NTCs is also discussed below.

LEGAL HELP, HELP AT COURT, LEGAL REPRESENTATION BEFORE IMMIGRATION ADJUDICATORS OR IMMIGRATION APPEAL TRIBUNAL

GROSS INCOME LIMIT	INCREASED FROM £2,250 TO £2,288* PER MONTH
DISPOSABLE INCOME LIMIT	INCREASED FROM £611 PER MONTH TO £621 PER MONTH
CAPITAL LIMIT	REMAINS £3,000
* A higher limit applies for families with more than 4 children	

NO. OF CHILDREN IN FAMILY	GROSS MONTHLY INCOME NOT TO EXCEED
0-4	£2,288
5	£2,433
6	£2,578
7	£2,723
8 OR MORE	ADD £145 TO ABOVE FIGURE FOR EACH ADDITIONAL CHILD

Clients in receipt of Income Support or Income Based Job Seekers' Allowance will continue to be automatically eligible on income, but their capital will still need to be assessed.

These levels of service remain non-contributory. Clients are ineligible if their income or capital exceeds the above limits.

ALL OTHER LEVELS OF SERVICE

GROSS INCOME LIMIT	INCREASED FROM £2,250 TO £2,288* PER MONTH
DISPOSABLE INCOME LIMIT	INCREASED FROM £695 PER MONTH TO £707 PER MONTH
CAPITAL LIMIT	REMAINS £8,000
* A higher limit applies for families with more than 4 children as detailed above	

Clients in receipt of Income Support or Income Based Job Seekers' Allowance will continue to be automatically eligible on both income and capital and their means will not need to be assessed.

There continues to be no contribution system for either Family Mediation or Help with Mediation.

For Legal Representation in Specified Family Proceedings, General Family Help, Support Funding and Full Legal Representation other than set out above, a client with disposable income of **£267** or below per month and capital of £3,000 or below will not be required to pay any contributions. A client with disposable income between **£268 AND £707 INCLUSIVE** per month will be liable to pay a monthly contribution of a proportion of the excess over **£263**. Such contributions will be assessed in accordance with the following bands:

BAND	MONTHLY DISPOSABLE INCOME	MONTHLY CONTRIBUTION
A	£268 TO £393	1/4 OF INCOME IN EXCESS OF £263
B	£394 TO £522	£32.50 + 1/3 OF INCOME IN EXCESS OF £393
C	£523 TO £707	£75.50 + 1/2 OF INCOME IN EXCESS OF £522

So if disposable income is £303 per month, the contribution will be in band A, the excess income is £40 and therefore the monthly contribution will be £10 per month.

If the disposable income was £408 per month, the contribution would be in band B, the excess income would be £15 (£408 - £393), the monthly contribution would therefore be £37.50 i.e. £32.50 + £5.

If the disposable income was £542 per month, the contribution would be in band C, the excess income would be £20 (£542 - £522), the monthly contribution would therefore be £85.50 i.e. £75.50 + £10.

A client whose disposable capital exceeds £3,000 (but does not exceed £8,000) is required to pay a contribution of either the capital exceeding £3,000 or the likely maximum costs of the funded service whichever is the lesser.

DEPENDANTS' ALLOWANCES

Following the uprating of 1.7% to the Income Support (General) Regulations 1987, the following increases to the allowances for dependants will apply to applications for funding and reassessments on or after 7 April 2003 for all levels of service.

PARTNER	INCREASED FROM £133.40 TO £135.14 PER MONTH
CHILD AGED 15 OR UNDER	INCREASED FROM £160.77 TO £167.29 PER MONTH
CHILD AGED 16 OR OVER	INCREASED FROM £164.25 TO £167.29 PER MONTH

NEW TAX CREDITS

Working Tax Credit and Child Tax Credit will replace Working Families Tax Credit (WFTC) and Disabled Person's Tax Credit (DPTC) from 6 April 2003. People receiving these New Tax Credits (NTCs) will **NOT** be automatically entitled to CLS funding (i.e. 'passported') for any level of service under the CLS Scheme. This represents a continuation of the policy of not passporting tax credits. Clients in receipt of NTCs will be assessed for CLS funding against the financial limits for those levels of service where financial eligibility criteria apply.

A Tax Credit Award Notice is issued to clients upon determining the claim for tax credits. Where the client does not have a partner it is likely that a single award notice will provide the necessary details covering all entitlements to the NTCs. Couples must make a joint tax credits application, i.e. they cannot decide to apply as a single person, however separate award notices may be issued. For example in the case of a married couple the husband may be awarded Working Tax Credit while Child Tax Credit is awarded to the wife as the main carer of the children. The client must therefore provide a copy of all notifications pertaining to his/her financial circumstances including those issued to a partner.

SATISFACTORY EVIDENCE

In accordance with Rule 2.5 of the General Civil Contract, satisfactory financial evidence will need to be supplied. A copy of the Tax Credit Award Notice issued to the client should be accepted as satisfactory evidence of the claim. Otherwise any relevant correspondence from the paying agency in the client's possession would be acceptable. Evidence must also be obtained of the client's other income i.e. salary, child benefit, maintenance payments.



CRIMINAL DEFENCE SERVICE

Financial Eligibility from 7 April 2003

The Criminal Defence Service (General) (No 2) (Amendment) Regulations 2003 provide for the following changes in financial eligibility. These changes will apply to all applications for funding made on or after 7 April 2003. (New passporting arrangements will apply from 6 April 2003.)

- 1) Changes to the passporting arrangements on income following the introduction of New Tax Credits for people in work (NTCs) which replace existing Tax Credits from April.
- 2) An uprating of financial eligibility limits representing a 1.7% increase in line with welfare benefit provision.

These changes are set out below.

NEW TAX CREDITS

Working Tax Credit and Child Tax Credit will replace Working Families Tax Credit (WFTC) and Disabled Person's Tax Credit (DPTC) from 6 April 2003. Passporting arrangements on **INCOME ONLY** will apply to the NTCs where these are claimed as follows:

- Working Tax Credit claimed together with Child Tax Credit where gross annual income is not more than £14,213;
- Working Tax Credit with a disability element or severe disability element (or both) where the gross annual income is not more than £14,213.

A client will be deemed to automatically qualify on income grounds where Working Tax Credit is claimed together with Child Tax Credit or the award of Working Tax Credit includes a disability/severe disability element, subject to the gross income limit of £14,213. Disposable capital will need to be assessed in each case to determine whether the client's means falls within the capital limit. A Tax Credit Award Notice will be issued to the client by the Inland Revenue upon determining his/her NTCs claim and, as appropriate, will confirm entitlement to the relevant tax credit(s) and provide a detailed breakdown of the award. This notice will therefore contain the information necessary to determine whether the client is passported on income or will require a full assessment.

It will no longer be necessary for practitioners to obtain details of the abatement figure from the award as was previously the case under the old passporting arrangements for WFTC and DPTC*. The new passporting arrangements represent a positive step forward in the LSC's continuing efforts to simplify the assessment process and improve the transparency of passporting arrangements.

**A person directly or indirectly in receipt of WFTC or DPTC on or after 6 April 2003 shall be treated as if draft Regulation 5 (i.e. passporting arrangements for NTCs) had not come into force. For these cases, the client continues to be passported for funding if the abatement from the award is £70 per week or less.*

SATISFACTORY EVIDENCE

In accordance with Rule 2.6 of the General Criminal Contract, satisfactory financial evidence will need to be supplied. A copy of the Tax Credit Award Notice issued to the client should be accepted as satisfactory evidence of the claim. Otherwise any relevant correspondence from the paying agency in the client’s possession would be acceptable. Evidence must also be obtained of the client’s other income i.e. salary, child benefit, maintenance payments.

Where the client does not have a partner it is likely that a single award notice will provide the necessary details covering all entitlements to the NTCs. Couples must make a joint tax credits application, i.e. they cannot decide to apply as a single person, however separate award notices may be issued. For example in the case of a married couple the husband may be awarded Working Tax Credit while Child Tax Credit is awarded to the wife as the main carer of the children. The client must therefore provide a copy of all notifications pertaining to his/her financial circumstances including those issued to a partner.

The introduction of a gross income cut-off set at £14,213 will ensure that the global numbers entitled to remission from court fees are maintained and the current passported client groups are protected. The gross income cut-off is specific to the passporting arrangements for NTCs only, it is **not** applicable to the claims passported on the basis of Income Support or Job Seekers’ Allowance (Income Based) entitlement. Similarly the £14,213 limit is not to be otherwise factored into the full income assessment for non-passported cases. The updated Keycard (38a) provides a step-by-step guide to assessment.

