

# Focus

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Community  
Legal Service



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

- **Civil contract awards 2003/4** *update*

Latest news on civil contracting including an update on solicitor and nfp contracts from April 2003; solicitor immigration contracts; solicitor contracts from April 2004 and interim bid rules. (see page 08)

- **Scope and Funding Code** *update*

This article provides an update on Special Immigration Appeals Commission; proceeds of crime Act 2002 — civil proceedings; judicial reviews concerning education; duty to keep us informed on prospects of success; *Allis v LSC*; and the case outcomes consultation. (see page 12)

- **Immigration** *new developments*

This article gives a round-up on non-suspensive appeals; a judicial review consultation paper on devolved powers; revised guidance on the merits test for controlled legal representation and an update on the Bar asylum advocacy project. (see page 10)

- **Stamping out rejects** *improving our service to you*

Inside this issue you will find a number of checklists, on applications, bills and family graduated fees which will hopefully act as a quick reference guide to avoid simple errors causing problems. (see page 20)

- **Late claims** *the sanctions applied are changing*

The LCD and the Commission have been working together to find a simpler and fairer approach to late claims for civil certificated work. Subject to any changes following consultation we expect the approach outlined in this issue, and contained in the extract from the draft regulations, to be applied from 1 January 2003. (see page 16)

- **PIAP summaries**

The Public Interest Advisory Panel reports to the Commission on cases which are considered to raise public interest issues. Summaries of the cases considered by the panel since the last issue of *Focus* are published here. (see page 25)

# Family advice & information networks

*looking forward to the full pilot*

**Are you frustrated in your work as a family solicitor and wish you could devote more time to your clients? Do you want to make a fundamental difference in helping couples to separate or divorce with a minimum of distress, especially to their children? Do the principles embodied in the Family Law Protocol reflect all that you strive to achieve? Would you like to see closer partnership working between the legal profession and your local advice sector services?**



*Angela Lake-Carroll  
Head of Projects family  
law and mediation*

If the answer to any of these questions is yes, the FAINs team would like to hear from you. The Family Advice & Information Networks project will move into a full pilot phase in Spring 2003

A six-month pre-pilot has successfully run in five regions - Cardiff, Exeter, Milton Keynes, Newcastle upon Tyne and Nottingham, and is now gearing up for expansion.

Approximately twenty firms have been involved in the pre-pilot and have been instrumental in helping to establish the procedures and systems necessary for the smooth operation of the Family Advice & Information Networks. In preparation for their role as FAINs suppliers, these specialist family solicitors completed a programme of professional development, including a package of distance learning material, have spent time exploring and providing feedback on the arrangements for the pre-pilot phase and on practice issues, and have started building their local networks.

As the first gateway for clients to access the Family Advice & Information Networks service, these family specialists are holding first meetings with the client, in which they are able to work with the client to identify and provide tailored information and advice that is pertinent to the client's need. This does not prevent the family specialist from initiating proceedings and/or providing representation where it is identified by both the solicitor and the client as being appropriate. Together with the client, the solicitor will work to identify priorities for action and the type and nature of other services they may need, or that they may

find helpful. The solicitor can make a referral on behalf of the client, or can assist the client to make a self-referral. Thereafter the solicitor will case manage the client's progress — dealing with the legal aspects, considering other referrals with the client and reviewing the client's priorities as matters progress.

The pre-pilot has already indicated that the delivery of an enhanced service for family clients has significant benefits. The research team are in the process of compiling all their findings over the past six months and an interim research report will be delivered to the LSC at the end of the year.

For the full pilot in Spring 2003, the project will move into more geographical areas and, where appropriate, will expand in the existing pre-pilot areas. The participants in the five pre-pilot regions will continue to deliver the FAINs service to their clients without interruption, and will seamlessly join the full pilot in spring of next year.

The new areas under consideration are: Accrington, Basingstoke, Bristol, Brighton & Hove, Carmarthen, Hartlepool, Huddersfield, Leeds, Luton, Mansfield, Merthyr Tydfil, Oldham, Peterborough, Telford, Woking/Guildford.

If you operate as a family solicitor in any of these areas and would like to become involved in the delivery of a new, holistic service to couples and families, we are particularly interested in hearing from you.

For more information contact [fiona.dagenais@legalservices.gov.uk](mailto:fiona.dagenais@legalservices.gov.uk) or visit [www.legalservices.gov.uk/fains](http://www.legalservices.gov.uk/fains)

# Further round of PIB announced

**On 22 October the LSC announced plans for a further round of the Partnership Initiative Budget. A total of £6million has been made available to fund local initiatives that help priority groups have access to justice over the next three years.**

From June 2003, £2million a year will be available to projects in Community Legal Service Partnership (CLSP) areas that focus on getting services to priority client groups who have difficulty accessing CLS services. Projects will specifically relate to Community Legal Education and/or developing or promoting links between Community Groups and Legal Advice Providers.

Our intention for this further round of the PIB was announced in the consultation paper *The Partnership Innovation Budget: Proposals for the Second Round* (April 2002). Following that consultation it was agreed that the PIB would be called Partnership Initiative Budget, rather than its previous title, Partnership Innovation Budget. The proposals set out in the consultation paper were largely supported and a summary of the responses can be found in the *Post Consultation Summary Report* which is available on the LSC website [www.legalservices.gov.uk](http://www.legalservices.gov.uk).

The feedback received from consultation has been used to develop the *Bidding Guidance and Application Pack*, which is now available for all those interested in applying.

If you wish to apply for PIB funding please contact the Regional Planning and Partnership team in your local LSC Regional Office for the application pack, which sets out the process and timetable for applying. All bids must be reviewed by the local CLSP by the end of January 2003 and funding decisions will be announced in Spring 2003.

## Community Legal Service directory 5th edition

**The production process for the 5th edition of the Directory (due to be published by the end of April 2003) is now well under way.**

Questionnaires have been sent to all organisations eligible to appear in the directory by Resource Information Service, who produce the CLS Directory database. Information from the database is also used for the online searchable version of the Directory at [www.justask.org.uk](http://www.justask.org.uk) and the CLS Directory Line on: 0845 608 1122.

The deadline for the return of the CLS Directory questionnaires was 1st November 2002. If your organisation has not yet returned their questionnaire please do so as soon as possible.

We are also very interested in improving the directory and welcome any feedback or comments that you may have about its future development.

Special Projects, which is part of the CLS Policy team, has now taken over the CLS Directory Project from SDG.

You can contact the Special Projects team by calling Beatrice Etemah on 020 7759 1032 or emailing [CLS.CLSdirectory@legalservices.gov.uk](mailto:CLS.CLSdirectory@legalservices.gov.uk) or writing to us at Special Projects, CLS Policy Team, 85 Gray s Inn Road, London, WC1X 8TX.

# CLS/CDS financial eligibility changes

## *up-rating for dependants allowances*

**There are small but important changes to the allowance rates given within the financial assessment which are outlined below. These changes apply to all levels of service, for all applications for funding made on or after 14 October 2002 where the financial eligibility test applies.**

### **In summary the changes are:**

1. The allowance in respect of the maintenance of a dependant child has increased in line with the equivalent income support allowance, for all levels of service, as from 14 October 2002.
2. There is no change to the allowance given in respect of the maintenance of a partner.

### **Guidance on applying the dependants allowance**

In order to qualify for an allowance the child must be:

- I) dependent upon the client or their partner (if aggregated) and living in the client's household.
- II) at the start of the computation period, either under school leaving age or in full-

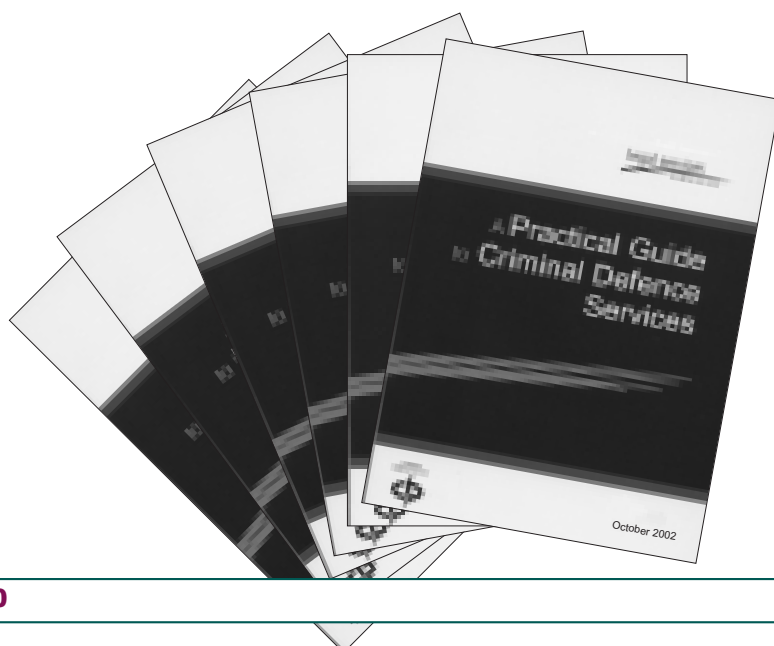
time education or undergoing training for a trade, profession or vocation.

It would be normal to grant the allowance to the client if they are receiving child benefit for that child.

In circumstances where child benefit is not in payment - e.g. for immigration cases or where the client is based overseas, or otherwise where no claim has been made for the benefit - this does not preclude the allowance being given if the above criteria are met.

The relevant allowance is set out below. The eligibility calculator has been updated to incorporate these changes. A revised keycard has been circulated as an update to the forms masterpack.

<b>Dependant's Allowances</b>	<b>on/after 14.10.02</b>
Child aged 15 or under	£160.77 per month (£37.00 per week)
Child aged 16 or over	£164.25 per month (£37.80 per week)
Partner	£133.40 per month (£30.70 per week)



## **Amended leaflets available**

The leaflets, A practical guide to CLS funding by the LSC and A Practical Guide to Criminal Defence Services have been updated to reflect the new changes detailed above.

