

FOCUS

ON CDS

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- **CDS DIRECT PILOT/AMENDMENTS TO GCC**

FOR THE LATEST INFORMATION ON CDS DIRECT, ALONG WITH AMENDMENTS TO THE GENERAL CRIMINAL CONTRACT, PLEASE TURN TO PAGE 02.

- **OUTCOME OF CONSULTATION**

CHANGES TO BE IMPLEMENTED FOLLOWING THE POLICE STATION REPRESENTATIVES AND SOLICITORS ATTENDING THE POLICE STATION CONSULTATION CAN BE FOUND ON PAGE 03.

- **CRIMINAL BILLS ASSESSMENT MANUAL**

A SUMMARY OF CHANGES TO BE MADE TO THE CRIMINAL BILLS ASSESSMENT MANUAL CAN BE FOUND AT PAGE 08.

- **FREEDOM OF INFORMATION ACT 2000**

TO FIND OUT HOW THE FREEDOM OF INFORMATION ACT AFFECTS CDS SUPPLIERS, TURN TO PAGE 07.

- **FUNDING ARRANGEMENTS – PROCEEDS OF CRIME ACT 2002**

A USEFUL REFERENCE TABLE CONTAINING THE RELEVANT FUNDING ARRANGEMENTS FOR CONFISCATION, RESTRAINT AND RECEIVERSHIP PROCEEDINGS UNDER THE PROCEEDS OF CRIME ACT 2002 CAN BE FOUND ON PAGE 11.

At time of going to press, no decision had yet been made on any changes to CDS financial eligibility. An updated Keycard will be published on the Commission's website (www.legalservices.gov.uk)

CDS DIRECT PILOT

The Commission first consulted on the CDS Direct Pilot in May 2004 and issued a further consultation in September.

Since concluding consultation, the Commission has made a concession to allow a Telephone Acceptance Fee to be claimed by practitioners receiving cases referred by CDS Direct.

Amendments to support the introduction of the CDS Direct Pilot were included in the consultation pack issued in December 2004; however, The Law Society has raised some new concerns regarding the operation of CDS Direct at a late stage in our planning.

The Commission and The Law Society have agreed to discuss these issues further and, as a result, the implementation date of 2 May 2005 may slip by a short period.

All firms will be advised in writing of the new start date for the pilot and provided with a Contract Notice detailing the amendments necessary to support the pilot.

For further information please contact our Project Manager John Sirodcar at john.sirodcar@legalservices.co.uk

AMENDMENTS TO GENERAL CRIMINAL CONTRACT – APRIL 2005

The Commission began consultation in December 2004 on amendments to the General Criminal Contract to be implemented in April 2005. These were primarily to support the introduction of the CDS Direct pilot and other changes arising from the recent consultation on police station attendances.

To avoid disruption and confusion for practitioners, the Commission has decided to delay the implementation of all planned Contract Amendments (and linked changes to guidance), to enable a single package to be issued to coincide with the introduction of the CDS Direct pilot.

Note: There will be changes to claim codes, the Criminal Bills Assessment Manual, Duty

Solicitor Arrangements 2001, Police Station Register Arrangements 2001 and Duty Solicitor Manual from 30 April 2005 which are detailed later in this edition of *Focus on CDS*.

For further information please contact our Project Manager, Maryvonne Islip, at maryvonne.islip@legalservices.co.uk

POLICE STATION REPRESENTATIVES AND SOLICITORS ATTENDING THE POLICE STATION

OUTCOME OF CONSULTATION

This consultation paper was published on 15 November 2004 with the consultation period closing on 10 January 2005. The Commission received over 100 responses and published its response on 17 February 2005 (available at www.legalservices.gov.uk).

The Commission has decided not to proceed, at the present time, with the proposal that payment to a supplier for work undertaken by a freelance accredited representative be treated as a disbursement and capped at 50% of the hourly rates.

The following changes will be implemented:

- The Commission will require solicitors who do not hold the Police Station Qualification (PSQ), to undertake the accreditation process to obtain this qualification before providing publicly funded police station advice and assistance within the following time limits:
 - By 1 November 2005 to register on the Police Station Register.
 - By 1 May 2006 to pass either the critical incidents test or the portfolio.
 - By 1 November 2006 to pass both tests.

These requirements will not apply to practitioners on the Serious Fraud Panel providing the client has been arrested for a fraud offence.