ADVICE AND ASSISTANCE

DISPOSABLE INCOME LIMIT	INCREASED FROM £89 TO £91 PER WEEK
CAPITAL LIMIT	REMAINS £1,000 FOR THOSE WITH NO DEPENDANTS REMAINS £1,335 FOR THOSE WITH ONE DEPENDANT REMAINS £1,535 FOR THOSE WITH TWO DEPENDANTS WITH £100 INCREASE FOR EACH EXTRA DEPENDANT

Clients in receipt of Income Support, Income Based Job Seekers’ Allowance, Working Tax Credit + Child Tax Credit* or Working Tax Credit + a disability element* will continue to be automatically eligible on income, but their capital will still need to be assessed.
*gross income not to exceed £14,213 for passporting.

This level of service remains non-contributory. Clients are ineligible if their income or capital exceeds the above limits.

ADVOCACY ASSISTANCE

DISPOSABLE INCOME LIMIT	INCREASED FROM £189 TO £192 PER WEEK
CAPITAL LIMIT	REMAINS £3,000 FOR THOSE WITH NO DEPENDANTS REMAINS £3,335 FOR THOSE WITH ONE DEPENDANT REMAINS £3,535 FOR THOSE WITH TWO DEPENDANTS WITH £100 INCREASE FOR EACH EXTRA DEPENDANT

Clients in receipt of Working Tax Credit + Child Tax Credit* or Working Tax Credit + a disability element* will continue to be automatically eligible on income, but their capital will still need to be assessed.
*gross income not to exceed £14,213 for passporting.

Clients in receipt of Income Support or Income Based Job Seekers’ Allowance will continue to be automatically eligible on both income and capital.

This level of service remains non-contributory. Clients are ineligible if their income or capital exceeds the above limits.

DEPENDANTS’ ALLOWANCES

Following the uprating of 1.7% to the Income Support (General) Regulations 1987, the following increases to the allowances for dependants will apply to applications for funding for all of the above levels of service made on or after 7 April 2003.

PARTNER	INCREASED FROM £30.70 TO £31.10 PER WEEK
CHILD AGED 15 OR UNDER	INCREASED FROM £37.00 TO £38.50 PER WEEK
CHILD AGED 16 OR OVER	INCREASED FROM £37.80 TO £38.50 PER WEEK



GENERAL

This card is intended as a quick reference point only when assessing financial eligibility for those levels of service for which the supplier has responsibility: Legal Help; Help at Court; Legal Representation before Immigration adjudicators and the Immigration Appeal Tribunal; Family Mediation; Help with Mediation and Legal Representation in respect of Specified Family Proceedings before a Magistrates' Court (other than proceedings under the Children Act 1989 or Part IV of the Family Law Act 1996). Full guidance on the assessment of means is set out in Part C of Volume 2 of the Legal Services Commission Manual. References in this card to volume and section numbers e.g. volume 2C-section 1 are references to the relevant parts of that guidance. Practitioners should have regard to the general provisions set out in guidance volume 2C-section 2, particularly those set out in sub paragraphs 3-5 regarding the documentation required when assessing means. This keycard and the guidance are relevant to all applications for funding made on or after 7 April 2003.

ELIGIBILITY LIMITS

The summary of the main eligibility limits from 7 April 2003 are provided below:

LEVEL OF SERVICE	INCOME LIMIT	CAPITAL LIMIT
<i>LEGAL HELP, HELP AT COURT, AND LEGAL REPRESENTATION BEFORE IMMIGRATION ADJUDICATORS AND THE IMMIGRATION APPEAL TRIBUNAL</i>	<i>GROSS INCOME NOT TO EXCEED £2,288** PER MONTH</i> <i>DISPOSABLE INCOME NOT TO EXCEED £621 PER MONTH</i> <i>PASSPORTED IF IN RECEIPT OF INCOME SUPPORT OR INCOME BASED JOB SEEKERS' ALLOWANCE</i>	<i>£3,000</i> <i>NO PASSPORTING - CAPITAL MUST BE ASSESSED IN ALL CASES</i>
<i>FAMILY MEDIATION, HELP WITH MEDIATION, AND *LEGAL REPRESENTATION IN SPECIFIED FAMILY PROCEEDINGS I.E. FAMILY PROCEEDINGS BEFORE A MAGISTRATES' COURT OTHER THAN PROCEEDINGS UNDER THE CHILDREN ACT 1989 OR PART IV OF THE FAMILY LAW ACT 1996</i>	<i>GROSS INCOME NOT TO EXCEED £2,288** PER MONTH</i> <i>DISPOSABLE INCOME NOT TO EXCEED £707 PER MONTH</i> <i>PASSPORTED IF IN RECEIPT OF INCOME SUPPORT OR INCOME BASED JOB SEEKERS' ALLOWANCE</i>	<i>£8,000</i> <i>PASSPORTED IF IN RECEIPT OF INCOME SUPPORT OR INCOME BASED JOB SEEKERS' ALLOWANCE</i>

* May be subject to contribution from income and/or capital (see volume 2C-section 3 paras 9 to 13).

** A higher gross income cap applies to families with more than 4 dependant children. Add £145 to the base gross income cap shown above for the 5th and each subsequent dependant child.

Additional information regarding the financial eligibility criteria is also provided in guidance volume 2C-section 3.

STEP BY STEP GUIDE TO ASSESSMENT

STEP ONE Determine whether or not the client has a partner whose means should be aggregated for the purposes of the assessment (see guidance in volume 2C-section 4 paras 2-6).

STEP TWO Determine whether the client is directly or indirectly in receipt of either Income Support or Income Based Job Seekers' Allowance in order to determine whether the client automatically satisfies the relevant financial eligibility test as indicated by the 'passported' arrangements stated in the table on reverse.

STEP THREE For any cases which are not 'passported' determine the gross income of the client, including the income of any partner, (see guidance in volume 2C-section 5). Where that gross income is assessed as being above £2,288 per month, then the client is ineligible for funding for all levels of service and the application should be refused without any further calculations being performed. Certain sources of income can be disregarded and a higher gross income cap applies to families with more than 4 dependant children.

STEP FOUR For those clients whose gross income is not more than the gross income cap (see guidance in volume 2C-section 3). Fixed allowances are made for dependants and employment expenses and these are set out in the table below. Other allowances can be made for: tax; national insurance; maintenance paid; housing costs and childminding. If the resulting disposable income is above the relevant limit then funding should be refused across all levels of service without any further calculations being necessary.

FIXED RATE ALLOWANCES (PER MONTH) FROM 7 APRIL 2003	
WORK RELATED EXPENSES FOR THOSE RECEIVING A WAGE OR SALARY	£45
DEPENDANTS' ALLOWANCES	
PARTNER	£135.14
CHILD AGED 15 OR UNDER	£167.29
CHILD AGED 16 OR OVER	£167.29
HOUSING CAP FOR THOSE WITHOUT DEPENDANTS	£545

STEP FIVE Where a client's disposable income is below the relevant limit then it is necessary to calculate the client's disposable capital (see guidance in volume 2C-section 7). If the resulting capital is above the relevant limit, then the application should be refused (however in the case of Legal Representation in Specified Family Proceedings if the likely costs of the case are more than £5,000 then refer to the Commission which may grant – see volume 2C-section 3 para 5).

STEP SIX For those clients whose disposable income and disposable capital have been assessed below the relevant limits then for all levels of service other than Legal Representation in Specified Family Proceedings, the client can be awarded funding.

STEP SEVEN For Legal Representation in Specified Family Proceedings, it is necessary to determine whether any contributions from either income or capital (or both) should be paid by the client (see guidance in volume 2C-section 3 paras 9 to 13). For ease of reference the relevant income contribution table is reproduced below. Such contributions should be collected by the supplier (see guidance in volume 2C-section 3 para 12).

BAND	MONTHLY DISPOSABLE INCOME	MONTHLY CONTRIBUTION
A	£268 TO £393	1/4 OF INCOME IN EXCESS OF £263
B	£394 TO £522	£32.50 + 1/3 OF INCOME IN EXCESS OF £393
C	£523 TO £707	£75.50 + 1/2 OF INCOME IN EXCESS OF £522



Criminal Defence Service

KEYCARD No 38^A from 7 April 2003

GENERAL

This card is intended as a quick reference point only when assessing financial eligibility for Advice and Assistance and Advocacy Assistance. Full guidance on the assessment of means is set out in Part E of Volume 4 of the Legal Services Commission Manual. References in this card to volume and section numbers e.g. volume 4E-section 1 are references to the relevant parts of that guidance. Practitioners should have regard to the general provisions set out in guidance volume 4E-section 3, particularly those set out in sub paragraph 2 regarding the documentation required when assessing means. This keycard and the guidance are relevant to all applications for funding made on or after 7 April 2003.

