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Community  
Legal Service



# Focus

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APRIL 2005

- NEW FOCUS FOR CIVIL LEGAL AID**  
 Ministers have announced the reforms of Civil Funding that will take place following last year's consultation. Details are available at pages 02-03.
- CASE STUDIES**  
 Do you have a positive story to tell about legal aid and the people it helps? If so, we'd like to hear from you. See page 04 for details.
- PEER REVIEW**  
 For details of how Peer Review and Quality Profiles will affect you, please turn to page 08.
- PREFERRED SUPPLIERS**  
 For details of the forthcoming Preferred Supplier consultation and an honest appraisal of the scheme from a current Preferred Supplier, see pages 16-18.
- SPECIALIST SUPPORT**  
 For details of where to get Specialist Support advice and help, turn to pages 22-23.
- CLS FINANCIAL ELIGIBILITY**  
 For current developments on CLS financial eligibility upratings, including a new CLS keycard, turn to page 09.

legal services

COMMISSION

# NEW FOCUS FOR CONSULTATION

Decisions on the package of reforms of Civil Funding were announced on a range of changes to financial eligibility, family and non-family funding rules

The package of reforms has changed in light of the consultation responses received. However, the thrust of the proposals – to encourage the early settlement of disputes and to treat litigation as the last resort – remains unchanged.

The proposed reduction in the £100,000 home equity eligibility exemption is not proceeding. Further, there will be no reductions in the scope of Civil Legal Aid other than minor changes to the personal injury exclusion. Nor will there be any increase in the range of cases for which the availability of Conditional Fee Agreements may be taken into account in legal aid decisions. Cost protection in non-family cases will also remain unchanged.

Uniform upper income limits will apply to all forms of Legal Aid, as proposed in the consultation paper. Whilst the upper income limit for legal representation will decrease, we will also align capital limits through a rise in the capital limit for Legal Help from £3,000 to £8,000. Legal Help will of course remain non-contributory. Also, clients in receipt of passported benefits will now qualify automatically for all forms of Legal Aid on both income and capital (previously, Legal Help clients were only passported on income and capital had to be assessed in every case).

There are also new items arising from the consultation. These include tightening the application of the Statutory Charge and increasing the interest payable on postponed charges. There will also be increased control over group actions and other very high cost cases funded out of the central budget.

The following summarises all the changes that are going ahead and the items that are not proceeding. For more detailed information on the eligibility changes, see the article at page 09 of this edition of *Focus*. For more information on the Statutory Charge, refer to page 25. Most of these changes will require amendments to the Funding Code and related decision-making guidance. We expect to implement all Funding Code changes in July 2005 and will shortly consult on the detailed amendments.

## FINANCIAL ELIGIBILITY

These changes will apply from 11 April 2005:

- New uniform upper disposable income limit of £632 (Legal Help increased from £621 and Legal Representation reduced from £707).
- New power to waive the upper limit for domestic violence victims.
- No change in gross income caps or contribution regime for Legal Representation.
- Capital limit for Legal Help and Help at Court raised from £3,000 to £8,000.
- Capital limit for Controlled Legal Representation in asylum and immigration cases to remain at £3,000 for the time being, with the intention in due course to raise it to £8,000 following consultation on the most appropriate form of contribution regime for such cases.
- All clients in receipt of passported benefits will be passported on both income and capital for all types of Legal Aid.
- Pensioner capital disregard to be applied to all types of Legal Aid.

- Self-employed persons' childcare costs to be discounted from their disposable income to bring them into line with other employed persons.
- SMOD rule to be retained but for Legal Representation only there will be a ceiling of £100,000 ie: assets in dispute will be taken into account in the assessment only to the extent that the client's interest in the disputed assets exceeds £100,000.
- No change to the £100,000 home equity exemption.

## FAMILY FUNDING

- A pilot scheme will be established to test new structures and incentives for Family Legal Aid. If successful a new devolved level of service, Family Help, will replace Legal Help and General Family Help, probably from April 2007.
- Guidance will impose stricter merits controls over funding for multiple and repeat contact applications.
- Legal Aid cost protection will be abolished in family cases.
- Reform of Ancillary Relief funding through requiring clients to seek private funding alternatives will not be implemented as part of this package but will be kept under review along with other options, including making Legal Aid available in the form of a loan.
- The £3,000 Statutory Charge exemption in family cases will be abolished – but this will apply only to new applications made from April 2005.

# CIVIL LEGAL AID: OUTCOMES

2 March following last year's consultation. This article explains the that will be implemented from April this year.

- There will be no changes to the scope of Family Legal Aid; divorce petitions and changes of name will remain in scope.

## **CLINICAL NEGLIGENCE**

- Cases will not be required to move from Legal Aid to Conditional Fee Agreements after initial investigations.
- A greater range of Clinical Negligence cases will be expected to pursue complaints procedures before funding for potential litigation is granted.
- The cost benefit thresholds for Clinical Negligence cases will be raised to match those in the General Funding Code.
- Guidance will continue to strongly support the use of mediation and other ADR techniques.
- Further Clinical Negligence reform will await the introduction of Redress.

## **ACTIONS AGAINST THE POLICE**

- Legal Aid may be refused if the police complaints system has not been pursued without good reason.
- Cost benefit guidance will emphasise the importance of proportionality of costs and remedies.
- LSC will improve handling of police applications through training and increased specialisation.
- LSC will consider restricting funding to a panel of suppliers with a proven track record in police claims.

## **PERSONAL INJURY**

- The exclusion in Schedule 2 to be widened to exclude all personal injury proceedings other than Clinical Negligence cases and cases covered by Directions.
- Existing Directions on scope to continue in force (eg: claims against public authorities and public interest cases). New scope Directions will ensure continued support for abuse claims and applications to the Criminal Injuries Compensation Authority.
- Support funding to be abolished.

## **JUDICIAL REVIEW**

- There will be no general removal of devolved powers for judicial review cases, but suppliers should not grant cases on grounds of wider public interest.
- The presumption of funding for judicial review cases where permission is granted to be narrowed as proposed in the Consultation Paper.

## **VERY HIGH COST CASES**

- Application of affordability criteria to be simplified and applied only to the largest actions.
- Budget for Very High Cost Cases to be reduced from April 2005.

## **Other Non-Family**

- Guidance to continue to encourage mediation and other forms of ADR, limiting certificates where necessary to achieve this.
- No expansion of Conditional Fee Agreements into new funding areas.

- All types of case within the General Funding Code to be considered for refusal if a CFA is available and insurance can be obtained.
- No change to non-family cost protection.

## **STATUTORY CHARGE**

- Interest rate on postponed charges to rise from 5% to 8% from 1 October 2005.
- Decision to postpone enforcement of charge to be discretionary rather than automatic.
- General power to review postponed charges in light of clients' ability to repay.

## **MISCELLANEOUS**

- New section of the Funding Code to apply 'interests of justice' test to quasi-criminal proceedings.
- Revised non-family application forms will ensure that Legal Aid is not granted to clients who already have before-the-event insurance.
- New devolved power for respondents to defend appeals to the Court of Appeal.
- Scope of Help at Court to be widened to include in-scope Tribunals.
- No change to the 'sufficient benefit' test.

## LSC INCREASES INVESTMENT IN NEXT GENERATION OF LEGAL AID SOLICITORS

Clare Dodgson recently announced that the LSC's training support grants scheme would now operate on a rolling basis, with 100 grants being awarded annually from 2005.

The move guarantees the long-term future of legal aid training grants, first offered to Legal Practice Course students and trainee solicitors by the LSC in 2002.

Clare said: 'Ensuring the next generation of legal aid solicitors is a key priority for the LSC. I am delighted we are able to make training grants available on a permanent basis. The LSC's investment in the next generation of legal aid solicitors already stands at nearly £10m. The training grants provided so far will translate into nearly 400 newly qualified solicitors working in legal aid. Each of these new solicitors will make a difference to people's lives.'

Organisations who wish to apply for a training grant should call 020 7759 0304 or e-mail [contract.design@legalservices.gov.uk](mailto:contract.design@legalservices.gov.uk)

## WORKING TOGETHER TO TELL THE STORY OF LEGAL AID

Late last year, Emma Juggins was entering the latter stages of her pregnancy, facing debt and a County Court possession hearing. By January, she was telling the media how a legal aid adviser had transformed her life.

While Gloucestershire Echo readers were learning how the adviser got a possession action adjourned until he freed her stalled housing benefits claim, another legal aid client was publicly thanking her solicitor in a Times feature for getting her onto a rehabilitation scheme that ended her life cycle of petty crime and drug addiction.

The LSC would like to use many more such 'case studies' to help tell the story of legal aid.

We are developing a database of client volunteers who are willing to speak about their experience in the media, to be used in our publications and other communications campaigns in association with our suppliers.

The LSC's Communications team would like to work in partnership with our suppliers to help gather volunteers and has produced a form that can be used to record information about clients, who have a positive story to tell. This information will be stored in a searchable database. Over the past year we have already been working with many of you to obtain case studies about the good work that you have been doing to help improve the lives of so many people. We would like to roll out this process to all of our suppliers so that we can highlight the valuable contribution that you all make in collectively helping over 2 million people each year.

Communications Project Manager Seema Chandarana, who is coordinating the database, recognised that many clients would find it too difficult to publicly talk about their past problems but said there were many others who were happy to do so – they have just never been asked.

'We know that one in three people are unaware of their basic legal rights or how to get help when they need it. We also know that the public generally has a poor understanding of legal aid work. Client stories are an effective way of addressing both of these issues', she said.

Using case studies, which are just real accounts about what we do and the people we help, can truly bring our work to life. It can seem like a time consuming exercise and all clients, for obvious reasons, may not want to get involved but they are an invaluable way of not only promoting the work that we do to the general public, but also a useful way of informing and empowering people who may need legal help and advice in the future, about their fundamental rights and the services we offer.

Case study stories are also a great way of illustrating the commitment and hard work of internal people delivering legal aid and can also help to increase their understanding of legal aid work.

The case study form is available in this edition of *Focus*, to cut out and keep as a master to photocopy and is also downloadable from the LSC website ([www.legalservices.gov.uk/civil/forms/admin.asp](http://www.legalservices.gov.uk/civil/forms/admin.asp)). Once you have completed the form, or if you would like to discuss any joint communications activity, please forward a copy to Seema Chandarana, Communications, Legal Services Commission, 85 Gray's Inn Rd, London WC1X 8TX, DX 328 Chancery Lane/London. Tel: 020 7759 0489, fax: 020 7759 0546 or e-mail [seema.chandarana@legalservices.gov.uk](mailto:seema.chandarana@legalservices.gov.uk)

# Case Study Form

Case studies are an invaluable way of bringing to life the work that we do by using real client stories about the people we help. They are a great way of informing the general public about legal aid work, highlighting our services to those who may need legal help and advice and illustrating the hard work and commitment of staff.

## *How to use this form*

This is a master form that can be photocopied. You can also download it at <http://www.legalservices.gov.uk/civil/forms/admin.asp>

### **part 1** *About you (supplier)*

**Name of organisation:** \_\_\_\_\_

**Name of caseworker/solicitor:** \_\_\_\_\_

**Address:** \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Postcode:** \_\_\_\_\_

**Telephone:** \_\_\_\_\_

**Email:** \_\_\_\_\_

**Do you have the client's permission to use this information?** (please circle)    Yes    No

(Please obtain permission from the client before submitting this form)

### **part 2** *About the client*

**Name:** \_\_\_\_\_

**Address:** \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Postcode:** \_\_\_\_\_

**Telephone:** \_\_\_\_\_

**Email:** \_\_\_\_\_

continued on page 2

part 2 continued

**Age:**

**Gender:** (please circle)    male    female

**Nationality:** (please circle)    White    Black    Oriental    Asian    Other (please specify)

**Do they have any disabilities:** (please circle)    Yes    No (if yes please specify)

**part 3**    *About the case*

**Type of case:**

**Date case commenced:**

**Status of case:** (please circle)    completed    on-going

**What was the case about:**

**What was the outcome:**

(please attach further pages if necessary)

**Signed:**

**Name:** (please print)

**Date:**

The information provided will be stored in a database in accordance with the Data Protection Act 1998 and case study material will only be used in agreement with the client.

Please forward a copy of completed forms and requests for joint promotional activity to Seema Chandarana, Communications, Legal Services Commission, 85 Gray's Inn Rd, London WC1X 8TX,  
**Tel:** 020 7759 0489 **Fax:** 020 7759 0546 **email:** seema.chandarana@legalservices.gov.uk

# SIR MICHAEL BICHARD TO CHAIR LSC

After the retirement of Philip Ely OBE, Sir Michael Bichard has been appointed as the new Chair of the Legal Services Commission (LSC), the organisation's most senior non-executive role. The appointment runs for five years.

Sir Michael has enjoyed a long and distinguished career in the public sector, including holding the positions of Chief Executive of the Benefits Agency and Permanent Secretary of the Department for Education and Employment. He is currently Rector of the University of the Arts London and holds a number of non-executive positions. Last year he was appointed by the Home Office to chair the inquiry into child protection procedures in the light of the Soham murders.

