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Community
Legal Service



Focus

www.legalservices.gov.uk

DECEMBER 2003

- **OVERVIEW**

For a review of our current thinking on average costs, PIB and other areas, as well as new changes to publicly funded asylum and immigration work, see pages 02 and 03.

- **MATTER STARTS**

For the latest news on matter starts and answers to common questions arising in relation to matter starts for current schedules, see page 23.

- **ANUFRIJEVA**

For our response to the recent decision of the Court of Appeal in *Anufrijeva v Southwark London BC*, turn to page 04.

- **ELIGIBILITY UPDATE - GUARANTEE STATE PENSION CREDIT**

For details of changes to financial eligibility regulations regarding the Guarantee State Pension Credit and updated Keycards, see pages 08-13.

- **SPECIALIST SUPPORT SERVICES**

For an up-to-date guide to Specialist Support Services – providers, opening times and telephone numbers – see the table on page 15.

- **JUDICIAL CASE MANAGEMENT**

For a summary of the main issues relating to the implementation of the Protocol for Judicial Case Management in Public Law Children Act Cases, in particular the Commission's position on prior authorities and payments on account, turn to pages 16 and 17.

- **PIAP SUMMARIES**

The Public Interest Advisory Panel reports to the Commission on cases which are considered to raise public interest issues. Summaries of the cases considered by the panel since the last issue of *Focus* are published at page 20.

legal services

COMMISSION

OVERVIEW

Average Costs

We have been concerned for some time about the inexorable rise in average costs of cases in the civil scheme, particularly at the Legal Help level. Average costs per case have been rising in all categories of law, some more rapidly than others. Overall the rise has averaged at about 15% per year.

We have studied this closely and can point to a number of causes which were quite acceptable, particularly in the early years of the contracted scheme. These include: the two remuneration increases; improvements in quality judged by improving case outcomes and case end-points reported by suppliers; and the increasing complexity of case mix. Overall these all show that under contracting, measurably better quality of work is being done for clients; and the work is more focused on serious, rather than trivial, cases.

However, this does not explain the total increase and why it still continues. Indeed, continuing increases in average costs of Legal Help in the context of a controlled budget now represent one of the major threats to the civil scheme, as increasing costs per case obviously mean fewer case starts for clients. This is why we have taken action to limit or remove matter starts from those firms whose average costs are rising faster than 10% a year.

We are now convinced further action is needed. We are proposing to issue a consultation paper, suggesting a more direct way of containing this problem. In essence, we would impose an upper limit on the earnings a firm could be paid for its Legal Help work in any category of law. This would be equal to the average costs per case for that firm in that category achieved up to a certain point this year, multiplied by the number of cases in that category claimed for next year. There may need to be exclusions, escapes and transitional provisions, but the idea is that this would roll forward each year, to achieve a more stable average costs per case position.

The effect would be to move in the direction of a fixed fee or block contract in which firms had the certainty of a budget within which to work, related to the number of cases they completed at Legal Help level. Firms would

then be expected to manage within that overall budget. This will require active management by firms. In return, we would offer distinct financial advantages to Category 1 firms which could include: cash flow, additional matter starts or possibly an additional payment. We would expect Category 2 firms to reach Category 1 status before they attracted these financial advantages. In addition, such a scheme holds out the possibility of relaxing the current costs auditing regime for Category 1 firms. As we have judged their claim pattern to be reasonable, and we are guaranteed that average costs of claims will not rise, costs auditing of Category 1 firms becomes unnecessary in its current form.

We would still expect to see properly kept and recorded files and the submission of claims as now. We would also audit sample files on a risk basis as now. However, we would move to a more comprehensive review of the quality of those files. Provided the quality was within acceptable parameters, this would result in a light-touch liaison audit. Quality concerns could lead to a peer review which may, if things are not put right, result in contract sanctions.

We hope that this approach may go some way to creating a more positive relationship between our suppliers and us. It will certainly help us in making the case for proper funding to the Treasury if we are successful in getting average costs under control. However, it is not an end point in itself. It will create a range of different average costs per case for different firms. In the short term, that is not a problem – after all, it is what we have now and can often be justified according to the case mix of the individual firm. However, in the medium term, we would see this as a step towards a fixed fee or block contract for Legal Help. We will create space for discussions with the profession towards this end.

We are of course very aware of the Law Society's debate on the future of legal aid: 'Tackling Social Exclusion – Proposals for the Future Delivery of Publicly Funded Legal Services', which we welcome as a major and constructive contribution to planning the way ahead. In the coming months, we shall engage positively with the ideas which have been raised. We do not see our proposals for controlling average costs as precluding discussion on alternative forms of contracting.

Indeed, we look forward to working with you to bring about much needed changes in both the short and the longer term.

Public Accounts Committee on Civil Contracting

It is worth sharing with you the significant improvement in civil costs auditing results this year. We have recently responded to the Public Accounts Committee's report on civil contracting, issued in June this year. In our report, we were able to say that as of July this year: 44% of all audited offices were in Category 1; 38% in Category 2; just 18% in Category 3. Category 1 and 2 firms represent 82% of all expenditure under civil contracts. This owes much to the commitment of our suppliers as well as to the lessons being learnt on both sides as contracting beds in. Our response to the PAC report can be found on the Commission's website (www.legalservices.gov.uk). It is a positive document, and well worth a read, as it is a wide-ranging review of our approach to civil contracting and how we are seeking to address problem areas.

Partnership Initiative Budget

Finally, we have been considering the future of the Partnership Initiative Budget (PIB) in the light of overall developments in the civil scheme. We face the challenge of needing to encourage the development of solicitor and not-for-profit suppliers to fill gaps, identified by the Community Legal Services Partnerships and our Regional Legal Services Committees.

We now think that the PIB needs to be developed into a more flexible funding regime which will not be limited (as it has been) to innovative projects, based largely around the not-for-profit sector. Instead, we would like to see it focused more directly in support of our regional priorities for contracting; opening up start-up or expansion funding packages for solicitors and not-for-profit organisations, who are willing to fill gaps in service which have been identified as priorities. This would not preclude further projects within the ambit of the current PIB if they were considered the best way of meeting priority need.

Bid rounds would be conducted at a purely regional level. This idea will need further

discussion and approval but, in principle, it should give us another tool that will encourage the future supplier base to develop in line with identified priority needs. It could also enable us to respond positively to some of the ideas raised in the course of the Law Society's debate.

Changes to Publicly Funded Immigration and Asylum Work

Following the consultation paper issued in June 2003, to which 260 responses were received, new measures were finally announced by Lord Falconer on 27 November to combat the rise in asylum legal aid costs and ensure taxpayers receive value for money. These include:

- A financial threshold for Legal Help of five hours (asylum) or three hours (non-asylum) prior to the substantive decision by the Home Office, which can only be exceeded with the Commission's prior authority.
- Devolved powers for grant of CLR for appeals will be removed for most firms, thus requiring prior approval by the LSC for appeal cases.
- Accreditation is to be introduced for all lawyers and case-workers doing legally-aided asylum work.
- A unique client number will be introduced.

The LSC will be able to vary the financial threshold up or down for firms whose track record justifies this. A limited number of firms, where work is to a high standard, will be allowed devolved powers to work to a higher figure. We will also allow top quality firms with a good record on appeal cases to proceed without prior authority up to a set financial threshold.

Once a supplier has reached the threshold, they will only be allowed to proceed under legal aid with an extension from the LSC. Professional disbursements and VAT will **not** count towards the thresholds. A separate threshold for professional disbursements, which requires prior authority to exceed, will be introduced for Legal Help.

An application to the LSC for an extension will only be granted where there is a real prospect of success and where the case is sufficiently complex to warrant further work being done.

In all but exceptional cases, funding for attendance by a representative at the substantive asylum interview will **not** be authorised. Where attendance at interview is authorised, this will be by the adviser in the case or the immigration supervisor, and not by an outdoor clerk until they are accredited.

Applicants will continue to be able to seek a review of refusal of funding to the Funding Review Committee as now, but any review will be considered on the papers only.

We will proceed with a fixed fee of £150 (plus VAT) for applications for leave to appeal to the Immigration Appeal Tribunal.

Accreditation

Three levels of accreditation are proposed. The LSC is working closely with the Law Society to finalise the skills and competencies required. The Law Society will then recruit independent assessment organisations to ensure all advisers undergo competence tests and evaluate the work they conduct. It is proposed that those who achieve the most advanced level will be entitled to increased remuneration at 5% above current rates. Accreditation will be introduced from April 2004, becoming compulsory by April 2005.

Unique Client Number

Once issued, this number will be required for use in all dealings between advisers and the LSC in a case, and must be submitted with all claims for payment once an initial decision has been made. The unique client number will be introduced from April 2004.

Implementation of Changes to Legal Help and CLR

The implementation timetable is as follows:

- Transitional seven-hour threshold for Legal Help applies to suppliers in London from 1 March 2004, to all other suppliers from 1 April 2004.
- Five-hour threshold for Legal Help applies to all suppliers in England and Wales from 1 May 2004.
- LSC authorisation for appeals required from 1 April 2004.

Thresholds apply to all work started after introduction, whether done on new or old cases.

Limiting Choice of Representative

The LSC will consult over limiting choice of representative in locations where fast-track procedures are in operation to dedicated duty representatives authorised under contract. This is intended to prevent touting and poaching of clients at fast-track centres. The LSC will also consult over the use of experts and interpreters, and whether it is necessary to have a separate interpreter at substantive interviews.

Conclusion

We are very pleased that the government has accepted the argument that there should be thresholds rather than caps, as this will allow suppliers to continue to provide a quality service to all their clients, including in complex cases.

These measures will enable us to stop funding, at an early stage, those cases which are unlikely to succeed – costs will be limited and targeted at the most deserving cases. We will continue to bear down heavily on immigration suppliers who fail to meet our quality standards or who indulge in touting or other unacceptable practices, whereas accreditation will recognise and reward quality representation.