ELIGIBILITY LIMITS

The summary of the main eligibility limits from 7 April 2003 are provided below:

LEVEL OF SERVICE	INCOME LIMIT	CAPITAL LIMIT
ADVICE AND ASSISTANCE	<p>DISPOSABLE INCOME NOT TO EXCEED £91 PER WEEK</p> <p>PASSPORTED IF IN RECEIPT OF INCOME SUPPORT, INCOME BASED JOB SEEKERS' ALLOWANCE, WORKING TAX CREDIT PLUS CHILD TAX CREDIT* OR WORKING TAX CREDIT WITH DISABILITY ELEMENT*</p> <p><i>*Gross Income not to exceed £14,213 for passporting</i></p>	<p>£1,000 FOR THOSE WITH NO DEPENDANTS</p> <p>£1,335 FOR THOSE WITH ONE DEPENDANT</p> <p>£1,535 FOR THOSE WITH TWO DEPENDANTS WITH £100 INCREASE FOR EACH EXTRA DEPENDANT</p> <p>NO PASSPORTING - CAPITAL MUST BE ASSESSED IN ALL CASES</p>
ADVOCACY ASSISTANCE	<p>DISPOSABLE INCOME NOT TO EXCEED £192 PER WEEK</p> <p>PASSPORTED IF IN RECEIPT OF INCOME SUPPORT, INCOME BASED JOB SEEKERS' ALLOWANCE, WORKING TAX CREDIT PLUS CHILD TAX CREDIT* OR WORKING TAX CREDIT WITH DISABILITY ELEMENT*</p> <p><i>*Gross Income not to exceed £14,213 for passporting</i></p>	<p>£3,000 FOR THOSE WITH NO DEPENDANTS</p> <p>£3,335 FOR THOSE WITH ONE DEPENDANT</p> <p>£3,535 FOR THOSE WITH TWO DEPENDANTS WITH £100 INCREASE FOR EACH EXTRA DEPENDANT</p> <p>PASSPORTED IF IN RECEIPT OF INCOME SUPPORT OR INCOME BASED JOB SEEKERS' ALLOWANCE</p>

STEP BY STEP GUIDE TO ASSESSMENT

STEP ONE Determine whether or not the client has a partner whose means should be aggregated for the purposes of the assessment (see guidance in volume 4E-section 4).

STEP TWO (A) Determine whether the client is directly or indirectly in receipt of either Income Support or Income Based Job Seekers' Allowance in order to determine whether the client automatically satisfies the relevant financial eligibility test as indicated by the 'passported' arrangements stated in the table on reverse.

STEP TWO (B) Assess gross income for all other cases. Determine whether the client is directly or indirectly in receipt of Working Tax Credit along with Child Tax Credit or Working Tax Credit with disability element. The client will be 'passported' on income where gross limit £14,213 not exceeded.

STEP THREE For any cases that are not 'passported' determine the client's disposable income (see guidance in volume 4E-section 5). Fixed allowances are made for dependants and these are set out in the table below. Other allowances can be made for: tax; national insurance and maintenance paid. Certain sources of income can be disregarded. If the resulting disposable income is above the relevant limit then funding should be refused across all levels of service without any further calculations being necessary.

FIXED RATE ALLOWANCES (PER WEEK) FROM 7 APRIL 2003	
DEPENDANTS' ALLOWANCES	
PARTNER	£31.10
CHILD AGED 15 OR UNDER	£38.50
CHILD AGED 16 OR OVER	£38.50

STEP FOUR Where a client's disposable income is below the relevant limit then it is necessary to calculate the client's disposable capital (see guidance in volume 4E-section 6). If the resulting capital is above the relevant limit, then the application should be refused.

STEP FIVE For those clients whose disposable income and disposable capital have been assessed below the relevant limits then for all levels of service the client can be awarded funding.

EXPERTS IN PUBLIC LAW CHILDREN ACT PROCEEDINGS

IT HAS BECOME CLEAR THAT SOLICITORS ARE AGREEING EQUAL APPORTIONMENTS OF EXPERTS' FEES IN PUBLIC LAW CHILDREN ACT PROCEEDINGS IN CIRCUMSTANCES WHERE THE EXPENSE COULD FALL WITHIN SECTION 38(6) OF THE CHILDREN ACT 1989 AND, CONSEQUENTLY, BE ORDERED IN FULL AGAINST THE LOCAL AUTHORITY IN ACCORDANCE WITH CASE LAW (SEE RE C (INTERIM CARE ORDER: RESIDENTIAL ASSESSMENT) H.L. [1997] A.C. 489; [1996] 4 ALL E.R. 871 AND RE B (INTERIM CARE ORDER: DIRECTIONS) [2002] EWCA CIV 25, [2002] 1 F.L.R. 545).

The Commission's view is that Section 38 should be considered and decided by the court after full argument (rather than on the basis of an agreement reached between the parties) in any case where it is relevant. No amendment is needed to a certificate of Legal Representation to cover representation on a Section 38 hearing (see page 1D-22/35,

Volume 1, Legal Services Commission Manual). Agreeing that the limited Community Legal Service Fund will meet any apportionment of Section 38(6) expenditure transfers the costs involved from the local authority to the Fund and raises the possibility that the Fund will meet elements of the expenditure which cannot be covered and should not fall to the Fund.

Practitioners are reminded of the Commission's guidance at paragraph 5.8, page 1D-22/34, Volume 1, Legal Services Commission Manual. This makes it clear that:

- 1) Where the Court makes or could reasonably be expected to make an interim care or supervision order, prior authority for a Section 38(6) assessment will generally be refused.
- 2) If any authority for expenditure outside

Section 38(6) is to be granted not only must the principle of obtaining an assessment or report be reasonable but also the fees involved (both hourly fees and global fees) must be reasonable.

- 3) It is not the role of the Community Legal Service Fund to fund residential placements or assessments as the local authority should fund these, if they are justified. Hence the importance of a fully argued Section 38 hearing in these cases.
- 4) The Fund cannot pay for any treatment, therapy or training generally. Any authority granted for a report will not extend to the costs of treatment, therapy or training and these costs should be excluded from any application for prior authority. Where it is not clear that these costs have been excluded, an application for prior authority will be refused for further information about this issue.

REPORTING CASE OUTCOMES

NEW CODES APPLY FROM APRIL

Following our recent consultation on reporting case outcomes we are improving the way we record and report the outcome of civil cases, both for certificated work and for controlled work reported through the SPAN system.

A new range of outcome codes is being introduced which will be better able to demonstrate what is achieved for clients through public funding. Details of the new codes are contained in the Forms Masterpack April 2003 update and are summarised below. The new codes and a summary of the consultation responses and changes made following consultation can be found on the News section of our website at www.legalservices.gov.uk.

CERTIFICATE OUTCOMES

Outcomes of individual cases will continue to be reported to us in forms CLSCLAIM1 and 2. However these forms have been amended to allow more meaningful outcome information to be captured. The existing very limited range of options such as 'Settled' or

'Otherwise disposed of' has been replaced by five new outcome boxes to record the following:

- The stage the case ended, eg before or after issue. Judicial review cases can also record whether permission was granted by the court and at what level.
- How the case ended, including by settlement, withdrawal or court determination.
- What was achieved for the client – specific outcomes are available for some of the most common types of family and non-family case. Both money and non-money benefits can be recorded, including whether the client obtained an explanation or apology.
- Use of ADR – whether mediation or other ADR was proposed or used and with what result.
- Public interest – whether the case achieved a significant wider public benefit.

All the available codes and guidance on their use are set out in a new Certificate Outcomes Checklist that is included in the Masterpack update and should be consulted when completing the forms.

The new version of the forms and new codes must be used in all cases where the CLSCLAIM1 or 2 form is submitted to us on or after 1 April 2003.

SPAN

A new range of outcomes for controlled work is also being introduced, although the changes are more minor than for certificated work. A wider range of client benefits can now be reported as well as more detailed outcomes for Controlled Legal Representation. The system for reporting cases through the Consolidated Matter Report Form remains unchanged.

Suppliers of the software systems used to record controlled work outcomes are updating their systems to incorporate the new codes. The new codes will apply to cases concluded from 1 April onwards which then will be reported to us in early May.

There are however some not-for-profit suppliers who have been notified by their software providers that their existing software systems are not being updated to cover the new codes. We have written to not-for-profit suppliers in this situation and confirmed that they may continue to use their existing software and the old outcome codes up to 1 October 2003.

THE NEW LATE CLAIMS SANCTIONS

IN FOCUS 40 WE SET OUT THE INTERIM GUIDANCE FOR THESE CHANGES. RESPONSES WERE RECEIVED FROM THE LAW SOCIETY AND LAPG.

In consideration of the comments made, the deductions to be applied now graduate less steeply. There are only five possible deductions to be applied where bills are up to four years late. The cited examples of reasonableness in *Focus 40* are amended to include a reference to other work in implementing an ancillary relief order.

Consultation concluded on 31 January 2003 and the finalised guidance has been applied to all costs claims assessed on or after 17 February 2003. The final version of the guidance will be published in full in Release 9 of the LSC Manual (due for distribution in April 2003) and posted to the Commission's website as soon as possible.

The guideline deductions are:

- bills submitted up to 9 months late – 5%
- bills submitted between 9 and 18 months late – 10%
- bills submitted between 18 and 27 months late – 15%
- bills submitted between 27 and 36 months late – 20%
- bills submitted between 36 and 45 months late – 30%

Generally, it should be possible for late claims to be submitted within 48 months of the conclusion of the matter (i.e. up to 4 years out of time) but if the claim is submitted later, higher deductions may be applied.

