

Moving Towards a Legal Services Commission

APRIL 1 is approaching fast and preparation for the changeover from the Legal Aid Board to the Legal Services Commission is gathering pace. In this issue of *Focus* you will find the new regulations made under the Access to Justice Act which come in on 1 April. The new Funding Code together with all the subsidiary documentation has been published and will be included in the Commission's new loose-leaf manual which will also be available very soon. The CLS Directory will be circulated widely in hard copy in late March and also available on the CLS Website and through the LSC's Website.

Contracting for Legal Help under controlled work contracts started on 1 January and has survived a challenge in the Divisional Court. The Divisional Court hearing lasted six days and the contracting arrangements were subject to the most intense scrutiny by a very senior court. In its judgment the Court was very helpful in identifying some key

points that will have to be addressed as the scheme develops over the next few months. These include, for example the position of new firms wishing to enter the market and allowable travelling time in contracts with niche practices serving particularly vulnerable clients.

We are confident that we can deal with all these key points quickly. The Court was impressed by the speed with which we reallocated new matter starts in immigration, for example as a consequence of audit failure and interventions by the OSS. I am sure that the flexibility that was commented upon by the Divisional Court in the contracting arrangements can be used positively as a means of resolving issues that arise between us and any organisation with a contract. It is better to talk than to litigate. I believe that we now have the go ahead to develop the contracting arrangements so that the public gets the best possible legal advice that is available. ■

Steve Orchard

Steve Orchard, Chief Executive, Legal Aid Board



ACCESS TO JUSTICE ACT

NEW REGULATIONS FROM APRIL INSIDE

The Lord Chancellor Approves the Funding Code

The Funding Code contains all the rules and procedures for deciding which individual cases should be funded by the Legal Services Commission as part of the Community Legal Service from 1 April 2000.

We published a draft Code for consultation in October 1999. This draft was sent to all firms applying for civil contracts. A number of amendments were made following the consultation and the revised Code was sent to the Lord Chancellor. On 14 January 2000, the Lord Chancellor approved the revised Code which is now being submitted for Parliamentary approval.

A full list of all the amendments made to the Code since the October draft is set out on pages 24-27. Many of these are minor or drafting amendments, but there have been some important changes. In particular, certain thresholds for support funding have been reduced to allow a greater range of cases to be helped:

- ▶ For Investigative Support, that is help with the investigative costs of a potential personal injury claim to see if it is suitable for a conditional fee agreement, the threshold for funding profit costs has been reduced from £5,000 to £3,000.
- ▶ For Litigation Support, that is public funding in support of a high cost personal injury claim proceeding under a conditional fee agreement, the threshold for funding profit costs/counsel's fees has been reduced from £20,000 to £15,000.
- ▶ The thresholds for providing funding for disbursements have, in both cases, remained unchanged.

We have also prepared detailed guidance on decision making under the Code explaining how the criteria and

procedures will be applied in practice. This guidance was issued for consultation in December. Some initial revisions to this guidance have been made, but we intend to make further amendments soon after implementation of the new scheme. We are now considering consultation responses but further comments are always welcome. Please send these to Colin Stutt at the Policy & Legal Department, 85 Gray's Inn Road, London WC1X 8TX.

Both the revised Code and the revised guidance are now available on our website at www.legal-aid.gov.uk. The Code and guidance will also be printed in full in volume 3 of the forthcoming Legal Services Commission Manual, available in due course from Sweet & Maxwell (see page 4). Meanwhile, further copies of the Code or guidance can be obtained from Frances May at the Policy & Legal Department, 85 Gray's Inn Road, London WC1X 8TX.

At the same time as approving the Funding Code the Lord Chancellor issued directions and guidance on other important aspects of the funding of cases as part of the Community Legal Service. The following are set out in full in this edition of *Focus*:

- ▶ Direction and guidance on Funding Priorities (see pages 17-18).
- ▶ Direction and guidance on Specific Budgets (see pages 18-20).
- ▶ Direction and guidance on the Scope of the Community Legal Service Fund (see pages 20-23). Note that the Funding Code Guidance referred to above also covers scope and includes the Lord Chancellor's direction and guidance together with further practical guidance on which cases may be funded under the new scheme. ■



C O N T E N T S	Moving Towards a Legal Services Commission	1	Civil Contracting – Matter Starts and Expansions of Work	7	LSC (Disclosure of Information) Regulations 2000	30
	Lord Chancellor Approves Funding Code	2	New Application Forms	8-9	CLS (Scope) Regulations 2000	30
	Prisoners' Rights: Crime or Civil?	3	Review Panel to Replace Area Committees	10	CLS (Financial) Regulations 2000	31-41
	Peter G. Birch CBE Appointed as LSC Chair	3	Criminal Defence Service Contracts	10	CLS (Costs) Regulations 2000	42-49
	Millennium Duty Solicitor Cover	3	How the Access to Justice Act 1999 Will Affect the Statutory Charge	11-13	CLS (Costs Protection) Regulations 2000	50-52
	Cambridge Office Moves	3	ABWOR Granted Within the Precincts of the Court	14	CLS (Funding) Order 2000 (Draft)	53-54
	New LSC Manual	4	Costs Appeals – Points of Principle	15-16	Civil Legal Aid (General) (Amendment) Regulations 2000	55-57
	Board Launches Specialist Support Lines	4	Lord Chancellor's Directions & Guidance	17-23	Proposed Payment Dates	58
	Manchester CLSP Launched	5	Funding Code Amendments	24-27	Specialist Support Line Details	Back page
	CLS Quality Mark	5	Community Legal Service Fund: Regulations	28-29		
	Financial Eligibility From April 2000	6				

Prisoners' Rights: Crime or Civil?

STOP PRESS

There are reports of some confusion about what category of work Prisoners' Rights falls into and how practitioners should claim payment for advice and assistance work in this category. This work now falls within the Crime category and will be funded as part of the Criminal Defence Service from October 2000.

The last edition of *Focus* (see *Focus 28*, December 1999, pages 8, 22, and 23) contained the list of areas of work which fall into this category and are therefore not covered by the General Civil Contract, these include advice and assistance and ABWOR in relation to Prisoners' Rights, Parole Board, Discretionary Lifer Panels, and applications to the Criminal Cases Review Commission. The full details can be found on pages 22 and 23 of *Focus 28*. All these matters fall within paragraphs 2 and 4 of the new crime franchise definition to be found on page 17 of *Focus 28* ("All matters relating to... sentence, length of imprisonment, detention or parole", and "All matters relating to the treatment or discipline of prisoners...")

Claims for payment in the relevant categories for matters started on a CLAIM10 before 1 January 2000, and on new matters started after 31 December 1999 should continue to be made on CLAIM10s and sent to the appropriate CLAIM10 processing office (Reading or Nottingham). These matters continue under Part III of the 1988 Legal Aid Act until criminal contracting is introduced in October 2000. ■

Millennium Duty Solicitor Cover

Over the Christmas and New Year period duty solicitors dealt with 6,948 requests from police stations. On 1 January 1,267 requests were received, which is the highest demand for one day that there has ever been. Only in 33 cases during the 10 day holiday period (less than 0.5% of the total requests) was it not possible to find a duty solicitor and almost half of these cases fell on 1 January.

In a letter to the Law Society's Gazette, Simon Hillyard, National Duty Solicitor Co-ordinator, said "Given the concerns beforehand about the ability to cope with the demand, I would like to thank duty solicitors for providing such a high standard of service during a time when there must have been many more pleasant alternatives than spending several hours in a police station." ■

PETER G. BIRCH, CBE

Peter G. Birch, CBE was appointed by the Lord Chancellor in December 1999 to chair the new Legal Services Commission which will replace the Legal Aid Board in April 2000. His term of appointment as Chair is for four years. Peter also became a member of the Legal Aid Board from 1 January 2000 and will chair the residual Board from April until it is wound down later this year.

Before embarking on his business career, Peter was commissioned during his two years National Service as a Second Lieutenant. He began his business career with Nestlé before moving to Gillette where he gained extensive experience in sales and marketing, held senior management positions across South East Asia, Africa, the Middle East and Eastern Europe and was ultimately Managing Director, UK in the early 1980s. Peter then moved to Abbey National as Chief Executive where he guided its development from building society to bank. He holds a range of non-executive directorships and is also Chair of Land Securities plc. Peter's appointment to chair the Legal Services Commission marks his entry into the public sector.

Peter Birch, CBE

Peter is President of the Middlesex Young People's Clubs. He is married with three sons and one daughter. His recreations are active holidays and swimming.

Peter is already getting to grips with his new role and looking forward to the launch of the Commission in April 2000. ■



Cambridge office moves

The Board's Eastern regional office, which covers Norfolk, Suffolk, Essex, Cambridgeshire, Hertfordshire and Bedfordshire, has moved to new premises ahead of the creation of the Legal Services Commission. The new address is:

Legal Aid Board
Eastern regional office
62-68 Hills Road
Cambridge CB2 1LA
(DX: 5803 Cambridge)

Telephone: 01223 366511 (switchboard)
Fax: 01223 222608. ■

The New Legal Services Commission Manual

Sweet & Maxwell will be publishing the new LSC Manual on 28 March 2000. If you have not already received details of this new loose-leaf publication you should contact Sweet & Maxwell on 020 7449 1111.

The forthcoming LSC Manual will contain the key statutory provisions relating to the Community Legal Service (CLS) Fund, which replaces civil legal aid, together with other relevant documentation. Its loose-leaf format will allow changes to be incorporated into the publication. Although many of the regulations and orders under the Access to Justice Act 1999 were not finalised at the time of going to press, they will all be included in the first update, together with narrative, commentary and guidance. This first update will appear by June 2000. In the interim, the statutory materials are reproduced in this edition of *Focus* (see pages 30 - 57).

Three volumes of the manual will be published on 28 March 2000: The Framework Volume; Contracting and The Funding Code. A fourth volume, dealing with the Criminal Defence Service will be issued in October 2000. The four volumes will be available in a variety of combinations to suit civil and criminal suppliers, or those who practice in both fields. There is also the option of

purchasing a CD-ROM, which can be used on internal and external networks.

Sweet & Maxwell are offering the following combinations at fixed prices, with a 20% discount for orders made before 28 March 2000:

	Regular price	Pre-publication order price
Volumes 1-4*		
Loose-leaf only	£125	£99.95
Loose-leaf + CD-ROM	£160 + VAT	£128 + VAT
Volumes 1-3 (CLS)		
Loose-leaf only	£95	£76
Loose-leaf + CD-ROM	£130 + VAT	£104 + VAT
Volumes 1 + 4 (CDS)*		
Loose-leaf only	£80	£64
Loose-leaf + CD-ROM	£115 + VAT	£92 + VAT

Single volume

Each volume is available separately at a cost of £45. The CD-ROM is not available with this option.

* No charge will be made for Volume 4 until available. ■

Legal Aid Board Launches specialist consultancy lines and support services pilot for General Civil Contract holders.

The Board announces the launch of specialist consultancy services aimed at offering support to suppliers with a General Civil Contract. The areas of law covered in the pilot are:

**Human Rights and Public Law;
Housing;
Immigration;
and Employment.**

This innovation, which is part of the Board's Methods of Delivery pilot, marks an important development in plans for the Community Legal Service of the future.

► consultancy lines

The lines will be staffed by experts in their field who can offer support on practical and procedural problems; help with difficult tactical decisions and advice on substantive law. Legal reference materials can be provided and advice can be followed up in writing.

Calls are not required to relate only to cases for eligible clients. The principle being that the lessons learnt are applicable to future eligible client work.

For details of these services, their telephone numbers and opening times, please refer to the *cut out and keep* back page of this edition of *Focus*.

The services are available free of charge to General Civil Contract holders. The most it will cost is the price of a local telephone call.

The lines will be busy so callers need to have the following information ready:

- General Civil Contract account number;
- case reference (in case further work is required);
- a summary of the key facts and dates;
- the questions to be answered.

► complex cases on referral

Where all parties agree, it will be possible to refer complex cases (where the client is financially eligible) to the specialists. The second tier service will then take on conduct of the case.

► training

Training programmes are currently being developed and details of courses will be available soon. Information will be published in the next edition of *Focus* and/or sent directly to General Civil Contract holders. Courses will be offered at special rates for all those with contracts but full rate places may also be available for those without contracts.

Coverage

The services described above are *national services* and can therefore be accessed by any supplier with a General Civil Contract in England or Wales.

In addition, a regional service is being funded. *Tyndallwoods Solicitors* are providing a second tier support service aimed at suppliers in the Legal Aid Board's Birmingham Region (Region 6). This will offer support in the following areas of law: Immigration; Welfare Benefits; Community Care and Health (not clinical negligence). Details of this service will be sent directly to all contracted suppliers in Region 6. ■

Manchester CLSP launched

Over one hundred funders, providers and users of legal services gathered in Manchester recently for the launch of the city's "Community Legal Service Partnership" (CLSP). The meeting began with keynote speaker, Jane Kennedy MP, Parliamentary Secretary at the Lord Chancellor's Department, outlining the Government's vision of a local network of quality legal services, supported by co-ordinated funding, based on priority local need.

The Minister explained that central to all partnerships will be the Legal Aid Board and the local authority, who will work with other funders and providers to deliver a strategic plan for services. Marilyn Taylor, Lead City Council Spokesperson on Health and Social Care, and Carolyn Schofield, Regional Planning and Partnership Manager from the Legal Aid Board, spoke of the benefits of establishing a CLSP in Manchester.

The broad and inclusive nature of CLSPs was illustrated by the range of speakers that followed. The provider perspective was given by speakers representing the voluntary sector, local authority services, the advice sector and private practice. Fundamental to CLSPs is consultation with users and the meeting was also addressed by Khan Moghal, Director of Manchester Council for Community Relations.

All speakers endorsed the development of a CLSP for Manchester. A commitment was publicly signed by the meeting's Chair Dave Addy, North Western Regional Director for the Legal Aid Board, and local speakers, agreeing to work jointly to deliver:

- ▶ a network of good quality legal and advice services;
- ▶ supported by a co-ordinated funding strategy;
- ▶ that delivers appropriate services to local communities;
- ▶ based on a realistic assessment of local needs.

The launch of Manchester's Community Legal Service Partnership was a successful, well attended event. A steering group has now formed to ensure that the Manchester Partnership is ready for the national launch of the Community Legal Service on 3 April 2000. ■



Dave Addy signing concordat with (left to right) Councillor Marilyn Taylor, Ian Ford (Manchester Advice), Jane Kennedy MP, John Potter (Manchester Law Society) and Khan Moghal.

Community Legal Service Quality Mark

A new Community Legal Service logo is currently being developed by the Lord Chancellor's Department. This will be introduced in April and will act as a quality mark for contracted suppliers. It will gradually replace the legal aid franchise logo for civil franchise holders, however the franchise logo for crime will remain in use until the launch of the Criminal Defence Service in October 2000. Practitioners should be aware of the new logo if they are planning to print new stationery. Logo packs will be sent out to all contract holders in late March, however its use will be strictly embargoed until 3 April. Those planning to print new stationery before the logo is available should continue to use the current legal aid and franchise logos. ■

Financial Eligibility – 1 April 2000

All income and capital figures are 'disposable'.

For all levels of assistance there are dependants' allowances to be deducted from income at the following rates:

Partner	£ 29.75 pw (£1,551 pa)
Child age 15 or under	£ 26.60 pw (£1,387 pa)
Child age 16 or over	£ 31.75 pw (£1,656 pa)

The following services are available without reference to the client's financial resources.

1. Provision of general information about the law and legal system and availability of legal services.
2. Initial legal advice consisting of such amount of Legal Help authorised under contract to be provided without reference to the client's financial resources. It should be noted that only 'not-for-profit' sector contracts contain such authority.
3. Legal Representation in special Children Act and related proceedings.
4. Legal Representation in proceedings before a Mental Health Review Tribunal under the Mental Health Act 1983.
5. Legal Representation for applications pursuant to sections 3(2) or 14(2) of the Child Abduction and Custody Act 1985 and to the registration of or the refusal to register a foreign maintenance order or the registration of a judgement.

Legal Help; Help At Court; and Legal Representation before Immigration Adjudicators and the Immigration Appeal Tribunal

Automatically qualifies on income if in receipt of Income Support, Income Based Jobseeker's Allowance, Working Families Tax Credit*, Disabled Persons Tax Credit* but may still be out of scope on capital.

*passported only if the amount (if any) to be deducted under Sections 128(5)(b) or 129(5)(b) of the Social Security Contributions and Benefits Act 1992 has been determined at not more than £70 per week.

There is no automatic qualification on capital therefore disposable capital must be assessed in all applications.

Ineligible if disposable capital exceeds limits below:			
	No dependants	One dependant	Two dependants
Capital limits	£1000	£1335	£1535

Capital limit increases by £100 for each subsequent dependant.

Ineligible if weekly disposable income exceeds £84.

There are no contributions for these levels of service.

Family Mediation; and Legal Representation in respect of family proceedings before a Magistrates' Court (other than proceedings under the Children Act 1989 or Part IV of the Family Law Act 1996.) (Authorised Representation)

Automatically qualifies on income and capital if in receipt

of Income Support or Income Based Jobseeker's Allowance.

Automatically qualifies on income if in receipt of Working Families Tax Credit*, Disabled Persons Tax Credit*, but may still be ineligible on capital.

*passported only if the amount (if any) to be deducted under Sections 128(5)(b) or 129(5)(b) of the Social Security Contributions and Benefits Act 1992 has been determined at not more than £70 per week.

Ineligible if disposable capital exceeds limits below:			
	No dependants	One dependant	Two dependants
Capital limits	£3000	£3335	£3535

Capital limit increases by £100 for each subsequent dependant.

Ineligible if weekly disposable income exceeds £180.

There is no contribution system for either Family Mediation or Help with Mediation. For Legal Representation in respect of family proceedings before a magistrates' court there is a weekly contribution of 1/3 of excess income over £76. No contribution is payable if income below £76 per week.

Help With Mediation

Clients who are/were funded for Family Mediation automatically qualify financially for Help with Mediation in respect of that mediation. Clients who are seeking Help with Mediation but who did not receive funding for Family Mediation should have their financial eligibility assessed by the applying solicitor in accordance with the eligibility rules for Family Mediation and Authorised Representation outlined above.

General Family Help; Legal Representation (other than above); and Support Funding

Automatically qualifies on income **and** capital if in receipt of Income Support or Income Based Jobseeker's Allowance.

lower income limit £2,723 per annum
upper income limit £8,067 per annum

lower capital limit £3,000
upper capital limit £6,750

Note: *There are no longer higher income and capital limits for personal injury cases.*

Monthly income contribution of 1/6 of excess annual income over £2,723. Contribution from capital of excess over £3,000.

Criminal Legal Aid

Free legal aid income limit £52 pw
Free legal aid capital limit £3,000

Ongoing weekly contribution from income of £1 for every £3 or part of £3 by which weekly disposable income exceeds £52. No contribution if disposable income is less than £53 per week. Contribution from capital of excess over £3,000.

Civil Contracting – Matter Starts and Expansions of Work

or “How can I complete a complex case for the £150 the Board says is my average case cost?” The answer is “You probably can’t and we don’t expect you to!”

We are concerned at the level of misunderstanding of the contract arrangements covering the cost of individual cases and the calculation of your Schedule Payment Limit. This item is intended to correct some of the areas of misunderstanding and reiterate our intentions, with particular regard to the Immigration category of work where dispersal to the regions has exacerbated the problem.

However, the same principles apply to all categories of work.

The position in a nut-shell is:

You must not take on more cases than are authorised under your contract. Provided you stay within the matter start limit, we will pay, subject to assessment, for work actually and reasonably done on those individual matters within the rules of the contract. This is so even where the total eventual cost of those matters is more than your schedule payment limit, or where you exceed your previous average case cost.

In individual cases, the General Civil Contract, (“the Burgundy book”) does provide for a financial limit per case at page 122, called the Upper Financial Limit. In an individual case, you must not exceed this sum without coming to the Board for prior authority. The operation of this limit corresponds broadly to the old green form extension system, only it provides a much more generous limit on each case before Board authority is required. The limit for Legal Help is £500 for most cases, but £1,000 for immigration asylum, or £2,000 for immigration asylum if fully franchised. In cases where controlled legal representation is provided before a tribunal, there is a **separate** limit of £750 (or £1,500 if fully franchised) which applies to the costs of that representation. These figures were amended to the current levels by post-consultation changes made to the contract in December 1999. They exclude VAT.

Provided you stay within the Upper Financial Limit as initially set for a case, or as extended on application to the Board, and the case is within your authorised number of matter starts, we will pay, subject to assessment, for all work actually and reasonably done on the case.

The average cost figures quoted in your contract are *not* a statement of our payment intentions for each matter start in each category of work. The average cost figures are used to calculate an appropriate flow of monthly payments to your firm which is intended to match the anticipated flow of your claims for controlled work. The figures are based wherever possible on actual data

for your office’s claims in each category of work. For the vast majority of practices this calculation produces a reasonable payment profile which does not differ markedly from the payments that would be due on work claimed during the relevant period. Where there has been a change in the profile of work and associated claiming patterns this calculation will be updated as further information becomes available.

We aim to ensure that adjustments are made to your schedule payment limit to bring your payments broadly into line with your claims during the period covered by the schedule. If there is still a difference towards the end of the first schedule, an appropriate reconciliation and adjustment will be made either during that schedule or to the next (see Burgundy book, schedule clause B19 at page 33).

We are committed to the provision of quality services in all categories of work. In the immigration category, we are particularly concerned to support the provision of services to asylum seekers dispersed to the regions through the Home Office dispersal programme. The interim arrangements for dispersal came into play in December 1999, and will be formally introduced under the Immigration and Asylum Act from April 2000. However, the effect of dispersal may have a significant impact on claiming patterns, and historical figures may be inadequate indicators accordingly. Where this is the case, practitioners must contact their regional office and discuss the most appropriate way to make speedy adjustments.

You should contact your Account Manager urgently if you believe that you will be in financial difficulty without an early change to your schedule payment limit. Similarly, you should contact your Account Manager as soon as you are running out of matter starts for legitimate matters. We will give you additional matter starts to carry you through to the end of June, at least.

The Board will conduct a major review of contracts from April 2000. This will lead to adjustments to both matter starts and schedule payment limits. The Board will consult on the basis for this review shortly. In the meantime the Board’s policy is that no office should run out of matter starts for work provided properly within the terms of the contract prior to the review.

Please do not turn clients away purely because of your matter start allocation; rather, contact the Board if you are running out. Case start and financial adjustments will be available – PLEASE ASK. ■

New application forms

STOP PRESS

Civil applications arising from criminal proceedings

An amended version of the Civil Substantive and emergency application forms will be produced shortly for civil applications arising from criminal proceedings under the 1988 Legal Aid Act. These applications will be subject to the usual merits tests under the 1988 Act, which will continue in force for criminal matters after April 2000 until the creation of the Criminal Defence Service. The relevant proceedings are:

- ▶ Proceedings for judicial review and Habeas Corpus arising from criminal proceedings;
- ▶ Applications for bail including applications to the High Court;
- ▶ Proceedings under RSC Order 115 in Schedule I to the Civil Procedure Rules 1998 for confiscation or forfeiture in connection with criminal proceedings;
- ▶ Representation on applications to the High Court concerning representations against the grant of a voluntary bill of indictment.

Copies of the amended forms will be distributed separately to the first LSC edition of the forms pack but included in subsequent updates. CLS means forms must be completed to accompany these applications.

The Board is updating its application forms in line with the provisions of the Access to Justice Act 1999, the Funding Code and the General Civil Contract. The current list of forms affected is set out in the table below.

All applications for new certificates and **civil** ABWOR approvals under the 1988 Legal Aid Act must be completed by 31 March 2000 and received by regional offices by 2 May 2000. This applies to forms APP 1 - 4, 11 and 12. ABWOR applications for matters now within the crime franchise, and applications for civil certificates arising from criminal proceedings are not affected by this timetable.