They are available from the leaflet line. To order copies of LSC leaflets contact the LSC Leaflet line on 0845 3000 343 or e-mail [lsleafletline@direct.st-ives.co.uk](mailto:lsleafletline@direct.st-ives.co.uk) or Fax: 01732 860 270

# Eligibility calculator

## *improvements online*

**The calculator which allows suppliers to work out if their client is financially eligible for CLS-funded help will receive a substantial update in December 2002.**

The calculator can be found on the LSC website at <http://www.legalservices.gov.uk/calculator/index.htm>.

The update reflects feedback received from suppliers from April to August 2002, and ensures that the calculator will now:

- Include calculation of contributions payable and warnings where statutory charge may apply.
- Calculate dependants allowances for partner and children according to most recent figures issued by the LSC (14 October 2002).
- Automatically increase the gross income cap where the client has more

than 4 dependant children.

- Accept figures for mortgage, rent, tax and NI as weekly, 4-weekly or monthly amounts.
- Automatically include the standard allowance for employment-related expenses where client or partner has indicated their wage.
- Restrict the figures entered for mortgage/rent where amount entered exceeds the maximum.
- Allow user to print out a calculation sheet which indicates how the totals were arrived at.

As at present, suppliers are able to print out CW1, CW2, CLS Means 6 and CLS Means 7 with the means information already filled in.

Any further suggestions for improvement or queries about the calculator should be directed to Michelle Sampson, eCLS Policy Officer  
[michelle.sampson@legalservices.gov.uk](mailto:michelle.sampson@legalservices.gov.uk)

## Equal Opportunities

We have updated and standardised our equal opportunities monitoring questions in the forms masterpack. These now uniformly reflect the 2001 census categories for ethnic origin, and the Disability Discrimination Act 1995 definition of disability. Whilst completion of these questions remains voluntary, the information given will greatly assist us in monitoring and researching access to LSC funded services in line with our commitment to promote equal opportunities as set out in our Equality Scheme (available on our website).

## Housing Possession Court Duty Scheme Pilot - Update

**The Housing Possession Court Duty Scheme Pilot is nearing the end of its first year.**

The duty schemes in the pilot are generally progressing well and, on early indications, they are showing good results for their clients. The duty schemes also appear to be valued by the courts in which they are situated.

We expect the pilot to continue next year. However, there will be changes in relation to the way in which schemes are funded, as, at the moment, a number of schemes do not appear to be using all of the hours allowed under their contracts. This is likely to lead to a reduction in funding for a number of schemes, but extension contracts will be negotiated on a case-by-case basis, looking at performance this year.

It is intended that the regional offices will take over responsibility for awarding and managing contracts for duty schemes from April 2004.

Any queries on the pilot should first be directed to Mary Burkinshaw (Policy Assistant) on 020 7759 1172.

Or e-mail:  
[mary.burkinshaw@legalservices.gov.uk](mailto:mary.burkinshaw@legalservices.gov.uk)



# Telephone advice pilot “phase 2”

**The “phase 2” expansion of the Legal Services Commission’s telephone advice pilot has now been completed, with November seeing the launch of Shelter’s two housing advice lines, which serve the West Midlands and North Kent.**

Shelter joins fourteen other organisations working within the pilot, which aims to address the limited availability of specialist legal advice in certain categories of law in various parts of the country, particularly outside the major urban areas.

The telephone advice scheme is intended to supplement current services. It also aims to reach people who have access problems, and who cannot easily visit their local solicitor or advice agency, for example due to disability. Calling the helplines costs the same as making a local rate call, since all those that are available to people across a wide area have dedicated 0845 numbers. Details of the organisations involved, their coverage areas, opening times and contact numbers can be found on the LSC website at [www.legalservices.gov.uk/leaflets/phone.htm](http://www.legalservices.gov.uk/leaflets/phone.htm)

The advice lines provide confidential, impartial and independent legal advice and a full casework service by telephone and post, and are quality assured at the Specialist level by the LSC. Advisers do not just give advice over the telephone — they are able to follow it up with other work, such as writing letters on the client’s behalf, that a solicitor or other legal adviser would ordinarily do. As with all CLS-funded Legal Help, callers must meet a means test in order to qualify for free advice. The test is conducted over the telephone in the first instance, although a means test form must be completed and signed as a case progresses.

*“The advice lines provide confidential, impartial and independent legal advice”*

The new pilot contracts have all been let for an initial twelve-month period, during which time the project team is gathering data about the work each advice line carries out. There will be a full evaluation of the pilot during 2003, and provided the conclusions are positive, it will allow us to produce telephone advice contract terms and guidance to enable the LSC to include telephone advice as a permanent feature of CLS-funded advice services.

For more information about the telephone advice pilot, please contact Jill Hobson on (020) 7759 0474, or Peter Jones on (020) 7759 0478.



# ILPA Asylum Caseworker Training

*have you been on the project course ?*

**Has anyone in your firm attended the eight-day training session run by the ILPA Asylum Caseworker Training project?**

The ILPA ACT project is going to run a number of special one and a half day courses on the Nationality, Immigration and Asylum Act 2002, in January and February 2003. The course will offer a participant focused analysis of the Nationality, Immigration and Asylum Act 2002. It will examine how the new Act interacts with existing legislation and be informative and practical.

The course, funded by the Legal Services Commission, is open to anyone who has been a trainee on an eight-day ACT course.

If you wish to book yourself, or someone from your firm, on one of the courses, please contact Jane Savory for a booking form. Places will be allocated in order of receipt of completed booking forms.

dates (2003)	venues
13, 14 January	London
15, 16 January	London
21, 22 January	Newcastle
23, 24 January	Leeds
28, 29 January	Birmingham
30, 31 January	Nottingham
4, 5 February	Manchester
6, 7 February	Liverpool

Jane Savory  
ACT Project Administrator  
Immigration Law Practitioners  
Association, Lindsey House, 40-42  
Charterhouse Street, London EC1M 6JN,  
Tel: 020 7250 3757; Fax: 020 7251  
8384; Email: [actproject@ilpa.org.uk](mailto:actproject@ilpa.org.uk)

## Consultation Papers

**Many contractors have told us that they'd prefer not to receive consultation papers.**

Our General Contracts require us, for proposed contract changes, to consult with The Law Society and the Advice Services Alliance. However, when proposed changes concern the General Civil Contract, we also normally consult with the Legal Aid Practitioners Group. When they concern the General Criminal Contract, we also normally consult both the Criminal Law Solicitors Association and the London Criminal Courts Solicitors Association. When proposed changes

concern policy, we also consult widely, with many different bodies. When they might affect our General Contracts, particularly their day- to-day operation, we have made it our practice to consult with all contractors, too.

We are considering that, in future, instead of sending consultation papers to all contractors, we will put them on our Website and notify contractors that they are there, normally by a notice in *Focus*. We will, of course, continue all other consultation. If a contractor wants a copy of a consultation paper and does not have access to our Website, they may ask their Contract Manager or CDS Manager for a copy. This would save

costs and save contractors from receiving unwanted papers that their representative bodies will consider.

We will shortly issue another consultation paper about assessing costs by file sampling and extrapolation of results and guidance on contract sanctions, with consequential amendments to the contract standard terms, which we propose to take effect from 1 April 2003. This will be subject to the usual consultation with representative bodies, will be placed on our website and will be available, on request, as described above. This will trial the new procedure and, if it is successful, we will use it for future consultations.

# Civil Contract Awards 2003/04 - update

**As reported in the July 2002 edition of *Focus*, the current three year General Civil Contracts for solicitors and Not-for-Profit (NfP) organisations will come to an end on 31 March 2003.**

We recently consulted on our proposals for setting regional priorities for civil contracting from 1 April 2003 and updating the current bidding rules for the award of General Civil Contracts (Solicitors and NfPs) from November 2002. We received a wide range of responses from solicitor and NfP suppliers and their representative bodies, and will publish a post consultation summary and the final version of the bidding rules on our website shortly.

The criteria for setting regional priorities won general support although some concerns were expressed as to the structure of CLSPs and as to the quality of information available to them.

In accordance with our proposals, Regional Legal Services Committees are preparing reports to inform Regional Directors contracting strategies and we will publish both sets of documents in January 2003. These documents will list the regional priorities for contracting during the 2003-4 financial year, and will allow suppliers to inform themselves as to where new contracts are to be invited.

## **Solicitors contracts for April 2003**

As proposed, we will extend the General Civil Contract for solicitors by one year to 2004 on largely the same terms with some amendments, principally related to cost assessments and extrapolation of results to other claims. The amounts authorised in Schedules granted from 1 April 2003 will reflect the 80% guarantee in current Schedules. Subject to this 80% guarantee, we may reduce the number of

matter starts awarded in those cases where we have significant concerns about the quality of work, or the level of over-claiming identified by contract compliance audits, or where we consider it necessary to do so to reallocate resources to meet other priorities identified in the RLSC reports and contracting strategies. Only very exceptionally will contracts not be renewed on these grounds.

## **Solicitors Immigration Contracts**

The LSC has introduced a number of measures, including the use of peer review, to tackle the problems of over claiming and poor quality work provided by a minority of immigration suppliers. The peer review process, as well as reports from other stakeholders in the asylum system, continues to highlight serious concerns about the effectiveness of the advice provided which far exceed concerns in any other category of law.

Those suppliers that have been rated as category 3 in our immigration cost assessments are not providing an acceptable service to these vulnerable clients. Accordingly, in the immigration category only, we will reduce matter starts in April 2003 Contract Schedules to 80% of the new matters started this year where the supplier is rated as category 3. Schedule values will be reduced accordingly. We will not authorise any increase in new matter starts to such suppliers either in the remainder of this Schedule period or next year. We will of course review this position with individual firms where a

supplier's categorisation is amended following an appeal or as a result of subsequent improvements in performance.

## **Solicitors Contracts from April 2004**

The majority of respondents to the recent consultation expressed the view that we should do more to open up the market to enable new suppliers to compete for contracts. Respondents were also not in favour of a rolling one-year contract. We are therefore considering what further steps we can take to hold a wider bidding process for the award of new contracts from 1 April 2004 and to create some fixed term certainty for those contracts. We will publish details early next year.

