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Focus on CDS

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> New Chief Executive

The LSC has announced the appointment of its new Chief Executive. For details, see page 2.

> Equal Opportunities Data

From November 2006 the LSC will begin to collect equal opportunities data for all clients funded under the General Criminal Contract. Turn to page 4 for more information.

> Crown Court Remuneration

For information on the proposals contained in Lord Carter's Review of Legal Aid regarding remuneration in the Crown Court, see page 5.

> October 2006 Changes

For an outline of the key changes made to the General Criminal Contract, coming into force on 2 October, please turn to page 6.

> CDS Act 2006

Pages 8-11 contain all the information you need to know regarding the changes that the Criminal Defence Services Act 2006 brings in on 2 October.

> Quick Guide to Means Test

Attached to this issue of Focus on CDS is your step-by-step quick guide to the criminal legal aid means test.

Quick Guide to Means Test
Pocket Card

*Criminal
Defence Service*



Lord Carter's Review

On 13 July, Lord Carter of Coles published his review of legal aid procurement, 'Legal Aid: A market-based approach to reform' which recommends moving to a market based approach to legal aid based on quality for clients and value for money for the taxpayer. The final version of Lord Carter's report makes 62 recommendations and comes after 12 months of detailed analysis of the existing legal system. Also on 13 July the Department for Constitutional Affairs (DCA) and the LSC launched a joint consultation paper 'Legal Aid: a sustainable future' which sets out proposals as to how Lord Carter's recommendations will be implemented.

A full copy of Lord Carter's report has been sent to all contract holders, along with a copy of the consultation paper. Copies of his report can also be obtained from his website at www.legalaidprocurementreview.gov.uk. The consultation paper is available on both the LSC and DCA websites at www.legalservices.gov.uk and www.dca.gov.uk. The consultation will end on 12 October 2006. Providers are invited to send in comments and queries in relation to the consultation paper to:

Emma McGovern
Legal Services Commission
85 Gray's Inn Road
London
WC1X 8TX
DX 450 Lon/Chancery Lane
Fax: 020 7759 0534
E-mail: [contract.
design@legalservices.gov.uk](mailto:contract.design@legalservices.gov.uk)

Further information on Lord Carter's recommendations for remuneration of Crown Court cases is contained in the article on page 5.



New Chief Executive



The LSC has announced the appointment of its new Chief Executive, Carolyn Regan, who was previously the Chief Executive of the North East London Strategic Health Authority. Carolyn has been with the Strategic Health Authority (SHA) since April 2002 and has 25 years experience in strategic leadership and operational management. At the SHA she has focused on transforming services for vulnerable people from diverse communities in the context of increasing demand, as well as on leading national partnerships with service providers. Carolyn will join the Commission on 25 September 2006.

Commenting on her appointment Carolyn said: 'I am delighted to be taking up this important post at a vital time of change. I look forward to working with the Chair, Commissioners, the Executive Team, DCA, service providers and all of the LSC's staff and clients to progress the recommendations of the Carter Review.' LSC Chair, Sir Michael

Bichard, welcomed Carolyn, saying: 'Carolyn has a wealth of leadership and management experience gained at the most senior level in the health service. I am absolutely delighted that we have been able to attract a person of her calibre to the post of Chief Executive.' At the same time Sir Michael announced the retirement of Brian Harvey OBE, currently the Acting Chief Executive, at the end of September. He described Brian as a key figure in the development of the LSC since he joined it 17 years ago. Sir Michael said his commitment to continuously improving the quality of services for some of the most vulnerable people in society has been unswerving. He said much of the inspiration and drive behind the Preferred Supplier initiative came from Brian's vision.

Sir Michael said: 'Brian's support has been invaluable since I became Chair and he has given the Commission the leadership it has needed at a time of fundamental change. I am grateful to Brian for having agreed to remain Acting Chief Executive until a permanent appointment could be made.' Brian commented: 'It has been a pleasure working at the Commission. I believe in the value of legal aid because people who know about their rights and can act on them are able to play a fuller part in society. It has been inspiring to work with so many great people so committed to improving quality of advice for clients and value to the taxpayer.'

CDS Direct Pilot Extended

The LSC's report on the first six months of the pilot recommends the pilot continues running. CDS Direct has hit its targets and will save taxpayers £5.6m per annum. John Sirodcar, Head of Direct Services at the LSC, said: 'The LSC is committed to ensuring we obtain the best value for money for the services we fund. The CDS Direct pilot has allowed us to test a new method of service delivery that reduces unnecessary duty solicitor visits at police stations, which drain solicitors called out in the middle of the night as well as public funds. Solicitors, police and custody staff have given us valuable feedback that will enable the service to develop in an even more efficient and user-friendly way.' The CDS Direct pilot also received the endorsement

of Lord Carter of Coles in his review of legal aid procurement: 'All requests for advice at the police station should go through the duty solicitor call centre. CDS Direct will also be rolled out subject to a review of the evaluation evidence.' The LSC will publish further information on the development of CDS Direct as its thinking moves forward and as a result of the current consultation on Lord Carter's proposals.