Welcoming Sir Michael's appointment, Constitutional Affairs Secretary and Lord Chancellor Lord Falconer said:

'I am delighted that Sir Michael will be taking on this important role. He has a long record of public service and I am confident that he will provide excellent leadership for the Legal Services Commission.'

'I have asked my officials to undertake a full review of legal aid, which is due to be completed shortly, with the aim of ensuring that we maintain access to justice while at the same time maintaining careful control over expenditure. This is a key priority in the Government commitment to deliver high quality public services. I am sure that his expertise and experience mean that Sir Michael is the right man to implement change effectively.'

#### Sir Michael said:

*'I am looking forward to the challenge immensely. Legal aid provides help to people who are facing very difficult circumstances and it is my responsibility to ensure that legal services are available in ways that help the client the most.'*

*'We will develop new programmes and services so that we can ensure access to justice for the most vulnerable and ensure that our £2.1 billion budget is spent in the most prudent way possible.'*

#### Clare Dodgson, Chief Executive of the LSC, said:

*'On behalf of my executive team and all my staff, I am delighted to welcome Sir Michael to the Legal Services Commission. I look forward to working closely with him and to continue to drive forward our programme of new and innovative services that make a real difference to people's lives.'*

*'Legal aid helps more than two million people every year, some of who are the most vulnerable in our society. I am sure Sir Michael will not fail to be impressed with the dedication of all the providers of legal aid, who are vital to the continued success of the legal aid scheme.'*

The LSC has also said goodbye to commissioner and acting chair Jim Shearer who is retiring after eight years. Commissioners Yvonne Mosquito and Margaret Richards also left the LSC at the end of March.

Clare Dodgson commented that 'working with Jim Shearer has been a very rewarding experience. His rich experience of industry and as a magistrate combined with a sharp focus on the needs of the client and strong support to the executive team and the staff have enabled him to make a very special contribution to the organisation.'



# PEER REVIEW AND QUALITY PROFILES

## NEW TOOLS TO BE USED TO ASSESS QUALITY OF ADVICE AND LEGAL WORK

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

### 1. Peer Review Consultation

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

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

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

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

#### • What will Peer Review be used for?

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

- A gateway for inclusion in specific programmes/schemes.
- One of the quality of advice assessment tools utilised in the supplier management process.
- The development of a national benchmark for quality of advice.

- To support the development of other quality of advice tools such as quality profiles.

#### • Where can you find out more?

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

Further details are available at the above web address and responses can be sent to [jennifer.will@legalservices.gov.uk](mailto:jennifer.will@legalservices.gov.uk)

### 2. Quality Profiles

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

#### • How will the Quality Profile Report work for you?

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

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

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

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

become increasingly important as the LSC looks towards more remote management of the highest performing firms (ie Preferred Suppliers).

#### • More information about Quality Profiles

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

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

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

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

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

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



# COMMUNITY LEGAL SERVICE – FINANCIAL ELIGIBILITY APRIL 2005

*Following the consultation, A New Focus for Civil Legal Aid, published jointly by the Dept of Constitutional Affairs and the Legal Services Commission in July 2004, the Community Legal Service (Financial) (Amendment) Regulations 2005 provide for a wide range of changes to financial eligibility. These changes will apply to all applications for funding made on or after 11 April 2005.*

*These changes are summarised in the main article on page 02 of this issue. Detailed information is provided below.*

## Passporting Arrangements

As from 11 April 2005 clients in receipt of Income Support, Income Based Job Seekers' Allowance or Guarantee State Pension Credit will be deemed to automatically qualify on both income and capital for all levels of service. Previously clients applying for Legal Help, Help at Court or Controlled Legal Representation (immigration) automatically qualified on income but a capital assessment was required to establish financial eligibility; this is no longer required for any level of service, simplifying the means assessment process for suppliers and clients.

## Gross Income Cap

There is no change to the Gross Income Cap which is the same for all levels of service:

No. of children in family	Gross monthly income not to exceed
0-4	£2288
5	£2433
6	£2578
7	£2723
8 or more	Add £145 to above figure for each additional child

Clients with gross income above these limits will be refused funding without the need for a full assessment.

## New Waiver for Domestic Violence Cases

As part of our commitment to target funding to protect the socially excluded and those most vulnerable in society, new measures have been announced to provide increased help to victims of domestic violence.

From 11 April 2005 the Commission will be given discretion to waive the upper disposable income limit for the benefit of victims of domestic violence seeking protection from the court. The waiver will apply to any application for Legal Representation for proceedings where the client seeks an injunction or other order for protection from harm to the person; or for committal for breach of any such order.\*

The waiver of the eligibility limit for disposable income will extend eligibility for such clients by allowing the upper limit to be increased beyond both the new limit of £632 per month and the previous upper limit of £707 per month; but the

Gross Income Cap of £2288 per month will still apply. Please also note, that any contribution from income or capital which is applicable under the regulations cannot be waived in such cases. Contributions will apply to all assessed disposable income above £268 per month, and therefore the monthly contribution will exceed the usual maximum contribution which is applicable for clients having disposable income of £632 per month.

The Commission is committed to empowering victims of domestic violence to safeguard their rights; the Commission will, unless there are exceptional circumstances, exercise the discretion to waive the upper disposable income limit for all cases meeting the criteria set out above. This means that when applications for emergency representation to protect a client are being considered, suppliers are entitled to assume that the discretion to waive the upper disposable income limit will be exercised; suppliers can therefore exercise their devolved powers accordingly in domestic violence cases. It will however be particularly important to alert clients to whom the waiver applies that they will be

liable to pay a contribution and that their certificate can be revoked should they not accept an offer in respect of the substantive application. Should suppliers have any doubt about the exercise of discretion in a particular case then they should contact the regional office to seek advice.

\*The waiver does *not* extend to other matters in family proceedings, for example ancillary relief, contact, etc; work therefore cannot be undertaken for the client on other matters relating to the breakdown of the relationship under the certificate granted for domestic violence proceedings, where a waiver has been applied (see note below). Suppliers therefore may need to apportion costs to reflect the work undertaken.

**(Note: Where the client's financial circumstances have changed and following a further assessment of means undertaken by the Commission, the client now qualifies for funding within the disposable income limit, an application to amend the certificate to cover other related matters can be considered.)**

## Eligibility Limits

### All levels of service

Gross Income Limit	£2288* per month
Disposable Income Limit	£632 per month
Capital limit	£3000** Controlled Legal Representation (Immigration) £8000 All other levels of service
* A higher limit applies for families with more than 4 children.	
** This limit is to remain at £3000 for the time being with the intention to raise it to £8000 following consultation on an appropriate contribution scheme, later in the year.	

There continues to be no contribution system for Legal Help, Help at Court, Family Mediation, Help with Mediation or for Legal Representation before the Asylum and Immigration Appeal Tribunal; and the High Court in respect of an application

under section 103A of the Nationality, Immigration and Asylum Act 2002. Clients are ineligible if their income or capital exceeds the above limits.

For all other forms of Legal Representation and for General Family Help and Support Funding (until it is abolished in July), a client with disposable income of **£272** or below per month and capital of £3000 or below will not be required to pay any contributions. A client with disposable income between **£273 and £632 inclusive\*** per month will be liable to pay a monthly contribution of a proportion of the excess over **£268**. Such contributions will be assessed in accordance with the following bands:

Band	Monthly disposable	Monthly contribution
A	£273 to £400	1/4 of income in excess of £268
B	£401 to £531	£33+ 1/3 of income in excess of £400
C	£532 to £632*	£76.70+ 1/2 of income in excess of £531
* limit may be waived in Domestic Violence cases (as specified above).		

So if disposable income is £308 per month, the contribution will be in band A, the excess income is £40 and therefore the monthly contribution will be £10 per month.

If the disposable income was £415 per month, the contribution would be in band B, the excess income would be £15 (£415-£400), the monthly contribution would therefore be £38 i.e. £33+£5.

If the disposable income was £551 per month, the contribution would be in band C, the excess income would be £20 (£551-£531), the monthly contribution would therefore be £86.70 i.e. £76.70+£10.

A client whose disposable capital exceeds £3000 is required to pay a contribution of either the capital exceeding that sum or the likely maximum costs of the funded service whichever is the lesser.

## Dependants Allowances

Following the uprating of 1.8% to the Income Support (General) Regulations 1987, the following increases to the allowances for dependants will apply automatically to financial assessments in respect of applications for funding and further assessments of certificates under Regulation 15 of the Community Legal Service (Financial) regulations 2000, on or after 11 April 2005 for all levels of service:

Partner	Increased from £137.53 to £138.83 per month
Child aged 15 or under	Increased from £183.67 to £190.67 per month
Child aged 16 or over	Increased from £183.67 to £190.67 per month

## Main Dwelling Equity Disregard to Remain

The Equity Exemption provided to homeowners in respect of the main or only dwelling is to remain. New Regulation 32B of the Community Legal Service (Financial) Regulations 2000 as amended, provides that the first £100,000 of the client's interest in the main dwelling property (which includes a spouse's or partner's interest in the property for aggregated assessments) will be disregarded. Please note that only one disregard of £100,000 is applied within the assessment; the equity exemption does not apply to any second or additional homes owned by the client.

## Subject Matter of Dispute Rule

New Regulation 32A of the Community Legal Service (Financial) Regulations 2000 as amended, provides that capital assets that are the subject matter of dispute in the matter to which the application relates shall be disregarded; however where eligibility is being assessed in respect of an application for *Legal Representation* (i.e. all types other than Controlled Legal Representation for immigration), the total amount to be disregarded as subject matter of dispute shall not exceed £100,000.

The subject matter of dispute rule for financial assessments undertaken by suppliers in respect of an application for Legal Help, Help at Court, Controlled Legal Representation (immigration) and Family Mediation will therefore in effect remain unchanged to the position prior to April 2005, i.e. assets which are the subject matter of dispute in proceedings are to be wholly disregarded.

In respect of Legal Representation cases (i.e. all types other than Controlled Legal Representation for immigration), capital assets in dispute will be taken into account in the assessment only to the extent that the client's interest in the disputed assets exceeds £100,000. This change will therefore only apply to cases involving very substantial assets: for example in matrimonial proceedings where the value of the client's jointly owned but disputed main dwelling exceeds £500,000.

## Assessment

Consideration must firstly be given to any assets held by the client in his / her sole name or in joint names with any third party which are not in dispute. If the client's interest in such assets exceed the capital limit of £8000 the application can be refused without the need to assess disputed assets. Where the client's undisputed assets fall within the £8000 limit, but there are disputed assets of a substantial value, those disputed assets will need to be assessed in accordance with Regulation 32A.

Assets held by the client in his or her sole name will be included within the assessment. Where the client holds an asset jointly or in common with any other person, the assessing authority in its discretion will normally assume that the asset is owned in equal shares and will include the client's interest in those assets within the assessment [Regulation 30A of the Community Legal Service (Financial) Regulations 2000 as amended refers; full guidance on the treatment of joint assets is provided within the LSC Manual volume 2, part F]. Where a contrary interest exists between the client and his / her (former) spouse or partner, the client's share of the asset should not be aggregated with that (former) spouse's or partner's share.

In dealing with property assets which are in dispute the following hierarchy of disregards will apply:

Step 1 (a) Apply the **mortgage disregard** (actual mortgage or £100,000 whichever is the less) to the value of the property to establish the total amount of equity within the property; (b) determine the client's share of this equity – generally treated as 50% unless there is evidence of a different division of property. Multiply total equity assessed under Step1(a) by the client's percentage share of the property.

Step 2) Apply the **subject matter of dispute disregard** of £100,000 to the client's share of any equity within the property.

Step 3) Apply the **Equity disregard** of £100,000 to the remainder (if any) of the client's share of the equity within the main dwelling. (Do not apply the equity disregard to a property which is not the main dwelling).

For cases where the assets in dispute include the main dwelling *and* other capital assets, the subject matter of dispute disregard is applied to the client's interest in the main or only dwelling *first*. The remainder (if any) can then be applied to the other disputed assets. The total amount disregarded must not exceed £100,000.

Detailed guidance (with further worked examples) is provided in the LSC manual volume 2, part F. Such guidance can be accessed via the eligibility calculator at the following website address from 11 April 2005:

[www.legalservices.gov.uk](http://www.legalservices.gov.uk)

Further information on the new SMOD rule, to accompany the advice given in this article will also be made available on the above website.

## Self Employed Child Care Costs

Prior to 11 April 2005, the allowance for child care costs was targeted on those in paid employment i.e. employees receiving a wage or salary. For applications on or after 11 April 2005, the child care cost allowance will also be available to the self-employed. The deduction can be made in respect of actual monthly expenditure on childminding fees incurred as a result of the self-employed person's absence from the home whilst engaged in his trade / business.

Unless there are exceptional circumstances e.g. disability of the child, it would only be reasonable to make such a deduction in respect of a dependant child aged 15 or under. It would also be unreasonable to make such an allowance where one or other of a couple was available to look after that child.

