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Community
Legal Service



• FOREWORD

The Commission's Chief Executive, Clare Dodgson, talks about priorities for publicly-funded legal services. See page 02.

• GENERAL CIVIL CONTRACT 2004

For the information you need to know about the General Civil Contract (Solicitors) 2004, please turn to page 03.

• ELIGIBILITY NEWS

For current developments on financial eligibility upratings, including new keycards, turn to page 06.

• IMMIGRATION SERVICES

The Commission has reorganised elements of our immigration and asylum services to help support delivery of high quality services in this area. For details, see page 12.

• NEW IMMIGRATION SPECIFICATION AND COSTS LIMITS

For details of the background to the new immigration specification, along with the new extendable costs limits for publicly-funded work in this area, please see pages 12-14.

• FUNDING CODE UPDATE

For information on a consultation on the future of the Funding Code, Proceeds of Crime Act 2002 and representations at inquests, see page 17.

• BUNDLES AND CITATIONS

The Court of Appeal has recently commented on failure to follow Practice Directions regarding the correct preparation of court bundles and citation of authorities. For a reminder of proper procedure, please turn to page 20.

FOREWORD

CLARE DODGSON, CHIEF EXECUTIVE

As we start a new financial year and a new contracting period, I wanted to take this opportunity to say how pleased I am that you, our partners in the delivery of quality legal aid services, are continuing to demonstrate your commitment to helping people who are facing very real problems in their lives.

The last few months have seen a period of great change for us all. Many of the initiatives we've been consulting with you about are now taking effect. The context for all of these changes is that we have a limited fund of public money available and we need to make sure that it is used for the highest priority work which focuses on real needs.

The changes now being introduced in Immigration and Asylum work are an example of our approach. These are designed to ensure that publicly funded advice for asylum seekers is high quality and good value, and is focused on those with genuine cases. Costs for asylum legal aid have risen sharply and we also had evidence that some of the work being done was not of good enough quality. Changes were clearly necessary. We are delighted that we can now move forward with partners who are quality providers of Immigration and Asylum advice so that together we can help some of the most vulnerable people in our communities.

Escalating costs in Criminal work meant that we had to take action here too. Following consultation and Ministerial decisions, in mid-May we will be introducing a package of changes to legal aid scope which will enable us, with you, to focus on real priorities. This was the only responsible approach to using limited public money effectively for those who most need it. We are also currently taking your views into account in finalising the terms of the new Criminal contract which will be introduced on 1st July.

We know that Ministers are currently facing some very difficult decisions about costs, so the future might well present more challenges. We continue to predict an overspend on our

budgets for 2004/05 and 2005/06, and announcements can be expected in the near future. Whatever happens, the Legal Services Commission will remain steadfastly focused on working with you for the benefit of our customers, the people who rely on legal aid to get access to justice.

All of the changes taking place are necessary to ensure that we are providing help and advice where the needs are greatest. The research recently published by our Legal Services Research Centre gives us a better understanding than ever of what those needs are. 'Causes of Action: Civil Law and Social Justice' gives us real insights into how people experience problems which lead to legal action. We will use this new understanding to continue developing initiatives which are designed to make a difference.

One such initiative is our partnership with Jobcentre Plus to provide information to their clients on how they can get help with other problems they might be experiencing. Improving the effectiveness of referrals in this way will help to address the issue of problems occurring in 'clusters', with one triggering another, a phenomenon which was identified in the Causes of Action research.

In another initiative we are working with the Law Society, the College of Law and others to look at how we can encourage young people to consider a career in legal aid practice. As you know, the Legal Services Commission is already providing grants to firms, enabling them to take on trainees in legal aid work. We are also keen to encourage LPC providers to include more legal aid-specific electives so that young people with a particular interest can pursue a breadth of

training that includes a good grounding in legal aid practice. We hope to have more news on this soon.

Finally, we are exploring a completely new way of working with the best quality providers of legal aid services. Our 'Preferred Suppliers' initiative is about to begin, with a pilot in several parts of the country. You might have seen the request for Expressions of Interest which appeared in the Law Society Gazette very recently. The pilot will look at different relationships and incentive packages with individual firms, taking a creative approach to the supply of services which benefits the firms and, most importantly, the people who need our help. I am really excited about this initiative and look forward to the results of the pilot so that we can take it forward next year on a national basis.

We would not be able to do any of this pioneering work without your continuing commitment and support. Every day you are helping people to sort out their problems in the most demanding circumstances. Your hard work and effort makes it all happen. Thank you for working with us to ensure that our mutual clients get the legal advice that they need.



GENERAL CIVIL CONTRACT (SOLICITORS) 2004 – WHAT YOU NEED TO KNOW

A new General Civil Contract starts on 1 April 2004 and replaces the previous contract, which ran from 1 January 2000 to 31 March 2004. It incorporates a new Specification for Immigration work – see page 06 of this Focus.

All offices eligible for a new contract should now have received their Contract for Signature and Schedule tables, with details of Matter Starts and payments. They should note that the "Additional General Civil Contract Terms effective on 1 April 2004" and the new Immigration Specification will apply. Those successful in appealing against a decision not to award a contract should have received the same contract documentation as soon as possible after their appeal.

In November last year, we started consultation on both the new General Civil and General Criminal Contract terms, with consultation set to close on 13 January 2004 (the Immigration Specification was subject to separate consultation).

Our consultation paper proposed:

- Amendments to the Contract Standard Terms to address practical contract operation issues
- Amendments to the Specification
- Minor amendments to the Specialist Quality Mark

The Law Society (in its own right and on behalf of CLSA and LCCSA) and LAPG responded to our proposals and raised other issues. To allow further consultation time for these issues, we have agreed that post-consultation amendments will not take effect until 1 July 2004.

Until 1 July 2004, the new Contract terms are those in the Contract for Signature, based on the previous Contract terms, amended by the "Additional General Civil Contract Terms effective on 1 April 2004" and the new Immigration Specification. Once consultation has been concluded, we will send all contractors details of the amendments that will take effect on 1 July 2004.

As there has been no Criminal Bid Round, we have provided further consultation time for General Criminal Contract issues, simply by extending that contract to 30 June 2004 – allowing amendments to both the General Civil and General Criminal Contracts to be made on 1 July 2004.

Once final terms have been settled we will ensure that a full copy of both the civil and criminal contracts are placed on the LSC website. They will appear in the first update of the loose-leaf Manual planned for December.

The new General Civil Contract starts on 1 April 2004. Its terms are those in the Contract for Signature plus the old terms with:

- The "Additional General Civil Contract Terms effective on 1 April 2004"
- The new Immigration Specification – see page 06 of this Focus

On 1 July 2004, amendments flowing from the contract consultation begun in November last year will take effect. Notice of these amendments will be given to practitioners when the extended consultation has concluded.

FORMS MASTERPACK UPDATE

The Forms Masterpack Update for April 2004 was sent out at the end of February.

The Update has seen changes to the Consolidated Matter Report Form to take into account the new requirements for a Unique Client Number in Immigration and Asylum cases **only**. Updated guidance for SPAN reporting has also been issued to accompany this change, which will become mandatory from **30 April 2004**. This means the new form will need to be used for Apr-04 submissions.

Changes have also been made to the Consolidated Matter Start Form, the Legal Help form, CW4, ADMIN 1, CLSAPP3. The ADMIN 1 became mandatory from **1 March 2004** whilst the others became mandatory from **1 April 2004**.

In addition to the new versions and guidance in the Forms Masterpack Update, two new forms have been created: the CW2(Imm) and the CW3(Imm). The existing CW2 form has been revised and will only relate to Mental Health cases. The existing CW3 has been revised and should be used for all non-immigration cases.

The new CW2(Imm) and CW3(Imm) forms must be used for immigration cases and will **not** be included in the Masterpack but have been sent out in a separate mailshot to all Immigration suppliers.

The new CW2(Imm) form must be used for applications for Controlled Legal Representation in immigration cases, and will become mandatory from 1 April 2004.

The new CW3(Imm) form must be used for applications for extensions to the relevant financial limits in immigration cases. It is mandatory for London suppliers from 1 March 2004, and all other suppliers from 1 April 2004.

All forms, including the CW2(Imm) and CW3(Imm), were included on the LSC website in a PDF format from early March. The Immigration forms have been sent to Immigration suppliers **only** with the revised Immigration Contract Specification, which were with suppliers by 19 February 2004.

Any queries relating to the Forms Masterpack Update can be referred to Anne Clarke at the Business Improvement Team on 020 7759 1786 or at anne.clarke@legalservices.gov.uk

SPECIALIST SUPPORT TO GO MAINSTREAM

Since the establishment of the CLS Specialist Support Pilot in 2000 it has proven to be an important source of help and advice for Solicitors and Legal Advisers dealing with complex or unusual client problems. The service provides free telephone advice, mentoring and subsidised training in various categories of Law.

A recent evaluation of the pilot has found that Specialist Support does improve access to legal services for clients by giving them access to higher levels of expert advice which may not otherwise be available. It also found that solicitors and advice workers who use specialist support are able to progress matters more efficiently and effectively and gain better case outcomes for clients as a result. In light of these findings the service is to continue beyond the pilot phase with new contracts being offered for a three-year term.

As the pilot prepares to go mainstream some changes to the service will be taking

place. The evaluation made several key recommendations that will shape the future of CLS Specialist Support services and the way in which they are delivered.

All Specialist Support services will be provided on a national basis only from April 2004. The majority of national services already in place will remain the same. Additionally, a tendering process for national contracts in the fields of Housing, Welfare Benefits and Debt law has recently taken place. The outcome of the tender process and successful bidders will be announced by the end of March 2004.

Currently, Specialist Support Services are open to all General Civil contract holders (including family law practitioners) and General Help with Casework organisations in Community Care and Welfare Benefits. However, from 1 April 2004 **all** General Help with Casework organisations will be eligible to use Specialist Support.

Service providers will continue to provide training courses on the latest legal

developments. Training will be developed in close liaison with LSC Regional Planning and Partnership teams (RPPs) to ensure that training is closely matched with Regionally identified training needs.

Flexible access to Specialist Support will continue to be an important feature of the service. Voice messaging, call back services and provision of support via email will ensure that users are able to access the services on a more flexible basis.

A publicity drive is due to take place early in the new contract year, beginning from April 2004. Full details of the services available, contact details and opening times will be circulated along with initial information on training.