We will very shortly be issuing the contract amendments to deliver this package. This will include consultation over the procedures, the withdrawal of devolved powers for CLR, and limiting choice of representative.

GENERAL CIVIL CONTRACTS FROM 1 APRIL 2004

The Bid Round – a Positive Response

The deadline for registering on the Bid Panel for a General Civil Contract expired on 1 October 2003.

Overall, registration for renewal of existing contracts varied by region between 89% and 99% of current supply. Many of the contracts that are not being renewed were small, or had been winding down over some time and will not significantly effect local provision.

In general, withdrawals have been more than matched by applications for new contracts, either from existing contractors wishing to expand or from new suppliers wanting to join the scheme. In some regions, particularly London, there have been very significant numbers of new bids. This will mean that those regions will need to hold more competitive bid rounds than were at first envisaged.

Contracting strategies will be published by the end of the year, and regions will be writing to suppliers to inform them on whether they will be awarded a contract or to invite bids where there is to be a competitive bid round.

The new contracts will run from 1 April 2004. Although we do not have plans for a major restructure of the current documentation, we are now consulting the Law Society and other practitioner groups on some amendments. Apart from any changes necessary to implement our proposals on average costs (see page 02), we will wish to make changes to the contract documentation to deal with various issues relating to the Standard Terms that have arisen during the first four years or so of contracting. We are also consulting on changes to streamline the cost-compliance process and will be proposing some amendments to simplify the contract. For example, making it easier for mental health practitioners to claim the travel costs of visiting a client in hospital before the Controlled Work form is signed.

Changes to the immigration contract will flow from the Government's decisions following the consultation paper issued in June 2003 – see the separate article on pages 02-03.

CLAIMS FOR COMPENSATION BASED ON BREACH OF HUMAN RIGHTS: THE ANUFRIJEVA DECISION

In future, any claim for compensation under the Human Rights Act 1998, based on maladministration by a public body, should follow the procedure set out in Lord Woolf CJ's reasoned judgment in the case of Anufrijeva v London Borough of Southwark [2003] EWCA Civ 1406.

The decision relates to three appeals concerning the treatment of asylum seekers. In one case, the appellant was the personal representative of a deceased member of the asylum seeker's family. She argued that the nature of the accommodation the family had been allocated breached the deceased's right to family life under art 8. Another had been affected by a mistake in the processing of his application for asylum which led to hardship, in turn causing a depressive illness. His lawyers argued that his private life was so impaired as to breach his rights under art 8. The third, who had been accepted as a refugee, complained of a delay in processing his family's application to enter the UK and join him. Again, his lawyers argued the delay had amounted to a breach of art 8. Before the Court of Appeal, none of the claimants succeeded in establishing that there had been any breach of the Convention.

Lord Woolf CJ expressed concern about the "truly horrendous" costs of the appeals, and said: "... the situation is made even more worrying by the fact that all the parties are funded out of public funds" (paragraph 76). He went on to say: "The reality is that a claim for damages under the HRA in respect of maladministration, whether brought as a free-standing claim or ancillary to other substantive relief, if tried in court by adversarial proceedings, is likely to cost substantially more to try than the amount of any damages that are likely to be awarded ... there will often be no certainty that an entitlement to damages will be established at all" (paragraph 77).

To prevent other cases being brought at disproportionate expense, he said:

(i) an attempt to recover damages for maladministration by any procedure other than judicial review in the Administrative Court, should be looked at critically;

(ii) since a claim for damages on its own, independent of an application for another order, may not be brought by way of judicial review, any such proceedings should be brought in the Administrative Court by way of an

ordinary claim; and

(iii) in this kind of case, the Administrative Court will give permission to apply for judicial review, only after it has been explained why a complaint procedure, such as those operated by the Parliamentary or Local Government Ombudsman, is not more appropriate (paragraph 78).

Regional offices and suppliers should not grant certificates for representation in proceedings for compensation for breach of a Convention right unless this procedure is followed. In particular, the client must be able to demonstrate that only the court - not an Ombudsman, internal complaints procedure or other alternative means of dispute resolution - can adequately deal with the claim. Additionally, suppliers and regional offices need to be satisfied that, following the principles set out in this judgment and the tests in the Funding Code, the compensation the client would recover would justify the expense of the proceedings.

The court's reasoning in *Anufrijeva* re-emphasises the general principle set out in *Frank Cowl v Plymouth City Council* [2001] EWCA Civ 1935: that the courts should not permit judicial review to go ahead if the parties can resolve a significant number of the issues between them, outside the litigation process.

The *Anufrijeva* decision puts forward the basis for adjudicating on compensation claims for breach of arts 3 (the right not to be subjected to inhuman or degrading treatment), 5 (liberty and security) and 8 (respect for private and family life). For clients who are concerned about a possible breach of art 2, the right to life, following a family member's death in custody or in some other circumstances involving a public official or organisation, the natural occasion for the effective judicial enquiry (which art 2 requires) is a coroner's inquest at which the family is represented, not court proceedings: *R (on the application of Mohammed Farooq Khan) v Secretary of State for Health* [2003] EWCA Civ 1129. Regional offices and suppliers should not grant certificates for proceedings in which the client's objective is to find out more about how the death came about. Instead, the client should apply, under s 6(8)(b) of the Access to Justice Act 1999, for a certificate covering representation at the inquest.

NOTICE TO IMMIGRATION & ASYLUM CONTRACTORS:

Home Office Announcement 24 October 03

The Home Secretary has announced a "one-off exercise" to grant indefinite leave to remain to families who applied for asylum in the UK before 2 October 2000 and had children before that date. This will include families at all stages in the asylum process: pre-decision, pre-appeal and post final appeal outcome.

If your client appears to be eligible for leave to remain under the exercise, you should advise your client of the position and avoid carrying out any unnecessary work using public funds.

LSC CIVIL BILL ASSESSMENT MANUAL NOW AVAILABLE

Following consultation with the Law Society, Legal Aid Practitioners Group, The Bar Council, Association of Law Costs Draftsmen and others, the Commission's guidance on the assessment of civil certificated work has been published.

The full text of the manual is placed on our website and key extracts set out at section 13 to Part D of Volume 1 of the LSC manual in Release 11 (December 2003).

Whilst the Commission consulted professional bodies on the content, we are mindful that it is the first time that practitioners have had access to the main tool that assessors use when determining the costs of civil certificated work. We are inviting practitioners to make comments on the manual from now until March 2004. These will be considered when preparing the subsequent edition of the LSC manual.

Queries on the manual or the assessment of civil certificated work may be raised with Ruth Symons by e-mail at ruth.symons@legalservices.gov.uk or in writing to Policy and Legal Department, 85 Gray's Inn Road, London WC1X 8TX, DX 328 London/Chancery Lane.

CONTRACT STANDARD TERMS 2004

We will shortly begin our consultation on amendments to our General Civil and General Criminal Contract Standard Terms, to take effect from 1 April 2004.

Consultation, as usual, will be with The Law Society, Advice Services Alliance, Legal Aid Practitioners Group, Criminal Law Solicitors Association and the London Criminal Courts Solicitors Association.

The consultation paper will be on our website (www.legalservices.gov.uk) but if you are unable to access our website and would like a copy, please contact your Contract or CDS Manager.

Few of the amendments proposed in the consultation paper will affect the day-to-day provision of services under contracts. In the main, they are to address technical issues encountered in operating over 7,500 contracts. Many of the proposed amendments have already been incorporated into the new General Civil Contract (NFP) 2003. Where appropriate, any that have not, will be subject to consultation with the Advice Services Alliance with a view to incorporation.

There are a few amendments proposed in the consultation paper that do not affect the Standard Terms and which may affect the day-to-day provision of services. The most significant are an amendment to the General Civil Contract Schedule to address the issue of rising average matter costs; and an amendment to the Civil and Criminal Specifications to emphasise that there must be evidence of work done on a case file, or no payment will be made for it.

This Standard Terms consultation is entirely separate from the consultation paper issued by the Department for Constitutional Affairs (DCA) on 5 June 2003, entitled 'Delivering Value for Money in the Criminal Defence Service' (Code CP/05/03) and available on the DCA website (www.lcd.gov.uk).

In *Focus on CDS* 12, June 2003, we encouraged criminal practitioners to read and consider the DCA consultation paper, as it contained important proposals affecting work undertaken by CDS suppliers.

NEW IMPROVED JUST ASK! WEBSITE

www.justask.org.uk

Just Ask!, the website of the Community Legal Service, has undergone a major facelift. The new site was launched early in September 2003 and has received positive feedback from both the public and the profession.

Navigation has been simplified, so that all major sections of the website can be accessed from the homepage. These sections include: Advice Search which indexes around 300 legal and advice websites on a wide range of legal topics; an online version of the CLS Directory which is updated on a daily basis and allows users to search for a solicitor or other adviser by location; and the full range of CLS information leaflets which are available in a fully-searchable format, as well as PDF for easy downloading and printing.

A major development for Just Ask! is its calculator which allows members of the public to get an idea of their eligibility for CLS-funded help. A suppliers' calculator has been on the Commission's website for some time and has proved very popular.

The coming months will see a number of developments to Just Ask!, including:

- a comprehensive review of the foreign language sections;
- an evaluation of the site's usability from the public perspective;
- a project to pilot Just Ask! on internet kiosks;
- an increase in the quantity and quality of legal information being fed through to the site from partner organisations and greater syndication of content across relevant websites; and
- plans to enable the online Directory to be shared (or accessed) by other websites.

A publicity drive for the new site is planned over the next few months and will involve a leaflet and poster campaign. Feedback or queries regarding the website should be sent to webadmin@justask.org.uk. If you would like copies of the Just Ask! leaflet or poster, please contact Amy Clements via e-mail, amy.clements@legalservices.gov.uk, or telephone 020 7759 1025.

