FOCUS 26

TWENTY SIXTH ISSUE MARCH '99

Legal Aid Board

THE FUNDING CODE

– a new approach to funding civil cases

The Access to Justice Bill has now completed its passage through the House of Lords and is before the Commons. It is expected to receive Royal Assent later in the year and come into force in January 2000 or as soon as possible thereafter.

When the Bill comes into force, the existing 'merits test' for civil legal aid will be replaced with a new flexible set of rules to determine which individual cases should receive funding under the Community Legal Service. These rules will be contained in a 'Funding Code' (Code) which will be prepared by the Legal Services Commission (which will replace the present Legal Aid Board) and approved by the Lord Chancellor and Parliament. Along with contracting and strategic planning, the Funding Code is central to the Lord Chancellor's plans to refocus legal aid, targeting resources to those most in need.

In January 1999 the Board published a consultation paper on the Code. The Board welcomes responses from practitioners on any of the issues raised by the Funding Code.

The consultation paper proposes tough and objective criteria designed to target funding to strong cases and priority areas. The Code would replace the existing tests of 'reasonable grounds' and 'reasonableness' with clear rules based on percentage prospects of success, likely damages and likely cost. The Code will seek to ensure that funding is only available in circumstances where a client who had to pay legal costs privately would be prepared to do so; however, the criteria in the Code are flexible enough to take into account other considerations, such as the wider public interest. The Code can also set different criteria for different stages of a case, for example by having specific criteria for funding the investigative stage of cases when limited information about the strength of the case is available.

The consultation paper also discusses other key reform issues such as:

- public interest cases
- funding alternative dispute resolution services
- the impact on the Code of the Woolf reforms
- the growth of conditional fee agreements
- incorporation of the European Convention on Human Rights

As well as suggesting general criteria for funding cases, the paper deals specifically with some of the most important types of case which will be within the scope of the new scheme, namely:

- judicial review and other challenges to public bodies
- clinical negligence
- housing
- family
- very high cost cases

There are also sections on how the Code will be operated in practice by the Legal Services Commission.

Copies of the consultation paper are available from:

**Jenny Treacy, Legal Aid Board Head Office,
85 Gray's Inn Road, London WC1X 8AA.
DX 328 London.
Tel. 0171 813 1000 extension 8540.**

Responses should be sent to Freddie Hurlston at the same address, to be received no later than Friday 30 April 1999. ■

Legal Aid

Civil Non-Family Block Contracting Pilots

The Board has now decided to complete the block contracting pilot research this year ***without*** progressing into a further pilot phase. We are confident that the information we will have from the research will be sufficient to inform the next stages of development in block contracting.

Our aim is to try to make the transition into exclusive contracting from the pilot as easy as possible. For this reason the private practice contracts are being extended to 31 December 1999. There are different arrangements for the not-for-profit contracts. All current and new NFP contracts are part of the exclusive regime; however, the form of the NFP contracts themselves is different from the private practice contract in that the contract is for a specified block of time provided annually by funded caseworker(s). No completely new NFP contracts will be let to start before 1 January 2000.

Meanwhile, the White Paper 'Modernising Justice' (Cm 4155) was published on 2 December 1998. It sets out clearly the Lord Chancellor's vision for the future. The Access to Justice Bill began its progress through Parliament on the same day.

The current timetable for contracting is:

- 1 January 2000 – civil advice and assistance; family certificated legal aid
- 1 April 2001 – all remaining non-family civil certificated legal aid

Although these dates have been announced, there is, as yet, no timetable for the introduction of *block* contracting.

The timing of the introduction of block contracting, and the nature of work it will cover, will be informed by:

a) the results of the current block contracting pilots;
b) the RLSC strategic plans and their conclusions on the need for service provision by category;
c) developments in the establishment of the Community Legal Service under a new Access to Justice Act.

Points b) and c) in particular will clarify what any new form of *block* contract must achieve. This will help us to determine the appropriate terms of the contracts and ensure that they are constructed in such a way as to deliver the desired objectives.

The introduction of exclusivity for civil advice and assistance is a step along the road to block contracting (however that is eventually defined). It will rationalise the supplier base so that only those who are operating under a contract and working to the specific quality criteria in franchising are providing civil advice and assistance. This paves the way for extending contracting to *all* civil representation within the scope of the scheme. Decisions have ***not*** been made on what form future contracts will take but the objectives are clearly specified in the White Paper and the Bill.

The research will conclude at the end of this year and we expect the final report in early 2000. The researchers have gathered a wide range of information from a variety of sources. The extensive reporting from *Brief*Case, covering the classification of work, level of adviser, case end and result, provides a rich vein of data which will enable us to move towards the next stages in contracting. ■

CONTENTS

Immigration Report to the Lord Chancellor

This report follows the Lord Chancellor's invitation to the Board to submit specific proposals on how best to approach contracting in this complex and sensitive category of work. The report will be submitted to the Lord Chancellor shortly.

Key issues covered in the report include:

- Current expenditure and the extent to which it can be taken as an indicator of the level of *genuine* need for advice and assistance in the immigration category of law.
- The availability of good quality advice and assistance at the earliest opportunity in cases.
- The availability of representation before the adjudicators and the Immigration Appeal Tribunal.
- The availability of legal aid for applications for judicial review proceedings after the introduction of exclusive contracting for green form advice and assistance in January 2000.
- The need for contracted firms to expand to address priority need in the immigration category.
- The potential for contracting for "second tier" support with organisations able to support other organisations with contracts.

Once the Lord Chancellor has received and considered the report, we anticipate that he will write to Sir Tim Chessells with his views on the Board's proposals. We will then publish the report.

. . . STOP PRESS . . .

OSS intervenes into four firms

The OSS has recently intervened into four, predominately, immigration firms. This forms part of an on-going investigation into incompetent work and abuse of the scheme, including the overuse of unqualified staff, in immigration work.

The interventions are as a result of information passed to the OSS by the Board. The Board is continuing to look at a number of firms in respect of their claims for payment for immigration work. More interventions are likely. ■

Regional Legal Services Committees Strategic Plans 1999/2000

The thirteen final Regional Legal Services Committee (RLSC) strategic plans which will form the basis for the Area Manager's decisions on contracts to provide civil advice and assistance were approved by the Board at its meeting on 23 February 1999. Final copies will be available from the relevant Legal Aid Area Offices shortly.

An overview document has also been prepared and that will be available with all strategies, or separately, from the Policy and Legal Department at Legal Aid Head Office. This document highlights issues raised in the strategies and summarises the process the RLSCs followed in finalising the plans. It will also provide summaries of the recommendations for each of the 13 RLSCs.

Overall, the response to the RLSC consultation process was very positive. Nationally, over 3400 individuals attended RLSC consultation conferences and focus groups. These included solicitors in private practice, the not-for-profit agencies, local authorities, health authorities, community groups and individual consumers. The RLSCs also encouraged written submissions and over 400 responses were received.

In addition to providing specific information and points of detail regarding the contents of the strategies, the consultation process raised some specific issues regarding the methodological approach taken by the RLSCs to assess need and determine priorities for provision. Other key issues, such as the scope of the scheme itself, were identified. As these issues lay outside the RLSC's remit, they were referred to the Board at a national level in order to determine appropriate advice, emerging from the process, for the Lord Chancellor.

Sir Tim Chessells, Chairman of the Legal Aid Board, thanked all RLSC members and participants in the consultation process for their positive contribution and hard work in finalising the first of the regional strategic plans.

The next RLSC strategies will be produced for consultation by the end of March 2000.

Further information on individual RLSCs and their work in strategic planning is available from the Regional Legal Services Adviser (RLSA) at each Legal Aid Area Office. ■

Pioneer Partners

In November 1998, the Lord Chancellor made public the details of the Government's plans to establish a Community Legal Service (CLS).

Lord Irvine described a service which will be:

> *" a network of quality providers of legal services, supported by co-ordinated funding, delivering services to local communities"*
> *(Lord Irvine, speech to the Holborn Law Society, 2/11/98)*

He went on to emphasise that developing this new initiative would entail a fundamental change in the way that legal advice and services are organised and delivered.

Part of that change was for the Government and the Legal Aid Board to look outwards and to establish partnerships with local authorities and others who support legal advice in the community, with the aim of working together to assess the local community's needs and how best to meet them.

The CLS covers more than just legal aid eligible clients and aims to deliver legal help to a wider client group which might best be defined as "the poor and socially excluded". A more strategic and co-ordinated approach between the key funders of legal services will ensure that the CLS is able to provide a comprehensive, value for money service to a wider range of those in need than legal aid eligibility can cover. This will therefore extend access to quality legal services for the community.

In December 1998, six local authorities were invited to pioneer this approach – the "Pioneer Partners". In March 1999, a number of other authorities – the "Associate Pioneers" – were invited to join the Pioneers to add to the pool of information and ideas. The participation of these forty Associate Pioneers has now been confirmed. The project to develop the CLS therefore now involves approximately 10% of all the local authorities in England and Wales and covers some 12 million of the population. There is a "Pioneer Partner" or an "Associate Pioneer" in each of the areas covered by the 13 legal aid area offices.

The six Pioneer Partners are listed below. You can contact the Legal Aid Board's Regional Legal Services Advisers (RLSAs) at each relevant legal aid area office, for more information.

London Borough of Southwark
London Area Office, RLSA Helen Mills 0171 813 5300

Nottinghamshire County Council
Nottingham Area Office,
RLSA Catherine Staite 0115 955 9630

Cornwall County Council
Bristol Area Office, RLSA Simon Lamont 0117 929 4741

Kirklees Metropolitan Council
Leeds Area Office, RLSA Lorraine Jackson 0113 243 3940

Norwich City Council
Cambridge Area Office,
RLSA Karl Demain 0122 322 2611

Merseyside
Liverpool Area Office,
RLSA Sue Christopher 0151 243 3910.

Rachael Naylor, RLSA at the Reading area office, (0118 958 9696) is co-ordinating information on the work of the pioneers.

The LCD has commissioned research focused on evaluating and monitoring the work of the pioneers with the objective of agreeing a best practice blueprint which can be adopted by all future partnerships working within the CLS. The ultimate aim is for all local authorities to work within such partnerships with the Board (or the Legal Services Commission as the Board will become under the new Access to Justice Bill). Richard Moorhead at the Institute of Advanced Legal Studies has been commissioned to carry out this work. ■

Green Form & ABWOR Keycard

In December 1998, the Board withdrew the provision of free forms to the profession. A Legal Aid forms Masterpack was introduced and made available to solicitors. This contained the majority of forms and checklists and included the Green Form & ABWOR Keycard.

As the majority of solicitors now have a masterpack, or have purchased a disk with similar contents, copies of the Keycard will no longer be separately available from area offices. It is, however, contained within this issue of Focus.

Details of eligibility limits can be found on pages 18-19 of this issue of Focus. Please make sure you retain this copy of Focus for future reference.

If you have any queries regarding the Masterpack of forms please contact the Business Support Unit on

0181 813 1000. ■

CBE for Chief Executive of Legal Aid Board

Steve Orchard, Chief Executive of the Legal Aid Board, was awarded a CBE in the New Years Honours List, for services to legal aid.

Steve Orchard took up the post of Chief Executive in January 1989. He became an executive Board member in January 1992. Before joining the Legal Aid Board he worked at the Lord Chancellor's Department and has wide ranging experience of the legal system.

Sir Tim Chessells, Chairman of the Legal Aid Board, said:

"I would like to congratulate Steve Orchard on his very well deserved award of the CBE in the New Year's Honours List. The award is a recognition of all Steve's achievements as the Board's Chief Executive and also an endorsement of the Board's programme of work and the contribution that all involved have made to it over the years since the Board was set up.

The time ahead will be particularly exciting and challenging as I expect Steve will play a key role in the development of the Lord Chancellor's Legal Services Commission." ■

Application invited for generic franchises

In November 1998, the Board announced the introduction of a new generic franchise category (see Focus 25, p.11). Arrangements for applications for a franchise within this category were introduced at the end of February 1999.

Organisations providing services in niche areas of law, such as education or community care or emerging areas of law such as access to healthcare can now apply for a generic franchise. Applicants must provide details as to the specific area of law sought within the generic banner (usually by reference to the particular type of legal matter or proceedings). Organisations must be compliant with the supervisory requirements ie. they must be able to demonstrate the necessary knowledge, skills and understanding both of the specific area of law and of the supervisory role.

The Board is continuing to work with the profession to understand what constitutes appropriate expertise in the specified niche subject areas. In completing an application for a generic franchise, individuals will be asked to supply details of cases undertaken in the relevant area in order to demonstrate knowledge and experience.

The length of experience the individual has within the area of law will be taken into account in determining their suitability as a supervisor. The franchise requirement stipulates that they must have spent 350 hours on casework in the relevant subject area for each of the three preceding years (or the equivalent over a shorter period for a specialist). However, in emerging areas of law, the Board will be flexible in applying this franchise requirement. Franchises will be granted to successful applicants from 2 August 1999.

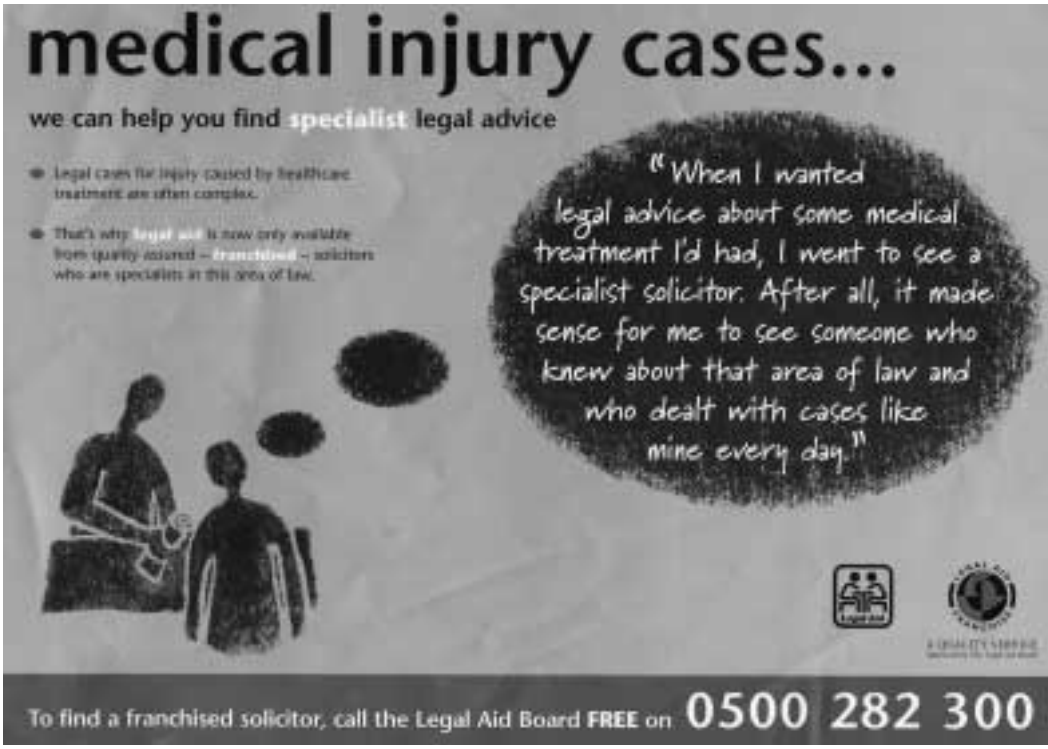
Next year, organisations with an advice and assistance contract attached to a franchise category which do a small amount of work in an area included within the scope of the generic franchise will be able to deliver this work from within their allocated tolerance. Contracts to deliver advice and assistance within the generic franchise arrangements will only be let where the Regional Legal Services Committee has identified a need for that specific legal service.

Organisations interested in applying for a generic franchise in a specific area of law should contact their local area office for an information and application pack. ■

First Clinical Negligence Franchises Awarded

On 1 February 1999, the first clinical negligence (CN) franchises were awarded. Under new regulations which came into force on the same date, Personal Injury franchisees are permitted to take on new CN cases until 31 July 1999, but after that date only solicitors with a CN franchise will be able to take new CN cases.

One month after the launch of the new CN franchise, there were 137 offices with a franchise contract in clinical negligence. By 1 August 1999, from which date only CN franchise contract holders will be able to accept new cases, we anticipate that there will be in the region of 200 CN franchised offices.



At the end of January 1999, the Legal Aid Board launched CN posters and leaflets to explain the changes to the public and to help firms without a CN franchise to refer clients to firms which have. The publicity materials (pictured here) also advertise a Legal Aid Board freephone information line which both clients and solicitors can call to obtain details of CN franchised firms.

The launch of the CN publicity material and accompanying press campaign has been highly successful and has resulted in an enormous rise in the use of the freephone number. At times, demand has been more than twice the anticipated maximum and over 12 times the level it was before the launch of the CN franchise. Given this high level of demand, we would be grateful if franchised firms did not 'test' the line to check that their details are being given out, as this prevents other callers from getting through.

Firms without a CN franchise who would like to obtain details of CN franchised firms in order to refer clients to them, should call the freephone information line on 0500 282 300. Copies of the CN publicity posters and leaflets are available free of charge. Please write, quoting how many posters/leaflets you would like, to:

Legal Aid Board Franchising Distribution
P.O. Box 3
West Wickham
Kent, BR4 9TB.

Multi-Party actions

THE WAY FORWARD

On 1 February 1999, the Legal Aid Board announced that a specialist panel of solicitors with a proven track record in running multi-party actions (MPAs) would form the centrepiece of a package of measures to reform MPAs. The changes are designed to concentrate MPAs in the hands of experts and to control spending.

The definition of an MPA is any case in which a number of people have a legal case involving the same legal or factual issue arising from the same cause or event. For example, the recent successful actions in Vibration White Finger, Human Growth Hormone/CJD and British Coal respiratory disease cases, all of which received legal aid funding.

MPAs often involve large numbers of legal aid clients each of whom would be granted a certificate if eligible. However, the cost of the investigative work would be shared among them, rather than incurring large costs on each certificate.

The Board will consider quality and, for the first time, price in awarding future contracts for MPAs. The Board has also established a new specialist MPA Unit.

The reform package is designed to achieve greater certainty in spending in an area in which costs can be very high and better targeting of MPA work to those solicitors who have extensive experience in one of the most complex areas of civil litigation.

The reforms were first proposed in 1997 in the Board's report, *When the Price is High*. The measures were approved by the Lord Chancellor who, in July 1998, directed the Board to implement them.

The MPA Panel

Eighteen firms have been approved for membership of the MPA solicitors' panel. All have demonstrated experience and expertise in running group actions. Panel members will be able to tender for any MPA contract, they will be subject to less onerous tender requirements, they may be invited to take over contracts at short notice, and they will perform a key consultative role on legal aid procedures in MPAs. Non-panel firms will be able to bid for contracts if they have clients in the action.

The MPA Unit

A specialist unit has been established at the Board's London area office to take on the job of managing all new significant MPAs including all new contracted MPAs. It will also take on a small number of current contracts and will act as a central reference point for all new legal aid cases likely to become MPAs. Unit staff will work closely with solicitors, ensuring compliance with case plans and cost-efficient running of MPAs.

New Contract Award Rules

In line with new contract rules, the Board will be awarding contracts firstly by reference to the quality of the firms' plans for conducting the litigation and secondly on the basis of price.

New Approach to Pricing Contract Work

We are committed to obtaining value for money in these very costly cases. We have consulted on the details of pricing MPA work and the result of that consultation will be announced shortly. Our pricing regime, which may provide a model for future pricing of work in other high cost cases, will be based on a mixture of hourly rates and overall prices for contract stages. Applying conditional fee principles, we will expect contracted solicitors to share the risk of running group actions with the Board. They will be paid less for cases that fail and receive significantly more for those that succeed. ■

Exclusive Contracting

On 31 January 1999, the Board closed Section A of the Bid Panel for organisations intending to bid for contracts later this year.

Organisations which missed that deadline can still apply to be considered for Section B of the Panel, but they must have applied for a franchise and passed a preliminary audit before they submit their application.

Not-for-Profit (NFP) Sector

The next stages of the bidding process vary slightly for organisations which have opted for the NFP contract route. Invitations to apply for a NFP contract will be issued to appropriate Bid Panel members very shortly. These contract applications will include the application for a franchise and must be submitted to the local area office by 31 May 1999. The area office will then allocate a date for a preliminary audit. All audits for potential NFP contractors will be completed by 30 July 1999.

Franchise Applications

Organisations on Section A intending to bid for a private practice contract in a category of law in which they are not currently franchised **must** have applied for a franchise in that category by 31 March 1999.

To maintain its status on Section A of the Bid Panel, an organisation following the private practice route must also pass a preliminary audit by 1 August 1999.

Generic Franchises

Organisations which have stated an intention to submit a bid for a contract in a category of work not currently covered by the franchise subject categories will need to submit an application under the generic franchise arrangements. For details of how to apply for a generic franchise, organisations should contact local area office franchise teams. The timetable for the generic category differs slightly in that organisations following the private practice route have up until 30 July 1999 to submit their franchise application and 31 December 1999 to pass a preliminary audit. Those following the NFP contract route will submit their applications to the separate NFP timetable set out above.

Private Practice Bidding Process

The Board plans to invite private practice contract bids from solicitors' firms in May 1999. Firms will have until 30 July 1999 to submit their contract bids. As part of a contract bid, organisations will be required to state, for each category of law in which they are bidding, the number of application forms for advice and assistance signed by clients in the six months ending 31 May 1999.

Tolerances

A private practice contract to undertake family/matrimonial work will specify a number of new cases to be started in that category. The contract will also specify a "tolerance" – an additional number of new cases which may be started in non-family categories. The number will be determined by reference to the funds available within the relevant zone.

A contract to undertake work in a category other than family/matrimonial will specify a number of new case starts. The contract will also specify that a number of those cases may be in categories other than the one which is the subject of the contract. So a contract for 100 new housing cases would provide that (say) 10 of those cases could be in categories other than housing. The number will be set as a fixed percentage of the contract size.

NFP organisations will also have contract tolerances specifying the amount of time which may be spent on matters outside their specified contract categories.

Tolerance-Only Contracts for Criminal Practitioners

Tolerance-Only Contracts are intended for firms on the Bid Panel which do mainly criminal work and are franchised (or intending to be franchised) in the criminal category, but wish to apply for a contract to do a small amount of civil advice and assistance work, mainly for their criminal clients.

If such a firm is awarded a contract in a civil category of law, then that contract will already include a tolerance level (as described above) which will allow the firm to carry out civil advice and assistance for their criminal clients and therefore a tolerance-only contract will not be necessary.

Criminal practitioners on Section A of the Bid Panel not yet franchised in crime must have applied for a criminal franchise before 31 March 1999 if they intend applying for a Tolerance-Only Contract starting in January 2000.

Criminal practitioners who have been unable to meet the timetable for Section A of the Bid Panel may join Section B if they comply with the rules which govern it. ■

Draft Contract Documentation

Response to Consultation

The consultation period for the exclusive contracting draft contract documentation ended on 30 January 1999. The Board would like to thank all those who took the time to respond and would like to assure them that their comments and suggestions are currently under review. We will publish a summary of the responses to the draft contract documentation, together with the action we will take. We expect to publish the final version of the contract documentation in April 1999. ■

Plain English Award for Legal Aid Leaflet

Caroline O'Dwyer, Press Manager, accepts the award from Martyn Lewis.

The Legal Aid Board has won a Plain English Award for its public information leaflet, 'A Practical Guide to Legal Aid'. The leaflet was nominated by the public for the award, which was presented at a ceremony in London in December 1998.

The panel of judges from the Plain English Campaign said of the leaflet:

> *"Coming into contact with our complex legal system is a daunting prospect for many people. And the whys and wherefores of paying legal costs can be particularly worrying. This booklet makes excellent use of personal references to provide a highly approachable guide to the subject. The information is broken down into short sections punctuated by helpful headings to guide the reader through this complicated subject. The design is spacious and pleasing."*

'A Practical Guide to Legal Aid' and the two other public information leaflets , 'How to Get Free and Low Cost Legal Help' and 'Criminal Legal Aid at the Police Station and in Court', are updated each Spring to reflect new eligibility limits and any changes to the scheme. The leaflets for 1999/2000 will be available shortly.

The leaflets for 1998/1999 are currently available from:
Legal Aid Publicity Distribution,
PO Box 447, Croydon, CR9 1WU.

'How to Get Free and Low-Cost Legal Help' and 'Criminal Legal Aid at the Police Station and in Court' are aimed directly at clients and provide a brief introduction to the legal aid scheme in England and Wales. 'A Practical Guide to Legal Aid' is more detailed and is aimed primarily at solicitors/advisers who are explaining the scheme to their clients. ■

Holding a Personal Injury Franchise

Over the last few months we have received a number of enquiries about the value of applying for or continuing to hold a Personal Injury (PI) franchise. Many of these have been prompted by the omission of PI from the list of areas of law in which intentions to bid for an advice and assistance contract could be accepted. Other enquiries have been in response to Schedule 2 of the Access to Justice Bill, which generally excludes personal injury – other than clinical negligence cases – from future legal aid funding.

