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> Supplier Survey 2005

For the results of our national supplier satisfaction survey, turn to page 3.

> How Are We Measuring Up?

In *Focus* 48, we explained our corporate targets and what they would mean for suppliers. Turn to page 6 to see how we are making progress against two of our targets.

> Further Guidance on VAT for Asylum Seekers

For clarification on the position regarding VAT on supply of legal services to asylum seekers and other overseas clients, see page 10.

> Adjustments Made for Deaf Disabled Clients

For guidance on the provision for and costs of sign language interpretation for deaf disabled clients, turn to page 11.

> Public Law Children Act Proceedings – Costs of Treatment, Therapy or Training

To find out how the recent House of Lords decision in the case of *Re G* affects this area, please see page 12.

> Family – New Legislation and the New Focus Reforms

For more detailed information on the new power to refer ancillary relief cases to private funding, turn to page 14.



Preferred Supplier Update

As reported in *Focus 48*, the LSC is developing plans for a national Preferred Supplier scheme based on the successful pilot, which was launched last year with 25 firms.

The first step in this process is to issue a consultation paper outlining our proposals. We are committed to publishing this as soon as we have received Ministerial approval from the Department for Constitutional Affairs.

We are expecting to launch the three month consultation early in the new year and dependent on the outcomes of the consultation, we would hope to be in a position to introduce a national Preferred Supplier scheme from late 2006. To remain updated on the progress of the Preferred Supplier scheme please visit the project pages on our website at www.legalservices.gov.uk/civil/how/psp.asp

Change to Telephone Security Checks

Following a recent complaint the LSC has decided to update its telephone security checks for case enquiries. When calling about one of your funded clients, you will now be required to provide your supplier number or, if you are unable to provide that, your roll number. It has been determined that the previous checks, which allowed address details to be provided, were insufficient to ensure that we were in keeping with our obligations under section 20 of the Access to Justice Act concerning confidential information. If you have further queries, please contact your regional office.

Tailored Fixed Fee Scheme

The LSC announced in October that the Tailored Fixed Fee Scheme will be extended until April 2007.

As part of a review of the scheme, which became mandatory in April 2005, we have been seeking feedback from suppliers and their representative bodies. The early indications are that the scheme has been successful and suppliers would welcome a period of stability before further changes are introduced.

The scheme has enabled legal aid firms to calculate their income with greater certainty, as costs compliance audits no longer take place in most cases. This has enabled firms to plan more effectively. Firms have also been able to increase their profitability as they benefit from any efficiency savings they make

and the fixed fee includes a 2.5% uplift on their previous average case costs.

We had anticipated replacing the scheme in April 2006 but we have listened to suppliers' calls for more long-term financial stability and agreed to continue the scheme for a further year. We will continue our discussions with suppliers to ensure their views are fed into proposals for future funding arrangements.

We expect to make some minor changes to the General Civil Contract to enable the scheme to continue and will consult on these changes shortly.

CLS Direct Hits the Streets

We are running a pilot project on *Cityspace* kiosks, which are found at bus stops, shopping centres, libraries and Underground stations throughout England and Wales.

These kiosks give access to council services, travel information, job vacancies and support services such as Women's Aid. Through the kiosks people can find a local adviser using the Community Legal Service Directory and order Community Legal Service Direct leaflets.

People can also access information about our service and order a leaflet through the Direct Gov pages on 'My Local' kiosks available in clubs, pubs and leisure centres across England and Wales. Research suggests that kiosks are particularly popular amongst young males, a group that is often reluctant to seek advice. Mike Whittall, Head of Community Legal Service Direct said: 'This pilot will find out if kiosks situated in public places, such as bus stops and shopping centres, enable those

without internet access to get the help and information they need. Nowadays all government services need to have multi-channel access and we want Community Legal Service Direct to be leading by example.'

To further increase access Community Legal Service Direct is also available through the Direct Gov pages on digital TV. On Sky, Telewest and NTL viewers can use their remote control to order leaflets and in the near future will be able to search for a local legal adviser. The number of leaflets ordered via digital TV has been increasing month on month since August. If you would like any further information about kiosks or digital TV please contact Sonya Fyffe on 020 7759 0275 or sonya.fyffe@legalservices.gov.uk



Supplier Survey 2005

Many of you took part in our supplier satisfaction survey. We surveyed over 6,500 suppliers across the country and had a 20% response rate. The following is a summary of the 2005 satisfaction survey results.

Areas where we have improved

The efforts we have made this year have been reflected in the results in the following key areas:

- > Satisfaction with the time taken to process contract reviews increased from 27% in 2004 to 50% in 2005
- > Satisfaction in the audit process increased from 19% in 2004 to 44% in 2005
- > Satisfaction with the time taken to process applications has increased from 4% in 2004 to 41% in 2005
- > Satisfaction with the way telephone calls are handled has also increased from 35% in 2004 to 56% in 2005
- > Satisfaction with services provided by your local regional offices rose considerably with 68% of respondents rating them as good or excellent (an increase of 30% on 2004)

What you told us about our staff

- > Over 80% of you told us that you found our staff professional and knowledgeable
- > 90% of you rated our staff as helpful which was on average a 20% increase from 2004

Supplier Management Audit

Opinions of the Supplier Management Audit had also improved, with 53% of you agreeing that the audit was conducted in the spirit of partnership (an increase of 21% on 2004). More of you also agreed that the audit was fair and transparent with 56% of respondents – an increase of 21% on 2004.

Further improvement required

While levels of overall supplier satisfaction have improved, which is very encouraging, we are far from complacent and recognise fully the need to increase performance levels in 2005/06 in the following areas:

- > Consulting on changes to contracts, forms and in general – 65% told us we needed to improve, although 12% more than 2004 told us we had the right level of consultation
- > Implementing change – 52% of respondents told us we implemented changes well (an increase of 28% on 2004)
- > 82% of respondents told us we could improve working in partnership by communicating our changes earlier

We would like to thank all those who took part in the survey for their time and honest feedback on our services.

We are committed to working with suppliers openly and transparently and many suppliers indicated they were happy for us to contact them to discuss their comments further. We are keen to consult and involve practitioners more frequently in specific changes, eg our leaflets, forms and business processes.

If any of you would like to be involved in focus groups, or further, more detailed work on gathering views and opinions, please contact haveyoursay@legalservices.gov.uk

Welsh Language Scheme

The consultation period for the LSC's proposed Welsh Language Scheme closed on 1 November. The LSC has adopted the principle that in the conduct of public business in Wales, it will treat the Welsh and English languages on the basis of equality.

The proposed scheme sets out how the LSC will give effect to that principle when providing services to the public in Wales. The LSC worked closely with the Welsh Language Board in developing the consultation paper and, now the period for

comments has ended, will continue to do so until the scheme is published next year.

There are a number of publications which are already produced bilingually, and the scheme will set out what publications and marketing material will have to be produced bilingually in the future.

For more information, please contact Regional Communications Manager Shone Hughes in the Wales regional office on 029 20647 203.

Specialist Quality Mark

In July 2005 a consultation paper was published outlining amendments to the Community Legal Services Specialist Quality Mark (SQM), covering the crime category. The consultation was in response to changes made to the General Criminal Contract, to ensure the quality of work done by Police Station Representatives through tightening of their regulations. To ensure consistency with the Contract, the SQM needed to reflect the changes.

After consultation responses, amendments have been made to the following standards and guidance:

- > D4.2 – Supervisors of Probationary Police Station Representatives must document supervisory dates and tests
- > D5.1 – Police Station Representatives must meet the mandatory training requirements
- > D5.2 and SQM Guidance – Police Station Representatives need to show on-going compliance with the Police Station Register Arrangements 2001

The impacts of the changes are minor, with changes to the standards incorporated into the Crime Supervisor Standards. The changes will come into effect in November 2006, but consideration should be taken now as achieving the qualifications takes time. For further information please contact your Account Manager.