These requirements do not apply to current Duty Solicitors.

- The Legal Services Commission Police Station Register Arrangements 2001 will be amended from 30 April 2005 to implement the following:
 - It will be a requirement that an individual should pass, or be exempt from, the legal examination part of the

assessment process before registration as a probationary representative.

- Exemptions to the requirement to pass the legal examination element will be available to solicitors (who have passed the Legal Practice Course), barristers (who have passed the Bar Vocational Course) and Fellows or Members of The Institute of Legal Executives who have passed the ILEX Level 4 Professional Higher Diploma in Law (previously known as the Part 2 examinations) which must include the criminal law and criminal litigation papers.
- To require that a supervisor solicitor for a police station representative should be a current duty solicitor or accepted by the Commission as satisfying the requirements to be a crime supervisor, including acceptance on a temporary basis while a permanent supervisor is recruited.
- To require that the minimum number of police station attendances per annum will be increased to 25 for an accredited representative and all representatives will be expected to undertake a minimum of six hours training per annum relevant to criminal law work.
- To require that if a probationary representative has been suspended from the Register for not passing one test within six months, the Commission

will allow a six month period to pass any remaining test once one test has been passed.

- The Commission will implement the power to refuse membership of the Police Station Register for good reason but restrict this ability to its senior staff in the national CDS Policy team. When this power is used, there will be a right of appeal to a Regional Duty Solicitor Committee for such decisions (an amendment will be made to the Duty Solicitor Arrangements 2001 from 30 April 2005 to facilitate this).

Guidance contained in the Duty Solicitor Manual has been amended to reflect the above changes.

Any queries regarding an individual's status in obtaining the Police Station Qualification should be directed to the Police Station Representatives Service on 0845 600 1022 or policestationreps@firstassist.co.uk.

For any other enquiries please contact the regional office responsible for managing your contract.



MEANS TESTING IN THE MAGISTRATES' COURTS – CDS BILL

Current Status of the Bill

As reported in *Focus on CDS* 16 (December 2004), the Criminal Defence Service Bill was introduced into the House of Commons in December of last year with the expectation that it would receive its second reading on 11 January 2005.

Competing legislative priorities in an extremely busy parliamentary session meant that the second reading date was lost and the Bill did not complete its passage prior to the dissolution of Parliament.

We will keep all stakeholders informed of any future developments. If you require any further information please contact our Project Manager, Steve Parkin at steve.parkin@legalservices.gov.uk

CLAIMING NEWS

New Claim Codes

The following claim codes have been introduced to support the review of funding for anti-social behaviour orders (see page 05). These new codes should be used for all relevant work claimed after 31 May 2005.

2Q – Magistrates' court Advocacy Assistance relating to anti-social behaviour orders

This claim code should be used for proceedings under sections 1 and 1D of the Crime and Disorder Act 1998 relating to an anti-social behaviour order (including an application to vary or discharge such an order). Claim code 2C will have previously been used for these claims. 2C should continue to be used for all other magistrates' court advocacy assistance.

2R – Crown Court Advocacy Assistance relating to anti-social behaviour orders

This claim code should be used for appeals under section 4 of the Crime and Disorder Act 1998 against an anti-social behaviour

order. Claim code 2H will have previously been used for these claims. 2H should continue to be used for all other Crown Court Advocacy Assistance.

Note: Offence and outcome codes are not required for claims made under either of the above claim codes.

Withdrawn Claim Codes

The following claim codes became obsolete following changes introduced on 17 May 2004.

2A – Criminal Proceedings – Freestanding Advice and Assistance

2B – Criminal Proceedings – Early Hearing (including Advice and Assistance where given)

Only claims relating to work undertaken prior to 17 May 2004 can be claimed under these claim codes. All such claims should have already been submitted and therefore these claim codes will be withdrawn from 31 May 2005. Process Centres will reject

any claims with a 2A or 2B claim code after this date.

Rules for Claiming Criminal Investigation Cases

Since the introduction of CPS Statutory Charging, it appears that some suppliers are submitting claims in the Criminal Investigations Class where there is still an outstanding bail back in the matter. This is in breach of the General Criminal Contract (Part A, 2.4.2(c)), unless it is known that further work will not be undertaken.