## **NfP Contracts from April 2003**

We have published a consultation paper on the proposed new NfP contract from 1 April 2003, which is available on our website. Consultation runs until 31st December 2002. We will issue a post consultation report and summary and final version of the contract in early 2003.

## **Interim bid rules – new contracts**

Our June 2002 consultation paper also contained draft bid rules. We will shortly publish the final version. These rules will apply to the award of new contracts between formal bidding rounds and will apply to both the solicitor and NfP sectors.



# Amendments to regulations

*following R v LSC ex parte Oliver Fisher*

**This judicial review considered whether the Commission had the power to deduct losses to the Commission resulting from breach of regulations by a firm from other monies due to the firm. The power is to be found in Regulation 102 of the Civil Legal Aid (General) Regulations 1989 (LSC Manual Volume 1 at paragraph 1B-123).**

Two conditions need to be satisfied before Regulation 102 becomes effective, namely:

- i)** failure to comply with any provision of the regulations; and
- ii)** loss to the fund as a consequence of the breach.

The court concluded that payment could potentially be deferred indefinitely and was effective in cases where the breach was incapable of remedy.

The judgment did however expose a difficulty in Regulation 102, in that deferment could only be in relation to the costs of the specific case. Where the costs claim had been paid, Regulation 102 did not enable the Commission to defer by recouping against other costs.

Amendments to regulation 102 are now being made under the Civil Legal Aid (General) (Amendment No. 2) Regulations 2002. These draft regulations are published in this edition of *Focus* and will be posted to the Commission's website. Consultation on these amendments concluded on 26

November 2002. The changes are intended to become effective on 31 December 2002.

Regulation 102 will in future allow deferment to be made against costs due in connection with any proceedings.

A new regulation 102A obliges a solicitor to promptly produce documentation and disclose information where costs have been paid.

A new regulation 102B empowers the Commission to recoup losses and excesses from other sums due to the solicitor.

A post-consultation draft of the amending regulation can be found on page 18.

## Commercial Referral Arrangements *with Non-Solicitors*

**We have recently become aware of an organisation approaching contracted suppliers offering introductions of housing disrepair cases for commercial gain. The cases were found by cold-calling potential clients.**

This causes the Commission particular concern. Rules 1.2 and 1.3 of the Commission's General Civil Contract Specification provide:

### 1.2 Cold Calling

Contracted legal services may not be marketed by means of unsolicited visits or telephone calls, whether by you or another person or body.

This Rule reflects the principle that contracting is intended to ensure that resources are targeted to meet need. The Rule also applies where a third party

such as a surveyor or another organisation makes the unsolicited visits or calls and refers the client to you.

### 1.3 Marketing your Services

The marketing of contracted services via leafleting, letters or circulars should not be undertaken except with the Commission's express permission. Advertising free welfare benefit checks or free disrepair surveys to be undertaken as contracted services is not permitted.

You will see from this that such arrangements will be a breach of contract with the Commission. Where payments are made for clients, this is also likely to be a breach of the Solicitors Practice Rules. The Commission takes a serious view of such practices, as the purpose is often merely to maximise revenue for the solicitors, for the third

parties who introduced the clients and for any experts who were instructed, with little concern for the client's best interests.

In each case where there is evidence of breach the Commission will consider whether to take action against both the solicitor's firm and the introducing agency.

If any suppliers have been approached or are approached in the future with the offer of such a scheme they should contact their account manager in the Commission's regional office. This will enable us to take appropriate steps to prevent this happening further. Any queries regarding this article should be addressed to Neil Tyson, Head of Special Investigations, 2nd Floor, 29/37 Red Lion Street, London WC1R 4PP (e-mail: [neil.tyson@legalservices.gov.uk](mailto:neil.tyson@legalservices.gov.uk)).

# Immigration

## *new developments*

**On the 25 October 2002 we wrote to all contracted immigration suppliers on a range of issues. These and other matters are discussed further below. Immigration suppliers should also refer to the article on Civil Contract Awards 2003-4 on page 08 of this issue for some important announcements.**

### **(1) Non-suspensive appeals**

The Nationality Immigration and Asylum Bill received Royal Assent on 7 November 2002. As of that date asylum applicants from 10 countries named in the Act no longer have a right of appeal whilst remaining within the United Kingdom once their initial asylum applications have been decided. They can be removed from the United Kingdom and will exercise any right of appeal from abroad. Their asylum applications will also be fast tracked.

Where asylum is refused, we understand that removal directions will be served upon the client with the decision. If the client's legal representative then indicates that a judicial review will be sought, then the removal directions will be suspended for three working days from that point in order for the legal representative to lodge an application for judicial review with the Administrative Court where appropriate. Legal representatives should inform Home Office IND immediately the application is lodged with the Court by telephoning and faxing a copy of the application and supporting documents including grounds. (IND will supply the relevant numbers). They should also serve a copy of the application and grounds on the Treasury Solicitor in the normal way.

If the legal representative adopts the above procedure then IND should not remove the client before the application for permission has been decided. If permission is granted then clearly no

further steps to remove may be taken by IND until proceedings are concluded.

If the legal representative does not lodge an application and fax a copy of the application and supporting documents including grounds within three working days we understand that the client may be removed without further notice.

The Commission has introduced an expedited procedure for dealing with any applications for legal aid for judicial review arising out of a non-suspensive appeal. The London Regional Office will deal with all applications for legal aid for judicial review in relation to these cases within 24 hours of receipt. All applications should be submitted for the attention of Ian Hollings at the London Regional Office 29-37 Red Lion Street, London WC1R 4PP. The dedicated fax number for these applications will be 020 7759 1582. This service will operate 7 days a week from 9.00a.m to 5.00p.m. If you need to contact the office by telephone then you should call 020 7759 1641. If a decision is required in the particular case before the 24 hours is up, then suppliers should make this clear on the face of the application so that the London Regional Office can prioritise accordingly.

Except in exceptional cases - see below - suppliers should not self-grant emergency funding for judicial reviews in these cases, as the London Regional Office will be able to process the substantive application in time using the dedicated procedure. The use of

devolved powers will not therefore satisfy the urgency criterion in the Funding Code.

If suppliers should find, having made reasonable efforts, that they are unable to make contact with the LSC to apply for funding for a judicial review in time, or a decision is urgently needed out of hours, they still have a power to self-grant an emergency certificate. Suppliers should clearly act in their clients' best interest and where such cases pass the merits test for funding they may self-grant an emergency certificate and notify the London Regional Office of this grant, in writing, before 12 noon on the next working day. A full application must be submitted within 5 days. The usual arrangements will apply and if suppliers do need to grant funding using devolved powers then reasonable costs will be reimbursed as at present.

However we would expect such cases to be quite exceptional, firstly because of the arrangements we have set up to process the applications speedily and secondly because of the merits test requirements. Although each case has to be considered on its own merits, and there may be cases where clients are wrongly classified, clients from the listed countries are statistically unlikely to be successful with their asylum applications. The non-suspensive appeal arrangements themselves are on the face of the legislation. Any legal aid application raising issues of general principle should be referred to our office if it is possible so that we can carefully consider the totality of any applications

and any arguments put forward.

We will do our best to process any appeal against refusal of funding for legal aid for judicial review as soon as possible. However, we are also consulting the Law Society and Bar Council on a change to Funding Code Procedures that will allow us to fund retrospectively any application for judicial review issued in a non—suspensive appeal case where:

- (a) the solicitor has been refused funding for the judicial review and has appealed, and
- (b) we have not been able to arrange to hear the appeal before the client is due to be deported, and
- (c) the Court subsequently grants permission for the judicial review to proceed.

### **(2) Judicial review consultation**

The Commission has also published for consultation proposals to remove the use of devolved powers to grant emergency certificates in other immigration judicial review cases as from April 2003. Responses to the consultation paper should be sent to Zo Farrant, Civil Contracting Policy Unit, Legal Services Commission, 85 Gray's Inn Road, London WC1X 8TX, email: [zoe.farrant@legalservices.gov.uk](mailto:zoe.farrant@legalservices.gov.uk) by 16 December 2002. Additional copies of the paper are available from the LSC website [www.legalservices.gov.uk](http://www.legalservices.gov.uk)

### **(3) Merits test for Controlled Legal Representation**

Following consultation with suppliers the LSC will be introducing revised guidance on the application of the merits test for Controlled Legal Representation from 16 December 2002. The application of the merits test by suppliers will be monitored as part of the costs assessment audit. The final version of the guidance can be found on the LSC website at [www.legalservices.gov.uk](http://www.legalservices.gov.uk) and will appear in the next update of the LSC Manual.

### **(4) Bar Asylum Advocacy project**

The Commission is pleased to announce that the first Bar Advocacy training course to train new barristers in immigration law will be run by the College of Law in December 2002. It was essential in view of the increase in the number of appeals to be dealt with by the IAA from November 2002 that the project was up and running as soon as possible and we are grateful to the Bar Council and the College of Law for their work in setting up and designing the course. The response has been very encouraging with over 100 applications. Selection of candidates will now take place and it is hoped that the first candidates will be trained by the New Year. Barristers who qualify using the scheme will be paid fees for asylum directly by the Commission, not by the supplier that instructs them. Full details will be sent to all immigration suppliers early next year.

# Scope and funding code - Update

**Although no major changes are planned to the Funding Code for the time being, a number of separate scope changes and guidance issues have arisen recently.**

## Special Immigration Appeals Commission

The Lord Chancellor is proposing to issue a direction under Section 6(8) of the Access to Justice Act 1999 to bring the Special Immigration Appeals Commission (SIAC) into the scope of CLS funding. SIAC deals with certain immigration appeals which raise issues concerned with terrorism and national security. At present funding for representation before SIAC is only available through the Section 6(8)(b) exceptional funding regime under which each application for funding must be made to the Commission and referred to the Lord Chancellor. Under the direction, which is expected to take effect by the end of this year, the Commission will have power to fund SIAC cases directly.

