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Community
Legal Service



Focus

www.legalservices.gov.uk
AUGUST 2005

- MAKING LEGAL RIGHTS A REALITY**
The LSC recently announced its future strategy for the Community Legal Service. See pages 02-03 for details.
- MEDIATION AND COLLABORATIVE LAW**
For the latest information on LSC policy on Collaborative law in family dispute resolution, see page 15.
- LSC CORPORATE TARGETS**
To find out how the LSC's Corporate Targets for 2005/06 affect you, turn to page 04.
- COST ISSUES ARISING FROM PROCEEDS OF CRIME WORK**
For details of how a recent High Court judgment affects work in this area, turn to pages 22-23.
- NEW FOCUS REFORMS**
For details of the New Focus Reforms that came into force on 25 July, see page 06.
- REVIEW OF THE FAMILY GRADUATED FEE SCHEME**
For up-to-date guidance on the review changes to the Family Graduated Fee Scheme, see pages 26-27.

legal services

COMMISSION

MAKING LEGAL RIGHTS A REALITY – THE LSC'S STRATEGY FOR THE CLS

Head of the CLS, Crispin Passmore, outlines the LSC's approach in an article which first appeared in the July/August issue of Independent Lawyer.

In the DCA post-election manifesto, Lord Falconer, the Secretary of State, made a renewed commitment to civil legal aid. His 'Fairer Deal for Legal Aid' emphasises the importance of the CLS and pledges to re-strike the balance between criminal and civil legal aid expenditure. In "Making Legal Rights a Reality" we set out the LSC's strategy for the CLS. We recognise the criticisms that have been made, but are proud of the many good things that have been achieved in recent years. However, we are clear that change is required so as to better focus on clients.

We have learnt a great deal about the problems that clients face and the strategies that they deploy to address them. There are over one million unsolved problems each year: if you have one problem you are likely to have two and if you have several problems you will almost certainly have more to come; problems cluster together into particular groups and amongst particular clients. Only around half of those with a problem actually seek advice and one in seven tries but fails to get help. Half of all clients seeking advice make first contact with their advisor by telephone and half of these go on to resolve their problem without any face to face contact.

We will expand Community Legal Service Direct to deliver front line legal information, advice and assistance. Community Legal Service Direct will play a central role in reaching the clients currently not accessing services and we will therefore deliver a much larger proportion of our services by telephone providing early advice and identifying more appropriately which clients need a more intensive service. As we know from many areas of service delivery, it is clients that determine a service's popularity, but we confidently expect Community Legal Service Direct to continue to expand rapidly over the next five years as clients choose this as the preferred access channel. We expect that its growth will allow us to better focus face to face services in a sustainable manner.

There will always be a need for face to face

services, especially for those clients requiring advocacy or undertaking complex litigation, and Community Legal Service Direct will transfer clients to an appropriate advisor or lawyer as necessary. But at present it can be a challenge for clients to find the specialist advice that they need as the preferences of law firms and advice agencies will determine what services are available locally. It is unrealistic to expect every town to have a wide range of legal aid practitioners in every area of law, but it is reasonable to commission services in locations where clients need them rather than where suppliers might otherwise choose to provide them. The LSC will develop geographical access criteria and targets that set out the pattern of services that we expect to commission according to our priorities and available resources.

Face to face services are also vitally important in delivering legal and advice services to the most excluded. For these clients, services need to be seamless and integrated and, wherever possible, delivered alongside general advice services so as to minimise the need for referrals. They must also be delivered against a client-focused specification. There can be no place as we move forward for a contracting regime that allows suppliers to pick and choose clients, deliver services in only some of the categories of law needed or simply to deliver nothing because private client work is available. But if we are to expect our suppliers to make these changes, then we must offer a contracting regime that gives certainty and is based on a relationship of trust within a preferred supplier framework.

Our priority clients are most heavily concentrated in large urban areas and in these areas we will seek to develop Community Legal and Advice Centres. These centres, run by any appropriate agency such as a private law firm, not-for-profit agency or consortium, will deliver a seamless service, from basic advice and assistance to specialist representation in the highest courts. In order to deal with clients'

problems properly, the centres will cover a complete range of social welfare law services and also either deliver or have effective links with suppliers in other specialist areas of law. They will be under a positive duty to identify and meet the legal and advice needs of the communities within which they operate and to use the law to tackle the root cause of the problems that drive their clients to seek advice.

Outside of these conurbations we need to commission networks of services that can jointly meet the needs of clients across wider geographical areas. In developing Community Legal and Advice Networks we will be able to bring private law firms (and indeed not-for-profit agencies) together so that when a client walks through one door they are accessing the services of the whole network.

In this strategy we are setting out a vision for the CLS with civil legal aid at its heart. We will identify and commission legal and advice services that meet clients' needs, seeking to both widen access for all and deepen it for those with priority needs. This is not about squeezing either private law firms or not-for-profit agencies out of the system but is about ensuring that the civil legal aid system within the CLS is consistently providing access to justice. Our obligation stretches beyond the individual client to the many excluded people with over a million unsolved problems. Making sure that we can offer appropriate services to all clients will ensure that civil legal aid and the CLS make legal rights a reality.

This article highlights some aspects of the LSC's consultation paper on the CLS – 'Making Legal Rights a Reality'. The full paper can be downloaded at www.legalservices.gov.uk

PREFERRED SUPPLY – THE WAY FORWARD

Delivering innovative, high quality, high value legal advice and services through top quality suppliers

In Autumn 2005 the LSC will publish its consultation paper setting out proposals for the introduction of a national Preferred Supplier scheme.

Pilot Evaluation

The formal evaluation of the pilot stage is now complete, and the results are overwhelmingly positive. The Preferred Supplier Pilot enabled us to explore some of the methods and approaches that we wish to use in the management of all contracted suppliers in the future. The opportunities provided in the pilot allowed us to work directly with suppliers in an unprecedented way. We have, for example, been able to use the joint expertise and knowledge of legal aid systems and processes, accumulated between the LSC and the participating suppliers, to begin to identify improvements that will make meaningful efficiency savings and client delivery improvements in the future.

The project would particularly like to thank the following firms for their participation in the pilot scheme:

- **Birmingham:** Baches Solicitors, Owen Nash & Co, Rotherham & Co, Terry Jones Solicitors & Advocates and Williamson & Soden.
- **Brighton:** Brighton Housing Trust, Edward Hayes, Francis Lovett, Hamnett Osborne Tisshaw and Wannop & Fox.
- **London:** Ashley Smith & Co, Fisher Meredith, H C L Hanne & Co, TV Edwards and White Ryland.
- **Manchester:** Burton Copeland, Forbes Solicitors, Green & Co, Platt Halpern Solicitors and Pluck Andrew & Co.
- **Nottingham:** Bhatia Best, Cartwright King, Fraser Brown Solicitors, The Emery Johnson Partnership and The Johnson Partnership.

Consultation Plans

We are now developing the consultation paper, on our proposals for the operational scheme, for publication on 29 September 2005 (subject to approval). The paper will build upon the feedback from the pilot evaluation and the 'Preferred Supplier Focus Groups' held in November and December 2004 (in all non-pilot regions). Additionally, as part of this

development process, we have engaged the services of PA Consulting to provide a 'challenge function' to the evaluation outputs and to develop an implementation feasibility study to determine operational delivery.

In addition to the proposals for the operational scheme, the consultation paper will set out our vision for 'Preferred Supply' in the context of the wider supplier management strategy, specifically addressing the LSC's strategic aims for:

- Legal Aid Reform – considering the changing legal services market and the strategies for the delivery of CLS, CDS, Children and Family and employed services.
- Future Supplier Purchasing Strategy – including the short and longer term vision for the LSC to achieve value for money (including quality) from all suppliers with a contract, and specifically:
 - Pricing strategy/vision – including remuneration, rewards and incentives.
 - Use of quality of advice assessment tools.
 - Relationship between the fixed fee schemes and Preferred Supply.
 - Service Delivery – focusing on improved customer services to preferred suppliers, other contract holders and clients.
 - Technological Development – including details of the scope and timeframe for the delivery of LSC's e-business strategy.

The LSC is fully committed to developing an operational preferred supplier scheme. Where we can be assured that suppliers are delivering good quality and value for money services to clients, and where suppliers can demonstrate that they are consistently able to make effective decisions to maximise delivery of services, adopting an approach that is supportive rather than intrusive is our long-term goal.

A summary of the pilot evaluation is now available on the LSC website at www.legalservices.gov.uk/civil/how/psp.asp. Updates on the development of the consultation paper will continue to be posted on the website.

MEDIATION WEEK IS COMING

The 'New Focus' reforms have emphasised the central role of mediation and other forms of ADR within the CLS. As the courts have made clear, mediation should be routinely considered before and during the litigation process. To further raise awareness of the benefits of ADR, the Department for Constitutional Affairs is organising a "Mediation Week" at the end of October.

The DCA, court staff, The Law Society, the Bar Council, the Civil Justice Council, mediation providers and other stakeholders are working to develop a range of activities to help raise the profile of mediation. The idea is to organise a range of events and activities catching the attention of those parts of the legal community and the general public who may not currently be familiar with the concept of mediation. A series of mediation activities will commence in the week beginning 24 October 2005, to coincide with the European Day of Civil Justice.

The focal point of the activities will be around the 60 county courts that are participating in the initiative. The exact details for each court are still being formulated. However, some of the main components are as follows:

- Launch Event on 21 October 2005.
- Local Law Society awareness and education events for practitioners.
- Awareness seminars for judiciary and court staff.
- Advice desks staffed by local mediation providers at the major court centres.

For more information, contact Ms. Kismet Rashid at kismet.rashid@dca.gsi.gov.uk or alternatively at:

1st Floor, Southside, 105 Victoria Street, London, SW1E 6QT.

THE LSC'S CORPORATE TARGETS AND WHAT THEY MEAN FOR YOU

Earlier this year the LSC set out the priorities which will guide our work. In line with these, we have now agreed our targets for the current financial year. Here we look at what these targets will mean for you.

The LSC's corporate priorities (see box opposite) are all about ensuring that clients have access to quality services that meet their needs and working in partnership with high quality service providers to achieve this. Of course, our priorities also have to address the challenge of delivering a sustainable legal aid scheme within the resources available, so value for money inevitably features prominently too.

Our specific targets for this year are closely aligned with our priorities. They have been agreed with the Department for Constitutional Affairs and contribute to the DCA's Public Service Agreement targets. A full list of our targets can be found in our Corporate Plan, available on our website at www.legalservices.gov.uk/aboutus/how/corporate.asp. In setting these targets we recognised that we would need to refocus some of our activities and resources to achieve them and you will probably notice some differences, particularly in our contract management approach, as a result. There are six targets which will particularly affect the way we work together this year and we have set them out below, grouped according to the type of contract you have with us.

Service Providers with a General Civil Contract

Corporate Target: Increase the number of acts of assistance (civil legal aid) to our clients to 650,000 by April 2006

Clearly, achieving this target is central to ensuring that people have access to services which meet their needs. We advertised earlier in the year to invite service providers to bid for

additional matter starts and have already been successful in letting new contracts and new matter starts as a result. Of course, our ongoing review and management of the use of new matter starts continues at a regional level. This ensures that we continue to commission the services that people need and respond quickly to any risk of under-supply which emerges during the year. Current contract holders are always welcome to discuss the possibility of additional new matter starts by contacting their Account Manager in the usual way.

Service Providers with a General Civil Contract that includes Immigration

Corporate Target: Increase the success rate of cases where legal aid has been granted to assist people seeking Asylum (Controlled Legal Representation) to 40% by April 2006

We are monitoring the CLR success rates through the outcomes reported on controlled matter report forms. Where a contract holder has a relatively low success rate we will explore this in discussions with them. If we are unable to establish the reasons for the low success rate, or agree an action plan that will lead to an improvement, we may commission an independent peer review through the Institute of Advanced Legal Studies (IALS) as described in our consultation paper on peer review earlier this year. This process will help ensure we only fund cases that have a reasonable chance of success.

Service Providers with a General Criminal Contract

Target: Implement and manage changes to the scope of, and remuneration

mechanisms for, legal aid approved by Government to improve value for money and enable legal aid to be delivered within our resources, saving £102million.

This target is clearly focused on delivering value for money and ensuring that best use is made of taxpayers' money. Within the overall target covering both civil and criminal work, two of the cost savings we are seeking are relevant to those with contracts which include court duty solicitor or police station work:

i) To reduce the costs of the court duty solicitor scheme by 12% compared with 2003/4.

This is the second year of this target, which will be achieved partly through the changes in the scope of the scheme that were introduced in May 2004. We are also working to align more closely the times that court duty solicitors are present at court with the times when eligible defendants are most likely to require assistance.

ii) To reduce the total cost of work carried out at the police station by 5%, using the financial year 2003/04 as the baseline.

Again, this is a two year target, which we are one year into delivering. We measure our progress in reducing costs on a regional basis and the majority of regions achieved the target reduction in 2004/05. We will continue to pursue the overall reduction in costs by focusing on police stations and solicitors' offices where costs are particularly high.