Advice Services Alliance 2006 Conference

Advice uncovered: the real value of what we do – a one day conference in London. On Friday 24 March 2006 the ASA conference will examine the changing sector and look at how we can make the case for advice. For more information visit www.asauk.org.uk/conference

LSC Manual Survey and Update

Earlier this year we undertook a Customer Satisfaction Survey to see how subscribers rated the LSC Manual. The responses received provided a very useful insight into service providers' opinions of the publication and how it is used.

It's generally appreciated that the Manual is of necessity a complex document, but some simplification and improvement to its user-friendliness would be welcome. This manifested itself in three main themes:

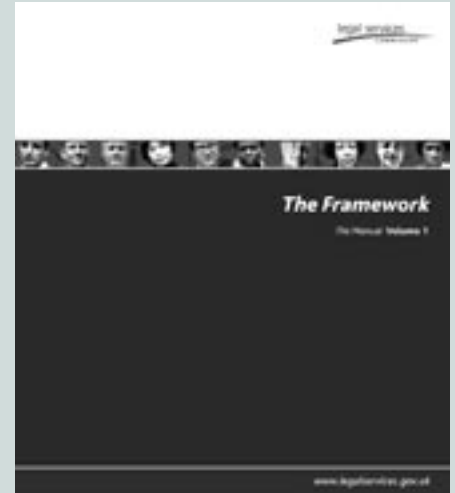
- > The Manual is not viewed as particularly user-friendly
- > The Tables of Contents lack detail and/or inclusion of relevant topics
- > The Index entries should be in terms that are readily understandable to practitioners who are actually doing the work

To help remedy these issues, various measures are being looked at. There will be a review of the Manual, which will examine the feasibility of simplifying the content and language and removing repeated information. We will also look at the idea of producing a 'digest' of the

most frequently used parts of the Manual in one handy volume. Some simple guidance will be provided on the practicalities of using the Manual and on what the LSC is trying to achieve by its publication. The electronic versions of the Manual will also be reviewed, to see if we can make them easier to use.

Thanks go to all our service providers who responded to the survey – your participation is greatly appreciated. For further information please e-mail neil.mcleavey@legalservices.gov.uk or visit www.legalservices.gov.uk/aboutus/news/legal_updates.asp to view or download the complete survey report.

The next update to the Manual (Release 03) will be in December. Please visit the web link above for a summary of the key changes, which will appear in the Manual as the Release Bulletin. If you have any questions regarding



your subscription to the Manual, please contact TSO on 0870 6072468 or e-mail lscmanual@tso.co.uk

LSC Online Update

One of the LSC's Corporate Targets is to increase the number of legal service providers who submit their monthly claims through LSC Online to 1,500 by April 2006.

Regional Office Representatives:

Birmingham: Ann Delany or Selina Joby
 Brighton: Debbie Dillon
 Bristol: Paula Hopkinson or Anthony Evans
 Cambridge: Patricia Chambers
 Cardiff: Jo-ann Painter-Jones
 Leeds: Vicky Barnes
 Liverpool: Ruth Potter
 London: Chris Ledbrook
 Manchester: Jocelin Adderly
 Newcastle: Ruth Milner
 Nottingham: Corlia Bell
 Reading: John Pearce

E-mail is:
firstname.surname@legalservices.gov.uk

The LSC has recently seen a rapid increase in the usage of the LSC Online service. The number of firms choosing to submit their October CDS6/CMFR claims electronically exceeded 1,200. However many LSC Online registered legal service providers have expressed apprehension about using the service to submit their claims and are nervous about progressing from paper to electronic submissions. As a response to this we provided LSC Online Training Workshops in October and November which aimed to 'demystify' the system, demonstrate its ease of use and explain Online's key features.

The sessions demonstrated how to input data, review data for errors and omissions, delete and finally submit claims. There was an opportunity for legal service providers to talk to representatives from the Marketing, Support and Development teams and take advantage of some hands-on practice by setting up accounts and making submissions on our test site. By the end of November over 70 training workshops were held, attended

by over 700 legal service providers. After the sessions, 81% of attendees felt confident in using the service. Some of those who attended the workshops said: '[I] found the session very helpful, matters explained clearly'; 'Training very good and opens up facilities for management information' and 'I thought the training session was excellent. Very good pace and took us through everything. Seems not too difficult to use.' Feedback has also been received on other aspects of Online. One user said of the Support Team: 'I found the people on the helpline very helpful indeed.' Another commented: 'The Online system is brilliant ... I find billing online more efficient and easier than when I used to submit by paper.'

If you missed out on the recent training events and would like more information about the service and its benefits you can visit our website www.legalservices.gov.uk/ebusiness, or alternatively contact the National Marketing Team (tel: 0117 302 3117, e-mail: online-support@legalservices.gov.uk) or your regional LSC Online representative (see left).

New Mental Health Unit Launched

The new unit is jointly made up of the senior caseworker teams from the East Midlands and Merseyside & Chester regional offices.

What will they do and which office will a supplier deal with?

Regional offices will no longer be responsible for any audits (except for residual category 3 firms) or new applications in relation to Mental Health. Instead the new unit will be responsible for the following on a national basis:

- > Mental Health contract compliance and cost assessment audits
- > Mental Health transaction criteria audits
- > Applications for Mental Health public funding certificates, eg judicial review plus any amendments in relation to certificates granted by the unit
- > Applications for extensions to the upper cost limit for Legal Help for Mental Health
- > Claims for Mental Health cases in relation to new certificates granted by the unit

Audits

From April 2006 any contract compliance and cost assessment audits (and any transaction criteria audits) for Mental Health will be undertaken by the Liverpool and Nottingham offices, split on a geographical basis as per above. If a supplier requires an audit the relevant office will contact them. Management audits (conducted by lead assessors and account managers) will continue to be conducted by the supplier's regional office.

Reporting Matter Ends

CLAIMS does not include the reporting of work, ie Controlled Matter Report Forms. These should continue to go to the regional office that the supplier has historically sent them to.

Guidance on the applications

The unit understands that suppliers have

previously sent applications to their regional offices in different ways. The unit's policy on submission of applications is as follows:

- > Applications to be posted or sent via DX
- > Urgent applications can be faxed, but the unit would appreciate a call beforehand, with reasons for its urgency, so the fax is expected (if the application is faxed we will not need a postal copy)
- > We require the CW3 application, and the CW1 and/or CW2
- > Evidence of income can be enclosed if the supplier would like us to advise if it would be deemed satisfactory on audit
- > Work to date and work required should be broken down and explained
- > The reason an independent expert's report is required should be explained and a high hourly rate or overall cost should be justified
- > Attendance at meetings (eg as a McKenzie advisor at a Managers' Review) should be explained and justified

As all applications will be processed within 48 hours of receipt (and a decision given over the

phone if necessary), faxing will be unnecessary in the majority of cases. A supplier is welcome to call the unit to discuss any particular requirements they may have.

What are the benefits for the supplier and the client?

Our aim in setting up the unit is to ensure consistency and control the Mental Health budget outside of the Tailored Fixed Fees scheme. We are confident that suppliers and clients will notice real benefits in terms of our knowledge, expertise and consistency along with an overall improvement in our service.

If you have any queries about the new unit or the new processes please contact the unit.

