Isle of Man Law Society – Legal Aid Consultation Submission

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Legal Aid Services

The Report by the Council of Ministers to the May 2007 sitting of Tynwald together with The full Report of the Legal Services Commission

August 2007 **£8.20**

Foreword

Hon J A Brown MHK, Chief Minister

The Council of Ministers appointed the Commission in January 2002. It was asked to consider the provision and administration of legal aid and legal advice and assistance and in particular to review and comment on the legal framework, including eligibility for legal aid and advice, the administration arrangements and the fee structure of those providing the service.

The Commission presented its Report in May 2003. The over-riding objective of the Commission was 'to maximise access to justice while at the same time ensuring that any public provision gives value for money'. The main finding was that the Legal Aid system was in need of improvement.

The Council of Ministers regard Legal Aid as one of the cornerstones of a fair and decent society. It safeguards vulnerable and disadvantaged people so they are not denied access to justice because they cannot afford it. The Council of Ministers considered the Legal Services Commission's recommendations in great depth as it was anxious to ensure that its response would move the system forward onto a sound and safe footing for the future. The Council of Ministers reported to the May 2007 sitting of Tynwald on its progress on the findings of the Legal Service Commission. I believe that the Report sets clear actions for Legal Aid Services. There are still areas which require further work and others which require implementation and then review to see if they are working.

It is important that the rationale behind the Legal Services Commission's findings is set out for all to see and therefore the full Report of the Legal Services Commission accompanies the Council of Minister's Report in this comprehensive document.

Hon Tony Brown MHK
Chief Minister

Government Report Number 16/07

Council of Ministers



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Legal Aid Services

Legal Services Commission

A Report by the Council of Ministers

May 2007

Price: £2.20

To: Hon N Q Cringle, President of Tynwald, and the Honourable Council and Keys in Tynwald assembled.

In January 2002 the Council of Ministers appointed the Legal Services Commission. Its over-riding objective was to maximise access to justice while at the same time ensuring that any public provision gives value for money. The Commission had the following terms of reference –

"to consider the provision and administration of Legal Aid and legal advice and assistance in the Isle of Man in the context of recognised best practice and in particular to report, with any relevant recommendations, on :the legal framework (both primary and subordinate legislation), including eligibility (financial and otherwise) for Legal Aid and legal advice and assistance, the administrative arrangements, and the availability and quality of the service provided and the fee structure for those providing the service".

The Council of Ministers recognises that the members of the Commission carried out the terms of reference with diligence and sincere thanks are extended for their work.

This Council of Ministers Report is the progress made on the recommendations of the Commission.

Recommendation

That the action taken by the Council of Ministers in response to the Legal Services Commission be noted and endorsed.

Hon J A Brown, MHK
Chief Minister
May 2007

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PURPOSE AND INTRODUCTION

1.1 This report sets out the progress made on the Recommendations of the Legal Services Commission and their legal, financial and policy implications together with the Government's policy pertaining to Legal Services. Appendix 1 summarises the current Legal Aid Scheme. Appendix 4 is the executive summary of the Legal Services Commission's Report.

1.2 In January 2002 the Council of Ministers appointed the Legal Services Commission. Its over-riding objective was to maximise access to justice while at the same time ensuring that any public provision gives value for money.

1.3 In May 2003 the Commission submitted its Report to the Council of Ministers. There were a number of matters which required further development, consultation or research before Council would be in a position to approve the Report's publication and submission to Tynwald. The Commission's Chair was invited to produce an executive summary. The Report was also referred to the General Registry for costings and comment. The members of the Commission were advised of the General Registry's views and given the opportunity to revise its recommendations. The legality of reconvening was questioned by one member and the Commission did not reconvene.

1.4 Council considered the Report again in Feb 2004, July 2005, April 2006 and Feb 2007, together with the costed Implementation Plan and responses from the General Registry, Department of Health and Social Security, the Attorney General's Chambers regarding Human Rights and the Law Society regarding certain issues. The consultation responses have been incorporated into the Report.

2. GOVERNMENT POLICY PERTAINING TO LEGAL AID

2.1 The Government identifies Legal Aid Reform as a high priority and stated in its 2006 plan that:-

The Council of Ministers is continuing to review the findings of the Commission of Inquiry into legal services, and recognises the need for the system to be reformed at the earliest opportunity. The resource implications of the Commission's proposals are substantial and will clearly need to be considered against Government's other competing priorities.

2.2 The actions identified were:-

- Review the findings of the 2003 Legal Aid Commission (CSO)
- Introduce simplified Legal Aid Regulations by 31st December 2006 (Gen Reg)

2.3 As signatories to the European Convention on Human Rights the Island agrees that:-

- Everyone charged with a criminal offence has the following minimum rights: (c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require.

3. COUNCIL OF MINISTERS ACTIONS ON THE LEGAL SERVICES COMMISSION'S RECOMMENDATIONS

3.1 The Legal Services Commission's Report (May 2003) found that the present system of Legal Aid is in urgent need of improvement if it is to provide equal access to justice. In addition, the Commission was concerned that people seeking Legal Aid would find the scheme both complex and difficult to understand.

3.2 The main recommendations of the Commission relate to the means of access to the justice system both through advice and financial eligibility, the problems of providing legal advice, the need to provide appropriate remuneration for advice and for any administration of the system to be above perceived conflicts of interest or in contravention of Human Rights. In reaching its findings and recommendations the Commission consulted a wide range of people and organisations.

3.3 The Commission's recommendations are set out below together with any consultations with the General Registry, Treasury, the Attorney General's Chambers and the Law Society. Council of Ministers Actions taken to date are then shown. For Members' information Table 1 (at page 25) of this Report is a summary of the Commission's recommendations, consultations and the actions taken by the Council of Ministers together with a brief explanation of their implications.

For ease of reference each Recommendation is notated with green or red.

- Green – Action has been taken or will be taken;
- Red – The recommendation is not being progressed and the reasons for this.

The narrative below explains the actions taken by the Council of Ministers on each of the recommendations of the Commission in detail. Recommendations of the Commission are highlighted in bold followed by a report on progress to date and concludes with the action being taken by the Council of Ministers in bold.

3.1 ADVICE AND GUIDANCE

In general the Commission found that there was a lack of information and guidance for the public. To improve this problem they made recommendations for the Green Form scheme and the introduction of a mediation scheme.

Legal Advice and Assistance (Green Form) Scheme

3.1.1 The Commission found that the Green Form scheme to enable persons to receive initial advice or a quick resolution to a legal matter is comparatively straightforward and cost effective but under used. It recommended that access to information is assisted by user friendly leaflets and that the production of these leaflets is enabled by cooperation between the Law Society and the Office of Fair Trading. The Commission recommended that the rates of payment for Advocates should be made consistent across all Legal Aid schemes. The General Registry has supported this and the Law Society has supported a standardisation for the Green Form Scheme.

3.1.2 **Consultations** - General Registry is fully supportive of this recommendation and further suggests that Advocates rates for provision of the service are standardised.

3.1.3 Action – The Green Form scheme for legal advice will be more widely promoted by the Office of Fair Trading (OFT) and the Law Society (LS) and is publicised through the production of leaflets enabled by cooperation between the OFT and the LS by May 2008.

Council of Ministers has agreed that Advocate's rates for the Green Form scheme and all other Legal Aid rates of pay will be standardised by inclusion in the Criminal Legal Aid Order. Subordinate Legislation is being prepared to action this during 2007/08.

Mediation Service

3.1.4 The Commission recommended the introduction of a Mediation Service. A Mediation Service tries to resolve disputes. The disputes can revolve around a number of issues but mediation has been used to good advantage in cases arising from marital/relationship breakdown where children are involved principally relating to contact and residence issues. Mediation can potentially save court time. The Courts have power to enable mediation if both parties are in agreement.

3.1.5 **Consultations** - The General Registry supports an independent Mediation Service for a variety of cases including marital/relationship breakdown and it is one of the actions proposed in the Children and Young People's Strategy for cases concerning children. The General Registry further comment that whilst family matters represent the most appropriate starting point for conciliation services it should be recognised that the use of professional conciliation as a means of resolving civil matters before the need for expensive Court proceedings has substantial potential benefits. It was suggested that in drafting new High Court Rules the General Registry should seek to incorporate a conciliation phase in relation to civil matters.

3.1.6 It is also understood that the First Deemster would support a Mediation service.

3.1.7 Action – General Registry will review during 2008 the Mediation Services available including family mediation in order to make it more widely used and report to Council of Ministers.

3.2 MERITS AND MEANS TEST FOR CIVIL LEGAL AID AND STATUTORY CHARGES

Overall the Commission found that:

- The Legal merits test appears to need reviewing and to be applied consistently.
- The thresholds for financial eligibility are wholly unrealistic and exclude persons who could not otherwise afford legal advice. They are not updated sufficiently frequently.

- Regulations which govern the assessment of means lack transparency, are complex and difficult to comprehend.
- There is no appeal against refusal on the grounds of means.
- Parents in care proceedings are not granted Legal Aid regardless of means, as they are in the UK.
- No provision for Courts to award costs against a legally-aided person.

Merits Test

3.2.2 **The Commission whilst stating that the 'merits test' which an applicant for Legal Aid must satisfy under the present arrangements should continue in full force, also qualified this statement by commenting that the merits test needs reviewing and to be applied consistently.**

3.2.3 **Consultations -** The General Registry considers that the current system is working well and they cannot find evidence of anything in other jurisdictions that would seem to be an improvement. The current merits test matches that of the adjacent jurisdictions and is supported by much case law, therefore no legislative change is proposed. However it is recognised that due to both the legal complexity and personal emotiveness of such issues the application of the merits test is not always clear. It is therefore proposed that the General Registry should provide clearer information and guidance in this regard.

3.2.4 The Law Society support and endorse the retention of the merits test but would like to see greater clarification of the merits test set out in the Legal Aid Regulations in order to give greater guidance to both the Legal Aid Certifying Officer and on appeal from decisions of the Legal Aid Certifying Officer and the Legal Aid Committee.

3.2.5 **Action – General Registry will provide clearer information and guidance on the 'merits test' by April 2008.**

Means Test - Thresholds for financial eligibility

3.2.6 **The Commission stated that the thresholds of financial eligibility for access to civil Legal Aid are regrettably low, so low that those in need are being denied access to justice. It recommends that to achieve equal access to justice income eligibility thresholds be raised substantially without delay.**

3.2.7 The Commission recommended several criteria be added to a complicated system which if implemented would raise the threshold for civil Legal Aid entitlement from £8,000 to £18,000 a year before deductions.

3.2.8 The Isle of Man Law Society suggested to the Commission an adaptation whereby an amount equal to the applicant's income tax allowance may be deducted from income before determination. This would have the effect of raising the thresholds significantly and introducing a regular appraisal of the amounts without significant additional complexity.

3.2.9 **Consultations -** The General Registry agrees that the current means test thresholds are too low and that the system needs a thorough review. It

considers that the current calculation is over complicated as are the proposed alternatives and suggest that what is needed is a simple, understandable system.

3.2.10 The Law Society endorses and supports a new, simple system for financial eligibility for Legal Aid. The Law Society believes that it is important that the financial limits for eligibility for Legal Aid be increased substantially as there are presently circumstances in which a large number of individuals and families do not qualify for Legal Aid but are not in a financial position to afford the costs of litigation.

3.2.11 In addition, The Law Society consider the financial limits of Legal Aid are now somewhat outdated and are believed to be below benefit levels in the United Kingdom.

3.2.12 Action - Greater access to justice will be given through increasing the numbers of those eligible for Civil Legal Aid by:-

- **Widening the criteria to include all people who are in receipt of income based benefits (currently those in receipt of Family Income Supplement and Income Support only are automatically financially eligible for civil Legal Aid) and**
- **Raising the thresholds for eligibility through the introduction of a new scheme aligned with that used to assess means by the DHSS for Family Income Supplement (FIS) which will:-**
  - **Give greater access to civil Legal Aid,**
  - **Is easier to understand and transparent,**
  - **Links to an established government financial system which is regularly reviewed and has minimal additional costs,**
  - **Is equitable to those who are/are not on benefits**
- **The Legal Aid Act 1986, the Legal Aid (Financial Resources) 1997 and the Legal Advice and Assistance Regulations 1997 will be amended to give effect to the above within the 2007/08 Legislative Programme.**
- **The new system for eligibility to civil Legal Aid and the thresholds will be reviewed one year after their implementation and will be reported to Council of Ministers**
- **The criteria for eligibility will be reviewed every 3 years.**

3.2.13 The FIS system allows a far higher allowance in respect of single and married couples, lower allowances for a first child, but higher allowances for two or more children, where they are under 15. It gives additional allowances for those in full time work, caps the allowance relating to housing costs, and child care costs, and does not include maintenance as an allowable deduction.

3.2.14 The paper attached at Appendix 2 gives examples of hypothetical applicants. From this it can be seen that in all cases quoted, applicants are in a better position under the proposals than they were on the existing system, except where maintenance payment costs are a significant percentage of salary (say 50%), and family incomes exceed £20,000 per annum (this scenario is considered extremely unlikely because if a person is in a position to fund such a high maintenance then their income would be substantial). The vast majority of applicants will be better off under the proposed new system.

Repayment of Contributions to Civil Legal Aid

3.2.15 The thresholds for free Civil Legal Aid are set, however there are always those whose means fall just outside eligibility. For those applicants there is a system whereby they can have access to Legal Aid but part or all is required to be repaid. The Commission made no recommendations on the current procedure for contribution to the repayment of all or part of Civil Legal Aid. However the current method does not achieve repayment contributions at an acceptable level. The current repayment of contributions is set out in Appendix 3-Table 1.

3.2.16 **Consultation** - No consultation has been carried out.

3.2.17 Action - A new scheme of bands for repayment of contributions to facilitate access to Civil Legal Aid for those whose net resources are in the bands just above the levels which would permit free Legal Aid will be introduced. The contribution levels are set so as to require payment of 2 times the annual net resource excess figure (the amount above the free Legal Aid figure), with repayment being made over a four year period. Thus Civil Legal Aid is accessible to more but is treated, in effect, as an interest free loan. This is set out in Appendix 3-Table 2. The proposed method would achieve greater levels of recovery in a way which requires monthly contributions which are no greater than those required at present. This will be effected in the same manner as that proposed under 3.2.12 viz The Legal Aid Act 1986, the Legal Aid (Financial Resources) 1997 and the Legal Advice and Assistance Regulations 1997 will be amended to give effect to the above within the 2007/08 Legislative Programme.

Means Tests Regulations

3.2.18 The applicant's financial eligibility is considered by the Legal Aid Office in consultation with the DHSS where the applicant is in receipt of benefits. The Commission found that the regulations which govern the assessment of means lack transparency because they are unduly complex and difficult to comprehend by those most likely to be affected. Furthermore there is no appeal against refusal on the grounds of means.

3.2.19 **Consultations** - The issue of complexity is not accepted per se by the General Registry. It considers that current regulations are relatively straightforward given the breadth of financial circumstances which applicants may have. The establishment of an appeal to a financial eligibility decision would be difficult, as it is a decision based entirely on facts. It may be possible to establish the means to have a decision reviewed if disputed. The General Registry does, as a matter of course, review such decisions if required in any event.

3.2.20 In the interest of openness and fairness the Law Society support the introduction of some form of appeal or review from a decision of the Legal Aid Certifying Officer in relation to financial limits. The present procedure is that the financial determination is made by the General Registry and conveyed to the Legal Aid Certifying Officer for onward transmission to the applicant for Legal Aid. There is

presently no right of appeal or review against a decision that Legal Aid should not be granted on financial eligibility grounds.

3.2.21 The Law Society feels that some form of appeal or review should be provided. Whether this is to the Legal Aid Committee or to some other forum will be a matter for consideration.

Action – The move to Family Income Supplement alignment for means tests should improve the clarity and transparency. On the issue of means test reviews, the General Registry will consider this further in consultation with the DHSS and report back to Council of Ministers by April 2008.

Parents in Care Proceedings

3.2.22 The Commission noted that parents in care proceedings are not granted civil Legal Aid regardless of means, as happens in the UK. The Commission recommended that Legal Aid should be granted without means test to parents in care proceedings and also to Guardians ad Litem who represent the child'.

3.2.23 **Consultations** - The Legal Aid Office comment that the implementation of this recommendation would require legislative change and that costs would be associated with this.

3.2.24 The introduction of a Mediation Service (see above) would go some way towards assisting parents in care proceedings. However in the interests of a consistent, fair and equitable approach Civil Legal Aid should be subject to a means test as in the civil and criminal proceedings.

3.2.25 Action - The current legislation which allows parents in care proceedings to be considered for Civil Legal Aid subject to a means test is continued.

Statutory Charge

3.2.26 The Commission saw merit in the introduction of a statutory charge but did not suggest introduction at this time but wished to see this issue under close review.

It is opportune to consider the introduction of statutory charges within this report. The statutory charge is a mechanism used in the UK and other jurisdictions whereby, in effect, Legal Aid funding for a civil case is by way of a loan, which is repayable upon successful conclusion of a case where costs are not recovered from the losing party. The UK has the ability to recover both by a deduction of monies obtained and by a legal charge against property. One of the most important aspects of this is that it puts the privately funded and the legally aided parties on an equal footing.

3.2.27 The example below illustrates that the introduction of statutory charges would enable an equitable and fair system to be introduced.

In matrimonial proceedings when both parties are legally aided and they could be disputing the share of the matrimonial home which could value £500,000.00. At

present at the conclusion of this matter the parties' legal costs would be paid by the Legal Aid fund (taxpayer), which may run into many thousands of pounds and the parties gain up to £250,000 each.

If a statutory charge was introduced then the parties' litigation would be funded, but upon conclusion would result in a net payment from the proceeds of sale.

3.2.28 **Consultations -** The General Registry comment that the provision of this service can be quite beneficial to Legal Aid funding, and early case resolution, but could be administratively cumbersome both for the Legal Aid office and the legal profession, however both are mainly supportive of the introduction of such.

3.2.29 The Law Society has no objection in principle to the introduction of a statutory charge with the intent obviously that monies are recouped for the general revenue. The Law Society does however have a number of concerns relating to further administrative costs in the Legal Aid Office and the General Registry and additional administrative costs to Advocates. It is obviously important that any recovery made by way of a statutory charge is more than the amount of the additional administrative costs and charges which may be incurred.

3.2.30 The Law Society is also concerned that the number of cases in which a statutory charge would be effective are fairly limited. In many cases, if a legally aided party is successful in litigation, they will recover their costs from the opposing party. There would therefore be no need for the statutory charge. If the legally aided party is unsuccessful they will not have recovered any asset against which the statutory charge can be applied.

3.2.31 In addition, the Law Society consider that it would be appropriate for there to be some form of judicial discretion for a Deemster sitting in the High Court to disallow the provisions of the statutory charge (if the same were to be introduced) if the Deemster felt in all the circumstances of a particular case the same was inequitable.

3.2.32 Action –It is recognised that a statutory charge is merited, but also acknowledged that significant administration and therefore cost impact would result. The General Registry will seek to introduce legislation in 2008/09 to allow a phased introduction of the Statutory Charges to be made in consultation with the IOM Law Society.

3.3 MEANS TEST FOR CRIMINAL LEGAL AID

3.3.1 The Commission recommended that the means test in criminal proceedings served no useful purpose and should be abolished for criminal proceedings but that the Court should have discretion to order costs against a defendant in appropriate circumstances. It took the view that the abolition of the means test in criminal proceedings is necessary to comply with the European Council on Human Rights. It recommended this course of action for all summary offences punishable by imprisonment as well as all criminal proceedings in the High Court.

3.3.2 Applications for criminal Legal Aid are made to the relevant court and are granted if the court feels that such a decision would be in the interests of justice and that the applicant is financially eligible. Applications for Legal Aid to mount an appeal to a conviction or decision are made to the Chief Registrar. If the applicant disputes the decision made regarding the grant or otherwise of Legal Aid, an appeal can be made to the court or to a Judge.

3.3.3 **Consultations -** The General Registry does not agree. It considers that the present system whereby applications for criminal Legal Aid are made to the Court works well and this should continue. If the current system was abolished then they cite an example of where a high earner may be allowed Legal Aid without having their means assessed. General Registry recommends that in the interests of equity, openness and fairness the same means tested rules that apply to civil Legal Aid should be applied and reported to the court.

3.3.4 The Registry also point out that in the case of criminal Legal Aid there is no recording on the criminal case files of where Legal Aid has been granted under what circumstances and for what amounts. This is not compliant with current auditing practices.

3.3.5 With regard to the Human Rights issue, Article 6(3) of the European Convention on Human Rights provides as follows:

Everyone charged with a criminal offence has the following minimum rights:
(c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;

3.3.6 There is no absolute right to free representation; only if you have insufficient means and the interests of justice require it. Provided the criminal Legal Aid scheme is flexible enough to take the complexity of the case into account when assessing whether a defendant has sufficient means to meet his costs, there is not any justification for providing free criminal Legal Aid to all defendants.

3.3.7 Action - The means test for Criminal Legal Aid will remain.

3.4 HUMAN RIGHTS

Legal Aid Office Service and Location

3.4.1 The Commission made several comments and recommendations regarding the independence of the Legal Aid Certifying Officer, the provision of the service and the role of the Legal Aid Certifying Officer concluding that here is a perception of a lack of independence of the Legal Aid Certifying Officer because of the Civil Service line management system in the General Registry.

3.4.2 The Commission recommended that the Legal Aid Certifying Officer and her deputy no longer be subject to the line management of the Chief Registrar and that the staff of the Legal Aid Certifying Officer have the Legal Aid Certifying Officer as their line manager.

In essence the Commission were questioning whether the services provided by the Legal Aid Office were open to challenge on human rights because of the physical/perceived location of the Legal Aid Certifying Officer in the General Registry and whether the lines of reporting for the Legal Aid Certifying Officer compromised their independent role.

3.4.3 **Additional information on Services** - Section 14 of the Legal Aid Act 1986 requires Legal Aid Office staff to ensure that no persons, including members of the judiciary and Court staff are entitled to any information about a Legal Aid application without, in effect, the applicants authority.

3.4.4 An example of the need for this is where a legally aided party obtains authority to obtain a report which is not subsequently used. There are clear legal reasons why such information and indeed report should not be seen by the Court or any other party.

3.4.5 It should also be noted that the Certifying Officer may be considering applications to bring actions against the Isle of Man Government.

3.4.6 **Legal Challenge -** In the UK, due to the fact that the Courts and the Legal Aid authorities are two separate entities, it is not unusual for the Legal Aid authorities to seek to challenge the decisions of the courts through higher courts, this is not such an easy issue when the two functions are part of the same entity (General Registry), and there have been occasional matters where this could be an issue.

3.4.7 **Location** - As stated above, confidentiality is an extremely important issue for the division. The Legal Aid Office is now located in the Registries building as opposed to the Courthouse. This is a positive move, but it must still be noted that the current office is adjacent to further courtrooms, the entrance to which for Judiciary and staff is through the Legal Aid Office where there are confidential files and documents, telephone calls are also made there.

3.4.8 Legal advice is that the only issue of concern relating to the location of the Legal Aid Office is one of confidentiality. Provided this can be adequately addressed, there is no reason why the Office should not continue to be located within the General Registry buildings.

Action - The Legal Aid Office location will remain but be the subject of monitoring on confidentiality.

<u>Legal Aid Certifying Officer</u>

3.4.9 The Legal Aid Certifying Officer is appointed by the Governor. The Officer is accountable to the Legal Aid Committee. The Legal Aid Committee comprises the First Deemster, HM Attorney General, President of the IOM Law Society and Chairman of the Magistrates Association.

3.4.10 Action - The Legal Aid Certifying Officer will remain as an appointee of the Governor and accountable to the Legal Aid Committee

Legal Aid Committee

3.4.11 The Commission highlighted a perception of a lack of independence in the Appeals process whereby the Legal Aid Committee is both the regulatory body and the body that hears appeals against the decisions of the Legal Aid Certifying Officer. It pointed out that as members of the Judiciary sit on the Committee there are potential conflicts of interest in subsequent legal proceedings relating to an appeal.

3.4.12 **Consultations** - The Legal Aid Office and Legal Costs Division have made a recommendation that there be a move to a two Committee structure so that policy is determined by one body and the Committee that hears appeals is a different body. These changes overcome the Commissions concerns. The General Registry suggested that a Legal Aid Appeals Tribunal should be established under the Tribunals Act 2005.

3.4.13 Action - A Legal Aid Appeals Tribunal should be appointed in pursuance of the Tribunals Bill and the present Committee should remain in place for consideration of policy issues. A Legal Aid Amendment Bill will be introduced within the 2007/08 Legislative Programme and an amendment to the Tribunals Act 2006.

3.5 ADVOCATES

Advocates Fees Administration

3.5.1 The Commission stated that Advocates have difficulty getting paid in timely manner for Legal Aid work.

3.5.2 **Consultations** - The General Registry does not accept this. It points out that standard invoices are processed 1 month from receipt and sent to Treasury for payment. It also points out that in the UK solicitors can be paid up to 12 months in arrears. The introduction of the AXAPTA accounting system will ensure that invoices continue to be dealt with in a timely fashion.

3.5.3 The point is noted by the Law Society. At the time when representations were made by the Law Society to the Commission, there were delays being encountered in the assessment of Legal Aid Bills of Costs. The Law Society is happy to acknowledge that this problem no longer exists and that the General Registry now deal with the assessment of Legal Aid Bills of Costs (together with civil Bills of Costs generally) in a timely and expeditious manner. It is understood that changes are being introduced which will reduce further the time period between assessment and actual payment.

3.5.4 Action - The issues in the Commission's report on difficulties for timely payment of advocate's fees no longer exists, therefore no action is required.

Advocates Fees for Civil and Criminal Legal Aid Work.

3.5.5 The Commission recommended that the fees paid to Advocates for Legal Aid work are too low and should be aligned to the commercial rate.

3.5.6 **Consultations -** The General Registry accepts that the rates paid are too low and that if they continue at these rates it may become difficult to continue to offer the service. However it does not necessarily accept the accompanying argument that the Legal Aid rate should be more closely aligned to the commercial rate. They see Legal Aid work as part of the civil and social duty of the profession rather than a profit making enterprise.

3.5.7 The Law Society strongly supports the introduction of new and more substantial rates in respect of Legal Aid work. The Law Society is disappointed that it is proposed to introduce the same in a phased manner over a period of 3 to 5 years. The Law Society is more than happy to work in consultation in relation to agreeing such new rates and hope that some consultation can be commenced sooner rather than later.

3.5.8 The Law Society is also supportive of there being an annual review.

3.5.9 **Action – Council of Ministers has agreed that the hourly rates of pay to Advocates for Legal Aid work should be in accordance with the recommendation of the Commission on a phased 3 year basis Year 1 £120/£100; Year 2 £135/£115; Year 3 £150/£125 respectively for senior/junior Advocates. Effected by amendment to the Criminal Legal Aid Order during 2007/08. At the conclusion of the 3 year phasing this will be reviewed annually by Treasury.**

Higher Fees to UK Counsel

3.5.10 The Commission suggested that fees paid to UK counsel for Legal Aid work is higher than that paid to Manx Advocates.

3.5.11 **Consultations -** The General Registry point out that applications to license UK lawyers to work in Manx Courts are decided by Their Honours the Deemsters and are generally made by Manx Advocates on behalf of their clients. The circumstances in which these are given are strictly controlled through legislation and mainly involve the need for expert Counsel. Where specialist Counsel is required, the costs of engaging such are inevitably higher than that of those who do not possess such expertise. In cases where applications for licences are granted which do not require such expertise then local Legal Aid rates apply.

3.5.12 The Law Society is concerned that the representations which it made to the Commission may have been misunderstood. The Commission's comments appear to relate principally to the issue of the licensing of UK Counsel.

3.5.13 The concerns expressed by the Law Society were in relation to the rates paid to UK Counsel dealing with Legal Aid work. In many cases, UK Counsels are paid or it is perceived that they are paid at a higher Legal Aid rate than Isle of Man Advocates undertaking the same or similar work. In addition, uplifts in relation to complexity are agreed at the commencement of the instructions, rather than on assessment.

3.5.14 Action – On the assumption that applications to licence Counsel will not be made unless expertise etc is required and that higher IOM rates are not given unless such is required, no action is needed.

Duty Advocates Schemes

3.5.15 Two schemes currently run as follows:-

- Duty Advocate (Police Custody) Scheme 1998 which provides for an advocate on call to attend at a police station and
- Duty Advocate (Courts of Summary Jurisdiction) which provides for an advocate to be available to give advice to anyone at a fixed criminal court. This advice is time limited but is not means tested and is therefore available to anyone.

3.5.16 The Commission concluded that the rates, which were fixed in 1998, are now too low. It recommends that the advocate should be paid £150 for each on-call period during which he is available on the rota, and the Legal Aid rate for each hour or part of an hour he attends a police station to give advice to a suspect.

3.5.17 **Consultations** - The Registry agrees that the current rates are too low.

3.5.18 The Law Society endorses and supports new and more substantial rates. The Law Society is disappointed that it is proposed to introduce the same in a phased manner over a period of 3 to 5 years. The Law Society is more than happy to work in consultation in relation to agreeing such new rates and hope that some consultation can be commenced sooner rather than later.

3.5.19 In addition, the Law Society would support the continuation of the current pay structure for the Police Station Duty Advocate Scheme whereby a fixed fee is paid for the Advocate being available on call together with a rate per hour when called out to attend the Police Station.

3.5.20 Action – Council of Ministers had agreed that rates for Duty Advocates are too low and should be for a specific time period. Council have agreed to bring the rates for all schemes into line and will be reviewed in line with para 3.5.9

Change of Advocate

3.5.21 The Commission recommended that the decision to transfer a Certificate should be made by the Legal Aid Certifying Officer as at present, who should agree to this course of action only if she is satisfied that it is strictly necessary for the proper administration of justice'

3.5.22 **Consultation** - The General Registry accepts this recommendation.

3.5.23 Action - The decision to transfer a Certificate should be made by the Legal Aid Certifying Officer as at present, who should agree to this course of action only if she is satisfied that it is strictly necessary for the proper administration of justice'

Panel of Advocates

3.5.24 **The Commission recommended that the Panel of Advocates prepared to do civil Legal Aid work should always carry out the Legal Aid work that they hold themselves responsible for, other commitments permitting.**

3.5.25 **Action - This recommendation is accepted and is current practice**

Standards of Advocates

3.5.26 **The Commission recommended the introduction of a marshalling programme for the Deemsters and High Bailiff to improve the standard of advocacy at the junior bar.**

3.5.27 **Consultation** - The General Registry comments that this is a matter for the Law Society.

3.5.28 **Action - This is a matter for the Law Society and no further action will be taken by Government. Matter will be referred to the Law Society.**

Voluntary or Compulsory for Advocates to undertake Legal Aid work

3.5.29 **The Commission advised against a compulsory Legal Aid scheme and accepts the assurances of the Law Society that it will provide high quality legal services for the benefit of the Isle of Man.**

3.5.30 **Consultation** - The General Registry agree with the recommendation

3.5.31 **Action - A compulsory Legal Aid Scheme will not be introduced.**

Disbursements

3.5.32 **The Commission recommended that the Legal Aid Certifying Officer should approve all disbursements in civil matters with the Head of the Legal Aid and Legal Costs Division of the General Registry deciding criminal disbursements.'**

3.5.33 It is assumed that the Commission intended the Legal Aid Certifying Officer to consider disbursements rather than approve them as a matter of course.

3.5.34 **Consultation** - The General Registry has no issue with this recommendation.

3.5.35 **Action – The legislation will be amended so that the Legal Aid Certifying Officer will consider civil case disbursements. Effect will be given to this through an amendment to Legal Aid (General) Regulations 1997, Legal Advice and Assistance Regulations 1997 and the Criminal Legal Aid Regulations 1993 during 2007/08.**

3.6 TRIBUNALS

3.6.1 The Commission pointed out that Civil Legal Aid is available for representation at certain Tribunals and not at others. The Commission is in favour of the provision of Legal Aid for [the Employment Tribunal and the Criminal Injury Compensation Tribunals] but only to ensure equality where a non legally aided party elects to use a lawyer. It recommends a fixed payment in each case to protect the Legal Aid fund and encourage conciseness.

3.6.2 The implications of this recommendation are unclear – for instance, what would happen where both parties to a case were legally aided? The principle of Legal Aid provision based upon decisions made by the other party to the case is questionable. The situation is further clouded by the fact that there is no other party in matters before the Criminal Injuries Compensation Tribunal.

3.6.3 It is clear that in the interests of equality and access to legal advice there should be an opportunity to apply for Legal Aid where this is appropriate, (Legal Aid for Tribunals is available in the UK) however Tribunals are not legal/court proceedings and by allowing Legal Aid then there is a risk that they are elevated to this status. Again there is an issue of possible contravention of the European Convention on Human Rights.

3.6.4 **Consultations -** General Registry wished to raise a linked issue for Tribunals which is that it is aware that it is becoming increasingly difficult to find legally qualified people to sit on the tribunals because of the low fee.

3.6.5 Appointments to Tribunals are made by a variety of agencies and no problem has been raised to the Chief Secretary's Office with regard to appointing people to serve on these Tribunals. An Appointments Commission has been established to appoint members of Tribunals. The issue of pay structure is being progressed by this body.

3.6.6 As regards the primary issue of Legal Aid for representation at Tribunals; the provision of Legal Aid in civil matters may, in certain circumstances, be implicit in the right of access to court guaranteed by Article 6(1) of the ECHR. Whether this is so depends on what is at stake in the proceedings, the complexity of the relevant law and procedure, and the capacity of the individual litigant to represent himself effectively. Case law shows that an applicant complained to the European Court of Human Rights regarding the absence of Legal Aid for judicial separation proceedings. The principles arising from this case required considerable importance be attached to the rights which are at stake for the individual in the litigation. Thus, litigation involving family separation or parental rights will generally require legal representation, as will a challenge to the lawfulness of detention.

3.6.7 In the Island Legal Aid is available for proceedings before the Mental Health Review Tribunal, the Advocates Disciplinary Tribunal and the Isle of Man Data Protection Tribunal. Apart from the Isle of Man Data Protection Tribunal the case is clear that these persons should be represented however the vast majority of Tribunals are unlikely to involve the issues considered by the case law given above. There is not an explicit reason to justify Legal Aid being made available across the board at this time.

3.6.8 The Employment Tribunal is a party tribunal, rather than an Administrative Tribunal, but the same principles apply. The Commission made specific reference to the Criminal Injuries Compensation Tribunal, this is not a tribunal in the judicial sense but a body administering an ex gratia scheme. In any case, changes are proposed to the present Scheme which will enable the costs of an applicant to be paid in respect of an appeal against an initial decision. There is therefore no need to include the Criminal Injuries Compensation Scheme in considerations regarding Legal Aid.

3.6.9 Action - Civil Legal Aid will not be available as a matter of course for representation at Tribunals. If an individual Tribunal wishes to make a case for Legal Aid to be available for the proceedings before it then the issues can be considered.

4 CONCLUSIONS

4.1 The Council of Ministers has carefully considered and accepted the actions on the Recommendations of the Legal Services Commission.

4.2 The Council of Ministers considers that the Commission's over riding objective to increase access to justice will be met by the introduction of raised thresholds of eligibility for the vast majority of the Island's population. The new system:-

- Provides greater access to civil Legal Aid,
- Is easier to understand and transparent,
- Links to an established government financial system which is regularly reviewed, and
- Has minimal additional costs
- Is equitable to those who are/are not on benefits

4.3 Council shares the Commission's concern about the low rate of fees for Legal Aid work and the variance of Advocates fees between the four schemes providing advice and legal support. Progress has been made in this area as the rates have been increased and standardised across the four schemes. Council accepts that the rates need to be raised further in order to ensure that there are sufficient advocates willing to undertake Legal Aid work to meet the needs of the population.

4.4 The Council of Ministers has sought to meet the needs of those who need Legal Aid by introducing a fair and equitable scheme of repayment for those that can afford to replay. This not only ensures that there is access to Legal Aid for more people but also that the scheme gives value for money to the Taxpayer.

4.5 The Council of Ministers will review the new system for thresholds of eligibility twelve months after its introduction and the criteria for eligibility and rates of pay for advocates will be reviewed every 3 years and reported back to Council.

4.6 The recommendations that are still being investigated have a timescale and a further reports will be made to Council of Ministers.

SUMMARY OF ACTIONS TAKEN BY COUNCIL OF MINISTERS

1. **Action – The Green Form scheme for legal advice will be more widely promoted by the Office of Fair Trading (OFT) and the Law Society (LS) and is publicised through the production of leaflets enabled by cooperation between the OFT and the LS by May 2008.**

   Council of Ministers has agreed that Advocate's rates for the Green Form scheme and all other Legal Aid rates of pay will be standardised by inclusion in the Criminal Legal Aid Order. Subordinate Legislation is being prepared to action this during 2007/08. [Ref para 3.1.3]

2. **Action – General Registry will review during 2008 the Mediation Service including family mediation available in order to make it more widely used and report to Council of Ministers. [Ref para 3.1.7]**

3. **Action – General Registry will provide clearer information and guidance on the 'merits test' by April 2008. [Ref para 3.2.5]**

4. **Action - Greater access to justice will be given through increasing the numbers of those eligible for Civil Legal Aid by:-**

   - **Widening the criteria to include all people who are in receipt of income based benefits (currently those in receipt of Family Income Supplement and Income Support only are automatically financially eligible for civil Legal Aid) and**
   - **Raising the thresholds for eligibility through the introduction of a new scheme aligned with that used to assess means by the DHSS for Family Income Supplement (FIS) which will:-**
     - **Give greater access to civil Legal Aid,**
     - **Is easier to understand and transparent,**
     - **Links to an established government financial system which is regularly reviewed and has minimal additional costs,**
     - **Is equitable to those who are/are not on benefits**
   - **The Legal Aid Act 1986, the Legal Aid (Financial Resources) 1997 and the Legal Advice and Assistance Regulations 1997 will be amended to give effect to the above within the 2007/08 Legislative Programme.**
   - **The new system for eligibility to civil Legal Aid and the thresholds will be reviewed one year after their implementation and will be reported to Council of Ministers**
   - **The criteria for eligibility will be reviewed every 3 years. [Ref par 3.2.12]**

5. **Action - A new scheme of bands for repayment of contributions to facilitate access to Civil Legal Aid for those whose net resources are in the bands just above the levels which would permit free Legal Aid will be introduced. The contribution levels are set so as to require payment of 2 times the annual net resource excess figure (the amount above the free Legal Aid figure), with repayment being made over a four year period. Thus Civil Legal Aid is accessible to more but is treated, in effect, as an interest free loan. This is set out in Appendix 3-Table 2.**

The proposed method would achieve greater levels of recovery in a way which requires monthly contributions which are no greater than those required at present. This will be effected in the same manner as that proposed under 3.2.12 viz The Legal Aid Act 1986, the Legal Aid (Financial Resources) 1997 and the Legal Advice and Assistance Regulations 1997 will be amended to give effect to the above within the 2007/08 Legislative Programme. [Ref para 3.2.17]

6. **Action – The move to Family Income Supplement alignment for means tests should improve the clarity and transparency. On the issue of means test reviews, the General Registry will consider this further in consultation with the DHSS and report back to Council of Ministers by April 2008. [Ref para 3.2.21]**

7. **Action - The current legislation which allows parents in care proceedings to be considered for Civil Legal Aid subject to a means test is continued. [Ref para 3.2.25]**

8. **Action –It is recognised that a statutory charge is merited, but also acknowledged that significant administration and therefore cost impact would result. The General Registry will seek to introduce legislation in 2008/09 to allow a phased introduction of the Statutory Charges to be made in consultation with the IOM Law Society. [Ref para 3.2.32]**

9. **Action - The means test for Criminal Legal Aid will remain. [Ref para 3.3.7-**

10. **Action - The Legal Aid Office location will remain but be the subject of monitoring on confidentiality. [Ref para 3.4.8]**

11. **Action - The Legal Aid Certifying Officer will remain as an appointee of the Governor and accountable to the Legal Aid Committee [Ref para 3.4.10]**

12. **Action - A Legal Aid Appeals Tribunal should be appointed in pursuance of the Tribunals Bill and the present Committee should remain in place for consideration of policy issues. A Legal Aid Amendment Bill will be introduced within the 2007/08 Legislative Programme and an amendment to the Tribunals Act 2006. [Ref para 3.4.13]**

13. **Action - The issues in the Commission's report on difficulties for timely payment of advocate's fees no longer exists, therefore no action is required. [Ref para 3.5.4]**

14. **Action – Council of Ministers has agreed that the hourly rates of pay to Advocates for Legal Aid work should be in accordance with the recommendation of the Commission on a phased 3 year basis Year 1 £120/£100; Year 2 £135/£115; Year 3 £150/£125 respectively for senior/junior Advocates. Effected by amendment to the Criminal Legal Aid Order during 2007/08. At the conclusion of the 3 year phasing this will be reviewed annually by Treasury. [Ref para 3.5.9]**

15. **Action – On the assumption that applications to licence Counsel will not be made unless expertise etc is required and that higher IOM rates are not given unless such is required, no action is needed. [Ref para 3.5.14]**

16. **Action – Council of Ministers had agreed that rates for Duty Advocates are too low and should be for a specific time period. Council have agreed to bring the rates for all schemes into line and will be reviewed in line with para 3.5.9. [Ref para 3.5.20]**

17. **Action - The decision to transfer a Certificate should be made by the Legal Aid Certifying Officer as at present, who should agree to this course of action only if she is satisfied that it is strictly necessary for the proper administration of justice. [Ref para 3.5.23]**

18. **Action - This recommendation is accepted and is current practice [Ref para 3.5.25]**

19. **Action - This is a matter for the Law Society and no further action will be taken by Government. Matter will be referred to the Law Society. [Ref para 3.5.28]**

20. **Action - A compulsory Legal Aid Scheme will not be introduced. [Ref para 3.5.31]**

21. **Action – The legislation will be amended so that the Legal Aid Certifying Officer will consider civil case disbursements. Effect will be given to this through an amendment to Legal Aid (General) Regulations 1997, Legal Advice and Assistance Regulations 1997 and the Criminal Legal Aid Regulations 1993 during 2007/08. [Ref para 3.5.35]**

22. **Action - Civil Legal Aid will not be available as a matter of course for representation at Tribunals. If an individual Tribunal wishes to make a case for Legal Aid to be available for the proceedings before it then the issues can be considered. [Ref para 3.6.9]**

4.7 **Recommendation**

That the action taken by the Council of Ministers in response to the Legal Service Commission be noted and endorsed.

Table 1 Legal Services Commission - Summary of Council of Ministers Actions on Commission's Recommendations
Abbreviations LS –Law Society, GR – General Registry, Attorney General Chambers, OFT - Office of Fair Trading

		Implications of Recommendation		
Legal Services Commission Recommendation	**Consultations and Action**	**Legal**	**Policy**	**Financial**
Advice and Guidance **Green Form Scheme** Legal advice and Assistance (the Green Form scheme) is promoted by leaflets.	**Green** L S and G R agree. In addition they suggested that Advocates rates for the Green Form Scheme be standardised. **Office of Fair Trading and Law Society will promote the Green Form Scheme more fully, Advocates rates for Green Form are standardised with the other Legal Aid rates. Timescale 2007/08**	Subordinate (Legal Aid (Advice & Assistance) Scheme 1997, Criminal Legal Aid Order 2005	Open Transparent and promotes equal access to justice.	Yes, additional costs for rates of pay for advocates
Advice and Guidance **Mediation Service** Introduction of a Mediation Service to try to resolve disputes mainly from marital/relationship breakdown where children are involved	**Green** GR supports an independent Mediation Service. **General Registry will review Mediation Services to make them more widely available.**	Yes through the General Registry	Agreed as part of the Children and Young People's Strategy	Yes A Mediation scheme will incur a revenue cost but could be offset by saving court time.
Legal Aid for Civil Cases **Merits test** No change – Merits test to continue but clearer guidance required.	**Green** GR agree General Registry will review during 2007 the Mediation Service to make it more widely available and report to Council of Ministers **General Registry will provide clearer**	None	Open, transparent system	None

		Implications of Recommendation		
Legal Services Commission Recommendation	**Consultations and Action**	**Legal**	**Policy**	**Financial**
	information and guidance on the 'merits test' by April 2008.			
Legal Aid for Civil Cases **Means Test** Income eligibility be raised substantially. Scheme suggested based on Applicant's income tax allowance etc would raise threshold from £8k to £18K	**Green** **Greater access to justice will be given through increasing the numbers of those eligible for Civil Legal Aid by widening the criteria to include all people who are in receipt of income based benefits (currently those in receipt of Family Income Supplement and Income Support only are automatically financially eligible for civil Legal Aid) and raise the thresholds for eligibility through the introduction of a new scheme aligned with that used to assess means by the DHSS for Family Income Supplement (FIS).** **Legislative Programme 2007/08/**	Primary (Legal Aid Act 1986) Sub (Legal Aid (Financial Resources) Regulations 1997) Legal Aid (Advice & Assistance Regulations 1997)	Meet the aim of social well being and substantially contribute to equal access to justice system.	Yes
Repayment of Contributions to Civil Legal Aid Commission made no recommendation	Thresholds for free Civil Legal Aid are set - some fall just outside eligibility. Those applicants can have access to Legal Aid but part or all is required to be repaid. Current method does not achieve repayment contributions at an acceptable level. No consultation has been carried out. **Introduce a new scheme of bands for repayment of contributions. New scheme would achieve greater levels of recovery in a way which requires monthly contributions**	Legal Aid (Financial Resources) Regulations 1997) and Legal Aid (Advice and Assistance Regulations) 1997	Meet the aim of social well being and substantially contribute to equal access to justice system.	Yes potential to recover greater sums.

		Implications of Recommendation		
Legal Services Commission Recommendation	**Consultations and Action**	**Legal**	**Policy**	**Financial**
	which are no greater than those required at present. Thus Civil Legal Aid is accessible to more but is treated, in effect, as an interest free loan.			
Means Tests Regulations Regulations which govern assessment of means lack transparency	**Green** GR agree that the rules are over complicated and suggest a simple, understandable system. **The move to FIS alignment for means tests should improve clarity and transparency. On the issue of means test reviews, the General Registry will consider this further in consultation with the DHSS and to report back to Council of Ministers by April 2008.**		Open, transparent and accountable government	None
Legal Aid **Parents in Care Proceedings** 'Legal Aid should be granted without means test to parents in care proceedings and also to Guardians ad Litem who represent the child'.	**Red** The introduction of a Mediation Service would go some way towards assisting parents in care proceedings. In the interests of a fair and equitable approach, Civil Legal Aid should be the subject of a means test. Parents and Guardians Ad Liteum involved in care proceedings will be eligible for Legal Aid on the same basis as other applicants using the same calculations for FIS. Thus raising the threshold levels. **The means test will continue for parents in care proceedings**	No	Equality of access	None

		Implications of Recommendation		
Legal Services Commission Recommendation	**Consultations and Action**	**Legal**	**Policy**	**Financial**
Statutory Charge 'see merit in the introduction of statutory charge but no introduction but wish to see close review'	**Green** GR comment that current system is not considered equitable and fair. Statutory charge should be considered so that Government can recoup some Legal Aid costs. **General Registry will seek to introduce legislation in 2008/09 to allow a phased introduction of statutory charges to be made.**	Yes if decision to proceed	Value for money	Yes – Increase in money being returned to public funds.
Means Test for Legal Criminal Legal Aid Means test should be abolished to comply with European Court of Human Rights (ECHR)	**Red** Means test should remain – Attorney General's Chambers comment with provisos that there is no justification for providing free criminal Legal Aid. GR strongly supports the retention of the means test. **Means test for Criminal Legal Aid will remain.**	None	Meets equal access to justice and value for money	Yes
Human Rights Legal Aid Office -service and location Independence of the Legal Aid Office both in its location and the management of the Legal Aid Certifying Officer.	**Red** Attorney General's Chambers comment that provided confidentiality is addressed then location can remain. GR comment that confidentiality is addressed and do not see immediate need to relocate. Legal Certifying officer accountable to Legal Aid Committee.	None	Open, transparent and accountable government	None

		Implications of Recommendation		
Legal Services Commission Recommendation	**Consultations and Action**	**Legal**	**Policy**	**Financial**
	The Legal Aid Office will remain in its present location but be subject of monitoring on confidentiality. Legal Aid Certifying Officer remains as appointed by the Governor			
Human Rights **Legal Aid Committee** Lack of Independence of Appeals process and potential conflict of interest for judiciary.	**Green** Legal Aid Office and Legal Costs Division recommend that there be a move to a two Committee structure, Policy and Appeals. These changes overcome the concerns. The GR comments that the Legal Aid Appeals Tribunal should be appointed in pursuant of the proposed Tribunals Act 2005. **A Legal Aid Appeals Tribunal will be appointed in pursuance of the Tribunals Bill and the present Committee to remain in place for consideration of policy issues. Legislation within 2207/08**	Yes General Registry to consider appropriate legislation	Open, transparent and accountable Government	
Advocates **Administration** 'Advocates have difficulty getting paid in timely manner for Legal Aid work.'	**Green** GR does not accept this. LS comment that this was a problem in the past but now resolved. **Standard invoices are processed 1 month from receipt and sent to Treasury for payment. LS agree that the system has improved.**	None	None	None

		Implications of Recommendation		
Legal Services Commission Recommendation	**Consultations and Action**	**Legal**	**Policy**	**Financial**
Advocates **Civil and Criminal Legal Aid Work.** The fees paid to Advocates for Legal Aid work are too low and should be aligned to the commercial rate. They should be closely aligned to the commercial rate.	**Green** GR accepts rates paid are too low and that if they continue at these rates it may become difficult to continue to offer the service. Does not agree that the Legal Aid rate should be more closely aligned to the commercial rate. **The rate of pay for Advocates undertaking Legal Aid work will be revised in accordance with the recommendations of the Commission on a phased basis. Legislation Programme 2007/08**	Subordinate (Criminal Legal Aid Order 2005	Accountable government	Yes
Advocates **Higher fees to UK Counsel?** Perceived unfairness in the payment of higher fees to UK Counsel acting in the Island	**Red** GR point out that applications to license UK lawyers to work in Manx Courts are decided by Their Honours the Deemsters and are generally made by Manx Advocates on behalf of their clients. The circumstances in which lawyers from the UK or other jurisdictions are allowed to work in the Island are strictly controlled through legislation and mainly involve the need for expert Counsel. **No action**	None	None	None
Advocates **Duty Advocates Schemes** Rates, which were fixed in	**Green** GR agree that the current rates are too low.	Subordinate (Duty Advocate Scheme 1997,	Equitable and accountable	Yes

		Implications of Recommendation		
Legal Services Commission Recommendation	**Consultations and Action**	**Legal**	**Policy**	**Financial**
1998, are now too low. Advocate should be paid £150 for each on-call period during which he is available on the rota, and the Legal Aid rate for each hour or part of an hour he attends a police station to give advice to a suspect. Travel expenses should be paid at the prevailing Government rate."	**Rates for Duty Advocates are too low and should be for a specific time period. Rates for all schemes will be brought into line and reviewed (see Advocates' Rates of Pay detailed above).**	Duty Advocate (Police Custody) Scheme 1998, Criminal Legal Aid Order 2005		
Advocates **Change of Advocate** Decision to transfer a Certificate should be made by the Legal Aid Certifying Officer as at present, who should agree to this course of action only if she is satisfied that it is strictly necessary for the proper administration of justice.	**Green** GR accepts this recommendation. **Decision to transfer a Certificate should be made by the Legal Aid Certifying Officer as at present. She should agree to this course of action only if she is satisfied that it is strictly necessary for the proper administration of justice.**	None	Equitable	None
Advocates **Panel of Advocates** Panel of Advocates prepared to do Civil Legal Aid work should always carry out the Legal Aid work that they hold	**Green** This is current practice. **No action**	None	None	None

		Implications of Recommendation		
Legal Services Commission Recommendation	**Consultations and Action**	**Legal**	**Policy**	**Financial**
themselves responsible for, other commitments permitting				
Advocates **Standards of Advocates** Introduction of a marshalling programme for the Deemsters and High Bailiff to improve the standard of advocacy at the junior bar.	**Green** GR comment that this is a matter for the Law Society. **This is a matter for the Law Society and no further action will be taken. Matter will be referred to the Law Society**	None	None	None
Advocates **Voluntary/Compulsory for Advocates to undertake Legal Aid** Advises against a compulsory Legal Aid scheme and accepts the assurances of the Law Society that it will provide high quality legal services for the benefit of the Isle of Man.	**Green** GR agree with the recommendation **The Legal Aid Scheme will continue as a voluntary scheme.**	None	None	None
Disbursements The Legal Certifying Officer should approve all disbursements in civil matters with the Head of the Legal Aid and Legal Costs Division of the General Registry	**Green** It is assumed that the Commission intended the Legal Aid Certifying Officer to consider disbursements rather than approve them as a matter of course. GR has no issue with this recommendation.	Subordinate (Legal Aid (General) Regulations 1997	None	None

Legal Services Commission Recommendation	Consultations and Action	Implications of Recommendation		
		Legal	Policy	Financial
deciding criminal disbursements.	**Legislation to be amended so that the Legal Certifying Officer will consider all disbursements in civil matters. Legislation Programme 2007/08**			
Tribunals **Legal Aid for Tribunals** In principle in favour of the provision of Legal Aid for [the Employment Tribunal and the Criminal Injury Compensation Tribunals] but only to ensure equality of arms where a non legally aided party elects to use a lawyer. Recommend a fixed payment in each case to protect the Legal Aid fund and encourage conciseness."	**Red** GR comment that in the interests of equality and access to legal advice there should be an opportunity to apply for Legal Aid where this is appropriate, (Legal Aid for Tribunals is available in the UK) however Tribunals are not legal/court proceedings. T Attorney General's Chambers are of the view that there is there is no argument to justify Legal Aid being made available across the board at this time. **On balance there should be no change to current practice. Specific Tribunals to make formal case for change as appropriate.**	None	None	None

APPENDIX 1 - EXISTING LEGAL AID SYSTEM

Legal Aid was introduced into the Isle of Man for criminal appeals, by the Criminal Code Amendment Act 1921 and provided for defendants in criminal trials by The Poor Prisoners Defence Act 1933. Forty years later the Legal Aid (Isle of Man) Act 1973 introduced Legal Aid for civil proceedings (with some exceptions e.g. defamation).

The Legal Aid Act 1986 replaced the 1973 and 1933 Acts and those parts of the 1921 Act that dealt with Legal Aid. The 1986 Act introduced a scheme of legal advice and assistance ("the Green Form Scheme"), a more comprehensive scheme for criminal Legal Aid (but based on the existing scheme) and the introduction of the Duty Advocates Scheme.

The Legal Aid Committee

A Legal Aid Committee was established by the 1973 Act, comprising the First Deemster, the Attorney General, the President or Vice-President of the Isle of Man Law Society and the Chairman of the Isle of Man Magistrates Association.

The Committee's principal function is to make regulations to implement civil Legal Aid provisions and the Green Form Scheme. Such regulations require Tynwald approval. The Committee hears appeals against the refusal of Legal Aid in civil proceedings.

Legal Certifying Officer

Regulations provide for the appointment of a legally qualified Certifying Officer by the Lieutenant Governor. The administration of the civil Legal Aid scheme is effectively vested in the Certifying Officer, who is responsible for the issue of Legal Aid certificates. The Officer considers the legal merits of the application, but the financial eligibility is decided by the Legal Aid and Costs Division of the General Registry and in certain instances in consultation with the DHSS.

Civil Legal Aid

Applications for civil Legal Aid are made to the Legal Aid Certifying Officer by the applicant's advocate. The application is granted if it satisfies the legal merits test, which takes into account cost-effectiveness, and if the applicant is financially eligible: the financial criteria are laid down in the Legal Aid (Financial Resources) Regulations 1997.

A successful application is granted a Legal Aid Certificate, that certificate might be limited in the first instance but later amended or extended upon further application. Legal Aid for appeals is available on the same basis.

If Legal Aid is refused an appeal may be considered by the Legal Aid Committee under the Legal Aid (General) Regulations 1997. There is no right of appeal on the grounds that the applicant is not financially eligible.

The Civil Legal Aid Order 1999 made by the Treasury after consultation with the Deemsters, and approved by Tynwald, provides that remuneration for civil Legal

Aid work is paid at the same level as that for criminal work, with the exception of fixed fees for certain matrimonial proceedings.

If there has been no recovery of costs from the other party the advocate's costs are paid after assessment by the General Registry

Criminal Legal Aid

An application for criminal Legal Aid must be made to the relevant court, either by the applicant, with a request for an advocate, or by an advocate chosen by the applicant. The application will be granted if it is considered by the court to be in the interests of justice and if the applicant is financially eligible: The financial eligibility criteria are laid down in the Criminal Legal Aid Regulations 1993 made by the Legal Aid Committee and approved by Tynwald. An application for Legal Aid to appeal against sentence and/or conviction must be made to the Chief Registrar, except for proceedings before the Privy Council.

If Legal Aid is refused, there is a right of appeal to the court or a Judge.

An advocate is remunerated for criminal Legal Aid work at rates set out in the Criminal Legal Aid Order 2001, made by the Treasury and approved by Tynwald. Bills of costs must be assessed by the General Registry before payment.

Duty Advocates Scheme - advice and representation in criminal cases

There are two schemes that provide for legal advice and representation in criminal matters. They are the Duty Advocate Scheme 1997, which provides for an advocate to be available at fixed criminal courts, and the Duty Advocate (Police Custody) Scheme 1998, which provides for an advocate to be on call to a police station. he Isle of Man Law Society produces a panel and rota for the Schemes.

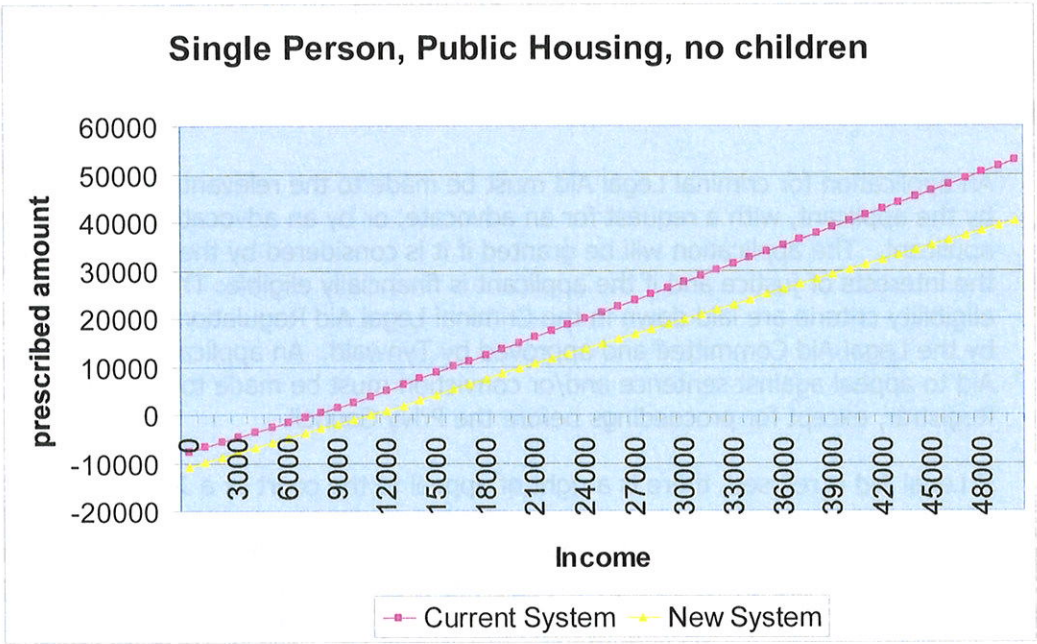
Neither scheme is means or merit tested. The advocate is remunerated according to the rates laid down by the Schemes and his costs are paid after consideration by the General Registry. Bills of costs must be assessed by the General Registry before payment.

Legal Advice and Assistance (Green Form)

Advice is available on almost every aspect of Manx law under the Legal Advice and Assistance (Green Form) Scheme, which is intended to provide either initial advice or quick resolution of a matter. The scope of the advice is limited to a maximum of approximately three hours work when petitioning for divorce or two hours for all other matters but the advocate may apply for extensions to those limits.

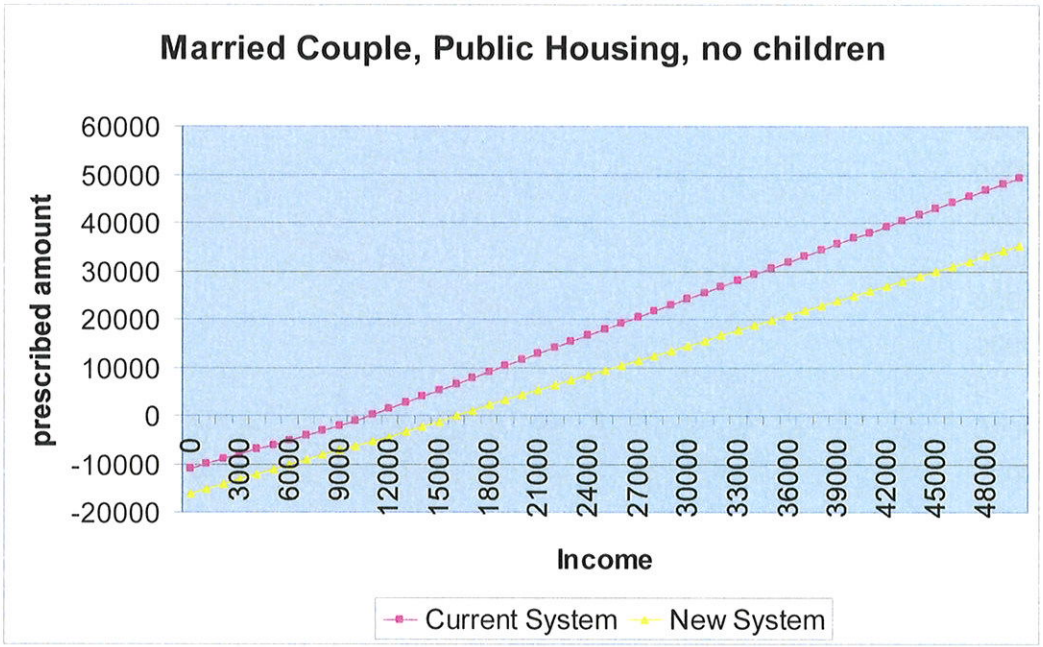
Applications for this type of Legal Aid are made to an advocate, who carries out a means and merits test. The financial criteria are laid down in the Legal Aid (Advice and Assistance) Regulations 1997.

Appendix 2 – Examples of Hypothetical Cases under existing and new Legal Aid Eligibility systems.



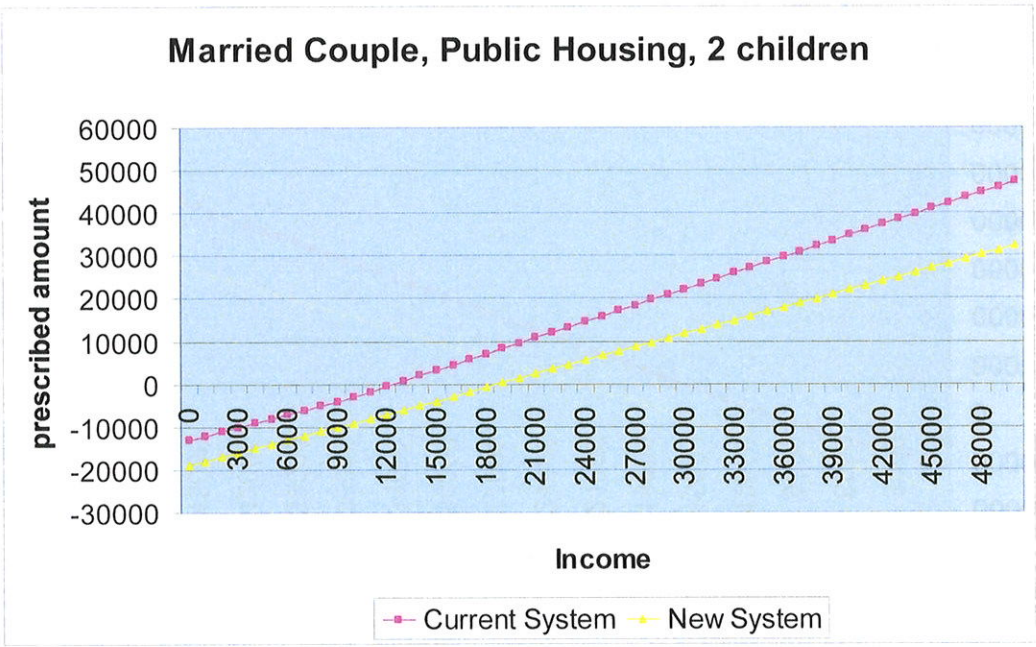
Status	**SINGLE**
Children	**0**
Working Full Time	**N**
Housing Cost	**2860**
Child Care Cost	**0**
Rates	**700**
Housing Type	**RENTED**
Maintenance Payments	**0**

Under the existing system free Legal Aid is available to those whose income is less than £7,560 per annum. This increases to £11,125 under the new system.



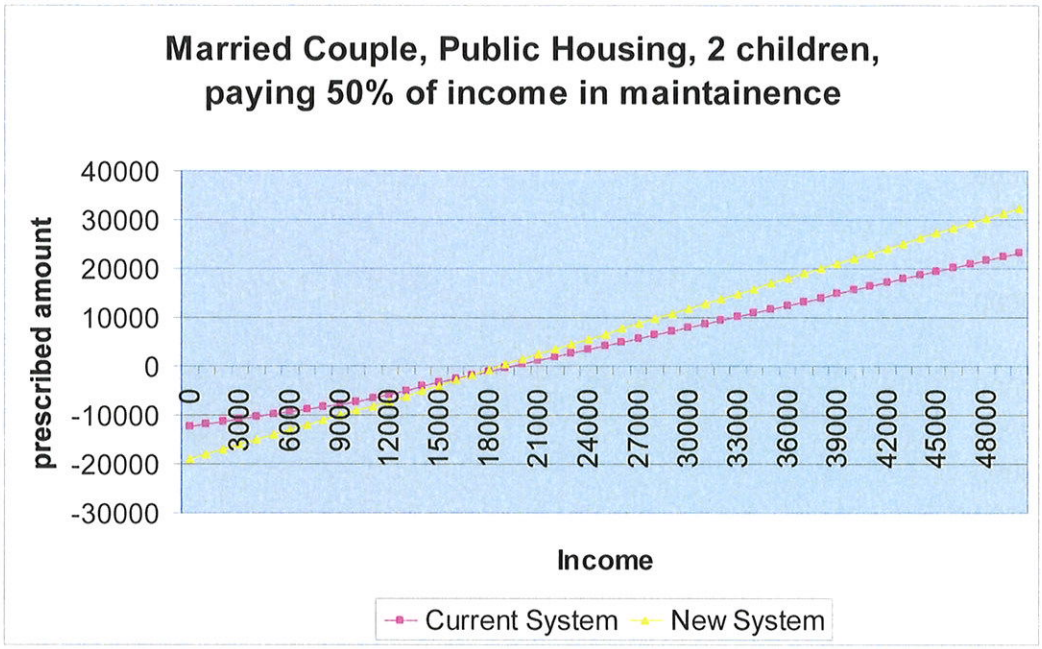
Status	**MARRIED**
Children	**0**
Working Full Time	**Y**
Housing Cost	**2860**
Child Care Cost	**0**
Rates	**700**
Housing Type	**RENTED**
Maintenance Payments	**0**

Under the existing system free Legal Aid is available to those whose income is less than £10,760 per annum. This increases to £16,050 under the new system.



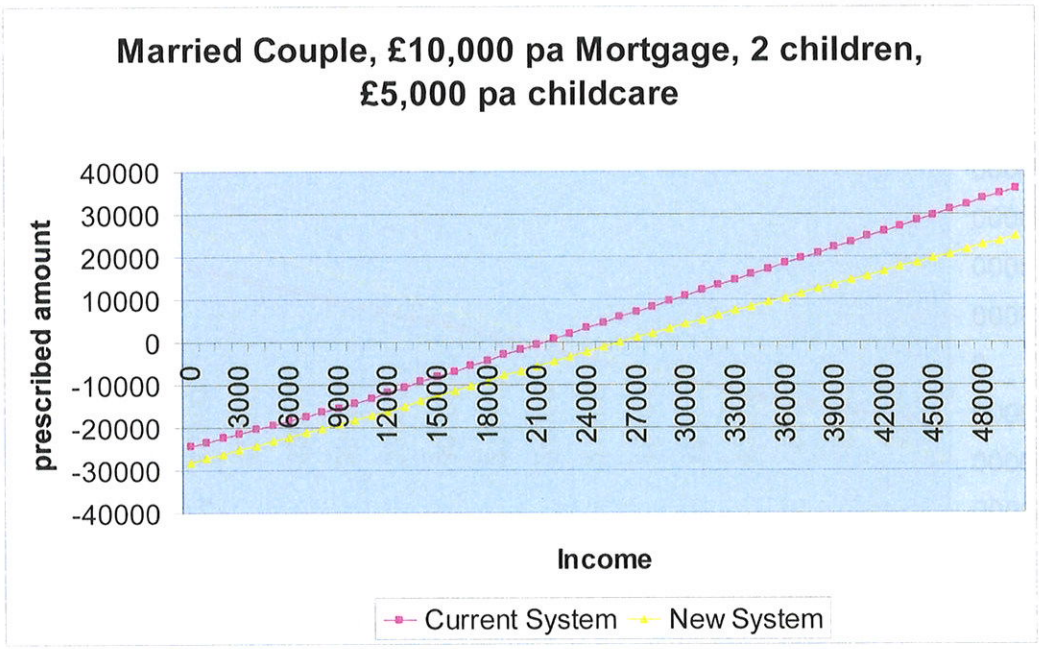
Under the existing system free Legal Aid is available to those whose income is less than £11,710 per annum. This increases to £18,560 under the new system

Status	**MARRIED**
Children	**2**
Working Full Time	**Y**
Housing Cost	**2860**
Child Care Cost	**0**
Rates	**700**
Housing Type	**RENTED**
Maintenance Payments	**0**



Under the existing system free Legal Aid is available to those whose income is less than £17,160 per annum. This increases to £18,560 under the new system

Status	**MARRIED**
Children	**2**
Working Full Time	**Y**
Housing Cost	**2860**
Child Care Cost	**0**
Rates	**700**
Housing Type	**RENTED**
Maintenance Payments	**50%**



Status	**MARRIED**
Children	**2**
Working Full Time	**Y**
Housing Cost	**10000**
Child Care Cost	**5000**
Rates	**700**
Housing Type	**OWNER OCCUPIER**
Maintenance Payments	**0%**

Under the existing system free Legal Aid is available to those whose income is less than £21,350 per annum. This increases to £26,090 under the new system

Appendix 3 – Eligibility for Partial Legal Aid and Repayment periods.

Table 1
CURRENT SYSTEM

RESOURCES		% CONTRIBUTION	MAX CONTRIBUTION	MONTHLY PAYMENT	PAYMENT PERIOD
£	£		£	£	MONTHS
4,000	5,000	10	500	42	12
5,000	6,000	25	1,000	84	12
6,000	7,000	50	1,500	126	12
7,000	8,000	75	2,000	168	12

Table 2
PROPOSED SYSTEM

RESOURCES		% CONTRIBUTION	MAX CONTRIBUTION	MONTHLY PAYMENT	PAYMENT PERIOD
£	£		£	£	MONTHS
0,001	1,000	2 x NR (net resources)	2-2,000	42 (max)	1-48
1,001	2,000	2 x NR	2,002-4,000	84 (max)	24-48
2,001	3,000	2 x NR	4,002-6,000	126 (max)	32-48
3,001	4,000	2 x NR	6,002-8,000	168 (max)	36-48

Appendix 4 - EXECUTIVE SUMMARY

CHAPTER 1

INTRODUCTION

Background

1.1 - 1.5 Three Commissions of Inquiry have been created in the last fourteen years into legal services in the Isle of Man. The Clothier Commission's recommendations in 1990 led to the report of the Calcutt Commission in 2001 which identified shortcomings in the provision of legal aid and recommended further investigation. This has been carried out by the present Commission whose terms of reference are:

"to consider the provision and administration of legal aid and legal advice and assistance in the Isle of Man in the context of recognised best practice and in particular to review and comment, with any relevant recommendations, on:

the legal framework (both primary and subordinate legislation), including eligibility (financial and otherwise) for legal aid and legal advice and assistance,

the administrative arrangements, and

the availability and quality of the service provided and the fee structure for those providing the service".

The overriding Objective

1.6-1.7 This is to maximise access to justice while at the same time ensuring that any public provision gives value for money.

Methodology

1.8 -1.10 We held 6 meetings over 15 months, received 40 written submissions and heard oral evidence over 3 days, and made our formal report to the Council of Ministers in May 2003.

Impressions

1.11-1.14 The burgeoning growth of the financial sector has vastly increased the number of

lawyers working on the island but few of them deal with legal aid cases. This means that it is becoming progressively more difficult to find a suitable lawyer prepared to do legal aid work. Our recommendations aim to strike a fair balance between the just claims of the public to be properly represented in legal matters and the expectations of the legal aid lawyer to be adequately remunerated. We have striven to be guided by the twin loadstars of simplicity and transparency. There should be a uniform hourly rate for the preparation and conduct of a case with a higher rate for more senior practitioners.

CHAPTER 2

THE EXISITNG LEGAL AID SYSTEM

Background

2.1-2.6 Legal aid was introduced in 1921 with subsequent amendments. The Legal Aid Committee makes regulations for civil legal aid. The scheme is administered by the Certifying Officer. The Certifying Officer administers the civil legal aid scheme and considers the merits test; financial eligibility is determined by the Legal Aid Costs Division of the General Registry in consultation with the Department of Health and Social Security.

Criminal Legal Aid

2.7 – 2.9 This is granted or refused by the courts, with rights of appeal. There are financial eligibility tests and, to be granted, the application must be considered by the court to be "in the interests of justice".

Duty Advocate Schemes

2.10-2.12 The schemes provide for an advocate to be available at certain criminal courts to give advice and to attend a police station to advise a suspect held in custody.

Civil Legal Aid

2.13-2.17 Civil legal aid is granted or refused by the Legal Aid Certifying Officer with appeals to the Legal Aid Committee. The remuneration rates are broadly similar as that for criminal work apart from certain matrimonial proceedings.

Legal Advice and Assistance (Green Form)

2.18-2.19 The Green Form scheme enables a lawyer to give initial advice upon almost every aspect of Manx law.

CHAPTER 3

THE SHORTCOMINGS OF THE SYSTEM

3.1 The present system is in urgent need of improvement, if it is to provide the access to justice intended.

Information and Access

3.2 Criminal and civil proceedings are dealt with by different bodies with different eligibility criteria.

3.3 The system is complex and difficult to understand.

3.4 The financial eligibility thresholds are wholly unrealistic.

3.5 The regulations governing eligibility are unduly complex.

3.6 Parents in care cases are not granted legal aid without a means test.

3.7 The Green Form scheme, which is cost effective, is underused.

3.8 Legal aid is not available for some Tribunals.

The Profession

3.9 Legal aid fees are too low when compared with commercial and routine private client work

3.10 Payment is slow. There is no provision for payment on account.

3.11 The administration is unduly bureaucratic.

3.12-3.13 These shortcomings mean that there are not enough advocates prepared to do legal aid work.

3.14 There is unjustified disparity between fees paid to United Kingdom counsel acting in the Isle of Man under legal aid and a Manx advocate.

3.15 There is a lack of effective quality control over advocates, unlike the United Kingdom.

Legal Aid Administration

3.16 There is a perception of a lack of independence of the Legal Aid Certifying Officer. A similar problem exists in the appeals process where the Legal Aid Committee is both the regulatory body and the body hearing appeals from the Certifying Officer. Since judges sit on the Committee the potential for conflicts of interest in subsequent legal proceedings exists.

3.17 There is no provision to 'claw back' the costs of litigation when money or property has been preserved or recovered but no costs order made.

3.18 The legal merits test appears to need reviewing and consistent application.

3.19 Certain aspects of the system may not be in accordance with the European Convention on Human Rights.

3.20 The Courts cannot award costs against a legally-aided person.

CHAPTER 4

DISCUSSION AND RECOMMENDATIONS

4.1 Since there is broad consensus among those most closely involved in the provision and administration of justice in the Island it is our earnest hope that our recommendations will receive prompt and favourable consideration by Tynwald and that they will be brought into force expeditiously.

Public Information and Access to Legal Aid

4.2 "User friendly" leaflets setting out what is on offer from the legal profession should be made available at locations used by the public. These leaflets should be jargon-free and written in plain English.

4.3 All advertising restrictions should be abolished.

Advice Surgeries

4.4 Help in form filling and settling of everyday consumer and neighbour disputes, debt management, and housing problems should be available in a pilot scheme of advice surgeries conveniently located.

Mediation

4.5 Mediation should be expanded to all appropriate disputes and it should no longer be necessary to start proceedings to invoke the mediation process.

Eligibility Criteria

4.6 Income eligibility criteria should be raised substantially.

4.7 The current merits test should continue in full force.

4.8 The present civil legal aid scheme provides free legal aid for those whose resources after deductions do not exceed £4000, provision for a contribution is then available on a sliding scale until a cut off point at £8000 is reached.

4.9 The Law Society has put forward a tax based eligibility scheme.

4.10 We recommend that eligibility for civil legal aid should closely follow the tax regime and operate on a sliding scale so that after deduction of all tax allowances the litigant will pay 10% of what he has left for each £1,000 with a cut-off point at £10,000.

4.11 Housing costs should form a deductible allowance from gross income including the interest element of a mortgage.

4.12 Worked examples are to be found at para. 4.12 at pp 19-20 of this Report.

4.13 The same allowances should apply to everyone irrespective of the source of their income.

4.14 There should be no discretion to grant legal aid for cases falling just above the financial limits.

Statutory Charge

4.15-4.16 The question of whether to implement the 'statutory charge' (by which the legal aid fund recovers the shortfall of litigation costs from the damages or property obtained or preserved as a result of the litigation) should be kept under close review and should our recommendations for streamlining legal aid not be successful, then this should be revisited.

Orders for costs against Legally-Aided persons

4.17 We are not in favour, for practical reasons, of making a costs order against an unsuccessful legally aided litigant, but the Court should consider carefully whether or not to make a costs order which is not to be implemented without leave of the court with a view to revisiting the matter were the litigant's position to change.

Eligibility for Criminal Legal Aid

4.18 The means test for criminal legal aid should be abolished, although the court should retain a discretion to award costs against a Defendant where appropriate.

4.19 The Duty Advocates Schemes should continue without a means test.

"Football Pools Order"

4.20 The court should retain its power to review its costs order should that turn out to be inappropriate.

Employment Tribunals and Criminal Injury Compensation Tribunals

4.21 Legal aid should be available for Tribunal hearings where a non-legally aided party uses a lawyer.

Rates

4.22 There should be an across the board hourly rate of £125 for an advocate of under ten years call and £150 for those over ten years. These should be reviewed annually.

4.23 Apart from the call out and stand-by fees in the Duty Advocates (Police Custody) Scheme, the same hourly rate should apply for the preparation, waiting, travel, and appearances in all cases.

Legal Aid Staff

4.24 The Legal Aid Certifying Officer and deputy should no longer be subject to the line management of the Chief Registrar. The staff of the Legal Aid Certifying Officer should have the Legal Aid Certifying Officer as their line manager.

Assessment and Payment of Bills

4.25 Hours claimed in legal bills should be accepted as bona fide provided they are accompanied by a certificate warranting their accuracy signed by the claimant personally, and no further time consuming investigation is necessary.

4.26 Within two months of the lodgement of the final bill there should be an entitlement to payment of 90% of all claimed costs plus disbursements. Each firm should be given a unique reference number and payment made through the BACS system.

4.27 Interim payments of 90% of claimed costs should be available for long cases, with any overpayments being taken into account when the final bill is assessed.

4.28 The people of the Island are entitled to high quality legal services. The chances of achieving this will be improved by dealing fairly with lawyers prepared to undertake legal aid work.

Disbursements

4.29 The Legal Aid Certifying Officer should approve all civil disbursements and the Head of the Civil Legal Aid and Costs Division of the General Registry should deal with criminal disbursements.

Change of Advocate

4.30 The transfer of a legal aid certificate should continue to be determined by the Legal Aid Certifying Officer who should, as at present, agree to this course only if satisfied that it is strictly necessary for the proper administration of justice.

Panel of Advocates

4.31 Members of the panel of advocates prepared to do legal aid should always carry out the legal-aid work they hold themselves out for, other commitments permitting.

Duty Advocates (Police Custody) Scheme

4.32 The duty advocacy scheme for legal advice for those in police custody both safeguards the rights of the individual and frees confessions from the taint of coercion and may shorten trials.

4.33 Advocates should be paid £150 for each on-call period plus the legal aid rate for each hour or part of an hour he advises at a police station. Travel Expenses should be at the prevailing Government rate. The rate for a senior advocate on call to advise more junior colleagues should be £300 for each seven day period

4.34 There should be full implementation of the statutory Duty Advocates Scheme, and which would result in the Scheme operating during working hours.

Community Legal Service/Public Defender

4.35 A Public Defender Service should not be instituted at present but if the improvements we propose do not result in increased access to justice then such a scheme may be the only available alternative.

Civil Legal Aid Appeals

4.36 Legal aid for appeals should be considered by an independent sub-committee of the Legal Aid Committee with an independent chairman. Criminal legal aid appellate procedure should continue as at present.

Child Care proceedings

4.37 Legal aid without a means test should be available for parents and Guardians ad Litem all care proceedings.

4.38 The welfare of the child in care cases and the rights of the parents require a full investigation which can only be done if each party is legally represented.

4.39 Careful consideration should be given to the enhancement provisions of the rates we have recommended.

Standards of Advocacy

4.40 A marshalling programme with the Deemsters and the High Bailiff should be instituted to improve the standard of advocacy at the junior bar and the Law Society should subject their training programme to continuing review.

A Voluntary or Compulsory Scheme?

4.41 We advise against a compulsory legal aid scheme for lawyers at present and accept the assurances of the Law Society that it will provide high quality legal services for the benefit of all the people of the island. Our recommendations, if implemented, will make good the shortcomings we have identified. We look to the legal profession to play its part in securing access to justice, which is the birthright of every Manxman.

THE ISLE OF MAN LAW SOCIETY

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E-mail: enquiries@iomlawsociety.co.im
Website:www.iomlawsociety.co.im

Please reply to:– **Jane O'Rourke**

12th March 2014

Mr J Kennish
Secretary to the Legal Aid Committee
Legal Aid Office
General Registry
Isle of Man Courts of Justice
Deemster's Walk
Douglas
Isle of Man

Dear Sirs

Consultation Document Legal Aid Regulations etc

Thank you for the opportunity to comment on the proposed changes contained in:

- Legal Aid (General) (Amendment) Regulations 2014- *Proposed Date of operation not stated and being Regulations of the Legal Aid Committee* ***requiring Tynwald approval***
- Legal Aid (Financial Resources) (Amendment) Regulations 2014 - *Proposed Date of operation not stated and being Regulations of the Legal Aid Committee requiring no Tynwald approval*
- Legal Aid Remuneration Order 2014 – *Proposed Date of operation being 01 April 2014 and being a Treasury Order* ***requiring Tynwald approval***
- Duty Advocate (Police Custody) (Amendment) Scheme 2014 – *Proposed Date of operation 01 April 2014 being Regulations of the Legal Aid Committee requiring no Tynwald approval*
- Criminal Legal Aid (Amendment) Regulations 2014 - *Proposed Date of operation not stated and being Regulations of the Legal Aid Committee* ***requiring Tynwald approval***

The Society has consulted it members extensively and the Society submits this response on their behalf.

As a matter of principle the Society and its members welcome any development of the legal aid scheme whereby access to justice is promoted for the most vulnerable members of society at the most efficient cost to the island community.

In this context, it should be stated at the outset that legal aid Advocates have continued to support the system despite being subject to an effective rate freeze since 2010, when without consultation, the agreed hourly increase in rates from £115 to £125 (for Juniors) and £135 to £150 (Seniors) was deferred and remains frozen (please see Appendix for detail). In that period, other costs including wage costs; financing; unavoidable regulatory and professional indemnity insurance costs have risen

markedly. In real terms, legal aid advocates have already sustained a significant and ongoing rate reduction.

Advocates' contribution to increasing efficiencies within the system was recognised by the Chief Minister in Tynwald when he noted that the costs of the Court Duty Advocate scheme had fallen significantly in consequence of the support and co-operation of Advocates in reducing (at our instigation) the number of Advocates on duty from 2 to 1, in any Court sitting.

We continue to put measures in place to measure inefficiencies (such as delays/waiting time) in the system, which we can address. I am pleased to report that our statistics suggest that virtually no Court time (and concomitant funds) is "wasted" by Advocates waiting, save that which is attributable to some unavoidable external factor such as waiting for Defendants or the prosecution files to arrive or for Court space to become available.

Whilst therefore supporting the push for greater efficiency, the Society very strongly rejects:

- changes to the system which have not been adequately costed
- any diminution in access to justice
- any changes, the impact of which has not yet been determined and which may either introduce further expense (e.g. by way additional administrative burdens) or future savings (e.g. by way of fewer court sittings or fewer cases before the courts) into the system.

In short for the reasons provided below, the Society would endorse:

Legal Aid (General) (Amendment) Regulations) 2014

- Regulation 9 Mediation: Legal aid to be available for mediation prior to proceedings in Court

Legal Aid (Financial Resources) (Amendment) Regulations 2014

- Regulations 3-9 Statutory Charge (as previously agreed by Advocates in 2005)

Duty Advocate (Police Custody) (Amendment) Scheme 2014

- Claims for part hour – agreed that Advocates should be paid only for actual time of attendance in police station rather than claims be rounded up to the nearest hour. We welcome the data to show what savings this will generate.

As regards all other proposals it is suggested that such changes be deferred for a period of one year to permit the Committee and Treasury to obtain meaningful and accurate costings in respect of the changes and the impact of the changes in respect of access to justice.

1. LACK OF DATA

(i) In recent months process changes have been introduced (plea before venue and reduction of fixed courts from 3 to 2) which will of themselves generate savings within the system. It is not yet known what those savings will be and it would be unwise to embark on further changes which could impact on access to justice until it can be determined whether a sustainable level of savings has already been achieved.

(ii) The Society has made enquiry of the Chief Registrar to obtain a better understanding of the figures which are available to us.

(iii) The 2014 "pink book" states:

"10.3 LEGAL COSTS RESERVE

The Legal Costs Reserve continues to be affected by large unplanned legal costs. Legal aid expenditure on large cases and tribunal costs in the Registry have an estimated cost of £4 million in the current year, with the Attorney General's Chambers indicating that a further £1.3 million will be required. This reserve will be topped up this year with a transfer of £1.7 million from the operating account and £2 million transferred from the Media Development Fund.

Treasury remains concerned about the sustained high cost of legal activity."

We note that the £4M figure referred to there is "normal" Civil and Criminal Legal aid **AND** the costs of running the Tribunals for 2014/2015 **AND** the cost of "large cases".

Advocates have no say in determining whether prosecutions will be brought, nor the type of charge which may render a case "a large case". This is a matter which falls exclusively to the Attorney General's Prosecutions Division. We would ask what enquiry has been made there, to determine the efficacy of those processes and the number of occasions on which failed prosecutions have been brought or, conversely, where charges have been dropped or reduced or costs awarded against the prosecution?

Such costs would necessarily impact on this figure of £4M in respect of which the Treasury is rightly concerned.

(iv) In response to our query as to the breakdown of this figure, the Chief Registrar advises that "the exact draw down [against this £4M figure] will not be known until the end of March". He further advises however, that this estimated figure "includes the potential costs of failed prosecutions, large criminal injury payments and additional judicial costs in large cases".

This establishes that true costs are as yet unknown and we would caution delay in proceeding at this time without that information. Moreover, any exercise which looks to adjust routine legal aid costs will be misdirected if the focus is on a headline figure of £4M, only part of which is attributable to such routine costs.

(v) The Society asked for "the split between the various heads" [civil and criminal legal aid] but has been advised by the Chief Registrar that the Legal Aid Committee "will be provided with a breakdown of the figures when they are available .... until the year end is reached the figures do not have much meaning. This applies to a certain extent to the duty advocates schemes as well, with monthly figures being impacted by when the payments are processed."

(vi) It is of great concern to the Society that critical financial decisions are planned to be taken when relevant financial data was not available at the time such proposals were suggested and is still not available.

2. FALLING COSTS

(i) Despite the foregoing, we have researched the information which ***is*** available and it appears that the actual expenditure figure given in the detailed Government accounts (to March 2013) for legal aid, Green Form and Duty Advocate Schemes was £3,561,577 (plus £653,538 irrecoverable VAT which would give a total of £4,215,115) but that this included a period of 10 months when there were 2 duty advocates per court. It is clear that if the current figure of £4M "includes the potential costs of failed prosecutions,

large criminal injury payments and additional judicial costs in large cases" as advised by the Chief Registrar, that there has been a significant reduction in legal aid costs already.

(ii) On further investigation, of the overall 2013 figure in the detailed Government Accounts, **£2,640,679** was attributable to legal aid. The Chief Registrar provided the Criminal Justice Modernisation Programme (CJMP) with data for the year ending January 2014, which gave the figure of **£1,926,826** (including irrecoverable VAT of £290,086) as the cumulative total for Criminal and Civil legal Aid **and** green form **and** the 2 Duty Advocate schemes. Further evidence that expenditure in these areas is significantly reducing year on year in any event.

(iii) In the context of a £4M "pink book" headline and a 2013 legal aid figure of £2,640,679 the Chief Registrar's reduced figure is of great interest. Falling numbers of matters going though the Court (we have asked for but not yet received this data) will also generate of themselves, significant legal aid savings in addition to those yielded by the reduced Court Duty Advocate Scheme; reduced number of fixed courts and changes as regards plea before venue. We have seen no data indicating what level of cost reduction will be generated but can be certain that the trend is downwards.

(iv) English Barristers have in the past been a greater financial burden to the Legal aid system than Manx Advocates in the sense that their rate of pay is routinely higher than that paid to Manx Advocates. However, the frequency with which such lawyers are employed has now very much diminished and this will generate savings, the extent of which has yet to be seen, within the legal aid budget (see judgement in AG v Darroch & OTR J1269).

(v) There must come a point where a level of savings is regarded as sufficient and adequate when compared to the value of legal services delivered; the cost savings derived from experienced Advocates able to operate efficiently and the absolute requirement that vulnerable members of our community have ready and equal access to justice.

3. JUNIOR RATES IN SUMMARY COURTS

(i) With regard to the proposal that only Junior advocates' rates of fee be available in the Summary Courts, there are no figures available to us in respect of the legal aid expenditure in Summary Court Costs by reference to Civil and Criminal legal aid or by reference to Junior or Senior Advocates. This would again appear to be critical information. It is therefore impossible for us (and presumably everyone else) to quantify what level of savings might be procured from a reduction in Advocates' rates in Summary Courts to £115, regardless of the Seniority of the Advocate.

If such calculations have been done it would be helpful to have sight of them. If not, it is difficult to understand how any computation of savings has been determined.

(ii) For the purposes of this exercise we have assumed that this proposal assumes not that Senior advocates should be expected to take a rate cut but that the work should more properly be done by Junior advocates. No data has been produced in support of this proposition. If it exists we would be grateful for sight of it. It is estimated that approximately 4 of the advocates appearing in the Summary Courts are Juniors the remainder being Seniors. We are not aware of instances in which complaint has been made that work claimed for by Seniors at Senior rates has been inappropriate.

(iii) Whilst some matters in the Summary Courts may be classed as "simple" this is by no means true of all matters. This is further explained in the Appendix.

(iv) In particular, there is significant concern amongst the Family Bar as to the impact this would have in care proceedings. It is felt that there will either need to be a blanket exemption from such proposed regulation in these matters, or that the Courts must be prepared to hear argument in every case as to why it would not be appropriate for a Junior advocate to take the case.

(v) Care proceedings are complex matters in which the judiciary are given considerable assistance by long experienced advocates. Without such assistance it is probable that matters will be less readily and more expensively determined and the welfare of children less rigorously protected.

(vi) As regards members of the Criminal Bar, they are concerned that additional expense will be incurred (and again the judiciary less well served) by the arguments which will have to be advanced as to the circumstances in which a Senior advocate at Senior advocate rate would be appropriate . This will create a new administrative level, with associated costs, within the legal aid bureaucracy. No work has been undertaken in determining what those costs might be or how they might impact on any potential savings.

4. JUNIOR ADVOCATES -JUSTICE -EQUALITY OF ARMS

(i) There are further concerns identified in the Appendix in respect of applicants and defendants being represented by Junior Advocates and thereby denied equality of arms, given that those appearing on behalf of the Department of Social Care and all Prosecution Advocates are Senior Advocates.

5. POLICE & COURT DUTY ADVOCATE SCHEMES

(i) The Chief Registrar's office has provided figures to the CJMP showing the number of *claims* on the Duty Advocate Scheme remained relatively steady at 562/563/583 between 2010 and 2013 but that cost per claim fell from £484 to £393 in the latter 2 years. We do not have access to the equivalent stats for the 2013/2014 period. These figures would again appear to be critical to making informed decisions in respect of reducing costs.

(ii) Figures produced for the CJMP in respect of numbers of claims that for 2012/2013 show there were **826** claims for the Police station scheme as opposed to **583** claims for the Court scheme. So one might reasonably expect the Police Scheme to cost more.

(iii) In the same way, one would expect the cost of 826 Police Station claims to be higher than the cost of 583 Court Claims if they represent the same amount of ***time*** claimed but the average cost per claim for Police station is **£479** and for Court is **£393**. This suggests Advocates are engaged longer at the Police station than in Court. It is accepted that this higher cost may be generated by the current permitted practice of rounding up time claimed at the Police station and for this reason the Society accepts that claims should be limited to the time actually spent at the Police station and travelling time.

(iv) The higher " time" figure might also be connected to delays in the processes of police custody and we would ask that further investigation be undertaken to ascertain whether this is so and such data can be fed into the calculations as to how to generate reduced costs without sacrificing access to justice.

(v) We note that total cost figures in respect of Court and Police station schemes are falling year on year 2011/12 and 2012/13 and 2013/2014.

[redacted]	£272k	£228k	£94k
[redacted]	£433K	£395K	£333K

It would be useful to have sight of the projected data on the basis that this trend continues.

6. LITIGANTS IN PERSON

(i) The principal purpose of a state funded scheme is to ensure that citizens are availed of their human right to legal representation even where they are without the private means to pay for such representation. If legal aid rates are reduced, Advocates will inevitably suffer a "motivational gap". In the survey we have conducted we note that legal aid work is already undertaken at a considerably reduced rate when compared to commercial rates. In one practice, profit per hour on the proposed new rates would be estimated to be £12 per hour. This is not sustainable. Without Advocates willingly undertaking legally aided work there will be a shortage of representation and litigants and defendants will have to appear in Court without the benefit of representation.

(ii) This is already proving a distinct problem for judges in England and Wales and adds to, rather than reduces, the cost of administering justice.

(iii) Moreover in the context of accessing justice what consideration has been given to the impact of fewer advocates being available generally to the market?

7. IMPACT ON THE PROFESSION

(i) Within the profession's 35 practices approximately 500 people are employed. If legal aid work becomes unsustainable Advocate employers will have to consider whether they can remain as viable practices and employers. Already many firms experience significant financial difficulties within their practices arising from the requirement to carry legal aid disbursements on their own accounts (and often overdrafts).

(ii) Where legal bills are assessed by the Court in any matter, the base-line rate which is applied for work is the legal aid rate. If a new Summary Court rate of £115 is to be used for such assessments this will affect:

- the value of costs awarded to successful litigants who pay privately and
- the viability not just of legal aid practitioners but of many within the profession. There will come a tipping point where advocates determine that they simply cannot afford to practice. This will affect the commercial community in addition to the "domestic" legal service market.

8. SUPPORT STAFF RATE

(i) The proposal that a new fee rate be introduced for support staff is strongly opposed. There are already difficulties in the present legal aid system in having Advocates' professional decisions repeatedly challenged by non-advocates.

(ii) If work is undertaken by a member of the Advocate's support staff, it nonetheless forms part of a body of work which is undertaken by an Advocate; the Advocate remains responsible for that work and is accountable to the Advocates Disciplinary Tribunal for failing to reach the professional standard rightly demanded of the profession. Where would the line be drawn, if an administrative rate is introduced? Will the Advocate be reimbursed for checking the support worker's work or will the Advocate simply have to be accountable for work done by others and re-imbursed at a significantly lower rate.

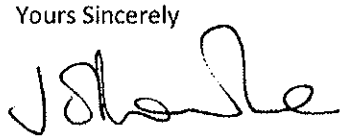
9. Conclusions

(i) The Society has demonstrated its support for efficiency savings and has borne the brunt of a rates' freeze. It accepts that further steps should be taken within the measures proposed, as identified at the beginning of this letter.

(ii) However, what is clear is that the proposed measures represent a very real risk of harm to the justice system without the financial savings being in any way clearly determined. The Society strongly cautions that time should be given for the new processes to bed in and the associated cost reductions ascertained; that real analysis should be applied to the proposed measures so that their potential cost can be offset against putative savings and that careful consideration be given to the point at which the justice system must be protected at all costs.

(iii) We plan to speak from the bar when these measures are brought before Tynwald and in respect of those measures not requiring Tynwald approval we request detail of the manner of their proposed implementation and whether we might have further opportunity to make oral representations before such steps are taken.

Yours Sincerely



Jane O'Rourke
Chief Executive Officer
IOM Law Society

Cc Members of Tynwald (via email)
Mr J Quinn Acting Attorney General (hard Copy)

APPENDIX
CONSULTATION DOCUMENT
LEGAL AID COMMITTEE

Historical Position

There was judicial concern that Junior advocates were undertaking work which was beyond their competence and it was determined that no Advocate of less than 5 years' commission could undertake a rape or murder case. This was the start of the Senior/Junior system and was to recognise that some types of work can only competently be done by Advocates with a greater breadth of knowledge and experience.

From 1997 - 2004 there were 6 legal aid Rates; Junior and Senior rates for preparation; travelling & waiting and appearance.

In 2002 the legal aid Commission recommended that rates should be £150 for Senior Advocates and £125 for Junior Advocates, although this information was not generally known. At this time however, a single Senior and Junior rate was introduced being £94 for Seniors and £77 for Juniors. This reduction from 6 to 2 rates recognised the administrative burden which had been imposed on the legal aid office in having to calculate 3 different heads of claim.

In 2004 Advocates were given a commitment that the recommended rates would be implemented on a staggered basis. In 2010 however, these rates were frozen at £135 for Seniors and £115 for Juniors. The only reason advanced (as the freeze was without consultation) was that the economic circumstances did not permit implementation of the full rate.

Summary Courts

The legal aid Remuneration Order 2014 provides at 4(3) that Remuneration for Senior Advocates in connection with summary jurisdiction matters shall be payable at Junior rates "except with the approval of the High Baliff". In reality this will mean either that Senior Advocates will not appear in summary matters or that on each and every matter there will be an application to the High Baliff as to why that matter requires the appearance of a Senior at Senior rates.

Civil Matters

Care Proceedings: These are legally complex, intense and time consuming matters. Given the significance of the decisions made as regards the rights of children and parents to safe, family lives they are also one of the most important types of case in which legal representation is required. These cases frequently involve mental health issues; violence and drug and alcohol abuse. It would usually be wholly inappropriate for a Junior to undertake this type of work and wholly inappropriate for Senior Advocates to be paid at Junior rates.

It should be noted that the Department of Social Care and the Advocate for the children's Guardian are always Senior Advocates. There would be no equality of arms if parents were only able to instruct Junior advocates against such experienced counsel and this in turn could increase the number of appeal applications.

Family Proceedings: At present there is an anomaly in the system in that all matters (Parental Responsibility, Prohibited Steps, Contact and Maintenance or indeed property settlement) involving children of an unmarried mother are deal with in the Summary Court whilst the same matters in respect of the children of married parents are dealt with in the High Court. This means that the same type of matters are dealt with at both "levels" of the Court system. The fact of a matter being in the Summary Court is by no means an indicator of the complexity of the case. It is right that such matters be dealt with by a Senior Advocate at Senior rates.

It is also possible though rarely done, to have Domestic Violence Injunctions heard before the Summary Courts. More frequent however, are the applications for Exclusion From Property Orders (which protect victims of Domestic abuse) , and Applications for Transfer of Property. In these complex matters both the families and the Courts require the assistance of experienced lawyers who, by dint of their experience, are able to direct the judiciary quickly and efficiently to relevant law and who experienced in drafting the required Orders.

Even apparently simple matters such as Maintenance can also raise some complex issues, particularly centering on disclosure of assets by the matrimonial parties. If Junior Advocates are to attain the requisite levels of skill they must have the opportunity to work alongside and observe experienced practitioners, otherwise Applications will take longer and be more expensive and neither the Court nor the parties before it will be well served.

The Equality of Arms principle is also applicable here. The parent (usually father) who is paying privately for legal representation will be most likely to instruct a Senior Advocate it is

unfair if the legally aided parent should be disadvantaged by having to be represented by a Junior advocate. The usual consequence of this is that the husband will secure settlement terms which are disadvantageous to the wife, who is likely to have day to day care of the children. If that mother is in receipt of benefits then her successful claim for maintenance from her spouse would have directly benefitted the taxpayer by reason of reduced benefits payments. Experienced and robust Senior Advocates are also more likely to be a position to recover the costs of any application, directly benefitting the legal aid Fund.

Criminal Matters

There are three types of offences:-

1. Summary only – Triable in the Summary Courts

2. Trial either way:– usually commence in Summary Court thereafter go to High Court (General Gaol)

3. Information: triable only High Court General Gaol but are commenced in the Summary Court and thereafter committed to the

Information only offences means that Tynwald has decided that this case is so serious it can only be dealt with by a Judge and Jury in a Court of General Gaol, but it will commence in the Summary Court.

These offences include murder, rape, death by dangerous driving and death by reckless driving.

In such serious cases as murder and rape there has already been a Court ruling to the effect that a Senior must deal with these matters. It is therefore ludicrous to say that a Senior Advocate cannot represent a person or do any work until Committal to the Higher Court has taken place. There is no motivation for a Senior to undertake such serious work at anything other than a Senior rate of pay which acknowledges the complexity of the matter and seriousness of the consequences of conviction for the Defendant.

It is vital that a Senior Advocate is involved in such cases from the very beginning. If "exceptional circumstance" applications are to be received in such cases, for the High Baliff's approval to pay at Senior rates, this will involve a further administrative layer and embroil

the judiciary in decisions as to payment rates which frankly ought to rest elsewhere on any principle of justice and the separation of powers.

For a legally aided Defendant the cost of such applications would be borne by the legal aid Fund and there would be a requirement to establish on a case by case basis or by the creation of regulations, the grounds and the criteria for payment of such higher rates of fee.

It may also be necessary to create a formal list of those offences which, as of right or by way of Application, will be deemed to be "exceptional" in terms of the applicable fee rate even if they are not Information-only offences. This list would include burglaries, aggravated assault, serious theft, breach of trust cases, any matter involving a fatality and sexual offences. This is a further administrative burden.

Other offences would also require to be included on such a list, which at first glance appear capable of being dealt with by a Junior advocate but which should only be dealt with by a Senior because of factors particular to that matter (such as the vulnerability of the defendant; previous convictions; multiple defendants or aggravating circumstances).

Given that the Regulation speaks of Junior rate payment in respect of "work undertaken ... in connection with proceedings in a court of summary jurisdiction" it suggests that preparation time for these very serious cases is to be paid at Junior rates and therefore most likely to be done by Junior advocates. This preparation work is often the most important work undertaken by any advocate necessarily involving advice as to plea; evidence gathering and legal argument research.

If this Order is introduced as drafted it will be necessary to immediately determine the criteria on which applications for representation by a Senior advocate at Senior rates, may be made. Such Applications, will be made immediately upon charge and be heard by the Court with a right of appeal. There will be cost implications.

As regards the principle of Equality of Arms, again it is to be noted that the prosecutors in the Attorney General's prosecutions team are all Senior Advocates (even when Advocates in private Practice are instructed to prosecute they are Senior advocates) and Defendants ought also to have the right to Senior representation.

If there were to be any circumstance in which Senior Advocates should be paid at Junior rates, then the presumption currently contained in the Order should be reversed. **All** Senior

Advocates should be paid at Senior rates **unless and until** the Court determines that Junior rates are appropriate by reason of the simplicity of the matter.

Vicki Unsworth

From: Vicki Unsworth
Sent: 23 May 2016 15:16
To: 'Blackburn, Martin'; Powell, Alex; Juan.Moore@iomlawsociety.co.im
Subject: RE: Legal Aid Info

Dear Martin

Would it be at all possible to calculate the cost of Court Fees from the information held at Legal Aid.

Clearly, one of the biggest cost saving measures we could effect would be to remove the Court fee for Legally Aided litigants (as the system used to be) which would be a huge saving, I would have thought. Given that litigants who are in receipt of benefits but not Legal Aid can have the Court fees remitted, I think it is a very unfair system to charge Legal Aid!

Kind regards

Vicki Unsworth
Advocate

Tel: +44 1624 677888
Fax: +44 1624 612605
Email: vicki@advocates.co.im
Barrule Chambers, 36 Finch Road, Douglas, Isle of Man IM1 2PS

ADVOCATES
Smith Taubitz Unsworth Ltd

From: Blackburn, Martin [mailto:Martin.Blackburn@gov.im]
Sent: 23 May 2016 14:53
To: Vicki Unsworth; Powell, Alex; Juan.Moore@iomlawsociety.co.im
Subject: RE: Legal Aid Info

Dear Vicki

We do not separately identify the cost of court fees, they are included as disbursements and not separately recorded.

Rent heat and light is met centrally from the budgets of the DoI, there are no internal recharges so I have no idea what they pay in respect of the part of the building occupied by legal aid

Failed prosecution costs are where the court orders the defence costs to be met from central funds. These were previously charged to legal aid as a holding exercise, pending 100% reimbursement from the legal cost reserve – the cost centre remained within General Registry when Legal Aid transferred to Social Security

Alex will need to speak to Alice Martin to see if they will release the information requested in respect of their budgets

With kind regards

Martin Blackburn CPFA FMAAT
Financial Management Adviser

The Treasury
Corporate Strategy Division
First Floor
Central Government Offices
Buck's Road
Douglas
Isle of Man
IM1 3PX

Email: **martin.blackburn@gov.im**
Tel: +44 (0) 1624 685629
Mob: +44 (0) 7624 338508

From: Vicki Unsworth [mailto:vicki@advocates.co.im]
Sent: 23 May 2016 14:42
To: Blackburn, Martin; Powell, Alex; Juan.Moore@iomlawsociety.co.im
Subject: RE: Legal Aid Info

Dear Martin

Thank you for that, it is very useful.

Can you please advise what the costs for failed prosecution are?

Does the office expenses cover rent, heat, light etc?

Can you advise how much is now spent on Court fees, since the introduction of the charge?

As for the information from the AG's Chambers, I think we need the following:

Salary Costs – Advocates
Salary Costs – Administrators
Pension costs
Holiday entitlement and other benefits
Membership expenses (training, fees etc)
Insurances
Office Rent, heat, light etc
Stationery and other office expenses
Costs Awards against

Kind regards

Vicki Unsworth
Advocate

Tel: +44 1624 677888
Fax: +44 1624 612605
Email: vicki@advocates.co.im
Barrule Chambers, 36 Finch Road, Douglas, Isle of Man IM1 2PS

ADVOCATES
Smith Taubitz Unsworth Ltd

From: Blackburn, Martin [mailto:Martin.Blackburn@gov.im]
Sent: 23 May 2016 12:27

To: Powell, Alex; Juan.Moore@iomlawsociety.co.im; Vicki Unsworth
Subject: RE: Legal Aid Info

Updated as promised.

Feel free to ring to discuss

With kind regards

Martin Blackburn CPFA FMAAT
Financial Management Adviser

The Treasury
Corporate Strategy Division
First Floor
Central Government Offices
Buck's Road
Douglas
Isle of Man
IM1 3PX

Email: **martin.blackburn@gov.im**
Tel: +44 (0) 1624 685629
Mob: +44 (0) 7624 338508

From: Blackburn, Martin
Sent: 20 May 2016 16:53
To: Powell, Alex; Juan Moore (Juan.Moore@iomlawsociety.co.im); vicki@advocates.co.im
Subject: RE: Legal Aid Info

I'm getting there slowly, need to add the last 2 years and tidy up the formatting, plus adjust for the effect of the reserve fund, hopefully have it to you on Monday

With kind regards

Martin Blackburn CPFA FMAAT
Financial Management Adviser

The Treasury
Corporate Strategy Division
First Floor
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Douglas
Isle of Man
IM1 3PX

Email: **martin.blackburn@gov.im**
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Mob: +44 (0) 7624 338508

From: Powell, Alex
Sent: 20 May 2016 16:50
To: Juan Moore (Juan.Moore@iomlawsociety.co.im); vicki@advocates.co.im
Cc: Blackburn, Martin
Subject: Legal Aid Info

Dear Juan/Vicki,

Please see attached some basic info around LA costings in recent years – however, I know that Martin is in the throes of prepping something more specific to your requirements so you may wish to hang fire before sharing this info with working groups. I'll catch up with Martin on Monday so we are singing from the same hymn sheet!

Hope you all have a good weekend.

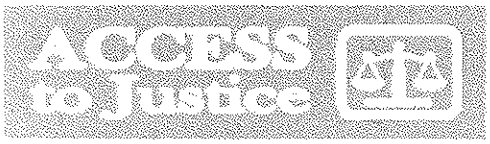
With kind regards,

Alex

Alex Powell
Legal Aid Project Manager

The Treasury
Social Security Division
Ground Floor
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RAAUE: S'preevaadjagh yn çhaghteraght post-l shoh chammah's coadanyn erbee currit marish as ta shoh coadit ec y leigh. Cha nhegin diu coipal ny cur eh da peiagh erbee elley ny ymmydey yn chooid t'ayn er aght erbee dyn kied leayr veih'n choyrtagh. Mannagh nee shiu yn enmyssagh kiarit jeh'n phost-l shoh, doll-shiu magh eh, my sailliu, as cur-shiu fys da'n choyrtagh cha leah as oddys shiu.

Cha nel kied currit da failleydagh ny jantagh erbee conaant y yannoo rish peiagh ny possan erbee lesh post-l er son Rheynn ny Boayrd Slattyssagh erbee jeh Reiltys Ellan Vannin dyn co-niartaghey scruit leayr veih Reireyder y Rheynn ny Boayrd Slattyssagh t'eh bentyn rish.

Advocates Smith Taubitz Unsworth Ltd
Tel: 01624 677888 Fax 01624 612605
Directors: Hazel Smith LLM, Darren Taubitz BA (Hons), Vicki Unsworth LLB
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Vicki Unsworth

From: David Trace <davidtrace104@gmail.com>
Sent: 11 November 2016 13:53
To: Vicki Unsworth
Cc: Andrew Swithinbank; Jane Gray; Juan.Moore@iomlawsociety.co.im; terence@cjm.im
Subject: Re: Legal Aid Committee sub-committees

Thank you Vicky, 16.30 on 21 November is fine for both Andrew and myself.
Best wishes
David

On Fri, 11 Nov 2016 at 10:41, Vicki Unsworth <vicki@advocates.co.im> wrote:

Dear David

Thank you for your email below.

Can we list the meeting for 4.30 pm on 21 November 2016 at the Law Society?

I am in the process of finalising our written response for the Committee, however, as a result of me having been tied up all week in an emergency unlawful detention case, I will need the weekend to finish the same. Of course, the question of a person's liberty unlawfully removed has had to rank in higher priority than finalising the submission. It will, I am afraid, therefore be delayed until next week. The submission is lengthy, given the number of different areas the Committee wanted us to look at, and it is important that all of the research we have undertaken is provided to you.

Kind regards

Vicki Unsworth

Advocate

Tel: +44 1624 677888

Fax: +44 1624 612605

Email: vicki@advocates.co.im

Barrule Chambers, 36 Finch Road, Douglas, Isle of Man IM1 2PS

From: David Trace [mailto:davidtrace104@gmail.com]
Sent: 11 November 2016 10:00

To: Vicki Unsworth
Cc: Andrew Swithinbank

Subject: Re: Legal Aid Committee sub-committees

Dear Vicki

I am afraid Andrew and I can no longer attend a meeting on 23 November, our diaries are filling up quickly.

Thank you

Best wishes

David

David Trace

Vice-Chair Legal Aid Committee

On 4 November 2016 at 09:52, Vicki Unsworth <vicki@advocates.co.im> wrote:

Dear David

I will forward to you all of the responses that we have put together. I would respectfully request that you await receipt of these responses before publishing your report. They will be with you next week.

We have agreed and offered to meet with you. This offer was formally made in my email dated 31 August (after our oral agreement to meet and discuss matters in July), in respect of which no response was received until 5 October. I again offered a meeting by email on 12 October and you responded on 3 November. The offer for sub-committees to meet up rests with your email dated 5 October, in respect of which you stated you were waiting for

statistics to see whether your proposals were viable, and no further request has been received from you. The delay in having any meetings therefore is not as a result of our unwillingness or unavailability.

Given that we have not been able to meet with you, in order to discuss our responses and the significant research undertaken, and how best we could put these together to assist you, they will be forwarded in the format they are presently in. My understanding from our discussions about the sub-groups meeting together was that the sub-groups would consider the research already undertaken, ascertain what further research needed to be undertaken and thereafter producing a joint report to the Committee. Such approach would save time and costs for all involved and further would have streamlined the entire project producing a more full and considered outcome. It would appear that this is not the approach the Committee wishes to take, which is entirely its prerogative.

I will revert with regard to a further meeting with you and Andrew at the end of November, in due course.

Kind regards

Vicki Unsworth

Advocate

Tel: +44 1624 677888

Fax: +44 1624 612605

Email: vicki@advocates.co.im

Barrule Chambers, 36 Finch Road, Douglas, Isle of Man IM1 2PS

From: David Trace [mailto:davidtrace104@gmail.com]
Sent: 04 November 2016 09:22

To: Vicki Unsworth
Cc: Andrew Swithinbank; Powell, Alex; Juan.Moore@iomlawsociety.co.im; Jane Gray; terence@cjm.im
Subject: Re: Legal Aid Committee sub-committees

Dear Vicky

The Legal Aid Committee asked for written submissions from interested parties so that these could be collated and published. At your request we extended the deadline until the end of October. We still intend to publish all the responses we have received.

On 20th July I asked you if our sub committees could meet together. More than three months have passed since then and, despite our follow-up emails, no such meetings have taken place.

Andrew Swithinbank, LAC Chair, and myself are happy to meet with you and Juan. We do not think it would be useful for two larger committees to meet. We could manage any time after 2pm on Monday 21st, Tuesday 22nd or Wednesday 23rd of November. Please let me know if you can manage any of these dates.

Kind regards

David

David Trace

Vice-Chair Legal aid Committee

On 3 November 2016 at 10:09, Vicki Unsworth <vicki@advocates.co.im> wrote:

Dear David

I am very surprised to receive your email below.

The amount of work requested of the Law Society, in respect of which we are having to rely on volunteers, is significant. A large proportion of this work has been done, however, you specifically requested that our sub-groups work together with your sub-groups to research the areas further. We have requested a meeting with you to discuss further, in respect of which no response has been received until today.

If you report that no response has been received from the Law Society to the consultation, such statement would be wholly and deliberately misleading and extremely damaging to both the Law Society and the Legal Aid Committee. In the circumstances therefore, I would respectfully suggest that no such comment is made and would urge against making such a comment that is not reflective of what has in fact been going on.

As I have advised, our members have carried out a significant amount of research into the areas you identified as being areas to be looked into. We have requested a meeting with you in order to decide the best way forward. In order that you can fully and properly produce your report following your consultation, it is my view that meeting is required. How else would you like us to produce the information to you and identify what further work needs to be undertaken and how that will be undertaken?

We are not prevaricating. We have offered to work with you going forward, having already invested a significant amount of time into this consultation. We are simply trying to find the most effective way to move this consultation forward.

In the circumstances I would ask once again that we have a meeting to discuss further. Thereafter, we can produce to you, in a way that assists the Committee, the research undertaken thus far.

If access to justice is to be maintained, for the most vulnerable members of our society, in a cost and time effective manner we must all work collaboratively. If we do not then the cost of Legal Aid will only increase and the most vulnerable members of our society are likely to lose out. There are many ways in which Legal Aid can be delivered in a more effective manner, but you really must work with us (and other stakeholders) in order to achieve that. Should the Committee determine that it is not prepared to work with us in the manner suggested that is entirely a matter for the Committee, but the Law Society will make it widely known that we have tried to do so.

Kind regards

Vicki Unsworth

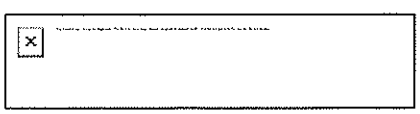
Advocate

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Email: vicki@advocates.co.im

Barrule Chambers, 36 Finch Road, Douglas, Isle of Man IM1 2PS



From: David Trace [mailto:davidtrace104@gmail.com]
Sent: 03 November 2016 09:29

To: Vicki Unsworth
Cc: Andrew Swithinbank; Powell, Alex; Juan.Moore@iomlawsociety.co.im; Jane Gray; terence@cjm.im
Subject: Re: Legal Aid Committee sub-committees

Dear Vicki

Following our exchange of emails over recent months, the Legal Aid Committee was able to discuss the issues yesterday. As you are aware, the committee extended the deadline for responses to the Legal Aid Committee Interim Report at the request of the Law Society. It remains the intention of the Committee to publish all responses received by the end of October. The Committee is conscious that it has not received any responses from the Law Society and will note that in the publication.

Kind regards

David

David Trace

Vice-Chair Legal Aid Committee

On 12 October 2016 at 15:03, Vicki Unsworth <vicki@advocates.co.im> wrote:

Dear David

I suspect that the best thing to do would be for our Law Society Legal Aid Committee to meet with the Legal Aid Committee in order that we can discuss how best we move forward from here. Meetings face to face are invariably the best way to discuss different ideas and reach a consensus in approach.

Please can you advise when the Legal Aid Committee are available and we will then hopefully be able to work around that to fix a meeting.

Kind regards

Vicki Unsworth

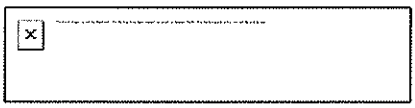
Advocate

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From: David Trace [mailto:davidtrace104@gmail.com]
Sent: 05 October 2016 18:35
To: Vicki Unsworth
Cc: Andrew Swithinbank; Powell, Alex; Juan.Moore@iomlawsociety.co.im; Jane Gray; terence@cjm.im
Subject: Re: Legal Aid Committee sub-committees

Apologies again, pressed send before I had finished!

Dear Vicki

My sincere apologies for taking so long to respond but the Legal Aid Committee has been unable to meet to discuss your email until today.

Our consultation period has been going on for 18 months and is well advanced. All the people you list have been involved and have had an opportunity to comment. We are interested in the Jersey model and a multi-agency approach to change. Some of the committee will be going to the Manx Museum lecture to hear about this. We still require the Law Society's comments as promised to us for October. We are still interested in joining forces on the sub committees but are having difficulty obtaining statistics to see if what we are proposing would be viable.

Best wishes

David

On Wednesday, 31 August 2016, Vicki Unsworth <vicki@advocates.co.im> wrote:

Dear David

Apologies for my delayed response. I depart on annual leave tomorrow, so things are manic here!

We have been advised by the Jersey Law Society that a wholesale review of Legal Aid has been ongoing there for some time. I include below a link, by way of assistance, to their latest report into the review. They are due to publish their findings in October.

http://www.statesassembly.gov.je/AssemblyReports/2016/R.85-2016.pdf

The Isle of Man Law Society has always been concerned about the speed at which our own review was being undertaken and therefore would like to respectfully suggest that we take a step back at this stage and consider adopting a similar approach to Jersey. Clearly Jersey, like the Isle of Man, is a small jurisdiction with its own financial constraints. Given the similarities between the Islands we firmly believe that their model of approach is a good one to follow.

Therefore, what we would like to suggest, in the first instance, is a meeting of key stakeholders in order to ascertain how to conduct the review effectively. We would suggest that those stakeholders should be as follows:

Isle of Man Law Society

Treasury

Legal Aid Certifying Officer

Courts of Justice

Dept of Home Affairs

Attorney General's Chambers

Police

Court Welfare Officers

Probation

Thereafter a proper framework with working groups can be established and a timetable designed to move forward. The work already undertaken will not be lost and can form part of the work going forward. One of our concerns is that Advocates and the Legal Aid Office are not the only people who really need to be on board if we

are to effect real change that ensures access to justice remains. We need all key stakeholders to be a part of this and to sign up to a more effective working system, whether that be tweaking and improving what we already have or designing a completely new look Legal Aid system. This is a work stream that the Criminal Justice Board have been looking at for a number of years, but from Legal Aid's perspective, this review should and must go across all Legal Aid services not simply criminal.

Whilst I fully appreciate that this appears to push back what the LAC are trying to achieve, this way the legacy of the LAC will be one that will be far more positive and effective and hopefully will serve the Island for a number of years to come. Also, by bringing in all other relevant stakeholders, we can cut the workload down as we are all struggling for resources!!

Please let me know what the LAC thinks and thereafter I will coordinate a stakeholder meeting.

I will have intermittent access to emails whilst I am away, albeit I will be 5 hours behind BST.

Kind regards

Vicki Unsworth

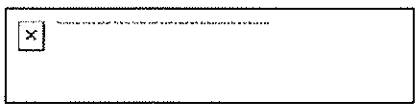
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From: David Trace [mailto:davidtrace104@gmail.com]
Sent: 22 August 2016 20:54
To: Vicki Unsworth
Cc: Andrew Swithinbank; Powell, Alex
Subject: Legal Aid Committee sub-committees

Dear Vicki

You may recollect that at the recent Legal Aid User Group meeting you kindly agreed that the LAC sub committees looking at the four areas for suggested radical change might meet together with the Law Society sub committees looking at these areas. Sadly, we do not appear to be making much headway with this. As Juan is about to go on leave, we are concerned that it will be increasingly difficult for us to arrange to meet together before the Law Society makes formal responses to our consultation in October. I wonder if, in Juan's absence, we could prevail upon your good offices to facilitate these meetings?

Thank you

Best wishes

David Trace

Vice Chair Legal Aid Committee

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Dear Sirs

Proportionality and Legal Aid

By email dated 21 June 2016, the Legal Aid Committee asked the Isle of Man Law Society for comments with regard to proportionality and the use of Legal Aid funds. This request was made following the Legal Aid Committee requesting that the Isle of Man Law Society assist in a significant and major review of the current Legal Aid system.

The query from the Legal Aid Committee was as follows:

"The Legal Aid Committee have been asked to consider whether they should introduce measures to guide the future cost effective disposal of cases by applying a monetary threshold for disbursements.

Let me give you a hypothetical example based on some recent trends.

A defendant is charged with criminal damage to property, the cost of the repairing damage is less than £100. The defendant admits causing the damage but pleads not guilty due to his previously documented mental health issues. In discussions it becomes apparent that if a Psychiatric report is obtained by the Defence then the Prosecution will review the decision to continue to prosecute. In similar circumstances, a likely disposition would be for the Defendant to receive a caution in addition to paying compensation, submitting a letter of apology and signing up to a good behaviour agreement. The Legal Aid Certifying Officer is asked by the Nominated Advocate to extend the certificate to allow the advocate to incur disbursements to pay the expert for updating their report.

The principle of proportionality comes into being when there is a conflict between domestic law (that is the law of an individual country signed up to the Human Rights Convention) and the Human Rights Act. In the current instance the Human Rights Act says a defendant has the right "to defence himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require"

Criminal Legal Aid is therefore not entirely free but limited to when "the interests of justice so require".

For the offence of criminal damage there can be imposed a custodial sentence. If, instead of obtaining a Psychiatric Report, the matter had continued to trial and he had been convicted he could have appealed directly to the Staff of Government Division which could have then ordered that a Psychiatric Report be obtained which would have led to a much greater figure being spent on Legal Aid. Had it been a civil matter, the question of proportionality would have been considered as part of the merits tests and consideration would have been given as to whether a disbursement for an expert Psychiatric Report (which can cost nearly £1,700) and the associated costs of preparing a defence should be authorised. It would likely cost the legal aid fund around £4,000 to dispose of the matter in this manner, whereas a full trial and possible appeal would obviously cost considerably more.

If monetary limits were to be issued to effectively fetter the Certifying Officer's discretion as to whether or not a disbursement should be authorised, this could lead to such defendants suffering a breach of their Human Rights. This in turn may lead to the jurisdiction of the Isle of Man losing its international reputation. Currently, the certifying officers have the discretion to allow or disallow a disbursement according to whether the interests of justice so require. Introducing a rigid system over disbursements may well not be a proportionate way of dealing with the matter. Proportionality engages in every criminal case but the question is in how far you apply the domestic legal restriction in limiting the right that the Human Rights Act applies to the case. The Legal Aid Committee are mindful that whilst it is important to ensure that their limited funds are targeted to those areas which will best fund access to justice, there must be a balance between cost savings and the international standing of the Isle of Man and in considering the situation the Committee is cognisant that whereas in civil matters Human Rights are qualified rights, in criminal law cases Human Rights are absolute.

Whilst on the face of things, the final cost to the Legal Aid fund of around £4,000 in respect of this particular example would appear to be excessive and disproportionate in relation to an offence of damaging an item to the value of less than £100, the LACO has to decide whether such costs can be justified within the existing regulations. The LACO could refuse the request in its entirety, or refuse the disbursement request and advise the Advocate to obtain a letter from the defendant's GP. This usually costs about £50 - £100. It could be argued that this would not have breached the Human Rights Act to have denied an overly expensive expert report in case of this sort.

The Committee have requested its officers to endeavour to obtain data on the number of cases where proportionality was an issue so that they can give the matter due consideration and if necessary to progress amendments to those regulations or clarify its policy on these matters. Your input into their deliberations would greatly assist them."

Dealing with the issue head on, it is entirely for the Defence Advocate and/or the Court to determine whether a psychiatric report would be required in a case per the example above.

Whilst it may, at first blush, appear to disproportionate to spend £1,700 for a psychiatric report in respect of a £100 criminal damage case, it is respectfully submitted that the wrong angle is being considered.

Criminal damage, like the vast majority of offences, has two elements that the Prosecution must prove; Actus Reus and Mens Rea. Actus Reus is the act of committing the criminal damage. Mens Rea is the state of mind the prosecution must prove a Defendant had at the time of committing the offence in order to secure a conviction. The Mens Rea varies from offence to offence. However, regardless of the variation, if a Defendant was mentally impaired at the time an offence was apparently committed, then he would be found not guilty, and he would not have a recorded conviction on his record.

The presence of a recorded conviction can have vast implications to a person's life. It can reduce employment prospects, restrict travel and increase insurance as well as other consequences.

If, therefore, a psychiatric report was obtained in relation to the £100 criminal damage matter which showed that the Defendant was mentally impaired at the time the offence was alleged to have been committed and therefore the Defendant did not have sufficient Mens Rea, he would be acquitted and remain conviction free. Upon the production of such a report to the Prosecution, often common sense would be employed and the charges withdrawn. If not, and the trial were to proceed unsuccessfully, the Defence Advocate would be able to apply for costs to be paid by the Prosecution. If convicted on the basis that there was sufficient mental capacity present, the psychiatric report would then be used to mitigate any sentence, and thus would not be a waste of money in any event as it would be required at that stage regardless.

Looking at the proportionality of the matter, in light of a recorded conviction (instead of in money terms) the cost of the psychiatric report would be more than proportionate. Applying the legal test of whether a reasonable fee paying person of adequate means would pay for such a report, one would suggest that to ensure a conviction is not issued, they would.

By accepting a caution or a bind over, the Defendant would be making an admission in relation to the commission of the offence. The Defendant, however, was not capable of committing the offence by reason of mental deficit. It would be wholly negligent of an Advocate to allow such an event to occur. Further, whilst a caution/bind over is not a conviction, it must still be declared in certain circumstances and would appear on a criminal record check.

The issue of mental deficit is a complex medical area and a GP is rarely suitably qualified to give evidence on such matters. An expert before the Court, is a person with relevant qualifications and experience in relation to the issue at hand. A GP would be an expert in general and basic medicine, a psychologist/psychiatrist an expert in mental disorders and their effect on the Defendant. Therefore, the Court would not have a suitable expert before it from whom a conclusion can be drawn. GPs will rarely give anything other than a tentative view of a matter and will always defer to a clinical expert, in accordance with the training they are given. Again, an Advocate proffering a GP as a suitable expert of psychiatry/psychology would be wholly negligent.

It is respectfully submitted that it is in the interests of justice to ensure that innocent people are not convicted of committing crimes they were incapable of committing. The Human Rights Act guarantees a Defendant the right to be defended. If there is a defence, such as in this example, that defence must be pursued properly and by way of evidence.

To compare this situation with a civil case is entirely wrong as a matter of principle. In a civil case the issue is solely financial and not a matter of criminality. The far reaching consequences of a criminal conviction do not apply equally (or at all) in a civil context.

Furthermore, to await the Appeal Court before obtaining the psychiatric report would be too late. The Appeal Court rarely considers new evidence and, in fact, can only do so in limited circumstances. On the basis that the Defendant could have, and should have, obtained medical evidence as to Mens Rea before the lower Court, is

unlikely to suffice in the Appeal Court allowing such evidence to be obtained an relied upon at Appeal.

It is respectfully submitted that to fetter the discretion of the Legal Aid Certifying Officer by setting fixed disbursement limits is to deny justice and is very dangerous. It is not for a Legal Aid Certifying Officer to run the defence of the Defendant. It is not for the Legal Aid Certifying Officer to choose an expert. If disbursement costs are limited then a situation could arise whereby only poor experts are available to Defendants.

Would the limit be different, and in turn higher, in a murder case where, in fact the same outcome would apply i.e. an acquittal? How possibly could such a situation be monitored and kept up to date? What would be the situation in a very unusual case?

Upon consideration of the issue therefore, it is considered that to measure proportionality in criminal case in monetary terms is entirely inequitable and wholly prejudicial. The proportionality is that of conviction versus acquittal. Costs saving should not be the primary consideration; access to justice should always prevail and the denial of a defence is an absolute denial of access to justice.

It is not considered by the Isle of Man Law Society that there is real and serious problem in this regard. Certainly, the Legal Aid Committee has produced no evidence or data to show that the present system, whereby the Legal Aid Certifying Officer exercises her discretion in matters of this nature, is being abused. The Legal Aid Certifying Officer, who is a qualified Advocate, is provided with the justification for the disbursement cost on a case by case basis, by the Advocate. It is the Advocate's role to justify the disbursement requested and to apply the legal test, that is, whether a reasonable fee paying person of adequate means would pay for such a report. It is entirely inappropriate to justify cost savings in the manner suggested, which, it is submitted, would not be Human Rights compliant and would seriously endanger the international reputation of the Isle of Man.

We therefore, respectfully submit, that there should be no amendment to the current system in this regard. The discretion of the Legal Aid Certifying Officer is paramount to ensuring access to justice is maintained.

We trust this assists and hope that the same is taken on board.

Yours faithfully

Isle of Man Law Society

Status: Positive or Neutral Judicial Treatment

Reference — Ambrose v Harris (Procurator Fiscal, Oban) (Scotland)
Reference — Her Majesty's Advocate v G (Scotland)
Reference — Her Majesty's Advocate v M (Scotland)

SC

6 October 2011

[2011] UKSC 43

2011 WL 4529260

before Lord Hope , Deputy President Lord Brown Lord Kerr Lord Dyson Lord Matthew Clarke

Judgment Given on 6 October 2011

Heard on 28, 29 and 30 June 2011

Representation

Appellant Frank Mulholland QC , Lord Advocate Gordon Balfour (Instructed by the Crown Agent, Crown Office).
Respondent (Ambrose) John Dominic Scott Andrew Mason (Instructed by DM MacKinnon Solicitors).
Appellant Frank Mulholland QC , Lord Advocate Gordon Balfour (Instructed by the Crown Agent, Crown Office).
Respondent (G) Gordon Jackson QC Claire Madison Mitchell (Instructed by Paterson Bell).
Appellant Frank Mulholland QC , Lord Advocate Gordon Balfour (Instructed by the Crown Agent, Crown Office).
Respondent (M) Christopher Shead Moira MacKenzie (Instructed by G Keenan & Co).

Judgment

Lord Hope

1 On 26 October 2010 this Court issued its judgment in *Cadder v HM Advocate [2010] UKSC 43, 2010 SLT 1125* . It held that the Crown's reliance on admissions made by an accused without legal advice when detained under section 14 of the Criminal Procedure (Scotland) Act 1995 gave rise to a breach of his right to a fair trial, having regard to the decision of the European Court of Human Rights in Salduz v Turkey (2008) 49 EHRR 421 . This was because the leading and relying on the evidence of the appellant's interview by the police was a violation of his rights under article 6(3)(c) read in conjunction with article 6(1) of the European Convention on Human Rights : see Cadder v HM Advocate , para 63.

2 The evidence that was in question in Cadder had been obtained when the appellant was being questioned while in detention at a police station. The applicant in Salduz too had been taken into custody before he was interrogated during his detention by police officers of the anti-terrorism branch of the Izmir Security Directorate. But the facts of those cases by no means exhaust the situations in which the prosecution may seek to rely on answers to questions that have been put to the accused by the police. The Court now has before it four references by judges of the High Court of Justiciary which have been required by the Lord Advocate under paragraph 33 of Schedule 6 to the Scotland Act 1998 . Common to them all is the fact that incriminating answers were given to questions put by the police when the accused did not have access to legal advice. In three of them the evidence that is objected to was obtained by the police otherwise than by questioning at a police station following detention under section 14 of the 1995 Act. They can be grouped together and are the subject of this judgment. The fourth is concerned with the question whether the ratio of the

decision in Salduz extends to lines of enquiry to which the accused's answers to questions while in detention have given rise. That reference is dealt with in a separate judgment: *P v HM Advocate [2011] UKSC 44* .

3 The issues that the first three references raise are (1) whether the right of access to a lawyer prior to police questioning, which was established by Salduz , applies only to questioning which takes place when the person has been taken into police custody; and (2) if the rule applies at some earlier stage, from what moment does it apply. The first reference is of a case which is the subject of an appeal against conviction. The second is of a case which is before the Appeal Court in an appeal against a ruling by a sheriff on the admissibility of evidence. The third is of case which is the subject of a devolution minute which was referred by the trial judge to the Appeal Court under paragraph 9 of Schedule 6 to the Scotland Act 1998 . The cases that are the subject of the second and third references that have not yet gone to trial, so the names of the parties involved have been anonymised. In each case the reference has been made by the Appeal Court at the request of the Lord Advocate.

The first reference

4 The appellant in the first case, John Paul Ambrose, was prosecuted on summary complaint at Oban Sheriff Court on a charge of contravening section 5(1)(b) of the Road Traffic Act 1988 as being in charge of a motor vehicle whilst having consumed a level of alcohol in excess of the prescribed limit. He had been found by two police officers sitting in the passenger seat of a car parked by the roadside. A female was sitting in the driver's seat. A member of the public had expressed concerns to the police about them because they were thought to be drunk. As there was vomit beside the driver's door and the female was seen to be upset, the police officers decided to speak to the appellant. Having formed the view that he had been drinking, one of the police officers cautioned the appellant but did not give him any specification about the offence which he was suspected of having committed. The appellant made no reply when cautioned. He was then asked three questions, to which he gave answers, by the police. They were as follows:

> "Q – Where are the keys for the vehicle? A – In my pocket.
>
> Q – Do you drive the car? A – Yes.
>
> Q – Are you going to drive the car?
>
> A – Ah, well she wisnae well *or* Aye, well she wisnae well."

The appellant then removed the car keys from his trouser pocket. He was asked whether he had anything to drink in the last 20 minutes and replied that he had not. He was then given a roadside breath test which he failed. He was taken to Oban police station where he gave a breath/alcohol reading that was well in excess of the prescribed limit.

5 The appellant pled not guilty to the complaint. He went to trial before a Sheriff on 31 May 2001 and 2 July 2010. The evidence of the questions and answers was led without objection from his solicitor. After the Crown had closed its case the appellant's solicitor challenged the admissibility of this evidence on the ground that the police had not informed the appellant of the offence of which he was suspected before he was questioned. The sheriff repelled this submission. After hearing evidence from the appellant and a defence witness, he found the appellant guilty. He was fined £375, was disqualified from driving for two years and had his licence endorsed. The appellant then lodged an appeal against his conviction. Among the grounds on which he applied for a stated case

was the submission that the act of the Lord Advocate in seeking a conviction in reliance on the evidence of the police interview was incompatible with his right to a fair trial under article 6(1) . Leave to appeal having been refused at the first sift, he appealed to the second sift and then lodged a devolution minute in which it was stated that for the Lord Advocate to support the conviction would be incompatible with his rights under article 6(1) and article 6(3)(c) . In a note which he lodged on 12 October 2010 in support of the appeal he submitted, with reference to the decision in Salduz , that the use of the evidence of the interview was unfair as he did not have access to legal representation before or during the police interview. On 3 November 2010 leave to appeal was granted at the second sift.

6 Following a procedural hearing on 26 January 2011 and at the request of the Lord Advocate, the Appeal Court referred the following question to this court:

> "Whether the act of the Lord Advocate in leading and relying on evidence obtained in response to police questioning of the appellant conducted under common law caution at the roadside and without the appellant having had access to legal advice was incompatible with the appellant's rights under article 6(1) and 6(3)(c) of the European Convention on Human Rights , having regard in particular to the decision of the *Supreme Court of the United Kingdom in Cadder v HM Advocate 2010 SLT 1125* ."

The second reference

7 The accused in the second case, referred to as M, has been indicted in the sheriff court on a charge of assault to severe injury, permanent disfigurement and permanent impairment. Shortly after the assault took place on 30 August 2008, in the course of initial inquiries, the police took the accused's details from him but allowed him to leave the locus. On 4 September 2008 however he was traced to his home address where, after administering a common law caution to the effect that he was not required to say anything but that anything he did say might be used in evidence, a police officer asked a total of seven questions, each of which was answered by the accused. They were as follows:

> "Q – I am investigating a serious assault which happened on Saturday night there, within a bar named [X]. There was a large disturbance in there too. Were you there?
>
> A – Yes, aye.
>
> Q – Were you involved in the fight? A – Aye.
>
> Q – Who were you with?
>
> A – My dad and just boys fae [Y] where I used to work. Q – Were they involved too?
>
> A – I think so, the other boys started it. I got punched a couple of times on the eyebrow. It's still sair.
>
> Q – OK, what were you wearing?
>
> A – Pale blue t-shirt, jeans, trainers.
>
> Q – OK [M], I will stop there. I need to speak to you further except it will be recorded in a taped interview format. Can you be at [Z] Police Office tomorrow night at 8 pm?

A – Yes.

Q – I need to take your t-shirt you had on, is that OK? A – Aye."

At this point the police officer concluded his questions because he felt that it had become obvious that the accused had some involvement on the incident and that it was not appropriate to carry out an interview there. The accused attended the police office the next day. He was then detained and interviewed under section 14 of the 1995 Act, in the course of which he made further admissions.

8 The accused was indicted for trial, and after sundry procedure he lodged a minute raising the issue whether the Crown had power to lead evidence of the admissions which he had made. When the minute was argued before the sheriff on 9 November 2010 the Crown conceded that the evidence of the admissions made during the section 14 interview was inadmissible. But the sheriff ruled that evidence relating to the questions and answers at the accused's home on 4 September 2008 was admissible. The accused appealed against that decision to the High Court of Justiciary, contending that by failing to allow him access to legal advice prior to interview and there being no compelling reasons to justify this, his admissions allegedly obtained under caution had been unfairly obtained and were therefore inadmissible.

9 Following a procedural hearing on 26 January 2011 and at the request of the Lord Advocate, the Appeal Court referred the following question to this court:

"Whether the act of the Lord Advocate in leading and relying on evidence obtained in response to police questioning of the accused, conducted under common law caution at his home address and without the accused having had access to legal advice would be incompatible with the accused's rights under article 6(1) and 6(3)(c) of the European Convention on Human Rights , having regard in particular to the decision of the *Supreme Court of the United Kingdom in Cadder v HM Advocate 2010 SLT 1125* ."

The third reference

10 The accused in the third case, referred to as G, has been indicted in the High Court of Justiciary with offences including the possession of controlled drugs under the Misuse of Drugs Act 1971 and possession of prohibited firearms and ammunition under the Firearms Act 1968 . The police had obtained a search warrant under the 1971 Act for the search of a flat where on 4 June 2008, having forced entry, they found the accused. Before commencing the search in terms of the warrant the accused, who had been handcuffed following a struggle, was cautioned in these terms:

"A systematic search will be carried out in your presence. I must caution that you are not obliged to say anything or make any comment regarding any article that may be found, but anything you do say will be noted and may be used in evidence."

The accused was then detained and searched. Prior to being searched he admitted to having drugs in his jeans pocket, from which a bag of brown powder was recovered that was later found to be heroin. He was then arrested for contravention of section 23(4) of the 1971 Act. He was not arrested or charged with any other offence in the course of the search of the premises. During the search he was asked questions about the items which were found. He was not offered access to legal advice or to a solicitor before being asked these questions. After the search was concluded he was removed to a police station

where he was detained under section 14 of the 1995 Act and again interviewed by the police in connection with alleged offences involving controlled drugs and firearms. He was not allowed access to legal advice before or during this interview.

11 The Crown does not seek to rely on answers which the accused gave while he was being interviewed in the police station, but it seeks to rely on the statements and answers which he made at the premises in the course of the search. They are set out in a schedule which was completed as the search of the flat was carried out. Without that evidence there would not be sufficient evidence to convict the accused. The accused has lodged a devolution minute in which he contends that the leading of evidence of the statements and answers which he made at the premises would be incompatible with his Convention right to a fair trial. The trial judge decided to refer this issue to the Appeal Court under paragraph 9 of Schedule 6 to the Scotland Act 1998 . On 18 January 2011 at the request of the Lord Advocate the Appeal Court referred the following question to this court:

> "Is it incompatible with the Panel's Convention rights for the Lord Advocate to lead evidence of his statements and answers made during the course of the search conducted under warrant granted in terms of section 23(3) of the Misuse of Drugs Act 1971 as recorded in the Search Production Schedule?"

12 In each of these three cases the circumstances differ from those that were before the court in Cadder and before the Grand Chamber in Salduz . The evidence that is objected to was obtained, in Ambrose's case before he was taken to the police station for further procedures to be carried out under section 7 of the Road Traffic Act 1988 following his failure of a road-side breath test, and in the cases of M and G before they were detained and questioned at a police station under section 14 of the 1995 Act. It is precisely because the issue that the references raise was not the subject of decision in either case that the court's guidance is now sought by the Lord Advocate.

13 His position is that three features determine whether an individual has a right to legal advice under article 6 in accordance with the principle in Salduz . These features are all taken from words used by the Grand Chamber's judgment in that case: see paras 55 and 56. First, he must be a "suspect". Second, he must be "in police custody". Third, he must be the subject of "police interrogation". Unless all three features are present, he has no right of access to legal advice under article 6 . These propositions all assume, of course, that the court finds that article 6(1) was engaged when the incriminating statements were made. This is because the protection of articles 6(1) and 6(3)(c) is afforded only to those who have been "charged", as that word has been interpreted by the Strasbourg court. Each of these expressions will need to be analysed in the discussion that follows.

Background

14 Two very important points need, however, to be made at the outset. The first is that the jurisdiction of this court is limited to a consideration of the devolution issue which is raised by each of these references. That is plain from the wording of paragraph 33 of Schedule 6 to the Scotland Act 1998 under which the references have been made, but it needs to be emphasised yet again. The High Court of Justiciary is the court of last resort in all criminal matters in Scotland: see section 124(2) of the Criminal Procedure (Scotland) Act 1995 ; *McInnes v HM Advocate [2010] UKSC 7, 2010 SLT 266* , para 5, *Fraser v HM Advocate [2011] UKSC 24, 2011 SLT 515* , para 11. It is not our function to rule on how the circumstances referred to in each case would fall to be dealt with under domestic law, although this does form part of the background.

15 The second point is that a decision by this court that there is a rule that a person who is suspected of an offence but is not yet in custody has a right of access to a lawyer before being questioned by the police unless there are compelling reasons to restrict that right would have far-reaching consequences. There is no such rule in domestic law: see para 22, below. If that is what Strasbourg requires, then it would be difficult for us to avoid holding that to deny such a person access to a lawyer would be a breach of his rights under articles 6(1) and 6(3)(c) of the Convention. But the consequences of such a ruling would be profound, as the answers to police questioning in such circumstances would always have to be held – in the absence of compelling reasons for restricting access to a lawyer – to be inadmissible. The effect of section 57(2) of the Scotland Act 1998 would be that the Lord Advocate would have no power to lead that evidence. I agree with Lord Matthew Clarke that this would have serious implications for the investigation of crime by the authorities: see para 116, below. This suggests that a judgment pointing unequivocally to that conclusion would be required to justify taking that step. If Strasbourg has not yet spoken clearly enough on this issue, the wiser course must surely be to wait until it has done so.

16 Section 126(1) of the Scotland Act 1998 provides that "the Convention rights" has the same meaning as in the Human Rights Act 1998 . Section 2(1) of the Human Rights Act requires this court in determining any question which has arisen in connection with a Convention right to take into account any relevant Strasbourg case law. In *R (Alconbury Developments Ltd) v Secretary of State for the Environment, Transport and the Regions [2001] UKHL 23, [2003] 2 AC 295* , para 26 Lord Slynn of Hadley said that, although the Human Rights Act did not provide that a national court is bound by these decisions, it is obliged to take account of them so far as they are relevant:

> "In the absence of some special circumstances it seems to me that the court should follow any clear and constant jurisprudence of the European Court of Human Rights. If it does not do so there is at least a possibility that the case will go to that court, which is likely in the ordinary case to follow its own constant jurisprudence."

17 In *R (Ullah) v Special Adjudicator [2004] UKHL 26, [2004] 2 AC 323* , para 20 Lord Bingham of Cornhill said that Lord Slynn's observations in that case reflected the fact that the Convention is an international instrument, the correct interpretation of which can be expounded only by the Strasbourg court. From that it followed that a national court should not without strong reason dilute or weaken the effect of the Strasbourg case law. It was its duty to keep pace with it as it evolved over time. There is, on the other hand, no obligation on the national court to do more than that. As Lord Bingham observed, it is open to member states to provide for rights more generous than those guaranteed by the Convention. But such provision should not be the product of interpretation of the Convention by national courts.

18 Lord Kerr says that it would be wrong to shelter behind the fact that Strasbourg has not so far spoken and use that as a pretext for refusing to give effect to a right if the right in question is otherwise undeniable: para 130, below. For reasons that I shall explain later, I do not think that it is undeniable that Strasbourg would hold that any questions put to a person by the police from the moment he becomes a suspect constitute interrogation which cannot lawfully be carried out unless he has access to a lawyer, which is the principle that Lord Kerr derives from his consideration of the mainstream jurisprudence: see para 146, below. But his suggestion that there is something wrong with what he calls an Ullah -type reticence raises an important issue of principle.

19 It is worth recalling that Lord Bingham's observations in Ullah were not his first pronouncements on the approach which he believed should be taken to the Convention. In *Brown v Stott 2001 SC (PC) 43* , 59 he said:

> "In interpreting the Convention, as any other treaty, it is generally to be assumed that the parties have included the terms which they wished to include and on which they were able to agree, omitting other terms which they did not wish to include or on which they were not able to agree. Thus particular regard must be had and reliance placed on the express terms of the Convention, which define the rights and freedoms which the contracting parties have undertaken to secure. This does not mean that nothing can be implied into the Convention. The language of the Convention is for the most part so general that some implication of terms is necessary, and the case law of the European Court shows that the court has been willing to imply terms into the Convention when it was judged necessary or plainly right to do so. But the process of implication is one to be carried out with caution, if the risk is to be averted that the contracting parties may, by judicial interpretation, become bound by obligations which they did not expressly accept and might not have been willing to accept. As an important constitutional instrument the Convention is to be seen as a 'living tree capable of growth and expansion within its natural limits' (*Edwards v Attorney General for Canada ([1930] AC 124*) at p 136 per Lord Sankey LC), but those limits will often call for very careful consideration."

The consistency between this passage and what he said in Ullah shows that Lord Bingham saw this as fundamental to a proper understanding of the extent of the jurisdiction given to the domestic courts by Parliament. Lord Kerr doubts whether Lord Bingham intended that his discussion of the issue should have the effect of acting as an inhibitor on courts of this country giving full effect to Convention rights unless they had been pronounced upon by Strasbourg: para 128, below. I, for my part, would hesitate to attribute to him an approach to the issue which he did not himself ever express and which, moreover, would be at variance with what he himself actually said. Lord Bingham's point, with which I respectfully agree, was that Parliament never intended to give the courts of this country the power to give a more generous scope to those rights than that which was to be found in the jurisprudence of the Strasbourg court. To do so would have the effect of changing them from Convention rights, based on the treaty obligation, into free-standing rights of the court's own creation.

20 That is why, the court's task in this case, as I see it, is to identify as best it can where the jurisprudence of the Strasbourg court clearly shows that it stands on this issue. It is not for this court to expand the scope of the Convention right further than the jurisprudence of the Strasbourg court justifies.

The background in domestic law

21 The powers of the police to detain a person and to subject him to questioning depend on the category into which the person falls at the time these powers are being exercised. They differ according to whether the person is a witness, a suspect or an accused. Where a person is not under suspicion, the police have no power to take him into custody or to compel him to submit to police questioning. Such a person is classified, at most, as a witness. A person who is in that category can be asked to provide personal information, such as his name and address. Further questions may be put as part of a routine investigation into the events that have happened. So long as he is being questioned as a potential witness rather than as a suspect, the right to protection against self-incrimination is not in play. There is no obligation to advise him of his rights, such as the right to

silence or his right to seek legal advice. As Lord Justice Clerk Thomson said in *Chalmers v HM Advocate 1954 JC 66* , 81, a person ultimately accused may be interviewed as part of the ordinary routine investigation of the police into the circumstances of the crime. It would unduly hamper the investigation of crime if the threat of inadmissibility were to tie the hands of the police in asking questions at this stage.

22 The position changes if the stage is reached when suspicion begins to fall on the person who is being questioned. Once suspicion has begun to fall on him the need to protect him against self-incrimination comes into play. As Lord Justice General Cooper explained in *Chalmers v HM Advocate 1954 JC 66* , 78:

> "The theory of our law is that at the stage of initial investigation the police may question anyone with a view to acquiring information which may lead to the detection of the criminal; but that, when the stage has been reached at which suspicion, or more than suspicion, has in their view centred upon some person as the likely perpetrator of the crime, further interrogation of that person becomes very dangerous, and, if carried too far, eg to the point of extracting a confession by what amounts to cross-examination, the evidence of that confession will almost certainly be excluded."

It was for a time thought that this passage was to be taken to establish that answers by suspects to police questioning were inadmissible by virtue of the person's position as a person under serious consideration as the perpetrator of the crime. But, as the law has developed, the position is less easy to define: see Renton and Brown, *Criminal Procedure* , 6th ed looseleaf (1996), para 24-38. In *Miln v Cullen 1967 JC 21* it was held that the incriminating answers which the driver of a car gave when questioned by police officers who had formed the opinion that he was under the influence of drink were admissible in evidence. Lord Justice Clerk Grant said at p 25 that the constable, in asking the simple question whether he was the driver, was not merely acting reasonably, properly and fairly but was acting in accordance with the duties incumbent upon him. Lord Wheatley said at pp 30–31 that it was difficult to define with exactitude when a person becomes a suspect in the eyes of a police officer, as it may vary from a very slight suspicion to a clearly informed one, and that what happened after that had to be judged by the test of fairness.

23 In *Lord Advocate's Reference (No 1 of 1983) 1984 JC 52* , 58 Lord Justice General Emslie said that Lord Wheatley's statement in Miln v Cullen , at p 31 that in each case the issue is whether the question was in the circumstances a fair one was a sound statement of the law:

> "A suspect's self-incriminating answers to police questioning will indeed be admissible in evidence unless it can be affirmed that they have been extracted from him by unfair means. The simple and intelligible test which has worked well in practice is whether what has taken place has been fair or not? (see the opinion of the Lord Justice General (Clyde) in *Brown v HM Advocate 1966 SLT 105* at 107). In each case where the admissibility of answers by a suspect to police questioning becomes an issue it will be necessary to consider the whole relevant circumstances in order to discover whether or not there has been unfairness on the part of the police resulting in the extraction from the suspect of the answers in question."

He went on to say that, where the words "interrogation" and "cross-examination" were used in the decided cases in discussing unfair tactics on the part of the police, they were to be understood to refer only to improper forms of questioning tainted with an element of bullying or pressure designed to break

the will of the suspect or to force from him a confession against his will. The current position as described in Renton and Brown, para 24-39 is therefore that the fact that the accused was at the time under suspicion or even under arrest is not in itself crucial. It is merely a circumstance like any other to be taken into account in assessing the fairness of the police questioning.

24 The legal basis for detaining and questioning a suspect was clarified by section 2 of the Criminal Justice (Scotland) Act 1980 which was consolidated as section 14 of the Criminal Procedure (Scotland) Act 1995 . The background to the legislation was described with characteristic skill and attention to detail by Lord Rodger in Cadder , para 74-86. As he explained in para 86, one aim was to put an end to the doubts about the legal basis for holding suspects for questioning when they had not been arrested. Another was to clarify the law as to the power of the police to question suspects and as to the admissibility of any answers that the suspects gave to such questions. A person may be detained for the purpose of carrying out investigations where a constable has reasonable grounds for suspecting that he has committed or is committing an offence punishable by imprisonment: section 14(1) . Where a person has been detained under section 14(1) a constable may, without prejudice to any relevant rule of law as regards the admissibility in evidence of any answer given, put questions to him in relation to the suspected offence: section 14(7) . The effect of the decision in Cadder is that the Lord Advocate has no power to lead and rely on answers by a detainee who was subjected to questioning by the police while he was without access to legal advice.

25 In none of the situations described in each of the references was the person who was being questioned a detainee under section 14 of the 1995 Act. The domestic law test for the admissibility of the answers that were given to the questions put by the police is whether or not there was unfairness on the part of the police. The fact that the person did not have access to legal advice when being questioned is a circumstance to which the court may have regard in applying the test of fairness, but it is no more than that. There is no rule in domestic law that says that police questioning of a person without access to legal advice who is suspected of an offence but is not in custody must always be regarded as unfair. The question is whether a rule to that effect is to be found, with a sufficient degree of clarity, in the jurisprudence of the Strasbourg court.

The reasoning in Salduz

26 The starting point for an examination of this question must be the reasoning of the Grand Chamber in Salduz . Some of the propositions that are set out in its judgment are expressed in a way that might suggest that the right of access to a lawyer is not confined to persons who are subjected to police questioning while they are in custody. Para 55 of the judgment is in these terms:

> "Against this background, the Court finds that in order for the right to a fair trial to remain sufficiently 'practical and effective' article 6(1) requires that, as a rule, access to a lawyer should be provided as from the first interrogation of a suspect by the police, unless it is demonstrated in the light of the particular circumstances of each case that there are compelling reasons to restrict this right. Even where compelling reasons may exceptionally justify denial of access to a lawyer, such restriction – whatever its justification – must not unduly prejudice the rights of the accused under article 6. The rights of the defence will in principle be irretrievably prejudiced when incriminating statements made during police interrogation without access to a lawyer are used for a conviction."

Read on its own, and without taking full account of the context in which these sentences were written, that paragraph suggests that the features which determine whether access to legal advice is to be

provided are (a) that the person is a suspect, and (b) that he is subject to police interrogation. No mention is made in this paragraph of his being in police custody. The fact is, however, that the applicant was in police custody when he was interrogated by the police. The narrative of the facts in paras 12-14 shows that it was not until after he had been taken into custody by police officers from the Anti-Terrorism Branch of the Izmir Security Directorate that he was interrogated. That being so, it is necessary to look elsewhere in the judgment to see whether the court was contemplating anything other than an interrogation in police custody when it came to set out what it did in para 55 of the judgment.

27 In Part II A of the judgment, under the heading "Domestic law", the court referred to legislation in force at the time of the application which provided that anyone suspected or accused of a criminal offence had a right of access to a lawyer from the moment they were taken into police custody. The reason why this had not been provided to the applicant was that the legislation did not apply to persons accused of offences falling within the jurisdiction of the state security courts, which his offence did. The challenge, therefore, was to a systematic departure from the right of access to a lawyer which the law gave to everyone else. In its examination of recent amendments in paras 29-31 of the judgment too its focus was on provisions that deal with juveniles taken into police custody.

28 That continued to be its focus in its examination of the relevant international law materials in. Part IIB Chapter 1 of that Part refers to materials from the Council of Europe and the United Nations dealing with procedure in juvenile cases where the child had been deprived of his liberty by means of pre- trial detention. The heading of Chapter 2 is "Right of access to a lawyer during police custody". Reference is made in para 37 of the judgment to rule 93 of the Standard Minimum Rules for the Treatment of Prisoners adopted by the Council of Europe Ministers, which states that an untried prisoner shall be entitled as soon as he is imprisoned to choose his legal representatives and to receive visits from his legal adviser, and, in para 38, to a recommendation of the Committee of Ministers to Member States of the Council of Europe dealing with the right of prisoners to legal advice. There is no sign here or in its examination of the United Nations materials in paras 41-42 that the Grand Chamber was interested in the position of suspects who were questioned by the police when not in custody. Nor is there any sign of an international consensus that there is a right of access to a lawyer at that stage.

29 The part of the judgment which deals with the alleged violation of article 6 of the Convention begins at para 45. The first section, which is headed "Access to a lawyer during police custody", continues to para 63. It includes para 55, which I have already quoted: see para 26, above. In para 45 it is stated that the applicant's allegation was that his defence rights had been violated as he had been denied access to a lawyer during his police custody. The parties' submissions, as narrated in paras 47-49 were directed to this issue. There then follows a discussion of the general principles which were applicable to the case: paras 50-55. In this passage, to which I will return, the court does not, at least in so many words, limit its scrutiny of the principles to what they require in cases where the person concerned is in police custody. But in the next section, where it applies the principles to the case of applicant, the fact that he was in police custody lies at the heart of the discussion; paras 56-62. The holding in para 80 states that there had been a violation of the applicant's rights under article 6(1) in conjunction with article 6(3)(c) on account of the lack of legal assistance while he was in police custody.

30 But for the discussion of the relevant principles in paras 50-55, which is not so limited, there would be no doubt at all that the Grand Chamber's declaration in the last sentence of para 55 that the rights of the defence will in principle be irretrievably prejudiced when incriminating statements made during police interrogation without access to a lawyer are used for a conviction was directed to

the situation where that interrogation took place while the person was in police custody. That is the conclusion that one would naturally draw from the context. The concurring opinions of Judge Bratza and Judge Zagrebelsky lend further support to this conclusion. Judge Bratza said in para O-I2 that, like Judge Zagrebelsky, he thought that the court should have used the opportunity to state in clear terms that the fairness of criminal proceedings under article 6 required that, as a rule, a suspect should be granted legal advice "from the moment he is taken into police custody or pre-trial detention." No mention is made in either of these opinions of any rule to the effect that the suspect should be granted legal advice at any earlier stage. It may be, as Lord Rodger suggested in Cadder , para 70, that what these judges were contemplating was legal assistance for other purposes such as support for an accused who was distressed or to check on the conditions of detention. Whatever the reason, they were plainly not addressing their remarks to situations such as those described in the references where the questioning took place before the suspect was taken into police custody.

31 The discussion of the general principles in paras 50-55 is not limited in this way. As para 50 makes clear, the fact that the applicant's case was concerned with pre-trial proceedings did not mean that article 6 had no application. The point is made that the fairness of a trial may be seriously prejudiced by an initial failure to comply with its provisions. In para 51 reference is made to the right of everyone charged with a criminal offence to be effectively defended by a lawyer, the choice of means of ensuring this being left to the contracting states. The paragraph ends with a warning that assigning counsel does not in itself ensure the effectiveness of the assistance he may afford an accused. So far there is nothing to suggest that the Grand Chamber was searching for a basis for a ruling that the right of access to a lawyer arose at a stage before the suspect was taken into police custody. In para 52 reference is made for the first time to the attitude of the accused at the initial stages of police interrogation and to the fact that article 6 will normally require that the accused be allowed to benefit from the assistance of a lawyer at this stage. No mention is made of where he was assumed to be when he is being questioned, but the cases referred to in the footnote to this paragraph are all cases where the applicant was in custody when he was subjected to interrogation by the police: *Murray v United Kingdom (1996) 22 EHRR 29* , Brennan v United Kingdom (2001) 34 EHRR 507 and Magee v United Kingdom (2000) 31 EHRR 822 .

32 In para 53 it is stated that the principles outlined in the previous paragraph are also in line with the generally accepted international human rights standards which, as the footnote to this paragraph indicates, are those set out in Part B of the judgment: see para 28, above. These are said to be at the core of the concept of a fair trial. Their rationale relates in particular to the protection of an accused against abusive coercion on the part of the authorities. The language used and the international materials referred to suggest that what the Grand Chamber had in mind here was the need for protection of the accused against abusive coercion while he was in custody. In para 54 it underlined the importance of the investigation stage for the preparation of criminal proceedings and referred to the fact that the accused often finds himself in a particularly vulnerable position "at that stage of the proceedings" and to the fact that early access to a lawyer was part of the procedural safeguards to which the court will have particular regard. The stage in the proceedings that the court had in mind is not specified other than by reference to the accused's vulnerability. This is said to be amplified by the fact that legislation in criminal procedure tends to become increasingly complex. It seems that what the Grand Chamber had in mind here was a stage when the accused was being subjected to detailed questioning of the kind that, under the inquisitorial systems, will invariably take place after the accused has been taken into custody. This impression is reinforced by the reference in the third last sentence of the paragraph to the recommendations of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment about

the right of a detainee to have access to legal advice as a fundamental safeguard against ill-treatment to which, I would infer, it was thought a detainee might be vulnerable.

33 This analysis of the reasoning of the Grand Chamber in Salduz suggests that the judgment was concerned only with establishing a rule that there was a right of access to a lawyer where the person being interrogated was in police custody. The alternative view is that in para 55 it recognised a broader principle that the rule applies as soon as the person has been charged so that article 6 is engaged. This alternative has a certain logical appeal for the reasons that Lord Kerr has identified. The prejudice suffered by the accused is the same irrespective of the stage at which an incriminating statement is made in answer to questions put by the police.

34 But the base on which this proposition rests is not that the Convention prohibits absolutely any reliance on incriminating statements. The privilege against self-incrimination is not an absolute right: *Murray v United Kingdom (1996) 22 EHRR 29* , para 47. It is primarily concerned with respecting the will of the person to remain silent: *Saunders v United Kingdom (1996) 23 EHRR 313* , para 68. Everyone is entitled to respect for the right not to incriminate himself, irrespective of whether or not he is in police custody. Nevertheless a person can confess if he is willing to do so, and his confession will be admissible if it is truly voluntary. The underlying principle therefore is that there is a right against self-incrimination which in some circumstances must be protected by special measures to protect the person against the risk that a confession may be obtained from him against his will by unfair tactics by the police. That is why the court recognised in its application of those principles to Salduz's case, as it had already done in para 54, that an interview which takes place in police custody has particular features which require the provision of an especially strong protection to protect the rights of the defence against a forced confession. It is that aspect of Salduz's case which seems to have informed the whole of the court's judgment.

35 It seems to me that the Grand Chamber's judgment, when taken as a whole, does not indicate with a sufficient degree of clarity – or indeed, I would suggest, in any way at all – that the ruling in para 55 about incriminating statements made without access to a lawyer applies to questions put by the police before the accused is taken into custody. The context would have required this to be stated expressly if it was what was intended, as the rule which the judgment laid down can be departed from only where there are compelling reasons to justify its restriction. It would have had to have been stated precisely to what situations outside police custody the rule was to apply, and it was not.

The jurisprudence since Salduz

36 The Grand Chamber's judgment has, not surprisingly, been referred to many times by the Strasbourg court since the judgment in that case was delivered. The question is whether there is an indication in any of the cases that the right of access to a lawyer arises, as a rule, as soon as a person whose rights under article 6 are engaged is subject to questioning by the police.

37 There are passages in some of the cases which indicate that Salduz is regarded as having been concerned only with the need for legal advice while the person was in custody. In Dayanan v Turkey (application no 7377/03) (unreported) given on 13 October 2009 , which is a decision of the Second Section and is available only in French, the applicant was arrested and detained as part of an operation against the Hizbullah. He was informed of his right to silence and exercised it, as he refused to answer the questions put to him by the police. It was held nevertheless that there had been a breach of article 6(3)(c) in conjunction with article 6(1) because he did not have access to a lawyer while he was being interrogated. The court said:

"31. Elle estime que l'équité d'une procédure pénale requiert d'une manière générale, aux fins de l'article 6 de la Convention, que le suspect jouisse de la possibilité de se faire assister par un avocat dès le moment de son placement en garde à vue ou en détention provisoire.

32. Comme le souligne les normes internationales généralement reconnues, que la Cour accepte et qui encadrent sa jurisprudence, un accusé doit, dès qu'il est privé de liberté, pouvoir bénéficier de l'assistance d'un avocat et cela indépendamment des interrogatoires qu'il subit (pour les textes de droit international pertinents en la matière, voir Salduz , précité, paras 37-44)..."

The proposition in para 32 that an accused must have access to a lawyer from the moment he is deprived of his liberty ("un accusé doit, dès qu'il est privé de liberté, pouvoir bénéficier de l'assistance d'un avocat") seems to go further than what the Grand Chamber itself said in Salduz . It is more in keeping with the concurring opinions of Judge Bratza and Judge Zagrebelesky. However that may be, the passages which I have quoted indicate the importance that appears to have been attached by Strasbourg to the fact that the person was in police custody when he was being interrogated. It is especially significant that this is what the court saw the international consensus ("les normes internationales généralement reconnues") to be on this issue.

38 Three other cases from Turkey are to the same effect. In Arzu v Turkey (application no 1915/03) (unreported) given on 15 September 2009 the applicant, who was arrested and placed in custody, complained that he had been denied access to a lawyer during the initial stages of the criminal proceedings against him. The court said that Salduz had considered the grievance of a lack of access to a lawyer whilst in police custody: para 46. In Duman v Turkey (application no 28439/03) (unreported) given on 23 March 2010 the court said in para 46 that the use of statements obtained at the stage of the police inquiry and the judicial investigation is not inconsistent with article 6(1) , provided that the rights of the defence are respected. On that point the court said that it relied on the basic principles laid down in its judgments, including Salduz , para 55, concerning the notion of a fair procedure. In Taşkin v Turkey (application no 5289/06) (unreported) given on 1 February 2011 the applicant complained that he had had no legal assistance before he made his police statement or during his interrogation before the public prosecutor while in custody. The court observed that it had already examined the issue concerning the lack of legal assistance in police custody in Salduz , paras 56-62. In all these cases, as in Salduz itself, there was a systemic restriction on access to legal advice by anyone held in police custody in connection with proceedings that were to be taken in the state security courts.

39 In Pishchalnikov v Russia (application no 7025/04) (unreported) given on 24 September 2009 the applicant, who had been arrested, was interrogated while he was in police custody. The pattern of the First Section's judgment followed that of the Grand Chamber in Salduz . It repeated many of the propositions in paras 50-55 of Salduz in its assessment of the case under the heading "Restrictions on access to a lawyer in the police custody", and referred in para 71 to the fact that the right to silence and the right not to incriminate oneself are generally recognised international standards which lie at the heart of a fair procedure under article 6 . But, as it was a custody case, it does not examine the question whether these propositions require access to a lawyer at any earlier stage. In Sharkunov and Mezentsev v Russia (application no 75330/01) (unreported) given on 10 June 2010 the question before the court was again directed to the lack of legal assistance while in police custody and the use at the trial of incriminating statements that had been made at that stage. In

para 97 the court repeated the proposition that was first stated in Salduz , para 55 that the rights of the defence will in principle be irretrievably prejudiced when incriminating statements made during police interrogation without access to a lawyer are used for a conviction. But once again the police interrogation in the course of which these statements were made took place while the applicant was in police custody.

40 In Borotyuk v Ukraine (application no 33579/04) (unreported) given on 16 December 2010 the applicant was, once again, in police custody during the pre- trial investigation. Here too the propositions on which the court based its judgment are closely modelled on what the Grand Chamber said in para 55 of Salduz . In para 79 it summarised the general principles that are to be found there. It stated that, as a rule, access to a lawyer must be provided as from the first questioning of a suspect by the police, unless it can be demonstrated in the light of the particular circumstances that there are compelling reasons to restrict that right. As in para 55 of Salduz , no indication is given that the principles are restricted to cases where the accused was in police custody. But, as in Salduz , that was the background against which the case was heard. Once again it is unclear whether the general propositions on which the judgment was based must equally be applied, as a rule, to cases where the accused was not in custody when the questioning took place.

Zaichenko v Russia

41 The First Section had the opportunity to clarify where the court stood on this issue in Zaichenko v Russia (application no 39660/02) (unreported) given on 18 February 2010 . This appears to have been the only case to date in which the complaint was of lack of legal assistance during questioning by the police when the applicant was not in custody. He was stopped while he was driving home from work and his car was inspected by the police as there had been reports of workers stealing diesel from their service vehicles. Two cans of diesel were discovered in the car. The applicant made self-incriminating statements in reply to questions put to him by the police at the roadside. He was charged with stealing the cans, and he was convicted. His complaint was that he had not been advised of the privilege against self-incrimination when he made his admission to the police. His position at the trial was that he had purchased the diesel at a petrol station and that he did not give this explanation to the police because he felt intimidated and did not have a receipt to prove the purchase.

42 In its assessment the court set out the general principles that are relevant to a consideration of whether there has been a violation of the right to a fair trial. It noted that article 6(3)(c) especially might be relevant before a case is sent to trial if and in so far as the fairness of the trial is likely to be seriously prejudiced by a initial failure to comply with its requirements. In para 36 it recalled, as the Grand Chamber did in Salduz , the proposition that the court set out in *Imbrioscia v Switzerland (1993) 17 EHRR 441* , para 38 that the manner in which articles 6(1) and 6(3)(c) were to be applied during the preliminary investigation depended on the special features of the proceedings and on the circumstances of the case. Account was taken in para 37 of the principles set out in Salduz , para 55 and in para 38 of the fact that the right to silence and the right not to incriminate oneself are generally recognised standards which lie at the heart of the notion of a fair procedure.

43 Para 38 then contains these important propositions which did not receive the same attention in Salduz :

> "The right not to incriminate oneself presupposes that the prosecution in a criminal case seek to prove their case against the accused without resort to evidence obtained through methods of coercion or oppression in defiance of the will of the accused (see, inter alia, J B

> v Switzerland, no 31827/96 , para 64, ECHR 2001-III). In this sense the right is closely linked to the presumption of innocence contained in article 6(2) of the Convention. In examining whether a procedure has extinguished the very essence of the privilege against self-incrimination, the Court must examine the nature and degree of the compulsion, the existence of any relevant safeguards in the procedures and the use to which any material so obtained is put (ibid)."

44 Applying these propositions to the applicant's case, the court noted in para 42 that in criminal matters article 6 comes into play as soon as a person is "charged" and that this may occur on a date prior to the case coming before the trial court, such as the date of arrest, the date when the person concerned was officially notified that he would be prosecuted or the date when the preliminary investigations were opened. *Eckle v Germany (1982) 5 EHRR 1* , para 73 was referred to, which includes the proposition taken from cases such as Deweer v Belgium (1980) 2 EHRR 439 , para 46 that the test as to whether a person has been "charged" for the purposes of article 6(1) is whether the situation of the person has been substantially affected. The court concluded that, given the context of the road check and the applicant's inability to produce any proof of the diesel purchase at the moment of his questioning by the police, there was a suspicion of theft against him from that moment and that, although he was not yet accused of any criminal offence, his situation in the proceedings at the roadside was substantially affected. So article 6(1) was engaged at that point.

45 But the fact that article 6(1) was engaged did not mean that a right of access to a lawyer arose at that point. The court observed in para 47 that the case was different from previous cases concerning the right to legal assistance in pre-trial proceedings. This was because the applicant was not formally arrested or in police custody but was stopped for a roadside check which was carried out in the presence of two attesting witnesses. In para 48 it said:

> "Although the applicant in the present case was not free to leave, the Court considers that the circumstances of the case as presented by the parties, and established by the Court, disclose no significant curtailment of the applicant's freedom of action, which could be sufficient for activating a requirement for legal assistance already at this stage of the proceedings."

In para 49 it noted that the role of the police in such a situation was to draw up an inspection record and receive the applicant's explanation as to the origin of the cans in his car. Having done so, the police transferred the documents to the inquirer who submitted a report to his superior which prompted him to open a criminal case against the applicant. In para 51 it held that the absence of legal representation at the roadside check did not violate his right to legal assistance under article 6(3)(c) . In a partly dissenting opinion Judge Spielmann said that the interview took place in circumstances that could in no way be compared to those normally observed during routine road checks and he could not agree that the circumstances of the case disclosed no significant curtailment of the applicant's freedom of action such as to require legal assistance. He did not take issue with the principle formulated in para 48. His dissent was as to its application to the facts of the case.

46 Mr Scott for Ambrose submitted that it was wrong to look at the court's reasoning in Salduz through what it decided in Zaichenko . Mr Shead for M submitted that Zaichenko was so out of line with the other cases, and so hard to reconcile with the basic principles that were stated in Salduz , that it should be regarded as having been wrongly decided. I would reject these arguments. The

President of the Court, Judge Rozakis, was a member of the Grand Chamber in Salduz , as was Judge Spielmann. The importance of the question that the case raised, which was whether the ruling in Salduz applied to questioning where the applicant was not in police custody, would not have been overlooked. The reasoning shows that the reasoning in Salduz was fully taken into account. The finding in para 48 that the circumstances did not disclose a sufficient curtailment of the applicant's freedom of action which could be sufficient for activating a requirement for legal assistance indicates that the court was well aware that it had to give reasons for reaching a different result. That it did so in the way that it did shows that this is a judgment which must be taken into account in the search for an answer to the question where the jurisprudence of the Strasbourg court stands on the question we have to decide.

Abdurahman v United Kingdom

47 The question whether the right of access to a lawyer applies at a stage before the person is taken into custody is now before the Strasbourg court in an application by Ismail Abdurahman, application no 40351/09. He was questioned by the police as a witness in connection with the attempt to detonate four bombs at separate points in the London public transport system two weeks after the bombings that took place on 7 July 2005. He had been approached by two police officers who took him to a police station. According to their evidence at the voir dire at the applicant's trial, this was with a view to his assisting the police as a potential witness. They began interviewing him, but after about 45 minutes of questioning they considered that, as a result of the answers that he was giving, he was in danger of incriminating himself and should be cautioned. On instructions from a senior officer they continued nevertheless to interview him as if he were a witness. It was not until after he had completed and signed his witness statement, which contained statements that were incriminating and was made without access to legal assistance, that they were told to arrest him and he was then taken into custody.

48 This case is still awaiting a hearing in Strasbourg. It has reached the stage of the court posing questions to the parties, which are whether there has been a violation of article 6(1) together with article 6(3)(c) arising from

> "(a) the failure to caution the applicant before he gave his witness statement (Aleksandr Zaichenko v Russia, no 39660/02, 18 February 2010); and/or
>
> (b) the failure to provide him with legal assistance before he gave the witness statement? In particular, were the rights of the defence irretrievably prejudiced by the use of the witness statement at trial (Salduz v Turkey [GC], no 36391/02, para 55, 27 November 2008)?"

It is, of course, too early to say what view will be taken of this case when the facts have been assessed by the court in the light of the relevant principles. But it is at least likely that its judgment will provide some useful guidance as to the approach that is to be taken to a person's rights under article 6(1) together with article 6(3)(c) where the prosecution seeks to rely on answers given to questions by the police before he is formally taken into custody. The key issue, so far as the references that are before the court in this case are concerned, is whether, as a rule, access to a lawyer must always be provided when a person is questioned at any stage in the proceedings after he has become a suspect and must be taken to have been charged for the purposes of article 6 (see paras 62-63, below), or whether access to a lawyer is required, as a rule, only where the person has been taken into custody or his freedom of action has been significantly curtailed.

49 The fact that this application is still pending suggests that, if there was any doubt as to where the jurisprudence of the Strasbourg court stands, it would have been wise to wait for its judgment in Abdurahman before holding that there is a rule that access must be provided in any situation that is not analogous on its facts to that which was before the court in Salduz . But that is for another day, as the delivery of the judgment in that case cannot be taken to be imminent.

Miranda v Arizona

50 The Lord Advocate placed considerable weight in support of his argument on the judgment of the Supreme Court of the United States in Miranda v Arizona 384 US 436 (1966). In that case the Supreme Court held that the prosecution may not use statements, whether incriminatory or exculpatory, stemming from custodial interrogation of a defendant unless it demonstrated the use of procedural safeguards which were sufficient to secure the privilege against self-incrimination. These safeguards require that, unless other fully effective means are devised to inform the accused person of the right to silence and to assure continuous opportunity to exercise it, he must be warned that he has a right to remain silent, that any statement that he does make may be used as evidence against him, that he has the right to consult with an attorney and that, if he cannot afford one, a lawyer will be appointed to represent him. "Custodial interrogation" for the purposes of this rule means questioning initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of his freedom of action in any significant way: p 444.

51 Miranda has been referred to in a number of individual opinions given by judges of the Strasbourg court. Judge De Meyer referred to it in his dissenting opinion in *Imbrioscia v Switzerland (1993) 17 EHRR 441* . The applicant in Imbrioscia had been questioned several times without access to a lawyer while he was in police custody but the court held, considering the proceedings as a whole, that there had been no breach of article 6(1) read with article 6(3)(c) . Judge De Meyer said that the court had failed to recognise the rules governing the right to legal advice during custodial interrogation which the Supreme Court has summarised in its Miranda judgment and which he said belonged to the very essence of fair trial. In *Murray v United Kingdom (1996) 22 EHRR 29* the applicant had been denied legal advice for 48 hours after he had been taken into custody. The court held that there had been a violation of article 6(1) read with article 6(3)(c) . The partly dissenting judges, Judge Pettiti, joined by Judge Valticos, and Judge Walsh, joined by Judges Makarczyk and Löhmus, also referred to the Miranda judgment in this context. Judge Walsh pointed out that the Supreme Court had affirmed that the constitutional protection against self- incrimination contained in the Fifth Amendment

> "guarantees to the individual the 'right to remain silent unless he chooses to speak in the unfettered exercise of his own free will' whether during custodial interrogation or in court."

Much more recently, but prior to the Grand Chamber's decision in Salduz , Judge Fura-Sandström joined by Judge Zupančič referred to Miranda in Galstyan v Armenia (2007) 50 EHRR 618 when, in para 0-I5, she described the right to be assisted by a lawyer as a bright line rule which nobody should cross and said that its purpose was to neutralise the distinct psychological disadvantage that suspects are under while dealing with the police.

52 The Strasbourg court has not referred to Miranda in any of its judgments, and Imbrioscia , Murray and Galstyan are the only cases where it has been referred to in a dissenting opinion in the context of what is described in Miranda as custodial interrogation. But it can be assumed that the court will not have overlooked it in its search for generally accepted international human rights standards. The

dissenting judgments in Imbrioscia and Murray which drew attention to it were given before the Grand Chamber considered the issue in Salduz , and those cases were cited to it in that case. As T A H M van der Laar and R L de Graaf, "Salduz and Miranda: is the US Supreme Court pointing the way?" [2011] 3 EHRLR 304, 315 have pointed out, the test that the Strasbourg court described in paras 47 and 48 of Zaichenko when it considered that the applicant was neither "formally arrested" nor "interrogated in police custody" and that there was no "significant curtailment of his freedom of action" echoes the statement in Miranda , p 477 that the rule of access to a lawyer that it describes applies when the suspect is subjected to police interrogation while in custody or otherwise deprived of his freedom of action in any significant way.

53 It is not unreasonable to think that Miranda and subsequent cases that the ruling in that case have given rise to in the United States will influence the thinking of the Strasbourg court as it develops the principles described in Salduz . The significance of Miranda is that it follows the custodial approach to the question as to when access to a lawyer is required. The core of that decision, as der Laar and de Graaf have described it in [2011] EHRLR 304, 310, is that a suspect's statement made as a result of interrogation initiated by the interrogating authorities while he is in custody cannot be used in evidence unless the prosecutor can prove that the procedural safeguards that were used were effective enough to secure the suspect's right not to incriminate himself. The underlying reason is that the circumstances in which such an interrogation takes place are inherently intimidating. As Chief Justice Warren explained at p 445, an understanding of the nature and setting of the in-custody interrogation was essential to the court's decision: incommunicado interrogation in a police-dominated atmosphere. But it was noted that an interpretation of the requirement that the right to legal advice arose at an earlier stage would hamper the traditional function of the police in investigating crime. General on-the-scene questioning as to facts surrounding the crime or other general questioning of citizens was not affected. The right to legal advice was held not to extend that far because the compelling atmosphere inherent in the process of in-custody interrogation was not necessarily present: Miranda , pp 477–478. The accused in that position is protected by the rule that only statements voluntarily made are admissible.

54 I think that there is an indication here about the way the Strasbourg court's jurisprudence may develop, if there are doubts as to the significance of the court's decision in Zaichenko . Miranda shows that reasons can be given which, at the very least, the court has not yet said are irrelevant for thinking that it would be going too far to hold that there is a rule that there must be access to a lawyer irrespective of whether the person who is being questioned by the police is being held in custody. The basis for the ruling in Miranda is that police custody or its equivalent creates particular pressures which mean that the person's will is more likely to be overcome when he is being questioned under conditions of that kind. The observation in Salduz , para 53 that the rationale of the generally recognised international human rights standards relates in particular to the protection of the accused against abusive coercion on the part of the authorities fits in with this line of reasoning. This feature is likely to be absent when questions are being put at the locus or in the person's home simply with a view to deciding whether the person being questioned is to be treated as a suspect and, as such, to be subjected to further procedures.

The case for police custody or its equivalent

55 I should like, before stating my conclusions, to say a bit more about why I would hold that in principle the line as to when access to legal advice must be provided before the person is questioned should be drawn as from the moment that he has been taken into police custody, or his freedom of action has been significantly curtailed as it was put in Zaichenko , para 48.

56 I return to the points I made in para 34, above. The privilege against self- incrimination is not an absolute right: *Murray v United Kingdom (1996) 22 EHRR 29* , para 47; *Brown v Stott 2001 SC (PC) 43* , 64, per Lord Steyn. At p 60 Lord Bingham said that while it could not be doubted that such a right must be implied, there is no treaty provision which expressly governs the effect or extent of what is to be implied. At p 74 I said that implied rights are open, in principle, to modification or restriction so long as this is not incompatible with the right to a fair trial. We do know however that the right is primarily concerned with respecting the will of the person to remain silent: see *Saunders v United Kingdom (1996) 23 EHRR 313* , para 68. A person is therefore free to speak to the police and to answer questions if he is willing to do so, even after he has been cautioned. He can provide them with self-incriminating answers if he is willing to do this, and his answers will be admissible if they are truly voluntary. This approach to the problem is familiar in domestic law: see para 22, above. So long as it is applied the fundamental right under article 6 to a fair trial will be guaranteed. The test is whether the will of the person to remain silent, if that is his will, has been respected. Answers cannot be extracted from him by unfair means, and he must be protected against the risk that they may be forced out of him.

57 It is well understood that in some circumstances merely to caution the person that he has the right to remain silent will not be enough to protect him against the risk of a forced confession. The paradigm case is where he is in police custody. In such a situation the circumstances surrounding his questioning are likely to be oppressive and intimidating. The questioning is likely to be prolonged, and the atmosphere is likely to be coercive. In such circumstances it is reasonable to assume that he will be vulnerable to having a confession extracted from him against his will and to insist that special measures are needed to ensure that his rights are respected.

58 As Lord Kerr points out, common experience tells us that a coercive atmosphere can exist independently of custody: para 147, below. That is why it was recognised in Miranda and in Zaichenko that a person's freedom of action to act as he wishes may be significantly impaired in other circumstances. But it does not follow that this will be so in every case when the police engage in conversation with a suspect. Circumstances will vary, and questioning which may become objectionable as the process continues may not be so during its initial stages. That is why I believe that a more flexible approach to the problem is called for than the rigid principle that Lord Kerr would adopt, which would involve laying down a rule that access to lawyer must always be provided before any police questioning can take place: see para 146, below.

59 Lord Kerr says in para 148 that there is no reason to suppose that a person questioned by the police while not in detention would not experience the same need to acquiesce in the power of the police to require answers to potentially highly incriminating questions. The important question, he says, is whether the questions asked are liable to be productive of incriminating answers, not the circumstances in which they are being asked. That leads him to say that whenever questions of that kind are being put to a suspect they must be asked in the presence of a lawyer. I do not think that there is any support in the Strasbourg cases, or in such international authorities as we have been shown, for that proposition.

60 The point that was being made in the Canadian case of R v Grant 2009 SCC 32; [2009] 2 SCR 353 to which he refers in para 147 was that there are *situations* in which psychological constraint amounting to detention have been recognised: the majority judgment of McLachlin CJ and LeBel, Fish, Abella and Charron JJ at para 30. These are where the subject is legally required to comply with a direction or command and where there is no such obligation but a reasonable person in the subject's position would feel so obligated. Not every conversation that takes place between the

police and a suspect in which questions are asked is of that character. A demand or direction by a police officer is one thing. Questioning under caution is another. It is understandable that a person who is confronted by a direction or a demand by a police officer to provide information will feel that he has to comply with it. It is understandable too if the circumstances are such that he feels that he has no real choice in the matter. That is why the law requires that before questions are put to him by the police the suspect must be cautioned. In that way a fair balance is struck between the interests of the individual and the public interest in the detection and suppression of crime. The search for that balance is inherent in the whole of the Convention: *Sporrong and Lönnroth v Sweden (1982) 5 EHRR 35* , para 69. The whole point of the caution is to make it clear to the person that he is under no obligation to answer the questions that are being put to him. The requirement would be pointless if it is to be assumed that he will nevertheless feel, whatever the circumstances, that he has no alternative but to answer them. Whether the caution is enough to ensure that the person will have a fair trial will depend on the circumstances.

Conclusion

61 I return to the Lord Advocate's submission that three features determine whether an individual has a right to legal advice under article 6 in accordance with the principle in Salduz . First, he must be a "suspect". Second, he must be "in police custody". Third, he must be the subject of "police interrogation". The submission is that, unless all three features are present, he has no right of access to legal advice under article 6 .

62 The correct starting point, when one is considering whether the person's Convention rights have been breached, is to identify the moment as from which he was charged for the purposes of article 6(1) . The guidance as to when this occurs is well known. The test is whether the situation of the individual was substantially affected: Deweer v Belgium (1980) 2 EHRR 439 , para 46; *Eckle v Germany (1982) 5 EHRR 1* , para 73. His position will have been substantially affected as soon as the suspicion against him is being seriously investigated and the prosecution case compiled: Shabelnik v Ukraine (application no 16404/03) (unreported) given on 19 February 2009 , para 57. In *Corigliano v Italy (1982) 5 EHRR 334* , para 34 the court said that, whilst "charge" for the purposes of article 6(1) might in general be defined as the official notification given to the individual by the competent authority of an allegation that he has committed an criminal offence, as it was put in Eckle , para 73, it may in some instances take the form of other measures which carry the implication of such an allegation. In Šubinski v Slovenia (application no 19611/04) (unreported) given on 18 January 2007 , paras 62-63 the court said that a substantive approach, rather than a formal approach, should be adopted. It should look behind the appearances and investigate the realities of the procedure in question. This suggests that the words "official notification" should not be taken literally, and that events that happened after the moment when the test is to be taken to have been satisfied may inform the answer to the question whether the position of the individual has been substantially affected.

63 It is obvious that the test will have been satisfied when the individual has been detained and taken into custody. It must be taken to have been satisfied too where he is subjected to what Salduz , para 52 refers to as the initial stages of police interrogation. This is because an initial failure to comply with the provisions of article 6 at that stage may seriously prejudice his right to a fair trial. The moment at which article 6 is engaged when the individual is questioned by the police requires very sensitive handling if protection is to be given to the right not to incriminate oneself. The mere fact that the individual has been cautioned will not carry the necessary implication. But, when the surrounding circumstances or the actions that follow immediately afterwards are taken into account,

it may well do so. The moment at which the individual is no longer a potential witness but has become a suspect provides as good a guide as any as to when he should be taken to have been charged for the purposes of article 6(1) : Shabelnik v Ukraine , para 57. The Lord Advocate submitted that the protection of article 6(3)(c) was not engaged until the individual was actually taken into custody. But this cannot withstand the emphasis that the Strasbourg court puts on the consequences of an initial failure to comply with its provisions, as in Salduz , para 50; see also Zaichenko v Russia , para 42.

64 As for the requirement that the individual must be in police custody, I would hold that the Strasbourg court has not said, or at least has not said with a sufficient degree of clarity, that a person who has become a suspect and is not in custody must, as a rule, have access to a lawyer while he is being questioned. I would attach particular importance to the judgment in Zaichenko v Russia , for the reasons given in para 46, above. That is not to say that the fact that the individual had no access to legal advice in that situation is of no consequence. If it was practicable for access to legal advice to be offered, this will be one of the circumstances that should be taken into account in the assessment as to whether the accused was deprived of a fair hearing, as he is entitled to respect for the right not to incriminate himself. But it is no more than that. The fact that the incriminating statements were made without access to a lawyer does not of itself mean that the rights of the defence are irretrievably prejudiced, as was held to be the case in Salduz on account of the lack of legal assistance while the applicant was in custody.

65 The phrase "police interrogation" appears frequently in the cases where the applicant was detained in custody. It was suggested that, for the purposes of the rule about access to a lawyer, it means something more than just asking questions of an individual. These words are, however, extremely fact sensitive. Any questioning of an individual who has been detained in custody by persons who are referred to in the Strasbourg cases as representing the investigating authorities with the aim of extracting admissions on which proceedings could be founded will amount to interrogation for the purposes of the rule: for a statement to that effect in England, see *R v Absolam (1989) 88 Cr App R 332* , 336, per Bingham LJ. The same could be said of questioning that takes place at the roadside or in the person's home, depending on the circumstances. It is not necessary, if access to a lawyer is needed for the right to a fair trial to remain practical and effective (see Salduz , para 55), that the questioning should amount to an "interrogation" in the formal sense. It need not be a detailed and sustained course of questioning. Questions that the police need to put simply in order to decide what action to take with respect to the person whom they are interviewing are unlikely to fall into this category. But they are likely to do so when the police have reason to think that they may well elicit an incriminating response from him.

66 With that introduction, I now turn to the questions that have been referred to this court. As I understand them, they invite us not only to deal with the situations that they describe as raising issues of principle but also to express our own view as to the answers that the Appeal Court should give on the facts as presented to us in each case.

The answers to the questions referred

67 The question in Ambrose's case is whether the act of the Lord Advocate in leading and relying on evidence obtained in response to police questioning of the appellant conducted under common law caution at the roadside and without the appellant having had access to legal advice was incompatible with the appellant's rights under article 6(1) and 6(3)(c) . I would answer this question in the negative. Applying the test that I have described in para 62, above, I would hold that Ambrose was charged for the purposes of article 6 when he was cautioned and that the police officer

had reason to think that the second and third questions were likely to elicit an incriminating response from him. This conclusion is supported by the way the question whether the applicant was charged was dealt with in Zaichenko v Russia , para 41, where the court said that, given the context of the road check and the applicant's inability to produce proof that he had purchased the diesel, there should have been a suspicion of theft against the applicant at the moment of his questioning by the police. The context in Ambrose's case was that, when he was approached by the police, he was drunk and sitting in the car. Suspicion that he was committing an offence fell on him as soon as he told the police that the keys were in his pocket.

68 But I would hold it would be to go further than Strasbourg has gone to hold that the appellant is entitled to a finding that this evidence is inadmissible because, as a rule, access to a lawyer should have been provided to him when he was being subjected to this form of questioning at the roadside. This leaves open the question whether taking all the circumstances into account it was fair to admit the whole or any part of this evidence. There may, perhaps, still be room for argument on this point. So I would leave the decision as to how that question should be answered to the Appeal Court.

69 The question in M's case is whether the act of the Lord Advocate in leading and relying on evidence obtained in response to police questioning of the accused, conducted under common law caution at his home address and without the accused having had access to legal advice was incompatible with the accused's rights under article 6(1) and 6(3)(c) . I would hold that M was charged for the purposes of article 6 when he was cautioned by the police officer at his home address. Although he did yet not have enough information as that stage to detain him as a suspect under section 14 of the 1995 Act, his actions were sufficient to carry the implication that the purpose of his visit was to establish whether M was in that category. Even if that was not so at the moment when M was cautioned, the first question which the police officer put to him carried that implication. I also think that the police officer had reason to think that the second question that he asked ("Were you involved in the fight?") was likely to elicit an incriminating response from him.

70 But I would answer the question in this reference also in the negative, as it would be to go further than Strasbourg has gone to hold that the accused is entitled to a ruling that this evidence is inadmissible because, as a rule, access to a lawyer should have been provided to him when he was being asked these preliminary questions in his own home with a view to determining what further steps should be taken to deal with him in connection with the offence. As in Ambrose's case, this leaves open the question whether, taking all the circumstances into account, it would be fair to admit the whole or any part of this evidence. I would leave it to the sheriff to answer that question.

71 The question in G's case is whether it is incompatible with the Panel's Convention rights for the Lord Advocate to lead evidence of his statements and answers made during the course of the search conducted under warrant granted in terms of section 23(3) of the Misuse of Drugs Act 1971 as recorded in the Search Production Schedule. The Lord Advocate conceded that G was a suspect from the time of his first admission to possession of a quantity of heroin in his jeans. In must follow that he had been charged for the purposes of article 6 by the time the police began their search. The feature of this case which distinguishes it from the other two is that, although G had not yet been formally arrested and or taken into police custody, there was a significant curtailment of his freedom of action. He was detained and he had been handcuffed. He was, in effect, in police custody from that moment onwards. So I would answer the question in the affirmative. The circumstances were sufficiently coercive for the incriminating answers that he gave to the questions that were put to him without access to legal advice about the items to be found to be inadmissible.

72 I would hold however that the same result need not follow in every case where questions are put

during a police search to a person who is to be taken to have been charged for the purposes of article 6 . It would be to go further than Strasbourg has gone to hold that a person has, as a rule, a Convention right of access to a lawyer before answering any questions put to him in the course of a police search. It is not because there is a rule to this effect that I would answer the question in the affirmative. Rather it is because it is plain from the particular circumstances of the case that G was, in effect, a detainee when he was being questioned by the police. In the absence of such indications of coercion the question, as in the other cases, will be whether, taking all the circumstances into account, it would be fair to admit the whole or any part of the evidence.

Lord Brown

73 I am in full agreement with Lord Hope's judgment in this case and there is comparatively little that I want to say in addition.

74 Cadder is authority for an absolute rule, derived from the European Court of Human Rights's decision in Salduz v Turkey (2008) 49 EHRR 421 , that the Crown cannot lead and rely upon evidence of anything said by an accused without the benefit of legal advice during questioning under detention at a police station. For convenience I call this the Cadder rule and refer to it as absolute notwithstanding the Court's recognition in Salduz itself (at para 55) that "compelling reasons may exceptionally justify denial of access to a lawyer" (providing always that such a restriction does not unduly prejudice the defence) since for present purposes those possible exceptional cases can safely be ignored. The critical issue arising for our determination on these references is whether the Cadder rule applies equally to anything said by an accused in answer to police questioning even *before* he is detained at a police station, providing only that at the time of such questioning he is already a suspect and "charged" within the meaning of article 6(1) of the Convention (his situation "substantially affected" as explained by Lord Hope at para 39).

75 Although these are, of course, Scottish references and, rather to my regret, we have not had the benefit of any intervention on behalf of English and Welsh prosecuting authorities to assist us as to the legal position south of the border, I cannot but notice that on their face the statutory provisions governing the position in England and Wales sit a little uneasily even with the absolute rule in Cadder , let alone with the substantial extension to that rule now proposed by the respective accused in these references.

76 Section 76(2) of the Police and Criminal Evidence Act 1984 (PACE) provides:

> "If, in any proceedings where the prosecution proposes to give in evidence a confession made by an accused person, it is represented to the court that the confession was or may have been obtained — (a) by oppression of the person who made it; or (b) in consequence of anything said or done which was likely, in the circumstances existing at the time, to render unreliable any confession which might be made by him in consequence thereof, the court shall not allow the confession to be given in evidence against him except in so far as the prosecution proves to the court beyond reasonable doubt that the confession (notwithstanding that it may be true) was not obtained as aforesaid."

77 By section 82(1) of PACE , "confession" is defined to include "any statement wholly or partly adverse to the person who made it" and by section 76(8) "oppression" is defined to include "torture, inhuman or degrading treatment, and the use or threat of violence (whether or not amounting to torture)".

78 The only absolute statutory rule, therefore, is that confessions are inadmissible under PACE if obtained by oppression or in consequence of anything said or done likely to render them unreliable. Generally speaking the court would not regard a confession elicited during questioning under detention at a police station as unreliable merely because the suspect had not at the time had the benefit of legal advice (unless, of course, by reason of youth or mental frailty or for any other reason the suspect may be regarded as having been particularly vulnerable to such questioning – see, for example, *R v McGovern (1990) 92 Cr App R 228*). Nevertheless the principle established in Salduz that underlies the Cadder rule is, I apprehend, properly given effect in England and Wales by the appropriate application of sections 58 and 78 of PACE which provide respectively:

> (1) A person arrested and held in custody in a police station or other premises shall be entitled, if he so requests, to consult a solicitor privately at any time.

> (1) In any proceedings the court may refuse to allow evidence on which the prosecution proposes to rely to be given if it appears to the court that, having regard to all the circumstances, including the circumstances in which the evidence was obtained, the admission of the evidence would have such an adverse effect on the fairness of the proceedings that the court ought not to admit it."

Consistently, therefore, with the operation of the Cadder rule in Scotland, the discretion to exclude evidence under section 78(1) is, I apprehend, routinely exercised in England and Wales in the case of significant and substantial breaches of the right to legal advice conferred by section 58 and the related rights arising under Code C of the Codes of Practice established under PACE .

79 In England and Wales, however, suspects do not, as I understand it, have a right to free legal advice before their arrest and admission into custody. The police's only obligation at this earlier stage is to caution the suspect before questioning begins. Once, however, a decision to arrest is made – and once grounds for arrest exist it cannot then be delayed so as to defer the suspect's right to legal advice – the police are required to stop the questioning and to resume it only at the police station. On arrival at the police station the detainee must be advised about his right to free legal advice, including a right to speak to a solicitor on the telephone, and he must be asked if he wishes to do so. Once the interview begins he must again be reminded of his right to free legal advice. So much for the position obtaining under English law.

80 Somewhat to my surprise, my own brief judgment in Cadder is sought to be prayed in aid in support of the respondents' contention on these references that the principle against self-incrimination requires a suspect to be given access to legal advice before he is first questioned whatever may be the circumstances of that questioning providing only that article 6(1) is engaged (as indeed it was held to be engaged even in the situation that arose in Zaichenko v Russia (application no 39660/02) (unreported) (judgment given 18 February 2010) – see paras 41-44 of Lord Hope's judgment). With the best will in the world, however, I cannot recognise my judgment in Cadder as offering the least support for any such contention. On the contrary, the whole context of that judgment was interrogation in a police station and in the last sentence I was endeavouring to explain the principal considerations which seem to me to underlie the principle against self-incrimination, namely the importance of guarding against both inadequate police investigation and the exploitation of vulnerable suspects. Strasbourg's evident core concern in Salduz (see in particular para 53 of the Court's judgment) is that suspects should be protected against "abusive

coercion" and that miscarriages of justice should be prevented. Quintessentially such risks arise in the very situation under consideration in Salduz : the interrogation of a terrorist suspect in police custody. Small wonder that the court (at para 53) saw its decision as "in line with the generally recognised international human rights standards", standards which may be seen from the instruments referred to in the footnotes to relate specifically to rights of access to a lawyer during, rather than before, suspects are taken into police custody.

81 Another decision relied upon by the respondents is that of the Supreme Court of Canada in R v Grant [2009] 2 SCR 353 and true it is that the court there, having given a wide meaning to the concept of detention, concluded on the particular facts of that case (which involved the kerbside questioning of a suspect leading to his being searched and found to be carrying a loaded firearm) that the police had breached section 10(b) of the Canadian Charter of Rights and Freedoms by failing before questioning the suspect to advise him of his right to speak to a lawyer. Section 10(b) provides:

> "Everyone has the right on arrest or detention ... (b) to retain and instruct counsel without delay and to be informed of that right ... "

Importantly, however, the Supreme Court concluded that, the breach of section 10(b) notwithstanding, the trial judge had been entitled pursuant to section 24(2) of the Charter to admit the incriminating evidence and in the result upheld the conviction. Section 24(2) provides:

> "Where ... a court concludes that evidence was obtained in a manner that infringed or denied any rights or freedoms guaranteed by this Charter, the evidence shall be excluded if it is established that, having regard to all the circumstances, the admission of it in the proceedings would bring the administration of justice into disrepute."

For present purposes, two paragraphs only from the head note to the court's immensely long judgments must suffice:

> "When faced with an application for exclusion under section 24(2), a court must assess and balance the effect of admitting the evidence on society's confidence in the justice system having regard to: (1) the seriousness of the *Charter* -infringing state conduct, (2) the impact of the breach on the *Charter*- protected interests of the accused, and (3) society's interest in the adjudication of the case on its merits. At the first stage, the court considers the nature of the police conduct that infringed the *Charter* and led to the discovery of the evidence. The more severe or deliberate the state conduct that led to the *Charter* violation, the greater the need for the courts to dissociate themselves from that conduct, by excluding evidence linked to that conduct, in order to preserve public confidence in and ensure state adherence to the rule of law. The second stage of the inquiry calls for an evaluation of the extent to which the breach actually undermined the interests protected by the infringed right. The more serious the incursion on these interests, the greater the risk that admission of the evidence would bring the administration of justice into disrepute. At the third stage, a court asks whether the truth-seeking function of the criminal trial process would be better served by admission of the evidence or by its exclusion. Factors such as the reliability of the evidence and its importance to the Crown's case should be considered at this stage. The weighing process and the balancing of these concerns is a matter for the trial judge in each case. Where the

trial judge has considered the proper factors, appellate courts should accord considerable deference to his or her ultimate determination.

Here, the gun was discovered as a result of the accused's statements taken in breach of the *Charter* . When the three-stage inquiry is applied to the facts of this case, a balancing of the factors favours the admission of the derivative evidence. The *Charter* -infringing police conduct was neither deliberate nor egregious and there was no suggestion that the accused was the target of racial profiling or other discriminatory police practices. The officers went too far in detaining the accused and asking him questions, but the point at which an encounter becomes a detention is not always clear and the officers' mistake in this case was an understandable one. Although the impact of the *Charter* breach on the accused's protected interests was significant, it was not at the most serious end of the scale. Finally, the gun was highly reliable evidence and was essential to a determination on the merits. The balancing mandated by section 24(2) is qualitative in nature and therefore not capable of mathematical precision. However, when all these concerns are weighed, the courts below did not err in concluding that the admission of the gun into evidence would not, on balance, bring the administration of justice into disrepute. The significant impact of the breach on the accused's *Charter* -protected rights weighs strongly in favour of excluding the gun, while the public interest in the adjudication of the case on its merits weighs strongly in favour of its admission. However, the police officers were operating in circumstances of considerable legal uncertainty, and this tips the balance in favour of admission."

In short, the position in Canada, just as in England and Wales, is that no absolute rule applies to exclude incriminating evidence obtained in breach of a constitutional right to legal advice – although it may be supposed that in flagrant cases equivalent to those where the Cadder rule itself would apply directly (where a suspect in police custody is denied access to a lawyer during interrogation) the Canadian courts would invariably strike the section 24(2) balance in the accused's favour.

82 It follows from all this that I share Lord Hope's view that the court in Salduz ought not to be understood to be laying down an absolute rule of exclusion with regard to admissions made without the opportunity to take legal advice irrespective of whether or not the suspect was at the time actually in police custody. The contention that Salduz requires the Cadder rule to be extended in this way to my mind founders on a proper understanding both of what the Strasbourg Court was there saying in the particular factual context of that case, and of the recognised international human rights standards underlying that decision. It also seems to me inconsistent both with the terms of Judge Bratza's concurring opinion in that case (implicit in which was a recognition that under the majority judgment the very earliest time at which a suspect could be found entitled to legal advice is when "he is taken into police custody or pre-trial detention") and with Strasbourg's post- Salduz jurisprudence (helpfully analysed by Lord Hope in great detail), most notably the judgment in Zaichenko v Russia itself.