## Satisfactory Evidence

Where the client states expenditure on child care which is more than £600 per month for someone working full time i.e. 35 hours per week (or part-time equivalent) then documentary evidence (e.g. copy of bank statement, copy of agreement/contract with childminder) to support the figures stated should be obtained.

Where an aggregated assessment is being undertaken for a couple who incur child care costs during their absence from

### Worked Example:

The applicant has a home worth £520,000 and the mortgage is £150,000.

Value of Home	£520,000
Deduct mortgage up to maximum allowable:	minus £100,000
<b>Equity</b>	<b>£420,000</b>
Client's share of Equity (assume asset held in equal shares):	<b>£210,000</b>
Is the client's share of the property and savings in dispute	Yes/ No?
<b>If Yes:</b>	
Apply Subject Matter of Dispute disregard	minus £100,000
Remaining Equity	<b>£110,000</b>
Apply Equity exemption for main dwelling property	minus £100,000
Capital assessed	<b>£10,000</b>

The client is therefore ineligible for funding in this example.

the home due to either waged / salaried employment or self employment, please note that only *one* deduction should be provided for reasonable childminding fees within the assessment (to avoid 'double-counting').

Full details are available in the guidance (LSC Manual volume 2, part F) accompanying the Supplier calculator on the Commission's website from 11 April.

## Pensioners Capital Disregard

These are additional capital disregards on assessments where either the client (or spouse / partner where an aggregated assessment is carried out) is aged 60 years or over at the date of computation and their disposable income is less than £272 per month. The following process is followed:

Firstly, calculate the client's (and spouse's / partner's) disposable income; if the disposable income figure is **above** £272 per month, the amount of disposable capital is assessed in accordance with the normal regulations; if however, the disposable income figure is £272 per month or less, then the capital held, up to the maximum available for the particular income, is disregarded in accordance with the following table:

Monthly disposable income (£)	Amount of capital disregard
0-25	£100,000
26-50	£90,000
51-75	£80,000
76-100	£70,000
101-125	£60,000
126-150	£50,000
151-175	£40,000
176-200	£30,000
201-225	£20,000
226-272	£10,000
Over 272	nil

The supplier calculator has been amended to complete this calculation for you where the client's disposable income falls within these limits, for assessments from 11 April 2005.

## Transitional Provisions

Under the transitional provisions within the amended regulations, the above changes to eligibility limits (with the exception of the dependants allowances) and new measures set out above will not apply to reassessments of certificates in respect of applications made prior to 11 April 2005 which are undertaken by the Commission under Regulation 15 of the Community Legal Service (Financial) Regulations 2000.

## Forms Update – Masterpack

Updated packs will be available from July; these will be sent to suppliers who hold a copy of the forms Masterpack. Updated forms will also be posted on the LSC website. The current versions of the means assessment and contracting forms should continue to be used in the intervening period.

An updated Keycard (No. 41) providing a step-by step guide to assessment accompanies this article and is available from the LSC Website.

The suppliers' calculator and accompanying guidance (LSC Manual volume 2, part F) also located on the LSC Website has been updated accordingly for applications on or after 11 April 2005.

For more information regarding the changes please contact:

Grace Nicholls  
Means Assessment Policy Adviser  
29-37 Red Lion Street  
London WC1R 4PP  
020 7759 1776

***At time of going to press, no decision had yet been made on any changes to CDS financial eligibility. An updated Keycard will be published on the LSC website in due course.***

## CHANGE OF PRINT AND DISTRIBUTION SUPPLIER FOR LSC LEAFLETS

From Tuesday 29 March, the Community Legal Service Direct Information leaflets and publicity materials, as well as the Legal Services Commission leaflets, are being printed and distributed by a new supplier.

### EC GROUP

The Legal Services Commission has selected EC Group to provide a comprehensive range of print and distribution services. The contract is for three years, with a potential two-year extension. The LSC conducted a formal tender and after very detailed analysis was pleased with the totality of the EC Group service.

The information leaflets are a key part of Community Legal Service Direct, ensuring that people have access to legal information, advice and assistance. Written by independent experts and accredited by the Plain Language Commission, the leaflets are designed to be as accessible as possible to the general public.

### NEW ORDERING DETAILS

The contact details for ordering the leaflets and publicity materials have now changed. The revised order form for ordering leaflets is available at [www.legalservices.gov.uk/public/help/leaflets.asp](http://www.legalservices.gov.uk/public/help/leaflets.asp) and [www.legalservices.gov.uk/public/help/legal\\_leaflets.asp](http://www.legalservices.gov.uk/public/help/legal_leaflets.asp)

For information on ordering Community Legal Service Direct publicity materials please e-mail: [beatrice.etemah@legalservices.gov.uk](mailto:beatrice.etemah@legalservices.gov.uk)

The Leaflet Line telephone number will remain the same – 0845 3000 343. However, we would encourage members of the public who wish to order leaflets to contact Community Legal Service Direct.

### COMMUNITY LEGAL SERVICE DIRECT

Community Legal Service Direct is an easy-to-use service that helps people deal with their legal problems. Available via a national helpline - 0845 345 4 345 - and website, [www.clsdirect.org.uk](http://www.clsdirect.org.uk), it offers free telephone advice on welfare benefits, debt and education, details of where to find quality local advice services and information on other common legal problems.

### FURTHER INFORMATION

To find out more about the new processes, please contact Ian Philpott, Community Legal Service Direct, at [ian.philpott@legalservices.gov.uk](mailto:ian.philpott@legalservices.gov.uk)



Community Legal Service

# KEYCARD No 41

Issued April 2005

## GENERAL

This card is intended as a quick reference point only when assessing financial eligibility for those levels of service for which the supplier has responsibility: Legal Help; Help at Court; Legal Representation before the Asylum and Immigration Tribunal, and before the High Court in respect of an application under s.103A of the Nationality, Immigration and Asylum Act 2002; Family Mediation; Help with Mediation, and Legal Representation in respect of Specified Family Proceedings before a Magistrates' Court (other than proceedings under the Children Act 1989 or Part IV of the Family Law Act 1996). Full guidance on the assessment of means is set out in Part F of Volume 2 of the Legal Services Commission Manual. References in this card to volume and section numbers e.g. volume 2F-section 1 are references to the relevant parts of that guidance. Suppliers should have regard to the general provisions set out in guidance volume 2F-section 2, particularly those set out in sub paragraphs 3-5 regarding the documentation required when assessing means. This keycard and the guidance are relevant to all applications for funding made on or after 11 April 2005.

## ELIGIBILITY LIMITS

The summary of the main eligibility limits from 11 April 2005 are provided below:

LEVEL OF SERVICE	INCOME LIMIT	CAPITAL LIMIT
<p><b>LEGAL REPRESENTATION BEFORE THE ASYLUM AND IMMIGRATION TRIBUNAL; AND BEFORE THE HIGH COURT IN RESPECT OF AN APPLICATION UNDER S.103A OF THE NATIONALITY, IMMIGRATION AND ASYLUM ACT 2002.</b></p>	<p><b>GROSS INCOME NOT TO EXCEED £2,288** PER MONTH.</b></p> <p><b>DISPOSABLE INCOME NOT TO EXCEED £632 PER MONTH.</b></p> <p><b>PASSPORTED IF IN RECEIPT OF INCOME SUPPORT, INCOME BASED JOB SEEKERS' ALLOWANCE OR GUARANTEE STATE PENSION CREDIT.</b></p>	<p><b>£3,000</b></p> <p><b>PASSPORTED IF IN RECEIPT OF INCOME SUPPORT, INCOME BASED JOB SEEKERS' ALLOWANCE, OR GUARANTEE STATE PENSION CREDIT.</b></p>
<p><b>LEGAL HELP, HELP AT COURT, FAMILY MEDIATION, HELP WITH MEDIATION, AND *LEGAL REPRESENTATION IN SPECIFIED FAMILY PROCEEDINGS I.E. FAMILY PROCEEDINGS BEFORE A MAGISTRATES' COURT OTHER THAN PROCEEDINGS UNDER THE CHILDREN ACT 1989 OR PART IV OF THE FAMILY LAW ACT 1996.</b></p>	<p><b>GROSS INCOME NOT TO EXCEED £2,288** PER MONTH.</b></p> <p><b>DISPOSABLE INCOME NOT TO EXCEED £632 PER MONTH.</b></p> <p><b>PASSPORTED IF IN RECEIPT OF INCOME SUPPORT, INCOME BASED JOB SEEKERS' ALLOWANCE OR GUARANTEE STATE PENSION CREDIT.</b></p>	<p><b>£8,000</b></p> <p><b>PASSPORTED IF IN RECEIPT OF INCOME SUPPORT, INCOME BASED JOB SEEKERS' ALLOWANCE OR GUARANTEE STATE PENSION CREDIT.</b></p>

\* May be subject to contribution from income and/or capital (see volume 2F-section 3.2 paras 1 to 5).

\*\* A higher gross income cap applies to families with more than 4 dependant children. Add £145 to the base gross income cap shown above for the 5th and each subsequent dependant child.

Additional information regarding the financial eligibility criteria is also provided in guidance volume 2F-section 3.

## STEP BY STEP GUIDE TO ASSESSMENT

**STEP ONE** Determine whether or not the client has a partner whose means should be aggregated for the purposes of the assessment (see guidance in volume 2F-section 4.2 paras 1-5).

**STEP TWO** Determine whether the client is directly or indirectly in receipt of either Income Support, Income Based Job Seekers' Allowance or Guarantee State Pension Credit in order to determine whether the client automatically satisfies the relevant financial eligibility test, as indicated by the 'passport' arrangements stated in the table on reverse.

**STEP THREE** For any cases which are not 'passport', determine the gross income of the client, including the income of any partner (see guidance in volume 2F-section 5). Where that gross income is assessed as being above £2,288 per month, then the client is ineligible for funding for all levels of service and the application should be refused without any further calculations being performed. Certain sources of income can be disregarded and a higher gross income cap applies to families with more than 4 dependant children.

**STEP FOUR** For those clients whose gross income is not more than the gross income cap, (see guidance in volume 2F-section 3). Fixed allowances are made for dependants and employment expenses, and these are set out in the table below. Other allowances can be made for: tax; national insurance; maintenance paid; housing costs and child-minding. If the resulting disposable income is above the relevant limit then funding should be refused across all levels of service without any further calculations being necessary.

<b>FIXED-RATE ALLOWANCES (PER MONTH) FROM 11 APRIL 2005</b>	
<b>WORK-RELATED EXPENSES FOR THOSE RECEIVING A WAGE OR SALARY</b>	<b>£45</b>
<b>DEPENDANTS' ALLOWANCES</b>	
<b>PARTNER</b>	<b>£138.83</b>
<b>CHILD AGED 15 OR UNDER</b>	<b>£190.67</b>
<b>CHILD AGED 16 OR OVER</b>	<b>£190.67</b>
<b>HOUSING CAP FOR THOSE WITHOUT DEPENDANTS</b>	<b>£545</b>

**STEP FIVE** Where client's disposable income is below the relevant limit then it is necessary to calculate the client's disposable capital (see guidance in volume 2F-section 7). If the resulting capital is above the relevant limit, then the application should be refused. (however, in the case of Legal Representation in Specified Family Proceedings, if the likely costs of the case are more than £5,000 then refer to the Commission which may grant – see volume 2F-section 3.1 para 6).

**STEP SIX** For those clients whose disposable income and disposable capital have been assessed below the relevant limits then for all levels of service other than Legal Representation in Specified Family Proceedings, the client can be awarded funding.

**STEP SEVEN** For Legal Representation in Specified Family Proceedings, it is necessary to determine whether any contributions from either income or capital (or both) should be paid by the client (see guidance in volume 2F-section 3.2, paras 1 to 5). For ease of reference, the relevant income contribution table is reproduced below. Such contributions should be collected by the supplier (see guidance in volume 2F-section 3.2, para 4).

<b>BAND</b>	<b>MONTHLY DISPOSABLE INCOME</b>	<b>MONTHLY CONTRIBUTION</b>
<b>A</b>	<b>£273 TO £400</b>	<b>1/4 OF INCOME IN EXCESS OF £268</b>
<b>B</b>	<b>£401 TO £531</b>	<b>£33 + 1/3 OF INCOME IN EXCESS OF £400</b>
<b>C</b>	<b>£532 TO £632</b>	<b>£76.70 + 1/2 OF INCOME IN EXCESS OF £531</b>

# FORMS MASTERPACK UPDATE JANUARY 2005

You will now have received the update to the Forms Masterpack for January 2005.

Amendments have been made to the following Masterpack documents:

- **CLSADMIN 1 (version 7)**

This form has been updated to reflect an amendment to the Client's Declaration. The new version of the ADMIN1 became mandatory on 31 January 2005.

- **CLSCLAIM 5 (version 4)**

This form has been updated to reflect Family Graduated Fee (FGF) changes due to be implemented in February 2005. This form should not have been used before

1 March 2005. The new CLAIM5 became mandatory on 1 March 2005.

- **SPAN Guidance (version 6)**

- **Quick Reference Guide (version 5)**

New Immigration endpoints were introduced in October 2004. Immigration Suppliers received a separate mailshot previously and these codes are already in use. These guidance documents have been updated to bring everyone else in line with those changes.