For further information on the Specialist Support pilot, including details on the recent evaluation please visit www.legalservices.gov.uk/cls_developments Alternatively contact anthony.walters@legalservices.gov.uk

ADVICE SERVICES ALLIANCE COURSES

Advice Services Alliance (ASA) will be running six courses from Spring through to Autumn 2004 on issues relating to the not-for-profit contract, Specialist Quality Mark (SQM) and Alternative Dispute Resolution. Courses 1 to 5 are aimed primarily at not-for-profit General Civil Contract holders although solicitor contract holders may also find them of interest. Courses 2 and 3 will also be relevant to non-contracted agencies that hold the SQM. Course 6 is aimed at any adviser who needs to know about dispute resolution options.

Course	Title	Date	Venue
Course 1:	Casework under Contract: An introduction to the key issues	6 May	London
		11 May	Birmingham
		3 June	York
		10 June	Nottingham
Course 2:	Monitoring Performance: An introduction to supervision, file review and appraisal	19 May	London
		26 May	York
		16 June	Birmingham
		24 June	Manchester
Course 3:	The Effective Supervisor	2 June	London
		6 July	Bristol
		3 August	York
		9 September	Birmingham

Course	Title	Date	Venue
Course 4:	Making Every Minute Count: 2004!	8 June	London
		17 June	Manchester
		14 July	Nottingham
		28 July	Newcastle upon Tyne
Course 5:	Sufficient Benefit Test: Principles and Practice	10 August	York
		18 August	Birmingham
		7 September	London
		21 September	Bristol
Course 6:	Introduction to ADR	23 June	Liverpool
		20 July	London
		26 August	Birmingham
		28 September	York
Course 6:	Introduction to ADR	13 May	London
		9 June	York
		13 July	Birmingham
		12 August	London

Details, including the full course outlines, can be found on the ASA website at www.asauk.org.uk.

FAMILY ADVICE & INFORMATION SERVICE (FAInS) EXPANSION

Phase 2 of the FAInS initiative is due to start in April 2004, and the FAInS team have just completed a series of new provider meetings and supplier review meetings around the country.

Three new FAInS areas are set to join the pilot – Merseyside (made up of the bid zones in Bootle/Crosby, Southport/Formby and Kirby/St Helens), Oldham and Telford. Current areas have also been expanded to take in more suppliers.

Approximately 130 firms across the twelve pilot areas – Basingstoke, Cardiff, Exeter, Hartlepool, Leeds, Lincoln, Merseyside, Mansfield, Nottingham, Oldham, Stockton on Tees and Telford – will be taking part in this next phase.

Supplier professional development seminars for these areas will be taking place during March and April.

A further canvassing phase is planned to begin very shortly, to bring in further suppliers by October 2004. Details of the short listed areas will be communicated in Focus and on the FAInS web pages (www.legalservices.gov.uk/fains) in the near future.

Plans to introduce contracted family mediation services as distinct 'FAInS' suppliers is making progress. Further to work undertaken with our Mediation Consultation Group, the lead bodies contacted member services to canvass interest and services submitted initial ideas for the end of November 2003. Further work has led to five services being short listed, and we are working closely with these services to establish feasible ways of setting up all or part of their proposals within the next six months. If your service was not able to submit a proposal for

last November's deadline, but would still be interested, we are continuing to accept ideas and proposals from family mediation services, ready for consideration in the next round of expansion in this area. Services do not need to be located in a current FAInS area in order to submit an idea or proposal.

Advice sector networking meetings were also held in current FAInS areas to assist in promoting FAInS and the importance of interdisciplinary and local partnership working between solicitors, advice sector agencies and statutory services. FAInS networks extend beyond family and relationship support services to encompass key social welfare categories such as debt, housing and welfare benefits advisors.

The FAInS team is keen to introduce NFP suppliers as FAInS access points and would like to hear from contracted suppliers who are interested in submitting proposals – for further information please contact simone.hugo@legalservices.gov.uk or telephone 020 7759 0318.

SUPPLIER QUESTIONNAIRES

The recently received CLS/CDS Database Questionnaires, should have been amended and returned to Resource Information Service by Wednesday 17 March. If you have still to return your form please do so as soon as possible as late returns are still being accepted.

Please note that the information collected in the questionnaire is used for the Just Ask! website and the Directory Line, as well as by regional office and other LSC staff responsible for scheduling audits and making payments. It is therefore essential that the information is accurate and up to date.

Change of details form

Suppliers wishing to alter details who have not recently received a questionnaire should use a 'Change of Details form'. The form can be downloaded from the Quality Mark section of the forms page at: www.legalservices.gov.uk/misl/forms.htm and should be sent to your regional office.

If you have any queries regarding the above please contact your regional office or the Special Projects Team on 020 7759 1171.

COMMUNITY LEGAL SERVICE AND CRIMINAL DEFENCE SERVICE

FINANCIAL ELIGIBILITY APRIL 2004

Traditionally, the eligibility levels for civil and criminal legal aid have been increased from each April to take account of the increases in state benefits, e.g. Income Support. State benefits are increasing generally from 12 April 2004.

No decision has yet been taken by ministers on the eligibility uprating for legal aid for April 2004. As a result, there will be no increase at the present time in either Community Legal Service or Criminal Defence Service financial eligibility rates, other than those which apply automatically when State benefits are uprated.

This means that current gross income, disposable income and capital limits will continue to apply for all new applications for funding after 12 April. The Commission will also apply these rates when it reassesses certificates under regulation 15 of the Community Legal Service (Financial) Regulations 2000, SI 2000/516. The current 'passporting' arrangements will of course continue.

DEPENDANTS ALLOWANCES

Following the uprating of 1.8% to the Income Support (General) Regulations 1987, SI 1987/1967, the following increases to

the allowances for dependants will apply automatically to applications for funding and reassessments on or after 12 April 2004 for all levels of service.

The updated Keycards (No. 40 and 40a) provide a step-by-step guide to assessment (see pages). The suppliers' calculator and accompanying guidance (LSC Manual II part 2C) that are also located on the Commission's website (www.legalservices.gov.uk), have been updated accordingly.

Copies of all means forms including Keycards are available from the Commission's website.

The Commission will provide a further update on eligibility limits once a decision has been reached by ministers, which is expected in the near future.

FOR FURTHER INFORMATION

PLEASE CONTACT:

GRACE NICHOLLS

MEANS ASSESSMENT

POLICY ADVISER

29-37 RED LION STREET

LONDON WC1R 4PP

020 7759 1776

Partner	Increased from £135.14 to £137.53 per month
Child aged 15 or under	Increased from £167.29 to £183.67 per month
Child aged 16 or over	Increased from £167.29 to £183.67 per month



GENERAL

This card is intended as a quick reference point only when assessing financial eligibility for those levels of service for which the supplier has responsibility: Legal Help; Help at Court; Legal Representation before Immigration adjudicators and the Immigration Appeal Tribunal; Family Mediation; Help with Mediation and Legal Representation in respect of Specified Family Proceedings before a Magistrates' Court (other than proceedings under the Children Act 1989 or Part IV of the Family Law Act 1996). Full guidance on the assessment of means is set out in Part C of Volume 2 of the Legal Services Commission Manual. References in this card to volume and section numbers e.g. volume 2C-section 1 are references to the relevant parts of that guidance. Practitioners should have regard to the general provisions set out in guidance volume 2C-section 2, particularly those set out in sub paragraphs 3-5 regarding the documentation required when assessing means. This keycard and the guidance are relevant to all applications for funding made on or after 12 April 2004.

ELIGIBILITY LIMITS

The summary of the main eligibility limits from 12 April 2004 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 or not the client has a partner whose means should be aggregated for the purposes of the assessment (see guidance in volume 2C-section 4 paras 2-6).

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

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

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

FIXED-RATE ALLOWANCES (PER MONTH) FROM 12 APRIL 2004	
WORK-RELATED EXPENSES FOR THOSE RECEIVING A WAGE OR SALARY	£45
DEPENDANTS' ALLOWANCES	
PARTNER	£137.53
CHILD AGED 15 OR UNDER	£183.67
CHILD AGED 16 OR OVER	£183.67
HOUSING CAP FOR THOSE WITHOUT DEPENDANTS	£545

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

STEP SIX For those clients whose disposable income and disposable capital have been assessed below the relevant limits, 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 only when assessing financial eligibility for Advice and Assistance, and Advocacy Assistance. Full guidance on the assessment of means is set out in Part E of Volume 4 of the Legal Services Commission Manual. References in this card to volume and section numbers, e.g. volume 4E-section 1, are references to the relevant parts of that guidance. Practitioners should 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 12 April 2004.

ELIGIBILITY LIMITS

The summary of the main eligibility limits from 12 April 2004 are provided below:

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

STEP BY STEP GUIDE TO ASSESSMENT

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

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

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

STEP THREE For any cases that are not 'passport', 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 12 APRIL 2004

DEPENDANTS' ALLOWANCES

PARTNER	£31.65
CHILD AGED 15 OR UNDER	£42.27
CHILD AGED 16 OR OVER	£42.27

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

PREFERRED SUPPLIER PILOT – EXPRESSIONS OF INTEREST

In June this year the Commission will launch an innovative new pilot – the Preferred Supplier Project. The pilot will radically change the way we work with our best performing suppliers and will explore how we can work with these suppliers more efficiently and effectively. We will also want to investigate the potential of encouraging all suppliers to operate at a 'preferred supplier' level.

For the purposes of this pilot, 'suppliers' means 'firms of solicitors', however we will be exploring 'preferred status' with NFP contract holders later in the year.

The 'expression of interest' period for the pilot concluded at 4pm on 13 April 2004 and we had a fantastic response from suppliers across all the pilot regions. As a result, we have received many formal 'expressions of interest' from suppliers who successfully met the initial eligibility criteria.

During this period we also received a number of queries from suppliers who did not meet the initial eligibility criteria, despite having performed well at previous cost compliance and SQM audits. We fully appreciate that this caused frustration amongst suppliers, particularly among immigration suppliers, where we used available case outcome data as initial performance criteria.

The initial pilot eligibility criteria were purposely set to reduce the numbers of applications received from suppliers to a small amount. This was in order to minimise the risk of suppliers putting an excessive amount of work into their application for them then not to be selected for inclusion in what is a very limited pilot; particularly at a time when suppliers have so many other priorities competing for their time.