Challenges in the CDS



Derek Hill Director of the Criminal Defence Service, gives his perspective on the Carter report.

Lord Carter's review of legal aid procurement presents a route to a sustainable future for legal aid which will necessitate significant changes to the funding of criminal legal aid. Change is necessary - all those who deliver or administer criminal defence services will acknowledge that the existing system does not fully provide what is expected from it. For some the administrative burden is felt to be too great, for others the plethora of payment systems are bureaucratic and lack consistency and control, while for others, the current structures for allocating work do not reflect the optimum model for a modern business. Carter acknowledges these difficulties and we will work hard to consult on and deliver his recommendations. The goal of a sustainable legal aid scheme is too important not to. Our belief is that Carter offers the best opportunity to achieve it. The CDS and its providers exist to ensure that the fundamental rights of

those subject to criminal investigation or prosecution are protected. We must continue to meet this objective within the context of a finite resource. The Carter recommendations offer an opportunity for providers to change the way that they work and their relationship with the LSC. Combined with the effect of the Preferred Supplier initiative, providers will be able to exploit the proposals to maximize the new efficiencies that Carter offers. This will provide an opportunity to grow businesses in a way that has not previously been possible. The key to this will be the introduction of new police station boundary areas. Increasing the size of the areas to deliver certainty about the volume of work means that providers will be able to plan more effectively to provide services at the police station and as cases progress through the courts.

With this opportunity for growth, Carter also offers flexibility for providers. Carter is not proposing a prescriptive blueprint for the whole of England and Wales. It is an approach that can respond sympathetically to the particular requirements of a region or particular client group. Carter allows providers to adapt and grow to deliver a competitive, quality service to all clients. The demand for criminal defence services will continue and statutory requirements mean that this demand will have to be met. Carter requires

the delivery of best value for criminal legal aid by balancing the interests and concerns of all stakeholders. It is essential in these changes that suspects and defendants have their fundamental legal rights protected and that they are confident that they have been treated fairly by the Criminal Justice System (CJS).

The next few years will be challenging for all involved in the delivery of criminal defence services. We are committed to working with providers and our CJS partners in order to deliver a sustainable scheme that provides quality, cost effective and timely services to those that need them.

Preferred Supplier Consultation Closes

The consultation on the LSC's proposals for a national Preferred Supplier scheme closed on 12 June 2006. We received 117 formal responses which included 69 responses from solicitors (eight were from pilot firms), 24 from NFPs, 15 from representative bodies and nine others. In addition, a considerable amount of feedback was gained from providers who attended a consultation event. Thank you to everyone who gave comments at the events and filled in a feedback form. All the information is being taken into consideration as part of the wider consultation. It will be useful for informing any future events held by the LSC. We understand that providers wanted more detail at the Preferred Supplier consultation events which was not available at the time. This should be available following the publication of Lord Carter's final report and our response to the Preferred Supplier consultation later this year. However, if you have any outstanding questions about the Preferred Supplier scheme then please speak to your LSC Account Manager. Information about the consultation proposals can still be found on the website at www.legalservices.gov.uk/civil/preferred_supplier/consultation.asp

Prisoner Video Links

Defence solicitors are being encouraged to use video link booths in court to connect with prisons and hold 'visits' over the link where it is appropriate to do so. The move comes as part of a cross-CJS project being co-ordinated by the Home Office to look at ways of maximising the use of prisoner video links for court hearings where it is legal and appropriate to do so. It is also looking at improving the availability of video links for lawyers to have contact with clients for the taking of instructions and giving legal advice.

Emma Davies from Her Majesty's Court Service said: 'We are committed to making the most use of video link facilities in court - it reduces the need for prisoner journeys, which can result in a 12-18 hour day for a ten minute court hearing.' Journey times are often longer for juveniles and women prisoners than for adult males as the distances to court are

usually greater. Courts and prisons are also looking at ways to make the video link process run more smoothly and efficiently. Defence lawyers, probation and Youth Offending Teams are increasingly using booths at court for contact when they are not required for court hearings. Feedback from users has been positive - as well as preventing potentially long travel times to prison, it can result in more frequent contact with clients where needed. Facilities at court are also on the same network as those in the prison.

Defence teams should contact their local court to enquire about bookings of video link booths for visits if they are interested in using this facility. For further information on the project please contact the Improving Prisoner Availability Project at the Home Office at ipap.project@uk.pwc.com

Equal Opportunities Data

From November 2006 the LSC will begin to collect equal opportunities data for all clients funded under the General Criminal Contract. This has resulted in changes to the CDS1, CDS6 and CDS7 forms to enable the relevant data to be collected and submitted to the LSC. Information on gender, ethnicity and disability will be collected. This data has been collected for clients funded under the Community Legal Service since 2000. The categories and codes currently used for CLS clients have been adopted to minimise any confusion for providers.