The guidance sheet contained in this update will explain what the changes to these

documents are and why they have been updated. You can also find this on the Forms page of the LSC Website at [www.legalservices.gov.uk/civil/forms/forms.asp](http://www.legalservices.gov.uk/civil/forms/forms.asp)

Current versions of all forms contained in the Forms Masterpack are now available to be printed from the above web address.

If you have not received the January 2005 update or have any queries about the amendments to the forms, please contact:

**Lydia Anderson:** 020 7759 1682  
[Lydia.Anderson@legalservices.gov.uk](mailto:Lydia.Anderson@legalservices.gov.uk)

**Anne Clarke:** 020 7759 1786  
[Anne.Clarke@legalservices.gov.uk](mailto:Anne.Clarke@legalservices.gov.uk)

## PDS CRACKS SAFE!

In July 2004, the Public Defender Service (PDS) launched its new internal audit, aimed at monitoring and improving efficiency within its eight offices and ensuring full compliance against the Specialist Quality Mark (SQM) and the General Criminal Contract. This audit has been named SAFE – Service Audit for Efficiency.

This rigorous audit examines all areas of the operation of the service. It includes contractual elements such as cost compliance, SQM requirements and an extended review of file management and supervision processes, coupled with a look at the internal efficiency of the offices; focusing on tailored issues such as caseworker time management, reporting requirements, caseload management, etc. Each element is given a score, weighted according to the relative importance of the issue, which build up to produce a final percentage figure against which future performance may then be benchmarked.

To date, two rounds of audit have been undertaken within the PDS with encouraging results; a number of offices demonstrating significant improvement from the first visit to the second. Martin Snape, Quality Manager for Liverpool and Chester, said: 'We found the audit process was incredibly constructive – it

helped focus our minds on key areas on which to concentrate, with helpful advice, observations and support offered at all stages. The file management skills of all our caseworkers have improved considerably and our clients are reaping the rewards.'

During the last round of SAFE audits, conducted in January 2005, five of the eight PDS offices achieved scores in excess of 94%, with all eight rated above the 80% designated target score.

The next step for this initiative is to consider use of the process to achieve the LSC aims of self-certification against SQM for our better suppliers.

For further information regarding the SAFE process, or to discuss how SAFE may be utilised by your firm, please contact [sarah.acikgoz@legalservices.gov.uk](mailto:sarah.acikgoz@legalservices.gov.uk), Quality, Systems and Audit Manager for the PDS.

### AMENDMENTS TO THE SPECIALIST QUALITY MARK EFFECTIVE FROM APRIL 2005

Following the introduction of the Immigration & Asylum Accreditation Scheme (IAAS) in March 2004 we have updated the Specialist Level Quality Mark. The requirements are clearly set out in the General Civil Contract and by updating the Specialist Level Quality Mark we are ensuring that our documentation is consistent.

The consultation paper and post consultation response can be found on our website at [www.legalservices.gov.uk](http://www.legalservices.gov.uk)

If you have any queries regarding the consultation please contact Maxine Blackett on 020 7759 0377 or e-mail [maxine.blackett@legalservices.gov.uk](mailto:maxine.blackett@legalservices.gov.uk)

# WHAT DOES PREFERRED SUPPLIER STATUS DELIVER?



# We asked one of our pilot participants – Ash Bhatia, from Bhatia Best (Nottingham), to write a short article on what it was like to be a ‘Preferred Supplier’. As part of our ongoing commitment to communicating the pilot outputs with all of our suppliers, we are pleased to present Ash’s comments below:

The opportunity to apply for preferred status was denied to many firms, the pilot being run in five areas only. Whatever be the fairness of that, our decision to apply was a close call. We nearly didn't bother. It was driven by the recurring thought ... "Its not what they say they'll do, its what we know they might".

The cynicism and mistrust born of a decade of change after change was set aside ... "Better to be on the inside..." you know the rest of the adage. Even then we had no expectation of benefit, beyond maybe a head start in understanding the LSC vision for the future, and perhaps an early indicator of the next round of changes. Set against that we saw the inevitability of lost fee earning time, bureaucracy, consultation, feedback and general intrusion. With a deep breath and fingers crossed the application was lodged.

The selection process was painful. Three stages. Paper criteria based on past CMRC

reports and prior audits. Naked financial disclosure. Then peer review. The timing made matters worse. The General Criminal Contract had been terminated with a three month extension, yet uncertainty remained on the new contract. We had just emerged from a five day new process controlled audit and retained our category one status. We felt we had something to lose and were exposed. As weeks passed we agonised and prepared for rejection. Worse still that the application process may throw up fresh issues, a renewed audit, extrapolation, etc. Some comfort came from knowing that this time our trauma was elective and the risks foreseeable.

Did we have a choice? Not really. Did we think we'd be selected? Not really. Was it worth it? Not really. Did we fancy rejection? Not really. Did we consider withdrawing? Every day. Would we do it again? Absolutely!!

I can hear you thinking ..."You would say that now wouldn't you". True, its nice to be selected. Who would say otherwise? We certainly felt good. The firm was invigorated, the Partners content, and I was relieved. We wanted to tell everyone. Marketing suggestions appeared on my desk, I responded with a reminder that advertising preferred status is contractually prohibited. It didn't matter. We revelled in calling LSC and reciting the permitted incantation ..."I'm a preferred supplier, can you help with ...". Like magic the spell worked. Again and again.

LSC responded to our call. Guidance flowed. We received help on anything and everything. Applications were processed. Claims assessed. Papers returned, and turn around, always in 48 hours. A hitch with EDI once reported caused an LSC team to descend within the hour. Moreover, the positive response from LSC has not been

from our Relationship Manager and specified contacts alone, but the entire back room team. At mid point of pilot, with some months elapsed, things are even better. If that's Preferred Supplier Status I have no criticism. Surprised? No one more so than me!

These remarks have attracted some ridicule ..."Ash you've gone soft. Its a pilot. You're a guinea pig. Get back on your wheel". The thing is, I can't really argue. I know its a pilot. I know there are only 25 firms involved. But I haven't gone soft. Guinea pig or not, things are so much better than before.

The key is improved relationship. For years now we've all heard the words, references to partnership, etc. During this pilot. certainly so far, its not just what LSC have said but what they've done. In short, to be recognised. Indeed recognised as a valued supplier of services. Its been a long time coming. Arguably only a small step, but certainly one in the right direction.

Despite improved relationship the real incentive must be immunity from a costs compliance audit during the pilot period. In fact that is not cited as a specific reward, but it has been confirmed in writing. Undoubtedly that was an important element for us. No practitioner will disagree when I point to the indignity and unfairness of CCAs. Who wants to sit with tongue bitten while a young cost assessor with no practical experience dismembers a claim and exposes possible extrapolation. The horror of cat one status turning on one file, indeed, one item of prep, and the need to recover two units of time to retain category one. I'm sure no one will disagree. Equally, most would say removal of CCA is the main advantage to preferred status. In a sense that's true, but to obtain preferred status the firm will have been audited to death anyway. I see removal of CCA as a hallmark of trust born of improved relationship. Interestingly at the pilot launch meeting LSC made much of improved relationship. Historic error was conceded in applying a 'one size fits all' approach. Indeed it was asserted that lessons had been learned. The theme extended to a recognition that providers must make a profit. The words came directly from Clare Dodgson

...I know its not what they say, and I'm not holding my breath, but its nice to hear something new.

Specified rewards are subdivided. General rewards, civil and criminal. The detail of those can be read elsewhere. In truth we originally had no interest in the rewards at all. Rather we simply wanted to be involved and avoid CCAs. I'd be lying if I said otherwise.

Beyond relationship and CCA the rewards themselves are nothing special, but in the main they're worth having. The most pertinent ease paperwork and claiming. Life's a little easier. Enhanced SMP to 17.5% rather than 10% Simplified NSF claims. Consolidated claims. Enhanced Devolved Powers. Automated File Review Claims. Of course the place is awash with green paper. That being the identifier to LSC that a preferred supplier has lodged something. It triggers expedited response and permits processing within the target time of 48 hours. That really is excellent. That said, I can't imagine which individual dreamed up a visit to DSCC as a reward. Why would anyone want to look at a call centre?

Overall, dealings with LSC have simply not materialised as we thought. Our anxiety about interference, intrusion and hassle have proved to be misplaced. Downtime has been negligible. There have been a few meetings, but worthwhile and to the point. Most interaction has been by telephone and that was what we wanted. In fairness, by the time of the pilot we were well acquainted with our Relationship Manager and senior LSC staff. Some battles have been won but mostly lost. In truth things have settled down. I suppose its obvious really, there must be a working relationship before there can be an improved relationship.

So where's this going? Never before have I been able to support an LSC initiative. There's usually a catch. So far I haven't found it. Of course we haven't got to National Roll Out yet. My hunch is that's where the problems lie. OK, things have yet to be properly evaluated, but in some regards the writing is on the wall. Whilst I don't have the answers, I certainly wouldn't wish to delay enlargement to other firms, but understand that intended Roll Out on 1.4.05 has been

put back a little. Sensible if things can't be worked out in the second half of the pilot.

I'm not sure the title "Preferred Supplier" was wisely chosen. In the context of National Roll Out, how can everyone be preferred? What meaning will that have? What of those who are not preferred? Will they be permitted to continue, what relationship will they enjoy, or suffer? Is it viable for LSC to replicate the service we've experienced across an enlarged supplier network? Will LSC be able to train sufficient Relationship Managers, at all or in time? How many will be needed? I know there were training issues during early stages of the pilot, much of it done on the hoof. What will the selection process be? Have I got to go through it again? Can LSC possibly maintain a 48 hour turn around? Will CCA actually be buried?

There has been some talk of money. But not much. It's true that the paperwork mentions improved cashflow, business development and expansion. The need for profitability has been raised at meetings. The Kaizen Review is intended to improve processes, efficiency and thus profitability. Nevertheless, I am not blinkered to the fact that the pilot injects no extra funds at all. Moreover, the central theme to practitioners' beleaguerment has been political insistence upon budgetary cuts whilst repeating the mantra of 'No more money'. Whilst I welcome the steps and direction being taken, I am simply not persuaded that any improvement in relationship and efficiency can obviate the need for real money.

Further, I am not convinced that the profession will so quickly forget past experiences. In a sense throughout years of change we've all been guinea pigs. Franchising, , standard fees, transaction criteria, SQM, contracting, costs audits, controlled audits, ETMP, VHCC, PDS, the list goes on.. Even now other changes are afoot with CDS Direct, fixed fees and competitive tendering.

But despite my residual cynicism, I regard the Preferred Supplier Pilot as a worthwhile vehicle. Change in attitude, relationship and direction may yet get us where we want to go.

# CLS SUPPORT – ADVICE SERVICES ALLIANCE – TRAINING 2005

[www.asauk.org.uk/clsstraining](http://www.asauk.org.uk/clsstraining)

## COURSE 1 Casework under Contract: the essentials

*Law Society CPD Introductory/Intermediate level (4.5 CPD hours)*

London	5th May	York	8th June
Birmingham	18th May	Manchester	16th June

## COURSE 2 Improving Performance: an introduction to supervision, file review and appraisal

*Law Society CPD Introductory/Intermediate level (4.5 CPD hours)*

London	11th May	Manchester	22nd June
Birmingham	25th May	Newcastle Upon Tyne	28th June

## COURSE 3 The Effective Supervisor

*Law Society CPD Intermediate/Advanced level (4.5 CPD hours)*

London	23rd June	Birmingham	3rd August
Birmingham	8th July	York	15th September

## COURSE 4 Making Every Minute Count: 2005!

*Law Society CPD Intermediate/Advanced level (4.5 CPD hours)*

London	14th June	York	14th July
Newcastle Upon Tyne	29th June	Birmingham	9th August
London	12th July	Birmingham	28th September

## COURSE 5 Sufficient Benefit Test: principles and practice

*Law Society CPD Intermediate/Advanced level (4.5 CPD hours)*

Birmingham	7th June	London	16th August
York	21st July	Manchester	22nd September

## COURSE 6 Eligibility: principles and practice

*Law Society CPD Introductory/ Intermediate level (4.5 CPD hours)*

London	5th July	Birmingham	24th August
Birmingham	28th July	Birmingham	9th August
Newcastle Upon Tyne	11th August	London	4th October

## COURSE 7 Full Cost Recovery: an introduction to costing your services

*Law Society CPD Introductory/ Intermediate level (4.5 CPD hours)*

London	26th July	Birmingham	13th September
York	18th August	Birmingham	5th October

All courses run from 10am-4pm Each course is £100 + VAT = £117.50.

Please see our website [www.asauk.org.uk/clsstraining](http://www.asauk.org.uk/clsstraining) for further details and a booking form.

# LSC FORMS

Feedback on the content and format of our forms generated a lean Kaizen event to help us address some of the concerns we have received.

Lean Kaizen originates from the principles used in Kaizen, a Japanese management technique that aims to simplify processes to remove any unnecessary waste.