From 1 April 2000, all initial applications for certificates under the 1999 Act must be made using the new forms.

Applications for post-issue amendments, authorities and payments for cases started under the 1988 Act and the 1999 Act must be made on the forms listed in the table – in most instances the new forms can be used for both old and new cases.

Some forms have not been amended at all (the L17 and most of the criminal forms for example) and where this is so, the existing version will continue in use after April 2000 until otherwise amended. We may amend the CLAIM10 and ABWOR forms to reflect the fact that these forms of assistance will only be available in matters within the crime franchise from 1 April 2000 when the forms are next updated, but for the moment please continue to use the existing forms as set out in the table.

Suppliers who have a LAB master pack of forms will be receiving a new LSC pack in mid-March. This will include all the new forms except the Litigation Support form (CLSAPP2) which will be distributed separately. The licensed disk companies who provide the current forms will also be providing their customers with updates in time for 1 April and specific queries regarding these software packages should be made to your supplier. As with the current set of forms, the new versions will also be available on the Law Society's website at www.lawsociety.hotdocs.co.uk. If you have any queries, please contact the Business Support Unit on one of the following numbers: 020 7813 8907, 020 7813 8769, 020 7813 8753.

The first version of the LSC forms pack will be based on the post-consultation version of the Funding Code, and draft regulations under the Access to Justice Act available at the time the pack was produced. An update to the pack is planned for Summer 2000, and any comments which you have on the first edition of the forms will be welcome – please write to the Business Support Unit at 12 Roger Street, London WC1N 2JL.

LEGAL SERVICES COMMISSION FORMS

APPLICATION FORMS	DESCRIPTION	FORMERLY
CLSAPP1	Application for CLS Funding Certificate. Legal Representation/Investigative Help. Non-Family Proceedings (1999 Act cases only)	APP1 & 12
CLSAPP2	Application for CLS Funding Certificate. Litigation Support (1999 Act cases only) To be published separately to first LSC forms pack	N/A
CLSAPP3	Application for CLS Funding Certificate. General Family Help and Legal Representation (including authorised representation) in Family Proceedings (1999 Act cases only)	APP2& 4
CLSAPP4	Application for CLS Funding Certificate. Help with Mediation (Family) (1999 Act cases only)	N/A
CLSAPP5	Application for CLS Funding Certificate. Legal Representation in Special Children Act Proceedings (1999 Act cases only)	APP3
CLSAPP6 CLS APP6a	Fax Emergency Application (1999 Act cases only) Fax Emergency Application – <i>Means</i> (1999 Act cases and civil applications arising from criminal proceedings)	APP11 APP11a
CLSAPP7	Availability of Family Mediation form (1999 Act cases)	FORM 29
CLSAPP8	Application for amendment or prior authority in civil cases (1988 & 1999 Act cases)	APP6 & 13
CLSAPP11	Application for Discharge (1988 & 1999 Act cases)	APP8

ADMIN FORMS

CLSADMIN1	Preservation or recovery under the statutory charge and request to postpone enforcement (1988 & 1999 Act cases)	ADMIN 1
CLSADMIN 2	Change of Details (1988 & 1999 Act cases)	ADMIN 5
CLSADMIN3	Application to suspend contributions/undertaking as to costs (1988 & 1999 Act cases)	ADMIN 3
CLSADMIN4	Payment of monies (1988 & 1999 Act cases)	ADMIN 4

CLAIM FORMS

CLSCLAIM1	Claim for assessment of costs or payment of taxed costs in civil cases (including authorised family representation) (1988 & 1999 Act cases)	CLAIM 1, 5
CLSCLAIM2	Report in civil cases – costs met in part or full by other party (1988 & 1999 Act cases)	CLAIM 2
CLSCLAIM3	Counsel’s fee note in civil cases (1988 & 1999 Act cases)	CLAIM 3
CLSCLAIM4	Claim for payment on account in civil cases (1988 & 1999 Act cases)	CLAIM 4
CLAIM5I	Claim for costs for assistance by way of representation. (<i>Crime and civil</i>) (1988 & 1999 Act cases)	CLAIM 5

MEANS FORMS

CLS MEANS1	Means assessment form. For applicants not receiving Income Support or Income-Based Jobseeker’s Allowance (1988 & 1999 Act cases)	MEANS 1
CLS MEANS1a	Information about your self employed work (1988 & 1999 Act cases)	MEANS 1 a
CLS MEANS1b	Information about your partnership (1988 & 1999 Act cases)	MEANS 1 b
CLS MEANS1c	Information about a shareholding in a private limited company and/or directorship (1988 & 1999 Act cases)	MEANS 1 C
CLS MEANS2	Means assessment form. For people who receive Income Support or Income-Based Jobseeker’s Allowance (1988 & 1999 Act cases)	MEANS 2
CLS MEANS3	Means assessment form. For use if your main home is outside the UK (1988 & 1999 Act cases)	MEANS 3
CLS MEANS4	Means assessment form. Child under 16 (1988 & 1999 Act cases)	MEANS 4
CLS MEANS5	Change in capital (1988 & 1999 Act cases)	MEANS 5
CLS MEANS 6	Means assessment form for applications for Representation in Specified Proceedings in the Magistrates’ court (1999 Act cases only)	PART OF APP4
CLSCK3	Financial assessment forms checklist	CK3

NOTE:

The following forms will not be amended when the first LSC forms pack is produced – please continue to use existing versions:

APP4	Application for assistance by way of representation including application for payment on account of costs. (<i>Criminal category only from 1/4/2000</i>)
APP5	Refusal of Criminal Legal Aid
CLAIM6	Claim for payment on account (disbursements only) in ABWOR (<i>Crime only</i>)
CLAIM7	Claim for lower standard fees in criminal cases
CLAIM8	Higher or Non-Standard Fees
CLAIM9	Counsel’s fee note criminal cases
CLAIM10	Legal advice and assistance. (<i>Crime only</i>)
CLAIM11	Representation in Contempt proceedings (forms available from the London regional office)
CLAIM12	Application for payment on account
CLAIM13	Claim by court duty solicitor
CLAIM14	Claim for advice at police station
CLAIM15	Claim for standby payment
CLAIM16	Claim for representation
L17	Statement of earnings
	Duty Solicitor call centre swop call notification

The following Notices published by OYEZ will be amended once Regulations have been finalised:
Notice of discharge or revocation of emergency certificate, Notice of issue of (emergency) certificate



Replacement of area committees – the review panel

Arrangements for the review panel which will hear reviews of Legal Services Commission decisions on the grant or withdrawal of funding and costs assessment after 1 April 2000 have been finalised following consultation (see *Focus 28* pages 29-30) and will be put to the Commission for formal adoption.

The Law Society have now confirmed that solicitor review panel members will be able to claim CPD points for time actually spent at committee hearings, up to a maximum of 75% of the annual requirement.

Letters appointing existing area committee members to the review panel have been sent out by Regional Directors. Remuneration for the new committee meetings will be calculated on the same principles as applied to area committees.

Membership of the panel involves a commitment to attend a training event on the Funding Code and review procedures. Appointments to the review panel will lapse unless the member has attended an event by, at the latest, the anniversary of their appointment. Members should, however, aim to attend a training event as soon as possible, as Regional Directors will seek to appoint committees from review panel members who have been trained on the new procedures. The training provided will also be a useful overview of the Funding Code for members acting for CLS funded clients.

Details of training events have been sent out by regional offices. Attendance at an event will be remunerated at the area committee rate. ■

Criminal Defence Service Contracts for Advice, Assistance and Magistrates' Court Representation

In *Focus 28*, the Board published details of the timetable for obtaining a criminal category franchise in order to be eligible for the award of a contract to undertake advice, assistance and magistrates' court representation from October 2000. From the date of introduction of these contracts, the Legal Services Commission (the body that will supersede the Board in April 2000) will not fund work other than through contracts with the Commission.

General CDS contracts – franchising timetable

6 March 2000	Implementation of revised supervisor standard (<i>Focus 28</i> stated this was to be 2 February 2000, the implementation date has been revised)
29 February 2000	Closing date for franchise applications to be guaranteed to receive a pre-franchise audit by 31 August 2000 and so, if standard is achieved, be eligible for a contract from October 2000
30 April 2000	Closing date for franchise applications to be guaranteed to receive a preliminary audit by 31 August 2000 and so, if standard is achieved, be eligible for a temporary contract from October 2000
October 2000	Commencement of contracts for advice, assistance and magistrates' court representation – limited to franchised firms and firms having passed a preliminary audit

(This is a summary of the article published in *Focus 28*)

Specialist CDS contracts – prisoners' rights and CCRC cases

Since 1 January 2000, prisoners' rights work and Criminal Cases Review Commission work has fallen within the scope of the crime franchise category. From October 2000, firms operating under a General CDS Contract will be permitted to do this work under that contract. The Board is aware of a number of firms which do not undertake general criminal defence work, and so are unlikely to qualify for a General CDS Contract, but which specialise in niche areas of work.

In *Focus 28*, the Board explained that a separate contractual framework is being developed for niche areas of work – in particular advice, assistance and representation to prisoners, and acting in Criminal Cases Review Commission cases. This framework will enable contracts to be awarded to firms specialising in these niche areas of work.

Firms interested in being involved in developing the arrangements for specialist contracts in prisoners' rights, and CCRC cases are invited to contact:

Robert Heard, Criminal Defence Services,
Legal Aid Board, 85 Gray's Inn Road, London WC1X 8TX.
(DX 328 London/Chancery Lane).
Telephone 020 7813 8677. ■

How the Access to Justice Act 1999 will affect the statutory charge

As with the Legal Aid Act 1988 and previous Acts, under the Access to Justice Act clients will have to contribute towards the cost of funding their cases from property they gain or keep in the proceedings.

Although the charge works in much the same way as before the Access to Justice Act, there are differences, as this article will explain. Services that begin after the Access to Justice Act comes into effect will be governed by the new provisions.

The relevant statutory provision is section 10 (7) Access to Justice Act 1999. It reads:

‘Except so far as regulations otherwise provide, where services have been funded by the Commission for an individual as part of the Community Legal Service –

- (a) sums expended by the Commission in funding the services (except to the extent they are recovered under section 11) [from the opposing party], and**
- (b) other sums payable by an individual by virtue of regulations under this section [this includes interest],**

shall constitute a first charge on any property recovered or preserved by him (whether for himself or any other person) in any proceedings or in any compromise or settlement of any dispute in connection with which the services were funded.’

Like the corresponding provisions in previous Acts, this has three purposes:

- ▶ it ensures that people pay towards the cost of their cases as far as they are able;
- ▶ it encourages people to act reasonably and not to incur excessive legal costs, and
- ▶ it puts the person whose legal costs are publicly funded in a similar position to a privately paying client.

Under what levels of service does the charge arise?

There are no longer two kinds of charge, as there were under sections 11 and 16 Legal Aid Act 1988. There is a single charge which may or may not arise, depending on the level of service.

The charge does **not** arise in respect of the cost to the Commission of:

- ▶ Legal Help, except in relation to family, clinical negligence or personal injury disputes or proceedings. This is unlike advice and assistance under the Legal Aid Act 1988.;

- ▶ Help at Court, except in relation to family, clinical negligence or personal injury proceedings;
- ▶ Family Mediation; or
- ▶ Help with Mediation:

see Regulation 43(3) Community Legal Service (Financial) Regulations 2000.

When is property recovered or preserved?

In previous decisions on the statutory charge, the courts have said that:

- ▶ property has been recovered or preserved if it has been at issue in the proceedings. It is recovered by a claimant or applicant if it is the subject of a successful claim. It is preserved by the defendant or respondent if a claim fails: see [Hanlon v The Law Society](#) HoL [1980] 2 All ER 199 [1980] 2 WLR 756.
- ▶ what is at issue is a question of fact. The pleadings, affidavits and correspondence, judgment and/or order will show what property was at issue between the parties ([Hanlon](#)).
- ▶ the recovery or preservation of the *possession* of property can give rise to the charge. Even if the title to the property is not in issue, if the proceedings reduce it or restore it to the possession of its owner, he or she has recovered property: see [Curling v The Law Society](#) CA [1985] 1 All ER 705. If as a result of the proceedings, the owner is able to unlock the value of the property, the charge arises.

All these principles will remain the same, as they rest on interpretations of very similar wording to that in section 10(7) of the new Act.

Where the dispute or proceedings result in a payment to someone other than the client, such as a dependent child or a creditor, but the payment is for the benefit of the client, the charge will in future cases arise on that payment. In this respect, the Access to Justice Act has **wider effect** than the Legal Aid Act 1988.

Under the 1988 Act, if an award or settlement:

- ▶ was for a substantial amount of the matrimonial assets to a dependent child, the Board would have pointed to the decision in [Draskovic v Draskovic](#) [1981] Family Law Reports 1987. According to this decision, it is contrary to public policy to make an order transferring matrimonial property to children where to do so has the effect of defeating the statutory charge;
- ▶ was for money or other property to be transferred to an

assisted person's creditors, the transfer would be treated as a benefit to the assisted person under the principle in Manley v The Law Society [1981] 1 All ER 401.

Where this happens in a case under the 1999 Act, these decisions will no longer need to be relied upon, as the charge will attach anyway by virtue of the words "whether for himself of any other person".

Is any property exempt?

Regulation 44 Community Legal Service (Financial) Regulations 2000, like Regulation 94 Civil Legal Aid (General) Regulations 1989 before it, lists exempt property. The exemptions are the same as before **except for the following**:

- ▶ interim payments are no longer exempt. Instead the regional office can pay or direct the solicitor to pay the client, rather than the regional office, an interim payment, if it considers it essential to protect the client's interests or welfare (Regulation 20(3) Community Legal Service (Costs) Regulations 2000);
- ▶ the exemption for personal possessions is wider, but can be disappplied if the possessions are exceptional, particularly in quantity or value (such as works of art or antiques);
- ▶ clarifying an area that has been uncertain, payments on or after the making of an occupation order under Part IV Family Law Act 1996 are to be exempt;
- ▶ lump sums or property adjustment orders are exempt if they are made after divorce, in substitution for spousal maintenance, under section 31(7A) or (7B) inserted in the Matrimonial Causes Act 1973 by the Family Law Act 1996.

What is the extent of the charge?

The way the charge is calculated takes account of the different way of funding cases in the new Act. But the basic principle – that the deficiency on the client's account gives rise to the charge – is the same. The charge consists of:

- ▶ the amount of money the Commission has spent on funding services at all levels in connection with the proceedings or dispute;
- ▶ less any costs recovered by the client in the proceedings or dispute;
- ▶ less any payment by the client by way of contribution or otherwise.

Regulations 40(2) and (3) and 43(2) make detailed provision for the calculation of the charge. The cost of getting the supplier's bill assessed is taken out of the calculation of the charge, as it was before: see Regulations 120 Civil Legal Aid (General) Regulations and Regulation 40(4) Community Legal Service (Financial) Regulations 2000. But the new Regulations make clear that the exemption does not include the cost of drawing up the suppliers' bill.

The charge includes interest: see Section 10(4)(b) and (7)(b).

Under the 1988 Act the Board treated the amount of the charge as being the deficiency to the Fund or the value of

the property recovered or preserved, whichever was less. Under the 1999 Act, the value of the property at the time of recovery or preservation can no longer determine the level of the charge where it is agreed to postpone enforcement and register the charge on property. For how the Commission will charge interest on these cases, see below.

Who does the charge belong to?

Suppliers will find that whether the charge benefits them or the Commission depends on similar principles as before. The charge belongs to the Commission, except where it arises in respect of the costs of Legal Help or Help at Court. If, after getting Legal Help or Help at Court and another level of service, the client goes on to recover or preserve property, the charge will be in favour of the Commission: Regulation 45 Community Legal Service (Financial) Regulations 2000.

The suppliers' duties to protect the charge continue unchanged. The charge represents public money. Suppliers are responsible for making sure that the system works properly so that where the charge arises, it is secured. The Legal Aid Board can defer payment of a bill where there has been a loss to the Legal Aid Fund because of a solicitor's breach of the regulations. Under a contracted scheme the Commission will have wide powers of recoupment.

Under the 1989 Regulations, any money payable to the client in proceedings for which they had legal aid had to be paid to their solicitor, or if they were no longer instructing a solicitor, to the Board. The new provisions work slightly differently. Any money recovered in the dispute or proceedings must be paid to the client's solicitor unless it is:

- ▶ maintenance, or
- ▶ paid into court and invested for the client's benefit and exempt: Regulation 18(2) Community Legal Service (Costs) Regulations 2000.

As before, the solicitor must report any attempt to get round this rule: Regulation 18(3). The solicitor must also report to the regional office straight away when the client recovers or preserves property: Regulation 21.

Suppliers should bear in mind that with cases under both the 1988 and 1999 Acts, even if the client is no longer getting publicly funded services, any money or other property payable to the client in the proceedings must not be paid directly to them.

Under the new regulations, the solicitor must pass on any money recovered in the proceedings which is not exempt to the Commission. They can pass on money which has been recovered or preserved, but which is exempt, to the client: Regulation 20(2) Community Legal Service (Costs) Regulations 2000. Previously, solicitors had no power to pass on exempt money to their clients.

Can the supplier waive the charge?

Where the charge arises from the costs of Legal Help or Help at Court in a family, personal injury or clinical negligence case, and is therefore in favour of the supplier, the Commission may authorise them to waive it (or if they

have devolved powers they may themselves waive it) in part or in full if enforcement -

- ▶ would cause grave hardship or distress, or
- ▶ would be unreasonably difficult because of the nature of the property.

This provision, in Regulation 46 Community Legal Service (Financial) Regulations 2000, closely resembles the wording of section 11 Legal Aid Act 1988 and will be interpreted in much the same way.

The Commission or the supplier will decide whether or not to waive the charge according to these considerations:

Grave Hardship

What are the personal or financial circumstances of the client compared with the value of the money or property recovered or preserved? Since the hardship must be grave, the lower the value of the money or property recovered the less the likelihood there may be of grave hardship being suffered.

What are the personal or financial circumstances of the client? If the client is on a low income, or income support, the regional office will usually give authority if the client has suffered a financial loss and the compensation is to remedy that loss, but not if the compensation has an element of profit. If the client is on a higher income, any hardship may not be so grave as to justify authority.

What is the value of the money or property recovered or preserved? If it is so low that enforcement would substantially diminish or wholly extinguish the benefit to the client, authority might be justified. But in these circumstances, the regional office might consider that the solicitor should have advised the client from the outset that the work would not be cost effective.

What is the nature of any property recovered or preserved? If the property is an essential item such as a cooker, refrigerator or furniture, the regional office will grant authority. If the property is a luxury item such as jewellery, a video or television, the regional office will refuse authority.

Grave Distress

Does the property itself have any special meaning for the client? If the item is of genuine sentimental value, for example, a wedding ring, the regional office may grant authority.

What are the problems in enforcement? The regional office will grant authority where there is a real difficulty as distinct from inconvenience or delay, for example where the property is outside the jurisdiction (but should the supplier have given the help if they could have foreseen difficulty in enforcement?).

Can the Commission waive the charge?

While there was a limited ability to waive the charge in an advice and assistance case under Part III of the Legal Aid Act 1988, there was no power whatever to waive the statutory charge for representation. This has changed, but the possibility of waiver will only come up in test cases.

The Commission has no power to waive the charge unless

- ▶ it funded Legal Representation in proceedings which it considered have a significant wider public interest and
- ▶ it considered it cost-effective to fund Legal Representation for a specified claimant or claimants, but not for others who may benefit: Regulation 47 Community Legal Service (Financial) Regulations 2000.

This very limited exemption will only be relevant in cases where the Commission funds a case on grounds of public interest. These cases are likely to be ones where the client has agreed not to settle without the Commission's permission. **The Commission will not be able to waive the charge if the case did not start out on this very specialised basis.**

Can the Commission defer enforcing the charge?

The Commission can defer enforcing the charge in the same circumstances as in cases under the 1988 Act. But the procedure is rather different. The Commission may only defer enforcing the charge if

- ▶ the property subject to the charge is the home of the client or their dependants or, in a family case, money to be used to buy a home for the client or their dependants; and
- ▶ the Commission is satisfied that the home will provide appropriate security for the charge; and
- ▶ the charge is registered; and
- ▶ interest accrues from registration at 8% on the lesser of either: (i) the value of the charge, or (ii) the value of the property at the time of recovery: Regulation 52 Community Legal Service (Financial) Regulations 2000.

The circumstances in which interest arises have changed. Unlike under the 1989 Regulations, the client's liability to pay interest does not depend on them having signed a form agreeing to do so. Interest will start to run from when the charge is registered, or the bill paid if later.

Suppliers will need to make sure that their clients are prepared for this by explaining not only that

- ▶ the charge will arise on property they win or keep in the case, but
- ▶ they may well come out of the proceedings with a registered charge on their home, and
- ▶ that charge will attract interest.

The rate of interest remains unchanged: 8% simple.

As explained above, in future, if a flat or house with low or negative equity is recovered or preserved, the charge will arise in the net cost of funding the case. If and when the property recovers in value, the Commission will be able to get back the value of the charge, not merely the value of the property at any previous point in time. But while the value of the property is non-existent or low, the client will not be charged interest on the full value of the charge. Instead, interest will accrue on 'such lower sum as the Commission considers equitable in the circumstances': Regulation 53(3)(c)(ii) Community Legal Service (Financial) Regulations 2000. ■

ABWOR Granted Within the Precincts of the Court:

a note to District Judges and Magistrates

Regulations 7(1)(b) and 8 of the Legal Advice and Assistance (Scope) Regulations 1989 allow ABWOR to be granted by the magistrates' court or county court to solicitors within the precincts of the court in certain limited circumstances.

District judges and magistrates should note that the implementation of the Access to Justice Act, and in particular the provisions of Commencement No. 3 and Transitional Provisions and Savings Order 2000, will change this position. **From 1 April 2000:**

1. Magistrates' courts may only grant ABWOR under 7(1)(b) if the matter involves criminal proceedings as defined in that Order. This definition includes matters which were formerly classified as civil but which were moved in to the crime franchise in the Board's new franchise category definitions published on Pages 14 - 21 of *Focus 28*. Courts should note that all 'Benham' proceedings arising in the magistrates court from failure to pay a fine or obey a court order, as well as certain proceedings under sections 1,2,4 and 8 of the Crime and Disorder Act 1998 are now included in the crime category -see paragraphs (j) to (l) on page 22 of *Focus 28*. In these cases, Regulation 7(1)(b) remains available.
2. ABWOR may no longer be granted by the county court under Regulation 8.

If, in relation to civil proceedings, either the magistrates' court or the county court wishes to ensure that the party appearing before them is represented in circumstances where they may previously have relied upon regulations 7(1)(b) or 8, the court should seek to secure representation by a solicitor who is able to provide Help at Court under the terms of the Commission's General Civil Contract. Help at Court is a means by which advocacy can be provided for a client who is eligible without the solicitor being on the court record or the need for an

application being made to the Commission. Help at Court is remunerated under the General Civil Contract, and can be provided by any solicitor with a contract allowing work in the category of law with which the particular case is concerned. None of the other, detailed requirements as set out in regulations 7(1)(b) or 8 will need to be satisfied in order to take advantage of this new form of help. It will be a matter for the solicitor to determine whether the client is financially eligible, and the case is within the scope of the new Act and meets the Funding Code criteria.

As the application for Legal Help is made to the solicitor and not to the Commission, any solicitor on the court premises with a relevant contract can be asked to assist. However, there is no need for the solicitor who is to be asked to provide the Help at Court to be actually at court when the request is made. It will be open to the court to telephone any local solicitors with a General Civil Contract and ask if anyone is willing to attend. By 1 April 2000 each court will have been provided with a directory in hard copy which will provide a complete list of every solicitor with a contract specifying the category or categories of law. This list will be updated every six months.

