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Community
Legal Service



Focus

www.legalservices.gov.uk
JULY 2003

- GENERAL CIVIL CONTRACTS**
 Details of the General Civil Contracts Bid Round for obtaining a civil contract from 1 April 2004 are available on page 02.
- IMMIGRATION AND ASYLUM NEWS**
 For information on the immigration and asylum consultation paper, an update on the CLR Merits Test Guidance and other news, see page 03.
- CHANGES TO COST ASSESSMENT RULES**
 For information on the new rules introduced under the General Civil Contract on 1 April 2003 see page 04.
- CASE OUTCOMES**
 For guidance on using the new case outcomes codes introduced in April this year please see page 10.
- FUNDING CODE UPDATE**
 This article provides an update on guidance on domestic violence, multi-party actions, education claims and conditional fee agreements and the future development of the Funding Code (see page 11).
- ASSESSMENT OF JOINT INTERESTS IN CONTRARY INTEREST CASES**
 For clarification on the treatment of joint assets for persons living together and determining whether a couple live in the same household, see the article on page 12.
- VERY HIGH COST FAMILY CASES**
 These will no longer be subject to high cost case controls when authority is sought to instruct leading or two junior counsel, see page 12.

GENERAL CIVIL CONTRACTS Bid Round

Following last year's consultation on the process for awarding civil contracts to solicitor and not-for-profit organisations from 2003 onwards ('Regional Prioritisation and Bid Rules' June 2002), the Commission has announced:

- A bid round prior to letting contracts in April 2004. This will allow new suppliers to bid for contracts and existing suppliers to bid for contracts for additional categories.
- Three-year contracts from April 2004, subject however to a break clause if necessary to implement the review of contracting recently announced by the then Lord Chancellor's Department (now Department for Constitutional Affairs).

What do you have to do to be awarded a civil contract from 1 April 2004?

All existing firms (including Licence-Only contractors) wishing to renew their contracts or apply for additional contracts from April 2004, as well as new firms which do not currently hold a contract with the LSC but are interested in obtaining one, will need to register on the bid panel by completing a bid registration form to be returned to their LSC regional office.

If firms have more than one office interested in applying for a contract, each of the offices will need to submit a separate form to register on the bid panel for a given CLSP area. If firms intend to register on the bid panel in other CLSP areas, they should submit a separate registration form for each CLSP area in which they wish to register for a contract.

Not-for-profit (NFP) suppliers will not need to register on the bid panel to renew their current contracts, and will generally only be affected by this bid round if they want to bid for additional contracts or caseworkers, as current NFP contracts do not expire until 31 March 2006.

Three separate bid registration forms have been issued by the Commission, and are available from the LSC regional offices or from the contracting section of the LSC website (www.legalservices.gov.uk):

- BIDCW: for existing suppliers with

controlled work contracts

- BIDLO: for existing suppliers with licence-only contracts
- BIDNEW: for organisations without a current contract or NFP suppliers that want additional contracts

All organisations (except existing NFP contractors who do not wish to apply for additional contracts) wanting to carry out civil work from April 2004 will need to:

- register on the bid panel by **2pm on 1 October 2003**, by returning their completed registration form to their local LSC office. **Firms that miss this deadline will not be considered for the award of a contract from 1 April 2004.**
- hold or obtain at least the provisional Specialist Quality Mark (SQM) in the category of law in which they want a contract by **31 March 2004**. Firms which do not currently hold the Specialist Quality Mark should be contacting their regional office now to schedule their preliminary audit and discuss all the necessary arrangements.

Existing firms whose latest civil cost assessment results are category 3 will be excluded from the bid round if this is their second such result since 1 November 2001 (the date the revised cost assessment guidance came into effect).

What happens when the bid panel closes on 1 October 2003?

When the bid panel closes on **1 October 2003**, regional offices will decide whether they will need to run a bid round in a particular CLSP area. They will only do so where there are more new bidders and existing suppliers than the number of contracts that they consider appropriate to award in the category concerned. In many areas, there will be no need to run a bid round, and existing suppliers will be notified as soon as practicable after the bid panel closing date of the renewal of their contract.

In broad terms, regional offices will determine the number and size of contracts

they wish to award in a CLSP area (if any) by reference to the RLSC reports (to be updated by 1 September 2003 and available from the LSC website or from the LSC regional offices) and to available funds and performance.

Where can you get further information?

Further information on the bid round for 2004 is contained in the following documents, both of which have been issued to all existing contractors and are available for download from the LSC website:

- Briefing paper on civil contracts from 1 April 2004
- Rules for the Award of General Civil Contracts from April 2004.

Any queries on the bid round process should be addressed to the contracting teams of the relevant LSC regional offices. Their address details and phone numbers can be found on the LSC website.

LSC ANNUAL REPORT AND CORPORATE PLAN

The LSC's Annual Report for 2002/03 was published on 11 July as was the Corporate Plan for 2003/04–2005/06.

The Annual Report details our main achievements and challenges in 2002/03 in managing the Community Legal Service and Criminal Defence Service. It includes information on our operational performance, including business processing, complaints handling and our financial and operational efficiency.

The Corporate Plan outlines our view of the priorities for the funding and development of legal services over the next two years. The annual report is published by The Stationery Office and it is available from their bookshops and costs £18.50. Both the Corporate Plan and Annual Report are available on our website at www.legalservices.gov.uk

IMMIGRATION AND ASYLUM ROUND UP

On 5 June 2003 the Lord Chancellor's Department (now the Department for Constitutional Affairs) issued a consultation paper on proposed changes to the way in which immigration and asylum work is to be funded. These proposals affect both solicitors and not-for-profit agencies with General Civil Contracts in immigration.

A copy of this paper is available on the Department for Constitutional Affairs website (www.lcd.gov.uk). The consultation closes on 27 August 2003.

The main changes involve setting limits on the amount of publicly funded advice available for each client under both Legal Help and Controlled Legal Representation and the introduction of a system of accreditation for all those involved in giving advice on immigration and asylum issues.

As detailed in the consultation paper, the package also includes the introduction of a unique file number for each client, (based on the Home Office reference number) that suppliers will need to use when claiming costs from the Commission.

We are issuing a separate consultation paper setting out the implications of the Government's proposals for the General Civil Contract. This is available on our website at www.legalservices.gov.uk. We are also carrying on discussions with the Law Society and others on the detail of how an accreditation scheme might work.

Detainees Leaflet

The Law Society, Law Society of Scotland, OISC, LSC and ILPA have jointly produced a leaflet entitled 'Legal Advice for people who are detained by the Immigration Service'. Copies are available from these organisations and are currently being distributed to all main detention centres.

Update on CLR Merits Test Guidance

On 16 December we issued revised guidance on the application of the merits test for Controlled Legal Representation. This guidance amended section 5 of the General Civil

Contract (Solicitors and Not-for-Profit Specification). This article is intended to update suppliers on issues arising since implementation and suppliers are asked to make all staff aware of the contents of this article.

Since these amendments, section 101(1) of the Nationality, Immigration and Asylum Act 2002 has come into force. This section limits applications for leave to appeal to the Tribunal to a point of law only. This will mean that applications for CLR should only be granted where the appeal is on a point of law and not fact.

Since its introduction we have received a number of enquiries from suppliers regarding how they implement and interpret certain aspects of the test. In particular some suppliers are still unsure about whether they can still continue to provide Legal Help after refusing Controlled Legal Representation.

The position is that you should assess both the means and merits of a case for Controlled Legal Representation once the appeal right has arisen (subject to the exceptions set out in the guidance itself). This matches the approach taken in relation to other forms of Legal Representation and which is set out at Rule 3.9 of the General Civil Contract Specification. Paragraph 9 of the guidance to Rule 5.2 in the General Civil Contract Specification states that: 'If the criteria for Controlled Legal Representation are not satisfied then suppliers should not continue to provide Legal Help to the client in connection with that appeal except to inform the client of their situation and advise on rights of appeal.' The relevant criteria referred to here are both the client's means and the merits of the case – see also Rule 2.5 and paragraph 4 of the guidance to Rule 5.2 in the General Civil Contract Specification.

In other words, if the client has failed (or would fail if the tests were applied) either the merits or means tests for granting Controlled Legal Representation then you should not continue to provide Legal Help in connection with the appeal. The only situation where you may continue to advise under Legal Help would be to enable you to make representations on

the client's behalf, which are not in connection with the appeal.

If you are currently assisting a client under Legal Help where in light of the guidance you should have ceased to provide assistance then you should cease to provide further Legal Help except to inform the client of the position and save to the extent of any professional duty owed (see paragraph 8 of the guidance to Rule 5.2).

TOUTING Asylum Work

The LSC has received a number of reports of touting at ports of entry (particularly at Dover) by representatives from firms with legal aid contracts.

The reports include instances of asylum seekers being approached in the street and given business cards, and even of being offered financial inducements to transfer instructions. Practitioners are reminded that:

- Approaching asylum seekers who are not existing clients with a view to obtaining their instructions is a breach of Rule 1.2 of the General Civil Contract Specification (Solicitors). It is equally a breach to allow others to do this on the firm's behalf, for example by giving business cards to an interpreter who will then approach the asylum seekers him or herself.
- Paying referral fees to touts or employing someone to approach potential clients directly would be a breach of the Solicitor's Practice rules and therefore of General Civil Contract Standard Term 2.13.

The LSC will not hesitate to take sanctions, including contract termination where appropriate, against firms that are proved to be engaging in these or similar activities. Such behaviour will be taken into account in the award of contracts to immigration suppliers from April 2004.

CHANGES TO CIVIL COSTS ASSESSMENT FOR CONTROLLED WORK

New rules were introduced under the General Civil Contract from 1 April 2003 and similar provisions will come into effect on 21 July 2003 for the General Criminal Contract.

The following approach will be adopted in relation to all civil costs audits for Controlled Work where the date of notification of the results is on or after 1 May and to all criminal audits where the date of notification of the results is on or after 21 July this year.