The LSC has recently published MDA Research into the impact of London competitive tendering proposals on Black and Minority Ethnic firms. One of the recommendations specifically refers to the collection of client data: 'The LSC should collect data on the diversity of clients of the Criminal Defence Service in the same way as it does for clients of the civil legal aid service. This information should be analysed as part of an impact assessment of its policies to make sure that these services are delivered fairly. This will become even more important when the proposals for means testing are implemented for criminal legal aid.' Revised forms have been sent to providers as part of the October Forms Masterpack update. The changes to each form are detailed below.

CDS1

The first page of this form has been amended to collect information on gender, to update the definition of disability and to update the Data Protection Act (DPA) statement. The new form must be used from 1 November 2006.

When completing this form it is essential that providers inform all CDS clients how their personal information will be used. This information is provided in the new DPA statement.

Page 1 of the CDS1 must be completed for all clients; however, where the provider has a file that contains the information required as an integral part of that file, eg the information is printed directly onto the file or is contained in a file cover sheet, this may be completed instead. The LSC is keen that providers retain this flexibility but they must ensure that clients are made aware of the contents of the DPA statement.

CDS6 and CDS7

Both forms have been amended to add boxes for the collection of equal opportunities

monitoring data. The codes to be used have been provided below for reference. The revised CDS6 form must be used for the November 2006 submission (submitted to Process Centres during December). The revised CDS7 form must be used for all claims submitted on or after 1 November 2006. It will be mandatory for this information to be included for all claims.

The only exceptions will be claims for duty solicitor standby (1G) and Court Duty Solicitor sessions (2D) as no client information is required for these claims. Any claims submitted, after the above dates, without this data will be rejected. Codes have been provided to indicate that the client has declined to provide ethnic and disability information.

Codes - Ethnic Monitoring

Ethnic	Code
White British	01
White Irish	02
White Other	14
Mixed White & Black Caribbean	10
Mixed White & Black African	11
Mixed White & Asian	12
Mixed Other	13
Asian or Asian British Indian	06
Asian or Asian British Pakistani	07
Asian or Asian British Bangladeshi	08
Asian or Asian British Other	15
Black or Black British Caribbean	04
Black or Black British African	03
Black or Black British Other	05
Chinese	09
Other	00
Unknown	99

Gender	Code
Male	M
Female	F

Disability	Code
Yes	Y
No	N
Unknown	U

Carter News Round-Up

The LSC is holding a series of information briefings for providers interested in finding out more about Lord Carter's Review of Legal Aid Procurement and the joint LSC/DCA consultation. The events will be held in five cities (London, Birmingham, Cardiff, Warrington and Leeds) over six days throughout September. Separate crime and civil sessions will be held on the same day with Richard Collins, LSC Executive Director for Policy, Crispin Passmore, Director of the CLS, and Derek Hill, Director of the CDS, presenting. There will be an opportunity to ask questions and offer feedback at the briefings, although we want to stress that the events are not a substitute for sending in a formal response to the consultation, which we would encourage providers to do before 12 October. Information about dates and venues is available on the LSC website, or contact your Account Manager.

Vera Baird QC, MP, Minister for Legal Aid and Social Exclusion (who writes for *Focus on CDS* in this issue on page 8, outlining the benefits of the CDS Act) has undertaken a number of visits around the country to discuss Lord Carter's recommendations with solicitors, barristers and not-for-profit advisers. The visits have given the Minister a chance to hear first-hand from stakeholders across England and Wales on how the proposed changes could work in practice.

For comprehensive information on Lord Carter's recommendations please visit the following websites:

- > www.legalaidprocurementreview.gov.uk
- > www.dca.gov.uk
- > www.legalservices.gov.uk

Crown Court Remuneration

In July, Lord Carter published his review of Legal Aid Procurement – 'Legal Aid – A market-based approach to reform'. In the review Lord Carter outlined the following key proposals for the future of legal aid provision in the Crown Court:

- > The introduction of a new graduated fee scheme for litigators in the Crown Court from April 2007. (Recommendation 4.15)
- > The introduction of a revised Advocates Graduated Fee Scheme (AGFS) for Crown Court work from April 2007. (Recommendation 4.13)
- > 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. (Recommendation: 4.16)

New Graduated Fee Scheme For Litigators

Background

At present, most litigation services performed by solicitors in the Crown Court are paid on an ex post facto (epf) basis according to hourly rates on a case-by-case assessment of the reasonableness of the work done. This system of remuneration has proved expensive – from 1997/8 to 2004/5 there has been a real terms increase of 86% in the cost of remunerating solicitors for this work. The remainder of the Crown Court cases are paid by way of a limited standard fee scheme that was introduced in 1988. However, since 1988 the number of cases escaping from the standard fee to epf has increased to almost 50%.

The Proposals

It is proposed that a 'graduated fee' should be introduced which will link case fees to a formula rather than a length of time preparing a case. The scheme includes 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).