FUNDING OF JUDICIAL REVIEW CASES RELATING TO S 55 OF THE NIA ACT 2002

Section 55 of the Nationality, Immigration and Asylum Act 2002 restricts access to support (NASS) to those who have made their claim for asylum as soon as reasonably practicable. There is no right of appeal against this decision. Legal advisers are using the Administrative Court to challenge the Secretary of State's decisions under this section.

Mr Justice Maurice Kay, Head of the Administrative Court, has recently expressed his concern about the volume of section 55 cases clogging up the system. Many of these cases are publicly funded.

The Home Office has already issued to representative bodies guidance on what evidence is required for initial decisions on eligibility for access to support to be reconsidered. Every effort is now being made to ensure that decisions on reconsiderations are

made within 24 hours.

Four test cases were heard on 24 October 2003 and following that, Mr Justice Maurice Kay has issued some guidance on the handling of these cases. He recommends that:

- The Secretary of State should provide emergency accommodation, without the need for an injunction, once there is an indication that a judicial review application is to be made.
- The Secretary of State should aim to produce a decision on further representations within 24 hours. If that decision is negative then the claimant may make an application to the court for interim relief.
- Claimants' legal advisers should make their representations to the Secretary of State in as detailed manner as possible.
- Legal advisers should not make

applications to the out of hours judge save in the most exceptional circumstances.

Applications for judicial review should only be made after the Home Office has refused to provide emergency accommodation. The Commission will not grant funding in such cases unless there is evidence that detailed further representations have been made to the Secretary of State and that either no decision has been received within 24 hours or the decision was negative.

The guidance from Mr Justice Maurice Kay forms part of his judgment in the case of *R (on the application of Q) v Secretary of State for the Home Department*, which is to be reported by the All England Law Reports and can be found on Butterworth's Lexicon website. (Reference [2003] All ER (D) 409 (Oct).)

THE LSC MANUAL 2004 AND BEYOND

The LSC Manual – the main source of guidance and information for contracted suppliers – will have a new publisher and a new look from 2004.

The Stationery Office (TSO) has successfully tendered to take over as the publisher of the LSC Manual from 2004 onwards. This follows the expiration of the current contract with Sweet & Maxwell at the end of this year.

The LSC and TSO are working together closely to maximise the potential benefits to our suppliers; providing better value for money and offering all combinations of the Manual or Manual plus CD-ROM at lower prices. The change of publisher will also allow us to replace the current manuals in circulation which, after four years' use, are beginning to show their age.

Additionally, we are using this opportunity to respond to the feedback we have received over the past four years. This includes:

- a move to twice-yearly updates;
- improved, more user-friendly indices and page numbering;

- an enhanced CD-ROM version; and
- a subscription-based web version, which will be updated between Releases to reflect key changes.

Sweet and Maxwell, will continue to produce the manual for 2003, culminating in the issue of Release 11 in December. TSO will take over the publication of the Manual from 1 January 2004, with the first Release taking place in June, to allow for inclusion of Financial Eligibility rates and other time-critical changes. This will be a complete reissue of the Manual to all subscribers. During this six-month period, key updates will be made via the LSC website and *Focus*.

TSO will be contacting all suppliers over the coming months and offering existing subscribers the opportunity to renew their subscriptions.

If you require further information in the meantime, please contact either andrea.oliver@tso.co.uk or neil.mcleavey@legalservices.gov.uk

REVISED MILEAGE RATES

Effective for Chair and Members of Legal Services Commission Committees from 1 October 2003.

Demonstrating its commitment to following a sound environmental strategy to support the Government's policy for a greener approach to Government Operations, the Commission has reviewed the mileage rates for payments to external members (including Chairs) of its committees.

The administrative system of authorised mileage rates based on a car's engine size, and used for the majority of external members of the LSC's committees, has been replaced by a single rate for all cars as follows:

Up to 10,000 miles 40p

Over 10,000 miles 25p

The revised rate reflects the Government's policy to promote sustainable development, particularly in the public sector, and means that those who use cars with larger engines receive marginally lower reimbursements. The change brings the Committee mileage rates into line with those applied to Commission members and staff, and reflects Government guidance more accurately.

ASYLUM CASEWORKER TRAINING PROJECT

The Asylum Caseworker Training Project has been running successfully for two years. The purpose of the project is to train new or recently recruited asylum caseworkers to provide, under supervision, quality advice and representation for asylum seekers.

The course runs for five days followed by three follow-up days a few weeks later. The course covers the substantive and practical areas of asylum casework and concentrates on 'best practice' in all sections of this work.

Under the project, participants from Commission contracted suppliers, who obtain

their certificate of attendance, will have their course fees reimbursed. To gain their certificate of attendance, the trainee must attend all eight days of their course, 9.30 am – 4.30 pm and complete all set coursework.

There are a maximum of 15 places available. To avoid disappointment phone Jane Savory on 020 7611 7441 to confirm that places are still available. Contact ACT Project, Professional Development Department, The College of Law, 2 Bream's Buildings, London EC4 1PJ. E-mail jane.savory@lawcol.co.uk

LOCATION	5 Days	3 Days
CHANCERY LANE	5,6,7,8,9 JAN 04	21,22,23, JAN 04

UPDATED COMMUNITY LEGAL SERVICE LEAFLETS

To ensure that the CLS information leaflets remain accurate and relevant, they are being reviewed and amended by their authors. The following leaflets have been updated since June 2003 and are now available to reorder:

Leaflets updated in July 2003: Buying and Selling, Welfare Benefits and No Win No Fee. Leaflets updated in August 2003: Losing Your Home.

The remaining leaflets, Equal Opportunities, Education, Dealing with Police, Immigration, Mental Health, Family Mediation, Rights for People with Disabilities and Racial Discrimination are in the process of being reviewed and updated versions will be available during the next three months. Amendments are currently being made to the alternative formats of all of the leaflets. Updated versions will be available by the New Year.

The version date for each leaflet can be found at the bottom of the back page of each leaflet. 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, E-mail: LSCLeafletline@direct.st-ives.co.uk

If you have any queries or comments concerning the leaflets please contact Mary Burkinshaw, Policy and Legal Department, Head Office, 85 Gray's Inn Road, London, WC1X 8TX or e-mail mary.burkinshaw@legalservices.gov.uk

CHANGE OF DETAILS FORM

To make it easier for CLS Suppliers to keep the Commission informed about their service, a new 'change of details form' is now available on the Commission's website.

The form is to be used to notify the Commission of any changes to: core service details, together with other information available on the directory, on the Just Ask! website, or from the CLS Directory Line.

The form can be downloaded from the Quality Mark section of the forms page at www.legalservices.gov.uk/misl/forms.htm. Please complete the form as and when necessary and return it to your local regional office. If you have any further queries about the form please contact your regional office or the Special Projects Team on: 020 7759 1032.

METHODS OF DELIVERY PILOTS

The Legal Services Commission has now evaluated its telephone advice pilot project, which produced very positive findings.

Based on the findings, which will be published soon, it is intended that the telephone advice service should be rolled out across England and Wales in priority categories of law. A tendering process for letting new contracts commenced in late November 2003, and more detail about the future shape of this service will appear in the next edition of *Focus*.

If you require further information about telephone advice, please contact Jill Hobson (020 7759 0474).

MINISTER VISITS PROJECTS

David Lammy, Minister at the Department for Constitutional Affairs with responsibility for Legal Aid, visited Brighton, London, Sheffield and Cardiff in September to look at various projects that work in partnership with the Commission in delivering quality legal advice.

In particular Mr Lammy visited local solicitors in Cardiff to talk about the Commission's FAInS project, and visited Shelter Cymru, part of the Specialist Support Service in Wales. In Brighton, Mr Lammy attended Brighton CAB and also looked at the work of the Partnership Initiative Budget's Mental Health Advice project, a partnership of Brighton Housing Trust, Brighton CAB, and Threshold.

Mr Lammy said: "I was enthused by a lot of the innovative practice that I saw in the NFP sector and I listened carefully to some of their suggestions of new practices that they are undertaking in legal aid work."

LEEDS ON THE MOVE

As of 11 November, the Yorkshire and Humberside regional office has a new address:

**Harcourt House
Chancellor Court
21 The Calls
Leeds LS2 7EH**

The DX and telephone numbers remain the same.

FINANCIAL ELIGIBILITY PENSION CREDIT OCTOBER 2003

The Community Legal Service (Financial) (Amendment) Regulations 2003, SI No 650, makes the following change to financial eligibility. This change will apply to all applications for funding made on or after 6 October 2003 and to reassessments of certificates under Regulation 15 of the Community Legal Service (Financial) Regulations 2000.

Since 6 October 2003, there is a new passporting benefit under the Community Legal Service (CLS) scheme. Clients who directly or indirectly* receive **Guarantee State Pension Credit (under section 1(3)(a) of the State Pension Credit Act 2002)** will be deemed to automatically satisfy the financial qualification criteria for income and/or capital.

(*A person is deemed to indirectly receive a benefit through their inclusion as a dependant on the benefit claim.)

The passporting arrangements for clients who receive the Guarantee State Pension Credit will exactly mirror the existing arrangements for clients who receive Income Support and Income Based Job Seekers' Allowance. Therefore:

- **For levels of service of Legal Help, Help at Court, Legal Representation before Immigration Adjudicators or Immigration Appeal Tribunal** clients who receive Income Support, Income Based Job Seekers' Allowance or Guarantee State Pension Credit, will continue to be automatically eligible on income. But their capital will still need to be assessed.
- **For all other levels of service:** clients who receive Income Support, Income Based Job Seekers' Allowance or Guarantee State Pension Credit, will continue to be automatically eligible on both income and capital and their means will not need to be assessed.

Please note, there are no changes to the eligibility limits outlined in April 2003.