We would, however, like to reassure all suppliers that for the planned operational rollout, we will be undertaking a complete review of the selection criteria across all areas. The 'expression of interest' assessment period has been invaluable to us in this process, and we have already been able to identify a number of areas where we can improve and make effective changes for any operational rollout. The initial eligibility criteria we developed is purely for the

purposes of the pilot, and it will be subject to a full evaluation and review in order to identify where any changes need to be made, prior to the operational rollout.

We are encouraging feedback from all suppliers on the pilot as it progresses and we will be conducting a large-scale consultation with a sample of suppliers across all regions (pilot and non-pilot) as part of the project's evaluation.

In advance of this evaluation, if you wish to access further information on the pilot please visit our website at www.legalservices.gov.uk. Alternatively, if you wish to discuss any aspect of the pilot further, please contact the appropriate Relationship Manager for your region.

Emma Archer	Birmingham	0121 665 4735
Margot Coates	Brighton	01273 878 834
Anne Campbell	London	0207 759 1817
Sarah Kavanagh	Manchester	0161 244 5078
Natalie Pedley	Nottingham	0115 908 4310



IMMIGRATION SERVICES AT THE LSC

The Legal Services Commission has reorganised some elements of both its Head Office and Regional Office structure to better focus on supporting the delivery of high quality publicly-funded immigration and asylum legal services.

A new Immigration Services Team in Head Office will focus on all aspects of immigration and asylum contracting policy, whilst the National Immigration and Asylum Team in the London Regional Office will deal with all operational issues for immigration suppliers across the whole of England and Wales.

The Immigration Services Team is responsible for immigration and asylum policy on contracting; the new accreditation scheme for immigration practitioners; other new projects such as the announcements in this edition of Focus on legal services at Oakington and Harmondsworth and the wider development of high quality legal and advice services that offer value for money and access to justice. The team is also responsible for relations with the legal profession and representative organisations as well as liaison with the Department for Constitutional Affairs, the Home Office and other statutory agencies.

Crispin Passmore has been appointed as the Head of Immigration Services. Crispin was previously the Manager of a Law Centre and has experience of delivering front line legal and advice services. He has also been a member of the West Midlands Regional

Legal Services Committee. The Immigration Services Team can be contacted on 020 7759 0338.

The London Regional Office has had a specialist immigration team for some time dealing with certificated work. In recognition of the specialist nature of immigration work and to help implement the April changes we have decided to develop the team to provide a national service. The National Immigration and Asylum Team will deal with all applications for Controlled Legal Representation and for extensions of Controlled Work. The team will also carry out Contract Compliance audits for all immigration suppliers although day-to-day contract management will remain with the local regional office.

The National Immigration and Asylum Team can be contacted at:

Legal Services Commission
London Regional Office
29/37 Red Lion Street
London WC1R 4PP

DX 170 London/Chancery Lane
Phone: 020 7759 1591

Fax: 020 7759 1592 (urgent applications only)

BACKGROUND TO THE NEW IMMIGRATION SPECIFICATION

The new Immigration Specification has been drafted to incorporate major changes in publicly funded immigration and asylum work and replaces Section 12 of the General Civil Contract. This follows on from consultation on the proposed changes, a summary of which is set out below.

The new Immigration Specification contains specific rules that will apply to all Controlled Work conducted in the Immigration Category on or after 1 April 2004 in addition to the general rules set out in other parts of the General Civil Contract.

For all queries regarding the new rules, please check the Frequently Asked Questions and Answers on the LSC website before contacting your Regional Office. These will be updated on a regular basis.

Consultation 2003

On 5 June 2003, the then Lord Chancellor's Department (now Department for Constitutional Affairs) issued a consultation paper "Proposed Changes to Publicly Funded Immigration and Asylum Work".

The Legal Services Commission subsequently issued a consultation paper on how the proposed changes might impact on the General Civil Contract and published a new draft Immigration Specification.

The main proposals were:

- The introduction of a Unique Client Number.
- The introduction of accreditation for all solicitors and case-workers carrying out legally aided immigration work.
- A cap of 5 hours work for asylum cases at the initial decision-making stage.
- A cap of 3 hours work for non-asylum cases at the initial stage.
- A cap of 4 hours work in preparation for any appeal to the Immigration Appellate Authority.
- Removing funding for attendance at interviews.

The consultation period ended on 27 August 2003 and 260 responses were received. The House of Commons Constitutional Affairs Committee also inquired into the proposals and reported on 31 October 2003.

There was broad support in principle for the introduction of the Unique Client Number and accreditation. However there were major concerns from the majority of respondents over the proposal to put a rigid limit on the amount of time spent in individual cases. In addition, most respondents claimed attendance by legal representatives at substantive asylum interviews was necessary.

The DCA and the LSC subsequently proposed to change the approach to allow for flexibility and introduced new cost limits, which could be extended upon application to the LSC. The DCA announced the way forward on 27 November 2003.

Changes to the proposals following consultation:

- New cost limits extendable upon application to the LSC;
- Approximately 5 hours (asylum) and 3 hours (non-asylum) at the initial stage of the case, and
- A cost limit of £1200, including preparation, for appeals to the Immigration Adjudicator, and
- A cost limit of £750.00 for appeals to the Immigration Appeal Tribunal.
- A maximum amount of £150 for preparing the application to the Tribunal.
- Funding for attendance at interviews in exceptional cases.
- In addition a transitional cost limit equivalent to approximately 7 hours (asylum) and 5 hours (non-asylum) at the initial stage of the case would be in place during March and April.

Consultation December 2003

On 3 December 2003, the LSC issued a second consultation paper on proposed changes to the grant of Controlled Legal Representation (CLR) and the provision of services to asylum applicants subject to a fast track process. At the same time, the LSC issued a second draft Immigration Specification to incorporate the revised June changes and the new proposals.

The new proposals were:

- To remove the devolved power from most of suppliers to grant CLR.
- To introduce a system for suppliers to apply to the LSC for a grant of CLR (including a right of review).
- To limit the provision of publicly funded legal advice to asylum applicants in a fast track process to representatives authorised under a separate contract.

The consultation period ended on 26 January 2004 and 13 responses were received.

Respondents to consultation expressed concern about the risk of meritorious cases being wrongly refused funding. Many respondents referred to the existing CLR merits test, which has not changed, and the ability of the LSC to process applications. With regard to the fast track cases, many respondents suggested that there should be exceptions to allow for choice or continued representation in certain circumstances.

In addition to the consultation paper, the LSC also met with representative bodies (for both solicitors and Not for Profit organisations) in the immigration profession, where we agreed to consider further representations on the draft Immigration Specification.

Changes to the proposals published in December as a result of the consultation exercise:

- We introduced new provisions to allow for urgent work where there is a change of supplier and the new representative has not received the costs information or documents from a previous representative.
- The rules relating to the application form and sponsors have been changed to allow a sponsor or family member to sign both the Legal Help or Controlled Legal Representation form where they have sufficient interest in the matter.
- There is also a new rule to clarify that concurrent applications by the same client will constitute one matter start.
- With regard to cost limits and extensions, a reasonable period (normally up to 30 minutes) may be claimed for completing the application for extension on form CW3 Imm.
- The Legal Help Cost Limit has been varied to allow for higher limits in cases where the client is in detention or a fast track process.
- The Maximum Disbursement Limit under Legal Help has been increased to £250.00 (and £400.00 in cases where the client is in detention or a fast track process).
- There is further flexibility under the CLR Cost Limit to take into account delays at appeal hearings, which are no fault of a representative or a client.
- In addition, a reasonable period may also be claimed for completing the application for CLR on form CW2 Imm.
- We have introduced exceptions to the fast track process at Oakington and Harmondsworth whereby representatives without a specific fast track contract may

in limited circumstances provide controlled work to clients at those locations (ie where the client is an existing client or close family member of an existing client).

- With regard to the scheme at Harmondsworth, we have decided to delay implementation and we intend to invite tenders from all suppliers so that those wishing to provide controlled work may bid to do so from 1 July 2004. Only successful bidders for specific contracts will be able to provide services to clients in the fast track at Harmondsworth from that date.

The new immigration specification February 2004

The new Immigration Specification incorporates the proposals we have consulted on subject to the above amendments, and was sent to suppliers on 6 February (Solicitors) and 9 February (Not for Profit organisations). The Specification comes into effect as part of the new three-year contracts on 1 April 2004.

From 1 April 2004 the following provisions will apply:

- The new cost limits, extendable upon application to the London Regional Office.
- The removal of general devolved powers to grant CLR, applications to be made to the London Regional Office.
- Specific authorisation required to provide services to clients in the fast track process at Oakington.

The full details are set out in the new Immigration Specification.

From 1 April 2004, all suppliers should submit applications for costs extensions and CLR to the London Regional Office:

**Legal Services Commission
London Regional Office
29/37 Red Lion Street
London WC1R 4PP**

Tel: 020 7759 1591

Fax : 020 7759 1592 (urgent applications only)

DX 170 London/Chancery Lane

There will be further consultation on proposals to award the devolved powers to suppliers based on agreed criteria and this will be issued later this year. The current arrangements are confirmed in our covering letter dated 6 February (Solicitors) and 9 February (Not for Profit). That letter also provides further information on the timetable and transitional arrangements relating to the new cost limits.

NEW COSTS LIMITS IN IMMIGRATION

There are new extendable costs limits for publicly funded work in the immigration category that will take effect from 1 April 2004 and these are set out in full in the new Immigration Specification. From that date (or from 1 March 2004 if you are in the London region) you will need to apply to the London Regional Office for an extension using the new form CW3 (Imm) if you wish to exceed those limits.

A summary of the new limits is as follows (All figures are exclusive of VAT):

Legal Help

Solicitor Cost Limit (excluding disbursements)	NFP Casework Limit
£286.75 in asylum cases in London and £262.75 outside London	5 hours direct casework time in asylum cases
£172.05 in non-asylum cases in London and £157.65 outside London	3 hours direct casework time in non-asylum cases
£700.00 in detained asylum cases	14 hours direct casework time in detained asylum cases
£500.00 in detained non-asylum cases	10 hours direct casework time in detained non-asylum cases

However for a transitional period during March and April in London and April outside London the following limits will apply for solicitors:

- £401.25 in asylum cases in London and £367.85 outside London
- £286.75 non-asylum cases in London and £262.75 outside London
- £700.00 in detained asylum cases and £500.00 in detained non-asylum cases

Disbursements and Controlled Legal Representation

Type of work	Solicitors	NFP
Legal Help Maximum Disbursement Limit	£250.00 £400.00 (detained)	No change to existing arrangements
CLR Adjudicator	£1200.00 including disbursements	10 hours direct casework time excluding hearing
CLR Tribunal application	£150.00 including disbursements	3 hours direct casework or up to £150 as a disbursement
CLR Tribunal hearing	£750.00 including disbursements	7 hours direct casework excluding hearing

Please see our covering letter dated 6 February (Solicitors) and 9 February (Not for Profit organisations) for further information relating to transitional arrangements.