The position is essentially the same for crime and civil, subject to one point covered below. This should make the procedure easier to operate, including at costs committees. Crime suppliers should refer to *Focus on CDS*, issue 12.

To ensure that the files sampled for audit are properly representative, the sample will be stratified by category (civil), or class of work (crime). The files for audit will be selected at random by computer within the stratified sample.

Generally, there will be no extrapolation of costs assessments for Category 1 suppliers. We have taken into account the views expressed in the consultation on the crime contract amendments. This should facilitate good partnership working and encourage more suppliers to attain this Category.

We will now extrapolate in Category 2 and Category 3 cases for both crime and civil. However, in order to minimise the cost and expense of appeals, we will extrapolate at 5 percentage points below the assessment in all cases where there is no appeal. Thus a supplier which is assessed at 15% overall on the sampled files will have 10% recovered from its population of claims subject to audit. In general terms the claims to which extrapolation will apply will be all claims submitted after the date files were called for in connection with the previous audit, up to the date files were called for in connection with the current audit, subject to not going back earlier than 12 months if there is a longer period between audits, or two years in the event of misclaims under a crime contract.

If there is an appeal, that is a final and

independent determination of the proper assessment rate, and we shall extrapolate at the full rate found. Essentially therefore, it will usually only be worth the trouble of appealing if there are issues which lead the supplier to believe there is overall a greater margin of error in our assessments than the 5 percentage points offered. We hope this will be seen as a valuable concession, which will save considerable resources on both sides.

A supplier's categorisation will continue to be determined by its assessment results even where extrapolation will be at 5 percentage points less. Hence a supplier assessed at 24% will be classed as Category 3 even where extrapolation will be at only 19%.

We shall maintain the position that suppliers found to be in Category 3 will receive a contract notice on the first occasion, which will be a formal warning that a second consecutive finding of Category 3 if confirmed will result in contract termination.

Suppliers have the right of appeal against our assessment findings. Any supplier wishing to appeal must comply strictly with the 21-day time limit, or apply for a short extension before that deadline expires. That right includes the right to appeal on the grounds that the sample taken is not truly representative of the supplier's work over the relevant period. Specific evidence that the audited sample is not representative may lead to further files being audited.

Once we have notified the assessment results to any Category 2 or 3 firms, we shall wait 21 days in case of any appeal, unless we are notified no appeal is intended. We shall then arrange to meet with the supplier concerned and discuss the result of the audit and how to implement the appropriate recovery.

In essence recovery will be effected by a reduction in the claims to be reconciled against the contract payments. Contract monthly payments may therefore be reduced both:

- to effect recovery of the extrapolation amount over a period to be determined in the light of the circumstances of the

supplier. This should generally be within the current financial year, but if there are significant extenuating grounds it could be over the next following financial year as well. It should never exceed that period.

- where appropriate, to reflect the fact that over claims are not expected to continue in the future.

If you have any queries about this approach, please contact your local Account Manager or Contract Manager.

UPDATED COMMUNITY LEGAL SERVICE LEAFLETS

In order to ensure that the CLS Information Leaflets remain accurate and relevant they are in the process of being reviewed and amended by their authors. So far the following leaflets have been updated and are now available to reorder.

Leaflets updated in April 2003: Dealing with Debt, Employment, Divorce & Separation, Wills & Probate, Problems with Goods & Services, Community Care and Alternatives to Court. Leaflets updated in June 2003: the Human Rights Act, Personal Injury, Claiming Asylum and Medical Accidents. The remaining leaflets will be reviewed and updated by Autumn 2003.

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

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

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

NOT-FOR-PROFIT CONTRACT 2003 Update

A new General Civil Contract for not-for-profit (NFP) suppliers came into effect on 1 April 2003. The contract introduces a number of necessary changes to secure value for money in the light of the increasing role of the NFP sector within the Community Legal Service, the most significant of which is the introduction of a contract compliance process to assess the reasonableness of work done under contract.

During 2003/4 we will be undertaking the following activities to support the implementation of the new contract:

Contract consultation summary and response

There was a sizeable response to the consultation on the new contract, which we took into account when drafting the final version of the contract. We will publish a summary of all responses received, and our views on these, on our website (www.legalservices.gov.uk) in July. Copies will also be sent to NFP suppliers and their networks.

Educational audits

We have begun a round of 'educational' audits

designed to assist suppliers in meeting the new requirements by providing feedback on their current performance. The timing of these varies from region to region, but each NFP supplier will receive an educational audit and be given at least six months to implement any changes advised before a full compliance audit is conducted.

Training

Our regional offices and the NFP networks will deliver training on the new contract this year. Further guidance and audit materials (including a new assessment booklet) will also be available on our website.

Time standards

We intend to introduce time guidelines for each category of law for the NFP sector. These will not be introduced until later in the year, after further discussion with the NFP networks.

Ensuring value for money in the NFP sector

In September we will be sending a questionnaire to all NFP suppliers to examine the hourly cost to suppliers of providing advice under the contract. We are working with the sector to develop the questionnaire and hope

that the networks will encourage their members to participate in this survey. The data collected will inform the future development of policy on funding NFP contracts.

Managing performance

The first quarter review of NFP performance will be undertaken in July. New guidance on the management of under-performance will be added to Annex C of the contract in time for this review, following consultation with the NFP networks. Copies of the update will be available on our website and will also be sent to NFP suppliers and their networks.

We are working with the sector to develop a two-day training course for managers focusing on contract management skills, with the aim of improving performance. We are likely to run two pilots initially in the North West and the South East this autumn, with a view to extending the scheme nationwide later in the year. For further information please contact:

Value for money project, and contract management training: Civil Remuneration Team, LSC Head Office: 020 7759 0000.

All other queries: Civil Contracting Policy Unit, LSC Head Office: 020 7759 0000.

COMMUNITY LEGAL SERVICES DIRECTORY 5TH EDITION

The fifth edition of the Community Legal Service (CLS) Directory is now available. It includes information on Criminal Defence Service suppliers. If you have been awarded or are in the process of being awarded the Quality Mark, you should have already received a copy of the directory for your region.

The Future of the CLS Directory

During 2003 the Legal Services Commission will be conducting a review of the paper CLS Directory, CLS Directory Line and the online JustAsk! version of the directory. The outcome of this review could be to amend the format of the directory (in all its versions) or even to decide that a paper copy will not be produced in future. Work on a sixth edition of the

paper directory will not commence until the results of this evaluation are available at the end of 2003. If you would like to contribute, please see the feedback forms available within the paper directory and on JustAsk! www.justask.org.uk

The CLS Directory and the Quality Mark

Quality Marked suppliers must have access to the CLS Directory in order to satisfy the requirement to operate a referral and signposting service, either the printed version of the directory or the online version available on the JustAsk! website at www.justask.org.uk

How to amend entries in the CLS Directory

If any entries in the CLS Directory contain incorrect or incomplete information, please use

the feedback form on www.justask.org.uk or complete the CLS Directory amendment form found within each directory, and return it to: Resource Information Service, The Basement, 38 Great Pulteney Street, London, W1F 9NU or fax it to: 020 7287 8928

How to obtain copies of the CLS Directories

If you require copies of the CLS Directories please use the CLS Directory order form, which can be downloaded from the LSC website at www.legalservices.gov.uk and send it together with a cheque for the relevant amount to: William Clowes Ltd, Beccles, Suffolk, NR34 9QE.

STATUTORY CHARGE STATEMENT UPDATE

Further to the article that appeared in Focus 39 we can now confirm that with effect from July 2003 we will be commencing the next stage in the issue of statements to clients on a rolling basis, annually on the anniversary of the first registration of the charge.

The scheme will continue to be extended to eventually include all clients with a charge on their property.

The provision of this information is in line with the Commission's wish to provide good customer service by keeping clients informed.

Pilot

During pilots held in December 2002 and May 2003, 400 statements were issued to clients for both interest and non-interest bearing charges. The results of these pilots have helped determine the resource requirement to ensure adequate customer service is maintained for anticipated enquiries made.

Further Information

A target of 9,000 annual charge statements to be issued has been set for this financial year, 2003/04. The statement will provide explanatory information to the client and direct them to contact the address below with any enquiries they might have. If you have any comments or queries they should be sent to:

The Charge Statement Team
Legal Services Commission
Head Office
85 Gray's Inn Road
London WC1X 8TX
Tel: 020 7759 0000

SIMPLIFYING THE SQM

The Commission is committed to improving the audit process as part of its approach to Supplier Management. In Focus 41, we provided you with details of a project to simplify the Specialist Quality Mark (SQM) and its audit process.

This project is developing in three phases, with the aim, on completion, to have reduced bureaucracy in the SQM for the benefit of all suppliers, have a greatly simplified audit process for our stronger performers and have a benchmark against which we can assess quality performance.

Phase One of the project is now complete, having conducted extensive research with suppliers to review operation of the SQM one year on from its implementation. While the research asked a whole range of questions about the standard, critical to this project was the need to identify where respondents believed there to be unnecessary bureaucracy and to explore what might be appropriate to resolve it.

Overall, responses showed that there is strong support for the SQM as an effective management tool, and there was praise from many suppliers on what it can help organisations achieve. However the research also showed that many suppliers are unsure about what exactly the standard is seeking, and feel frustrated by a perceived lack of flexibility in meeting certain requirements.

A considerable number of research respondents indicated that they were doing more than is required 'just to be sure', and many identified alternative ways in which we could simplify how we ask for certain requirements to be evidenced at audit. The solutions suggested were practical and constructive (for example to produce a series of compliant template letters and procedures for supplier use) and will be considered for development over the next six months or so. During that time, the project will also explore a number of issues that suppliers sought to have resolved which were specific to them (eg as a small supplier) or the types of cases they handled (eg crime).

Of greater interest in the immediate term, however, were results that identified significant uncertainty about the scope for flexibility that already exists in the SQM. This was deduced from the overwhelming number of respondents who gave examples of flexibility that they would like to see when meeting the requirements which are, in fact, already catered for.