Pension Credits Explained

The State Pension Credit Act received Royal Assent in July 2002. It is made up of two elements:

- **Guarantee Credit** for people who are 60 or over (however, their partner can be aged under 60 years);
- **Savings Credit** to reward people who are 65 or over who have made a modest provision for their retirement.

The Guarantee Credit broadly replaces the current Minimum Income Guarantee (MIG), i.e. Income Support for those aged 60 years or over. It is possible to receive either type of Pension Credit or a combination of both. The applicant is passported on income and/or capital if the Guarantee Credit is in payment by itself or is combined with the Savings Credit. The applicant is **not** passported under the CLS scheme when they receive the Savings Credit only, and the Savings Credit will be treated as income.

Existing MIG claims were converted by 6 October 2003. For new applications and reassessments where the Commission is the assessing authority, passporting checks are being carried out by the regional office directly with the Department of Work and Pensions to confirm entitlement. For those levels of services where the supplier firm is the assessing authority, reference should be made to the section below which deals with satisfactory evidence of claim.

Satisfactory Evidence

Clients will receive an Award Letter and Award Calculation Sheet for Pension Credit, which are system-produced notifications that confirm their entitlement to Pension Credit. The Calculation Sheet will identify if the award is for Guarantee Credit and/or Savings Credit. It also shows a breakdown of any income the client has and any capital where

applicable. The Award Letter will show which method of payment is being used. Forms PC12 and A14N(PC) are the clerical version of the Award Letter and the Award Calculation Sheet.

In accordance with Rule 2.5 of the General Civil Contract, satisfactory financial evidence will need to be supplied. The Award Letter together with the Award Calculation Sheet (or the clerical versions of these forms), should be accepted as satisfactory evidence of claim. Otherwise, any relevant correspondence from the paying agency in the client's possession would be acceptable, such as a Statement of Entitlement, which explains how the client's Pension Credit has been worked out. (The Award Letter, or the 'short version' Statement of Entitlement, will not be accepted by themselves as evidence that Guarantee Credit is in payment where the form does not specify the type of Pension Credit received.)

Update packs have been sent to suppliers who hold a copy of the Forms Masterpack and updated forms have been posted on the Commission's website (www.legalservices.gov.uk). An updated Keycard (No 39) is also available from the website. The suppliers' calculator and accompanying guidance (LSC Manual Vol 2, part 2C) also located on the website, has been updated accordingly.

For more information on these changes please contact: Grace Nicholls, Means Assessment Policy Adviser, 29-37 Red Lion Street, London WC1R 4PP. Tel:020 7759 1776





GENERAL

This card is intended as a quick reference point for assessing financial eligibility for levels of service for which the supplier has responsibility: Legal Help; Help at Court; Legal Representation before Immigration adjudicators and the Immigration Appeal Tribunal; Family Mediation; Help with Mediation and Legal Representation for Specified Family Proceedings before a Magistrates' Court (other than proceedings under the Children Act 1989 or Part IV of the Family Law Act 1996). Full guidance on the assessment of means is set out in Part C of Volume 2 of the Legal Services Commission Manual. References in this card to volume and section numbers e.g. volume 2C-section 1 are references to the relevant parts of that guidance. Practitioners should have regard to the general provisions set out in guidance volume 2C-section 2, particularly those set out in sub paragraphs 3-5 regarding the documentation required when assessing means. This keycard and the guidance are relevant to all applications for funding made on or after 6 October 2003.

ELIGIBILITY LIMITS

The summary of the main eligibility limits from 6 October 2003 are provided below:

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

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

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

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

STEP BY STEP GUIDE TO ASSESSMENT

STEP ONE Determine whether the client has a partner whose means should be aggregated for the purposes of the assessment (see guidance in volume 2C-section 4 paras 2-6).

STEP TWO Determine whether the client is directly or indirectly receiving Income Support, Income Based Job Seekers' Allowance or Guarantee State Pension Credit to determine whether the client automatically satisfies the relevant financial eligibility test, as indicated by the 'passported' arrangements stated in the table on reverse.

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

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

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

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

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

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

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



GENERAL

This card is intended as a quick reference point for assessing financial eligibility for Advice and Assistance, and Advocacy Assistance. Full guidance on the assessment of means is set out in Part E of Volume 4 of the Legal Services Commission Manual. References in this card to volume and section numbers, e.g. volume 4E-section 1, are references to the relevant parts of that guidance. Practitioners should note the general provisions set out in guidance volume 4E-section 3, particularly those set out in sub-paragraph 2, regarding the documentation required when assessing means. This keycard and the guidance are relevant to all applications for funding made on or after 6 October 2003.

ELIGIBILITY LIMITS

The summary of the main eligibility limits from 6 October 2003 are provided below:

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

STEP BY STEP GUIDE TO ASSESSMENT

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

STEP TWO (A) Determine whether the client directly or indirectly receives either Income Support, Income Based Job Seekers' Allowance or Guarantee State Pension Credit to determine whether the client automatically satisfies the relevant financial eligibility test, as indicated by the 'passported' arrangements stated in the table on reverse.

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

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

FIXED RATE ALLOWANCES (PER WEEK) FROM 7 APRIL 2003

DEPENDANTS' ALLOWANCES

PARTNER	£31.10
CHILD AGED 15 OR UNDER	£38.50
CHILD AGED 16 OR OVER	£38.50

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

STEP FIVE For clients whose disposable income and disposable capital has been assessed as being below the relevant limits, the client can be awarded funding for all levels of service.

FINANCIAL ELIGIBILITY PENSION CREDIT OCTOBER 2003

The Criminal Defence Service (General) (No 2) (Amendment No 2) Regulations 2003, SI No 2378, provide for the following changes to financial eligibility. These changes apply to all applications for funding made on or after 6 October 2003.

Clients who directly or indirectly* receive the new **Guarantee State Pension Credit (under section 1(3)(a) of the State Pension Credit Act 2002)** will be 'passported', i.e. deemed to automatically satisfy the financial qualification criteria on income and/or capital, under the Criminal Defence Service Advice and Assistance/Advocacy Assistance Schemes.

(*A person is deemed to be indirectly receiving a benefit through their inclusion as a dependant on the benefit claim.)

The passporting arrangements for clients who receive the Guarantee State Pension Credit will exactly mirror the existing arrangements for clients who receive Income Support and Income Based Job Seekers' Allowance.

Advice and Assistance

Clients who receive Income Support, Income Based Job Seekers' Allowance, Guarantee State Pension Credit, Working Tax Credit plus Child Tax Credit*, or Working Tax Credit plus a disability element*, will continue to be automatically eligible on income. However their capital will still need to be assessed.

(*Gross income not to exceed £14,213 for passporting.)

Advocacy Assistance

Clients who receive Income Support, Income Based Job Seekers' Allowance or Guarantee State Pension Credit, will continue to be automatically eligible on both income and capital.

Clients who receive Working Tax Credit plus Child Tax Credit*, or Working Tax Credit plus a disability element*, will continue to be automatically eligible on income. However their capital will still need to be assessed.

(*Gross income not to exceed £14,213 for

passporting.)

There are no changes to the eligibility limits outlined in April 2003.

Recovery of Defence Costs Orders

There are no regulation changes for the purposes of Recovery of Defence Costs Orders as there is no passporting under this scheme. Guidance will be issued to courts to consider the Guarantee State Pension Credit as a means-tested benefit, in the same way as Income Support and Income Based Job Seekers' Allowance.

Pension Credits Explained

The State Pension Credit Act received Royal Assent in July 2002. It is made up of two elements:

- Guarantee Credit for people who are 60 or over (their partner can however be aged under 60 years); and
- Savings Credit to reward people who are 65 or over who have made a modest provision for their retirement.

The Guarantee Credit broadly replaces the current Minimum Income Guarantee (MIG), i.e. Income Support for those aged 60 years or over. Existing MIG claims are to be converted by 6 October 2003. It is possible to receive either type of Pension Credit by itself or a combination of both elements. The applicant is passported if the Guarantee Credit is in payment by itself, or is combined with the Savings Credit. The applicant is **not** passported under the CDS scheme where the client is in receipt of the Savings Credit only, and the Savings Credit will be treated as income.

Satisfactory Evidence

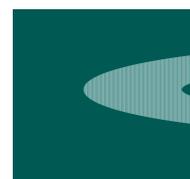
Clients will receive an Award Letter and Award Calculation Sheet for Pension Credit, which are system produced notifications that confirm their entitlement to Pension Credit. The calculation sheet will identify if the award is for Guarantee Credit and/or Savings Credit. It also

shows a breakdown of any income the customer has and any capital where applicable. The Award Letter will show which method of payment is being used. Forms PC12 and A14N(PC) are the clerical version of the Award Letter and the Award Calculation Sheet.

In accordance with Rule 2.6 of the General Criminal Contract, satisfactory financial evidence will need to be supplied. The Award Letter together with the Award Calculation Sheet (or the clerical versions of these forms), should be accepted as satisfactory evidence of claim. Otherwise, any relevant correspondence from the paying agency in the client's possession would be acceptable, such as a Statement of Entitlement which explains how the client's Pension Credit has been worked out. (The Award Letter, or the 'short version' Statement of Entitlement, will not be accepted by themselves as evidence that Guarantee Credit is in payment where the form does not specify the type of Pension Credit received.)

Update packs have been sent to suppliers who hold a copy of the forms Masterpack and updated forms have been posted on the Commission's website. An updated Keycard (No 39A) is available from the website. LSC Manual IV will be updated in due course.

For more information regarding the changes please contact: Grace Nicholls, Means Assessment Policy Adviser, 29-37 Red Lion Street, London WC1R 4PP. Tel: 020 77591776



FUNDING CODE UPDATE

Housing Disrepair Pre-action Protocol

After one of the longest gestation periods ever, the Pre-action Protocol for Housing Disrepair was finally included in the 33rd update of the Civil Procedure Rules, published in September. The protocol is due to come into force on 8 December 2003, some 7 years after getting its first mention in the Woolf Report!