83 Also like Lord Hope (see paras 50-53 above) I find some assistance here in the decision of the Supreme Court of the United States in Miranda v Arizona 384 US 436 (1966) . As Lord Hope observes (at para 53), the significance of Miranda is that it adopts a custodial approach to the question as to when access to a lawyer is required, the fundamental reason being that it is at that point that "the circumstances in which [the suspect's] interrogation takes place are inherently intimidating", "because [of] the compelling atmosphere inherent in the process of in-custody interrogation". As, however, Lord Hope also observes: "It was noted that an interpretation of the requirement that the right to legal advice arose at an earlier stage would hamper the traditional function of the police in

investigating crime".

84 I have already indicated (at para 80 above) my own understanding of the central considerations underlying the principle against self-incrimination: the importance of guarding against the exploitation of vulnerable suspects and also against inadequate police investigation. In the intimidating circumstances of custodial interrogation there are undoubtedly some suspects who confess to crimes of which in truth they are innocent. And undoubtedly too, once a suspect has confessed, the police are likely to become less inclined to pursue other useful avenues of investigation that may identify the actual offender. Thus it is that miscarriages of justice can occur. As Miranda suggests, however, the introduction of a right to legal advice (and what, of course, is being contended for here is an *absolute* right to *free* legal advice) at some pre-custodial stage, so far from encouraging proper police investigation into crime, would in fact tend to inhibit it.

85 It is, in short, one thing to require of the police that they caution a suspect before questioning him, quite another to require that he be provided with legal assistance as a precondition of any self-incriminating answers later becoming admissible in evidence against him. This is the critical distinction which Zaichenko v Russia so clearly illustrates. The Court there considered quite separately the applicant's article 6 complaints as to (i) legal assistance and (ii) the privilege against self-incrimination and the right to remain silent and in the event it found no violation of article 6 (3) (c) in respect of the former but a violation of article 6(1) in respect of the latter (the applicant's self-incriminatory answers to the police's roadside questioning having been elicited without his first being cautioned).

86 Like Lord Hope, I too would in the present context give full weight to what has come to be known as the Ullah principle – see para 20 of Lord Bingham's judgment in *R (Ullah) v Special Adjudicator [2004] 2 AC 323* . It would seem to me quite wrong for this court now to interpret article 6 of the Convention as laying down an absolute exclusory rule of evidence that goes any wider than Strasbourg has already clearly decided to be the case. And whatever else one may say about the Strasbourg jurisprudence, it can hardly be regarded as deciding the present issue clearly in the respondent's favour.

87 In the result I agree with the answers proposed by Lord Hope to the questions posed in the respective references. Essentially it comes to this. In the cases of Ambrose and M there is no absolute rule such as that laid down in Cadder which precludes reliance on the evidence in question. Rather it must be for the trial court to decide – just as an English court must decide under section 78(1) of PACE – whether the evidence ought fairly to be admitted or excluded. In G's case, however, because he was, as Lord Hope puts it (para 71), "in effect, in police custody" from the time when, following his arrest, he was handcuffed and detained, the Cadder rule should be held to apply to his questioning during the subsequent search. That said, I also agree with Lord Hope (para 72) that the Cadder rule would by no means routinely apply to exclude answers to questions put to a suspect without his having been given the opportunity to seek legal advice during a search. That too would be to go further than Strasbourg has yet gone.

Lord Dyson

88 I agree with the answers proposed by Lord Hope for the reasons that he gives as well as those given by Lord Brown. In Salduz v Turkey (2008) 49 EHRR 421 (applied by this court in *Cadder v HM Advocate [2010] UKSC 43, [2010] SLT 1125*), the ECtHR decided that article 6 of the European Convention on Human Rights ("the Convention") requires that, as a rule, access to a lawyer should be provided to a suspect when he is interrogated by the police while he is in detention; and that

there will usually be a violation of article 6 if incriminating statements made by a suspect during a police interrogation in such circumstances are relied on to secure a conviction. I shall refer to this as "the Salduz principle". The central question that arises in the present proceedings is whether the Salduz principle also applies to interrogations of a suspect that are conducted before he is placed in detention. Lord Hope says that there is no sufficiently clear indication in the Strasbourg jurisprudence of how the ECtHR would resolve this question and that we should not apply the Salduz principle to situations to which the ECtHR has not clearly stated that it applies.

89 Lord Kerr says that (i) even if the ECtHR has not clearly decided whether article 6 requires the Salduz principle to be applied to statements obtained from a suspect when he is not in detention, that is not a sufficient reason for this court to refuse to do so (paras 126 to 130); (ii) to draw a distinction between evidence obtained before and after a suspect is detained is "not only arbitrary, it is illogical" (para 136); and (iii) in any event, an analysis of the Strasbourg jurisprudence clearly shows that it draws no distinction between the two cases (paras 146 and 148).

90 It is convenient to start with explaining why I cannot accept Lord Kerr's third proposition, since, if it is clear from the Strasbourg jurisprudence that the Salduz principle applies whether or not the evidence is obtained from the suspect while he is in detention, then the premise on which the judgments of Lord Hope and Lord Brown are based falls away.

91 As Lord Hope explains at paras 26 to 33, the judgment in Salduz was concerned with whether there was or should be a rule that there was a right of access to a lawyer where the person being interrogated was in police custody. On its facts, it was a case about a suspect who had been interrogated by the police while he was in custody. The references in para 53 to "generally recognised international human rights standards" (which are concerned with the position of suspects who are in custody) and to "abusive coercion" strongly suggest that the court was only considering the position of suspects who are in custody. Paras 37 to 44 contains a discussion of the international law materials relating to a suspect's right of access to a lawyer during police custody. Unsurprisingly, the judgment says nothing explicitly about the position of a suspect who is *not* in custody. I agree with Lord Hope that the concurring opinions of Judge Bratza and Judge Zagrebelski lend further support to the conclusion that the court was only considering the position of suspects who are in custody.

92 Lord Kerr says that Salduz is authority for the broad proposition that a suspect is entitled to have access to a lawyer at the "investigation stage" (because he is in a particularly vulnerable position at that stage of the proceedings) and that there is nothing in the reasoning of the decision to indicate that the investigation stage only begins after the suspect has been detained. But the judgment should be read as a whole. In my view, the better interpretation is that, for the reasons I have already given, the court was only addressing the issue of police interrogation of a suspect in custody. It was making the point that for such a suspect the "investigation stage" takes place while he is in custody, where there is the risk of "abusive coercion" and he is in a "particularly vulnerable position" of making self- incriminating statements.

93 Further, the decision of the First Section in Zaichenko provides clear support for the view that the Strasbourg jurisprudence draws a distinction between the fruits of police questioning of a suspect who is in detention and one who is not. I agree with the reasons given by Lord Hope at para 46 for rejecting the arguments that Zaichenko was wrongly decided. I note that Lord Kerr does not suggest that it was wrongly decided. He analyses the reasoning of Zaichenko closely at paras 24 to 40. He says that the basis for the court's decision that there had not been a violation of article 6(3)(c) is the cumulative effect of a number of factors (which he identifies at para 33) and that none of them,

if taken in isolation, would have been sufficient to support the court's conclusion.

94 I cannot accept this interpretation of the court's reasoning in Zaichenko . It is true that at para 46, the court "notes at the outset" that the applicant waived his right to a lawyer. But the court went on to give other reasons for its decision at para 47. It said that the present case "is different from previous cases concerning the right to legal assistance in pre-trial proceedings (see Salduz ....) *because the applicant was not formally arrested or interrogated in police custody. He was stopped for a roadcheck* ... " (emphasis added). The court was, therefore, fully alive to the difference between police questioning of a suspect at the roadside and police questioning of a suspect who has been taken into custody. It was in the context of this difference that the court made express reference to Salduz . Plainly and explicitly it did not apply the Salduz principle and it gave its reasons for not doing so. The principal reason was given at para 48 which Lord Kerr has set out at para 160 below. I agree with Lord Kerr that this paragraph is not easy to follow. But what is clear is that the court considered that, whatever restrictions faced the suspect when he was being questioned at the roadside, they did not amount to a "significant curtailment of [his] freedom of action" sufficient to entitle him to legal assistance at this early stage of the proceedings. This is an essential part of the court's reasoning. It is clear that the court considered that the fact that the questioning took place before the suspect had been formally arrested or detained was critical.

95 I conclude, therefore, that the Strasbourg jurisprudence does not clearly show that the Salduz principle applies to statements made by a suspect who is not in detention when he is questioned by the police. The only case to which our attention has been drawn in which the Salduz principle has been considered in relation to statements made by a suspect who is not in detention is Zaichenko . For the reasons that I have given, Zaichenko strongly suggests that the Salduz principle does not apply in that situation.

96 I turn to Lord Kerr's second proposition. He says that the "animation of the right under article 6(1) cannot be determined in terms of geography" (para 133) and that it is arbitrary and illogical to hold that a suspect has no right to access to a lawyer if he is questioned by the police until he is taken into custody: the suspect is as likely to make incriminating statements outside as inside a police station and is therefore in equal need of the protection of article 6(3)(c) in both situations.

97 The essential question is at what stage of the proceedings access to a lawyer should be provided in order to ensure that the right to a fair trial is sufficiently "practical and effective" for the purposes of article 6(1) . What fairness requires is, to some extent, a matter of judgment. I accept that opinions may reasonably differ on whether the line for providing a suspect with access to a lawyer should be drawn at the point when the person being questioned becomes a suspect or at the point when he is taken into custody. I do not doubt that being interrogated by the police anywhere can be an intimidating experience and that a person may make incriminating statements to the police wherever the interrogation takes place. This can occur in a situation of what the majority of the Canadian Supreme Court described as "psychological detention" in R v Grant 2009 SCC 32; [2009] 2 SCR 353 , at para 30.

98 On the other hand, the arresting of a suspect and placing him in custody is a highly significant step in a criminal investigation. The suspect cannot now simply walk away from the interrogator. For most suspects, being questioned after arrest and detention is more intimidating than being questioned in their home or at the roadside. The weight of the power of the police is more keenly felt inside than outside the police station. As was said in Miranda v Arizona 384 US 436 (1966) at p 478, there is a "compelling atmosphere inherent in the process of in-custody interrogation". No doubt, it is also present to the mind of the suspect that the possibility of "abusive coercion" is

greater inside than outside the police station. Whether the difference between interrogation inside and outside the police station is sufficient to justify according the suspect access to a lawyer in one situation but not the other is a matter on which opinions may differ. But I do not see how it can be said to be arbitrary or illogical to recognise that there is a material difference between the two situations. I can agree with Lord Kerr (para 167) that one should be careful about making assumptions about the Miranda experience or believing that it can be readily transplanted into European jurisprudence. But this counsel of caution is hardly consistent with the assertion that the adoption of the distinction made in Miranda is arbitrary and illogical.

99 So what should this court do in these circumstances? This brings me to Lord Kerr's first proposition. As I have said, to the extent that the ECtHR has spoken on the question at all, Zaichenko contains a clear statement that the Salduz principle does not apply to statements made by a suspect during police questioning while the suspect (i) is not in custody or (ii) is not deprived of his freedom of action in any significant way. I derive (ii) from para 48. That paragraph echoes the language of p 477 of Miranda : "The principles announced today deal with the protection which must be given to the privilege against self-incrimination when the individual is first subjected to police interrogation while in custody at the station *or otherwise deprived of his freedom of action in any significant way"* (emphasis added).

100 I accept, however, that there is no "clear and constant" Strasbourg jurisprudence on the point. So the obligation in section 2 of the Human Rights Act 1998 to take account of judgments of the ECtHR does not compel a decision one way or the other: see *R (Alconbury Developments Ltd) v Secretary of State for the Environment, Transport and the Regions [2001] UKHL 23; [2003] 2 AC 295* para 26. Nor is this a case where, although Strasbourg has not expressly decided the point, it can nevertheless clearly be deduced or inferred from decisions of the ECtHR how the court will decide the point if and when it falls to be determined.

101 Lord Kerr has referred to para 20 of Lord Bingham's speech in *R (Ullah) v Special Adjudicator [2004] 2 AC 323* and the dictum that "the duty of national courts is to keep pace with the Strasbourg jurisprudence as it evolves over time: no more, but certainly no less". Lord Brown extended this in *R (Al-Skeini and others) v Secretary of State for Defence [2008] 1 AC 153* at para 106 by saying that Lord Bingham's dictum could as well have ended: "no less, but certainly no more". At para 107 Lord Brown said that the Convention should not be construed as "reaching any further than the existing Strasbourg jurisprudence clearly shows it to reach". Lady Hale said much the same at para 90. This approach was explicitly endorsed in *R (Smith) v Oxfordshire Assistant Deputy Coroner [2010] UKSC 29; [2011] 1 AC 1* by Lord Phillips at para 60, Lord Hope at para 93 and Lord Brown at para 147.

102 But these statements are not entirely apposite where Strasbourg has spoken on an issue, but there is no clear and constant line of authority. That is the case here because there is only one case in which the ECtHR has expressly decided that the Salduz principle does not apply in relation to the interrogation of a suspect who is not in detention (Zaichenko). Moreover, despite the view I have expressed earlier in this judgment, I accept that it is *arguable* that the language of para 55 of the judgment in Salduz can and should be interpreted as holding that the Salduz principle does apply in such circumstances.

103 So what should a domestic court do in this situation? Recognising that it is our duty to give effect to the domestically enacted Convention rights, I think that the correct approach was suggested at para 199 of the judgment of Lord Mance in Smith :

> "However, it is our duty to give effect to the domestically enacted Convention rights, while taking account of Strasbourg jurisprudence, although caution is particularly apposite where Strasbourg has decided a case directly in point or, perhaps, where there are mixed messages in the existing Strasbourg case law and, as a result, a real judicial choice to be made there about the scope or application of the Convention."

104 The position here is that Strasbourg has decided a case which is directly in point (Zaichenko). The most that can be said on behalf of the accused in these three cases is that by reason of (i) the broad terms in which para 55 of the judgment in Salduz is expressed and (ii) the decision in Zaichenko , it is *arguable* that there are mixed messages in the Strasbourg case law as to whether the Salduz principle applies to evidence obtained from a suspect who has been interrogated without access to a lawyer outside the police station. To use the words of Lord Mance, it follows that there is a real judicial choice to be made. Whether fairness requires the Salduz principle to apply in both situations raises questions of policy and judgment on which opinions may reasonably differ and as to which there is no inevitable answer. To demonstrate this, it is sufficient to contrast the approach of the US Supreme Court in Miranda with that of the Canadian Supreme Court in Grant .

105 In these circumstances, I consider that caution is particularly apposite and that the domestic court should remind itself that there exists a supranational court whose purpose is to give authoritative and Europe-wide rulings on the Convention. If it were clear, whether from a consideration of the Strasbourg jurisprudence or otherwise, that the Salduz principle applies to statements made by suspects who are not detained or otherwise deprived of their freedom of action in any significant way, then it would be our duty so to hold. But for the reasons that I have given, it is not clear that this is the case. In these circumstances, we should hold that the Salduz principle is confined to statements made by suspects who are detained or otherwise deprived of their freedom in any significant way.

Lord Matthew Clarke

106 I refer to Lord Hope's judgment for his detailed description of the references and the background to them which I gratefully adopt.

107 In *R v Samuel [1988] QB 615* at p 630 Hodgson J, delivering the judgment of the Court of Appeal, described the right of a suspect to consult and instruct a lawyer "as one of the most important and fundamental rights of a citizen". His Lordship did so in the context of section 58(1) of the Police and Criminal Evidence Act 1984 ("PACE"). The present references have raised the question as to when, and in what circumstances, such a right emerges as part of Scots law by virtue of the application of Article 6 ECHR . The Grand Chamber of the European Court of Human Rights in Salduz v Turkey (2008) 49 EHRR 421 held that "the rights of the defence will in principle be irretrievably prejudiced when incriminating statements made during police interrogation without access to a lawyer are used for a conviction" (para 55). In *Cadder v HM Advocate 2010 SLT 1125* this court applied that decision to the existing law of Scotland and, in particular, to the operation of the powers of detention of persons then contained in sections 14 and 15 of the Criminal Procedure (Scotland) Act 1995 . As a result of the court's decision in Cadder the Scottish Parliament enacted certain provisions in the Criminal Procedure (Legal Assistance, Detention and Appeals) (Scotland) Act 2010 . In particular a new section 15A to the 1995 Act was enacted which is in the following terms:

"15A Right of suspects to have access to a solicitor

(1) This section applies to a person ("the suspect") who –

(a) is detained under section 14 of this Act,

(b) attends voluntarily at a police station or other premises or place for the purpose of being questioned by a constable on suspicion of having committed an offence, or

(c) is –

(i) arrested (but not charged) in connection with an offence, and

(ii) being detained at a police station or other premises or place for the purpose of being questioned by a constable in connection with the offence.

(2) The suspect has the right to have intimation sent to a solicitor of any or all of the following –

(a) the fact of the suspect's –

(i) detention

(ii) attendance at the police station or other premises or place, or

(iii) arrest (as the case may be),

(b) the police station or other premises or place where the suspect is being detained or is attending, and

(c) that the solicitor's professional assistance is required by the suspect.

(3) The suspect also has the right to have a private consultation with a solicitor –

(a) before any questioning of the suspect by a constable begins, and

(b) at any other time during such questioning.

(4) Subsection (3) is subject to subsections (8) and (9).

(5) In subsection (3), "consultation" means consultation by such means as may be appropriate in the circumstances, and includes, for example, consultation by means of telephone.

(6) The suspect must be informed of the rights under subsections (2) and (3) –

(a) on arrival at the police station or other premises or place, and

(b) in the case where the suspect is detained as mentioned in subsection (1)(a), or arrested as mentioned in subsection (1)(c), after such arrival on detention or arrest, (whether or not, in either case, the suspect has previously been informed of the rights by virtue of this subsection).

(7) Where the suspect wishes to exercise a right to have intimation sent under subsection (2), the intimation must be sent by a constable –

(a) without delay, or

(b) if some delay is necessary in the interest of the investigation or the prevention of crime or the apprehension of offenders, with no more delay than is necessary.

(8) In exceptional circumstances, a constable may delay the suspect's exercise of the right under subsection (3) so far as it is necessary in the interest of the investigation or the prevention of crime or the apprehension of offenders that the questioning of the suspect by a constable begins or continues without the suspect having had a private consultation with a solicitor.

(9) Subsection (3) does not apply in relation to the questioning of the suspect by a constable for the purpose of obtaining the information mentioned in section 14(10) of this Act."

108 Prior to that enactment, and the decision in Cadder , the position was that the courts in Scotland had never recognised a suspect's right to have access to a solicitor before or during questioning of him by the police. The position was, as stated in pre- Cadder versions of *Renton and Brown's Criminal Procedure* , 6th edition at para 24-39 as follows:

"...any statement by a suspect in answer to police questions will be inadmissible in evidence at the subsequent trial of that suspect unless it has been obtained fairly, and that all the circumstances of the questioning (apart from whether or not a caution was given to a person accused of a crime) are relevant in so far, and only in so far, as they indicate the presence or absence of unfairness...."

That passage continued later:

"The current situation is that the fact that the accused was at the same time under suspicion or even under arrest is not in itself crucial, but is merely a circumstance like any other to be taken into account in assessing the fairness of the police, in the same way as the fact that he....did not have the services of a solicitor"

Reference was made to, *inter alia* , *Law v McNicol 1965 JC 32* , *HM Advocate v Whitelaw 1980 SLT (Notes) 25* and *HM Advocate v Anderson 1980 SLT (Notes) 104* .

109 As was also noted in Renton and Brown at para 24-39 "There are no legal rules in Scotland

governing the questioning of a suspect such as the Judges' Rules and Administrative Directions issued by the Home Office...". Nor were there, until the 2010 Act, any provisions similar to those provided in England and Wales under PACE . In *HM Advocate v Cunningham 1939 JC 61* Lord Moncrieff at page 65 noted that after the accused "had been charged and had replied, he subsequently received an incidental intimation that he might, if he so desired, require and obtain the assistance of a law agent." His Lordship continued:

> "I think it would have been desirable that that intimation should have been made formally and should have been made at the very outset before the making of any charge, but I am satisfied that, in not making it, the police officers followed their usual practice and acted with an intention of complete fairness. Nonetheless, any such practice, in my opinion, ought to be reformed"

The later full bench decision in *Chalmers v HM Advocate 1954 JC 66* gave some support for the view that all answers given by a suspect to a police officer were inadmissible and nothing was said about a suspect's right to have a solicitor present when he was being questioned. Although that decision was never over- ruled its influence was considered to have been virtually removed by subsequent case law, concerned, it seems, with rising crime rates, which made the criterion of admissibility, fairness — see Lord Advocate's Reference (No. 1 of 1983), 1984 JC 52. The decision in the case of Cadder , in applying the law as set out in Salduz , can be seen as truly innovative as regards what had been understood to be the domestic law of Scotland up until that time.

110 The present references raise, in the first place, the question as to how far the innovation goes having regard to the relevant Strasbourg jurisprudence. The focus of the hearing before this court was concerned, to a significant extent, with how the suspect's right to access to a lawyer has been defined to date by the Strasbourg court, either expressly, or by necessary implication, whatever other arguments there may be in principle, or policy, for defining it otherwise.

111 The defence in the cases before us sought to take from the language of the ECtHR, in discussing the right in the decided cases on the topic, a broad approach to its nature and its extent. They had some basis for doing so having regard to how the court expressed itself in Salduz at para 55 where the Grand Chamber was to the effect " Article 6(1) requires that, as a rule, access to a lawyer should be provided as from the first interrogation of a suspect by the police". At para 52 of the judgment one finds the following "... Article 6 will normally require that the accused be allowed to benefit from the assistance of a lawyer already at the initial stages of police interrogation." That language, it was submitted, focused on the status of the person as a suspect when determining his rights rather than his position being that of a person in custody. Similar language can be seen in previous judgments of the Court. For example in Panovits v Cyprus (Application No 4268/04) (unreported) given 11 December 2008 the Court, at para 66, observed that "...the concept of fairness enshrined in Article 6 requires that the accused be given the benefit of the assistance of a lawyer already at the initial stages of police interrogation" — see also Borotyuk v Ukraine (Application No 33579/04) (unreported) given 16 December 2010 at para 79. It should, however, be noted that Panovits was a case which concerned the questioning of a child when the child had gone to the police station with his father, as requested by the police, and was thereafter arrested. Borotyuk was also a custody case.

112 In Panovits , at para 65, the court, having said that it was reiterating that the right to silence and the right not to incriminate oneself were generally recognised international standards, which lay

at the heart of the notion of a fair procedure under Article 6 , went on to say:

> "Their rationale lies, *inter alia* , in the protection of the accused against improper compulsion by the authorities, thereby contributing to the avoidance of miscarriages of justice and to the fulfilment of the aims of Article 6".

In Salduz similar remarks were made by the court at paragraph 53:

> "These principles, outlined at para 52 above, are also in line with the generally recognised international human rights standards which are at the core of the concept of a fair trial and whose rationale relates in particular to the protection of the accused against abusive coercion on the part of the authorities. They also contribute to the prevention of miscarriages of justice and the fulfilment of the aims of Article 6, notably equality of arms between the investigating or prosecuting authorities and the accused."

Those remarks would tend, in my judgement, to support the contention that the focus of the court's concern in Salduz , and other cases, has been in relation to those situations where methods of coercion or oppression might be more readily, and effectively, employed upon a suspect person, namely when his liberty has been curtailed by the authority detaining him.

113 Significant support for that being the focus of such a rule is to be found in the jurisprudence of the United States, and particularly the seminal decision of the US Supreme Court in Miranda v State of Arizona 384 US 436 (1966) , where at p 467, para 23 the court said:

> "Today, then, there can be no doubt that the Fifth Amendment privilege is available outside of criminal court proceedings and serves to protect persons in all settings in which their freedom of action is curtailed in any significant way from being compelled to incriminate themselves. We have concluded that without proper safeguards the process of in-custody interrogation of persons suspected or accused of crime contains inherently compelling pressures which work to undermine the individual's will to resist and to compel him to speak where he would not otherwise do so freely. In order to combat these pressures and to permit a full opportunity to exercise the privilege against self-incrimination, the accused must be adequately and effectively apprised of his rights and the exercise of those rights must be fully honoured."

The court then at pp 478–479, paras 66, 67 defined the right and its extent, together with its rationale in the following way:

> "To summarise, we hold that when an individual is taken into custody or otherwise deprived of his freedom by the authorities in any significant way and is subjected to questioning the privilege against self-incrimination is jeopardised. Procedural safeguards must be employed to protect the privilege and unless other fully effective means are adopted to notify the person of his right of silence and to assure that the exercise of the right will be scrupulously honoured, the following measures are required. He must be warned prior to any questioning that he has the right to remain silent, that anything he says can be used against him in a court of law, that he has the right to the presence of an attorney, and that if he cannot afford an attorney one will be appointed for him prior to any questioning if he so desires.

> Opportunity to exercise these rights must be afforded to him throughout the interrogation. After such warnings have been given, and such opportunity afforded him, the individual may knowingly and intelligently waive these rights and agree to answer questions or make a statement. But unless and until such warnings and waiver are demonstrated by the prosecution at trial, no evidence obtained as a result of interrogation can be used against him."

The Miranda decision has informed international legal discussion of the right of the suspect to have access to a lawyer, since the decision was given.

114 Another factor pointing towards the more restrictive extent of the right in question is that the Strasbourg court, in defining it, has done so by referring to the context of what are described as "pre-trial proceedings", see para 50 of the Salduz judgment. The person taken into detention who, in due course, may face being tried for a crime, might well be said to be involved, at the stage of any questioning, while detained, to be "in pre-trial proceedings" for the purposes of Article 6 . That that is the context in which the Strasbourg court has been considering the right in question under Article 6 is, I think, supported by what the court had to say recently in Affaire Brusco c France (Requete No 1466/07) (unreported) given 14 October 2010 , at para 45:

> "La Cour rappelle également que la personne placée en garde à vue a le droit d'être assistée d'un avocat dès le début de cette mesure ainsi que pendant les interrogatoires, et ce *a fortiori* lorsqu'elle n'a pas été informée par les autorités de son droit de se taire."

That passage also, to my mind, points to the phrases in Salduz "early access to a lawyer" and "from the first interrogation of a suspect by the police" as being references to the earliest point in time after the person is taken into custody with his liberty having been restricted by the investigating authorities. The reference by the Strasbourg court to equality of arms, at para 53 of its judgment in Salduz , also, in my opinion, supports that approach. Once a person's liberty is curtailed by the authorities, the balance of power between him and the representatives of the state shifts significantly and, it might be said, requires to be redressed by his having access to a lawyer.

115 All of these considerations, taken together, with what Lord Hope has to say in his analysis of the Salduz decision, and other Strasbourg jurisprudence, ultimately persuades me that the proper understanding of those decisions is that the right to have access to a lawyer emerges at the point when the suspect is deprived of his liberty of movement, to any material extent, by the investigating authorities and is to be questioned by them. It follows that I am in agreement with Lord Hope that the Strasbourg jurisprudence, to date, does not support the defence contention in these references that the ECtHR has gone as far as to say that the right emerges as soon as a suspect is to be questioned by the police in whatever circumstances.

116 As to whether this court should go further than the ECtHR seems to have gone so far, certain important considerations lead me to the conclusion that it should not. The first is the difficulty that can arise in relation to defining precisely at what point in time someone becomes a suspect, as opposed to being a witness or a detained person. The second is that the broader version of the right, contended for by the defence in these cases, could have serious implications for the proper investigation of crime by the authorities. If the police are to be required to ensure that a person who they wish to question about the commission of a crime (in a situation where the circumstances point to the person being a possible suspect) should have access to a lawyer, if he so wishes, then such a

requirement could hamper proper and effective investigations in situations which are often dynamic, fast moving and confused. The unfortunately regular street brawls in city and town centres, or disturbances in crowded places like night clubs, which, on occasions, result in homicide, are simply examples of situations which highlight the problems that might be involved.

117 In relation to the first of these considerations I note that the limits of the "Miranda" rights have been, very recently, (16 June 2011) re-visited by the US Supreme Court in JDB v North Carolina 564 US 2011 . That case involved the questioning of a 13 year old. The majority of the court held that the child's age was a relevant factor to be taken into account in addressing the question as to whether he had been in custody at the time of questioning. The majority did not depart from the test being whether or not the person was in custody at the relevant time and at page 18 of the opinion of the court they directed the state court to address that question, taking account of all of the relevant circumstances of the interrogation, including the child's age at the time. The disagreement between the majority and minority was with regard to the relevance of the child's age in judging of the question as to whether or not he was in custody at the relevant time.

118 In giving the dissenting judgment, with which the rest of the minority concurred, Alito J at pp 1–2 said "Miranda's custody requirement is based on the proposition that the risk of unconstitutional coercion is heightened when a suspect is placed under formal arrest or is subjected to some functionally equivalent limitation on freedom of movement". Alito J, then, at page 8 of his judgment, under reference to previous authorities remarked that "a core virtue" of the Miranda rule has been the clarity and precision of its guidance to "police and courts". Again at page 13 he remarked that "a core virtue" of Miranda was the "ease and clarity of its application". I am persuaded that the value of clarity and certainty in this area are relevant factors in deciding the extent of the right.

119 As to the second consideration, I recall what was said by Lord Wheatley in *Miln v Cullen 1967 JC 21* at pp 29–30:

> "While the law of Scotland has always very properly regarded fairness to an accused person as being an integral part of the administration of justice, fairness is not a unilateral consideration. Fairness to the public is also a legitimate consideration, and in so far as police officers in the exercise of their duties are prosecuting and protecting the public interest, it is the function of the Court to seek to provide a proper balance to secure that the rights of individuals are properly preserved, while not hamstringing the police in their investigation of crime with a series of academic vetoes which ignore the realities and practicalities of the situation and discount completely the public interest."

That dictum is, of course, of its time and pre-dates the experience of examples of convictions obtained on false confessions which have caused justifiable public concern. Nevertheless it is difficult, even now, to contradict the substance of what his Lordship said. As was said by Binnie J in the Canadian case of R v Grant 2009 SCC 32 [2009] 2 SSC 353 at para 180 "It is not controversial that in the early stages of a criminal investigation the police must be afforded some flexibility before the lawyers get involved. The police do have the right to ask questions and they need to seek the co-operation of members of the public, including those who turn out to be miscreants."

120 It seems to me that the balancing of legitimate interests referred to by Lord Wheatley is a further justification for restricting the right to have access to a lawyer to situations in which the suspect is in custody. The law in formulating a right designed to protect and support a legitimate interest, such as the right to silence, should seek to avoid defining that right in such a way, as to

damage, or unduly inhibit another legitimate interest such as the efficient investigation of crime. The task, which may be a delicate and difficult one, is to produce a result which strikes a rational balance between the two interests. I consider the balance struck in the US "Miranda" jurisprudence achieves that end.

121 For the foregoing reasons I agree entirely with Lord Hope as to the way in which references in the cases of Ambrose and M should be answered. In relation to these two cases the admissibility or otherwise of the replies to questioning will fall to be determined by the Appeal Court and the trial judge respectively in accordance with the rules as to fairness. In the passage in his judgment in Miln v Cullen , cited above, Lord Wheatley continued:

> "Even at the stage of routine investigations, where much greater latitude is allowed, fairness is still the test, and that is always a question of circumstances."

122 As regards G's case I consider that the right to access to a lawyer, before questioning, arises not only when the suspect is taken into the physical surroundings of a police station. The focus should be on whether, at the commencement of the proposed questioning, the individual's liberty is significantly restricted by the police. The location where that occurs is not in itself conclusive. In relation to rights of this kind matters should be judged in accordance with what the substance of the position is rather than its form. It follows that I, therefore, also agree with Lord Hope in the way in which the reference in G's case should be answered.

123 I also agree with Lord Hope, for the reasons given by him, that the Cadder rule would not necessarily routinely apply to exclude answers to questions, put to a suspect, without his having been given the opportunity to seek legal advice, during a search. There is no justification in the Strasbourg jurisprudence, as I read it, for the right to be so interpreted.

124 By way of a footnote I would add this. Our attention was drawn by the defence, in support of their position, to a "Proposal for a Directive of the European Parliament and of the Council on the right of access to a lawyer in criminal proceedings and on the right to communicate upon arrest" recently published by the European Commission – Brussels, XXX COM (2011) 326/3. Article 3(1) of the draft of the proposed Directive, attached to that document is in the following terms:

> "1. Member States shall ensure that suspects and accused persons are granted access to a lawyer as soon as possible and in any event:
>
> (a) before the start of any questioning by the police or other law enforcement authorities;
>
> (b) upon carrying out any procedural or evidence-gathering act at which the person's presence is required or permitted as a right in accordance with national law, unless this would prejudice the acquisition of evidence;
>
> (c) from the outset of deprivation of liberty."

125 The proposed Article 3 appears to envisage three discrete situations where the right of access to a lawyer should arise. The authors of the proposal appear to believe that those draft provisions reflect the settled jurisprudence of the Strasbourg court — see para 13. It follows from what I have said above that their apparent understanding of the Strasbourg jurisprudence does not coincide with

my own.

Lord Kerr

Introduction

126 The well known aphorism of Lord Bingham in para 20 of *R (Ullah) v Special Adjudicator [2004] UKHL 26, [2004] 2 AC 323* that the "duty of national courts is to keep pace with the Strasbourg jurisprudence as it evolves over time: no more, but certainly no less" has been given a characteristically stylish twist by Lord Brown in *R (Al-Skeini and others) v Secretary of State for Defence [2007] UKHL 26; [2008] 1 AC 153* at para 106 where he said that the sentence "could as well have ended: 'no less, but certainly no more.'" In keeping with this theme, some judges in this country have evinced what might be described as an Ullah - type reticence. On the basis of this, it is not only considered wrong to attempt to anticipate developments at the supra national level of the Strasbourg court, but there is also the view that we should not go where Strasbourg has not yet gone. Thus, in the present case Lord Hope says that this court's task is to identify where the jurisprudence of the Strasbourg court clearly shows that it currently stands and that we should not expand the scope of the Convention right further than the current jurisprudence of that court justifies.

127 Lord Bingham's formulation of the principle expressed in para 20 of Ullah was prompted by his consideration of the effect of section 2 of the Human Rights Act 1998 by which the courts of this country are enjoined to take into account Strasbourg case law. Therefore, said Lord Bingham, although such case law was not strictly binding, where a clear and constant theme of jurisprudence could be detected, it should be followed because the Convention, being an international instrument, had as the authoritative source of its correct interpretation the Strasbourg court. A refusal to follow this would "dilute or weaken the effect of the Strasbourg case law".

128 I greatly doubt that Lord Bingham contemplated – much less intended – that his discussion of this issue should have the effect of acting as an inhibitor on courts of this country giving full effect to Convention rights unless they have been pronounced upon by Strasbourg. I believe that, in the absence of a declaration by the European Court of Human Rights as to the validity of a claim to a Convention right, it is not open to courts of this country to adopt an attitude of agnosticism and refrain from recognising such a right simply because Strasbourg has not spoken. There are three reasons for this, the first practical, the second a matter of principle and the third the requirement of statute.

129 It is to be expected, indeed it is to be hoped, that not all debates about the extent of Convention rights will be resolved by Strasbourg. As a matter of practical reality, it is inevitable that many claims to Convention rights will have to be determined by courts at every level in the United Kingdom without the benefit of unequivocal jurisprudence from ECtHR. Moreover, as a matter of elementary principle, it is the court's duty to address those issues when they arise, whether or not authoritative guidance from Strasbourg is available. The great advantage of the Human Rights Act is that it gives citizens of this country direct access to the rights which the Convention enshrines through their enforcement by the courts of this country. It is therefore the duty of this and every court not only to ascertain "where the jurisprudence of the Strasbourg court clearly shows that it currently stands" but to resolve the question of whether a claim to a Convention right is viable or not, even where the jurisprudence of the Strasbourg court does not disclose a clear current view. Finally, section 6 of the Human Rights Act leaves no alternative to courts when called upon to adjudicate on claims made by litigants to a Convention right. This section makes it unlawful for a

public authority, including a court, to act in a way which is incompatible with a Convention right. That statutory obligation, to be effective, must carry with it the requirement that the court determine if the Convention right has the effect claimed for, whether or not Strasbourg has pronounced upon it.

130 In this context, it would be particularly unsatisfactory, I believe, if, because of an Ullah -type reticence, we should feel constrained not to reach a decision on the arguments advanced by the respondents to these references just because those very arguments are likely to be ventilated on behalf of the applicant in ECtHR in Abdurahman v United Kingdom application no 40351/09 and we cannot say how Strasbourg will react to them. If the much vaunted dialogue between national courts and Strasbourg is to mean anything, we should surely not feel inhibited from saying what we believe Strasbourg ought to find in relation to those arguments. Better that than shelter behind the fact that Strasbourg has so far not spoken and use it as a pretext for refusing to give effect to a right that is otherwise undeniable. I consider that not only is it open to this court to address and deal with those arguments on their merits, it is our duty to do so.

The nature of the right under article 6(1) taken in conjunction with article 6(3)(c)

131 The true nature of the right under article 6(1) , taken in conjunction with article 6(3) (c) , can only be ascertained by reference to its underlying purpose. What is its purpose? The respondents argue that its purpose is that when a person becomes a suspect, because of the significant change in his status that this entails; because of the potential that then arises for him to incriminate himself or to deal with questions in a way that would create disadvantage for him on a subsequent trial; and because of the importance of these considerations in terms of his liability to conviction, the essential protection that professional advice can provide must be available to him.

132 The right, it is argued, should not be viewed solely as a measure for the protection of the individual's interests. It is in the interests of society as a whole that those whose guilt or innocence may be determined by reference to admissions that they have made in moments of vulnerability are sufficiently protected so as to allow confidence to be reposed in the reliability of those confessions. For reasons that I will develop, I consider that these arguments should prevail. If it has taught us nothing else, recent experience of miscarriage of justice cases has surely alerted us to the potentially decisive importance of evidence about suspects' reactions to police questioning, whether it is in what they have said or in what they have failed to say, and to the real risk that convictions based on admissions made without the benefit of legal advice may prove, in the final result, to be wholly unsafe. The role that a lawyer plays when the suspect is participating in what may be a pivotal moment in the process that ultimately determines his or her guilt is critical.

133 Thus understood, the animation of the right under article 6(1) cannot be determined in terms of geography. It does not matter, surely, whether someone is over the threshold of a police station door or just outside it when the critical questions are asked and answered. And it likewise does not matter whether, at the precise moment that a question is posed, the suspect can be said to be technically in the custody of the police or not. If that were so, the answer to a question which proved to be the sole basis for his conviction would be efficacious to secure that result if posed an instant after he was taken into custody but not so an instant before. That seems to me to be a situation too ludicrous to contemplate, much less countenance.

134 Two supremely relevant, so far as these appeals are concerned, themes run through the jurisprudence of Strasbourg in this area. The first is that, in assessing whether a trial is fair, regard must be had to the entirety of the proceedings including the questioning of the suspect before trial — see, for instance, *Imbrioscia v Switzerland (1993) 17 E.H.R.R. 441* , *Murray v United*

Kingdom(1996) 22 E.H.R.R. 29 ; Averill v United Kingdom (2000) 31 E.H.R.R. 839 ; Magee v United Kingdom (2000) 31 E.H.R.R. 822 ; and Brennan v United Kingdom (2001) 34 E.H.R.R. 507 . The second theme is that, although not absolute, the right of everyone charged with a criminal offence to be effectively defended by a lawyer, assigned officially if need be, is one of the fundamental features of a fair trial — *Poitrimol v France (1993) 18 E.H.R.R. 130* and Demebukov v Bulgaria (Application No 68020/01) (unreported) given 28 February 2008 at para 50.

135 Taken, as they must be, in combination, these features of a fair trial lead inexorably to the conclusion that where an aspect of the proceedings which may be crucial to their outcome is taking place, effective defence by a lawyer is indispensable. When one recognises, as Strasbourg jurisprudence has recognised for quite some time, that the entirety of the trial includes that which has gone before the actual proceedings in court, if what has gone before is going to have a determinative influence on the result of the proceedings, it becomes easy to understand why a lawyer is required at the earlier stage.

136 There is no warrant for the belief that vulnerability descends at the moment that one is taken into custody and that it is absent until that vital moment. The selection of that moment as the first occasion on which legal representation becomes necessary is not only arbitrary, it is illogical. The need to have a lawyer is not to be determined on a geographical or temporal basis but according to the significance of what is taking place when the later to be relied on admissions are made. This much, I believe, is clear from paras 54 and 55 of the judgment in Salduz v Turkey (2008) 49 EHRR 421 . It is worth setting out para 54 to examine its constituent parts and in order to draw together the various strands of guidance that it contains. This is what the court said in that para:

> "... the Court underlines the importance of the investigation stage for the preparation of the criminal proceedings, as the evidence obtained during this stage determines the framework in which the offence charged will be considered at the tria1. At the same time, an accused often finds himself in a particularly vulnerable position at that stage of the proceedings, the effect of which is amplified by the fact that legislation on criminal procedure tends to become increasingly complex, notably with respect to the rules governing the gathering and use of evidence. In most cases, this particular vulnerability can only be properly compensated for by the assistance of a lawyer whose task it is, among other things, to help to ensure respect of the right of an accused not to incriminate himself. This right indeed presupposes that the prosecution in a criminal case seek to prove their case against the accused without resort to evidence obtained through methods of coercion or oppression in defiance of the will of the accused. Early access to a lawyer is part of the procedural safeguards to which the Court will have particular regard when examining whether a procedure has extinguished the very essence of the privilege against self-incrimination. In this connection, the Court also notes the recommendations of the CPT [European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment], in which the committee repeatedly stated that the right of a detainee to have access to legal advice is a fundamental safeguard against ill-treatment. Any exception to the enjoyment of this right should be clearly circumscribed and its application strictly limited in time. These principles are particularly called for in the case of serious charges, for it is in the face of the heaviest penalties that respect for the right to a fair trial is to be ensured to the highest possible degree by democratic societies."

137 The first question that arises from this passage concerns the meaning of "the investigation stage". That stage is stated to be particularly important for two related reasons. The first is that evidence obtained at that stage "determines the framework" in which the offence with which the defendant is charged will be considered at trial. In other words, evidence obtained during the investigation stage can significantly influence the outcome of the proceedings and on that account it requires close attention as to its reliability. The second reason is that at that very time (*viz* when evidence capable of influencing the trial's outcome is being obtained) the accused finds himself in a vulnerable position. It may seem trite to ask why he should be vulnerable at that time but the answer, it seems to me, is both plain and significant. He is vulnerable *because* at this investigation stage, evidence which may be instrumental in securing a finding of guilt against him is being obtained and collated. The way that he reacts during the collection of that evidence may prove to be of critical importance in his subsequent trial. His vulnerability may be enhanced, moreover, because increasingly complex legislation permits the evidence to be obtained and used in ways that were not previously possible.

138 I return then to the anterior question. What is meant by the "investigation stage"? It must surely include any point or juncture at which evidence which is potentially inculpatory of an accused is being obtained. This is of especial importance when the investigation stage provides the setting for a statement by the accused person that might incriminate him. ECtHR recognised in para 54 of Salduz that an incriminating statement might occur at an early stage of the investigation and it was for this reason that early access to a lawyer was considered to be necessary. That early access is expressly required so that the very essence of the right not to incriminate oneself is not destroyed. But extinction of the essence of the right, it seems to me, is precisely what may happen if statements tending to incriminate, made without the benefit of legal advice, are admitted in evidence against their maker on his or her trial. And that conclusion reinforces my view that it is not the place at which admissions are made nor whether the individual making the statements has been detained that is important. What is important is the use to which such statements may subsequently be put.

139 The same message is provided by the opening words of para 55 of Salduz :

> "Against this background, the Court finds that in order for the right to a fair trial to remain sufficiently 'practical and effective" article 6(1) requires that, as a rule, access to a lawyer should be provided as from the first interrogation of a suspect by the police, unless it is demonstrated in the light of the particular circumstances of each case that there are compelling reasons to restrict this right."

140 Once more, it is noteworthy that the court here does not refer to the place at which the "first interrogation" takes place nor whether the person who is answering questions has been detained. It is from the moment of the first interrogation that the need for the presence of a lawyer is deemed to be required and that point is chosen because that is precisely when self incriminating statements may begin to be made.

141 In this connection I should say that I do not construe the judgments of Judge Bratza and Judge Zagrebelsky in Salduz as seeking to link the need for a lawyer's presence inextricably with the moment that a suspect is taken into custody. At O-I2 Judge Bratza said:

"At para 55 of the judgment, the Court states as a general principle that in order for the right to a fair trial to remain sufficiently, "practical and effective", article 6 requires that, as a rule, access to a lawyer should be provided, "as from the first interrogation of a suspect by the police". This principle is consistent with the Court's earlier case law and is clearly sufficient to enable the Court to reach a finding of a violation of article 6 on the facts of the present case. However, I share the doubts of Judge Zagrebelsky as to whether in appearing to hold that the right of access to a lawyer only arises at the moment of first interrogation, the statement of principle goes far enough. Like Judge Zagrebelsky, I consider that the Court should have used the opportunity to state in clear terms that the fairness of criminal proceedings under article 6 requires that, as a rule, a suspect should be granted access to legal advice from the moment he is taken into police custody or pre-trial detention. It would be regrettable if the impression were to be left by the judgment that no issue could arise under article 6 as long as a suspect was given access to a lawyer at the point when his interrogation began or that article 6 was engaged only where the denial of access affected the fairness of the interrogation of the suspect. The denial of access to a lawyer from the outset of the detention of a suspect which, in a particular case, results in prejudice to the rights of the defence may violate article 6 of the Convention whether or not such prejudice stems from the interrogation of the suspect."

142 It is immediately obvious from this passage that Judge Bratza's concern was that the judgment of the court did not go far enough. It is clear that his assumption was that "the first interrogation of a suspect" would normally take place *after* he had been taken into custody. He felt that to prescribe that the presence of a lawyer was only then required might not be sufficient. Statements could be made or events could occur which might prove incriminating after the suspect was taken into custody but before the first formal interrogation began. That was why Judge Bratza suggested that a lawyer was required when the accused was taken into custody. But his statement to that effect does not betoken a view that the moment that custody begins should be invested with some special significance. On the contrary, it reflects concern that the suspect's vulnerability and his need for a lawyer should not be seen as inevitably coincident with the opening of the formal interview. Statements made or events occurring before that time are just as likely to require the presence of a lawyer if the fairness of the trial is to be assured.

143 The cases decided in Strasbourg post Salduz and discussed by Lord Hope in paras 36-40 of his judgment do not appear to me, with respect, to contribute much to the debate except for the case of Borotyuk v Ukraine (Application no. 33579/04) . All of the cases concerned suspects who were already in custody when the questioning began. Lord Hope has suggested that importance was attached by Strasbourg in some of these cases to the fact that the person was in custody when he was being interrogated. I do not so read them. It seems to me that the cases are at least as consistent with the view that the important factor in play was that the interrogation was the occasion when inculpatory statements might be made and on that account a lawyer's presence was considered an indispensable concomitant of a fair trial.

144 In Borotyuk an interesting passage appears at para 79. There the court said:

"The Court emphasises that although not absolute, the right of everyone charged with a criminal offence to be effectively defended by a lawyer, assigned officially if need be, is one of the fundamental features of fair trial (see Poitrimol , cited above, para 34). As a rule,

> access to a lawyer should be provided as from the first questioning of a suspect by the police, unless it can be demonstrated in the light of the particular circumstances of each case that there are compelling reasons to restrict this right. The rights of the defence will in principle be irretrievably prejudiced when incriminating statements made during police questioning without access to a lawyer are used to secure a conviction (see Salduz v. Turkey [(2008) 49 EHRR 421], para 55."

145 Quite apart from the observation that access to a lawyer was deemed necessary "as from the first questioning of a suspect", the emphasis in this passage seems to be on the inevitable prejudice that will occur if questioning takes place at a time and in circumstances where incriminating statements might be made. This, as it seems to me, is entirely consonant with the underlying philosophy of article 6(1) taken in conjunction with article 6(3)(c) . The essential question is: when the questioning is taking place, is the suspect in a position where the advice of a lawyer is essential if a fair trial is to occur. If he is liable to incriminate himself at that time, a lawyer's presence is required so that he may be fully advised as to how he may or should respond to the interrogation. Likewise, if he requires advice as to how he should react to questioning, for example by giving information that may subsequently emerge at the trial, he needs to have proper guidance. Remaining silent when a perfectly innocent explanation is available may fatally undermine a subsequently proffered defence.

146 I would therefore express the principle, to be derived from a consideration of the mainstream Strasbourg jurisprudence, in this way: where a person becomes a suspect, questions thereafter put to him or her that are capable of producing inculpatory evidence constitute interrogation. Before such interrogation may be lawfully undertaken, the suspect must be informed of his or her right to legal representation and if he or she wishes to have a lawyer present, questions must be asked of the suspect, whether or not he or she is in custody, in the presence of a lawyer.

147 The Lord Advocate in the present appeal submitted that the touchstone should be the taking into custody of the individual because this marked the start of the coercive atmosphere in which the vulnerability of the suspect was aroused. I cannot accept that argument. Common experience tells us that a coercive atmosphere can exist independently of custody. The subject was also helpfully considered, albeit in a different context, in the Canadian case of R v Grant 2009 SCC 32; [2009] 2 S.C.R. 353. In that case the Supreme Court of Canada held that what it described as "psychological detention" such as to give rise to rights under section 9 of the Canadian Charter of Rights and Freedoms was established where an individual has a legal obligation to comply with a restrictive request or demand, or where a reasonable person would conclude by reason of the state conduct that he or she had no choice but to comply. Although the right under section 9 of the Charter is one that entitles an individual not to be arbitrarily detained or imprisoned, as opposed to the right not to incriminate oneself, the relevance of the decision to the present appeal lies in the court's analysis of when the interaction between a police officer and the person he has stopped and questioned assumes a coercive quality. At para 30 of the majority judgment of McLachlin CJ and LeBel, Fish, Abella and Charron JJ it was stated:

> "... we find that psychological constraint amounting to detention has been recognized in two situations. The first is where the subject is legally required to comply with a direction or demand, as in the case of a roadside breath sample. The second is where there is no legal obligation to comply with a restrictive or coercive demand, but a reasonable person in the

subject's position would feel so obligated. The rationale for this second form of psychological detention was explained by Le Dain J. in [R v Therens [1985] 1 SCR 613 , 644] as follows:

> 'In my opinion, it is not realistic, as a general rule, to regard compliance with a demand or direction by a police officer as truly voluntary, in the sense that the citizen feels that he or she has the choice to obey or not, even where there is in fact a lack of statutory or common law authority for the demand or direction and therefore an absence of criminal liability for failure to comply with it. Most citizens are not aware of the precise legal limits of police authority. Rather than risk the application of physical force or prosecution for wilful obstruction, the reasonable person is likely to err on the side of caution, assume lawful authority and comply with the demand. The element of psychological compulsion, in the form of a reasonable perception of suspension of freedom of choice, is enough to make the restraint of liberty involuntary. Detention may be effected without the application or threat of application of physical restraint if the person concerned submits or acquiesces in the deprivation of liberty and reasonably believes that the choice to do otherwise does not exist.'"

148 There is no reason to suppose that a person questioned by police while not in detention would not experience the same need to acquiesce in the power of the police to require answers to potentially highly incriminating questions. In as much, therefore, as a coercive atmosphere is required in order to stimulate the need for the protection that a lawyer's presence brings, I consider that it is just as likely that this will occur outside a police station as within. As I have said, the important question is whether the circumstances in which questions are asked are liable to be productive of incriminating answers, not whether those questions are being asked in a police station or whether the suspected person can be said to be in custody.

Zaichenko v Russia

149 This decision needs to be examined because of the possibly discordant note that it strikes in what I consider to be the clear message of what I have described as the mainstream European jurisprudence on the subject. The applicant had been stopped by police when driving away from his place of work on 21 February 2001. He was asked to account for two cans of diesel that were discovered in his car. He replied that he had poured the fuel from the tank of a service vehicle that he drove as an employee into the containers that the police had found in his car. He said that he intended to use it for his own personal purposes – in other words, he admitted to having stolen it. A vehicle inspection record was prepared by a police officer at the scene in which it was stated that the applicant had explained that "he had poured out the fuel from the company premises." The applicant signed that document. He also signed another document entitled "explanations" in which his statement to the following effect was recorded:

> "Since 1997 I have been employed as a driver by a private company. On 21 February 2001 I arrived to my workplace at 9 am. During the day I was repairing my service vehicle. In the evening I poured out thirty litres of fuel from the tank of my service vehicle. I have previously brought the cans, ten and twenty litres each, from home. After work, at around 8 pm, I was driving home in my car and was stopped by the police. The car was inspected in

the presence of the attesting witnesses. I poured out the fuel for personal use."

150 On 2 March 2001 an official known as an inquirer compiled a report on the events of 21 February 2001. It was recorded that the applicant had intentionally stolen thirty litres of diesel from his service vehicle. The report was stated to have been based on, among other things, the inspection record compiled by the police at the scene and the applicant's written statement. The accusation section of this statement read, "At 8 pm on 21 February 2001 [the applicant] ... being at work intentionally stole from his service vehicle the diesel in the amount of thirty litres. Thereby, he caused to the company pecuniary damage in the amount of 279 roubles". The applicant appended his signature to the following certificates that appeared at the foot of the statement:

"I have been informed of the nature of the accusation, the right to have access to the case file, the right to legal representation, the right to make requests and challenge the inquiring authorities' actions.

and

I have studied the case file and have read this document. I have no requests or motions. I do not require legal assistance; this decision is based on reasons unrelated to lack of means. I will defend myself at the trial."

151 At his trial the applicant retracted the confession and instead advanced a defence that he had purchased the fuel. He maintained that evidence of his admissions to police officers when his car was stopped should not have been admitted because he had not been informed of his right against self incrimination. At para 19 of ECtHR's judgment it is recorded that the appeal court in Russia had decided that the applicant's allegation of self-incrimination had been rightly rejected by the trial court as unfounded.

152 At paras 42 and 43 of its judgment, ECtHR dealt with the question of whether the applicant had been charged during the events of 21 February 2001. As to that the court said this:

"42. The Court reiterates that in criminal matters, Article 6 of the Convention comes into play as soon as a person is 'charged'; this may occur on a date prior to the case coming before the trial court, such as the date of arrest, the date when the person concerned was officially notified that he would be prosecuted or the date when preliminary investigations were opened (see Eckle v. Germany, 15 July 1982 , § 73, Series A no. 51, and more recently, O'Halloran and Francis v. the United Kingdom[GC], nos. 15809/02 and 25624/02 , § 35, ECHR2007 ...). 'Charge', for the purposes of Article 6 § 1, may be defined as 'the official notification given to an individual by the competent authority of an allegation that he has committed a criminal offence', a definition that also corresponds to the test whether 'the situation of the [person] has been substantially affected' (see Shabelnik v. Ukraine, no. 16404/03, § 57, 19 February 2009 ; Deweer v. Belgium, 27 February 1980 , § 46, Series A no. 35; and Saunders v. the United Kingdom, 17 December 1996 , §§ 67 and 74, *Reports of Judgments and Decisions* 1996-VI). Given the context of the road check and the applicant's inability to produce any proof of the diesel purchase at the moment of his questioning by the police, the Court considers that there should have been a suspicion of theft against the applicant at that moment.

> 43. Applying these principles to the facts of the case, the Court notes that the trial court's use made of the admissions made on 21 February 2001, which led to the institution of criminal proceedings against the applicant and then served for convicting him of theft, is at the heart of the applicant's complaints under Article 6 of the Convention (compare Saunders , cited above, §§ 67 and 74; and Allen v. the United Kingdom (dec.), no. 76574/01, 10 September 2002). It is also noted that the inspection record itself indicated Article 178 of the RSFSR Code of Criminal Procedure as the legal basis for the inspection (see paragraph 26 above). Thus, although the applicant was not accused of any criminal offence on 21 February 2001, the proceedings on that date "substantially affected" his situation. The Court accepts that Article 6 of the Convention was engaged in the present case. Nor was there any disagreement on this point between the parties."

153 The "substantial effect" which prompted the finding that article 6 was engaged appears to comprise the suspicion which the court felt the police must have had that the applicant had been guilty of theft and the fact that the events that occurred at the roadside check led to his subsequent prosecution and conviction. On that basis the same conclusion (that article 6 is engaged) is irresistible in the three cases involved in these references. In each of the cases it is clear that, at the time that the relevant admissions were made, the police either did have or should have had a suspicion that the persons to whom they were posing questions were guilty of the offences that were under investigation and that the statements made in answer to those questions were or were likely to be highly incriminating of all three.

154 But why in Zaichenko , if article 6 was engaged, was the applicant not entitled to the protection of article 6(3)(c) , taken in conjunction with article 6(1) ? For an answer to this, one must conduct a probe of the later passages of the judgment which, I should confess in advance, has not led me to an entirely clear understanding of the rationale underlying the court's conclusion on the issue.

155 At para 46 the court said this:

> "46. The Court notes at the outset that the applicant only complained that he had not been afforded enough time to contact a lawyer in a nearby town. The Court cannot but note that, as confirmed by the applicant's representative in his letter to the European Court dated 26 July 2002, both on 21 February and 2 March 2001 the applicant 'chose not to exercise his right to legal representation with the hope that the court would give him a fair trial even without counsel'."

156 It is difficult to be sure that, in using the phrase, "the court cannot but note", the judgment at this point was indicating that, because the applicant had elected not to have legal representation, this was a basis on which it could be concluded that there had not been a violation of article 6(3)(c) . Observations that appear later in the judgment would tend to support that view, however. In the first instance, the para following (para 47) opens with the word "moreover" which suggests that the decision of the applicant not to seek legal representation was, at least, one of a number of reasons for the finding that article 6(3)(c) had not been breached. Secondly, at para 50 of the judgment, the court refers to the applicant's election not to seek legal assistance either on 21 February or on 2 March 2001 as a *waiver* of his right to legal assistance.

157 Some of the other reasons for finding that there had not been a violation of article 6(3)(c)

appear in para 47:

> "47. Moreover, the Court observes that the present case is different from previous cases concerning the right to legal assistance in pre- trial proceedings ... because the applicant was not formally arrested or interrogated in police custody. He was stopped for a road check. This check and the applicant's self-incriminating statements were both carried out and made in public in the presence of two attesting witnesses. It is true that the trial record contains a statement by the applicant suggesting that the writing down of the inspection record and/or his subsequent statement were started on the spot but were completed in the village of Birofeld. Nevertheless, the Court concludes on the basis of the materials in the case file that the relevant events, namely the drawing of the inspection record and the taking of the applicant's explanation, were carried out in a direct sequence of events."

158 The distinction between Zaichenko's case and earlier decisions that is highlighted here *viz* that the applicant had not been arrested or interrogated while in police custody is not expressly stated to be a reason that alone would warrant a finding that there had not been a violation of article 6(3)(c) taken in conjunction with article 6(1) . It seems to me impossible to say, on the basis of the statements in this paragraph, that ECtHR has concluded that formal arrest and interrogation in custody are essential prerequisites to the invocation of the right. Rather, it appears that the court treated the cumulative effect of factors that were peculiar to this particular case as the basis for the finding that there had not been a violation of article 6(3)(c) . These factors can be enumerated as follows: (1) the applicant had waived his right to a lawyer and had explicitly stated that he did not want a lawyer to represent him despite having been told on 2 March 2001 that he was entitled to legal representation; (2) he had not been formally arrested or interrogated in police custody; (3) the initial questioning of the applicant took place at a road check and not in any formal setting; (4) the applicant was questioned in a public place with other witnesses present who could attest to a lack of coercion on the part of the police; and (5) the checking of the applicant's car and his questioning as to the source of the diesel all occurred as part of a seamless process.

159 I do not believe that any one of these factors can be elevated to a position of pre-eminence nor does it appear to me that it can be said with confidence that any single factor, taken in isolation, would be sufficient to support the finding that there had not been a breach of article 6(3)(c) .

160 The succeeding paragraphs in the judgment repeat the matters dealt with in paras 46 and 47 or expand on them to some extent. It is not necessary to consider these in any detail but I should mention para 48, if only to say that I have had a little difficulty in following the reasoning that it contains. It reads:

> "Although the applicant in the present case was not free to leave, the Court considers that the circumstances of the case as presented by the parties, and established by the Court, disclose no significant curtailment of the applicant's freedom of action, which could be sufficient for activating a requirement for legal assistance already at this stage of the proceedings."

161 It is not immediately clear why someone who was not free to leave the scene could be said not to have had any significant curtailment of his freedom of action. Be that as it may, it appears to be the case that if the court had found that there *had been* a significant curtailment of the applicant's

freedom of actin, it would have regarded this as a sufficient basis for a finding of a violation of article 6(3)(c) . What would constitute such a curtailment of freedom of action has not been made clear, however. Altogether, it is not easy to distil any obvious principle from this paragraph and I would be reluctant to ascribe to it any significance beyond that relevant to the circumstances of the case of Zaichenko itself.

162 Although ECtHR concluded that Mr Zaichenko had waived his right to legal assistance, it decided that there had not been a waiver of his right not to incriminate himself. At para 52 the court held that it was incumbent on the police to inform the applicant of the privilege against self-incrimination and the right to remain silent. Their failure to do so at the roadside check before putting questions to him constituted a violation of article 6(1) , therefore.

163 In a partly dissenting opinion, Judge Spielmann (who, as Lord Hope pointed out in para 46 of his judgment, was a member of the Grand Chamber in Salduz) addressed forthrightly the question of when the right to legal representation arose and, relating it directly to the decision in Salduz , came down firmly in favour of what I believe to be the logical position, namely, that it began when police questioning started. In para 3 of his opinion, Judge Spielmann said:

> "3. In Salduz v. Turkey the Court held that as a rule, access to a lawyer should be provided as from the first interrogation of a suspect by the police (see Salduz v. Turkey[GC], no. 36391/02 , § 55, ECHR 2008- ...). The Court also held that the lack of legal assistance during a suspect's interrogation would constitute a restriction of his defence rights and that these rights would in principle be irretrievably prejudiced when incriminating statements, made during police interrogation without access to a lawyer, were used for a conviction. The Court took a similar approach in the equally important judgment in Panovits (Panovits v. Cyprus, no. 4268/04 , §§ 66 and 70–73, 11 December 2008)." (original emphasis)

164 Judge Spielmann also questioned the reasoning of the majority that is contained in para 48 of the court's judgment. At para 6 he said:

> "6. Contrary to what is said in para 48 of the judgment, I cannot agree that the circumstances of the case disclose no significant curtailment of the applicant's freedom of action. I am of the opinion that those circumstances were sufficient to activate a requirement for legal assistance."

165 I do not understand Judge Spielmann's dissent necessarily to indicate that there was a divergence of views between him and the majority about the nature of the principle at stake. The principle which I believe can be said to be common to both is that when a suspect is interrogated by police he is entitled to legal assistance. Where Judge Spielmann parted company with the majority was in its conclusion as to whether the principle applied. Because of the accumulation of factors that the court had identified (see para 158 above) and because it concluded that there had not been a curtailment of Mr Zaichenko's freedom of action, it held that the principle did not apply. Judge Spielmann, by contrast, did not attach the weight to the factors that the majority had considered militated against a finding of violation of article 6(3)(c) and he disagreed (in my view, quite properly) with the suggestion that someone who was not free to leave the scene nevertheless had not suffered any curtailment of his freedom of action.

Miranda v Arizona

166 As Lord Hope has said in para 52, "curtailment of freedom of action" carries echoes from Miranda v Arizona 384 US 436 (1966) . And as Lord Hope suggests, it may well be that Miranda will influence the thinking of Strasbourg, it having featured in a number of prominent dissenting judgments in that court already. But I question whether this will lead to the adoption of "the custodial approach to the question as to when access to a lawyer is required". Curtailment of an individual's freedom of action can arise even when he has not been taken into custody. The important question must surely be whether the suspect feels constrained to answer the questions posed to him by the police officer. As the Grant case illustrates, this can arise either because of the manner in which the police officer manages the exchange with the suspect or because of the latter's belief that he has no option but to answer the questions put to him.

167 Quite apart from these considerations, however, I believe that one must be careful about making assumptions about the Miranda experience or believing that it can be readily transplanted into European jurisprudence in any wholesale way. The implications of that decision must be considered in the context of police practice in the United States of America. Nothing that has been put before this court establishes that it is common practice in America to ask incriminating questions of persons suspected of a crime other than in custody. Indeed, it is my understanding that as soon as a person is identified as a suspect, police are trained that they should not ask that person any questions until he or she has been given the Miranda warnings.

168 Custody was identified in Miranda as one of the features necessary to activate the need for legal representation but custody has been held to mean either that the suspect was under arrest or that his freedom of movement was restrained to an extent "associated with a formal arrest" — Stansbury v. California, 511 US 318 (1994) ; New York v. Quarles, 467 U.S. 649 , 655 (1984). So it is clear that the rule that custody is required before entitlement to legal representation arises is not inflexible or static and that its underlying rationale is closely associated with the question whether the person questioned feels under constraint to respond.

Hampering police investigation

169 One of the principal practical arguments advanced against the requirement that a suspect be informed that he is entitled to legal representation before incriminating questions are put to him is that this will hamper police investigations. The argument is a venerable one. It has been deployed in reaction to various proposals for safeguards intended to protect suspects' rights – including the right to have a solicitor present during interviews and the audio recording or the videotaping of interviews. There is no evidence that the introduction of those measures brought about any widespread impediment to police investigations nor is there, in my view, any convincing evidence that this would be the result of recognising the right of a suspect to be informed that he or she is entitled to legal representation before being required to provide potentially incriminating answers to police questioning.

170 As the respondents have pointed out, in the final analysis, these cases are about the admissibility of evidence. There is no legal prohibition on police asking questions of a suspect that may produce incriminating answers. The legal consequence of doing so without first informing the suspect of his or her right to be legally represented will be, in my opinion, that the answers produced will be inadmissible in evidence unless compelling reasons such as were discussed in para 55 of Salduz exceptionally justify denial of access to a lawyer. One can anticipate, therefore, that police may decide in appropriate circumstances to proceed with questions in order to further the investigation but have to accept that if they are capable of producing incriminating answers from

someone who is a suspect, the replies will be inadmissible.

171 A balance will always have to be struck between unfettered police investigatory powers and the complete safeguarding of suspects' rights. The history of criminal jurisprudence shows how that balance has been struck in different ways and at different times, reflecting, no doubt, changing attitudes as to what properly reflects contemporary standards. It is my belief that the proper balance to strike for our times is the one that I have suggested in para 146 above.

Conclusions

172 For the reasons given in para 153 above, I consider that article 6 of ECHR was engaged in each of the respondents' cases at the time that the relevant questions were asked. I have no doubt that when they were asked those questions each of them was suspected of having committed an offence. I agree with Lord Hope that the administration of a caution is not necessarily determinative of this issue but, in the particular circumstances of these cases, I do not believe that any other conclusion is possible.

173 The second and third questions that were put to the respondent, Ambrose, were clearly capable of producing incriminating responses. In fact they did so and it is evident that the answers have been relied on in order to establish his guilt, (although that might well have been possible simply by proving that he was in the car and in possession of the keys). In these circumstances, I am of the view that he had a right under article 6(3)(c) taken in conjunction with article 6(1) of ECHR to be informed, after his reply to the first question, that he was entitled to legal representation before answering further questions, and that, absent such a warning, the incriminating answers given by him to the second and third questions were not admissible.

174 The questions put to the respondent who has been referred to as M, apart from the first question, were also clearly capable of producing incriminatory replies although whether they would in fact be probative of guilt would be a matter for trial, if indeed the answers were held to be admissible. Since they clearly had the capacity of producing inculpatory responses, however, I consider that the questions put to M at his home, apart from the first question, are inadmissible.

175 In the case of the respondent referred to as G, for the reasons given by Lord Hope (with which I agree), it is indisputable that, at the time the impugned questions were put to him, he was in custody and, whatever view one takes of the effect of the European jurisprudence, the incriminating answers that he gave are inadmissible. But, for the same reasons that I have given in the cases of Ambrose and M, I would have held that they were inadmissible, regardless of whether G was in custody at the time that the answers were given.

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News story

Crime news: telephone change for Defence Solicitor Call Centre

From: Legal Aid Agency (https://www.gov.uk/government/organisations/legal-aid-agency)
First published: 17 May 2016

0845 prefix is changing to 0345 from 1 June for calls to the Defence Solicitor Call Centre (DSCC).



The telephone prefix number used to contact the Defence Solicitor Call Centre (DSCC) is changing to 0345 instead of 0845 on 1 June 2016. The remainder of the digits remain the same.

Why are you making this change?

This change ensures we comply with Cabinet Office guidance that all publicly funded call centres use 0345 numbers as soon as is practically possible.

0345 numbers typically come free in mobile or landline deals. So, most people should find that there is a cost saving from this change. However, you will need to check with your phone provider to find out more.

The new numbers will be:

- 0345 7500 620 – solicitor line (was 0845 7500 620)
- 0345 7500 640 – police line (was 0845 7500 640)
- 0345 543 8910 – admin line (was 0845 7543 8910)

What will happen if I dial 0845 after 1 June?

The 0845 numbers will still be active. But callers using this number will be presented with a message reminding them of the new number change. If you don't redial and continue on the call then previous call charges will apply.

The plan is to review usage of both the new and old numbers after three months and make a decision on finally deactivating the 0845 route.

Further information

Call charges and phone numbers (https://www.gov.uk/call-charges) – GOV.UK information

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DSCC Online

Legal Aid Agency

Home Login

Welcome to the DSCC Online Services Website

PLEASE ENSURE THAT YOU ARE ACCESSING THIS PAGE USING www.dutysolicitors.org

Welcome to Defence Solicitor Call Centre (DSCC) Online. This site allows providers direct and secure access to certain features of the DSCC's in house case management system used to process requests for legal advice at police stations within England and Wales.

Once logged in you will be able to view and amend (in real time) the records held by DSCC for all advisers attached to your individual firm.

You will be able to view and change contact telephone numbers, view rota duties, enter periods when individuals will be unavailable for DSCC contact and perform swaps of duty. In addition to these features you will also be able to access useful performance management information and easily view detailed case records for any DSCC case accepted by your firm within the past year.

We hope you find this service useful and would encourage you to leave any feedback via the relevant link.

Getting Help

Wherever you see this button you can click it to get help.

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CAPITA

DSCC ONLINE USER GUIDE

Revised 2013



Version	Issue date	Last review date	Owned by
1	19/11/13	19/11/13	Capita

CAPITA

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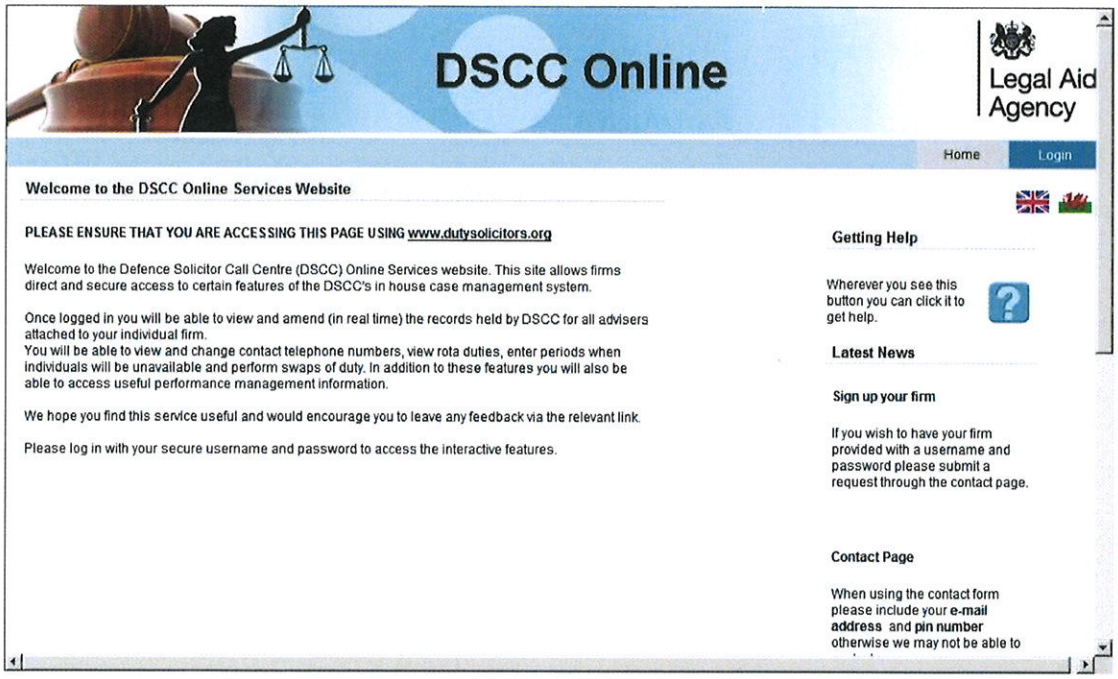
Abbreviations

The document will use the following abbreviations:

LAA – Legal Aid Agency
DSCC – Defence Solicitor Call Centre
iDST – DSCC Online Services
MI – Management Information

Accessing the Site

To visit the site simply type www.dutysolicitors.org into your web browser.



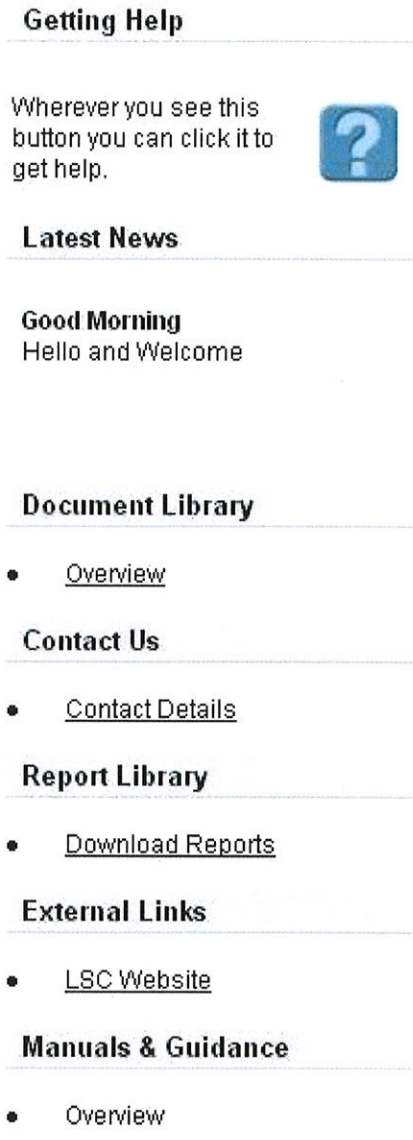
CAPITA

Home Page Menu



The following options are available:

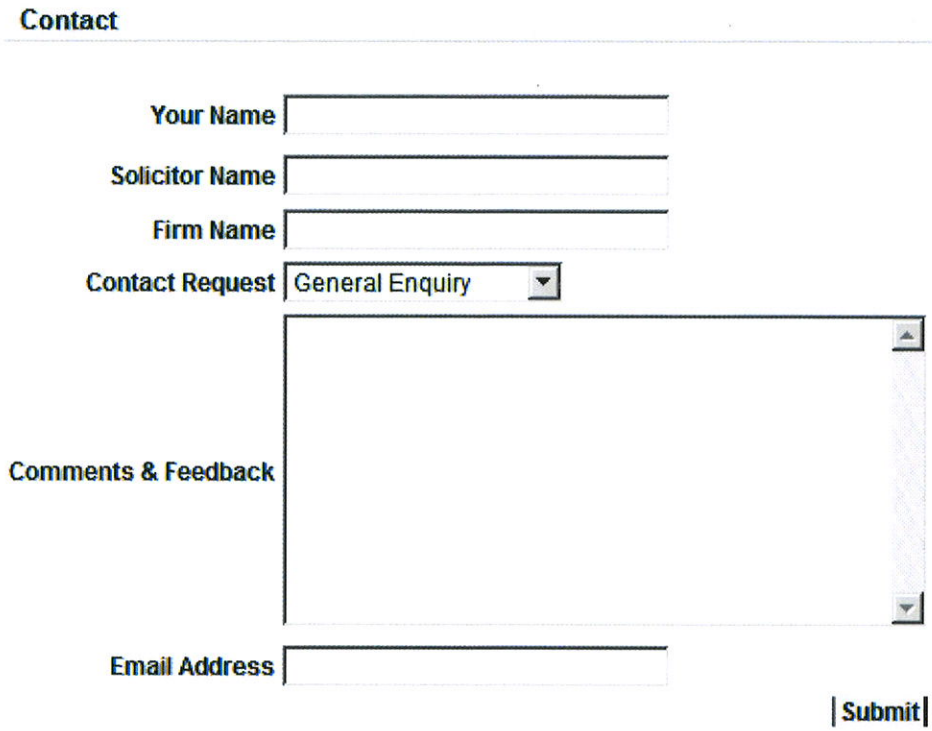
Home –	Takes you back to the home page.
Login –	Enables you to log in to the Interactive services provided by iDST.
Latest News –	Will provide up to date news regarding iDST and DSCC
Document Library -	Provides a brief overview of each document that can be accessed and amended
Contact Us –	Provides an arena for contact and feedback to the DSCC
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CAPITA

Contact

Clicking on this link will take you to a form which will enable you to contact the DSCC or provide feedback on the iDST service.



A Contact Request reason will need to be selected using the Contact Request drop down box – the available options are shown below.



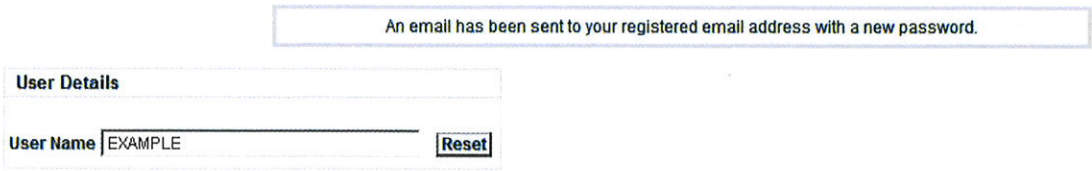
Enter your query or feedback in the comments box provided then click submit once all fields have been completed.

Reset Password

If you have forgotten your password you can select the 'Reset Password' button. This will take you to a page where you can enter your username.

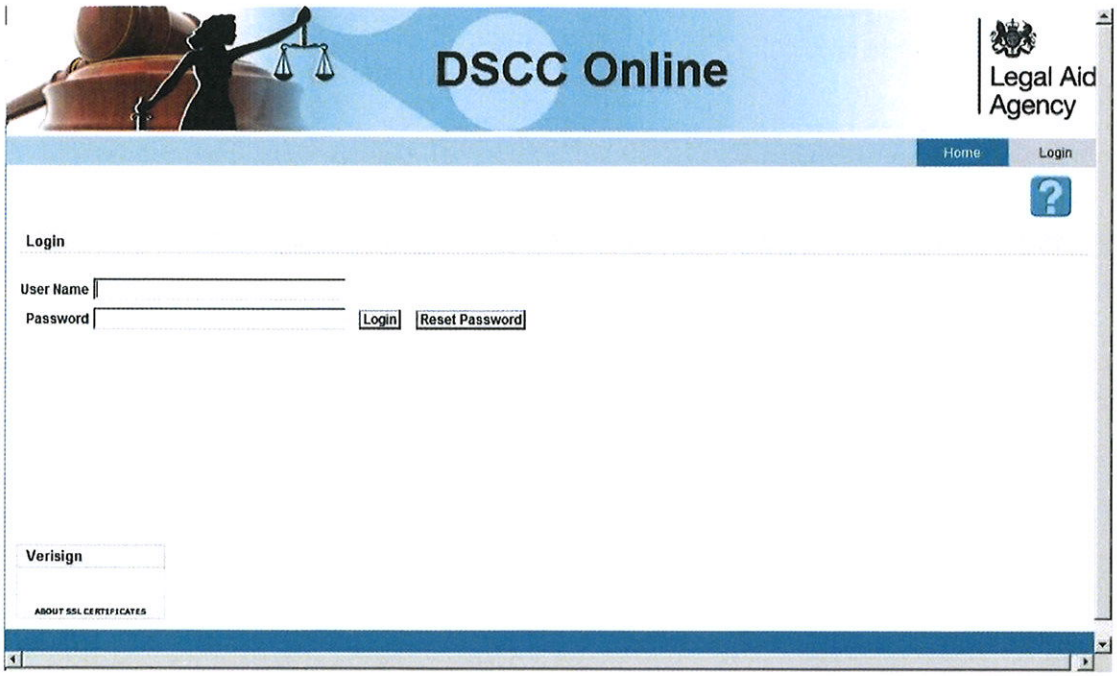


A message will appear confirming that an e-mail containing the new password has been sent to your registered address.



Logging In

In order to log in to the interactive side of DSCC online you will need to click on the login option on the home page. This in turn will generate a password box where you will need to enter your secure User name and Password.



Click on Login to submit this information – assuming that you have entered your details correctly you will be directed to the home page of the site where the options will be provided for amending and viewing your details.

CAPITA

Home Page

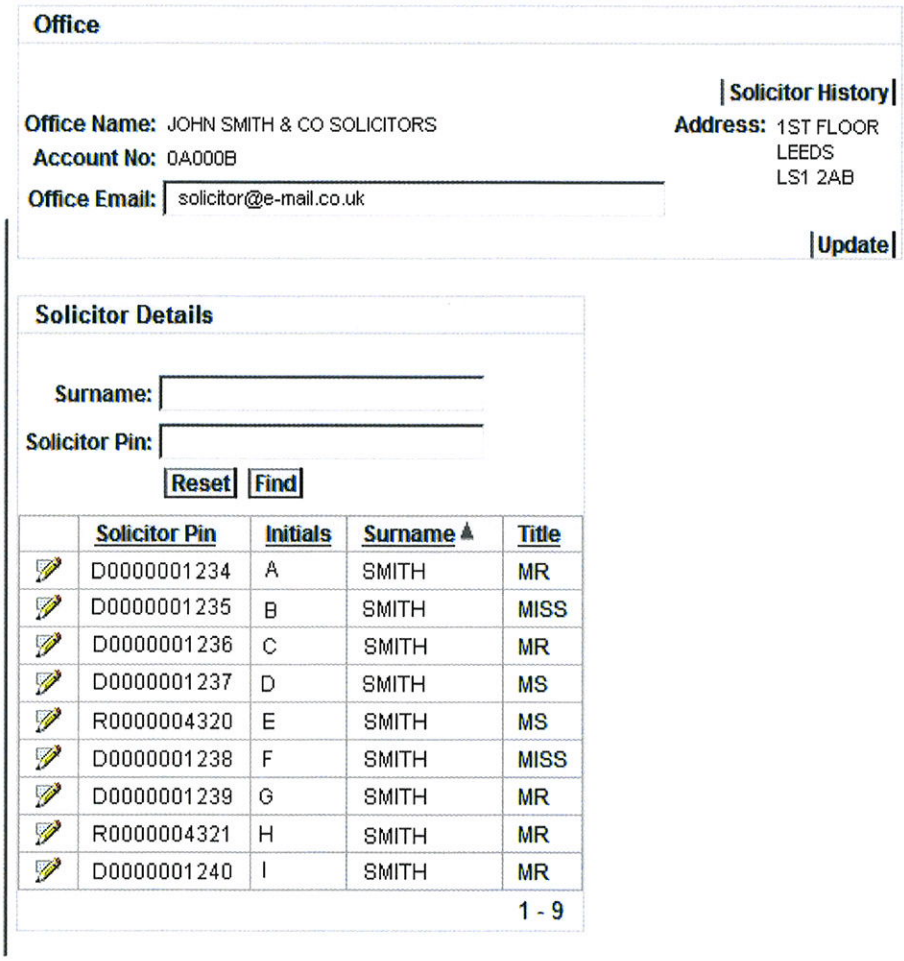


On this screen you will be presented with the options as shown above.

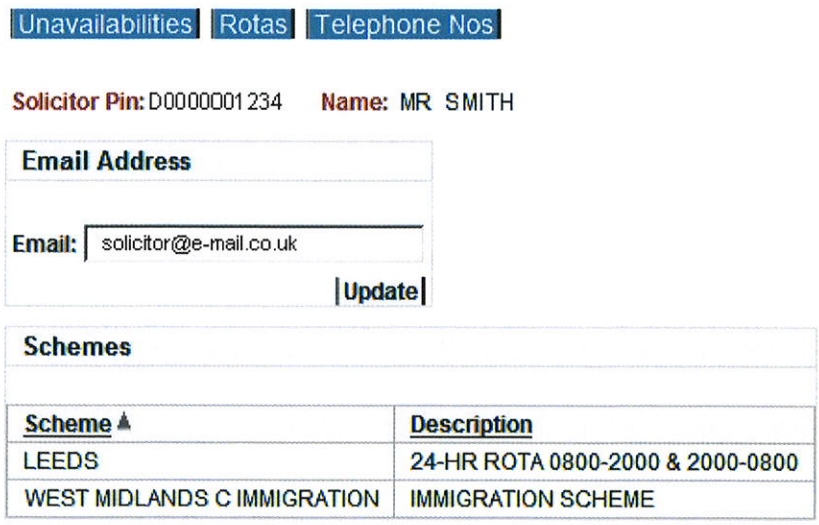
Home: click on this link to return to the homepage.
Solicitors: click on this link to view solicitor's details.
MI Reports: click on this link to run reports.
Police Stations: click on this link to find contact details for custody suites.
Downloads: click on this link to see any files or documents we have uploaded (this may often be blank but can have reports or information you have requested).
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Logout: click on this link to securely log out of the application.
How We Work: click on this link to see information on the DSCC service.
Contact: click on this link to send us an e-mail.
User Settings: this link is purely for IT purposes so will not be needed by site users.

Solicitors

When you click on the Solicitors option you will be moved to the Duty Solicitors screen. Here you can access Solicitor information via their Pin number or Surname.



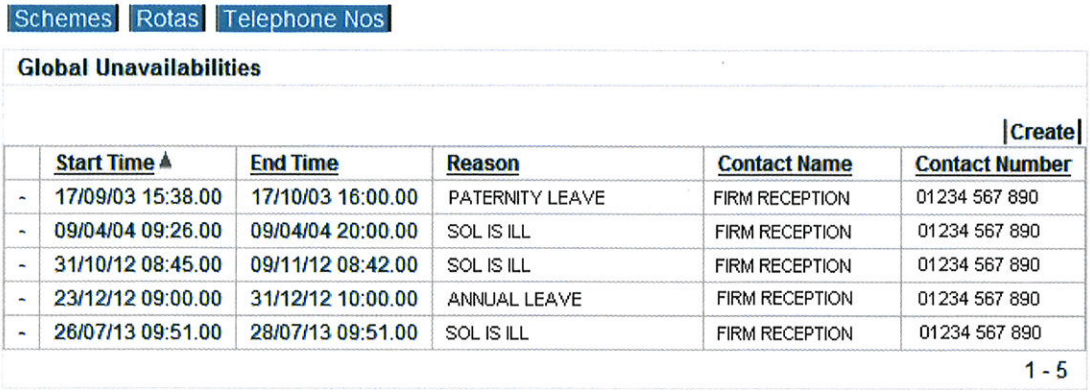
If using a firm login you will be given a list of all staff registered to the firm (screen shot above). Clicking on the pencil icon will bring up the details for the chosen solicitor. If logging in as an individual you will be taken to the pencil icon screen (shown right) straight away.



There are options for searching staff by name or PIN. This is a useful feature for firms with large numbers of employees.

Unavailabilities

Clicking on unavailabilities under the solicitor tab will bring up a summary page of the occasions that particular solicitor has been unavailable for work.



To make the solicitor unavailable click on Create (top right of the table) which will direct you to the Unavailability Details screen.

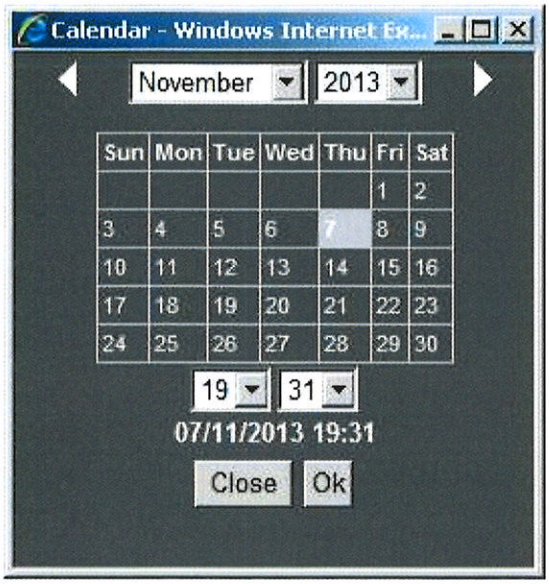


This option enables solicitors to make the DSCC aware that they will be unavailable for calls during a specified period. This can be used for a few hours while a solicitor attends a wedding or to inform us they are going on holiday for a week or two.

Whilst someone is listed as unavailable the DSCC can not log cases to the solicitors PIN so no calls will be made to them. Please ensure that any duty slots during this period are swapped to an active staff member.

Enter the start and end date and time of the period you wish to be made unavailable for. The start time will need to be at least 1 minute ahead of the time the entry is being made.

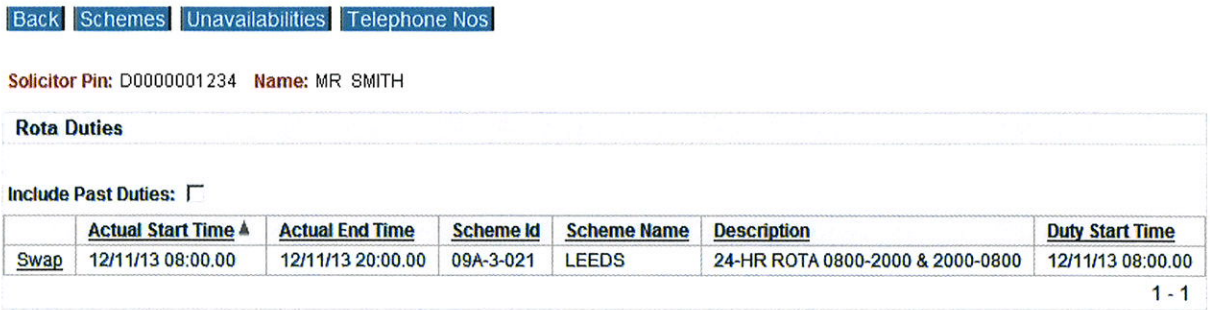
The calendar provided can also be used to enter the relevant information by using the drop down boxes.



Once this has been saved, the unavailability will be displayed on the Unavailability summary table.

Rotas

Selecting the rotas tab under Solicitors will bring up a summary page showing all upcoming duty slots. From this page you can make any duty swaps required by clicking on swap (to the left of the table).

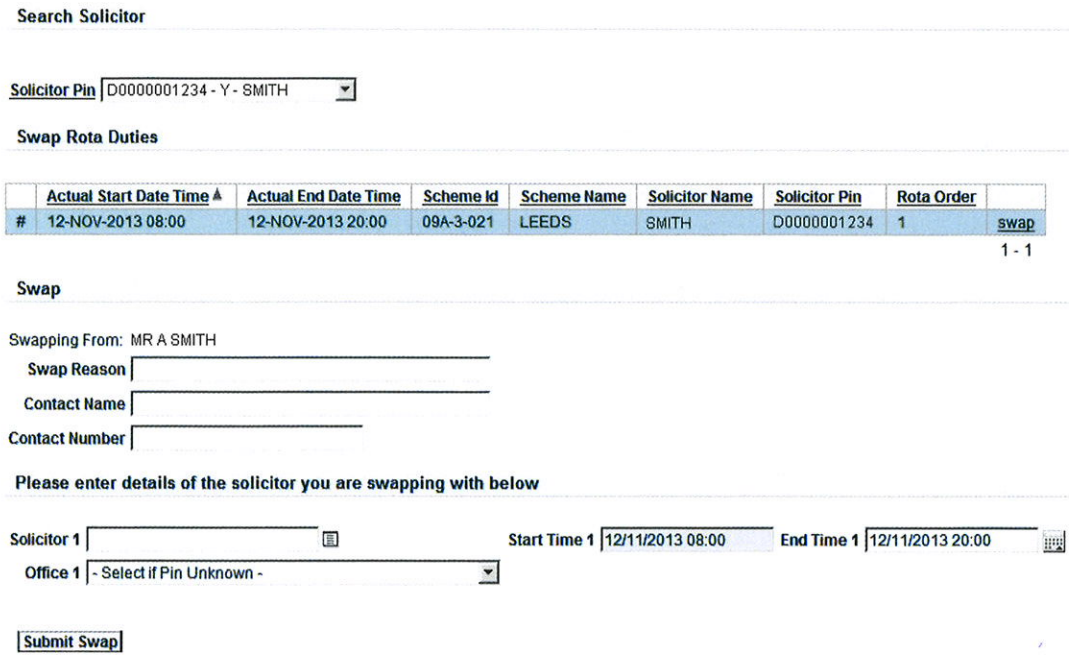


	Actual Start Time	Actual End Time	Scheme Id	Scheme Name	Description	Duty Start Time
Swap	12/11/13 08:00.00	12/11/13 20:00.00	09A-3-021	LEEDS	24-HR ROTA 0800-2000 & 2000-0800	12/11/13 08:00.00

1 - 1

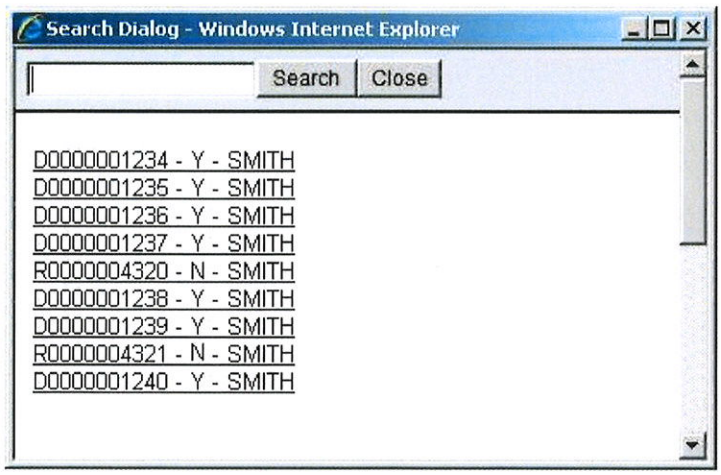
Swaps

Clicking on this option will load a new page where you will need to select the person you are swapping to from the drop down box. You have already selected who holds the duty and which slot you would like to change in the pervious steps (Solicitors tab, pencil icon next to solicitors name then swap beside the selected duty). All the fields will be populated automatically so only the name of the solicitor taking the duty needs to be entered. This is done by clicking on the note pad icon to the right of the solicitor 1 box.



Please note that for security reasons you can only swap your duties to other solicitors; you cannot swap other firms duties to your own staff (they must do this themselves).

Once you have clicked on the note pad icon the below box will appear. This lists all the solicitors available to swap the duty to. Between the PIN and the solicitor's surname you will see a Y or N. This stands for yes and no and tells you whether the solicitor is active of the scheme. The solicitor to whom you are swapping must be a member of the scheme for the duty being swapped. Select the relevant solicitor by clicking on their name.



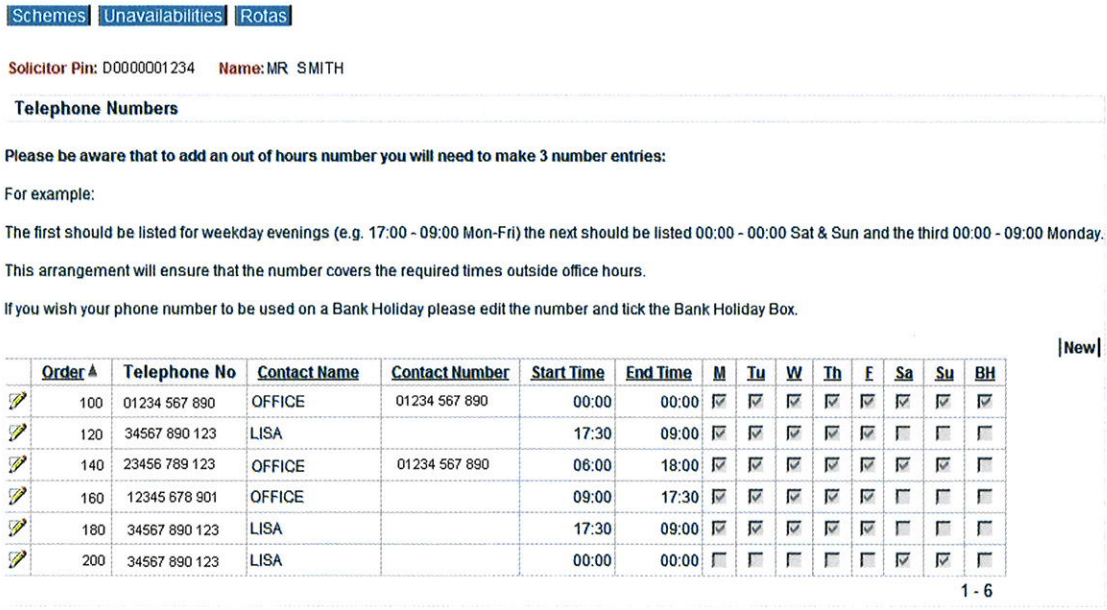
The Swap Reason, the contact name of the person making the change and their contact number will need to be entered before the swap can be saved.

Once all the relevant information is entered click on Submit Swap. The duty that has been swapped will disappear from the original solicitor's available rota duties list and you will be informed by e-mail that the swap was successful. We will use the office e-mail address listed under the Solicitors tab.

CAPITA

Telephone Numbers

Selecting Telephones Nos under the Solicitors tab will bring up a summary table of the telephone numbers under the solicitor's PIN (shown below).



Schemes | Unavailabilities | Rotas

Solicitor Pin: D0000001234 Name: MR SMITH

Telephone Numbers

Please be aware that to add an out of hours number you will need to make 3 number entries:

For example:

The first should be listed for weekday evenings (e.g. 17:00 - 09:00 Mon-Fri) the next should be listed 00:00 - 00:00 Sat & Sun and the third 00:00 - 09:00 Monday.

This arrangement will ensure that the number covers the required times outside office hours.

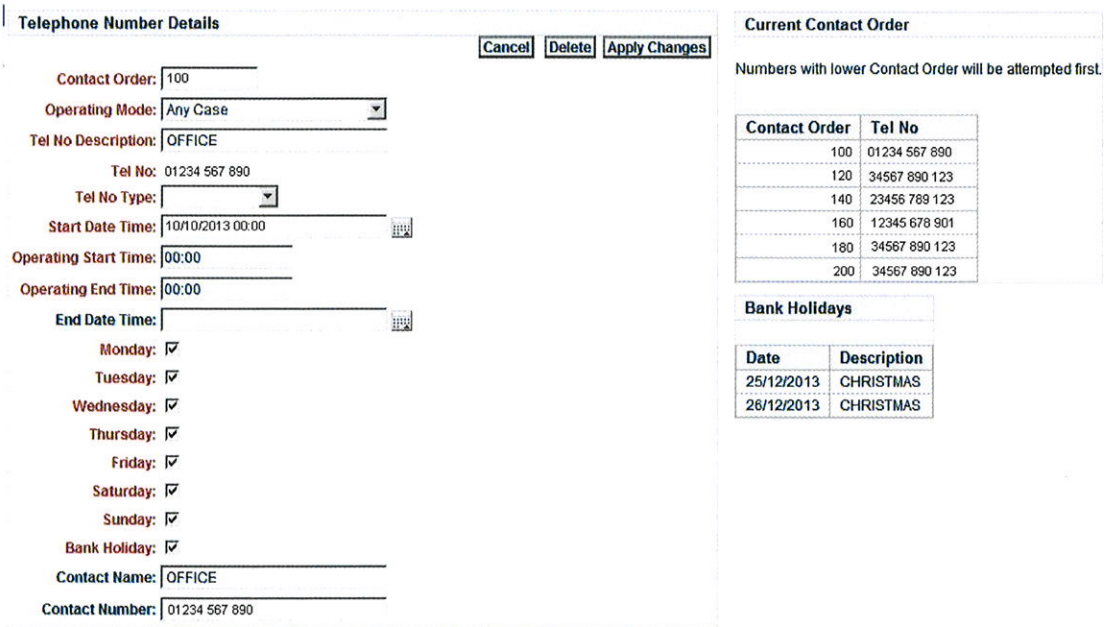
If you wish your phone number to be used on a Bank Holiday please edit the number and tick the Bank Holiday Box.

|New|

Order	Telephone No	Contact Name	Contact Number	Start Time	End Time	M	Tu	W	Th	F	Sa	Su	BH
100	01234 567 890	OFFICE	01234 567 890	00:00	00:00	☑	☑	☑	☑	☑	☑	☑	☑
120	34567 890 123	LISA		17:30	09:00	☑	☑	☑	☑	☑	☐	☐	☐
140	23456 789 123	OFFICE	01234 567 890	06:00	18:00	☑	☑	☑	☑	☑	☑	☑	☐
160	12345 678 901	OFFICE		09:00	17:30	☑	☑	☑	☑	☑	☐	☐	☐
180	34567 890 123	LISA		17:30	09:00	☑	☑	☑	☑	☑	☐	☐	☐
200	34567 890 123	LISA		00:00	00:00	☐	☐	☐	☐	☐	☑	☑	☐

1 - 6

Clicking on the pencil icon to the left of an entry will enable you to edit or remove a number. To add a new entry click on the 'New' button (top right of the table).



Telephone Number Details

Cancel | Delete | Apply Changes

Contact Order: 100
Operating Mode: Any Case
Tel No Description: OFFICE
Tel No: 01234 567 890
Tel No Type:
Start Date Time: 10/10/2013 00:00
Operating Start Time: 00:00
Operating End Time: 00:00
End Date Time:
Monday: ☑
Tuesday: ☑
Wednesday: ☑
Thursday: ☑
Friday: ☑
Saturday: ☑
Sunday: ☑
Bank Holiday: ☑
Contact Name: OFFICE
Contact Number: 01234 567 890

Current Contact Order

Numbers with lower Contact Order will be attempted first.

Contact Order	Tel No
100	01234 567 890
120	34567 890 123
140	23456 789 123
160	12345 678 901
180	34567 890 123
200	34567 890 123

Bank Holidays

Date	Description
25/12/2013	CHRISTMAS
26/12/2013	CHRISTMAS

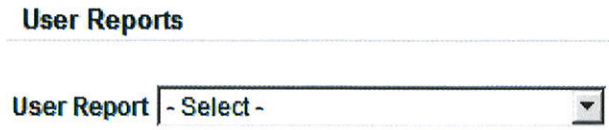
Mode	-	Panel cases, own client, rota cases etc.
Description	-	Description of number – i.e. Mobile, Office etc…
Tel No Type	-	Mobile, office number, pager etc…
Telephone no	-	Number
Start Date	-	Date number to be used from
Start Time	-	Time number to be used from
End Time	-	Time number is to be used to
End Date	-	Date to be used until (optional for temp details)
Week Days	-	Days of the week the number is active on
	-	✓ for active
	-	blank for inactive
Bank Holidays		To be used on any Bank Holiday
	-	✓ for active (Yes)
	-	blank for inactive (No)
Contact Name	-	Name of Person who amended details
Contact Number	-	Contact number of person who amended details

Please ensure that no two contact order numbers are the same as this could result in the contact details being using in the incorrect order.

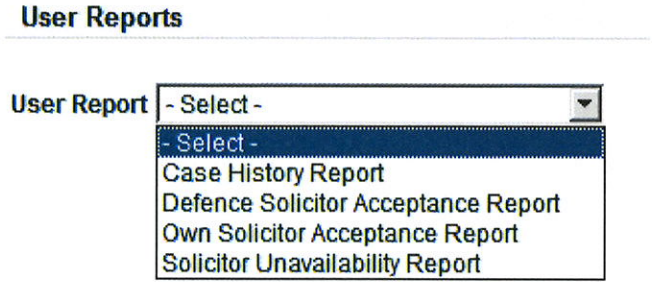
CAPITA

MI Reports

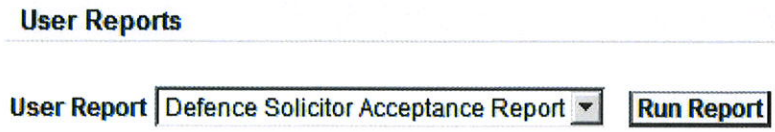
When you click on the MI (Management Information) Reports option you will be directed to the user reports screen. Here you can run performance reports:-

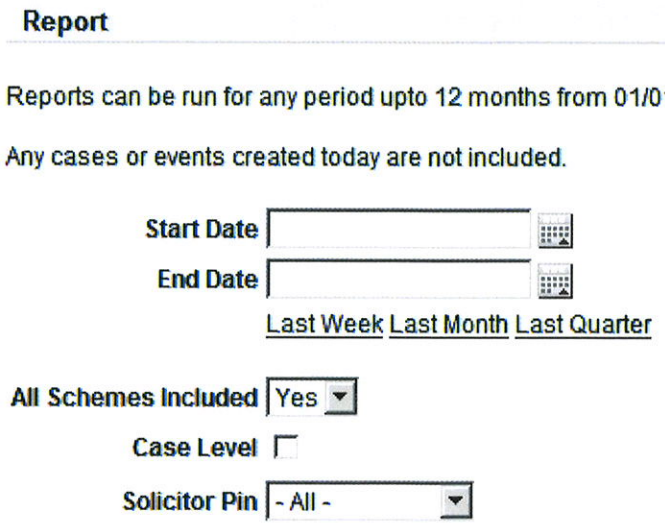


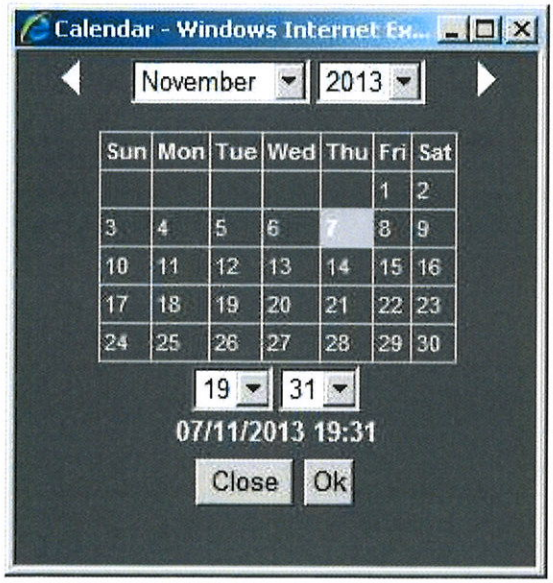
To run a report simply select an option from the provided drop down box in the User Reports field



The available reports are separated into defence solicitor cases (rota, back up and panel) and own client cases. The case history report enables you to search for all the details relating to a particular reference number while the solicitor unavailability report shows the periods of unavailability created by solicitors (holidays, maternity leave etc).





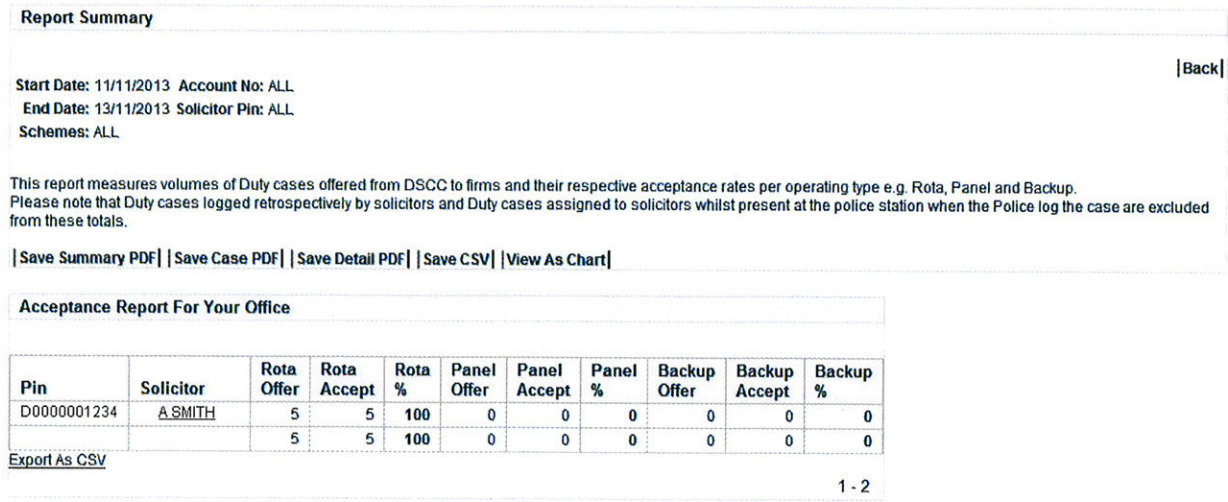


After selecting the required report, enter the Start Date and End Date for the period you would like to review. Alternatively you can click on one of the preset options (either last week, last month or last quarter).

If setting a personalised date period please use the calendar icon beside the boxes. The system requires the information in a particular format which the calendar will populate automatically for you.

There is the option of all schemes included which is the default setting for all reports. This will include all schemes the solicitors at your firm are registered on. If you would like to run the report for particular schemes only change the drop down box to 'no'.

Doing this will refresh the screen which will list the available schemes. Click on the relevant scheme(s) and then click » . The selected scheme will then be transferred to the next box and ready to run.



Report Summary

|Back|

Start Date: 11/11/2013 **Account No:** ALL
End Date: 13/11/2013 **Solicitor Pin:** ALL
Schemes: ALL

This report measures volumes of Duty cases offered from DSCC to firms and their respective acceptance rates per operating type e.g. Rota, Panel and Backup.
Please note that Duty cases logged retrospectively by solicitors and Duty cases assigned to solicitors whilst present at the police station when the Police log the case are excluded from these totals.

|Save Summary PDF| |Save Case PDF| |Save Detail PDF| |Save CSV| |View As Chart|

Acceptance Report For Your Office

Pin	Solicitor	Rota Offer	Rota Accept	Rota %	Panel Offer	Panel Accept	Panel %	Backup Offer	Backup Accept	Backup %
D0000001234	A SMITH	5	5	100	0	0	0	0	0	0
		5	5	100	0	0	0	0	0	0

Export As CSV

1 - 2

When all the required fields are entered, click on run report towards the top of the screen. The screen will change to show the name of each solicitor in the report and a summary of their details. Clicking on the solicitors name will take you to a further page where the reference number of each case is given.

Clicking on a reference number will load the full case record showing all data we hold on that particular detainee. If you wish to access this information straight away you can tick the box called 'case level' before running the report.

Report Summary

|Back|

Start Date: 11/11/2013 **Account No:** ALL
End Date: 13/11/2013 **Solicitor Pin:** ALL
Schemes: ALL

This report measures volumes of Duty cases offered from DSCC to firms and their respective acceptance rates per operating type e.g. Rota, Panel and Backup.
Please note that Duty cases logged retrospectively by solicitors and Duty cases assigned to solicitors whilst present at the police station when the Police log the case are excluded from these totals.

|Save Summary PDF| |Save Case PDF| |Save Detail PDF| |Save CSV|

Acceptance Report For A SMITH

Top Up

Case Ref	Rota Offer	Rota Accept	Rota %	Panel Offer	Panel Accept	Panel %	Backup Offer	Backup Accept	Backup %
131100082A	1	1	100	0	0	0	0	0	0
131100083A	1	1	100	0	0	0	0	0	0
131100084A	1	1	100	0	0	0	0	0	0
131100085A	1	1	100	0	0	0	0	0	0
131100086A	1	1	100	0	0	0	0	0	0
	5	5	100	0	0	0	0	0	0

Export As CSV

1 - 6

With this box ticked the report will take you straight to a full list of case reference numbers rather than the solicitor's summary.

If any of the fields show the word 'protect' it means a different firm has been involved and the information is restricted. To get all the details we will require a request containing signed permission from your client for DPA compliance.

|Create PDF (Current)| |Create CSV (Current)|

Scheme Id	Scheme Name	Police Station
09A-3-021	LEEDS	GARFORTH, LEEDS

Case Ref	Created Date Time	Custody No	Status	Detainee	Adult / Junior	Detainee Name
131100083A	MON 11/11/2013 16:16	NOT GIVEN	DT	Male	Adult	ANETTE KERTAN

1st Offence Code	1st Offence	2nd Offence Code	2nd Offence	3rd Offence Code	3rd Offence	Comments
IE	Indecent Exposure					

Arrival Date Time	Ask Interview	Company Name
11/11/2013 16:15	Y	

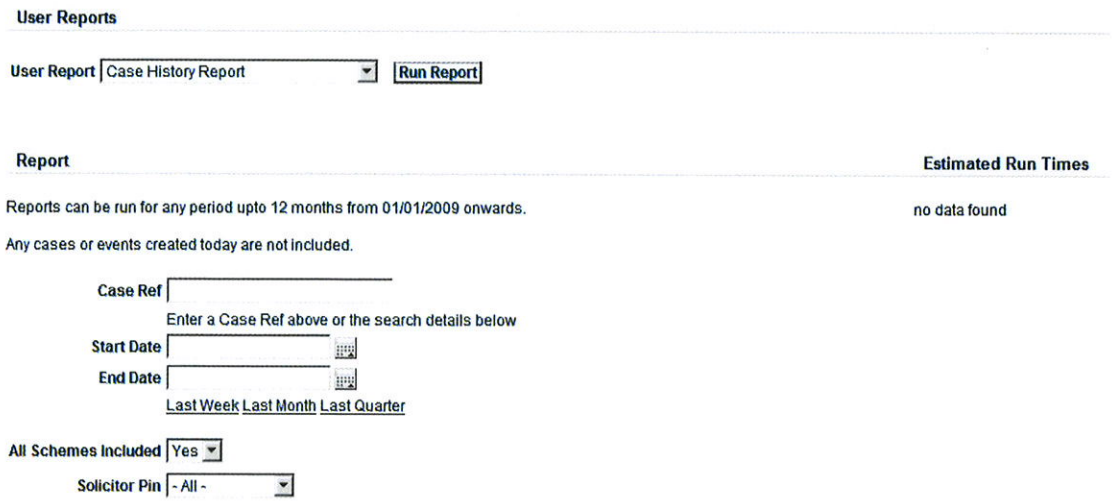
Time	Duration	R/B/P	Solicitor Office Name	Contact	Telephone	Events	Contact	Code	Outcome	Comments	Event Modified By
16:16.16		R		PC Oldman	0113 2322087	IN	Police	OP	Case Opened		1211
11:40.01	43:23:45	R	JOHN SMITH & CO SOLICITORS	SMITH A MR	01234 567 890	OUT	Solicitor	AV	Available	Acc	1211
11:40.10	0:00:09	R	JOHN SMITH & CO SOLICITORS	SMITH A MR	01234 567 890	ADD	Solicitor	DT	Solicitor Deployed		1211
11:40.20		R	JOHN SMITH & CO SOLICITORS	SMITH A MR	01234 567 890	OUT	Solicitor	SMS	Text Message Sent	Automated Text	1211

1 - 4

CAPITA

Case History Report

Choosing the Case History Report option will generate the screen shown below.



As with the acceptance reports you can select dates from the calendar icons or choose the preset periods (last week, last month or last quarter). Alternatively you can enter the reference number for the case if you already have it.

Once you have run the report a screen will display the report on the next page. Clicking on any reference number shown will provide all the information we hold on a particular case.

Report Summary

|Back|

Start Date: 11/11/2013 **Account No:** ALL
End Date: 13/11/2013 **Solicitor Pin:** ALL
Schemes: ALL

Case Summary

|View|
Tick the cases you wish to see and click the View button

All	Scheme Name	Case Ref	DP Name	Created Time	Station Name	Solicitor Name	Offered	Accepted
☐	LEEDS	131100081A	JANE DOE	11/11/2013 16:08	CENTRAL BRIDEWELL, LEEDS	MISS B SMITH	Y	Y
☐	LEEDS	131100082A	ROBIN BANKS	11/11/2013 16:15	CENTRAL BRIDEWELL, LEEDS	MR A SMITH	Y	Y
☐	LEEDS	131100083A	ANNETTE KERTAN	11/11/2013 16:16	GARFORTH, LEEDS	MR A SMITH	Y	Y
☐	LEEDS	131100084A	TERESA GREEN	11/11/2013 16:17	HOLBECK, LEEDS	MR A SMITH	Y	Y
☐	LEEDS	131100085A	JOHN DOE	12/11/2013 10:45	LEEDS RAIL STN (BTP), WEST YORKS.	MR A SMITH	Y	Y
☐	LEEDS	131100086A	IAN MOONE	12/11/2013 10:47	LEEDS RAIL STN (BTP), WEST YORKS.	MISS B SMITH	Y	Y

Export As CSV

1 - 6

Solicitor Unavailability Report

This report is generated in the same way as the others (see above) and will display the data as shown below. If there are no periods of unavailability the report will state 'no data found'.

Report Summary

Back

Start Date: 10/08/2013 **End Date:** 10/11/2013

Save PDF | **Save CSV**

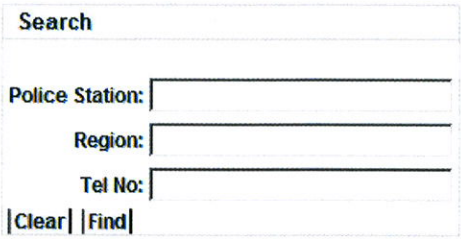
Unavailability Report

no data found

CAPITA

Police Stations

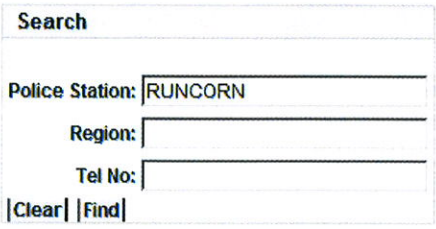
This option provides an up to date directory of all custody suite telephone numbers throughout England and Wales. It is based upon the live details we hold on the DSCC case management system and will automatically update itself from our records when any changes are made internally.



Police Stations

STATION_NAME	REGION_NAME	TEL_NO
ABBEY HULTON, STAFFORDSHIRE	WEST MIDLANDS C	NOT KNOWN
ABBEYTOWN, CUMBRIA	NORTH WESTERN B	Not Known
ABERCYNON, MID GLAMORGAN	WALES	01443 740233
ABERDARE, MID GLAMORGAN	WALES	01685 724 281
ABERGAVENNY, GWENT	WALES	01495 232 380
ABERGELE, CLWYD	WALES	01492 517 171
ABERKENFIG, MID GLAMORGAN	WALES	Not Known
ABERSOCH, GWYNEDD	WALES	Not Known
ABERTILLERY, GWENT	WALES	01495 212021
ABERYSTWYTH, DYFED ("DUVID")	WALES	0845 330 2000
ABINGDON, OXFORDSHIRE	SOUTHERN A	01235 556 840
ACCRINGTON, LANCASHIRE	NORTH WESTERN B	01254 353756
ACLE, NORFOLK	EASTERN A	01493 333 265
ACOCKS GREEN, BIRMINGHAM	WEST MIDLANDS B	0121 626 7178
ACTON, LONDON	LONDON WEST	0208 721 7027/25/28
ADDINGTON, SURREY	LONDON SOUTH	01932 845544
ADDLESTONE, SURREY	SOUTH EASTERN	01932 845544
ADLINGTON, LANCASHIRE	NORTH WESTERN B	01254 382141
ADMIRAL STREET, LIVERPOOL	MERSEYSIDE	0151 777 5332

row(s) 1 - 20 of 1887 Next >



Police Stations

STATION_NAME	REGION_NAME	TEL_NO
NORTHERN CUSTODY SUITE (RUNCORN)	NORTH WESTERN A	01606 366 470

1 - 1

The custody suites are listed alphabetically by station name. You can chose to look through the list in full or find it by searching the station name, region or telephone number.

Downloads

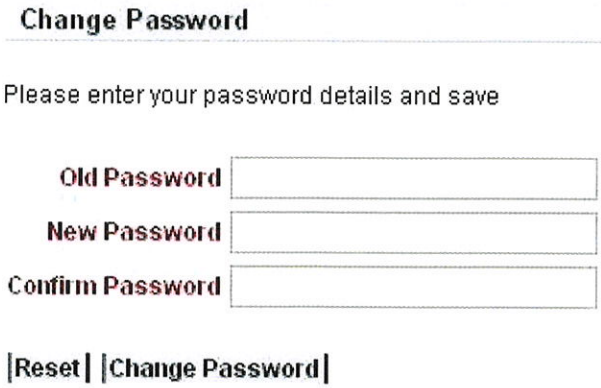
This page can be used by the DSCC to provide firms with information. It will usually be blank but if we are sending out updates document will be attached to this screen.

Change Password

When you click on the Change Password tab you will be moved to the Change Password screen. Here you can change your password by completing the fields as shown.

Click on Reset to disregard the changes

Click on Change Password to save the new password you have entered.



If you get locked out of the iDST please use the contact option on the site to e-mail a request for the account to be unlocked. Including the firms LAA supplier number in the e-mail will enable us to reply with a new password and confirmation the account has been unlocked.

How We Work

This tab will show information on the DSCC service.

Legal Aid Agency

Crime Defence Direct and Police Station Immigration Telephone Advice Service Contracts 2016

The Legal Aid Agency ("LAA") will be offering Applicant Organisations the opportunity to bid for the Crime Defence Direct ("CDD") and Police Station Immigration Telephone Advice Service ("PSITAS") contracts to commence on 1st June 2016.

This document outlines the plans for the future procurement for these services.

It is our intention that Applicant Organisations will have the opportunity to bid to deliver:

- PSITAS only or
- the CDD service only; or
- CDD and PSITAS under one consolidated Police Station Telephone Advice contract;

The LAA will utilise a lot based approach with successful Applicant Organisations being those whose bids provide the most economically advantageous outcome based on criteria that will be detailed in the procurement documentation.

Questions or views

The LAA invites any questions or views on the tender intentions detailed below to be fed back to gemma.jordan@legalaid.gsi.gov.uk by **27th August 2015**

The services

Through the CDD and PSITAS services, the LAA delivers non-means tested telephone based legal advice to detainees at the police station. CDD provides legal advice in relation to non-imprisonable summary style criminal offences and PSITAS provides legal advice in relation to non-criminal Immigration offences.

The CDD service is currently a 24 hour service and cases are allocated equally between each provider, who work concurrently. The PISTAS service currently runs from 7am-12 midnight only and providers work on a rota system. The LAA's intention is to maintain the current arrangements regarding working hours and case allocation in the new contracts for each service.

Providing a consolidated service

The LAA will consider bids for a consolidated service where Applicant Organisations are capable of meeting all requirements (which will be set out in the procurement documentation) for both services under one "Police Station Telephone Advice" contract.

Applicant Organisations will also be able to bid for individual contracts to deliver either CDD or PSITAS and will have to meet the specific criteria relevant to each service.

The LAA intends to contract with 2 providers for each service. Therefore, the LAA will be looking for a minimum of 2 and a maximum of 4 providers across both services.

Remuneration

It is our intention that CDD will be remunerated on the basis of one separate fixed fee per case. PSITAS will also be remunerated by one separate fixed fee per case. The level of the fixed fee will be the subject of a price competition between Applicant Organisations as part of the procurement process. No standby payments will be available for either service.

Tender process

The following table contains information about the timescales for the procurement process. This is provided **for information only** and it may be amended by the LAA at any time:

Restricted Procedure	**Date**
Issue Prior Information Notice	07/09/2015
Issue call for competition	12/10/2015
Deadline for submission of pre-qualification information	27/10/2015
Issue Invitation to Tender document	20/11/2015
Deadline for submission of tenders	22/12/2015
Tender evaluation	23/12/2016 – 24/01/2016
Issue standstill letters	25/01/2016
Mandatory standstill period	26/01/2016 – 04/02/2016
Conclude contract	05/02/2016
Issue Contract award notices	05/02/2016
Mobilisation period commences	05/02/2016
Service Commencement Date	01/06/2016

Further information

Further information will be provided in the procurement documentation which will be published online in due course and will be accessible via: www.gov.uk/government/publications/police-station-telephone-advice-tender-2015

Annex F– Summary of current criminal legal aid scheme

The Legal Aid Agency (LAA) administers legal aid in a number of crime related categories.

Criminal legal aid expenditure

By way of summary, the spend on criminal legal aid in the financial year 2011/12 was £1.08bn. The expenditure against each of the schemes outlined above is as follows:

Category	Class	Fee scheme	Spend in 2011/12	
Crime lower	Investigations	Police station	£161m	£410m
		CD Direct	£3m	
		Free standing advice	£1m	
	Proceedings	Magistrates' Court	£218m	
	Prison Law		£23m	
Crime higher	Crown Court (non VHCC)	Crown Court litigation (LGFS)	£304m	£703m
		Experts (LGFS)	£34m	
		Crown Court advocacy (AGFS)	£241m	
	Ex post facto (legacy and escapes)		£23m	
	Very High Cost Cases		£92m	
	Higher courts		£9m	
TOTAL				£1.08bn

The LAA also manages the Defence Solicitor Call Centre which is contracted to deliver a call centre service administering the allocation of clients to solicitors at the police station. The cost of this contract is currently £3m per year.

Crime Lower

At present, crime lower services (advice and assistance, including at police stations, and representation in the magistrates' court) can only be delivered by organisations that hold the 2010 Standard Crime Contract. There are currently over 1,600 contracted organisations.

i) Investigations

There are three main services provided to people at the investigations (police station) stage of a criminal case:

Telephone advice –

This is provided by the Criminal Defence Direct (CDD) (formerly the Criminal Defence Service Direct (CDS Direct)) call centre service to people under investigation for less serious offences, such as: drink driving offences, non-imprisonable offences, breach of bail, and warrants. Payments are made on a case by case basis. Solicitors can also bill for telephone advice.

There were just over 115,000 cases funded by legal aid in 2011/12 which are dealt with by the CDD service.

Face-to-face advice –

This is provided to people under investigation for more serious offences. This service is provided by contracted litigator organisations, which deploy a qualified advisor to attend the police station. For administrative purposes police stations are grouped together into 'duty solicitor schemes' and each scheme has a rota or panel of named advisors who can be called on to provide face-to-face advice. People held in custody at police stations can either ask for whomever is on rota for that particular duty solicitor scheme.

For each police station case a provider will be paid a fixed fee. The fee paid differs depending on the applicable duty solicitor scheme and covers all the work done on a case, including time spent giving advice, travel time and subsequent attendances at the police station on the same case.

For all cases, providers may also claim reasonably incurred disbursement costs in addition to the payment they receive for their work on a case.

In total there are just over 640,000 cases funded by legal aid in 2011/12 for face to face advice at the police station.

Free standing advice and assistance (outside a police station) –

This is provided in connection with a criminal investigation to people who are not being interviewed by the police. This can include investigations by authorities other than the police, and freestanding advice and assistance can also be provided to witnesses in some cases. Providers are paid at hourly rates for this work (up to a prescribed maximum amount).

This advice is provided by advisers face-to-face and is subject to a sufficient benefits test, which ensures that the client's case is serious enough to merit advice, and a financial eligibility test. In 2011/12, there were just over 8,000 claims for free standing advice and assistance.

ii) Magistrates' Court Proceedings

At the magistrates' court, the majority of individuals access publicly funded legal services by being granted a 'representation order'. The granting of this order confirms that an 'interests of justice' merits test has been passed. A means test is also performed, which looks at the client's income and family circumstances, and determines if they can afford to pay their defence costs.

As with police stations, magistrates' courts also have a duty solicitor available to clients at court. The duty solicitor is able to offer free legal advice and representation to people on their first appearance at court (not at trial) for a particular offence only, regardless of their financial circumstances.

Duty solicitors are paid an hourly rate for their attendance at Court and individuals do not need a representation order to access these services.

There are approximately 399,000 cases funded by legal aid in 2011/12 in the magistrates' court. Payment for these cases is by way of Standard Fees (quasi-fixed fees). The applicable fee depends on the type of the case and the number of hours worked by the

solicitor and whether the case was in an urban or more rural area (designated areas or non-designated areas).

Crime Higher

Crime higher includes remuneration for cases in the Crown Court for both litigators and advocates and for any work undertaken in preparation for an appeal to the Court of Appeal and Supreme Court. There are four main fee schemes that operate within the crime higher category.

i and ii) Litigator Graduated Fee Scheme (LGFS) & Advocate Graduated Fee Scheme (AGFS)

These two schemes cover the majority of Crown Court cases and apply nationally. The rules governing the graduated fee schemes are set out in the Criminal Legal Aid (Remuneration) Regulations 2013 and are supported by graduated fee guidance.

Litigators must have a 2010 Standard Criminal Contract to conduct work under the graduated fee schemes but the LAA does not have a contractual relationship with advocates under the AGFS.

The graduated fee is calculated using different pieces of case information known as proxies. These include:

- Case outcome (e.g. trial, guilty plea, cracked trial (where the client changes his/her plea to guilty on the first day of trial))
- Pages of prosecution evidence (PPE)
- Offence type (e.g. murder, fraud etc)
- Length of trial (if trial)
- Number of prosecution witnesses (for advocates only if trial)

Providers may also claim an hourly rate for work that falls within special preparation. This includes:

- Where evidence is served electronically
- Where the evidence exceeds 10,000 pages of prosecution evidence
- Where the case involves an unusual or novel point of law or factual issue (advocates only)

In addition, advocates may also claim for miscellaneous hearings (e.g. disclosure, admissibility of evidence, applications to dismiss). These are known as bolt-ons.

For confiscation proceedings, litigators are still paid using an administratively set hourly rate and advocates are paid either (a) daily rates for attendance if the page count is under 50 PPE or (b) if the PPE is over 50, daily rates for attendance, PPE enhancements and hourly rate preparation.

Approximately 139,000 litigator claims and approximately 127,000 advocate claims were processed in 2011/12.

iii) Very High Cost Cases (VHCCs)

Cases are classified as Very High Cost Cases (Crime) (VHCCs) if the trial is estimated to last more than 60 days. Once classified, the remuneration for those working on the case falls outside of the graduated fee schemes and instead they are remunerated under a separate hourly and daily rate scheme.

All cases classified as VHCCs operate under an individual case contract. Only those organisations that meet the applicable experience based entry criteria are offered such a contract with the LSC.

The scheme operates on a prior authority mechanism, whereby in order to secure payment for the work done on the case, litigators and advocates must seek agreement in advance from the LAA. The work requested is assessed based on necessity and reasonableness. Work is agreed every 3 months up to, including and post trial and sentence; and, where applicable includes confiscation hearings.

At the end of each stage the provider submits the claim for the work done which is assessed and paid by the LAA.

iv) Higher Courts

Legal aid is available, subject to a merits test, to those clients who have grounds to appeal against their conviction or sentence to the Court of Appeal and/or the Supreme Court. Her Majesty's Courts & Tribunals Service (HMCTS) determine the grant of legal aid and assess and pay the claims on these cases on behalf of the LAA.

HMCTS, through its Senior Courts Costs Office, also manages appeals against extradition and ancillary Administrative Court matters where legal aid is available.

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CDS Direct: Flying in the face of the evidence

Lee Bridges
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CDS Direct: Flying in the face of the evidence

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CDS Direct: Flying in the face of the evidence

Lee Bridges and Ed Cape

Preface

This deliberately detailed account of the introduction of two related schemes, Criminal Defence Service (CDS) Direct and the Defence Solicitor Call Centre (DSCC), for the delivery of legal advice to those arrested and detained by the police, provides an insight into a number of features of policy development and implementation that are becoming increasingly familiar in the current era. What commenced as a limited pilot project has been expanded to become a national scheme that affects all people arrested and detained by the police and all criminal defence lawyers who provide advice at police stations.

Yet the pilot project was never evaluated independently, and the evaluation that was carried out provided an inadequate basis for expanding the scheme. Evidence has been ignored or discounted as to the likely implications of changes which will build in long lines of communication and delay, which will break the link between suspects and 'their' lawyers, and which will require many of those who request legal advice to be asked about how they intend to pay. Spurious targets and measures of success – for example, measuring time taken by CDS Direct to respond to a call rather than the time taken to deliver legal advice – are established and calls for meaningful evaluation are refused. Whilst

police custody officers are asked for their views about whether the schemes are 'usable', no attempt is made to discover the views and experiences of suspects or their lawyers (LSC, 2006a).

Public consultation has been used to legitimise the new schemes, yet the process is shamelessly abused. Consultation periods are unreasonably short and, in the case of the consultation on the Police and Criminal Evidence codes, limited to the absolute minimum number of respondents permitted by the legislation. And, in any event, the views of those who oppose or question the proposals (that is, the overwhelming majority) are simply ignored. The parliamentary approval process for revising the codes is so arcane that it is difficult to identify the relevant committee that will actually consider the substance of the changes. However, that is of no consequence since, as the revisions were approved, the Legal Services Commission (LSC) changed the scheme so that what parliament had approved was immediately rendered meaningless. Yet the confidence of the Ministry of Justice and the LSC that they will not, or cannot, be challenged is such that all of this is placed in the public domain.

During most of the 1990s there was a real commitment by government and by the legal aid authorities to increase the take-up of the right to custodial legal advice and to improve the quality of the legal services provided. The government responded to academic research that revealed the factors that inhibited the demand for and delivery of legal advice and the Legal Aid Board (the predecessor of the LSC), taking the Law Society with it, responded to both the research and miscarriage of justice cases that demonstrated systemic failures in the provision of high quality legal advice. Whilst lip-service is still paid to quality, the principal objective now is not simply to contain costs, but also to provide a mechanism for preventing future increases in expenditure without regard to the real quality implications or to the significance of government policies, such as the Offences Brought to Justice Target, in driving up demand.

Indeed, the barely veiled underlying intent of the changes is to place a cap on any further expansion in the take-up of the

right to custodial legal advice, thereby effectively undermining the universal right of all suspects to consult with a solicitor of their choice established by parliament over 20 years ago in the wake of an earlier wave of serious miscarriages of justice. But to a government – and increasingly a LSC – that sees criminal justice solely in terms of its efficiency in delivering convictions, such a reversal in policy, in the face of the evidence, has become commonplace.

Chapter 1
The lessons of history

For over two decades people arrested and detained by the police in England and Wales had an almost unfettered right to consult a lawyer in person, and to have them present during police interviews. Although the legislation creating this right pre-dated the Human Rights Act 1998 by well over a decade, it anticipated the recognition that the right to a fair trial requires a fair investigative process. Admired and emulated in many jurisdictions, countries seeking to join the European Union over the past few years have been required to create similar rights as a condition of membership. However, at the beginning of 2008, the Legal Services Commission (LSC) introduced two schemes, CDS Direct[1] and the Defence Solicitor Call Centre (DSCC) which call into question the British government's and the LSC's commitment to this universal right to legal advice for those detained by the police. The former scheme limits both the right to legal advice in person and the right to a choice of lawyer in certain cases. Under the latter scheme, all requests for police station legal advice are routed to the DSCC. Neither the suspect themselves nor the police can make the initial contact directly with the suspect's nominated solicitor.

To understand fully the nature of the risk these schemes pose to suspects' rights, it is necessary to place them in the context of how the right to legal advice has developed. Unfortunately, those responsible for changes to the schemes, whether in the Home Office, the Ministry of Justice or the LSC, seem to be suffering from a collective amnesia regarding the lessons of history and the extensive research on custodial legal advice undertaken in the period following implementation of the relevant statutory provisions in the late 1980s.

[1] The scheme is known as CDS Direct, CDS standing for Criminal Defence Service, which is one of two divisions of the Legal Services Commission (LSC), the other being the Community Legal Service, or CLS. The LSC has responsibility under the Access to Justice Act 1999 for the administration of legal aid in England and Wales.

Under the Police and Criminal Evidence Act 1984 (PACE) s.58, any person under arrest and held in custody in a police station or other premises is entitled, upon request, 'to consult a solicitor privately at any time'. In order to give effect to this new statutory right, the original codes of practice issued under PACE required the police custody officer to advise arrested persons, both orally and by way of a printed notice, of their right to consult either a named solicitor of their choice, one selected from a list held by the police or a duty solicitor. The arrested person was required to sign the custody record confirming that they had been advised of their right to legal advice and, where this was the case, that they did not seek to exercise this right. Where the arrested person did request legal advice from a named solicitor or one chosen from a list, the police were required to seek to contact the solicitor in question by telephone directly. But where the duty solicitor was asked for (or the named solicitor could not be contacted), the request would be channelled through a national telephone referral service set up for this purpose which maintained a record of the solicitor on duty in each locality at any given time. It would then be for the solicitor to decide how to respond to the request, in particular whether to advise the suspect over the telephone, to attend the police station to advise the suspect in person, or both.

The government at the time further provided that all legal advice in police stations, whether given over the telephone or in person and by a named solicitor (what came to be referred to as an 'own solicitor') or the duty solicitor, would be fully remunerated under legal aid at no cost to the suspect. The Law Society (then responsible for the administration of legal aid on behalf of the government) was given responsibility for establishing 24-hour duty solicitor schemes in each locality to ensure that legal advice would be available at all police stations to advise and assist suspects who did not name a solicitor or select one from a list.

A proper evaluation

These provisions, along with many other aspects of PACE, were subject to a significant body of empirical research in the period

immediately following their implementation.[2] The national take-up rate for custodial legal advice, at around one-fifth of all arrested persons, was considerably higher than had been originally predicted by the Royal Commission on Criminal Procedure (RCCP, 1981), whose recommendations formed the basis of PACE, but was also shown to vary considerably from one area and police station to another. More importantly, a number of criticisms emerged of the ways in which both the police and the legal profession had gone about putting the section 58 right to legal advice into effect. A study commissioned by the Lord Chancellor's Department (a forerunner of the Ministry of Justice), based on observations in the custody suites of ten police stations, found that in two-fifths of the cases observed the police used one or more 'ploys' to dissuade suspects from exercising their right to legal advice. These included: reading suspects their rights too quickly, incomprehensibly, incompletely, or simply asking them to 'sign here, here and here'; telling them they would only be held in custody for a short time; telling them that the charge was not a serious one, or that they would not be charged or interviewed; or informing them that a request for legal advice would result in their being held for a long period and having 'to wait in the cells'. The research also noted that potential take-up of the right to legal advice might have been suppressed by the fact that the police were not obliged under the codes of practice to inform suspects that the service would be provided free under legal aid (Sanders et al., 1989).

For their part, solicitors were criticised for the ways in which they responded to requests for custodial legal advice. First, there were problems with solicitor availability to answer calls for legal advice, especially outside office hours, which even extended in some areas to duty solicitors.[3] Second, there was a high incidence of

[2]For a summary of this research, see Brown, 1997, and Bridges and Choongh, 1998.

[3]Two types of duty solicitor schemes were set up: *rota schemes* in potentially busy areas where a named solicitor(s) would be on duty, either at all times or out of office hours, and would be paid a 'standby' fee in addition to any other legal aid fees payable for individual cases; and *panel schemes* where the duty solicitor telephone service would work through a list of approved duty solicitors for an area until such time that one was found to be available to respond to a request and the solicitor would be paid only the fees payable for the individual case.

cases in which the only advice offered to the suspect was over the telephone, even though in many police stations there were no facilities to ensure that such advice could be provided on a confidential basis. In the early days of the scheme, 'telephone-only' advice was provided in as many as a third of all requests for legal advice and the rate was even slightly higher where the police indicated that they intended to interview the suspect.[4] Telephone-only advice rates could be considerably higher in particular police stations (up to 80 per cent in one study) (Brown, Ellis and Larcombe, 1992), and even in the case of suspects detained in respect of the most serious offences, a fifth of requests for legal advice where a solicitor could be contacted resulted in the provision of telephone-only advice. It was thus apparent that decisions to provide advice by telephone rather than going to the police station to provide it in person were often made on the basis of considerations other than the needs of the client or the seriousness of the alleged offence.

Suspects themselves were clear that advice over the telephone was of much more limited value than that provided in person: 46 per cent of those who received telephone-only advice described it as worthless, compared to just eight per cent who were attended in person by a legal adviser at the police station (Sanders et al., 1989). A subsequent Home Office study pointed to a number of examples where suspects did not proceed with requests for solicitors when they realised that advice would be given over the telephone. As this study explained:

> *Solicitors are often unable or not prepared to attend the station to provide advice and custody officers are therefore well aware that the only consultation that may take place is on the telephone within others' hearing. However, telephone consultation ... may sometimes occur simply because the suspect does not realise that he or she may ask to speak to the solicitor in person at the police station. The impression may be fostered either by what is said by*

[4] Excluding cases where a solicitor attended with the suspect on a pre-arranged appointment. See Sanders et al., 1989. A subsequent study by the Home Office found a similar rate of telephone-only advice. See Brown, Ellis and Larcombe, 1992.

> *custody officers or because custody officers fail to correct wrong conclusions drawn by the suspect. Examples of both situations were encountered during observation ... the belief that advice will be given only on the telephone may influence decisions about whether to ask for a solicitor.*
>
> **(Brown, Ellis and Larcombe, 1992)**

It is significant that duty solicitors tended consistently to offer telephone-only advice more frequently (44 per cent of cases) than own solicitors (17 per cent), despite the fact that out-of-office-hours duty solicitors would actually have been remunerated more generously than own solicitors had they attended the suspect in person at the police station.

Two factors might have explained the higher rate of police station attendances by own solicitors. The first was the interest of these solicitors in maintaining the loyalty of established clients, so that even when such a client was arrested for a less serious offence the solicitor may have felt a professional obligation to attend in person so that the client would, if arrested on a more serious matter in future, again name them as their chosen solicitor.

The second factor was the greater flexibility own solicitors had in deploying other staff within their firms in responding to requests for custodial legal advice and in attending in person at the police station. As noted earlier, PACE s.58 specified the right of suspects 'to consult a *solicitor* in private at any time' (emphasis added) and initial Law Society guidelines indicated that this work should normally be carried out by a solicitor experienced in criminal law (Law Society, 1985). However, it soon became clear that, in implementing the new provisions for custodial legal advice, solicitors were in practice making considerable use of other staff who might not be qualified as solicitors or experienced or trained in criminal law. The Law Society eventually amended its professional guidance to allow for such delegation even without the solicitor first considering the appropriateness of doing so on an individual case basis:

> *Solicitors organise their work in a variety of ways and it is acceptable for solicitors to give general authority to their clerks to undertake this work without the necessity of a decision by a solicitor in each case.*
>
> **(Law Society, 1991)**

On the other hand, duty solicitors could only delegate to other 'representatives' where a local organising committee allowed this and had vetted the persons concerned as suitable for the role, and even then the duty solicitor was required personally to handle the initial request for legal advice and to undertake an assessment of whether attendance in person might be required and whether this could properly be delegated to another 'representative' within the firm.

The extent of the use of 'representatives' to provide custodial legal advice varied from one solicitors' firm and police station to another (and therefore, in the absence of national statistics on the matter, from one research study to another).[5] The earliest police station observation study for the Lord Chancellor's Department found that, overall, 30 per cent of police station attendances (55 per cent on behalf of own solicitors but only 13 per cent on behalf of duty solicitors) were undertaken by staff who were not solicitors (Sanders et al., 1989). A subsequent Home Office observational study, conducted in a smaller number of police stations and with fewer cases observed, indicated a lower rate of use of 'representatives', ranging from nine per cent to 16 per cent of cases involving the adviser's attendance at the police station (Brown, Ellis and Larcombe, 1992). By contrast, another study, using observers based inside mainly large solicitors' firms, found that as many as three-quarters of police station attendances were undertaken by non-solicitors, including one-fifth by former police officers employed within these firms, 15 per cent by trainee solicitors and 35 per cent by other non-solicitor staff such as legal clerks, secretaries or even out-of-work actors (McConville and Hodgson, 1992).

[5] For a summary of the research findings in this respect, see Bridges and Hodgson, 1995.

Using the evaluation to improve the service

These weaknesses in the initial implementation of the right to custodial legal advice were partially addressed during the 1990s, in particular following the recommendations of the Royal Commission on Criminal Justice in 1993 (RCCJ, 1993).[6] Indeed, even before this, the Home Office had undertaken a revision of the relevant PACE code of practice in order to ensure that suspects were better informed of their right to legal advice. Perhaps the most important change introduced at the time was a requirement to inform suspects that legal advice would be *free* of charge, that the consultation would be *private* and that the adviser would be *independent* of the police. This information was required to be given orally by the custody officer and in the form of an improved leaflet produced by the Law Society, and additionally in posters displayed prominently in custody areas of police stations. The police were also required to inform suspects that the right to legal advice was a continuing one which could be exercised at any point during their detention at the police station, and further reminders of the right to obtain legal advice were to be given prior to any police interview, identification parade, request to take a sample, or when the detention itself was subject to review under PACE. Finally, the revised code specifically stated that '[n]o police officer should, at any time, do or say anything with the intention of dissuading a detainee from obtaining legal advice.'

At the same time, in order to discourage reliance on telephone advice especially among duty solicitors, the Legal Aid Board[7] introduced a set of specific criteria under which duty solicitors would be expected to attend a suspect in person (Legal Aid Board, 1992). These included situations where the suspect requested an attendance, where the offence was an arrestable one and the suspect was to be interviewed, where an identification parade was to be held, or where the suspect

[6] See in particular pp.35-39 and Recommendations 56-69.

[7] Which had taken over responsibility for legal aid from the Law Society as a result of the Legal Aid Act 1988.

complained of serious maltreatment.[8] These criteria were not restrictive, in that duty solicitors (as well as own solicitors) retained a professional discretion to attend in person in other circumstances. They were designed to encourage attendance and, as will be seen, this contrasts with the way in which some of the criteria have now been adapted to serve as exceptions, allowing for an attendance at the police station to be paid for in circumstances where otherwise legal aid is restricted, for both duty and own solicitors, to the provision of telephone-only advice.

The impact of these changes was to significantly improve various aspects of the provision of custodial legal advice. First, take-up of the right to legal advice increased, so that nearly a third of all suspects requested such advice, compared to between a fifth and a quarter prior to implementation of the revised code of practice (Brown, Ellis and Larcombe, 1992). Request rates subsequently increased further to two-fifths of all detainees (Bucke and Brown, 1997). Home Office research also showed that the use of 'ploys'[9] by the police to discourage suspects from seeking legal advice, although not entirely eliminated, did decline, as did the impact of such tactics in influencing suspects' actual behaviour (Brown, Ellis and Larcombe, 1992). The incidence of advice provided only over the telephone also reduced to less than a fifth of cases in which suspects received legal advice while in police custody, a figure that has remained fairly constant until very recently (Phillips and Brown, 1998).[10] At the same time, the differential whereby duty solicitors provided telephone advice more frequently than own solicitors continued (ibid).

[8] 'Arrestable offence' had a specific meaning under PACE 1984 s.24 and, broadly, included offences that carried a maximum sentence of at least five years and certain other specific offences. Section 24 was amended in January 2006 so that the police now have the power of arrest in respect of all offences.

[9] A term with which the Home Office researchers disagreed.

[10] For example, in 2003-2004 the proportion of suspects receiving custodial legal advice on criminal matters who received such advice solely over the telephone was 20.7 per cent. See LSC, 2004: 54.

The other major improvement introduced jointly by the Law Society and the Legal Aid Board, following the report of the Royal Commission on Criminal Justice, was a national scheme for training and accrediting non-solicitor police station legal advisers.[11] This was backed by the Legal Aid Board requiring that such persons, whether acting on behalf of duty or own solicitors, should be registered under the scheme as a condition of their firms being remunerated under the legal aid scheme for police station advice cases on which they were deployed. As a result, several thousand existing and new personnel were accredited under the scheme during its first few years of operation, and the scheme was shown to have resulted in significant improvement in the quality of custodial legal advice as provided both by solicitors and their 'representatives', especially during police interviews (Bridges and Choongh, 1998). At the same time, the introduction of the accreditation scheme for non-solicitor police station representatives probably increased the incidence of their use in the provision of custodial legal advice, especially among larger firms and duty solicitors. The latter, whilst still required to consider a request for custodial legal advice personally before deciding to delegate it to a representative, were relieved of the requirement to obtain prior permission from local organising committees in order to use representatives once the national scheme for their accreditation had been introduced.

Many of the above measures were consolidated with the introduction of the General Criminal Contract for the provision of legally-aided criminal defence services introduced by the LSC in 2001. The contract quality assurance provisions extended to own solicitors the various criteria (previously contained in the duty solicitor arrangements) under which attending the suspect in person at the police station would normally be required. This marked a high point in the drive, which began in the late 1980s, by those responsible for the administration of legal aid (and to some extent by the Home Office) to increase the take-up of custodial legal advice, in line with the spirit of PACE s.58 provisions that it

[11] The scheme is described in detail in Bridges and Choongh, 1998.

should be readily available to all suspects in police stations, and to improve the quality of the provision of such advice by increasing advisers' rates of attendances at police stations (given the limitations of telephone-only advice) and by ensuring that legal advisers were properly trained in their role in protecting suspects' rights throughout their period in detention.

Chapter 2

Restricting access to custodial legal advice – step-by-step

Subsequent changes have thrown the drive to extend the availability and quality of custodial legal advice into reverse, to the extent that it is arguable that the government and the LSC have signalled, for the first time, an intention to 'cap' the provision of custodial legal advice at its present levels (which, even now, is received by less than half of all arrested persons[12]) and effectively to undermine its availability as a universal right for all arrested persons.

Step one – revision of the General Criminal Contract

The first step in this direction was taken with the revision of the General Criminal Contract in 2004, which specified for the first time that only telephone advice would be available under legal aid for certain classes of suspect. These were: those detained for non-imprisonable offences; those arrested on a bench warrant for failing to appear and being held for production before a court (unless the solicitor had clear documentary evidence that would lead to the client's release); those arrested for driving with excess alcohol and taken to a police station to provide a specimen (failure to provide a specimen, driving whilst unfit/drunk in charge of a motor vehicle); and those detained in relation to breach of police or court bail conditions.

As indicated earlier, the revised General Criminal Contract now provided as exceptions in such cases many of the criteria that were previously introduced in order to encourage a greater rate of personal attendance and less reliance on telephone-only advice.[13] These exceptions were where: an interview or

[12] Statistics are not routinely collected, but in the most recent years for which figures are available there were about 1.4 million arrests for notifiable offences (which do not cover all persons arrested or otherwise subject to questioning in police stations) and about 790,000 claims for police station legal advice and assistance.

[13] Strictly, they are not prohibitions in that the lawyer may still attend in person but they cannot be paid to do so under legal aid.

identification procedure was due to take place; the suspect was eligible for assistance from an appropriate adult; the suspect required an interpreter or was otherwise unable to communicate over the telephone; the investigation included another offence not included in the above list; or at the time of the request the legal adviser was already in the police station. In other words, solicitors were previously encouraged to attend in person in such circumstances (and could do so in other cases if they made a professional judgment that attendance was necessary), but now they would only be paid for doing so (in those cases to which the restrictions apply) if the exceptional conditions were satisfied.

Step two – pilot the CDS Direct scheme

In October 2005, the LSC introduced a pilot CDS Direct scheme to provide telephone-only advice to suspects in police stations who had requested the duty solicitor. Whilst the proportion of police station advice cases where the suspect requested a duty solicitor (as opposed to an own solicitor) had increased, it still represented (and continues to represent) a minority of all requests for custodial legal advice. In such cases, the police would, as previously, refer requests for duty solicitors to the national telephone service, the Duty Solicitor Call Centre (DSCC, recently re-named the Defence Solicitor Call Centre). But the DSCC, rather than passing all such calls directly on to the duty solicitor, would instead refer those that appeared, from information available from the police, to be eligible only for telephone advice to CDS Direct instead.

Step three – fail to carry out an independent evaluation

The new pilot scheme began operation at the end of October 2005 and was subject to an internal LSC evaluation after six months (LSC, 2006b). Unlike previous research on custodial legal advice, the evaluation was not carried out by independent researchers, did not involve any observations inside police stations (for example, to assess the conditions under which suspects obtained telephone advice and whether these met the requirement of privacy promised under PACE) or make any

attempt to gauge suspects' reactions to the new service.[14] During this period, 36,211 requests for custodial legal advice intended for duty solicitors were diverted to CDS Direct. However, the new service was only able to deal by telephone advice alone with 70 per cent of these cases, and in a further eight per cent CDS Direct, on giving telephone advice to the suspect, determined that conditions existed that required attendance at the police station and thus referred the case to a duty solicitor.

The remaining 22 per cent of cases were ones where the original request for advice had apparently been misdirected to CDS Direct and on examination were found to involve more serious offences or conditions where the legally-aided suspect was entitled to legal advice in person. These cases were also referred back to duty solicitors, without CDS Direct even attempting to provide telephone advice to the suspect. Whilst the LSC evaluation stated that no cost savings were attributed to this latter group of cases, no attempt was made to measure the extent of additional delay in suspects receiving advice that may have been caused by their cases being misdirected to CDS Direct, nor even whether some of the suspects may, as a result of the delay, have abandoned their request for advice altogether. This was a serious omission given that earlier research had established that delay in contacting a solicitor was a significant factor in suspects deciding to proceed without legal advice (Brown,1997).

The evaluation also showed that no less than 22 per cent of telephone calls made by CDS Direct to police stations in order

[14]The inadequacy and bias of the LSC's internal monitoring of the impact of these changes has persisted, as demonstrated in LSC, 2008. This shows that monitoring is focused primarily on cost savings, is heavily dependent on data supplied to the LSC by the actual providers of the new CDS Direct service (e.g. on their call handling and even the quality of advice offered), supplemented by a fairly perfunctory and poorly designed questionnaire addressed only to police custody officers and not to suspects. Most importantly, no attempt is made to measure overall delays that occur in suspects actually receiving advice through CDS Direct and other cases or the impact these may have on overall take-up of the right to custodial legal advice or suspects' withdrawals of requests for such advice.

to advise suspects went unanswered[15] and in a further 23 per cent of cases the police were 'not ready' to allow a suspect to be advised when telephone contact was made. As the evaluation report noted, such delay 'at worst case scenario, negates our client's ability to receive legal advice that has been requested' (LSC, 2006a).

Step four – rush the consultation on national implementation and ignore the results

Notwithstanding these findings and the questions they raised about the effectiveness of CDS Direct in securing the provision of legal advice for those held in police custody, the LSC, encouraged by the recommendations of the Carter Review of Legal Aid Procurement (Carter, 2006), decided to push ahead. In March 2007 it issued a consultation paper, Duty Solicitor Call Centre and CDS Direct Expansion, proposing that all requests for publicly funded legal advice at police stations should be directed to the DSCC whose operatives would then determine whether to route the request to CDS Direct, the nominated solicitor or a duty solicitor. CDS Direct would 'deal with all publicly funded cases in circumstances where an attendance by the Duty Solicitor or the individual's own solicitor is not necessary' (LSC, 2007a). A solicitor nominated by the suspect, or a duty solicitor, would not be contacted unless attendance was 'necessary'. Although not directly proposed in the consultation paper, it was implied that attendance would be treated as not being necessary in those circumstances where already, under the general criminal contract, attendance was not paid for. The objectives of the proposals were stated as being to achieve greater value for money, to ensure that the LSC had greater control over legal aid expenditure under the forthcoming fixed fee regime, and to give the LSC 'complete management information on the number, location and nature of requests for publicly funded advice and areas for concern in police practices' (LSC, 2007a).

[15] As will be seen, when the scheme was rolled out nationally in 2008, this continued to be a serious problem.

Despite the significance of the proposals and their implications for the right to custodial legal advice, the LSC gave only six weeks for responses. As the LSC itself admitted, 'the tone of the comments was largely negative' (LSC, 2007b: 2.4). Of the 135 responses, only seven were in favour of the proposals. Undeterred, the LSC announced in May 2007 that it would go ahead with the reform. The DSCC would expand to deal with all requests for publicly funded police station advice from 1 October 2007. CDS Direct would be introduced in three areas on 31 October 2007, and in the rest of England and Wales from January 2008 (LSC, 2007b: 4.3-4.6). The phased commencement of CDS Direct would 'provide an opportunity for the Police, CDS Direct and local providers and their representatives to raise any issues that were not identified within the consultation process' and would 'ensure that our working practices can be refined so that national implementation achieves the best possible outcome' (LSC, 2007b: 4.9).

This announcement met with what might be described as a furious response. Concern that the consultation process had been a sham was fuelled by the fact that the contracting procedure for the provision of CDS Direct had continued throughout the consultation period and, it appeared, a contract had been given to a firm that employed many ex-police officers and which, it was understood, employed few, if any, solicitors. Also, as the details of the schemes were assimilated, it became clear that whilst the CDS Direct scheme was limited to a relatively small number of less serious offences (and other grounds for arrest and detention), the DSCC scheme would require custody officers to ask all suspects who requested legal advice whether they intended to pay privately for that advice. The major concern here was that this could institutionalise one of the very 'ploys' that had been identified by research in the early 1990s as being a method by which suspects were deterred from exercising their right to legal advice.

Step five – hurry statutory changes through parliament

It became apparent that PACE Code of Practice C (a statutory code governing the treatment of detained suspects) did not accurately reflect what custody officers would be required to do

under the new schemes. Given the fact that revisions to PACE codes have to be consulted upon, and have to go through the parliamentary procedure for approval of statutory instruments,[16] the commencement dates were put back to January 2008 (subsequently delayed further to February 2008) and the code revision process was initiated. On 24 September 2007, the Home Office sent the proposed revisions to the police and the organisations representing the legal professions, asking for a response by 17 October 2007, a period of just over three weeks. Whilst PACE s.67(4) provides that the Secretary of State must consult with 'such other persons as he thinks fit' in addition to those organisations, clearly he saw no need to consult with any other person or body.[17] Perhaps not surprisingly, despite a variety of concerns raised by the non-police consultees, both about the schemes and the way in which they had been interpreted in the draft revisions, the version laid before parliament for approval was almost identical to the original version consulted upon.

At this stage, the authors of the paper prepared a parliamentary briefing setting out their concerns. It is worth repeating some of them here since no changes were made during the parliamentary process so the version now in force[18] suffers from the same problems. As we shall see, however, even as parliament was approving the revisions, the LSC finally realised the folly of creating a scheme that involved requiring custody officers to ascertain whether a suspect intended to pay privately for legal advice, rendering the revised code out of date even before it was approved.

Under Code C, paragraph 6.1 the police are required, when suspects arrive at a police station, to inform them of their

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[16] PACE 1984 s.67.

[17] One of the authors, Ed Cape, did nevertheless respond, expressing concern about the two schemes and raising questions about their legality. See Home Office, 2007a.

[18] The revised Code C was introduced by the Police and Criminal Evidence Act 1984 (Codes of Practice) Order 2008, SI No. 167 and took effect on 1 February 2008. It is available at: http://police.homeoffice.gov.uk/operational-policing/powers-pace-codes/pace-code-intro/

right 'at any time to consult and communicate privately with a solicitor, whether in person, in writing or by telephone, and that free independent legal advice is available'. Police officers continue to be prohibited from doing or saying anything with the intention of dissuading a detainee from obtaining legal advice (paragraph 6.3). However, these requirements are directly contradicted by changes made to the Code C Notes for Guidance. In its previous version, Code C Note for Guidance 6B specified the following:

> *A detainee who asks for legal advice should be given an opportunity to consult a specific solicitor or another solicitor from that solicitor's firm or the duty solicitor. If advice is not available by these means, or they do not want to consult the duty solicitor, the detainee should be given an opportunity to choose a solicitor from a list of those willing to provide legal advice. If this solicitor is unavailable, they may choose up to two alternatives. If these attempts are unsuccessful, the custody officer has discretion to allow further attempts until a solicitor has been contacted and agrees to provide legal advice. Apart from carrying out these duties, an officer must not advise the suspect about any particular firm of solicitors.*

Note for Guidance 6B is now replaced by a new Note for Guidance 6B2 which states:[19]

> *A detainee who asks for legal advice* ***to be paid for by himself*** *should be given an opportunity to consult a specific solicitor or another solicitor from that solicitor's firm. If this solicitor is unavailable by these means, they may choose up to two alternatives. If these attempts are unsuccessful, the custody officer has discretion to allow further attempts until a solicitor has been contacted and has agreed to provide legal advice. Otherwise,* ***publicly funded legal advice*** *shall in the first instance be accessible by telephoning a call centre authorised by the Legal*

[19]This version was applicable from 21 April 2008 when CDS Direct was rolled out throughout England and Wales.

Services Commission (LSC) to deal with calls from the police station. ***The Defence Solicitors Call Centre will determine whether legal advice should be limited to telephone advice or whether a solicitor should attend.*** *Legal advice will be by telephone if the detainee is:*

- *detained for a non-imprisonable offence,*
- *arrested on a bench warrant for failing to appear and being held for production before the court (except where the solicitor has clear documentary evidence available that result in the client being released from custody),*
- *arrested on suspicion of driving with excess alcohol (failure to provide a specimen, driving whilst unfit/drunk in charge of a motor vehicle), or*
- *detained in relation to breach of police or court bail conditions.*

An attendance by a solicitor for an offence suitable for telephone advice will depend on whether limited exceptions apply, such as:

- *whether the police are going to carry out an interview or an identification procedure,*
- *whether the detainee is eligible for assistance from an appropriate adult,*
- *whether the detainee is unable to communicate over the telephone,*
- *whether the detainee alleges serious maltreatment by the police.*

Apart from carrying out these duties, an officer must not advise the suspect about any particular firm of solicitors. (emphases added).

Step six – issue confusing, ambiguous and factually incorrect guidance

A basic flaw with the revised version of Code C is that there is a drafting error, as a result of which at no stage are the police required to offer a suspect a choice of his or her own solicitor,

one chosen from a list, or the duty solicitor.[20] This matter may be covered by a revised Notice of Rights and Entitlements or a revised script for custody officers but it seems essential that the requirement to offer this choice is incorporated in the code itself if the new arrangements for contacting own solicitors through the DSCC are to work in the way intended and as outlined in documentation from the LSC. In particular, the flow chart attached to the Commission's own consultation on these arrangements (LSC, 2007a: Annex 1) specifically indicated that the police should record a suspect's preference for a particular lawyer and presumably pass this information on to the DSCC, so that they can attempt to identify and contact the firm concerned in appropriate cases.[21]

However, whether or not the police specifically advise suspects of their option to choose their own solicitor, in response to being told that they have a right to consult with a solicitor at any time and that 'free, independent legal advice' is available to them, many suspects will indeed request a solicitor already known to them. Yet, at this stage, according to Note for Guidance 6B2, the police are required to contradict their initial statement that legal advice is available free and inform the suspect that, should they request advice from a solicitor of their own choosing, this will only be available if they are prepared to pay for such advice themselves. No distinction is drawn in this respect within the note between cases that are restricted to telephone-only advice and those in which the suspect would normally be entitled to an attendance by a legal adviser at the police station. Indeed, if the police were to be required to make such a distinction, it would in effect involve them directly in determining, at least at first instance, what form of legal advice should be made available to the suspect (rather than

[20] A suspect retains a right to choose in all cases other than in a legally-aided case covered by CDS Direct.

[21] The ambiguity is compounded, however, by the fact that the subsequent tender document issued by the LSC to bidders for CDS Direct contracts (see LSC, 2007c) did not list the identity of a solicitor nominated by a suspect as among the information to be obtained by the DSCC from the police or recorded on their electronic information system.

this decision resting with the DSCC and CDS Direct advisers) and in conveying the fact that only telephone advice is available in certain types of case to the suspect.

As approved by parliament, this aspect of Code C is at one and the same time confusing, highly ambiguous (and therefore open to misinterpretation by the police), factually incorrect and therefore misleading in terms of the right of suspects to receive advice from their own solicitors. This is because suspects will indeed continue to be entitled to receive advice free under legal aid from their own solicitor in the vast majority of cases that are not restricted to telephone-only advice.[22] Even in the latter type of cases, which are intended under the new arrangements to be diverted to CDS Direct, there is a possibility that solicitors might be willing to offer telephone advice on a *pro bono* basis, or at a reduced fee, especially to established clients. This possibility was raised by several solicitor respondents to the LSC's original consultation on expanding CDS Direct (LSC, 2007b: 3.16). In reply the LSC stated:

> *Under the new system firms will continue to be able to provide advice to clients on a private fee paying (or pro bono) basis, it is only those clients who wish to receive publicly funded advice that will need to go via the Duty Solicitor Call Centre and CDS Direct system.*
> **(LSC, 2007b: 3.19)**

That response was, at best, disingenuous, since the suspect in the police station will neither be advised of the possibility of *pro bono* advice nor be given the opportunity of having contact made with their chosen solicitor to see whether such a service may be available to them.

In the event, these concerns were, at least as far as police involvement is concerned, rendered immaterial. As noted, whilst

[22] Provided that the nominated solicitor is within a firm holding a General Criminal Contract from the LSC.

parliament was considering the revisions to Code C, the LSC changed its mind as to how the DSCC was to work.[23] Instead of the police finding out whether the suspect intends to pay privately and then contacting the nominated solicitor or the DSCC as appropriate, as the revised Code C states, the police would be required to route *all* requests for legal advice to the DSCC. The DSCC determines whether the case is covered by CDS Direct. If it is, they will then contact CDS Direct. If not, they will contact the nominated solicitor or, if appropriate, a duty solicitor. Where the case is referred to CDS Direct it is for them to speak to the suspect and ask them whether they intend to pay privately. If the answer is in the affirmative, the case is routed back to the DSCC who will contact the nominated solicitor. Thus, a matter of days before the DSCC was introduced, changes that had not been consulted upon, and of which parliament had not been informed, were introduced. Revision of Code C, which was considered sufficiently important to hold up the implementation of the schemes at the end of 2007, was suddenly deemed irrelevant.

The DSCC scheme was rolled out throughout England and Wales on 14 January 2008, and CDS Direct was introduced in three areas (Greater Manchester, West Midlands and West Yorkshire) on 1 February 2008 and nationally on 21 April 2008. The LSC explained the staged introduction of CDS Direct on the basis that it would 'allow the Commission and other stakeholders time to ensure that the process, particularly the own client elements, are tried and tested before the full national roll out ... This will ensure that our working practices can be refined so that national implementation achieves the best possible outcome' (LSC, 2007b: 4.9). The suggestion made to the LSC that this would not allow sufficient time for a proper evaluation to be conducted was rejected, as was a proposal that the period before full implementation be extended by three months to allow for research, already being

[23] The decision was taken at such a late stage that the LSC had to issue an 'Urgent Notice' to police custody staff informing them of the revised procedure. On 9 January 2008 the LSC was still issuing guidance based on the scheme whereby the police would ask the suspect whether they intended to pay privately. See *Defence Solicitor Call Centre: Questions and Answers for Service Providers*, LSC, 9 January 2008.

conducted by the LSC's own research centre, to assess suspects' responses to the scheme.[24] In confirming that the national roll-out of CDS Direct would go ahead as planned, the LSC stated that its introduction in the first three areas 'went smoothly with no technical problems'.[25] What it did not mention was that there had been considerable problems in the first few weeks of operation of the DSCC, leading Carolyn Regan, the chief executive of the LSC to make a public apology.[26] She explained that call levels had been higher than expected, a problem which, of course, would not have occurred if all requests for 'own solicitors' did not have to go through the DSCC.[27]

However, cannot these difficulties simply be put down to teething problems? What is the problem with CDS Direct given that it is only a relatively few people, arrested and detained for relatively minor offences or on warrant (where a visit in person by a lawyer is unlikely to make any difference to the outcome), who will be limited to telephone-only advice by a CDS Direct adviser? After all, it is accepted by the most critical observers that, despite the fact that decisions to provide it in this way may be taken on the basis of inappropriate factors, telephone advice can be appropriate.[28]

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[24] This was proposed by Professor Michael Zander in a letter dated 22 February 2008 to Lord Hunt, the legal aid minister, and rejected out of hand in a reply dated 4 March 2008.

[25] LSC/CDS Direct web page, http://www.legalservices.gov.uk/criminal/cds_direct.asp accessed on 1 May 2008.

[26] 'I would like to apologise for the difficulties some solicitors experienced following the expansion of the Defence Solicitor Call Centre (DSCC) to cover 'own client' work on 14 January.' Regan, 2008.

[27] The LSC Strategic Plan 2008-2011 mentions none of these difficulties but, by careful use of words, gives the impression that the DSCC scheme has produced benefits without actually claiming that it has done so. Under the heading 'What we have achieved so far' it states: 'Extension of the Defence Solicitor Call Centre to provide quicker advice, reduce the overall time clients are held in the police station and increase value for taxpayers' money.' The LSC has no evidence on speed of advice nor on time spent in police custody, but, on a careful reading of the sentence, it does not actually claim this.

[28] See, for example, Sanders and Young, 2007.

Chapter 3
The costs as well as the benefits

The impact is universal

As is now clear, the DSCC scheme affects the way in which all people who ask for custodial legal advice are dealt with, even those who are not reliant on legal aid (a minority) and those who are, but who are not covered by the CDS Direct scheme (the majority). The Final Regulatory Impact Assessment, signed by the then legal aid minister, Vera Baird,[29] stated: 'For the majority of clients who are being detained for offences that are not restricted to telephone only advice this [DSCC and CDS Direct] will have no impact.'[30] This is simply untrue. All requests for legal advice are directed to the DSCC, and neither the police nor suspects can directly contact a nominated solicitor even if the suspect intends to pay privately.[31] If the case is not within the CDS Direct scheme, the DSCC must contact the nominated solicitor or duty solicitor, who will then have to contact the police. In a case covered by the CDS Direct scheme – for example, driving with excess alcohol – it is not until the CDS Direct adviser finds out, by speaking to the suspect, that they intend to pay privately that any attempt is made to contact the solicitor requested. However, the CDS Direct adviser cannot do this directly. They must refer the case back to the DSCC for this to be done (assuming that the details have been correctly recorded by the police and passed on to the DSCC). The nominated solicitor

[29] The signed and dated copy does not appear to be available on the Ministry Of Justice website, but an unsigned, undated version is available on the LSC website at: http://www.legalservices.gov.uk/docs/consultations/Final_RIA_DSCC_and_CDS-Direct.pdf

[30] Final Regulatory Impact Assessment, para. 65.

[31] There are two exceptions to this that verge on the bizarre: where the solicitor is directly contacted by a relative or friend of the detained suspect; and where a suspect attends at a police station by appointment, accompanied by their lawyer. In these circumstances the lawyer can be paid under the legal aid scheme provided they inform the DSCC that they have been instructed to advise. So, for example, if a suspect arranges for a relative to instruct a lawyer rather than request legal advice themselves once they arrive at the police station, they can have direct access to their lawyer without the request being routed through the DSCC.

will then have to contact the police. This entails a minimum of six telephone calls before the privately paying suspect is able to speak to their lawyer.

The LSC is aware of considerable difficulties in that many telephone calls to police stations (or custody suites) go unanswered. In November 2007 a national newspaper published an article entitled: 'Legal advice helpline for suspect in chaos because police don't answer the phone'. In Bridewell police station in Nottingham, it was reported, the police answered the telephone less than 50 per cent of the time. An inspector who ran the custody suite was quoted as saying, 'On a busy Friday night, you are not going to get that phone answered because all your staff is concerned with is that stream of people walking in.' John Sirodcar, the LSC's head of direct services programme and responsible for the schemes, was reported as responding: 'People are not getting their rights because police are not answering the phones' (Condron, 2007).

Thus, before the schemes were introduced nationally, the LSC would appear to have been well aware of the problems. Given this, it is noteworthy that the LSC timeliness targets and evaluations (LSC, 2008) refer only to the speed of response to requests for legal advice. The LSC does not appear to know, or to want to know, the impact of the schemes on the actual time taken for suspects to receive advice. Yet speed of delivery of advice is crucial. In its Global Guide to Performance Indicators the Vera Institute of Justice makes this absolutely clear: 'The most vulnerable period for all defendants is the time immediately following arrest. The sooner advice is provided, the less physical, psychological, and legal injury the defendant will suffer... the measure should be the amount of time between arrest and the first face-to-face contact with a legal advisor' (Vera Institute of Justice, 2003).

When the police were responsible for contacting the lawyer directly, they were required to do so as soon as practicable (PACE s.58(3)), and when they did so, the lawyer could normally obtain details from the police about the client and reasons for detention and speak to the client if that was appropriate. Furthermore, the time between the request for legal advice and when the lawyer

was contacted by police was transparent since these details had to be recorded in the custody record. Although the recording requirements remain, the police can avoid responsibility for any delay once they have contacted DSCC. From the suspect's perspective, the causes of delay are irrelevant. Moreover, in the past, a suspect could directly ask the police to contact their lawyer, and would have been entitled to an explanation from the custody officer as to what had been done to implement their request. Now, the suspect might simply be told: 'We have contacted DSCC and that is all we are required to do.' As noted earlier, delay is a significant factor in suspects withdrawing requests for legal advice, and the likelihood of this might well be increased if the suspect is aware that they are effectively at the mercy of the efficiency (or otherwise) of a call centre and the willingness or ability of the police who are holding them to answer their telephones.

Impact on the vulnerable

It was noted earlier that under the CDS Direct scheme there are various exceptions where a person is entitled to legally-aided advice from a solicitor in person even though they have been arrested for one of the reasons for which legally-aided advice is limited to the telephone. These include when the detained person is 'eligible' for assistance from an appropriate adult, which covers those under 17 years and those who are, or who may be, mentally disordered or otherwise mentally vulnerable. It should be noted that under PACE Codes C, D and H the question is not one of eligibility. Rather, if a detained person comes within these categories, the custody officer is obliged to identify and contact an appropriate adult and ask them to come to the police station (Code C, paragraph 3.15). Although there is no up-to-date evidence, research in the 1990s showed that the police are poor at identifying those who are or who may be mentally disordered or vulnerable. Research by Gudjonsson found that whilst the police assessed less than two per cent of suspects as being mentally disordered or handicapped, the true figure was probably nearer 20 per cent (Gudjonsson et al., 1993). The Home Office subsequently issued best practice guidance which stated that defence lawyers 'need to be diligent to make sure that "borderline" mentally vulnerable people … are identified so that proper safeguards

under PACE Code C can be implemented'.[32] A danger with CDS Direct is that if the police make an incorrect assessment, this is unlikely to be picked up by an adviser giving advice over the telephone. Even if it is picked up, CDS Direct will have to refer the case back to the DSCC, who will then have to contact the nominated solicitor or the duty solicitor so that they can advise in person. As with the privately paying suspect, this will entail a minimum of six telephone calls before the vulnerable suspect is able to speak to their lawyer,[33] and the scope for error and delay, and detriment to the suspect, is obvious.[34] Yet the LSC's response has simply been to state that '[u]nder the PACE Codes the police are responsible for allocating an appropriate adult where a client is assessed as vulnerable. If an appropriate adult is allocated, the case will not be handled by CDS Direct'.[35]

Are the new services legal?

In addition to the practical problems resulting from the introduction of the two schemes, the question is also raised of their legality both by reference to the statutory right to consult a solicitor under PACE s.58 and by reference to the European Convention on Human Rights (ECHR) Article 6. Section 58 gives a right to 'consult a solicitor'. 'Solicitor' is defined for the purposes of the code as including an accredited or probationary representative, but historically this was directed at ensuring that where a representative attended a police station on behalf of a solicitor, they were treated no less favourably than a solicitor. It is not authority for asserting that an arrested person does not

[32] *Mentally Disordered Offenders: Inter-Agency Working*, a best practice booklet issued with Home Office Circular 12/1995, p.31.

[33] Initial call from police to DSCC; DSCC to CDS Direct; CDS Direct to police/client,;CDS Direct to DSCC; DSCC to nominated or duty solicitor; nominated or duty solicitor to police/client.

[34] There are similar concerns where a suspect has suffered from serious police maltreatment.

[35] Letter to the editor of *Legal Action* from John Sirodcar, in response to concerns expressed by one of the authors in an earlier article in that journal. See *Legal Action* 49, 2008.

have the right to consult with a solicitor as opposed to a legal representative. Furthermore, the term 'solicitor' is not defined in PACE itself to include a representative, and it is submitted that a code cannot be treated as authority for the proposition that the right to consult a solicitor can be satisfied by offering only a consultation with a representative. The Solicitors Act 1974 makes it clear that a solicitor is a person who has been admitted as such and whose name is on the roll, and that a person who does not satisfy those conditions must not pretend to be, or represent themselves as, a solicitor. Under the CDS Direct scheme most advice will be provided by representatives rather than solicitors. Although it is understood that the companies contracted to provide CDS Direct do employ solicitors, it is far from clear whether, were a suspect to insist on their right to consult with a solicitor, one would be available. If not, and this was to result from systemic factors, the LSC would be responsible for denying suspects their statutory right.

Further, section 58 gives a right to a person to consult a solicitor 'in private'. Whilst in many police stations facilities for private consultation are far from adequate,[36] they do exist and consultation can be delayed until a time when such facilities are available. It has long been recognised that private facilities for telephone consultation are often not available in police stations (Phillips and Brown, 1998) and it would seem that this continues to be the case. In a letter to one of the authors a Ministry of Justice official stated: 'The mere fact that some police stations may not presently have adequate facilities in this regard [ie., for private telephone consultations] should not, however, be a barrier to the expansion of CDS Direct ...'[37] This would seem to be a clear acceptance that the statutory right to legal advice in private is routinely breached, and yet the CDS Direct scheme is based on

[36] Recognised by Home Office Circular 034/2007, *Safety of Solicitors and Accredited and Probationary Representatives Working in Custody Suites at Police Stations.*

[37] Letter from Imran Khan, Legal Aid Strategy Division, Ministry of Justice, to Ed Cape, 21 November 2007.

the notion that telephone advice is adequate in cases covered by the scheme.

The argument regarding compatibility with ECHR Article 6 is more complex, and the intention here is to give an outline of the issues. Article 6(3) provides that everyone 'charged with a criminal offence' has the right to 'defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require'. The European Court of Human Rights (ECtHR) has held that the rights in Article 6(3) are not limited to where a person has been charged, in the sense given to that term in England and Wales, but can extend to the investigative stage.[38] Therefore, the Article 6 right to legal assistance would apply in most circumstances where a person is arrested for an offence and detained by the police in England and Wales. A person paying privately clearly has a right to choose their lawyer. However, where a person does not have sufficient means to pay, Article 6(3) may be interpreted, and appears to be interpreted by the LSC, as meaning that if legal advice is funded by the state the suspect loses the right to choose.

This raises two questions. Although Article 6(3) refers to the person's inability to pay, it is arguable that the relevant issue is not ability to pay, but the need to depend upon state aid. It is understood that the 'script' for CDS Direct advisers requires them to ask, in cases covered by the scheme, whether the suspect intends to pay privately. In so doing, they are denying the opportunity of a suspect to choose their lawyer in circumstances where they could afford to pay a reduced fee which a solicitor is willing to accept, or where the solicitor is willing to provide the advice at no charge. The LSC has refused to accept the logic of this argument, insisting that if solicitors wish to provide services at a reduced rate or free, they must make potential clients aware of this in advance. However, by adopting this approach, the LSC may be preventing a suspect who

[38] See: *Imbrioscia v Switzerland* (1994), 17 EHRR 441; *John Murray v United Kingdom* (1996), 22 EHRR 29; and *Ocalan v Turkey* (2003), 37 EHRR 10.

does not wish or need to rely on state assistance from exercising a choice.[39]

Will the new scheme realise the cost savings promised?

A significant part of the rationale for introducing the DSCC and CDS Direct schemes is the scope for direct cost savings. The pilot demonstrated that where CDS Direct was able to 'close' a case without a referral back to the duty solicitor, the average cost per case was £22, compared with the £30 fee normally paid to duty and own solicitors for telephone advice. However, the latter fee was a standard one payable to solicitors for all telephone advice they provided to suspects throughout their period in custody and regardless of the nature of the charges against them. As CDS Direct only covers relatively minor cases, where the telephone advice likely to be given would be relatively straightforward and simple, it is not clear that this is a valid basis of comparison. Nevertheless, the total annual saving predicted from lower cost per telephone advice for duty solicitor cases alone was just £844,000.

Far greater savings were predicted from another presumed effect of introducing CDS Direct: substituting telephone-only advice from CDS Direct in cases where the duty (or own) solicitor might previously have exercised their professional judgment to attend the suspect in person. It is again a mark of the shift in the attitudes of the legal aid authorities from earlier periods, which emphasised upholding the rights of suspects to legal advice under PACE, towards seeking to obtain cost savings by encouraging greater use of telephone-only advice. Detailed analysis of figures covering just four months of CDS Direct operations showed that 65 per cent of all police station advice cases during this period resulted in

[39] Whether a person who is reliant on state funding has the right to choose the lawyer appointed is unclear. There is a crucial difference between the two official versions of Article 6(3), with the English version, as noted in the text above, using the word 'or' between the second two limbs of the relevant sentence and the French version using the word 'et'. Early case law of the ECtHR indicates that the legally-aided client does not have the right to choose, although in *Pakelli v Germany* (1984), 6 EHRR 1 the court took the contrary view. See further Trechsel, 2005.

attendance rather than telephone-only advice, compared with over 75 per cent during the previous six months. On the basis of this shift to telephone advice over this relatively short period, the pilot evaluation predicted annual savings, from the continuation of CDS Direct for duty solicitor cases alone, of just under £5 million (LSC, 2006b: Appendix 1).[40]

However, there are reasons for doubting the validity of such large projected cost savings. During the first four months of the CDS pilot the overall volume of police station advice cases actually increased by nearly eight per cent compared to the previous six-month period, with virtually all of this increase attributable to a greater volume of telephone-only advice cases. In other words, the volume of police station attendances by legal advisers hardly changed at all between the two periods. It may, therefore, be the case that the introduction of CDS Direct actually increased the propensity of suspects arrested on relatively minor charges to seek legal advice over the telephone, rather than led to the substitution of attendance at police stations with telephone advice. If so, rather than leading to cost savings, the overall costs of the service would have increased.[41]

---

[40] The projected savings have subsequently increased to £10 million per annum. See LSC, 2008: Appendix 1.

[41] Figures published in the LSC's annual reports for the relevant years also show no significant shift in the proportion of police station advice cases entailing an attendance by the legal adviser at the police station. Thus, in 2004-2005, before CDS Direct was introduced, there were 726,229 claims from solicitors paid for the provision of legal advice to criminal suspects at police stations, of which 575,814 (79 per cent) were for attendances by the legal adviser at the police station and 150,415 (21 per cent) for telephone advice only. In 2005-2006, the year in which CDS Direct was introduced, there were 751,977 claims from solicitors for police station advice in criminal cases, plus an estimated 21,000 cases 'closed' by CDS Direct without a further referral to a solicitor, representing an increase from the previous year of 6.4 per cent in the overall volume of police station advice cases. Interestingly, the proportion of police station advice cases entailing an attendance by the legal adviser in the latter year, at 617,362 or 80 per cent, was slightly higher than in the year prior to the introduction of CDS Direct. Unfortunately, the published data from the LSC for 2006-2007 does not provide a breakdown of the number of cases referred to CDS Direct in that year or of their outcomes.

On the other hand, information from the LSC about the operation of an expanded CDS Direct service is perhaps indicative of their determination to drive up cost savings through the conversion of cases in which a legal adviser attends the police station to telephone only advice. The final invitation to tender for CDS Direct issued by the LSC in September 2007 estimated that when the service was fully extended to cover both duty and own solicitor cases, it would handle an estimated 204,000 calls per annum (LSC, Invitation to Tender CDS Direct, September 2007). This compares with a total of just over 36,000 calls (inclusive of misdirected calls) received in the first six months of the CDS Direct pilot (LSC, 2006b), and with a weekly average of 1,227 calls received by CDS Direct during the period November 2006 to February 2007 (ibid: p.10) when the service covered only duty solicitor cases. These figures suggest an annual caseload of between 64,000 and 72,000 from duty solicitor referrals, and it is planned that this number will increase threefold once own solicitor cases are also included within the scope of CDS Direct. However, as duty solicitors are estimated to handle just under half of all police station advice cases at present, and as they have always had a propensity to rely on telephone-only advice more frequently than own solicitors, it is not clear how such a threefold expansion in CDS Direct case numbers is to be achieved unless a very considerable number of cases where own solicitors currently attend suspects at police stations are diverted into telephone-only advice. [42]

[42] The same picture emerges from a comparison between the projected number of cases to be referred to the expanded CDS Direct, at 204,000 per annum, and the number of suspects recorded in the Legal Aid annual reports as receiving telephone advice only, which in 2005-2006 was 150,415. Of course, these figures may indicate that the LSC anticipates that up to a quarter of all calls to CDS Direct will be misdirected cases.

Chapter 4

Restricting eligibility to legal representation

A more fundamental reason for establishing the DSCC and expanding the scope of CDS Direct relates to the wider changes being introduced into the procurement of criminal legal aid under the Carter reforms. These involve the substitution of fixed fees for police station advice work (in place of hourly-based payments) as a precursor for the move toward competitive tendering for all criminal defence work.

One potential side-effect of these changes is that, in response to having to operate under a system of fixed fees per case, solicitors will seek to increase the volume of police station cases they handle as a means of maintaining or even increasing their income. Given that the number of arrests is going up, [43] and the fact that probably still less than half of all persons who are arrested currently request legal advice (including many who are arrested for the more serious offences which are not currently limited to telephone advice only), there is obviously considerable scope for growth in the overall volume of custodial legal advice.

In previous periods, such expansion may well have been viewed as a positive consequence of the introduction of fixed fees, encouraging solicitors to take on even more police station advice work. Under the current regime, this is not the way the prospect of more arrested persons exercising their statutory right to custodial legal advice is viewed. Rather, it is now seen as a

[43] The number of arrests for notifiable offences increased by almost 12 per cent between 1999-2000 and 2005-2006. See *Arrests for Recorded Crime (Notifiable Offences) and the Operation of Certain Police Powers under PACE*, Ministry of Justice, October 2007. Furthermore, offences brought to justice (i.e., arrests followed by formal action such as charge, caution, etc.) increased by approximately 250,000 per annum between 2002 and 2007. See Home Office, 2007b. For research on what drives legal aid costs for police station advice, see Cape and Moorhead, 2005.

cause for alarm and as potentially undermining the cost controls implicit in a system of fixed fees and competitive tendering, as the Carter Report (2006) itself made clear at several points:

> *All requests for advice – both duty and now own solicitor should be routed through the duty solicitor call centre. This is particularly important ... to protect against the potential of a small number of suppliers seeking to drive their volume of cases up in inappropriate matters ...*
>
> **(chapter 4 paragraph 25)**

> *If the duty solicitor call centre and CDS Direct are expanded in the way suggested this could provide a filter whereby the risk of some firms taking up cases to maximise fees would be reduced.*
>
> **(ibid: paragraph 27)**

> *The duty solicitor call centre and CDS Direct should be monitored closely by the Legal Services Commission. The monitoring should be on a monthly basis and at a local scheme level, and should look at volume of cases, and review their effectiveness and quality of service.* ***If this fails to control any increase in volume of work being undertaken in the police station, the DCA [Department of Constitutional Affairs, now the Ministry of Justice] and the Commission should consider options for restricting defendant eligibility*** *(emphasis added).*
>
> **(ibid: Recommendation 4.5).**

This latter statement makes abundantly clear the true intent behind the changes being introduced in the provision of police station legal advice. It is a backdoor method of restricting the take-up of the statutory right of all arrested persons to receive legal advice whilst in police custody to current levels, and one which if it does not succeed will lead to demands for further changes to be made. The most obvious change would be to increase the range, and seriousness, of offences that are limited to telephone-only advice under the CDS Direct scheme. The history of criminal procedure generally, and of police powers under PACE in particular, is replete with examples of limiting criteria and conditions being

relaxed over time.[44] The writing here is already on the wall. Despite the fact that crime has been going down, arrests and 'offences brought to justice' have been going up in order to meet government targets. That the scope of the CDS Direct scheme will be expanded in the not-too-distant future is as near to being certain as to be certain.

[44] For an analysis of this phenomenon in relation to police powers under PACE, see Cape, 2008.

References

Bridges, L. and Choongh, S. (1998), *Improving Police Station Legal Advice.* London: Law Society and Legal Aid Board.

Bridges, L. and Hodgson, J. (1995), 'Improving custodial legal advice', *Criminal Law Review* 114.

Brown, D., Ellis, T. and Larcombe, K. (1992), *Changing the Code: Police Detention under the Revised PACE Codes of Practice*, Home Office Research Study 129, London: Home Office.

Brown, D. (1997), *PACE Ten Years On: A Review of the Research*, Home Office Research Study 155, London: Home Office.

Bucke, T. and Brown, D. (1997), *In Police Custody: Police Powers and Suspects' Rights under the Revised Codes of Practice*, Home Office Research Study 174, London: Home Office.

Cape, E. (2008), 'PACE then and now: 21 years of "rebalancing"', in Cape, E. and Young, R., *Regulating Policing: the Police and Criminal Evidence Act 1984 Past, Present and Future*, Oxford: Hart.

Cape, E. and Moorhead, R. (2005), *Demand Induced Supply? Identifying Cost Drivers in Criminal Defence Work*, London: Legal Services Research Centre.

Carter, Lord (2006), *Legal Aid: A Market-Based Approach to Reform*, London: Lord Carter.

Condron, S. (2007), 'Legal advice helpline is in chaos as police ignore phone calls', *Mail on Sunday*, 11 November.

Gudjonsson, G., Clare, I., Rutter, S. and Pearse, J. (1993), *Persons at Risk During Interviews in Police Custody: The Identification of Vulnerabilities*, RCCJ Research Study No 12, London: HMSO.

Home Office (2007a), Statutory Consultation of Proposed Amendments to PACE Codes of Practice (Codes A – E): Summary of Responses, London: Home Office.

Home Office (2007b), *Home Office Targets Autumn Performance Report*, Cm 7287, London: TSO.

Home Office (2008), *Code C: Code of Practice for the Detention, Treatment and Questioning of Persons by Police Officers*, London: Home Office, available via www.police.homeoffice.gov.uk/operational-policing/powers-pace-codes/pace-code-intro/

Hope, T. and Walters, R. (2008), *Critical thinking about the uses of research*, London: Centre for Crime and Justice Studies.

Law Society (1985), *Advising a Suspect in the Police Station* (first edition), London: The Law Society.

Law Society (1991), *Advising a Suspect in the Police Station* (third edition), London: The Law Society.

Legal Aid Board (1992), *Duty Solicitor Arrangements*, London: Legal Aid Board.

Legal Services Commission (2004), *Annual Report 2003/4*, London: LSC.

Legal Services Commission (2006a), *Evaluation of CDS Direct First Phase Expansion*, London: LSC.

Legal Services Commission (2006b), *CDS Direct Six Month Evaluation Report,* London: LSC.

Legal Services Commission (2007a),*Duty Solicitor Call Centre and CDS Direct Expansion,* London: LSC.

Legal Services Commission (2007b), *Duty Solicitor Call Centre and CDS Direct Expansion: Final Response to the Public Consultation,* London: LSC.

Legal Services Commission (2007c), *Invitation to Tender CDS Direct* London: LSC.

Legal Services Commission (2008), *Evaluation of CDS Direct First Phase Expansion and Benefits Realisation Plan,* London: LSC.

McConville, M. and Hodgson, J. (1992), *Custodial Legal Advice and the Right to Silence,* Royal Commission on Criminal Justice Research Study No. 16, London: HMSO.

Phillips, C. and Brown, D. (1998), *Entry into the Criminal Justice System: A Survey of Police Arrests and their Outcomes,* Home Office Research Study 185, London: Home Office.

Regan, C (2008),'Next steps for legal aid,' *New Law Journal* 29 February, 309.

Royal Commission on Criminal Justice (1993), *Report* Cm. 2263, London: HMSO.

Royal Commission on Criminal Procedure (1981), *Report* Cmnd 8092, London: HMSO.

Sanders, A., Bridges, L., Mulvaney, A. and Crozier, G. (1989), *Advice and Assistance at Police Stations and the 24 hour Duty Solicitor Scheme,* London: Lord Chancellor's Department.

Sanders, A. and Young R. (2007), *Criminal Justice,* Oxford: Oxford University Press.

Trechsel, S. (2005), *Human Rights in Criminal Proceedings,* Oxford: Oxford University Press.

Vera Institute of Justice (2003), *Measuring Progress towards Safety and Justice: A Global Guide to the Design of Performance Indicators across the Justice Sector,* available at: www.vera.org/publication_pdf/207_404.pdf

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Criminal Defence Service

A GUIDE TO BECOMING AN ACCREDITED POLICE STATION REPRESENTATIVE

Version Number 5.0

June 2008

May 2005

This guidance has been redrafted following amendments to the Police Station Register Arrangements 2001 that were published in April 2005 and are available on the LSC website:

http://www.legalservices.gov.uk/docs/criminal_consultations/LSC_Police_Station_Register_Arrangements_2001_amended_30April2005.pdf

IMPORTANT NOTE

In December 2004 the administration of the Register of Police Station Representatives was transferred from the Criminal Defence Service to the **POLICE STATION REPS SERVICE**.

All correspondence or enquiries regarding the Register should be directed to:

Police Station Reps Service
First Assist, 32 High Street
Purley, Surrey, CR8 2PP
DX 59609 PURLEY

Tel: 0845 600 1022
Fax: 0208 763 3191

Email: policestationreps@firstassist.co.uk

Abbreviations

The following abbreviations have the following meanings:

LSC – Legal Services Commission
CDS – Criminal Defence Service
PSRS – Police Station Reps Service
DSCC – Duty Solicitor Call Centre

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1.Background

1.1 The Access to Justice Act 1999 provides that the LSC shall fund legal advice and assistance to individuals involved in criminal investigations - from initial questioning by the police to the point at which the decision is made as to whether the individual is to be charged.

1.2 When legal advice is requested two options are available – the Duty Solicitor and the detainee's own solicitor.

1.3 Duty Solicitor

- Custody officer calls DSCC
- DSCC calls Duty Solicitor

1.4 Own Solicitor

- Custody officer calls solicitor directly

1.5 Advice given to a detainee by a Duty Solicitor is paid for by the LSC. If the detainee chooses his or her own solicitor, the LSC will pay for the advice given provided the solicitor holds a General Criminal Contract.

1.6 In addition to solicitors, Police Station Representatives can attend the police station to give advice and assistance to detainees in certain circumstances – see **Appendix 1**.

2. Police Station Representatives

2.1 2 categories:

- Accredited
- Probationary

2.2 Accredited Representatives are eligible to give advice paid for by the LSC at the police station in certain circumstances – see **Appendix 1.**

2.3 A Probationary Representative has not completed the Accreditation Process and can only give advice paid for by the LSC at the police station during a 12 month Probationary Period.

3. Who Can Apply?

3.1 Anyone can apply to become accredited as a Police Station Representative, with the following exceptions:

- Serving police officers
- Special constables
- Individuals employed in any capacity that may cause a conflict of interest when undertaking Criminal Defence Service work

4. Pre-Registration Requirements

Supervising Solicitor

4.1 Before applying to the PSRS to be registered as a Probationary Representative you must find a suitable Supervising Solicitor.

4.2 Your Supervising Solicitor must be a current police station Duty Solicitor or otherwise a solicitor who is acceptable to the LSC as meeting the Crime Category Supervisor Standard – see Specialist Quality Mark;

http://www.legalservices.gov.uk/docs/quality_mark/specialist_standard.pdf

4.3 The same solicitor should supervise you throughout the accreditation process. If exceptional circumstances make this arrangement impractical you must contact the PSRS requesting permission to change Supervising Solicitor and setting out the reasons why.

4.4 All Probationary and Accredited Representatives must have a designated Supervising Solicitor at all times.

Assessment Organisation

4.5 Before applying to the PSRS to be registered as a Probationary Representative you must first register with an Assessment Organisation.

4.6 The Assessment Organisations are:

- Central Law Training, Wrens Court, 52-54 Victoria Road, Sutton Coldfield, Birmingham, B72 1SX (0121 362 7703)
- Centre for Professional Studies, University of Wales, PO Box 294, Cardiff, CF1 3UX (02920 876 948)
- Datalaw, 27 Dale Street, Liverpool, L2 2DH (0151 236 1234)
- School of Law, University of Wales, Singleton Park, Swansea, SA2 8PP (01792 602 251)

5. Registering As A Probationary Representative

5.1 Once you have registered with an Assessment Organisation to begin the accreditation process you must pass two tests before you can register with the PSRS as a Probationary Representative: Part A of the Portfolio and the Written Examination (NB. The requirement to pass the Written Examination before registering with the PSRS only applies if you registered with an Assessment Organisation after 30 April 2005).

Part A of the Portfolio

5.2 Part A of the Portfolio is split into two stages.

5.3 Stage 1 consists of 2 cases where you observe a solicitor giving advice to a client in a police station. The advice in these cases can be given by any eligible solicitor and may be Duty or Own Client cases. The cases may be summary, either way, or indictable only.

5.4 Stage 2 consists of 2 cases in which a solicitor observes you giving advice in a police station. The observing solicitor must be your Supervising Solicitor. The cases must not be Duty cases or indictable only. If your Supervising Solicitor has to intervene at the police station then that case will not be valid for inclusion in stage 2.

Written Examination

5.5 As stated above, if you register with an Assessment Organisation after 30 April 2005 you must have passed, or be exempt from, the Written Examination (in addition to passing Part A of the Portfolio) before you can register with the PSRS as a Probationary Representative.

5.6 You can claim an exemption from the Written Examination if you have:

- Passed the Legal Practice Course;
- Passed the Bar Vocational Course;
- Qualified as a Fellow or Member of the Institute of Legal Executives who has passed the ILEX Level 4 Professional Higher Diploma in Law (previously known as the Part 2 examinations), which must include the criminal law and criminal litigation papers.

5.7 Once the Assessment Organisation has marked and passed both Part A of your Portfolio and Written Examination (unless one of the above exemptions applies) you will be provided with an application form. This form should be completed, and evidence that you have passed or are exempt from the written examination attached, and sent to the PSRS at **Police Station Reps Service, First Assist, 32 High Street, Purley, Surrey, CR8 2PP.**

5.8 The PSRS will then register you as a Probationary Representative and issue you with a PIN number within 14 days of receiving the fully completed form.

6. Requirements Following Registration As A Probationary Representative

6 Month Deadline

6.1 You must pass one of the remaining Accreditation Tests (Part B of the Portfolio, Critical Incidents Test or, if you registered with an Assessment Organisation on or before 30 April 2005, the Written Examination) within 6 months of registration with the PSRS.

If you do not pass one of the tests within 6 months of registration with the PSRS, you will be suspended from the Register until such time as one of the tests is passed. Upon passing one of the tests, you will be reinstated to the Register, and have a further 6 month Probationary Period to complete the accreditation process – see **Appendix 3**.

12 Month Deadline

6.2 You are required to pass all the tests within the 12 month Probationary Period. The Probationary Period is made up of either 2 six month period, if one of the tests is not passed within 6 months of registration, or one continuous 12 month period if a test is passed within the first 6 months. Failure to pass all tests within either 12 month period will result in suspension from the Register. In these circumstances you will only be reinstated to the Register when the PSRS have been informed that all the tests have been passed – see **Appendix 3**.

7. Monitoring Progress

7.1 It is both your responsibility and that of your Supervising Solicitor to monitor your progress and ensure that all the tests are passed within the prescribed timeframe.

8. Extending Your Probationary Period

8.1 There is no provision within the Register Arrangements to allow any extension to your Probationary Period.

8.2 However, you may, with prior written notice, **'Voluntarily Suspend'** yourself from the Register. This can be done on one occasion only. This effectively stops the clock on your Probationary Period so that when you request to be reinstated to the Register, the Probationary Period will be extended by the same amount of time as the suspension lasted for - see **Appendix 3**.

8.3 Furthermore, such a suspension can be granted without prior notice if the reason for suspension is illness, pregnancy or loss of employment. Written evidence to support any such request will be required before the suspension can be granted together with confirmation that no remuneration for police station attendances has been or will be claimed from the LSC during the period that suspension is requested.

8.4 Voluntary Suspensions can last for a minimum of one month and a maximum of three years.

9. Pass Dates

9.1 A pass date is the date the test board of the relevant Assessment Organisation sits and determines that the test has been passed, **not** the date that the test was sat / submitted.

9.2 It should be noted that it may take up to 35 working days after the submission / sitting of a test before the result is issued by an Assessment Organisation. Therefore, you should ensure that all tests are booked with sufficient time allowed for marking, in order to prevent suspension.

10. Notification On Passing A Test / Gaining Accreditation

10.1 It is possible that you will receive notification of having passed a test before your Assessment Organisation emails the result to the PSRS. Therefore, the PSRS would encourage you to contact them directly, providing evidence that you have passed a test, so that the Register can be immediately updated.

11. Accreditation Costs Contribution

11.1 The LSC will contribute £400 towards the cost of your accreditation. This is available to all representatives who have successfully completed the accreditation process on or after 1 April 2002.

11.2 The contribution will be paid to the firm employing the solicitor who is your Supervising Solicitor at the time of accreditation.

11.3 A claim form (CDS13) is available on the LSC website: www.legalservices.gov.uk

12. Remaining Accredited / Training

12.1 Accredited Representatives may be designated fee earners for their Supervising Solicitors' firms.

12.2 Training requirements for all designated fee earners are now contained within Section D5.1 of The Specialist Quality Mark. The requirement is that:

"In each 12 month period, every designated casework member of staff receives a minimum of six hours ' training that directly relates to the relevant category of law."

12.3 Furthermore, a supplier is required to ensure that all its designated fee earners have a job description, annual appraisal, training record and undergo file review.

12.4 To remain an Accredited Representative you must:

- Undertake a minimum of 25 police station attendances per annum
- Undertake 6 hours Continuous Professional Development training on issues relevant to criminal law (which may include internal courses).

12.5 In addition you must advise the PSRS if:

- Employer or employer's address changes
- Supervising Solicitor changes
- Employed as a special constable or in any other capacity that may cause a conflict of interest
- Under investigation, faces an outstanding criminal charge or has been convicted of an offence or is the subject of an investigation by the Office for the Supervision of Solicitors or the Solicitors Disciplinary Tribunal

13. Certificate of Fitness

13.1 The application form that must be submitted to the PSRS in order to be registered as a Probationary Representative includes a Certificate of Fitness. This certificate asks the Supervising Solicitor to declare to the best of his or her knowledge that you are of suitable character to provide legal advice at police stations. In determining this, the Supervising Solicitor should consider any criminal convictions you may have. The Supervising Solicitor should then read the relevant guidance produced by the Criminal Law Committee of the Law Society at:

http://lawsocietyinternetp.aspective.com/documents/downloads/panels policestationrepguidev12004.pdf

and make a professional judgment as to whether you are of suitable character to provide advice and assistance at police stations.

13.2 If a complaint is received or any concerns over the competency or character of a representative arise, the LSC, before taking action, may ask the Supervising Solicitor to comment and also to sign a Certificate of Fitness on behalf of the representative.

13.3 There is no longer a requirement to submit a Certificate of Fitness annually.

14. Freelance Representatives

14.1 Subject to the limitations in Part D of the Contract Specification, the General Criminal Contract does not restrict an Accredited Representative from undertaking work for more than one CDS supplier.

15. Probationary Representatives Only Working For One Firm

15.1 In August 2002, Part B, Rule 3.3 of the General Criminal Contract was amended to include the provision that:

"From 1 April 2003, a Probationary Representative may only provide Police Station Advice assistance for the firm at which his or her supervising solicitor is based. The firm must hold a General Criminal Contract."

16. Certificates of Registration and Accreditation

16.1 In May 2005 the PSRS sent Certificates of Registration to all Probationary Representatives and Certificates of Accreditation to all Accredited Representatives whose records are held on the Register.

16.2 Candidates who register with the PSRS to become Probationary Representatives will now receive a Certificate of Registration when they receive their PIN number.

16.3 Probationary Representatives who complete the accreditation process and become Accredited Representatives will receive a Certificate of Accreditation.

16.4 These certificates should be retained as you may be asked to produce them by future employers and LSC auditors.

Appendix 1

WHO CAN DO WHAT AT THE POLICE STATION?

TYPE OF WORK	DUTY SOLICITOR	ACCREDITED REP	PROBATIONARY REP	SOLICITOR WITH PSQ	SOLICITOR WITHOUT PSQ
Duty – accept telephone initial call from DSCC?	YES	YES	NO*	YES	NO
Own – accept initial telephone call from Police?	YES	YES	YES	YES	YES***
Duty – provide initial telephone / in person advice?	YES	YES	NO	YES	NO
Own – provide initial telephone / in person advice?	YES	YES	YES**	YES	NO
Duty – attendance?	YES	YES	NO	YES	NO
Own – attendance?	YES	YES	YES**	YES	NO
Duty – swaps?	YES	YES****	NO	YES****	NO

NOTE - THE DISTINCTION BETWEEN A SOLICITOR WITH PSQ (POLICE STATION QUALIFICATION) AND ONE WITHOUT IS ONLY RELEVANT AFTER 1 NOVEMBER 2005. UNTIL THAT DATE ALL ADMITTED SOLICITORS HAVE THE STATUS GIVEN ABOVE TO SOLICITORS WITH PSQ.

*Unless CDSM has given written approval to the contrary.