Court Duty Solicitor Claims

Claim code 2D is used for all court duty solicitor claims. For each 2D claim submitted on form CDS 6 a date concluded is required. The date concluded must be the date on which the session took place and not any other date.

FUNDING FOR PRESCRIBED PROCEEDINGS

A project is being set up to assess the cost and methods of funding in prescribed proceedings. Section 12 (2) of the Access to Justice Act 1999, prescribes or designates that certain proceedings, which would not automatically qualify as criminal proceedings within the definition of the Act, be treated as proceedings. They are known as prescribed proceedings and currently include Anti-social Behaviour Orders, Football Banning Orders and certain Parenting Orders.

At the present time the funding arrangements for representation are complex. A table showing these funding arrangements was published in *Focus on CDS* 16 (December 2004).

The current provisions have led to confusion amongst practitioners, the courts and their staff, as well as for staff within both the Department for Constitutional Affairs (DCA) and the Commission. Questions that are commonly asked in connection with these proceedings are:

1. When and at what point, if at all, can these types of cases receive public funding?
2. Where it is appropriate to fund such a case, how is it done and under what funding scheme?
3. Who has the authority to grant funding?
4. What should happen with regard to obtaining payment if someone without authority has purported to grant funding when they had no authority to?
5. What, if any, financial limits exist with regard to such funding?

This is not beneficial to clients, the profession or any of the other agencies involved in these proceedings and can lead to delay and uncertainty.

The Commission recognises that this situation needs to be reviewed. A thorough examination of claims should reveal the true picture of actual costs to date. It should also identify any deficiencies or weaknesses in the current funding system which may need to be modified.

The aim of the project is to come up with a sustainable funding model for this work, taking into account the likely growth of the number of such cases and the need to obtain best possible value for money.

The project will examine all possible funding models, including a fixed fee structure, in a bid to identify the most suitable options which we will then consult upon.

Although not yet in scope, orders made under Part 2 of the Sexual Offences Act 2003, will also be included in the project in anticipation of being brought within CDS funding.

To facilitate this work it has been necessary to create two new claim codes. Details are contained in the article 'Claiming News' on page 04 of this edition..

A project team will be set up to run the project. We intend to set up a project support group to provide input, feedback and meaningful practical advice for the project team. This group will include members of representative bodies (who will need to be practising criminal lawyers) as well as representatives from the DCA, the Home Office and Her Majesty's Court Service. The purpose of this group is to ensure real understanding of all the issues involved. It should result in the project devising a realistic, practical and workable funding model for all stakeholders.

If there are any practitioners who would like to be a member of the project support group they are invited to contact the Project Manager, Denise Bradshaw, at denise.bradshaw@legalservices.gov.uk

REGISTER OF POLICE STATION REPRESENTATIVES

The data cleanse of records that was undertaken as part of the transfer of the Register of Police Station Representatives from the CDS Policy Team to the Police Station Representatives Service in December 2004 is now complete.

Surveys have been sent to all representatives and responses have been received from a sizeable majority. The CDS Policy Team would once again like to thank all representatives and solicitors who took the time to complete and return the survey.

As part of our continuing efforts to ensure the quality of advice provided by representatives at the police station and to help facilitate the administration of the Register, the Police Station Representatives Service will shortly be sending certificates to all accredited representatives on the data cleansed Register. Certificates will also be sent to probationary representatives once they have become accredited.

These certificates will confirm the representative's name, PIN and date of accreditation. Solicitors are advised to check that every representative they use, whether employed or freelance, has a certificate. LSC auditors may also wish to see a copy of the certificate.

Accredited representatives who have not received or returned a data cleanse survey can check whether their records are held on the Register by contacting the Police Station Representatives Service (Tel: 0845 600 1022, e-mail: policestationreps@firstassist.co.uk). If a representative's records are not held, all that is required to add them is copy confirmation from an assessment organisation that the accreditation process has been successfully completed.

ASYLUM AND IMMIGRATION (TREATMENT OF CLAIMANTS, ETC) ACT 2004

THIS ARTICLE HAS BEEN SUPPLIED BY THE IMMIGRATION LAW PRACTITIONERS ASSOCIATION

The introduction of criminal offences under the Asylum and Immigration (Treatment of Claimants, etc) Act 2004 is a reminder of the need for criminal practitioners to be keenly aware of the issues raised by the arrest and prosecution of clients who have immigration or asylum cases.