The Benefits

By remunerating solicitors through a graduated fee scheme, case fees will be linked to a formula which establishes the complexity of the case rather than the length of time spent preparing a case. The graduated fee scheme will offer financial reward to those practitioners who seek early resolution to cases where appropriate. Furthermore, given the additional payments for prosecution evidence and days at trial, cases that are genuinely complex and require greater input from a practitioner will receive a proportionately higher total case fee. The graduated fee scheme will also ensure more certainty for both the LSC and legal service providers in the timing of payments and the final payments for work undertaken in the Crown Court.

A Revised Advocates Graduated Fee Scheme

Lord Carter has also proposed a number of amendments to the AGFS which, since October 2005, has remunerated all advocacy work (performed by barristers and solicitor-advocates) in cases up to 40 days at trial.

The Proposals

It is proposed that a review of the October 2005 changes to the AGFS should be undertaken and that this review should recommend a number of amendments to the current AGFS including:

- > 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 uplifts only begin 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.

The Benefits

The graduated fee scheme provides certainty for both the purchaser and suppliers of advocacy services and the fees are fixed by a formula that is clear and understood by all. As with litigator's fees, the advocates graduated fee also better rewards efficiency and encourages advocates to bring cases to a timely disposal.

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. Lord Carter has recommended that the timing of such a move should be as soon as possible after 2009, once suppliers have had time to adapt to the new schemes and to structure their services to provide greater efficiencies within the reformed legal services environment.

Consultation

The LSC are primarily responsible for the implementation of any changes to these remuneration schemes and a joint DCA/LSC consultation paper was published at the same time as the Carter Review. We encourage providers to respond to this consultation – see the article on page 2. To help providers understand the impact of the changes, the LSC will provide a prototype of the Litigator Fee calculator on our website – www.legalservices.gov.uk



October 2006 Changes

There are significant changes being introduced from 2 October 2006 that will affect CDS providers. These primarily relate to the CDS Act 2006 and the reintroduction of means testing for representation in the magistrates' court and the rear section of this issue is dedicated to these (see pages 8–11). Other changes are detailed below.

General Criminal Contract Amendments

Consultation on amendments to the General Criminal Contract closed on 26 June 2006. The LSC has carefully considered the responses and a notice of Contract amendment was despatched to all CDS providers on 10 August. The notice comes into force on 2 October 2006. Copies of the notice, consultation and outcome of consultation are all available from our website (www.legalservices.gov.uk). The key changes are as follows.

CDS Act 2006

Amendments have been made to support the reintroduction of means testing in the magistrates' court – these include the introduction of a new form of funding, Early Cover. As a result of responses to the consultation the proposed amendments have been revised to allow a longer period of time to submit applications for representation orders where the client is detained in custody. See pages 10–11 for further information on when Early Cover may be claimed.

Change of Solicitor

Amendments have been made to clarify the remuneration arrangements that apply when a representation order is transferred from one firm to another. The amendments confirm that mergers and restructuring of firms do not amount to a change of solicitor and would not therefore justify separate standard fees being claimed by both the old firm and the new firm. In these cases only the new firm would be able to submit a claim which should include the costs of the old firm.

Warrants of Further Detention

A separate, urgent, consultation was undertaken on proposals to extend the scope of the Contract. This was a result of section 23 of the Terrorism Act 2006 amending Schedule 8 to the Terrorism Act 2000 to extend the maximum time suspects can be held following arrest from 14 to 28 days. Any application for a warrant which takes the period of detention beyond 14 days must be made to the High Court or senior judge. The Contract amendment enables such

applications to be remunerated. Section 23 of the 2006 Act came into force on 25 July 2006 and therefore these Contract amendments will apply retrospectively from the same date.

Other changes

Police Station Register Arrangements

Amendments were proposed to enable individuals who obtain the Police Station Qualification as a solicitor but then cease to be a solicitor, to be treated as an accredited representative for registration purposes rather than having to start retraining as a probationary representative. The amendment will be implemented with minor amendments including a change to both these Arrangements and the Duty Solicitor Arrangements to provide a right of appeal to the Regional Duty Solicitor Committee in cases where the LSC refuses to register the individual.

Guidance Manuals

As a step toward simplifying the guidance manuals, changes will be made from October to remove sections of guidance that simply duplicate parts of the Contract. In addition the Criminal Bills Assessment Manual and the Police Station & Court Duty Solicitor Cost Assessment Manual will be amalgamated into a single manual. The combined Manual will continue to be known as the Criminal Bills Assessment Manual.

Equal Opportunities Data

Changes to forms will be introduced from November 2006 to enable the LSC to collect equal opportunities data for CDS clients. Further information on these changes can be found in the article on page 4.

Reform of the LSC's Funding and Costs Appeals Procedures

From 2 October 2006, both Funding Review Committees and Costs Committees are being replaced by single Independent Funding Adjudicators and Independent Costs Assessors (as appropriate). In addition, the general right of attendance before both of those committees is being removed. The Assessors/Adjudicators will continue to have a discretion

to allow attended hearings and to refer particularly complex appeals to three-member panels but it is expected that both of these discretions will be rarely exercised. A contract notice setting out the contract changes necessary to implement these reforms has been sent to all Contractors. Full details can be found on the LSC's website.