It is important to note, however, that under the Bill the Lord Chancellor will be able to give directions authorising funding of services which would otherwise be excluded. It is likely that such directions will be given in due course and will allow for limited funding in personal injury claims which have:

- very high investigative costs (which may cover many industrial disease and child abuse claims);
- very high overall costs; or
- a wider public interest

The detailed funding rules have yet to be determined, but we believe it is likely that only firms with a personal injury franchise will be able to apply for funding. Some personal injury based multi-party actions (MPAs) may well also qualify for funding under the rules. Only franchised firms are eligible to join the Board's recently established MPA panel.

In addition, personal injury franchisees should note that franchised rates of pay will only apply for work undertaken during periods in which a franchise contract is in force. This means that if a franchise is withdrawn or allowed to lapse, the firm will no longer be able to claim franchised rates of remuneration.

In the circumstances we would encourage firms to maintain, or continue to apply for, PI franchises. ■

Contracting for Legal Services: Methods of Delivery Pilot

The Legal Aid Board is planning a Methods of Delivery Pilot to agree ways of contracting for civil advice and assistance using methods of delivering legal services previously excluded from the Board's block contracting pilots. This pilot builds on research carried out for the Board by the Policy Studies Institute (PSI) "Access to Legal Services: the Contribution of Alternative Approaches", which is to be published by PSI shortly.

On 13 October 1998, the Lord Chancellor wrote in a letter to Sir Tim Chessells, Chairman of the Legal Aid Board:

> *"I am satisfied that the ability to provide the services such as telephone advice, outreach services, and what are known as 'second tier' services will be an important factor in the successful development of the Community Legal Service...A wider range of services will enable providers to give their clients the most appropriate help for the issue at stake, and ensure that the tax payer is receiving value for money... I must emphasise that the introduction of new methods of service delivery will be carried out within the existing spending limits".*
>
> *('Reforming the Civil Advice and Assistance Scheme', Legal Aid Board, October 1998)*

The Board, therefore, is interested in contracting with organisations which run one or more of the following methods of delivery:

- **telephone advice**
  (national, regional or local full casework services)
- **outreach services**
  (services delivered remote from the agency/office base)
- **second tier advice**
  (national or regional services combining advice, support and training for front-line advisers in specialist areas and taking complex cases on referral)
- **combination services**
  (combination of any or all of the above)

Key objectives of the pilot include agreeing quality criteria and contract terms.

We expect to let at least one pilot contract in each of the three types of methods of delivery, and at least one combination contract. However, the funds available for this pilot are very limited, so our approach is extremely focused. We will only be able to let contracts with a small number of providers, probably no more than ten.

Providers who currently have a contract with the Board or who have applied to be on the Exclusive Contracting Bid Panel are not excluded from this pilot. However, a separate application for this Methods of Delivery pilot must be made.

Advice centres and solicitors in private practice have been invited to submit applications for pilot contracts by **Friday 26 March 1999** (see tender for applications in the Society section of 'The Guardian', Wednesday 24 February 1999). Applicants will be shortlisted by 30 April 1999.

The constraints on the pilot have led to intentionally strict selection criteria. Applicants have been asked to demonstrate that they have at least three years' proven track record in the relevant subject area and one year's experience of the relevant method of delivery. They have also been asked for evidence of quality service provision (for example their ability to meet legal aid franchise requirements as set out in LAFQAS). The Board is also interested in evidence of demand for service (number of users, information from monitoring caseload and range) and of successful innovative approaches to provision. The full list of selection criteria is available from the Board.

Other factors will also be considered when shortlisting applicants. For example, the Regional Legal Services Committee strategic plans and assessments of need, and plans relating to Pioneer and Associate Pioneer Partnerships will inform the shortlisting process. Services not selected for this pilot will not be ruled out for future consideration once contracts are available on a wider basis.

For further information relating to the Methods of Delivery pilot, please contact Sarah Maclean, Policy and Legal Department, Legal Aid Board, 85 Gray's Inn Road, London WC1X 8AA. DX 328 London. ■

If you deal with clinical negligence cases...

. . . you should make sure you have read the article and guidance in Focus 25 – and should take note of the information about the regulations contained in this article.

Exclusivity started on 1 February 1999
Legal aid account holders were advised of the arrangements for exclusive provision in a letter dated January 1999. Those arrangements were effected by The Legal Aid (Prescribed Panels) Regulations 1999 which came into force on 1 February 1999.

The regulations were made using powers given under section 32(7) of the Legal Aid Act 1988, and provide that an assisted person's right to select an "authorised litigator" (i.e. solicitor or fee-earner) for the purpose of advice, assistance or representation is limited to members of a Clinical Negligence Franchise Panel.

Are any of your solicitors on the Panel?
Solicitors/fee-earners who are authorised by the Board under a franchising contract are on the panel. Who is authorised, and how?

- Solicitors/fee earners (who are clinical negligence supervisors or are supervised by one) of clinical negligence franchisees are authorised when clinical negligence franchise certificates are issued.
- Solicitors/fee earners (who are provisional clinical negligence supervisors or are supervised by one) in firms which have passed a clinical negligence preliminary audit, are authorised through a temporary "franchising" contract (which ends when the franchise is granted or refused or after nine months).
- Solicitors/fee earners (who are personal injury supervisors or are supervised by one) of personal injury franchisees are authorised until 31 July 1999 under the authority set out below*.

What can't you do if you are not on the Panel?
Unless you are an authorised litigator on the Clinical Negligence Franchise Panel then, from 1 February, for the clinical negligence and related claims listed below, you:

- cannot accept an application for advice and assistance
- cannot have a legal aid certificate issued showing you as the nominated solicitor (though you can retain existing certificates, and submit applications for amendments to cost or scope limitations in respect of these)
- cannot have a legal aid certificate amended to show you as the nominated solicitor

Which claims are covered?
The claims covered by the new regulations are:

(a) clinical negligence claims;
(b) claims for damages in respect of alleged trespass to the person committed in the course of the provision of clinical or medical services (including dental or nursing services);
(c) claims for damages in respect of alleged professional negligence in the conduct of a claim falling within paragraph (a) or paragraph (b) above; or
(d) claims which include any claim falling within paragraphs (a), (b) or (c) above.

*Personal Injury Franchisees

Clinical Negligence

Temporary Authority (expires 31 July 1999) under Franchising Contracts

1 Authority
Until midnight on 31 July 1999, those members of Franchisees' personnel, at offices holding personal injury franchises, who are Authorised Litigators and who are either approved by the Board as supervisors in the personal injury category of work or are under the supervision of such a supervisor, are authorised by the Board to provide Advice, Assistance and Representation in claims to which regulation 4 of The Legal Aid (Prescribed Panels) Regulations 1999 applies.

2 Membership of the Clinical Negligence Franchise Panel
Until midnight on 31 July 1999, provided a Franchisee's office described in paragraph 1 continues to hold a personal injury franchise, members of the Franchisee's personnel described in paragraph 1 are members of the Clinical Negligence Franchise Panel.

Date temporary authority granted:
1 February 1999 (or date of grant of personal injury franchise, if later)

Signed by:

Steve Orchard, Chief Executive
For the Legal Aid Board

Notes: A new franchised category of work "clinical negligence" has been created. This work was formerly within the "personal injury" category of work. This authority enables franchisees with personal injury franchises to continue to provide advice, assistance and representation under their personal injury franchises until 31 July 1999. "Authorised Litigator" has the meaning given in section 119(1) of the Courts and Legal Services Act 1990 but only solicitors may be selected under the Legal Aid Act 1988. ■

Pilot implementation of Part III of the Family Law Act 1996

The Act

Part III of the Family Law Act 1996 introduces legally aided mediation and requires that, in certain family cases, suitability for mediation is considered before legal aid is granted. The Legal Aid Board's family mediation pilot project aims to provide, through franchise contracts, quality assured family mediation services, and also to pilot and implement the requirement outlined above.

Section 29 of the Family Law Act 1996 restricts the availability of civil legal aid certificates in family matters where mediation is suitable. It states that, subject to some important exceptions,

> *"civil legal aid for those family matters must be refused unless the applicant has first attended a meeting with a mediator to assess whether mediation is suitable to the dispute, the parties, and all the circumstances, and in particular, whether mediation could take place without either party being influenced by fear of violence or other harm."*

The policy behind the Act

The purpose of the Act is not to oblige applicants for legal aid to go through the mediation process against their will, but to require them to attend a meeting with a mediator. The mediator can then assess whether mediation is suitable given all the circumstances of the dispute and the parties involved. This will give the applicant the opportunity to consider mediation as an alternative form of dispute resolution.

The family mediation pilot project

The family mediation pilot project was created by the Legal Aid Board to ensure that sufficient quality assured mediators, acting under contract with the Board, are in place to meet the demand for mediation created by the Family Law Act 1996, and to implement section 29 of that Act.

The project seeks to identify the most effective supplier arrangements, with supporting legal advice and assistance, and to support the development and expansion of such arrangements. Proceeding by way of a pilot, rather than national implementation, allows the Board to study and research the most effective ways of delivering mediation services in family cases.

The project has contracted with, and will continue to contract with, franchised firms to supply linked legal advice and assistance for those who find themselves financially eligible for mediation but not for advice and assistance.

How does Part III of the Family Law Act 1996 affect solicitors?

Where an application for civil legal aid in a family matter is affected by section 29 (see below) **it will be rejected unless it is accompanied by a completed S29 form**.

The family mediation pilot project has selected various areas in which to pilot section 29 and family mediation. These catchment areas are drawn around quality assured mediation suppliers contracted to the Board. The size of the catchment area is dependent on the anticipated volume of legally aided family cases, and the capacity of the mediation supplier to offer mediation.

Section 29 was initially piloted in Bristol and Northamptonshire from March 1998. The pilot was then extended in September 1998 to Cambridge, Peterborough, Birmingham, Coventry, Bury, Stockport and central Manchester. The Board will implement section 29 on a wider scale on 26 April 1999. All solicitors who will be affected by the implementation of section 29 will be notified and invited to attend a talk at which the new procedures will be explained. They will also be issued with guidance to enable them to take account of the new procedures when applying for civil legal aid for family matters using form APP2 or, exceptionally, form APP3.

Applicants for civil legal aid affected by section 29

Section 29 applies to those applicants for civil legal aid for certain family matters whose solicitor's office is located within a pilot catchment area. It does not apply to applications received from any other solicitor. Family matters are defined in section 13A(2) Legal Aid Act (page 288 Legal Aid Handbook 1998/99):

> *13A(2) "Family matters" means matters which are governed by English law and in relation to which any*

question has arisen, or may arise:

(a) under any provision of;

(i) the Matrimonial Causes Act 1973;

(ii) the Domestic Proceedings and Magistrates' Courts Act 1978;

(iii) Parts I to V of the Children Act 1989;

(iv) Parts II and IV of the Family Law Act 1996; or

(v) any other enactment prescribed;

(b) under any prescribed jurisdiction of a prescribed court or tribunal; or

(c) under any prescribed rule of law.

Currently no jurisdictions or rules have been prescribed under (b) or (c).

Applications for civil legal aid which are not affected by section 29

Section 29 does not apply to any application outside section 13A(2) Legal Aid Act 1988.

Section 29 does not apply to applications on form APP3 where cover under Parts IV or V of the Children Act 1989 is sought (public law proceedings whether non-means non-merits tested, means tested only or means or merits tested).

Section 29 does not currently apply to applications to amend or extend existing certificates, even where the certificate was initially granted after the effective date in your area.

Section 29 does not apply where an emergency civil legal aid application is made and meets the criteria for the grant of emergency cover. This includes situations where the emergency application is granted either as an emergency certificate, or as a substantive certificate (i.e. where the applicant is in receipt of a passporting benefit). Any emergency application which is refused must be resubmitted as a substantive application, to which all of the requirements relating to section 29 will apply.

There are additional exceptions to the requirement to attend a meeting with a mediator. These exceptions are only activated on the completion of form S29.5 by the solicitor, and acceptance of the exception by the Board's area office.

The initial meeting between solicitor and applicant

Any applicant for civil legal aid in family matters to whom section 29 applies must be referred for a meeting with a mediator at a quality assured family mediation service under contract with the Legal Aid Board.

The solicitor should advise the applicant as to:

(a) what the client might expect from mediation;

(b) what might happen at the meeting with the mediator;

(c) who will be present, and who may be present at the meeting with the mediator;

(d) who will be present, and who may be present at any subsequent mediation; and

(e) what the alternatives are if the mediator decides that mediation is not suitable to the parties, the dispute and all the circumstances.

There are exceptions to the requirement to attend a meeting with a mediator under section 29. In order to activate one of these exceptions, the solicitor must complete either section 1 or 2 of form S29.5 and attach the form to the application for legal aid.

Where clients are eligible, solicitors are able to claim for advice and assistance provided to clients referred to, or taking part in, family mediation under section 29. The time spent and the work which can be justified will depend on all the circumstances of the case. All the usual rules apply regarding availability, extensions to the financial limit and costs assessment. As it should be possible to provide information regarding mediation at the initial meeting with the client, an extension to the financial limit is unlikely to be justified unless, exceptionally, the initial limit has already been used.

The Referral Process

Although the applicant can arrange their own meeting with a mediator, the Board recommends that the solicitor takes responsibility for referring the applicant to a mediation service for a meeting with a mediator.

The Board recommends that the solicitor refers the applicant by making a telephone call to a mediation service to arrange a meeting with a mediator for the applicant. Where the solicitor is not able to do this, they should advise the applicant to contact the mediation service independently to discuss their meeting with a mediator. A list of approved mediation services contracted to the Board in each particular area will be sent to all solicitors affected.

The meeting with a mediator

Meetings will be conducted with applicants who have been referred by a solicitor or some other body, or have referred themselves. The meeting may be conducted by

one or two family mediators recognised by the Legal Aid Board. Mediation services must offer the applicant and their partner the opportunity to attend a meeting with the mediator either together or separately. The decision whether to attend the meeting together or separately must be left to the applicant and their partner.

The purposes of the meeting are so that:

(a) the mediator(s) can assess whether mediation is suitable for the dispute, the parties and all the circumstances; and

(b) the mediator(s) can consider whether mediation could take place without either party being influenced by fear of violence or other harm.

Where the mediation does not proceed, the S29.5 form is returned to the applicant, and the mediation service must inform the applicant that they may consult with their solicitor. The solicitor can now make an application for civil legal aid by attaching the S29.5 form to the applicant's application form.

This application may still be refused by the area office under the reasonableness test. The area office must consider:

(a) the possible use of mediation as a suitable alternative to litigation;

(b) the outcome of the meeting with a mediator; and

(c) any assessment of suitability by a mediator for legally aided mediation.

Some of the factors which may be taken into consideration by the mediators are as follows:

(a) where one or both parties is unwilling to negotiate;

(b) where the dispute is not one which can be mediated;

(c) where there are unredressable imbalances of power or extreme conflict;

(d) where there is a major impairment of mental or physical capacity;

(e) where one or both parties feel that they have been coerced into attending;

(f) where there are criminal/child protection issues;

(g) where mediation has already been fully attempted; or

(h) where one party has insufficient confidence in their ex-partner's ability to keep to any agreement.

Mediation

If mediation is suitable for the dispute, the parties and all the circumstances the applicant may, if financially eligible, have access to legally aided family mediation and linked legal services. The S29.5 form does not need to be completed unless mediation breaks down.

Application of the Civil Legal Aid Merits Test

If an application is subject to section 29, is not an exception under either section 1 or 2 of the S29.5 form, and is suitable for mediation, the civil legal aid merits test will be applied.

Eligibility

The eligibility limits for legally aided family mediation under Part IIIA Legal Aid Act 1988 are currently set at the ABWOR rate (see pages 18-19 of this issue of Focus).

Clients receiving legally aided family mediation under the Legal Aid Act 1988 may also be eligible for legal advice and assistance under Part IIIA of the Act ('green form' advice and assistance). If the client's weekly disposable income or capital are above the legal advice and assistance limit (see pages 18-19 of this issue of Focus), the client may receive advice and assistance from contracted suppliers during and after mediation.

These suppliers are franchised firms the Board has contracted with to provide linked legal advice and assistance to support mediation. This contracted form of advice and assistance is available to those who qualify financially for ABWOR and who therefore qualify for legally aided family mediation itself.

Where to find the relevant statutes

Part III of the Family Law Act 1996 introduced Part IIIA into the Legal Aid Act 1988. These provisions are set out at pages 288 to 291 of the Legal Aid Handbook 1998/9. Part IV of the Legal Aid Act was also amended by the Family Law Act 1996 at section 15 in relation to the grant of legal aid.

Regulations have also been introduced to govern the availability of legally aided family mediation and the impact of the requirement to consider mediation on civil legal aid. These are contained in the Legal Aid (Mediation in Family Matters) Regulations 1997 at pages 363 to 365 of the Legal Aid Handbook 1998/9, and in Regulation 26A of the Civil Legal Aid (General) Regulations 1989 at page 383 of the Handbook. ■

Payment for bail act proceedings and other ancillary work

On 28 July 1995, the Divisional Court made a declaration that offences under Section 6 of the Bail Act 1976 constitute a separate case within the Magistrates' Court standard fee scheme. After that date a separate standard fee was payable for Bail Act offences. The Lord Chancellor's Department always intended that work relating to bail applications, any bail offences arising from such applications, and proceedings for contempt (other than those proceedings where legal aid has been granted under Section 29 of the Legal Aid Act) would be "incidental" to the main criminal proceedings.

In order to give effect to that intention, **amending regulations came into force on 1 December 1998 and apply to work done under a legal aid order made on or after 1 December 1998.**

Where a legal aid order was made **before 1 December 1998** Bail Act offences will continue to attract a separate standard fee (except where the Bail Act offences themselves constitute a series of offences, or, where the offence is a Section 7 offence which is not a free standing offence and thus is incidental to the main proceedings).

Where the legal aid order was made **on or after 1 December 1998**, the regulations describe the proceedings listed in paragraph 2(2) of Part III of Schedule 1 to the Legal Aid in Criminal and Care Proceedings (Costs) Regulations 1989 as "specified proceedings".

"Specified proceedings" are to be treated as including all "ancillary proceedings" in respect of which a legal aid order is in force. A legal aid order may cover ancillary proceedings either by an amendment to an existing order or by the grant of a subsequent legal aid order. Proceedings will still be ancillary even where they are covered by a separate legal aid order from that covering the "specified proceedings".

"Ancillary proceedings" are defined as:-

(a) proceedings preliminary or incidental to the specified proceedings (whether before that or another court) including bail applications made either in a magistrates' court or in the Crown Court;
(b) proceedings arising from bail applications within (a) above, including appeals against the grant or refusal of bail and proceedings for offences under the Bail Act 1976;
(c) proceedings for contempt alleged to have been committed in the specified proceedings, other than proceedings in respect of which the assisted person has been granted representation under Section 29 of the Act.

No separate fee is payable for ancillary proceedings. The cost of the work done is to be included in the costs claim for the specified proceedings.

Solicitors will only receive a larger standard fee for the ancillary proceedings work if, by including these costs, they are entitled to claim a higher standard fee or a non-standard fee by virtue of the level of their core costs.

If solicitors submit a separate claim for a standard fee for ancillary proceedings work where the legal aid order is made on or after 1 December 1998 it will be rejected. Solicitors should ensure that the costs claims submitted include the core costs for both the specified and ancillary proceedings. ■

Crime and Disorder Act 1998
Anti-Social Behaviour Orders

These new civil orders under section 1 of the Crime and Disorder Act 1998 will be available nationally from 1 April 1999. An application can be made by the police or local authority in the magistrates' court.

Legal advice and assistance is available if the financial eligibility criteria are satisfied (pages 18-19 of this issue of Focus).

The scope of the duty solicitor scheme has also been extended to enable a duty solicitor to provide advice, assistance and representation where appropriate in these cases. A presumption will operate that the duty solicitor will generally be able to provide the degree of representation necessary. ABWOR may be granted, however, by the Board if no duty solicitor is available or if the matter is unsuitable for the duty solicitor, e.g. due to its complexity or estimated hearing time. ABWOR should be granted in preference to the duty solicitor dealing with the case if it raises complicated issues of fact, law or procedure, e.g. a contested hearing raising the statutory defence of reasonableness.

ABWOR may also be granted to cover representation on an application to vary or discharge an order or for an appeal to the Crown Court. Applications for ABWOR should be made on Form APP4. The usual ABWOR financial eligibility criteria will apply.

The Board will aim to make a decision on ABWOR applications relating to this type of order within three working days of receipt. Written postal applications should be submitted unless urgent work must be undertaken within one working day in which case an application may be submitted by fax. Area offices will determine whether the urgency of the case justifies the method of application used.

Anti-social behaviour orders have been included in the crime franchise category so that franchisees will be able to exercise devolved powers.The full guidance on these orders appears on page 38 of this issue of Focus. There is no devolved power to grant ABWOR for appeals to the Crown Court. ■

LAFQAS
Points of Clarification

Following the introduction of LAFQAS (Legal Aid Franchise Quality Assurance Standard), a number of queries have been raised by practitioners and by the Law Society in relation to financial management and supervisory courses. In order to assist firms in understanding the requirements, we would like to provide the following information for clarification:

Financial management

Where the accounts of a practice have been prepared by an independent accountant based on information supplied to them by the organisation, a statement from the accountant for the relevant financial period will be sufficient to demonstrate compliance with LAFQAS requirement K1.4. Organisations will still need to produce evidence that financial analysis is ongoing in line with the requirements.

Supervisory courses

The Board requires supervisors to have experience, knowledge and understanding of the supervisory role as well as of the relevant legal subject area.

Where individuals meet all of the requirements to be appointed as a supervisor except having experience of supervising other fee earners, they may complete a training course on supervision. Course attendance would then be supplemented by relevant mentoring and coaching.

There are a number of organisations that deliver relevant training in supervisory skills. For those undertaking the Legal Practice Course, completion of the compulsory module 1 management course would be sufficient. Within areas of the advice sector, individuals who supervise work undertake training in supervision as part of their induction into the post of supervisor. Other management courses focus on discrete activities and so a number of these courses or proof of personal knowledge may be necessary to show that the relevant areas have been addressed.

The individual's role will determine the most suitable training for them. The Board will be flexible in considering if this meets our requirements. ■

Guarantees to franchisees
– A CLARIFICATION

We have received a number of queries following reports in the legal press of a House of Lords debate on the Access to Justice Bill on 11 February 1999. The reports suggested that the Lord Chancellor announced that contracts would be guaranteed to all franchisees. We would like to take this opportunity to clarify this point.

The Lord Chancellor's comment was made specifically in the context of the first round of contracting for non-family civil certificated work – it did not constitute a guarantee but indicated his expectation that all franchisees would obtain contracts:

> *"Looking ahead, contracting for non-family civil litigation work, currently certificated work, is timetabled for introduction in April 2001. We are still at the planning stage, but in the first round of contracting I would again expect all franchised firms who want a contract to receive one."*

When the Lord Chancellor here speaks of the "first round of contracting" he is only referring to the first round of non-family civil certificated work, timetabled for 2001. He is not referring to the first round of contracts for advice and assistance and certificated family work in 2000.

Moments earlier in the debate he confirmed his, and the Board's, established position that advice and assistance contracts have been guaranteed for those with franchises (provided that they are on the bid panel) in specified areas:

> *"contracts have already been guaranteed to all those who obtain franchises in the mental health, immigration and family categories".* ■

Costs Appeals Committee

Points of Principle of General Importance

1. DUTY SOLICITOR

DS7 – 28 September 1998 (Amended)
Advising and Assisting over the Telephone

The expression "advising and assisting over the telephone" in Regulation 5(1)(d) of the Legal Advice and Assistance at Police Stations (Remuneration) Regulations 1989 covers any attendance over the telephone actually and reasonably made which is not a routine call and which materially progresses the case.

It is possible for a single telephone call to comprise of more than one act of advice and assistance provided each claim relates to a separate and particular circumstance in which material progress was made.

The onus is on the solicitor to satisfy the assessing officer that any such work did progress the case and was actually and reasonably done. The solicitor must be able to supply an attendance note to justify any claim for advising and assisting over the telephone, if required to do so by the assessing officer.

2. CIVIL

CLA23 – 26 October 1998
Mediation in Non Family Proceedings

Work carried out by legal representatives in advising on, preparing for and, where appropriate, attending a mediation hearing can in principle be allowable on assessment in a non family case. In such cases an appropriate share of the reasonable costs of the mediation may also be claimed as a disbursement under the certificate.

(See article in Focus 25 page 19).

3. CRIME

CRIMLA73– 14 December 1998
Appropriate area office for submission of a Claim for Costs

Regulations 2 and 12 of the Legal Aid in Criminal and Care Proceedings (Costs) Regulations 1989 require an area committee which reviews a determination of a claim for criminal costs to be the "appropriate area committee". The "appropriate area committee" is defined as the area committee in whose area the magistrates' court which granted the legal aid order is situated (not the court which disposed of the proceedings). Regulation 5(2) requires claims for costs to be submitted to the "appropriate authority".

The Board regards the "appropriate authority" for these purposes to be the area office covering the legal aid area in which the magistrates' court which granted the legal aid order is situated. In cases involving multiple legal aid orders the "appropriate authority" will be the area office in whose area the magistrates' court which granted the first legal aid order in time is situated. A claim for costs which is not submitted to the appropriate area office will be rejected.