All applications for funding for SIAC cases, either under Section 6(8)(b) or under the new direction when it comes into force, should be made using the normal CLS means and merits forms to the Commission's Special Cases Unit at the London Regional Office, 29-37 Red Lion Street, London WC1R 4PP, DX 170 London/Chancery Lane.

*See also page 10 for other developments relating to immigration.*

## Proceeds of Crime Act 2002 Civil Proceedings

The Act will set up new procedures in the High Court, Crown Court and magistrates court. Certain provisions of this Act are expected to be brought into force on 30 December 2002. These are the money laundering provisions in Part 7; and the provisions in Chapter 3 of Part 5 of the Act concerning the detention and

forfeiture of cash derived from or intended for use in unlawful conduct. The 2002 Act will also amend Schedule 2 of the Access to Justice Act 1999 to bring certain proceedings in the Crown Court and the magistrates court within the scope of CLS funding. This will be licensed work carried out under certificates for Legal Representation.

The following proceedings under the Proceeds of Crime Act 2002 will be brought into scope:

- (i) Section 295 — proceedings in the magistrates court extending the period in which seized cash may be detained.
- (ii) Section 297 — proceedings in the magistrates court directing the release of detained cash.
- (iii) Section 298 — applications in the magistrates court for forfeiture of sums detained.
- (iv) Any proceedings in the Crown Court which relate to an order under Section 298 for the forfeiture of cash i.e. appeals.
- (v) Section 301 — application to a magistrates court by a person other than the person from whom the cash was seized, claiming ownership of detained cash and seeking its release.
- (vi) Section 302 — application to a magistrates court seeking compensation for the detention of cash if no forfeiture order is made by the court.

These provisions all relate to proceedings concerning the detention and forfeiture of cash. Under previous legislation there was no access to legal aid but if necessary funding was made available from the seized cash. The new Act has changed this position, as seized cash will not be available for funding but

CLS funding will be available. It is anticipated that there will be 800 cases per year, although it is difficult to predict how many will be eligible for CLS funding.

Applications for funding will be subject to the usual CLS financial eligibility rules for Legal Representation. When considering applications on the merits the Commission will seek to ensure that funding is available where it is in the interests of justice for the applicant to be represented.

It will often be appropriate for a firm which provided representation in substantive criminal proceedings to continue to represent the client in any civil proceedings under the Proceeds of Crime Act 2002. The Commission will therefore be prepared to grant CLS funding for these cases both to firms who have a General Civil Contract or who have a General Criminal Contract. Exceptional case contracts will be issued to criminal firms undertaking such cases pending an amendment to bring them within the scope of Associated CLS Work under the General Criminal Contract.

All applications for CLS funding for proceedings under the Proceeds of Crime Act 2002 should be made to the London Regional Office at 29-37 Red Lion Street, London WC1R 4PP, DX 170 London/Chancery Lane.

## Judicial Reviews Concerning Education

### *Applications in the Name of the Child*

The Commission has for some time been concerned as to when it is appropriate for a child to apply for funding to bring a judicial review of an education matter rather than the application being in the name of the parents. Under Criterion 5.4.2 of the Funding Code the Commission can refuse an application if there are other persons who could reasonably be expected to bring or fund the case. The Commission's Funding Code guidance at Section 9.12.3 provides that if a child applies for funding to take judicial review proceedings which could equally well be brought by the parents, funding will usually be refused.

The Commission has now issued more detailed guidance on this topic both in response to queries from solicitors and regional offices and a number of recent authorities referring to the issue. The approach in the guidance is that whilst an application in the name of the child will not necessarily be treated as an abuse of the scheme the Commission will generally require information as to the means of the parents and may either refuse applications on behalf of the child under Criterion 5.4.2 or else seek a contribution under the certificate based upon the parents' means. The full text of the guidance is to be found in the consultation section of our website at [www.legalservices.gov.uk](http://www.legalservices.gov.uk). Any comments on the guidance should be sent to Colin Stutt at Policy and Legal Department, 4th Floor, 85 Gray's Inn Road, London WC1X 8TX, DX: 328 London/Chancery Lane or by email to [michelle.jordan@legalservices.gov.uk](mailto:michelle.jordan@legalservices.gov.uk), if possible by 31 December 2002.

## Duty to Keep the Commission Informed in Relation to Prospects of Success

In a recent immigration judicial review Mr Justice Scott Baker reminded practitioners of the duty they owe to draw to the attention of the Legal Services Commission a matter which affects the likelihood of a claim being successful. The Commission regards this as a general duty above and beyond the specific obligations to report certain matters to the Commission under section 12 of Part C of the Funding Code Procedures.

The case in question was *Ziya Yildrem v IAT & Home Department* [CO/4719/2001, 1 July 2002]. It concerned a renewed application for permission following refusal on the papers. The court criticised the solicitors for not drawing the judge's reasons for refusing on the papers to the attention of the Commission, although the court declined to make a wasted costs order against the solicitors in the individual case.

The particular problem arising in the *Yildrem* case is unlikely to arise in the future as judicial review certificates are generally now limited only to applying for permission on the papers and require the authority of the regional office before making a renewed application — see section 16.8 of the Funding Code guidance (LSC Manual Vol 3C-176). However the Commission regards the principle emerging from the case as of more general application.

## Allis v LSC

### *Article 6 considered on discharge of certificate*

In *Allis v LSC*, [CO/3348/02, 25 September 2002] the discharge of a certificate at a late stage in proceedings on cost benefit grounds was successfully challenged. The court held that in the particular circumstances of the case the client's Article 6 rights had been breached, particularly because the case was approaching trial, prospects of success were better than 50% and there had been no significant change of circumstances since funding was last approved.

Section 13.5 of the Funding Code guidance (LSC Manual Vol 3C-136) which covers withdrawal of funding on the merits has been amended to reflect the *Allis* decision. The amended guidance is already on the website and will appear in the next update of the Manual later this month.

## Case Outcomes Consultation

The Commission is now considering responses to the consultation paper on reporting case outcomes. The consultation paper, which is still available in the consultation section of our website, proposed a more detailed range of outcome reporting both for Controlled Work and Certificated Work.

The proposed implementation date for any changes is April 2003. If we decide to introduce changes by that date it will be necessary to make amendments to reporting forms, in particular forms CLS Claim 1 and Claim 2 for Certificated Work. As soon as any changes are decided upon in relation to reporting case outcomes, details will be posted on the website. Amended forms will be distributed well in advance of implementation.



# Statutory charge exemptions in family cases

**Since we published guidance in Focus 39 (page 11) on property and costs that are exempt from the charge, we have been asked for further explanation of the different ways the exemptions work in family cases. We have set out the principles in the earlier guidance. We will now show how they take effect in some typical situations.**

*References to regulations are to the Community Legal Service (Financial) Regulations 2000.*

Suppose your client is getting divorced, and recovers both a lump sum and her former husband's share of the equity in the matrimonial home. She remains in the home.

## Legal Help cases

If your client only had Legal Help (and/or Help at Court), the costs give rise to a charge (because although Legal Help does not normally do so, it does in family and personal injury cases, including clinical negligence). The first £3,000 of the lump sum is exempt (Regulation 44(1)(d)). The home is exempt (because the charge is in favour of the solicitor) (Regulations 44(1)(g) and 45). So the charge will only bite on the lump sum above £3,000.

## Both Legal Help and Representation

If your client has Legal Help followed by Representation, and, in the proceedings in which you represent her, recovers a lump sum and her former husband's share of the home, the costs of both the Legal Help and the Representation will give rise to a charge on the lump sum above £3,000, and the recovered share of the home. The home is no longer exempt, because the charge is no longer in favour of the solicitor (Regulation 45).

## General Family Help

The costs of General Family Help give

rise to a charge in the same way as the costs of Representation. So again, if the client goes on to get General Family Help after having Legal Help, the costs of both give rise to a charge, and the home is no longer exempt.

## Family Mediation and Help with Mediation

If your client had Family Mediation or Help with Mediation, those costs do not give rise to a charge, regardless of whether the recovered property is exempt. If she goes on to have Representation, and, in the proceedings in which you are representing her, recovers a lump sum and her former husband's share of the matrimonial home, the costs of Representation will form a charge on the lump sum over £3,000 and the recovered share of the home in the ordinary way. But the Family Mediation and Help with Mediation costs do not do so.

## What if the former matrimonial home is sold?

Suppose now that the same client recovers a lump sum and her former husband's share of the proceeds of sale of the former matrimonial home. Although the home itself is exempt where the charge is in favour of the solicitor (see above), the proceeds of sale are not.

So whether the only service your client has is Legal Help, or both Legal Help and Representation, a charge in respect of the costs of both the Legal Help and any Representation will bite on both the

# Quality Mark

## for Mediation

lump sum, and the proceeds of sale of the home, above £3,000.

### The increase to the exemption

*The £3,000 rather than £2,500 exemption applies wherever a charge arises, is in existence, or remains undischarged on or after 3 December 2001.*

The transitional provisions in the regulations changed at a very late stage, and we prepared our guidance and programmed our systems according to the earlier provisions. Unfortunately, we have wrongly applied the £2,500 exemption instead of the higher figure in a number of cases closed since December 2001. As a result, clients who recovered or preserved between £2,500 and £3,000 have been deprived of the benefit of up to £500.

We have corrected our guidance and the programming of the system that calculates the charge. Everyone with a charge registered on his or her home, who is affected by the increase, is now getting the benefit of the higher exemption. We are now arranging to identify and make refunds in those cases where we applied the wrong figure.

We appreciate that suppliers will have concerns about clients who may have been affected by this mistake. We hope it will not be necessary for you to contact regional offices about individual cases. If we try to put the problem right by responding to suppliers' concerns as they arise, the process may take longer than it needs to, and we will not identify all the cases we should.