The 2004 Act introduces the following offences, both of which are in force:

- Failure to have an 'immigration document' at a 'leave or asylum interview' (section 2).
- Failure to comply with a requirement in relation to obtaining a travel document to facilitate deportation/removal (section 35).

The Act also introduces an offence of trafficking people for exploitation, eg forced labour (section 4), which adds to the existing offence of trafficking for sexual exploitation (sections 57–59 of the Sexual Offences Act 2003).

Criminal practitioners will be aware that the prosecution of immigrants and asylum seekers is not a new development. The introduction of the document offences simply widens the scope for the prosecution of immigration-related activities already existing under the Immigration Act 1971, the Asylum and Immigration Appeals Act 1996, the Immigration and Asylum Act 1999, the Nationality, Immigration and Asylum Act 2002 and other criminal legislation such as the Forgery and Counterfeiting Act 1981.

Criminal practitioners dealing with clients arrested for one of these offences, or indeed clients arrested for any offence, who have immigration and asylum issues, should always consider the following at the outset of a case:

- Does your client have a representative for their immigration/asylum case? Specialist immigration advice will be required. Where your client consents and it is in their interests you are likely to need to liaise with that representative. You should be aware that the outcome of the criminal case might have a direct impact on the assessment of a client's immigration/asylum application (eg by damaging your client's credibility).
- What is the nature of your client's immigration case? Is your client an asylum seeker or person making a human rights claim? Asylum seekers forced to flee their country of origin have often undergone very difficult and arduous journeys and are unaware of the application procedures or may have been wrongly advised. They are by definition vulnerable and may be very worried about disclosing information for fear of endangering themselves or relatives or because of past trauma. If your client is not an asylum seeker there may still be particular issues which need to be taken into account, such as family ties in the UK, illness, etc.
- Client groups who may be particularly vulnerable are children and young people (whose age may be disputed), people with disabilities and health problems, women, victims of torture and abuse and trafficking victims.
- Among the procedural issues you should consider are: making representations to the CPS to discontinue proceedings, obtaining any notes of answers given by your client prior to a PACE interview (eg the 'Section 2/asylum screening' notes), applying for bail (it is possible for organisations like the Refugee Arrivals Project to assist with emergency accommodation if your client does not have an address).
- The application of article 31 of the 1951 Refugee Convention or section 31 of the Immigration and Asylum Act 1999
This is not an exhaustive list and more information on all these issues can be obtained from ILPA (Immigration Law Practitioners Association).

ILPA has produced a briefing on sections 2 and 35 of the Asylum and Immigration (Treatment of Claimants, etc) Act 2004 for criminal practitioners – if you have not received a copy, please contact the ILPA office or see the ILPA website. ILPA would also welcome feedback from criminal practitioners about their experiences.

Contact Rosie Brennan with queries at:
ILPA, Lindsey House, 40-42 Charterhouse Street, London EC1M 6JN
Tel: 020 7251 8383
E-mail: info@ilpa.org.uk (marked for the attention of Rosie Brennan) or rosiebrennan@fsmail.net
www.ilpa.org.uk

PUBLIC DEFENDER SERVICE – REVISED FORMS AVAILABLE

One of the intended benefits of the introduction of the Public Defender Service (PDS) was the development of systems and processes compliant with the General Criminal Contract (GCC) and the Specialist Quality Mark (SQM), which could then be shared with all private practice suppliers and the wider legal profession. This included the publication of a range of standard

documentation as well as an office manual.

The original documents have been subject to ongoing revision in line with Contract amendments issued by the LSC. During Autumn 2004, a comprehensive review of PDS systems and procedures was undertaken to ensure all remained relevant and necessary which included a thorough review of all forms.

Practitioners can access the revised forms, free of charge, from our website at www.legalservices.gov.uk/criminal/pds/doc_library.asp

If you have any queries about forms, letters, systems or any other aspect of the PDS, please contact central.businessteam@legalservices.gov.uk

FREEDOM OF INFORMATION ACT 2000

Impact of legislation on the LSC and its CDS Suppliers

As a public body accountable for nearly £2bn of public money, the Commission is committed to being open and transparent about how it manages the CDS and CLS Funds. Like all other public authorities, the Commission is adjusting to the changeover from operating under the earlier 'Open Government' Code to working within the provisions of the Freedom of Information Act (FOI Act), which came into full effect on 1 January 2005.