CONGESTION CHARGE

Interim Guidance

WE ARE CURRENTLY CONSULTING WITH THE LAW SOCIETY AND LAPG ON THE IMPACT OF THIS CHARGE. CONSULTATION HAS BEEN EXTENDED TO 1 MAY 2003 AND COMMENTS ARE WELCOME. THE INTERIM GUIDANCE WILL BE APPLIED UNTIL THE GUIDANCE IS FINALISED. COMMENTS MAY BE SENT TO RUTH SYMONS AT POLICY & LEGAL DEPARTMENT, 85 GRAY'S INN ROAD, LONDON WC1X 8TX.

The congestion charge for drivers in central London has been effective since Monday 17 February 2003. Drivers of private cars have to pay £5.00 per day if they drive in the charging zone during charging hours (7.00am – 6.30pm, Monday – Friday excluding Public Holidays).

The charge is triggered by the first journey in the charging zone on a particular day; the number of journeys in/out of the zone does not affect the amount due. A map of the charging zone and further information can be found on the Transport for London congestion charge website www.cclondon.com

The charge can be paid at retail outlets, such as newsagents and petrol stations, or by electronic methods including e-mail and text message. A receipt will be issued for all 'over the counter' payments. For electronic payments a receipt number is issued automatically. If required, a printed receipt must be requested by e-mail or post. Payment can be made in advance (up to 90 days) or on a weekly/monthly basis, but there is no discount for paying this way.

A surcharge will be levied if payment is made on the day between 10.00pm–midnight and a penalty fine if not paid at all.

IMPACT ON SUPPLIERS

There are a number of courts and police stations within the charging zone that suppliers visit on a regular basis. The charge will be triggered by any journey in the zone using a private car but not by the use of public transport or taxis.

If the solicitor's office is outside the zone, and they assist a client at a police station or

attend a hearing at a court inside the zone, or if the supplier's office is inside the zone and they go to a court or police station either inside or outside the zone, the charge may potentially be payable. Any other travel justified for the proper conduct of the case within Contract rules and guidance (for example, visiting a client at home) could also possibly trigger the charge.

WHEN SHOULD THE CHARGE BE CLAIMED AS A DISBURSEMENT? - GUIDANCE TO ASSESSORS AND AUDITORS

Suppliers based inside the charging zone

Generally, if a solicitor uses a private car to travel to/from his office inside the zone (or vice versa), the daily charge will be triggered by his normal journey to/from work. The charge should not then be claimed on work done in relation to a client.

Fee earners who are based at a solicitor's office inside the charging zone may not ordinarily claim the congestion charge. The congestion charge is considered to be an overhead for suppliers located inside the charging zone and in most cases where the fee earner drives to work the charge will be incurred on this journey.

The only exception to this is where the fee earner has driven into the zone outside the charging hours specifically to attend a client and concludes the matter within the charging hours.

Suppliers based outside the charging zone

Fee earners who are based at a solicitor's office outside the charging zone may claim the congestion charge as a disbursement should they incur it, subject to the considerations outlined below as to its reasonableness.

Reasonableness

Solicitors should use the most economical form of transport, considering both the cost of travelling time and expenses. The additional cost of the congestion charge should be

considered when deciding the reasonableness of travel by car. As public transport and taxis are widely available within the zone, it is the solicitor's responsibility to note on the file the reasons why private transport was used.

Since there is no charge for additional travel on the same day, the charge should be claimed as a disbursement if it has been triggered only as a result of the work on the particular case. Where several journeys are made on the same day, the supplier must ensure that a claim for the congestion charge has not been duplicated on more than one file. It is not necessary to apportion the charge between clients as it will be triggered by the first incidence of travel and should be credited to the first client attended.

The fund will only be responsible for the charge itself and will not pay any surcharge or penalty levied for late payment.

VAT

The charge is outside the scope of VAT and VAT cannot therefore be reclaimed. The charge may be claimed as a business expense if an employer allows this; self-employed individuals are advised to consult the Inland Revenue. If it is an expense chargeable as a disbursement it will attract VAT because it is part of the integral supply made by the solicitor.

WHAT EVIDENCE SHOULD BE RETAINED ON FILE?

A receipt is required for any individual disbursement exceeding £10 so it is not necessary to retain the receipt on file. Suppliers will however be expected to record the receipt number to enable payment to be made.

If the charge is claimed on a particular file, suppliers should ensure that the addresses of the supplier's office, location visited and times of travel are clearly recorded on the file so that auditors can confirm that travel claimed is within the zone and reasonably charged to the fund. In addition, the solicitor should confirm that the charge was not triggered by their own travel to work or by any other travel within the zone on that same day.

AUDITOR'S CHECKLIST

Before allowing a claim for the congestion charge, auditors will consider the following:

- Is the journey justified from the evidence available on the file?
- Is the address of the solicitor's office or the destination within the charging zone?
- Are the dates and times for which the charge has been claimed clearly stated on the file?
- Has justification been provided for not using public transport/taxi or is it evident from the circumstances of the case?
- Is it clear from the file that the only reason the charge was triggered was a journey which was necessary for the proper conduct of the case and that no personal/other travel occurred on the same day?
- Is there any evidence that the charge has been duplicated on more than one file for the same day?

CHANGING THE LSC'S ASSESSMENT LIMITS

The Lord Chancellor has sent a letter to the profession's representative bodies setting out proposed changes to the assessment limits for civil costs claims.

The proposals will abolish the discretionary assessment limit (£500–£1,000) and introduce a mandatory assessment by the LSC for all costs claims up to £2,500. Costs claims exceeding £2,500 will continue to be assessed by the courts. *(This only affects cases where there is no order for costs between the parties, commonly known as legal aid only bills. The LSC does not assess in those circumstances and it is not proposed that this will change in future).* The Lord Chancellor is also working towards the total transfer to the LSC of all legal aid only bills at some future point. Subject to consultation, if the initial change goes ahead it is likely to be implemented in July 2003. Future editions of *Focus* may further expand on the changes.

Prior to implementation, all suppliers will be sent an information pack from the LSC. If you are a law costs draftsman and you would like a copy of any such pack please write to Brigitte Gilbert at Policy & Legal, 85 Gray's Inn Road, London WC1X 8TX or e-mail brigitte.gilbert@legalservices.gov.uk.

REGULATIONS ROUND-UP

APART FROM ANNUAL ELIGIBILITY CHANGES (FOR WHICH SEE FULL DETAILS ON PAGES 8-14) A NUMBER OF MINOR REGULATION CHANGES TAKE EFFECT THIS APRIL. THE RELEVANT SI NUMBERS ARE SI 2003 NO. 649, 650 AND 651.

- Costs against the Commission. The procedures for opponents to claim costs orders against the Commission are being simplified in some cases. In particular opponents will no longer need to file a statement of financial resources in appeal cases where there is no requirement for the opponent to demonstrate financial hardship.
- Litigation friends. The CLS (Costs) Regulations 2000 are being amended to confirm for the avoidance of doubt that a litigation friend enjoys cost protection (as previously made clear in Regulation 133 of the Civil Legal Aid (General) Regulations 1989).
- Multi-party actions. The Commission's power to waive financial eligibility limits in a multi-party action (Regulation 5B of the CLS (Financial) Regulations 2000) is being amended to make it clear that the power may be used where funding is restricted to the generic issues within an action, leaving the individual claims to be pursued privately.
- FAINs. Amendments are being made to the CLS (Financial) Regulations 2000 and CLS (Funding) Order 2000 to support the FAINs pilot and ensure that the clients of firms involved in the pilot are not penalised through the operation of the statutory charge.
- Proceeds of Crime Act 2002. The CLS (Funding) Order 2000 is being amended to cover remuneration for civil proceedings under the 2002 Act – see further the Funding Code update on page 19.

CIVIL CONTRACTING Update

THE GENERAL CIVIL CONTRACT (SOLICITORS) IS BEING RENEWED FOR A YEAR FROM 1 APRIL 2003 AND SCHEDULES HAVE NOW BEEN SENT OUT TO SUPPLIERS. SIGNED SCHEDULES HAD TO BE RETURNED TO THE RELEVANT LSC REGIONAL OFFICE BY 12 NOON ON 27 MARCH 2003.

WE HAVE CONSULTED THE LAW SOCIETY AND LAPG ON SOME AMENDMENTS TO THE CONTRACT TO COME INTO EFFECT FROM 1 APRIL 2003. THE MAIN CHANGES ARE:

- 1) To incorporate rules for applying results from contract compliance audit samples to other files. Although these rules will come into effect on 1 April, we are consulting the Law Society and LAPG on further guidance relating to their operation.
- 2) To set out the circumstances in which we may terminate a contract in the small number of cases where there has been a fundamental breach by the supplier.
- 3) To allow all contractors to carry out work relating to the Proceeds of Crime Act 2002.
- 4) In immigration cases only, to (a) reflect the introduction of no-merits certificates and (b) remove devolved powers to grant or amend emergency certificates for judicial review and statutory review. Notice of (b), which includes a Funding Code procedure change has already been served on all immigration contractors.