**Not indictable only offences – can be flexible if case starts as summary/either way offence.

*** Any persons from the firm are permitted to take case details of own client matters.

**** Only for the firm where you're supervising solicitor is based.

Appendix 2

Accreditation Tests

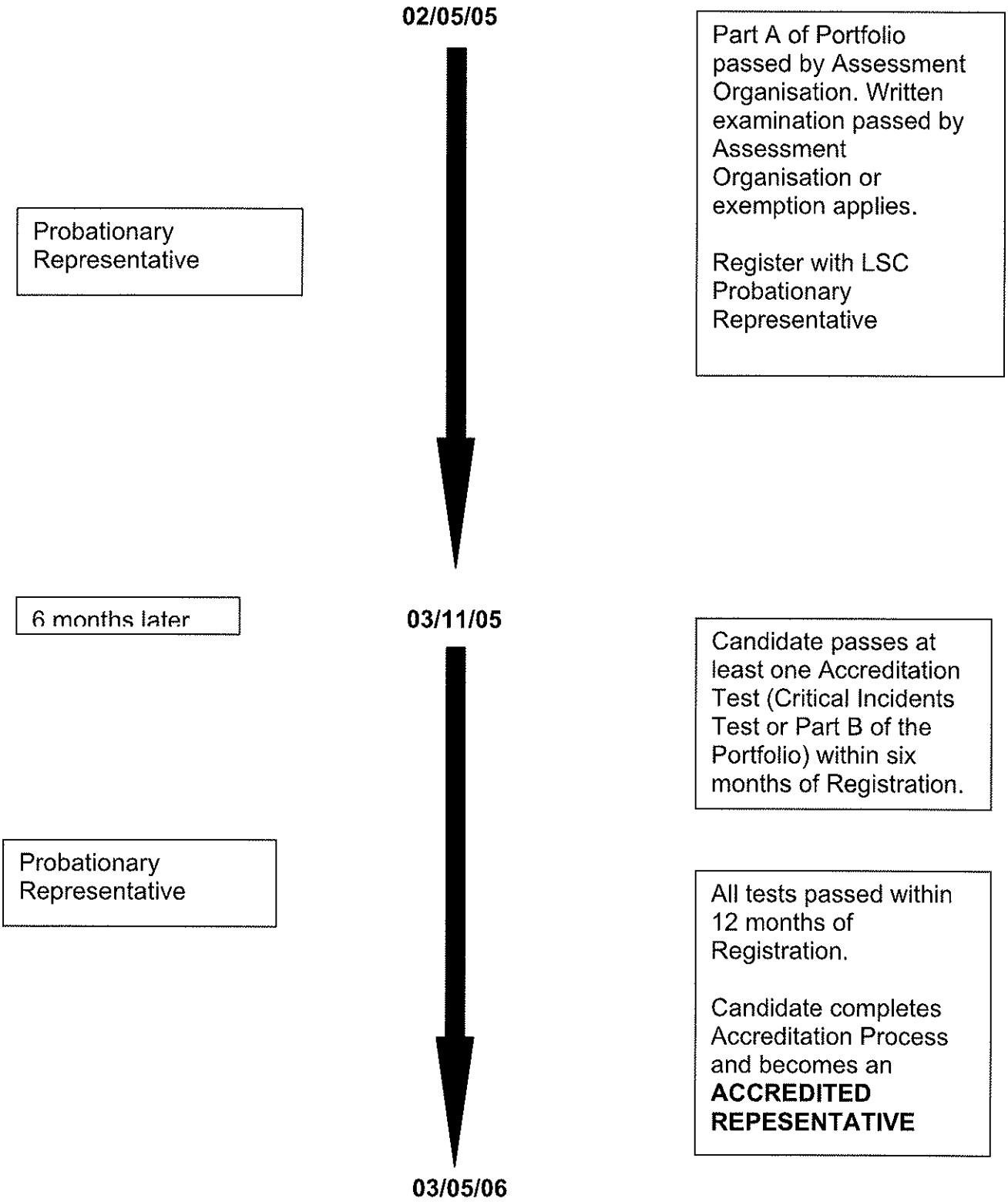
The Law Society provides comprehensive guidance on the Accreditation Test requirements on their website:

http://lawsocietyinternetp.aspective.com/documents/downloads/panelspolicestationrepguidev12004.pdf

Appendix 3

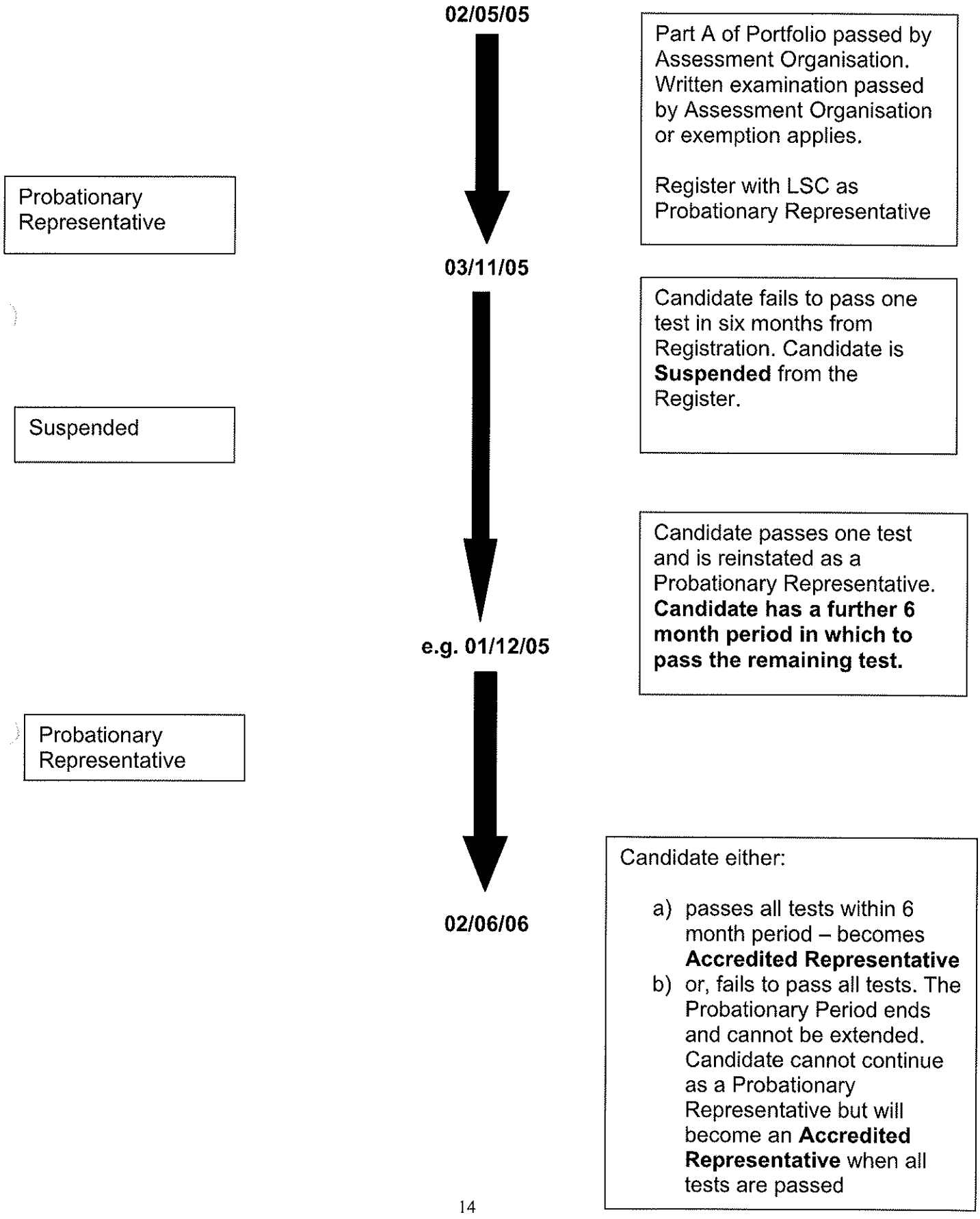
Accreditation Process – Flowcharts

1. The Accreditation Process

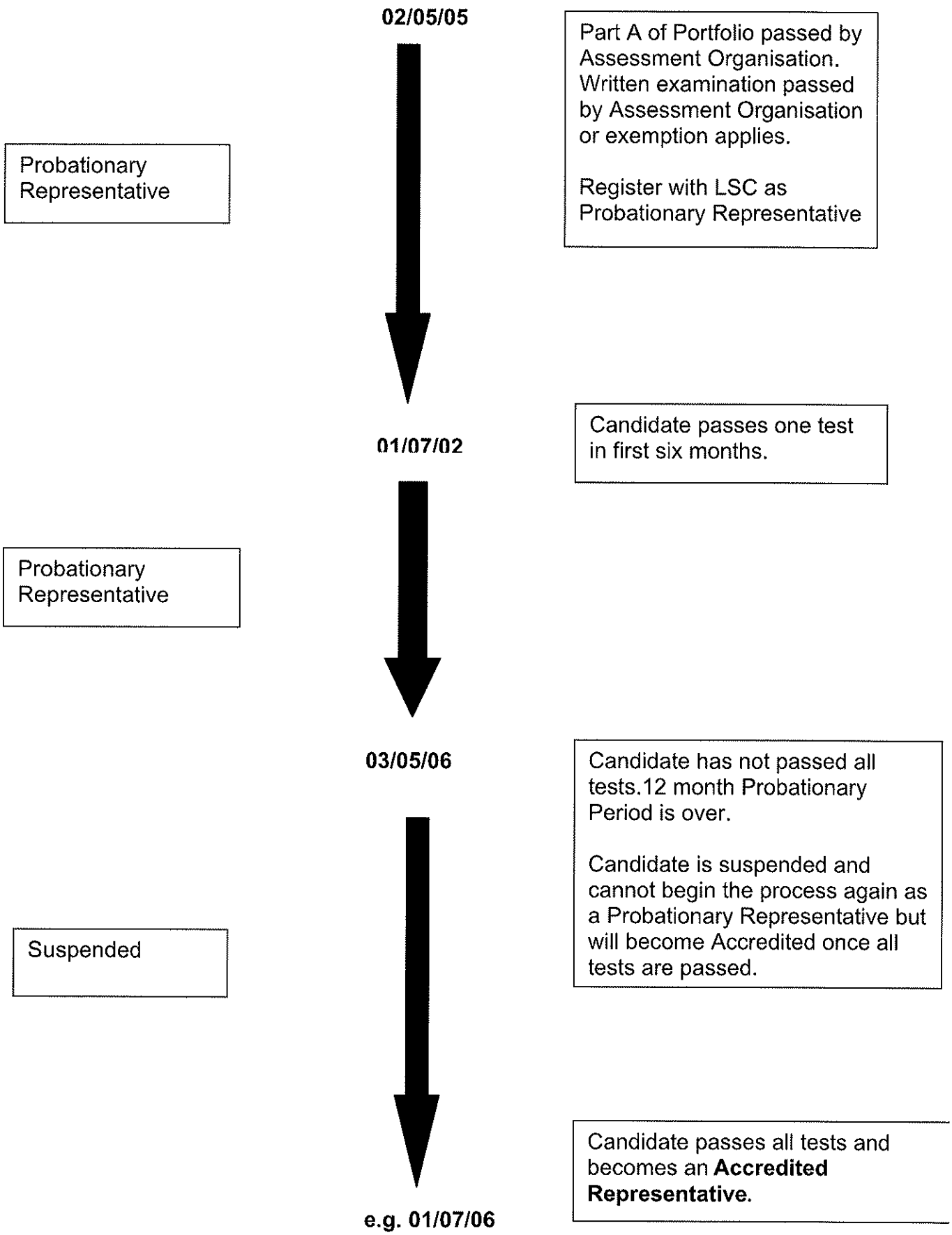


2. Suspension

a) Failure to pass one test within six months of Registration



b) Candidate passes one test within 6 months of Registration but fails to pass all tests by the end of the 12-month Probationary Period.



3. Voluntary Suspension

02/05/05

Part A of Portfolio passed by Assessment Organisation. Written examination passed by Assessment Organisation or exemption applies.

Register with LSC as Probationary Representative

Probationary Representative



e.g.02/08/05

3 months into the Probationary Period the candidate informs PSRS of wish to be **voluntarily suspended** from the Register for e.g. 4 months.

Suspended



03/12/05

Suspension ends. Probationary Representative has 9 months to complete all tests i.e. time remaining at the point at which suspension began.

Probationary Representative



Candidate passes all tests in 12 months (not including time voluntarily suspended) – becomes an **Accredited Representative**.

04/08/06

Appendix 4 – Frequently Asked Questions

I have submitted Part A of the portfolio and sat the written examination (am exempt from the written examination), has a PIN been allocated?

Once Part A of the portfolio has been submitted and the written examination sat, they have to be assessed as passes by the testing organisation. Once this is done an application form will be sent to the candidate, who will complete (attaching evidence of either the written exam having been passed or an exemption applying) and send to the PSRS. Once this has been received the PSRS will process within two days, and at this point a PIN number will be generated.

Can I fax a copy of my application form to the CDS?

Where an individual or firm of solicitors can demonstrate good reason they can submit their application to join the Register of Police Station Representatives by fax.

Good reason could include:

- Delays in the post
- Missing or lost applications
- In cases where a firm would otherwise be unable to undertake their police station attendances

Where the PSRS decides that good reason applies they will process the application on receipt of fax, provided that the copy application form received is clear and legible.

The faxed copy will be processed as if it were the original and a PIN number issued.

What advice can a Representative give?

Probationary Representatives can provide advice on Own Client cases (including the taking the initial call & providing advice and attendance); they cannot provide any advice in Duty cases.

Probationary Representatives cannot give advice in indictable only matters (including bail backs and ID procedures)

Accredited Representatives can provide advice in Own Client cases (including the taking the initial call & providing advice and attendance); they can also attend the police station for Duty cases (although they cannot take the initial call from the DSCC or provide initial telephone advice).

Does my supervising solicitor have to be a Duty Solicitor?

Your supervising solicitor should be a current Police Station Duty Solicitor or be acceptable to the Commission as meeting the Crime Category Supervisor Standard. Details can be found in the Specialist Quality Mark Standard.

Can I work for more than one firm?

An Accredited Representative can be paid for work for more than one CDS supplier (subject to limitations in Part D of the Contract Specification).
A Probationary Representative can only undertake work for the CDS supplier at which his/her Supervising Solicitor is based.

What do I need to do to remain accredited?

Undertake a minimum of 25 police station attendances per annum

If designated as a fee-earner by a supplier who is a holder of the General Criminal Contract the Representative must complete six hours of training that directly relates to the relevant category of law.

The supplier is also required to make sure all Representatives who are designated fee-earners have a job description, annual appraisal, training record, and undergo a file review.

How often do I need to complete a Certificate of Fitness?

The Certificate of Fitness is completed as part of the application form
There is no longer a requirement to submit a Certificate of Fitness annually

What are the rates for PS work?

The rates, which are paid to the firm rather than the Representative directly, are contained in the General Criminal Contract (each firm will have a copy)

The fee for any attendance undertaken by representatives is to be agreed between themselves and the firm.

I am due to be suspended because I have not passed a test within six months / all tests within 12 months. Can I still attend police stations?

Representatives cannot bill the LSC for police station attendances whilst suspended. If they feel that there are grounds to review their suspension (eg sickness), then the Representative must write to the PSRS with details.

I have received a letter stating I am suspended, but I have passed 1 test within 6 months / all tests?

If a Representative has passed tests and the PSRS have not been informed then the Representative should contact their Assessment Organisation to advise. If the Representative has evidence to show a test has been passed a copy of a certificate should be sent to the PSRS.

If a Rep holds evidence that they should not be suspended they are able to continue to work and claim for police station attendances.

Does the Commission provide any financial help towards PS Accreditation?

The Commission will contribute £400 to the cost of accreditation
This is paid to the firm, not the Representative.

When the PSRS is informed that a Representative has achieved Accreditation, they will send a CDS13 form, which can be used to claim payment

I have been off work due to illness/maternity leave/loss of employment and will not complete all tests in time. Can I extend my probationary period?

There is no provision within the Register Arrangements to allow any extension to your probationary period. However, where an individual can show good reason (i.e. illness/pregnancy/loss of employment) the Commission will consider a retrospective suspension from the Register. This in effect stops the clock on your probationary period so that your probationary period will be extended by the same amount of time as the suspension lasted for.
Written evidence to support any such request will be required before the suspension can be granted together with confirmation that no police station attendances have been or will be claimed during the period that suspension is requested.

I am due to be suspended in 2 weeks and won't get my portfolio mark for another 4 weeks. Can I have an extension whilst I wait for the assessment organisation to mark my paper?

There is no provision within the Register Arrangements to allow any extension to your probationary period. It is the responsibility of both the Representative and the Supervising Solicitor to monitor progress in passing the relevant tests within the prescribed time frame. This includes ensuring all tests are booked with sufficient time allowed for marking in order to prevent suspension.

Panels & Accreditation Schemes

Police Station Representatives Accreditation Scheme
Guidance

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The scope of the scheme

The Police Station Representatives Accreditation Scheme (PSRAS) is regulated by the Legal Services Commission Police Station Register Arrangements 2001, as amended 30 April 2005.

Non-solicitors who want to give advice to persons held in a police station for which payment is claimed from the Legal Services Commission (LSC) must successfully complete the PSRAS.

A non-solicitor who is training as a police station representative must be registered as a probationary police station representative with the LSC in order to claim payment from legal aid funds.

The accreditation process

Contact an assessment organisation

Your first step must be to contact an assessment organisation (AO) for details of assessment programmes. This is paramount, because you must pass or be exempt from the written test and submit Part A of the portfolio to an AO before you approach the LSC to apply for probationary registration.

The AO will issue you with a pass certificate or letter for the written test and confirm receipt and technical completeness of the Part A portfolio. The Part A portfolio is not fully assessed at this stage and will either be retained by the AO or returned (the AO may charge a postage fee) to you for inclusion with your final portfolio.

The AO will then supply you with the LSC application form for probationary registration.

Register as a probationary representative with the LSC

You should then submit your application for probationary registration to the LSC enclosing your written test pass certificate and Part A portfolio receipt. If you are exempt from passing the written test, then you must provide appropriate proof of exemption, along with your application, eg a copy of your LPC pass certificate.

Your application for probationary registration must be signed by your supervising solicitor and submitted to the LSC within three months of the date your Part A portfolio was certified by the AO.

You must pass either the full portfolio (parts A and B) or the critical incidents test (CIT) within six months of the date of probationary registration with the LSC.

You must pass both assessments within 12 months of the date of probationary registration.

Failure to comply with these time restrictions will result in your suspension from the register.

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Assessments

Throughout the assessment process, you must be supervised by a solicitor who complies with the definition of a supervising solicitor set out in Paragraph 1 of the Legal Services Commission Police Station Register Arrangements 2001.

You will be assessed against the Standards of competence for the accreditation of solicitors and solicitors' representatives advising at the police station.

The specific parts of the assessment process are outlined below.

The written test

The written test must be completed before you can apply for probationary registration, unless you are exempt, and will assess your knowledge and understanding of basic criminal law, the law of evidence and police station procedures. It will assess your understanding of the adviser's role in the police station and the skills required of a competent adviser.

Exemptions from the written test

You will be exempt from the written test if

- you are a solicitor or barrister, or
- you have passed the Legal Practice Course (LPC), or
- you have passed the Bar Vocational Course (BVC), or
- you are a fellow or member of the Institute of Legal Executives (ILEX) and have passed the level 4[6] Professional Higher Diploma in Law which must include a pass in the criminal law and the criminal litigation papers

The portfolio

The purpose of the portfolio is to

- encourage you to consider and reflect upon your performance in the police station
- encourage your supervising solicitor to review your competence and assist you to identify and rectify any deficiencies
- enable an AO to assess your competence against the standards

For comprehensive and detailed guidance on the portfolio, please read portfolio guidance.

Part A

- Stage 1 – two cases in which you observed a solicitor giving advice in a police station
- Stage 2 – two other cases in which you were observed giving advice at a police station by your supervising solicitor

Cases must not be more than three months old on the date that you submit your Part A portfolio to an AO.

Part B

The remaining five reports must be on cases where you have attended on a client at the police station unaccompanied. Part B cases must not precede your date of probationary registration, and no case may be more than 12 months old on the date of submission of the portfolio.

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You must ensure that the portfolio is completed in all respects before it is submitted for marking.

All cases used in the portfolio must be identified by the Criminal Defence Service (CDS)'s unique file number, which is allocated to cases under the general criminal contract.

Failed portfolios

If your portfolio does not pass the assessment, it will be returned to you. Failed case reports will be identified and appropriate feedback given.

You may resubmit your portfolio for re-marking in accordance with the AO's requirements. A resubmitted portfolio may contain previously passed case reports, but failed case reports must be replaced with fresh case reports based on other cases.

The critical incidents test (CIT)

The purpose of this test is to assess your effectiveness in the police station by simulating police station situations on audiocassette. You will listen to extracts from typical police station situations and record appropriate responses on another audio tape.

The purpose of the CIT is to assess

- the appropriateness of your responses
- your oral communication skills
- your assertiveness

There are no exemptions from the CIT.

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Annex A

Assessment organisations (AOs)

Authorisation and monitoring

The Law Society authorises and monitors organisations that provide the police station assessments. The authorised assessment organisations have satisfied the Law Society that they have the necessary expertise and administrative support to provide fair assessment of candidates.

The Law Society carries out regular monitoring of AOs to ensure the maintenance of appropriate assessment standards.

Training

Organisations, including the AOs, may provide training programmes to assist you in completing the PSRAS assessments. Attendance at such training is not a compulsory part of the assessment process. It is up to you to consider the benefits of training and to decide whether to undertake a training course. The Law Society recommends that you and your supervisor carefully consider your training needs throughout the assessment process.

Assessment organisations – contact details

Cardiff University Centre for Professional Legal Studies

Nationwide duty solicitor testing available

CPLS
PO Box 294
Cardiff
CF10 3UX

Tel +44 (0) 29 2087 6948
Fax +44 (0) 29 2087 4984

E-mail Devereux@cardiff.ac.uk DaviesDC@cardiff.ac.uk
Website www.cardiff.ac.uk/claws/cpls

Central Law Training

Nationwide training and testing programme available

Police Station Accreditation Department
Wren's Court
52/54 Victoria Road
Sutton Coldfield
Birmingham
B72 1SX

or DX 708700
Sutton Coldfield

E-mail hjones@centlaw.com
Website www.clt.co.uk

Tel +44 (0) 121 362 7703
Fax +44 (0) 121 240 1088

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Datalaw

Nationwide training and testing programme available

Dale House
27 Dale Street
Liverpool
L2 2HD

Tel +44 (0) 151 227 4439
Fax +44 (0) 151 236 5678

E-mail info@datalaw.co.uk
Website www.datalaw.co.uk

Swansea University

Director of Continuing Education
Swansea University
Singleton Park
Swansea
SA2 8PP

Tel +44 (0) 1792 205678

Contact Andrew Clemes

E-mail A.J.Clemes@Swansea.ac.uk
Website www.swan.ac.uk

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Annex B

Other contact details

Enquiries about the operation of the LSC's police station register should be directed to

The Police Station Representative Service

First Assist
32 High Street
Purley
Surrey
CR8 2PP

or

E-mail policestationreps@firstassist.co.uk
Tel 0845 600 1022
Fax 0208 763 3191

Enquiries about the assessment process, police station standards and assessment organisations should be directed to

The Law Society

Information Services
Ipsley Court
Berrington Close
Redditch
Worcestershire
B98 0TD

or

E-mail info.services@lawsociety.org.uk
Tel 01527 504433

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ISLE OF MAN LAW SOCIETY

SUBMISSION

TO

LEGAL SERVICES COMMISSION 2002

15th May 2002

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SUBMISSION BY THE ISLE OF MAN LAW SOCIETY COUNCIL ON BEHALF OF THE LAW SOCIETY AND ITS MEMBERS TO THE LEGAL SERVICES COMMISSION 2002

INTRODUCTION

1. The Isle of Man Law Society ("the Society") is grateful to have been asked to make a submission to the Legal Services Commission 2002.

2. The Law Society notes the terms of reference of the Commission namely:-

"To consider the provision and administration of legal aid and legal advice and assistance in the Isle of Man in the context of recognised best practice and in particular to review and comment, with any relevant recommendations, on:

- *the legal framework (both primary and subordinate legislation), including eligibility (financial and otherwise) for legal aid and legal advice and assistance,*
- *the administrative arrangements, and*
- *the availability and quality of the service provided and the fee structure for those providing the service"*

3. The Society is aware that the Commission have sought evidence widely, and indeed from bodies upon which members of the Society sit including the legal aid committee and the court user group. Those bodies may or may not have made submissions of their own. As those bodies have members other than Society members their views do not necessarily represent those of the Society.

4.1 This submission is made on behalf of the Society and its members and represents the view of Council of the Society on behalf of its members. Individual members of the Society have been invited to make their own submissions. The Society in arriving at its submission and recommendations has circularised its members and sought their views on legal aid and why Advocates do or do not undertake legally aided work. The results of this survey appear as appendix one to this submission. Members practising in the area were asked to supplement their survey returns with written submissions. Included as Appendices 2 and 3 are examples of such supplements from a civil

practitioner and a criminal practitioner. They may be regarded as illustrative of the views of those practising in the legal aid area.

5. THE LEGISLATIVE FRAMEWORK

5.1 The primary framework of Legal Aid and costs legislation in the Isle of Man is:-

1. Legal Aid Act 1986:-
2. the Legal Aid Regulations
3. the High Court Costs Rules 2000 together with associated regulations.

5.2 Legal Aid can be divided into two divisions, namely

1. criminal
2. civil.

5.3 Criminal can then be further sub-divided into:-

i) trial legal aid

ii) representation at the police station

iii) court based duty advocate.

5.4 Civil Legal Aid can be sub-divided into

i) legal advice and assistance (Green Form)

ii) full civil Legal Aid.

5.5 Full civil Legal Aid can be granted for representation in the following courts:

i) coroner of inquests

ii) summary court (family matters)

iii) High Court

5.6 Civil Legal Aid can also be subdivided into (i) full certificate or (ii) certificate limited to take certain steps.

6. **HISTORY**

6.1 Before assessing the present position it may be useful to look at the history of Legal Aid in the Isle of Man.

6.2 Criminal Legal Aid was first introduced in the Isle of Man through the provisions of The Prisoners Defence Act 1915. That Act brought in a limited provision for representation of Defendants in serious criminal cases before the court of general gaol. That Act also provided for Legal Aid to be awarded by either committing justices or a Judge of the High Court, after reading the deposition, at a remuneration set by the Governor. The test was whether or not it was:-

> *"desirable in the interest of justice that he should have Legal Aid in the preparation and conduct of his Defence and that his means are insufficient to enable him to obtain such aid".*

It can be seen that the current test in criminal matters is very similar.

6.3 Additionally, criminal Legal Aid has been extended to cover representation in summary courts, at the police station and through the court based duty advocate scheme.

6.4 Modern ideas influenced by human rights have tended to focus on "equality of arms" so that if the state is represented the defendant should also have representation.

6.5 In serious charges such as murder it is a sine qua non that the defendant should have the benefit of Legal Aid whatever his financial position. The same concept applied in relation to defendants charged with criminal activity following the collapse of the Savings & Investment Bank. Regardless of means all defendants were granted Legal Aid.

6.6 Civil Legal Aid was not introduced to the Isle of Man until 1974. Before then civil Legal Aid was not available. Maintenance and champerty were and continue to be unprofessional and criminal offences.

6.7 Notwithstanding this, there were certain provisions of Manx Law which allowed an Advocate to take on a case on a type of "no win, no fee" basis or for others to be responsible for a litigants costs. As a safeguard against maintenance and champerty this was subject to the approval of the Court. The provisions were contained in the Attorneys Act 1777.

> *"provided also, and be it further enacted by the authority aforesaid, that any poor person or persons (destitute of relations and friends to yield such assistance) who hereafter shall have cause of action or suit against any person or persons within this Isle shall, upon application to the Court or Judge before whom the suit depends or is to be commenced and making oath that he or they is or are not worth £5 after his or her debts were paid, be allowed to employ any attorney or attorneys who will undertake his or their cause to manage, solicit, plead, defend and carry on the same through the Courts of Law which attorney or attorneys shall be allowed to lay out and expend his or their own money as necessary in the prosecution thereof, to be paid upon the event of the cause; and for their indemnification therein and to recompense him or them for his or their fees, trouble and expenses such Court or judge upon the request of such poor person or persons as hereby authorised and empowered to grant him or them liberty to give and make such attorney security upon the estate, houses, land, goods, chattels or effects in issue or to be sued either by sale, mortgage or assignment to such extent or amount as such Judge shall see reasonable".*

The above provision was only repealed by the Advocates Act 1976, Schedule 3.

6.8 Therefore it can be seen that in civil cases between 1777 and 1976 there was a provision of "no win no fee" subject to supervision by the courts. It appears there was no enhancement of the fees to be paid. It also seems to have been little used.

6.9 Upon civil Legal Aid being introduced, it became available for a variety of areas including:-

(a) matrimonial

(b) child care

(c) child contact

(d) affiliation

(e) general cases relating to contracts and tort and especially road traffic and work place related personal injury claims.

7. BACKDROP TO LEGAL AID

7.1 There is of course a problem with the funding of any litigation. Those who have sufficient funds clearly are in a position to fund litigation themselves. That may be subject to the question of the limits on recoverable costs. Those who do not have funds face a potential difficulty. As can be seen from section 6.8 above that difficulty was to a limited extent apparently surmounted in the Isle of Man for 200 years by a type of "no win, no fee" provision. No win, no fee is widely available in the United States and conditional fees, which are slightly different, have been available in England for the best part of six years.

7.2 In England civil Legal Aid has now been abolished for personal injury claims except in medical negligence cases and even in those cases the long term aim appears to be abolition. In relation to matrimonial matters and family matters it has not been possible to do this but given that the test is that the case should have a 50% plus chance of success, Legal Aid should not end up paying out as most non family cases should succeed and costs should be recoverable from the unsuccessful party.

7.3 In the Isle of Man, until recently, costs, whether legally aided or not, were only recoverable up to a maximum set by the Advocates Scale of Fees at £38.70 per hour under the Eighth revision of the Advocates Scale of Fees in 1989. This should be contrasted with the actual fees a client would have privately to pay his Advocate which might be as much as £170 to £350 per hour.

7.4 The practical problem is that wherever costs fall and whoever funds them they have to be paid for. That means they have to be paid for either by both of the parties, or the winning party or the unsuccessful party, either in full or in part. This issue remains

whether costs are personally funded, through insurance, by Legal Aid by no win no fee or by a conditional fee arrangement.

7.5 It is clear that Legal Aid budgets in the Isle of Man have had to grow with increased consumption of legal services.

7.6 The Manx Bar has increased in size over the last 20 years from 25 members to 115 members. See Appendix 1 for those who undertake legal aid.

7.7 In relation to criminal matters the introduction of the Police Powers and Procedures Act 1998 resulted in a need for round the clock representation at Police Stations. At the moment the Society members provide a rota which covers the out of office hours parts of the week. This rota sometimes causes problems. In relation to the Court based Duty Advocate Scheme this seems to work satisfactorily. The rota problem has been caused by an inability to recruit sufficient volunteers to give full cover at current remuneration rates. Many advocates have indicated they would join if paid more. For example, we need 18-20 members for nights and weekends and at least 20 advocates to do one daytime duty per month twelve times a year.

7.8 In relation to civil Legal Aid the biggest growth has been in family and family related matters. It appears that the net Legal Aid budget for personal injury and other cases is comparatively small because most Advocates are now reasonably satisfied with the amount of the adverse costs their clients are awarded or can be agreed when they win and so make no claim on Legal Aid.

7.9 There has been anecdotal evidence from time to time that various Advocates are not prepared to undertake civil Legal Aid work because of the low rate of remuneration. This is not because of an unwillingness to do that type of work merely a reluctance to undertake it at a loss. Appendix 1 appears to confirm this.

7.10 It was hoped that the abolition of the Standing Committee of Tynwald on Advocates Fees following the passing of the 1995 Act would result in removal of the link between fixing and assessing private fees and fixing legal aid rates for Advocates fees by taking the same out of the political arena. That has not yet happened fully. The Treasury is still consulted by the new committee and it is obviously worried about the impact of Legal Aid rates. If our proposals contained in this submission are accepted this may be resolved.

7.11 Clearly in any case where an Advocate is free to take on his client he does so at a rate which is going to remunerate him i.e. result in a profit. No Advocate is going to regularly take on cases where the rate of remuneration is too low and he runs his practice at a loss. The Society does, however, encourage members to undertake a reasonable amount of pro-bono work and many members do this and have done so for many years.

8. REMUNERATION

8.1 Remuneration has five essential elements. The first is the basic rate of pay. The second is when it is paid. The third is how long it takes to get a bill assessed. The fourth, after assessment how quickly it is paid. The fifth is the fairness of the assessment procedure.

8.2 Legal Aid in both criminal and civil matters appears to have the following associated problems:-

(a) low rates

(b) the difficulty in obtaining interim payments in civil and criminal cases

(c) the difficulty in obtaining disbursements in advance in civil cases and even greater difficulty with respect to criminal cases

(d) that once the work has been completed it may take six months for the bill to be assessed and a further two months for payment to be made

(e) there is anecdotal evidence that the costs assessing officer who is also a member of the Legal Aid staff often tries to cut bills too aggressively and without logical reasoning.

8.3 Advocates have to have regard to their cash flow as well as their absolute earning. If it takes two years to complete a case and then another eight months to get paid, and if every claim for five minutes per letter is reduced to two, Advocates are going to want a higher rate in the first place or provision for substantial interim payments.

8.4 One of the greatest disincentives to criminal Legal Aid in long or serious cases is that a firm cannot afford to carry, as a sole practitioner, partner or as an employee, someone who is earning £56.00 per hour for preparation and £74.00 per hour for hearings (or less in some cases) when they may be tied up for several months.

8.5 The practice has grown up, where it is a long or complicated case, of instructing English barristers. Sometimes there are good reasons for this. However, in the majority of criminal cases the matter could be dealt with by a Manx Advocate. The issue is that if the trial is likely to last (say) six weeks with four weeks preparation and a months worth of work before that dealing with committal, forensics etc., then there is little incentive to undertake the work, if it is done at a loss. In contrast, Treasury and the Legal Aid Office are seemingly prepared to pay junior barristers from the English Bar, that is senior qualified personnel who are not QC's £125.00 for preparation and £175.00 per hour for actual advocacy. The inquiries of the Council amongst its members tend to indicate that if such sums were offered to Manx advocates for these long and complex cases, there are several Manx advocates who not only feel themselves qualified but who would be willing to take the cases on. It is somewhat

galling for our Members to be appearing in a case with an English barrister and to know that that English barrister who is no better qualified and has no better expertise, indeed no expertise in Manx law, is getting for preparation time, well over double and for advocacy two and a half times what a Manx advocate would receive.

9. LEGAL AID IN OPERATION

9.1 Criminal Legal Aid

(a) Applications are made to the relevant Court whether Magistrates, High Bailiff or General Gaol

(b) They are considered on 2 grounds:

1. The application must be in the interest of justice.
2. The applicant must be financially eligible.

The financial criteria are laid out in the Criminal Legal Aid Regulations 1993.

An application may be made using a chosen Advocate or may be made with a request that an Advocate is assigned. This is undertaken by the Summary Courts Office.

(c) Upon consideration the relevant presiding officer of the Court will issue a legal aid certificate or a certificate of refusal.

(d) Applications for legal aid to appeal against sentence and/or conviction are made to the Chief Registrar (delegated to the Head of the Legal Aid and Legal Costs Division as Assistant Chief Registrar).

(e) The rights of appeal against a refusal are set out in the Criminal Legal Aid Regulations, and may be considered either by the Court before which the applicant is to be heard or by a Judge of the High Court.

(f) Remuneration of Advocates is set out in the Criminal Legal Aid Order (as amended).

(g) At the conclusion of a matter the Advocate will submit a bill of costs for Taxation/Assessment, to the Legal Aid and Legal Costs Division.

9.2 **Civil Legal Aid**

(a) Applications are to be made to the Legal Aid and Legal Costs Division by the Advocate on behalf of the client.

(b) They are considered on 2 grounds:

1. The legal merits test, which also considers cost effectiveness.

2. The applicant must be financially eligible.

The financial criteria are laid out in the Legal Aid (Financial Resources) Regulations 1997.

(c) After consideration the Legal Aid Certifying Officer will issue a legal aid certificate or a certificate of refusal.

(d) Certificates are generally limited, in the first instance, for research or until set down for hearing and can be amended as appropriate upon application.

(e) Legal Aid is available on the same basis for Civil appeals.

(f) The rights of appeal against a refusal are set out in the Legal Aid (General) Regulations 1997, and are to be considered by the Legal Aid Committee.

(g) There is no right of appeal in relation to a financial means refusal.

(h) Remuneration of Advocates is an hourly rate set out in the Civil Legal Aid Order (as amended).

(i) At the conclusion of a matter the Advocate will submit a bill for costs for taxation/assessment, to the Legal Aid and Legal Costs Division, unless there has been full recovery of costs.

9.3 **Legal Advice and Assistance ("Green Form")**

(a) Applications for such are made to an Advocate who has to carry out a means test.

(b) The financial criteria are laid out in the Legal Aid (Advice & Assistance) Regulations 1997.

(c) Advice is available on almost every aspect of Manx Law.

(d) The scope of advice is limited to a maximum of approximately 3 hours work when Petitioning for Divorce and 2 hours for all other matters. The rate is £45 per hour.

(e) The Advocates may apply for limited extensions to those limits to the Legal Aid and Legal Costs Division.

(f) The scheme is intended to provide either initial advice or quick resolution of a matter.

(g) Upon completion the Advocate submits the bill for consideration and payment to the Legal Aid and Legal Costs Division.

9.4 **Duty Advocate Scheme**

(a) The scheme is provided by the Duty Advocates Scheme 1997.

(b) It provides for an Advocate to be available at fixed Summary Criminal Courts.

(c) The scheme is not means or merits tested.

(d) A panel and rota are operated by the Society.

(e) Remuneration of Advocates is set out in the Regulations referred.

(f) Upon completion the Advocate submits the bill for consideration and payment to the Legal Aid and Legal Costs Division.

9.5 **Duty Advocate (Police Custody) Scheme**

(a) The scheme is provided by the Duty Advocates (Police Custody) Scheme 1997.

(b) It provides for an Advocate to be available on call, to a Police Station, for advice in relation to Criminal matters out of office hours.

(c) The scheme is not means or merits tested.

(d) A panel and rota are operated by the Society.

(e) Remuneration of Advocates is set out in the Regulations referred.

(f) Upon completion the Advocate submits the bill for consideration and payment to the Legal Aid and Legal Costs Division.

9.6 **Civil Legal Aid Order 1999**

This order sets out the basis upon which Advocates are remunerated in certain circumstances in matrimonial matters and in general terms, in other matters.

9.7 **Panel of Advocates Regulations 1976**

(a) These Regulations set out the basis upon which Advocates may be entitled to undertake legal aid work, by having their names entered upon the "Panel of Advocates".

(b) Such list is available to the general public.

10. **PROVISION IN ENGLAND**

10.1 The Manx system in many respects was fairly closely modelled on the English system of Legal Aid. In the last 10 years there have been major changes in the Legal Aid system in England.

10.2 Legal aid seems to have been seen as an easy political target, it being evidently thought that costs could be squeezed and overheads eliminated by abolishing Legal Aid in certain areas. For other areas, where it could not be abolished, franchises have been introduced and a sort of block booking system where firms are awarded an amount of fees to cover a year for which they must do a certain amount of work.

10.3 Legal aid for personal injuries has all but gone to be replaced by a conditional fee system. The conditional fee system has not yet worked its way through and it is still being tinkered with and there are still large problems over recoverability of such outgoings as disbursements. It is also, we believe, difficult to administer, places the risk on the lawyer, alone amongst professionals, and does not fully answer what the public want, either free representation or a check on unwarranted legal action.

10.4 In some cases, such as medical negligence, a large amount of costs must be expended before one can assess whether or not a conditional fee agreement is worth entering into.

10.5 Legal Aid rates have now been frozen for the year 2002. Legal aid of course is still available for matrimonial and other cases but sometimes cases cannot be funded because funding for the year has run out.

10.6 Should the Commission require, we have background information of the English systems including a history, details of the civil Legal Aid system via the community legal service and funding by the legal services commission, an analysis of the criminal defence service which is being introduced in some areas as an experiment, details of criminal Legal Aid, conditional fee agreements, the statutory charge and various leaflets and booklets about Legal Aid and legal services in England.

10.7 Upon analysis it appears to the Society that the English provisions are too complicated and bureaucratic to operate successfully in a small jurisdiction such as the Isle of Man.

11. THE PROBLEMS WITH THE EXISTING MANX SYSTEM

11..1 There are clear differences in eligibility between Legal Aid in criminal and civil cases. Not only are the tests different but the financial limits are different. We believe they should be the same. The rates of remuneration are different as well, which appears illogical to us.

11.2 The financial limits in civil cases have not been increased for many years. An applicant now has to be on social security benefits in most cases before he is entitled to civil Legal Aid. We believe that the limits should be reviewed regularly and should be linked to more realistic figures, perhaps such as personal allowances within the taxation system. Relating eligibility to tax allowances would mean that they are reviewed every year. The Report of the Commission of Inquiry into Legal Services

(May 1990) chaired by Sir Cecil Clothier (the "Clothier Report") at paragraph 5.14 commented that "It appears to us that not all persons who need legal aid are getting it. Furthermore the levels of income at which a person qualifies for legal aid appear to be too low. We recommend that they should be reviewed annually".

11.3 We accept that there should be a contribution from capital resources but suggest that as the limit has not been increased for a number of years the limit should be increased to a realistic level. We suggest £25,000.

11.4 We suggest this eligibility should extend to both criminal and civil cases alike and should extend in civil cases across both full legal aid and green form advice and assistance.

11.5 As discussed above, not enough Advocates come forward to staff the Duty Advocate rotas. The burden on the few remaining is material. There appear to be a number of reasons for this but the predominant reason is the poor rate of remuneration.

11.6 Different rates apply across the board in Legal Aid. There is no reason why Members should work at £47 on green form and at different rates for preparation, travelling, waiting and advocacy in criminal cases. Preparation is often as important or even more so than actual advocacy.

11.7 It is without doubt true that costs in the financial and legal services sector for, inter alia, staff, rent and professional indemnity insurance have increased dramatically. For example professional indemnity premiums have increased by 56% in the last twelve months. Only one or two firms with low overheads and a concentration on Legal Aid work can make Legal Aid pay at the current rates. Unless there is a significant increase in rates there will be fewer people going into Legal Aid and fewer people staying in it.

11.8 The method of application is complicated and the forms are not straightforward. There seems to be no reason why there should not be a common form application for both criminal and civil Legal Aid which sets out on the form adequately what the rates and allowances are. This will make life easy for the applicant as well as the applicant's Advocate and the authorities processing such applications.

11.9 There is great difficulty in getting authority for interim payment of disbursements in criminal cases. There is less difficulty in civil cases, but the advocate has to obtain a quote in advance of instruction and the amount of correspondence and consequential delay involved is extensive. This process increases the costs it is supposed to save. In addition, there is very little provision for interim cost payments. Once a bill has been drawn and submitted at the end of the case, which may have run for 2, 3 or 4 years depending on whether it is criminal or civil and whether it went smoothly or was long drawn out, there is on average a six month delay for assessment and a further two month delay for payment.

11.10 We suggest therefore that a simplified system be brought in for obtaining interim payments and authorisations for disbursements. We are pleased to note that the Civil Service Commission has recently authorised an extra officer within the General Registry, Legal Aid and Costs Division, to assist with Legal Aid and Assessment of costs although we believe that this merely restores the staff complement to what it was previously and so at least one more officer should be recruited.

12. THE ENGLISH AND U.S. SYSTEMS

12.1 We have considered US contingency fees, English conditional fees and legal expenses insurance. We believe that whilst there are some merits in each system they do not provide the entire answer for the Isle of Man.

12.2 Judge Michael Cook wrote in the Times on 26th February 2002 that the conditional fee system was not working and that it had resulted in calls for US style contingency fees. He feared that this was a disguised call for abolition of between parties costs. The treatment of costs is a major difference between the United States system and the system in Isle of Man and the system in England.

12.3 In the Isle of Man the usual outcome is that the loser pays the winners costs. This a powerful check on speculative cases. In the Isle of Man the claimant runs at least two risks. First failure to prove his case and secondly the risk of being left to pay not only his own costs but a substantial part of the costs of the other side. The greater the proportion of the winner's costs recovered from the loser the stronger the disincentive to bring speculative or nuisance cases. These risks are an inducement to set aside injured feelings and to explore settlement and to view Court as a resolution of last resort. In more extreme cases it acts as a curb on fictitious claims. This is the rationale behind the legal restrictions placed on advocates and parties by rules of champerty and maintenance.

12.4 After the event insurance, prima facie, seems to erode that principle. However in practice, and obviously for commercial reasons, insurance companies will only grant such cover to a claim they consider to have substantial merit. It acts as a filter on actions and can be used to distinguish the arrangement from classic champerty.

12.5 In the United States there is no such filter. A contingent fee arrangement is often referred to as "no win no fee" or more properly described as "no fee no risk". In the United States the litigant not only does not have to pay his own lawyer if he loses but, significantly, very rarely has he to pay the winner's legal expenses. The claimant has literally nothing to lose and everything to gain; there is no reason not to pursue the case and every incentive to do so however lacking in merit.

12.6 A luckless US defendant may therefore be obliged to shoulder the whole cost of establishing that the claim against him is entirely without foundation. This may cost him thousands of dollars. Quite often the only option is to pay the claimant something to go away. It follows, if fought appropriately in the correct manner, even the most unmeritorious claim has a nuisance value.

12.7 Whilst it may be thought that the majority of this may be covered by insurance, it is the defendants who pay the insurance premiums influenced as they are by the incidence of claims. In any event not all claims are paid by the insurers. The claims have an impact on the defendant's claims record. Every claim defended by a defendant either personally or by his insurers costs him. This results either in increased premiums or increased costs to be passed on to his customers. Indeed, post September 11 the issue is not so much the cost of insurance but its availability at all.

12.8 The other consequences are less immediately obvious, but perhaps no more desirable. For high risk enterprises the spiralling costs of nuisance value litigation and the prohibitive cost of, often compulsory, insurance might drive the defendants to wind up or liquidate. Accordingly, in the United States the value of no win no fees is now being questioned. President Clinton started his first term of office promising, amongst many other things, to consider the introduction to the United States of a system of what he called "English style" costs, meaning the loser pays. However the lobbying power of the American Trial Lawyers Association ensured that that proposition was lost.

12.9 As far as conditional fees are concerned, the conditional fee means that the lawyer has to assess in advance the chances of success. If he is going to have a 25% success fee he has to ensure that he wins four cases out of five to be even and five cases out of six to be ahead of the game. With the introduction of the CPR rules this results in much front loading of work. In many cases, especially in medical negligence, it is virtually

impossible to work out, for a long time, who is going to win. Lawyers therefore take the risk on behalf of their client or at least share it.

12.10 The view of this Society is that no win no fee, contingency fees arrangements, conditional fees and insurance are not the answer. We believe the answer to the current problems lie in a simplification of the existing system and a more realistic scale of fees. In saying this we believe the legal aid authorities should adopt a more forensic approach to scrutinising claims rather like that undertaken by insurance companies.

13. ALTERNATIVE SYSTEMS

Civil

13.1 An alternative we have considered is Law Centres for civil work and a strengthening of the Manx Citizens Advice Service. At the end of the day however, we do not believe that this would prove to be satisfactory. We believe that the costs will be greater than the present provision through the existing public sources. The problem is that, often, politicians and the public at large seem to believe that Advocates being paid say £100 per hour are doing very well. They do not take into account that this sum has to pay for office rent and overheads, staff, professional indemnity insurance and other regular expenses.

13.2 Employing three junior Advocates with one supervisor, paying rent on rooms and having professional indemnity insurance and support staff, together with an adequate library, would cost the Citizens Advice Service somewhere in the region of £350,000 to £400,000 a year.[1]

13.3 Even this would not be a big enough team to deal with all the potential conflicts and would mean that not everyone could be adequately represented. The costs therefore

[1] Based on £40,000 for a junior Advocate x 3 = £120,000; £50,000 for a senior Advocate = £170,000; 3 secretaries at £20,000 = £60,000; rent at say £40,000 = £270,000 professional indemnity insurance at £30,000; £300,000 plus library provision £20,000 = £320,000; plus IT of £30,000 = £350,000 plus other costs.

would be more than all the current non matrimonial and family and child care Legal Aid currently expended.

13.4 As far as matrimonial Legal Aid is concerned, there are suggestions that this could be taken out of the Legal Aid net altogether, apart from the most exceptional circumstances, by bringing in further ADR and mediation schemes and further fixed rules. This may be outside the remit of this Commission but it is an area the Society believes worthy of further consideration.

Criminal

13.5 In relation to criminal matters, a public defender system could be considered. We would, however, again question whether it would be cost effective. At the moment, although the Manx Bar is at an all time high in numbers, it is very difficult to recruit. Many people come to the Island to work in niche practices, having already gained experience in foreign legal markets. They are unlikely to want to work in relatively low paid public defence work.

13.6 To provide cover 24 hours a day at the Police Station and then to provide representation in the Courts would probably need a team of 10 Advocates at various levels of seniority. It would obviously need secretarial assistance, offices and professional indemnity insurance. There will be library costs as well. We would estimate that that number of Advocates, with say three junior and three middle ranking, three senior and one supervisory, would cost in the region of £800,000 per annum.

13.7 Even if one extracts out cases such as Operation Diamond and Operation Safe where English Counsel have been employed, this would probably cost far more than the entire current criminal Legal Aid budget.

14. THE ISLE OF MAN LAW SOCIETY'S VIEWS AND RECOMMENDATIONS

14.1 How those who cannot afford legal representation should have their legal costs paid is a matter for Isle of Man society as a whole.

14.2 It is also a matter upon which Advocates can have a view and indeed should have a view because it affects their livelihood and the best interests of their clients. The Clothier Report (at paragraph 5.13) stated that "The objective of a Legal Aid System is to ensure that all should be entitled to advance their claim to justice regardless of their means".

14.3 The Society accepts that if payment is being made by government with the consequence guarantee of payment, coupled with the notion of public service, members of the Society should undertake work at what may be less than their normal hourly rate. The issue is how much less and how bureaucratic the system is.

14.4 Lord Justice Auld's Review of the Criminal Courts of England and Wales (2001) recognised as essential "efficient and properly paid defence lawyers" (paragraph 153). The Review stated that "urgent consideration should be given to changing the structure of public funding of defence fees in the criminal courts so as to properly reward and encourage adequate and timely preparation of cases for disposal on pleas of guilty or by trial....".

14.5 There seems to be no reason why there should not be adequate state funded schemes for both criminal and civil representation and that those schemes should be integrated with identical rates.

14.6 There should be provision for interim payments at intervals of no more than six months and for the payment of disbursements, whether pre approved or post approved as long as the disbursements were appropriate to the running of the case.

14.7 Legal Aid should be continued in matrimonial and family and child care cases, although the ADR/Mediation role should be strengthened.

14.8 The Society sees no reason why Legal Aid should not continue to be available for personal injury and contract and other cases as long as the test on the merits is tightened up and cases are regularly reviewed along with a cost effectiveness review. Legal Aid may also have to be made available for tribunal work (for example the Employment Tribunal) to satisfy the requirements of the European Convention on Human Rights.

14.9 We suggest that every six months the Legal Aid Officer should write to the Advocate in respect of each case asking for an update. There should be supplied with the letter a pre-printed form and the Advocate should be required to report progress made and give views on the prospects of success give views on the size of the claim, the costs incurred to date and their estimate of costs for the next six months. This would be an ideal opportunity to also submit a claim for costs incurred to date which could be paid without formal assessment at, say, 75% of profit costs and 100% of disbursements incurred plus VAT. Disbursements could be approved at this stage rather than having to be approved in advance. There could be general rules in relation to what disbursements would be allowed so that, for instance, in a personal injury case or medical negligence case the following would have automatic approval:-

(a) Obtaining and copying GP and hospital medical records.

(b) A basic report from a consultant in private practice, on or off the Island, for each speciality where there is a claim. (This is to get over the fact that there may be claims for both orthopaedic injury and psychiatric injury arising out of the same accident).

(c) A copy of the Police report;

(d) In appropriate cases, a road traffic accident reconstruction expert.

(e) In criminal cases this should cover off island reports and forensic reports appropriate to the particular type of trial;

(f) In all cases involving children, whether civil or criminal, psychological reports.

14.10 This should mean that Legal Aid should only continue to be extended to cases which are ultimately likely to succeed. Cases which are not likely to succeed will fall by the wayside hopefully sooner rather than later. Indeed every six months the Legal Aid Officer will be able to review the position and decide whether or not to renew or extend the Legal Aid for the next six months. It introduces not only a better merits test but also a cost effectiveness test.

14.11 One of the tests would have to be whether both parties are legally aided. If they both are, there must clearly be a cost effectiveness review so that fees are not built up.

14.12 This should mean very few cases where a claim is made against the Legal Aid fund as legally aided litigants should be successful in their claim and get costs from the other side. It is only where the other side do not pay or are themselves legally aided the claim will be made.

14.13 Given the equality of arms provisions of the European Convention on Human Rights, to be introduced into Manx Law, it is only fair that each party should as far as possible have legal representation. The "equality of resources" points made in the Final Report on the civil justice system in England and Wales by Lord Woolf "Access to Justice" July 1996 would also support this proposition.

14.14 It appears to us that there are a number of cases where Legal Aid in civil cases ought to be available on a merits test only and without any means test. These include: any child care case and any child abduction case under the Hague Convention (which is the present position).

14.15 In relation to criminal matters we see no reason to change the tests but we do see reason for making easier the obtaining of interim payments, payment of disbursements and authorisation of disbursements up front.

14.16 We also recommend alignment of eligibility and administration with civil legal aid.

14.17 Many litigants are now funded in their litigation by unions rather than Legal Aid. At the moment this is very difficult in the Isle of Man because it cannot be done without in some way impinging against the rule against maintenance and champerty or the indemnity principle. It is suggested that for legally aided cases or for cases where the funder is a third party such as a union, subject to disclosure of that at the beginning, the indemnity principle should not apply.

14.18 Finally, in relation to the fixing of rates of remuneration, we believe that rates should be set on a much wider and broader basis and that private civil rates should be totally separately fixed to Legal Aid.

14.19 We believe that civil and criminal Legal Aid rates ought to be consolidated and ought to be identical. We suggest £120 per hour for someone qualified ten years or over, £105 for someone qualified 5 to 9 years, £90 for someone qualified less than five years and £75 per hour for a Clerk or trainee. These include profit element. There should, in exceptional circumstances such as murder, rape and complicated cases, be a provision for uplift to be applied for and agreed in advance. These rates should be reviewed by inflation linkage a minimum of every two years with a possibility on application for review annually if inflation rates go above a 2½% inflation target. These rates should be linked to an inflation rate linked to Advocates' overheads. The rates suggested are modest. The Clothier Report of 1990 (some 12 years ago now) suggested an hourly rate for preparation/appearance time of £95 for a senior advocate (10 years qualified) and £80 for a junior advocate.

14.20 Legal Aid should be granted, with no contribution as follows: single person £10,000, married couple £20,000, with additional allowances for a blind or disabled person of £2,460 and for a single parent of £5,475. Legal Aid to be available on a tapering scale so that for a single person Legal Aid will be subject to a 10% contribution at £11,000, a 25% contribution at £12,000, a 50% contribution at £15,000, a 75% contribution at £17,500. For a married couple the figures would be free at £20,000, 10% at 22,000, 25% at £24,000, 50% at £30,000, 75% at £35,000.

14.21 For children we suggest a tapering scale of allowance dependant on age.

14.22 We do not advise the introduction of no win, no fee contingent fees or conditional fees as we believe they have proved problematic where introduced in England and socially corrosive as they operate in the USA.

14.23 We do however recommend a thorough review of the concepts of champerty and maintenance and the indemnity principle. We believe that this will allow Advocates to take cases if they wish on a pro bono or union funded basis. We do not suggest an enhancement on fees because the case is taken on "no win, no fee" as would happen in an English conditional fee agreement, nor do we suggest that in contentious cases a percentage of damages might be taken as in an American contingent or "no win, no fee" case.

14.24 We suggest that with the review of the indemnity principle, an Advocate should be able to recover sufficient on a good case as long as the costs rules are amended adequately and an uplift is applied properly under the High Court Costs Rules 2000.

14.25 To protect poorer plaintiffs, they ought to be able to take out after the event insurance to cover any adverse costs orders and disbursements. Legal Aid should be available to fund those disbursements and the insurance premium on the basis that if they succeed they will be recovered as costs. The rules need amending to ensure that recoverability.

14.26 Obviously Advocates would only proceed with cases which they think they can win. This would bring into the civil non-legally aided realm much the same stringency of merits that we are suggesting for Legal Aid.

14.27 We appreciate that the suggestions we are making will result in a materially larger Legal Aid budget to start with, with greatly increased eligibility, but we believe it is practical and sensible. We believe that there is no reason why persons facing criminal charges except the most serious, should not pay a contribution towards their defence costs if they can afford to do so. We recognise that there are certain things in both civil and criminal law which are so serious that legal assistance should be provided regardless of means but subject in civil cases to a merits test.

14.28 We believe that with that merits test strictly applied many cases will be weeded out on their way through and that with the review of the indemnity principle the recoverable costs for legally aided and other civil litigants on a pro bona or union funded basis will be sufficient to reward Advocates and result in little or no claim on legal aid funds at the end of the day. We appreciate in criminal cases there is always going to be a claim. We believe that claim will be well below the level of providing a public defenders office.

14.29 If the rules allowed full recovery at the appropriate rate against the unsuccessful litigant then litigation should decrease or at least settle sooner than at the door of the courts.

14.30 Finally in relation to matrimonial legal aid we recommend in respect of family and matrimonial matters that there a should be review of the legislation and the Court procedures aimed to reducing costs and reducing the number cases going through to a Court hearing where cases appear to be fought at great cost sometimes for very little benefit on either side.

14.31 We are not in favour of introduction of the legal aid charge on personal injury cases or other civilly legally aided matters. This is because we believe that with the improved merits test there will be no need, as full recovery should be made from the other side in every case where the Plaintiff is successful apart from where there is legal aid on the other side as well. Hopefully applying a cost benefit analysis will result in large sums not being run up on either side in such cases. Indeed such cases may be ideal cases to refer to some form of arbitration/mediation very early on.

14.32 The legal aid charge is therefore only likely to apply if our submissions are followed to matrimonial cases. We believe it is a false economy when the only place that a legal aid charge can apply would be the successful persons home i.e. the person who had retained the home for themselves finds imposed a mortgage or charge (whether bearing interest or interest free) to be paid when the children leave home or on pension lump sum. We believe that in having a Legal Aid charge society is merely storing up further financial problems arising out of the divorce for the future. We recognise there is however a problem with the costs and we suspect the best way of dealing with that is going to be to completely overhaul the divorce practice and procedure. We make no specific suggestions as to how this should be done as we do not respectfully believe that this may be beyond the remit of the Commission.

ORAL SUBMISSIONS

15.1 We should be grateful of the opportunity of addressing the Commission direct should the Commission so require.

Samantha Wilson

Secretary-General

For and on behalf of the Council of the Isle of Man Law Society

15th May 2002

APPENDIX ONE

SOCIETY'S MEMBERSHIP SURVEY TO ASCERTAIN THE WILLINGNESS TO UNDERTAKE LEGAL AID APRIL/MAY 2002

(i) TABULATION OF RESPONSES

TOTAL NUMBER OF ADVOCATES ELIGIBLE TO UNDERTAKE LEGAL AID	TOTAL RESPONSES	CIVIL ONLY	CRIMINAL ONLY	CIVIL & CRIMINAL	NO LEGAL AID
102*	89	18	2	8	61

(ii) REASONS FOR NOT UNDERTAKING LEGAL AID WORK

TOTAL NUMBER OF ADVOCATES UNWILLING TO UNDERTAKE LEGAL AID WORK	LEVEL OF REMUNERATION	DELAY IN PAYMENT	ADMINISTRATION DIFFICULTIES	OTHER**
61	51	30	32	25

* **A material percentage of the total would not regard themselves as Court lawyers**

** **Other reasons include:**

- **type of work undertaken does not allow for Legal Aid**
- **attitude of Legal Aid clients**
- **taxation of bills**

Note: Most respondents indicated a number of reasons for unwillingness to undertake Legal Aid work

APPENDIX TWO
LEGAL SERVICES COMMISSION 2002

LEGAL AID

A CIVIL LITIGATOR'S PERSPECTIVE

CIVIL LEGAL AID

The purpose of the Legal Aid Act 1986 is to establish a framework for the provision of advice, assistance and representation which is publicly funded, with a view to helping persons who might otherwise be unable to obtain advice, assistance or representation on account of their means. There can be little doubt that, politically, the provision of a meaningful legal aid scheme is desirable and part of any enlightened society. The "equality of arms" argument is powerful and should not be disregarded.

In practice however - and principally as a result of the rate of remuneration recoverable by the advocate acting for the legally aided client - means that there is often little will on the part of the advocate to accept instructions from the legally aided client.

PRESENT DIFFICUTLTIES

1. Rates of remuneration

The present Green Form rate is £47 per hour. Once a Legal Aid Certificate has been obtained the following hourly rates apply:-

	Senior Advocate (5 years)	Junior
Preparation:	£65	£56
Travelling/Waiting:	£33	£33
Appearance:	£90	£74

There is no logical reason why there is a distinction between the legal aid Green Form rates and those recoverable under a full Certificate. It is understood that the Green Form hourly rate is presently under review and that the property new rate is £60.

There ought to be one hourly rate available whether under Green Form or Certificate.

Of more significance is the actual hourly rate. Bluntly speaking, the hourly rates offered are not only unattractive but, for many advocates, they represent a return which is not profitable. Although there has been some movement of late to the rates mentioned above, for many years the hourly rates were not reviewed at all so that, in real terms, the rate decreased. The recoverable rate has not been increased proportionately to the increases levied upon private paying clients. The overheads of running an advocates business have increased materially and it is worthwhile considering the increase in say the cost of office accommodation over the last fifteen years and comparing that to the increase, if any, to the legal aid rates which, to begin with, were already unattractive. Most advocates firms have incurred additional

material expenditure in introducing and maintaining expensive I.T. infrastructures. Legally aided clients share the benefit of these improvements.

Private paying litigation clients are of course able to choose their advocate and agree an hourly rate. It is believed that hourly rates of £150 - £250 are common. Additionally it is understood that where Counsel from other jurisdictions are licensed to appear here for legally aided clients they are remunerated at a rate far in excess of that available for the Manx advocate who might be appearing in the same Court. (eg. Operation Safe matters). It costs as much to run a case for a legally aided client as for any other client.

2. Differing hourly rates for work type

Similarly there is no logical reason as to why an advocate should receive one hourly rate for his time when occupied in preparation as opposed to his time when appearing in Court or travelling/waiting. Our overheads remain constant no matter the type of work one is engaged in from time to time. Given that most legally aided clients are involved in litigation and it being frequent for litigation matters to resolve prior to actual hearing, the average hourly rate actually recovered by the advocate is a maximum of £65 per hour.

The rates or remuneration frankly make legal aid work not only unattractive but, more importantly, unprofitable so that in many cases, by accepting such work, the advocate is himself subsidising the client. For many firms no profit (let alone a realistic one) is generated. A competent advocate is far more likely to have private fee paying work available and so when confronted with accepting instructions from a client who is legally aided, there is simply no incentive.

3. Lack of uplift

While there is provision for uplift to be granted in respect of fees once assessed, in practice this is very sparingly awarded. It is understood that, in the United Kingdom, enhancement is routinely awarded. This would likely not be an issue if a properly hourly rate was available in the first instance.

4. The lack of interim payments

As is often the case with litigation matters a case can take some considerable while to complete. It is simply poor business practice to undertake work without there being provision for interim payments (of course this is exacerbated where the hourly rate is not realistic). It is not unheard of for litigation matters to take years to complete and there is no reason why we should be providing our services effectively on an interest free credit basis. When we instruct professionals on our own behalf we expect to be invoiced on an interim basis and this is also the position with our fee paying clients. The legally aided clients should be no different.

5. Recovering disbursements on an as incurred basis

Recovery of disbursements is sometimes difficult and always a protracted process. It hinders the advocates reaction time and decision making processes.

6. Administration (period for files to be taxed and then paid)

Although the position is improving it is nevertheless worth noting that, once a matter is completed and the advocate is recovering costs from the Treasury, an itemised bill must be prepared for taxation (in itself a time consuming exercise) and then be submitted for approval. The actual period for a file to be taxed is too long and should never be more than a month ie. from finalisation of the bill until receipt of the bill as taxed. What happens at the moment is that we inform the legal aid office that a file is ready for taxation and the bill (alone) is rendered: it is only as and when the Taxing Master has the opportunity to carry out the taxation that our file actually requested. The period between completion of taxation and actual payment of a bill should never be more than a month. It is simply a matter of the Taxing Master authorising the Treasury.

SOLUTIONS

1. Rates of remuneration

Recent reviews - however welcome - have not gone far enough. We would be surprised if there are many advocates who are not prepared to do at least some work on a pro bono or legal aid basis but to accept legally aided clients as a material part of any client base quite obviously requires the hourly rate to be increased dramatically. If there is a perception that those advocates offering legal aid services are less experienced and/or capable than those concerned only with private practice then the issue is easily resolved by introducing an hourly rate which materially reduces the distinction. We should not lose sight that we are dealing with market forces.

There should also be provision for the hourly rates to be regularly ie. annually reviewed. We must not again allow rates to be fixed and then for them to stand still for ten years or so. We need an automatic review so that political arguments as to whether or not a review take place at all can be avoided.

2. Differing hourly rates for work type

There is no basis for such distinction and they should be abolished.

3. Lack of uplift

While, as mentioned, uplift is routinely granted in the United Kingdom the argument is probably avoided altogether if a reasonable hourly rate is granted in the first place.

4. The lack of interim payments

We must introduce provision for interim payments. One might consider agreeing that the advocate render an interim/provisional bill for taxation at no less than six monthly intervals but - and at the advocates option - more regularly if required. The manner in which files are taxed upon completion is not appropriate for assessment of interim payments requiring as it does for the advocate to part with possession of the files. An itemised bill for taxation should be prepared on the basis that two thirds of the amount

so produced should be recoverable as an interim fee. This would leave ample room for adjustments and deductions which may be introduced upon final taxation by the Taxing Master when he has possession of the file. In the unlikely event that interim billing has resulted in a payment to the advocate of more than the file is "worth" when taxed then the advocate would be required to pay any difference upon production of the finalised taxed bill (allowing for appeals and the like).

5. Recovering disbursements on an as incurred basis

The existing procedure needs to be simplified/streamlined. An advocate should be able to assume that legal aid will agree incurring of the disbursement - and that its costs will be repaid to the advocate - upon production of the invoice wherever the disbursement represents costs which would be recoverable under an award of party and party costs.

6. Administration (period for files to be taxed and then paid)

It is understood that the Civil Service Commission has recently authorised an extra officer to assist with legal aid and assessment of costs: this is a welcome development. It should be exceptional for taxation to take more than one month (ie. from production of bill for taxation) and equally it should be exceptional for payment to take more than one month once the bill has been taxed. Wherever delays over and above these periods are experienced interest should be recoverable upon the fees finally paid.

GENERAL OBSERVATIONS

(a) It is appreciated that there may be a perception that the legally aided client is represented, by and largely, by junior advocates who may sometimes be seen to be less able than their opponent. It would be true to say that legal aid - whether criminal or civil - is granted in respect of matters which are usually litigious in nature and so while the number of practising advocates has increased rapidly over the last ten to fifteen years there is nevertheless a much smaller number of litigation advocates available. The rapid development of the finance sector over the last fifteen or so years has required many advocates to specialise in areas outside of litigation so that the legally aided clients choice of advocate prior to specialisation would likely to have been far broader with many practising advocates then being prepared to undertake litigation work as part of a general practice profile. In practice the legally aided client has a fairly limited choice of advocate being (a) the advocate who offers Court work and (b) of the litigation advocates available, only those who are attracted to undertaking legal aid work. As mentioned above there is little incentive to an advocate who has the choice of accepting private fee paying clients (where hourly rates are in the region of treble what can be recovered under legal aid) to prefer a legally aided client.

Like any other profession the individual advocate is driven by what he can earn and acting in the best interest of his client. Within the larger firms an advocates progress and promotion is sometimes dependant upon their fee income. Again the point needs to be made that to attract capable advocates to the legally aided client, the prospects of reasonable return needs to be in place. The observation is of course related to

comments above as to remuneration and it is trite that rates of pay recoverable for litigation work are, on average, somewhat less than that recoverable in other areas.

(b) Financial Eligibility: in the same way that the rate of remuneration has suffered from the absence of regular and realistic review, the requirements for financial eligibility for legal aid too have been neglected. Thus, for example, an individual earning the national wage in 1989 may well have been likely to qualify for legal aid assistance while such an income today would just as likely take them well outside of the maximum band of eligibility.

(c) There are a number of regulations made under the Legal Aid Act 1986 many of which have been amended in part so that the result is the existence of a confusing number of Directives. Complete review is required so that, hopefully, the number of regulations can be reduced perhaps to a single civil legal aid regulation and a single criminal legal aid regulation.

(d) Wherever same still exist, fixed cost provisions should be abolished. Thus, for example, the Legal Aid (Matrimonial Proceedings) Regulations which provide for fixed costs to be paid to an advocate in a matrimonial matter should be repealed. Our understanding is that, in practice, the legal aid office disapplies the fixed cost provisions whenever now requested and so the fixed costs provisions serve little purpose.

(e) It is worth reminding ourselves that, as a fused profession, the cost incurred by Treasury in paying advocates for legally aided clients represent a considerable saving to that which is incurred in other jurisdictions where a legally aided client employs both solicitor and barrister with inevitable duplication. This position is mitigated somewhat by the fact that the financial eligibility criteria in the United Kingdom are understood to be more demanding than those prevailing in the Isle of Man.

APPENDIX THREE

LEGAL SERVICES COMMISSION 2002

A CRIMINAL LAWYER'S PERSPECTIVE

Categories of Criminal Legal Aid

Criminal Legal Aid can be divided into 3 main categories:-

(i) Police Station Duty Advocate Scheme
(ii) Court Duty Advocate Scheme
(iii) Individual legal aid certificate for Court proceedings

1. Police station duty Advocate Scheme

This Scheme was introduced to overcome difficulties which were frequently encountered by persons who were under arrest at a police station, and who wished to have legal advice or representation, but were unable to obtain an Advocate. Difficulties were encountered either because Advocates simply were unavailable to attend the Police station, but also because Advocates were unwilling to do so. This was largely due to the unsociable hours involved in attending the Police station which was frequently at night, and most often at weekends, and also the poor rates of remuneration. The only form of Legal Aid which was available was the Green Form Scheme, which paid at the rate of £47.00 per hour, and under which the time spent in travelling to the Police station was often disallowed.

The importance of legal advice and representation for persons at the Police station cannot be understated, particularly following the restrictions placed on an accused's right to remain silent (under the Police Powers and Procedures Act 1998), and the legal consequences which may flow from a failure of an accused person to appreciate his position.

As a result the Police Station Duty Advocate Scheme was introduced, which provides that any person attending a Police station (whether under arrest or attending voluntarily) is entitled to request the services of the Duty Advocate. There is no means test, or merits test.

The Isle of Man Law Society maintains a panel of Advocates who are prepared to act as Duty Advocates, and maintains a rota to ensure that there is always an out of hours Duty Advocate available. The rota only provides cover for outside normal office hours. Each duty period runs from 7.00 pm until 7.00 am. seven days a week, and additionally periods from 7.00 am to 7.00 pm on Saturdays, Sundays and Bank holidays. The rota operates 365 days of the year.

To remain on the panel, Advocates must attend a suitable course at least once in every two years. In practice most Advocates attend annually. Courses are paid for by the Advocate.

During the times not covered by the rota, there is no on call Advocate, but any panel Advocate may attend the Police station and be paid under the scheme for his attendance.

In addition to the Duty Advocate, there is also a Senior On Call Advocate. The Senior Advocate must have been qualified and practising for a minimum of 5 years, and have the

requisite knowledge skill and experience to act as a Senior Advocate. The role of the Senior Advocate is to attend for the most serious categories of offences, specifically for allegations of murder, manslaughter and rape. The Senior Advocate is also available to assist the Duty Advocate in cases of difficulty. In practice, the Senior Advocate will also attend the Police station where the Duty Advocate has a conflict of interests (most commonly where 2 or more persons are arrested in connection with the same offence) or where the Police station is particularly busy.

The Problems

1. Rates of pay having regard to the unsociable nature of the work

Many Advocates are reluctant to enter onto the panel as the work involves unsociable hours. Although for minor offences (such as motoring offences) advice can be given over the telephone, the vast majority of calls involve attending at the Police station (which could be any Police station in the Island), most are during the evening, often quite late at night and into the early hours of the morning. Most calls are received on Friday night and Saturday nights, and each can involve several hours' attendance. It is not uncommon for the Duty Advocate to receive telephone calls at maybe 3 o'clock in the morning from persons who are either too drunk to be interviewed or who are simply going to be charged and released once they have sobered up, but who nevertheless insist on telephoning the Duty Advocate (who is often unable to do anything at all to assist in the circumstances) simply because it is their right to do so. Once a Duty Advocate has assisted a person in custody, it may be that the person is charged and brought before a remand Court held on a Saturday (and very occasionally Sunday), and in such circumstances the Duty Advocate has an obligation either to secure another Advocate for that person, or in the vast majority of cases to attend the Court himself. Such Court attendances are paid as "call out" time under the Scheme.

It has been known for a Duty Advocate to spend up to 40 hours at the Police station during a Duty Week. All Advocates on the panel will also be doing a full week's work in their offices and in the courts, and to undertake the Duty Advocate scheme can be extremely disruptive and exhausting, particularly when the Advocate has spent several hours during the night at the Police station. It also involves a certain degree of organisation and re-organisation to ensure that a week on duty will not coincide with a particularly heavy week in the office.

The rates of pay are not attractive to the majority of Advocates, bearing in mind the nature of the work. As a result there are a limited number of Advocates who are prepared to be on the panel. The smaller the number prepared to be on the panel, the more duties have to be covered by those who are on the panel, thereby increasing the burden upon them and making it even more unattractive to remain on the panel. There are presently 18 Advocates on the Panel, although some of these only undertake a very limited number of duties and have only agreed to be on the panel on that basis (particularly those Advocates who have young families). Out of the 18 Advocates on the panel only 8 are Senior Advocates. As a result, each Senior Advocate is presently on call (either as Duty Advocate or as Senior Advocate) for 1 week in every 5. More Senior Advocates need to be attracted to the Scheme, and any further reduction in numbers of Senior Advocates on the panel must be avoided, failing which the scheme for Senior Advocates to be available is in danger of collapse. This would result in only the regular Duty Advocate being available, most of whom would not in fact be permitted by the Courts to represent a client charged with an offence of murder, manslaughter or rape (which the Courts have directed should not be dealt with by Junior Advocates). The arrest,

detention and interview of an accused is a crucial stage of any criminal proceeding, and one where it is vital that the client receives the best advice. It would be extremely undesirable for a recently qualified Advocate to be faced with representing a client arrested and about to be interviewed for murder, rape etc.

Any reduction in the number of Advocates on the panel would increase the pressure on those remaining, and could put the Scheme at risk. The Senior rota is already at risk.

The rates of pay are:

Duty Advocate:

(i) Duty Advocate "on call" fee of £105.00 per 12 hour session (a session being from 7.00 pm to 7.00 am, or 7.00 am to 7.00 pm at weekends and Bank holidays)
Included in the "on call" fee is the provision of advice by telephone.

(ii) call out charges of £65.00 per hour or part hour for time spent actually attending a Police station.

Senior Advocate:

(iii) Senior Duty Advocate "on call" fee of £250.00 per **week** (equivalent to £27.78 per 12 hour session)

(iv) call out charges of £65.00 per hour or part hour for time spent actually attending a Police station.

2. Availability of Advocates During the Working Day

The duty rota only provides for a Duty Advocate and a Senior Advocate to be "on call" during the out of hours periods (7.00 pm to 7.00 am each day, and 7.00 am to 7.00 pm on Saturdays, Sundays and Bank holidays).

Although a person who has attended a Police station has the right to consult a Duty Advocate whatever the time of day, it is often difficult to obtain an Advocate during the daytime. As there is no "on call" Advocate, this results in the Police station Custody Sergeant telephoning his way through the list of panel advocates until he finds an Advocate who is both available to come immediately to the Police station and who is prepared to do so. In many cases, persons are unable to secure legal assistance for some length of time, possibly until the Duty Advocate comes on duty at 7.00 pm. As a consequence some persons elect to continue their interviews without the benefit of the legal advice to which they are entitled.

Solutions

1. Rates of Pay

Simply maintaining a legal practice involves a substantial investment both in time and finance. The day to day running of a modern law firm is costly, and time-consuming. High levels of rent and salaries, the cost of insurance, maintaining up-to-date texts and information technology, increasing compliance requirements etc, all must be paid for. To simply maintain a law firm is time-consuming itself. Most Advocates need to recoup in the region of £90.00 per chargeable hour to cover the overheads involved simply in maintaining their practice. It

is only after the Advocate has earned that first £90.00 per hour that he then begins to earn any profit for himself. Each hour undertaken at legal aid rates therefore represents a direct loss to the Advocate, which must be recouped elsewhere. Most firms therefore strictly limit the amount of legal aid work which they undertake, and many firms are simply not prepared to undertake legal aid work at all.

To attract more Advocates (and more experienced Advocates) onto the panel, and to prevent membership of the panel falling even further, the rates must be made sufficiently attractive.

The rates of pay generally should be enhanced so as to provide not only a reasonable rate of return for the Advocate, but also to reflect upon the unsociable nature of the work. In particular the rate for time spent on call outs should be addressed as this element best reflects the most unsociable aspects of the work. The nature of representing a client during a police interview is as taxing and involved as appearance before the Courts yet is paid at a lower rate.

The call out rate should be set at the same level as the rate for Court appearance.

Senior Advocates should receive an enhanced rate for time which they spend on call outs, to reflect their greater knowledge, skill and experience. Whilst this is recognised in the higher rates applicable for a Senior Advocate under a full criminal legal aid certificate or a full civil legal aid certificate, it is not reflected in the Police Station Scheme. By linking the call out rates to the Court appearance rates this would reflect the more demanding task undertaken by Senior Advocates.
Whilst the "on call" fee for the Duty Advocate is £105.00 per session, the Senior Advocate "on call" fee is only £250 for the full week (a full week being 9 sessions - 7 overnight and 2 daytime sessions at weekends). On Bank holidays, the Senior Advocate is paid only £27.78 for being on call during the extra daytime session that week (including Christmas, New Year, etc). The "on call" fee should be enhanced generally to try to attract more Senior Advocates onto the panel, but in particular a supplement should be paid for Bank holidays.

2. Availability of Advocates during the Working Day.

A rota should be established to provide for an Advocate and a Senior Advocate to be "on call" during the period from 7.00 am to 7.00 pm each working day, so as to provide 24 hour on call cover, 365 days of the year.

An "on call" fee would be required, to reflect the disruption, inconvenience, and the organisation and re-organisation which would be involved for the Advocate to enable him to be available to attend the Police station immediately. Due to Court commitments, this would often involve a degree of re-arranging of cover.

The rates of remuneration would also need to be sufficiently attractive as to ensure a sufficient number of Advocates joining the panel.

2. Court Duty Advocate Scheme

This Scheme provides for a Duty Advocate to be available at the majority of criminal Courts (the High Bailiff's Court, the Deputy High Bailiff's Court, Magistrates Courts, and Juvenile

Courts). The Duty Advocate is available to advise, to present mitigation, make applications for bail and legal aid, seek adjournments where necessary, etc.

The Duty Advocate provides advice and representation for persons who do not have representation (often because of difficulty in finding an Advocate who will take on their case on legal aid). The Scheme helps to reduce the amount of wasted Court time, by enabling many cases to be dealt with immediately without adjournment. It also ensures that cases are dealt with appropriately, and that the Court is made properly aware of all relevant factors which might otherwise not be brought to the Court's attention if a client were to present their case in person. It provides assistance for persons who are unable to find legal representation, and generally assists in the proper administration of justice.

The Scheme generally runs well, but does have its shortfalls.

Problems

1. Adequacy of Representation

The Scheme should not be viewed as a satisfactory alternative to a properly funded and staffed system of criminal legal aid. It is a fall back.

Court Duty Advocates must deal with any and all cases that fall their way on the morning, and the amount of time which the Advocate can spend with each client is limited. Whilst the Duty Advocate can make the Court aware of the main factors relevant to a case, the limited time available must have an adverse effect on the quality of mitigation which can be presented. Mitigation presented "off the cuff" should not be seen as ideal.

There are many cases which cannot be dealt with "on the spot", where further enquiry and investigation or research is required, and where an adjournment is necessary to enable the client to find an Advocate to look into his case in more detail, under a full criminal legal aid certificate.

Many cases may have been adjourned from previous Courts. Lack of continuity of representation is undesirable. A detailed and first hand knowledge of a matter is more likely to produce the high quality of representation which is required.

2. Rates of Pay

Court Duty Advocates are paid a flat rate of £74.00 per hour for time incurred. There is no distinction between junior and senior advocates. There is no means test, and all individuals are entitled to see the Duty Advocate.

The rate of pay falls below the level of overheads which an Advocate must charge simply to cover his out-of-pocket expenditure. Each hour spent as Duty Advocate therefore causes a loss to the Advocate of about £16.00 per hour.

3. Scope of the Scheme

The Duty Advocate is only available to assist individuals. The Scheme does not cover assistance to a limited company. Accordingly it is often the case that a tradesman who runs

his business through a company (and may be the only "employee" of the company, or one of only a few) will find a prosecution against his company for not filing Income Tax returns, or making National Insurance payments. If he were trading in his own name he would be able to seek assistance from the Duty Advocate. As he has set up a company, however, he is not entitled to any assistance.

Solutions

1. Adequacy of representation

Whilst the Court Duty Advocate Scheme is a necessary part of the legal aid system, it has limited scope, and the difficulties associated with legal aid generally need to be addressed.

2. Rates of Pay

The rate of pay should at least cover the cost to the Advocate, and provide some profit element. This will ensure that the Scheme continues to have sufficient participation, and attract more senior Advocates to participate which will improve the quality of service.

3. Scope of the Scheme

The Scheme should be extended to allow assistance to be given to persons who run their businesses through limited companies.

3. Full Criminal Legal Aid Certificate

Persons who are charged with criminal offences may apply for a full criminal legal aid certificate, which covers the full conduct of their case up to sentencing, and advice on appeals. To qualify, a person must fall within the financial limits set. Furthermore, it must be deemed to be "in the interests of justice" that legal aid is granted (for example, there is a real risk of imprisonment, or the case involves some complex legal point, etc). Minor matters, therefore tend not to qualify, but they can be dealt with by the Court Duty Advocate.

Application for a full certificate is normally made in Court, or by sending the application to the Summary Courts office. As supporting documentation (eg wage slips) is required there is often a delay in the issuing of the certificate. This can often mean the Advocate undertaking at least some preliminary work which is not covered by the legal aid certificate. Whilst the Green Form Scheme is available prior to the issue of the certificate, the even worse rates for Green Form make this very unattractive, and there are occasions where Green Form may not be available.

The rates for a full legal aid certificate depend on whether the Advocate is Junior or Senior, and whether the proceedings are before the Summary Courts or before the Court of General Gaol Delivery or for an Appeal.

The rates per hour are:-

	Preparation time	Travel & Waiting	Appearance time
Summary proceedings (both Junior and Senior Advocates)	£56.00	£33.00	£74.00
General Gaol & Appeals			
Senior Advocates	£65.00	£33.00	£90.00
Junior Advocates	£56.00	£33.00	£74.00

In addition there is a fixed sum of £20.00 paid, provided the person has not received assistance under the Green Form Scheme, the Police Station Duty Advocate Scheme or the Court Duty Advocate Scheme.

The Problems

1. Rates of Pay

Many Advocates are unwilling to take on legal aid work due to the poor rates of pay. Those firms which do undertake legal aid work tend to limit the amount of legal aid work they undertake. Again, this is due to the simple fact that for the vast majority of Advocates, legal aid rates are lower than the cost of the Advocate's overheads, with the result that the Advocate is, in effect, not only providing his time for free, but is in fact paying for the privilege.

2. Difficulty Obtaining Representation

Many people find it difficult to find an Advocate who is prepared to take on their case on legal aid. It has been known for people to call into Advocates' receptions desperately seeking representation and stating that they have been to every office without success.

3. Procedure for and Delays in Payment

The procedure for seeking payment is to send an itemised bill, detailing every task and letter and telephone call (itself a time-consuming task for which the Advocate is not paid) which is sent to the Registry with a "Bill Summary Form". Once the Taxing Officer is ready to tax the bill he writes to the Advocate, who then delivers his file to the Registry. The Advocate must have sorted out his file to ensure that every document and entry is in correct date order (again a time-consuming task) The Taxing Officer then taxes the bill and sends a copy as taxed to the Advocate and instructs Treasury to make the payment.

There is frequently a delay of 3 to 4 months between the lodging of the Advocates itemised bill, and the taxation of the bill. There is then a delay of about a month after taxation before payment is received from the Treasury. Interim payments are rare, and the Advocate will accordingly have already been funding the case themselves whilst it is ongoing. To have a delay of around 5 months after the case has been completed is a source of discontent, particularly when coupled with the low rates of pay to start with. Many Advocates run their practices on overdraft facilities from the Bank. Whilst the Advocate is waiting for payment, he is accordingly incurring interest charges himself.

Bills are often returned with simple queries which could easily be dealt with by a telephone call or an e-mail, which causes more delay in the taxation process.

The requirement for completing a "Bill Summary Form" should be removed. When one Advocate queried the need for these it was explained that it was "for the Advocates benefit" as an *aide memoire*. In practice the Form simply means more unpaid time and paperwork for the Advocate.

The practice of the Taxing officer appears to be to tax off items too stringently. Taxed bills appear generally to have around 10% taxed off. It is not accepted that 10% of Advocates work is done unreasonably (Advocates cannot afford to waste time - particularly when working on loss-making legal aid rates - when they could be spending that time productively elsewhere), and there is a perception that the Taxing Officer feels compelled to make deductions from bills in every case. There has been a practice of making a "general deduction" from preparation time, usually with some comment to the effect that the work should not have involved so much preparation - comments which cannot be justified, certainly without a detailed knowledge of the matter and understanding of the law. Proper preparation is the cornerstone of a properly presented case, and the proper administration of justice.

Although there is an Appeal procedure from the Taxing Officer's deductions, the time involved (which is unpaid, and therefore effectively costing the Advocate about £90.00 per hour for his overheads) makes it impractical to Appeal the taxation other than in exceptional cases.

The practice of the Taxing Officer has also recently changed, with regard to the amount of time allowed for letters sent by the Advocate. Previously, each letter sent was allowed as 5 minutes time. There then started a practice where the Taxing Officer would disallow any letter which he classed as a "covering letter" on the alleged basis that, for example, a Pleading could be sent to the Court or to the other party with a "compliments slip". The Taxing Officer would not allow any claim for such items, even though sending pleadings by compliments slip was not satisfactory in most cases, and involved just as much time as sending a letter (by the time the Advocate has got the file out, checked the references, written on the compliments slip, made a written note on the file, given the document to a secretary to put in an envelope, and then had it physically delivered). This practice caused much discontent and complaint. The practice has recently been changed, but regrettably for the worse. Whilst a short covering letter will now be allowed, the Taxing Officer is no longer allowing letters at the standard average of 5 minutes per letter. Instead, the amount of time being allowed for letters is determined according to the number of words written. A full page of writing is allowed as 5 minutes, whilst a short letter may be allowed only 2 minutes or even 1 minute. 1 minute at present rates is 93 pence. Prior to the current system, costs were calculated on the Advocates Scale of Fees, under which the rates (set in 1988) allowed £6.45 for a letter sent and £5.16 for perusing a letter received. Allowing even 5 minutes for letters on the present rates is £4.67 - 28% **less** than was allowed 14 years ago.

The Solutions

1. Rates of Pay

Rates of pay should at least cover the overhead costs of the Advocate and provide a modest profit element.

The Advocate's overheads remain constant, regardless of whether he is doing preparation work, or waiting in Court, or appearing in Court. The Majority of work involves preparation, but can also involve a fair degree of travelling and waiting (criminal Courts are quite often held in Castletown, or Ramsey) and appearances at the regular fixed criminal Courts generally involve more time waiting than appearing. At £33.00 per hour it causes a substantial loss to the Advocate, and is a great disincentive to take on legal aid matters.

The rates of pay should be the same for each category of work.

2. Difficulty in Obtaining Representation

Advocates are in private business. They need to make a profit to stay in business. If work is profitable, there will be Advocates who are prepared to undertake it. There is little incentive for Advocates to take on work which will actually cost them money, which they must then recoup elsewhere. Many Advocates simply cannot afford to take on legal aid work, and those that do tend to limit strictly the amount they take on.

A fair and reasonable rate of remuneration would result in clients being able to secure proper representation more easily.

3. Procedure for and Delays in Payment

Provision should be made for interest to be paid on bills which are not paid within a month of their submission.

The procedure for seeking payment should be streamlined, so that the bill can simply be submitted with the file, as was previously the practice. The original reason for changing the procedure, so that the file was sent separately only when the Taxing Officer was ready, was apparently because the Taxing Officer was so far behind that the Registry did not have the space available for all the files that were awaiting taxation. The taxation procedure should be speeded up, which is purely a matter of adequate staffing. The requirement for completing a "Bill Summary Form" should be removed, and would be wholly superfluous if the file can be sent with the bill at the outset.

Letters and telephone calls should be allowed at a standard rate of 5 minutes, as an average figure, but subject to the Advocate being able to seek a greater allowance where justified (some telephone calls may easily take 15 or 30 minutes or occasionally longer, and some letters can be time consuming and difficult to draft). While it is theoretically possible for the Advocate to make a note of exactly how much time he spends on each letter or telephone call, in practice this is not practicable. Almost all Advocates firms operate computerised time recording systems which work on time units (whether they be units of 5 minutes, 6 minutes, etc), and to have to make a separate individual note of exactly how many minutes is spent on every letter or call would simply be another inconvenience and source of irritation for legal aid matters. Even at 5 minutes per letter or call this is still lower than rates 14 years ago.

Conclusion

The predominant factor in the reluctance of Advocates to undertake legal aid work is the poor rate of remuneration, which in most cases involves the Advocate working at a loss.

Coupled with this is the irritation and aggravation factor associated with the delays in securing payment, the perception that the Taxing Officer will deduct an excessive proportion of costs, and the unpaid time involved in practice.

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Lord Irvine's speech -- legal aid system set for the most radical changes since its inception, solicitors hear

22 October 1997

MAIN POINTS-- Widest possible extension of conditional fee arrangements and removal of legal aid from all civil money or damages claims.-- Introduction of contracts for legally aided work at agreed, fixed prices.-- Tightening of the merits test where legal aid is still available.-- Adoption of Woolf reforms.SUMMARY-- Contracting of legal services in civil and criminal cases.

In medium term a majority of criminal work to be under contract.-- Merits test for grant of legal aid to be raised to 75% to reflect pressure on legal aid budget.-- Solicitors' predictions of the strength of cases to be monitored by the Legal Aid Board against achieved outcomes.-- Award and continuation of contracts to be dependent on outcomes and other quality measures to be consulted upon.-- Special arrangements for public interest cases, perhaps funded by a LAB-run reserve and supervised by judges.-- Consultation on maximum possible extension of conditional fee agreements to all civil cases except family, from April 1998.-- Consultation on a contingency legal aid fund, on legal aid being available to fund legal costs insurance premiums and on making medical negligence a special case.-- In the longer term a community legal service to co-ordinate work of voluntary sector agencies, advised on local priorities by regional legal services committees.-- Extension of court fees exemptions to wider range of benefit recipients.-- Adoption of Woolf's judicial case management proposals.-- Creation of a fast-track route for cases subject to fixed timetable with cases usually heard within 30 weeks.

Creation of a multi-track route for other cases.

Both tracks to be running by April 1999, accompanied by fixed costs regime.-- Small claims limit to be raised to £5,000-- Consultation on whether to raise fast-track limit to £15,000.KEY SECTIONS OF LORD IRVINE'S SPEECH:There are two major priorities, two main targets.

First, legal aid has become a leviathan with a ferocious appetite.

I have to grapple with that.

Second, the civil justice system is a machine with many faults.

I plan to remove them.

Those are my targets, taking control of legal aid and modernising civil justice.Legal aid must be re-focused.

It must be made a tool to promote access to justice for the needy -- not be seen by the public as basically a means of keeping lawyers in business.

It is the people's needs that justify a legal aid system in the first place.-- LEGAL AIDI have thought for a long time about the future of legal aid.

The future lies in contracting for services, in both criminal and civil cases.

The way ahead is contracts that will specify in advance just what services are being bought, and at exactly what prices.

It is only through contracting that the government can hope to gain sufficient control over the shape of the legal aid scheme to ensure that resources are targeted on the needy.Legal aid work will, in time, be restricted to those providers who have a contract with the Legal Aid Board.

No longer demand-led, as now, the civil legal aid scheme will become more responsive to the Legal Aid Board which will purchase, at agreed and fixed -- I emphasise fixed -- prices, services which have been determined in advance under plans made locally on the advice of regional legal services committees.No lawyer can be compelled to contract at a fixed price.

Lawyers must make a commercial judgment.

Depending on how each case progresses, the fixed price in every case will, at the end, seem too high or too low.

It is called 'taking the rough with the smooth'.

It is the overall outcome from all contracts on which lawyers' profitability will depend.Lawyers must become more precise in their predictions.

Those predictions should be monitored by the Legal Aid Board, against achieved outcomes.

This is an important means by which the board will judge whether particular firms deserve to continue to be awarded contracts.

But there are no doubt other ways in which competence and quality can be assessed.

Clearly, this is something that demands consultation between the government and the professions.I propose also to extend contracting to criminal legal aid.

In the medium-term, the greater part of criminal work will be drawn into contracting arrangements.

But we need to work hard to decide how the interests of justice in criminal cases -- particularly the rights of defendants and the need to avoid delay -- can be dovetailed with a contracting system managed through the Legal Aid Board.

That work is already in hand.-- MERITS TESTSA grant of legal aid depends on the case passing what is commonly called the merits test.

That test needs tightening.

Too often the Legal Aid Board is told that a case has a 'good' or an 'average' chance of success...

without the lawyer having to nail his colours to the mast of a precise percentage prospect of success.

Lawyers will be required to do that in future.In cases where it is the prospects of success which are central, I hope to see the merits test stipulate a 75% likelihood of success...

No prudent person would run the risk of litigating out of his own resources with less than a 75% likelihood of success.I also intend that the merits test should, in future, reflect the pressure on the legal aid budget...

It is only by bringing the overall availability of resources into play that the government can guarantee keeping legal aid within an annual pre-determined budget.

But by careful planning in the contracting process -- and granting overlapping contracts that last for several years ahead -- we shall ensure that there is a steady level of services available at all times to meet the priority cases identified through the merits test.-- EXCEPTIONAL CASESBefore I move on from the merits test, I acknowledge there are categories which would not pass the test, and where the predicted cost would be disproportionate to the likely benefit to the individual -- but where it is plainly in the public interest for a particular point of law to be examined, or for a precedent to be established.

I believe it would be right to make special arrangements for these cases.I am attracted by two proposals...

for handling these cases of public importance.

First, that the Legal Aid Board should establish a separate fund specifically designed to carry them forward.

And, second, that consideration should be given to placing them under special judicial management.Sir Peter Middleton...

concluded that it would be reasonable for the government to ask for a contribution of five or ten pounds, even from those who are dependent on income support.

This is one of the few recommendations from Sir Peter Middleton which I am unable to accept.-- CONDITIONAL FEESMy department will be consulting over the next few months on the maximum possible extension of conditional fee agreements to all civil proceedings, other than family cases, from April 1998...

The extension of conditional fee agreements to a wide range of cases must prompt the question: 'Should legal aid also be offered in cases where other arrangements already exist to support litigants?'I think not.

Subject to consultations, I expect to exclude most claims for money or damages from legal aid.

Legal aid will continue to be available for all civil cases not claiming damages or other money: for example, care of children; judicial review; and the threat of homelessness, not to mention the whole of criminal legal aid.An alternative approach which has been suggested is that, rather than leaving the less well-off to make 'no-win no-fee' agreements, there should be a contingency, or conditional, legal aid fund -- a CLAF for short.

This is a listening government, so I am willing to consider this proposal.

I do, however, have major concerns about the way this fund would work...

would there not be a real risk that only weaker cases would be supported by a CLAF, because lawyers would prefer to cream off the stronger cases under no-win, no-fee agreements?-- FUNDING INSURANCEI have already received suggestions: for instance, that there should perhaps be provision for the legal aid fund to meet the insurance premiums, to protect against the risk of loss those who are eligible for legal aid, and wish to enter into conditional fee arrangements.There is also an argument that medical negligence is a special case, because substantial costs are incurred in investigating it before a view can be formed whether it has the prospects of success to merit carrying it forward.

The question is whether the lawyers should accept these costs as a commercial risk they should bear in arriving at a decision whether to make a beneficial conditional fee agreement.We are an open government, committed to openness...

I am willing to consider any arguments made to me, but I will always test them against the principle that legal aid exists only to remedy an imbalance between the poor and those who are better-off, not to put the poor in a privileged position.Three key changes are at the heart of my vision for the future of legal aid: altering the basis of payment to contracts at agreed, fixed, prices; tightening the merits test; and the widest possible extension of conditional fee arrangements, and reliance on them in preference to legal aid from the taxpayer.-- WOOLF PROPOSALSThis government embraces Lord Woolf's vision of a more efficient civil justice system: a modern civil justice system designed for the 21st century, in which people who are legally aided, and those who are not, have equal access to simpler, faster procedures for securing their rights.I....

propose that the small claims limit should be raised to £5,000 as part of an overall package of reform.We will adopt Lord Woolf's proposals for more 'hands on' management of cases by judges, transferring power from lawyers to judges, and giving the courts greater control over the progress, cost and length of those cases as they move to trial.

I intend to oversee the cre ation of two new routes through civil justice to replace the complexities of the present: a 'fast-track'; and a 'multi-track', designed to deal appropriately and proportionately with civil cases which are not suitable for the small claims court.Cases allocated to the 'fast-track' will be subject to a fixed timetable, requiring the case usually to be heard within 30 weeks of allocation.I have considered the views of those who have advocated that all personal injury claims should be in the 'multi-track' and excluded from the 'fast-track'.

I do not believe so extreme a case to be made out.-- WOOLF IMPLEMENTATIONThe government intends to have these two tracks up and running in April 1999.

This is six months later than the last government's plans.

My view is that even more litigants should be able to benefit from the speed of the 'fast-track'.

I therefore intend to initiate consultation on whether the 'fast-track' limit should be set at £15,000.The introduction of the fast-track, in April 1999, should be accompanied by an associated fixed costs regime.

Much work, however, remains to be done on the detail of how the regime would operate in practice.In response to concerns raised in Parliament, I propose to extend [court fee] exemptions to those in receipt of income-related job seeker's allowance, or family credit, or disability working allowance.

I intend that this change should come into effect at the end of next month.-- COURT FEESThe civil fee structure is irrational and hopelessly out of date.

It needs to be reformed.

I will be issuing a consultation paper next month inviting discussion on the principles which should underlie a new fee structure.-- COMMUNITY LEGAL SERVICEI have my sights set on another, longer-term, goal -- a community legal service...

There are many existing information and advice sources: the CABs, the Law Centres, the advice centres, and mediation bodies.

We intend to co-ordinate these services under a coherent scheme which will provide a service to the whole public which is both easy to access and to understand.The package I envisage will bring great benefit to you; extending conditional fees into so many new areas means more business; the public will believe that the risks and the benefits for lawyers in these new arrangements will motivate lawyers to do their very best for their clients.

More rapid procedures in the civil courts will enable you to deal with more cases, more quickly -- upping your overall caseload -- as more people, especially from middle income Britain, gain access to justice though the new terms.

I doubt if anyone in this hall would seriously argue that the legal profession in recent years has done anything other than fall lower and lower in public estimation.

I want to reverse that.

JUSTICE-ILAG
Legal Aid Newsletter
November and December 2009

Opening note

Happy New Year.

May justice around the world be the safer throughout this year for being – at least partly - in your hands.

Roger

1. Major Themes of the Issue

Marvel at how well the Scottish Legal Aid Board (SLAB) seems to have controlled expenditure. Scotland presents all the signs of a well-managed legal aid system, controlled by deft movements of the SLAB's tiller: a few salaried staff lawyers here, fixed price criminal cases there, above all the Holy Grail of a 'whole systems approach' in which procedural and legal aid reform interact.

Check out the position in New Zealand as a blizzard of press coverage announces the results of the legal aid review announced during last year's ILAG conference in Wellington. A link to the report is also provided. It recommends that a loss of autonomy for the Legal Services Agency and is highly critical of the behaviour of legal aid practitioners who are roundly accused of widespread 'rorting' or dishonesty.

Note the chaos in the Cayman Islands where a government firing from the hip with ill-considered reform comes a cropper and is forced to establish a proper review first – a small jurisdiction providing a larger lesson.

Show interest in Professor Mary Jane Mossman's research on Ontario's community legal clinics – still the world's leader in the community-based legal provision of poverty law.

And, finally, consider volunteering a paper for the Legal Services Research Centre's annual conference next summer. Why not escape the miseries of life in legal aid at a particularly stressful time for a few days in a Cambridge college at the end of June and beginning of July?

Roger

2. Contribution

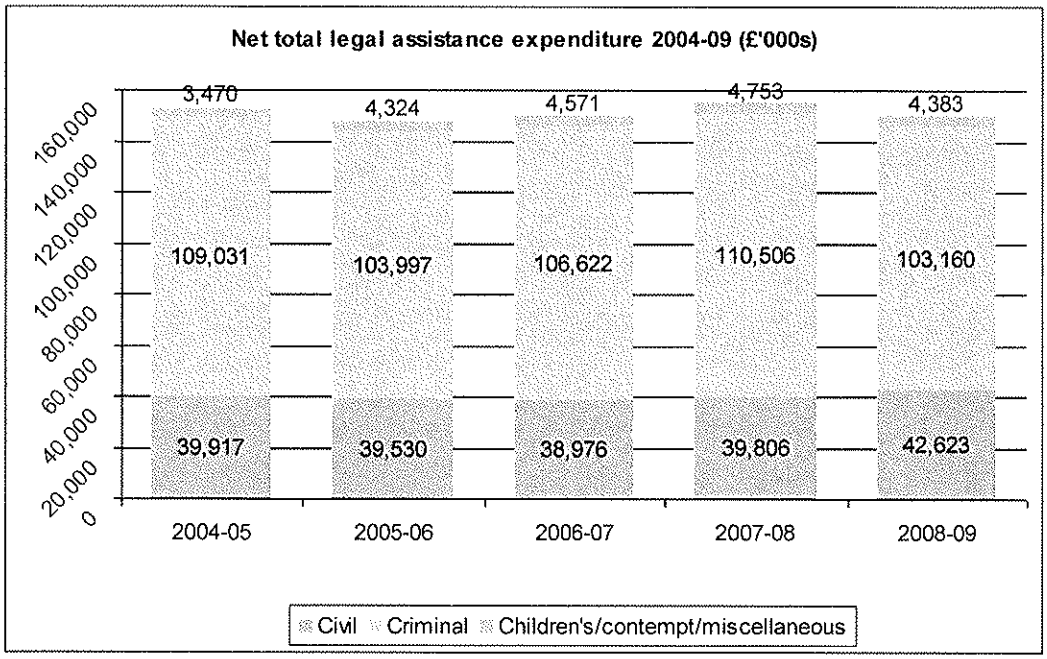
Colin Lancaster, Director of Policy and Development, Scottish Legal Aid Board, writes:

It was observed in the previous issue of the Newsletter that, in contrast to many jurisdictions around the world, Scotland has managed to control or even reduce expenditure without the need for swingeing cuts in either scope or financial eligibility. This article very briefly offers suggested explanations for this.

First, a short bit of background. The Scottish legal aid scheme, administered by the Scottish Legal Aid Board, covers a very wide range of both civil and criminal matters. Initial advice is available on any matter of Scots law. Most types of court proceedings are covered by civil legal aid, including personal injury and other money claims. In recent years, there has been significant growth in spending in relation to some administrative tribunals, in particular immigration and asylum and mental health.

Services are provided overwhelmingly by solicitors in private practice, funded on a case by case basis. We have a small network of public defenders (16 solicitors in 7 offices, compared to around 1300 solicitors in 600 private firms). We also now have a small network of civil employed solicitors (15 solicitors in 4 offices, again compared to several hundred private practice firms).

The majority of expenditure is directed towards criminal matters. There is no cap on the budget, making the system one of the few remaining fully demand led systems in the world. Despite this, expenditure in 2008-09 was in fact lower than in three of the four previous years.



Although increasing in the last year (partly as a result of a fee increase for solicitors), civil legal assistance had been largely static for several years, a product of falling volumes and rising case costs. Earlier analysis by the Board (http://www.slab.org.uk/about_us/research/supply/archive/changing_world/index.htm) suggested a number of reasons for the decline in applications and concluded that it neither reflected nor resulted in significant access to justice problems. In the years following that analysis, applications continued to fall.

Recent trends suggest that at least some of this reduction – and therefore the containment of expenditure – is attributable to the relative unattractiveness of legal aid fees compared to private fees. As the recession has hit other aspects of solicitors' business – particularly residential property sales – we have seen a 35% increase in civil legal aid applications. While some of this increase undoubtedly reflects increased demands due to the recession (home repossession etc), it is perhaps no coincidence that the highest ever number of civil legal aid applications occurred in 1993 – the tail end of the last recession. The fact that solicitors are once again willing to work for legal aid rates suggests that, overall, fees are sufficient, if not particularly competitive when up against the rates chargeable in a booming market.

Further investigation would be required to establish whether we are now seeing supplier-induced demand or whether over the last fifteen years we have seen at least a degree of what might be termed supplier-reduced demand. Some concern had been

expressed in the intervening years about difficulties finding solicitors to do certain types of work in some areas. We addressed the most consistent concerns by employing a small number of solicitors to work in certain parts of the country, but when we suggested doing so in other areas we were told very clearly by the profession that they did not agree that there was any degree of unmet need.

How far the decline in applications affected access to justice therefore remains unclear. By restraining legal aid fee increases in the face of wildly above-inflation rises in private fees, it appears that for the majority of solicitors legal aid became something they would continue to do, but not something they would actively seek to expand. It is worth noting that the resulting stability in expenditure has enabled Scottish Ministers to extend eligibility and maintain the scope of the scheme, in contrast to many other jurisdictions.

Expenditure on criminal legal assistance has fluctuated more than civil and, as by far the largest chunk of expenditure, has driven the overall expenditure figure. The fluctuations in criminal spend are largely, although not exclusively, volume driven. As the number of prosecutions has ebbed and flowed, so has expenditure. This is because case costs for the lower cost but higher volume 'summary' cases have been steady for several years. This stability is a direct result of the fixed payment system introduced in 1999.

Over a period of nine years, there was no change in the level of the fixed payment. Fewer solicitors decided to undertake criminal work but, in line with a wider and growing tendency towards specialisation, the withdrawal was concentrated mainly amongst those solicitors and firms that had previously done very little criminal legal aid work; those that remained were able to become more efficient, take a larger market share and therefore become better able to maintain profits from the static fixed payment.

It had long been argued, however, that the legal aid payment structure incentivised initial pleas of not guilty, only for these to be changed to pleas of guilty at the next available opportunity i.e. once a legal aid payment had been secured. This practice and the extra hearings it necessitated were identified as key reasons for the inefficiency of the summary justice system.

However, defence solicitors had also argued for many years that the wider system discouraged early pleas, including the lack of disclosure of the prosecution evidence. In 2008 as part of a wider programme of reform to the summary justice system, changes were made to the timing and extent of disclosure at the same time as the payment structure was

changed to better reward and therefore incentivise early investigation of the case by the defence. This, it was hoped, would lead to more up front guilty pleas. The modelling that led to the setting of the specific fees was geared to produce an average increase in fees equivalent to inflation since fixed payments were introduced.

The result of the reforms as a whole is that fewer inputs are required from defence solicitors: there are fewer cases and, because of the increase in early pleas, less work is required per case. Early indications are that a substantial increase in early guilty pleas has occurred and, despite an overall reduction in expenditure, around 40% of firms have seen their revenues increase in the first year since the reforms.

The 'whole systems' approach to these reforms built on earlier success in reducing 'churn' in the High Court, which deals with the most serious criminal cases. Changes made there in 2005 also incorporated a legal aid change: a significantly increased payment to encourage early engagement of counsel (advocates and solicitor advocates). Again, this resulted in an increase in early pleas and, alongside other changes designed to improve the way in which cases progressed, a reduction in average case costs and overall expenditure.

Both of these experiences suggest that legal aid change alongside justice system change is more likely to achieve positive results in both contexts. We are now considering how we can take these lessons into other areas, such as mental health and asylum and immigration. Although these areas are far less significant in overall expenditure terms than criminal legal aid, we are hopeful that significant additional savings can be achieved without compromising the availability of representation at an appropriate quality.

3. News: Summaries and Links

These reports are largely compiled from news reports on the internet on the basis of a simple search under the words 'legal aid'. Readers must, just as buyers, beware of authenticity. The links worked at the time of writing but some will fail after a period of time.

Australia

Concern at decline of federal funding of legal aid in Western Australia: http://www.thenewlawyer.com.au/article/wa-lawyers-furious-over-legal-aid/504284.aspx; and New South Wales: http://www.abc.net.au/news/stories/2009/11/05/2733749.htm; and Victoria: http://www.abc.net.au/news/stories/2009/11/06/2735091.htm; Senate committee reveals gaps in regional and aboriginal access to justice: http://www.abc.net.au/news/stories/2009/12/10/2767680.htm?site=southwestwa;

Canada:

Legal Aid Ontario advertises for salaried posts to break criminal practitioner boycott: http://www.lawtimesnews.com/200911025712/Headline-News/Boycott-battle-deepens; Ontario strike spreads to mental health work: http://www.theglobeandmail.com/news/national/legal-aid-takes-hits-in-bc-ontario/article1351623/; attempts by LAO to avoid a court mandated lawyer at a higher than legal aid rate: http://www.thestar.com/news/ontario/article/722562--legal-aid-can-t-recruit-lawyers; BC closes regional offices: http://www.thenewlawyer.com.au/article/wa-lawyers-furious-over-legal-aid/504284.aspx; Vancouver lawyer alleges government only spends half of money taken on special lawyers' on legal aid: http://www.vancouversun.com/legal+facing+cuts+service+reduction/2184130/story.html; BC union takes up the argument: http://www.nupge.ca/node/2698; The Ontario boycott continues: http://www.trinidadexpress.com/index.pl/article_news?id=161556279; Civil legal advice telephone line and several offices cut in BC: http://www.bclocalnews.com/vancouver_island_south/victorianews/news/69990352.html; Supreme Court to rule on whether legal aid lawyer can withdraw from case if client's legal aid rescinded: http://www.cbc.ca/canada/north/story/2009/11/17/yukon-legal-scoc.html; Law Foundation continues funding programme for 11 trainees at clinics and legal aid: http://www.benzinga.com/pressreleases/m50412/the-law-foundation-of-ontario-continues-connecting-articling-fellowships-for-a-; Criminal dispute in Ontario enters seventh month: http://www.nationalpost.com/news/canada/story.html?id=2296145; New Brunswick justice minister orders review into family law legal aid delays: http://www.cbc.ca/canada/new-brunswick/story/2009/12/04/nb-legal-aid-funding-murphy-531.html; Ontario practitioner breaks the boycott: http://www.lawtimesnews.com/200912075953/Headline-News/Cracks-in-boycott; Reforms of family law system come with only minor new money from legal aid: http://www.lawtimesnews.com/200912075953/Headline-News/Cracks-in-boycott; New Brunswick justice minister admits legal aid 'down to bare bones': http://telegraphjournal.canadaeast.com/front/article/897625;

Cayman Islands

Row on cut to legal aid continues: http://www.caymannewsservice.com/headline-news/2009/11/12/jack-stops-mac-legal-aid-plan; Looks like plan virtually to kill off budget will fail: http://www.caymannetnews.com/news-19294--8-8---.html; review announced: http://www.lawtimesnews.com/200912075953/Headline-News/Cracks-in-boycott; issues to be considered: http://www.caycompass.com/cgi-bin/CFPnews.cgi?ID=10388240;

England and Wales:

Bar leader decries legal aid position: http://business.timesonline.co.uk/tol/business/law/article6903342.ece; Divorce going up and so are numbers of cases involving emotionally charged disputes over children: http://www.guardian.co.uk/lifeandstyle/2009/nov/09/divorce-cases-children-legal-aid; family law quotas exhausted as firms turn away prospective clients: http://business.timesonline.co.uk/tol/business/law/article6929839.ece; Expenditure on criminal legal aid appears to be falling: http://www.channel4.com/news/articles/business_money/spending+on+legal+aid+aposalready+fallingapos/3438007; Legal Services Commission criticised in Parliamentary report and lawyers may have to repay considerable sums of overpayments: http://business.timesonline.co.uk/tol/business/law/article6934179.ece; cuts of unidentified amount to be made to legal aid budget: http://www.telegraph.co.uk/finance/financetopics/budget/6772946/Pre-Budget-report-Legal-Aid-and-NHS-database-under-threat.html; Law Society launches judicial review of proposal to reduce costs payable to acquitted defendants: http://www.legalbrief.co.za/article.php?story=2009121508103620; Cuts to some criminal fees to save £23m; review of Crown Court advocacy fees (defence said to be 18 per cent higher than prosecution): http://www.guardian.co.uk/commentisfree/2009/dec/19/legal-aid-conditional-fee-nhs; editorial extols legal aid rather than conditional fees for personal injury cases: http://www.guardian.co.uk/commentisfree/2009/dec/19/legal-aid-conditional-fee-nhs;

Fiji:

Legal aid commission 'overstretched and under-resourced', says judge: http://www.fijitimes.com/story.aspx?id=133690;

Ireland:

15 per cent cut to criminal legal aid and 5 per cent to civil: http://www.irishtimes.com/newspaper/breaking/2009/1209/breaking97.htm;

Israel:

Knesset considers law on mandatory pro bono: http://www.israelnationalnews.com/News/Flash.aspx/174701;

India:

'Justice on wheels' project sends legal advice off on a bus to be more accessible: http://www.dailyindia.com/show/342199.php;

New Zealand:

Legal aid report praised for recommending expansion community legal centres and public defenders: http://www.voxy.co.nz/politics/dalziel-legal-aid-report-exceeds-expectations/5/31623; Report criticises Legal Services Agency and recommends loss of independent status: http://tvnz.co.nz/politics-news/govt-promises-fix-legal-aid-3198822; The counter-attack arrives: http://www.scoop.co.nz/stories/HL0911/S00320.htm; Agency axed as report identifies alleged 200 legal aid lawyers abusing the system: http://www.nzherald.co.nz/politics/news/article.cfm?c_id=280&objectid=10612664; Law Society says most lawyers not corrupt: http://www.nzherald.co.nz/politics/news/article.cfm?c_id=280&objectid=10612911; Legal aid lawyers say that they are being defamed: http://tvnz.co.nz/national-news/lawyers-considering-legal-action-3221247; The lawyers say 'put up or shut up' to claims that they took 'top up' fees from legal aid clients: http://www.nzherald.co.nz/nz/news/article.cfm?c_id=1&objectid=10613383; Chief Executive of LSE, Tim Bannatyne's, post 'disestablished' in reforms to respond to allegations of lack of administrative control http://tvnz.co.nz/national-news/fallout-legal-aid-review-continues-3242401;

Philippines:

Legal aid extended to police officers: http://www.manilastandardtoday.com/insideNation.htm?f=2009/november/2/nation4.isx&d=/2009/november/2;

Rwanda:

Roll out of free legal advice centres continues: http://allafrica.com/stories/200911090192.html;

Serbia: Reform of legal aid system to be introduced with help from Sweden: http://www.emportal.rs/en/news/serbia/108092.html;

South Africa:

Trinidad and Tobago:

Lawyer seeks release from legal aid representation as he argues rates go below minimum wage: http://www.trinidadexpress.com/index.pl/article_news?id=161556279;

United States:

President Obama pressed to support Jiang Tianyong, a Chinese lawyer refused a right to practice after assisting in legal aid for Tibetan : http://www.reuters.com/article/idUSN23263187; California federal appeals court upholds restrictions on recipients of federal legal aid: http://www.sfgate.com/cgi-bin/article.cgi?f=/c/a/2009/11/24/BAPR1APBRM.DTL; Maryland IOLTA funds reduced by 70 per cent: http://www.hometownannapolis.com/news/top/2009/12/07-13/Report-Insufficient-funding-for-legal-aid.html; Obama appoints conservative to Legal Services Corporation board: http://www.mcclatchydc.com/crime/story/81144.html; Obama signs into law bill to give LSC budget of $420m ($30m increase) and remove restrictions on work to be undertaken by LSC funded attorneys: http://www.mcclatchydc.com/crime/story/81144.html; Call for a 'civil Gideon' or right to a lawyer in civil cases continues: http://www.newsobserver.com/opinion/columnists_blogs/other_views/story/202766.html;

4 Reports and Publications:

New Zealand

Transforming the Legal Aid System: Final Report and Recommendations

http://www.justice.govt.nz/publications/global-publications/t/transforming-the-legal-aid-system/executive-summary#transforming-the-legal-aid

The following are quotations from the executive summary of the report.

'The legal aid system can no longer focus solely on legal representation one case at a time. It needs to focus on helping people to resolve their problems before they progress further into the justice system, and to leave the justice system by resolving the problems that took them there in the first place. The legal aid system must anticipate and meet legal needs through a variety of means, not just through legal representation. It must be integrated with community-based information and advice services. It needs to have a national overview and be strongly linked into government agencies and non-governmental organisations throughout the justice and social sectors ...

Although a level of independence is necessary in relation to individual grants of legal aid, that independence can be achieved without the expense of creating a standalone agency. It is

time the administering body was brought closer to the government. It now has a key role to play in justice sector policy development and needs to be resourced accordingly. It must have the capability to be responsive to implementing the fundamental changes recommended by this review. The functions of the Legal Services Agency should be moved into the Ministry of Justice, and the decisions which need to be made independently of the government vested in a statutory officer...

The legal aid system needs to focus on the legal needs of Māori and Pacific peoples, and the barriers they face in accessing legal aid, with a view to enhancing their access over time ...
The legal aid system needs a stronger focus on initial advice and assistance, which can help to prevent cases from escalating and requiring expensive legal solutions ...
More needs to be done to encourage quality in legal aid lawyers ...
Seven changes are needed to enhance quality:

- raise the barriers to entry: only lawyers with competence and integrity should be able to enter the legal aid system
- create incentives for lawyers to maintain their competence, quality and integrity
- create a mechanism for the swift ejection of incompetent and/or dishonest lawyers from the legal aid system
- build ties between legal aid lawyers to limit their isolation and minimise the risk of cases falling over because of the lawyer's absence
- require legal aid lawyers to train, supervise, and mentor junior lawyers to ensure long term sustainability of the legal aid workforce
- pay legal aid lawyers in a way that recognises the services they provide
- clarify the roles and responsibilities of the two regulators with an interest in the area: the Legal Services Agency and the Law Society ...

Publicly provided services should be used where case volumes are sufficient to make them an efficient option ...

A new model for procurement would: help to address the quality issues identified above; reduce the administrative burden associated with legal aid; and take advantage of efficiencies. It would involve bulk funding groups of lawyers (whether in firms, chambers, or looser groupings based around a court) led by a senior lawyer who would be responsible for quality ...

The current approach does not focus sufficiently on responsible expenditure of taxpayer funds. High cost case management panels should be chaired by a senior public servant and

include experts who bring legal, economic, and public policy perspectives. This blend should give better decisions focused on value for money, without undermining access to justice for people on legal aid.'

Comparing and Understanding Legal Aid Priorities

Professor Mary Jane Mossman (with Karen Schucher and Claudia Schmeing)

This paper was commissioned by Legal Aid Ontario to "assess a variety of different rationales and compare their advantages and disadvantages in the provision of effective legal aid services in Ontario." The paper was completed in April 2009, and is forthcoming in (2010) 29:1 *Windsor Review of Legal and Social Issues.*

Following a brief Introduction (Part I), Part II first situates current legal aid programs in Ontario within broader movements for access to justice, identifying themes that have characterized the evolution of legal aid in Ontario. In particular, the paper reveals how the judicare (certificate) system tends to identify legal aid priorities in terms of "legal categories" for services, while community legal clinics adopted more systemic approaches to prioritizing their work, focusing on strategies of education, community development and law reform. This Part also reviews recent developments in other jurisdictions, including the United States, Australia, New Zealand, and England and Wales (UK), with brief comments about western Europe. Finally, this Part reviews *Charter* requirements for legal aid services in Canada, and suggests the significance of emerging *Charter values* of equality in defining legal aid priorities.

Part III focuses on the goals of legal aid priorities. It first examines the impact of changes in the administration of justice on the provision of legal aid, including the growth in the number and complexity of regulatory regimes, the expanding range of legal processes, and policies of privatization. This Part also explores the concept of "legal needs" and recent research on "justiciable problems," and how governmental policies of "social exclusion" and "social inclusion" reflect political choices about the provision of legal aid within the administration of justice. Finally, this Part defines a role for Legal Aid Ontario as *the* state agency with primary responsibility for promoting access to justice for vulnerable individuals and communities, including programs that confront *systemic* problems of inequality.

Finally, Part IV explores three broad approaches to defining legal aid priorities:

- the "legal categories" approach;
- the "legal needs / social exclusion" approach; and
- the "social inclusion / systemic" approach.

In assessing how each of these approaches shapes the content of legal aid to achieve defined goals, this Part assesses the advantages and disadvantages of each approach, and provides concrete examples of ways to implement a social inclusion approach to confront systemic inequality issues. In doing so, the paper also suggests that Ontario's community legal clinics can offer expertise and experience in the use of scarce resources to achieve systemic access to justice goals for vulnerable individuals and communities.
Mary Jane Mossman

Rationing Justice: the effect of the recession on access to justice in DC
A Joint Report of the District of Columbia Access to Justice Commission and the D.C. Consortium of Legal Services Providers (9pp) Nov 2009
http://www.legalaiddc.org/documents/RationingJusticeReport..pdf
The report can be summarised as: 'Need up: resources down'. It concludes:
'Somewhere in the District a family won't have enough to eat tonight because of a bureaucratic mistake. A child will be hospitalized yet again because the rat droppings in her apartment caused an asthma attack. A veteran who has served in combat will sleep on the street because he could not access the public benefits, mental health services and shelter to which he is entitled. At this time of great and increasing need, lawyers could make a difference for this family, this child and this veteran — as well as the thousands of District residents who face similar problems. Because of the crisis in legal services, there are simply not enough lawyers to help our suffering, low-income neighbors. And next year there will be even fewer. The safety net has been seriously weakened and legal services providers, which have historically been a critical component of that safety net, have fewer resources available to help the most vulnerable members of our community. The result is that justice is being rationed. And, as is too often the case, those most in need are getting too small a measure of justice.'

5. Conferences

Forthcoming: Legal Services Research Centre
The next Legal Services Research Centre's International Research Conference on 'Research into Practice: Legal Service Delivery in a New Decade will be held at Downing College in Cambridge. The conference will run from Wednesday 30th of June pm to Friday 2nd July 2010. Those wishing to attend can obtain a booking form from our website www.lsrc.org.uk or by contacting catrina.denvir@legalservices.gov.uk. Late abstract proposals may be considered. Please contact Catrina at the above email address for further information.

6. And Finally

This newsletter has been compiled by Roger Smith of JUSTICE in London, UK. If you would like to be taken off the circulation list; add someone or contribute some content: contact rsmith@justice.org.uk.

REPORT OF THE

LEGAL SERVICES COMMISSION 2002

MAY 2003

To: The Council of Ministers

1. On 1st February 2002 the Council of Ministers announced the appointment of a Legal Services Commission with the following terms of reference:

"to consider the provision and administration of legal aid and legal advice and assistance in the Isle of Man in the context of recognised best practice and in particular to review and comment, with any relevant recommendations, on:

- the legal framework (both primary and subordinate legislation), including eligibility (financial and otherwise) for legal aid and legal advice and assistance,

- the administrative arrangements, and

- the availability and quality of the service provided and the fee structure for those providing the service."

2. The Council of Ministers appointed the following to be a Commission for the said purpose:

3.

Mr M Bishop, QC
Mrs E Christian, JP
Mrs A Craine, JP
Mr B Moffatt
Mr P Wood

4. The Commission now presents its Report.

5. Once again the Commissioners wish to record their heartfelt appreciation for the outstanding service received from Mrs Anne Webster, their Secretary, who has discharged her duties with exemplary diligence and her vast experience gained from her involvement with previous Commissions has been a most valuable resource.

Mr M Bishop QC (Chairman)

Mrs E Christian JP

Mrs A Craine JP

Mr B Moffatt

Mr P Wood

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CHAPTER 1

INTRODUCTION

Background

1.1 In the last fourteen years there have been three Commissions of Inquiry into Legal Services in the Isle of Man.

1.2 The first and most wide-ranging under the Chairmanship of Sir Cecil Clothier reported in May 1990. It made numerous recommendations affecting all aspects of legal work in the Island. Many were accepted by Government and the Law society and have been brought into force.

1.3 In 1998, however, concern was expressed about the procedures for regulation and discipline of advocates and this led to the establishment of a Commission of Inquiry under the chairmanship of Sir David Calcutt. The Commission reported in January 2001 and made important recommendations to improve the regulatory and disciplinary procedures of the legal profession in the Island and further recommended that a review of the provision of legal services should be undertaken at intervals of no more than ten years.

1.4 Again many of its recommendations have been accepted and are now in force. The Calcutt Commission noted discontent with the availability and quality of the delivery of legal aid services and, since this was outside its remit, suggested that there be an urgent and independent investigation into this important topic.

Terms of Reference

1.5 In January 2002 the Council of Ministers accepted this recommendation and appointed the present commission whose terms of reference are as follows:

"to consider the provision and administration of legal aid and legal advice and assistance in the Isle of Man in the context of recognised best practice and in particular to report, with any relevant recommendations, on:

the legal framework (both primary and subordinate legislation), including eligibility (financial and otherwise) for legal aid and legal advice and assistance, the administrative arrangements, and the availability and quality of the service provided and the fee structure for those providing the service"

Overriding Objective

1.6 Although in one sense our terms of reference are narrower than those of both the Clothier and Calcutt Commissions, we regard the topic we have been asked to consider as of paramount importance. Essentially this Commission has been concerned with access to justice. That has been our overriding objective. We are persuaded that a system of law, however well fashioned, can only command the respect of those affected by it if it is seen to be accessible to all. To achieve this a publicly funded system of legal aid and assistance is a necessary pre-condition for the doing of justice between citizens, otherwise justice becomes an elusive goal available only to those who can afford to pay and denied to the rest, among whom may be the most deserving. This is not to say that every prospective litigant is entitled to a blank cheque to pursue or defend a hopeless grievance. Public resources are not infinite and those who foot the bill for such services are entitled to expect value for money. This must mean that there should be some control over eligibility to legal aid in civil disputes, although we see no reason why this should be elaborately cumbersome. We make recommendations to simplify procedures in Chapter 4 at paragraphs 6 to14.

1.7 In the field of criminal law different considerations apply. Any system of criminal justice entails the coercive power of the state and may result in the loss of liberty. For these reasons the European Convention for the Protection of Human Rights and Fundamental Freedoms (which is now in prospect for incorporation into Manx law) makes obligatory the provision of free legal assistance for those without sufficient means. We address and make recommendations on this matter in Chapter 4 at paragraph 18.

Methodology

1.8 We held our first meeting on 21st March 2002 and were hopeful of being able to report by the end of that year. However, because of the need to obtain further information as a result of the public hearings we held in September 2002 and the professional commitments of the Chairman, a slight delay was unavoidable.

1.9 In all we held six meetings spread over the months of March, April, May, June, September 2002 and February 2003. We have been gratified by the widespread interest shown in our deliberations. We have received and considered some 40 separate submissions from members of the public as well as organisations most closely involved in legal aid work such as the Isle of Man Law Society, the General Registry of the Courts of Justice, consumer groups, the police and many others besides. We are particularly grateful for the learned submission of the former First Deemster His Honour T. W. Cain, Q.C., dealing with the history of the provision of legal aid in the Isle of Man.

1.10 We were anxious to ensure widespread public participation in our deliberations and caused advertisements to be placed in the local press and on Manx Radio inviting written submissions. Those who responded to our invitation are set out in Appendix 1. We were pleased with the response although many of our respondents raised matters of individual grievance arising out of legal disputes with which we could not deal. We gave careful consideration to all written submissions and invited 10 to expand their views by way of oral evidence which we heard over three days between the 23rd and 25th September 2002. Those who gave oral evidence are listed in Appendix 2. As a result of questions at those hearings a supplemental submission was received from the Law Society as well as further submissions from the Civil Legal Aid division and the Chief Registrar, which we have also taken into account.

Impressions

1.11 From our first meeting we were conscious of the enormous change which has taken place in the Isle of Man over the last half century. From being primarily an agrarian and tourist-driven low wage economy, the blossoming of financial services has transformed employment opportunities and the standard of living of many, but not all, its inhabitants. This has been mirrored in the expansion of the legal profession. In 1966 there were 25 practising Manx advocates; now there are 125. In 1966 there were no registered legal practitioners: they came into being by the Legal

Practitioners Act 1986 when 5 were registered: now there are 71. This increase is largely due to the financial services industry and the recommendations of the Clothier Commission. Most of the new lawyers specialise in privately funded commercial law. Few regard legal aid as a mainstay of their practice and some do no legal aid work at all.

1.12 This, we believe, is unsatisfactory. It means that although life on the Island has grown more complex over the years making legal disputes more likely, the availability of a sufficiently diverse cohort of lawyers to deal with such disputes has fallen behind improvements in other areas. It is now significantly more difficult to be represented by a lawyer of appropriate experience and ability in simple civil disputes or straightforward criminal matters than it was 50 years ago. There are certainly more lawyers working on the Island but most of them earn their living in areas not encountered by the bulk of the population. This imbalance must be put right if the Island is to make the contribution to the development of European civilisation for which geography and history alike has so well equipped it.

1.13 To this end we bring forward a number of recommendations designed to strike a fair balance between the just claims of the public to be properly represented in legal matters and the expectations of the practitioner to be adequately remunerated for his efforts. Throughout our task we have striven to be guided by the twin loadstars of simplicity and transparency.

1.14 On the whole projects work best when they are simple to understand and implement; they are most likely to achieve acceptance when they are fair and seen to be fair. In a small Island we see no need for an elaborate bureaucracy to regulate the day-to-day operation of the legal aid scheme. Of course when public monies are involved there has to be scrutiny; but we see no need for stultifyingly minute perusal of bills of costs which inevitably leads to delay in payment and so, dissatisfaction on the part of the lawyer. This inevitably breeds a reluctance to take on further similarly funded work. At the core of our recommendations is a uniform basis of remuneration. This should be at the same hourly rate across the board, for preparation, travelling, waiting and court appearances irrespective of the level of court involved, except that more senior practitioners (who are likely to be involved in the more difficult work) should be paid at a higher level. At a stroke this will achieve simplicity and transparency and will, we believe, together with our proposals for prompt payments as set out in Chapter 4 paragraphs 24 to 27 encourage sufficient members of the legal profession to undertake legal aid work to ensure an adequate pool of appropriately experienced lawyers of proven ability to make access to justice a reality for all the people of the Island.

CHAPTER 2

THE EXISTING LEGAL AID SYSTEM

Background

2.1 Legal aid was introduced into the Isle of Man for criminal appeals, by the Criminal Code Amendment Act 1921. Eventually legal aid was provided for defendants in criminal trials by The Poor Prisoners Defence Act 1933. It was not until some forty years later that the Legal Aid (Isle of Man) Act 1973 introduced legal aid for civil proceedings (with some exceptions e.g. defamation).

2.2 The Legal Aid Act 1986 replaced the 1973 Act, the 1933 Act and those parts of the 1921 Act that dealt with legal aid. The 1986 Act continued the scheme of legal aid in civil proceedings established by the 1973 Act but also introduced a scheme of legal advice and assistance ("the Green Form Scheme"). The 1986 Act also introduced a more comprehensive scheme for criminal legal aid (but based on the existing scheme) and provided for the introduction of the Duty Advocates Scheme.

The Legal Aid Committee

2.3 A Legal Aid Committee was established by the 1973 Act, comprising the First Deemster, the Attorney General, the President or Vice-President of the Isle of Man Law Society and the Chairman of the Isle of Man Magistrates Association. The Committee was given the power to make regulations to implement the Act.

2.4 The 1986 Act continued the Committee. The principal function of the Committee under the 1986 Act is to make regulations to implement civil legal aid provisions and the Green Form Scheme. Such regulations require the approval of Tynwald.

2.5 The Committee also hears appeals against the refusal of legal aid in civil proceedings.

Certifying Officer

2.6 Regulations made under the 1973 Act, and equivalent regulations made under the 1986 Act, provided for the appointment of a legally qualified Certifying Officer by the Lieutenant Governor. The administration of the legal aid scheme in civil proceedings is effectively vested in the Certifying Officer, who is responsible for the issue of legal aid certificates. The Certifying Officer considers the legal merits of the application, but the financial eligibility is decided by the Legal Aid and Costs Division of the General Registry in consultation with the Department of Health and Social Security.

Criminal Legal Aid

2.7 An application for legal aid in a criminal case must be made to the relevant court, either by the applicant himself, with a request for the assignment of an advocate, or by an advocate chosen by the applicant. The application will be granted if it is considered by the court to be in the interests of justice and if the applicant is financially eligible: the financial criteria for eligibility are laid down in the Criminal Legal Aid Regulations 1993 made by the Legal Aid Committee and approved by Tynwald. An application for legal aid to appeal against sentence and/or conviction must be made to the Chief Registrar, except for proceedings before the Privy Council.

2.8 If legal aid is refused, there is a right of appeal to the court or a Judge.

2.9 An advocate is remunerated for criminal legal aid work at rates set out in the Criminal Legal Aid Order 2001, made by the Treasury and approved by Tynwald. Bills of costs must be assessed by the General registry before payment.

Duty Advocates Scheme

2.10 There are two schemes that provide for legal advice and representation in criminal matters. They are the Duty Advocate Scheme 1997, which provides for an advocate to be available at fixed criminal courts, and the Duty Advocate (Police Custody) Scheme 1998, which provides for an advocate to be on call to a police station. The Isle of Man Law Society produces a panel and rota for the Schemes.

2.11 Neither scheme is means or merit tested. The advocate is remunerated according to the rates laid down by the Schemes and his costs are paid after consideration by the General Registry.

2.12 Bills of costs must be assessed by the General Registry before payment.

Civil Legal Aid

2.13 An application for legal aid in a civil matter must be made to the Legal Aid Certifying Officer by the applicant's advocate. The application is granted if the application satisfies the legal merits test, which takes into account cost-effectiveness, and if the applicant is financially eligible: the financial criteria are laid down in the Legal Aid (Financial Resources) Regulations 1997.

2.14 If the application is successful and a Legal Aid Certificate is granted, that certificate might be limited in the first instance but later amended or extended upon further application. Legal aid for appeals is available on the same basis..

2.15 If legal aid is refused an appeal may be considered by the Legal Aid Committee under the Legal Aid (General) Regulations 1997. However there is no right of appeal on the grounds that the applicant is not financially eligible.

2.16 The Civil Legal Aid Order 1999 made by the Treasury after consultation with the Deemsters, and approved by Tynwald, provides that remuneration for civil legal aid work is paid at the same level as that for criminal work, with the exception of fixed fees for certain matrimonial proceedings.

2.17 If there has been no recovery of costs from the other party the advocate's costs are paid after assessment by the General Registry

Legal Advice and Assistance (Green Form)

2.18 Advice is available upon almost every aspect of Manx law under the Legal Advice and Assistance (Green Form) Scheme, which is intended to provide either initial advice or quick resolution of a matter. The scope of the advice is limited to a maximum of approximately three hours work when petitioning for divorce or two hours for all other matters but the advocate may apply for extensions to those limits.

2.19 Applications for this type of legal aid are made to an advocate, who carries out a means and merits test. The financial criteria are laid down in the Legal Aid (Advice and Assistance) Regulations 1997.

CHAPTER 3

THE SHORTCOMINGS OF THE SYSTEM

3.1 The evidence received by the Commission showed that the present system of legal aid is in urgent need of improvement if it is to provide the access to justice intended.

Information and Access

3.2 Civil and criminal proceedings are dealt with by different bodies and have different eligibility criteria.

3.3 The system is complex and difficult to understand and from the very outset there is a problem of lack of information and guidance for the public. In civil matters persons requiring legal aid are anxious not to incur costs by consulting an advocate, yet they must to find out if they qualify for civil legal aid.

3.4 The thresholds for financial eligibility are wholly unrealistic and exclude persons who could not otherwise afford legal advice. They are not updated sufficiently frequently.

3.5 The regulations which govern the assessment of means by the DHSS lack transparency because they are unduly complex and difficult to comprehend by those most likely to be affected. Furthermore there is no appeal against refusal on the grounds of means.

3.6 Parents in care proceedings are not granted legal aid regardless of means as in the UK.

3.7 The Green Form Scheme, which is a comparatively straightforward and cost-effective means of obtaining legal advice, appears to be underused.

3.8 There is legal aid available for some Tribunals (Mental Health Review and Advocates Disciplinary Tribunals) but not others (Employment and Social Security Tribunals), apparently without good reason.

The Profession

3.9 Legal aid fees to advocates are too low both by comparison with fees obtainable for commercial work in the private sector and with run of the mill private client work. Present legal aid rates are less than half those a lawyer can earn on a commercial, privately funded case and significantly lower than would be charged for an uncomplicated, privately funded dispute. This means that a legal aid practice is either run at a loss or heavily subsidised by the other work of the practice.

3.10 Advocates have difficulty getting paid in a timely manner for legal aid work. There is no effective provision for payments on account and advocates must wait for the repayment of, sometimes, large disbursements to witnesses which they have had to pay at the outset of proceedings.

3.11 The administration of the system and the assessment of bills appears to be unduly bureaucratic.

3.12 There are insufficient advocates prepared to do legal aid work mainly because of the problems outlined in 9 to 11 above. There is also difficulty in obtaining a duty advocate to attend the police station during office hours.

3.13 Advocates who appeal successfully against the assessment of their costs are not granted the costs of their appeal.

3.14 There is a perceived unfairness in the payment of higher fees to UK Counsel acting in the Isle of Man for legally aided persons than to Manx advocates. We have heard evidence of differing legal aid rates for UK and Manx advocates appearing in the same case. In the absence of cogent evidence that the work undertaken by the UK lawyer is outside the expertise and experience of any available Manx advocate this cannot be justified.

3.15 There is a lack of effective quality control over advocates who do legal aid work. In the UK only approved firms can carry out such work and they can be monitored.

Legal Aid Administration

3.16 There is a perception of a lack of independence of the Legal Aid Certifying Officer because of the Civil Service line-management system in the General Registry. There is also a similar problem in the appeals process where the Legal Aid Committee is both the regulatory body and the body that hears appeals against decisions of the Certifying Officer. Furthermore as members of the Judiciary sit on the Committee there is the potential for conflicts of interest in subsequent legal proceedings relating to an appeal.

3.17 There is no provision for a statutory charge to claw back resources from those who can afford to repay assistance from a financial settlement obtained through legally-aided action, where no order for costs is made.

3.18 The legal merits test appears to need reviewing and consistent application.

3.19 Certain aspects of the system might not be in accordance with the ECHR.

3.20 There is no provision for Courts to award costs against a legally-aided person.

CHAPTER 4

DISCUSSION & RECOMMENDATIONS

4.1 We have received a helpful memorandum from the First Deemster, and through him from the Legal Aid Committee, in which a number of recommendations similar to ours are made and in relation to which we have been told that legislation is pending. Since there appears to be a broad consensus of agreement by those most closely involved in the provision and administration of justice in the Island, it is our earnest hope that the recommendations which follow will receive prompt and favourable consideration by Tynwald and that they will be brought into force expeditiously.

Public Information and Access to Legal Aid

4.2 Access to justice depends not only on the service provided, but also on the knowledge that such a service is available. The best legal service in the world is useless if no one knows about it. In this respect we are satisfied that serious steps need to be taken to acquaint the public with the availability of legal advice and assistance. The Office of Fair Trading has made the point to us in their evidence that a visit to an advocate can be an intimidating experience for many. Indeed, it was suggested that this may be more frightening than a visit to the dentist. We recommend that access to advice be eased by the provision of a number of "user-friendly" leaflets setting out what is on offer from the legal profession and the way in which legal advice generally, including under the Green Form Scheme, can be made available. There should be cooperation between the Law Society and the Office of Fair Trading in the production and distribution of such leaflets, which should be readily available at locations which members of the public are likely to visit, for example libraries, shops, public houses, post offices, hospitals, Citizens' Advice offices etc. Professional assistance in the composition of the leaflets might be necessary to ensure they are jargon-free and can be readily understood.

4.3 In our view any remaining restrictions on advertising legal services are out of date and we recommend that they should be abolished forthwith. This could be done by an amendment of the Law Society's rules.

Advice Surgeries

4.4 We have heard evidence that many consumers have difficulties in completing official forms. The Small Claims Arbitration forms are not always easy to understand. We recognise the need for assistance in these areas as well as for access to basic advice in everyday matters such as consumer disputes, debt management, and housing problems. To meet these needs we recommend that a pilot scheme be set up providing informal and user-friendly help and advice together with assistance in completing documents, including Small Claims Arbitration forms. Outlets should be located where consumers habitually congregate and be manned by suitably competent personnel nominated by the Isle of Man Law Society. They should operate user friendly hours.

Mediation

4.5 We have been told that, except in financial services matters, mediation is not available until a defence has been filed in an existing court action. We see no reason why a mediation service should not be offered before litigation is commenced. This, we are satisfied, would lead to the early settlement of disputes and would result in a saving of costs. A mediation panel is in being under the auspices of the General registry. Its remit should be extended to deal with all disputes appropriate for mediation.

Eligibility Criteria

4.6 To achieve our overriding objective of equal access to justice we recommend that income eligibility thresholds be raised substantially. In our view current eligibility levels for legal aid are so low that those in need are being denied access to justice. This imbalance is inimical to the interests of justice and should be put right without delay.

4.7 We deal with criminal legal aid and advice at paragraph 18 this section deals with the eligibility criteria for the grant of legal aid in civil litigation. We see no reason why the taxpayer should foot this bill irrespective of the means of the litigant. Nor do we

take the view that anyone is entitled to legal aid irrespective of the merits of his case. In our view the "merits test" which an applicant for legal aid must satisfy under the present arrangements should continue in full force. But we are concerned that for a significant number of those who surmount the "merits" hurdle the present financial thresholds may operate as a barrier to justice.

4.8 The current regulations are the Legal Aid (Financial Resources) Regulations 1997 and the Legal Aid (Advice and Assistance) Regulations 1997. An assisted person is entitled to free legal advice and assistance if his weekly income does not exceed £43.15 after specified deductions. Anyone earning in excess of that amount makes a contribution on a sliding scale of between 5% and 50% of his income after deductions for spouse and children. There are further provisions in relation to income earned on capital over £10,000. The upshot is that there is no contribution if the litigant's resources after deductions do not exceed £4,000 and no legal aid if they exceed £8,000 during the period of computation.

4.9 The Law Society has put forward a different set of proposals. In short it advocates that, after deduction of housing costs and rates, there should also be deducted all income tax allowances under the tax regime. They submit that this would make for simplicity and ease of comprehension and, since such allowances are reviewed annually, would enable the eligibility rates to keep pace with inflation without the need for occasional ex post facto adjustment. We see great force in this approach. Income tax allowances and Social Security benefits (where applicable) provide a crude, but well understood, benchmark above which the citizen can be called upon to make his contribution to financing the society in which he lives and from which he benefits. It seems to us unfair that an individual pursuing or defending a legal claim, whose stance has, ex hypothesi, been found to have legal merit, should be called upon to fund that litigation in whole or in part from the resources that the state has decreed are insufficient to call for a contribution to its running costs by way of taxation.

4.10 We recommend that eligibility for legal aid should closely follow the tax regime and operate on a sliding scale beginning with 10% of such sum as remains after deducting from gross income an applicant's tax allowances (including special tax allowances such as the single parent's allowance), housing costs (as defined below)

and any Social Security benefits, for each amount of £1000 until the sum remaining is £10,000 or more when no legal aid would be payable.

4.11 In principle we support the view that housing costs should also form a deductible allowance but that in the case of properties being purchased on mortgage, the interest element of the mortgage should alone be allowed. In the public sector rental market the whole rent should be an allowable deduction and in the private rental sector the Social Security based housing costs should apply. In each case rates should be deducted in full.

4.12 We set out by way of examples how we envisage this scheme will operate, with a proviso that the figures we have taken are exemplars only and may not reflect those in force when this report is published.

Example 1 – Lone Parent with one Child

Single parent allowance		*13,475*
Child benefit		*1,425*
Housing costs	*2,500*	
Total deductions		*17,000*

If the gross income is £15,000, legal aid would be awarded with no contribution required.

Example 2 – Married Couple

Personal allowances (2x£8000)		*16,000*
Housing costs	*3,000*	
Total deductions		*19,000*

If the gross income is £25,000, the amount eligible for contribution would be £6,000. At 10% for each £1,000, the actual contribution would be £600.

Example 3 – Married Couple with two Children

Personal allowances	*16,000*	
Child benefit		*1,850*
Housing costs	*5,500*	
Total deductions		*23,350*

If gross income is £32,000, the amount eligible for contribution would be £8,650. At 10% for each £1000, the actual contribution would be £865.

Example 4 – Married Couple

Personal allowances	*16,000*	
Housing costs	*4,500*	
Total deductions		*20,500*

If gross income is £40,500, the amount eligible for contribution would be £20,000. No legal aid would be awarded.

4.13 We see no reason, when determining eligibility, to discriminate between those whose source of income is from public funds and those who depend on private resources. The important point is that there should be a level playing field. Therefore there should no longer be a rule where there is special entitlement to legal aid for those on state benefits. What is important is that eligibility levels be sufficient so that those who cannot afford the services of a lawyer are not adversely affected. The same allowances, therefore, should apply to everyone, regardless of the source of their income. If the sum after the deduction of allowances is greater than the entitlement level, then there is no entitlement to legal aid; if less, there is entitlement. This is not to say that legal aid is either a blank cheque for the client or a licence to print money for the lawyer. We deal with criminal legal aid at paragraph 18.

4.14 It has been suggested that there should be some discretion to grant legal aid in cases where the applicant falls slightly above the financial limits where the merits test has been satisfied. We consider that this would seem fraught with hazards. It would increase pressure on the appropriate officer and would undermine the transparency of a system that sets out clear parameters. Our belief is that since there will always be cases falling either side of a line, wherever drawn, the solution, surely, is to raise the eligibility thresholds to remedy the present unsatisfactory state of affairs where applicants who have a good case cannot afford to pursue it.

Statutory Charge

4.15 When a person in receipt of legal aid in civil litigation is successful in recovering monetary damages, or in recovering or preserving property, or in successfully defending a monetary or other claim, he will generally be awarded his costs as well. These costs are subject to assessment by the courts. If there is a shortfall between the costs awarded and those incurred on the successful litigant's behalf by the legal aid authority, then the shortfall is made up by the successful party out of the damages awarded or the value of the property preserved or recovered (if such damages or property exceed a specified amount). This is known as the 'Statutory Charge'. In matrimonial proceedings, where the dispute is over ownership of the matrimonial home, there is a discretion enabling the implementation of the Charge to be postponed by the court and not to take effect until the occurrence of a future event, such as the children of the family completing their full time education. No such discretion arises if the person is awarded a lump sum rather than an adjustment of his or her interest in the family home. It is to be noted that should the parties agree to settle their dispute on the basis of compromising their difference with each side paying their own costs, then the party in receipt of legal aid will have to reimburse the legal aid authority in respect of the costs incurred in pursuing or defending the claim.

4.16 We have received a number of representations in broad terms concerning the Statutory Charge. All who gave evidence were in favour of its implementation in the Isle of Man, except the Law Society, whose members would, of course, have to administer it. We can see merit in safeguarding public funds by making it clear to the legally-aided person that, should he gain a benefit from the litigation and the costs of so doing are not wholly discharged by the opposing side, then he should make a contribution to the costs incurred. We also acknowledge that the imposition of the Charge would act as an incentive to finalise litigation as speedily and simply as possible. On the other hand, we recognise the increased burden on the legal profession that the Charge would impose and, more importantly, the possibility that the costs of recovering the sums involved may be so great that the exercise may result in very little benefit to the public purse. Our recommendation therefore is that this is a matter to be kept under close review and, if our proposals for streamlining legal aid are not successful, then this should be revisited.

Orders for Costs against Legally-Aided Persons

4.17 It has been suggested that a costs order, if only for a small amount payable by instalments, be made against an unsuccessful legally-aided person who had unmeritoriously pursued or defended an action. In our view the practicalities of implementing such an order in all cases of unmeritorious litigation would be out of all proportion to the sums recovered. However we see merit in preserving the Court's power to make a costs order should there be a substantial change in the legally assisted person's circumstances. We therefore recommend that, in the case of legally-aided persons, the Court should give careful consideration to making a costs order against them with the proviso that it should not be implemented without leave of the Court, with a view to recouping the public funds expended on the litigation after the unsuccessful party has been given the chance to make representations.

Eligibility for Criminal Legal Aid

4.18 We heard evidence from Deemster Williamson, drawing on his experience as former High Bailiff, when he was involved on a daily basis in presiding over the Court of Summary Jurisdiction in criminal matters. His view was that the means test in criminal proceedings served no useful purpose. He pointed out that free legal aid is available to anyone with a disposable income of £191 per week or less. His experience was that the overwhelming majority of defendants fell well below this threshold. He suggested that the means test should be abolished for criminal proceedings but that the Court should have discretion to order costs against a defendant in appropriate circumstances. We would recommend this course of action. Indeed we take the view that the abolition of the means test in criminal proceedings is necessary to comply with the ECHR. We would recommend this course of action for all summary offences punishable by imprisonment as well as all criminal proceedings in the High Court.

4.19 Neither the Duty Advocates Scheme nor the Duty Advocates (Police Custody) Scheme is means or merit tested and we recommend that they continue on that basis.

"Football Pools Order"

4.20 We can see considerable benefit in the Court being able to review its order for costs in the event of an unanticipated change in future circumstances e.g. where a party has manipulated his financial position to avoid the consequences of a court order, but on the other hand we have regard to the principle of the finality of legal action. We recommend that the Court should bear in mind its power to review court orders that turn out to be inappropriate and that provision should be made for parties to invite a court review.

Employment Tribunals and Criminal Injury Compensation Tribunals

4.21 In principle, we are in favour of the provision of legal aid for these tribunals (which are presently not provided for in the Legal Aid legislation) but only to ensure equality of arms where a non-legally-aided party elects to use a lawyer. We would recommend a fixed payment in each case to protect the legal aid fund and encourage conciseness.

Rates

4.22 For reasons set out in Chapter 3 we are firmly of the view that the present level of remuneration for legal aid work is insufficient to attract enough lawyers of experience and ability to deliver the high quality service that the people of the Island deserve. In furtherance of our overriding objective of access to justice we can see no alternative to a substantial increase in hourly rates. The minimum necessary to achieve access to justice in our view is £125 per hour for an advocate of under ten years admission and £150 per hour for more senior members of the profession. This should be reviewed annually at the same time as the review of the financial eligibility criteria.

4.23 With the exception of the call out and stand-by elements of the Duty Advocates (Police Custody) Scheme which we address at paragraph 33, we recommend a uniform rate for all aspects of a case whether civil, matrimonial or criminal i.e. advice under the green form scheme, preparation, waiting, travel and appearance and the court-based Duty Advocates Scheme. We doubt that an additional mark-up would be justified in any but exceptional cases. In the interests of uniformity and simplicity we recommend that the same rates be payable at all levels for both civil and criminal proceedings.

Legal Aid Staff

4.24 We recommend that the Legal Aid Certifying Officer (LACO) and her deputy no longer be subject to the line management of the Chief Registrar and that the staff of the LACO have the LACO as their line manager. This is because, although there is no evidence which suggests that the independence of the present post holder has been, or is likely to be compromised, a public perception of total independence from governmental bodies is essential in the interest both of retaining public confidence in the system and in complying with Article 6 of the ECHR.

Assessment and Payment of Bills

4.25 There is widespread concern about delays in the assessment of bills and the frequency with which items are disallowed. We have borne this in mind in considering whether there should be a unified, simple and transparent system of payment on account before final assessment. We have recommended that the basis of payment should be a uniform hourly rate and our expectation is that the hours claimed will be accepted by the Assessment Officer as both bona fide and reasonable. We see no reason for a detailed appraisal of each item in the bill. Provided the hours claimed have been contemporaneously recorded, appear reasonable and are accompanied by a certificate warranting their accuracy signed by the claimant personally, no further time consuming investigation is necessary.

4.26 We have heard compelling evidence about delays in assessment of legal aid bills. This has resulted in acute problems, especially for smaller firms such that some have given up legal aid work altogether. In our view it is both right and efficient that lawyers should be paid promptly for work done. Whilst we recognise that public funds are involved and the claimed amounts need to be justified before final payment, we see no reason why a scheme analogous to the payment on account arrangements in the UK should not work in the Isle of Man. Indeed we go further, and take the view that where, as here, a profession is small, cohesive and subject to strong discipline in respect of complaints, the dangers of interim payments are far less than in the UK, which deals with many thousands of claims on behalf of many firms of practitioners. We recommend that within two months of the lodgement of a final bill, there should be entitlement to a payment on account of 90% of the claimed costs plus all disbursements. Each firm should be given a unique reference number and a system set up for payment to be made directly into the firm's bank account under the BACS system. We are satisfied that this will both ease the present cash flow problems and also reduce pressure on the Assessment Officer. We hope that it will also lead to an increase in the number of practitioners prepared to do legal aid work and so benefit all who live on the Island because access to justice will be widened and the quality of the service improved. We see no reason to suppose that these recommendations will be abused. We are satisfied that should any suspicion of abuse arise the disciplinary procedures of the Law Society provide sufficient sanctions.

4.27 We have given additional consideration to the cash flow problems caused by long cases, both civil and criminal. In the civil law field many actions may take months or even years to come to court. This places a heavy and, at times, intolerable burden on a firm's cash flow, particularly for smaller firms. Further, some criminal cases are complex and need many months of preparation between charge and trial. These tend to involve the more serious allegations that require the attention of an advocate of appropriate experience and ability. We have heard compelling evidence that such practitioners are very reluctant to undertake complex criminal work, citing as the reasons both the low level of remuneration and the delay in payment. To this end we recommend that in cases where the advocate certifies that the expected conclusion of the case is three months or more, an interim payment should be payable each month. This should be 90% of the claimed sum and all disbursements incurred to date. Claims for interim payments should not involve any assessment of the claimed sum at that stage. Any overpayments can be adjusted when the bill is finally assessed with provision made for reimbursement of any disallowed amounts. This will entail changes to the Civil Legal Aid (General) Regulations 1997 and the Criminal Legal Aid Regulations 1993. We note that the Law Society has strong powers to discipline any member making an unjustifiable claim. In a small and closely regulated body of professionals such as exists in the Isle of Man we do not envisage this being a frequent occurrence.

4.28 Our strong view is that the people of the Island are entitled to high quality, prompt and efficient legal services the chances of achieving which will be improved by dealing fairly with lawyers prepared to undertake legal aid work.

Disbursements

4.29 The LACO should approve all disbursements in civil matters with the Head of the Civil Legal Aid and Costs Division of the General Registry deciding criminal disbursements.

Change of Advocate

4.30 We have heard evidence about repeated transfers of the Legal Aid Certificate and it has been suggested that this inevitably increases the cost of the litigation in question because two or more lawyers are being paid to read the same papers. We are mindful of the need to balance the rights of a litigant to be represented by the advocate of his choice with the additional costs to the public purse that a change of representative might entail. In our view the decision to transfer a Certificate should be made by the LACO as at present, who should agree to this course only if she is satisfied that it is strictly necessary for the proper administration of justice.

Panel of Advocates

4.31 We consider that those on the Panel of Advocates should always carry out the legal-aid work that they hold themselves out for, other commitments permitting.

Duty Advocates (Police Custody) Scheme

4.32 This is a well-established feature of the criminal justice system. It both safeguards the rights of the citizen interviewed by the police on suspicion of crime; and furthers the ends of justice by ensuring that admissions made, after confidential legal advice, are free from the taint of coercion and so are admissible in evidence. The introduction of the Scheme with its accompanying practice of tape-recording all police interviews has considerably shortened many criminal trials and avoided many hours or even days in investigating, in the absence of a jury, the voluntariness or otherwise of a confession.

4.33 We are firmly of the view that money spent on the Scheme is money well spent. We see no reason why the scheme should not be embraced within our overriding objective of achieving simplicity and transparency in delivering access to justice but by its very nature it is not susceptible to an across-the-board uniform hourly rate. This is because the Scheme involves an advocate being on call and only attending a police station if needed. The current Duty Advocates (Police Custody) Scheme 1998 recognises this and provides for varying payments to be made for periods when the advocate is on call and when he is called to a police station. This distinction should be preserved but we have concluded that the rates, which were fixed in 1998, are now too low. We recommend that the advocate should be paid £150 for each on-call period during which he is available on the rota, and the legal aid rate for each hour or part of an hour he attends a police station to give advice to a suspect. Travel expenses should be paid at the prevailing Government rate. The current scheme also makes provision for the services of an advocate of at least five years admission to be

made available to advise in serious cases or where a conflict of interest has been identified. Experience shows that this service is needed but infrequently and may involve no more than the senior advocate giving telephonic advice to his more junior colleague in attendance at a police station. For these reasons he has been remunerated at a lower rate than a duty advocate who in the ordinary course of his on-call period can expect to be called out much more frequently. We recommend a modest increase to £300 for each seven-day period.

4.34 It has been claimed by the police that they have difficulty securing the prompt attendance of a duty advocate at police stations during working hours. To meet this concern we recommend early implementation of the full statutory Duty Advocates Scheme. This will have personnel implications but it is hoped that these will be alleviated if our recommendations as to rates and time of payment are brought into force.

Community Legal Service/Public Defender

4.35 We have considered proposals that there should be a Community Legal Service for civil legal aid work and a Public Defender for criminal. The Law Society is strongly opposed to a Public Defender system and takes the view that it would not be cost effective. It claims that the cost of running the service, including overheads and ancillary staff would be disproportionate to the benefits. Our view is that both schemes have a number of handicaps in a small community such as the Isle of Man where conflicts of interest arise more frequently than in the UK. We are not persuaded that the time is now ripe to introduce such schemes since it is our expectation that, if our recommendations are brought into effect and if the legal profession responds by providing the high quality service to which the people of the Isle of Man are entitled, then a publicly funded service is unnecessary. However, should our expectations not be realised and, despite the improvements we recommend in the legal aid scheme there continues to be a dearth of appropriate lawyers willing to undertake this work, then the interests of justice require more drastic measures and a publicly funded scheme along the lines of the UK Public Defender Service model may be the only available alternative.

Civil Legal Aid Appeals

4.36 Concerns were expressed about the composition of the Legal Aid Committee, which determines appeals from decisions of the LACO with respect to Legal Aid Certificates. It was felt that the inclusion of the First Deemster and the Attorney General might give an appearance of unfairness. While we in no way doubt that the Committee as presently constituted acts with complete propriety, we recognise that public

perception is an important ingredient in fostering confidence in the administration of justice in the Island. We therefore recommend that an independent sub-committee should be constituted with a legally qualified chairman. The criminal legal aid appellate procedure should continue as at present.

Child Care Proceedings

4.37 Legal aid is granted without the necessity of a means test for certain proceedings, namely those under the Hague Convention. We recommend that legal aid should also be granted without a means test to parents in care proceedings and also to the Guardians ad Litem who represents the child. This is already the position in England and Wales by virtue of section 99 of the Children's act 1989 (of Parliament) which amended section 15 of the Legal Aid Act 1988 (of Parliament). In the Isle of Man section 2(4) of the Legal Aid Act 1986 would need to be amended in this respect.

4.38 Our view is that both the paramountcy of the welfare of the child and of the rights of the parents require full investigation of the issues before the Court on an application for a Care Order. This can only be done properly if each party to the dispute is legally represented.

4.39 Our attention has been drawn to the remuneration rates in England in care cases. It has been suggested that those rates are higher than in the Isle of Man and that comparable rates should be paid to Manx advocates in recognition of the specialist nature and importance of this field of practice. In our view such recognition can best be achieved by giving careful and sympathetic consideration to the enhancement provisions of the prevailing rates which we recommend earlier in our report.

Standards of Advocacy

4.40 We were disturbed to hear from Deemster Williamson in response to a question from the Chairman that, as High Bailiff, he had observed a deterioration in the standard of advocacy because of the increase in numbers of the junior bar, although he made it plain that this was not a problem that related solely to legal aid cases. Indeed his view was that there was no close correlation between standards in a particular case

and its status as a privately or publicly funded matter. Strictly speaking these are matters outside our remit although we commend his suggestion that the bar should arrange a marshalling programme with the High Bailiff or Deemsters as part of their advocacy training. It is also our view that the Law Society's ongoing training and refreshing programme should be kept under continuing review with a view to their improvement. In this way Manx advocates will continue to provide legal services of a quality commensurate with the increasing public expectation of the role of a lawyer in a multi-faceted modern society meeting the challenges of the new Millennium.

A Voluntary or Compulsory Scheme?

4.41 During its oral evidence the Isle of Man Law Society argued strongly against introducing a compulsory element into the provision of legal aid. It assured the Commission of its commitment to provide high quality legal services for the benefit of all people of the Island irrespective of means. We accept the Law Society's assurances at face value and have therefore decided against compulsion at this stage. Our recommendations address the defects in the present legal aid system and, we believe, if implemented, will make good these shortcomings. It will then be for the legal profession as a whole to play its part in securing the access to justice that is the birthright of every Manxman.

APPENDIX 1

PERSONS OR BODIES WHO SUBMITTED WRITTEN EVIDENCE

Mrs M Aspell

Mr and Mrs J Boyle

Mr J S Bradshaw

Mr P Bryden

Cains, Advocates

His Honour T W Cain, QC, Former First Deemster

Mrs J Cook

Mr P Coppell, Head of the Civil Legal Aid Division, General Registry

Mr S Coren

Mr W J H Corlett, HM Attorney General

Mr G A Dickinson

Mr A Edwards

Mrs H Hannan MHK

Mr M B Hartley, Chairman of the Isle of Man Magistrates Association

Mr and Mrs Harvey

The Department of Health and Social Security

Mr R W Henderson MHK

Mr J R Houghton MHK

The Isle of Man Children's Centre

The Isle of Man Constabulary

The Isle of Man Law Society

Mr W Johnson

Mr P Karran MHK

Mr G Kinley

Mr K Kinrade, The Office of Fair Trading

Mrs A Lloyd.Humphreys, Chief Registrar

Mrs S McDonald, English Solicitor

Manx Citizens Advice Service (Ramsey)

Mrs W Megson

Mrs W Montgomerie, Civil Legal Aid Certifying Officer

Mr J Needham, Legal Officer (Courts)

Mr A Noble

Mr S Parkes, Former Civil Legal Aid Certifying Officer

Mr R Penn, Advocate

Mr R E Quine MHK

Mr J Quinn, Advocate

Mr D B Sellick, Chief Probation Officer

Mrs F Simon, Former Civil Legal Aid Certifying Officer

The Treasury

Mr A Williamson, Former High Bailiff

APPENDIX 2

PERSONS WHO GAVE ORAL EVIDENCE

Mr P Coppell, Head of Civil Legal Aid Division, General Registry

Inspector M Cowell, Isle of Man Constabulary

Mr R W Henderson, MHK

Mr J R Houghton, MHK

Mr K Kinrade, Office of Fair Trading

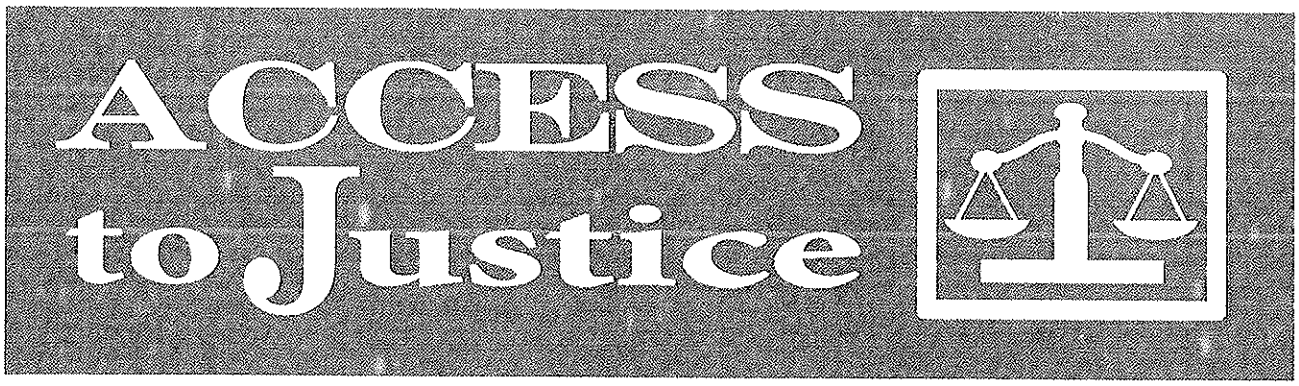
Mr S Parkes, Former Civil Legal Aid Certifying Officer

Mrs S McDonald, English Solicitor

Messrs P Morris, J Stanley, W Wannenburgh and J Stanley, Isle of Man Law Society

Mrs W Montgomerie, Civil Legal Aid Certifying Officer

Mr A Williamson, Former High Bailiff



CIVIL LEGAL AID & LEGAL COSTS

PANEL OF ADVOCATES

The panel of Advocates detailed overleaf comprise the panel of Advocates prepared and maintained under Section 13 of the Legal Aid Act.

Issued: 23 August 2016

The most current version can be viewed online:
https://www.gov.im/legalaid/advocate

CONTACT DETAILS	CATEGORIES OF LEGAL AID WORK UNDERTAKEN											
	Personal Injury	Medical Negligence	Debt	Damages	Possession	Family Matters	Matrimonial Injunctions	Criminal	Human Rights	Criminal Green Form	Temporary Manx Advocate	ALL
ARTHURS Chiva GOUGH LAW 4th Floor Anglo International House Bank Hill Douglas	√	√	√	√	√		√	√	√	√		
ARROWSMITH Christopher John SIMCOCKS ADVOCATES LIMITED Ridgeway House Ridgeway Street Douglas IM99 1PY Tel 690300 Email carrowsmith@simcocks.com	√			√				√				
BECKETT Paul QUINN LEGAL 30 Ridgeway Street Douglas IM1 1EL Tel 665522									√			
BENHAM Miles MANN BENHAM ADVOCATES LIMITED 49 Victoria Street Douglas IM1 2LD Tel 639350 Email milesbenham@mannbenham.com	√		√	√	√	√	√	√	√	√		
BERRY Ms Rachel L APPLEBY 33 Athol Street Douglas IM1 1LB Tel 647647 Email rberry@applebyglobal.com			√	√								
BOLTON Sally M CORLETT BOLTON 4 Finch Road Douglas IM1 2PT Tel 676868						√	√					
BROOKS Christopher M M& P LEGAL 23-25 Bucks Road Douglas Tel 695800 Email cmb@mplegal.im	√			√					√			
BRENNAN Paul A CORBRIDGES Chancery House 22 Finch Road IM1 2PT	√	√	√	√	√			√	√	√		

CONTACT DETAILS	CATEGORIES OF LEGAL AID WORK UNDERTAKEN											
	Personal Injury	Medical Negligence	Debt	Damages	Possession	Family Matters	Matrimonial Injunctions	Criminal	Human Rights	Criminal Green Form	Temporary Manx Advocate	ALL
BRIDSON SD Andrew BRIDSON HALSALL 20 Athol Street Douglas IM1 1JA Tel 614422 Email abridson@iomlaw.com	√	√	√	√	√	√	√	√				
BUTTERWORTH Pamela GELLING JOHNSON FARRANT Myrtle Chambers 8-9 Myrtle Street Douglas IM1 1ED Tel 675367	√	√				√						
BYRNE Louise Clemo QUINN LEGAL 30 Ridgeway Street Douglas IM1 1EL Tel 665522	√	√	√	√	√	√	√	√				
CANNELL Peter J QUINN LEGAL 30 Ridgeway Street Douglas IM1 1EL Tel 665522 Email peter@quinnlegal.im			√	√	√							
CARTER Jeremy PB CARTERS LIMITED 9 Circular Road Douglas Tel 662809								√				
CLAMPTON Claire L GELLING JOHNSON FARRANT Myrtle Chambers 8-9 Myrtle Street Douglas IM1 1ED Tel 675367						√	√					
CLOUGH Miss Kathryn L CALLIN WILD 15-19 Athol Street Athol Street Douglas IM1 1JB Tel 623195 Email kclough@callinwild.com	√	√	√	√	√							

CONTACT DETAILS	CATEGORIES OF LEGAL AID WORK UNDERTAKEN											
	Personal Injury	Medical Negligence	Debt	Damages	Possession	Family Matters	Matrimonial Injunctions	Criminal	Human Rights	Criminal Green Form	Temporary Manx Advocate	ALL
COLEMAN Charles MH GOUGH LAW 4th Floor Anglo International House Bank Hill North Quay Douglas IM1 4QE Tel 629100								√				
COLLISTER Miss Claire V APPLEBY 33 Athol Street Douglas IM1 1LB Tel 647628 Email ccollister@applebyglobal.com	√	√	√	√	√	√	√	√	√	√		√
COOIL Miss C Louise HANNAN LAW 5 Hill Street Douglas IM1 1EF Tel 628900 Email louise@hannanlaw.im			√		√	√	√	√		√		
COREN Steven QUINN LEGAL 30 Ridgeway Street Douglas IM1 1EL Tel 665522	√	√	√	√	√		√					
CRAINE Fletcher Charles Callin Wild15-19 Athol Street Douglas Tel 623195 Email f.craine@callinwild.com	√		√	√	√							
DENNETT Ailsa L HANNAN LAW 5 Hill Street Douglas IM1 1EF Tel 628900			√		√							
EMERY Mark C APPLEBY 33 Athol Street Douglas IM1 1LB Tel 647628 Email memery@applebyglobal.com	√	√	√	√	√	√	√					

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FURNESS Marc E CALLIN WILD Bank Chambers 15-19 Athol Street Douglas IM1 1LB Tel 623195 Email mfurness@callinwild.com	√	√	√	√	√	√	√	√		√	√	
GRAY Jane DICKINSON CRUICKSHANK & CO Masonic Buildings Water Street Ramsey IM1 1RD Tel 812107 Email jgray@dc-ramsey.com			√	√	√	√	√	√	√	√		
HALSALL Richard BRIDSON HALSALL 20 Athol Street Douglas IM1 1JA Tel 614422 Email rhalsall@iomlaw.com	√	√	√	√	√	√	√					
HANNAN Miss Aalish L HANNAN LAW 5 Hill Street Douglas IM1 1EF Tel 628900 Email Aalish@hannanlaw.im			√		√	√	√	√				
JENNINGS Mrs Caroline SIMCOCKS Ridgeway House Ridgeway Street Douglas IM99 1PY Tel 690300	√	√				√	√					
JEPSON-BENNETT Mrs Rachel H KELLY LUFT STANLEY & ASHTON 2 Sydney Mount Douglas IM1 1QD Tel 674316 Email law@kellyluft.com			√	√	√	√	√	√				
JONES Mrs Dawn H JONES & CO Finch Chambers 28 Finch Road Douglas IM1 2PT Tel 629002 Email law@jonesandco.im			√	√	√	√	√	√				

CONTACT DETAILS	CATEGORIES OF LEGAL AID WORK UNDERTAKEN											
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KANE Roger J HANNAN LAW 5 Hill Street Douglas IM1 1EF Tel 628900 Email Rogerh@hannanlaw.im	√	√	√	√	√	√	√	√	√	√		√
KERRUISH Edward Paul KERRUISH LAW & TRUST 5th Floor Anglo International House Douglas IM1 4QE Tel 623999 Email paul.kerruish@KLT.im				√								
KINLEY Christopher AGJ KINLEY LEGAL 12 Hope Street Douglas IM1 1AQ Tel 640366 Email christopherkinley@kinleylegal.com			√	√								
KINNIN Paul S CAINS GORDON BELL Auckland Chambers 3-5 Auckland Terrace Ramsey IM8 1AF Tel 811311	√	√	√	√	√	√						
LASLETT Victoria H CORBRIDGES Chancery House 22 Finch Road IM1 2PT			√	√	√	√	√	√	√	√		
LONG Robert A LONG AND HUMPHREY The Old Courthouse Athol Street Douglas IM1 1LD Tel 651951 Email info@longandhumphrey.com	√			√								
MARSHALL Andrew Hudson KERRUISH LAW & TRUST 5th Floor Anglo International House Douglas IM1 4QE Tel 623999 Email Andrew.marshall@KLT.im	Probate Only											

CONTACT DETAILS	CATEGORIES OF LEGAL AID WORK UNDERTAKEN											
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MCDONALD Terrence P CARTER JONES MCDONALD Athol Chambers 21 Athol Street Douglas IM1 1LB Tel 629627	√	√	√	√	√	√	√	√				
MERRITT Nicola Jane CORLETT BOLTON & CO 4 Finch Road Douglas IM1 2PT Tel 676868 mail@corlettbolton.com	√	√	√	√	√	√						
MULLIGAN Mrs Lydia CALLIN WILD Bank Chambers 15-19 Athol Street Douglas Tel 623195			√		√	√	√	√				
MURPHY Miss Victoria Claire M&P LEGAL New Court Chambers 23/25 Bucks Road Douglas IM1 3DA Tel 695800	√	√	√	√	√	√	√			√		
MYERSCOUGH Miss Deborah BRIDSON HALSALL 20 Athol Street Douglas IM1 1JA Tel 614422 Email dmyerscough@iomlaw.com	√	√	√	√	√	√	√	√	√	√		√
O'RIORDAN Kevin L KELLY LUFT STANLEY & ASHTON 2 Sydney Mount Douglas IM1 1QD Tel 674316 Email law@kellyluft.com						√						
PARKES Mrs Elizabeth A GELLING JOHNSON FARRANT Myrtle Chambers 8-9 Myrtle Street Douglas IM1 1ED Tel 675367 Email eparkes@manxlaw.com	√	√	√	√	√	√						

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PETERSON James Michael MANNBENHAM ADVOCATES LIMITED 49 Victoria Street Douglas IM1 2LD Tel 639350 Email jamespeterson@mannbenham.com	√		√	√	√	√	√	√	√	√		
PRINGLE Pamela J PRINGLE LAW Victoria Court 16 Athol Street Douglas IM1 1JA Tel 612200	√	√	√	√	√	√	√	√				
QUINN James BS QUINN LEGAL 30 Ridgeway Street Douglas IM1 1EL Tel 665522 Email mail@quinnlegal.im						√		√				
QUIRK Sarah QUINN LEGAL 30 Ridgeway Street Douglas IM1 1EL Tel 665522 Email mail@quinnlegal.im						√						
RATCLIFFE Emma JONES & CO Finch Chambers 28 Finch Road Douglas IM1 2PT Tel 629002 Email law@jonesandco.im						√	√					
REYNOLDS David CARTERS LIMITED 9 Circular Road Douglas Tel 662809/204377	√	√	√	√	√	√	√	√	√	√		√
ROBERTS Mrs Nadine Victoria M & P LEGAL New Court Chambers 23/25 Bucks Road Douglas IM99 2EN Tel 695800 Email nvr@mplegal.im	√	√	√	√	√	√	√					

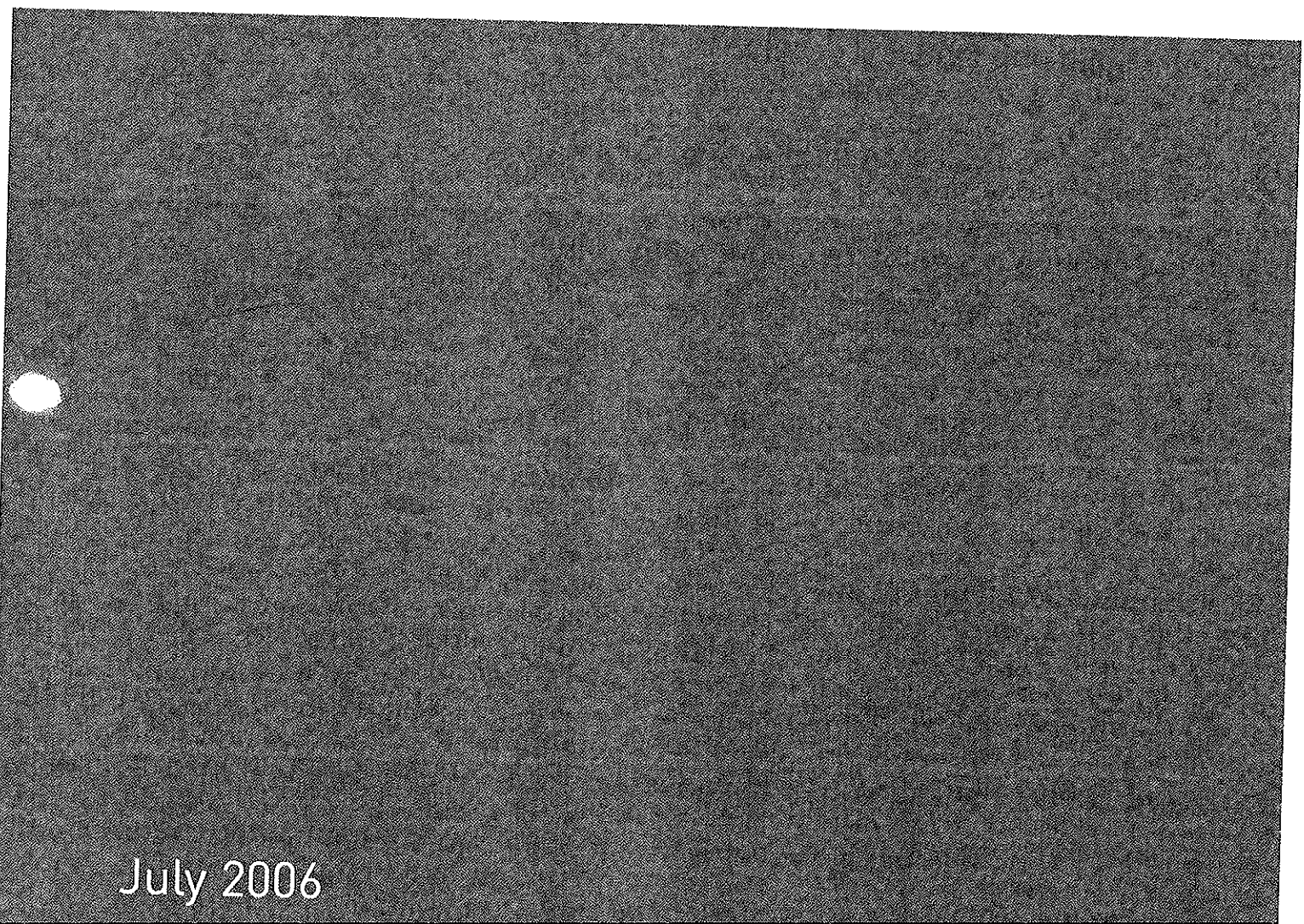
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RODGERS Paul ADVOCATES SMITH TAUBITZ UNSWORTH LTD Barrule Chambers 36 Finch Road Douglas IM1 2PS Tel 677888	√	√	√	√	√	√	√	√				
SMITH Hazel F ADVOCATES SMITH TAUBITZ UNSWORTH LTD Barrule Chambers 36 Finch Road Douglas IM1 2PS Tel 677888 hazel@advocates.co.im	√	√	√	√	√	√	√	√	√	√		√
STANLEY Jason BT KELLY LUFT STANLEY & ASHTON 2 Sydney Mount Douglas IM1 1QD Tel 674316 Email law@kellyluft.com	√	√	√	√	√	√	√	√				
STANLEY Jennifer M KELLY LUFT STANLEY & ASHTON 2 Sydney Mount Douglas IM1 1QD Tel 674316 Email law@kellyluft.com	√	√	√	√	√	√	√	√				
STRATTON Michael Matthew CAINS GORDON BELL Auckland Chambers 3-5 Auckland Terrace Ramsey IM8 1AF Tel 811311	√	√	√	√	√	√	√	√				
TAUBITZ Darren Haydn ADVOCATES SMITH TAUBITZ UNSWORTH LTD Barrule Chambers 36 Finch Road Douglas IM1 2PS Tel 677888 darren@advocates.co.im	√	√	√	√	√	√	√	√	√	√		√

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TAYLOR Peter J SIMCOCKS Ridgeway House Ridgeway Street Douglas IM99 1PY Tel 690300 Email ptaylor@simcocks.com	√	√	√	√	√			√				
TAYLOR Winston SIMCOCKS Ridgeway House Ridgeway Street Douglas IM99 1PY Tel 690300	√	√	√	√	√	√	√	√				
THOMAS Mrs Alison J HANNAN LAW 5 Hill Street Douglas IM1 1EF Email alison@hannanlaw.im						√	√	√				
TRAVERS James Charles QUINN LEGAL 30 Ridgeway Street Douglas IM1 1EL Tel 665522	√	√	√	√	√	√	√	√				
UNSWORTH Mrs Victoria Leanne ADVOCATES SMITH TAUBITZ UNSWORTH LTD Barrule Chambers 36 Finch Road Douglas IM1 2PS Tel 677888	√	√	√	√	√	√	√	√	√	√		√
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CONTACT DETAILS	CATEGORIES OF LEGAL AID WORK UNDERTAKEN											
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Lord Carter's Review of
Legal Aid Procurement

Legal Aid
A market-based approach to reform



July 2006



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Lord Carter's Review of Legal Aid Procurement

House of Lords
London
SW1A 0PW

13th July 2006

The Rt Hon Lord Falconer of Thoroton
Secretary of State and Lord Chancellor

Final Report on Legal Aid Procurement

I enclose the final report of my review into the procurement of legal aid. I must put on record that I am very grateful for the immense support and co-operation throughout from the Law Society, the Bar Council, the many practitioners we have seen over the past year, the judiciary, the Legal Services Commission and your department.

I was surprised to discover at the outset that the relationship between the various legal aid stakeholders was often adversarial and sometimes hostile. This has resulted in a fragmented system that has not historically recognised a duty to deliver justice at an acceptable overall public cost. I am pleased to see a growing recognition that a new co-ordinated and collaborative approach is required in which it is no longer acceptable for one part of the system to act in a way that imposes a disproportionate burden on another. This is, however, a broader theme that will require reinforcement by you and the rest of government.

The arrangements I have recommended are the best ones that I think can be achieved, bearing in mind the tough fiscal climate. The biggest challenge that I have faced is the inadequacy of the management information available. The complexity and the opaqueness of the numbers, their components, the inability to forecast change, and the lack of a comprehensive understanding of the whole system, all contributed greatly to the difficulties I have encountered.

I have been impressed by the deep dedication and integrity of the professionals involved in legal aid work, and their real commitment to the principles of legal aid. They should be proud of their hard work on behalf of their clients, and acknowledged rightly as a credit to the legal profession.

However, many in the profession tend to have a natural conservatism towards any move to greater efficiency in the services they deliver. There must be a better understanding of the finite nature of resources, and the need for the taxpayer and government to secure better value for money from the funds it spends.

I am confident the legal profession will understand the benefits of change arising from my recommendations, and how they have been devised with their business interests at heart. The new procurement regime will help government to forecast and control the cost of the legal aid system; it will help the public to receive a better service; and it will also help practitioners to achieve a better financial return for themselves.

I have been encouraged by the willingness of the Law Society and the Bar Council to participate in the iterative process which has led to my report. I recognise that, in this process, they have had to countenance changes that may not be wholly welcomed by their members. Whilst they are not, of course, responsible for the recommendations of my report, it would not have been possible to reach these recommendations without their engagement and I am grateful to them for their responsiveness and their participation in the process.

There is an historic opportunity for all parties to address the inherent risks in the culture and structure of the legal aid delivery arrangements, and match the willingness to do something about it, with the urgency to address it.

Given this urgency, all parties must also make a fresh start, with a new relationship based on openness and co-operation.

Finally, I would like to thank my panel of advisers, Guy Beringer, David Gregson and David Ross, as well as the secretary to the review, Jeremy Marlow, and the rest of my team for all their hard work.



LORD CARTER OF COLES

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Executive Summary

1 Lord Carter's report on the review of legal aid procurement is the conclusion of a year's detailed analysis and extensive consultation. The review has been iterative in its approach, considering a wide range of issues, options and impacts before developing detailed and costed recommendations for a new procurement system for legal aid.

2 DCA, the Legal Services Commission, the Law Society, the Bar Council, the judiciary, other representative groups, individual practitioners and many other stakeholders, have all played a full part in the discussions that have led to these recommendations.

The need for reform

3 Fundamental change must be made in the way legal aid services are procured so that:

- clients have access to good quality legal advice and representation;
- a good quality, efficient supplier base thrives and remains sustainable;
- the taxpayer and government receive value for money; and
- the justice system is more efficient, effective and simple.

4 There have been several attempts in recent years to improve the efficiency of the legal aid system, but these have proved insufficient to halt the increase in legal aid spending, especially on criminal defence services.

5 In England and Wales, we spend more on legal aid per capita than anywhere else in the world. Legal aid expenditure has increased from £1.5 billion in 1997 to over £2 billion today. Legal aid costs each taxpayer nearly £100 per year.

6 Although there have been many well-known anomalous and exceptionally high cost claims on the legal aid budget, the scale of the continued rise in spending is not the result of individual or collective wastefulness. It is the result of systemic weaknesses in the way legal aid services are procured and therefore inefficiencies in the way those services are delivered.

7 The recommended procurement reforms should lead to much better control and forecastability of legal aid spending. They should provide greater efficiency in criminal defence practices and the operation of the justice system, which should ease the pressure on civil and family legal aid.

8 The recommendations should, subject to effective implementation, deliver efficiencies across the legal aid budget of £100 million against spend in 2005–06 without compromising quality and access to services for clients. This control will reduce spending on criminal legal aid by over 20% in real terms over the next four years.

Quality, value, access

9 All reforms are directed towards achieving a market-based outcome. A healthy legal services market should be driven by best value competition based on quality, capacity and price. All three of these factors should lead to the restructuring of the supply market. The option of longer contracts should be available for suppliers, if they are considered to offer a particularly good quality and efficient service.

10 There should be a minimum standard of quality for all legal aid practitioners assured through peer review. The process of reviewing and assessing the quality of individual suppliers should begin immediately and complete by April 2009 at the latest. This process alone will cause some restructuring of the market as suppliers of inadequate quality legal services are forced to improve or withdraw from the market.

11 Combined with the implementation of Sir David Clementi's recommended reforms to deregulate the legal services sector, procurement driven restructuring is likely to see an increase in the average size of firms through growth and mergers, rationalisation and harmonisation of the way separate services are delivered.

12 There should be a wholesale move towards fixed pricing for work. Fixed pricing rewards efficiency and suppliers who can deliver increased volumes of work. However, pricing should be graduated for more complex work so that cases

genuinely requiring more expertise and effort are priced fairly. Exceptionally complex cases should be managed and paid for under individual case contracts with only the most experienced, competitive and competent legal teams providing the service.

13 Reform of the procurement system and restructuring of the legal services market will be challenging for all involved. Part of this can be helped by a managed transition. This should give good quality and efficient suppliers time and support to adapt to the new arrangements in the run up to best value tendering in 2009–10.

14 The managed transition period should be used to sustain and promote a diverse and sustainable supplier base. This should enable clients to be confident in the quality of the service they receive, and still offer a choice of legal representative.

Criminal defence

15 Defence firms should be able to increase their volumes of work through new contracts, working arrangements and boundaries for allocation of duty police station work. Clients would continue to be able to ask for a firm of their choice but there should be limitations of the amount of work a firm can do of this nature to preserve the integrity of the quality and economic benefits of the new working arrangements and boundaries.

16 There should be minimum thresholds of capacity and managed choice for clients. Payments for the police station should be based on fixed fees, which include travel and waiting costs that are currently paid separately. These changes should be implemented in two stages (April 2007 and October 2007).

17 Revisions to the current magistrates' court standard fee scheme should be made to shift more payment in to fees for productive work in the early stages of a case and away from of travel and waiting costs. This should reward more efficient practices and provide appropriate incentives for early preparation and resolution. A new graduated fee scheme for this work should be considered for implementation in April 2008.

18 Revisions should be made to the graduated fee scheme for advocacy in the Crown Court to transfer a greater proportion of the fee in to the early stages of a case, promoting earlier preparation and resolution. There should be a reduction in piecemeal payments for work resulting from inefficiencies in the operation of the justice system. The revisions should be in place by April 2007.

19 A new graduated fee scheme for litigation in the Crown Court should replace the current method of paying case-by-case bills based on the number of hours worked as determined by each and every supplier. The fee should have a base payment varied to reflect different types of offences and have uplifts to that fee to reflect varying complexity and effort required for each case. The new scheme should be in place by April 2007.

20 Revised, tighter control of very high cost criminal cases should be achieved by only allowing (through a best value tendering process) the best qualified, most experienced and most efficient defence teams to undertake this sort of long and complex work. There should be more active and legally experienced management of the individual case contracts by the Legal Services Commission. The improved procurement and management arrangements should be in place by January 2007.

Civil and family

21 Suppliers of civil legal aid should provide a more efficient client-focussed service concentrated around meeting differing local needs through the establishment of community legal advice centres and community legal advice networks, in line with the Legal Services Commission's strategy for the Community Legal Service.

22 New forms of contracting should promote greater links between civil suppliers, and where possible, greater links with family law suppliers, so that the clusters of problems faced by many clients are dealt with more effectively. Best value tendering for the new centres and networks is already underway. (Learning from the first wave should be applied to subsequent waves with the complete roll-out expected from 2009 onwards).

23 Family law, especially child-care proceedings, has been subject to considerable reform, and the recommendations made on family legal aid should support the rationalisation and simplification of these legal processes through encouraging earlier resolution where appropriate, and controlling expenditure.

24 New fixed fee schemes for legal help for areas of law such as housing and debt advice should be in place from April 2007. These will replace the current tailored fixed fee schemes for civil legal help to promote a consistent level of efficiency across all suppliers.

25 A new graduated fee scheme for solicitors in private law family should be in place by April 2007. This scheme should provide a structured framework for replacing tailored fees for legal help and payment at hourly rates for work in court. This should lead to a more efficient structure that provides better outcomes for clients, as well as better control over expenditure.

26 A graduated fee scheme for solicitors in child-care cases should replace the current system of payment at hourly rates in court, as well as encourage earlier work by solicitors before proceedings are initiated. This should be in place from April 2007 to support better outcomes for children and families in child-care proceedings in line with the current judicial case management protocol and changes following the implementation of the child care proceedings review.

Quality assurance

27 It is essential that clients have confidence in their legal service and that the professional quality of that service is assured.

28 The Legal Services Commission should continue to set quality standards, but in line with legal services reform, the responsibility of quality assurance should pass to the legal professions through their relevant professional bodies.

29 In particular, the quality of advocacy services, including their quality of interaction with the courts, should be developed in time for the introduction of new procurement schemes in April 2007.

Profitability

30 The reforms will have an impact on suppliers, especially criminal defence suppliers. In terms of profitability, the proposed new fee structures will allow good quality efficient criminal defence suppliers to make a reasonable return. Moreover, as the volume of work that firms can undertake increases, so too does the return they can earn. While a sole practitioner is likely to earn £36,000 to £55,000, an equity partner in a firm with 40 fee earners could expect to earn between £120,000 and £150,000.

31 It is now recognised that overall expenditure on Crown Court advocacy services will decrease by nearly 20% compared to 2005-06. This is largely driven by the final elements of the ex post facto regime coming within the revised graduated fee. However, changes to the pricing of different elements within the revised advocacy graduated fee scheme have been recommended to address the fact that different elements of the graduated fee scheme have been held flat with no indexation to account for inflation, in some instances for up to 10 years.

32 The impact of the new rates has been assessed against a basket of different Crown Court cases. This assessment shows that the changes to different elements within the revised graduated fee scheme would re-balance the value of these cases by between -3% to +20%.

Diversity and choice

33 It is essential that clients have access to good quality legal advice, and confidence in the service they are given. A diverse and sustainable supplier base is essential for clients of diverse backgrounds to have confidence in their legal services. The Legal Services Commission should use its procurement power through its contracting terms to promote diversity within firms and their use of counsel and referral services, especially where they serve diverse communities.

34 Analysis of available data indicates that the recommendations should not have a negative impact on black and minority ethnic firms and solicitors on a national basis. There may be some disparity of impact at regional level. It is considered, however, that the recommendations are justified by the need to control legal aid spending and to promote efficiency of service in the public interest. It is considered that the recommendations constitute a proportionate means of securing a legitimate aim.

35 Consultation with representative groups and diversity experts have led to a reconsideration of the position in the review's interim report where capacity bidding would be a major feature of market-based reforms and choice would have been tightly controlled. The removal of simple capacity bidding in favour of best value bidding on quality, capacity and price, and the relaxation of client choice limitations should aid the transition for smaller black and minority ethnic owned firms to restructure in time to compete effectively for work.

Integrated justice

36 It is essential that resources are optimised within the justice system, and that wherever possible unnecessary work and duplication is spared. The judiciary have a vital role to play in this respect, as they have a unique role outside the other competing pressures on other players in the adversarial system. They should build on and spread the robust case management practices supported in several recent high profile Court of Appeal judgments.

37 The justice system has many different elements, with different objectives, each of which is funded by the taxpayer. Each of the participants is able to cause a significant cost burden to fall on some of the others but, in many cases, little account appears to be taken of the overall financial burden which results for other parts of the justice system. More collective responsibility for the overall use of resources in the justice system should be encouraged and enforced nationally and locally.

Help for suppliers

38 Delivering radical reform in the shape of a market-based approach will be a significant challenge to firms and practitioners. Help should be available to firms who want to continue in legal aid to enable them to become more efficient and capable of competing for contracts.

39 There should be grant programmes to part fund specific growth and consolidation advice and assistance amongst suppliers and for investment in all legal aid supplier's information technology infrastructure and modernisation. This will offer the Law Society a unique opportunity to provide firms with assistance in restructuring, and mark its renewed representative status following legal services reform.

Cost control

40 The procurement reforms should, if executed properly deliver the long desired cost control in legal aid. Without these new procurement reforms, the same sort of price inflation as seen in the past decade would more than likely be repeated in the future.

41 By 2010, the new procurement system and underlying fee rates should lead to 4% efficiencies (before inflation) from the supplier market over three years from 2006–07. The variations in timing for the new fixed pricing schemes should mean that the efficiencies sought are staged over the period of the transition.

Implementation

42 This challenging programme of changes needs a mix of expert skills and knowledge to execute their effective delivery. The changes, restructuring and overall efficiencies for all sides will require DCA and the Legal Services Commission to assess and where appropriate to continue to improve their capability.

43 The cost of administering legal aid has increased from £58 million in 1997-98 to nearly £100 million today (a rise of 65%). This is 5% of the legal aid budget. The increase in capability and skills will require some short term-investment. But by 2010 the shift to a smaller number of suppliers (and therefore contracts, in some cases, of a longer duration) along with rationalised and more electronic transaction processes should mean that administration costs are reduced by 30% to approximately £70 million.

Transparency

44 An atmosphere of mistrust and suspicion has been allowed to build up between suppliers and the government, and implementation of the reforms would be significantly helped if stakeholder relations were strengthened with the legal profession and other agencies operating in the justice system.

45 A new structure of stakeholder engagements should be put in place. This will be a platform for improved and constructive relationships between DCA, the Legal Services Commission and the key stakeholders that are essential to a sustainable settlement for the long-term.

List of recommendations

Quality

Recommendation 3.1: The Legal Services Commission should begin from July 2006 a national roll-out of peer review assessment for all firms seeking a place in the new market so that the introduction of best value tendering can take place from April 2009 onwards. The Legal Services Commission should adopt four criteria to plan the roll-out of peer review:

- greatest quality impact for clients;
- greatest opportunity to restructure the local market;
- ensure a level playing field for all firms until best value tendering takes place; and
- assess the impact on the justice system.

Value

Recommendation 3.2: The Legal Services Commission should continue to develop the design of a best value tendering process around the framework set out in paragraphs 61 to 64 of the review's final report, with specific arrangements for each local tendering round, so that a national roll-out of best value tendering should begin in April 2009.

Access

Recommendation 3.3: The Legal Services Commission should consider whether and how a small number of criminal defence practitioners could continue to provide niche services when the new General Criminal Contract arrangements are implemented in October 2007. Consideration should be given to how sub-contacting arrangements can be developed for referrals from firms who hold a General Criminal Contract as well as support for growth and consolidation.

Recommendation 3.4: The Legal Services Commission should explore the possibility of firms and not for profit agencies expanding into other categories of civil and family law. Depending on the area and the nature of the service, suppliers should be encouraged to develop services across a wider area of categories of civil and family law than is currently the case.

Recommendation 3.5: It is important that there is not one model for community legal advice centres, and the Legal Services Commission allows centres to develop in a pragmatic and flexible fashion that best suits their potential clients in the area where they are located (including sub-contracting service delivery where necessary).

Recommendation 3.6: It is recommended that the Legal Services Commission should carefully evaluate the impact of the transition in the first wave of community legal advice centres from 2007, so lessons can be learnt for later waves from 2008-09 onwards.

Recommendation 3.7: It is important that the Commission enable community legal advice networks to be developed in a pragmatic and flexible fashion that makes sense locally, as in some areas there could be informal networks that already exist and might be built upon, whereas elsewhere the networks would be a fresh development. But the Legal Services Commission should ensure that all would-be network suppliers are subject to a robust tendering process, and that the network is ultimately based on the needs of clients.

Recommendation 3.8: It is recommended that the Community Legal Service strategy should not simply set the way forward for the Legal Services Commission, but should also provide a good working framework for other funders of legal advice services, including local authorities and other government departments in England and Wales, that allows them to add value to their spending in this area through working together with the Legal Services Commission. This better co-ordination should lead to better overall legal services for local communities, especially the more vulnerable groups.

Criminal defence

Recommendation 4.1: The Legal Services Commission should construct new General Criminal Contract boundary areas as set out in paragraphs 4 to 9 and Annex 4.1, for all of England and Wales by January 2007. This should be based on detailed maps and data covering existing police stations and duty schemes, suppliers, magistrates' courts, and distances between suppliers and police stations. An iterative process to create the new boundaries should be based on:

- developing larger areas for work where appropriate;
- a combination of minimum drive times between suppliers and police stations and grouping of existing duty police station schemes, as well as travel to courts;
- ensure new working areas allow performance standards to continue to be met for client access; and
- provide for possible exceptions for police stations in rural areas.

The new boundary areas should then be published for consultation prior to implementation with associated new working arrangements in October 2007.

Recommendation 4.2: The Legal Services Commission should put in place a series of measures that mitigate market fragmentation and allow firms to begin the process of restructuring. The Legal Services Commission should consider the following measures:

- reduce duty solicitor service requirements for duty solicitor work so that it is in line with own client requirements. This should mean that any duty solicitor, accredited representative, probationary representative (non indictable offences) and solicitor with the police station qualification may undertake all types of work. Duty solicitor slots should be allocated to firms (in proportion to the volume of work they had undertaken between July 2005 and July 2006) rather than named individual solicitors. There should be a moratorium on new duty solicitor slots other than in response to changes in local need. Where new slots are required to meet demand the Legal Services Commission should notify firms that new slots are available;
- enforce the requirements that 80% of police station work and 50% of magistrates' court work is undertaken in house; and
- the duty solicitor rotas and remove those firms or individuals that have not undertaken duty solicitor work in a 12 month period.

The Legal Services Commission should consult on the above proposals and should introduce them as soon as is practicable, but no later than January 2007.

Recommendation 4.3: The register of potential very high cost criminal cases should be developed further to include early identification of cases. The prosecution authorities should work together to notify the Complex Crime Unit of a potential very high cost case on the questioning or charge of an individual. Changes to the Complex Crime Unit should ensure that the exception to the police station scheme operates effectively. This register should be in place by December 2006.

Recommendation 4.4: The Legal Services Commission should construct new General Criminal Contract working arrangements providing for access to own solicitor within and outside of contract areas and duty solicitor slots by January 2007 as set out in paragraphs 20 to 28 of Chapter 4. The new working arrangements should then be published for consultation prior to the implementation with associated new working arrangements in October 2007.

Recommendation 4.5: The duty solicitor call centre and CDS Direct should be monitored closely by the Legal Services Commission. The monitoring should be on a monthly basis and at a local scheme level, and should look at the volume of cases, and review their effectiveness and quality of service. If this fails to control any increase in volume of work being undertaken in the police station then DCA and the Commission should consider options for restricting defendant eligibility. This should happen alongside the introduction of the new police station fees in October 2007.

Recommendation 4.6: By January 2007, the Legal Services Commission should develop a methodology for allocating work under the new working arrangements, based on a mimimum threshold that varies according to area and market conditions as described in paragraphs 29 to 35 allowing for duty slots within boundary areas, a percentage of out of area duty slots and own solicitor work within the boundary area. The Legal Services Commission should consult on the need for a minimum threshold that varies. The new working arrangements (including the need for a lower threshold) should then be published for consultation prior to implementation with associated new working arrangements in October 2007.

Recommendation 4.7: The Legal Services Commission should introduce a new police station procurement scheme , based on fixed fees per case that include travel and waiting, as described in paragraphs 36 to 39 and set out in Annex 4.2. The fees set out in Annex 4.2 should be subject to consultation and should be introduced in April 2007.

Recommendation 4.8: The Legal Services Commission should introduce a revised magistrates' court standard fee scheme including an element of travelling and waiting (as described in paragraphs 40 to 41 and set out in Annex 4.3). The fees in Annex 4.3 should be subject to consultation and should be introduced in April 2007.

Recommendation 4.9: The Legal Services Commission should introduce a new magistrates graduated court fee as described in paragraph 43. The Legal Services Commission should collect data to develop proxies.The Legal Services Commission should also collect data to develop an alternative basis for pricing cases that escape. The graduated fee scheme set should be developed and subject to consultation in June 2007 and should be introduced in April 2008.

Recommendation 4.10: Alongside the introduction of a new graduated fee scheme for magistrates' courts work in April 2008, DCA and the Legal Services Commission should review the issue of assigned counsel in magistrates' courts by April 2007 and should consider the following alternatives:

- counsel to be paid the basic fixed fee with a 10% uplift;
- solicitors to be paid a 50% uplift on the basic fee and thereafter disseminate monies as they believe to be appropriate to assigned counsel; or
- the development of a graduated fee scheme for assigned counsel.

The Legal Services Commission's preferred option should be published in June 2007 to be implemented in 2008 alongside the new graduated fee.

Recommendation 4.11: DCA and the Legal Services Commission should apply the ring fenced and capped budgets for Crown Court advocacy ancillary payments as set out in Annex 4.5. These budgets should be monitored on a quarterly basis. If the budget is exceeded in the financial year the payments will cease to be made as ancillary payments and will be automatically absorbed without further negotiation into the base fee for all following years on a cost neutral basis.

Recommendation 4.12: DCA and the Legal Services Commission should review the effectiveness of the October 2005 changes to the advocacy graduated fee cracks and guilties scheme in the Crown Court, and any changes proposed to this scheme, on the timing of cracked cases. This should report in January 2007 and be considered by the stakeholder mechanisms recommended in Chapter 6.

Recommendation 4.13: DCA and the Legal Services Commission should introduce a revised advocacy graduated fee scheme for crown court work (as described in paragraphs 46-55 and the tables in Annex 4.5) that increases base fees, introduces two new offence types, reduces the number of ancillary payments and makes total case fee payment to a single named advocate or two named advocates in two counsel cases. The fees should be subject to consultation and implemented in April 2007.

Recommendation 4.14: The introduction of a revised advocacy graduated fee scheme in the Crown Court in April 2007 will require the early identification of the trial advocate. Clerks and chambers should begin revising their working practices to ensure that advocates will be identified at the commencement of a case from this date.

Recommendation 4.15: The Legal Services Commission should introduce a new graduated fee scheme for litigators in the Crown Court. The Legal Services Commission, during consultation and prior to implementation in April 2007, should ensure that the fees set out in Annex 4.6:

- contain uplifts that appropriately reflect and remunerate differences in costs and complexity;
- are not missing uplifts that might provide greater cost reflectivity; and
- achieve the appropriate balance, in terms of payment, between the base fee and the uplifts described above.