In cases where no suitable solicitor is available, the court will have to consider whether it is appropriate to adjourn the matter to allow the client to be represented on a subsequent occasion.

Courts which currently make regular use the power to grant ABWOR within the precincts of the court in civil matters which will now be covered by Help at Court should consider obtaining copies of the application form (Controlled Work 1) for supply to solicitors who are asked to provide representation whilst at court. Copies are available from the Board's Business Support Unit by telephoning 020 7813 1000. ■

COSTS APPEALS COMMITTEE

Points of Principle of General Importance

1. LEGAL ADVICE AND ASSISTANCE

LAA19 – 22 February 1999

Notice to Landlords in Housing Disrepair Cases

In proceedings for housing disrepair under Section 82 of the Environmental Protection Act 1990 expenditure on expert reports will not be authorised, except in cases of real urgency, unless the landlord has been notified of both the defects and the anticipated litigation, and has been given an opportunity to carry out repairs. The periods of notice prescribed by Section 82 are minimum periods only and do not limit or proscribe the proper exercise of powers under Regulations 21 and 29 of the Legal Advice and Assistance Regulations 1989.

LAA20 – 24 May 1999

Provision of Capital and Income Details of Spouse or Partner

In cases where paragraph 7(2) of Schedule 2 of the Legal Advice and Assistance Regulations 1989 applies so that the capital and income of a spouse (partner) are not to be treated as part of the applicant's financial resources, the **relevant** sections of the CLAIM10 requiring details of a partner's resources should be marked "not applicable" or "n/a" and a note of the **reason why the means should not be aggregated** must be **provided on or with** the claim form. A tick or striking through of **all or part of these sections** does not furnish sufficient information and claims made in this way will be disallowed.

GUIDANCE

The Capital details box asks for three pieces of information and these should be answered as set out below:-

- (i) **How many dependants does the client have.**

This must be answered in words and/or figures stating the **number** of dependants (including partner, children and other dependent relatives).

- (ii) **The client's total savings and/or other capital.**

This must be answered in words and/or figures

to provide the total **amount** of savings/ disposable capital.

- (iii) **The Client's partner's savings and/or other capital.**

This should be answered in the same manner as (ii) above except where:-

- ▶ it is clear from the response to (i) that there is no partner.
- ▶ where the circumstances are such that income/capital should not be aggregated. (See paragraph 7(2) Schedule 2 of the LAAR 89.)

If so, the words not applicable or n/a should be used. The solicitor must also provide a note of explanation on or with the CLAIM10.

Similarly, in the Income details section of the CLAIM10 not applicable or n/a must only be used where there is no partner or the couple's means will not be aggregated. A note of explanation must be provided for non aggregation.

If therefore the income or capital details are not fully completed as above or the form is not signed, then the claim will be *assessed at nil* as the mandatory requirements have not been met.

2. CIVIL LEGAL AID

CLA24 – 22 February 1999

Completion of Application Form for Payment on Account

Where a claim is made for completing the Board's form CLA28/CLAIM4 (Application for a Payment on Account) consideration should be given to making a small allowance for the solicitor's time in preparing and submitting the form. Normally an allowance of six minutes will be appropriate.

CLA25 – 26 April 1999

Use of Local Solicitor Agents

Where a claim for costs includes travelling time, the assessor may consider whether it would have been more reasonable to instruct a solicitor agent than to incur the travelling time and cost. The assessor will consider whether there are any factors which would have made it reasonable for the solicitor to undertake the work. If the assessor considers that it was unreasonable for the solicitor to incur the travel time and cost, the assessor will reduce or disallow travelling costs to the extent that they exceed the costs which would have been allowed if an agent had been instructed. The sum for time and costs in these circumstances will include a notional allowance for:

1. an agent undertaking the work;
2. a fee-earner arranging the agent and preparing a letter or other form of instruction; and

3. considering any reports or correspondence received from the agent.

3. CRIMINAL LEGAL AID

CRIMLA74 – 19 January 1999

Serious or Complex Fraud

It is a question of fact whether a case is a serious or complex fraud under paragraph 3(5) of Part I Schedule 1 of the Legal Aid in Criminal and Care Proceedings (Costs) Regulations 1989. Each case must be considered according to its particular merits. Factors which may be relevant to the decision include where:

1. a large amount of money is involved, although this does not necessarily make a fraud serious or complex in itself;
2. the fraud has significant consequences for the victim e.g. fraud on individual private investors resulting in loss of life savings or personal bankruptcy;
3. the case raises complex issues of law, fact or procedure, examples of which could include access to bank accounts, foreign law jurisdictional issues, multiple offences/defendants, conspiracy charges and/or substantial forensic accountancy work;
4. detailed consideration of extensive documentary evidence/unused material is necessary;
5. the proceedings are transferred to the Crown Court under section 4 of the Criminal Justice Act 1987;
6. a preparatory hearing is ordered in the Crown Court under section 7 of the Criminal Justice Act 1987;
7. the case is investigated or prosecuted by the SFO, DTI, CPS Special Casework, Inland Revenue or Customs and Excise.

None of these factors should be taken alone as a conclusive indication that a case is a serious or complex fraud. Nor should this list of factors be regarded as exhaustive.

CRIMLA75 – 26 July 1999

Time Limit for Submitting a Claim where the Order is Transferred

When a legal aid order is transferred to new solicitors, for the purposes of Regulation 5(1) Legal Aid in Criminal and Care Proceedings (Costs) Regulations 1989 and subject to the exceptions provided for, the date of the transfer is deemed to be the “conclusion of the proceedings” for the former solicitor’s claim.

GUIDANCE

The former solicitors should submit their original legal aid order with their claim within three months of the transfer. The new solicitors should submit the

original order transferring legal aid to them (with a photocopy of the order setting out the offences covered) within three months of the actual conclusion of the proceedings.

HEAD OFFICE GUIDANCE ON CRIMLA 74

1. This guidance is issued by the Costs Appeals Committee in the light of the judgment of Mr Justice Buckley dated 14 December 1999 (QBD – unreported) in the taxation appeal relating to the case of *R v Crossley (Messrs Murria v Lord Chancellor)*.
2. This appeal concerned the proper construction of paragraph 3(5) of Part 1 of Schedule 1 of the Legal Aid in Criminal and Care Proceedings (Costs) Regulations 1989 which reads:

“Where the proceedings relate to serious or complex fraud, the percentage above the relevant prescribed rate by which fees for work may be enhanced shall not exceed 200%.”

3. The point certified was whether this paragraph should be construed to mean that the defendant must be “charged with” an offence of serious or complex fraud before a 200% uplift can be claimed **or** whether the test is satisfied if the proceedings “relate to serious or complex fraud”.
4. The High Court concluded that the wording of the paragraph meant that the proceedings must be “about” serious or complex fraud, irrespective of the actual charges in the indictment. He suggested that proceedings are “about” serious or complex fraud if it has been necessary for the solicitor to investigate and prepare the case as if the proceedings did involve serious or complex fraud in the sense used in Schedule 1 of the Criminal Justice Act 1989, i.e. did the solicitors have to prepare the fraud issue in as much detail and with as much expertise as if it were a serious or complex fraud trial?
5. If the above test is satisfied, the solicitor may be entitled to claim an enhancement of up to 200%, irrespective of the actual offences charged, provided that the other criteria set out in paragraph 3 of Schedule 1 are also satisfied. The onus is on the solicitor to supply sufficient information to the assessing officer to justify any claim that the usual maximum percentage rate of 100% should be exceeded.
6. If the assessing officer is not satisfied that it was necessary for the solicitor to prepare the fraud issue in as much detail and with as much expertise as if it were a serious or complex fraud trial, then the hourly prescribed rates **cannot** be enhanced by more than 100%. ■

Lord Chancellor's Directions and Guidance

Community Legal Service Fund Funding Priorities

Direction

1. This is a direction by the Lord Chancellor under section 6(1) of the Access to Justice Act 1999 concerning the priorities that the Legal Service Commission should set for funding services as part of the Community Legal Service. It is supplemented by guidance under section 23.
2. In drawing up future annual plans and any revisions to the Funding Code, the Commission shall have regard to the following priorities.
3. The Commission should give top priority to the categories in this paragraph, ensuring that all cases within them that meet appropriate merits criteria can be funded:
 - ▶ special Children Act proceedings (as defined in the Funding Code); and
 - ▶ civil proceedings where the client is at real and immediate risk of loss of life or liberty.
4. After that, the Commission should generally give the following categories higher priority than others:
 - ▶ help with social welfare issues that will enable people to avoid or climb out of social exclusion, including help with housing proceedings (as defined in the Funding Code) and advice relating to debt, employment rights, and entitlement to social security benefits;
 - ▶ domestic violence proceedings;
 - ▶ proceedings concerning the welfare of children (including proceedings under Part IV or V of the Children Act not included above, adoption proceedings, and proceedings concerning residence); and
 - ▶ proceedings against public authorities alleging serious wrong-doing, abuse of position or power or significant breach of human rights.

Guidance

1. "My direction under section 6(1) sets out the

broad categories of case which should be given priority for funding by the Legal Services Commission as part of the Community Legal Service. Under the new scheme, priorities will be given practical effect through the contracts for different categories of work which the Commission awards (which will reflect regional and local needs) and through the criteria in the Funding Code (which have national application). I have already approved the initial version of the Code and the basis on which contract awards have been made for 2000-01. Before approving the Commission's future Annual Plans and any revisions to the Code, I will look to satisfy myself that these priorities are adequately reflected.

2. Paragraph 3 of the direction defines top priority categories. The Commission should ensure that all cases in these categories that apply for funding receive it, subject to passing the criteria laid down in the Funding Code.
 - ▶ Special Children Act proceedings are public law child protection cases for which legal aid is available now without a means or merits test. In other words, funding is available automatically for cases in this category.
 - ▶ Cases about loss of life or liberty, on the other hand, will involve means and merits tests. These tests will need to be met before funding can be granted. In particular, the Commission will need to satisfy itself that the client faces a genuine threat to his life or of being sent to or held in prison or other detention, and that the proceedings are directly concerned with averting that threat. This will be true of most *habeas corpus* proceedings for example. Depending in particular on the client's country of origin and the other factual circumstances of the case, so will many (but by no means all) asylum cases.
3. Paragraph 4 of the direction contains other categories of case that deserve a high priority. Unlike paragraph 3, this paragraph is not intended to create a firm rule. It is not my intention that all cases in these categories should receive funding before any case in any other category. All categories

contain a range of more and less pressing cases. It is equally important to take account of particular factors like the strength and importance of individual cases, as it is the category in which they fall. A factor which could arise in any category, and to which I expect the Commission to attach particular importance, is whether a case raises issues of wider public interest.

4. Broadly, there are two ways of giving effect in practice to different priorities for different categories of case. The first is by setting more or less rigorous requirements in the Funding Code for these categories. The second turns on the level of resources allocated to contracts for particular categories of case.
5. At present, the latter approach is only relevant at the Legal Help level (and for representation before immigration and mental health tribunals) where contracts control the amount of work that can be done. This is the principal mechanism by which priority will be given to providing help in the social welfare categories of law. In future years, the Commission should allocate at least the same proportion of the total resources available for Legal Help to the social welfare categories as it has done for 2000-01. I have deliberately expressed this priority at national level in very broad terms. Within it, different regions and localities will have different priorities as between, say, housing, employment and debt. The advice of Regional Legal Services Committees and Community Legal Service Partnerships will ensure that these are reflected in local decisions about contracts. These decisions should, of course, reflect the fact that many asylum cases will have top priority because the client's life will be at risk. Local priorities should not be set that have the effect of reducing a region's allocation of resources in the social welfare category as a whole.
6. For cases that require Legal Representation (or other more substantial levels of service), the Funding Code is the principal mechanism for giving effect to priorities. That is why the Code contains separate criteria for housing cases, claims against public authorities, domestic violence and children cases. ■

Community Legal Service Fund Specific Budgets

Direction

1. This is a direction by the Lord Chancellor under section 5(6) of the Access to Justice Act 1999, imposing requirements on the Legal Services Commission as to the services to be funded from specified amounts paid into the Community Legal Service Fund for 2000-01. It is supplemented by guidance issued by the Lord Chancellor under section 23 of the Act.
2. The Commission should spend no more than £202 million (net) on controlled work (as defined in its General Civil Contract) and its 17 pilot contracts testing innovative methods of service delivery.
3. Of this, a minimum of £20 million should be devoted to contracts with providers in the not-for-profit sector.
4. The Commission should spend no more than a total of £1 million (net) on cases (commencing after 1 April 2000) which individually are likely to cost more than £25,000.

5. The Commission should spend no more than £1.2 million on grants that do not directly support the provision of funded services to eligible clients (that is grants to not-for-profit agencies, including those which may represent core funding, and grants to umbrella and other bodies to enable them to facilitate the provision of services, for example by providing training and other support to service providers, or by developing standards and other systems to underpin new forms of service).

Guidance

1. "Section 5(2)(a) of the Act requires me to determine appropriate sums to pay into the Community Legal Service Fund. I have decided that the appropriate sum for the year 2000-01 is £749 million. I will be considering the budgets for future years in the forthcoming public spending review.
2. This figure represents the overall net budget for the Fund. Receipts from *inter partes* costs, contributions and the statutory charge are also paid into the Fund under section 5(5)(b). The figures in the direction limiting spending on particular categories of work are also net figures.

The Commission will be able to spend receipts generated in those categories in addition to the net budget.

3. During its first 2-3 years, a substantial but diminishing proportion of the Fund will be spent on cases started under the Legal Aid Act 1988. These will remain subject to the provisions of that Act and the regulations made under it. The figures set out above are based in large part on estimates of the likely cost of those pre-existing cases. I recognise that the predominance of pre-existing cases in the early years of the new scheme will limit the Commission's flexibility and its ability to control expenditure. Forecasts of the cost of these old cases are inevitably uncertain. During this period, I would therefore be prepared to consider authorising an increase in the overall budget should these forecasts prove too low. But this would depend on my ability to find off-setting savings within my other programmes, and any increase in one year might reduce the sums available in future years.
4. The specific budget for controlled work (paragraph 2 of the direction) reflects the greater ability of the Commission to control spending in this area. The same problem of a high but uncertain liability for pre-existing cases exists during the first year in particular. However, I would be most reluctant to authorise any increase in the expenditure in 2000/2001 for controlled work (as defined in the general civil contract), and would expect the Commission to exhaust the additional controls at its disposal before doing so. I look to the Commission to produce proposals for developing equivalent controls for other levels of work by the end of 2000, with a view to implementing them by April 2003. Once wider controls are in place, and once most pre-existing legal aid cases are completed, I will expect the Commission to live within the budgets set at the start of the year as a matter of course.

Very high cost cases

5. I have also set a specific budget ("the central budget") designed to control spending on the most expensive cases (paragraph 4 of the direction). Unlike the other budgets I have set, the central budget relates only to new cases commencing under the provisions of the 1999 Act. The central budget for 2000-01 is £1 million. I am minded to set a budget for 2001-02 of £4.5 million, and a budget for 2002-03 of £13.5 million. Although I would be prepared to

amend these figures if appropriate, I consider it important to give a fairly firm indication now of the level of future budgets. Very expensive cases last much longer than average, and their costs build up over a number of years. A decision in one year to grant funding to a potentially very expensive case creates a substantial financial commitment in several future years.

6. I have set the central budget to cover new cases only because otherwise, for the first two or three years, most payments made from the budget would relate to pre-existing legal aid cases over which the Commission had relatively little control. If the cost of those cases was only slightly higher than forecast, there would be a disproportionately severe impact on the number of new cases that the Commission could fund.
7. The central budget I have set for 2000-01 may appear to be very low relative to the overall CLS Fund. That is because it relates only to payments made during that year on new cases that are identified as likely to incur high costs over time. Furthermore, not all high cost cases will be identified at the outset. Some cases granted funding in 2000-01 will be classified as high cost cases at a later stage. Their costs will be paid from the central budget with effect from the year during which they are referred to it.
8. The figures in paragraph 5 reflect the historic profile of spending on high cost cases under the legal aid scheme, adjusted to allow for the effects of the different scope of the CLS Fund, and the application of the criteria in the Funding Code and the Commission's published guidelines on applying those criteria in high cost cases. If future demand reflects past trends, the budgets I have set will allow the Commission to grant funding to all high cost cases that meet the normal Funding Code criteria, other than those which the guidelines suggest should generally be refused funding under the affordability criterion. I welcome these guidelines as a sensible basis for establishing the new system. I would not expect major changes to the guidelines or the basis on which the central budget is set for at least three years. That will enable the Commission to gain experience in operating the guidelines and build up a more robust spending profile based on the actual costs of cases funded from the central budget. After that, I expect to consider whether the central budget should be set at a lower level intended to bear down on the proportion of overall spending that very high cost cases represent.

9. Under the Funding Code, cases will be referred to the Special Cases Unit and funded from the central budget either if the case is likely to cost more than £25,000 to settlement or other disposal, or if they might cost more than £75,000 if it proceeded to a first instance trial. The second test will capture cases that are potentially very expensive, but which are not classified as likely to cost more than £25,000 because of the possibility of an early settlement. The budget I have set is designed to reflect the referral criteria in the Code. These represent a practicable approach to identifying potentially expensive cases at an early stage in order to subject them to appropriate scrutiny and case management requirements.
10. My underlying concern, however, is with cases that *actually* cost £25,000 or more. I am determined to limit the proportion of the Fund spent on the few most expensive cases. I therefore want the Legal Services Commission to report to me each year against the following measures:
- ▶ the total gross cost of cases completed each year for which the Commission funded civil legal aid, Legal Representation, Approved Family Help or Support Funding;

- ▶ the proportion of that figure represented by the 1% most expensive cases; and
- ▶ the proportion represented by cases with gross costs in excess of £25,000.

I will use these measures to inform my decisions about the central budget in future years.

Grants

11. The provision in paragraph 5 of the direction allows in particular for the continuation of grants made by the Legal Aid Board to a number of Law Centres which may be used as core funding. For the future, however, I will be looking to the Commission to phase out this form of funding, and replace it with contracted funding targeted on eligible clients and priority needs.
12. The provision also allows for grants to bodies concerned with (a) facilitating the development of mediation and other new or emerging forms of service provision; and (b) providing support to the not-for-profit advice sector generally in order to promote the effective and efficient provision of quality services. The Commission should continue to make grants of this kind where it considers there are demonstrable benefits from doing so. Any grants in category (a) should be specifically approved by my Department. ■

Scope of the Community Legal Service Fund

Lord Chancellor's Guidance

1. The Lord Chancellor has issued the following guidance under section 23 of the Access to Justice Act 1999 ("the Act"), explaining the Government's intentions underlying paragraph 1 of Schedule 2 to the Act (Excluded services).
2. "Section 5 of the Act requires the Legal Services Commission to fund services as part of the Community Legal Service from a fund maintained for the purpose. The Commission may fund any services of the broad types listed in section 4(2) of the Act (subject to priorities and the availability of resources). By virtue of section 4(1), services may only be funded for individuals (i.e. not firms, companies or other corporate bodies). Section 4(3) provides that services that the Commission is required to fund as part of the Criminal Defence Service are not available as part of the Community Legal Service.
3. Schedule 2 to the Act prescribes other types of service that the Commission may not fund as part of the Community Legal Service. Paragraph 1 of the Schedule lists areas of law in relation to which no services may be funded beyond the provision of general information about the law, the legal system and the availability of legal services. The Government's reasons for making these exclusions fall into two categories.
4. Paragraph 1(a) excludes services relating to allegations of negligently caused injury, death or damage to property, apart from allegations relating to clinical negligence. These cases are excluded because the great majority of them are suitable for funding under conditional fee agreements.
5. Paragraph 1(a) only excludes allegations of "negligently caused" injury or damage. It is not intended to exclude cases about personal injury arising from an alleged assault or deliberate

abuse. Claims alleging assault or abuse by a public servant may well be brought against the responsible authority that employs him or her as well as, or instead of, the individual. The legal claim against the authority may be one of negligence. These claims are not prevented by paragraph 1(a) which turns on whether the injury itself was caused negligently or deliberately.

6. Similarly, paragraph 1(a) *does* exclude cases relating to injuries or damage caused by negligence, even when the legal claim is not cast in terms of the tort of negligence. So, for example, “tripping” cases are excluded when they take the form of a claim that a local authority breached its statutory duty to maintain the highway.
7. The other areas of law excluded by paragraph 1 are: conveyancing; boundary disputes; the making of wills; matters of trust law; defamation or malicious falsehood; matters of company or partnership law; and other matters arising out of the carrying on of a business. These are excluded because they are not considered to have sufficient priority to justify public funding. Some cases in these categories, for example claims for defamation, might well be suitable for conditional fees or other alternative forms of funding; but this is not the basis for their exclusion. In particular, it is not thought justified to spend public money helping businessmen who fail to insure against the risk of facing legal costs.
8. The word “property” in paragraph 1(a) is *not* intended to exclude intangible property, for example intellectual property or a legal claim (which it might be argued can itself be considered a type of property). Most cases about intellectual property would be excluded in any event as arising in the course of business. But paragraph 1(a) is not intended to exclude claims for professional negligence against a lawyer for damaging a legal claim, for example by negligently failing to issue proceedings within the limitation period. A professional negligence claim might still be excluded by one of the other provisions of paragraph 1, for example if the original legal claim concerned the conduct of a case arising in the carrying on of business.
9. Paragraph 1(h) (matters arising out of the carrying on of a business) excludes cases brought or defended by sole traders in the course of their business, including cases brought after the

business has ceased to trade (for example cases concerning the sale of the business). It does not exclude cases brought by consumers against businesses. Nor does it exclude help in cases brought by or against sole traders in a non-business capacity, for example personal insolvency proceedings or cases about the repossession of their home, even if the case arose out of the failure of a business.”

Exceptions to the exclusions

Lord Chancellor’s Direction

1. This is a direction by the Lord Chancellor under section 6(8) of the Access to Justice Act 1999 (“the Act”). It authorises the Legal Services Commission (“the Commission”) to fund in specified circumstances services generally excluded from the scope of the Community Legal Service Fund by Schedule 2 to the Act.
2. In this direction, “excluded issues” generally means the issues listed in paragraph 1(a)-(g) of Schedule 2 to the Act, but in paragraph 9 and 10 below means the issues listed in paragraph 1(a)-(h) of the Schedule. Matters arising out of the carrying on of a business are not brought within the scope of funding by this direction, other than in the circumstances described in paragraph 10.
3. References in this direction to services which the Commission may fund are to the levels of service defined in those terms in the Commission’s Funding Code (“the Code”). References in this direction to “proceedings” include contemplated proceedings; and references to particular categories of dispute or proceedings defined in the Code, and to the “wider public interest”, have the same meaning as in the Code unless this direction specifies otherwise.

Public interest cases

4. The Lord Chancellor authorises the Commission to fund Legal Representation or Support Funding (as it considers more appropriate), in relation to excluded issues in:
 - (a) cases that have a significant wider public interest; and
 - (b) proceedings against public authorities (including judicial review proceedings) alleging serious wrong-doing, abuse of position or power, or significant breach of human rights.

Housing and family cases

5. The Lord Chancellor authorises the Commission to fund services relating to the excluded issues specified in the circumstances set out below.
6. The circumstances are where:
 - (a) housing proceedings consist of, or include, a claim for negligently caused illness, injury, or damage to property; or an issue arises in housing proceedings about a boundary, a trust or a matter of company or partnership law;
 - (b) a family dispute or family proceeding consists of, or includes, an issue about a boundary, a trust, or a matter of company or partnership law; or
 - (c) an issue of trust law arises in a case under section 14 of the Trusts for Land and Appointment of Trustees Act 1996 concerning the ownership or possession of the only or main dwelling of the person for whom services are funded.