NEW CONTRACTS AND MATTER STARTS DURING 2003-4

Controlled Work (Legal Help, Help at Court and Controlled Legal Representation) is delivered within a fixed budget. However, the cost per case across the main categories of law is rising by 15%–20% per annum. The LSC is looking into the reasons behind these increases, but the effect is that we must manage funds even more carefully during 2003-4 to ensure that they are directed to providing an appropriate service for those clients most in need:

- 1) Suppliers are reminded that we will not pay for any cases started above the matter start limits set out in their schedule. Any applications to increase matter starts during the year will be considered in light of our need to direct available funds towards the highest priority work and of the capacity available amongst other suppliers.
- 2) We will monitor increases in average costs on a firm-by-firm basis. Under the terms of clause B.16(c) of the Contract Schedule, we may reduce matter starts during the life of the Schedule where the supplier's average matter cost is at least 10% higher than their Standard Matter Cost. The Standard Matter Cost is defined as '... our determination of the normal average cost of your Controlled Work matters

in a Category of Work based on our payments to you over a period determined by us (normally between six and twelve months) but adjusted to take account of abnormal factors such as small numbers of matters'. During the 2003-4 Schedule period, we will take the relevant period for the purposes of determining the Standard Matter Cost as the six months from April 2002 to September 2002. We will therefore be reviewing increases in average costs in 2003-4 and will apply clause B.16(c) in appropriate cases. The first review will take place in July 2003, and we may reduce matter starts for firms whose average costs of claims in any category for the period April – June 2003 have increased by 10% or more over their Standard Matter Cost for the period April to September 2002.

3) Any funding available for new Controlled Work contracts will be allocated in accordance with the priorities set out in the published RLSC reports and contracting strategies. Organisations (whether solicitor or not-for-profit) with an interest in a new or additional contract should write to their regional office and register on the bid panel in accordance with the 'Bid Rules for General Civil Contracts for Controlled Work – January 2003'. These rules are available on our website at www.legalservices.gov.uk and will be included in the next update of Volume 2 of the LSC manual.

We will continue to award Licence contracts to all firms that obtain the SQM.

NOT-FOR-PROFIT CONTRACTS

The new General Civil Contract (Not-for-Profit) has now been issued following consultation. Agencies had to return their signed Schedules to their regional office by 12 noon on 21 March 2003 otherwise they may be left without a contract in force on 1 April 2003. The new contract does not yet include guidance on underperformance or on time standards in individual categories of law. These will be incorporated as soon as practicable after further consultation.

SCOPE AND FUNDING CODE Update

CODE PROCEDURE CHANGES

THE FUNDING CODE PROCEDURES ARE BEING AMENDED WITH EFFECT FROM 1 APRIL 2003. THE MAIN CHANGE IS TO ESTABLISH A NEW POWER TO GRANT RETROSPECTIVE FUNDING FOR JUDICIAL REVIEW OR STATUTORY REVIEW PROCEEDINGS IN CERTAIN CIRCUMSTANCES. THIS NEW POWER IS PRIMARILY RELEVANT TO IMMIGRATION CASES – SEE PAGES 2-3 FOR GUIDANCE ON THIS AND OTHER DEVELOPMENTS RELATING TO IMMIGRATION.

Minor changes are also being made to cater for the new Not-for-Profit Contract and to exempt cases in the FAINs pilot from the mediation referral requirement.

The amended text of the Code Procedures will be available on the LSC website (www.legalservices.gov.uk) and in the next update of the LSC Manual.

JUDICIAL REVIEWS CONCERNING EDUCATION

We recently consulted on applications in the name of children for funding to bring a judicial review in education matters – see *Focus 40*, page 13. We have now finalised our guidance in the light of consultation responses.

It will remain the case that judicial review applications concerning school admissions/choice of school should be brought in the name of the parent rather than the child. However for most other education judicial reviews, in particular those relating to school exclusions or special educational needs, we accept the arguments put forward on consultation that these cases more directly concern the rights of the child. We have therefore amended the guidance to make it clear that a child may apply. We will not normally expect means information from the parents in such cases, while reserving the right to do so if representations are received in individual cases.

In cases concerning school closures our guidance remains unchanged. We will take

into account the extent to which the wider group of families affected by the closure may be able to fund the proceedings, as with public interest cases.

The new guidance is already being applied to new applications and existing cases. The full text is available on the LSC website and in the next update of the LSC Manual.

PROCEEDS OF CRIME ACT 2002

At page 12 of *Focus 40* we drew attention to certain provisions of the 2002 Act that came into force on 30 December 2002. These included the procedures for detention and forfeiture of cash in the magistrates' court for which CLS funding is available.

All the remaining key provisions of the Proceeds of Crime Act 2002 have now been brought into force. Although much of the Act concerns criminal proceedings the Act establishes a wide range of civil procedures in the High Court, Crown Court and magistrates' court for which CLS funding is available.

We have now prepared detailed guidance on the 2002 Act explaining the scope of CLS funding and circumstances in which it will be provided. This guidance is available on the LSC website and will also be included in the next update of the LSC Manual.

We have with effect from 1 April 2003 made amendments to the General Criminal Contract, General Civil Contract and franchise category definitions to make it easier for criminal firms to apply for CLS funding. All proceedings under the Proceeds of Crime Act 2002 now come within the category of 'Associated CLS Work' so that any firm with either a Criminal Contract or a Civil Contract can apply for funding.

Civil proceedings under the Proceeds of Crime Act 2002 are funded as Licensed Work. All applications for certificates should be made to the London regional office at 29-37 Red Lion Street, London WC1R 4PP, DX 170

London/Chancery Lane. Remuneration will be at the prescribed rates for civil proceedings in a magistrates' court.

USE OF GENERAL FAMILY HELP

General Family Help is the level of service under the Funding Code that covers preparation and negotiation with a view to resolving family legal disputes. The aim of General Family Help is to resolve disputes without adversarial court proceedings, in line with both the statutory aims of the CLS and the approach to dispute resolution set out in the Law Society Family Law Protocol. In relation to disputes concerning children General Family Help does not cover contested court proceedings. However in relation to financial disputes General Family Help includes seeking disclosure of information and covers representation in proceedings up to and including the Financial Dispute Resolution hearing.

Practitioners are reminded that when applying for a certificate in private law family proceedings General Family Help should be the level of service applied for unless Legal Representation is justified in the particular circumstances of the case. Applications for Legal Representation in private law children cases can be refused if the client has not already made reasonable attempts to resolve the dispute without recourse to proceedings. In those circumstances an application for Legal Representation is likely to be granted as General Family Help instead. In relation to financial disputes General Family Help is the appropriate level of service up to and including the Financial Dispute Resolution hearing.

As part of the FAINs project we are proposing to pilot a devolved power for suppliers to grant certificates for General Family Help.

EXPERT ADVICE IS JUST A PHONE CALL AWAY!

THE SPECIALIST SUPPORT PILOT HAS BEEN ESTABLISHED BY THE LSC TO ENABLE GENERAL CIVIL CONTRACT HOLDERS TO ACCESS EXPERT LEGAL ADVICE AND SUPPORT FROM SOME OF THE LEADING LEGAL AID PRACTITIONERS IN THE COUNTRY. SERVICES CAN GIVE TELEPHONE ADVICE, SUPPORT WITH CASEWORK, ACCEPT REFERRALS OF COMPLEX CASES AND GIVE SPECIFIC TRAINING COURSES ON NEW AND EMERGING AREAS OF LAW.

We have recently been writing to civil contract holders to promote using these Services. Below are some common queries that have been raised with us about how the Services operate, who should use them and when.

WHO CAN USE IT?

The Specialist Support pilot is available to assist all general civil contract holders. Services are available in most categories of social welfare law either nationally or regionally, including specific Services in Wales. It may be helpful to practitioners who are working on a 'tolerance' matter.

In some categories of law we have also extended eligibility to other practitioners and organisations:

- Human Rights and Mental Health are also available to Criminal practitioners
- Community Care is available to General Help with Casework services
- General Help with Casework services in the West Midlands may also use the Services

FAMILY LAWYERS ARE ELIGIBLE TOO

Although there is no specific support service for Family lawyers, they are still eligible to use any of the Services, for example where a client who has a family matter also has a housing, welfare benefits or administrative law issue you would like to discuss with an expert.

DO I HAVE TO REFER CASES ON TO THEM?

It is not compulsory to refer any cases to these Services. In fact, they will be reluctant to take a case referral from you unless you request it and you believe that it is beyond your ability to run the case with some support from them.

CAN THEY REFER CASES TO OUR FIRM/ORGANISATION?

The Services will refer cases to local experts

where that is more appropriate than them taking the case on themselves.

WE WOULD LIKE TRAINING FROM ONE OF THE SERVICES – HOW CAN WE ACCESS THIS?