IMMIGRATION AMENDMENT – MAXIMUM DISBURSEMENT LIMIT UNDER LEGAL HELP AND VAT

Since the new Immigration Specification for Solicitors was issued on 6 February, we have received representations on the inclusion of VAT within the Maximum Disbursement Limit under Legal Help (Rule 12.3.3 of the new Immigration Specification). We realise that by oversight the VAT was treated as inclusive, in contrast to other provisions in the General Civil Contract.

We now confirm that the Maximum Disbursement Limit under Legal Help will be **exclusive** of VAT.

Please amend your copy of the Immigration Specification. The final version will be included in the new issue of the Manual. We apologise for this oversight.

IMMIGRATION AND ASYLUM ACCREDITATION SCHEME

Following widespread support through the consultation in 2003, the LSC will be introducing a compulsory accreditation scheme for all individuals performing publicly funded work in the immigration category.

In early March the LSC and Law Society issued the following briefing note, which is reprinted here to ensure that everyone sees it that needs to:

The Government aims to ensure that all those seeking advice on immigration and asylum issues, many of whom are extremely vulnerable and for whom English is unlikely to be the first language, receive a quality service. The Legal Services Commission, the Law Society and, we believe, the great majority of those practising in this area of work, fully support this aim.

To ensure that a high quality service is provided to those that are publicly funded, from 1st April 2005, the Legal Services Commission (LSC) will require all advisers doing legal aid work to be accredited to an appropriate standard. Additionally, everyone who supervises immigration or asylum work under the terms of the contract with the LSC, will need to be accredited as a supervisor.

How will the new scheme work?

The scheme will begin to operate in April 2004. Advisers will have until 1st April 2005 to demonstrate that they meet the relevant standards.

In March 2004, The Law Society will appoint an Assessment Organisation, which will develop methods to assess whether advisers meet the standards. The Assessment Organisation will be contracted to and monitored by the Law Society, but the assessments will be conducted independently of both the Law Society and the LSC.

From 1st April 2005, the work that advisers can do and/or the amount they will be paid by the LSC for their work, will depend on the level at which they have been accredited.

What are the Standards?

The Law Society and the LSC have developed a set of standards detailing the knowledge of law and practice, as well as the skills needed to be a competent adviser at any of 3 levels:

- Accredited Caseworker
- Senior Caseworker
- Advanced Caseworker.

In addition, Senior or Advanced Caseworkers who supervise others, will need to meet the Supervisor Standard.

The draft standards for each level, including Supervisor, have been sent to suppliers.

How do I demonstrate that I meet the Standards?

Advisers will decide for themselves the level that they think they meet. They can seek assessment at either Accredited Caseworker or Senior Caseworker level. (Achieving a high score in the Senior Caseworker assessment acts as the first step towards Advanced Caseworker accreditation.)

In April 2004, details will be published of the method(s) by which assessments will be carried out. (This might include, for example, written examination, mock interview with a client, analysis of mock-cases etc.)

Shortly afterwards, the Assessment Organisation will begin to publish details of when and where assessments will be held.

Advisers will need to book their places on an assessment at a venue and on a date of their choice. They will be required to pay the fee at the time of booking.

What if I fail the Assessment?

From 1st April 2005, accreditation at some level will be compulsory for those doing legal aid work.

It is important to note that the LSC will only make a contribution to the costs of assessment of successful candidates (see below under 'Who Pays for the Assessment?').

Advisers who fail the assessment must either re-take it and pass before 1st April 2005, or pass an assessment at a lower level before 1st April 2005. There is no restriction on the number of times an individual might take the assessment, but, of course, they will have to bear responsibility for the cost.

Remember, the earlier you take the assessment, the more opportunity you will have to be re-assessed, if that is necessary.

Who Pays for the Assessment?

As with other accreditation schemes, the LSC will make a contribution to the cost of the assessment, but only where the candidate passes the assessment.

Details of the amount that the LSC will contribute to the assessment will be published in April 2004.

What about Outdoor Clerks and Volunteers?

Outdoor Clerks and Volunteers doing legal aid work must also be accredited at an appropriate level. The circumstances in which the LSC will contribute to the costs of assessment of Outdoor Clerks or Volunteers will depend on their relationship with the firm using their services. More details about this will be published shortly.

Why are the different levels relevant?

From 1st April 2005, the LSC will restrict the type of work that Accredited Caseworkers may perform under public funding. There will be no restrictions on the work permitted for Senior or Advanced Caseworkers. The Permitted Work for each level was issued with the standards.

From 1st April 2004, the LSC will pay enhanced rates to those accredited at Level 3 – Advanced Caseworker. This is currently set at 5%.

What about existing members of the Law Society's Immigration Panel?

Existing members of the Law Society's Immigration Law Panel will be passported on to the new scheme at Level 2 – Senior Caseworker, until such time as their re-accreditation falls due. Those whose membership has been extended pending development of the new scheme will need to have been successfully assessed under the new scheme before 1st April 2005.

Those wishing to apply for Level 3 – Advanced Caseworker will need to pass the Level 2 – Senior Caseworker assessment as the first step towards achieving Level 3.

What should I do now?

Over the next few weeks, advisers should consider which of the levels they think they and their fee-earning staff are likely to achieve.

If you think you might need additional development in order to achieve the level at which you want to work, you might want to contact a training provider to see what courses they can offer. Details of organisations approved by the Law Society to provide CPD in immigration and asylum work were issued with this note.

How do I get in contact with the Assessment Organisation?

The Assessment Organisation will publish details of assessments soon after April 2004.

However, for planning purposes and to ensure that the Assessment Organisation can contact you direct, please complete the Immigration & Asylum Accreditation Scheme Application Form issued for each of your advisers and return it to Chris Handford at the LSC by 31st May 2004. The address is provided on the form.

The information provided will help the Assessment Organisation plan when and where to hold assessments for each of the levels of accreditation.

Finally....

Watch out for more information on the Accreditation Scheme, which we will send to you as soon as the detail has been finalised.

If you have any queries about the scheme, please contact Rebecca Bowry at the LSC (020 7759 0339 or rebecca.bowry@legalservices.gov.uk)

TRANSFER OF FUNDING OF IAS AND RLC

Suppliers will be aware that for a number of years the Immigration Advisory Service (IAS) and Refugee Legal Centre (RLC) have provided a free service to clients. This work which has pre-dominantly been appeals related has been funded through Home Office grant (currently under section 110 of the Immigration, Nationality and Asylum Act 2002).

On 1 April the money currently being provided by the Home Office to IAS and RLC for services in England and Wales will be transferred to the Commission. The transfer of funding has been agreed by Ministers at both the Home Office and Department of Constitutional Affairs. Consequently the publicly funded casework carried out by these organisations will be conducted under LSC contract and therefore all new clients will be subject to the LSC means and merits criteria. Suppliers should therefore no longer routinely refer cases to IAS and RLC where clients have failed the LSC means or merits criteria as the organisations will no longer be able to provide a free service to those clients. IAS is planning to continue to offer a service, however, to clients who have failed the LSC means test on a not-for-profit cost-recovery basis.

The Home Office will continue to provide section 110 grant funding to the IAS and Northern Ireland Law Centre for services in Scotland and Northern Ireland respectively. It is planned to transfer this funding to the Scottish Executive and Northern Ireland Legal Services Commission by April 2005.

Any questions about the transfer should be directed to Paul Newell on 0121 665 4731 or at paul.newell@legalservices.gov.uk

CONTRACTING ARRANGEMENTS AT OAKINGTON AND HARMONDSWORTH

In December we announced our plans to provide new exclusive contracting arrangements for the provision of legal services to asylum claimants processed at Oakington Reception Centre and those subject to fast track processes at Harmondsworth Removal Centre. These proposals were aimed to prevent the significant duplication of legal services provided out of public funds and eliminate some of the touting practices and poaching of clients that have existed at these locations. The consultation process for our proposals ended on 26 January 2004.

From 1 April 2004 only the Immigration Advisory Service (IAS) and the Refugee Legal Centre (RLC) will be permitted to provide publicly funded legal advice at Oakington. IAS and RLC will provide advice at the initial decision stage (Legal Help) and will apply the merits test for all refused clients that have an in-country right of appeal. They will then formally refer clients who pass the merits test to other suppliers to deal with their appeals. Suppliers should not provide Controlled Work for clients arriving at Oakington on or after 1 April unless they have received a formal referral from IAS or RLC or their client satisfies the exceptional circumstances detailed in the Immigration Specification of the General Civil Contract. The exceptions are where the client is a close family member of an existing client and knowledge of the family's circumstances is material to the new client's case or where the client is an existing client on whom you have attended in the UK and carried out at least five hours work. Full details are in the Immigration Specification at rule 12.2.13 for solicitors and paragraph 13.2.4 for NFPs.

We will carry out a competitive bid round later this year to award exclusive contracts for Oakington from April 2005.

At Harmondsworth the current fast track pilot contracts that we awarded for the duty scheme are due to expire at the end of March, however they will now be extended until 30th June 2004 where the supplier is happy to continue with this work. Until that time other suppliers may also continue to provide advice to fast tracked clients if instructed.

We will shortly commence a bid round so that all interested suppliers (including those from regions outside London) may apply for a specific contract authorising them to perform fast track work at Harmondsworth from 1 July. The selection criteria for this bid round will be published shortly, along with details of the service required.

In the meantime, should you have any queries regarding the Harmondsworth scheme, please contact Rebecca Bowry on 020 7759 0339 or by e-mail to rebecca.bowry@legalservices.gov.uk. Any questions about Oakington should be directed to Paul Newell on 0121 665 4731 or paul.newell@legalservices.gov.uk

FUNDING CODE UPDATE

Consultation

We are hoping to issue our consultation paper on the future of the Funding Code in April, consulting through to 30 July 2004. This will be an important consultation considering not just the general future of the Code and related scope rules, but proposals in a range of key areas including Family, Clinical Negligence, Police and Education claims. The paper will be posted on the consultation section of our website at www.legalservices.gov.uk as soon as it is available.