*"If your client had Family Mediation or Help with Mediation, those costs do not give rise to a charge, regardless of whether the recovered property is exempt. If she goes on to have Representation, and, in the proceedings in which you are representing her, recovers a lump sum and her former husband's share of the matrimonial home, the costs of Representation will form a charge on the lump sum over £3,000 and the recovered share of the home in the ordinary way. But the Family Mediation and Help with Mediation costs do not do so"*

**The Quality Mark standard for Mediation has now been published to coincide with the start date for the new Family Mediation Contracts on 1st December 2002.**

The standard is based on the Family Mediation Pilot Quality Assurance Standard, and has been written in the Quality Mark format of A-G. Specific requirements relating to the contract have been removed from the quality standard and placed into the contract. The primary change following consultation last year has been the removal of the requirement to carry out observed mediations, although this has been retained as part of the guidance.

The standard also includes requirements for Community Mediators, and Community Mediation organisations and new Family Mediation applicants will be able to apply for the Quality Mark from 1st January 2003. All requirements in the standard are applicable for new applicants; there are a number of new requirements which existing Family Mediation contract holders will not have to meet until October 2003. Observations will be raised against these areas on all audits between January and October.

If you would like any further information please contact Clare Powell Evans on 020 7759 0328 or Robert Cross on 020 7759 0394.

# Late claims *the sanctions applied are changing*

**The Lord Chancellor's Department and the Commission have been working together to find a simpler and fairer approach to late claims for civil certificated work. Draft amendments to The Civil Legal Aid (General) (Amendment No. 2) Regulations 2002 are published in this edition of Focus and will be posted to the Commission's website.**

The Lord Chancellor's Department has consulted with The Law Society, The Bar Council, and other representative bodies. The consultation concluded on 27 Nov 2002.

The changes will be effective on 31st December 2002 and will be applied to all costs claims for civil certificated work that are submitted to the Commission for assessment on or after 1 January 2003.

## *What are the amendments?*

The amendments are being made to the Civil Legal Aid (General) Regulations 1989 (as amended) see page 1B-83 of Volume 1 of the LSC manual. Rule 6.5 of the General Civil Contract Specification incorporates the regulations into the contract — see page 2 A-108 of Volume 2 of the LSC manual. The proposed amendments will apply to costs claims under both the 1988 Act and the 1999 Act. New Regulations 104(4) & (5) are inserted. Regulation 105(9) is deleted.

Regulation 105(10) is substituted by:

*"Where a solicitor or counsel has failed to comply with the time limit in paragraph (3A), the costs shall be assessed and the Area Director shall consider what, if any, reduction is reasonable and proportionate in all the circumstances; provided that the costs shall not be reduced unless the solicitor or counsel has been allowed an opportunity to show cause in writing why the costs should not be reduced".*

## *What does this mean?*

Currently if there is no extension to the time limit for good reason (where the

solicitor can justify the delay) a nil assessment of the costs is made unless there are exceptional circumstances. If no good reason exists, but the solicitor can show exceptional circumstances, the reasonable costs are assessed and deductions imposed for lateness. This structure, whilst it follows the previous approach to criminal costs claims has, in some cases, produced harsh results. The courts' approach in the case of *Home Assured v Dobson & Others*, whilst not directly on point, was considered when determining how sanctions should be applied.

Hopefully, the changes will produce a fair balance between the interests of the Legal Services Commission, in obtaining prompt submission of costs claims, and those of solicitors who should not be deprived, merely by late submission, of all the costs of work properly carried out. The amended regulations allow the Commission to assess costs and to apply a level of reduction that is reasonable and proportionate in each case.

Amendments are made to regulation 104 to place it beyond doubt that the late claims sanctions apply to proceedings conducted in the Magistrates' court and to set out the relevant time limits.

The remainder of this article sets out the Commission's interim guidance. The guidance is subject to consultation until 31 January 2003. Following consultation the final version of the guidance will be posted to the Commission's website and published in a later edition of *Focus* and the LSC Manual.

## *Guidance*

There is no longer a requirement for the time limit to be extended. Where costs are submitted outside of the time limit, deductions will be immediately considered. The Commission's existing guidance on time limits can be found at page 1D-22/11-13 Volume 1 of the LSC manual.

The guideline deductions are:

- 5% for bills submitted up to 3 months out of time;
- 10% for bills submitted up to 6 months out of time;
- 15% for bills submitted up to 9 months out of time;
- 20% for bills submitted up to 12 months [1 year] out of time;
- 25% for bills submitted up to 15 months out of time;
- 30% for bills submitted up to 18 months [1 and a half years] out of time;
- 40% for bills submitted up to 21 months out of time;
- 50% for bills submitted up to 24 months [2 years] out of time.

Generally, it should be possible for late claims to be submitted within 27 months of the conclusion of the matter (i.e. up to 2 years out of time) but if the claim is submitted later, higher deductions may be applied.

The percentage reductions are a guide, so if the solicitor provides an explanation that justifies the delay, the regional office

will consider what is the appropriate reduction in the circumstances. There may, for example, be circumstances where a bill submitted up to 3 months out of time has been delayed through no fault of the solicitor and thus no deduction should be applied. Where circumstances are outside the firm's control it is less likely that a penalty will be imposed.

Regard will be had to what reasonable steps could have been taken to minimise delay. The factors below are indicators that it may be reasonable for some delay to have occurred. The regional office will evaluate what period of delay is reasonable and make a reduction in accordance with that decision. For example, a fee-earner has a serious illness and is away from the office for three months but it is 12 months before the cost claim is submitted. When it was known the fee earner would be away for a considerable period, the firm should have taken steps to ensure their costs claims were assessed promptly. In the circumstances, it may have been reasonable for a delay of up to six months to be incurred. If so, a deduction of 10% would be made on the basis that the costs claim should have been submitted only six months out of time.

#### *What is reasonable and proportionate in the circumstances?*

This is a question of fact in every case. Regard will be had to the particular firm's history of late claiming.

#### *Reasonableness*

Common examples of where it may be

reasonable for some delay to have been incurred are:

- linked or related actions awaiting final disposal;
- where conveyancing work by the conducting solicitor is necessary to implement an ancillary relief order;
- the court has delayed in sending the final order;
- counsel has failed to submit a fee note, despite reasonable steps by the solicitor to obtain the same (or where the solicitor has failed to provide information or documentation - for counsel's claims);
- delays in drafting the bill by a Law Costs Draftsman, despite reasonable steps by the solicitor to ensure the bill is submitted within time;
- if the solicitor chooses to await the conclusion of a case transferred from the Magistrates to the County Court before assessment;
- intervention or insolvency (however it remains the solicitor's duty to collate and prepare bills), illness or injury to the conducting solicitor;
- damage to files through office fire or flood.

#### *Proportionality*

In considering the deduction to be applied the size of the claim may be a relevant factor. If the costs claim is above average, i.e. over £2,500, it may be appropriate for a lesser deduction to be applied than that in the guidelines. In claims under £2,500 the guideline deductions are considered to be

proportionate and therefore it will be a case of considering the reasonableness of the reason for late submission when applying them.

Deductions are based on the solicitor's profit costs. The deductions will have to be made from the solicitor unless counsel has been responsible for the delay. Counsel's fees are preserved provided he or she has not caused or contributed to the delay. In any case where the maximum fee principle applies, the late claim deduction is applied after assessment of the reasonable costs and counsel's fees are paid from the balance then due.

Where profit costs are disallowed in full, the solicitor is still bound to discharge any expert's fees that had been incurred.

Under the Family Graduated Fee Scheme counsel must submit costs claims within three months of revocation or discharge of the certificate. These sanctions will be applied whenever a late claim reduction is appropriate under that scheme.

Comments on the interim guidance may be sent to Ruth Symons, Policy & Legal Department, 85 Gray's Inn Road, London WC1X 8TX (DX 328 London/Chancery Lane) or e-mailed to [ruth.symons@legalservices.gov.uk](mailto:ruth.symons@legalservices.gov.uk).

Please note a post-consultation draft of the amending regulations follow on page 18.

## Extract from the civil legal aid (general) (amendment no.2) regulations 2002

**These amendments can be viewed against the current regulations to be found in LSC manual volume IB pages 82 and 83.**

### **“4. The following shall be inserted after regulation 102:**

#### **“Production of documentation and disclosure of information 102A.**

A solicitor shall promptly produce to the Commission any documentation in his possession or control, and disclose any information, which the Commission may request from time to time in connection with any proceedings in respect of which it has made payment to the solicitor.

#### **Recoupment of losses and excesses 102B.**

**(1)** Where the fund incurs loss in the circumstances mentioned in regulation 102, the solicitor shall pay to the Commission a sum equivalent to the amount of such loss or such proportion of that amount as the Commission considers appropriate.

**(2)** Where for whatever reason a solicitor has been paid an amount greater than that to which he is entitled, the Commission may recover the excess either by way of repayment by the solicitor or by way of deduction from any other sum which may be due to him. .

### **5. The following shall be inserted after regulation 104(3):**

(4) Paragraphs (3A) to (11) of regulation 105 shall apply and regulation 105A shall apply where costs are assessed by an Area Director under paragraph (1) as they apply to an assessment under that regulation; provided that the references

to the time limit in regulation 105(3A) shall be construed as references to:

(a) the date three months after the termination of the solicitor's retainer, where the retainer is determined before proceedings are begun, or where the assisted person's certificate is revoked or discharged; or

(b) otherwise, the date three months after the determination of the proceedings, whether in a magistrates court or another court.

(5) Subject to paragraph (4), regulations 105 to 110 shall not apply to costs in respect of proceedings in a magistrates court to which this regulation applies. .

### **6. (1) The following shall be inserted at the beginning of regulation 105(3A):**

Subject to paragraph (10), .

(2) Regulation 105(9) shall be deleted.

(3) For regulation 105(10) there shall be substituted:

(10) Where a solicitor or counsel has failed to comply with the time limit in paragraph (3A), the costs shall be assessed and the Area Director shall consider what, if any, reduction is reasonable and proportionate in all the circumstances; provided that costs shall not be reduced unless the solicitor or counsel has been allowed a reasonable opportunity to show cause in writing why the costs should not be reduced. .

(4) In regulation 105(11), (9) or shall be deleted.”