Training brochures for each Service have been mailed to all civil contract holders. If you have not received these, copies are available on the LSC website. Alternatively, you may call Services direct to find out what training they will be running this year or to discuss arranging a specific training course in your local area.

WHAT DOES IT COST?

It costs very little to use them – just the cost of the call, or a subsidised rate for going to the training courses.

WANT TO KNOW MORE?

If you would like more information, postcards and posters are available from the CLS Policy Team, contact kylie.kilgour@legalservices.gov.uk.

PUBLIC INTEREST ADVISORY PANEL 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 AT WWW.LEGALSERVICES.GOV.UK.

Summaries of Panel reports are no longer included in the Manual. They are however available on the guidance section of the Commission's website on the page headed 'Public Interest Reports'. New reports will continue to be published in *Focus*.

Summaries of cases considered by the Panel were contained in *Focus* 32-40. 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/02/129

NATURE OF CASE

Proposed House of Lords appeal re: inconsistent rulings on marital status by social security and immigration authorities.

REPORT OF PANEL

The Panel was concerned that in light of the decision of the Court of Appeal, the applicant's prospects of obtaining leave to appeal were poor. In particular, the Panel noted the remarks made by the court about the second adjudicator having been seriously misled by counsel. Whilst the Panel accepted that the principles raised by the case were of great importance, the Panel was of the view that

this case would not lead to a determination of these issues by the House of Lords. The Panel was also concerned that, as suggested by the court, the correct manner in which to conclusively establish the applicant's marital status was to follow the procedure laid out in Part III of the Family Law Act 1986 and not pursue this proposed appeal to the House of Lords.

CONCLUSION

No significant wider public interest.

PIAP/02/135

NATURE OF CASE

Proposed appeal to Administrative Court re: disallowed council tax discount by a valuation tribunal.

REPORT OF PANEL

The Panel accepted that on considering the appeal against the decision of the billing authority the valuation tribunal in this case might well have erred in its application of the correct legal test, on the basis that the valuation tribunal should conduct a full appeal on the merits and not merely a Wednesbury-type review. However, the Panel could find no evidence in the papers to suggest that tribunals other than the one in this case were adopting a similarly incorrect approach. That being so, the Panel could not identify how a statutory appeal against the decision in this case had the potential to produce real benefits for other individuals.

CONCLUSION

No significant wider public interest.

PIAP/02/142

NATURE OF CASE

Judicial review of CPS and police for failure to act re: alleged assault by special constable.

REPORT OF PANEL

The Panel noted the applicant's contention that the Police Complaints Authority had no

jurisdiction to investigate complaints concerning a special constable. In the circumstances it appeared that an individual challenging the actions of a special constable might therefore have much more limited rights to be kept informed of an investigation or the reasons for not taking action than if the actions challenged were those of a full time constable. The Panel considered that in view of the above it was important to establish the nature and extent of the Chief Constable's duty to provide reasons for concluding that no further action was to be taken against the special constable involved. The Panel therefore concluded that the proposed challenge to the Chief Constable's decision was of wider public interest.

Regarding the proposed claim against the Crown Prosecution Service it appeared that the law relating to the duty to give reasons was already settled and that that law would apply equally to cases involving special constables as to cases involving other individuals. Whether or not the reasons given by the CPS were sufficient in this individual case, it did not appear that the challenge to the CPS had the potential to develop the law or otherwise produce real benefits to other individuals.

CONCLUSION

Significant wider public interest

RATING: Significant

PIAP/02/143

NATURE OF CASE

Proposed claim under ECHR Articles 3 and 14 for racially motivated discriminatory treatment of the applicant during a police search of his premises.

REPORT OF PANEL

The Panel considered that there was insufficient information about the alleged racial aspect of the applicant's claim to show that this case would establish any new issue of principle in relation to any of the potential

civil claims against the police, including the race discrimination claim. It therefore appeared that the case did not have the potential to produce real benefits to individuals other than the applicant (other than the benefits to the public at large that normally flow from proceedings of the type in question) and for that reason it did not appear to fall within the Funding Code definition of significant wider public interest.

CONCLUSION

No significant wider public interest.

PIAP/02/144

NATURE OF CASE

Proposed judicial review of Home Secretary relating to findings of guilt at prison adjudications. UK government changing procedure at prison adjudication hearings following a European Court of Human Rights ruling that hearings were Article 6 non-compliant. Home Secretary agreeing to quash imposition of extra days at Article 6 non-compliant hearings but refusing to quash finding of guilt. Allegation that finding of guilt should also be quashed.

REPORT OF PANEL

The Panel agreed unanimously that determination of the issue raised in these cases concerning the findings of guilt has the potential to produce real benefits for individuals other than the applicants and is therefore of wider public interest.

CONCLUSION

Significant wider public interest

RATING: Significant

PIAP/02/146

NATURE OF CASE

Judicial review of a local authority's policy on asylum support payments.

REPORT OF PANEL

The Panel noted that the decision of the local authority in this case to pay asylum support in arrears appeared to affect a significant number of individuals within that borough. In addition, it appeared that the policy of paying support two weeks in arrears would have a material impact on those individuals to whom payments are made. In the circumstances,

whether or not the local authority were taking steps to deal with the individual case, the Panel agreed unanimously that there was a wider public interest in determining whether the policy of paying support in arrears is in accordance with the law.

CONCLUSION

Significant wider public interest

RATING: Significant

PIAP/02/147

NATURE OF CASE

Judicial review of the Prison Service's Category A Review Team. Failure to assign prisoner to a lower risk category.

REPORT OF PANEL

The Panel noted that the courts had already established that a prisoner's failure to admit guilt could not act as the exclusive ground on which a Parole Board could deny parole. Whilst the applicant sought to challenge a decision of the Category A Review Team, the Panel noted that the Category A Review Team did in fact appear to have taken the above principle into consideration in their determination of his case. That being so, the majority of the Panel considered that there was no issue of principle to be determined in the applicant's proposed challenge to the Team's decision and no potential benefit to be gained by other individuals.

A minority of the Panel considered that as the applicant's case concerned a decision of the Category A Review Team and not that of a Parole Board, it was significantly different from cases in which the courts had previously considered the issue of reliance on failure to admit guilt as a ground for reviewing a prisoner's status, and that in those circumstances the applicant's challenge did have the potential to clarify the point of principle raised.

CONCLUSION

No significant wider public interest.

PIAP/02/148

NATURE OF CASE

Judicial review of coroner's decision refusing to refer request for inquest to Home Secretary.

REPORT OF PANEL

The Panel considered counsel's advice from which it appeared that the only way in which the coroner's decision may be shown to be challengeable would be to obtain medical evidence linking the deceased's death with the delay in admission to hospital. It appeared that unless such medical evidence was obtained no challenge would lie under *Touche* or otherwise. In view of counsel's advice and the absence of medical evidence referred to therein, the Panel was not persuaded that the challenge in this case had real prospects of succeeding.

The Panel also noted that the proposed challenge was to the exercise by the coroner of his discretion. That challenge appeared to be a very narrow one (given that the coroner had accepted that he was bound by the applicant's solicitor's interpretation of *Touche*) and in the circumstances it did not appear that the case had the potential to produce real benefits for individuals other than the applicant.

CONCLUSION

No significant wider public interest.

PIAP/02/149

NATURE OF CASE

Proposed appeal to House of Lords: incompatibility of procedure at prison adjudication hearings with ECHR Article 6. Alleged conflict between domestic and European law following ruling in *Ezeh and Connors v UK*. Applicant prisoner also seeking award of damages from domestic court for breach of Article 6.

REPORT OF PANEL

The Panel agreed unanimously that the proposed appeal to the Lords in this case was of significant wider public interest on both the general issue of prison adjudication hearings complying with Article 6 and on the issue of damages.

CONCLUSION

Significant wider public interest

RATING: Significant

PIAP/02/151*NATURE OF CASE*

Judicial review concerning the commercial use of the electoral register.

REPORT OF PANEL

The Panel considered that the issues raised in the applicant's challenge to the legislation governing the use of data from the electoral register were of great importance and that judicial determination of those issues had potentially far reaching implications affecting a significant number of individuals. In the circumstances the Panel agreed unanimously that the case was of wider public interest.

CONCLUSION

Significant wider public interest

RATING: High

PIAP/02/153*NATURE OF CASE*

Challenge to Prison Service policy of issuing condoms to male prisoners yet deeming prison cell to be public place in which sex is therefore unlawful.

REPORT OF PANEL

The Panel considered that in addition to resolving the issues concerning homosexual sex in prison cells and the Prison Service's policy and rules in that regard, this case had the potential to benefit other individuals because it appeared that the proceedings might also deal with the wider question of the nature of prisoners' rights to privacy.

CONCLUSION

Significant wider public interest

RATING: Significant

PIAP/02/154*NATURE OF CASE*

Proposed judicial review concerning police powers of stop and search under s 60 Criminal Justice and Public Order Act 1994.