Proceeds of Crime Act 2002

As well as reforming criminal law and practice the 2002 Act established a number of new civil proceedings for which CLS funding is available. The proceedings which may be eligible for civil funding, including civil recovery proceedings brought by the new Assets Recovery Agency, are set out in paragraph 3(1) of Schedule 2 to the Access to Justice Act 1999. Guidance on the funding of such proceedings is at section 25 of the Funding Code decision-making guidance in the Manual and on the website. As experience develops of the new procedures we will prepare further guidance for civil and criminal practitioners and make this available on the website.

Although these proceedings are subject to the financial eligibility limits for civil cases, when considering the merits of applications an "interests of justice" test is applied. Issues such as the importance of the case to the client and the complexity of the proceedings will usually be the key considerations rather than legal prospects of success.

Some asset recovery proceedings may relate to a client's business activities and so are potentially excluded under paragraph 1(h) of Schedule 2 to the 1999 Act. The Secretary of State is however consulting on a direction that would exempt proceedings under the Proceeds of Crime Act 2002 from the business case exclusion. This will speed up the processing of such cases by avoiding the

need for them to be referred to the Secretary of State under the exceptional funding procedure for out of scope cases.

All applications for civil funding for proceedings under the Proceeds of Crime Act 2002 should now be submitted to the Special Cases Unit at London Regional Office, 29-37 Red Lion Street, London WC1R 4PP, DX 170 London/Chancery Lane. It is very important that applications for funding are made at the earliest opportunity, in particular to ensure that the complex means issues which sometimes arise in such proceedings can be resolved without delaying the progress of the case.

Representation at Inquests

As mentioned in *Focus* 43 (page 17) new powers exist for the Secretary of State to waive financial eligibility levels of contributions in relation to legal representation at certain inquests. This follows cases such as *Khan* and *Amin* which have clarified the extent of the state's obligations to fund representation at inquests in accordance with Article 2 of ECHR. The Secretary of State has now issued draft guidance on inquest funding, including the approach to the new powers to waive eligibility. The full text of the consultation guidance is at page 12 below. Comments on the draft guidance should be sent no later than 20 May 2004 to Michael Tant at Public Legal Services Division 3, Department for Constitutional Affairs, Selborne House, 54-60 Victoria Street, London, SW1E 6QW, DX: 117000 London.

Pending finalisation of the guidance following consultation we will be dealing with inquest cases broadly in line with the draft guidance. The procedure for applying for inquest funding remains unchanged. **All applications should be made to the Special Cases Unit in London.** Again it is important that applications are made to us as far in advance of the inquest date as possible to allow time for cases to be referred to the Secretary of State where necessary.

UNITED NATIONS SECURITY COUNCIL RESOLUTION 1390: RAHMATULLAH SAFI

The United Nations Security Council has made a number of resolutions in the past three years that require States to apply certain measures to give effect to decisions of the Council in relation to Afghanistan and in relation to combating terrorist activities. Resolution 1390, which was made in January 2002, requires States to prohibit the delivery or supply of arms and the provision of related technical assistance and training to Usama bin Laden, Al-Qa'ida, the Taliban and their associates. It also prohibits the making of funds available to those persons. The names of persons to whom these prohibitions apply are set out in a list maintained by the Security Council.

This resolution is given force in the United Kingdom under the Al-Qa'ida and Taliban (United Nations Measures) Order 2002 (SI 2002/111). Paragraph 7 of this Order provides:

"Making funds available to Usama bin Laden and associates

7. Any person who, except under the authority of a licence granted by the Treasury under this article, makes any funds available to or for the benefit of a listed person or any person acting on behalf of a listed person is guilty of an offence under this Order."

It is therefore imperative that all suppliers are aware that no funds, by way of the provision of legal aid, can be made available to a person who is named on this list. In particular, the Commission has been informed that a Mr Rahmatullah Safi may shortly be applying for funding. Please be informed that Mr Safi is named on the list and no funds may be provided to him without the appropriate licence.

The full list of persons designated by the Security Council is at www.un.org/Docs/sc/committees/Afghanistan/Afg_list_eng.htm.

For further information as to the procedures for obtaining a licence, applicants should contact the International Financial Services Team at HM Treasury, 1 Horse Guards Road, London SW1A 2HQ, tel: 020 7270 5550.

Any queries in relation to this article should be emailed to the Deputy Legal Director at ruth.wayte@legalservices.gov.uk.

RECOVERING A LOSS TO THE FUND IN PROFESSIONAL NEGLIGENCE PROCEEDINGS

Where a solicitor represents a client in professional negligence proceedings, and the allegedly negligent work was publicly funded, the solicitor should consider whether to seek the Commission's instructions as well as those of their client.

Where a client brings proceedings for professional negligence against solicitors, concerning those solicitors' performance of publicly-funded work, it is important that any costs wasted in the original action should be recovered to the same extent as they would be if they had been incurred by the client privately.

For instance: a firm of solicitors represented a client in personal injury proceedings under a pre-Access to Justice Act Legal Aid Certificate. The firm failed to issue proceedings within the limitation period. The client can obviously bring proceedings for compensation for their own loss as a result of the solicitors' negligence. But the negligent solicitor's insurers may not be prepared to compensate the client for the costs paid out to those solicitors from the Fund.

In these situations, solicitors taking proceedings for professional negligence may wish to seek the Commission's instructions. The additional cost of the Commission's claim is likely to be low, since the Commission's claim will be based on the same facts and evidence as that of the client. The Commission's Debt Recovery Unit will instruct the solicitors, normally on a no-win, no-fee basis.

For more information please contact Alison Macnair on 020 7759 0359 or Jimmy Nuttall on 020 7759 1229.

FUNDING FOR REPRESENTATION AT INQUESTS – CONSULTATION

The following is draft guidance on when it may be appropriate for public funding to be provided for legal representation at inquests, taking into account the recent guidance of the court in the cases of Khan and Amin and the new power to waive eligibility limits inserted by the CLS (Financial) (Amendment No. 2) Regulations 2003 (SI 2003/2838). This guidance would replace paragraphs 6 and 7 of the Lord Chancellor's existing guidance on individual case funding which is set out at section 3.4 of the Commission's Funding Code guidance.

6 "I have issued a Direction with effect from 1 November 2001 bringing representation at certain inquests within the normal scope of CLS funding [see section 3.13 of this guidance]. The following guidance should be taken into account by the Commission both when considering applications which fall within that Direction and when considering applications relating to other inquests under the section 6(8)(b) procedure.

7 Before approving an application I would expect the Commission to be satisfied that either:

- i there is a significant wider public interest in the applicant being legally represented at the inquest; or,
- ii the death concerns agencies of the state and funded representation for the immediate family of the deceased is necessary to assist the coroner to carry out an effective investigation into the death, as required by Article 2 of ECHR.

For most other inquests, the coroner will be able to carry out an effective investigation without the need for funded representation.

8 In considering whether funded representation may be necessary to comply with the Article 2 obligation all the circumstances of the case must be taken into account including:

- i the nature and seriousness of any allegations which are likely to be raised at the inquest;
- ii whether other forms of investigation, including internal investigations by a public body, have taken place or are likely to take place and whether the family have or will be involved in such investigations;

iii whether the family may be able to participate effectively in the inquest without funded legal representation – it is recognised that this may be difficult where the death was particularly traumatic for the family, for example inquests concerning the death of a young child;

iv any views expressed by the coroner.

There is however no requirement to seek the coroner's views before determining an application.

9 In all applications for exceptional funding consideration should be given to whether any alternative source of funding exists, including whether there are other family members who can reasonably be expected to pay for or contribute to the costs of representation. In general applicants must satisfy the eligibility limits for Legal Representation as set out in regulations. However with effect from 1 December 2003 I have the discretion to waive financial eligibility limits and contributions relating to representation at an inquest where the Commission requests me to do so (Regulations 5C and 38(8A) of the CLS (Financial) Regulations 2000 as amended). I will consider such a waiver in relation to inquests which satisfy the guidance set out above if, in all the circumstances, it would not be reasonable to expect the family to bear the full costs of representation at the inquest. Whether this is reasonable will depend in particular on the applicant's assessed disposable income and capital, other financial resources of the family, the estimated costs of providing representation, the history of the case and the nature of the allegations to be raised.

10 Where it is appropriate for a contribution to be payable this may be based upon the applicant's disposable income and disposable capital in the usual way ignoring upper eligibility limits. As funding will cover only one off advocacy services at the inquest it will not usually be appropriate for more than one month's assessed income contribution to be payable. Contributions should always be based on what can reasonably be afforded by the applicant and his or her family in all the circumstances of the case."

UNDERTAKINGS

A solicitor's undertaking is a serious commitment, on which the Commission is entitled to rely.

On page two of form CLS ADMIN3, solicitors and FILEX can sign under the following statement:

I hereby undertake that I shall not claim for payment out of the Community Legal Service Fund in respect of costs, disbursements and Counsel's fees incurred in this matter including any solicitor and own client costs and any costs incurred under legal advice and assistance or legal help prior to the issue of the certificate, a sum exceeding £ ----- except and insofar as costs may actually be recovered for the assisted person in excess of that sum.

This enables the Commission to pay the client what he or she has won in the proceedings before the solicitor's claim on the Fund is finalised. It is an important part of client care.

Firms doing high volumes of work sometimes fill in this section of the form without giving it enough thought. The Commission asks for this undertaking to protect the Community Legal Service Fund and the client. And of course, solicitors

know that when they make an undertaking, they have to be sure that they can fulfil what they have promised, because the Law Society treats breach of an undertaking as professional misconduct.

Regulations under both the Legal Aid Act 1988 and the Access to Justice Act 1999 prevent the regional office from allowing a client to have any damages or proceeds of sale that the proceedings have yielded, unless the interests of the Fund are protected (see Regulation 90(2) of the Civil Legal Aid (General) Regulations 1989 (SI 1989/339) and Regulation 20(4) of the CLS (Costs) Regulations 2000 (SI 2000/441)). When agreeing that money can be released to the client, the regional office has to be able to rely on the solicitor's undertaking that the eventual claim on the Fund can be met out of the money that has been held back. Otherwise, the Fund is at risk of a shortfall, and the client is at risk of having to repay some of their winnings.