The Act gives a general right of access to information held by public authorities. This means that the Commission must on the one hand be as open and transparent as possible, while balancing this against its obligation to protect certain data provided in relation to a funded client's case on the other.

There are two types of exemptions under the FOI Act: 'Absolute' and 'Qualified'. (If any absolute exemption applies the information will be withheld and no further consideration need be given. If a Qualified exemption applies, the Commission must consider the public interest in disclosing the information before relying on the exemption.)

What does this mean for CDS Suppliers?

Information you provide to the Commission in connection with a funded client's case will not be disclosed upon receipt of a valid FOI request, unless you or the client give consent to disclose. This information is generally protected from disclosure under section 20 of the Access to Justice Act 1999 (or section 38 of the Legal Aid Act 1988 if the funding was granted under that Act). Without the appropriate consent, you can be assured that the Commission would not disclose this information as it would fall within the Absolute exemption under section 44 of the Freedom of Information Act.

However, information that the Commission generates does not fall within section 20 of the Access to Justice Act and is therefore likely to be disclosable. Clause 13 of the General Criminal Contract sets out the type of information that the Commission does not consider to be confidential, as follows:

- a) The award of the contract.
- b) The terms, including payment terms, of the contract.
- c) Payments made by category, class or otherwise.
- d) Number of matters and cases started and completed by category or class or otherwise.
- e) Status as a provisional SQM holder or SM holder.
- f) Contract decisions concerning suppliers or their personnel taken by the Commission or reasons for decisions, including decisions concerning sanctions, amount of payments, results of audits.

It has long been our policy to disclose global payment information made to firms of solicitors and barristers for closed cases. The Commission has a general duty to account for the funds it manages and the public interest tends to override any qualified exemption under the FOI Act.

In addition, information about the amount of any grant, loan or other payment made to any person or body by the Commission may also be disclosed by virtue of section 20(3)(b) of the Access to Justice Act. This provision was not included in the Legal Aid Act 1988.

The Commission discloses a considerable amount of information. The classes of information that is routinely published can be found in our Publication Scheme, which is available on our website at www.legalservices.gov.uk

THE YOUTH JUSTICE SYSTEM – GOOD DEFENCE PRACTICE

The Law Society,
113 Chancery Lane,
London, WC2A 1PL

Thursday 19 May 2005
10:00 am – 4:45 pm

£115.00 including VAT
(£97.88 ex VAT)

and at regional centres
throughout 2005

This intensive and innovative course, generously subsidised by the Youth Justice Board and the Law Society, is designed to equip delegates with the specialist knowledge and skills necessary for effective working in the Youth Court, which requires a very different body of knowledge from that required in the magistrates' court. The clientele also requires specialist skills. The unique collaboration between LCCSA Training, the Law Society and the Youth Justice Board provides a holistic and multi-disciplinary approach. The course is supported by exceptionally extensive course notes and handouts, which will provide an invaluable and comprehensive future reference resource. The numbers attending this course will be limited; it quickly sold out when it was offered in London in November 2004 so early booking is advised.

Topics: Culture of the Youth Court; Mode of trial/Jurisdiction; Bail and secure remands; Special measures for young witnesses; Referral Orders; Community sentences; ISSPs; Custodial sentences; ASBOS; Developmental needs of young people; Identifying mental health issues; Communication skills – your client; Communication skills – the court.

Speakers: Naomi Redhouse – Solicitor Advocate, Mark Ashford – Solicitor and Youth Court specialist, Fionnuala Mullin – Specialist in Child Development and a Youth Offending Team Member.

Booking forms and further details from: Sandra Dawson, LCCSA Administrator, PO Box 6314, London N1 0DL, DX 122249, Upper Islington, Phone and Fax: 020 7837 0069, Email: sandra@admin4u.org.uk.

CRIMINAL BILLS ASSESSMENT MANUAL

Following consultation a number of amendments will be made to the Criminal Bills Assessment Manual (CBAM) with effect from 30 April 2005.

A summary of the changes is provided below. However, a more detailed summary, the Commission's response to consultation and a revision marked copy of CBAM can be found on our website (www.legalservices.gov.uk).

