



Carolyn Regan the LSC's new Chief Executive gives her view

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Market Stability details of our new consultation paper

LEGAL PAGE 12

Issue # 52
December 2006

www.legalservices.gov.uk

The service provider newsletter of the **Legal Services Commission**

focus

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A sustainable system

On 28 November 2006 DCA ministers and the LSC announced a major programme of reform as part of the modernisation of the legal aid system to provide a sustainable scheme for access to justice for vulnerable people.

Stemming from Lord Carter's review of legal aid procurement, and following one of the largest consultations in LSC history, at a joint press conference, the Lord Chancellor, Vera Baird QC MP and LSC Chief Executive Carolyn Regan launched the document 'Legal Aid Reform: the Way Ahead'. The new plans contained some changes from those outlined in the original consultation proposals.

In civil, a number of the schemes will be implemented in October 2007 and not April. In order to prepare for the replacement for Tailored Fixed Fees for solicitors and not-for-profit agencies, a new unified contract, starting with standard terms, will be introduced from April next year (see page 13). This will bring law firms and NFP agencies under the same contract conditions. Revised Care Proceedings

Graduated Fees will start in October 2007, apart from advocacy, and consultation will take place on that early in 2007. An early consultation and implementation in October 2007 also applies to revised graduated fees for 'Family Law – Private' work.

In the criminal scheme, fixed fees for police station work will be introduced in October 2007, as opposed to April and they will be set according to new boundary areas, which allow for sensitivity to local conditions, instead of setting them by Criminal Justice System area. In the magistrates' court, revised standard fees are being introduced in main urban areas from April 2007, which will include an element of travel and waiting. Crown Court litigators graduated fees will now be introduced in October 2007 as opposed to April.

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Carolyn Regan, Lord Falconer and Vera Baird

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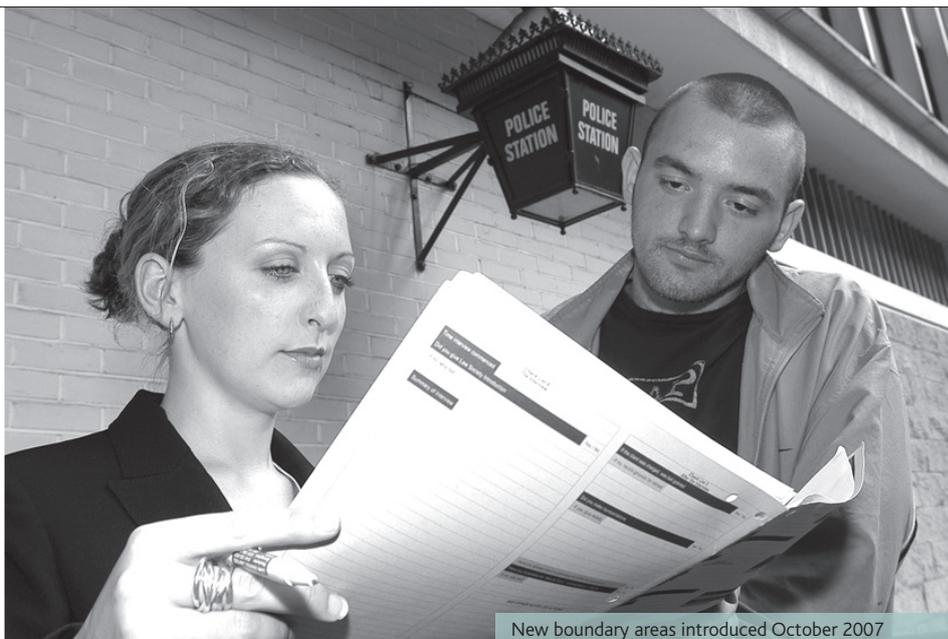
Also in crime, best value competitive tendering was initially proposed for 2009, but will now be introduced in October 2008 – this allows the market to set the rate for services as soon as possible, and October 2008 is also when single graduated fees scheme will begin in the Crown Court for litigators and advocates. At the launch a new consultation was also announced: 'Market Stability Measures' contains proposals to ensure the duty solicitor scheme remains stable as a market based approach moves nearer (see page 12). Further news on the LSC's Preferred Supplier scheme was not announced at the launch, but more details will be released shortly.

Lord Falconer described his vision of a legal aid system that 'continues to provide high quality advice while remaining financially sustainable and fit for the demands and challenges of the 21st century' and Vera Baird commented that the reforms will 'safeguard access to justice for the socially excluded ... with the aim of re-balancing towards a greater provision of legal aid for civil law.'

All contract holders have been sent a copy of the consultation response and it can also be viewed online at www.legalservices.gov.uk on the homepage.

New look Focus

Your free Focus newsletter has been re-designed to make it more informative and easier to read. It's now divided into three sections - News, Comment and Legal. This means that as well as all the usual LSC legal and technical information to keep you updated, you will now be able to read the latest news from the LSC, along with comment and opinion from senior officials on our latest initiatives. The Proposed Payment Dates keep their useful position on the back page. We have also changed our banner to the lead LSC corporate colour, so Focus is no longer green. The re-design of this newsletter was undertaken in-house in the LSC's Communications department. Please fill in and return the survey card with this issue - your views are important to us.



New boundary areas introduced October 2007

Police station proposals

Lord Carter set out a series of proposals for police station procurement in his report. In April 2007 a series of market stability measures will be introduced (see the article on page 12).

In October 2007 revised boundary areas and associated new working arrangements will be introduced. Fixed fees will be developed in line with the new areas. All of the proposals will be jointly consulted upon in early 2007.

Boundary areas

The LSC will develop new boundary areas within which service providers will work; the first draft of these areas will be available from February 2007. The LSC will undertake significant engagement with stakeholders at a local level on the details of the schemes.

Providers will have three methods of obtaining work under the scheme. Firstly they can accept an own client referral from within the boundary area. Secondly, they will be assigned a number of duty slots within the boundary area. Thirdly, they will be able to accept a fixed number of own client cases from outside their boundary area. The LSC is currently designing the process of assigning duty solicitor slots within the boundary areas.

CDS Direct

All requests for advice – both own client and duty solicitor work – will be routed through the duty solicitor call centre, starting October 2007. The LSC will look to work with representative bodies in developing the necessary procedures to govern this.

Fixed fees

Providers will be remunerated under a fixed fee system for police station cases. These fees will be calculated by reference to each specific boundary area in order to be sufficiently sensitive to local conditions. This will be a single fee inclusive of travel, waiting and VAT which will remunerate police station attendance cases. There will be provision for a limited number of cases that require substantial preparation to receive additional remuneration beyond a specified numbers of hours already undertaken by providers. The fee will be fixed and will not differ whether the case was an own client or duty or whether it is undertaken out of hours or not.

Roll out of contracts let through best value competition will begin by October 2008. This will enable quality assured providers to set the market price for providing services in a competitive market and allow them a period of one year to work under fixed fees in their boundary area. During this time they can undertake any necessary reorganisation in order to maximise their efficiency in advance of tendering. Police station, magistrates' court and Crown Court work will be tendered.

@ CONTACT & INFORMATION

CDS Policy Directorate

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Magistrates' court changes

In his report, Lord Carter proposed changes for magistrates' courts which are listed below, along with how these have been changed following the consultation.

including VAT	Category	Lower	Lower	Higher	Higher
		Current	New	Current	New
London	1	£262.32	£334.10	£621.87	£718.10
London	2	£461.72	£569.40	£1,037.11	£1,181.45
National	1	£203.80	£260.36	£490.21	£560.95
National	2	£359.84	£444.68	£825.32	£931.43

Lord Carter's proposals were:

- > revising the current standard fees to incorporate an element of travel and waiting from April 2007;
- > further work to develop a graduated fee for magistrates' court work to be introduced from April 2008;
- > consideration of alternative arrangements for payment of assigned counsel to also be introduced from April 2008; and
- > introduction of a competitive market from 2009/10.