How to contact the unit

Liverpool Office – Tel: 0151 242 5256
 Mental Health Unit – Merseyside Regional Office Cavern Court, 8 Mathew Street, Liverpool L2 6RE. DX 14208 Liverpool 1
 e-mail: liverpool@legalservices.gov.uk
 Nottingham Office – Tel: 0115 908 4280
 Mental Health Unit – East Midlands Regional Office Fothergill House, 16 King Street, Nottingham NG1 2AS. DX 10035 Nottingham
 e-mail: nottingham@legalservices.gov.uk

Mental Health Extensions for Legal Help/Controlled Legal Representation (CLR) from 3 October 2005		
Local regional office	Legal Help & CLR extensions for matters started before 3 October send to:	Legal Help & CLR extensions for matters started after 3 October send to:
Leeds, Liverpool/Chester, Manchester & Newcastle	Liverpool	Liverpool
Nottingham, Birmingham, Cardiff, Bristol, London, Brighton/Reading & Cambridge	Nottingham	Nottingham

Mental Health CLS APPs (inc amendments) & CLS CLAIMs from 3 October 2005				
Local regional office	CLS APPs for matters started before 3 October send to:	CLS APPs for matters started after 3 October send to:	Claims for Certificates granted before 3 October send to:	Claims for Certificates granted after 3 October send to:
Leeds, Liverpool/Chester, Manchester & Newcastle	The office that the supplier has historically dealt with	Liverpool	The office that the supplier has historically dealt with	Liverpool
Nottingham, Birmingham, Cardiff, Bristol, London, Brighton/Reading & Cambridge	The office that the supplier has historically dealt with	Nottingham	The office that the supplier has historically dealt with	Nottingham

How Are We Measuring Up?

In *Focus* 48, we explained our corporate targets and what they would mean for you. Here we look at our progress against the corporate targets that underpin one of our four priorities; to work with suppliers who provide quality, value for money and client focused services, in whom we have sufficient trust to liberate them to deliver.

Two of our 12 corporate targets feed into this priority. Our progress is shown below.

Corporate Target: Drive up performance standards by taking every action to improve or remove all contracts with ineffective suppliers (those whose cost assessments are Category 3 or whose quality assessments in peer review are 4 or 5) by April 2006.

By the end of October, we had finalised action with over 70% of service providers that fell within the above definition. Encouragingly, of these, at least three quarters showed an improvement on either their contract compliance audit (CCA) or peer review results to enable us to continue working with them. The remaining minority of suppliers were either not willing to, or not able to, demonstrate that the necessary improvements had been made. To ensure protection of clients' interests or the legal aid fund, these contracts have been terminated.

We are confident of meeting the target this year, and have made a number of changes to streamline systems, such as the CCA appeal process, to ensure a speedier resolution where issues have been identified. We have concluded the peer review consultation, and have an agreed way forward for suppliers that have a Category 4 or 5 rating in peer review.

In terms of targets for next year, we will be continuing this work to drive up performance standards. We will be focusing more on peer review than CCA due to the reduction of CCA activity now that the Tailored Fixed Fee scheme is fully operational.

Corporate Target: Reconcile each contract so that claims are within 90%-105% of contract payments by April 2006.

The reconciliation of claims and payments has been ongoing since contracts were first awarded and is a key part of our relationship with service providers. With the limited

budget available to us, and the need to focus our funding in priority areas, it has become necessary to make this an even greater priority this year. This target is really nothing new because all contracts would have had to be 100% reconciled anyway by 31 March 2007 when they come to an end.

Although contracts with all our suppliers have been managed so as to prevent large discrepancies between claims and payments, there are cases where the level of over- or underpayment has exceeded an acceptable level. By the end of September, 73% of civil contracts and 51% of crime contracts had been reconciled to within the 90%-105% band. The process of reconciling contracts will continue throughout this financial year and will remain a focus in years to come. Our approach is designed to ensure consistency and fairness, and we expect all but a few firms to end the financial year in the 90%-105% band.

Young Legal Aid Lawyers: the Next Generation

Legal aid work is not always the first choice for law students deciding the course of their career. Senior practitioners in the field comment on the lack of new blood in legal aid. Their concern is shared by the LSC which has stated that 'ensuring the next generation of legal aid solicitors is a key priority' and LSC investment through training grants already stands at nearly £10m.

Despite this concern, there are many young lawyers committed to practising in areas of legal aid work which can be immensely rewarding. Young Legal Aid Lawyers (YLAL) was set up in April 2005 to provide a voice for a new generation committed to legal aid. The group is made up of newly qualified and trainee solicitors and barristers, as well as paralegals, legal executives and law students. The group has a strong belief in the importance of good quality representation and advice at all levels to those who could not otherwise afford it.

Many members are committed to legally aided work despite the current lack of financial sponsorship or reward compared to

private practice. They believe in providing a good quality public service within a justice system that does not favour the wealthy. YLAL believe that without access to justice, there can be no justice at all. The popular trend in pro bono work cannot compare to a comprehensive, state funded system to safeguard the legal rights of the less wealthy.

YLAL aims to promote legal aid and respond to the many proposed reforms that are ongoing. The group believes it is vital their views should be considered because the impending overhaul of the legal aid system will shape their careers. The group has submitted responses to recent LSC consultations. Young legal aid lawyers hope that proposed reforms will not result in restrictions on their ability to provide a quality service to clients - but they are concerned that their commitment will be futile if they do not have the resources to act for each client in accordance with their needs.

While LSC investment in training is welcomed, there are many young lawyers struggling to make ends meet to complete

the training stage or survive at the junior end of the profession. In a survey conducted by the Law Society, 50% of trainee solicitors indicated that, assuming all things were equal, they would be likely to pursue a career in legal aid work. The reality is that only 8% indicated that they were in fact likely to do so. Financial uncertainty is a particular problem for young barristers who do not even have the guarantee of a basic salary.

There is also the question of race. Organisations like the Law Society and Bar Council are committed to diversity, but what should not be forgotten is the disproportionate effect proposed reforms may have on ethnic minority firms and communities. In the face of all this, support at the junior end is fundamental to sustain those currently training and newly qualified as well as encouraging new entrants to legal aid practice. YLAL provides a support network and a channel through which issues affecting newly qualified lawyers can be voiced. For more information please visit www.younglegalaidlawyers.org

Criminal Defence Service Keycard

No 41a(2) - Issued Oct 2005

Criminal
Defence Service



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 LSC Manual. References in this card to volume and section numbers eg volume 4E-section 1 are references to the relevant parts of that guidance. Suppliers should have regard to the general provisions set out in guidance volume 4E-section 3, particularly those set out in sub-paragraph 2 regarding the documentation required when assessing means. This keycard and the guidance are relevant to all applications for funding made on or after 31 October 2005.

Eligibility Limits

The summary of the main eligibility limits from 31 October 2005 are provided below:

Level of Service	Income Limit	Capital Limit
Advice and Assistance	<p>Disposable income not to exceed £92 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>*Gross Income not to exceed £14,213 for passporting.</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 £194 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>* Gross Income not to exceed £14,213 for passporting.</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

Criminal
Defence Service



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 'passported' arrangements stated in the table on reverse.

Step Two (b)

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

Step Three

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

Fixed rate allowances (per week) from 31 October 2005

Dependants Allowances	Partner	£31.95
	Child aged 15 or under	£43.88
	Child aged 16 or over	£43.88

Step Four

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

Step Five

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

The background features a large, faint, stylized Arabic calligraphic element, possibly the word 'Taqwa' (Taqwa), rendered in a light teal color. The calligraphy is composed of thick, flowing lines and is positioned behind the central text.

Civil Guidance & Development

Further Guidance on VAT for Asylum Seekers and Other Overseas Clients

The LSC, together with The Law Society and HM Customs & Revenue (HMRC) have been working to further clarify the VAT treatment in relation to the place of supply of legal services and particularly the legal services provided to individuals who do not have either a right or permission to remain in the UK, such as asylum seekers. As previously indicated this does not represent a change in HMRC policy. Following publication of advice in *Focus 48*, practitioners should have been changing their practice, where appropriate, in all closed but unbilled cases. The guidance below is further clarification.