GUIDANCE ON DECISION CRIMLA 73

1. Regulation 5(2) of the Legal Aid in Criminal and Care Proceedings (Costs) Regulations 1989 requires that a claim for criminal costs is submitted to the "appropriate authority" in such form and manner as directed. Regulation 3 provides that the Board is the appropriate authority in the case of criminal proceedings in the magistrates' court (with limited exceptions).
2. A single claim for costs may include more than one legal aid order (paragraph 2(3) of Part III Schedule 1 of the Legal Aid in Criminal and Care Proceedings (Costs) Regulations 1989 and Note for Guidance 18-22 of the Legal Aid Handbook 1998/99). The definition of a "case" may cover proceedings in which multiple legal aid orders were granted by more than one magistrates' court.
3. Difficulty arises where multiple legal aid orders are granted to the same defendant by different magistrates' courts situated in different legal aid areas where the offences covered by the legal aid orders would constitute a "case" for standard fee purposes and therefore are to be treated as a single claim.
4. Where a claim is made for work which amounts to a single "case" for standard fee purposes where more than one legal aid order was granted to the same defendant by separate magistrates' courts in different legal aid areas, the claim must be assessed by the area office covering the magistrates' court which granted the **first** order in time i.e. usually the court in which proceedings commenced.
5. Claims which are not submitted in accordance with this guidance will be rejected by an area office. ■

Legal Aid Eligibility 1999
General information

New eligibility rates will take effect from Monday **12 April 1999**.

The Minister of State at the Lord Chancellor's Department is currently considering representations from the Bar and the Law Society regarding remuneration rates.

Income limits for civil and criminal legal aid have been increased by about 2.1%, income limits for advice and assistance and ABWOR by about 3.2%. **All** capital limits remain unchanged.

Dependants' allowances remain in line with Income Support rates which will also change.

Dependants' allowances

It should be noted that benefits are aligned to school years so children aged 11 or 16, at the time legal aid is applied for, could fall into one of two bands depending on when their birthday falls. The rules are as follows:-

11 year olds

If applying for legal aid before 6 September 1999, the allowance is £25.90 only if the child/dependant became 11 before 7 September 1998. If applying on or after 6 September 1999 the allowance is £25.90 only if the child/dependant became 11 before 6 September 1999. In all other cases, the lower allowance of £20.20 must be used.

And:

16 year olds

If applying for legal aid before 6 September 1999, the allowance is £30.95 only if the child/dependant became 16 before 7 September 1998. If applying on or after 6 September 1999, the allowance is only £30.95 if the child/dependant became 16 before 6 September 1999. In all other cases, the lower allowance of £25.90 must be used.

19 and over

Where a dependent child/relative is aged 19 or over the rate to apply is the rate which would have been applicable immediately before that dependant reached 19.

Benefit changes

Social Security changes to certain benefits are likely to take effect in the Autumn. It is intended that family credit and disability working allowances will be replaced by equivalent tax credits for the individual concerned. Further information on the changes, and their impact on eligibility, will be published when the relevant amending legislation is drafted.

Criminal changes

Through Orders

The eligibility regulations also amend regulation 11 of the Legal Aid in Criminal and Care Proceedings (General) Regulations 1989 to clarify the procedure for granting legal aid orders that will apply to both magistrates' court and Crown Court work ("through orders"). Such orders enable solicitors to begin Crown Court preparation work before the case is committed for trial. A through order can be made at the outset of the case for an indictable only offence. Where the offence is triable either way, the order can only be made after mode of trial has been determined. There has been confusion as to who was competent to make such an order. The amendment to the regulations confirms that Justices' clerks can make such orders (as well as the magistrates).

Graduated Fees in the Crown Court

New criminal regulations will come into effect on 1 April 1999 and will affect criminal cases in the Crown Court. The graduated fee scheme has been amended to restrict attendance by solicitors/their representatives on the authorised advocate to cases falling within one or more of six specified criteria. The first four criteria relate to the seriousness of the offence or disability of the assisted person which may justify attendance at trial. The fifth criterion relates to the likely sentence to be imposed which could justify attendance at the last day of trial or the sentencing hearing, if later. The sixth criterion is the judge's ability to certify that the case requires attendance for all or part of the hearing. Additional remuneration is provided for advocates who appear unattended and for authorised litigators who prepare a case where the advocate will be unattended. ■

Legal Aid Eligibility from 12 April 1999

1. Green Form – Legal Advice and Assistance

Income limit:		£83 per week
Weekly dependants' allowances:		
Partner		£29.25
Dependants	under 11	£20.20
	11-16	£25.90
	16-18	£30.95
	Over 19	£30.95

Capital limits: no change	No dependants	£1,000
	One dependant	£1,335
	Two dependants	£1,535

Plus £100 for each additional dependant

Contribution system:
none. Ineligible if weekly disposable income exceeds £83.

State benefits:
automatically qualify on income if in receipt of income support, income-based jobseekers allowance, family credit or disability working allowance, but may still be out of scope on capital.

2. ABWOR

Income limit: £178 per week

Weekly dependants' allowances:
as for advice and assistance

Capital limits: no change	No dependants	£3,000
	One dependant	£3,335
	Two dependants	£3,535

Plus £100 for each additional dependant.

Contribution system:
free if weekly disposable income up to £75. If between £75 and £178 weekly contribution of one-third of excess income over £75.

State benefits:
automatically qualify on income free of contribution if in receipt of income support, income-based jobseekers allowance, family credit, or disability working allowance. Automatically qualify on capital if in receipt of income support or income-based jobseekers allowance.

3. Family Mediation Pilot

This only concerns those practitioners/organisations who have contracted with the Board to take part in the pilot and their clients' eligibility for mediation.

Advice and assistance for mediation in family matters is covered by a pilot scheme. Eligibility is set at the ABWOR rate but is non-contributory. The increased rates are set out below.

Income limit	1998/99	1999/2000
	£172 per week	£178 per week

Weekly dependants' allowance: as advice and assistance.

Capital limits: no change		
	No dependants	£3,000
	One dependant	£3,335
	Two dependants	£3,535

Plus £100 for each additional dependant

Contribution System:
none, ineligible if income limit exceeds the amount set.

State Benefits: as ABWOR

NB: Automatically eligible on both income and capital if client or partner (where living together as man and wife) are in receipt of legal aid

4. Civil Legal Aid

Income limits	**£ per year**
Lower income limit	£2,680
Upper income limit	£7,940
	(£8,751 personal injury)

Capital limits: no change		
Lower capital limit		£3,000
Upper capital limit		£6,750
		(£8,560 personal injury)

Yearly dependants' allowances:		
Partner		£1,525
Dependants	under 11	£1,053
	11-16	£1,350
	16-18	£1,614
	19 and over	£1,614

Capital disregards for pensioners: Unchanged

NB: available for both men and women over 60.

Annual disposable income (excluding net income derived from capital)	**Amount of capital (disregarded)**
up to £370	£35,000
£371 – £670	£30,000
£671 – £970	£25,000
£971 – £1270	£20,000
£1,271 – £1,570	£15,000
£1,571 – £1,870	£10,000
£1,871 – £2,680	£5,000

Contribution system:
contribution from capital of excess over £3,000. Ongoing monthly contribution from income of 1/36th of excess over £2,680 for the life of the certificate.

State benefits:
automatically qualify for civil legal aid free of contribution if in receipt of income support or income-based jobseekers allowance.

5. Criminal Legal Aid

Free legal aid **income limit**: £51
Free legal aid **capital limit**: £3,000
No upper income or capital limit

Weekly dependants' allowances:
as for advice and assistance.

Contribution system:
Contributions from capital of the excess over £3,000. Weekly contributions from income of £1 for every £3 or part of £3 by which weekly disposable income exceeds £51. No contribution is payable if the disposable income is less than £52 per week.

State benefits:
automatically eligible free of contribution if in receipt of income support, income-based jobseekers allowance, family credit or disability working allowance. ■

CIVIL LEGAL AID:

Guide to Assessing Financial Eligibility

The following is intended as a general guide only and does not guarantee an individual applicant's entitlement to a full certificate.

Note that the assessment officer may take into account the assets of others where they have transferred resources to the client, maintained the client in the proceedings or have made resources available to the client.

Further details of the key guidance provided to assessment officers can be purchased from the Board at a Cost of £21. For more information please contact the Business Support Unit, 85 Gray's Inn Road, London WC1X 8AA. DX 328 London/Chancery Lane. Fax: 0171 813 8647.

Step One: Identify clients in receipt of income support/income-based jobseekers allowance

Applicants properly in receipt of income support/income-based jobseekers allowance are eligible for free civil legal aid. There are two ways to check eligibility which are by:

(1) sight of notification from the Benefits Agency – this will be in the form of a letter of entitlement (issued either when income support/income-based jobseekers allowance was awarded or when benefit was uprated in April).
(2) proof of payment – either from bank statements showing the benefit paid in or by sight of the orderbook.

If the client is not in receipt of income support/income-based jobseekers allowance (this includes cases where the applicant has applied for but not received a decision on entitlement to the passported benefit) move on to step two. Other types of benefit, such as family credit and disability working allowance, do not give automatic entitlement.

Step Two: Work out capital

Add together all the capital of the client (and partner if appropriate).

Capital includes:

- land and buildings other than the client's home and including interests in timeshares although the market value of the client's home in excess of £100,000 after allowing for any outstanding mortgage or £100,000 (whichever is the lesser) must be included and a maximum of £100,000 allowed in respect of the total mortgage debt on any property or properties that the client resides in;
- money in the bank, building society, premium bonds, Post Office, National Savings certificates, etc.;
- investments, stocks and shares;
- money that can be borrowed against the surrender value of insurance policies;
- money value of valuable items, for example, boat, caravan, antiques, jewellery (but not wedding or engagement rings or usually the client's car, unless of exceptional value);
- money owing to the client;
- money due from an estate or Trust Fund;
- money that can be borrowed against business assets;

Do not include any savings, valuable items or property the ownership of which is the specific subject of the court case, for example, a holiday cottage would normally count but not if it was under attack as part of a disputed divorce settlement.

Do not include:

- loans or grants from the Social Fund;
- home contents, for example (unless exceptionally valuable) furniture and household effects;
- personal clothing;
- personal tools and equipment of trade;
- back to work bonus under section 26 Job Seekers Act 1995;
- payments under the Community Court Direct Payment Scheme;
- any capital disregard for pensioners (men and women over 60):

Annual disposable income (excluding net income derived from capital)	Amount of capital (disregarded)
up to £370	£35,000
£371 – £670	£30,000
£671 – £970	£25,000
£971 – £1270	£20,000
£1271 – £1570	£15,000
£1571 – £1870	£10,000
£1871 – £2680	£5,000

Total Disposable Capital £.....

Step Three: Does the disposable capital qualify the client for Civil Legal Aid?

If under £3,000 → no contribution from capital.

If between £3,000 and £6,750 (personal injury £8,560) → Civil Legal Aid subject to a capital contribution.

Over these limits the client will not get Civil Legal Aid unless the area office considers the probable costs would exceed the contribution payable.

Step Four: Work out the size of the client's likely capital contribution

Total disposable capital (Step 2) £.....
deduct £3,000 to give

Capital Contribution £.....

Step Five: Work out weekly income

Add together the client's weekly gross income (i.e. before tax) and that of his/her partner if appropriate.

Income includes:

- weekly earnings or profits from business;
- maintenance payments;
- pensions;
- all welfare benefits except housing benefit, attendance

allowance, disability living allowance, constant attendance allowance, back to work bonus under section 26 Job Seekers Act 1995, payments made under the Earnings Top-up Scheme and the Community Care Direct Payment Scheme;

- income from savings and investments;
- dividends from shares;
- monies received from friends and relatives;
- student grants and loans.

Weekly Income £.....

Step Six: Work out deductible allowances and expenses

Deduct the following from *weekly* income:

- Income Tax; National Insurance contributions; pension scheme contributions; trade union membership;
- council tax;
- maintenance payments made;
- fares to and from work;
- child care expenses incurred because of work;
- housing costs:
  - rent (less any housing benefit), water rates and mortgage repayments (interest and capital) although, the amount allowed if the client's mortgage debt exceeds £100,000 will be reduced in proportion (e.g., if the client's mortgage debt is £200,000 only half the amount actually paid can be deducted).
  - £5.38 weekly for necessary repairs and house insurance (where payable by the client owner-occupier);
  - endowment policy premiums (if paid in connection with a mortgage);
  - actual costs of accommodation if the client is neither a tenant nor owner-occupier;
  - ground rent and any other applicable charges; and service charges which have to be paid as part of a lease or tenancy agreement;
- fixed amounts for each dependent relative (adult and child) living with the client.

The *weekly* amounts of allowances for dependants are:

£29.25 for a partner
£20.20 for each child aged up to 11*
£25.90 for each child aged 11-16*
£30.95 for each child aged 16-18*
£30.95 for each child or dependant aged 19 or over

For children and dependants aged 11 **or 16 at the time legal aid is applied for, the following rules apply:*

➢ 11 year olds – if applying for legal aid before 6 September 1999, the allowance is £25.90 only if the child became 11 before 7 September 1998. If applying on or after 6 September 1999 the allowance is £25.90 only if the child became 11 before 6 September 1999. In all other cases the lower allowance of £20.20 must be used.

➢ 16 year olds – if applying for legal aid before 6 September 1999, the allowance is £30.95 only if the child became 16 before 7 September 1998. If applying on or after 6 September 1999 the allowance is £30.95 only if the child became 11 before 6 September 1999. In all other cases the lower allowance of £25.90 must be used.

Total of all Deductions £.....

Note that other deductions may be made, e.g. for membership of professional associations connected with employment, fines and judgments, and payments of arrears of tax, mortgage, gas or electricity.

Step Seven: Work out yearly disposable income

Weekly income (step 5) £.....

minus deductions (step 6) £..... to give

Weekly disposable income multiply by 52 to give £.....

Yearly Disposable Income £.....

Note that if there are known changes of circumstances (e.g. a pay rise, applicant having a baby or returning to work after sickness) which will affect the income of the applicant during the next 52 weeks then these will be taken into account in the assessment by the assessment officer when determining the actual level of annual disposal income.

If the yearly disposable income for pensioners (men and women over 60) excluding net income derived from capital is under the lower income limit (£2,680) there is a sliding scale of capital disregards (see Step 2).

Step Eight: Does the yearly disposable income qualify the client for Civil Legal Aid?

If under £2,680 → no contribution from income.

If between £2,680 and £7,940 (£8,751 in personal injury claims) → Civil Legal Aid subject to a contribution from income.

Step Nine: Work out amount of contribution from income

Yearly disposable income (step 8) £.....

deduct £2,680 = £.....

divide by 36 to give Monthly Contribution £.....

Step Ten: Work out total initial contribution

Add together:

Monthly Contribution (step 9) £.....

and Capital Contribution (step 4) £.....

to give Total Initial Contribution £.....

■

KEYCARD NO. 31
LEGAL ADVICE AND ASSISTANCE/ABWOR/MEDIATION

Effective from 12 April 1999

CAPITAL **means the amount or value of every resource of a capital nature, including all savings and any other capital assets, other than the exceptions listed below. Capital derived from a bank loan or borrowing facility should be taken into account.**

In computing Disposable Capital disregard :
(i) the first £100,000 equity in the main or only dwelling in which the client resides, **see Note 7 overleaf**,
(ii) the value of household furniture and effects, personal clothing, tools and implements of the client's trade,
(iii) the subject matter of the application for advice and assistance **see Note 6 overleaf.**
(iv) any back to work bonus received under Section 26 of the Jobseeker's Act 1995,
(v) any payments received under the Community Care (Direct Payments) Act 1996.
In considering capital where the assets are jointly owned **see Note 5 overleaf**.
Note: Capital must be assessed for advice and assistance even if the client is on income based jobseeker's allowance, family credit or disability working allowance. In ABWOR and mediation cases, all capital is disregarded if the client is on income support or income based jobseeker's allowance.

MAXIMUM DISPOSABLE CAPITAL LIMITS [dependant = partner, child or dependent relative]

Advice and Assistance	**ABWOR/MEDIATION**
£1,000 - client no dependants	£3,000 - client no dependants
£1,335 - client with 1 dependant	£3,335 - client with 1 dependant
£1,535 - client with 2 dependants	£3,535 - client with 2 dependants

Add: £100 for each additional dependant

INCOME **means the total income from all sources which the client has received or may reasonably expect to receive in respect of the seven days up to and including the date of the application for advice and assistance.**

Note: the capital and weekly income of both the client and their partner must be taken into account unless:
(a) they have a contrary interest,
(b) they live separate and apart,
(c) it is inequitable or impractical to aggregate their means. **See Note 4 overleaf**
If the client or their partner is in receipt of certain state benefits namely, income support, income based jobseeker's allowance, family credit or disability working allowance, they will qualify automatically on income. Capital must still be assessed, although for legally aided mediation only the client will qualify automatically on both income and capital if the client or partner (where living with the client as man and wife) is in receipt of civil legal aid.

In computing Disposable Income deduct:-
(i) Income Tax
(ii) Contribution paid under the Social Security Acts 1975-88
(iii) £29.25 in respect of the client's partner (if living together) whether or not their means are aggregated. If separated or divorced the allowance is the actual sum of maintenance paid by the client in respect of the previous 7 days.
(iv) The following payments are to be disregarded and deducted:
(a) disability living allowance;
(b) attendance allowance paid under section 64 or Schedule 8 to the Social Security Act and Benefit Act 1992;
(c) constant attendance allowance paid as an increase to a disablement pension; or
(d) any payment out of the social fund;
(e) housing benefit payments;
(f) council tax benefit payments;
(g) back to work bonus under section 26 of the Jobseeker's Act 1995;
(h) payments under the Earnings Top Up Scheme 1996;
(i) payments under the Community Care Direct Payment Scheme
(v) **Children/Dependants' allowances**;

For each child aged up to 11	£20.20
For each child aged 11 to 16	£25.90
For each child aged 16 to 18	£30.95
For each child or dependant aged 19 or over	£30.95

Note: These allowances apply to dependent children of the household. There is no allowance in relation to a foster child. Where the child or dependent relative is not a member of the household, the allowance will be the actual maintenance paid by the client in the previous 7 days.
For children or dependants aged 11 or 16, at the time legal aid is applied for, the following rules apply :
11 year olds:
If applying for legal aid before 6 September 1999, the allowance is £25.90 only if the child/dependant became 11 before 7 September 1998. If applying on or after 6 September 1999, the allowance is £25.90 only if the child/dependant became 11 before 6 September 1999. In all other cases, the lower allowance of £20.20 must be used.
16 year olds:
If applying for legal aid before 6 September 1999, the allowance is £30.95 only if the child/dependant became 16 before 7 September 1998. If applying on or after 6 September 1999, the allowance is £30.95 only if the child/dependant became 16 before 6 September 1999. In all other cases, the lower allowance of £25.90 must be used.
19 and over:
Where a dependent child/relative is aged 19 or over the rate to apply is the rate which would have been applicable immediately before that dependant reached the age of 19.

MAXIMUM DISPOSABLE INCOME LIMITS

Advice and Assistance Mediation	**Mediation**	**ABWOR**
£83 per week. Automatically qualify on income if in receipt of income support, income based jobseeker's allowance, family credit or disability working allowance. But may still be out of scope on capital. No contribution. Ineligible if weekly income exceeds £83.	Upper Limit £178 per week. No system of contributions for legally aided mediation Automatically qualify on income if in receipt of income support, income based job seekers allowance, family credit or disability working allowance. Automatically qualify on capital if in receipt of income support or income based job seekers allowance. Automatically qualify on both capital and income if the client or partner (where living with the client as man and wife) is in receipt of civil legal aid.	Lower limit £75 per week (no contribution) Upper limit £178 per week People with disposable income between the lower and upper limits will be liable to pay a **weekly** contribution (collected by the solicitor) from the date of the ABWOR approval until the conclusion of the proceedings calculated at one third of the client's weekly disposable income over £75. Automatically qualify (free of contribution) on income if in receipt of income support, income based jobseeker's allowance, family credit or disability working allowance. Automatically qualify on capital if in receipt of income support or income based jobseeker's allowance.

NB Social security changes to certain benefits are likely to take effect in the Autumn. It is intended that Family Credit and Disability Working Allowances will be replaced by equivalent tax credits for the individuals concerned. Further information on the changes, and their impact on eligibility will be published when the relevant amending legislation is drafted.

EXPLANATORY NOTES

All references are to the Notes for Guidance (NFG) in the 1998/9 Legal Aid Handbook

1 General Notes

Practitioners should take care to be familiar with the Legal Advice and Assistance Regulations 1989 ("the regulations") as amended and The Legal Advice and Assistance (Scope) Regulations 1989 ("the scope regulations") as amended. The regulations applicable to legally aided mediation are the Legal Aid (Mediation in Family Matters) Regulations 1997 as amended. The responsibility for determining eligibility is placed upon the solicitor under Schedule 2 of the regulations. The assessment of means is a mandatory requirement under the regulations before advice and assistance is given. Where the capital or income details on the application form are not

completed or are incomplete then the claim for costs will be assessed at nil **[see NFG 2-67].** A solicitor must also ensure that the client is asked whether they have received previous legal advice and assistance in the same matter and ensure the application form is fully completed. Reasonable steps must be taken to verify the information about income and capital provided by the client.

2 Notes on Financial Eligibility

Note 1 : Disregards

There are a number of specific disregards and allowances from income but otherwise all income must be included whether from employment, state benefits or elsewhere. To calculate weekly income, multiply by 12 and divide by 52 if payment is made by calendar month and divide by 4 if payment is made four weekly. There are no deductions or allowances for rent, mortgage repayments, hire purchase repayments, etc. as these have been built in already. Contributions towards private pensions are not an allowable disregard against income for means assessment. Income cannot be disregarded merely because the client has incurred liabilities and expenses which must be repaid.

Note 2 : Erratic income (including the self employed)

Where a client's income is erratic because of bonuses, commission, nature of employment or payment etc. they may be ineligible for advice and assistance one week but eligible the next. The income that should be taken into account should include any that is due or will become due for the 7 day period prior to the application for legally aided advice and assistance. If a client has become entitled to money in the previous 7 days which he has not yet received (e.g. he has earned commission) then that income too must be included in the assessment. Student grants should be treated as income by reference to the number of weeks a particular grant is intended to cover and attributed to those weeks. Student loans should be treated as capital. In the case of the self employed client, it is the gross amount due to the business. Expenses such as cost of materials or staff costs are not deductible from income. **See NFG 2-08/3** for further guidance.

Note 3 : "No income"

Situations may arise, especially in the family/matrimonial context where a client has not received or become entitled to any direct income at all in the preceding 7 days e.g. where the client is living separate and apart from their spouse in the same house, with the client not being employed but the spouse still meeting all outgoings. In those circumstances the client can be assessed as having no income. If however the client is receiving money from the partner to pay bills or as maintenance this must be shown as income.

Note 4 : Aggregation of means

Schedule 2 contains a general rule that if a person is married or living with someone as husband and wife in the same household, then the incoming capital of the partner must be taken into account and added to those of the client . There are important exceptions to this rule and means are not aggregated in the following circumstances:

(a) Where the partner has a contrary interest in the matter in respect of which the client is seeking advice and assistance. Contrary interest in the most obvious sense is where the partner is the opponent or potential opponent in proceedings. A contrary interest could also exist in a claim brought by a third party, such as where a mortgagee is seeking possession and undue influence by the partner may be a defence.

(b) The client and their partner are living separate and apart . The fact that both terms are used (i.e. "separate" and "apart") means that more than mere physical separation is required if means are not to be aggregated. Living separate and apart is well defined in the context of matrimonial law and refers to a breakdown in a relationship. In other words, parties must be living separate and apart because at least one of them regards the relationship as at an end and not separate because of purely financial or practical reasons e.g. job location, the fact that one of the parties is in prison, hospital, residential care etc.

(c) In all the circumstances it would be inequitable or impractical to aggregate.
Since the normal rule is that partners means are aggregated, the onus must be on the client to show that this exception applies. **See NFG 2-08/1**

Note 5 : The clients share joint assets

There will often be assets which are jointly owned by the parties or to which both parties have access. In deciding what should be taken into account for the client a key question is whether the client has access to or control of the asset. **See NFG 2-08/10**.

Note 6 : Subject matter of the dispute

The value of the subject matter of any claim in respect of which a person is seeking advice and assistance is required to be left out of the count in computing the capital and income of that person. This situation is more likely to arise in practice in relation to capital assets. It is a very important rule in the context of family/ matrimonial advice and assistance. It means that assets which are being fought over in relation to the dispute for which the advice and assistance is required must not be taken into account when assessing income or capital. **See NFG 2-08/11**

Note 7 : Value of the home

Provided it is not disregarded as subject matter of the dispute, a client's main or only dwelling in which he resides must be taken into account as capital subject to the following rules:

(a) the dwelling should be valued at the amount for which it could be sold on the open market;
(b) the first £100,000 of the value of the client's interest must be disregarded; and
(c) the amount of any mortgage or charge registered on the property must also be deducted. The maximum amount that can be deducted for such a mortgage or charge is £100,000. **See NFG 2-08/12**

Note 8 : Intentional deprivation of resources

Occasionally a person will deliberately transfer assets to another person in order to make themselves eligible. This is not permitted. If it appears that a person applying for advice and assistance has directly or indirectly deprived himself or herself of any resources or has converted any part of his resources into resources which are to be left out of account wholly or partly under the regulations, the resources which have been transferred or converted must still be taken into account in the assessment. This will normally mean that such a person will not qualify for advice and assistance. **See NFG 2-08/14**.