Having carefully considered our response to Lord Carter's recommendations, as well as the responses received to the consultation, the DCA and LSC have noted that the current system of standard fees operating in the magistrates' courts had been broadly successful - it has controlled unit costs and is largely accepted by providers as a fair method of remuneration. The revised standard fees will begin to be introduced from April 2007. Having, in particular, considered the arguments that there will be a disproportionately high impact of the changes on rural and remote providers, it has been agreed that initially the revised fees will only be introduced in the main urban areas so that the LSC can have the opportunity to measure the exceptional costs, outside these centres, and, if necessary put in place mechanisms to deal with them before implementing fixed fees there.

In implementing these fees initially in urban areas there will be an opportunity for providers to concentrate the work that they undertake in specific courts and therefore will be able to take advantage of the efficiencies available. These changes will enable providers in these areas to begin to prepare for a competitive market from October 2008. The proposed standard fees were

published in Annex 4.3 of Lord Carter's report for category 1 and 2 fees and are replicated above. At the time that the report was published no fees were proposed for category 3 (committals) fees as it was anticipated any magistrates' court work would be remunerated as part of the Crown Court case in the future. This will be the case when the Litigator Fee is introduced in October 2007, but in the interim revised fees, calculated on the same basis as the other categories, will be used for committal cases.

From April 2007 there will be twin mechanisms for claiming for magistrates' court work with the fees proposed by Lord Carter applying in specific geographical areas and the existing remuneration arrangements applying elsewhere. During December we will be publishing details of the areas in which the fees will initially be introduced and the revised fees for category 3 cases. This information will be published alongside the consultation on amendments that will be needed to the General Criminal Contract (Specification) to implement the change.

We will continue to work on developing mechanisms to enable the revised fees to be implemented in other areas. This work will be undertaken alongside the development of graduated fees for magistrates' court work, although the feasibility of introducing a graduated fee in advance of competitive tendering will need to be reconsidered in light of the proposals to begin the rollout of a competitive market from October 2008.

For more information, please e-mail the CDS Directorate at the address below.

@ CONTACT & INFORMATION

CDS Policy Directorate

e-mail: cds.directorate@legalservices.gov.uk

Very High Cost Criminal Cases

As stated in the Government's consultation response, the LSC intends to implement Lord Carter's recommendations to create a panel of service providers for VHCC work, presently planned for October 2007.

We believe that better value can be obtained by reduced pricing, together with a stronger focus on the efficiency of panel members through the use of in-house lawyers, referral and audit panels and by having a stronger contract and best value protocol. In return the panel offers service providers the prospect of a more regular workflow than at present.

A lot of detail still needs to be provided about specific qualification criteria, team definition and how the panel will be set up. The consultation papers with the LSC and Bar Council will cover all this work at the end of January. This will also set out the timetable up to the selection of the panel to enable providers to plan ahead. In the meantime, even though consultation may change things, providers may want to be thinking about:

- > whether they meet the qualification criteria in the Carter report and, if not, how they could achieve this;
- > if there is an opportunity for them to do more work but at reduced price – what their appetite is for this, and what changes if any they might need to make; and
- > how they should plan to put the solicitor team and advocates list in place to be able to respond to the structure outlined by Lord Carter.

For firms that do not qualify for panel membership, we will describe what options are available for them to improve prospects of being candidates for the second panel. Questions and Answers from the VHCC briefing meetings with solicitors and barristers are available on the LSC website (www.legalservices.gov.uk) in the Criminal Defence Service/Consultation pages. For further information, please also see the article on page 9.

Timetable for the reforms

When	Crime	Civil, Family & Immigration
November 06	<ul style="list-style-type: none"> > LSC to issue consultation paper to market stability measures 	
December 06	<ul style="list-style-type: none"> > LSC to announce detailed arrangements for revised magistrates' court standard fees 	<ul style="list-style-type: none"> > LSC to issue draft unified contract for final consultation, until the end of January
Late 06 / early 07		<ul style="list-style-type: none"> > DCA to consult professional bodies on revisions to CLS regulations to implement the changes planned for April 2007
Early 07	<ul style="list-style-type: none"> > LSC to publish consultation paper on: <ul style="list-style-type: none"> Local boundary areas New working arrangements Level of fixed fees for police station work at a local level > LSC to publish outcome from Market Stability consultation > LSC to publish VHCC consultation paper on: <ul style="list-style-type: none"> New VHCC contract Expressions of Interest criteria, and panel exclusion criteria. Best Value Protocol > Consultation on new VHCC regulations (including amendment to CDS Funding Order), and new regulations for the Advocates' Graduated Fee Scheme in the Crown Court 	<ul style="list-style-type: none"> > LSC to issue further paper on fee scheme for mental health > LSC to issue further paper on fee scheme for immigration and asylum > LSC to issue revised fee scheme for child care work, with elements for further consultation over a limited period > LSC to issue revised fee scheme for family help-private work, with elements for further consultation over a limited period
April 07	<ul style="list-style-type: none"> > Introduction of revised standard fees for magistrates' court work (larger conurbations) > Implementation of Market Stability Measures (subject to consultation) > Introduction on new arrangements for Advocates' Graduated Fee > Consultation on new regulations to establish the Litigators Fee Scheme 	<ul style="list-style-type: none"> > Introduce the Unified Contract to replace the existing General Civil and Not-for-Profit contracts > Introduce harmonised rates across the Family Proceedings Courts and county courts for private family representation > Introduce measures to provide more pre-proceeding Legal Help
Early Summer 07	<ul style="list-style-type: none"> > LSC to publish outcome from Police Station consultation > LSC to publish consultation on Best Value Tendering 	<ul style="list-style-type: none"> > LSC to consult on proposals for fixed fees for advocacy for solicitors and counsel in family cases, including full representation in family – private (for implementation in April 2008) > LSC to consult on criteria for setting TFF contract level from April 2008 > DCA to consult professional bodies on revisions to CLS regulations and LSC Funding Code to implement the changes planned for October 2007
Late Summer 07	<ul style="list-style-type: none"> > LSC to publish consultation response on Best Value Tendering 	
October 07	<ul style="list-style-type: none"> > Introduction of a new litigators GFS > Implement Police Station fixed fees, new working arrangements and revised boundary areas > Launch of the new VHCCC supplier panel. 	<ul style="list-style-type: none"> > Introduce replacement for Tailored Fixed Fee Scheme for civil and family controlled work > Introduce fee scheme for child care work, other than advocacy > Introduce fee scheme for family help-private work, up to Level 3 (excluding representation at the final contested hearing and then advocacy) > Introduce fee scheme for mental health > Introduce fee scheme for immigration and asylum > Introduce new specification to the Unified Contract to underpin the new schemes
Late 07		<ul style="list-style-type: none"> > DCA to consult professional bodies on revisions to CLS regulations to implement the changes planned for April 2008
April 08	<ul style="list-style-type: none"> > Introduce the Unified Contract for criminal providers 	<ul style="list-style-type: none"> > Introduce fixed fees for advocacy for solicitors and counsel in family cases, including full representation in family – private
July 08		<ul style="list-style-type: none"> > DCA and LSC to report on possible changes to civil representation remuneration
October 08	<ul style="list-style-type: none"> > Rollout of Best Value Tendering 	

Crown Court remuneration

Following the end of the consultation period for Lord Carter's Review of Legal Aid Procurement, responses to the Crown Court proposals have been reviewed and considered.

The three Crown Court proposals under the Carter Review are:

- > the introduction of a new graduated fee scheme for litigators in the Crown Court from April 2007;
- > the introduction of a revised Advocates Graduated Fee Scheme for Crown Court work from April 2007; and
- > consideration to be given to the harmonisation of the separate litigation and advocacy graduated fee schemes into a single graduated fee for all defence services in the Crown Court, for implementation as soon as possible after 2009.