If rebalancing or the creation of additional uplifts is required, this should take place within the proposed level of expenditure recommended for the scheme (see Chapter 6). The fees should be implemented in April 2007.

Recommendation 4.16: DCA and the Legal Services Commission should consider harmonising the separate litigation and advocacy graduated fee schemes in to a single graduated fee for all defence services in the Crown Court, for implementation as soon as possible after 2009, when the market has stabilised and legal services reforms allow for the creation of alternative business structures.

Recommendation 4.17: There should be a new specialist panel of suppliers to conduct very high cost criminal cases. In advance of inviting applications and bids from potential teams the Legal Services Commission should issue by April 2007 an expression of interest document detailing the criteria for membership of the new panel. This should fulfil the requirements (set out in paragraphs 70 to 74 and the detailed wording should be consulted on with the appropriate professional bodies.

Recommendation 4.18: The Legal Services Commission should establish a best value tendered panel for very high cost criminal cases based on the steps sets out in paragraphs 80 to 89. Prior to doing so the issues set out in paragraph 90 should be consulted on with the professional bodies. The invitation to tender should be issued by July 2007 with tenders submitted by September 2007 to allow implementation of the panel by October 2007.

Recommendation 4.19: The Legal Services Commission should require all defence teams and prosecution bodies to notify all cases that would be expected to last 25 days or more at trial and/or the defence teams are estimated to be £100,000 or greater. The Legal Services Commission should contract all cases that would be expected to last 41 days or more. They should have the discretion to contract any case expected to last greater than 25 days and less than 41 days and/or the defence teams are estimated to be £100,000 or greater. This should take effect by April 2007. The Legal Services Commission should consider developing criteria for other 'exceptional' cases that do not meet the 25 days and/or financial criteria.

Recommendation 4.20: The Legal Services Commission should design a pro forma notification document to assist in the early identification of potential very high costs criminal cases by September 2006. Annex 4.7 sets out the key points that this document should cover.

Recommendation 4.21: The existing High Cost Cases Review Board should develop a robust trial estimate procedure for very high cost criminal cases. The procedure would:

- provide an estimate of the trial length which should be scrutinised by the court, the prosecution and the defence;
- provide for a detailed timetable agreed by the prosecution, defence and the court within which the issues in the case can be fairly determined;
- build a process to monitor departures from that timetable and ensure these are justified to the court; and
- develop a mechanism by which the estimate set and any variations to the estimate should be

reflected in the contractual terms for payments and management arrangements for both prosecution and defence teams.

This should be developed by the review board in November 2006 and implemented in January 2007.

Recommendation 4.22: The Legal Services Commission should make improvements to case management by the Complex Crime Unit (outlined in paragraph 96 and detailed in Annex 4.7) by recruiting qualified practitioners, establishing a referral and a post case audit panel and designing a very high cost criminal cases best value team protocol by October 2007.

Recommendation 4.23: The Legal Services Commission should consider the potential to generate a 5% saving on current spending through the combination of competition on rates and tighter management of very high cost criminal cases in the financial year 2008-09.

Civil and family

Recommendation 4.24: The Legal Services Commission should ensure the fixed fees for legal help with which they propose to replace tailored fixed fees in civil categories of law are sustainable within the overall legal aid budget, and consistent with maintaining a good quality supplier base.

Recommendation 4.25: Wherever possible, the Legal Services Commission should ensure that the dynamics, between the fixed fee for civil legal help and the payments for civil court work, act to reward early settlements where it is appropriate. The Legal Services Commission needs to look at this in more detail, and whether this means removing the current differential between legal help and representation rates, and should report with its findings by July 2008.

Recommendation 4.26: Where practicable, the Legal Services Commission requires firms to report success rates in civil certificated cases as one of the performance indicators in the contracts, so the Legal Services Commission is able to monitor if devolved powers for certification are being used properly.

Recommendation 4.27: Following the introduction of the first community legal advice networks in 2006, options for networks should be tested out in different areas by the Legal Services Commission to identify which approach works best in each of a variety of different circumstances.

Recommendation 4.28: Bids by suppliers to work in community legal advice networks should refer to arrangements they have together agreed for co-operation with other bidders, so that it can build on existing informal networks. This could include proposed co-location and active referral arrangements. Bidders should also be asked by the Legal Services Commission for their own proposals on how they would implement or exceed the contractual requirements. This should enable the network to be flexible and take account of local factors. The Legal Services Commission would be free to accept or refuse bids on an individual basis, and determine which arrangements are best for clients.

Recommendation 4.29: The process of moving to indicative budget allocations by the Legal Services Commission for legal help for social welfare law through deprivation data should be managed carefully to minimise any disruption to services. As part of this process, the funding formula should enable the Legal Services Commission to decide in which local areas to expand case starts.

Recommendation 4.30: There should be no major changes in the current civil representation ex post facto remuneration scheme for the time being, but it should be kept under close review by DCA and the Legal Services Commission, together with the profession, and DCA and the Legal Services Commission should produce a report with their findings by July 2008. As part of this, DCA and the Legal Services Commission should consider how the various alternatives, such as a "success fee", set out in Annex 3.1, might impact upon the current scheme.

Recommendation 4.31: The procurement strategy in the category of mental health should be kept under close review by the Legal Services Commission, as it will need to take account of future changes in mental health legislation, and if there is a move towards more clients being cared from at home and not detained. It is important that clients cared from at home are able to have access to legal advice, if it is required, and so supply centred around hospitals may need to be expanded to cover this category of clients (and permit referrals from the community legal advice network).

Recommendation 4.32: The Legal Services Commission should ensure the fee levels they are proposing for private law family are sustainable within the overall legal aid budget, and consistent with maintaining a good quality supplier base.

Recommendation 4.33: The move to the family help procurement scheme from April 2007, should be seen as paving the way to a graduated fee scheme for solicitors in private law family that includes the final hearing stage from autumn 2007.

Recommendation 4.34: The Legal Services Commission should replace the current public law children ex post facto scheme with a graduated fee scheme aligned with the Judicial Case Management Protocol for Care Proceedings. Other public law children work, that is not covered by the graduated fee scheme, should be kept under review by the Legal Services Commission and DCA, and consideration given to expanding the graduated fee scheme if volumes and costs increase in other public law children work.

Recommendation 4.35: The Legal Services Commission should ensure the fee levels they are proposing for the new public law children scheme for solicitors is sustainable within the overall legal aid budget, and consistent with maintaining a good quality supplier base.

Recommendation 4.36: The Legal Services Commission should consider the possibility of tailoring family contract sizes in relation to quality. For instance, a firm with a high peer review score, who might be prepared to be subject to more stringent performance targets, could be offered an extended contract, e.g. up to five years, with a three year break clause to check their progress against targets. Equally, a firm with a low peer review score, but who are prepared to improve to meet more stringent standards, could be offered a shorter length of contract, to enable time to improve with close monitoring from the Legal Services Commission.

Recommendation 4.37: The Legal Services Commission should encourage growth in family provision through best value based bidding on contract sizes and length of contract by 2009, but subject to the need to maintain a variety of good quality, efficient suppliers within the family justice system.

Quality assurance

Recommendation 5.1: The Legal Services Commission, DCA and Law Society should agree an operational process and timetable by September 2006 for transfer of all quality assurance for solicitors by April 2009. The Legal Services Commission will need to be satisfied by the arrangements put in place for quality assurance by the Law Society before effecting a handover of responsibility.

Recommendation 5.2: Peer review should also be assessed before transfer to the Law Society in April 2009 to ensure that a high level of client service is being delivered, resources are being correctly used, and that the needs of the rest of the justice system are being met. Such an assessment should cover both client satisfaction and justice system partners, so that quality assurance includes the quality of firms' effective interaction with the wider justice system. The assessment should be undertaken in partnership by the Law Society, Legal Services Commission, Bar Council and judiciary by April 2009.

Recommendation 5.3: A proportionate system of quality monitoring based on the principles of peer review and a rounded appraisal system should be developed for all advocates working in the criminal, civil and family courts. This system should be developed through a process chaired by a member of the judiciary in partnership with the Bar Council, Law Society, Legal Services Commission and DCA to ensure it covers all advocates with relevant rights of audience in these courts. The new quality monitoring system should be developed in the first instance for publicly funded criminal advocates, then for publicly funded family and civil advocates, and ultimately for all advocates. The scheme for publicly funded criminal advocates should be in place by the time the new graduated fee schemes are implemented in the Crown Court in April 2007. The system should be subject to a full regulatory impact assessment before being implemented.

Diversity and choice

Recommendation 5.4: The Legal Services Commission and DCA should help sustain a diverse supply base for legal aid services by working closely with the legal profession to introduce the following measures:

- monitoring of ethnic data throughout all stages of the transition to the market structure in 2010 and beyond;
- regular monitoring of quality checks to ensure that they have no unintended discriminatory effects; and
- a requirement that all suppliers have in place an equal opportunity policy, including specific measurable characteristics, which is regularly reviewed and which is followed; the policy should include the promotion of diversity in the workforce and the capacity of the firm to work effectively with the diversity of the community in its area.

Recommendation 5.5: The Legal Services Commission should maintain resource to monitor, assess and promote diversity within its suppliers. The Legal Services Commission together with partners, including DCA, should create a wider diversity advisory group to report to the Lord Chancellor and LSC Commissioners on the state of diversity within the suppliers of legal aid services and make recommendations for improvements where necessary. The Legal Services Commission, Law Society and the Commission for Racial Equality should jointly review the number of black and minority ethnic firms, and the number, status and integration of black and minority ethnic practitioners within firms providing legal aid services.

Helping suppliers

Recommendation 5.6: The Legal Services Commission should include the methods and timing of making payments to suppliers as a factor when determining the length of contracts awarded under a best value tendering process.

Recommendation 5.7: The Legal Services Commission should set up a financial advisory group as a regular forum in which DCA, suppliers and bankers can discuss how best to promote the availability of loan and equity finance for the sector.

Recommendation 5.8: There should be established a grant programme through a growth and consolidation fund, lasting from April 2007 to March 2009, totalling no more than £4 million, and administered by the Law Society to provide support for the necessary assistance that firms delivering legal aid will need to enable them to restructure in a way that will allow them to compete for new contracts under the best value tendering process from 2009 onwards.

Recommendation 5.9: There should be established a match-funded grant programme through an information technology modernisation challenge fund lasting from April 2007 to March 2009, totalling no more than £6 million and administered by the Law Society to provide support for all firms providing at least £50,000 of legal services in 2005–06 to invest in information technology improvements to their businesses.

Integrated justice

Recommendation 5.10: The appropriate use of limited resources by all participants in the criminal justice system should be pursued and enforced by the judiciary in their management of all types of cases. Internal judicial training, through the Judicial Studies Board, should be expressly developed to ensure that the comments set out above become standard practice and are rigorously enforced, through for example, the quality assurance schemes. Training developments should build on the existing work of the Judicial Studies Board in the area of judicial case management and would provide a backdrop against which it should help the proposed reforms to become more effective. The relevant judicial training should be in place for all Circuit and High Court judges by April 2007.

Recommendation 5.11: A review of the effectiveness of judicial, prosecution and defence adherence to the principles set out in the disclosure protocol (Disclosure: A Protocol for the Control and Management of Unused Material, 20 February 2006) should be conducted by the existing High Cost Cases Review Board reporting by July 2007.

Recommendation 5.12: DCA and the judiciary should review the criteria and regulations that allow for the appointment of two counsel to ensure that representation orders are only granted for those cases that genuinely require two advocates and in particular what circumstances should permit the instruction of two junior counsel as opposed to a QC and junior counsel. The review should be completed by October 2006 so that guidance can be issued and necessary changes to regulations made before the revised advocacy graduated fee scheme is introduced in April 2007.

Transparency

Recommendation 6.1: The Legal Services Commission should immediately move to set up dynamic management information systems by December 2006 so that they can effectively monitor and share key performance indicators relevant to the successful delivery of new procurement schemes.
Major indicators include the take-up of advice in the police station, proxies for case complexity in the magistrates' courts, differences between estimate of trial length and actual trial length for very high cost criminal cases. In civil and family, it could include the number of cases under legal help budget, or percentage of cases achieving significant benefit for the client or resolved without resort to court.

Recommendation 6.2: Using the new improved monitoring information, the Legal Services Commission should identify significant upward movements in unit cost and bring together all parties (using the mechanisms for stakeholder relations set out in Chapter 6) to secure shared understanding of the position and agreement to an adjustment down in price or other measures to bring unit cost back within the projected totals set out in Chapter 6 and in Annex 6.2.

Recommendation 6.3: DCA and its partners in the justice system should develop systems for ensuring a full understanding of volume pressures. The legal aid impact test is a good approach to ensuring that the volume implications of legislation or other deliberate changes in government policy are understood and quantified. It should be vigorously enforced through the government's collective agreement mechanisms. But it will need to be supplemented by a programme of research to ensure that volume pressures arising from subtler changes across the public services, for example in professional practice or rules of procedure, are better understood.
DCA should also work with the full support of the Cabinet Office and Her Majesty's Treasury to ensure that government collectively takes a balanced view of the costs and benefits of allowing legal aid volumes to rise. Where a volume increase is unavoidable or the consequence of a change in policy or practice which is desirable for the government as a whole, the government will need to accept that this will increase the total cost of the scheme and ensure additional funding is therefore made available. It will not be sustainable to offset increased costs from increased volumes through simple price cuts in the transition period and following the introduction of best value tendering in 2009-10 this will not be possible anyway.

Recommendation 6.4: Mechanisms for local information sharing and problem solving on legal aid should be established by the Legal Services Commission by April 2007 to promote opportunities for greater efficiency (or managing risks of inefficiency) which arise from practices and relationships in a particular place. For criminal legal aid the basis for such arrangements should be for the Legal Services Commission to be represented on local criminal justice boards supported by local defence practitioner feedback arrangements. Elsewhere, for example, local family justice boards may be used for family legal aid.

Recommendation 6.5: DCA and the Legal Services Commission should establish improved stakeholder engagement arrangements giving the precise format and timing for quarterly meetings of the senior members and officials from the key groups to update one another on dynamic management information and quarterly forecast reviews so that the first quarterly update can take place by January 2007. An annual roundtable chaired by the Lord Chancellor should also be established for the lead figures in the major representative bodies and agencies to report and discuss the major strategic issues affecting legal aid.

1. Purpose of the review

Delivering a fairer deal for legal aid

1 This is the final report of an independent review led by Lord Carter of Coles and commissioned by Lord Falconer of Thoroton, the Lord Chancellor and Secretary of State for Constitutional Affairs.

2 The background for the review was set out in the government's command paper A Fairer Deal For Legal Aid, published by DCA in July 2005. The paper set out the need to improve the way that legal services were procured with legal aid, especially criminal defence services.

3 The paper underlined the importance of procurement changes, and stated that any changes in procurement must have regard to an understanding of the wider impacts on the justice system and the profession. It said reforms would need to ensure access to justice, deliver greater value for money and a sustainable supplier base.

4 The paper suggested a number of new procurement options including the possibility of introducing block contracts, the greater use of price competition, and adopting a lead supplier approach. All of these and other options have been considered during the review.

5 An interim report was published by Lord Carter in February this year. This report[1] set out the principles of a market-based approach to reforming criminal defence services, and provided the platform for the review's final report.

6 This final report is the culmination of 12 months of research, consultation and analysis. The report provides a plan to implement reforms to the way legal advice and representation are procured through legal aid by the state, as required in the Lord Chancellor's terms of reference for the review (see Annex 1.1 for the full terms of reference). A description of how the review was conducted, including a list of those consulted, is summarised in Annex 1.2.

The major issues and challenges

7 Building a new procurement system for legal aid within this remit has involved understanding four significant factors that make up the context and boundaries for the review. They are:

- maintaining access to good quality and efficient justice;
- operating in a complex multi-party justice system, that should provide access to justice for all and especially for the most vulnerable in our society;
- a public service delivered by the private sector that provides value for money, quality and client choice; and
- delivering justice, within fixed and compartmentalised budgets, which supports the aims of the justice system.

8 All of these challenges have an impact on each other and they are often the legacy, of the constitutional arrangements in England and Wales, evolved over generations.

Maintaining access to good quality and efficient justice

9 It is widely recognised that legal aid is an essential component of the justice system in England and Wales, which is one of the most highly regarded justice systems in the world. The effective operation of the legal aid scheme is necessary to ensure equal access to justice for those who may not otherwise be able to exercise their rights.

10 The foundation of the modern legal aid system is the Legal Aid and Advice Act 1949. It was one of the building blocks of the post-war welfare state. Throughout the 1950s there was a phased introduction of separate schemes for the provision of both civil and criminal legal aid. However, only a handful of cases were funded under the Act at that time.

[1] Procurement of Criminal Defence Services – Market-Based Reform, Lord Carter of Coles, February 2006

11 During the course of the 1960s – and almost continually since then – both the number of people receiving help and concomitant expenditure have increased. For example, in the magistrates' courts alone, costs have risen in real terms (2006 prices), from £6.9 million in 1966-67, to £117 million in 1982-83, to more than £334 million in 2005-06.

12 The total cost of the legal aid budget has risen from its negligible actual cost in the early 1960s to £1.5 billion by 1997, to over £2 billion this year.

13 It is clear that far more is spent on criminal defence in England and Wales than in other jurisdictions. An examination of legal aid expenditure is, however, in itself insufficient. For example, the very different demands of inquisitorial systems, such as those that operate in France and Germany, require less advice, assistance and representation in securing just outcomes. The review commissioned the University of Westminster to undertake research into criminal defence services in other jurisdictions. This research, which has been published online[2], found that legal aid spending per head was far greater than other jurisdictions, and even when the costs of the court systems in other countries were factored in, the spending in England and Wales remains significantly higher than other jurisdictions.

14 Of course, any comparison with other jurisdictions needs to be treated with caution, but the adversarial nature of the justice system in England and Wales appears to be a key contributory factor to the higher cost of justice here. There might be issues around the quality of justice delivered, but it is widely accepted that other jurisdictions would appear to be delivering justice at less cost than in England and Wales. This was confirmed by visits by members of the review to the Netherlands, Germany and the United States, where they spoke to justice system experts, including judiciary, lawyers, and public officials, about their respective systems.

15 Legal aid is used to procure independent advice, assistance and representation provided by the privately operated legal services sector in defined circumstances to ensure the effective resolution of legal issues, including a fair trial. The way legal aid is used to procure legal services for the eligible client can promote the earlier resolution of cases and help ensure that court proceedings are focussed on the key issues. Efficient and effective operation of the justice system through the use of legal aid also provides a better outcome for families in dispute, vulnerable people in care, victims, witnesses and defendants.

16 This report considers the issues and challenges arising in most kinds of criminal and non-criminal legal aid. The main exception is immigration and asylum cases, which have not been considered in detail as their handling has been the subject of detailed recent review.

Operating in a complex multi-party justice system

17 The system of justice in England and Wales operates in an adversarial forum where each party to a dispute argues out their case in front of an independent court or tribunal. Legal aid is used to fund the services for one or more of these parties. For example the defence of a client in a criminal case, one or all sides in a family dispute, or the representation of a person seeking redress for negligence or for having their rights infringed.

18 Delivering a more efficient legal aid procurement system requires greater predictability. The more that the requirements in individual cases are predictable, certain and standardised, the more that legal aid procurement arrangements can be predictable, certain and standardised – with benefits both to the government, suppliers and customers.

19 Reforms to any part of the justice system should recognise the fit between the provision of legal aid and the demands of the justice system, so that legal aid supports the drive to simplify, speed up and standardise processes, where possible and appropriate. The more that all parties can work together to make the most effective use of resources (police, prosecutors, social services, courts, judiciary, as well as lawyers) the more that the maximum possible productive use is made of all resources.

[2] http://www.legalaidprocurementreview.gov.uk

20 The nature of an adversarial system means that none of the active participants in the justice system has any responsibility to ensure that the overall result is the best possible allocation of public funding for society as a whole. Each participant can say that it has protected the interests entrusted to it and that the fault lies elsewhere. The result is exemplified by legal aid expenditure in very high cost cases. The optimum use of resources within the justice system is set out in more detail in Chapter 5.

A public service delivered by the private sector

21 In contrast to other public services introduced as part of the post-war welfare state, legal aid has never been a public service delivered directly by the public sector. There is some public sector involvement in the delivery of criminal defence services but this is very small and accounts for less than 1% of all criminal defence spending. There are examples in other countries where the public sector directly delivers publicly funded legal advice and representation (e.g. public defender services in the United States). However, there are very few advocates of such an approach in England and Wales. In line with wider government policy on public sector reform, the review has therefore focussed on how best to improve the way the current private market is structured to deliver value for taxpayers' money rather that replacing it with a public sector alternative

22 As in other parts of the public services, where the private sector is directly involved in delivering services, there is a clear expectation by parliament and the taxpayer that this should be done to optimal efficiency and delivered at the right quality. It is critical that quality of service is assured, especially in such a highly skilled and client-centred professional service as the law.

23 In recent years, quality assurance has been the responsibility of the professions and the Legal Services Commission. The Specialist Quality Mark awarded to solicitors firms have specific requirements to ensure competence. The Legal Services Commission assess performance through audit, bill assessment and contract management review, and will through the use of peer review directly measure, for the first time, the quality of advice. The Bar Council is also responsible for quality in the Bar through its regulatory and disciplinary structure, advocacy training, and traditional monitoring and discipline imposed by chambers and the circuit structure

24 The Legal Services Commission will continue to monitor performance in terms of contract compliance and bill assessment. They should also set minimum acceptable standards but the responsibility for quality assurance in the future should be within the control of the professional regulatory bodies. Further detail can be found in Chapter 5.

25 Choice is also seen as an integral part of the legal system. The right for clients to choose their legal representative is considered to be critical to both the commercial viability of suppliers and the confidence and co-operation of clients in the justice system. The current legal framework provides eligible clients in criminal cases with the right to choose any representative, provided they choose either a member of the public defender service or a privately operated firm that holds a General Criminal Contract from the Legal Services Commission, and the travel times are not excessive. There is a similar scope to choose a representative in civil and family legal aid.

26 At present, suppliers do not compete on price, but firms compete with one another to gain new clients or retain existing ones, and therefore the income generated by clients. Competition tends to be on the basis of reputation. Similarly, barristers compete with one another to demonstrate to those firms, and their clients, that by instructing them they will receive the best advocacy service.

27 Chapter 2 describes in more detail how the current private market of suppliers is structured to deliver legal aid services.

Delivering within a limited budget

28 Access to justice through legal aid is not an unlimited free good. Legal services procured through legal aid are delivered with finite resources which need to be managed within the government's three year spending regime and judged alongside other priority areas, such as health and education. The challenge is to ensure access to justice within available resources, and to make the best possible use of the budget so that it supports the aims of the justice system. However, in recent years, driven by the growth in criminal legal aid, the legal aid budget has grown considerably. This has not been due to increasing volumes of work but increasing average costs. The Lord Chancellor has stated that his priority is to bring the growth of criminal legal aid under greater control in order to ease the resulting pressure on the courts and civil and family legal aid budgets.

29 Financial pressures caused by legal aid do not restrict themselves to DCA. These pressures have an impact across the justice system and have serious implications for the public and all concerned with the delivery of justice. It could mean that fewer cases will be resolved each year and the rate at which they are resolved will be slower.

30 There is a clear relationship between the operation of the wider justice system and the provision of legal aid. Regardless of the point of origin, the interdependent nature of the justice system means that inefficient behaviour in one area will inevitably be felt by all. As such it is vital that work is pursued to improve the fit between legal aid and the wider justice system within which it operates. Headway is already being made in this area, and it is vital that this work is vigorously pursued; from the formulation of strategic policy to behaviours at the frontline of delivery. Although the budgets for prosecutors, police, the courts, prisons and legal aid are separately administered, effective and consistent joint working is vital to enable processes to be streamlined, thus releasing benefits for all.

31 Decisions on the process and design of the justice system, often set out in departmental and judicial guidance, can no longer afford to be taken without regard to the resource implications for all the interests and stakeholders within the justice system. The relationship between the provision of legal aid and the operation of the justice system – particularly in its formal arena – is potentially a major contributor to getting legal aid funding on a more proportionate and controlled basis. That is why strategic responsibility for the whole of the justice system must be shared collectively at national and local levels.

32 Real progress has been made in the operation and performance of the criminal justice system to achieve collective responsibility, e.g. through the national criminal justice board and the 42 local criminal justice boards. By comparison, much more could still be done to create the same sense of collective responsibility for civil and family justice. In both arenas, if strategic responsibility is to work then the allocation of resources must also be explicitly within the remit of these collective arrangements. This is addressed, with recommendations, in Chapter 6.

Balancing the challenges to create a sustainable procurement system

33 Steps have been taken to improve efficiency in the provision of legal aid in the recent past – many of which were set out in DCA publications, A Fairer Deal for Legal Aid and A New Focus[3] – and some progress has been made in controlling expenditure. However, actual spending ran considerably ahead of forecasts. The exact reason for this overspend is difficult to identify – the system is dynamic, and it has not been possible to identify a single cause through examining the available management information. What is clear though is that this overspend is not the result of simple wastefulness, and that substantial procurement reform has a vital role in putting the provision of legal aid on a sustainable footing.

34 The new procurement schemes for legal aid recommended in this report should enable better control and management of legal aid and so deliver a sustainable financial profile for the future. But this will not be enough in its own right. Continuing reform to improve the efficiency and effectiveness of the way the justice system operates is equally important.

[3] A New Focus for Civil Legal Aid, Legal Services Commission, October 2005

Criteria and conditions for a successful outcome

Quality, value, access

35 The aim of the review can be summed up as securing value for money without compromising quality and access to legal advice. This means creating a procurement system that pays fair prices for good quality and efficient legal services to all eligible clients.

36 From the outset it has been clear that a reform package would need to balance two criteria for achieving this aim:

- sustainability of good quality, efficient suppliers – the procurement system must promote and sustain an optimal market of suppliers through out England and Wales; and
- managing within a budgetary envelope – the procurement system must be based on pricing for specified volumes of work that take account of available resources.

Dynamic and transparent data and management focussed on delivery

37 As is common with other areas of public service delivery, the pressures placed upon legal aid have to be managed within an agreed budget. This means it is very important that forecasts are based on fixed pricing and predicted volumes of work. Suppliers need to consider whether they can become more efficient and deliver better value for money for taxpayers.

38 The procurement system recommended in this report provides a way to achieve fixed pricing, set either by the government or the market. But it is conditional on DCA and the Legal Services Commission working closely with other government departments and agencies to ensure they have a clear and shared understanding of forecast volumes of work and the operation of the justice system.

39 In turn, other government departments and agencies must have an understanding of what pressures are being placed on legal aid. DCA should reach an understanding of shared risk with other departments. Recommendations for how this should be achieved are contained in Chapter 6.

40 And finally, DCA and the Legal Services Commission must transform the way they work, within controlled budgets and with the supplier base, both through individual contracts and relationships with the broader representative and regulatory bodies. Similarly, these representative and regulatory bodies (mainly the Law Society and Bar Council) must also examine their role in a reformed system and how they can better serve the needs of their members and the consumers of their services.

41 It is essential that all organisations rapidly recognise and implement the changes within their organisations to strengthen their capability and capacity for delivering the new procurement schemes and managing an orderly market transition. Recommendations of how this should be achieved are in Chapter 4 and Chapter 5.

Measures of success

42 In order to achieve the review's aim and balance the two factors of sustainability and fixed budgets, the package of procurement and associated reforms recommended in this report have been designed and tested against three questions:

- will each scheme, and the combined effect of the schemes, provide access to quality services with client confidence?
- will each scheme, and the combined effect of the schemes, lead to a structure for the suppliers that is profitable and vibrant?
- will each scheme promote greater efficiency and value for money for the taxpayer and enable more active management of demand for legal aid – both in the steady-state of a reformed system and during the transition?

43 Achieving positive answers to the first two of these questions should produce the sustainability of good quality suppliers that is essential for the long-term future of legal aid.

44 Making sure the schemes are affordable will rely on the dynamic monitoring and management described above and recommended in Chapter 6. Managing expenditure in a world of finite resources is a critical task in any modern, reformed public service, including legal aid.

45 Designing a new procurement system to try and achieve these measures of success has been extremely difficult and has inevitably led to tough choices. The legal aid system is highly complex and deals with extremely sensitive and constitutionally important issues, critical to the rights and freedoms of all citizens. The people who work in it are committed and professional in what they do.

46 But the public rightly demands that these professional services are structured in a way that delivers full effectiveness. Public funds must only be used to procure good quality services at a fair price, otherwise finite budgets come under pressure and tough choices have to be made about access to justice.

47 The new procurement system recommended in this report has been designed to procure only from suppliers who structure themselves to deliver the most efficient good quality services, whilst recognising that those structures will be dependent on local market conditions, and the particular needs and diversity of local communities.

Structure of the report

48 The structure of the report follows the iterative approach taken by the review. It reflects the research used to determine key issues conducted at the start of the review, the development of ideas and solutions to these issues, and the negotiations regarding the proposed reforms as the review completed.

49 Chapter 2 summarises the research and consultation process, examining the details of the current procurement system and identifying the most pressing issues. Chapter 3 outlines the options for finding solutions to these problems and then sets out a strategy for achieving a steady state for the legal aid market, taking into account the variability of the legal market and the need for managed transition to the new procurement framework.

50 Chapter 4 goes into the detail of the new procurement schemes, explaining the design of contracts and tendering processes for both criminal and civil and family legal aid. Chapter 5 examines the impacts to the current supplier base, and recommends methods of managing the transition to the new system.

51 Finally, Chapter 6 looks at the need for a sustainable management of the legal aid budget which better monitors prospective monetary and volume pressures, and continues to find best value for money for both the procurer and the client.

52 The annexes contain finer details omitted from the body of the report, such as the terms of reference, closer analysis and descriptions of the proposals, and the specific proposed fees and rates for the new criminal schemes.

2. The current procurement system, supplier market and wider justice system

Understanding the specific procurement, supply and systems issues

1 A detailed assessment of the need and priorities for reform to the procurement system was undertaken before considering specific reform options. A significant amount of time and effort was spent working with the Legal Services Commission, representative bodies, practitioners, members of the judiciary, as well as expert economists and accountants. The assessment examined:

- the way the current procurement schemes worked;
- existing plans for change;
- the state of the private market supplying legal aid services; and
- the effect the wider justice system was having on legal aid and specific procurement schemes.

2 This chapter outlines the findings of that assessment by first explaining and analysing the current legal aid procurement arrangements and expenditure, and highlighting key issues and areas of concern relevant to the review. The findings are presented separately for criminal legal aid, and then for civil and family legal aid as the schemes and issues are quite distinct.

3 The chapter goes on to consider the current position of the supplier base, and the risks to suppliers under the current legal aid procurement arrangements. The chapter sets out the case for a restructuring of the supplier base to improve its long-term sustainability and the associated risks of doing that.

4 The review commissioned research from a range of bodies to examine the legal aid market from various perspectives. The University of Westminster produced a report for the review that compared the legal aid sector in England and Wales to other jurisdictions. Business consultants from PKF conducted a survey of practitioners involving visits to firms and telephone surveys with firms and chambers. Otterburn Legal Consulting conducted further analysis of the PKF work and previous research.

5 It is important that the current procurement arrangements and state of the supplier base, and any restructuring, are placed within the context of the overall justice system. The chapter ends with an examination of some of the key issues for legal aid that arise from pressures elsewhere in the justice system.

The current procurement system

The Access to Justice Act and the Legal Services Commission

6 The Access to Justice Act 1999 made major changes to the legal aid scheme. This included the replacement of the Legal Aid Board with the Legal Services Commission in April 2000. The Commission is tasked with developing and maintaining both the Community Legal Service (CLS) for civil, immigration and family legal aid, and the Criminal Defence Service (CDS) for criminal legal aid.

7 The Commission's overarching aims are twofold. The first is to ensure that the CLS allows appropriate access to those services that meet citizens' needs. The second is that the CDS grants access to such advice, assistance and representation as the interests of justice require. To this end, the Commission is required to act as the procurer of legal aid services to ensure the provision of a high quality public service at a fair and efficient price.

The Criminal Defence Service procurement system

8 Since 2001-02, solicitors' firms wishing to carry out publicly funded criminal defence services have been required to obtain a General Criminal Contract from the Legal Services Commission. The General Criminal Contract includes the scope of work provided for by the contract and details the means through which all defence work is funded up to disposal in the magistrates' court.

9 For the vast majority of criminal defence work, firms access work through the police station when clients either choose their own solicitor or request a duty solicitor. Clients currently choose their own solicitor in approximately half of all cases. However, if a client asks for a solicitor, but does not know a named solicitor who can attend, they will be offered a solicitor from the duty solicitor scheme.

10 Under the duty solicitor scheme, solicitors are placed on a duty rota for a police station or a group of stations. When an individual in a police station requests a duty solicitor, a solicitor from the rota is called. Firms can be on multiple rotas, but there is a requirement that firms must be within a certain proximity of the relevant police station.

11 There are a number of different payment schemes depending on the type of work being undertaken, the key features of which are detailed in the following paragraphs.

Police station schemes

12 Police station work includes all work undertaken for a client during the criminal investigation of a matter up until the point at which the client is charged or summonsed for the matter under investigation. This falls into the criminal investigations class of a General Criminal Contract. Advice and assistance in police stations is paid for on an hourly basis, as is travel and waiting. All suppliers are paid the same basic remuneration rates (higher in London). They vary according to whether the solicitor is a duty solicitor or 'own' solicitor, at what hour they are called to the police station, and the seriousness of the offence. The hourly rate therefore ranges from £52 up to £80. There are also separate hourly rates for travel and waiting, which again are subject to some variation, but range from approximately £30 to £70.

13 There are 1,645 police stations in England and Wales and solicitors working in police stations generate around 700,000 claims for legal aid annually. Of these approximately 20% are telephone advice and 80% are for attending and providing advice at the police station.

14 It is not possible to measure the volume of police station cases back beyond 2001-02 on a consistent basis because the way volume was measured has changed. However, the volume of police station advice rose from 616,366 in 2001-02 to 766,305 in 2005-06 – a 24% increase. Actual costs rose from £126.9 million to £171.2 million over the same period – a 35% increase. Travel and waiting increased from £55 million to £90 million between 2001-02 and 2005-06. The average cost of a claim varied considerably across different regions. For example, the average cost was £204 in Newcastle and Leeds, and was £349 in London.

15 In 2005-06 the average total cost of all attendance cases was £89,000 per police station. This figure varied considerably between individual stations, with one attracting total claims of only £36 and another claims totalling £1.8 million. Over 70% of police stations had total attendance costs of less than £50,000, whilst 6% of police stations had total attendance costs of more than £500,000 in a year. Around 26% of the value of all attendance costs were for travel and waiting 20% for travel, 6% for waiting.

16 In 91% of police stations travel and waiting accounted for between 10% and 40% of total attendance costs. Around 6% of police stations had travel and waiting claims of more than 40% of the total cost of attendance.

17 The number of suppliers serving a particular police station varies significantly. For example, the average number of suppliers per police station in Bristol was 31, compared to 85 in London.

18 The current police station scheme is largely structured on the basis of choices made by suppliers as to where they practice and the volume of work they provide. Firms can choose whether to provide duty and/or own solicitor work and, subject to contractual and regulatory rules, may choose which police station schemes they join.

19 As the majority of criminal defence work originates in the police station, firms that wish to maximise their market share of duty work are required to employ a number of duty solicitors and encourage them to join as many schemes as possible. In some areas this has resulted in schemes with many members and high travel costs.

20 The remuneration system is based largely upon inputs and time spent and therefore does not provide the best incentive to be efficient. Examples of potential inefficiencies are:

- uniform hourly rates do not allow the market to vary the price at which individual suppliers would be willing to supply services; and
- uniform hourly rates do not necessarily encourage suppliers to innovate in either the way they develop and deliver services to clients or how they run their business.

21 A procurement scheme based primarily on payment for inputs, such as time spent, letters written and phone calls received, could provide incentives to perform more work on a case than necessary to achieve a desirable outcome.

22 The current system does not allow work to be allocated to those suppliers offering the best value for money. It also does not allow such suppliers to benefit from their efficiency and control of costs by taking on more work at competitive prices. Unrestricted choice of suppliers independent of where they operate can lead to high expenditure on travel and waiting time. There are insufficient incentives for firms to reduce travel and waiting time.

Magistrates' court scheme

23 Magistrates' court work undertaken by solicitors' falls into the criminal proceedings class of work set out in the General Criminal Contract and covers all work undertaken for a client during criminal proceedings in a matter or case from the date of charge or summons.

24 Solicitors are paid for magistrates' court work in three categories according to standard fees. The first two categories separate guilty pleas and uncontested or discontinued proceedings from contested trials and cracked trials disposed of by a guilty plea or discontinued on the day of trial before the opening of the prosecution case. The third category covers work for cases being sent from the magistrates' court to the Crown Court.

25 There are two levels of standard fee, lower and higher. The level of standard fee for each category of work is determined by the amount of work the solicitor carries out for the case. If a solicitor's costs go above the limits set for the higher standard fee then their costs will be paid as assessed on an ex post facto basis.

26 In addition to the standard fee, there are also payments for travelling time, waiting time and disbursements such as translators.

27 The total cash cost of magistrates' work in 2005-06 was £324 million. The average increase in cost per case between 1997-98 and 2004-05 excluding travel and waiting has been 6% in cash terms. Travel and waiting made up approximately £50 million of expenditure in 2005-06. Solicitors working in magistrates' courts generate around 670,300 claims for legal aid each year. Over 90% of the value of these claims was for representation work.

28 Of the representation claims, 80% were paid at the lower standard fee rate, 14% were paid at the higher standard fee rate, and 5% were paid at the ex post facto arrangements. Waiting costs make up a slightly higher proportion of the average claim for lower standard fee cases.

29 This scheme has worked well in containing cost, with relatively little increase in the cost per case in profit cost terms. However, there has been a substantial and disproportionate increase in travel and waiting costs. The system does not incentivise firms to minimise these costs.

30 Of course there are limits to which costs in either travel or waiting can be reduced, but firms have not yet had incentives to organise their businesses to secure economies in these areas. The current fee system, which is a hybrid, with both hourly rate and fixed elements has proved effective. There is evidence that some firms do organise their business to maximise higher fees at the risk of making the running of the magistrates' court less effective than it could be. The cost of running this system is inevitably higher than a pure fixed or graduated fee scheme.

Litigation in the Crown Court

31 Most litigation services performed by solicitors in the Crown Court are currently paid on an ex post facto basis where solicitors carry out work at an hourly rate, and then submit their bill for assessment at the end of the case.

32 Some cases are remunerated by a standard fee scheme that was introduced in 1998. It was to cover cases of one to two days trial and some guilty pleas. However, almost 50% of the eligible cases avail of an escape clause to ex post facto determination. Total spending for 2002-03 was £12.3 million falling to £10.8 million in 2004-05.

33 Court staff attached either to the court or to the National Taxing Teams assess the individual claims and pay such sums as they think reasonable, for work they consider has been reasonably undertaken. Regulations prescribe the hourly rates for the various grades of fee earners used in solicitors' firms, but the assessment of the reasonable number of hours and the number and grade of fee earners used on a case is not subject to any pre-set limit.

34 This system of remuneration has proved to be expensive. From 1997-98 to 2004-05 there had been an increase in real terms of 86% in the Crown Court. The Legal Services Commission have been developing a graduated fee scheme for litigators at the Crown Court since 2005 to allow for greater certainty and control of this area of expenditure.

35 The current ex post facto system pays for work considered to have been actually and reasonably done and can take account of exceptional factors. However, the current system does little to reward efficiency as firms are paid for inputs (hours worked) rather than outputs (throughput of cases). There is, therefore, an incentive to work as many hours as possible on each case. Maximising the hours worked could mean that the criminal justice system as a whole does not operate as efficiently as possible, as there is no incentive for litigators to secure the earliest possible disposal of individual cases or minimise duplication with the work done by advocates. In contrast to a graduated fee regime, the current system provides little certainty for firms in both the timing of payment and the final amount that might be allowed by the determining officer as costs are only assessed after the event.

36 A graduated fee scheme would provide suppliers with a fee for a case that is not connected to the number of hours they work but to the complexity of the case. This would allow those suppliers who are most efficient to benefit financially from their efficiencies.

37 By remunerating litigators through a graduated fee scheme, case fees will be linked to the formula rather than the length of time spent preparing the case. This will offer a financial reward to those practitioners who seek early resolution to cases where appropriate. Currently the efficient practitioner who manages to dispose of a case efficiently in circumstances where this is the right course of action, will receive less in case fees than the inefficient practitioner who does not succeed in addressing case issues efficiently. However, under a graduated fee scheme they would be able to retain those unspent funds from the case fee as additional profit.

38 In addition, given that the additional payments in a graduated fee scheme for pages of prosecution evidence and days at trial are a good proxy for complexity, those cases that are genuine complex cases and require greater input from a practitioner will receive a proportionately higher total case fee.

Advocacy in the Crown Court

39 Since October 2005, all advocacy work (performed by barristers and solicitor-advocates) on new cases committed, sent or transferred to the Crown Court (except very high cost cases – see below) has been paid through a graduated fee scheme. The graduated fee scheme payment is calculated by applying a formula made up of a base fee (that varies with advocate type and offence type), uplifts for length of trial, a daily refresher (that varies with advocate type and offence type), uplifts for number of pages of prosecution evidence and number of prosecution witnesses, and a range of additional payments to cover smaller events (e.g. sentencing hearings) and preparation activities (e.g. viewing video tapes).

40 The advocacy graduated fee scheme was introduced in 1997 to remunerate the advocacy element for all cases that went to trial for 1-10 days. Longer cases and most cases that cracked or had guilty pleas were remunerated separately through the ex post facto scheme. This scheme required advocates to submit a bill at the conclusion of the case, which would then be assessed by the National Taxing Team and paid on an hourly rates basis.

41 Since 1997 the scheme has been progressively extended to capture more cases so that since October 2005 all cases including guilty pleas and cracked trials are covered (except very high cost cases with trials lasting 41 days or over). In that time total cash spending on advocates in all Crown Court cases (including very high cost cases) has increased by 78% from 1997–98 to October 2005. This growth has arisen from cases paid under the old ex post facto arrangements.

42 The graduated fee scheme provides certainty for both the purchaser and suppliers of advocacy services. Fees are fixed by a formula that is clear and understood by all, and payment is made promptly. However, the number of 'bolt-on' fees paid in addition to the basic fee make the system cumbersome, and leads to misconceptions about rates. The fees for additional work are not fees in themselves, rather they represent part of the overall graduated fee for whole cases. The graduated fee scheme scheme better rewards efficiency and encourage advocates to bring cases to a timely disposal.

Very high cost cases

43 Very high cost cases are managed under contracts by the Complex Crime Unit at the Legal Services Commission. The Complex Crime Unit was established in 2001 in response to the rapidly growing expenditure being incurred in long and complex cases. It is widely recognised that the method of paying the lawyers – ex post facto determination – was unable to exercise any control over the spiralling cost of these cases. It is estimated that almost 50% of defence costs in the Crown Court were being spent on just 1% of the cases and the cost of these cases was increasing by 15% year on year.

44 The primary difference between the Complex Crime Unit scheme and the old ex post facto system is that work is now agreed in advance and there are fixed rates for advocates preparation and court attendance. The unit works to control costs by ensuring that:

- only necessary work is done;
- it is done by the right level of fee earner;
- it is done in a timely manner; and
- unnecessary duplication of work between the defence team is eliminated.

45 Cases are managed through three monthly stage plans and paid on the basis of different hourly rates for team members (solicitors and barristers) with different levels of experience. The rates that are paid depend upon which of four categories of seriousness and complexity the case falls into. Category one cases attract the highest rates and category four cases attract the lowest rates.

46 Initially the unit only contracted a limited number of cases. There were two criteria for whether a case was contracted or not. Firstly, if the case were to go to trial and would be expected to last

at least 25 days it would be considered for contract. Secondly, if the preparation of the case was expected to incur costs of £150,000 or greater it would also be considered. By meeting either one of these criteria the case could be brought under contract.

47 Following discussions between DCA and the Bar Council in August 2004, the criteria to be applied when considering a case for contract changed to cover cases where trial is expected to exceed 40 days.

48 Table 2.1 below details the total number of contracts signed each year, the number of live contracts and the total spend incurred. In 2003-04 the majority of contracts were signed in the second half of the year, and from 2 August 2004 the notification criterion changed to trial estimate over 40 days.

Table 2.1 – Volume of very high cost case contracts and associated expenditure

Year	Contracts signed	Live contacts	Total spend £ million
2002–03	43	43	15
2003–04	558	548	41
2004–05	480	756	96
2005–06	394	773	103

Source: Legal Services Commission

49 According to the Legal Services Commission 2004-05 annual report, the Complex Crime Unit made savings of £46 million on that years spend. The unit employs approximately 42 staff and incurs a total cost of £1.7 million per year to run. It has offices in London, Birmingham, Leeds and Liverpool.

50 The structural strengths of the very high cost cases system are that defence teams are paid only for work that has been agreed in advance as being reasonable for that particular defence client. Claims are supported by attendance notes or detailed work logs, and contract managers will assess proposed work to avoid duplication and encourage delegation across the defence team, and will compare cost proposals on generic issues with other contracts on the same case. However as suppliers are paid on hourly rates, apart from advocacy, for work done within agreed tasks there is no in-built incentive for suppliers to improve efficiency.

51 Although the current system of hourly rates is more structurally effective than ex post facto settlements – as firms are compelled to justify and negotiate for work on an ongoing basis – there is still no systemic incentive for defence teams to innovate and work efficiently. As payment is on an hourly basis (rather than an output measure paying by task), teams can profit through seeking to agree and claim for work which would do little to progress the defence case if judged objectively by their peers. This drives up costs by remunerating defence teams for work that does not help progress the defence's case.

52 As such, cost control is heavily dependent on the skill and experience of contract managers in negotiating unreasonable costs down. They are supported in this task by training, supervision, best practice guidelines and the contract specification. They also have the discretion to decline unreasonable requests, in which case, defence teams have the right of appeal to a panel of peers. The cost management process presently lacks the ability to compare defence costs on individual contracts across a case to influence future negotiation. This will be addressed by the proposal to recruit experienced lawyers into the Complex Crime Unit.

Court of Appeal and other schemes

53 Fees for legal aid work in the Court of Appeal (Criminal) and the other higher courts (advice and assistance in Courts-Martial Appeal Court, or in appeals from the Court of Appeal to the House of Lords where the appeal is not lodged with the House of Lords) are assessed by the court after the case has concluded using the prescribed hourly rates and the fee regimes that are used in the Crown Court ex post facto scheme.

54 This ex post facto regime shares the disadvantages of the current Crown Court litigation scheme described above. However, the volume of cases here is much smaller and costs are assessed by a small team at the Royal Courts of Justice who are able to assess relative fees much more easily than colleagues assessing Crown Court bills across England and Wales. As the total spend here is such a small proportion of legal aid spend, and as the system appears to be working well, changes have not been considered by the review.

The Community Legal Service procurement schemes

Legal help

55 Civil, family and immigration legal aid suppliers are awarded a General Civil Contract by the Legal Services Commission, which is granted within specific categories of law. The General Civil Contract operates under two mechanisms: controlled work and licensed work.

56 Controlled work covers the provision of general legal advice from contracted solicitors or legal advisers (legal help in civil, family and immigration, and controlled legal representation, which applies only in the areas of immigration and mental health). The Commission sets the number of cases the supplier is authorised to start in a particular year and the number of hours of direct casework time for not for profit agencies.

57 Legal help involves taking instructions and giving initial advice and assistance. Legal help cash costs went from £143 million in 1997-98 (2005 prices) to £182 million in 2005-06, an increase of 27%. This is despite the fact that certain categories of work (including business cases and most personal injury claims) were removed from the scope of legal aid in 2000.

58 Most civil legal help provided by solicitors' firms is remunerated under the tailored fixed fee scheme. The scheme pays fixed amounts per case (matter start) based on firms' average costs per case in the year 2003-04, plus an uplift of 2.5%.

59 The tailored fixed fee scheme varies by firm and category and includes disbursements and counsel's fees. Additional payments can be made for exceptional cases, which cost three times the tailored fixed fee or £2,500 (whichever is the lower) and are out of profile with previous claims. The Legal Services Commission also pays any increase in overall average disbursement costs, and the tailored fixed fee can be adjusted down if the firm's total costs at hourly rates fall below 80% of their total tailored fixed fee payments in any category over any 6 month period. Those firms with less than 10 claims in any category are paid the average tailored fixed fee for that category within the region.

60 There are exceptions to the tailored fixed fee scheme for legal help. Firms doing mental health work can choose whether to include their work in the tailored fixed fee scheme or work at hourly rates. It is also noted the tailored fixed fee scheme does not cover cases of patients subject to Part 3 of the Mental Health Act 1983. Work under the immigration contract continues to be paid at hourly rates.

61 Legal help provided by not for profit organisations is paid for on a funded post model, rather than through tailored fixed fees per case as for solicitors. The model is based on a target of 1,100 hours controlled work per year for each funded post. The payment for each post does not vary by category. It is calculated as follows:

- salary of caseworker – using local authority pay scales;
- running costs – a flat rate of £10,907 (£9,578 outside London); and
- start up costs – £7,330 (£6,548 outside London) for first 1,100 hours and £2,728 (£2,416 outside London) for each additional 1,100 hours are paid when agency first enters into contract.

62 Case disbursements for example, expert reports or interpreters are paid in addition and do not form part of the funding formula.

63 The contracting arrangements for legal help described above have been successful in directing expenditure to priorities and improving quality. However, current remuneration schemes do not sufficiently reward efficient suppliers. The tailored fixed fee scheme (which was only ever intended to be a transitional measure prior to the introduction of standard fees) has been successful in limiting cost increases but maintains price differentials that reward the most expensive firms. The not for profit funding model, since it pays the same regardless of the number of cases started, does not always incentivise effective working. None of the current arrangements encourage the delivery of a seamless service.

64 The improvements in quality have come at the price of reinforcing the tendency for firms and not for profit agencies to concentrate on particular sections of law, so there is now a declining number of family suppliers undertaking social welfare work. Furthermore, the increasing concentration of social welfare law services in not for profit agencies has further fragmented the delivery of civil law advice, despite the real improvements in access to benefits and debt advice that have arisen because of their involvement in civil legal aid. The fragmented delivery of services is a barrier to early resolution of problems and thus could be argued to be a barrier to the efficient interaction between civil and family advice and the rest of the civil and family justice systems. Such fragmentation ensures that clients' needs are not met efficiently.

Licensed work

65 Licensed work covers all other civil and family legal representation except for high cost civil cases. There is no limit on the amount of casework that can be done. Applications for funding must be made in each individual case. Funding is decided based on the client's financial eligibility and the merits of the case. Legal representation in civil categories, under licensed work, is paid for entirely on a case-by-case basis using hourly and item rates.

66 At an assessor's discretion, an enhancement of up to 100% can be claimed on top of the published rates. In the High Court, an enhancement of up to 200% can be claimed. Disbursements and counsel fees are also claimed in addition to the hourly rates. In civil cases, where the case is successful and the opponent pays costs, the solicitor is paid at inter-parties rates rather than legal aid rates.

67 In family work, legal representation is paid for on a hourly basis once court proceedings have been initiated. The rates depend on the type of case, within three categories. The rules that decide which cases fall into each of the three categories are complex. Each category has a slightly different set of rates.

68 Civil and family licensed work cash costs went from £773 million in 1997-98 (2005 prices) to £547 million in 2005-06, a fall of 29%. The reduction can be traced to the removal of scope of certain categories of cases following the Access to Justice Act, though some categories of work, notably child care within family public law, have increased in cost substantially as noted elsewhere.

69 The system of licensed work, particularly the changes in scope, and criteria for granting legal aid set out in the funding code, has kept down overall costs and ensured expenditure is focussed on priority cases that have merit. The funding code has also created an increased emphasis on suitable alternatives being explored before litigation is taken. Payment by hourly rates however, does not reward efficient working, and the differential between controlled and licensed rates can create an incentive to move to litigation.

Family graduated fee scheme

70 Within licensed work, one graduated fee scheme, paying fixed rates in a number of broad categories of work, has applied since 2001 for advocacy by counsel. There are four categories of graduated fee that apply depending on the type of case. The categories are as follows:

- category 1 – family injunctions (domestic violence);
- category 2 – in respect of public law children proceedings;
- category 3 – in respect of private law children proceedings; and
- category 4 – ancillary relief and all other family proceedings (a general category which includes all financial cases).

71 In each category there are five functions (units of work):

- pre-action and written advice work;
- injunctions and enforcement;

- interim hearings – including straightforward directions hearings, substantial case management hearings, financial dispute resolution hearings in court conciliation, and contested hearings over where a child should live, or how much contact a parent should have in the period before the final hearing;
- conferences – other than conferences at court which are included in the base fee for the hearing; and
- final hearings.

72 There is a fixed fee for each function in the different categories with some variation in amount for different types of work. This fee is capable of fixed increases in cases where specific defined elements of complexity exist, provided that those complexity elements are certified by the judge as being of substance and relevance to the hearing. They are known as special issue payments. Special issue payments are only payable if the trial judge countersigns a form saying that they were of substance and relevance to the hearing. The barristers submit their claims for payment to the Legal Services Commission when one of the five functions is completed. Payments are generally received more quickly than they were before the system was introduced.

73 Family graduated fee cash costs went from £40 million in 2002-03 (2005 prices) to £88 million in 2005-06. The scheme has been reviewed since it was designed and the fee levels adjusted accordingly. The revised scheme and rates (as above) was introduced in 2005, and has largely been accepted by the family Bar.

74 In cases in the family proceedings court, where counsel has been instructed, but no certificate nor subsequent justification for counsel has been issued, the fee paid will be limited to the maximum the solicitor would have received had they undertaken all the work themselves. This is to avoid duplication of payment.

High cost civil and family cases

75 The Special Cases Unit was set up by the Legal Services Commission in April 2000 to manage high cost civil and family cases. The Special Cases Unit controls the funding of civil cases where costs will exceed £25,000. The unit manages these cases under individual case contracts, deciding which cases should be funded on merits and what prices should be paid.

76 When the Special Cases Unit was established, around 0.5% of cases were consuming 15% of civil legal aid funding. However, the unit has been successful in gaining greater control over this cohort of cases, and the Legal Services Commission now spends around £60 million per year on an estimated 1,800 high cost civil and family cases. Nearly half of the cases managed by the Special Cases Unit fall under the heading of Public Law Children Act cases. The next largest area is clinical negligence, and other cases covered include multi-party actions, damages actions against other public bodies, and judicial review cases.

77 The cash costs for high cost civil and family cases went from £106 million in 2000-01 (2005 prices) to £56 million in 2005-06, a decrease of 47%. Of this approximately £17 million of the reduction was due to categories of work that are now excluded from funding under the Access to Justice Act, which includes categories such as personal injury and business related cases.

78 The Special Cases Unit controls have improved success rates and reduced net cost to the fund. This has happened in a number of ways, detailed as follows.

79 First, cases are subject to a higher level of scrutiny by legally qualified staff in the Special Cases Unit. Suppliers provide case plans setting out in detail the merits and costs of cases for the case manager to consider along with key expert reports and evidence. The Special Cases Unit obtains independent expert and barrister reports in novel and complex cases to enable more accurate decisions to be made.

80 Second, the incentive payment regime where providers are paid less for unsuccessful cases

incentivise the supplier to select cases effectively. It results in lower costs to the fund in losing cases.

81 Third, the exclusive panel of specialist suppliers in clinical negligence work subject to performance measurement, has achieved better selection of cases by suppliers. This will be built on in the preferred supplier scheme.

Solicitors' firms – their role and an assessment of the current supply market

Criminal defence services

82 Criminal defence solicitors provide a range of advice and representation services, and there is a wide range of structures for firms operating criminal defence services. However, the core structures can typically be described as follows:

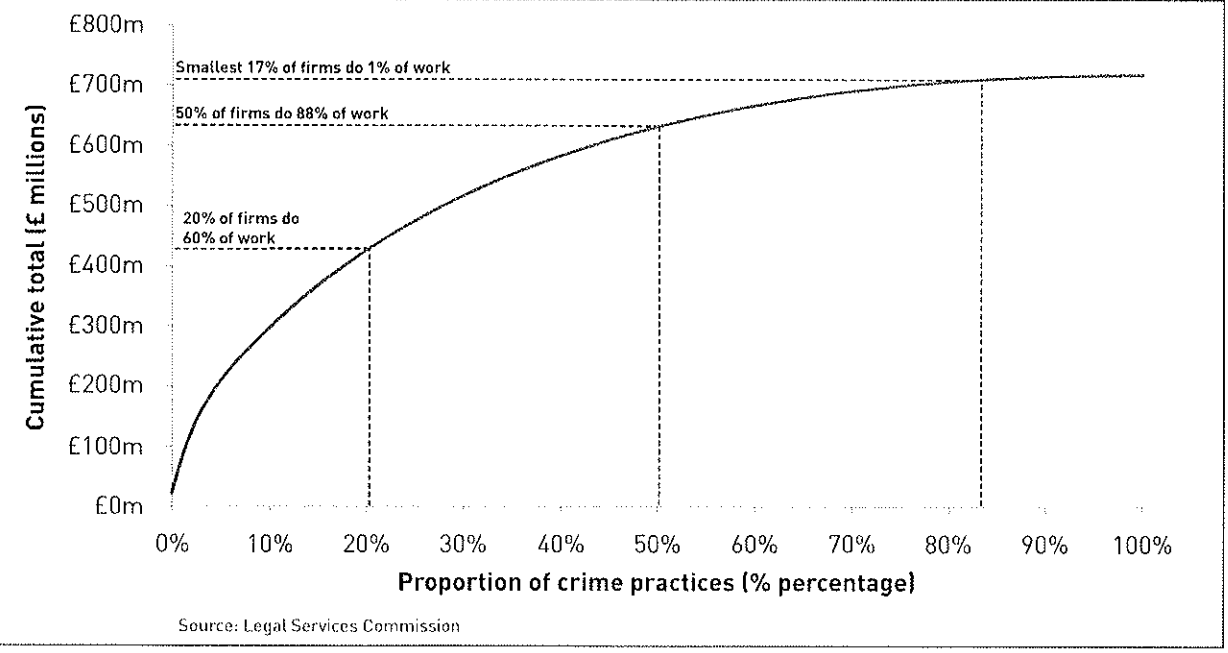
- whole system suppliers – offering a full range of defence services in the police stations, magistrates' court and Crown Court;
- volume suppliers – focussing on police, magistrates' and volume Crown Court work;
- niche suppliers – focussing primarily on high value Crown Court work; and
- mixed practice suppliers – carrying out a mix of criminal, civil and/or family work.

83 Firms access criminal defence work in a number of ways including duty solicitor slots in the police station, repeat work from previous clients, and referral work.

84 Figures 2.1 and 2.2 illustrates the distribution of income for criminal defence work across solicitors' firms. Approximately 2,200 firms claimed for criminal defence work in 2004-05. Of these, 720 (33%) received income of less than £100,000 for criminal defence work. 131 firms had turnover in excess of £1 million from criminal defence work. Overall, 88% of criminal defence work was undertaken by 50% of criminal practices

85 Figure 2.3 shows the distribution of crime work for suppliers that do relatively small amounts of legal aid work. There is a group of very small legal practices – over 120 suppliers receive less than £10,000 per year for criminal defence work – but otherwise the distribution of crime work for firms earning less than £100,000 is relatively even. Although these firms have small crime practices, they are not necessarily small firms overall. The 120 firms with less than £10,000 crime work per year

Figure 2.1 – Value of crime work done by legal aid firms

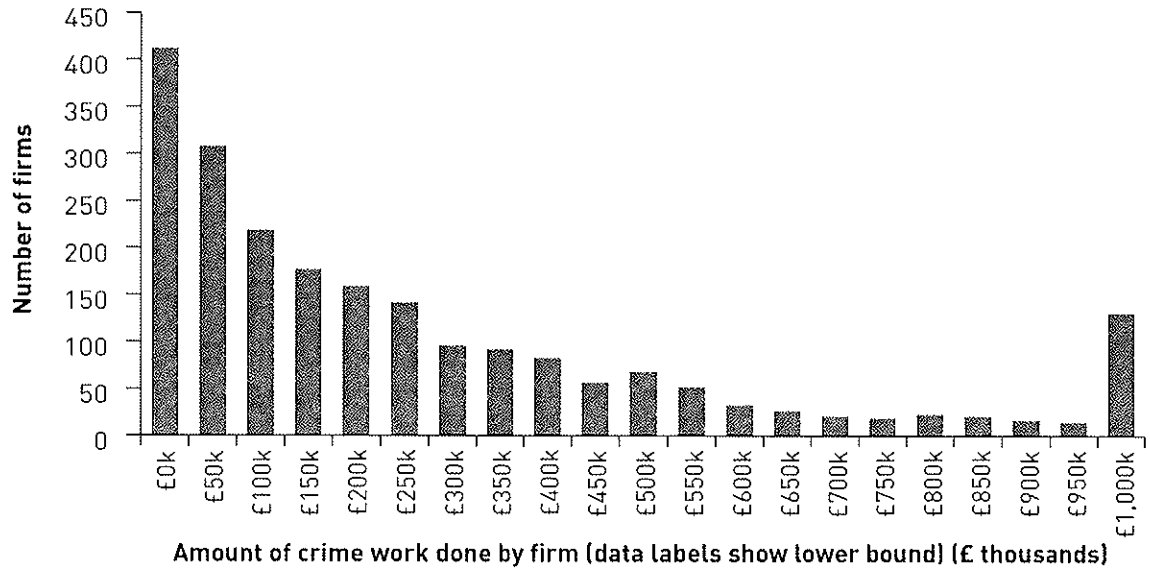


Source: Legal Services Commission

receive just over £500,000 for crime work between them. However, the same firms received a total of £25 million for family and civil work, giving them average total legal aid revenues of almost £200,000 per firm.

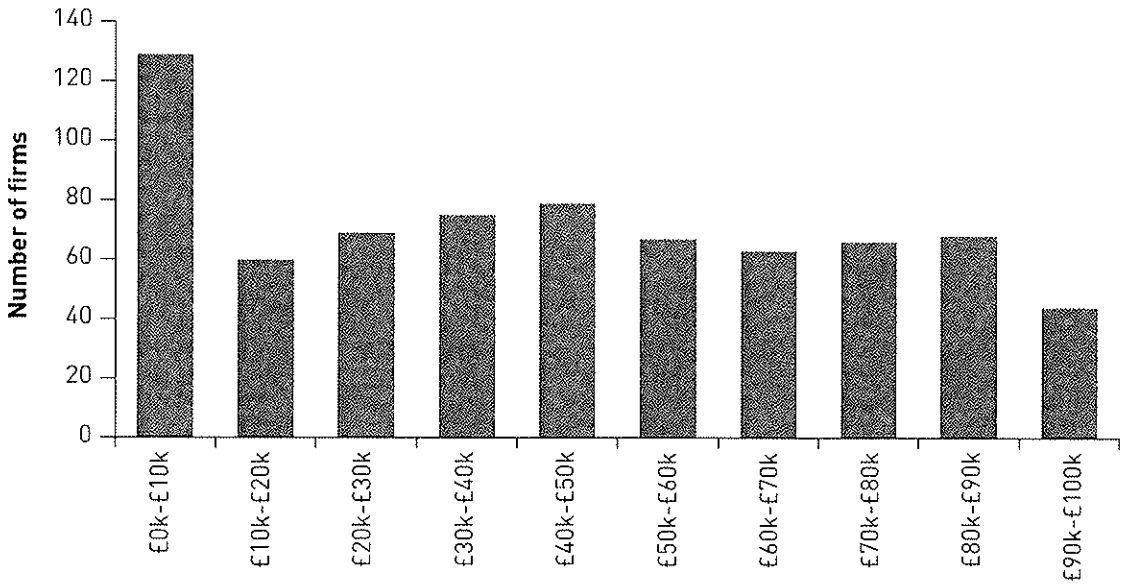
86 Graphs illustrating the distribution of spending by region can be found online[4]. Overall, the distribution of spending is similar in all regions. However, London and Merseyside have a greater than average number of large firms, while the South

Figure 2.2 – Size distribution of suppliers undertaking criminal defence work



Source: Legal Services Commission

Figure 2.3 – Distribution of crime work done by legal aid firms earning less than £100,000



Source: Legal Services Commission

[4] http://www.legalaidprocurementreview.gov.uk

West, South East, Yorkshire and Humberside and Wales have a large number of small firms.

87 In London, firms receiving more than £1 million for crime work accounted for 47% of all crime work, compared with 31% nationally. Consequently, although the number of firms with small amounts for legal aid revenues in London is comparable with the national picture, they receive a lower than average share of total regional revenue.

88 In Merseyside, only 33% of firms received less than £250,000 for their crime work, compared with 59% nationally, and they received just 7% of the legal aid budget (17% nationally). Equally, one in seven firms in Merseyside received more than £1 million for crime work, compared with one in seventeen nationally.

89 Firms receiving more than £1 million account for 12 % of crime work in the South West, 10% in the South East and Yorkshire and Humberside, and 6% in Wales, compared with 31% nationally. In these regions, smaller firms receive a proportionately higher share of revenues.

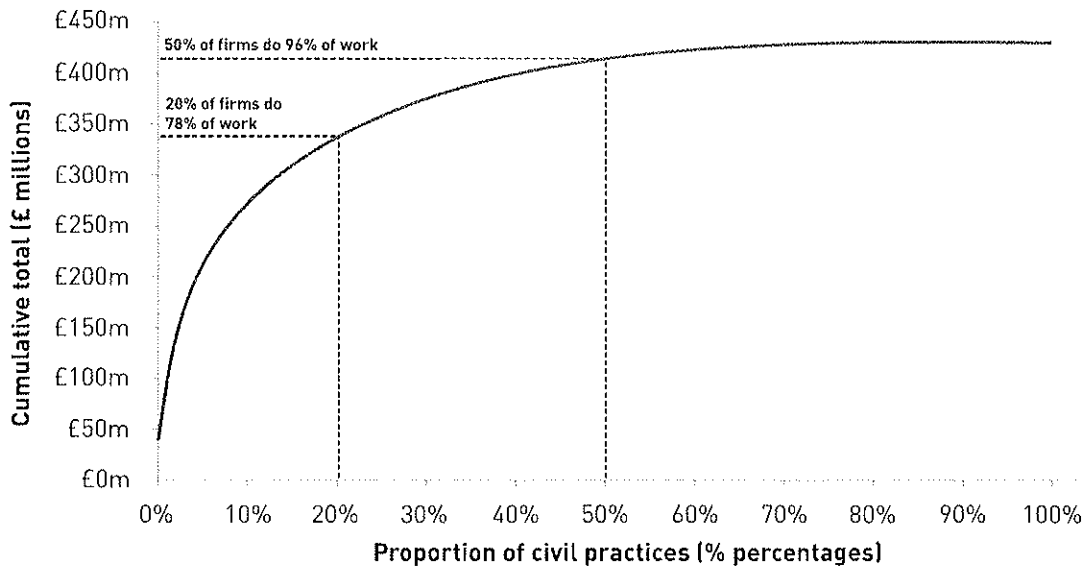
Community Legal Service (civil) – solicitors' firms

90 There are 12 different categories of civil law funded by the Legal Services Commission. As with crime suppliers, there is a wide range of types of supplier. Many firms providing some advice in this area will have a contract in either crime or family work. However, they are quite likely to provide civil work though a 'tolerance' rather than a category specific contract. They may also, particularly those with family contracts, have substantial private client practices. The size of the firm's private practice may well be larger than the legal aid practice.

91 Just over 3,000 firms and not-for profit organisations (73% of all suppliers undertaking some form of legal aid work) carried out civil, family and immigration legal aid work in 2004-05. Their total revenue for this work was £428 million (26% of all legal aid expenditure).

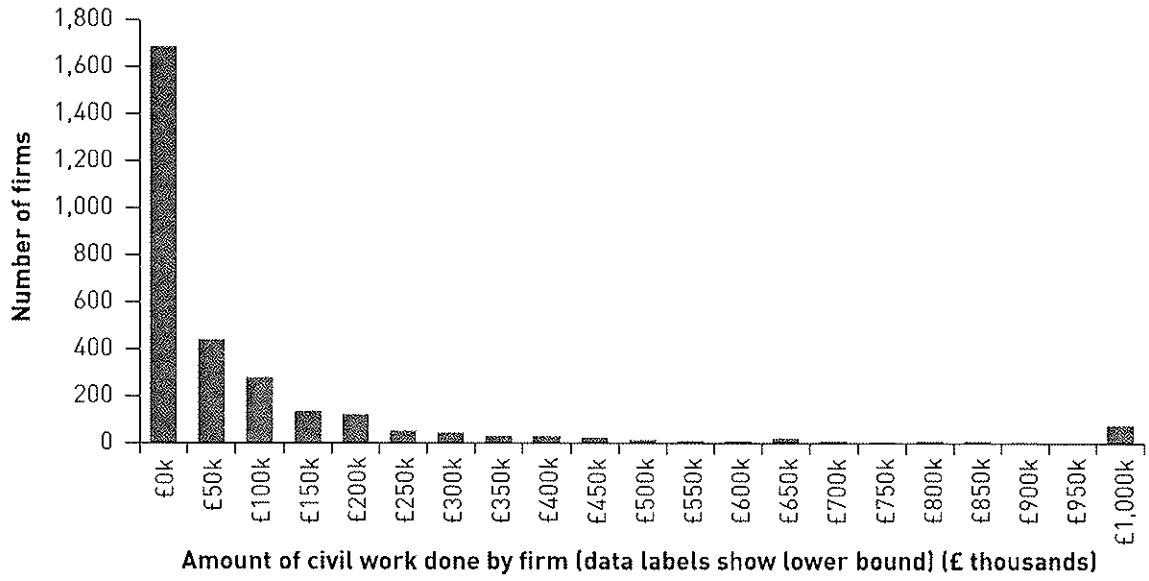
92 Figure 2.4 shows that civil work is slightly more concentrated than criminal defence work. The figure shows that 50% of suppliers carried out 96% of the work. In absolute terms, this means that 1,500 firms between them accounted for just £16 million of civil legal aid spending: claiming on average less than £11,000 each for legal aid work.

Figure 2.4 – Value of civil work done by legal aid firms (including not for profit agencies)



Source: Legal Services Commission

Figure 2.5 – Size distribution of firms and not for profit suppliers providing civil legal aid services

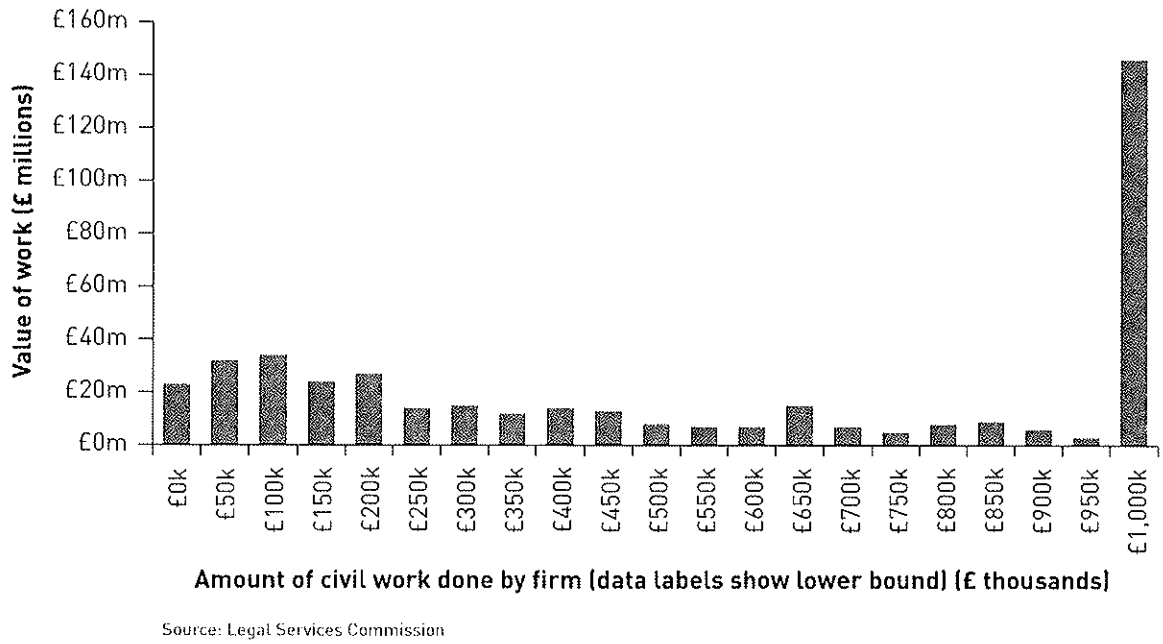


Source: Legal Services Commission

93 Figure 2.5 shows the size distribution of firms. It shows a very large number of firms doing only small amounts of civil work. Almost 1,700 firms, over half the number of firms doing some civil work, received less than £50,000. However, there were also 77 firms which received more than £1 million.

94 Figure 2.6 shows the revenue received by firms for civil work. It shows that over a third of expenditure was received by the 3% of firms which received more than £1 million. By contrast, firms receiving less than £50,000 received just 5% of the total legal aid civil budget.

Figure 2.6 – Revenue profile for firms and not for profit suppliers providing civil legal aid services



Source: Legal Services Commission

95 Graphs illustrating the distribution of spending by each region can be found online[5]. In the North East, firms with small revenues from legal aid work occur more frequently than they do nationally. Firms receiving less than £200,000 accounted for 40% of the total spend compared with 26% nationally. The same is also broadly true in Wales, where these firms account for 47% of the total spend, the South (44%) and the South West (43%).

96 Conversely, firms earning more than £1 million had significant market share in Yorkshire and Humberside, where they received 55% of spend (compared to 34% nationally and 42% in London).

Community Legal Service (family) – solicitors' firms

97 Family solicitors provide a range of advice and representation services within the Community Legal Service procurement schemes. The majority of work undertaken is licensed rather than legal help and proportionately more so in the field of public law children work. The core structures for firms offering publicly funded family legal services are typically:

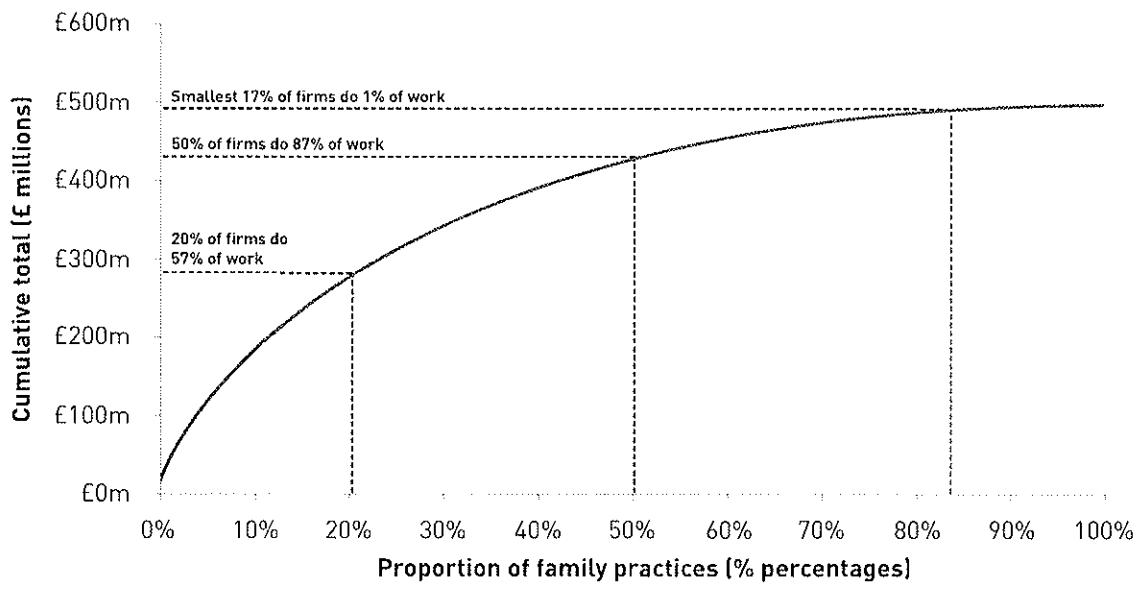
- mixed practices undertaking a mixture of private client and publicly funded work, which may be also be mixed with other categories of law;
- mixed publicly funded practice suppliers – carrying out a mix of family (public law and private law), criminal and/or civil work;
- family only suppliers – undertaking only family – private client, private law, publicly funded private and public law; and
- niche suppliers (including sole practitioners) – focussing primarily on either private law or public law children work.

98 There were approximately 2,500 firms (61% of all suppliers undertaking some form of legal aid work) engaged in family legal aid work in 2004-05. Their total revenue for this work was £494 million (30% of all legal aid expenditure).

99 As can be seen in Figure 2.7, this work is relatively concentrated. The largest 100 firms carried out approximately 20% of the work. Each of these firms generating at least £600,000 of family legal aid work.

100 Figure 2.8 shows the distribution of family work by firm. It shows that the distribution is still heavily skewed, with many firms receiving small revenues from legal aid work.

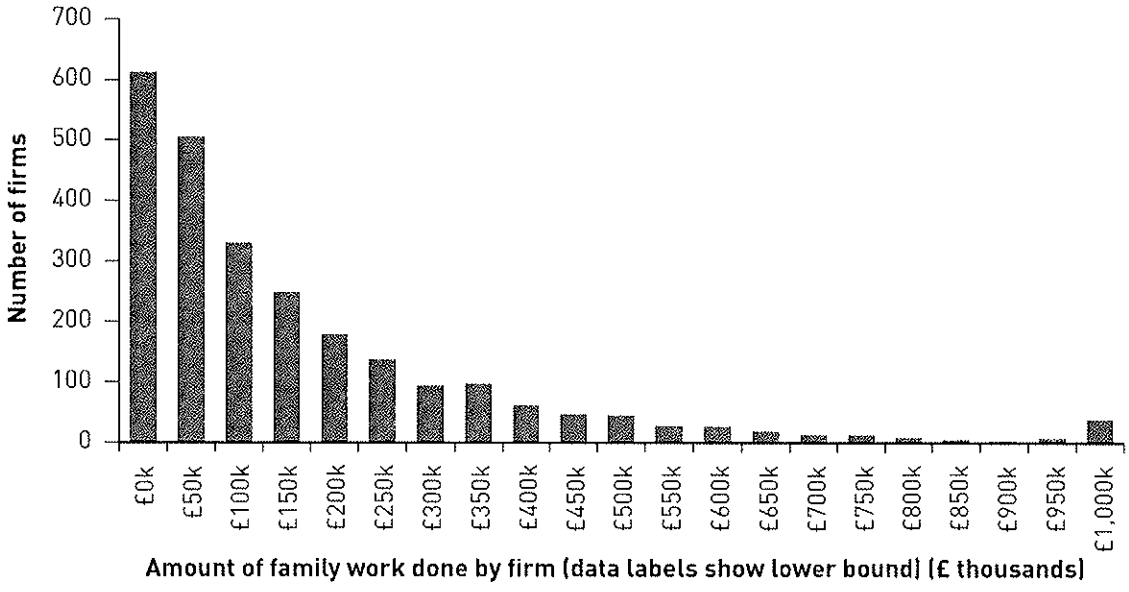
Figure 2.7 – Revenue profile for firms providing family legal aid services



Source: Legal Services Commission

[5] http://www.legalaidprocurementreview.gov.uk

Figure 2.8 – Size distribution of firms providing family legal aid services

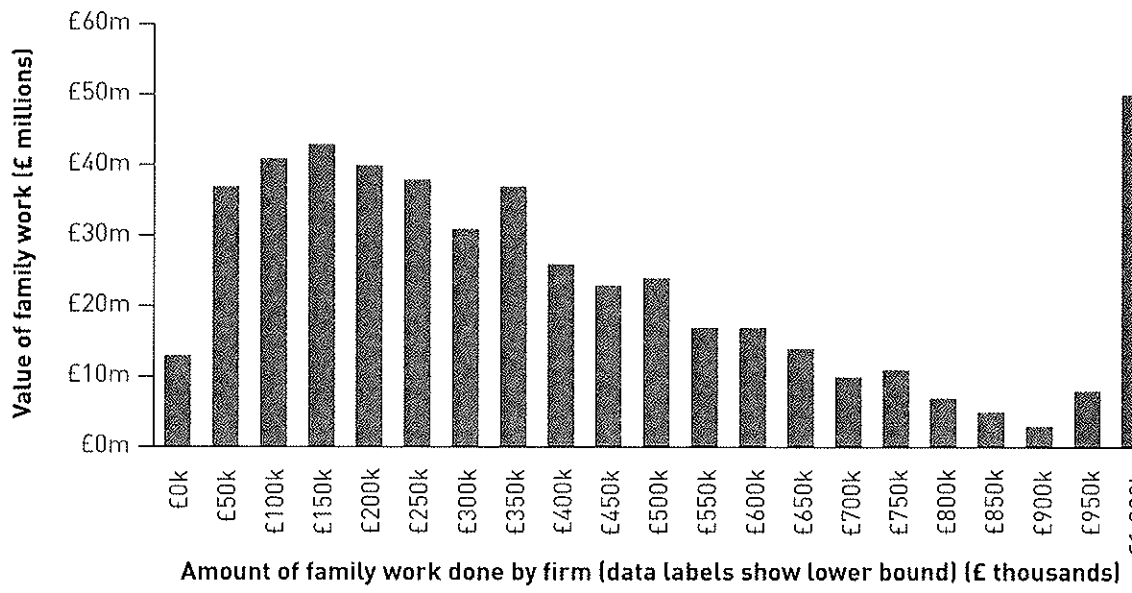


Source: Legal Services Commission

101 Figure 2.9 shows the revenues these firms received for family work. It shows that firms receiving large revenues from legal aid work occur somewhat less frequently for family work than for either crime or civil work. Approximately 25% of family work was done by firms receiving at least £600,000 for their family work. In contrast, around half of all crime and civil work was done by firms that received at least £600,000 for crime and civil work respectively.

102 The national picture for the distribution of family work between firms is slightly less concentrated than for either crime or civil work, but still shows half of all firms doing over 85% of the work.

Figure 2.9 – Revenue profile for firms providing family legal aid services



Source: Legal Services Commission

103 Graphs illustrating the distribution of spending by each region can be found online[6]. As for other types of work, London firms tend to be larger than those elsewhere in the country. 29% of family work in London is done by firms receiving at least £750,000, compared with 17% nationally. Likewise, only 32% of family work is done by firms receiving less than £300,000 (43% nationally).

104 Some regions have a greater number of firms with small amounts of legal aid revenues compared to the national distribution. In particular, 54% of work is done by firms receiving less than £300,000 for family work in the North East and in Wales and 50% in the East region compared with 43% nationally.

Revenue profiles of firms undertaking a mix of legal aid work

The national picture

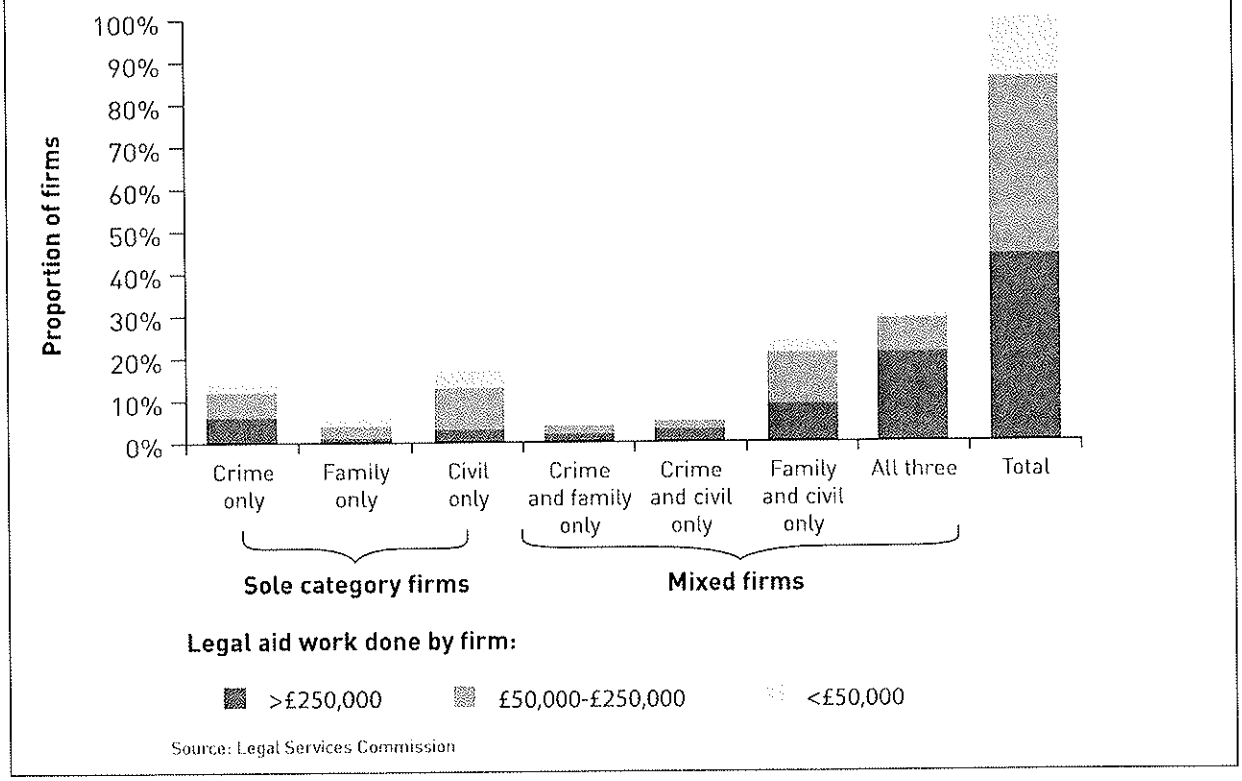
105 There are almost 4,100 suppliers of legal aid work. Over 2,500 firms (62%) engaged in more than one type of legal aid work (crime, family and civil) in 2004-05. These mixed firms received total revenues for all types of work of £1,301 million (79% of all legal aid expenditure). The other 1,500 firms who do just one type of work were together responsible for £337 million (21% of all legal aid expenditure).

106 Of the 1,500 firms who do one category of law, most do so in crime or civil work. There are 597 crime firms and 776 civil suppliers. By contrast, just 218 firms do only family work. However, most of the civil only suppliers are not for profit agencies, excluding them, there are only 236 civil only firms. There are 597 crime only firms.

107 Most firms do family and civil work. 961 firms did family and civil work (but no crime) while 1,188 did crime as well. Conversely, only 168 firms did just crime and family work and only 219 firms did just crime and civil work.

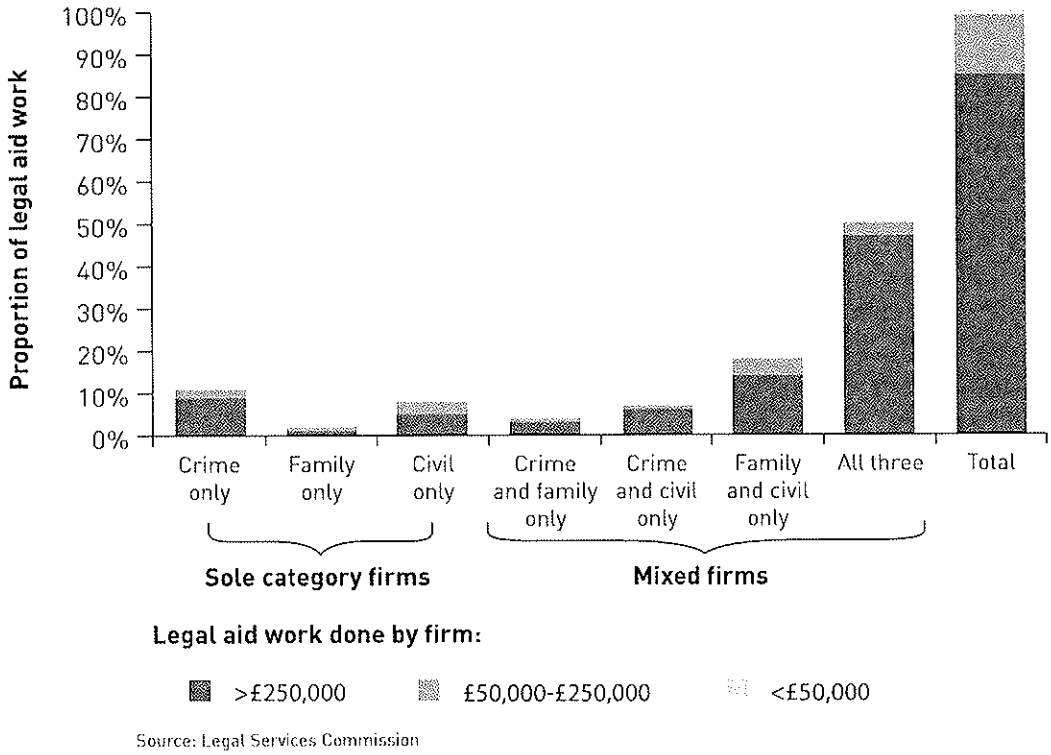
108 Firms who do one category of law tend to be smaller than other firms. Although these firms make up 38% of the supplier base by number, they account for 21% of the legal aid budget. On average, each sole category firm receives £226,000 in legal aid revenues, less than half the £513,000 the average

Figure 2.10 – Proportion of firms providing a mix of legal aid work with revenue profile



[6] http://www.legalaidprocurementreview.gov.uk

Figure 2.11 – Proportion of legal aid work provided by a mix of firms with revenue profiles



Source: Legal Services Commission

mixed firm receives. Family only firms tend to receive particularly small amounts of legal aid revenue, around £129,000 on average. By contrast, firms which do all three types of work received on average £695,000 in legal aid revenues, and accounted for over half the total legal aid budget.

The regional picture

109 The distribution of firms is very similar in each of the regions. In all regions, mixed firms providing crime, civil and family work are the largest single group of suppliers. Similarly, family only suppliers, and firms providing just crime and family work are rare everywhere, whether counted by number of suppliers or by value of work. The number and importance of crime and civil only suppliers varies slightly more across the country.

110 Firms in the North East and Wales are more likely to undertake a mix of all three types of work than elsewhere in the country. In the North East, this is balanced by an unusually small number of specialist firms, while in Wales it is balanced by very few firms doing crime and civil, but not family work, or family and civil work, but not crime.

111 In Liverpool, the proportion of firms falling in each category is in line with the national average, but a slightly higher proportion of work is done by large mixed firms than elsewhere.

112 In London, more work is done by civil only suppliers, or crime and civil firms than elsewhere in the country. This is reflected in fewer firms doing a mix of all three types of work.

The structure of solicitors' firms

113 The analysis by PKF shows that legal aid work is currently procured in a piecemeal manner and firms are structured to meet demand on this basis. This and other evidence suggests that the current procurement system does not reward or promote optimal efficient structures for local supplier markets.

114 There is a widely-held recognition of a high level of non-productive time and duplication of effort most of which is a consequence of the way the justice system operates and is outside the control of firms. An increasing burden of administration was also increasing the costs of delivery.

115 Although there is a great variation in the shape of firms and the range of services they offer, they are typically partnerships with a mix of equity to non-equity ratios. There are two main models for firms that undertake crime work:

- a process approach whereby work is passed to individuals most suited to that work based on grade and experience; and
- a more traditional approach where an individual or single team is responsible for a case from beginning to end.

116 The traditional approach does not tailor resources to the task, but is less likely to incur duplication of effort.

117 There is a very large variation in information technology investment, with consequent variations in the efficiencies that firms can achieve. The FreshMinds survey found that spending ranged from £0 to £3.8 million, with the average being £100,000. The survey also found that around 90% of solicitors use time management software; practice management software was used by around 60%; and IT for case management by about 60%.

118 While 29% of firms in the FreshMinds survey said they continued to undertake crime work so as to provide a full service to clients, nearly 50% of firms thought that the biggest change affecting the market would be closure of criminal departments. Some 22% thought there would be a pooling of resources in the future either through merger or consolidation.

119 The average firm in the FreshMinds survey (242 respondents) had more staff undertaking criminal work compared to family and civil work. Average staffing was as in Table 2.2.

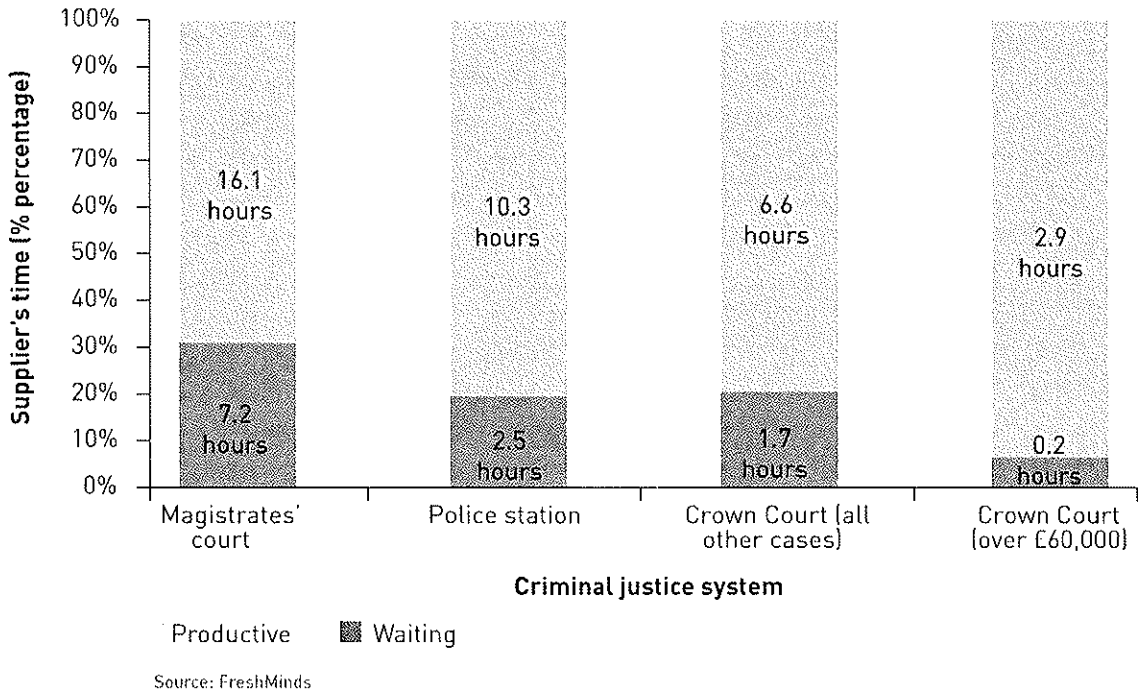
120 In the context of criminal legal aid work, a firm will spend around 50% of its time on magistrates' courts activity, 28% on police station work and the remainder at Crown Court. However, in an average working week about 24% of time could be classified as unproductive 'waiting' time. In Crown Court cases under £60,000 some 20% of time is made up of waiting, but in cases over £60,000 non-productive time accounts for only 7% of time.

Table 2.2 – Average staffing levels for different types of legal aid firms

Type	Crime	Civil	Family	Other	Total
Equity partners	1.5	0.9	0.8	1.3	4
Non-equity partners	1.5	1.2	0.8	1.5	4.9
Qualified fee earners	3	2.1	1.9	2.8	8.6
Non-qualified fee earners	2.5	1.3	0.8	1.4	5.3
Trainees	0.6	0.5	0.3	0.5	1.8
Administrative and other	2.9	1.8	2.4	7	15.1
Total	**11.9**	**7.7**	**7**	**14.6**	**39.7**

Source: FreshMinds

Figure 2.12 – Allocation of suppliers time into productive and non-productive elements in different parts of the criminal justice system



Source: FreshMinds

The profitability of solicitors' firms – identifying optimal structures

121 A key issue for the review has been identifying the optimal structure for firms in terms of costs, quality, efficiency and profitability. In developing an understanding of this issue, the review has drawn on a wide range of existing evidence, and has commissioned work from both PKF and Otterburn Legal Consulting to examine the issues of firm behaviour and structure in detail. A summary of the findings of both the newly commissioned and existing research can be found online.[7]

122 This section provides a brief summary of the overall conclusions, before providing a more detailed summary of the Otterburn work, which focused in detail on the relationship between the structure of firms and their costs and profitability. In summary,

[7] http://www.legalaidprocurementreview.gov.uk

the key findings from the evidence examined are as follows:

- there is a need for substantial reform of the procurement system – legal aid firms consistently report that they are at the edge of profitability. Firms also believe that, under the current system, there will be many closures of criminal practices, or consolidation;
- there are many elements of the system that impose costs and inefficiencies. A key one of these is the bureaucracy involved in the current procurement system;
- legal aid firms are amongst the most efficient of legal firms – particularly those that are crime only firms – but there remains scope for further efficiency gains in many firms. For example, management information and information technology – firm investment in these activities could lead to substantial efficiencies. However, they need to be combined with changes on the part of the Legal Services Commission in the way it interacts with firms;
- there are some firms that are able to make reasonable profits per equity partner from carrying out legal aid work. These firms appear to have a number of common features: higher levels of gearing; higher levels of chargeable hours; a relatively low overhead base; and a specialism in criminal legal aid; and
- typically, firms with larger numbers of fee earners tend to be more profitable.

123 Otterburn Legal Consulting was asked to validate and analyse data collected by the market research firm FreshMinds. FreshMinds were commissioned to conduct a large scale survey of legal aid firms in November–December 2005. A key limitation of the FreshMinds data was the small number of large crime firms that chose to take part. Consequently, a second survey was undertaken by Otterburn Legal Consulting of the top 100 crime firms.

124 A key objective of the Otterburn analysis was to consider how different firm structures impacted on costs. Consequently, the analysis examined and reported costs for different sizes of firm (1-5, 6-12, 13-40 and 40+ fee earners). It is important to note, as mentioned above, that two different surveys were carried out; one by FreshMinds and a second by Otterburn, which focused on the top 100 crime firms.

125 Care must be taken in making direct comparison between the two surveys because the samples, methodology and assumptions used in the two surveys were different, in particular with regard to chargeable hours. The composition of the two samples was also very different – in the first survey, for example, only 20% of the firms with 13-40 firms undertook crime work, whereas in the second survey crime represented 94% of the fees of these firms.

126 Costs are reported on a per hour basis – a standard measure used, for example, by the Law Society in its research. Costs were calculated using both reported chargeable hours and assumed chargeable hours. The latter measure was used to help identify differences in the underlying costs of different types of firm, by allowing like for like cost comparisons across the firms. Specifically, the question this comparison addresses is, for the same level of input per fee earner, which type of firm can achieve the lowest costs.

127 The analysis of the FreshMinds data finds that, when compared on a like for like basis – using assumed hours per fee earner – firms with 13-40 fee earners have the lowest costs per hour. However, when costs per hour are measured on the basis of reported hours, firms with less than five fee earners have the lowest hourly cost – this appears to be driven by the high chargeable hours achieved by these firms. Firms with less than five fee earners report chargeable hours that are substantially higher per fee earner than firms with 6-12, 13-40 and 40+ fee earners. The analysis of costs across the second survey of the top 100 crime firms revealed that the 40+ fee earner firms had lower costs than the 13-40 fee earner firms.

128 The Otterburn work notes that costs per hour are higher in the second survey. However, it cautions that direct comparisons should not be drawn between the two samples, as the methodology and assumptions used in both are different.

129 Finally, the work suggests that firms that only provide criminal legal aid tend to have lower costs than firms that provide a mixed service. This appears to be because crime only suppliers do not require the same level of overhead as other types of firm. This is consistent with the findings from the PKF research.

130 A key finding of the Otterburn work is that many firms are on the edge of profitability. This includes some firms that have high gearing (ratio of equity partners to fee earners), effective systems and strong management.

131 However, the analysis finds that profitability does tend to vary considerably. Key trends that appear to emerge are that:

- profit per equity partner increases with the number of fee earners;
- the FreshMinds data shows that profit per equity partner increases from approximately £43,000 per equity partner for 1-5 fee earner firms to £65,000 for 13-40 fee earner firms and £140,000 for 40+ fee earner firms; and
- analysis of the larger crime firms shows a similar trend – 13-40 fee earner firms had a median profit per partner of £67,000, while 40+ firms had a median profit per partner of £139,000.

132 The analysis also identifies the characteristics of those firms earning 'reasonable profits per equity partner[8]:

- high levels of gearing, and a small number of equity partners;
- higher levels of unqualified fee earners;
- an expectation of higher chargeable hours;
- a relatively low overhead base; and
- a focus on criminal legal aid work

133 The analysis finds that 1-5 fee earner firms can achieve low costs if they can generate chargeable hours that are considerably higher per fee earner than for firms with greater numbers of fee earners. It also notes that these firms tend to offer a high level of client service.

134 However, Otterburn's view, based on the qualitative comments in the questionnaires, suggests that it is difficult to see how firms in this category can represent a sustainable long term model:

- they tended to have lower profits per equity partner;
- the average age of practitioners, particularly in crime, is increasing;
- they have greater difficulty recruiting staff at some levels – the work found that – young solicitors are often not attracted due to the long hours expected, poor pay, lack of security and poor public profile;
- they have difficulty developing the team structures that are key to cost effective working – due to recruitment difficulties, and also due to a lack of skill/inclination on the part of the partners;
- the firms find it hard to develop the necessary systems and procedure, or to invest in information technology; and
- the firms can be vulnerable to unexpected blows such as the loss of a key fee earner.

The work found that firms with larger numbers of fee earners and a more highly geared structure, can overcome the issues set out above:

- recruitment of certain levels of staff can be easier. These firms are often well known. They are often regarded as providing good training, and for young solicitors who wish to pursue a career in publicly funded work, can be good to have on their curriculum vitae;
- they have sufficient fee earners to be able to attract and justify the cost of specialist human resources and information technology staff;
- they are more likely to have the necessary resources and management structures to develop effective procedures and systems;

[8] The measure of profit used in the Otterburn work is profit per equity partner. This measure has been used as it appears to be the industry standard approach to assessing profitability.

- succession is often easier – there is a bigger pool of younger solicitors, and if the firms are profitable they are attractive to these people; and
- they are likely to be able to offer a wider range of services – family, housing, debt, crime, rather than the narrower areas of work that many smaller firms will be able to offer.

The capacity of firms to grow

135 In 2003, the report A Market Analysis of Legal Aid Services Provided by Solicitors was produced by Frontier Economics[9]. This was complemented by Otterburn Legal Consulting's Review of Demand, Supply and Purchasing Arrangements[10]. The Frontier report showed the potential for an excess supply of legal aided services provided by solicitors, and suggested that there was some flexibility within the current market to adapt to changes in the CLS.

136 Out of the firms surveyed as part of the Frontier research (which included criminal, civil and mixed firms), 16% said they would be willing to take on more work at current remuneration rates and that they would have the capacity to do so. A further 24% said that they would be willing to take on more work but would require additional resource (office space/staff) to do so. Frontier also found that there was a significant variation in the cost of delivering legal aid services. Frontier concluded that given the fact that some suppliers would be willing to take on more work, and that variety in costs was great, a procurement system which remunerated suppliers on the basis of prices they revealed would be likely to deliver greater value for money.

137 The Frontier report also considered firms' abilities to undertake activities other than legally aided work. Looking at the distinct economic markets for private and publicly funded areas of work, and between civil categories (including family), Frontier found that switching between private and publicly funded law was considered to be relatively easy by 70% of the responding firms. However, switching between categories of law was less easy, with 49% of firms saying it would be difficult to do so in response to market pressures. Frontier considered that within civil and family, it was likely that there are distinct economic markets for categories of law, such as mental health and public law children.

The not for profit sector – the current supply market

138 The not for profit sector includes a diverse range of agencies (Citizens Advice Bureaux, independent advice centres, and other community based organisations), offering a wide spread of services from general advice to more specialist legal advice by solicitors. There are over 2,000 advice service organisations, which provide a range of services throughout England and Wales[11].

139 Recent research by Matrix Research and Consultancy, attempted to estimate the size and nature of the civil and family legal advice sector in England and Wales[12]. The research revealed that the advice sector was worth around £5-7 billion, of which nearly two thirds was accounted for by not for profit organisations.

140 Local authorities are probably the largest funders of the not for profit advice sector[13]. However,

[9] 'A Market Analysis of Legal Aided Services Provided by Solicitors, a report prepared for the Department for Constitutional Affairs and the Legal Services Commission', December 2003, Frontier Economics Ltd., London

[10] 'Review of Demand, Supply and Purchasing Arrangements, Survey Of Legal Firms 2003', Otterburn Legal Consulting, Holmfirth, 2003

[11] The Advice Services Alliance, which is the umbrella organisation for independent advice networks in the UK, states in its literature that it represents over 2,000 organisations.

[12] Matrix Research and Consultancy 'Estimating the size and nature of the civil legal advice sector in England and Wales', DCA Research Series4/06, March 2006

[13] By way of example, from 2001-2004, Citizens Advice Bureaux received 50% of their funding from Local Authorities, compared to just 20% from the Legal Services Commission. Legal Services Commission, Making Legal Rights A Reality, the Legal Services Commission's Strategy for the Community Legal Service, Volume 2, An Overview of the Community Legal Service, July 2005, p. 25.

they each have different priorities, funding different types and levels of service, depending on local needs and demands. Since the establishment of the CLS fund, legal aid funding is perceived by the advice sector to have played an important role in increasing the capacity of the not for profit advice sector to provide specialist legal advice to their clients.

141 The number of not for profit contracts with the Legal Services Commission has grown from 360 in 2000 to 454 in 2005-06. In terms of the proportion of work being undertaken by this sector, not for profit agencies are now dominating advice provision in areas such as welfare benefits and debt. Not for profit organisations hold around 60% of contracts in debt and welfare benefits. However, they held less than 5% of contracts in family, actions against the police, clinical negligence, mental health, personal injury and public law. In family law, solicitors hold nearly 100% of the contracts.

142 The dominance of solicitors in some areas, and the not for profit sector in others is partly a result of the legal complexity of the issues typically presented in each area, and partly an historical arrangement, as some categories have traditionally been perceived as the preserve of solicitors. With a larger proportion of work being undertaken by the not for profit sector, and their dominance in some social welfare law categories, it is important that value for money be achieved.

143 Not for profit suppliers have higher average cost than solicitors in some categories of cases but not in others. This may reflect a different mix of cases or different degrees of efficiency at dealing with them. In the categories of debt and welfare benefits, where not for profit agencies hold the majority of contracts, their average cost is over £100 more per case than a solicitors' firm. In debt, not for profit agencies average cost is £332 per case, compared to £199 for solicitors' firms. In welfare benefits, not for profit agencies average cost is £352 per case, compared to £243 for solicitors' firms.

144 There are a number of possible explanations for this difference. Some of it is explained by the cost of 'underperformance' against the 1,100 hours target. Around £8 million per year is paid out to the not for profit sector for hours that are not performed. If this is taken out of the cost per case calculations then the differences narrow but remain significant in some categories, such as debt. In addition, not for profit agencies have far fewer licensed contracts than solicitors. Taking licensed work as a proxy for complexity (those cases going to court may tend to involve more complex legal issues), the issue of higher case costs becomes more acute.

145 There should be scope for greater efficiency in the way that not for profit organisations deliver legal advice services. The funded post model that applies to not for profit agencies may encourage inefficiency, as by paying for hours worked rather than cases completed it may encourage some caseworkers to spend more time on cases than is strictly necessary. This could mean fewer clients helped, and in an environment where ever more innovative means are being found to help more people access legal advice, it is essential that a good quality service is secured that provides maximum value for money.

Barristers and chambers – their role and an assessment of the current supply market

Distribution and supply of barristers' services

146 Although around 6,500 advocates in England and Wales provided an element of legal aid services in 2005-06, the majority of these advocates specialise in either civil (including family and immigration) or criminal work, and are self-employed referral advocates practising in chambers. Barristers are specialist advocates, and generally spend their time arguing cases in the courts, although they also give specialist advice, for example on the prospects of success of a civil case. In the context of legal aid, therefore, barristers are dependent on solicitors to instruct them – to argue a case in court, or to advise on it.

147 There is great variation in the type of work undertaken by chambers ranging from those who

Table 2.3 – Regional distribution of chambers and tenants

Region	Number of chambers	Total number of tenants
South East	163	12,442
Western Circuit	21	735
Wales & Chester	10	351
Northern	29	1,165
Midlands	18	793
North East	26	749
Total	**267**	**16,235**

Source: Bar Council

undertake privately funded work only to those that specialise in either criminal or civil legal aid. Equally there is a broad spectrum of remuneration for barristers undertaking legal aid work, from those who undertake a small number of legal aid cases in a year to those who work full time as legal aid practitioners.

148 Chambers rent will be the most significant overhead for many barristers. Other overheads include Continuing Professional Development course fees, insurance and practice certificate.

149 Work is allocated to barristers in a number of ways. Most commonly the senior clerk in chambers will allocate the majority of cases that have been referred to advocates. On more complex cases solicitors firms may request an individual advocate on the basis of reputation or previous working relationship.

150 There are numerous advocacy fee schemes in civil, family and criminal legal aid which are outlined earlier in this chapter. In 2000-01 barrister's fees for legal aid (both criminal, civil and family) totalled £440 million. By 2004-05 that had risen to £536 million.

151 The table above shows that barristers are heavily concentrated in London, which creates intense competition for work, particularly at the junior Bar and this in turn makes it difficult for some advocates to be fully employed in legal aid work. There are around 11,500 self-employed practising barristers. The difference in the total number of tenancies may be attributable to some barristers having tenancies in London and provincial chambers.

152 One of the recurring themes that emerged in discussions with barristers was the perceived low income of its junior members. There are three issues that influence this perception or the level of junior barristers income:

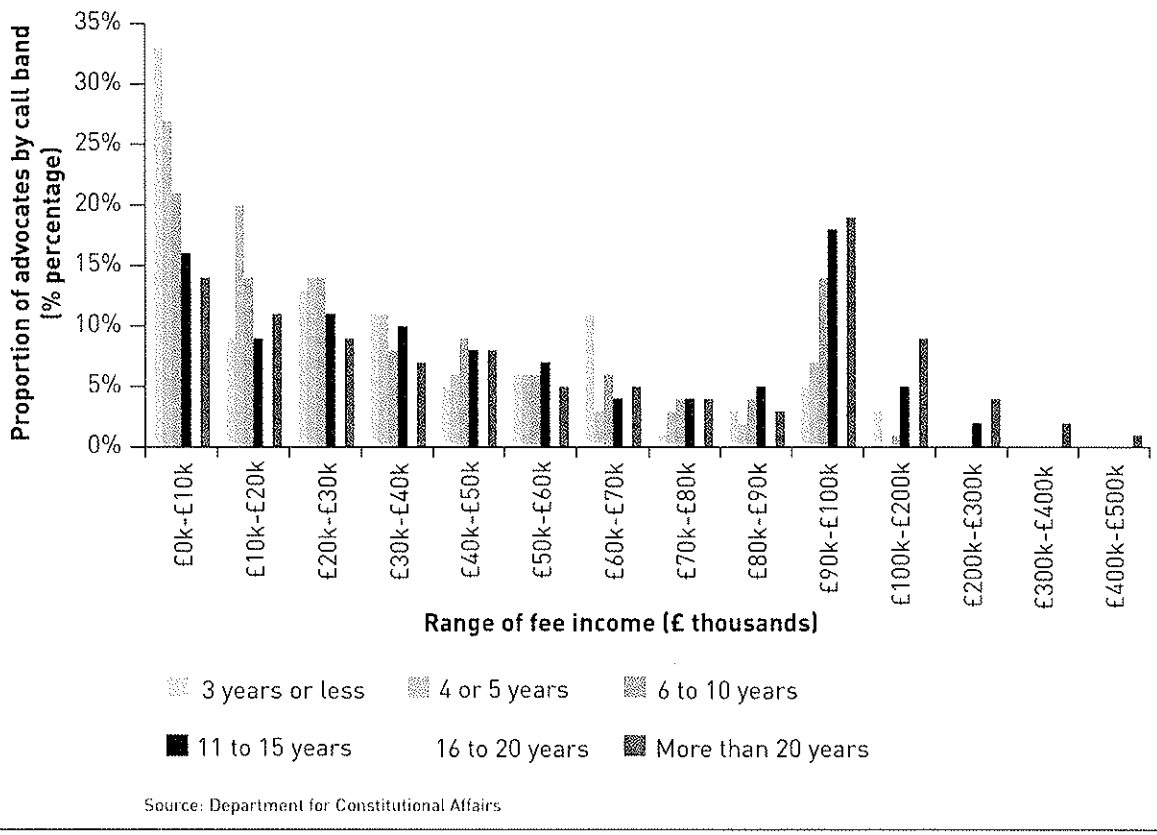
- the supply of barristers;
- the employment of those barristers;
- and the expectations, in terms of income, of those practising.

153 What is in contention is the amount of work that junior barristers are undertaking, and whether there is in fact an oversupply of barristers in certain regions, particularly London.

154 It is essential that the legal aid procurement system pays rates that attract good quality advocates. However, there should be an expectation that those advocates will be fully occupied, so that low incomes are only representative of those struggling to find work and are not reflective of poor remuneration.

155 In a healthy and competitive market there should be a more than adequate supply of advocacy services to meet demand. The available evidence suggests that this is the case in England and Wales generally, and is certainly the case in and around London. The market to supply advocacy services is

Figure 2.13 – Distribution of all advocate graduated fee scheme and ex post facto spending in the Crown Court



Source: Department for Constitutional Affairs

highly competitive and as a result some individual barristers find difficulty in undertaking a full year's work from legal aid defence work or other sources of work, such as prosecution and private funded defence.

156 Evidence regarding the availability of barristers outside London is contained in Frontier Economics' second survey of solicitors (carried out for DCA in 2005). The survey suggested that it had become easier (since the first survey in 2004) for solicitors to obtain a barrister if they were located outside London and specialised in family or criminal law.

157 In the survey, 30% of solicitors said that they had on at least one occasion been unable to secure the services of a barrister of appropriate experience and expertise. However, in less than 1% of all cases was there thought to be some detriment arising from difficulties solicitors faced in obtaining barristers to undertake legal aid cases.

Barristers' incomes from legal aid

158 The figure above shows how it is possible to earn substantial sums in criminal legal aid work. Around 5% of those of 3 years or less of call earned between £90-100,000. While over 30% of advocates of similar experience earned £10,000 or less, that is not indicative of full time employment in legal aid work (for example, those on low legal aid revenues could have earned revenues from prosecution or privately funded work).

159 Unlike solicitors' firms where there is detailed data about fee income it is difficult to break down total fees because of how chambers are organised, the financial data held by individual barristers and the mix of work (private and public) that each undertakes. What is clear though is that good quality, fully employed advocates, regardless of experience, can make a reasonable income from criminal defence work.

Structure of chambers

160 Despite variation in size, chambers tend to be structured in the same way. In the FreshMinds survey a typical set had eight junior barristers (0-5 years of call), 31 junior barristers (6+ years) and five QCs. The average number of clerks was two with the remainder of staff made up of administrators.

161 Chambers handled an average of 4,203 cases a year, and operated in 88 courts. Although barristers' average 154 cases each per year, the variation of caseload ranged from 3 to 600. The proportion of work undertaken by a barrister, which is legal aid work, varies with experience. Junior barristers (6+ years of call) conducted the most legal aid work (48.8%) and junior barristers 0-5 years call) did the least. This may explain the low incomes amongst the most junior barristers who may not be fully engaged in legal aid work.

162 In the survey junior barristers (6+ years call) generated the most income for chambers in absolute terms; they generate 65.6% of income for chambers reflecting the higher number of staff at this level. That is more than both junior barristers (0-5 years call) and QCs who generate 27% and 7.4% of a chambers' income respectively.

163 The survey found for junior barristers that the greatest income per head is typically gained from civil cases, while the greatest income per head for QCs is gained from criminal defence cases. On an individual basis QCs earn the highest income per head. The mean total income for junior barristers (0-5 years call) is £56,128, which increases to £103,211 for junior barristers (6+ years call) and again to £244,919 for QCs.

164 The mean total expenditure per chambers was £852,073 per annum. Of these costs the most significant element was clerks' remuneration (32.3%). In over a third of chambers, clerks are paid a fixed salary; commission alone was found in only 17.6% of cases sampled. While rent is the second most significant expenditure for chambers, typically accounting for 18.3% of expenditure, it is generally the largest expenditure for barristers (52.4%).

Reform and demands of the wider justice system

Criminal justice

165 Addressing inefficiencies in the procurement regime should be but one goal in tackling inefficiencies more generally within the criminal justice system. While the current input-based remuneration arrangements do not promote efficient working practices, they are not wholly responsible for inefficiencies in the process.

166 There are systemic inefficiencies within the criminal justice system: chief among those is wasted or unproductive time. Moreover, it is often the general public, in the shape of witnesses, or the client who is the victim of this inefficiency. This inefficiency shakes the confidence of the public in the criminal justice system.

167 There can be large elements of non-productive time for practitioners at police stations, at court and when visiting prisoners. It is incumbent upon the various interlocking parts of the criminal justice system – police, defence, prosecution, prison service, court service and judiciary - to acknowledge the essential role of each other in the process and to work in concert even where there are inherent tensions, such as between the prosecution and defence, to deliver an effective service for defendants, victims and the wider public.

168 Defence practitioners can be hampered by poor co-operation with the prosecution or inappropriate decisions on the part of the prosecution. However, the prosecution can also be hampered by the defence, such as through failure or delay in providing a defence statement. This lack of co-operation can lead to delays in the service of papers or late, inappropriate disclosure of unused material, or non-disclosure of undermining and assisting unused material, which in turn can lead to postponements in court, a raft of unnecessary hearings and an inability on the part of the defence solicitor to be able to advise their client properly. That impacts on a defendant's plea and may lead to further wasted time.

169 It is clear that a lack of communication between defence and prosecution can result in increased numbers of ineffective hearings. The National Audit Office estimates that £173 million was spent in 2004-05 on trials and hearings in magistrates' courts that did not go ahead when planned[14]. The National Audit Office also calculated that around 28% of all pre-trial hearings in magistrates' courts did not proceed on the scheduled day and that these delays were attributable to, amongst others, the defence (including non-attendance of the defendant), the prosecution, the court and probation service.

170 The defence and prosecution are not responsible for all delays, and it is evident that there can also be deficiencies in the handling of prisoners (for example, timely delivery to court) and within the court listing process. When courts are listing, consideration should be given to the possibility of increased waiting time for all those involved in the justice system or to cases being presented with inadequate preparation.

171 Practitioners are directly responsible for some delays. Cases can be poorly prepared leading to a greater number of hearings; cases may be inappropriately allocated to an inexperienced or poorly briefed counsel; evidence may not be complete or the defence is left with insufficient time to prepare a case; files are mislaid; and occasionally there may be failures in judicial management. At the same time existing information technology may not be used properly or is incompatible with systems held by others within the criminal justice system.

172 However, there have been some improvements within some parts of the system. For example, there is greater involvement of prosecutors via the joint charging programme with the police, which should improve the quality of the case at the point of charge, which in turn will help clarify the sort of advice required by the defence provider. This should encourage appropriate guilty pleas and reduce the number of discontinued cases. There is also improved use in information technology in the court system: a new computer system, XHIBIT, originally launched in Thames Valley and now rolled out nationally allows the police, prosecutors and witness groups to obtain case details much more quickly than at present.

173 There are also provisions in place that will improve discipline in case preparation, including the protocols for Disclosure (February 2006) and the Control and Management of Heavy Fraud and Complex Criminal Cases (March 2005). While case preparation is critical to improving efficiency within the criminal justice system, there are business efficiencies in terms of practice and the purchase of legal aid services that can drive even greater cost benefits.

Family justice

174 There are pressures within the criminal justice system that lead to increased pressures on legal aid spending, and the same problems surface in terms of legal aid and the family justice system, especially public law children.

175 Public law children covers a range of different matter types. The review has focussed on child-care proceedings (s31 Children Act 1989), as they account for 74% of volume and 86% of the value of claims. In particular, legal aid spending on s31 cases has more than doubled between 1999-2000 and 2004-2005. Spending in this area is projected to continue to rise, and it is expected to rise ahead of increases in care applications unless system changes are introduced.

176 The child-care proceedings system has recently been the subject of a joint review by DCA and DfES. The review found that the current system can suffer from delays and complex proceedings can be difficult for children and the families involved. It made recommendations on how to improve the way the system works, and these are set out in its report Review of the Child Care Proceedings System in England and Wales[15], published in May 2006. The review encouraged early intervention to find resolutions before court, and when cases proceed to court it identified ways to improve the quality of local

[14] National Audit Office report Crown Prosecution Service: Effective use of Magistrates' Court Hearings 15 February 2006

[15] Review of the Child Care Proceedings System in England and Wales, DCA, May 2006

authority applications. It also recommended the involvement of solicitors at an earlier stage to assist this process. The work of the joint DCA and DfES review (which was complimented by the Judicial thematic review of the Judicial Case Management Protocol for care proceedings) is now being implemented and is under the supervision of a Ministerial group.

177 Under the current system, most solicitors only get involved after court proceedings have been initiated by the local authority, as that is the first opportunity for them to be instructed by their clients. The proposed reforms to the Judicial Case Management Protocol and the changes in practice set out in the Child Care Proceedings Review identify this as an area that should change to bring benefits to the overall system. It is suggested that solicitors should become involved earlier and before proceedings are initiated in the courts. This will result in new legal aid costs as the role of pre-proceedings legal advice is increased. However, it should help ensure local authorities carry out their existing statutory duties effectively and prepare cases as thoroughly as possible before court proceedings begin, and where appropriate, enable cases to be resolved without the need to go to court.

178 When cases go to court, the emphasis should be building on the pre-proceedings work, and identifying the key issues earlier so that cases can be resolved as quickly as possible. Family proceedings are being recategorised so as to lead to improved case management which makes best use of the limited resources of the specialist family judiciary. This will involve new allocation and categorisation directions and the need for a gatekeeper role to determine at what level family proceedings should be heard. This should enable proceedings to be heard at the most appropriate tier.

179 Closer, tightly focussed judicial case management, earlier in the process, should lead to a swifter court process, with a consequent positive impact on costs. These proposed reforms, together with improvements to local authority preparation, should achieve significant benefits if implemented effectively. To support this process, DCA and DfES should give consideration to a single shared Public Service Agreement target for the child care process in time for the spending review in 2007. This should support a shared performance framework, which would provide a basis for closer strategic planning around securing and maintaining the necessary system changes. There should be similar performance arrangements put in place in Wales with the Welsh Assembly Government.

180 Such system changes should mean the system is far more cost effective in achieving desired outcomes, as cases are either better prepared in court or, where appropriate, diverted away from the court. The reforms to the child-care system should lead to improvements for all participants, including legal aid. There also needs to be greater control of legal aid paid to experts in child care cases. It is very important that the Chief Medical Officer's report on expert witnesses is published soon, so that work can be pursued in this area.

181 In addition to problems with child care proceedings, there have also been significant issues around the resolution of disputes in private law family, which in turn have an impact upon legal aid expenditure. The trend towards serial families and the increase in the divorce rate has contributed to the complexity of family structures and greater potential for conflict. This is illustrated by an increase in the number of residence and contact proceedings brought before the court and a consequent increase of 23% in the average case costs of private law cases over the last 6 years.

182 However, it is widely accepted that in private law family disputes, individuals should be diverted away from court based fully litigated outcomes, wherever it is safe and appropriate to do so. Parental Separation: Children's Rights and Parents' Responsibilities and the Next Steps paper published by DfES in January 2005 set out objectives around early dispute resolution in private law contact cases.

183 This saw the introduction of Family Help as a new level of service as a means of contributing to its objectives. It did this with the aim of encouraging early and amicable dispute resolution and reducing incentives to resort to contested court litigation.

184 The Next Steps paper set out plans to implement a range of measures to help separating parents in dispute reach agreement about future parenting arrangements. The intention is to promote these methods as better ways to reach agreement than through contested court hearings.

Civil justice

185 Access to civil justice is one of the key components of a fair and decent society. It enables people to understand their civil rights and obligations, and if appropriate, enforce their rights in disputes. Wherever possible, disputes should be resolved without the need to resort to the courts, but where that is necessary, such disputes should be dealt with as expeditiously and effectively as possible by the courts.

186 Legal aid ensures vulnerable and disadvantaged people are not denied access to civil justice because of their inability to pay. As a result of Government reforms and pressure on legal aid spending, the level of civil legal aid spending has come under pressure. This has meant that legal aid eligibility limits for civil legal aid has tightened over the past two decades. For civil representation, conditional fee agreements have developed as a means of providing access to justice in certain civil areas of law, such as personal injury, for those people who would not qualify for legal aid and would otherwise be unable to pay for litigation. This is discussed further in Annex 3.1.

187 The reforms to the civil justice system introduced by Lord Woolf have helped the system to become more streamlined and efficient, and that has helped ensure cases are better prepared. However, there should be a renewed drive to reduce the need for individuals to resort to the courts, so that cases only proceed when appropriate and proportionate to the dispute in question.

188 It is clear that many of the disputes funded by civil legal aid are not disputes between individuals but disputes between individuals and the state. Funded litigation in these cases is an important means of protecting individual rights, as well as ensuring compensation for maladministration. Therefore, if government wishes to avoid unnecessary legal aid expenditure in court (and expenditure on its own legal teams), it should recognise that the answer to this often rests in its own hands. It should build on existing initiatives, and put greater energy into the following:

- Wider strategic action, involving DCA and across government which deals with the causes of problems (e.g. poor administration) that lead to litigation.
- The use of the legal aid impact test, which requires government departments to consider the effect on legal aid expenditure of changes to policy; and.
- Creating and encouraging the use effective alternatives to litigation, such as complaints procedures.

3. The procurement strategy to 2010

1 A number of options were considered by the review when developing the overall strategy for a reformed procurement system. These options were assessed for their ability to resolve the weaknesses of the current procurement arrangements set out in Chapter 2 and to mitigate the risks associated with the challenges set out in Chapter 1.

2 This chapter begins with a summary and assessment of each option. The chapter goes on to describe the principles behind the review's preferred option of a managed transition to a predominantly market-based system. The remainder of the chapter describes the vision for what the legal aid procurement regime and market should look like once the market has gone through transition and reached steady state in 2010-11.

Summary of alternative options considered

3 Although the review has made the case and developed specific plans for the delivery of a managed market-based transition, the other options considered below should not be ruled out. If the risks to the successful delivery and execution of a managed transition are realised then the government will need to reconsider the merits of the alternative options, especially for criminal defence suppliers.

Option 1– immediate move to price competition

4 An immediate move to price competition would mean, for example, that contracts for all criminal defence work, excluding very high cost cases in the Crown Court, would be issued following an auction process, with successful suppliers awarded work on the basis of price. Although this approach would be administratively complex to deliver in the short term, it would allow substantial savings to be made quickly as only the most efficient suppliers would remain in the market.

5 There are significant risks associated with purely price-based competition. Some suppliers might set unrealistic prices for their services so as to gain market share and subsequently have to breach their contract and leave the market. This could lead to supply problems.

6 There is also a significant risk associated with quality; with the roll out of peer review taking two to three years, quality assurance mechanisms could not be put in place in time, meaning contracts would need to be awarded on the basis of price and capacity only. There is also the potential for a significant negative impact on the wider justice system as quality is undermined and suppliers left in the legal aid market fail to perform effectively. This could have a particularly negative impact on the running of the courts.

Option 2 – price competition with a restriction on choice

7 Moving to a price competitive market, whilst completely restricting client choice, should increase the scope for any efficiencies to be made quickly as only large and efficient firms would provide services. This could be achieved through a swift restructuring of the system, which simplifies the Legal Services Commission's systems for issuing contracts, and provides greater clarity on the volume of work in each area.

8 In addition to the risks described in option 1 above, this approach has short-term drawbacks. It could result in an administratively complex system and may have a high impact on suppliers within a limited transition period. The limitation on client choice and the removal of a significant proportion of the supply base could jeopardise parts of the justice system. The benefits of continuation, reputation and confidence of representation, e.g. for vulnerable or black and minority ethnic clients, may be lost and some rural areas could lose supply altogether.

Option 3 – progressive administratively set price reductions

9 Administratively set rate cuts could be applied to all defence work with minimal change to current procurement schemes. It would be possible within this option to include some restriction of choice by setting minimum contract sizes and progressively increasing the threshold. This approach would be administratively straightforward. It would also allow some time for a managed transition whereby inefficient suppliers could be excluded and their work taken over by more efficient firms.

10 This administrative option could lead to unmitigated and rapid change for suppliers, posing significant risks to both quality and access if rates are forced too low too quickly as described for option 2. Furthermore, continuous administratively set rate reductions would perpetuate long-term conflict and mistrust between the government and suppliers of legal services.

Option 4 – independently operated public defender service with vouchers

11 The creation of an independent public defender service with vouchers would allow for a few very large, independent regional suppliers to win work. Suppliers would win work through price competitive tendering and would provide duty services in all defence work. A client could choose an alternative non-contracted qualified supplier by using a means-tested legal aid voucher, which they could top up if the supplier's rates were deemed acceptable. These vouchers would be priced according to fixed rates for each type of defence service and would be an administratively easy system to operate, providing for an immediate move to competition and substantial scope for efficiencies.

12 However, the creation of a public defender service along these lines would be a substantial, unmanaged change for suppliers and a fundamental departure from the way the justice system in England and Wales has evolved. It also poses significant risks to both quality and access for similar reasons to those set out in options 1 and 2.

13 In the interim report capacity based bidding was considered as an option. However, this was subsequently discounted because the research suggested that capacity alone is not sufficiently reflective of the relative quality and efficiency of firms. It is also likely that differentiating between firms on the basis of stated capacity would have been difficult to achieve in practice (owing to the difficulty in identifying objective measures of firms potential future capacity) and potentially unfair if firms were excluded from the market solely on that criterion.

Principles of reform

14 As explained in Chapter 1, the aim of the procurement system is to ensure value for money, without compromising quality and access to legal advice. A reformed procurement system should pay fair market prices to sustain a pool of suppliers delivering predictable volumes of good quality and efficient legal services to all eligible clients.

15 To achieve this outcome the review's strategy for procurement has followed a number of key principles across the design of all new procurement schemes. These are to develop pricing and payment systems that:

- optimise the most efficient allocation and provision of good quality work amongst the profitable independent businesses that make up the pool of suppliers;
- distribute payments towards the provision of productive services and away from unproductive costs such as travel and waiting; and
- produce simplicity and transparency in the system reducing the transaction costs of all parties.

The market-based approach

Securing best value – quality, capacity and price

16 The procurement strategy proposed here is based on a move away from a relatively complex administrative set of arrangements towards a more market based approach where work is procured from those suppliers who can provide the best value service to clients.

17 Suppliers across the legal services sector already compete with one another to supply their services to clients. The new procurement system should recognise and harness the long-standing existence of a market economy in legal services by awarding work to suppliers who can meet the demand for work in local areas according to:

- the quality of their service;

- their ability to deliver a sufficient quantity of service; and
- that service being delivered for the most efficient price.

18 This approach of ultimately having work tendered according to these best value criteria is central to delivering the review's overarching aim of securing value for money, without compromising quality and access to legal advice. It is clear that price is not the sole consideration when awarding contracts. The best value model should mean that a quality threshold will be put in place for all suppliers. Only suppliers who meet this threshold will be able to tender for contracts.

19 The assessment of the current procurement arrangements in Chapter 2 highlighted some of their major weaknesses. The assessment also clearly demonstrated that the current arrangements do not fit with the approach to procurement described above.

20 A market-based approach, based on best value tendering, with quality at the forefront, can overcome many of the key challenges to the system. Specifically, best value tendering should help to deliver quality services where the price paid for those services reflect their cost of provision.

21 This means that where good quality services are costly to provide, prices will be higher, and where services are relatively inexpensive to provide, prices will be lower. Overall, however, it means that good quality efficient suppliers should be able to earn a reasonable level of profit.

22 Market-based methods involve suppliers who meet the required quality threshold developing their own means of delivering their product or service in response to external incentives and pressures. Suppliers reveal the correct market price to meet demand by competing with each other to provide services as efficiently as possible.

Wider system benefits

23 The best value tendering approach and the managed phases towards it will also facilitate the needed restructuring of the supply base as identified in Chapter 2 so that more efficiently structured suppliers will:

- be more likely to be sustainable;
- provide more efficient working structures;
- manage more effective working relationships between the litigation and advocacy element of their service;
- be more profitable, thus ensuring the long term sustainability of the supply base; and
- deliver low transaction costs.

24 The other key advantage of a market-based system is that it should avoid ongoing negotiation between procurers and suppliers. Once an effective market structure is in place to meet the procurer's demands, all the key decisions should be determined by the market rather than by the procurer. This has the advantage of reducing the complexity and bureaucracy of the system, and reducing the uncertainty providers face as they wait for the outcome of negotiations.

25 In the specific context of criminal defence services, it is also important to account for, and wherever possible prevent, inefficiencies elsewhere in the criminal justice system. These inefficiencies can impose substantial costs on suppliers of criminal defence services thus hindering the development of an effective and sustainable market-based procurement system.

26 The cost of meeting these justice system inefficiencies will in future be transferred to the government as the costs will be reflected in market prices. This is a fairer sharing of risk than the current system of administratively set pricing.

27 The clear incentive will be on the government and its partners in the justice system to reduce these costs through the action it is taking to improve the efficiency of the justice system. Otherwise the legal aid budget will not be as effective or as far reaching in helping to achieve wider government objectives for social justice as it could or should be.

One size does not fit all

28 The benefits set out above mean that a move towards a more market-based approach, if delivered successfully, will meet the objectives of the review. However, it is recognised that there are significant risks associated with introducing such a fundamental reform of the system.

29 Critically it is recognised that wholesale and immediate introduction of best value tendering could produce a loss of suppliers such that demand for legal aid services cannot be met. For example, many civil and family suppliers could withdraw from the legal aid market and focus exclusively on privately paying clients. There will be a need to nurture suppliers and help them undertake the transition to new and very different working arrangements.

30 A key element to the design of new procurement schemes and the phasing of their implementation has been to identify what can be done to mitigate the risk of local market failure.

A managed transition

31 In order to minimise the risk of losing suppliers of legal services during the move to a market-based procurement system the review considered a phased approach to deliver a managed transition.

Continuing the move towards fixed and graduated pricing

32 It is widely recognised that the introduction of standard fees for magistrates' court work and graduated fees for Crown Court advocacy have brought benefits to both the procurer and to providers. Continuing this move will help to introduce greater control and certainty over the costs of legal aid procurement.

33 More fixed pricing with appropriate graduations will also provide suppliers with greater certainty over the payments they will receive for the provision of services, provide greater reward to the most efficient suppliers, and reduce substantially the administrative complexity and bureaucracy costs borne both by suppliers and the procurer.

Time and support to adjust to the new arrangements

34 There is a need to provide suppliers with clear signals about the future direction of procurement arrangements. This involves providing suppliers with:

- a clear vision of what they need to do to be in a position to provide services in the future; and
- the time and support to take the necessary steps to remain viable and sustainable under the new arrangements.

Gradual and targeted introduction of best value tendering

35 A detailed assessment of where and when areas are ready for the introduction of best value competition will be needed. This should have a high threshold for the quality of services being provided, as a first step, and require that all competing suppliers meet that threshold.

36 It will also require active economic analysis by the Legal Services Commission to monitor any price element of the competitive process to ensure that high quality efficient suppliers are not undermined by low quality unsustainable suppliers, and to ensure that suppliers do not offer to provide services at unsustainably low prices, thereby putting at risk the entire supply base.

Recognising local and regional differences

37 The review has fully recognised that the pace of change will not be the same for all elements of the system, and that the form that best value tendering will take will also be different. In addition suppliers may need longer to restructure and may need more bespoke arrangements. All of these issues are recognised in the design of the new procurement schemes and in the timing for their implementation.

Minimising unproductive costs

38 A key issue identified by the review is the substantial separate payments currently being made for unproductive costs in relation to lower crime. Specifically, payments for travel and waiting account

for almost 20% of the payments made for police station and magistrates' court work.

39 The review has examined ways in which this unproductive element can be included and more importantly reduced with the move to fixed pricing. The review also recognises that much of the cause of this element has been outside the control of legal aid suppliers.

40 The development of new work areas and working arrangements should ameliorate the current costs of travel and waiting. Recommendations for specific procurement schemes have sought to concentrate more of the work of suppliers in smaller geographical areas, thereby reducing the need for travel.

41 Similarly, by concentrating clusters of work to fewer suppliers, it should also be possible to reduce the time suppliers must spend waiting either in the courts or in police stations. By increasing the volume of work suppliers will cover, less of their time will be spent on unproductive waiting.

A simple more transparent system

42 A simpler more transparent system that reduces transaction costs will provide efficiencies for both suppliers and the procurer. For suppliers, this is focused around two key elements: electronic based transactions and fixed pricing. For the Legal Services Commission, it is based around electronic transactions, and a move to a market with fewer, good quality, sustainable providers.

A quality threshold for all suppliers

43 All suppliers wishing to undertake work should pass a strict quality threshold. The standard for that threshold for solicitors' firms should, in the first instance, be based on a peer review assessment managed by the Legal Services Commission. Firms wishing to provide services will ultimately be required to meet a threshold level of peer review.

Recommendation 3.1: The Legal Services Commission should begin from July 2006 a national roll-out of peer review assessment for all firms seeking a place in the new market so that the introduction of best value tendering can take place from April 2009 onwards. The Legal Services Commission should adopt four criteria to plan the roll-out of peer review:

- greatest quality impact for clients;
- greatest opportunity to restructure the local market;
- ensure a level playing field for all firms until best value tendering takes place; and
- assess the impact on the justice system.

The steady state market for criminal defence services

Revised General Criminal Contracts: new market areas and working arrangements

44 The design and specification for all newly issued General Criminal Contracts should be based on re-defined boundary areas. The new General Criminal Contracts will be the means by which the vast majority of criminal defence cases are supplied. The new boundary areas, where possible should be based on the grouping together of existing police station duty schemes. However, they should change where:

- current duty schemes are too small, for example, one of the schemes in Merseyside had just £38,000 of police station work last year; and/or
- an alternative grouping of police stations would allow for a more economic provision of service, an example of which is grouping police stations that are close together so as to reduce travelling time.

45 Within each boundary area suppliers should compete for a new General Criminal Court, through best value tendering, to provide a given number of cases within that boundary area. Suppliers may compete for work in more than one boundary area but there should be limits on the amount of work a

supplier may bid for in any area or nationally. The Office of Fair Trading should monitor the market in order to guard against the development of cartels.

46 Duty police station slots for the boundary area should be allocated in proportion to the number of cases a supplier successfully bids for. The new General Criminal Court should require the successful bidder to undertake all subsequent magistrates' court work and Crown Court work that may take place after providing advice to a client in the police station. Duty police station slots should be allocated to firms rather than individually named solicitors.

Client choice

47 Eligible clients requiring criminal defence services in a given boundary area should be allowed to choose their defence solicitor in the following ways:

- from those suppliers whose General Criminal Contract permits them a given volume of work in that area (likely to be at least 4 to 6 different suppliers);
- from a supplier with a General Criminal Contract for work outside the boundary area if that supplier agrees to take the case and has not exceeded its permissible 'outside area' volume of cases for the given area; or
- from a supplier holding a specialist contract, as detailed below, if that supplier is eligible to take the case, agrees to take it and has not exceeded its permissible volume of cases for the given area.

48 All requests for advice at the police station should go through the duty solicitor call centre. CDS Direct will also be rolled out subject to a review of the evaluation evidence.

49 There will be a limit on the number of cases that General Criminal Contract holders can take from clients outside boundary areas covered in their General Criminal Contract. This case limit would allow a supplier with a General Criminal Contract to do a small proportion of their contracted volume outside of their boundary area(s). The proportion may be around 20%, but the limit should be set for firms by the Legal Services Commission according to the specific circumstances of a regional market (e.g. density and diversity of available work and local suppliers). The proportion of cases a supplier could take outside its boundary area(s) would be based on the supplier's contracted volume of cases rather than its delivered volume of cases.

50 The purpose of the 'outside area' limit is to ensure the economic and quality benefits of the new boundaries are preserved. The limits should prevent suppliers from outside an area using short-term aggressive marketing tactics to gain market share at the cost of the general stability and cost efficiency of the local supplier market.

51 By allowing 'outside area' work and client choice in this way suppliers should be able to provide continuity of service to clients who currently have a case in the criminal justice system. Suppliers should also be able to provide a service to existing clients who they have worked for within their boundary area(s) in the past but have come into contact with outside their boundary area(s) as well. Both instances allow the Criminal Defence Service to play its part in the efficient and effective operation of the criminal justice system.

52 Reconciliation of 'outside area' work would take place quarterly, and the risk would be borne entirely by the supplier. If the supplier does more 'outside area' cases than their set limit then they will not get paid for those additional cases either at the police station, magistrates' court or Crown Court.

53 In summary, the new General Criminal Contract with its new boundary areas and working arrangements should ensure that:

- good quality and efficient suppliers can thrive in a healthy and competitive market, for example by limiting any one supplier's share of local markets and the national market;
- new entrants have access to the market, for instance by ensuring rolling-re-tendering and managing size of local contracts; and
- new business structures are not precluded (e.g. all-in-one litigation and advocacy services for all work).

54 New areas and working arrangements should be rolled out in April 2008, with the introduction of best value tendering, where appropriate, from April 2009.

55 The specific details of the new working arrangements, design of new areas and stages of implementation are recommended in Chapter 4.

Fixed pricing

56 In steady state, all elements of publicly funded criminal defence services should be paid through a system of fixed and graduated prices for the main sorts of defence service (police station advice, magistrates' court cases, and the majority of Crown Court cases) with limited escapes for exceptional cases.

57 Specifically, the remuneration schemes will be as follows:

- police station advice – a fixed fee per case, varying by criminal justice system area, with escapes for exceptional cases and a pre-set 'access' uplift for specified police stations with recognised increased costs (e.g. in some rural areas);
- magistrates' court cases – a new graduated fee scheme, with a base payment varying with case type and offence type, and an escape for exceptional cases where appropriate; and
- Crown Court cases – a revised graduated fee scheme for advocacy services (building on current arrangements) and a new graduated fee scheme for litigation services similar in concept to the existing advocacy graduated fee scheme.

58 The Crown Court graduated fee schemes are designed to allow harmonisation of the current schemes to a single graduated fee for all defence services in the Crown Court. The timing of such a move is likely to be best decided as soon as possible after 2009 when suppliers have had time to adapt to both schemes and have new opportunities to structure their services following implementation of wider legal service reforms, and best value tendering is in place.

59 For very high cost cases in the Crown Court, the escape mechanism will be a bespoke managed contracting regime, building on the recent developments of individual case contracts for these long and complex cases. The revised arrangements will require suppliers to compete for access to this specialist and rewarding work and put mechanisms in place to drive more effective team working.

60 Details of the design and implementation of the fee schemes between now and the run-up to best value tendering from April 2009 are recommended in chapter four.

Best value tendering

61 From April 2009 suppliers should compete for General Criminal Contracts through a process of best value tendering. This best value approach encompasses quality, capacity and price. Only suppliers that have demonstrated that they have achieved the appropriate quality standard will be allowed to take part in the best value tendering rounds for police station contracts.

62 While the Legal Services Commission will need to determine the exact nature of the best value tendering process, it is likely to have the following features:

- only firms that pass the appropriate quality threshold will be asked to bid;
- suppliers will bid for volumes of police station cases and associated magistrates' and Crown Court work within each boundary area – firms could be asked either to specify individually the volume they wish to bid for, or cases may be tendered in predetermined lot sizes, for example, blocks of 500 cases;
- if suppliers can specify the volume they wish to bid for, the Legal Services Commission may wish to implement a minimum bid size, based on local market conditions;
- tenders from suppliers will include price bids for police station, magistrates' court and volume Crown Court work. The price element of the tender could be based on discounts off the fixed prices set during phase 1;

- for police station work the introduction of a two part payment structure could be considered whereby firms receive a block payment for a set volume of work, and a fixed fee per case for additional volumes;
- for police station and magistrates' court work firms could bid a discount against the fixed price, with a floor to prevent unrealistic bidding destabilising the market;
- Crown Court firms and advocates could be asked to bid a discount against the relevant graduated fee (either on the basis of the base fee or on the basis of base fee and uplifts), with a floor to prevent unrealistic bidding;
- price bidding could be restricted so that an individual supplier must bid the same discount across the police station, magistrates' court and Crown Court work – e.g. 5%. Alternatively, suppliers could be allowed to vary the discount offered across the three categories of work; and
- the bidding process should ensure that, where practicable, at least four to six suppliers receive contracts in each boundary area in order to ensure that issues of conflict and concerns regarding weak competition are dealt with.

63 The national roll-out of best value tendering rounds should take place in three waves, with each wave having tendering rounds within each region of England and Wales.

64 To assist in deciding upon the areas that should be included in each wave of the best value tendering process the following types of criteria could be considered:

- the size and concentration of the market – larger areas where work is more concentrated may be more suitable for early introduction of best value tendering;
- the extent of restructuring undertaken by the firms. This can be measured by the size and the profitability of the firms;
- the potential number of bidders in the area;
- the number of firms that have attained the necessary quality threshold; and
- the administrative cost to the Legal Services Commission.

Recommendation 3.2: The Legal Services Commission should continue to develop the design of a best value tendering process around the framework set out in paragraphs 61 to 64 of the review's final report, with specific arrangements for each local tendering round, so that a national roll-out of best value tendering should begin in April 2009.

Specialist supplier contracting arrangements

65 The Legal Services Commission should consider whether there should be at least one type of specialist contracting arrangement in addition to the General Criminal Contract. Any specialist contracting arrangement would need to be restricted to a limited number of suppliers and would only be available to those who can meet relevant criteria.

66 One form of specialist contracting arrangement will be a a restricted panel of suppliers (likely to be 75 to 150) eligible to take on individual case contracts for long and complex defence work (very high cost cases) defined by the Legal Services Commission as requiring their specialist services. This process for gaining access to this panel and its working arrangements are described in detail in Chapter 4.

67 In addition to the panel of suppliers eligible for individual case contracts for very high cost cases there are a very small number of specialist criminal defence suppliers (likely to be 50 to 200 nationally) who provide valuable niche services to specific groups of clients.

68 However, because of the nature of their services, they may not be structured to provide the suite of services required under the General Criminal Contract. For example, these defence practioners do not usually provide general advice and assistance in the police station or high volume work in magistrates' court or Crown Court. Instead they tend to gain their work from clients who chose them for their particular skills and reputation, or have cases referred to them by other suppliers.

Recommendation 3.3: The Legal Services Commission should consider whether and how a small number of criminal defence practitioners could continue to provide niche services when the new General Criminal Contract arrangements are implemented in October 2007. Consideration should be given to how sub-contacting arrangements can be developed for referrals from firms who hold a General Criminal Contract as well as support for growth and consolidation.

The steady state market for civil and family services

69 The objectives of the recommended procurement reforms are:

- ensuring clients are provided with a good quality legal service;
- delivering legal services to potential clients which are based around addressing clusters of problems;
- ensuring a sustainable supplier base;
- funding based on outputs;
- risk shared between procurer and suppliers;
- delivering greater efficiency through larger contracts – where appropriate – with incentives for suppliers to grow; and
- developing stronger links between categories of civil and family law, whilst ensuring the maintenance of good quality specialist services.

70 There should be a move towards an efficient market structure that delivers the right quality of service at minimum cost. That will provide a sustainable long-term supplier base where price reflects the most efficient cost of delivering the service.

71 The system should be flexible enough to promote and reward a range of efficient suppliers who can adapt to changes in the type of services required or the volume of work required. It is important to stress that a 'one size fits all' approach will not be appropriate, as there will be a need to take account of the capacity of suppliers and local factors influencing demand for services.

72 By 2011 a steady state should be reached where there are:

- larger, more efficient, good quality suppliers who prosper from increased volumes of work, in which costs are under control;
- smaller suppliers who have maximised their efficiency and provide a good quality service; and
- smaller, mixed practice suppliers in areas of limited demand but where access is an issue.

73 On completion of a series of phased reforms, suppliers will be working under new contracting arrangements to deliver either one or a mixture of social welfare, private law family, public law children, or other civil categories of law (mental health, asylum etc).

74 Wherever possible, depending on volumes of work and the state of local supply, social welfare suppliers should have the opportunity to develop a family law capability. If they are part of a local network, they will have strong links with family suppliers. Similarly, family suppliers should be able to develop a social welfare capacity.

75 Where suppliers deliver services in categories such as mental health, actions against the police, education, discrimination etc, such services are likely to be delivered on a regional basis, but suppliers would have links with local networks and suppliers. It is not envisaged that there should be a sole supplier in any region in any category of law, as potential conflicts of interest need to be avoided.

76 Contracts should be tendered on quality, capacity and price. Contracts in social welfare will cover a local area (top tier local authority) either as sole social welfare supplier or as part of a local network.

77 Contracts in family will again cover a local area (top tier local authority), so family suppliers in that area will be able to engage effectively as part of the

local network and with civil services supplied at a regional level. Payment for civil and family services by solicitors' firms and not for profit agencies will be through fixed pricing wherever there is a sufficient volume of cases.

78 The Legal Services Commission preferred supplier approach should provide a quality basis for the proposals, as well as complementing the direction of travel.

79 There should be further consideration given to the level of access to civil courts where that is appropriate. In recent years, conditional fee agreements, usually underpinned by insurance taken out by clients, has been introduced. This is discussed further in Annex 3.1, where options for variations on a contingent legal aid fund are considered.

80 Moving away from the current system, characterised by tailored fixed fees and payment by hourly rates, towards competition should be carefully managed over a realistic time period to ensure the supplier base is supported and maintained through the transition. In order to address potential concerns over access, the procurement schemes take particular account of rural suppliers, black and minority ethnic suppliers, and providing sufficient suppliers in family law.

81 There should be a gradual transition from the current system towards the steady state. The transition will need to take account of the evaluation and roll-out of the community legal advice centres and community legal advice networks and regional level services, plus post-implementation work following the introduction of family standard fees and new family contracting arrangements.

82 In order to achieve the objectives, and move to steady state, there are a number of key considerations for civil and family legal aid procurement that must be taken into account:

- civil and family legal aid covers a very wide range of law. It would be more accurate to describe it as 'non-criminal' legal aid. Each category has its own body of law, its own specialist suppliers, particular interest groups and problems;
- civil and family suppliers are more likely to be able to have privately paying clients. This is particularly the case with private law family lawyers;
- there is a significant not for profit sector. This is particularly the case in social welfare provision, where not for profit organisations receive significant funding from local authorities and other public and charitable bodies;
- with the exception of some parties in public law children, the provision of civil and family legal advice is subject to means testing. This has increasingly resulted in civil and family legal aid only being available to the poorest members of our society;
- unlike the criminal justice system, there is no equivalent to the police station, which provides an entry point into the civil and family justice systems. Clients can enter and leave the systems at many points and demand is difficult to map; and
- some suppliers have a perception of under-supply in some areas of the country.

83 However, there are also a number of factors in civil and family legal aid which provide building blocks for a new approach to procurement:

- there is a common perception among suppliers and others that the current system is underfunded, and change is needed;
- the Legal Services Commission has clearly signposted the move towards standardising fees in the new civil and family contract round in April 2007, building upon the tailored fixed fee scheme and the family help pilot;
- there are a large number of suppliers doing very little legal aid work. Around a third of contracted offices do less than £10,000 legal aid work per year (although some of these offices will be in rural areas where they provide a small scale but valuable service); and

- the allocation of funding for civil and family legal help work – matter starts – provides a tool to encourage growth in efficient suppliers. In particular, there has been an overall growth in the number of matter starts in the past year through the Commission re-focussing funding on direct services. Over 710,000[16] new acts of civil and family advice were started during 2005-06, an additional 20% compared with the previous year. This included an increase by both solicitors and not for profit agencies and across both telephone and face to face advice.

84 A key element of the proposed transition, and the steady state market will be the move away from remuneration based on tailored fixed fees and hourly rates towards a system of standardised fixed and graduated fees.

85 Specifically, in steady state key areas of work will be remunerated as follows:

- legal help – there will be a move towards standardised fixed fees;
- mental health and asylum – there will be a move towards a new graduated fee scheme;
- private law family – there will be a move to a new graduated fee scheme for solicitors; and
- public law children – there will be a move to a new graduated fee scheme for solicitors.

Civil and family contracting

86 The review endorses the Legal Services Commission's move away from payment by hourly rates and the current arrangements for tailored fixed fees towards standard fees, for instance fixed fees and graduated fee schemes depending on the category of law. It is recommended that remuneration for solicitors in family legal services, both public law and private law family, should move to standard fees. Moving to standard fees should provide greater certainty over spending for the Legal Services Commission and promote greater efficiency in the family legal market. Payment should move away from the current position where remuneration for advice is by tailored fixed fees or at hourly rates paid ex post facto.

87 A move towards standard fees should give greater responsibility to suppliers as they would be required to organise their work within the fixed fee, whilst giving greater certainty over expenditure to the Legal Services Commission. It should mean change for suppliers, as the most efficient organisations are rewarded, for example, through access to greater volumes of work or longer contracts. Over time, civil and family legal aid is likely to be provided by fewer suppliers with larger contracts. However, there ought to be sufficient coverage to ensure appropriate access to quality legal services (including telephone advice), and maintaining a variety of suppliers in family law, social welfare law, and civil categories outside the 'core' social welfare areas of law.

88 The Legal Services Commission should ensure its procurement policies support a sustainable supplier base that has the capacity and capability to deliver a quality, accessible service that meets the needs of clients. The legal services it procures should be able to deal effectively with the kinds of problems presented by clients, and procured in a pragmatic and flexible way, so services are delivered in a way that makes sense to both local suppliers and the communities and locality being served. It is also important that the Legal Services Commission continues to work effectively with other funders of legal services, especially local authorities, so that public money is used to best effect and its impact optimised. This approach should be facilitated by indicative local budgets, which would show how much legal aid is spent from one area to another.

Restructuring civil legal services

89 The move to standard fees complements the CLS strategy[17] published by the Legal Services Commission earlier this year. Under the CLS strategy, future service delivery will be through a mixture of direct face to face services, complemented by an expansion of phone services, such as the CLS Direct telephone helpline. The Legal Services Commission says it will contract with

[16] Source: Legal Services Commission
[17] Making Legal Rights a Reality – the Legal Services Commission's Study for the Community Legal Service, March 2006

suppliers to deliver services on the basis of meeting the legal needs of clients and potential clients.

90 The contracts should require the supplier to deliver a certain number of cases at legal help, subject to payment for the supplier based on the standardised fixed fees for different categories of law, and achieving the performance standards set out in the contract. The payments should be on the same basis as currently, that is fixed fees and standard monthly payments. However, the Legal Services Commission should move, where possible, to output-based block contracts. In any event, over time remuneration arrangements for civil suppliers should become subject to best value tendering wherever appropriate.

91 Categories of law including debt, housing, and benefits will increasingly be seen as part of a single packaged social welfare service, rather than discrete categories of law provided by separate suppliers. The social welfare categories of law should form the core service.

Recommendation 3.4: The Legal Services Commission should explore the possibility of firms and not for profit agencies expanding into other categories of civil and family law. Depending on the area and the nature of the service, suppliers should be encouraged to develop services across a wider area of categories of civil and family law than is currently the case.

92 This move towards firms and agencies developing services across a wider range of law represents a change in the procurement strategy of recent years, but the Legal Services Commission has already signalled its willingness to make such a shift in its CLS strategy. This is supported by evidence[18] about the nature of clusters of problems presented by clients, and underlines the need for civil and family legal aid services that are able to address cluster problems effectively by providing a joined up service for clients.

93 The Legal Services Commission is expanding the CLS Direct telephone helpline and it is an important part of their CLS strategy. The Helpline is already an important part of meeting the need for legal advice, and this should continue to be the case as CLS Direct develops its triage services and expands its capacity. However, it is important to ensure that the growth of CLS Direct continues to be consistent with it delivering a good service, and that the Legal Services Commission manages the difficult balancing act between promoting the growth of public awareness of CLS Direct and its capacity to deliver. Phone services are an important gateway to advice for many people. The telephone service should provide wide and consistent access to basic level advice, as well as more specialist advice where that is possible and appropriate.

Introduction of centres and networks

94 Under the CLS Strategy, the Legal Services Commission is setting up community legal advice centres and community legal advice networks to serve local areas. The centre is a franchise and could be either a solicitors' firm or not for profit agency, depending on the outcome of the tendering process for that local area. The centre franchise-holder would be expected to receive funding from not just the Legal Services Commission but other funders such as the local authority. The centre should provide the whole bundle of social welfare services for that area, as well as provide some services in family law, as part of the overall provision of family supply in the local area. The centres should also expand into other categories of law where feasible.

95 In some cases, the centre could be a consortium that creates a single legal entity to run the centre franchise, subject to Law Society regulations. This could involve a number of private practitioners or private practitioners and the not for profit sector, but this will be subject to the pace of legal services reform and the necessary changes in regulations by the Law Society.

[18] Causes of Action, Legal Services Research Centre, March 2006

Recommendation 3.5: It is important that there is not one model for community legal advice centres, and the Legal Services Commission allows centres to develop in a pragmatic and flexible fashion that best suits their potential clients in the area where they are located (including sub-contracting service delivery where necessary).

96 The centre could operate from a number of locations within the local area and deliver outreach services to particular client groups. For example, a firm providing services in several areas of law may win the tender for the centre but decide to sub-contract the housing work to a specialist housing agency. That secondary agency would need to work to the main body's standards. Alternatively a small black and minority ethnic supplier may act as a sub-contractor in order to reach out to particular client groups that are a priority in any given area. Where work is sub-contracted it would be the responsibility of the centre supplier to ensure the necessary standard.

97 Centres will tend to be based in urban areas, but there could be more than one centre in a defined area depending on the volumes of work and local factors. For example, the volume of work, and issues about access, may make it impracticable to have a single centre in some London boroughs, or Manchester or Birmingham for example, but it would depend on the local area profile.

98 In these areas, a large urban area might be split into two or three centre areas. Equally, a centre might be established that covers, for example, more than one London borough. However, important issues have to be considered when managing the tender process, which is likely to reduce the number of local firms and agencies doing civil legal aid work, as the Commission will need to maintain and develop the service to clients in that area.

Recommendation 3.6: It is recommended that the Legal Services Commission should carefully evaluate the impact of the transition in the first wave of community legal advice centres from 2007, so lessons can be learnt for later waves from 2008-09 onwards.

99 The creation of networks should provide a framework for groups of suppliers that work together to deliver an equivalent range of legal services to that envisaged in a centre. The suppliers that make up the network should not individually be expected to deliver the full range of services but the range should be available collectively through all the network members.

Recommendation 3.7: It is important that the Commission enable community legal advice networks to be developed in a pragmatic and flexible fashion that makes sense locally, as in some areas there could be informal networks that already exist and might be built upon, whereas elsewhere the networks would be a fresh development. But the Legal Services Commission should ensure that all would-be network suppliers are subject to a robust tendering process, and that the network is ultimately based on the needs of clients.

100 The networks should be encouraged to expand their services to cover the full range of legal services in the local area. It is essential that there are links between family suppliers and other civil suppliers through networks. It is also important that, subject to any minimum contract size, networks are able to provide a platform for some smaller firms or agencies, which are unable to provide the full range of services, but provide a good quality service to clients. Networks could also provide entry points for new suppliers

101 The Commission, together with suppliers, should consider how to make the networks real, in the sense of the service given to clients. One option would be to use secure internet 'chat rooms' restricted to network members, in which, in appropriate cases, advice could be given from one member to another on the client's problems or use technology such as web cams or video conferencing to make services provided by one supplier in the network accessible through other network members.

102 This could be particularly helpful for networks covering rural areas of England and Wales, where there may be particular problems expecting a client to travel to see another member of the network. It

has a been suggested that such a facility could also enable networks to develop virtual relationships with firms outside their geographical area, and it would add value to the services provided within the Network. It has been suggested that this could be necessary when a distant supplier that deals with a non social welfare category is part of a local network, and it is easier for the client to deal with a single practitioner in relation to a range of problems. As the work should be carried out under a fixed fee, there would be no extra cost to public funds in working in this way as the practitioners could make their own arrangements for dividing the fixed fee.

103 In other civil categories of law, mainly mental health, clinical negligence, education, immigration and actions against the police, it makes sense if such services were procured at a regional level. However, it is essential that there are effective links between suppliers in these categories of law and the centres and networks operating at local area level. It is quite likely there could be an overlap in suppliers in some regions and areas, depending on the range of law covered by the supplier. As some suppliers of regional level services could act as a centre or part of a network, especially if suppliers are encouraged to work in a wider range of categories.

104 All preferred suppliers, whether in centres, networks, with 'stand alone' contracts or with regional contracts, should be able to offer a service that ranges from basic advice to court representation in complex cases. It is proposed to pay for work done under legal help and controlled legal representation by way of standard fixed fees or graduated fees, depending on the category of law, and to continue to pay for licensed work by way of hourly rates and ex post facto assessment.

Suppliers and funders working together

105 Suppliers should work more effectively together to ensure services are integrated in a way that makes sense in terms of client needs. In particular, it is important that the past difficulties with referral are overcome where suppliers have to link to provide an effective service to clients. This should be addressed through service level agreements or other contractual obligations on suppliers.

106 Wherever possible, decision-making on service delivery should be devolved to suppliers, whilst the Commission should take procurement decisions with regard to the local and regional profile, as well as national priorities set out in the funding code and directions from the Lord Chancellor.

107 It is important the Commission continues to work closely with other funders of legal advice services, especially local authorities and the Welsh Assembly Government. For example, such close working is vital to the implementation and timing of the roll-out of centres and networks, as this is subject to a degree of agreement between the Commission and individual local authorities and other key funders. The work of the Interdepartmental Review of Civil Advice has reinforced the need to build better links between funders in central governments departments to ensure the maximum value of out of spending in this area is achieved. The same principle should be applied at local level.

Recommendation 3.8: It is recommended that the Community Legal Service strategy should not simply set the way forward for the Legal Services Commission, but should also provide a good working framework for other funders of legal advice services, including local authorities and other government departments in England and Wales, that allows them to add value to their spending in this area through working together with the Legal Services Commission. This better co-ordination should lead to better overall legal services for local communities, especially the more vulnerable groups.

108 Wherever possible, it has been suggested the Commission should encourage links between centres, networks and pro-bono legal services, with the assistance of Law-Works and others, through promoting strategic partnerships between networks/centres and commercial law firms. This depends on the willingness of those involved, and the voluntary participation by all sides, but interested commercial firms could provide some form of pro-bono assistance to networks or centres. This could

possibly be through help with premises or information technology, or business back-up support to networks/centres.

Niche suppliers – public law children

109 The issue of maintaining a variety of suppliers, including small niche suppliers, is particularly an issue for public law children due to the multi-party nature of many proceedings. There are often several parties to the proceedings who require separate representation – the child or children, parents and other extended family members and the local authority. Many public law specialists are on the Law Society children panel. There are around 1,700 members of the children panel in England and Wales and children in care proceedings must be represented by a children panel member, although this is not currently the case for other parties to the proceedings. A number of these are small suppliers, and there will be a need to ensure such suppliers can be maintained within the system.

110 If small public law children suppliers are to be sustained within the system, there needs to be greater imagination applied, so that a solution is developed that addresses the concerns of all stakeholders in this area. One proposal worth further consideration is the idea of establishing 'chambers' practices with public law children practitioners, where they are sole practitioners. The suggestion is that the practices could operate on a similar basis to barristers' chambers, with practitioners sharing overheads in order to achieve greater efficiencies. The use of 'chambers' would allow for the fact that many of these providers are at some distance from one another and a 'physical' arrangement would not always be practicable. It could also present an opportunity to bring public law children only practitioners and private law family only practitioners into consortia.

Training contracts and building children panel membership

111 The Legal Services Commission should take a more strategic approach towards the use of funding for training contracts. For example, they could be used to help efficient family law suppliers to grow their capacity, and within the family category, to encourage public law trainees and increase the number of new public law practitioners and build the size of the Law Society's children panel. These could be allocated on a regional basis looking at the number of care applications being issued by local authorities.

112 The Legal Services Commission should also work with the profession and representative bodies to help create a clearer career path for solicitors in this area. This should aim to encourage solicitors to move into and remain in public law children. At present, there is a significant qualifying period before a solicitor can gain entry to the children panel. This may deter some solicitors from specialising in this category of law. Proposals could be worked up that create a stepped entry to the Panel- a probationary membership – to encourage lawyers to specialise in this area if there is perceived to be a shortfall in supply.

A new relationship with the Legal Services Commission

113 The Legal Services Commission aims to deliver a more efficient operating structure that will enable it to reduce its operating costs and manage its assets more effectively.

114 The Legal Services Commission's delivery transformation project will streamline processes, to the benefit of clients, suppliers and the Legal Services Commission itself, while maintaining control over the fund. Both the Legal Services Commission's administrative spend and the bureaucratic burden on suppliers will be reduced by intervening only when there is a need to and by ensuring responsibility for quality assurance and cost control is in the right place and well defined.

115 There are two key elements to delivering the necessary change:

- implementing preferred supplier to establish the right environment for the supplier-purchaser relationship to thrive; and

- moving away from paper based systems and ensuring that the data collected is accurate and relevant.

116 The preferred supplier scheme is consistent with and will support the transformation process. Those suppliers that become preferred suppliers will be rewarded with greater autonomy, simpler processes and lower transaction costs.

117 The relationship manager will have a key role to play in the preferred supplier process. These managers will be directly responsible for each preferred supplier account and will work with the supplier to identify and to deliver services that meet clients' needs while achieving reduced transaction costs. They will also help suppliers monitor their own systems, processes and outputs to ensure sustained quality and value for money. The pilot for preferred supplier suggested that relationship management worked well in practice.

118 All of the systems and processes will be delivered electronically:

- a client entry system, which will assess the financial eligibility and liability of clients entering the CLS or CDS whether that be at a supplier's office or at a police station;
- a client information database or system will hold the client information required by the Legal Services Commission and suppliers, but will not include detailed case information;
- a suppliers' electronic case management system will record and manage the progression, balancing and outcome of individual cases necessary for case, contract and business management; and
- a supplier management system will interface with the suppliers' electronic case management system so that the Legal Services Commission can monitor quality, cost and outcome profiles across all categories of work against agreed profiles; trends or 'high risk' cases which may take a supplier out of profile and require earlier Legal Services Commission intervention; and payments made to suppliers and the Legal Services Commission future financial liability.

119 Administrative savings will rely on intelligent intervention. Suppliers will be expected to stay within the performance profile agreed with the Legal Services Commission. At the same time the suppliers' electronic case management system and the Legal Services Commission supplier management system enables a process of constant feedback between both parties that will make the review of payments the exception.

Three phases of implementation

120 Table 3.1 shows the major steps for the introduction of the new procurement schemes between July 2006 and 2010-11.

Table 3.1: Phases of implementation

When	What	Where
Phase 1		
July 2006	Peer review begins	Managed roll-out taking 2.5 to 3 years
August 2006	First community legal advice centres and community legal advice networks established	Nationally
April 2007	Introduce revised standard fees for magistrates' court work	Nationally
	Introduce new fixed fees for police stations	
	Introduce new fees for Crown Court advocacy	
	Introduce new fees for Crown Court litigators	
	New civil contracts. Tailored fixd fees replaced with standardised fixed fees for legal help	
	Introduction of private law family graduated fee scheme for solicitors	
	Introduction of public law children graduated fee scheme for solicitors	

Table 3.1: Phases of implementation (continued)

When	What	Where
Phase 2		
October 2007	Quality assessed and competitively tendered panels for very high cost cases established	Nationally
	Introduce new boundary areas and working arrangements	
	Introduce new fee regime for magistrates' court work at the same as the new boundary areas and working arrangements	
November 2007	Extension of private law family graduated fee schemes for solicitors to include final hearing	Nationally
Phase 3		
April 2009	Peer review completed for whole country	Nationally
October 2009 January 2010 April 2010	Introduce best value competition for tendering police station contracts and pricing of all criminal justice system work excluding very high cost cases	Three waves in each region with each wave targeting a different local area. Each wave separated by a quarter.
2010-11	Completion of move to community legal advice centres and networks. Complete move to best value tendering for new civil contracts.	Nationally

4. The new procurement schemes

1 This chapter presents the methodology and where possible, the specific design for recommended changes to introduce greater fixed pricing to the major criminal, civil and family legal aid procurement schemes. The design includes recommended fee rates for the criminal legal aid procurement schemes for introduction, following detail consultation, in April 2007 onwards and up to the point when fee rates are determined by best value tendering. The fee rates for civil and family legal aid, as proposed by the Legal Services Commission, are contained in the consultation paper being published separately by DCA and the Commission.

2 The first part of the chapter begins by describing the methodology that the Legal Services Commission should adopt for designing specific new boundaries and working arrangements for the new General Criminal Contracts and the stages of implementation for those areas and arrangements. The chapter then sets out the detailed new pricing structures for police stations; magistrates' courts; and Crown Court work. The final element of the crime proposals is a description of the revised individual case contracting arrangements and controlled access for very high cost cases in the Crown Court.

3 The second part of the chapter outlines the key recommendations for changes to the civil and family procurement schemes and the changes to the pricing regime. This is set out in less detail here than the criminal schemes, as work to develop the new fee schedules was already being undertaken by the Legal Services Commission.

Designing new criminal contracts and procurement schemes

The new General Criminal Contract boundary areas

4 The new General Criminal Contracts will be based on newly defined boundary areas as described in Chapter 3. The method for designing each new boundary area, duty slots and volume of cases available for allocation under contract in each area will involve production of detailed data and maps for England and Wales that:

- plot the boundaries, volume of cases and value of claims generated for all existing police stations and current duty schemes;
- plot the location of suppliers, their volume of cases and the value of their claims;
- plot the location, volume of cases and value of work generated for all magistrates' courts; and
- calculate estimates of the distances between suppliers' offices and police stations.

5 With this information an iterative process of creating the new General Criminal Contract boundaries should be conducted to the following principles:

- **develop larger areas for work where appropriate**. Many of the current duty schemes are small, for instance less than £100,000 in value terms. Consequently, it would be uneconomic for suppliers to concentrate work in these areas while at the same time retaining enough supply to deal with issues of conflict. Moving to larger areas will allow firms to concentrate their work and provide opportunities for good quality efficient firms to grow. At the same time, the areas will be large enough to maintain sufficient numbers of suppliers to deal with issues of conflict;
- **seek a combination of minimum drive times between existing suppliers and police stations and a grouping of existing duty police station schemes, as well as travel to courts**. Where possible the new boundary schemes should be based on grouping up duty solicitor schemes, as this approach will provide firms with familiar areas for work and will capitalise on existing efficient working practices and groupings in the system. However, in some areas, the grouping up of police station schemes may lead to groups of police stations that do not provide for efficiencies in service provision. In these cases, new schemes should be devised based on minimising the drive time between suppliers and police stations in the schemes; and

- **ensure new working areas allow performance standards to continue to be met for client access and convenience.** The current General Criminal Contract sets out performance targets, for example, the time taken between receiving a call and first contact with the client whether in person or on the telephone. The new boundary areas will need to ensure that it is practicable for solicitors to be able to continue to meet these targets.

6 When devising the new, larger boundary areas, there may also be a need for exceptions to be made for police stations in rural areas, and objective criteria developed to identify these areas. The exceptions could mean that certain isolated rural police stations are not grouped into larger boundary areas, but are contracted for separately.

7 The rationale for the exceptions is that it would not be economic to group these police stations into new larger areas, as this would impose a considerable travel burden on firms servicing those police stations. This should also help maintain the civil and family supply base in those areas where mixed delivery represents the best business model.

8 The criteria could be based on a combination of distance from the rural police station to the main police station in relevant schemes, volume of cases in the police station, location of suppliers and distance to relevant police stations or impact on the civil and family supply base in the local area.

9 Annex 4.1 provides an illustration of the way in which new boundary areas can be constructed, the need to take account of dispersed rural areas and the advantages they bring in terms of reducing the cost of service provision for suppliers (through concentrating suppliers' work in smaller geographic areas).

Recommendation 4.1: The Legal Services Commission should construct new General Criminal Contract boundary areas as set out in paragraphs 4 to 9 and Annex 4.1, for all of England and Wales by January 2007. This should be based on detailed maps and data covering existing police stations and duty schemes, suppliers, magistrates' courts, and distances between suppliers and police stations. An iterative process to create the new boundaries should be based on:

- developing larger areas for work where appropriate;
- a combination of minimum drive times between suppliers and police stations and grouping of existing duty police station schemes, as well as travel to courts;
- ensure new working areas allow performance standards to continue to be met for client access; and
- provide for possible exceptions for police stations in rural areas.

The new boundary areas should then be published for consultation prior to implementation with associated new working arrangements in October 2007.

The new General Criminal Contract working arrangements

10 Currently firms are limited in the amount of duty solicitor work that they can access by the number of duty solicitors they employ. This is because even though slots are allocated to firms and not to individuals, the number of slots that any firm receives is in direct proportion to the number of duty solicitors they have on the rota.

11 There are also rules on what type of work individuals can undertake depending on their qualifications. For example, in most situations only a duty solicitor can accept new cases from the duty solicitor call centre or provide initial advice. The combined effect of these requirements is that many

firms have to employ more duty solicitors than actually needed. The cost of employing duty solicitors is also considerably higher than retaining less qualified staff e.g. accredited representatives.

12 In the short term, prior to the introduction of the new boundary areas and working arrangements, there is a risk of market fragmentation as firms attempt to introduce large numbers of additional duty solicitors in order to gain market share. Were this to occur it would be disruptive and costly and act against one of the core principles of the review: to give access to greater levels of volume to good quality and efficient suppliers. It will be important therefore to put in place measures that prevent market fragments.

13 Given that the introduction of the new fee levels will occur in advance of the introduction of the boundary areas and working arrangements it will also be important to put in place measures, that allow firms to begin the process of restructuring as soon as possible.

Recommendation 4.2: The Legal Services Commission should put in place a series of measures that mitigate market fragmentation and allow firms to begin the process of restructuring.

The Legal Services Commission should consider the following measures:

- reduce duty solicitor service requirements for duty solicitor work so that it is in line with own client requirements. This should mean that any duty solicitor, accredited representative, probationary representative (non indictable offences) and solicitor with the police station qualification may undertake all types of work. Duty solicitor slots should be allocated to firms (in proportion to the volume of work they had undertaken between July 2005 and July 2006) rather than named individual solicitors. There should be a moratorium on new duty solicitor slots other than in response to changes in local need. Where new slots are required to meet demand the Legal Services Commission should notify firms that new slots are available;
- enforce the requirements that 80% of police station work and 50% of magistrates' court work is undertaken in house; and
- the duty solicitor rotas and remove those firms or individuals that have not undertaken duty solicitor work in a 12 month period.

The Legal Services Commission should consult on the above proposals and should introduce them as soon as is practicable, but no later than January 2007.

14 Within each boundary area, the provision of defence services in the police station will be through a block contract based upon a volume of cases. Duty solicitor slots for the boundary area will be allocated in proportion to the number of cases a firm has. Firms should be able to do subsequent magistrates' court and Crown Court work in proportion to their volume allocation. As indicated above, slots should be allocated to firms rather than individual named solicitors, and the allocations should not be governed by the number of duty solicitors employed. However, firms will have to demonstrate their capacity to conduct the work and have satisfactory supervision arrangements in place.

15 This means that if a firm has been allocated 200 cases out of a total of 1,000 in the boundary area, then it will receive 20% of the duty slots. The firm must also have the capacity to do the magistrates' court and Crown Court work associated with its 200 cases.

16 Clients should have the right to choose their representative. However, the choice will be limited to either the duty firm or the other firms contracted to provide advice in that boundary area. There will be one key exception to this restriction: a percentage outside area rule – initial work suggests this number should represent in the region of 20% of allocated work. This would allow a panel firm to undertake the relevant proportion of their contracted volume outside of their panel area.

17 Therefore from a firm's perspective, they will be able to access work in the following ways:

- **own solicitor within a contract area** – if a client asks for a firm, and the firm has a contract in the boundary area, then it can provide advice;
- **duty solicitor** – the firm will have duty slots in proportion to its total allocation of work, and can access work, as today, when a client asks for the duty solicitor; and
- **own solicitor outside the contract area** – if a client asks for a firm, and the firm does not have a contract in the boundary area, then it can still provide advice to that client, as long as it is in that firms limit of cases outside its contracted area.

18 There should be at least four to six suppliers working in each area to deal with potential conflicts of interest, although the exact number may be subject to local factors.

19 The other key proposed changes to the working arrangements can be summarised as follows:

- **contract scope** – the block contract should encompass both police station duty solicitor work and magistrates' court duty solicitor work. Court duty sessions will be allocated to firms in proportion to the volume of work that they have.
- **very high cost cases** – these cases should not form part of the police station block contract. Advice given by very high cost cases panel members will be remunerated under the very high cost cases scheme. The Complex Crime Unit will be responsible for determining which cases it takes under contract. All cases with a trial estimate of 25 days or greater should be notified to the Complex Crime Unit. However, early identification of some very high cost cases may be possible through identification of the prosecuting body. For example, cases where the Serious Fraud Office or Serious Organised Crime Agency is the prosecutor may require automatic notification of the Complex Crime Unit.

Recommendation 4.3: The register of potential very high cost criminal cases should be developed further to include early identification of cases. The prosecution authorities should work together to notify the Complex Crime Unit of a potential very high cost case on the questioning or charge of an individual. Changes to the Complex Crime Unit should ensure that the exception to the police station scheme operates effectively. This register should be in place by December 2006.

20 In instances where a case has started in a police station, but is later identified as a potential very high cost case, the Complex Crime Unit will determine both whether the case fits the criteria, and whether there is a need to switch from the police station provider to a very high cost case panel member.

21 A pilot for immigration advice for clients detained at the police station started in June 2006. The purpose of this scheme is to ensure that advice is available in relation to non-criminal immigration matters via a 24-hour telephone service. However, the pilot does not change the General Criminal Contract in relation to immigration offences, so immigration practitioners will continue to provide advice and assistance in these matters.

22 Under the rules and provisions of the block contract, advice should only be required and remunerated in relation to the criminal element of the case. Early referral, where possible, of the immigration aspect of the case to an immigration practitioner is recommended. Similarly, consideration has to be given to those persons detained under section 136 of the Mental Health Act who are not suspected of a criminal offence but are held at police stations. This class of detained persons should be referred to mental health practitioners.

23 The relevant supplier should be responsible for representing the client from first advice through to charge or police station disposal, including bailbacks where attendance is required. There are concerns that changes to the operation of the criminal justice

system, such as the rollout of statutory charging, could affect the frequency of bailbacks.

24 Whilst the scheme will not remunerate practitioners separately for necessary attendance at bailbacks, the Legal Services Commission should dynamically monitor the number of bailbacks where attendance is required, and should consider the effect of any substantial increase in numbers when determining fees.

25 All requests for advice – both duty and now own solicitor should be routed through the duty solicitor call centre. This is particularly important during 2007-08 to protect against the potential of a small number of suppliers seeking to drive their volume of cases up in inappropriate matters prior to the boundary arrangements.

26 As previously mentioned in Chapter 3, CDS Direct could be continued in pilot areas and extended to own client work. However the extensions of the pilot in Liverpool and Boston (Lincolnshire) should be discontinued.

27 If the duty solicitor call centre and CDS Direct are expanded in the way suggested this could provide a filter whereby the risk of some firms taking up cases to maximise fee take would be reduced. The new system will also provide management information, which could be used to identify inefficiencies within the wider criminal justice system.

28 No fundamental problems have been identified with the creation of a block contract for this work – the additional features could be included within a revised General Criminal Contract or devised as a separate contract.

Recommendation 4.4: The Legal Services Commission should construct new General Criminal Contract working arrangements providing for access to own solicitor within and outside of contract areas and duty solicitor slots by January 2007 as set out in paragraphs 20 to 28 of Chapter 4. The new working arrangements should then be published for consultation prior to the implementation with associated new working arrangements in October 2007.

Recommendation 4.5: The duty solicitor call centre and CDS Direct should be monitored closely by the Legal Services Commission. The monitoring should be on a monthly basis and at a local scheme level, and should look at the volume of cases, and review their effectiveness and quality of service. If this fails to control any increase in volume of work being undertaken in the police station then DCA and the Commission should consider options for restricting defendant eligibility. This should happen alongside the introduction of the new police station fees in October 2007.

Introducing the new General Criminal Contract boundaries and working arrangements in October 2007

29 The new contract areas should be rolled out in October 2007, to ensure that firms have as much time as possible to work under the new arrangements before the introduction of best value competition. The new working arrangements described above should be rolled out in conjunction with the new work areas in October 2007, save for the duty solicitor call centre, which should assume responsibility for own duty work before April 2007.

30 When the new working arrangements and areas are introduced a minimum threshold for all contracts should also be introduced with the possible exception of some rural areas. The threshold should be set at a low level. For example, the volume of police station work that one dedicated professional criminal practitioner could undertake in a year, £50,000 or 200 cases. Exact formulation of the threshold should vary by area and by local market conditions.

31 In addition, when the new areas and working arrangements are introduced, a minimum work requirement relative to the scheme in question should be applied based on historic data in order for a firm to get access to a scheme. For example, to gain access to a new scheme, a firm could have to have delivered a minimum level of between 1 and 5% of work on that scheme in the previous year, (the precise level of the requirement may need to vary by

area, and the Commission will need to draw up detailed rules to determine this), in addition to having delivered £50,000 of work nationally. The exact minimum percentage for work in an area would have to be calculated on an area by area basis, and would vary depending on local supplier market conditions. Firms that meet the threshold for work nationally, but do not meet the minimum work criteria in any individual scheme may not be excluded from the market. Rather, they could be allocated to the scheme in which they had undertaken the largest proportion of the work in the previous year.

32 Independent research commissioned by the Review clearly demonstrates that profitability increases with the volume of work undertaken by the firm. Given the efficiencies required to be delivered in legal aid, it is important therefore to ensure that firms have access to volume in order to improve their profitability sufficiently to remain sustainable under the new procurement regime.

33 Under the new proposals, it is envisaged that firms undertaking larger volumes of work in a more concentrated area will be able to make substantial cost savings by reducing the time spent travelling and waiting in police stations. Firms undertaking small volumes of work would not be able to realise the same level of savings, and moreover, by taking volume away from firms with the capacity to undertake greater volumes of work would also prevent those firms from realising the required levels of savings.

34 Reduction in transaction costs for the Legal Services Commission. The Legal Services Commission currently contracts with over 2,200 suppliers for criminal defence work. The smallest 17% (almost 400) of these firms do less than 1% of the work. They do, however, contribute substantially to the total cost of procuring criminal defence services.

35 When the new working arrangements are rolled out, eligible firms that apply for contracts will be allocated:

- duty slots in the relevant boundary area in proportion to the relative volume of work carried out by the firm in the previous year;
- a percentage out of area allocation based on the total number of cases undertaken in the boundary area in the previous year. For example if the out of area proportion were 20% then if the firm carried out 200 cases in total in the boundary area in the previous year, then its out of area allocation would be 40 cases, and
- the firm will be entitled to undertake own solicitor work for any client within the boundary area.

Recommendation 4.6: By January 2007, the Legal Services Commission should develop a methodology for allocating work under the new working arrangements, based on a mimimum threshold that varies according to area and market conditions as described in paragraphs 29 to 35 allowing for duty slots within boundary areas, a percentage of out of area duty slots and own solicitor work within the boundary area. The Legal Services Commission should consult on the need for a minimum threshold that varies. The new working arrangements (including the need for a lower threshold) should then be published for consultation prior to implementation with associated new working arrangements in October 2007.

The new police station pricing scheme

36 The interim report set out ideas for payment by block contract and very restricted client choice. Following representations from the Law Society and other suppliers, this proposal has been amended. While work will still be allocated through block contracts, considerably more client choice will be allowed (see above) and payment will be made on a fixed fee per case basis.

37 The key elements of the scheme would be:

- a fixed fee that is grouped into eight cost bands;
- the fee to include an element of payment for travel and waiting;
- the fee paid at the same rate for duty work and for own work;
- the fee paid at the same rate regardless of whether work is undertaken in or out of office hours;
- an escape mechanism, based on hours worked for exceptional high end cases – hours spent travelling and waiting do not contribute to hours worked for the purposes of calculating the escape mechanism; and
- hourly payments for cases that escape (excluding travel and waiting) – suppliers must apply separately for payment in cases where there is an escape payment required.

38 The recommended new pricing schedule for the criminal justice system regions, alongside the threshold for escape and the hourly payment for escapes can be found in Annex 4.2.

39 It may be necessary to consider during the consultation process whether fees for London should be further extended – for example, on an inner and outer London basis.

Recommendation 4.7: The Legal Services Commission should introduce a new police station procurement scheme , based on fixed fees per case that include travel and waiting, as described in paragraphs 36 to 39 and set out in Annex 4.2. The fees set out in Annex 4.2 should be subject to consultation and should be introduced in April 2007.

The new magistrates' court pricing arrangements (stage 1)

40 The interim report proposed an immediate move to a new fixed price scheme. However representations have been made from the Law Society and other suppliers to consider reviewing the timetable for the introduction of the new fixed fee pricing schedule. Consequently, and in recognition of the fact that the recommendations set out by the review are likely to lead to substantial changes in relation to criminal defence procurement, and given the degree of control that standard fees currently provide, the review recommends that:

- the current standard fee is retained, but amended in the short term; and
- a new graduated fee is developed for magistrates' court work in the longer term.

41 The amendments to the current scheme and the principles and proposed price schedule for a new scheme are set out in detail below:

- travel and waiting should no longer be paid for separately on an hourly basis;
- the standard fees should be amended to include an element for travel and waiting;
- ex post facto payments, for cases that escape, should not include travel and waiting; and
- the bulk of additional payment should be within the lower standard fee.

42 Annex 4.3 sets out the recommended price schedules for the amended standard fees.

Recommendation 4.8: The Legal Services Commission should introduce a revised magistrates' court standard fee scheme including an element of travelling and waiting (as described in paragraphs 40 to 41 and set out in Annex 4.3). The fees in Annex 4.3 should be subject to consultation and should be introduced in April 2007.

New magistrates' court procurement arrangements (stage 2)

43 A new procurement scheme for magistrates' court work based on a graduated fee scheme could have the following elements:

- a base fee that varies with offence type and case type (guilty or trial);
- an uplift for London;
- an escape for a small proportion of exceptional cases, based on a pre-defined number of hours;
- escaped cases would be paid on an hourly basis;
- travel and waiting included in the base fee; and
- disbursements will continue to be paid separately.

44 The escape mechanism set out above is set on the basis of hours worked. However, given that there will be some time before the introduction of the new graduated fee, further work will be required to develop a robust scheme.

Recommendation 4.9: The Legal Services Commission should introduce a new magistrates graduated court fee as described in paragraph 43. The Legal Services Commission should collect data to develop proxies.The Legal Services Commission should also collect data to develop an alternative basis for pricing cases that escape. The graduated fee scheme set should be developed and subject to consultation in June 2007 and should be introduced in April 2008.

Paying for assigned counsel in the magistrates' court

45 At present the Legal Services Commission defines assigned counsel as follows: counsel who may only be instructed where a defendant has been charged with any indictable offence or with particular proceedings under the Extradition Act 1989, and where the court is of the opinion that because of circumstances which make the proceedings unusually grave or difficult, representation by both a solicitor and an advocate would be desirable. Therefore:

- counsel is then paid directly by the Legal Services Commission in accordance with the rates set out in the General Criminal Contract; and
- payment of assigned counsel is paid according to rates set by the Legal Services Commission.

Recommendation 4.10: Alongside the introduction of a new graduated fee scheme for magistrates' courts work in April 2008, DCA and the Legal Services Commission should review the issue of assigned counsel in magistrates' courts by April 2007 and should consider the following alternatives:

- counsel to be paid the basic fixed fee with a 10% uplift;
- solicitors to be paid a 50% uplift on the basic fee and thereafter disseminate monies as they believe to be appropriate to assigned counsel; or
- the development of a graduated fee scheme for assigned counsel.

The Legal Services Commission's preferred option should be published in June 2007 to be implemented in 2008 alongside the new graduated fee.

The new Crown Court advocacy procurement scheme

46 A key proposal is to introduce a number of amendments to the current structure of the advocate's graduated fee scheme. The key amendments are:

- enhanced base fees that include payment for the first two days of trial and incorporate the majority of ancillary payments that are currently paid as additional fees;
- uplifts limited to pages of prosecution evidence, numbers of prosecution witness and length of trial – length of trial uplifts only begin to be paid where the length of trial exceeds two days;
- each case fee payable to a single trial advocate as identified at the outset of the case wherein

cases requiring two counsel each counsel would continue to be paid separately; and

- the introduction of two new case categories, D+ and G+, to allow different case fees for those advocates undertaking the most challenging cases in the D and G categories.

47 D+ would cover serious sexual offences. G+ would apply to those offences in class G where the value of the fraud exceeds £100,000. Annex 4.4 provides a full list of the offences that would be included in D+.

48 A small number of ancillary payments will remain. These are set out in Annex 4.5.

Recommendation 4.11: DCA and the Legal Services Commission should apply the ring fenced and capped budgets for Crown Court advocacy ancillary payments as set out in Annex 4.5. These budgets should be monitored on a quarterly basis. If the budget is exceeded in the financial year the payments will cease to be made as ancillary payments and will be automatically absorbed without further negotiation into the base fee for all following years on a cost neutral basis.

49 As is currently the situation, there will be three components to the graduated fee scheme. The first will address remuneration for trials, the second will address cracked cases and the third will cover guilty pleas.

50 For trials there should be different levels of fees depending on the type of advocate involved. The categories of advocate will be:

- Queen's Counsel;
- leading junior;
- led junior; and
- other advocate.

51 Cracked trials should continue to have broadly the same structure as that which was introduced in October 2005. This scheme has three sets of rates depending on the timing of the plea.

52 As with the current scheme guilty pleas should attract the same basic fee and the same evidence uplift payments as trials that crack 'in the first third'. There is no witness uplift for guilty pleas.

Recommendation 4.12: DCA and the Legal Services Commission should review the effectiveness of the October 2005 changes to the advocacy graduated fee cracks and guilties scheme in the Crown Court, and any changes proposed to this scheme, on the timing of cracked cases. This should report in January 2007 and be considered by the stakeholder mechanisms recommended in Chapter 6.

53 Annex 4.6 provides the review's recommended new payment schedules for:

- trials;
- cracks;
- guilty pleas; and
- ancillary payments.

54 A small element of payment will remain under ex post facto (for example, some exceptional appeals on conviction and appeals on sentences). This is estimated to be around £11 million. DCA and the Legal Services Commission should monitor this closely and, where practicable, it should be absorbed within the graduated fee scheme.

55 The revised scheme should continue to be paid directly to barristers apart from substitute advocates – see paragraph 57. This may change beyond 2010 – see paragraph 68.

Recommendation 4.13: DCA and the Legal Services Commission should introduce a revised advocacy graduated fee scheme for crown court work (as described in paragraphs 46-55 and the tables in Annex 4.5) that increases base fees, introduces two new offence types, reduces the number of ancillary payments and makes total case fee payment to a single named advocate or two named advocates in two counsel cases. The fees should be subject to consultation and implemented in April 2007.

56 Where a barrister does the trial the whole graduated fee should be paid to the first barrister instructed. This trial advocate must be identified at the commencement of the case. The graduated case payment will be made directly to that trial advocate. The Bar Council has indicated that it will produce a protocol to assist advocates in this task.

57 If the case has two counsel instructed on it then both the junior and leader will receive their graduated fees separately. However, they will be responsible for the payments to any substitute advocate, if required to attend a particular hearing during the case.

Recommendation 4.14: The introduction of a revised advocacy graduated fee scheme in the Crown Court in April 2007 will require the early identification of the trial advocate. Clerks and chambers should begin revising their working practices to ensure that advocates will be identified at the commencement of a case from this date.

The new Crown Court litigation procurement scheme

58 A key recommendation of the review is to introduce a new graduated fee scheme for Crown Court litigation services. It is recommended that the scheme should have the following elements:

- a base fee that varies according to offence type and that covers the first two days of trial;
- daily trial uplifts that would only begin to be paid where the trial length exceeds two days;
- uplifts on pages of prosecution evidence beyond a specified minimum threshold, depending on class of offence and case type;
- uplifts that are tapered over the course of the case so that payment is front-loaded to reward early preparation and resolution of cases;
- uplifts that vary with the number of defendants being represented; and
- a payment for cracks and guilty pleas that represents a proportion of the trial fee.

59 These uplifts have been identified as appropriate proxies that encompass the size and complexity of a case. For example, the length of trial is impacted upon by the number of prosecution witnesses called at trial, the amount and complexity of the evidence inherent to the case and the amount of relevant unused evidence introduced at trial. All of these elements are represented by the length of trial uplift, and the pages of prosecution evidence uplift. Therefore the payments should not be taken as purely representing the cost to the supplier of reading prosecution evidence or attending at court.

60 However, it is also recognised that there is very large variation in the costs and complexity of Crown Court litigation work. The move from ex post facto payment to a graduated fee scheme represents a substantial change to the procurement arrangements. Consequently, it will be important for the Legal Services Commission, during consultation and prior to implementation to undertake additional analysis to ensure that the indicative fees set out in Annex 4.6:

- Contain uplifts that appropriately reflect and remunerate differences in costs and complexity;
- Are not missing uplifts that might provide greater cost reflectivity; and
- Achieve the appropriate balance, in terms of payment, between the base fee and the uplifts described above.

However, if rebalancing or the creation of additional uplifts is required, this should take place within the proposed level of expenditure recommended for the scheme (see Chapter 6).

61 The fees for cases which are heard in the Crown Court should include payment for any procedures which have taken place in the magistrates' court.

62 The base fees payable and the relevant uplifts will vary by class of offence from A through to I. Annex 4.6 sets out the offence types covered by each class, the base fees and the allowable uplifts.

63 There are fixed and graduated elements to this scheme. There are fixed fees for:

- appeals against sentence from the magistrates' court;
- appeals against conviction from the magistrates' court;
- contempt cases in the Crown Court that are not linked to a substantive case; and
- committals for sentence.

64 There are graduated fees or fees deriving thereof for the following:

- cases that commence but end before the plea and case management hearing;
- cases that commence but end at the plea and case management hearing;
- cases that crack between the plea and case management hearing and the trial; and
- cases that involve a trial.

65 Additionally, the graduated fee payments are also affected by the following:

- transfers between solicitors;
- retrials; and
- multiple defendants.

66 Annex 4.6 sets out details of how the revised fees are claimed and paid.

Recommendation 4.15: The Legal Services Commission should introduce a new graduated fee scheme for litigators in the Crown Court. The Legal Services Commission, during consultation and prior to implementation in April 2007, should ensure that the fees set out in Annex 4.6:

- contain uplifts that appropriately reflect and remunerate differences in costs and complexity;
- are not missing uplifts that might provide greater cost reflectivity; and
- achieve the appropriate balance, in terms of payment, between the base fee and the uplifts described above.

If rebalancing or the creation of additional uplifts is required, this should take place within the proposed level of expenditure recommended for the scheme (see Chapter 6). The fees should be implemented in April 2007.

Harmonisation of Crown Court procurement schemes

67 As set out in Chapter 3, the Crown Court graduated fee schemes are designed to allow harmonisation of the schemes in to a single graduated fee for all defence services in the Crown Court.

68 The timing of such a move is likely to be as soon as possible after 2009 when suppliers have had time to adapt to both schemes, suppliers have new opportunities to structure their services to provide greater efficiencies following implementation of wider legal service reforms, and with best value tendering in place.

Recommendation 4.16: DCA and the Legal Services Commission should consider harmonising the separate litigation and advocacy graduated fee schemes in to a single graduated fee for all defence services in the Crown Court, for implementation as soon as possible after 2009, when the market has stabilised and legal services reforms allow for the creation of alternative business structures.

The new working arrangements for very high cost cases

69 In summary, the key changes proposed are:

- the introduction of minimum criteria and quality thresholds for all suppliers wishing to carry out very high cost case work;
- the introduction of a new team based panel for very high cost case work, membership of which should be determined by best value tendering;

- the reorganisation and development of the Complex Crime Unit's contracting capability, and the improvement of the skills base of the unit through the employment of in house lawyers;
- post case audit where requested; and
- revision of the very high cost case contract to reflect these and other changes to strengthen the units ability to control costs. This will be the subject of a separate consultation.

Gaining panel membership – expressions of interest and quality assessment

70 The Complex Crime Unit should issue a detailed expression of interest document to potential bidders. This document should set out information on a number of points of interest to teams seeking to participate in the tendering process.

71 The expression of interest should also set out a number of eligibility requirements in relation to capacity and experience that firms must meet in order to take part in the tendering process. The expression of interest would need to be issued several months in advance of the best value tendering process to allow firms to make any internal restructuring so they are compatible with the minimum requirements set out in the expression of interest.

72 Annex 4.7 contains details on the types of eligibility criteria that suppliers will have to meet.

73 Suppliers who have passed the initial eligibility criteria will be subject to a formal quality assessment of both legal advice and case management skills. Peer review should be the central element of this quality assessment process.

74 Only firms who have been successful in achieving the expression of interest criteria and have achieved a minimum of a level 3 on their peer review will be allowed to proceed to a price bid. This should rise to a level 2 in future rounds.

Recommendation 4.17: There should be a new specialist panel of suppliers to conduct very high cost criminal cases. In advance of inviting applications and bids from potential teams the Legal Services Commission should issue by April 2007 an expression of interest document detailing the criteria for membership of the new panel. This should fulfil the requirements (set out in paragraphs 70 to 74 and the detailed wording should be consulted on with the appropriate professional bodies.

Best value competition

75 The development of a competitive procurement process requires a clear definition of:

- who will be the participant – the qualification;
- what will be competed for – the product and its price;
- how services will be offered – the capacity; and
- how price will be determined – the formal;

76 A team of advocates and solicitors, each led by a QC or Level A solicitor will be able to participate in the procurement process, providing they meet quality criteria set out by the Legal Services Commission. These teams need to be defined in response to the expression of interest publication by the Legal Services Commission.

77 There will typically be a core litigation team that will provide a list of approved advocates that they propose to instruct in the event of taking a very high cost case. The team will nominate a single lead lawyer to act as its representative in any discussions with the Complex Crime Unit about their panel application.

78 The Complex Crime Unit, based on its forecast of total capacity requirements, will qualify a panel of firms who will be eligible to undertake cases taken under contract by the Complex Crime Unit.

79 A simple, dynamic procurement process should be used to determine both the price firms will be paid and the composition of the panel.

80 The Complex Crime Unit should begin by offering a particular base price and invite capacity offers from firms (for instance each firm will be asked to bid the number of cases it would do at that price).

81 A consideration was made for the option of tapering very high cost case hourly rates in the interim report as a method of encouraging efficiency in the market. However analysis of this method has highlighted the difficulties in identifying a mechanism for deciding the start point and the gradient of a taper for very high cost cases. This owes to the complexity and individual nature of such cases. Therefore the decision was taken to omit the principle of tapering for very high cost cases at this point.

82 This base price should be used to determine payment to each team member. For example, for a particular base price the Legal Services Commission could agree to pay:

- base price for a Level A solicitor or QC for a category four contract;
- 87% of the price for a Level B solicitor or leading junior;
- 62% for a Level C solicitor and so on for each of the grades of solicitors, counsel and solicitor advocates/led junior; and
- A fixed uplift on this price can be provided depending on case category (for instance, the current categories one to four in the scheme).

83 If, when the Legal Services Commission offers its starting price, the total capacity bids it receives is in excess of what is required, it should lower the offered base price. It should then re-tender for capacity offers. This process should continue until the capacity offered matches the capacity required. This should constitute the panel of eligible teams.

84 In order to ensure capacity bids are achievable, the Legal Services Commission could decide to limit the rate at which teams can increase their capacity from year-to-year. For example, a team that has never done more than four cases at any one time in the previous three years may not be allowed to bid a capacity of more than six cases in an upcoming procurement process.

85 Capacity should be defined as being that of the instructing litigation team who will agree to supply the required advocate capacity. This would avoid the need to validate the individual capacity requirements of each advocate on each list.

86 Teams who are on the panel should be required to provide capacity they have bid but can exceed this if this meets client choice. Therefore if they have not fulfilled their capacity bid for the period and are chosen by a client they should accept that case. Should, for any reason, they be unable to supply the capacity they have bid, they should be required to find another qualified team willing to undertake the work at the contracted price. If this were to happen regularly it would be deemed to be a breach of contract.

87 This process should result in a single, market-clearing price that will be paid to all suppliers on the qualified panel. This has the important advantage of being fair (all teams are paid the same amount for the same work) and efficient (all teams will have an incentive to offer capacity up to the point where the announced price falls below the base rate they have determined themselves).

88 Teams that are on the panel should not be guaranteed work. Instead, the allocation of work should be determined by client choice from amongst the available panellists.

89 The first panel should remain in existence for 12 months after which a new procurement round will be held in order to create another panel for the next period. This period should be sufficient to minimise procurement costs (on both teams and the Legal Services Commission) while recognising that teams who fail to make it onto the panel should not be locked out of very high cost case work for a very long period of time. Second and subsequent panels may cover longer periods.

90 The auction process recommended above raises a number of further issues for which detailed rules would have to be developed during implementation. These include:

- **capacity forecasting** – the Complex Crime Unit will have to have a very clear indication of capacity required and available capacity at any point in time;

- **long running cases** – rules would have to be developed for cases that run across bidding periods, particularly with respect to how capacity available is accounted for in subsequent bidding periods; and
- **geographic coverage** – rules to incorporate the geographic location of firms and implications for their availability will have to be developed.

Recommendation 4.18: The Legal Services Commission should establish a best value tendered panel for very high cost criminal cases based on the steps sets out in paragraphs 80 to 89. Prior to doing so the issues set out in paragraph 90 should be consulted on with the professional bodies. The invitation to tender should be issued by July 2007 with tenders submitted by September 2007 to allow implementation of the panel by October 2007.

91 There should be a requirement for all cases that have trial estimates of greater than 25 days and/or the defence teams costs are estimated to be £100,000 or greater to be notified to the Complex Crime Unit for consideration for contract. The unit will contract all cases with a trial estimate of greater than 40 days. However they will have the discretion to contract cases with a trial estimate of 25-40 days and/or the defence teams costs are estimated to be £100,000 or greater. The Complex Crime Unit should make a decision whether those cases would be best suited to the contracting scheme or by payment through a graduated fee. The decision of the unit will be final.

Recommendation 4.19: The Legal Services Commission should require all defence teams and prosecution bodies to notify all cases that would be expected to last 25 days or more at trial and/or the defence teams are estimated to be £100,000 or greater. The Legal Services Commission should contract all cases that would be expected to last 41 days or more. They should have the discretion to contract any case expected to last greater than 25 days and less than 41 days and/or the defence teams are estimated to be £100,000 or greater. This should take effect by April 2007. The Legal Services Commission should consider developing criteria for other 'exceptional' cases that do not meet the 25 days and/or financial criteria.

Recommendation 4.20: The Legal Services Commission should design a pro forma notification document to assist in the early identification of potential very high costs criminal cases by September 2006. Annex 4.7 sets out the key points that this document should cover.

92 In cases where the Complex Crime Unit takes a case under contract, and where initial work has been carried out by a volume police station provider, the unit should also determine whether it is necessary for the case to be transferred to a very high cost case panel member.

93 The Complex Crime Unit should continue to develop the information flow from the main prosecution authorities about cases they are prosecuting (without breaching any rules of conflict) to identify and use trial length estimates as a basis for early contracting decisions in the absence of reliable estimates from defence teams or the Court. This information, where relevant should also indicate possible plans to sever indictments, which will also be helpful in decision making.

94 Whilst the creation of the panel may be a strong incentive for non-panel firms to delay notification, as happens in some fraud cases now, appropriate sanctions will be sufficient to offset this.

Trial estimates

95 Despite the work being done to improve the management of cases (see Chapter 3), many cases still last longer than their initial estimates. There is a need to maximise resources by making all concerned conduct the trial in such a way that it is kept within the target length.

Recommendation 4.21: The existing High Cost Cases Review Board should develop a robust trial estimate procedure for very high cost criminal cases. The procedure would:

- provide an estimate of the trial length which should be scrutinised by the court, the prosecution and the defence;
- provide for a detailed timetable agreed by the prosecution, defence and the court within which the issues in the case can be fairly determined;
- build a process to monitor departures from that timetable and ensure these are justified to the court; and
- develop a mechanism by which the estimate set and any variations to the estimate should be reflected in the contractual terms for payments and management arrangements for both prosecution and defence teams.

This should be developed by the review board in November 2006 and implemented in January 2007.

Improving the case management process

96 In addition to recommending the development of a best value procurement process, the review has also focused on how the Complex Crime Unit's case management process can be improved. In this regard, a number of recommendations have been developed, each of which is summarised below and set out in detail in Annex 4.7.