Expensive personal injury cases

7. The Lord Chancellor authorises the Commission to fund Investigative Support in relation to allegations of negligently caused injury or death, where the costs of investigating the circumstances of the case to the point where it is possible to assess whether and on what terms it could be funded under a conditional fee agreement exceeds the relevant threshold set out in the Code.
8. The Lord Chancellor authorises the Commission to fund Litigation Support in relation to allegations of negligently caused injury or death where the costs of the case exceeds the relevant threshold set out in the Code.

Mixed cases

9. In the circumstances specified in paragraph 10 below, the Lord Chancellor authorises the Commission to fund services (other than Legal Help) in relation to an excluded issue that is linked to another matter or case in which services are being funded by the Commission.
10. The specified circumstances are:
 - (a) the excluded issue is minor or incidental to the other matter or case; or
 - (b) the excluded issue is introduced into proceedings by a person other than the funded client; or

- (c) there are two distinct causes of action, one of which relates to an excluded issue, arising out of the same incident or circumstances, and the following conditions are all satisfied. The conditions are that:
 - (i) the Commission considers that it would not be practicable to issue and conduct the claim that does not relate to an excluded issue alone
 - (ii) both claims, considered separately, would pass the relevant criteria in the Code (except, in the case of the excluded issue, the criterion about scope); and
 - (iii) the Commission considers that it would not be possible to fund both claims together under a conditional fee or other private funding arrangement;
- or
- (d) an issue about conveyancing arises in any funded proceedings.

Conveyancing

11. The Lord Chancellor authorises the Commission to fund conveyancing services where this is necessary to give effect to a court order made in proceedings in respect of which the Commission funded services, or to an agreement reached, with the help of funded services, to settle or avoid family proceedings.

Wills

12. The Lord Chancellor authorises the Commission to fund Legal Help in relation to the making of wills where the client is:
 - (a) aged 70 or over; or
 - (b) a disabled person within the meaning of section 1 of the Disability Discrimination Act 1995; or
 - (c) the parent of a disabled person (as defined in (b) above) who wishes to provide for that person in a will; or
 - (d) the parent of a minor who is living with the client but not with his other parent, and the client wishes to appoint a guardian for the minor in a will.
13. In paragraph 12, “parent” includes a guardian appointed under section 5 of the Children Act 1989 and any other person with parental responsibility for the child.

Individual cases

Lord Chancellor's Guidance

1. Section 6(8)(b) of the Act empowers the Lord Chancellor to authorise funding in individual cases, following a request from the Commission. The Lord Chancellor has issued the following guidance to the Commission under section 23 of the Act, to indicate the types of case he is likely to consider favourably under this power.
2. "Schedule 2 of the Act, together with the general exceptions I have authorised, is designed to ensure that money is not spent on cases that do not have sufficient priority to demand a share of the available resources. I would therefore expect it to be extremely unusual for me to authorise the Commission to fund an individual case that remained outside scope.
3. Schedule 2 excludes funding for personal injury cases because they are generally suitable for conditional fees. I have authorised the Commission to fund personal injury cases with very high investigative or total costs, because this may not always be true of these cases. If a particular client was having difficulty finding a solicitor to take a case that was objectively suitable for a conditional fee, that is a case with reasonable prospects of success but not requiring very high costs, I would generally expect the Commission, through the Community Legal Service, to advise the applicant about solicitors willing to take cases under conditional fee agreements, rather than apply to me for exceptional funding.
4. The other categories in paragraph 1 of Schedule 2 are excluded because they are of low priority. I have authorised the Commission to fund cases raising significant issues of wider public interest that would otherwise be excluded by paragraph 1. The only other reason that would justify funding a case in a low priority category would be if it was of overwhelming importance to the client, affecting the life, liberty or physical safety or the client or his or her immediate family or the roof over their heads. I find it very hard to see how this could apply to cases in the categories concerned, which relate to business and property issues or to reputation. But if such a case did arise, I should of course be prepared to consider the Commission's application.
5. Paragraph 2 of Schedule 2 excludes the provision

of advocacy services before coroners' courts and most tribunals. Coroners' courts are excluded because the inquisitorial nature of the process means that public funding for legal representation is not usually appropriate. Historically, most tribunals have been excluded from legal aid on the grounds that their procedures are intended to be simple enough to allow people to represent themselves. The 1999 Act excludes advocacy before the Lands Tribunal and Commons Commissioners for the first time because they do not have sufficient priority to justify public funding.

6. I would be prepared to consider applications from the Commission, in exceptional individual cases, to authorise funding for advocacy before a tribunal, inquest or public inquiry. To justify funding:
 - (a) the client would have to be financially eligible for funded representation;
 - (b) the case would have to pass all the relevant criteria in the General Funding Code; *and* either involve a significant wider public interest or have overwhelming importance (as defined in paragraph 4 above) to the client (or clients) seeking funding; and
 - (c) there would have to be convincing evidence that, given the procedures and other arrangements in the court or tribunal concerned, legal representation was the only adequate way of establishing the facts and presenting the case; and that no alternative means of funding that representation was available;

so that taking these factors together, and having regard to our obligations under the European Convention on Human Rights, it was essential to provide public funding for representation in order to serve the interests of justice.

7. A good example of the type of case I have in mind is the second Marchioness inquest. My predecessor authorised exceptional funding for this case under the 1988 Legal Aid Act. In this case, apart for the personal importance and public interest of that hearing, the normal process had broken down in that the families of the deceased faced the expense of a second hearing following the quashing of earlier proceedings through judicial review." ■

FUNDING CODE

Amendments Following Consultation

The following amendments have been made to the draft Code published in October 1999. Note that the structure of the Code and the numbering of its rules remain largely unchanged.

Part 1 – Criteria

Page	Section / sub-paragraph	Amendment
3	2.1	Add the following words to the end of the definition of “Approved Family Help”: “... and related conveyancing work”.
3	2.1	Add the following words to the end of the definition of “Help with Mediation”: “... and related conveyancing work.”
3.	2.1	Delete the word “means” in the definition of “Family Mediation” and replace with: “is a level of service the grant of which authorises...”
4.	2.2	In the definition of “Family Proceedings”, the second sentence of the main paragraph should read as follows: “Family Proceedings also include all proceedings under any one or more of the following:”
5.	2.2	In the definition of “Other public law children cases”, sub-paragraph (i) should read: (i) “Appeals (whether interim or final) ...”
5.	2.3	In the definition of “Borderline”, the second sentence should read: “... disputes of fact, law or expert evidence,”
7.	2.3	A new definition should be inserted beneath “Immigration Adjudicator” as follows: “Multi Party Action” or “MPA” means any action or actions in which a number of clients have causes of action which involve common issues of fact or law arising out of the same cause or event.
7.	2.3	The definition of “Wider Public Interest” should now read as follows: “Wider Public Interest” means the potential of the proceedings to produce real benefits for individuals other than the client (other than benefits to the public at large which normally flow from proceedings of the type in question).
11.	5.3.2	(The Need for Representation) – replace the word “representation” in the third line with the word “advocacy”.
12.	5.4.6	(Small Claims) – replace the word “referred” in the second line with the word “allocated”.
13.	5.6.2	(The Need for Investigation) – add the following sentence to the end of the sub-paragraph: “Guidance may indicate what constitutes substantial investigative work for this purpose.”
15.	5.8.1	(High Investigative Costs) – in (ii) replace the figure “£5,000” with the figure “£3,000”.
15.	5.9.2	(Insurance) – this sentence should now read: “Litigation Support will be refused unless the conditional fee agreement will be supported by satisfactory insurance cover or equivalent arrangements in accordance with Code Procedures.”

16. 5.9.3 (High Overall Costs) – in (i) after “£,5000;” add the word “or” and in (ii) replace the figure “£20,000” with the figure “£15,000”.
16. 5.9.4 (Prospects of success) – replace the word “uncertain” in the second line with the word “unclear”.
18. 6.3 Replace the heading “The Case Plan” with the words “The Costed Case Plan”. The paragraph should then be amended to read as follows:
“Funding may be refused if the proposals put forward for progressing the litigation including proposals as to cost do not appear to the Commission to be satisfactory.”
19. 7.1 (Scope) – and the end of the 7.1 after the words “habeas corpus” add the words “and proceedings under Part VII of the Housing Act 1996.”
22. 8.1 (Scope) – After the words “power or” at the beginning of the fourth line add the word “significant” before the word “breach”.
23. 9.2.1 (Potential for a Conditional Fee Agreement) – after the word “section” add the following:
“,unless the application relates to a multi-party action”.
23. 9.3.1 (Conditional Fee Agreements) – after the word “section” add the following:
“,unless the application relates to a multi-party action”.
24. 10.1 In the second sentence, after the words “possession of the client’s home”, add the words “,the client’s legal status in the home”.
24. 10.3.1 In the second line replace the words “relate to” with the word “concern”.
24. 10.3.2 This paragraph should now read:
“Full Representation will be refused if the client has no substantive legal defence to the proceedings or the prospects of successfully avoiding an order for possession (or, if the client is bringing the proceedings, the prospects of obtaining such an order) are poor.”
26. 11.3.1 Replace the sub-heading “Attending a meeting with a mediator” with the words “Referral to Family Mediation”.
- 11.3.1 In lines 2 and 3 replace the words “the client is required to first attend a meeting with a mediator to determine” with the words “the case must first be referred to a mediator for a determination as to ...”.
29. 11.11.2 Replace the sub-heading “Attending a meeting with a mediator” with the words “Referral to Family Mediation”.
- 11.11.2 In lines 2 and 3 replace the words “the client is required to first attend a meeting with a mediator to determine” with the words “the case must first be referred to a mediator for a determination as to....”.
30. 11.12.2 Replace the sub-heading “Attending a meeting with a mediator” with the words “Referral to Family Mediation”.
- 11.12.2 In lines 2 and 3 replace the words “the client is required to first attend a meeting with a mediator to determine” with the words “the case must first be referred to a mediator for a determination as to....”.
30. 11.12.5 (Prospects of Success) – In (i) replace the word “uncertain” in the first line with the word “unclear”.
34. 14.1 Add the following sentence to the end of paragraph 14.1:
“Code Procedures may in particular specify the grounds for withdrawal of emergency representation.”
34. 14.4 Add the following sentence to the end of paragraph 14.4:
“Investigative Support will also cease when a conditional fee agreement is entered into.”

Part 2 – Procedures

Page	Section / sub-paragraph	Amendment
	Contents	“Funding Review Body” or “FRB” have been replaced by “Funding Review Committee” or “FRC” throughout this document.
5.		In paragraph 12.3 after the word “paragraph” replace the word “with” with “within”.
6.		The definition of “Multi-Party Action” has been deleted. It is now contained in section 2 of the Criteria.
12.	B3.1	In the second line replace the word “unless” with the words “but not where”.
12.	B3.3	The heading should read “Upper Financial Limit”. The last sentence in the last paragraph should be deleted and replaced with the words: “The Upper Financial Limit set by us may vary by or within franchise category or by Schedule Office (including by reference to the franchise status of that Office).”
14.	B4	after the words “(and any extension thereof)” in the penultimate line of B4 add the words “and the Upper Financial Limit set by Rule 3.3” before the words “will apply to the total ...”.
15.	B5	Insert a new paragraph B5.3 as follows: “5.3 The Controlled Legal Representation Financial Limit You may only provide Controlled Legal Representation where the costs do not exceed the limit set by us from time to time (the “Controlled Legal Representation Financial Limit”) for the costs of Controlled Legal Representation, inclusive of disbursements, in relation to any one matter unless we have given authority to exceed that limit. An application for authority to exceed the Controlled Legal Representation Financial Limit must be made to the relevant Regional Director on the form specified by us. If authority is granted to exceed the limit you may claim at the Contract rate for the work actually and reasonably carried out up to a maximum of the amount authorised by the particular case. The Controlled Legal Representation Financial Limit set by us may vary by or within franchise category or by Schedule Office (including by reference to the franchise status of that Office).”
17.	C3.2	Delete the words “unless rules of court require the proceedings to be brought by some other person on the client’s behalf” so that the sentence finishes after the words “proposed party to the proceedings”.
28.	C25	Delete the word “may” in the second line and replace with the word “will”.
28.	C26.1	This paragraph should now read as follows: “Where the Special Cases Unit grants or continues funding in a case which has been referred to it, it may direct that the case should continue as Other Contracted Work under a Multi-Party Action Contract or High Cost Case Contract, and will do so in any case which falls within paragraphs (i) or (ii) of Rule 23 above.”
29.	C28.1	(ii) add an “s” to the end of the word “Court”. (iii) should now read as follows: “Parts I to III of the Children Act 1989 (note that this includes Schedule 1 of that Act).”
29.	C29.2	In the third line after the words “issue guidance” add the following: “,either generally or in individual cases,”
31.	C33.1	The words “or imposed” should be added after the word “amended” in the third line of this paragraph. The following words in brackets should be added at the end of the paragraph: “(including limitations to prevent further work being carried out under the certificate).”

32. C34.4 Replace the word “cover” in the first line with the word “authorise”.
32. C35.4 After the words “Regional Director” at the end of the sentence add the words “or, where appropriate, an authorised solicitor.”
38. C43.2(vi) After (d) insert a new paragraph (e) as follows:
“(e) an offer to participate in any alternative dispute resolution scheme specified by the Commission for the purpose of this Rule;”
- The paragraph currently (e) now becomes (f).
In (f) delete the words “which has been submitted in writing or”.
39. C46 Insert a new paragraph 46.1 as follows:
“46.1 Where the Commission is considering granting an application which relates to proceedings which have a significant wider public interest, the Commission may require the client, as a condition of providing funding, to agree not to settle the proceedings without the consent of the Commission.”
39. C46 Existing paragraphs 46.1 to 46.7 are renumbered accordingly.
41. C48.1 In the first line after the word “immediately” delete the word “when” and replace with the words “if a conditional fee agreement is entered into or ...”.
41. C50.1 In the first line after the words “appropriate insurance” add the words “or equivalent arrangements”.
42. C51.1 Add the words “section 14 of” before “the Criteria” in the third line.
42. C51 Add an new paragraph 51.4 as follows:
“The Regional Director may convert a discharge into a revocation if following the discharge information comes to light which would justify revocation under Rules 52 or 53.”
42. C52 Insert a new 52.3 as follows:
“52.3 An emergency certificate may be revoked or discharged if the client fails to accept an offer of a substantive certificate within the time limit specified under Rule 15.”
42. C52 The existing 52.3 becomes 52.4 and should now start with the words “Subject to Rule 51.4...”
43. C55.2 The second line should be amended to read:
“emergency certificate under Rule 52.2, 52.3 or 52.4 above, to discharge on...”
44. C56.5 In the first line after the word “discharged” add the words “or revoked”.
45. C58.2 (i) should be amended to read as follows:
“The revocation or discharge of an emergency certificate under Rule 52.2, 52.3 or 52.4;”
46. C61.1 (iii) should be amended to read as follows:
“cost benefit for the client (for the avoidance of doubt this excludes considerations of whether the case has a significant wider public interest);”
47. C64.1 This paragraph should be amended to read as follows:
“In a review of a decision under Rule 22 or Rule 40 (refusal or amendment of certificates) if, following a determination of issues by the FRC under Rule 61 above, it appears to the Regional Director that the criteria for granting or amending the certificate are satisfied and the client is financially eligible, he or she shall immediately grant or amend the certificate as required.”
47. 64.2 This paragraph should be amended to read as follows:
“In a review under Rule 58 (discharge or revocation of a certificate) if, in the light of any determination by the FRC under Rule 61 above, it appears to the Regional Director that the certificate should be reinstated, he or she shall reinstate the certificate.”

Community Legal Service Fund: Regulations

The Legal Services Commission will be established and the Community Legal Service Fund will replace civil legal aid on 1 April 2000. The regulations that will underpin the scheme have now been prepared by the Lord Chancellor's Department, following consultation with the Law Society, the Bar and others. They are described briefly below, and printed on pages 30 - 57. (Until the Criminal Defence Service is established in October 2000, the Commission will take over the Legal Aid Board's responsibilities for criminal legal aid and advice and assistance in criminal matters.)

The Scope and Cost Protection Regulations are subject to Parliamentary approval under the affirmative resolution procedure. Drafts of these regulations have been laid before Parliament for debate in both Houses.

The other regulations are subject to the negative approval procedure. These instruments were made by the Lord Chancellor on 18 February 2000. They are currently lying before Parliament, but will only be debated if an objection is raised within 40 days.

Legal Services Commission (Disclosure of Information) Regulations 2000

These regulations replicate the Legal Aid (Disclosure of Information) Regulations 1991. They waive rules of privilege and confidentiality so that service providers can, when the Commission requires, disclose information about clients' cases to enable the Commission to exercise its functions. The regulations apply to all types of supplier, and all services funded by the Commission (whether as part of the Community Legal Service or under the Legal Aid Act).

Community Legal Service (Scope) Regulations 2000

These regulations amend Schedule 2 to the Access to Justice Act (Excluded services). Regulation 3(a) extends the list of courts and tribunals where funding may be provided for advocacy to include the Immigration Appeal Tribunal and adjudicators.

Regulation 3(b) and (c) excludes funding for advocacy in certain proceedings under the Crime and Disorder Act 1998. The Government has decided that it is more appropriate to fund these cases as part of the Criminal Defence Service. Until the CDS is implemented in October, legal aid will continue to be available under

the green form and ABWOR schemes. Provision will be made after October 2000 to allow firms with civil franchises which undertake some of this work (e.g. family and debt cases) to continue to do so.

Community Legal Service (Financial) Regulations 2000

Part II of these regulations contains the financial eligibility limits, and the rules about means testing and contributions, for all levels of services funded as part of the Community Legal Service.

Generally, the new regulations apply the existing eligibility limits (subject to an annual uprating) to the equivalent levels of service under the Funding Code. The various levels of service under the Code were explained in *Focus 28* (pages 1-2). The new limits are summarised in the table on page 6 of this *Focus*.

The higher eligibility limit for personal injury cases has been abolished, as most personal injury cases will no longer be within scope. (Where a legal aid certificate has been granted in a PI case before 1 April, the higher limits will continue to apply if the assisted person's means are re-assessed.)

Part III of the Financial Regulations sets out the scope of the statutory charge and the rules for its postponement. The main changes compared to the current scheme are described in a separate article on pages 11-13.

Community Legal Service (Costs) & (Cost Protection) Regulations 2000

The Cost Protection Regulations define the scope of a funded client's protection against costs under section 11(1) of the Access to Justice Act, and the circumstances in which costs may be awarded against the Community Legal Service Fund. The principles are broadly the same as now, though the procedures are different.

Cost protection will not apply to clients receiving Litigation Support. These cases are primarily funded under a conditional fee agreement. The Access to Justice Act makes it possible to recover success fees from the other side. So the unsuccessful opponent in a Litigation Support case would be liable to a success fee in respect of the risk borne by both the solicitor and the Commission. It is therefore only right that a successful opponent should receive his normal costs in full. Regulation 6 provides that, where the insurance policy is inadequate to cover the opponent's costs, the

Commission will be liable for the excess. The opponent would not have to demonstrate severe financial hardship.

Part II of the Costs Regulations sets out the procedures for awarding costs in funded cases. These replace the procedures in Parts XIII and XIV of the Civil Legal Aid (General) Regulations 1989.

Regulation 8 allows the opponent to submit a statement of his resources at any time and, unlike now, requires the client to provide a statement as well. This is intended to enable the court, in appropriate cases, to decide immediately the amount of costs that the funded client should pay.

In other cases, regulation 10 will apply. This is a streamlined procedure that will enable the detailed assessment of the bill, and any costs to be awarded against the client or the Commission, to be determined all at the same time. The timetable for this procedure is modelled on that for a detailed assessment under part 47 of the Civil Procedure Rules. If the opponent fails to apply to have his costs determined within 3 months, he may no longer apply for a costs order against the Commission (a strict time limit which cannot be extended). But he may still apply for costs against the funded client, on any of the grounds in regulation 12(4), up to 6 years after the original order.

Part III of the Costs Regulations deal with the handling of money recovered for a client, whether by way of costs or damages. These provisions are similar to now.

Community Legal Service (Funding) Order 2000 (Draft)

The Lord Chancellor has not yet made this Order, and Article 5 may change depending on the outcome of his negotiations with the Law Society about remuneration.

The Funding Order limits the Commission's powers to fund cases other than under contract. This will only be possible for some categories of Legal Representation, and then only under certificates granted before 1 April 2001. Non-contract payments will not be available for categories of case provided as licensed work under the General Civil Contract: family, immigration, and from 1 April clinical negligence and those personal injury cases that remain within scope. From April 2001, all other categories will also be restricted to solicitors licensed under contract.

Article 4 of the Order provides that payments in these non-contracted cases should be assessed in accordance with specified regulations in the Civil Legal Aid (General) Regulations 1989. By virtue of regulation 107A, the provisions and rates in the civil and family legal aid remuneration regulations also remain applicable.

Rule 6.5 of the General Civil Contract Specification also applies the existing legal aid regulations for the

assessment of costs to contracted cases.

Article 5 deals with remuneration for contracted work. It prohibits the Commission from contracting at rates higher than those prescribed in the relevant legal aid regulations.

Remuneration for Support Funding and cases under an individual High Cost Case or Multi-Party Action contract is not linked to the legal aid regulations. These cases will be paid at fixed hourly rates set by the Commission in the contract itself. The provisions of the regulations, including enhancements and separate item fees for letters and phone calls, will not apply.

Civil Legal Aid (General) (Amendment) Regulations 2000

These regulations amend the Civil Legal Aid (General) Regulations 1989 in relation to the assessment of costs. They make changes consequential on the Civil Procedure Rules and simplify the procedure for appeals against assessments. The existing requirement to seek the Board's authority to appeal is replaced by a requirement to notify the Lord Chancellor's Department if permission to appeal against a detailed assessment is obtained from the court under CPR 47.24. The amending regulations, which take effect on 20 March 2000, are reproduced below.

Transitional arrangements

A draft Commencement Order containing transitional provisions is currently subject to consultation. The proposed transitional arrangements are summarised below, but the text of the draft Order is not reproduced.

The provisions of the Access to Justice Act about the Legal Services Commission and the Community Legal Service take effect on 1 April 2000 (sections 1-11 & 19-26). At the same time, the civil parts of the Legal Aid Act and regulations will be repealed, except in relation to:

- ▶ Green forms signed before 1 January 2000 (or 1 April in clinical negligence or personal injury cases);
- ▶ Emergency certificates and ABWOR self-granted by franchisees before 1 April 2000. The notification of grant must reach the Commission by 2 May for the grant to be legally valid under the old Act, but should in any event be received within the existing 5 working day rule.
- ▶ Other certificates and ABWOR granted on applications signed before 1 April and received by 2 May;
- ▶ civil cases that will be funded as part of the Criminal Defence Service from October 2000. Until October, legal aid remains available for all issues and proceedings in the revised crime franchise category published in *Focus 28*. ■

The Legal Services Commission (Disclosure of Information) Regulations 2000

The Lord Chancellor, in exercise of the powers conferred on him by sections 22(1) and 25 of the Access to Justice Act 1999, and all other powers enabling him in that behalf, makes the following Regulations:

Citation and commencement

1. These Regulations may be cited as the Legal Services Commission (Disclosure of Information) Regulations 2000 and shall come into force on 1 April 2000.

Interpretation

2. In these Regulations:
 - “the Act” means the Access to Justice Act 1999;
 - “Commission” means the Legal Services Commission established under section 1 of the Act; and
 - “supplier” means any person or body who provides services funded by the Commission to a client.
3. The Commission may require a supplier to provide to any person authorised by the Commission to request it such information or documentation as it may from time to time require for the purpose of discharging its

functions under the Act or the Legal Aid Act 1988.