Note 9 : Eligibility of children

A child may apply for advice and assistance in the circumstances set out in regulation 14. When assessing the means of a child, the resources of any person who is liable to maintain the child or who usually contributes substantially to the child's maintenance or who has care and control of the child (other than on a temporary basis) should be taken into account, as well as any assets of the child. **See NFG 2-08/15**.

Note 10 : Mistakes in assessment

Sometimes a mistake will be made in assessing a person's financial eligibility or new information will come to light which suggests that an earlier assessment was inaccurate. Where this happens the assessment can and should be reopened and a new assessment carried out, which may mean that a person previously eligible is no longer so. If any dishonesty or improper conduct in relation to disclosure of assets is discovered, the details should be reported to the area office.

3 Notes on the Solicitor and client relationship

(a) A solicitor may, for reasonable cause, either refuse to accept an application for legal advice and assistance or, having accepted it, decline to give advice and assistance without giving reasons to the client. He may however be required to give reasons to the legal aid area office.
(b) Under ABWOR, once financial eligibility has been established, a client should be told the amount of the weekly contribution due (if any), and arrangements should be made for payment either outright or by instalments to be agreed between the solicitor and the client. Payments should begin from the date ABWOR is approved by the area office. Any contribution paid should be retained on client account until the ABWOR approval is withdrawn or the proceedings concluded.
(c) If the contribution exceeds the costs payable and VAT, the excess should be returned to the client.
(d) If the contribution payable under ABWOR is likely to be more than the costs of giving ABWOR, the solicitor should collect only enough to cover his or her reasonable costs.

4 Notes on Remuneration

(a) The initial financial limit of expenditure under Green Form (two hours' worth of work, or three hours' worth of work in the case of an undefended divorce or judicial separation petition) is exclusive of VAT as is any costs extension granted.
(b) The financial limit of three hours' worth of work in undefended divorce or judicial separation cases under Green Form is only applicable where a petition has been drafted. It need not, however, have been filed.
(c) The legal aid fund is only responsible for paying to solicitor and counsel such of their costs as are not covered by the client's contribution (ABWOR only), party and party costs awarded and the charge which arises in the solicitor's favour on any property recovered or preserved. *Schedule 4* of the regulations sets out the circumstances when the charge does not apply. Application may be made to the area office for authority not to enforce the charge where (a) it would cause grave hardship or distress to the client, or (b) it could be enforced only with unreasonable difficulty because of the nature of the property.
(d) Costs for work done under *regulation 8(1)(b)* or *regulation 8* of the scope regulations, in excess of the usual financial limit will not be payable. In such cases, only one week's contribution will be payable.
(e) Remuneration of mediators is in accordance with the contracted arrangements made between the Board and the mediator.

5. Notes on Court Proceedings

A solicitor may not take steps in court proceedings unless either approval is given by the legal aid area office for ABWOR in a magistrates' court or a solicitor is acting according to the other conditions contained in *regulation 7* and *regulation 8* of the scope regulations.

6 Notes on Authorities

(a) Unless a franchisee exercises his or her powers, the authority of the legal aid area office is required before accepting an application from:-

- a child (unless the child is entitled to conduct the particular proceedings without a next friend or guardian ad litem (a litigation friend)),
- a person on behalf of a child or a patient (in the case of such person not falling within the categories referred to in *regulation 14* of the regulations),
- a person residing outside England and Wales or
- a person who has already received advice and assistance from another solicitor on the same matter.

(b) Where approval of the legal aid area office is required for ABWOR, even if approval is given, the prior permission of the legal aid area office is required to obtain a report or opinion of an expert, to tender expert evidence or to perform an act which is either unusual in its nature or involves unusually large expenditure. The prior permission of the legal aid area office is therefore required before obtaining a blood test (including DNA test) even if it is ordered by the court. The area office may make a payment on account of disbursements under ABWOR.

INCREASE IN SMALL CLAIMS JURISDICTION

There will be an increase in Small Claims Jurisdiction from £3000 to £5000 which will be effective from 26 April 1999. As cases within the small claims procedure do not normally require legal representation and because the 'no costs' rule will mean any benefit by representation will be negated by the statutory charge, it will be unreasonable for legal aid to be granted for such cases unless there are exceptional circumstances and there will be a tangible benefit to the assisted person.

Where certificates have been granted but pleadings have not closed prior to 26 April 1999 and the claim will therefore be allocated to the small claims track, solicitors must notify the relevant area office by way of a report under Regulation 70 of the Civil Legal Aid (General) Regulations 1989 in respect of each certificate the solicitor holds which is affected by the change. The report must be provided before the issue of proceedings where possible so that the reasonableness of the continuation of the certificate can be considered by the Area Manager. Where the assisted person consents to the discharge of the certificate, Form APP8 can be used in the usual way.

Failure to report prior to issue in circumstances where, if reported, the certificate would have been discharged or revoked, may result in a deferment of costs under Regulation 102 Civil Legal Aid (General) Regulations 1989.

Detailed guidance on the new Civil Procedure Rules is given in this issue of Focus at pages 31-38. ■

Immigration Pilot

The Board has taken a number of measures to ensure that all immigration advice and assistance is provided by responsible and competent representatives who are supervised by appropriately qualified solicitors (see pages 25-29 of this issue of Focus).

Although the Board is satisfied that much of this work has been done to a satisfactory standard over a period of years, there is now strong evidence that in a significant minority of claims made to our London office, not all non-franchised practitioners meet the high standards of work required in this area.

Working closely with the Office for the Supervision of Solicitors and the Immigration Service, we are introducing a pilot scheme from 5 April 1999 for non-franchised practitioners in the London area. We will set up a database of all firms' supervising solicitors and unadmitted representatives, who meet the appropriate standards. Non-franchised firms which submit claims from representatives not on the database, will need to demonstrate on a case by case basis that the provisions of Regulation 20 have been met. Appropriate staff can of course be added to the database as a firm's personnel changes.

Introducing this new guidance and procedures has also given us the opportunity to pilot new claim forms for advice and assistance on immigration matters, replacing the current Claim 10, in London only. Firms will be supplied with an initial stock, from which they will be expected to copy additional stock requirements. We intend to review the forms in the light of this six month pilot and before they are released on disk.

A new Claim 20 series will replace the current Claim 10 form, but we stress this is for immigration work only and within the London pilot. We have written to all affected firms to explain the pilot fully. Here is a summary of the new forms:

Claim 20 is a one page, double-sided form which will be completed in all cases. It provides details of the Applicant, Immigration Reference number and Port of Entry as well as the solicitors chargeable time spent. This form must be submitted to the Board at the end of the case.

Where time claimed is in excess of 2 hours, the solicitor must also complete and submit a **Claim 22**. Again this is a one page, double-sided form which has a section for completion by the Immigration Service at accompanied interviews.

In cases where solicitors need to apply for an extension, a new **Claim 21** is to be introduced. This will allow solicitors to apply for up to three separate extensions on the one case. This is a single page, double sided form that requires details of work done to date and future case plan as well as the solicitors DX address in appropriate cases.

As in current practice, solicitors will be required to establish that the applicant is financially eligible to receive advice and assistance. A separate financial statement, **Claim 20A**, one page and single sided, has been developed using much the same format as that contained in the current **Claim 10**. Solicitors will need to complete this in every case and are required to keep this on file and not send it in to our Area Office. It should be retained for subsequent verification in selected cases. ■

Guidance to Immigration practitioners on Regulation 20 of the Legal Advice and Assistance Regulations 1989

1. Background

1.1 The Lord Chancellor wrote to Sir Tim Chessells on 13 October 1998 to ask the Legal Aid Board to set out its proposals for securing the provision of competent and effective advice and assistance in immigration matters in the context of exclusive contracting.

1.2. The Board's response 'Exclusive contracting: access to quality services in the immigration category' will be published shortly. As part of the preparation of that report, the Board has looked at evidence relating to the quality of service provided by current non-franchised suppliers. This has included the detailed scrutiny of claims for payment and supporting files and of the arrangements made by those suppliers to supervise non-qualified staff.

1.3 As a result of this exercise, the Board has come to the conclusion that a significant amount of advice and assistance in the immigration field is being provided by unqualified individuals who have little or no competence to do so and who are inadequately supervised. This situation cannot be acceptable in an area of law where the issues involved are of such fundamental importance to the clients concerned, and, taken in the context of evidence of significant overclaiming by many of the firms involved, requires prompt action to be taken by the Board.

1.4 This document sets out the Board's guidance on the supervision requirements of Regulation 20 of the Legal Advice and Assistance Regulations 1989. That regulation has general application to all categories of advice and assistance work, and 'Note for Guidance 2-51' in the 1998/99 Legal Aid Handbook contains the general legal requirements, which are further discussed at paragraphs 2.1-2.7 below. This document does not depart from those general requirements, but gives guidance on how compliance with them can be demonstrated by firms providing advice and assistance in immigration law, bearing in mind the situation outlined at 1.3 above.

2. Introduction

2.1 Advice and assistance under Part III of the Legal Aid Act 1988 can only be provided by a qualified solicitor or barrister – see ss 2(6) and 43 of the Legal Aid Act 1988 and R v Legal Aid Board ex parte Bruce [1992] 1 WLR 694.

2.2 The limited exception to this principle is set out in Regulation 20 of the Legal Advice and Assistance Regulations 1989 which provides that a solicitor may entrust any function under those regulations to "a partner of his or to a competent and responsible representative of his who is employed in his office or is otherwise under his immediate supervision".

2.3 Solicitors are therefore permitted by Regulation 20 to entrust work to someone under their immediate supervision who is not legally qualified, provided that person is competent to give the advice.

2.4 Whether a representative is under the immediate supervision of a solicitor will depend upon all the relevant facts. Practitioners should note the decision of the Divisional Court in *R v Legal Aid Board ex p. Rafina* (12 February, 1998, *New Law Journal,* 27 February, 1998) which involved an application for judicial review by a firm of solicitors which specialised in immigration work. The firm were challenging the Board's decision to disallow cost claims due to concerns over inadequate supervision.

2.5 Mr Justice Latham, in dismissing the application in Rafina, upheld the interpretation of Regulation 20 as set out by the Costs Appeals Committee. The effect of this is that if unqualified representatives undertake work under the Legal Advice and Assistance Scheme, they must be competent and responsible, and they must be under the immediate supervision of a solicitor. Whether the representative is actually employed by the firm on a PAYE basis or as a self employed contractor, the nature of the employment envisaged by the regulation must carry with it the necessary elements of supervision. It is not sufficient for an unqualified person to be working in a solicitor's office as an independent contractor unless the person is also being immediately supervised by a solicitor.

2.6 Mr Justice Latham further adopted an interpretation of "immediate supervision" put forward by the Law Society, which is as follows:

> "The Society's interpretation of 'immediate supervision' is that it requires the solicitor to be empowered to direct the work of the clerk and to review it as necessary. If the solicitor is able to direct the work of the representative, is able to monitor its quality, and to take immediate and effective action if the quality is unsatisfactory as well as being able to insist that the representative ceases to act as necessary then in the Society's view adequate and immediate supervision has taken place."

This should be read in conjunction with the Board's views below.

2.7 The decision in Rafina confirmed that the consequences of a breach of Regulation 20 are that there will be no entitlement to any payment under the Legal Advice and Assistance Scheme. It prevents payment of both profit costs and disbursements, for example, interpreters fees.

2.8 The Board's guidance on the meaning and application of Regulation 20 is set out in the ensuing paragraphs. Sections 3 to 5 deal with the overall requirements on the supervisor and the representative as well as containing general guidance on supervision. Sections 6 to 8 set out detailed supervision requirements according to the extent of the tasks delegated to the representative. Section 9 deals with keeping records of supervision.

2.9 All practitioners carrying out advice and assistance work in any category should already be compliant with the general principles set in the Notes for Guidance and in paragraphs 2.1-2.7 above in any event, and the Board assesses claims for payment accordingly. However, the Board will expect the specific requirements set out in the succeeding paragraphs to be complied with by all immigration practitioners, whether franchised or not, from **5 April 1999**. No claim for payment for any immigration advice and assistance provided thereafter by an unqualified representative will be allowed by the Board unless those standards are met.

3. Who can supervise?

3.1 The first requirement is that the supervisor must be a qualified solicitor. Immediate supervision includes the concept that the supervision is direct. Supervision cannot therefore take place indirectly through another member of staff who is not a solicitor. This does not mean that an experienced representative (as defined in section 6 below) handling their own caseload cannot delegate some aspects of their work, such as attending on Immigration Service interviews or very routine matters such as checking bundles of documents, to other appropriate staff. However, the overall responsibility for ensuring the competence of those staff and adequacy of the work carried out must remain with the solicitor who must demonstrate that measures are taken to meet this responsibility and that they themselves exercise supervision.

3.2 The supervising solicitor must show that they have the ability to properly direct the work of the representative and to take action to remedy any defects. Therefore, unless the provisions of 3.3 below apply, the supervising solicitor should have both substantial and recent experience and knowledge of immigration law. The following requirements should be met:

3.2.1 The supervising solicitor should be able to demonstrate that for at least two out of the last three years, they have devoted at least 250 chargeable hours per annum to the practice of immigration law, or if part time, 120 hours per annum over the last three years;

and

3.2.2 In relation to immigration advice and assistance generally the supervising solicitor must be able to show:
- familiarity with the relevant statute and case law;
- a working knowledge of the immigration rules and procedures, the way in which they are applied and the time limits;
- experience in the preparation of the necessary documentation;

and

3.2.3 In relation to asylum matters the supervising solicitor must be able to show, **in addition**:
- knowledge of the 1951 Convention and any associated domestic jurisprudence and of the handbook produced by the United Nations High Commissioner for Refugees
- familiarity with the application of the exceptional leave to remain provisions outside the immigration rules.
- familiarity with the application of the European Convention of Human Rights and the associated jurisprudence to domestic law and procedures.

3.3 Where work is carried out by an experienced representative (as defined in section 6 below) and the firm is franchised in the immigration category (or has passed a preliminary franchise audit in that category) and thus has satisfied the Board of the competence of their staff and their compliance with LAFQAS, then the solicitor supervising that work need not meet the specific requirements of paragraph 3.2 above. In such a case, the supervising solicitor must demonstrate sufficient general legal knowledge of the subject area to be able to exercise the supervisory functions set out in this document.

3.4 If the supervising solicitor is an assistant they must be empowered to take any remedial action themselves. They must, for example, be able to take the file from the representative and carry on the work themselves if they deem it necessary without waiting for a meeting with the partner to whom they report before taking any decisions. If the assistant has no power to take the decisions him or herself, then clearly they cannot be exercising adequate 'immediate' supervision. However, the assistant solicitor need not necessarily be empowered to take formal disciplinary action against the representative, as in solicitors firms such matters usually remain in the hands of the partners.

3.5 The requirements of immediate supervision and of

the need to ensure the competence of the representative as well as direct the quality of the work carried out, means that there must be a limit on the number of staff who can be effectively monitored by one supervising solicitor. In particular, supervising solicitors will have difficulty in satisfying the Board that they can effectively supervise more than **five individual** representatives who carry out Category A or B work – (see sections 6 and 7 below).

4. Responsible and competent representative

4.1 Any delegation of work by the solicitor must be to a representative who is both responsible in general, and competent to deal with the particular matter delegated.

4.2 Responsible

No representative may be employed who has been convicted of an offence involving dishonesty or deception or a serious arrestable offence (as defined by section 116 of the Police and Criminal Evidence Act 1984) or against whom there has been a finding of serious misconduct by the OSS or Bar Council or an order made under section 43 Solicitors Act 1974 banning them from employment in the profession. The representative should also be of sufficient maturity to be able to deal with the tasks allotted to them.

4.3 Competent

4.3.1 The representative must be competent to perform the particular tasks allotted to them. The levels of experience, qualification and training required will depend on the nature of those tasks. However, all representatives should, if attending on a client, be competent to give legal advice relevant to the purpose of the attendance.

4.3.2 Practitioners must apply the specific guidelines set out in sections 6 to 8 below, subject to the proviso that where the supervising solicitor has reason to believe that any task is beyond the capacity of the particular representative, then the matter should not be delegated to them.

5. Immediate supervision – general

5.1 The supervising solicitor must be able to show that they:

5.1.1 *Ensure that the representative receives any training necessary for their particular role and is kept up to date with any relevant developments in the law*. The question of whether, and to what extent, training is required will of course depend upon the experience of the representative in the type of work which they carry out. However, firms should ensure that representatives are kept updated in any changes in law (including case law and European Law) and in immigration procedures and practice relevant to their role.

5.1.2 *Ensure that only those tasks which are within the particular representative's skill and competence are delegated to them.*

This issue is dealt with more specifically at paragraphs 6 to 8 below.

5.1.3 *Monitor the overall level of the representative's workload and any feedback on their conduct (including complaints) provided by clients or other third parties.*

Complaints made by clients will need to be recorded and where appropriate actioned. Supervising solicitors should also have regular meetings with representatives who have their own case load.

5.1.4 *Direct and monitor the quality of the work carried out by the representative.*

This is an important part of the definition of supervision adopted by the court in 'Rafina'.

Measures taken by the supervising solicitor to ensure compliance should include:

- reading all incoming post and a reasonable sample of outgoing post (unless the firm has a current franchise contract in immigration, in which case the supervisor may deal with this aspect of supervision by complying with the standards as to post checking contained in LAFQAS)
- briefing the representative in advance of the work unless it is justifiable not to do so because of the representative's experience in that particular work
- carrying out supervisory checks (see below)

Guidance on how to meet these requirements for specific types of work is set out in paragraphs 6 to 8 below.

6. Category A: The provision of advice and assistance by an experienced representative who has conduct of the file

6.1 Some representatives will possess sufficient experience and knowledge to handle their own caseload subject to appropriate supervision including the general requirements set out at 5 above. For the purposes of this guidance, an experienced representative will be a person falling into one of the categories set out below who also has the relevant knowledge as set out in 6.2:

6.1.1 A Fellow of the Institute of Legal Executives who has worked full-time for at least two years post-qualification and has spent a third of their fee earning/casework hours (or more) over that period working in immigration law. This would be equivalent to an average of 8 hours a week or 350 hours a year over two years.

6.1.2 A Fellow of the Institute of Legal Executives who has worked part-time for at least three years post-qualification and has spent an average of between 3 to 8 hours a week or 120 to 350 hours a year over three years working in immigration law.

6.1.3 For any other type of legal adviser who has worked full-time for at least five years and has spent a third of their fee earning/casework hours (or more) working in the relevant subject category over that period. This would be equivalent to an average of 8 hours a week or 350 hours a year over five years.

6.1.4 For any other type of legal adviser who has worked part-time for at least seven years and has spent an average of between 3 to 8 hours a week or 120 to 349 hours a year over seven years working in the relevant subject category.

6.2 In addition:

6.2.1 In relation to immigration advice and assistance generally the experienced representative must be able to show:
- familiarity with the relevant statute and case law;
- a working knowledge of the immigration rules and procedures, the way in which they are applied and the time limits;
- experience in the preparation of the necessary documentation;

and

6.2.2 In relation to asylum matters the experienced representative must also be able to show:
- knowledge of the 1951 Convention and any associated domestic jurisprudence and of the handbook produced by the United Nations High Commissioner for Refugees
- familiarity with the application of the exceptional leave to remain provisions outside the immigration rules
- familiarity with the application of the European Convention of Human Rights and the associated jurisprudence to domestic law and procedures.

6.3 Supervisory check

6.3.1 Those firms who hold a current franchise contract in immigration or who have passed a preliminary franchise audit in that category (and who are therefore required to meet franchise standards as to recruitment, training and assessment of staff) should carry out file reviews under the terms of LAFQAS. Those reviews should incorporate the matters set out in paragraph 6.3.3 below.

6.3.2 Supervising solicitors in those firms who do not hold a current franchise contract in immigration should carry out a supervisory check on a randomly chosen proportion of the files dealt with by the experienced representative, such proportion to be not less than 10% of the representative's total caseload per calendar month.

6.3.3 As part of each file check, the supervising solicitor should:
- Read all attendance notes made by the representative to check that the appropriate advice has been given and action taken. Firms with standardised attendance notes are unlikely to be able to show that adequate supervision has been given, since it will not be possible for the supervising solicitor to monitor the quality of the work carried out.
- Read any documentation prepared (e.g. statements, instructions to counsel) by the representative
- Identify any material errors or omissions in the advice given or steps taken and take or direct prompt remedial measures
- Ensure that the appropriate steps have been taken in accordance with the requirements of section 8 below relating to category C work.
- Ensure that the experienced representative has correctly identified any further steps to be taken and ensure that the file has been given an appropriate review date in consequence.

7. Category B: The provision of other advice and assistance by a representative not having conduct of the file

7.1 Representatives who do not fall into the category of experienced representatives should not have conduct of the file and their involvement should be limited to specific tasks e.g. taking statements from the applicant and drafting the application for approval by the supervising solicitor. In such cases the supervising solicitor should ensure that the representative is briefed in advance on the particular context of the case and in relation to any issues that may arise. If seeing a client by prior arrangement to take a statement, the representative should be aware of the issues which will need to be addressed in the particular case and be capable of explaining the legal framework of the application to the client.

7.2 Where delegation takes place, the representative should (unless their experience of the type of matter is such that this is not required) be properly briefed in advance. Any documentation prepared by the representative must be checked and amended where appropriate by the supervising solicitor, in whose hands the conduct of the file will remain.

7.3 Supervisory check

7.3.1 Those firms who hold a current franchise contract in immigration or who have passed a preliminary franchise audit in that category (and who are therefore required to meet

franchise standards as to recruitment, training and assessment of staff) should carry out file reviews under the terms of LAFQAS. Those reviews should incorporate the matters set out in paragraph 7.3.3 below.

7.3.2 Those firms who do not hold a current franchise contract in immigration should ensure that a check of the file should take place on every matter as soon as practicable after any substantive step has been taken in the case by the representative.

7.3.3 As part of the file check, the supervising solicitor should:
- Read all attendance notes made by the representative to check that the appropriate advice has been given and action taken. Firms with standardised attendance notes are unlikely to be able to show that adequate supervision has been given, since it will not be possible for the supervising solicitor to monitor the quality of the work carried out.
- Read any documentation prepared (e.g. statements, instructions to counsel) by the representative.
- Identify any material errors or omissions in the advice given or steps taken and take or direct prompt remedial measures
- Where after any piece of work, the representative is to take the next substantive step in the matter, ensure that they have correctly identified any further steps to be taken and ensure that the file has been given an appropriate review date in consequence.

8. Category C: Attending the client on interviews with the Immigration Services

8.1 Any representative attending an interview should:

8.1.1 Have a general knowledge of the relevant legal issues sufficient to enable them to assist the client at the interview by seeking to ensure that the pertinent details of the client's case are put forward and to intervene where appropriate. Compliance with this requirement could be demonstrated by for example, recent study of immigration law, and/or through the firm's own written guidance and training materials. The representative would not be expected to be able to argue detailed case law, but must be able to advise the client in general terms of their appeal rights and the timetable;

and

8.1.2 be capable of taking a full accurate, and comprehensible verbatim note of the interview and of any interventions made during its course.

8.2 The representative should be briefed as to any special factors e.g. particular conditions prevailing in the country of origin, and special circumstances in the particular case. The representative should, if the timing of the interview permits, be given a copy of the client's statement. If a representative is attending an interview of which the firm has only been given short notice, then any briefing may be given over the telephone if appropriate. However, the supervising solicitor, (or the very experienced representative if they are dealing with the file) must speak to the representative in advance in every case where they are instructed to attend on an interview.

8.3 Supervisory check

8.3.1 The supervising solicitor should read all records of the interviews with the immigration authorities taken by the representative. These should be full, verbatim, legible notes. Supervising solicitors should compare the notes with any record provided by the Immigration Service and should ensure that the representative has taken a proper record, has intervened in the interview where appropriate and has not intervened in an inappropriate fashion.

8.3.2 Where an experienced representative (as defined in section 6) is dealing with the file, then they can exercise the functions set out in 8.3.1 on the solicitor's behalf, although the solicitor remains ultimately responsible for ensuring that the supervisory checks take place – see 6.3.3 above.

9. Record of supervision

9.1 In order to demonstrate that adequate supervision has taken place, firms must be able not only to show that procedures exist to meet the general requirements (such as which supervising solicitor is responsible for which representatives, which tasks are suitable to be delegated to them and details of ongoing training arrangements) but must be able to provide evidence of actual supervision in relation to work carried out.

9.2 Firms are likely to be able to demonstrate this by the file record showing, for example, when a file was taken from a representative as it became more complex, when an approach taken by a representative in a case was corrected, and so on. In other words, there must be evidence that supervision is actual rather than merely structural.