Areas in which we found that suppliers were often unnecessarily self-constrained include file review, business planning, training, supervision and client feedback. These are the very areas that suppliers tell us they find overly bureaucratic, and so the relatively simple task of improving understanding about the flexibility *already* available should have a significant and positive impact.

In response to this finding, in future editions of *Focus* and *Focus on CDS* we will be including articles that will seek to unravel some of the most common misconceptions surrounding the SQM. Other ways in which we can clarify the standard and advise on the extent of SQM flexibility (as it is set out in the guidance that accompanied the standard) are also being identified, including providing additional training to our audit staff to support this process.

The Project is now moving forward into its next stage, looking at how we can use tools such as Peer review, to directly assess the quality of advice being provided, and to see how and where this could impact on requirements that need to be evidenced at audit.

Phase One of the project has already shown how valuable supplier input is, and we would like to thank all those who took the time to respond to the research. Throughout the project's progression we will be consulting and working closely with suppliers, including on a specifically convened project working group, that includes representative members from LAPG, Law Society and ASA, as well as practitioners. If you have any queries in relation to this project, or would like further information please e-mail alison.brown@legalservices.gov.uk

TRANSFER OF FAMILY WORK

from South East Region (Reading and Brighton Offices) to Newcastle and Liverpool

Since 2 June 2003 Reading has been using the additional resources available in the Newcastle and Liverpool/Chester offices to process matrimonial and family applications. This change was implemented in order to improve our customer service by reducing backlogs. We are confident that these changes will provide speedier decisions on applications and associated work (amendments/authorities/post and other side representations).

The Reading office will provide a more tailored, customer orientated service focused on non-family work. We have a dedicated team concentrating on the wide range of non-family cases and providing a telephone help-line to assist and support our customers.

These changes only affect where work is processed. All appeals where the client or supplier wishes to attend will continue to be arranged at a venue local to the supplier irrespective of where they are being processed. All non-family cases over £25,000 will continue to be dealt with by the Special Cases Unit in Brighton, as will family applications for leading counsel or more than one counsel (see notice on page 12). The Civil Bills/Finance

section will also remain in Brighton for all types of work, both family and non-family.

Reading suppliers should direct all work associated with a family application such as telephone calls and correspondence to the Newcastle office and Brighton suppliers should direct their family work to the Liverpool office.

If you have any queries regarding the transfer please do not hesitate to contact the Reading office on 0118 9558600.

The duty line numbers and address for Newcastle are:

Legal Services Commission
DX 61005
Newcastle-upon-Tyne 1
Telephone: 0191 2445810
Emergency Fax: 0191 2445998

The duty line numbers and address for Liverpool are:

Legal Services Commission
DX 14208
Liverpool 1
Telephone Number: 0151 2425370
Emergency Fax: 0151 2425394

NEW DEPARTMENT TO REPLACE LCD

Following the Government reshuffle, the Lord Chancellor's Department is no more and has been replaced by the Department for Constitutional Affairs which will be responsible for legal aid.

Lord Irvine has retired as Lord Chancellor and has been replaced by Lord Falconer of Thoroton, who will be known as the Secretary of State for Constitutional Affairs and a process of wide-ranging consultation is underway on proposed reforms to the legal system. In further changes the new department has new Parliamentary Under-Secretaries, namely Christopher Leslie MP, David Lammy MP and Lord Filkin. Baroness Scotland has moved to the Home Office and David Lammy will take over her brief including that of legal aid.



David Lammy, MP

PARTNERSHIP INITIATIVE BUDGET

Funding awarded to local initiatives

On 22 October 2002 the LSC announced plans to fund local initiatives under a further round of the Partnership Initiative Budget (PIB).

At this time bids were invited for initiatives that focused on getting services to priority client groups who have difficulty accessing the Community Legal Service. The focus was on projects that specifically related to Community Legal Education and/or developing or promoting links between Community Groups and Legal Advice Providers.

A total of 69 projects have been awarded funding, in principle, throughout England and Wales, amounting to £5.6m, over a three year period. Seven of these projects are in Wales and will be jointly funded through a collaborative arrangement, worth nearly £1m, between the Commission, the Community Fund and the Welsh Assembly Government. Further projects are still being considered for funding.

All of the projects have been sponsored by local Community Legal Service Partnerships (CLSPs) and have funding from other sources, external to the LSC.

The approved projects include a number of Financial Literacy and Debt Prevention projects, projects that raise Domestic Violence awareness and projects that focus specifically on the legal advice needs of the young and old. A full list of the projects approved in principle can be found on the LSC website, www.legalservices.gov.uk

For further information contact Helen Perkins in the CLS Policy Team on 020 7759 0459.

legal services

COMMISSION

FAMILY ADVICE & INFORMATION SERVICE

Full pilot areas

The Family Advice & Information Service (FAInS) has entered the first phase of full pilot operation in England and Wales, following a successfully completed pre-pilot phase.

The first phase areas are confirmed as Basingstoke, Hartlepool, Leeds, Lincoln, Mansfield and Stockton-on-Tees. The pre-pilot areas of Cardiff, Exeter and Nottingham will continue to participate in the full pilot.

The Family Law and Mediation team would like to thank all the suppliers in the areas that were short-listed, for their interest in the pilot, even if they are not currently participating in Phase 1. It is likely that there will be further phases of expansion in the pilot, and we will hope to re-visit these areas in the future. Equally, we hope to bring the pre-pilot areas of Milton Keynes and Newcastle-upon-Tyne back into the pilot in due course.

Professional Development seminars took

place in early July in the pilot areas. These are compulsory one-day events, to introduce all new participants in the pilot to the new way of approaching family work that is intrinsic to the FAInS approach. The seminars have the backing of the solicitor's governing bodies, and count towards their CPD allocation.

If any family solicitors have not registered their interest and would like to do so, or would like any more information, please contact fains@legalservices.gov.uk

Consultation Group working

The FAInS team is continuing to work closely with the consultation groups that were established to support the pilot. These stand-alone groups meet approximately 3–4 times per year, and represent the legal, family mediation and voluntary sector respectively. These groups ensure that external views and events are considered when planning for FAInS, and endeavour to work cohesively in sharing

information and removing duplication.

The Mediation Consultation Group is specifically looking at how the project could pilot the use of mediation services as access points for FAInS. The lead body representatives (from the UK College of Family Mediators, Family Mediators Association, National Family Mediation, NCH, Solicitor's Family Law Association mediation and the Law Society) have been debating this with us and for our next meeting at the end of September, we would like interested mediation services in the pilot areas to put forward concrete ideas and proposals of how they see FAInS operating within their service, and how it would need to serve their local clients. Services can either submit their proposals to their lead body, or can contact the Family Law and Mediation team. If anyone would like further information, please contact fiona.dagenais@legalservices.gov.uk

NOS FOR THE LEGAL ADVICE SECTOR



In partnership with the legal advice sector, the Legal Services Commission has been successful in obtaining funding from the European Social Fund (ESF) to develop National Occupational Standards (NOS) for legal advice.

The NOS project represents a significant and innovative step forward in the field of professional and vocational development. It will have a major impact both on the quality of advice provided to the public and on the status, employability and transferability of skills of individuals working in the legal advice sector.

The project has brought together a wide and diverse range of stakeholders including those who represent, support and regulate and train practitioners across the public, private and voluntary sectors¹. It has two key aims:

- To develop a framework for professional support, work-based training and

individual development based on competence levels that will apply across a range of practitioners from volunteer community centre workers to private practice solicitors

- To profile the workforce in the legal advice sector to identify current skills levels, training gaps and skills shortages and develop a work force plan to address these and recruitment and retention issues in the legal advice sector

These aims will be achieved through a programme of detailed research and extensive consultation with employers and workers. Commencing in October 2003 it is expected the workforce plan will be published in early 2005 and the NOS in early 2006.

The project will cover all publicly funded categories of law namely all social welfare categories and client-based categories such as young people, asylum seekers and refugees as

well as categories generally only advised on by private practice solicitors such as crime, personal injury and clinical negligence. The geographical scope has initially been limited to England and Wales but will, in due course, make contact with relevant organisations in Scotland and Northern Ireland to share findings.

The funding secured from the ESF, which has enabled this project to go ahead, is approximately half the total budget (£815,000 of £1.8M) with the balance of costs being met primarily from the sector and the Legal Services Commission.

¹ Advice Services Alliance, Advice UK, Age Concern England, Citizens' Advice, DIAL UK, Institute of Legal Executives, Local Government Association, Law Society, Law Centres Federation, Legal Services Commission, Office of the Immigration Services Commission (Co-opted), Refugee Council, Shelter, Shelter Cymru, Youth Access.



***Civil Guidance
and Development***

ADOPTION PROCEEDINGS – LOCAL AUTHORITY FUNDING

The Legal Services Commission wishes to draw the attention of practitioners to the availability of funding from local authorities to support adoption proceedings. Delays have been caused by the lack of clarity regarding funding of such proceedings as between the Commission and any relevant local authority.

The position is clarified by the Adoption Support Services (Local Authorities) (England) Regulations 2003, SI 2003/1348, and guidance on the regulations issued by the Department of Health.

In short, local authorities may make financial support available to facilitate the placement of a child with adoptive parents and this extends to the legal costs, including court fees, in relation to the adoption of the child. The Department of Health guidance, issued after consultation by the Lord Chancellor's Department with the Association of Directors of Social Services, aims to resolve delays around

funding and to improve consistency of practice.

The guidance makes it clear that the local authority is expected to consider the need for help with legal costs for those applying to adopt a child in their care with their support. Local authorities will be expected to meet the adopter's legal costs in contested cases and may also decide that assistance is justified in uncontested cases.

The guidance recognises that where a local authority supports an application to adopt a child in their care, and the adopter needs help with the legal costs, the Funding Code (criterion 5.4.2 and LSC guidance, paragraph 20.15) allows for the refusal of funding, having regard to the availability of alternative funding. The Department of Health guidance indicates that it is wholly unreasonable for the local authority to require the adopter to apply to the Commission for funding before offering support themselves, since this would lead only to a delay in the case (see paragraphs 169 to 175 in

the guidance).