4. Where:
 - (a) information or documentation is required in accordance with regulation 3; and
 - (b) such information or documentation relates to any service provided to a client or former client of the supplier who is or was in receipt of services funded by the Commission

the relationship between or rights of the supplier and client, or any privilege arising out of such relationship, does not preclude the supplier from disclosing such information or documentation.
5. For the purpose of providing information in order to enable the Commission to discharge its functions under the Act or under the Legal Aid Act 1988, any party may disclose to any person authorised by the Commission to receive them communications in relation to the proceedings concerned sent to or by the supplier, whether or not they are expressed to be “without prejudice”. ■

The Community Legal Service (Scope) Regulations 2000

The Lord Chancellor, in exercise of the powers conferred on him by section 6(7) of the Access to Justice Act 1999, and all other powers enabling him in that behalf, makes the following Regulations, a draft of which has been laid before and approved by resolution of each House of Parliament:

Citation and commencement

1. These Regulations may be cited as the Community Legal Service (Scope) Regulations 2000 and shall come into force on 1 April 2000.

Interpretation

2. In these Regulations, “the Act” means the Access to Justice Act 1999.

Community Legal Service: excluded services

3. The following amendments shall be made to Schedule 2 to the Act:
 - (a) The following shall be inserted at the end of paragraph 2(1):
 - “(h) the Immigration Appeal Tribunal or before an adjudicator.”;
 - (b) In paragraph 2(2):
 - (i) in sub-paragraph (b), the words “4 or” shall be deleted; and
 - (ii) sub-paragraph (c) shall be deleted; and
 - (c) In paragraph 2(3)(j), the words “section 8 or 11” shall be substituted for “section 1, 2, 8 or 11”. ■

The Community Legal Service (Financial) Regulations 2000

The Lord Chancellor, in exercise of the powers conferred on him by sections 7 and 10 of the Access to Justice Act 1999, and all other powers enabling him in that behalf, makes the following Regulations:

PART I – GENERAL

Citation and commencement

1. These Regulations may be cited as the Community Legal Service (Financial) Regulations 2000 and shall come into force on 1 April 2000.

Interpretation

2. (1) In these Regulations, unless the context requires otherwise:
 - “the Act” means the Access to Justice Act 1999;
 - “application” means an application to receive funded services, made by or on behalf of a client in accordance with the Funding Code;
 - “assessing authority” means:
 - (a) the Commission, where the client’s eligibility under regulation 5(6) is being assessed;
 - (b) otherwise, the supplier;
 - “certificate” means a certificate issued under the Funding Code certifying a decision to fund services for the client;
 - “client” means an individual who applies for or receives funded services and, in the case of actual or contemplated proceedings, is a party or prospective party to the proceedings;
 - “clinical negligence proceedings” means proceedings which include:
 - (a) a claim for damages in respect of breach of a duty of care or trespass to the person committed in the course of the provision of clinical or medical services (including dental or nursing services); or
 - (b) a claim for damages in respect of alleged professional negligence in the conduct of such a claim;
 - “Commission” means the Legal Services Commission established under section 1 of the Act;
 - “CPR” means the Civil Procedure Rules 1998, and a reference to a rule, prefixed by “CPR”, means the rule so numbered in the CPR;
 - “disposable income” and “disposable capital”

mean, respectively, the income and capital of the person concerned, calculated in accordance with regulations 16 to 37;

“family proceedings” means proceedings which arise out of family relationships, including proceedings in which the welfare of children is determined. Family proceedings also include all proceedings under any one or more of the following:

- (a) the Matrimonial Causes Act 1973;
- (b) the Inheritance (Provision for Family and Dependants) Act 1975;
- (c) the Adoption Act 1976;
- (d) the Domestic Proceedings and Magistrates’ Courts Act 1978;
- (e) Part III of the Matrimonial and Family Proceedings Act 1984;
- (f) Parts I, II and IV of the Children Act 1989;
- (g) Part IV of the Family Law Act 1996; and
- (h) the inherent jurisdiction of the High Court in relation to children.

“Funding Code” means the code approved under section 9 of the Act;

“funded services” means services which are provided directly for a client and funded for that client by the Commission as part of the Community Legal Service under sections 4 to 11 of the Act;

“partner” except in the expression “partner in a business” means a person with whom the person concerned lives as a couple, and includes a person with whom the person concerned is not currently living but from whom he is not living separate and apart;

“personal injury proceedings” means proceedings for damages in respect of death or any disease or impairment of the client’s physical or mental condition, excluding proceedings for clinical negligence;

“person concerned” means the person:

- (a) whose eligibility is to be assessed; or
- (b) whose resources are to be treated as the resources of the client under these Regulations;

“solicitor” means solicitor or other person who is an authorised litigator within the meaning of section 119(1) of the Courts and Legal Services Act 1990; and

“supplier” means the solicitor, mediator or agency being requested to provide or providing funded services to the client.

- (2) References to the levels of service listed in paragraph (3) shall be construed as references to the application for, or receipt or provision of, those levels of service in accordance with the Funding Code.
- (3) The levels of service referred to in paragraph (2) are:
- (a) Legal Help;
 - (b) Help at Court;
 - (c) Legal Representation;
 - (d) Family Mediation;
 - (e) Help with Mediation;
 - (f) General Family Help;
 - (g) Support Funding;
 - (h) Litigation Support.

PART II – ELIGIBILITY, ASSESSMENT AND CONTRIBUTIONS

Financial eligibility

3. (1) The following services shall be available without reference to the client’s financial resources:
- (a) services consisting exclusively of the provision of general information about the law and legal system and the availability of legal services;
 - (b) initial legal advice consisting of such amount of Legal Help as is authorised under a contract to be provided without reference to the client’s financial resources;
 - (c) Legal Representation in proceedings under the Children Act 1989 applied for by or on behalf of:
 - (i) a child in respect of whom an application is made for an order under:
 - (a) section 31 (care or supervision order);
 - (b) section 43 (child assessment order);
 - (c) section 44 (emergency protection order); or
 - (d) section 45 (extension or discharge of emergency protection order);
 - (ii) a parent of such a child, or a person with parental responsibility for such a child

within the meaning of the Children Act 1989; or

- (iii) a child who is brought before a court under section 25 (use of accommodation for restricting liberty) who is not, but wishes to be, legally represented before the court;
 - (d) Legal Representation in proceedings related to any proceedings in sub-paragraph (c) which are being heard together with those proceedings or in which an order is being sought as an alternative to an order in those proceedings;
 - (e) Legal Representation in proceedings before a Mental Health Review Tribunal under the Mental Health Act 1983, where the client’s case or application to the Tribunal is, or is to be, the subject of the proceedings;
 - (f) Legal Representation by a solicitor in England and Wales of a person whose application under the Hague Convention or the European Convention has been submitted to the Central Authority in England and Wales under section 3(2) or 14(2) of the Child Abduction and Custody Act 1985; and
 - (g) Legal Representation of a person who:
 - (i) appeals to a magistrates’ court against the registration of, or the refusal to register, a maintenance order made in a Hague Convention country under the Maintenance Orders (Reciprocal Enforcement) Act 1972; or
 - (ii) applies for the registration of a judgment under section 4 of the Civil Jurisdiction and Judgments Act 1982
 and who benefited from complete or partial assistance with, or exemption from, costs or expenses in the country in which the maintenance order was made or the judgment was given.
- (2) In this regulation:
- “Central Authority” has the same meaning as in sections 3 and 14 of the Child Abduction and Custody Act 1985;
- “European Convention” means the convention defined in section 12(1) of the Child Abduction and Custody Act 1985;
- “Hague Convention” means the convention defined in section 1(1) of the Child Abduction and Custody Act 1985;
- “Hague Convention country” has the same meaning as in the Reciprocal Enforcement of

Maintenance Orders (Hague Convention Countries) Order 1993; and

“the Maintenance Orders (Reciprocal Enforcement) Act 1972” means that Act as applied with such exceptions, adaptations and modifications as are specified in the Reciprocal Enforcement of Maintenance Orders (Hague Convention Countries) Order 1993.

4. (1) Subject to regulation 3, the assessing authority to which an application is made shall determine the financial eligibility of the client in accordance with these Regulations.
- (2) Where the assessing authority is satisfied that the client is directly or indirectly in receipt of a qualifying benefit mentioned in paragraph (3), it shall take his disposable income and disposable capital as not exceeding the relevant sums specified in paragraph (4).
- (3) The following are qualifying benefits for the purposes of paragraph (2):
 - (a) income support;
 - (b) income-based Jobseeker’s Allowance;
 - (c) Working Families’ Tax Credit, provided that the amount (if any) to be deducted under section 128(2)(b) of the Social Security Contributions and Benefits Act 1992 has been determined at not more than £70 per week; and
 - (d) Disabled Person’s Tax Credit, provided that the amount (if any) to be deducted under section 129(5)(b) of the Social Security Contributions and Benefits Act 1992 has been determined at not more than £70 per week.
- (4) The relevant sums mentioned in paragraph (2) are as follows:
 - (a) where eligibility is being assessed under regulation 5(2) and the client is in receipt of any qualifying benefit, the disposable income figure in that regulation;
 - (b) where eligibility is being assessed under paragraphs (3) or (5) of regulation 5 and the client is in receipt of any qualifying benefit, the disposable income figure in those paragraphs;
 - (c) where eligibility is being assessed under paragraphs (3) or (5) of regulation 5 and the client is in receipt of a qualifying benefit in paragraph 3(a) or (b), the disposable capital figure in those paragraphs;
 - (d) where eligibility is being assessed under regulation 5(6) and the client is in receipt of a

qualifying benefit in paragraph 3(a) or (b), the disposable income figure in regulation 38(2)(a) and the disposable capital figure in regulation 38(2)(b).

5. (1) This regulation has effect subject to regulations 3 and 4.
- (2) A client is eligible for Legal Help, Help at Court, and Legal Representation before the Immigration Appeal Tribunal and an adjudicator if his weekly disposable income does not exceed £84, and his disposable capital does not exceed £1,000.
- (3) A client is eligible for Family Mediation if his weekly disposable income does not exceed £180 and his disposable capital does not exceed £3,000.
- (4) A client who is eligible for Family Mediation under paragraph (3) shall also be eligible for Help with Mediation in relation to family mediation.
- (5) A client is eligible for Legal Representation in respect of family proceedings before a magistrates’ court, other than proceedings under the Children Act 1989 or Part IV of the Family Law Act 1996, if his weekly disposable income does not exceed £180, and his disposable capital does not exceed £3,000.
- (6) A client is eligible for Legal Representation (other than as provided for in paragraphs (2) and (5)), General Family Help and Support Funding if his disposable income does not exceed £8,067 per year, but a person may be refused such services where:
 - (i) his disposable capital exceeds £6,750; and
 - (ii) it appears to the assessing authority that the probable cost of the funded services to which the application relates would not exceed the contribution payable by him under regulation 38.

Assessment of resources

6. Where an application is made, the client shall provide the assessing authority with the information necessary to enable it to:
 - (a) determine whether he satisfies the conditions set out in regulation 4; and
 - (b) calculate, where relevant, his disposable income and disposable capital and those of any other person concerned.
7. (1) The assessing authority shall:
 - (a) subject to regulation 4(2), calculate the disposable income and disposable capital of the person concerned in accordance with regulations 16 to 37; and

- (b) calculate any contribution payable in accordance with regulations 38 and 39.
 - (2) When calculating disposable income for the purposes of regulation 5(2), (3) or (5), the period of calculation shall be the seven days ending on the date of the application.
 - (3) When calculating disposable income for the purposes of regulation 5(6), the period of calculation shall be the 12 months starting on the date of the application or such other 12 month period as the assessing authority considers appropriate, but if there is no other practicable means of ascertaining it, the income may be taken to be the income received during the previous year.
 - (4) Where the assessing authority calculates that a client has disposable income or disposable capital of an amount which makes him ineligible to receive funded services, it shall refuse the application.
- 8.** The supplier shall not provide any funded services to the client prior to the assessment of resources in accordance with regulation 7 other than:
- (a) in accordance with Funding Code procedures; or
 - (b) where authorisation to do so is given by the Commission in a contract.
- 9.** Where the assessing authority is the supplier, any question arising under regulations 10 to 41 shall be decided by the supplier and the supplier, in deciding any such question, shall have regard to any guidance which may from time to time be given by the Commission as to the application of these Regulations.

Application in representative, fiduciary or official capacity

- 10.** Where the client is acting only in a representative, fiduciary or official capacity, the assessing authority shall, in calculating his disposable income and disposable capital, and the amount of any contribution to be made:
- (a) assess the value of any property or estate or the amount of any fund out of which he is entitled to be indemnified; and
 - (b) unless it considers that he might benefit from the proceedings, disregard his personal resources.

Resources of other persons

- 11.** (1) Subject to paragraph (2), in calculating the disposable income and disposable capital of the client, the resources of his partner shall be treated

as his resources.

- (2) The resources of the client's partner shall not be treated as his resources if he has a contrary interest in the dispute in respect of which the application is made.
- (3) Except where eligibility is being assessed under regulation 5(6), where the client is a child the resources of a parent, guardian or any other person who is responsible for maintaining him, or who usually contributes substantially to his maintenance, shall be treated as his resources, unless, having regard to all the circumstances, including the age and resources of the child and any conflict of interest, it appears inequitable to do so.
- (4) Where it appears to the assessing authority that:
 - (a) another person is or has been substantially maintaining the person concerned, or
 - (b) any of the resources of another person have been made available to the person concerned,
 the assessing authority may treat all or any part of the resources of that other person as the resources of the person concerned.
- (5) In this regulation and regulation 12, "person" includes a company, partnership, body of trustees and any body of persons, whether corporate or not corporate.

Deprivation or conversion of resources

- 12.** If it appears to the assessing authority that the person concerned has, with intent to reduce the amount of his disposable income or disposable capital, whether for the purpose of making himself eligible to receive funded services, reducing his liability to pay a contribution, or otherwise:
- (a) directly or indirectly deprived himself of any resources,
 - (b) transferred any resources to another person, or
 - (c) converted any part of his resources into resources which under these Regulations are to be wholly or partly disregarded,
- the resources which he has so deprived himself of, transferred or converted shall be treated as part of his resources or as not so converted as the case may be.

Duty to report change in financial circumstances

- 13.** The client shall forthwith inform the assessing authority of any change in his financial

circumstances (or those of any other person concerned) which has occurred since any assessment of his resources, and which might affect the terms on which the client was assessed as eligible to receive funded services.

Amendment of assessment due to error or receipt of new information

14. Where:

(a) it appears to the assessing authority that there has been an error in the assessment of a person's resources or contribution, or in any calculation or estimate upon which such assessment was based, or

(b) new information which is relevant to the assessment has come to light,

the assessing authority may make an amended assessment, and may take such steps as appear equitable to give effect to it in relation to any period during which funded services have already been provided.

Further assessments

15. (1) Where the eligibility of the person concerned was assessed under regulation 5(6) and it appears that his circumstances may have altered so that:

(a) his disposable income may have increased by an amount greater than £750 or decreased by an amount greater than £300, or

(b) his disposable capital may have increased by an amount greater than £750,

the assessing authority shall, subject to paragraph (6), make a further assessment of the person's resources and contribution (if any) in accordance with these Regulations.

(2) For the purposes of the further assessment, the period of calculation shall be the period of 12 months following the date of the change of circumstances or such other period of 12 months as the assessing authority considers to be appropriate.

(3) Where a further assessment is made, the amount or value of every resource of a capital nature acquired since the date of the original application shall be ascertained as at the date of receipt of that resource.

(4) Any capital contribution which becomes payable as a result of a further assessment shall be payable in respect of the cost of the funded services, including costs already incurred.

(5) Where a certificate is discharged as a result of a further assessment of capital, the assessing

authority may require a contribution to be paid in respect of costs already incurred.

(6) The assessing authority may decide not to make a further assessment under paragraph (1) if it considers such a further assessment inappropriate, having regard in particular to the period during which funded services are likely to continue to be provided to the client.

Calculation of income

16. The income of the person concerned from any source shall be taken to be the income which that person may reasonably expect to receive (in cash or in kind) during the period of calculation.

17. (1) The income from a trade, business or gainful occupation other than an occupation at a wage or salary shall be deemed to be whichever of the following the assessing authority considers more appropriate and practicable:

(a) the profits which have accrued or will accrue to the person concerned in respect of the period of calculation; or

(b) the drawings of the person concerned.

(2) In calculating the profits under paragraph (1)(a):

(a) the assessing authority may have regard to the profits of the last accounting period of such trade, business or gainful occupation for which accounts have been prepared; and

(b) there shall be deducted all sums necessarily expended to earn those profits, but no deduction shall be made in respect of the living expenses of the person concerned or any member of his family or household, except in so far as that person is wholly or mainly employed in that trade or business and such living expenses form part of his remuneration.

18. (1) For the purposes of this regulation, "national insurance contributions" means contributions under Part 1 of the Social Security Contributions and Benefits Act 1992.

(2) In calculating the disposable income of the person concerned, any income tax and national insurance contributions paid or, in the case of an assessment under regulation 5(6), payable on that income in respect of the period of calculation shall be deducted.

(3) For the purposes of regulation 5(6), income tax and national insurance contributions payable shall be calculated in accordance with the statutory provisions in force for the fiscal year in which the application or reassessment is made.

19. (1) In calculating the disposable income of the person

concerned, the following payments shall be disregarded:

- (a) under the Social Security Contributions and Benefits Act 1992:
 - (i) disability living allowance;
 - (ii) attendance allowance paid under section 64 or Schedule 8 paragraphs 4 or 7(2);
 - (iii) constant attendance allowance paid under section 104 as an increase to a disablement pension;
 - (iv) any payment made out of the social fund;
 - (b) any payment made under the Community Care (Direct Payments) Act 1996; and
 - (c) so much of any back to work bonus received under section 26 of the Jobseekers Act 1995 as is by virtue of that section to be treated as payable by way of jobseeker's allowance.
- 20.** (1) For the purposes of this regulation, "the Schedule" means Schedule 2 to the Income Support (General) Regulations 1987.
- (2) Subject to paragraph (3), in calculating the disposable income of the person concerned there shall be a deduction at or equivalent to the following rates (as they applied at the beginning of the period of calculation):
- (a) in respect of the maintenance of his partner, the difference between the income support allowance for a couple both aged not less than 18 (which is specified in column 2 of paragraph 1(3)(c) of the Schedule), and the allowance for a single person aged not less than 25 (which is specified in column 2 of paragraph 1(1)(e) of the Schedule); and
 - (b) in respect of the maintenance of any dependant child or dependant relative of his, where such persons are members of his household:
 - (i) in the case of a dependant child or a dependant relative aged 15 or under at the beginning of the period of calculation, the amount specified at (a) in column 2 in paragraph 2(1) of the Schedule; and
 - (ii) in the case of a dependant child or a dependant relative aged 16 or over at the beginning of the period of calculation, the amount specified at (b) in column 2 in paragraph 2(1) of the Schedule.
- (3) The assessing authority may reduce any rate provided by virtue of paragraph (1) by taking into account the income and other resources of the dependant child or dependant relative to such extent as appears to the assessing authority to be equitable.
- (4) In ascertaining whether a child is a dependant child or whether a person is a dependant relative for the purposes of this regulation, regard shall be had to their income and other resources.
- 21.** Where the person concerned is making and, throughout such period as the assessing authority considers adequate, has regularly made payments for the maintenance of:
- (a) a former partner;
 - (b) a child; or
 - (c) a relative
- who is not a member of his household, a reasonable amount shall be deducted in respect of such payments.
- 22.** Where eligibility is being assessed under regulation 5(6), in calculating the disposable income of the person concerned from any source, such amount (if any) as the assessing authority considers reasonable, having regard to the nature of the income or to any other circumstances, shall be disregarded.
- 23.** (1) This regulation applies only where eligibility is being assessed under regulation 5(6).
- (2) In calculating the disposable income of the person concerned, any sums (net of council tax benefit) payable by him in respect of the council tax to which he is liable by virtue of section 6 of the Local Government Finance Act 1992 shall be deducted.
- (3) Where the income of the person concerned consists, wholly or partly, of a wage or salary from employment, there shall be deducted:
- (a) the reasonable expenses of travelling to and from his place of employment;
 - (b) the amount of any payments reasonably made for membership of a trade union or professional organisation;
 - (c) where it would be reasonable to do so, an amount to provide for the care of any dependant child living with the person concerned during the time that person is absent from home by reason of his employment; and
 - (d) the amount of any contribution paid, whether under a legal obligation or not, to an occupational pension scheme within the meaning of the Social Security Pensions Act

1975 or to a personal pension scheme within the meaning of the Social Security Act 1986.

24. (1) This regulation applies only where eligibility is being assessed under regulation 5(6).
- (2) Paragraphs (3) to (5) apply only if the person concerned is a householder.
- (3) In calculating the disposable income of the person concerned, the net rent payable by him in respect of his main or only dwelling, or such part of it as is reasonable in the circumstances, shall be deducted; and the assessing authority shall decide which is the main dwelling where the person concerned resides in more than one dwelling.
- (4) For the purpose of this regulation, “net rent” includes:
- (a) any annual rent payable;
- (b) any annual instalment (whether of interest or capital) in respect of a mortgage debt or hereditary security up to a maximum of an amount bearing the same proportion to the amount of the annual instalment as £100,000 bears to the debt secured; and
- (c) a sum in respect of yearly outgoings borne by the householder including, in particular, any water and sewerage charges, and a reasonable allowance towards any necessary expenditure on repairs and insurance.
- (5) In calculating the amount of net rent payable, there shall be deducted
- (a) any housing benefit paid under the Social Security Contributions and Benefits Act 1992;
- (b) any proceeds of sub-letting any part of the premises; and
- (c) an amount reasonably attributable to any person other than the person concerned, his partner or any dependant, who is accommodated in the premises otherwise than as a sub-tenant.
- (6) If the person concerned is not a householder, a reasonable amount in respect of the cost of his living accommodation shall be deducted.

Calculation of capital

25. In calculating the disposable capital of the client, the amount or value of the subject matter of the dispute to which the application relates shall be excluded.
26. Subject to the provisions of these Regulations, in calculating the disposable capital of the person concerned, the amount or value of every resource of a capital nature belonging to him on the date

on which the application is made shall be included.

27. In so far as any resource of a capital nature does not consist of money, its value shall be taken to be:
- (a) the amount which that resource would realise if sold; or
- (b) the value assessed in such other manner as appears to the assessing authority to be equitable.
28. Where money is due to the person concerned, whether it is payable immediately or otherwise and whether payment is secured or not, its value shall be taken to be its present value.
29. The value to the person concerned of any life insurance or endowment policy shall be taken to be the amount which he could readily borrow on the security of that policy.
30. Other than in circumstances which are exceptional having regard in particular to the quantity or value of the items concerned, nothing shall be included in the disposable capital of the person concerned in respect of:
- (a) the household furniture and effects of the main or only dwelling house occupied by him;
- (b) articles of personal clothing; and
- (c) the tools and equipment of his trade, unless they form part of the plant or equipment of a business to which the provisions of regulation 31 apply.
31. (1) Where eligibility is being assessed under regulation 5(6), paragraphs (2) to (4) apply.
- (2) Where the person concerned is the sole owner of or partner in a business, the value of the business to him shall be taken to be the greater of:
- (a) such sum, or his share of such sum, as could be withdrawn from the assets of his business without substantially impairing its profits or normal development; and
- (b) such sum as that person could borrow on the security of his interest in the business without substantially injuring its commercial credit.
- (3) Where the person concerned stands in relation to a company in a position analogous to that of a sole owner or partner in a business, the assessing authority may, instead of ascertaining the value of his stocks, shares, bonds or debentures in that company, treat that person as if he were a sole owner or partner in a business and calculate the amount of his capital in respect of that resource in accordance with paragraph (2).