# Public law children act proceedings

## *delays in the allocation of CAFCASS guardians*

**Following liaison with the Lord Chancellor's Department and CAFCASS we accept that urgent one-off pieces of social work arising out of a delay in appointing a CAFCASS guardian in specified public law Children Act proceedings (usually care proceedings) can be met out of the Community Legal Service Fund as a solicitor's disbursement.**

### **Payment for urgent one-off pieces of social work**

We are only able to fund legitimate solicitors' disbursements as part of the costs of a funded client. We can therefore only pay for one-off pieces of social work expertise relating to a matter of urgency within the context of proceedings. Any work that extends to other aspects of the children's guardian's role could not, as a matter of law, be met as a solicitor's disbursement.

In any event, the funding of one-off pieces of social work may only be met:

- where leave to instruct an independent social worker has been granted by the court; and
- CAFCASS has been notified of the fact of the granting of such leave and asked to allocate a guardian but has not done so without further delay.

We shall apply the CAFCASS payment rates to any independent social work undertaken due to the absence of a CAFCASS guardian ad litem (£22.50 per hour for work from Inner London, South London, Essex, Norfolk, Hampshire, Devon, Northamptonshire, Buckinghamshire, Oxfordshire and Surrey and £20 per hour for work from elsewhere in England and Wales). The rate is determined from the location of the local authority which is taking the proceedings.

These rates will be applied to both professional time and travelling and waiting. They include all ordinary disbursements including travel in England and Wales (although the cost of interpreters and translators may be met

as an additional item where these are necessary).

It should only be necessary for us to authorise or make a limited number of payments in such cases as CAFCASS is reviewing its staffing and prioritisation arrangements and the solicitor will be expected to draw the attention of both CAFCASS and the court to the urgency of the matter. This will give CAFCASS a number of opportunities to appoint a guardian in an urgent case. We would not generally consider that the solicitor should seek to commission other expert work in the absence of a guardian.

### **Additional work undertaken by the solicitor**

In September 2002 the Law Society issued a notice to Children Panel members clarifying the involvement of solicitors in public law cases where there is no CAFCASS guardian and the Association of Lawyers for Children referred to the notice and commented on the topic in its October 2002 newsletter. The text of the notice and the points made by the Association have not been specifically agreed. In particular all the work referred to in the notice as appropriate for the solicitor to undertake in the absence of a guardian will not necessarily be in scope and justified. This will depend on the circumstances of the case and additional work will have to be justified in each case — this is of relevance to costs assessment.

Any costs incurred in involving a mentor (e.g. either an experienced solicitor or guardian) to advise or support the solicitor in dealing with the case are not recoverable as part of the costs of Legal Representation.

# Stamping out rejects

*improving our service to you.*

**At the Legal Services Commission we are committed to improving our service to you. One of the first steps is to review the application and bill rejects, details of which are set out below. We will then extend this, in 2003, to include Payment on Account and Family Graduated Fee claims submitted by barristers. To help you now we have included checklists for Family Graduated Fees, Applications and Bills in this edition of *Focus*.**

## **Did you know that nationally:**

25% of all rejected applications are due to a missing signature or date?  
More than 11% of all rejected claims for payment are due to a missing signature or date?

This causes you delays when starting work and getting paid and prevents the Legal Services Commission from processing work quickly and efficiently.

## **Top 5 reject reasons**

- (1)** Application or Bill not signed and dated.
- (2)** Means Form not submitted with an Application
- (3)** Relevant documentation not enclosed
- (4)** The client is not in receipt of income support
- (5)** The forms are not fully completed

To reduce the number of forms returned unprocessed we are introducing initiatives across the organisation which involve, wherever possible, requesting missing information by telephone or fax. If you are able to submit the missing information within the requested time, we will be able to process the form without returning it to you. This will save us time and minimise delays for you.

## **What we will do to help you:**

- (1)** Ensure all new applications for funding are fully screened on the day of

receipt. Where there is an administrative error with the form, e.g. your client's national insurance number is missing or your role number has not been supplied, our caseworkers will telephone or fax you for the information. You will be given a limited period of time by your local office to supply the information and once it is received your application will be processed. If you are unable to supply us with the information by telephone/fax within the time limit requested, the application will be rejected and returned to you no later than 4 working days after it was initially received in the regional office.

- (2)** Telephone you where form L17 is required but has not been supplied. Our caseworkers will firstly determine the whereabouts of the L17 and also establish whether the L17 has been fully completed. If you have the L17 in your possession and it is fully completed you will be requested to submit the form within 2 working days. If form L17 has not been completed, or you do not send the information in within the time frame specified, the application will be returned to you for resubmission once the completed form has been obtained.

- (3)** Screen all Claim 1s and Claim 2s on receipt to check that they are signed and dated. If not they will be sent back to you on the same day with an accompanying letter that will help you to check for other possible reasons for rejection, before resubmission.

# Reject checklists

*right first time*

**(4)** Wherever possible try and obtain missing information by telephone or fax before rejecting a bill. You will again be asked to submit this information within an agreed time limit.

In general, where an entire document or enclosure is missing from either a bill or a new application, we will contact you and request that the missing document be submitted. There will still be occasions where it will not be possible for us to contact you for further information, e.g. where forms are not signed/dated or where the missing information has to be completed by you or your client so as to ensure we do not materially alter the information submitted with the application or bill.

You will notice that when we do have to return work to you unprocessed, the item will be clearly stamped as a reject. This is to enable staff in the regional offices to quickly identify any work as having been previously submitted and attach the appropriate degree of urgency to the work. It also enables us to monitor our own performance and ensure we are only rejecting your work when absolutely necessary.

## **What you can do to help us get it right first time:**

Check everything that is sent in to the regional office to ensure it is fully completed and all the information required to enable us to make a decision

is enclosed. To help you in this, we have produced checklists for Family Graduated Fees, applications and bills which act as reminders when preparing an item of work for submission. The checklists have been reproduced in this issue of *Focus*.

*“To reduce the number of forms returned unprocessed we are introducing initiatives across the organisation which involve, wherever possible, requesting missing information by telephone or fax. If you are able to submit the missing information within the requested time, we will be able to process the form without returning it to you. This will save us time and minimise delays for you.”*

**As part of our commitment to getting it right first time, we are focusing on reducing the number of bills and applications that we reject. Our commitment to you means that we now reject far fewer bills and applications and with your help we can reduce this even further.**

As part of our ongoing drive to get things right first time, we are making a determined effort to reduce the amount of work rejected to you.

We know how involved the correct completion of bills and applications can be; making sure that they are signed and dated where necessary, completed correctly and including all the necessary information. We have received feedback from a number of you requesting user-friendly checklists or tips to prevent work being rejected. Therefore, we have produced reject checklists in relation to these specific categories of work, including family graduated fees, and they are contained in this edition of *Focus*. They have been written to simplify the checking of forms prior to submission. We are confident that they will act as a quick and easy to use reminder that should prevent a significant number of bills and applications being rejected. The checklists also contain guidance on where to access forms and the relevant guidance.

## New applications *checklist*

- **Following this list will help us process your applications more quickly**

- **1 in 4 rejected applications are unsigned**

- Have all the forms been signed and dated by the applicant and the legal representative?*
- Are the signatures original and less than 2 months old?*
- Have you submitted the relevant Means form?*
- Has the applicant completed all sections of the Means form and signed/dated it?*
- Do you need to submit a Form L17? If so, has it been stamped/signed by the employer?*
- Has the applicant provided evidence of the benefits they are in receipt of?*
- Have you included a statement of case and any supporting documents?*
- Where appropriate have you submitted a form CLS APP7 (mediation)?*
- Should Devolved Powers have been used?*

Both Funding Code criteria and Decision Making Guidance can be found on the Legal Services Commission website at [www.legalservices.gov.uk](http://www.legalservices.gov.uk) under statutory material or in the Legal Services Commission Manual, Volume 3.

Copies of all CLS forms are available on the Law Society website; [www.lawsociety.hotdocs.co.uk](http://www.lawsociety.hotdocs.co.uk)

# Family graduated fees checklist

- **Following this list will help us process your applications more quickly**

- Is the CLS Claim 5 fully completed and signed by Counsel?*
- Is the case reference correct?*
- Have you enclosed the signed original of the Judge's verification form?*
- Are you sending your claim to the correct Regional Office?*
- Have you attached a CLSADMIN5, if appropriate?*
- Have you provided sufficient detail of the case and hearing times?*
- Have you included reasons for your instruction, if claiming travel expenses?*
- Are all enclosures correct?*
- Is it a Family Graduated Fee Case?*

All London FGF bills should be sent to the Newcastle Regional Office to be processed.

Both Funding Code criteria and Decision Making Guidance can be found on the Legal Services Commission website at [www.legalservices.gov.uk](http://www.legalservices.gov.uk) under statutory material or in the Legal Services Commission Manual, section 10, part D, Volume 1.

Copies of all CLS forms are available on the Law Society website; [www.lawsociety.hotdocs.co.uk](http://www.lawsociety.hotdocs.co.uk)



## Bills checklist

- **Following this list will help us process your claims quicker.**
- **1 in 5 rejected claims are either unsigned or have documents missing.**

- Have all forms been signed/dated by the solicitor?*
- Has the form been completed in full?*
- Is the amount claimed the same as the amount on the assessment certificate?*
- Where appropriate have you included the relevant documentation and the file of papers?*
- Where required, have you included a breakdown of Counsel's fees?*
- Where necessary, have you included a signed, original assessment certificate?*
- Is the bill being submitted in time? (3.38 and 3.39 Part D Vol 1 LSC Manual)*

Both Funding Code criteria and Decision Making Guidance can be found on the Legal Services Commission website at [www.legalservices.gov.uk](http://www.legalservices.gov.uk) under statutory material or in the Legal Services Commission Manual, Volume 1.

Copies of all CLS forms are available on the Law Society website; [www.lawsociety.hotdocs.co.uk](http://www.lawsociety.hotdocs.co.uk)

# PIAP Summaries

**The Public Interest Advisory Panel reports to the Commission on cases which are considered to raise public interest issues. These reports are then taken into account by the Commission in decisions under the Funding Code. For more information on the Panel see the article in Focus 31 (page 2) and Section 5 of the Funding Code Decision-Making Guidance in Volume 3 of the LSC Manual**

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 are contained in *Focus* 32-39. 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/02/109

### Nature of Case

Proposed judicial review concerning the powers of a Mental Health Review Tribunal to commission an independent medical report and delays in holding hearings.