Without an undertaking from their solicitor, many clients would have to wait until the case is at an end, and their representatives' claims have been drawn up, assessed, and paid, before being able to get any benefit from the proceedings. This would be so, even

if the client stood to get an enormous sum by comparison with the costs.

Sometimes, a solicitor's claim exceeds the amount given in the undertaking. This may be a consequence of unforeseen circumstances, such as another step having to be taken in the proceedings. On other occasions, it can be because the solicitors made a mistake in the figure they entered on the form.

If an actual claim is more than the amount in the solicitor's undertaking, the regional office is always entitled to rely on the undertaking. Regional offices will not allow repeated claims in excess of the amounts solicitors have undertaken to claim. They will refuse to allow claims if there is evidence of a casual approach to the solicitor's obligations, and will not do anything that could lead to a weakening of the machinery that protects clients and the Fund at the end of a case. The regional office will never agree to pay out more than the solicitor undertook to claim if the result will be either a loss to the Fund, or money already paid to the client becoming subject to the charge.

Practitioners and regional offices with queries should contact Ruth Symons on 020 7759 0375.

TIME LIMITS FOR RECOUPMENT OF PAYMENT ON ACCOUNTS; DAVIS v LSC

Background

Leicester firm Davis & Co sued the Legal Services Commission (the Commission) regarding its recoupment of payments on account valued £799.33. Proceedings were issued in the Leicester County Court and heard in the Small Claims Court. Judgment was made in the firm's favour on 30 October 2003.

The basis of the firm's claim was that, as all the payments on account were older than 10 years, the limitation period had expired. The firm asserted that the Commission should refund monies recouped whenever considerable effluxion of time had passed and files were no longer available to the solicitor.

The Commission's position is that the limitation period can only start from the point at which the Commission could

commence proceedings for recovery, namely, from an event that informs the Commission that repayment is due. There are five possible points from which time could run:

1. When a cost claim is assessed by the Commission.
2. When the Commission receives a report of a settlement.
3. When the Commission receives a claim for payment.
4. When the court assesses the costs.
5. When the Commission is made aware of the solicitor's failure to report or where the solicitor has made it clear that the payment on account will not be paid back to the Commission.

The deputy district judge determined that the limitation period had begun to run when payments on account were made and that it was open to the Commission to demand repayment any time thereafter.

The Appeal

The Commission appealed the decision and the appeal was determined in its favour by Judge O'Rourke on 2 February 2004.

The judge found that whilst section 9 of the Limitation Act 1980 does provide a defence to an action for recovery of money after the limitation period has expired, the Act did not apply as the Commission had not attempted to recover the sums by action.

The judge also held that the Commission does not have the right to arbitrarily demand repayment once payments on account are made as the right to repayment arises only on one of the contingencies advanced by the Commission; or in the absence of a submission of a bill or any evidence from the solicitor upon demand for an account by the Commission.

The Commission is pleased that the position, as previously advised to practitioners in *Focus* 34, has been established on appeal.

PROTOCOL FOR JUDICIAL CASE MANAGEMENT PUBLIC LAW CHILDREN ACT CASES – A REMINDER

The Protocol for Judicial Case Management in Public Law Children Act Cases has been in force since 1 November 2003. Therefore the Commission's regional offices have some experience of how practitioners are implementing the Protocol.

Many solicitors are continuing to submit prior authority applications where a report or court attendance by an expert has been authorised by the court. This is not necessary because, in our detailed information pack to support the Protocol, we indicated that, in the absence of a relevant change in circumstances (affecting the need for or the costs of the work), we shall follow the directions given by the court. Applying for authority may serve only to delay the progress of the proceedings. See www.legalservices.gov.uk/guid/cls.htm or www.courtservice.gov.uk – Protocol guidance section – paragraph 7.4 in the information pack.

Solicitors should also be aware that we have introduced a new, unified procedure which can be used for applications for payment on account of disbursements where there is a joint liability for payment. This involves the lead solicitor applying for a payment on account on behalf of each of the solicitors who is acting for a publicly funded client. We cannot, however, make any payment on account to any of the solicitors involved unless the information regarding each funded client and the apportionment of the amount claimed is accurately and fully provided in page 3 of the new CLAIM 4, payment on account, form. Incomplete or incomplete information results in further work for the solicitor in re-submitting the form and in delay in making the payments on account.

Solicitors are referred both to the information pack and to the summary item which appeared on page 16 of *Focus* 43 (December 2003). Queries can be addressed to Lynn Graham, Policy and Legal Department, Legal Services Commission, 85 Gray's Inn Road, London, WC1X 8TX, DX 328 London/Chancery Lane.

IMPORTANT REMINDER FROM THE COURT OF APPEAL REGARDING PREPARATION OF BUNDLES AND CITATION OF AUTHORITIES

The Practice Direction to CPR 52 sets out the procedures to be adopted for appeals. It is designed to assist all Courts, but particularly the Court of Appeal, with the expeditious and efficient disposal of appeals. It is supplemented by Practice Direction (Citation of Authorities) [2001] 1WLR 1001.

Lord Justice Brooke, Vice President of the Court of Appeal (Civil Division) has recently expressed his concern about the failure to follow the above Practice Directions, which is causing unnecessary difficulty to the Court of Appeal and unnecessary expense to those who fund the litigation. [*Harvey Shopfitters Ltd v Adi Ltd* [2003] EWCA Civ 1757 at [10] – [24]].

The problem has attracted judicial comment in two other cases. [*Governor of Bank of Scotland v Henry Butcher & Co* [2003] EWCA Civ 67 per Munby J at [76] – [80] and per Chadwick LJ at [95]; *Schmelz v The IAT* [2004] EWCA Civ 29 per Buxton LJ at [24]].

We have been asked to issue a reminder to legal aid practitioners. Suppliers whose clients are litigating in the courts, particularly the Court of Appeal, must make it their business to ensure that staff concerned with preparing papers for the Court of Appeal and/or counsel instructed are alerted to and follow the requirements set out in the Practice Directions. In particular, at pre-permission and the post permission stages, the following paragraphs are worthy of note:

Pre-permission

- Paragraph 5.8, which deals with the 'pre-reading bundle'. If the pre-reading bundle exceeds 150 pages (excluding transcripts of judgments and other transcripts of the proceedings in the lower court) cut it down so that it contains only those documents which the court may reasonably be expected to pre-read. You can bring the full set of documents to the hearing for reference purposes. This will permit the judge to read the most important documents and grasp the central issues prior to the hearing commencing.

Excessive or unnecessary copying of documents is not required by the Practice Direction and may not be a recoverable expense.

- Paragraph 5.9, 5.10 and 7.6 to 7.7, which deal with 'skeleton arguments'. In preparing skeleton arguments ensure full compliance with Practice Direction (Citation of Authorities), in particular paragraphs 8.1, 8.2 and 8.4 of that Direction. Also remember to cite the best authority possible, noting that appropriate use may be made of copies of judgments in electronic form [*Practice Direction (Court of Appeal: Citation of Authority)* [1995] 1 WLR 1096 and *Henry Butcher* case above per Munby J at [77 iii)] and [79 ii) a)] and Practice Note (Judgments: Neutral Citation) [2001] 1 All ER 193]. It also assists the Court of Appeal to identify the precise passage in a judgment relied on e.g. for cases with neutral citations (post 11 January 2001) mention the paragraph number in [] brackets. For pre-11 January 2001 cases consider the page number.

Post-permission

- Paragraph 15.11 which deals with 'the copy bundle of authorities'. This list must be compiled in full compliance with the Practice Directions mentioned above. In the light of the *Harvey Shopfitters* case, all references to '28 days' in paragraph 15.11 may now be read as '7 days'. In appropriate cases the upper limit of 10 authorities may be disregarded.
- Paragraph 15.11A, which deals with 'the core bundle' for a full appeal. A core bundle of essential documents not exceeding 150 pages must be used where all the pages to be put before the court on a full appeal exceeds 750 pages (excluding transcripts and copied authorities). **This provision is so important to the work and smooth running of the Court of Appeal that it should be scrupulously observed.** At the very latest the core bundle, following co-operation as to its contents between the parties, should be lodged in the Civil Appeals Office seven days before the hearing starts.

Any queries about this article should be sent to the Litigation Manager at silas.catling@legalservices.gov.uk.

COSTS APPEALS COMMITTEE POINTS OF PRINCIPLE

CLA 37, 6 November 2003

Burden and Standard of Proof on Assessment

Point of Principle

The burden of proof to justify a claim for costs remains throughout on the solicitors. The assessment is performed on the standard basis defined in Rule 44.4(2) CPR 1998. The standard of proof to be applied on consideration of evidence by those involved in assessment under paragraphs 2.14 to 2.18 of the GCC specification, when neither the contract, nor the guidance invoked by it, specifies the standard required, is the normal civil standard.

Guidance

The civil standard of proof is flexible, but the courts have always refused to be more specific about how it should be adapted according to different facts and circumstances. In the assessment of costs payable from public funds, the courts recognise that a balancing exercise is to be undertaken between the proper use of public funds and the need for appropriate remuneration for the solicitor.

The standard required cannot vary from firm to firm, nor depend on the wider implications of the assessment. However, the decisions made at all levels in audit cases have very significant consequences for all parties. Those undertaking assessments which are applied generally must therefore carry out their responsibilities with care, understanding the seriousness of the task and ensuring that when deciding whether an item is allowed or disallowed the decision is properly justified.

Whilst the contract requires that adequate attendance notes be kept, regard may also be had to all the circumstances (including the particular client's needs, the nature of the proceedings, and the requirements arising at the stage they have reached) as well as other contents of the file, in making judgments as to whether work was done and its reasonableness. The test to be applied is that laid down in *Francis v Francis and Dickerson* [1955] 3 All ER 836, without applying hindsight, and having appropriate regard to guidance, both on the reasonable expenditure of time and on good practice.

CLA 38, 8 December 2003

Treatment of Underclaims in Audit Sample

Point of Principle

When taking an audit sample the Commission must assess the correct value of each file. Where the solicitor has claimed less than the value of an individual item, the full value should be allowed. If the total amount due on a file has been under-claimed by the solicitors, that undervalue must be set against any over-claim or over-claims elsewhere in the sample.

Guidance

The purpose of the costs compliance audit is to assure the Commission that suppliers are not claiming more than they are entitled to from the Community Legal Service or Criminal Defence Service Fund. The sample taken must be random, so that there may be a fair extrapolation of the audit findings across the entire relevant caseload. If undervalues are ignored the sample will cease to be random, because part of it is omitted.