All Service Providers

Corporate Target: Increase the number of suppliers who submit their monthly claims on-line to 1,500 by April 2006

Doing business together electronically makes sense for you as well as for us. We will be encouraging you to sign up to submit your claims on-line and will be running regional briefings so that you can find out about the benefits. But there's no need to wait for that - if you are interested in submitting your claims on-line, you can contact karen.powell@legalservices.gov.uk at any time. Once you're using the system, there's a help-line to guide you if you encounter any problems. One happy e-business user recently said: *"I don't have to rush to do all the entries at the last minute. With Online, I can enter the claims onto the system as I go along. Now that we can print out the sheets with totals on the bottom, checking the figures is easy. And if I make a mistake, the screen goes pink and tells me! You just can't go wrong."*

Corporate Target: Drive up performance standards by taking every action possible to either 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

We will be approaching this target in two ways:

- We will carry out further Cost Assessment or Control audits on contract holders who are currently rated as Category 3 and ensure that any outstanding appeals are prioritised. This will either lead to a proven improvement or the termination of contracts where there are repeated breaches.
- We will undertake further peer reviews of any service provider with an active contract in a category of law which has been rated at 4 or 5 in a peer review carried out before 1 April 2005. These repeat peer reviews will ensure that the rating is assessed through the developed process described in our consultation paper earlier this year. Where reviews after 1 April lead to a rating of 1,2 or 3, the contract holder will no longer be deemed 'unacceptable'. Where a rating of 4 or 5 results from a peer review after this date, we will issue Contract or Termination notices as described in the consultation paper.

This might sound tough, but it's simply about applying the quality standards that are already in place. Achieving this target is clearly vital if we are to ensure the quality of the services clients receive and make best use of limited resources to fund as many acts as

assistance as possible.

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

We will be continuing our ongoing contract management process to achieve this target. By the end of the financial year we need to ensure that monthly payments are aligned with the amount of work being done. In some cases we have sought to assist firms with future expansion and have based payments on their forecasts of future claiming rates. Where the amount of work done has been less than the forecasts, we now need to agree steps to recoup any overpayments and/or adjust monthly payments accordingly. With the agreement of contract holders we will be balancing each contract to 100% so that everyone can move forward on the best possible financial footing. This will also liberate funds and enable us to help more people. Achieving this target will ensure that we fulfil our responsibility to exercise control over the use of public funds by managing the legal aid budget effectively.

Corporate Target: Maintain overall customer service score at 85% while introducing more challenging targets for processing within the overall score. Specifically: Process 70% of applications within two weeks and 90% of amendments and authorities within one week by September 2005.

Hopefully, you'll already be noticing some improvement in our turnaround times for processing applications, amendments and authorities. We recognise how important this is, both to you and to your clients, which is why we've set ourselves the target of achieving these faster times by the half-way point in the year rather than by the end of it. We'll keep you updated on our progress.

Working together for the benefit of our mutual clients

Our targets show that we're clear about the things we need to achieve and improve this year so that we make the most effective use of taxpayers' money and ensure that as many people as possible get the help they need. These people are your clients and potential clients, and they represent some of the most vulnerable in society. It is your skills and commitment which can really make a

difference to their lives. They are the focus for our work too, and their needs lie at the heart of our corporate priorities.

Alongside this year's immediate targets, we are also working on some important medium-term projects which are driven equally firmly by the needs of clients. For example, our Preferred Supplier initiative will develop the way we work together in future for their benefit, and our proposed CLS Strategy is looking at a more co-ordinated approach to advice services, whoever funds them, so that they are organised around the help people need and where and how they need it. Your input to the current consultation on the CLS Strategy is warmly welcomed.

Both in the short term and the longer term, our partnership with you will be the key to ensuring that we put clients at the heart of everything we do.

LSC Corporate Targets

- Ensure our clients have access to quality services which meet their needs
- Work with suppliers who provide quality, value for money and client-focused services, in whom we have sufficient trust to liberate them to deliver
- Deliver a sustainable scheme within the resources available and demonstrate real value to Government in terms of effective financial control, improving value for money and positive outcomes for clients
- Transform the organisation to enable it to deliver these and excellence in all of it

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'NEW FOCUS' REFORMS – YOUR QUESTIONS ANSWERED

The reforms arising from the “New Focus for Civil Legal Aid” consultation are the most significant changes to civil funding since April 2000. This article is a guide to some of the main features of the ‘New Focus’ reform programme. It is presented in a Q and A format and grouped by topic for ease of reference. For full details, see the amended Funding Code and Guidance at www.legalservices.gov.uk/civil/guidance/funding_code.asp.

'NEW FOCUS' REFORMS OVERVIEW

What are the 'New Focus' reforms?

'New Focus' is a wide-ranging package of reforms to civil legal aid arising from the 2004 consultation “A New Focus for Civil Legal Aid”. The changes essentially concern the rules determining entitlement to civil legal aid, ie: merits criteria, financial eligibility, scope and financial conditions. The reforms primarily affect certificated work. The reforms do not directly affect contracts and remuneration issues, although they involve some minor changes to devolved powers.

As the name of the consultation implies, the aim of the reforms is to direct public funding so far as possible towards early resolution of disputes, through greater promotion of Alternative Dispute Resolution and ensuring that funding is provided for contested litigation only where this is the most appropriate option for the client.

Why reform Civil Legal Aid?

The reforms are expected to produce in excess of £50 million savings for the fund over the next three years, but none of the reforms is motivated solely by budget considerations. The reforms aim to tackle the underlying incentives of legal aid, which encourage cases to proceed to adversarial litigation too often. The 'New Focus' reforms aim to achieve a combination of

better outcomes for clients and better value for money for the fund.

What are the main elements of 'New Focus'?

'New Focus' is a wide-ranging package of reforms, which can be grouped under five main headings:

- Financial Eligibility reforms, which came into force in April 2005. See Focus 47 for details;
- Family Help Pilot – this is an important pilot scheme to explore ways of restructuring Family Legal Aid. The pilot is due to start in September, but will not have a national impact before April 2007;
- Funding Code changes – Family;
- Funding Code changes – Non-Family; and
- Statutory Charge reform.

How will reforms affect suppliers?

There is no substitute for looking at the detailed changes to the Code Criteria and Guidance, which can be found on the LSC website at www.legalservices.gov.uk/civil/guidance/funding_code.asp. Reforms to financial eligibility and the statutory charge are of general application, but in relation to Funding Code changes some subject areas are much more directly affected than others.

The following chart illustrates where the reforms will have their greatest impact:

	Low	Medium	High
Family Work	Public Law Children		Private Law Children Ancillary Relief
Non-Family Work	Housing Immigration/ Asylum Mental Health	Judicial Review Non-Family	Clinical Negligence Actions v Police Personal Injury Education

What legal changes are being made?

The reforms involve the first significant changes to the Funding Code criteria since April 2000. Flowing from the Code changes, there are extensive changes to the decision-making guidance. Full details of these are on the website.

Four new sets of Regulations are also being introduced covering such matters as the personal injury exclusion, statutory charge reform and cost protection in family cases.

There are also changes to the application forms CLS APP 1 and APP 3. In October there will be additional changes to APP 3 and APP 8. There are also minor reference data changes.

Where can I find out about the main changes?

A summary of the 'New Focus' reforms was included in Focus 47. Details of the Code and Guidance changes are set out on the website at www.legalservices.gov.uk/civil/guidance/funding_code.asp where revision markings show the exact nature of changes made to the various documents. The Code and Guidance changes will appear in the next update of the Manual, which is due to be published in August 2005.

When do the reforms take effect?

Monday, 25 July 2005 was the key implementation date. The Funding Code and most Regulation changes apply to applications made from that date. The new rules will not apply to devolved powers exercised prior to that date or to applications signed and posted to Regional Offices before 25 July that are received by 29 July.

A new power is being introduced in the Funding Code to refer ancillary relief cases to private funding. However, this is an exception in that it only takes effect from Monday, 3 October 2005.

Do the changes apply to existing cases?

Please refer to the individual commencement and transitional provisions for regulation changes. The Funding Code changes do not apply to levels of service granted prior to 25 July 2005, but do apply to applications after that date to amend certificates from General Family Help to Legal Representation, regardless of when the General Family Help certificate was issued.

For this purpose, Investigative Help is not treated as a separate level of service. For example, if a certificate for Investigative Help is in force before 25 July, the cost benefit criteria applied to it will be the existing criteria, both in relation to an application to extend it to cover Full Representation and for the life of the certificate. This is of particular relevance to clinical negligence certificates.

Some of the elements of 'New Focus' do not depend on legal changes to the Funding Code. For example, we are encouraging a greater use of mediation and use of the power

to limit certificates to cover mediation in appropriate cases. This is a case of further guidance on an existing power and is therefore equally applicable to old and new cases.

Are there reforms that were in the consultation but which are not proceeding?

A number of proposals in the original consultation paper have not been proceeded with in light of consultation responses. These include:

- (i) the proposed reduction or abolition of the £100,000 home equity exemption on means assessment;
- (ii) there is to be no reform of cost protection in non-family cases;
- (iii) no family scope changes are proceeding – work done in assisting a client to complete a divorce petition remains within scope; and
- (iv) no new areas of non-family work are being moved from Legal Aid to Conditional Fee Agreements.

Are there any reforms still under consideration?

Final decisions have been made on almost all the reform proposals in the 'New Focus' consultation. The one remaining item, which is a longer term reform option, is to make civil legal aid repayable in a wider variety of circumstances than at present, ie: providing legal aid where the client is a home owner on terms that it will be repayable at the end of the case, regardless of whether property is recovered or preserved. This reform option is still being explored and no decisions have been taken. If any such reform proceeds, it is unlikely to be implemented prior to April 2006.

Further reforms may emerge through the Fundamental Legal Aid Review (FLAR) or elsewhere. However, FLAR has been concerned primarily with underlying procedures and purchasing arrangements and is unlikely to impact on the detailed rules of civil funding. The Funding Code Criteria and other funding rules emerging from the 'New Focus' consultation are intended to be a stable basis for civil legal aid for future years.

'New Focus' REFORMS – FAMILY

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

As a supplier what practical changes will there be for me?

The family application form CLS APP 3 has been revised to reflect the changes and also to remove duplicated questions and unnecessary material so that the form is much shorter (down from 17 pages to 11).

The Family Decision Making Guidance in Volume 3 of the LSC Manual has been updated to reflect the changes which came into force on 25 July 2005. The revised guidance will be in the next Manual update and, following an earlier consultation exercise, it has also been re-presented and re-written in a more user friendly style. There is an index at the start of the section and a desk top aid at the end – to assist suppliers in dealing with injunction applications under devolved powers.

What new information will be required?

More information will need to be given about previous family proceedings involving the same relationship and any public funding for them. This is because a client will usually only be able to hold one funding certificate relating to private law family proceedings regarding the same family relationship at any one time (Funding Code procedure 35.6). This does not apply to Help with Mediation and there is an exception allowed for cases where the regional office is satisfied that exceptional circumstances make it appropriate for there to be more than one certificate.

The LSC will make additional checks in its systems to increase control over multiple and repeat applications. Where an issue has already been litigated the LSC will look at the material change(s) since the previous proceedings, the issues involved and mediation as a possible way forward, as well as whether the other party is publicly funded. If their conduct appears unreasonable then action may be taken in relation to their continued funding.

What about devolved powers?

You must not exercise devolved powers to grant a new separate certificate where there is an existing certificate which should be amended having regard to the Code Procedures. You must submit a single application for funding or apply for an amendment unless one of the exceptions in Procedure C35.6 applies.

Where can I most easily bring myself up to speed with the changes?

The changes were summarised in *Focus 47* (April 2005) at pages 2 and 9. You can access the latest information including the revised guidance at www.legalservices.gov.uk/civil/guidance/funding_code.asp. You can also look in the updated Volume 3 of the LSC Manual.

When do changes in family funding take effect?

The financial eligibility changes came into effect in April 2005.

The majority of the changes to the Funding Code and Guidance, including the new wider definition of General Family Help, came into operation on Monday 25 July 2005. Such changes do not apply to levels of service granted before that date, but do apply to applications made from that date to extend a certificate from one level of service to another, ie: from General Family Help to Legal Representation (regardless of when the certificate was originally issued).

There is a new power in the Funding Code to refuse Legal Representation in ancillary relief and other financial cases if the client is in a position to arrange private funding. This is explained further below. However, this change is not coming into operation until 3 October 2005.

What financial eligibility changes have there been which impact on family cases?

For applications made from 11 April 2005 there is a £100,000 cap on the subject matter of dispute disregard. There is a worked example on page 11 of *Focus 47*.

A new waiver of the upper disposable income limit has been created for victims of domestic violence. The waiver applies to any

application for Legal Representation for proceedings where the client seeks "an injunction or other order for protection from harm to the person" or for committal for breach of any such order. The waiver is primarily relevant to clients seeking protection from domestic violence but the regulation is not restricted to family proceedings. The waiver extends the upper disposable income limit beyond the usual limit of £632 per month but the gross income cap of £2,288 per month and the disposable capital limit still apply. Although there is a discretion given to the Commission in the application of the waiver, it will, unless there are exceptional circumstances, exercise the discretion in all cases meeting the criteria. You are entitled to assume this and exercise your devolved powers accordingly. You will, however, need to alert clients affected to the level of contribution which will be payable and to the likelihood of revocation should they fail to accept an offer in respect of the substantive application.

As the waiver does not extend to other matters in family proceedings you cannot undertake that work on a publicly funded basis and may need to apportion costs to reflect the funded work undertaken.

Are there any other financial changes which impact on family cases?

The £3,000 statutory charge exemption has been abolished in respect of applications for funding made on or after 1 April 2005. The statutory charge continues not to apply to Help with Mediation.