General rule

In certain cases, the place where a client belongs determines where the legal services are deemed to be made which in turn determines whether VAT is payable on those services. This is the case in respect of supplies of general legal services provided to individuals who belong outside the EU. Individuals receiving such supplies in a non-business capacity are treated as belonging in the country where they have their usual place of residence. For VAT purposes, individuals can only have one usual place of residence at any point in time and are normally resident in the country where they have set up home with their family and are in full time employment/education (for example, overseas forces personnel and students attending full-time degree courses at college/university). Individuals are not treated as belonging in a country that they are only visiting as a tourist, are on short term educational courses, or here only for medical treatment.

Supplies of general legal services to individuals who belong in the EU are treated as being made where the supplier belongs. Where the supplier belongs in the UK, these will be subject to UK VAT. This might be an issue in relation to legal services provided to a person who belongs in a country which gained accession to the EU on 1 May 2005. Such services will only be subject to UK VAT when supplied after accession, although services relating to asylum applications should be treated as outlined below.

Place of supply of general legal services to a person with no right to remain in the UK

For VAT purposes, persons who have not been granted either permission or a right to remain in the UK should be treated as belonging in their country of origin. This will apply for example, to asylum seekers and those entering without permission. "Belonging" in this context involves something more than physical presence alone – see above. In

these circumstances, the country in which individuals have their usual or permanent place of residence can only reasonably be seen to be their country of origin unless and until they are granted the right to remain in the UK.

This policy applies to all supplies of legal services in relation to an application to remain in the UK (including services relating to that application, or costs, after a judgment has been made) even if a final bill is rendered after the recipient has been granted the right to remain in the UK. Consequently if work is done after determination to close the file VAT need not be apportioned. However, where other legal services are ongoing, VAT will need to be apportioned for work done for such services after the immigration decision is made and the client's status is determined – see below.

Once an individual is granted leave to remain in the UK, then the place of any legal services supplied to him thereafter (for example in relation to his obtaining a work permit) will be the UK (although there are special rules for services which relate to land).

Place of supply of general legal services to a person with a right to remain in the UK

Where an individual is granted the right to remain in the UK and this is subsequently revoked for whatever reason, he should be treated for VAT purposes, as resident in the UK until such time as the issue is concluded (including the time taken to go through any appeal process).

VAT should be charged on all relevant services according to the principle outlined above.

Exceptional circumstances

In exceptional circumstances, an individual will not have an identifiable country of origin. Such individuals are in effect stateless and should be treated for VAT purposes, as belonging in the UK, for example, a person granted exceptional leave to remain in the UK on the basis that his country of origin is

unknown and his claim to be a British citizen cannot readily be verified.

What if I have been treating these supplies differently?

If you have charged VAT on supplies of legal services which, according to this guidance, are outside the scope of UK VAT, you should not now make amendments in relation to past charges which were funded by legal aid. These principles apply to inter partes as well as legal aid only costs and so VAT cannot be charged onwards to paying parties if not charged to the LSC.

Disbursements

The rules for disbursements remain unchanged. However, one of the issues to consider is whether the supply is made to the solicitor, and subsumed in the onward supply of legal services, or made direct to the individual client and treated as a disbursement. The LSC and the Law Society are still in discussions with HMRC and further guidance will follow on this issue.

Barristers fees

These will follow the same principles as solicitors' profit costs.

HMRC have published on their website VAT information sheet 07/05 – Clarification of place of supply policy (this information sheet should be read in conjunction with notice 741 – Place of supply of services). Any queries on VAT may be raised with your local tax office. Any legal aid issues may be raised with Ruth Symons on 020 7759 0000 or ruth.symons@legalservices.gov.uk

Adjustments Made for Deaf Disabled Clients

The Disability Discrimination Act 1995 (DDA) places an obligation on service providers to make reasonable adjustments to their premises in order to assist any client who has a disability. Reasonable adjustments include physical adjustments to premises in addition to one-off capital costs for hearing loops or text phones, etc.

One issue, which has become contentious, is with regard to the provision for and costs of sign language interpretation for clients on a continuing basis during a case.

It is clear from the Act that it is the supplier, as service provider, who is obliged to provide a sign language interpreter for clients, where it would be a reasonable adjustment to make. Reasonable adjustments, by way of provision of an auxiliary aid, a service like BSL interpretation or other language support professionals (LSPs), are dependent on the circumstances of the client and also the resources of the supplier.

The Code of Practice states that: '... the type of auxiliary aid of service will vary according to the importance, length, complexity and frequency of the communication involved.'

Any charges incurred by the provider for such adjustments cannot be passed on to the client. This was confirmed in the case of *Yvonne Brooks*, which clarified that such charges were to be borne by the supplier and not to be passed onto the client. The consequences of that judgment were set out in the recent *Focus* 47 article 'Interpreters and the DDA'.

Following publication of that article, the LSC accepted that there might be circumstances in which the provision of sign language interpreters cannot be considered a reasonable step under the Act. For such cases, the LSC assured professional bodies and representative groups that it would meet such costs (as unreasonable adjustments) to ensure there was no gap in service provision for these vulnerable clients.

Agreement as to the exact point at which the adjustment became *unreasonable* due to the resources of the supplier was not reached. Any guidance on the point at which the charge would be borne by the supplier and not met by the LSC, would by necessity, involve solicitors justifying to the LSC the unreasonableness of the expense to their firm. The LSC considered that this might give rise to a future risk in the provision of services, if solicitors were unwilling to provide the justification required.

The public duty to promote disability equality comes into force in January 2007. In light of preparations for this, the LSC will now bear both the 'reasonable and unreasonable' adjustment costs so that clients are not denied access to language support where appropriately employed and where reasonable in amount.

As well as the cost of English/British Sign Language interpretation we will pay the reasonable cost of other LSPs (such as speech to text reporters, lip speakers and DeafBlind manual communicators), if the engagement of such professionals is reasonable and necessary to communicate effectively with the client. Further guidance may be developed on this.

No agreement has been reached as to the reasonable hourly rate for these costs. The LSC will be consulting shortly on what is a reasonable amount to expect it to pay.

The DDA prohibits such costs from being passed onto the client. Therefore, in supporting this change and facilitating reimbursement, it is imperative that suppliers ensure they keep a separate breakdown of such costs and the associated increased attendance times on the client (the *Brooks* case suggested this may be between 20–30%). Any costs of the BSL/LSP or increased attendance can then be deducted from the calculation of any statutory charge. Initially this information will need to be provided by way of covering letter or annotation of the claim form until the claim forms can be amended. The LSC will need to consult with judges as to the correct approach on assessment. This change will take effect immediately and the requested calculation will be sought for all costs claims submitted or in the process of being assessed from this point onwards.

Practitioners may locate the guidance on providing sign language interpretation jointly produced by RNID and the Disability Rights Commission at www.rnid.org.uk.

Any queries may be addressed to Ruth Symons, Corporate Legal Team. Tel: 020 7759 0000 or ruth.symons@legalservices.gov.uk

Video Conferencing - Reducing Delays in Children Act Cases

Her Majesty's Courts Service (HMCS) has provided 55 mobile video conferencing (VC) units for the 53 Care Centres across England and Wales (the two largest centres being issued with two units each) and relevant court staff have been given appropriate training. Solicitors should consider whether they can use this equipment in publicly funded cases.

Judges and advocates have long recognised the importance of allowing witnesses in appropriate cases to give evidence from outside the courtroom and in some cases outside the precincts of the court. Using VC technology for expert evidence in Public Law Children Act cases is one important area where this practice could prove extremely beneficial. Recent studies and reports have shown that a major cause of delay in family cases is due to experts being unavailable to give necessary evidence. Delays increase costs and can negatively affect the children involved. The use of VC provides experts with more flexibility over when they are required to give evidence and means they have to spend less time travelling to and from court and waiting for cases to be heard. These changes mean that the courts will be able to arrange hearing dates and conclude cases more quickly.