A new graduated fee scheme for litigators

The Carter Review developed a litigator fee scheme with the following elements:

- > a base fee that varies according to offence type and that covers the first two days of trial;
- > daily trial uplifts that only begin to be paid where the trial exceeds two days;
- > uplifts on pages of prosecution evidence beyond a specified minimum (dependant on class of offence and case type);
- > uplifts that are tapered over the course of the case so that payment is front loaded to reward early preparation and resolution of cases;
- > uplifts that vary with the number of defendants;
- > a payment for cracks and guilty pleas that represent a proportion of the trial fee; and
- > fixed fees for some non-trial events (eg committals for sentence, appeals against sentence).

Responses to the consultation highlighted two main concerns about the scheme. The first focused on the taper which was built into the



Crown Court scheme now re-modeled

scheme and which affected the fees for larger cases, resulting in inadequate payments for those cases. The second concern was that the 'proxies' used to build the fee (trial length and numbers of pages of prosecution evidence), were not able to adequately remunerate complex cases, where factors such as a vulnerable client or a client that requires an interpreter may have a significant effect on the hours spent preparing the case.

As a consequence of the concerns, the LSC has re-modeled the scheme to remove the taper. This significantly improves the payments for larger cases within the fee scheme. As well as the removal of the taper, the LSC has also made a minor redistribution of the fee so that the larger cases have improved remuneration through increased uplift payments. The LSC is satisfied that the proxies in the Litigator Fee are the correct proxies, based on the fact that the proxies are universal and apply to all cases. The Litigator Fee will now be introduced in October 2007. Discussions will continue with the Law Society in the meantime.

A revised advocacy graduated fee scheme

The Carter Review proposed the following amendments to the Advocates Graduated Fee Scheme:

- > enhanced base fees that include payment for the first two days at trial and incorporate the majority of ancillary payments that are currently paid as ancillary fees;

- > uplifts limited to pages of prosecution evidence, number of prosecution witnesses and length of trial – length of trial only begins to be paid where the case exceeds two days;
- > each case fee payable to a single advocate as identified at the outset of the case; and
- > the introduction of revised case categories to allow different fees for those advocates undertaking the most challenging cases.

These proposals have met with a positive response following consultation and the LSC and the Department for Constitutional Affairs have continued discussions with representative bodies, in particular with reference to the practical implementation of the single, instructed, advocate principle. The amendments will be introduced in April 2007.

Single graduated fee

The proposals for the new litigator graduated fee and the changes to the advocate graduated fee have been designed to allow harmonisation of the schemes into a single graduated fee. The implementation of the Single Graduated Fee will coincide with the introduction of Best Value Tendering in October 2008.

@ CONTACT & INFORMATION

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Record numbers online

LSC Online, our free and secure electronic billing service, continues to grow in popularity among providers and is a key element of our e-business strategy.

LSC Online now electronically processes over 60% of claims that were previously input at our processing centre and almost 2,700 providers submitted claims electronically in November 2006. Every month, approximately 100 providers change from sending in paper claims to making electronic submissions. By April 2008, all providers must be making work submissions electronically, but you are recommended to register as early as possible to begin enjoying the advantages.

LSC Online can deliver many practical benefits to your firm and the LSC, which include lower administration costs for your firm and the LSC, by reducing paper-based interactions, which will allow you to spend more time with your clients and allow us more time to sustain a positive working relationship with you. It also gives an extension to the usual processing centre deadlines for making work submissions, from the 10th to the 20th of each month, and the facility to make submissions between 7am and 11pm any day of the week. There is greater control over the accuracy and security of your claims, by avoiding transcription errors and lost claims and you have the ability to view your most recent financial statement (solicitor firms only).

We will be making further improvements to our online systems, which will provide you with the ability to maintain your own reference and contact data online, giving you greater control over its accuracy. It will also feature automatic calculation of fees, which will ease the transition to the new fee schemes in October 2007 and the ability to view your performance against key performance indicators.

These improvements are part of the LSC's delivery of a Supplier Management System (SMS) to support key business initiatives. Moving towards a more e-enabled relationship and business operation will reduce transaction and consumable costs, improve data accuracy and reduce the need for remedial work or reduced claims. The SMS will also assist service providers by giving access to high level data held by the LSC confidentially.

LSC Online has a dedicated team of support staff fully trained to answer any technical query you may have and deliver first-class customer service. The helpdesk is open between 9am and

5.30pm, Monday to Friday.

The Online Delivery teams work closely with software vendors to ensure that your internal systems are compatible with ours. In February 2007 we will publish what the future specification will look like to enable time for us to work with providers and software companies to refine our proposals prior to publication in October 2007.

You will receive all necessary training and support to enable you to use the system effectively and maximise its potential for your firm. All existing online users will find the switch to SMS seamless and appreciate the improvements it makes to the current system.

"LSC Online now electronically processes over 60% of claims that were previously input at our processing centre and almost 2,700 providers submitted claims electronically in November 2006"

For more information and to get registered, call the LSC Online Marketing Team (contact details below) or visit the LSC website. As part of the drive to make greater use of e-business in general, the LSC will need all service providers to have an e-mail address and access to the internet by 1 April 2007. By October 2007 work submissions should be made online and by 1 April 2008 all service providers will need to do this.

The advantages of doing business electronically will create savings in business administration for both the LSC and service providers, and eventually we will carry out all our business electronically.

@ CONTACT & INFORMATION

LSC Online Marketing Team

tel: 0117 302 3117

web: <https://online.legalservices.gov.uk/register.html>

Means testing

On 22 November, Vera Baird QC MP, the Legal Aid Minister, announced important changes to the new means test for legal aid in the magistrates' court.

The new means test was introduced on 2 October 2006 and so far, around 60,000 representation orders have been granted. However, in some areas there have been concerns as to how means testing is operating – the changes aim to address these concerns. They will: guarantee that representation orders start from the date a complete application form is first submitted; improve the Early Cover Scheme; provide greater flexibility around a partner's signature; and improve application forms.

The Minister said: 'It is to the benefit of everyone, not least the client, that where a case can appropriately be dealt with at first hearing that it happens. This is a central part of the Government's aims to streamline criminal justice ... The changes we propose making to the means test are evidence that we have listened to the feedback from solicitors and acted on it. We look forward to engaging with solicitors further.'

Derek Hill, Director of the CDS, wrote to all firms with a criminal contract on the following day. The letter (which can be viewed from the LSC website) sets out the announced changes. The LSC and its partner organisations – the DCA and HMCS – hope that you will feel assured that we have listened to your feedback and acted on it rapidly.

We are aware however that there may be a threat of collective action by solicitors in some areas. We would ask any providers contemplating joining in to reconsider and suggest they read the Law Society's statement which is available on their website at www.lawsociety.org.uk/documents/downloads/dynamic/meanstestingstatement291106.pdf. While we do take issue with some of the comments regarding criminal means testing, we endorse their approach in relation to collective action which is clearly not in the best interest of the client, our primary focus.

Summary of the changes

From 27 November, improvements to the Early Cover Scheme will apply, ie application forms submitted within five working days from the point of first instruction, provided that this is no later than the first hearing, will qualify for the Early Cover payment.

From 11 December, the LSC will formally consult on the Early Cover Scheme. The above-mentioned letter sent to firms amends the contract on Early Cover as of 27 November. However, the consultation will formalise this contract change.

From 11 December, we will have in place clearer guidance relating to applications that are rejected for administrative reasons. This will make it clear that where legal aid applications are returned for administrative reasons, but where the defendant would qualify for legal aid, the solicitor will be granted payment from the date the application was first submitted.