REPORT OF PANEL

The Panel considered that a case which had the potential to clarify the legality of the use of police powers under CJPOA s 60 would be of wider public interest; however this case did not appear on its facts to be an appropriate

vehicle to test such issues. In the present case both the use of s 60 and the decision to stop and search the applicant are likely to be seen as justifiable, given the real likelihood of disorder and the applicant's actions immediately before being stopped by the police.

CONCLUSION

No significant wider public interest.

PIAP/02/155*NATURE OF CASE*

Opposition to a judicial review brought by police concerning Crown Court's award of costs against police in successful appeal against revocation of firearms licence.

REPORT OF PANEL

The Panel agreed that the issue in this case concerning the liability of the police to pay an individual's legal costs following a successful challenge to a police decision revoking a firearms licence was of wider importance. It appeared that similar issues arose in other types of case, in particular in cases involving appeals under the Licensing Acts to which the police make objections. In view of that fact and also the fact that the current case law in this area pre-dates the Human Rights Act 1998, the Panel agreed that determination of the costs issue in this case would be of benefit to other individuals and is therefore of wider public interest.

CONCLUSION

Significant wider public interest

RATING: Significant

PIAP/02/156*NATURE OF CASE*

Proposed appeal in a negligence claim against a GP relating to death of applicant's daughter from an overdose of methadone which was prescribed by the GP to another person.

REPORT OF PANEL

The Panel expressed their deep sympathy for the applicant but were unable to conclude that this case was of wider public interest. On the information provided it appeared unlikely that the appeal in this case would effect any change in the existing law on proximity and

duty of care and the appeal was therefore unlikely to benefit other individuals.

CONCLUSION

No significant wider public interest.

PIAP/03/159*NATURE OF CASE*

HRA claim against Probation Service for damages for breach of ECHR Article 8 – alleged breach of privacy in implementation of terms of drug testing and treatment order (DTTO).

REPORT OF PANEL

The Panel considered that although it appeared that the scheme under which DTTOs are implemented in the applicant's region of the country may be open to criticism, the applicant's proposed claim for damages would actually entail neither a review of the scheme itself nor of the law in this area. Instead it appeared that the claim would involve a consideration of the applicant's case on its own facts, with particular regard to the question of whether the applicant gave full consent to the terms of the DTTO and whether the Prison Service could justify any invasion of privacy in this particular case. In the circumstances the Panel considered that this case did not have the potential to produce benefits for other individuals and it was not therefore of any wider public interest.

CONCLUSION

No significant wider public interest.

PIAP/03/160*NATURE OF CASE*

Personal injury action turning on employer's vicarious liability for acts of negligent employee.

REPORT OF PANEL

The Panel noted that the alleged wider public interest in this case turned on the application of the decision in *Lister v Hesley Hall Ltd* to the facts of this case. In *Lister* the House of Lords had established a test for vicarious liability which clearly applied not only to cases of sexual abuse but to all torts committed by an employee for which liability of the employer

was claimed. In the circumstances the Panel was unable to identify how proceedings in this case could be said to have the potential to clarify the law on that point or to produce real benefits for other individuals in any other way.

CONCLUSION

No significant wider public interest.

PIAP/03/161

NATURE OF CASE

Proposed claim in negligence against Department of Education and examination body for damages arising out of the summer 2002 marking of 'A' level examination scripts.

REPORT OF PANEL

The Panel noted that a significant number of students had been affected by incorrect grading of their examination scripts following the summer 2002 'A' level exams and that the applicant sought to establish that either the relevant government department or the examination board should be liable in negligence for damage suffered as a result thereof. In the circumstances it appeared that this case fell within the Funding Code definition of wider public interest both because of the numbers of individuals affected by the incorrect grading and because of the potential for the case to establish whether damages were in principle recoverable in this situation.

CONCLUSION

Significant wider public interest

RATING: Significant

PIAP/03/162

NATURE OF CASE

Proposed appeal to Court of Appeal by claimant as interested party in judicial review proceedings. Issue of jurisdiction of asylum support adjudicator to determine appeals brought by person to whom support offered by Secretary of State under s 95 of the Immigration and Asylum Act 1999 in a particular geographic area but who has declined to travel to that area.

REPORT OF PANEL

The Panel noted that if the applicant in this case succeeded on appeal to the Court of

Appeal, the result would be that significant numbers of asylum seekers in the applicant's situation, and in particular those with families, would have the opportunity of appealing to the asylum support adjudicator concerning the stoppage of their asylum support payments. Any such appeal to the asylum support adjudicator would be in addition to the usual right to seek judicial review but would provide the asylum seeker with a more speedy appeal route on more comprehensive grounds than those available in judicial review proceedings.

In the circumstances it was clear to the Panel that this case had the potential to produce real benefits for a significant number of other individuals and it was therefore of significant wider public interest.

CONCLUSION

Significant wider public interest

RATING: Significant

PIAP/03/163

NATURE OF CASE

Challenge to burden of proof imposed on patient appealing to MHRT under Mental Health Act 1983, s 72(4A) – patients subject to supervised discharge orders.

REPORT OF PANEL

The Panel noted that it appeared that only those people who had been "taken and conveyed" under the terms of a s 25A order would have an arguable ECHR Article 5 challenge to the imposition on them of the burden of proof in appeals against such orders. This was because although the range of requirements imposed on a patient under a s 25A order varied, only the power to take and convey appeared to involve a deprivation of liberty within the meaning of ECHR Article 5. It also appeared that the number of potential beneficiaries of the applicant's proposed challenge was considerably smaller than the total number of s 25A orders. The Panel also noted that the applicant was not now subject to any form of order under the Mental Health Act and that she had not at any time been taken and conveyed under a s 25A order. It therefore appeared that this case was not an appropriate vehicle to test the burden of proof issue raised by the applicant.

CONCLUSION

No significant wider public interest.

PIAP/03/164

NATURE OF CASE

Proposed claim against Jockey Club for compensation for Club's refusal to award applicant jockey licence on medical grounds. Challenge based on Disability Discrimination Act 1995 and ECHR Articles 6 and 14.

REPORT OF PANEL

The Panel noted that the applicant had not pursued an appeal to the Appeal Board of the Jockey Club against a refusal to award him a licence and that it appeared that until such an appeal had been made the applicant would not have a final reasoned determination of his application. In the circumstances it appeared that the proceedings proposed in this case were premature, and did not currently have the potential to produce benefits to other individuals.

CONCLUSION

No significant wider public interest.

PIAP/03/165

NATURE OF CASE

Personal injury action seeking to establish that multiple sclerosis can be triggered by hypertension/flexion injuries.

REPORT OF PANEL

The Panel noted from decisions of the courts in other cases that the courts already appeared to accept that a claimant's MS might be triggered by a hypertension/flexion injury though establishing causation will turn on the facts of each individual case. In the circumstances it did not appear that funding the claimant's case would establish any new principle of law nor did there appear to be any other reason to suggest that funding this case would have the potential to produce real benefits for other individuals.

CONCLUSION

No significant wider public interest.

PIAP/03/166

NATURE OF CASE

Judicial review in planning matter relating to Grade II listed building.

REPORT OF PANEL

The Panel noted that even if it is established that the approach adopted by the council towards the planning application in this case was incorrect, there was no evidence that the

council adopted a similar approach to planning applications in other cases. In the circumstances, it appeared that any judicial review in this case would turn on the facts of the individual case. Further, although it could be said that individuals other than the claimant living in the area of the planning site would derive some benefit from a favourable decision in the current proceedings, the Panel considered that neither the number of other individuals who stood to benefit nor the nature of that benefit was significant enough to bring the case within the Funding Code definition of significant wider public interest.

CONCLUSION

No significant wider public interest.

PIAP/03/167

NATURE OF CASE

Proposed claim against national newspaper for damages for breach of confidence/breach of Data Protection Act 1998 in obtaining information from the applicant whilst seriously ill in hospital, and publishing that information without consent.

REPORT OF PANEL

The Panel noted that although the Court of Appeal had recently visited the issue of breach of privacy in several cases, the applicant in this case was attempting to effect a broadening of the law on breach of confidence with particular regard to claimants in vulnerable situations. Unlike the earlier authorities, the present case concerned an individual who was not previously in the public eye. Therefore, although a minority of the Panel considered that this case would not have the potential to develop the law in any significant way, the majority considered that it would and that it would therefore be of significant wider public interest to fund the claim.

CONCLUSION

Significant wider public interest

RATING: Significant

NEED A BARRISTER TO PROVIDE REPRESENTATION ON APPEALS IN PUBLICLY FUNDED ASYLUM WORK?