CLA 39, 16 February 2004

Completing Application Form in Public Law Children Act Work

Point of Principle

Time spent completing an application for funding in Special Children Act proceedings is treated as work done by a fee-earner under the Certificate.

Guidance

The point of principle relates only to Special Children Act Proceedings, defined in Section 2 of the Funding Code, where the applicant is a child, its parent or a person with parental responsibility; or where a child is not, but wishes to be, represented on an application for a secure accommodation order. In these cases, funding is available without reference to the client's means, or to the standard Funding Code criteria for Legal Representation at paragraph 5.4 of the Funding Code. As long as the application is made at the first available opportunity, arriving in the regional office within three working days of the solicitor being instructed, the costs incurred by the solicitor from receiving instructions to act in the proceedings are deemed to be within the certificate (Funding Code Procedures C7). Consequently, where the form arrives in the

regional office within the time limit, the costs of completing the application for funding (CLSAPP5) are deemed to be within the scope of the certificate. In all other circumstances, costs incurred before the grant of funding are not within the scope of the certificate and may be met either under Legal Help or by the client paying privately.

CRIMLA 37 (Amended), 14 June 1993, 23 November 1993 and 17 November 2003

The Relationship Between Decisions of Taxing Masters, the Costs Appeals Committee, Costs Committees and Regional Offices

Point of Principle

1. Decisions of the Costs Appeals Committee are binding on Costs Committees and regional offices.
2. Decisions of taxing masters and determining officers are not automatically binding on the Costs Appeals Committee, Costs Committees or regional offices.
3. If a conflict arises between a taxing master's decision and existing Commission practice or a Costs Appeals Committee decision, then the existing Commission practice or Costs Appeals Committee decision should be followed. In such circumstances, however, a Costs Committee should give consideration to certification of a point of principle of general importance.

NOTICE TO COUNSEL – CONSEQUENCES OF BEING WITHOUT A CURRENT PRACTISING CERTIFICATE

The Legal Services Commission and The Bar Council agree that barristers are not entitled to be paid as counsel for publicly funded work done during any period when they are without an up-to-date practising certificate.

Any barristers who are sent reminders for non-payment of their certificate will also be reminded by the Bar Council that they will not be paid for such work if it is undertaken during a period when they have failed to subscribe.

Practising certificate queries should be addressed to the Records Department at the Bar Council (tel: 020 7242 0082).

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* 32-43. A summary of the cases which have since been referred to the Panel is set out below. These are taken from the full reports of the Panel, but omitting individual client details. In each case the Panel gives an opinion as to whether or not the case has a significant wider public interest. Cases which have a significant wider public interest are usually assessed in one of three categories, namely "exceptional", "high" or simply in the general category of "significant" wider public interest.



PIAP/03/182

Nature of Case

Proposed damages claim against Prison Service for breach of duty of care in failing to inform applicant of the conditions attached to his grant of bail.

Report of Panel

The Panel previously sought additional information in order to clarify whether bail conditions not being passed on to defendants is a common problem. No such information was forthcoming, although the court manager advised that it is the normal practice of the court to fax through bail orders to the prison where defendants do not appear at court. In addition, the applicant was represented at court by counsel. The Panel was not persuaded that this case concerned a systems failure.

The Panel considered that it may be helpful for there to be clarification as to who is responsible for ensuring that a defendant is aware of his bail conditions, however the Panel was not satisfied that this case would change practice or procedure or have an impact on the wider public.

Conclusion

No significant wider public interest.

PIAP/03/200

Nature of Case

Judicial Review of Home Office and police force. Disclosure of transsexual's former gender by Criminal Records Bureau.

Report of Panel

The Panel considered that extending the scope of the *Goodwin* case potentially had public interest. However the present case did not appear likely to affect a large number of people i.e. those who have undergone gender re-assignment and have committed criminal offences in their former gender. The question as to whether *Goodwin* would be likely to be extended from dealing with the consequences of gender re-assignment to allowing non-disclosure of the fact of gender re-assignment is unclear. In addition there is an issue as to whether this case would be an appropriate vehicle to attempt to extend *Goodwin* given that the offence involved is not gender neutral. The merits are not better than borderline. The Panel noted that disclosure would not necessarily reduce the chances of the applicant obtaining employment but would lead to embarrassment and anxiety.

In all the circumstances the Panel was not satisfied that the case was likely to produce benefits of enough importance for a sufficient number of people to be of significant wider public interest. However if further information were produced as to the scale of the problem it might be appropriate to look again at the public interest arguments.

Conclusion

No significant wider public interest.

PIAP/03/201**Nature of Case**

Judicial review of the Health and Safety Executive decision not to prosecute the owner of a maintenance vehicle involved in a fatal motorway accident.

Report of Panel

The Panel agreed that there are doubts regarding the merits of this case. It was considered that there is no realistic prospect of the judicial review succeeding. The court will not evaluate the disputed evidence and it is unlikely that the decision not to prosecute would be considered to be *Wednesbury* unreasonable. In addition, even if the judicial review was successful, there was little prospect of the matter going forward to a successful prosecution.

The Panel was not satisfied that this case would produce a wider benefit for the public. The most important potential result from a prosecution would be the provision of guidance. The Panel noted that the Coroner has intervened and it appears from the documents provided that the Coroner's concerns have been picked up by the Department for Transport, who is currently reviewing procedures in order to provide such guidance. The Panel also recognised the importance of the issue of corporate accountability, but did not consider that the present case would be a suitable vehicle to develop the law in that respect.

Conclusion

No significant wider public interest.

PIAP/03/202**Nature of Case**

Clinical negligence claim and claim under HRA. Alleged failure of health authority to provide appropriate care and treatment to a patient detained under the Mental Health Act.

Report of Panel

The Panel agreed that this case raises important issues regarding the Article 3 and Article 5 rights balanced against availability of resources of an NHS Trust. The failure to provide treatment when a person is detained pursuant to section 3 of the Mental Health Act 1983 may affect a large number of people and could set a precedent in relation to the responsibilities of any detaining authorities

regarding what is reasonable and unreasonable in relation to section 3 detention. The Panel agreed that it was of great importance to determine the way in which the court will balance the Article 3 and Article 5 rights against that of limited resources of authorities when examining the effects of section 3 of the Mental Health Act 1983.

Conclusion

Significant wider public interest.

Rating: High**PIAP/03/204****Nature of Case**

Judicial review of the Home Office. Decision of the Prison Service's Category A Review Team not to refer the applicant to the Category A Committee to consider whether his security rating should be downgraded.

Report of Panel

The Panel agreed that this case has poor prospects of success. The applicant has not demonstrated that there would be any particular advantage in attending before the Committee. There is no information available to indicate that the applicant could argue that the Review Team's decision was wrong in considering whether the applicant has sufficiently addressed his offending behaviour and accordingly that the Review Team's use of their discretion was unreasonable. Further any point of general importance in relation to the role of the Review Team had already been considered and rejected in the case of *Dorrian* (CO 3406/02). The Panel considered that there would be no benefits to the wider public in the present case.

Conclusion

No significant wider public interest.

PIAP/03/205**Nature of Case**

Judicial Review of a decision of the Mental Health Review Tribunal that the applicant should remain under an order of conditional discharge and liable to be recalled to hospital.

Report of Panel

The Panel considered that there was no evidence to demonstrate that there would be any real benefit following a judicial review

of the decision of the Tribunal. In those circumstances this case would not be a good vehicle to establish any issues of principle. It is noted that the Tribunal may have provided inadequate reasons to the applicant however this does not indicate that the decision not to provide an absolute discharge was unreasonable. The issue of inadequate reasons would only affect the individual case and would not establish any new principles or duty regarding the Tribunal.

Further the Panel considered that there was no incompatibility between section 75 of the Mental Health Act and the Human Rights Act. Section 75 allows a discretion and in relation to this discretion the Tribunal must act in accordance with the Human Rights Act.

Conclusion

No significant wider public interest.

PIAP/03/206**Nature of Case**

Judicial review of the decision of the Secretary of State for Trade and Industry and the Secretary of State for Foreign and Commonwealth Affairs not to introduce an embargo on the export of military equipment to Indonesia.

Report of Panel

The Panel recognised the considerable difficulty of mounting a successful challenge in this area but considered that this case might assist in requiring the Government to explain how it applies foreign policy to its decisions regarding the export of military equipment. The Panel considered that public interest arose not only in relation to the people of Indonesia who would be directly affected by further licences not being granted, but in providing transparency in relation to governmental decision making for the grant of licences. There would be benefits in any event in obtaining disclosure of the information which led to the government's decision, because this would be likely to improve the decision making process for future licences.

Conclusion

Significant wider public interest.

Rating: High

PIAP/03/207**Nature of Case**

Appeal against a decision of the High Court granting injunctive relief against the applicants pursuant to the Protection from Harassment Act 1997. Protest campaign against the use of live animals in laboratory experiments.

Report of Panel

The Panel agreed that representation would assist in determining a number of important legal issues including the breadth of the group of defendants, issues regarding peaceful protest and the scope of the Protection from Harassment Act. It is necessary for there to be some scrutiny of the scope of the injunction in order to ensure that there is clarification of the law for future protesters. The grant of permission to appeal by Lord Justice Chadwick had also recognised the general importance of the legal issues set out in the notice of appeal.

Conclusion

Significant wider public interest.

Rating: High**PIAP/03/209****Nature of Case**

Judicial review of the Environment Agency and a local authority concerning the modification of a waste management licence to allow the scrapping of warships at a waste management site.

Report of Panel

The Panel recognised the importance of ensuring that environmental policy and procedures are properly implemented and noted the arguments that existing policy and procedure has effectively been avoided. The Panel agreed that funding in this case is necessary as a precedent may be established for ensuring environmental policy and procedure is complied with, particularly in relation to the decommissioning of ships, and particularly those from outside of this jurisdiction.

The Panel was persuaded that public interest arose both on behalf of those who might be affected by the proposed decommissioning of the warships, and from the legal issues raised, including the principle of proximity in relation to disposal of waste.

Conclusion

Significant wider public interest.

Rating: High**PIAP/03/208****Nature of Case**

Proposed appeal to Court of Appeal of the decision of the High Court refusing an application from the applicant child to be joined as a party to an appeal from the Special Educational Needs and Disability Tribunal.