The lean Kaizen programme has been successful within the Commission in streamlining many of our processes by applying the lean principles and using teams of staff from all aspects of the business.

On 15 February the LSC ran a workshop in Nottingham to review the content of:

- Application for CLS Funding Certificate – Non-Family proceedings (CLSAPP1)
- Application for CLS Funding Certificate – Family proceedings (CLSAPP3)
- Means Assessment form (CLSMEANS 1)

We took the same approach of using cross-functional teams (caseworkers, suppliers and our legal advisers). The delegates looked at the forms considering the following areas:

- 1) Format
- 2) Grouping questions by subject type
- 3) Avoiding redundancy and duplication
- 4) Making the questions specific and clear
- 5) Establishing clear form names
- 6) Putting the questions in a logical order

The initial results were positive. The group managed to make reductions to the length of the CLSAPP1 and CLSAPP3. Significant improvements were made to all three forms in terms of simplifying content, by reducing duplication, removing questions no longer used and streamlining the form so they reflect how suppliers and caseworkers work. The content and format is yet to be finalised but the intention is for the new forms to be included in the July Forms Masterpack Update.

We would like to thank representatives from Fraser Brown, The Emery Johnson Partnership, Bhatia Best and TV Edwards for their valuable contribution to the event.

If you have any suggestions about the content or format of any of the forms contained in the Forms Masterpack please contact: [Anne.Clarke@legalservices.gov.uk](mailto:Anne.Clarke@legalservices.gov.uk)

## FREEDOM OF INFORMATION ACT 2000 IMPACT OF LEGISLATION ON THE LSC AND ITS SUPPLIERS

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

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

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

### What does this mean for Suppliers?

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

However, information that the Commission generates does not fall within section 20 of the Access to Justice Act and is therefore likely to be disclosable. Clause 13 of the General Civil Contract, General Criminal Contract and Not-for-Profit Contract, sets out the type of

information that the Commission does not consider to be confidential, as follows:

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

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

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

The Commission discloses a considerable amount of information. The classes of information that is routinely published can be found in our Publication Scheme, which is available on the LSC website at [www.legalservices.gov.uk](http://www.legalservices.gov.uk)

# LSC ONLINE — ELECTRONIC BILLING

## BACKGROUND

***LSC Online is the electronic billing service which allows you to submit monthly Civil and Criminal controlled work via a secure website. The service is free and eliminates the need for you to submit your controlled work claims to the Processing Centres.***

## NATIONAL SURVEY

The LSC Online Marketing Team conducted two national surveys during September and November 2004. All responses were extremely valuable and will greatly assist the ongoing improvements and system enhancements now underway. We will continue to monitor the level of support provided and the performance of the service. Additionally your responses help to inform the Commission's future eBusiness activities.

## CHANGES IN PLACE NOW

A number of your comments have already resulted in direct improvements which we hope will be of benefit. Recent changes include:

- A dedicated LSC Online Support Team was established in January 2005. This is staffed by individuals trained to resolve system usage queries about registration, submissions and bulk load.
- In January the Marketing Team was expanded with the aims of promoting and encouraging the use of LSC Online. The performance of this service will be monitored and evaluated.

- The IT systems that support the LSC Online service are currently being upgraded to increase speed and overall performance.

## CHANGES FOR THE FUTURE

During the coming months you will see further improvements and enhancements, again as a result of your participation in the survey:

- The registration process is being simplified, making it easier and quicker for you to get started.
- A printable submission report will shortly be available.
- Increased communication between the Commission and independent suppliers of case management systems to encourage the development of bulk load conversion features into their software.
- The LSC Online Marketing Team will be providing regional office staff with marketing packs to ensure your account manager has general information about the service, how to access it and how it could be of benefit to your organisation.
- The LSC Online teams will work with the business to take forward the

implementation of system enhancements and new developments, many of which will be a direct result of your responses

## MARKETING STRATEGY

The Commission is currently considering how increased eBusiness initiatives will enhance its business processes and in turn provide valuable, cost effective services and communication links. Key to realising this, we acknowledge that we must:

- Provide a high level of customer service and support.
- Ensure there is a continuous improvement programme in place.
- Monitor and evaluate the service, making recommendations for ongoing refinements and developments.

### For further information about LSC Online:

LSC Online Marketing Team  
Telephone: 0117 3023117  
E-mail: [online-support@legalservices.gov.uk](mailto:online-support@legalservices.gov.uk)

### For assistance and support using the service:

LSC Online Support  
Telephone: 020 77591859  
E-mail: [online-support@legalservices.gov.uk](mailto:online-support@legalservices.gov.uk)

# SPECIALIST SUPPORT SERVICES

*Following on from the article in Focus 45 (August 2004), the Legal Services Commission is pleased to report that the Specialist Support services have proven invaluable and continue to offer solicitors and advisors the support needed to improve access to justice and services to the client.*

Originally started in pilot form in 2000, the initiative now holds 17 contracts with organisations in England and two with organisations in Wales to provide free advice, support, mentoring and low-cost training to eligible organisations. All providers have extensive experience and qualifications in their respective categories. Services are available to all LSC General Civil Contract holders, organisations with the Specialist Quality Mark and organisations with the Quality Mark for General Help with Casework. Most services are available via the telephone, and some of the services are available by e-mail and the internet. To access these services, please see the details opposite.

Reports have been received of very positive outcomes for clients as a result of the service. The nationally reported, successful case of the former Ghurkha, serving in the British Army for 23 years and denied a British pension, started through the service. Other success stories include a successful challenge against a local authority's application of a scheme awarding concession to disabled

drivers, successful advice on council tax exclusion, awards of student grants and a successful challenge against a Primary Health Care Trust with regard to IVF treatment.

One story tells of an 85-year-old woman in an acute hospital bed awaiting discharge. The local authority attempted to charge a 'top-up figure' from the woman's estate. However, as a result of advice from the Specialist Support services, the attempt was withdrawn and the woman was successfully placed in a care home of her choice. Charlotte von Dadelszen from the Disability Law Service commented: 'The service has given us the opportunity of building great working relationships with other solicitors and advisors wanting to develop and increase their knowledge in this area of law. They have been able to achieve some excellent outcomes for clients because they have had access to specialist advisors. It has also provided advisors with the ability and confidence to take on more complex cases.'

The support for the expert services offered has been excellent, with many

organisations stressing how invaluable the services have been. Various reasons have been given for accessing the service, including updates on legislation and case law, getting insights from experienced practitioners, getting tactical advice and second opinions, discussing options with peers and combining experience to achieve the best outcomes.

Advice on areas of law, addressing critical and current issues, will be available through the next round of training. All eligible suppliers should shortly receive a brochure outlining the available courses in their region. All courses are low in cost, low in numbers, giving the opportunity for a more interactive approach, and most are regionally based, reducing time and costs of travel. Courses all attract CPD points. For more information on training courses or support work services, please visit our website at [www.legalservices.gov.uk/civil/innovations/developing\\_cls.asp](http://www.legalservices.gov.uk/civil/innovations/developing_cls.asp). Alternatively, please contact the Contract Design Team at [contract.design@legalservices.gov.uk](mailto:contract.design@legalservices.gov.uk)

# NATIONAL SPECIALIST SUPPORT SERVICES

Category of Law	Organisation	Advice Line Opening Times	Phone Number
Community Care	Disability Law Services	Mon & Wed 2-5pm	020 7791 9809
	Public Law Solicitors	Tue to Thurs 2-4.30pm	0121 256 0334
Community Care and Public Law	Christian Khan	Wed & Fri 2-5pm	020 7693 0215
Human Rights and Public Law	Doughty Steet Chambers	Mon to Fri 9.30am-5.30pm	020 7411 2700
	Liberty/Public Law Project	Mon & Wed 2-5pm, Tue & Thurs 10am-1pm***	0808 808 4546
Immigration	Joint Council for the Welfare of Immigrants	Mon to Fri 10am-1pm**	0845 602 1020
	Two Garden Court Chambers	Mon to Fri 2-5pm	020 7415 6350
HIV/AIDS	Terrence Higgins Trust	Tues & Fri 10am-1pm and 2-5pm	020 7816 4605
Mental Health	MIND	Tue & Thurs 11am-1pm*	020 8215 2345
	Scott-Moncrieff, Harbour & Sinclair	Mon to Fri 9am-5pm* (24 hour answerphone)	020 7428 5927

\* Caller can leave a message and will be called back within 24 hours

\*\*Service can be contacted by e-mail at [specialist.support@ttht.org.uk](mailto:specialist.support@ttht.org.uk)

\*\*\*Email enquiries can be submitted via [www.liberty-human-rights.org.uk](http://www.liberty-human-rights.org.uk)

## English Specialist Support Services

Category of Law	Organisation	Advice Line Opening Times	Phone Number
Debt	Citizens Advice Specialist Support Unit	Mon, Tues & Thurs 10.30am-1pm and 2-4pm	0808 808 2575
Employment	Citizens Advice Specialist Support Unit	Mon to Thurs 10.30am-1pm and 2-4pm	0808 808 3681
	Two Garden Court Chambers	Wed to Fri 2-5pm	020 7415 6360
Housing	1 Pump Court	Mon to Fri 2-5pm	020 7842 7027
	Shelter	Mon-Fri 9am-5pm (answerphone 1st & 3rd Weds mornings of the month)	020 7505 4688
	Two Garden Court Chambers	Tues to Thurs 2-5pm	020 7415 6340
Welfare Benefits	Child Poverty Action Group	Mon & Tues 2-4.30pm, Wed 10.30am-1pm	020 7278 2100
	LASA	Wed 2-4.30 pm, Thurs 10.30am-1pm & Fri 2-4.30pm	020 7247 8935

## Welsh Specialist Support Services

Category of Law	Organisation	Advice Line Opening Times	Phone Number
Debt	Morgans	Mon, Tues, Thurs & Fri 10am-12.30pm and 1-3.30pm	0845 602 3450
Housing	Morgans and Shelter Cymru	Mon to Fri 10am-12.30pm and 1-3.30pm	0845 602 3449
Welfare Benefits	Morgans	Mon to Fri 10am-12.30pm and 1-3.30pm	0845 602 3451

# FUNDING IN RELATION TO CONTROL ORDERS UNDER THE PREVENTION OF TERRORISM ACT 2005

**The Prevention of Terrorism Act provides for the making of 'control orders' that impose obligations on individuals suspected of involvement in terrorism-related activity. Control orders may impose any obligations necessary for purposes connected with preventing or restricting an individual's further involvement in terrorism-related activity. Obligations that may be imposed include, for example, prohibitions on the possession or use of certain items, restrictions on movement to or within certain areas, restrictions on communications and associations, and requirements as to place of abode. It will be possible to make control orders against any individuals engaged in terrorism-related activity, irrespective of nationality.**

Control orders that do not seek to impose obligations that are incompatible with the individual's right to liberty under Article 5 of the Human Rights Convention (non-derogating orders) will be made by the Secretary of State with the permission of the court, or without their permission, if there is some urgency in the particular case. If the Secretary of State makes a non-derogating order without the permission of the court, he must immediately refer the order to the court and the court must consider the case within 7 days.

Control orders that impose obligations that are incompatible with the individual's right to liberty under Article 5 of the Human Rights Convention (derogating orders) must be made by the Court on the application of the Secretary of State. Upon receipt of an application from the Secretary of State the court must immediately hold a preliminary hearing to determine whether to impose such an order. If the court does make such an order, it must then give directions for the holding of a full hearing to determine whether to confirm the order.

All proceedings under the Act are in scope of civil funding, subject to the normal CLS criteria for scope and merits. However, the Commission will apply the General Funding Code criteria in a way consistent with the nature of the proceedings. As with, for example

civil recovery under the Proceeds of Crime Act 2002, the Commission will apply the Funding Code Criteria so as to ensure that representation is available where it is in the 'interests of justice' for the client to be represented.

Regulations have now been made which provide that Legal Help and Legal Representation for a person who is subject to a control order, is available on a non-means tested basis in respect of proceedings under the Act. The Community Legal Service (Financial) (Amendment No 2) Regulations 2005 came into force on 5 April 2005.

## **Process to be followed with applications for funding under the Act**

All applications for funding, or notifications of grant of emergency funding under devolved powers will be dealt with by the Special Cases Unit and should be sent to:

John Baker Senior Case Manager  
Special Cases Unit, Legal Services Commission,  
29-37 Red Lion Street, London WC1R 4PP  
DX 170 London Chancery Lane  
Tel 020 7759 1561 Fax 020 7759 1588

No means form need be provided.

Where the anticipated costs to the end of the case are likely to exceed £25,000, the solicitors will be required to provide a caseplan for the future conduct of the case and enter a contract with the Commission.