Where the local authority, exceptionally, does not support the application to adopt a child in their care, the prospective adopters may be able to obtain public funding through the Commission. However, applications for cases which should be funded by the local authority will be refused public funding from the Commission.

Practitioners may need to draw the attention of local authorities to the funding position. The Regulations come into force on 31 October 2003 but applications submitted to the Commission before that date may be refused on the existing guidance contained in the Legal Services Commission Manual (paragraph 20.15, page 3C-165).

The Regulations and Department of Health guidance can be found on the Department of Health website at www.doh.gov.uk/adoption in the Stop Press box or at www.doh.gov.uk/adoption/adoption/support.htm

CASE OUTCOMES

The New Codes

The new case outcome codes for both certificated work and controlled work have been in operation for three months. Details of the new codes were contained in the April 2003 Forms Masterpack Update and can still be found on the News section of our website at www.legalservices.gov.uk.

When reporting controlled work outcomes under the SPAN system, some suppliers have continued to report using old or inappropriate codes. With the exception of certain not-for-profit suppliers, who have been permitted to use the old outcome codes up to 1 October 2003 while their software systems are updated, it is important that all suppliers now use only the new codes. Failure to do so is likely to lead to missed payments under the SPAN system.

When reporting SPAN outcomes please refer to the guidance on available outcomes included in the Forms Masterpack Update. Points to remember include:

- For each outcome reported on the Consolidated Matter Report Form, three

end point fields must be completed. The first is the client outcome of the matter, the second end point records whether there is any significant wider public benefit and the third end point records the stage at which the matter concluded.

- There should be no numbers entered anywhere in the end point fields. The new codes are all alphabetic characters.
- Some codes are available in all categories while others are category specific. Especially in immigration cases, when recording end points 1 and 3 please take care that the code reported corresponds to the appropriate category of law.
- When making an immigration stage claim, the appropriate code (X, Y or Z) should be entered in end point field 3, with end point fields 1 and 2 left blank.
- Suppliers should check that their existing software systems are compatible with the new codes. If not, they should contact their software supplier and invite them to liaise with the Commission to ensure that the correct reporting codes are applied.

Outcomes and Supplier Management

Accurate outcomes reporting has never been

more important to suppliers or the Commission, as we have recently begun a project to look at how outcome data, reported by suppliers, might be incorporated into the new supplier management process. The aim is to add an initial assessment, for quality of work, to the information already being used to determine audit approach.

Without wanting to pre-empt the project findings, we also anticipate that the structured use of outcome data could provide alternatives or equivalents to a number of SQM requirements, which should provide an opportunity to further reduce the audit burden on suppliers, particularly for the very best performers. Some initial research is already underway, using data supplied in the first month after the new codes were introduced. This is being analysed by external researchers to identify factors that when considered in series could be indicative of overall quality performance. We expect to be able to consult on proposed sets of indicators in a number of categories later this year, and are working on developments in the project with The Law Society in the meantime.

FUNDING CODE UPDATE

Recent Consultations

We have just completed three consultations on different aspects of the Funding Code Guidance. Final versions of the guidance will be posted on the website shortly and will be included in the next update of the LSC Manual to be published in August. Any guidance changes will take effect from 1 September 2003.

Domestic Violence

Our guidance on domestic violence has been re-written to clarify our approach to funding these high priority cases. Our aim was to improve the clarity and consistency of the guidance in the light of concerns raised by practitioners and our Regional Legal Services Committees. The revised guidance was broadly welcomed on consultation. Whilst we have kept the main structures and features of the guidance we have been able to incorporate a number of improvements suggested in consultation to clarify or give examples of how aspects of the guidance may operate in practice.

Overall, the structure of the new guidance is intended to make it easier for practitioners to ensure that they address all relevant issues when applying for funding or submitting forms following an emergency grant under devolved powers. We also trust the new guidance will be easier to adapt in response to wider reforms, such as the Home Office's recent consultation paper on domestic violence 'Safety and Justice' published in June 2003.

Multi-Party Actions

We have published revised guidance on the funding of multi-party actions, in particular on issues concerning the relative roles of public and private funding within group litigation. We have also included guidance on our power to waive financial eligibility levels under Regulation 5B of the Community Legal Service (Financial) Regulations 2000. These aspects of group litigation raise very complex issues. Bearing in mind responses to the consultation, we intend to apply our guidance not as a series of rigid rules, but as a broad framework within which our approach to funding will be tailored to meet the needs of each individual action.

Education Claims and Conditional Fee Agreements

We have also consulted about options for encouraging the wider use of conditional fee agreements (CFAs) in relation to education damages cases. We recognise that practitioners are strongly opposed to the use of CFAs in this area, but we believe these are issues which need to be addressed. Damages claims arising out of provision of education services are not a high priority within the Community Legal Service.

In light of the responses to consultation we have decided not to implement the proposed guidance changes at this stage but will consult further on the future funding of education cases in the autumn.

Future Development of the Funding Code

The Funding Code Criteria have not been altered since the Code came into operation in April 2000. We propose to issue a consultation paper in the autumn to consider whether changes to the Code are appropriate on or after April 2004. We have no plans at present for any major structural reform of the Code but do wish to consider whether the existing definition of levels of service and criteria in the Code remain appropriate. In particular we would like to consider the future scope and criteria for funding the following areas, both in the light of external reforms and our experience of operation of the cases under the Code to date.

- Clinical negligence claims (in light of the publication of the Chief Medical Officer's report)
- Actions against the police
- Education claims

We welcome proposals on reform of the Code at any time. Comments may be sent to Michelle Jordan, Policy & Legal Department, Legal Services Commission, 85 Gray's Inn Road, London, WC1X 8TX.

CHANGES TO THE COMMISSION'S ASSESSMENT LIMITS

In Focus 41 we notified you of the proposal to increase the Commission's assessment limit to £2,500. This has been implemented with effect from 1 July 2003. All suppliers should by now have received a copy of the Commission's Information Pack. If you have not received your copy please contact Brigitte Gilbert on 020 7759 0367 or by e-mail on brigitte.gilbert@legalservices.gov.uk

We invited all Law Costs Draftsmen to let us know if they wished to receive a pack. If you have not informed us you would like a copy or the copy has not yet arrived, please contact Brigitte as above.

Regional offices will shortly be arranging supplier forums and will contact suppliers directly in this regard.

The information pack including the regulations have been posted to the website. If you have any queries relating to the change please contact Ruth Symons or Matthew Howgate on 020 7759 0000 or by e-mail on ruth.symons@legalservices.gov.uk, matthew.howgate@legalservices.gov.uk

CONGESTION CHARGE

In Focus 41 we set out the interim guidance pending consultation with the Law Society and LAPG. Final guidance has now been issued to LSC staff.

Following consultation, suppliers inside the charging zone now have one exception to the general principle that the congestion charge is an overhead for suppliers within the charging zone. *The exception is where the fee-earner has driven into the zone within charging hours specifically for the purpose of a case either to attend on the client or to transport large files to a hearing. Whenever the charge is incurred we will assess the reasonableness of the claim.*

The guidance has been posted on our website (www.legalservices.gov.uk).

ASSESSMENT OF JOINT ASSETS IN CONTRARY INTEREST CASES

There has been some debate about the treatment of joint assets for persons living together but of opposing interests and the circumstances for determining whether a couple live in the same household. This note seeks to clarify the position.

Regulation 11 of the Community Legal Service (Financial) Regulations 2000 contains a general provision that the income and capital of the client's partner must be taken into account and added to those of the client *except* in circumstances where the partner has a contrary interest in the proceedings for which the client is seeking funding.

A partner is defined as anyone (including a person of the same sex) with whom the applicant lives as a couple, and includes a person with whom the applicant is not living but from whom he is not living 'separate and apart'. The concept of living 'separate and apart' refers to a breakdown in the relationship where at least one of the parties involved regards the relationship as at an end. It is therefore possible for former partners to live 'separate and apart' in the same property pending the final resolution of their financial affairs. In these circumstances separate households have effectively been formed by the former couple.

The basic principle for awarding a dependants allowance for a partner (currently £135.14) is that it is given *where the client has a partner*. Therefore it is correct that this allowance applies provided the couple are 'living together', regardless of whether there is a contrary interest. A dependants allowance would therefore be awarded in a case where the client and their partner have a contrary interest in a claim made by a third party.

A couple should not be treated as 'living together' if they would be viewed as living 'separate and apart' for aggregation purposes. Put simply, in circumstances where one or both parties views the relationship to be at an end, the client is no longer deemed to have a

partner and therefore does not qualify for this allowance. It will most obviously be shown that the separate and apart definition is met where there are ongoing matters relating to children or divorce arising from the breakdown of the relationship. Therefore it would *not* be appropriate to assess a dependants allowance for a partner in these cases unless this relates to a new partner with whom the client's resources should be aggregated.

Similarly where the client is living separate and apart from his or her spouse, a decision will need to be taken as to whether the children reside in the client's household. In cases where parties continue to live under the same roof, the child would normally be considered to be living in the household of the main carer (usually the parent receiving child benefit for that child). Refer to full guidance on awarding the allowance in the LSC Manual, Vol II (paragraph 2C-011).

If the children do not live in the household of the person who has applied for funding, an allowance can be given for payments made towards their upkeep and towards the upkeep of a former partner under the category of 'maintenance'. Household bills including mortgage payments and child minder fees should therefore be apportioned according to the amounts actually discharged by the client and their former partner. Refer to guidance paragraph 2C-013 for a full explanation.

In relation to the treatment of a joint asset which is not in dispute in the proceedings, the assessor should firstly establish whether the client has access to or control of the asset. If full access and/or control of the asset is established in respect of the client, the full value of the asset should be included in the assessment. If the client establishes that there is an agreement or understanding about certain assets being split equally, then it would be reasonable only to take into account half the value of the asset.