From 11 December, we will accept applications without a partner's signature where: there is evidence that the partner is unable to sign due to exceptional circumstances, for instance, if the person is in hospital or resident overseas; and where written permission is provided by the defendant, to HMCS or LSC, to approach the partner to seek confirmation of the partner's financial circumstances.

From 5 January, subject to receiving positive feedback on the consultation, we will formally introduce the new Early Cover Scheme.

From 22 January, improved application forms and guidance will replace the existing ones. Both the forms and guidance are currently being revised in view of the feedback we have received from the profession.

We also plan to make changes to support solicitors who have clients with serious mental health problems. The LSC will continue to talk to solicitors to ensure that the structure and operation of the new means test system is enhanced where it is appropriate to do so. If you have any queries relating to the system, please e-mail the address below or for more information visit the LSC website and look on the CDS pages.

@ CONTACT & INFORMATION

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News in brief

Reminder: referral fees and delegation

We want to remind solicitors of the Law Society's Solicitors' Introduction and Referral Code 1990 and the supporting guidance given by the Law Society on the Code. (These can be viewed on the Law Society's website.) In addition, solicitors are reminded that the cost of provision of legal advice by a person who is neither a lawyer nor supervised by a lawyer cannot be treated as a disbursement. If practitioners seek the assistance of non-lawyers their costs/charges must be absorbed as an overhead. This is dealt with at para 2.13, sub-para 4 of the Contract Specification. Fees for process serving can, however, be recovered, although they are of course subject to costs assessment in the usual way. For more information please e-mail jane.worsey@legalservices.gov.uk or lynn.graham@legalservices.gov.uk



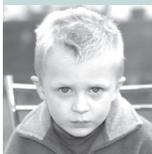
Security

In Focus 49, the LSC reported on the changes it had made to its telephone security checks. Following a recent review, the LSC has now made further changes to this procedure. In accordance with its obligations under s 20 of the Access to Justice Act, the LSC will be unable to discuss confidential information over the telephone without verifying the caller's identity. In order to assist in verifying the identity of a caller, changes have been made in the October 2006 updates to the CLS APP1 and 3 forms. Applicants are now asked to provide a unique Client Security Password. This password will then be requested at the start of any telephone conversation. If you have any further queries please contact your regional office.



Disability Equality Scheme

The LSC is committed to promoting equality and tackling discrimination on any ground including age, disability, gender, race, religion and belief and sexual orientation. As part of our commitment to disability equality, and towards meeting our duty under the Disability Discrimination Act 2005, we have published our Disability Equality Scheme on the LSC website. This sets out the actions that we will be taking to promote disability equality for legal service providers and the clients they serve, and for our staff. A draft version of the Scheme was published in October and the LSC is grateful to those who responded with their views. Following the feedback received we have made a number of changes to the Scheme. We recognise that working towards disability equality is an ongoing process and we will review our performance against our action plan at least annually. As well as checking progress we will ensure that the actions we have committed to remain the right ones and we welcome views and feedback on our Scheme. Contact Kirstie Adams, Equality & Diversity Manager, Secretariat, 85 Gray's Inn Road, London, WC1X 8TX, DX 328 Chancery Lane/London. E-mail: kirstie.adams@legalservices.gov.uk



VHCC family cases

The LSC is to re-introduce case planning for high cost cases in Family with immediate effect. The reason for this change is that the number of certificates with costs approved above £25,000 has risen substantially. The LSC intends to apply greater scrutiny the approval of this level of costs. Case plans provide LSC caseworkers with greater information upon which to determine applications.

Independent Peer Reviewers wanted

Are you an experienced legal aid practitioner who provides a high quality service to your clients, whilst guiding the careers of your colleagues?

If so, you may be interested in becoming an Independent Peer Reviewer. As an Independent Peer Reviewer, you will assess the quality of work carried out by legal aid providers and work with experts from the Institute of Advanced Legal Studies. There may also be opportunities to work with the LSC, influencing future developments on a variety of projects requiring practitioner experience. We are currently accepting applications in the following categories:

- > Actions Against the Police
- > Community Care
- > Consumer General Contract
- > Family
- > Public Law
- > Immigration
- > Welfare Benefits

If you wish to apply, you should be a specialist in your chosen category, with wide casework and supervision experience. You will be contracted to carry out peer reviews and should be available for approximately 36 days per annum while continuing with your usual work under the LSC contract. Fees are payable at the rate of £375 per day plus expenses.

For background information on the peer review process, please see our website at www.legalservices.gov.uk/civil/how/mq_peerreview.asp. For details of the essential and preferred requirements for Peer Reviewers and an application form, please contact us. The closing date for applications is Wednesday 10 January 2007.

@ CONTACT & INFORMATION

The Peer Review Team

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'A first class service'

In the latest client satisfaction survey for Community Legal Service Direct, 95% of clients were satisfied with the service and 98% would recommend it to others.

One client said: 'I think CLS Direct is a first class service. They took the fear and loneliness out of the situation, one didn't feel so victimised or powerless.'

Community Legal Service Direct is a free confidential advice service. It provides help and advice on a range of common legal problems through a national helpline, 0845 345 4 345, a website, www.clsdirect.org.uk, and a series of free legal information leaflets. Callers who live on a low income or benefits can get independent advice about debt, education, benefits and tax credits, employment and housing problems by calling 0845 345 4 345. Calls cost no more than 4p per minute from a BT landline but calls from mobiles are usually more. In 2005/06 73,625 cases were dealt with by Community Legal Service Direct's legal advisers which included almost 30,000 people who were struggling with debt; over 15,000 people who did not receive the welfare benefits they were entitled to; and more than 12,000 people who were facing eviction.

To make the service more accessible over the coming months we will be replacing the

automated menu with operators. They will be able to identify clients' problems, inform them of their legal rights and refer them quickly to other services as appropriate. Clients eligible for legal aid and in need of advice about benefits and tax credits, debt, education, employment or housing will continue to be put through to specialist advisers who can run their case.

Signposting to Community Legal Service Direct can help relieve the pressure on advisers. To help direct clients to the service you could put up our posters and postcards in your reception; give out our pocket-sized booklet to clients; add Community Legal Service Direct contact details to your answer phone; and order free copies of the Community Legal Service Direct legal information leaflets, covering a wide variety of common legal topics

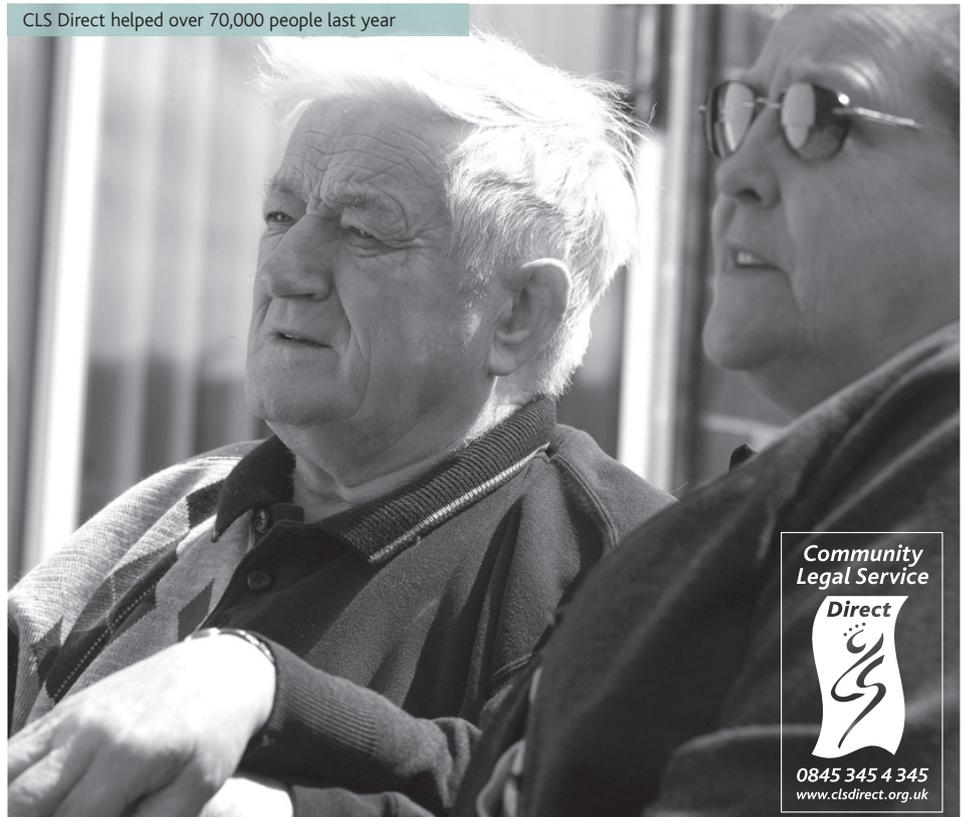
For more information about Community Legal Service Direct or to order publicity materials, please use the e-mail below.