9.3 Where file checks are to be carried out, the file should show:
- the date the check was carried out
- the particular purpose of the check (e.g. to consider the interview record) if not otherwise apparent
- a note of any corrective action taken
- where relevant, confirmation that the appropriate future steps have been identified and the date for the next check.

In the absence of such evidence, the firm will have difficulty in demonstrating that adequate supervision has taken place. ■

Guidance: Exercise of Devolved Powers – Update

- Introduction
- General – Advice & Assistance and Means Assessment
- General – Civil
- Family/Matrimonial – Advice & Assistance
- Housing – Advice & Assistance
- Housing – Civil
- Immigration – Advice & Assistance
- Crime – ABWOR
- Mental Health – ABWOR

Amendments to Guidance: Exercise of Devolved Powers

The Guidance: Exercise of Devolved Powers is to be updated by **Issue 9** which is being sent to franchisees and subscribers prior to the implementation date.

The implementation dates are as follows:

- **Crime and Disorder Act 1998**
  (i.e. Family/ Matrimonial – Advice & Assistance)
  1 April 1999
- **Eligibility changes**
  (i.e. General – Means Assessment – Legal Advice & Assistance/ ABWOR and part of General – Civil)
  12 April 1999
- **All other amendments**
  26 April 1999

All the substantive changes arising from the update have been consulted upon with practitioner groups prior to being finalised.

The main changes in the update are:

- **To amend the guidance where appropriate to reflect the new Civil Procedure Rules (the Woolf reforms).**

  The changes of substance are:

1. New guidance in the General – Advice & Assistance part of Section 01 on advising clients with claims in the small claims track. This includes suggested times for advising and assisting in applications to remove the case from the small claims track, as well as guidance on consideration of the effect of the solicitor's charge.
2. The incorporation of new guidance in the General – Civil part of Section 01 outlining the Board's approach to the new track procedures. This includes guidance on the approach to applications for matters proceeding or likely to proceed in the small claims track (including a cost benefit matrix) and on the appropriate limitations on certificates for matters proceeding in the fast and multi-track procedures. This section also incorporates a matrix for decision-making on the removal of a pre-trial limitation based on the table already adopted in the clinical negligence franchise category and a new devolved power allowing franchisees to take fast-track cases to trial without a formal amendment after issue of proceedings.
3. Insertion of a note at line (g) of paragraph 3.2.4.5 of the General – Civil part of Section 01 to stress that a franchisee exercising devolved powers to remove a limitation to allow a case to proceed to trial should only do so within the parameters of the decision-making matrices referred to above.
4. The addition, in paragraph 3.2.7.2 of the General – Civil part of Section 01, of a requirement to supply copies of any directions and of the allocation questionnaire where completed, when notifying the area office of an amendment to a certificate under devolved powers.

- **To replace the guidance in the area of Housing. This guidance appears in full at page 40 in this issue of Focus.**

Other changes are:

1. To update the introduction.
2. To include guidance on delegation and supervision at paragraph 5.8 in General – Advice & Assistance.
3. To update the Guide to Assessing Financial Eligibility in General – Civil and General – Means Assessment – Legal Advice & Assistance/ABWOR (see pages 18-19 of this issue of Focus for the changes to financial eligibility for civil legal aid).
4. To give guidance in Family/Matrimonial on advice

and assistance in relation to the Crime and Disorder Act 1998.

5 To amend paragraph 1.2.4 in Immigration – Advice & Assistance to indicate that an extension of 4 hours (40 units) should normally be sufficient to cover the completion of the Political Asylum Questionnaire, including supporting documentation. This is a correction to ensure that the text reflects the table of suggested extension times as was intended when the table was consulted upon and introduced.

6 To give guidance on anti-social behaviour orders in Crime – ABWOR. This has been done by amending the existing guidance in relation to sex offender orders. The Crime and Disorder Act 1998 is also dealt with by a separate article on page 15 of this issue of Focus.

7 To amend the section in Mental Health – ABWOR dealing with ABWOR prior permissions. The amendments make it clear that a franchisee can incur disbursements without reference to the area office, although disbursements incurred will be subject to costs assessment. Costs protection is only obtained where the area office has granted prior authority.

The amended guidance of relevance to non-franchisees appears below with additions and amendments to the existing text shown in bold type. See also page 40 of this issue of Focus for the full text of the guidance on Housing.

For the avoidance of doubt it is confirmed that the travelling expenses of a solicitor, including a solicitor in the capacity of McKenzie friend, are a recoverable disbursement for the purposes of legal advice and assistance. The lists of recoverable and irrecoverable disbursements were reproduced in Focus 25 of December 1998 at page 21 to specifically indicate that mediators' fees were a recoverable disbursement. Unfortunately, the tables incorrectly showed the travelling expenses of a solicitor to be irrecoverable.

General – Advice & Assistance

5.7 Small Claims Track Cases

5.7.1 Advice and assistance is available to litigants in person, subject to financial eligibility. This will allow a solicitor to advise in the proceedings in the small claims track and assist the litigant in relation to any necessary steps to be taken. If full civil legal aid is not likely to be granted it may be reasonable in some cases for a solicitor to undertake more advice and assistance during the course of the proceedings. However, solicitors should have regard to the effect of the solicitor's charge on any recovery that will be made by their client. Further, as the solicitor will not be on the court record, they will need to take reasonable steps to protect the charge – see paragraph 6.4 (b) of this section.

5.7.2 Where the case is one involving a difficult point of law or involving a question of factual complexity it may be justified for the solicitor to assist the litigant in person to make necessary representations in an application to the court for removal of the case from the small claims track or to assist the litigant in person in completing the allocation questionnaire. It should normally be possible to advise the litigant of the arguments and procedure and prepare written representations on the allocation issue in 3 to 5 units (15 to 30 minutes)**.**

5.7.3 Representation on any such application would not be covered by advice and assistance, although in some circumstances a McKenzie adviser may be justified (see general guidance provided in paragraph 5.3 of this section).

5.7.4 If the case was then removed following application and allocated to the fast or multi-track then an application for a civil legal aid certificate could be made in the normal way. The usual extension of 5 units (30 minutes) **to the financial limitation may be justified in order to make the application (see paragraph. 3.3.2 of this section).**

5.8 Delegation and Supervision

5.8.1 Solicitors are permitted (under regulation 20 of the Legal Advice and Assistance Regulations 1989) to entrust work to someone under their immediate supervision who is not legally qualified, provided that person is competent to give the advice. Solicitors may not be paid under the legal advice and assistance scheme for the cost of obtaining *legal* advice for their clients from anyone who is not a solicitor or a barrister. Note also that for work to be delegated within regulation 20 the solicitor's representative must be competent and responsible and either employed in the solicitor's office under a contract of service or be under the solicitor's immediate supervision.

5.8.2 It may be possible for a self-employed contractor engaged by a solicitor to fit these requirements but the mere fact of being engaged by a firm of solicitors is not of itself sufficient.

5.8.3 Whether a representative is under the immediate supervision of a solicitor will depend upon all the relevant facts. Practitioners should note the decision of the Divisional Court in R-*v*-Legal Aid Board, ex p. Rafina, February 12, 1998, New Law Journal, (February 27, 1998) which involved an application for judicial review by a firm of solicitors which specialised in immigration work. The Board had concerns about the use of unsupervised representatives by the firm to provide immigration advice under legal advice and assistance.

5.8.4 The Divisional Court upheld the Costs Appeals Committee's interpretation of regulation 20 as set out in the point of principle arising

from the matter (LAA12 – Note for Guidance 2-64 in the Legal Aid Handbook). This means that if unqualified representatives undertake work under legal advice and assistance, they must be competent and responsible, and either be employed in a solicitor's office under a contract of service or be under the immediate supervision of a solicitor. It is not sufficient for an unqualified person to be employed in a solicitor's office as an independent contractor unless the person is being immediately supervised by a solicitor.

5.8.5 The Court adopted an interpretation of "immediate supervision" put forward by the Law Society, which is as follows:

"The Society's interpretation of 'immediate supervision' is that it requires the solicitor be empowered to direct the work of the clerk and to review it as necessary. If the solicitor is able to direct the work of the representative, is able to monitor its quality, and to take immediate and effective action if the quality is unsatisfactory as well as being able to insist that the representative cease to act as necessary then in the Society's view adequate and immediate supervision has taken place."

This should be read in conjunction with the Board's views below.

5.8.6 The Board considers:

(a) that it may be easier to demonstrate supervision of the representative for the purpose of the regulation when it can be shown to take place on a general, and not merely an individual case, basis;
(b) that it is more difficult to exercise supervision at a distance:
(c) that the less contact the solicitor has with the representative or "welfare officer" the more difficult it will be for him to exercise supervision; and
(d) that "immediate" means that there must be no third party between the solicitor and the representative, i.e. the solicitor's contract must be with the representative and not with an agency or organisation on behalf of the representative.

General – Civil

2. Civil Procedure Non-Family

2.1 General

2.1.1 The first phase of implementation of Lord Woolf's civil justice reforms comes into effect from 26 April 1999, and includes new Civil Procedure Rules, practice directions, forms and protocols, applying to most High Court and county court non-family claims. Exceptions include insolvency, probate, Mental Health Act proceedings, summary possession proceedings and judicial review. Other exceptions at this stage are some of the specialist jurisdictions such as enforcement and patents and appeals. However these, together with housing and judicial review are likely to be covered by revised rules within the next twelve months or so. The reforms do not, at this stage, affect family proceedings or proceedings in the magistrates' courts.

2.1.2 The Civil Procedure Rules create a three-tier system, with cases allocated, on the filing of a defence and after completion of an 'allocation questionnaire', to the small claims track, the fast track or the multi-track, according, primarily, to the value of the claim. This will affect the conditions and limitations placed on civil legal aid certificates at the point at which proceedings are issued. Conditions and limitations may also be affected pre-issue, by anticipation of the track into which a case may be allocated, and/or where "pre-action protocols" have been developed.

2.1.3 Pre-action protocols have been developed to encourage more pre-action contact, investigation and exchange of information between the parties. The intention is to enable them to settle cases fairly and early without litigation and to enable proceedings to run efficiently to the court's timetable if litigation becomes necessary. So far protocols have been produced for personal injury and clinical negligence cases only, although additional ones are due to be developed to cover as wide a range of case types as possible. The personal injury protocol is primarily aimed at fast track cases.

2.1.4 Failure to comply with a protocol may have adverse cost consequences for the non compliant party once proceedings are issued. Where developed, the Board therefore expects protocols to be complied with before the issue of proceedings. It is, however, recognised that both sides need to co-operate for the protocol to be effective. Whilst non-compliance by a non-legally aided party will not completely excuse the legally aided party from taking some steps in the protocol, such as sending a detailed letter of claim, it will prevent compliance with other steps such as co-operation on instructing a joint expert.

2.2 Small claims track

2.2.1 Allocation to the small claims track

2.2.1.1 The small claims track will be the normal track for any claim which has a financial value of not more than £5,000 with the exceptions of personal injury claims and some housing claims (see 2.2.1.2 and 2.2.1.3 below). It is worth noting that in assessing the value of the claim in order to allocate to any track,

the court will disregard:

- Any amount not in dispute. Thus if part of the claim has been admitted by the opponent, this part of the claim will not be included when valuing the claim for track allocation purposes;
- Interest;
- Costs;
- Any benefits to be paid by a compensator to the CRU;
- Any contributory negligence.

2.2.1.2 The small claims track is also the normal track for

(a) any claim where the financial value of the claim for damages for personal injuries (including clinical negligence cases) does not exceed £1,000. Damages are defined as meaning compensation claimed for pain, suffering and loss of amenity (i.e. general damages) and does not include any special damages claimed (such as loss of earnings or damage to a vehicle).

(b) any claim by a tenant of residential premises against the landlord, where the tenant is seeking an order for repairs or other work to the premises (whether or not the tenant is claiming some other remedy) and where the cost of the repairs or other work to the premises is estimated to be not more than £1,000 and the financial value of those repairs or other work is not more than £1,000.

2.2.1.3 It should be noted that any claim for damages for harassment or unlawful eviction relating to residential premises is excluded from the small claims track, whatever its financial value.

2.2.1.4 The court also has the power to allocate a case which would normally be within the small claim financial limit to another track, if it thinks it appropriate, having regard to the following factors:

- financial value of the claim or amount in dispute
- nature of the remedy sought
- likely complexity of the facts, law or evidence
- number of parties or likely parties
- value of any counterclaim or third party claim (a 'Part 20 claim') and the complexity of any related matters
- amount of oral evidence required
- importance of the claim to non parties
- views expressed by the parties and
- circumstances of the parties.

2.2.2 Initial applications for small claims

2.2.2.1 Section 15(3)(a) of the Legal Aid Act 1988 provides that a person may be refused representation for the purposes of any proceedings if, in the particular circumstances of the case, it appears to be unreasonable for them be granted representation. Regulation 29(b) Civil Legal Aid (General) Regulations 1989 also provides that legal aid may be refused where, on account of the nature of the proceedings, a solicitor would not ordinarily be employed.

2.2.2.2 The purpose of the small claims track is to provide a simplified procedure which the parties can pursue without legal representation. In other words, the venue is not one in which solicitors are normally employed and it is intended for un-represented parties (hence the very limited circumstances only in which the cost of representation might be recovered from the opponent). As a general rule, therefore, any application involving a case which has been, or is likely to be, allocated to the small claims track (i.e. is not worth more than £5,000 or is within the exceptions set out in paragraph 2.2.1.2 above) should be refused legal aid on the basis that it appears to be unreasonable for representation to be granted.

2.2.2.3 There may exceptionally be circumstances in which it may be reasonable to grant legal aid in the small claims track (see paragraph 2.2.3 of this section). However, another limb of the reasonableness test is the cost/benefit ratio, which requires the estimated cost of proceedings to be weighed against estimated benefit/recovery. This must be given particular consideration in applications for cases allocated to, or likely to be allocated to, the small claims track, as the limited cost recovery in such proceedings would mean that in many cases any financial gain the applicant secured by representation would be negated by the workings of the statutory charge. Unless the prospects of recovery are particularly strong, it is unlikely that legal aid will be granted to proceed with litigation as the costs of the proceedings are likely to erode a substantial part of the claim for damages.

2.2.2.4 In the vast majority of small claims, it will therefore not be reasonable to grant legal aid for a case proceeding or likely to proceed in the small claims track, and legal aid should only be granted for a small claim where:

(a) the applicant has reasonable grounds for taking or defending the proceedings under section 15(2) Legal Aid Act 1988; and

(b) there are exceptional circumstances which make legal representation in the small claims track reasonable (see below); and

(c) the cost benefit test has been carefully considered (see 2.2.2.5 and 2.2.2.6 below)

and it is still regarded as appropriate to grant legal aid.

2.2.2.5 In general, the cost benefit test is only likely to be satisfied at the upper end of the small claims jurisdiction and only if the solicitor's costs are very limited. The key information needed to assess this benefit is:

- the predicted amount of any damages if the proceedings are successful (A);
- the total estimated costs inclusive of disbursements and counsel's fees but excluding VAT (C). For the purposes of calculating C, the cost estimate should take into account any realistic prospects of settlement, except where the certificate is to be granted or extended to cover the trial, in which case C should include costs up to and including final hearing;
- the likely net amount of recoverable damages after application of the statutory charge (D) – this will be A plus any recoverable costs minus C;
- the probability of success (P).

2.2.2.6 Therefore, even if exceptionally it is considered that representation is justified (although the matter will remain in the small claims jurisdiction), legal aid should not normally be granted in cases involving only a monetary claim (and not any injunctive or other relief) unless a consideration of the key information (i.e. A, D, P and C) produces a result on a risk based assessment in the following ranges:

Prospects of success (P)	Net damages compared to costs (D:C)
less than 50%	whatever the ratio the application is likely to be refused
50% – 60%	D must be at least 2 times C
60% – 80%	D must be at least 1.5 times C
more than 80%	D must be at least equal to C

2.2.3 Exceptional circumstances

2.2.3.1 When determining allocation of individual cases to the small claims track, courts are able to consider factors other than the value of the claim alone (see paragraph 2.2.1.4 of this section). The relevance of such factors, in making an application for legal aid, depends on whether they have already been considered by the court, and therefore whether or not the case has been allocated to the small claims track.

2.2.3.2 Pre allocation applications – Cases falling within the small claims financial limit should not normally be granted legal aid on the grounds of alleged 'complexity', unless there are other exceptional factors (see paragraph 2.2.1.4) which it can be demonstrated may lead to the case not being allocated to the small claims track when considered by the court. If the case is subsequently allocated to the fast or multi-track then a further application for legal aid can be made at that stage.

2.2.3.3 Similarly, it would usually be unreasonable to grant civil legal aid for the purposes of arguing the issue of allocation. This can, however, be covered by advice and assistance if the litigant is financially eligible and, if appropriate, by the solicitor acting as a McKenzie friend (see General- Advice & Assistance, paragraph 5.3).

2.2.3.4 However, where exceptional circumstances relate to the 'personal circumstances' of the applicant, then it may be appropriate to grant legal aid for the purposes of issuing proceedings and arguing the track allocation. This may be appropriate where the client is a child, or has a mental or physical disability which prevents them from presenting their case personally, or has language difficulties. If the case is not subsequently allocated to the small claims track, then the matter can proceed as normal. However, if the case is allocated to the small claims track notwithstanding the arguments raised, then the solicitor should report this forthwith to the Board and notice to show cause why the certificate should not be discharged will normally be issued, on the basis that the court did not consider that the circumstances warranted removal from the small claims track.

2.2.3.5 Post allocation applications – If a case has already been allocated to the small claims track, then the court can be assumed to have had regard to the factors set out in paragraph 2.2.1.4 above. Arguments to the effect that the case requires representation, either as being unusually complex or requiring skilled cross examination of witnesses, or because of the personal circumstances of the applicant (e.g. because of a disability), will already have been considered and rejected by the court and as such will be unlikely to constitute exceptional circumstances justifying the award of or continuation of representation.

2.2.3.6 An example of exceptional circumstances where the grant of representation may be justified would be cases involving violence, harassment or intimidation, where it may be inappropriate for the applicant to have to deal with the opponent in person without the benefit of legal representation. Of course, damages cases relating to harassment relating to residential premises are excluded from the small claims procedure in any event (see 2.2.1.3 above).

2.2.4 Applications for amendment: cases allocated after 26 April 1999.

2.2.4.1 Given the limited scope for representation in

small claims, it is unlikely that many applications will be made for an amendment to the scope or costs limitation. Nevertheless, where such an application is made the risk-based assessment ratio must be re-applied in all cases (see paragraph 2.2.2.6). Further, where the amendment is to cover representation to trial, the figure for costs (C) must include costs to trial (and should no longer take into account prospects of settlement).

2.2.5 Transitional arrangements: requests for amendments or authorities (existing cases)

2.2.5.1 The increase in the small claims limit is not retrospective and does not therefore apply to proceedings issued before 26 April 1999. Legal aid will, however, have been granted prior to 26 April 1999 for cases worth between £3,000-£5,000, in cases where proceedings have yet to be issued, either because of time spent preparing the case or because a certificate was limited to pre-issue steps.

2.2.5.2 In such circumstances (where the case has been, or is likely to be, allocated to the small claims track) the case must be re-assessed, against the guidance contained above, at the earliest opportunity. Unless exceptional circumstances apply, it will normally be no longer reasonable for legal aid to continue in these cases and notice to show cause why the certificate should not be discharged will be issued (unless the client consents to the discharge).

2.3 Fast track and multi-track (non-family)

2.3.1 Initial applications

2.3.1.1 Civil legal aid will only be granted where the client is financially eligible (see part 1 of this section), and where the application demonstrates that the case meets the Board's merits tests (legal merits and reasonableness), including complying with supporting guidance provided in this section and category specific guidance provided elsewhere in the manual.

2.3.2 Scope limitations – pre-issue

2.3.2.1 In certain instances, particularly for cases likely to be allocated to the fast track, it will be reasonable for the legal aid certificate to be limited in scope to cover pre-issue investigation and steps up to but not including issue of proceedings. Actions taken to comply with a pre action protocol would be regarded as within the scope of such a limitation, since where a protocol has been developed for the relevant proceeding type, the Board expects the legally aided party to seek to comply with it (see paragraph 2.1.4 of this section). A certificate will not normally be amended to cover the issue of proceedings until the steps outlined in the protocol have been completed or a reasonable explanation is given as to why this has not been possible in the time available.

In other instances, where merits or reasonableness of the application are less clear from the outset or where the size of the claim means that the matter is likely to proceed in the multi-track, legal aid will be limited more tightly, to specified steps or stages. These could include obtaining an initial opinion from counsel and/or a specific expert report.

2.3.3 Scope limitations – to issue proceedings and beyond

2.3.3.1 Where a limitation is to be removed to allow the issue of proceedings, or to take further steps in the proceedings thereafter, the legal merits test and reasonableness test will again be applied. As part of the latter, the cost benefit test will be considered and, where the action includes a claim for damages, the matrix set out at 2.3.3.3 below will be used.

When proceedings are to be issued (or a certificate amended to take further steps thereafter) the solicitor will be in a position to discuss with, and advise the client as to, estimates of three key pieces of information: the predicted amount of any damages if proceedings are successful or the financial value of any property in dispute in the case (A); the prospects of success (P); and the estimate of costs (C).

2.3.3.2 Any estimate of costs should include all costs incurred to date, and those which would be incurred if the matter proceeded. If reasonable prospects of settlement exist, they may be taken into account in arriving at the figure, unless the application is for an amendment of the certificate which will allow the case to be taken to trial in which case the estimate must include trial costs. The "C" figure should consist of estimated profit costs (at legal aid rates with enhancement where appropriate) and estimated disbursements including counsel's fees. VAT should be excluded. Further key information guidance (relating to A (damages or value) for claimants, and P (prospects of success) for defendants) is provided at paragraph 2.3.4 below.

2.3.3.3 An amendment to remove a limitation to allow proceedings to be issued or subsequent steps in the proceedings to be taken is likely to be granted in a civil non-family case which includes a claim for damages or other property, if consideration of the key information (i.e. A, P and C) produces a result on a risk based assessment in the following ranges:

Prospects of success (P)	Damages or value of property in dispute compared to costs (A:C)
less than 50%	whatever the ratio the application is likely to be refused
50% – 60%	A must be at least 2 times C
60% – 80%	A must be at least 1.5 times C
more than **80%**	A must be at least equal to C

2.3.3.4 If the ratios in the above matrix are not satisfied, then the solicitor will need to justify why, in the circumstances of the case it is nevertheless reasonable for legal aid to continue. This will include situations where there are considerations, in addition to damages or the amount in dispute, which make it reasonable to assume that a private client of moderate means would continue to fund the case. This is likely to include situations where, for example, the client's home or livelihood are at serious risk, or there is some other remedy, such as an injunction, which is of equal or greater importance than the issue of damages.

2.3.4 Claimant or defendant

2.3.4.1 The guidance given in paragraph 2.3.3.3 above applies whether the client is the claimant or defendant in proceedings. However, the following points, relating to the key information, should be noted.

2.3.4.1.1 If the client is making the claim (i.e. as the claimant or as a defendant making a counterclaim), then the key information "A" figure (damages or value) should be discounted by:

- any likely finding of contributory negligence (on a percentage basis)
- assuming the case is successful, any likely difficulties in recovery. If there is any doubt about the opponent's ability to pay costs and damages, then the "A" figure should be reduced to whatever figure it is considered could be realistically recovered, if any. Where the opponent is not insured and appears to have no assets from which judgement could be satisfied then the "A" figure should be reduced to nil.

2.3.4.1.2 If the client is defending the claim, then the key information "P" figure (prospects of success) should represent the client's prospects of either defending the claim or substantially reducing the liability for damages claimed by the opponent.

2.3.5 Reviewing the merits – fast track cases

2.3.5.1 Where it is clear from the application or amendment that the case will be allocated to the fast track, then the intention is to allow meritorious cases to proceed in accordance with the timetable set by the court with minimal recourse to the area office to extend limitations. There should, however, be a formal review of the merits of the case once exchange of witness statements and expert evidence has taken place.

2.3.5.2 For firms without a franchise in the relevant category, the review will need to take place through an application to amend the certificate. The normal limitation in fast track cases where proceedings are authorised will be 'all steps up to and including filing of the listing questionnaire and thereafter a solicitor's report or counsel's opinion as appropriate' (CV056). Firms should, however, apply to remove the limitation as soon as practicable after exchange of witness statements and expert evidence to ensure that the amendment can be processed in sufficient time for them to carry out pre-trial preparations. In other words although the limitation will allow firms to meet the court's timetable for filing the questionnaire, firms should not wait until then before applying to remove the limitation. The estimate of total costs given on the APP6 at this stage should include the costs of trial and should not be discounted for prospects of settlement – see 2.3.3.2 above.