The above advice also applies to a joint household account into which wages (in part or in full) are paid and from which household payments are discharged. The balance of funds should be assessed as follows:

Take the balance prior to the last wage credit (if two salaries are deposited into a joint account take the balance just prior to both salaries being paid in). This will indicate residual funds in the account after the previous month's salary was used to meet expenses. Add any subsequent non-wage credit evidenced as being paid into the account and use the resulting balance for capital assessment purposes.

VERY HIGH COST FAMILY CASES

Our procedures for funding very high cost family cases have been simplified. Family cases – including Public and Private law Children Act Proceedings – will no longer be subject to High Cost Case controls unless authority is sought to instruct leading or two junior counsel.

Applications for amendment and prior authority from that date where costs have – or are likely to – exceed £25,000, should be submitted on CLSAPP8 to your local regional office. A fully costed case plan will not be required. Costs will no longer be agreed in advance and cases funded under these arrangements will be dealt with by detailed assessment by the court. Cases currently under an individual case contract will continue to be managed in that way.

The exception to this change relates to cases where authority is sought to instruct leading or two junior counsel. In this case, the High Cost Case controls will apply. Applications of this nature will continue to need to be supported by a fully costed case plan. The matter will be dealt with by the Special Cases Unit and managed under individual case contracts.

The reason for this change is that in our experience there have been few gains from individual case contracts where leading counsel or more than one counsel are not employed.

IMMIGRATION HEARINGS OUTSIDE ENGLAND AND WALES

Immigration contractors should note that as of 1 September 2003 the LSC will no longer fund services for clients in appeals to an adjudicator, the Immigration Appeal Tribunal or any onward appeal where the client's appeal to the adjudicator was or is to be heard by an adjudicator sitting outside England and Wales.

The reason for this is that under s 19 of the Access to Justice Act 1999 the LSC may not fund services relating to any law other than that of England and Wales, unless any such law

is relevant for determining any issue relating to the law of England and Wales. Where an adjudicator determines an appeal outside England and Wales, the appeal will be determined according to the law of that other jurisdiction and funding representation for the client will not fall within the LSC's powers. In addition, s 109 of the Access to Justice Act makes it clear that the LSC's powers to fund services in relation to immigration hearings extend only to England and Wales.

Subject to representations that we may receive on this issue, we will apply the

approach outlined above to all hearings taking place on or after 1 September 2003.

For hearings in Scotland funding may instead be available through the Scottish Legal Aid Board, 44 Drumsheugh Gardens, Edinburgh EH3 7SW (tel: 0131 226 7061, website: www.slab.org.uk). For hearings in Northern Ireland contact the Law Society of Northern Ireland, Legal Aid Department, 3rd Floor, Bedford House, 16-22 Bedford Street, Belfast BT2 7FL (tel: 02890 246 441, website: www.nilad.org).

CONTRACTING AND RISK MANAGEMENT

Last year, we published a consultation paper setting out policies and procedures that we proposed to implement to reduce the risks to clients and public funds that might arise through entering into and maintaining contracts with inappropriate solicitor and not-for-profit organisations.

The first set of policies and procedures concerned additional pre-contract enquiries that we proposed to make about organisations that sought contracts, and our proposed responses to some possible replies to the enquiries (illustrated in Annex B to the consultation paper). In some circumstances, the response to replies would be 'decline' (a refusal to award a contract) in others it might be 'caution' (carrying out further enquiries, or the award of a contract but subject to additional contract terms, or the refusal of a contract – usually after further enquiries). Annex B appears on the following page.

The second set of policies and procedures concerned sharing information with appropriate bodies when it is in the public interest to do so, with a view to combating fraud, and included a draft protocol for sharing information with appropriate bodies, eg the Office for the Supervision of Solicitors. The consultation paper posed three specific questions:

- Do you agree that the Commission should

make the proposed additional pre-contract enquiries?

- Do you agree with the proposed response to the results of pre-contract enquiries as set out in Annex B?
- Do you agree with the proposals for sharing information with regulatory or tax authorities, etc, if the public interest in doing so outweighs the interest in maintaining the contractor's confidentiality?

Respondents generally welcomed the proposals relating to pre-contract enquiries and supported the proposed responses to replies to such enquiries.

Respondents also supported the proposal to share information with appropriate bodies when it was in the public interest to do so, provided statutory confidentiality provisions were not breached and safeguards were in place to ensure that information was disclosed only when it was justifiable to do so.

We are, therefore, implementing the proposals in the paper, and to ensure consistency of decision-making and that any disclosures are made only when justified, have assigned to our Head of Special Investigations (based in our Red Lion Street office in London) responsibility for the matters covered by the consultation paper. Some specific steps are

described below.

We will refuse contracts, or specify additional contractual terms as safeguards, when the responses to pre-contract enquiries are adverse (see Annex B on page 14).

We will be more likely to call for copies of organisations' accounts which, if they do not wish to disclose them to a regional office, they may send direct to the Head of Special Investigations for review by an accountant.

We are establishing a database of organisations whose contracts we have terminated (including the names of relevant partners, directors, etc) which we will check before deciding whether to award a contract to a new organisation. The database will also include the names of any person who has been excluded from contract work.

We are discussing, with the OSS, arrangements for sharing information when it is in the public interest to do so.

The consultation paper and post consultation summary report may normally be obtained from the Commission's website at www.legalservices.gov.uk (in the 'other consultation' archive). Paper copies may be obtained from Simon Morgans, Policy & Legal Department, in the Commission's Head Office at 85 Gray's Inn Road, London WC1X 8TX.

The Head of Special Investigations may be contacted at 29-37 Red Lion Street, London WC1R 4PP.

ANNEX B

SANCTIONS & ISSUES RELEVANT TO THE ORGANISATION AND ITS PERSONNEL	LSC'S LIKELY RESPONSES (FOR SANCTIONS, TIME RUNS FROM EXPIRY)			
SANCTION OR ISSUE	LIKELY RESPONSES FOR 3 OR 4 PARTNER FIRM WHETHER CURRENT OR ELAPSED TIME IN YEARS			
	CURRENT	<1 YEAR	1-2	>2 YEARS
Struck Off	decline	caution	caution	caution
Suspended	decline	caution	caution	caution
Tribunal Fine (Legal Aid, improper accounting or client care issue)	n/a	decline	decline	caution
Tribunal Fine (other issues)	n/a	caution	caution	caution
Conditional Practising Certificate (approved employment)	decline*	caution	caution	caution
Conditional Practising Certificate (submit accounts)	decline*	caution	caution	caution
Conditional Practising Certificate (no handling of client monies)	decline*	caution	caution	caution
Conditional Practising Certificate (supervision)	decline*	caution	caution	caution
Exclude from Legal Aid work	decline	caution**	caution**	caution
Order to pay Costs or a Contribution	n/a	caution	caution	caution
Prohibition of Restoration of Name to Roll	n/a	caution	caution	caution
Outstanding OSS issue	caution	n/a	n/a	n/a
Intervention	decline	caution	caution	caution
Judgment Debt (time since entered)	n/a	caution	caution	caution
Previous Contract Terminated (quality issues)	n/a	caution**	caution	caution
Previous Contract Terminated (fraud issues)	n/a	decline	decline	caution
Time since Organisation Formed	caution	caution	caution	accept
Net Worth less than 25% of Contract value	caution	caution	caution	caution
Net Loss recorded in Last Accounts	caution	caution	caution	caution
Net Loss recorded in two or more of last 3 years	caution	caution	caution	caution
Contract Value greater than 50% of Turnover	caution	caution	caution	caution
Return on Capital Employed (profit/net worth) >10%	caution	caution	caution	caution
Debit Balance outstanding to LSC from Previous Organisation	caution	caution	caution	caution
Previous Organisation closed or left in disarray eg with unbilled Legal Aid Matters	caution	caution	caution	caution

*for organisations of five or more partners the likely response would be "caution".

**for organisations with two partners or a sole principal the likely response would be "decline".

THE GENERAL CIVIL CONTRACT (SOLICITORS)

Just what work can you do?

Introduction

If your office has a General Civil Contract and you want to know what work you can do under it, look at the Contract Schedule issued to your individual office. It will show what **Controlled Work** (by numbers of Matter Starts against categories of law) and what **Licensed Work** (by ticks against categories of law) can be performed from your office.

To check your devolved powers, look at section 1.5 of the Contract Specification (see Volume 2 of the LSC Manual at page 2A-78). Look at the Specification and the Funding Code to check rules, criteria, procedures and guidance relating to Contract Work.

If you want to keep an eye on future developments of the 'legal aid scheme', or to find out more about it, visit the Commission's website at www.legalservices.gov.uk. Also visit Just Ask! - the website of the CLS at www.justask.org.uk.

Controlled Work

Controlled Work is:

- Legal Help
- Help at Court
- Controlled Legal Representation

Table A shows the relevant application forms and scope of work.

Clients apply to you (not to the Commission) for these levels of help. If granted, the Commission does not issue any form of certificate to confirm the grant. Each month, you tell the Commission how many matters you have started (on Controlled Matter Start Form CMSF) and which matters you have ended – and what payment you are claiming for them – (on Consolidated Matter Report Form CMRF).

The Commission makes regular monthly payments for Controlled Work, and audits your payment claims – normally once or twice a year.

Matter Starts are authorised in a category only if your office has passed a preliminary

TABLE A, CONTROLLED WORK

LEVEL	A/P FORM	SCOPE
Legal Help	Controlled Work 1	Taking instructions and giving initial advice and assistance e.g. writing letters (like the work that used to be done under the legal aid Green Form Scheme).
Help at Court	Controlled Work 1	Advocacy without formally representing a client (used for mitigation, where there is no defence e.g. in mortgage possession proceedings).
Controlled Legal Representation	Controlled Work 2	Representation at Mental Health Review Tribunals, Immigration Adjudicator, or Immigration Appeal Tribunal (like the work that used to be done under the legal aid ABWOR scheme).

SQM audit in the category.

At any time, you can apply for more Controlled Work Matter Starts, but the Commission has discretion whether or not to grant the request.