Are there changes to the list of allowable disbursements in family cases?

A new sentence has been added to Code Criterion 1.3, which concerns allowable disbursements. This 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, unless authorised by specific orders or directions from the Lord Chancellor."

This applies to disbursements incurred on or after 25 July 2005, regardless of the date on

which a certificate is issued. The change is not part of the New Focus package but is being introduced in response to a recent case, which held, in the context of care proceedings, that such expenses could in principle be charged to the fund.

The amendment is being made to preserve the status quo and protect the fund from expenses not directly connected with the funding of legal services. Further information together with the detailed guidance on the impact of the amendment and related issues such as apportionment of disbursements in public law cases can be found on page 24 of this edition of *Focus*.

Are there changes to cost protection for the client?

Cost protection provisions have previously been afforded to legal aid clients in family proceedings. Following the New Focus consultation, cost protection in some family proceedings will be removed from certificates granted, and amendments made to add new proceedings to an existing certificate, on or after 25 July 2005. You will therefore want to be particularly aware of the need to advise clients of the risk of an adverse order being made.

Cost protection will no longer apply to all proceedings under any one or more of the following:

- the Matrimonial Causes Act 1973;
- the Domestic Proceedings and Magistrates' Courts Act 1978;
- Part III of the Matrimonial and Family Proceedings Act 1984;
- the Child Abduction and Custody Act 1985;
- Parts I and II of and Schedule 1 to the Children Act 1989;
- s 53 of and Schedule 7 to the Family Law Act 1996; and

proceedings which arise out of family relationships under either or both of the following –

- the Inheritance (Provision for Family and Dependents) Act 1975;
- the Trusts of Land and Appointment of Trustees Act 1996.

The intention is that publicly funded clients in family cases should face the same risk of a

costs order as private clients and that the removal of costs protection will be a deterrent against unreasonable behaviour. Where cost protection is removed it will not be possible to obtain an order against the Commission.

What legal change will affect my cases most?

If you deal with private law children cases you will find that there is an increased emphasis on the resolution of cases other than by issuing proceedings and going to contested final hearings. The definition of General Family Help at paragraph 2.1 in the Funding Code has been amended so that it can be used to cover negotiations as well as issuing proceedings and providing representation in proceedings where that is necessary to secure the early resolution of a family dispute or obtain a necessary consent order.

For ancillary relief cases where General Family Help has been widely used up to now – to provide cover up to and including the Financial Dispute Resolution hearing – you will not notice much impact although there is a new slightly amended standard limitation (FM053). However, for cases which justify work beyond the scope of Legal Help, General Family Help will become the usual level of certificated service. Legal Help should continue to be used to investigate the issues between the parties, consider mediation and open negotiations – possibly to a conclusion in a straightforward case. General Family Help will be justified by reference to the work done and to be done rather than by the particular solicitors tailored fixed fee.

What limitations will be applied to General Family Help for children cases?

The standard costs limitation will remain unchanged at £1,500 and certificates will be limited, either to cover negotiations (standard limitation FM051) or negotiations and representation in proceedings – save in relation to or at a contested final hearing (standard limitation FM052). The latter limitation can be used for finding of fact hearings and all other work except for a contested final hearing. You will only need to apply for an amendment to Legal Representation once it is clear there will be a contested final hearing.

Increasingly the first hearing will, in

accordance with the President's Private Law Programme, take the form of a First Hearing Dispute Resolution Appointment (FHDRA) supported by the provision of CAFCASS Dispute Resolution. An allegation of harm does not automatically exclude the possibility of negotiations through solicitors or CAFCASS Dispute Resolution.

Note that in appropriate cases the condition requiring freestanding Children Act cases to be commenced in the Family Proceedings Court (condition CO05) will continue to be applied. You should not overlook this if it is appropriate for an emergency certificate of Legal Representation to be granted and should anticipate that the substantive certificate will be limited to work within the scope of General Family Help.

For family graduated fee purposes the FHDRA will be an F3 hearing unless the case is concluded at that hearing when it would become the F5 main hearing. The Programme envisages that CAFCASS will review appropriate cases to ensure compliance with orders made. Any review and/or enforcement hearings would fall within F3 for family graduated fee purposes.

Will the requirement to consider the suitability of the case for mediation still apply to the new definition of General Family Help?

Yes, the suitability of mediation requirement will apply, subject to the existing exemptions although FAINS suppliers are also exempt. The courts are also likely to encourage mediation as the FHDRA hearing will, where immediate agreement cannot be reached, or where there are exceptional circumstances (including safety issues) refer the family to a Family Resolutions Pilot Project (currently available in Brighton, Sunderland, and the Inner London Family Proceedings Court at Wells Street) or to other locally available resolution services – these include Mediation Services offering publicly funded mediation.

Are there any other changes to General Family Help?

The sufficient benefit test is replaced by a private client test. This imports elements of objectivity and proportionality in relation to the issues in dispute and the costs to be incurred. General Family Help will be refused unless the benefits to be gained from representation for the client justify the costs, such that "a reasonable private paying client would be prepared to proceed in all the circumstances" (Funding Code Criterion 11.3.4).

The intention is that clients should be focused on the proportionality of the costs to be incurred as against the benefits to be obtained.

There will also be a more flexible approach to General Family Help remaining in force where Help with Mediation becomes appropriate. The General Family Help certificate may be limited with contributions waived and then the certificate reactivated if necessary.

What if the client already holds a certificate of Legal Representation but then needs to be represented on another aspect of the case?

As previously, the certificate can be limited in different ways for different aspects of the case. So, where, for example, the client has a certificate of Legal Representation covering ancillary relief and a contact issue arises, any cover granted in respect of contact will be limited to the appropriate scope of General Family Help. As previously, suitability for mediation will need to be considered unless there has been a previous recent assessment in relation to the same aspect of the case.

What if the issue(s) cannot be resolved under General Family Help and need to proceed to a contested, final hearing?

You will need to apply for an amendment to the scope of the certificate to cover Legal Representation. The Regional Office will expect to see any court order summarising the issue(s) outstanding and the application will need to show that the Funding Code Criteria are met including paragraphs 11.11.4, 11.11.5, and 11.11.6 (which deal with attempts at settlement, prospects of success and cost benefit).

There will be an increased emphasis on reporting offers and proposals for settlement and Legal Representation will only be granted if the prospects and issues justify continued public funding. In that context, it will be important for the regional offices of the Commission to have information, in particular in any order made, about the issues which remain unresolved and for any CAF/CASS report to be directed towards those issues. In appropriate cases, the other party's funding will also be reconsidered.

How will the new power to refer ancillary relief cases to private funding operate in practice?

This new provision in the Code will not come into operation until 3rd October 2005. We are currently consulting on the detailed approach and draft guidance, and this may be found on the consultation section of our website. There will also be amendments to forms CLS APP 3 and CLS APP 8 to secure the information necessary to apply the new power.

The scope of the new criterion is that it applies only to applications for Legal Representation and does not apply to applications for General Family Help. It applies to all cases under section 11.12 of the Code, ie: ancillary relief, financial provision and all miscellaneous family cases which do not fall within any other specific parts of section 11. The criterion will most often apply in relation to applications to extend existing certificates to cover financial provision work which is outside the scope of General Family Help, typically to cover a final contested hearing.

Ministers have made it clear that applications should only be refused under this power where there are available assets that could be used to fund the case or where the client has sufficient disposable income to be able to secure a loan to cover the likely costs. The detailed guidance to apply to this approach will be finalised following consultation.

'NEW FOCUS' REFORMS – NON-FAMILY

REFERRAL TO COMPLAINTS SCHEMES

Why should clients have to go through complaint schemes before Legal Aid is granted?

Our funding needs to reflect private paying client principles and treat litigation as a last resort. A complaints scheme will provide information about the issues of concern to the client following which a better-informed decision can be made as to whether to proceed with legal remedies.

What if the client is only interested in obtaining compensation, which the complaint scheme cannot offer?

It is not suggested that complaint systems can offer remedies equivalent to the court or will give the client exactly what s/he is seeking. Pursuing a complaint procedure is simply a first procedural step that a private paying client would be well advised to pursue, without shutting off any future options.

NON-FAMILY MEDIATION

When will certificates be limited to require parties to explore mediation?

We have a wide discretion on limiting certificates for this purpose. This reflects the fact that mediation should be routinely considered during the course of litigation, as emphasised in the Halsey case. Suppliers should take care in completing the relevant section of the CLS APP 8 form to explain why ADR may or may not be appropriate to the individual case.

A mediation limitation is particularly likely to be considered in response to other-side representations or court encouragement. Remember that under the Funding Code Procedures all offers to mediate which a funded client does not accept must be reported to the Regional Office ([Code Procedures C43.2(vi)(c)]). There may also be other cases which are crying out for mediation, for example: where there is an ongoing relationship between the parties or where the remedies the client would like to see go beyond those that the court has power to order.

Is imposing a mediation limitation a breach of the client's right to a hearing under Article 6?

No. Where a certificate is limited to mediation, that requires the client to attempt a mediation process if the other side is co-operative, but does not require the client to settle the case at mediation. If mediation is not successful, the client's right to go to court is fully preserved.

CLINICAL NEGLIGENCE

What are the main impacts for clinical negligence practitioners?

There are three significant changes:

- More cases will be expected to pursue the complaint procedure before funding is granted. This can now be considered for all clinical negligence applications, not only for those worth less than £10,000.
- Cost benefit criteria are being increased. The existing cost benefit ratios are being replaced with those in the General Funding Code.
- We will be expecting more clinical negligence cases to be mediated and will impose limitations in appropriate cases – see decision-making guidance at section 18.8.

Will all clinical negligence cases have to pursue the complaint procedure before applying for legal aid?

No. The guidance recognises a number of situations where pursuing the complaints route would be inappropriate:

- Urgent cases with a legal limitation deadline.
- Delay would cause severe prejudice to the claim.
- The claim is of such severity that legal investigation is inevitable, eg: cerebral palsy claims.
- The NHS refuses to deal with the complaint or to provide a written response within six months.

What about the NHS Redress Scheme?

Legislation has been put forward to establish a Redress Scheme as a more effective way of dealing with compensation within the NHS. Redress would have an important impact on litigation and the need for legal aid funding, but national implementation of Redress is not expected before April 2007.

ACTIONS AGAINST THE POLICE

What are the main impacts for police claims?

There are four points to consider:

- Many police claims will be expected to pursue a complaint procedure before funding is granted.
- As with other non-family areas, we would like to see more use of mediation, even in this adversarial category.
- Cost benefit criteria have been revised to emphasise the need for proportionality between costs and benefits.
- There is new guidance on the level of damages in police cases, following cases such as *Thompson*.

Will all police applications be refused unless a complaint procedure has been followed?

No. The guidance recognises a number of situations where pursuing the complaints route would be inappropriate:

- Urgent cases with a legal limitation deadline.
- Delay would cause severe prejudice to the claim.
- The case does not include allegations concerning the conduct of police officers.
- No proper response to a complaint within six months.

What will the new proportionality test mean in practice?

Cases under section 8 of the Funding Code should carefully address whether the benefits to be gained are proportionate to the likely costs. The question of proportionality is a well-established concept in ECHR law and in the Civil Procedure Rules. Ultimately, it is a commonsense test that takes into account the importance of the case to the client, viewed objectively, and the seriousness of the allegations made.

PERSONAL INJURY CASES

What changes are there to the funding of personal injury proceedings?

The exclusion of personal injury proceedings has been widened. The old exclusion of only 'negligently caused' injury has been replaced with an exclusion of all personal injury proceedings except clinical negligence and cases covered by the Lord Chancellor's Directions.

Support Funding is also abolished.

Under the changes, what personal injury proceedings can still be funded?

Existing scope directions remain. Thus, for example, the following will always be in scope:

- Claims under section 8 of the Code (serious wrong-doing etc, against public authorities).
- Housing proceedings.
- Cases with a significant wider public interest.

New directions have also been made to ensure that the following remain within the scope of funding:

- Legal Help in relation to applications to the Criminal Injuries Compensation Authority.
- Claims based on allegations of sexual assault.
- Claims based on allegations of the abuse of a child or vulnerable adult.

OTHER NON-FAMILY CHANGES

Are there any changes to the funding of judicial review cases?

Several changes have been made to the funding of judicial review cases:

- Guidance on devolved powers has been amended to specify that suppliers should not grant emergency funding on the grounds of public interest - such cases should come to the Commission.
- We have changed the presumption of funding to ensure that alternative funding can always be considered by the Commission in judicial reviews.
- ADR should always be considered in judicial review proceedings. At the outset, the availability of complaint procedures must be taken into account. Once permission is granted mediation should be considered.

What changes are there to Very High Cost Case funding?

The following changes apply to very high cost case (VHCC) funding:

- There is a reduced budget for VHCC, including MPAs.
- The Special Cases Unit will consider the affordability of the largest actions, particularly group litigation.
- There is new guidance on priorities within the High Cost Case budget.

How will quasi-criminal cases be dealt with in future?

A new section of the Funding Code has been introduced to cover cases that are civil in domestic terms but may arguably be criminal in ECHR terms. This is likely to apply to certain proceedings under the Proceeds of Crime Act 2002, the Terrorism Act 2005 and certain tax penalty cases. The Code applies an interests of justice test, rather than the normal legal merits criteria.

What is the effect of Before the Event (BTE) insurance on legal aid?