- **very high cost case best value team protocol** – this will articulate some of the basic approaches to case preparation that the Complex Crime Unit will expect from a very high cost case team. The review recommends that the Legal Services Commission work with the professions to develop the team protocol. Annex 4.7 sets out the types of questions that this protocol should address.
- **increasing the skill base of the Complex Crime Unit through hiring in house lawyers.**
- **referral panel** – if complex or novel points of law or procedure are raised, the Complex Crime Unit lawyers will have the benefit of access at short notice to a selection of experts known as the referral panel.
- **post case audit** – there will be a post case audit of a small selection of very high cost cases by a specially constituted very high cost case audit panel.

Recommendation 4.22: The Legal Services Commission should make improvements to case management by the Complex Crime Unit (outlined in paragraph 96 and detailed in Annex 4.7) by recruiting qualified practitioners, establishing a referral and a post case audit panel and designing a very high cost criminal cases best value team protocol by October 2007.

Setting a budget for very high cost cases

97 Currently there is no budget limit to the amount spent on very high cost cases. The amount spent is the product of each individual contract manager negotiation. Instead there is a system of forecasting future spend based on current run rates and the amount of work agreed but unpaid on individual contracts. The measurement of savings is based on comparison to the system that existed prior to the creation of the Complex Crime Unit, namely the ex post facto system of determination. This shows significant savings having been made by the Unit through the policies implemented for generic types of preparation, the published tariffs and the negotiation success of individual contract managers.

98 This approach still has the following weaknesses:

- It still results in approximately £100 million being spent on a small number of cases

- There are many cases where there is a wide disparity between the amount spent on individual contracts on the same case, which cannot be fully justified solely by the relative position of different defendants.

99 This results partly from the established policy of each contact manager negotiating independent of what is agreed on other contracts on the same case and not being aware of the case management strategy being used by other defence teams.

100 The setting of a budgetary limit lower than the spending currently anticipated on very high cost cases, means the Complex Crime Unit needs to identify ways to spend less money on its cases.

101 However, with the move to a panel of quality assured very high cost case suppliers who would have exclusive rights to manage such cases, there is the opportunity to start to work in partnership with panel members to identify options to reduce the amount spent consistently to the level of the most efficient.

102 The most effective way to achieve the full benefits of this is to set a financial limit for very high cost cases, with the only justification for any subsequent increase being a significant rise in the number of cases.

103 This should, of course, be in addition to the better management of case spending to be achieved by the other measures set out in this report. There is a need to quantify the benefit of these measures and to revise the budget downwards further.

Recommendation 4.23: The Legal Services Commission should consider the potential to generate a 5% saving on current spending through the combination of competition on rates and tighter management of very high cost criminal cases in the financial year 2008-09.

New civil and family procurement arrangements

Payment for civil legal services

104 Remuneration for civil legal services for solicitors' firms and not for profit agencies for controlled work should move to standard fees (for instance, fixed fees and graduated fees depending on the category of law) wherever possible. Payment should move away from the current position where remuneration is by tailored fixed fees, based on average costs per firm, and hourly rates paid ex post facto. The review endorses the Commission's planned move to payment by standardised fixed fees or graduated fee schemes.

105 The tailored fixed fee scheme pays different suppliers different amounts for essentially the same outputs. There could be valid reasons for this difference, but equally it could be seen as unfair to some suppliers and the differences also raise questions about the value for money that is secured. The replacement for tailored fixed fee should consist of a fixed fee for each category of advice it covers, based on historical case costs and tailored fixed fee payments. A move to standardised fixed fees should be relatively simple to administer and operate. The detail of the new fixed fees arrangements, including the financial limit for exceptional cases, whether disbursements are included, and payment for cases done under tolerance, will all be set out in DCA and the Legal Services Commission's consultation paper.

106 The level of the fixed fees will also be the subject of the consultation paper. The Commission will be presenting two options in its paper: a national fixed fee; and regional fixed fees. It is understood that the options cost the same, but obviously there will be different impacts upon suppliers depending on which option is pursued by the Commission.

Recommendation 4.24: The Legal Services Commission should ensure the fixed fees for legal help with which they propose to replace tailored fixed fees in civil categories of law are sustainable within the overall legal aid budget, and consistent with maintaining a good quality supplier base.

107 In the shorter term, the replacement for tailored fixed fees will cover cases at the current legal help stage, with the exception of mental health and immigration cases, which will be paid through a form of graduated fee.

108 In the longer term, the Legal Services Commission should consider the option of fixed fees wrapped up in block contracts based on the supplier meeting output targets and set performance standards. The payments in block contracts would be based on fixed fees per case within a particular category. The output targets should be flexible, as there would be a range of outputs (e.g. cases completed), subject to achieving the basic floor level, with extra payments for achieving over and up to a certain output.

109 In addition to setting a range of output targets, the contracts should require a certain number of hours worked. The fixed fee will be based on notional hours worked, and information on hours worked, as presently, will continue to be required by the Legal Services Commission for monitoring purposes. This is to ensure that firms do not only take on cases with a value, in terms of hours worked, that is below the fixed fee. If the Legal Services Commission targets only case volumes, there is a risk that some suppliers may not wish to pursue complex cases. However, if the target is based solely on hours worked, there is equally a risk that ultimately, a smaller number of cases could ultimately end up being undertaken. The combination of cases and hours should therefore drive better performance in both cases completed and quality of service.

110 The block contracts should contain service level agreements whereby suppliers would be held to rigorous performance standards. For example, the Legal Services Commission might wish to set clear performance expectations around types of clients seen – i.e. black and minority ethnic clients or housing possession cases. As the contract should require information to be provided about types of case and ethnicity of clients. This information should be monitored, and included amongst the performance indicators. Explanation should be required if a centre or firm in a Community Legal Advice Network does not appear to be meeting local need.

111 The contracts should be based on a holistic approach. As they should aim to include legal representation in court, as in the current licensed level, within the contract. However, by including representation within the contract, it should provide solicitors with greater responsibility to proceed with cases – 'self grant' – as powers are devolved from the Legal Services Commission, where previously they would have sought a certificate. Such an extension of the current system of devolved powers would place greater responsibility on suppliers, but it should reduce their administrative burden.

112 It is important to ensure potential perverse incentives are not created, through inadvertently encouraging more cases to proceed to court proceedings.

Recommendation 4.25: Wherever possible, the Legal Services Commission should ensure that the dynamics, between the fixed fee for civil legal help and the payments for civil court work, act to reward early settlements where it is appropriate. The Legal Services Commission needs to look at this in more detail, and whether this means removing the current differential between legal help and representation rates, and should report with its findings by July 2008.

Recommendation 4.26: Where practicable, the Legal Services Commission requires firms to report success rates in civil certificated cases as one of the performance indicators in the contracts, so the Legal Services Commission is able to monitor if devolved powers for certification are being used properly.

113 The Legal Services Commission will be merging not for profit contracts with solicitor contracts from April 2007, which the review endorses, as there should be a common contractual basis for both sectors. Under the new unified contracts, not for profit agencies should receive funding linked to case targets, on the same basis as solicitor contracts, and they should work under the same level of fixed fees as solicitors.

Tendering civil contracts

114 The best value tendering process for a civil contract should involve potential providers bidding against a set of criteria:

- quality – peer review/preferred supplier;
- capacity – how need will be met, innovation, outreach; and
- price – for example a floor for case volumes to be delivered, with an invitation to say how they could deliver higher volumes.

115 These key elements should be common to all civil contracts, and should set the minimum standards but suppliers should be prepared to offer more.

Tendering for a centre contract (or sub-contract)

116 The Commission should contract with firms, agencies or groups of organisations to run centre franchises in co-operation with the local authority and other funders. The contracts should be of sufficient length, for example, three years to make the service sustainable. Any one individual supplier could succeed in winning tenders for more than one centre (although there should be a limit on how many centre franchises can be held by one individual supplier (e.g. regionally and nationally) to preserve competition). It is recommended that elements of best value competition should be introduced, with quality and service delivery as essential ingredients in the tendering process.

117 Tenders should be invited from firms, agencies or groups of organisations (that propose to merge or carry out some sub-contracting) that can deliver integrated general and specialist legal advice and representation services that meet the needs of the local area. The successful applicant(s) should have a significant track record of providing specialist legal advice and representation services and demonstrate they are able to set up and deliver these services. They should show that the service delivered will be in locations that best meet the local needs of that area, particularly vulnerable groups within that population, and such group could be identified within the performance standards in the contract, as a group that requires particular consideration. This again reinforces the necessity of applying a pragmatic and flexible approach that is able to take account of local factors for clients and suppliers, and that there is not one prescribed model.

118 The centre franchise holder should put in place an effective referral system, as they should be able to receive referrals from CLS Direct, criminal practitioners, family practitioners, regional suppliers and others. Equally, they would have to have effective referral processes to refer clients to CLS Direct or neighbouring CLS suppliers, criminal practitioners, family practitioners and others.

119 As a means of identifying their key role to the community and other suppliers, the firm or not for profit agency with the centre contract may be required to use some form of centre branding as part of their public image. The firm or agency with the franchise should be able to keep their own separate identity, but it is important the centre is identifiable as one, so the public develops an awareness of where they can seek legal advice and have some understanding of what it entails.

120 The centre should receive payments in advance as part of their contract, and the period covered could be the subject of individual negotiation with the Commission. The payments should be linked to the firm or agency meeting the performance standards set out in the centre contract, and payments adjusted if the standards are not achieved. Equally, the Commission should aim to make bonus payments if the performance standards are exceeded. The firm or agency with the centre contract should also be able to keep (at least part of) any costs awarded in any successful litigation.

Tendering for a network contract

121 There are options for how best the Commission can contract with networks, as it could contract individually with which each member of the network, or have a single contract with a "lead supplier" within the network, who then sub-contracts with the other members.

Recommendation 4.27: Following the introduction of the first community legal advice networks in 2006, options for networks should be tested out in different areas by the Legal Services Commission to identify which approach works best in each of a variety of different circumstances.

122 Standard contracts for firms and agencies in networks should be three years in length generally. However, it is recommended that the Commission should also consider tailoring contract sizes in relation to quality. For instance, a firm with a high peer review score, who might be prepared to be subject to more stringent performance targets might be offered an extended contract, for example to five years, with a break clause after three years to check their progress against targets. Equally, a firm with a low peer review score, but who is prepared to commit to meeting more stringent standards under the preferred supplier initiative, could be offered a shorter length of contract, to provide time to make the necessary improvements.

123 Similar to centres, payment should be made in advance, based on projected case outputs, with the regularity of payment subject to individual negotiation with the Commission. Payments would be reconciled against actual work completed, although practitioners should also take responsibility for doing this. In order to facilitate payment mechanisms and performance monitoring, there needs to be a more sophisticated and collaborative relationship between the Commission and suppliers, in a way that allows enables risks to be shared and any issues to be identified and resolved swiftly.

124 In terms of developing the network, rather than having to combine together first, suppliers should bid individually to provide part of the network service.

Recommendation 4.28: Bids by suppliers to work in community legal advice networks should refer to arrangements they have together agreed for co-operation with other bidders, so that it can build on existing informal networks. This could include proposed co-location and active referral arrangements. Bidders should also be asked by the Legal Services Commission for their own proposals on how they would implement or exceed the contractual requirements. This should enable the network to be flexible and take account of local factors. The Legal Services Commission would be free to accept or refuse bids on an individual basis, and determine which arrangements are best for clients.

125 Contracts in the non-social welfare categories should be specified as part of the network process, but the funds allocated could reflect the fact that services may often be provided on a wider regional basis, that is, to clients outside of the local authority area.

126 It may be sensible for the network to have a co-ordinator – a post that would have the responsibility of ensuring effective co-operation in the interests of clients. The network co-ordinator should be accountable to the network members and based in the offices of one of the local suppliers. There options as to how these posts could be paid for, as they could be paid for solely by the Legal Services Commission, or a combination of different public funders, or through the cost efficiencies achieved through the bidding process and use of targets. It remains to be established how this position could fit with the new relationship manager function at the Commission, as the Commission needs to ensure there is no duplication and that each is aware of each other's role and can work together closely

127 One of the successful bidders would be given the funding for the post, and with the funding would go the obligation to ensure that the network functioned in the way intended. The Commission should discuss the role of the network co-ordinator

with practitioner groups, so the role can be developed in a way that it adds value to both the Commission and Network members and takes account of local factors. However the Network co-ordinator could have a number of essential functions, for example:

- ensuring management information is accurately recorded and available; or
- ensuring providers across the network are delivering services in line with the contract specification.

128 However, there could also be scope to provide a broader level of business support and expertise to those within the network, providing advice on how to maximise their efficiency and productivity, engage with firms on data management processes or options for establishing referral processes. The network co-ordinator could add value to the network's operation as a whole, as well as to individual businesses within the network whilst improving the provision of management information for the Commission. However, it will be very important to guard against this becoming an extra layer of bureaucracy, and it the post-holder becoming seen as intervening in the affairs of independent firms and agencies, which is why the profession and advice sector should be involved in the further development of this role.

Budget allocation

129 The contracts, including output targets, should be based on indicative budget allocations for local areas. It would need to be a flexible process to allow for changes and sudden shocks to the system, but such a system would ensure allocation took account of levels of deprivation. It would clearly enable comparisons to be drawn between the nature of the local/regional area and the level of spending on legal problems.

130 The allocation of social welfare funding should be based on a formula using data from means tested benefits e.g. income support as a proxy for legal aid eligibility. The overall budget for the region (for instance, by adding together the top tier allocations for all local authorities in the region) should be managed without variation – for example, a fixed regional budget but variation within it from one top-tier local authority area to another. The Legal Services Commission should manage its budget in consultation with other national, regional and local funders, wherever those funders are willing to manage their budgets in the same way.

Recommendation 4.29: The process of moving to indicative budget allocations by the Legal Services Commission for legal help for social welfare law through deprivation data should be managed carefully to minimise any disruption to services. As part of this process, the funding formula should enable the Legal Services Commission to decide in which local areas to expand case starts.

Civil legal representation

131 The introduction of tailored fixed fees by the Commission represented a move away from simple hourly rates in controlled work in most categories of civil law. There has also been the introduction of the Family graduated fee scheme for the Bar. However, there has not been a similar move away from payment by hourly rates in civil representation. Both litigators and advocates are still billing for work based on hourly rates and paid ex post facto. Of course, in successful cases, payment in civil categories tends to be at inter-partes private rates due to cost recovery.

132 The net amount spent on civil representation has been in the region of £100 million per annum in recent years, of which around two thirds has been spent on housing and clinical negligence cases, whilst the other third is spent on a dozen or so other categories of law. The overall net level of expenditure is therefore relatively small compared to other areas of legal aid. This, together with the fragmentation between the different categories and the relatively low spend and volumes involved, means it is difficult to produce a standard fee regime for civil representation which would work effectively for all categories.

133 Further consideration should be given to the possibility of separate standard fee regimes for representation in housing and clinical negligence. However, housing covers a wide range of law such as housing disrepair through to repossession, whilst clinical negligence is a particularly complex area that might not lend itself to standard fees without a great deal of further work.

Recommendation 4.30: There should be no major changes in the current civil representation ex post facto remuneration scheme for the time being, but it should be kept under close review by DCA and the Legal Services Commission, together with the profession, and DCA and the Legal Services Commission should produce a report with their findings by July 2008. As part of this, DCA and the Legal Services Commission should consider how the various alternatives, such as a "success fee", set out in Annex 3.1, might impact upon the current scheme.

Regional services

134 There should continue to be a number of regional level services provided by suppliers in non-social welfare categories of the law, where the nature of the work means that there is an insufficient case volume within local areas, or work is concentrated in particular locations. A supplier providing such a regional level service should not be confined to taking only clients from one particular region, as the model needs to be flexible enough to allow suppliers to take clients who are referred from elsewhere in the country. There is likely to be more than one supplier in any region for any category of law. This will ensure a degree of choice, and avoid any potential conflicts of interests. All the schemes are covered in more detail in DCA and the Legal Services Commission's consultation paper, including the levels of fees. The Commission should ensure that the level of remuneration is sustainable within the overall legal aid budget, and consistent with maintaining a quality supplier base.

Mental health

135 The Legal Services Commission is proposing that mental health suppliers move to payment through a graduated fee scheme. This is covered in detail in DCA and the Legal Services Commission's consultation paper. The proposed graduated fee scheme should take account of the complexity involved in some cases, as well as providing remuneration for representation before the Tribunal. Mental health services would be provided through either centres or suppliers in networks, as well as specialist suppliers operating at a regional level.

136 The Commission proposes that supply should tend to be focussed on detained clients and would be based around hospitals. In order to allow choice of legal representative for clients, work at particular hospitals or groups of hospitals should be divided into units which suppliers can compete for, so that there would be a number of contracts at each hospital.

Recommendation 4.31: The procurement strategy in the category of mental health should be kept under close review by the Legal Services Commission, as it will need to take account of future changes in mental health legislation, and if there is a move towards more clients being cared from at home and not detained. It is important that clients cared from at home are able to have access to legal advice, if it is required, and so supply centred around hospitals may need to be expanded to cover this category of clients (and permit referrals from the community legal advice network).

137 Contracts should include community care provision and any follow up to the client once released. It is also proposed that mental health suppliers should be able to provide advice for their clients in social welfare categories of law. Such advice could be provided through their own legal competence or through links with social welfare law suppliers. This link would work best through participation in networks.

Education/Actions against the police/Clinical negligence/Public law

138 There are relatively small volumes of work in these categories, and they are likely to lend themselves more to suppliers operating at a regional level with links into networks (and if they exist, the local centres) and family suppliers. It would not be practicable to have such suppliers in every local area, but it is proposed that suppliers should be paid by fixed fees for work at the legal help level.

139 With all these services, such as actions against the police, it is important that potential clients are aware of the legal services that are available. This means it is important that good links are made, between networks or centres and suppliers in these services, and referrals made where necessary.

Asylum and immigration

140 This is a complex area of law and it is very difficult to construct a single straightforward remuneration scheme that can deal with all the different processes that exist, not least because virtually all legal aid work, including representation at the Tribunal, is funded as controlled work. DCA and the Commission's consultation paper provides details of a graduated fee scheme that has been devised to apply to around 75% of all asylum clients and to all eligible immigration clients.

141 The Commission is proposing to have a small network of national and possibly regional level services provided by suppliers, and that these are supplemented by smaller local suppliers from both private practice and the not for profit sector. It is anticipated that these suppliers will be based predominantly near induction centres, hearing centres, detention centres and removal centres and in areas of high dispersal but that they will be able to provide services through outreach wherever they are required. Providing services in this way will ensure continuity for clients as they are moved around the country whilst reducing the possibility of them receiving duplicate advice from more than one supplier.

Family contracting

The graduated fee scheme for solicitors – private law family

142 The review endorses the introduction of a graduated fee scheme for solicitors in private law family work. This is proposed in DCA and the Commission's consultation paper, and is consistent with the Legal Services Commission's direction of travel in private law family. The Commission's work in this area has been sign-posted through its current family help pilot, and its move to replace the current tailored fixed free scheme in the next contracts round in April 2007. It is recognised that the family help pilot involves only a small number of suppliers, but it has still provided valuable insights into how such a scheme works.

143 The new payment scheme should be designed to promote the early settlement of disputes where it is appropriate, with better outcomes for clients and less reliance on litigation. The scheme should therefore address the current potentially perverse incentives to proceed to a legal representation certificate. Where possible, the new scheme should reduce bureaucracy for suppliers and the Commission by simplifying the levels of service and reducing the administrative burden. This should be attractive to practitioners, but in addition to reducing bureaucracy, any scheme should provide incentives to practitioners to take on work and reward efficiency. In addition, of course, it is particularly important that any scheme should provide greater certainty over costs and spending for both suppliers and the Commission.

144 In line with the above objectives, the Commission has developed a graduated fee scheme for family help. This should pave the way for a comprehensive graduated fee scheme for solicitors undertaking private law family. Domestic violence cases that start as emergency applications are not covered by the proposed scheme, but where an emergency application has been made, the rest of the work done under the case should be done under the new scheme.

145 The detail of the graduated fee scheme is subject to consultation by DCA and the Legal Services Commission in their consultation paper, and this includes details of the fee levels.

Recommendation 4.32: The Legal Services Commission should ensure the fee levels they are proposing for private law family are sustainable within the overall legal aid budget, and consistent with maintaining a good quality supplier base.

Recommendation 4.33: The move to the family help procurement scheme from April 2007, should be seen as paving the way to a graduated fee scheme for solicitors in private law family that includes the final hearing stage from autumn 2007.

The graduated fee scheme for solicitors – public law children

146 The Legal Services Commission should move away from payment by hourly rates to a graduated fee scheme for solicitors undertaking section 31 child care proceedings work.

Recommendation 4.34: The Legal Services Commission should replace the current public law children ex post facto scheme with a graduated fee scheme aligned with the Judicial Case Management Protocol for Care Proceedings. Other public law children work, that is not covered by the graduated fee scheme, should be kept under review by the Legal Services Commission and DCA, and consideration given to expanding the graduated fee scheme if volumes and costs increase in other public law children work.

147 The Commission has developed proposals for a new graduated fee scheme for solicitors that covers existing legal help and a new higher level of service to create a staged approach to the fee structure. The scheme is aligned with the judicial case management protocol, and should work under both the current protocol and once the protocol has been reformed. It is acknowledged that the system is relatively fluid, as for example, a case moving from the High Court to a lower court and possibly back again, and payment should reflect this. The detail of the proposed scheme is in DCA and the Legal Services Commission's consultation paper, including the fee levels.

Recommendation 4.35: The Legal Services Commission should ensure the fee levels they are proposing for the new public law children scheme for solicitors is sustainable within the overall legal aid budget, and consistent with maintaining a good quality supplier base.

Tendering for family contracts – private law and public law

148 Tendering for a family contract should involve potential suppliers bidding against a set of criteria. In respect of private law family, it should involve assessing their ability to deliver a contract on the basis of the quality, capacity and price needed against a set budget. The set budget should be a consequence of:

- historical data on demand for advice and representation in private law family, and hence potential case-load;
- standard fees for categories of work, and
- in due course, the share of work which the firm has been successful in gaining.

149 Contracts should be tendered on the basis of local authority top tier levels, although this will need to be validated by the Commission against the location of care centres in order to gain an understanding of volumes of work passing through a particular contract area. This should not mean that the firm must only take clients from within that particular geographical area. However, the area should provide a reasonable, indicative volume of work, and using the local authority area as the framework ought to facilitate links with civil suppliers.

150 Standard contracts should be up to three years in length, but there should be allowance for firms delivering a particularly high quality service, and those that are not yet of the required quality but seeking to make improvements.

Recommendation 4.36: The Legal Services Commission should consider the possibility of tailoring family contract sizes in relation to quality. For instance, a firm with a high peer review score, who might be prepared to be subject to more stringent performance targets, could be offered an extended contract, e.g. up to five years, with a three year break clause to check their progress against targets. Equally, a firm with a low peer review score, but who are prepared to improve to meet more stringent standards, could be offered a shorter length of contract, to enable time to improve with close monitoring from the Legal Services Commission.

151 The allocation of matter starts to contract holders should be decided on the basis of a three-stage process.

(i) Preferred supplier

152 Matter starts should be allocated consistent with the preferred supplier strategy, which in family should be those suppliers who:

- adhere to the Law Society family law protocol applicable in private law cases and the good practice in child care cases;
- demonstrate that they are working with suppliers linked in to other services; and
- fulfil stringent financial checks and the relevant peer review standards.

(ii) Local need

153 Local legal needs should, of course, determine the allocation of matter starts. Whilst this can be difficult to predict accurately, there are a series of proxies which can be used e.g. historical data from firms, population data and local authority data. Such an analysis should provide an indicator of local need and an understanding of the number of matter starts likely to be required in a particular area.

(iii) Minimum and maximum contract sizes

154 Once preferred suppliers have been identified, and local need has been identified as far as possible, the numbers of new matter starts should be allocated to firms on the basis of minimum and maximum contract sizes. These should be set on the basis of the need to retain sufficient numbers of suppliers in a local area (given the multi-party nature of family work), as well as the need to encourage those suppliers who wish to grow to do so wherever possible.

155 The contracts would set targets for outputs of cases to be delivered in return for payment. The output targets should be flexible, as there should be a range of outputs (e.g. cases completed), subject to achieving the basic floor level, with extra payments for achieving over and up to a certain output. The contract should not just set output targets, but require a certain number of hours worked. If only case volumes are targeted, there is a risk that suppliers may not wish to pursue complex cases. However, if a target is based upon hours worked only, there is equally a risk that ultimately smaller volumes of cases are undertaken. The combination of cases and hours should drive better performance in terms of cases completed and quality.

156 The contracts should include service level agreements setting out desired performance standards. Ideally, this should set out desired outcomes. Although it is very difficult to identify a 'good' outcome in this area, the standards should focus on encouraging desirable behaviour in suppliers. For example, there could be indicators relating to forging links with other suppliers through networks, or seeking to ensure only appropriate cases proceed to court proceedings (i.e. the number of applications which result in certificates). The performance standards could also be concerned with the number of settled cases, % resolved at first issue, % cases resolved outside of court, the % through mediation and so on.

157 Payment should be in advance for legal help, with payments reconciled against actual work completed, although responsibility for doing this would rest with practitioners. In order to facilitate

payment mechanisms and performance monitoring, highly skilled relationship managers could be needed in order to manage a more sophisticated and collaborative relationship between the Legal Services Commission and suppliers, in a way which enables risks to be shared and any issues to be identified and resolved swiftly.

158 Over time, the Legal Services Commission should look to introduce more elements of best value competition, as it moves to minimum and maximum size contracts, with quality and service delivery as essential ingredients in the tendering process. The introduction of contestability for different size contracts would need to take into account the requirement to have separate representation for the different parties in family law cases. This means there has to be a minimum number of suppliers in a reasonably sized geographical area and any competition will need to be carefully managed.

159 For example, the potential caseload in the area could be divided into 10 nominal units, and depending on the area, a supplier can bid for up to six units of work and no less than two units. This would vary depending on the nature of the area, as the bidding round would be more competitive in an urban area with a larger number of suppliers, whereas it would need to be more carefully managed in rural areas with few family suppliers. There are a number of options for the geographical basis upon which suppliers can bid. However, to facilitate the creation of stronger links between family law and other civil categories through local networks, it is proposed that the area should be based on top-tier local authority areas.

160 Family contracts for public law children should similarly involve potential suppliers bidding for contracts against a set of criteria relating to quality, access and value for money within a similar size geographical area.

Recommendation 4.37: The Legal Services Commission should encourage growth in family provision through best value based bidding on contract sizes and length of contract by 2009, but subject to the need to maintain a variety of good quality, efficient suppliers within the family justice system.

5. Assessing the impacts and managing the transition

1 In line with the aims and criteria given in Chapter 1, there has been constant consideration of the impact of reforms throughout the iterative design of the procurement system. The assessment of impacts has been focused on four areas:

- the clients who receive legal services;
- the firms, solicitors, not-for-profit organisations and barristers who supply legal services;
- the Legal Services Commission and DCA; and
- the wider justice system.

2 This chapter sets out the key positive and negative impacts in each of these areas and includes details of how negative impacts can be mitigated through a carefully managed transition to the new procurement arrangements.

3 The chapter also considers proposals for strengthening quality assurance mechanisms, and sets out the responsibility of the legal profession for ensuring that quality services are delivered by the profession.

4 This chapter focuses particularly on suppliers who undertake criminal legal aid work, as they are likely to be subject to the greatest procurement changes, and therefore experience the largest impact. It also includes an analysis of the impact on black and minority ethnic owned firms. However, recommendations about managing the transition to the new procurement arrangements will also apply to suppliers who focus only on civil and family legal aid work.

Access

Client confidence

5 Clients need to have confidence in their legal representative in order for justice to be fair and effective. Clients may want to choose a specific lawyer or firm for a number of reasons:

- some vulnerable clients and persistent offenders tend to relate better to those solicitors they know, and therefore this may help the process to focus on the key issues; and
- clients may also wish to choose and take up recommendations from friends, family and others, based on the reputation of a specific lawyer or firm.

6 The recommendations in this report should ensure that clients continue to receive quality advice and an efficient service. Clients that wish to retain links with a specific person or firm can do so if that person or firm has a suitable contract. There is also scope within the new scheme for practitioners to continue to provide advice to those clients outside their General Criminal Contract area(s).

7 In certain more complex cases, a client's choice of legal representative may not be equipped to deal with those matters that require specialised knowledge. The very high cost cases and possibly other specialist supplier schemes should provide clients with the best possible representation and ensure that complex or specialist cases of this nature are dealt with by specialist suppliers, thereby ensuring that the best possible service is provided.

Appropriate coverage

8 Access to quality legal services means that an individual is able to receive legal advice that is proportionate and appropriate to their potential or actual problem. Traditionally this would have meant that a solicitor's firm, which did legal aid work, was within a reasonable travelling distance. This still remains true for many people requiring legal advice, although the growing use of telephone helplines and the internet suggests that the public has alternative means of getting advice. It is important that the new procurement arrangements support access to face-to-face legal services and respond to legal needs as much as possible.

Impact on specific clients

9 The procurement reforms have been designed to meet the requirements of clients. It is a fundamental point worth restating that legal aid exists in the interests of the client. Legal aid is there to ensure that vulnerable and disadvantaged people are not denied access to justice because of their inability to pay, and those accused of committing a criminal offence are able to get a proper defence and

a fair trial. The recommended procurement schemes should create a stronger, more sustainable supplier base that ensures the client continues to receive a good quality legal service, and one that is delivered at a fair price to the taxpayer.

10 Under the recommended reforms, clients should be able to get access to quality legal advice and representation, with a reasonable choice of legal representative (this includes black and minority ethnic clients having access to black and minority ethnic lawyers if that is requested – the impact on black and minority ethnic suppliers is discussed later in this chapter). The reforms should also provide clients with even greater confidence in the quality of service they receive owing to the more robust quality assurance mechanisms being put in place such as peer review.

Putting quality first

11 Clients should receive the most appropriate professional advice for achieving just outcomes. The client should have confidence in the quality of the legal advice and assistance they receive which will help contribute to their overall sense of trust in the justice system. This requirement should be at the heart of any legal service procured with legal aid. But it equally applies to any client receiving advice or representation from an accredited legal professional.

12 Any method of procuring legal aid must have the individual who needs assistance at its centre. However, it is very difficult for any client receiving legal advice to know objectively whether the advice is 'good'.

13 When procuring legal services with legal aid, primarily from solicitors, there is a particular responsibility resting with the Legal Services Commission to have confidence that it is procuring good quality services. Quality has been, and should continue to be, the most important factor for the Legal Services Commission when it is awarding a contract for legal aid work to a supplier.

Assuring quality for legal advice, assistance and litigation

14 The Legal Services Commission has used various tools to assess whether suppliers are providing good quality services. The Specialist Quality Mark, the terms of its contracts with suppliers, and the funding code describe the responsibilities of suppliers, but while the Specialist Quality Mark has proxies to measure delivery of competent advice, it does not measure quality directly.

15 The Legal Services Commission has recently consulted on its major new initiative, the preferred supplier scheme, which should transform its relationship with solicitors' firms and not for profit agencies. Key to this initiative is the use of peer review. The assessment process is not confined to quality of service, but addresses other issues such as financial management.

16 Peer review is a quality assessment process that has been generally acknowledged as the most effective and preferred means by which the quality of legal advice and assistance by solicitors can be assessed on behalf of the client.

17 Peer review is an independent assessment undertaken by an experienced practitioner, who takes a random selection of closed files from a solicitor's firm and then produces a report on the quality of advice given by that organisation with a rating from 1 to 5 (1 being the highest). Firms that want to gain access to legal aid work will be expected to achieve a level 3 assessment, and in the longer term level 2 will have to be attained. In criminal legal aid, the threshold should start at level 3 for firms competing for very high cost criminal cases. However, the quality threshold will start at level 2 for police station work as soon as best value competition is introduced.

18 It is important that peer review is fair to all firms. The Managing Diversity Associates' (MDA) report[19] (Research on Ethnic Diversity amongst suppliers of Legal Aid) commended the Legal

[19] Managing Diversity Associates report for Legal Services Commission April 2006: Research on Ethnic Diversity amongst suppliers of Legal Aid services pp36-37

Services Commission for the steps they had taken to equality proof the peer review process, but recommended that the response rate to the diversity questionnaire, which would improve the validity of data, should be improved. MDA reported that black and minority ethnic firms interviewed as part of the research exercise 'supported the proposal for peer review as the best measure of quality'.

19 The Legal Services Commission should continue to demand quality, and set the required quality standards, as quality should continue to be the key test for deciding which suppliers to contract with, as reflected in the approach and specific reforms described in Chapter 3 and Chapter 4.

20 However, the responsibility for monitoring and assuring the quality of professional services should not lie with a procuring body, especially when that body is not the sole procurer. Instead, the Law Society should take responsibility for drawing up competency standards and for monitoring and assuring the quality standards required of solicitors undertaking publicly funded work. Not for profit agencies that have legal aid contracts, but do not employ a qualified solicitor, will need to consider how best they fall under the new quality arrangements, and whether they should develop their own advice standards (based on peer review).

21 One deficiency in the monitoring process is the absence of any consideration of the impact of the quality of advice on the wider justice system as a whole, and in particular on activity at court and compliance with court orders. This needs to be addressed.

Recommendation 5.1: The Legal Services Commission, DCA and Law Society should agree an operational process and timetable by September 2006 for transfer of all quality assurance for solicitors by April 2009. The Legal Services Commission will need to be satisfied by the arrangements put in place for quality assurance by the Law Society before effecting a handover of responsibility.

Recommendation 5.2: Peer review should also be assessed before transfer to the Law Society in April 2009 to ensure that a high level of client service is being delivered, resources are being correctly used, and that the needs of the rest of the justice system are being met. Such an assessment should cover both client satisfaction and justice system partners, so that quality assurance includes the quality of firms' effective interaction with the wider justice system. The assessment should be undertaken in partnership by the Law Society, Legal Services Commission, Bar Council and judiciary by April 2009.

Assuring quality for advocacy

22 The Bar Council, like the Law Society, has a number of quality assurance mechanisms in place: a regulatory and disciplinary function; young practitioners' training; continuing professional development requirements; and monitoring and discipline. All these mechanisms are fundamental to maintaining a professional body, but neither they nor the designated qualifications that a barrister holds are an indication of a particular standard of quality.

23 A comprehensive quality assurance process has not been developed for barristers or advocacy skills more generally, and barristers and solicitor-advocates have not been subject to any equivalent to peer review or the Specialist Quality Mark by the Legal Services Commission.

24 The Bar Council has recognised the importance of quality assurance, and is setting up a new Bar Quality Review Board. The Bar Quality Review Board as proposed by the Bar Council would provide a focused element of peer review where other safeguards appear to have failed to deliver a competent and professional advocate. The Bar Council has suggested that the Bar Quality Review Board be regarded as a safety net designed to improve poor advocacy wherever it is found amongst barristers.

25 The Bar Council has demonstrated a clear willingness to enhance its current quality control structures, and its proposals should be welcomed as a very important development for the Bar. The proposals build on its existing structure of de facto quality assurance: training, feedback from clients, responding to complaints, and reports of poor performance.

26 However, as with legal advice, assistance and litigation, there is a client-driven need for the quality assurance of advocacy to be more than a reactive mechanism addressing specific complaints or concerns. This is especially important in the Crown Court (and higher courts) and family courts where advocacy, whether performed by barristers or solicitor-advocates, is a critical component of a client's legal service.

27 A swift move towards a proactive quality assurance process for advocates is required as a precondition of the new advocacy procurement system. Quality assurance should include a robust assessment process against which the required performance can be tested and a rounded system of appraisal (e.g. confidential feedback on performance from other advocates, Her Majesty's Courts Service and judiciary) as suggested above for improvements to peer review for legal advice, assistance and litigation. It could also include information about compliance with court orders. This should ensure that an advocate's ability to provide a general level of client service and effective interaction with the wider justice system is taken into consideration too.

28 Once an assessment system is in place an advocate should only be able to undertake legal aid work if they meet the necessary quality standard. This, together with their professional reputation, should underpin confidence in the ability of the advocate whose service is sought.

29 The Crown Prosecution Service is currently operating a system of preferred sets in London and the South East. But it is moving to a system of grading whereby they intend to secure involvement from the Bar and heads of chambers in accrediting practitioners offering themselves for publicly funded work. This latter model may be a further option to enhance quality for advocacy.

Recommendation 5.3: A proportionate system of quality monitoring based on the principles of peer review and a rounded appraisal system should be developed for all advocates working in the criminal, civil and family courts. This system should be developed through a process chaired by a member of the judiciary in partnership with the Bar Council, Law Society, Legal Services Commission and DCA to ensure it covers all advocates with relevant rights of audience in these courts. The new quality monitoring system should be developed in the first instance for publicly funded criminal advocates, then for publicly funded family and civil advocates, and ultimately for all advocates. The scheme for publicly funded criminal advocates should be in place by the time the new graduated fee schemes are implemented in the Crown Court in April 2007. The system should be subject to a full regulatory impact assessment before being implemented.

Impact on suppliers: solicitors' firms

30 The Legal Services Commission has begun a process of quality assessment under which all legal aid firms will, by 2009, have undergone a peer review process. This process will involve a review by objective experienced practitioners. Quality should be the lynchpin of any market driven restructuring of the profession, and early results of the peer review process suggest that quality rather than price will be the key determinant of the number of firms that will emerge in the restructured post-transition market.

31 The definition of best value relies on quality, capacity and price. Quality has been deliberately placed first because it will be the first element to be tested (and precedes capacity and price) and because early indications are that it will have a greater impact on the number of firms that will participate than either capacity or price.

32 As described in the previous two chapters, the new procurement system has been designed to promote business structures that should enable legal aid suppliers to reach optimal efficiency for the local market, and hence sustain reasonable profits

to ensure the long-term future of legal aid. An efficient, responsive market driven by quality is also in the best interests of clients who need to be confident that they will receive the best advice regardless of which firm they choose.

33 The new procurement system is designed to provide predictable and more concentrated volumes of work so that costs can be reduced for both suppliers and the government.

34 Some firms have sufficient capacity now to undertake work in this way while other firms will have to adapt. Similarly, those firms that already operate in a way suited to the new procurement system may want to make changes to increase their ability to gain market share (within the anti-cartel limits set by the Legal Services Commission).

35 The transition period when suppliers adapt and change their business models to benefit from these procurement changes has to be managed to ensure that there are sufficient good quality suppliers available to provide a service to all clients in all areas. Arrangements to aid this transition are discussed and recommended towards the end of the chapter.

A possible scenario for impact on current suppliers

36 The changes in procurement, as set out in this report, may mean a number of firms with small publicly funded criminal practices are likely to need to change their current business structures to stay in the criminal legal aid market. The firms could increase their volumes of work by increasing their number of fee earners to gain a larger market share or they could achieve a similar outcome by merging with a similar or larger firm. Alternatively they might choose to leave the criminal legal aid market completely or focus on non-criminal legal aid services. Although the latter is an option it might not be viable for all firms. It is difficult to be precise about the exact impact of the recommended procurement changes, as this will depend on how firms respond to them, but the implications for the legal aid market have been modelled on the scenario that only firms with at least £50,000 worth of total criminal legal aid business continue in criminal legal aid.

37 Under this scenario, two groups of firms are identified:

- firms that are likely to need to adapt their entire legal aid business structures to stay within the criminal legal aid market (specialist crime firms, and other firms where criminal legal aid work is at least 60% of the total legal aid income); and
- firms that are likely to need to adapt part of their legal aid business structures to stay within the criminal legal aid market, but could continue to work with similar or revised structures to provide family or civil legal aid subject to the civil and family changes recommended in this report (firms for which crime work is less than 60% of total legal aid income).

38 Based on these two groups, the potential impact on the supplier base for criminal, family and civil legal aid nationally and by region has been identified. Unfortunately, a comprehensive data set does not exist for the private earnings of firms, and so it has not been possible to model the impact on the legal services market more generally.

39 Almost 2,200 firms do some criminal legal aid work. They make up just over half (53%) of the 4,083 firms that did some legal aid work in 2005. However, since these firms are, on average, larger than firms which do only family and civil work, these firms account for around 72% of total legal aid expenditure.

40 Most firms do some family or civil work alongside their criminal legal aid. Only 573 firms focused exclusively in criminal legal aid in 2005, while 1,599 firms mixed criminal legal aid with family or civil work. Together, these firms were also responsible for 59% of all family work and 40% of civil work.

Table 5.1 – National criminal legal aid supplier base

	Number of firms	Proportion of all legal aid firms	Proportion of all legal aid work	Proportion of all crime work	Proportion of all family work	Proportion of all civil work
Crime only firms	573	14%	10%	23%	n/a	n/a
Crime and family only	161	4%	3%	6%	3%	0%
Crime and other civil only	223	5%	7%	14%	n/a	5%
Mixed firms	1,215	30%	51%	57%	56%	35%
Total	**2,172**	**53%**	**72%**	**100%**	**59%**	**40%**

Source: Legal Services Commission

41 Table 5.1 shows key statistics for the current criminal legal aid supplier base. It includes all firms which did any amount of crime work in 2005.

42 The recommendations for changing the current procurement regime will result in extensive restructuring of the legal aid market. The emphasis of the proposals has been upon providing incentives for firms to structure their businesses in such a way that legal aid services can be procured more effectively, and that the service is delivered more efficiently. But the restructuring of firms, whether through consolidation or other means of growing, is about developing efficient practices and not reducing the total number of solicitors in the overall legal aid market.

43 When the new working arrangements are introduced there may be a minimum requirement for a firm to have undertaken £50,000 of criminal legal aid work, based on historic data, in order that a firm have access to further legal aid work (see Chapter 4). Subsequently, when best value tendering is introduced it is likely that those firms with more than £50,000 of criminal legal aid work (and who meet the minimum quality threshold assessed by peer review) will need to increase the amount of defence work in order to compete effectively for new General Criminal Contracts. The likely size required will differ around the country depending on local market conditions. The Legal Services Commission will provide an indication of likely size requirements when it publishes the new working arrangements and boundary areas in summer 2007.

44 The result of the scenario, which is illustrative only, may overestimate the impact of the supplier base in some areas (e.g. small market towns) given the supplier led restructuring that is designed to occur in advance of best value tendering. The result of this senario is summarised in the following three tables. Table 5.2 shows the number of firms that may be affected by the recommended procurement system in the scenario outline. Table 5.3 shows the number of firms as a proportion of the total legal aid supplier base (including non-crime firms). Finally, Table 5.4 shows the importance of these firms in the context of the overall legal aid budget.

Table 5.2 – Number of firms affected by procurement changes in scenario 1 £50,000

	Current supplier base	Number of firms likely to need restructure	Number of firms unlikely to need restructure
Crime only firms	573	85	488
Crime and family only	161	39	122
Crime and civil only	223	53	170
Mixed firms	1,215	235	980
Total	**2,172**	**412**	**1,760**

Source: Legal Services Commission

Table 5.3 – Number of firms affected by procurement proposals, as a proportion of all legal aid firms in scenario 1 £50,000

	Current supplier base	Percentage of firms likely to need restructure	Percentage of firms unlikely to need restructure
Crime only firms	14%	2.1%	12%
Crime and family only	4%	0.9%	3%
Crime and civil only	5%	1.3%	4%
Mixed firms	30%	5.7%	24%
Total	**53%**	**10%**	**43%**

Source: Legal Services Commission

Table 5.4 – Firms affected by procurement changes, as a proportion of total legal aid budget

	Current supplier base	Percentage of firms likely to need restructure	Percentage of firms unlikely to need restructure
Crime only firms	10.2%	0.1%	10.1%
Crime and family only	3.3%	0.3%	3.0%
Crime and other civil only	7.4%	0.4%	7.0%
Mixed firms	51.0%	3.3%	47.7%
Total	**71.9%**	**4.1%**	**67.8%**

Source: Legal Services Commission

45 Therefore under this scenario 10% (by number of firms) of the overall legal aid supplier base (4,083 firms) and 19% (by number of firms) of the criminal legal aid supplier base would need to adapt their business structures. These firms supplied approximately 4% of all solicitor services procured with the overall legal aid budget.

The impact of the new fee structures on good quality and efficient firms

46 This section sets out an analysis of the impact of the proposed recommendations on new fee structures and market restructuring on good quality efficient firms as modelled in discussion with the Law Society, Otterburn Legal Consulting and a range of suppliers. The section provides:

- a comparison of the new fee rates with the existing fee rates;
- an analysis of the new fee rates on a selection of model firms; and
- an assessment of the impact of modest efficiency savings on equity partner earnings.

47 As set out in Chapter 4, it is recommended that work in the police station should be paid according to a system of fixed fees. The fees should cover all work on the case including any time spent on travel and waiting. The fixed fee should cover all cases that do not go over a threshold number of hours. The most complex cases that exceed the threshold number of hours will be paid the relevant fixed fee and will be paid according to hourly rates for all hours worked over the threshold.

48 Table 5.5 shows the new fixed fee, current average profit costs and the percentage difference between the two for each criminal justice system area. A comparison of current average profit costs per case with the new fixed fees in each criminal justice system area shows that the average criminal justice system area will see an increase in average fees per case of around £45, a percentage increase of 28%. The minimum percentage increase in police station fees for a criminal justice system area is 8%, observed in Nottinghamshire. This criminal justice system area has average profit costs that are currently high. Only five other criminal justice system areas have average profit costs that are higher: London, Hertfordshire, Kent, Surrey and Hampshire. The maximum percentage increase for a criminal justice area is 45%. This percentage increase occurs in London.

Table 5.5 – Comparison of new fixed fees and current profit costs in the police station

Criminal justice system area	Fixed fee	Average profit cost	Difference	Percentage difference
AVON & SOMERSET	£224	£175	£49	28%
BEDFORDSHIRE	£215	£174	£41	23%
CAMBRIDGESHIRE	£181	£148	£33	22%
CHESHIRE	£181	£146	£35	24%
CLEVELAND	£165	£124	£41	33%
CUMBRIA	£181	£143	£39	27%
DERBYSHIRE	£224	£176	£48	27%
DEVON & CORNWALL	£196	£167	£29	18%
DORSET	£165	£135	£30	22%
DURHAM	£196	£144	£52	36%
DYFED-POWYS	£196	£157	£39	25%
ESSEX	£224	£174	£50	29%
GLOUCESTERSHIRE	£196	£155	£41	26%
GREATER MANCHESTER	£215	£167	£47	28%
GWENT	£215	£156	£58	37%
HAMPSHIRE	£224	£183	£40	22%
HERTFORDSHIRE	£243	£191	£52	27%
HUMBERSIDE	£165	£144	£21	14%
KENT	£243	£187	£56	30%
LANCASHIRE	£181	£154	£27	18%
LEICESTERSHIRE	£224	£166	£58	35%
LINCOLNSHIRE	£196	£147	£49	33%
LONDON	£313	£215	£98	45%
MERSEYSIDE	£215	£168	£47	28%
NORFOLK	£215	£161	£53	33%
NORTH WALES	£196	£163	£33	20%
NORTH YORKSHIRE	£196	£147	£48	33%
NORTHAMPTONSHIRE	£181	£141	£40	29%
NORTHUMBRIA	£196	£149	£47	32%
NOTTINGHAMSHIRE	£196	£181	£15	8%
SOUTH WALES	£243	£178	£64	36%
SOUTH YORKSHIRE	£196	£158	£38	24%
STAFFORDSHIRE	£196	£161	£35	22%
SUFFOLK	£215	£166	£49	29%
SURREY	£243	£188	£55	29%
SUSSEX	£224	£170	£54	32%
THAMES VALLEY	£224	£176	£48	27%
WARWICKSHIRE	£215	£156	£59	38%
WEST MERCIA	£215	£167	£48	29%
WEST MIDLANDS	£224	£171	£53	31%
WEST YORKSHIRE	£196	£142	£54	38%
WILTSHIRE	£196	£169	£27	16%

49 In the magistrates' court, the existing system of lower standard, higher standard and non-standard fees will be retained. However, payments for travel and waiting will no longer be separately reimbursed. The lower and higher standard fees payable for magistrates' work will increase.

50 Table 5.6 compares the current fees for work in the magistrates' court with the new fees. Lower standard fee rates will increase by between 23% and 28% and higher standard fee rates will increase by between 13% and 15%. The result is an increase in the lower standard fee rate of £57 for category 1 fees nationally and £85 for category 2 fees. The increase in higher standard fees equates to £71 in category 1 fees and £106 in category 2 fees at the national level.

51 Payments to solicitors in the Crown Court should no longer be paid ex post facto. Payments should be made according to a graduated fee similar to that introduced to pay advocates in the Crown Court. Payments will be graduated according to trial length and the number of pages of prosecution evidence. Since the new system is very different to the current system, it is difficult to compare the payments that would be made under the two. However, Table 5.7 shows payment under the graduated fee scheme for a selection of illustrative cases.

Table 5.6 – Comparison of current and new fees in magistrates' courts

	Category	Lower standard fee				Higher standard fee			
		Current	New	Increase	Percentage increase	Current	New	Increase	Percentage increase
London	1	£262.32	£334.10	£71.78	27%	£621.87	£718.10	£96.23	15%
London	2	£461.72	£569.40	£107.68	23%	£1,037.11	£1,181.45	£144.34	14%
National	1	£203.80	£260.36	£56.56	28%	£490.21	£560.95	£70.74	14%
National	2	£359.84	£444.68	£84.84	24%	£825.32	£931.43	£106.11	13%

Table 5.7 - Litigation fee payments for example cases

Offence class	Trial length (days)	Pages of prosecution evidence	Number of defendants	Total trial fee (excluding VAT)
Homicide and related grave offences	4	10	1	£6,090
Homicide and related grave offences	4	10	2	£7,308
Homicide and related grave offences	4	100	2	£7,308
Homicide and related grave offences	4	500	2	£10,514
Homicide and related grave offences	10	10	1	£13,325
Homicide and related grave offences	10	10	2	£15,991
Homicide and related grave offences	10	100	2	£15,991
Homicide and related grave offences	10	500	2	£15,991
Burglary, etc	4	10	1	£1,502
Burglary, etc	4	10	2	£1,803
Burglary, etc	4	100	2	£1,974
Burglary, etc	4	500	2	£5,215
Burglary, etc	10	10	1	£2,570
Burglary, etc	10	10	2	£3,084
Burglary, etc	10	100	2	£3,084
Burglary, etc	10	500	2	£5,215

52 Table 5.7 shows that a four day case in the homicide and related grave offences class (class A) would receive a payment of between £6,090 and £10,514 depending on the number of pages of prosecution evidence and the number of defendants. For a four day burglary (class E) case, example payments range between £1,502 and £5,215.

53 The table also shows the fees that would apply for 10 day cases. A 10 day homicide or related grave offence would receive between £13,325 and £15,991. A 10 day burglary would receive between £2,570 and £5,215.

54 This report sets out significant changes to the way in which solicitors practising criminal legal aid will be remunerated. It also sets out a vision for a restructuring of the legal aid supply market. Given the scale of the changes recommended, it has been important to understand the impact of these new remuneration structures on good quality efficient firms.

55 To help understand the likely impact of the new fees and market structures on a good quality firm, the review has engaged in detailed discussions with the Legal Services Commission, a range of suppliers, the Law Society and Otterburn Legal Consulting. These discussions have focused on trying to understand how a good quality firm can structure itself to work efficiently in the new system. Based on these discussions, a number of model firms have been devised. These model firms have been used to test the impact of the new fee structures, to assess the sustainability of the new market and to understand the effects of efficiency improving measures on the part of firms.

56 Table 5.8 shows the projected profit per equity partner for five different model firms. The projected profit per equity partner is based on a range of assumptions about salaries, overhead costs, chargeable hours, mix of work and average case length (for details of the assumptions see Annex 5.1).

57 Table 5.8 shows that profit per equity partner increases substantially as the structure of a firm changes. It shows that a provincial sole practitioner (who is assumed to work 1,600 chargeable hours per year), will earn substantially less than an equity partner in even a small provincial firm (£36,000 vs. £63,000). For substantially larger firms, equity partner profits increase considerably. For example, in a 30 fee earner provincial firm, with a turnover of between £1.6 million and £1.9 million, an equity partner can earn between £110,000 and £140,000.

58 Table 5.9 sets out the assumptions on earnings for other categories of fee earner.

59 The same five model firms have been used to model the effect of modest efficiency savings on profits per equity partner. The efficiency savings that have been modelled take two forms:

- a saving of 5% in terms of the average number of hours per case; and
- a saving of 5% on overheads and non fee-earner costs.

60 Table 5.10 shows the projected profit per equity partner for each of the five different model firms under the assumption that each of the firms make an efficiency saving of 5% in terms of average hours per case.

61 The table shows that profit per equity partner would be around £39,000 for a sole provincial practitioner with a turnover of around £68,000. This is around a £3,300 increase (9%) in profit. For a provincial firm with one equity partner and 11 fee earners, profit per equity partner would be around £96,000, a £16,000 increase (20%). As firm size increases to 47 fee earners, profit per equity partner rises further to £142,000, a £20,000 (16%) increase.

Table 5.8 – Model firms projected profit per equity partner

Number of fee earners	Number of equity partners	Turnover (Provincial)	Profit per equity partner (Provincial)	Turnover (London)	Profit per equity partner (London)
1	1	£64,397	£35,797	£88,852	£55,118
5	1	£299,111	£63,411	£361,137	£89,471
11	1	£643,045	£80,495	£768,296	£121,729
27	2	£1,637,489	£109,005	£1,904,323	£137,162
47	3	£2,878,785	£121,948	£3,337,213	£151,049

Table 5.9 – Earnings assumptions for other categories of fee earners

	Salary of fee earner (Provincial)	Salary of fee earner (London)
Salaried partner (SP)	£76,500	£85,000
Associate (3-10 years call)	£46,350	£51,500
Solicitors (0-3 years call)	£23,940	£26,600
Other qualified fee earner (OQFE)	£26,100	£29,000
Unqualified fee earners (UQFE)	£14,400	£16,000
Trainee (Tr)	£18,360	£20,400
Support staff	£18,810	£20,900

62 Table 5.11 shows the projected profit per equity partner for the second scenario in which firms make a 5% saving on overheads and non-fee earner costs. Under this scenario, profits per equity partner are again higher than before. The increase in profit per equity partner is not as great as when savings of 5% on average hours per case are made for small firms but is larger for bigger firms.

63 Table 5.11 shows the profit per equity partner would be around £37,000 for a provincial sole practitioner. This equates to an increase of £1,000 (3%) relative to no savings. Profits per equity partner increase by £7,000 (11%) for a 5 fee earner provincial firm to £22,000 (18%) for a 47 fee earner provincial firm.

Impact on suppliers – not for profit sector

64 The recommended procurement schemes for civil legal aid, primarily the move to fixed fees for legal help and away from the funded post model enjoyed by not for profit agencies, are likely to have an impact on the not for profit sector. Not for profit suppliers tend to have a higher average cost in categories of law, such as debt and welfare benefits where they have the majority of contracts.

65 The new procurement scheme should require greater efficiency in the way that not for profit suppliers deliver legal services with legal aid. For example, many not for profit suppliers may need to

Table 5.10 – Model firms with an assumed efficiency saving of 5% for average hours per case

Number of fee earners	Number of equity partners	Turnover (Provincial)	Profit per equity partner (Provincial)	Turnover (London)	Profit per equity partner (London)
1	1	£67,786	£39,186	£93,528	£59,795
5	1	£306,794	£71,094	£372,085	£100,418
11	1	£658,894	£96,344	£790,737	£144,170
27	2	£1,671,844	£126,182	£1,952,721	£161,361
47	3	£2,938,727	£141,929	£3,421,283	£179,072

Table 5.11 – Model firms with assumed 5% saving on overheads and non-fee earner costs

Number of fee earners	Number of equity partners	Turnover (Provincial)	Profit per equity partner (Provincial)	Turnover (London)	Profit per equity partner (London)
1	1	£64,397	£37,227	£88,852	£56,805
5	1	£299,111	£70,561	£361,137	£97,904
11	1	£643,045	£96,225	£768,296	£140,282
27	2	£1,637,489	£128,310	£1,904,323	£159,932
47	3	£2,878,785	£144,352	£3,337,213	£177,473

increase the number of clients they help for the funding they receive, so that their productivity compares with private practitioners. This move to encourage greater efficiency should reward those not for profit suppliers who match the efficiency of solicitor firms, as they should make a surplus equivalent to those firms' profits and should be able to use that surplus to support its wider advice work, campaigning, policy work or lobbying. This should enhance the overall role of the not for profit sector and its wider social role.

Impact on suppliers – barristers and chambers

66 The recommended new procurement schemes have a short-term (one to three years) and possibly a long-term (four years or more) impact on the structure or advocacy services provided by the independent Bar. In the short-term there is a measurable impact on income.

67 Three factors are likely to combine over the next four years or more to effect the way advocacy services are structured and delivered. These factors are:

- the implementation of best value tendering for all criminal defence work from 2009 onwards;
- a decision on whether to move to a single graduated fee scheme in the Crown Court; and
- the emergence of a significant number of alternative business structures (where barristers' and solicitors' services are provided through single entities, possibly based on a chambers-type model) assuming the Legal Services Bill is enacted and implemented in its current form over the next few years.

68 These factors could eventually provide an opportunity for businesses offering legal services to provide more efficient litigation and advocacy for certain areas of work. If this market-led development of the legal services sector were to appear after 2010, the independent referral Bar would continue to be an important and significant means of delivering high quality, experienced and efficient specialist advocacy in many instances.

69 As is set out in Chapter 6, by 2009-10 overall expenditure on Crown Court advocacy services will decrease by nearly 20% compared to 2005-06. The most significant driver of this impact will be the efficiencies derived from the final elements of ex post facto spend coming fully within the revised advocacy graduated fee scheme as set out in Chapter 4.

70 The pricing of different elements within the revised advocacy graduated fee scheme have been recommended to address the fact that different elements of the graduated fee scheme have been held flat with no indexation to account for inflation, in some instances for up to 10 years. This means that while the value of ex post facto cases was increasing above inflation year on year the value of other cases have decreased by between 5-30% in real terms.

71 The impact of the new rates has been assessed against a basket of different Crown Court cases (see Table 5.12). This assessment shows that the changes to different elements within the revised graduated fee scheme would re-balance the value of these cases by between (-3 to +20%). Most of the re-balancing has been directed towards the sorts of cases undertaken by more junior advocates as these cases have had their rates held flat longer than others over the past 10 years.

72 The impact of the efficiencies required from the removal of all ex post facto elements and the re-balancing of the revised graduated fee scheme have also been assessed. The assessment is based on sample of actual case and payment records for advocates of different levels of experience who appear to work full time in publicly funded criminal defence work. Using these advocates' caseload for 2005–06, estimated incomes, as shown in Table 5.13, have been calculated using the revised graduated fee scheme. Overheads are assumed at 35% based on a sample study in 2005 of 28 barristers across all years of call. Overheads include chambers rent and personal work related expenses and do not include any allowance for pension contributions or tax.

73 The table shows that good quality and efficient advocates who are fully employed in publicly funded criminal defence work can expect appropriate remuneration for the work undertaken. For example, a relatively new advocate of up to five years call could expect to earn in around £50,000 under the proposed graduated fee scheme, while an experienced advocate of 10-15 years call could expect to earn over £80,000.

Table 5.12 – Impact of proposals on basket of Crown Court cases

Level of experience (years of call)	Change in payment for typical basket of cases
15+ years (QC)	-3%
15+ years	+5%
10-15 years	+12%
5-10 years	+20%
1-5 years	+18%

Table 5.13 – Potential earnings of sample full time advocates

Level of experience (years of call)	Typical age of advocate	Potential earnings (gross)	Potential earnings (net of overheads)
QC	40+	£196,000	£127,000
15+ years	40+	£125,000	£81,000
10-15 years	35-39	£129,000	£84,000
5-10 years	30-34	£100,000	£65,000
1-5 years	24-29	£76,000	£50,000

74 These earnings only represent defence work in the Crown Court. Full-time advocates (especially as they increase in years of call) are likely to replace or complement their graduated fee scheme work with more very high cost case work and prosecution work for the Crown Prosecution Service (or other prosecuting agencies) as well as any privately funded work.

Impact on suppliers – black and minority ethnic firms

The importance of diversity amongst suppliers

75 The recommendations in this report are intended to create a system within which a diverse choice of quality assured legal representation is procured for clients. This section assesses the impact of the reforms on black and minority ethnic firms and solicitors, and outlines measures designed to ensure the continuation of a diverse supplier base.

76 Some black and minority ethnic practitioners have set up their own firms because that suits the way in which they want to practise, but others have said that barriers within large firms – a 'glass ceiling' – hinder their prospects. It is essential that those barriers, or even the perception that such barriers exist, should be removed.

77 All clients should have confidence in the quality of legal advice and assistance provided by lawyers. Changes to the current arrangements for the procurement of legal aid services should recognise the needs of all groups and ensure that there is an appropriate, high quality and diverse supplier base. Diversity is important to the supplier base, but it is equally important that suppliers are able to work effectively with a diverse population in whatever area they might be operating in.

78 Some black and minority ethnic practitioners see their key role as serving the black and minority ethnic communities and say that some black and minority ethnic clients express a preference for lawyers of their own background. There is a clear relationship between ethnicity of clients and black and minority ethnic firms (defined as firms with a majority of black and minority ethnic partners) as shown in the Table 5.14, which shows client ethnicity by ethnicity of majority managerial control. However, black and ethnic minority practitioners serve all communities, and it is important that high quality advice is available to all clients regardless of their background.

79 While there is a demonstrable link between use of black and minority ethnic firms by black and minority ethnic clients, there is also a strong connection between the percentage of black and minority ethnic firms and the make-up of local black and minority ethnic populations across most regions (see Tables 5.15 and 5.16[20]). This could suggest that the correlation may be as much about location as preference.

The profile of black and minority ethnic suppliers

80 Although there is no single comprehensive database of all black and minority ethnic firms and practitioners in England and Wales, the Law Society and the Legal Services Research Centre hold data from which projections can be made.

[20] Population data taken from the Census 2001, Key Statistics for England and Wales, Table KS06, Office for National Statistics 2001. Black and minority ethnic firm and solicitor data taken from 5th Annual Diversity report September 2005 for Legal Services Research Centre. Response rate to Equal Opportunities Monitoring Section was 48.6%; paragraph 1.2.3 of the 5th Annual Report.

Table 5.14 – Client ethnicity by ethnicity at majority managerial control

	Majority managerial control												
Client ethnicity	**White British**	**White Irish**	**White Other**	**Mixed White/Black Caribbean**	**Mixed White/Black African**	**Mixed White/ Asian**	**Asian/ Asian British Indian**	**Asian/ Asian British Pakistani**	**Asian/ Asian British Other**	**Black/ Black British Caribbean**	**Black/ Black British African**	**Chinese**	**Other**
	N=1154	N=2	N=11	N=1	N=1	N=1	N=37	N=13	N=17	N=5	N=19	N=4	N=1
White British	123635	214	456	.	5	7	1189	713	213	92	368	15	.
White Irish	778	1	7	.	.	.	31	11	33	4	16	2	.
White Other	2453	3	79	.	1	4	479	166	254	15	133	160	2
Mixed White/Black Caribbean	691	3	1	.	.	5	37	19	15	4	28	.	.
Mixed White/Black African	282	.	1	.	.	.	180	6	139	.	154	1	1
Mixed White/Asian	186	.	2	.	.	.	8	2	2	1	1	.	.
Mixed Other	234	2	2	.	1	.	13	4	7	.	7	.	.
Asian/Asian British Indian	1631	.	7	.	.	.	585	34	109	18	22	5	2
Asian/Asian British Pakistani	2807	1	10	.	.	.	323	204	132	15	57	.	18
Asian/Asian British Bangladeshi	815	.	11	.	.	.	102	34	54	4	28	3	.
Asian/Asian British Other	680	2	7	.	.	.	183	1291	414	4	56	103	.
Black/Black British Caribbean	3516	10	13	.	5	3	139	84	253	85	311	18	.
Black/Black British African	7198	13	126	63	6	1	1827	483	2216	67	2014	80	148
Black/Black British Other	1006	6	4	.	.	.	69	29	36	7	33	1	3
Chinese	391	.	12	.	.	1	51	289	57	2	137	73	.

Source: Legal Sevices Commission Research Centre

Table 5.15 – Black and minority ethnic solicitors and their regional distribution against black and minority ethnic population

Regional breakdown of solicitors	White British		Black and minority ethnic		Total no. solicitors
	Solicitors %	Population %	Solicitors %	Population %	
East	91.2%	91.5%	8.8%	8.5%	1,024
East Midlands	91.7%	91.3%	8.3%	8.7%	1,105
London	56.3%	59.8%	43.7%	40.2%	2,556
Merseyside	91.9%	95.3%	8.1%	4.7%	297
North East	98.4%	96.4%	1.6%	3.6%	616
North West	92.2%	91.4%	7.8%	8.6%	1,645
South East	92.1%	91.3%	7.9%	8.7%	1,443
South West	96.5%	95.4%	3.5%	4.6%	1,451
Wales	96.1%	96.0%	3.9%	4.0%	830
West Midlands	82.5%	86.2%	17.5%	13.8%	1,330
Yorkshire & Humberside	88.8%	91.7%	11.2%	8.3%	1,406
Total	**85.0%**	**87.0%**	**15.0%**	**13.0%**	**13,703**

Source: Legal Service Commission Research Centre

81 The first of these tables indicates that black and minority ethnic solicitors, as a percentage of total solicitors from the sample, are proportionately larger than the black and minority ethnic population mapped against the total population of England and Wales (15% to 13%). In terms of firms the black and minority ethnic populations are nearly matched 11.9% to 13%. London stands out in terms of the size of its black and minority ethnic population (40.2%), and the percentage of black and minority ethnic solicitors is 43.7%.

Table 5.16 – Black and minority ethnic firms and their regional distribution against black and minority ethnic population

Regional breakdown of firms	White British		Black and minority ethnic		Mixed Firm %	Total no. firms
	Firms %	Population %	Firms %	Population %		
East	90.6%	91.5%	3.0%	8.5%	6.4%	202
East Midlands	87.9%	91.3%	7.5%	8.7%	4.6%	173
London	45.5%	59.8%	42.6%	40.2%	11.9%	479
Merseyside	98.3%	95.3%	1.7%	4.7%	0.0%	59
North East	98.1%	96.4%	1.3%	3.6%	0.6%	157
North West	93.1%	91.4%	5.5%	8.6%	1.4%	346
South East	93.4%	91.3%	2.6%	8.7%	4.0%	303
South West	98.5%	95.4%	0.8%	4.6%	0.8%	262
Wales	90.9%	96.0%	7.0%	4.0%	2.1%	187
West Midlands	84.8%	86.2%	12.1%	13.8%	3.1%	257
Yorkshire & Humberside	88.6%	91.7%	7.5%	8.3%	3.9%	254
Total	**83.7%**	**87.0%**	**11.9%**	**13.0%**	**4.5%**	**2,679**

Source: Legal Service Commission Research Centre

Table 5.17 – Regional impact in roll-out areas by legal aid income[21]

Crime firms under £50,000	White British		Black and minority ethnic	
	Local %	National	Local %	National
East	22%	1.6%	25%	0.6%
East Midlands	26%	1.9%	0%	0.0%
London	12%	1.2%	22%	13.6%
London – North	13%	0.8%	22%	10.4%
London – South	11%	0.3%	24%	3.2%
Merseyside	16%	0.4%	0%	0.0%
North East	34%	2.4%	0%	0.0%
North West	24%	3.6%	25%	1.3%
South East	20%	2.6%	25%	0.6%
South Eastern	19%	1.3%	0%	0.0%
Southern	22%	1.4%	50%	0.6%
South West	34%	3.6%	100%	0.6%
Wales	32%	2.4%	33%	1.3%
West Midlands	18%	1.8%	17%	1.9%
Yorkshire & Humberside	26%	2.6%	15%	1.3%
Total		**24.1%**		**21.4%**

Source: Legal Service Commission Research Centre

82 The awarding of any legal aid contract should be done on a level playing field. All firms, must meet an adequate quality threshold if the fundamental principles of access to justice are to be upheld.

83 Should a minimum quantity threshold be put in place in any area, then a firm's capacity to meet the threshold, and therefore its size becomes relevant.

84 Table 5.17 shows the percentage of firms that are likely to have to restructure so that they can compete for a criminal contract under the new procurement regime.

85 The impact in Table 5.17 is modelled on a financial threshold of £50,000 for the minimum contract sum. For each region, there is a national impact figure and a regional impact figure. For example, for firms in the East of England holding criminal contracts of less than £50,000, 22% of white British firms may have to restructure their businesses. In the same region, 25% of black and minority ethnic firms holding criminal contracts might need to restructure because their current contracts are less than £50,000.

[21] Black and minority ethnic firm and solicitor data provided by Legal Services Research Centre: from 5th Annual Diversity report September 2005 for Legal Services Research Centre. Response rate to Equal Opportunities Monitoring Section was 48.6%; paragraph 1.2.3 of the 5th Annual Report.

Crime solicitors

86 Table 5.18 shows the percentage of solicitors (working in crime) likely to be at risk if their practice does not restructure in a way that will allow them to win a new General Criminal Contract under the recommended procurement system. The basis of the data is the same as Table 5.17.

87 As with the data for the firms, the national picture for solicitors is similar in impact. Again white practitioners are marginally more at risk than black and minority ethnic firms.

88 Looking at what this means in terms of individual solicitors, there are still regional differences. But, significantly, the pattern of impact for firms in London is not the same for solicitors: black and ethnic minority solicitors are less at risk (18% to 26%).

89 However, it should be noted that the precise impact of the arrangements can only be estimated as firms will have two years in which to restructure. Consequently the scenarios described are likely to be an upper bound on potential impacts.

Securing a diverse sector

90 Some black and minority ethnic firms expressed concern about the impact of the proposals outlined in the interim report. Changes made to these proposals address many of the concerns expressed, and have resulted in impact figures that differ considerably from those in the Managing Diversity Associates' report for the Legal Services Commission for London Competitive tendering.

Table 5.18 – Regional impact in rollout areas by legal aid income

Crime solicitors under £50,000	White British		Black and minority ethnic	
	Local %	National	Local %	National
East	16%	1.0%	15%	0.6%
East Midlands	16%	1.5%	3%	0.1%
London	26%	3.9%	18%	9.9%
London – North	31%	3.8%	18%	8.1%
London – South	5%	0.1%	15%	1.8%
Merseyside	27%	0.7%	36%	0.4%
North East	25%	1.3%	50%	0.1%
North West	17%	2.3%	16%	0.9%
South East	17%	2.0%	22%	1.1%
South Eastern	14%	0.7%	12%	0.2%
Southern	20%	1.3%	28%	0.9%
South West	19%	1.6%	6%	0.1%
Wales	24%	1.7%	33%	0.4%
West Midlands	10%	1.0%	15%	1.8%
Yorkshire & Humberside	19%	2.2%	9%	0.7%
Total		**19.1%**		**16.3%**

Source: Legal Service Commission Research Centre

91 Analysis of available data indicates that the recommendations should not have a negative impact on black and minority ethnic firms and solicitors on a national basis. There may be some disparity of impact at regional level. It is considered, however, that the recommendations are justified by the need to control legal aid spending and to promote efficiency of service in the public interest. It is considered that the recommendations constitute a proportionate means of securing a legitimate aim.

92 A number of measures have been recommended to help sustain a diverse supplier base (see Recommendation 5.4). Further, businesses that wish to restructure should be given assistance to do so, as described below, and will have up to two years to achieve efficiencies before the introduction of best value tendering. There will also be a three month period of consultation after the publication of this report in which any outstanding concerns can be raised and addressed.

93 The recommendations in this report differ significantly from those put forward for London competitive tendering by the Legal Services Commission. In particular, it is recognised that an immediate price based competition is not sustainable and that transitional support may be required. Further, it is recognised that while it is important that there are black and minority ethnic firms available to service the needs of local populations, it may be more important for clients that their needs are met through the provision of high quality advice from black and minority ethnic lawyers, regardless of the firms and chambers in which they work.

Recommendation 5.4: The Legal Services Commission and DCA should help sustain a diverse supply base for legal aid services by working closely with the legal profession to introduce the following measures:

- monitoring of ethnic data throughout all stages of the transition to the market structure in 2010 and beyond;
- regular monitoring of quality checks to ensure that they have no unintended discriminatory effects; and
- a requirement that all suppliers have in place an equal opportunity policy, including specific measurable characteristics, which is regularly reviewed and which is followed; the policy should include the promotion of diversity in the workforce and the capacity of the firm to work effectively with the diversity of the community in its area.

94 The Legal Services Commission has an important role to play in monitoring and promoting diversity within its suppliers, and most particularly during the transitional period when the market will be restructured. There is a clear need for diversity experts within the Legal Services Commission to advise and report to a wider diversity group that should consider issues across legal aid delivery from the client to the supplier.

Recommendation 5.5: The Legal Services Commission should maintain resource to monitor, assess and promote diversity within its suppliers. The Legal Services Commission together with partners, including DCA, should create a wider diversity advisory group to report to the Lord Chancellor and LSC Commissioners on the state of diversity within the suppliers of legal aid services and make recommendations for improvements where necessary. The Legal Services Commission, Law Society and the Commission for Racial Equality should jointly review the number of black and minority ethnic firms, and the number, status and integration of black and minority ethnic practitioners within firms providing legal aid services.

Managing the transition

95 As discussed earlier in this chapter, the process of restructuring and transition towards steady state must be managed carefully. The government is under a duty to ensure that there are sufficient good quality suppliers available to provide a service to all clients in all areas. There is also a duty to make sure that specific needs, such as among black and minority ethnic clients and communities are served fairly and adequately.

96 Managing that process of transition should be a shared responsibility – firms that are interested in continuing in legal aid or in entering the market will be expected to demonstrate the necessary quality standards. Through a demonstration of the required competence and quality, efficient firms should be able to grow their business and reduce costs under the recommended new procurement system. Firms that invest in restructuring and growth should be offered support to undertake the necessary transformation.

97 Changes to the procurement system should be phased to allow firms to adapt to the new market conditions and procurement changes. Once firms have shown they have attained both the required standards of quality and capacity, which may vary across regions, they should be able to take part effectively in the best value tendering process from 2009 onwards.

98 In general, the scale and nature of financial support via banks, and the level of complementary professional services available from accountants, tax advisors and consultants, should provide the means for suppliers to adapt to the new procurement arrangements. What may be available to a particular firm will of course depend on individual circumstances.

99 The lending institutions have traditionally been well disposed towards the legal sector. There should be no reason why this should change in light of the recommendations in this report. Moreover, the proposed changes to working arrangements that provide greater guarantees of access to larger volumes of work and which allow firms to grow their business at lower cost should make it easier for firms to access finance. Banks will continue to screen firms with growth aspirations, focusing on sustainability of income, business acumen and appropriate professional support.

100 Investment in information technology systems and the streamlining of processes to enable firms to become more efficient and generate greater profit should be complemented by the Legal Services Commission taking similar action to address overly bureaucratic processes, onerous checking procedures and inadequate information technology capabilities.

Financing restructuring in the legal aid supplier base

101 It is recognised that firms with the quality, scale, infrastructure, capacity and business acumen to respond to the market based reforms should be able to take up the opportunities presented under the new procurement arrangements.

102 Similarly, firms that are already efficiently structured may want to increase their capacity through recruitment or other methods of expansion, while less efficient firms that want to remain in the market might look for opportunities to consolidate, grow or amalgamate in order to allow appropriate restructuring and generate efficiencies.

103 However, some firms may not have the business knowledge to make the necessary changes, and so assistance in the shape of expert advice should be made available to help them make the required transition.

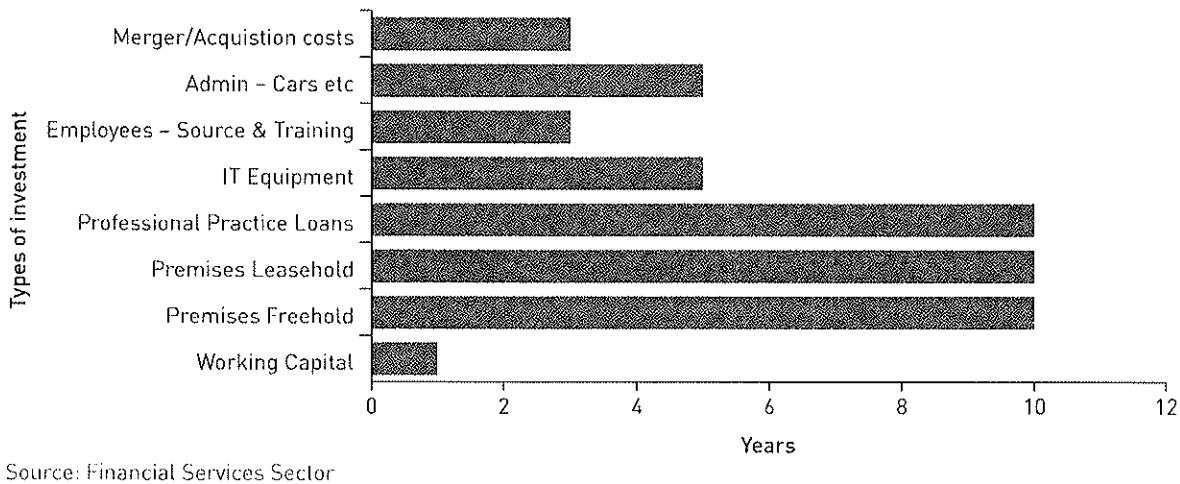
Lending institutions support for legal aid firms

104 The lending institutions have usually viewed the lending and business risks of the larger firms more positively than the smaller practices, as larger firms can often commit specific resources to financial management and tend to be more committed to modernising their business. Larger firms also tend to benefit from a broader spread of clients and fee earners thus making them less vulnerable and more responsive to changes in the sector specifically, and macro business issues generally.

105 It is not only lending institutions that consider smaller firms and sole practitioners to be a greater risk than larger businesses, but the same is true of those providing professional indemnity insurance. Although there is an assigned risks pool which provides cover for firms that cannot get cover from qualifying insurers or cannot reasonably afford the terms available to them, there are limitations on assigned risks pool. Firms may need to pay a high premium and may be required to attend courses approved by the Law Society. Larger firms are generally in a stronger position to obtain cover as they are more likely to have better claims records and other risk factors may be lower than those for small firms and sole practitioners.

106 Although lenders will examine businesses on a case by case basis, it is likely that they will continue to provide support to the legal aid sector. It is suggested that the procurement changes should be attractive to lenders because they offer better security (standard fee regimes, better cash flow and larger contracts).

Figure 5.2 – Time profile for different types of firm investment



Source: Financial Services Sector

107 Most firms have accounts with one of the three largest high street banks. These banks often have relationship managers dedicated solely to clients within the legal profession. Many relationship managers within these banks are Lexcel accredited and should be in a position to help and advise firms through the transitional period.

108 Lenders are likely to raise the following issues and firms seeking finance to restructure would need to consider each one in advance of seeking appropriate support:

- how sustainable is the top line income stream of the business – is the business viable?
- what are the key risks to sustaining profitability margins?
- has a business plan been completed by an appropriately qualified professional and what funding requirement does it demonstrate?
- is the financial management of the business satisfactory for the task in hand?
- is the client base reasonably well spread – that is, no undue reliance on one client?
- what is the acumen/quality of the key people – how many fee earners are there and what is their track record?
- is the internal structure of the business appropriate to accommodate increased business?
- is the drawings policy of the business appropriate/sustainable?
- what is the level of information technology investment given the scale of the business and growth aspirations?
- what is the investment in people?

Length and terms of contracts

109 Lenders are likely to focus particularly on the sustainability of the top line income stream, the cash flow dynamics of the business, and the robustness of the gross and net profit margins. A key consideration should therefore be length of the contracts and the terms they contain. These considerations are not only important for lenders, but also for the firms themselves, given that medium and long term business decisions on premises, staff and information technology investment are likely to be taken on the back of the length and volume of business won under contracts from the Legal Services Commission.

110 However, it is not only the length of the contracts that is important, but the manner in which payments are made by the Legal Services Commission. The procurement changes should help in respect of cash flow. This should have significant benefits for practices.

Recommendation 5.6: The Legal Services Commission should include the methods and timing of making payments to suppliers as a factor when determining the length of contracts awarded under a best value tendering process.

Broader business support for firms in transition

111 Whilst there is likely to be support on the part of lenders willing to take the risk, there are many other business areas which firms should consider and decide upon, whether they are proposing to expand, consolidate or dissolve.

112 Figure 5.2 demonstrates the period of commitment that underpins strategic decisions on key business areas.

113 This shows how important it will be for firms to win and retain contracts when rebidding. For example, if a firm is contractually committed for 15 years under a property lease, the risks associated with having a shorter legal aid contract are clear.

114 Firms should have access to advice and support in considering if and how to bid, understanding the ramifications of not winning a contract and having a plan of action to deal with such a scenario. Such support should include:

- consultancy and professional advice on property issues;
- assistance regarding employee contracts;
- assistance on whether financial assistance/grants might be available;
- tax advice for dissolution or merger;
- information technology advice and support advice/support;
- consultancy support for buying and selling a business;
- personal pension advice on implications of dissolving a business;
- the Legal Services Commission help desk facilities;
- the Legal Services Commission relationship management support; and
- general support to bid or undertake a strategic review and produce a business plan.

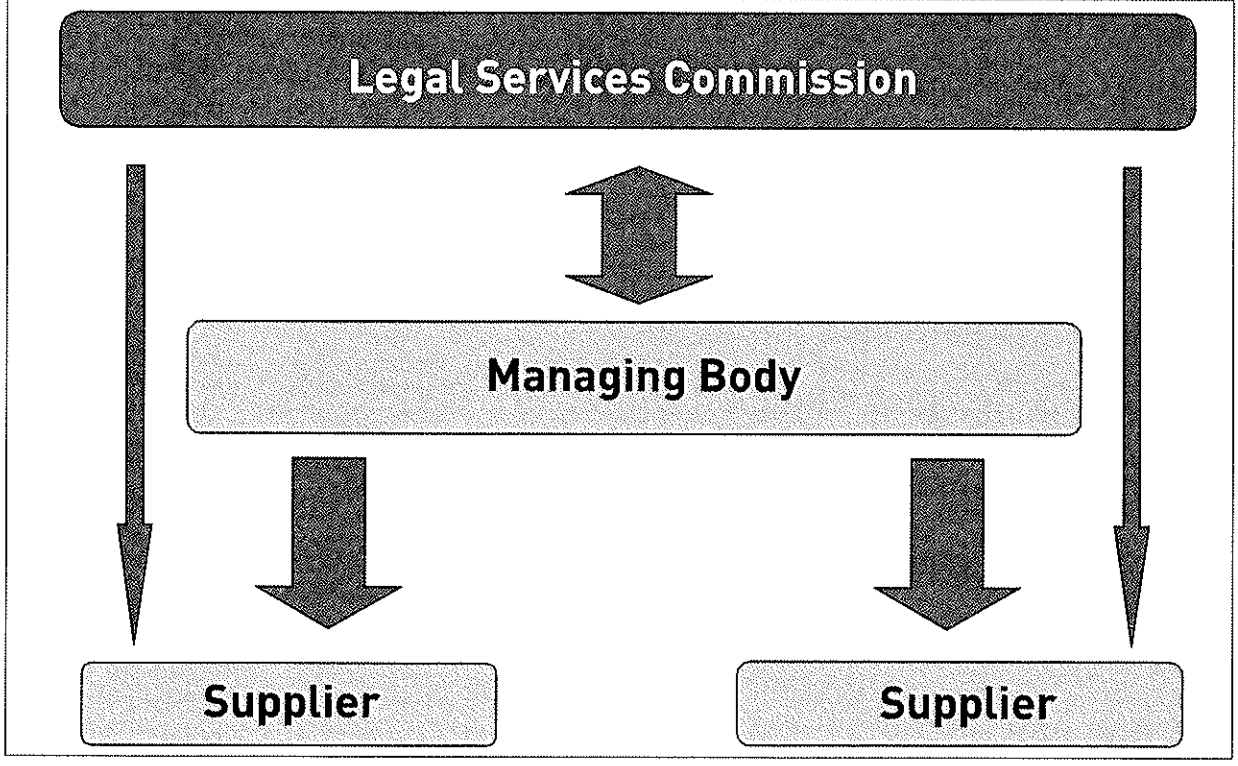
115 There already exist some specialist advice services for small and medium businesses such as 'Business Link' via the regional development agencies. While these can provide advice and assistance in some areas, it may be preferable for a more bespoke programme of support to be established.

Recommendation 5.7: The Legal Services Commission should set up a financial advisory group as a regular forum in which DCA, suppliers and bankers can discuss how best to promote the availability of loan and equity finance for the sector.

Options for suppliers during the transitional period

116 There are a number of models which firms could adopt to increase capacity, such as consolidation, expanding through increased recruitment or sub-contracting. In the short-term consolidation may be the preferred means for small firms to develop.

Figure 5.3 – Possible model for a relationship with the Legal Services Commission



117 For example, firms that wish to consolidate and reduce their overheads could share common services or outsource those services to another supplier. There are two potential models: (i) provision of back office functions including information technology by a larger firm or (ii) use of a third party. The Legal Services Commission will after April 2008 only issue crime contracts to single entities that can be held to account for performance and quality. This will mean either a single firm or a firm which has sub-contracting arrangements with other firms for the delivery of service.

118 It is understood that some firms are actively considering merger as a response to both the interim report and the recent consultation on preferred supplier. Civil and family firms may prefer to operate through networks if they provide civil and family legal aid service. A range of options is available, which should enable small firms to share in the efficiencies currently enjoyed by the larger suppliers, and others are already being actively developed.

Providing shared non-legal functions

119 Discussions with firms have highlighted a number of options open to smaller practices as a result of a sharing of resources. The most regularly identified advantage is access to advanced information technology systems, which would be potentially outside the budget of individual participant firms operating alone.

120 The most advanced current systems are tailored to the relatively limited number of possibilities for progression of criminal proceedings and link directly into time recording systems that flow into billing via the Legal Services Commission website. Users are currently further developing systems that build in automated quality control and produce reports highlighting deficiencies – a form of electronic peer review. A common case management system outside the financial reach of a single firm would be accessible to a number of firms operating together. Indeed, it should be regarded as an essential tool that would enable such firms to gain the efficiencies available to larger suppliers.

121 In addition to information technology, there are other options for consolidating back office functions. For example, secretarial functions could be pooled, or phone calls, messages and correspondence could be taken at a single point and re-routed to individual suppliers when required.

122 Models currently exist within which the entire back office function (including secretarial, administrative services, recruitment, training and even business development) is contracted out to a commercial provider. The degree of control relinquished by participating firms will vary, but can include the fixing of fee earners' salaries, the location of premises and the employment of administrative and management staff directly by the provider. Savings on overheads achieved could be as high as 30%, and partners and fee earners would be able to concentrate solely on fee earning work.

123 Another option is a franchise model. This has similarities to the approach for community legal advice centres. A parent organisation could franchise a number of smaller firms or sole practitioners. The parent organisation has the responsibility of ensuring quality and contractual compliance from the firms it franchises. If it fails to do so the entire contract is at stake. The advantage of the arrangement to both parent organisation and supplier is that this need not be a purely transitional arrangement. A model as shown in Figure 5.3 could continue to operate within a system of either competitive tendering or minimum contract size. There is scope for strategic management by the parent organisation of the ways in which the various firms operate, including acting as a clearinghouse for allocation of work to ensure that all participant firms are operating as efficiently as possible.

124 The main contractual relationship is between the Legal Services Commission and the managing organisation. The Legal Services Commission does however retain some direct contractual control with individual suppliers for exceptional use.

125 The delivery models suppliers choose will affect the willingness of organisations (crucially the Legal Services Commission) to deal with them as a single entity. Suppliers would need to be mindful of this as they develop their services, and in turn the Legal Services Commission will be clear on its requirements and expectations, as should the Law Society when control of quality is transferred to them.

126 As with other areas of growth and restructuring, there should be assistance, in the form of advice, for those suppliers who are interested in pursuing shared office functions.

Helping suppliers to meet the challenge

127 Firms and practitioners will need expert help to achieve the demanding transitional restructuring that many of them will face if they wish to continue supplying publicly funded legal services. That advice may be in relation to gaining knowledge about how to consolidate or grow, how to find a provider of back office services, borrowing and investment, or steps they may need to take in order to improve their efficiency.

128 Regional panels of independent advice providers could be established, particularly in areas where high numbers of smaller firms are seen to be at risk. They could offer a programme of support across a wide range of business issues. This facility would complement the advice that banks would give their clients once the timeframe and implications of the reforms were understood.

129 All criminal legal aid firms that want to restructure to compete for contracts should be given some means of financial support. All other firms delivering legal aid services should also be given financial incentives and advice on how to invest in modern information technology infrastructure provided certain criteria are met in bidding for that assistance. Any financial support available for firms and practitioners should be available to applicants for a period of two years. Any firm that receives a grant and subsequently fails to apply for a legal aid contract will be expected to repay the grant.

Assisting firms to restructure

130 Assistance to suppliers for legal aid services that need and want assistance to restructure could be facilitated by financial support from the government. External help could be provided to suppliers that want to merge or expand their businesses. There are a number of ways in which this help could be provided, however, a small pilot study undertaken by the review found that suppliers currently holding a criminal legal aid contract and wanting help in restructuring could be offered it at three levels. Not only would this staging advice help businesses make planning and investment decisions, but it should also help them, where appropriate, to take the necessary steps to transform themselves into more efficient businesses capable of competing for contracts.

131 Although firms could use the grant to obtain local assistance they might also want to use it through a device that offered firms three levels of advice as outlined below, and possibly facilitated by regional structures of exiting practitioner support groups.

132 The first level of advice would be presentational and delivered by independent specialists who would outline why firms may want to merge or expand; the economic advantages of growth; the steps required to merge or expand; and how to achieve growth. Local presentations would be made to groups of firms, and would be mandatory and part-funded by the firms as a condition of their grant. In effect these sessions will raise awareness amongst interested firms and practitioners about the opportunities and challenges that the new proposals will create. The options and routes open to firms together with the consequences of following each will also be outlined.

133 The second level of advice will be for smaller groups of firms based on information provided by supplier firms. Experts will run workshops for those firms that can demonstrate that they are currently or will be able to deliver the efficient structure required to compete effectively under best value tendering. These workshops will provide practical advice to the individual firms in attendance. This support will detail the nature of advice required (for expanding, merging, diversifying, acquiring, consolidating or dissolving as appropriate).

134 Those firms that appear financially viable for merger or expansion would be offered a third tailored level of service. Expert advisers would work directly with firms: they will brief and assist firms to collate information for merger; consider that information and report to the firms on viability and next steps. All costs beyond that point will be borne by the supplier firm in agreement with the expert adviser.

135 The third level of advice should encompass an initial analysis of accounting information and identification of key issues together with a report giving an assessment of the accounting issues and signposts for the way forward, prior to work being put in train to effect growth or a merger.

136 From the review's pilot study an estimated cost of the individual levels of advice are as follows:

- level 1 – £1,000 per group of 30;
- level 2 – £3,000 per group of six; and
- level 3 – £3,000 per two firms

137 Assuming that firms currently unable to deliver £150,000 of criminal legal aid work will want to consolidate, grow or merge, approximately 1,000 firms with crime work may wish to seek a grant and assistance to merge or grow.

138 The measures outlined above are illustrative of the assistance criminal legal aid practices might want to consider to restructure. However, civil and family practices that also need to restructure to become efficient could use similar assistance though the grant programme.

Recommendation 5.8: There should be established a grant programme through a growth and consolidation fund, lasting from April 2007 to March 2009, totalling no more than £4 million, and administered by the Law Society to provide support for the necessary assistance that firms delivering legal aid will need to enable them to restructure in a way that will allow them to compete for new contracts under the best value tendering process from 2009 onwards.

Other financial support to assist with information technology modernisation

139 Not all firms providing criminal defence services will need to restructure their business or need to seek expert advice for their circumstances. However, there are likely to be a large tranche of firms, providing all types of legal aid services, that will still need to adapt to improve efficiency in the recommended new procurement system, reduce transaction costs with the Legal Services Commission (as envisaged in their preferred supplier approach) and improve their effectiveness when interacting with the wider justice system.

140 Firms that can meet set criteria demonstrating how increased information technology capacity will improve their ability to increase their efficiency to deliver legal aid services, reduce transaction costs and improve their performance within the wider justice system should be eligible to apply for a grant of up to £3,000 from an information technology modernisation challenge fund administered by the Law Society.

141 The fund would provide match-funded grants whereby the firm would need to demonstrate they could find other sources of funding for information technology investment equal to or greater than the value of the grant. The amount available within the fund should be limited to £6 million for a specific period. Such a fund would allow up to 2,000 legal aid firms to bid for the maximum grant.

Recommendation 5.9: There should be established a match-funded grant programme through an information technology modernisation challenge fund lasting from April 2007 to March 2009, totalling no more than £6 million and administered by the Law Society to provide support for all firms providing at least £50,000 of legal services in 2005–06 to invest in information technology improvements to their businesses.

Impact on DCA and the Legal Services Commission

142 The new procurement regimes, set out in this report, will call for considerable skill, application and flexibility by the Legal Services Commission and DCA in managing delivery of very significant changes within a challenging timetable. While the Legal Services Commission has already embarked on a drive for change through initiatives including its delivery transformation project and preferred supplier, the recommendations in this report should prove more testing, but if they are implemented effectively, there should be significant rewards.

143 Both DCA and the Legal Services Commission should recognise that suppliers are being asked to undertake considerable internal change, and they are likely to require an understanding, sympathetic context if such changes are to result in optimum benefits for the system. The skills required by the Legal Services Commission to help manage that process are very different to the skills required for a relatively straightforward contracting relationship.

144 The Legal Services Commission is already moving in the right direction: the delivery transformation project will help streamline processes to the benefit of clients, suppliers and the Legal Services Commission. In parallel, the preferred supplier process will be undertaken, which will readily assist the transformation process but will also demand a high degree of sound relationship management as the supplier market moves through the transitional period to best value tendering. There is also necessary reform to the civil landscape through the CLS strategy, which should result in better legal services for vulnerable clients.

Completing the detailed design and implementation

145 The report details significant changes to the procurement of legal aid services, particularly for crime. But detailed roll-out and mapping of individual police station areas, particularly in London, should be carefully managed by the Legal Services Commission and the professional bodies to ensure that the supplier base is sufficient to deliver the high quality service that clients deserve and expect.

146 The Legal Services Commission and DCA should have in place a detailed implementation plan and draw on expertise in market change from external experts where suitable in-house expertise is not available. This should help to ensure that the move to a smaller number of more efficient suppliers has no detriment on clients and those firms striving to maintain their business and competitiveness. The Legal Services Commission and DCA should ensure that the changes that will ensue, and what those changes mean, are accurately and sensibly conveyed to all existing suppliers and those who may want to enter the market. There is clearly scope here for the Legal Services Commission and DCA to work much more closely in delivering clear messages to the profession.

Managing the transition and monitoring the supply market

147 Firms that want to remain in the legal aid market, yet need to restructure to improve efficiency so that they can compete for contracts should be given assistance as detailed above in this chapter. Many of these firms may want to grow through merger, but they might be unaware of firms in a similar position in their area. The Legal Services Commission with the Law Society should be able to provide a service to help identify firms who are also interested in growing or restructuring.

148 At the same time, it is incumbent on the Legal Services Commission in managing the transitional process to secure sufficient quality suppliers in each area. It will need processes in place that enable it to monitor what is happening in the market, but it should do so with a light touch.

A more efficient relationship between Legal Services Commission and its restructured suppliers

149 Through the delivery transformation project and preferred supplier scheme the Legal Services Commission should be driving towards a less administratively burdensome system. The changes in the procurement system should lead to a closer relationship between the Commission and suppliers. Some of this can be delivered through the more efficient electronic systems that are being developed, such as the suppliers' electronic management system, and intelligent intervention.

150 The relationship managers, currently being appointed by the Legal Services Commission, have a vital role to play. The relationship managers will be expected to improve the current working relationship with suppliers, through for example helping suppliers to monitor their own systems and processes to meet clients' needs and reduce transaction costs. This should create much more of a partnership approach.

Delivering administrative efficiencies

151 The Legal Services Commission's operating costs in 2005-06 were £94 million. This was a 62% increase on the £58 million operating costs of the Legal Aid Board in 1997-98. The rationalising processes and information technology changes that the Legal Services Commission are making could realise savings of up to £30 million by 2010 against the 2005-06 spend on administration. Achieving those savings will depend on the feasibility of introducing the necessary information technology regulation changes and the ability of the Legal Services Commission to reduce its costs. It is essential to the success of this programme that the recommended procurement changes are implemented within the timetable, as this should complement and support the changes in administration and audit processes.

Impacts on the wider justice system

The criminal justice system

152 The recommendations in this report should have a positive impact upon the criminal justice system by complementing new initiatives, encouraging early resolution of cases where appropriate, and ensuring an efficient and quality service is given by defence practitioners. The streamlining of payment regimes should enable suppliers to focus energy on delivering a quality service, rather than dealing with burdensome bureaucratic processes, which in turn should improve effectiveness as practitioners can give greater attention to delivering advice and representation.

153 Clients will be able to choose their representative; it is envisaged that by providing clients with sufficient choice at the police station, consistency of representation from police station through to magistrates' courts or the Crown Court should be encouraged. This should have a positive impact upon the criminal justice system.

154 The current remuneration scheme pays less to those practitioners that dispose of a case efficiently and expeditiously as it is an input based system that rewards expenditure and not use of time. The introduction of more fixed pricing schemes will ensure greater financial reward to those practitioners that can deal with cases more efficiently and expeditiously. In turn, efficient working practices ensure that a valued public service is delivered whilst reassuring the public that due weight is being given to progressing cases.

155 The new fixed pricing schemes should give proper consideration to those cases that are complex and require additional work. Sufficient remuneration is provided for those cases that fall within this category thereby ensuring that a quality service is provided. This should complement the careful control and management of those more complex cases to ensure that key issues are resolved and the delivery of justice improved.

156 The procurement reforms should also ensure that very high cost cases are dealt with by practitioners who demonstrate a high level of specialised knowledge and an ability to deal with complex cases. By guaranteeing the knowledge and ability of those delivering advice and representation in these cases, the criminal justice system will benefit from a speedier and more efficient delivery of service by suppliers who will give such cases a priority.

The civil and family justice systems

157 The recommended new procurement schemes for civil and family legal aid should complement the DCA strategy for civil and family justice. As it should have a positive impact on efficiency and encouraging expedition in court where appropriate, and ensuring cases are resolved without the need to proceed to court where that is appropriate and possible.

158 The introduction of standardised fixed fees for legal help for most civil legal aid work should reward efficient suppliers and enable them to play a full part as a centre or as a supplier within a network. This should complement the Legal Services Commission's recent CLS strategy that set out how the Legal Services Commission would be addressing the need for civil legal advice and representation. The roll-out of networks and centres, plus the expansion of CLS Direct, should enable eligible groups to have access to good quality legal advice, which is proportionate and appropriate to legal problems presented by clients. This in turn, should also ensure that legal problems are addressed at an early stage, and cases only proceed to court when this is necessary.

159 The move to graduated fee schemes for solicitors in public law children and private Law family cases should similarly complement DCA strategy for family justice. The graduated fee scheme for solicitors in public law children should support the reforms to child-care proceedings following the recent reviews in this area. It should ensure sufficient coverage is maintained to allow separate representation for all the potential parties in cases, it should support the move to ensure more work is undertaken prior to the initiation of proceedings, and provide a sensible framework for work in court.

Optimum use of all resources within justice system

160 There are significant improvements that can be made to the criminal justice system to remove inefficiencies that can impose substantial costs on suppliers of criminal defence services. These inefficiencies and additional costs combine to hinder the development of an effective and sustainable market based procurement system and place unnecessary burdens on the Legal Services Commission and suppliers of services.

161 The nature of an adversarial system means that none of the active participants in the justice system has any responsibility to ensure that the overall result is the best possible allocation of public funding for society as a whole. It could be argued that the one participant that could bring overall accountability is the judiciary because it remains above the adversarial process. In the context of the trial process, the judiciary has already sought to do this in two recent instances. The judgments of Lord Justice Judge in Rv. Chabaan[22] and Rv. Jisl[23] illustrate clearly the proposition that, in a world of limited resources, a disproportionate allocation of resource to one case unfairly deprives another of its proper entitlement. The judgment in Jisl states:

> "Justice must be done. The defendant is entitled to a fair trial ... It is not however a concomitant of the entitlement to a fair trial that either or both sides are further entitled to take as much time as they like ... Resources are limited ... Every day unnecessarily used ... represents ... continuing and increasing tension and worry for another defendant ... in trials which are waiting their turn to be listed ... The objective is not haste and rush, but greater efficiency and better use of limited resources."

162 This judgment repeated similar sentiments set out in Chabaan where Judge, LJ stated "Every trial which takes longer than it reasonably should is wasteful of limited resources". The recent Court of Appeal decision in the case of R v K[24] endorsed the approach adopted by a Crown Court judge who invited counsel to make written submissions in order to curtail time spent in oral argument. The Court highlighted in its judgement that the duties and burdens of the Criminal Procedure Rules 2005 provided a framework for all parties, including the judiciary, to ensure effective case management is a reality. This will mean that the judiciary will require sufficient resource and capacity to see this through.

163 It would be tempting, in the light of these judgements, to draw a conclusion which relates solely to judicial case management. Clearly, all cases should be managed on these principles, but the conclusion should be a much wider one. The legal aid fund will always be a limited resource. Any action which wastes a part of this resource has the effect of denying access to justice to unidentified potential applicants. This will not lead to any cause of action on the part of those potential applicants because of the remoteness of the cause and effect but it clearly produces indirect exclusion from justice for those unidentified people who suffer the effect of diminished resources.

164 It should therefore be a prerequisite of any act of any participant in the process that it does not waste limited resources and thus cause such indirect exclusion. In criminal cases, this principle would most obviously discourage prevarication or duplication on the part of the defence but it would also, by way of example, encourage better practice by the prosecution. Action is being taken across the criminal justice system to improve its overall effectiveness and efficiency (as described in Chapter 2) and a good example is the Protocol for the Control and Management of Unused Material issued by Judge LJ in February 2006 . However, such initiatives need constant reviewing to assess their effectiveness and to consider if further incentives or direction are needed.

[22] [2003] EWCA Crim 1012

[23] [2004] EWCA Crim 696

[24] [2006] 2 EWCA Crim 724

165 Similar considerations also apply to civil and family cases, for example, encouraging better practice in local authorities in housing or child-care cases or encouraging social services to be better prepared for child care proceedings (as recommended in the DCA and DfES Review of the Child Care Proceedings System in England and Wales, May 2006). This would reverse the current position of fragmented non-accountability and provide a universal principle aimed at avoiding direct or indirect exclusion from access to justice.

166 Further legislation should not be required because the principle of efficient use of limited resources has clear judicial endorsement. Proper use of all limited resources (whether those of the defence or the prosecution) is an obligation which should temper the actions of all participants in legally aided matters. The principle should be observed and implemented by participants throughout the justice system.

Recommendation 5.10: The appropriate use of limited resources by all participants in the criminal justice system should be pursued and enforced by the judiciary in their management of all types of cases. Internal judicial training, through the Judicial Studies Board, should be expressly developed to ensure that the comments set out above become standard practice and are rigorously enforced, through for example, the quality assurance schemes. Training developments should build on the existing work of the Judicial Studies Board in the area of judicial case management and would provide a backdrop against which it should help the proposed reforms to become more effective. The relevant judicial training should be in place for all Circuit and High Court judges by April 2007.

Recommendation 5.11: A review of the effectiveness of judicial, prosecution and defence adherence to the principles set out in the disclosure protocol (Disclosure: A Protocol for the Control and Management of Unused Material, 20 February 2006) should be conducted by the existing High Cost Cases Review Board reporting by July 2007.

Recommendation 5.12: DCA and the judiciary should review the criteria and regulations that allow for the appointment of two counsel to ensure that representation orders are only granted for those cases that genuinely require two advocates and in particular what circumstances should permit the instruction of two junior counsel as opposed to a QC and junior counsel. The review should be completed by October 2006 so that guidance can be issued and necessary changes to regulations made before the revised advocacy graduated fee scheme is introduced in April 2007.

6: Costing the transition and sharing the risks

1 The report has so far set out the value for money objectives for a new legal aid procurement system, the strategy for achieving market-based reform by 2010 and the specific fixed pricing schemes to achieve it. The previous chapter provided an assessment of the impacts on those who use the justice system or operate in it.

2 This chapter presents the review's best estimate of the costs of the procurement schemes in the transition to best value tendering in 2010, based on the latest full set of volumes and case mix for 2005-06. The chapter also makes recommendations on how spend and performance of the new schemes should be monitored and made transparent so that risks can be shared fairly and openly by all sides.

Costing legal aid expenditure to 2010

Profile of expenditure to 2010-11

3 As described throughout the report, the new fixed pricing procurement schemes and component fees rates are based on a transition to a more efficient and restructured market of suppliers whilst recognising that many of the cost pressures suppliers face are beyond their control.

4 The fee rates set out in Chapter 4 and annexes and the timing of their implementation are designed to ensure the legal services market they are purchased from is the most efficient and sustainable for the long-term. This need to maintain sustainability requires a transition period of two to three years. Annex 6.1 sets out the key milestones and timetable for implementation.

5 The recommended fixed pricing schemes and fee rates would bring the market and system through to a fit state ready for best value tendering beginning in 2009-10. By 2010-11 legal aid expenditure will be procuring legal services through the new schemes but at rates set by the market based on quality, capacity and price.

6 Table 6.1 presents an estimate of expenditure profile during the three years of transition up to 2010-11. The figures are an estimate as they are calculated against the volume and case mix of 2005-06.

Table 6.1 – Expenditure profiles for each of the main areas of legal aid addressed by the review in the transition years up to best value tendering in 2010-11 compared to historic expenditure

£m (RAB)	Cash growth 1997-98 to 2004-05	Outturn 2005-06	Forecast outturn 2006-07	Year 1 of transition 2007-08	Year 2 of transition 2008-09	Year 3 of transition 2009-10
Defence in police stations and magistrates' courts	32%	523	531 (+2%)	508 (-4%)	503 (-1%)	503 (0%)
Defence in the Crown Court*	96%	635	609 (-4%)	586 (-4%)	560 (-4%)	535 (-4%)
Legal help scheme for non-family work and private family scheme	n/a	377	378 (0%)	390 (+3%)	377 (-3%)	377 (0%)
Public law children scheme and legal help scheme for family work	n/a	342	360 (5%)	373 (+4%)	388 (+4%)	405 (+4%)
Sub-total	26%	1,877	1,878 (0%)	1,857 (-1%)	1,828 (-2%)	1,820 (-1%)
All other expenditure (e.g. single asylum fund, administration costs, Court of Appeal, central funds)	n/a	158	191 (+21%)	217 (+14%)	223 (+3%)	219 (-2%)
Total	37%	2,035	2,069 (+2%)	2,075 (0%)	2,055 (-1%)	2,044 (-1%)

*Crown Court figures exclude disbursements which cost £48 million in 2005-06 and forecast to increase to £65 million in 2010-11.

7 Forecasts of changes to 2005-06 volumes and mix of cases procured by each new scheme for the three years of transition will need to be incorporated in to the actual expenditure profile when budgets are eventually set. Some of these volume and case mix forecasts are available and others, especially in later years are being prepared as part of the government's preparations for the forthcoming spending review in 2007.

Implied overall efficiencies

8 Table 6.1 shows the scale and timing of overall efficiencies expected from a reformed procurement system and restructured supplier base. By 2010 the new procurement system and underlying fee rates will demand 4% efficiencies (before inflation) from the supplier market over the three years from 2006–07. The proposed implementation timetable for the procurement system and associated changes can be found in Annex 6.1.

9 Taking account of inflation at 2.7% per annum the overall efficiency demand is closer to 14% efficiencies across the supplier market. Although this level of efficiency would be the same regardless of volume changes (as prices are set on a per case basis) it is important to note that the absolute amount of spend would reduce or decline relative to the changes in volume.

10 The variations in timing in the new fixed pricing schemes mean that efficiencies being sought from the supplier market are staggered over time. This means the 4% overall efficiency demand is sought as 1% in the first year, a further 2% in the second year, and 1% in the final year. This staggering prevents an immediate efficiency demand towards the early years so that efficiencies can be delivered in line with the overall transition. This has been an essential factor in judging the recommended schemes and rates as being sustainable for suppliers' providing services in each area of activity in the transition to best value tendering in 2010.

11 In addition, the sustainability of the level of efficiencies being demanded for each part of the supplier market have been made with reference to the analysis of the structure and profitability of supply base presented in Chapter 2 and the scope for efficiencies through a restructured supplier base as presented in Chapter 5.

12 Similar tables to that above are included in Annex 6.2 showing expenditure profiles broken down for police stations, magistrates' courts, Crown Court litigation, Crown Court advocacy, civil and private family cases and public law children cases.

13 The implementation of new fixed pricing schemes and the time it takes to come through as efficiencies for the overall system varies by each area of spend and within each area of spend. This has a noticeable effect on the profile for spend within each year.

Implied efficiencies for criminal defence supply market

14 The efficiencies being sought from the supplier market delivering services in the police station and magistrates' court have an immediate impact of 4% efficiency demands in the first year of transition which then rapidly taper out to 1% in the second year and flat in the third. This front-loading of efficiencies to earlier years is because pricing changes come through relatively quickly as cases are disposed of and claimed for within weeks or months from their start.

15 The implementation of a new graduated fee scheme and improved control of very high cost cases means that for litigation in the Crown Court the pattern is 8% in year one and then 3% in the following two years. Although the new graduated fee scheme is introduced for all new cases from April 2007 there is a fairly even distribution of efficiency demands for these services as there will be a legacy of cases still coming through and paid for by the old ex post facto or standard fee schemes. By the end of the third year all cases in the system should be procured by the graduated fee scheme.

16 An unusual and complex pattern of expenditure is seen for Crown Court advocacy services. The reduction in spend of 10% in 2006-07 and 6% in each of the final two years is a result of on-going efficiency demands pre-dating the new procurement system recommended in this report. The significant efficiencies are a result of earlier and staged extensions of scope in the graduated fee scheme (see Chapter 2) reaching almost comprehensive coverage in 2005–06 coinciding with some old ex post facto legacy payments running out of the system in the following two years. The scale of these efficiencies would be even larger were there not to be some re-indexation of fee rates within the revised advocacy graduated fee scheme as recommended in Chapter 4.

17 By the end of the transition period the payment system is in balance as all cases (excluding very high costs cases) will be being paid by the graduated fee scheme – revised in structure to improve incentives for efficient operation of the criminal justice system; and with revised rates to take account of varying and inconsistent erosion of rates in parts of the scheme set between 5 and 10 years ago (see Chapter 4 and Chapter 5).

18 Excluding advocacy in the Crown Court the overall effect is that the restructuring of the supplier market for criminal defence services will deliver efficiencies for the taxpayer of 5% in the first year, 3% in the second and then 1% in the third. As described in Chapter 5, those suppliers that restructuring to maximise the opportunities that the new procurement system offers will also be able to increase their profitability.

19 After the introduction of best value tendering in 2010 and a possible move to a single graduated fee for all defence services in the Crown Court there should be scope for significant further efficiencies as suppliers will also increase their profitability by restructuring the way they deliver their services.

Implied efficiencies for civil and family supply market

20 Efficiencies being sought from the market supplying civil and family services either hold overall spending flat in all years (e.g. for the moved to fixed fees for legal help schemes) or have a variable impact.

21 The implementation of a graduated fee scheme in the first year for solicitors in family public law cases initially allows a continued increase in prices 6% over that year before reducing price growth the following two years.

22 A similar pattern of growth in the first year occurs for family private law (5%) although for this graduated fee scheme there follows a 5% efficiency demand from the supply market in the second year and then flat in the third.

23 The overall effect is that the supplier market for civil and family services has a net increase in prices of 3% in the first year followed by no increase in the second and an increase of 2% in the third.

Achieving cost control

24 The historical 37% increase in overall expenditure on legal aid between 1997-98 and 2004-05 demonstrates that cost control for legal aid, even when accounting for volumes, has been unmanageable with most of the current and past procurement schemes of the past decade. There have some noticeable exceptions, including graduated fees for advocacy in the Crown Court and the use of individual case contracts for very high cost civil and criminal cases.

25 The forecast overall cap on total expenditure at constant volumes for legal aid shown in Table 6.1 over the next three to four years clearly demonstrates that the new procurement system should deliver almost complete control on any above inflation price increases. This cost control is especially true for those areas which have experienced some of the largest above inflation increases in price per case, mainly owing to the predominance of ex post facto arrangements in these areas over the past five years and more.

26 Without these new procurement controls the same sort of price inflation as seen in the past decade would more than likely be repeated in the future. The current financial pressures on the legal aid budget are clear evidence of this. Using the Legal Services Commission's forecasts of expenditure, it is likely that the new procurement system will deliver savings of around £150 million by 2010-11.

27 However, the effectiveness of the schemes at controlling price inflation up to 2010 and the introduction of best value tendering will not by itself reduce the outstanding pressure on DCA's provision of funding for legal aid in the 18 months of so up to 2008-09 (the first year of the next spending review period).

28 If the pricing of legal aid work were to be used to reduce the remaining pressure on DCA's provision for legal aid, then the scale of efficiencies that would need to be sought from the supplier base would in the order of 10-20% in less than two years (again, on constant volumes and case mix based on 2005-06). This is despite an inflationary increase in provision for the legal aid budget for the years to 2007-08.

29 Efficiencies of 10-20% over such a short time-scale are undeliverable and unsustainable, when considering the tight margins for profitability in the current supply base and the length of time it would take to restructure the market without making strict restrictions on choice, immediate price based competition and risking loss of good quality supply or any supply in some areas.

Maintaining engagement and transparency

Demystifying and monitoring the numbers

30 The most time-consuming and challenging task of this review was to analyse and understand the immense amount of financial and payment data held by the Legal Services Commission and DCA. There were over a dozen separate types of procurement schemes in operation over the past five years and each one had several types of payment arrangements within it, such as graduated fee schemes or standard fee schemes.

31 Some schemes were so opaque in their nature that analysis of them was extremely limited (e.g. ex post facto schemes for litigation in the Crown Court). In other instances the complexity and difficulty was compounded further by the fact that there were or had been numerous schemes in operation just for one area of spend (e.g. advocacy in the Crown Court).

32 It is clear that as well as creating schemes that pay fair fee rates and offer the right incentives for quality and efficiency, it is also important that the new procurement schemes can clearly be shown to fit within an overall procurement strategy (as set out in Chapter 3) and crucially that they are transparent and capable of providing management and performance information simply and quickly.

33 The Legal Services Commission and DCA have recognised the need for more transparency and simpler, more effective management tools (see Chapter 3 and Chapter 5). The schemes presented in this report should help them in this task and it is critical to the delivery of the recommendations in this report that both organisations do not delay in putting in place transparent management information systems before the transition to the new procurement system begins as many of the changes will rely on them.

Recommendation 6.1: The Legal Services Commission should immediately move to set up dynamic management information systems by December 2006 so that they can effectively monitor and share key performance indicators relevant to the successful delivery of new procurement schemes.

Major indicators include the take-up of advice in the police station, proxies for case complexity in the magistrates' courts, differences between estimate of trial length and actual trial length for very high cost criminal cases. In civil and family, it could include the number of cases under legal help budget, or percentage of cases achieving significant benefit for the client or resolved without resort to court.

Dynamic and participative forecasting

34 A substantial legacy of this review has been to build constructive and open engagement of all sides. A major factor facilitating the creation of trust and appreciation has arisen through the complex process of elucidating the clear constituents of any procurement scheme and therefore legal aid expenditure:

- price – for a whole unit of work or its component rates;
- complexity – the make up of a case mix or the individual variables within a graduated fee scheme; and
- volume – the total number of all cases of type of cases.

35 The procurement system recommended in this report has put the vast majority of legal aid work and expenditure in to fixed pricing schemes. Locking this major variable allows for a fundamental shift to a more transparent and dynamic means of forecasting expenditure and understanding the drivers behind variations from a forecast. In a fixed price procurement system the only drivers are complexity and volume.

36 It appears to be agreed by all sides that although complexity of legal proceedings has increased in recent years in most areas this is now stabilising. The main exception is for child care proceedings.

37 The main variable is therefore the case mix element of complexity and overall volumes of cases coming through the various parts of the justice system. Having clear and cross-justice system agreed expectations and forecasts on these two elements is critical if legal aid budgets are to be set to meet the sustainable pricing presented in this report.

38 Clarity on forecast volumes is also essential for the subsequent transparent and accountable management of the legal aid budget by DCA and the Legal Services Commission so that any emerging anomalies in the procurement schemes or unforeseen perverse incentives can be addressed by all stakeholders rapidly.

39 Speed and complicity in addressing unintended consequences will avoid harming a sustainable settlement which in turn could harm the effective operation of the justice system and lead to a reduction in the scope and eligibility criteria for legal aid. The alternative is to revisit the procurement options set out in Chapter 3 that involve tight restrictions on choice and have high risks of lowering quality and reducing access to justice.

Managing pressure on unit costs

40 The new fixed and graduated fee schemes should do much to reduce the risk of upward drift in prices arising from complexity, or to make such an effect more transparent when it occurs – provided the improved monitoring arrangements described above are put into effect rapidly. One of the positive outcomes of this review is that all sides have acknowledged that if total costs for any graduated element of a fixed price scheme rises because of complexity, the pricing of that element will have to be re-considered to bring the total cost back within profile. However, following the move to best value tendering in 2009-10, it will be the market that re-adjusts these prices rather than through administratively set changes to rates.

41 The exception will be the ancillary payments that remain within the advocacy graduated fee scheme in the Crown Court. As set out in Chapter 4, these ancillary payments will be subject to close monitoring. Any deviation from the expected cost profile within year will automatically lead to that ancillary payment being removed in that year with its cost being incorporated in the base element of the graduated fee scheme for the following year.

Recommendation 6.2: Using the new improved monitoring information, the Legal Services Commission should identify significant upward movements in unit cost and bring together all parties (using the mechanisms for stakeholder relations set out in Chapter 6) to secure shared understanding of the position and agreement to an adjustment down in price or other measures to bring unit cost back within the projected totals set out in Chapter 6 and in Annex 6.2.

Sharing the volume risk

42 If all parties accept that the proposals in this review on price and the projected cost of each element of legal aid at agreed volume assumptions are as demanding as can be achieved without unacceptable risk to the supplier market, it follows that any pressures on the budget arising from volumes cannot be offset by a cut in prices. They will need to be managed either by anticipating and preventing significant increases in costs for areas where volumes increase, for example, because of higher police detection rates.

43 As described above, DCA and Legal Services Commission are the unambiguous accountable bodies with responsibility for setting and managing legal aid budgets according to their statutory duties. The procurement system recommended here will help them in this challenging task. But the risk that cross-justice system agreements or understandings of volume vary significantly should not be one that is left entirely to DCA and the Legal Services Commission to manage.

44 Unplanned and unbudgeted volume changes put pressures on the whole legal aid budget. These pressures should be shared across the justice system, especially when they are a result of policy changes that may increase the absolute volume of cases eligible for legal aid or affects the mix of cases so that there is a relative increase in higher cost cases.

Recommendation 6.3: DCA and its partners in the justice system should develop systems for ensuring a full understanding of volume pressures. The legal aid impact test is a good approach to ensuring that the volume implications of legislation or other deliberate changes in government policy are understood and quantified. It should be vigorously enforced through the government's collective agreement mechanisms. But it will need to be supplemented by a programme of research to ensure that volume pressures arising from subtler changes across the public services, for example in professional practice or rules of procedure, are better understood.

DCA should also work with the full support of the Cabinet Office and Her Majesty's Treasury to ensure that government collectively takes a balanced view of the costs and benefits of allowing legal aid volumes to rise. Where a volume increase is unavoidable or the consequence of a change in policy or practice which is desirable for the government as a whole, the government will need to accept that this will increase the total cost of the scheme and ensure additional funding is therefore made available. It will not be sustainable to offset increased costs from increased volumes through simple price cuts in the transition period and following the introduction of best value tendering in 2009-10 this will not be possible anyway.

On-going transparency and joint problem-solving

45 DCA and the Legal Services Commission have usually engaged with their partners in the justice system or the suppliers of the legal services they procure through a set of bilateral relationships. The history behind the establishment of this review suggests that these relationships are only triggered when problems have become manifest and that they are ineffective at finding solutions to these problems as by the nature of legal aid several parties are usually involved.

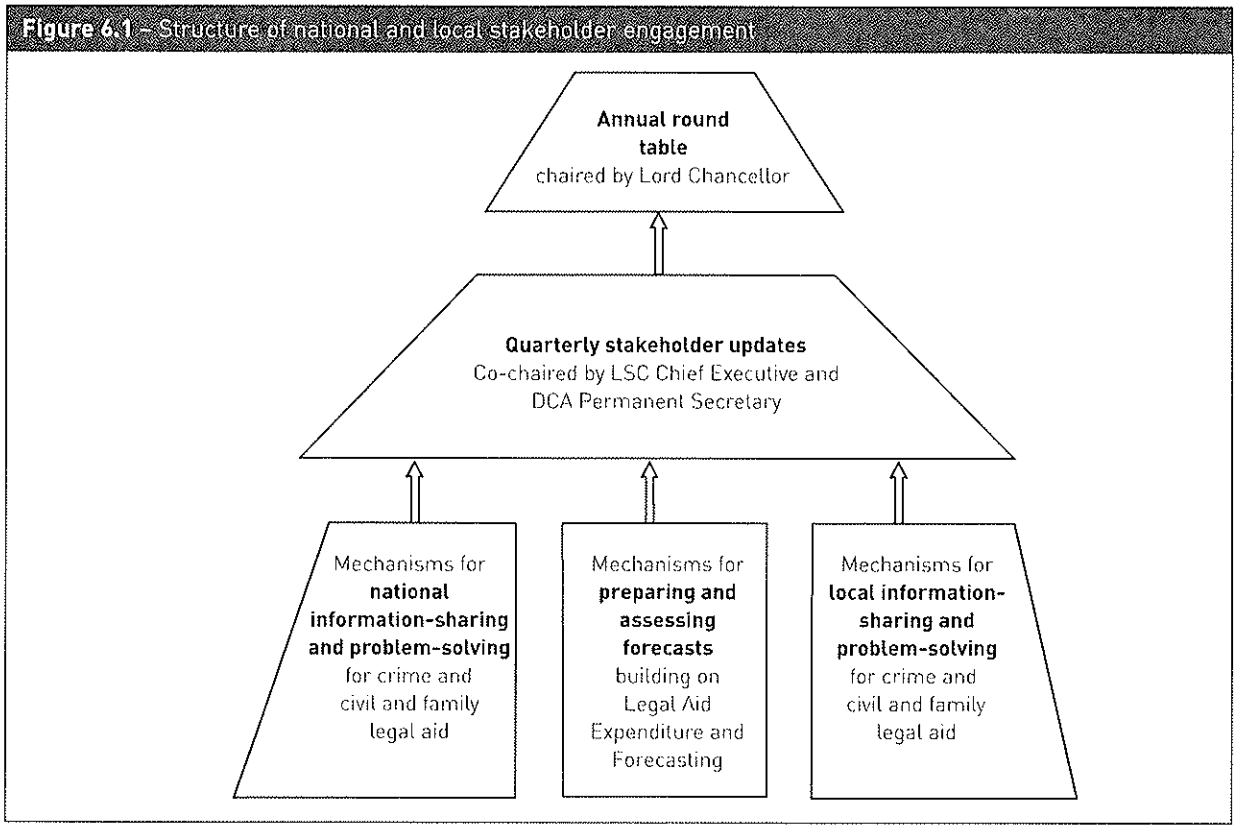
46 More regular and multilateral arrangements for dialogue and problem-solving will have a greater chance of addressing the unintended consequences of change, bring to light opportunities for further improvement and alert others to future volume related or other risks. Arrangements should work at local and national level and there should be a two-way relationship between each level.

Recommendation 6.4: Mechanisms for local information sharing and problem solving on legal aid should be established by the Legal Services Commission by April 2007 to promote opportunities for greater efficiency (or managing risks of inefficiency) which arise from practices and relationships in a particular place. For criminal legal aid the basis for such arrangements should be for the Legal Services Commission to be represented on local criminal justice boards supported by local defence practitioner feedback arrangements. Elsewhere, for example, local family justice boards may be used for family legal aid.

47 Figure 6.1 illustrates how national and local stakeholder engagement arrangements should fit together.

48 The lower tier of stakeholder engagement mechanisms would pick up the local arrangements recommend above as well as existing national intra-government and practitioner arrangements such as those managed by the Office for Criminal Justice Reform. In addition to these national and local information-sharing and problem solving arrangements the current internal DCA and Legal Services Commission forecasting committee could be opened up to involve stakeholders from outside government as necessary, such as analysts and officials from the Law Society, practitioners groups, the Bar Council, the Local Government Association, the Association of Chief Police Officers and the Crown Prosecution Service.

Figure 6.1 – Structure of national and local stakeholder engagement



49 A middle tier of stakeholder engagement could be established for senior members and officials from the key stakeholder groups (as above and including the senior judiciary, consumer groups and others) to update one another on legal aid issues such as:

- quarterly management and monitoring information produced as part of the orderly transition to address any unintended consequences likely to harm a sustainable settlement;
- the state of quality and commercial viability of the supplier market both nationally and locally;
- policy changes in the wider justice system effecting legal aid; and
- significant forecast issues based on a presentation of DCA and the Legal Services Commission quarterly forecast.

50 A final top tier of stakeholder engagement could be an annual round table chaired by the Lord Chancellor providing an opportunity for the senior office holders from a limited number of the key stakeholder groups (e.g. President of the Queen's Bench Division, Chair of the Legal Services Commission, Chair of Bar Council, President of the Law Society and Director of Public Prosecutions) to report and discuss the major strategic issues effecting legal aid that have been raised through the quarterly updates.

Recommendation 6.5: DCA and the Legal Services Commission should establish improved stakeholder engagement arrangements giving the precise format and timing for quarterly meetings of the senior members and officials from the key groups to update one another on dynamic management information and quarterly forecast reviews so that the first quarterly update can take place by January 2007. An annual roundtable chaired by the Lord Chancellor should also be established for the lead figures in the major representative bodies and agencies to report and discuss the major strategic issues affecting legal aid.

Annexes

Annex 1.1: Terms of reference

1 These are the terms of reference for the production of a plan to implement a package of reforms to the way publicly funded legal advice and representation are procured by the state. The review and resulting plan will be produced by Lord Carter in agreement with the Secretary of State and Lord Chancellor and by early 2006.

2 The review will consider the means by which to deliver the Government's vision, set out in A Fairer Deal for Legal Aid, for procuring publicly funded legal services, particularly criminal defence services. This will be presented as a plan for delivering a procurement system that achieves maximum value for money and control over spending whilst ensuring quality and the fairness of the justice system.

3 The reforms will also encourage a more open and responsive market, share risks between supplier and purchaser, and improve the way the state engages with lawyers when procuring legal services.

4 To achieve these objectives the plan will set out how to deliver the best way of buying and delivering legal services, in particular criminal defence services for high cost cases, that:

(a) matches the right advice and representation to the issue at stake;

(b) meets specified quality standards;

(c) incentivises swift conclusions and minimises costs to other parties;

(d) encourages a diverse and competitive market of lawyers and others offering advice and advocacy that helps deliver quality and just outcomes for best value; and

(e) avoids frequent and piecemeal direct fees negotiations between the purchaser and individual sectors within the legal services market.

5 The review will take in to account the current programme of moving to fixed or graduated fees (in particular schemes for graduated fees for cracked trial and guilty pleas and for Crown Court litigators) and the proposals for competitive tendering for solicitors in London. This review will also fulfil the commitment that DCA gave in a letter to the Bar dated 24 June 2004 to review the current criminal graduated fee scheme and the very high cost criminal cases scheme.

6 The review will focus on the options for new procurement arrangements set out in A Fairer Deal for Legal Aid (block contracting, price competition, and lead supplier) but may also contain other reforms to supplement, modify or replace these options in order to produce an effective overall package.

7 The plan will be grounded in a detailed analysis of the impact of the final reforms. This analysis will include:

(a) an assessment of how effective each reform and/or combination of reforms will be at achieving the overall objectives, whilst ensuring quality;

(b) the likely efficiency gains and the timescale over which they will be achieved;

(c) the impact of a new procurement regime on the supply of criminal defence services, the wider legal market, the way the professions are structured, the way the Crown Prosecution Service operate and the operation of the entire justice system; and

(d) the impact on the various agencies e.g. the Legal Services Commission and Her Majesty's Courts Service.

8 From this analysis the plan will give a route map of how to deliver the reform package and how that will achieve the overall objectives. Included in this route map will be the action needed to promote changes to the quality, structure and performance of the market and its constituent professions (in the context of wider legal service reforms). The plan will also include mitigating action to be taken to address any adverse affects on quality and performance that may result from changes.

Annex 1.2: Review methodology

1 Lord Carter's review team was made up of eight full-time staff (three DCA secondees, one Legal Services Commission secondee, one Crown Prosecution Service secondee and three project support staff), as well as being assisted by secondees from Frontier Economics. Lord Carter also engaged the assistance of three senior figures from the commercial and legal worlds, Guy Beringer, David Gregson and David Ross. Guy Beringer is Senior Partner at Allen & Overy, an international legal practice; David Gregson is Chairman of Phoenix Equity Partners, which he co-founded in 1991; and David Ross is chairman of the National Express Group and deputy chairman of the Carphone Warehouse Group. Further biographical details can be found at www.legalaidprocurementreview.gov.uk.

2 An iterative approach was taken to developing the recommendations detailed in this report, and key stakeholders were extensively engaged. As well as liaising with the Law Society and Bar Council on an almost daily basis, the following stakeholder groups were regularly consulted: DCA, Legal Services Commission, the judiciary, the Crown Prosecution Service, the Office for Criminal Justice Reform and Her Majesty's Treasury. As ideas were developed, they were presented to these key stakeholders for comments, making the final report the result of close discussion with these groups.

3 The review team also met with a number of other practitioner groups, visited a range of firms, chambers and courts, and held a series of meetings with barristers, solicitors and local judiciary in Birmingham, Bristol, Cardiff, London, Chester, Manchester and Leeds. This allowed the team to gain valuable insight into how legal aid has been working throughout England and Wales. A full list of stakeholders consulted is shown below.

4 In summer 2005, an advertisement inviting submissions on legal aid procurement was published in a number of national newspapers and legal journals. Over 100 submissions were received from a range of interested parties.

5 Business consultants PKF were contracted to conduct a survey into legal aid and the wider legal market, with visits to firms and a series of questionnaires to both firms and chambers. Further development of this work was undertaken by Otterburn Legal Consulting to determine the optimum structure of efficient and productive firms and chambers that currently exist in the market.

List of stakeholders

6 Throughout the review, Lord Carter and his team met with a number of stakeholders and interested parties; including:

The Rt Hon Lord Falconer of Thoroton, Lord Chancellor and Secretary of State for Constitutional Affairs

Baroness Ashton of Upholland

Bridget Prentice MP

Harriet Harman QC MP

Vera Baird QC MP

DCA officials

HM Courts Service officials

Sir Michael Bichard – Chair, Legal Services Commission

Legal Services Commission officials

Des Browne MP – former Chief Secretary to the Treasury

The Rt Hon Stephen Timms MP – Chief Secretary to the Treasury

HM Treasury officials

The Rt Hon The Lord Goldsmith QC – Attorney General

Attorney General's Office officials

Ken Macdonald QC – Head of the CPS and Director of Public Prosecutions (DPP)

Crown Prosecution Service officials

Prime Minister's Office officials

Cabinet Office officials

Home Office officials

Office for Criminal Justice Reform officials

Office for Fair Trading officials

Parmjit Dhanda MP – Parliamentary Under Secretary of State for Children, Young People and Families

Department for Education and Skills officials

Robert Wardle – Director of Serious Fraud Office

David Green QC – Director of Revenue & Customs Prosecutions Office

Beverly Willstrop – Director of National Taxing Team

David Varney, Chairman – HM Revenue & Customs

Oliver Heald MP, Shadow Secretary of State for Constitutional Affairs

Scottish Executive officials

Welsh Assembly Government officials

Lady Barbara Thomas Judge

The Bar Council

The Law Society

The Law Society of Scotland

Lindsay Montgomery – Chief Executive, Scottish Legal Aid Board

Scottish Legal Aid Board officials

Lord Phillips of Worth Matravers – Lord Chief Justice of England and Wales

Lord Woolf of Barnes – former Lord Chief Justice of England and Wales

The Rt Hon Sir Anthony Clarke – Master of the Rolls and Head of Civil Justice

The Rt Hon Sir Igor Judge – President of the Queen's Bench Division

The Rt Hon Sir Mark Potter – President of the Family Division and Head of Family Justice

Lord Justice Brooke – Vice President Civil Division of the Court of Appeal

Lord Justice Dyson – Deputy Head of Civil Justice

Lord Justice Thomas- Senior Presiding Judge of England and Wales

Lord Justice Hughes

Mr Justice Ryder

HH Judge Riddell

HHJ Cutler – Secretary of HM Council of Circuit Judges

HH Judge Barker QC – the Common Sergeant

HH Judge Samuels QC -Chairman of the Criminal Committee of the Council of Circuit Judges

DJ Tim Workman – Senior District Judge, Chief Magistrate

DJ Michael Walker – Honorary Secretary, Association of District Judges

District Judge Rawkins

Senior Costs Judge Peter Hurst

District Judge Crichton

Advice Services Alliance

Association of Chief Police Officers

Association of Lawyers for Children

Association of Major London Criminal Law Firms

Association of Women Barristers

Bar Parliamentary Group

Black Solicitors' Network

Bob Nightingale

CAFCASS

Citizens Advice

Civil Justice Council Access to Justice Committee

Criminal Barristers Association

Criminal Law Solicitor's Association

Family Law Bar Association

Institute of Barristers Clerks

Institute of Legal Executives

Law Centres Federation

Law For All

Law Works

Legal Aid Practitioners Group

Local Government Association

London Criminal Courts Solicitors' Association

Magistrates Association

Mental Health Lawyers Association

Police Federation of England and Wales

Resolution

Solicitors' Association of Higher Court Advocates

Society for Asian Lawyers

Society of Labour Lawyers

Serious Fraud Association

Youth Justice Board

Various financial institutions
Wimbledon Police Station Custody Suite
Bishopsgate Police Station Custody Suite
Steel House Lane Police Station Custody Suite, Birmingham
Longsight Police Station Custody Suite, Manchester
MET Custody Directorate officials
Brent Law Practice
Bindman and Partners
DLA Piper Rudnick Gary Cary Solicitors
Evans Bisset
Fisher Jones Greenwood
Hanne & Co
Hodge Jones & Allen
Hope Atkins Solicitors
Howard Cohen & Co Solicitors
Irwin Mitchell
Osbornes Solicitors
Peters and Peters
Russell, Jones & Walker
Scomo
Tuckers Solicitors
9 Gough Square Chambers
9 Park Place Chambers, Cardiff
11 Old Square Chambers
Charter Chambers
Doughty Square Chambers
Furnival Chambers
Matrix Chambers
No 5 Fountain Court Chambers, Leeds
Whitefriars Chambers, Chester
Cardiff Crown Court
Edmonton County Court
Stratford magistrates' court
Thames magistrates court
Birmingham Crown Court
Chester Crown Court
Harrow Crown Court
Manchester Crown Court
Leeds Combined Court
Inner London family proceedings court
Central Criminal Court, London
Pamela Sanderson, Recorder of London
Professor Flood
Avis Whyte
Sylvie Bacquet
Graham Hogan
Ed Lloyd-Cape
Richard Moorhouse
Otterburn Legal Consulting
Professor Lee Bridges

Netherlands – The Hague

Mr Peter Wagenmaker, Head of Legal Aid Department, Ministry of Justice
Mr van der Spoel and Dr Sjocrona – Dutch defence lawyers.
Mr Jan van Dijk, Executive Director; Mr Jan Ouwehand, Legal Adviser; and Mr Frits Haarlemmer, Management Team – Legal Aid Board
Mr Bas van de Vliet, Head and Mr Martin Petrov, Deputy Head – Office of Legal Aid and Detention Matters, International Criminal Tribunal for the former Yugoslavia

USA

Washington

Avis Buchanan, Director and Peter Krauthamer, Deputy Director – Public Defender Service for the District of Columbia
Ted Lidz, Assistant Director – Office of Defender Services Program for the US Federal Courts
Josh Manley, Professional Staffer – Senate Sub-Committee Appropriations, Judiciary Related Agencies
Senior staff from both Senate & House Committees
Chief Judge Rufus King of the DC Superior Court

Helaine M. Barnett, President – Legal Services Corporation

Michael Greco, President – American Bar Association (ABA)

Terry Brooks, Director – ABA Division for Legal Services

Alan Houseman, Executive Director – Centre for Law and Social

Policy Donald Saunders, Director – Civil Legal Services, National Legal Aid & Defender Association

Boston

Judge Saris – US Federal District Court (Ex Chairperson US Defender Services Program)

Dorothy Seder – Chief Financial Advisor US Courts (Federal)

Ted Lidz, Assistant Director – Administrative Office, Office of Defender Services Program for the US Federal Courts

Bill Leahy – Committee for Public Counsel Services (State defender system)

Andrew Silverman – Committee for Public Counsel Services (State defender system)

Charles Rankin – Private Attorney – Head of the federal panel in Massachusetts

Miriam Conrad – Federal Public Defender

Germany – Berlin

Dr Christian Meyer-Seitz, Head of Division, Civil Legal Procedures – Justice Ministry

Klaus Otto, Head of Division, Court Costs, Legal Remuneration and Legal Statistics – Justice Ministry

Jürgen Seifert, Judge at Higher Criminal Court – seconded to BMJ

Dr. Tobias Mästle, Judge at Civil Law Court – seconded to BMJ

Werner Klüsener, Senior Legal Counsellor, Criminal Law

Gabriele Cirener, Judge at Upper Chamber, Serious Crimes Court, and Judicial Registrar

Prof. Dr. iur. Christoph G. Paulus, LL.M., Professor for Civil Law and Civil Procedural Law, Law Faculty, Humboldt University

Prof. Dr. Dr. Alexander Ignor, Professor for Criminal and Criminal Procedural Law, Law Faculty, Humboldt University

Udo Henke, Director, Deutscher Anwaltverein/German Bar Association

Alexander Sättele & Anke Müller-Jacobsen, Lawyers at Strafverteidiger e.V./German Association of Defence Lawyers

Annex 3.1: Civil justice system – dispute resolution, conditional fee agreements and insurance

1 Access to civil justice is one of the key components of a fair and decent society. It enables people to understand their civil rights and obligations, and if appropriate, enforce their rights in disputes. As legal aid eligibility limits have tightened over the past two decades, conditional fee agreements have developed as a means of providing access to justice in certain civil areas of law, such as personal injury, for those people who would not qualify for legal aid and would otherwise be unable to pay for litigation.

2 A conditional fee agreement makes it permissible for a legal representative to represent a client on the basis that if the case is lost, either no fee or a reduced fee, will be payable by the client. However, the client remains liable for the opposing party's costs. In recognition of the risk of non-payment or under-payment being taken by the legal representative, the legal representative is permitted to require payment of a percentage increase, known as a success fee, in the event of a successful case. The success fee can be up to a maximum of 100% depending upon the level of risk being undertaken.

3 Initially, the success fee was payable by the client out of the damages recovered from the opposing party. Following the Access to Justice Act 1999, this changed so that the party against whom an order for costs was made also had to pay the success fee. In some cases, the party would also be required to pay any after the event insurance premium.

4 After the event insurance is an essential part of the conditional fee agreement arrangements. A losing party represented under a conditional fee agreement has to pay the legal representatives either a reduced fee or no fee, but they will still be liable for the opposing party's costs. Since most litigants represented under conditional fee agreements do not have the means to meet such costs, it is necessary to have insurance in place that will meet those costs if the case is lost.

5 After the event insurance premiums can cost between £350–900 in fast track personal injury claims, but premiums can cost thousands of pounds in more complex cases. After the event insurance can therefore be expensive and many litigants are unable to fund the premiums. In order to overcome this difficulty, a number of methods are used. In some rare cases, the solicitors themselves will fund the premium. However, in other cases a loan is obtained from a bank to cover the cost of the premium. Although the premium itself may be recovered from the opposing party, the interest on any bank loan is not recoverable and has to be paid by the client. Some after the event policies have deferred premiums, that is nothing is payable until the litigation is completed, and others are self-insuring, so that if the case is lost, no premium is payable.

6 This has meant that the opposing losing party, usually backed by large liability insurers, has found themselves liable to pay the normal costs of the litigation, a success fee which could be up to 100% of the solicitor's profit costs and counsel's fees, plus an after the event insurance premium. As a result of this, there has been satellite litigation in which paying parties, backed by liability insurers, have attacked conditional fee agreements on the basis they did not satisfy all of the necessary statutory and regulatory conditions, and are therefore unenforceable and no costs should be payable.

7 It has been suggested that the after the event market is still relatively immature, as a number of companies have had to leave it after suffering significant losses. It has not been helped, of course, by the turbulence within the conditional fee agreement system caused by the collapse of high profile claims management companies: Claims Direct and the Accident Group. However, the strength of the agreement system depends upon a healthy after the event insurance market, and the government and insurance companies should

consider what additional steps should be taken to grow and safeguard the market. At present, there are only a small number of insurers underwriting after the event insurance policies, and this limited capacity may mean that prices are potentially higher than they would be if there was greater competition.

8 Civil litigation can sometimes also be funded through legal expenses insurance, which is sometimes called before the event insurance. Such insurance is obtainable as a separate policy or can be bought as an 'add-on', for example, when taking out household and motor policies. This type of insurance is cheap, as the many pay for the few; but is not recoverable from the paying party.

9 However, it is thought that the take up of before the event insurance has been hindered by a combination of factors:

- lack of consumer awareness as to its value;
- an attitude that "it'll never happen to me" amongst some members of the public;
- apathy to some policies within the insurance industry, as it adds to the overall costs of the policy and makes it unattractive; and
- under-utilisation by solicitors who have overlooked before the event insurance in favour of after the event insurance to support any conditional fee agreement.

10 The development of conditional fee agreements provided a market solution to access to justice in certain categories of law, such as personal injury claims. However, just in case, powers were taken under the Access to Justice Act 1999, to provide a statutory basis for third parties to establish a contingent legal aid fund. This would be a reserve power in the event that conditional fee agreements or other forms of funding litigation could not adequately provide for access to justice[25].

11 Ideas for some form of contingent legal aid fund to support court cases have been in circulation for the past 40 years. A contingent legal aid fund is a funding mechanism under which successful cases pay some form of levy back into a common fund to help pay for those cases which are not successful, so that the scheme as a whole over time is self-financing. There are a number of different ways in which a contingent legal aid fund could operate, including whether the levy should be collected from the client's damages or from the costs in some way, and whether any additional sums should be payable by the opponent. A supplementary legal aid system is a similar mechanism to a contingent legal aid fund but is administered by the legal aid authorities as part of their scheme.

12 The idea of a contigent legal aid fund has come to the forefront again following the Civil Justice Council report last year Improved Access to Justice – Funding Options and Proportionate Costs[26]. This report was informed by visits to other jurisdictions where such funding mechanisms have worked well and recommended that further work is done by the Legal Services Commission and others to progress such ideas within England and Wales.

13 However, any proposals for a contingent legal aid fund or supplementary legal aid system in England and Wales have to be considered within a context in which conditional fee agreements are available. Conditional fee agreements are the government's preferred option, as they minimise the risk for the taxpayer, but a contingent legal aid fund could never be self-financing when in direct competition with a conditional fee arrangement. Adverse selection would operate such that it would always be more profitable for strong cases to proceed under contingent legal aid funds leaving only weaker cases to apply to the contingent legal aid fund and this would jeopardise the key self-financing aspect of the fund.

[25] This provision has never been commenced, to date. During the passage of the Act in Parliament the government position was that we saw no need and would only consider commencing and making regulations if an independent body, i.e. the Law Society or Bar Council came forward with proposals for a viable scheme.

[26] Improved Access to Justice – Funding Options and Proportionate Costs, Civil Justice Council, August 2005.

14 A contingent legal aid fund would only be possible in the absence of conditional fee agreements, or possibly, in a discrete area where there is insufficient access to justice and it is an area of civil justice that tends not to be in direct competition with any other funding scheme. In its report, the Civil Justice Council recommended that further consideration should be given to a form of conditional legal aid fund where insurance was unavailable, and highlighted the particular issues around funding group actions. This is an option that should be further explored by the Legal Services Commission and DCA with the Civil Justice Council.

15 However, an alternative option, which may offer greater scope for future action, is if elements are taken from the contingent legal aid fund model and applied to legal aid funding of civil representation cases. It has always been a feature of legal aid that the fund loses money in unsuccessful cases, and at best breaks even in successful cases. Indeed, it is often the case, that in successful cases there is very often a significant net expenditure for the fund in irrecoverable individual or generic costs. Consideration should therefore be given as to how the system can be reformed to allow the CLS fund to make a net profit in successful civil cases. For example, the process could be redesigned to allow the Commission to recover both its outlay and receive a further levy or success fee. This would be of overall benefit to the legal aid fund and access to justice.

16 Under such an approach, there should be advantages over a pure contingent legal aid fund model, as there should be no start up costs usually associated with such a fund, and there should be no need for such an approach to be entirely self-financing from the start. Instead, the Commission could simply apply the new approach to new cases from a certain date, with the view that it will eventually recoup sufficient sums to match net expenditure or even exceed it.

17 There are various ways in which a "success fee" or profit-making element could be built into legal aid funding of civil representation cases. These include:

- a levy on damages – this could be a levy on the damages awarded to the client in a successful case. It would require a combination of legal aid being granted and the client entering into a litigation funding agreement, which is allowed for by the Access to Justice Act 1999 and provides for the possibility of such a levy being recoverable from the other side; and
- a levy from costs – this would either see the Legal Services Commission taking a share of inter-partes costs recovered in funded cases, or allow generic costs to be simultaneously covered by both legal aid and the conditional fee agreement.

18 One option that should be explored is legal aid can be combined with conditional fees in the funding of the generic costs of an action, thereby leaving individual costs to be dealt with solely under conditional fee agreements. Under this approach, in successful cases, the opponent would have to pay the inter-partes costs plus a success fee determined in exactly the same way as for a pure conditional fee case. That success fee would then be split appropriately between lawyers and the Legal Services Commission according to the degree of risk taken by each. This should be given further consideration by DCA and the Commission, with the Civil Justice Council.

Annex 4.1: How to define contract area boundaries with the North East as an illustration

1 The aim of developing new, larger working areas is to:

- reduce costs of provision be removing unnecessary travel and waiting from the system (by restricting the number of suppliers operating in each area); and
- allow suppliers to grow their business in a cost effective way by concentrating larger volumes of work in particular geographic areas

2 Scheme boundaries would ideally be based on current duty solicitor schemes as they are already recognised by suppliers. However, the volume and value of work in many of the existing duty schemes would be too small to sustain a reasonable number of current suppliers.

3 Where current duty scheme boundaries are inappropriate, alternative scheme boundaries will be designed.

4 Two alternatives to existing duty scheme boundaries should be considered when developing the new boundary areas:

- grouped duty schemes – combining existing duty scheme boundaries; and
- drive time based schemes – grouping police stations together on the basis of the drive time between them.

5 These approaches and the potential savings they could generate, are illustrated below in relation to detailed mapping work for duty schemes in the North East of England.

6 There are 72 police stations and non-constabulary units in the North East attached to 16 different duty schemes as shown in the Table 4.1.1.

Table 4.1.1 Costs attached to current duty schemes

Duty scheme	Total supplier cost	Travel cost	Waiting cost	No. claims
Berwick & Alnwick	£94,923	£23,412	£1,942	388
Darlington	£166,383	£30,078	£7,183	1,021
Derwentside	£220,055	£44,850	£5,994	989
Durham & Chester Le Street	£327,500	£70,192	£11,039	1,411
Eastington	£266,614	£49,256	£13,161	1,484
Gateshead	£477,612	£81,306	£20,169	2,627
Hartlepool	£288,520	£46,935	£14,442	2,065
Houghton-Le-Spring	£413,465	£73,501	£26,912	1,972
Newcastle	£1,010,949	£177,766	£40,847	5,445
North Tyneside	£435,323	£77,204	£17,958	2,383
South Durham	£326,294	£59,181	£10,768	2,061
South East Northumberland	£392,491	£64,358	£9,769	2,331
South Tyneside	£492,342	£84,126	£21,352	2,887
Sunderland	£596,679	£100,174	£27,264	3,173
Teeside	£1,373,151	£263,268	£44,129	8,847
Tynedale & Hexham	£81,357	£22,579	£1,821	313

Source: Legal Services Commission

7 Table 4.1.1 shows the number of claims and total costs associated with each of the 16 duty schemes. The schemes range in size from 313 police station claims[1] (£81,000) financial year 2005-06 to over 8,000 police station claims (£1.3 million).

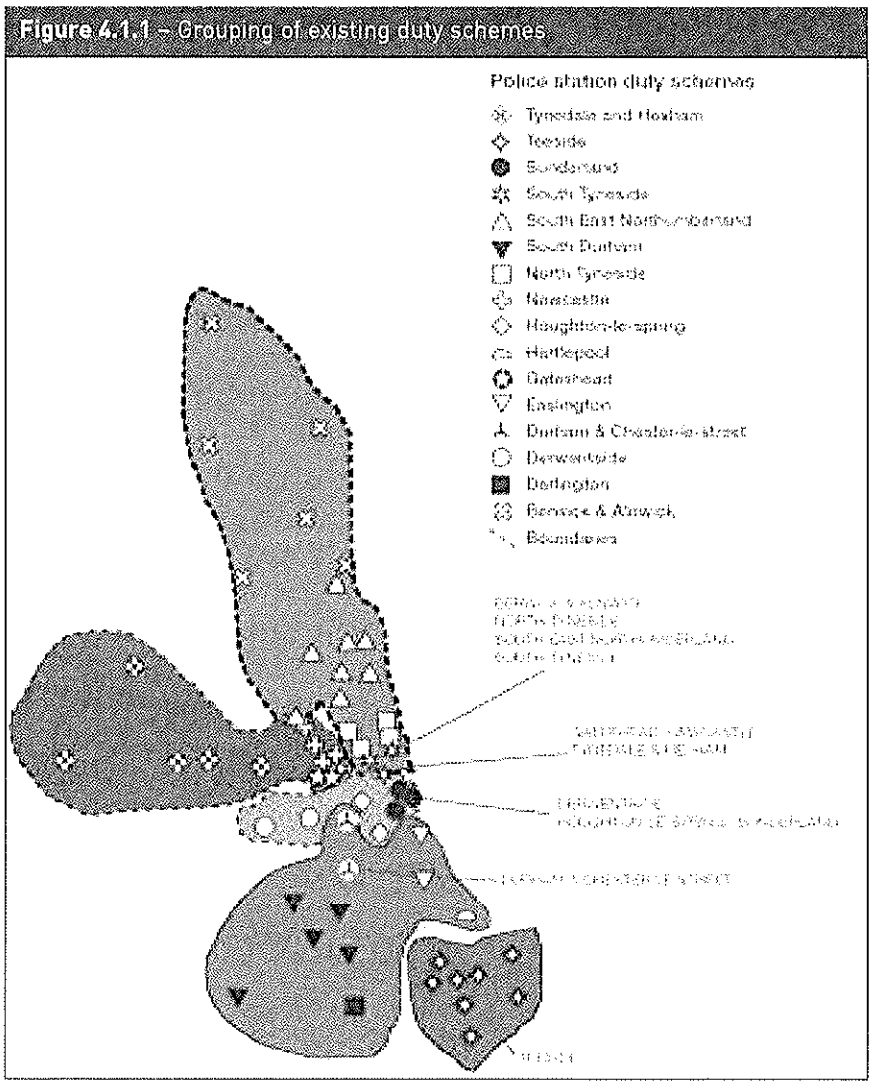
8 Under the new arrangements, there is a need to retain at least four to six firms in each scheme to deal with conflicts. However, a key aim of the review's recommendations is also to provide scope for good quality efficient suppliers to grow their businesses. Consequently, it is clear from Table 4.1.1 that the current 16 schemes would not allow both of these recommendations to be achieved.

9 There is therefore a need to consider grouping up the work in this area into new larger schemes.

10 Two alternative approaches to defining new boundary areas have been considered. The first approach is to group existing duty schemes to generate greater volumes of work. The alternative is to devise entirely new scheme boundaries that aim to minimise drive times between police stations within a given scheme.

11 Grouping up existing duty schemes results in five new schemes within the North East. The schemes that are the closest to each other have been combined as shown in Figure 4.1.1. Each grouped duty scheme generates between 6,000 and 8,800 claims per year.

Figure 4.1.1 – Grouping of existing duty schemes



[1] Police station claims 1B – 1F and 1H – 1L for financial year 2005-06.

Table 4.1.2 – Current duty schemes included in grouped schemes

Grouped duty scheme	Existing duty schemes
Scheme 1	Berwick & Alnwick, North Tyneside, South East Northumberland, South Tyneside
Scheme 2	Darlington, South Durham, Durham and Chester-le-street, Easington, Hartlepool
Scheme 3	Derwentside, Houghton-le-spring, Sunderland
Scheme 4	Gateshead, Newcastle, Tynedale & Hexham
Scheme 5	Teeside
Source: Legal Services Commission	

12 The groupings are set out in Table 4.1.2. It is clear that there may be a need to treat some rural police stations differently. For example, grouping Berwick and Alnwick with Tyneside would lead to a very large geographic area for suppliers to cover, could raise the costs of service delivery and could put at risk the firm's ability to meet key performance targets.

13 Consequently, when schemes are being designed there will be a need to take account of areas like Berwick, for example, by allowing them to remain outside the larger work areas and tendering for supply of services separately.

14 The alternative approach of using drive time based groupings leads to six schemes. The schemes were created by taking the 11 hub police stations in the North East (those that generated more than £300,000 worth of claims) and grouping them together on the basis of a 20 minute drive time around each hub. Police stations that were further than 20 minutes from any hub police station were included in the scheme to which they were the closest.

15 The drive time based schemes generate between 2,700 and 11,000 claims per year. The scheme with the smallest volume of claims is made up of a number of geographically quite dispersed police stations. Given this greater geographical spread of police stations and the increased time required to travel between them, fewer police stations were included within the scheme. The other schemes range in size from 5,000 to 11,000 claims.

Figure 4.1.2 – Groupings according to drive times

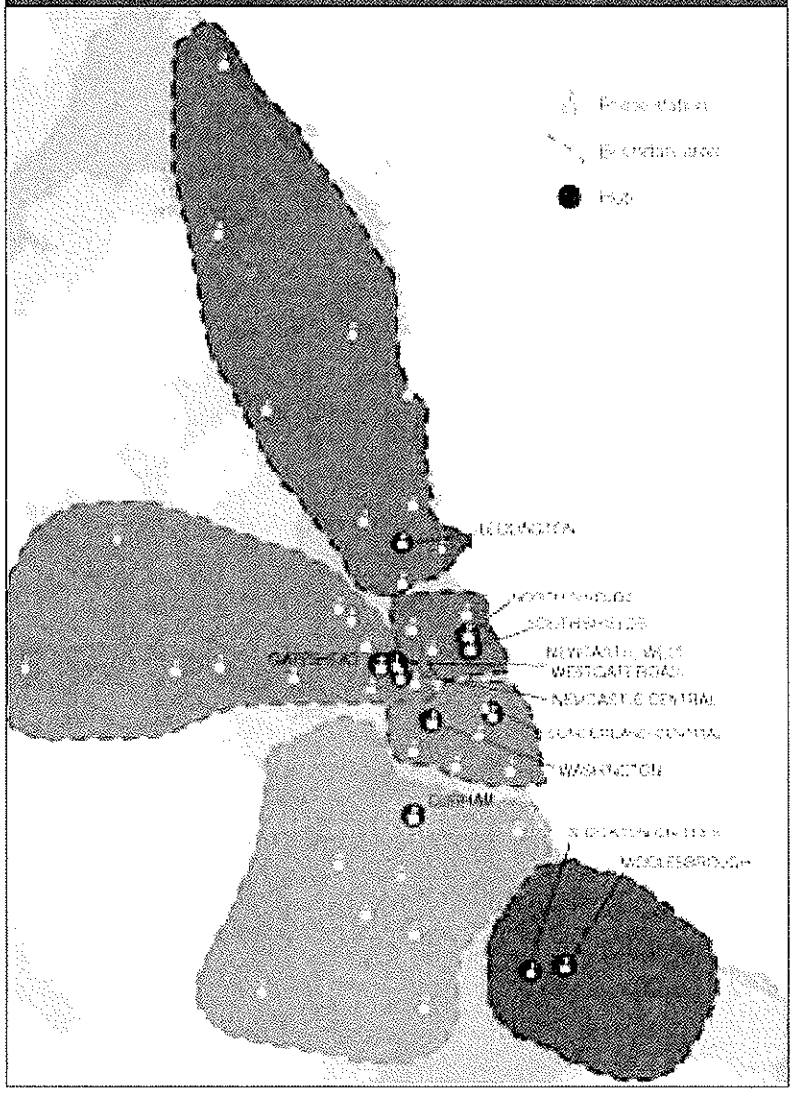


Table 4.1.3 – Police stations included in each drive time based scheme

Drive time based scheme	Police station
Bedlington	Bedlington, Morpeth, Blyth, Cramlington, Ashington, Alnwick, Amble, Rothbury, Berwick, Wooler, Newbiggin, Broomhill, Seahouses
Newcastle and Gateshead	Newcastle Central, Newcastle West, Gateshead, Ponteland, Newcastle Airport, Newcastle North, Newcastle East, Felling, Whickham, BTP Neville Street, Corbridge, Hexham, Prudhoe, Bellingham, Haltwhistle, St James Park, Newcastle BTP, Harton
North Shields and South Shields	North Shields, South Shields, Forest Hall, Wallsend, Whitley Bay, Jarrow, Hebburn, Boldon
Washington and Sunderland Central	Washington, Sunderland Central, Sunderland North, Chester-le-street, Houghton-le-spring, Sunderland West, Seaham, Hendon Task Force, Stadium of Light
Durham	Durham, Spennymoor, Stanley, Consett, Crook, Bishop Auckland, Newton Aycliffe, Darlington, Peterlee, Barnard Castle
Middlesbrough and Stockton-on-Tees	Middlesbrough, Stockton-on-Tees, Billingham, Hartlepool, South Bank, Coulby Newham, Redcar, Guisborough, Stokesley

Table 4.1.4 – Comparison of grouped duty schemes with drive time based schemes

Grouped duty scheme	Average drive time (minutes) – hub to other police stations (claim weighted)	Drive time based scheme	Average drive time (minutes) – hub to other police stations (claim weighted)
Berwick & Alnwick, North Tyneside, South East Northumberland, South Tyneside	35	Bedlington	56
Derwentside, Houghton-Le-Spring, Sunderland	30	Durham	26
Durham, Shester Le Street, Darlington, South Durham, Easington, Hartlepool	29	Middlesborough and Stockton-on-Tees	16
Gateshead, Newcastle, Tynedale & Hexham	17	Newcastle and Gateshead	12
Teeside	16	North Shields and South Shields	15
		Washington and Sunderland	16
All grouped duty schemes	26	All drive time based schemes	18

16 The police stations included within each scheme are set out in Table 4.1.3. Again, it is clear that there may be a need to treat some remote rural police stations differently.

17 A comparison of average drive times between the grouped duty schemes and the drive time based schemes is shown in the Table 4.1.4. The drive time based schemes have lower average drive times than the grouped duty schemes (other than for Bedlington).

18 On the basis of drive times, the drive time based schemes would appear to be more desirable than the grouped duty schemes. However, in the section that follows the travel cost implications of the two different schemes are compared.

Travel cost impact of new boundaries

19 The impact of the new boundaries on travel costs is illustrated in this section. To carry out this analysis, assumptions have had to be made about which suppliers would operate within the schemes after the new areas and working arrangements have been introduced. Calculations of how much it should cost the average supplier to travel to the police stations within each scheme are then made. These travel costs are then compared with the existing travel costs recorded for the scheme.

20 The numbers presented in the following paragraphs are to illustrate the types of issue that should be taken into account when developing the new boundary areas. They should not be taken as reflecting the review's view on the likely level of cost efficiency that could be derived from the new schemes, as they are based on historic data and consequently cannot reflect the new working practices that firms are likely to introduce in response to the introduction of new areas and working arrangements. They should also not be taken as the likely size a firm would need to achieve in order to win a contract.

21 The travel cost impact has been considered for the following scenario. Suppliers local to each new scheme (within 15 minutes of the hub police station) doing 200 claims worth of work across the entire country secure contracts. Non-local suppliers doing at least 200 claims worth of work in the new scheme areas also secure contracts.

22 The grouped duty schemes generated between 6,000 and 9,000 police station claims in 2005-06. If divided into units of 200 claims of work, each scheme area generates between 30 and 45 units.

23 There are 55 local offices doing at least 200 claims of work across the country (37 local offices and 18 non-local offices). The average drive time between suppliers and the hub police station in each scheme ranges between three minutes (for example, Durham) and 17 minutes (for example, Gateshead). The average drive time across all scheme areas is 11 minutes.

24 If suppliers were based 11 minutes away from the hub police station in each scheme and they were paid £69.50 per hour for travel (the highest rate currently paid) travel costs for attendance claims would be £296,000 lower (4%) than currently paid out.

25 Under the drive time based schemes, there are 56 local offices based within 15 minutes of the hub police stations of each scheme doing at least 200 claims worth of work. The average drive time between suppliers and the hub police station is 12 minutes. The travel cost savings for attendance claims would be £392,000 (6% of total).

Annex 4.2: Police station pricing schedule

Table 4.2.1 – New police station pricing scheme

Criminal justice system Area	Group	Fixed fee	Escape threshold (hours)	Escape rate (up to 40 hours)	Escape rate (over 40 hours)
LONDON	1	£313	24	£82	£56
HERTFORDSHIRE	2	£243	19	£81	£56
KENT	2	£243	19	£81	£56
SURREY	2	£243	19	£81	£56
SOUTH WALES	2	£243	19	£81	£56
AVON & SOMERSET	3	£224	18	£80	£56
ESSEX	3	£224	18	£80	£56
DERBYSHIRE	3	£224	18	£80	£56
WEST MIDLANDS	3	£224	18	£80	£56
HAMPSHIRE	3	£224	18	£80	£56
THAMES VALLEY	3	£224	18	£80	£56
LEICESTERSHIRE	3	£224	18	£80	£56
SUSSEX	3	£224	18	£80	£56
GWENT	4	£215	17	£79	£56
GREATER MANCHESTER	4	£215	17	£79	£56
MERSEYSIDE	4	£215	17	£79	£56
BEDFORDSHIRE	4	£215	17	£79	£56
SUFFOLK	4	£215	17	£79	£56
NORFOLK	4	£215	17	£79	£56
WEST MERCIA	4	£215	17	£79	£56
WARWICKSHIRE	4	£215	17	£79	£56
WILTSHIRE	5	£196	16	£80	£56
NOTTINGHAMSHIRE	5	£196	16	£80	£56
GLOUCESTERSHIRE	5	£196	16	£80	£56
STAFFORDSHIRE	5	£196	16	£80	£56
DEVON & CORNWALL	5	£196	16	£80	£56
NORTHUMBRIA	5	£196	16	£80	£56
NORTH WALES	5	£196	16	£80	£56
SOUTH YORKSHIRE	5	£196	16	£80	£56
DYFED-POWYS	5	£196	16	£80	£56
NORTH YORKSHIRE	5	£196	16	£80	£56
LINCOLNSHIRE	5	£196	16	£80	£56
WEST YORKSHIRE	5	£196	16	£80	£56
DURHAM	5	£196	16	£80	£56
NORTHAMPTONSHIRE	6	£181	14	£81	£55
CAMBRIDGESHIRE	6	£181	14	£81	£55
LANCASHIRE	6	£181	14	£81	£55
CHESHIRE	6	£181	14	£81	£55
CUMBRIA	6	£181	14	£81	£55
CLEVELAND	7	£165	13	£81	£55
DORSET	7	£165	13	£81	£55
HUMBERSIDE	7	£165	13	£81	£55

Annex 4.3: Amended magistrates' court fees

Table 4.3.1 – Changes to magistrates' court standard fees

	Category	Lower standard fee			Higher standard fee		
		Current	Increase	New	Current	Increase	New
London	1	£262.32	£71.78	£334.10	£621.87	£96.23	£718.10
London	2	£461.72	£101.68	£569.40	£1,037.11	£144.34	£1,181.45
National	1	£203.80	£56.56	£260.36	£490.21	£70.74	£560.95
National	2	£359.84	£84.84	£444.68	£825.32	£106.11	£931.43

Annex 4.4: Suggested offences for the new D+ category in the graduated fee scheme

Suggested D+ offences

Table 4.4.1 – Offences already categorised in Class D and proposed re-classification

Rape	Sexual Offences Act 1956 "SOO" s.1(1)	D+
Administering drugs to obtain intercourse	SOO s.4	D
Sexual intercourse with girl under 13	SOO s.5	D+
Sexual intercourse with girl under 16	SOO s.6	D+
Sexual intercourse with a defective	SOO s.7	D+
Procurement of a defective	SOO s.9	D
Incest by man with girl under 13	SOO ss.10	D+
Incest other than above	SOO ss.10 and 11	D
Buggery of person under 16 or an animal	SOO s.	D+
Gross indecency	SOO s.13	D
Indecent assault	SOO ss.14 and 15	D
Abuse of position of trust	Sexual Offences (Amendment) Act 2000 s.3	D
Indecency with children under 14	Indecency with Children Act 1960 s.1(1)	D+
Taking, having indecent photographs of children	Protection of Children Act 1978 s.1	D+
Assault with intent to commit buggery	SOO s.16	D+
Abduction of woman by force	SOO s.17	D+
Permitting girl under 13 to use premises for sexual intercourse	SOO s.25	D+
Man living on earnings of prostitution	SOO s.30	D
Woman exercising control over prostitute	SOO s.31	D
Living on earnings of male prostitution	Sexual Offences Act 1967	D
Incitement to commit incest	Criminal Law Act 1977 s.54	D
Allowing or procuring a child under 16 to go abroad to perform	Children and Young Persons Act 1933 ss.25,26	D+
Sexual intercourse with patients	Mental Health Act 1959 s.128	D+
Ill-treatment of persons of unsound mind	Mental Health Act 1983 s.127	D
Abduction of unmarried girl under 18 from parent	SOO s.19	D
Abduction of unmarried girl under 16 from parent	SOO s.20	D+
Abduction of defective from parent	SOO s.21	D
Procuration of girl under 21	SOO s.23	D
Permitting girl under 16 to use premises for intercourse	SOO s.26	D+
Permitting defective to use premises for intercourse	SOO s.27	D
Causing or encouraging prostitution of girl under 16	SOO s.28	D+
Causing or encouraging prostitution of defective	SOO s.29	D

Table 4.4.1 – Offences under the Sexual Offences Act 2003 and proposed classification (continued)		
Rape	s.1	D+
Assault by penetration	s.2	D+
Sexual Assault	s.3	D
Causing sexual activity with penetration	s.4	D+
Causing sexual activity without penetration	s.4	D
Rape of child under 13	s.5	D+
Assault of child under 13 by penetration	s.6	D+
Sexual assault of child under 13	s.7	D+
Causing a child under 13 to engage in sexual activity	s.8	D+
Sexual activity with a child	s.9	D+
Causing a child to engage in sexual activity	s.10	D+
Engaging in sexual activity in the presence of a child	s.11	D
Causing a child to watch a sexual act	s.12	D
Child sex offence committed by person under 18	s.13	D
Arranging child sex offence	s.14	D+
Meeting child following sexual grooming	s.15	D
Abuse of trust: sexual activity with a child	s.16	D
Abuse of position of trust: causing a child to engage in sexual activity	s.17	D
Abuse of trust: sexual activity in the presence of a child	s.18	D
Abuse of position of trust: causing a child to watch sexual activity	s.19	D
Sexual activity with a child family member, with penetration	s.25	D+
Inciting a child family member to engage in sexual activity	s.26	D+
Sexual activity with a person with a mental disorder	s.30	D+
Causing or inciting a person with a mental disorder to engage in sexual activity	s.31	D+
Engaging in sexual activity in the presence of a person with a mental disorder	s.32	D
Causing a person with a mental disorder to watch a sexual act	s.33	D
Offering inducement to procure sexual activity with a person with a mental disorder	s.34	D+
Inducing person with mental disorder to engage in sexual activity	s.35	D+
Engaging in sexual activity in the presence of a person with a mental disorder	s.36	D
Causing a person with a mental disorder to watch a sexual act	s.37	D
Care workers: sexual activity with a person with a mental disorder	s.38	D+
Care workers: inciting person with mental disorder to engage in sexual act	s.39	D+

Table 4.4.1 – Offences under the Sexual Offences Act 2003 and proposed classification (continued)		
Care workers: sexual activity in presence of a person with a mental disorder	s.40	D
Care workers: causing a person with a mental disorder to watch a sexual act	s.41	D
Paying for sexual services of a child	s.47	D+
Causing or inciting child prostitution or pornography	s.48	D+
Controlling a child prostitute	s.49	D+
Facilitating child prostitution	s.50	D+
Causing or inciting prostitution for gain	s.52	D
Controlling prostitution for gain	s.53	D
Trafficking into UK for sexual exploitation	s.57	D+
Trafficking within UK for sexual exploitation	s.58	D+
Trafficking out of UK for sexual exploitation	s.59	D+
Administering a substance with intent	s.61	D
Committing offence with intent to commit sexual offence	s.62	D
Trespass with intent to commit sexual offence	s.63	D
Sex with adult relative	ss.64,65	D
Exposure	s.66	D
Voyeurism	s.67	D
Intercourse with an animal	s.69	D
Sexual penetration of a corpse	s.70	D

Annex 4.5: Proposed new advocacy graduated fee rates

1 The following tables set out the rates that will apply to all trials of 1- 40 days.

2 The case fees set out below include: a plea and case management hearing fee, listening to or watching tapes, CD-ROMs and DVDs; the daily fee for the first two days of trials, mentions and other hearings up to and including the fifth and all conferences up to and including the third.

3 NB: Fees for led junior are capped at the corresponding case fee for another trial advocate for class C, D, G, H and I.

Table 4.5.1 – QC 1-40 day rate for trial

Class of offence	Case fee	Daily fee	Page uplift	Witness uplift
A	£4,434	£1,321	£1.89	£7.55
B	£2,924	£991	£1.89	£7.55
C	£2,075	£943	£1.89	£7.55
D	£2,641	£943	£1.89	£7.55
D+	£3,302	£1,132	£1.89	£7.55
E	£1,415	£708	£1.89	£7.55
F	£1,415	£708	£1.89	£7.55
G	£2,075	£943	£1.89	£7.55
G+	£3,302	£1,132	£1.89	£7.55
H	£2,075	£943	£1.89	£7.55
I	£2,453	£943	£1.89	£7.55

Table 4.5.2 – Leading Junior 1-40 day rates for trial

Class of offence	Case fee	Daily fee	Page uplift	Witness uplift
A	£3,325	£991	£1.42	£5.66
B	£2,193	£743	£1.42	£5.66
C	£1,557	£708	£1.42	£5.66
D	£1,981	£708	£1.42	£5.66
D+	£2,476	£849	£1.42	£5.66
E	£1,061	£531	£1.42	£5.66
F	£1,061	£531	£1.42	£5.66
G	£1,557	£708	£1.42	£5.66
G+	£2,476	£849	£1.42	£5.66
H	£1,557	£708	£1.42	£5.66
I	£1,840	£708	£1.42	£5.66

Table 4.5.3 – Led junior 1-40 day rates for trial

Class of offence	Case fee	Daily fee	Page uplift	Witness uplift
A	£2,217	£660	£0.94	£3.77
B	£1,462	£495	£0.94	£3.77
C	£1,038	£472	£0.94	£3.77
D	£1,132	£472	£0.94	£3.77
D+	£1,887	£566	£0.94	£3.77
E	£708	£354	£0.94	£3.77
F	£708	£354	£0.94	£3.77
G	£1,415	£472	£0.94	£3.77
G+	£1,887	£566	£0.94	£3.77
H	£943	£472	£0.94	£3.77
I	£1,132	£472	£0.94	£3.77

Table 4.5.4 – Junior alone rates for 1-40 day trials

Class of offence	Case fee	Daily fee	Page uplift	Witness uplift
A	£2,547	£778	£1.13	£5.66
B	£1,509	£542	£1.13	£5.66
C	£1,038	£472	£1.13	£5.66
D	£1,132	£472	£1.13	£5.66
D+	£1,887	£613	£1.13	£5.66
E	£755	£377	£1.13	£5.66
F	£802	£377	£1.13	£5.66
G	£1,415	£472	£1.13	£5.66
G+	£1,887	£613	£1.13	£5.66
H	£943	£472	£1.13	£5.66
I	£1,132	£472	£1.13	£5.66

Cracks and guilties

4 Cracked trials will continue to have broadly the same structure as that which was introduced in October 2005. This scheme has three sets of rates depending on the timing of the plea. The rates below may be subject to change – see Recommendation 4.12.

5 The timeline in Figure 4.5.1 shows that the period between the day a case is fixed (or warned) for trial and the date of the proposed trial (or warned list), is divided into three equal periods known as the 'first third', the 'second third' and the 'last third'. In a case that cracks, the payment that an advocate will receive will depend on in which 'third' the crack occurred. Guilty pleas will always be paid the same fee as a crack in the first third.

Figure 4.5.1 – Cracks and guilties

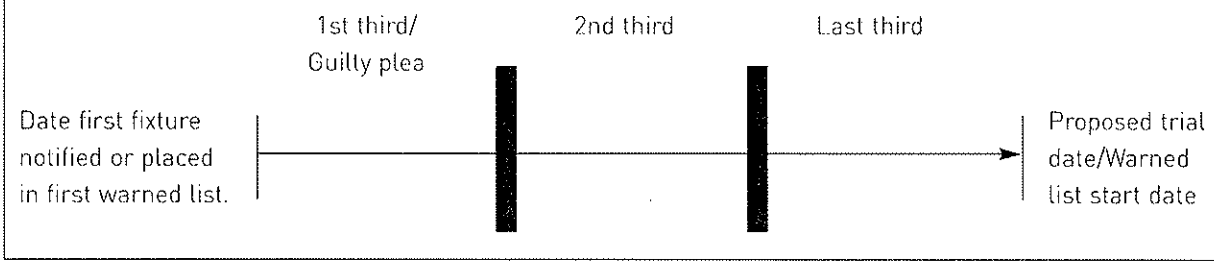


Table 4.5.5 – Guilty plea and crack trial in the first third – other advocates*

Offence Group	Basic fee	Evidence uplift per page (pages 1 to 1000)	Evidence uplift per page (pages in excess of 1000)
A	£1,321	£1.08	£0.54
B	£802	£0.94	£0.47
C	£519	£0.69	£0.35
D	£802	£1.37	£0.68
D+	£1,132	£1.37	£0.68
E	£472	£0.41	£0.20
F	£472	£0.63	£0.31
G	£755	£1.18	£0.59
G+	£1,132	£1.18	£0.59
H	£566	£0.63	£0.32
I	£660	£0.49	£0.25

*Other advocates refer to advocates acting alone

Table 4.5.6 – Guilty plea and crack trial in the first third – Queen's Counsel			
Offence group	**Basic fee**	**Evidence uplift per page (pages 1 to 1000)**	**Evidence uplift per page (pages in excess of 1000)**
A	£2,358	£2.35	£1.17
B	£1,509	£2.08	£1.04
C	£1,415	£1.48	£0.74
D	£1,509	£3.30	£1.65
D+	£1,981	£3.30	£1.65
E	£1,415	£1.06	£0.53
F	£1,415	£1.39	£0.70
G	£1,415	£1.84	£0.92
G+	£1,981	£1.84	£0.92
H	£1,415	£1.91	£0.95
I	£1,415	£1.86	£0.92

Table 4.5.7 – Crack trial beyond first's third – other trial advocates – suggested rates (provisional)					
				A case that cracks in the second third:	**A case that cracks in final third:**
Offence group	**Basic fee**	**Evidence uplift per page (pages 1 to 250)**	**Evidence uplift per page (pages 251 to 1000)**	**Evidence uplift per page (pages 1001 to 10000)**	**Evidence uplift per page (pages 1001 to 10000)**
A	£1,981	£4.63	£2.15	£0.71	£2.15
B	£1,179	£4.03	£1.88	£0.62	£1.88
C	£755	£2.99	£1.39	£0.46	£1.39
D	£1,179	£5.87	£2.73	£0.90	£2.73
D+	£1,698	£5.87	£2.73	£0.90	£2.73
E	£660	£1.75	£0.82	£0.27	£0.82
F	£660	£2.70	£1.25	£0.42	£1.25
G	£1,132	£5.08	£2.37	£0.78	£2.37
G+	£1,604	£5.08	£2.37	£0.78	£2.37
H	£802	£2.71	£1.26	£0.42	£1.26
I	£943	£2.11	£0.98	£0.32	£0.98

Table 4.5.8 – Crack trial beyond first's third – Queen's Counsel – suggested rates (provisional)					
				A case that cracks in the second third:	A case that cracks in final third
Offence group	**Basic fee**	**Evidence uplift per page (pages 1 to 250)**	**Evidence uplift per page (pages 251 to 1000)**	**Evidence uplift per page (pages 1001 to 10000)**	**Evidence uplift per page (pages 1001 to 10000)**
A	£3,585	£4.70	£1.17	£1.55	£4.70
B	£2,264	£4.16	£1.04	£1.38	£4.16
C	£2,075	£2.95	£0.74	£0.97	£2.95
D	£2,264	£6.59	£1.65	£2.18	£6.59
D+	£3,019	£6.59	£1.65	£2.18	£6.59
E	£2,075	£2.11	£0.53	£0.70	£2.11
F	£2,075	£2.77	£0.70	£0.92	£2.77
G	£2,170	£3.68	£0.92	£1.22	£3.68
G+	£3,019	£3.68	£0.92	£1.22	£3.68
H	£2,075	£3.80	£0.95	£1.25	£3.80
I	£2,075	£3.72	£0.92	£1.23	£3.72

6 Leading junior counsel will receive 75% of the QC rate. Led junior counsel will be remunerated at the rate of 50%. Fees for led junior are capped at the corresponding case fee for another trial advocate for class C, D, G, H, I.

Ancillary payments

7 The interim report outlined the proposals for a revised advocacy graduated fee scheme. This outlined proposals to incorporate the majority of ancillary payments into the base fee. This created the opportunity for efficient practitioners to benefit from efficient practice.

8 There has been concern from stakeholders that the removal of ancillary payments could cause some suppliers to be unfairly penalised. However there are a number of protecting factors in the revised schemes to account for this.

9 Firstly the schemes have been costed towards a full time equivalent criminal practitioners. Therefore on the majority of ancillary payments (e.g. bolt ons) a full time criminal defence practitioner will be able to absorb the variability in payments in a years case mix.

10 Secondly there are three additional payments for all trials – daily fee, pages of prosecution evidence and number of prosecution witnesses. These additional payments provide a good proxy for the overall complexity of the case. Therefore in those cases where the trial last for twenty days the advocate will receive payment for an additional eighteen days. Each of these payments is designed to reflect more than just the daily fee that the advocate incurred in court. Instead they are designed to remunerate for the additional level of complexity involved in a twenty-day crown court case.

11 Thirdly the base fees and uplifts have been adjusted by offence category to reflect those categories that are generally more complex than other case categories.

12 Finally practitioners will be able to notify cases with trial estimates of 25 days or greater to the Complex Crime Unit. These cases may then be individually managed and will be paid by an hourly rate.

The budget for ancillary payments

13 Ancillary payments will be subject to a fixed budget. This budget will need to be monitored on a quarterly basis. If the budget is exceeded the payments will cease to be made and the ancillary elements will be absorbed into the base fee in time for the next financial year. Table 4.5.9 outlines the remainder of ancilliary payments.

Table 4.5.9 – Remainder of ancillary payments

Category	Comments	Rate junior	Lead junior	Queens Council	Capped Budget
Conferences with clients and experts Views Research novel facts	First 3 in the base fee. Payment for 4th and subsequent view or conference[28]	45	65	85	£648,000
Mentions, Pre Trial Hearings and Other Hearings	Mentions in the base fee. Payment for 6th and subsequent appearances. (national average is 2.1)	100	150	200	£120,000
Full and Half Day Hearings for PII hearings, Bad character hearings, confiscation hearings, abuse of process, disclosure hearings		Half Day 150 Full Day 275	Half Day 225 Full Day 400	Half Day 300 Full Day 575	£966,000
Special Preparation		45	65	85	£1,679,000
Ineffective Trial Payment		150	225	325	£986,000
Sentencing	Sentence Hearings Deferred Sentence	125 200	200 275	300 375	£5,614,000
Appeals to the Crown Court	Against Sentence and Breach Against Conviction	125 150	175 225	250 300	£803,000
Committal for sentence		150	225	300	£2,506,000
Noting Brief		125	-	-	

[28] The caps on the number of conferences that currently apply will remain. These are set out in Criminal Defence Service (Funding) Order 2001 as amended by the Criminal Defence Service (Funding) (Amendment) Order 2005/2621. Schedule 4 paragraph 19.

Annex 4.6 Proposed litigator fee schedule and case types

Fixed fee payments

1 Table 4.6.1 details the type of cases that will be remunerated by fixed fees and the fixed fee payment applicable to each

Table 4.6.1 – Litigation fixed fees in the Crown Court

Type of case	Payment (£)
Committal for sentence	500
Appeal against sentence	500
Contempt (stand alone hearing)	500
Appeal against conviction	1,000

Graduated fee payments

2 The following tables provide all of the information required to manually calculate a litigators graduated fee. In order to calculate these fees, the following steps should be followed:

Step 1. Determine the case type (e.g. guilty plea, cracked trial or trial)

Step 2. Determine the class of offence (see Table 4.6.2)

Step 3. Identify the appropriate basic fee using Table 4.6.3

Step 4. Identify the number of pages of prosecution evidence (PPE) and length of trial (where applicable) in the case

Step 5. Using tables 4.6.4 or 4.6.5, compare PPE in the case with the appropriate PPE cut-off

Step 6. In the event of a cracked trial or a guilty plea, if your PPE does not exceed the PPE cut-off (see Table 4.6.4) then the final fee payable is the basic fee identified at step 3 above. (Subject to steps 10 and 11 below.)

Step 7. In a trial where the PPE does not exceed the PPE cut-off (see Table 4.6.5), go to Table 4.6.6 and identify the appropriate length of trial uplift. Adding the length of trial uplift to the basic fee (as identified in step 3 above) will give you the final fee payable (subject to steps 10 and 11 below.)

Step 8. In the event of a cracked trial or a guilty plea, where the PPE exceeds the PPE cut-off – refer to Tables 4.6.7 and 4.6.8 and identify the PPE equal to, or less than the PPE in your case. The final fee payable will be the corresponding initial fee plus the appropriate incremental rate per page shown for additional PPE.

Step 9. In a trial where the PPE exceeds the PPE cut-off, refer to Table 4.6.9 and identify the PPE equal to, or less than the PPE in your case. The final fee payable will be the corresponding initial fee plus the appropriate incremental rate per page shown in the row below.

Step 10. Where the case has transferred or there is a retrial, apply the variances to the fee outlined in Table 4.6.11.

Step 11. Determine the defendant uplift as outlined in Table 4.6.10. These uplifts should be applied to the final fee.

Table 4.6.2 – Classes of offence

Class	Description (from the Statutory Instrument 855)
A	Homicide and related grave offences
B	Offences involving serious violence or damage and serious drug offences
C	Lesser offences involving violence or damage, and less serious drug offences
D	Serious sexual offences, offences against children
E	Burglary, etc
F	Other offences of dishonesty
G	Other offences of dishonesty
H	Miscellaneous lesser offences
I	Offences against public justice

Table 4.6.3 – Basic fee

Basic fee	A	B	C	D	E	F	G	H	I
Trial	3,382	1,465	1,203	1,596	1,089	997	1,384	1,052	1,205
Cracked trial	3,382	1,257	928	1,596	858	817	1,384	861	931
Guilty plea	2,344	745	620	911	514	542	862	527	491

3 The basic fee, as detailed in Table 4.6.3 (above) will only be appropriate in small cases where there is no PPE uplift or length of trial uplift.

Table 4.6.4 – PPE cut-off for non-trial cases

Type of case	PPE cut off A	PPE cut off B	PPE cut off C	PPE cut off D	PPE cut off E	PPE cut off F	PPE cut off G	PPE cut off H	PPE cut off I
Cracked trial	150	70	40	80	40	50	120	40	40
Guilty plea	150	70	40	80	40	50	120	40	40

4 In this paper, Table 4.6.5 includes the PPE cut-off for trials up to 40 days. However, the litigator fee calculator will include the appropriate cut-off for cases up to 200 days.

5 In this paper, Table 4.6.6 (page 160) includes the length of trial uplift for trials up to 40 days. However, the litigator fee calculator will include the appropriate uplift for cases up to 200 days.

Table 4.6.5 – PPE Cut-off for trials

Trial length in days	PPE cut off A	PPE cut off B	PPE cut off C	PPE cut off D	PPE cut off E	PPE cut off F	PPE cut off G	PPE cut off H	PPE cut off I
1	150	70	40	80	40	50	120	40	40
2	150	70	40	80	40	50	120	40	40
3	246	98	67	103	58	89	218	77	73
4	341	126	93	125	82	127	315	114	106
5	417	152	118	146	110	162	406	145	136
6	494	178	143	166	139	198	497	176	167
7	570	206	168	186	171	234	588	207	197
8	663	250	192	207	204	277	679	237	228
9	746	289	204	245	219	302	761	250	256
10	830	328	215	287	234	326	848	270	283
11	914	367	226	329	248	350	935	290	311
12	997	406	237	371	263	374	1,023	310	339
13	1,081	445	248	413	278	399	1,110	330	367
14	1,169	484	260	455	293	423	1,197	350	397
15	1,258	526	271	497	308	447	1,284	371	428
16	1,302	563	279	529	320	462	1,359	385	456
17	1,345	600	287	561	332	476	1,434	400	484
18	1,389	637	296	593	344	490	1,509	415	512
19	1,432	674	305	625	356	505	1,584	430	539
20	1,476	711	314	657	368	519	1,659	445	567
21	1,519	748	323	689	380	534	1,734	460	595
22	1,563	785	333	723	392	548	1,809	475	623
23	1,606	822	342	759	404	563	1,884	490	651
24	1,650	859	352	795	416	577	1,959	505	679
25	1,693	896	361	831	428	591	2,034	520	707
26	1,719	923	368	851	437	603	2,091	532	730
27	1,745	949	375	871	447	614	2,148	543	754
28	1,771	975	382	891	456	626	2,204	554	778
29	1,798	1,002	389	911	465	637	2,261	566	801
30	1,824	1,028	396	931	474	649	2,318	577	825
31	1,850	1,055	403	951	483	660	2,375	588	849
32	1,876	1,081	410	972	492	672	2,433	600	873
33	1,905	1,107	416	992	501	683	2,491	611	897
34	1,960	1,134	423	1,012	510	695	2,550	623	921
35	2,015	1,160	430	1,032	519	706	2,609	637	945
36	2,058	1,174	435	1,049	525	714	2,642	645	957
37	2,101	1,187	440	1,067	530	722	2,676	654	970
38	2,144	1,200	445	1,086	536	730	2,709	663	983
39	2,187	1,213	450	1,104	542	738	2,742	671	995
40	2,231	1,226	455	1,123	547	746	2,776	680	1,008

Table 4.6.6 – Length of trial uplifts

Trial length in days	Trial length uplift A	Trial length uplift B	Trial length uplift C	Trial length uplift D	Trial length uplift E	Trial length uplift F	Trial length uplift G	Trial length uplift H	Trial length uplift I
1	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
2	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
3	1,886.64	477.59	352.48	686.28	338.00	338.00	754.28	357.50	419.34
4	3,773.28	955.18	704.96	1,372.56	676.00	676.00	1,508.56	715.00	838.68
5	5,282.62	1,397.61	1,032.18	1,987.02	931.71	985.56	2,210.94	1,009.65	1,225.49
6	6,791.96	1,840.04	1,359.40	2,601.48	1,187.42	1,295.12	2,913.32	1,304.30	1,612.30
7	8,301.30	2,282.47	1,686.62	3,215.94	1,443.13	1,604.68	3,615.70	1,598.95	1,999.11
8	9,810.64	2,724.90	2,013.84	3,830.40	1,698.84	1,914.24	4,318.08	1,893.60	2,385.92
9	11,043.05	3,124.64	2,161.81	4,409.52	1,814.86	2,085.15	4,934.95	2,013.83	2,738.81
10	12,275.46	3,524.38	2,309.78	4,988.64	1,930.88	2,256.06	5,551.82	2,134.06	3,091.70
11	13,507.87	3,924.12	2,457.75	5,567.76	2,046.90	2,426.97	6,168.69	2,254.29	3,444.59
12	14,740.28	4,323.86	2,605.72	6,146.88	2,162.92	2,597.88	6,785.56	2,374.52	3,797.48
13	15,972.69	4,723.60	2,753.69	6,726.00	2,278.94	2,768.79	7,402.43	2,494.75	4,150.37
14	17,205.10	5,123.34	2,901.66	7,305.12	2,394.96	2,939.70	8,019.30	2,614.98	4,503.26
15	18,437.51	5,523.08	3,049.63	7,884.24	2,510.98	3,110.61	8,636.17	2,735.21	4,856.15
16	19,037.31	5,863.69	3,159.70	8,323.42	2,605.53	3,212.30	9,158.65	2,824.63	5,174.27
17	19,637.11	6,204.30	3,269.77	8,762.60	2,700.08	3,313.99	9,681.13	2,914.05	5,492.39
18	20,236.91	6,544.91	3,379.84	9,201.78	2,794.63	3,415.68	10,203.61	3,003.47	5,810.51
19	20,836.71	6,885.52	3,489.91	9,640.96	2,889.18	3,517.37	10,726.09	3,092.89	6,128.63
20	21,436.51	7,226.13	3,599.98	10,080.14	2,983.73	3,619.06	11,248.57	3,182.31	6,446.75
21	22,036.31	7,566.74	3,710.05	10,519.32	3,078.28	3,720.75	11,771.05	3,271.73	6,764.87
22	22,636.11	7,907.35	3,820.12	10,958.50	3,172.83	3,822.44	12,293.53	3,361.15	7,082.99
23	23,235.91	8,247.96	3,930.19	11,397.68	3,267.38	3,924.13	12,816.01	3,450.57	7,401.11
24	23,835.71	8,588.57	4,040.26	11,836.86	3,361.93	4,025.82	13,338.49	3,539.99	7,719.23
25	24,435.51	8,929.18	4,150.33	12,276.04	3,456.48	4,127.51	13,860.97	3,629.41	8,037.35
26	24,796.56	9,172.37	4,231.53	12,523.14	3,527.70	4,208.27	14,256.08	3,696.95	8,307.27
27	25,157.61	9,415.56	4,312.73	12,770.24	3,598.92	4,289.03	14,651.19	3,764.49	8,577.19
28	25,518.66	9,658.75	4,393.93	13,017.34	3,670.14	4,369.79	15,046.30	3,832.03	8,847.11
29	25,879.71	9,901.94	4,475.13	13,264.44	3,741.36	4,450.55	15,441.41	3,899.57	9,117.03
30	26,240.76	10,145.13	4,556.33	13,511.54	3,812.58	4,531.31	15,836.52	3,967.11	9,386.95
31	26,601.81	10,388.32	4,637.53	13,758.64	3,883.80	4,612.07	16,231.63	4,034.65	9,656.87
32	26,962.86	10,631.51	4,718.73	14,005.74	3,955.02	4,692.83	16,626.74	4,102.19	9,926.79
33	27,323.91	10,874.70	4,799.93	14,252.84	4,026.24	4,773.59	17,021.85	4,169.73	10,196.71
34	27,684.96	11,117.89	4,881.13	14,499.94	4,097.46	4,854.35	17,416.96	4,237.27	10,466.63
35	28,046.01	11,361.08	4,962.33	14,747.04	4,168.68	4,935.11	17,812.07	4,304.81	10,736.55
36	28,330.21	11,482.68	5,021.28	14,951.33	4,212.24	4,986.16	18,036.28	4,347.31	10,878.74
37	28,614.41	11,604.28	5,080.23	15,155.62	4,255.80	5,037.21	18,260.49	4,389.81	11,020.93
38	28,898.61	11,725.88	5,139.18	15,359.91	4,299.36	5,088.26	18,484.70	4,432.31	11,163.12
39	29,182.81	11,847.48	5,198.13	15,564.20	4,342.92	5,139.31	18,708.91	4,474.81	11,305.31
40	29,467.01	11,969.08	5,257.08	15,768.49	4,386.48	5,190.36	18,933.12	4,517.31	11,447.50

Table 4.6.7 – Final fees for cracked trials

Offence class	PPE	Initial fee	Incremental fee per page
A	150	3,382	22.5467
A	250	5,357	19.7500
A	500	10,269	19.6480
A	1,000	13,668	6.7980
A	2,800	19,785	3.3983
A	4,600	22,846	1.7006
A	6,400	24,374	0.8489
A	8,200	25,140	0.4256
A	9,999	25,522	0.2123
A	100,000	35,081	0.1062
B	70	1,257	17.9571
B	250	2,826	8.7167
B	1,000	5,498	3.5627
B	2,800	8,707	1.7828
B	4,600	10,310	0.8906
B	6,400	11,112	0.4456
B	8,200	11,513	0.2228
B	9,999	11,713	0.1112
B	100,000	16,725	0.0557
C	40	928	23.2000
C	250	2,182	5.9714
C	1,000	4,044	2.4827
C	2,800	6,280	1.2422
C	4,600	7,396	0.6200
C	6,400	7,956	0.3111
C	8,200	8,234	0.1544
C	9,999	8,374	0.0778
C	100,000	11,866	0.0388
D	80	1,596	19.9500
D	250	3,799	12.9588
D	1,000	7,860	5.4147
D	2,800	12,734	2.7078
D	4,600	15,169	1.3528
D	6,400	16,388	0.6772
D	8,200	16,998	0.3389
D	9,999	17,302	0.1690
D	100,000	24,915	0.0846
E	40	858	21.4500
E	250	1,936	5.1333
E	1,000	3,515	2.1053
E	2,800	5,409	1.0522

Table 4.6.7 – Final fees for cracked trials (continued)

Offence class	PPE	Initial fee	Incremental fee per page
E	4,600	6,356	0.5261
E	6,400	6,829	0.2628
E	8,200	7,065	0.1311
E	9,999	7,184	0.0661
E	100,000	10,142	0.0329
F	50	817	16.3400
F	250	1,967	5.7500
F	1,000	3,777	2.4133
F	2,800	5,947	1.2056
F	4,600	7,033	0.6033
F	6,400	7,575	0.3011
F	8,200	7,847	0.1511
F	9,999	7,983	0.0756
F	100,000	11,376	0.0377
G	120	1,384	11.5333
G	250	2,388	7.7231
G	1,000	7,282	6.5253
G	2,800	12,258	2.7644
G	4,600	14,745	1.3817
G	6,400	15,989	0.6911
G	8,200	16,611	0.3456
G	9,999	16,922	0.1729
G	100,000	24,697	0.0864
H	40	861	21.5250
H	250	1,795	4.4476
H	1,000	3,112	1.7560
H	2,800	4,693	0.8783
H	4,600	5,483	0.4389
H	6,400	5,880	0.2206
H	8,200	6,077	0.1094
H	9,999	6,175	0.0545
H	100,000	8,647	0.0275
I	40	931	23.2750
I	250	2,447	7.2190
I	1,000	4,777	3.1067
I	2,800	7,572	1.5528
I	4,600	8,969	0.7761
I	6,400	9,669	0.3889
I	8,200	10,017	0.1933
I	9,999	10,193	0.0978
I	100,000	14,561	0.0485

Table 4.6.8 – Final fees for guilty pleas

Offence class	PPE	Initial fee	Incremental fee per page
A	150	2,344	15.6267
A	400	5,133	11.1560
A	1,000	7,842	4.5150
A	2,800	11,906	2.2578
A	4,600	13,936	1.1278
A	6,400	14,952	0.5644
A	8,200	15,460	0.2822
A	9,999	15,714	0.1412
A	100,000	22,063	0.0705
B	70	745	10.6429
B	400	1,827	3.2788
B	1,000	2,656	1.3817
B	2,800	3,902	0.6922
B	4,600	4,524	0.3456
B	6,400	4,836	0.1733
B	8,200	4,991	0.0861
B	9,999	5,069	0.0434
B	100,000	7,014	0.0216
C	40	620	15.5000
C	400	1,807	3.2972
C	1,000	2,679	1.4533
C	2,800	3,985	0.7256
C	4,600	4,639	0.3633
C	6,400	4,966	0.1817
C	8,200	5,129	0.0906
C	9,999	5,211	0.0456
C	100,000	7,254	0.0227
D	80	911	11.3875
D	400	2,048	3.5531
D	1,000	2,921	1.4550
D	2,800	4,231	0.7278
D	4,600	4,885	0.3633
D	6,400	5,212	0.1817
D	8,200	5,377	0.0917
D	9,999	5,458	0.0450
D	100,000	7,504	0.0227
E	40	514	12.8500
E	400	1,487	2.7028
E	1,000	2,200	1.1883
E	2,800	3,270	0.5944
E	4,600	3,805	0.2972

Table 4.6.8 – Final fees for guilty pleas (continued)

Offence class	PPE	Initial fee	Incremental fee per page
E	6,400	4,074	0.1494
E	8,200	4,207	0.0739
E	9,999	4,274	0.0372
E	100,000	5,946	0.0186
F	50	542	10.8400
F	400	1,239	1.9914
F	1,000	1,733	0.8233
F	2,800	2,471	0.4100
F	4,600	2,841	0.2056
F	6,400	3,026	0.1028
F	8,200	3,118	0.0511
F	9,999	3,164	0.0256
F	100,000	4,319	0.0128
G	120	862	7.1833
G	400	1,622	2.7143
G	1,000	2,227	1.0083
G	2,800	3,134	0.5039
G	4,600	3,588	0.2522
G	6,400	3,815	0.1261
G	8,200	3,929	0.0633
G	9,999	3,985	0.0311
G	100,000	5,402	0.0157
H	40	527	13.1750
H	400	1,239	1.9778
H	1,000	1,733	0.8233
H	2,800	2,472	0.4106
H	4,600	2,843	0.2061
H	6,400	3,028	0.1028
H	8,200	3,120	0.0511
H	9,999	3,167	0.0261
H	100,000	4,324	0.0129
I	40	491	12.2750
I	400	1,552	2.9472
I	1,000	2,345	1.3217
I	2,800	3,531	0.6589
I	4,600	4,125	0.3300
I	6,400	4,422	0.1650
I	8,200	4,571	0.0828
I	9,999	4,644	0.0406
I	100,000	6,499	0.0206

Table 4.6.9 – Final fees for trials

Offence class	PPE	Initial fee	Incremental fee per page
A	150	3,382	22.5467
A	600	12,270	19.7511
A	1,100	19,632	14.7240
A	1,900	30,675	13.8038
A	3,300	39,878	6.5736
A	5,000	45,399	3.2476
A	6,000	47,024	1.6250
A	7,000	47,835	0.8110
A	8,000	48,241	0.4060
A	9,000	48,444	0.2030
A	9,999	48,545	0.1011
A	100,000	53,113	0.0508
B	70	1,465	20.9286
B	200	3,681	17.0462
B	500	6,749	10.2267
B	1,300	14,111	9.2025
B	2,000	19,632	7.8871
B	3,300	26,994	5.6631
B	5,000	32,516	3.2482
B	6,000	34,140	1.6240
B	7,000	34,951	0.8110
B	8,000	35,357	0.4060
B	9,000	35,561	0.2040
B	9,999	35,662	0.1011
B	100,000	40,230	0.0508
C	40	1,203	30.0750
C	300	4,638	13.2115
C	700	9,325	11.7175
C	1,250	15,460	11.1545
C	2,000	19,632	5.5627
C	3,200	24,540	4.0900
C	4,560	27,322	2.0456
C	5,920	28,712	1.0221
C	7,280	29,408	0.5118
C	8,640	29,755	0.2551
C	9,999	29,929	0.1280
C	100,000	35,680	0.0639
D	80	1,596	19.9500
D	210	5,522	30.2000
D	700	12,270	13.7714
D	1,050	16,565	12.2714

Table 4.6.9 – Final fees for trials (continued)

Offence class	PPE	Initial fee	Incremental fee per page
D	2,000	26,994	10.9779
D	3,600	35,777	5.4894
D	5,200	40,168	2.7444
D	6,800	42,363	1.3719
D	8,400	43,462	0.6869
D	9,999	44,010	0.3427
D	100,000	51,728	0.0858
E	40	1,089	27.2250
E	70	1,656	18.9000
E	130	2,209	9.2167
E	600	5,890	7.8319
E	1,350	8,221	3.1080
E	3,000	10,909	1.6291
E	4,750	12,254	0.7686
E	6,500	12,926	0.3840
E	8,250	13,263	0.1926
E	9,999	13,431	0.0961
E	100,000	17,801	0.0486
F	50	997	19.9400
F	230	2,577	8.7778
F	700	5,890	7.0489
F	1,400	10,430	6.4857
F	1,950	13,497	5.5764
F	3,550	17,958	2.7881
F	5,150	20,190	1.3950
F	6,750	21,306	0.6975
F	8,350	21,863	0.3481
F	9,999	22,150	0.1740
F	100,000	29,994	0.0872
G	120	1,384	11.5333
G	735	6,135	7.7252
G	1,290	10,061	7.0739
G	2,400	17,792	6.9649
G	4,500	31,902	6.7190
G	8,000	53,375	6.1351
G	8,400	54,602	3.0675
G	8,800	55,215	1.5325
G	9,200	55,522	0.7675
G	9,600	55,675	0.3825
G	9,999	55,752	0.1930
G	100,000	64,379	0.0959

Table 4.6.9 – Final fees for trials (continued)

Offence class	PPE	Initial fee	Incremental fee per page
H	40	1,052	26.3000
H	250	3,068	9.6000
H	620	5,276	5.9676
H	1,300	8,589	4.8721
H	3,000	15,338	3.9700
H	5,000	19,632	2.1470
H	6,000	20,706	1.0740
H	7,000	21,243	0.5370
H	8,000	21,511	0.2680
H	9,000	21,646	0.1350
H	9,999	21,712	0.0661
H	100,000	24,731	0.0335
I	40	1,205	30.1250
I	370	5,399	12.7091
I	800	10,307	11.4140
I	1,300	15,951	11.2880
I	2,700	21,473	3.9443
I	4,200	2,5154	2.4540
I	5,360	26,577	1.2267
I	6,520	27,288	0.6129
I	7,680	27,644	0.3069
I	8,840	27,822	0.1534
I	9,999	27,911	0.0768
I	100,000	31,362	0.0383

Table 4.6.10 – Defendant uplifts

Total number of defendants represented by firm	Percentage uplift applicable to total fee
1	0%
2-4	20%
5+	30%

6 Only one defendant uplift will be paid per case. For example if a firm represents six defendants in a case, they will receive one defendant uplift payment of 30% on the entire final fee.

Table 4.6.11 – Transfers and retrials table

No	Scenario	Percent	Case type	Remarks
1	Pre plea and case management hearing	25%	Cracked trial	No change of solicitor
2	Plea and case management hearing	100%	Guilty plea	No change of solicitor
3	Cracked trial	100%	Cracked trial	No change of solicitor
4	Trial	100%	Trial	No change of solicitor
5	Appeal against conviction	100%	Appeal against conviction	No change of solicitor
6	Appeal against sentence	100%	Appeal against sentence	No change of solicitor
7	Committal for sentence	100%	Committal for sentence	No change of solicitor
8	Contempt	100%	Contempt	No change of solicitor
9	Retrial	25%	Trial	No change of solicitor
10	Pre plea and case management hearing transfer (original)	25%	Cracked trial	
11	Pre plea and case management hearing transfer (new) – guilty plea	100%	Guilty plea	
12	Pre plea and case management hearing transfer (new) – cracked	100%	Cracked trial	
13	Pre plea and case management hearing transfer (new) – trial	100%	Trial	
14	Before trial transfer (org)	75%	Cracked trial	
15	Before trial transfer (new) – cracked	100%	Cracked trial	
16	Before trial transfer (new) – trial	100%	Trial	
17	During trial transfer (org) – trial	100%	Trial	Claim up to the day before the transfer
18	During trial transfer (new) – trial	50%	Trial	Claim for the full trial length
19	During trial transfer (new) – retrial	25%	Trial	Claim for the full retrial length
20	Transfer before retrial (org) – retrial	25%	Cracked trial	
21	Transfer before retrial (new) – retrial	50%	Trial	Claim for the full retrial length
22	Transfer during/after retrial (org) – retrial	25%	Trial	Claim up to retrial day before the transfer
23	Transfer during/after retrial (new) – retrial	50%	Trial	Claim for the full retrial length

7 As well as identifying the payment rates for transfers and retrials, Table 4.6.11 shows the percentages of payments for all trial types. For example, cases that end, for whatever reason, prior to the plea and case management hearing will be paid 25% of the cracked trial fee (see the first row of Table 4.6.11).