Those wishing to make use of the VC equipment should make their request to the court before the Case Management Conference (CMC) or as soon as practicable before the full hearing. At the CMC itself, any necessary practical issues can be agreed, such as remote location, who will administer the oath and any other special arrangements required to ensure that witnesses are able to give their evidence freely. Many hospitals, government departments and businesses now have VC facilities and HMCS is working with other agencies to establish a catalogue of sites where VC is available. This directory will enable court listing staff to identify appropriate sites when arranging appointments and will be posted on the HMCS website. For more information contact Angela Muir at HMCS Family Division, Selborne House, 54-60 Victoria Street, London SW1E 6QW. Tel: 020 7210 8691.

Public Law Children Act Proceedings The Costs of Treatment, Therapy or Training

Articles appeared in *Focus* 47 (April 2005) and *Focus* 48 (August 2005) regarding the use of experts in public law Children Act proceedings and the costs of treatment, therapy or training. The purpose of this article is to alert practitioners to the recent House of Lords decision in the case of *Re G* and to provide some updated information based on the LSC's experiences in this area since the Funding Code was amended with effect from 25 July 2005. The legal team in the Children and Family Services Division, as well as staff in the regional offices, have received many enquiries and applications regarding the current position.

Re G

Child care practitioners need to be aware of the decision in *Re G* [2005] UKHL 68, and of the impact it will have on assessments of children under section 38(6) of the Children Act 1989 as well as on the conduct of care proceedings generally. The full judgment can be accessed on the Parliamentary website at www.parliament.uk/pa/ld200506/ldjudgmt/jd051124/kent-1.htm

The decision, as well as considering in detail the role of the court in care proceedings, makes it clear that:

- > A proposed assessment must be of the child if it is to fall within section 38(6). The main focus must be on the child but can include an assessment of attachment between a parent and child.
- > An assessment of the capacity of the parent(s) to change falls outside the section as does assessment for the purpose of rehabilitation of the family.
- > A programme focused on the treatment and improvement of the parent(s) and their parenting skills cannot be regarded as an assessment of the child.
- > Article 8 rights do not extend to being 'made a better parent at public expense'.
- > Any process of examination or assessment should extend over a relatively short period.

In addition, it is also clear that:

- > A distinction can be made as between what constitutes an assessment and what constitutes treatment. The two may co-exist. An institution directed to make an assessment may incidentally commence some form of treatment, if only to assess whether the case is susceptible to treatment. However, the jurisdiction of the court is confined to obtaining information about the current state of affairs, including perhaps a forecast of what future progress might be possible, and does not extend to a continuing survey of the effects of treatment.

- > The purpose of section 38(6) is not to ensure the provision of services either for the child or his family. There is nothing in the 1989 Act which empowers the court hearing care proceedings to order the provision of specific services for anyone.
- > It is not always possible to draw a hard and fast line between information gathering and service providing. Some information can only be gathered through the provision of services. It may be necessary to observe the parents looking after the child at close quarters for a short period in order to assess the quality of the child's attachment to the parents, the degree to which the parents have bonded with the child, the current parenting skills of the parents and their capacity to learn and develop. However, it is not a proper use of the court's powers under section 38(6) to seek to bring about change.
- > In many cases, the local authority should be able to make its own core assessment and the child's guardian to make an independent assessment in the interests of the child. Further or other assessments should only be commissioned if they can bring something important to the case which neither the local authority nor the guardian is able to bring.

In concluding her judgment Baroness Hale said:

'In short, what is directed under section 38(6) must clearly be an examination or assessment of the child, including where appropriate her relationship with her parents, the risk that her parents may present to her, and the ways in which those risks may be avoided or managed, all with a view to enabling the court to make the decisions which it has to make under the Act with the minimum of delay. Any services which are provided for the child and his family must be ancillary to that end. They must not be an end in themselves.'

The decision leaves open whether a party

can be directed to fund an assessment and also suggests that if an assessment involves no element of treatment, therapy or training, the LSC will fund the whole cost of a programme of assessment, including accommodation and subsistence expenses. This seeks to summarise the position before the decision in *Re G*, taking the Funding Code amendment to exclude therapeutic/rehabilitative work and related expenses into account. However, it overstates the position which is that where there is no element of therapy, etc, it is within the *vires* of the Community Legal Service Fund to meet the costs of assessment as appropriately apportioned, including accommodation and subsistence expenses on behalf of funded clients, but these will only be met if that is justified and appropriate in the circumstances of the particular case.

Even if the court can direct a funded client to meet the costs of an assessment, the position of the LSC is that:

- > Section 22(4) of the Access to Justice Act 1999 precludes the position being considered differently than if the client was privately funded or unrepresented. Section 22(2) of the Act specifically allows for those providing services to receive payment other than from the Fund provided the authority of the LSC is given.
- > The decision in *Re G* is relevant to any possible assessment under section 38(6).
- > The apportionment of any residential assessments should not be agreed as they require appropriate and careful consideration by the court including as to any apportionment.
- > Excluded work cannot be remunerated in any event.

The decision also suggests that the LSC could voluntarily fund treatment, etc. However, it cannot due to the clear terms of paragraph 1.3 of the Funding Code (see below) nor, indeed, can it follow any direction from the court to fund treatment/therapy with or without

assessment, as to do so would be to act *ultra vires* the Funding Code which has statutory force.

The Funding Code amendment

The Funding Code amendment provides that costs of, or expenses in relation to, treatment, therapy, training or other interventions of an educative or rehabilitative nature may not be charged as disbursements under any level of service, subject to an exception for specific orders or directions from the Lord Chancellor.

The guidance at paragraph 5.9 in Volume 1 of the LSC Manual, Part D narrative and guidance, remains current (subject to the decision in *Re G*) but we are now providing some further information which we anticipate practitioners and others will find helpful.

Funding Code criterion 1.3, which deals with disbursements, is widely drafted. It provides that costs of, or expenses **in relation to**, treatment, therapy or training or other interventions of an educative or rehabilitative nature may not be charged as disbursements. This is clearly not confined to the expenses of such interventions. Any accommodation or other expenses including subsistence and travelling expenses in relation to these items cannot therefore be charged as disbursements and must also be excluded from any application made by the conducting solicitor for prior authority (or for an increase in the costs limitation applicable to the certificate of public funding).

However, elements of an assessment, including a residential assessment, ie the assessment itself as opposed to treatment and therapy – will not be excluded under criterion 1.3. For those costs the guidance states that following the Lambeth decision, the apportionment of the assessment should be considered by the court on the principles of *Calderdale Metropolitan Borough Council v S* [2004] EWHC 2529 (Fam).

Note, however, that the court's powers are limited by the decision in *Re G* and that therapeutic work and any related expenses are outside the *vires* of public funding. Furthermore, the LSC will not voluntarily fund work outside section 38(6) even if agreed by the parties.

It was hoped that it would be possible to exclude items which were **not** part of the work to be carried out for assessment purposes from work which **could** and possibly would be paid for by the individual funded parties and the Community Legal Service Fund. Despite the work and costs involved, residential units (and others) may not, in our experience to date, provide any or a sufficient breakdown of the work to be carried out, or the costings in relation to the individual elements. More frequently, a single

figure or weekly rate has been produced which covers not only assessment but also any accommodation, subsistence, training, parenting work, etc.

No treatment or therapy

In some cases the information received is that no treatment or therapy is included in the work being carried out under section 38(6). If this is the case then the whole cost of the work to be carried out, including any reasonable accommodation and subsistence expenses, can be met by the Fund (as appropriately apportioned and, in the case of residential assessments in particular, following consideration by the court).