- High Court Bail Proceedings – amendments to sections 1.3 and 3.2 to reflect the impact of sections 16 and 17 of the Criminal Justice Act 2003.
- Proceeds of Crime Act – amendments to sections 1.3 to reflect the impact of the Proceeds of Crime Act on the funding of restraint and confiscation proceedings.
- Effective Trial Management Programme – a new section 2.5 added to cover chargeable work carried out in pursuance of the Criminal Case Management Framework.
- Drug Treatment and Testing Orders – paragraph 3.10 amended to reflect the commencement of sections 209 through to 211 of the Criminal Justice Act 2003.
- Anti-social Behaviour Orders – new paragraph 3.15.14 and table of funding arrangements added.
- Electronic Presentation of Evidence – paragraph 4.10.3 amended to update the definition of a Very High Cost Case and new paragraph 4.10.5 added to record the standardisation of fees nationally.
- Retention of Bodies – new section 4.16 added to provide guidance on charging for retention of bodies and reconstruction work as a result of a change in practice by mortuaries.
- The Appeal Procedure on Cost Assessments – section 11 has been extensively amended to reflect changes made to the General Criminal Contract from October 2004.

Any enquires relating to the above should be directed to Denise Bradshaw, CDS Legal Advisor, at denise.bradshaw@legalservices.gov.uk

CRIME CLAIMS DATA CLEANSE EXERCISE

The LSC has recently launched an exercise to resolve anomalies in data held in our SPOCC system. This is the system that holds information on criminal cases submitted on forms CDS6 and CDS7.

There are three key reasons for ensuring the integrity of the data held by the Commission:

- our commitment to ensuring that the suppliers are correctly remunerated for the services they provide;
- our obligation, as a public body, to put in place controls on money paid out; and
- our responsibility to report accurately on the services provided.

An analysis of claim data processed from the start of contracting in April 2001 to early 2004, suggested that potential data entry errors and duplications of criminal case information were affecting the integrity of the data held. As a result of these findings we have established a broader review. This will focus on apparently duplicate claims.

In many cases, potential duplicate claims may have resulted from errors in 'keying' of information at the processing centre. These should be resolved by Commission staff cross-referencing data held within SPOCC with information provided on CDS6 and CDS7 forms, without the need to involve individual crime suppliers.

Other apparently duplicate claims may be as a result of claim data, pertaining to the same case, being processed on more than one

occasion. In these cases it may be necessary for suppliers to be contacted to provide assistance in establishing whether the information has been duplicated and to assist in correcting it. In most cases, we will provide suppliers with a list of cases where we believe there is duplication and request that this is checked against their own records. Where keying errors or instances of duplication are confirmed regional offices will ensure that appropriate amendments are made in SPOCC.

The exercise will take place in two stages. The first stage is scheduled for completion by the end of June and will focus on claim data submitted prior to 2004. The second stage will involve a review of all claims that have been processed during the period January 2004 to date and is expected to start during August 2005.

We will also be looking to put in place processes to safeguard the integrity of our claims data and ensure that further data cleanse exercises are not required.

For more information about the data cleanse exercise, please contact your Account Manager, or alternatively, Elliot Miller at elliott.miller@legalservices.gov.uk or on 020 7759 1712.

HOWARD LEAGUE FOR PENAL REFORM LEGAL ADVICE LINE

The Howard League for Penal Reform Legal Advice Line was officially launched in London earlier this year at a party attended by members of the Prison Service, judiciary, legal establishments and Prison Officers Association.

This article has been supplied by the Howard League for Penal Reform

The Advice Line, live since 2004, is used by children up to the age of 18 in young offender institutions, secure training centres and local authority secure children's homes, and is accessible via a freephone number (0808 801 0308) three days a week. Dedicated lawyers answer or investigate legal issues arising from the individual's period in detention. These include problems with sentence calculation, availability of education and healthcare, early release decisions and local authority aftercare.

The Advice Line has also received calls from young people referred by parents, solicitors or social workers, YOT caseworkers and individuals working within the secure juvenile estate. In addition to providing legal help to children themselves, the Howard League offers support to those working with them.