List of barristers referred to in the article on page 04

PHILIP NATHAN
CHAMBERS OF MICHAEL PERT QC
36 BEDFORD ROW
LONDON
WC1R 4JH

DX 360 LDN/CHRYLN
TEL No: 020 7421 8000

STACEY WIDDISON-THOM
MITRE COURT CHAMBERS
4 OLD MITRE COURT
LONDON
EC4Y 7BP

DX 214 LDN/CHRYLN
TEL No: 020 7583 2121

SHOURAV LAHIRI
CHAMBERS OF ROBIN PURCHAS QC
2 HARCOURT BUILDINGS
2ND FLOOR, TEMPLE
LONDON
EC4Y 9DB

DX 402 LDN/TEMPLE
TEL No: 020 7353 8415

SIMON HODGETT
5 PUMP COURT CHAMBERS
TEMPLE
LONDON
EC4Y 7AP

DX 497 LDN/TEMPLE
TEL No: 020 7353 2532

TIM BULEY
LANDMARK CHAMBERS
4 BREAMS BUILDINGS
LONDON
EC4A 1AQ

DX 1042 LONDON
TEL No: 020 7430 1221

BARNABY PINFIELD
5 PUMP COURT
TEMPLE
LONDON
EC4Y

DX 497 LDN/TEMPLE
TEL No: 020 7353 2532

SAIRA SHEIKH
2 HARCOURT BUILDINGS
2ND FLOOR
TEMPLE
LONDON
EC4Y 9DB

DX 402 LDN/TEMPLE
TEL No: 020 7353 8415

FEMI OGUNLENDE
14 GRAY'S INN SQUARE
LONDON
WC1R 5JP

DX 399 LDN/TEMPLE
TEL No: 020 7242 0858

ALLAN BRIDDOCK
CHAMBERS OF CARL TEPER
1 GRAY'S INN SQUARE
LONDON
WC1R 5AA

DX 1013 LDN/CHRYLN
TEL No: 020 7405 8946

ROOMA HOREESORUN
WARWICK HOUSE CHAMBERS
8 WARWICK COURT
GRAY'S INN
LONDON
WC1R 5DJ

DX 1001 LDN/CHRYLN
TEL No: 020 7430 2323

JASON GREEN
2 PUMP COURT
TEMPLE
LONDON
EC4Y 7AH

DX 290 LDN/CHRYLN
TEL No: 020 7353 5597

EDWARD ELTON
2 KING'S BENCH WALK
TEMPLE
LONDON
EC4Y 7DE

DX 1032 LDN/TEMPLE
TEL No: 020 7353 1746

LARA MAROOF
CHARTER CHAMBERS
DR JOHNSON'S BUILDINGS
LONDON
EC4Y 7AY

DX 429 LONDON
TEL No: 020 7832 0300

GRAHAM DENHOLM
CHAMBERS OF ASHLEY
UNDERWOOD QC
2 & 5 FIELD COURT
LONDON
WC1R 5BB

DX 457 LDN/CHRYLN
TEL No: 020 7405 6114

HASSAN KHAN
INDIA BUILDINGS CHAMBERS
8TH FLOOR, INDIA BUILDINGS
WATER STREET
LIVERPOOL
L2 OXG

DX 14227 LIVERPOOL
TEL No: 0151 243 6000

AMOS WALDMAN
NICHOLAS STREET CHAMBERS
22 NICHOLAS STREET
CHESTER
CH1 2NX

DX 22154 CHESTER
TEL No: 01244 323 886

SHAY LOTAN
37 PARK SQUARE CHAMBERS
LEEDS
LS1 2NY

DX 26045 LEEDS
TEL No: 0113 243 9422

SIRAJ AHMED
INDIA BUILDINGS CHAMBERS
8TH FLOOR, INDIA BUILDINGS
LIVERPOOL
L2 OXG

DX 14227 LIVERPOOL
TEL No: 0151 243 6000

MARY GLASS
CHAMBERS OF RICHARD KING
5 PAPER BUILDINGS
TEMPLE
LONDON
EC4Y 7HB
DX 415 LDN/TEMPLE
TEL No: 020 7815 3200

CRAIG LUDLOW
CHAMBERS OF MICHAEL
PARROY QC
3 PAPER BUILDINGS
TEMPLE
LONDON
EC4Y 7EU

DX 1024 LONDON
TEL No: 020 7583 8055

ALSO AT:

CHAMBERS OF MICHAEL
PARROY QC
1 ALFRED STREET
HIGH STREET
OXFORD
OX1 4EH
DX 4302 OXFORD
TEL No: 01865 793 736

CHAMBERS OF MICHAEL
PARROY QC
4 ST PETER STREET
WINCHESTER
SO23 8BW
DX 2507 WINCHESTER
TEL No: 01962 868 884

CHAMBERS OF MICHAEL
PARROY QC
20 LORNE PARK ROAD
BOURNEMOUTH
BH1 1JN
DX 7612 BOURNEMOUTH
TEL No: 01202 292 102

HELEN WILLIAMS
MERCURY CHAMBERS
MERCURY HOUSE
33-35 CLARENDON ROAD
LEEDS
LS2 9NZ
DX 26410 LEEDS PARK SQUARE
TEL No: 0113 2270 750

TIMOTHY POLE
3 FOUNTAIN COURT
STEELHOUSE LANE
BIRMINGHAM
B4 6DR
DX 16079 BIRMINGHAM
TEL No: 0121 236 5854/2286

GLENDA TURNBULL
OLD COURT CHAMBERS
NEWHAM HOUSE
96-98 BOROUGH ROAD
MIDDLESBROUGH
TS1 2JH
DX 60591 MIDDLESBROUGH
TEL No: 01642 232 523

ANDREW BARCELLO
TEMPLE CHAMBERS
12 CLYTHA PARK ROAD
NEWPORT
NP20 4PB

DX 33208 NEWPORT
TEL No: 01633 267 403

DARIO GIOVANELLI
PARK COURT CHAMBERS
16 PARK PLACE
LEEDS
LS1 2SJ

DX 26401 LEEDS PARK SQUARE
TEL No: 0113 243 3277

GORDON LEE
BELL YARD CHAMBERS
116-118 CHANCERY LANE
LONDON
WC2A 1PP

DX 390 LONDON
TEL No: 020 7306 9292

PETER LAST
CHAMBERS OF MARIE-CLAIRE
SPARROW
116-118 CHANCERY LANE
LONDON
WC2A 1PP

DX 451 LONDON
TEL No: 020 7627 2189

JULIE LEIVESLEY
BRACON CHAMBERS
8 BELL YARD
LONDON
WC2A 2JR

DX 416 LONDON
TEL No: 020 7242 4248

RACHEL ROWLEY-FOX
TWO GARDEN COURT
CHAMBERS
2 GARDEN COURT
MIDDLE TEMPLE
LONDON
EC4Y 9BL
DX 34 LDN/CHRYLN
TEL No: 020 7353 1633

RUPERT BELOFF
NO.5 CHAMBERS
5 FOUNTAIN COURT
STEELHOUSE LANE
BIRMINGHAM
B4 6DR
DX 16075 BIRMINGHAM
TEL No: 0121 606 0500

PROPOSED PAYMENT DATES *for the remainder of 2003*

THE PROPOSED PAYMENT DATES FOR THE SECOND HALF OF 2003 ARE SET OUT BELOW. THESE DATES MAY BE SUBJECT TO AMENDMENT, BUT WE WILL INFORM YOU OF CHANGES IN ADVANCE WHERE POSSIBLE.

If you are paid by BACS (Bank Automated Clearing System) the proposed payment date shown is the date on which you will receive a payment 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 the Regional Office or the Solicitors/Counsel Settlement section on 020 7759 0260 but no earlier than the day before the proposed payment date.

However, if you have a query regarding an individual item shown on a remittance advice, you should contact the relevant regional office, which authorises and processes all such bills.

KEEPING US UP TO DATE

Names, addresses, DX, fax and telephone numbers and bank details for BACS payments are held on the 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.

CONTRACT PAYMENTS	1ST SETTLEMENT OF THE MONTH	2ND SETTLEMENT OF THE MONTH
THURSDAY 3 JULY 2003	FRIDAY 11 JULY	MONDAY 28 JULY
TUESDAY 5 AUGUST 2003	TUESDAY 12 AUGUST	THURSDAY 28 AUGUST
WEDNESDAY 3 SEPTEMBER 2003	FRIDAY 12 SEPTEMBER	MONDAY 29 SEPTEMBER
FRIDAY 3 OCTOBER 2003	TUESDAY 14 OCTOBER	WEDNESDAY 29 OCTOBER
WEDNESDAY 5 NOVEMBER 2003	THURSDAY 13 NOVEMBER	FRIDAY 28 NOVEMBER
WEDNESDAY 3 DECEMBER 2003	MONDAY 15 DECEMBER	MONDAY 29 DECEMBER

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It is important that *Focus* is seen by everyone in your firm who is involved in LSC work. To help you 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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85 GRAY'S INN ROAD,
LONDON, WC1X 8TX
(DX 450 LONDON)

**PLEASE CONTACT
CHRIS DAVIES ON
020 7759 0523**

christopher.davies@legalservices.gov.uk

FOR GENERAL ENQUIRIES PLEASE
CONTACT THE MAIN SWITCHBOARD
ON: 020 7759 0000