Solicitors should always check carefully with clients whether they have any form of legal expenses insurance, usually attached to household or contents policies. The guidance of the Court of Appeal in the *Sarwa* case applies to publicly funded clients, too.

A new section of the APP 1 form seeks to identify whether BTE is present.

How do the reforms affect issues of Conditional Fee Agreement (CFA) availability?

No new categories have been moved from legal aid to conditional fees, but CFA suitability remains a criterion for all cases considered under the General Funding Code. This includes education damages cases, building and other contract disputes and land disputes.

CFA availability will not usually be a ground for refusing Investigative Help, but once investigations have been funded, we would expect cases with good merits to proceed under CFAs unless convincing evidence is provided that no insurance can be obtained in support of a CFA.

'NEW FOCUS' REFORMS – STATUTORY CHARGE

Why is the statutory charge being reformed?

One of the strongest messages emerging from the 'New Focus' consultation was that in response to pressures on the budget, rather than reducing the services offered to clients at the outset, it would be better to concentrate on improving procedures for recovering costs back into the fund at the end of a case, from those clients who are able to pay. We have therefore responded by introducing regulation changes to clarify and strengthen our powers to recover these costs.

What are the statutory charge changes?

- The matrimonial exemption, whereby the first £3,000 of property recovered in a family case was exempt from the charge, has been abolished in respect of applications for funding made on or after 1 April 2005.
- The interest rate on postponed charges is rising from 5% to 8% with effect from 1 October 2005. All existing statutory charge holders are being notified of this and encouraged to repay the charge if they are able.
- The circumstances in which the LSC will agree to postpone the charge at the end of a case where a home is recovered have been clarified in the regulations. The regulations now set out a test of whether the client is in a position to repay the charge, for example by obtaining a small increase on their mortgage. If so, we would expect the charge to be repaid, rather than postponed indefinitely.
- A new general power in the regulations is being introduced to review existing postponed charges and ask for repayment where the client is well able to do so.

Does this mean that clients will be forced to sell their homes to repay the charge?

No. The new regulations are expressly aimed at clients who can readily afford to repay the charge. Many clients will be in a more secure financial position a few years after their case is concluded. In no circumstances would clients be put in the position of being forced to sell the home they have recovered.

Clients who were paying a contribution towards their costs may be encouraged to continue to pay the amount of their contribution, as a condition of enforcement of the charge being postponed, if there is no adverse change in their financial position.

COMMUNITY LEGAL SERVICE DIRECT LAUNCHED IN WALES

A free bilingual legal advice and information service was launched on Tuesday, 28 June, 2005 by Welsh First Minister, Rhodri Morgan.

Community Legal Service Direct is an easy-to-use bilingual service providing free information, help and advice to the general public on a range of common legal problems.

Launched by the Legal Services Commission, Community Legal Service Direct introduces a new bilingual national telephone advice line, website and leaflets providing legal help on welfare benefits, debt, housing and education problems for the whole of Wales.

The service comprises of:

- a national bilingual telephone helpline on **0845 345 4 345**, which provides free advice and a full casework service for eligible people from a qualified legal adviser with problems to do with benefits and tax credits, debt, housing and education.
- A bilingual website, www.clsdirect.org.uk where people can find information to help themselves or search for details of quality local advice services. They can ask a question or choose a topic and be directed to the right place on the best advice sites in the UK or view, download or print legal information leaflets. They can also check their eligibility for legal aid.
- A series of 31 free bilingual information leaflets covering a wide range of subjects from dealing with debt to divorce and separation; from losing your home to wills and probate.

Speaking at the Community Legal Service Direct launch event in the National Assembly of Wales Building, Cardiff Bay, Tom Jones, OBE, Chair of the Legal Services Committee for Wales

said: "The helpline, website and leaflets will help people from all across Wales to access legal help. Many people live in remote parts of the country, or have difficulty leaving home for appointments due to caring commitments or a disability. Community Legal Service Direct will help these people receive quality legal advice when they need it."

Launching the new service, First Minister Rhodri Morgan said: 'Many people across Wales do not seek legal advice because they are afraid that it will be expensive and beyond their means. These are often the people in most need where good legal advice and support could solve some of their most worrying and pressing problems. This new service helps to tackle such social exclusion by making quality legal advice available to everyone, regardless of means.'

The Welsh helpline started in October 2004, and so far has helped over 2,000 people in Wales. Legal Aid helps some of the most vulnerable and the most disadvantaged people in Wales. The Commission in Wales has invested over £70m per annum in developing the Community Legal Service and the Criminal Defence Service to help people get quality legal services that tackle real needs.

Community Legal Service Direct will complement face to face help, not replace it. Where face to face help is more appropriate, Community Legal Service Direct will play a vital role in helping people to make contact with a legal aid solicitor or adviser in their area.

COMMUNITY LEGAL SERVICE DIRECT CELEBRATES ITS FIRST BIRTHDAY

On 14 July 2005 Community Legal Service Direct celebrated its first birthday. The service has had an excellent first year:

- Over 210,000 calls have been made to **0845 345 4 345**
- Over 500,000 visits have been made to www.clsdirect.org.uk
- 1.7 million information leaflets have been distributed

An expanded service

After successfully piloting housing and employment telephone advice in some regions, these services have now been extended nationally alongside benefits and tax credits, debt and education.

On the website, revamped language pages and information are now available in Arabic, Hindi and Turkish alongside Bengali, Chinese, Gujarati, Punjabi, Urdu and Welsh.

Seven new titles have been added to our series of popular free legal information leaflets, bringing the total number available to 31. New titles include Domestic Violence, Abuse and Harassment, Living Together and your Rights if you Separate and Neighbourhood and Community Disputes.

Who the service helps

Steven Healey of Walsall was one of the many people who received help via Community Legal Service Direct. After developing a serious medical condition Steven was signed off work and later made redundant. Although he had taken out insurance to cover his credit card and loan repayments, he had recently taken out a finance agreement on a new car.

Despite trying to negotiate with the finance company just three weeks after falling behind on the payments for his car, they seized it, leaving him owing more than £14,000 for a car he no longer had.

Steven was advised that the initial contract was void and after Community Legal Service Direct contacted the finance company and explained the fault with Steven's contract they agreed to cancel the £14,000 debt.

Promoting the service

New publicity materials have been designed to incorporate the expansion of the service and these are now available to order.

For more information about Community Legal Service Direct or to order publicity materials, e-mail Hannah.chaplin@legalservices.gov.uk.

ENSURING CLIENTS HAVE ACCESS TO QUALITY SERVICES WHICH MEET THEIR NEEDS

Following the May General Election, the Lord Chancellor announced his commitment to civil legal aid (see www.dca.gov.uk/dept/dcaprioritiesmay2005.pdf). This is reflected in the LSC's corporate targets for the provision of Legal Help (see article on p 05).

In line with the Lord Chancellor's views on the importance of civil legal aid, the LSC will be embarking on a series of initiatives to encourage suppliers to provide integrated and seamless services across a number of areas of law and using a range of methods, including outreach and housing possession court duty schemes. The LSC will also be targeting client groups that currently do not access mainstream services, particularly in the most economically deprived areas of England and Wales.

As a first step, each Regional Office has published a Delivery Plan setting out its key priorities which can be found on the regional information pages within the LSC website. Any supplier interested in the future development of civil legal aid should read their local regional plan. The LSC has introduced a package of measures to support service delivery, including:

- Increases in case starts will be guaranteed until April 2007.
- Increases will be given in larger blocks.
- Suppliers will be given flexibility to open cases in any priority category of law where appropriate, rather than being confined to one category.
- In some circumstances, suppliers will have devolved powers to self-authorise matter starts.

LSC regions will also focus the CLS Development Fund on funding measures that help increase capacity.

Please contact your Account Manager for further details.

BUILDING AN ONLINE ADVICE TOOL – A NEW CHALLENGE FOR COMMUNITY LEGAL SERVICE DIRECT

Imagine an interactive tool on the Internet that could, for areas of Debt and Welfare Benefits:

- ask pertinent questions
- recommend what to do next
- refer onwards, with case notes, to the Community Legal Service Direct telephone service or a face-to-face provider.
- signpost to relevant services and information
- help the user directly, eg by producing a tailored letter.

Why?

We aim to:

- help users make more efficient use of advisers' time by ensuring that, where they seek help, they do so early and are prepared for the advice process
- help some people to solve the problem themselves or to find an alternative, more appropriate support mechanism
- reduce referral fatigue – the client will not have to be passed from adviser to adviser in order to get the necessary help.

Who is it for?

As with other Community Legal Service Direct services, this tool aims to help people who otherwise cannot or would not use traditional face-to-face services, eg those who:

- are geographically isolated
- work unsociable hours
- are disabled
- do not want to use traditional services
- are not eligible for publicly funded help.

Who is involved?

The project is advised by a Reference Group of stakeholders including Debt and Welfare Benefits practitioners, advice organisations, telephone advice services and government departments.

We have also been working closely with Project Eagle (in the West Midlands Regional Office), who are developing a similar tool initially in Employment law for generalist advisers, to ensure lessons are learned across both projects and joint work carried out where appropriate.

The successful applicants for the tender for legal advisers to the project were Simon Ennals and Jason Slaney of French and Co. Simon and Jason will be leading the work to identify which areas of Debt and Welfare Benefits would be appropriate and useful, and in specifying the detailed content for the tool.

The project is being managed within Community Legal Service Direct, and the project owner is Mike Whittall, Acting Head of Direct Services.

What is happening right now?

Our current priorities are to analyse:

- what types of people would most benefit from an online tool and would be most likely to use it
- what areas of Debt and Welfare Benefits could most plausibly be tackled by an online tool

Our IT procurement has been paused until we can answer these questions with confidence, and our analysis will be made public at the end of the year. The anticipated go-live date of the tool is June 2007.

How can I find out more?

To receive regular updates on the project, contact Sonya Fyffe (Project Support)
Tel: 020 7759 0273
sonya.fyffe@legalservices.gov.uk

For specific questions on the project, contact Michelle Sampson (Project Manager)
Tel: 020 7759 0270
michelle.sampson@legalservices.gov.uk

MEDIATION AND COLLABORATIVE LAW – IMPACT ON FAMILY MEDIATORS

Collaborative law is a relatively new concept in family dispute resolution. It started in North America in 1990 and has developed into a whole movement that is now being noticed as a viable and effective alternative in consensual resolution of family disputes. It was introduced to the UK in 2003.

Collaborative law seeks to resolve disputes without the need for litigation and Collaborative practitioners seek to resolve the conflict by negotiation - if a matter has to go to court, other solicitors have to be instructed. This is being explored as one of a range of interventions to help families, without having to have recourse to the courts.

WHO CAN DELIVER COLLABORATIVE LAW?

In North America, there are various Collaborative models in operation – delivered by varied practitioners. At the moment, in the UK, only *family lawyers* are able to deliver Collaborative Law, as the model in use here is based on the need for legal advice.

Resolution is delivering all the training for those wishing to qualify as a Collaborative lawyer, and have set out clear guidelines and standards for entry and participation, namely:

- Must be members of Resolution.
- Must have been practicing family law in England or Wales for a minimum of three years, either in a specialist family practice or in a practice where at least 50% of their work is in family law.
- Must be either a solicitor, Fellow or Member of ILEX or a barrister.

Coverage of trained Collaborative family solicitors in the UK remains patchy but is increasing rapidly. There are now around 400 trained Collaborative lawyers in England and Wales.

The Children and Family Services Division will be running a small scale six month pilot, starting September 2005, to establish a model for delivering Collaborative law to legally aided family clients. Initially the pilot proposes to run in Nottingham and Mansfield only.

WHERE DOES MEDIATION FIT WITH THE PROCESS?

The aim of the collaborative process is to be flexible enough to ensure that the clients are able to negotiate full agreements without going to court.

This means that they can utilise other services throughout the Collaborative process that might help them make decisions and reach agreement – this includes mediation. In the LSC pilot areas, clients in the collaborative process will be able to access the services of publicly funded family mediators, where they feel it would be beneficial: for example, if an impasse has been reached in negotiations and an impartial third party is needed to help the couple work through their differences objectively. This will be funded in the normal way.

WHO ARE FAMILY CONSULTANTS?

As well as being able to act as a mediator for clients in the Collaborative process, Family Mediators are being asked to consider whether they are in a position to offer their services as Family Consultants.

A Family Consultant is someone who can work with the individual client, offering help and practical support in addressing the important decisions they need to make as a result of their new family situation, and how they will deal with the changes to their family set-up, finances and lifestyle. This support role (known as a Divorce Coach in North America), is viewed as vital for some clients, to help them come to the negotiating table with clear objectives and with the ability to negotiate with their former partner.

Key to this role is flexibility and the ability to adapt the service offered to the particular needs of the client. It requires highly skilled professionals who can respond to the demands of family conflict and breakdown. Family Consultants will not be delivering therapy. However, it maybe that using the services of a Family Consultant has therapeutic benefits for the client.

Resolution are managing the development of the role of Family Consultants and see Family Mediators with additional specialist training and experience as ideally placed to fill this role. Resolution has laid down criteria for individuals who wish to become Family Consultants. These are:

- Must be a qualified Family Mediator (training recognised by the UK College).
- Have a recognised qualification allowing practice in the specified profession(s) – for example, counselling, social work, therapy.
- Must be a member of the relevant professional organisation(s) that regulate your practice.
- Must have insurance cover for the professional practice, including as a Family Consultant.
- Three years' post qualification experience in family work.