### Report of the Panel

The Panel considered that as the issue of delay in holding MHRT hearings had already been adjudicated upon by the Court of Appeal, the only live issues remaining in the applicant's case were those of quantum of compensation and the tribunal's disputed power to commission independent medical reports.

The Panel considered that there was no

wider public interest in funding the present application insofar as it related to the question of compensation. The Court of Appeal had already determined that delay constituted a breach of Article 5(4) and the question of damages was also to be determined in those ongoing Court of Appeal proceedings. That being the case the Panel felt that there would be no added benefit to other individuals in funding argument on the same issue in the applicant's case.

Regarding the commissioning of independent reports, the Panel considered the relevant rules governing the MHRT's powers and considered what the effect might be of a ruling that the MHRT had no power to commission such reports. However the Panel could not identify any significant real benefit to detained persons from such a ruling, especially bearing in mind the right to refuse an examination. The independent report might or might not benefit the patients.

In all the circumstances, the Panel considered that there would be no significant benefit to other individuals from the proposed challenges sufficient to bring the case within the Funding Code test of significant wider public interest.

### Conclusion

No significant wider public interest

## PIAP/02/110

### Nature of Case

Application for funding to petition the House of Lords for leave to appeal in a housing matter. The applicant claims

that she is entitled under statute to a home loss payment from her local council. The council disputes that fact.

### Report of the Panel

The Panel considered that this was an important case concerning entitlement to home loss payments. The House of Lords should be given the opportunity to clarify the legal principles governing entitlement to such payments, in particular the circumstances in which the decision of the tenant to move and the reasons for moving would affect entitlement to payment, as discussed in counsel's advice. It was also clear to the Panel that significant numbers of people stood to benefit from clarification of those issues. In the circumstances the Panel agreed unanimously that the proposed appeal to the Lords was of significant wider public interest.

### Conclusion

Significant wider public interest

**Rating:** Significant

## PIAP/02/111

### Nature of Case

Application for continued funding for proceedings seeking judicial review of the actions of the Children and Family Court Advisory and Support Service (CAFCASS) in delaying the appointment of a guardian.

### Report of the Panel

The Panel agreed that the issue of delay in appointing guardians in proceedings under the Children Act was one of great importance as a failure to promptly appoint such a guardian leaves the child without a suitable person to instruct a legal representative in the proceedings.

The Panel was however concerned about the wider practical benefit which

proceedings for judicial review might engender in this case. It seemed clear from the case law that the delays would be found to be an infringement of the children's Article 6 and Article 8 rights and that the court would be likely to make a declaration to that effect. However, the Panel also considered that any such declaration would be likely to highlight the plight of all children left without a guardian in Children Act proceedings and encourage the relevant authorities to take further action to address the cause for the delays. For that reason the Panel agreed unanimously that the proceedings were of significant wider public interest.

### Conclusion

Significant wider public interest

**Rating:** High

## PIAP/02/112

### Nature of Case

Proposed appeal to the House of Lords in a personal injury case involving a road traffic accident and the duty of the highway authority. The appeal turns on a point of law on which the Court of Appeal has given conflicting judgments.

### Report of the Panel

The Panel considered the issues that the applicant alleged would be determined by the proposed appeal to the Lords in this case. The Panel felt that it was clear from present authority that a duty does arise at common law ancillary to the duty contained in Road Traffic Act 1988 section 39 (the Larner duty) and it was unlikely that an appeal to the Lords in this case would result in the imposition on the highway authority of a higher standard of care in that regard. That being the case, the Panel felt that the only issue that could be said to require clarification was that of the exact scope

of the Larner duty. The Panel did not consider that any differences that could be said to exist between the different judgments of the Court of Appeal regarding formulation of the scope of the duty were significant in practice. Similarly, the Panel could not identify how the Lords might be persuaded to broaden the scope of the Larner duty so as to provide any real benefit to other road users. In the circumstances the Panel felt that the proposed appeal could not be said to be of significant wider public interest.

### Conclusion

No significant wider public interest

## PIAP/02/113

### Nature of Case

Group action against waste disposal company and local authority. Claims for damages for nuisance and/or personal injury by persons living close to a landfill site.

### Report of the Panel

The Panel did not think that this action raised any significant new issues of law and took the view that public interest in this case would derive only from benefits to the local community. The Panel noted that the nuisance was not continuing, that enforcement action had been taken by the environment agency and that no injunctive relief was sought. In relation to the claims for negligence/nuisance, the Panel considered that as there was a large group of claimants, who would benefit from the claim for damages which, in total, may be substantial, these claims did have a significant wider public interest. It was desirable for all claimants to be included in the action, although whether this should be by way of public or private funding was for the regional office to determine.

**Conclusion**

Significant wider public interest

**Rating:** Significant

**PIAP/02/114****Nature of Case**

Judicial review of police re: Valentine message sent to persistent offenders.

**Report of the Panel**

The Panel was unanimous in agreeing that a case which would have the effect of clarifying the legality of proactive policing designed to target ex-offenders would be of wider public interest. However, the Panel was divided in this case on the issue of whether the proceedings would have such an effect. Being mindful of the fact that permission to seek judicial review had been granted, the majority of the Panel considered this case would have the potential effect of clarifying the legality of the policy implemented by this police force. However, the minority considered that the trivial nature of the act complained of was unlikely to lead to a judgment clarifying the ambit of the police's power.

**Conclusion**

Significant wider public interest

**Rating:** Significant

**PIAP/02/115****Nature of Case**

Negligence claims against a health authority re: sexual assaults by a doctor in its employ (limitation issues).

**Report of the Panel**

The Panel expressed their deep sympathy for the applicants but were unable to see how this case would have

the potential to produce real benefits for other individuals. The Panel considered that the case against the health authority would be decided on its facts without any significant benefit flowing to others. In particular the Panel was not persuaded that determination of the limitation issue would set any new precedent as it appeared that the case would fall to be decided under sections 11, 14 and 33 of the Limitation Act 1980 in accordance with well settled principles.

**Conclusion**

No significant wider public interest

**PIAP/02/116****Nature of Case**

Proposed judicial review of Prison Service re: decision banning visits to a prisoner by his fianc e.

**Report of the Panel**

The Panel noted the applicant's argument that the case had a wider public interest because it had the potential to ensure that the Prison Service acted in accordance with the law. However, the Panel also noted that in order to be of significant wider public interest for Funding Code purposes a case would need to have the potential to produce real benefits for other individuals other than benefits which would normally flow to the public at large from the type of proceedings in question. As the ban on visits to the applicant had now expired and judicial review is a discretionary remedy the Panel thought it was unlikely that this case would result in any development of the law. Accordingly the Panel was unable to identify any public interest of this more specific kind in this case.

**Conclusion**

No significant wider public interest

**PIAP/02/117****Nature of Case**

Proposed personal injury claim against retailers for selling butane gas to a minor thus contributing to him becoming an addict.

**Report of the Panel**

The Panel noted that the application was for Investigative Help to ascertain both whether members of the public had a private law right to claim damages against retailers of butane gases (whether under the criminal statute or at common law) and the extent of any such right. Whilst the Panel was concerned that the applicant's case may be weak on its facts and therefore not the best case to test the point at issue, it agreed unanimously that this case did have the potential to produce real benefits for other individuals because investigation of the legal issues and their subsequent determination by a court would produce future guidance to individuals as to the extent of their rights.

**Conclusion**

Significant wider public interest

**Rating:** Significant

**PIAP/02/118****Nature of Case**

Appeal before Social Security Commissioner re: recoupment of overpaid income support. Exceptional funding application.

**Report of the Panel**

The Panel noted with surprise that the Secretary of State was seeking to argue that the Commissioner should not entertain legal arguments which had not been raised before the tribunal. The Panel considered that, if the Secretary of

State succeeded on that preliminary point, it would represent a radical departure from current practice under which the Commissioner is expected to consider all relevant legal arguments. This might disadvantage significant numbers of applicants who had not argued all the points available to them before the tribunal.

In addition the Panel considered that the substantive legal issues raised in this appeal in relation to failure to disclose and the principle of Non Est Factum were important matters, the clarification of which would be beneficial.

### Conclusion

Significant wider public interest

**Rating:** Significant

## PIAP/02/119

### Nature of Case

Claim for declaration and damages against a school re: alleged racial discrimination against a former student.

### Report of the Panel

The Panel restated that any case that had the potential to identify and eliminate racial bias within a school would have a significant wider public interest. However the Panel considered that this case as currently pleaded did not show any wider public interest because its resolution was not likely to have any wider impact in this school or elsewhere. In forming that view the Panel noted that there was no allegation of systemic failure in the school in its approach towards pupils from different ethnic backgrounds and the case as pleaded did not have a real potential to produce benefits for other pupils.

### Conclusion

No significant wider public interest

## PIAP/02/122

### Nature of Case

Challenge to two year cohabitation rule for dependency claims under the Fatal Accidents Act 1976.

### Report of the Panel

The Panel was concerned that this case was not likely to succeed because the legislation was likely to be upheld in view of the margin of appreciation that is afforded to EU member states in areas of social policy such as that on which the challenged legislation was based. Nonetheless, the Panel considered that if the claim could be said to have sufficient prospects of success to satisfy the relevant Funding Code criterion then the proceedings would have the potential to produce real benefits to other individuals because a successful challenge to the legislation would engender legislative reform by Parliament.

### Conclusion

Significant wider public interest

**Rating:** Significant

## PIAP/02/123

### Nature of Case

Proposed human rights challenge to Gambling Act 1845 s.18 under which gambling debts are unenforceable.

### Report of the Panel

The Panel noted that, if successful in the proceedings, the only remedy that the applicant was likely to obtain was a declaration of incompatibility. However the Panel also noted that the Government had already stated its intention to introduce legislation to reform the legislation that was being challenged. It did not appear that the grant of a declaration of incompatibility would be

likely to result in a swifter change in the law and therefore a declaration was unlikely to have any practical wider significance.