In anticipation of the protocol coming into force the LSC has amended its guidance on housing disrepair cases namely, all civil law claims which include a claim for disrepair but not counterclaims or set-offs in disrepair claims which originate as other proceedings. Provided that: the prospects of success are clear; quantum of damages can be estimated; and there is clear evidence of prior notice having been given to the landlord by or on behalf of the tenant, Legal Representation is likely to be granted for protocol work.

This guidance is consistent with the existing LSC policy to encourage the use of Legal Representation in appropriate disrepair cases and limit expenditure on surveyor's reports under Legal Help. Practitioners will be requested to confirm the relevance, or otherwise, of the protocol when applying for Legal Representation; and certificates will normally be limited to protocol work at first instance.

The amended guidance will appear in Release 11 of the Legal Services Commission Manual, due to reach practitioners at the beginning of December 2003.

Contact: Ruth Wayte, Policy and Legal Department, 85 Gray's Inn Road, London WC1X 8TX. Tel: 020 7759 0536

Emergencies – Public Interest

Some practitioners have been granting emergency certificates under devolved powers on the basis of significant wider public interest, particularly judicial review cases in areas such as education. This is not generally an appropriate use of devolved powers – decisions on public interest should be made by the Commission, assisted if necessary by the Public Interest Advisory Panel. Emergency grants should usually be based upon the genuine urgent needs of the client, rather than any perceived wider public benefits.

Boundary Disputes

Although boundary disputes are excluded work, other types of dispute between neighbours may be in scope. So what is a boundary dispute? We intend to produce improved guidance on this issue in future updates to the manual but, meanwhile, the following should be borne in mind:

- As with all exclusions, what matters is the substance of the dispute rather than the legal cause of action or pleading. The key question is whether the dispute is about the boundary between two properties or about other matters.
- Boundary disputes, therefore, include disputes about party walls, boundary fences or rights of way along a boundary. However, a dispute about a right of way running across a neighbour's property would be within scope.
- If a neighbour is not respecting a boundary that constitutes a boundary dispute even if the neighbour has no legal basis for his actions. Similarly a case may be excluded even if the client is only seeking an injunction against the neighbour rather than a declaration as to the location of the boundary.
- If a dispute between neighbours includes boundary disputes and other matters, the rules on mixed cases must be applied. However if the client is proposing to initiate proceedings it will usually be possible to separate out the excluded issues and fund only the in scope matters.

Consultation

As explained in *Focus* 42 (page 11), we will shortly be consulting upon the future development of the Funding Code, including areas such as actions against the police, clinical negligence and education claims. We also wish to consider whether the scope and definitions of the different levels of service remain appropriate, especially in family cases.

We plan to issue a consultation paper before the end of the year – this will appear in the consultation section of our website as soon as it is available. Any changes to scope or criteria will not be made before April 2004 but will partly depend on external reforms, such as the Chief Medical Officer's proposals for clinical negligence.

Contact: Colin Stutt, Policy and Legal Department, 85 Gray's Inn Road, London WC1X 8TX. Tel: 020 7759 0460.

IMPROVED ACCESS TO EXPERT ADVICE

"Specialist Support helped us to win in many cases."

"It made a complete difference to the outcome."

"It helped us to gather the essential evidence to progress the case."

These quotes come from a recent user survey of the Specialist Support pilot. 92% of respondents to the survey echoed these thoughts, saying that the support had a positive impact on their client's case.

The pilot was established in 2000 to explore ways of providing expert legal advice and support to all General Civil Contract holders (including family law practitioners), and General Help with Casework organisations in community care and welfare benefits. Services can provide one-off advice, assist with running complex cases and deliver training courses on the latest legal developments.

There have been a number of changes recently to increase access to these services. These include increasing their opening hours or providing voice messaging services and developing e-mail services to deal with queries. Please see the chart opposite for details.

The other change is that the Community Care team at Tyndallwoods who have been providing advice since the inception of the pilot is demerging and setting up as Public Law Solicitors. Public Law Solicitors will take over from Tyndallwoods though the advice line number and session times will remain the same. If you would like any more information about this or their training courses, please contact Karen Ashton on 0121 256 0326.

If you would like any more information please contact kylie.kilgour@legalservices.gov.uk

SPECIALIST SUPPORT SERVICES

category of law	catchment	organisation	opening times	phone number
Community Care	National	Disability Law Service	Mon & Wed 2-5pm	020 7791 9809
		Public Law Solicitors	Tues & Thurs 2-4.30pm	0121 246 9027
Community Care/Public Law	National	Christian Khan	Wed & Fri 2-5pm*	020 7693 0215
Debt	London	Balsara & Co	Tues & Thurs 2-5pm	020 7797 6324
		Mary Ward Legal Centre	Wed 2-5pm & Fri 10-1pm	020 7269 5490
	Wales	Citizens Advice	Tues-Fri 10am-12.30pm & 1-3.30pm	0845 602 3450
		Morgans	Mon 10am-12.30pm & 1-3.30pm	0845 602 3450
Employment	National	Citizens Advice SSU	Mon-Thurs 10.30am- 1pm & 2-4pm	0808 808 3681
		Two Garden Court Chambers	Wed-Fri 2-5pm	020 7415 6360
	East Midlands	Chesterfield Law Centre	Wed 10am-12pm*	01246 273 171
	North West	Garden Court North	Tues & Thurs 2-5pm	0161 236 3666
HIV/AIDS (Immigration)	National	Terrence Higgins Trust	Tues & Fri 2-5pm*	020 7816 4605
Housing	National	Shelter	Mon-Fri 9am-5pm	020 7505 4688
		Two Garden Court Chambers	Mon-Fri 2-5pm	020 7415 6340
	Wales	Shelter Cymru	Mon, Thurs & Fri 10am-12.30pm & 1-3.30pm	0845 602 3449
		Morgans	Tues & Wed 10am-12.30pm & 1-3.30pm	0845 602 3449
	North Yorks, East Riding, York & Hull	HARP	Mon & Wed 10am-1pm & 2-5pm & Fri 10am-1pm	01609 761 777
	S & W Yorks, N & NE Lincs	Shelter North & Midlands	Mon-Fri 10am-4pm**	0113 246 8094
Human Rights/Public Law	National	Doughty Street Chambers	Mon-Fri 9.30am-5.30pm	020 7411 2700
		Liberty/Public Law Project	Mon & Wed 2-5pm, Tues & Thurs 10am-1pm	0808 808 4546
Immigration	National	JCWI	Mon-Fri 10am-1pm	0845 206 1020
		Two Garden Court Chambers	Mon-Fri 2-5pm	020 7415 6350
Mental Health	National	MIND	Tues & Thurs 11am-1pm*	020 8215 2345
		Scott-Moncrieff***	Tues & Thurs 2-5pm*	020 7428 5927
Welfare Benefits	Wales	Citizens Advice	Mon-Wed & Fri 10am-12.30pm & 1-3.30pm	0845 602 3451
		Morgans	Thurs 10am-12.30pm & 1-3.30pm	0845 602 3451
	Eastern Region****	CPAG	Mon-Wed 2-4pm, Thurs 10.30-12.30	020 7278 2100
	Hertfordshire	Herts Money Advice	Tues 10-12, Thurs 2-4pm	01992 556 890
	London	LASA	Mon & Tues 1.30-4pm, Thurs 11am-1.30pm	020 7247 8935
	Yorkshire & Humberside	Howells	Tues & Thurs 1-4pm, Wed 10am-1pm	0114 249 6686
	East Midlands	French & Co	Mon 10am-2pm	0115 941 5050

* at other times by leaving a message, ** Wed from 1pm only, *** Scott-Moncrieff Harbour & Sinclair, **** excluding Herts

PROTOCOL FOR JUDICIAL CASE MANAGEMENT PUBLIC LAW CHILDREN ACT CASES

Public funding issues

Family practitioners will be aware that the Protocol for Judicial Case Management In Public Law Children Act Cases has been implemented from 1 November 2003. The Protocol has impacts for public funding and this article summarises the main issues, in particular, the Commission's latest position on prior authorities and payments on account, and the changes to be made to the Family Graduated Fees Scheme to support the Protocol.

An updated, detailed information pack dealing with experts can be found on the Commission's website at www.legalservices.gov.uk/guid/cls.htm, as well as on the Court Service website (www.courtservice.gov.uk) in the Protocol guidance section. Family barristers have already received a briefing on Family Graduated Fees which is summarised below. The main issues are:

- court directions will be followed by the Commission;
- there is no need to apply for prior authority;
- there is a new unified payment on account procedure; and
- to reflect the Protocol implementation, changes are to be made to the Family Graduated Fees Scheme.

Further details on the changes to the Scheme were provided to family barristers during October.

The use of experts in cases subject to the Protocol

Whenever the Community Legal Service Fund (the Fund) is expected to bear the costs of a disbursement, consideration will be given by the court to whether both the principle and the amount of the disbursement (hourly rates and the overall, global figure) are reasonable. The Protocol for Judicial Case Management in Public Law Children Act Cases provides for the control of both the use and costs of experts by the judiciary at all levels. The court may specify an hourly and/or global maximum rate but a direction naming an expert (as envisaged by the Protocol) implies that the work, rates and total amount quoted are reasonable. See the

Annex to the Practice Direction, paragraph 7 and Appendix C to the Protocol, paragraph 2.3.

The Protocol is to be supported by 'standard variable directions' which can be used by the courts, amended as necessary to reflect the circumstances and decision in a particular case.

The powers of the court in relation to directions as to the apportionment and the amount of any costs are not beyond doubt but the Commission takes the view that it should follow orders made by the court which has given appropriate consideration to the relevant issues.