2.3.5.3 For firms with a franchise in the relevant category, the normal limitation in fast track cases where proceedings are authorised will be 'all steps up to and including trial' (CV073). This limitation will, therefore, be imposed at the stage when proceedings are to be issued, and at that stage reasonable prospets of settlement can be taken into account when estimating total costs. However, a review should be carried out under devolved powers in accordance with paragraph 3.2.4.5.1 as soon as practicable after exchange of witness statements and expert evidence. At the review stage, the estimate of costs should include costs to trial. Franchisees must place a note of the review on the file, and their exercise of this review will be checked as part of the franchise audit process.

2.3.5.4 Scope is only likely to be more strictly limited in fast track cases where the question of allocation is unclear (see 2.3.7 below), or where issues relating to the merits of the case can more appropriately be assessed at an interim stage (e.g. following a case management conference).

2.3.6 The scope of cases allocated to the multi-track is likely to be limited more tightly, on a step by step basis, given their higher value, complexity and cost. Where it is clear from

the application or amendment that the case will be or has been allocated to the multi-track, a certificate will usually be more limited in scope at issue stage, such as to cover all steps up to and including disclosure of documents (CV065). Further guidance for franchisees on this issue is contained at paragraph 3.2.4.13 in the manual.

2.3.7 Where the question of allocation is unclear, i.e. the case seems borderline between a fast track/multi track, or fast track/small claims track, then the guidance in 2.3.5 above will be followed i.e. effectively the 'normal' fast track limitation will be imposed. Where appropriate a condition requiring the solicitor to report to the area office before carrying out any further work in the event of the case being allocated or reallocated to the small claims track will, however, be imposed, so that the cost benefit can be reviewed in the event of this occurrence.

2.3.8 Case management conferences and pre-trial reviews.

Where the court orders a case management conference or pre-trial review, then attendance on this will be included within the scope of the certificate without the need for a specific amendment (subject of course to any cost limitation), unless all work up to the limitation has been completed. Thus for example, if a certificate covers all steps up to and including discovery but the court holds a case management conference before giving directions, then clearly attending on that conference will be within the scope. However, if in that example, the certificate is limited to close of pleadings, it will need to be amended in order to cover attendance.

2.3.9 Requests for prior authorities to incur expenditure

2.3.9.1 Guidance relating to applications for prior authority to incur expenditure is provided in the current Legal Aid Handbook (NFG 11) and should be applied in all cases. In addition, it should be borne in mind that the overriding objective of the Civil Procedure Rules is to ensure that cases are treated "justly", which includes dealing with them in ways which are proportionate to the amount of money involved. This means that the court will wish to manage the number of experts allowed, the extent of disclosure and, ultimately, the amount of costs awarded. The likely considerations of the court in respect of the individual case must, therefore, be taken into account before a request for prior authority is made and in selecting relevant experts.

2.3.9.2 In fast track cases this is a particular concern, as expert evidence will be limited to one expert per field per party, and a maximum of two fields per party per case, other than where permission of the court has been given. Subject to the guidance provided at NFG-11 of the Legal Aid Handbook, an authority for expenditure over and above this maximum will normally only be granted where permission of the court has already been obtained (and a copy of the order provided to the area office with the application).

2.3.9.3 Prior authority is also unlikely to be granted in fast track cases where an additional expert's report is required, to support or expand upon an earlier report by an expert in the same field, even where the first report has not been served on the court. This is because of the prescribed levels for experts outlined above, and because of implications for application of the statutory charge in respect of non-recoverable costs.

3 Franchisees

3.2 Devolved powers – Amending Substantive Civil Certificates

3.2.4.5 Franchisees exercising devolved powers must apply the legal merits test (NFG 7-02) and reasonableness test (NFG 7-03) fully. The expression "favourable opinion" means an opinion which places the prospects of success as better than 50% (NFG 7-02.6) and which recommends that it is reasonable to proceed having regard to:

(a) all the questions of fact and law arising (NFG 7-02.3);
(b) the likely total costs when weighed against the benefit (NFG 7-03.4 to 7-03.8);
(c) importance of the case to the litigant (NFG 7-03.9 to 7-03.14);
(d) the operation (where appropriate) of the statutory charge and/or the Compensation Recovery Unit (NFG 7-03.21);
(e) the ability of the opponent to satisfy a judgement or order (NFG 7-03.5(c) to 7-03.20);
(f) recourse to alternative methods of funding, alternative types of legal aid or alternative methods of dispute resolution (NFG 7-03.24 to 7-03.31); and
(g) the application of the test of the private paying client of moderate means (NFG 7-01.4 to 7-01.6).

Note: To assist with assessments of "reasonableness" in civil non-family cases which include a claim for damages or other property, ratios of key information (including prospects of success, damages, costs and sometimes statutory charge) have been provided elsewhere in the manual. These ratios must be considered,

in addition to the factors listed in (a)-(g) above, wherever they apply (see paras 2.2.2.6 and 2.3.3.3 of this section and sections 7 and 12 on Housing and Clinical Negligence – Civil) and franchisees must only exercise devolved powers where the application of the key information produces a result in the relevant range. Where the franchisee considers that, even though the ratios in the cost benefit matrix are not satisfied, it is still reasonable for legal aid to continue (see paragraph 2.3.4.4 of this section) then they may refer the application to the area office, setting out why, in their view, this is so (unless the prospects of success are less than 50%, in which case the franchisee must refuse the amendment).

3.2.4.5.1 Where limitation CV073 'all steps up to and including trial' has been applied, the franchisee must, as soon as practicable, after disclosure of documents and exchange of any witness statements and expert evidence, and before filing the listing questionnaire, review the case and apply the legal merits test by reference to the points contained in 3.2.4.5 above. The franchisee need not complete an APP6 or send any documentation to the area office. However, the franchisee must report forthwith to the area office any case where they consider that the merits test is no longer met, and/or in a non-family case which includes a claim for damages or other property, where the cost benefit ratios set out in the guidance are not satisfied.

3.2.7.2 In addition to requiring a record of the exercise of the devolved power on file and in a central record, the franchisee must (unless paragraph 3.2.5.4.1 applies) complete and send to the Area Office:

- **(a) Completed Form APP. 6 – one form can be used where both scope and costs amendments are authorised;**
- **(b) Counsel's opinion or the solicitor's report together with relevant experts' reports, and any directions ordered by the court since the last amendment (e.g. following filing the allocation questionnaire or a case management conference);**
- **(c) Solicitor's justification for allowing the amendment in relation to Counsel's opinion or the solicitor's report; and**
- **(d) Solicitor's report justifying an extension of a costs limitation where applicable together with a copy of the allocation questionnaire, where completed.**

A solicitor may combine the three required elements (merits, justification, costs) in a single solicitor's report if he wishes to do so.

Family/Matrimonial – Advice & Assistance

1.13 Crime and Disorder Act 1998
(see also Crime – Advice & Assistance)

1.13.1 Subject to financial eligibility legal advice and assistance is available in relation to the Crime and Disorder Act 1998.

1.13.2 Appendix 2 gives details of the extent of the family/matrimonial franchise category.

1.13.3 As advice and assistance would only be used to provide initial advice given the availability of the duty solicitor and ABWOR, it would not be usual for an extension to the financial limit to be justified and an extension should normally be refused.

Housing – Advice & Assistance

See page 40 of this issue of Focus.

Housing – Civil

See page 48 of this issue of Focus.

Immigration – Advice & Assistance

1.2.4 **PAQ (Political Asylum Questionnaire)** – a further extension of up to **4 hours (40 units)** should normally be sufficient to cover the completion of the Political Asylum Questionnaire, including supporting documentation.

Crime – ABWOR

3. ABWOR for sex offender orders and anti-social behaviour orders under the Crime and Disorder Act 1998
(see Appendix 2 for the extent of the Crime and Family/Matrimonial franchise categories in relation to the Crime and Disorder Act 1998 generally)

3.1 A franchisee may grant ABWOR for representation on an application for a sex offender order (SOO) **or for an anti-social behaviour order (ASBO)** or an application to vary or discharge a SOO **or ASBO**. A franchisee may not grant ABWOR for an appeal to the Crown Court although advice and assistance as opposed to ABWOR is within the Crime category.

3.2 When determining whether ABWOR should be granted the guidance below should be applied.

3.3 The usual ABWOR financial eligibility test applies (see Regulations 9 and 11 to 13 of the Legal Advice and Assistance Regulations 1989 and Notes for Guidance 3-02 to 3-04 Legal Aid Handbook 1998/99 as well as section 01 – General – Means Assessment – Legal Advice & Assistance/ABWOR).

3.4 A costs limitation must be imposed for work authorised under the ABWOR approval (see Regulation 22(8) of the Legal Advice and Assistance Regulations 1989).

3.5 The ABWOR merits test is set out in Regulation 22(6A) of the Legal Advice and Assistance Regulations 1989 (as amended). ABWOR may

be refused where:

(a) it appears unreasonable that approval should be granted in the particular circumstances of the case, e.g. if the duty solicitor is available (Regulation 22(6A(a)); or

(b) it is not in the interests of justice to grant approval, e.g. the law is not unduly complex (Regulation 22(6A)(b)).

3.6 If it appears that the duty solicitor could deal with the case, then ABWOR should normally be refused under 22(6A)(a). If the court has no duty solicitor scheme or it is not an appropriate case for the duty solicitor i.e. due to complexity or length of hearing, then ABWOR should not be refused on this ground.

3.7 It should be assumed that the duty solicitor will usually be able to provide the degree of representation necessary. If a hearing is contested the duty solicitor is not precluded from appearing by paragraph 51(1) of the Duty Solicitor Arrangements 1997 (as amended) as this provision does not apply to civil cases. Home Office guidance specifies that adjournments of these type of applications should be avoided where possible and so they will generally be concluded following a single hearing. However, where an application is contested and evidence is to be called, it may not be possible for the duty solicitor to deal with the case on the day in which case the grant of ABWOR may be appropriate.

3.8 ABWOR should be granted in preference to the duty solicitor dealing with the case if it raises complicated issues of fact, law or procedure. **Examples** of more complex case**s include** a contested application for a SOO **or an ASBO** made against **an** individual who is known to suffer from a mental disorder; **a contested ASBO hearing involving disputed evidence from a "professional" witness (such as a police officer or local authority representative, used where another witness is too frightened to be identified and give evidence); a contested ASBO hearing raising the statutory defence of reasonableness or contested applications for ASBOs made against a group of named individuals.** The estimated length of the hearing (which could lead to an adjournment as the matter would be unsuitable for the duty solicitor) may also be a relevant consideration. An assessment of the factual, legal and procedural complexity of the case should be made to determine whether it would be reasonable for ABWOR to be granted.

3.9 Where

– the court has no duty solicitor scheme or
– the case is too complex for the duty solicitor or
– the estimated hearing time makes the case unsuitable for the duty solicitor,

the next stage is to consider whether it is in the interests of justice for ABWOR to be granted. If it is considered that it is not in the interests of justice for ABWOR to be granted, then an approval of ABWOR should not be granted.

3.10 If the interests of justice test is satisfied, it will almost certainly be reasonable in all the circumstances for ABWOR to be granted. However, each case must be considered on its own facts and merits.

Mental Health – ABWOR

1.3 ABWOR prior permission

1.3.1 A franchisee with the relevant devolved power can incur **disbursements** without reference to the Area Office – no prior permission or authority is required (paragraph 2.16 Franchise Specification). However, this is subject to assessment by the Area Office of the costs claim. If the claim is reduced there is a right of review by the area committee in the usual way. This means that a franchisee is not required to have the prior permission of the Area Office to incur a disbursement although the principle and amount of the disbursement incurred by the franchisee are not protected on costs assessment in any event.

1.3.2 **An** application for prior permission must, in any event, be made by a franchisee who wishes to incur **profit costs** by undertaking work which is "unusual in its nature".

1.3.4 to 1.3.12 as before.

1.3.13 Franchisees with the relevant devolved power need not and should not apply to the Area Office for prior permission/authority to incur a **disbursement – disbursements incurred will, however, be subject to costs assessment**. An application for prior permission must, however, be made to the Area Office where a solicitor (whether franchised or not) wishes to undertake an act which is unusual in its nature in relation to his own **profit costs**.

Appendix 2 (Franchise Categories)

Crime

Proceedings for a sex offender order or anti-social behaviour order, at first instance, and proceedings to vary or discharge such orders

Non-franchised proceedings

The following do not fall into a franchise category of work:

Administrative law/Crime

Proceedings including appeals under the Crime and Disorder Act 1998 (although advice and assistance is available in the CRIME or FAMILY category and, at first instance, proceedings relating to a sex offender order **and an anti-social behaviour order** are franchised in the CRIME category only)

Proceedings by a vexatious litigant for leave under Section 42 Supreme Court Act 1981

Children

Proceedings under the Crime and Disorder Act 1998, including as to a child safety order, parenting order or sex offender order (although advice and assistance is available in the CRIME or FAMILY category). ■

Advice & Assistance and Extension Guidance

1. ADVICE & ASSISTANCE AND EXTENSION GUIDANCE

1.1 HARASSMENT/WRONGFUL EVICTION

1.1.1 The initial two hour limit should normally be sufficient to take full instructions, to write to the landlord and/or the local authority, contact the tenancy relations officer and/or apply for legal aid. If an injunction is to be sought, an application for legal aid would need to be submitted on an emergency basis. It would therefore be unusual for extension applications to be made. Solicitors or applicants will normally be expected to contact the tenancy relations officer prior to applying for legal aid and the justification for not doing so must be set out in the application. If contact has been successful but the matter has not been resolved, solicitors should indicate this, and what steps, if any, have been taken by the tenancy relations officer, when applying for emergency legal aid.

1.1.2 However, an extension of **up to ten units (1 hour)** may be appropriate if negotiations with the landlord would appear likely to be successful in avoiding the need for court proceedings. If negotiations are ongoing, further extensions may be appropriate if the negotiations are likely to avoid court action and may secure the return of the tenant.

1.1.3 Civil legal aid and ABWOR are not available for proceedings under the **Protection from Eviction Act** in the magistrates' court and therefore, although individuals may take proceedings, most prosecutions are brought by the local authority. If the local authority is pursuing a prosecution, some advice and assistance on that aspect may still be given, but the initial limit should normally be sufficient.

1.1.4 Advice and assistance may also be appropriate on civil proceedings where such action would achieve a worthwhile benefit in addition to that arising from the prosecution.

1.1.5 Even if an injunction is not to be sought in civil proceedings the initial limit should be sufficient for the solicitor to provide preliminary advice on liability and quantum and to complete an application for legal aid, if appropriate.

1.2 DISREPAIR

1.2.1 The initial two hour limit should normally be sufficient for the solicitor to take instructions, identify the issues and advise the client as to appropriate remedies. The instructions should include details of the property, the tenancy, full details of the disrepair, losses caused by the disrepair, any health problems suffered by the family, whether and how complaints or notification of the disrepair have been made to the landlord in the past. Advice should cover details of the possible courses of action, including:-

- negotiations with the Environmental Health Department and/or with the landlord to ensure that the repairs are carried out,
- pursuing local arbitration/mediation arrangements where available or the Independent Housing Ombudsman or Local Government Ombudsman (as appropriate).
- possible legal proceedings, the remedies available as a result of those proceedings and quantum,
- the steps to be taken to achieve the desired outcome, which should be identified and recorded on the file.

1.2.2 If the allegations of disrepair are of a trivial or insignificant nature further advice and assistance is unlikely to be justified, e.g. a cracked window pane, cracked tiling, or matters predominantly of a decorative nature. A tenant should normally be able to report minor disrepair to the landlord and pursue the matter without the assistance of a solicitor.

1.2.3 In the case of potential civil proceedings, the instructions obtained from the client should normally be sufficient to support an application for legal aid without the need for a report from a Surveyor/Environmental Health Officer. If a certificate is granted a report can be obtained at that stage. The initial limit should be sufficient for the solicitor to identify the extent of the disrepair, write to the landlord and apply for legal aid. Where, in exceptional circumstances, it is necessary to investigate the disrepair further an extension **of 10 units (one hour)** may be appropriate. If, in exceptional circumstances, it is considered that a report is needed prior to an application for legal aid, this decision must be justified in the application for extension of the financial limit. Where there are sufficient grounds for pursuing both magistrates` court and civil remedies, any report already obtained in connection with the potential magistrates` court proceedings must be submitted with the application for legal aid.

1.2.4 If a civil legal aid certificate is unlikely to be granted, e.g. because the value of the claim is within the small claims limit, an extension of **10-20 units (one to two hours)** may be justified to advise on conducting the matter in person, depending on the value of the claim and having regard to the effect of the solicitor's charge on any damages recovered.

1.2.5 Where the condition of the premises is prejudicial to health so as to constitute a statutory nuisance, magistrates' court proceedings may be appropriate under the **Environmental Protection Act 1990**. Legal aid is not available, but advice and assistance may be provided where it is reasonable to do so. Such proceedings would be appropriate where the defects are only actionable in the magistrates' court (i.e. where the disrepair does not fall within **section 11 Landlord and Tenant Act 1985**, or any other relevant statutes, for the purpose of civil proceedings.) Where there is a mixture of defects which can give rise to either civil or magistrates' court proceedings, the decision as to which remedy to pursue will depend on the urgency of the situation (e.g. an urgent need to remedy a statutory nuisance which constitutes a real danger to the occupants), the value of any claim for damages and the ultimate benefit desired by the client (e.g. to see work undertaken rather than pursue a relatively modest claim for damages). A decision to pursue more than one remedy must be justified when claiming costs.

1.2.6 Except in cases of real urgency, extensions beyond the initial limit are unlikely to be granted in civil or magistrates' court cases unless the solicitor has already written to the landlord setting out the client's allegations of disrepair with a request for remedial repair and compensation and this has not been resolved within a reasonable period. A reasonable fee paying client would not embark upon costly litigation without first attempting to resolve matters by negotiation, even where previous complaints had been made.

1.2.7 The obtaining of an expert's report should not be regarded as an automatic first step in a potential disrepair case. The onus is on the solicitor to obtain full details from the client and assess the merits of taking further action in the light of all the information available, including any response received from the landlord. It is not sufficient to rely on information received from a referral agent. Once the necessary information has been obtained from the client, the solicitor should carry out an initial screening of the case to determine whether any further action is appropriate. The decision to instruct an expert must be one that is in the best interests of that client in those particular circumstances.

1.2.8 An extension of the financial limit would not normally be granted to instruct a surveyor or Environmental Health Officer to inspect the property and prepare a report unless the landlord had first been contacted by the solicitors, notified of the defects, requested to effect repairs and/or offer compensation within a reasonable period. This is the approach which a reasonable fee paying client would be likely to take. The time given and action demanded will depend on the urgency/severity of the particular case but in most cases would be a period of 2 to 4 weeks.

1.2.9 An extension for an expert's report may be appropriate either where the landlord has failed to respond, failed to inspect, failed to effect repairs or offer adequate compensation within the time given . If a surveyor is instructed the client's statement should be attached to the instructions. The name and qualifications of the expert to be instructed, a breakdown of the fee to be incurred and an indication of the nature of the disrepair must be provided in support of the application for extension together with details of the steps taken so far.

1.2.10 Where the client has a potential and worthwhile claim for damages, extensions of the financial limit are unlikely to be granted for the purpose of gathering further evidence, e.g. a surveyor's report, and an application for legal aid should be submitted.

1.2.11 In magistrates' court proceedings the client will be acting in person. Advice and assistance may cover the drafting of the statutory notice and information, obtaining a schedule of works necessary to abate the statutory nuisance and correspondence with the landlord. In some cases a medical report may also be required. Extensions of **20 – 40 units (two to four hours)** plus disbursements may be justified to assist in bringing the case to the point of trial.

1.2.12 If a solicitor is instructed by a private landlord for advice on the defence of proceedings for disrepair the initial limit should be sufficient to enable a solicitor to take full instructions, identify the issues, advise on prospects and submit an application for legal aid.

1.2.13 Before advising a client to commence any proceedings, the availability of alternative methods of resolving the matter should be considered. Such alternatives would include local arbitration/mediation arrangements or a referral to the Independent Housing Ombudsman/Local Government Ombudsman (as appropriate). A fee paying client would be likely to take advantage of such arrangements before incurring the costs of litigation. An explanation for not pursuing alternative remedies, where available, should be provided with any application for extension of the financial limit or claim for costs.

1.2.14 The work set out in paragraphs 1.2.1 to 1.2.3 above should be undertaken under a single application for advice and assistance. More than one application form should be signed only when reasonable grounds have been established for pursuing separate remedies **and** a definite and justifiable decision has been reached to pursue both remedies, e.g. a claim for damages in civil proceedings and statutory nuisance proceedings in the magistrates' court. It is only when such a decision has been taken that there can be said to be two genuinely separate matters. Two forms for

advice and assistance are therefore not appropriate for the initial preliminary investigations.

1.2.15 Where solicitors submit more than one claim for payment for a single client (together or at separate times), the area office may call for the files of papers. The need for separate proceedings must always be justified by reference to the additional benefit to be gained for the client in relation to the costs incurred.

1.2.16 Where solicitors receive referrals of cases from a third party they must comply with Practice Rule 12.04 and the Solicitors' Introduction and Referral Code 1990, where applicable. In the case of such referrals solicitors must take care to satisfy themselves, by way of full and continuing instructions from the client, of the basis of the claim and the reasonableness of incurring costs and disbursements. Before advising a client to pursue any remedy the solicitor must have regard to the wishes and best interests of the client and the reasonableness of expending public funds in the particular circumstances of the case.

1.3 Possession Cases

1.3.1 The initial two hour limit should normally be sufficient to take full instructions and to give advice on the type of tenancy, the rights and obligations involved, and any available defences and counterclaims. The solicitor may write to the landlord in an attempt to settle the matter, and/or submit an application for legal aid. The client may seek advice when notice of proceedings is received, in which case there may be greater opportunity for negotiation. However, if advice is not sought until proceedings are issued and there is an imminent hearing date, an application for civil legal aid will have to be made as a matter of urgency (provided that there is a defence to the landlord's application for a possession order). Where negotiation is ongoing, an extension of **5-10 units (30 minutes to one hour)** may be justified.

1.3.2 Advice may be sought on whether or not a proper notice has been served either to determine the tenancy or indicate proceedings will be issued. The initial limit should be sufficient to provide such advice.

1.3.3 Even if there is no defence to the possession proceedings, the solicitor may still be able to negotiate in relation to the terms of a possession order. The landlord may agree not to pursue arrears of rent, and/or to allow more time for the tenant to vacate the premises. The solicitor may even be able to negotiate terms under which the tenant is allowed to remain under a suspended possession order, provided that rent is paid regularly. An extension of **about 10 units (one hour)** may be justified to cover negotiations in these circumstances.

1.3.4 In some circumstances, there may be a defence to possession proceedings based on the landlord's failure to keep the premises in repair. The solicitor would need to take full instructions on the condition of the premises in order to establish the value of any counterclaim in addition to the defence of the proceedings. This can entail extra work. It may be that the amount of the damages that would be awarded for the disrepair would extinguish the landlord's claim for arrears of rent. The usual extensions in relation to disrepair may be appropriate.

1.3.5 If a landlord is taking accelerated possession proceedings to obtain possession of premises let on an assured shorthold tenancy**,** an application for civil legal aid will not be appropriate because there is no court hearing. The solicitor will have to go through the landlord's affidavit with the client. There are, however, several reasons why objections could be made to the accelerated procedure. For example, there may be a dispute as to whether or not the correct notice of shorthold tenancy was served on the tenant before the tenancy commenced. If there is a dispute, the solicitor will need to assist the client to prepare a detailed reply for the court. This reply would raise the relevant issues and provide evidence to persuade the court that an immediate order for possession should not be made, and that the matter should be listed for a hearing. An extension of **up to 5-10 units (30 minutes to one hour)** would normally be sufficient to make the application for legal aid.

1.3.6 If there is a defence to the possession proceedings based on an incorrect notice, it would not be unusual for there to be other problems with the tenancy. There may be rent arrears and/or disrepair and/or welfare benefit problems. In cases where there is no defence, the solicitor may have to advise on homelessness. The amount of any extension which could be justified would always depend on the number of issues arising.

1.4 Homelessness

1.4.1 The initial two hour limit should normally be sufficient to take detailed instructions, identify the issues and advise the client as to any appropriate action. Those instructions should include details of whether the client is actually homeless or threatened with homelessness and the history of events leading to the client's current circumstances. Advice should also be given on whether or not the local housing authority has any duty towards the individual and what that duty is. Local Authorities are under an obligation either to provide accommodation for homeless individuals or, in cases where there is no duty to re-house, provide advice in obtaining accommodation. It would not be reasonable for the solicitor to provide advice on obtaining accommodation as the Local Authority has a statutory duty to provide it. If an application to the housing authority has been made but no

decision yet reached, the solicitor may enter into correspondence with the housing authority to set out the client's case. An extension of **up to 10 units (one hour)** may be appropriate for this correspondence.

1.4.2 Further extensions may be justified if negotiations and investigations are ongoing because there is a long delay between the notification of homelessness /threatened homelessness to the housing authority and any decision.

1.4.3 Once the housing authority's decision has been made it will be communicated in writing. The housing authority has a duty under **section 184 Housing Act 1996** to give notice of its decision on its duty to the applicant, the reasons for it and to notify the applicant of the right to request a review of the decision or to seek assistance in obtaining accommodation. The solicitor will have to consider the reasons given and should obtain the housing authority's file (if not already obtained) to decide whether it would be appropriate to seek a review of the decision. A further extension of **20 units (two hours)** may be justified to obtain the file, review it and to advise and assist the client in deciding whether to request a review.