No breakdown

Before the *Re G* decision courts were, in some cases, adopting an approach whereby

“We shall continue to work with the judiciary as well as interested agencies and departments on this complex and challenging area”

they deducted a percentage from the total amount of the assessment before this was apportioned between the parties to take into account elements of treatment, therapy and training – based, however, only on the court's understanding of the case and the type of work to be carried out. This inevitably lead to inconsistencies. There have also been different approaches in the 'discounts' allowed by the courts in apportioning the costs of assessments where the child/children would have otherwise been accommodated at local authority expense.

Where it is apparent that there may be an element of treatment, therapy or training but the provider does not give any breakdown of work in an assessment to be carried out under section 38(6), LSC regional offices will be forced to conclude that all the work must be 'in relation to' treatment, therapy or training and is therefore outside the *vires* of the Fund. The consequence is that prior authority and any application for an increase to the costs covered by the certificate of funding must be refused.

As stated above, if **no** elements of

treatment, therapy or training are included in the assessment then an appropriate apportionment of reasonable accommodation and subsistence costs can be met. However, if any elements of treatment and therapy are included then **all** the costs and expenses of accommodation and subsistence must be excluded so far as funded clients and the Fund are concerned – either by the court or subsequently by the regional office.

Summary

Where having regard to the decision in *Re G*, treatment, therapy or training are none the less included in the work to be undertaken by a residential unit or other assessor but they cannot be accurately identified by the provider, any application for prior authority (or for an increase in the costs limitation) must be refused. However, these costs may, and ideally should, have been identified and then considered at the hearing at which the court directed the assessment and any apportionment. This is to ensure that no *ultra vires* payments are made from the Fund following ultimate costs assessment by the court or the LSC's regional office on the conclusion of the case.

If treatment, therapy or training is included in the assessment then any accommodation, subsistence and other related expenses of the funded clients cannot be met.

Practitioners should not agree apportionments of residential assessments nor should they agree work outside section 38(6) as interpreted in *Re G*. Neither funded clients nor the Fund can reasonably be expected to meet the cost of work outside section 38(6) or which should not fall to the funded clients themselves, having regard to section 22(4) of the Access to Justice Act 1999.

We shall continue to work with the judiciary as well as interested agencies and departments on this complex and challenging area. If you have any queries regarding these issues please contact Jane Worsey (jane.worsey@legalservices.gov.uk, tel: 020 7759 1130) or Lynn Graham (lynn.graham@legalservices.gov.uk, tel: 020 7759 1129).

Family Guidance - New Legislation and the New Focus Reforms

An article on the 'New Focus' reforms appeared in *Focus* 48 (August 2005) at page 06. The article referred to the new power to refer ancillary relief cases to private funding and now this article provides more detailed information.

Following an internal and external consultation exercise, including with the main practitioner stakeholder groups, the LSC's position has been amended and finalised. Detailed guidance can be seen on the LSC website at www.legalservices.gov.uk/docs/civil_consultations/guidanceamendments.pdf. All the amended family decision-making guidance will be included in Release 3 of the LSC Manual (December 2005). This will also reflect the implementation of the Civil Partnership Act 2004 and the Adoption and Children Act 2002. (Note: A new Part I SPAN matter type has been created for matters opened in connection with the Civil Partnership Act 2004. These should therefore be reported as FICP on the consolidated matter report form in Part I followed by the appropriate Part II family code).

The new criterion

- > The new Funding Code criterion 11.12.7 applies to applications for Legal Representation in ancillary relief proceedings and other financial and miscellaneous family proceedings that fall to be considered under section 11.12 of the Code.
- > The condition does not apply to General Family Help. The new criterion supports the policy that family disputes should, so far as possible, be resolved by agreement. Where that is not possible the issues which remain disputed in proceedings should be narrowed (in ancillary relief by using the opportunity presented by the Financial Dispute Resolution hearing), and public funding should only be made available for final, contested hearings where that is justified, having regard to all the circumstances. The revised, wider definition of General Family Help explained in *Focus* 48 also supports this policy.
- > The new criterion establishes a discretionary ground for refusal 'if it appears reasonable in all the circumstances for proceedings to be funded privately, having regard to the financial circumstances of the client and the value of the assets in dispute'.
- > The policy behind the new powers is

not to apply them to financial cases that in substance are still at the General Family Help level. However, a subsequent amendment to such a certificate to cover a contested final hearing for financial provision would be subject to the criterion.

When will the new criterion apply?

- > It applies to applications for Legal Representation made on or after 3 October 2005. It applies to an application to amend an existing General Family Help certificate to cover Legal Representation where the application to extend is made on or after 3 October 2005.
- > It does not apply to certificates of Legal Representation in force as at 3 October 2005 where an application is made to extend the scope of the certificate to cover proceedings caught by the criterion (eg an application to extend an existing domestic violence certificate to cover ancillary relief).
- > It will not apply to applications to include proceedings caught by the criterion, eg to include the scope of General Family Help for ancillary relief in an existing certificate covering domestic violence and/or children proceedings.
- > Forms CLS APP3 (application for funding) and CLS APP8 (application for an amendment) have been amended to support the new criterion. The amended forms have been mandatory from 3 October 2005.

Issues for consideration

- > There are three issues:
 - > Availability of capital assets that the client could reasonably use to cover the remaining legal costs of the case.
 - > The borrowing potential of the client.
 - > Evidence of availability of a loan.
- > In some courts an early final hearing may be listed after the Financial Dispute Resolution hearing. In cases where private funding may be an option, future funding arrangements should be investigated and discussed urgently between the solicitor and the client following the unsuccessful Financial Dispute Resolution hearing.

Available capital assets

- > The client is not expected to sell their home nor to use it as security for a loan.
- > The issue here will usually be cash and other readily available assets, eg stocks and shares.
- > Assets are available so long as there is no legal restraint (ie order or undertaking), on their use to pay reasonable legal costs. Any financial penalty connected to accessing the funds does not make them unavailable.
- > The likely costs to conclude the case can be based on the costs estimate to trial in form CLS APP8 (page 5). Solicitors should take care to complete the costs estimate details as accurately as possible based on publicly funded rates. Applications will be refused where inadequate information is available on likely costs.
- > Where assets are available and can be used, Legal Representation will generally be refused under the new criterion. In cases where the likely costs of the case are greater than the assets available, the assets available above £3,000 should first be used, but thereafter a further application for public funding can be made. This can be achieved in either of the following ways:
 - > by the discharge of the certificate, with a further application for public funding when the available assets are exhausted; or
 - > by the certificate remaining in force on condition that no further costs may be claimed under the certificate until the available assets have been applied towards the ongoing costs. In those circumstances the LSC gives authority under section 22(2)(b) of the Access to Justice Act 1999 for the solicitor to receive payment out of those assets while the certificate is still in force, provided the work done continues to be charged at legal aid rates.

Borrowing potential

- > The criterion is discretionary and private funding must be a realistic and affordable alternative for the client.
- > The most important question is therefore whether the client's disposable income

is such that repayments to a loan could be supported. Funded clients in ancillary relief proceedings on average have higher disposable incomes than any other funded category, and many clients pay substantial monthly contributions, which will sometimes be greater than the monthly payments that would be due on a small loan.

- > The starting point is to consider refusal where clients are paying or would be paying contributions of £60 per month or more. The current contribution should be declared on the amended APP8 form (but can also be checked on the LSC's computer records).
- > Where the certificate covers other aspects the client can choose whether to discharge the certificate or not. Existing contributions can be taken into account if there is good reason for the certificate to continue in the particular circumstances (eg the existing cover is being used to protect the client/ children).
- > All the circumstances of the case must be considered, eg substantial existing loan repayments.