@ CONTACT & INFORMATION

CLS Direct Policy Team

e-mail: judith.cripps@legalservices.gov.uk

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VHCCs and Peer Review

In August 2006 the LSC wrote to all solicitors firms who have signed at least one contract since 1 January 2004, setting out how we plan to implement peer review for the proposed VHCC panel.

The letter also included a form to return to advise of present intentions about applying to join the panel. A copy of the letter and attachments is available on the Peer Review pages of the LSC website. If any defence teams have signed any VHCC contracts since 1 January 2004 and have not received the letter or who consider that VHCC work outside of this period should be included, please e-mail the VHCC Project Team.

Notification

In order that the Complex Crime Unit (CCU) can sign contracts for VHCC cases, the unit must be notified of such cases as soon as the solicitor becomes aware that a case they are instructed in meets the VHCC criteria. Firms are reminded that it is a statutory requirement for all firms to notify the CCU of all new cases falling within the VHCC definition. A VHCC is one that is likely to last for 41 days or more at trial.

When notifying the CCU of a VHCC case, firms should use the new Notification Request Form (available on the LSC website) and complete all the details as accurately as possible. Please e-mail or send VHCC notifications to the address below. If you have any further questions about Carter VHCCs please e-mail the Carter VHCC Project Team at the address below.

@ CONTACT & INFORMATION

Notifications

e-mail: ccu@legalservices.gov.uk

post: Complex Crime Unit, 29-37 Red Lion Street, London WC1R 4PP DX 170 London Chancery Lane

tel: 020 7759 1757 | **fax:** 020 7759 1518

web: www.legalservices.gov.uk

Carter VHCC Project team

e-mail: CarterVHCC@legalservices.gov.uk



Case Study

Protecting people's rights and the role of CDS solicitors

Babatunde Thomas and the CDS

Babatunde Thomas was arrested and charged with conspiracy to supply class A drugs. He was 20 years old, studying Economics at university and sharing a house with three university friends. The police raided two addresses where they believed drug dealers were living. Two of the men were arrested as they stepped out of a taxi and the driver said he had picked them up from Babatunde's address.

Police obtained a warrant to search Babatunde's house. They found a safety deposit box containing large amounts of cash in his room, while Babatunde had £500 in cash on him. He was arrested along with his flatmates and taken to the police station. He was inexperienced, having never been arrested before and decided not to ask for a solicitor.

He explained that the money in his pocket was to pay his rent that day and he knew nothing about the safe in his room. He said that living in a sociable, student house meant there were always lots of people coming and going. Later that night, he and the other men were remanded in custody.

After a failed bail application, McCormacks Solicitors took on Babatunde's case, by which time he had been in custody for almost three months. Police forensically tested the safe and its contents and neither could be connected to Babatunde. The police prosecution discontinued the case as there was insufficient evidence to proceed and Babatunde was found not guilty and discharged. His solicitor said: "If he had asked for a solicitor at first it would have been a lot easier - but he was naive as he had not been in that position before."

The future of the CDS



Derek Hill

Director, Criminal Defence Service

The Government's and LSC's response to Lord Carter's report has now been published. I hope that all crime providers will read it.

Both the LSC and Government are clear about the direction of travel. Our intention is to introduce the first new competitively tendered contracts from October 2008. Best value competition will extend to police station, magistrates' court and crown court work (although there will be separate arrangements for very high cost cases under contract). This will enable the LSC and providers to agree prices for both advocacy and litigators. There is much work to do in order to get to that position and we will be consulting closely on all of the aspects, not least the design of, and the roll-out programme for, best value competition.

In the interim we will be constructing the basis on which best value competition can take place. There are a number of elements to this which include: market stability measures, on which we have released a comprehensive consultation document; the design of new police station boundary areas and fixed fees for police station work, on which we will consult in

February 2007; and litigators' fees, which we will continue to refine in co-operation with the Law Society and interested firms. Magistrates' court fees will be introduced in major urban areas in April 2007; we will be publishing the details very shortly.

One of the principles of our response has been that we should flex our fee arrangements to meet particular concerns, such as rural issues, sensitivity to local conditions and exceptional cases. We have also taken on board the concern of the profession not to introduce fees before the reform of structures. For example, police station fixed fees will be calculated for each new boundary area and should be sensitive to local conditions. Also, because we understand the concerns of the profession about external 'cost drivers', the LSC will redouble its efforts to reduce those costs.

This is a challenging programme, but the profession should now have no doubt about the direction of travel and should be able to plan for the new environment. For our part we remain eager to take every opportunity to explain our thinking in further detail and hear your concerns.

Reform and the CLS



Crispin Passmore

Director, Community Legal Service

The DCA and the LSC have completed one of their largest consultations and our listening response demonstrates our commitment to getting reform of legal aid procurement right – balancing budget pressures against the need for sustainable access to high quality services delivered by excellent legal aid providers.

One of the biggest issues was the need to allow firms proper lead in times to consider how to respond to the move to fixed and graduated fees, so a delay until October 2007 for implementation of the majority of civil schemes is the right thing to do. We will ensure the schemes proposed in family are amended to take account of the main concerns raised – on advocacy, multiple children and the exceptional case level. Minor amendments to the asylum and mental health schemes will ensure they are more responsive to the actual practice of providers.

Many firms across the country will gain under the fees that replace the current TFF in most categories. We hope they respond positively to the clear statement that their work already represents good value. We ask these firms to consider how they might expand into other areas of law – especially to increase firms that deliver across all social welfare law services

and family. To the minority that see a reduction in their average fee (even after disbursements, exceptional cases and VAT), we ask them to consider how to change their case mix to better reflect the needs of their community and how to update working practices or technology in order to deliver sustainable services. We do not want high quality firms to decide not to deliver legal aid services. Where firms decide to pull out of legal aid, we will use this as an opportunity to improve access with targeted bid rounds as money becomes available. In 2007 we will publish detailed information on access across social welfare and family work. Whilst the transition may be difficult for firms with more expensive average case costs, the proposed scheme represents an incredible opportunity for over two thirds of firms that will gain. That so many gain in areas where access to joined-up services is weakest is an important feature of the revised proposals.

With over £50m being invested in the NFP sector to deliver social welfare law services, it has been important to ensure the sector can match the efficiency of private firms. The improvements in performance achieved are shown by the fact that nearly half of NFP providers will gain under the proposed fee structure.

The next few months will see detailed proposals set out in areas of significant spend and important services. Our commitment to listen remains, as does our commitment to deliver a sustainable civil legal aid system that is resolutely focused on clients.