Litigator fee calculation examples

Scenario 1:

8 A shoplifting offence (value less than £30,000) with 25 PPE where the defendant pleads guilty at the plea and case management hearing.

Step 1 – Case type is guilty plea

Step 2 – Offence class is Class F (Table 4.6.2)

Step 3 – Basic Fee for a Class F guilty plea is **£542** (Table 4.6.3)

Step 4 – PPE in the case is 25. (length of trial is not applicable as case type is guilty plea.)

Step 5 – PPE cut-off for a Class F guilty plea is 50 (Table 4.6.4)

Step 6 – Actual PPE (25) is less than PPE cut-off (50) therefore the "final fee payable is the basic fee identified at step 3 above."

Final fee (subject to defendant uplift and/or reduction for transfers/retrials) = basic fee

= **£542**

Step 7 – Not applicable – case type is a guilty plea.

Step 8 – Not applicable because actual PPE (25) is less than PPE cut-off (50)

Step 9 – Not applicable – case type is a guilty plea.

Step 10 – Not applicable – case is not a retrial nor is there a transfer.

Step 11 – Not applicable –firm has only represented one defendant in the case.

Final litigator fee = £542

Scenario 2:

9 A 15-day murder trial with 476 PPE and two defendants.

Step 1 – Case type is trial

Step 2 – Offence class is Class A (Table 4.6.2)

Step 3 – Basic Fee for a Class A trial is **£3,382** (Table 4.6.3)

Step 4 – PPE in the case is 476 – length of trial is 15 days

Step 5 – PPE cut-off for a Class A offence with a 15 day trial is 1,258 (Table 4.6.5)

Step 6 – Not applicable – case type is trial.

Step 7 – Actual PPE (476) is less than PPE cut-off (1,258) therefore "go to Table 4.6.6 and identify the appropriate length of trial uplift to the basic fee."

Length of trial uplift for 15 day Class A offence is £18,437.51

Final fee (subject to defendant uplift and/or reduction for transfers/retrials) = basic fee plus length of trial uplift.

= 3,382 + 18,437.51

= £21,819.51

Step 8 – Not applicable – case type is a trial.

Step 9 – Not applicable because actual PPE (476) is less than PPE cut-off (1,258)

Step 10 – Not applicable – case is not a retrial nor is there a transfer.

Step 11 – Defendant uplift for two defendants is 20% (Table 4.6.10).

Final fee (including defendant uplift) = 21,819.51*120% = **£26,183.41**

Final litigator fee = £26,183.41

Scenario 3:

10 A three-day burglary with 92 PPE and one defendant

Step 1 – Case type is trial

Step 2 – Offence class is Class E (Table 4.6.2)

Step 3 – Basic fee for a Class E trial is **£1,089** (Table 4.6.3)

Step 4 – PPE in the case is 92– length of trial is three days

Step 5 – PPE cut-off for a Class E offence with a three-day trial is 58 (Table 4.6.5)

Step 6 – Not applicable – case type is trial.

Step 7 – Not applicable because actual PPE (92) is greater than PPE cut-off (58)

Step 8 – Not applicable – case type is a trial.

Step 9 – **(i)** Actual PPE (92) is greater than PPE cut-off (58) therefore "refer to Table 4.6.9 and identify the PPE equal to, or less than the PPE in your case." The PPE closest to 92, without exceeding it, is 70.

(ii) "The final fee payable will be the corresponding trial fee plus the appropriate incremental rate per page shown in the row below "

Final fee (subject to defendant uplift and/or reduction for transfers/retrials) = £1656 (Table 4.6.9) plus 22(92-70) pages at £9.2167 per page

= £1656 + (22*9.2167)

= £1656 + 202.77

= **£1,858.77**

Step 10 - Not applicable – case is not a retrial nor is there a transfer.

Step 11 – Not applicable – firm has only represented one defendant in the case

Final litigator fee = £1,858.77

Scenario 4:

11 A lengthy (non-very high cost) fraud case with 2,135 PPE and three defendants which folds unexpectedly on the 1st day of trial

Step 1 – Case type is trial

Step 2 – Offence class is Class G (Table 4.6.2)

Step 3 – Basic fee for a Class G trial is **£1,384** (Table 4.6.3)

Step 4 – PPE in the case is 2,135 – length of trial is 1 day

Step 5 – PPE cut-off for a Class G offence with a 1-day trial is 120 (Table 4.6.5)

Step 6 – Not applicable – case type is trial.

Step 7 – Not applicable because actual PPE (2,135) is greater than PPE cut-off (120)

Step 8 – Not applicable – case type is a trial.

Step 9 – **(i)** Actual PPE (2,135) is greater than PPE cut-off (120) therefore "refer to Table 4.6.9 and identify the PPE equal to, or less than the PPE in your case." The PPE closest to 2,135, without exceeding it, is 1,290.

(ii) "The final fee payable will be the corresponding trial fee plus the appropriate incremental rate per page shown in the row below "

Final fee (subject to defendant uplift and/or reduction for transfers/retrials) = £10,061 (Table 4.6.9) plus 845 (2,135-1,290) pages at £6.9649 per page

= £10,061+ (845*6.9649)

= £10,061 + £5,885.34

= £15,946.34

Step 10 – Not applicable – case is not a retrial nor is there a transfer.

Step 11 – Defendant uplift for 3 defendants is 20% (Table 4.6.10).

Final fee (including defendant uplift) = 15,946.34 *120%

= £19,135.61

Final litigator fee = £19,135.61

Scenario 5:

12 A retrial of the above 15-day murder trial where the retrial lasts 18 days, contains 600 PPE and has two defendants

Step 1 – Case type is trial

Step 2 – Offence class is Class A (Table 4.6.2)

Step 3 – Basic fee for a Class A trial is **£3,382** (Table 4.6.3)

Step 4 – PPE in the case is 600 – length of trial is 18 days

Step 5 – PPE cut-off for a Class A offence with a 18 day trial is 1,389 (Table 4.6.5)

Step 6 – Not applicable – case type is trial.

Step 7 – Actual PPE (600) is less than PPE cut-off (1,389) therefore "go to Table 4.6.6 and identify the appropriate length of trial uplift to the basic fee."

Length of trial uplift for 18 day Class A offence is £20,236.91

Final Fee (subject to defendant uplift and/or reduction for transfers/retrials) = Basic Fee plus length of trial uplift.

= **3,382 + 20,236.91**

= **£23,618.91**

Step 8 – Not applicable – case type is a trial.

Step 9 – Not applicable because actual PPE (600) is less than PPE cut-off (1,389)

Step 10 – The case is a retrial. Therefore the final fee must be adjusted in accordance with Table 4.6.11. This shows that where there is no change of solicitor the appropriate litigator fee is 25% of the trial fee.

Therefore, the final fee adjusted for a retrial is 23,618.91*25% = **£5,904.73**

Step 11 – Defendant uplift for 3 defendants is 20% (Table 4.6.10).

Final fee (including defendant uplift) = 5,904.73*120%

= **£7,085.68**

Final litigator fee = £7,085.68

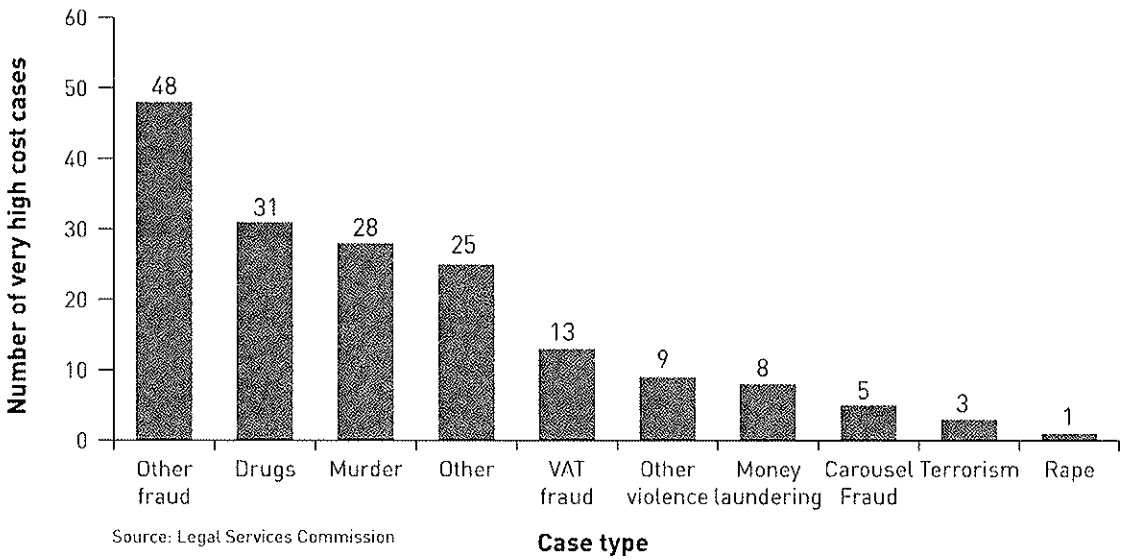
Annex 4.7: Very high cost criminal cases

Background on very high cost cases

1 About 100 to 150 very high cost cases begin in any given year. In general, they are more complex cases, with trials lasting over 40 days. Fraud cases account for about half of all very high cost cases, with the other half a combination of drugs, murder, terrorism and related categories (see Figure 4.7.1).

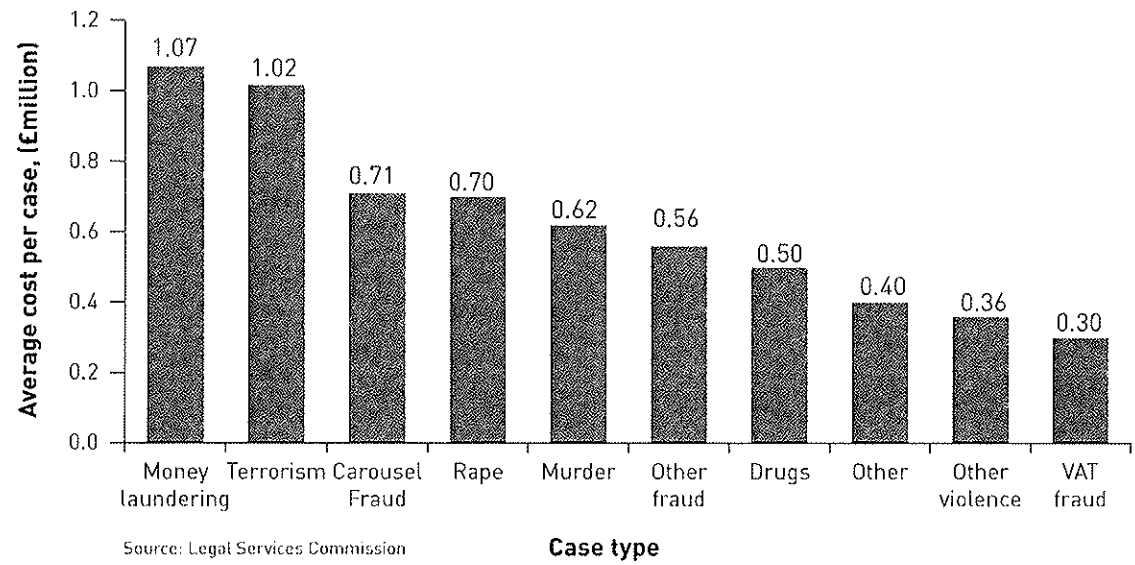
2 However, cases that are few in number may be particularly complex. For example, money laundering and terrorism cases tend to cost more per case than other types of cases (see Figure 4.7.2).

Figure 4.7.1 – Very high cost case by crime category



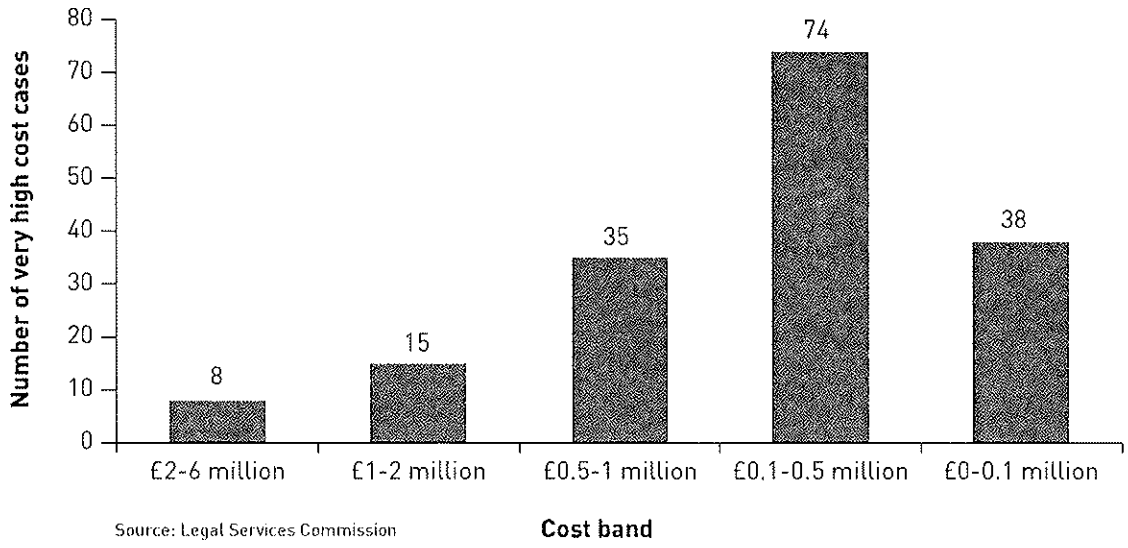
Source: Legal Services Commission

Figure 4.7.2 – Cost per case



Source: Legal Services Commission

Fig 4.7.3 –Distribution of very high cost criminal case costs



Source: Legal Services Commission

3 In general, the majority of cases cost less than £500,000, although a few cases do cost significantly more (see Figure 4.7.3).

Background to the Complex Crime Unit

4 In 2000 the Legal Services Commission piloted the Complex Crime Unit in response to a growing concern at the rising costs of a small number of expensive cases each year.

5 Each case that is dealt with under contract by the Complex Crime Unit is assigned an individual contract manager for each instructing solicitor. This contract manager will agree all work on the contract in advance of it being undertaken and is responsible for ensuring that costs are controlled.

6 The Complex Crime Unit has been credited with substantial success in controlling costs in the cases it manages. However, it is also recognised among stakeholders that this is an area of legal aid, which is still in a position to deliver further cost reductions. In particular, it is believed that there may be scope for reducing the rates paid for work, while improved case management on the part of suppliers and the Complex Crime Unit could also lead to cost savings.

7 As stated in the main body of the report the Complex Crime Unit should draft an expression of interest document setting out the minimum eligibility criteria that would be expected of the team.

Information technology resources

8 All prospective panel member teams should have access to the necessary information technology resources to adequately prepare a complex criminal case and to transact with the Complex Crime Unit in an efficient manner. At minimum, this should include a CD ROM/DVD player and the main software packages, including Word and Excel. They should also have access to email and the internet, to communicate with the Complex Crime Unit and prosecution agencies. They should also be able to demonstrate that they have access to trained personnel who can use information technology skills to achieve great efficiencies in searching large amounts of prosecution material.

9 All team members will be required to keep electronic diaries detailing time spent preparing both their very high cost cases and other cases. They should make their electronic diaries available for auditing purposes.

Specialist Quality Mark

10 Litigators firms wishing to gain membership of the panel should hold the specialist quality mark.

Team members experience

11 At least half of all counsel nominated to act in a leading role (QC, leading junior, junior alone) must have experience of at least two very high cost cases in the last three years, at least one of which should have gone to trial. This would include very high cost cases contracted prior to the change to 41 days.

12 At least half of the A Grade litigators, and at least half of the B Grade litigators, in a bid team must have have experience of at least two very high cost cases as defined above.

- it will be a requirement of the very high cost case contract that either the lead litigator or leading counsel has the above experience; and
- it will also be a requirement of the very high cost case contract that where the team have been instructed in a fraud matter that the case team includes either leading counsel or a Level A solicitor who has experience of at least three very high cost case fraud cases.

13 The above criteria seek to strike a balance between appropriate experience and avoiding the exclusion of those who do not have this.

14 The role of the team leader will be critical to the success of the very high cost case scheme. The team leader will be accountable to the Complex Crime Unit for the allocation of work to members of their team. They will lead on all stage negotiations with the assigned contract manager. Therefore it will be a requirement for all nominated team leaders to have the relevant experience.

15 The Complex Crime Unit, in drafting the expression of interest document, should make provision for excluding teams , any of whose members have been found to have undertaken in conduct that would be unacceptable for the Complex Crime Unit panel. The events below are for example only:

- double claiming;
- failure to return signed contract within deadline, or extended deadline;
- unreasonable returns of briefs;
- wasted costs orders;
- substantial work (100 hours plus) disallowed under an individual case contract because it was not agreed in advance; and
- non payment for work on a case on the grounds that a conflict of interest was not identified.

16 Teams would be required to advise whether any of these events has taken place and the existence of two or more would preclude the team from bidding.

17 Should there be a difference of opinion between the team and the Complex Crime Unit on whether such events have taken place, there will need to be provision for an arbitration mechanism.

Pro forma notification document for very high cost cases

18 This document should include the following points:

- charge/offences;
- number of defendants;
- court and T number;
- solicitors views on trial length;
- volume of known evidence (already served or about to be served);
- indictment and case summary if served;
- any indication that an early guilty plea is to be entered;
- solicitors initial views on the likely category of the case;
- details of co-defendant's solicitors;
- name of counsel (if assigned);
- details of prosecuting authority;
- date of representation order;
- date of transfer to the Crown Court;
- value of fraud or drugs; and
- court estimate and trial date (if known).

Improving the case management capability of the Complex Crime Unit

19 This annexe sets out greater detail on the key recommendations to improve the case management capability of the Complex Crime Unit. It is structured around four core areas:

- very high cost case protocol on best value;
- Complex Crime Unit lawyers;
- referral panel; and
- post case audit panel.

Very high cost case protocol on best value

20 Critical to embedding best practice in very high cost cases will be adhering to a very high cost case best practice team protocol. This will articulate some of the basic approaches to case preparation that the Complex Crime Unit will expect from a very high cost case team to achieve the standards of the most efficient suppliers. The review recommends that the Legal Services Commission work with the professions to develop the team protocol around the following themes.

- approach to served prosecution evidence;
- management of counsel;
- case planning;
- taking client's instructions;
- approach to unused material;
- selection and instruction of experts;
- control of counsel's preparation for trial and during trial; and
- sharing of costs with co-defendant's legal team.

Complex Crime Unit lawyers

21 A key factor to the successful delivery of savings to very high cost cases will be ensuring that changes are made to increase the skills of the Complex Crime Unit. The interim report recommended the addition of qualified lawyers to the unit.

22 The Complex Crime Unit currently assigns a separate contract manager for each individual instructing solicitor in a trial. The role of each contract manager is to negotiate the appropriate amount of work to be undertaken by his or her team in each trial. Currently the contract managers are organised into small teams.

23 The Complex Crime Unit lawyers should take a case management role with each being responsible for a set of trials. Generally, they would not manage individual contracts, rather they would undertake an overall management role of all the contracts in each trial.

24 This would involve ensuring consistency of approach by contract managers and working to ensure that variance in spending between defendants in each trial is the product of relative positions of defendants in each case or specific defence strategies. In order to do this the lawyers will need to see regular updates of spending in each trial. This should then be followed by meetings with the group of contract managers on the particular case when important case issues arise.

25 It is envisaged that the Complex Crime Unit lawyers would make contact with the prosecution solicitor at the commencement of each trial. They will receive updates on case progression and be notified of any significant hearings that would impact on costs (e.g. disclosure). They will also represent the Complex Crime Unit if required and appropriate at particular court hearings.

26 The lawyers should be practitioners who have at least five years experience of criminal litigation. Ideally they will have worked on very high cost cases.

The referral panel

27 If complex or novel points of law or procedure are raised, the Complex Crime Unit lawyers will have the benefit of access at short notice to a selection of experts known as the reference panel. This panel will be made up of a small number of very senior practitioners, a judge and some senior members of the profession who are in private practice.

28 The role of the panel members will be to provide advice to the Complex Crime Unit lawyers on points that are referred to them. They should be available at short notice by phone or email and may need to work to a rota basis. The Complex Crime Unit should ensure that regular meetings of the referral panel take place to review advice that has been given.

Post case auditing

29 As outlined in the interim report, there will be a post case audit of a small selection of very high cost cases by a specially constituted very high cost case audit panel. This will be an ad hoc panel that has four broad objectives:

- to scrutinise performance of defence teams, comparing behaviour to undertakings given in tender documents (invitation to tender, quality assessment, bid documents, best value protocols);
- to provide a retrospective system of quality assurance for firms undertaking very high cost case work;
- to identify systemic issues (with supporting evidence) in the management of very high cost cases; and
- to identify best practice and innovation in the management of very high cost cases.

30 Cases may be referred to the audit panel in the following circumstances:

- the Complex Crime Unit lawyers will refer any cases that they judge necessary to the audit panel that have generated concerns at previous audits;
- stakeholder feedback – reports from trial judge, Complex Crime Unit, prosecuting counsel on behaviour and performance of defence team can also trigger an audit;
- on occasion the panel will be asked to review live cases should concerns be raised by the Complex Crime Unit; and
- the panel will then conduct an analysis of the information available on a case and will issue sanctions if they see fit in addition to information on best practice guidelines for panel members and contract managers.

31 There should be a range of possible sanctions that could be imposed on a team such as:

- fixed financial penalties;
- referral to professional body;
- improved strategy agreed; and
- disqualification from the Complex Crime Unit panel and the next bidding round.

32 Representatives on the audit panel will be from a combination of the following:

- Bar Council regulatory unit;
- Law Society regulatory unit;
- senior lawyers in private practice as appropriate;
- judiciary as appropriate; and
- the Legal Services Commission.

Annex 5.1: Impact on model firms

1 Chapter 5 sets out analysis of the impact of the new fee structures on five model firms. The analysis is provided for these firms under two different scenarios. The first scenario assumes that firms continue with their current working arrangements. The second scenario assumes that firms are able to make small efficiency savings. Scenarios 1 and 2 are considered in turn below.

Scenario 1 – current working arrangements

2 This section of the annex sets out the assumptions that have been made to understand the impact of the new fee structures on firms under current working practices (for instance, assuming no efficiency savings). Information is provided on the assumptions that have been made under each of the following headings:

- firm structure and costs;
- chargeable hours and splits of work;
- case length and case mix; and
- price levels.

Firm structure and costs

3 The structure of each model firm in terms of the mix of fee earners employed is different. The table below shows the structure that has been assumed for each. Support staff have been assumed to be employed at a rate of one for every three fee earners.

Table 5.1.1 – Type of fee earner

	1 fee earner, 1 equity partner	5 fee earners, 1 equity partner	11 fee earners, 1 equity partner	27 fee earners, 2 equity partners	47 fee earners, 3 equity partners
Equity partner (EP)	1	1	1	2	3
Salaried partner (SP)				1	2
Associate (3-10 years call)			1	2	4
Solicitors (0-3 years call)			1	3	8
Other qualified fee earner (OQFE)		3	5	11	17
Unqualified fee earners (UQFE)		1	2	7	11
Trainee (Tr)			1	1	2
Support staff	0.3	1.7	3.7	9.0	15.7

4 The following assumptions have been made regarding the salaries of each type of fee earner inside and outside of London. Equity partners are not allocated a salary per se as they are the residual claim holders on the profit generated by the firm. Salaries in London are assumed to be 10% higher than those outside of London. Overhead costs per firm have been assumed to be £22,000 per fee earner.

Chargeable hours and splits of work

5 The assumptions that have been made regarding the number of chargeable hours worked by each type of fee earner are set out in the table below. Equity partners are assumed to work 1,300 chargeable hours a year, salaried partners, associates, solicitors and other qualified fee earners are assumed to work 1,400 hours a year and unqualified fee earners and trainees are assumed to work 1,000 and 700 hours respectively.

Table 5.1.2 – Salaries of fee earners

Type of fee earner	Salary of fee earner (Provincial)	Salary of fee earner (London)
Equity partner (EP)	-	-
Salaried partner (SP)	£76,500	£85,000
Associate (3-10 years call)	£46,350	£51,500
Solicitors (0-3 years call)	£23,940	£26,600
Other qualified fee earner (OQFE)	£26,100	£29,000
Unqualified fee earners (UQFE)	£14,400	£16,000
Trainee (Tr)	£18,360	£20,400
Support staff	£18,810	£20,900

Table 5.1.3 – Total numbers of chargeable hours in a year

Type of fee earner	Total number of chargeable hours in a year
Equity partner (EP)	1,300
Salaried partner (SP)	1,400
Associate (3-10 years call)	1,400
Solicitors (0-3 years call)	1,400
Other qualified fee earner (OQFE)	1,400
Unqualified fee earners (UQFE)	1,000
Trainee (Tr)	700

6 Assumptions are also required regarding the split of those chargeable hours that each fee earner devotes to different types of criminal work. The table below shows the assumptions that have been made regarding the split of hours for each type of fee earner in the police station, magistrates' court and Crown Court work. Equity partners are assumed to spend around half of their time in the magistrates' court. Salaried partners, in contrast, are assumed to spend 85% in the Crown Court. Other qualified fee earners are assumed to spend 100% of their chargeable hours doing police station work. Unqualified fee earners spend 90% of their time in the Crown Court.

Case length and case mix

7 In order to translate the number of hours worked into an estimated case load for each fee earner, information is needed on the average length of cases of different types.

8 Average case length for police station data has been calculated using historical information on the number of hours billed. Fixed fee cases take an average of 5 hours and cases that would escape under the new system take an average of 23 hours.

9 Hours of work are not specifically recorded for work undertaken in the magistrates' court as payments depend on whether work done would exceed the threshold levels necessary to qualify for lower standard, higher standard or non-standard fees. However, it is possible to estimate the number of hours that would, on average, need to be worked to achieve lower standard or higher standard fees. The average case length for lower standard and higher standard fee cases has been taken to be the number of hours needed to reach the threshold minus one (as not all cases are assumed to require the threshold number of hours). The number of hours required for a non-standard fee case has been assumed to be 25. However, for simplicity of analysis we assume that firms do not undertake non-standard cases, so this figure does not affect the analysis in any way.

10 Since the new litigator graduated fee payment system is complex and varies according to the class of case, length of trial and number of pages of prosecution evidence, it is difficult to estimate average case lengths. So that the analysis is tractable, Crown Court cases have been divided by offence type into trials, cracks and guilty pleas. The average case length for a trial has been taken to be

Table 5.1.4 – Proportion of hours

	Proportion of hours		
Type of fee earner	**Police station**	**Magistrates' court**	**Crown Court**
Equity partner (EP)	50%	50%	0%
Salaried partner (SP)	3%	12%	85%
Associate (3–10 years call)	16%	55%	29%
Solicitors (0–3 years call)	15%	26%	59%
Other qualified fee earner (OQFE)	47%	10%	43%
Unqualified fee earners (UQFE)	2%	8%	90%
Trainee (Tr)	100%	0%	0%

the number of hours at trial plus half a day's preparation for each day at trial. Cracked cases have been assumed to take the relevant preparation time for a trial plus a quarter of a day extra for each day of preparation. Guilty pleas have been assigned the average preparation time for the relevant trial.

Table 5.1.5 – Average case length	
	Average case length (hours)
Police station (fixed fee case)	5
Police station (escape case)	23
Magistrates' Court (lower standard fee cases cat 1)	5
Magistrates' Court (lower standard fee cases cat 2)	9
Magistrates' Court (higher standard fee cases cat 1)	9
Magistrates' Court (higher standard fee cases cat 2)	16
Magistrates' Court (non-standard fee cases)	25
Crown Court (Class A) – trial	74
Crown Court (Class B) – trial	42
Crown Court (Class C) – trial	32
Crown Court (Class D) – trial	42
Crown Court (Class E) – trial	21
Crown Court (Class F) – trial	32
Crown Court (Class G) – trial	74
Crown Court (Class H) – trial	32
Crown Court (Class I) – trial	42
Crown Court (Class A) – crack	31
Crown Court (Class B) – crack	18
Crown Court (Class C) – crack	13
Crown Court (Class D) – crack	18
Crown Court (Class E) – crack	9
Crown Court (Class F) – crack	13

Table 5.1.6 – Average case length (continued)	
	Average case length (hours)
Crown Court (Class G) – crack	31
Crown Court (Class H) – crack	13
Crown Court (Class I) – crack	18
Crown Court (Class A) – guilty plea	25
Crown Court (Class B) – guilty plea	14
Crown Court (Class C) – guilty plea	11
Crown Court (Class D) – guilty plea	14
Crown Court (Class E) – guilty plea	7
Crown Court (Class F) – guilty plea	11
Crown Court (Class G) – guilty plea	25
Crown Court (Class H) – guilty plea	11
Crown Court (Class I) – guilty plea	14

11 Fee earners are assumed to work across different case types according to the historical mix of trials, cracks and guilties in each offence type.

Price levels

12 The prices that have been used to estimate the impact of the new fixed fees on firms are taken from the new pricing structures and are shown below. In the police station, firms outside of London are assumed to attract the average police scheme level fixed fee (excluding VAT) for all of their police station work. Firms within London are assumed to attract the London criminal justice system area fee.

13 As the pricing structure within the magistrates' court is relatively simple, the new fees (exclusive of VAT) have been used directly in the analysis.

14 In the Crown Court, the fee reflects average payments (excluding VAT) for average cases in each offence type varying for trials, cracks and guilty pleas.

Table 5.1.7 – Proportion of cases	
Police station	
Proportion of fixed fee cases	100%
Proportion of escape cases	0%
Magistrates' court	
Proportion of lower standard fee (cat 1) cases	67%
Proportion of lower standard fee (cat 2) cases	18%
Proportion of higher standard fee (cat 1) cases	7%
Proportion of higher standard fee (cat 2) cases	8%
Proportion of non-standard fee cases	0%

Crown Court	**Trial**	**Crack**	**Guilty plea**
Crown Court (Class A)	1%	0%	0%
Crown Court (Class B)	8%	15%	10%
Crown Court (Class C)	6%	11%	7%
Crown Court (Class D)	4%	3%	1%
Crown Court (Class E)	1%	4%	5%
Crown Court (Class F)	1%	3%	3%
Crown Court (Class G)	0%	0%	0%
Crown Court (Class H)	2%	6%	4%
Crown Court (Class I)	0%	1%	2%

Table 5.1.8 – Price levels

Police station	National	London
Fixed fee	£177	£266
Escape	n/a	n/a

Magistrates' court	National	London
Lower standard fee (cat 1) cases	£222	£284
Lower standard fee (cat 2) cases	£378	£485
Higher standard fee (cat 1) cases	£477	£611
Higher standard fee (cat 2) cases	£793	£1,005
Non-standard fee cases	n/a	n/a

Crown Court	Trial	Crack	Guilty plea
Crown Court (Class A)	£11,018	£2,878	£1,995
Crown Court (Class B)	£2,060	£1,088	£634
Crown Court (Class C)	£1,324	£810	£534
Crown Court (Class D)	£2,789	£1,462	£784
Crown Court (Class E)	£1,027	£735	£437
Crown Court (Class F)	£1,136	£745	£498
Crown Court (Class G)	£5,913	£1,595	£766
Crown Court (Class H)	£1,200	£770	£449
Crown Court (Class I)	£3,924	£836	£418

Scenario 2 – the impact of modest efficiency savings

15 This section of the annex sets out the assumptions that have been made to understand the impact of the new fee structures assuming that firms make small efficiency savings. Analysis has explored the impact of a firm being able to make efficiency savings of 5% in each of two different areas (but not both at the same time):

- a 5% reduction in the average amount of time spent per case; and
- a 5% reduction in overhead costs and support staff salaries.

16 A 5% reduction in the average amount of time spent per case leads to the average hours per case shown in the table below.

Table 5.1.9 – Average case length assuming 5% efficiency savings

	Average case length (hours)
Police station (fixed fee case)	5
Police station (escape case)	22
Magistrates' court (lower standard fee cases cat 1)	5
Magistrates' court (lower standard fee cases cat 2)	9
Magistrates' court (higher standard fee cases cat 1)	9
Magistrates' court (higher standard fee cases cat 2)	15
Magistrates' court (non-standard fee cases)	24
Crown Court (Class A) – trial	70
Crown Court (Class B) – trial	40
Crown Court (Class C) – trial	30
Crown Court (Class D) – trial	40
Crown Court (Class E) – trial	20
Crown Court (Class F) – trial	30
Crown Court (Class G) – trial	70
Crown Court (Class H) – trial	30
Crown Court (Class I) – trial	40

Table 5.1.9 – Average case length (continued)	
	Average case length (hours)
Crown Court (Class A) – crack	29
Crown Court (Class B) – crack	17
Crown Court (Class C) – crack	12
Crown Court (Class D) – crack	17
Crown Court (Class E) – crack	8
Crown Court (Class F) – crack	12
Crown Court (Class G) – crack	29
Crown Court (Class H) – crack	12
Crown Court (Class I) – crack	17
Crown Court (Class A) – guilty plea	23
Crown Court (Class B) – guilty plea	13
Crown Court (Class C) – guilty plea	10
Crown Court (Class D) – guilty plea	13
Crown Court (Class E) – guilty plea	7
Crown Court (Class F) – guilty plea	10
Crown Court (Class G) – guilty plea	23
Crown Court (Class H) – guilty plea	10
Crown Court (Class I) – guilty plea	13

17 In the alternative scenario for understanding the effect of modest efficiency savings, a 5% reduction in overhead costs and support staff salaries would mean support staff salaries of £18,810 (£20,900 in London) and overhead costs of £20,900 per fee earner.

Annex 6.1: Timetables for phased implementation

Criminal legal aid procurement

1. The timetable below may be subject to further revision by all stakeholders in the consultation process following publication of this report.

July 2006	• DCA and the Legal Services Commission issue initial consultation document • The Legal Services Commission begins national roll-out of peer review assessment for all firms seeking a place in the new market • The Law Society start to establish a process and timetable for the transfer of quality assurance from the Legal Services Commission
September 2006	• The Legal Services Commission, DCA and Law Society devise conditions which will enable responsibility for quality assurance to be passed from the Legal Services Commission
October 2006	• DCA and the Legal Services Commission consultation ends
November 2006	• Announcement of future policy and procedures • Final fixed fee scheme for police station published • Information technology and system changes commence
October to December 2006	• The Legal Services Commission starts process to monitor, assess and promote diversity within its suppliers • The Legal Services Commission and DCA establish a wide diversity advisory group which will report to the Lord Chancellor and Legal Services Commission commissioners on the state of diversity within suppliers • The Legal Services Commission commence development of very high cost case team protocol and establish referral panel
January to March 2007	• The Complex Crime Unit completes reshaping and employs in-house lawyers • The Legal Services Commission and DCA begin working with professions to help sustain a diverse supplier base throughout transitional period and beyond. Measures include establishing compulsory monitoring of ethnic data. • The Legal Services Commission consults on a new working arrangements and boundary areas for General Criminal Contracts

	• New police station fee introduced
	• Revised standard fees for magistrates' courts introduced
	• Revised scheme for Crown Court advocacy introduced
	• New fees for Crown Court litigators introduced
	• Proposals for a system of quality monitoring for advocates made ready for consideration
April 2007	• Establishment of a grant programme to provide financial support to firms (This also apples to civil and family)
	• Establishment of an information technology modernisation challenge fun to provide support to firms to invest in information technology improvements to their businesses
	• The Legal Services Commission publish expression of interest for very high cost case best value competition
	• New very high cost case notification criteria for 25-40 day cases introduced
July to September 2007	• The Legal Services Commission collects data to develop an alternative basis for pricing by magistrates' court cases that escape
October 2007	• The Legal Services Commission establishes quality assessed and best value tendered panel for very high cost criminal cases
	• New working arrangements for General Criminal Contracts
	• Roll-out of new areas and working arrangements for revised General Criminal Contracts
January to March 2008	• Legal Services Commission begins process of designing and developing framework for (non-very high cost cases) best value tendering
April 2008	• A new graduated fee for magistrates' court work introduced
March 2009	• Grant programme through growth and consolidation fund and information technology Modernisation Challenge fund ends (Applies to civil and family as well)
April 2009	• Introduction of best value tendering for criminal legal aid: suppliers compete for contracts
	• The Law Society completes transfer of quality assurance for solicitors from Legal Services Commission

Civil and family legal aid procurement

2. The timetable below may be subject to further revision by all stakeholders in the consultation process following publication of this report.

July 2006	• DCA and the Legal Services Commission issue consultation document
September 2006	• The Legal Services Commission begins national roll-out of peer review assessment for all firms seeking a place in the new market • The Law Society starts to establish a process and timetable for the transfer of quality assurance form the Legal Services Commission
October 2006	• DCA and the Legal Services Commission consultation closes • Announcement of future policy and procedures
October to December 2006	• The Legal Services Commission start process to set up a dedicated unit to monitor, assess and promote diversity within its suppliers • The Legal Services Commission and DCA establish a wide diversity advisory group which will report to the Lord Chancellor and Legal Services Commission commissioners on the state of diversity within suppliers
December 2006	• DCA consults with the Law Society and the Bar Council regarding regulatory changes connected with fees
April 2007	• First community legal advice centres and networks established • Legal Services Commission introduces fixed and graduated fees for range of civil, family and immigration work (further extensions in family work to follow) • Proposals for a system of quality monitoring for advocates made ready for consideration • Establishment of an information technology modernisation challenge fund to provide support to firms to invest in information technology improvements to their businesses
July 2008	• DCA and the Legal Services Commission to report on scope for further changes to civil remuneration
January to March 2009	• Grant programme through information technology modernisation challenge fund ends
April 2009	• The Law Society completes transfer of quality assurance for solicitors from the Legal Services Commission • Begin move to best value tendering for new civil and family contracts (first wave of centres and contracts in 2006-07 subject to best value tendering)

2010-11	• Completion of move to community legal advice centres and networks • Complete move to best value tendering for new civil and family contracts
January 2011	• A steady state achieved: larger, more efficient, good quality supplier prosper with larger volumes of work; smaller firms have maximised efficiency and provide a good quality service; and smaller mixed practices operate in areas of limited demand but where access is an issue

Annex 6.2: Detailed expenditure profiles for each of the main areas of legal aid addressed by the review

Police station and magistrates' courts

Table 6.2.1 – Police station and magistrates court forecast spend to 2010 on 2005-06 volumes

£m (RAB)	Cash growth* 1997-98 to 2004-05	Outturn 2005-06	Forecast outturn 2006-07	1st year of transition 2007-08	2nd year of transition 2008-09	3rd year of transition 2009-10
Police station (new fixed fee scheme introduced April 07)	32%	183	184 (0%)	184 (-6%)	173 (0%)	173 (0%)
Magistrates' courts (revision to standard fee scheme in April 07 and new graduated fee scheme introduced April 2008)	32%	340	348 (+2%)	335 (-4%)	330 (-1%)	330 (0%)
Total	32%	523	531 (+2%)	508 (-4%)	503 (-1%)	503 (0%)

*Note: It has note been possible to disaggregate cash growth for police station and magistrates' courts expenditure.

1 Police station fixed fees should be introduced in April 2007 across the country as a first step in the transition process. New boundary areas and working arrangements should be rolled out from October 2007. The new arrangements will demand efficiencies from suppliers by the fixed fee procurement scheme that rewards efficient practitioners.

2 Suppliers will be helped to achieve these efficiencies through restructuring to allow more effective allocation of greater volumes of work and substantial reductions in travel costs. Restructuring is also integral to a supplier's ability to deliver efficiencies in other schemes – for the most efficient to a scale that allows them to increase their profitability (see Chapter 5).

3 The magistrates' courts revised standard fee scheme should be introduced in April 2007 with scope for a new graduated fee scheme in April 2008. Reductions in expenditure are generated from more efficient practices and allocation of work reducing travel costs substantially and to a lesser extent waiting costs as these are often beyond the direct influence of defence practitioners.

Crown Court litigation

Table 6.2.2 – Crown Court litigators forecast spend to 2010 on 2005-06 volumes

£m (RAB)	Cash growth 1997-98 to 2004-05	Outturn 2005-06	Forecast outturn 2006-07	1st year of transition 2007-08	2nd year of transition 2008-09	3rd year of transition 2009-10
Standard fee and ex post facto schemes (terminated April 2007 leaving some legacy)	120%	218	227	109	55	11
New graduated fee scheme (takes effect April 2007)	n/a	n/a	n/a	95	143	179
Very high cost case scheme (introduced in 2000 and to be modified from October 2007)	n/a	55	56	55	55	55
Total	120%	273	283 (+4%)	259 (-8%)	252 (-3%)	245 (-3%)

4 The new graduated fee scheme replaces the old ex post facto scheme, which has grown significantly above inflation in recent years. Ex post facto payments for old cases started before April 2007 continue to come through the system in early years, so that efficiency demands are distributed across the transition period until the ex post facto legacy has run out of the system, other than some minor exceptions in 2009–10.

5 The new very high cost case arrangements envisage the early introduction of price competition and the better management of very high cost case contracts. The forecast spend in this area may be larger than shown as a total budget has been suggested of £60 million for these cases. However, if this budget were reached (for instance, £5 million above this forecast) then it would be a result of cases being taken out of the graduated fee scheme and there would therefore be at least an equivalent reduction in spend under that scheme.

6 Disbursements are not included here. In 2005-06 they cost £48 million and covered non-legal costs incurred during the litigation of a Crown Court case (e.g. experts and translation costs). The review has not addressed this area of cost but there may be significant efficiencies to be found in procurement and delivery of these services.

Crown Court advocacy

Table 6.2.3 – Crown Court advocacy forecast spend to 2010 on 2005-06 volumes

£m (RAB)	Cash growth 1997-98 to 2004-05	Outturn 2005-06	Forecast outturn 2006-07	1st year of transition 2007-08	2nd year of transition 2008-09	3rd year of transition 2009-10
Ex post facto schemes (terminated in stages between 1997-98 and October 2005)	78%	162	105	87	49	11
Graduated fee scheme (introduced in stages since 1997-98 and modified scheme takes effect from April 2007)	n/a	155	175	197	217	238
Very high cost case scheme (introduced in 2000 and to be modified from October 2007)	n/a	45	46	43	42	41
Total	78%	362	326 (-10%)	327 (0%)	308 (-6%)	290 (-6%)

7 The revised graduated fee scheme has payments front loaded to promote early resolution and better preparation of cases. The rapid reduction in ex post facto payments in early years is the result of an extension of the graduated fee scheme in October 2005, in addition to the reduction of the ongoing legacy of ex post facto payments remaining in the system. The legacy eventually runs out of the system other than some minor exceptions in 2009-10.

8 The new very high cost case arrangements envisage the early introduction of price competition and the better management of very high cost case contracts. The forecast spend in this area may be larger than shown as a total budget has been suggested of £60 million for these cases. However, if this budget were reached (i.e. £17-19 million above this forecast) then it would be a result of cases being taken out of the graduated fee scheme and there would therefore be at least an equivalent reduction in spend under that scheme.

Legal help and representation in civil and private family cases

Table 6.2.4 – Legal help and private family law forecast spend to 2010 on 2005-06 volumes

£m (RAB)	Outturn 2005-06	Forecast outturn 2006-07	1st year of transition 2007-08	2nd year of transition 2008-09	3rd year of transition 2009-10
Legal help scheme for non-family work (introduction of fixed fees in April 2007)	120	124	120	120	120
Legal help scheme for family work (introduction of fixed fees in April 2007)	70	71	70	70	70
Private family law (new graduated fee scheme for solicitors from April 2008)	257	254	270	257	257
Total	447	448 (0%)	460 (+3%)	447 (–3%)	447 (0%)

9 New legal help schemes for family and non-family work should be introduced in April 2007. The new schemes replace the existing tailored fixed fee regime. With the introduction of these schemes, prices should remain constant over the period of implementation.

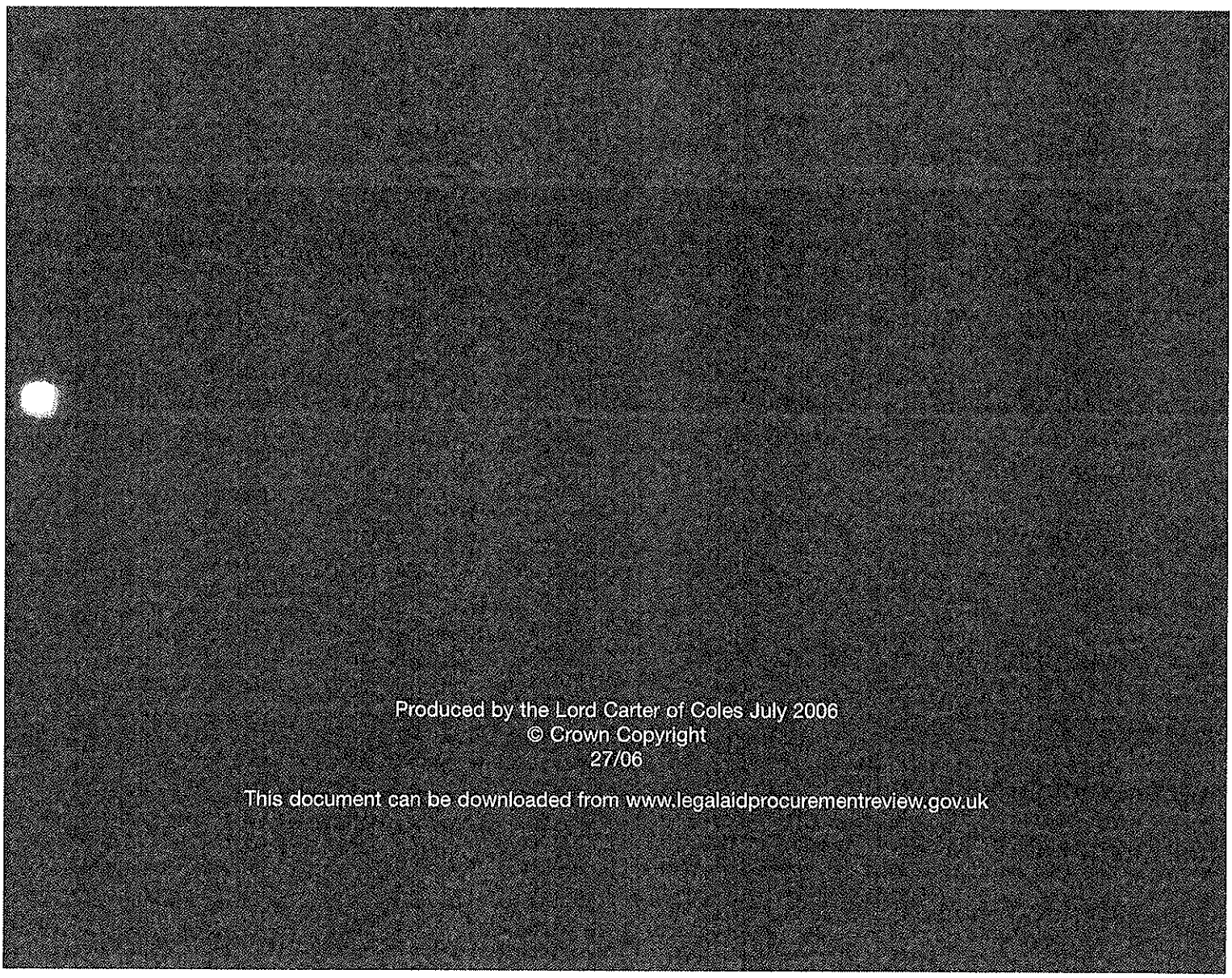
10 A new graduated fee scheme for private family law should be introduced in April 2007. However, the graduated fee scheme will not extend to the final hearing stage until Autumn 2007, which means that expenditure is likely to increase between 2006-07 and 2007-08 (due to some price growth), before returning to 2005-06 levels when the scheme has been fully implemented.

Legal help and representation in public law children cases

Table 6.2.5 – Public law children forecast to 2010 on 2005-06 volumes

£m (RAB)	Outturn 2005-06	Forecast outturn 2006-07	1st year of transition 2007-08	2nd year of transition 2008-09	3rd year of transition 2009-10
Public law children (new graduated fee scheme for solicitors from April 2008)	272	290 (+7%)	303 (+4%)	318 (+5%)	335 (+5%)

11 The new graduated fee scheme should be implemented from April 2007. This scheme will cover approximately 56% of expenditure on public law family, and by the time the scheme has fully worked through in 2009-10 should have substantially reduced price inflation in this area of expenditure. However, because a number of areas (and in particular disbursements) remain outside the scheme, considerable growth in overall expenditure is still forecast for the period.



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Graduated Fee Payment Protocol

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Introduction

Background

1. In 2006, the Carter Review recommended a revised advocates graduated fee scheme (RAGFS) for the remuneration of advocates in the Crown Court.

2. The RAGFS was set out in The Criminal Defence Service (Funding) Order 2007 SI No 1174 (the Order), which took effect from 30 April 2007 in respect of representation orders granted on or after 30 April 2007.

3. In April 2010 the government announced a reduction of 13.5 per cent over a three year period in remuneration for criminal graduated fee work. As a consequence, graduated fees were cut by 4.5 per cent in April 2010, 2011 and 2012.

4. In addition, on 3 October 2011, the government harmonised fees for Crown Court cases paid under Class A (homicide and related grave offences) and cases paid under Class J (serious sexual offences) so that they are paid at the same rate. Two other key changes in operation from 3 October 2011 were the introduction of fixed fees for either way cases where an elected Crown Court trial ends in a guilty plea or cracked trial, and treating sentence hearings as standard appearances.

5. Since 1 April 2013, the Criminal Legal Aid (Remuneration) Regulations (the Remuneration Regulations) have provided for the payment of graduated fees for Crown Court advocacy.

6. This Fee Payment Protocol (the Protocol) was the subject of consultation by the Bar Council in 2007, and was adapted as a result. It was supported by the Department for Constitutional Affairs, now the Ministry of Justice, and the Protocol meets the requirements of the Remuneration Regulations where necessary.

Helpful information

7. The Bar Council publishes a monthly Remuneration Update with information with news, updates and current issues about getting paid as a barrister. You can subscribe to the Remuneration Update here. You can read previous editions on the Bar Council website.

8. The Legal Aid Agency (LAA) also publishes a monthly update, called the Advocates' Bulletin. The Bulletin provides information and advice about ensuring you get paid on time and making sure fee claims are right the first time. You can subscribe to the Advocates' Bulletin on the LAA website.

The Graduated Fee Payment Protocol

Key definitions and concepts

The instructed advocate and substitute advocate

9. The Remuneration Regulations define the instructed advocate in article 2:

> **"instructed advocate"** means
> (a) where the section 16 determination provides for a single advocate, the first barrister or solicitor advocate instructed in the case, who has primary responsibility for the case; or
> (b) where the section 16 determination provides for more than one advocate, each of—
> (i) the leading instructed advocate; and
> (ii) the led instructed advocate;
>
> **"leading instructed advocate"** means the first leading barrister or solicitor advocate instructed in the case, who has primary responsibility for those aspects of a case undertaken by a leading advocate;
>
> **"led instructed advocate"** means the first led barrister or solicitor advocate instructed in the case, who has primary responsibility for those aspects of the case undertaken by a led advocate.

10. Any other advocate who carries out paid returned work in relation to the case is referred to in this Protocol as the **substitute advocate**.

11. This protocol operates most effectively when the instructed advocate and any substitute advocates have a **contractual relationship**. This requires the instructed advocate to contract with any substitute advocates where they are required to undertake any advocacy services. **The instructed advocate is then the contractor and the substitute advocate a subcontractor.** The relationship of contractor and subcontractor does not affect any of the barrister's duties under the BSB Handbook.

12. The instructed advocate's position as contractor and the substitute advocate as subcontractor can be evidenced by the instructed advocate and any substitute advocate agreeing to provide services in accordance with the letter at Annex C.

Withdrawal as instructed advocate

13. It is in the public interest and the criminal justice system that the same advocate should undertake all necessary work on a case and that the advocate of choice should undertake all aspects of the case for the client.

14. There are, however, some limited circumstances where withdrawal as instructed advocate is inevitable. These circumstances are set out in schedule 1, paragraph 25(10) of the Remuneration Regulations:

> (10) An instructed advocate must remain as instructed advocate at all times, except where—
>
> (a) a date for trial is fixed at or before the plea and case management hearing and the instructed advocate is unable to conduct the trial due to the instructed advocate's other pre-existing commitments;
> (b) the instructed advocate is dismissed by the assisted person or the litigator; or
> (c) the instructed advocate is required to withdraw because of his professional code of conduct.

15. The replacement instructed advocate must then take over all the original instructed advocate's responsibilities. This is established in schedule 1, paragraph 25(11):

> (11) Where, in accordance with sub-paragraph (10), an instructed advocate withdraws, the instructed advocate must –
>
> (a) immediately inform the court of the withdrawal—
> (i) in writing; or
> (ii) where the withdrawal takes place at a plea and case management hearing, orally; and
>
> (b) within 7 days of the date of the withdrawal, notify the court in writing of the identity of a replacement instructed advocate, who must fulfil all the functions of an instructed advocate in accordance with these Regulations.

16. For the avoidance of doubt, paragraph 25(11) does not impose an obligation on the incumbent instructed advocate to select a replacement instructed advocate, as this would be inconsistent with a client's freedom of choice. The obligation is one of notification and not selection.

Paid returned work and paid retained work

17. **Paid returned work** is work undertaken by a substitute advocate where the instructed advocate was unable to do the work.

18. **Paid retained work** is work undertaken by the instructed advocate.

19. Paid returned work covers only the items specified in Annex A. In particular, there is no separate payment for tape listening, video watching and/or reading unused material. The same applies to retained work.

Total fee

20. The **total fee** covers all advocacy services provided by the instructed advocate and any substitute advocates. The total fee is paid by the LAA to the instructed advocate. It is then the responsibility of the instructed advocate to distribute fees to any substitute advocates

Basic fee and depleted basic fee

21. The **basic fee** includes payment for:

- First plea and case management hearing (PCMH) or pre-trial review
- First four standard appearances
- First three pre-trial conferences or views, and
- Reading, listening and watching evidence that is not defined as pages of prosecution evidence.

22. Where a substitute advocate has undertaken work remunerated under the basic fee, instructed advocates may have to accept a depleted basic fee to ensure all advocates are adequately paid for their services. Examples of how this works in practice are provided in Annex E.

Professional obligations to professional and lay client

23. The relationship of contractor and subcontractor does not alter any of the instructed or substitute advocate's professional obligations to their professional or lay client or to the court.

24. It is the duty of all advocates at all times to act in the best interest of their clients, in accordance with the BSB Handbook and the Solicitors Regulation Authority (SRA) Handbook.

Obligations of the instructed advocate

Preparing and submitting fee claims

25. At the end of the case, the instructed advocate must prepare a claim form (in the required format) for all advocacy services and submit it within the required time limit to the LAA for payment (Remuneration Regulations, regulation 4).

26. The claim form itemises the appropriate fee for the case and any items of work that attract discrete payments under the Remuneration Regulations. The total payment will include VAT if the instructed advocate is VAT registered.

Paying substitute advocates

27. The instructed advocate is responsible for arranging payment of fees to any substitute advocates (Remuneration Regulations, schedule 1, paragraph 26(3)). Any payments to substitute advocates will be in accordance with this protocol.

28. Where the instructed advocate is a solicitor, and where work has been undertaken by other advocates on the case (whether barristers or Higher Court Advocates) the solicitor will treat the amounts due to such other advocates from the fee or fees paid by the LAA as client monies and account for them as such.

29. All fees owed to substitute advocates which are received by the instructed advocate, whether a solicitor or barrister, must be paid to substitute advocates within 14 days of receipt.

Redetermination of fees

30. If any advocate is dissatisfied with the determination of fees by the LAA, the instructed advocate may apply for a redetermination. Regulation 28 of the Remuneration Regulations only provides for the instructed advocate to apply for a redetermination.

31. The only exceptions to this are in relation to special preparation and wasted preparation, as regulation 28(1)(a) allows any advocate in proceedings in the Crown Court to seek a redetermination of a decision by the appropriate officer not to allow special or wasted preparation, or to dispute the number of hours allowed in the calculation of the fee.

32. This means that where a substitute advocate is dissatisfied with the appropriate officer's determination of a fee (other than special or wasted preparation), the application for redetermination and any appeal must be brought by the instructed advocate.

33. The instructed advocate is responsible for ensuring that the application for a redetermination is made in accordance with regulation 28.

34. Regulation 29 allows a representative who is dissatisfied with the decision of the appropriate officer to appeal to a Costs Judge.

Obligations of substitute advocates

35. A substitute advocate must invoice the instructed advocate in respect of any paid returned work done for the instructed advocate. This will include VAT where the substitute advocate is VAT registered.

36. Substitute advocates must invoice the instructed advocate promptly, and in good time so as to enable the instructed advocate to submit a correct fee claim to LAA within three months of the conclusion of the case.

37. If the substitute advocate is dissatisfied with the LAA's determination of fees and requires the instructed advocate to apply for a redetermination, the substitute advocate must prepare any written material required by regulation 28 in support of a redetermination. This is because only the substitute advocate will know the precise grounds of dissatisfaction.

Division of fees

Paid returned work contained in the basic fee

38. During the Carter Review, the Bar Council provided the Carter Review Team with a full breakdown of the appropriate fees for the constituent parts of a case (with the exception of the Plea and Case Management Hearing (PCMH) fee). The Carter Review Team agreed that these were the appropriate fees, even though many of them were put into the basic fee rather than being discrete payments as before.

39. Fees (excluding VAT) which should be paid by the instructed advocate to any substitute advocate are included in the tables at Annex A for:

- Table A: Scheme 10 (1 April 2013 –)
- Table B: Scheme 9 (1 April 2012 – 31 March 2013)
- Table C: Scheme 8 (3 October 2011 – 31 March 2012)
- Table D: Scheme 7 (1 April 2011 – 2 October 2011)
- Table E: Scheme 5 and 6 (27 April 2010 – 31 March 2011)
- Table F: Scheme 4 (30 April 2007 – 26 April 2010)

40. The instructed advocate is obliged to pay any substitute advocate who undertakes any of the work on the case specified in Annex A. Payment for paid returned work is at the rates specified in Annex A, together with any hotel or travel expenses paid by the LAA or other agency in respect of expenses incurred by the substitute advocate.

41. The instructed advocate will retain from the total fee paid for the case the appropriate sums for any work on the case done by them which is specified in Annex A and at the rates shown there, together with any hotel or travel expenses incurred.

Paid returned work covers only the items specified in Annex A. In particular, there is no separate payment for tape listening, video watching and/or reading unused material. The same applies to retained work.

Depleted basic fee

42. If the proportion of the basic fee remaining for the trial, re-trial, cracked trial or guilty plea after following the requirements of Annex A is less than 70 per cent of the basic fee, then the instructed advocate shall reduce the sums payable for all paid returned work and paid retained work (including the trial, included in the starting calculation at 70 per cent of the basic fee) by an equal percentage that will reduce the total to the amount of the basic fee.

43. Examples of how depleted basic fees work in practice are set out in Annex E. The underlying principle is that in determining whether the fees are subject to reduction, both paid returned work and paid retained work must be deducted from the basic fee, otherwise the instructed advocate may be penalised for attending hearings other than the main hearing.

PCMH Fee

44. It is expected that trial advocates will be able to conduct both the PCMH and the trial.

45. Where the PCMH is conducted by an advocate other than the instructed advocate, the PCMH fee will be 15 per cent of the appropriate trial basic fee as shown in Annex B regardless of whether the case ultimately fights or cracks. If the case is disposed of as a guilty plea at the PCMH then the advocate conducting the hearing will receive the appropriate guilty plea fee. This will ensure that the advocate who conducts the PCMH is properly remunerated for the necessary preparation and attendance at court.

Paid returned work where there are two instructed advocates

46. In a case where there are two instructed advocates and a substitute advocate appearing alone undertakes any paid returned work in place of the led junior, the obligation to pay the substitute advocate shall be shared between the instructed advocates in the ratio of two-thirds (leading advocate) to one-third (led advocate).

47. Where a leading advocate (QC or leading junior) is instructed as a trial advocate after the date of instruction of the junior advocate, the leading advocate shall be liable for two-thirds of all of the paid returned work fees, including work undertaken by a substitute advocate appearing alone prior to the date of instruction of the leading advocate.

48. Where a junior advocate (led either by a QC or a leading junior) is instructed after the leading advocate, the junior advocate shall not be liable in respect of any paid returned work undertaken prior to the date of their instruction.

Dispute resolution

49. Chambers must have their own dispute resolution process in relation to the division of RAGFS fees. The Bar Standards Board takes a serious view of any failure by one member of the Bar to honour obligations to another, and barristers must comply at all times with the BSB Handbook.

50. In the first instance, any dispute between barristers should be resolved by the Head of Chambers or Heads of Chambers (where barristers are in different chambers) with the barristers concerned. The Head of Chambers will, with the senior clerk, ensure that a procedure is in place which resolves any dispute quickly and fairly.

51. Where the dispute involves a barrister or barristers less than five years Call, the Head of Chambers will arrange for suitable assistance to be available through the Head of the Chambers Pupillage Committee.

52. Where the dispute involves a barrister and solicitor advocate, the Head of Chambers and the Senior Partner of the firm in question will seek to resolve the dispute quickly and fairly.

53. A written record of the dispute and its resolution should be kept. Where the dispute involves a sole practitioner the parties concerned will seek to resolve the dispute in writing.

54. If a dispute is not resolved under this procedure, the Bar Council should be notified in writing and the matter will be referred to a Dispute Resolution Panel. The Dispute Resolution Panel will resolve disputes between barristers, whether in sole practice or in the same or different chambers.

55. A dispute between a barrister and a solicitor which cannot be resolved informally will be resolved in accordance with the Joint Tribunal Standing Orders for Fee Disputes with Solicitors.

Accounting system

56. The Bar Council considers it essential for chambers to have in place a communal fee accounting system to enable fees for paid returned work to be paid to other advocates.

57. The outline of a model accounting system is set out in Annex D.

Income Tax

58. When the instructed advocate receives the total fee they are only liable to tax on payment for the work they have actually undertaken.

59. The substitute advocate will be liable to tax for their share of the fees at the point when those fees are earned.

VAT

60. The total payment from the LAA to the instructed advocate is inclusive of VAT, if the instructed advocate is VAT registered. The instructed advocate is liable to account to HM Revenue and Customs (HMRC) for the VAT on the value of the whole supply made.

61. If the substitute advocate is VAT registered they will be required to account for VAT on the value of the supplies made to the instructed advocate. The instructed advocate will be liable to pay VAT to the substitute advocate, whether or not the instructed advocate is VAT registered. However, if the instructed advocate is registered for VAT, the VAT may be deducted as input tax (subject to normal VAT rules). For this reason it is strongly advisable for the instructed advocate to be registered for VAT.

62. Appropriate records must be kept for VAT inspection, including copies of VAT invoices issued by the instructed advocate and VAT invoices issued to the instructed advocate by any substitute advocate. The Bar Council recommends that chambers keep these records centrally. An extract of HMRC guidance, and advice received by the Bar Council appears in Annex E. This advice is relevant to both barristers and solicitor advocates who receive fees for Crown Court advocacy.

63. Please note that, whilst the VAT treatment has been discussed with HMRC, the views expressed in this document are based on the Bar Council's understanding of the law as at the

date of publication of this protocol. Neither the Bar Council nor HMRC can accept any liability for any reliance placed on this protocol. Barristers, solicitors and their staff should check for changes in the law, and any court or tribunal decisions, and obtain updated official publications. Help can be obtained from HMRC's website at http://www.hmrc.gov.uk/ or by telephoning HMRC VAT Helpline on 0845 010 9000.

Annex A: Paid returned and retained work

Key points to note

When using the tables below, the following points must be taken into account:

- **Conferences:** Fees for conferences are payable to a substitute advocate as paid returned work and deductible by the instructed advocate as retained work, but they are subject to the capping both as to number and length that applies under the relevant Graduated Fee Scheme.

- **Uplifts for additional cases:** Any uplifts payable under schedule 1, paragraph 27 of the Remuneration Regulations are payable to a substitute advocate in respect of paid returned work and are deductible by the instructed advocate for retained work.

- The figures below are for the following payment schemes:
  Table A: Scheme 10 (representation orders 1 April 2013 –)
  Table B: Scheme 9 (representation orders 1 April 2012 – 31 March 2013)
  Table C: Scheme 8 (representation orders 3 October 2011 – 31 March 2012)
  Table D: Scheme 7 (representation orders 1 April 2011 – 2 October 2011)
  Table E: Scheme 5 and 6 (representation orders 27 April 2010 – 31 March 2011)
  Table F: Scheme 4 (representation orders 30 April 2007 – 26 April 2010)

Table A: Scheme 10 (representation orders 1 April 2013 –)

Category	Comments	Junior	Leading Junior	QC
The trial	The amount paid to the advocate undertaking the trial will be the total fee less (a) any sums payable to other advocates for paid returned work apart from the trial, and (b) any sums which the instructed advocate is entitled to deduct for retained work.	See adjoining comments column	See adjoining comments column	See adjoining comments column

Category	Comments	Junior	Leading Junior	QC
PCMH *Part of basic Fee*	The amount paid to the advocate undertaking the PCMH will be the amount shown as 15% of the basic fee in table B, or the guilty plea fee less any sums which the instructed advocate is entitled to deduct for Retained work if the case pleads at the PCMH	See adjoining comments column	See adjoining comments column	See adjoining comments column
Conferences with clients and experts. Views. *Part basic fee, part fixed fee, depending upon the actual or estimated length of the case.*	The first three conferences are included in the basic fee. Separate payment is made for fourth and subsequent conferences only in cases lasting or estimated to last 21 days or more.	£39 per hour	£56 per hour	£74 per hour
Standard appearances. *Standard appearances 1-4 part of basic fee, 5+ fixed fee.*	The first 4 standard appearances are included in the basic fee. Separate payment is made for fifth and subsequent standard appearance. They are paid as Paid returned work at the rates shown in the adjoining columns	£87	£130	£173
Full and Half Day Hearings for PII hearings, bad character hearings, abuse of process, and disclosure hearings. *Fixed fee*		Half Day £130 Full Day £238	Half Day £195 Full Day £346	Half Day £260 Full Day £497

Category	Comments	Junior	Leading Junior	QC
Special and Wasted Preparation. *Fixed fee*	Wasted preparation to apply only as defined in the Order. This includes research on novel facts.	£39	£56	£74
Ineffective Trial Payment. *Fixed fee*	A listed trial that does not proceed for any reason.	£130	£195	£281
Sentencing. *Sentence hearing paid as standard appearance. This means there is no separate fee where sentencing hearings are included in the first 4 standard appearances.*	Sentence Hearings	£87	£130	£173
Deferred sentence hearing paid as fixed fee. Non-effective hearing counts as a standard appearance.	Deferred Sentence Effective Non-effective	 £173 £87	 £238 £130	 £324 £173
Appeals to the Crown Court *Fixed fee*	Against Sentence Effective Non-effective	 £108 £87	 £151 £130	 £216 £173
Fixed fee	Against Conviction Effective Non-effective	 £130 £87	 £195 £130	 £260 £173
Proceedings for breach of a Crown Court order *Fixed fee*	Effective Non-effective	£108 £87	£151 £130	£216 £173

Category	Comments	Junior	Leading Junior	QC
Committal for sentence *Fixed fee*	Effective Non-effective	£130 £87	£195 £130	£260 £173
Noting Brief *Fixed fee*		£108	-	-

Table B: Scheme 9 (representation orders 1 April 2012 – 31 March 2013)

Category	Comments	Junior	Leading Junior	QC
The trial	The amount paid to the advocate undertaking the trial will be the Total fee less (a) any sums payable to other advocates for Paid returned work apart from the trial, and (b) any sums which the instructed advocate is entitled to deduct for Retained work.	See adjoining comments column	See adjoining comments column	See adjoining comments column
PCMH *Part of basic fee*	The amount paid to the advocate undertaking the PCMH will be the amount shown as 15% of the basic fee in table B, or the guilty plea fee less any sums which the instructed advocate is entitled to deduct for Retained work if the case pleads at the PCMH	See adjoining comments column	See adjoining comments column	See adjoining comments column
Conferences with clients and experts. Views. *Part basic fee, part fixed fee, depending upon the actual or estimated length of the case.*	The first three conferences are included in the basic fee. Separate payment is made for fourth and subsequent conferences only in cases lasting or estimated to last 21 days or more.	£39 per hour	£56 per hour	£74 per hour

Category	Comments	Junior	Leading Junior	QC
Standard appearances. *Standard appearances 1-4 part of basic fee, 5+ fixed fee.*	The first 4 standard appearances are included in the basic fee. Separate payment is made for fifth and subsequent standard appearance. They are paid as Paid returned work at the rates shown in the adjoining columns	£87	£130	£173
Full and Half Day Hearings for PII hearings, bad character hearings, abuse of process, and disclosure hearings. *Fixed fee*		Half Day £130 Full Day £238	Half Day £195 Full Day £346	Half Day £260 Full Day £497
Special and Wasted Preparation. *Fixed fee*	Wasted preparation to apply only as defined in the Order. This includes research on novel facts.	£39	£56	£74
Ineffective Trial Payment. *Fixed fee*	A listed trial that does not proceed for any reason.	£130	£195	£281

Category	Comments	Junior	Leading Junior	QC
Sentencing. *Sentence hearing paid as standard appearance. This means there is no separate fee where sentencing hearings are included in the first 4 standard appearances.* *Deferred sentence hearing paid as fixed fee. Non-effective hearing counts as a standard appearance.*	Sentence Hearings Deferred Sentence Effective Non-effective	£87 £173 £87	£130 £238 £130	£173 £324 £173
Appeals to the Crown Court *Fixed fee* *Fixed fee*	Against Sentence Effective Non-effective Against Conviction Effective Non-effective	 £108 £87 £130 £87	 £151 £130 £195 £130	 £216 £173 £260 £173
Proceedings for breach of a Crown Court order *Fixed fee*	Effective Non-effective	£108 £87	£151 £130	£216 £173
Committal for sentence *Fixed fee*	Effective Non-effective	£130 £87	£195 £130	£260 £173
Noting Brief. *Fixed fee*		£108	-	-

Table C: Scheme 8 (representation orders 3 October 2011 – 31 March 2012)

Category	Comments	Junior	Leading Junior	QC
The trial	The amount paid to the advocate undertaking the trial will be the Total fee less (a) any sums payable to other advocates for Paid returned work apart from the trial, and (b) any sums which the instructed advocate is entitled to deduct for Retained work.	See adjoining comments column	See adjoining comments column	See adjoining comments column
PCMH *Part of basic fee*	The amount paid to the advocate undertaking the PCMH will be the amount shown as 15% of the basic fee in table B, or the guilty plea fee less any sums which the instructed advocate is entitled to deduct for Retained work if the case pleads at the PCMH	See adjoining comments column	See adjoining comments column	See adjoining comments column
Conferences with clients and experts. Views. *Part basic fee, part fixed fee, depending upon the actual or estimated length of the case.*	The first three conferences are included in the basic fee. Separate payment is made for fourth and subsequent conferences only in cases lasting or estimated to last 21 days or more.	£41 per hour	£59 per hour	£77 per hour
Standard appearances. *Standard appearances 1-4 part of basic fee, 5+ fixed fee.*	The first 4 standard appearances are included in the basic fee. Separate payment is made for fifth and subsequent standard appearance. They are paid as Paid returned work at the rates shown in the adjoining columns	£91	£137	£182

Category	Comments	Junior	Leading Junior	QC
Full and Half Day Hearings for PII hearings, bad character hearings, abuse of process, and disclosure hearings. *Fixed fee*		Half Day £137 Full Day £250	Half Day £205 Full Day £364	Half Day £273 Full Day £523
Special and Wasted Preparation. *Fixed fee*	Wasted preparation to apply only as defined in the Order. This includes research on novel facts.	£41	£59	£77
Ineffective Trial Payment. *Fixed fee*	A listed trial that does not proceed for any reason.	£137	£205	£296
Sentencing. *Sentence hearing paid as standard appearance. This means there is no separate fee where sentencing hearings are included in the first 4 standard appearances.* *Deferred sentence hearing paid as fixed fee. Non-effective hearing counts as a standard appearance.*	Sentence Hearings Deferred Sentence Effective Non-effective	£91 £182 £91	£137 £250 £137	£182 £348 £182

Category	Comments	Junior	Leading Junior	QC
Appeals to the Crown Court *Fixed fee*	Against Sentence Effective Non-effective Against Conviction Effective Non-effective	 £114 £91 £137 £91	 £159 £137 £205 £137	 £228 £182 £273 £182
Proceedings for breach of a Crown Court order *Fixed fee*	Effective Non-effective	£114 £91	£159 £137	£228 £182
Committal for sentence *Fixed fee*	Effective Non-effective	£137 £91	£205 £137	£273 £182
Noting Brief. *Fixed fee*		£114	-	-

Table D: Scheme 7 (representation orders 1 April 2011 – 2 October 2011)

Category	Comments	Junior	Leading Junior	QC
The trial	The amount paid to the advocate undertaking the trial will be the Total fee less (a) any sums payable to other advocates for Paid returned work apart from the trial, and (b) any sums which the instructed advocate is entitled to deduct for Retained work.	See adjoining comments column	See adjoining comments column	See adjoining comments column
PCMH *Part of basic fee*	The amount paid to the advocate undertaking the PCMH will be the amount shown as 15% of the basic fee in table B, or the guilty plea fee less any sums which the instructed advocate is entitled to deduct for Retained work if the case pleads at the PCMH	See adjoining comments column	See adjoining comments column	See adjoining comments column
Conferences with clients and experts. Views. *Part basic fee, part fixed fee, depending upon the actual or estimated length of the case.*	The first three conferences are included in the basic fee. Separate payment is made for fourth and subsequent conferences only in cases lasting or estimated to last 21 days or more.	£41 per hour	£59 per hour	£77 per hour
Standard appearances. *Standard appearances 1-4 part of basic fee, 5+ fixed fee.*	The first 4 standard appearances are included in the basic fee. Separate payment is made for fifth and subsequent standard appearance. They are paid as Paid returned work at the rates shown in the adjoining columns	£91	£137	£182

Category	Comments	Junior	Leading Junior	QC
Full and Half Day Hearings for PII hearings, bad character hearings, abuse of process, and disclosure hearings. *Fixed fee*		Half Day £137 Full Day £250	Half Day £205 Full Day £364	Half Day £273 Full Day £523
Special and Wasted Preparation. *Fixed fee*	Wasted preparation to apply only as defined in the Order. This includes research on novel facts.	£41	£59	£77
Ineffective Trial Payment. *Fixed fee*	A listed trial that does not proceed for any reason.	£137	£205	£296
Sentencing. *Fixed fee if effective.* *Non-effective hearing counts as a standard appearance.*	Sentence Hearings Effective Non-effective Deferred Sentence Effective Non-effective	 £114 £91 £182 £91	 £182 £137 £250 £137	 £273 £182 £341 £182
Appeals to the Crown Court *Fixed fee* *Fixed fee*	Against Sentence Effective Non-effective Against Conviction Effective Non-effective	 £114 £91 £137 £91	 £151 £130 £205 £137	 £216 £173 £273 £182
Proceedings for breach of a Crown Court order *Fixed fee*	Effective Non-effective	£114 £91	£159 £137	£228 £182

Category	Comments	Junior	Leading Junior	QC
Committal for sentence *Fixed fee*	Effective Non-effective	£137 £91	£205 £137	£273 £182
Noting Brief. *Fixed fee*		£114	-	-

Table E: Scheme 5 and 6 (representation orders 27 April 2010 – 31 March 2011)

Category	Comments	Junior	Leading Junior	QC
The trial	The amount paid to the advocate undertaking the trial will be the Total fee less (a) any sums payable to other advocates for Paid returned work apart from the trial, and (b) any sums which the instructed advocate is entitled to deduct for Retained work.	See adjoining comments column	See adjoining comments column	See adjoining comments column
PCMH *Part of basic fee*	The amount paid to the advocate undertaking the PCMH will be the amount shown as 15% of the Basic fee in table B, or the guilty plea fee less any sums which the instructed advocate is entitled to deduct for Retained work if the case pleads at the PCMH	See adjoining comments column	See adjoining comments column	See adjoining comments column
Conferences with clients and experts. Views. *Part basic fee, part fixed fee, depending upon the actual or estimated length of the case.*	The first three conferences are included in the basic fee. Separate payment is made for fourth and subsequent conferences only in cases lasting or estimated to last 21 days or more.	£43 per hour	£62 per hour	£81 per hour

Category	Comments	Junior	Leading Junior	QC
Standard appearances. *Standard appearances 1-4 part of basic fee, 5+ fixed fee.*	The first 4 standard appearances are included in the basic fee. Separate payment is made for fifth and subsequent standard appearance. They are paid as Paid returned work at the rates shown in the adjoining columns	£96	£143	£191
Full and Half Day Hearings for PII hearings, bad character hearings, abuse of process, and disclosure hearings. *Fixed fee*		Half Day £143 Full Day £263	Half Day £215 Full Day £382	Half Day £287 Full Day £549
Special and Wasted Preparation. *Fixed fee*	Wasted preparation to apply only as defined in the Order. This includes research on novel facts.	£43	£62	£81
Ineffective Trial Payment. *Fixed fee*	A listed trial that does not proceed for any reason.	£143	£215	£310
Sentencing. *Fixed fee if effective. Non-effective hearing counts as a standard appearance.*	Sentence Hearings Effective Non-effective Deferred Sentence Effective Non-effective	 £119 £96 £191 £96	 £191 £143 £263 £143	 £287 £191 £358 £191

Category	Comments	Junior	Leading Junior	QC
Appeals to the Crown Court *Fixed fee*	Against Sentence Effective Non-effective Against Conviction Effective Non-effective	 £119 £96 £143 £96	 £167 £143 £215 £143	 £239 £191 £287 £191
Proceedings for breach of a Crown Court order *Fixed fee*	Effective Non-effective	£119 £96	£167 £143	£239 £191
Committal for sentence *Fixed fee*	Effective Non-effective	£143 £96	£215 £143	£287 £191
Noting Brief. *Fixed fee*		£119	-	-

Table F: Scheme 4 (representation orders 30 April 2007 – 26 April 2010)

Category	Comments	Junior	Leading Junior	QC
The trial	The amount paid to the advocate undertaking the trial will be the Total fee less (a) any sums payable to other advocates for Paid returned work apart from the trial, and (b) any sums which the instructed advocate is entitled to deduct for Retained work.	See adjoining comments column	See adjoining comments column	See adjoining comments column
PCMH *Part of basic fee*	The amount paid to the advocate undertaking the PCMH will be the amount shown as 15% of the basic fee in table B, or the guilty plea fee less any sums which the instructed advocate is entitled to deduct for Retained work if the case pleads at the PCMH	See adjoining comments column	See adjoining comments column	See adjoining comments column
Conferences with clients and experts. Views. *Part basic fee, part fixed fee, depending upon the actual or estimated length of the case.*	The first three conferences are included in the basic fee. Separate payment is made for fourth and subsequent conferences only in cases lasting or estimated to last 21 days or more.	£45 per hour	£65 per hour	£85 per hour
Standard appearances. *Standard appearances 1-4 part of basic fee, 5+ fixed fee*	The first 4 standard appearances are included in the basic fee. Separate payment is made for fifth and subsequent standard appearance. They are paid as Paid returned work at the rates shown in the adjoining columns	£100	£150	£200

Category	Comments	Junior	Leading Junior	QC
Full and Half Day Hearings for abuse of process, admissibility of evidence, disclosure, and withdrawal of plea of guilty. *Fixed fee*		Half Day £150 Full Day £275	Half Day £225 Full Day £400	Half Day £300 Full Day £575
Special and Wasted Preparation. *Fixed fee*	Wasted preparation to apply only as defined in the Order. This includes research on novel facts.	£45	£65	£85
Ineffective Trial Payment. *Fixed fee*	A listed trial that does not proceed for any reason.	£150	£225	£325
Sentencing. *Fixed fee if effective.* *Non-effective hearing counts as a standard appearance.*	Sentence Hearings Effective Non-effective Deferred Sentence Effective Non-effective	 £125 £100 £200 £100	 £200 £150 £275 £150	 £300 £200 £375 £200
Appeals to the Crown Court *Fixed fee* *Fixed fee*	Against Sentence Effective Non-effective Against Conviction Effective Non-effective	 £125 £100 £150 £100	 £175 £150 £225 £150	 £250 £200 £300 £200
Proceedings for breach of a Crown Court order *Fixed fee*	Effective Non-effective	£125 £100	£175 £150	£250 £200

Category	Comments	Junior	Leading Junior	QC
Committal for sentence *Fixed fee*	Effective Non-effective	£150 £100	£225 £150	£300 £200
Noting Brief. *Fixed fee*		£125	-	-

Annex B: PCMH Fees

Table G: Scheme 9 and 10 (representation orders 1 April 2012 –) PCMH fees in pounds (£)

Class of offence	QC	Leading Junior	Led Junior	Junior alone
A	428.40	321.30	244.80	244.80
B	379.35	284.55	189.75	195.75
C	295.20	221.40	134.70	134.70
D	342.60	257.10	168.75	168.75
E	227.10	170.40	104.10	97.95
F	227.10	170.40	104.10	104.10
G	227.10	170.40	104.10	104.10
H	285.45	214.05	122.40	122.40
I	318.30	238.80	146.85	146.85
J	428.40	321.30	244.80	244.80
K	428.40	321.30	214.20	244.80

Table H: Scheme 8 (representation orders 3 October 2011 – 31 March 2012) PCMH fees in pounds (£)

Class of offence	QC	Leading Junior	Led Junior	Junior alone
A	450.75	337.95	257.55	257.55
B	399.15	299.40	199.50	205.95
C	310.50	232.80	141.75	141.75
D	360.45	270.45	177.45	177.45
E	238.95	179.25	109.50	103.05
F	238.95	179.25	109.50	109.50
G	238.95	179.25	109.50	109.50
H	300.30	225.30	128.70	128.70
I	334.80	251.10	154.50	154.50
J	450.75	337.95	257.55	257.55
K	450.75	337.95	225.30	257.55

Table I: Scheme 7 (representation orders 1 April 2011 – 2 October 2011) PCMH fees in pounds (£)

Class of offence	QC	Leading Junior	Led Junior	Junior alone
A	605.25	453.90	302.55	347.70
B	399.15	299.40	199.50	205.95

C	310.50	232.80	141.75	141.75
D	360.45	270.45	177.45	177.45
E	238.95	179.25	109.50	103.05
F	238.95	179.25	109.50	109.50
G	300.30	225.30	150.15	193.20
H	300.30	225.30	128.70	128.70
I	334.80	251.10	154.50	154.50
J	450.75	337.95	257.55	257.55
K	450.75	337.95	225.30	257.55

Table J: Scheme 5 and 6 (representation orders 27 April 2010 – 31 March 2011) PCMH fees in pounds (£)

Class of offence	QC	Leading Junior	Led Junior	Junior alone
A	635.10	476.25	326.55	364.80
B	418.80	314.10	209.40	216.15
C	325.95	244.35	148.65	148.65
D	378.30	283.80	186.30	186.30
E	250.65	188.10	114.90	108.15
F	250.65	188.10	114.90	114.90
G	315.15	236.40	157.65	202.65
H	315.15	236.40	135.15	135.15
I	351.45	263.55	162.15	162.15
J	472.95	354.75	270.30	270.30
K	472.95	354.75	236.55	270.30

Table K: Scheme 4 (representation orders 30 April 2007 – 26 April 2010) PCMH fees in pounds (£)

Class of offence	QC	Leading Junior	Led Junior	Junior alone
A	665.10	498.75	332.55	382.05
B	438.60	328.95	219.30	226.35
C	341.25	255.90	155.70	155.70
D	396.15	297.15	195.00	195.00
E	262.50	196.95	120.30	113.25
F	262.50	196.95	120.30	120.30
G	330.00	247.50	165.00	212.25
H	330.00	247.50	141.45	141.45
I	367.95	276.00	169.80	169.80
J	495.30	371.40	283.05	283.05
K	495.30	371.40	247.65	283.05

Annex C: Terms of work in defence criminal legal aid cases

Dear [XXXX],

Thank you for sending me instructions in the case of [XXXX], which I note is or is likely to paid under the Criminal Legal Aid (Remuneration) Regulations 2013 (the Remuneration Regulations).

It is a term of my acceptance of these instructions that applications for payment under the Remuneration Regulations will be made promptly and in accordance with its terms, and no later than 3 months after the conclusion of the case.

I also accept instructions in this case on the basis that the terms and provisions of the Bar Council's Graduated Fee Payment Protocol (the Protocol) apply and will be enforceable in law.

[XXXX] of [XXXX] chambers ***will be/*is** the instructed advocate. The Protocol provides, amongst other things, that in the event that, subject to my professional client's consent, any advocacy work involved in the case is subcontracted to a substitute advocate(s), the fee or fees for work undertaken by any subcontracted advocate(s) will be claimed, accounted for and distributed in accordance with the Protocol.

A copy of the Protocol ***is attached**, or ***has been provided to you by my clerk**, or ***is available on my chambers/the Bar Council website**.

Yours sincerely,

[XXXX]

Annex D: Chambers fee account

The scheme

The advocates' graduated fee scheme involves creating a chambers fee account. All fees are paid in to the account, rather than to an individual barrister. The chambers administrator(s) reconcile the fees received with the work done and make payments (twice monthly) to each barrister. The scheme allows for detailed record keeping and cross-payments to other chambers.

Steps

1. The chambers' constitution needs to have an enabling provision to cover the scheme and each member should sign to show assent. A suitably worded part of the constitution (or side document) will cover pupils' fees. The constitution needs to ensure that cheques made out to members under the graduated fee scheme can be paid into the chambers fee account and distributed in accordance with the terms of the protocol. Arrangements need to be made for pupil's fees to be paid and dealt with under the protocol and distributed through the chambers fee Account. One form of amendment to a fairly standard chambers constitution is as follows:

> Chambers may operate such fees accounts and systems as are reasonable or efficient for the business – and may require members remuneration to be paid into fees accounts and hold such monies for dispersal to members, or other advocates, including pupils.
>
> Chambers may deduct from any funds received to chambers any monies outstanding to chambers (including expenses, surcharges and contingency funds and any debts that chambers may have incurred for on or behalf of members, or other advocates for whom the fees are held) before release of any net proceeds to members
>
> Chambers may hold the property of any members or any interest in chambers property, until any sums due and owing to chambers are discharged. Any disputes as to sums owed shall be dealt with by the grievance procedure.

2. Chambers must notify all paymasters of its intention to create a dedicated fees account (the fees account) and supply them with the account details.

3. Each member of chambers must supply their bank account details to the chambers administrator.

4. At the outset, the bank is likely to require one copy of the chambers' constitution which contains details of the fees accounting system. It ought not to require any additional mandate thereafter. The account is both for payments in and out.

5. Payments are made from the fees account to individual barristers twice monthly. These payments are net of payments due to other barristers, chambers contributions and incidentals. On request, the VAT can be held back so that it remains available to be paid at the end of the quarter.

6. The date of cross-payments will appear as the remittance date.

7. Payments to and from other chambers and higher court advocates should be made by direct transfer from one fee account to the other fee account. In order to achieve this, each chambers should open a fee account as described in this document. Details would have to be exchanged with other organisations, thereby allowing payments to be made and received between chambers.

8. Fees accounts should not become overdrawn. Payments out should only be made from cleared funds.

9. If under chambers constitutional arrangements chambers charges or expenses are to be deducted from funds in the fees account, deductions should only be made in respect of the correct amount due from sums held to the credit of individual members of chambers or other advocates.

10. Reference should be made to the VAT advice contained in Annex F. In short, the tax point arises on receipt of money into the chambers fee account and not on payment out to the barrister concerned.

Annex E: Examples of depleted basic fees

The examples below are of a two-day Class E trial conducted by a sole junior. The basic fee includes:

- the PCMH
- all conferences and views
- up to four standard appearances (SAF) as defined in Schedule 1, paragraph 1 of the Remuneration Regulations

In all the examples below, the same figures are used:

- The basic fee (BF) for the trial is £653
- 70 per cent of the BF is £457
- 30 per cent of the BF is £195
- 15 per cent of the BF (the PCMH fee or value) is £97

Example 1

A substitute advocate (SA) conducts one SAF; the instructed advocate (IA) conducts the PCMH and trial.

Advocate	Hearing	Cost	
	30% of BF	£195.00	minus
Instructed advocate	PCMH	£97.00	minus
Substitute advocate	SAF	£87.00	
	Balance	*£11.00*	

*Due to the balance being **greater** than £0.00 the SA's fee is paid out of the instructed advocate's BF.*

Basic fee Cost Breakdown

Instructed advocate	BF	£653.00	minus
Instructed advocate	PCMH	£97.00	minus
Substitute advocate	SAF	£87.00	
Instructed advocate	**Trial**	**£469.00**	

Example 2

SA conducts two SAFs; the IA conducts the PCMH and trial.

Advocate	Hearing	Cost	
	30% of BF	£195.00	minus
Instructed advocate	PCMH	£97.00	minus
Substitute advocate	SAF	£87.00	minus
Substitute advocate	SAF	£87.00	
	Balance	*-£76.00*	

Due to the balance being ***less*** *than £0.00 the fees are reduced using the "Depleted Basic Fee" rule*

Depleted Basic Fee Rule

Substitute advocate	SAF	£87.00	
Substitute advocate	SAF	£87.00	
	Substitute Total	£174.00	
Instructed advocate	Trial (@ 70%)	£457.00	
Instructed advocate	PCMH	£97.00	
	Total	£728.00	minus
	BF	£653.00	
	Excess	*£75.00*	

Excess as a proportion of Total	10.30%
Percentage rate payable of each fee	89.70%

Allocation of Amounts		Fee	Paid
Substitute advocate	SAF	£87.00	**£78.00**
Substitute advocate	SAF	£87.00	**£78.00**
Instructed advocate	Trial (@ 70%)	£457.00	**£410.00**
Instructed advocate	PCMH	£97.00	**£87.00**
	Total	£728.00	**£653.00**

Example 3

SA conducts the PCMH and a SAF; the IA conducts the trial.

Advocate	**Hearing**	**Cost**	
	30% of BF	£195.00	minus
Substitute Advocate	PCMH	£97.00	minus
Substitute Advocate	SAF	£87.00	
	Balance	*£11.00*	

Due to the balance being ***greater*** *than £0.00 the SA's fee is paid out of the instructed advocate's BF.*

Fees' Breakdown

Instructed advocate	BF	£653.00	minus
Substitute advocate	PCMH	£97.00	minus
Substitute advocate	SAF	£87.00	
Instructed advocate	**Trial**	**£469.00**	

Example 4

SA conducts three SAFs; the IA conducts the PCMH and trial.

Advocate	Hearing	Cost	
	30% of BF	£195.00	minus
Instructed advocate	PCMH	£97.00	minus
Substitute advocate	SAF	£87.00	minus
Substitute advocate	SAF	£87.00	minus
Substitute advocate	SAF	£87.00	
	Balance	*-£163.00*	

Due to the balance being ***less*** *than £0.00 the fees are reduced using the "Depleted Basic Fee" rule*

Depleted Basic Fee Rule

Substitute advocate	SAF	£87.00	
Substitute advocate	SAF	£87.00	
Substitute advocate	SAF	£87.00	
	Substitute Total	£261.00	
Instructed advocate	Trial (@ 70%)	£457.00	
Instructed advocate	PCMH	£87.00	
	Total	£805.00	minus
	BF	£653.00	
	Excess	*£152.00*	

Excess as a proportion of Total	18.88%
Percentage rate payable of each fee	81.12%

Allocation of Amounts		Fee	Paid
Substitute advocate	SAF	£87.00	**£71.00**
Substitute advocate	SAF	£87.00	**£71.00**
Substitute advocate	SAF	£87.00	**£71.00**
Instructed advocate	Trial (@ 70%)	£457.00	**£370.00**
Instructed advocate	PCMH	£97.00	**£78.00**
	Total	£815.00	**£661.00**

Example 5

SA conducts PCMH and three SAFs; IA conducts the trial.

Advocate	Hearing	Cost	
	30% of BF	£195.00	minus
Substitute advocate	PCMH	£97.00	minus
Substitute advocate	SAF	£87.00	minus
Substitute advocate	SAF	£87.00	minus
Substitute advocate	SAF	£87.00	
	Balance	*-£163.00*	

Due to the balance being ***less*** *than £0.00 the fees are reduced using the "Depleted Basic Fee" rule*

Depleted Basic Fee Rule

Substitute advocate	PCMH	£97.00	
Substitute advocate	SAF	£87.00	
Substitute advocate	SAF	£87.00	
Substitute advocate	SAF	£87.00	
	Substitute Total	£358.00	
Instructed advocate	Trial (@ 70%)	£457.00	
	Total	£815.00	minus
	BF	£653.00	
	Excess	*£162.00*	

Excess as a proportion of Total	19.88%
Percentage rate payable of each fee	80.12%

Allocation of Amounts		Fee	Paid
Substitute advocate	PCMH	£97.00	**£77.00**
Substitute advocate	SAF	£87.00	**£70.00**
Substitute advocate	SAF	£87.00	**£70.00**
Substitute advocate	SAF	£87.00	**£70.00**
Instructed advocate	Trial (@ 70%)	£457.00	**£366.00**
	Total	£815.00	**£653.00**

Example 6

SA conducts the PCMH and four SAFs; IA conducts trial.

Advocate	**Hearing**	**Cost**	
	30% of BF	£195.00	minus
Substitute advocate	PCMH	£97.00	minus
Substitute advocate	SAF	£87.00	minus
Substitute advocate	SAF	£87.00	minus
Substitute advocate	SAF	£87.00	minus
Substitute advocate	SAF	£87.00	
	Balance	*-£250.00*	

Due to the balance being ***less*** *than £0.00 the fees are reduced using the "Depleted Basic Fee" rule*

Depleted Basic Fee Rule

Substitute advocate	PCMH	£97.00
Substitute advocate	SAF	£87.00
Substitute advocate	SAF	£87.00

Substitute advocate	SAF	£87.00	
Substitute advocate	SAF	£87.00	
	Substitute Total	£445.00	
Instructed advocate	Trial (@ 70%)	£457.00	
	Total	£902.00	minus
	BF	£653.00	
	Excess	*£249.00*	

Excess as a proportion of Total	27.61%
Percentage rate payable of each fee	72.39%

Allocation of Amounts		Fee	Paid
Substitute advocate	PCMH	£97.00	**£70.00**
Substitute advocate	SAF	£87.00	**£63.00**
Substitute advocate	SAF	£87.00	**£63.00**
Substitute advocate	SAF	£87.00	**£63.00**
Substitute advocate	SAF	£87.00	**£63.00**
Instructed advocate	Trial (@ 70%)	£457.00	**£331.00**
	Total	£902.00	**£653.00**

Example 7

SA conducts the PCMH and five SAFs; IA conducts the trial

Advocate	**Hearing**	**Cost**	
	30% of BF	£195.00	plus
	SAF 5	£87.00	
	Total	**£282.00**	minus
Substitute advocate	PCMH	£97.00	minus
Substitute advocate	SAF 1	£87.00	minus
Substitute advocate	SAF 2	£87.00	minus
Substitute advocate	SAF 3	£87.00	minus
Substitute advocate	SAF 4	£87.00	minus
Substitute advocate	SAF 5	£87.00	
	Balance	*-£268.00*	

Due to the balance being ***less*** *than £0.00 the fees are reduced using the "Depleted Basic Fee" rule*

Depleted Basic Fee Rule

	BF	£653.00
	SAF 5	£87.00
	Total	**£740.00**
Substitute advocate	PCMH	£97.00
Substitute advocate	SAF 1	£87.00
Substitute advocate	SAF 2	£87.00

Substitute advocate	SAF 3	£87.00	
Substitute advocate	SAF 4	£87.00	
Substitute advocate	SAF 5	£87.00	
	Substitute Total	£550.00	
Instructed advocate	Trial (@ 70%)	£457.00	
	Total	£1,007.00	minus
	Total Fee	£740.00	
	Excess	*£267.00*	

Excess as a proportion of Total	25.51%
Percentage rate payable of each fee	73.49%

Allocation of Amounts		Value	Paid
Substitute advocate	PCMH	£97.00	**£71.00**
Substitute advocate	SAF 1	£87.00	**£64.00**
Substitute advocate	SAF 2	£87.00	**£64.00**
Substitute advocate	SAF 3	£87.00	**£64.00**
Substitute advocate	SAF 4	£87.00	**£64.00**
Substitute advocate	SAF 5	£87.00	**£64.00**
Instructed advocate	Trial (@ 70%)	£457.00	**£336.00**
	Total	£989.00	**£727.00**

Annex F: Extract from HMRC guidance on VAT records

1. Guidance on keeping VAT records is available in HMRC VAT Guide. Paragraph 19.2 of the VAT Guide states:

> "You must keep records and accounts of all taxable goods and services which you receive or supply in the course of your business. This includes:
> - standard-rated;
> - reduced-rated; and
> - zero-rated supplies.
>
> You must also keep records of any exempt supplies that you make.
>
> In addition, you must keep a summary of the totals of your input tax and output tax for each tax period. This is called a VAT account (see paragraph 19.12).
>
> All these records must be kept up to date and must be in sufficient detail to allow you to calculate correctly the amount of VAT that you have to pay to, or can claim from, HM Revenue and Customs.
>
> You do not have to keep these records in any set way. But they must be kept in a way which will enable our officers to check easily the figures that you have used to fill in your VAT return. If your records do not satisfy the requirements set out in this notice, we have the power to direct you to make the necessary changes.
>
> However you decide to keep your records, you must be able to make them readily available to our officers when they ask to see them."

Advice received on VAT treatment

2. Annex D of the Protocol deals with the chambers fee account into which all fees are paid and distributed by the chambers administrator twice monthly.

3. VAT Regulations 1995 SI 1995/2518, regulation 92 governs the time of supply for supplies of services by barristers and advocates. This regulation does not relate to any other business activity (to which the normal tax point rules apply as per Notice 700 The VAT Guide) apart from advocacy.

4. Regulation 92 provides:

> "Services supplied by a barrister, or in Scotland by an advocate, acting in that capacity, shall be treated as taking place at whichever is the earliest of the following times:
> (a) when the fee in respect of those services is received by the barrister or advocate;
> (b) when the barrister or advocate issues a tax invoice in respect of them; or

(c) the day when the barrister or advocate ceases to practice as such."

5. The expectation therefore is that for the instructed advocate who issues a "request for payment fee note" to Legal Aid Agency (rather than a tax invoice), the tax point will, as now, continue to be triggered by receipt of the legal aid payment. It is important to note that for chambers operating a fees account, "received" for the purposes of regulation 92 will be the time the payment is received into the fees account, as opposed to the time of the bi-monthly payment to individual barristers.

6. For the substitute advocate, who issues an invoice to the instructed advocate, the time of the substitute advocate's supply to the instructed advocate will be the earlier of receipt of payment or issue of a VAT invoice.

7. Note that regulation 92 only extends to barristers. Solicitors are therefore subject to normal tax point rules.

8. Under the protocol, solicitor instructed advocates must treat the substitute advocate element of any legal aid payments as "client monies and account for them as such". However, the tax point for VAT purposes will be created by the receipt of that payment in the normal way. In other words, the normal practice of disregarding payments into client's accounts will not be appropriate in these circumstances.

Annex G: Email notification to Crown Court centres

Introduction

1. Schedule 1, paragraph 25(1) of the Criminal Legal Aid (Remuneration) Regulations 2013 (the Remuneration Regulations) requires written notification of the identity of the instructed advocate to the court before the PCMH.

2. If the identity of the instructed advocate is not provided, schedule 1, paragraphs 25(2), 25(3) and 25(4) of the Remuneration Regulations provides that the person who attends the PCMH will be recorded as the instructed advocate. If no barrister or solicitor advocate attends the PCMH then the barrister or solicitor advocate who attends the next hearing will be deemed to be the instructed advocate.

3. Schedule 1, paragraph 25(6) provides that where a representation order is amended after the PCMH an additional advocate must notify the court in writing of their appointment within seven days of the date on which the order is amended. Each instructed advocate must notify the court whether they are the leading instructed advocate or the led instructing advocate.

4. Schedule 1, paragraph 25(7) states that where no notification is given in accordance with paragraph 25(6), the advocate who attends the next hearing will be deemed to be an instructed advocate and the court will record whether they are the leading instructed advocate or the led instructed advocate, as appropriate to the circumstances of the case.

5. This protocol governs written notification and establishes standard delivery arrangements for those wishing to email the notification. The attached list gives the email address for each Crown Court Centre. **These are not secure email addresses**. Those able and wishing to use secure email should add **cjsm.net** to the end of the listed email address for the court.

Protocol

6. Notifications must be sent to the court's 'enquiries' box (shown in the attached address list).

7. Every email notification must have the heading 'Instructed Advocate Notification' and should show the date of the PCMH.

8. The email message must contain the name, telephone number and email address of the sender and should be in plain text or rich text format rather than HTML.

9. It is permissible for notification to be made on behalf of an instructed advocate but the person making the notification must state the capacity in which it is made (e.g. barrister's clerk, another member of the solicitor advocate's firm).

10. To enable the court to identify the correct defendant/case and avoid the need for the notification to be rejected, the email must include:

- the case number
- the full name of the represented defendant
- the full name of the instructed advocate
- the name and telephone number of the person taking responsibility for the notification
- if notification is made on behalf of another, the capacity in which it is made
- chambers/firm name and address

11. The notification is limited to identifying the instructed advocate and any additional information, such as listing information, will not be processed.

12. A separate email notification must be sent for each represented defendant even if the same instructed advocate represents more than one defendant in a multi-handed case.

13. The notification sender must set up the email to give an automatic 'delivery receipt' if they require confirmation of receipt. This will be the only form of acknowledgement.

14. The notification must be received in the correct email box at the correct court before the PCMH or, in the case of an additional instructed advocate, seven days after the date on which the representation order is amended. Otherwise, the advocate who attends the PCMH will be recorded as the instructed advocate. In the case of an additional instructed advocate, where no notification is given within the seven day period, then the advocate who attends the next hearing will be deemed to be an instructed advocate and the court will record whether they are the leading instructed advocate or the led instructed advocate

15. The notifying party is responsible for ensuring that the email transmission is filed within the relevant time limit. An email transmission must be received by the court by 16:00 the day before the PCMH in order to be accepted as being received on that day.

16. The date and time of notification will be the date and time the email is received in the correct email box at the correct court. The time of receipt of a transmission will be recorded electronically on the transmission as it is received. If a transmission is received after 16:00 the day before the PCMH the transmission will be treated as received on the next day the court office is open.

17. The notification sender cannot ask for the email to take effect from a day/time earlier than the day/time it was received in the correct email box at the correct court.

18. An email received by the court before the PMCH will be deemed to be the notification even if not opened until after the PCMH.

19. The email notification will be assumed by the court to be accurate. Any error in notification will be an issue internal to the chambers/solicitor's firm.

20. This protocol is for instructed advocates wishing to use email. Courts can also accept notification by letter.

Crown Court enquiries email addresses

Crown Court	Email Address
Aylesbury Crown Court	enquiries@aylesbury.crowncourt.gsi.gov.uk
Basildon Crown Court	enquiries@basildon.crowncourt.gsi.gov.uk
Birmingham Crown Court	enquiries@birmingham.crowncourt.gsi.gov.uk
Blackfriars Crown Court	enquiries@blackfriars.crowncourt.gsi.gov.uk
Bolton Crown Court	enquiries@bolton.crowncourt.gsi.gov.uk
Bournemouth Crown Court	enquiries@bournemouth.crowncourt.gsi.gov.uk
Bradford Crown Court	enquiries@bradford.crowncourt.gsi.gov.uk
Bristol Crown Court	enquiries@bristol.crowncourt.gsi.gov.uk
Burnley Crown Court	enquiries@burnley.crowncourt.gsi.gov.uk
Cambridge Crown Court	enquiries@cambridge.crowncourt.gsi.gov.uk
Canterbury Crown Court	enquiries@canterbury.crowncourt.gsi.gov.uk
Cardiff Crown Court	enquiries@cardiff.crowncourt.gsi.gov.uk
Carlisle Crown Court	enquiries@carlisle.crowncourt.gsi.gov.uk
Central Criminal Court	enquiries@central.crowncourt.gsi.gov.uk
Chelmsford Crown Court	enquiries@chelmsford.crowncourt.gsi.gov.uk
Chester Crown Court	enquiries@chester.crowncourt.gsi.gov.uk
Chichester Crown Court	enquiries@chichester.crowncourt.gsi.gov.uk
Coventry Crown Court	enquiries@coventry.crowncourt.gsi.gov.uk
Croydon Crown Court	enquiries@croydon.crowncourt.gsi.gov.uk
Derby Crown Court	enquiries@derby.crowncourt.gsi.gov.uk
Doncaster Crown Court	enquiries@doncaster.crowncourt.gsi.gov.uk
Dorchester Crown Court	enquiries@dorchester.crowncourt.gsi.gov.uk
Durham Crown Court	enquiries@durham.crowncourt.gsi.gov.uk
Exeter Crown Court	enquiries@exeter.crowncourt.gsi.gov.uk
Gloucester Crown Court	enquiries@gloucester.crowncourt.gsi.gov.uk
Grimsby Crown Court	enquiries@grimsby.crowncourt.gsi.gov.uk
Guildford Crown Court	enquiries@guildford.crowncourt.gsi.gov.uk
Harrow Crown Court	enquiries@harrow.crowncourt.gsi.gov.uk
Hull Crown Court	enquiries@kingstonuponhull.crowncourt.gsi.gov.uk
Inner London Crown Court	enquiries@innerlondon.crowncourt.gsi.gov.uk
Ipswich Crown Court	enquiries@ipswich.crowncourt.gsi.gov.uk
Isleworth Crown Court	enquiries@isleworth.crowncourt.gsi.gov.uk
Kingston Crown Court	enquiries@kingstonuponthames.crowncourt.gsi.gov.uk
Leeds Crown Court	enquiries@leeds.crowncourt.gsi.gov.uk
Leicester Crown Court	enquiries@leicester.crowncourt.gsi.gov.uk
Lewes Crown Court	enquiries@lewes.crowncourt.gsi.gov.uk
Lincoln Crown Court	enquiries@lincoln.crowncourt.gsi.gov.uk
Liverpool Combined Court	enquiries@liverpool.crowncourt.gsi.gov.uk
Luton Crown Court	enquiries@luton.crowncourt.gsi.gov.uk
Maidstone Crown Court	enquiries@maidstone.crowncourt.gsi.gov.uk
Manchester Crown Court	enquiries@manchester.crowncourt.gsi.gov.uk

Merthyr Tydfil Crown Court	enquiries@merthyrtydfil.crowncourt.gsi.gov.uk
Middlesex Guildhall Crown Court	enquiries@middlesexguildhall.crowncourt.gsi.gov.uk
Minshull St Crown Court	enquiries@manchesterminshullstreet.crowncourt.gsi.gov.uk
Mold Crown Court	enquiries@mold.crowncourt.gsi.gov.uk
Newcastle Crown Court	enquiries@newcastle.crowncourt.gsi.gov.uk
Newport (Gwent) Crown Court	enquires@newport-southwales.crowncourt.gsi.gov.uk
Newport (IOW) Crown Court	enquiries@newportiow.crowncourt.gsi.gov.uk
Northampton Crown Court	enquiries@northampton.crowncourt.gsi.gov.uk
Norwich Crown Court	enquiries@norwich.crowncourt.gsi.gov.uk
Nottingham Crown Court	enquiries@nottingham.crowncourt.gsi.gov.uk
Oxford Crown Court	enquiries@oxford.crowncourt.gsi.gov.uk
Peterborough Crown Court	enquiries@peterborough.crowncourt.gsi.gov.uk
Plymouth Crown Court	enquiries@plymouth.crowncourt.gsi.gov.uk
Portsmouth Crown Court	enquiries@portsmouth.crowncourt.gsi.gov.uk
Preston Crown Court	enquiries@preston.crowncourt.gsi.gov.uk
Reading Crown Court	enquiries@reading.crowncourt.gsi.gov.uk
Salisbury Crown Court	enquiries@salisbury.crowncourt.gsi.gov.uk
Sheffield Crown Court	enquiries@sheffield.crowncourt.gsi.gov.uk
Shrewsbury Crown Court	enquiries@shrewsbury.crowncourt.gsi.gov.uk
Snaresbrook Crown Court	enquiries@snaresbrook.crowncourt.gsi.gov.uk
Southampton Crown Court	enquiries@southampton.crowncourt.gsi.gov.uk
Southwark Crown Court	enquiries@southwark.crowncourt.gsi.gov.uk
St Albans Crown Court	enquiries@stalbans.crowncourt.gsi.gov.uk
Stafford Crown Court	enquiries@stafford.crowncourt.gsi.gov.uk
Stoke on Trent Crown Court	enquiries@stoke.crowncourt.gsi.gov.uk
Swansea Crown Court	enquiries@swansea.crowncourt.gsi.gov.uk
Swindon Crown Court	enquiries@swindon.crowncourt.gsi.gov.uk
Taunton Crown Court	enquiries@taunton.crowncourt.gsi.gov.uk
Teesside Crown Court	enquiries@teesside.crowncourt.gsi.gov.uk
Truro Crown Court	enquiries@truro.crowncourt.gsi.gov.uk
Warwick Crown Court	enquiries@warwick.crowncourt.gsi.gov.uk
Winchester Crown Court	enquiries@winchester.crowncourt.gsi.gov.uk
Wolverhampton Crown Court	enquiries@wolverhampton.crowncourt.gsi.gov.uk
Wood Green Crown Court	enquiries@woodgreen.crowncourt.gsi.gov.uk
Woolwich Crown Court	enquiries@woolwich.crowncourt.gsi.gov.uk
Worcester Crown Court	enquiries@worcester.crowncourt.gsi.gov.uk
York Crown Court	enquiries@york.crowncourt.gsi.gov.uk

STATUTORY INSTRUMENTS

2013 No. 435

LEGAL AID AND ADVICE, ENGLAND AND WALES

The Criminal Legal Aid (Remuneration) Regulations 2013

Made - - - -	*26th February 2013*
Laid before Parliament -	*28th February 2013*
Coming into force - -	*1st April 2013*



£18.50

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The Lord Chancellor makes these Regulations(**a**) in exercise of the powers conferred by sections 2(3), 5(2) and (4), 30(2) and 41(1) to (3) of the Legal Aid, Sentencing and Punishment of Offenders Act 2012(**b**).

Citation and commencement

1. These Regulations may be cited as the Criminal Legal Aid (Remuneration) Regulations 2013 and shall come into force on 1st April 2013.

Interpretation

2.—(1) In these Regulations—

"the Act" means the Legal Aid, Sentencing and Punishment of Offenders Act 2012;

"advocate" means a barrister, a solicitor advocate or a solicitor who is exercising their automatic rights of audience in the Crown Court;

"appropriate officer" means—

(a) in the case of proceedings in the civil division of the Court of Appeal, the head of the civil appeals office;

(b) in the case of proceedings in the criminal division of the Court of Appeal, the registrar of criminal appeals;

(c) in the case of proceedings in the Crown Court, the Lord Chancellor;

(a) Section 42(1) of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c. 10) provides that in Part 1 of that Act "regulations" means regulations made by the Lord Chancellor.
(b) 2012 c. 10.

(d) in respect of advice or assistance as to an appeal from the Crown Court to the Court of Appeal (except in the case of an appeal under section 9(11) of the Criminal Justice Act 1987(a) (preparatory hearings)) where, on the advice of any representative instructed, notice of appeal is given, or application for leave to appeal is made, whether or not such appeal is later abandoned, the registrar of criminal appeals;

(e) in respect of advice or assistance as to an appeal to the Courts-Martial Appeal Court, the registrar of criminal appeals;

(f) in respect of advice or assistance as to an appeal from the Court of Appeal to the Supreme Court, where the appeal is not lodged with the Supreme Court, the registrar of criminal appeals; and

(g) in any other case, the Lord Chancellor,

and, in any case, includes an officer designated by the person who is the appropriate officer by virtue of paragraphs (a) to (g) to act on his behalf for the purposes of these Regulations;

"assisted person" means an individual in whose favour a section 16 determination has been made;

"fee earner" means a litigator, or person employed by a litigator, who undertakes work on a case;

"instructed advocate" means—

(a) where the section 16 determination provides for representation by a single advocate, the first barrister or solicitor advocate instructed in the case, who has primary responsibility for the case; or

(b) where the section 16 determination provides for representation by more than one advocate, each of—

(i) the leading instructed advocate; and

(ii) the led instructed advocate;

"leading instructed advocate" means the first leading barrister or solicitor advocate instructed in the case who has primary responsibility for those aspects of a case undertaken by a leading advocate;

"led instructed advocate" means the first led barrister or solicitor advocate instructed in the case who has primary responsibility for those aspects of the case undertaken by a led advocate;

"litigator" means the person referred to in the representation order as representing an assisted person, being a solicitor, firm of solicitors or other appropriately qualified person.

"related proceedings" means—

(a) two or more sets of proceedings involving the same defendant which are prepared, heard or dealt with together; or

(b) proceedings involving more than one defendant which arise out of the same incident, so that the defendants are charged, tried or disposed of together;

"representation order" means a document which records a section 16 determination;

"representative" means a litigator or an advocate including, where appropriate, an instructed advocate;

"section 16 determination" means a determination made under section 16 of the Act that an individual qualifies for representation for the purposes of criminal proceedings;

"senior solicitor" means a solicitor who, in the judgement of the appropriate officer, has the skill, knowledge and experience to deal with the most difficult and complex cases;

"solicitor advocate" means a solicitor who has obtained a higher courts advocacy qualification in accordance with regulations and rules of conduct of the Law Society;

(a) 1987 c. 38.

"solicitor, legal executive or fee earner of equivalent experience" means a solicitor, Fellow of the Institute of Legal Executives or equivalent senior fee earner who, in the judgement of the appropriate officer, has good knowledge and experience of the conduct of criminal cases;

"trainee solicitor or fee earner of equivalent experience" means a trainee solicitor or other fee earner who is not a Fellow of the Institute of Legal Executives, who, in the judgement of the appropriate officer, carries out the routine work on a case;

"Very High Cost Case" means a case in which a section 16 determination has been made and which the Director classifies as a Very High Cost Case on the grounds that—

(a) in relation to fees claimed by litigators—

(i) if the case were to proceed to trial, the trial would in the opinion of the Director be likely to last for more than 40 days and the Director considers that there are no exceptional circumstances which make it unsuitable to be dealt with under an individual case contract for Very High Cost Cases made by the Lord Chancellor under section 2(1) of the Act; or

(ii) if the case were to proceed to trial, the trial would in the opinion of the Director be likely to last no fewer than 25 and no more than 40 days and the Director considers that there are circumstances which make it suitable to be dealt with under an individual case contract for Very High Cost Cases made by the Lord Chancellor under section 2(1) of the Act;

(b) in relation to fees claimed by advocates, if the case were to proceed to trial, the trial would in the opinion of the Director be likely to last for more than 60 days and the Director considers that there are no exceptional circumstances which make it unsuitable to be dealt with under an individual case contract for Very High Cost Cases made by the Lord Chancellor under section 2(1) of the Act.

(2) The fees and rates set out in the Schedules to these Regulations are exclusive of value added tax.

(3) A function of the Lord Chancellor or Director under these Regulations may be exercised by, or by an employee of, a person authorised for that purpose by the Lord Chancellor or Director respectively(**a**).

Scope

3.—(1) Regulations 5(2), 10 and 14(1) apply to proceedings in magistrates' courts and to proceedings in the Crown Court.

(2) Regulation 8 and Schedule 4 apply to proceedings in magistrates' courts, to proceedings in the Crown Court and to proceedings in the High Court.

(3) Regulations 16 and 31 and Schedule 5 apply to proceedings in magistrates' courts, to proceedings in the Crown Court and to proceedings in the Court of Appeal.

(4) Regulations 4, 5(1) and (3) to (8), 13, 14(2) to (9), 15, 17 to 24 and 28 to 30 and Schedules 1 and 2 apply to proceedings in the Crown Court only.

(5) Regulations 9, 11 and 25 to 27, apply to proceedings in the Crown Court and to proceedings in the Court of Appeal.

(6) Regulation 6 and Schedule 3 apply to proceedings in the Court of Appeal only.

(7) Regulation 7 applies to proceedings in the Supreme Court only.

(8) With the exception of regulation 12 and paragraphs 13(8) and (9) of Schedule 2, these Regulations do not apply to Very High Cost Cases.

(9) For the purpose of these Regulations, any reference to the Court of Appeal includes as appropriate a reference to—

(a) Section 6 of the Act (authorisations) makes provision for authorisations given for the purpose of section 5 of the Act (delegation) or regulations under that section.

(a) the criminal division of the Court of Appeal;

(b) the civil division of the Court of Appeal;

(c) the Courts-Martial Appeal Court; and

(d) a Divisional Court of the High Court.

Claims for fees by advocates – Crown Court

4.—(1) Claims for fees by an instructed advocate in proceedings in the Crown Court must be made and determined in accordance with the provisions of Schedule 1 to these Regulations.

(2) A claim for fees under this regulation and Schedule 1 must be made by each instructed advocate.

(3) Subject to regulation 31, a claim by an instructed advocate for fees in respect of work done pursuant to a section 16 determination must not be entertained unless the instructed advocate submits it within three months of the conclusion of the proceedings to which it relates.

(4) An instructed advocate must submit a claim for fees to the appropriate officer in such form and manner as the appropriate officer may direct.

(5) An instructed advocate must supply such further information and documents as the appropriate officer may require.

(6) Where a confiscation hearing under Part 2 of the Proceeds of Crime Act 2002(**a**) (confiscation: England and Wales), section 2 of the Drug Trafficking Act 1994(**b**) (confiscation orders) or section 71 of the Criminal Justice Act 1988(**c**) (confiscation orders) is to be held more than 28 days after—

(a) the conclusion of the trial to which the section 16 determination relates; or

(b) the entering of a guilty plea,

an instructed advocate may submit any claim for fees in respect of the trial or guilty plea as soon as the trial has concluded or the guilty plea has been entered.

(7) Where the section 16 determination provides for representation by—

(a) a single advocate other than a QC; or

(b) two or more advocates other than QC,

and a QC agrees to appear as the single advocate or as a leading junior, that QC must be treated for all the purposes of these Regulations as having been instructed in relation to that determination, and the remuneration of that QC must be determined as if the advocate were not a QC.

Claims for fees and disbursements by litigators – Crown Court

5.—(1) Claims for fees by litigators in proceedings in the Crown Court must be made and determined in accordance with the provisions of Schedule 2 to these Regulations.

(2) Claims for disbursements by litigators in proceedings in the Crown Court or in proceedings in a magistrates' court which are subsequently committed or sent for trial to the Crown Court must be made and determined in accordance with the provisions of regulations 14 to 17.

(3) Subject to regulation 31, a claim by a litigator for fees in respect of work done pursuant to a section 16 determination must not be entertained unless the litigator submits it within three months of the conclusion of the proceedings to which it relates.

(a) 2002 c. 29.

(b) 1994 c. 37. Section 2 was repealed by sections 456 and 457 of, and Schedules 11 and 12 to, the Proceeds of Crime Act 2002, subject to certain savings set out in S.I. 2003/333.

(c) 1998 c. 33. Section 71 was repealed by sections 456 and 457 of, and Schedules 11 and 12 to, the Proceeds of Crime Act 2002, subject to certain savings set out in S.I. 2003/333.

(4) Subject to paragraph (5), a claim by a litigator for fees in proceedings in the Crown Court must be submitted to the appropriate officer in such form and manner as the appropriate officer may direct and must be accompanied by the representation order and any receipts or other documents in support of any disbursement claimed.

(5) A claim under paragraph 20 or 26 of Schedule 2 to these Regulations must—

(a) summarise the items of work done by a fee earner in respect of which fees are claimed according to the classes specified in paragraph 26(2) of Schedule 2;

(b) state, where appropriate, the dates on which the items of work were done, the time taken, the sums claimed and whether the work was done for more than one assisted person;

(c) specify, where appropriate, the level of fee earner who undertook each of the items of work claimed; and

(d) give particulars of any work done in relation to more than one indictment or a retrial.

(6) Where the litigator claims that paragraph 29 of Schedule 2 applies in relation to an item of work, the litigator must give full particulars in support of the claim.

(7) The litigator must specify any special circumstances which the litigator considers should be drawn to the attention of the appropriate officer.

(8) The litigator must supply such further information and documents as the appropriate officer may require.

Proceedings in the Court of Appeal

6. Claims for fees by representatives in proceedings in the Court of Appeal must be made and determined in accordance with the provisions of Schedule 3 to these Regulations.

Proceedings in the Supreme Court

7.—(1) In proceedings in the Supreme Court, the fees payable to a representative in respect of advice and assistance or representation made available to an individual in accordance with sections 15 or 16 of the Act must be determined by such officer as may be prescribed by order of the Supreme Court.

(2) Subject to paragraph (1), these Regulations do not apply to proceedings in the Supreme Court.

Claims for fees for certain categories of work to which the Standard Crime Contract applies

8.—(1) This regulation applies to—

(a) advice and assistance provided pursuant to a determination made under section 13 or section 15 of the Act;

(b) representation in proceedings in a magistrates' court pursuant to a section 16 determination;

(c) representation pursuant to a section 16 determination in proceedings prescribed as criminal proceedings under section 14(h) of the Act; and

(d) representation in appeals by way of case stated to the High Court.

(2) Claims for fees in cases to which this regulation applies must—

(a) be made and determined in accordance with the 2010 Standard Crime Contract; and

(b) be paid in accordance with the rates set out in Schedule 4.

(3) In this regulation and in Schedule 4, "2010 Standard Crime Contract" means the contract so named between the Lord Chancellor and a person with whom the Lord Chancellor has made an

arrangement under section 2(1) of the Act for the provision of advice, assistance and representation made available under sections 13, 15 and 16 of the Act(a).

Payments from other sources

9. Where representation is provided in respect of any proceedings, the representative, whether acting pursuant to a section 16 determination or otherwise, must not receive or be a party to the making of any payment for work done in connection with those proceedings, except such payments as may be made—

(a) by the Lord Chancellor; or

(b) in respect of any expenses or fees incurred in—

(i) preparing, obtaining or considering any report, opinion or further evidence, whether provided by an expert witness or otherwise; or

(ii) obtaining any transcripts or recordings,

where an application under regulation 13 for an authority to incur such fees or expenses has been refused by a committee appointed under arrangements made by the Lord Chancellor to deal with, amongst other things, appeals of, or review of, assessment of costs.

Cases committed or sent for trial to the Crown Court

10.—(1) Where a case is committed or sent for trial or transferred to the Crown Court, the payment in relation to work carried out in the magistrates' court is included within the applicable fee payable under Schedule 1 or Schedule 2.

(2) Paragraph (1) does not apply where the case is remitted to a magistrates' court.

Proceedings for contempt

11. Where representation is provided in proceedings referred to in section 14(g) of the Act (proceedings for contempt in the face of a court), the Lord Chancellor may only pay remuneration for services in accordance with Schedules 1, 2 and 3.

Notification of Very High Cost Cases

12.—(1) A litigator who has conduct of a case which is, or is likely to be classified as, a Very High Cost Case, must notify the Lord Chancellor in writing as soon as practicable.

(2) Where a litigator fails to comply with this regulation without good reason, and as a result there is a loss to public funds, the Lord Chancellor may refuse payment of the litigator's costs up to the extent of such loss.

(3) The Lord Chancellor must not refuse payment under paragraph (2) unless the litigator has been given a reasonable opportunity to show why the payment should not be refused.

Authorisation of expenditure

13.—(1) Where it appears to a litigator necessary for the proper conduct of proceedings in the Crown Court for costs to be incurred in relation to representation by taking any of the following steps—

(a) obtaining a written report or opinion of one or more experts;

(b) employing a person to provide a written report or opinion (otherwise than as an expert);

(c) obtaining any transcripts or recordings; or

(a) A copy of the 2010 Standard Crime Contract is available at www.justice.gov.uk/legal-aid. Copies can be inspected at the Legal Aid Agency (Head Office), 102 Petty France, London, SW1H 9AJ.

(d) performing an act which is either unusual in its nature or involves unusually large expenditure,

the litigator may apply to the Lord Chancellor for prior authority to do so.

(2) Where the Lord Chancellor authorises the taking of any step referred to in paragraph (1), the Lord Chancellor shall also authorise the maximum to be paid in respect of that step.

(3) A representative assigned to an assisted person in any proceedings in the Crown Court may apply to the Lord Chancellor for prior authority for the incurring of travelling and accommodation expenses in order to attend at the trial or other main hearing in those proceedings.

Interim payment of disbursements

14.—(1) A litigator may submit a claim to the appropriate officer for payment of a disbursement for which the litigator has incurred liability in proceedings in the Crown Court, or in proceedings in a magistrates' court which are subsequently committed or sent for trial or transferred to the Crown Court, in accordance with the provisions of this regulation.

(2) A claim for payment under paragraph (1) may be made where—

(a) a litigator has obtained prior authority to incur expenditure of £100 or more under regulation 13; and

(b) the litigator has incurred such a liability.

(3) Without prejudice to regulation 17(4) and (5) a claim for payment under paragraph (1) must not exceed the maximum amount authorised under the prior authority.

(4) A claim for payment under paragraph (1) may be made at any time before the litigator submits a claim for fees under regulation 5.

(5) A claim for payment under paragraph (1) must be submitted to the appropriate officer in such form and manner as the appropriate officer may direct and must be accompanied by the authority to incur expenditure and any invoices or other documents in support of the claim.

(6) Subject to regulation 16, the appropriate officer must allow the disbursement subject to the limit in paragraph (3) if it appears to have been reasonably incurred in accordance with the prior authority.

(7) The appropriate officer must notify the litigator and, where the disbursement claimed includes the fees or charges of any person, may notify that person of the appropriate officer's decision.

(8) Where the appropriate officer allows the disbursement, the appropriate officer must notify the litigator and, where the disbursement includes the fees or charges of any person, may notify that person, of the amount payable, and must authorise payment to the litigator accordingly.

(9) Regulations 28 to 30 do not apply to a payment under this regulation.

Interim disbursements and final determination of fees

15.—(1) On a final determination of fees, regulations 5(2) and 17 apply notwithstanding that a payment has been made under regulation 14.

(2) Where the amount found to be due under regulation 17 in respect of a disbursement is less than the amount paid under regulation 14 ("the interim payment"), the appropriate officer must deduct the difference from the sum otherwise payable to the litigator on the determination of fees, and where the amount due under regulation 17 exceeds the interim payment, the appropriate officer must add the difference to the amount otherwise payable to the litigator.

Expert services

16.—(1) Subject to paragraph (2), the Lord Chancellor may provide for the payment of expert services only at the fixed fees or at rates not exceeding the rates set out in Schedule 5.

(2) The appropriate officer may, in relation to a specific claim, increase the fixed fees or rates set out in Schedule 5 if that officer considers it reasonable to do so in exceptional circumstances.

(3) For the purposes of paragraph (2), exceptional circumstances are where the expert's evidence is key to the client's case and either—

(a) the complexity of the material is such that an expert with a high level of seniority is required; or

(b) the material is of such a specialised and unusual nature that only very few experts are available to provide the necessary evidence.

Determination of litigators' disbursements

17.—(1) Subject to paragraphs (2) to (5), the appropriate officer must allow such disbursements claimed under regulation 5(2) as appear to the appropriate officer to have been reasonably incurred.

(2) If the disbursements claimed are abnormally large by reason of the distance of the court or the assisted person's residence or both from the litigator's place of business, the appropriate officer may limit reimbursement of the disbursements to what otherwise would, having regard to all the circumstances, be a reasonable amount.

(3) No question as to the propriety of any step or act in relation to which prior authority has been obtained under regulation 13 may be raised on any determination of disbursements, unless the litigator knew or ought reasonably to have known that the purpose for which the authority was given had failed or had become irrelevant or unnecessary before the disbursements were incurred.

(4) Where disbursements are reasonably incurred in accordance with and subject to the limit imposed by a prior authority given under regulation 13, no question may be raised on any determination of fees as to the amount of the payment to be allowed for the step or act in relation to which the authority was given.

(5) Where disbursements are incurred in taking any steps or doing any act for which authority may be given under regulation 13, without such authority having been given or in excess of any fee so authorised, payment in respect of those disbursements may nevertheless be allowed on a determination of disbursements payable under regulation 5.

(6) Paragraph (7) applies where the Lord Chancellor receives a request for funding of an expert service of a type not listed in Schedule 5.

(7) In considering the rate at which to fund the expert service the Lord Chancellor—

(a) must have regard to the rates set out in Schedule 5; and

(b) may require more than one quotation for provision of the service to be submitted to the Lord Chancellor.

Interim payments in cases awaiting determination of fees

18.—(1) The appropriate officer must authorise an interim payment in respect of a claim for fees in proceedings in the Crown Court in accordance with this regulation.

(2) Entitlement to a payment arises in respect of a claim for fees by an instructed advocate, where—

(a) the graduated fee claimed in accordance with Schedule 1 is £4,000 or more (exclusive of value added tax); and

(b) the claim for fees is for less than the amount mentioned in sub-paragraph (a) but is related to any claim for fees falling under sub-paragraph (a).

(3) For the purposes of this regulation, the following claims for fees are related to each other—

(a) the claims of instructed advocates acting in the same proceedings for a defendant; and

(b) the claims of any instructed advocate acting for any assisted person in related proceedings.

(4) Entitlement to a payment under paragraph (1) does not arise until three months have elapsed from the earlier of—

(a) the date on which the claim for fees is received by the appropriate officer for determination, except that where there are related claims for fees, the date on which the last claim is received by the appropriate officer; or

(b) three months after the conclusion of the last of any related proceedings.

(5) An instructed advocate may submit a claim for an interim payment under this regulation where—

(a) no payment has been made under paragraph (1); and

(b) six months have elapsed from the conclusion of the proceedings against the assisted person.

(6) Subject to regulation 31, payment must not be made under this regulation unless the instructed advocate has submitted a claim for fees in accordance with regulation 4(3).

Amount of interim payments in cases awaiting determination of fees

19.—(1) Where entitlement to an interim payment arises under regulation 18, the amount payable is 40% of the total claim for fees, less any sum already paid.

(2) Regulations 28 to 30 do not apply to an interim payment under this regulation.

Staged payments in long Crown Court proceedings

20.—(1) An instructed advocate may submit a claim to the appropriate officer for a staged payment of the instructed advocate's fees in relation to proceedings in the Crown Court.

(2) Where a claim is submitted in accordance with this regulation, a staged payment must be allowed where the appropriate officer is satisfied—

(a) that the claim relates to fees for a period of preparation of 100 hours or more, for which the instructed advocate will, subject to final determination of the fees payable, be entitled to be paid in accordance with Schedule 1; and

(b) that the period from committal, or sending for trial or transfer (or from the date of the section 16 determination, if later) to the conclusion of the Crown Court proceedings is likely to exceed 12 months, having regard, amongst other matters, to the number of defendants, the anticipated pleas and the weight and complexity of the case.

(3) In this regulation, "preparation" means—

(a) reading the papers in the case;

(b) contact with prosecutors;

(c) written or oral advice on plea;

(d) researching the law, preparation for examination of witnesses and preparation of oral submissions;

(e) viewing exhibits or undisclosed material at police stations;

(f) written advice on evidence;

(g) preparation of written submissions, notices or other documents for use at the trial;

(h) attendance at views at the scene of the alleged offence,

and is limited to preparation done before the trial, except in proceedings in which a preparatory hearing has been ordered under section 8 of the Criminal Justice Act 1987 (commencement of trial and arraignment), in which case it is limited to preparation done before the date on which the jury is sworn (or on which it became certain, by reason of pleas of guilty or otherwise, that the matter would not proceed to trial).

(4) The amount allowed for preparation falling within paragraph (3) must be determined by reference to the number of hours of preparation which it appears to the appropriate officer, without

prejudice to the final determination of the fees payable, has been reasonably done, multiplied by the hourly rate for special preparation as set out in the table following paragraph 24 of Schedule 1, as appropriate to the category of advocate.

(5) A claim for staged payment of fees under this regulation must be made to the appropriate officer in such form and manner as the appropriate officer may direct, including such case plan as the appropriate officer may require for the purposes of paragraph (2)(a).

(6) An instructed advocate may claim further staged payments in accordance with this regulation in respect of further periods of preparation exceeding 100 hours which were not included in an earlier claim.

(7) Regulations 28 to 30 do not apply to a payment under this regulation.

Hardship payments

21.—(1) Subject to paragraphs (5) and (6), the appropriate officer may allow a hardship payment to a representative in the circumstances set out in paragraph (2).

(2) Those circumstances are that the representative—

(a) represents the assisted person in proceedings in the Crown Court;

(b) applies for such payment, in such form and manner as the appropriate officer may direct, not less than six months after the representative was first instructed in those proceedings, or in related proceedings if the representative was instructed in those proceedings earlier than in the proceedings to which the application relates;

(c) is unlikely to receive final payment in respect of the proceedings, as determined under Schedule 1 or 2, within the three months following the application for the hardship payment; and

(d) satisfies the appropriate officer that, by reason of the circumstance in sub-paragraph (c), the representative is likely to suffer financial hardship.

(3) Every application for a hardship payment by an advocate must be accompanied by such information and documents as the appropriate officer may require as evidence of—

(a) the work done by the advocate in relation to the proceedings up to the date of the application; and

(b) the likelihood of financial hardship.

(4) Every application for a hardship payment by a litigator must be accompanied by such information and documents as the appropriate officer may require as evidence of—

(a) the Class of Offence with which the assisted person is charged, in accordance with Part 7 of Schedule 1;

(b) the length of trial, where appropriate;

(c) the number of pages of prosecution evidence, determined in accordance with paragraph 1(2) of Schedule 2;

(d) the total number of defendants in the proceedings who are represented by the litigator;

(e) the likelihood of financial hardship.

(5) The amount of any hardship payment is at the discretion of the appropriate officer, but must not exceed such sum as would be reasonable remuneration for the work done by the representative in the proceedings up to the date of the application.

(6) A hardship payment must not be made if it appears to the appropriate officer that the sum which would be reasonable remuneration for the representative, or the sum required to relieve the representative's financial hardship, is less than £5,000 (excluding value added tax).

(7) Where the appropriate officer allows a hardship payment under paragraph (1), the appropriate officer must authorise payment accordingly.

(8) Where the application for a hardship payment is made by an advocate other than an instructed advocate, and the appropriate officer allows a hardship payment under paragraph (1)—

(a) payment must be made to the leading instructed advocate or the led instructed advocate, as appropriate; and

(b) the appropriate officer must notify the advocate who made the application that payment has been made to the instructed advocate.

Computation of final claim where an interim payment has been made

22.—(1) At the conclusion of a case in which one or more payments have been made to an instructed advocate or a litigator under regulations 18 to 21, the instructed advocate or litigator must submit a claim under regulation 4 or 5 for the determination of the overall remuneration, whether or not such a claim will result in any payment additional to those already made.

(2) In the determination of the amount payable to an instructed advocate or litigator under regulation 4 or 5—

(a) the appropriate officer must deduct the amount of any payment made under regulations 18 to 21 in respect of the same case from the amount that would otherwise be payable; and

(b) if the amount of the interim payment is greater than the amount that would otherwise be payable, the appropriate officer may recover the amount of the difference, either by way of repayment by the instructed advocate or litigator or by way of deduction from any other amount that may be due to the instructed advocate or litigator.

Payment of fees to advocates – Crown Court

23.—(1) Having determined the fees payable to each instructed advocate, in accordance with Schedule 1, the appropriate officer must notify each instructed advocate of the fees payable and authorise payment accordingly.

(2) Where, as a result of any redetermination or appeal made or brought pursuant to regulations 28 to 30, the fees payable under paragraph (1) are altered—

(a) if they are increased, the appropriate officer must authorise payment of the increase; or

(b) if they are decreased, the instructed advocate must repay the amount of such decrease.

(3) Where the payment of any fees of an instructed advocate is ordered under regulation 29(12) or regulation 30(8), the appropriate officer must authorise payment.

Payment of fees to litigators – Crown Court

24.—(1) Having determined the fees payable to a litigator in accordance with Schedule 2, the appropriate officer must authorise payment accordingly.

(2) Where the appropriate officer determines that the fees payable under paragraph (1) are greater than or less than the amount claimed by the litigator under regulation 5(1), the appropriate officer must notify the litigator of the amount the appropriate officer has determined to be payable.

(3) Where, as a result of any redetermination or appeal made or brought pursuant to regulations 28 to 30, the fees payable under paragraph (1) are altered—

(a) if they are increased, the appropriate officer must authorise payment of the increase; or

(b) if they are decreased, the litigator must repay the amount of such decrease.

(4) Where the payment of any fees of the litigator is ordered under regulation 29(12) or regulation 30(8), the appropriate officer must authorise payment.

Recovery of overpayments

25.—(1) This regulation applies where a representative is entitled to be paid a certain sum ("the amount due") by virtue of the provisions of Schedule 1, 2 or 3 and, for whatever reason, the representative is paid an amount greater than that sum.

(2) Where this regulation applies, the appropriate officer may—

(a) require immediate repayment of the amount in excess of the amount due ("the excess amount"); or

(b) deduct the excess amount from any other sum which is or becomes payable to the representative by virtue of the provisions of Schedule 1, 2 or 3,

and where sub-paragraph (a) applies the representative must repay the excess amount to the appropriate officer.

(3) The appropriate officer may proceed under paragraph (2)(b) without first proceeding under paragraph (2)(a).

(4) Paragraph (2) applies notwithstanding that the representative to whom the excess amount was paid is exercising, or may exercise, a right under regulations 28 to 30.

Adverse observations

26.—(1) Where in any proceedings to which Schedule 1, 2 or 3 applies, the court makes adverse observations concerning a representative's conduct of the proceedings, the appropriate officer may reduce any fee which would otherwise be payable in accordance with Schedule 1, 2 or 3 by such proportion as the appropriate officer considers reasonable.

(2) Before reducing the fee payable to a representative in accordance with the provisions of paragraph (1), the appropriate officer must give the representative the opportunity to make representations about whether it is appropriate to reduce the fee and the extent to which the fee should be reduced.

Wasted costs orders

27.—(1) Subject to paragraph (2), where the court has disallowed the whole or any part of any wasted costs under section 19A of the Prosecution of Offences Act 1985(a) (costs against legal representatives etc), the appropriate officer, in determining fees in respect of work done by the representative against whom the wasted costs order was made, may deduct the amount in the wasted costs order from the amount otherwise payable in accordance with these Regulations.

(2) Where the appropriate officer, in accordance with this regulation, is minded to disallow any amount of a claim for work done to which the wasted costs order relates, the appropriate officer must disallow that amount or the amount of the wasted costs order, whichever is the greater.

Redetermination of fees by appropriate officer

28.—(1) Where—

(a) an advocate in proceedings in the Crown Court is dissatisfied with the decision not to allow any of the following fees, or with the number of hours allowed in the calculation of such a fee, namely—

(i) a special preparation fee under paragraph 17 of Schedule 1; or

(ii) a wasted preparation fee under paragraph 18 of Schedule 1; or

(b) an instructed advocate in proceedings in the Crown Court is dissatisfied with—

(i) the decision not to allow an hourly fee in respect of attendance at conferences or views at the scene of the alleged offence under paragraph 19 of Schedule 1, or with the number of hours allowed in the calculation of such a fee;

(ii) the calculation by the appropriate officer of the fee payable to the instructed advocate in accordance with Schedule 1; or

(iii) the decision of the appropriate officer under paragraph 3(3) of Schedule 1 (reclassification of an offence not specifically listed in the relevant Table of Offences and so deemed to fall within Class H); or

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(a) 1985 c. 23. Section 19A was inserted by section 111 of the Courts and Legal Services Act 1990 (c. 41).

(c) a litigator is dissatisfied with—

(i) the calculation by the appropriate officer of the fee payable to the litigator in accordance with Schedule 2; or

(ii) the decision of the appropriate officer under paragraph 3(3) of Schedule 2 (reclassification of an offence not specifically listed in the relevant Table of Offences and so deemed to fall within Class H),

the advocate, instructed advocate or litigator, as the case may be, may apply to the appropriate officer to redetermine those fees, to review that decision or to reclassify the offence, as appropriate.

(2) An application under paragraph (1) may not challenge the quantum of any of the fees set out in Schedule 1 or Schedule 2.

(3) Subject to regulation 31, an application under paragraph (1), or paragraph 11(1) of Schedule 3, must be made—

(a) within 21 days of the receipt of the fees payable under regulation 23, regulation 24 or paragraph 10 of Schedule 3, as appropriate;

(b) by giving notice in writing to the appropriate officer, specifying the matters in respect of which the application is made and the grounds of objection; and

(c) in such form and manner as the appropriate officer may direct.

(4) The notice of application must be accompanied by the information and documents supplied under regulation 4, regulation 5 or Schedule 3, as appropriate.

(5) The notice of application must state whether the applicant wishes to appear or to be represented and, if the applicant so wishes, the appropriate officer must notify the applicant of the hearing date and time.

(6) The applicant must supply such further information and documents as the appropriate officer may require.

(7) The appropriate officer must, in the light of the objections made by the applicant or on behalf of the applicant—

(a) redetermine the fees, whether by way of confirmation, or increase or decrease in the amount previously determined;

(b) confirm the classification of the offence within Class H; or

(c) reclassify the offence,

as the case may be, and must notify the applicant of his decision.

(8) Where the applicant so requests, the appropriate officer must give reasons in writing for the appropriate officer's decision.

(9) Subject to regulation 31, any request under paragraph (8) must be made within 21 days of receiving notification of the appropriate officer's decision under paragraph (7).

Appeals to a Costs Judge

29.—(1) Where the appropriate officer has given his reasons for his decision under regulation 28(8), a representative who is dissatisfied with that decision may appeal to a Costs Judge.

(2) Subject to regulation 31, an appeal under paragraph (1) or paragraph 11(2) of Schedule 3 must be instituted within 21 days of the receipt of the appropriate officer's reasons, by giving notice in writing to the Senior Costs Judge.

(3) The appellant must send a copy of any notice of appeal given under paragraph (2) to the appropriate officer.

(4) The notice of appeal must be accompanied by—

(a) a copy of any written representations given under regulation 28(3);

(b) the appropriate officer's reasons for the appropriate officer's decision given under regulation 28(8); and

(c) the information and documents supplied to the appropriate officer under regulation 28.

(5) The notice of appeal must—

(a) be in such form as the Senior Costs Judge may direct;

(b) specify separately each item appealed against, showing (where appropriate) the amount claimed for the item, the amount determined and the grounds of the objection to the determination; and

(c) state whether the appellant wishes to appear or to be represented or whether the appellant will accept a decision given in the appellant's absence.

(6) The Senior Costs Judge may, and if so directed by the Lord Chancellor either generally or in a particular case must, send to the Lord Chancellor a copy of the notice of appeal together with copies of such other documents as the Lord Chancellor may require.

(7) With a view to ensuring that the public interest is taken into account, the Lord Chancellor may arrange for written or oral representations to be made on the Lord Chancellor's behalf and, if the Lord Chancellor intends to do so, the Lord Chancellor must inform the Senior Costs Judge and the appellant.

(8) Any written representations made on behalf of the Lord Chancellor under paragraph (7) must be sent to the Senior Costs Judge and the appellant and, in the case of oral representations, the Senior Costs Judge and the appellant must be informed of the grounds on which such representations will be made.

(9) The appellant must be permitted a reasonable opportunity to make representations in reply.

(10) The Costs Judge must inform the appellant (or the person representing him) and the Lord Chancellor, where representations have been or are to be made on the Lord Chancellor's behalf, of the date of any hearing and, subject to the provisions of this regulation, may give directions as to the conduct of the appeal.

(11) The Costs Judge may consult the trial judge or the appropriate officer and may require the appellant to provide any further information which the Costs Judge requires for the purpose of the appeal and, unless the Costs Judge otherwise directs, no further evidence may be received on the hearing of the appeal and no ground of objection may be raised which was not raised under regulation 28.

(12) The Costs Judge has the same powers as the appropriate officer under these Regulations and, in the exercise of such powers, may alter the redetermination of the appropriate officer in respect of any sum allowed, whether by increasing or decreasing it, as the Costs Judge thinks fit.

(13) The Costs Judge must communicate his decision and the reasons for it in writing to the appellant, the Lord Chancellor and the appropriate officer.

(14) Where the Costs Judge increases the sums redetermined under regulation 28, the Costs Judge may allow the appellant a sum in respect of part or all of any reasonable costs incurred by the appellant in connection with the appeal (including any fee payable in respect of an appeal).

Appeals to the High Court

30.—(1) A representative who is dissatisfied with the decision of a Costs Judge on an appeal under regulation 29 may apply to a Costs Judge to certify a point of principle of general importance.

(2) Subject to regulation 31, an application under paragraph (1) or paragraph 11(3) of Schedule 3 must be made within 21 days of receiving notification of a Costs Judge's decision under regulation 29(13).

(3) Where a Costs Judge certifies a point of principle of general importance the appellant may appeal to the High Court against the decision of a Costs Judge on an appeal under regulation 29, and the Lord Chancellor must be a respondent to such an appeal.

(4) Subject to regulation 31, an appeal under paragraph (3) must be instituted within 21 days of receiving notification of a Costs Judge's certificate under paragraph (1).

(5) Where the Lord Chancellor is dissatisfied with the decision of a Costs Judge on an appeal under regulation 29, the Lord Chancellor may, if no appeal has been made by an appellant under paragraph (3), appeal to the High Court against that decision, and the appellant must be a respondent to the appeal.

(6) Subject to regulation 31, an appeal under paragraph (5) must be instituted within 21 days of receiving notification of the Costs Judge's decision under regulation 29(13).

(7) An appeal under paragraph (3) or (5) must—

(a) be brought in the Queen's Bench Division;

(b) subject to paragraph (4), follow the procedure set out in Part 52 of the Civil Procedure Rules 1998(**a**); and

(c) be heard and determined by a single judge whose decision will be final.

(8) The judge has the same powers as the appropriate officer and a Costs Judge under these Regulations and may reverse, affirm or amend the decision appealed against or make such other order as the judge thinks fit.

Time limits

31.—(1) Subject to paragraph (2), the time limit within which any act is required or authorised to be done under these Regulations may, for good reason, be extended—

(a) in the case of acts required or authorised to be done under regulations 29 or 30, by a Costs Judge or the High Court as the case may be; and

(b) in the case of acts required or authorised to be done by a representative under any other regulation, by the appropriate officer.

(2) Where a representative without good reason has failed (or, if an extension were not granted, would fail) to comply with a time limit, the appropriate officer, a Costs Judge or the High Court, as the case may be, may, in exceptional circumstances, extend the time limit and must consider whether it is reasonable in the circumstances to reduce the fees payable to the representative under regulations 4, 5 or 6, provided that the fees must not be reduced unless the representative has been allowed a reasonable opportunity to show cause orally or in writing why the fees should not be reduced.

(3) A representative may appeal to a Costs Judge against a decision made under this regulation by an appropriate officer and such an appeal must be instituted within 21 days of the decision being given by giving notice in writing to the Senior Costs Judge specifying the grounds of appeal.

Signed by authority of the Lord Chancellor

McNally
Minister of State
Ministry of Justice

26th February 2013

(a) S.I. 1998/3132. There are relevant amendments in S.I. 2000/221 and 2092, 2003/2113 and 3361, 2004/2072, 2005/3515, 2006/1689 and 3435, 2007/2204, 2009/2092 and 3390, 2010/1953 and 2012/2208.

SCHEDULE 1

Regulation 4

Advocates' Graduated Fee Scheme

PART 1

Definitions and Scope

Interpretation

1.—(1) In this Schedule—

"case" means proceedings in the Crown Court against any one assisted person—

(a) on one or more counts of a single indictment;

(b) arising out of a single notice of appeal against conviction or sentence, or a single committal for sentence, whether on one or more charges; or

(c) arising out of a single alleged breach of an order of the Crown Court,

and a case falling within paragraph (c) must be treated as a separate case from the proceedings in which the order was made;

"cracked trial" means a case on indictment in which—

(a) a plea and case management hearing takes place and—

(i) the case does not proceed to trial (whether by reason of pleas of guilty or for other reasons) or the prosecution offers no evidence; and

(ii) either—

(aa) in respect of one or more counts to which the assisted person pleaded guilty, the assisted person did not so plead at the plea and case management hearing; or

(bb) in respect of one or more counts which did not proceed, the prosecution did not, before or at the plea and case management hearing, declare an intention of not proceeding with them; or

(b) the case is listed for trial without a plea and case management hearing taking place;

"guilty plea" means a case on indictment which—

(a) is disposed of without a trial because the assisted person pleaded guilty to one or more counts; and

(b) is not a cracked trial;

"main hearing" means—

(a) in relation to a case which goes to trial, the trial;

(b) in relation to a guilty plea, the hearing at which pleas are taken or, where there is more than one such hearing, the last such hearing;

(c) in relation to a cracked trial, the hearing at which—

(i) the case becomes a cracked trial by meeting the conditions in the definition of a cracked trial, whether or not any pleas were taken at that hearing; or

(ii) a formal verdict of not guilty was entered as a result of the prosecution offering no evidence, whether or not the parties attended the hearing;

(d) in relation to an appeal against conviction or sentence in the Crown Court, the hearing of the appeal;

(e) in relation to proceedings arising out of a committal for sentence in the Crown Court, the sentencing hearing; and

(f) in relation to proceedings arising out of an alleged breach of an order of the Crown Court, the hearing at which those proceedings are determined;

"Newton Hearing" means a hearing at which evidence is heard for the purpose of determining the sentence of a convicted person in accordance with the principles of R v Newton (1982) 77 Cr App R 13;

"standard appearance" means an appearance by the trial advocate or substitute advocate in any of the following hearings which do not form part of the main hearing—

(a) a plea and case management hearing, except the first plea and case management hearing;

(b) a pre-trial review;

(c) the hearing of a case listed for plea which is adjourned for trial;

(d) any hearing (except a trial, a plea and case management hearing, a pre-trial review or a hearing referred to in paragraph 2(1)(b)) which is listed but cannot proceed because of the failure of the assisted person or a witness to attend, the unavailability of a pre-sentence report or other good reason;

(e) custody time limit applications;

(f) bail and other applications (except where any such applications take place in the course of a hearing referred to in paragraph 2(1)(b));

(g) the hearing of the case listed for mention only, including applications relating to the date of the trial (except where an application takes place in the course of a hearing referred to in paragraph 2(1)(b));

(h) a sentencing hearing other than one falling within paragraph 2(1)(b)(ii), paragraph 15(1) or paragraph 34;

(i) a preliminary hearing; or

(j) a hearing, whether contested or not, relating to breach of bail, failure to surrender to bail or execution of a bench warrant,

provided that a fee is not payable elsewhere under this Schedule in respect of the hearing;

"substitute advocate" means an advocate who is not an instructed advocate or the trial advocate but who undertakes work on the case; and

"trial advocate" means an advocate instructed pursuant to a section 16 determination to represent the assisted person at the main hearing in any case, including a QC or a leading junior advocate so instructed after the hearing at which pleas are taken.

(2) For the purposes of this Schedule, the number of pages of prosecution evidence served on the court must be determined in accordance with sub-paragraphs (3) to (5).

(3) The number of pages of prosecution evidence includes all—

(a) witness statements;

(b) documentary and pictorial exhibits;

(c) records of interviews with the assisted person; and

(d) records of interviews with other defendants,

which form part of the committal or served prosecution documents or which are included in any notice of additional evidence.

(4) Subject to sub-paragraph (5), a document served by the prosecution in electronic form is included in the number of pages of prosecution evidence.

(5) A documentary or pictorial exhibit which—

(a) has been served by the prosecution in electronic form; and

(b) has never existed in paper form,

is not included within the number of pages of prosecution evidence unless the appropriate officer decides that it would be appropriate to include it in the pages of prosecution evidence taking into account the nature of the document and any other relevant circumstances.

(6) In proceedings on indictment in the Crown Court initiated otherwise than by committal for trial, the appropriate officer must determine the number of pages of prosecution evidence in accordance with sub-paragraphs (2) to (5) or as nearly in accordance with those sub-paragraphs as possible as the nature of the case permits.

(7) A reference to the Table of Offences in this Schedule is to the Table of Offences in Part 7 and a reference to a Class of Offence in this Schedule is to the Class in which that offence is listed in the Table of Offences.

Application

2.—(1) Subject to sub-paragraphs (2) to (11), this Schedule applies to—

(a) every case on indictment; and

(b) the following proceedings in the Crown Court—

(i) an appeal against conviction or sentence;

(ii) a sentencing hearing following a committal for sentence to the Crown Court; and

(iii) proceedings arising out of an alleged breach of an order of the Crown Court (whether or not this Schedule applies to the proceedings in which the order was made).

(2) Sub-paragraphs (3) and (4) apply where, following a trial, an order is made for a new trial and the same trial advocate appears at both trials where—

(a) the defendant is an assisted person at both trials; or

(b) the defendant is an assisted person at the new trial only; or

(c) the new trial is a cracked trial or guilty plea.

(3) Subject to sub-paragraph (4), in respect of a new trial, or if the trial advocate so elects, in respect of the first trial, the graduated fee payable to the trial advocate must be calculated in accordance with Part 2 or Part 3, as appropriate, except that the fee must be reduced by—

(a) 30%, where the new trial started within one month of the conclusion of the first trial;

(b) 20%, where the new trial did not start within one month of the conclusion of the first trial;

(c) 40%, where the new trial becomes a cracked trial or guilty plea within one month of the conclusion of the first trial; or

(d) 25% where the new trial becomes a cracked trial or guilty plea more than one month after the conclusion of the first trial.

(4) Where—

(a) in relation to the first trial, the case was committed or sent for trial to the Crown Court on the election of a defendant where the magistrates' court had determined the case to be suitable for summary trial; and

(b) the new trial becomes a cracked trial or guilty plea,

the fee payable to the trial advocate must be—

(i) the graduated fee calculated in accordance with Part 2, in respect of the first trial; and

(ii) the fixed fee set out in paragraph 10 in respect of the new trial.

(5) Sub-paragraphs (6) and (7) apply in the circumstances set out in sub-paragraph (2) but where a different trial advocate appears for the assisted person at each trial.

(6) Subject to sub-paragraph (7), in respect of each trial, the graduated fee payable to the trial advocate must be calculated in accordance with Part 2 or Part 3 as appropriate.

(7) Where—

(a) in relation to the first trial, the case was committed or sent for trial to the Crown Court on the election of a defendant where the magistrates' court had determined the case to be suitable for summary trial; and

(b) the new trial becomes a cracked trial or guilty plea,

the fee payable to the trial advocate at the first trial must be the graduated fee, calculated in accordance with Part 2 and the fee payable to the trial advocate at the new trial must be the fixed fee set out in paragraph 10.

(8) Where following a case on indictment a Newton hearing takes place—

(a) for the purposes of this Schedule the case is to be treated as having gone to trial;

(b) the length of the trial is to be taken to be the combined length of the main hearing and the Newton hearing;

(c) the provisions of this Schedule relating to cracked trials and guilty pleas do not apply; and

(d) no fee is payable under paragraph 15 in respect of the Newton hearing.

(9) Sub-paragraph (10) applies where proceedings are—

(a) sent for trial to the Crown Court; or

(b) transferred to the Crown Court under—

(i) section 4 of the Criminal Justice Act 1987(**a**) (transfer of serious fraud cases); or

(ii) section 53 of the Criminal Justice Act 1991(**b**) (transfer of certain cases involving children).

(10) Where, at any time after proceedings are sent or transferred to the Crown Court as referred to in sub-paragraph (9), they are—

(a) discontinued by a notice served under section 23A of the Prosecution of Offences Act 1985(**c**) (discontinuance of proceedings after accused has been sent for trial); or

(b) dismissed pursuant to—

(i) paragraph 2 of Schedule 3 to the Crime and Disorder Act 1998(**d**) (applications for dismissal);

(ii) section 6 of the Criminal Justice Act 1987 (applications for dismissal); or

(iii) paragraph 5 of Schedule 6 to the Criminal Justice Act 1991 (applications for dismissal),

the provisions of paragraph 22 apply.

(11) For the purposes of this Schedule, a case on indictment which discontinues at or before the plea and case management hearing otherwise than—

(a) by reason of a plea of guilty being entered; or

(b) in accordance with sub-paragraph (10),

must be treated as a guilty plea.

Class of Offences

3.—(1) For the purposes of this Schedule—

(a) every indictable offence falls within the Class under which it is listed in the Table of Offences and, subject to sub-paragraph (2), indictable offences not specifically so listed are deemed to fall within Class H;

(b) conspiracy to commit an indictable offence contrary to section 1 of the Criminal Law Act 1977(**e**) (the offence of conspiracy), incitement to commit an indictable offence and attempts to commit an indictable offence contrary to section 1 of the Criminal Attempts

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(a) 1987 c. 38. Section 4 was repealed by the Criminal Justice Act 2003 (c. 44), sections 41, 332, Schedule 3, Part 2, Paragraphs 58(1) and (2) and Schedule 37, Part 4, which repeal is in force for certain purposes and will take effect in full from a date to be appointed.

(b) 1991 c. 53. Section 53 was repealed by the Criminal Justice Act 2003 (c. 44), sections 41, 332, Schedule 3, Part 2, Paragraphs 62(1) and (2) and Schedule 37, Part 4, which repeal is in force for certain purposes and will take effect in full from a date to be appointed.

(c) 1985 c. 23. Section 23A was inserted by section 119 of the Crime and Disorder Act 1998 (c. 37).

(d) 1998 c. 37.

(e) 1977 c. 45.

Act 1981(**a**) (attempting to commit an offence) fall within the same Class as the substantive offence to which they relate;

(c) where the Table of Offences specifies that the Class within which an offence falls depends on whether the value involved exceeds a stated limit, the value must be presumed not to exceed that limit unless the advocate making the claim under regulation 4 proves otherwise to the satisfaction of the appropriate officer;

(d) where more than one count of the indictment is for an offence in relation to which the Class depends on the value involved, that value must be taken to be the total value involved in all those offences, but where two or more counts relate to the same property, the value of that property must be taken into account once only;

(e) where an entry in the Table of Offences specifies an offence as being contrary to a statutory provision, then subject to any express limitation in the entry that entry includes every offence contrary to that statutory provision whether or not the words of description in the entry are appropriate to cover all such offences;

(f) where in a case on indictment there is a hearing to determine the question of whether an assisted person is unfit to plead or unfit to stand trial, the trial advocate must elect whether that hearing falls within the same Class as the indictable offence to which it relates or within Class D; and

(g) where in a case on indictment a restriction order is made under section 41 of the Mental Health Act 1983(**b**) (power of higher courts to restrict discharge from hospital), the offence falls within Class A, regardless of the Class under which the offence would be listed in the Table of Offences but for this paragraph.

(2) Where an advocate in proceedings in the Crown Court is dissatisfied with the classification within Class H of an indictable offence not listed in the Table of Offences, the advocate may apply to the appropriate officer when lodging the claim for fees to reclassify the offence.

(3) The appropriate officer must, in light of the objections made by the advocate—

(a) confirm the classification of the offence within Class H; or

(b) reclassify the offence,

and must notify the advocate of the decision.

PART 2

Graduated Fees for Trial

Calculation of Graduated Fees

4. The amount of the graduated fee for a single trial advocate representing one assisted person being tried on one indictment in the Crown Court in a trial lasting one to 40 days must be calculated in accordance with the following formula—

$$G = B + (d \times D) + (e \times E) + (w \times W)$$

Where—

G is the amount of the graduated fee;

B is the basic fee specified in the table following paragraph 5 as appropriate to the offence for which the assisted person is tried and the category of trial advocate;

d is the number of days or parts of a day on which the advocate attends at court by which the trial exceeds 2 days but does not exceed 40 days;

(a) 1981 c. 47.
(b) 1983 c. 20.

D is the fee payable in respect of daily attendance at court for the number of days by which the trial exceeds 2 days but does not exceed 40 days, as appropriate to the offence for which the assisted person is tried and the category of trial advocate;

c is the number of pages of prosecution evidence excluding the first 50, up to a maximum of 10,000;

E is the evidence uplift specified in the table following paragraph 5 as appropriate to the offence for which the assisted person is tried and the category of trial advocate;

w is the number of prosecution witnesses excluding the first 10;

W is the witness uplift specified in the table following paragraph 5 as appropriate to the offence for which the assisted person is tried and the category of trial advocate.

Table of fees

5. For the purposes of paragraph 4 the basic fee (B), the daily attendance fee (D), the evidence uplift (E) and the witness uplift (W) appropriate to any offence are those specified in the table following this paragraph in accordance with the Class within which that offence falls.

Table of Fees and Uplifts

Class of Offence	*Basic Fee (B)*	*Daily Attendance Fee (D)*	*Evidence Uplift (E)*	*Witness Uplift (W)*
	(£)	(£)	(£)	(£)
QC				
A	2,856	979	1.63	6.53
B	2,529	857	1.63	6.53
C	1,968	816	1.63	6.53
D	2,284	816	1.63	6.53
E	1,514	612	1.63	6.53
F	1,514	612	1.63	6.53
G	1,514	612	1.63	6.53
H	1,903	816	1.63	6.53
I	2,122	816	1.63	6.53
J	2,856	979	1.63	6.53
K	2,856	979	1.63	6.53
Leading Junior				
A	2,142	734	1.23	4.90
B	1,897	643	1.23	4.90
C	1,476	612	1.23	4.90
D	1,714	612	1.23	4.90
E	1,136	459	1.23	4.90
F	1,136	459	1.23	4.90
G	1,136	459	1.23	4.90
H	1,427	612	1.23	4.90
I	1,592	612	1.23	4.90
J	2,142	734	1.23	4.90
K	2,142	734	1.23	4.90
Led Junior				
A	1,632	490	0.81	3.26
B	1,265	428	0.81	3.26
C	898	408	0.81	3.26
D	1,125	408	0.81	3.26
E	694	306	0.81	3.26
F	694	306	0.81	3.26

G	694	306	0.81	3.26
H	816	408	0.81	3.26
I	979	408	0.81	3.26
J	1,632	490	0.81	3.26
K	1,428	490	0.81	3.26
Junior Alone				
A	1,632	530	0.98	4.90
B	1,305	469	0.98	4.90
C	898	408	0.98	4.90
D	1,125	408	0.98	4.90
E	653	326	0.98	4.90
F	694	326	0.98	4.90
G	694	326	0.98	4.90
H	816	408	0.98	4.90
I	979	408	0.98	4.90
J	1,632	530	0.98	4.90
K	1,632	530	0.98	4.90

PART 3

Graduated Fees for Guilty Pleas and Cracked Trials

Scope of Part 3

6. Subject to paragraph 22, this Part does not apply to a case committed or sent for trial to the Crown Court on the election of a defendant where the magistrates' court has determined the case to be suitable for summary trial.

Calculation of graduated fees in guilty pleas and cracked trials

7.—(1) The amount of the graduated fee for a single trial advocate representing one assisted person in a guilty plea or cracked trial is—

(a) where the case is a guilty plea or a trial which cracks in the first third—

(i) the basic fee specified in Table A following paragraph 8 as appropriate to the offence with which the assisted person is charged, and the category of trial advocate; and

(ii) the evidence uplift, as appropriate to the number of pages of prosecution evidence, calculated in accordance with that table; and

(b) where the case is a trial which cracks in the second or last third—

(i) the basic fee specified in Table B following paragraph 8 as appropriate to the offence with which the assisted person is charged and the category of trial advocate; and

(ii) the evidence uplift, as appropriate to the number of pages of prosecution evidence, calculated in accordance with that table.

(2) Where—

(a) the trial of a case does not commence on the date first fixed; or

(b) the case is not taken and disposed of from the first warned list in which it is entered,

the basic fee and evidence uplift for the offence are those specified for the last third in Table B following paragraph 8.

(3) In this paragraph, and in the tables following paragraph 8, references to the first, second and last third are references to the first, second and last third—

(a) where a case is first listed for trial on a fixed date, of the period of time beginning with the day after the date on which the case is so listed and ending with the day before the date so fixed;

(b) where the case is first placed in a warned list, of the period of time beginning with the day after the date on which the case is so placed and ending with the day before the date of the start of that warned list,

and where the number of days in this period of time cannot be divided by three equally, any days remaining after such division must be added to the last third.

(4) Where a graduated fee is calculated in accordance with this Part for the purposes of paragraph 2(3), the fee must be calculated as if the trial had cracked in the last third.

Tables of fees

8. Subject to paragraph 7, the basic fee and evidence uplift appropriate to any offence are specified in the tables following this paragraph in accordance with the Class within which that offence falls, the category of trial advocate and whether the case is a guilty plea, a trial which cracks in the first third or a trial which cracks in the second or last third.

Table A – Fees and uplifts in guilty pleas and trials which crack in the first third

Class of Offence	*Basic Fee (£)*	*Evidence uplift per page of prosecution evidence (pages 1 to 1,000) (£)*	*Evidence uplift per page of prosecution evidence (1,001 to 10,000) (£)*
QC			
A	1,714	2.85	1.43
B	1,305	1.8	0.90
C	1,224	1.28	0.64
D	1,305	2.85	1.43
E	1,081	0.92	0.46
F	1,081	1.20	0.61
G	1,081	1.20	0.61
H	1,224	1.65	0.82
I	1,224	1.61	0.80
J	1,714	2.85	1.43
K	1,714	1.59	0.80
Leading Junior			
A	1,285	2.15	1.07
B	979	1.35	0.67
C	918	0.96	0.48
D	979	2.15	1.07
E	811	0.69	0.35
F	811	0.90	0.46
G	811	0.90	0.46
H	918	1.24	0.61
I	918	1.21	0.60
J	1,285	2.15	1.07
K	1,285	1.19	0.60
Led Junior			
A	857	1.43	0.72
B	653	0.90	0.45
C	612	0.64	0.32
D	653	1.43	0.72
E	541	0.46	0.23

F	541	0.61	0.30
G	541	0.61	0.30
H	612	0.83	0.42
I	612	0.80	0.40
J	857	1.43	0.72
K	857	0.80	0.40
Junior Alone			
A	979	1.19	0.59
B	694	0.81	0.41
C	449	0.60	0.30
D	694	1.19	0.59
E	408	0.35	0.17
F	408	0.54	0.27
G	408	0.54	0.27
H	490	0.54	0.28
I	571	0.42	0.22
J	979	1.19	0.59
K	979	1.02	0.51

Table B – Fees and uplifts in trials which crack in the second or last third

Class of Offence	*Basic Fee (£)*	*Evidence uplift per page of prosecution evidence (pages 1 to 250) (£)*	*Evidence uplift per page of prosecution evidence (pages 251 to 1,000) (£)*	*Evidence uplift per page of prosecution evidence (pages 1,001 to 10,000) (£)*
QC				
A	2,324	5.07	1.27	1.68
B	1,743	3.20	0.80	1.06
C	1,520	2.27	0.57	0.75
D	1,743	5.07	1.27	1.68
E	1,232	1.63	0.41	0.54
F	1,232	2.14	0.54	0.71
G	1,232	2.14	0.54	0.71
H	1,540	2.93	0.73	0.96
I	1,598	2.87	0.71	0.94
J	2,324	5.07	1.27	1.68
K	2,324	2.83	0.71	0.94
Leading Junior				
A	1,744	3.80	0.95	1.26
B	1,307	2.40	0.60	0.80
C	1,140	1.70	0.43	0.56
D	1,307	3.80	0.95	1.26
E	924	1.22	0.31	0.41
F	924	1.60	0.41	0.53
G	924	1.60	0.41	0.53
H	1,155	2.20	0.54	0.72
I	1,198	2.14	0.53	0.71
J	1,744	3.80	0.95	1.26
K	1,744	2.13	0.53	0.71
Led Junior				
A	1,162	2.54	0.64	0.84

B	871	1.60	0.40	0.53
C	760	1.14	0.28	0.37
D	871	2.54	0.64	0.84
E	616	0.82	0.20	0.27
F	616	1.07	0.27	0.36
G	616	1.07	0.27	0.36
H	770	1.46	0.37	0.48
I	798	1.43	0.36	0.48
J	1,162	2.54	0.64	0.84
K	1,162	1.42	0.36	0.47
Junior Alone				
A	1,307	4.52	2.10	0.69
B	908	3.11	1.45	0.48
C	581	2.31	1.07	0.36
D	808	4.52	2.10	0.69
E	508	1.34	0.63	0.20
F	508	2.08	0.96	0.32
G	508	2.08	0.96	0.32
H	618	2.08	0.97	0.32
I	726	1.63	0.76	0.25
J	1,307	4.52	2.10	0.69
K	1,234	3.91	1.82	0.60

PART 4

Fixed Fee for Guilty Pleas and Cracked Trials

Scope of Part 4

9. This Part applies to a case committed or sent for trial to the Crown Court on the election of a defendant where the magistrates' court has determined the case to be suitable for summary trial.

Fixed fee for guilty pleas or cracked trials

10. The fee payable to an advocate in relation to a guilty plea or cracked trial to which this Part applies is £194 per proceedings.

PART 5

Fixed Fees

General provisions

11.—(1) All work undertaken by an advocate in a case to which Part 4 applies is included within the fee set out in paragraph 10 except for attendance at a confiscation hearing to which paragraph 14 applies.

(2) Except as provided under this Part, all work undertaken by an advocate in a case to which Part 3 applies is included within the basic fee (B) specified in the table following paragraph 5, or that following paragraph 8, as appropriate to—

(a) the offence for which the assisted person is tried;

(b) the category of advocate; and

(c) whether the case is a cracked trial, guilty plea or trial.

Fees for plea and case management hearings and standard appearances

12.—(1) The fee payable in respect of—

(a) an appearance by the trial advocate or substitute advocate at the first plea and case management hearing or pre-trial review; and

(b) up to four standard appearances by the trial advocate or substitute advocate,

is included within the basic fee (B) specified in the table following paragraph 5, or that following paragraph 8, as appropriate to the offence for which the assisted person is tried and the category of trial advocate.

(2) The fee payable in respect of an appearance by the trial advocate or substitute advocate at a plea and case management hearing or standard appearance not included in sub-paragraph (1) is specified in the table following paragraph 24 as appropriate to the category of trial advocate or substitute advocate.

(3) The fee payable for preparing and filing the plea and case management questionnaire where no oral hearing takes place is specified in the table following paragraph 24 as appropriate to the category of trial advocate or substitute advocate.

(4) This paragraph does not apply to a standard appearance which is or forms part of the main hearing in a case or to a hearing for which a fee is payable elsewhere under this Schedule.

Fees for abuse of process, disclosure, admissibility and withdrawal of plea hearings

13.—(1) This paragraph applies to—

(a) the hearing of an application to stay the case on indictment or any count on the ground that the proceedings constitute an abuse of the process of the court;

(b) any hearing relating to the question of whether any material should be disclosed by the prosecution to the defence or the defence to the prosecution (whether or not any claim to public interest immunity is made);

(c) the hearing of an application under section 2(1) of the Criminal Procedure (Attendance of Witnesses) Act 1965(**a**) (issue of witness summons on application to Crown Court) for disclosure of material held by third parties;

(d) any hearing relating to the question of the admissibility as evidence of any material; and

(e) the hearing of an application to withdraw a plea of guilty where the application is—

(i) made by an advocate other than the advocate who appeared at the hearing at which the plea of guilty was entered; and

(ii) unsuccessful.

(2) Where a hearing to which this paragraph applies is held on any day of the main hearing of a case on indictment, no separate fee is payable in respect of attendance at the hearing, but the hearing is included in the length of the main hearing for the purpose of calculating the fees payable.

(3) Where a hearing to which this paragraph applies is held prior to the first or only day of the main hearing, it is not included in the length of the main hearing for the purpose of calculating the fees payable and the trial advocate or substitute advocate must be remunerated for attendance at such a hearing—

(a) in respect of any day where the hearing begins before and ends after the luncheon adjournment, at the daily rate set out in the table following paragraph 24 as appropriate to the category of trial advocate or substitute advocate; or

(b) in respect of any day where the hearing begins and ends before the luncheon adjournment, or begins after the luncheon adjournment, at the half-daily rate set out in the

(a) 1965 c 69.

table following paragraph 24 as appropriate to the category of trial advocate or substitute advocate.

Fees for confiscation hearings

14.—(1) This paragraph applies to—

(a) a hearing under Part 2 of the Proceeds of Crime Act 2002(**a**) (confiscation: England and Wales);

(b) a hearing under section 2 of the Drug Trafficking Act 1994(**b**) (confiscation orders); and

(c) a hearing under section 71 of the Criminal Justice Act 1988(**c**) (confiscation orders).

(2) A hearing to which this paragraph applies is not included in the length of the main hearing or of any sentencing hearing for the purpose of calculating the fees payable, and the trial advocate or substitute advocate must be remunerated in respect of such a hearing—

(a) where the number of pages of evidence is fewer than 51, for attendance—

(i) in respect of any day when the hearing begins before and ends after the luncheon adjournment, at the daily rate set out in the first section of the table following this sub-paragraph; or

(ii) in respect of any day when the hearing begins and ends before the luncheon adjournment, or begins after the luncheon adjournment, at the half-daily rate set out in the first section of that table,

as appropriate to the category of trial advocate or substitute advocate;

(b) where the number of pages of evidence is between 51 and 1000—

(i) at the rates for the relevant number of pages set out in the second section of the table following this sub-paragraph; and

(ii) where the hearing lasts for more than one day, for attendance on subsequent days or half-days at the daily rate or half-daily rate set out in the first section of that table,

as appropriate to the category of trial advocate or substitute advocate; or

(c) where the number of pages of evidence exceeds 1000—

(i) at the rates for 751 to 1000 pages set out in the second section of the table following this sub-paragraph;

(ii) with such fee as the appropriate officer considers reasonable for preparation in respect of the pages in excess of 1000, at the hourly rates for preparation set out in the third section of that table; and

(iii) where the hearing lasts for more than one day, for attendance on subsequent days or half-days at the daily rate or half-daily rate set out in the first section of that table,

as appropriate to the category of trial advocate or substitute advocate.

Fees for confiscation hearings

	Fee for QC (£)	*Fee for Leading Junior (£)*	*Fee for Junior Alone (£)*	*Fee for Led Junior (£)*
1. Daily and half daily rates				
Half daily rate	260	195	130	130
Daily rate	497	346	238	238
2. Pages of evidence				

(a) 2002 c 29.
(b) 1994 c. 37.
(c) 1988 c. 33.

51-250	649	541	433	324
251-500	973	811	649	486
501-750	1,298	1,081	865	649
751-1000	1,946	1,622	1,298	973
3. Preparation hourly rates	74	56	39	39

(3) In sub-paragraph (2) "evidence" means—

(a) the statement of information served under section 16 of the Proceeds of Crime Act 2002 and relied on by the prosecution for the purposes of a hearing under Part 2 of that Act, or a similar statement served and so relied on for the purposes of a hearing under section 2 of the Drug Trafficking Act 1994 or under section 71 of the Criminal Justice Act 1988 and, in each case, any attached annexes and exhibits;

(b) any other document which—

(i) is served as a statement or an exhibit for the purposes of the trial;

(ii) is specifically referred to in, but not served with, a statement mentioned in paragraph (a); and

(iii) the prosecution state that they intend to rely on in the hearing; and

(c) any written report of an expert obtained with the prior authority of the Lord Chancellor under regulation 13 or allowed by the appropriate officer under these Regulations, and any attached annexes and exhibits, other than documents contained in such annexes or exhibits which have also been served under paragraph (a) or (b) or which consist of financial records or similar data.

Fees for sentencing hearings

15.—(1) This paragraph applies to a sentencing hearing following a case on indictment to which this Schedule applies, where sentence has been deferred under section 1 of the Powers of Criminal Courts (Sentencing) Act 2000(**a**) (deferment of sentence).

(2) The fee payable to an advocate for appearing at a hearing to which this paragraph applies is that set out in the table following paragraph 24 as appropriate to the category of trial advocate or substitute advocate and the circumstances of the hearing.

Fees for ineffective trials

16. The fee set out in the table following paragraph 24 as appropriate to the category of trial advocate is payable in respect of each day on which the case was listed for trial but did not proceed on the day for which it was listed, for whatever reason.

Fees for special preparation

17.—(1) This paragraph applies where, in any case on indictment in the Crown Court in respect of which a graduated fee is payable under Part 2 or Part 3—

(a) it has been necessary for an advocate to do work by way of preparation substantially in excess of the amount normally done for cases of the same type because the case involves a very unusual or novel point of law or factual issue;

(b) the number of pages of prosecution evidence, as defined in paragraph 1(2), exceeds 10,000 and the appropriate officer considers it reasonable to make a payment in excess of the graduated fee payable under this Schedule; or

(c) a documentary or pictorial exhibit is served by the prosecution in electronic form where—

(a) 2000 c. 6.

(i) the exhibit has never existed in paper form; and

(ii) the appropriate officer—

(aa) does not consider it appropriate to include the exhibit in the pages of prosecution evidence; and

(bb) considers it reasonable to make a payment in respect of the exhibit in excess of the graduated fee.

(2) Where this paragraph applies, a special preparation fee may be paid, in addition to the graduated fee payable under Part 2 or Part 3.

(3) The amount of the special preparation fee must be calculated—

(a) where sub-paragraph (1)(a) applies, from the number of hours preparation in excess of the amount the appropriate officer considers reasonable for cases of the same type;

(b) where sub-paragraph (1)(b) applies, from the number of hours which the appropriate officer considers reasonable to read the excess pages; and

(c) where sub-paragraph (1)(c) applies, from the number of hours which the appropriate officer considers reasonable to view the prosecution evidence,

and in each case using the hourly fee rates set out in the table following paragraph 24 as appropriate to the category of trial advocate.

(4) Any claim for a special preparation fee under this paragraph must be made by an instructed advocate, whether or not the instructed advocate did the work claimed for.

(5) An instructed advocate claiming a special preparation fee must supply such information and documents as may be required by the appropriate officer in support of the claim.

(6) In determining a claim under this paragraph, the appropriate officer must take into account all the relevant circumstances of the case, including, where special preparation work has been undertaken by more than one advocate, the benefit of such work to the trial advocate.

Fees for wasted preparation

18.—(1) A wasted preparation fee may be claimed where a trial advocate in any case to which this paragraph applies is prevented from representing the assisted person in the main hearing by any of the following circumstances—

(a) the trial advocate is instructed to appear in other proceedings at the same time as the main hearing in the case and has been unable to secure a change of date for either the main hearing or the other proceedings;

(b) the date fixed for the main hearing is changed by the court despite the trial advocate's objection;

(c) the trial advocate has withdrawn from the case with the leave of the court because of the trial advocate's professional code of conduct or to avoid embarrassment in the exercise of the trial advocate's profession;

(d) the trial advocate has been dismissed by the assisted person or the litigator; or

(e) the trial advocate is obliged to attend at any place by reason of a judicial office held by the trial advocate or other public duty.

(2) This paragraph applies to every case on indictment to which this Schedule applies provided that—

(a) the case goes to trial, and the trial lasts for five days or more; or

(b) the case is a cracked trial, and the number of pages of prosecution evidence exceeds 150.

(3) The amount of the wasted preparation fee must be calculated from the number of hours of preparation reasonably carried out by the trial advocate, using the hourly fee rates set out in the table following paragraph 24 as appropriate to the category of trial advocate, but no such fee is payable unless the number of hours of preparation is eight or more.

(4) Any claim for a wasted preparation fee under this paragraph must be made by an instructed advocate, whether or not the instructed advocate did the work claimed for.

(5) An instructed advocate claiming a wasted preparation fee must supply such information and documents as may be required by the appropriate officer as proof of the circumstances in which the instructed advocate was prevented from representing the assisted person and of the number of hours of preparation.

Fees for conferences and views

19.—(1) This paragraph applies to the following types of work—

(a) attendance by the trial advocate at pre-trial conferences with prospective or actual expert witnesses not held at court;

(b) attendance by the trial advocate at views at the scene of the alleged offence;

(c) attendance by the trial advocate at pre-trial conferences with the assisted person not held at court;

(d) reasonable travelling time by the trial advocate for the purpose of attending a view at the scene of the alleged offence; or

(e) reasonable travelling time by the trial advocate for the purpose of attending a pre-trial conference with the assisted person or prospective or actual expert witness, where the appropriate officer is satisfied that the assisted person or prospective or actual expert witness was unable or could not reasonably have been expected to attend a conference at the trial advocate's chambers or office.

(2) The fees payable in respect of attendance at the first three pre-trial conferences or views, as set out in sub-paragraph (1)(a) to (c), are included in the basic fee (B) specified in the table following paragraph 5, or that following paragraph 8, as appropriate to the offence for which the assisted person is tried, the category of trial advocate and whether the case is a guilty plea, cracked trial or trial, provided that the trial advocate satisfies the appropriate officer that the work was reasonably necessary.

(3) The fee specified in the table following paragraph 24 as appropriate to the category of trial advocate is payable in the following circumstances, provided that the trial advocate satisfies the appropriate officer that the work was reasonably necessary—

(a) for trials lasting not less than 21 and not more than 25 days, and cracked trials where it was accepted by the court at the plea and case management hearing that the trial would last not less than 21 days and not more than 25 days, one further pre-trial conference or view not exceeding two hours;

(b) for trials lasting not less than 26 and not more than 35 days, and cracked trials where it was accepted by the court at the plea and case management hearing that the trial would last not less than 26 days and not more than 35 days, two further pre-trial conferences or views each not exceeding two hours; and

(c) for trials lasting not less than 36 days, and cracked trials where it was accepted by the court at the plea and case management hearing that the trial would last not less than 36 days and not more than 40 days, three further pre-trial conferences or views each not exceeding two hours.

(4) Travel expenses must be paid for all conferences and views set out in sub-paragraph (1)(a) to (c), provided that the trial advocate satisfies the appropriate officer that they were reasonably incurred.

(5) Travelling time must be paid for all conferences and views set out in sub-paragraph (1)(a) to (c), provided that the trial advocate satisfies the appropriate officer that it was reasonable.

Fees for appeals, committals for sentence and breach hearings

20.—(1) Subject to sub-paragraphs (4) and (5) and paragraph 26 the fee payable to a trial advocate in any of the hearings referred to in paragraph 2(1)(b) is the fixed fee specified in the table following paragraph 24.

(2) Where a hearing referred to in paragraph 2(1)(b) is listed but cannot proceed because of the failure of the assisted person or a witness to attend, the unavailability of a pre-sentence report, or other good reason, the fee payable to the advocate is the fixed fee specified in the table following paragraph 24.

(3) Where—

(a) a bail application;

(b) a mention hearing; or

(c) any other application,

takes place in the course of a hearing referred to in paragraph 2(1)(b), the fee payable to the advocate is the fixed fee specified in the table following paragraph 24.

(4) Where it appears to the appropriate officer that the fixed fee allowed under sub-paragraph (1) would be inappropriate taking into account all of the relevant circumstances of the case the appropriate officer may instead allow fees of such amounts as appear to the appropriate officer to be reasonable remuneration for the relevant work in accordance with sub-paragraph (5).

(5) The appropriate officer may allow any of the following classes of fees to an advocate in respect of work allowed by the appropriate officer under this paragraph—

(a) a fee for preparation including, where appropriate, the first day of the hearing including, where they took place on that day—

(i) short conferences;

(ii) consultations;

(iii) applications and appearances (including bail applications);

(iv) views at the scene of the alleged offence; and

(v) any other preparation;

(b) a refresher fee for any day or part of a day for which a hearing continued, including, where they took place on that day—

(i) short conferences;

(ii) consultations;

(iii) applications and appearances (including bail applications);

(iv) views at the scene of the alleged offence; and

(v) any other preparation; and

(c) subsidiary fees for—

(i) attendance at conferences, consultations and views at the scene of the alleged offence not covered by paragraph (a) or (b);

(ii) written advice on evidence, plea, appeal, case stated or other written work; and

(iii) attendance at applications and appearances (including bail applications and adjournments for sentence) not covered by paragraph (a) or (b).

Fees for contempt proceedings

21.—(1) Subject to sub-paragraph (2), remuneration for advocates in proceedings referred to in section 14(g) of the Act in the Crown Court must be at the rates specified in the table following this sub-paragraph.

Category of advocate	*Payment rates (£ per day)*

QC	300
Leading Junior	225
Led Junior or Junior acting alone	150

(2) Where an advocate and a litigator are instructed in proceedings referred to in section 14(g) of the Act, remuneration must be at the rates specified in the table following this sub-paragraph, as appropriate to the category of advocate.

Category of advocate	*Payment rates (£ per day)*
QC	175
Leading Junior	125
Led Junior or Junior acting alone	100

Discontinuance or dismissal of sent or transferred proceedings

22.—(1) This paragraph applies to proceedings which are—

(a) sent for trial to the Crown Court; or

(b) transferred to the Crown Court under—

(i) section 4 of the Criminal Justice Act 1987 (transfer of serious fraud cases); or

(ii) section 53 of the Criminal Justice Act 1991 (transfer of certain cases involving children).

(2) Where proceedings referred to in sub-paragraph (1) are discontinued by a notice served under section 23A of the Prosecution of Offences Act 1985 (discontinuance of proceedings after accused has been sent for trial) at any time before the prosecution serves its evidence in accordance with the Crime and Disorder Act 1998 (Service of Prosecution Evidence) Regulations 2005(**a**) the advocate must be paid 50% of the basic fee (B) for a guilty plea, as specified in the table following paragraph 8 as appropriate to the offence for which the assisted person is charged and the category of advocate.

(3) Where proceedings referred to in sub-paragraph (1) are discontinued by a notice served under section 23A of the Prosecution of Offences Act 1985 (discontinuance of proceedings after accused has been sent for trial) at any time after the prosecution serves its evidence in accordance with the Crime and Disorder Act 1998 (Service of Prosecution Evidence) Regulations 2005, the advocate must be paid a graduated fee calculated in accordance with paragraph 7, as appropriate for representing an assisted person in a guilty plea.

(4) Sub-paragraph (5) applies to—

(a) a plea and case management hearing that takes place after the prosecution serves its evidence; and

(b) any other hearing that takes place before a plea and case management hearing has taken place but after the prosecution has served its evidence.

(5) Where, at a hearing to which this sub-paragraph applies—

(a) the prosecution offers no evidence and the assisted person is discharged; or

(b) the case is remitted to the magistrates' court in accordance with paragraph 10(3)(a), 13(2) or 15(3)(a) of Schedule 3 to the Crime and Disorder Act 1998,

the advocate instructed in the proceedings must be paid a graduated fee calculated in accordance with paragraph 7, as appropriate for representing an assisted person in a guilty plea.

(6) Where an application for dismissal is made under paragraph 2 of Schedule 3 to the Crime and Disorder Act 1998, section 6 of the Criminal Justice Act 1987 or paragraph 5 of Schedule 6 to the Criminal Justice Act 1991 (applications for dismissal), the advocate must be remunerated for attendance at the hearing of the application for dismissal—

(a) S.I. 2005/902 as amended by S.I. 2012/1345.

(a) in respect of any day where the hearing begins before and ends after the luncheon adjournment, at the daily rate set out in the table following paragraph 24 as appropriate to the category of advocate; or

(b) in respect of any day where the hearing begins and ends before the luncheon adjournment, or begins after the luncheon adjournment, at the half-daily rate set out in that table as appropriate to the category of advocate,

provided that a fee is not payable elsewhere under this Schedule in respect of any day of the hearing.

(7) Where an application for dismissal is made under paragraph 2 of Schedule 3 to the Crime and Disorder Act 1998, section 6 of the Criminal Justice Act 1987 or paragraph 5 of Schedule 6 to the Criminal Justice Act 1991, and—

(a) the charge, or charges, are dismissed and the assisted person is discharged; or

(b) the case is remitted to the magistrates' court in accordance with paragraph 10(3)(a), 13(2) or 15(3)(a) of Schedule 3 to the Crime and Disorder Act 1998,

in respect of the first day of the hearing of the application to dismiss, the advocate instructed in the proceedings must be paid a graduated fee calculated in accordance with paragraph 7, as appropriate for representing an assisted person in a guilty plea.

(8) Where an advocate represents more than one assisted person in proceedings referred to in sub-paragraph (1), the advocate must be paid a fixed fee of 20% of—

(a) the fee specified in sub-paragraph (2) where that sub-paragraph applies; or

(b) the basic fee (B) specified in the table following paragraph 8 where sub-paragraph (3), (4) or (5) applies, as appropriate for the circumstances set out in the relevant sub-paragraph,

in respect of each additional assisted person the advocate represents.

Noting brief fees

23. The fee payable to an advocate retained solely for the purpose of making a note of any hearing must be the daily fee set out in the table following paragraph 24.

Fixed fees

24. The table following this paragraph sets out the fixed fees payable in relation to the category of work specified in the first column of the table.

Fixed Fees

Category of work	*Paragraph providing for fee*	*Fee for QC (£)*	*Fee for Leading Junior (£)*	*Fee for Led Junior or Junior alone (£)*
Standard appearance	12(2)	173 per day	130 per day	87 per day
Paper plea and case management	12(3)	26 per case	26 per case	26 per case
Abuse of process hearing	13(1)(a) and 13(3)	260 half day 497 full day	195 half day 346 full day	130 half day 238 full day
Hearings relating to disclosure	13(1)(b), 13(1)(c) and 13(3)	260 half day 497 full day	195 half day 346 full day	130 half day 238 full day
Hearings relating to the admissibility of evidence	13(1)(d) and 13(3)	260 half day 497 full day	195 half day 346 full day	130 half day 238 full day
Hearings on withdrawal of guilty plea	13(1)(e) and 13(3)	260 half day 497 full day	195 half day 346 full day	130 half day 238 full day
Deferred sentencing hearing	15(2)	324 per day	238 per day	173 per day

Ineffective trial payment	16	281 per day	195 per day	130 per day
Special preparation	17	74 per hour	56 per hour	39 per hour
Wasted preparation	18	74 per hour	56 per hour	39 per hour
Conferences and views	19	74 per hour	56 per hour	39 per hour
Appeals to the Crown Court against conviction	20(1)	260 per day	195 per day	130 per day
Appeals to the Crown Court against sentence	20(1)	216 per day	151 per day	108 per day
Proceedings relating to breach of an order of the Crown Court	20(1)	216 per day	151 per day	108 per day
Committal for sentence	20(1)	260 per day	195 per day	130 per day
Adjourned appeals, committals for sentence and breach hearings	20(2)	173 per day	130 per day	87 per day
Bail applications, mentions and other applications in appeals, committals for sentence and breach hearings	20(3)	173 per day	130 per day	87 per day
Second and subsequent days of an application to dismiss	22(6)	260 half day 497 full day	195 half day 346 full day	130 half day 238 full day
Noting brief	24			108 per day
Hearing for mitigation of sentence	34	260 per day	173 per day	108 per day

PART 6

Miscellaneous

Identity of instructed advocate

25.—(1) Where an instructed advocate is appointed before the plea and case management hearing, the instructed advocate must notify the Court in writing as soon as the appointment is made and, where appropriate, must confirm whether the instructed advocate is the leading instructed advocate or the led instructed advocate.

(2) Where the section 16 determination provides for representation by a single advocate and no instructed advocate has been notified to the Court in accordance with sub-paragraph (1)—

(a) the barrister or solicitor advocate who attends the plea and case management hearing is deemed to be the instructed advocate; and

(b) the Court must make a written record of this fact.

(3) Where the section 16 determination provides for representation by a single advocate and no barrister or solicitor advocate attends the plea and case management hearing—

(a) the barrister or solicitor advocate who attends the next hearing in the case is deemed to be the instructed advocate; and

(b) the Court must make a written record of this fact.

(4) Where the section 16 determination provides for representation by more than one advocate, and no leading instructed advocate has been notified to the Court in accordance with sub-paragraph (1), the leading advocate who attends—

(a) the plea and case management hearing; or

(b) where no leading advocate attends the plea and case management hearing, the next hearing in the case attended by a leading advocate,

is deemed to be the leading instructed advocate, and the Court must make a written record of this fact.

(5) Where the section 16 determination provides for representation by more than one advocate, and no led instructed advocate has been notified to the Court in accordance with sub-paragraph (1), the led advocate who attends—

(a) the plea and case management hearing; or

(b) where no led advocate attends the plea and case management hearing, the next hearing in the case attended by a led advocate,

is deemed to be the led instructed advocate, and the Court must make a written record of this fact.

(6) Where a section 16 determination is amended after the plea and case management hearing to provide for representation by more than one advocate—

(a) the additional instructed advocate must notify the Court in writing of the additional instructed advocate's appointment within 7 days of the date on which the section 16 determination is amended; and

(b) each instructed advocate must notify the Court whether that instructed advocate is the leading instructed advocate or the led instructed advocate.

(7) Where no additional instructed advocate has been notified to the Court in accordance with sub-paragraph (6)(a), the advocate who attends the next hearing in the case is deemed to be an instructed advocate and the Court must record in writing whether that instructed advocate is the leading instructed advocate or the led instructed advocate, as appropriate to the circumstances of the case.

(8) Where—

(a) a case ceases to be a Very High Cost Case (in relation to fees claimed by advocates); and

(b) none of sub-paragraphs (1) to (7) applies,

the instructed advocate must notify the Court in writing of the instructed advocate's appointment within 7 days of the case ceasing to be a Very High Cost Case.

(9) The Court must attach—

(a) any notice received under sub-paragraph (1), (6) or (8); and

(b) any record made by it under sub-paragraph (2), (3), (4), (5) or (7),

to the representation order.

(10) An instructed advocate must remain as instructed advocate at all times, except where—

(a) a date for trial is fixed at or before the plea and case management hearing and the instructed advocate is unable to conduct the trial due to the instructed advocate's other pre-existing commitments;

(b) the instructed advocate is dismissed by the assisted person or the litigator; or

(c) the instructed advocate is required to withdraw because of his professional code of conduct.

(11) Where, in accordance with sub-paragraph (10), an instructed advocate withdraws, the instructed advocate must—

(a) immediately notify the court of the withdrawal—

(i) in writing; or

(ii) where the withdrawal takes place at a plea and case management hearing, orally; and

(b) within 7 days of the date of the withdrawal, notify the court in writing of the identity of a replacement instructed advocate, who must fulfil all the functions of an instructed advocate in accordance with these Regulations.

(12) This paragraph does not apply to a claim for fees under paragraph 32, 33 or 34.

Payment of fees to instructed advocate

26.—(1) In accordance with regulation 23 the appropriate officer must notify each instructed advocate of the total fees payable and authorise payment to the instructed advocate accordingly.

(2) Payment of the fees in accordance with sub-paragraph (1) must be made to each instructed advocate.

(3) Where the section 16 determination provides for representation by a single advocate, the instructed advocate is responsible for arranging payment of fees to the trial advocate and any substitute advocate who has undertaken work on the case.

(4) Where there are two instructed advocates for an assisted person, payment must be made to each instructed advocate individually, and—

(a) the leading instructed advocate is responsible for arranging payment of fees to the trial advocate and any substitute advocate who have undertaken work on the case of a type for which a leading advocate is responsible; and

(b) the led instructed advocate is responsible for arranging payment of fees to the trial advocate and any substitute advocate who have undertaken work on the case of a type for which a led advocate is responsible.

(5) This paragraph does not apply to a claim for fees under paragraph 32, 33 or 34.

Additional charges and additional cases

27.—(1) Where an assisted person is charged with more than one offence on one indictment, the fee payable to the trial advocate under this Schedule must be based on whichever of those offences the trial advocate selects.

(2) Where two or more cases to which this Schedule applies involving the same trial advocate are heard concurrently (whether involving the same or different assisted persons)—

(a) the trial advocate must select one case ("the principal case"), which must be treated for the purposes of remuneration in accordance with this Schedule;

(b) in respect of the main hearing in each of the other cases the trial advocate must be paid a fixed fee of 20% of—

(i) the basic fee (B) specified in the table following paragraph 5 or that following paragraph 8, as appropriate, for the principal case, where that is a case falling within paragraph 2(1)(a); or

(ii) the fixed fee for the principal case, where that is a case falling within paragraph 2(1)(b) or paragraph 10.

(3) Nothing in sub-paragraphs (4) to (6) permits a fixed fee under Part 5, other than one to which paragraph 14 applies, to be paid in a case to which Part 4 applies.

(4) Where a trial advocate or substitute advocate appears at a hearing specified in paragraph 12, 13, 14, 15 or 16, forming part of two or more cases involving different assisted persons, the trial advocate or substitute advocate must be paid—

(a) in respect of the first such case, the fixed fee for that hearing specified in the table following paragraph 24; and

(b) in respect of each of the other cases, 20% of that fee.

(5) Subject to sub-paragraphs (1) to (4), where a trial advocate or substitute advocate appears at a hearing forming part of two or more cases, the trial advocate or substitute advocate must be paid the fixed fee for that hearing specified in the table following paragraph 24 in respect of one such case, without any increase in respect of the other cases.

(6) Where a trial advocate selects—

(a) one offence, in preference to another offence, under sub-paragraph (1); or

(b) one case as the principal case, in preference to another case, under sub-paragraph (2),

that selection does not affect the trial advocate's right to claim any of the fees set out in the table following paragraph 24 to which the trial advocate would otherwise have been entitled.

Multiple advocates

28. Where a section 16 determination provides for representation by three advocates in a case the provisions of this Schedule apply, and the fees payable to the led juniors in accordance with Part 2 or Part 3 are payable to each led junior who is instructed in the case.

Non-local appearances

29. Where an advocate is instructed to appear in a court which is not within 40 kilometres of the advocate's office or chambers, the appropriate officer may allow an amount for travelling and other expenses incidental to that appearance, provided that the amount must not be greater than the amount, if any, which would be payable to a trial advocate from the nearest local Bar or the nearest advocate's office (whichever is the nearer) unless the advocate instructed to appear has obtained prior approval under regulation 13 for the incurring of such expenses or can justify the attendance having regard to all the relevant circumstances of the case.

Trials lasting over 40 days

30. Where a trial exceeds 40 days, the trial advocate must be paid a fee as set out in the table following this paragraph, as appropriate to the category of trial advocate and the Class of Offence, for each day by which the trial exceeds 40 days on which the trial advocate attends at court.

Daily rates payable where a trial lasts over 40 days

Class of Offence	*Daily rate payable for days 41-50 (£)*	*Daily rate payable for days 51 and over (£)*
QC		
A	387	414
B	387	414
C	387	414
D	387	414
E	387	414
F	387	414
G	387	414
H	387	414
I	387	414
J	387	414
K	387	414
Leading Junior		
A	331	356
B	331	356
C	331	356
D	331	356
E	331	356
F	331	356
G	331	356
H	331	356
I	331	356
J	331	356
K	331	356
Led Junior		
A	221	237

B	221	237
C	221	237
D	221	237
E	221	237
F	221	237
G	221	237
H	221	237
I	221	237
J	221	237
K	221	237
Junior Alone		
A	266	285
B	247	265
C	247	265
D	266	285
E	225	241
F	225	241
G	225	241
H	247	265
I	247	265
J	266	285
K	266	285

Assisted person unfit to plead or stand trial

31. Where in any case a hearing is held to determine the question of whether the assisted person is unfit to plead or to stand trial (a "fitness hearing")—

(a) if a trial on indictment is held, or continues, at any time thereafter, the length of the fitness hearing is included in determining the length of the trial for the calculation of the graduated fee in accordance with Part 2 or Part 3;

(b) if a trial on indictment is not held, or does not continue, thereafter by reason of the assisted person being found unfit to plead or to stand trial, the trial advocate must be paid—

(i) a graduated fee calculated in accordance with paragraph 4 as appropriate to the combined length of—

(aa) the fitness hearing; and

(bb) any hearing under section 4A of the Criminal Procedure (Insanity) Act 1964(a) (finding that the accused did the act or made the omission charged against him); or

(ii) a graduated fee calculated in accordance with paragraph 7 as appropriate for representing an assisted person in a cracked trial,

whichever the trial advocate elects; and

(c) if at any time the assisted person pleads guilty to the indictable offence, the trial advocate must be paid either—

(i) a graduated fee calculated in accordance with paragraph 4 as appropriate to the length of the fitness hearing; or

(ii) a graduated fee calculated in accordance with paragraph 7 as appropriate for representing an assisted person in a guilty plea,

(a) 1964 c. 84, as amended by section 2 of the Criminal Procedure (Insanity and Unfitness to Plead) Act 1991 (c. 25) and section 22 of the Domestic Violence Crime and Victims Act 2004 (c. 28).

whichever the trial advocate elects.

Cross examination of witness

32.—(1) Where in any case on indictment an advocate is retained solely for the purpose of cross-examining a witness under section 38 of the Youth Justice and Criminal Evidence Act 1999(a) (defence representation for purposes of cross-examination), the advocate must be paid a graduated fee calculated in accordance with paragraph 4.

(2) For the purposes of this paragraph the daily attendance fee (D) is as set out in the table following paragraph 5 as appropriate to the number of days of attendance at court by the advocate.

Provision of written or oral advice

33.—(1) Where in any case on indictment an advocate is assigned pursuant to a section 16 determination solely for the purpose of providing written or oral advice, the advocate must be paid for the reasonable number of hours of preparation for that advice using the hourly fee rates for special preparation set out in the table following paragraph 24 as appropriate to the category of trial advocate.

(2) An advocate claiming a fee for advice under this paragraph may apply to the appropriate officer to redetermine the fee under regulation 28 and the advocate must supply such information and documents as may be required by the appropriate officer as proof of the number of hours of preparation.

Mitigation of sentence

34.—(1) Where in any case on indictment an advocate is assigned pursuant to a section 16 determination to appear at a sentencing hearing solely for the purpose of applying to the court to mitigate the assisted person's sentence, the advocate must be paid in respect of that appearance the fee specified in the table following paragraph 24 together with a fee calculated from the reasonable number of hours of preparation for that appearance using the hourly fee rates for special preparation set out in the table following paragraph 24 as appropriate to the category of trial advocate.

(2) An advocate claiming an hourly preparation fee under this paragraph may apply to the appropriate officer to redetermine such hourly fee under regulation 28 and the advocate must supply such information and documents as may be required by the appropriate officer as proof of the number of hours of preparation.

PART 7

Table of Offences

Offence	*Contrary to*	*Year and Chapter*
Class A: Homicide and related grave offences		
Murder	Common law	
Manslaughter	Common law	
Soliciting to commit murder	Offences against the Person Act 1861, s.4	1861 c. 100
Child destruction	Infant Life (Preservation) Act 1929, s.1(1)	1929 c. 34
Infanticide	Infanticide Act 1938, s.1(1)	1938 c. 36

(a) 1999 c. 23.