The Howard League Legal Advice Line Team has forged links with members of the Youth Court, YOT workers, children's charities, defence solicitors and prison staff, but are alert to the need for further promotion of the legal advice line, to ensure that any child or practitioner in need of legal assistance is aware of the help available. It is seeking to reinforce its relationship with solicitors, to offer its specialist knowledge of prison law, so that if a client

presents him or herself with such an issue, the Howard League legal team may be accessed as a resource. The advice line is open Tuesday and Wednesday 11am – 5pm and Thursday 11am – 7pm. For more information on this service and the work of the Howard League please contact Elizabeth McMahon on 020 7249 7373 (ext 103) or elizabeth.mcmahon@howardleague.org

CASE STUDY 1

Jane contacted the advice line when she was placed in the segregation unit for reasons of 'good order or discipline'. She was a vulnerable girl, prone to self harm and suicide attempts, exacerbated by the paucity of regime on 'the block'. In the High Court (and later the Court of Appeal) the Howard League challenged the refusal by the prison to provide her with a regime consistent with that for all children in prison (including six hours of purposeful activity per day, educational provision and physical exercise) and the Prison Service guidelines prohibiting juveniles from making representations prior to being placed in segregation. As a result of the court's ruling that so far as is practical, a child should be given the opportunity to make representations, and that in the event of being placed on the

block the usual regime should continue, the Prison Service has reviewed and reissued its guidelines on the matter.

CASE STUDY 2

The legal team was contacted by a prison caseworker, concerned that Mary, a 15-year-old in prison, was unable to enjoy the one month early release she had earned through her exemplary behaviour and progress during her sentence, because her local authority had failed in its duty as her legal parents to find her foster care for her release. The Howard League acted on Mary's behalf, reminding the local authority of its statutory duties and worked with her social, case and YOT workers to place her with a foster family able to meet her needs. As a result, she was granted early release and has just completed an educational course.



PEER REVIEW AND QUALITY PROFILES

New tools to be used to assess quality of advice and legal work

The Commission is continuing to ensure that clients receive a high quality service and that we identify opportunities to improve our way of working with Legal Aid suppliers. This has culminated in the development of new quality of advice assessment tools – Quality Profiles and Peer Review, which will be used as part of the Supplier Management Strategy.

1. Peer Review Consultation

On Thursday 31 March 2005, the LSC published a consultation paper that details how Independent Peer Review:

- Will be utilised as a direct assessment of quality of a firm's advice and legal work.
- Will provide a key quality measure for the LSC's future supplier management strategy.

The use of Peer Review as an assessment tool is in recognition of practitioner feedback over a number of years that an independent evaluation by experienced peers is the preferred assessment of quality of advice.

An independent research team at the Institute of Advanced Legal Studies (IALS) developed the independent peer review framework and methodology. The last year has seen the development and refinement of the operational aspects of Peer Review, which is detailed in the consultation paper.

• What will Peer Review be used for?

The consultation paper highlights some of the uses of Peer Review in a number of the Commission's programmes including:

- A gateway for inclusion in specific programmes/schemes.
- One of the quality of advice assessment tools utilised in the supplier management process.
- The development of a national benchmark for quality of advice.
- To support the development of other quality of advice tools such as quality profiles.
- Where can you find out more?

The consultation paper (and Executive summary): 'Independent Peer Review of Legal Advice and Legal Work' is available on our website at www.legalservices.gov.uk/peerreview and responses are invited until 25 June 2005.

Further details are available at the above web address and responses can be sent to jennifer.will@legalservices.gov.uk

2. Quality Profiles

The second key tool that will enable the LSC to monitor work remotely is the Quality Profile process, which was launched in December 2004.

• How will the Quality Profile Report work for you?

A Quality Profile report will be produced for your firm and provides a picture of your case performance against a series of indicators for each category of law. These are drawn from the case information provided to the LSC at the conclusion of every case.

To be an exact and valuable assessment of your firms' work the report will only be useful if the case information and in particular the outcome codes that you report to the Commission are accurate.

The Quality Profile Report will enable your firm to identify trends, compare results from the same six month period in the previous year and to monitor changes in case performance. It will also enable the Commission to compare data to ensure performance is being maintained, provide feedback where your firm may be 'out of profile' and the key areas for improvement.

It is important for your firm to check now that the outcome codes are accurate. It will become increasingly important as the

Commission moves towards more remote management of the highest performing firms (i.e. Preferred Suppliers).

• More information about Quality Profiles

Examples of the indicators used to produce your firm's Quality Profile include substantive client outcomes, case duration, case mix and how cases are concluded. You report this information at the conclusion of every case, whether it is under Legal Help, Crime or Certificate Work. Each indicator uses national data to create a specified 'normal' range.