## **United Nations restrictions on the availability of legal aid**

The Security Council, pursuant to United Nations Security Council Resolution 1390, maintains a list of individuals suspected of being linked to Al-Qa'ida or the Taliban. The Al-Qa'ida and Taliban (United Nations Measures) Order 2002 (No.111) provides that it is an offence to make funds available to people on that list without authorisation. Any individual on the list is therefore prevented from receiving any form of legal aid (including Legal Help and emergency representation) without first obtaining the necessary authorisation. In the United Kingdom, HM Treasury is the authorising authority. The Commission is in discussions with the government with a view to expediting the obtaining of authorisations to ensure that proceedings under the Prevention of Terrorism Act are not delayed, should this issue arise. In the meantime, it is imperative that applicants for CLS funding who are on this list apply early to HM Treasury for an authorisation in order that funding can be made available to them. It is the applicant's responsibility to obtain this authorisation. For further information as to the procedures for obtaining a licence, applicants should contact the International Financial Services Team at HM Treasury, 1 Horse Guards Road, London SW1A 2HQ, tel: 020 7270 5550.



# INTERPRETERS AND THE DDA

## We have received a number of enquiries from suppliers in relation to the cost of British Sign Language (BSL) interpreters.

This follows the implementation of the Disability Discrimination Act (DDA) 1995 and in particular section 19, which prohibits discrimination against a disabled person in relation to the provision of goods, facilities and services.

Traditionally the LSC has covered the cost of BSL interpreters as a disbursement which could lead to that cost being recovered from the client should the statutory charge arise on the recovery or preservation of money or property.

That very scenario was challenged by Yvonne Brook in Cambridge County Court, supported by the RNID Casework Service. Ms Brook was profoundly deaf and had requested a BSL interpreter to enable her to communicate during meetings. Her solicitors duly booked the interpreters but included the cost in their bill which fell to Ms Brook following the operation of the statutory charge. She queried the additional costs incurred due to her disability, citing section 19 of the DDA. The court held that as service providers, the solicitors were obliged to make 'reasonable

adjustments' and, under the Act, were not entitled to pass on any additional cost to the client. The interpreters' costs were thus deleted from the bill and a reduction in the time of the meetings was allowed to reflect the additional time taken for interpretation.

This case raises two important issues: the identity of the service provider and what reasonable adjustments must be made.

The LSC maintains that when funding suppliers to provide legal services to the public, it is the supplier who is the service provider for the purposes of section 19 and therefore the cost of any reasonable adjustment will amount to a business overhead for that supplier, rather than a disbursement to be charged to the LSC and, potentially, the client. What is reasonable will naturally depend on the particular case and the resources of the firm in question.

For more information see 'The Disability Discrimination Act 1995: An Essential Guide for Solicitors (3rd edition)', available from the Law Society's website at [www.lawsociety.org.uk](http://www.lawsociety.org.uk)

## FORMER CLIENTS WITH STATUTORY CHARGES REGISTERED ON THEIR HOMES

As part of this year's reforms to the funding of civil cases, so we can focus on our priority areas, and avoid limiting access to justice for people who are socially excluded, the interest rate on registered statutory charges is increasing.

The annual rate will increase from 5% to 8% on 1 October 2005. The rate will continue to be simple rather than compound: there is no interest on accumulated interest.

As long as former clients cannot manage to repay the charge, we do not ask them to make any payment towards the principal sum or interest. If a former client needs us to leave a charge on their home for the rest of their life, we can do so. But from July 2005, we will have wider powers at the end of a case to consider whether it is necessary to postpone the charge in light of the client's financial circumstances.

We will also be able to review postponed charges at any time. In future, if clients can raise the money from a building society or bank and can afford the repayments, we will ask them to repay the charge so that the money can be recycled to pay for other people's cases.

Between now and October, our Land Charges Section is sending letters to former clients with interest-bearing statutory charges on their homes. If former clients want to know how much it would cost to redeem a charge, they should contact:

Charge Statements Team  
Land Charge Section  
Legal Services Commission  
85 Grays Inn Road  
London WC1X 8TX  
Telephone: 020 7759 0000

## CHANGES TO THE FAMILY GRADUATED FEE SCHEME

The Lord Chancellor's review of the scheme has now concluded and the revised scheme was implemented on 28 February 2005.

Essentially, the main changes are the creation of category specific special issue payments and revising the rates to be paid for work done.

All family barristers directly received a briefing pack which contains the following documents:

- Explanatory document.
- Amending regulations in draft (the final version is to be found on the LSC website ([www.legalservices.gov.uk](http://www.legalservices.gov.uk))).
- The revised LSC guidance.
- Old and new rates.
- The revised CLS claim 5.

The changes apply only to new certificates or new proceedings added to existing certificates on or after 28 February 2005 so there will be two payment schemes running simultaneously for some time to come. It is important for counsel to receive a copy of the public funding certificate within the enclosures to the brief to be able to know which payment scheme applies.

All the briefing documents can be found on the LSC website. Any queries can be addressed to [ruth.symons@legalservices.gov.uk](mailto:ruth.symons@legalservices.gov.uk)

# PUBLIC LAW CHILDREN ACT PROCEEDINGS – EXPERTS

- You should not agree or consent to bearing the costs of any section 38(6) assessments.
- There is no legal or funding distinction between section 38(6) non-residential assessments and section 38(6) residential assessments: the local authority should bear all the costs of all section 38(6) assessments.
- You should inform the court of the Commission's position.
- Joint instruction does not automatically mean joint funding.
- If, having considered the *Calderdale* criteria, a non-section 38(6) assessment is to be funded jointly, rather than by the local authority, then funding should usually be equally between all parties.
- Any expenditure to be shared must be justified in all circumstances of the case and the cost must be reasonable. You should not agree to share the costs of an expenditure only to avoid putting the need for it or apportionment of the cost to the court for a decision.
- Solicitors instructing counsel should ensure that counsel are aware of the Commission's position.

**This is to confirm the position of the Legal Services Commission with regard to assessments directed by the court both generally and under section 38(6) of the Children Act 1989.**

The position of the Commission with regard to Public Law Children Act cases was contained in the information pack published to support the Protocol. In that pack, it was stated that the Commission would follow the directions given by the court where, following appropriate consideration of the relevant issues, it had given leave for an expert to undertake specified work. However, the Commission suggested that where it was appropriate for an assessment to be apportioned then the apportionment should be on a moiety basis (i.e. shared equally

between the local authority on the one hand and all the funded parties on the other). In the meantime, the position has been considered in *Calderdale Metropolitan Borough Council v S* (2004) Times, 18 November 2004 and [2004] EWHC 2529 (Fam), (Bodey J). In the light of the judgment in the *Calderdale* case, the Commission accepts that where an apportionment is appropriate then it should generally be on a proportionate or pro rata basis – i.e. each party paying equally towards the costs (but see below regarding section 38(6) assessments). In *Calderdale*, Bodey J treated the children's guardian as the funded party, although there were in fact two children who were funded parties. The Commission accepts that any proportionate apportionment should accurately reflect the numbers of parties (including children).

In *Calderdale*, Bodey J accepted that a specialist report can and, on some occasions, should be comprised within a local authority's core assessment and/or should be part of the local authority's own basic case (para 28). In the absence of any statutory or regulatory guidance on the distinction between reports which ought to be at the expense of the local authority and reports which should be funded by all the parties (except those unaffected by it), the following non-exhaustive considerations apply (para 35):

- (a) The court has to exercise its discretion to apportion the relevant costs fairly and reasonably, bearing in mind all the circumstances of the particular case.
- (b) The court will have regard to the reasonableness of how the local authority has conducted the information-gathering process and with what degree of competence and thoroughness.
- (c) The court will use its experience and 'feel' to be alert for cases where a local authority has done quite little preparation or else has prepared rather poorly. If for example, a local authority proposes the instruction of an independent social worker consultant (which for good practical reasons is agreed to be done on a joint-instruction basis), where the work would normally have

been expected to be undertaken by the local authority as part of its core preparation, then the local authority will certainly or almost certainly be ordered to pay 100% of the costs involved.

- (d) The court will have regard to the extent to which the report in question goes merely to satisfying the so called 'threshold' for state intervention, as distinct from helping the court to decide more generally what overall 'disposal' would best serve the interests of the child's welfare.
- (e) A further consideration is the type of expert concerned and the nature of his or her involvement with the family and/or of his or her role in the case. 'Treating' experts and others who have had a 'hands on' role with the family already are more likely to have to be paid for, if they charge a fee, by the local authority. Conversely, the fees of a purely forensic expert brought in specifically to make a full overview report to the court within the context of his or her discipline, are much more likely to be ordered to be shared in principle between the parties.
- (f) One reason that the costs of a jointly commissioned report ordered by the court will, generally speaking, be ordered to be shared in some way is that each party has an interest in having confidence in the integrity of the forensic process. However, if a party genuinely opposes a report being jointly commissioned, or disputes the need for a report at all then, provided this opposition is mounted for substantive reasons and not merely cosmetically or tactically, the court may take this factor into account in deciding how to exercise its discretion.
- (g) The fact that a party is publicly funded is not a reason for taking a different decision about costs from that which would otherwise have been taken. It would be wrong to pin a costs responsibility on the LSC which would not otherwise have been ordered against the publicly funded individual concerned (section 22 of the Access to Justice Act 1999).

The decision in *Calderdale* suggests that where-so-ever possible, issues regarding payment for jointly commissioned assessments and reports should be resolved by agreement in a collaborative way, having regard to the guidance which may appear in reported authorities and to the particular circumstances of the case in question.

The judgment makes it clear that there will be cases where a party has intervened on a discrete issue (for example, as to contact) and should plainly not be required to join in the costs of a jointly commissioned report on other issues (para 53). Likewise, it was accepted that there will be some cases where even though it is determined that the costs of a joint report should in principle be shared, some apportionment other than equally between the parties would clearly be appropriate. Ultimately apportionment is a matter for the discretion of the court (para 54).

The Commission accepts that suppliers should seek to agree apportionments, having regard to the guidance given in the *Calderdale* case and that where an apportionment is

justified this may generally be on a proportionate or pro rata, rather than moiety, basis. Its information pack (see below) will be amended accordingly. However, the Commission's position regarding section 38(6) assessments remains unchanged.

It has always been the position of the Commission that assessments under section 38(6) of the Children Act 1989 should be borne by the local authority alone (see paras 1.5 and 2.1 in the pack available on the LSC website at [www.legalservices.gov.uk/docs/stat\\_and\\_guidance/info\\_pack\\_public\\_fund\\_issues.pdf](http://www.legalservices.gov.uk/docs/stat_and_guidance/info_pack_public_fund_issues.pdf)). You should not agree to apportion any assessments, residential or not, which would otherwise fall or be likely to fall to the local authority alone under section 38(6). Note, however, that a limited viability assessment consisting of consideration of the relevant papers and a meeting with the carers, social worker and/or guardian may be publicly funded, subject to reasonableness.

It should be noted that there have been no reported cases where funded clients have been directed to pay the costs of a section 38(6)

assessment. In addition, the case of *Re G (Interim Care Order: Residential Assessment)* [2004] EWCA Civ 24 has widened the scope of section 38(6) to therapeutic work. The Community Legal Service Fund cannot meet costs which do not fall within the vires of the Access to Justice Act 1999, the definition of Legal Representation at paragraph 2.2 of the Funding Code and the Commission's guidance. Furthermore, the Court of Appeal, in para 55 of its judgment in *Re G*, sets public funding to one side when looking at the section 38(6) assessment.

In the case of *Calderdale*, it was common ground between the parties and accepted by Bodey J that section 38(6) assessments are not a matter for public funding.

The Legal Team in the Children and Family Services Division will be happy to provide assistance on these issues. Please contact Jane Worsley ([jane.worsley@legalservices.gov.uk](mailto:jane.worsley@legalservices.gov.uk), telephone 020 7759 1130) or Lynn Graham ([lynn.graham@legalservices.gov.uk](mailto:lynn.graham@legalservices.gov.uk), telephone 020 7759 1129).

## PRIVATE LAW PROGRAMME

You should be aware that the President of the Family Division has issued guidance on a new framework for private law Children Act cases. The programme will be rolled out gradually and you can see the guidance on the website for the Department for Constitutional Affairs at [www.dca.gov.uk/family/plpguide.pdf](http://www.dca.gov.uk/family/plpguide.pdf)

The essential elements of the programme are:

- An early **First Hearing dispute resolution appointment** (FHDRA) before the district judge between 4 and 6 weeks of an application being issued.
- The use of that first appointment for **'in-court conciliation'** using CAFCASS practitioners to assist wherever 'in-court conciliation' schemes are in place and where CAFCASS and Her Majesty's Courts Service resources are available.
- Detailed **case management** at the FHDRA to identify those issues that still need to be determined and a timetable for the case.

- The **focus** of **CAFCASS reports** on the issues that are identified.
- **Judicial continuity** and the continuity of CAFCASS practitioners wherever possible.
- Access to the allocated judge for an **urgent hearing** to review and, where necessary, enforce orders within 10 working days of any request by CAFCASS or a party.

Parenting Plans should be available at all family courts and the intention is that parents will be asked at the FHDRA whether they have read the Plan which can be used to encourage cases to be resolved.

The usual arrangements regarding public funding will apply. The grant of an emergency certificate may be justified, having regard to the existing guidance published in Volume 3 of the LSC Manual (page 157 onwards). Emergency certificates should, however, be limited to all steps up to and including representation at the FHDRA. For Family Graduated Fee purposes the FHDRA will be an F3 hearing. If the case

concludes at the FHDRA a settlement payment may be claimed.