(4) Where the person concerned owns solely, jointly or in common with other persons, any interest on the termination of a prior estate, whether

- (a) legal or equitable;
- (b) vested or contingent;
- (c) in reversion or remainder; and
- (d) whether in real or personal property or in a trust or other fund

the value of such interest shall be calculated in such manner as is both equitable and practicable.

(5) Where eligibility is being assessed other than under regulation 5(6), the sums mentioned in this regulation shall be disregarded.

32. (1) In calculating the disposable capital of the person concerned, the value of any interest in land shall be taken to be the amount for which that interest could be sold less the amount of any mortgage debt or hereditary security, subject to the following:

- (a) in calculating the value of his interests, the total amount to be deducted in respect of all mortgage debts or hereditary securities shall not exceed £100,000;
- (b) in making the deductions in sub-paragraph (a), any mortgage debt or hereditary security in respect of the main or only dwelling shall be deducted last; and
- (c) the first £100,000 of the value of his interest (if any) in the main or only dwelling in which he resides, after the application of sub-paragraphs (a) and (b), shall be disregarded.

(2) Where the person concerned resides in more than one dwelling, the assessing authority shall decide which is the main dwelling.

33. In calculating the disposable capital of the person concerned, there shall be disregarded:

- (a) so much of any back to work bonus received under section 26 of the Jobseekers Act 1995 as is by virtue of that section to be treated as payable by way of jobseeker's allowance; and
- (b) the whole of any payment made out of the social fund under the Social Security Contributions and Benefits Act 1992 or any arrears of payments made under the Community Care (Direct Payments) Act 1996.

34. Where eligibility is being assessed under regulation 5(2), (3), or (5), and the person concerned has living with him a partner whose resources are required to be aggregated with his, or one or more dependant children or dependant relatives, a deduction shall be made of £335 in

respect of the first, £200 in respect of the second and £100 in respect of each further such person.

35. (1) Where eligibility is being assessed under regulation 5(6), the person concerned is of pensionable age and his annual disposable income (excluding any net income derived from capital) is less than the figure prescribed in regulation 38(2)(a), the amount of capital shown in the following table shall be disregarded:

annual disposable income (excluding net income derived from capital)	amount of capital disregard
up to £370	£35,000
£371-670	£30,000
£671-970	£25,000
£971-1,270	£20,000
£1,271-1,570	£15,000
£1,571-1,870	£10,000
£1,871 and above	£5,000

(2) In paragraph (1) "pensionable age" means the age of 60.

36. Where eligibility is being assessed under regulation 5(6), and under any statute, bond, covenant, guarantee or other instrument the person concerned is under a contingent liability to pay any sum or is liable to pay a sum not yet ascertained, such amount as is reasonably likely to become payable within the period of calculation shall be disregarded.

37. Where eligibility is being assessed under regulation 5(6), in calculating the disposable capital of the person concerned, such amount of capital (if any) as the assessing authority considers reasonable, having regard to the nature of the capital or to any other circumstances, may be disregarded.

Contributions

38. (1) A person whose eligibility is assessed under regulation 5(5) shall make a weekly contribution of one third of the amount by which his weekly disposable income exceeds £76.

(2) A person whose eligibility is assessed under regulation 5(6) shall make the following contributions:

- (a) where his disposable income in the period of calculation exceeds £2,723, monthly contributions throughout the period the certificate is in force of one thirty-sixth of the excess; and

- (b) where his disposable capital exceeds £3,000, a contribution of the lesser of the excess and the sum which the assessing authority considers to be the likely maximum cost of the funded services.
- (3) If, in making an assessment under regulation 5(6), the Commission considers that there are other persons or bodies, including those who have the same or a similar interest to the client or who might benefit from any proceedings, who can reasonably be expected to contribute to the cost of the funded services, or that some other source of funding exists which could be used to contribute to that cost, a reasonable additional amount may be added to the contribution (if any) due from the client.
- (4) The Commission may subsequently vary the amount of any additional contribution payable under paragraph (3).
- (5) All contributions shall be payable to the assessing authority.
- 39.** Where more than one certificate is in force in respect of the client at any one time, contributions from income under only one certificate shall be payable, and the Commission may decide under which certificate contributions shall be paid.
- 40.** (1) Where a certificate has been discharged or revoked and the contribution made by the client exceeds the net cost of the funded services, the excess shall be refunded to the client.
- (2) The net cost of the funded services means the cost paid by the Commission less any costs recovered by the Commission from another party.
- (3) Where funding is provided by the Commission under a contract which does not differentiate between the remuneration for the client's case and remuneration for other cases, or require the cost of individual cases to be assessed, the reference in paragraph (2) to the cost paid by the Commission shall be construed as a reference to such part of the remuneration payable under the contract as may be specified in writing by the Commission.
- (4) For the purposes of this regulation and regulation 43, where a certificate has been discharged the cost of any assessment proceedings under CPR Part 47 or of taxation in the House of Lords shall not be included as part of the cost of the funded services, and the cost of drawing up a bill is not part of the cost of assessment proceedings.
- 41.** Where the Commission has revoked a certificate in accordance with Part 15 of the Funding Code:

- (a) the client shall pay to the Commission all costs paid or payable by it under the certificate, less any amount already paid by way of contribution; and
- (b) the solicitor shall have the right to recover from the client the difference between the amount paid or payable to him by the Commission and the full amount of his costs assessed on the indemnity basis under CPR Rule 44.4.

PART III – THE STATUTORY CHARGE

Calculation of the statutory charge

- 42.** In regulations 43 to 53:
- “relevant dispute” means the dispute in connection with which funded services are provided;
- “relevant proceedings” means proceedings in connection with which funded services are provided;
- “recovered”, in relation to property or money, means property or money recovered or preserved by a client, whether for himself or for any other person;
- “statutory charge” means the charge created by section 10(7) of the Act in respect of the amount defined in regulation 43; and
- “success fee” is defined in accordance with section 58 of the Courts and Legal Services Act 1990.
- 43.** (1) Subject to paragraphs (3) and (4), where any money or property is recovered for a client in a relevant dispute or proceedings, the amount of the statutory charge shall be the aggregate of the sums referred to in section 10(7)(a) and (b) of the Act.
- (2) For the purposes of this regulation:
- (a) the sum referred to in section 10(7)(a) shall be defined in accordance with regulation 40(2) to (4), less any contribution paid by the client;
- (b) the sum referred to in section 10(7)(b) shall include:
- (i) any interest payable under regulation 52; and
- (ii) any sum which the client has agreed to pay only in specific circumstances under section 10(2)(c) of the Act, including that proportion of any success fee payable by a client in receipt of Litigation Support which he has agreed should be payable to the Commission under the terms of a conditional fee agreement.

(3) Subject to paragraph (4), the amount of the charge created by section 10(7) of the Act shall not include sums expended by the Commission in funding any of the following services:

- (a) Legal Help;
- (b) Help at Court;
- (c) Family Mediation; or
- (d) Help with Mediation.

(4) Paragraph (3)(a) and (b) does not apply where the funded services are given in relation to family, clinical negligence or personal injury proceedings or a dispute which may give rise to such proceedings.

Exemptions from the statutory charge

- 44.** (1) The charge created by section 10(7) of the Act shall not apply to any of the following:
- (a) any periodical payment of maintenance;
 - (b) other than in circumstances which are exceptional having regard in particular to the quantity or value of the items concerned, the client's clothes or household furniture or the tools or implements of his trade;
 - (c) any sum or sums ordered to be paid under section 5 of the Inheritance (Provision for Family and Dependents) Act 1975 or Part IV of the Family Law Act 1996;
 - (d) the first £2,500 of any money or the value of any property recovered by virtue of an order made or deemed to be made under any of the enactments specified in paragraph (2), or an agreement which has the same effect as such an order;
 - (e) one-half of any redundancy payment within the meaning of Part XI of the Employment Rights Act 1996 recovered by the client;
 - (f) any payment of money made in accordance with an order made by the Employment Appeal Tribunal (excluding an order for costs);
 - (g) where the statutory charge is in favour of the supplier, the client's main or only dwelling; or
 - (h) any sum, payment or benefit which, by virtue of any provision of or made under an Act of Parliament, cannot be assigned or charged.

(2) The enactments referred to in paragraph (1)(d) are:

- (a) section 23(1)(c) or (f), 23(2), 24, 27(6)(c) or

(f), 31(7A) or (7B), or 35 of the Matrimonial Causes Act 1973;

(b) section 2 or 6 of the Inheritance (Provision for Family and Dependents) Act 1975;

(c) section 17 of the Married Women's Property Act 1882;

(d) section 2(1)(b) or (d), 6(1) or (5), or 20(2) of the Domestic Proceedings and Magistrates' Courts Act 1978; and

(e) Schedule 1 to the Children Act 1989;

(4) In paragraph (1)(a), "maintenance" means money or money's worth paid towards the support of a former partner, child or any other person for whose support the payer has previously been responsible or has made payments.

45. (1) Subject to paragraph (2), the statutory charge shall be in favour of the Commission.

(2) Subject to paragraph (3), where it relates to the cost of Legal Help or Help at Court, the statutory charge shall be in favour of the supplier.

(3) Where Legal Help or Help at Court has been provided, the statutory charge shall be in favour of the Commission if it attaches to money or property recovered after a certificate has been granted in relation to the same matter.

Supplier's authority to waive statutory charge

46. (1) This regulation applies only where the statutory charge is in favour of the supplier.

(2) The Commission may grant a supplier authority, either in respect of individual cases or generally, to waive either all or part of the amount of the statutory charge where its enforcement would cause grave hardship or distress to the client or would be unreasonably difficult because of the nature of the property.

Waiver of charge in case of wider public interest

47. (1) For the purposes of this regulation, "wider public interest" means the potential of proceedings to produce real benefits for individuals other than the client (other than any general benefits which normally flow from proceedings of the type in question).

(2) Paragraph (3) applies where:

(a) the Commission funds Legal Representation or Support Funding in proceedings which it considers have a significant wider public interest; and

- (b) the Commission considers it cost-effective to fund those services for a specified claimant or claimants, but not for other claimants or potential claimants who might benefit from the litigation.
- (3) Where this paragraph applies, the Commission may, if it considers it equitable to do so, waive some or all of the amount of the statutory charge.

Application of regulations 49 to 53

- 48.** Regulations 49 to 53 apply only in relation to a statutory charge in favour of the Commission.

Operation of statutory charge where certificate revoked or discharged

- 49.** (1) Where a certificate has been revoked or discharged, section 10(7) of the Act shall apply to any money or property recovered as a result of the client continuing to pursue the relevant dispute or take, defend or be a party to the relevant proceedings.
- (2) In paragraph (1), “client” means the person whose certificate has been revoked or discharged, or, as the case may be, his personal representatives, trustee in bankruptcy or the Official Receiver.

Operation of statutory charge on money in court

- 50.** (1) Paragraph (2) applies where any money recovered by a client in any proceedings is ordered to be paid into or remain in court and invested for the benefit of the client.
- (2) Where this paragraph applies, the statutory charge shall attach only to such part of the money as, in the opinion of the Commission, will be sufficient to safeguard the interests of the Commission, and the Commission shall notify the court in writing of the amount so attached.

Enforcement of statutory charge

- 51.** Subject to regulation 52, the Commission may enforce the statutory charge in any manner which would be available to a chargee in respect of a charge given between parties.
- 52.** (1) The Commission may postpone the enforcement of the statutory charge where (but only where):
- (a) by order of the court or agreement it relates to property to be used as a home by the client or his dependants, or, where the relevant proceedings were family proceedings, to money to pay for such a home;
 - (b) the Commission is satisfied that the property in question will provide such security for the statutory charge as it considers appropriate;

and

- (c) as soon as it is possible to do so, the Commission registers a charge under the Land Registration Act 1925 to secure the amount in regulation 43 or, as appropriate, takes equivalent steps (whether in England and Wales or in any other jurisdiction) to protect its interest in the property.

- (2) Where the client wishes to purchase a property in substitution for the property over which a charge is registered under paragraph (1)(c), the Commission may release the charge if the conditions in paragraph (1)(b) and (c) are satisfied.
- (3) Where the enforcement of the statutory charge is postponed, interest shall accrue for the benefit of the Commission in accordance with regulation 53.
- (4) Without prejudice to the provisions of the Land Registration Act 1925 and the Land Charges Act 1972, all conveyances and acts done to defeat, or operating to defeat, any charge shall, except in the case of a bona fide purchaser for value without notice, be void as against the Commission.

Payment and recovery of interest

- 53.** (1) Where interest is payable by the client under regulation 52, that interest shall continue to accrue until the amount of the statutory charge is paid.
- (2) The client may make interim payments of interest or capital in respect of the outstanding amount of the statutory charge, but no interim payment shall be used to reduce the capital outstanding while any interest remains outstanding.
 - (3) Where interest is payable by the client under regulation 52:
 - (a) it shall run from the date when the charge is first registered;
 - (b) it shall accrue at the rate of 8% per annum; and
 - (c) the capital on which it is calculated shall be either:
 - (i) the amount of the statutory charge outstanding from time to time, less any interest accrued by virtue of regulation 52(3), or
 - (ii) where the value of the property at the time it was recovered was less than the amount of the statutory charge, such lower sum as the Commission considers equitable in the circumstances. ■

The Community Legal Service (Costs) Regulations 2000

The Lord Chancellor, in exercise of the powers conferred on him by sections 10, 11(2), (3) and (4)(a), (c) and (e) to (g) and section 22(1), (5) and (6) of the Access to Justice Act 1999, and all other powers enabling him in that behalf, makes the following Regulations:

PART I – GENERAL

Citation and commencement

1. These Regulations may be cited as the Community Legal Service (Costs) Regulations 2000 and shall come into force on 1st April 2000.

Interpretation

2. In these Regulations:

“the Act” means the Access to Justice Act 1999;

“certificate” means a certificate issued under the Funding Code certifying a decision to fund services for the client;

“client” means an individual who receives funded services;

“Commission” means the Legal Services Commission established under section 1 of the Act;

“costs judge” has the same meaning as in the CPR;

“costs order” means an order that a party pay all or part of the costs of proceedings;

“costs order against the Commission” means an order, made under regulation 5 of the Community Legal Service (Cost Protection) Regulations 2000 (but not one under regulation 6 of those Regulations), that the Commission pay all or part of the costs of a party to proceedings who has not received funded services in relation to those proceedings under a certificate, other than a certificate which has been revoked;

“cost protection” means the limit on costs awarded against a client set out in section 11(1) of the Act;

“court” includes any tribunal having the power to award costs in favour of, or against, a party;

“CPR” means the Civil Procedure Rules 1998, and a reference to a Part or rule, prefixed by “CPR”, means the Part or rule so numbered in the CPR;

“Financial Regulations” means the Community Legal Service (Financial) Regulations 2000;

“Funding Code” means the code approved under section 9 of the Act;

“full costs” means, where a section 11(1) costs order is made against a client, the amount of costs

which that client would, but for section 11(1) of the Act, have been ordered to pay;

“funded services” means services which are provided directly for a client and funded for that client by the Commission as part of the Community Legal Service under sections 4 to 11 of the Act;

“partner”, in relation to a party to proceedings, means a person with whom that party lives as a couple, and includes a person with whom the party is not currently living but from whom he is not living separate and apart;

“proceedings” include proceedings in any tribunal which is a court, as defined, in this paragraph;

“receiving party” means a party in favour of whom a costs order is made;

“Regional Director” means any Regional Director appointed by the Commission in accordance with the Funding Code and any other person authorised to act on his behalf, except a supplier;

“rules of court”, in relation to a tribunal, means rules or regulations made by the authority having power to make rules or regulations regulating the practice and procedure of that tribunal and, in relation to any court, includes practice directions;

“section 11(1) costs order” means a costs order against a client where cost protection applies;

“solicitor” means solicitor or other person who is an authorised litigator within the meaning of section 119(1) of the Courts and Legal Services Act 1990;

“statement of resources” means:

- (a) a statement, verified by a statement of truth, made by a party to proceedings setting out:
 - (i) his income and capital and financial commitments during the previous year and, if applicable, those of his partner;
 - (ii) his estimated future financial resources and expectations and, if applicable, those of his partner; and
 - (iii) a declaration that he and, if applicable, his partner, has not deliberately foregone or deprived himself of any resources or expectations, particulars of any application for funding made by him in connection with the proceedings, and any other facts relevant to the determination of his resources; or

- (b) a statement, verified by a statement of truth, made by a client receiving funded services, setting out the information provided by the client under regulation 6 of the Financial Regulations, and stating that there has been no significant change in the client's financial circumstances since the date on which the information was provided or, as the case may be, details of any such change;

“statement of truth” has the same meaning as in CPR Part 22;

“supplier” means any person or body providing funded services to the client, including any authorised advocate (within the meaning of section 119(1) of the Courts and Legal Services Act 1990) engaged by the client's solicitor to act in proceedings.

Effect of these Regulations

- 3.** Nothing in these Regulations shall be construed, in relation to proceedings where one or more parties are receiving, or have received, funded services, as:
- requiring a court to make a costs order where it would not otherwise have made a costs order; or
 - affecting the court's power to make a wasted costs order against a legal representative.

Termination of retainer where funding is withdrawn

- 4.** (1) The following paragraphs of this regulation apply where funding is withdrawn by revoking or discharging the client's certificate.
- Subject to paragraphs (3) and (4), on the revocation or discharge of the client's certificate, the retainer of any supplier acting under that certificate shall terminate immediately.
 - Termination of retainers under paragraph (2) shall not take effect unless and until any procedures under the Funding Code for review of the decision to withdraw the client's funding are concluded, and confirm the decision to withdraw funding.
 - The solicitor's retainer shall not terminate until he has complied with any procedures under the Funding Code that require him to send or serve notices.

PART II – COSTS ORDERS AGAINST CLIENT AND AGAINST COMMISSION

Application of regulations 6 to 13

- 5.** Regulations 6 to 13 apply only where cost protection applies.

Security for costs

- 6.** Where in any proceedings a client is required to

give security for costs, the amount of that security shall not exceed the amount (if any) which is a reasonable one having regard to all the circumstances, including the client's financial resources and his conduct in relation to the dispute to which the proceedings relate.

Assessment of resources

- 7.** (1) The first £100,000 of the value of the client's interest in the main or only dwelling in which he resides shall not be taken into account in having regard to the client's resources for the purposes of section 11(1) of the Act.
- (2) Where, but only to the extent that, the court considers that the circumstances are exceptional, having regard in particular to the quantity or value of the items concerned, the court may take into account the value of the client's clothes and household furniture, or the tools and implements of his trade, in having regard to the client's resources for the purposes of section 11(1) of the Act.
- (3) Subject to paragraph (4), in having regard to the resources of a party for the purposes of section 11(1) of the Act, the resources of his partner shall be treated as his resources.
- (4) The resources of a party's partner shall not be treated as that party's resources if the partner has a contrary interest in the dispute in respect of which the funded services are provided.
- (5) Where a party is acting in a representative, fiduciary or official capacity, the court shall not take the personal resources of the party into account for the purposes of section 11(1) of the Act, but shall have regard to the value of any property or estate, or the amount of any fund out of which he is entitled to be indemnified, and may also have regard to the resources of the persons, if any, including that party where appropriate, who are beneficially interested in that property, estate or fund.

Statements of resources

- 8.** (1) Any person who is a party to proceedings in which another party is a client may make a statement of resources, and file it with the court.
- (2) A person making and filing a statement of resources under paragraph (1) shall serve a copy of it on the client.
- (3) Where a copy of a statement of resources has been served under paragraph (2) not less than seven days before the date fixed for a hearing at which the amount to be paid under a section 11(1) costs order falls, or may fall, to be decided, the client shall also make a statement of resources, and shall produce it at that hearing.

Procedures for ordering costs against client and Commission

9. (1) Where the court makes a section 11(1) costs order, it shall consider whether, but for cost protection, it would have made a costs order against the client and, if so, whether it would, on making the costs order, have specified the amount to be paid under that order.
- (2) If the court considers that it would have made a costs order against the client, but that it would not have specified the amount to be paid under it, the court shall, when making the section 11(1) costs order:
- (a) specify the amount (if any) that the client is to pay under that order if, but only if:
 - (i) it considers that it has sufficient information before it to decide what amount is, in that case, a reasonable amount for the client to pay, in accordance with section 11(1) of the Act; and
 - (ii) it is satisfied that, if it were to determine the full costs at that time, they would exceed the amount referred to in sub-paragraph (i);
 - (b) otherwise, it shall not specify the amount the client is to pay under the section 11(1) costs order.
- (3) If the court considers that it would have made a costs order against the client, and that it would have specified the amount to be paid under it, the court shall, when making the section 11(1) costs order:
- (a) specify the amount (if any) that the client is to pay under that order if, but only if, it considers that it has sufficient information before it to decide what amount is, in that case, a reasonable amount for the client to pay, in accordance with section 11(1) of the Act;
 - (b) otherwise, it shall not specify the amount the client is to pay under the section 11(1) costs order.
- (4) Any order made under paragraph (3) shall state the amount of the full costs.
- (5) The amount (if any) to be paid by the client under an order made under paragraph (2)(b) or paragraph (3)(b), and any application for a costs order against the Commission, shall be determined in accordance with regulation 10, and at any such determination following an order made under paragraph (2)(b), the amount of the full costs shall also be assessed.
- (6) Where the court makes a section 11(1) costs order that does not specify the amount which the client is to pay under it, it may also make findings of fact, as to the parties' conduct in the proceedings or otherwise, relevant to the determination of that amount, and those findings shall be taken into consideration in that determination.
10. (1) The following paragraphs of this regulation apply where the amount to be paid under a section 11(1) costs order, or an application for a costs order against the Commission, is to be determined under this regulation, by virtue of regulation 9(5).
- (2) The receiving party may, within three months after a section 11(1) costs order is made, request a hearing to determine the costs payable to him.
 - (3) A request under paragraph (2) shall be accompanied by:
 - (a) if the section 11(1) costs order does not state the full costs, the receiving party's bill of costs, which shall comply with any requirements of relevant rules of court relating to the form and content of a bill of costs where the court is assessing a party's costs;
 - (b) a statement of resources; and
 - (c) if the receiving party is seeking, or, subject to the determination of the amount to be paid under the section 11(1) costs order, may seek, a costs order against the Commission, written notice to that effect.
 - (4) The receiving party shall file the documents referred to in paragraph (3) with the court and at the same time serve copies of them:
 - (a) on the client, if a determination of costs payable under section 11(1) of the Act is sought; and
 - (b) on the Regional Director, if notice has been given under paragraph (3)(c).
 - (5) Where documents are served on the client under paragraph (4)(a), the client shall make a statement of resources.
 - (6) The client shall file the statement of resources made under paragraph (5) with the court, and serve copies of it on the receiving party and, if notice has been given under paragraph (3)(c), on the Regional Director, not more than 21 days after the client receives a copy of the receiving party's statement of resources.
 - (7) The client may, at the same time as filing and serving a statement of resources under paragraph (6), file, and serve on the same persons, a statement setting out any points of

dispute in relation to the bill of costs referred to in paragraph (3)(a).

- (8) If the client, without good reason, fails to file a statement of resources in accordance with paragraph (6), the court shall determine the amount which the client shall be required to pay under the section 11(1) costs order (and, if relevant, the full costs), having regard to the statement made by the receiving party, and the court need not hold an oral hearing for such determination.
- (9) If the client files a statement of resources in accordance with paragraph (6), or the period for filing such notice expires, or if the costs payable by the client have already been determined, the court shall set a date for the hearing and, at least 14 days before that date, serve notice of it on:
 - (a) the receiving party;
 - (b) the client (unless the costs payable by the client have already been determined); and,
 - (c) if a costs order against the Commission is or may be sought, the Regional Director.
- (10) The court's functions under this regulation may be exercised:
 - (a) in relation to proceedings in the House of Lords, by the Clerk to the Parliaments;
 - (b) in relation to proceedings in the Court of Appeal, High Court or a county court, a costs judge or a district judge;
 - (c) in relation to proceedings in a magistrates' court, by a single justice or by the justices' clerk;
 - (d) in relation to proceedings in the Employment Appeal Tribunal, by the Registrar of that Tribunal.
- (11) The amount of costs to be determined under this regulation may include the costs incurred in relation to a request made under this regulation.