The position of the Commission

It is the position of the Commission that the limited Fund should only bear the costs of reports or expert assessment where that is reasonable, having regard to the assessment obligations of the local authority, both as to core assessments and under section 38(6) of the Children Act 1989.

It is always assumed that the local authority will undertake or commission any core assessment work which is reasonably required, at its own expense.

It is also assumed that the costs of an assessment under section 38(6) of the 1989 Act will also be borne by the local authority that has the care of the child under the interim care order. This is the underlying basis for the Commission's guidance in the LSC Manual (Volume 1, paragraph 5.8).

Where it is neither a core nor a section 38(6) assessment borne in total by the local authority, it is appropriate for expenditure to be apportioned between the parties in public law Children Act cases. In such cases, the Commission takes the view that any apportionment should be on a moiety basis, rather than a proportionate basis, between the individual funded clients and the local authority (see paragraph 5.8.2 in the Manual). Moiety in this context means shared equally between the local authority and the Fund (with the share attributable to the Fund then being apportioned between the funded clients). Proportionate in this context means divided equally between all the parties. This reflects the fact that free, non-means/non-merits tested Legal Representation is available to the key,

individual parties in the most important proceedings.

However, the Commission is pursuing the question of apportionment as a matter of policy with the relevant Government departments with a view to a common position being achieved. In the meantime it will accept the apportionment directed by the court, but would ask that the above approach be followed.

Payment rates including for independent social work

There are no fixed payment rates for experts in public law Children Act cases. The published rates which are available are those applicable, by regulation, in criminal proceedings and the rates paid by CAFCASS for self-employed guardians. It is reasonable to use those rates to inform the exercise of discretion on rates of payment and to have regard to them when considering the instruction and payment of experts. In particular, it would be reasonable to apply the CAFCASS rates to independent social work requiring the same level of expertise and experience as that of a self-employed guardian.

The basic principle is that costs, whether paid by the client or the Fund, are in reimbursement of the solicitor's profit costs, counsel's fees and disbursements incurred by the solicitor. The solicitor is expected to obtain good value for money for the client in the same way as he or she would do for a private client.

Prior authorities and payments on account

No prior authority is required to incur costs in relation to obtaining a report or to a court attendance by an expert whose instruction has been authorised by the court. Although the amount of the fees to be paid to such an expert will be determined when the costs are assessed, the Commission will, in the absence of a relevant change in circumstances (affecting the need for or the costs of the work), follow the directions given by the court where it has given leave for an expert to undertake certain, specified work and may have given a direction as to the apportionment of the expert's costs. In the circumstances, the Commission wishes to discourage applications for prior authority which may serve only to delay the instruction

of the expert and the court timetable for the proceedings.

No prior authority has to be obtained for a payment on account of disbursements to be made. A payment on account can be applied for where a disbursement has been incurred or is about to be incurred (Regulation 101(1)(a) Civil Legal Aid (General) Regulations 1989 (as amended)) but the solicitor must use standard form CLS CLAIM 4. The form has been amended and a new, unified procedure established so that, in the event of joint liability for disbursements in a public law Children Act case, the lead solicitor can apply for apportioned payments on account for all the solicitors acting for publicly-funded clients. The standard variable directions supporting the Protocol can be used to provide specific authority to the lead solicitor to make a unified claim or to require the lead solicitor to be put in funds to pay the expert.

Where a unified claim for a payment on account is made, the apportioned payment on account is made direct to each solicitor who can then deal with it in accordance with any relevant court direction or agreement between the solicitors.

This will mean that, in the event of joint liability for the expert's costs, each solicitor will no longer need to apply for a separate payment on account and the expert should receive payment more quickly. Solicitors will need to check for receipt of payments in the usual way.

Solicitors should look at the updated information pack on the Commission's website and queries can be addressed to **Lynn Graham**, Senior Legal Adviser, Legal Services Commission, Policy & Legal Department, 85 Gray's Inn Road, London, WC1X 8TX, DX 328 London/Chancery Lane, e-mail: lynn.graham@legalservices.gov.uk

Family Graduated Fees Scheme Update

The summary below outlines how counsel will be paid for Protocol work within the Family Graduated Fee Scheme (FGFS). A more detailed information pack on these changes was made available to counsel during October.

The review of FGFS is continuing and the changes arising are likely to be implemented in early 2004. Further details of these changes will be published as they become available.

Protocol Work – how will it be paid?

- **The Case Management Conference**

(CMC): step 4 The CMC is a function F3 hearing and will be paid as such. However, in recognition of the additional preparatory work required of counsel, an additional lump sum payment will be paid – equal to 50% of the single hearing unit fee.

- **The Pre-Hearing Review (PHR): step 5** This is the directions hearing held immediately prior to the final hearing to ensure all parties are ready for the final hearing. The Protocol encourages attendance at the PHR by the advocate retained for the final hearing. Ordinarily, a PHR would be a function F3 but, in support of the Protocol, if the same advocate attends the final hearing, the PHR will be treated as the F5 primary hearing unit. All days of the main hearing are then paid at the F5 secondary hearing unit rate. In the event that separate advocates attend each of the hearings, the PHR will be paid as an F3 as usual.
- **Advocates Meetings (AM): prior to steps 4 and 5** The Protocol requires advocates to meet prior to the CMC and PHR to undertake specific preparatory work to narrow the issues prior to the hearing. If the meeting takes place prior to the day of the CMC and PHR, it will be paid as an F3 function. If it takes place on the day of the CMC, the start of the AM will be deemed to be the start of the F3 hearing unit.
- **Written Submissions at the Main Hearing: step 6** If the court requires written submissions on consequential orders and directions to be lodged at the conclusion of the main hearing, these will be paid as a function F5 secondary unit.

What other changes are being made to FGFS in November?

- The scope of the scheme will be amended so that: cases brought under the Child Abduction and Custody Act 1985 will now be paid under category 2; and cases brought under either the Inheritance (Provision for Family and Dependents) Act 1985 or the Trusts for Land and Appointment of Trustees Act 1996 will be removed from the remit of the scheme.
- Payment for court bundles that are over 700 pages will change so that the fixed payment for bundles over 350 pages (CBP2) will always be paid. Where the preparation is substantially more than the

norm, counsel may also apply for a special preparation fee.

- The rule on travel expenses will be relaxed and will be subject to a general test to ensure that expenses are reasonably and necessarily incurred.

How will further details be published?

If you would like to receive a copy of the fuller briefing pack or have any queries on the FGFS changes please contact **Ruth Symons** by e-mail at ruth.symons@legalservices.gov.uk or on 020 7759 0367.

REPRESENTATION AT INQUESTS *Increased Eligibility*

New regulations have been made to give the Secretary of State the power to waive financial eligibility levels in cases where exceptional funding is applied for to cover representation at an inquest.

This change follows the recent decision of *Khan* in the Court of Appeal which considered the State's obligation under art 2 of the ECHR to ensure an effective investigation, following a death in which agencies of the State were involved. *Khan*, and the recent case of *Amin* in the House of Lords, have stressed the importance of family involvement in such investigations.

The procedure for applying for exceptional funding for representation at an inquest remains unchanged. Applications should be made under section 6(8)(b) of the Access to Justice Act 1999 to the Special Cases Unit in London at 29-37 Red Lion Street, London EC1R 4PP, DX 170 London/Chancery Lane, completing the normal means and merits forms for CLS funding.

However, under the new regulations, the Commission will have power to request the Secretary of State to disapply eligibility levels for inquests where art 2 is engaged.

The amendments are contained in the Community Legal Service (Financial) (Amendment No 2) Regulations 2003, SI No 2003/2838. The regulations come into force on 1 December 2003.

Contact: Colin Stutt, Policy and Legal Department, 85 Gray's Inn Road, London WC1X 8TX. Tel: 020 7759 0460.

COSTS APPEALS COMMITTEE POINTS OF PRINCIPLE

CLA 33, 21 JULY 2003

Entitlement to a Settlement Supplement in Injunction Proceedings

Point of Principle

Under Article 12 (1) Community Legal Service (Funding) (Counsel in Family Proceedings) Order 2001, a settlement supplement is payable where a settlement leads to the resolution of a set of proceedings. A settlement cannot lead to the resolution of proceedings within Function F2 where, in enforcement proceedings, the judge is left to decide the penalty for breach of an injunction, whether the breach is admitted or not.

CLA 34, 18 AUGUST 2003

Fee-Earner Time Spent Translating or Interpreting

Point of Principle

The principle that a solicitor may only be paid for undertaking fee-earning work is unaffected by the fact that the work is done in a language other than English. A solicitor who speaks the same foreign language as the client may only claim as a fee-earner for fee-earning time. No payment may be made where a fee-earner merely translated papers or acted as an interpreter.

CLA 35, 18 AUGUST 2003

Evidence and Means where the Client is Staying with a Benefactor

Point of Principle

Where a client is staying with, and dependent on, a benefactor, it is not necessarily impracticable for the client or solicitor to seek evidence from the benefactor of the extent of support being provided. A failure by the benefactor to respond should be recorded on the file.

CLA 36, 18 AUGUST 2003

Immigration and Asylum Cases: Waiting Time after Interviews

Point of Principle

In immigration and asylum cases, it may not be unreasonable to claim for a representative's

waiting time notwithstanding that an interview is over, provided that there is evidence on the file of the reason why the representative remained. For instance, the need to collect a copy of the notes of the interview, or to await a decision of the Higher Executive Officer concerning the client's immigration status.

CRIMLA 12, 4 SEPTEMBER 1990, AMENDED ON 22 SEPTEMBER 2003

Determination of Costs

Point of Principle

The process of costs assessment is the same whether a case is conducted in the Crown Court under the Criminal Defence Service Funding Order 2001, or in the magistrates' court under the General Criminal Contract Specification Part C, Rule 1.13. The approach to both is defined by the same words, and regard may be had in exceptional cases to the decision in *Ex parte John Singh*, as follows:

- (1) to conduct a line-by-line assessment;
- (2) to stand back from that exercise and look at the size of the claim as a whole;
- (3) when considering the claim as a whole, to apply a judgment of what was reasonably required for the preparation of a proper defence for the client.