The programme envisages that CAFCASS will review appropriate cases to ensure compliance with orders made. Certificates will require an amendment to cover work in connection with any review. You may, if justified, amend an emergency certificate granted under devolved powers to cover work up to and including the review and/or enforcement hearing. For family graduated fee purposes the review hearing would fall within F3 and the enforcement hearing within F2.

The existence of the programme does not affect the availability and use of publicly funded Family Mediation. Parties may or may not have mediated prior to proceedings being issued and proceedings may be adjourned to enable the parties to mediate away from the court (with a mediator as opposed to a CAFCASS officer). The usual requirements regarding the consideration of mediation will continue to apply.

## **COSTS OF TREATMENT, THERAPY OR TRAINING**

It has always been and remains the position of the Legal Services Commission that it is not the role of the Community Legal Service Fund to meet the costs of treatment, therapy or training. They should be excluded from any application for prior authority and any bill of costs. This applies equally to public and private law Children Act cases and to any other cases.

Where it is not clear whether the costs of treatment, therapy or training are excluded, an application for prior authority will be refused for further information or confirmation (see sub-para 4 on page 274 in Volume 1 of the LSC Manual).

You are also reminded that the existence of public funding cannot affect the exercise of the discretion of the court (section 22(4) of the Access to Justice Act 1999). It is therefore inappropriate to transfer the responsibility for an expenditure to a publicly funded party because they are in receipt of public funding.

You should not reach any agreement which anticipates the costs of treatment, therapy or training being met from the Community Legal Service Fund, nor which would transfer liability for payment of an expense on the basis that a particular party is publicly funded. The Legal Team in the Children and Family Services Division will be happy to provide assistance on these issues. Please contact Jane Worsey ([jane.worsey@legalservices.gov.uk](mailto:jane.worsey@legalservices.gov.uk), telephone 020 7759 1130) or Lynn Graham ([lynn.graham@legalservices.gov.uk](mailto:lynn.graham@legalservices.gov.uk), telephone 020 7759 1129).

## **FORCED MARRIAGE**

You may be aware that forced marriage is increasingly being identified and is seen as a serious and significant issue within government. There is now a joint Home Office/Foreign and Commonwealth Office Unit which supports work around forced marriage. Against that background, we thought it might be helpful to remind you of the availability of public funding for urgent proceedings in this area. Most applications are dealt with by specialist staff in the London regional office but this will not necessarily be the case as there may be such cases outside London. Should you wish to obtain a certificate for proceedings around

forced marriage, you may want to speak to the Legal Team in the Children and Family Services Division at Head Office ([jane.worsey@legalservices.gov.uk](mailto:jane.worsey@legalservices.gov.uk) or [lynn.graham@legalservices.gov.uk](mailto:lynn.graham@legalservices.gov.uk)). It is important to recognise the vulnerability of these clients, both in England and Wales and abroad, and that there may be difficulties around applying the usual procedures, for example in relation to receiving full instructions.

If you want to know more about the Forced Marriage Unit visit the website for the Home Office or Foreign and Commonwealth Office at [www.homeoffice.gov.uk](http://www.homeoffice.gov.uk) or [www.fco.gov.uk](http://www.fco.gov.uk)

## **FAMILY DECISION MAKING GUIDANCE – RE-STRUCTURING**

We have consulted on the re-structuring and re-presentation of our Family Decision Making Guidance which appears in Volume 3 of the LSC Manual.

Although the consultation has closed, you can see the draft by going to [www.legalservices.gov.uk](http://www.legalservices.gov.uk), under CLS, then 'Consultations', then 'Civil consultation'. We have asked for comments from external stakeholders as well as staff. The aims are to make the guidance more accessible and user friendly by re-ordering it, so that the topics appear in a more logical sequence and also re-writing it, so that each section has been drafted along the lines of the domestic violence guidance. This was re-written in a

more narrative format in 2004. The restructured guidance will be included in the next update of the LSC Manual.

We have also consulted on the idea and format of a desk top aid which could be used by solicitors and staff when considering applications for emergency certificates covering family work. This could make life easier for those considering applications and would improve consistency in the use of standard wordings. In relation to standard wordings themselves, work is being done to improve the wordings in the area of family work. The intention is to remove duplications, improve any wordings which are unclear and create any additional wordings which are required.

***If you have any queries about any of the above, contact Lynn Graham, Senior Legal Adviser, Children and Family Services Division on 020 7759 1129 or [lynn.graham@legalservices.gov.uk](mailto:lynn.graham@legalservices.gov.uk)***

# PUBLIC INTEREST ADVISORY PANEL SUMMARIES

The Public Interest Advisory Panel (PIAP) reports to the Commission on cases that are considered to raise public interest issues. These reports are then taken into account by the Commission in decisions under the Funding Code. For more information on the Panel see the article in *Focus* 31 (page 2) and section 5 of the Funding Code Decision-Making Guidance in Volume 3 of the LSC Manual and on the website at [www.legalservices.gov.uk](http://www.legalservices.gov.uk)

Summaries of Panel reports are no longer included in the Manual. They are however available on the guidance section of the Commission's website on the page headed 'Public Interest Reports'. New reports will continue to be published in *Focus*.

Summaries of cases considered by the Panel were contained in *Focus* 32-46. A summary of the cases that have since been referred to the Panel is set out below. These are taken from the full reports of the Panel, but omitting individual client details. In each case the Panel gives an opinion as to whether or not the case has a significant wider public interest. Cases that have a significant wider public interest are usually assessed in one of three categories, namely 'exceptional', 'high' or simply in the general category of 'significant' wider public interest.

## PIAP 04/253

### Nature of Case

Multiple potential claims against various local authorities in respect of damages for lack of education and support and breach of right to education under art 2, Protocol 1 and art 8 of the European Convention on Human Rights (ECHR) for failure to implement statements of Special Educational Needs.

### Report of Panel

The Panel accepted that judicial review proceedings are not being fully effective in providing a remedy for children with special educational needs whose local authorities are not making proper provision for these needs as required by their statements of special educational needs. The Panel also accepted that this problem affects sufficient numbers of children, their families and the wider community so that any improvement which legal action can bring about would have significant wider public interest.

The Panel therefore considered that the proposed freestanding Human Rights Act proceedings do have significant wider public interest for the purposes of the Funding Code.

### Conclusion

Significant wider public interest

### Rating

High

## PIAP 04/254

### Nature of Case

Application for Investigative Help in respect of a proposed claim in tort against Merseyside Police in relation to a sexual assault by an off duty police officer on the applicant.

### Report of Panel

The Panel considered that this case had the potential to develop the law in relation to the vicarious liability of chief constables for the personal behaviour of officers. In particular, the Panel recognised that judicial consideration of

this case would be informed by the recent cases of *Lister v Hesley Hall Ltd* [2001] UKHL 22, [2002] 1 AC 769, [2001] 2 All ER 769, *KR v Bryn Alyn Community (Holdings) Ltd* [2003] QB 1441, [2003] 3 WLR 107 and *Weir v Bettison* [2003] EWCA Civ 111 and could lead to a change in the traditional approach to these cases.

### Conclusion

Significant wider public interest

### Rating

Significant

**PIAP 04/255****Nature of Case**

Proposed judicial review of the Department of Health Guidance on the provision of advice and treatment to young people under 16 on contraception and sexual and reproductive health.

**Report of Panel**

The Panel considered that there was no realistic prospect of establishing that the guidelines constitute a breach of, or interference with, art 8. The guidelines do not exclude parental involvement; but allow for this in appropriate circumstances. The case law does not allow for absolute control of children by parents, but instead requires a reasonable balance between a child's rights and parental control where necessary to protect that child. Although the Panel accepted that, if successful, the proposed proceedings would have an effect on large numbers of children and their families, it is not clear what the benefits would be.

**Conclusion**

No significant wider public interest

**PIAP 04/256****Nature of Case**

Proposed action against the Attorney-General for damages as a result of the courts not dealing with a point of European Law in an environmental case.

**Report of Panel**

The Panel recognised that this case raised an interesting European point of law, which may in an appropriate case have significant wider public interest. However, the Panel considered that this was the wrong case to establish the point. It was not clear, on the evidence before the Panel, that the European point had been properly argued before the courts. In addition, there was also no indication that, had it been fully argued, that the applicant would have succeeded.

**Conclusion**

No significant wider public interest

**PIAP 04/257****Nature of Case**

Proposed judicial review of the Secretary of State for the Home Department in respect of the National Asylum Support Service's (NASS) refusal to provide appropriate accommodation to the applicants to enable them to be released from detention on bail.

**Report of Panel**

The Panel considered that the decision not to provide accommodation was clearly challengeable. In addition, there was clear evidence that, should this case be successful, real benefits would be produced for a large number of asylum seekers.

**Conclusion**

Significant wider public interest

**Rating**

Significant

**PIAP 04/259****Nature of Case**

Proposed claims for race discrimination, breach of duty of care and negligence and violation of human rights in respect of a school exclusion.

**Report of Panel**

The Panel was impressed by the detailed evidence of the strength of the claim attached to this application. While the Panel questioned whether this case would develop any particular point of law, the impact of any judgment on the school itself would be sufficient to meet the criteria of significant wider public interest as set out in the Funding Code. In addition, it was accepted that the result could have a wider effect on all schools in the diocese and possibly those in the local authority area more generally.

**Conclusion**

Significant wider public interest

**Rating**

Significant

**PIAP 04/260****Nature of Case**

Proposed judicial review of the Secretary of State for the Home Department in respect of the alleged failure to provide adequate toilet facilities to a serving prisoner.

**Report of Panel**

The Panel considered that there was wider public interest in the court being given the opportunity to rule on whether the practice of 'slopping out' is in breach of arts 3 or 8 of the ECHR. The effect of any such ruling is likely to be of immediate effect on prisoners on the same wing as the applicant, and that effect alone is sufficient to meet the criteria of significant wider public interest under the Code. However, the Panel was of the view that there were likely to be wider implications for an unknown and potentially large number of prisoners in respect of this and other prison practices.

**Conclusion**

Significant wider public interest

**Rating**

Significant

**PIAP 04/261****Nature of Case**

Application for Investigative Help in respect of a proposed claim for damages against a local authority for misfeasance and/or false imprisonment.

**Report of Panel**

The Panel considered that this case would be considered on its own facts and determined in accordance with the existing misfeasance/false imprisonment case law. It was therefore unlikely to create any wider precedent or produce significant benefits beyond to the applicant himself.

**Conclusion**

No significant wider public interest

**PIAP 04/262****Nature of Case**

Proposed proceedings seeking a declaration of incompatibility between the Fatal Accidents Act 1976 and arts 14 and 8 of the ECHR.

**Report of Panel**

The Panel noted the clear distinction between the provisions of the Fatal Accidents Act 1976 and the Inheritance (Provision for Family and Dependents) Act 1975. Given the potential impact of this legislation, the Panel considered that there was clear significant wider public interest in the proceedings to seek a declaration of incompatibility. Should these proceedings be successful they would probably result in legislative reform, which could potentially benefit all non-natural dependant children of co-habiting relationships.

**Conclusion**

Significant wider public interest

**Rating**

Significant

**PIAP 04/265****Nature of Case**

Proposed clinical negligence proceedings in respect of a nursing home's failure to properly care for an elderly resident.

**Report of Panel**

The Panel considered that this was a very sad case that could well succeed on its merits. However, there was nothing in the application to indicate there was a systemic problem, or that this case was likely to provide any benefit beyond the applicant herself. Therefore, the Panel considered that this case was limited to its own facts and was unlikely to provide any wider public benefit.

**Conclusion**

No significant wider public interest

**PIAP 04/267****Nature of Case**

Proposed judicial review of the Local Government Ombudsman's (LGO) refusal to investigate the applicant's complaint on the basis that the matter has been the subject of previous court proceedings.

**Report of Panel**

The Panel considered that this case had significant wider public interest as it had the potential to provide guidance to both the LGO and all people seeking to pursue a complaint with the LGO, as to the appropriate interpretation to be given to section 26 of the Local Government Act 1976.

The Panel was of the view that whatever the outcome of the proceedings in respect of whether access to the LGO was allowed or not in cases that had been subject to judicial review, the benefit of clarification itself would still be of wider public benefit.

**Conclusion**

Significant wider public interest

**Rating**

Significant

**PIAP 04/268****Nature of Case**

Proposed judicial review of the Independent Police Complaints Commission's (IPCC) decision not to quash a dispensation granted by them.

**Report of Panel**

The grant of a dispensation appears to be effectively a summary dismissal, from which it is not possible to seek an internal review. Therefore, the Panel considered that the procedures used to issue one should be fair, open and independent. In addition, they must allow for the complainant to respond to any application for a dispensation.

The Panel therefore considered that this case had significant wider public interest as it had the potential to provide guidance on the appropriate procedures to be followed by the IPCC in future dispensation cases.

**Conclusion**

Significant wider public interest

**Rating**

Significant

**PIAP 04/269****Nature of Case**

Proposed judicial review of the Secretary of State for the Home Department regarding the level of pay provided to the applicant as a serving prisoner.