Appeals, etc

- 11.** (1) Subject to the following paragraphs of this regulation, and to regulation 12, any determination made under regulation 9 or regulation 10 shall be final.
- (2) Any party with a financial interest in an assessment of the full costs may appeal against that assessment, if and to the extent that that party would, but for these Regulations, be entitled to appeal against an assessment of costs by the court in which the relevant proceedings are taking place.
- (3) Where, under regulation 9(2)(a), the court has

specified the amount which a client is required to pay under a section 11(1) costs order, the client may apply to the court for a determination of the full costs and if, on that determination, the amount of the full costs is less than the amount which the court previously specified under regulation 9(2)(a), the client shall instead be required to pay the amount of the full costs.

- (4) The receiving party or the Commission may appeal, on a point of law, against the making of a costs order against the Commission (including the amount of costs which the Commission is required to pay under the order), or against the court's refusal to make such an order.

Variation and late determination of amount of costs

- 12.** (1) The following paragraphs of this regulation apply where the court makes a section 11(1) costs order.
 - (2) Where the amount (if any) which the client is required to pay under the section 11(1) costs order, together with the amount which the Commission is required to pay under any costs order against the Commission, is less than the full costs, the receiving party may, on the ground set out in paragraph (4)(a), apply to the court for an order varying the amount which the client is required to pay under the section 11(1) costs order.
 - (3) Where the court has not specified the amount to be paid under the section 11(1) costs order, and the receiving party has not, within the time limit in regulation 10(2), applied to have that amount determined in accordance with regulation 10, the receiving party may, on any of the grounds set out in paragraph (4), apply for a determination of the amount that the client is required to pay.
 - (4) The grounds referred to in paragraphs (2) and (3) are the grounds that
 - (a) there has been a significant change in the client's circumstances since the date of the order;
 - (b) material additional information as to the client's financial resources is available, and that information could not with reasonable diligence have been obtained by the receiving party in time to make an application in accordance with regulation 10; or
 - (c) there were other good reasons justifying the receiving party's failure to make an application within the time limit in regulation 10(2).

- (5) Any application under paragraph (2) or (3) shall be made by the receiving party within six years from the date on which the section 11(1) costs order is first made.
- (6) On any application under paragraph (2), the order may be varied as the court thinks fit, but the amount of costs ordered (excluding any costs ordered to be paid under paragraph (9)) shall not exceed the amount of the full costs as stated in any previous order of the court.
- (7) When the amount which the client is required to pay under the section 11(1) costs order has been determined under regulation 9(2)(a), and the receiving party applies under paragraph (2) for an order varying that amount:
 - (a) the receiving party shall file with the application under paragraph (2) his bill of costs, which shall comply with any requirements of relevant rules of court relating to the form and content of a bill of costs where the court is assessing a party's costs; and
 - (b) the court shall, when determining the application, assess the full costs.
- (8) Where the receiving party has received funded services in relation to the proceedings, the Commission may make an application under paragraph (2) or paragraph (3), and:
 - (a) when making the application the Commission shall file with the court a statement of the receiving party's costs or, if those costs have not been assessed, the receiving party's bill of costs; and
 - (b) paragraphs (4) to (6) shall apply to that application as if "the Commission" were substituted for "the receiving party" in those paragraphs.
- (9) The amount of costs to be determined under this regulation may include the costs incurred in relation to an application made under this regulation.

Rights to appear

- 13.** (1) The Regional Director may appear at:
 - (a) any hearing in relation to which notice has been given under regulation 10(3)(c);
 - (b) the hearing of any appeal under regulation 11(4); or
 - (c) the hearing of any application under regulation 12(8).
- (2) The Regional Director may, instead of appearing under paragraph (1), give evidence in the form of a written statement to the court, verified by a statement of truth.

- (3) The Regional Director shall file with the court any statement under paragraph (2), and serve a copy on the receiving party, not less than seven days before the hearing to which it relates.

PART III – PROPERTY AND COSTS RECOVERED FOR A FUNDED CLIENT

Application of this Part

14. (1) In this Part:

"the awarded sum" means the amount of costs to be paid in accordance with a client's costs order or a client's costs agreement;

"client's costs order" and "client's costs agreement" mean, respectively, an order and an agreement that another party to proceedings or prospective proceedings pay all or part of the costs of a client;

"Fund" means the Community Legal Service Fund established under section 5 of the Act;

"the funded sum" means the amount of remuneration payable by the Commission to a supplier for the relevant work under a contract or any other arrangements that determine that supplier's remuneration, including those that apply by virtue of article 4 of the Community Legal Service (Funding) Order 2000; and, where funding is provided by the Commission under a contract which does not differentiate between the remuneration for the client's case and remuneration for other cases, means such part of the remuneration payable under the contract as may be specified in writing by the Commission as being the funded sum;

"relevant work" means the funded services provided in relation to the dispute or proceedings to which the client's costs order or client's costs agreement relates;

"remuneration" includes fees and disbursements and value added tax on fees and disbursements;

"statutory charge" means the charge created by section 10(7) of the Act.

Amount of costs under client's costs order or client's costs agreement

- 15.** (1) Subject to the following paragraphs of this regulation, the amount of the costs to be paid under a client's costs order or client's costs agreement shall, subject to regulation 16, be determined on the same basis as it would be if the costs were to be paid to a person who had not received funded services.
- (2) Subject to paragraph (3), the amount of the awarded sum shall not be limited to the amount of the funded sum by any rule of law which limits the costs recoverable by a party to proceedings to the amount he is liable to pay to

his legal representatives.

- (3) Paragraph (2) applies only to the extent that the Commission has authorised the supplier under section 22(2)(b) of the Act to take payment for the relevant work other than that funded by the Commission.

Costs of serving notices and other documents

- 16.** The amount of costs to be paid under a client's costs order or client's costs agreement may include costs incurred in filing with the court, or serving on any other party to proceedings, notices or any other documents in accordance with these Regulations, the Financial Regulations or the Funding Code.

Application of regulations 18 to 24

- 17.** (1) Regulations 18 to 24 apply only where funded services have been provided under a certificate.
- (2) If the client is no longer being represented by a solicitor, all money to which regulation 18(1) applies shall be paid (or repaid) to the Commission, and all references in regulations 18(1) and 19 to the client's solicitor shall be construed as references to the Commission.

Money recovered to be paid to solicitor

- 18.** (1) Subject to the following paragraphs of this regulation, and to regulation 17(2), all money payable to or recovered by a client in connection with a dispute by way of damages, costs or otherwise, whether or not proceedings were begun, and whether under an order of the court or an agreement or otherwise, shall be paid to the client's solicitor, and only the client's solicitor shall be capable of giving a good discharge for that money.
- (2) Paragraph (1) shall not apply to
- (a) any periodical payment of maintenance; or
 - (b) any money recovered or preserved by a client in any proceedings which:
 - (i) has been paid into, or remains in, court, and is invested for the client's benefit; and
 - (ii) under regulation 50 of the Financial Regulations, is not subject to the statutory charge.
- (3) Where the client's solicitor has reason to believe that an attempt may be made to circumvent the provisions of paragraph (1), he shall inform the Commission immediately.

Notice to third parties

- 19.** (1) Where money is payable under regulation 18, and that money is payable by a trustee in bankruptcy, a trustee or assignee of a deed of arrangement, a liquidator of a company in liquidation, a trustee of a pension fund or any other third party ("the third party") the client's solicitor shall send to the third party notice that funded services have been funded for the client by the Commission.
- (2) Notice under paragraph (1) shall operate as a request by the client that money payable under regulation 18 be paid to his solicitor, and shall be a sufficient authority for that purpose.

Solicitor to pay money recovered to Commission

- 20.** (1) The client's solicitor shall forthwith—
- (a) inform the Regional Director of any money or other property recovered or preserved, and send him a copy of the order or agreement by virtue of which the property was recovered or preserved;
 - (b) subject to the following paragraphs of this regulation, pay to the Commission all money or other property received by him under regulation 18.
- (2) Paragraph (1)(b) shall not apply to any money or other property to which the statutory charge does not apply, by virtue of the Financial Regulations.
- (3) Where he considers it essential to protect the client's interests or welfare, the Regional Director shall pay, or direct the client's solicitor to pay, to the client any money received by way of any interim payment made in accordance with an order made under CPR rule 25.6, or in accordance with an agreement having the same effect as such an order.
- (4) The Regional Director may direct the client's solicitor to—
- (a) pay to the Commission under paragraph (1)(b) only such sums as, in the Regional Director's opinion, should be retained by the Commission in order to safeguard its interests; and
 - (b) pay any other money to the client.
- (5) Where the solicitor pays money to the Commission in accordance with this regulation, he shall identify what sums relate respectively to:
- (a) costs;
 - (b) damages;
 - (c) interest on costs; and
 - (d) interest on damages.

Postponement of statutory charge

21. (1) In this regulation:

“conveyancer” means a solicitor or any other person who lawfully provides conveyancing services.

“family proceedings” means proceedings which arise out of family relationships, including proceedings in which the welfare of children is determined. Family proceedings also include all proceedings under any one or more of the following:

- (a) the Matrimonial Causes Act 1973;
- (b) the Inheritance (Provision for Family and Dependents) Act 1975;
- (c) the Adoption Act 1976;
- (d) the Domestic Proceedings and Magistrates’ Courts Act 1978;
- (e) Part III of the Matrimonial and Family Proceedings Act 1984;
- (f) Parts I, II and IV of the Children Act 1989;
- (g) Part IV of the Family Law Act 1996; and
- (h) the inherent jurisdiction of the High Court in relation to children.

“purchase money” means money recovered or preserved by the client in family proceedings which, by virtue of an order of the court or an agreement, is to be used to purchase a home to be used by the client or the client’s dependants, and “the purchased property” means the property purchased or to be purchased with that money;

- (2) The following paragraphs of this regulation apply, and (subject to paragraph (6)) regulation 20(1)(b) does not apply, where the Commission decides to postpone enforcement of the statutory charge under regulation 52 of the Financial Regulations.
- (3) The solicitor may release the purchase money to the seller or the seller’s representative on completion of the purchase of the purchased property; and shall as soon as practicable provide the Commission with sufficient information to enable it to protect its interest in accordance with regulation 52(1)(c) of the Financial Regulations.
- (4) The client’s solicitor may release the purchase money to a conveyancer acting for the client in the purchase of the purchased property, if he is satisfied that adequate steps have been, or will be, taken to protect the interests of the Commission.
- (5) The steps referred to in paragraph (4) shall

include, but are not limited to, the securing of an undertaking from the conveyancer referred to in that paragraph to:

- (a) provide the information referred to in paragraph (3); and
 - (b) repay the purchase money under paragraph (6).
- (6) Where the purchase of the purchased property has not been completed within 12 months after the date of the Commission’s decision referred to in paragraph (2), or such longer period as the Commission considers reasonable, regulation 20(1)(b) shall apply and the purchase money shall accordingly be repaid to the Commission.

Retention and payment out of money by the Commission

22. (1) The Commission shall deal with the money paid to it under this Part in accordance with this regulation.

(2) The Commission shall retain:

- (a) an amount equal to the costs incurred in taking steps under regulation 23;
- (b) an amount equal to that part of the funded sum already paid to the supplier in respect of the relevant work; and
- (c) where costs are paid to the Commission together with interest, an amount equal to that interest, less the amount of any interest payable to the supplier under paragraph (3)(b)(ii).

(3) The Commission shall pay to the supplier :

- (a) any outstanding amount of the funded sum payable to him in respect of the relevant work;
- (b) where costs are ordered or agreed to be paid to the client, and those costs are received by the Commission, and those costs (less any amount retained under paragraph (2)(a) or payable under paragraph (5)) exceed the funded sum:
 - (i) an amount equal to the amount of the excess; and
 - (ii) where those costs are paid to the Commission together with interest, an amount equal to the interest attributable to the excess referred to in sub-paragraph (i).

- (4) Paragraph (5) applies where a solicitor has acted on behalf of the client in proceedings before that client receives funded services in respect of the same proceedings, or has a lien on any documents necessary to proceedings to which a client is a party, and has handed them

over subject to the lien, but applies only so far as is consistent with the express terms of any contract between the Commission and the solicitor.

- (5) Where the solicitor referred to in paragraph (4) gives the Commission written notice that this paragraph applies, the Commission shall pay to that solicitor the costs to which that solicitor would have been entitled if those costs had been assessed on an indemnity basis.
- (6) Where the amount of costs payable under paragraph (5) have not been assessed by the court, they may instead be assessed by the Commission.
- (7) Where the amount received by the Commission, less any amount retained under paragraph (2)(a), is insufficient to meet the funded sum and any sum payable under paragraph (5), the Commission shall apportion the amount received proportionately between the two.
- (8) The Commission shall pay all the money paid to it under this Part, which is not paid or retained under paragraphs (2) to (5), to the client.

Enforcement of orders etc in favour of client

- 23.** (1) Where, in relation to any dispute to which a client is a party, whether or not proceedings are begun—
- (a) an order or agreement is made providing for the recovery or preservation of property by the client (whether for himself or any other person); or
 - (b) there is a client's costs order or client's costs agreement
- the Commission may take any steps, including proceedings in its own name, as may be necessary to enforce or give effect to that order or agreement.
- (2) A client may, with the consent of the Regional Director, take proceedings to give effect to an order or agreement under which he is entitled to recover or preserve money or other property.
 - (3) Subject to paragraph (4), the client's solicitor may take proceedings for the recovery of costs where a client's costs order or a client's costs agreement has been made.
 - (4) Where the client's costs order or client's costs agreement relates wholly or partly to costs incurred in carrying out work which is remunerated, or to be remunerated, in the funded sum, but those costs have not been reimbursed by payment from any other party in

favour of the client, the solicitor shall require the consent of the Regional Director before taking proceedings to which paragraph (3) refers.

- (5) Where the Commission takes proceedings, it may authorise any person to make a statement, file a proof or take any other step in the proceedings in its name.
- (6) The costs incurred by the Commission in taking any step to enforce an order or agreement where paragraph (1) applies shall be a first charge on any property or sum so recovered.

Interest on damages

- 24.** (1) Where the Commission receives damages paid in favour of a client it shall, subject to the following paragraphs, pay to the client a sum representing gross interest earned while the damages are being held by the Commission.
- (2) Without prejudice to its other powers to invest money, the Commission shall maintain and may deposit damages to which this regulation refers in one general account at a bank or building society.
 - (3) The rate of interest payable to the client under this regulation shall be 0.5% per annum less than the rate payable on damages deposited in the general account.
 - (4) The Commission shall not be required to pay interest where the damages received do not exceed £500 or where the period during which they are held by the Commission is less than 28 days.
 - (5) Interest shall be payable for the period beginning on the third business day after the date on which damages are received by the Commission to and including the date on which the Commission determines the amount to be paid under regulation 22(8).
 - (6) In this regulation—

“bank” means the Bank of England, or the branch, situated in England or Wales, of any institution authorised under the Banking Act 1987;

“building society” means the branch, situated in England or Wales, of a building society within the meaning of the Building Societies Act 1986;

“business day” means a day other than a Saturday, a Sunday, Christmas Day, Good Friday or a bank holiday under the Banking and Financial Dealings Act 1971;

“general account” means an interest bearing account opened in the name of the Commission, the title of which does not identify any client. ■

The Community Legal Service (Costs Protection) Regulations 2000

The Lord Chancellor, in exercise of the powers conferred on him by sections 11(1), (3) and (4)(b) and (d) of the Access to Justice Act 1999, and all other powers enabling him in that behalf, makes the following Regulations, a draft of which has been laid before and approved by resolution of each House of Parliament:

Citation and commencement

1. These Regulations may be cited as the Community Legal Service (Cost Protection) Regulations 2000 and shall come into force on 1st April 2000.

Interpretation

2. (1) In these Regulations:

“the Act” means the Access to Justice Act 1999;

“certificate” means a certificate issued under the Funding Code certifying a decision to fund services for the client and “emergency certificate” means a certificate certifying a decision to fund Legal Representation for the client in a case of emergency;

“client” means an individual who receives funded services;

“Commission” means the Legal Services Commission established under section 1 of the Act;

“costs order” means an order that a party pay all or part of the costs of proceedings;

“cost protection” means the limit on costs awarded against a client set out in section 11(1) of the Act;

“court” includes any tribunal having the power to award costs in favour of, or against, a party;

“full costs” means, where a section 11(1) costs order is made against a client, the amount of costs which that client would, but for section 11(1) of the Act, have been ordered to pay;

“funded proceedings” means proceedings (including prospective proceedings) in relation to which the client receives funded services or, as the case may be, that part of proceedings during which the client receives funded services;

“funded services” means services which are provided directly for a client and funded for

that client by the Commission as part of the Community Legal Service under sections 4 to 11 of the Act;

“Funding Code” means the code approved under section 9 of the Act;

“non-funded party” means a party to proceedings who has not received funded services in relation to those proceedings under a certificate, other than a certificate which has been revoked;

“partner” means a person with whom the person concerned lives as a couple, and includes a person with whom the person concerned is not currently living but from whom he is not living separate and apart;

“proceedings” include proceedings in any tribunal which is a court, as defined in this paragraph;

“receiving party” means a party in favour of whom a costs order is made;

“section 11(1) costs order” means a costs order against a client where cost protection applies;

“solicitor” means a solicitor or another person who is an authorised litigator within the meaning of section 119(1) of the Courts and Legal Services Act 1990;

(2) References to the levels of service listed in paragraph (3) shall be construed as references to the receipt or provision of those levels of service granted in accordance with the Funding Code.

(3) The levels of service referred to in paragraph (2) are:

- (a) Legal Help;
- (b) Help at Court;
- (c) Legal Representation;
- (d) Approved Family Help;
- (e) Investigative Support;
- (f) Litigation Support.

Cost protection

3. (1) Cost protection shall not apply in relation to such parts of proceedings, or prospective proceedings, as are funded for the client by way of:

- (a) Help at Court or Litigation Support;
 - (b) Investigative Support, except where any proceedings in respect of which the Investigative Support was given are not pursued (whether or not as funded proceedings) after the certificate for Investigative Support is discharged;
 - (c) subject to paragraph (2), Legal Help.
- (2) Subject to paragraph (4), where the client receives Legal Help, but later receives Legal Representation or Approved Family Help in respect of the same dispute, cost protection shall apply, both in respect of:
- (a) the costs incurred by the receiving party before the commencement of proceedings which, as regards the client, are funded proceedings by virtue of the client's receipt of Legal Help, and
 - (b) the costs incurred by the receiving party in the course of proceedings which, as regards the client, are funded proceedings by virtue of the client's receipt of Legal Representation or Approved Family Help.
- (3) Subject to paragraph (4), cost protection shall apply only to costs incurred by the receiving party in relation to proceedings which, as regards the client, are funded proceedings, and:
- (a) where work is done before the issue of a certificate, cost protection shall (subject to paragraphs (2) and (5)) apply only to costs incurred after the issue of the certificate;
 - (b) where funding is withdrawn by discharging the client's certificate, cost protection shall apply only to costs incurred before the date when funded services under the certificate ceased to be provided.
- (4) Where funding is withdrawn by revoking the client's certificate, cost protection shall not apply, either in respect of work done before or after the revocation.
- (5) Cost protection shall apply to work done immediately before the grant of an emergency certificate if:
- (a) no application for such a certificate could be made because the Commission's office was closed; and
 - (b) the client's solicitor applies for an

emergency certificate at the first available opportunity, and the certificate is granted.

Enforcement of costs order against client

- 4.** Where, for the purpose of enforcing a costs order against a client (alone or together with any other judgment or order), a charging order under section 1 of the Charging Orders Act 1979 is made in respect of the client's interest in the main or only dwelling in which he resides:
- (a) that charging order shall operate to secure the amount payable under the costs order (including, without limitation, any interest) only to the extent of the amount (if any) by which the proceeds of sale of the client's interest in the dwelling (having deducted any mortgage debts) exceed £100,000; and
 - (b) an order for the sale of the dwelling shall not be made in favour of the person in whose favour the charging order is made.

Costs order against Commission

- 5.** (1) The following paragraphs of this regulation apply where:
- (a) funded services are provided to a client in relation to proceedings;
 - (b) those proceedings are finally decided in favour of a non-funded party; and
 - (c) cost protection applies.
- (2) The court may, subject to the following paragraphs of this regulation, make an order for the payment by the Commission to the non-funded party of the whole or any part of the costs incurred by him in the proceedings (other than any costs that the client is required to pay under a section 11(1) costs order).
- (3) An order under paragraph (2) may only be made if all the conditions set out in subparagraphs (a), (b), (c) and (d) are satisfied:
- (a) a section 11(1) costs order is made against the client in the proceedings, and the amount (if any) which the client is required to pay under that costs order is less than the amount of the full costs;
 - (b) the non-funded party makes a request under regulation 10(2) of the Community Legal Service (Costs) Regulations 2000 within three months of the making of the section 11(1) costs order;

- (c) as regards costs incurred in a court of first instance, the proceedings were instituted by the client and the court is satisfied that the non-funded party will suffer severe financial hardship unless the order is made; and
 - (d) in any case, the court is satisfied that it is just and equitable in the circumstances that provision for the costs should be made out of public funds.
- (4) Where the client receives funded services in connection with part only of the proceedings, the reference in paragraph (2) to the costs incurred by the non-funded party in the relevant proceedings shall be construed as a reference to so much of those costs as is attributable to the part of the proceedings which are funded proceedings.
 - (5) Where a court decides any proceedings in favour of the non-funded party and an appeal lies (with or without permission) against that decision, any order made under this regulation shall not take effect:
 - (a) where permission to appeal is required, unless the time limit for applications for permission to appeal expires without permission being granted;
 - (b) where permission to appeal is granted or is not required, unless the time limit for appeal expires without an appeal being brought.
 - (6) Subject to paragraph (7), in determining whether the conditions in paragraph (3)(c) and (d) are satisfied, the court shall have regard to the resources of the non-funded party and of his partner.
 - (7) The court shall not have regard to the resources of the partner of the non-funded party if the partner has a contrary interest in the funded proceedings.
 - (8) Where the non-funded party is acting in a representative, fiduciary or official capacity and is entitled to be indemnified in respect of his costs from any property, estate or fund, the court shall, for the purposes of paragraph (3), have regard to the value of the property, estate or fund and the resources of the persons, if any, including that party where appropriate, who are beneficially interested in that property, estate or fund.

Orders for costs against Commission – Litigation Support

6. (1) Paragraph (2) applies where:
 - (a) the client receives Litigation Support and the certificate is not revoked;
 - (b) the client has effected insurance against liability in respect of costs in the proceedings, or has made other arrangements, approved by the Commission as being equivalent to such insurance;
 - (c) the amount of liability insured under that insurance (or covered by those other arrangements) is subject to a maximum which has been approved by the Commission; and
 - (d) a costs order has been made against the client in favour of a non-funded party and the actual amount of the client's liability in respect of costs under that costs order exceeds the maximum referred to in sub-paragraph (c).
- (2) Where this paragraph applies, the amount of the excess referred to in paragraph (1)(d) shall, subject to paragraph (3), be paid by the Commission, not by the client, and the court shall order accordingly.
- (3) The amount of the Commission's liability under this regulation shall not exceed the reasonable costs of the non-funded party incurred during the period in which Litigation Support was provided.