Additionally, if working with children:

- Must have additional recognised training (UK College recognised = minimum of two days for mediators).
- Current enhanced level police clearance.

Any Family Mediators wishing to apply are advised to contact Fay Passey at FMA Administration on 0117 946 7181.

HOW WILL COLLABORATIVE LAW AFFECT MY FAMILY MEDIATION SERVICE?

Family mediation is a well-established service in alternative dispute resolution, and has proven to be successful for those people who are able and suitable for engaging in the mediation process. However, it is also a well known fact that mediation does not suit everyone. There are people who are not suited to mediation. Some of these people may, however, be more suited to the collaborative process, or to other ADR methods.

By offering a greater range of alternatives for clients, more people may be able to find a route for resolving their disputes that does not involve an unnecessary adversarial battle in court. Anything that may result in more amicable outcomes and less distress to clients and dependent children must be seen as a positive development for all family practitioners.

If you would like any further information, please contact
fiona.dagenais@legalservices.gov.uk

Organising your information leaflets

Michael Stuart, of Camden Information Services, explains how the FRILLS leaflet service makes it easier to organise information leaflets.

There's a leaflet or booklet on almost every aspect of life: from redundancy to starting your own business; getting married to divorcing.

Leaflets are popular with the public because they're short, easy to understand and can be picked up and taken home. However, leaflets can be difficult for agencies to manage, being hard to find out about, time-consuming to order, refusing to stay in one place, changing from one day to the next and then simply disappearing.

It's obviously important for all information to be up-to-date, and particularly where there's a risk of being sued for providing inaccurate information. A strength of leaflets is that they're usually updated quicker than books - Community Legal Service booklets are usually updated twice a year for example. But the downside is the work involved in keeping up-to-date, especially when many leaflets aren't even dated!

How the FRILLS leaflet service helps

FRILLS tracks the most up-to-date version of 800 leaflets from 400 publishers, mostly government departments, quangos and national charities.

The leaflets cover a huge range of issues of interest to the general public including benefits, housing, money, law, education, employment and health. All leaflets are free in multiple copies so they can be ordered in bulk and given away to clients.

FRILLS subscribers receive monthly mailings of some 40 new, updated and obsolete leaflets. The service will also add any national leaflet subscribers suggest.

While providing a systematic framework, FRILLS is flexible. So, subscribers can choose to keep all the leaflets or only those relevant to their client group. Similarly, subscribers can keep the copy sent for reference or order extra copies to give away.

The listing classifies leaflets (including a legal category), making it faster to select. There's also a listing of the entire collection with dates and details of how to order, which means that on joining subscribers can run a complete check on their own collection.

An annually published directory of leaflet publishers includes details of priced leaflets and booklets, the languages into which each publisher translates their leaflets and formats such as large print.

FRILLS is the only national general leaflet update service. It is part of the library service at the London Borough of Camden and over 13 years has built up subscribers in a third of UK local authority library departments.

For a free monthly listing or to find out more about the FRILLS leaflet service contact Michael Stuart on 020 7974 4007 or frills@camden.gov.uk giving your postal address.

SPECIALIST SUPPORT – UPDATE

Two Garden Court, who provide support on Immigration, Housing and Employment, will be moving to new premises during August.

As a result, the telephone line will be suspended from 5 August to 28 August, with a limited service being offered via fax and e-mail. When the service returns on 29 August, there will be new access

numbers. Suppliers should continue to ring the old numbers, and will be given instructions. Other Specialist Support advice lines will continue to operate as usual, and you will be able to access alternative providers for support on Immigration, Housing and Employment.

For more information on the services offered under Specialist Support, including training and advice, please visit our website at www.legalservices.gov.uk/civil/innovations/Specialist_Support.asp

TELL US WHAT YOU THINK!

During early September you should receive a copy of our annual supplier survey, this is an opportunity for you tell us what you really think of the LSC, our people, processes and communications.

By completing the survey you can tell us what we are doing well and what we need to improve. We need you to be completely honest so that we can make the right changes to the right things.

The survey is for everyone in your office and can be completed anonymously. Please encourage your colleagues to have their say.

You can also download the survey from www.legalservices.gov.uk

CARE PROCEEDINGS CASE STUDY

Stephen Williams, a solicitor at Ashton Graham Solicitors submitted case study information about one of his clients following our appeal for client case studies in the last issue of *Focus*.

Stephen Williams has been involved in a case concerning one of his clients, Jane for over three years. Jane is 20-years-old and a mother of three children. She comes from an unsettled background where she experienced forms of domestic violence and Jane and her partner became parents at a young age.

It was deemed by the local authorities and social services that she was unable to care for her children. Her first and second children were taken into care, after care proceedings were issued, and were put up for adoption – due to local authorities being anxious about the level of care being provided for them. During this time, Jane went through a psychological assessment. It was found that she might be too immature, at this stage of her life, to be able to care for her children. This was added to by the on-going volatility in their lives caused by moving from one place of accommodation to another and the negative influence of some of her partner's acquaintances. Unfortunately, Jane does not have any contact with her two children.

During this part of Jane's case, almost a year later, things seemed to settle down and Jane was expecting her third child. Stephen Williams kept in close contact with Jane and could see that she was becoming more responsible. He had spent considerable time with Jane and her partner looking at the recommendations put forward by the psychologist, advising them of what they would need to do to keep their third child.

At this stage he took the initiative to obtain further assistance from the LSC by applying for funding for an expert before

social services were involved. The LSC provided this funding, which enabled the psychologist that had previously assessed Jane to re-assess her psychological state and ability to look after her un-born child. Stephen Williams then wrote a letter on Jane's behalf to the psychologist in order to fully articulate the progress that Jane and her partner had made. He also confirmed that Jane was showing increased maturity and was living in independent accommodation, which she was keeping clean and tidy. Her partner had also found employment with a regular income. Social services and the local authorities were then able to change their assessment of Jane's case by the time her baby was born and further care proceedings were not issued regarding Jane's third child. Without LSC funding at the right time, the outcome may have been quite different.

Stephen Williams said: "It was helpful that the LSC were proactive in the use of funding, as having the ability to instruct and retain the psychologist proved fundamental to this case."

Jane and her partner are planning to marry this summer and their daughter Sky is now 11 months old. Jane said: "Things are ok now, they've worked themselves out."

Case studies are an invaluable way of bringing to life the work that we do and telling the story of legal aid to our staff, Government departments and the public.

You can download a case study form at www.legalservices.gov.uk/civil/forms/admi.asp or contact Seema Chandarana on 020 7759 0489 or e-mail seema.chandarana@legalservices.gov.uk.

EXTENSION OF NOT-FOR-PROFIT GENERAL CIVIL CONTRACTS

The Commission has received Ministerial approval to extend Not-for-Profit (NFP) General Civil Contracts by a year to 31 March 2007. A letter has been sent to all NFP suppliers setting out the terms of the extension in more detail.

The key reason for extending the contracts is to give the LSC time to properly develop and test its future contracting strategy for both the solicitor and NFP sector. The additional time to develop new contracts will enable the following.

- Alignment with future strategy

The future direction of LSC contracting will be highly dependent on the recommendations made by the Fundamental Legal Aid Review (FLAR), the CLS Strategy Consultation and the outcomes of the reviews announced in the Fairer Deal for Legal Aid.

- Development of a contract that ensures quality and value for money

New ways of monitoring quality and value for money need to be developed and tested before they can be incorporated into new contract terms.

The LSC is considering moving towards more holistic social welfare law contracts (covering debt, employment, housing and welfare benefits), which are neither solicitor nor NFP specific. In this context, it is more practical to align the expiry date of NFP contracts with that of solicitors' contracts, which expire at the end of March 2007.

The one-year extensions will be offered on the same terms as those of the present NFP contracts, with no general pay increase. However, as part of the initiative to increase the number of people the LSC helps this year, NFPs are being invited to bid for additional funds to help achieve this.

The CLS Strategy Consultation will consider the whole issue of how we purchase social welfare law services in the future, focusing on how we can deliver advice to the most vulnerable client groups and provide more holistic services. Over the next year, we will work in consultation with the NFP sector to develop new contracts that are able to deliver these objectives.

CLARIFICATION: IMMIGRATION SERVICES TEAM NEWSLETTER 20 JUNE 2005

On 20 June, the Immigration Services Team sent out a newsletter to all contracted Immigration Suppliers offering an update on changes in immigration policy, procedure and legal aid arrangements.

The text published at pages 6 and 10 of the Newsletter, with regards to the provisions for undertaking CLR and work in immigration and asylum cases, requires further clarification as follows.

STAFF MUST BE ACCREDITED AT LEVEL 2 FOR CLR WORK

It is correct that CLR will only be granted to an accredited Senior Caseworker (Level 2) and that an accredited Senior Caseworker will be expected to maintain conduct of the file and will be required to perform the majority of work on that file. However, it is not the Commission's intention to prevent CLR work from being delegated to a Probationer or an Accredited Caseworker where applicable. The specific tasks at CLR which the Competence Standards and Work Restrictions Document allows a Probationer or Accredited Caseworker

to perform, may still be delegated to a Probationer or an Accredited Caseworker.

FUNDING CERTIFICATES

Furthermore, following feedback from practitioners, we have given serious consideration to allowing work being performed under a funding certificate to be delegated to a Probationer or Accredited Caseworker. We are willing to accept that any specific tasks which the Competence Standards and Work Restrictions Document allows a Probationer or an Accredited Representative to undertake under controlled work, may also be delegated to a Probationer or an Accredited Representative in a certificated matter. The solicitor who has been awarded the funding certificate will obviously maintain overall responsibility and effective and actual supervision for all work performed on that certificate.

Furthermore, we propose that Accredited Caseworkers and Probationers who have passed the Multiple Choice Test should also be allowed to attend with counsel at a hearing relating to a certificated matter where appropriate. We would however urge the conducting advisor to give serious consideration to the complexity of the case and the depth of knowledge about the case that is usually required in Court of Appeal and Judicial Review matters by the caseworker attending before delegating this work to a Probationer or Accredited Caseworker.

The Competence Standards and Work Restrictions will be updated shortly to reflect this position.

For further information, please contact Chris Handford on 020 7759 1476 or by e-mail: chris.handford@legalservices.gov.uk

GUIDANCE TO PRACTITIONERS ON THE APPLICATION OF VAT FOR ASYLUM SEEKERS AND OTHER OVERSEAS CLIENTS

The Commission has been in discussion with HM Revenue & Customs (HMRC) to seek clarity on the application of VAT to all overseas clients, but particularly those who are seeking asylum. This is not a new decision to be implemented, just clarification of HMRC policy.

All funded services are supplied to the client and, as the recipient of the legal service, the client's VAT status is relevant, particularly if the client is considered to reside overseas.

HMRC take the view that the legal services are supplied where the client belongs, ie, where they have their place of residence. If the client's asylum status is not yet determined (or has been determined and they have no leave to remain), HMRC's view is that, even though the client may be physically present in the UK, their place of residence can only be in the country from which they have originated. The same VAT position will apply to other individuals with no right to stay, eg an illegal entrant who is not an asylum seeker.

Once a person has been granted a right to stay, eg, overseas forces, students attending university here, or self-employed nurses under contract, VAT applies as normal. In cases where the client is resident, eg services supplied to a resident sponsor, VAT can be accounted for in the

usual way. If the client is the sponsored person residing overseas then VAT does not apply and is not accounted for.

Consequently, *any* legal services provided to asylum seekers (or others without a right to stay) whether for their asylum applications or in relation to other areas of law, are supplied to them in their country of origin. This places the service outside the scope of UK VAT where that country is outside of the EU. Inside the EU the service attracts VAT (where the supply is not for the purposes of any business activity of the client).

Where VAT does not apply and POA's have been automatically generated on the exercise of devolved power, suppliers should account for the whole sum of £287.50 as profit costs and not split it as £250 plus VAT.

The tax point will be at the conclusion of the legal work and no apportionment should be necessary unless other work is done after the determination of the right to stay when the client would be resident and VAT chargeable. If the client has lost

contact with the supplier before the case has concluded it would be right to not charge VAT for the work done.

As this is existing HMRC policy suppliers may have previously over claimed VAT. The Commission would expect that where such cases have been identified and refunds received from HMRC that the refunds are credited to the individual client's legal aid account with the Commission when received. The Commission is not however expecting suppliers to identify such cases and actively seek refunds until the Commission has established a refund policy with HMRC. Further guidance may be issued. For all pending cases unbilled and all future work, VAT should not be charged.

Solicitors will need to be aware of their client's immigration status in order to know how to correctly treat the supply for VAT purposes. Any queries on VAT in individual cases should be referred to the HMRC's National Advice Service on 0845 010 9000. Any queries on the Commission's approach to VAT should be referred to ruth.symons@legalservices.gov.uk.

LEGAL HELP INCREASES IN HOUSING CASES

In Focus 45 last August, increases were announced in the rates of remuneration for cases under Legal Help and Help and Court relating to homelessness reviews and possession proceedings. The increased rates are those currently payable for Controlled Legal Representation (CLR), except that the advocacy rate for CLR does not apply. This article is to clarify the scope of the work that will qualify for the increased payment rates.

In homelessness cases, the increased rates will apply to a matter where assistance is provided in relation to a review under s 202 of the Housing Act 1996. This includes the full range of decisions that are capable of review under s 202 and not only decisions as to whether an applicant is homeless.