Evidence of availability of loan

Where the disposable income of a client, as above, suggests that s/he ought to be in a position to obtain private funding, any evidence produced by the client to show that such funding for some reason is not available to the client must still be taken into account. Even where the client's disposable income would support a loan, many clients are unable to obtain any form of affordable loan because of their poor credit rating. Funded clients would not be expected to explore tailor-made finance arrangements specifically set up to cover ancillary relief costs.

Evidence produced by the client to show that a loan is not available must be taken into account. A client should approach two or more reputable banks or building societies – this can be by telephone, internet or face-to-face. Details of the attempts must be given, specifying why any application for a loan was refused – if this is known. Applications will be refused where there is inadequate information although it is understood that written confirmation from the lenders may not be available.

Where the client declines a loan, Legal Representation may still be granted if the interest payments are at least 10% more than the client's monthly contribution.

Queries regarding the changes can be addressed to the LSC's Children and Family Services Division by e-mail to family@legalservices.gov.uk

Community Legal Service



Care Standards Tribunal

Although advocacy before most tribunals is excluded from public funding under para 2, Schedule 2 to the Access to Justice Act 1999, the Lord Chancellor's Direction on Tribunal Representation of April 2001 had permitted funding at the Legal Representation level in proceedings before the Protection of Children Act Tribunal (POCAT). That Tribunal considered applications for the inclusion and removal of the names on the list of those considered unsuitable to work with children.

POCAT was subsequently superseded by the Care Standards Tribunal and the range of proceedings heard before it has been significantly extended. As a result the Funding Code Guidance, at section 22.3, currently states that within the Care Standards Tribunal, it is only those proceedings that relate to the original purpose of POCAT that are in scope for Legal Representation.

However, with effect from 31 October 2005, the Secretary of State has issued a new Direction on Tribunal Representation. In relation to the Care Standards Tribunal, the LSC is now authorised to fund Legal Help, Help at Court and Legal Representation in relation to the following proceedings:

- > Proceedings under section 4 of the Protection of Children Act 1999 (which relate to appeals against inclusion on a list of individuals who are considered

unsuitable to work with children).

- > Proceedings under section 4A of the Protection of Children Act 1999 (which relates to applications for removal from the list of individuals who are considered unsuitable to work with children).
- > Proceedings under section 86 of the Care Standards Act 2000 (which relate to appeals against inclusion on a list of individuals who are considered unsuitable to work with vulnerable adults).
- > Proceedings under section 87 of the Care Standards Act 2000 (which relates to applications for removal from the list of individuals who are considered unsuitable to work with vulnerable adults).

These proceedings in general, are not considered suitable for informal representation under Help at Court. Applications for Legal

Representation for these proceedings should continue to be addressed to the Special Cases Unit, London Regional Office, Legal Services Commission, 29-37 Red Lion Street, London, WC1R 4PP, DX 170 London/Chancery Lane, for funding as licensed work.

Remuneration is at Controlled Legal Representation rates, as for representation at the Mental Health Review Tribunal. However, this work (whether assistance under Legal Help or licensed Legal Representation) does not come under any Specialist Quality Mark (SQM) category, and so it is not limited to suppliers holding an SQM in any particular category.

For more information, please contact the Special Cases Unit on 020 7759 1975.

Public Interest Advisory Panel Summaries

The Public Interest Advisory Panel (PIAP) reports to the LSC on cases that are considered to raise public interest issues. These reports are then taken into account by the LSC 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* 32-48. A summary of the cases that 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 that 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/05/325

Nature of Case

A proposed appeal to the Court of Appeal against a decision on an interim application to allow a local authority to resile from an admission of liability in relation to injury suffered by an infant when she fell in their playground onto a bare concrete surface, and thereafter an application for investigative help, the proceedings up to this point having been conducted under a conditional fee agreement.

Report of Panel

In relation to the decision of a circuit judge to allow the local authority to resile from its earlier admission of liability, no wider public interest appeared to arise. That decision was based on accepted principles and appeared unsurprising in view of the short period between the admission itself and the attempt to resile from it. Concerning the substantive issues in the proceedings, the local authority skeleton argument alluded to the possibility of defending the proceedings on the basis that protective flooring had not been required at the time that the playground had been constructed and/or that they had subsequently decided not to provide protective flooring, having properly balanced safety considerations against resources available to the council. The Panel considered

that the legal defences raised were unlikely to be successful if pursued to trial. Accordingly, the Panel took the view that this case was unlikely to establish new law or to have any impact on playground safety standards. However, the position would be different were the local authority to succeed and the applicant then wished to appeal.

Conclusion

No significant wider public interest

PIAP/05/326

Nature of Case

Proposed judicial review of a refusal by the General Medical Council (GMC) decision not to investigate a complaint by the applicant against a psychiatrist on the basis that the complaint had first been made to the GMC more than five years after the events giving rise to the allegation of misconduct.

Report of Panel

The Panel accepted that there was wider public interest in the pursuit of the judicial review proceedings, as it has the potential to establish that the exercise of the discretion of the GMC medical screener to waive the five year limitation period in exceptional circumstances should take into account matters such as other complaints made against the practitioner in question, contrary to the GMC's own interpretation of SI 1988/2255. The Panel considered that such a decision would achieve greater public protection where there was a pattern of complaints against an individual practitioner and would generally increase public confidence in the complaints process.

Conclusion

Significant wider public interest
Rating: Significant

PIAP/05/320

Nature of Case

Proposed appeal to Court of Appeal seeking a declaration of incompatibility and damages arising from the applicant's detention as a restricted patient under sections 37 and 41 of the Mental Health Act 1983, whereby it was

alleged that the statutory decision to set the court review of such detention only after six months amounted to a breach of art 5(1)(e) and/or art 5(4) of the European Convention on Human Rights.

Report of Panel

The Panel recognised the potential importance of any clarification or extension of rights of review of detentions under the Mental Health Act. However, the Panel concluded that the present case was unlikely to achieve any changes to the law or procedure.

The Panel considered that problems arose in the narrower challenge, specific to sections 37 and 41, to the six-month period before detention can be challenged before the MHRT. The panel questioned whether art 5(4) was engaged here in any event and felt that the applicant's case was undermined by the existence of the obvious remedy of an appeal to the Court of Appeal against the s 41 order, which had in fact been effective in this case.

Given that the applicant's release from detention had been secured and that this was an appeal against refusal at the permission stage, the Panel concluded that this was not an appropriate case through which to challenge the wider issue of detention without recourse to a tribunal under the Act.

Conclusion

No significant wider public interest

PIAP/05/321

Nature of Case

Proposed judicial review of the Operational Protocol in relation to s 136 of the Mental Health Act 1983 developed by the Cornwall Partnership NHS Trust, Peninsular Strategic Health Authority and Devon and Cornwall Constabulary, which adopted a general policy of using police custody suites as a 'place of safety' under s 136.

Report of Panel

The Panel accepted that there was wider public interest in the pursuit of the judicial review proceedings. The Protocol appeared to breach the statutory Code of Practice on mental health. If successful this case had the potential to benefit significant numbers as,

throughout the counties in question, provision would have to be made for persons fulfilling the criteria of s 136 of the Act to be taken to hospital rather than police custody.

Conclusion

Significant wider public interest
Rating: Significant

PIAP/05/322

Nature of Case

Proposed appeal to the Court of Appeal within judicial review proceedings concerning a local authority's duties under s 190 of the Housing Act 1996, as amended by the Homelessness Act 2002, owed to applicants found to be in priority need of accommodation but to be intentionally homeless.

Report of Panel

The Panel received very considerable assistance from a letter and statistics provided by Shelter on the applicant's behalf, which demonstrated the large number of applicants and families within the position of having been found to be intentionally homeless.