1.4.4 When the review is completed, if the decision remains that there is no duty, a further extension of **up to 10-20 units (one to two hours**) may be justified to consider and advise the client whether to exercise the right of appeal to a county court under **section 204 Housing Act 1996** and to submit an application for legal aid for that appeal.

1.4.5 If at any stage a decision favourable to the client is made a further extension of **5 units (30 minutes)** may be justified to enable the solicitor to advise the client as to the suitability of any accommodation offered if the client considers that the offer made is inadequate. The client may seek a review under **section 202 Housing Act 1996** and if so further extensions of **up to 20 units (two hours)** may be appropriate to pursue that review. Once that review is completed, the client may be advised whether to pursue an appeal to the County Court (see para. 1.4.4 above for the appropriate extensions).

1.4.6 At each or any of the above stages a further extension of **5-10 units (30 minutes to one hour)** may be justified to enable the solicitor to consider whether temporary accommodation is needed/being provided/is suitable and to correspond with the housing authority about such provision. If suitable temporary accommodation is not being provided a further extension of **5-10 units (30 minutes to one hour)** may be justified to consider whether an application for judicial review should be made as a county court does not have power to grant interim relief i.e. to order the provision of temporary accommodation pending the outcome of any appeal. Any extension should enable the solicitor to send a letter before action and in the absence of a satisfactory response, submit an application for legal aid.

1.5 Mortgage Repossession

1.5.1 Claims by lenders against borrowers whose property is subject to a mortgage/legal charge

1.5.1.1 The initial two hour limit should normally be sufficient for instructions to be taken, relevant issues identified, and advice given as to the legal position, any defence, and relevant steps to be taken. This would include details of the property, the nature of the loan, instalments, capital and interest outstanding. Advice would be necessary as to the nature of any proceedings threatened or already issued, and the nature of any defence/ counterclaim which could be mounted. A single form for advice and assistance would be appropriate in this context. and this should cover the limited amount of initial correspondence necessary. If additional correspondence is necessary where information is outstanding from the lender or negotiations are ongoing an extension of **up to 10 units (one hour)** may be justified.

1.5.2 The following issues may arise when the client seeks advice of this nature:-

(a) Arrears

In many cases this is the only issue in dispute. It should be possible to write to the court to explain the borrower's position. An immediate possession order is unlikely to be granted in light of the decision in **Cheltenham & Gloucester Building Society-*v*-Norgan** as the Court can consider the remaining period of the mortgage as the reasonable period for repayment of arrears. If there is some dispute as to the level of arrears a modest extension of **up to 10 units (one hour)** may be appropriate.

(b) Linked relationship breakdown or other disputes/litigation.

This may be a factor justifying more extensive advice and correspondence, although an extension of more than **ten units (one hour)** is unlikely to be justified unless an application for legal aid in relation to the possession proceedings is made in which case **another 5 units (30 minutes)** will be required. In most cases it should be possible to write to the Court to explain the position.

(c) Fraud

It is sometimes alleged by the assisted person that his/her signature has been fraudulently added to a document, usually by his/her co-habitant/ spouse. An extension of **not more than 5 units (30 minutes)** would be appropriate to obtain a copy of the document, and to make the application for a legal aid certificate in this context. If the fraud is blatant, advisers would be expected to write to the lender pointing this out before any application for

legal aid is made.

(d) Duress/Undue Influence

If it is claimed that signatures have been obtained under duress/pressure and/or that inadequate independent advice has been given advisers will need to have regard to the guidelines laid down in the case of **Royal Bank of Scotland-*v*-Etteridge** (which expands upon **Barclays Bank-*v*-O'Brien**). If the client has had the benefit of independent advice from a solicitor before entering into the transaction, the lender is in fact in a strong position. The client will have difficulty in establishing duress/undue influence in these circumstances. Where the client did not have advice from a solicitor limited correspondence may be necessary to establish whether any defence exists and an extension of **up to 10 units (one hour)** may be justified.

Advisers may find that a combination of two or more of the issues above may arise and, should this be the case, an extension of 10 to 20 units(one to two hours) might be justified prior to seeking a legal aid certificate.

(e) Arrears cases/Consumer Credit Act issues

Advice should usually be provided within the initial limit but an extension of **not more than 10-20 units (one to two hours)** may be necessary if the case is unusually complex and/or the borrower seeks to request time to pay and/or to reduce interest charges.

(f) Addition of Parties

Where an occupant is not a party to the secured loan agreement he/she may wish to apply to be added as a party to the proceedings. If the adviser considers that there is real benefit in so doing it should be possible to consider the issue and apply for legal aid within the initial two hour advice and assistance limit. An extension is unlikely to be necessary.

(g) Counterclaims

Advice and assistance may be appropriate for this purpose, e.g. as to a negligent survey. An extension of **up to 10 units (one hour)** may be appropriate.

(h) Advice to tenants of borrowers

Advice may be given as to the tenant's position in relation to the mortgage and possible action against the borrower, if evicted. The issues should usually be investigated and considered within the initial limit, to include any application for legal aid.

(i) Advice following issue of warrant for possession

If this is the first time the client has been seen, then full details will need to be obtained so that the adviser can consider if there is any possibility of judgement being set aside and/or an application can be made to set aside or suspend any warrant issued. If an application to set aside judgement can be made then an application to seek legal aid may be considered justified. An extension of **up to 10 units (one hour)** may be appropriate to go into sufficient detail to seek a legal aid certificate. If none of these factors apply and the only issue is the amount of arrears, advice should be given within the initial limit. If advised to make an application to the court to suspend the warrant an extension of up to one hour/ten units may be appropriate.

(j) Sale by building society/bank in possession

Advice may be sought by borrowers against whom possession has been ordered and whose property is to be sold. It is sometimes suggested that the lender is pressing ahead with a sale at an undervalue. It should be possible in most cases to establish the approximate value of the property without a formal valuation report (e.g. from an estate agent's valuation or client's estimate of the current market value) and to advise the borrowers of their rights. If the solicitor considers undervalue can be established then an extension may be justified to enter into negotiations with the lender on value/conduct of sale and/or to obtain a formal valuation.

(k) Costs

Should judgement be obtained by a lender the costs will be added to the debt due under the charge. Advice may be sought on the possibility of taxing the lender's solicitors costs under **section 70 Solicitors Act 1974**. An extension of **between 5-15 units (30 minutes to one and a half hours)** may be appropriate for this to enable the bill to be scrutinised.

1.6 Miscellaneous Issues

1.6.1 Unlawful occupiers and trespassers

1.6.1.1 The initial two hour limit would normally be sufficient for the solicitor to take instructions and advise. In many cases the adviser's role may be limited to no more than brief advice that the occupier/trespasser has no right to remain and limited correspondence. Advice might be necessary to establish whether a tenancy/licence has been determined, whether possessory title can be alleged, or whether there is an ongoing licence to occupy. Should there be a defence to proceedings which have already been issued then the initial two hour limit should be sufficient to include an application for legal aid.

1.6.2 Travellers

1.6.2.1 Advisers may be consulted by Gypsies/Romanies and other persons with a nomadic life-style including new travellers (sometimes referred to as new age travellers). Gypsies are a distinct

ethnic group under the **Race Relations Act** and anti-discrimination legislation will apply to them.

1.6.2.2 It is frequently the case that advisers may provide advice and assistance or work under a legal aid certificate to one person, although it is likely that this may be of benefit to not only this person and his/her family, but other persons on the site, or in the same group. Where any application for legal aid is to be made solicitors should consider whether it is appropriate to suggest that the advice should be jointly funded with reference to regulation 32 of the Civil Legal Aid (General) Regulations 1989. It is likely that the individuals will have cases which are not identical, but are similar to others of the group.

1.6.2.3 The initial two hour limit is likely to be sufficient for detailed instructions to be taken, the relevant issues identified and advice given as to the legal position, and the appropriate response to any contact made by the owner of the land, the police or the local authority.

1.6.2.4 The following issues may arise when advisers are consulted by gypsies and other travellers:

(a) Sites

Advice may be required as to obtaining or keeping a pitch, the quality of services, and evictions. Poor sites may contravene a local authority's duty under the **Children Act 1989** to provide adequate conditions for children. Advisers may be asked to write to the Local Authority. If ongoing correspondence takes place an extension of **up to 20 units (two hours)** may be appropriate in this context. Where the poor quality of site is in dispute action can be taken under the **Environmental Protection Act 1990**. The initial two hour limit should normally be sufficient to take instructions, identify the issues, and advise the client. Legal aid is not available but advice and assistance may be provided where it is reasonable to do so and the extensions for disrepair apply.

(b) Harassment

Problems may arise as to issues of harassment and advice may be sought as to this. An extension to the initial two hour advice and assistance limit is unlikely to be justified.

(c) Eviction by the Local Authority from Unoccupied Sites or land forming Part of the Highway

Travellers may be subject to a local authority direction to leave land and remove all vehicles and property where they are on unoccupied sites/land forming part of the highway. Advice might be sought by travellers as to the steps which need to be carried out by the local authority before issuing the removal direction under **section 77 of the Criminal Justice and Public Order Act 1994** and/or in negotiations and correspondence with the authority in relation to its obligations under the **Children Act 1989** for education, housing, access to local health and welfare services, and relevant humanitarian considerations as set out in any relevant Department of the Environment circular. (Gypsy Sites and Unauthorised Camping (D.O.E circular 18/24) and DETR/Home Office Good Practice Guide "Managing Unauthorised Camping" Oct. 1998). Should ongoing correspondence take place an extension of **20 to 40 units (two to four hours)** might be appropriate.

(d) Eviction by the Local Authority from its Own Land

Travellers may be subject to Civil Procedure Rules, Schedule 2 CCR Order 24 Possession Proceedings from caravan sites or other council owned property which they occupy as trespassers. The relevant circular does not apply in this context as the council is exercising eviction powers rather than initiating removal directions. The initial two hour limit for advice and assistance should be sufficient to establish that this is the case and to consider appropriate remedies, including judicial review. If judicial review is considered an extension of **5-10 units (30 minutes to one hour)** may be justified which would include applying for legal aid where appropriate.

(e) Occupation by Travellers of Land Already Occupied

Where two or more travellers are on land which is occupied and the landlord has taken reasonable steps to ask them to leave, the police can become involved in the eviction. Advice and assistance might be appropriate in relation to the powers of the police which include removal and destruction of vehicles. If the traveller fails to comply with a direction by the senior officer to leave the site, a criminal offence might be committed punishable by imprisonment. An extension of **10 to 20 units (one to two hours)** may be appropriate to advise on the power of the police and to advise on occupation. Advice on any criminal charge(s) should be the subject of a separate green form or an application for a legal aid order.

1.6.3 Mobile Homes

1.6.3.1 The initial two hour limit would normally be sufficient for the solicitor to take detailed instructions, identify the issues and advise the client as to appropriate remedies. The initial limit should be sufficient to advise fully and include any application for legal aid, if appropriate.

1.6.3.2 Advice may be sought as to various matters including:-

- Whether or not the site is protected under the Mobile Homes Act and the effects of this.
- The provision and interpretation of a written

statement of rights under the Mobile Homes Act 1983.
- Utilities and the price at which fuel is re-sold to occupants.
- Breaches of site licence, e.g. by overcrowding.
- Harassment.

1.6.3.3 Matters of this nature can be the subject of litigation in the County Court. However, advice will need to cover details of the possibility of other courses of action, e.g:-
- Negotiation with the site owner
- Involvement of the Local Authority
- Involvement of the police
- Whether the site falls within the Independent Housing Ombudsman Scheme and a reference to the Ombudsman is appropriate.

Given that occupants of mobile homes will all have their own case, it is likely in most cases that legal advice should not be jointly funded.

1.6.3.4 Where individuals own their mobile home the initial two hour limit will normally be sufficient for detailed instructions to be taken, issues to be identified and advice given as to the legal position and as to appropriate remedies. Issues specific to clients in this position include:-
- Failure to provide a written statement within three months of occupancy. If it is not forthcoming, advice may be appropriate as to the possibility of seeking a County Court order that the site owner provide a statement and the initial limit would be sufficient to include applying for a legal aid certificate.
- Termination of the agreement by the site owner for e.g. disrepair and/or other breach of condition. A surveyor's report may be needed and an extension of **up to 10 units (one hour)** plus the cost of the report may be justified.
- Change of the written statement and negotiations relating to this. An extension of **up to 20 units (two hours)** may be appropriate, to include any application for legal aid for a reference to the County Court.
- The site owner may wish to move the mobile home to a new pitch and advice may be sought as to the terms of the agreement and the nature of the move. An extension of **up to 10 units (one hour)** may be appropriate for negotiations and any application for legal aid in the event of reference to the County Court.
- Unreasonable refusal of consent to a sale. Advice may be sought as to this and the possibility of seeking a County Court declaration. An extension of **up to 5 units (30 minutes)** may be appropriate to cover applying for legal aid in this context.
- Advice may be sought as to a change in the site rules or an increase in the pitch fee. There is a requirement that the owner of the site consult with the mobile home owner and in certain circumstances either party can seek a County Court declaration. An extension of **up to 20 units (two hours)** plus the cost of any report may be justified, to include any application for legal aid.

1.6.3.5 Where individuals rent their mobile home the initial two hour limit should be sufficient for instructions to be taken, issues to be identified and advice given. In many cases only brief advice will be appropriate as security of tenure is limited. Four weeks notice is all that is required although a court order is necessary. Advice would cover details of the legal position and any possible remedies including:-
- Early termination of a fixed term agreement for breach e.g. for non-payment of rent. Advice may be sought as to whether there has been a breach.
- Increases of rent.
- Change to a new pitch.

Extensions beyond the initial limit are likely to be unusual. Where a legal aid certificate is sought then it should be possible to apply for legal aid within the two hour limit.

1.6.4 Advice in relation to a lease/notice of assured shorthold tenancy

1.6.4.1 The initial two hour limit should normally be sufficient for instructions to be taken, and advice given on the terms and conditions of the lease or tenancy agreement where correspondence needs to be entered into a further extension of **up to 5-10 units (30 minutes to one hour)** may be justified.

1.6.5 Arrears of rent

1.6.5.1 The initial two hour limit should normally be sufficient for the solicitor to take full instructions and advise as to possible defences and action to be taken. If proceedings have been issued in respect of a sum over £5,000 or for a lesser sum together with a claim for possession, and there is a defence, an application for civil legal aid would normally be made within the initial limit. The tenant may have a counterclaim in respect of the costs of repairs, or the amount of rent claimed may be incorrect.

1.6.5.2 If a tenant has been threatened with distress or property has been impounded, the solicitor will be able to advise about the process, including exempt and protected goods i.e. goods which cannot be taken. The solicitor may also be able to negotiate repayment of the arrears with the landlord in order to avoid the immediate removal of property.

1.6.6 Service Charges

1.6.6.1 The initial limit should normally be sufficient for instructions to be taken and advice to be given which will include an explanation of the remit/ workings of the Leasehold Valuation Tribunal. If the case is complex or ongoing correspondence is necessary a further extension of **up to 10-20 units (one to two hours)** may be justified.

2. SUGGESTED TIMES FOR GREEN FORM EXTENSION REQUESTS

Type of Case	Reason	Reference	Time (unit = 6 mins)
Harassment	Negotiations to settle	1.1.2	10
Disrepair	Further investigation of the disrepair	1.2.3	10
	Cases where legal aid is unlikely to be granted, including small claims cases	1.2.4	10-20
	Magistrates' Court cases	1.2.11	20-40 plus expert's report and other disbursements
Possession	Negotiations to avoid proceedings	1.3.1	5-10
	Negotiation to agree terms of order	1.3.3	10
	Assist with accelerated possession proceedings	1.3.5	10
Homelessness	Correspondence pending decision	1.4.1	10
	Consideration of options following decision	1.4.3	20
	Consideration of right of appeal	1.4.4	10-20
	Consideration of suitability of offer of accommodation	1.4.5	5
Mortgage re-possession	Negotiations with lender	1.5.1.1	10
	Dispute on level of arrears	1.5.2(a)	10
	Linked disputes and application for legal aid	1.5.2(b)	10
	Fraud	1.5.2(c)	5
	Duress/undue influence	1.5.2(d)	10
	Arrears/Consumer Credit Act	1.5.2(e)	10-20
	Counter-claims	1.5.2(g)	10
	Set aside warrants	1.5.2(i)	10
	Application to suspend	1.5.2(i)	10
	Costs	1.5.2(k)	5-15
Miscellaneous issues	Sites	1.6.2.4(a)	20
	Disrepair of sites	1.6.2.4(a)	20-40
	Eviction by local authority	1.6.2.4(c)	20-40
	Judicial review	1.6.2.4(d)	5-10
	Police directions	1.6.2.4(e)	10-20
	Mobile homes – termination of agreement	1.6.3.4	10 plus expert's report
	Change of written statement	1.6.3.4	20
	Moving to new pitch	1.6.3.4	10
	Unreasonable refusal to sale	1.6.3.4	5
	Changes to rules/fees	1.6.3.4	20
	Lease/notice of assured shorthold tenancy	1.6.4.1	5-10
	Service Charges	1.6.6	10-20

Civil Legal Aid

1. GENERAL ISSUES

1.1 Alternative Remedies for Tenants of Social Landlords

1.1.1 Generally, unless a matter is urgent, it would not be reasonable to grant legal aid to take proceedings until the tenant has fully considered the use of any local arbitration or mediation arrangements and/ or the pursuit of a complaint within the jurisdiction of the Ombudsman (Independent Housing Ombudsman or the Local Government Ombudsman, as appropriate).

Where solicitors are not familiar with the Ombudsman scheme it should be noted that both the Independent Housing Ombudsman and the Local Government Ombudsman publish information about their work and jurisdiction. Contact details are set out below:

Independent Housing Ombudsman
0171 836 3630

(This includes membership by social landlords and voluntary membership of private landlords, including some park home owners (for tenants of mobile homes))

Local Government Ombudsman
Website: http://www.open.gov.uk/lgo

Mr E Osmotherly
(Greater London, Kent and East Sussex) **0171 915 3210**

Mrs P Thomas
(Birmingham, Cheshire, Derbyshire, Nottinghamshire, Lincolnshire and the North of England) **01904 663200**

Mr J White
(remainder of England) **01203 695999**

Mr E R Moseley
(Wales) **01656 661325**

1.1.2 The Board does not seek to automatically refuse legal aid in every case where an Ombudsman or local mediation/arbitration scheme exists. The issue is whether, in applying the private client test, it is reasonable to grant legal aid before options other than legal proceedings have been explored with the client and/or pursued. Regard should be had to the specific concerns of the client and what s/he wishes to secure as this will be relevant to whether the Courts, arbitration/ mediation, or an Ombudsman might be better able to deliver what the client wants. Solicitors should be aware of the jurisdiction of the relevant Ombudsman, the local mediation/arbitration schemes and be able to discuss the alternative avenues with their client when making the decision whether to apply for legal aid.

1.1.3 When applying for legal aid solicitors should indicate:

a) whether any local arbitration or mediation schemes are available;
b) why a local scheme and/or either of the Ombudsmen are not suitable for the individual case; and,
c) the particular circumstances that make litigation the most appropriate route.

Solicitors should be able to illustrate that they have considered the available options with the client, and to justify the decision to pursue litigation.

Alternative remedies should always be considered before initiating court based litigation. This is because if arbitration/mediation is available either locally through the Landlord, or under the auspices of an Ombudsman, a private client would be likely to exhaust those avenues before issuing proceedings.

1.1.4 There are limited circumstances in which a complaint to an Ombudsman could be an adjunct to litigation (e.g. in judicial review cases where the public law remedy cannot result in a damages award). If the client is pursuing both avenues, solicitors should indicate this in the application for legal aid.

1.1.5 If the tenancy agreement contains a compulsory arbitration clause, solicitors should explain whether arbitration took place, and if so its outcome. If arbitration was not pursued, solicitors should explain why the case was not suitable. Any correspondence with the landlord should be submitted with the application.

1.2 Cost Benefit and Housing Cases

1.2.1 Cost benefit is unlikely to be the only relevant factor in the consideration of an application for a housing case, in that the importance to the client to peacefully occupy a home that is in a proper state of repair may be equally relevant. However, the applicant must be able to show that the benefit to be gained from the proposed proceedings justifies the potential costs.

1.2.2 In determining whether the reasonableness criteria are met, the Board will consider what the applicant is seeking to achieve, what other remedies are available, and what action a private fee paying client would take in similar circumstances. Solicitors will be expected to show that they have considered these issues when evaluating the merits of the case.

1.2.3 The key information needed to assess costs benefit is:

- the predicted amount of any damages if the proceedings are successful (A);
- the total estimated costs inclusive of disbursements and counsel fees but excluding

VAT (C). Any estimate of costs should include costs incurred to date, and those which would be incurred if the matter proceeded. If reasonable prospects of settlement exist they should be taken into account when arriving at the figure, unless the application is to amend the scope of the certificate to allow the case to be taken to trial. In such cases the estimate must include final costs. The "C" figure should consist of estimated profit costs (at legal aid rates, with enhancement where appropriate) and estimated disbursements including counsel's fees. VAT is to be excluded.

- the likely net amount of recoverable damages after application of the statutory charge (D) – this will be A plus any recoverable costs minus C;
- the probability of success (P);

1.2.4 Even if it is considered that representation is justified, legal aid should not normally be granted in cases involving only a monetary claim (and not any injunctive or other relief) unless the reasonableness criteria are satisfied as to cost benefit. They are likely to be satisfied where consideration of the **key information** (i.e. P, D and C) produces a result on the risk based assessment in the following ranges:

Prospects of success (P)	Net Damages compared to costs (D:C)
less than 50%	whatever the ratio the application is likely to be refused
50% – 60%	D must be at least 2 times C.
60% – 80 %	D must be at least 1.5 times C
more than 80%	D must be at least equal to C

1.2.5 If the rates in the matrix are not satisfied the solicitor will need to justify why, in the circumstances, it would be reasonable for legal aid to be granted/continued. This will include considerations, other than the damages, which make it reasonable to assume that a private client of moderate means would continue to fund the case.

1.2.6 In proceedings that are being defended against or brought by a private landlord consideration of the probability of success must also include an assessment of the prospects of successfully recovering any order for costs made in the proceedings.

2 HARASSMENT/WRONGFUL EVICTION

2.1 Harassment/Wrongful Eviction

2.1.1 Legal aid is likely to be granted to a tenant/occupier to take proceedings if he/she can show a breach of covenant for quiet enjoyment, trespass or unlawful eviction, interference with and trespass to goods or assault.

and

reasonable prospects of obtaining one or more of the following:-

a) an order enabling the applicant to return to the property; and/or
b) recovery of any personal possessions; and/or
c) an award of damages; and/or
d) an injunction.

2.1.2 Legal aid is unlikely to be granted to take proceedings in circumstances where:-

a) there has been no letter before action or other prior contact with the landlord/agent with a view to resolving matters without the need for proceedings (unless it is demonstrated in the application that the matter is so urgent and/or serious that this would not be appropriate or would have no effect); and/or
b) the conduct complained of is trivial or is not recent and unlikely to be repeated; and/or
c) if an order for return to the property is sought, the benefit to be obtained may be insufficient to justify legal aid where the nature and length of the tenancy are such that the order would exist for only a short period of time e.g. where the length of time left in an assured shorthold tenancy is less than a month; and/or
d) the basis of the estimated value of the claim is not set out in the application, including claims for aggravated and/or exemplary damages. In cases involving personal possessions the nature, age and current actual second-hand values of the items should be specified rather than the purchase prices or cost of replacement as new.
e) any order obtained could not be enforced within a reasonable time.
f) there are no reasonable prospects of recovering costs and the operation of the statutory charge would therefore extinguish any benefit likely to be obtained. Some details of the opponent's financial circumstances and ability to pay damages/costs must be provided.

2.1.3 Where the tenant or the local authority is taking action in the magistrates' court under the **Protection from Eviction Act 1977**, legal aid is unlikely to be granted unless the benefit of separate civil proceedings can be shown. Where the primary remedy sought is an injunction or return to the property, legal aid is unlikely to be granted unless the matter has first been reported to the tenancy relations officer. If that step has not been taken justification for not doing so must be specifically set out in the application. If contact was made solicitors should indicate, if known, what steps have been taken by the tenancy relations officer.

2.1.4 Legal aid is likely to be granted to a private landlord to defend proceedings where the tenant's allegations are answered in sufficient detail to show reasonable prospects of successfully defending the claim. A simple denial, without any further explanation, is unlikely to justify legal aid.

2.1.5 Legal aid is likely to be granted to pursue a counterclaim if reasonable grounds are shown for taking those proceedings, an order is likely to be made and, where a financial remedy is the main remedy sought, the cost/benefit criteria set out in para 1.2.4 is met and the tenant would be able to satisfy judgement within a reasonable time, e.g. on a counterclaim for arrears of rent.

2.2 **Protection from Harassment Act 1997**

Note: ABWOR is not available.