The increased rates do not apply to matters consisting only of assistance in making a homelessness application, or cases where advice is given as to a possibility of a review of a decision but this is not pursued. Similarly, the increases do not apply to cases where a review decision has already been made, unless a further review is subsequently pursued, for instance because the authority agrees to reopen its enquiries.

In possession cases, the increased rates encompass all matters where Legal Help/Help at Court is given to a defendant to a possession summons. Cases will qualify for the increase, therefore, even if possession is sought on mandatory grounds or, conversely, if an application for Full Representation is made at an early stage.

The regulatory change that enabled these increases does not apply to applications to suspend warrants for possession.

Suppliers are reminded that qualifying cases should be reported on CMRF in the normal way, but using the increased remuneration rates. This will trigger the credit of the fixed fee. Increased payments are then claimed at the end of the schedule year by completing form D within the Tailored Fixed Fee Annual Claim Adjustment Pack.

Suppliers can choose on this form between claiming the increased payments either as a fixed top up fee per case, or as the difference between the actual costs of each case at the increased and old remuneration rates. However, the chosen option must be applied to all the supplier's qualifying cases in the relevant year.

Suppliers who joined the Tailored Fixed Fee Scheme on the voluntary basis should by now have submitted their annual claim for increased payments for cases from the 2004/2005 schedule year. If any suppliers have, on the basis of previous guidance from the Commission, not included matters that qualified for increased housing payments, please can they contact anthony.Cox@legalservices.gov.uk

STATUTORY CHARGE

Following a review of current practices involving the Statutory Charge, please can we remind you to ensure that a fully completed Admin 1 form is sent to your local Regional Office as soon as the final order has been made.

Please do not send payment in respect of any expected liability under the charge until the Regional Office has determined a liability. This will allow us to correctly record payment and improve efficiency. They will then request your bill, the payment and any other related documents.

We appreciate you following these requests, as it will improve our service to customers.

APPLICATIONS FOR POINTS OF PRINCIPLE

A BRIEF INTRODUCTION TO POINTS OF PRINCIPLE AND THE COSTS APPEALS COMMITTEE.

Points of Principle (POPs), whilst often overlooked, are extremely important for all suppliers working under LSC contracts – not least because clause 3.4 of the Contract Standard Terms makes them binding on all contract work. In essence, POPs are statements which seek to clarify a costs assessment principle or interpret a contractual assessment provision.

Current POPs can be found both on the LSC website and in Volume 1 of the LSC Manual. Anyone making an application for a new POP could do worse than review those already certified, as they are a good guide as to how suggested POPs should be worded.

A common error is to phrase the POP as a question to be answered rather than as a statement to be certified. When an application for certification of a POP is made, you should ensure that you set out the exact wording of the POP that you want the committee to certify.

The procedures for applying for POP's are set out in the following places:

- Regulation 105 of the Civil Legal Aid (General) Regulations 1989 – for POPs in respect of civil bills assessments;
- General Civil Contract, Contract Specification, rule 2.17 – for POPs in respect of Civil Controlled Work (CCA) assessments; and
- General Criminal Contract, Contract Specification, Part C, rule 1.12 – for POPs in respect of Crime CCA assessments.

The basic procedure is that if you are unhappy with the decision of a Costs Committee then you can, within 21 days, apply

to another Costs Committee for certification of a POP. This is effectively the permission stage and even if the Costs Committee certify the POP it has no effect on the underlying assessment nor is it binding under the Contract. In order for the POP to have effect it has to be certified by the Costs Appeals Committee.

The Costs Appeals Committee is a committee of the LSC normally consisting of a non-executive lawyer member of the LSC, a regional review panel chair and a lawyer nominee of the Law Society. It meets roughly monthly although, given that there is not normally a right of attendance on POP applications, the committee will now be dealing with POP applications by phone or other electronic means.

Once your POP has been certified by the regional Costs Committee you then have a further 21 days to apply for it to be certified by the Costs Appeals Committee. That application should be made to:

The Secretary to the Costs Appeals Committee
Corporate Legal Team
Legal Services Commission
85 Gray's Inn Road
London WC1X 8TX

Once an application is received, the secretary to the committee will arrange for a report to be prepared. That report will set out the nature and wording of the POP sought, the applicant's reasons for suggesting that it should be certified and the LSC's formal response. Once completed, the report, along with any relevant bundle of documents, will be sent to the applicant for comment and circulated to the committee members.

Once the Committee has considered the application it is empowered to either certify or refuse to certify the POP. If it certifies the POP, it can either use the exact wording given or, if appropriate, such other wording as it considers necessary. In either case, the committee has the jurisdiction to re-visit the underlying assessment but will only typically do so where the certification of the POP affects the lower committee's decision.

All new POPs are then published, with any necessary guidance, on the LSC website and in the LSC Manual and *Focus*.

If you have any queries about Points of Principle or the role of the Costs Appeals Committee, please e-mail Matthew Howgate, Secretary to the CAC, at matthew.howgate@legalservices.gov.uk or call him on 020 7759 0357.

COST ISSUES ARISING FROM PROCEEDS OF CRIME ACT WORK

In *Bowman v Fels* [2005] EWCA Civ 226 the Court of Appeal considered how s 338 of the Proceeds of Crime Act 2002 (POCA) affected lawyers involved in litigation. The Court of Appeal concluded that: ‘... the proper interpretation of s 338 is that it is not intended to cover or affect the ordinary conduct of litigation by legal professionals.’

As a direct result of the *Bowman* judgment, certain activities are excluded from the remit of the s 328 arrangements offence. In practical terms, this means that suppliers conducting litigation, including preparatory stages, settlements, negotiations, and all forms of alternative dispute resolution, including the mediation process, are not involved in s 328

arrangements. Solicitors, mediators and others do not need to make authorised disclosures.

Whilst the litigation and related processes are outside of the ambit of the offence, the property itself remains ‘criminal property’. Future dealings with it after a judgment or settlement may need to be considered separately. Sham litigation will remain within

the remit of the section. Additionally, solicitors may still need to advise the client about their own position.

It is likely there will be a reduced number of reports made by litigation lawyers but reports and other POCA work cannot be discounted altogether.

The Commission has set out its approach to remuneration for work done under POCA. Full guidance on the impact of this legislation and *Bowman v Fels* can be found on the law society's website

Work done by a supplier to comply with POCA and the money laundering regulations generally, including an internal consultation, is a product of a professional requirement, as such is administrative work, and is not claimable from the legal aid fund.

Work that is client-specific however (and not an internal consultation), is more likely to be work that is directly involved in the provision of contracted legal services to the client and so may be claimed from the fund, subject to reasonableness.

Set out below is the Commission's view of what may be allowed against the Fund.

CHECKING IDENTITY AND MAKING A RISK ASSESSMENT

Checking the identity of a client is a pre-instruction procedure whereby the solicitor must ensure they obtain proof of the client's identity. The cost of identification procedure will be borne by the supplier in any event, as it is a preliminary step to determine whether instructions can be accepted from that client.

ADVICE TO THE CLIENT ABOUT THE SOLICITOR'S RESPONSIBILITIES UNDER POCA

To what extent these costs are chargeable will depend on **why** the work is being done and **when**. The Law Society recommends that solicitors change their client care letters to explain the law in this area so that the client understands at the outset what steps can be taken and, that when taken, they are directly chargeable to the client. It would be an amendment to the firm's standard client care letter and should not form a separate letter. The Law Society advises that the explanation should be in general terms without reference to the client's particular circumstances.

After initial instructions are received there may be other points at which the solicitor and client spend time on POCA issues, for example, considering another party's finances. Such time is chargeable to the fund, subject to the reasonableness.

TAKING FURTHER INSTRUCTIONS ON WHETHER AN OFFENCE HAS OR WILL BE COMMITTED, CONSIDERING WHETHER TO MAKE A NCIS REPORT, MAKING A REPORT TO NCIS

Reflecting on whether an offence has been committed and what steps to take may be driven by a number of reasons, including

- a) to avoid the solicitor committing the offence of failing to disclose;
- b) to determine whether the client's or someone else's assets are criminal property in the context of assessing financial eligibility; or
- c) to obtain consent from NCIS where the firm is to receive monies from (or otherwise becoming concerned in financial arrangements) the client or another.

If the purpose of the work is to consider how to avoid an offence by the solicitor of failing to disclose, it is not allowable against the fund. This work does not benefit the client, and its performance has no effect on the question of whether the firm can continue acting.

In contrast, if the firm has made a report to NCIS and has to also consider whether it can continue acting and how to advise without 'tipping off', this work would be claimable, subject to reasonableness.

If the purpose of the work is to obtain a consent from NCIS (and therefore a defence to substantive money laundering offences) because the firm is to receive monies from or otherwise concerned in suspected financial arrangements, it is claimable *if* the transaction or settlement is in the context of the case. This work can be properly described as directly involved in the provision of contracted legal services, as it may be a necessary part of the process.

If the reason for receiving monies or becoming concerned in arrangements is the collection of private payment for legal services, then by definition it is nothing to do with the Commission and is therefore not claimable.

CONSIDERING WHETHER THE FIRM CAN CONTINUE TO ACT AND WHETHER 'TIPPING OFF' HAS BEEN COMMITTED AND SEEKING GUIDANCE FROM THE COURT

Any application for an adjournment within proceedings is generally within the scope of the certificate. If a firm has to seek directions and guidance from the court as to whether or not they should continue as the client's solicitor, this will fall within the scope of proceedings. Whilst this is not a usual step, in the sense that it is not common within the proceedings, it arises out of the solicitor's professional obligation to appear as they are on the court record as the acting solicitor. It is anticipated that directions would only be sought where there was a pending hearing and the solicitor was unsure whether to continue to act. In such cases, this is client specific work. However, an amendment to the scope of the certificate may be required if the existing scope limitation is not wide enough to cover this work.

Whilst considering whether the firm can continue to act is client specific work, and will be allowed subject to reasonableness, considering whether the firm has 'tipped off' is not client specific.

COMPLYING WITH PRODUCTION ORDERS

Once NCIS has conducted an investigation the Assets Recovery Agency (ARA) may decide to initiate proceedings. This can include a production order served on a firm for the release to ARA of client documentation.

Whether this is chargeable will depend on the funding position. If the client is a former client, with no current relationship existing between client and solicitor, the work in complying with the order will be borne by the firm. Where however the client is a current client with the benefit of public funding, compliance with the order would be client specific.

Any queries on costing issues may be raised with ruth.symons@legalservices.gov.uk and all other POCA queries with kelly.harris@legalservices.gov.uk.

PUBLIC LAW CHILDREN ACT PROCEEDINGS AND THE COSTS OF TREATMENT, THERAPY OR TRAINING

Two separate items appeared in *Focus 47* (April 2005) regarding experts in public law Children Act proceedings and the costs of treatment, therapy or training. Since *Focus 47* was published, there have been some developments in these areas. Below you will find some amended guidance which is to appear at Part D (Narrative and Guidance) in the next release of the LSC Manual, Volume 1.

The revised guidance takes into account the decision of Ryder J in *London Borough of Lambeth v S* (reported in *The Times* 19.5.2005), as well as an amendment to paragraph 1.3 of the Funding Code.

The Funding Code amendment to take effect on 25 July 2005 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. There is, however, an exception for specific orders or directions from the Lord Chancellor. The Legal Team in the Children and Family Services Division will be happy to provide assistance if you have any queries regarding these issues. Please contact Jane Worsey (jane.worsey@legalservices.gov.uk, telephone 020 7759 1130) or Lynn Graham (lynn.graham@legalservices.gov.uk, telephone 020 7759 1129).

Revised Guidance Volume 1, LSC Manual Part D, Narrative and Guidance

5.7 Joint Instructions and Apportionment Generally

- Parties should use a single expert jointly instructed where this is appropriate to the circumstances of the case (including in particular in ancillary relief applications). If the funded client unreasonably refuses to do so, then this should be reported by the solicitor as incurring an unjustifiable expense to the Fund (Funding Code procedures C.44).
- Disbursements should be appropriately apportioned between parties (whether publicly funded or not) where that is reasonable, eg where only one report is to be obtained for the use of the court (possibly following joint instruction), with or without the leave of the court (but see para 5.8 below regarding public law Children Act cases). This may be equally as between the number of parties. However, the existence of public funding cannot affect the exercise of the discretion of the court (s 22(4) of the Access to Justice Act 1999). It is therefore inappropriate to transfer the responsibility for an expenditure to a publicly funded party because they are in receipt of public funding.

5.8 Public Law Children Act Cases

- The position of the Commission with regard to Public Law Children Act cases was contained in the information pack published to support the Protocol (www.legalservices.gov.uk/docs/stat_and_guidance/info_pack_public_fund_issues.pdf). In that pack, it was stated that the Commission would follow the directions given by the court where, following appropriate consideration of the relevant issues, it had given leave for an expert to undertake specified work. However, the Commission suggested that where it was appropriate for an assessment to be apportioned then the apportionment should be on a moiety basis (ie shared equally between the local authority on the one hand and all the funded parties on the other).
- The position has been considered and overtaken by the decision in *Calderdale Metropolitan Borough Council v S* (2004) *Times*, 18 November 2004, [2004] EWHC 2529 (Fam), (Bodey J). In the light of the judgment in the *Calderdale* case, the Commission accepts that where an apportionment is appropriate then it should generally be on a proportionate or pro rata basis – ie each party paying equally towards the costs (but see below regarding s 38(6) assessments). In *Calderdale*, Bodey J treated the children's guardian as the funded party, although there were in fact two children who were funded parties. The Commission accepts that any proportionate apportionment should accurately reflect the numbers of parties (including children).
- In *Calderdale*, Bodey J accepted that a specialist report can and, on some occasions, should be comprised within a local authority's core assessment and/or should be part of the local authority's own basic case (para 28).
- In the absence of any statutory or regulatory guidance on the distinction between reports which ought to be at the expense of the local authority and reports which should be funded by all the parties (except those unaffected by it), the following non-exhaustive considerations set out by Bodey J apply (para 35):
 - The court has to exercise its discretion to

apportion the relevant costs fairly and reasonably, bearing in mind all the circumstances of the particular case.