The Panel recognised that if successful this case had the potential to clarify the law in relation to the period for which accommodation should continue to be provided and the nature and extent of other assistance and the assessment of the applicant's needs that should be undertaken by the authority. The Panel noted, in particular, the importance of the question of whether the local authority could be required to provide financial assistance by way of rent deposit.

Conclusion

Significant wider public interest
Rating: High

PIAP/05/323

Nature of Case

Proposed action for a declaration of the unenforceability of a contract pursuant to the Consumer Credit (Agreements) Regulations 1983 where a dealer selling a vehicle to the applicant had mis-stated the cash price, resulting in the agreement stating an incorrect figure for the amount of credit.

Report of Panel

The Panel considered that, even if successful, any benefits that could potentially amount to a wider public interest under the Funding Code, since it would enable purchasers who had colluded with dealers in mis-stating the terms of a sale to avoid liability to the credit provider. The Panel noted that the meaning of the Consumer Regulations concerned appeared clear and in support of the

applicant's position, and that any wider public interest in the case would revolve on whether the lender could avoid the effect of these regulations on the ground of the applicant's collusion in the defective statement of credit.

The Panel considered that it would not be appropriate for the applicant to seek declaratory relief where the finance lender had not commenced proceedings in respect of his debt. The Panel noted also that the applicant had successfully brought proceedings against a third party who had taken possession of the vehicle, which had relied on the fact that the credit agreement was enforceable against the applicant.

Conclusion

No significant wider public interest

PIAP/05/324

Nature of Case

Proposed judicial review concerning the exercise of police powers under s 36 of the Anti-Social Behaviour Act 2003, following protests against the staging of a play in Birmingham in December 2004.

Report of Panel

The Panel considered that this case has significant wider public interest in addressing the question of whether it was legitimate for the police to issue a direction pursuant to s 30(4) of the Act, requiring protesters to disperse in reliance on an authorisation notice under s 30(2) in force in the locality, that had been issued for reasons unconnected with the protest itself.

The Panel recognised that the legal challenge will have to proceed on the basis that there is public interest in determining whether dispersal orders can be made where there is no link between the authorisation notice and the protest in question, even though the protest is said not to be peaceful. The Panel noted that permission to apply for judicial review had been granted and that consideration of the case would not be confined to the particular facts.

Conclusion

Significant wider public interest
Rating: High

PIAP/05/314

Nature of Case

Proposed claim by the applicant, as Personal Representative of his deceased mother, for damages and a declaration that the defendants, a local authority and a registered social landlord, failed to provide the deceased with suitable accommodation and care.

Report of Panel

Whilst the Panel had sympathy for the applicant's position the majority view of the Panel was that this case was unlikely to establish any new points of ECHR law. There was no guarantee that a court would reach any conclusion on whether a PFI care home was a public authority, as remedies were also pursued against the local authorities. Further, the majority of the Panel felt that the court was less likely to address the issue of ECHR breaches because contractual remedies are available.

Conclusion

No significant wider public interest

PIAP/05/329

Nature of case

A proposed claim for damages under the Disability Discrimination Acts of 1995 and 2005 in respect of the alleged failures of the proposed defendant, a local transport company, to provide assistance to the applicant, who was wheelchair bound, to enable him to access the bus network in his area through lowering and assisting in the use of the ramp from the bus doorway to the pavement.

Report of Panel

Although the potential damages in this case were modest, the Panel emphasised the importance of ensuring that provisions aimed at preventing discrimination were complied with in practice. The Panel considered that, rather than developing the law relating to disability discrimination, the case had the potential to bring benefits to other disabled users of the proposed defendant's transport services, and to influence the policies of other authorities, particularly as a result of publicity arising from a successful outcome.

Conclusion

Significant wider public interest
Rating: Significant

PIAP/05/331

Nature of case

Proposed claim for judicial review seeking to quash the decision of an independent prison adjudicator and to obtain a decision on the compatibility of the prison disciplinary procedure with the EHCR, after a hearing at which the applicant had been unable to compel witnesses to give evidence, and the adjudicator had recalled the prosecution witness to allow her to clarify her evidence following the applicant's submission of no case to answer.

Report of Panel

The Panel had considered the issue of perceived bias of the adjudicator in the related case PIAP/05/332. The present application also involved the question of the compatibility of the rules of the Prison Discipline Manual, which provide that neither prosecution nor defence could compel a witness to give evidence at a disciplinary hearing, with art 6(3)(d) of the ECHR.

The Panel recognised that, on its face, that rule did not breach the relevant convention provision since it applied equally to both sides in the proceedings. However, given the potential of the disciplinary proceedings to increase the length of a defendant's sentence, the Panel considered there could be an arguable case that this departure from normal principles of criminal proceedings made the disciplinary process as a whole unfair towards the defendant. In the absence of any direct authority on the point the case might impact upon future procedures.

Conclusion

Significant wider public interest
Rating: Significant

PIAP/05/332**Nature of case**

Proposed claim for judicial review seeking to quash the decision of an independent prison adjudicator and to obtain a decision on the compatibility of the prison disciplinary procedure with the ECHR, after a hearing at which the adjudicator had recalled the prosecution witness to allow her to clarify her evidence, following a submission of no case to answer on behalf of a co-defendant (PIAP/05/331).

Report of Panel

The Panel noted that it was a weakness of the present application that the disputed evidence did not relate to the charge against this applicant and recognised that in general, given the inquisitorial nature of the hearing,

the adjudicator could be expected to enjoy considerable discretion in the procedure adopted to ascertain the facts of a case.

The Panel did consider that there could be an appearance of bias in the adjudicator's decision to recall the prosecution witness, which had the effect of remedying a perceived weakness in the prosecution's case against the co-defendant, and that this might also be viewed as having tainted the proceedings against this applicant. This was an issue of significance in that the applicant's period of detention was extended as a result of the hearing. However, given that there is no general bar to recalling a witness within criminal proceedings, this application was not considered an appropriate vehicle to explore potential limitations of the powers of adjudicators to determine procedure in prison disciplinary hearings.

Conclusion

No significant wider public interest

Key Articles From Focus 43 to Date

For ease of reference, a list of the key articles in issues of *Focus* dating back to December 2003:

Focus 43 Dec 2003

- > Matter Starts
- > Anufrijeva v Southwark London BC
- > Eligibility Update – Guarantee State Pension Credit
- > Judicial Case Management

Focus 44 Apr 2004

- > General Civil Contract 2004
- > Immigration Services
- > Immigration Specification and Costs Limits
- > Funding Code Update
- > Bundles and Citations

Focus 45 Aug 2004

- > New Consultation Papers
- > Launch of Community Legal Service Direct
- > Preferred Supplier Pilot
- > Crime and Civil Contract Changes

Focus 46 Dec 2004

- > Tailored Fixed Fees
- > Use of Experts
- > Immigration and Asylum Accreditation Scheme
- > Changes to Costs Compliance Appeal Process

Focus 47 Apr 2005

- > New Focus for Civil Legal Aid
- > Peer Review
- > Preferred Suppliers
- > CLS Financial Eligibility

Focus 48 Aug 2005

- > Making Legal Rights a Reality
- > LSC Corporate Targets
- > New Focus Reforms
- > Mediation and Collaborative Law
- > Cost Issues Arising From Proceeds of Crime Work
- > Review of the Family Graduated Fee Scheme

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Contract Payments	1st Settlement of the Month	2nd Settlement of the Month
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Monday 6 February	Thursday 9 February	Thursday 23 February
Monday 6 March	Thursday 9 March	Thursday 23 March
Thursday 6 April	Thursday 13 April	Thursday 27 April
Friday 5 May	Thursday 11 May	Thursday 25 May
Tuesday 6 June	Thursday 8 June	Thursday 22 June

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