Causing explosion likely to endanger life or property	Explosive Substances Act 1883, s.2	1883 c. 3
Attempt to cause explosion, making or keeping explosives etc.	Explosive Substances Act 1883, s.3	As above
Class B: Offences involving serious violence or damage, and serious drug offences		
Endangering the safety of an aircraft	Aviation Security Act 1982, s.2(1)(b)	1982 c. 36
Racially aggravated arson (not endangering life)	Crime and Disorder Act 1998, s.30(1)	1998 c. 37
Kidnapping	Common law	
False imprisonment	Common law	
Aggravated criminal damage	Criminal Damage Act 1971, s.1(2)	1971 c. 48
Aggravated arson	Criminal Damage Act 1971, s.1(2), (3)	As above
Arson (where value exceeds £30,000)	Criminal Damage Act 1971, s.1(3)	As above
Possession of firearm with intent to endanger life	Firearms Act 1968, s.16	1968 c. 27
Use of firearm to resist arrest	Firearms Act 1968, s.17	As above
Possession of firearm with criminal intent	Firearms Act 1968, s.18	As above
Possession or acquisition of certain prohibited weapons etc.	Firearms Act 1968, s.5	As above
Aggravated burglary	Theft Act 1968, s.10	1968 c. 60
Armed robbery	Theft Act 1968, s.8(1)	As above
Assault with weapon with intent to rob	Theft Act 1968, s.8(2)	As above
Blackmail	Theft Act 1968, s.21	As above
Riot	Public Order Act 1986, s.1	1986 c. 64
Violent disorder	Public Order Act 1986, s.2	As above
Contamination of good with intent	Public Order Act 1986, s.38	As above
Causing death by dangerous driving	Road Traffic Act 1988, s.1	1988 c. 52
Causing death by careless driving while under the influence of drink or drugs	Road Traffic Act 1988, s.3A	As above
Aggravated vehicle taking resulting in death	Theft Act 1968, s.12A	1968 c. 60
Causing danger to road users	Road Traffic Act 1988, s.22A	1988 c. 52
Attempting to choke, suffocate, strangle etc.	Offences against the Person Act 1861, s.21	1861 c. 100
Causing miscarriage by poison, instrument	Offences against the Person Act 1861, s.58	As above
Making threats to kill	Offences against the Person Act 1861, s.16	As above
Wounding or grievous bodily harm with intent to cause grievous bodily harm etc.	Offences against the Person Act 1861, s.18	As above
Endangering the safety of railway passengers	Offences against the Person Act 1861, ss. 32, 33, 34	As above
Impeding persons endeavouring to escape wrecks	Offences against the Person Act 1861, s.17	As above
Administering chloroform, laudanum etc.	Offences against the Person Act 1861, s.22	As above
Administering poison etc. so as to endanger life	Offences against the Person Act 1861, s.23	As above
Cruelty to persons under 16	Children and Young	1933 c. 12

	Persons Act 1933, s.1	
Aiding and abetting suicide	Suicide Act 1961, s.2	1961 c. 60
Prison mutiny	Prison Security Act 1992, s.1	1992 c. 25
Assaulting prison officer whilst possessing firearm etc.	Criminal Justice Act 1991, s.90	1991 c. 53
Producing or supplying a Class A or B drug	Misuse of Drugs Act 1971, s.4	1971 c. 38
Possession of a Class A or B drug with intent to supply	Misuse of Drugs Act 1971, s.5(3)	As above
Manufacture and supply of scheduled substances	Criminal Justice (International Co-operation) Act 1990, s.12	1990 c. 5
Fraudulent evasion of controls on Class A and B drugs	Customs and Excise Management Act 1979, s.170(2)(b), (c)	1979 c. 2
Illegal importation of Class A and B drugs	Customs and Excise Management Act 1979, s.50	As above
Offences in relation to proceeds of drug trafficking	Drug Trafficking Act 1994, ss. 49, 50, 51	1994 c. 37
Offences in relation to money laundering investigations	Drug Trafficking Act 1994, ss. 52, 53	As above
Practitioner contravening drug supply regulations	Misuse of Drugs Act 1971, ss. 12, 13	1971 c. 38
Cultivation of cannabis plant	Misuse of Drugs Act 1971, s.6	As above
Occupier knowingly permitting drugs offences etc.	Misuse of Drugs Act 1971, s.8	As above
Activities relating to opium	Misuse of Drugs Act 1971, s.9	As above
Drug trafficking offences at sea	Criminal Justice (International Co-operation) Act 1990, s.18	1990 c. 5
Firing on Revenue vessel	Customs and Excise Management Act 1979, s.85	1979 c. 2
Making or possession of explosive in suspicious circumstances	Explosive Substances Act 1883, s.4(1)	1883 c. 3
Causing bodily injury by explosives	Offences against the Person Act 1861, s.28	1861 c. 100
Using explosive or corrosives with intent to cause grievous bodily harm	Offences against the Person Act 1861, s.29	As above
Hostage taking	Taking of Hostages Act 1982, s.1	1982 c. 28
Offences against international protection of nuclear material	Nuclear Material (Offences) Act 1983, s.2	1983 c. 18
Placing explosives with intent to cause bodily injury	Offences against the Person act 1861, s.30	1861 c. 100
Membership of proscribed organisations	Terrorism Act 2000, s.11	2000 c. 11
Support or meeting of proscribed organisations	Terrorism Act 2000, s.12	As above
Uniform of proscribed organisations	Terrorism Act 2000, s.13	As above
Fund raising for terrorism	Terrorism Act 2000, s.15	As above
Other offences involving money or property to be used for terrorism	Terrorism Act 2000, ss.16-18	As above

Disclosure prejudicing, or interference of material relevant to, investigation of terrorism	Terrorism Act 2000, s.39	As above
Weapons training	Terrorism Act 2000, s.54	As above
Directing terrorist organisation	Terrorism Act 2000, s.56	As above
Possession of articles for terrorist purposes	Terrorism Act 2000, s.57	As above
Unlawful collection of information for terrorist purposes	Terrorism Act 2000, s.58	As above
Incitement of terrorism overseas	Terrorism Act 2000, s.59	As above
Concealing criminal property	Proceeds of Crime Act 2002, s.327	2002 c. 29
Involvement in arrangements facilitating the acquisition, retention, use or control of criminal property	Proceeds of Crime Act 2002, s.328	As above
Acquisition, use or possession of criminal property	Proceeds of Crime Act 2002, s.329	As above
Failure to disclose knowledge or suspicion of money laundering: regulated sector	Proceeds of Crime Act 2002, s.330	As above
Failure to disclose knowledge or suspicion of money laundering: nominated officers in the regulated sector	Proceeds of Crime Act 2002, s.331	As above
Failure to disclose knowledge or suspicion of money laundering: other nominated officers	Proceeds of Crime Act 2002, s.332	As above
Tipping off	Proceeds of Crime Act 2002, s.333	As above
Disclosure under sections 330, 331, 332 or 333 of the Proceeds of Crime Act 2002 otherwise than in the form and manner prescribed	Proceeds of Crime Act 2002, s.339(1A)	As above
Causing or allowing the death of a child	Domestic Violence, Crime and Victims Act 2004, s.5	2004 c. 28
Class C: Lesser offences involving violence or damage and less serious drugs offences		
Racially aggravated assault	Crime and Disorder Act 1998, s.29(1)	1998 c. 37
Racially aggravated criminal damage	Crime and Disorder Act 1998, s.30(1)	As above
Robbery (other than armed robbery)	Theft Act 1968, s.8(1)	1968 c. 60
Unlawful wounding	Offences against the Person Act 1861, s.20	1861 c. 100
Assault occasioning actual bodily harm	Offences against the Person Act 1861, s.47	As above
Concealment of birth	Offences against the Person Act 1861, s.60	As above
Abandonment of children under two	Offences against the Person Act 1861, s.27	As above
Arson (other than aggravated arson) where value does not exceed £30,000	Criminal Damage Act 1971, s.1(3)	1971 c. 48
Criminal damage (other than aggravated criminal damage)	Criminal Damage Act 1971, s.1(1)	As above
Possession of firearm without certificate	Firearms Act 1968 s.1	1968 c. 27
Carrying loaded firearm in public place	Firearms Act 1968, s.19	As above
Trespassing with a firearm	Firearms Act 1968, s.20	As above
Shortening of shotgun or possession of shortened shotgun	Firearms Act 1968 s.4	As above
Shortening of smooth bore gun	Firearms Amendment Act 1988, s.6(1)	1988 c. 45
Possession or acquisition of shotgun without	Firearms Act 1968, s.2	1968 c. 27

certificate		
Possession of firearms by person convicted of crime	Firearms Act 1968, s.21(4)	As above
Acquisition by or supply of firearms to person denied them	Firearms Act 1968, s.21(5)	As above
Dealing in firearms	Firearms Act 1968, s.3	As above
Failure to comply with certificate when transferring firearm	Firearms Act 1968, s.42	As above
Permitting an escape	Common law	
Rescue	Common law	
Escape from lawful custody without force	Common law	
Breach of prison	Common law	
Harbouring escaped prisoners	Criminal Justice Act 1961, s.22	1961 c. 39
Assisting prisoners to escape	Prison Act 1952, s.39	1952 c. 52
Fraudulent evasion of agricultural levy	Customs and Excise Management Act 1979, s.68A(1) and (2)	1979 c. 2
Offender armed or disguised	Customs and Excise Management Act 1979, s.86	As above
Making threats to destroy or damage property	Criminal Damage Act 1971, s.2	1971 c. 48
Possessing anything with intent to destroy or damage property	Criminal Damage Act 1971, s.3	As above
Child abduction by connected person	Child Abduction Act 1984, s.1	1984 c. 37
Child abduction by other person	Child Abduction Act 1984, s.2	As above
Bomb hoax	Criminal Law Act 1977, s.51	1977 c. 45
Producing or supplying Class C drug	Misuse of Drugs Act 1971, s.4	1971 c. 38
Possession of a Class C drug with intent to supply	Misuse of Drugs Act 1971 s.5(3)	As above
Fraudulent evasion of controls on Class C drugs	Customs and Excise Management Act 1979, s.170(2)(b),(c)	1979 c. 2
Illegal importation of Class C drugs	Customs and Excise Management Act 1979, s.50	As above
Possession of Class A drug	Misuse of Drugs Act 1971, s.5(2)	1971 c. 38
Failure to disclose knowledge or suspicion of money laundering	Drug Trafficking Offences Act 1986, s.26B	1986 c. 32
Tipping off in relation to money laundering investigations	Drug Trafficking Offences Act 1986, s.26C	As above
Assaults on officers saving wrecks	Offences against the Person Act 1861, s.37	1861 c. 100
Attempting to injure or alarm the Sovereign	Treason Act 1842, s.2	1842 c. 51
Assisting illegal entry or harbouring persons	Immigration Act 1971, s.25	1971 c. 77
Administering poison with intent to injure etc.	Offences against the Person Act 1861, s.24	1861 c. 100
Neglecting to provide food for or assaulting servants etc.	Offences against the Person Act 1861, s.26	As above
Setting spring guns with intent to inflict grievous	Offences against the	As above

bodily harm	Person Act 1861, s.31	
Supplying instrument etc. to cause miscarriage	Offences against the Person Act 1861, s.59	As above
Failure to disclose information about terrorism	Terrorism Act 2000, s.19	2000 c. 11
Circumcision of females	Prohibition of Female Circumcision Act 1985, s.1	1985 c. 38
Breaking or injuring submarine telegraph cables	Submarine Telegraph Act 1885, s.3	1885 c. 49
Failing to keep dogs under proper control resulting in injury	Dangerous Dogs Act 1991, s.3	1991 c. 65
Making gunpowder etc. to commit offences	Offences against the Person Act 1861, s.64	1861 c. 100
Stirring up racial hatred	Public Order Act 1986, ss.18-23	1986 c. 64
Class D: Sexual offences and offences against children		
Administering drugs to obtain intercourse	Sexual Offences Act 1956, s.4	1956 c. 69
Procurement of a defective	Sexual Offences Act 1956, s.9	As above
Incest other than by man with a girl under 13	Sexual Offences Act 1956, s.10, 11	As above
Gross indecency between male of 21 or over and male under 16	Sexual Offences Act 1956, s.13	As above
Indecent assault on a woman	Sexual Offences Act 1956, s.14	As above
Indecent assault on a man	Sexual Offences Act 1956, s.15	As above
Abuse of position of trust	Sexual Offences (Amendment) Act 2000, s.3	2000 c. 44
Man living on earnings of prostitution	Sexual Offences Act 1956, s.30	1956 c. 69
Woman exercising control over prostitute	Sexual Offences Act 1956, s.31	As above
Living on earnings of male prostitution	Sexual Offences Act 1967, s.5	1967 c. 60
Incitement to commit incest	Criminal Law Act 1977, s.54	1977 c. 45
Ill-treatment of persons of unsound mind	Mental Health Act 1983, s.127	1983 c. 20
Abduction of unmarried girl under 18 from parent	Sexual Offences Act 1956, s.19	1956 c. 69
Abduction of defective from parent	Sexual Offences Act 1956, s.21	As above
Procuration of girl under 21	Sexual Offences Act 1956, s.23	As above
Permitting defective to use premises for intercourse	Sexual Offences Act 1956, s.27	As above
Causing or encouraging prostitution of defective	Sexual Offences Act 1956, s.29	As above
Sexual assault	Sexual Offences Act 2003, s.3	2003 c. 42
Causing sexual activity without penetration	Sexual Offences Act 2003, s.4	As above
Engaging in sexual activity in the presence of a child	Sexual Offences Act 2003,	As above

	s.11	
Causing a child to watch a sexual act	Sexual Offences Act 2003, s.12	As above
Child sex offence committed by person under 18	Sexual Offences Act 2003, s.13	As above
Meeting child following sexual grooming	Sexual Offences Act 2003, s.15	As above
Abuse of trust: sexual activity with a child	Sexual Offences Act 2003, s.16	As above
Abuse of position of trust: causing a child to engage in sexual activity	Sexual Offences Act 2003, s.17	As above
Abuse of trust: sexual activity in the presence of a child	Sexual Offences Act 2003, s.18	As above
Abuse of position of trust: causing a child to watch sexual activity	Sexual Offences Act 2003, s.19	As above
Engaging in sexual activity in the presence of a person with a mental disorder	Sexual Offences Act 2003, s.32	As above
Causing a person with a mental disorder to watch a sexual act	Sexual Offences Act 2003, s.33	As above
Engaging in sexual activity in the presence of a person with a mental disorder	Sexual Offences Act 2003, s.36	As above
Causing a person with a mental disorder to watch a sexual act	Sexual Offences Act 2003, s.37	As above
Care workers: sexual activity in presence of a person with a mental disorder	Sexual Offences Act 2003, s.40	As above
Care workers: causing a person with a mental disorder to watch a sexual act	Sexual Offences Act 2003, s.41	As above
Causing or inciting prostitution for gain	Sexual Offences Act 2003, s.52	As above
Controlling prostitution for gain	Sexual Offences Act 2003, s.53	As above
Administering a substance with intent	Sexual Offences Act 2003, s.61	As above
Committing offence with intent to commit sexual offence	Sexual Offences Act 2003, s.62	As above
Trespass with intent to commit sexual offence	Sexual Offences Act 2003, s.63	As above
Sex with adult relative	Sexual Offences Act 2003, ss.64,65	As above
Exposure	Sexual Offences Act 2003, s.66	As above
Voyeurism	Sexual Offences Act 2003, s.67	As above
Intercourse with an animal	Sexual Offences Act 2003, s.69	As above
Sexual penetration of a corpse	Sexual Offences Act 2003, s.70	As above
Class E: Burglary etc.		
Burglary (domestic)	Theft Act 1968, s.9(3)(a)	1968 c. 60
Going equipped to steal	Theft Act 1968, s.25	As above
Burglary (non-domestic)	Theft Act 1968, s.9(3)(b)	As above
Classes F G and K: Other offences of dishonesty		
The following offences are always in Class F		
Destruction of registers of birth etc.	Forgery Act 1861, s.36	1861 c. 98
Making false entries in copies of registers sent to the	Forgery Act 1861, s.37	As above

registrar		
Possession (with intention) of false identity documents	Identity Cards Act 2006, s.25(1)	2006 c. 15
Possession (with intention) of apparatus or material for making false identity documents	Identity Cards Act 2006, s.25(3)	As above
Possession (without reasonable excuse) of false identity documents or apparatus or material for making false identity documents	Identity Cards Act 2006, s.25(5)	As above
The following offences are always in Class G		
Undischarged bankrupt being concerned in a company	Insolvency Act 1986, s.360	1986 c. 45
Counterfeiting notes and coins	Forgery and Counterfeiting Act 1981, s.14	1981 c. 45
Passing counterfeit notes and coins	Forgery and Counterfeiting Act 1981, s.15	As above
Offences involving custody or control of counterfeit notes and coins	Forgery and Counterfeiting Act 1981, s.16	As above
Making, custody or control of counterfeiting materials etc.	Forgery and Counterfeiting Act 1981, s.175	As above
Illegal importation: counterfeit notes or coins	Customs and Excise Management Act 1979, s.50	1979 c. 2
Fraudulent evasion: counterfeit notes or coins	Customs and Excise Management Act 1979, s.170(2)(b),(c)	As above
The following offences are in Class G if the value involved exceeds £30,000, Class K if the value exceeds £100,000 and in Class F otherwise		
VAT offences	Value Added Tax Act 1994, s.72(1) to (8)	1994 c. 23
Fraudulent evasion of duty	Customs and Excise Management Act 1979, s.170(1)(b)	1979 c. 2
Theft	Theft Act 1968, s.1	1968 c. 60
Removal of articles from places open to the public	Theft Act 1968, s.11	As above
Abstraction of electricity	Theft Act 1968, s.13	As above
Obtaining property by deception	Theft Act 1968, s.15	As above
Obtaining pecuniary advantage by deception	Theft Act 1968, s.16	As above
False accounting	Theft Act 1968, s.17	As above
Handling stolen goods	Theft Act 1968, s.22	As above
Obtaining services by deception	Theft Act 1978, s.1	1978 c. 31
Evasion of liability by deception	Theft Act 1978, s.2	As above
Illegal importation: not elsewhere specified	Customs and Excise Management Act 1979, s.50	1979 c. 2
Counterfeiting Customs documents	Customs and Excise Management Act 1979, s.168	As above
Fraudulent evasion: not elsewhere specified	Customs and Excise Management Act 1979, s.170(2)(b),(c)	As above
Forgery	Forgery and Counterfeiting Act 1981, s.1	1981 c. 45
Copying false instrument with intent	Forgery and Counterfeiting Act 1981, s.2	As above

Using a false instrument	Forgery and Counterfeiting Act 1981, s.3	As above
Using a copy of a false instrument	Forgery and Counterfeiting Act 1981, s.4	As above
Custody of control of false instruments etc.	Forgery and Counterfeiting Act 1981, s.5	As above
Offences in relation to dies or stamps	Stamp Duties Management Act 1891, s.13	1891 c. 38
Counterfeiting of dies or marks	Hallmarking Act 1973, s.6	1973 c. 43
Fraud by false representation	Fraud Act 2006, s.2	2006 c. 35
Fraud by failing to disclose information	Fraud Act 2006, s.3	As above
Fraud by abuse of position	Fraud Act 2006, s.4	As above
Possession etc. of article for use in frauds	Fraud Act 2006, s.6	As above
Making or supplying articles for use in frauds	Fraud Act 2006, s.7	As above
Participation in fraudulent business carried on by a sole trader etc.	Fraud Act 2006, s.9	As above
Obtaining services dishonestly	Fraud Act 2006, s.11	As above
Class H: Miscellaneous other offences		
Breach of anti-social behaviour order	Crime and Disorder Act 1998, s.1(10)	1998 c. 37
Breach of sex offender order	Crime and Disorder Act 1998, s.2(8)	As above
Racially aggravated public order offence	Crime and Disorder Act 1998, s.31(1)	As above
Racially aggravated harassment/putting another in fear of violence	Crime and Disorder Act 1998, s.32(1)	As above
Having an article with a blade or point in a public place	Criminal Justice Act 1988, s.39	1988 c. 33
Breach of harassment injunction	Protection from Harassment Act 1997, s.3(6)	1997 c. 40
Putting people in fear of violence	Protection from Harassment Act 1997, s.4(1)	As above
Breach of restraining order	Protection from Harassment Act 1997, s.5(5)	As above
Being drunk on an aircraft	Air Navigation Order 2005, article 75	SI 2005/1970
Possession of offensive weapon	Prevention of Crime Act 1953, s.1	1953 c. 14
Affray	Public Order Act 1986, s.3	1986 c. 64
Assault with intent to resist arrest	Offences against the Person Act 1861, s.38	1861 c. 100
Unlawful eviction and harassment of occupier	Protection from Eviction Act 1977, s.1	1977 c. 43
Obscene articles intended for publication for gain	Obscene Publications Act 1964, s.1	1964 c. 74
Gross indecency between males (other than where one is 21 or over and the other is under 16)	Sexual Offences Act 1956, s.13	1956 c. 69
Solicitation for immoral purposes	Sexual Offences Act 1956, s.32	As above
Buggery of males of 16 or over otherwise than in private	Sexual Offences Act 1956, s.12	As above
Acts outraging public decency	Common law	

Offences of publication of obscene matter	Obscene Publications Act 1959, s.2	1959 c. 66
Keeping a disorderly house	Common law: Disorderly Houses Act 1751, s.8	1751 c. 36
Indecent display	Indecent Displays (Control) Act 1981, s.1	1981 c. 42
Presentation of obscene performance	Theatres Act 1968, s.2	1968 c. 54
Procurement of intercourse by threats etc.	Sexual Offences Act 1956, s.2	1956 c. 69
Causing prostitution of women	Sexual Offences Act 1956, s.22	As above
Detention of woman in brothel or other premises	Sexual Offences Act 1956, s.24	As above
Procurement of a woman by false pretences	Sexual Offences Act 1956, s.3	As above
Procuring others to commit homosexual acts	Sexual Offences Act 1967, s.4	1967 c. 60
Trade description offences (9 offences)	Trade Descriptions Act 1968, ss.1, 8, 9, 12, 13, 14	1968 c. 29
Misconduct endangering ship or persons on board ship	Merchant Shipping Act 1970, s.27	1970 c. 36
Obstructing engine or carriage on railway	Malicious Damage Act 1861, s.36	1861 c. 97
Offences relating to the safe custody of controlled drugs	Misuse of Drugs Act 1971, s.11	1971 c. 38
Possession of Class B or Class C drug	Misuse of Drugs Act 1971, s.5(2)	As above
Wanton or furious driving	Offences against the Person Act 1861, s.35	1861 c. 100
Dangerous driving	Road Traffic Act 1988, s.2	1988 c. 52
Forgery and misuse of driving documents	Public Passenger Vehicles Act 1981, s.65	1981 c. 14
Forgery of driving documents	Road Traffic Act 1960, s.233	1960 c. 16
Forgery etc. of licences and other documents	Road Traffic Act 1988, s.173	1988 c. 52
Mishandling or falsifying parking documents etc.	Road Traffic Regulation Act 1984, s.115	1984 c. 27
Aggravated vehicle taking	Theft Act 1968, s.12A	1968 c. 60
Forgery, alteration, fraud of licences etc.	Vehicle Excise and Registration Act 1994, s.44	1994 c. 22
Making off without payment	Theft Act 1978, s.3	1978 c. 31
Agreeing to indemnify sureties	Bail Act 1976, s.9(1)	1976 c. 63
Sending prohibited articles by post	Post Office Act 1953, s.11	1953 c. 36
Impersonating Customs Officer	Customs and Excise Management Act 1979, s.13	1979 c. 2
Obstructing Customs Officer	Customs and Excise Management Act 1979, s.16	As above
Class I: Offences against public justice and similar offences		
Conspiring to commit offences outside the United Kingdom	Criminal Justice (Terrorism and Conspiracy) Act 1998, s.5	1998 c. 40
Perverting the course of public justice	Common Law	

Perjuries (7 offences)	Perjury Act 1911, ss.1 to 7(2)	1911 c. 6
Corrupt transactions with agents	Prevention of Corruption Act 1906, s.1	1906 c. 34
Corruption in public office	Public Bodies Corrupt Practices Act 1889, s.1	1889 c. 69
Embracery	Common law	
Offences of bribing another person	Bribery Act 2010, s.1	2010 c. 23
Offences relating to being bribed	Bribery Act 2010, s.2	As above
Bribery of foreign public officials	Bribery Act 1010 s.6	As above
Fabrication of evidence with intent to mislead a tribunal	Common law	
Personation of jurors	Common law	
Concealing an arrestable offence	Criminal Law Act 1967, s.5	1967 c. 58
Assisting offenders	Criminal Law Act 1967, s.4(1)	As above
False evidence before European Court	European Communities Act 1972, s.11	1972 c. 68
Personating for purposes of bail etc.	Forgery Act 1861, s.34	1861 c. 98
Intimidating a witness, juror etc.	Criminal Justice and Public Order Act 1994, s.51(1)	1994 c. 33
Harming, threatening to harm a witness, juror etc.	Criminal Justice and Public Order Act 1994, s.51(2)	As above
Prejudicing a drug trafficking investigation	Drug Trafficking Act 1994, s.58(1)	1994 c. 37
Giving false statements to procure cremation	Cremation Act 1902, s.8(2)	1902 c. 8
False statement tendered under section 9 of the Criminal Justice Act 1967	Criminal Justice Act 1967, s.89	1967 c. 80
Making a false statement to obtain interim possession order	Criminal Justice and Public Order Act 1994, s.75(1)	1994 c. 33
Making false statement to resist making of interim possession order	Criminal Justice and Public Order Act 1994, s.75(2)	As above
False statement tendered under section 5B of the Magistrates' Courts Act 1980	Magistrates' Courts Act 1980, s.106	1980 c. 43
Making false statements to authorised officer	Trade Descriptions Act 1968, s. 29(2)	1968 c. 29
Class J: Serious sexual offences		
Rape	Sexual Offences Act 1956, s.1(1)	1956 c. 69
Sexual intercourse with girl under 13	Sexual Offences Act 1956, s.5	As above
Sexual intercourse with girl under 16	Sexual Offences Act 1956, s.6	As above
Sexual intercourse with defective	Sexual Offences Act 1956, s.7	As above
Incest by man with a girl under 13	Sexual Offences Act 1956, s.10	As above
Buggery of person under 16	Sexual Offences Act 1956, s.12	As above
Indecency with children under 14	Indecency with Children Act 1960, s.1(1)	1960 c. 33
Taking, having etc. indecent photographs of children	Protection of Children Act 1978, s.1	1978 c. 37
Assault with intent to commit buggery	Sexual Offences Act 1956,	1956 c. 69

	s.16	
Abduction of woman by force	Sexual Offences Act 1956, s.17	As above
Permitting girl under 13 to use premises for sexual intercourse	Sexual Offences Act 1956, s.25	As above
Allowing or procuring child under 16 to go abroad to perform	Children and Young Persons Act 1933, ss.25, 26	1933 c. 12
Sexual intercourse with patients	Mental Health Act 1959, s.128	1959 c. 72
Abduction of unmarried girl under 16 from parent	Sexual Offences Act 1956, s.20	1956 c. 69
Permitting girl under 16 to use premises for intercourse	Sexual Offences Act 1956, s.26	As above
Causing or encouraging prostitution of girl under 16	Sexual Offences Act 1956, s.28	As above
Rape	Sexual Offences Act 2003, s.1	2003 c. 42
Assault by penetration	Sexual Offences Act 2003, s.2	As above
Causing sexual activity with penetration	Sexual Offences Act 2003, s.4	As above
Rape of child under 13	Sexual Offences Act 2003, s.5	As above
Assault of child under 13 by penetration	Sexual Offences Act 2003, s.6	As above
Sexual assault of child under 13	Sexual Offences Act 2003, s.7	As above
Causing a child under 13 to engage in sexual activity	Sexual Offences Act 2003, s.8	As above
Sexual activity with a child	Sexual Offences Act 2003, s.9	As above
Causing a child to engage in sexual activity	Sexual Offences Act 2003, s.10	As above
Arranging child sex offence	Sexual Offences Act 2003, s.14	As above
Sexual activity with a child family member, with penetration	Sexual Offences Act 2003, s.25	As above
Inciting a child family member to engage in sexual activity	Sexual Offences Act 2003, s.26	As above
Sexual activity with a person with a mental disorder	Sexual Offences Act 2003, s.30	As above
Causing or inciting a person with a mental disorder to engage in sexual activity	Sexual Offences Act 2003, s.31	As above
Offering inducement to procure sexual activity with a person with a mental disorder	Sexual Offences Act 2003, s.34	As above
Inducing person with mental disorder to engage in sexual activity	Sexual Offences Act 2003, s.35	As above
Care workers: sexual activity with a person with a mental disorder	Sexual Offences Act 2003, s.38	As above
Care workers: inciting person with mental disorder to engage in sexual act	Sexual Offences Act 2003, s.39	As above
Paying for sexual services of a child	Sexual Offences Act 2003, s.47	As above
Causing or inciting child prostitution or pornography	Sexual Offences Act 2003, s.48	As above

Controlling a child prostitute	Sexual Offences Act 2003, s.49	As above
Facilitating child prostitution	Sexual Offences Act 2003, s.50	As above
Trafficking into UK for sexual exploitation	Sexual Offences Act 2003, s.57	As above
Trafficking within UK for sexual exploitation	Sexual Offences Act 2003, s.58	As above
Trafficking out of UK for sexual exploitation	Sexual Offences Act 2003, s.59	As above

Class K: Other offences of dishonesty (high value)
Class K offences are listed under Classes F and G

SCHEDULE 2

Regulation 5

Litigators' Graduated Fee Scheme

PART 1

Definitions and Scope

Interpretation

1.—(1) In this Schedule—

"case" means proceedings in the Crown Court against any one assisted person—

(a) on one or more counts of a single indictment;

(b) arising out of a single notice of appeal against conviction or sentence, or a single committal for sentence, whether on one or more charges; or

(c) arising out of a single alleged breach of an order of the Crown Court,

and a case falling within paragraph (c) must be treated as a separate case from the proceedings in which the order was made;

"cracked trial" means a case on indictment in which—

(a) a plea and case management hearing takes place and—

(i) the case does not proceed to trial (whether by reason of pleas of guilty or for other reasons) or the prosecution offers no evidence; and

(ii) either—

(aa) in respect of one or more counts to which the assisted person pleaded guilty, the assisted person did not so plead at the plea and case management hearing; or

(bb) in respect of one or more counts which did not proceed, the prosecution did not, before or at the plea and case management hearing, declare an intention of not proceeding with them; or

(b) the case is listed for trial without a plea and case management hearing taking place;

"guilty plea" means a case on indictment which—

(a) is disposed of without a trial because the assisted person pleaded guilty to one or more counts; and

(b) is not a cracked trial;

"main hearing" means—

(a) in relation to a case which goes to trial, the trial;

(b) in relation to a guilty plea, the hearing at which pleas are taken or, where there is more than one such hearing, the last such hearing;

(c) in relation to a cracked trial, the hearing at which—

(i) the case becomes a cracked trial by meeting the conditions in the definition of a cracked trial, whether or not any pleas were taken at that hearing; or

(ii) a formal verdict of not guilty was entered as a result of the prosecution offering no evidence, whether or not the parties attended the hearing;

(d) in relation to an appeal against conviction or sentence in the Crown Court, the hearing of the appeal;

(e) in relation to proceedings arising out of a committal for sentence in the Crown Court, the sentencing hearing; and

(f) in relation to proceedings arising out of an alleged breach of an order of the Crown Court, the hearing at which those proceedings are determined;

"Newton Hearing" means a hearing at which evidence is heard for the purpose of determining the sentence of a convicted person in accordance with the principles of R v Newton (1982) 77 Cr App R 13;

"PPE Cut-off" means the minimum number of pages of prosecution evidence for use in calculating the fee payable to a litigator under this Schedule, as set out in the tables following paragraph 5(1) and (2).

(2) For the purposes of this Schedule, the number of pages of prosecution evidence served on the court must be determined in accordance with sub-paragraphs (3) to (5).

(3) The number of pages of prosecution evidence includes all—

(a) witness statements;

(b) documentary and pictorial exhibits;

(c) records of interviews with the assisted person; and

(d) records of interviews with other defendants,

which form part of the committal or served prosecution documents or which are included in any notice of additional evidence.

(4) Subject to sub-paragraph (5), a document served by the prosecution in electronic form is included in the number of pages of prosecution evidence.

(5) A documentary or pictorial exhibit which—

(a) has been served by the prosecution in electronic form; and

(b) has never existed in paper form,

is not included within the number of pages of prosecution evidence unless the appropriate officer decides that it would be appropriate to include it in the pages of prosecution evidence taking into account the nature of the document and any other relevant circumstances.

(6) In proceedings on indictment in the Crown Court initiated otherwise than by committal for trial, the appropriate officer must determine the number of pages of prosecution evidence in accordance with sub-paragraphs (2) to (5) or as nearly in accordance with those sub-paragraphs as possible as the nature of the case permits.

(7) A reference to the Table of Offences in this Schedule is to the Table of Offences in Part 7 of Schedule 1 and a reference to a Class of Offence in this Schedule is to the Class in which that offence is listed in the Table of Offences.

Application

2.—(1) Subject to sub-paragraphs (2) to (7), this Schedule applies to—

(a) every case on indictment;

(b) the following proceedings in the Crown Court—

(i) an appeal against conviction or sentence from the magistrates' court;

(ii) a sentencing hearing following a committal for sentence to the Crown Court;

(iii) proceedings arising out of an alleged breach of an order of the Crown Court (whether or not this Schedule applies to the proceedings in which the order was made);

(c) a sentencing hearing following a case on indictment to which this Schedule applies, where sentence has been deferred under section 1 of the Powers of Criminal Courts (Sentencing) Act 2000(**a**) (deferment of sentence);

(d) any other post-sentence hearing.

(2) Sub-paragraph (3) applies where proceedings are—

(a) sent for trial to the Crown Court; or

(b) transferred to the Crown Court under—

(i) section 4 of the Criminal Justice Act 1987(**b**) (transfer of serious fraud cases); or

(ii) section 53 of the Criminal Justice Act 1991(**c**) (transfer of certain cases involving children).

(3) Where, at any time after proceedings are sent or transferred to the Crown Court as referred to in sub-paragraph (2), they are—

(a) discontinued by a notice served under section 23A of the Prosecution of Offences Act 1985(**d**) (discontinuance of proceedings after accused has been sent for trial); or

(b) dismissed pursuant to—

(i) paragraph 2 of Schedule 3 to the Crime and Disorder Act 1998(**e**) (applications for dismissal);

(ii) section 6 of the Criminal Justice Act 1987 (applications for dismissal); or

(iii) paragraph 5 of Schedule 6 to the Criminal Justice Act 1991 (applications for dismissal),

the provisions of paragraphs 21 and 22 apply.

(4) Where, following a case on indictment, a Newton hearing takes place—

(a) for the purposes of this Schedule the case is to be treated as having gone to trial;

(b) the length of the trial is to be taken to be the combined length of the main hearing and the Newton hearing; and

(c) the provisions of this Schedule relating to cracked trials and guilty pleas will not apply.

(5) For the purposes of this Schedule, a case on indictment which discontinues at or before the plea and case management hearing otherwise than—

(a) by reason of a plea of guilty being entered; or

(b) in accordance with sub-paragraph (3),

must be treated as a guilty plea.

(6) For the purposes of this Schedule, where a trial that is not a Very High Cost Case (in relation to fees claimed by litigators) lasts over 200 days, it must be treated as if it had lasted 200 days.

(7) For the purposes of this Schedule, where the number of pages of prosecution evidence in a case which is not a Very High Cost Case (in relation to fees claimed by litigators) exceeds—

(a) 2000 c. 6.

(b) 1987 c. 38. Section 4 was repealed by the Criminal Justice Act 2003 (c. 44), sections 41, 332, Schedule 3, Part 2, Paragraphs 58(1) and (2) and Schedule 37, Part 4, which repeal is in force for certain purposes and will take effect in full from a date to be appointed.

(c) 1991 c. 53. Section 53 was repealed by the Criminal Justice Act 2003 (c. 44), sections 41, 332, Schedule 3, Part 2, Paragraphs 62(1) and (2) and Schedule 37, Part 4, which repeal is in force for certain purposes and will take effect in full from a date to be appointed

(d) 1985 c. 23. Section 23A was inserted by section 119 of the Crime and Disorder Act 1998 (c. 37).

(e) 1998 c. 37.

(a) the PPE Cut-off figure specified in the table following paragraph 5(2) as appropriate to the offence for which the assisted person is to be tried and the length of trial; and

(b) 10,000,

the case must be treated as though it had 10,000 pages of prosecution evidence.

Class of Offences

3.—(1) For the purposes of this Schedule—

(a) every indictable offence falls within the Class under which it is listed in the Table of Offences and, subject to sub-paragraph (2), indictable offences not specifically so listed are deemed to fall within Class H;

(b) conspiracy to commit an indictable offence contrary to section 1 of the Criminal Law Act 1977(**a**) (the offence of conspiracy), incitement to commit an indictable offence and attempts to commit an indictable offence contrary to section 1 of the Criminal Attempts Act 1981(**b**) (attempting to commit an offence) fall within the same Class as the substantive offence to which they relate;

(c) where the Table of Offences specifies that the Class within which an offence falls depends on whether the value involved exceeds a stated limit, the value must be presumed not to exceed that limit unless the litigator making the claim under regulation 5 proves otherwise to the satisfaction of the appropriate officer;

(d) where more than one count of the indictment is for an offence in relation to which the Class depends on the value involved, that value must be taken to be the total value involved in all those offences, but where two or more counts relate to the same property, the value of that property must be taken into account once only;

(e) where an entry in the Table of Offences specifies an offence as being contrary to a statutory provision, then subject to any express limitation in the entry that entry includes every offence contrary to that statutory provision whether or not the words of description in the entry are appropriate to cover all such offences;

(f) where in a case on indictment there is a hearing to determine the question of whether an assisted person is unfit to plead or unfit to stand trial, the litigator must elect whether that hearing falls within the same Class as the indictable offence to which it relates or within Class D;

(g) where in a case on indictment a restriction order is made under section 41 of the Mental Health Act 1983(**c**) (power of higher courts to restrict discharge from hospital), the offence falls within Class A, regardless of the Class under which the offence would be listed in the Table of Offences, but for this paragraph.

(2) Where a litigator in proceedings in the Crown Court is dissatisfied with the classification within Class H of an indictable offence not listed in the Table of Offences, the litigator may apply to the appropriate officer, when lodging the claim for fees, to reclassify the offence.

(3) The appropriate officer must, in light of the objections made by the litigator—

(a) confirm the classification of the offence within Class H; or

(b) reclassify the offence,

and must notify the litigator of the decision.

(a) 1977 c. 45.
(b) 1981 c. 47.
(c) 1983 c. 20.

PART 2

Graduated Fees for Guilty Pleas, Cracked Trials and Trials

Scope

4. Subject to paragraph 21, this Part does not apply to a guilty plea or cracked trial in a case committed or sent for trial to the Crown Court on the election of a defendant where the magistrates' court has determined the case to be suitable for summary trial.

Pages of Prosecution Evidence

5.—(1) For the purposes of this Part, the PPE Cut-off figures in a cracked trial or guilty plea are specified in the table following this sub-paragraph, as appropriate to the offence with which the assisted person is charged.

PPE Cut-off figures in cracked trials and guilty pleas

	Class of Offence										
Type of case	A	B	C	D	E	F	G	H	I	J	K
Cracked trial or guilty plea	80	70	40	80	40	50	50	40	40	80	120

(2) For the purposes of this Part, the PPE Cut-off figures in a trial are specified in the table following this sub-paragraph, as appropriate to the offence for which the assisted person is tried and the length of trial.

PPE Cut-off figures in trials

Trial length in days	*PPE Cut off A*	*PPE Cut off B*	*PPE Cut off C*	*PPE Cut off D*	*PPE Cut off E*	*PPE Cut off F*	*PPE Cut off G*	*PPE Cut off H*	*PPE Cut off I*	*PPE Cut off J*	*PPE Cut off K*
1	80	70	40	80	40	50	50	40	40	80	120
2	80	70	40	80	40	50	50	40	40	80	120
3	95	105	81	95	120	138	138	122	134	95	186
4	126	139	120	126	158	173	173	157	185	126	252
5	156	170	157	156	195	206	206	191	232	156	314
6	186	203	193	186	229	240	240	225	281	186	372
7	218	238	230	218	265	276	276	260	329	218	433
8	257	274	267	257	301	310	310	301	376	257	495
9	293	306	301	293	333	342	342	338	420	293	550
10	330	338	339	330	365	373	373	374	464	330	606
11	367	370	378	367	399	405	405	412	509	367	663
12	404	402	417	404	433	437	437	449	554	404	721
13	440	434	455	440	467	470	470	486	598	440	779
14	477	465	493	477	500	501	501	523	642	477	836
15	514	497	531	514	532	533	533	559	686	514	894
16	551	535	569	551	565	564	564	596	730	551	951
17	587	573	607	587	598	596	596	637	774	587	1,007
18	624	611	646	624	646	627	627	687	818	624	1,063
19	661	649	684	661	696	659	659	736	862	661	1,119
20	697	687	722	697	746	690	690	786	907	697	1,174
21	742	722	753	742	787	720	720	826	943	742	1,230
22	786	757	785	786	828	752	752	867	980	786	1,286
23	830	792	819	830	868	784	784	908	1,017	830	1,341
24	874	826	857	874	908	816	816	948	1,053	874	1,396
25	917	860	894	917	948	848	848	988	1,088	917	1,451
26	961	895	931	961	988	880	880	1,028	1,124	961	1,505
27	1,005	935	967	1,005	1,028	912	912	1,068	1,160	1,005	1,560

28	1,049	975	1,004	1,049	1,068	944	944	1,107	1,196	1,049	1,615
29	1,099	1,016	1,041	1,099	1,108	976	976	1,147	1,231	1,099	1,670
30	1,150	1,057	1,077	1,150	1,148	1,007	1,007	1,187	1,267	1,150	1,725
31	1,200	1,098	1,114	1,200	1,188	1,039	1,039	1,226	1,303	1,200	1,780
32	1,251	1,138	1,151	1,251	1,228	1,070	1,070	1,266	1,349	1,251	1,835
33	1,301	1,179	1,187	1,301	1,268	1,102	1,102	1,307	1,394	1,301	1,889
34	1,352	1,220	1,224	1,352	1,308	1,133	1,133	1,357	1,439	1,352	1,944
35	1,402	1,261	1,262	1,402	1,347	1,165	1,165	1,407	1,485	1,402	1,999
36	1,453	1,302	1,303	1,453	1,435	1,196	1,196	1,457	1,530	1,453	2,054
37	1,503	1,348	1,345	1,503	1,526	1,228	1,228	1,507	1,575	1,503	2,109
38	1,554	1,395	1,386	1,554	1,617	1,259	1,259	1,557	1,621	1,554	2,164
39	1,604	1,441	1,428	1,604	1,708	1,291	1,291	1,607	1,666	1,604	2,219
40	1,652	1,484	1,444	1,652	1,745	1,314	1,314	1,629	1,704	1,652	2,271
41	1,700	1,527	1,461	1,700	1,782	1,338	1,338	1,651	1,742	1,700	2,324
42	1,748	1,570	1,477	1,748	1,820	1,361	1,361	1,673	1,780	1,748	2,377
43	1,796	1,613	1,494	1,796	1,857	1,384	1,384	1,695	1,818	1,796	2,430
44	1,844	1,656	1,511	1,844	1,895	1,410	1,410	1,716	1,856	1,844	2,483
45	1,892	1,699	1,527	1,892	1,932	1,440	1,440	1,738	1,894	1,892	2,536
46	1,939	1,742	1,544	1,939	1,970	1,470	1,470	1,760	1,932	1,939	2,589
47	1,987	1,785	1,560	1,987	2,007	1,501	1,501	1,782	1,970	1,987	2,642
48	2,039	1,828	1,577	2,039	2,045	1,531	1,531	1,804	2,008	2,039	2,695
49	2,091	1,871	1,594	2,091	2,082	1,561	1,561	1,826	2,046	2,091	2,749
50	2,144	1,914	1,610	2,144	2,120	1,591	1,591	1,848	2,084	2,144	2,802
51	2,196	1,957	1,627	2,196	2,158	1,622	1,622	1,870	2,122	2,196	2,855
52	2,249	2,000	1,644	2,249	2,195	1,652	1,652	1,892	2,160	2,249	2,908
53	2,301	2,043	1,660	2,301	2,233	1,682	1,682	1,914	2,198	2,301	2,962
54	2,354	2,086	1,677	2,354	2,271	1,712	1,712	1,936	2,236	2,354	3,015
55	2,406	2,129	1,694	2,406	2,308	1,743	1,743	1,958	2,275	2,406	3,068
56	2,459	2,172	1,710	2,459	2,346	1,773	1,773	1,980	2,313	2,459	3,121
57	2,512	2,215	1,727	2,512	2,384	1,803	1,803	2,002	2,351	2,512	3,175
58	2,564	2,258	1,744	2,564	2,422	1,833	1,833	2,024	2,389	2,564	3,228

59	2,617	2,301	1,760	2,617	2,459	1,864	1,864	2,046	2,427	2,617	3,281
60	2,669	2,345	1,777	2,669	2,497	1,894	1,894	2,068	2,465	2,669	3,335
61	2,722	2,388	1,794	2,722	2,535	1,924	1,924	2,090	2,503	2,722	3,388
62	2,775	2,431	1,811	2,775	2,572	1,959	1,959	2,112	2,542	2,775	3,442
63	2,827	2,474	1,827	2,827	2,610	2,020	2,020	2,134	2,580	2,827	3,495
64	2,880	2,517	1,844	2,880	2,648	2,081	2,081	2,156	2,618	2,880	3,549
65	2,933	2,561	1,861	2,933	2,686	2,141	2,141	2,178	2,656	2,933	3,602
66	2,985	2,604	1,877	2,985	2,723	2,202	2,202	2,200	2,694	2,985	3,656
67	3,038	2,647	1,894	3,038	2,761	2,263	2,263	2,222	2,776	3,038	3,709
68	3,091	2,690	1,911	3,091	2,799	2,323	2,323	2,244	2,865	3,091	3,763
69	3,144	2,734	1,927	3,144	2,836	2,384	2,384	2,266	2,954	3,144	3,816
70	3,196	2,777	1,944	3,196	2,874	2,445	2,445	2,288	3,043	3,196	3,870
71	3,249	2,820	1,961	3,249	2,912	2,506	2,506	2,310	3,132	3,249	3,923
72	3,302	2,864	1,978	3,302	2,950	2,566	2,566	2,332	3,221	3,302	3,977
73	3,355	2,907	1,994	3,355	2,987	2,627	2,627	2,354	3,310	3,355	4,031
74	3,407	2,950	2,016	3,407	3,025	2,688	2,688	2,376	3,399	3,407	4,084
75	3,460	2,994	2,040	3,460	3,063	2,749	2,749	2,398	3,488	3,460	4,138
76	3,513	3,037	2,064	3,513	3,101	2,809	2,809	2,420	3,577	3,513	4,192
77	3,566	3,080	2,089	3,566	3,138	2,870	2,870	2,442	3,666	3,566	4,245
78	3,619	3,124	2,113	3,619	3,176	2,931	2,931	2,464	3,755	3,619	4,299
79	3,672	3,167	2,137	3,672	3,214	2,992	2,992	2,486	3,844	3,672	4,353
80	3,724	3,211	2,161	3,724	3,251	3,052	3,052	2,508	3,933	3,724	4,406
81	3,777	3,254	2,185	3,777	3,289	3,113	3,113	2,530	4,023	3,777	4,460
82	3,830	3,297	2,210	3,830	3,327	3,174	3,174	2,552	4,112	3,830	4,514
83	3,883	3,341	2,234	3,883	3,365	3,235	3,235	2,575	4,201	3,883	4,568
84	3,936	3,384	2,258	3,936	3,402	3,295	3,295	2,597	4,290	3,936	4,622
85	3,989	3,428	2,282	3,989	3,440	3,356	3,356	2,619	4,379	3,989	4,675
86	4,042	3,471	2,307	4,042	3,478	3,417	3,417	2,641	4,469	4,042	4,729
87	4,095	3,515	2,331	4,095	3,516	3,478	3,478	2,663	4,558	4,095	4,783
88	4,148	3,558	2,355	4,148	3,553	3,539	3,539	2,685	4,647	4,148	4,837
89	4,201	3,602	2,379	4,201	3,591	3,599	3,599	2,707	4,737	4,201	4,891

90	4,254	3,645	2,404	4,254	3,629	3,660	3,660	2,729	4,826	4,254	4,945
91	4,307	3,689	2,428	4,307	3,666	3,721	3,721	2,751	4,915	4,307	4,999
92	4,360	3,733	2,452	4,360	3,704	3,782	3,782	2,774	5,005	4,360	5,053
93	4,413	3,776	2,477	4,413	3,742	3,843	3,843	2,796	5,094	4,413	5,107
94	4,466	3,820	2,501	4,466	3,780	3,903	3,903	2,818	5,183	4,466	5,161
95	4,519	3,863	2,525	4,519	3,817	3,964	3,964	2,840	5,273	4,519	5,215
96	4,572	3,907	2,549	4,572	3,855	4,025	4,025	2,862	5,362	4,572	5,269
97	4,625	3,951	2,574	4,625	3,893	4,086	4,086	2,884	5,452	4,625	5,323
98	4,679	3,994	2,598	4,679	3,930	4,147	4,147	2,906	5,541	4,679	5,377
99	4,732	4,038	2,622	4,732	3,968	4,207	4,207	2,929	5,631	4,732	5,431
100	4,785	4,082	2,647	4,785	4,006	4,268	4,268	2,951	5,720	4,785	5,485
101	4,838	4,125	2,671	4,838	4,044	4,329	4,329	2,973	5,810	4,838	5,539
102	4,891	4,169	2,695	4,891	4,081	4,390	4,390	2,995	5,899	4,891	5,593
103	4,944	4,213	2,720	4,944	4,119	4,451	4,451	3,032	5,989	4,944	5,647
104	4,997	4,257	2,744	4,997	4,157	4,512	4,512	3,073	6,079	4,997	5,702
105	5,051	4,300	2,768	5,051	4,195	4,573	4,573	3,114	6,168	5,051	5,756
106	5,104	4,344	2,793	5,104	4,232	4,633	4,633	3,155	6,258	5,104	5,810
107	5,157	4,388	2,817	5,157	4,270	4,694	4,694	3,196	6,348	5,157	5,864
108	5,210	4,432	2,841	5,210	4,308	4,755	4,755	3,237	6,437	5,210	5,918
109	5,264	4,475	2,866	5,264	4,345	4,816	4,816	3,278	6,527	5,264	5,973
110	5,317	4,519	2,890	5,317	4,383	4,877	4,877	3,319	6,617	5,317	6,027
111	5,370	4,563	2,914	5,370	4,421	4,938	4,938	3,361	6,706	5,370	6,081
112	5,423	4,607	2,939	5,423	4,459	4,999	4,999	3,402	6,796	5,423	6,135
113	5,477	4,650	2,963	5,477	4,496	5,059	5,059	3,443	6,886	5,477	6,189
114	5,530	4,694	2,987	5,530	4,534	5,120	5,120	3,484	6,976	5,530	6,244
115	5,583	4,738	3,012	5,583	4,572	5,181	5,181	3,525	7,066	5,583	6,298
116	5,637	4,782	3,036	5,637	4,610	5,242	5,242	3,566	7,155	5,637	6,352
117	5,690	4,826	3,060	5,690	4,647	5,303	5,303	3,607	7,245	5,690	6,406
118	5,743	4,869	3,085	5,743	4,685	5,364	5,364	3,648	7,335	5,743	6,460
119	5,797	4,913	3,109	5,797	4,723	5,425	5,425	3,689	7,425	5,797	6,514
120	5,850	4,957	3,133	5,850	4,760	5,486	5,486	3,730	7,515	5,850	6,569

121	5,904	5,001	3,158	5,904	4,798	5,547	5,547	3,771	7,605	5,904	6,623
122	5,956	5,044	3,182	5,956	4,836	5,607	5,607	3,812	7,693	5,956	6,677
123	6,009	5,088	3,206	6,009	4,874	5,668	5,668	3,853	7,782	6,009	6,731
124	6,061	5,131	3,230	6,061	4,911	5,729	5,729	3,895	7,871	6,061	6,785
125	6,114	5,175	3,254	6,114	4,949	5,789	5,789	3,936	7,959	6,114	6,839
126	6,167	5,218	3,278	6,167	4,987	5,850	5,850	3,977	8,048	6,167	6,892
127	6,219	5,261	3,302	6,219	5,025	5,911	5,911	4,017	8,137	6,219	6,945
128	6,272	5,304	3,326	6,272	5,062	5,971	5,971	4,058	8,225	6,272	6,999
129	6,324	5,347	3,350	6,324	5,100	6,032	6,032	4,098	8,314	6,324	7,052
130	6,377	5,390	3,374	6,377	5,138	6,093	6,093	4,139	8,403	6,377	7,106
131	6,430	5,433	3,398	6,430	5,175	6,153	6,153	4,179	8,491	6,430	7,159
132	6,482	5,476	3,422	6,482	5,213	6,214	6,214	4,219	8,580	6,482	7,212
133	6,535	5,520	3,446	6,535	5,251	6,274	6,274	4,260	8,669	6,535	7,266
134	6,588	5,563	3,470	6,588	5,289	6,335	6,335	4,300	8,757	6,588	7,319
135	6,640	5,606	3,494	6,640	5,326	6,396	6,396	4,341	8,846	6,640	7,373
136	6,693	5,649	3,518	6,693	5,364	6,456	6,456	4,381	8,935	6,693	7,426
137	6,745	5,692	3,542	6,745	5,402	6,517	6,517	4,422	9,023	6,745	7,479
138	6,798	5,735	3,566	6,798	5,439	6,578	6,578	4,462	9,112	6,798	7,533
139	6,851	5,778	3,590	6,851	5,477	6,638	6,638	4,503	9,201	6,851	7,586
140	6,903	5,821	3,614	6,903	5,515	6,699	6,699	4,543	9,289	6,903	7,639
141	6,956	5,864	3,638	6,956	5,553	6,760	6,760	4,584	9,378	6,956	7,693
142	7,008	5,908	3,662	7,008	5,590	6,820	6,820	4,624	9,467	7,008	7,746
143	7,061	5,951	3,686	7,061	5,628	6,881	6,881	4,664	9,555	7,061	7,800
144	7,114	5,994	3,709	7,114	5,666	6,942	6,942	4,705	9,644	7,114	7,853
145	7,166	6,037	3,733	7,166	5,704	7,002	7,002	4,745	9,733	7,166	7,906
146	7,219	6,080	3,757	7,219	5,741	7,063	7,063	4,786	9,821	7,219	7,960
147	7,272	6,123	3,781	7,272	5,779	7,124	7,124	4,826	9,910	7,272	8,013
148	7,324	6,166	3,805	7,324	5,817	7,184	7,184	4,867	9,999	7,324	8,067
149	7,377	6,209	3,829	7,377	5,854	7,245	7,245	4,907	10,087	7,377	8,120
150	7,429	6,252	3,853	7,429	5,892	7,305	7,305	4,948	10,176	7,429	8,173
151	7,482	6,296	3,877	7,482	5,930	7,366	7,366	4,988	10,265	7,482	8,227

152	7,535	6,339	3,901	7,535	5,968	7,427	7,427	5,029	10,353	7,535	8,280
153	7,587	6,382	3,925	7,587	6,005	7,487	7,487	5,069	10,442	7,587	8,333
154	7,640	6,425	3,949	7,640	6,043	7,548	7,548	5,110	10,531	7,640	8,387
155	7,692	6,468	3,973	7,692	6,081	7,609	7,609	5,150	10619	7,692	8,440
156	7,745	6,511	3,997	7,745	6,119	7,669	7,669	5,190	10,708	7,745	8,494
157	7,798	6,554	4,021	7,798	6,156	7,730	7,730	5,231	10,797	7,798	8,547
158	7,850	6,597	4,045	7,850	6,194	7,791	7,791	5,271	10,885	7,850	8,600
159	7,903	6,641	4,069	7,903	6,232	7,851	7,851	5,312	10,974	7,903	8,654
160	7,956	6,684	4,093	7,956	6,269	7,912	7,912	5,352	11,063	7,956	8,707
161	8,008	6,727	4,117	8,008	6,307	7,973	7,973	5,393	11,151	8,008	8,760
162	8,061	6,770	4,141	8,061	6,345	8,033	8,033	5,433	11,240	8,061	8,814
163	8,113	6,813	4,165	8,113	6,383	8,094	8,094	5,474	11,329	8,113	8,867
164	8,166	6,856	4,189	8,166	6,420	8,155	8,155	5,514	11,417	8,166	8,921
165	8,219	6,899	4,213	8,219	6,458	8,215	8,215	5,555	11,506	8,219	8,974
166	8,271	6,942	4,237	8,271	6,496	8,276	8,276	5,595	11,595	8,271	9,027
167	8,324	6,985	4,261	8,324	6,534	8,337	8,337	5,636	11,683	8,324	9,081
168	8,376	7,029	4,285	8,376	6,571	8,397	8,397	5,676	11,772	8,376	9,134
169	8,429	7,072	4,309	8,429	6,609	8,458	8,458	5,716	11,861	8,429	9,188
170	8,482	7,115	4,333	8,482	6,647	8,518	8,518	5,757	11,949	8,482	9,241
171	8,534	7,158	4,357	8,534	6,684	8,579	8,579	5,797	12,038	8,534	9,294
172	8,587	7,201	4,380	8,587	6,722	8,640	8,640	5,838	12,127	8,587	9,348
173	8,639	7,244	4,404	8,639	6,760	8,700	8,700	5,878	12,215	8,639	9,401
174	8,692	7,287	4,428	8,692	6,798	8,761	8,761	5,919	12,304	8,692	9,454
175	8,745	7,330	4,452	8,745	6,835	8,822	8,822	5,959	12,393	8,745	9,508
176	8,797	7,373	4,476	8,797	6,873	8,882	8,882	6,000	12,481	8,797	9,561
177	8,850	7,417	4,500	8,850	6,911	8,943	8,943	6,040	12,570	8,850	9,615
178	8,903	7,460	4,524	8,903	6,948	9,004	9,004	6,081	12,659	8,903	9,668
179	8,955	7,503	4,548	8,955	6,986	9,064	9,064	6,121	12,747	8,955	9,721
180	9,008	7,546	4,572	9,008	7,024	9,125	9,125	6,162	12,836	9,008	9,775
181	9,060	7,589	4,596	9,060	7,062	9,186	9,186	6,202	12,925	9,060	9,828
182	9,113	7,632	4,620	9,113	7,099	9,246	9,246	6,242	13,013	9,113	9,881

183	9,166	7,675	4,644	9,166	7,137	9,307	9,307	6,283	13,102	9,166	9,935
184	9,218	7,718	4,668	9,218	7,174	9,368	9,368	6,323	13,191	9,218	9,988
185	9,271	7,762	4,692	9,271	7,211	9,428	9,428	6,364	13,279	9,271	10,042
186	9,323	7,805	4,716	9,323	7,248	9,489	9,489	6,404	13,368	9,323	10,095
187	9,376	7,848	4,740	9,376	7,285	9,549	9,549	6,445	13,457	9,376	10,148
188	9,429	7,891	4,764	9,429	7,322	9,610	9,610	6,485	13,545	9,429	10,202
189	9,481	7,934	4,788	9,481	7,360	9,671	9,671	6,526	13,634	9,481	10,255
190	9,534	7,977	4,812	9,534	7,397	9,731	9,731	6,566	13,723	9,534	10,309
191	9,587	8,020	4,836	9,587	7,434	9,792	9,792	6,607	13,811	9,587	10,362
192	9,639	8,063	4,860	9,639	7,471	9,853	9,853	6,647	13,900	9,639	10,415
193	9,692	8,106	4,884	9,692	7,508	9,913	9,913	6,687	13,988	9,692	10,469
194	9,744	8,150	4,908	9,744	7,545	9,974	9,974	6,728	14,077	9,744	10,522
195	9,797	8,193	4,932	9,797	7,582	10,035	10,035	6,768	14,166	9,797	10,575
196	9,850	8,236	4,956	9,850	7,620	10,095	10,095	6,809	14,254	9,850	10,629
197	9,902	8,279	4,980	9,902	7,657	10,156	10,156	6,849	14,343	9,902	10,682
198	9,955	8,322	5,004	9,955	7,694	10,217	10,217	6,890	14,432	9,955	10,736
199	10,007	8,365	5,028	10,007	7,731	10,277	10,277	6,930	14,520	10,007	10,789
200	10,060	8,408	5,051	10,060	7,768	10,338	10,338	6,971	14,609	10,060	10,842

Cracked trial or guilty plea where the number of pages of prosecution evidence is less than or equal to the PPE Cut-off

6.—(1) Where in a cracked trial or guilty plea the number of pages of prosecution evidence is less than or equal to the PPE Cut-off specified in the table following paragraph 5(1) as appropriate to the Class of Offence with which the assisted person is charged, the total fee payable to the litigator is—

(a) the basic fee, calculated in accordance with the table following sub-paragraph (2) of this paragraph;

(b) the defendant uplift, if any, calculated in accordance with the table following paragraph 12; and

(c) the adjustment for transfers and retrials, if any, calculated in accordance with paragraph 13.

(2) For the purposes of sub-paragraph (1), the basic fee appropriate to a cracked trial or a guilty plea is specified in the table following this sub-paragraph, in accordance with the type of case and Class of Offence with which the assisted person is charged.

Basic fees for cracked trials of guilty pleas (£)

	Class of Offence										
Type of case	A	B	C	D	E	F	G	H	I	J	K
Cracked trial	991.32	775.15	575.16	941.75	255.38	245.73	245.73	259.73	277.99	991.32	848.07
Guilty plea	745.63	609.44	485.38	708.34	202.41	214.59	214.59	209.28	191.34	745.63	702.29

Trial where the number of pages of prosecution evidence is less than or equal to the PPE Cut-off

7.—(1) Where in a trial the number of pages of prosecution evidence is less than or equal to the PPE Cut-off specified in the table following paragraph 5(2) as appropriate to the offence for which the assisted person is tried and the length of trial, the total fee payable to the litigator is—

(a) the basic fee, calculated in accordance with the table following sub-paragraph (2);

(b) the length of trial proxy, if any, calculated in accordance with the table following sub-paragraph (3);

(c) the defendant uplift, if any, calculated in accordance with the table following paragraph 12; and

(d) the adjustment for transfers and retrials, if any, calculated in accordance with paragraph 13.

(2) For the purposes of sub-paragraph (1), the basic fee appropriate to a trial is specified in the table following this sub-paragraph, in accordance with the offence for which the assisted person is tried.

Basic fees for trials (£)

	Class of Offence										
Type of case	A	B	C	D	E	F	G	H	I	J	K
Trial	1608.31	1202.92	810.51	1527.89	386.54	391.89	391.89	392.05	391.72	1608.31	1130.76

(3) For the purposes of sub-paragraph (1), the length of trial proxy is specified in the table following this sub-paragraph, in accordance with the offence for which the assisted person is tried and the length of trial.

Length of trial proxy

Trial Length in Days	Trial length proxy A	Trial length proxy B	Trial length proxy C	Trial length proxy D	Trial length proxy E	Trial length proxy F	Trial length proxy G	Trial length proxy H	Trial length proxy I	Trial length proxy J	Trial length proxy K
1	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
2	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
3	276.76	496.31	473.98	262.93	785.29	706.78	706.78	771.17	945.08	276.76	629.18
4	843.60	964.00	924.20	801.42	1,132.77	984.95	984.95	1,106.66	1,447.59	843.60	1,250.00
5	1,382.09	1,408.31	1,351.90	1,312.99	1,462.86	1,249.21	1,249.21	1,425.36	1,924.97	1,382.09	1,839.79
6	1,930.05	1,858.61	1,776.66	1,833.56	1,772.17	1,519.38	1,519.38	1,741.43	2,411.61	1,930.05	2,390.18
7	2,469.99	2,303.80	2,203.87	2,346.50	2,099.12	1,789.40	1,789.40	2,059.74	2,890.57	2,469.99	2,973.44
8	3,009.93	2,748.97	2,631.09	2,859.44	2,426.07	2,055.07	2,055.07	2,378.05	3,369.53	3,009.93	3,556.69
9	3,518.82	3,149.63	3,015.57	3,342.88	2,720.32	2,294.19	2,294.19	2,664.53	3,806.50	3,518.82	4,081.63
10	4,027.71	3,550.30	3,400.07	3,826.32	3,014.59	2,533.30	2,533.30	2,951.00	4,243.47	4,027.71	4,606.55
11	4,540.38	3,951.50	3,794.99	4,313.36	3,322.37	2,779.24	2,779.24	3,245.35	4,689.34	4,540.38	5,155.06
12	5,049.58	4,352.20	4,190.10	4,797.10	3,630.24	3,025.17	3,025.17	3,539.33	5,135.58	5,049.58	5,703.89
13	5,558.78	4,752.90	4,576.22	5,280.84	3,937.70	3,270.12	3,270.12	3,826.93	5,574.00	5,558.78	6,252.75
14	6,067.98	5,153.61	4,962.33	5,764.59	4,235.69	3,510.51	3,510.51	4,114.53	6,012.41	6,067.98	6,801.57
15	6,577.18	5,554.31	5,348.45	6,248.32	4,532.77	3,750.89	3,750.89	4,402.14	6,450.82	6,577.18	7,350.37
16	7,086.38	5,955.02	5,734.56	6,732.06	4,829.87	3,991.29	3,991.29	4,689.74	6,889.23	7,086.38	7,898.30
17	7,595.57	6,355.73	6,120.68	7,215.80	5,126.96	4,231.68	4,231.68	4,977.34	7,327.64	7,595.57	8,431.63
18	8,104.77	6,756.43	6,506.79	7,699.54	5,424.05	4,472.07	4,472.07	5,264.94	7,766.05	8,104.77	8,964.95
19	8,613.97	7,157.13	6,892.90	8,183.28	5721.14	4,712.46	4,712.46	5,552.54	8,204.46	8,613.97	9,498.27
20	9,123.17	7,557.84	7,279.02	8,667.02	6,018.23	4,952.85	4,952.85	5,840.14	8,642.88	9,123.17	10,031.60
21	9,642.08	7,927.97	7,596.29	9,159.97	6,263.74	5,149.52	5,149.52	6,076.67	9,003.14	9,642.08	10,564.93
22	10,160.89	8,298.07	7,913.63	9,652.84	6,509.26	5,346.28	5,346.28	6,313.31	9,363.42	10,160.89	11,098.26
23	10,670.92	8,668.15	8,231.00	10,137.38	6,747.46	5,543.04	5,543.04	6,549.95	9,723.73	10,670.92	11,631.58
24	11,180.95	9,029.83	8,548.37	10,621.91	6,985.68	5,739.80	5,739.80	6,786.59	10,080.08	11,180.95	12,164.91
25	11,691.00	9,391.50	8,864.09	11,106.44	7,223.89	5,936.55	5,936.55	7,019.41	10,431.95	11,691.00	12,698.24
26	12,201.03	9,753.17	9,174.28	11,590.99	7,462.10	6,133.31	6,133.31	7,250.40	10,783.83	12,201.03	13,231.57

27	12,711.06	10,114.85	9,484.49	12,075.51	7,700.31	6,330.07	6,330.07	7,481.38	11,135.70	12,711.06	13,764.89
28	13,221.10	10,476.53	9,794.68	12,560.05	7,938.53	6,526.83	6,526.83	7,712.37	11,487.57	13,221.10	14,298.22
29	13,731.14	10,838.20	10,104.88	13,044.58	8,176.73	6,721.29	6,721.29	7,943.34	11,839.46	13,731.14	14,831.54
30	14,241.17	11,199.87	10,415.07	13,529.11	8,414.94	6,914.62	6,914.62	8,174.32	12,191.33	14,241.17	15,364.87
31	14,751.21	11,561.55	10,725.27	14,013.65	8,653.16	7,107.96	7,107.96	8,405.31	12,543.20	14,751.21	15,898.20
32	15,261.24	11,923.23	11,035.47	14,498.18	8,891.37	7,301.29	7,301.29	8,636.29	12,895.08	15,261.24	16,431.52
33	15,771.29	12,284.90	11,345.67	14,982.72	9,129.58	7,494.62	7,494.62	8,867.28	13,246.95	15,771.29	16,964.85
34	16,281.32	12,646.57	11,655.86	15,467.26	9,367.79	7,687.96	7,687.96	9,098.26	13,598.83	16,281.32	17,498.18
35	16,791.35	13,008.25	11,966.06	15,951.79	9,606.00	7,881.29	7,881.29	9,329.24	13,950.71	16,791.35	18,031.51
36	17,301.39	13,369.92	12,276.26	16,436.32	9,844.21	8,074.63	8,074.63	9,560.22	14,302.58	17,301.39	18,564.83
37	17,811.43	13,731.60	12,586.46	16,920.86	10,082.43	8,267.96	8,267.96	9,791.21	14,654.45	17,811.43	19,098.16
38	18,321.46	14,093.27	12,896.66	17,405.39	10,320.64	8,461.29	8,461.29	10,022.19	15,006.33	18,321.46	19,631.49
39	18,831.50	14,454.94	13,206.85	17,889.92	10,558.84	8,654.63	8,654.63	10,253.17	15,358.20	18,831.50	20,164.82
40	19,312.20	14,785.90	13,329.94	18,346.59	10,654.34	8,797.55	8,797.55	10,353.05	15,651.51	19,312.20	20,674.95
41	19,795.51	15,119.38	13,454.39	18,805.74	10,752.37	8,940.76	8,940.76	10,454.14	15,946.54	19,795.51	21,188.86
42	20,278.95	15,452.95	13,578.88	19,265.01	10,850.45	9,083.97	9,083.97	10,555.27	16,241.65	20,278.95	21,702.94
43	20,762.51	15,786.64	13,703.38	19,724.39	10,948.58	9,227.20	9,227.20	10,656.41	16,536.81	20,762.51	22,217.20
44	21,246.19	16,120.43	13,827.90	20,183.88	11,046.75	9,370.43	9,370.43	10,757.57	16,832.03	21,246.19	22,731.63
45	21,729.98	16,454.31	13,952.45	20,643.48	11,144.95	9,513.67	9,513.67	10,858.77	17,127.33	21,729.98	23,246.22
46	22,213.90	16,788.30	14,077.02	21,103.21	11,243.21	9,656.92	9,656.92	10,959.97	17,422.67	22,213.90	23,761.00
47	22,697.92	17,122.39	14,201.62	21,563.03	11,341.51	9,800.18	9,800.18	11,061.21	17,718.09	22,697.92	24,275.94
48	23,182.08	17,456.59	14,326.24	22,022.98	11,439.86	9,943.44	9,943.44	11,162.47	18,013.57	23,182.08	24,791.06
49	23,666.34	17,790.89	14,450.89	22,483.03	11,538.24	10,086.71	10,086.71	11,263.74	18,309.10	23,666.34	25,306.34
50	24,150.72	18,125.29	14,575.55	22,943.19	11,636.66	10,230.00	10,230.00	11,365.05	18,604.70	24,150.72	25,821.80
51	24,635.23	18,459.79	14,700.25	23,403.47	11,735.14	10,373.29	10,373.29	11,466.37	18,900.37	24,635.23	26,337.44
52	25,119.85	18,794.39	14,824.96	23,863.86	11,833.66	10,516.60	10,516.60	11,567.72	19,196.09	25,119.85	26,853.24
53	25,604.59	19,129.10	14,949.70	24,324.37	11,932.22	10,659.90	10,659.90	11,669.09	19,491.87	25,604.59	27,369.22
54	26,089.45	19,463.91	15,074.46	24,784.97	12,030.83	10,803.22	10,803.22	11,770.48	19,787.72	26,089.45	27,885.37
55	26,574.42	19,798.82	15,199.24	25,245.69	12,129.47	10,946.54	10,946.54	11,871.89	20,083.63	26,574.42	28,401.69
56	27,059.51	20,133.84	15,324.06	25,706.54	12,228.16	11,089.88	11,089.88	11,973.33	20,379.61	27,059.51	28,918.19
57	27,544.72	20,468.95	15,448.89	26,167.49	12,326.89	11,233.23	11,233.23	12,074.78	20,675.64	27,544.72	29,434.86

58	28,030.05	20,804.17	15,573.74	26,628.55	12,425.63	11,376.58	11,376.58	12,176.26	20,971.74	28,030.05	29,951.69
59	28,515.50	21,139.50	15,698.63	27,089.73	12,524.37	11,519.94	11,519.94	12,277.77	21,267.90	28,515.50	30,468.71
60	29,001.06	21,474.92	15,823.53	27,551.00	12,623.11	11,663.31	11,663.31	12,379.29	21,564.12	29,001.06	30,985.90
61	29,486.75	21,810.44	15,948.46	28,012.41	12,721.86	11,806.69	11,806.69	12,480.84	21,860.41	29,486.75	31,503.25
62	29,972.54	22,146.08	16,073.41	28,473.92	12,820.60	11,950.07	11,950.07	12,582.42	22,156.76	29,972.54	32,020.78
63	30,458.47	22,481.80	16,198.38	28,935.55	12,919.34	12,093.46	12,093.46	12,684.01	22,453.17	30,458.47	32,538.49
64	30,944.50	22,817.64	16,323.39	29,397.28	13,018.08	12,236.87	12,236.87	12,785.63	22,749.63	30,944.50	33,056.36
65	31,430.66	23,153.57	16,448.41	29,859.12	13,116.82	12,380.28	12,380.28	12,887.26	23,046.17	31,430.66	33,574.41
66	31,916.93	23,489.62	16,573.46	30,321.09	13,215.56	12,523.70	12,523.70	12,988.92	23,342.77	31,916.93	34,092.62
67	32,403.32	23,825.76	16,698.52	30,783.16	13,314.30	12,667.13	12,667.13	13,090.60	23,639.42	32,403.32	34,611.01
68	32,889.83	24,162.01	16,823.62	31,245.34	13,413.04	12,810.57	12,810.57	13,192.31	23,936.14	32,889.83	35,129.58
69	33,376.46	24,498.35	16,948.73	31,707.63	13,511.78	12,954.02	12,954.02	13,294.04	24,232.93	33,376.46	35,648.31
70	33,863.20	24,834.80	17,073.87	32,170.04	13,610.52	13,097.48	13,097.48	13,395.79	24,529.77	33,863.20	36,167.23
71	34,350.07	25,171.35	17,199.04	32,632.57	13,709.26	13,240.94	13,240.94	13,497.57	24,826.68	34,350.07	36,686.31
72	34,837.05	25,508.01	17,324.22	33,095.20	13,808.00	13,384.42	13,384.42	13,599.36	25,123.65	34,837.05	37,205.57
73	35,324.14	25,844.77	17,449.44	33,557.95	13,906.74	13,527.90	13,527.90	13,701.17	25,420.68	35,324.14	37,724.99
74	35,811.36	26,181.63	17,574.67	34,020.80	14,005.48	13,671.39	13,671.39	13,803.02	25,717.78	35,811.36	38,244.59
75	36,298.70	26,518.59	17,699.93	34,483.76	14,104.22	13,814.89	13,814.89	13,904.89	26,014.94	36,298.70	38,764.36
76	36,786.15	26,855.65	17,825.21	34,946.85	14,202.96	13,958.39	13,958.39	14,006.77	26,312.15	36,786.15	39,284.30
77	37,273.73	27,192.82	17,950.52	35,410.04	14,301.70	14,101.91	14,101.91	14,108.67	26,609.43	37,273.73	39,804.42
78	37,761.41	27,530.09	18,075.85	35,873.35	14,400.44	14,245.43	14,245.43	14,210.60	26,906.77	37,761.41	40,324.71
79	38,249.23	27,867.46	18,201.20	36,336.77	14,499.18	14,388.97	14,388.97	14,312.56	27,204.19	38,249.23	40,845.17
80	38,737.15	28,204.93	18,326.58	36,800.29	14,597.92	14,532.51	14,532.51	14,414.54	27,501.65	38,737.15	41,365.80
81	39,225.19	28,542.51	18,451.97	37,263.94	14,696.66	14,676.06	14,676.06	14,516.54	27,799.18	39,225.19	41,886.60
82	39,713.35	28,880.19	18,577.40	37,727.69	14,795.40	14,819.62	14,819.62	14,618.55	28,096.77	39,713.35	42,407.58
83	40,201.63	29,217.97	18,702.85	38,191.56	14,894.14	14,963.18	14,963.18	14,720.60	28,394.43	40,201.63	42,928.73
84	40,690.03	29,555.86	18,828.31	38,655.53	14,992.89	15,106.77	15,106.77	14,822.66	28,692.14	40,690.03	43,450.06
85	41,178.54	29,893.84	18,953.81	39,119.62	15,091.63	15,250.35	15,250.35	14,924.75	28,989.92	41,178.54	43,971.55
86	41,667.18	30,231.93	19,079.34	39,583.83	15,190.37	15,393.94	15,393.94	15,026.86	29,287.77	41,667.18	44,493.22
87	42,155.93	30,570.12	19,204.88	40,048.14	15,289.11	15,537.54	15,537.54	15,129.00	29,585.68	42,155.93	45,015.06
88	42,644.81	30,908.42	19,330.44	40,512.57	15,387.85	15,681.16	15,681.16	15,231.15	29,883.64	42,644.81	45,537.07

89	43,133.80	31,246.81	19,456.03	40,977.11	15,486.59	15,824.77	15,824.77	15,333.33	30,181.67	43,133.80	46,059.26
90	43,622.90	31,585.31	19,581.64	41,441.75	15,585.33	15,968.40	15,968.40	15,435.52	30,479.76	43,622.90	46,581.62
91	44,112.13	31,923.91	19,707.28	41,906.52	15,684.07	16,112.04	16,112.04	15,537.75	30,777.91	44,112.13	47,104.14
92	44,601.46	32,262.61	19,832.94	42,371.40	15,782.81	16,255.69	16,255.69	15,639.99	31,076.13	44,601.46	47,626.84
93	45,090.93	32,601.42	19,958.62	42,836.38	15,881.55	16,399.34	16,399.34	15,742.26	31,374.41	45,090.93	48,149.72
94	45,580.50	32,940.33	20,084.33	43,301.48	15,980.29	16,543.00	16,543.00	15,844.55	31,672.75	45,580.50	48,672.77
95	46,070.20	33,279.34	20,210.06	43,766.69	16,079.03	16,686.67	16,686.67	15,946.87	31,971.15	46,070.20	49,195.98
96	46,560.02	33,618.46	20,335.82	44,232.02	16,177.77	16,830.35	16,830.35	16,049.19	32,269.62	46,560.02	49,719.38
97	47,049.95	33,957.68	20,461.60	44,697.46	16,276.51	16,974.04	16,974.04	16,151.51	32,568.14	47,049.95	50,242.94
98	47,540.00	34,297.00	20,587.40	45,163.00	16,375.25	17,117.74	17,117.74	16,253.84	32,866.73	47,540.00	50,766.68
99	48,030.17	34,636.42	20,713.23	45,628.66	16,473.99	17,261.45	17,261.45	16,356.16	33,165.39	48,030.17	51,290.59
100	48,520.45	34,975.94	20,839.07	46,094.43	16,572.73	17,405.16	17,405.16	16,458.49	33,464.09	48,520.45	51,814.66
101	49,010.86	35,315.57	20,964.94	46,560.32	16,671.47	17,548.89	17,548.89	16,560.81	33,762.88	49,010.86	52,338.92
102	49,501.38	35,655.29	21,090.84	47,026.31	16,770.21	17,692.61	17,692.61	16,663.13	34,061.71	49,501.38	52,863.34
103	49,992.03	35,995.12	21,216.77	47,492.43	16,868.95	17,836.35	17,836.35	16,765.46	34,360.61	49,992.03	53,387.95
104	50,482.78	36,335.06	21,342.70	47,958.65	16,967.69	17,980.10	17,980.10	16,867.78	34,659.57	50,482.78	53,912.71
105	50,973.66	36,675.10	21,468.63	48,424.97	17,066.43	18,123.86	18,123.86	16,970.10	34,958.60	50,973.66	54,437.66
106	51,464.66	37,015.23	21,594.56	48,891.42	17,165.17	18,267.63	18,267.63	17,072.43	35,257.69	51,464.66	54,962.66
107	51,955.77	37,355.44	21,720.49	49,357.97	17,263.91	18,411.40	18,411.40	17,174.75	35,556.84	51,955.77	55,487.65
108	52,447.00	37,695.64	21,846.43	49,824.66	17,362.66	18,555.18	18,555.18	17,277.07	35,856.05	52,447.00	56,012.65
109	52,938.35	38,035.85	21,972.36	50,291.43	17,461.40	18,698.98	18,698.98	17,379.40	36,155.33	52,938.35	56,537.64
110	53,429.81	38,376.05	22,098.29	50,758.32	17,560.14	18,842.77	18,842.77	17,481.72	36,454.66	53,429.81	57,062.64
111	53,921.40	38,716.26	22,224.22	51,225.34	17,658.88	18,986.59	18,986.59	17,584.04	36,754.06	53,921.40	57,587.63
112	54,413.10	39,056.46	22,350.15	51,692.45	17,757.62	19,130.40	19,130.40	17,686.37	37,053.52	54,413.10	58,112.63
113	54,904.92	39,396.66	22,476.09	52,159.69	17,856.36	19,274.23	19,274.23	17,788.69	37,353.05	54,904.92	58,637.63
114	55,396.86	39,736.87	22,602.02	52,627.02	17,955.10	19,418.07	19,418.07	17,891.01	37,652.64	55,396.86	59,162.62
115	55,888.92	40,077.07	22,727.95	53,094.47	18,053.84	19,561.91	19,561.91	17,993.34	37,952.28	55,888.92	59,687.62
116	56,381.10	40,417.28	22,853.88	53,562.04	18,152.58	19,705.76	19,705.76	18,095.66	38,251.99	56,381.10	60,212.61
117	56,873.39	40,757.48	22,979.81	54,029.72	18,251.32	19,849.62	19,849.62	18,197.98	38,551.77	56,873.39	60,737.61
118	57,365.80	41,097.69	23,105.74	54,497.51	18,350.06	19,993.49	19,993.49	18,300.31	38,851.60	57,365.80	61,262.60
119	57,858.33	41,437.89	23,231.68	54,965.41	18,448.80	20,137.37	20,137.37	18,402.63	39,151.50	57,858.33	61,787.60

120	58,350.98	41,778.09	23,357.61	55,433.43	18,547.54	20,281.26	20,281.26	18,504.95	39,451.46	58,350.98	62,312.60
121	58,843.74	42,118.30	23,483.54	55,901.56	18,646.28	20,425.15	20,425.15	18,607.28	39,751.48	58,843.74	62,837.59
122	59,329.22	42,458.50	23,609.47	56,362.76	18,745.02	20,568.43	20,568.43	18,709.60	40,047.31	59,329.22	63,362.59
123	59,814.69	42,798.71	23,735.40	56,823.97	18,843.76	20,711.70	20,711.70	18,811.92	40,343.13	59,814.69	63,887.58
124	60,300.17	43,134.92	23,859.50	57,285.16	18,942.50	20,854.97	20,854.97	18,914.25	40,638.96	60,300.17	64,411.56
125	60,785.64	43,470.02	23,983.54	57,746.36	19,041.24	20,998.25	20,998.25	19,016.57	40,934.79	60,785.64	64,928.68
126	61,271.11	43,805.11	24,107.58	58,207.57	19,139.98	21,141.51	21,141.51	19,118.83	41,230.61	61,271.11	65,445.80
127	61,756.60	44,140.22	24,231.63	58,668.77	19,238.72	21,284.79	21,284.79	19,219.63	41,526.44	61,756.60	65,962.93
128	62,242.07	44,475.32	24,355.67	59,129.97	19,337.46	21,428.07	21,428.07	19,320.42	41,822.27	62,242.07	66,480.04
129	62,727.54	44,810.42	24,479.71	59,591.17	19,436.20	21,571.34	21,571.34	19,421.20	42,118.09	62,727.54	66,997.17
130	63,213.02	45,145.52	24,603.75	60,052.37	19,534.94	21,714.61	21,714.61	19,521.99	42,413.92	63,213.02	67,514.29
131	63,698.49	45,480.62	24,727.80	60,513.57	19,633.69	21,857.89	21,857.89	19,622.78	42,709.75	63,698.49	68,031.40
132	64,183.97	45,815.73	24,851.84	60,974.77	19,732.43	22,001.16	22,001.16	19,723.57	43,005.57	64,183.97	68,548.53
133	64,669.45	46,150.83	24,975.88	61,435.97	19,831.17	22,144.43	22,144.43	19,824.36	43,301.40	64,669.45	69,065.65
134	65,154.92	46,485.92	25,099.92	61,897.17	19,929.91	22,287.70	22,287.70	19,925.15	43,597.23	65,154.92	69,582.77
135	65,640.39	46,821.03	25,223.97	62,358.37	20,028.65	22,430.98	22,430.98	20,025.93	43,893.06	65,640.39	70,099.89
136	66,125.87	47,156.13	25,348.02	62,819.57	20,127.39	22,574.26	22,574.26	20,126.72	44,188.89	66,125.87	70,617.01
137	66,611.34	47,491.23	25,472.06	63,280.77	20,226.13	22,717.52	22,717.52	20,227.51	44,484.71	66,611.34	71,134.14
138	67,096.82	47,826.33	25,596.10	63,741.98	20,324.87	22,860.80	22,860.80	20,328.30	44,780.54	67,096.82	71,651.25
139	67,582.29	48,161.43	25,720.14	64,203.18	20,423.61	23,004.08	23,004.08	20,429.09	45,076.37	67,582.29	72,168.37
140	68,067.77	48,496.54	25,844.19	64,664.38	20,522.35	23,147.34	23,147.34	20,529.88	45,372.20	68,067.77	72,685.50
141	68,553.24	48,831.63	25,968.23	65,125.58	20,621.09	23,290.62	23,290.62	20,630.66	45,668.02	68,553.24	73,202.61
142	69,038.71	49,166.74	26,092.27	65,586.78	20,719.83	23,433.90	23,433.90	20,731.46	45,963.85	69,038.71	73,719.74
143	69,524.20	49,501.84	26,216.31	66,047.99	20,818.57	23,577.17	23,577.17	20,832.25	46,259.68	69,524.20	74,236.86
144	70,009.67	49,836.94	26,340.36	66,509.19	20,917.31	23,720.44	23,720.44	20,933.03	46,555.50	70,009.67	74,753.97
145	70,495.14	50,172.04	26,464.40	66,970.38	21,016.05	23,863.71	23,863.71	21,033.82	46,851.33	70,495.14	75,271.10
146	70,980.62	50,507.14	26,588.44	67,431.59	21,114.79	24,006.99	24,006.99	21,134.60	47,147.16	70,980.62	75,788.22
147	71,466.09	50,842.25	26,712.49	67,892.79	21,213.53	24,150.26	24,150.26	21,235.40	47,442.98	71,466.09	76,305.34
148	71,951.57	51,177.34	26,836.53	68,354.00	21,312.27	24,293.53	24,293.53	21,336.19	47,738.81	71,951.57	76,822.46
149	72,437.05	51,512.44	26,960.57	68,815.19	21,411.01	24,436.81	24,436.81	21,436.97	48,034.64	72,437.05	77,339.58
150	72,922.52	51,847.55	27,084.61	69,276.39	21,509.75	24,580.09	24,580.09	21,537.76	48,330.46	72,922.52	77,856.71

151	73,407.99	52,182.65	27,208.66	69,737.60	21,608.49	24,723.35	24,723.35	21,638.55	48,626.29	73,407.99	78,373.82
152	73,893.47	52,517.74	27,332.70	70,198.80	21,707.23	24,866.63	24,866.63	21,739.34	48,922.12	73,893.47	78,890.94
153	74,378.94	52,852.85	27,456.74	70,660.00	21,805.97	25,009.91	25,009.91	21,840.13	49,217.94	74,378.94	79,408.07
154	74,864.42	53,187.95	27,580.78	71,121.20	21,904.71	25,153.17	25,153.17	21,940.92	49,513.77	74,864.42	79,925.18
155	75,349.90	53,523.06	27,704.83	71,582.40	22,003.46	25,296.45	25,296.45	22,041.70	49,809.60	75,349.90	80,442.31
156	75,835.37	53,858.15	27,828.87	72,043.61	22,102.20	25,439.72	25,439.72	22,142.49	50,105.42	75,835.37	80,959.43
157	76,320.84	54,193.25	27,952.91	72,504.80	22,200.94	25,583.00	25,583.00	22,243.29	50,401.25	76,320.84	81,476.54
158	76,806.32	54,528.36	28,076.95	72,966.01	22,299.68	25,726.27	25,726.27	22,344.07	50,697.08	76,806.32	81,993.67
159	77,291.80	54,863.46	28,201.00	73,427.21	22,398.42	25,869.54	25,869.54	22,444.86	50,992.90	77,291.80	82,510.79
160	77,777.27	55,198.56	28,325.05	73,888.41	22,497.16	26,012.82	26,012.82	22,545.65	51,288.73	77,777.27	83,027.91
161	78,262.75	55,533.66	28,449.09	74,349.61	22,595.90	26,156.09	26,156.09	22,646.43	51,584.56	78,262.75	83,545.03
162	78,748.22	55,868.76	28,573.13	74,810.81	22,694.64	26,299.36	26,299.36	22,747.23	51,880.38	78,748.22	84,062.15
163	79,233.69	56,203.86	28,697.17	75,272.02	22,793.38	26,442.64	26,442.64	22,848.02	52,176.21	79,233.69	84,579.28
164	79,719.17	56,538.96	28,821.22	75,733.22	22,892.12	26,585.91	26,585.91	22,948.80	52,472.04	79,719.17	85,096.39
165	80,204.65	56,874.07	28,945.26	76,194.41	22,990.86	26,729.18	26,729.18	23,049.59	52,767.86	80,204.65	85,613.51
166	80,690.12	57,209.17	29,069.30	76,655.62	23,089.60	26,872.46	26,872.46	23,150.38	53,063.69	80,690.12	86,130.64
167	81,175.59	57,544.26	29,193.34	77,116.82	23,188.34	27,015.73	27,015.73	23,251.17	53,359.52	81,175.59	86,647.75
168	81,661.07	57,879.37	29,317.39	77,578.03	23,287.08	27,159.00	27,159.00	23,351.96	53,655.34	81,661.07	87,164.88
169	82,146.54	58,214.47	29,441.43	78,039.22	23,385.82	27,302.28	27,302.28	23,452.75	53,951.17	82,146.54	87,682.00
170	82,632.02	58,549.57	29,565.47	78,500.42	23,484.56	27,445.55	27,445.55	23,553.53	54,247.00	82,632.02	88,199.11
171	83,117.50	58,884.67	29,689.51	78,961.63	23,583.30	27,588.83	27,588.83	23,654.32	54,542.83	83,117.50	88,716.24
172	83,602.97	59,219.77	29,813.56	79,422.83	23,682.04	27,732.10	27,732.10	23,755.11	54,838.66	83,602.97	89,233.36
173	84,088.44	59,554.88	29,937.60	79,884.03	23,780.78	27,875.37	27,875.37	23,855.90	55,134.49	84,088.44	89,750.49
174	84,573.92	59,889.97	30,061.64	80,345.23	23,879.52	28,018.65	28,018.65	23,956.69	55,430.31	84,573.92	90,267.60
175	85,059.40	60,225.07	30,185.69	80,806.43	23,978.26	28,161.92	28,161.92	24,057.47	55,726.14	85,059.40	90,784.72
176	85,544.87	60,560.18	30,309.73	81,267.63	24,077.00	28,305.19	28,305.19	24,158.26	56,021.97	85,544.87	91,301.85
177	86,030.35	60,895.28	30,433.77	81,728.83	24,175.74	28,448.47	28,448.47	24,259.06	56,317.79	86,030.35	91,818.96
178	86,515.82	61,230.38	30,557.81	82,190.03	24,274.49	28,591.74	28,591.74	24,359.84	56,613.62	86,515.82	92,336.09
179	87,001.29	61,565.48	30,681.86	82,651.23	24,373.23	28,735.01	28,735.01	24,460.63	56,909.45	87,001.29	92,853.21
180	87,486.77	61,900.58	30,805.90	83,112.43	24,471.97	28,878.29	28,878.29	24,561.42	57,205.27	87,486.77	93,370.32
181	87,972.25	62,235.69	30,929.95	83,573.63	24,570.71	29,021.56	29,021.56	24,662.20	57,501.10	87,972.25	93,887.45

182	88,457.72	62,570.78	31,053.99	84,034.83	24,669.45	29,164.83	29,164.83	24,763.00	57,796.93	88,457.72	94,404.57
183	88,943.20	62,905.89	31,178.03	84,496.04	24,766.77	29,308.11	29,308.11	24,863.79	58,092.75	88,943.20	94,921.69
184	89,428.67	63,240.99	31,302.08	84,957.24	24,864.03	29,451.38	29,451.38	24,964.57	58,388.58	89,428.67	95,438.81
185	89,914.14	63,576.09	31,426.12	85,418.43	24,961.29	29,594.66	29,594.66	25,065.36	58,684.41	89,914.14	95,955.93
186	90,399.63	63,911.19	31,550.16	85,879.64	25,058.55	29,737.93	29,737.93	25,166.15	58,980.23	90,399.63	96,473.06
187	90,885.10	64,246.29	31,674.20	86,340.84	25,155.81	29,881.20	29,881.20	25,266.94	59,276.06	90,885.10	96,990.17
188	91,370.57	64,581.39	31,798.25	86,802.05	25,253.07	30,024.48	30,024.48	25,367.73	59,571.89	91,370.57	97,507.29
189	91,856.04	64,916.49	31,922.29	87,263.24	25,350.33	30,167.74	30,167.74	25,468.52	59,867.71	91,856.04	98,024.42
190	92,341.52	65,251.59	32,046.33	87,724.44	25,447.59	30,311.02	30,311.02	25,569.30	60,163.54	92,341.52	98,541.53
191	92,827.00	65,586.70	32,170.37	88,185.65	25,544.85	30,454.30	30,454.30	25,670.09	60,459.37	92,827.00	99,058.66
192	93,312.47	65,921.80	32,294.42	88,646.85	25,642.11	30,597.57	30,597.57	25,770.89	60,755.19	93,312.47	99,575.78
193	93,797.95	66,256.89	32,418.46	89,108.05	25,739.37	30,740.84	30,740.84	25,871.67	61,051.02	93,797.95	100,092.89
194	94,283.42	66,592.00	32,542.50	89,569.25	25,836.63	30,884.12	30,884.12	25,972.46	61,346.85	94,283.42	100,610.02
195	94,768.89	66,927.10	32,666.54	90,030.45	25,933.89	31,027.39	31,027.39	26,073.25	61,642.67	94,768.89	101,127.14
196	95,254.37	67,262.20	32,790.59	90,491.66	26,031.15	31,170.66	31,170.66	26,174.03	61,938.50	95,254.37	101,644.26
197	95,739.85	67,597.30	32,914.63	90,952.85	26,128.41	31,313.93	31,313.93	26,274.83	62,234.33	95,739.85	102,161.38
198	96,225.32	67,932.40	33,038.67	91,414.06	26,225.67	31,457.21	31,457.21	26,375.62	62,530.15	96,225.32	102,678.50
199	96,710.80	68,267.51	33,162.71	91,875.26	26,322.93	31,600.49	31,600.49	26,476.40	62,825.98	96,710.80	103,195.63
200	97,196.27	68,602.60	33,286.76	92,336.46	26,420.19	31,743.75	31,743.75	26,577.19	63,121.81	97,196.27	103,712.74

Cracked trials and guilty pleas where the number of pages of prosecution evidence exceeds the PPE Cut-off

8.—(1) Where in a cracked trial or guilty plea the number of pages of prosecution evidence exceeds the PPE Cut-off specified in the table following paragraph 5(1) as appropriate to the offence with which the assisted person is charged, the total fee payable to the litigator is—

(a) the final fee, calculated in accordance with sub-paragraph (2) of this paragraph;

(b) the defendant uplift, if any, calculated in accordance with the table following paragraph 12; and

(c) the adjustment for transfers and retrials, if any, calculated in accordance with paragraph 13.

(2) For the purposes of sub-paragraph (1), the final fee payable to a litigator in a cracked trial or guilty plea is calculated in accordance with the following formula—

$$F = I + (D \times i)$$

Where—

F is the amount of the final fee;

I is the initial fee specified in the tables following this paragraph, as appropriate to the type of case, the offence with which the assisted person is charged and the number of pages of prosecution evidence;

D is the difference between—

(i) the number of pages of prosecution evidence in the case; and

(ii) the lower number in the PPE range as specified in the tables following this paragraph, as appropriate to the type of case, the offence with which the assisted person is charged and the number of pages of prosecution evidence in the case;

i is the incremental fee per page of prosecution evidence specified in the tables following this paragraph, as appropriate to the type of case, the offence with which the assisted person is charged and the number of pages of prosecution evidence in the case.

Table of final fees in cracked trials

Class of Offence	*PPE Range*	*Initial Fee (£)*	*Incremental fee per page of prosecution evidence (£)*
A	0-79	991.32	0
A	80-249	991.32	11.7216
A	250-999	2,983.99	7.3571
A	1000-2799	8,501.81	4.3001
A	2800-4599	16,241.92	4.3001
A	4600-6399	23,982.04	3.4135
A	6400-8199	30,126.41	3.4135
A	8200-9999	36,270.78	3.4135
A	10,000	42,411.74	0
B	0-69	777.15	0
B	70-249	777.15	8.5755
B	250-999	2,320.73	4.0137
B	1000-2799	5,331.02	2.6733
B	2800-4599	10,143.02	2.6733
B	4600-6399	14,955.02	2.2478
B	6400-8199	19,001.08	2.2478
B	8200-9999	23,047.12	2.2478

B	10,000	27,090.92	0
C	0-39	575.17	0
C	40-249	575.17	4.2997
C	250-999	1,478.10	2.4611
C	1000-2799	3,323.90	1.5674
C	2800-4599	6,145.18	1.5674
C	4600-6399	8,966.46	1.5674
C	6400-8199	11,787.74	1.5674
C	8200-9999	14,609.03	1.5674
C	10,000	17,428.74	0
D	0-79	941.75	0
D	80-249	941.75	11.1082
D	250-999	2,830.14	6.6941
D	1000-2799	7,850.70	3.9525
D	2800-4599	14,965.19	3.9525
D	4600-6399	22,079.68	3.2433
D	6400-8199	27,917.58	3.2433
D	8200-9999	33,755.47	3.2433
D	10,000	39,590.12	0
E	0-39	255.38	0
E	40-249	255.38	5.0432
E	250-999	1,314.44	1.5958
E	1000-2799	2,511.28	0.6689
E	2800-4599	3,715.35	0.6689
E	4600-6399	4,919.42	0.6689
E	6400-8199	6,123.50	0.6689
E	8200-9999	7,327.57	0.6689
E	10,000	8,530.97	0
F	0-49	245.72	0
F	50-249	245.72	4.8400
F	250-999	1,213.73	1.9622
F	1000-2799	2,685.36	0.7636
F	2800-4599	4,059.91	0.7636
F	4600-6399	5,434.46	0.7636
F	6400-8199	6,809.00	0.7636
F	8200-9999	8,183.55	0.7636
F	10,000	9,557.33	0
G	0-49	245.72	0
G	50-249	245.72	4.8400
G	250-999	1,213.73	1.9622
G	1000-2799	2,685.36	0.7636
G	2800-4599	4,059.91	0.7636
G	4600-6399	5,434.46	0.7636
G	6400-8199	6,809.00	0.7636
G	8200-9999	8,183.55	0.7636
G	10,000	9,557.33	0
H	0-39	259.73	0
H	40-249	259.73	4.6685
H	250-999	1,240.12	1.7046
H	1000-2799	2,518.58	0.7626
H	2800-4599	3,891.28	0.7626
H	4600-6399	5,263.97	0.7626
H	6400-8199	6,636.67	0.7626

H	8200-9999	8,009.37	0.7626
H	10,000	9,381.30	0
I	0-39	278.00	0
I	40-249	278.00	6.4873
I	250-999	1,640.33	2.5353
I	1000-2799	3,541.82	0.9835
I	2800-4599	5,312.17	0.9835
I	4600-6399	7,082.51	0.9835
I	6400-8199	8,852.85	0.9835
I	8200-9999	10,623.20	0.9835
I	10,000	12,392.55	0
J	0-79	991.32	0
J	80-249	991.32	11.7216
J	250-999	2,983.99	7.3571
J	1000-2799	8,501.81	4.3001
J	2800-4599	16,241.92	4.3001
J	4600-6399	23,982.04	3.4135
J	6400-8199	30,126.41	3.4135
J	8200-9999	36,270.78	3.4135
J	10,000	42,411.74	0
K	0-119	848.07	0
K	120-249	848.07	7.1738
K	250-999	1,780.66	5.5001
K	1000-2799	5,905.73	4.8159
K	2800-4599	14,574.29	4.8159
K	4600-6399	23,242.87	4.1067
K	6400-8199	30,634.84	4.1067
K	8200-9999	38,026.81	4.1066
K	10,000	45,414.67	0

Table of final fees in guilty pleas

Class of Offence	*PPE Range*	*Initial Fee (£)*	*Incremental fee per page of prosecution evidence (£)*
A	0-79	745.63	0
A	80-399	745.63	6.1572
A	400-999	2,715.93	3.2471
A	1000-2799	4,664.21	2.0766
A	2800-4599	8,402.07	2.0766
A	4600-6399	12,139.92	1.2255
A	6400-8199	14,345.86	1.2255
A	8200-9999	16,551.81	1.2255
A	10,000	18,756.53	0
B	0-69	609.44	0
B	70-399	609.44	4.9497
B	400-999	2,242.84	2.4934
B	1000-2799	3,738.90	1.5916
B	2800-4599	6,603.75	1.5916
B	4600-6399	9,468.61	1.1661
B	6400-8199	11,567.51	1.1661
B	8200-9999	13,666.41	1.1661
B	10,000	15,764.14	0
C	0-39	485.38	0

C	40-399	485.38	2.9193
C	400-999	1,536.31	1.5971
C	1000-2799	2,494.54	0.8668
C	2800-4599	4,054.72	0.8668
C	4600-6399	5,614.91	0.8668
C	6400-8199	7,175.10	0.8668
C	8200-9999	8,735.29	0.8668
C	10,000	10,294.60	0
D	0-79	708.34	0
D	80-399	708.34	5.7339
D	400-999	2,543.19	3.0095
D	1000-2799	4,348.90	1.8739
D	2800-4599	7,721.86	1.8739
D	4600-6399	11,094.83	1.1647
D	6400-8199	13,191.21	1.1646
D	8200-9999	15,287.57	1.1647
D	10,000	17,382.78	0
E	0-39	202.41	0
E	40-399	202.41	3.2041
E	400-999	1,355.88	1.3732
E	1000-2799	2,179.80	0.5057
E	2800-4599	3,090.08	0.5057
E	4600-6399	4,000.36	0.5057
E	6400-8199	4,910.64	0.5057
E	8200-9999	5,820.92	0.5057
E	10,000	6,730.69	0
F	0-49	214.59	0
F	50-399	214.59	3.1058
F	400-999	1,301.62	1.0840
F	1000-2799	1,952.01	0.3488
F	2800-4599	2,579.80	0.3488
F	4600-6399	3,207.59	0.3488
F	6400-8199	3,835.38	0.3488
F	8200-9999	4,463.17	0.3488
F	10,000	5,090.61	0
G	0-49	214.59	0
G	50-399	214.59	3.1058
G	400-999	1,301.62	1.0840
G	1000-2799	1,952.01	0.3488
G	2800-4599	2,579.80	0.3488
G	4600-6399	3,207.59	0.3488
G	6400-8199	3,835.38	0.3488
G	8200-9999	4,463.17	0.3488
G	10,000	5,090.61	0
H	0-39	209.28	0
H	40-399	209.28	3.0613
H	400-999	1,311.33	1.0852
H	1000-2799	1,962.46	0.3465
H	2800-4599	2,586.14	0.3465
H	4600-6399	3,209.84	0.3465
H	6400-8199	3,833.53	0.3465
H	8200-9999	4,457.23	0.3465
H	10,000	5,080.55	0

I	0-39	191.34	0
I	40-399	191.34	3.4214
I	400-999	1,423.04	1.4936
I	1000-2799	2,319.22	0.5581
I	2800-4599	3,323.86	0.5581
I	4600-6399	4,328.49	0.5581
I	6400-8199	5,333.13	0.5581
I	8200-9999	6,337.78	0.5581
I	10,000	7,341.86	0
J	0-79	745.63	0
J	80-399	745.63	6.1572
J	400-999	2,715.93	3.2471
J	1000-2799	4,664.21	2.0766
J	2800-4599	8,402.07	2.0766
J	4600-6399	12,139.92	1.2255
J	6400-8199	14,345.86	1.2255
J	8200-9999	16,551.81	1.2255
J	10,000	18,756.53	0
K	0-119	702.29	0
K	120-399	702.29	5.7624
K	400-999	2,315.76	3.2075
K	1000-2799	4,240.26	2.9871
K	2800-4599	9,617.04	2.9871
K	4600-6399	14,993.82	2.2779
K	6400-8199	19,094.01	2.2779
K	8200-9999	23,194.20	2.2779
K	10,000	27,292.10	0

Trials where the number of pages of prosecution evidence exceeds the PPE Cut-off

9.—(1) Where in a trial the number of pages of prosecution evidence exceeds the PPE Cut-off figure specified in the table following paragraph 5(2) as appropriate to the offence for which the assisted person is tried and the length of trial, the total fee payable to the litigator is—

(a) the final fee, calculated in accordance with sub-paragraph (2) of this paragraph;

(b) the defendant uplift, if any, calculated in accordance with the table following paragraph 12; and

(c) the adjustment for transfers and retrials, if any, calculated in accordance with paragraph 13.

(2) For the purposes of sub-paragraph (1), the final fee is calculated in accordance with the following formula—

$$F = I + (D \times i)$$

Where—

F is the amount of the final fee;

I is the initial fee specified in the table following this paragraph as appropriate to the offence for which the assisted person is tried and the number of pages of prosecution evidence;

D is the difference between—

(i) the number of pages of prosecution evidence in the case; and

(ii) the lower number in the PPE range as specified in the table following this paragraph, as appropriate to the offence for which the assisted person is tried and the number of pages of prosecution evidence in the case;

i is the incremental fee per page of prosecution evidence specified in the table following this paragraph as appropriate to the offence for which the assisted person is tried and the number of pages of prosecution evidence in the case.

Table of final fees in trials

Class of Offence	*PPE Range*	*Initial Fee (£)*	*Incremental fee per page (£)*
A	0-79	1,608.31	0
A	80-209	1,608.31	18.1662
A	210-699	3,969.91	13.8717
A	700-1049	10,767.03	11.6431
A	1050-1999	14,842.10	10.0960
A	2000-3599	24,433.34	9.2271
A	3600-5199	39,196.75	9.2271
A	5200-6799	53,960.15	9.2271
A	6800-8399	68,723.57	9.2271
A	8400-9999	83,486.98	9.2272
A	10,000	98,241.16	0
B	0-69	1,202.92	0
B	70-199	1,202.92	14.0353
B	200-499	3,027.51	12.5398
B	500-899	6,789.46	10.5557
B	900-1299	11,011.74	8.8680
B	1300-1999	14,558.94	7.7722
B	2000-3299	19,999.46	7.7722
B	3300-4999	30,103.28	7.7722
B	5000-5999	43,315.97	7.7722
B	6000-7999	51,088.14	7.7722
B	8000-8999	66,632.48	7.7722
B	9000-9999	74,404.65	7.7722
B	10,000	82,169.05	0
C	0-39	810.51	0
C	40-299	810.51	11.5783
C	300-799	3,820.87	10.1155
C	800-1249	8,878.62	8.4660
C	1250-1999	12,688.32	7.4854
C	2000-3199	18,302.39	5.1761
C	3200-4559	24,513.74	5.1761
C	4560-5919	31,553.29	5.1761
C	5920-7279	38,592.83	5.1761
C	7280-8639	45,632.37	5.1761
C	8640-9999	52,671.91	5.1762
C	10,000	59,706.30	0
D	0-79	1,527.89	0
D	80-209	1,527.89	17.2578
D	210-699	3,771.41	13.1781
D	700-1049	10,228.68	11.0609
D	1050-1999	14,100.00	9.5912
D	2000-3599	23,211.67	8.7658
D	3600-5199	37,236.90	8.7658
D	5200-6799	51,262.14	8.7658
D	6800-8399	65,287.39	8.7658

D	8400-9999	79,312.63	8.7658
D	10,000	93,329.10	0
E	0-39	386.54	0
E	40-69	386.54	10.4287
E	70-129	699.40	9.3950
E	130-599	1,263.10	9.0869
E	600-1349	5,533.96	5.9649
E	1350-2999	10,007.63	2.6174
E	3000-4749	14,326.32	2.6174
E	4750-6499	18,906.75	2.6174
E	6500-8249	23,487.17	2.6174
E	8250-9999	28,067.60	2.6174
E	10,000	32,645.40	0
F	0-49	391.89	0
F	50-229	391.89	8.0098
F	230-699	1,833.66	7.6326
F	700-1399	5,420.98	6.1357
F	1400-1949	9,715.95	4.7354
F	1950-3549	12,320.41	2.3624
F	3550-5149	16,100.18	2.3624
F	5150-6749	19,879.95	2.3624
F	6750-8349	23,659.72	2.3624
F	8350-9999	27,439.49	2.3624
F	10,000	31,335.02	0
G	0-49	391.89	0
G	50-229	391.89	8.0098
G	230-699	1,833.66	7.6326
G	700-1399	5,420.98	6.1357
G	1400-1949	9,715.95	4.7354
G	1950-3549	12,320.41	2.3624
G	3550-5149	16,100.18	2.3624
G	5150-6749	19,879.95	2.3624
G	6750-8349	23,659.72	2.3624
G	8350-9999	27,439.49	2.3624
G	10,000	31,335.02	0
H	0-39	392.05	0
H	40-249	392.05	9.4203
H	250-619	2,370.32	7.8338
H	620-1299	5,268.81	5.8194
H	1300-2999	9,226.02	4.6188
H	3000-4999	17,077.91	2.4911
H	5000-5999	22,060.10	2.4910
H	6000-6999	24,551.12	2.4911
H	7000-7999	27,042.22	2.4911
H	8000-8999	29,533.32	2.4911
H	9000-9999	32,024.42	2.4911
H	10,000	34,513.02	0
I	0-39	391.72	0
I	40-369	391.72	10.0165
I	370-799	3,697.16	9.9618
I	800-1299	7,980.75	9.8555
I	1300-2699	12,908.52	7.7641
I	2700-4199	23,778.23	3.3365

I	4200-5359	28,783.04	3.3365
I	5360-6519	32,653.42	3.3365
I	6520-7679	36,523.80	3.3366
I	7680-8839	40,394.20	3.3365
I	8840-9999	44,264.58	3.3365
I	10,000	48,131.63	0
J	0-79	1,608.31	0
J	80-209	1,608.31	18.1662
J	210-699	3,969.91	13.8717
J	700-1049	10,767.03	11.6431
J	1050-1999	14,842.10	10.0960
J	2000-3599	24,433.34	9.2271
J	3600-5199	39,196.75	9.2271
J	5200-6799	53,960.15	9.2271
J	6800-8399	68,723.57	9.2271
J	8400-9999	83,486.98	9.2272
J	10,000	98,241.16	0
K	0-119	1,130.76	0
K	120-734	1,130.76	9.4875
K	735-1289	6,965.55	9.5522
K	1290-2399	12,267.04	9.7237
K	2400-4499	23,060.31	9.6873
K	4500-7999	43,403.55	9.6873
K	8000-8399	77,308.93	9.6872
K	8400-8799	81,183.82	9.6872
K	8800-9199	85,058.72	9.6873
K	9200-9599	88,933.63	9.6872
K	9600-9999	92,808.53	9.6872
K	10,000	96,673.74	0

PART 3

Fixed Fee for Guilty Pleas and Cracked Trials

Scope of Part 3

10. This Part applies to a guilty plea or cracked trial in a case committed or sent for trial to the Crown Court on the election of a defendant where the magistrates' court has determined the case to be suitable for summary trial.

Fixed fee for guilty pleas or cracked trials

11. The fee payable to a litigator in relation to a guilty plea or cracked trial to which this Part applies is £362 per proceedings.

PART 4

Defendant Uplifts, Retrials and Transfers

Defendant uplifts

12.—(1) The defendant uplift payable to a litigator is calculated in accordance with the table following this paragraph.

(2) Only one defendant uplift is payable in each case.

(3) In the table following this paragraph, the total fee means—

(a) in a cracked trial or guilty plea where the number of pages of prosecution evidence does not exceed the PPE Cut-off specified in the table following paragraph 5(1), the basic fee specified in the table following paragraph 6(2);

(b) in a trial where the number of pages of prosecution evidence does not exceed the PPE Cut-off specified in the table following paragraph 5(2), the basic fee specified in the table following paragraph 7(2) plus the length of trial proxy specified in the table following paragraph 7(3);

(c) in a cracked trial or guilty plea where the number of pages of prosecution evidence exceeds the PPE Cut-off specified in the table following paragraph 5(1), the final fee, as calculated in accordance with paragraph 8(2); and

(d) in a trial where the number of pages of prosecution evidence exceeds the PPE Cut-off specified in the table following paragraph 5(2), the final fee, as calculated in accordance with paragraph 9(2);

(e) where appropriate, the fee set out in paragraph 11.

(4) In a case where the representation of one defendant would attract a fixed fee under Part 3 and the representation of one or more of the other defendants would attract a graduated fee under Part 2, the total fee is the fee falling within whichever of paragraphs (a) to (d) of sub-paragraph (3) is appropriate.

Defendant uplifts

Total number of defendants represented by litigator	*Percentage uplift to total fee*
2-4	20%
5+	30%

Retrials and Transfers

13.—(1) Where following a trial an order is made for a retrial and the same litigator acts for the assisted person at both trials the fee payable to that litigator is—

(a) in respect of the first trial, a fee calculated in accordance with the provisions of this Schedule; and

(b) in respect of the retrial, 25% of the fee, as appropriate to the circumstances of the retrial, in accordance with the provisions of this Schedule.

(2) Where—

(a) a case is transferred to a new litigator; or

(b) a retrial is ordered and a new litigator acts for the assisted person at the retrial,

the fee payable to the original litigator and the new litigator is a percentage of the total fee, calculated in accordance with the table following this paragraph, as appropriate to the circumstances and timing of the retrial, transfer or withdrawal of the section 16 determination.

(3) In sub-paragraph (2), "transfer" includes the making of a section 16 determination in favour of an individual who, immediately before the making of the section 16 determination—

(a) had represented themselves; or

(b) had been represented (otherwise than pursuant to a section 16 determination) by the litigator named in the order,

and for the purposes of that sub-paragraph the litigator is to be treated as a new litigator.

(4) For the purposes of sub-paragraph (2), a case is not transferred to a new litigator where—

(a) a firm of solicitors is named as litigator in the representation order and the solicitor or other appropriately qualified person with responsibility for the case moves to another firm;

(b) a firm of solicitors is named as litigator in the representation order and the firm changes (whether by merger or acquisition or in some other way), but so that the new firm remains closely related to the firm named in the order; or

(c) a solicitor or other appropriately qualified person is named as litigator in the representation order and responsibility for the case is transferred to another solicitor or appropriately qualified person in the same firm or a closely related firm.

(5) For the purposes of sub-paragraph (2), where a case which has been transferred to a new litigator is transferred again, that new litigator—

(a) must be treated as the original litigator, where the transfer takes place at any time before the trial or any retrial;

(b) must be treated as a new litigator, where the transfer takes place during the trial or any retrial; and

(c) must not receive any fee, where the transfer takes place after the trial or any retrial but before the sentencing hearing.

(6) Where a section 16 determination is withdrawn before the case ends, a litigator must receive a percentage of the total fee, in accordance with the table following this paragraph, as appropriate to the circumstances and timing of a transfer.

(7) In the table following this paragraph, the total fee means—

(a) in a cracked trial or guilty plea in a case to which Part 2 applies, where the number of pages of prosecution evidence is less than or equal to the PPE Cut-off specified in the table following paragraph 5(1), the basic fee as set out in the table following paragraph 6(2);

(b) in a trial where the number of pages of prosecution evidence is less than or equal to the PPE Cut-off specified in the table following paragraph 5(2), the basic fee specified in the table following paragraph 7(2) plus the length of trial proxy specified in the table following paragraph 7(3);

(c) in a cracked trial or guilty plea in a case to which Part 2 applies, where the number of pages of prosecution evidence exceeds the PPE Cut-off specified in the table following paragraph 5(1), the final fee as calculated in accordance with paragraph 8(2);

(d) in a trial where the number of pages of prosecution evidence exceeds the PPE Cut-off specified in the table following paragraph 5(2), the final fee, as calculated in accordance with paragraph 9(2);

(e) in a cracked trial or guilty plea in a case to which Part 3 applies, the fixed fee set out in paragraph 11.

(8) Where a case becomes a Very High Cost Case after a section 16 determination has been made and is transferred from the litigator named on the representation order to a new litigator—

(a) the original litigator must be remunerated in accordance with the individual Very High Cost Case contract entered into by that litigator; and

(b) the new litigator must be remunerated in accordance with the individual Very High Cost Case contract entered into by that litigator.

(9) Where a case becomes a Very High Cost Case after a section 16 determination has been made and the section 16 determination is withdrawn before the end of the case, the litigator must be remunerated in accordance with the table following this paragraph as appropriate to the circumstances and timing of the withdrawal.

(10) Sub-paragraph (11) applies where—

(a) the case is a case to which Part 3 would apply if it resulted in a cracked trial or guilty plea; and

(b) at the time the case is transferred to a new litigator in accordance with sub-paragraph (2) it is not known whether the case would result in a cracked trial or guilty plea or whether it would proceed to trial.

(11) Where this sub-paragraph applies—

(a) for the purpose of a claim by the original litigator at the time of the transfer of the case, "total fee" in the table following this paragraph, means the fixed fee set out in paragraph 11;

(b) the original litigator may, if the case proceeds to trial, claim the difference between the payment received at the time of transfer of the case and the payment that would have been due at that time if that payment had been based on the case proceeding to trial.

(12) A litigator may not be treated both as an original litigator and as a new litigator in a case.

Retrials and Transfers

Scenario	*Percentage of the total fee*	*Case type to be used to determine total fee*	*Claim period*
Cracked trial before retrial, where there is no change of litigator	25%	Cracked trial	
Retrial where there is no change of litigator	25%	Trial	
Up to and including plea and case management hearing transfer (original litigator)	25%	Cracked trial	
Up to and including plea and case management hearing transfer – guilty plea (new litigator)	100%	Guilty plea	
Up to and including plea and case management hearing transfer – cracked trial (new litigator)	100%	Cracked trial	
Up to and including plea and case management hearing transfer – trial (new litigator)	100%	Trial	
Before trial transfer (original litigator)	75%	Cracked trial	
Before trial transfer – cracked trial (new litigator)	100%	Cracked trial	
Before trial transfer – trial (new litigator)	100%	Trial	
During trial transfer (original litigator)	100%	Trial	Claim up to and including the day before the transfer
During trial transfer (new litigator)	50%	Trial	Claim for the full trial length
Transfer after trial or guilty plea and before sentencing hearing (original litigator)	100%	Trial, Cracked trial or Guilty plea as appropriate	Claim for the full trial length, excluding the length of the sentencing hearing
Transfer after trial or guilty plea and before sentencing hearing (new litigator)	10%	Trial	Claim for one day or for the length of the sentencing hearing if longer than one day
Transfer before retrial	25%	Cracked trial	

(original litigator)			
Transfer before cracked retrial (new litigator)	50%	Cracked trial	
Transfer before retrial (new litigator)	50%	Trial	Claim for the full retrial length
Transfer during retrial (original litigator)	25%	Trial	Claim up to and including the day before the transfer
Transfer during retrial (new litigator)	50%	Trial	Claim for the full retrial length
Transfer after retrial or cracked retrial and before sentencing hearing (original litigator)	25%	Trial or Cracked trial as appropriate	Claim for the full retrial length, excluding the length of the sentencing hearing
Transfer after retrial or cracked retrial and before sentencing hearing (new litigator	10%	Trial	Claim for one day or for the length of the sentencing hearing if longer than one day.

PART 5

Fixed Fees

General provisions

14.—(1) All work undertaken by a litigator in a case to which Part 3 applies is included within the fee set out in paragraph 11 except for a defendant uplift as provided for in paragraph 22.

(2) Except as provided under this Part, remuneration for all work undertaken by a litigator in a case to which Part 2 applies is included within the fee set out in Part 2 of this Schedule as appropriate to—

(a) the offence for which the assisted person is charged or tried;

(b) whether the case is a cracked trial, guilty plea or trial; and

(c) the number of pages of prosecution evidence.

Fees for appeals and committals for sentence hearings

15. The fee payable to a litigator instructed in—

(a) an appeal against conviction from a magistrates' court;

(b) an appeal against sentence from a magistrates' court; or

(c) a sentencing hearing following a committal for sentence to the Crown Court,

is that set out in the table following paragraph 19.

Fees for hearing subsequent to sentence

16.—(1) The fee payable to a litigator instructed in relation to a hearing under an enactment listed in sub-paragraph (2) is that set out in the table following paragraph 19.

(2) The enactments are—

(a) section 1CA of the Crime and Disorder Act 1998(a) (variation and discharge of orders under section 1C);

(a) 1998 c. 37. Section 1CA was inserted by section 140 of the Serious Organised Crime and Police Act 2005 (c. 15).

(b) section 155 of the Powers of Criminal Courts (Sentencing) Act 2000(**a**) (alteration of Crown Court sentence);

(c) section 74 of the Serious Organised Crime and Police Act 2005(**b**) (assistance by defendant: review of sentence).

Fees for contempt proceedings

17.—(1) This paragraph applies to proceedings referred to in section 14(g) of the Act in the Crown Court.

(2) Where, in proceedings to which this paragraph applies, the contempt is alleged to have been committed by a person other than a defendant in a case to which this Schedule applies, remuneration for litigators must be at the rate set out in the table following paragraph 19.

(3) Where, in proceedings to which this paragraph applies, the contempt is alleged to have been committed by the defendant in a case to which this Schedule applies, all work undertaken by the litigator is included within—

(a) the fee payable under Part 2 of this Schedule, or

(b) in proceedings under paragraph 15 or paragraph 18, the fixed fee set out in the table following paragraph 19.

Fees for alleged breaches of a Crown Court order

18.—(1) This paragraph applies to proceedings in the Crown Court against one assisted person arising out of a single alleged breach of an order of the Crown Court.

(2) The fee payable to the litigator in respect of the proceedings to which this paragraph applies is that set out in the table following paragraph 19.

Fixed Fees

19. The table following this paragraph sets out the fixed fees payable in relation to the category of work specified in the first column of the table.

Fixed Fees

Types of proceedings	*Paragraph providing for fee*	*Fee payable – (£ per proceedings)*
Appeal against sentence from a magistrates' court	15	170.21
Appeal against conviction from a magistrates' court	15	382.98
Committal for sentence	15	255.32
Hearing subsequent to sentence	16	170.21
Contempt proceedings (where contempt is alleged to have been committed by a person other than the defendant)	17(2)	127.66
Alleged breach of a Crown Court Order	18(2)	85.11

Fees for special preparation

20.—(1) This paragraph applies in any case on indictment in the Crown Court—

(a) where a documentary or pictorial exhibit is served by the prosecution in electronic form and—

(i) the exhibit has never existed in paper form; and

(**a**) 2000 c. 6.
(**b**) 2005 c. 15.

(ii) the appropriate officer does not consider it appropriate to include the exhibit in the pages of prosecution evidence; or

(b) in respect of which a fee is payable under Part 2 (other than paragraph 7), where the number of pages of prosecution evidence, as so defined, exceeds 10,000,

and the appropriate officer considers it reasonable to make a payment in excess of the fee payable under Part 2.

(2) Where this paragraph applies, a special preparation fee may be paid, in addition to the fee payable under Part 2.

(3) The amount of the special preparation fee must be calculated from the number of hours which the appropriate officer considers reasonable—

(a) where sub-paragraph (1)(a) applies, to view the prosecution evidence; and

(b) where sub-paragraph (1)(b) applies, to read the excess pages,

and in each case using the rates specified in the table following paragraph 27.

(4) A litigator claiming a special preparation fee must supply such information and documents as may be required by the appropriate officer in support of the claim.

(5) In determining a claim under this paragraph, the appropriate officer must take into account all the relevant circumstances of the case.

Discontinuance or dismissal of sent or transferred proceedings

21.—(1) This paragraph applies to proceedings which are—

(a) sent for trial to the Crown Court; or

(b) transferred to the Crown Court under—

(i) section 4 of the Criminal Justice Act 1987 (transfer of serious fraud cases); or

(ii) section 53 of the Criminal Justice Act 1991 (transfer of certain cases involving children).

(2) Where proceedings to which this paragraph applies are discontinued by a notice served under section 23A of the Prosecution of Offences Act 1985 (discontinuance of proceedings after accused has been sent for trial) at any time before the prosecution serves its evidence in accordance with the Crime and Disorder Act 1998 (Service of Prosecution Evidence) Regulations 2005(**a**) the litigator must be paid 50% of the basic fee for a guilty plea, as specified in the table following paragraph 6, as appropriate to the offence for which the assisted person is charged.

(3) Where proceedings to which this paragraph applies are discontinued by a notice served under section 23A of the Prosecution of Offences Act 1985 (discontinuance of proceedings after accused has been sent for trial) at any time after the prosecution serves its evidence in accordance with the Crime and Disorder Act 1998 (Service of Prosecution Evidence) Regulations 2005, the litigator must be paid a fee calculated in accordance with paragraph 6, or, where appropriate, paragraph 8, as appropriate for representing an assisted person in a guilty plea.

(4) Where an application for dismissal is made under paragraph 2 of Schedule 3 to the Crime and Disorder Act 1988, section 6 of the Criminal Justice Act 1987 or paragraph 5 of Schedule 6 to the Criminal Justice Act 1991, and—

(a) the charge, or charges are dismissed and the assisted person is discharged; or

(b) the case is remitted to the magistrates' court in accordance with paragraph 10(3)(a), 13(2) or 15(3)(a) of Schedule 3 to the Crime and Disorder Act 1998,

the litigator instructed in the proceedings must be paid a fee calculated in accordance with paragraph 6, or where appropriate, paragraph 8, as appropriate for representing an assisted person in a guilty plea.

(5) Sub-paragraph (6) applies to—

(a) S.I. 2005/902 as amended by S.I. 2012/1345.

(a) a plea and case management hearing that takes place after the prosecution serves its evidence; and

(b) any other hearing that takes place before a plea and case management hearing has taken place, but after the prosecution has served its evidence.

(6) Where, at a hearing to which this paragraph applies—

(a) the prosecution offers no evidence and the assisted person is discharged; or

(b) the case is remitted to the magistrates' court in accordance with paragraph 10(3)(a), 13(2) or 15(3)(a) of Schedule 3 to the Crime and Disorder Act 1998,

the litigator must be paid a fee calculated in accordance with paragraph 6 or where appropriate paragraph 8, as appropriate for representing an assisted person in a guilty plea.

Defendant uplifts

22.—(1) Where a litigator represents more than one assisted person in proceedings referred to in paragraph 21(2), (3), (4) or (5), a defendant uplift is payable.

(2) The defendant uplift must be calculated in accordance with the table following this paragraph.

(3) In the table following this paragraph, the total fee means—

(a) the fee specified in sub-paragraph (2) of paragraph 21 where that sub-paragraph applies;

(b) the basic fee (B) specified in the table following paragraph 6, or, where appropriate, the initial fee specified in paragraph 8, where paragraph 21(3), (4) or (5) applies, as appropriate for the circumstances set out in that sub-paragraph; or

(c) where appropriate the fee set out in paragraph 11.

(4) In a case where the representation of one defendant would attract a fixed fee under Part 3 and the representation of one or more of the other defendants would attract a graduated fee under Part 2, the total fee in the table following this paragraph means the fee falling within sub-paragraph (3)(b).

Defendant uplifts

Total number of defendants represented by litigator	*Percentage uplift to total fee*
2-4	20%
5+	30%

Warrant for arrest

23.—(1) This paragraph applies where—

(a) the assisted person fails to attend a hearing;

(b) at that hearing the court issues a warrant for the arrest of the assisted person, pursuant to section 7(1) of the Bail Act 1976(a) ("the warrant"); and

(c) the case does not proceed in the absence of the assisted person.

(2) Where in a case on indictment the warrant is not executed within three months of the date on which it was issued, the fee payable to the litigator is—

(a) where the warrant is issued at or before the plea and case management hearing, the fee payable for a guilty plea in accordance with paragraph 6 or where appropriate paragraph 8;

(b) where the warrant is issued after the plea and case management hearing but before the trial, the fee payable for a cracked trial in accordance with paragraph 6 or where

(a) 1976 c. 63.

appropriate paragraph 8, as appropriate to the Class of Offence with which the assisted person is charged; and

(c) where the warrant is issued during the trial, and the trial is aborted as a result, the fee payable for a trial as if the trial had ended on the day the warrant was issued.

(3) Where the warrant is issued during the course of proceedings referred to in paragraph 15 or 18 the fee payable to the litigator is the fee set out in the table following paragraph 19, as appropriate to the type of proceedings.

(4) Sub-paragraph (5) applies where—

(a) a fee has been paid, or is payable, to the litigator in accordance with sub-paragraph (2);

(b) the warrant is executed within 15 months of the date on which it was issued;

(c) the case proceeds after the warrant has been executed; and

(d) the litigator submits a claim for fees for the determination of the litigator's overall remuneration in the case, in accordance with regulation 5.

(5) Where this sub-paragraph applies—

(a) the appropriate officer must deduct the amount paid or payable in accordance with sub-paragraph (2) from the amount payable to the litigator on the final determination of fees in the case; and

(b) if the fee paid or payable in accordance with sub-paragraph (2) is greater than the amount payable to the litigator on the final determination of fees in the case, the appropriate officer may recover the amount of the difference by way of repayment by the litigator.

PART 6

Miscellaneous

Additional charges

24.—(1) Where an assisted person is charged with more than one offence on one indictment, the fee payable to the litigator under this Schedule must be based on whichever of those offences the litigator selects.

(2) Where a litigator selects one offence, in preference to another offence, under sub-paragraph (1) that selection does not affect the litigator's right to claim any of the fees provided for in Part 5 of this Schedule to which the litigator would otherwise have been entitled.

Assisted person unfit to plead or stand trial

25. Where in any case a hearing is held to determine the question of whether the assisted person is unfit to plead or to stand trial (a "fitness hearing")—

(a) if a trial on indictment is held, or continues, at any time thereafter, the length of the fitness hearing is included in determining the length of the trial for the calculation of the fee in accordance with Part 2;

(b) if a trial on indictment is not held, or does not continue, thereafter by reason of the assisted person being found unfit to plead or to stand trial, the litigator must be paid—

(i) a fee calculated in accordance with paragraph 7 or where appropriate paragraph 9, as appropriate to the combined length of—

(aa) the fitness hearing; and

(bb) any hearing under section 4A of the Criminal Procedure (Insanity) Act 1964(**a**) (finding that the accused did the act or made the omission charged against him); or

(ii) a fee calculated in accordance with paragraph 6, or where appropriate paragraph 8, as appropriate, for representing an assisted person in a cracked trial,

whichever the litigator elects; and

(c) if at any time the assisted person pleads guilty to the indictable offence, the litigator must be paid either—

(i) a fee calculated in accordance with paragraph 7 or, where appropriate, paragraph 9, as appropriate to the length of the fitness hearing; or

(ii) a fee calculated in accordance with paragraph 6 or, where appropriate, paragraph 8, as appropriate for representing an assisted person in a guilty plea,

whichever the litigator elects.

Fees for confiscation proceedings

26.—(1) This paragraph applies to—

(a) proceedings under Part 2 of the Proceeds of Crime Act 2002(**b**) (confiscation: England and Wales);

(b) proceedings under section 2 of the Drug Trafficking Act 1994(**c**) (confiscation orders); and

(c) proceedings under section 71 of the Criminal Justice Act 1988(**d**) (confiscation orders).

(2) Where this paragraph applies, the appropriate officer may allow work done in the following classes by a litigator—

(a) preparation, including taking instructions, interviewing witnesses, ascertaining the prosecution case, preparing and perusing documents, dealing with letters and telephone calls, instructing an advocate and expert witnesses, conferences, consultations and work done in connection with advice on appeal;

(b) attending at court where an advocate is instructed, including conferences with the advocate at court;

(c) travelling and waiting; and

(d) writing routine letters and dealing with routine telephone calls.

(3) The appropriate officer must consider the claim, any further particulars, information or documents submitted by the litigator under regulation 5 and any other relevant information and must allow such work as appears to him to have been reasonably done in the proceedings.

(4) Subject to sub-paragraph (3), the appropriate officer must allow fees under this paragraph in accordance with paragraph 27.

(5) The appropriate officer must allow fees in accordance with paragraphs 27 to 29 as appropriate to such of the following grades of fee earner as the appropriate officer considers reasonable—

(a) senior solicitor;

(b) solicitor, legal executive or fee earner of equivalent experience; or

(c) trainee or fee earner of equivalent experience.

(a) 1964 c. 84, as amended by section 2 of the Criminal Procedure (Insanity and Unfitness to Plead) Act 1991 (c. 25) and section 22 of the Domestic Violence Crime and Victims Act 2004 (c. 28).
(b) 2002 c. 29.
(c) 1994 c. 37.
(d) 1988 c. 33.

Prescribed fee rates

27. Subject to paragraphs 28 and 29, for proceedings in the Crown Court to which paragraph 26 applies the appropriate officer must allow fees for work under paragraph 26(2) at the following prescribed rates—

Class of work	*Grade of fee earner*	*Rate*	*Variations*
Preparation	Senior solicitor	£53 per hour	£55.75 per hour for a fee earner whose office is situated within the City of London or a London borough
	Solicitor, legal executive or fee earner of equivalent experience	£45 per hour	£47.25 per hour for a fee earner whose office is situated within the City of London or a London borough
	Trainee or fee earner of equivalent experience	£29.75 per hour	£34.00 per hour for a fee earner whose office is situated within the City of London or a London borough
Attendance at court where more than one representative instructed	Senior solicitor	£42.25 per hour	
	Solicitor, legal executive or fee earner of equivalent experience	£34.00 per hour	
	Trainee or fee earner of equivalent experience	£20.50 per hour	
Travelling and waiting	Senior solicitor	£24.75 per hour	
	Solicitor, legal executive or fee earner of equivalent experience	£24.75 per hour	
	Trainee or fee earner of equivalent experience	£12.50 per hour	
Writing routine letters and dealing with routine telephone calls		£3.45 per item	£3.60 per item for a fee earner whose office is situated within the City of London or a London borough

Allowing fees at less than the prescribed rates

28. In respect of any item of work, the appropriate officer may allow fees at less than the relevant prescribed rate specified in paragraph 27 where it appears to the appropriate officer reasonable to do so having regard to the competence and despatch with which the work was done.

Allowing fees at more than the prescribed rates

29.—(1) Upon a determination the appropriate officer may, subject to the provisions of this paragraph, allow fees at more than the relevant prescribed rate specified in paragraph 27 for preparation, attendance at court where more than one representative is instructed, routine letters written and routine telephone calls, in respect of offences in Class A, B, C, D, G, I, J or K in the Table of Offences.

(2) The appropriate officer may allow fees at more than the prescribed rate where it appears to the appropriate officer, taking into account all the relevant circumstances of the case, that—

(a) the work was done with exceptional competence, skill or expertise;

(b) the work was done with exceptional despatch; or

(c) the case involved exceptional complexity or other exceptional circumstances.

(3) Paragraph 3 of Schedule 1 applies to litigators in respect of proceedings in the Crown Court as it applies to advocates.

(4) Where the appropriate officer considers that any item or class of work should be allowed at more than the prescribed rate, the appropriate officer must apply to that item or class of work a percentage enhancement in accordance with the following provisions of this paragraph.

(5) In determining the percentage by which fees should be enhanced above the prescribed rate the appropriate officer must have regard to—

(a) the degree of responsibility accepted by the fee earner;

(b) the care, speed and economy with which the case was prepared; and

(c) the novelty, weight and complexity of the case.

(6) The percentage above the relevant prescribed rate by which fees for work may be enhanced must not exceed 100%.

(7) The appropriate officer may have regard to the generality of proceedings to which these Regulations apply in determining what is exceptional within the meaning of this paragraph.

SCHEDULE 3

Regulation 6

Proceedings in the Court of Appeal

General Provisions

1.—(1) The provisions of this Schedule apply to proceedings in the Court of Appeal.

(2) In determining fees the appropriate officer must, subject to the provisions of this Schedule—

(a) take into account all the relevant circumstances of the case including the nature, importance, complexity or difficulty of the work and the time involved; and

(b) allow a reasonable amount in respect of all work actually and reasonably done.

Claims for fees and disbursements by litigators

2.—(1) Subject to regulation 31, no claim by a litigator for fees and disbursements in respect of work done in proceedings in the Court of Appeal pursuant to a section 16 determination must be entertained unless the litigator submits it within three months of the conclusion of the proceedings to which it relates.

(2) Subject to sub-paragraph (3), a claim for fees in proceedings in the Court of Appeal must be submitted to the appropriate officer in such form and manner as the appropriate officer may direct and must be accompanied by the representation order and any receipts or other documents in support of any disbursement claimed.

(3) A claim must—

(a) summarise the items of work done by a fee earner in respect of which fees are claimed according to the classes specified in paragraph 3(1);

(b) state, where appropriate, the dates on which the items of work were done, the time taken, the sums claimed and whether the work was done for more than one assisted person;

(c) specify, where appropriate, the level of fee earner who undertook each of the items of work claimed;

(d) give particulars of any work done in relation to more than one indictment or a retrial; and

(e) specify any disbursements claimed, the circumstances in which they were incurred and the amounts claimed in respect of them.

(4) Where the litigator claims that paragraph 8(1) applies in relation to an item of work, the litigator must give full particulars in support of the claim.

(5) The litigator must specify any special circumstances which the litigator considers should be drawn to the attention of the appropriate officer.

(6) The litigator must supply such further information and documents as the appropriate officer may require.

(7) Where a retrospective section 16 determination has been made under regulations made under section 19 of the Act in respect of any proceedings where an appellant has been successful on appeal and granted a defendant's costs order under section 16(4) of the Prosecution of Offences Act 1985(**a**) (defence costs), the litigator must certify that no claim for fees incurred before the retrospective section 16 determination was made has been or will be made from central funds in relation to that work.

Determination of litigators' fees

3.—(1) The appropriate officer may allow work done in the following classes by fee earners—

(a) preparation, including taking instructions, interviewing witnesses, ascertaining the prosecution case, advising on plea and mode of trial, preparing and perusing documents, dealing with letters and telephone calls which are not routine, preparing for advocacy, instructing an advocate and expert witnesses, conferences, consultations, views and work done in connection with advice on appeal;

(b) advocacy, including applications for bail and other applications to the court;

(c) attending at court where an advocate is assigned, including conferences with the advocate at court;

(d) travelling and waiting; and

(e) writing routine letters and dealing with routine telephone calls.

(2) The appropriate officer must consider the claim, any further information or documents submitted by the fee earner under paragraph 2 and any other relevant information and must allow—

(a) such work as appears to the appropriate officer to have been reasonably done pursuant to the section 16 determination (including any representation or advice which is deemed to be work done pursuant to that determination) by a fee earner, classifying such work according to the classes specified in sub-paragraph (1) as the appropriate officer considers appropriate; and

(b) such time in each class of work allowed by him (other than routine letters written and routine telephone calls) as the appropriate officer considers reasonable.

(3) The fees allowed in accordance with this Schedule are those appropriate to such of the following grades of litigator as the appropriate officer considers reasonable—

(a) senior solicitor;

(b) solicitor, legal executive or fee earner of equivalent experience; or

(c) trainee or fee earner of equivalent experience.

Determination of litigators' disbursements

4. The appropriate officer must allow such disbursements claimed under paragraph 2 as appear to the appropriate officer to have been reasonably incurred, provided that—

(**a**) 1985 c. 23.

(a) if they are abnormally large by reason of the distance of the court or the assisted person's residence or both from the litigator's place of business, the appropriate officer may limit reimbursement of the disbursements to what otherwise would, having regard to all the circumstances, be a reasonable amount; and

(b) the cost of a transcript, or any part thereof, of the proceedings in the court from which the appeal lies obtained otherwise than through the registrar must not be allowed except where the appropriate officer considers that it is reasonable in all the circumstances for such disbursement to be allowed.

Claims for fees by advocates

5.—(1) Subject to regulation 31, a claim by an advocate for fees for work done in proceedings in the Court of Appeal pursuant to a section 16 determination must not be entertained unless the advocate submits it within three months of the conclusion of the proceedings to which the section 16 determination relates.

(2) Where the advocate claims that paragraph 9(4) applies in relation to an item of work the advocate must give full particulars in support of his claim.

(3) Subject to sub-paragraph (4), a claim for fees by an advocate in proceedings in the Court of Appeal must be submitted to the appropriate officer in such form and manner as the appropriate officer may direct.

(4) A claim must—

(a) summarise the items of work done by an advocate in respect of which fees are claimed according to the classes specified in paragraph 6(2);

(b) state, where appropriate, the dates on which the items of work were done, the time taken, the sums claimed and whether the work was done for more than one assisted person; and

(c) give particulars of any work done in relation to more than one indictment or a retrial.

(5) The advocate must specify any special circumstances which the advocate considers should be drawn to the attention of the appropriate officer.

(6) The advocate must supply such further information and documents as the appropriate officer may require.

Determination of advocates' fees

6.—(1) The appropriate officer must consider the claim, any further particulars and information submitted by an advocate under paragraph 5 and any other relevant information and must allow such work as appears to the appropriate officer to have been reasonably done.

(2) The appropriate officer may allow any of the following classes of fee to an advocate in respect of work allowed by him under this paragraph—

(a) a basic fee for preparation including preparation for a pre-trial review and, where appropriate, the first day's hearing including, where they took place on that day, short conferences, consultations, applications and appearances (including bail applications), views and any other preparation;

(b) a refresher fee for any day or part of a day during which a hearing continued, including, where they took place on that day, short conferences, consultations, applications and appearances (including bail applications), views at the scene of the alleged offence and any other preparation;

(c) subsidiary fees for—

(i) attendance at conferences, consultations and views at the scene of the alleged offence not covered by paragraph (a) or (b);

(ii) written advice on evidence, plea or appeal or other written work; and

(iii) attendance at pre-trial reviews, applications and appearances (including bail applications and adjournments for sentence) not covered by paragraph (a) or (b).

(3) Where a section 16 determination provides for representation by—

(a) a single advocate other than a QC; or

(b) two advocates other than QC,

and a QC agrees to appear as the single advocate or as a leading junior, that QC must be treated for all the purposes of this Schedule as having been instructed pursuant to that section 16 determination, and the remuneration of the QC must be determined as if the advocate were not a QC.

Litigators' fees for proceedings in the Court of Appeal

7.—(1) For proceedings in the Court of Appeal the appropriate officer must allow fees for work by litigators at the following prescribed rates—

Class of work	*Grade of fee earner*	*Rate*	*Variations*
Preparation	Senior solicitor	£53 per hour	£55.75 per hour for a litigator whose office is situated within the City of London or a London borough
	Solicitor, legal executive or fee earner of equivalent experience	£45 per hour	£47.25 per hour for a litigator whose office is situated within the City of London or a London borough
	Trainee or fee earner of equivalent experience	£29.75 per hour	£34 per hour for a litigator whose office is situated within the City of London or a London borough
Advocacy	Senior Solicitor	£64 per hour	
	Solicitor	£56 per hour	
Attendance at court where more than one representative assigned	Senior Solicitor	£42.25 per hour	
	Solicitor, legal executive or fee earner of equivalent experience	£34 per hour	
	Trainee or fee earner of equivalent experience	£20.50 per hour	
Travelling and waiting	Senior Solicitor	£24.75 per hour	
	Solicitor, legal executive or fee earner of equivalent experience	£24.75 per hour	
	Trainee or fee earner of equivalent experience	£12.50 per hour	
Routine letters written and routine telephone calls		£3.45 per item	£3.60 per item for a litigator whose office is situated within the City of London or a London borough

(2) In respect of any item of work, the appropriate officer may allow fees at less than the relevant prescribed rate specified in the table following sub-paragraph (1) where it appears to the appropriate officer reasonable to do so having regard to the competence and despatch with which the work was done.

Allowance of litigators' fees at more than the prescribed rate

8.—(1) Upon a determination of fees the appropriate officer may, subject to the provisions of this paragraph, allow fees at more than the relevant prescribed rate specified in paragraph 7 for preparation, advocacy, attendance at court where more than one representative is assigned, routine letters written and routine telephone calls, in respect of offences in Class A, B, C, D, G, I, J or K in the Table of Offences in Part 7 of Schedule 1.

(2) The appropriate officer may allow fees at more than the prescribed rate where it appears to the appropriate officer, taking into account all the relevant circumstances of the case, that—

(a) the work was done with exceptional competence, skill or expertise;

(b) the work was done with exceptional despatch; or

(c) the case involved exceptional complexity or other exceptional circumstances.

(3) Paragraph 3 of Schedule 1 applies to litigators in respect of proceedings in the Court of Appeal as it applies to advocates.

(4) Where the appropriate officer considers that any item or class of work should be allowed at more than the prescribed rate, the appropriate officer must apply to that item or class of work a percentage enhancement in accordance with the following provisions of this paragraph.

(5) In determining the percentage by which fees should be enhanced above the prescribed rate the appropriate officer may have regard to—

(a) the degree of responsibility accepted by the fee earner;

(b) the care, speed and economy with which the case was prepared; and

(c) the novelty, weight and complexity of the case.

(6) The percentage above the relevant prescribed rate by which fees for work may be enhanced must not exceed 100%.

(7) The appropriate officer may have regard to the generality of proceedings to which these Regulations apply in determining what is exceptional within the meaning of this paragraph.

Advocates' fees for proceedings in the Court of Appeal

9.—(1) Subject to sub-paragraph 9(4), for proceedings in the Court of Appeal the appropriate officer must allow fees for work by advocates at the following prescribed rates—

Junior Counsel

Types of proceedings	*Basic fee*	*Full day refresher*	*Subsidiary fees*		
			Attendance at consultation, conferences and views	*Written work*	*Attendance at pre-trial reviews, applications and other appearances*
All appeals	Maximum amount: £545 per case	Maximum amount: £178.75 per day	£33.50 per hour, minimum amount: £16.75	Maximum amount: £58.25 per item	Maximum amount: £110 per appearance

QC

Types of proceedings	*Basic fee*	*Full day refresher*	*Subsidiary fees*

			Attendance at consultation, conferences and views	*Written work*	*Attendance at pre-trial reviews, applications and other appearances*
All appeals	Maximum amount: £5,400 per case	Maximum amount: £330.50 per day	£62.50 per hour, minimum amount: £32	Maximum amount: £119.50 per item	Maximum amount: £257.50 per appearance

(2) Where an hourly rate is specified in the table following sub-paragraph (1), the appropriate officer must determine any fee for such work in accordance with that hourly rate, provided that the fee determined must not be less than the minimum amount specified.

(3) Where a refresher fee is claimed in respect of less than a full day, the appropriate officer must allow such fee as appears to the appropriate officer reasonable having regard to the fee which would be allowable for a full day.

(4) Where it appears to the appropriate officer, taking into account all the relevant circumstances of the case, that owing to the exceptional circumstances of the case the amount payable by way of fees in accordance with the table following sub-paragraph (1) would not provide reasonable remuneration for some or all of the work the appropriate officer has allowed, the appropriate officer may allow such amounts as appear to the appropriate officer to be reasonable remuneration for the relevant work.

Payment of fees

10.—(1) Having determined the fees payable to a representative in accordance with the terms of this Schedule, the appropriate officer must notify the representative of the fees payable and authorise payment accordingly.

(2) Where, as a result of any redetermination or appeal made or brought pursuant to paragraph 11, the fees payable under paragraph (1) are altered—

(a) if they are increased, the appropriate officer must authorise payment of the increase; and

(b) if they are decreased, the representative must repay the amount of such decrease.

(3) Where the payment of any fees of the representative is ordered under regulation 29(12) or regulation 30(8), the appropriate officer must authorise payment.

Redeterminations and appeals

11.—(1) Where a representative is dissatisfied with—

(a) the fees determined in accordance with the provisions of this Schedule; or

(b) the decision of the appropriate officer under paragraph 3(3) of Schedule 1,

he may apply to the appropriate officer to redetermine those fees or reclassify the offence, in accordance with the provisions of regulation 28(3) to (9).

(2) Where—

(a) a representative has made an application to the appropriate officer under sub-paragraph (1); and

(b) the appropriate officer has given his reasons for a decision under regulation 28(7),

a representative who is dissatisfied with that decision may appeal to a Costs Judge, in accordance with the provisions of regulation 29(2) to (14).

(3) A representative who is dissatisfied with the decision of a Costs Judge on an appeal under sub-paragraph (2) may apply to a Costs Judge to certify a point of principle of general importance, and the provisions of regulation 30(2) to (8) apply.

SCHEDULE 4

Regulation 8

Rates payable for the claims specified in Regulation 8

Interpretation of this Schedule

1. In this Schedule, unless the context otherwise requires, words and expressions have the same meaning as in the 2010 Standard Crime Contract.

Work conducted at the Police station: Police Station advice and assistance.

2.—(1) The Fixed Fee for Police Station Telephone Advice is—

(a) £31.45 per claim in London; and

(b) £30.25 per claim outside London ("National").

(2) The Criminal Defence Direct Fixed Acceptance Fee is £8.00 per Matter.

(3) The hourly rates for Police Station attendance (for recording time and to determine whether the Escape Fee Threshold has been reached) are specified in the table following this sub-paragraph.

	London	*National*
Police Station attendance hourly rates		
Own or Duty Solicitor	£56.20	£52.00
Duty Solicitor (Unsocial Hours)	£69.05	£69.05
Duty Solicitor – serious offence rate	£65.00	£60.00
Duty Solicitor – serious offence rate (Unsocial Hours)	£80.00	£80.00
Travel and waiting hourly rates		
Own Solicitor	£28.80	£28.80
Duty Solicitor	£56.20	£52.00
Duty Solicitor (Unsocial Hours)	£69.05	£69.05

(4) The table following sub-paragraph (8) sets out—

(a) the Police Station Attendance Fixed Fees; and

(b) the Escape Fee Thresholds applicable to Police Station attendance.

(5) The figures in columns 3 and 4 of the table following sub-paragraph (8) apply to attendance at a police station listed as being within the corresponding Scheme referred to in column 2.

(6) Where attendance is at a place where an interviewing Constable is present, and that place is not a police station listed as being within a Scheme, the relevant Scheme in column 2 is—

(a) the Scheme within which the police station at which the interviewing Constable is normally based is listed; or

(b) where the interviewing Constable is not normally based at a police station listed as being within a Scheme, the Scheme within which the police station nearest to the place of attendance is listed.

(7) Where attendance is at a place where a Services Person is assisting with an investigation by Services Police, the relevant Scheme in column 2 is the Scheme within which the police station nearest to the place of attendance is listed.

(8) In sub-paragraphs (5), (6) and (7), "listed" means listed in the table set out in Annex A to the 2010 Standard Crime Contract Guidance for reporting crime lower work(a).

Police Station Attendance – Fixed Fees and Escape Fee Thresholds

(a) A copy of the guidance is available at www.justice.gov.uk/legal-aid/submit-claim/cwa-online-claims/codes-guidance. Copies can be inspected at the Legal Aid Agency (Head Office), 102 Petty France, London, SW1H 9AJ.

Criminal Justice System Area	*Scheme*	*Fixed Fee (£)*	*Escape Fee Threshold (£)*
Cleveland	Hartlepool	144.00	444.27
	Teesside	149.00	457.02
Durham	Darlington	169.36	508.08
	South Durham	167.00	513.18
	Durham	195.00	607.65
	Derwentside	188.09	564.27
	Easington	183.00	561.69
Northumbria	South East Northumberland	162.55	487.65
	Newcastle upon Tyne	151.00	464.67
	Gateshead	156.60	469.80
	North Tyneside	154.00	472.35
	South Tyneside	146.00	449.37
	Sunderland / Houghton Le Spring	163.00	502.98
	Berwick & Alnwick	194.00	597.45
	Tynedale & Hexham	169.00	520.86
Avon & Somerset	Avon North & Thornbury	195.00	615.33
	Bath & Wansdyke	211.91	635.73
	Mendip/Yeovil & South Somerset	237.45	712.35
	Bristol	175.32	525.96
	Sedgemore / Taunton Dane	199.00	674.04
	Weston-Super-Mare	198.30	594.90
Dorset	Central Dorset	200.00	600.00
	Bournemouth & Christchurch	159.15	477.45
	Poole East Dorset	168.00	515.73
	Bridport West Dorset / Weymouth & Dorchester	160.00	480.00
Wiltshire	Salisbury	191.00	587.22
	Chippenham / Trowbridge	205.96	617.88
	Swindon	188.00	579.57
Gloucestershire	Cheltenham	173.00	533.61
	Gloucester	170.00	523.41
	Stroud	195.00	600.00
Devon & Cornwall	Barnstaple	190.64	571.92
	Exeter	169.36	508.08
	Plymouth	196.60	589.80
	East Cornwall	218.00	740.43
	Carrick / Kerrier (Camborne) / Penwith	195.00	617.88
	Teignbridge / Torbay	178.82	536.16
Staffordshire	Stoke on Trent / Leek	195.00	617.88
	Stafford / Cannock & Rugeley	195.00	600.00
	Lichfield & Tamworth / Burton Upon Trent / Uttoxeter	189.00	582.12
Warwickshire	Leamington / Nuneaton / Rugby	195.74	587.22
West Mercia	Hereford / Leominster	170.21	510.63
	Kidderminster / Redditch	217.87	653.61
	Shrewsbury	182.00	559.14
	Telford	189.00	582.12
	Worcester	198.30	594.90
West Midlands	Sandwell	193.00	592.35
	Wolverhampton & Seisdon	193.00	592.35
	Dudley & Halesowen	189.79	569.37

	Walsall	195.00	602.55
	Birmingham	195.00	620.43
	Solihull	205.11	615.33
	Coventry	168.51	505.53
Dyfed Powys	Amman Valley	195.00	625.53
	Carmarthen East Dyfed	221.28	663.84
	Llanelli	152.00	467.22
	Brecon & Radnor	222.98	668.94
	Mid Wales	170.21	510.63
	North Ceredigion / South Ceredigion	223.83	671.49
	Pembrokeshire	183.00	564.27
Gwent	East Gwent	186.00	571.92
	Newport	183.00	561.69
	Lower Rhymney Valley / North Bedwellty/ South Bedwellty	195.00	610.20
North Wales	Bangor & Caernarfon	207.66	622.98
	Colwyn Bay	190.00	584.67
	Denbighshire	206.81	620.43
	Dolgellau	206.81	620.43
	Mold & Hawarden	195.00	607.65
	North Anglesey	216.17	648.51
	Pwllheli	146.38	439.14
	Wrexham	177.02	531.06
South Wales	Cardiff	195.00	643.41
	Vale of Glamorgan	228.09	684.27
	Cynon Valley	195.00	617.88
	Mid Glamorgan & Miskin	195.00	643.41
	Merthyr Tydfil	195.00	638.31
	Port Talbot	240.00	811.92
	Newcastle & Ogmore	195.00	653.61
	Neath	198.00	671.49
	Swansea	188.00	579.57
Merseyside	Bootle & Crosby	178.00	546.39
	Southport	148.94	446.82
	Liverpool	196.60	589.80
	St Helens	168.00	518.31
	Knowsley	181.00	556.59
	Wirral	173.00	531.06
Cheshire	Crewe & Nantwich / Sandbach & Congleton / Macclesfield	193.00	592.35
	Warrington / Halton	169.36	508.08
	Chester / Vale Royal (Northwich)	176.17	528.51
Cumbria	Barrow in Furness	168.51	505.53
	Kendal & Windermere	200.85	602.55
	Penrith / Carlisle	189.79	569.37
	Whitehaven / Workington	157.45	472.35
Greater Manchester	Manchester	195.00	643.41
	Stockport	183.83	551.49
	Trafford	195.00	612.78
	Salford	195.00	625.53
	Bolton	180.43	541.29
	Bury	175.32	525.96
	Wigan	186.38	559.14

	Rochdale / Middleton	185.53	556.59
	Tameside	171.00	525.96
	Oldham	150.64	451.92
Lancashire	Burnley / Rossendale	177.87	533.61
	Blackburn / Accrington / Ribble Valley	195.00	635.73
	Blackpool	138.72	416.16
	Fleetwood	142.13	426.39
	Lancaster	174.47	523.41
	Chorley / Ormskirk / South Ribble & Leyland	191.49	574.47
	Preston	156.60	469.80
Kent	Dartford & Gravesend	255.32	765.96
	Ashford & Tenterden / Dover / Folkestone	225.00	763.41
	Medway	224.68	674.04
	Swale	266.38	799.14
	Maidstone & West Malling	237.45	712.35
	Canterbury / Thanet	195.00	661.29
	West Kent (Tonbridge)	228.09	684.27
Surrey	Guildford & Farnham	197.00	668.94
	North West Surrey (Woking)	215.00	730.20
	South East Surrey	227.00	771.06
	Epsom	230.00	781.29
	Staines	264.00	893.61
Sussex	Brighton & Hove & Lewes	201.00	681.69
	Chichester & District	178.00	546.39
	Crawley / Horsham	250.21	750.63
	Hastings	156.00	480.00
	Worthing	180.00	554.04
	Eastbourne	189.79	569.37
Derbyshire	East Derbyshire (Ripley) / Ilkeston	226.38	679.14
	Ashbourne / Matlock / High Peak (Buxton)	208.51	625.53
	Chesterfield	194.89	584.67
	Derby / Swadlincote	195.00	625.53
Leicestershire	Ashby & Coalville / Loughborough / Melton Mowbray	199.15	597.45
	Leicester	195.00	605.10
	Hinckley / Market Harborough	221.28	663.84
Lincolnshire	Boston, Bourne, Stamford	190.00	584.67
	Skegness	171.06	513.18
	Lincoln / Gainsborough	177.02	531.06
	Grantham & Sleaford	175.00	538.71
Nottinghamshire	Mansfield	176.00	541.29
	Newark	197.45	592.35
	Nottingham	196.60	589.80
	Worksop & East Retford	187.00	574.47
Northamptonshire	Corby (Kettering) / Wellingborough	172.77	518.31
	Northampton	187.23	561.69
Bedfordshire	Bedford	184.00	566.82
	Luton	195.00	658.71
Cambridgeshire	Cambridge	178.00	548.94
	Ely	195.00	630.63

	Huntingdon	189.79	569.37
	March & Wisbech	188.09	564.27
	Peterborough	156.60	469.80
Essex	Basildon	195.00	602.55
	Brentwood	273.00	926.82
	Braintree	218.00	737.88
	Clacton & Harwich / Colchester	195.00	617.88
	Grays	255.00	865.53
	Harlow & Loughton	255.00	865.53
	Stansted	282.00	957.45
	Rayleigh / Southend on Sea	182.98	548.94
	Chelmsford / Witham	193.00	594.90
Hertfordshire	Dacorum (Hemel Hempstead)	230.00	778.71
	Bishop's Stortford / East Hertfordshire	279.00	947.22
	Stevenage & North Hertfordshire	259.00	878.31
	St. Albans	235.00	769.59
	Watford	231.00	783.84
Norfolk	Cromer & North Walsham	202.00	684.27
	Great Yarmouth	184.68	554.04
	Kings Lynn & West Norfolk	180.43	541.29
	Norwich & District	185.53	556.59
	Diss / Thetford	192.00	589.80
	Dereham	217.00	735.33
Suffolk	Lowestoft / Beccles & Halesworth / Aldeburgh	185.53	556.59
	Felixstowe / Ipswich & District / Woodbridge	188.94	566.82
	Sudbury & Hadleigh / Bury St. Edmunds / Haverhill / Newmarket	195.00	605.10
Thames Valley	Abingdon, Didcot & Witney (South Oxfordshire)	229.00	776.16
	Aylesbury	217.87	653.61
	High Wycombe & Amersham	209.00	709.80
	Milton Keynes	181.00	556.59
	Bicester / North Oxon (Banbury)	213.00	722.55
	Oxford	213.00	722.55
	Reading	206.81	620.43
	Slough (East Berkshire)	229.00	776.16
	West Berkshire (Newbury etc.)	191.49	574.47
Hampshire	Aldershot / Petersfield (North East Hampshire)	219.00	742.98
	Andover / Basingstoke / Winchester (North West Hampshire)	230.64	691.92
	Isle of Wight	188.09	564.27
	Portsmouth / Waterlooville (South East Hampshire)	193.19	579.57
	Gosport & Fareham	235.74	707.22
	Southampton (South West Hampshire)	217.87	653.61
Humberside	Grimsby & Cleethorpes	147.23	441.69
	Scunthorpe	158.00	487.65
	Hull	168.00	515.73
	Beverley / Bridlington	195.00	643.41
	Goole	200.00	676.59

North Yorkshire	Northallerton & Richmond	210.21	630.63
	Harrogate & Ripon	201.70	605.10
	Skipton, Settle & Ingleton	195.00	600.00
	Scarborough / Whitby	167.00	513.18
	Malton & Rydale	160.85	482.55
	York / Selby	175.00	538.71
South Yorkshire	Barnsley	174.00	536.16
	Doncaster	168.00	515.73
	Rotherham	178.00	548.94
	Sheffield	183.00	564.27
West Yorkshire	Halifax	190.64	571.92
	Huddersfield	160.85	482.55
	Dewsbury	174.47	523.41
	Bradford	149.00	459.57
	Keighley & Bingley	168.00	515.73
	Leeds	158.00	485.10
	Pontefract & Castleford	154.89	464.67
	Wakefield	153.00	469.80
London	Barking	246.00	834.90
	Bexley	220.00	745.53
	Bishopsgate	257.00	870.63
	Brent	240.00	811.92
	Brentford	244.00	827.22
	Bromley	232.00	786.39
	Camberwell Green	240.00	814.47
	Central London	260.00	880.86
	Clerkenwell / Hampstead	243.00	822.12
	Croydon	237.00	801.69
	Ealing	252.00	855.53
	Enfield	239.00	809.37
	Greenwich / Woolwich	229.00	776.16
	Haringey	247.00	837.45
	Harrow	240.00	814.47
	Havering	224.00	758.31
	Heathrow	301.00	1,021.29
	Hendon / Barnet	242.00	819.57
	Highbury Corner	252.00	852.78
	Kingston-Upon-Thames	250.00	847.65
	Newham	241.00	817.02
	Old Street	240.00	814.47
	Redbridge	247.00	837.45
	Richmond-Upon-Thames	264.00	893.61
	South London	252.00	852.78
	Sutton	239.00	809.37
	Thames	239.00	809.37
	Tower Bridge	255.00	865.53
	Uxbridge	231.00	783.84
	Waltham Forest	224.00	760.86
	West London	258.00	875.73
	Wimbledon	245.00	829.80

Work conducted outside the Police Station

3.—(1) The fixed amounts and hourly rates for free standing Advice and Assistance conducted outside the Police Station are specified in the table following this sub-paragraph and this Unit of Work is subject to an Upper Limit of £300.

Free standing Advice and Assistance

	London (£)	*National (£)*
Routine letters written and routine telephone calls per item	3.85	3.70
Preparation hourly rate	49.70	46.90
Travel and waiting hourly rate	26.30	26.30

(2) The fixed amounts and hourly rates for Advocacy Assistance on a warrant of further detention are specified in Tables A and B following this sub-paragraph and this Unit of Work is subject to an Upper Limit of £1,500.

Table A

Advocacy Assistance on a warrant of further detention – Magistrates' Court or judicial authority

	London (£)	*National (£)*
Routine letters written and telephone calls (per item)		
Own Solicitor and Duty Solicitor	3.85	3.70
Duty Solicitor (Unsocial Hours)	5.10	4.90
Preparation hourly rate		
Own Solicitor and Duty Solicitor	49.70	46.90
Duty Solicitor (Unsocial Hours)	66.30	62.50
Advocacy hourly rate		
Own Solicitor and Duty Solicitor	59.00	59.00
Duty Solicitor (Unsocial Hours)	78.65	78.65
Travelling and waiting hourly rate		
Own Solicitor and Duty Solicitor	26.30	26.30
Duty Solicitor (Unsocial Hours)	35.05	35.05

Table B

Advocacy Assistance on a warrant of further detention – High Court or a senior judge

	London (£)	*National (£)*
Routine letter out per item	7.50	7.50
Routine telephone calls per item	4.15	4.15
All other preparation work, hourly rate	79.50	75.00
Attending counsel in conference or at the trial or hearing of any summons or application at court or other appointment, hourly rate	37.00	37.00
Attending without counsel at the trial or hearing of any cause or the hearing of any summons or application at court, or other appointment, hourly rate	75.00	75.00
Travelling and waiting, hourly rate	33.25	33.25

(3) The fixed amounts and hourly rates for Advocacy Assistance in armed forces custody hearings are specified in the table following this sub-paragraph and this Unit of Work is subject to an Upper Limit of £1,500.

Advocacy Assistance for armed forces custody hearings

	London (£)	*National (£)*
Routine letters written and telephone calls (per item)		
Own Solicitor and Duty Solicitor	3.85	3.70
Duty Solicitor (Unsocial Hours)	5.10	4.90
Preparation hourly rate		
Own Solicitor and Duty Solicitor	49.70	46.90
Duty Solicitor (Unsocial Hours)	66.30	62.50
Advocacy hourly rate		
Own Solicitor and Duty Solicitor	59.00	59.00
Duty Solicitor (Unsocial Hours)	78.65	78.65
Travelling and waiting hourly rate		
Own Solicitor and Duty Solicitor	26.30	26.30
Duty Solicitor (Unsocial Hours)	35.05	35.05

(4) The fixed amounts and hourly rates for Advocacy Assistance in the magistrates' court in connection with an application to vary police bail conditions are specified in the table following this sub-paragraph and this Unit of Work is subject to an Upper Limit of £1,500.

Advocacy Assistance in the magistrates' court in connection with an application to vary police bail conditions

	London (£)	*National (£)*
Routine letters written and telephone calls per item	4.05	3.90
Preparation hourly rate	52.55	49.70
Advocacy hourly rate	62.35	62.35
Travelling and waiting hourly rate	26.30	26.30

Advice and Assistance and Advocacy Assistance by a court Duty Solicitor and Advocacy Assistance at the virtual court

4.—(1) The hourly rates for Advice and Assistance and Advocacy Assistance by a court Duty Solicitor are specified in the table following this sub-paragraph.

Advice and Assistance and Advocacy Assistance by a court Duty Solicitor

	London (£)	*National (£)*
Standard hourly rate (attendance and waiting at a magistrates' court)	55.15	53.85
Enhanced hourly rate (only payable in respect of work done on a day which is not a Business Day)	68.90	67.30
Travelling hourly rate (only payable where the Duty Solicitor is called out (including being called to return) to the court from the Office or attends on a day that is not a Business Day. Reasonable travel expenses may also be claimed (where relevant)).	26.30	26.30

(2) The Fixed Fees for Advocacy Assistance at the Virtual Court are specified in the table following this sub-paragraph.

Advocacy Assistance at the Virtual Court

	London (£)	*National (£)*
Virtual Court Fixed Fee where the hearing is held during normal working hours	200	150
Virtual Court Fixed Fee where the hearing is held during Unsocial	240	180

hours

Representation in the Magistrates' Court

5.—(1) The fixed amounts and hourly rates for—

(a) recording time and to determine whether the Lower or Higher Standard Fee Limit has been reached; and

(b) claiming costs in cases which fall outside the Standard Fee payment scheme,

are specified in the table following this sub-paragraph.

Representation in a magistrates' court

	All Areas
Routine letters written and telephone calls per item	£3.90
Preparation hourly rate	£49.70
Advocacy hourly rate (including applications for bail and other applications to the court)	£62.35
Hourly rate for attendance at court where Counsel is assigned (including conferences with Counsel at court)	£34.00
Travelling and waiting hourly rate (only claimable where the undesignated area fees apply)	£26.30

(2) The table following this sub-paragraph sets out the fees and fee limits for the Standard Fee payment scheme for representation in a magistrates' court.

Higher and Lower Standard Fees Table

	Lower Standard Fee (£)	*Lower Standard Fee Limit (£)*	*Higher Standard Fee (£)*	*Higher Standard Fee Limit (£)*
Designated Area Standard Fees				
Category 1A	272.56	298.45	517.05	517.10
Category 1B	221.59	298.45	477.41	517.10
Category 2	378.46	512.70	792.71	854.40
Category 3	357.87	452.20	734.56	789.50
Undesignated Area Standard Fees				
Category 1A	213.35	298.45	451.84	517.10
Category 1B	173.45	298.45	417.20	517.10
Category 2	306.25	512.70	702.40	854.40
Category 3	276.50	452.20	626.50	789.50

(3) In the table following sub-paragraph (2)—

(a) the reference to "Category 1A" cases is a reference to the following proceedings—

(i) either way guilty pleas;

(ii) indictable only cases heard in the Youth Court;

(iii) proceedings (other than committal proceedings) relating to either way offences which are discontinued or withdrawn or where the prosecution offer no evidence; and

(iv) proceedings (other than committal proceedings) relating to either way offences which result in a bind over;

(b) the reference to "Category 1B" cases is a reference to the following proceedings—

(i) summary only guilty pleas;

(ii) uncontested proceedings arising out of a breach of an order of a magistrates' courts (including proceedings in a magistrates' court relating to a breach of a Crown Court community rehabilitation order, community punishment order or suspended sentence);

(iii) proceedings (other than committal proceedings) relating to summary offences which are discontinued or withdrawn or where the prosecution offer no evidence;

(iv) proceedings (other than committal proceedings) relating to summary offences which result in a bind over;

(v) proceedings arising out of a deferment of sentence (including any subsequent sentence hearing) under section 1 of the Powers of Criminal Courts (Sentencing) Act 2000(a);

(vi) proceedings prescribed under regulation 9 of the Criminal Legal Aid (General) Regulations 2013(b), except where the case was listed and fully prepared for a contested hearing to decide whether an order should be made; and

(vii) proceedings relating to either way offences which must be tried in a magistrates' court in accordance with section 22 of the Magistrates' Courts Act 1980(c);

(c) the reference to "Category 2" cases is a reference to—

(i) contested trials;

(ii) proceedings which were listed and fully prepared for trial in a magistrates' court but are disposed of by a guilty plea on the day of trial before the opening of the prosecution case;

(iii) proceedings which were listed and fully prepared for trial in a magistrates' court but are discontinued or withdrawn or where the prosecution offers no evidence or which result in a bind over on the day of trial before the opening of the prosecution case;

(iv) contested proceedings relating to a breach of an order of a magistrates' court (including proceedings relating to a breach of a Crown Court community rehabilitation order, community punishment order or suspended sentence);

(v) proceedings where mixed pleas are entered; and

(vi) proceedings prescribed under regulation 9 of the Criminal Legal Aid (General) Regulations 2013 where the case was listed and fully prepared for a contested hearing to decide whether an order should be made; and

(d) the reference to "Category 3" cases is a reference to committal proceedings which are discontinued or withdrawn.

(4) The fees payable to Assigned Counsel for representation in a magistrates' court are subject to the limits specified in the table following paragraph 12.

(5) In this paragraph "committal proceedings" means proceedings in a magistrates' court up to and including a hearing at which an assisted person is committed to the Crown Court for trial under section 6(1) or (2) of the Magistrates' Courts Act 1980(d).

Own client work

6.—(1) The fixed amounts and hourly rates for Pre-Order Cover, Early Cover and means test form completion are specified in the table following this paragraph.

(2) The amount payable for Pre-Order cover is subject to an Upper Limit of—

(a) £52.55 per claim in London; and

(b) £49.70 per claim outside London ("National").

(a) 2000 c. 6.
(b) S.I. 2013/9.
(c) 1980 c. 43.
(d) 1980 c. 43.

(3) The Fixed Fee for Early Cover is £75.

(4) The refused means test completion fee is £25.

Own client work

	London (£)	*National (£)*
Routine letters written and telephone calls per item	4.05	3.90
Preparation hourly rate	52.55	49.70
Advocacy (including applications for bail and other applications to the court) hourly rate	62.35	62.35
Travelling and waiting hourly rate (only applicable where the Undesignated Area fees apply)	N/A	26.30

Representation in proceedings prescribed as criminal proceedings under section 14(h) of the Act

7.—(1) The fixed amounts and hourly rates for representation in the Crown Court in proceedings prescribed as criminal proceedings under section 14(h) of the Act (other than an appeal from a magistrates' court) are specified in the table following this sub-paragraph and this Unit of Work is subject to an Upper Limit of £1,500.

Representation in Prescribed Proceedings in a Magistrates' Court

	London (£)	*National (£)*
Routine letters written and telephone calls per item	4.05	3.90
Preparation hourly rate	52.55	49.70
Advocacy hourly rate	62.35	62.35
Travelling and waiting hourly rate	26.30	26.30

(2) The fixed amounts and hourly rates for representation in the High Court or a county court in proceedings prescribed as criminal proceedings under section 14(h) of the Act are specified in the table following this sub-paragraph.

Representation in Prescribed Proceedings in the High Court or a county court

	London (£)	*National (£)*
Routine letters out per item	7.50	6.60
Routine telephone calls per item	4.15	3.65
All other preparation work hourly rate	75.00 (79.50 where Provider's office is in London)	66.00 (70.00 where Provider's office is in London)
Attending counsel in conference or at the trial or hearing of any summons or application at court or other appointment – hourly rate	37.00	32.50
Attending without counsel at the trial or hearing of any cause or the hearing of any summons or other application at court or other appointment – hourly rate	75.00	66.00
Travelling and waiting hourly rate	33.25	29.20

(3) The fees payable to Assigned Counsel for representation in the High Court or a county court in proceedings prescribed as criminal proceedings under section 14(h) of the Act are subject to the limits specified in the table following paragraph 12.

Advice and Assistance on an appeal against conviction or sentence or an application to the Criminal Cases Review Commission

8. The fixed amounts and hourly rates for Advice and Assistance on an appeal against conviction or sentence pursuant to a determination made under section 15 of the Act (except where there is a subsisting section 16 determination) or an application to the Criminal Cases Review Commission are specified in the table following this paragraph and are subject to an Upper Limit of—

(a) £300 for Advice and Assistance on appeals against conviction or sentence; and

(b) £500 for Advice and Assistance on an application to the Criminal Cases Review Commission.

Advice and Assistance an appeal against conviction or sentence or application to the Criminal Cases Review Commission

	London (£)	*National (£)*
Routine letters written and routine telephone calls per item	3.85	3.70
Preparation hourly rate	49.70	46.90
Travel and waiting hourly rate	26.30	26.30

Representation on an appeal by way of case stated

9.—(1) The fixed amounts and hourly rates for representation on an appeal by way of case stated are specified in the table following this sub-paragraph.

Representation on an appeal by way of case stated in the High Court

	High Court (£)
Routine letters out per item	7.50
Routine telephone calls per item	4.15
All other preparation work – hourly rate	75.00 (79.50 where the Provider's office is in London)
Attending counsel in conference or at the trial or hearing of any summons or application at court or other appointment – hourly rate	37.00
Attending without counsel at the trial or hearing of any cause or the hearing of any summons or other application at court or other appointment – hourly rate	75.00
Travelling and waiting hourly rate	33.25

(2) The fees payable to Assigned Counsel for representation in the High Court on an appeal by way of case stated are subject to the limits specified in the table following paragraph 12.

Representation in the Crown Court on an appeal from a magistrates' court in proceedings prescribed as criminal proceedings under section 14(h) of the Act

10. The fixed amounts and hourly rates for representation in the Crown Court pursuant to a section 16 determination on an appeal from a magistrates' court in proceedings prescribed as criminal proceedings under section 14(h) of the Act are specified in the table following this paragraph, and this Unit of Work is subject to an Upper Limit of £1,500

	London (£)	*National (£)*
Routine letters written and telephone calls per item	4.05	3.90
Preparation hourly rate	52.55	49.70
Advocacy hourly rate	62.35	62.35

Travelling and waiting hourly rate	26.30	26.30

Advice and Assistance provided pursuant to a determination made under section 15 of the Act in Prison Law cases

11.—(1) The Fixed Fee for Advice and Assistance in Treatment Cases, Sentence Cases, Disciplinary Cases and Parole Board Cases is £220 and the Escape Fee Threshold is £660.

(2) The fixed amounts and hourly rates for recording time and to determine whether the Escape Fee Threshold has been reached are specified in the table following this sub-paragraph.

Hourly rates for determining whether Escape Fee Threshold reached

	All areas (£)
Routine letters written and routine telephone calls per item	3.70
Preparation hourly rate	46.90
Travel and waiting hourly rate	26.30

(3) The fixed amounts and hourly rates for Advocacy Assistance in Disciplinary Cases, for recording time and to determine whether the Lower or Higher Standard Fee is claimable or whether the case is claimable on an non-Standard Fee basis, are specified in the tables following this sub-paragraph.

Hourly rates in Disciplinary Cases for determining application of Standard Fees

	All areas (£)
Routine letters written and routine telephone calls per item	4.05
Preparation hourly rate	56.15
Advocacy hourly rate	68.25
Travel and waiting hourly rate	26.30

Higher and Lower Standard Fees Table for Disciplinary Cases

Lower Standard Fee (£)	*Lower Standard Fee Limit (£)*	*Higher Standard Fee (£)*	*Higher Standard Fee Limit (£)*
223.48	391.30	618.26	1,853.91

(4) The fixed amounts and hourly rates for Advocacy Assistance in Parole Board Cases, for recording time and to determine whether the Lower or Higher Standard Fee is claimable or whether the case is claimable on an non-Standard Fee basis, are specified in the tables following this sub-paragraph.

Hourly rates in Parole Board Cases for determining application of Standard Fees

	All areas (£)
Routine letters written and routine telephone calls per item	4.05
Preparation hourly rate	56.15
Advocacy hourly rate	68.25
Travel and waiting hourly rate	26.30

Higher and Lower Standard Fees Table for Parole Board Cases

Lower Standard Fee (£)	*Lower Standard Fee Limit (£)*	*Higher Standard Fee (£)*	*Higher Standard Fee Limit (£)*
479.13	1,023.48	1,593.91	4,780.87

Payment for Assigned Counsel

12.—(1) This paragraph applies to the fees payable to Assigned Counsel for—

(a) representation in a magistrates' court;

(b) representation in the High Court or a county court in proceedings prescribed as criminal proceedings under section 14(h) of the Act; and

(c) representation in the High Court on an appeal by way of case stated.

(2) The fees payable to Assigned Counsel are subject to the limits specified in the table following this paragraph.

Payment for Assigned Counsel

	Junior Counsel (£)	*Queen's Counsel (£)*
Basic fee for preparation, including for a pre-trial review and, where appropriate, the first day's hearing including, where they took place on that day, short conferences, consultations, applications and appearances (including bail applications, views and any other preparation).	maximum amount: 468.00	maximum amount: 4,446.00
Refresher daily fee (for any day or part of a day during which a hearing continued, including, where they took place on that day, short conferences, consultations, applications and appearances (including bail applications, views and any other preparation).	maximum amount: 162.00	maximum amount: 297.00
Subsidiary fees:		
Attendance at consultations, conferences and views not covered by the basic fee or the refresher fee.	29.25 per hour – minimum amount: 14.50	54.50 per hour – minimum amount 28.00
Written work (on evidence, plea, appeal, case stated or other written work).	maximum amount: 51.25	maximum amount: 105.00
Attendance at pre-trial reviews, applications and other appearances (including bail applications and adjournments for sentence) not covered by the basic fee or the refresher fee.	maximum amount: 94.00	maximum amount: 205.00

SCHEDULE 5

Regulation 16

Experts' Fees and Rates

Expert	*Non-London Hourly Rate or Fixed Fee (£)*	*London Hourly Rate or Fixed Fee (£)*	*Comments*
A&E consultant	126	135	
Accident reconstruction	90	68	
Accountant	50-144	50-144	Partner £144; Manager £108; Accountant £80; General staff £50.
Anaesthetist	135	90	
Architect	99	90	
Back calculations	180 fixed fee	189 fixed fee	
Benefit expert	90	90	
Cardiologist	144	90	
Cell telephone site analysis	90	90	
Child psychiatrist	135	90	
Child psychologist	126	90	
Computer expert	90	90	
Consultant engineer	90	68	

Dentist	117	90
Dermatologist	108	90
Disability consultant	68	68
DNA (per person) - testing of sample	315 per test	315 per test
DNA (per person) – preparation of report	90	90
Doctor (GP)	99	90
Drug expert	90	90
Employment consultant	68	68
Enquiry agent	32	23
ENT surgeon	126	90
Facial mapping	135	90
Fingerprint expert	90	47
Fire investigation	90	68
Firearm expert	90	90
Forensic scientist	113	90
General surgeon	135	90
Geneticist	108	90
GP (records report)	63 fixed fee	90 fixed fee
Gynaecologist	135	90
Haematologist	122	90
Handwriting expert	90	90
Interpreter	32	25
Lip reader / Signer	72	41
Mediator	126	126
Medical consultant	135	90
Medical microbiologist	135	90
Medical report	99	90
Meteorologist	126	180 fixed fee
Midwife	90	90
Neonatologist	135	90
Neurologist	153	90
Neuropsychiatrist	158	90
Neuroradiologist	171	90
Neurosurgeon	171	90
Nursing expert	81	81
Obstetrician	135	90
Occupational therapist	68	68
Oncologist	140	90
Orthopaedic surgeon	144	90
Paediatrician	135	90
Pathologist	153	540 fixed fee
Pharmacologist	122	90
Photographer	32	23
Physiotherapist	81	81
Plastic surgeon	135	90
Process server	32	23
Psychiatrist	135	90
Psychologist	117	90
Radiologist	135	90
Rheumatologist	135	90
Risk assessment expert	63	63

Speech therapist	99	90
Surgeon	135	90
Surveyor	50	50
Telecoms expert	90	90
Toxicologist	135	90
Urologist	135	90
Vet	90	90
Voice recognition	117	90

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make provisions for the funding and remuneration of advice, assistance and representation made available under sections 13, 15 and 16 of the Legal Aid Sentencing and Punishment of Offenders Act 2012.

Regulations 4 to 27 deal with the manner in which fees are to be claimed, determined and paid including provisions permitting interim payments and payments for expert services.

Regulations 28 to 30 provide for an appeal mechanism to challenge, in certain circumstances, the appropriate officer's determination of the fees payable to a representative. The provisions deal with the redetermination of fees by an appropriate officer, appeals from the appropriate officer to a Costs Judge and appeals from the Costs Judge to the High Court.

Schedule 1 sets out the graduated fees and fixed fees payable to advocates for proceedings in the Crown Court.

Schedule 2 sets out the fees payable to solicitors (and other appropriately qualified persons) for proceedings in the Crown Court.

Schedule 3 sets out the manner in which fees are to be claimed, determined and paid in proceedings in the Court of Appeal.

Schedule 4 sets out the rates payable for proceedings in a magistrates' court and certain other work to which the 2010 Standard Crime Contract applies.

Schedule 5 sets out the fees and rates payable to experts.

A copy of the 2010 Standard Crime Contract, including the Specification to the Contract, is available at www.justice.gov.uk/legal-aid. Copies can be inspected at the Legal Aid Agency (Head Office), 102 Petty France, London, SW1H 9AJ.

A copy of the Guidance accompanying the 2010 Standard Crime Contract is available at www.justice.gov.uk/legal-aid/submit-claim/cwa-online-claims/codes-guidance. Copies can be inspected at the Legal Aid Agency (address as above).

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LSA 2013/0002

IN THE MATTER OF PROCEEDINGS BEFORE THE VISITOR

Between:

Appleby (Isle of Man) LLC
and
The Isle of Man Law Society

Decision of His Honour The Deemster Doyle, First Deemster and Clerk of the Rolls sitting as a Visitor of the Isle of Man Law Society delivered on the 21st day of March 2014

Introduction

1. Appleby (whose advocates are members of the Society) is aggrieved by the refusal of the governing Council of the Society on 2 May 2013 to grant them a waiver from the requirement to take out professional indemnity insurance through the Society's indemnity insurance scheme known as the "Master Policy". Appleby has applied to me in my capacity as Visitor pursuant to section 1(5) of the Advocates Act 1995 to redress its grievance.

2. In May 2013 the Council of the Society had to make a decision which it described as "one of the most difficult decisions to face the Society and the public interest aspect could not be ignored." (minutes of Council meeting 6 February 2013).

3. Simon Thomas Hugh Cain ("Mr Cain") of Appleby has been good enough to acknowledge the difficult decision that Council had to take. At paragraph 8 of his witness statement dated 23 December 2013 Mr Cain states: "I know that various members of Council were finding the decision extremely difficult and I have a great deal of sympathy." I should also record that Cains (whose advocates are also members of the Society) acknowledged this position in its letter dated 23 May 2012 to the Society when it stated: "We do understand the very difficult position Council finds itself in, and indeed appreciate the work of Jane [O'Rourke, the Society's Chief Executive Officer], in particular, in extremely trying circumstances."

4. The decision was difficult because the determination of the waiver application could impact on all practising members of the Manx Bar and on all members of the public who had the need for legal advice and representation on a wide range of matters from and by Manx advocates. The decision that Council had to make could also impact on 34 individual members of the Society from Appleby who represent about 15% of the Manx Bar (which comprises about 225 advocates) or as Sean Kevin Dowling ("Mr Dowling") of Appleby puts it at paragraph 7 of his witness statement dated 23 December 2013 "equivalent to approximately 22% of the local bar in private practice earlier this year." If the Appleby advocates were refused a waiver they would be required to continue to pay substantial annual premiums for something which they say is of no personal benefit to them or their clients whatsoever as they have insurance through the Appleby Group Policy ("AGP") which they consider protects the public which they serve.

5. In essence I have to consider whether the Council of the Society was wrong in May 2013 to refuse Appleby a waiver and whether Council's decision was tainted by unfairness. I have concluded, for the reasons which are specified in this decision, that Council was not wrong and that Council's decision was not tainted by unfairness. I have considered this matter afresh by way of a rehearing on the merits and have concluded that it would not be appropriate to grant Appleby a waiver.

6. I refer to my decision on jurisdiction delivered on 21 November 2013 (the "November 2013 Decision") which provides some background to this matter and should be treated as incorporated into this decision by reference.

7. At paragraph 77 of the November 2013 Decision I stated:

> "Subject to submissions I would have thought that a consideration of the waiver issue should be in the context of the general functions of the Society including "the interests of the legal profession and the interests of the public in relation to legal matters" and in particular on any adverse impact on Appleby, the legal profession and the public if the waiver is not granted and on any adverse

> impact on the legal profession and on the public if a waiver is granted. I am content to receive submissions from Appleby and the Society on the merits of the waiver issue."

8. Neither Appleby nor the Society sought to persuade me that these factors were not relevant factors for the Council or for me as Visitor, on this rehearing, to consider.

The May 2013 Decision

9. A lengthy letter dated 13 May 2013 purported to set out "the full reasons of Council" for determining not to grant a waiver to Appleby. It included adequate reasons and also dealt with various specific points that had been raised over a considerable period of time. It concluded concisely as follows at paragraph 7 on page 13:

> "Appleby have not satisfied Council that it could safely grant a waiver without incurring risks to the public and the profession and for that reason the application was refused."

10. As Appleby accepts, at paragraph 46 of its Application, the Society's letter of 13 May 2013 made it clear that the two reasons that Appleby's application for a waiver was refused were: (1) risk to the public and (2) risk to the profession. Appleby accepts that Council was concerned that if it acceded to Appleby's request it could potentially jeopardise the existence of the Master Policy and limit the full range of advocate legal service providers. Appleby took issue as to whether there was sufficient evidence to justify those conclusions. In my opinion there was and is sufficient evidence to justify those conclusions.

Submissions

11. I have considered all the written and oral submissions put before me by the parties on 4 March 2014. I am grateful to counsel for their assistance.

Appleby's submissions

12. On behalf of Appleby Mr Christopher Cope made, amongst others, the following submissions:

> (1) Council was wrong to refuse the waiver and the Visitor should redress Appleby's grievance by granting the waiver;
>
> (2) In the alternative, if the Visitor concludes that Council was right to have refused to grant the waiver, Council nevertheless reached its decision through unfair process and the matter should be remitted to it to consider afresh;
>
> (3) Appleby's non-participation in the Master Policy is not contrary to the interests of the legal profession and/or the interests of the public in relation to legal matters;
>
> (4) The fact that there is primary legislation concerning the Society's functions which specifically deals with insurance requirements, but which does not require participation in a Master Policy, strongly militates against any proposition that only with a Master Policy in which all advocates participate can the interests of the public and the legal profession be protected;
>
> (5) The fact that a waiver may be revoked is an appropriate means to address any uncertainty which the Visitor may have about what effect Appleby not participating in the Master Policy would have on the public or the legal profession;
>
> (6) The AGP protects the public (at least) just as well as the Master Policy. The AGP is manifestly adequate in terms of public protection;
>
> (7) There is no evidence to support the Society's claim that Appleby's departure could itself jeopardise the existence of the Master Policy;
>
> (8) Even assuming that a possible consequence of Appleby not participating in the Master Policy might be that the premiums of other firms rise to a certain limited extent the fact remains that there is no evidence at all to suggest that this would put at risk the public or the legal profession as a whole;

(9) There is no evidence that Appleby not participating in the Master Policy would mean that the continuance of the Master Policy ceased to be possible. On the contrary, there is ample evidence to support the proposition that the Master Policy would survive if Appleby was granted a waiver;

(10) The only evidence referred to support the Society's assertion that "the current position is that the lead underwriter RSA would not offer terms in the event the Master Policy was not a policy which covers all advocates" (paragraph 17 of witness statement of Edward Paul Kerruish dated 13 January 2014) is page 6 of the 2013 "Renewal Summary" that "RSA also stated – As last year, we will provide a Master Policy quotation only if all firms are included." This comes nowhere close to evidence that the Master Policy is not possible without Appleby's participation. At its very highest this is a comment by one underwriter made back in June 2013 that it would only provide a Master Policy quotation if all firms were included;

(11) The basis for the Society's position is therefore unsubstantiated but to any extent that the Visitor disagrees there is a simple answer. The evidence justifies granting Appleby a waiver and such waiver need not be indefinite. If it should prove to be the case that the Society's concern is well-founded, it will be open to it to revoke the waiver and require Appleby's participation once again. What would not be right is for Appleby's application to be declined because of uncertainty as to the effect of its departure on the Master Policy. Were that right, the practical effect would be that it could never achieve a waiver at all;

(12) Council acted irrationally in having regard to the floodgates point. The fear that granting Appleby a waiver would mean that other firms will apply is not justified. First, there is no evidence that they would. Secondly, there is positive reason to believe it is unlikely they would. There are in fact no other firms participating in the Master Policy which are part of a larger international group and which do have or could have a larger international group policy. Thirdly, if this were a legitimate basis to refusing a waiver, a waiver could never be granted. Fourthly, even if a different firm were to apply for a waiver in the future, there is no reason to suppose that it need be granted in the circumstances then prevailing. Fifthly, the current requirement is quite simply unfair to Appleby;

(13) It is pure speculation without any evidential basis to suggest, as Council do, that the granting of the application "could potentially limit the full range of Advocate legal service providers, as increases in premiums may drive choice from the market.";

(14) Any remaining concerns in respect of "run off cover" can easily be remedied by the provision of relevant undertakings or other provisions;

(15) Granting Appleby a waiver would not be contrary to the interests of the public. The public served by Appleby is amply protected. There is no reason on the evidence to suppose that granting the waiver would jeopardise the existence of the Master Policy;

(16) Other than a possible increase in premiums on some of the other firms there is no evidence that the waiver would have an effect on the legal profession which would be contrary to its interests. There is no reason not to grant the waiver as being contrary to the interests of the legal profession;

(17) The decision of Council was wrong and the Visitor should grant the waiver. This would not be a decision with indefinite effect. The power exits to revoke the waiver;

(18) If the Visitor considers that Council was right to refuse the waiver then the matter at the very least should be referred back to be considered afresh, because the decision-making process followed by Council was unfair.

Society's submissions

13. On behalf of the Society Mr Jonathan Wild made, amongst others, the following submissions:

(1) The decision of Council in May 2013 was not wrong and was not, as alleged, "motivated by lack of impartiality" or tainted by "procedural irregularity" or other "unfairness";

(2) There is nothing in the new evidence filed which requires the Visitor to interfere with the decision not to grant a waiver;

(3) The benefits of the Master Policy to the public are clear and were identified in the expert report of Frank Raymond Maher ("Mr Maher") of Legal Risk LLP dated 26 April 2013. The Master Policy has been in place for approximately 40 years and it has ensured that all members are adequately insured to protect the public. The Society has endeavoured to improve and develop the system (including apportionment of premium) and will continue to do so;

(4) The Master Policy at the present time is the most appropriate insurance mechanism in place for the protection of the public and also for the members of the Society as a whole. The ramifications of an inability to secure the renewal of the Master Policy would potentially be very detrimental to the public and their ability to have access to properly insured legal services. There is a very significant risk that if a waiver were granted the Society would not be able to ensure the Master Policy could survive – especially in the likely event of future applications for waiver. Because of the size of the membership to maintain its integrity the Master Policy has to be just that – a Master Policy for all;

(5) It is wholly unrealistic to suggest that there should be some form of grant of waiver and then in effect "let see what happens." It is already likely that the practices under 3 partners may well not be able to qualify for cover (RSA confirming they would not offer such cover);

(6) The Society has significant concerns that the "domestic work" traditionally undertaken by smaller practices and sole practitioners may not survive as such practices may either be unable to obtain insurance or it would not be affordable in the current insurance market (or may only be offered by unrated insurers with the inherent risks involved);

(7) Allowing a waiver might immediately cause the Master Policy to be incapable of being placed. If the Master Scheme was capable of being placed in 2014 (without Appleby) there is clearly a significant risk that other members would perceive a financial advantage to their own firms and if they were larger than 3 partners may well see at least a short term financial advantage in withdrawal and feel confident competitive open market insurance could be secured by them;
(8) The Master Policy scheme is not fragile if it operates as a Master Policy for all. The Master Policy becomes fragile if members are allowed to opt out;

(9) It is disappointing to note the suggestion from Appleby that there is no evidence of any proper consideration by the Society or AON of other options. As Appleby is aware many underwriters have been spoken to (whether on the existing slip or not) both through the broker and directly by the Society. It is not clear whether it is seriously being suggested that efforts were not made to identify other options or solutions but if it is then such suggestion is wrong;

(10) The Society does not consider that any residual differences between the Master Policy and the AGP are material;

(11) There is a real risk that other firms will apply for a waiver. It is not understood why Appleby concludes that only firms part of an international group would apply. Council's concern is the impact and effect of an inability to place the Master Policy. The Master Policy is in Council's view currently the most effective method of public protection in this context;

(12) It is correct to identify risks and look at the position of all members and the public and not just take a view on what is fair to one or more individual members. It is not simply a question of run-off cover for Appleby. If there is no Master Policy, run-off cover will be a real and currently unquantifiable risk to a number of different persons;

(13) The potential impact on the legal profession has been identified (see for example the expert reports of Mr Maher, the discussion at the special general meeting held by the Society and the waiver decision). Consideration must be given as to the impact on all (whilst reflecting that the primary concern is and remains public protection followed by the availability of legal services);

(14) Appleby is not being asked to "subsidise" other firms. The unfairness identified by Appleby is

that they are now in a position where they are paying twice for a similar product and do not want to do so;

(15) Council denies any allegations of bias or self-interest but accepts that obviously by the very nature of its composition the majority if not all members will have a financial stake in a Master Policy as all members participate. That does not translate to bias one way or the other (indeed there is no evidence to conclude whether an end to the Master Policy might benefit or burden any particular Council members);

(16) Council concluded in its waiver decision that there was a risk to the Master Policy. It is relevant to note that the risk to the viability of the Master Policy with any exits permitted has increased since the waiver decision bearing in mind the position of RSA as stated in the renewal summary 2013 and reflecting on the consistent position of Zurich. In support of its waiver decision Council did not and does not need to make a finding that the Master Policy could not survive without Appleby. It is clear that no one can definitely reach this conclusion not least as the placement of cover is always point in time. There is however a real risk that the Master Policy will not be able to be placed with the exit of Appleby, and thus will come to an end and an entire new structure and approach will need to be designed, operated and supervised;

(17) Even if the Master Policy did not immediately fail it is almost a certainty that the premiums will rise potentially significantly as a result of any substantial exit. The small size of the Master Policy makes it likely that the Society is already at a minimum level whereby insurers would not be interested in offering cover of this nature;

(18) On the evidence before Council at the time of the waiver decision and in light of the new evidence Council was, and remains, of the view that at the very least there is a significant risk that the Master Policy would not be able to operate if a waiver were granted. Council has effectively concluded that the Master Policy is the current best option and it has been unable to identify any option to allow "safe" exits from the policy. Council has effectively simply insisted on compliance with the prevailing rules. If the Visitor orders a waiver then prior to such waiver taking effect a new structure and regulatory framework would need to be put in place to manage a compulsory insurance environment without a Master Policy.

Determination

14. In accordance with the November 2013 Decision I have dealt with Appleby's Application filed under cover of a letter dated 10 September 2013 (the "Application") by way of an appeal on the merits similar to the way in which civil appeals by way of rehearing are dealt with by the Appeal Division but with a little more flexibility and informality.

15. By analogy with the approach of the Appeal Division, which is reluctant to interfere with the exercise of a discretion by the court below, I should also bear in mind that in making its decision to refuse a waiver Council was exercising a discretion. The Appeal Division would not normally interfere with the exercise of a discretion by a court at first instance unless it was clearly satisfied that the court at first instance was wrong. Even if the Appeal Division thought that one or more of the reasons leading the first instance court to the particular decision which it made was wrong, the Appeal Division would not reverse the decision unless it thought the decision itself was wrong. The Appeal Division would not normally interfere unless it was satisfied that the court at first instance had exercised its discretion under a mistake of law or a misapprehension of facts, or in disregard of principle, or taking into account irrelevant matters, or if it failed to exercise its discretion at all, or was so plainly wrong that the only legitimate conclusion was that it had erred in the exercise of its discretion (*Eurotrust v Barlow Clowes* 1996-98 MLR 394 at 407-408).

16. Council in making its decision not to grant a waiver was exercising a discretion. If any authority is needed for that basic proposition I would refer to the judgment of Stanley Burnton J in R (*Toovey and Gwenlan*) *v The Law Society* [2002] EWHC 391 (Admin) ("the *Toovey* " case), helpfully referred to at paragraph 120 of Mr Maher's report dated 26 April 2013 and a copy of the full judgment and the transcript of the hearing after hand down being included in volume 5 of the bundles at divider 127, considered the power of the Law Society of England and Wales to grant a waiver in respect of contributions (in effect premiums) to the professional liability insurance cover provided by the Solicitors' Indemnity Fund and plainly regarded that power as discretionary. The relevant Rule 10 stated that "The Society shall have

power in any case or classes of cases to waive in writing prospectively or retrospectively any obligation on any solicitor... under these Rules and to amend or revoke any such waiver." The learned judge at paragraph 15 of his judgment stated:

> "... as appears from their terms, Rule 10 and the Waivers Policy involved the grant by the Law Society of a discretionary concession. A waiver was in essence a discretionary discount from the mandatory contribution calculated in accordance with the Rules...".

17. In the November 2013 Decision at paragraph 63 I stated that I did not accept that, once the directions in respect of the provision of evidence, information and submissions had been complied with, Council would be better placed than the Visitor to make a decision on waiver in the circumstances of this case. That remains the case but I should also acknowledge that members of Council were elected by the membership of the Society and were well placed to consider and decide upon what was in the best interests of the Society and the Manx legal profession generally. Members of Council must, of course, always be astute to guard against the influence of self-interest but they will also have important views on what is in the best interests of the public in relation to legal matters.

The Clothier Report and the Master Policy

18. In the November 2013 Decision I made reference at paragraph 13 to a report of the Commission of Inquiry into Legal Services published in May 1990 (the "Clothier Report"). The Commission stressed the importance of professional indemnity insurance for the legal profession, its clients and the public as follows:

> *"Professional Indemnity Insurance*
>
> 3.33 Law Society rules impose an obligation on every practising advocate to have professional indemnity insurance up to a limit of liability which is set by the Law Society from time to time. We were satisfied that the present provision affords reasonable security to the client in case his advocate should be found to have been at fault in the handling of his affairs. The Law Society have arrangements for satisfying themselves that this obligation is fulfilled.
>
> 3.34 We were asked to consider the cost of this insurance. But inasmuch as there is a market for this kind of insurance and there is an absolute need for its provision in order to protect the public, we deemed that the cost must in any event be met and that its level was a matter for negotiation between Law Society and insurers."

19. The Commission touched upon the difficult market for this kind of insurance and stressed the "absolute need for its provision in order to protect the public."

20. It may well be that the costs associated with the Master Policy have significantly increased since May 1990 and it may be that the terms of the policy could be improved (as with any insurance policy) but it can be seen that the distinguished authors of the Clothier Report were firmly in favour of the concept of a Master Policy for all practising advocates and they felt it protected the public and that there was an "absolute need" for it.

21. Mr Maher and Mr Graham Reid ("Mr Reid") who have produced the expert reports that were placed before me, also acknowledged the positive attributes of the Master Policy. Mr Maher in his report of 26 April 2013 at paragraph 127 referred to the fact that "the Isle of Man Law Society has for some decades managed to ensure a very high degree of public protection" in respect of the insurance requirements for its members and at paragraph 130 Mr Maher refers to a positive attribute of the Master Policy namely the "guaranteed availability of cover for all firms." Mr Reid at paragraph 196 of his report of 23 December 2013 states: "I believe this is a reference to an attribute of the Master Policy, namely that it provides cover for all Advocates firms regardless of their claims records...".

22. The Society in its Answer dated 2 December 2013 states:

> "The Master Policy ... gives the Law Society the ability and power to ensure that the public is safe guarded in their dealings with advocates on the Isle of Man." (paragraph 2).
>
> "Council is of the opinion, especially having considered the contents of the expert report of Mr Frank

> Maher... that the Master Policy is a valuable scheme to both the public and the members of the Society as a whole..." (paragraph 10).
>
> " At the present time Council considers that the Master Policy represents the most appropriate insurance mechanism to protect the public especially being cognisant of the very significant challenges faced in many other jurisdictions with regard to adequate professional indemnity insurance cover. The difficulty in ensuring there is adequate insurance cover in place is especially problematic in the context of small firms..." (paragraph 14).

Rule 17

23. Rule 17 of the Advocates Practice Rules 2001 (the "2001 Practice Rules") provides as follows:

> "*Professional Indemnity Insurance*
>
> 17. Each advocate in connection with his private practice shall take out Professional Indemnity Insurance through the Isle of Man Law Society Indemnity Insurance Scheme in such minimum sum and on such terms as the Council with the approval of the Advocates Act Committee shall from time to time prescribe."

24. It can be seen therefore by the use of the word "shall" that in effect a mandatory requirement for insurance through the Society's scheme is imposed on practising advocates. Rule 17 of the 2001 Practice Rules imposes a mandatory requirement on any practising advocate that values his reputation and his ability to practice as an advocate as a breach of such rule would be prima facie professional misconduct and could result in the revocation of the advocate's commission to practice as an advocate. It is in effect a compulsory Master Scheme.

Rule 22

25. Rule 22 of the 2001 Practice Rules provides:

> "*Waiver*
>
> 22. In any particular case or cases the Council shall have power to waive in writing any of the provisions of these Rules for a particular purpose or purposes expressed in such waiver, and to revoke such waiver."

26. It is common ground that Council has power to grant a waiver in respect of the mandatory insurance requirements.

Discretionary power

27. In exercising the power to waive Council has a discretion to exercise. Anyone seeking a waiver from Council is in effect seeking the indulgence of Council (or in the words of Stanley Burnton J in the *Toovey* case "a discretionary concession") and, of course, has the burden of establishing that such waiver is justified. Appleby in applying for a waiver (in effect an exemption from a provision imposing a mandatory requirement applying to all practising advocates) was seeking to persuade Council that a discretion should be exercised in its favour.

28. Council exercised its discretion by declining to grant a waiver. I am not persuaded that in exercising its discretion Council committed any error of law or principle or acted unreasonably or irrationally or took into account irrelevant factors or did not consider relevant factors. I am not persuaded that Council acted in any way unfairly.

29. Council, on the basis of the evidence and information before it, including in particular Mr Maher's expert report, was entitled to come to the conclusion that the granting of a waiver to Appleby would not be in the best interests of the legal profession or in the best interests of the public in relation to legal matters overall.

The Appleby Group Policy

30. When Council made its decision in May 2013 it did not have full details of the AGP and it stated at paragraph 1.5.8 of its letter dated 13 May 2013 that:

> "... in the absence of clear information as to the extent of the cover which Appleby actually have, Council cannot be assured that the cover you have obtained on a voluntary basis is equivalent in all material respects to the compulsory cover required to be obtained by the Society."

31. Further details of the AGP have now been provided and for the record I should make it clear that the issue of the adequacy of the AGP is no longer a material issue between the parties.

32. The AGP although differing in some respects from the Master Policy appears sufficient in terms of public protection. Appleby at paragraph 44 of its written submissions refer to Council's historical concern that Council "could not be sure" that sufficient cover was provided under the AGP and add that it should now be abundantly clear that it can. In response to that paragraph the Society in its written submissions state: "... the Society does not consider that any residual differences between the Master Policy and the AGP are material, however [the] Society cannot be blamed for it not being "abundantly clear" until now – when Appleby did not provide it with the AGP." As to the very limited respects in which the AGP provides lesser cover than the Master Policy it has been confirmed that Appleby's broker, Cooper Gay, are prepared to provide harmonisation cover that would conform to the requirements of the Master Policy. The parties agree that the AGP already provides at least equal cover to the Master Policy in a large number of respects. There are however certain respects in which Appleby recognises that the AGP may currently appear to be more restrictive. Appleby's position is that it cannot sensibly be said that it would be against the interests of the public Appleby serves to be protected by the AGP. I do not decide the Application on the basis of the differences between the Master Policy and the AGP or on the basis that the public which Appleby serves would not be protected by the AGP.

Fundamental issues

33. I accept that the evidence now filed suggests that the AGP provides the public insofar as they are Appleby clients with protection but that is far from conclusive in itself. Council must have regard to the interests of other members of the public who are not Appleby clients. Council must also have regard to the interests of the legal profession and the interests of the public in relation to legal matters. In considering the application for a waiver Council had to consider a number of fundamental issues in respect of the profession and the public. Council at the outset appropriately recognised that the issues were not simply in respect of claims handling and whether the AGP was sufficient by way of cover. The Society in its email dated 15 March 2012 18:44 to Appleby stated:

> "There are some rather more fundamental issues of principle to be determined in the first instance (will withdrawal of Appleby render Master Policy cover for the remainder of the profession viable being the most important)."

The Manx legal profession

34. Sometimes, in the fast moving modern global commercial world where financial targets and the pursuit of profit appear to dominate centre stage, we need to pause and remind ourselves that the legal profession is a profession. It is not simply a money generating business. It is far more important than that. Independent advocates providing properly insured legal services are important to the maintenance of the rule of law in a civilised society. Members of the Society which comprise the Manx legal profession provide legal services over a wide range of matters to both local and international clients. That is in the public interest.