New Claim Code – Early Cover

A new claim code will be introduced from 2 October 2006 for Early Cover claims. The new code, 2T, should be used for all Early Cover claims. The following information must be recorded for all claims:

- > Client name
- > Unique File Number
- > Offence code
- > Date work concluded
- > Number of defendants
- > Court identifier
- > Duty Solicitor indicator
- > Youth court indicator

A fixed fee of £75.00 plus VAT can be claimed but no claim can be made for travel, waiting or disbursements.

Funding for Prescribed Proceedings

The LSC consulted on changing the funding arrangements for prescribed proceedings in the magistrates' court. These proceedings include those relating to anti-social behaviour orders, closure orders, football banning orders, parenting orders and orders under the Sexual Offences Act 2003. It was proposed that the Advocacy Assistance scheme for these proceedings be withdrawn and that they would in future be funded under representation orders. The LSC has decided that these changes will not go ahead from October 2006 pending further work to confirm the claiming process.

Reference Materials

Updated versions of the Contract, Arrangements and Guidance Manuals will be posted on our website. Relevant changes will also be incorporated into vol 4 of the LSC Manual from December 2006.

Funding – Frequently Asked Questions

We regularly receive queries from providers who are unsure as to whether the General Criminal Contract covers certain types of work and if covered, how this work should be claimed. In response to this we have provided below a list of the five most queried topics, detailing where guidance can be found on the funding available.

Proceeds Of Crime Act, including Confiscation, Restraint and Certificates of Inadequacy proceedings

The LSC continues to receive many queries in relation to this work. The most recent guidance on the funding available is published in *Focus on CDS*, issues 15 (August 2004) and 17 (April 2005) both of which can be found on the LSC website (address at the bottom of this article).

Prior Authorities

A Prior Authority should be obtained for any high value disbursements such as expert reports, transcripts etc, by submitting a CDS 4 to the relevant processing centre. The rules and guidance for prior authorities can be found in the General Criminal Contract Specification Part B 5.2 & the Criminal Bills Assessment Manual section 4.2.

Scope – in relation to Associated Community Legal Services (CLS) work

Legal Help, Investigative Help and Legal Representation under the CLS may be provided to qualifying clients on certain matters arising within the Crime Category, eg civil proceedings under the Proceeds of Crime Act 2002 and matters of public law. Full guidance on the scope of this work can be found in the following sections of the General Criminal Contract Part A 6.1-5 & Part F 2.5-6.

Immigration Offences - Boundary between CDS & CLS

Where you give Police Station Advice and Assistance and it is apparent or becomes apparent that an immigration issue arises, you should provide Advice and Assistance to the client up until the point where the Immigration Authorities take over the investigation. You may continue to provide advice after this point if the client remains in detention and requires advice, however you should consider whether it is practicable to refer the matter to a provider with a contract in the immigration category of work in the local area (which may include your own firm). Further information can be found in the General Criminal Contract Part B 3.6, the Police Station & Court Duty Solicitor Cost

Assessment Manual 5.1-5.4 and *Focus on CDS* 17 (April 2005). In addition, the LSC is currently running an immigration telephone advice pilot for those detained at the police station. Providers can refer clients to the Duty Solicitor Call Centre if they need immigration advice.

Anti-Social Behaviour Orders, Parenting Orders, Football Banning Orders

The LSC continues to receive enquiries in relation to the funding of prescribed proceedings. The proceedings funded by the CDS are detailed in the General Criminal Contract Part A 3.2.1 (b), additional further guidance can be found in Part B 4.1-12 and Part F 2.5 and the Criminal Bills Assessment Manual section 3.12. A helpful summary of funding for these proceedings was published in *Focus on CDS* 16 (December 2004).

If these references do not solve the problem or if providers would like to speak to someone about their matter, they should refer to their local regional office in the first instance, using the appropriate telephone number from those listed in the table below. In order to assist those handling queries we would ask that providers call as soon as their query arises so that we can ensure that the response given is as full and accurate as possible.

Birmingham	0121 665 4800
Brighton	01273 878842
Bristol	0117 302 3000
Cambridge	01223 417995
Cardiff	029 20647172
Chester	01244 404671
Leeds	0113 390 7440
Liverpool	0151 2425372
London	0207 7591967
Manchester	0161 244 5137
Newcastle	0191 2445921
Nottingham	0115 9084280
Reading	0118 9558617

Accredited Representatives

If you have a query in relation to the accreditation of police station representatives, in the first instance you should contact the Duty Solicitor Call Centre on 0845 600 1022 or policestationreps@firstassist.co.uk. If they cannot assist please contact Katherine Toms at Katherine.Toms@legalservices.gov.uk