Report of Panel

The Panel considered that the judgment of the Administrative Court in this case was clear and in line with existing principles. Further, the decision was in line with the Legal Services Commission guidance on funding child applicants in education cases. The Panel considered there was no realistic prospect of the applicant's case providing any new legal principle.

Conclusion

No significant wider public interest.

PIAP/03/211**Nature of Case**

Proposed appeal from decision to refuse permission to bring a judicial review of a decision of the Mental Health Review Tribunal (the MHRT) to adjourn the applicant's hearing for a period of eight days.

Report of Panel

The Panel agreed unanimously that this case had the potential to clarify the powers of the MHRT to adjourn hearings, particularly in light of the statutory requirement to fix a hearing within seven days of the application. It was clear that such clarification could be of fundamental importance to affected individuals. The Panel was particularly aware that this case concerned the liberty of the applicant. The Panel also considered that the additional issue of the Tribunal's failure to determine the matters before it subsequent to the applicant being released had the potential to clarify the law in this area. The present case also appeared to be a good vehicle to test these issues.

Conclusion

Significant wider public interest.

Rating: Significant**PIAP/03/212****Nature of Case**

Proposed actions for breach of confidence, breach of statutory duty and personal injury against a city council housing department, in relation to the disclosure by the department of the applicant's address to her abusive former partner.

Report of Panel

The Panel was sympathetic to the applicant's case, but did not consider that a decision in this case was likely to benefit the wider public. Even if the case proceeded to a final hearing, the Panel was not satisfied that a successful outcome would have the effect of improving procedures beyond the local housing department. It was perhaps more likely that the case would settle instead of establishing any lasting precedent.

Conclusion

No significant wider public interest.

PIAP/03/213**Nature of Case**

Application for Investigative Help to pursue a damages claim against a local authority's social services department for emotional distress.

Report of Panel

The Panel did not consider that this application raised an actionable issue. The principles regarding liability of public authorities were well established and unlikely to be developed further by the present case. The Panel in particular noted the judgments of *Phelps v Mayor Etc of The London Borough of Hillingdon* [2000] UKHL 47, and *X (minors) v Bedfordshire County Council* [1995] 2 AC 633. Therefore, they considered that there was no likelihood of any benefit being received by the applicant, or the wider public.

Conclusion

No significant wider public interest.

PIAP/03/214**Nature of Case**

Proposed multi-party action pursuant to the Consumer Protection Act in respect of a widely available anti-depressive drug.

Report of Panel

The Panel noted that an experienced Funding Review Committee had already considered the application and made recommendations to the Commission's Special Cases Unit. The Panel was happy to accept the findings of the Committee in relation to the number of potential claims and the potential amount of damages. The Panel was satisfied that the number of claimants, and the potential damages recoverable, were substantial. In addition, the Panel considered that a successful outcome in this case would potentially affect not only the various individual claimants within the action but may affect future availability and guidance on the drug. Such wider effects would impact upon every person who ever received or could receive a prescription for the drug. The Panel noted, however, that it was at present unclear what impact the current review of the drug would have on its future availability.

However, the Panel considered that the litigation also had the potential to extend and clarify the application of the Consumer Protection Act 1987 to the development and sales of new drugs, as well as the inter-relationship with the Medicines and Healthcare Products Regulatory Agency.

Conclusion

Significant wider public interest.

Rating: High**PIAP/04/210****Nature of Case**

Proposed action in negligence against a health authority asserting that it has a duty of care to patients of a self-employed GP and that this duty of care was breached by the health authority in failing to terminate its contract with a doctor, or otherwise monitor that doctor's behaviour when they became aware of concerns raised about him. The applicants claim that this breach led to them being sexually assaulted.

Report of Panel

The Panel accepted that this case had the potential to determine the existence or otherwise of a duty of care between a health authority and the patients of self-employed GPs. A successful outcome could improve the safety of all patients in private surgeries. The Panel also considered that, whatever the outcome, this case could inform the development of complaints procedures within the National Health Service. The case also raised issues about professional and clinical independence within a contracting framework which may be of wider application.

Conclusion

Significant wider public interest.

Rating: High**PIAP/04/216****Nature of Case**

Proposed action in negligence against the Crown Prosecution Service for disclosure of personal details of a witness.

Report of Panel

The Panel considered that this case had the potential to decide an important public policy point regarding whether there is, or should be, a duty of care between the Crown Prosecution Service and witnesses in criminal trials. The outcome of this case could affect Crown Prosecution Service procedures, and therefore impact on all witnesses.

Conclusion

Significant wider public interest.

Rating: Significant**PIAP/04/217****Nature of Case**

Proposed actions in judicial review of the detention of a mental health patient; and the decision of a County Court to displace that mental health patient's "nearest relative".

Report of Panel

The Panel considered that there was public interest in clarifying the law around the application of section 29 of the Mental Health Act 1983. However, any judicial review of the decision-making in this case was unlikely to have any impact beyond its own facts. In particular, this case is not likely to provide greater guidance on the correct process for the application of section 29. In addition, the material provided suggested that the discrimination in remedies for those falsely imprisoned while mental health patients, as opposed to in other circumstances, would not be fully addressed by this case.

Conclusion

No significant wider public interest.

PIAP/04/218**Nature of Case**

Proposed action, under the Third Parties (Rights Against Insurers) Act, for enforcement of a judgment in favour of the applicant's mother for compensation for developing mesothelioma due to exposure to asbestos dust, against the insurer of a company (now in liquidation).

Report of Panel

The Panel considered that given the nature of the action under the Third Parties (Rights Against Insurers) Act the outcome would be dependent upon the wording of the policy in this case. Therefore, this case was unlikely to establish any point of wider principle.

Conclusion

No significant wider public interest.

PIAP/04/219**Nature of Case**

Potential action for false imprisonment and breaches of Articles 5(1) and 6(3) of the European Convention on Human Rights following a decision of a magistrates' court to issue a warrant for the applicant's overnight detention for failure to pay a fine in the applicant's absence.

Report of Panel

The Panel considered that this case was substantially different from that of PIAP/03/178, in that this case did not involve a mistake by the court and this case did not primarily concern the statutory immunity of justices and their clerks from claims relating to acts or omissions carried out in the execution of duty. The facts of this case are such that it does not provide a good vehicle for a challenge to the court's detention powers. As the applicant appeared to be aware of the hearing that led to the warrant being issued and there is no explanation of why he did not appear, an Article 6 argument was unlikely to succeed. In addition, the facts of the case would impact on the proportionality issue such that this case was unlikely to be decided in a way which would be of wider significance.

Conclusion

No significant wider public interest.

PIAP/04/220**Nature of Case**

Proposed action for unlawful detention pursuant to Article 5(1) as a result of the applicant being detained in various mental health facilities without the proper processes set out under the Mental Health Act 1983 being followed.

Report of Panel

It was clear from the evidence provided that none of the mental health facilities in this case had considered whether the appropriate procedures had been followed in relation to the applicant. Nor had anyone considered the grounds for the applicant's continued detention, until the mistaken processes used were discovered and the applicant was sectioned.

The Panel considered this case had the potential to improve procedures in the mental health sector, particularly ensuring that the procedures set out under the Act for reassessment following a period in the community had been followed. This was of particular importance where provision was both private and statutory. The argument in relation to the use of section 5 of the Act was also of significance.

Conclusion

Significant wider public interest.

Rating: Significant**PIAP/04/221****Nature of Case**

The applicant is a child who was mistreated by his parents for a number of years. This is a proposed action in negligence and under section 7(1)(a) of the Human Rights Act 1998 against a local authority for failure to take him into care earlier than they did.

Report of Panel

The Panel considered that this case was likely to raise a complex legal point. Emerging case law appears to support the existence of a duty of care owed to the applicant in this case. This case has the potential to develop the law on this point, following on from earlier cases such as *X (minors) v Bedfordshire County Council* [1995] 2 AC 633 and *Z v UK* (2002) 34 EHRR 97.

Conclusion

Significant wider public interest.

Rating: High

PIAP/04/222**Nature of Case**

Proposed appeal against a judgment of the Administrative Court that in exceptional circumstances the Parole Board may resort to the use of a specially appointed advocate procedure (as provided for in special immigration proceedings involving issues of national security) in their proceedings.

Report of Panel

This case raises two important issues of public policy. First, the extension of the use of the specially appointed advocate procedure outside its statutory context. Second, the failure of the Parole Board to extend the use of the existing Rule 5 procedure to mandatory life prisoners and instead nominate a completely new procedure for cases such as the applicant's. It would be appropriate for the procedures applicable in such cases to be considered by a higher court, if they were not to be set out clearly in legislation.

Conclusion

Significant wider public interest.

Rating: High

PROPOSED PAYMENT DATES *for the second half of 2004*

The proposed payment dates for the second 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
TUESDAY 6 JULY 2004	TUESDAY 13 JULY	WEDNESDAY 28 JULY
THURSDAY 5 AUGUST 2004	THURSDAY 12 AUGUST	FRIDAY 27 AUGUST
MONDAY 6 SEPTEMBER 2004	MONDAY 13 SEPTEMBER	TUESDAY 28 SEPTEMBER
WEDNESDAY 6 OCTOBER 2004	WEDNESDAY 13 OCTOBER	THURSDAY 28 OCTOBER
THURSDAY 4 NOVEMBER 2004	FRIDAY 12 NOVEMBER	MONDAY 29 NOVEMBER
MONDAY 6 DECEMBER 2004	TUESDAY 14 DECEMBER	FRIDAY 24 DECEMBER

Focus is sent automatically to all LSC account holders, free of charge. It is usually published four times a year. It is not strictly quarterly as it is produced whenever we need to communicate important information to the profession, rather than according to a rigid timetable.

Focus is distributed using the names and addresses of all LSC account holders, details of which are held on our Master Index database. If you have not received a copy of *Focus* it may be because you have not alerted the Master Index Section to changes to your name, address or DX. Please make sure you send any relevant changes to them at 85 Gray's Inn Road, London, WC1X 8TX or fax them to 020 7759 0525. Please quote your LSC account number.

It is important that *Focus* is seen by everyone in your firm who is involved in LSC work. To help you circulate *Focus*, you may make as many photocopies as you need. Issues from number 26 are also available in PDF format on the LSC website at www.legalservices.gov.uk

**FOCUS IS PRODUCED BY THE
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**FOR GENERAL ENQUIRIES PLEASE
CONTACT THE MAIN SWITCHBOARD
ON: 020 7759 0000**