- The court will have regard to the reasonableness of how the local authority has conducted the information gathering process and with what degree of competence and thoroughness.
- The court will use its experience and 'feel' to be alert for cases where a local authority has done quite little preparation or else has prepared rather poorly. If for example, a local authority proposes the instruction of an independent social worker consultant (which for good practical reasons is agreed to be done on a joint-instruction basis), where the work would normally have been expected to be undertaken by the local authority as part of its core preparation, then the local authority will certainly or almost certainly be ordered to pay 100% of the costs involved.
- The court will have regard to the extent to which the report in question goes merely to satisfying the so called 'threshold' for state intervention, as distinct from helping the court to decide more generally what overall 'disposal' would best serve the interests of the child's welfare.
- A further consideration is the type of expert concerned and the nature of his or her involvement with the family and/or his or her role in the case. 'Treating' experts and others who have had a 'hands on' role with the family already are more likely to have to be paid for, if they charge a fee, by the local authority. Conversely, the fees of a purely forensic expert brought in specifically to make a full overview report to the court within the context of his or her discipline, are much more likely to be ordered to be shared in principle between the parties.
- One reason that the costs of a jointly commissioned report ordered by the court will, generally speaking, be ordered to be shared in some way is that each party has

an interest in having confidence in the integrity of the forensic process. However, if a party genuinely opposes a report being jointly commissioned, or disputes the need for a report at all then, provided this opposition is mounted for substantive reasons and not merely cosmetically or tactically, the court may take this factor into account in deciding how to exercise its discretion.

- (g) The fact that a party is publicly funded is not a reason for taking a different decision about costs from that which would otherwise have been taken. It would be wrong to pin a costs responsibility on the LSC which would not otherwise have been ordered against the publicly funded individual concerned (s 22 of the Access to Justice Act 1999).
5. The decision in *Calderdale* suggests that wheresoever possible, issues regarding payment for jointly commissioned assessments and reports should be resolved by agreement in a collaborative way, having regard to the guidance which may appear in reported authorities and to the particular circumstances of the case in question.
 6. The judgment makes it clear that there will be cases where a party has intervened on a discrete issue (for example, as to contact) and should plainly not be required to join in the costs of a jointly commissioned report on other issues (para 53). Likewise, it was accepted that there will be some cases where even though it is determined that the costs of a joint report should in principle be shared, some apportionment other than equally between the parties would clearly be appropriate. Ultimately apportionment is a matter for the discretion of the court (para 54).
 7. The Commission accepts that suppliers should seek to agree apportionments, having regard to the guidance given in the *Calderdale* case and that where an apportionment is justified this may generally be on a proportionate or pro rata, rather than moiety basis. However, having regard to the exceptional expense involved, suppliers should not agree the apportionment of residential assessments but rather put them to the court for consideration and possible adjustment (see para 8 below).
 8. Although it has always been the position of the Commission that assessments under s 38(6) of the Children Act 1989 should be borne by the local authority alone, the position has now been considered by Ryder J in *The London Borough of Lambeth v S*, 3.5.05, reported in The Times 19.5.05. He decided that:
 - The *Calderdale* headcount criteria apply to s 38(6) residential assessments. The apportionment between the parties is at the discretion of the court but there could be a discount to reflect the fact that a local authority would otherwise have to incur placement costs for the child(ren).
 - The Community Legal Service Fund can meet the costs of treatment, therapy or training – this decision is reversed by an amendment to the Funding Code, paragraph 1.3 (see para 5.9 below),
 - The Community Legal Service Fund can meet the consequent accommodation costs and subsistence costs of funded clients.
 - Generally all those involved have an interest in the use and instruction of an expert and should contribute to the cost but those who are disinterested/opposed may not need to contribute.
 - The court can bind the costs assessing authority as to the principle of involving the expert and as to the apportionment of the costs. The costs themselves remain to be considered by the costs assessing authority or indeed by the Commission on any application for prior authority, payment on account or increase to a costs limitation.
 9. Solicitors are urged not to seek prior authority in cases subject to the Protocol for Judicial Case Management in public law Children Act cases unless the expense involved is exceptional in amount or nature (for example it relates to a residential assessment or is in excess of £5,000 per funded client). This is because the process is discretionary and generally no prior authority is justified to incur costs in relation to obtaining a report or to a court attendance by an expert whose instruction and work has been authorised specifically by the court. Applications for prior authority may serve only to delay the instruction of the expert and the court timetable for the proceedings. However, an amendment to the costs limitation may still be necessary. Where prior authority or an amendment to the costs limitation is sought, details of the work to be undertaken, the rates applied and the total cost apportioned to the funded client must be provided (including, in any case where it is relevant, confirmation that any charges for or expenses in relation to treatment, therapy, training or other interventions of an educative or rehabilitative nature have been identified, costed and excluded).

5.9 Costs of treatment, therapy or training and contact centres

1. It is not the role of the Community Legal Service Fund to meet the costs of, or expenses in relation to, treatment, therapy or training or other interventions of an educative or rehabilitative nature (see Funding Code paragraph 1.3). They must be excluded from any application for prior authority and any bill of costs. This applies equally to public and private law Children Act cases and to any other cases and extends to related expenses such as client travelling or accommodation expenses.
2. Where it is not clear whether such costs or expenses are excluded in a case where this appears to be relevant, an application for prior authority or an amendment to the costs limitation will be refused for further information or confirmation.
3. Suppliers should not reach any agreement which anticipates such costs or expenses being met by a funded client (and therefore indirectly from the Community Legal Service Fund), nor which would transfer liability for payment of an expense on the basis that a particular party is publicly funded.
4. Costs of an assessment of supervised contact (as opposed to supported contact), or an independent social worker's or other assessment of contact may exceptionally be met by the funded client (through the Fund), provided:
 - (a) CAFCASS cannot reasonably be expected to assist through a report or other support;
 - (b) Contact sessions are reasonable both in number and extent, and court has ordered an assessment report of the contact to be submitted to assist in the final determination of an application pending before the court; and
 - (c) Any charges for or expenses in relation to treatment, therapy or training are met elsewhere.
5. Contact centre fees for supported contact are a client expense and not a recoverable disbursement.

REVIEW OF THE FAMILY GRADUATED FEE SCHEME

The review changes to the scheme were implemented with effect from 28 February 2005. Further information regarding the scheme can be found on the Commission's website (www.legalservices.gov.uk).

All work done under certificates issued on or after 1 May 2001 will continue to be paid under the original Family Graduated Fee Scheme. For existing cases the remuneration rates and structure of the scheme remain unchanged except for the provision on submission of claim.

The revised scheme **only** applies to new certificates issued or amendments made to add new proceedings to an existing certificate on or after 28 February 2005.

The two payment schemes will be running simultaneously for some time to come.

1 The Structural Changes

Committal Proceedings in Category 1

Committal hearings within category 1 family injunction proceedings were paid, as an

enforcement process, under Function F2. The revised scheme provides for the payment of committal hearings as a Function F3.

Enforcement Proceedings and Contested Injunctions within Category 4

The particular difficulties involved with enforcement or contested injunctions within ancillary relief proceedings will now be remunerated by an additional payment.

Conferences and Written Work

In the original scheme, conferences (F4) and written work (F1) were limited to one per set of proceedings. For cases falling within the revised scheme, the number of conferences and advices that may be claimed for each set of proceedings increases to a maximum of two.

Special Issue Payments

Under the original scheme there were seven generic special issue payments available across all four categories. The wording of the scheme restricted the ability to claim special issue payments in Functions F2 and F3. The Commission's Costs Appeals Committee clarified (POP CLA31) that each of the seven special issue payments is claimable once during the course of a single set of proceedings in Functions F2 and F3.

Within the revised scheme there are now ten potential special issue payments, but these are category specific so that payment is only available for those special issue payments that are most relevant in each category – see below.

Category 1 – Family Injunctions

Litigant in Person – 10%
More than one Expert – 10%

Category 3 – Private Law Children

Litigant in Person – 30%
More than two parties – 30%
Client difficulty in giving instructions etc – 25%
More than one Expert – 50%

Foreign – 30%
Conduct – 50%

Category 2 – Public Law Children

More than two parties – 40%
Client difficulty in giving instructions etc – 25%
Parents/allegations against others – 25%
More than one Expert – 15%
Foreign – 25%
Conduct – 20%

Category 4 – Other including Ancillary Relief

Litigant in Person – 25%
More than two parties – 10%
Analysis of accounts – 50%
Expert – 25% (note: definition of expert has changed in this category to one or more)
Foreign – 25%
Assets – 25%
Conduct – 50%

The restriction on special issue payments have been lifted so that whenever a special issue payment has been verified, irrespective of function, they will be paid and the calculation is based on the multiple of any hearing units.

The three new special issue payments relate to :

- (i) **Parents/allegations against others** – the representation of a parent or others within public law Children Act proceedings who are the subject of allegations. This special issue payment is automatic for those representing parents but subject to the substance and relevance test for those acting for others.
- (ii) **Client difficulty in giving instructions or understanding advice** – this special issue payment is available in both public law Children Act and private law Children Act cases to reflect the additional work required in the representation of clients who have difficulty giving instructions or understanding advice either because they are suffering from a diagnosed mental disorder or have significant impairment of intelligence or social functioning. *This is an automatic special issue payment but verification should be after the production of a medical report to the court prior to verification.*
- (iii) **Analysis of Accounts** – in ancillary relief proceedings the additional work necessary for considering the accounts in complex financial situations is remunerated by this

new special issue payment. These are usually business accounts but may also include accounts relating to trusts and investments.

NB: In Category 4, the definition of experts has been changed to one or more experts to recognise the fact that in ancillary relief proceedings there is rarely more than one expert used. For the avoidance of doubt a valuation of the matrimonial home is not an expert's report.

Assessment Issues*Work in the Family Proceedings Court*

In cases within the Family Proceedings Court where no prior authority has been granted, it was open on assessment for the assessor to accept that prior authority would have been reasonable if the complexity of the case required the use of both solicitor and counsel.

The payment of the fixed family graduated fee has occasioned hardship to solicitors where counsel is instructed in the magistrates' court in those cases where prior authority was not or was unlikely to be granted as the maximum fee principle then applied.

The Bar Council and the Law Society agreed in late 2004 that in the Family Proceedings Court, where counsel has a prior authority, or would get a prior authority on assessment, the family graduated fee should be payable. In all other cases however, counsel should be paid what the solicitor would receive in payment for the work done. This would be the time spent

calculated at the solicitor's hourly rate under the Legal Aid in Family Proceedings (Remuneration) Regulations 1991, including any enhancement applicable to the advocacy or other work undertaken by counsel.

The Funding Order now reflects this agreement for cases within the revised FGF scheme. The CLS CLAIM 5 has been amended to allow counsel to claim either the family graduated fee (in circumstances where prior authority has been granted or counsel believes it should be granted on assessment) or alternatively the time spent, using a breakdown of the time at the solicitor's hourly rate, for cases where prior authority has not or is unlikely to be granted.

Submission of Final Claims

The time limit for counsel under the original scheme was originally three months from discharge or revocation, whilst solicitors remained subject to the requirement of the Civil Procedure Rules that detailed assessment should be commenced within three months of the final hearing or the order concluding proceedings. The Commission's own late claim provisions for legal aid only costs mirror that three-month requirement.

In order to improve the interaction between solicitors and counsel in the submission of final claims, the Funding Order now requires counsel to submit the final claim for work done within two months of the date of the final hearing or within two months of revocation or discharge, if that happens earlier. This new time limit was immediately effective and applies to all FGF claims arising either from final hearings concluding, or discharge/revocation certificates issued on or after 28 February 2005.

Queries

Whilst the Commission is working actively with the Law Society to find solutions such as those above, individual suppliers are welcome to provide suggestions as to how the interaction between the payment schemes for counsel and solicitors may continue to improve. Any queries on the revised scheme or how it operates in practice can be addressed to Ruth Symons at ruth.symons@legalservices.gov.uk

PUBLIC INTEREST ADVISORY PANEL SUMMARIES

The Public Interest Advisory Panel (PIAP) reports to the Commission on cases that 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* 32-47. 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/05/289

Nature of Case

Proposed claim in negligence for damages against the Home Office in respect of a prison disciplinary adjudication.

Report of Panel

In the Panel's view, the only basis upon which this case would have been able to establish public interest would have been if it had the potential to lead to improved adjudication procedures through the establishment of training and appraisal procedures for adjudicators. However, on the evidence before the Panel, it appears that the Home Office already has training and appraisal processes in place in respect of adjudicators. It therefore appears unlikely that this case would produce any such benefit.

Therefore, the Panel did not consider that this case had significant wider public interest.

Conclusion

No significant wider public interest

PIAP/05/291

Nature of Case

Proposed claim in negligence against the Merseyside Police in respect of their alleged failure to protect the identity of a witness for the prosecution in a murder trial.