Schedules normally authorise some 'Tolerance' matter starts, which you can use for Controlled Work in any category except *Family, Immigration, Mental Health and Clinical Negligence*.

Licensed Work

Licensed Work is mainly:

- Legal Representation
- General Family Help
- Help with Mediation

Licensed Work requires an application to the Commission and the issue of a certificate by the Commission (though you can eg approve emergency certificates and amendments to certificates if you have the necessary devolved powers). It is therefore often referred to as certificated work.

Licensed Work bills are assessed, on a case-by-case basis, by the court or the Commission and are paid, on a case-by-case basis, by the Commission in a twice-monthly BACS settlement.

Table B on page 16 shows the relevant application forms and scope of work.

What Licensed Work can you perform?

There is no limit to the number of Licensed

Work cases that you may start. The individual Contract Schedule issued to your office will show what categories of Licensed Work you can perform. It will do so in accordance with the following rules, which are set out in the Contract (LSC Manual Volume 2 at page 2A-37):

- (i) You may only carry out Licensed Work in the Immigration, Personal Injury, Clinical Negligence or Family Specialist Quality Mark (SQM) categories if you hold a provisional or full SQM in the category concerned.
- (ii) You may carry out Licensed Work in all other SQM categories if you hold a provisional or full SQM in any civil category.

Thus for example if you hold the Family SQM you can also undertake certificated cases in Housing and Welfare Benefits, but cannot do Immigration or Clinical Negligence cases. If you hold the Housing SQM, you can also do certificated cases in Welfare Benefits but not Family cases.

General

Contracts operate on an office-by-office basis. If an office passes a Preliminary SQM audit, it may be awarded a contract but – normally within a year – must pass a Pre-Quality Mark Audit. If the office fails the audit, the contract will be ended. No publicly funded legal services can be performed from an office unless

TABLE B, LICENSED WORK		
LEVEL	A/P FORM	SCOPE
General Family Help	CLSAPP3	Help in relation to a family dispute (including negotiations). Like Legal Help but also covers issuing proceedings and representation where necessary to obtain disclosure, or information, or to obtain a consent order. (Not to be used for Help in support of family mediation.)
Help with Mediation	CLSAPP4	Help in support of family mediation. To enable help to be given to a client who is taking part in family mediation. Does not include any negotiations (as the purpose of the mediation is to resolve issues). Covers e.g. advice on what the client may be entitled to by way of settlement, on whether a settlement offer should be accepted and on any memorandum of agreement following mediation. Covers issuing proceedings solely to obtain a consent order.
Legal Representation	CLSAPP1 (non-family) CLSAPP3 (family) CLSAPP5 (Special Children Act)	Litigation and advocacy and the steps preliminary and incidental to proceedings or to compromise or conclude them. (Like the work that could be done under civil legal aid.)

TABLE C, CIVIL MATTERS NOT COVERED BY THE GENERAL CIVIL CONTRACT	
INDIVIDUAL CASE CONTRACTS (1)	OTHER GRANT OF CONTRACT WORK
Multi-Party Action Contracts	Family Mediation (2)
High Cost Case Contracts	Applications under s 6(8)(b) of the Act (3)
Exceptional Cases Contracts (4)	Other services authorised by specific orders or directions of the Lord Chancellor

(1) The Commission's Special Cases Unit manages these and cases will be referred there if they meet the referral criteria specified in rule C23 of the Funding Code Procedures.

(2) The Commission has issued mediation contracts to organisations with recognised family mediators. Such organisations must meet the Commission's Quality Mark Standard for Mediation and the mediator must meet the individual competence standard.

(3) Applications for funding for services that are excluded by Schedule 2 of the Act – in accordance with the guidance in the Funding Code.

(4) Used to authorise individual cases by otherwise non-qualifying firms where it is in the interests of justice to do so, e.g. a privately paying client becomes eligible for legal aid halfway through a long-running case.

authorised under a contract (or 'other grant' – see table B).

The standard General Civil Contract (Solicitors) documents are in the LSC Manual (as are the SQM and the Funding Code) which you should have in your office. However, the Contract Schedule for your office will have been sent to you individually. So, if you want to know what work you can carry out under your contract, look at the Contract Schedule sent to your individual office.

Finally, an important point, your contract cannot be assigned or otherwise disposed of. It is personal to your firm.

Civil work outside the contract

The General Civil Contract covers most civil cases that are within the scope of the Access to Justice Act 1999. The few it does not cover are shown in table C. This work is authorised by either an individual case contract or by another grant.

FAMILY MEDIATION, HELP WITH MEDIATION AND THE STATUTORY CHARGE

This is a reminder for practitioners about the operation of the statutory charge in relation to family mediation and advice associated with it.

If a solicitor provides Legal Help concerning financial provision for a client, in which property is in issue and, following mediation, the solicitor finalises the matter under Help with Mediation, then the costs of the Legal Help will form a charge on any property recovered or preserved. However, the Help with Mediation and the Mediation costs do not. This is the effect of Regulation 43(3) and (4) of the Community Legal Service (Financial) Regulations 2000 (as amended) – page 1B-55 of the Legal Services Commission Manual.

If property was recovered or preserved, all the Legal Help costs, whatever they were for (including the divorce itself, the children aspects as well as financial provision) go towards the charge. However, the statutory charge exemptions relevant to family cases may apply (Regulation 44 of the same Regulations).

COST APPEALS COMMITTEE POINTS OF PRINCIPLE

**CLA 21, 23 SEPTEMBER 1996,
AMENDED 19 MAY 2003**

Prescribed Rates: Enhancement: Membership of the Law Society's Clinical Negligence Panel

Point of Principle

Membership of the Law Society's Clinical Negligence Panel is not in itself an exceptional circumstance justifying payment of an enhanced rate under Regulation 5(1)(c) of the Legal Aid in Civil Proceedings (Remuneration) Regulations 1994, but membership of the Panel may be a factor which contributes to a decision that enhanced rates are justified.

Factors which may indicate whether a clinical negligence case was conducted with exceptional competence, skill or expertise, so as to justify an enhancement under Regulation 5(1)(a) of the same Regulations, include: the extent to which the solicitor relied on his or her own expertise rather than counsel; and whether the solicitor him- or herself has obtained the client's medical records, identified and assessed the relevant contents, and following that analysis, sent a detailed letter of instruction to the client's medical expert or experts.

CLA 28, 18 NOVEMBER 2002

Late Submission of Claims for Assessment by the Commission

Point of Principle

Where a solicitor submits a claim for assessment by the Commission under Regulation 105(2), (2A), or (3), Civil Legal Aid (General) Regulations 1989 outside the three-month limit in Regulation 105(3A) of the same Regulations, the Regional Director has no power to assess the bill.

Guidance

- (1) This Point of Principle only applies to costs claims submitted prior to 31 December 2002 which were outside of the three-month limit and in the absence of either good reason or exceptional circumstances.

- (2) In the absence of either factor, the Regional Director had no power to assess the bill. The Committee determined that it was incorrect to assess a costs claim at nil. The correct approach would have been to reject the costs claim.

MANDATORY ASSESSMENTS

- (3) Under Regulation 105(2) and 2(A) (proceedings not issued or costs claim under £500) the claim could **only** be assessed by the Commission and there was no alternative means of assessment available to the solicitor. Accordingly, although the Regional Director had assessed this bill at nil rather than rejecting it altogether no direct loss was suffered by the solicitor as a result of this error.
- (4) Where mandatory assessments were assessed at nil, the Commission will reassess on the facts as originally presented in accordance with the current late claims guidelines.
- (5) Where mandatory assessments were rejected, the Commission acted appropriately. Whilst no assessment has been undertaken, this is not a result of any error in law. Accordingly, if solicitors now seek assessment because the regulations have changed, the costs claims will be assessed on the facts as now presented.

Discretionary Assessments

- (6) In contrast, Regulation 105(3)(a) (costs claims between £500 and £1,000) is a discretionary assessment and governed by the solicitor's choice. The decision to nil assess in these cases, which has now been found to be incorrect, prevented solicitors from resubmitting claims to the Court for assessment.
- (7) Discretionary assessments which were nil assessed may be resubmitted to the Commission. They will be assessed in accordance with the current late claims guidance on the facts as presented on original submission. Alternatively, solicitors

may submit the claim to court as if no assessment decision has previously been made.

- (8) In discretionary cases where the bill was, correctly, rejected solicitors should have sought assessment by the Court.
- (9) If solicitors resubmit their claim they should supply to the appropriate regional office the original papers, together with a covering letter citing this Point of Principle.

CLA 29, 19 MAY 2003

Late Submission of Bills: Termination of Solicitor's Retainer

Point of Principle

For the purpose of the three-month time limit in Regulation 105(3A)(a) and (b)(i), whether the parties have terminated the retainer is a matter of general contract law, and depends on the parties' intentions, as evidenced by their acts. The following factors may be relevant to when the retainer should be treated as having ended:

- (1) Where the solicitor represents the client in proceedings, termination of the retainer can be inferred if the solicitor has applied to be removed from the Court record.
- (2) Where no proceedings were issued, the solicitor must have completed the work he or she was instructed to do; or if not, either the solicitor or the client must have made a conscious decision, which the other party acknowledges as being effective, that the solicitor should no longer act for the client.
- (3) Mere inactivity by the solicitor for a period of time, however long, does not in itself terminate the retainer.
- (4) A letter from the solicitor warning that in the absence of a response by a stipulated time, he or she will no longer act for the client, does not necessarily demonstrate either that the solicitor intended to terminate the retainer, or that the client regarded it as at an end, when the

stipulated period expired.

- (5) Where other facts and circumstances show that the retainer is terminated, an application for discharge of the certificate or a letter from the client to the solicitor is not evidence that it still subsists.

Guidance

Whilst a letter to his or her client may state that the solicitor is seeking instructions and, in the event of non-reply, may consider closing his file, the letter does not necessarily terminate the retainer on the expiry of any warning period given.

If a solicitor has had difficulty obtaining instructions or there have been long periods of inactivity before the application for discharge was made the solicitor should be asked to provide evidence to establish when the retainer did actually determine.