Where the Commission disallows a specific item for a specific reason, the item should be identified and the reason given. But the Commission is not precluded from reducing claims for classes of work without specifically identifying particular items of work. If there is a reduction in the claim, whether on a line-by-line or overall basis, sufficient reasons must always be given to enable the solicitor to identify the relevant issues. Reasons should be given for any judgment under (iii) above which are separate from, and additional to, reasons for decisions under (i) above. A mere statement that the overall bill was unduly high is not enough. Where, in determining costs, the Commission has taken into account some specific factor or factors other than the nature, importance, complexity or difficulty of the work and time involved, it should indicate that factor or factors.

A Costs Committee may determine a review

of an assessment without considering the solicitor's file of papers, if the solicitor has failed to send the file in response to a written invitation to do so.

Guidance

Whilst most cases in the magistrates' courts will be determined by line-by-line assessment, an overall review may be used, for instance, to avoid trimming individual items by predominantly small amounts. Relevant factors in deciding the overall reasonableness of a bill include:

- (a) the total number of hearings;
- (b) the length of time the case took;
- (c) the extent to which the solicitor took reasonable steps to ensure continuity of representation at court.

The fact that a claim is unduly high in relation to other cases where the charge is the same or similar, does not necessarily justify a round-sum assessment. Whereas a round-sum reduction of a claim that is significantly higher than those incurred on behalf of other defendants to the same proceedings may be justified.

A period of 14 days provides sufficient opportunity for a solicitor to respond to a request to send a file so that a Costs Committee can review the assessment of a claim.

INTEREST ON COSTS

Brief Reminder

Practitioners are asked to remember that when agreeing costs, some of the interest on those costs may belong to the Commission and must be accounted for when reporting to the Commission.

Guidance on the interest on costs is set out at 3.47 to Part D of Volume 1 of the LSC Manual. Where costs and damages recovered are £5,000 or more, failure to complete pages 2 and 4 of the CLS Claim 2 fully may lead to the rejection of your claim for details of costs and interest recovery.

VALIDATION OF OUTCOME CODES AND PAYMENTS UNDER SPAN

The Legal Services Commission wishes to draw practitioners' attention to the outcome code changes that came into effect in April 2003, and provide information on how continued mis-reporting will be dealt with on cases concluding after 1 October 2003.

Further to the articles in *Focus* 42 (July 03) and *Focus* 41 (March 03) which outlined the outcome code reporting requirements, this article outlines the position that will be taken by the processing centres and contracting teams from 1 November 2003. It relates to the submission of monthly, controlled work claims on CMRF forms.

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 were permitted to use the old outcome codes until 1 October 2003 while

their software systems were updated, all suppliers should have been using the revised codes for six months.

With the expiry of the not-for-profit extension, the validation - which excludes the reporting of old codes - will shortly be switched on. This means that it will no longer be possible for old-style codes to be processed in SPAN. This will result in missed payments under the SPAN system for suppliers that do not complete their CMRF submission correctly.

Cases completed in October will not be subject to the validation and will be processed as normal.

Cases completed in November will be subject to the validation and will be rejected if the revised codes are not used on the CMRF submission. The processing centres will endeavour to contact suppliers where the system rejects the submission to resolve the

issue. When a supplier fails to provide the correct information after the processing centre has been in contact, the submission will be rejected and returned to the supplier and the next payment will not be triggered.

Cases completed in December and thereafter will be subject to the validation and will be rejected if the revised codes are not used on the CMRF submission. This will automatically result in a missed payment under the SPAN system. The payment will be triggered by the next month's correct submission. Missed payment, caused by mis-reporting from this date, will not be regarded as criteria for an ad hoc payment. This applies whether it is a monthly solicitor payment or a quarterly payment for not-for-profit agencies. Please note that LSC online is unaffected by this validation process.

<i>month case completed</i>	<i>CMRF submitted by</i>	<i>processed by</i>	<i>triggered payment</i>
<i>October</i>	<i>10/11/03</i>	<i>30/11/03</i>	<i>December</i>
<i>November</i>	<i>10/12/03</i>	<i>31/12/03</i>	<i>January</i>
<i>December</i>	<i>10/01/04</i>	<i>31/01/04</i>	<i>February</i>

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* 32–42. 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 on whether the case is of 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/03/180

Nature of Case

Psychiatric patient known to be dangerous allowed to remain in the community. Patient subsequently killed two individuals and assaulted a third. Proposed claim in negligence against health authority for failures in treatment of patient.

Report of Panel

Whilst recognising the difficulties of establishing a duty of care, the Panel agreed that this case has the potential to establish whether a health authority can be liable to members of the public for the negligent treatment of psychiatric patients in the community. If established, such a precedent might have a wide impact on health authority practice.

Conclusion

Significant wider public interest
Rating: Significant

PIAP/03/181

This case was previously considered by the Panel and reported on in *Focus* 42. This report supersedes the report in *Focus* 42.

Nature of Case

Appeal to Court of Appeal concerning seizure of goods by Customs and Excise for evasion of excise duty. Policy of Customs and Excise in treating individual's appeal as either request for restoration (heard by the VAT and Duties Tribunal) or notice of claim requesting condemnation proceedings (heard by magistrates).

Report of Panel

The Panel agreed that this case had the potential to clarify the responsibilities of Customs and Excise in advising all individuals on how to make the appropriate type of appeal against seizure of their goods, and on the true effect that the different types of appeal may have. In addition, the Panel noted that the appeal might be widened to raise issues on the correct standard of proof to be applied in condemnation and restoration proceedings. It appeared that clarification of that issue also had the potential to benefit a significant number of individuals.

Conclusion

Significant wider public interest
Rating: Significant

PIAP/03/112

This case was previously considered by the Panel and reported on in *Focus* 40. This report supersedes the report in *Focus* 40.

Nature of Case

Appeal to the House of Lords concerning circumstances in which local authority has a duty of care at common law ancillary to the statutory duty contained in s 39 of the Road Traffic Act 1988 (duty to devise and pursue a road safety programme – the 'Larner duty'.)

Report of Panel

The Panel noted that the House of Lords had granted the applicant leave to appeal. In the circumstances, it appeared that this case does have the potential to clarify both the circumstances which will give rise to a *Larner* duty; and the correct legal test to assess whether there has been a breach of duty. In the circumstances, the Panel agreed that the case had the potential to benefit a significant number of other individuals and therefore was of significant wider public interest.

Conclusion

Significant wider public interest
Rating: Significant

PIAP/03/159

This case was previously considered by the Panel and reported on in *Focus* 41. This report supersedes the report in *Focus* 41.

Nature of Case

Proposed challenge to Probation Service administration of scheme involved in drug treatment and testing orders (DTTOs). Allegation that system of observed urination breaches the European Convention on Human Rights (ECHR), arts 3 and 8.

Report of Panel

The Panel noted from the additional papers that were submitted for re-consideration of this case that the issues in the case differed from those that had been presented at the Panel's previous meeting. In particular, it appeared that the applicant had consented to the terms of the DTTO.

However, the majority of the Panel considered that the benefit to other individuals, that would be engendered by a successful challenge to the Probation Service in this case, would be limited in nature; and that litigation was not the most appropriate way of examining the Probation Service policy. One alternative apparent from the papers before the Panel appeared to be pursuing the applicant's concerns through the Council's Scrutiny Committee. In addition, as it appeared that the applicant's proposed Human Rights

Act challenge was out of time, the Panel decided unanimously that the case did not have the potential to produce benefits for other individuals and was therefore, not of significant wider public interest.

Conclusion

No significant wider public interest.

PIAP/03/186

Nature of Case

Proposed claim against Child Support Agency (CSA) for psychological injury sustained following CSA's failure to assess correctly the contributions to child support required from the applicant over a period of eight years.

Report of Panel

It appeared from the papers before the Panel that the applicant's proposed claim was being framed both in negligence and as misfeasance in public office. It did not appear that the misfeasance claim would establish any new principle of law or produce benefits for other individuals in any other way. In addition, whilst it appeared that a successful claim in negligence would have the potential to establish a new principle of law, the Panel considered that there was no realistic prospect of such a claim succeeding in this case. Further, it appeared that the applicant had not pursued his case before the Independent Case Examiner (ICE); and the Panel considered that the ICE's opinion ought to be sought before turning to the courts for a remedy.

Conclusion

No significant wider public interest.

PIAP/03/187

Nature of Case

Proposed challenge to General Medical Council's (GMC) guidance, 'Withholding and Withdrawing Life Prolonging Treatment: Good Practice in Decision Making'.

Report of Panel

The Panel agreed that this case had the potential to clarify the GMC guidance in this important area. It was also clear that such clarification would be of fundamental importance to affected individuals, in particular, those who whilst still able to express their views had expressed a wish for life-

prolonging treatment to be maintained.

Conclusion

Significant wider public interest

Rating: High

PIAP/03/189

Nature of Case

Proposed damages claim against police concerning disposal of applicant's car. Applicant arrested on suspicion of supplying Class A drugs. Police seizing and disposing of applicant's car pending trial. Breach of Police Property Act 1987. Officer receiving Formal Advice following complaint to PCA.

Report of Panel

The Panel noted a submission that a successful result in the applicant's damages claim would lead to better training of police officers on the correct procedures to be followed in cases of this nature. However, the Panel considered it unlikely that the applicant's case would engender any such change. The officer involved had received a Formal Advice concerning his actions, and there was no evidence to suggest that other officers had been inadequately trained on the correct procedures to follow when dealing with suspects' property. In addition, the Panel noted an allegation that the individual officer who had disposed of the applicant's property was motivated by malice. That allegation supported the conclusion that this case would be decided on its facts with no wider implication regarding other officers.