Legal aid reforms to deliver best value



Carolyn Regan

Chief Executive, Legal Services Commission

On 28 November, the Department for Constitutional Affairs (DCA) and the Legal Services Commission outlined major reforms for putting the legal aid system on a sustainable financial footing. These reforms are part of the overall programme to modernise the legal aid system and will ensure that publicly-funded civil and criminal legal services continue to safeguard the rights of some of the most vulnerable people in society and offer high quality legal aid.

Legal Aid Reform: The Way Ahead, which we published jointly with the DCA, is our response to the consultation following Lord Carter's year-long review of how legal aid services are purchased. Our legal aid system is one of the best – and the best-funded – in the world, and the work of dedicated legal aid providers is fundamental to social and legal justice. That's one of the main reasons I joined the LSC.

The commitment that legal aid providers bring to

The work of dedicated legal aid providers is fundamental to social and legal justice. That's one of the main reasons I joined the LSC

their work is also evidenced by the huge response we received to our consultation on the Carter proposals – more than 2,300 submissions. These, and the briefing events we held around the country, attended by over 1,700 people, gave us really valuable input into the best way to introduce the needed reforms.

The LSC believes that the fundamental direction recommended by Lord Carter is right – that means moving to a market-based approach for buying legal aid services, with fixed and graduated fees as a first step. But it was right too to listen carefully to what providers had to say and this has influenced our thinking on the content of some schemes and the timetable for reform. As a result, we have made changes to how the proposals will be implemented, so the detail can be refined and providers have time to adapt before they are introduced. We need a legal aid system that continues to safeguard people's rights while providing value for the taxpayer, but we must also ensure it provides new business opportunities and fair reward for good quality, efficient service providers.

The DCA and the LSC have endorsed Lord Carter's key recommendation to move payment for legal aid services from a traditional system of hourly rates to one of best value tendering based on quality and price. To allow providers time to adapt their businesses to

a market-based approach, there will be a transition period where they will be paid fixed and graduated fees for different types of work.

It is also important to recognise that this change in how we pay for services is an integral part of a wider package of legal aid reforms. They work together with the Community Legal Service Strategy we launched earlier this year, which sets out what civil legal services we intend to buy to meet client needs. Now we have a clear way forward for the reform of procurement, we will also be progressing our plans for the Preferred Supplier scheme, which will set out who we buy services from and will establish new quality standards for providers.

We will be working with providers to implement these reforms but every player in the legal aid system – including the LSC – must become more efficient if we want to avoid restricting access to these vital services. We are already working to redesign our systems and processes so that the administrative burden on providers is reduced to the minimum. We'll do this by simplifying the processing of bills, increasing the powers devolved to providers and doing business with you electronically. By 2011 we expect to have reduced our administration costs by £30 million (about a third) as a result. We and the DCA also recognise that managing legal aid efficiently is only part of the story. We need greater efficiency in the justice system as a whole. It will be an important priority for us to work closely with partners across the system to ensure that solicitors do not spend unnecessary time at police stations and courts.

Details of our plans are featured in this issue of Focus, and copies of key documents have been sent to all providers and are available from the LSC website (www.legalservices.gov.uk). The changes we have made to the original proposals are as a result of listening to what providers said, and we will continue to listen. At the same time as announcing our plans we published a new consultation paper of 'Market Stability Measures' aimed at ensuring that the duty solicitor scheme remains stable as we move towards a market approach. I would encourage providers to let us have their views on this, as well as the other consultations which will take place from early next year.

My final point is one that I really want to emphasise. We, the LSC and providers, need to work together in genuine partnership if we are to deliver this programme of change effectively. Moving forward together means that we will be able to continue to deliver the services that legal aid clients need. I know that we are all agreed that they are the people in the legal aid system who really matter – and they are the people who will benefit when we succeed **together** in making legal aid services sustainable.

Market Stability Measures: a consultation

One of the key recommendations within Lord Carter's final report was for the LSC to introduce measures that mitigate market fragmentation and allow firms to begin the process of restructuring.



On 29 November 2006 the LSC published a consultation paper, 'Market Stability Measures', which outlined options for proposed amendments to the current duty solicitor arrangements that would come into force from April 2007. The consultation paper was sent out with the joint DCA/LSC response document 'Legal Aid Reform: The Way Ahead'. Lord Carter's Report stated that the LSC must ensure that: clients can access criminal defence services at police stations and court; firms are given the maximum opportunity to begin the restructuring process through less restrictive delivery rules; quality and performance standards are maintained; and new entrants to the market have realistic expectations about access to work.

These measures are required to ensure that the current system remains stable as firms seek to develop their businesses and prepare for longer-term changes. The consultation paper covers the four main areas that were identified as requiring changes and sets out options for the way forward.

Slot allocation

Lord Carter was concerned that within the current rules, any firms seeking to expand their businesses in advance of longer-term proposals would need to rapidly increase the number of duty solicitors they employ in order to gain greater access to slots on duty schemes. If this were to happen it would result in all firms paying inflated prices for staff and may threaten the ability of some firms to deliver a duty solicitor service. The LSC proposes two options to mitigate this position.

First, the LSC could allocate slots to firms in particular schemes based on the value of work undertaken between July 2005 and July 2006 by those firms in the same scheme. This is the approach recommended by Lord Carter. However, responses received during the consultation period revealed a concern among practitioners that this would be an unfair

method on which to base future allocation of duty slots.

The alternative option is to issue duty solicitor rotas on the same basis as is currently done but for a six-month period covering April 2007 to September 2007. Rotas are currently issued for a three or four month period. The proposed longer period would allow firms to retain their current allocation of slots up until the introduction of new boundary areas in October 2007, irrespective of any changes to their numbers of duty solicitors.

Service requirements

There are currently a number of service level requirements that govern the way in which criminal advice and assistance work must be performed. These rules differ depending on whether the firm is providing a duty solicitor or own client service. The difference is between the types of work that individuals holding different qualifications can undertake.

The LSC has two options for consideration. The first would be to amend the arrangements to allow any accredited police station representative, probationary representative and solicitor holding the police station qualification (PSQ) to undertake all types of work at the police station from April 2007. The second option would allow accredited representatives and solicitors with the PSQ to undertake all duty work but retain the restriction on the work that probationary representatives are able to conduct.

Performance standards

The General Criminal Contract (GCC) stipulates that 80% of a firm's police station attendances should be undertaken by a designated fee earner, ie a fee earner who receives professional supervision from the firm. In addition to ensuring that this requirement is enforced, Lord Carter has also recommended that 50% of magistrates' court work be conducted by a designated fee earner.

The LSC has two options for consideration. The first would be to enforce the current contract requirement as it relates to police station work and amend the contract to incorporate Lord Carter's recommendation on magistrates' court work. The second option would be to enforce the police

station requirement but make no change to magistrates' court work.

Moratorium on new duty solicitor slots

Lord Carter recommended that the LSC should consider placing a moratorium on new duty solicitor slots other than in response to changes in local need. Three options for implementing this recommendation are proposed.

The first option is for the LSC to cease allocating new GCCs until October 2007. This would result in no new firms applying to join duty solicitor schemes, which would ensure that existing providers' work volumes are not reduced. The decision to temporarily cease awarding new contracts would be on the basis that there is no shortfall in supply and that existing firms need a period of stability within which they can plan future changes.

The second option is for the LSC to continue to allocate new GCCs but close duty solicitor schemes to new members. This would in effect create 'own client only' contracts. Under this option duty slots that became free (ie on a firm's withdrawal from criminal work), would be re-allocated to existing duty firms rather than own client only contractors.

The third option is for the LSC to continue awarding contracts as it currently does, at least until October 2007, when proposals for new working arrangements come into force. This would ensure that entry to the market is not restricted in the short term but would also mean that existing providers would have less certainty as to their on-going slot allocation.