Where performance appears to be outside the range the Commission will work with you to identify and understand the reasons for being out of profile. The greater the number of indicators that are out of profile, the higher the likelihood of there usually being underlying performance issues within the category of law.

In some cases there will be valid reasons for being out of profile such as having niche client groups. Only where there are no logical explanations for your firm being out of profile would further investigation, such as peer review or audit, be considered.

The Quality Profile reports are updated monthly and cover nine categories of law (with the other categories under development). These are: Actions against the Police, Clinical Negligence, Debt, Employment, Family, Housing, Immigration, Welfare Benefits and Crime.

If you would like to review your Quality Profile report or check that you are using the correct codes, please contact your Account Manager.

Suppliers Guidance on Quality Profiles will be sent to your firm in April and will also be published on our website.

FUNDING ARRANGEMENTS

BEFORE AND AFTER THE PROCEEDS OF CRIME ACT 2002 FOR CONFISCATION, RESTRAINT AND RECEIVERSHIP

An article was published in *Focus on CDS* 15 (August 2004) on funding proceedings for confiscation, restraint and receivership. The Commission continues to receive enquiries and therefore the following table has been produced for reference showing the relevant funding arrangements.

If you require any additional information please contact our CDS Legal Adviser, John Binns at john.binns@legalservices.gov.uk

| Type of proceedings | Funding position | Notes |
|---|--|--|
| Criminal Justice Act 1988 and Drug Trafficking Act 1994 Proceedings for confiscation, restraint and receivership arising from criminal proceedings (in the Crown Court or the civil courts). | Considered ancillary to the proceedings from which they arise, so covered by any current Representation Order. | This covers work for the defendant only. See <i>Focus on CDS</i> 15 (August 2004) for more details. CLS funding may be available for third parties if the application is in the civil courts and the firm has a civil contract. Work for third parties in the criminal courts can only be covered by exceptional funding (apply to the Special Cases Unit). |
| Enforcement proceedings in the magistrates court for confiscation orders. | Fresh criminal proceedings: apply for Representation using Form A to the court hearing the matter. There is no means test. | Bill under General Criminal Contract as for a normal magistrates court case (non-standard fee) at the usual rates. |
| Applications for certificates of inadequacy (in the High Court). | Fresh criminal proceedings: apply for Representation using Form A to the court hearing the matter. There is no means test but Form B may be required as the court may make a Recovery of Defence Costs Order at the end of the proceedings. | Bill the court directly using rates in the Criminal Defence Service Funding Order 2001 (same as Crown Court rates). Pre-order work can be covered under the order if it is urgent and the application is made promptly. |
| Proceeds of Crime Act 2002 Proceedings under Part 2 of the Act for confiscation, restraint and receivership arising from criminal proceedings (in the Crown Court) after the defendant has been charged. | Considered ancillary to the proceedings from which they arise, so covered by any current Representation Order (extended to Crown Court if necessary). If the original substantive proceedings have ended or there is no Representation Order in place, then you should apply to the Crown Court for a fresh Representation Order using Form A. | This covers work for the defendant only. Billed as (part of) a Crown Court bill at the usual Crown Court rates. |
| Proceeds of Crime Act 2002 Proceedings under Part 2 of the Act for confiscation, restraint and receivership arising from criminal proceedings (in the Crown Court) before the defendant has been charged, or where the client is not the defendant; Proceedings under Part 5 of the Act ('civil confiscation proceedings') for confiscation, restraint and receivership (in the Crown Court), whether the work is for the defendant or someone else; Cash forfeiture proceedings under Part 5 of the Act (in the magistrates court). | In so far as the work relates to a criminal investigation in which the client is involved, the CDS Advice and Assistance scheme should be used until the defendant is charged. In other circumstances CLS funding may be available. Legal Help covers work excluding advocacy and may be self-granted. For representation, apply to the Commission using form CLSAPP1. Emergency certificates may be granted in some circumstances. A means test will apply. | All civil proceedings under the 2002 Act are classed as Associated CLS Work under the General Criminal Contract, so CDS firms may undertake it whether or not they also hold a General Civil Contract. Some of these proceedings will be brought by the Assets Recovery Agency. In these cases the CLSAPP1 application will be dealt with by our Special Cases Unit and guidance is available on our website. For all other cases the CLSAPP1 should be sent to the London regional office and any queries should be directed to that office. |