Conclusion

No significant wider public interest.

PIAP/03/190

Nature of Case

Representation of concerned families at second inquest into deaths caused by the New Cross fire. Exceptional funding application.

Report of Panel

The Panel agreed that representation at the inquest might assist in righting the initial wrongs committed by the failure to provide a proper inquest in the first instance, and that it would also afford the families their opportunity to have the deaths investigated properly. The Panel also noted that a properly conducted inquest would yield important, though intangible benefits, not just for the many

people whose lives were affected by the fire, but also for the wider black community, both within and outside the town concerned. The failure to properly investigate the deaths of the young persons has contributed to a lack of confidence in public bodies amongst ethnic minorities.

In the Panel's view, there would be a serious detrimental effect if public funds were not provided for representation, although the appropriate extent of funding was not a matter for the Panel. There is a memorial every year at which hundreds, if not thousands of people attend, and the Church is always involved. This wider interest has been reflected by letters written to the Commission in support of funding by religious leaders, and local and national politicians. There is a widely shared view that the wrong must be put right.

Conclusion

Significant wider public interest

Rating: High

PIAP/03/193

Nature of Case

Proposed appeal to the House of Lords: Secretary of State's decision to delay the review of the applicant's life sentence for a longer period than that recommended by the Parole Board. Alleged breach of art 5(4) of the ECHR.

Report of Panel

The Panel noted that, in this particular case, there is little benefit to the applicant, as noted by the Court of Appeal which said that it is 'primarily of academic interest only'. In addition, the Panel decided that insufficient numbers would benefit from funding this case.

Conclusion

No significant wider public interest.

PIAP/03/194

Nature of Case

Applicant on Sex Offenders Register on an indefinite basis. Rights under art 8 of the ECHR. Applicant currently being detained as a patient and argues that, as he will not be released until he is no longer a risk to the public, any continued registration would be disproportionate to art 8.

Report of Panel

The Panel noted that for art 8 to be engaged, the registration (to protect members of the public), would have to be disproportionate to the applicant's rights under that article. However, in this case, no evidence went before the Panel showing that the applicant is benefiting from a prescribed medical treatment and that he is no longer at risk of re-offending. The case is premature, as at present, the applicant's rights under art 8 cannot be said to be violated by ongoing registration.

Conclusion

No significant wider public interest.

PIAP/03/195**Nature of Case**

Proposed claim by autistic applicant against the police for unlawful arrest and false imprisonment and against LEA for violation of art 3 of the ECHR by failure to provide a place of safety other than a police station. The applicant was arrested while behaving in an uncontrolled manner in the front garden of his carers' home.

Report of Panel

The Panel recognised the importance of ensuring that safe and appropriate accommodation was available for children detained under the Mental Health Act 1983. If a legal challenge were to establish that detention in a police station was not acceptable, and that local authorities were under an obligation to provide more appropriate facilities, that would no doubt have a significant wider public interest.

However, the Panel is not persuaded that this case could achieve any such result. The wording of sections 135 and 136 of the 1983 Act makes it clear that a police station is a statutorily designated place of safety for these purposes. Therefore the practice could not be challenged except on ECHR grounds. Whilst the Panel recognised that conditions in a police station could amount to a violation of art 3, in the circumstances of this case, it is unlikely that such a violation could be made out. In consequence, the Panel was not satisfied that this case had the potential to change practice or procedure in this field.

Conclusion

No significant wider public interest.

PIAP/03/196**Nature of Case**

Proposed claim in trespass to the person and battery re: treatment administered to the applicant after being entered into a clinical trial without informed consent.

Report of Panel

The Panel sympathised with the applicant and others who had been subjected to clinical trials without informed consent. It was of the utmost importance that such practices were brought to light.

However, the Panel noted that this matter had already been thoroughly investigated by the GMC. The doctor in question had been found guilty of serious professional misconduct and suspended. The Panel was unable to detect any significant wider public interest in these issues also being the subject of litigation.

Indeed, if proceedings were issued, the likelihood was that the claim would be settled at an early stage without establishing any form of precedent.

Conclusion

No significant wider public interest.

PIAP/03/197**Nature of Case**

The applicant seeks to appeal the first instance judgment in his case in educational negligence and racial discrimination at school. He is seeking to appeal only the discrimination head of the claim.

Report of Panel

Whilst the Panel recognised that the issues concerned are of major public interest, it decided that, in this particular case, those issues were unlikely to be addressed as there are no realistic prospects of success. The findings of fact at first instance are not appealable. Moreover, the judge and assessors specifically considered whether there was unconscious racism, and concluded that there was not. In light of those findings, it is impossible to infer unconscious discrimination on the basis of statistical evidence. Indeed, if that were the effect of the law, then every such exclusion would be challengeable.

Conclusion

No significant wider public interest.

PIAP/03/198**Nature of Case**

Parents seeking to challenge a local authority's decision to close a small, rural primary school and replace it with a larger school.

Report of Panel

The Panel agreed that, whilst the question of the closure of rural schools is a matter of strong public interest in the general sense, there is no evidence that this individual case would benefit others and have a significant wider public interest. The Panel noted that if it is alleged merely that the consultation process was not properly followed, then these principles have been already established by judicial review. Therefore there is no significant wider public interest in this particular case. There is also no suggestion that the relevant local authority guidance is ultra vires or that it would be changed as a result of this case.

Further, the Panel's view is that this application is premature, especially in the absence of seeing the local authority's response to the parents' letter setting out the case for keeping the school open. Without much clearer identification of the basis of the proposed challenge and likely legal issues raised, it is impossible for the Panel to conclude that this case has potential for producing wide public benefit.

Conclusion

No significant wider public interest.

LATEST NEWS ON MATTER STARTS

Speaking at the Commission's open meeting on 25 November, Chief Executive, Clare Dodgson, announced that a further 20,000 new matter starts are being made available for solicitors to use by April 2004.

The additional new matter starts will ensure that solicitors are able to continue to help the most vulnerable and disadvantaged people in society.

Announcing the additional funding, Clare Dodgson said: "I am very pleased to be able to make these new matter starts available. Good quality firms are reporting to us that they have used their allocation of new matter starts. This additional funding will ensure that these good quality firms, that have their average case costs under control, can continue to carry out their good work."

The additional new matter starts will be focused on the Lord Chancellor's priority areas of law, for example, Mental Health and Family.

Solicitors firms should contact their Account Manager in their local LSC Regional Office for further information.

Here, for the benefit of solicitor contractors, are answers to some questions arising in relation to matter starts for current schedules.

Has the LSC 'run out' of matter starts?

No region has run-out of matter starts. Although we have to prioritise within a fixed budget, we remain able to ensure that access is maintained where necessary by allocating new matter starts. Regions manage matter starts under contracts, using their powers in part B of the General Civil Contract Schedule to reduce matter starts where they remain unused or where average costs are increasing by 10% or more compared to a set period last year. Regional Directors have discretion to reallocate matter starts as long as in total they do not exceed the numbers that were let as at 1 April 2003

How will LSC regions exercise their discretion?

We have to prioritise expenditure in various ways. We must follow the priorities set out by the Lord Chancellor (see volume 1 of the LSC Manual 1C-052.46) and have to give top priority to special Children Act proceedings and

civil proceedings where the client is at real and immediate risk of loss of life or liberty. We must also have regard to the priorities set out by the RLSC reports. We have to manage to try and ensure that access is maintained across the region. We must make sure that they plan for the whole year, and for subsequent years, which will mean keeping the position constantly under review.

Of course, we must also take into account your situation as those who supply the services to vulnerable clients. You will also want to plan your business and will want us to give you such certainty as we reasonably can. Contract schedules are therefore issued for 12 months, and you should plan on that basis, which may mean sometimes making referrals to others with capacity. Whilst we will want to reflect where clients are actually choosing to access their services, it will not necessarily be fair to 'reward' those firms using up matter starts quickly by removing them from firms whose running rate is staying along par with their allocation. Conversely, where firms have matter starts that it seems clear will not be used, we will want to ensure that funding is made available to firms who have clients waiting to see them.

When should you apply to your regional office for an increase?

If you are close to running out of matter starts, then you should approach your regional office so that they can discuss the situation with you and see what can be done.

Might your regional office contact you?

Where regions have particular concerns about access, they may sometimes contact you directly to discuss your current running rate with a view to seeing whether this can be increased.

When are requests for increases likely to be refused?

Requests for matter starts are likely to be refused where, for example:

- adequate alternative capacity and access

exists; or

- the particular matters sought are not a priority; or
- there are concerns about a particular supplier (e.g. they have unjustified increases in average costs or are currently a category 3).

When does one matter end and another begin?

The rules on when a matter ends and on the boundaries between separate matters are set out in Rules 2.10 and 3.10 of the General Civil Contract Specification (volume 2 LSC Manual at 2A-239 and 2A-264). Contractors should follow those rules and make sure that separate matters are opened where appropriate.

Otherwise contractors risk artificially increasing their average costs, which could lead to their matter starts being reviewed under Part B of the Contract Schedule.

PROPOSED PAYMENT DATES for the first half of 2004

The proposed payment dates for the first half of 2004 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
WEDNESDAY 7 JANUARY 2004	TUESDAY 13 JANUARY	WEDNESDAY 28 JANUARY
THURSDAY 5 FEBRUARY 2004	TUESDAY 10 FEBRUARY	WEDNESDAY 25 FEBRUARY
THURSDAY 4 MARCH 2004	THURSDAY 11 MARCH	FRIDAY 26 MARCH
TUESDAY 6 APRIL 2004	WEDNESDAY 14 APRIL	TUESDAY 27 APRIL
FRIDAY 7 MAY 2004	WEDNESDAY 12 MAY	THURSDAY 27 MAY
FRIDAY 4 JUNE 2004	FRIDAY 11 JUNE	MONDAY 28 JUNE

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