Effect of these Regulations

7. (1) No order to pay costs in favour of a non-funded party shall be made against the Commission in respect of funded proceedings except in accordance with these Regulations, and any costs to be paid under such an order shall be paid out of the Community Legal Service Fund.
- (2) Nothing in these Regulations shall be construed, in relation to proceedings where one or more parties are receiving, or have received, funded services, as:
 - (a) requiring a court to make a costs order where it would not otherwise have made a costs order; or
 - (b) affecting the court's power to make a wasted costs order against a legal representative. ■

The Community Legal Service (Funding) Order 2000 (Draft)

The Lord Chancellor, in exercise of the powers conferred on him by sections 6(4), 19 and 105 of, and paragraph 1 of Schedule 14 to, the Access to Justice Act 1999, having had regard to the matters specified in section 25(3) and having consulted the General Council of the Bar and the Law Society, makes the following Order:

Citation and commencement

1. This Order may be cited as the Community Legal Service (Funding) Order 2000 and shall come into force on 1 April 2000.

Interpretation

2. (1) In this Order:

“the Act” means the Access to Justice Act 1999;

“certificate” means a certificate issued under the Funding Code certifying the Commission’s decision to fund services for the client;

“client” means an individual who receives funded services;

“clinical negligence proceedings” means proceedings which include:

- (a) a claim for damages in respect of breach of a duty of care or trespass to the person committed in the course of the provision of clinical or medical services (including dental or nursing services); or
- (b) a claim for damages in respect of alleged professional negligence in the conduct of such a claim;

“Commission” means the Legal Services Commission established under section 1 of the Act;

“family proceedings” mean proceedings, other than proceedings for judicial review, which arise out of family relationships, including proceedings in which the welfare of children is determined, and including all proceedings under one or more of the following:

- (a) the Matrimonial Causes Act 1973;
- (b) the Inheritance (Provision for Family and Dependents) Act 1975;
- (c) the Adoption Act 1976;
- (d) the Domestic Proceedings and Magistrates’ Courts Act 1978;
- (e) Part III of the Matrimonial and Family Proceedings Act 1984;
- (f) Parts I, II and IV of the Children Act 1989;
- (g) Part IV of the Family Law Act 1996; and

(h) the inherent jurisdiction of the High Court in relation to children;

“fund” means the Community Legal Service Fund established under section 5 of the Act;

“funded services” means services which are provided directly for a client and funded for that client by the Commission as part of the Community Legal Service under sections 4 to 11 of the Act;

“Funding Code” means the code approved under section 9 of the Act;

“group litigation” means litigation of a number of claims which give rise to common or related issues of fact or law;

“immigration proceedings” means any proceedings relating to immigration, nationality or asylum in:

- (a) the House of Lords;
- (b) the Court of Appeal;
- (c) the High Court; or before
- (d) the Immigration Appeal Tribunal or an adjudicator;

“personal injury proceedings” means proceedings for damages in respect of death or any disease or impairment of the client’s physical or mental condition, excluding proceedings for clinical negligence.

- (2) References to the levels of service listed in paragraph (3) shall be construed as references to the receipt or provision of those levels of service granted in accordance with the Funding Code.
- (3) The levels of service referred to in paragraph (2) are:
 - (a) Legal Help;
 - (b) Help at Court;
 - (c) Legal Representation;
 - (d) Help with Mediation; and
 - (e) General Family Help.
- (4) In this Order, any reference to the provisions of the Civil Legal Aid (General) Regulations 1989 shall be construed as though they were amended as follows:
 - (a) any reference to “area committee” shall be replaced by a reference to “costs committee”;
 - (b) any reference to “assisted person” shall be replaced by a reference to “client”;

- (c) any reference to “authorised summary proceedings” shall be replaced by a reference to “proceedings in a magistrates’ court”;
 - (d) in regulation 59, the words “legal aid” shall be replaced by “Legal Services Commission”;
 - (e) in regulations 84 and 107, any reference to “regulation 83” shall be replaced by a reference to “regulation 3 of the Community Legal Service (Costs) Regulations 2000”;
 - (f) in regulation 102, the words “or the Funding Code” shall be inserted after “these Regulations”;
 - (g) in regulation 104, the words “or the Crown Court” shall be inserted after “magistrates’ court”; and
 - (h) in regulation 106A, the words “legal aid only costs” shall be replaced by “costs payable from the Community Legal Service Fund only”.
 - (i) in regulation 113(3) “section 16(6) of the Act” shall be replaced by “section 10(7) of the Access to Justice Act 1999”.
- (a) after competitive tendering as to price has taken place; or
 - (b) in relation to a particular case (including group litigation or potential group litigation).

Funding of services – Direct payments

3. (1) The Commission may only fund services as part of the Community Legal Service under section 6(3)(b) of the Act as follows:
- (a) where a certificate was granted before 1st April 2001, to make payments in respect of the provision of Legal Representation in actual or contemplated proceedings other than the following:
 - (i) personal injury;
 - (ii) clinical negligence;
 - (iii) family;
 - (iv) immigration; or
 - (v) before the Mental Health Review Tribunal;
 - (b) where authorisation has been given in an individual case under section 6(8)(b) of the Act.
- (2) The Commission may only fund services as part of the Community Legal Service under section 6(3)(e) of the Act where authorisation for such funding has been given in an individual case under section 6(8)(b) of the Act.
4. Where the Commission funds services under article 3(1)(a), the provisions of regulations 48, 59 to 63, 84, 100 to 102, 104 to 107A, 108 to 110, 112, 113(1), (2) and (4), 119(1), 122 and 149(7) of the Civil Legal Aid (General) Regulations 1989 shall apply.

Remuneration under contracts

5. (1) Paragraph (2) applies to contracts which have not been awarded:

- (2) Subject to paragraph (1), any contract for the provision of funded services under section 6(3)(a) of the Act which provides for the levels of service in this article shall provide for payment by the Commission to be at rates no higher than the rates in the following paragraphs.

- (3) In relation to:

- (a) Legal Help;
- (b) Help at Court; and

payment shall be at rates no higher than those provided in Schedule 6, paragraphs 1 and 2 of the Legal Advice and Assistance Regulations 1989.

- (4) In relation to:

- (a) Help with Mediation; and
- (b) Legal Representation before a Mental Health Review Tribunal
- (c) Legal Representation before the Immigration Appeal Tribunal or an adjudicator

payment shall be at rates no higher than those provided in Schedule 6, paragraphs 3 and 4 of the Legal Advice and Assistance Regulations 1989.

- (5) In relation to General Family Help, payment shall be at rates no higher than the relevant rates provided in the Legal Aid in Family Proceedings (Remuneration) Regulations 1991.

- (6) In relation to Legal Representation (other than as provided for in paragraphs (4)), payment shall be at rates no higher than whichever of those provided by the Legal Aid in Civil Proceedings (Remuneration) Regulations 1994 or the Legal Aid in Family Proceedings (Remuneration) Regulations 1991 is applicable.

6. Where a contract entered into by the Commission in accordance with section 6(3)(a) of the Act before 1st April 2003 provides for the remuneration payable by the Commission to be assessed by the court in accordance with the Civil Legal Aid (General) Regulations 1989, the Legal Aid in Civil Proceedings (Remuneration) Regulations 1994 and the Legal Aid in Family Proceedings (Remuneration) Regulations 1991, the court shall assess the remuneration accordingly.

Foreign Law

7. The Commission may fund as part of the Community Legal Service Legal Help relating to the preparation of applications for transmission under the provisions of the European Agreement on the Transmission of Applications for Legal Aid.

The Civil Legal Aid (General) (Amendment) Regulations 2000

The Lord Chancellor, in exercise of the powers conferred on him by sections 15, 34 and 43 of the Legal Aid Act 1988, having had regard to the matters specified in section 34(9) and having consulted the General Council of the Bar and the Law Society, and with the consent of the Treasury, makes the following Regulations:

Citation and commencement

1. These Regulations may be cited as the Civil Legal Aid (General) (Amendment) Regulations 2000 and shall come into force on 18 March 2000.

Interpretation

2. (1) In these Regulations “the Regulations” means the Civil Legal Aid (General) Regulations 1989, and a reference to a regulation by number alone means the regulation so numbered in the Regulations.
- (2) Words and expressions defined in the Regulations shall, unless the context requires otherwise, have the same meaning in these Regulations as they do in the Regulations.

Amendments to Civil Legal Aid (General) Regulations 1989

3. Subject as provided below in these Regulations, the Regulations shall be amended as follows:
 - (a) for “taxation”, wherever it occurs, there shall be substituted “detailed assessment”;
 - (b) for “taxed”, wherever it occurs, there shall be substituted “determined by way of detailed assessment”, and “tax” and other cognate words shall be amended accordingly;
 - (c) for “taxing master”, wherever it occurs, there shall be substituted “costs judge”;
 - (d) for “taxing officer”, wherever it occurs, there shall be substituted “costs officer”.
4. (1) In regulation 3(1):
 - (a) between the definitions of “authorised summary proceedings” and “certificate” there shall be inserted the following definition:

““CPR” means the Civil Procedure Rules

1998, and a reference to a rule or a Part, prefixed by “CPR”, means the rule or (as the case may be) Part so numbered in the CPR;”;

- (b) between the definitions of “contribution” and “court” there shall be inserted the following definitions:

““costs judge” has the meaning given in CPR rule 43.2(1)(b);

“costs officer” has the meaning given in CPR rule 43.2(1)(c);”;
- (c) between the definitions of “court” and “disposable capital” there shall be inserted the following definition:

“detailed assessment” has the meaning given in CPR rule 43.4;”;
- (d) the definition of “master” shall be deleted;
- (e) in the definitions of “standard basis” and “indemnity basis”, for “Order 62, rule 12 of the Rules of the Supreme Court 1965” there shall be substituted “CPR rule 44.4”;
- (f) the definition of “taxing officer” shall be deleted.

5. In regulation 50(3)(b), for the words from “Order 112” to “Matrimonial Causes Rules 1977” there shall be substituted “RSC Order 112 rules 3 or 4 in Schedule 1 to the CPR, or any of rules 3.2 to 3.5 of the Family Proceedings Rules 1991.
6. In regulations 84(a), 99(5)(a), 100(7) and (8) and 106A(1), and in the heading of regulation 106A, after “assessment” there shall be inserted “under regulation 105”.
7. (1) In the heading of regulation 84, after “assessed” there shall be inserted “under regulation 105”.
- (2) In regulation 84(b), “taxed or” shall be deleted.
8. In regulation 103(3) and (5), for “solicitor and own client taxation” there shall be substituted “detailed assessment of solicitor and client costs under CPR rule 48.8”.
9. (1) In regulation 104(1) and (3) for “authorised summary proceedings” there shall be substituted “proceedings in a magistrates’ court”.
- (2) In regulation 104(3):

- (a) for the words from “regulation 6” to “(Costs) Regulations 1989” there shall be substituted “the Legal Aid in Family Proceedings (Remuneration) Regulations 1991”;
- (b) for “paragraphs 2 and 3 of Schedule 1, Part I” there shall be substituted “regulation 3(4)(c)”.
- (3) Regulation 104(4) and (5) shall be deleted.
- 10.** (1) In regulation 105(1), after “ensuring that”, there shall be inserted “, subject to paragraph (10),”.
- (2) After regulation 105(3) there shall be inserted:
- “(3A) An application for an assessment under this regulation shall be made:
- (a) where paragraph (2) applies, within three months of the termination of the solicitor’s retainer;
- (b) where paragraph (2A) or (3) applies:
- (i) if the assisted person’s certificate is revoked or discharged, within three months of the termination of the solicitor’s retainer;
- (ii) otherwise, within the period which would have been the period specified by CPR rule 47.7 for the commencement of detailed assessment proceedings if the costs fell to be determined by way of detailed assessment.”.
- (3) After regulation 105(8) there shall be inserted:
- “(9) Subject to paragraph (10), the time limit in paragraph (3A) may, for good reason, be extended by the Area Director.
- (10) Where a solicitor or counsel without good reason has failed (or, if an extension were not granted, would fail) to comply with the time limit in paragraph (3A), the Area Director may, in exceptional circumstances, extend the time limit and shall consider whether it is reasonable in the circumstances to reduce the costs; provided that costs shall not be reduced unless the solicitor or counsel has been allowed a reasonable opportunity to show cause in writing why the costs should not be reduced.
- (11) A solicitor or counsel may appeal to the area committee against a decision made by the Area Director under paragraph (9)
- or (10) and such an appeal shall be commenced within 21 days of the decision by giving notice in writing to the area committee specifying the grounds of appeal.”.
- 11.** In regulation 106A(2)(a), for “Order 62, rule 16 of the Rules of the Supreme Court 1965” there shall be substituted “CPR rule 48.5”.
- 12.** (1) In regulation 107(1), the words from “; and, for the purpose of these Regulations” to the end of that paragraph shall be deleted.
- (2) In regulation 107(4), for “taxing office” there shall be substituted “court office”.
- 13.** In regulation 107A(1) and (3), for “assessment, review or taxation” there shall be substituted “assessment under regulation 105 or detailed assessment”.
- 14.** In regulation 109(1), for the words from “, Order 62” to “County Court Rules 1981”, there shall be substituted “or CPR rules 44.14 and 48.7”.
- 15.** In regulation 110, for “obtain a review of taxation under regulation 113 or 114” there shall be substituted “appeal against the detailed assessment”.
- 16.** (1) For regulations 113 to 118 there shall be substituted:
- “113 (1) Subject to paragraph (2), detailed assessment proceedings shall be deemed to be proceedings to which the assisted person’s certificate relates, whether or not it has been discharged or revoked, and the costs of such proceedings shall be paid out of the fund unless the court otherwise orders.
- (2) Subject to the following paragraphs of this regulation, an assisted person’s solicitor may appeal against a decision in detailed assessment proceedings in accordance with rules of court, and, if counsel acting for the assisted person notifies the solicitor that he is dissatisfied with the decision, shall do so, but the costs of any such appeal shall be deemed to be costs to which the assisted person’s certificate relates only to the extent that the court hearing the appeal so orders.
- (3) The assisted person shall not be required to make any contribution to the fund on account of the costs of any appeal against a decision in detailed assessment proceedings and the charge created by section 16(6) of the Act shall not apply in relation to any resulting increase in the net liability of the fund in consequence of any order made in

such an appeal.

- (4) Where permission to appeal is obtained under CPR rule 47.24(2), the assisted person's solicitor shall give written notice to that effect to the Lord Chancellor.
- (5) The assisted person's solicitor shall send to the Lord Chancellor, together with the notice given under paragraph (4), copies of:
 - (a) the bill of costs; and
 - (b) the request for permission to appeal.
- (6) When filing a notice of appeal, the assisted person's solicitor shall file with the court a copy of the notice given under paragraph (4).
- (7) After filing a notice of appeal the assisted person's solicitor shall without delay send a copy of it to the Lord Chancellor."

17. After regulation 119(2) there shall be inserted:

"(3) For the purposes of paragraph (2), the cost of drawing up a bill of costs shall not be included as part of the costs of the detailed assessment proceedings."

18. Regulations 120 and 121 shall be deleted.

19. (1) In regulation 122(1):

- (a) for "review by a judge of a taxation" there shall be substituted "appeal against a detailed assessment under CPR rule 47.22(2) or (3)";
- (b) for "particular review" there shall be substituted "particular such appeal";
- (c) for "review of taxation" there shall be substituted "such appeal".

(2) Regulation 122(2) shall be deleted.

(3) In regulation 122(3):

- (a) for "applies to a judge to review the inter partes taxation" there shall be substituted "appeals against a detailed assessment of costs payable by one party to another";
- (b) for "applies to a judge to review any such taxation as is referred to in" there shall be substituted "appeals against a detailed assessment in accordance with";
- (c) for the words from "inform the Board" to "the Lord Chancellor" there shall be substituted "inform the Lord Chancellor".
- (d) for "subject of the review is an inter partes taxation" there shall be substituted "subject of the appeal is a detailed

assessment of costs payable by one party to another".

(4) In regulation 122(4):

- (a) for "intervene in a review of taxation" there shall be substituted "intervene in an appeal against a detailed assessment";
- (b) for "judge" there shall be substituted "costs officer";
- (c) for "on the review" there shall be substituted "on the appeal".

(5) In regulation 122(5), for "review" there shall be substituted "appeal".

(6) For regulation 122(6) there shall be substituted:

"(6) Where rules of court provide for a further appeal from a decision on appeal from a detailed assessment ("the original appeal"), a solicitor appointed by the Lord Chancellor under paragraph (1) may appeal from the original appeal and paragraphs (2) to (5) shall apply to such a further appeal as it applies to the original appeal."

20. In regulation 141(2), for "County Court Rules 1981" there shall be substituted "CPR Parts 43 to 48".

21. (1) In regulations 143 to 146, for "master",

wherever it occurs, there shall be substituted "costs judge or district judge".

(2) After regulation 143(2) there shall be inserted:

"(3) In regulations 143 to 146 the expression "district judge" means a district judge of the High Court, including a district judge of the Principal Registry of the Family Division."

22. In regulations 144(b) and 146(2), for "Order 62 of the Rules of the Supreme Court 1965" there shall be substituted "CPR Parts 43 to 48".

23. (1) In regulation 148(4)(b), for "taxed by the registrar" there shall be substituted "determined by the registrar by way of detailed assessment".

(2) Regulation 148(4)(c) shall be deleted.

24. In regulation 149(7), for "Order 62 of the Rules of the Supreme Court 1965" there shall be substituted "CPR Parts 43 to 48".

25. In regulation 151(7), for "Order 62 of the Rules of the Supreme Court 1965" there shall be substituted "CPR Parts 43 to 48". ■

Proposed Payment Dates

In the past there have been two payment dates for solicitors and counsel each month. From 1 January, in addition, there has been a General Civil Contracting payment run, which comprises advice and assistance payments for firms which have been awarded contracts.

The proposed payment dates for March to June 2000 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 into your bank. For some smaller banks the BACS credit may appear a day later. The proposed payment date will also be the date by which the last of the cheque/remittance advices are despatched from the Financial Services Settlement section. Remittance

advices are despatched using DX or first class post.

If you are still being paid by cheque, we recommend that you change to BACS, which is a more efficient payment method. With BACS, the payment is made directly into your bank account avoiding cheque-handling and you also receive a remittance advice. BACS provides immediately cleared funds, unlike cheques which can take four to six days to clear. If you have any queries about payment by BACS, please telephone the Master Index section on 020 7813 8626.

Details of the amount due to you may be obtained by contacting either the regional office or the Solicitors/Counsel Settlement section on 020 7813 8625, 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

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

Proposed Payment Dates for March – June 2000

First Settlement of the Month	Second Settlement of the Month	General Civil Contracting Payment
Thursday, 9 March 2000	Friday, 24 March 2000	Friday, 3 March 2000
Tuesday, 11 April 2000	Wednesday, 26 April 2000	Wednesday, 5 April 2000
Wednesday, 10 May 2000	Thursday, 25 May 2000	Thursday, 4 May 2000
Friday, 9 June 2000	Monday, 26 June 2000	Monday, 5 June 2000

Receiving Focus

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

Focus is distributed using the names and addresses of all legal aid account holders, details of which are held on our Master Index database. If you have not received a copy of *Focus* it may be because you have not alerted the Master Index Section to any changes to your name, address or DX. Please make sure that you send any relevant changes to them, at 85 Gray's Inn Road, London, WC1X 8TX, or DX 328 London, or fax them to 020 7813 8624. Please quote your legal aid account number.

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

Focus is produced by the Legal Aid Board's Press Office,
85 Gray's Inn Road,
London WC1X 8TX.
DX 450 London.
Please contact
Lucy Dodsworth

020 7813 8676

Free Specialist Support Lines for General Civil Contract Holders

The following organisations are being funded in a one year pilot (until March 2001) by the Legal Aid Board to support you in your General Civil Contract work. They are available on the telephone on the following days and times for free specialist support. To access these services ring the telephone consultancy line and quote your General Civil Contract number. For further information about the pilot contact Sarah Maclean on 020 7813 1000.

Organisation	Categories	Telephone no	Open	From
Public Law Project / Liberty	Human Rights & Public Law	0808 808 4546	MON & WED 2pm - 5pm TUES & THUR 10am - 1pm	4.1.00
Shelter	Housing	020 7505 4648	MON TO FRI 9am - 5pm (closed alt Weds 9am - 12.30pm)	1.4.00
Joint Council for the Welfare of Immigrants	Immigration*	0845 602 1020	MON TO FRI 10am - 1pm	1.2.00
NACAB Specialist Support Unit	Employment	0808 808 3681	MON TO THUR 10.30am - 1pm, 2pm - 4pm	21.2.00
Two Garden Court Chambers	Housing Immigration* Employment	020 7415 6340 020 7415 6350 020 7415 6360	MON TO FRI 2pm - 5pm MON TO FRI 2pm - 5pm WED & FRI 2pm - 5pm	all from 13.3.00

*includes asylum

Public Law Project / Liberty – Human Rights and Public Law Line

The Public Law Project is a legal charity which can give you expert advice in the field of public law. This means the framework and principles of law which govern the exercise of powers of public authorities. Advice on judicial review and other remedies will be available. Recent judicial review cases have included: refusal of leave to appeal to the Social Security Commissioner, disclosure of reports on which a health authority based a decision to refuse to fund medical treatment; failure of an appeals system regarding charges for home care services.

Liberty's legal department is a centre of expertise in Human Rights and civil liberties law. The Human Rights Act (HRA), which comes into force in October 2000, will require a whole new way of thinking about many areas of law, for example: family life – how will the courts balance competing rights of a father, mother and child; housing – are local authorities able to use unproved allegations in determining suitability for tenancies; education – is there any redress for potentially discriminatory exclusion decisions; privacy rights – to what extent can information be collected and disseminated on an individual. Recent issues on which Liberty has advised include: the right to have representation in proceedings for poll tax default and rights of homeless people to vote.

Shelter – Housing Legal Services

Shelter's Legal Services team (solicitors and specialist caseworkers) has over 7 years experience providing specialist support on all aspects of housing law. The Shelter consultancy line will provide immediate access to expert knowledge and Shelter's extensive housing law library.

Advice will cover all aspects of the following: homelessness; security of tenure; rent and mortgage arrears; possession actions; disrepair; harassment and illegal eviction; relationship breakdown and domestic violence and housing benefit.

Joint Council for the Welfare of Immigrants – Asylum and Immigration

JCWI will provide you with expert advice in relation to asylum and immigration. The JCWI Handbook is well known for its practical advice. JCWI has up to date information on the new legislation, recent cases and policies which you can access via the consultancy line. Issues you may wish to seek advice on include: whether to represent your client under para 5.4 of the Funding Code, in connection with appeals and whether to seek leave for judicial review.

NACAB Specialist Support Unit (SSU) – Employment Line

Four specialist lawyers with an extensive employment law library are available to answer your queries. Advice and assistance is offered on all aspects of employment law including all statutory and contractual rights, discrimination, and practice and procedure at the employment tribunal and Employment Appeal Tribunal. Typical SSU work includes assisting in formulating the claim(s), suggesting alternative arguments, and advising on tactics. Assistance is offered, for example, in drafting IT1s and responding to IT3s, in calculating compensation, in drafting settlements and with appeal cases.

Two Garden Court Chambers – 'CallCounsel'

Two Garden Court Chambers has experienced barristers in the fields of housing, immigration and employment who through 'CallCounsel' will provide a specialist advice service to General Civil Contract holders. The types of cases will be similar to those outlined under Shelter, JCWI and NACAB SSU above. The calls will be answered directly by counsel on duty who will have a dedicated library (both hard copy and electronic) at their fingertips. Any advice given can be supported through e-mailed or faxed materials.

The service will provide you with immediate specialist advice on matters raised by individual client's cases. It is designed to give you access to counsel's view on the merits of a case, the most appropriate course of proceeding and whether Legal Representation (where available) should be granted. It will also be especially useful to advisers having difficulty researching a particular legal point or needing the most up-to-date information about developments in a specific subject area. Written opinions will be available where appropriate.

All the pilot organisations can take complex cases on referral and will provide training courses later this year – see *Focus 30* for details