If, in exceptional circumstances, it is necessary for you to request an extension or a voluntary suspension to a probationary period, you should put your request in writing to Ellis Pinnell at the following address:

Criminal Defence Service,
Greencroft House,
12 Roger Street,
London, WC1N 2JL
DX: 328 Chancery Lane/London
Fax: 020 7759 1051
E-mail: ellis.pinnell@legalservices.gov.uk

Useful Links

- > General Criminal Contract www.legalservices.gov.uk/criminal/contracting/contract.asp
- > Criminal Bills Assessment Manual and Police Station and Court Duty Solicitor Costs Assessment Manual www.legalservices.gov.uk/criminal/contracting/compliance.asp
- > Duty Solicitor Manual www.legalservices.gov.uk/criminal/contracting/duty_solicitor.asp
- > Focus on CDS www.legalservices.gov.uk/criminal/focus/index.asp

The Interests of Justice Test

To ensure consistency in the application of the Interests of Justice test, the LSC has amended the process and accepted the Justice Clerks' Society's offer to revise the guidance.

From 2 October 2006, the decision to grant or refuse legal aid – based on the Interests of Justice and the new means test – will become solely an administrative task performed by court staff. This will help to ensure that there is a high level of consistency in decision-making. However, clients will still be able to appeal to the court against refused applications. Therefore, judicial discretion will still play a part in the new process. Legal advisers will initially work with administrative staff to carry out the interests of justice test in order to embed the new procedure.

This revised guidance has been endorsed by The Law Society, the Senior Presiding Judge and the LSC and has also been piloted in a number of courts this year. It is anticipated that the LSC will require the guidance to be used in all courts from the 2 October 2006. The guidance is divided into two sections: instructions to assist solicitors in completing application forms; and guidance to court officers when considering applications. The LSC will send you a separate note advising you of your need to comply with the guidance.

The Justice Clerk's Society is keen to receive feedback on the revised document. This can be sent direct to the JCS's Secretariat, 2nd Floor, Port of Liverpool Building, Pier Head, Liverpool, L3 1BY. Tel: 0151 255 0790. Fax: 0151 236 4458. E-mail: secretariat@jc-society.co.uk

Free Guide

Attached to the front of this issue of *Focus on CDS* is your free quick guide to the criminal legal aid means test. It's a handy-sized guide to keep with you which takes you step-by-step through each stage of the means test process. Full information packs covering the means test and other guidance are available at www.legalservices.gov.uk

Fair Justice at a Fair Price



The Government Minister for Legal Aid, Vera Baird, QC, MP outlines the benefits of the CDS Act 2006.

The Government firmly believes in fair justice at a fair price, and this is the key principle behind the Criminal Defence Service Act. Along with Lord Carter's report, the Act aims to deliver a sustainable legal aid system that continues to serve the needs of this and future generations. Both aim to reform legal aid so that it responds to what the public wants and justice requires.

Since 1997/98, the cost of legal aid has increased from £1.5bn to over £2bn in 2005/06. This is a trend we are determined must not continue – and we also need to rebalance how the legal aid budget is spent. The 10% real term rise in overall legal aid spending since 1997/98 masks a 35% increase in spending on criminal legal aid. We spend a disproportionate amount defending those accused of crimes compared with the amount spent on those – often the most disadvantaged and vulnerable – who need to protect or enforce a civil right.

The Act therefore aims to protect the fundamental rights of individuals, ensure the taxpayer receives value for money, increase financial control and improve our management of the criminal legal aid system.

While sensitive to the circumstances of individual applicants, the new system will not tie defendants, solicitors or courts in red tape. It will ensure legal aid resources are rebalanced and refocused to where they are needed most.

The new means test is being introduced in magistrates' courts on 2 October, with a scheme for the Crown Court to follow by the end of 2007. The key challenge now is to ensure users of the new system understand how it will work and what it means for them, and that they are ready for October. I was encouraged to learn that the LSC has been inundated with requests to take part in its training sessions for suppliers in September. The LSC has also produced tools like the online calculator to support suppliers working with clients to complete forms. It has also consulted on the Early Cover Scheme, which will provide for a fixed fee payment to the solicitor to cover preparation and attendance at the first hearing. We are also working with other users, including court staff, police and magistrates, to prepare the way for successful implementation.

I am confident that the new system strikes the right balance between fairness and efficiency. It will be easy for defendants, solicitors and court staff to use. Most importantly, by ensuring that those who can afford to pay do pay, it will help place the criminal legal aid system on a sound footing for the future.

Vera Baird QC, MP
Legal Aid Minister

Training for the Changes

LSC training events have been organised across England and Wales to help solicitors get ready for the changes. The training is taking place throughout September and will focus on: the new processes; the means test; and the contract provisions for Early Cover payments, all of which are outlined in this supplement. Solicitors who attend the training will receive a full pack of information and three CDP points. For those who are unable to attend, we have made all the information available on our website (www.legalservices.gov.uk). There are still a few training spaces available. If you are interested, please e-mail Rebecca Tinker at rebecca.tinker@legalservices.gov.uk

Complex and Hardship Cases

Complex Cases

Under the CDS Act, Her Majesty's Court Service (HMCS) will continue to process most applications for legal aid under a new Service Level Agreement (please see the article *right*). However, a small number of clients may have more complex financial circumstances:

- > the self-employed;
- > those in a business partnership;
- > company directors; and
- > people subject to a restraint or freezing order.