In addition to the above options, the LSC is keen to receive feedback from practitioners on any alternative suggestions. This consultation will run for an eight-week period from 29 November 2006 and will close at 5pm on 24 January 2007. The LSC will publish a response to this consultation on 7 February 2007. Please send responses by e-mail, post or fax to the address below.

@ CONTACT & INFORMATION

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The Unified Contract: latest developments

In July 2006, the consultation paper, 'Legal Aid: a sustainable future' was published, inviting stakeholders and legal aid providers to comment on the proposals we were making in it, in the light of the recommendations in Lord Carter's report.

Our paper also set out specific proposals for the LSC Unified Contract. This is the contract to replace both General Civil Contracts (Solicitors and NFP), from 1 April 2007, and the General Criminal Contract, from 1 April 2008. A key difference between the General Contracts and the Unified Contract is that each legal aid provider will have one Unified Contract, instead of a contract per office. The aim of the Unified Contract is to set the structure for the future development of legal aid.

What's happened

In early October, we sent draft contract documents to representative bodies to begin consultation with them on the detailed terms. We also wrote to all legal aid providers to tell them what we were doing and that they could see the draft Unified Contract on our website. Since then, we have had a series of meetings with key representative bodies.

Formal consultation on the documents closed on 21 November 2006. We received 84 written responses including responses from the main representative bodies: the Law Society, the Legal Aid Practitioners Group and the Advice Services Alliance. We also received responses from other bodies, eg Citizens Advice and the Law Centres Federation, as well as individual NFP organisations and solicitors' firms.

Some key issues raised about the Unified Contract concerned:

- > remuneration and management of payment on account provisions;
- > 'Termination' and Amendments to contract documents;
- > 'Review' provisions;
- > minimum and maximum 'matter starts' allocations;
- > reporting and disclosure of information requirements; and
- > key performance indicators.

A number of respondents also said that April 2007 was too early to bring in all the proposed

civil legal aid reforms – particularly those covered by the Specification (eg on specific categories of law), and those concerning fees.

Way forward

The Government paper 'Legal Aid Reform: the Way Ahead' published in November 2006 explains that, although the Unified Contract will come into force on 1 April 2007, the Contract Specification will remain largely unchanged (ie it will remain largely the same as the current General Civil Contract Specification), until revised fee schemes come into force in October 2007. It also states that there will be further consultation before the Specification is amended. The paper sets out timetables for further consultations and reforms, eg the replacement for Tailored Fixed Fees will not come into effect until 1 October 2007.

Therefore, we plan to continue discussions with key bodies about the Unified Contract Standard Terms, Schedule and Contract for Signature over the next few weeks so that we will have the new contract (albeit with a Specification hardly changed from that presently in force) for civil legal aid providers ready before 1 April 2007.

Keep up to date – visit our website

We will use our website to publish news and show the revisions to documents made as a result of consultation. We are also consulting about a small number of amendments to the General Criminal Contract from 1 April 2007 to 31 March 2008 and, again, will use our website to publish developments. If you want to see the latest versions of the Unified Contract, please visit www.legalservices.gov.uk and look at 'consultations' under CLS or CDS. The Unified Contract documents are now shown under 'closed consultations' but we will continue to use our website to update the position and to show the revised Unified Contract.

@ CONTACT & INFORMATION

LSC Contract Lawyers

e-mail: simon.morgans@legalservices.gov.uk

Mental Capacity Act 2005

The Mental Capacity Act 2005, which is due to come into effect in April 2007, creates a new legal framework to improve and clarify the decision making process for people who may lack mental capacity to make decisions for themselves.

The Act establishes a new Court of Protection with its own procedures. The new court is able to make decisions about the property and financial affairs of a person who lacks capacity to take those decisions and also in relation to decisions in respect of their personal welfare.

The Court of Protection is a superior court of record but is not part of the High Court. Therefore advocacy bought before the Court of Protection is not within the scope of schedule 2 to the Access to Justice Act 1999. However, it is intended that a direction to be issued by the Lord Chancellor under s 6(8) of the 1999 Act will bring certain cases before the Court of Protection within the scope of CLS funding. This authorisation will seek to capture many of the cases that, prior to the 2005 Act, would have been heard in the High Court for which CLS funding has always been available.

The Lord Chancellor's authorisation on Representation before the Court of Protection and the LSC's guidance on this authorisation are presently the subject of consultation by the Department of Constitutional Affairs (DCA).

The text of the draft authorisation and guidance is available in the consultation section of the DCA's website, together with details of how to respond to the consultation. The deadline for responses is 2 February 2007.

@ CONTACT & INFORMATION

DCA website address

web: www.dca.gov.uk/consult/court-protection-cases/cp2606.htm

Public Interest Advisory Panel Summaries

The Public Interest Advisory Panel (PIAP) reports to the LSC on cases that are considered to raise public interest issues. These reports are then taken into account by the LSC in decisions under the Funding Code. For more information on the Panel, see the article in Focus 31 (page 2) and section 5 of the Funding Code Decision-Making Guidance in vol 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 LSC's website headed 'Public Interest Reports'. New reports will continue to be published in Focus. Summaries of cases considered by the Panel are contained in Focus 32–51. 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/06/355

Nature of Case

An application for exceptional funding in respect of a claim under the Employment Equality (Religion or Belief) Regulations 2003, alleging direct and indirect discrimination and harassment on the grounds of religious belief and victimisation, where the applicant, a Muslim woman, was not permitted to wear a face veil while working alongside male teachers as an ethnic minority achievement curriculum support worker at a primary school.

Report of Panel

The Panel had some concern as to the facts of this case, in particular that the applicant had attended her initial interview, with the male head teacher, unveiled. However, it was noted that this case would be the first where the issue of the wearing of a face veil in the workplace was tested against the 2003 Regulations, which were intended to implement the European Council framework Directive for equal treatment in employment and occupation. Important questions were raised as to the principle of protection of religious beliefs within employment and whether such protection would extend to the external manifestation of religious belief, such as the wearing of a veil, which was in turn central to the question of whether the applicant could claim direct

discrimination. There was some uncertainty as to whether the Employment Tribunal would in fact make the requested reference to the European Court of Justice in this matter, on the question of whether treatment based on the external manifestation of religious belief was treatment on the ground of religious belief for the purposes of the framework Directive. However, the Panel considered that a favourable decision in this case of the Employment Tribunal itself, although not legally binding, would still achieve substantial public impact in relation to these issues.

The Panel accepted further that, for the purposes of the criteria for a recommendation of exceptional public funding under s 6(8)(b) of the Access to Justice Act 1999, the points in the case with significant wider public interest would not be made effectively without legal representation, and thus there was significant wider public interest in the applicant receiving funded legal representation.

Conclusion

Significant Wider Public Interest
Rating: Significant

PIAP/06/356

Nature of Case

Proposed challenges by non-resident parents of the Child Support Agency's failure to transfer existing cases under the Child Support Act 1991 scheme to the new scheme under the Child Support, Pensions and Social Security Act 2000, or to introduce transitional provisions.

Report of Panel

The Panel noted that the applications in this case related to issues that were similar to those looked at previously in PIAP/06/348. However, the present applications provided significantly more detail of the basis for the proposed claims.

The Panel considered that the prospects of success of the proposed claims were uncertain, depending on the evidence that would arise as to the numbers remaining under the old scheme and resources required to transfer them, in order to establish whether the delay was proportionate. Further, the fact some would be better but others worse off under the terms

of the new scheme meant that there was less obvious impetus for the authority to complete the transfer of cases. As observed in the report on PIAP/06/348, there was no realistic prospect of establishing a breach of art 8 of the European Convention on Human Rights (ECHR), and there was uncertainty of the prospects of the argument under art 14, having particular regard to the decisions in *R v Secretary of State for Work and Pensions, ex p Carson*; *R v Secretary of State, ex p Reynolds* [2005] UKHL 37.