2.2.1 Legal aid may only be granted by a franchisee in the housing category where the proposed proceedings are between a landlord and tenant. Proceedings between tenants and neighbours do not fall within the housing franchise category.

2.2.2 Legal aid is only likely to be granted to take proceedings if:-

a) a warning letter has first been sent (or the circumstances are such that this would not be appropriate – the reasons must be made clear in the application);
b) the police have been notified and have nonetheless failed to provide adequate assistance having regard to their powers under the Act (or the circumstances are such that going to the police first would not be appropriate – the reasons must be made clear in the application) and a fee paying client of moderate means would in all the circumstances be advised to apply to the court for an order; and
c) reasonable grounds to take the proceedings to establish liability and/or causation can be shown; and
d) a fee paying client of moderate means would be advised to take the proceedings in all the circumstances of the case; and
e) where an injunction is sought, there has been conduct sufficient to constitute harassment/ apprehended harassment within the last two to three weeks or, if earlier, on the particular facts there is a likelihood of repetition.

2.2.3 Legal aid is unlikely to be granted to take proceedings if:-

a) on the facts the conduct complained of is trivial or not likely to be repeated; and/or
b) the other party is under an existing obligation not to molest, for example is subject to bail conditions, or is remanded in custody or is the subject of a restraining order in criminal proceedings under the Act (unless on the facts the existing obligation is likely to end imminently); and/or
c) in the circumstances of the case other steps would be more appropriate e.g. referral to the tenancy relations officer, proceedings in the magistrates' court under the **Protection from Eviction Act 1977** or a complaint to the Housing Ombudsman (where there is a scheme in existence covering matters of that type); and/or
d) any order is likely to be unenforceable due to the mental incapacity or minority of the defendant, or in a claim for damages there is no evidence of the opponent's ability to satisfy judgement within a reasonable period.

2.2.4 Legal aid is likely to be granted to defend proceedings if:-

a) there are any very serious allegations which are denied wholly or substantially; and/or
b) there is any question of inability to defend (e.g. because of mental incapacity or minority); and

and in all cases

c) the defendant has answered any allegations in sufficient detail to show a prima facie defence. A simple denial, without any further explanation, is unlikely to justify legal aid.

2.2.5 Legal aid is unlikely to be granted to defend proceedings if the matter could reasonably be dealt with by way of an undertaking for which representation is not considered necessary.

2.2.6 Legal aid is unlikely to be granted for enforcement proceedings unless the matter has first been reported to the police who have nonetheless failed to provide adequate assistance having regard to their powers under the Act.

3. DISREPAIR

3.1 Legal Aid is likely to be granted:

3.1.1 Legal aid is likely to be granted to the tenant to take proceedings under **section 11 Landlord and Tenant 1985** and/or other relevant statutes and/or in negligence where the landlord has been given notice of the relevant defects and has not taken action to remedy them within a reasonable time.

3.1.2 Applications by the tenant may include a claim for **personal injury** where this is incidental to proceedings within the housing category. Separate applications for legal aid for personal injury claims should be submitted by all individuals other than the tenant who are to be parties in the proceedings e.g. children of the tenant. However, where claims relate solely to personal injuries suffered by a person who is not a tenant, they will fall within the personal injury category rather than the housing category.

3.1.3 Legal aid applications from private landlords to defend/counterclaim are, in practice, very rare. However, legal aid is likely to be granted where the landlord can establish reasonable grounds to defend the proceedings and the value of the claim/ benefit to be gained by contesting the proceedings justifies the costs likely to be incurred by satisfying the cost/benefit criteria set out in para 1.2.4.

3.2 Legal Aid is unlikely to be granted:

3.2.1 Legal aid is unlikely to be granted in

circumstances where:-

a) the value of any claim for damages falls within the small claims limit, unless the allocation by the court has been or is likely to be changed or the circumstances are exceptional.
b) an alternative remedy is available which would achieve largely the same benefit and which could reasonably be pursued in the circumstances e.g. statutory nuisance proceedings in the magistrates' court which would result in essential repairs being undertaken or the use of local arbitration/ mediation arrangements or reference to a Housing Ombudsman. An explanation for not using such alternatives must be given in the application form.
c) the main purpose of the proceedings is to obtain damages and the cost/benefit criteria set out in para.1.2.4 have not been met.

3.3 Legal Aid is likely to be refused:

3.3.1 Legal aid is likely to be refused because of lack of information if the following details are not supplied with the application for legal aid:-

a) an adequate statement of case setting out the allegations of disrepair in detail;
b) the date(s) when the landlord was put on notice and the method by which this was done;
c) an indication of whether there have been any previous proceedings e.g. in the magistrates' court and, if so, details of the outcome and copies of any expert(s) report(s) already obtained in connection with the issues of disrepair;
d) details of the availability of local arbitration/ mediation arrangements or inappropriateness of a referral to an Ombudsman scheme;
e) an explanation where there have been previous proceedings, to justify further action;
f) an estimate of the value of the claim, with reference to the severity of the disrepair, the small claims limit and relevant case law;
g) copies of any relevant correspondence with the landlord/agents; and
h) details of the opponent's financial circumstances and ability to pay(in all cases where compensation and/or costs will be claimed). This is particularly important in the case of private landlords.

3.4 Miscellaneous

3.4.1 Solicitors must provide a report to the Area Office if the client moves from the property in question. Notification of a new address is not sufficient for this purpose. The report should set out the effect of the move on quantum or on any other remedy being sought in the proceedings.

4. POSSESSION CASES

4.1 Landlords: generally

4.1.1 Legal aid is likely to be granted to a private landlord to take possession proceedings:

a) where the type of tenancy is specified, e.g., where the tenancy is a protected tenancy under the **Rent Act 1977**; and
b) the landlord has specified the cases/grounds set out in the Schedule of the Act upon which he/she is relying; and
c) the case will not be dealt with under the accelerated possession procedure within the county court.

4.1.2 It would not be reasonable to grant legal aid unless the landlord has firstly determined the tenancy or served a notice seeking possession and sent a letter before action to the tenant.

4.1.3 When applying for legal aid, private landlords should indicate whether the tenant has sufficient means to satisfy any monetary claim made within the proceedings

4.2 Possession: Generally

4.2.1 Legal aid is unlikely to be granted if the only issue to be placed before the court is whether an immediate possession order would be inappropriate. Consideration needs to be given as to whether this is only a short term remedy for the applicant and whether a private client would incur such costs.

4.2.2 Legal aid is unlikely to be available to defend proceedings solely to establish that one or more of the technical defences are available where it would be reasonable to approach the landlord to seek a compromise. A private client would be unlikely to incur the costs involved in defending the proceedings without making representations to the landlord about the procedural defects. It is recognised, however, that in some cases it would be tactically advantageous to the individual client for the defects not to be drawn to the landlord's attention thus allowing the tenancy to continue longer. This tactical advantage would need to be considered as against the time saved/costs to be incurred/what the private client would do. Solicitors should, when applying for legal aid, indicate whether steps have been taken to persuade the landlord either to withdraw the proceedings or to remedy the technical breaches. If no approach has been made the solicitors should identify which considerations influenced the decision not to do so and why the costs of continuing the proceeding would be justified.

4.2.3 The technical defences referred to are set out below:-

a) where the notice is defective and the court is unlikely to exercise a discretion;
b) the notice is not in the prescribed form or in a form substantially to the same effect;
c) the tenant's name has been inserted incorrectly;
d) the ground set out in the notice does not match with that pleaded in the particulars of claim or where the particulars of claim do not set out the ground relied on;
e) the notice does not give sufficient details or

particulars;
f) the material dates are omitted or incorrectly stated;
g) the validity of the notice has lapsed;
h) the notice has not been served correctly;
i) the pleadings are defective; or
j) possession proceedings have been improperly brought.

4.3 Substantive Defences

4.3.1 Legal aid is likely to be granted where there is a substantive defence to a possession action. This will include defences which turn on the reasonableness of a possession order being made, even if the ground for possession has been made out by the Plaintiff. Whilst set-off can be a complete defence where the counter-claim is an amount equal or greater than the sum claimed by the Plaintiff, it is not a substantive defence when it is the only defence relied on.

4.4 Suspended possession orders

4.4.1 Legal aid is unlikely to be granted where the probable order would be a suspended possession order, e.g., where rent arrears are not in dispute, reasonableness is not being asserted as a defence, and the only issue is the terms on which a suspended order will be made.

4.5 Anti-social injunctions

4.5.1 Legal aid is unlikely to be granted to defend an application either where the conduct is admitted or the evidence against the tenant is overwhelming. It would not be reasonable for legal aid to be granted where undertakings are likely to be accepted by the court.

4.5.2 Legal aid is likely to be granted to defend the proceedings if the alleged conduct is disputed and/or it is likely that possession proceedings may subsequently be sought (under **Schedule 2 grounds 14 or 14A of the Housing Act 1988** as amended by the **Housing Act 1996**) and a substantive defence including the issue of reasonableness would be raised by the tenant.

4.6 Possession for anti-social behaviour.

4.6.1 Legal aid is unlikely to be granted where the conduct is admitted or the proceedings have been issued as a result of breached undertakings. If the client is vulnerable or has community care needs (which led to the breach) reasonableness may be in issue and legal aid may, exceptionally, be granted.

4.6.2 Legal aid is likely to be granted if the alleged conduct is disputed and a substantive defence including the issue of reasonableness can be raised by the tenant.

4.7 Introductory Tenancies

4.7.1 Legal aid is unlikely to be granted if a solicitor is instructed after the service of the preliminary notice but before the expiry of the 14 day period. It would not be reasonable to grant legal aid if the tenant has not yet instigated the internal review procedure.

4.7.2 Legal aid is unlikely to be granted unless the tenant has reasonable prospects of establishing any of the following:-

a) The tenancy was not "introductory" at the date the proceedings were issued;
b) The Section 128 notice is defective or was not served;
c) The proceedings have been commenced prematurely.

4.7.3 A tenant wishing to challenge the decision to give preliminary notice, the decision on review, or the procedure/handling of the review may do so by way of judicial review. Solicitors will be expected to justify the decision to pursue judicial review rather than the alternative of making a complaint to an Ombudsman.

4.8 Suitable Alternative Accommodation

4.8.1 Legal aid is unlikely to be granted to defend a discretionary ground for possession where a local authority certificate is available (confirming that it will provide suitable alternative accommodation) unless the accommodation can clearly be shown to be unsuitable or not available within a reasonable period of time and/or reasonableness is in issue.

4.8.2 Where a discretionary ground is relied on the tenant should make enquires of the local authority as to whether it will provide such a certificate. A private client faced with such proceedings would be likely to do so before taking a decision to defend or continue defending the proceedings. Whilst the certificate does not provide details of the address or size of the suitable alternative accommodation solicitors should consider whether or not the accommodation is suitable in accordance with the **Schedule 2 Part III, paras 2 to 6 of the Housing Act 1988**.

4.8.3 If the landlord has offered suitable alternative accommodation, solicitors will be expected to report to the area office on the court's likely view as to the suitability of that accommodation.

4.8.4 If the local authority subsequently makes a certificate available solicitors will be expected to report to the area office on the merits of the case.

4.9 Rent Arrears

4.9.1 Legal aid is unlikely to be granted to a tenant where rent arrears are the only issue and the arrears are not in dispute unless a substantive defence can be established on the basis of reasonableness. It would not usually be reasonable to grant legal aid to defend unless a significant issue of fact or law has been raised.

4.9.2 Legal aid is likely to be granted to a tenant if it can be shown that there are no arrears of rent and /or the tenant has a valid counterclaim for a sum exceeding the alleged arrears (e.g. damages for

breach of quiet enjoyment or for disrepair) or where the issue of reasonableness is asserted.

4.9.3 It should be noted that where the delay in payment has been generated by delay/failure of a local authority, either to determine or to make housing benefit payments, that delay/failure is not a valid defence to the proceedings. Such delay/failure may, however, go to the issue of reasonableness where a reasonableness defence is being asserted. If not, the tenant may be able to seek an adjournment to clarify the housing benefit position and, either await a determination or use the local authority's complaint system to generate a decision.

4.9.4 Legal aid is likely to be granted to a private landlord if he/she can show that the tenant is in arrears of rent and has sufficient means to satisfy any judgement which may be made against him/her.

4.10 Service Charges

4.10.1 As **section 81 Housing Act 1996** places a restriction on re-entry/forfeiture whilst service charges are in dispute, legal aid is unlikely to be granted where service charge arrears are the only issue in dispute as it is unlikely that an immediate order for possession would be made. As the jurisdiction of the Leasehold Valuation Tribunal (LVT) has been extended to determine service charge issues, there is an alternative no cost venue. County court proceedings may be referred to the LVT by an application to the court by either party. Legal aid will normally be refused where the LVT provides an effective way of pursuing/defending the claim. There are cases where a reference to the LVT is not appropriate, i.e. where a determination needs to be made whether the freeholder is entitled to claim for the item of work under the lease (as distinct from the reasonableness of the cost of that item).

4.11 Accelerated Possession Procedure

4.11.1 Legal aid is unlikely to be granted in cases that fall within the accelerated possession procedure under Civil Procedure Rules, Schedule 2 CCR Order 49 Rules 6 and 6A, unless, following consideration of the papers, the matter is listed by the court for an oral hearing.

4.11.2 Where the following issues arise:

a) a dispute as to the nature of the tenancy;
b) a defence to the claim for possession;
c) it is argued that the case does not come within the accelerated procedure; or
d) there is some defect in the application

solicitors may assist tenants to make representations to the court either by assisting the tenant to complete the Form N11A or by preparing an affidavit. Legal aid is unlikely to be granted to cover the solicitor's assistance with the client's representations.

4.11.3 The decision as to whether or not to hold an oral hearing is one taken by the court on the papers. Until there is a decision that the matter should be listed for an oral hearing it would not be reasonable to grant full representation. Once the matter has been listed for an oral hearing legal aid may be applied for in the usual way.

4.12 Warrants to suspend possession/execution

4.12.1 A solicitor would not normally be employed in proceedings relating only to rent arrears or for an application to suspend a warrant of possession or execution as these applications generally do not raise any significant issues of fact or law. Legal aid is unlikely to be granted unless a significant issue of fact or law can be shown. **Examples** of cases which involve complex issues of law may be where a non party is trying to stop the eviction, or where it is asserted that the landlord has waived the breach by subsequent acceptance of rent and/or other conduct.

5. HOMELESSNESS

5.1. Appeal to a County Court

5.1.1 A right of appeal to a county court exists from an unfavourable decision of a local housing authority in relation to either the eligibility for assistance, what duty, if any, is owed, referral to another local authority, suitability of accommodation and the reviews of those decisions, where available. Any appeal from a decision of a county court is to the Court of Appeal.

5.1.2 Legal aid is likely to be granted to an applicant who is dissatisfied with a decision by the local housing authority where a point of law can be shown. The appeal is on "any point of law arising from the decision, or as the case may be, the original decision". A point of law arising from the original decision will arise if there is no decision on the review or if the error of law was repeated in the review or not rectified by the review. What will be in issue on an appeal on a point of law is likely to be largely the same as any grounds for judicial review.

5.1.3 Legal aid is unlikely to be granted where:-

a) the 21 days time limit for appeal has expired or
b) what is in issue is not a point of law but rather a difference of opinion or judgement between the housing authority and the applicant on the facts of the case.

5.2 Judicial Review

5.2.1 In view of the provision of the appeal procedure referred to above the majority of cases will fall to be dealt with in a county court. However, judicial review remains an available remedy in appropriate circumstances.

5.2.2 Legal aid is likely to be granted where the application stands a reasonable prospect of

success i.e. the decision or failure to act can be shown to be unlawful, perverse or procedurally improper and where e.g.:-

a) the housing authority unreasonably refused to extend the time (under section 202) to apply for a review;
b) two housing authorities are at odds e.g. as to local connection;
c) the housing authority refuse to exercise the power to provide/continue to provide accommodation;
d) the housing authority simply fails to make a decision so the applicant cannot request a review e.g. refuses to accept an application for accommodation;
e) the applicant seeks to challenge their allocation assessment or the legality of the housing authority's allocation scheme;
f) the suitability of interim accommodation secured under section 188 is to be challenged;
g) the applicant seeks to challenge an unlawful policy;
h) the applicant is outside the 21 day period for an appeal where there is good reason for the delay (no power exists to permit the time stipulated in **section 204(2)** to be extended).

5.2.3 Applications for legal aid will not be granted:-

a) until the applicant has exhausted all available remedies
b) the housing authority has been notified of the proposed litigation and given an reasonable opportunity to respond. A letter before action should always be sent **(R-*v*-Horsham District Council ex parte Wenman)**.

6. MORTGAGE REPOSSESSION

6.1 Possible Defence

6.1.1 Legal aid is likely to be granted to the borrower to defend proceedings brought by the lender where there are issues of fact and/or law for consideration by the court. This is likely to be the case when one or more of the following issues arise:-

a) allegations of fraud.
b) allegations of duress/undue influence (see below).
c) where there are linked or (imminent) concurrent proceedings involving the borrower's spouse/co-habitee/trustee in bankruptcy.
d) where it might be appropriate for a party to be joined.
e) cases where there are counterclaims.

6.2 No Substantive Defence

6.2.1 Legal aid is unlikely to be granted in circumstances where:-

a) There is no substantive defence to the claim which relates to arrears only (given the operation of the **Administration of Justice Act** and the case of **Cheltenham & Gloucester Building Society-*v*-Norgan** in most cases the issues are straightforward).
b) Judgement has been entered and the adviser has been consulted as to setting aside a warrant of possession in an arrears only case.
c) The borrower has been advised by a solicitor in a duress/undue influence case – see the guidelines in **Royal Bank of Scotland-*v*-Etteridge**.
d) There is no substantive defence but there is a procedural irregularity. In these circumstances, a worthwhile outcome will have to be shown as a realistic possibility. A private client would be unlikely to incur the costs involved in defending the proceedings if the only aim is to establish that a technical defence of some sort is available and no approach has been made to the plaintiffs to resolve the matter.

6.3 Appeals

6.3.1 A legal aid certificate to pursue an appeal may be justified if the discretion of the District Judge has been exercised unreasonably, or the District Judge has misdirected himself in law and there is real advantage to be derived in pursuing an appeal. Legal aid is not likely to be granted if there has been lengthy delay before consideration of an appeal and/or there is limited benefit to be derived from pursuing the appeal. A legal aid certificate to resist an appeal by an unsuccessful plaintiff lender is likely to be granted unless there is no significant benefit to be derived from defending such an appeal. Legal aid to pursue an appeal to the Court of Appeal will only be justified when there appears to be real benefit to be derived by the borrower as well as reasonable grounds for an appeal. A certificate limited only to counsel's opinion would be likely to be granted initially, whether or not leave has been granted.

6.4 Litigation about the sale price and timing of the sale

6.4.1 A legal aid certificate for an action or counterclaim in this context is likely to be granted if there is, or is likely to be, favourable evidence obtained by a valuer's report or other evidence and the quantum justifies legal aid. Legal aid is less likely to be granted if there is a mortgage income guarantee scheme in operation as this clearly makes timing less crucial (although value may remain an issue).

6.5 Costs

6.5.1 A legal aid certificate can be sought to cover attending a taxation of the lender's solicitor's costs under **section 70 Solicitors' Act 1974**. Legal aid is likely to be granted only in exceptional circumstances where the costs, and

the reduction likely to be achieved, are considerable (£3,000 or more). Legal aid is not likely to be granted where the likely reduction is small and/or the prospects of obtaining a worthwhile reduction are slim. It is not reasonable for legal aid to be granted where the taxing officer's role is inquisitional and is to decide what sums are fair and reasonable, so separate legal representation is usually not necessary.

7. MISCELLANEOUS ISSUES

7.1 UNLAWFUL OCCUPIERS

7.1.1 Legal aid is likely to be granted to defend proceedings where there are issues of law and/or fact which can be brought before the court and there is a substantive defence, e.g.:

- The client asserts that a tenancy or licence exists which has not been validly determined.
- There is an intermediate undetermined tenancy or licence.
- There is a procedural irregularity. (Note that in all cases a worthwhile outcome will have to be shown as a realistic possibility. A private client would be unlikely to incur the costs involved in defending the proceedings if the only aim is to establish that a technical defence of some sort is available and no approach has been made to the plaintiffs to resolve the matter.)
- It is alleged that the occupier has acquired possessory title (twelve years' adverse possession).
- The client asserts that he has been given a licence to remain by the Local Authority. A legal aid certificate may be justified if such a licence has secure status and if there are real benefits to be obtained by asserting this defence.

NB: In the event of legal aid being granted a limitation to the initial summary hearing is likely to be imposed – it is at that point that the court will decide whether there is a triable issue.

7.1.2 Legal aid is unlikely to be granted in circumstances where occupiers are:-

- Persons who have entered the premises as trespassers (and their status has not changed) and an interim possession order under the **Criminal Justice and Public Order Act 1994** is sought.
- Persons occupying hostels.
- Persons sharing accommodation with the landlord or the landlord's family.
- Persons staying on in holiday lets when the holiday lease has expired.
- Persons living rent-free.

7.2 MOBILE HOMES

7.2.1 Under the **Mobile Homes Act 1983** either party may apply to the County Court for a declaration as to various matters, e.g. utilities, changing the pitch, refusal of agreement to a sale, etc. Possession proceedings may be brought by site owners.

7.2.2 A legal aid certificate is likely to be granted to an occupant of a mobile home where negotiation has been unsuccessful and/or the involvement of other agencies has not resolved the dispute. Some cases may involve several site occupants. Whilst all occupants of mobile homes will have their own particular circumstances and each eligible owner/renter of a mobile home should apply for legal aid advisers should consider the possibility of generic issues being funded jointly.

7.2.3 Legal aid is unlikely to be granted in circumstances where:-

- The applicant is a person renting a mobile home and the only issue is that of non-payment of rent and there is no defence to proceedings.
- The advantage to be obtained by seeking a declaration in the County Court is limited in scope and a fee-paying client would not be advised to issue proceedings.
- An alternative remedy in the form of referral of an issue to the Local Authority is available. An explanation for not using such an alternative must be given in the application form.

7.2.4 Legal aid is likely to be refused because of lack of information if the following details are not supplied with the application for legal aid:-

a) an adequate statement of case setting out the issues clearly.
b) a copy of the agreement if an agreement has been provided.
c) copies of any correspondence with the site owner.
d) details of the breach of the agreement.

7.3 TRAVELLERS

7.3.1 A civil legal aid certificate may be justified either for judicial review proceedings in relation to a local authority's decisions/facilities or where proceedings have been issued under the **Mobile Homes Act** against travellers. Civil legal aid/ABWOR is not available for any criminal/civil proceedings under the **Criminal Justice and Public Order Act 1994** before the magistrates' court.

7.3.2 Solicitors will need to consider and advise as to the extent to which others are concerned jointly with or having the same interest as the applicant and should therefore defray costs under regulation 32 of the Civil Legal Aid (General) Regulations 1989. The Board must consider the applicability of Regulation 32, although in many instances the applicant's case may not be the same but similar to that of others. ■

Proposed Payment Dates

There are two payment dates for solicitors and counsel each month. The proposed payment dates for the first quarter of the 1999/2000 financial year are set out below. These dates may be subject to amendment, but we will inform you of changes in advance where possible.

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

If you are still being paid by cheque, we recommend that you change to BACS, which is a more efficient payment method. With BACS, the payment is made directly into your bank account avoiding cheque-handling and you also receive a remittance advice. BACS provides immediately cleared funds, unlike cheques which can take four to six days to clear. If you have any queries about payment by BACS, please telephone the Master Index section on 0171 813 8625.

Details of the amount due to you may be obtained by contacting either the area office or the Solicitors/Counsel Settlement section on 0171 813 8625. However, if you have a query regarding an individual item shown on a remittance advice, you should contact the relevant area office, which authorises and processes all such bills.

Keeping us up to date

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

Proposed Payment Dates for April 1999 – June 1999

First Payment of the Month	Second Payment of Month
Monday, 12 April 1999	Tuesday, 27 April 1999
Wednesday, 12 May 1999	Thursday, 27 May 1999
Friday, 11 June 1999	Monday, 28 June 1999

We are currently reviewing our future payment dates, in consultation with both the Law Society and the Bar Council. Following this review, dates for the period from July to December 1999 will be published in the next issue of Focus.

Receiving Focus

Focus is sent automatically to all legal aid account holders, free of charge. It is usually published four times a year. It is not strictly quarterly, as it is produced whenever we need to communicate important information to the profession, rather than according to a rigid timetable.

Focus is distributed using the names and addresses of all legal aid account holders, details of which are held on our Master Index database. If you have not received a copy of Focus it may be because you have not alerted the Master Index Section to any changes to your name, address or DX. Please make sure that you send any relevant changes to them, at 85 Gray's Inn Road, London, WC1X 8AA, or DX 328 London, or fax them to 0171 813 8624. Please quote your legal aid account number.

It is important that Focus is seen by everyone in your firm who is involved in legal aid work. To help you to circulate Focus, you may make as many photocopies as you need.

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85 Gray's Inn Road,
London WC1X 8AA.
DX 450 London.
Please contact
Sophia Swithern
0171 813 1000
extension 8567