The LSC is currently setting up a National Courts Team that will process such applications from 2 October and enhance the process in terms of providing clear and consistent decisions for complex applications.

As a service provider, you will not have to identify complex cases. All you have to do is submit the new Application for Legal Aid form to the court – your relationship will continue to be with HMCS. Court staff will refer any complex case to the Team and advise you of their decision in the same way as for other applications. They will also continue to apply the Interests of Justice test for both straightforward and complex cases. For more information, please contact Nicola Thackray at nicola.thackray@legalservices.gov.uk

Hardship Applications

To ensure that the new system is as fair as possible and protects clients' fundamental rights, the LSC will review applications on the grounds of hardship if clients demonstrate that they genuinely cannot fund their own defence. The consultation on the hardship criteria ended on 17 August 2006. We plan to publish the final criteria on our website in September. Generally, hardship criteria will cover:

- > cases that are expected to be unusually expensive (our consultation suggests over £2,000 is unusually expensive as this is four times the average legal aid case cost);
- > cases where clients don't have access to income that is considered when assessing means; and
- > cases where clients have essential out-goings that are not considered when calculating means.

When Should Clients Apply on the Grounds of Hardship?

- > During the life of a case, there will be two opportunities for hardship to be considered:
- > A Review on Grounds of Hardship form, Application for Legal Aid form and the evidence required by both forms can be submitted simultaneously to the court when clients anticipate that may qualify under the grounds of hardship criteria. The court will then forward the hardship form to the LSC.
- > A Review on the Grounds of Hardship form and supporting evidence can be submitted direct to the LSC's National Courts Team after the court has refused an application on the grounds of financial means.

Each application will be assessed on its own merits and the LSC will make a decision based on the information provided. If supporting evidence is not submitted, the application will be rejected. The LSC has the power to refer cases to the High Court for a judgment where it is not clear, from the client's unique individual circumstances, whether legal aid should be granted.

Your National Courts Team

The LSC's National Courts Team will work from two offices that already handle criminal legal aid processing work – the LSC's Nottingham and Liverpool Business Delivery Centres:

- > If your LSC regional office is: Birmingham, Brighton, Cambridge, Nottingham or Reading, your National Courts Team is based in Nottingham.
- > If your LSC regional office is: Bristol, Cardiff, Liverpool, London, Manchester or Newcastle, your National Courts Team is based in Liverpool.

For more information about the hardship process, please e-mail Alex Nash at alex.nash@legalservices.gov.uk

New Service Level Agreement

A new Service Level Agreement will govern the relationship between the LSC and Her Majesty's Court Service (HMCS) in their joint operation of legal aid in the criminal courts. The new agreement strengthens current controls over legal aid expenditure in the higher criminal courts and extends to cover the granting of representation orders in the magistrates' court.

On a daily basis, the Service Level Agreement will mean that court staff will still process legal aid applications, capitalising on their existing Interests of Justice test expertise and facilitating the smooth running of the court system. The LSC will be accountable for ensuring that processing enables proper and cost-effective control of the legal aid fund. Control measures include carrying out audits on legal aid decisions and checking sample cases to help prevent fraud.

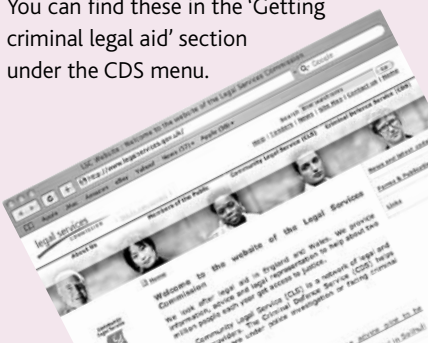
The Agreement also sets out new target turnaround times for applications. For instance, assuming an application is received on Monday:

- > 90% of applications will be processed by 5pm on Tuesday;
- > 99% by 5pm on Wednesday; and
- > 100% by 5pm on the following Monday.

Appeals against refused applications on the grounds of Interests of Justice will need to be made within 24 hours after receiving the decision. The New Service Level Agreement will be published on the LSC's website by 2 October. For more information, please contact John Foley at john.foley@legalservices.gov.uk

Information Online

The LSC's website - www.legalservices.gov.uk - contains new pages on the CDS Act. You can find these in the 'Getting criminal legal aid' section under the CDS menu.



HMCS Preparations

Her Majesty's Court Service (HMCS) has set up a network of Change Champions to facilitate the introduction of means testing. These Champions have been working closely with Court Managers and Justices' Clerks throughout the summer. To ensure that any potential performance issues were identified and dealt with prior to implementation, HMCS has carried out two field tests to check the new forms, guidance and process. Court staff are also being trained on the new system.