CLA 30, 19 MAY 2003

Counsel's Travelling Time and Expenses:
Family Graduated Fees

Point of Principle

Where a solicitor shows that the conduct of proceedings required specialist counsel, and that no specialist barrister was available from chambers within 40 km of the town in which the proceedings took place, the Commission may pay counsel's travel expenses and costs if they were reasonably and necessarily incurred. Factors affecting the decision whether counsel's travel expenses may be allowed include: the complexity of the issues; the distance between counsel's chambers and the court where the proceedings took place; counsel's possession of particular expertise relevant to the case; the location of the solicitor and client; and the need for continuity, particularly if there has been an earlier meeting or conference between

counsel and the lay client.

Guidance

- (1) This relates to travel costs where the case has required the use of specialist counsel.
- (2) Where it is reasonable to use specialist counsel the travel expenses and costs must have been reasonably and necessarily incurred.
- (3) Factors determining the reasonableness are:
- (i) complexity of the issues;
 - (ii) distance;
 - (iii) counsel's expertise;
 - (iv) location of solicitor and client;
 - (v) the need for continuity (particularly if the client had previously been represented by the particular counsel).

CLA 31, 19 MAY 2003

Special Issue Payments: Certified at More Than One Hearing

Point of Principle

If a judge certifies the same special issue at more than one hearing in a single set of proceedings, Article 10(7) of the Community Legal Service (Funding) (Counsel in Family Proceedings) Order 2001 provides that only one Special Issue Payment (SIP) may be made. But a SIP may be made in respect of each different special issue certified, whether at the same hearing or at separate hearings. If different counsel represent the client at successive hearings and submit claims for the same SIP, the first claim to be received will be paid.

Guidance

- (1) Application for the verification of SIPs must be made at the conclusion of each particular hearing.

- (2) Article 10(7) restricts SIP payment to only once per proceeding.

- (3) That restriction relates to each of the seven special issues so, if different SIPs are verified at different hearings, more than one claim may be made provided each special issue is only paid once. For example:

Hearing 1 - Expert and conduct SIPs verified

Hearing 2 - Foreign element and conduct verified

The Claim 5s are submitted sequentially

In the claim for hearing 1, the expert and conduct SIP will be paid but in respect of hearing 2 only the foreign element may be paid. Similarly, the automated SIPs (multiple parties, litigant in person and more than one child) are only paid once even though they may feature in (and be verified for) many hearings during the proceedings.

- (4) In the event that different counsel are instructed to attend at different hearings and SIPs are verified in each, the counsel to claim the SIPs payment first will be paid by the Commission in accordance to the principles set out above.

CLA 32, 23 JUNE 2003

Counsel in the Family Proceedings Court

Point of Principle

The cost of instructing counsel in the family proceedings court may be allowed on assessment, even though the solicitor had no prior authority; but only if the solicitor shows that he or she was unable to get authority before incurring the expenditure.

EXPERTS IN PUBLIC LAW CHILDREN ACT PROCEEDINGS

Practitioners may recall that an item on the use of experts in public law Children Act proceedings appeared in Focus 41 (March 2003 at page 15). We are now commenting further on the position because we are aware of a number of issues arising out of the Commission's position. The following is intended to provide further information and clarify issues raised with us:

- The advice given and approach taken by practitioners towards expert assessments and the payment arrangements for them should not take into account the free availability of public funding to the key players in the most important types of public law Children Act proceedings. Some non-local authority parties may, for whatever reason, not be publicly funded or represented and others may hold certificates which are subject to financial and other Funding Code criteria (such as joined grandparents). There is no reason why the lawyer having the conduct of the case should treat the position of a child or other party holding a non means, non merits tested certificate any differently from any other client, funded or not.
- It is clear that there are wide variations in practice in terms of local authority approaches towards obtaining and funding expert reports and assessments. Practitioners also have differing views towards the obtaining of prior authority from the Commission. It is, however, the position of the Commission that costs incurred should be set against the relevant certificate(s), including where there is joint instruction and costs liability, and not set against a single certificate (unless that would be reasonable in the circumstances of the case – for example where there is no joint instruction).
- Variations in practice make it difficult for statements to be made that will cover every eventuality and possible permutation of events. Moreover, it is clearly for the court to decide whether an expert is to be instructed although that decision may have the effect of committing the Community Legal Service Fund to expenditure at the rates of the named expert.
- Clearly the possibility of a Section 38(6) direction only arises where an interim care or supervision order is appropriate in the particular case.
- It may be justified for some limited expenditure to be met out of the Fund to support a contested Section 38(6) application but this, if justified, would usually be to enable an expert to conduct only limited work (to consider the papers) sufficient to persuade the court that further work is justified. Lengthy pre-assessment work or viability assessment work may more appropriately be treated as forming part of the assessment.
- The Commission's position regarding possible Section 38(6) directions applies not only to residential placements or assessments but to any expert work the costs of which could be directed against the local authority. It does not apply to assessments and reports on parents/carers alone which fall outside Section 38(6), although the court and Commission will expect the local authority to undertake or obtain appropriate assessment work (in accordance with the Children in Need Assessment Framework).
- The Commission is concerned that the court should be given the opportunity to give careful consideration to the need for the involvement of an expert, the costs involved and how those costs should most appropriately be funded in the circumstances of the particular case, having regard to the obligations of the local authority, the expertise already available and the position of the parties. The item in Focus 41 referred to 'full argument'. The intention is not that there should always be a contested, lengthy hearing but rather that the court will wish to have the opportunity to consider the position carefully, bearing in mind the delay which may be caused by involving an expert or experts. The judicial case management protocol for public law Children Act cases to be implemented later this year is clearly relevant. This is now available on the Department for Constitutional Affairs website at www.lcd.gov.uk/judicial/cap/index.htm
- Practitioners are reminded that applying for prior authority to a regional office of the Commission is not mandatory, that authority cannot be granted retrospectively and that an amount in excess of any authority granted can be justified on costs assessment or detailed costs assessment. Regional offices must reach a decision on prior authority applications where they have jurisdiction.
- In the majority of public law Children Act cases the regional office will hold very little information regarding the case as form CLS APP 5 (Special Children Act Proceedings) will have been used when Legal Representation was applied for. Although the practitioner should obtain leave of the court before applying for any prior authority, it is helpful if succinct but clear and up-to-date information is given regarding the circumstances in the case, the purpose of any expert report or assessment, the fees involved and how they are to be met. This may mean that form CLS APP 8 (the application for prior authority) has to be supplemented by further documents and/or information to enable the regional office to appreciate what is being sought, why and at what cost. Any relevant court order should be submitted and any particular urgency made clear by completing the form appropriately (using the tick box and providing further details). Detailed information may avoid authority being refused.
- Authority for a court attendance by an expert will not normally be granted unless/until it is clear that a court attendance will be necessary.

PUBLIC INTEREST ADVISORY PANEL SUMMARIES

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

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

Summaries of cases considered by the Panel were contained in *Focus* 32-41. 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/03/169

Nature of Case

Appeal to EAT concerning applicability of s 78 of the Race Relations Act 1976 to employment relationship between private-hire taxi driver and radio controller in taxi business.

Report of Panel

The Panel agreed that a determination of the preliminary issue in this case had the potential both to clarify the meaning of s 78 RRA and to broaden its scope, meaning that it may then apply in a greater range of quasi-employment relationships than is currently the case. Although the Panel was aware of other proceedings which were considering the scope of the RRA in a different context, it was clear that the case had the potential to benefit a significant number of other individuals and it

was therefore of significant wider public interest.

Conclusion

Significant wider public interest
Rating: Significant

PIAP/03/170

Nature of Case

Proposed challenge to a Public Authority's ability to decline to follow recommendations of MHRT made under s 72(3)(a) that patient be transferred to another hospital with a view to facilitating discharge at a later date.

Report of Panel

The Panel agreed that this case had the potential to produce real benefits to many detained patients who obtain recommendations from MHRTs on the most appropriate course of their treatment, yet cannot then get these implemented by the responsible authorities. The Panel considered that whether or not the claim for a declaration of incompatibility was successful, the proposed action in this case still had the potential to clarify the legal status of a recommendation by an MHRT and the legality, under the European Convention on Human Rights (ECHR) articles 3, 5 and 6, of a failure to implement the same.

Conclusion

Significant wider public interest
Rating: Significant

PIAP/03/171

Nature of Case

Appeal to Court of Appeal in asylum case concerning NASS policy guidance in relation to dispersal and school attendance.

Report of Panel

The Panel agreed that the appeal against the decision of the judge in this case clearly had good prospects of succeeding, however, it was also clear that because the applicant had now been granted support for reasons not connected with the present appeal, she derives no personal benefit from an appeal in this case.

It was unclear how many other asylum seekers would be affected by the judge's interpretation of the relevant NASS policy but it appeared the number was likely to be very limited. It would only apply directly to asylum seekers with dependent children who moved up from nursery to primary school but who had attended the primary school for less than a year at the time of dispersal. However the importance of the issue to each such client would be substantial. Further it might be the case that the judge's decision had implications not only in the asylum field but also in areas of education law. In those circumstances, the Panel was prepared to accept that the potential benefits to the wider public were significant enough to bring the case within the meaning of significant wider public interest in the Funding Code.

Conclusion

Significant wider public interest
Rating: Significant

PIAP/03/172

Nature of Case

Proposed appeal to Court of Appeal in housing matter concerning tenant's absence from property and length of time required before absence deemed to constitute surrender of tenancy.

Report of Panel

The Panel considered that any appeal in this case would turn on the facts of the case and would not effect any change in or clarification of the law. In the circumstances, the Panel could not identify any potential benefit to other individuals and the case did not appear to be of significant wider public interest.

Conclusion

No significant wider public interest.

PIAP/03/173 and PIAP/03/174

Nature of Case

Proposed judicial review of reduction to prisoners' wages following changes to Incentives and Earned Privileges Scheme.