The Panel noted the further issue concerning the existence of and the ability to enforce a secondary promise to pay, however the Panel considered that that issue would be decided on the facts of this case without any benefit flowing to other individuals.

For the above reasons the Panel was unable to identify any significant benefit that would accrue to other individuals from funding this case.

### Conclusion

No significant wider public interest

## PIAP/02/124

### Nature of Case

Proposed judicial review of failure of Lifer Unit of the Prison Service to provide the applicant, a post-tariff life sentence prisoner, with a place on an offender rehabilitation programme.

### Report of the Panel

The Panel considered that the case raised an important issue concerning the right to liberty and the state's duty to make resources available to ensure that systems are run without undue interference with that right. The Panel also agreed that determination of that issue in this case had the potential to produce benefits not only for life sentence prisoners but for any individual being detained by the state where allocation of resources is an issue in the continuation of detention.

### Conclusion

Significant wider public interest

**Rating:** High



**PIAP/02/125****Nature of Case**

Claim against CPS for unlawful detention re: arrest warrant wrongfully issued for applicant's failure to appear as a witness in a court case.

**Report of the Panel**

The Panel noted from the legal precedents that the Crown Prosecution Service at present owes no duty of care to the accused at common law arising out of the conduct of a prosecution. There did not however appear to be any authority determining the issue of the duty owed to individuals other than the accused. In those circumstances the Panel considered that this case has the potential to establish whether any duty is owed to individuals other than the accused and benefits would flow to other individuals accordingly.

**Conclusion**

Significant wider public interest

**Rating:** Significant

**PIAP/02/126****Nature of Case**

Proposed judicial review of a magistrates' court re: that court's policy of requiring those surrendering to an arrest warrant to have the warrant executed at a police station and denying them the option of surrendering directly to the court.

**Report of the Panel**

The Panel considered that the current policy requiring an individual for whose arrest a warrant had been issued to surrender to the police rather than the magistrates did not appear to provide the most efficient system for dealing with individuals in cases such as the applicant's. The system appeared to

involve an unnecessary waste of time and resources. In view of that fact and the fact that the legality of the policy implementing the procedure was not clear, the Panel agreed that there was a wider public interest in determining whether the policy was lawful.

**Conclusion**

Significant wider public interest

**Rating:** Significant

**PIAP/02/121****Nature of Case**

Proposed claims of racial discrimination brought by student and parent against former school's governing body and local education authority.

**Report of Panel**

The Panel had before it no evidence to suggest that the school had discriminated against the student's parent and there did not therefore appear to be any wider public interest in funding the parent's claim.

As regards the student's claim, the Panel was not persuaded that the court would exercise any discretion that it may have to extend time in relation to the claim under the Race Relations Act, nor could the Panel identify how the actions complained of constituted a breach of Article 3 as alleged. That being the case, there did not appear to be any mechanism by which Article 14 may be engaged. Further, the Panel had no information before it to suggest that the claim for negligence at common law would produce real benefits for other individuals.

For the above reasons the Panel was unable to identify how this case may be of wider public interest as defined by the Funding Code. In particular the Panel was not persuaded that this case would

lead to any improvement in race relations either within this school or more generally.

**Conclusion**

No significant wider public interest.

**PIAP/02/127****Nature of Case**

Proposed appeal to the House of Lords in a claim for negligence against solicitors.

**Report of Panel**

The Panel was not persuaded by counsel's argument that the Court of Appeal had incorrectly approached the issue of causation. It appeared that the court had applied the ordinary principles of causation, drawing the correct distinction between an omission to give advice and the negligent giving of advice. It therefore appeared to the Panel that the prospect of successfully challenging the court's distinction were poor and that in any event the facts of the case made it an unsuitable vehicle to run the argument. The Panel was therefore not satisfied that any appeal was likely to develop or clarify the law so as to produce benefits for the public.

**Conclusion**

No significant wider public interest.

**PIAP/02/128****Nature of Case**

Appeal to the Court of Appeal in a school exclusion case.

**Report of Panel**

The Panel considered that this case raised an important issue of principle, clarification of which by the Court of Appeal would be of benefit to other

parents in deciding the correct or most advisable manner in which to challenge decisions of a school's governing body and/or an independent appeal panel. The Panel considered that although it appeared that the issue of principle would probably be decided in the similar case of Reid, the presence of this case before the court alongside that of Reid would increase the likelihood of the court giving clear and comprehensive guidance on the issue.

### Conclusion

Significant wider public interest

**Rating:** Significant

## PIAP/02/130

### Nature of Case

Proposed appeal to the House of Lords in conjoined housing disrepair cases.

### Report of Panel

The Panel considered that this case raised an important point of wider public interest namely the difference in the approach taken by the Inner House of the Scottish Court of Session and the Court of Appeal in cases of this nature to the question of the availability of a remedy for statutory nuisance under the Environmental Protection Act 1990. The Panel considered that this case would provide an opportunity for the Lords to resolve that difference of approach, with a real possibility that the Lords may then determine the issues under the HRA and the Landlord & Tenant Act 1985 differently from the Court of Appeal.

The Panel therefore considered that the case had a real potential to provide a substantial benefit to tenants living in damp properties who might otherwise be left without a remedy.

### Conclusion

Significant wider public interest

**Rating:** High

## PIAP/02/131

### Nature of Case

Proposed judicial review of the Criminal Cases Review Commission's failure to investigate the applicant's case and refusal to refer it to the Court of Appeal.

### Report of Panel

The Panel was not persuaded on the facts of this case that the case had the potential to establish any new legal precedent regarding the CCRC's duty to investigate cases. It appeared that any challenge to the CCRC's actions that the applicant may seek to make would be a matter of applying established legal principles to the particular facts of the client's case.

### Conclusion

No significant wider public interest.

## PIAP/02/132

### Nature of Case

Claim against a local authority for failure to recognise and provide for the applicant's special educational needs.

### Report of Panel

The Panel agreed that there was an important issue at stake in the case, namely the attempt to establish a direct duty of care owed by the local education authority to a pupil at common law. The Panel also considered that if it could be shown that this case was likely to succeed in establishing liability on the part of the LEA, any such decision would be of wider public interest and could

significantly expand the circumstances in which the authority might be liable. However if the present case did proceed it should be monitored closely to ensure that it remained an appropriate vehicle to establish the issue of principle.

### Conclusion

Significant wider public interest

**Rating:** Significant

## PIAP/02/134

### Nature of Case

Proposed appeal to the House of Lords in proceedings under the Children Act 1989 involving possible abuse of a child by one or other of its parents.

### Report of Panel

The Panel agreed unanimously that it was important to clarify the correct legal test to be applied to cases of this nature involving possible abuse of a child by one or other of the parents. The importance of these issues to the parties and many others was immense. The decision in the Court of Appeal in this case appeared to represent a clear departure from the established position. In addition, authorities of the Court of Appeal and the House of Lords on other cases suggested that it was clearly arguable that the Lords in this case would reverse the decision below.

### Conclusion

Significant wider public interest

**Rating:** High

## PIAP/02/136 & 137

### Nature of Case

Proposed appeals to the House of Lords in housing cases turning on the construction of s.85(2) Housing Act 1985.

### Report of Panel

The Panel agreed unanimously that the proposed appeals to the Lords in these cases raised an issue of importance to many people living as tolerated trespassers but without the benefit of the rights attaching to tenancies that are recognised under the various housing statutes.

In the circumstances the Panel considered that the appeals had the potential to produce significant benefits to a wide group of individuals. The Panel also agreed that there was a significant benefit to be gained in both appeals being argued together in the Lords.

### Conclusion

Significant wider public interest

**Rating:** Significant

## PIAP/02/138

### Nature of Case

Proposed judicial review of a decision of a mental health review tribunal. The applicant's request for a review of his detention was ruled out of time under s.66 of the Mental Health Act 1983.

### Report of Panel

The Panel noted that the applicant was complaining not about the failure of staff to tell him about his right to appeal against detention but instead about the fact that s.66 imposes a 14 day limitation period on the making of an appeal.

The Panel considered that in view of the established European and domestic case law on limitation periods, the proposed challenge to the 14 day period under ECHR Articles 5(4) and 6 was unlikely to succeed. Since the maximum period of detention under section 2 is 28 days, a

short, non-extendable time in which to appeal would be very difficult to challenge. The Panel agreed with the submission of the Secretary of State in this respect. The Panel also considered that the number of people likely in practice to benefit from a successful challenge appeared to be small. In the circumstances, the Panel considered that this case was not of significant wider public interest.

### Conclusion

No significant wider public interest.

## PIAP/02/139

### Nature of Case

Proposed claim for damages for psychiatric injury following the death of a close relative in a road traffic accident.

### Report of Panel

The Panel expressed sympathy for the applicant but was unable to identify any real potential for this case to effect a change in the law. The Panel considered that even if the applicant were successful in establishing her right to damages for psychiatric injury, the facts of this case were so unusual that any decision from the court in the applicant's favour would be likely to be very fact specific, meaning that the number of other people who may benefit from the decision would be very small.

### Conclusion

No significant wider public interest.

# Proposed payment dates

## for the first half of 2003

**The proposed payment dates for the first 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

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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.

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contract payments	1 <sup>st</sup> settlement of the month	2 <sup>nd</sup> settlement of the month
Mon, 6 Jan 2003	Fri, 10 Jan 2003	Thur, 23 Jan 2003
Wed, 5 Feb 2003	Fri, 7 Feb 2003	Thur, 20 Feb 2003
Wed, 5 Mar 2003	Tue, 11 Mar 2003	Wed, 26 Mar 2003
Thu, 3 Apr 2003	Thur, 10 Apr 2003	Fri, 25 Apr 2003
Tue, 6 May 2003	Mon, 12 May 2003	Wed, 28 May 2003
Wed, 4 June 2003	Wed, 11 Jun 2003	Thur, 26 Jun 2003

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