**Report of Panel**

The Panel agreed that the point raised but not discussed in counsel's opinion, regarding the use of the incentive scheme to determine pay level, potentially had significant wider public interest. In particular it was noted that such proceedings would affect large numbers of serving prisoners.

However, the Panel was not persuaded that the manner in which this case was being put forward disclosed any real cause of action, or enabled any realistic assessment of prospects of success to occur. The Panel were therefore of the view that, on the information provided, this case did not have significant wider public interest.

**Conclusion**

No significant wider public interest

**PIAP 04/266****Nature of Case**

Proposed claim for damages under the Human Rights Act 1998 for significant breaches of art 8 of the ECHR by Northumberland County Council and/or Northumberland Healthcare Trust arising out of child protection proceedings. The children also have related causes of action for personal injury and misfeasance in Public Office.

**Report of Panel**

The Panel recognised the seriousness of the allegations raised in this case and the importance of the issue to the clients. However, the Panel were not persuaded that this case had the potential to benefit significant numbers of other children. If the allegations in the case were proved, that would no doubt impact on the professionals involved in this case, but was unlikely to have wider ramifications to develop the law. All potential causes of action depended on proving malicious falsehood from the professional(s) concerned and thus, this case would turn on its own facts.

**Conclusion:**

No significant wider public interest

**PIAP 04/264****Nature of Case**

Proposed judicial review of the General Medical Council (GMC) concerning the process used to determine complaints before the Preliminary Proceedings Committee (PPC).

**Report of Panel**

The Panel considered that this case raised an important challenge to the procedure for complaining against doctors. The case had the potential to address the apparent unfairness of allowing doctors to put in additional material to the PPC with no opportunity for the patient to comment. A change in procedure would afford greater protection to patients.

The Panel recognised that existing professional conduct procedures concerning doctors were under scrutiny and that reforms were likely in the wake of the Shipman Enquiry. There was however no evidence that the specific issue in this case was already being addressed in such reforms. The Panel considered that this case had the potential to usefully feed into the reform process.

**Conclusion:**

Significant wider public interest

**Rating**

Significant

**PIAP 04/270****Nature of Case**

Application for a declaration that the applicant is entitled to instruct the solicitor of her choice under her legal expenses insurance.

**Report of Panel**

The Panel considered that the case raised an important issue for clients, namely whether they were entitled to instruct a solicitor of choice for the period prior to the formal issue of proceedings. This depended on interpretation of the European Council Directive on Legal Insurance Expenses. The Panel considered that the case raised an important issue concerning access to justice. Success might allow clients to instruct their own local, specialist and independent solicitors.

**Conclusion**

Significant wider public interest

**Rating**

Significant

**PIAP 04/271****Nature of Case**

Proposed personal injury claim arising from horse riding accident involving a novice rider. Potential strict liability claim under the Animals Act 1971.

**Report of Panel**

The Panel were not satisfied that this case had the potential to develop the law in this area, which had recently been considered by the House of Lords in *Mirvahedy v Henley* [2003] UKHL 16, [2003] 2 All ER 401. The Panel were equally not satisfied that the case was likely to lay down new guidelines for the protection of novice horse riders. In the view of the Panel, the case was instead likely to be considered on its own specific facts.

**Conclusion**

No significant wider public interest

**PIAP 04/272****Nature of Case**

Claim for damages pursuant to section 7 of the Human Rights Act 1998 and declaration for breach of art 8 of the ECHR arising from covert administration of medication to a mental health patient.

**Report of Panel**

The Panel were satisfied that for an applicant detained under section 3 of the Mental Health Act who was not in a position to give informed consent, a covert administration of drugs might be justifiable. In each case it would be necessary to balance all the facts to see if there was any breach of art 8 of ECHR. The Panel were unclear as to what was meant by counsel's references to 'legal uncertainty'. On present information, the Panel felt that this case would be decided on its own specific facts and would not be likely to develop the law.

**Conclusion**

No significant wider public interest

**PIAP 04/273****Nature of Case**

Proposed action for judicial review of the General Medical Council (GMC) for its failure to investigate a complaint on the basis of it falling outside the five year rule.

**Report of Panel**

Whilst the Panel were sympathetic to the difficulties caused by the lack of reasons provided by the GMC with their decision, they felt it was within the GMC's powers to have a limitation period, and to exercise discretion over when to allow a late complaint. The Panel noted that as further information had been provided, the matter had now been referred back to the screener whose further decision was awaited. As such the Panel considered this application to be premature.

**Conclusion**

No significant wider public interest

**PIAP 04/274****Nature of Case**

Proposed judicial review of the trustees of the vCJD Compensation Scheme in respect of the operation of the compensation scheme established for victims of vCJD and their carers.

**Report of Panel**

The Panel recognised the potential importance of the subject matter of the case but were not satisfied that it was likely to result in changes to the compensation scheme or otherwise to produce public benefits. The legal basis of the claim was not clear but whether framed in domestic or ECHR law, the Panel were not satisfied that it would be possible to establish any entitlement to compensation beyond the existing scheme. However, of the issues raised, the Panel felt that the restrictive definition of who might apply for compensation had the most potential for wider public interest.

**Conclusion**

No significant wider public interest



**PIAP 04/275****Nature of Case**

This case came before the Panel in 2002 (PIAP/02/158), when it was declared to be of high public interest in order to establish the circumstances in which a doctor may properly interfere in the treatment of a former patient.

**Report of Panel**

The Panel considered the judgment in this case to have been very clear in setting out the principles to be applied. It was likely that any appeal to the Court of Appeal would not challenge those principles, but would consider only how they should have been applied to the facts of this case. There would therefore be no further significant wider public interest to pursuing the appeal as the public interest questions had effectively been resolved.

**Conclusion**

No significant wider public interest

**PIAP 04/276****Nature of Case**

Claim for damages for anxiety and distress caused by the execution of a search warrant on the applicant's property and the subsequent refusal of the Police to disclose information against which the warrant was obtained.

**Report of Panel**

Whilst not identical to the facts of *R (on the application of Cronin) v Sheffield Magistrates' Court* [2002] EWHC 2568 (Admin), the Panel did not feel that this case had the potential to develop the law significantly beyond *Cronin*. This case, on its facts, was not a suitable vehicle for developing the law as the issuing of the warrant was not challengeable, and the Panel did not consider there to be any potential to influence current police practice.

**Conclusion**

No significant wider public interest

**PIAP 04/278****Nature of Case**

A proposed judicial review of the NHS in relation to bed spacing in a new hospital currently under construction.

**Report of Panel**

The Panel felt that whilst the question of hospital infections such as MRSA is currently very relevant, hospital bed spacing is only one factor contributing to the current problem. The Panel noted and agreed with counsel at para 10 of his opinion of 27 September 2004, in that the way forward is to write a further letter to the Trust asking the Trust whether it has considered its administrative law responsibilities and has carried out sufficient appraisals. This is likely to result in the hospital reconsidering and remaking its decision in a lawful way, as suggested by counsel's advice.

The Panel were not satisfied that this case had any likelihood of achieving any change in hospital design.

**Conclusion**

No significant wider public interest

**PIAP 04/279****Nature of Case**

An application under section 288 of the Town and Country Planning Act 1990 to quash a decision of the Planning Inspector of the National Assembly of Wales.

**Report of Panel**

The Panel felt that this matter was one of significant wider public interest. There appeared to have been irregularities in the planning process, the resolution of which would be relevant not only to the local community but also to future planning applications, in particular whether a planning scheme can be varied outside the scope of an earlier Environmental Impact Assessment.

In the view of the Panel a planning decision having only local impact could still be a matter of significant wider public interest, bearing in mind the numbers that could be affected by that particular decision.

**Conclusion**

Significant wider public interest

**Rating**

Significant

**PIAP 04/280****Nature of Case**

Proposed judicial review of a Parole Board decision regarding whether to take a prisoner released on licence's personal circumstances into account when considering a recall.

**Report of Panel**

The Panel considered this case to be of significant wider public interest. The case raised a discrete legal issue as to the factors relevant to Parole Board decisions on prisoner recall. Whilst the present applicant's personal benefit was very limited, this was a matter which could be relevant to a large number of people, especially prisoners with mental health problems who might benefit significantly from a less restrictive interpretation of the legislation.

**Conclusion**

Significant wider public interest

**Rating**

Significant

**PIAP 05/281****Nature of Case**

Proposed claim for damages for personal injury purportedly arising from repeatedly heading a football while playing league football.

**Report of Panel**

Whilst the Panel expressed sympathy for the applicant in this case, they considered that these proceedings appeared to be purely speculative and had no realistic prospect of success against any of the prospective defendants. This case would therefore not produce the benefits necessary to meet to the test for significant wider public interest, as set out in the Funding Code.

**Conclusion**

No significant wider public interest

**PIAP 05/282****Nature of Case**

Proposed appeal to the Court of Appeal from a decision of the Social Security Commissioner in respect of the applicant's eligibility for maternity grants.

**Report of Panel**

The Panel agreed that this case has significant wider public interest, as it has the potential to determine whether social security claimants with residence orders in respect of a child should be treated in the same way as the birth or adoptive parents of that child for the purposes of claiming maternity grants. The Panel noted that the Social Security Commissioner had granted leave to appeal on the basis this was a point of general public importance. While the Panel recognised that the numbers likely to be directly affected by this case were not large, they considered that any decision on this point may well have wider implications within social security law.

**Conclusion**

Significant wider public interest

**Rating**

Significant

**PIAP 05/283****Nature of Case**

Proposed multi-party action in respect of personal injury caused by exposure to IMURAN in the workplace.

**Report of Panel**

The Panel accepted that this case has sufficient wider public interest to justify limited public funding for investigative work. The Panel considered that this case raised a novel point of law, in that it related to claims for personal injury arising from the manufacture of a dangerous drug, as opposed to the use of such a drug, which distinguished it from other drug-related multi-party actions. In addition, the Panel considered that this case raised important issues regarding the compliance of a major drug manufacturer with its health and safety obligations towards its employees.

**Conclusion**

Significant wider public interest

**Rating**

Significant (at this stage)

**PIAP 05/284****Nature of Case**

Proposed appeal against the decision to strike out an action for misfeasance against the Commissioner of Police of the Metropolis.

**Report of Panel**

The Panel agreed that, if successful, this case had the potential to expand the law as established in *Watkins v Secretary of State for the Home Department* [2004] EWCA Civ 966. Such an expansion may result in greater transparency in the role the police play in the classification of prisoners.

The Panel had residual concerns regarding the prospects of success of this particular case in light of the limited evidence available in support of the applicant's claim. However, on balance, the Panel were minded to accept significant wider public interest in this case.

**Conclusion**

Significant wider public interest

**Rating**

Significant

**PIAP 05/285****Nature of Case**

Proposed action in judicial review against the decision of a registered social landlord to commence possession proceedings against the applicant on the basis of a breach of tenancy arising from the behaviour of her daughters and on Ground 14 of Schedule 2 of the Housing Act 1988.

**Report of Panel**

The Panel accepted that there was wider public interest in the pursuit of the judicial review proceedings. The identification of the extent to which a registered social landlord could be a public body for the purposes of administrative law, and the consequential status of the housing corporation guidance, had the potential to provide wider benefits to, among others, all tenants of registered social landlords. The Panel accepted that, since the possession proceedings would be a nullity if the claimant succeeded in her application for judicial review, and were private law proceedings anyway, the proposal that the issues be dealt with in the possession proceedings was not appropriate.

**Conclusion**

Significant wider public interest

**Rating**

Significant to High

**PIAP 05/286****Nature of Case**

Proposed judicial review of DWP guidelines which require written evidence that an applicant for a National Insurance Number (NINO) is actively seeking work.

**Report of Panel**

The Panel considered that this case has significant wider public interest, as it has the potential to clarify and enhance the procedures surrounding the grant of NINOs. It was clear from the supporting evidence provided that a significant number of people were experiencing difficulty in obtaining a NINO under current practices.

The Panel considered that the public interest element in this case was strengthened by the fact that the operation of the current procedures appears to be indirectly discriminatory against successful asylum seekers and immigrants.

**Conclusion**

Significant wider public interest

**Rating**

Significant

**PIAP 05/287****Nature of Case**

Proposed action for damages under the heads of misfeasance in public office, negligence and under the Human Rights Act 1998, in respect of losses incurred in respect of the Police and Probation Service's handling of the relocation of a convicted sex offender.

**Report of Panel**

The Panel considered that there were serious evidentiary problems with this case that meant that the merits were highly speculative. They considered that even if this case was strong enough on its merits, it was unlikely to add anything to the law of negligence or misfeasance and would be limited to its own facts.

**Conclusion**

No significant wider public interest



# PAYMENT DATES *for the second half of 2005*

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

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

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

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

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

#### Keeping us up to date

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

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**To order back issues of *Focus*, please contact Neil McLeavey on 020 7759 1838 or [neil.mcleavey@legalservices.gov.uk](mailto:neil.mcleavey@legalservices.gov.uk)**

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