Report of Panel

The Panel was not persuaded that the difference between the proposed challenge in this case and the challenge already brought, unsuccessfully, in the case of *R v Home Secretary, ex p Potter* was of such significance that the present challenge stood any real prospect of succeeding. In the circumstances, the Panel considered that this case was not likely to produce real benefits for other individuals and could not be said to be of significant wider public interest.

Conclusion

No significant wider public interest.

PIAP/03/175**Nature of Case**

Proposed judicial review of BBC Radio 4 editorial policy banning non-religious contributors from 'Thought for the Day'.

Report of Panel

The Panel considered that even if the proposed proceedings in this case could be said to have a real prospect of succeeding, the nature of the benefit to be gained in the proceedings was unclear (particularly since the BBC would appear to be able to show that it meets its obligations for diversity across its schedule when considered as a whole) and did not in any event appear to be of sufficient significance to bring the case within the Funding Code definition of significant wider public interest.

Conclusion

No significant wider public interest.

PIAP/03/176**Nature of Case**

Judicial review of new police policy designed to deter re-offending – policy involving publication of convict's name, photograph and nature of offence and advertisement of the same on poster sites in the locality where convict committed offence.

Report of Panel

The Panel agreed that the proceedings in this case clearly had the potential to clarify the legality of pro-active policing policies designed to target ex-offenders. In the circumstances, it

was clear that this case had the potential to produce real benefits to other individuals and the case was of significant wider public interest.

Conclusion

Significant wider public interest
Rating: Significant

PIAP/03/177**Nature of Case**

Proposed judicial review based on routine failure of Chairman of MHRT to specify names of tribunal members when fixing date for MHRT hearing as required by Rule 31 of the Mental Health Review Tribunal Rules 1983.

Report of Panel

The Panel considered that although the challenge in this case differed technically from that made in the case of *R v Secretary of State for Health, ex p KB*, any real benefit of the proposed challenge would be to obtain a reduction in the delays faced by patients awaiting a hearing before an MHRT. Taking into consideration the detailed terms of the judgments in the case of *Re KB*, the Panel was not persuaded that the challenge in this case would bring patients any closer to achieving that aim. In particular, the Panel noted that even if MHRT Chairmen were to specify the names of tribunal members when fixing dates for hearings, if the MHRT was later able to amend the notification of hearing, as appeared to be a regular feature in MHRT cases, the earlier specification of tribunal members' names would be of little practical benefit to a patient.

In the circumstances, although the Panel considered that the proposed challenge had the potential to effect a change in listing practices in MHRTs, the change would not be likely to produce real benefits for other patients.

Conclusion

No significant wider public interest.

PIAP/03/168**Nature of Case**

Proposed claim in negligence and misfeasance against police relating to fatal shooting of unarmed man and subsequent investigation of events. Officers acquitted at trial on direction

of judge. Coroner subsequently not proceeding with inquest. Lack of effective investigation of circumstances surrounding the death.

Report of Panel

The Panel noted that because of the restrictions currently imposed on the coronial jurisdiction in England and Wales, no inquest had been held into the death in this case following the acquittal of the police officers at the criminal trial. It also appeared that the other investigations into the death had not secured an effective investigation as required under ECHR article 2. The Panel agreed that the proposed proceedings in this case therefore had the potential to highlight the fact that in cases of this nature there is a lacuna in the current national system of investigating deaths, and for that reason the case was potentially of significant wider public interest. The Panel also noted that the case raised an important issue concerning the duty of care owed by the police to victims and their families when investigating crimes and that examination of that issue by the courts would also benefit other individuals.

The Panel however noted that other members of the deceased's family had issued proceedings. The Panel's conclusion on public interest related to the case itself rather than any particular applicant.

Conclusion

Significant wider public interest
Rating: Significant/High

PIAP/03/178**Nature of Case**

Court Service failure to mark warrant 'backed with bail'. Applicant being arrested on warrant and detained rather than released on bail. Statutory immunity of justices and their clerks from claims relating to acts or omissions carried out in the execution of duty.

Report of Panel

The Panel noted that there appeared to be significant numbers of people nationwide who are affected by Court Service errors in issuing warrants. It was therefore clear that the applicant's proposed claim was of significant wider public interest for the same reasons as those given in the Panel's earlier decision in PIAP 01/82 in view of the fact that the claim in

PIAP 01/82 was not proceeding before the courts.

Conclusion

Significant wider public interest
Rating: Significant

PIAP/03/179

Nature of Case

Proposed claim against Prison Service for damages arising from assault occasioned by several officers.

Report of Panel

The Panel noted that the benefit alleged to flow to others from funding the applicant's claim was that of ensuring that detaining authorities are accountable to the public for their actions. It was clear that this type of benefit was one that would generally flow from proceedings of the type in question and therefore did not fall within the Funding Code definition of significant wider public interest.

Conclusion

No significant wider public interest.

PIAP/03/181

Nature of Case

Appeal to Court of Appeal concerning Customs and Excise refusal to restore vehicle used in commercial smuggling operation. Challenge to Customs and Excise policy of seizure in commercial smuggling cases.

Report of Panel

The Panel noted that similar issues to those in the present case had been considered by the Divisional Court in the case of *Newbury v Commissioners of Customs and Excise*, which made it clear that it was always open to a court to conclude that a seizure was disproportionate on its facts. In those circumstances, and whilst the present case might have merit on its own facts, it was not easy to identify any new agreed legal principle which this case might establish beyond what had been established in *Newbury*. The Panel was not therefore currently persuaded that there was a significant wider public interest in the present case.

Conclusion

No significant wider public interest.

PIAP/03/183 and 184

Nature of Case

Proposed group action against Prison Service for clinical negligence in failing to properly treat heroin withdrawal symptoms.

Report of Panel

The Panel noted that this case has the potential to clarify the inter-relationship between national prison service guidelines, local prison policies and best clinical practice in treating symptoms of heroin withdrawal. It also appeared that the numbers of people affected by Prison Service practice in this area are significant.

Conclusion

Significant wider public interest
Rating: High

PIAP/03/185

Nature of Case

Unreasonable delay on the part of Home Office in issuing documentary confirmation of grant of exceptional leave to remain. Applicant therefore unable to claim job-seekers allowance for extended period and claim for backdating rejected by benefits agency. Home Office refusing to pay compensation for period where benefits not obtainable due solely to Home Office delay in issuing documentation.

Report of Panel

The Panel noted the applicant's contention that there was no power under the regulations to backdate job-seekers allowance and no duty on the Home Office to issue documentation confirming a person's immigration status in a timely manner. In the circumstances, it appeared that many individuals might find themselves in a position similar to the applicant in which they have been given permission to remain in the UK and claim benefits yet are unable to prove those facts to the benefits agency. It was therefore clear that because of delays on the part of the Home Office, other individuals may suffer from an inability to claim benefits to which they would

otherwise be entitled. In the circumstances, it appeared that the challenge in this case had the potential to benefit other individuals in establishing whether a default on the part of a government department causing a claimant to suffer loss also gives rise to a duty to pay compensation.

Conclusion

Significant wider public interest
Rating: High

KEY ARTICLES FROM FOCUS 36 TO DATE

For ease of reference a list of the key articles in issues of Focus dating back to November 2001:

Focus Nov 2001 36

- *Exceptional Funding*
- *Funding Developments*
- *Costs Assessment Guidance*
- *CLS Financial Conditions*
- *Specialist Quality Mark*
- *Quality Mark Timetable*

Focus Feb 2002 37

- *Funding Code Update*
- *CLS Financial Conditions*
- *Quality Mark Update*
- *London Region Civil Finance Business Moving to Newcastle*
- *Interest on the Statutory Charge*
- *Supplier Survey 2001 results*
- *PIAP Reports*

Focus Apr 2002 38

- *Eligibility Update*
- *CLS Regulations and Code Changes*
- *Quality Mark Update*
- *Immigration: New Stage Bill*
- *Controlled Work: Cost Assessment*
- *Developing Expertise in the Community Legal Service*
- *PIAP Reports*

Focus Jul 2002 39

- *General Civil Contract – Immigration*
- *Debit Notes*
- *Civil Contract Awards 2003/4*
- *Statutory Charge: Exempt cost and property*
- *CLS Eligibility – New gross income cap*
- *Guidance on family graduated fees*

Focus Dec 2002 40

- *Civil Contract Awards 2003/4 update*
- *Scope and Funding Code update*
- *Immigration new developments*
- *Stamping out rejects – Improving our service to you*
- *Late Claims – The sanctions applied are changing*
- *PIAP summaries*

Focus Mar 2003 41

- *Immigration New Developments*
- *Eligibility Update*
- *Reporting Case Outcomes*
- *New Late Claims Sanctions*
- *Civil Contracting Update*
- *Scope and Funding Code Update*

PROPOSED PAYMENT DATES *for the remainder of 2003*

The proposed payment dates for the second half of 2003 are set out below. These dates may be subject to amendment, but we will inform you of changes in advance where possible.

If you are paid by BACS (Bank Automated Clearing System) the proposed payment date shown is the date on which you will receive a payment in your bank. For some smaller banks the BACS credit may appear a day later. The proposed payment date will also be the date by which the last of the cheque/remittance advices are despatched from the Financial Services Settlement section. Remittance advices are despatched using DX or first class post.

If you are still being paid by cheque, we recommend that you change to BACS, which is a more efficient payment method. With BACS, the payment is made directly into your bank account avoiding cheque-handling and you also receive a remittance advice. BACS provides immediately cleared funds, unlike cheques which can take four to six days to clear. If you have any queries about payment by BACS, please telephone the Master Index section on 020 7759 0261.

Details of the amount due to you may be obtained by contacting either the Regional Office or the Solicitors/Counsel Settlement section on 020 7759 0260 but no earlier than the day before the proposed payment date.

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

Keeping us up to date

Names, addresses, DX, fax and telephone numbers and bank details for BACS payments are held on the Commission's Master Index database. Please send any relevant changes relating to your firm or chambers to the Master Index section at 85 Gray's Inn Road, London, WC1X 8TX, or at DX 328 London.

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

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