Report of Panel

The Panel considered that this case was likely to turn on its own facts. It is settled law that a duty of care exists when dealing with witnesses to crime. The opinion (dated 28 November 2002) indicates that the Police accept this. This case would therefore simply be an application of the existing case law and would not establish anything new.

In addition, there is no evidence to suggest that there is a widespread problem with witness protection that this case had the potential to assist with. In this regard the Panel noted that there had been significant changes made to the procedure for dealing with witness protection since 2001.

Conclusion

No significant wider public interest

PIAP/05/292

Nature of Case

Proposed claim for damages against the Child Support Agency (CSA) in respect of the manner in which maintenance calculations are undertaken.

Report of Panel

The Panel accepted that this case raised a point of law of public importance as the CSA scheme deprives the applicant of bringing an action for maintenance against her former husband and then prevents her from collecting maintenance based on his full income.

The Panel was concerned that at this stage it had not been provided with detailed legal analysis setting out the precise application of the ECHR to the claim. However, the Panel noted that this was an application for Investigative Help only, so did not consider that it would be reasonable to expect the same level of detail from such an application compared to cases that were further along in the process.

The Panel was content to accept that the case had significant wider public interest at this time. However, the Panel asked that counsel, in providing the opinion requested, address in detail the legal basis of the case.

The Panel indicated that it would be happy to review this decision once the investigative process was complete.

Conclusion

Significant wider public interest

Rating

Significant (at this stage)

PIAP/05/293

Nature of Case

Proposed claim for damages pursuant to s 7(1) of the Human Rights Act 1998 for breach of Article 5 of the ECHR.

Report of Panel

The Panel accepted that this case has significant wider public interest. In particular the Panel considered that this case raised a serious question of whether a prisoner's recall could be set aside before detention. While the Panel recognised that s 39 of the Criminal Justice Act 1991 does not explicitly allow for this, there may be force in the Applicant's contention that it is possible to read in such a power, particularly in light of the state's obligations under Article 5 of the ECHR. The Panel considered that this case therefore had the potential to create an additional safeguard to ensure that people were not imprisoned for purely administrative reasons.

Conclusion

Significant wider public interest

Rating

Significant

PIAP/05/294

Nature of Case

Application for Investigative Help in relation to a clinical negligence claim against an NHS trust arising from the applicant's infection with MRSA while a patient at a trust hospital.

Report of Panel

The Panel considered that this case has significant wider public interest as it has the potential to establish specific duties under the

Control of Substances Hazardous to Health Regulations 2002 in respect of MRSA. Such a development could lead to greater measures being put in place to protect patients from MRSA. In addition, it would create a new cause of action for subsequent litigants in proceedings in relation to MRSA.

The Panel did request that they be given the opportunity to review their finding in this case once the investigative stage is complete.

Conclusion

Significant wider public interest

Rating

High (at this stage)

PIAP/05/290

Nature of Case

Proposed judicial review of the decision of the Secretary of State for Work and Pensions to refuse to award the applicant, who originated from one of the accession countries to the EU, income support on the basis that she did not have the right to reside in the United Kingdom.

Report of Panel

The Panel agreed that this case had the potential to produce significant financial benefits to a large number of people. While solicitors estimate this to be around 1,000 people per year who currently reside in the UK, the Panel considered that the case could result in a substantial increase in migration into the UK from the A8 countries. In addition, this case raises fundamental issues in relation to the operation of European treaties in the United Kingdom.

Conclusion

Significant wider public interest

Rating

High/exceptional

PIAP 05/297

Nature of case

A proposed Judicial Review of a decision by West Yorkshire Police and Leeds City Council to publicise an Anti-Social Behaviour Order (ASBO) made against the applicant by the Leeds Youth Court as a bolt-on in criminal proceedings.

Report of Panel

The Panel considers that the law relating to the publicising of ASBOs has been established by the case of *Stanley v Brent* [2004] EWHC 2229 in which the court stated that there was nothing inherently objectionable in publicising such orders. The Panel considers that the general principles established under *Stanley v Brent*, which related to an ASBO arising out of civil proceedings, would also cover the applicant's ASBO, which arose out of criminal proceedings. The Panel also considered that section 39 of the Children and Young Persons Act 1933 lifted the reporting restrictions on ASBOs made against young people in criminal proceedings.

Conclusion

No significant wider public interest

PIAP 05/300

Nature of Case

Proposed claim for damages against Hertfordshire County Council and the London Borough of Lambeth for human rights breaches under Article 5 of the ECHR.

Report of Panel

The Panel considered that this case had a significant wider public interest on the point of whether there is a cause of action against the London Borough of Lambeth for its part in any delay in the discharge of the applicant when the duty under section 117 of the Mental Health Act for after care services rested with Hertfordshire County Council.

Conclusion

Significant wider public interest

Rating

Significant

PIAP05/301

Nature of the Case

The applicant is seeking to bring proceedings under the Fatal Accidents Act and Law Reform (Miscellaneous Provisions) Act following the overdose death of his daughter, while in care.

Report of Panel

The Panel considered that the proposed proceedings would not bring about any changes in procedures additional to those recommended by the Area Child Protection Committee Report. The Panel acknowledged the tragic impact on the family and offered their sympathy. Nevertheless, they considered that the pursuit of this matter would not bring any benefits to others.

Conclusion

No significant wider public interest

PIAP 05/302**Nature of Case**

The applicant is seeking to bring judicial review proceedings against the London Borough of Ealing for its decision to grant planning permission for the building of a medium secure unit for women on the site of a closed hospital.

Report of Panel

The Panel agreed with the Funding Review Committee's reasons for refusing funding in this case and cannot see any significant benefits that will flow to others.

Conclusion

No significant wider public interest

PIAP/05/295**Nature of Case**

This is an application for Investigative Help to examine the basis for a claim of unlawful detention and aggravated damages against the Home Office.

Report of Panel

The Panel was concerned that this application did not set out the basis of the proposed claim nor did it provide any evidence in support of the alleged link between the fast track procedure and the period of detention.

The Panel accepted that any challenge on the right to detain asylum seekers that has a legal basis is likely to have significant wider public interest. However, on the information provided with this application, this was not such a challenge.

Conclusion

No significant wider public interest

PIAP/05/299**Nature of Case**

This is an application for judicial review of the Department of Health's policy of restricted advertising of post-exposure prophylaxis (PEP) treatment to reduce the risk of HIV infection.

Report of Panel

The Panel accepted that this case had significant wider public interest, in terms of the Funding Code as, if successful, it would have significant impact on the nature of the duty that exists between the Department of Health and health care consumers. However, the Panel considered that even if this case were ultimately unsuccessful, there would be substantial benefit in judicial consideration of the points raised.

Conclusion

Significant wider public interest

Rating

High

PIAP/05/296**Nature of Case**

This is a potential damages claim under the Human Rights Act 1998, against the Home Office, for inhuman and degrading conditions of detention.

Report of Panel

The Panel accepted that the merits of this case were strong on its own facts. However, they were not convinced that it would result in benefits for sufficient numbers of people to meet the test for significant wider public interest under the Code.

In particular, the Panel noted that current government guidelines accept that police station accommodation is unsuitable for long-term detention and seek to restrict its use to no more than two days. The evidence provided with this application did not indicate that currently there was a widespread failure to comply with these guidelines. Therefore, it did not appear that this action would result in any change that would benefit significant numbers of people.

Conclusion

No significant wider public interest.

PIAP/05/303**Nature of Case**

Proposed judicial review proceedings in respect of a decision of the City of Westminster in relation to a homelessness application.

Report of Panel

The Panel accepted that the central argument in this case, namely whether when a local authority relies on section 193(6)(b) of the Housing Act 1996 to claim that its duty to provide accommodation has ceased (on the basis that the claimant has made themselves intentionally homeless), the authority then owes a lesser duty under section 190(2) – being, to secure accommodation while the claimant finds his or her own accommodation; and to provide advice and assistance in his or her search for accommodation, had significant wider public interest. The outcome of this case would affect large number of council housing users.

While the Panel recognised that this case was academic in terms of this applicant, they noted Counsel's argument that it is difficult to find a test case in this area that does not become academic prior to full consideration by the court.

Conclusion

Significant wider public interest

Rating

Significant

PIAP/05/304**Nature of Case**

Proposed claim in negligence for damages against the Home Office in respect of a prisoner whose cellmate committed suicide.

Report of Panel

The Panel accepted that this case had significant wider public interest under the Code. The Panel considered that the primary/secondary victim point that had been considered at length in the decision by the court when refusing to enter summary judgment on behalf of the Home Office would have significant wider public interest on its own. However, they recognised that judicial consideration of the additional point raised by solicitors regarding the procedures the prison service use when dealing with prisoners assessed as a suicide risk could also lead to benefits to other prisoners at risk of suicide.

Conclusion

Significant wider public interest

Rating

Significant

PIAP/05/305**Nature of Case**

Proposed claim for compensation under the Disability Discrimination Act in relation to the applicant's treatment by the Stoke on Trent City Council.

Report of Panel

The Panel was disappointed with the referral of this case. On the information provided there was no identified cause of action, no discussion of the proposed merits of the case and there was no information provided that would support a contention that this case would benefit others.

The applicant clearly has a complaint against the local authority, which may be legitimate, but this is not an appropriate case to attract public funding for litigation.

Conclusion

No significant wider public interest.

PIAP/05/307**Nature of Case**

Proposed proceedings in the High Court for a declaration of incompatibility in respect of the requirements of indefinite registration under the Sex Offenders Act 1997 and the Sexual Offences Act 2003.

Report of Panel

This case involves a direct Human Rights Act challenge to a major piece of legislation that will increasingly affect large numbers of people. There would be significant benefits to those currently affected if this case were successful. While the Panel was not convinced by the applicant's enthusiastic assessment of the likelihood of success, the case could not be rejected as hopeless. The Panel accepted that there was significant wider public interest in this case.

Conclusion

Significant wider public interest

Rating

Significant

PIAP/05/308**Nature of Case**

Proposed proceedings seeking a declaration of incompatibility between the compulsory nature of the issue of a Hospital Order following the issue of a "special verdict" and article 5 of the ECHR.

Report of Panel

Despite counsel's advice on merits and damages, which the Panel did not accept, the Panel were concerned that the likely numbers affected by this legislation may be small. However, the Panel recognised that the likely effect on these people would be substantial.

Overall, the Panel concluded that this case did have significant wider public interest as it was a proper Human Rights Act challenge to an older piece of domestic legislation that, on the facts of this case, appears to lead to an illogical result.

Conclusion

Significant wider public interest

Rating

Significant

PIAP/05/309**Nature of Case**

Proposed appeal to the House of Lords from the judgment of the Court of Appeal in judicial review proceedings concerning the ability of local authorities to take into account parents' means when deciding whether or not to provide services to disabled children.

Report of Panel

The Panel acknowledged that this case concerned a very difficult area of law that would benefit from consideration before the House of Lords. If the House of Lords do grant leave then it will only be on the basis of public interest.

The Panel considered that the fact that the applicants in this case were currently abroad did not alter their decision as the applicants have indicated that they are returning to the

United Kingdom. In any event, consideration of this point would have significant benefits to many others beyond the applicants themselves.

Conclusion

Significant wider public interest

Rating

High

PIAP/05/310**Nature of Case**

Proposed action for false imprisonment and malicious prosecution against the Chief Constable of Humberside Police.

Report of Panel

The Panel acknowledged that the general area of anti-social behaviour control mechanisms is expanding and many challenges have public interest. In this case, the Panel concluded that there was potential public interest in the narrow point of the scope of a direction to disperse. In particular, whether such a direction prevents reformation at a later stage and whether special consideration should be given for people who live in the area in which the direction was given. However, it appears that this is not a central issue in this case, which will focus on the matters of the definition of "public place" and the applicant's age at the time the direction was given. Neither of these points was considered to have public interest, as defined by the Code.

Similarly, the Panel did not consider that the article 5 point raised in the application would have significant wider public interest, as it appeared any consideration of this point would be limited to the particular facts of this case.

The Regional Office will need to determine the application as a whole, bearing in mind the Panel's finding that SWPI would only attach to one aspect of the case.

Conclusion

Significant wider public interest

Rating

significant

PAYMENT DATES *for the second half of 2005*

The proposed payment dates for the second half of 2005 are set out below. These dates may be subject to amendment, but we will inform you of changes in advance where possible.

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

If you are still being paid by cheque, we recommend that you change to BACS, which is a more efficient payment method.

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

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

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

Keeping us up to date

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

CONTRACT PAYMENTS	1ST SETTLEMENT OF THE MONTH	2ND SETTLEMENT OF THE MONTH
WEDNESDAY 6 JULY 2005	THURSDAY 7 JULY	THURSDAY 21 JULY
THURSDAY 4 AUGUST 2005	THURSDAY 11 AUGUST	THURSDAY 25 AUGUST
TUESDAY 6 SEPTEMBER 2005	THURSDAY 8 SEPTEMBER	THURSDAY 22 SEPTEMBER
THURSDAY 6 OCTOBER 2005	THURSDAY 13 OCTOBER	THURSDAY 27 OCTOBER
FRIDAY 4 NOVEMBER 2005	THURSDAY 10 NOVEMBER	THURSDAY 24 NOVEMBER
TUESDAY 6 DECEMBER 2005	THURSDAY 8 DECEMBER	THURSDAY 22 DECEMBER

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