However, the Panel accepted that these cases were arguable and potentially covered substantial legal ground and, in particular, that a successful outcome would affect substantial numbers of people.

Conclusion

Significant Wider Public Interest
Rating: Significant

PIAP/06/357

Nature of Case

Proposed challenge, by a resident parent, of the Child Support Agency's refusal to transfer her Child Support case to the new scheme under the Child Support, Pensions and Social Security Act 2000

Report of Panel

The Panel considered that this case would have significant wider public interest for the same reasons as given in PIAP/06/356.

However, the wider public interest in the present case was clearly stronger. The applicant in the present case was within a class of people, parents in receipt of Income Support or Income Based Job Seekers' Allowance with care of a child, who would obtain a specific advantage from being transferred to the new child support scheme in being able to retain the first £10 of child maintenance received without loss of welfare benefit income. Under the old scheme, child maintenance payments are deducted in full from Income Support and Income Based Job Seekers' Allowance payments. It had been estimated that at present 46,000 parents were within this class, such that a successful outcome would bring widespread benefit.

Conclusion

Significant Wider Public Interest

Rating: Significant

PIAP/06/358**Nature of Case**

Proposed claim for damages against the police for an alleged assault whilst in police custody.

Report of Panel

The Panel considered that there had been no basis for the referral of this case.

The Panel noted that the Funding Code Guidance (at section 5.1) emphasised that a distinction had to be drawn between two types of public interest. On the one hand there were types of case that, by their nature, always exhibit a degree of public interest, examples being judicial review and, as in the present case, actions against the police. On the other hand, there were also individual cases that, on their own facts, had the potential to bring benefits to a wider section of the public. It was the latter type of case that could be held to have significant wider public interest under the terms of the Funding Code.

Cases such as actions against the police were recognised, as a category, as a priority area for funding under section 8 of the Funding Code. As such, the present case had already benefited from the cost benefit requirement being only that costs should be proportionate to the likely benefits of the proceedings, rather than having to satisfy a prescribed ratio of costs to damages related to its prospects of success under the general funding code.

Nothing put forward in this case, however, suggested any public interest of the latter type, in terms of benefits of the proceedings to people other than the applicant that should be taken into account in assessing whether the likely costs would be proportionate.

Conclusion

No Significant Wider Public Interest

PIAP/06/359**Nature of Case**

Proposed appeal against the refusal to grant permission for judicial review of the Metropolitan Police's actions in carrying out overt photography at protests and demonstrations, and retaining the photographs on police files, in alleged breach of arts 8, 10 and 11 of the ECHR.

Report of Panel

The Panel considered this to be an important case, but there were serious questions over its prospects of success. There was the particular difficulty that the retention of DNA samples

of suspects cleared of offences, which might appear a more substantial interference than in the present case, had been held not to be incompatible with art 8 of the ECHR in *R v Chief Constable of South Yorkshire Police, ex p LS; R v Chief Constable of South Yorkshire Police, ex p Marper* [2004] UKHL 39.

However, it remained possible that the present case could succeed on its facts. In particular there appeared to have been no clear justification in terms of the applicant's conduct for photographing him, suggesting that this had been undertaken as a matter of policy. The case presented the opportunity for an examination by the court of the application of art 8 of the ECHR where police engaged in overt surveillance, and of the extent to which the ECHR addressed the right to protest. Further, a successful outcome that had the effect of restricting the ambit of the decision in *Marper* would in itself be of significant wider public interest.

Conclusion

Significant Wider Public Interest

Rating: Significant/High

PIAP/06/360**Nature of Case**

Proposed claim under common law and the Human Rights Act 1998, for alleged breach of art 8 of the ECHR, for damages against a county council in respect of psychiatric injuries arising from alleged negligence in the council's decision to place the applicant's children on the 'at risk register', the latter component of the claim being, in principle, statute barred.

Report of Panel

The Panel noted that the present application involved an application to appeal the striking out of the common law claim for damages. That decision had held that the conclusion in *JD v East Berkshire Community NHS Trust* [2005] UKHL 23, that medical or social services staff could not be held liable for negligence to parents of a child placed on the at risk register, was not rendered invalid by the fact that since the coming into force of the 1998 Act such a parent might have a claim under art 8 of the ECHR.

The Panel considered the proposition that, contrary to the policy position expressed in *JD*, the interests of the child and parents in this situation should be considered to be identical, to be an unattractive one. However, the Panel considered that the proposed appeal did address an important issue as to the relationship between claims under common law and the 1998 Act, and in particular whether, as indicated by Lord Bingham of Cornhill in

his dissenting judgment in *JD*, the law of tort should evolve in correspondence with the ECHR rights jurisdiction, or leave such rights to be addressed by claims under s 7 of the 1998 Act. This would be of particular relevance if the 1998 Act claim were time barred in this case.

The Panel further considered that there was wider public interest in the application to extend the one year time limit under s 7(5) of the 1998 Act.

Conclusion

Significant Wider Public Interest

Rating: Significant

About Focus

Focus is sent automatically to all LSC account holders, free of charge. It is usually published four times a year. It is not strictly quarterly as it is produced whenever the LSC needs to communicate important information to the profession, rather than according to a rigid timetable. While Focus contains guidance, the LSC Manual should be referred to, when updated, for definitive information.

Focus is distributed using the names and addresses of all LSC account holders, details of which are held on our Master Index database.

If you have not received a copy of Focus it may be because you have not alerted the Master Index Section to changes to your name, address or DX. Please make sure you send any relevant changes in writing to the above address. Please ensure you quote your LSC account number.

It is important that Focus is seen by everyone in your firm who is involved in LSC work and you can make as many photocopies as you need. Issues from number 26 onwards are also available to download from the LSC website (www.legalservices.gov.uk).

If you have any questions regarding the articles that appear in Focus, please refer to the contact details in the article itself. If there are no contact details, or for other editorial questions or requests for extra copies, please contact the editor.

To obtain back issues of Focus, please download the relevant PDF file from the LSC website. Older issues can be found in the Archive section. If you are unable to do this, or require an issue prior to number 26, please contact Neil McLeavey.

@ CONTACT & INFORMATION

e-mail: neil.mcleavey@legalservices.gov.uk

Payment dates for January - June 2007

The proposed payment dates for the first half of 2007 are set out in the table below. These dates may be subject to amendment, but we will inform you of changes in advance where possible. Contact details for our Master Index and Settlement Sections are given below.

Contract Payments	1st Settlement of the Month	2nd Settlement of the Month
Friday 5 January	Thursday 11 January	Thursday 25 January
Tuesday 6 February	Thursday 8 February	Thursday 22 February
Tuesday 6 March	Thursday 8 March	Thursday 22 March
Thursday 5 April	Thursday 12 April	Thursday 26 April
Friday 4 May	Thursday 17 May	Thursday 31 May
Wednesday 6 June	Thursday 7 June	Thursday 21 June

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 account. 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, as opposed to 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. Details of the amount due to you may be obtained by contacting either the regional office or the

Solicitors/Counsel Settlement Section, but no earlier than the day before the proposed payment date. 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.

Names, addresses, DX, fax and telephone numbers and bank details for BACS payments are held on the Commission's Master Index database. Please help keep us up to date and make sure that you inform the Master Index Section of relevant changes relating to your firm or chambers in writing, either by letter or by fax.

@ CONTACT & INFORMATION

Master Index Section

tel: 020 7759 0261 | **fax:** 020 7759 0525

Settlement Section

tel: 020 7759 0260

address: Master Index Section, Legal Services Commission, 85 Gray's Inn Road, London, WC1X 8TX

dx: 328 Chancery Lane/London



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The LSC delivers legal aid and services through two schemes: the CLS and CDS.

**Community
Legal Service**



**Criminal
Defence Service**