How Will the New System Work?

New Application Forms for Magistrates' Courts

The new criminal legal aid forms have been designed to make the application process as simple as possible. To ensure that defendants are able to understand the forms, we have followed recommendations from the Plain English Campaign. We are also making the forms available online to the visually impaired who use through reading aid software. All the application forms have been reviewed by a representative group of practitioners and professional bodies and, where possible, we have incorporated their suggestions. From 2 October, the following forms will need to be used:

- > CDS 14 – Application for Legal Aid
- > CDS 15 – Financial Statement
- > CDS 16 – Review on Grounds of Hardship
- > CDS 17 – Statement of Truth

The Application for Legal Aid Form

The Application for Legal Aid form (CDS 14) will replace Form A. It contains the Interests of Justice test and welfare benefits information that will establish if the client is automatically eligible under the means test. Clients who: receive a 'passported' benefit, ie Income Support, income-based Jobseeker's Allowance or Guarantee Credit; are under the age of 16; or are under 18 and in full time education will have to provide only limited means information on the form.

We have created a direct link to the Department for Work and Pensions so that, where a National Insurance (NI) number is provided, we can quickly validate that the client is receiving a 'passported' benefit. We will only require evidence from the client when they are unable to provide their NI number.

The form will reflect the fact that there are no substantial changes to the Interests of Justice criteria under the Act. However, additional explanatory notes have been inserted under each criterion to help the applicant. Amended guidance on the Interests of Justice test, produced by the Justices' Clerks' Society, will also be available. We plan to make this widely available to criminal defence practitioners via our website.

The Financial Statement and Statement of Truth Forms

The Financial Statement form (CDS 15) will need to accompany the Application for Legal

Aid form for applications that require a full means test. Where an applicant is employed, their most recent wage slip will be required as evidence of income. Self-employed clients and those in a partnership or directorship, who form a small percentage of all cases, will also need to provide further evidence with their application. Applicants must provide evidence if they pay more than £500 a month on housing or childcare costs. Lastly, clients who receive a private pension must provide a bank statement to prove the amount received.

The LSC recognises that clients remanded in custody will often be unable to obtain evidence of their income. These clients may declare their income by completing a Statement of Truth form (CDS 17). Applicants who are not eligible for legal aid because of their financial means may re-apply if their financial circumstances change.

Review on Grounds of Hardship Form

Clients who fail the means test but, due to exceptional circumstances – eg they have unusually high out-goings or their case is likely to be particularly expensive – still cannot afford to pay for their defence, may apply for their financial circumstances to be reviewed on the grounds of hardship. Such reviews need to be submitted on form CDS 16. Clients may apply directly to the LSC following a decision on the initial application. Alternatively, they can file their hardship application with CDS 14 straightaway if they are aware they will fail the means test from the outset.

Our Early Cover Scheme

At times, solicitors may represent their clients at first hearings, before a decision has been made on their legal aid application. In these cases, a new scheme of Early Cover has been introduced to support solicitors. This is a one-off payment and solicitors can claim for each client who is likely to pass the Interests of Justice test but fail on means. The following conditions apply for Early Cover claims:

- > A properly completed Application for Legal Aid form has, with the help of the solicitor, been submitted and received by the representation authority, within two working days of the client being charged (five days where the client is in custody).
- > No decision on that application has been made before 9am on the day of the first hearing.
- > The first hearing advances the case and any adjournment is justified.

- > The eventual decision is that the case passes the merits test but the defendant does not pass the means test.

Where a representation order is subsequently granted, this initial work can be claimed for within the Standard Fee. Where a representation order is refused on the Interests of Justice test, a claim for Pre Order Cover can be made, as currently the case. If the application is refused on both tests, Pre Order Cover can be claimed. Early Cover is not available in this circumstance.

For each client represented in a case there should only be one claim submitted either under the representation order (including any pre order work), as Pre-Order Cover or as Early Cover. Where solicitors act for more than one client in the same case, one claim must be submitted for all clients represented under a representation order. If one or more of the represented clients is refused a representation order, then a separate Pre-Order Cover or Early Cover claim may be made for each client as appropriate.

A new claim code has been allocated for Early Cover payments. Claims should be made on form CDS 6 using code 2T (for more information please see the article on page 6).

Timings

Applications that are not complex will be processed by the court within two working days. Decisions on complicated means assessments will take no longer than seven days.

If you have any queries on the new process please e-mail cdsact@legalservices.gov.uk. We hope to be able to respond to e-mails within five working days.

Quick Calculations

The LSC has developed an online calculator to help court staff calculate the means test. A version of this will be available, via the LSC's website, to service providers so that you can quickly find out if your client qualifies financially for legal aid. The calculator can be downloaded onto your laptop from the website so that you can use it wherever you are. The LSC has also produced a pocket guide to the means test, available with this issue of *Focus on CDS*.

How to Claim Early Cover