35. We also need to remind ourselves that it is important to the future of the independent Manx legal profession and indeed the Island generally that all members of the Society try to work positively together for the general good of the Society and the Island. Sometimes if you are a member of a society you have to do something which you may perceive is not in your own personal interests and which may impact adversely upon you financially but is necessary for the greater good of the society of which you are a member and the interests of the public which the society serves. All members of the legal profession must on occasions put the interests of the legal profession as a whole and indeed the interests of the public over and above their own perceived personal interests. A classic occasion when that needs to happen is when members are dealing with professional indemnity insurance and the Master Policy.

36. A young Marx in "Reflections of a Young Man on the Choice of a Profession" in 1835 (referred to in *Karl Marx and Frederick Engels Collected Works* Lawrence & Wishart 1975 volume 1 pages 3-9) stated:

> "We must therefore seriously examine whether we have really been inspired in our choice of a profession... It is not only ambition which can arouse sudden enthusiasm for a particular profession, we may perhaps have emblellished it in our imagination, and emblellished it so that it appears the highest that life can offer. We have not analysed it, not considered the whole burden, the great responsibility it imposes on us... And if then our enthusiasm still persists, if we still continue to love a profession and believe ourselves called to it after we have examined it in cold blood, after we have perceived its burdens and become acquainted with its difficulties, then we ought to adopt it, then neither does our enthusiasm deceive us nor does overhastiness carry us away... But the chief guide which must direct us in the choice of a profession is the welfare of mankind and our own perfection. It should not be thought that these two interests could be in conflict, that one would have to destroy the other; on the contrary, man's nature is so constituted that he can attain his own perfection only by working for the perfection, for the good, of his fellow men... History calls those men the greatest who have ennobled themselves by working for the common good... If we have chosen the position in life in which we can most of all work for mankind, no burdens can bow us down, because they are sacrifices for the benefit of all; then we shall experience no petty, limited, selfish joy, but our happiness will belong to millions, our deeds will live on quietly but perpetually at work, and over our ashes will be shed the hot tears of noble people."

37. One does not need to subscribe to Marx's subsequent Communist Manifesto to appreciate the inherent good sense in members of a professional society acting not exclusively in their own personal self interests but for the greater good of the society of which they are members.

38. Cains in its letter of 8 February 2012 to the Society state that "Increasingly we see ourselves as internationally focused. In that regard, as you are aware, we no longer undertake Isle of Man general practice work other than on an exceptional basis" but Cains importantly and responsibly reveals its community spirit and social conscience in respect of the Master Policy when it adds:

> "Cains is also aware of the social utility aspect of the [Master Policy]. It may create capacity for a small number of member firms who primarily undertake work which assists the disadvantaged in our community. Cains would recognise a reasonable degree of obligation to support such firms in the event capacity issues arise due to the [Master Policy] becoming no longer viable."

39. Lady Hale the Deputy President of the Supreme Court of the United Kingdom and a lead member of the Judicial Committee of the Privy Council (our court of final appeal) at a speech delivered at the South Bank University on 30October 2013 referred to legal work conducted by those for the most disadvantaged in society and stated:

> "The problem is greatest in those areas of law which are probably most attractive to the idealistic young. There have always been students who go into the law because they want to make loads of money and have their sights set on the more lucrative areas of practice from the outset. And it may be that some of those areas are not feeling the pinch in the way that publicly funded work is doing. But most of the young people I meet want to become human rights lawyers or criminal advocates, rather than conveyancers or commercial lawyers. Most of them have not heard of transactional work (although of course they soon will if they go to the one of the universities targeted by the big city firms).
>
> Which brings me to the other great disappointment of my declining years - the steady and now precipitous decline in the legal aid and advice scheme which plays such an important part in securing genuine access to justice for all...
>
> I wish I could see a way ahead in these difficult days. I understand how difficult it is for the government to bring expenditure on legal services under control without taking drastic steps like these. I salute the courage and determination of the young legal aid lawyers who are bent on continuing to provide a service to the poorest and most disadvantaged in our society and also on promoting a more diverse and socially mobile legal profession."

40. The Review Team engaged in the Scope of Government reports in 2012 at paragraph 7.22 of their comments in March 2012 identified the following as vital to the continuance of society: "security, law and order, justice." The Review Team accepted that these "may represent some sort of irreducible minimum." The Review Team stressed that any proposed economies should not "Prejudice law and order, justice or the access to justice." Executive government, supported by Tynwald, have wisely accepted that "protecting the vulnerable" is one of their guiding priorities in rebalancing public finances. Members of the Society are frequently engaged in "protecting the vulnerable" and most disadvantaged in our compact community.

41. Many young men and women choose to enter the Manx legal profession. It is still a noble calling. The Society states that the Manx Bar consists of approximately 225 advocates. Members of the Manx Bar deal with a wide range of matters including domestic and international matters, commercial and corporate matters and family and criminal matters. The Society states that on the Isle of Man of the 35 legal practices 18 have 3 or fewer advocates and this grouping has particular difficulty in obtaining professional indemnity insurance cover. Of the remaining practices it is stated that 5 practices have 4 advocates, 3 have 5 advocates, 2 have 6 advocates and only 6 practices have 8 or more advocates. The Society states that only one practice (Appleby) has more than 20 advocates (in fact Appleby's evidence refers to Appleby having some 34 advocates – see paragraph 7 of the witness statement of Mr Dowling dated 23 December 2013). The Society states that the make up of the Manx Bar has a "significant resonance on the Island where the Society's smaller firms traditionally undertake the "local" work, servicing the community needs, for example conducting criminal work, domestic conveyancing, matrimonial work and other non-corporate/international type work."

42. As the President of the Family Division of the High Court of England and Wales Sir James Munby has recently said, dealing with the legal system, the common law and the rule of law principally in a family law context, in an address delivered in Middle Temple Hall on Friday 28 February 2014:

> "We are all the inheritors of great traditions – the traditions of the common law and the Bar. We – judges and [advocates] alike – are but the temporary custodians of something we have received on trust conferred on us by generations long gone and held by us for the benefit of generations as yet unborn and for centuries to come. We cannot, we must not, betray that trust. I know that there are siren voices, acting in good faith and in the conscientious belief that they are doing right... But we must take the long view. We must be careful that we navigate the storm without ending up shipwrecked on the rocks... The role of the advocate is timeless. Advocates have been around for a very long time. The challenges you face echo down the millennia...".

43. In my judgment in *Dev Property Development Plc* (7 May 2008) I acknowledged the importance to the Island of the international business which the commercial law firms including Appleby and Cains generate. At paragraph 21 I added:

> "The courts of the Island are here to provide an efficient service to the local and international community in respect of legal issues arising for determination in this jurisdiction whether those issues are finance sector related issues or not...".

44. Edward Paul Kerruish ("Mr Kerruish") the Vice – President of the Society and the Chairman of the Society's Professional Indemnity Insurance Committee puts it well at paragraph 30 of his statement dated 13 January 2014 when he states:

> "... Council sees the positive contribution to the Island of an international Group such as that of Appleby but at the end of the day it must also be remembered that Appleby is a firm of Manx Advocates and has an ethical obligation to have regard for the ongoing success and existence of the Isle of Man Law Society and the profession it represents and the important role it plays in the provision of legal services to the local market as well as the international market."

45. The international and local work which Appleby's advocates provide is, of course, of great importance and benefit to the Isle of Man. In Appleby's letter of 4 April 2012 to the Society reference is made to the continuing availability to the community of "legal aid representation and conveyancing" which Appleby says it "provides and will continue to provide in any event". The local domestic work which other advocates provide is also, of course, of great importance and benefit to the Isle of Man. This work frequently focuses on the vulnerable and those less privileged and with less opportunities than others. It is obviously important to the Island and its public that a full range of insured legal services are available. Council is right to be concerned that the public is adequately provided for and protected by ensuring that Manx

advocate services continue to be available across a full range of legal fields, domestic and international, and that adequate and secure insurance continues to remain in place in respect of such services.

46. The provision of a broad range of legal services on the Island is of great importance to the public. When consideration is being given to the interests of the legal profession and the interests of the public in relation to legal matters regard must also be had to the rule of law and the vital role that advocates have to play in assisting in the administration of justice. Access to justice is a fundamental feature of any society which is committed to the rule of law. Access to justice is greatly facilitated by the provision of legal advice and representation across a broad spectrum of matters. Advocates, like all other human beings including judges, make mistakes. I have made frequent reference to this position when swearing in newly qualified advocates and I have added words to the effect: "That is why advocates have professional indemnity insurance and that is why above courts at first instance there are appeal courts." It is very much in the public interest as recognised by the Clothier Report that advocates providing legal advice and representation are properly insured and that all advocates continue to be financially protected from their mistakes and that the public be financially protected from the mistakes of advocates.

47. Advocates have an overriding duty, in the public interest, to assist the court in the proper and efficient administration of justice (see Rule 19 (1) of the 2001 Practice Rules). This is important in respect of the maintenance of the rule of law. In *R v C* (judgment 10 December 2003) I stated:

> "8. Advocates have an important role to play in the administration of justice on the Island. Advocates are professional and committed people. It is a privilege to receive a commission to act as an advocate. With that privilege comes public responsibilities and public duties. The pro bono work done by the Manx Bar is evidence of their commitment to good Manx citizenship... Advocates should not simply consider their own financial position but should also look to the position of their clients and the position of the court and should always be conscious of their professional duties to the client and to the court...
> 19. ... It is also clearly important for the administration of justice on the Island that there are a sufficient number of local advocates who undertake family work and criminal defence work. Without the considerable efforts of those advocates who undertake that work the administration of justice on this Island would suffer...
>
> 20. It is important for the Isle of Man to have a strong and independent Manx Bar which serves the requirements of the local and international community. I am confident that the Isle of Man Law Society will ensure that there are sufficient advocates available to enable family law matters and criminal law matters to progress fairly and efficiently through the courts and to facilitate the administration of justice on the Island generally."

48. In coming to its decision Council plainly had regard to the interests of the whole of the legal profession and the interests of the public in relation to legal matters overall. These were very proper factors to have regard to. There is a very strong public interest in an independent Manx Bar and in the maintenance and enhancement of the rule of law and in all advocates being properly insured. The efficient and effective administration of justice is facilitated by insured advocates providing legal services over a broad range of legal matters. Across the water, the House of Lords in *Swain v The Law Society* [1983] AC 598 also touched upon the need for the English Law Society to have regard to the public interest as well as the interests of the legal profession in respect of the Society's then Master Policy in respect of professional indemnity insurance.

Appleby's challenge to Council's decision

49. In the Application Appleby complained that Council's decision was "wrong and flawed." Appleby sought to challenge the decision under 5 headings:

(1) No risk to the public;

(2) No risk to the profession;
(3) The financial effect on Appleby;

(4) Irrelevance of Appleby's motive;

(5) Unfair procedure followed by Council.

50. Appleby (1) says that the evidence did not and does not suggest that if Appleby was not required to participate in the Master Policy, this would have the effect of putting either members of the public or the legal profession at risk; (2) says, that Council illegitimately promoted the commercial interests of particular firms on the Isle of Man rather than legitimately promoting the interests of the legal profession in relation to legal matters; (3) refers to the financial impact upon it of having to pay a substantial premium which it says Council failed to consider; (4) says that there was no risk to the public and that the evidence is that the AGP would provide adequate protection to the public Appleby serves; (5) says that there was no evidence of any increased premiums for other firms in the event of Appleby's exit from the Master Policy; (6) says that Council wrongly took into account Appleby's assumed motive of mitigating its insurance cost in making the application; (7) says that Council did not have sight of all the material which was relevant to its decision and (8) make comments that suggest that there are belated concerns over bias in respect of some members of Council.

Risk to the public

51. Before turning to the risk to the public I refer to the references which have been made to the public interest. I accept the obvious point made by Mr Reid at paragraph 205 of his expert report dated 23 December 2013 that "the public interest must be invoked carefully when used as a basis for decision-making." The Society is required to have regard to the interests of the public in relation to legal matters. By statute one of the general functions of the Society is to promote the interests of the public in relation to legal matters (section 2(1)(i) of the Advocates Act 1995). Mr Reid in respect of the public interest recognised at paragraphs 206 and 207 of his report that:

> "206. For example consumers obviously will benefit from a generous level of mandated professional indemnity insurance cover. However the associated costs (in the form of increased premiums) will often be passed straight back to consumers as higher charges by the regulateds.
> 207. Likewise consumers may benefit from a consistent mandated professional indemnity insurance cover applied uniformly across all relevant regulated firms, this may also limit the scope competition between insurers when offering cover to those regulateds, and that in turn may lead to uncompetitive premium levels that are passed back to consumers."

52. At paragraph 192 Mr Reid refers to the 2012-13 PII survey dated April 2013 from the Law Society of England and Wales and extracts which suggest that the solicitors' PII market has remained relatively stable for three renewal cycles, the overall cost of premiums is falling and the renewal process is becoming easier for the profession but concerns are expressed about the number of smaller firms using unrated insurers.

53. Plainly there is a public interest in advocates being properly insured and if they are not there is a risk to the public. Plainly there is a public interest in the provision of legal services by insured advocates across a broad range of legal matters. If waivers are permitted and the future of the Master Policy put at risk this could result in some advocates being unable to practice. This would result in the reduced availability of legal services across a broad range of legal matters to the public and thereby the public would be adversely impacted.

54. Council did act carefully when considering the public interest as they were duty bound to do. It is plain that Council considered that granting a waiver would constitute an increased risk to the public. Council obviously felt a waiver could jeopardise the very existence of the Master Policy. See page 8 of the Society's letter dated 13 May 2013 where it is stated that the granting of a waiver "could potentially be placing the public interest in jeopardy by: opening the door to less robust and comprehensive insurance PI (including run-off provision); jeopardizing the existence of the Master Policy, as the floodgates to other waiver applications would be opened and it has been established that only limited exits are sustainable; limiting the full range of Advocate legal service providers, as increases in premiums may drive choice from the market"; paragraph 5.3.6 "Of greater concern even than price, is that should the Master Policy cease to be sustainable by reason of member exits, the profession would need to look to the open market for cover. Some practices may not qualify for cover (RSA expressly stated they would not cover practices under 3 partners) or be able to afford cover or they may buy inappropriate cover or use inappropriate providers which offer less robust consumer protection..."; and at 5.4.3 "... the Master Policy will not sustain multiple withdrawals." See also Mr Maher's report dated 26 April 2013, paragraph 28 "this is a very small scheme which means it has less negotiating position than most (and possibly any) other schemes"; paragraph 30 "possibly... the smallest lawyer's compulsory scheme in the world"; paragraph 32 "... there is a minimum premium below which insurers will not be interested in offering cover"; paragraph 46 reference to the option of having no scheme at all and the comment is made that it "seems unlikely that this is an option

having regard to the public interest"; paragraph 51 "It cannot therefore be assumed that insurers would be queuing for the business. Even if there were sufficient choice this year, that could easily change with adverse claims experience or a hard market generally. Firms could be exposed to significant fluctuations imposed by market forces"; paragraph 93: "Public protection may be an incentive rather than a disincentive to do business with a particular jurisdiction"; paragraph 123 "Any claim which turns out to be uninsured may damage the 'advocate brand' and possibly the standing of the Island as a financial services centre"; and paragraph 127 "the Isle of Man Law Society has for some decades managed to ensure a very high degree of public protection...".

55. It was relevant for Council to consider the interests of the public in relation to legal matters. I am not persuaded that the Council were wrong to conclude that there was a real risk to the public if it granted a waiver.

Risk to the legal profession

56. There is no evidence to support Appleby's serious allegation that Council were illegitimately promoting the commercial interests of particular firms in the Isle of Man. By statute one of the general functions of the Society is to promote the interests of the legal profession (section 2(1)(i) of the Advocates Act 1995). It was relevant for Council to consider the possible adverse impact on the legal profession if a waiver was granted and that is exactly what Council did.

57. I am not persuaded that Council was wrong to conclude that there was a real risk to the interests of the legal profession if it granted a waiver. Council was concerned that if it granted a waiver the floodgates to other waiver applications could be opened and the Master Policy would be in jeopardy and this would limit the full range of advocate legal service providers i.e. some practising advocates would not be able to obtain insurance and would have to cease practising and would be forced to retire from the profession. Their very livelihoods, careers and membership of the Society would be at risk. Council was right to conclude that the Master Policy would not sustain multiple withdrawals. Cains also touched upon "capacity issues" and the possibility that the Master Policy would become "no longer viable" in its letter of 8 February 2012.

The financial effect on Appleby and Appleby's motive

58. There will be an obvious financial impact on Appleby if a waiver is not granted. That however is one of the costs that advocates have to bear if they are to be members of the Society and the local legal profession.

59. Appleby was wrong to suggest that Council had "entirely failed" to consider the adverse financial effect on Appleby of having to pay a substantial premium. Council plainly took into account the adverse financial effect on Appleby if a waiver was refused. At paragraph 1.5.5 of the letter dated 13 May 2013 the following is expressly stated: "Council understands your commercial concerns that you do not wish to pay twice over for the same insurance cover...". In the letter dated 13 May 2013 from the Society it is clear (see paragraph 1.5 headed "Duplicate Cover" and top of page 6) that Council were also well aware of the duplication point raised by Appleby.

60. The minutes of the extraordinary meeting of Council held on 24 February 2012 record that:

> "JOR [Jane O'Rourke Chief Executive Officer] confirmed that the motive of these requests appears to be solely commercial, whereby the current Master Policy simply doesn't add anything to the cover of these two entities already and additionally purchase. (sic)
> Council were unanimous that full consideration should be given to the request from these Practices and action taken promptly. However, the primary problem for Council at this time is that AON quite simply do not have the data they require to be able to calculate the potential impact on the profession or cost of providing such a waiver. Council recognised their ultimate responsibility to ensure appropriate insurance cover for the whole profession for the benefit of all members and the public."

61. It is correct to record that Appleby in its letter of 6 February 2012 to the Society states that it could not "see any logic (from the perspective of protecting our clients, and ignoring the commercial position) in staying in the Master Policy, and so we do not plan to do so." It is also correct to record that Appleby in other communications to the Society makes reference to the considerable premiums it has to pay in

respect of its inclusion in the Master Policy. In the email dated 2 April 2012 16:59 from Appleby to the Society reference is made to the significant annual premiums paid by Appleby. In the email dated 15 March 2012 19:02 to the Society, Appleby speak of its concerns "about the unfairness of the division of the premium within the Master Policy." In the letter dated 4 April 2012 to the Society, Appleby again make reference to the "large premium" it pays and "the fact that the Master Policy nevertheless costs Appleby more than any other firm on the Isle of Man." Appleby in its letter to the Society dated 1 June 2012 referred to the premium as a "financial penalty." The comments attributed to the representatives of Appleby at the special general meeting of the Society held on 23 January 2013 reflect the concern of the financial impact on Appleby staying in the Master Policy (see paragraphs 2 and 3 on page 5 of the minutes). In the Appleby letter to the Society dated 1 February 2013 there was reference to the incurring of expenditure in respect of the premiums.

62. The financial impact on Appleby of a refusal to grant a waiver was a relevant consideration for Council and it plainly took this into account. There is some subsequent confirmation that Appleby was concerned over the premium. See paragraph 35 of Appleby's written submissions dated 4 February 2014 where it is stated that "... it is simply unfair for Appleby to be expected to spend vast annual sums... on a policy which is unnecessary to protect the public it serves in the commercial interest of other firms on the Island." Mr Cope raised similar concerns in his oral submissions on behalf of Appleby.

63. The financial impact on continuing within the Master Policy was plainly a factor considered by Appleby in making the application for a waiver. Council was right to have regard to that factor and the desire of Appleby not to pay for duplicate insurance cover.

64. Appleby says that in refusing to grant the waiver Council took into account an irrelevant consideration, namely Appleby's assumed motive in making the application for waiver. I agree with Mr Wild that there was nothing wrong with Council stating in effect that it appeared to it that the reason for Appleby making the application for a waiver was to mitigate its insurance costs. There is nothing objectionable in respect of the comment: "In the final analysis, it appeared to Council that Appleby's primary motivation for making the application for a waiver was to mitigate the insurance costs arising from your commercial decision to become part of the Appleby group" at paragraph 2.5.2 of the letter dated 13 May 2013. That plainly is indeed how the matter appeared to Council.

The changing positions in respect of insurance

65. There is somewhat of a mystery which surrounds the legal services insurance market and no doubt that mystery suits some of its operatives. In this very case the responses received to enquires in respect of the availability of insurance if certain members were to exit the Master Policy have not always been consistent. That may simply be because market conditions change and that the enquiries were made at different points in time or there may be other explanations which have not been put before me.

66. It can be seen in this case that the position has changed from:

> (1) An adverse affect on the Master Policy if there was an exit by two firms (see minutes of an extraordinary meeting of Council on 24 February 2012: "It should be said that the lead underwriter's initial view was that exit of these practices seemed likely to adversely affect the Master Policy position"; the minutes of the extraordinary meeting of Council held on 21 May 2012 "only one submission had been received from RSA which stated that they were not willing to provide master policy cover with either of the firms [Cains and Appleby] absent from the policy") to;
>
> (2) RSA would provide terms for a Master Policy excluding Cains and Appleby (AON to Society 15 October 2012 15:17, "Verbally RSA (Tower) have said that they will now provide terms for a Master Policy excluding Cains & Appleby but will not give any premium parameters at this stage... They have said that they will not provide terms for a Master Policy if any further firms are taken out of the Master Policy."; email from AON to Society 25 October 2012 "We have approached a wide range of insurers and not limited our discussions simply to insurers currently involved in the sector... RSA/Tower – Have now confirmed that they will offer lead terms for a Master Policy excluding Cains and Appleby but will not offer terms if any other firms looked to exit the Master Policy arrangement") and then to;
>
> (3) It is possible to maintain the Master Policy if some members exit but the premiums for

remaining members may increase (the Society's letter 13 May 2013 paragraph 2.5.1 "research undertaken by brokers... suggested the increased costs to practices by a reason of the exit of Appleby and Cains would be of the order of 20%"; paragraph 5.3.1: "In your letter of 02.05.13 you say that the Society has established that a Master Policy is achievable without the participation of Appleby. That was accepted by Council"; see also paragraph 32 of Mr Maher's report dated 26 April 2013 "... it may be that underwriters would agree to a scheme which excluded Appleby") and then to;

(4) The present position which appears to be that if Appleby were to exit the Master Policy then it would be difficult if not impossible to obtain quotations (email from RSA to AON dated 16 May 2013 14:29 "As last year, we will provide a Master Policy quotation only if all firms are included"; email from John Cordwell at AON to Philip Tompsett dated 16 May 2013 14:55 "RSA's terms are only valid if ALL firms participate"; letter from AON dated 10 January 2014 on the last page reference under paragraph 35 to "... the current position of RSA has reverted to a position where no exits would be contemplated."; see also letter from AON dated 20 January 2014 extracts quoted below).

67. The following are extracts from Mr Kerruish's witness statement dated 13 January 2014.

"17 For the avoidance of doubt the current position is that the lead underwriter RSA would not offer terms in the event the Master Policy was not a policy which covers all advocates (i.e. in the event any waiver was granted). That was also the position at the outset of this matter however the position did change and at one time (shortly before the Law Society's EGM on 25 January 2013) the position was that the lead underwriter RSA verbally indicated it would offer terms (at that time) for a policy excluding Cains and Appleby. Some of the other trailing insurers either did not confirm their position or indicated they would not provide cover. At best therefore the position was that the Master Policy might be able to continue without Cains and Appleby in October 2012 but by the time of the renewal in 2013 and currently, the position is that the lead underwriter RSA would not provide cover in these circumstances. In summary, at best the viability of the Master Policy was and remains precarious if any waivers were or are granted by Council and at present I believe the lead underwriter's position continues to be that it would not provide cover without participation of all Society Member firms...

37... I believe it is clear that it was and remains the case that an Appleby exit per se would jeopardise continuance of the Master Policy; one only needs to consider the current position of the lead underwriter RSA to make good this point...".

68. I can only deal with this matter on the basis of the evidence before me. There is little certainty and little consistency reflected in the evidence provided but I do not accept that an appropriate way of dealing with that uncertainty and inconsistency would be to grant a waiver, see what happens, and if necessary revoke it at a later date if problems arise, as suggested by Appleby. Such an approach would run the risk of allowing the damage to be done to the Master Policy and then endeavouring to lock the stable door after the horse had bolted.

69. The evidence presented to Council and indeed to me as Visitor indicates at the very least that there was and is a real risk that if Appleby was to be granted a waiver the future of the Master Policy would be in serious jeopardy and that is not in the best interests of the legal profession or the public in relation to legal matters. The further evidence filed has confirmed Council's considered view that there is indeed a very real risk that if Appleby was to be granted a waiver the Master Policy may become unsustainable and that would have an adverse impact on the interests of the legal profession and the interests of the public in relation to legal matters. This is not mere speculation. It is a matter of reasonable inference from the evidence which was before Council in May 2013 and is confirmed by the evidence contained in the bundles of documentation recently presented to me in connection with this matter. Council was right to have regard to the risks and the possible adverse consequences to the legal profession and the public in relation to legal matters if a waiver was granted.

70. I agree that each application for waiver is to be considered on its own individual merits but as part of that process it is perfectly acceptable for Council to have regard to the potential consequences of any decision it may make especially if those consequences could be adverse to the interests of the legal profession overall and adverse to the interests of the public in relation to legal matters. The Society and Council were wise to endeavour to carefully guard against realistic risks consequent upon granting a waiver from the requirement to take out professional indemnity insurance through the Master Scheme.

71. Mr Maher in his report of 10 January 2014 refers to the difficulties that English lawyers have had in respect of insurance cover and at paragraph 27 stresses:

> "... If the Master Policy were to cease, it should not be assumed that Manx advocates would be able to obtain cover from rated insurers..."

72. At paragraph 40 Mr Maher adds that "the issue is not only one of cost, but availability of cover."

73. Mr Kerruish in his statement dated 13 January 2004 at paragraph 17 states:

> "In summary, at best the viability of the Master Policy was and remains precarious if any waivers were or are granted by Council and at present I believe the lead underwriter's position continues to be that it would not provide cover without participation of all Society Member firms."

74. The AON renewal summary 2013 (June 2013) contains the following reference:

> "RSA also stated – 'As last year, we will provide a Master Policy quotation only if all firms are included.'"

75. The following is an extract from the letter from AON (Isle of Man) Ltd dated 20 January 2014:

> "Question:
>
> Please also explain whether the Law Society and/or AON has had any further discussions with RSA, Zurich and/or other underwriters at any time between May/June 2013 and the present date with regards to the terms upon which underwriters might offer renewal in 2014 for 2014/2015 and in particular with regards to the exit of Appleby and, if so, the outcomes of those discussions.
>
> Answer:
>
> The division of Aon's London market broking team that specialises in the legal profession (and is the largest broker in the sector) had discussions with a wide range of insures in an attempt to secure the most favourable terms they could leading up to the renewal date of 1st June 2013.
>
> There was very little interest in providing terms and those that were offered by insurers are outlined in the last annual report. Zurich, who provides 40% of the current insurance cover, supporting RSA's lead 40% have consistently stated that they will only support the cover if all member firms participate. During our very first meeting with Zurich in conjunction with the Society, I clearly recall Jenny Screech, Zurich's lead underwriter, stating that 'it either is or isn't a Master Policy' and their position has never changed. Whilst Zurich have never had cause to put this in writing I am sure they would be happy to confirm making this statement and maintaining their stance ever since.
>
> There have been no further discussions with underwriters subsequent to renewal with regards to the exit of Appleby or any other party (other than in relation to the Visitor Application being treated as a potential claim by RSA) pending the outcome of the Visitor Application."

Conclusions on the evidence

76. In my opinion the evidence before Council in May 2013 was sufficient to justify Council in arriving at the conclusion that it could not "safely grant a waiver without incurring risks to the public and the profession." There was sufficient evidence before Council in May 2013 to justify Council's conclusion that a waiver could jeopardise the very existence of the Master Policy and that could "potentially be placing the public interest in jeopardy."

77. The evidence filed subsequent to the decision of Council in May 2013 confirms and reinforces Council's genuine fear as to the insecure future of the Master Policy without Appleby. The evidence now before me confirms that there could be serious difficulties in maintaining a Master Policy if Appleby were permitted to exit. The evidence before me does not lead me to conclude with confidence that the Master Policy, which is in the interests of the legal profession overall and in the interests of the public in relation to legal matters, would survive if Appleby was granted a waiver. At the very least there is a real risk that the Master Policy will not continue if a waiver was granted.

78. If the Master Policy ceased to exist then on the evidence I find that there would be a significant number of practising advocates who would find it difficult if not impossible to obtain reliable insurance cover. In Mr Maher's words this is not just a matter of cost, it is a matter of the availability of cover. They would not be able to practice and in turn the access of the public to legal advice and representation especially in relation to local domestic matters such as crime and family would be severely restricted and this would have an adverse effect on access to justice, the rule of law and the administration of justice within this jurisdiction. There is already a serious shortfall of advocates who are able and willing to undertake family and criminal matters.

79. Mr Maher's evidence and the other evidence before me in respect of the position of those in the insurance market does not lead me to conclude that if Appleby was permitted to exit the Master Policy that there would be no risk to the Master Policy. If there is no Master Policy the evidence confirms that many practising advocates (especially those firms under 3 partners) would find it difficult if not impossible to obtain reliable insurance cover. If those advocates have to retire from legal practice that would impact adversely on them and on the access of the public to legal advice and representation over a wide range of local legal matters. That would not be in the public interest. That would have adverse consequences for the interests of the public and their protection in relation to legal matters. It would be damaging to the existence of an independent Manx legal profession which is fundamental to access to justice and the rule of law. It would impact adversely on the access of the public to insured legal services covering a wide range of legal matters which is so fundamental to the maintenance of the rule of law in this compact jurisdiction.

Allegation of unfair procedure - documentation

80. Appleby at paragraph 75 of its Application says that it is "striking that at the meeting at which Appleby's application for waiver was refused, Council did not even have sight of all the material which was relevant to its decision." Appleby does not refer to any authority in support of its submission in effect that the decision of Council was tainted because "a whole host of relevant documentation was not provided to Council on 2 May 2013" (paragraph 56 of Appleby's written submissions). This lack of documentation issue was not developed or even touched upon in Mr Cope's oral submissions but in fairness to Mr Cope he did indicate that nothing in the written submissions had been abandoned.

81. In the well known English case of *Secretary of State for Education and Science v Tameside Metropolitan Borough Council* [1977] AC 1014 Lord Diplock at 1065B referred to the duty of a public body to take reasonable steps to acquaint itself with the relevant material to enable it to take an informed decision.

82. The minutes of a special meeting of Council held on 24 April 2013 record the action point that all members of Council should familiarise themselves with the detail of the expert's report in time for the Council meeting on 2 May 2013. The minutes of the Council meeting on 2 May 2013 record the following:

> "(iv) Appleby application for Waiver: (Simon Cain having expressed his views on the Expert's report left the meeting prior to this discussion). A comprehensive revisiting of key issues, concerns, findings, the expert report and confirmation that all Council members had received and considered all submissions from members and other related papers was undertaken. A review of the Statute and Practice Rules was also made to ensure once more that Council had the appropriate authority / powers to either grant or refuse Applebys Waiver. Cains had withdrawn their request and the expert report had been re-drafted to remove the analysis of their submission although the issues raised by the circumstances of their request for waiver remained. On the basis of information presented and obtained in the preceding 15 month period, Council were asked to vote as to Appleby's request. Council were unanimous in their vote that the Appleby waiver was not to be granted. Those present and voting were; Kevin O'Riordan, Paul Kerruish, Lesley Webb, Jane Gray, Damian Ciapelli, Mark Dougherty & Amy Jolly.
> Also present but not voting: Chris Webb (Treasurer) Gillian Christian (Secretary); Jane O'Rourke; Emma Christie.
>
> It was agreed that;
> · JOR would notify Appleby straight after the meeting in a short email stating that detailed reasoning is to follow.

> JOR and PK would draft a full response to all (past and current) submissions, challenges and points of dispute from Appleby for the approval of Council."

83. By email dated 2 May 2013 15:59 Appleby was notified of Council's decision not to grant a waiver and a detailed letter followed on 13 May 2013.

84. I am not persuaded that Council's decision can be successfully attacked on the basis of inadequate presentation of relevant material to Council. I am satisfied that Council had sufficient material before it to make an informed decision. In any event I have now considered all the documentation and evidence made available to me by Appleby and the Society at this rehearing on the merits and I confirm the decision of Council not to grant a waiver.

Allegation of unfair procedure - general

85. I am not persuaded that an unfair procedure was followed by Council or that the decision of Council is tainted in any way by unfairness.

86. It is plain from the evidence before me that Council carefully considered the application, consulted with Appleby and the membership generally, took and acted upon independent expert advice, balanced all relevant factors and fairly came to a decision in good faith. I accept that Council's motivation was a desire to arrive at a fair decision and that it adopted fair procedures to arrive at the decision it arrived at.

The paragraph 76 bias point

87. Although this point was not pursued by Mr Cope in his opening oral submissions I cannot ignore the point raised at paragraph 76 of the Application where Appleby states:

> "... All of the members of Council, who participated [in] the decision, save for Mr Ciappelli, are either owners or employees of other firms participating in the Master Policy and it is inevitable that Appleby has no faith in Council's ability to consider its application without bias or suspicion of bias. It is clear that certain members of Council simply do not want Appleby to exit the policy for fear of the impact it might have on themselves personally... In conclusion, Appleby considers the decision of Council to have been utterly irrational and based primarily on ill-founded fears and direct protection of perceived personal financial interests, which ultimately leads Appleby to conclude that the Visitor is in fact the sole person capable of properly considering this matter."

88. At paragraph 6 of the Application Appleby states:

> "6. Furthermore, it is Appleby's contention that the Visitor is in fact the only party capable of making this decision in a way which is fair. All of the full members of Council bar one have a direct financial interest in the Master Policy and repeatedly have expressed their fears of the impact they personally may suffer (a fear which Appleby contends is irrational) if an application were to be granted. In the circumstances it is not reasonably possible for Appleby to believe that they can receive a fair hearing in respect of this matter other than from the Visitor."

89. The Society in its Answer dated 2 December 2013 referred to paragraphs 6 and 76 of the Application and denied the serious allegations made against Council. At paragraph 26 of its Answer the Society stated that it would be "wrong to simply leave these allegations unanswered in the event that they continue to be pursued in the evidence yet to be filed by Appleby... It is denied... that Council were biased... The existence of a Master Policy does not necessarily create or afford financial benefits to members of Council. Indeed it is quite possible that certain members of Council might financially benefit (at least in the short term) from an end to the Master Policy. It may well be the case that individual Council members would benefit from a decrease in premium in the event that a Master Policy was not in existence or their firms were able to obtain a similar waiver in the future." The Society's Answer also states:

> "27. Council members deny that they took into account any personal interest one way or the other. Many decisions made by Council Members in a small Bar can result in a potential impact one way or another on Council Members personally. This issue has been the case since the inception of the Law Society over 150 years ago. The type of allegation now being made by Appleby is one that could be raised against Council members in relation to most of its affairs in connection with regulatory type decisions. Many regulatory decisions will have an impact on other firms who are competitors of

> members of Council but it is submitted this is an inevitable feature of a small bar unless certain functions are undertaken by persons other than practising advocates.
> 28. Council members accordingly put aside personal considerations when making Council decisions and endeavour at all times to consider the best interests of Society, as members elected by their peers to perform that function and duty."

90. I note the point raised at paragraph 26 of the Society's Answer that the allegations of bias are "largely irrelevant especially in the context of a rehearing." I have considered this matter on the basis of a rehearing on the merits and I have confirmed the decision of Council. I felt it was important however to deal with the paragraph 76 point head on and I have endeavoured to do so in this decision. The serious allegations contained in paragraphs 6 and 76 of the Application could not simply be allowed to stay on the record without the Visitor determining the position in respect of such allegations.

91. The paragraph 76 point was not developed in Appleby's written submissions or indeed in Appleby's opening oral submissions and all that appeared on the agreed list of issues was a general reference at 11.2 to "conflicts of interests on the part of Council members" without any particularity. There was no reference in the agreed list of issues to bias or personal financial interests. The bias issue was not mentioned in the evidence of Mr Cain or Mr Dowling. Although Mr Cain does refer to what he describes as his "conflict of interest".

92. Although I do not benefit from detailed legal submissions or reference to all the relevant legal authorities I can deal with the paragraph 76 point as follows.

93. Frankly having considered all the evidence placed before me I do not understand why it is "inevitable that Appleby has no faith in Council's ability to consider its application without bias or suspicion of bias." I have been provided with no evidence which suggests actual bias or "direct protection of perceived personal financial interests" on the part of certain members of Council as alleged by Appleby. I have seen no evidence that all of the "full members of Council bar one have... repeatedly expressed their fears of the impact they personally may suffered..." if the waiver application were granted, as alleged by Appleby in paragraph 6 of the Application.

94. Nor have I seen any evidence to substantiate the allegations of scaremongering by members of Council past and present as alleged by Appleby in the introductory words of paragraph 76 of the Application. Scaremongering is defined as spreading frightening reports or rumours. All I have seen is evidence of a Council trying its best in very difficult circumstances to arrive fairly at a decision and considering and debating the very real and genuine concerns to the legal profession and the public raised by Appleby's Application for a waiver. That is far from scaremongering.

95. Moreover it is certainly not clear to me that "certain members of Council simply do not want Appleby to exit the policy for fear of the impact it might have on themselves personally" as alleged by Appleby.

96. I raised this paragraph 76 point with Mr Cope once he had finished his opening oral submissions and he appeared to emphasise the apparent bias argument and floated certain other points for consideration (which I shall come to) but sensibly recognised that consideration would have to be given to the doctrine of necessity.

Apparent bias?

97. The relevant test in respect of apparent bias is not, of course, whether Appleby felt there was bias or suspicion of bias but whether the fair-minded and informed observer, having considered the facts, would conclude that there was a real possibility that Council was biased (*Eurotrust* case 2001-03 MLR 330).

98. The fair-minded and informed observer would take into account all relevant facts including the consultation with Appleby and the membership generally, and the sensible commissioning of and reliance by Council on an independent expert report. Appleby was no doubt disappointed with the contents of the expert report of Mr Maher as is plain from its letter dated 26 April 2013 to all Law Society members. Appleby was "concerned that members should make any representations from a better informed position than the report allows" and that "although it purports to identify risks which may exist "in principle" there is no suggestion in the report that a decision by Council to grant Appleby's application for a waiver from compulsory participation in the current Master Policy would cause any financial exposure of the public or

the profession." Mr Cain at paragraph 12 of his witness statement dated 23 December 2013 stated: "Appleby did not consider that the expert report was particularly useful."

99. Council was wise to commission an independent expert report to assist it in the difficult position it found itself. The minutes of a meeting of Council held on 6 February 2013 record that: "It was agreed that Council ought to have the benefit of independent expert advice to assist them in making their decision as to whether to grant waivers to Appleby and Cains as this was one of the most difficult decisions to face the Society and the public interest aspect could not be ignored."

100. By email dated 27 February 2013 08:35 the Society indicated to Appleby that it was content for Appleby to "have an opportunity to input into the precise instructions" to the expert. Appleby concluded that it "would not be appropriate [for it] to be involved in any instructions to the independent expert" but was "willing to assist financially with the cost of such project by agreeing to pay one third of the final cost up to a value of £4,000." (Appleby letter dated 14 March 2013). The fair- minded and informed observer would have been aware that Council had sought to involve Cains and Appleby in the commissioning of the independent expert report and that Council had relied on that report in arriving at the decision to refuse the waiver.

The statutory context

101. The fair-minded and informed observer would also have had regard to the statutory context within which the decision had to be made. Section 6 of the Advocates Act 1995 refers to the constitution of the Council of the Society. There are nine members of Council. Bye-law 33 of the Bye-Laws of the Society 2001 provides that five members of Council shall constitute a quorum. Rule 22 of the 2001 Practice Rules gives Council the power to waive in writing any of the provisions of the Rules. It is the Council that has to exercise that power in the first instance. The Visitor does not become involved unless and until an application in respect of a decision by Council under Rule 22 is lodged with the Visitor and the Visitor's powers pursuant to section 1(5) of the Advocates Act 1995 are invoked. The constitution of the Council and the Bye-Laws of the Society 2001 envisage that Council (whose members will include practising advocates who are subject to the insurance requirements specified in Rule 17 of the 2001 Practice Rules) will have the power to decide on waiver applications. At least five members have to be engaged in that process in order for a quorum to be constituted. The fair-minded and informed observer would have been aware of all these facts.

102. I pause to record that at one stage (although not foreshadowed in his written submissions) Mr Cope sought somewhat tentatively to suggest that Council could delegate its power to grant a waiver and thereby circumvent any concerns in respect of apparent bias. When pressed to develop this submission Mr Cope abandoned it. Mr Wild submitted that under the relevant provisions the issue of whether or not to grant a waiver was ultimately an issue for Council to decide. A consideration of Rule 22 of the 2001 Practice Rules confirms that position.

103. Having considered Appleby's apparent bias point I am not entirely persuaded that a fair-minded and informed observer having considered the facts would have reached the conclusion that there was a real possibility that Council was biased. In any event the position is governed by the doctrine of necessity and my conclusion on the waiver issue as outlined below so I do not need to reach a conclusion as to whether there was apparent bias on the part of Council.

The doctrine of necessity

104. The minutes of the extraordinary meeting of Council on 21 May 2012 touch upon the doctrine of necessity when they record in the context of the apportionment of fidelity policy premium that:

> "It was agreed that all parties were conflicted, but that in this instance it would be sufficient to recognise and document this conflict as Council were bound to make a decision on behalf of Members regardless of their individual conflict."

105. The doctrine of necessity drives me to the conclusion that it was appropriate for Council to make the waiver decision even though some of its members were practising advocates who were subject to the insurance requirements specified in Rule 17 of the 2001 Practice Rules and may have been affected by the decision.

106. As Hammond on *Judicial Recusal* (2009) makes clear at page 99 "the rule of necessity in the common law... operates as an exception to the bias principle." De Smith's *Judicial Review* (7th Edition) at paragraph 10-065 refers to one of the classic ways in which the doctrine of necessity has been held to apply namely: "if the person who makes the decision is biased, but cannot effectively be replaced, e.g. if a quorum cannot be formed without him."

107. Mr Cope briefly touched upon the fact that the doctrine of necessity should be sparingly employed and he submitted that regard must be had to the Article 6 right to an independent and impartial tribunal. Frankly I gained the impression that he was not pushing these points with any great conviction. When considering the approach of Appleby to the paragraph 76 point and in particular taking into account the Society's Answer and the invitation to Appleby in effect to make it clear whether the arguments on bias remained and if they did to support them with evidence (basically in common parlance to "put up or shut up") one is reminded of the words of Alexander Pope in 1734:
"Willing to wound, and yet afraid to strike, Just a hint of fault and hesitate dislike."

108. It is interesting to note that Stanley Burnton J in the *Toovey* case referred (at paragraph 42 of his judgment) to the power to grant a waiver as a "discretionary concession" which is "not subject of a civil right within the meaning of Article 6: see *Husain v Asylum Support Adjudicator* [2001] EWHC Admin 852 at paragraphs [26] to [27], approved by the Court of Appeal in *London Borough of Tower Hamlets v Begum* [2002] EWCH Civ 239 at paragraph 24." Stanley Burnton J at paragraph 44 was not convinced that in the case before him you could "convert a statutory discretion into an obligation. In my judgment Article 6 is not engaged." *Toovey* is cited, albeit on another point, without disapproval at page 1766 of *The Law of Human Rights* (2nd Edition) by Clayton and Tomlinson. In R (*Thompson) v Law Society* [2004] 1 WLR 2522 it was held that the decision to reprimand a solicitor did not amount to a determination of his civil rights within Article 6(1) even though the effect of the reprimand might be to increase the cost of a solicitor's professional indemnity insurance and to permit the Law Society to impose conditions on the renewal of his practising certificate; nor did a decision to refer a case to the Solicitors Disciplinary Tribunal involve a determination of a solicitors' civil rights. I did not hear full argument on the Article 6 point and I do not determine the Application and the apparent bias issue on that basis.

109. The Appeal Division's judgment in *Clucas v Clucas* 1981-83 MLR 5 at 13 made reference to the Island being a small jurisdiction and "the doctrine [of recusal] must not be applied so as to create a failure of justice... It may not be possible to obtain a tribunal which is unaffected by interest or bias. For example, in a case in Canada the judges of Saskatchewan were held to be required out of necessity to pass judgment upon the constitutionality of legislation rendering them liable to pay income tax on their salaries: see *Judges v AG (Saskatchewan)* [[1937] W.N. 107]. But the essential principle is that if it is possible to constitute a different tribunal unaffected by bias or interest no difficulty arises." See also the judgment of Judge of Appeal Beloff in *Pitman v Jersey Evening Post Limited* [2013] JCA 149 at paragraphs 8 and 9 and reference to the doctrine of necessity at paragraph 61.3.7 of Fordham's *Judicial Review Handbook 6th Edition* (2012).

110. In *Meerabux v Attorney General of Belize* [2005] UKPC 12; [2005] 2 AC 513 the appellant, a former justice of the Supreme Court of Belize, was the subject of complaints made to the Governor General by the Bar Association of Belize and a senior barrister alleging that he had misbehaved while in office. The Governor General referred the matter to the Belize Advisory Council pursuant to section 98(5) of the Constitution. By section 54(1) of the Constitution the chairman of the Council was required to be someone qualified to hold office as a judge of a superior court of record and by section 54(11) he was required to preside at any meeting of the Council convened to discharge its duties under section 98. At the hearing the appellant objected to the composition of the Council, two of whom, including the chairman were members of the Bar Association. The Judicial Committee of the Privy Council held (1) that mere membership of a professional organisation such as the Bar Association, which was compulsory for the chairman as an attorney-at-law, did not justify automatic disqualification under the rule that a judge may not sit in any case in which he has an interest; and that, since it was not suggested that the chairman had any personal or pecuniary interest in the outcome of the proceedings and since he had taken no active part in the prosecution of the complaints by the Association the principle of automatic disqualification did not apply (paragraphs 21, 23-24); (2) that the appropriate test of apparent bias in such a case was to ask whether a fair-minded and informed observer would consider that there was a real possibility of bias; that if he took into account the nature and composition of the Belize Advisory Council, the qualifications which its chairman must by virtue of section 54(1) possess and the requirement in section 54(11) directing the

chairman to preside when the Council was convened on the reference under section 98(5), the hypothetical fair-minded and informed observer would not conclude that the chairman was biased; that, moreover, it must have been within the contemplation of the framers of the Constitution that the chairman of the Council who was directed to preside over an inquiry into the removal of a judge would be a member of the Bar Association and that allegations of misbehaviour by a judge would be made by that association in complaints referred to the Council; and that, accordingly, mere membership of the Association was not to be taken as a ground for disqualification in the case of the chairman (see paragraphs 22, 25, 28). Lord Hope delivered the judgment of their Lordships and at paragraph 26 referred to counsel's submission in respect of the doctrine of necessity. At paragraph 28 the point was made that the relevant provisions of the constitution envisaged that the chairman would be a member of the Bar Association and would be part of the tribunal convened to inquire into complaints by the Bar of Association. Lord Hope concluded:

> "This is a powerful and in their Lordship's opinion a conclusive, indication that in this context mere membership of the association is not to be taken, in itself, as a ground of the disqualification in the case of the chairman."

111. I accept Mr Cope's submission that the specific facts of *Meerabux* are different to the facts of this matter. The approach and comments of the Judicial Committee of the Privy Council are however of some assistance and guidance.

112. In the case presently before me in my capacity as Visitor of the Society the relevant provisions envisaged that Council (whose members would include practising advocates who were members of the Master Policy scheme) would decide upon applications for waivers. Mere membership of the Master Policy scheme is not to be taken, in itself, as a ground for disqualification in the case of those members of Council who are members of the Master Policy scheme and are called upon to make a decision in respect of a waiver of a requirement to be a member of the Master Policy scheme. In this case, of necessity, Council as constituted in May 2013 had to consider the waiver application as there was no one else who could have considered it. A different quorate tribunal could not have been constituted. I do not go so far as to say that it is impossible to envisage an extreme case where members of Council would have to stand down (see paragraph 29 of the *Meerabux* judgment) and some alternative decision-making mechanism employed.

113. It was not appropriate in this case however for members of Council to stand down and decline to make a decision in respect of the waiver application. Appleby invited Council to make the decision and did not, prior to the receipt of a decision against it, raise any objection to the members of Council who would be making the decision. Indeed even now it appears that Appleby would be content with Council considering future applications for waiver. In paragraph 6 of Appleby's written submissions reference is made to the matter being remitted to Council to consider it afresh if the Visitor concludes that Council was right in refusing the waiver but nevertheless reached its decision through unfair process. The same point is made at paragraph 56 of Appleby's written submissions. This is inconsistent with Appleby's position at paragraph 76 of the Application and frankly reveals a lack of force of such position. I am led to the conclusion that Appleby simply did not think this paragraph 76 point through properly. This brings us to the separate issue of waiver in the context of the belated bias allegations.

Waiver in the context of belated bias allegations

114. I turn now to deal with the issue of waiver in respect of the paragraph 76 point. Again I do not benefit from detailed written or oral submissions on the issue. The position can however be dealt with as follows.

115. The following are extracts from Hammond *Judicial Recusal* (2009) chapter 11 which deals with waiver:

> "It is clear on the recusal law authorities, both in the British Commonwealth and in the United States of America, that a litigant can, either expressly or by their conduct, validly waive an objection that the court is not independent and impartial, or an objection grounded in apparent bias." (page 93).

> "... High Court of Australia decision in *Vakauta v Kelly* "... It would be unfair and wrong if failure to object until the contents of the final judgment were known were to give the party in default the advantage of an effective choice between acceptance and rejection of the judgment and to subject

the other party to a situation in which it was likely that the judgment would be allowed to stand only if it proved to be unfavourable to him or her" (page 94).

"Lord Bingham said that 'in most litigious situations the expression 'waiver' is used to describe a voluntary, informed and unequivocal election by a party not to claim a right or raise an objection which it is open to that party to claim or raise." (page 94).

"Lord Browne-Wilkinson... in *Pinochet* (No 2), waiver can only run on the basis of the person who is said to have so waived 'has acted freely and in the full knowledge of the facts.'" (page 94).

"As a matter of legal doctrine, implied waiver is a particularly difficult area. It most commonly arises late in the proceedings, regularly on appeal, and all too often it stems from a distinct dissatisfaction with the outcome of the given proceedings. The matter which has been of most concern to the courts has been forensic manoeuvring: the employment of the sort of 'cards-up-the sleeve' tactics to which reference has already been made in attempts to unhorse judgments in trial courts after an adverse result. Courts do not look favourably on these sorts of activities." (page 95).

"As Sedley L J said recently in *Amjad v Steadman Byrne:*

'We would... stress that the time to draw the attention of a tribunal to a clear manifestation of bias on its part is ordinarily when it occurs... The law of waiver is not simple, but appellate and reviewing courts tend not to look favourably on complaints of vitiating bias made only after the complainant has taken his chance on the outcome and found it unwelcome'" (page 95).

116. The Appeal Division in a judgment delivered on 4 March 2002 in the Mount Murray case stressed at paragraph 9 the need to make objection to the constitution of the decision-making tribunal with all necessary particulars as soon as reasonably practicable. Appleby left its objection until after the decision went against it. That was not as soon as reasonably practicable. If Appleby had any serious concerns over the constitution of Council which was to make the decision as to waiver it should have raised those concerns prior to the decision being made.

117. Stanley Burnton J in the *Toovey* case dismissed a claim of apparent bias against those involved in considering waiver applications in respect of contributions to the English Solicitors' Indemnity Fund principally on the basis that the personal interests of the members involved in the decision were not capable of giving rise to a claim of bias (paragraph 49). In the particular circumstance of that case he was plainly influenced by the fact that personal financial interest in the result of the decision may be so small as to obviate any suggestion of bias (paragraph 47). The judge also held that the objection on grounds of bias had been waived. The judge concluded in effect that there was nothing in the apparent bias point. The learned judge at paragraph 50 added:

"I am glad to reach this conclusion. Given that the power under Rule 10 is conferred on the Law Society, that the Law Society is governed by solicitors, and that the solicitors who are likely to be entrusted to govern and administer the Society are likely to be principals, it would be unfortunate indeed to conclude that the most senior members of the profession were disqualified from exercising this power on its behalf."

118. The learned judge upheld the Law Society's submission that any complaint of bias had been waived as follows:

"53. In my judgment, the Claimants, having been given the names of the members of the Sub-Committee, being on notice that its members would be likely to include principals, and being able to ascertain whether or not they were principals if they considered that fact material, and having failed to object to those members participating in their appeal, waived any objection to those members of the Committee on the ground of their interest as principals in the outcome of the appeal."

119. At paragraph 52 the learned judge (who is due to chair a project on how we deliver justice in an age of austerity – see paragraph 22 of the speech on *Reshaping Justice* delivered on 3 March 2014 by Lord Thomas, the Lord Chief Justice of England and Wales) had stated:

"... The whole point of waiver is that a party must decide whether to object to a tribunal before he learns of its decision."

120. Appleby did not make any objections to the constitution of Council at the time of its application to Council and before the waiver decision was made. Appleby only raised the bias issue subsequent to the refusal of its application for the waiver.

121. Appleby directed its application for a waiver in February 2012 to Council and knew that it was Council who had the power to grant a waiver and yet raised no objection on grounds of bias. Mr Dowling at paragraph 57 of his witness statement dated 23 December 2013 says that on 24 April 2013 Appleby was informed that Council would determine its waiver application at a meeting to be held on 2 May 2013. No objection to the constitution of Council was raised by Appleby prior to the meeting. Mr Cain in paragraph 12 of his witness statement dated 23 December 2013 refers to his attendance at the Council meeting on 2 May 2013 and his departure shortly after the discussion commenced in respect of the Appleby application for a waiver. Mr Cain, who was well aware of the identity of the members of Council as indeed was Mr Dowling, did not object to the remaining members of Council determining the Appleby application on 2 May 2013.

122. In the matter presently before me Appleby well knew the identity of members of Council who would be considering its application for a waiver and yet it did not object to the constitution of Council until after it had learnt that the waiver decision had gone against it. This was despite some fairly vigorous pre-meeting correspondence including repeated and consistent threats by Appleby of legal proceedings against Council stressing that the only lawful decision Council could make was a decision in Appleby's favour. I pause to record that the tone of that correspondence being correspondence from members of the Society to its governing Council duly elected by the membership was, to say the least, somewhat unfortunate.

123. I very briefly touched upon the issue of waiver in my exchanges with Mr Cope on the apparent bias point and I am conscious that I did not benefit from full argument on the waiver issue. Having considered the evidence that was placed before me and having considered the relevant law (in particular the *Toovey* case which counsel had put before me in volume 5 of the bundles) I am, however, driven to the conclusion that Appleby by its failure to object prior to the meeting at which Council refused to grant it a waiver has itself freely and with full knowledge of the facts waived its right to object on the ground of apparent bias.

124. In any event even if I am wrong on the doctrine of necessity and the waiver of objection issues I have now dealt with this matter on the basis of a rehearing on the merits and any issue of apparent bias on the part of certain members of Council is somewhat academic. In view of the seriousness of the allegations against certain members of Council in paragraphs 6 and 76 of the Application I felt I should however make my position as Visitor plain in respect of such matters and I have endeavoured to do that in this decision. I have also, for the record, come to my determination on the doctrine of necessity and the waiver of the objection issues in this case.

Conclusions

125. I turn now to my conclusions in respect of the Application.

126. I have not been persuaded that it would be legitimate for me to interfere with the decision of Council even considering the position on a flexible broad merits based basis rather than on a restrictive review of exercise of discretion basis.

127. Having considered the Application by way of rehearing on the merits I am not persuaded that the decision of Council was wrong. Council provided sufficient reasons for its decision. It was relevant for Council to consider the interests of the public in relation to legal matters. It was also relevant for Council to consider the interests of the legal profession including Appleby. Council considered all these interests and endeavoured to balance them. The risks identified by Council were legitimate factors for Council to have regard to. There was sufficient material before Council in May 2013 to justify its conclusion that it could not safely grant a waiver without incurring risks to the public and the profession. That material has now been reinforced by the evidence filed subsequent to the waiver decision.

128. I am not persuaded that there are any grounds upon which I would be justified in interfering with the decision of Council arrived at in May 2013 nor am I persuaded that it would be appropriate for me to grant a waiver to Appleby in March 2014 and I do not do so.

129. I confirm the decision of Council to refuse to grant Appleby a waiver from the requirement to take out

professional indemnity insurance through the Society's indemnity insurance scheme. Appleby's challenge to Council's decision fails.

Supply

STATIC MARKET ANALYSIS
- STRUCTURE OF SUPPLY
- MARKET SEGMENTATION
- BUSINESS MODELS
- DISTRIBUTION OF SERVICES

DYNAMIC MARKET ANALYSIS
- BARRIERS TO SERVICE PROVISION
- ELASTICITY OF SUPPLY
- SUPPLY SIDE SUBSTITUTION
- MARKET TRENDS
- ALTERNATIVE BUSINESS STRUCTURES

MARKET FINANCIALS
- TURNOVER AND PROFITABILITY
- COST OF REGULATION
- DIVERSITY AND TURNOVER
- SALARIES AND OTHER COSTS

CHARGING

Supply**Charging**

1. Solicitors charging methods
2. Range of hourly rates charged by solicitors
3. Estimating hourly rates achieved by solcitors
4. Charging methods for other legal service providers
5. Does transparency of billing impact on price?

Solicitors charging methods

The RIR found limited information on charging methods, but the information reviewed identified a number of different methods of charging, summarised below.

Hourly rates

Traditionally clients were charged hourly rates, with each unit of input adding cost. Hourly rates were derived from a number of elements, including :

- *"Historically the hourly rate covered the cost of the solicitor (33.3%), the office overheads (33.3%) and a profit element(33.3%). More recently it has become much more a question of what the market will pay, or sometimes what the market will bear[1]".*
- the individual fee earners' annual chargeable hours target, derived from the amount of income they were expected to generate for a firm, which could vary by category of law, an experience of fee earner: "*Fees will vary by individual circumstances, experience and knowledge of your solicitor, the type of advice[2]".*
- Guideline hourly rates (GHRs) set by HMCTS Cost Committees, applicable in certain categories. These are reviewed annually. However these are guideline only. *"For Personal Injury and Clinical Negligence cases, the hourly rates charged by defendants' solicitors were some 20-35 percent below those charged by claimants' solicitors which were close to the existing GHRs. The ABI suggested that the rates charged by defendants' solicitors reflect the unfettered interplay of market forces and these rates should be used when setting GHRs. Second, our data revealed that the average hourly rates charged by London solicitors were below the GHRs and average hourly rates charged by National solicitors were above the GHRs[3]".*
- *Hourly rates are usually seen as the starting point for all price discussions. Even when the work is on fixed fees, the estimation of the amount of fees used as the basis for negotiation of the fixed fee would generally start from the a calculation based on the hourly rates and the estimated hours needed for the work[4].*

COMPETITION

Demand

INDIVIDUAL CONSUMER NEEDS

BUSINESS CONSUMERS' LEGAL NEEDS

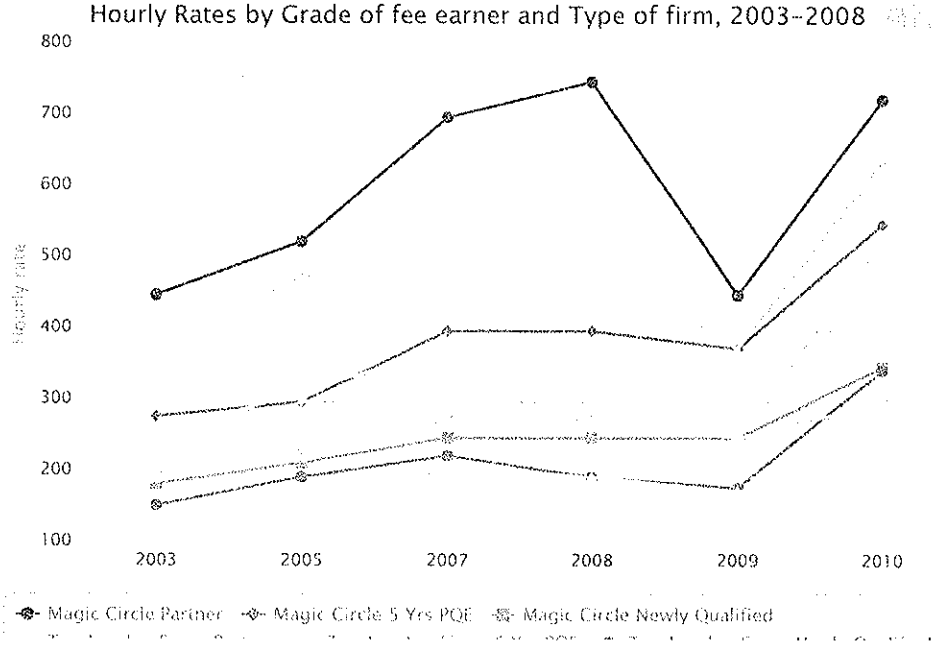
CONSUMERS' SERVICE CHOICES

QUALITY OF ADVICE

SERVICE PREFERENCES

COST OF SERVICES

ELASTICITY OF DEMAND



	GHR: Solicitors>8yrs PQE	GHR: Solictors or Legal Executives >4 years PQE	GHR: Other qualified Solictors or Legal Executives	GHR: Trainees, paralegals, and equivalent	Magic Circle Partner (JDS)	Magic Circle 5 Yrs PQE (JDS)	Magic Circle Newly Qualified (JDS)
2005/6	£184	£163	£137	£100	£525	£250	£215
2006/07	£184	£163	£137	£100	£525	£250	£215
2007/8	£195	£173	£145	£106	£700	£400	£250
2008/9	£203	£180	£151	£110	£750	£400	£250
2009/10	£213	£189	£158	£116	£450	£375	£250
2010/11	£217	£192	£161	£118	£725	£550	£350

Hourly rates have changed over time accross different solicitor segments[5]. This shows volatility in the highest hourly rates achieved, with significant increase between 2005-2008, a sharp drop in 2009, and an increase in 2010. The general trend if for increasing hourly rates. Note also that a fee earner with 5 years' post qualification experience has had since 2007 a higher hourly charge out rate than a partner at a Major & National Law Firm. In 2010, the Master of the Rolls Costs Committee increased some guideline hourly rates by 8%.[6]

Fixed fees

Fixed fees are used across a variety of services and categories of law. They are used in legal aid and for corporate clients, but is not clear to what extent other legal services are provided via fixed fees. However there are reports of clients resisting hourly rates in favour of fixed fees[7]. For example a matrix of fees for clients who are employers where a case goes to tribunal.[8] Alternatives include value billing which *"can be defined in different ways in the legal context. The basic idea is that a firm prices its services based on an understanding of the client's goals and perceived value of reaching those goals. The usual result is a predefined fee for a specified legal service".*[9]

Conditional fees

Conditional fees are used in a variety of categories but mainly in relation to personal injury and clinical negligence.[10] *"In the market for PI claimants' solicitors' services, the decision over which solicitor to use is made by the claimant—however, due to the prevalence of CFAs and BTE insurance, claimants rarely bear the cost. This reduces the incentive for solicitors to pass on any efficiency savings in the form of lower legal fees since, unlike in many other*

markets lower prices are unlikely to attract a greater volume of work. Fixed recoverable costs are determined by three elements: the solicitors' hourly charge-out rates; the grade of solicitors involved in each task; the amount of solicitor work required to settle a claim. Guideline Hourly Rates have a key role in establishing solicitors' hourly charge-out rates[11]". One report[12] indicates that these conditional fees are less profitable for legal service providers than hourly rate work.

Competitive tendering

In the 1990s, for city law firms an entrench culture of long term client loyalty and limited fee negotiation came to an end, as corporate client sought to reduce costs. Fees set against an hourly rate or by reference to the value of a transaction gave way to the price for the job, via competitive tendering[13].

Range of hourly rates charged by solicitors

The 2008 Law Management Section TLS survey of 108 firms found a wide spread of charge out rates. The minimum difference across the quartile points is £41 for Commercial Litigation & Commercial Property –approximately 25% of the median rate. The highest charge out rates were unsurprisingly all in commercial work.

Estimating hourly rates achieved by solcitors

An investigation into legal aid in 2003 compared costs and prices of different types of legal work, both legal aid and privately funded. The investigation utilised the hourly price achieved in certain categories of work and found that:

- Firms who undertook criminal legal aid achieved an hourly price of £69,
- Firms who undertook family legal aid achieved an hourly price of £71,
- Firms who undertook other civil legal aid work achieved an hourly price of £69
- This compared to privately funded work of £99 per hour for privately funded family work, £83 per hour for conveyancing, probate, wills, and personal injury, £91 per hour for housing and employment work , and £106 per hour for commercial and litigation work.

The report concluded that, *"different firms achieve a relatively wide range of chargeable hours is evidence of a more general point; there is a relatively large degree of heterogeneity among firms. This is particularly the case for firms with a contract to undertake Crime work. There are also noticeable differences between firms with a contract to undertake Crime versus Family versus Other Civil work."*

In terms of individual solicitor earnings, Law Society research concluded that the, *"key relationship between legal practice and income is not whether or not legal aid work is undertaken but rather the proportion of time spent on legal aid work. After taking into account firm size, grade, PQE, region, hours worked and number of casework areas undertaken, solicitors spending 50% or more of their fee-earning time with legally-aided clients earned, on average, 21% less than solicitors who did not undertake legal aid work but those spending between 1% and 49% of their time on legal aid work were not found to earn less than those who did no legal aid work."*

By utilising SRA turnover data and making a number of assumptions we can make broad estimates of the Solicitors price per hour (i.e. hourly rate) charged to consumers, for all solicitors legal practices. We did this because of very limited information on the prices paid by consumers. This calculation involves the following assumptions:

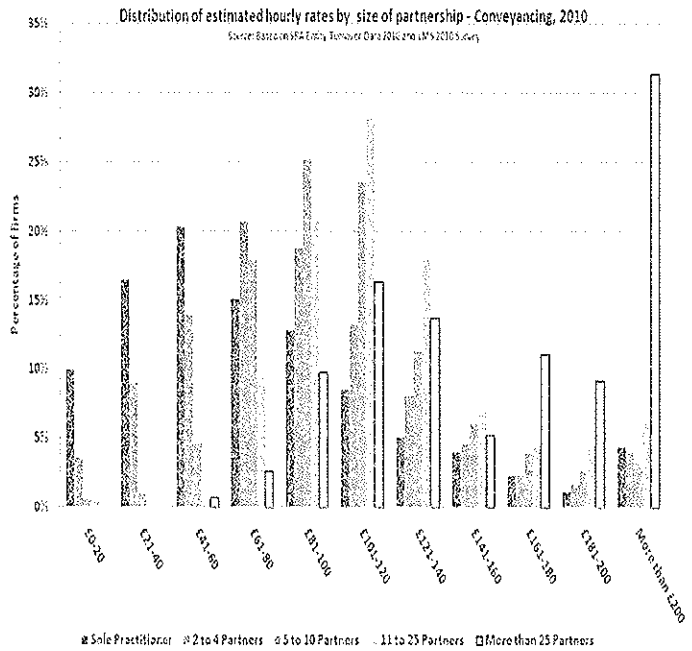
1. Using the number of fee earners, and assuming the firm as a whole meets chargeable hours targets, we can estimate the total number of hours billed. We use the chargeable hours targets reported in the 2010 Law Management Section survey [14]covering 200 legal practices, as the basis for these estimates.
2. Next assuming that the firm devotes an amount of resources proportionate to the amount of income in each area, we assign a proportion of the total number of hours to each category in which the firm reports turnover.

3. Finally, by dividing the reported turnover by this estimate of hours billed, we can derive an estimated hourly rate at the firm. This will reflect an average for the firm, and as set out above hourly rates vary by grade of fee earner used. We do not have data to assign these different resources to categories of work, so treat the firm average as sufficient for gaining an insight into both the levels of hourly rate charged and the variability across size, geography and category of law.

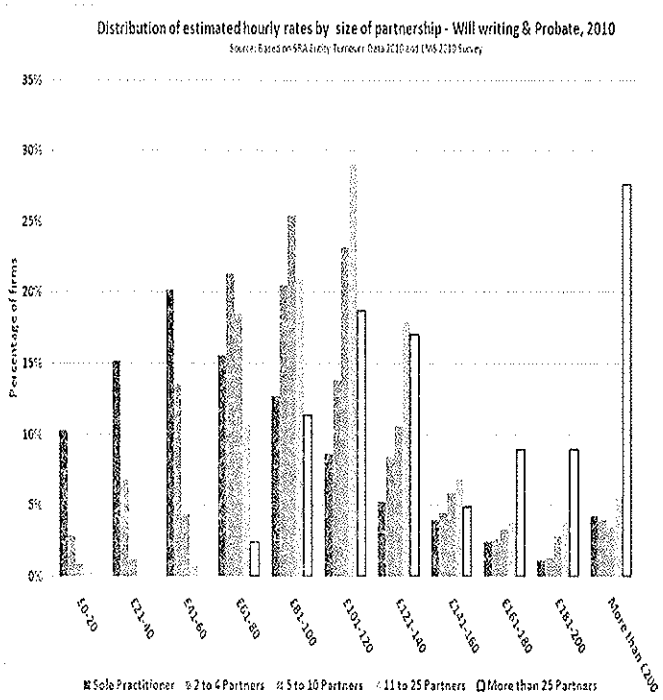
The results suggest, based on these estimates:

- There is significant variation in hourly rates within and across categories of law.
- As size of firm increases so do the hourly rates charged. This could be a result of the following factors:
  - Greater proportion of larger firms in London where prices are higher generally
  - Smaller firms not meeting the standard billable hours targets,
  - Larger firms exceeding standard billable hours targets.

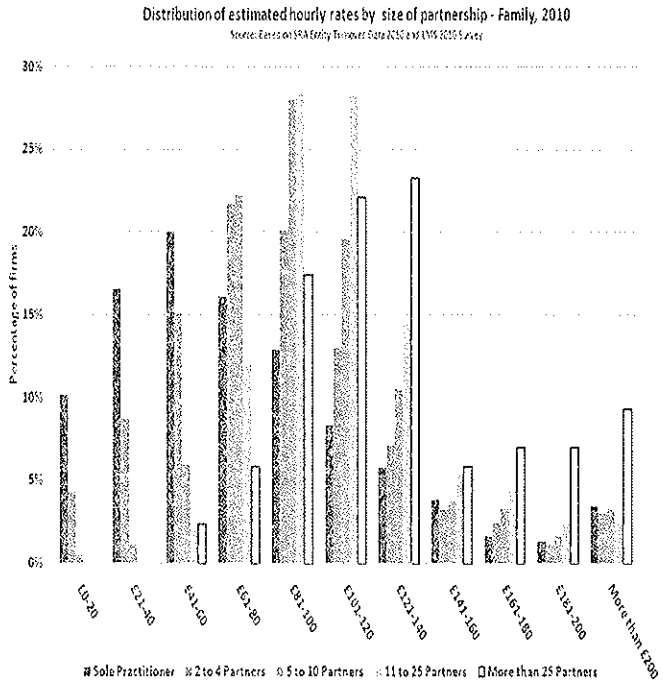
These range of estimated hourly prices are shown in the following charts, with the average hourly rate estimated.



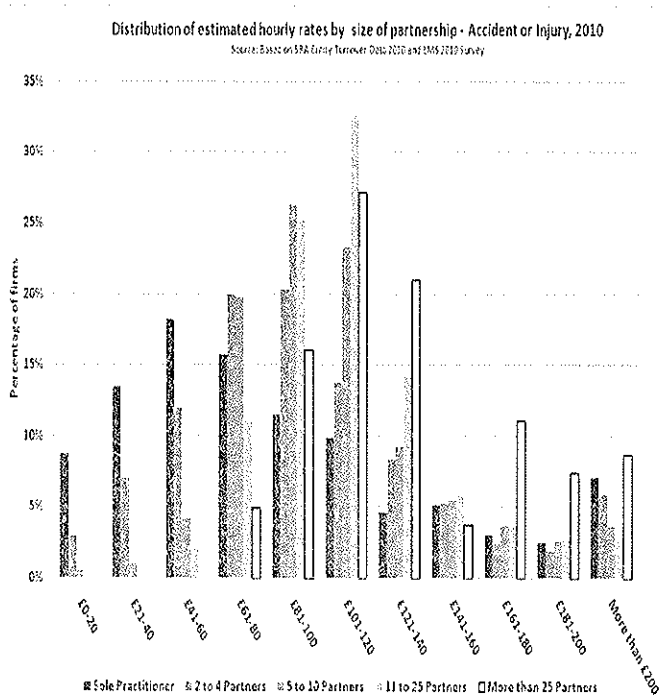
Conveyancing – £95



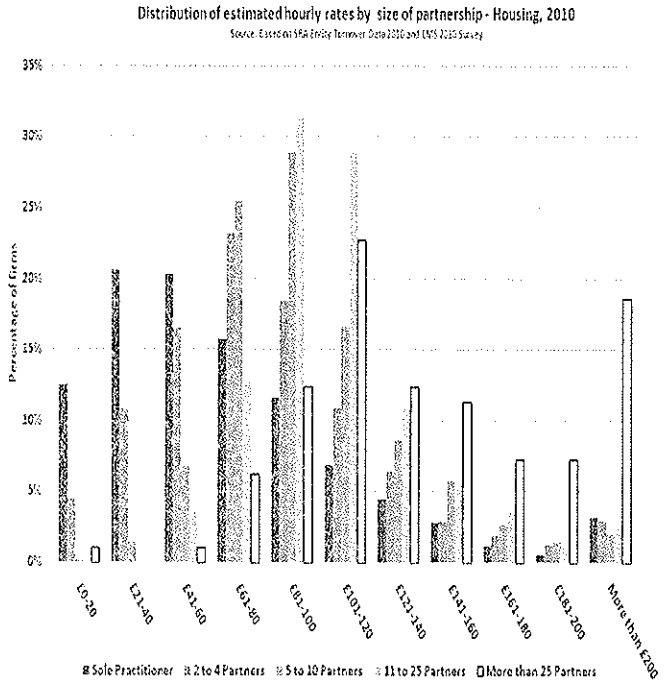
Will writing and probate – £94



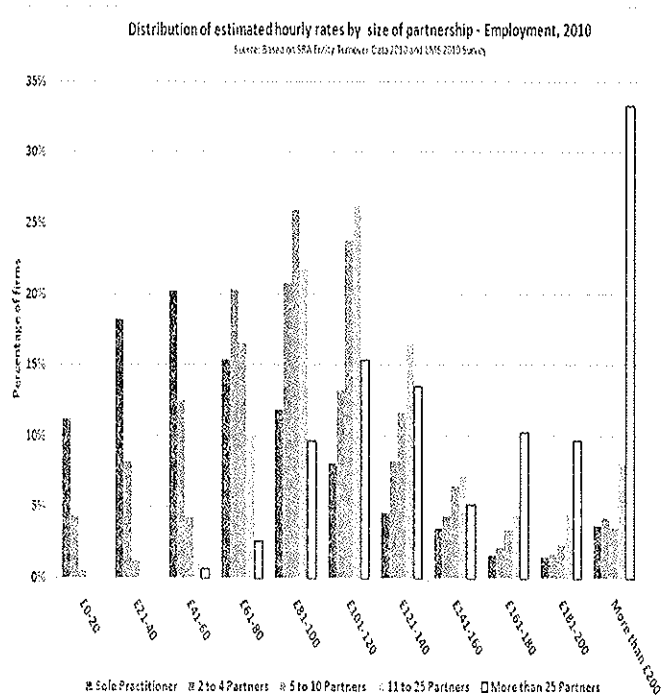
Family – £89



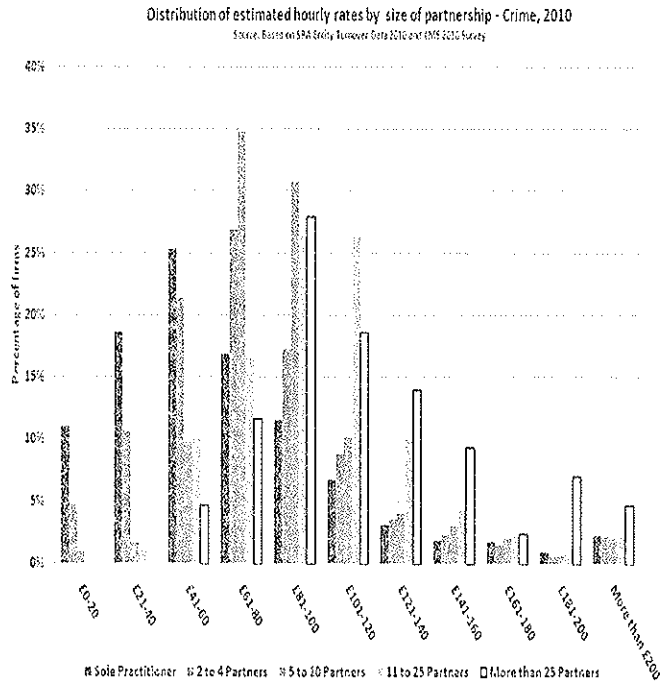
Accident or Injury - £101



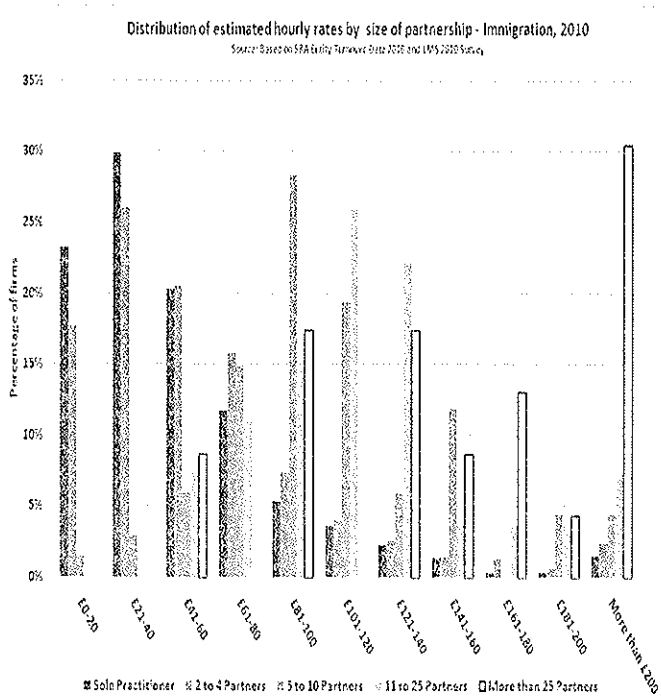
Housing – £85



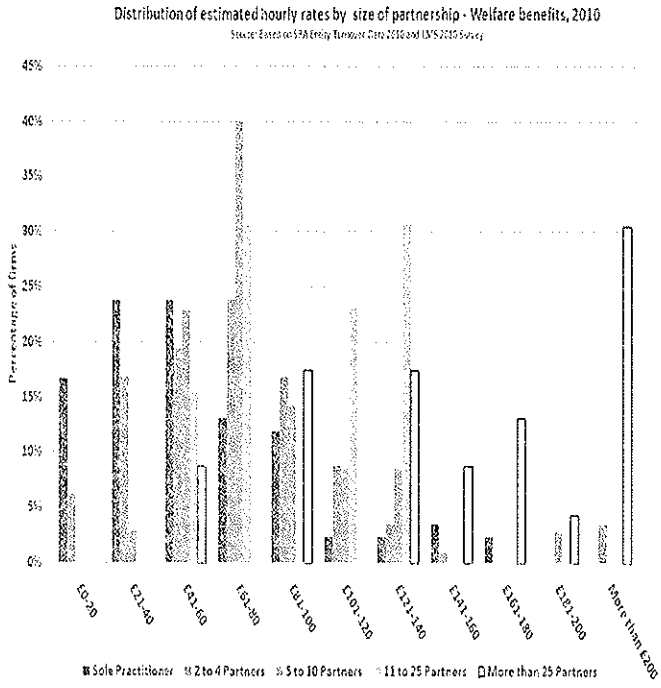
Employment – £98



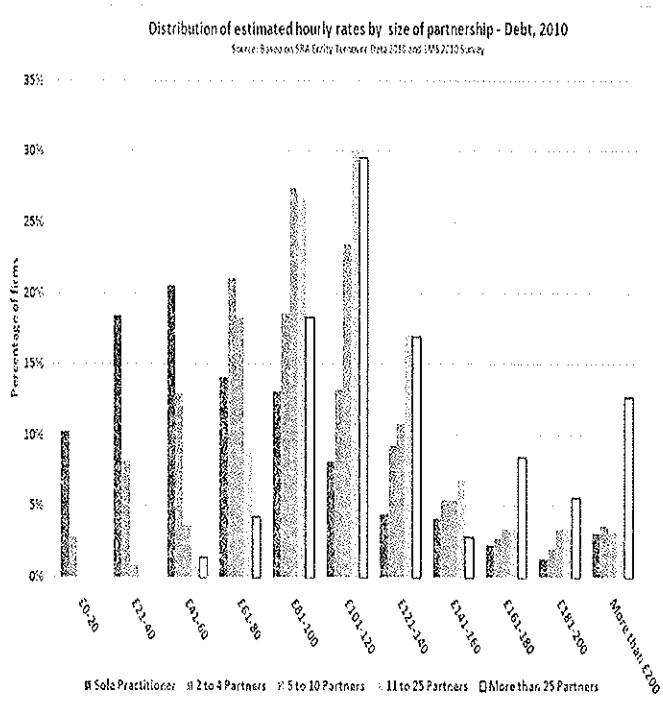
Crime – £78



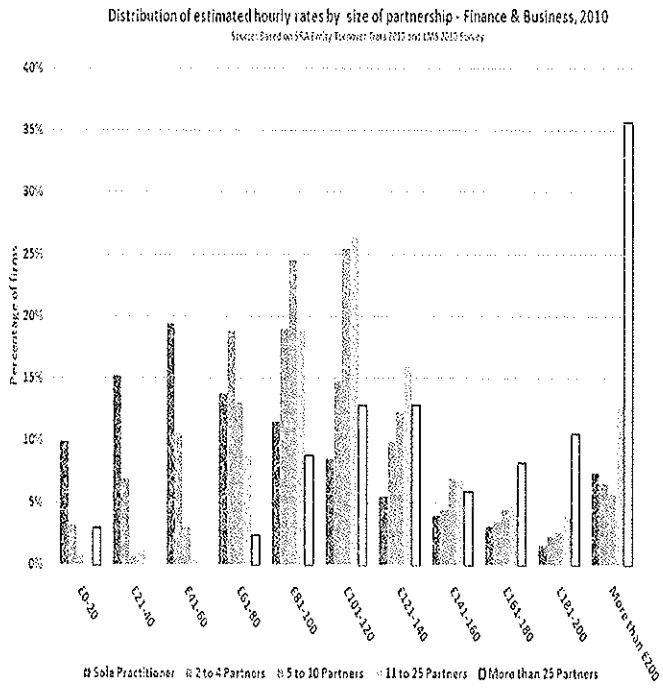
Immigration – £59



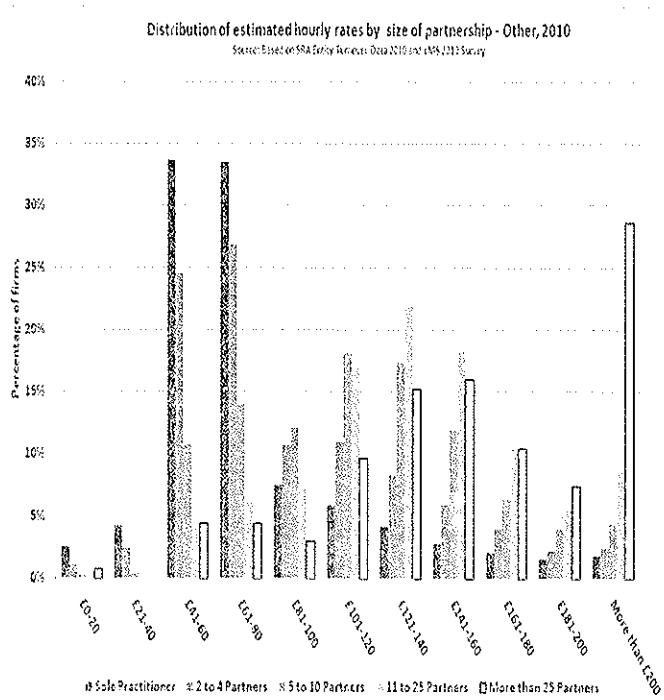
Welfare Benefits - £73



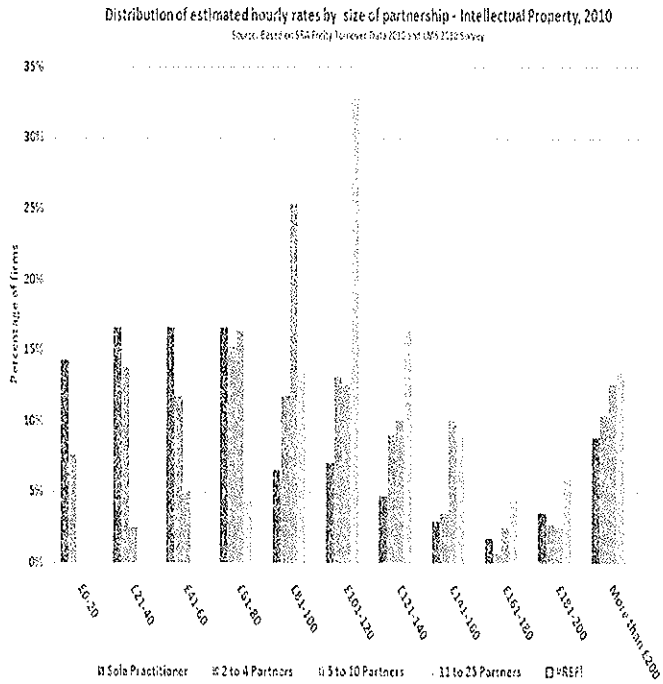
Debt -- £96



Finance and business --£112



Other - £112



Intellectual Property -£129

Charging methods for other legal service providers

For Barristers:

The overview of how barristers set their fees for lay clients states that: "*There are no formal scales of fees for barristers' work. Generally, barristers charge according to their level of experience and the complexity and length of time involved in any particular matter. The amount to be charged for any particular piece of work, and when the fee becomes payable, is a matter for negotiation between you, the barrister and his or her clerk*[15].

Barrister's fees are set by the barrister's clerk and reflect the complexity of the matter, the estimated time to be spent preparing and appearing before the court, and the seniority of the barrister in question. Barristers may also agree to act under a Conditional Fee Arrangement.[16]

There is a suggestion that higher rates of pay is linked to better service – when asked what would improve the service that they provide, 19% of barristers say better pay, 9%, more specifically, say better pay for legal aid, and 9% say better listing by courts[17].

For Legal Executives:

Once they have completed their first stage of academic training (the ILEX Level 3 Professional Diploma in Law and Practice course), employers (on a court assessment of costs) can charge Trainee Legal Executives fee-earning time up to £136 an hour in London and up to £116 nationally (based on SCCO 2009 guidelines rates for summary assessment)....Once they have passed their second stage, employers (on a court assessment of costs) can charge Trainee Legal Executives fee-earning time up to £222 an hour in London and up to £158 nationally (based on SCCO 2009 guidelines rates for summary assessment).[18]

While the RIR found no research looking specifically at charging methods of unreserved legal service providers, investigations undertaken by the Legal Services Consumer Panel have found a range of different charging methods on offer.

Examples include:

- Annual service fees:
- Which? Offer unlimited legal advice from £34 per year.
- Now let's get started offering small business unlimited legal advice calls from £375 + VAT per year.

Legal services provided free to membership organisations including Unite providing its members and their families, with free legal advice in employment, personal injury, wills and conveyancing.

Does transparency of billing impact on price?

It is not clear the impact of clarity of price has on consumers generally, and whether or not the rise of fixed fees has led to changes in prices. One study compared the impacts of different types of funding on personal injury cases. They found:

- Delay rose by 21% (157 days) for each £10,000 increase in estimated claim value
- Delay fell by 5% (38 days) for each 10% increase in the defendant's estimated liability
- Delay fell by around 1.2% (90 days) for each 10% increase in plaintiff's expected legal costs
- Legal aid finance increased delay by around 11% relative to legal expenses insurance, controlling for all other factors.

"The source of plaintiff finance was a significant factor determining delay (and consequently cost and settlement amounts), as a result of incentive effects on behaviour. The behaviour of litigants and their representatives is clearly influenced by the way financial risks are shared, and this must be taken into account when formulating and evaluating policy in this area.[19]" Another piece of research states that the pricing model based on fixed fees is seen as the key to efficiency[20]. The RIR found no further information on this area.

Sources

1. Guideline rates Routh Clarke Solicitors 2010
2. Starting a business The Law Society 2010, see also Guideline Hourly Rates for 2010 HMCS 2010
3. ADVISORY COMMITTEE ON CIVIL COSTS Guideline Hourly Rates – Conclusions Judiciary 2010
4. Benchmarking the supply of legal services by city law firms, CRA, 2011
5. Reproduced from 2010 Hourly Rate Survey by Jim Diamond. See http://www.jimdiamond.com/Jim_Diamond/Costs_Lawyer__.html
6. ADVISORY COMMITTEE ON CIVIL COSTS Guideline Hourly Rates – Conclusions Judiciary 2010

7. Trusted advisor: The Future: A report on the future of UK trust and estate practice by the Society of Trust and Estate Practitioners Society of Trust & Estate Practitioners 2010
8. Introducing Certainty The Pinsent Masons approach to successful tribunal management Pinsent Masons 2010
9. Client Driven Innovation in Legal Services - The State of the Legal Profession, Part 1By Andrew Zangrilli , FindLaw 2008
10. See Review of Civil Litigation Costs, the Right Honourable Lord Justice Jackson, 2009
11. Evidence of market failure Report from Oxera Consulting Limited Association of British Insurers 2009
12. Damage-based contingency fees in employment cases Cardiff University 2008
13. From kinship to magic circle: the London commercial law firm in the twentieth century Marc Galanter & Simon Roberts 2008
14. 2010 Law Management Section, The Law Society 2010
15. The Public Access Scheme - Guidance for Lay Clients Bar Council 2010
16. University of Oxford questionnaire on funding, costs and proportionality University of Oxford 2009
17. Perceptions of barristers Research study conducted for the Bar Standards Board by IPSOS MORI November 2007 Bar Standards Board 2007
18. . ILEX Members are Fee Earners Institute of Legal Executives 2010
19. The funding of personal injury litigation: comparisons over time and across jurisdictions Paul Fenn, University of Nottingham Alastair Gray, University of Oxford Neil Rickman, University of Surrey Yasmeen Mansur, University of Nottingham Department for Constitutional Affairs 2006
20. Supply Chains & Porous Boundaries: The Disaggregation of Legal Services, Milton C Regan Jr & Palmer T Heenan Fordham Law Review 2010

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Circular 2016-1 – ASSESSMENT OF FINANCIAL MEANS OF APPLICANTS FOR LEGAL AID.

This Circular is intended for GENERAL DISTRIBUTION. It replaces Circular 2015-1 and will be revised when necessary to keep in line with Social Security legislation.

This Circular describes the ways in which a person's financial means are assessed in connection with applications for legal aid. **It is effective from 1st January 2016** and will be used to assess any applications received on or after that date.

GENERAL PRINCIPLES.

The approach that is used is similar to that used when a person applies for Supplementary Benefit.

In this Circular, the word "Applicant" means a person that is applying or who has applied for legal aid either by way of advice and assistance under the Green Form Scheme or by way of a Legal Aid Certificate issued by the Administrator.

PART I

GENERAL PROVISIONS RELATING TO CALCULATING ELIGIBILITY FOR LEGAL AID

1. Exemptions

(a) No financial assessment is required by a Duty Advocate when giving advice to persons: - detained by the Island Police, the Border Agency, the Constable of Sark, or when a person attends the police station, Border Agency or Constable of Sark as a volunteer or in the Magistrate's Court or in the Court of Alderney sitting as a Police Court.
(When an Advocate, other than a Duty Advocate, is asked by a Court to assist a person currently appearing before it during the course of a sitting, the Administrator sees such assistance as being given pro bono.)

(b) Where an application is submitted, in respect of a specified public law children case in the court of first instance, the Administrator will assess the application on a "no means, no merits test" basis. See Circular 2010-4 Children Laws.

(c) Where an application is submitted in respect of legal representation at the Mental Health Review Tribunal, the Administrator will assess the application generally on a "no means, no merits test" basis; whilst reserving the right to exceptionally apply a

"means test" to an application, where reasonable and in conformity with Human Rights obligations. See Guide MHRT 1.

2. Eligibility for legal aid and calculation of requirements and resources.

The eligibility for legal aid depends upon whether an Applicant's total income falls short of his total weekly requirements and for the purpose of ascertaining that amount:

(a) The weekly requirements of an Applicant shall, except as provided for elsewhere in this Circular, be taken as the aggregate of such of the amounts specified in Part II of the First Schedule of the Supplementary Benefit (Implementation) Ordinance 1971, as amended, (**"SBIO"**) as are applicable to his case provided that the weekly requirements of any Applicant-

(i) Whose capital resources exceeds £20,000; or
(ii) In the case of an Applicant who is residing in a residential home, nursing home, or the Guernsey Cheshire Home, whose capital resources exceeds £40,000

shall be nil; and

(b) The resources of an Applicant shall be calculated in accordance with Part III of the First Schedule of SBIO except as provided elsewhere this Circular.

3. Aggregation of requirements and resources.

(a) Where a husband and wife are members of the same household their requirements and resources shall be aggregated and similarly as to (a) two persons cohabiting as man and wife or (b) two persons cohabiting in a single gender relationship.
(b) Persons are "members of the same household" even when one party is not currently living in the same house due to illness, working away or imprisonment, as long as the relationship has not broken down.
(c) Where a person has to provide for another person (not falling within the preceding-sub paragraph) who is the member of the same household, his requirements shall be taken to include the requirements of that other person and in that case their resources shall be aggregated.
(d) The resources of an Applicant and another person shall not be aggregated if an Applicant is seeking legal aid in connection with a dispute with such a person as identified in the previous sub-paragraphs of this section.

4. Limitation upon the amount of legal aid provided – requirement for a contribution.

Assessed residual weekly income is calculated by adding together all net income, then deducting housing allowance, and the Social Security Department weekly requirements of the individual, couple or family unit as appropriate. Maintenance payments and wage arrests actually made in accordance with a Court Order and child-minding costs may be offset against net income at the discretion of the Administrator.

(a) Where an Applicant's assessed residual weekly income is zero or less there is a presumption in favour of the grant of legal aid unless, in the Administrator's

opinion, the case does not have legal merit or it is one to be litigated in a court that is intended for litigants in person;

(b) Where an Applicant's assessed residual weekly income is £200.01 or more there is a presumption against the grant of legal aid. This presumption may be displaced by the Administrator if, in her opinion, the interests of justice require it.

(c) Between the limits set out in the two previous sub-paragraphs legal aid is granted at the discretion of the Administrator and, unless the Administrator determines otherwise, subject to a contribution as follows:-

Assessed Residual Weekly Income (£)	**Contribution Required**
zero or less	0% (see para 4(a))
£50.00 or less	20%
between £50.01 and £100.00	40%
between £100.01 and £150.00	60%
between £150.01 and £200.00	80% (see para 4(b))
more than £200.01	No award of legal aid will be given

(d) The Administrator may exercise discretion to grant legal aid outside the limits set out in sub-paragraphs (a), (b) and (c) above or to waive a contribution in the following two situations :

(i) Where an Applicant is a party in a private law case involving domestic abuse and children in which a Finding of Fact hearing has been ordered by the relevant Court. See the Administrator's Memorandum of 22nd February 2010, entitled *"Cases involving Domestic Abuse, Children and Practice Direction Number 6 of 2008"*

(ii) Where the Applicant has been advised by the Advocate to seek the protection of a Domestic Violence Injunction **and** has minor children residing with him/her.

5. Administrator's obligation to give reasons.

If the Administrator refuses legal aid, or exercises her discretion to grant it outside the above limits, or to waive a contribution, then she shall provide reasons.

6. Collection of contributions.

In civil matters, including domestic and family matters, the payment of any contribution is a matter between the Applicant and the Advocate that provides legal advice and assistance under the Green Form Scheme or is in receipt of a Legal Aid Certificate issued by the Administrator.

In criminal matters the Administrator will collect any contribution at the conclusion of the proceedings. In the case of advice and assistance under the Green Form Scheme the Advocate

that completes the Green Form should note the percentage contribution on the front page of the Form. If the Administrator issues a Certificate, then the amount of contribution will be noted on the Certificate. (This paragraph does not apply to Certificates issued under the provisions of any enactment currently in force in the Bailiwick of Guernsey).

PART II

CALCULATION OF REQUIREMENTS

7. Basis for assessment of requirements.

An Applicant's weekly requirements are those as set out in Section 5 of Part II of the First Schedule to SBIO as relating to a person to whom Supplementary Benefit has been payable for a continuous period of 6 months, save as provided for below:-

(a) For a husband and wife or other persons falling within paragraph 3 of Part I of this Circular, £249.75

(b) For a person living alone or a householder who is directly responsible for household necessities and rent (if any), £172.79

(c) (The aggregate of £249.75 in subparagraph (a) of this section may be calculated as £172.79 as relating to the Applicant and £76.96 as relating to their spouse or partner)

(d) For any other person who is not a householder aged 18 years or over £134.13.

A non-householder is someone who has left full time education and is living at home as a member of a household. Non-householders aged 16 and 17 years are allowed the same weekly requirement as members of a household of the same age i.e. £113.61

A person who is in prison or otherwise detained in legal custody is also defined as a non -householder, as is a person of no fixed abode.

(e) For a member of a household:

(i) aged 18 years or over, £134.13

(ii) aged 16 years or 17 years, £113.61

(iii) aged 12 years or over but less than 16 years, £70.29

(iv) aged 5 years or over but less than 12 years, £50.96

(v) aged less than 5 years, £37.56

No allowance is given for any child not in full time education.

8. Waiver of need for assessment

An Applicant that seeks advice and assistance under the Green Form Scheme shall not be assessed in accordance with the previous paragraph provided that they can provide the person undertaking the assessment with one of the following as appropriate to their circumstances:

(a) A Certificate or other evidence from the Guernsey Social Security Department that the Applicant is currently in receipt of Supplementary Benefit;

(b) In relation to an Applicant that is a resident of the Island of Sark, a Certificate or other evidence from the Procureur of the Poor of the Island of Sark or the Sark Treasurer that it is appropriate that the Applicant receives legal aid;

(c) Evidence of a request made by a Court of its own motion that the Applicant receives legal advice and no duty Advocate or other Advocate was present in Court to render such advice and assistance;

(d) In relation to an Applicant resident outside the Bailiwick, the provision by the Administrator of a Green Form endorsed to the effect that the requirement of assessment is waived

An Applicant that seeks advice and assistance and representation under the Civil or Criminal Legal Aid Scheme shall not be assessed in accordance with paragraph 7 above provided that they can provide the person undertaking the assessment with one of the following as appropriate to their circumstances:

(a) A Certificate or other evidence from the Guernsey Social Security Department that the Applicant is currently in receipt of Supplementary Benefit;

(b) In relation to an Applicant that is a resident of the Island of Sark, a Certificate or other evidence from the Procureur of the Poor of the Island of Sark or the Sark Treasurer that it is appropriate that the Applicant receives legal aid;

9. Housing Allowance Requirement

(a) Where the Applicant is living in **rented accommodation,** housing allowance is calculated as the amount of the weekly rent payable, **or** 20% of the gross weekly income (excluding Family Allowance and Severe Disability Benefit) of the Applicant and partner, if appropriate, whichever is the lesser amount respectively or such lesser amount as may be thought reasonable to the Administrator having regard to the circumstances of that person and the nature and standard of the accommodation concerned. For the avoidance of doubt, and without limitation, the Administrator may consult the Rent Officer (within the meaning of the Rent Control (Guernsey) Law, 1976) or the appropriate authority in any jurisdiction other than the Island of Guernsey in relation to the level of rent charged for the accommodation.

In any other case (unless there appears to the Administrator to be special reasons or the person is aged less than 18 years) a reasonable share as determined by the

Administrator of the rent payable by the householder of whose household the Applicant is a member, but not more than £15.00.

(b) Where the Applicant is living in their property as **owner-occupier,** housing allowance is calculated as, 90% of the weekly mortgage repayment in respect of a charge on the dwelling in which the householder resides, **or** 25% of the gross weekly income of the Applicant and partner, if appropriate, (excluding Family Allowance and Severe Disability Benefit) whichever is the lesser amount respectively.

(c) Where the Applicant is residing in a hospital or nursing home as a patient or is resident in a residential home by such amount, if any, as may be appropriate having regard to all the circumstances

(d) Where the Applicant is paying an inclusive charge for board and lodging, by one half of the actual amount being paid or the amount being paid for accommodation only.

(e) The requirements of an Applicant who is in prison or otherwise detained in legal custody shall be the same as for a non- householder.

(f) Only one Housing Allowance Requirement in respect of **either** rented accommodation **or** owner-occupied accommodation will be given for each application for advice and assistance under the Green Form Scheme.

(g) Only one Housing Allowance Requirement in respect of **either** rented accommodation **or** owner-occupied accommodation will be given for each application for advice, assistance and representation under the Civil or Criminal Legal Aid Schemes.

10. Lifestyle and indebtedness.

Neither the finance needed to support a person's lifestyle nor the extent of a person's indebtedness are requirements for the purposes of determining an Applicant's eligibility for legal aid.

PART III

CALCULATION OF RESOURCES.

11. Disregard of capital value of dwelling.

(a) In taking into account the value to any person of any interest in the dwelling in which that person resides, any sum that might be obtained by that person by selling that interest or borrowing money upon the security thereof shall, subject to the succeeding sub-paragraph be disregarded

(b) In the exercise of any discretion to grant legal aid (as opposed to advice and assistance under the Green Form Scheme) to any person in a civil matter the Administrator may, in all the circumstances of the case, take into account the

value and strength of the case, the extent to which that person's resources exceeds their requirements, the anticipated cost of providing legal aid, and the difference between the current value of such interest and any loan secured upon it.

12. Resources totally disregarded.

There shall be totally disregarded:

(a) The value of any resource that is the subject matter of the dispute in respect of which legal aid is being sought;
(b) The value of any resource that is the subject matter of any proceedings currently before a Court;
(c) Any sums payable to any person as holder of the Victoria Cross or of the George Cross;
(d) Any grant by the Education Department in respect of a person who would be treated as a child for the purpose of the Family Allowances (Guernsey) Law, 1950;
(e) The cash value of any free board or free lodging or both which a person may enjoy, not being board or lodging or both which that person is enjoying under and in pursuance of a contract of service;
(f) Any Severe Disability Benefit granted under the Severe Disability Benefit and Carer's Allowance (Guernsey) Law, 1984;
(g) Any payment made by a third party to a residential home, a care home, a nursing home or the Guernsey Cheshire Home on behalf of a person residing in the home in respect of the home's fees as may be considered reasonable by the Administrator in all the circumstances.
(h) Any fostering allowance, other than the contractual element paid by the Health and Social Services Department.

13. Capital Resources

(a) Capital resources which consist of;
(i) business premises or stock in trade or both which are wholly or partly used as the means of livelihood, other than by way of unearned income: or
(ii) an interest in an asset, which cannot reasonably be converted into a sum of money by selling that interest or borrowing money upon the security thereof, may be disregarded for such period as the Administrator in her discretion so directs.

(b) If the value of the capital resources taken into account would not exceed £5,000 they shall be totally disregarded together with any income there from.

14. Calculation of income from capital resources.

The capital resources taken into account, together with any income derived there from shall be treated as equivalent to a weekly income, so far as their value exceeds £5,000, of 15 pence for each complete £25.

15. *Earnings*

(a) For the purposes of an application for advice and assistance under the Green Form Scheme the weekly earnings of any person shall be taken as his net weekly earnings for the week immediately preceding the date of the application together with the earnings of any other person whose earnings must be taken into account

(b) Subject to the provisions of sub-paragraph (g) of this paragraph, for the purposes of an application for legal aid in a criminal matter the weekly earning of any person shall be taken as the average of the net weekly earnings for the 13 week period immediately preceding the date of the application together with the earnings of any other person whose earnings must be taken into account.

(c) Subject to the provisions of sub-paragraph (g) of this paragraph, for the purposes of an application for legal aid in civil matters the weekly earnings of any person shall be taken as the average net weekly earnings for the 13 week period immediately preceding the date of the application together with the earnings of any other person whose earnings must be taken into account.

(d) Subject to the provisions of sub-paragraph (g) of this paragraph, for the purposes of this Circular, a person's net weekly earnings shall be the net remuneration or profit, calculated on a weekly basis, derived by him from any occupation, pension, investment, bank interest or any other source, and, in particular, in so far as the earnings consist of salary or wages, there shall be deducted any sum the deduction of which from salary and wages is authorised by any enactment for the time being in force.

(e) For the purposes of this Circular, there shall be included in a person's net weekly earnings: -

(i) The cash value of any board or lodging or both which he is enjoying under and in pursuance of a contract of service;

(ii) Any Carer's Allowance payable in accordance with the Severe Disability Benefit and Carer's Allowance (Guernsey) Law, 1984;

(iii) The contractual element of any fostering allowance paid by the Health and Social Services Department.

iv) Payments received from another person whether under a Court order or otherwise for the benefit of that person or another member of the Applicant's household.

(f) Subject to the provisions of sub-paragraph (g) of this paragraph, the net weekly earnings of a person who is in business on a self-employed basis shall be determined from their total income and profit for the three years immediately preceding the date of the application.

(g) Where a person's earnings for any week or period are not immediately ascertainable, sub-paragraphs (b), (c), (d), and (f) shall not apply and his weekly earnings for that week or period shall be calculated in such manner and on such basis as the Administrator considers appropriate, having regard to the circumstances of the case, and an Applicant shall provide the Administrator with such information as she shall require.

(h) The Administrator may, at her discretion, allow to be offset against the income of a person:

(i) The costs of using the services of a Registered Child Minder or other appropriate person to enable a person to obtain an income from employment, including self-employment;
(ii) Any payment by way of maintenance actually made to another person in accordance with a Court Order;
(iii) Any deduction from a person's wages made by a Court Order arresting the wages of that person;

16. Resources abandoned.

If a person has

(a) directly or indirectly deprived himself of any resources; or
(b) neglected to claim, waived or abandoned any right or benefit to which he is, or may be, entitled

and the effect of the deprivation, neglect, waiver or abandonment, as the case may be, is to obtain legal aid for themselves or another person or increase the amount thereof or decrease any contribution that might otherwise be payable, those resources and that right or benefit may be taken into account as if they were still his or he were in receipt of any money due under or pursuant to or representing that right or benefit.

17. Attribution of assets.

(a) Subject to the following provisions of this paragraph, a person shall be deemed for the purposes of this Circular to own an asset if he is absolutely entitled in possession to the whole beneficial interest therein and not otherwise.
(b) Where two or more persons are beneficially entitled in possession to any asset they shall be entitled for the purposes of this Circular as if each of them were entitled to possession to the whole beneficial interest in equal shares unless it appears that their respective beneficial interests are not equal; and in that case they shall be treated as respectively entitled in possession to the whole beneficial interest in such shares as appear to be just.

18. Applicable law.

For the purposes of determining a person's requirements and resources, the Administrator shall apply the law of the Island of Guernsey, except that for any determination made in respect of a resident of the Islands of Alderney and Sark concerning eligibility for legal aid in the Court of Alderney or the Court of the Seneschal any conflict between the law of Guernsey with that of Alderney or Sark, shall be resolved in favour of applying the law of Alderney or Sark as appropriate.

19. Derogation for the Island of Sark.

Subject to paragraph 8(b) above, an Applicant resident in the Island of Sark, who applies for a Legal Aid Certificate in respect of proceedings in the Court of the Seneschal, shall be assessed by the Administrator who may consult with the Sark's Procureur of the Poor or The Sark Treasurer and the provisions of this Circular shall be deemed to be for guidance and not mandatory.

20. Transitional provisions

If an Applicant has been granted legal aid, either under the Green Form Scheme or by way of a certificate issued by the Administrator, and there are subsequent changes in the rates as a result of changes in the Supplementary Benefit (Implementation) Ordinance, then the Applicant may apply for re-assessment, and, whether in receipt of such an application or not, the Administrator may re-assess the Applicant. In such events, the Administrator may offer Legal Aid in an amended form. If the amendment is not accepted then the Administrator shall revoke the Legal Aid Certificate.

The Administrator may also revoke the Certificate if, as a result of such changes, the Applicant is no longer eligible for legal aid.

Hayley Cooper
Legal Aid Administrator

CIRCULAR 2010-4
Amended 1st January 2011

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Legal Aid and The Children (Guernsey and Alderney) Law, 2008
The Criminal Justice (Children and Juvenile Court Reform) (Bailiwick of Guernsey) Law, 2008 ("The Children Laws")

Due to the implementation from 4th January 2010 of the above laws and the new approach to the way in which children and young people will be dealt regarding welfare and criminal matters, the provision of legal aid has been amended as detailed below.

With the introduction of the Children's Convenor and the Child Youth and Community Tribunal ("CYCT") many issues will now be dealt with differently and may not even require legal advice assistance or representation. Indeed the CYCT is a "lawyer free zone".

Following approval of the Policy Council and consultation with HM Procureur the following new procedures are to be utilised from 4th January 2010.

NEW FORM AAS 1 CL ("Green Form")

The existing "Green Form" scheme will apply to both of the new children laws in order to provide advice and assistance regarding any aspect of family law.

Please note the new form AAS1 CL which is to be used for general advice and assistance to adults and children for the following:

1. The duties, responsibilities and investigations of the Children's Convenor including representation at the Convenor's Meeting.

2. The duties, responsibilities and decisions of the CYCT but excluding representation at a CYCT hearing.

3. The range of new public law orders including emergency orders.

The old Green Form AAS 1 should continue be used for all private family law advice and assistance.

PRELIMINARY MATTERS IN CONNECTION WITH THE CHILDREN'S CONVENOR

Green Form will be available on the usual means and merits basis to children and young persons (up to the age of 18) and the people with parental responsibility who ordinarily have the day to day care of the child, ("PR) together or separately (if there is a contrary interest) for preliminary advice and assistance at the very outset of the matter. This will usually be

once the young person has received a "Pre- Proceedings letter" from the Children's Convenor.
It is envisaged that this Green Form will cover up to the time when notification is received that there is going to be a Convenor's Meeting. This Green Form will be limited to the usual two hours including disbursements.

CONVENOR'S MEETING

If the young person receives notification that the matter will be referred to a Convenor's meeting, the Green Form will automatically be extended by a maximum of two hours in total including disbursements. This extension is to cover; representation at the Convenor's Meeting, any advice following and applying for a full certificate (if required) i.e. if the conditions are not accepted and the case is referred to the Juvenile Court for an Evidential Hearing.

Please ensure that you attach a copy of the referral letter to the Green Form upon submission as evidence of the automatic extension.

If the advocate can justify to the Administrator that the matter is significantly more complicated or there are mental health issues or language difficulties, then a further and absolutely final extension of two hours (including disbursements) may be considered. Unless there are such exceptional issues, a Green Form will only ever extend to a maximum of 4 hours including disbursements; there will be no other extensions.

Advocates are reminded that they are there to provide legal advice, assistance and representation only. There will be other parties available to provide support and advice e.g. social workers, doctors, teachers etc. There may well be situations in which no legal advice or representation is required at all.

MEANS TEST

The means to be tested will be those of the child or young person if that person is seeking advice and assistance either on their own or in conjunction with the person with PR.

If persons with PR wish to obtain separate advice and assistance or there is a conflict with the child, then the assessment will be based on their means.

As all matters referred through the Convenor under the new law are deemed to be civil- the advocate will as usual collect any contribution due under the green form.

It is anticipated that most recipients of Green Form advice and assistance will be entitled to free advice and assistance under the Green Form. However, this will be kept under review.

CYCT

The CYCT is designed to be a "lawyer free zone". Therefore there will be no legal aid, available at any Tribunal hearing whether by Green Form or a full certificate. This includes any review or where the matter is referred back to the CYCT following a court hearing.

There may be some very exceptional circumstances arising in which the Administrator deems that a full legal aid certificate is justified. In order for the Administrator to consider such a case, an advocate will need to be able to justify why an advocate is necessary to allow a party to "effectively participate" in the Tribunal proceedings. Is there any other person who could assist e.g. litigation friend, social worker, teacher etc?
It is anticipated that such circumstances would have to be "truly exceptional" to allow for the public funding of an advocate at a Tribunal hearing.
Article 6 confirms that there is no necessity for a lawyer for a person to be effectively represented.

LEGAL AID CERTIFICATES

Legal aid will be available for representation for all parties subject to eligibility, in all applications to court under the new law. There will be no changes to the current financial eligibility criteria.

Applications for legal aid will be determined on either a means and merits basis or on a no means no merit basis depending on the type of application. Any certificate issued may be subject to limitations and conditions as to scope and /or costs.

1) Private Law Orders

Please use Form 1LM Family.

Legal aid to be available for applications under sections 14, 17, 74(2) (b) and 93, including applications for leave and party status and will be subject to the usual means and merits test.

Each certificate will have a costs limit which may be extended by application to the Administrator but which will have to continue to satisfy the merits test. The application to extend should set out the work undertaken so far, cost to date and an estimate of further work to be done and future costs.

Each certificate will have standard scope conditions setting out exactly what type of application is being covered. Again the scope of the certificate could be amended upon application but any application for an amendment would have to satisfy the merits test

Each certificate will also limited as to extent e.g. that the certificate will cover up to the receipt of a safeguarders report or the setting down for a contested hearing. If an extension were required, the advocate would have to justify the basis for legal aid continuing.

2) Public Law Orders to be means and merit tested

Please use Form 1LM Children

Legal aid to be available on a means and merits tested basis for applications for party status and leave under:-

a) Section 48 (Community Parenting Order) ,
b) Section 50 (Special Contact Order),
c) Section 52 (2) (Discharge of Community Parenting Order),
d) Section 55 (Emergency Child Protection Order),
e) Section 58 (Discharge of ECPO),
f) Section 69 (Secure Accommodation Order) and
g) Section 92 (Recovery Order).

The scope of each certificate will be limited to one or more of the orders and will also be cost limited with ability to apply for scope and costs to be extended.

3) Public Law Orders on a no means no merit basis

Please use Form 1LM Children

Legal aid to be available in applications under:-

a) Section 48 (CPO)
b) Section 50(SCO)
c) Section 55 (ECPO)
d) Section 59 (exclusion order)
e) Section 69 (secure accommodation)

Applications to vary or discharge any of the orders at 3) above will be on a no means no merit basis for those persons who were parties to the proceedings in which the order was made.

It will be available to the automatic parties i.e. mother, father, child (the subject of the application), the person with parental responsibility who ordinarily has the day to day care of the child and anyone else who has been joined as a party by the Court.

A Form 1F will required from all parties in any Public Law case even if it is on a no means no merit basis.

Scope will limited to one or more of the orders and will also be cost limited with ability to apply for scope and costs to be extended.

Emergency Child Protection Orders (ECPO)

If an ECPO is to be applied for by the Department and the hearing is out of office hours, the advocate for any entitled party should submit an application for legal aid at the first possible opportunity and a certificate will be issued to cover the ECPO.

Referrals to the Juvenile Court from the Convenor or the CYCT.

If the conditions of referral to the Tribunal are not accepted the case will be referred to the Juvenile Court for an evidential hearing.

A full certificate may be available based on the usual means and merits criteria.

The means to be tested are those of the child or the persons with PR if there is a conflict of interest and unless it falls within one of the matters as above on a no means no merits basis. The full certificate will cover pre-hearing advice, the hearing and post-hearing advice.

Following the Court hearing, if the Court decides that the conditions are satisfied then the case will be referred back to the Tribunal. Once the Court has made a decision and the matter is returned to the CYCT to determine whether compulsory intervention is necessary and if so what it should be, the certificate will lapse. NB No legal aid whether by green form or full certificate will be available for a matter returned to the CYCT.

Criminal Matters

When a crime is jointly reported to the Convenor and HMP, if it is decided that the matter will be referred to the Tribunal, then no legal representation will be permitted unless there are exceptional circumstances as detailed above.

If it is decided that the case will be prosecuted in the Juvenile Court then the child may apply for a full legal aid certificate. As the standard of proof will be on the basis of beyond reasonable doubt a criminal certificate should be applied for.

Appeals

Legal Aid will be available for all appeals from the Tribunal to the Juvenile Court, from the Juvenile Court to the Royal Court and from the Royal Court to the Court of Appeal on a means and merits tested basis in respect of all appeals.

Experts

As no certificate will be granted for the CYCT, no funding for any expert report required at the CYCT can be provided by Glas.

There may be room for modest disbursements e.g. interpreter under the green form but NB the limits as detailed above.

In cases which are referred to the Courts and experts reports are ordered by the Court, application for advance approval of experts reports may be made using Form 8. Please remind any expert who is instructed to provide receipts for all expenses if they wish to be reimbursed by Glas.

ADMINISTRATION

A new "Green Form" called AAS 1 CL has been drafted. We should be grateful if it could be printed out on salmon coloured paper to enable easy identification.

This form should only be used for advice in cases that arise under the new Children Laws, except any private law applications under Section 14 and applications for leave and determination of party status in relation to S14 when the usual green form, AAS 1, should be used. (See page 1 above)

Glas will provide each firm with some of the new forms to start matters off.

It is suggested that advocates do not submit the AAS1 CL until it is either exhausted or the matter is completely concluded. Once a Green Form is submitted to Glas and passed for payment it cannot be "retrieved"by the firm to add on more work undertaken or disbursements even if the Green Form was not exhausted at the time of submission.

Only one Children's Green Form is permitted for each matter. Consequently even if a referral to the Convenor relates to more than one ground only one Green Form can be used.

If the parents and the child are advised together then the Green Form, any 1F and Form 3 should be signed by the parent(or person with PR) alone if the child is under 16 years and by both the parent and the child if the child is aged 16 to 18 years,

If there is a contrary interest between the child and the parent; the parent will sign their own forms and the child, if over 16, can sign his/her application. If under 16 years, the advocate should ensure that the child has the capacity and understanding to instruct the advocate.

Which 1LM to submit?

Please see new guide to 1LM use.

Alderney

The above procedure and guidance will also apply to Alderney.

Sark
Only the criminal law applies to Sark at the current time.

It is suggested that is any issues arise in connection with Sark; the advocate consults with then Administrator prior to commencing any work.

Experience may prove some adjustments are required to the Children Law legal aid forms or guidance. Consequently, if there are any observations or suggestions relating to the forms or legal aid and the Children Laws generally, the Administrator would be pleased to such comments.

Hayley Cooper
Legal Aid Administrator

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EFFECTIVE FROM 1ST JUNE 2006 AND AMENDED 1ST JANUARY 2013

CIRCULAR # 4 of 2006 - COSTS ASSESSMENT CRITERIA

The approach to the assessment of costs in Civil Matters

Assessment takes place on the basis of determining the reasonableness of the work done and whether the time spent was reasonable having regard to the requirements of the relevant regulations or guidance (as applicable) and applying the correct remuneration rate for each item of work. Allowance is only made for work claimed where it is supported by appropriate evidence on the file. The onus is on the advocate to provide evidence on the file that the work was done. The assessor must then assess whether the time spent was reasonable. In other words would a reasonably competent advocate have undertaken the work, has the work actually been performed with reasonable competence and was the time taken to perform the work reasonable.

Evidence of the work done should ideally be in the form of timed and dated attendance notes but where relevant may be evidenced by relevant documentation drafted or read.

The art (and it is more of an art than a science) of quantifying costs is to make a reasonable judgment as to the reasonableness of: -

a) The work done; and
b) The time taken.

In order to make this judgment it may be necessary to carefully review the file, the records of time taken and correspondence.

The assessor is not to take into account hindsight but is to try to view the question of what is reasonable and the perspective of the average competent advocate doing his best for his client at the particular time when the work is done.

Who is a fee earner?

It is only possible to pay for work carried out by a fee earner. The only fee earners permitted within the Guernsey Legal Aid Services (Glas) regulations are advocates and non- admitted lawyers / paralegals who have been

accredited by the Glas for the purpose of carrying out publicly funded legal work. If the task is not that of a fee earner it is not remunerated under the Regulations because it is correctly part of the advocates overheads. If the task is for a fee earner but not undertaken competently this is dealt with when the work is assessed. An element of reasonableness is the time taken in performing a task. The fee earner does not have to spend all his time doing fee-earning work; the test is the actual work done and whether it is appropriate to charge the client.

Overheads and administrative work

The basic principle is that payment will not be made for time spent purely on administrative matters. Payment will only be made "for work directly involved in the provision of the legal services to the client". Thus overheads (i.e. the costs of actually running the firm) are not recoverable costs.

An advocate's secretary is not classed as a fee earner as the expense of his or her time forms part of the advocate's overheads of running the firm. Only those non-admitted lawyers and paralegals who are accredited by Glas to charge for work undertaken may charge for their time.

Photocopying in-house is generally an overhead expense as are the costs of postage, stationery, faxes, typing and the actual cost of telephone calls. Where documents are necessarily copied for the Court e.g. applications, affidavits, bundles etc then copying may be charged at 10 pence per sheet. Copying documents for the client, an expert or any body other than the Court cannot be claimed. The time taken to photocopy documents may not be claimed. Additionally the costs of opening and setting up files, copying files before the original file is sent to another Advocate to whom the Certificate transferred, maintaining time costing records, preparing accounts and the like are all administrative costs.

A reasonable amount of time can be claimed for completion of Form's 6, 8 & 9 providing the information supplied by the Advocate on these Form's justifies this claim. We would anticipate in most cases 1 unit will be sufficient and reasonable. Alternatively, if the Advocate writes a letter incorporating this information and attaching the signed Form, subject to the information justifying it, as above, a reasonable amount of time can be claimed. Similarly, if the Advocate has to provide a review for GLAS throughout the duration of the Certificate, a reasonable amount of time can be claimed for this. Completion of Form 1LM's must be claimed under the Green Form and not under the Certificate.

Other examples of overheads include staffing expenses, the cost of maintaining premises, taxes and administrative expenses. Proof reading to check the accuracy of documents should generally be treated as an overhead. Similarly file reviews and file reviews by a supervisor together with inter-office memoranda, emails and the like are also classed as administrative functions.

Recorded and unrecorded time

All time spent by a fee earner should ideally be recorded on the file. If it is the advocates practice to keep reasonably comprehensive records of time spent, it is important to show how that time was spent. There are exceptions where unrecorded time may be allowed if the assessor is satisfied that it was impracticable to record the time taken. However, this should only be considered in relation to short periods of time and any substantial period of time should be recorded.

There are two forms of time recording. One centralised, the other on file. The first, centralised form of time recording seldom provides adequate information to assess costs. In a growing number of cases it will be computerised and a computer printout can be produced for each client showing who did work, when the work was done, the time taken and usually the broad category of such work. Such a record may be useful but it is not determinative of reasonableness.

The main information used to assess costs is the bill and information from the file. Primarily such information will be of three types: -

a) letters or emails that are in place of a letter,
b) notes of work done, attendances on the client and others and telephone attendances,
c) documents.

These items need to be viewed in two ways. The first is that it is the basic information upon which the claim can be arithmetically assessed. Letters and emails received are, in general, not remunerated, unless they contain complicated information. Time spent on drafting complex letters, emails and telephone attendances as well as on personal attendances, drafting documents and preparation should be recorded on attendance notes. The total time so recorded is calculated by reference to the hourly rate.

The assessor then has to exercise discretion as to the reasonableness of the work done and the amount claimed. The contents of the letters and attendance notes are the vital information in exercising this discretion. It is only by reading the file through that the assessor can make a judgment as to the weight and complexity of the case and the particular problems with which the advocate had to deal. Time claimed for several emails written often as a dialogue (some of which may involve only one sentence written) between parties in one day/a short space of time must be reasonable and not necessarily claimed as 1 unit for each email.

It is good practice for an advocate to record and prepare attendance notes for all the time he spends in attendance and preparation. Whilst it is not an obligation the position may be summarised by "if you do not record you are

unlikely to be paid". Bills may well be submitted where preparation time especially is claimed as "general" "estimated" or "various". These claims will generally be disallowed if they are not recorded or backed up by an attendance note. The absence of recorded time for any substantial amount would be only allowed in the most unusual case. If the assessor is in any doubt about time the doubt must operate against the advocate whose bill is being assessed. It should be noted that the proper recording of time spent is therefore only the first step. The advocate will have to provide adequate evidence that the work was properly and reasonably done. If not, the work is likely to be disallowed.

Drafting and consideration of documents

It is in reality part of the general preparation of a case, which will include: -

a) drafting of Court documents,
b) consideration of statements or documents served by the other party,
c) instructions to the advocate or advice in writing and/or at a conference,
d) consideration of documentary evidence,
e) general consideration from time to time of the strategy or tactics required to bring the action to Court,
f) consideration of or making offers to settle/payments into Court,
g) reconsideration of the Court documents, evidence and other factors in order to prepare for trial,
h) instructing expert witnesses and holding conferences,
i) identifying documents for and drafting the Index to Court Bundles, checking, making up Bundles to ensure accuracy.

ALLOWABLE / NON- ALLOWABLE WORK

The table below sets out in very broad terms, examples of work or claims that will normally qualify for remuneration under the current assessment criteria in the specific circumstances, and subject to any specific conditions, indicated (first column) and work that will not (second column). It should be noted that even where work falls, or is claimed to fall, into a description indicated in the first column of the table, the person assessing the work will always apply the criteria described in the first paragraph of this Circular to the work actually undertaken.

Allowable work	Non- Allowable work
Attendances upon the client and/or witnesses including collating information for witness statements or for a statement of means.	

The file must include a file note with the duration of the attendance noted.	
Perusal / consideration of documents received, for example expert's reports, witness statements, affidavits, and financial information. Counsel's opinion, etc. Perusal of the file prior to final submission to GLAS for assessment/taxation to enable the Advocate to prepare the final invoice and ensure the file is in chronological order and tidy– up to a maximum of 30 minutes per file but the time claimed should be reasonable. All other perusal for and preparation of accounts is considered administrative and thus not chargeable.	

Drafting documents *[see paragraph above]*. Generally claimable @ 6 minutes per A4 page. This is subject to the Administrator's discretion. The file must be noted to explain any exceptional circumstances of an additional claim.	File reviews; the file holder is expected to be familiar with the case. File reviews by a supervisor and internal memoranda unless there is evidence to demonstrate that they progress the case. Claims for two fee earners in attendance at the same time cannot be claimed. This includes inter-office conferences and duplicated inter-office work. GLAS will not fund two fee earners working on the same case other than in exceptional and pre-approved cases. The "Team " approach is to be discouraged and duplication arising from this approach taken to drafting documents and preparing cases for court will not be approved. Administrative and office overheads. *[See above paragraph].*
Advocacy	Research

The file should be noted to confirm the length of time taken and the result of the hearing. Waiting time should be noted separately from advocacy time	Unless the case involves a novel and developing or unusually complex point of law; Checking recent case law The file must show evidence of any research claimed, e.g. a copy of the case, notes made, conclusions drawn. i.e. the evidence must justify the claim.
Routine letters written where they progress a case are generally claimable at 6 minutes per A4 page For example a letter confirming or requesting a meeting would not be claimable but one setting out an offer received and advising the client upon its reasonableness would be claimable.	Routine letters received; unless they contain complicated information or enclosures, for example letters containing complex financial information where they may be claimed on a time basis as a perusal.

Routine Telephone calls: under six minutes may be claimed as a routine call i.e. 1 unit. Over six minutes must be claimed as a timed attendance. The file must, in both cases, include a file note of the contents of the call and its duration.	Administrative telephone calls cannot be claimed. e.g. discussions with the client without progressing the case, unanswered calls, where a message is left asking the client to contact the advocate or telephone calls made/received by a secretary
Emails out can be claimed if they are in place of a letter. A copy of the email must be held on the file.	Internal emails cannot be claimed. E-mails in cannot be claimed if they merely act as acknowledgement or as a receipt of a document. Generally they will be disallowed if they do not progress the case. A copy must be held on the file
Waiting at Court, the Police Station or Customs Hall. Travel and waiting outside Guernsey (except Alderney) is only allowed with prior approval of the Administrator.	Waiting time cannot be claimed where the client is late or fails to attend an appointment at the advocate's office.
	Where an assisted person changes advocate to one in a different firm, only the receiving advocate can claim for work in connection with the change. The outgoing advocate should keep the file in such a

	condition to allow another advocate to pick up and continue working on the file. Where there is a change of advocate within the same firm, this is viewed, as duplication and the time taken by the new advocate to familiarise him/herself with the file will not be remunerated.

The approach to the assessment of costs in Criminal Matters

The Administrator will continue to use the Bar Costs Guidelines as a yardstick when considering costs incurred in criminal matters but will also apply the above criteria, as necessary, in assessing a file.

I have copied below, the Bar Costs Guidelines for ease of reference.

Bar Costs Guidelines

Transaction	Time
Magistrate's Court – Guilty plea – client out of custody	2 Hours
Magistrate's Court – guilty plea- client in custody	4 hours
Magistrate's Court – not guilty plea – client out of custody	7 hours
Magistrate's Court – not guilty plea – client in custody	10 hours
Additional time when a not guilty plea extends beyond a half day	4 hours per additional half day
Royal Court on appeal from Magistrate's Court against sentence	4 hours
Royal Court on appeal from Magistrate's Court against conviction	8 hours
Additional time when appeal against conviction extends beyond a half day	5 hours per additional half day
Royal Court – guilty plea – including committal.	10 hours
Royal Court – not guilty – one day trial – including committal.	20 hours
Additional time when not-guilty plea extends beyond a half-day	5 hours per each additional half-day.

Hayley Cooper
Legal Aid Administrator
Circular # 4 of 2006-Criteria to be applied to the assessment of costs
Issued 1st June 2006

POINT OF PRINCIPLE REGARDING UNAUTHORISED COSTS

Advocates are reminded to check carefully at the outset that the Certificate actually covers the work that they wish to undertake in the appropriate Court. In addition please ensure that all amendments and extensions are requested in a timely fashion.

If an Advocate fails to apply for an extension or an amendment to a Certificate, any work that is not covered by the Certificate will **NOT** be remunerated by GLAS. Likewise, if an Advocate undertakes work that is not included within the scope of the Certificate, this work (and any disbursements incurred) will not be remunerated.

GLAS recently referred a disputed taxation matter to the Costs Judge. The Advocate had exceeded the costs limit under the Certificate authorised by GLAS. There was a suggestion by the Advocate that had a request for an extension had been made, GLAS would in any event have granted this extension and consequently the excessive costs should be allowed on taxation. The Costs Judge was in agreement with GLAS in disallowing the costs incurred above the authorised limit. His reasons in doing so are quoted below:

" Both GLAS and the Costs Draftsman instructed by them take the view that costs exceeding the authorised limit should be disallowed. That is a view with which I concur for the following reasons.

1. GLAS are a public body spending public money. They have a duty to ensure that money is spent in accordance with the scheme they are charged to operate.
2. GLAS have made it clear to Advocates in various memoranda that where an advocate fails to apply for an extension or amendment, any work not covered by the certificate will not be remunerated.
3. Costs limitations such as those imposed by GLAS are not unreasonable and should be adhered to.
4. The fact that had an extension been sought, in all likelihood would have been granted is not persuasive in my view. With the benefit of hindsight most, if not all applications for an extension are likely to be granted. The matter has to be judged objectively before the costs are incurred, not afterwards.
5. The entire system of imposing costs limitations on a legal aid certificate would be completely undermined if an Advocate were able to ignore the limitation and expect to be remunerated for any additional work carried out by them. I accept that in rare situations or in cases of emergency it may not always be possible to obtain an extension to the certificate before the work is carried out. In those circumstances retrospective approval may be sought and obtained. However in my view this is not one of those situations.

6. The GLAS scheme is to some extent modelled on the old English and Welsh equivalent Legal Aid scheme. In arriving at my decision in this case I take comfort from the guidance given by the Legal Aid Board at Chapter 9-15 of the Legal Aid Handbook 1998/99 which says:

> "Solicitors should particularly note the following:
>
> 1. Limitations
>
> Post the legal aid certificate/ABWOR approval will impose both scope and financial limitations on the work to be done under it..... The Board's liability where there is a claim on the fund will not exceed the final costs limit imposed. Payment cannot be made from the fund for either work outside the scope of the certificate or for costs in excess of the costs limit. Solicitors should carefully check the limitations imposed and apply for an amendment where appropriate."

To my mind, by analogy the guidance given by the LSC can equally well apply in this case".

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Circular 2016-1 – ASSESSMENT OF FINANCIAL MEANS OF APPLICANTS FOR LEGAL AID.

This Circular is intended for GENERAL DISTRIBUTION. It replaces Circular 2015-1 and will be revised when necessary to keep in line with Social Security legislation.

This Circular describes the ways in which a person's financial means are assessed in connection with applications for legal aid. **It is effective from 1st January 2016** and will be used to assess any applications received on or after that date.

GENERAL PRINCIPLES.

The approach that is used is similar to that used when a person applies for Supplementary Benefit.

In this Circular, the word "Applicant" means a person that is applying or who has applied for legal aid either by way of advice and assistance under the Green Form Scheme or by way of a Legal Aid Certificate issued by the Administrator.

PART I

GENERAL PROVISIONS RELATING TO CALCULATING ELIGIBILITY FOR LEGAL AID

1. Exemptions

(a) No financial assessment is required by a Duty Advocate when giving advice to persons: - detained by the Island Police, the Border Agency, the Constable of Sark, or when a person attends the police station, Border Agency or Constable of Sark as a volunteer or in the Magistrate's Court or in the Court of Alderney sitting as a Police Court.
(When an Advocate, other than a Duty Advocate, is asked by a Court to assist a person currently appearing before it during the course of a sitting, the Administrator sees such assistance as being given pro bono.)

(b) Where an application is submitted, in respect of a specified public law children case in the court of first instance, the Administrator will assess the application on a "no means, no merits test" basis. See Circular 2010-4 Children Laws.

(c) Where an application is submitted in respect of legal representation at the Mental Health Review Tribunal, the Administrator will assess the application generally on a "no means, no merits test" basis; whilst reserving the right to exceptionally apply a

"means test" to an application, where reasonable and in conformity with Human Rights obligations. See Guide MHRT 1.

2. Eligibility for legal aid and calculation of requirements and resources.

The eligibility for legal aid depends upon whether an Applicant's total income falls short of his total weekly requirements and for the purpose of ascertaining that amount:

(a) The weekly requirements of an Applicant shall, except as provided for elsewhere in this Circular, be taken as the aggregate of such of the amounts specified in Part II of the First Schedule of the Supplementary Benefit (Implementation) Ordinance 1971, as amended, (**"SBIO"**) as are applicable to his case provided that the weekly requirements of any Applicant-

(i) Whose capital resources exceeds £20,000; or
(ii) In the case of an Applicant who is residing in a residential home, nursing home, or the Guernsey Cheshire Home, whose capital resources exceeds £40,000

shall be nil; and

(b) The resources of an Applicant shall be calculated in accordance with Part III of the First Schedule of SBIO except as provided elsewhere this Circular.

3. Aggregation of requirements and resources.

(a) Where a husband and wife are members of the same household their requirements and resources shall be aggregated and similarly as to (a) two persons cohabiting as man and wife or (b) two persons cohabiting in a single gender relationship.
(b) Persons are "members of the same household" even when one party is not currently living in the same house due to illness, working away or imprisonment, as long as the relationship has not broken down.
(c) Where a person has to provide for another person (not falling within the preceding-sub paragraph) who is the member of the same household, his requirements shall be taken to include the requirements of that other person and in that case their resources shall be aggregated.
(d) The resources of an Applicant and another person shall not be aggregated if an Applicant is seeking legal aid in connection with a dispute with such a person as identified in the previous sub-paragraphs of this section.

4. Limitation upon the amount of legal aid provided – requirement for a contribution.

Assessed residual weekly income is calculated by adding together all net income, then deducting housing allowance, and the Social Security Department weekly requirements of the individual, couple or family unit as appropriate. Maintenance payments and wage arrests actually made in accordance with a Court Order and child-minding costs may be offset against net income at the discretion of the Administrator.

(a) Where an Applicant's assessed residual weekly income is zero or less there is a presumption in favour of the grant of legal aid unless, in the Administrator's

opinion, the case does not have legal merit or it is one to be litigated in a court that is intended for litigants in person;

(b) Where an Applicant's assessed residual weekly income is £200.01 or more there is a presumption against the grant of legal aid. This presumption may be displaced by the Administrator if, in her opinion, the interests of justice require it.

(c) Between the limits set out in the two previous sub-paragraphs legal aid is granted at the discretion of the Administrator and, unless the Administrator determines otherwise, subject to a contribution as follows:-

Assessed Residual Weekly Income (£)	**Contribution Required**
zero or less	0% (see para 4(a))
£50.00 or less	20%
between £50.01 and £100.00	40%
between £100.01 and £150.00	60%
between £150.01 and £200.00	80% (see para 4(b))
more than £200.01	No award of legal aid will be given

(d) The Administrator may exercise discretion to grant legal aid outside the limits set out in sub-paragraphs (a), (b) and (c) above or to waive a contribution in the following two situations :

(i) Where an Applicant is a party in a private law case involving domestic abuse and children in which a Finding of Fact hearing has been ordered by the relevant Court. See the Administrator's Memorandum of 22nd February 2010, entitled *"Cases involving Domestic Abuse, Children and Practice Direction Number 6 of 2008"*

(ii) Where the Applicant has been advised by the Advocate to seek the protection of a Domestic Violence Injunction **and** has minor children residing with him/her.

5. Administrator's obligation to give reasons.

If the Administrator refuses legal aid, or exercises her discretion to grant it outside the above limits, or to waive a contribution, then she shall provide reasons.

6. Collection of contributions.

In civil matters, including domestic and family matters, the payment of any contribution is a matter between the Applicant and the Advocate that provides legal advice and assistance under the Green Form Scheme or is in receipt of a Legal Aid Certificate issued by the Administrator.

In criminal matters the Administrator will collect any contribution at the conclusion of the proceedings. In the case of advice and assistance under the Green Form Scheme the Advocate

that completes the Green Form should note the percentage contribution on the front page of the Form. If the Administrator issues a Certificate, then the amount of contribution will be noted on the Certificate. (This paragraph does not apply to Certificates issued under the provisions of any enactment currently in force in the Bailiwick of Guernsey).

PART II

CALCULATION OF REQUIREMENTS

7. Basis for assessment of requirements.

An Applicant's weekly requirements are those as set out in Section 5 of Part II of the First Schedule to SBIO as relating to a person to whom Supplementary Benefit has been payable for a continuous period of 6 months, save as provided for below:-

(a) For a husband and wife or other persons falling within paragraph 3 of Part I of this Circular, £249.75

(b) For a person living alone or a householder who is directly responsible for household necessities and rent (if any), £172.79

(c) (The aggregate of £249.75 in subparagraph (a) of this section may be calculated as £172.79 as relating to the Applicant and £76.96 as relating to their spouse or partner)

(d) For any other person who is not a householder aged 18 years or over £134.13.

A non-householder is someone who has left full time education and is living at home as a member of a household. Non-householders aged 16 and 17 years are allowed the same weekly requirement as members of a household of the same age i.e. £113.61

A person who is in prison or otherwise detained in legal custody is also defined as a non -householder, as is a person of no fixed abode.

(e) For a member of a household:

(i) aged 18 years or over, £134.13

(ii) aged 16 years or 17 years, £113.61

(iii) aged 12 years or over but less than 16 years, £70.29

(iv) aged 5 years or over but less than 12 years, £50.96

(v) aged less than 5 years, £37.56

No allowance is given for any child not in full time education.

8. Waiver of need for assessment

An Applicant that seeks advice and assistance under the Green Form Scheme shall not be assessed in accordance with the previous paragraph provided that they can provide the person undertaking the assessment with one of the following as appropriate to their circumstances:

(a) A Certificate or other evidence from the Guernsey Social Security Department that the Applicant is currently in receipt of Supplementary Benefit;

(b) In relation to an Applicant that is a resident of the Island of Sark, a Certificate or other evidence from the Procureur of the Poor of the Island of Sark or the Sark Treasurer that it is appropriate that the Applicant receives legal aid;

(c) Evidence of a request made by a Court of its own motion that the Applicant receives legal advice and no duty Advocate or other Advocate was present in Court to render such advice and assistance;

(d) In relation to an Applicant resident outside the Bailiwick, the provision by the Administrator of a Green Form endorsed to the effect that the requirement of assessment is waived

An Applicant that seeks advice and assistance and representation under the Civil or Criminal Legal Aid Scheme shall not be assessed in accordance with paragraph 7 above provided that they can provide the person undertaking the assessment with one of the following as appropriate to their circumstances:

(a) A Certificate or other evidence from the Guernsey Social Security Department that the Applicant is currently in receipt of Supplementary Benefit;

(b) In relation to an Applicant that is a resident of the Island of Sark, a Certificate or other evidence from the Procureur of the Poor of the Island of Sark or the Sark Treasurer that it is appropriate that the Applicant receives legal aid;

9. Housing Allowance Requirement

(a) Where the Applicant is living in **rented accommodation,** housing allowance is calculated as the amount of the weekly rent payable, **or** 20% of the gross weekly income (excluding Family Allowance and Severe Disability Benefit) of the Applicant and partner, if appropriate, whichever is the lesser amount respectively or such lesser amount as may be thought reasonable to the Administrator having regard to the circumstances of that person and the nature and standard of the accommodation concerned. For the avoidance of doubt, and without limitation, the Administrator may consult the Rent Officer (within the meaning of the Rent Control (Guernsey) Law, 1976) or the appropriate authority in any jurisdiction other than the Island of Guernsey in relation to the level of rent charged for the accommodation.

In any other case (unless there appears to the Administrator to be special reasons or the person is aged less than 18 years) a reasonable share as determined by the

Administrator of the rent payable by the householder of whose household the Applicant is a member, but not more than £15.00.

(b) Where the Applicant is living in their property as **owner-occupier,** housing allowance is calculated as, 90% of the weekly mortgage repayment in respect of a charge on the dwelling in which the householder resides, **or** 25% of the gross weekly income of the Applicant and partner, if appropriate, (excluding Family Allowance and Severe Disability Benefit) whichever is the lesser amount respectively.

(c) Where the Applicant is residing in a hospital or nursing home as a patient or is resident in a residential home by such amount, if any, as may be appropriate having regard to all the circumstances

(d) Where the Applicant is paying an inclusive charge for board and lodging, by one half of the actual amount being paid or the amount being paid for accommodation only.

(e) The requirements of an Applicant who is in prison or otherwise detained in legal custody shall be the same as for a non- householder.

(f) Only one Housing Allowance Requirement in respect of **either** rented accommodation **or** owner-occupied accommodation will be given for each application for advice and assistance under the Green Form Scheme.

(g) Only one Housing Allowance Requirement in respect of **either** rented accommodation **or** owner-occupied accommodation will be given for each application for advice, assistance and representation under the Civil or Criminal Legal Aid Schemes.

10. Lifestyle and indebtedness.

Neither the finance needed to support a person's lifestyle nor the extent of a person's indebtedness are requirements for the purposes of determining an Applicant's eligibility for legal aid.

PART III

CALCULATION OF RESOURCES.

11. Disregard of capital value of dwelling.

(a) In taking into account the value to any person of any interest in the dwelling in which that person resides, any sum that might be obtained by that person by selling that interest or borrowing money upon the security thereof shall, subject to the succeeding sub-paragraph be disregarded

(b) In the exercise of any discretion to grant legal aid (as opposed to advice and assistance under the Green Form Scheme) to any person in a civil matter the Administrator may, in all the circumstances of the case, take into account the

value and strength of the case, the extent to which that person's resources exceeds their requirements, the anticipated cost of providing legal aid, and the difference between the current value of such interest and any loan secured upon it.

12. Resources totally disregarded.

There shall be totally disregarded:

(a) The value of any resource that is the subject matter of the dispute in respect of which legal aid is being sought;
(b) The value of any resource that is the subject matter of any proceedings currently before a Court;
(c) Any sums payable to any person as holder of the Victoria Cross or of the George Cross;
(d) Any grant by the Education Department in respect of a person who would be treated as a child for the purpose of the Family Allowances (Guernsey) Law, 1950;
(e) The cash value of any free board or free lodging or both which a person may enjoy, not being board or lodging or both which that person is enjoying under and in pursuance of a contract of service;
(f) Any Severe Disability Benefit granted under the Severe Disability Benefit and Carer's Allowance (Guernsey) Law, 1984;
(g) Any payment made by a third party to a residential home, a care home, a nursing home or the Guernsey Cheshire Home on behalf of a person residing in the home in respect of the home's fees as may be considered reasonable by the Administrator in all the circumstances.
(h) Any fostering allowance, other than the contractual element paid by the Health and Social Services Department.

13. Capital Resources

(a) Capital resources which consist of;
(i) business premises or stock in trade or both which are wholly or partly used as the means of livelihood, other than by way of unearned income: or
(ii) an interest in an asset, which cannot reasonably be converted into a sum of money by selling that interest or borrowing money upon the security thereof, may be disregarded for such period as the Administrator in her discretion so directs.

(b) If the value of the capital resources taken into account would not exceed £5,000 they shall be totally disregarded together with any income there from.

14. Calculation of income from capital resources.

The capital resources taken into account, together with any income derived there from shall be treated as equivalent to a weekly income, so far as their value exceeds £5,000, of 15 pence for each complete £25.

15. *Earnings*

(a) For the purposes of an application for advice and assistance under the Green Form Scheme the weekly earnings of any person shall be taken as his net weekly earnings for the week immediately preceding the date of the application together with the earnings of any other person whose earnings must be taken into account

(b) Subject to the provisions of sub-paragraph (g) of this paragraph, for the purposes of an application for legal aid in a criminal matter the weekly earning of any person shall be taken as the average of the net weekly earnings for the 13 week period immediately preceding the date of the application together with the earnings of any other person whose earnings must be taken into account.

(c) Subject to the provisions of sub-paragraph (g) of this paragraph, for the purposes of an application for legal aid in civil matters the weekly earnings of any person shall be taken as the average net weekly earnings for the 13 week period immediately preceding the date of the application together with the earnings of any other person whose earnings must be taken into account.

(d) Subject to the provisions of sub-paragraph (g) of this paragraph, for the purposes of this Circular, a person's net weekly earnings shall be the net remuneration or profit, calculated on a weekly basis, derived by him from any occupation, pension, investment, bank interest or any other source, and, in particular, in so far as the earnings consist of salary or wages, there shall be deducted any sum the deduction of which from salary and wages is authorised by any enactment for the time being in force.

(e) For the purposes of this Circular, there shall be included in a person's net weekly earnings: -

(i) The cash value of any board or lodging or both which he is enjoying under and in pursuance of a contract of service;

(ii) Any Carer's Allowance payable in accordance with the Severe Disability Benefit and Carer's Allowance (Guernsey) Law, 1984;

(iii) The contractual element of any fostering allowance paid by the Health and Social Services Department.

iv) Payments received from another person whether under a Court order or otherwise for the benefit of that person or another member of the Applicant's household.

(f) Subject to the provisions of sub-paragraph (g) of this paragraph, the net weekly earnings of a person who is in business on a self-employed basis shall be determined from their total income and profit for the three years immediately preceding the date of the application.

(g) Where a person's earnings for any week or period are not immediately ascertainable, sub-paragraphs (b), (c), (d), and (f) shall not apply and his weekly earnings for that week or period shall be calculated in such manner and on such basis as the Administrator considers appropriate, having regard to the circumstances of the case, and an Applicant shall provide the Administrator with such information as she shall require.

(h) The Administrator may, at her discretion, allow to be offset against the income of a person:

(i) The costs of using the services of a Registered Child Minder or other appropriate person to enable a person to obtain an income from employment, including self-employment;
(ii) Any payment by way of maintenance actually made to another person in accordance with a Court Order;
(iii) Any deduction from a person's wages made by a Court Order arresting the wages of that person;

16. Resources abandoned.

If a person has

(a) directly or indirectly deprived himself of any resources; or

(b) neglected to claim, waived or abandoned any right or benefit to which he is, or may be, entitled

and the effect of the deprivation, neglect, waiver or abandonment, as the case may be, is to obtain legal aid for themselves or another person or increase the amount thereof or decrease any contribution that might otherwise be payable, those resources and that right or benefit may be taken into account as if they were still his or he were in receipt of any money due under or pursuant to or representing that right or benefit.

17. Attribution of assets.

(a) Subject to the following provisions of this paragraph, a person shall be deemed for the purposes of this Circular to own an asset if he is absolutely entitled in possession to the whole beneficial interest therein and not otherwise.

(b) Where two or more persons are beneficially entitled in possession to any asset they shall be entitled for the purposes of this Circular as if each of them were entitled to possession to the whole beneficial interest in equal shares unless it appears that their respective beneficial interests are not equal; and in that case they shall be treated as respectively entitled in possession to the whole beneficial interest in such shares as appear to be just.

18. Applicable law.

For the purposes of determining a person's requirements and resources, the Administrator shall apply the law of the Island of Guernsey, except that for any determination made in respect of a resident of the Islands of Alderney and Sark concerning eligibility for legal aid in the Court of Alderney or the Court of the Seneschal any conflict between the law of Guernsey with that of Alderney or Sark, shall be resolved in favour of applying the law of Alderney or Sark as appropriate.

19. Derogation for the Island of Sark.

Subject to paragraph 8(b) above, an Applicant resident in the Island of Sark, who applies for a Legal Aid Certificate in respect of proceedings in the Court of the Seneschal, shall be assessed by the Administrator who may consult with the Sark's Procureur of the Poor or The Sark Treasurer and the provisions of this Circular shall be deemed to be for guidance and not mandatory.

20. Transitional provisions

If an Applicant has been granted legal aid, either under the Green Form Scheme or by way of a certificate issued by the Administrator, and there are subsequent changes in the rates as a result of changes in the Supplementary Benefit (Implementation) Ordinance, then the Applicant may apply for re-assessment, and, whether in receipt of such an application or not, the Administrator may re-assess the Applicant. In such events, the Administrator may offer Legal Aid in an amended form. If the amendment is not accepted then the Administrator shall revoke the Legal Aid Certificate.

The Administrator may also revoke the Certificate if, as a result of such changes, the Applicant is no longer eligible for legal aid.

Hayley Cooper
Legal Aid Administrator

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EFFECTIVE FROM 1ST JUNE 2006 AND AMENDED 1ST JANUARY 2013

CIRCULAR # 4 of 2006 - COSTS ASSESSMENT CRITERIA

The approach to the assessment of costs in Civil Matters

Assessment takes place on the basis of determining the reasonableness of the work done and whether the time spent was reasonable having regard to the requirements of the relevant regulations or guidance (as applicable) and applying the correct remuneration rate for each item of work. Allowance is only made for work claimed where it is supported by appropriate evidence on the file. The onus is on the advocate to provide evidence on the file that the work was done. The assessor must then assess whether the time spent was reasonable. In other words would a reasonably competent advocate have undertaken the work, has the work actually been performed with reasonable competence and was the time taken to perform the work reasonable.

Evidence of the work done should ideally be in the form of timed and dated attendance notes but where relevant may be evidenced by relevant documentation drafted or read.

The art (and it is more of an art than a science) of quantifying costs is to make a reasonable judgment as to the reasonableness of: -

a) The work done; and
b) The time taken.

In order to make this judgment it may be necessary to carefully review the file, the records of time taken and correspondence.

The assessor is not to take into account hindsight but is to try to view the question of what is reasonable and the perspective of the average competent advocate doing his best for his client at the particular time when the work is done.

Who is a fee earner?

It is only possible to pay for work carried out by a fee earner. The only fee earners permitted within the Guernsey Legal Aid Services (Glas) regulations are advocates and non- admitted lawyers / paralegals who have been

accredited by the Glas for the purpose of carrying out publicly funded legal work. If the task is not that of a fee earner it is not remunerated under the Regulations because it is correctly part of the advocates overheads. If the task is for a fee earner but not undertaken competently this is dealt with when the work is assessed. An element of reasonableness is the time taken in performing a task. The fee earner does not have to spend all his time doing fee-earning work; the test is the actual work done and whether it is appropriate to charge the client.

Overheads and administrative work

The basic principle is that payment will not be made for time spent purely on administrative matters. Payment will only be made "for work directly involved in the provision of the legal services to the client". Thus overheads (i.e. the costs of actually running the firm) are not recoverable costs.

An advocate's secretary is not classed as a fee earner as the expense of his or her time forms part of the advocate's overheads of running the firm. Only those non-admitted lawyers and paralegals who are accredited by Glas to charge for work undertaken may charge for their time.

Photocopying in-house is generally an overhead expense as are the costs of postage, stationery, faxes, typing and the actual cost of telephone calls. Where documents are necessarily copied for the Court e.g. applications, affidavits, bundles etc then copying may be charged at 10 pence per sheet. Copying documents for the client, an expert or any body other than the Court cannot be claimed. The time taken to photocopy documents may not be claimed. Additionally the costs of opening and setting up files, copying files before the original file is sent to another Advocate to whom the Certificate transferred, maintaining time costing records, preparing accounts and the like are all administrative costs.

A reasonable amount of time can be claimed for completion of Form's 6, 8 & 9 providing the information supplied by the Advocate on these Form's justifies this claim. We would anticipate in most cases 1 unit will be sufficient and reasonable. Alternatively, if the Advocate writes a letter incorporating this information and attaching the signed Form, subject to the information justifying it, as above, a reasonable amount of time can be claimed. Similarly, if the Advocate has to provide a review for GLAS throughout the duration of the Certificate, a reasonable amount of time can be claimed for this. Completion of Form 1LM's must be claimed under the Green Form and not under the Certificate.

Other examples of overheads include staffing expenses, the cost of maintaining premises, taxes and administrative expenses. Proof reading to check the accuracy of documents should generally be treated as an overhead. Similarly file reviews and file reviews by a supervisor together with inter-office memoranda, emails and the like are also classed as administrative functions.

Recorded and unrecorded time

All time spent by a fee earner should ideally be recorded on the file. If it is the advocates practice to keep reasonably comprehensive records of time spent, it is important to show how that time was spent. There are exceptions where unrecorded time may be allowed if the assessor is satisfied that it was impracticable to record the time taken. However, this should only be considered in relation to short periods of time and any substantial period of time should be recorded.

There are two forms of time recording. One centralised, the other on file. The first, centralised form of time recording seldom provides adequate information to assess costs. In a growing number of cases it will be computerised and a computer printout can be produced for each client showing who did work, when the work was done, the time taken and usually the broad category of such work. Such a record may be useful but it is not determinative of reasonableness.

The main information used to assess costs is the bill and information from the file. Primarily such information will be of three types: -

a) letters or emails that are in place of a letter,
b) notes of work done, attendances on the client and others and telephone attendances,
c) documents.

These items need to be viewed in two ways. The first is that it is the basic information upon which the claim can be arithmetically assessed. Letters and emails received are, in general, not remunerated, unless they contain complicated information. Time spent on drafting complex letters, emails and telephone attendances as well as on personal attendances, drafting documents and preparation should be recorded on attendance notes. The total time so recorded is calculated by reference to the hourly rate.

The assessor then has to exercise discretion as to the reasonableness of the work done and the amount claimed. The contents of the letters and attendance notes are the vital information in exercising this discretion. It is only by reading the file through that the assessor can make a judgment as to the weight and complexity of the case and the particular problems with which the advocate had to deal. Time claimed for several emails written often as a dialogue (some of which may involve only one sentence written) between parties in one day/a short space of time must be reasonable and not necessarily claimed as 1 unit for each email.

It is good practice for an advocate to record and prepare attendance notes for all the time he spends in attendance and preparation. Whilst it is not an obligation the position may be summarised by "if you do not record you are

unlikely to be paid". Bills may well be submitted where preparation time especially is claimed as "general" "estimated" or "various". These claims will generally be disallowed if they are not recorded or backed up by an attendance note. The absence of recorded time for any substantial amount would be only allowed in the most unusual case. If the assessor is in any doubt about time the doubt must operate against the advocate whose bill is being assessed. It should be noted that the proper recording of time spent is therefore only the first step. The advocate will have to provide adequate evidence that the work was properly and reasonably done. If not, the work is likely to be disallowed.

Drafting and consideration of documents

It is in reality part of the general preparation of a case, which will include: -

a) drafting of Court documents,
b) consideration of statements or documents served by the other party,
c) instructions to the advocate or advice in writing and/or at a conference,
d) consideration of documentary evidence,
e) general consideration from time to time of the strategy or tactics required to bring the action to Court,
f) consideration of or making offers to settle/payments into Court,
g) reconsideration of the Court documents, evidence and other factors in order to prepare for trial,
h) instructing expert witnesses and holding conferences,
i) identifying documents for and drafting the Index to Court Bundles, checking, making up Bundles to ensure accuracy.

ALLOWABLE / NON- ALLOWABLE WORK

The table below sets out in very broad terms, examples of work or claims that will normally qualify for remuneration under the current assessment criteria in the specific circumstances, and subject to any specific conditions, indicated (first column) and work that will not (second column). It should be noted that even where work falls, or is claimed to fall, into a description indicated in the first column of the table, the person assessing the work will always apply the criteria described in the first paragraph of this Circular to the work actually undertaken.

Allowable work	Non- Allowable work
Attendances upon the client and/or witnesses including collating information for witness statements or for a statement of means.	

The file must include a file note with the duration of the attendance noted.	
Perusal / consideration of documents received, for example expert's reports, witness statements, affidavits, and financial information. Counsel's opinion, etc. Perusal of the file prior to final submission to GLAS for assessment/taxation to enable the Advocate to prepare the final invoice and ensure the file is in chronological order and tidy– up to a maximum of 30 minutes per file but the time claimed should be reasonable. All other perusal for and preparation of accounts is considered administrative and thus not chargeable.	

Drafting documents *[see paragraph above]*. Generally claimable @ 6 minutes per A4 page. This is subject to the Administrator's discretion. The file must be noted to explain any exceptional circumstances of an additional claim.	File reviews; the file holder is expected to be familiar with the case. File reviews by a supervisor and internal memoranda unless there is evidence to demonstrate that they progress the case. Claims for two fee earners in attendance at the same time cannot be claimed. This includes inter-office conferences and duplicated inter-office work. GLAS will not fund two fee earners working on the same case other than in exceptional and pre-approved cases. The "Team " approach is to be discouraged and duplication arising from this approach taken to drafting documents and preparing cases for court will not be approved. Administrative and office overheads. *[See above paragraph].*
Advocacy	Research

The file should be noted to confirm the length of time taken and the result of the hearing. Waiting time should be noted separately from advocacy time	Unless the case involves a novel and developing or unusually complex point of law; Checking recent case law The file must show evidence of any research claimed, e.g. a copy of the case, notes made, conclusions drawn. i.e. the evidence must justify the claim.
Routine letters written where they progress a case are generally claimable at 6 minutes per A4 page For example a letter confirming or requesting a meeting would not be claimable but one setting out an offer received and advising the client upon its reasonableness would be claimable.	Routine letters received; unless they contain complicated information or enclosures, for example letters containing complex financial information where they may be claimed on a time basis as a perusal.

Routine Telephone calls: under six minutes may be claimed as a routine call i.e. 1 unit. Over six minutes must be claimed as a timed attendance. The file must, in both cases, include a file note of the contents of the call and its duration.	Administrative telephone calls cannot be claimed. e.g. discussions with the client without progressing the case, unanswered calls, where a message is left asking the client to contact the advocate or telephone calls made/received by a secretary
Emails out can be claimed if they are in place of a letter. A copy of the email must be held on the file.	Internal emails cannot be claimed. E-mails in cannot be claimed if they merely act as acknowledgement or as a receipt of a document. Generally they will be disallowed if they do not progress the case. A copy must be held on the file
Waiting at Court, the Police Station or Customs Hall. Travel and waiting outside Guernsey (except Alderney) is only allowed with prior approval of the Administrator.	Waiting time cannot be claimed where the client is late or fails to attend an appointment at the advocate's office.
	Where an assisted person changes advocate to one in a different firm, only the receiving advocate can claim for work in connection with the change. The outgoing advocate should keep the file in such a

	condition to allow another advocate to pick up and continue working on the file. Where there is a change of advocate within the same firm, this is viewed, as duplication and the time taken by the new advocate to familiarise him/herself with the file will not be remunerated.

The approach to the assessment of costs in Criminal Matters

The Administrator will continue to use the Bar Costs Guidelines as a yardstick when considering costs incurred in criminal matters but will also apply the above criteria, as necessary, in assessing a file.

I have copied below, the Bar Costs Guidelines for ease of reference.

Bar Costs Guidelines

Transaction	Time
Magistrate's Court – Guilty plea – client out of custody	2 Hours
Magistrate's Court – guilty plea- client in custody	4 hours
Magistrate's Court – not guilty plea – client out of custody	7 hours
Magistrate's Court – not guilty plea – client in custody	10 hours
Additional time when a not guilty plea extends beyond a half day	4 hours per additional half day
Royal Court on appeal from Magistrate's Court against sentence	4 hours
Royal Court on appeal from Magistrate's Court against conviction	8 hours
Additional time when appeal against conviction extends beyond a half day	5 hours per additional half day
Royal Court – guilty plea – including committal.	10 hours
Royal Court – not guilty – one day trial – including committal.	20 hours
Additional time when not-guilty plea extends beyond a half-day	5 hours per each additional half-day.

Hayley Cooper
Legal Aid Administrator
Circular # 4 of 2006-Criteria to be applied to the assessment of costs
Issued 1st June 2006

POINT OF PRINCIPLE REGARDING UNAUTHORISED COSTS

Advocates are reminded to check carefully at the outset that the Certificate actually covers the work that they wish to undertake in the appropriate Court. In addition please ensure that all amendments and extensions are requested in a timely fashion.

If an Advocate fails to apply for an extension or an amendment to a Certificate, any work that is not covered by the Certificate will **NOT** be remunerated by GLAS. Likewise, if an Advocate undertakes work that is not included within the scope of the Certificate, this work (and any disbursements incurred) will not be remunerated.

GLAS recently referred a disputed taxation matter to the Costs Judge. The Advocate had exceeded the costs limit under the Certificate authorised by GLAS. There was a suggestion by the Advocate that had a request for an extension had been made, GLAS would in any event have granted this extension and consequently the excessive costs should be allowed on taxation. The Costs Judge was in agreement with GLAS in disallowing the costs incurred above the authorised limit. His reasons in doing so are quoted below:

" Both GLAS and the Costs Draftsman instructed by them take the view that costs exceeding the authorised limit should be disallowed. That is a view with which I concur for the following reasons.

1. GLAS are a public body spending public money. They have a duty to ensure that money is spent in accordance with the scheme they are charged to operate.
2. GLAS have made it clear to Advocates in various memoranda that where an advocate fails to apply for an extension or amendment, any work not covered by the certificate will not be remunerated.
3. Costs limitations such as those imposed by GLAS are not unreasonable and should be adhered to.
4. The fact that had an extension been sought, in all likelihood would have been granted is not persuasive in my view. With the benefit of hindsight most, if not all applications for an extension are likely to be granted. The matter has to be judged objectively before the costs are incurred, not afterwards.
5. The entire system of imposing costs limitations on a legal aid certificate would be completely undermined if an Advocate were able to ignore the limitation and expect to be remunerated for any additional work carried out by them. I accept that in rare situations or in cases of emergency it may not always be possible to obtain an extension to the certificate before the work is carried out. In those circumstances retrospective approval may be sought and obtained. However in my view this is not one of those situations.

6. The GLAS scheme is to some extent modelled on the old English and Welsh equivalent Legal Aid scheme. In arriving at my decision in this case I take comfort from the guidance given by the Legal Aid Board at Chapter 9-15 of the Legal Aid Handbook 1998/99 which says:

> "Solicitors should particularly note the following:
>
> 1. Limitations
>
> Post the legal aid certificate/ABWOR approval will impose both scope and financial limitations on the work to be done under it..... The Board's liability where there is a claim on the fund will not exceed the final costs limit imposed. Payment cannot be made from the fund for either work outside the scope of the certificate or for costs in excess of the costs limit. Solicitors should carefully check the limitations imposed and apply for an amendment where appropriate."

To my mind, by analogy the guidance given by the LSC can equally well apply in this case".

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GUIDE D & JS

This guide provides information about the legal aid cover that may be available in respect of Court proceedings for Judicial Separation by Consent, Divorce and Petitions for a Decree of Judicial Separation.

A JUDICIAL SEPARATION BY CONSENT

A 2 hour Green Form for preliminary advice and assistance is available to **both parties** provided the means test is met.

A fixed fee certificate for Judicial Separation by Consent proceedings is available **only** for the party who drafts the documentation. The certificate will cover the drafting of the Judicial Separation Order, any Vesting Order and attendance at court for that party's Advocate in respect of the granting of the Judicial Separation.

It is anticipated that the parties will share the Greffe fees for the Judicial Separation by Consent and any Vesting Order, and the fixed fee certificate will only fund one half of the disbursements.

As with a Divorce fixed fee certificate, the party who is preparing the documentation can use the entirety of the 2 hour Green Form, even where a fixed fee certificate for Judicial Separation by Consent has been granted.

The maximum time allowed under a fixed fee certificate is as set out below. Disbursements are claimable in addition to the fixed fee.

	Fixed Fees allowed
No property and no dependent children	1 hour (£167) plus disbursements
Property but no dependent children	2 hours (£334) plus disbursements
No property but dependent children	3 hours (£501) plus disbursements
Property and dependent children	4 hours (£668) plus disbursements

See page 5 for definitions.

The idea behind granting legal aid for a Judicial Separation by Consent is that the parties will have already reached agreement concerning their finances and/or arrangements for their children and all that is required is for the documentation to be

drawn up and presented to the Court. Legal aid is limited to avoid situations where the parties are clearly not in agreement and significant negotiations are required to reach a measure of agreement. In the past GLAS has seen negotiations regarding Judicial Separations by Consent spanning several years; it is not acceptable for prolonged negotiations to be paid for by the public purse.

The Advocate is expected to ascertain from the outset/under the Green Form whether matters are likely to proceed promptly to a Judicial Separation. If not, then Divorce and Ancillary Relief Proceedings should be considered.

B DIVORCE

1. Uncontested Divorce where no previous Judicial Separation by Consent or Petition for Decree of Judicial Separation has been granted

Petitioner

An initial 2 hours under the Green Form may be available. If the Petitioner requires legal aid, this may be granted under a fixed fee certificate.

Please note that the entirety of the 2 hour Green Form can be used even after the fixed fee certificate has been issued.

The maximum time allowed under a fixed fee certificate is set out below. Disbursements are claimable in addition to the fixed fee:

	Fixed Fees allowed
No property and no dependent children	1 hour (£167) plus disbursements
Property but no dependent children	2 hours (£334) plus disbursements
No property but dependent children	3 hours (£501) plus disbursements
Property and dependent children	4 hours (£668) plus disbursements

See page 5 for definitions.

Respondent

No fixed fee Legal Aid Certificate is available for a Respondent; however, the Respondent may be entitled to 2 hours under the Green Form. 2 hours is expected to be sufficient to advise and assist the Respondent to the conclusion of the Divorce proceedings and for this reason, an extension is unlikely to be granted.

If the Divorce becomes contested, the Petitioner's Advocate will need to submit a Form 9 to amend the certificate and the Respondent will need to apply for a fixed fee contested certificate (see 3 below).

2. Uncontested Divorce where a previous Judicial Separation by Consent or Petition of Judicial Separation has been granted

No Legal Aid Certificate will be available where all that is required is to "convert" a previous Judicial Separation by Consent or Petition of Judicial Separation to a Divorce. All that is available is a 2 hour Green Form (plus disbursements) for the Petitioner only.

No Green Form is available for the Respondent.

It is anticipated that both parties will have taken legal advice at the time of the granting of the Judicial Separation including the effect of any subsequent Divorce.

3. Contested Divorce

A 2 hour Green Form may be available for both the Petitioner and Respondent. Please note that the entirety of the 2 hour Green Form can be used even after the fixed fee certificate has been issued.

An application may be made for a Legal Aid Certificate for both the Petitioner and the Respondent. All applications will be assessed on the usual means and merits criteria.

The legal merits are based on exceptional circumstances including issues relating to dependent children, ability to represent oneself, etc. The legal merits must include a consideration of reasonableness as set out in General Guide A. The financial merits are the standard financial assessment.

If a Certificate is granted, this will be limited to:

(a) Preparation of the Petition or Answer and Cross Petition – **2 hours plus disbursements,** and,
(b) First Directions Hearing – **2 hours.**

If, after the first directions hearing, the proceedings continue as contested, the Administrator will request a further opinion from the Advocate as to the merits of continued contested Divorce proceedings. The Administrator will then consider whether it would be reasonable for further public funding to be committed to the contested Divorce proceedings. The Administrator will provide reasons for permitting or refusing on-going legal aid.

Where the parties to a marriage agree that the marriage has irretrievably broken down but are only disputing the reasons for the break down, answers and cross petitions should not be encouraged.

GLAS will not grant legal aid for a party to cross petition for Divorce unless there are very exceptional circumstances.

GLAS is unlikely to grant legal aid for a cross petition of Divorce where the applicant for legal aid is not defending the other party's Divorce Petition on the merits.ie where

the opponent accepts that the marriage has irretrievably broken down, is not disputing the allegations in the petition but wishes to allege a different ground.

There may be cases where we would consider a cross petition to be reasonable, for example, if the outcome of ancillary matters may be affected.

Assisted persons should be fully advised as to the potential financial implications of contesting a Divorce. Please also remind assisted persons that should any costs order be made against them, GLAS will not meet the costs order. See Condition 8 of the Conditions attaching to each Legal Aid Certificate. Please note the usual recover and preserve rules will apply to Divorce certificates- See "Generally" below.

C PETITION FOR DECREE OF JUDICIAL SEPARATION

The same terms also apply in respect of time allocation for Legal Aid Certificates/Green Form for the Petitioner and Respondent as set out in B 1.

D GENERALLY

- Advocates may provide preliminary advice and assistance under one Green Form for Divorce or Judicial Separation proceedings **and** a separate Green Form in respect of ancillary relief/ children matters.

- In order to receive any advice/assistance under a Green Form, the applicant must meet the standard means test.

- Advocates are reminded that any contribution due under a Green Form or a Legal Aid Certificate in respect of Divorce or Ancillary Relief proceedings is to be collected by the Advocate.

- In Divorce proceedings on the basis of 2 years separation by consent, GLAS will fund the entirety of the disbursements through the Petitioner's fixed fee certificate. However, Advocates should use their best endeavours to arrange for the costs/disbursements to be paid equally by both parties as appropriate.

- Where an assisted person, who is involved in Divorce proceedings, wishes to apply for legal aid in connection with contested ancillary relief proceedings or children matters in the Royal Court, the standard financial eligibility and legal merits tests will apply. Both the Petitioner and Respondent may apply for a Legal Aid Certificate for such proceedings, provided the usual means and merits tests are met. See: General Guide A for Scope, Probable Cause and Reasonableness in respect of the Civil Legal Aid Scheme and the current Circular for the Assessment of Financial Means of Applicants for Legal Aid.

- Advocates are reminded that no legal aid is available for ancillary relief applications where there are no dependent children of the marriage referred to within Divorce proceedings or Petitions for Judicial Separation, unless there are exceptional circumstances as determined by the Administrator.

- In any case where an assisted person recovers or preserves assets or has their entitlement to any asset confirmed, GLAS will seek to recover all costs and disbursements incurred under a Legal Aid Certificate or connected certificates and any related Green Form/s.

- In Ancillary Relief matters following Divorce where there are no assets and a clean break order by consent is all that is required, GLAS would expect the Advocate to be able to conclude the consent order using the Ancillary Relief Green Form; in such circumstances, it is unlikely that a Legal Aid Certificate will be granted.

- Please note that fixed fees are granted at an Advocate's hourly rate of £167. A non- admitted lawyer or paralegal (NAL) is remunerated at a lower rate than an Advocate. Consequently, where an accredited NAL undertakes legally aided work in this area, i.e. Family Domestic and Matrimonial (FDM), the NAL will have more time to complete the work and can still use the total amount of authorised fixed fees. However, GLAS would expect a NAL to undertake the work efficiently and economically and they should not take much longer than an Advocate to do the work.

E DEFINITIONS

- "Property" includes any real or personal property that is owned by either or both of the parties or a property in which they have an interest. This does not include rented accommodation but will include property owned under the Partial Ownership Scheme.

- "Dependent children" are children of the marriage who are included in the Statement of Arrangements for the Children or Judicial Separation documentation. Such children will usually be under 18 years of age or if over 18 years of age are still in full time education.

- "Fixed fee "is the amount of time in Advocates' hours that can be claimed. You are permitted to claim the total of the fixed fee even if less time is taken. However, you are not permitted to claim more than the fixed fee nor will any extensions of time be given unless there are truly exceptional circumstances. As with all fixed fee arrangements, this is a "swings and roundabouts" situation.

F ADMINISTRATION

- Form 1LM must be fully completed having regard to General Guide A.

- The same 1LM may be used to apply for both a fixed fee Divorce certificate and Ancillary Relief (including children issues) certificate. However, the 1LM must be fully completed in respect of both sets of proceedings, including a full consideration of the legal merits.

Form 1F must be fully completed by the applicant in respect of all applications for legal aid and submitted together with all supporting evidence. GLAS may require further information from the applicant. Until GLAS has received both the 1LM and 1F and all required supporting evidence we will be unable to consider any application for legal aid.

- Where separate certificates for Divorce / Petition for Judicial Separation / Judicial Separation by Consent and Ancillary Relief (including children issues) have been granted to an applicant, GLAS will issue an "A" certificate for the Divorce, etc, and a "B" certificate for the Ancillary Relief proceedings. These certificates will be "linked "to allow for the recovery of all fees incurred under the certificates/Green Forms should the applicant recover, preserve or have entitlement to any assets confirmed with the use of the certificates. GLAS may on occasion issue other linked certificates e.g. when there have been proceedings in the DPMC issued prior to the Divorce proceedings before the Royal Court is seised of the matter and where it may be appropriate to connect all of the Legal Aid Certificates.

- Where an applicant has previously had a Legal Aid Certificate in connection with Divorce / Petition for Judicial Separation / Judicial Separation by Consent and Ancillary Relief (including children issues) matters which were never concluded and the applicant subsequently reapplies for legal aid to conclude the same issues and against the same opponent; GLAS may connect the later certificates with the earlier one/ones – again to allow for full recovery of all costs and disbursements should there be recovery / preservation of assets.

- If an assisted person starts out as the Petitioner in Divorce proceedings but then becomes the Respondent, the Legal Aid Certificate as issued to the Petitioner will come to an end immediately this occurs.

- If a fixed fee certificate is issued in respect of a Judicial Separation by Consent but it becomes clear fairly soon thereafter that the Judicial Separation will not be proceeded with and a Divorce is now required, GLAS may permit either an amendment to the certificate where the assisted person is now to be the Petitioner or depending on the circumstances, GLAS may require a fresh application. If a new certificate for Divorce is granted, it will be connected to the original Judicial Separation certificate to allow for full recovery of all costs and disbursements should there be recovery / preservation of assets.

- GLAS will not ordinarily tax advocates' accounts in respect of fixed fee certificates; however, we reserve the right to do so.

- Advocates are recommended not to submit the Green Form immediately a fixed fee certificate is granted unless the two hours have been fully utilised or the entire matter has fully concluded. This will allow Advocates to use the entirety of the Green Form to conclude matters, if necessary. Once a Green Form has been submitted and paid, GLAS will not permit additional time / disbursements to be added to it.

- Form 8 will not be required in respect of standard disbursements for Divorce, Petition for Judicial Separation and Judicial Separation by Consent, e.g. Court, Sheriff or reasonable Notary fees. However, a Form 8 will be required in respect of any other disbursement in excess of £100 e.g. Process Server's fee, translation of Divorce documentation etc. Please contact the Administrator in advance of incurring the disbursement if there are any queries in this regard.

- Form 8 will be required for all disbursements in excess of £100 (other than Court, Sheriff or reasonable Notary fees) under any Ancillary Relief Certificate.

Hayley Cooper
Legal Aid Administrator

May 2015

CIRCULAR 2010-4
Amended 1st January 2011

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Legal Aid and The Children (Guernsey and Alderney) Law, 2008
The Criminal Justice (Children and Juvenile Court Reform) (Bailiwick of Guernsey) Law, 2008 ("The Children Laws")

Due to the implementation from 4th January 2010 of the above laws and the new approach to the way in which children and young people will be dealt regarding welfare and criminal matters, the provision of legal aid has been amended as detailed below.

With the introduction of the Children's Convenor and the Child Youth and Community Tribunal ("CYCT") many issues will now be dealt with differently and may not even require legal advice assistance or representation. Indeed the CYCT is a "lawyer free zone".

Following approval of the Policy Council and consultation with HM Procureur the following new procedures are to be utilised from 4th January 2010.

NEW FORM AAS 1 CL ("Green Form")

The existing "Green Form" scheme will apply to both of the new children laws in order to provide advice and assistance regarding any aspect of family law.

Please note the new form AAS1 CL which is to be used for general advice and assistance to adults and children for the following:

1. The duties, responsibilities and investigations of the Children's Convenor including representation at the Convenor's Meeting.

2. The duties, responsibilities and decisions of the CYCT but excluding representation at a CYCT hearing.

3. The range of new public law orders including emergency orders.

The old Green Form AAS 1 should continue be used for all private family law advice and assistance.

PRELIMINARY MATTERS IN CONNECTION WITH THE CHILDREN'S CONVENOR

Green Form will be available on the usual means and merits basis to children and young persons (up to the age of 18) and the people with parental responsibility who ordinarily have the day to day care of the child, ("PR) together or separately (if there is a contrary interest) for preliminary advice and assistance at the very outset of the matter. This will usually be

once the young person has received a "Pre- Proceedings letter" from the Children's Convenor.
It is envisaged that this Green Form will cover up to the time when notification is received that there is going to be a Convenor's Meeting. This Green Form will be limited to the usual two hours including disbursements.

CONVENOR'S MEETING

If the young person receives notification that the matter will be referred to a Convenor's meeting, the Green Form will automatically be extended by a maximum of two hours in total including disbursements. This extension is to cover; representation at the Convenor's Meeting, any advice following and applying for a full certificate (if required) i.e. if the conditions are not accepted and the case is referred to the Juvenile Court for an Evidential Hearing.

Please ensure that you attach a copy of the referral letter to the Green Form upon submission as evidence of the automatic extension.

If the advocate can justify to the Administrator that the matter is significantly more complicated or there are mental health issues or language difficulties, then a further and absolutely final extension of two hours (including disbursements) may be considered. Unless there are such exceptional issues, a Green Form will only ever extend to a maximum of 4 hours including disbursements; there will be no other extensions.

Advocates are reminded that they are there to provide legal advice, assistance and representation only. There will be other parties available to provide support and advice e.g. social workers, doctors, teachers etc. There may well be situations in which no legal advice or representation is required at all.

MEANS TEST

The means to be tested will be those of the child or young person if that person is seeking advice and assistance either on their own or in conjunction with the person with PR.

If persons with PR wish to obtain separate advice and assistance or there is a conflict with the child, then the assessment will be based on their means.

As all matters referred through the Convenor under the new law are deemed to be civil- the advocate will as usual collect any contribution due under the green form.

It is anticipated that most recipients of Green Form advice and assistance will be entitled to free advice and assistance under the Green Form. However, this will be kept under review.

CYCT

The CYCT is designed to be a "lawyer free zone". Therefore there will be no legal aid, available at any Tribunal hearing whether by Green Form or a full certificate. This includes any review or where the matter is referred back to the CYCT following a court hearing.

There may be some very exceptional circumstances arising in which the Administrator deems that a full legal aid certificate is justified. In order for the Administrator to consider such a case, an advocate will need to be able to justify why an advocate is necessary to allow a party to "effectively participate" in the Tribunal proceedings. Is there any other person who could assist e.g. litigation friend, social worker, teacher etc?
It is anticipated that such circumstances would have to be "truly exceptional" to allow for the public funding of an advocate at a Tribunal hearing.
Article 6 confirms that there is no necessity for a lawyer for a person to be effectively represented.

LEGAL AID CERTIFICATES

Legal aid will be available for representation for all parties subject to eligibility, in all applications to court under the new law. There will be no changes to the current financial eligibility criteria.

Applications for legal aid will be determined on either a means and merits basis or on a no means no merit basis depending on the type of application. Any certificate issued may be subject to limitations and conditions as to scope and /or costs.

1) Private Law Orders

Please use Form 1LM Family.

Legal aid to be available for applications under sections 14, 17, 74(2) (b) and 93, including applications for leave and party status and will be subject to the usual means and merits test.

Each certificate will have a costs limit which may be extended by application to the Administrator but which will have to continue to satisfy the merits test. The application to extend should set out the work undertaken so far, cost to date and an estimate of further work to be done and future costs.

Each certificate will have standard scope conditions setting out exactly what type of application is being covered. Again the scope of the certificate could be amended upon application but any application for an amendment would have to satisfy the merits test

Each certificate will also limited as to extent e.g. that the certificate will cover up to the receipt of a safeguarders report or the setting down for a contested hearing. If an extension were required, the advocate would have to justify the basis for legal aid continuing.

2) Public Law Orders to be means and merit tested

Please use Form 1LM Children

Legal aid to be available on a means and merits tested basis for applications for party status and leave under:-

a) Section 48 (Community Parenting Order) ,
b) Section 50 (Special Contact Order),
c) Section 52 (2) (Discharge of Community Parenting Order),
d) Section 55 (Emergency Child Protection Order),
e) Section 58 (Discharge of ECPO),
f) Section 69 (Secure Accommodation Order) and
g) Section 92 (Recovery Order).

The scope of each certificate will be limited to one or more of the orders and will also be cost limited with ability to apply for scope and costs to be extended.

3) Public Law Orders on a no means no merit basis

Please use Form 1LM Children

Legal aid to be available in applications under:-

a) Section 48 (CPO)
b) Section 50(SCO)
c) Section 55 (ECPO)
d) Section 59 (exclusion order)
e) Section 69 (secure accommodation)

Applications to vary or discharge any of the orders at 3) above will be on a no means no merit basis for those persons who were parties to the proceedings in which the order was made.

It will be available to the automatic parties i.e. mother, father, child (the subject of the application), the person with parental responsibility who ordinarily has the day to day care of the child and anyone else who has been joined as a party by the Court.

A Form 1F will required from all parties in any Public Law case even if it is on a no means no merit basis.

Scope will limited to one or more of the orders and will also be cost limited with ability to apply for scope and costs to be extended.

Emergency Child Protection Orders (ECPO)

If an ECPO is to be applied for by the Department and the hearing is out of office hours, the advocate for any entitled party should submit an application for legal aid at the first possible opportunity and a certificate will be issued to cover the ECPO.

Referrals to the Juvenile Court from the Convenor or the CYCT.

If the conditions of referral to the Tribunal are not accepted the case will be referred to the Juvenile Court for an evidential hearing.

A full certificate may be available based on the usual means and merits criteria.

The means to be tested are those of the child or the persons with PR if there is a conflict of interest and unless it falls within one of the matters as above on a no means no merits basis. The full certificate will cover pre-hearing advice, the hearing and post-hearing advice.

Following the Court hearing, if the Court decides that the conditions are satisfied then the case will be referred back to the Tribunal. Once the Court has made a decision and the matter is returned to the CYCT to determine whether compulsory intervention is necessary and if so what it should be, the certificate will lapse. NB No legal aid whether by green form or full certificate will be available for a matter returned to the CYCT.

Criminal Matters

When a crime is jointly reported to the Convenor and HMP, if it is decided that the matter will be referred to the Tribunal, then no legal representation will be permitted unless there are exceptional circumstances as detailed above.

If it is decided that the case will be prosecuted in the Juvenile Court then the child may apply for a full legal aid certificate. As the standard of proof will be on the basis of beyond reasonable doubt a criminal certificate should be applied for.

Appeals

Legal Aid will be available for all appeals from the Tribunal to the Juvenile Court, from the Juvenile Court to the Royal Court and from the Royal Court to the Court of Appeal on a means and merits tested basis in respect of all appeals.

Experts

As no certificate will be granted for the CYCT, no funding for any expert report required at the CYCT can be provided by Glas.

There may be room for modest disbursements e.g. interpreter under the green form but NB the limits as detailed above.

In cases which are referred to the Courts and experts reports are ordered by the Court, application for advance approval of experts reports may be made using Form 8. Please remind any expert who is instructed to provide receipts for all expenses if they wish to be reimbursed by Glas.

ADMINISTRATION

A new "Green Form" called AAS 1 CL has been drafted. We should be grateful if it could be printed out on salmon coloured paper to enable easy identification.

This form should only be used for advice in cases that arise under the new Children Laws, except any private law applications under Section 14 and applications for leave and determination of party status in relation to S14 when the usual green form, AAS 1, should be used. (See page 1 above)

Glas will provide each firm with some of the new forms to start matters off.

It is suggested that advocates do not submit the AAS1 CL until it is either exhausted or the matter is completely concluded. Once a Green Form is submitted to Glas and passed for payment it cannot be "retrieved"by the firm to add on more work undertaken or disbursements even if the Green Form was not exhausted at the time of submission.

Only one Children's Green Form is permitted for each matter. Consequently even if a referral to the Convenor relates to more than one ground only one Green Form can be used.

If the parents and the child are advised together then the Green Form, any 1F and Form 3 should be signed by the parent(or person with PR) alone if the child is under 16 years and by both the parent and the child if the child is aged 16 to 18 years,

If there is a contrary interest between the child and the parent; the parent will sign their own forms and the child, if over 16, can sign his/her application. If under 16 years, the advocate should ensure that the child has the capacity and understanding to instruct the advocate.

Which 1LM to submit?

Please see new guide to 1LM use.

Alderney

The above procedure and guidance will also apply to Alderney.

Sark
Only the criminal law applies to Sark at the current time.

It is suggested that is any issues arise in connection with Sark; the advocate consults with then Administrator prior to commencing any work.

Experience may prove some adjustments are required to the Children Law legal aid forms or guidance. Consequently, if there are any observations or suggestions relating to the forms or legal aid and the Children Laws generally, the Administrator would be pleased to such comments.

Hayley Cooper
Legal Aid Administrator

LEGAL AID

Frequently Asked Questions about Legal Aid in the Bailiwick of Guernsey

LEGAL AID

YOUR QUESTIONS ANSWERED

Frequently Asked Questions about Legal Aid in the Bailiwick of Guernsey

This leaflet provides a general guide to the provision of legal aid. If you have any specific questions, please contact us as detailed on the back page.

1. What is legal aid and what can it cover?

Legal aid can provide free or reduced cost legal advice and assistance to people with limited means who could not otherwise afford the cost of an advocate.

Legal aid covers advice and assistance in preparing your case and representation at court, including the Magistrate's Court, Juvenile Court and Royal Court. It can also cover the making of a legal document, agreement or Will and limited assistance prior to and at a Children's Convenor's meeting. Legal aid will not be granted for debt claims and some personal injury cases in the Magistrate's Court or some cases before the Domestic Proceedings Court where people may represent themselves. However, in exceptional circumstances the Administrator may grant legal aid.

Legal aid may also be available for civil and criminal proceedings in the Court of Alderney and the Court of the Sénéschal in Sark.

Some types of case will not be covered by legal aid. The legal aid office will be able to advise you about this.

The Guernsey Legal Aid Service cannot pay for any legal advice and assistance or court proceedings that occur outside the Bailiwick of Guernsey. You may be able to apply for legal aid in other jurisdictions. Please see the back page for contact details of legal aid authorities in other jurisdictions.

If you live outside the Bailiwick but your case is before a Bailiwick Court, you must contact the Administrator in the first instance.

2. Does legal aid cover tribunals, such as an unfair dismissal tribunal or the Child Youth and Community Tribunal (CYCT)?

Generally the answer is "no". However, in exceptional circumstances, the Administrator may grant legal aid.

Patients who wish to apply to a Mental Health Review Tribunal will be entitled, in most cases, to free legal aid for representation at that particular Tribunal.

3. Who can get legal aid?

Legal aid is only available to private individuals. It is not available to companies or groups of people.

We expect all applicants to firstly investigate whether you have any other means of funding your legal expenses that make it unnecessary for you to obtain legal aid, for example, under an insurance policy (legal expenses, home or motor insurance) or membership of a professional association or trade union.

Legal aid is available to an applicant who qualifies. To qualify for legal aid you must satisfy a two-part test. The first part looks at your financial means, that is, how much money you have to spend after you have paid your income tax and social insurance. An allowance is also made for each dependent member of your family who lives with you, rent/mortgage/board and lodging and maintenance payments made.

The second part looks at the legal merits of your case. See below at question 16.

Legal aid will only be granted once the Legal Aid Administrator is satisfied with both your financial assessment and the legal merits. A legal aid certificate only provides cover from the day it is issued and will not cover legal costs retrospectively, that is, before the date of the certificate. It is very important for you to immediately provide all financial information requested by the legal aid office or there may be a delay in granting legal aid. This means you will be responsible for all of your legal costs until a legal aid certificate is granted unless some or all of these costs are covered under the green form scheme. Your advocate will explain this to you.

4. Who grants legal aid?

The Legal Aid Administrator is responsible for granting legal aid. The Administrator is an independent statutory official appointed by the States of Guernsey and answerable to the Policy Council. She has full discretion to grant or refuse legal aid within the terms of the scheme which the States prescribes.

5. How do I get legal aid?

In the first instance you should contact an advocate of your choice and ask if they accept legal aid clients (not all advocates undertake legal aid work). A list of the advocates' firms who do work on a legal aid basis is available from the Administrator. You will usually find that if the advocate you first contact does not undertake legal aid work he or she will tell you who else in his practice may see you. You should then ask for an appointment under the "green form" scheme.

When you attend your first appointment you should take your payslip for the previous week or confirmation of any benefits you receive. If you do not have your wage slip, please take a copy of your contract of employment or bank

statements. If you are married or have a partner you must also take copies of their wage slips. You should also take a copy of your rent account if you are a tenant or your mortgage statement if you own your own house. You must also provide evidence of any maintenance you or your partner is paying. The advocate will need these to make an initial assessment of your financial means.

6. What is a "green form"?

This is the process which generally covers your first appointment with your advocate. If the matter is fairly straightforward and can be dealt with by your advocate doing work on your behalf for two hours or less the "green form" will cover the whole matter.

If the matter is more complicated the "green form" will cover initial advice and assistance but you will need to make a formal application for legal aid to cover the next stages.

The financial assessment for the "green form" is based on slightly different criteria than the assessment for full legal aid. This is because it is recognised that many disputes can be settled quite quickly, for example by giving you some advice or writing a letter on your behalf, etc.

7. What are the financial limits for getting legal aid?

There are no set financial limits regarding income, as each applicant for legal aid will have different financial circumstances. However, essentially, if the "residual income" of your family unit is more than £200.01 per week then you will not be eligible for legal aid assistance.

"Residual income" is the income you have left after income tax and social security payments, a housing allowance, (See question 10) any maintenance payments actually made, childminding costs (if they are to enable you to work) and the weekly requirements for you and any other dependant members of your family who live with you have been taken into account.

If you are on Supplementary Benefit (including a top-up Supplementary Benefit payment if you are in a low paid job or on a low pension) you will be automatically financially eligible for legal aid. All other benefits, except Severe Disability benefit (previously called Attendance Allowance), are means tested. The Administrator will ask you to sign an authority (a copy is included in the assessment form) so that a check can be made with the Social Security Department to confirm your benefit status. If you live in Sark, The Administrator may check with the Procureur of the Poor or the Treasurer for Sark.

8. How is the financial assessment for full legal aid made?

You will be required to complete a detailed application form giving details of your income from all sources (for example, any benefits, wages, child benefit, maintenance, interest, pensions, dividends, trust income, etc), savings and any assets you own or part own (for example, property, land, cars, savings, shares etc.). You must also include details of your spouse or partner's income, savings and assets.

When you send the completed form to the Administrator you must include all the supporting evidence requested including; your wage slips and those of your spouse or partner, as appropriate, for the previous 13 weeks, evidence of rent /mortgage/board and lodging and any maintenance in payment. A bank statement showing these payments, or rental /mortgage agreement or Court Order will usually be sufficient. If you do not provide all this information the Administrator will not be able to process your application.

Even if you are in custody, details of both your and your partner's income for the previous 13 weeks will still be required.

We do not take account of any debts that you have or the finance required to support your lifestyle.

The assessment will be made against the criteria which the States have approved. A copy of the criteria is available from the Administrator.

You must send the fully completed application form with all supporting evidence to the Administrator as quickly as possible as any delays may mean that your case will not be covered by legal aid.

9. Whose income and savings will be taken into account when making the financial assessment?

If you have a partner, (that is, somebody you are in a relationship with, whether you are married to them or not,) their income, savings and assets will be taken into consideration regardless of whether or not they would be willing to pay your legal costs. If you and your partner are living apart due to e.g. illness, imprisonment or working away (and not because your relationship has broken down), the Administrator will still require their financial information. A partner includes a partner of the same sex.

10. My mortgage repayments/rent is very high; will this be allowed for when my residual income is calculated?

When your residual income is calculated the Administrator will take into account housing costs to a maximum of 25% (one quarter) of your gross income per week (other than family allowance and severe disability benefit) or 90% of the mortgage payment per week, whichever is the lesser amount. If you are renting the Administrator will take into account the amount of the weekly rent payable or 20% (one fifth) of your gross income per week,(other than

family allowance and severe disability benefit) whichever is the less. We do not give you an allowance for the full amount of the rent or mortgage that you pay.

If you are paying board and lodging, we will allow you one half of the total amount being paid or the amount being paid for accommodation only whichever is appropriate.

11. I have some savings/assets/investments will this affect my eligibility for legal aid?

The value of any savings/assets/investments will be taken into account; the Administrator will consider whether it is reasonable to expect you to use these to fund your legal advice and assistance.

If the value of you and your partner's capital resources exceeds £20,000 you will not be considered for legal aid. If you own more than one property, you will not be eligible for legal aid.

Capital resources include cash, savings, investments, premium bonds, shares, property, land, time shares, valuable furniture, paintings, jewellery, cars, rare registration numbers, etc. We ignore capital resources of less than £5,000.

Notional interest of 60 pence on every £100 of capital over £5,000 and below £20,000 is included as an applicant's income.

We do not take into account the house you live in or any assets which are in dispute within the proceedings for which you are applying for legal aid.

12. What happens if my income or capital situations change after legal aid has been granted?

When you sign the agreement with the Administrator and your advocate you are agreeing to notify the Administrator immediately of any changes to your financial situation. This includes if you have a baby, one of your children leaves home or leaves school and starts work, you or your partner start or finish work, you become entitled to a benefit such as Supplementary Benefit or you are given or win a sum of money.
A change to your income or capital may increase or reduce the level of contribution to the costs that you have been assessed to make or may make you ineligible for legal aid.

Whatever the cause, you must notify the Administrator immediately of any changes in your financial situation.

Your advocate also has a responsibility for telling the Administrator if he or she believes that your circumstances have changed.

13. What would happen if I didn't notify the Administrator of any changes?

If you make a false statement about your case or circumstances or fail to tell the Administrator of any changes you risk not only your legal aid being withdrawn and you being required to repay some or all of the legal aid costs you have incurred but you could also face prosecution.

14. What happens if my income and savings is only just over the threshold?

There is a sliding scale whereby if you are only just over the threshold (see question 7 above) you will have to contribute a percentage of the legal aid costs and disbursements (e.g. Court, Greffe and Sheriff's fees, doctors' reports, the cost of DNA testing, etc.)

If you are assessed to be on a contribution in a criminal matter the Administrator will collect the contribution at the conclusion of the proceedings. In civil matters you will be billed for your contribution by your advocate as the case proceeds. If you are assessed to be liable for a contribution, you should ask your advocate to keep you informed as to the amount of costs incurred as the case progresses.

15. What else will be considered?

In addition to the financial assessment the Administrator will assess the legal merits of the matter for which you are seeking legal aid.

16. What is meant by "legal merits"?

This is the second stage of the test. In short, the Administrator looks at the strengths and weaknesses of the matter for which you are requesting legal aid to decide whether it would be reasonable in all of the circumstances for you to receive public funding for your case. The advocate you have consulted will write an opinion for the Administrator based on the legal position and what you have told them about the matter. The Administrator will assess your application against a set of criteria which have been approved by the States.

At its simplest, the Administrator will be asking the following question "*Would a person of average means be advised to pursue or defend this matter if they were paying the full legal costs himself?*"

Full details for the assessment criteria are available on request from the Administrator.

17. If I am refused legal aid can I appeal against the decision?

Yes. You will always be told the reason why legal aid has been refused.

In the first instance you should write to the Administrator setting out the reasons why you think the decision is unfair and include any supporting evidence you may have.

If you have been refused legal aid because you are financially ineligible, there is no independent review process. However, the Administrator will review your financial assessment if you request it.

If legal aid has been refused because the legal merits test is not met, you can challenge this decision through an independent review process. You would be sent details of this when you receive the decision of refusal of legal aid.

18. Can I change my advocate part way through?

The Administrator will only allow you to change advocate if you can show there are exceptional reasons for changing. You would need to be able to satisfy the Administrator that your advocate was unable to advise and assist you fairly and impartially and that it would prejudice your case if you were not allowed to consult another advocate.

19. If I am arrested or attend the police station / customs voluntarily, can I get an advocate?

Free legal advice is available from the Duty Advocate to any person detained by the police or customs or attending the police / customs as a volunteer in respect of a matter for which they could otherwise be arrested.

There is a Duty Advocate on call. The Custody Sergeant will ask you when you first arrive at the police station /customs if you wish to speak with the Duty Advocate. He or she will be called if you want to see him or her and can either give advice over the telephone or attend the police station/customs, if necessary. You do not have any choice in the advocate you can consult under this scheme.

20. Will I have to pay?

No. Regardless of your means you may consult the Duty Advocate for free.

21. Can I have my own advocate rather than use the Duty Advocate?

If you want to see an advocate of your choice you will have to pay for that consultation in the normal way.

22. Can I have an advocate to represent me in a criminal case in Court?

There is a Duty Advocate present at most sittings of the Magistrate's and Juvenile Courts. A Duty Advocate also attends the Police Court in Alderney.

23. Will I have to pay?

As with the Duty Advocate at the police station you may consult this advocate for free.

24. Can I have my own advocate rather than use the Duty Advocate?

As with the Duty Advocate at the police station you may consult an advocate of your choice but you will have to pay for this unless the "green form" scheme is available to you or you have made a full application for legal aid and a legal aid certificate has been granted in advance of the court hearing.

25. Will I have to repay the cost of any legal aid I receive?

In some cases you will be required to repay all or part of the costs of your legal aid. These are referred to as recoveries. Recoveries can be made against any assets you receive or secure through the assistance provided by the advocate under the legal aid certificate and any "green form". Your advocate will be able to advise you about this.

For example, if you are awarded any sum of money in matrimonial proceedings or compensation for a personal injury you have suffered, you will have to repay the full costs of your legal aid at the end of the case.

Similarly, if in divorce proceedings you are awarded ownership of the house that you and your ex-spouse owned, then you will have to repay your legal aid costs from the value of that house. Repayment may be required immediately or may be deferred and a bond taken out by the Legal Aid Administrator on the house at your expense. The purpose of the bond is to ensure that when the house is sold the Administrator will be automatically repaid from the proceeds of the sale. This works in the same way as when any mortgage is repaid when a house is sold.

You may also have to contribute to some of the costs of your legal aid if you are financially assessed to be on a contribution – see question 14 above.

26. How will I know that I have to repay any legal aid costs?

When legal aid is granted you will have to sign an agreement with the Legal Aid Administrator and your advocate. The agreement sets out the situations when legal aid costs must be repaid and will also confirm if any contribution is required. When your case is concluded, if relevant, the Administrator will tell you how much you owe to reimburse the States and will arrange with you how

you will repay the debt. Depending on your circumstances, the Administrator may allow you to pay by way of reasonable instalments.

27. Are there any other situations when I will have to repay any legal aid costs?

Yes, if you are shown to have made a false or incomplete disclosure about your income, savings and assets or fail to co-operate with your advocate. For example, if you keep missing appointments with your advocate without good reason, or do not give him or her instructions about how to proceed, or fail to follow the advice or instructions your advocate gives you, the Administrator can withdraw your legal aid certificate and demand that you repay all or part of the costs of legal aid.

28. What will happen if I don't pay?

The Administrator will take you to Court to recover the debt. Depending on how much is owed this will either involve you receiving a Magistrate's Court or Royal Court summons.

If the Administrator has to take you to Court, the cost of the proceedings will be added to your debt.

As with any other debts recovered in this way the Administrator can ask for:

(a) A wage arrest, that is a proportion of the debt will be paid directly from your wages each week or month;

(b) Goods you own to be seized and sold at auction to repay the debt; or

(c) If you own property and the debt is substantial, for a bond to be attached to the property or for the property to be sold to repay the money owed.

29. Will the information I provide remain confidential?

All information you provide to The Legal Aid Service will remain confidential in accordance with the Legal Aid (Bailiwick of Guernsey) Law, 2003. However, there are a few specific situations where the law does allow us to pass on that information.

The Data Protection (Bailiwick of Guernsey) Law Act, 2001 also means that we have to keep "personal data" we hold about you confidential and only use it for the purpose for which you gave it to us.

30. Where is the legal aid office and how can I get in touch?

The legal aid office is at 28, Glategny Esplanade St. Peter Port, GY1 1WR. It is open Monday to Friday between 8.30am and 4.30pm.

If you have any queries regarding legal aid you can contact the office by –

Telephone	01481 747530
Fax	01481 727988
E-mail	legalaid@gov.gg

IMPORTANT NOTICE

The Administrator and the staff of the Guernsey Legal Aid Service are unable to provide legal advice

USEFUL CONTACTS AND INFORMATION IN THE BAILIWICK

Citizens Advice Bureau	01481 242266
The Greffe Guernsey	01481 725277
Alderney Court Office	01481 822817
The Greffe Sark	01481 832012
HM Sheriff	01481 711281
Royal Court website	www.guernseyroyalcourt.gg

LEGAL AID AUTHORITIES IN OTHER JURISDICTIONS

England and Wales	Legal Aid Agency Web: www.gov.uk/legal-aid Tel: 0345 345 4345
Scotland	Scottish Legal Aid Board Web: www.slab.org.uk Email: general@slab.org.uk Tel: 0131 226 7061

Northern Ireland	Northern Ireland Legal Services Commission Web: www.nilsc.org.uk Email:accesstojustice@nilsc.org.uk Tel: 028 9040 8888
Republic of Ireland	Republic of Ireland Legal Aid Board Web: www.legalaidboard.ie Email: info@legalaidboard.ie Tel: 066 947 1000
Isle of Man	Civil Legal Aid and Legal Costs Section Web: www.gov.im/registries Email: legalaid@registry.gov.im Tel: 01624 685977
Jersey	Jersey Legal Aid Service Web: www.legalaid.je Email: email@legalaid.je Tel: 0845 800 1066

GUERNSEY LEGAL AID SERVICE

28, Glategny Esplanade St Peter Port Guernsey GY1 1WR
Telephone (01481) 747530 Fax (01481) 727988 e-mail legalaid@gov.gg

APPLICATIONS FOR CIVIL LEGAL AID

INFORMATION SHEET – Revised May 2011

Persons resident in the Bailiwick seeking legal aid in civil matters should deal directly with Advocates. There is in force a scheme called the Green Form Scheme. It provides for persons of limited financial means to have an initial consultation with an Advocate to decide whether they require access to the Courts. If access to the Courts is required then help will be given towards applying for a Legal Aid Certificate. If an Advocate feels that a matter can resolved without going to Court then it may be possible to so this within the Green Form Scheme.

To apply for advice and assistance under the Green Form Scheme a person should contact a Firm of Advocates. Most Firms in Guernsey are prepared to do work under the Green Form Scheme but particular Advocates may not be available. The Firm will assess the applicant's financial means. The person will either receive advice and assistance free of charge or be required to pay a contribution of 20, 40, 60 or 80% towards the Advocate's costs. The value of the services provided is presently limited to £334.

The financial eligibility for advice and assistance is based upon figures currently used by the Social Security Department (SSD) and methods of assessment are similar. They are based on a person's present financial circumstances. A person will be unable to benefit from the Green Form Scheme if they and their partner have assets, other than their home, worth £20,000 or more. The higher the income of the person and their partner, the more likely it is that the person may have to pay part of the advocate's costs. A person currently on Supplementary Benefit qualifies automatically. It is stressed that, in common with SSD, no account is taken of a person's indebtedness or the requirements of their personal lifestyle.

The means test involves looking at the total income of a person and their partner and then giving an allowance for housing, any maintenance being paid, and a personal allowance-called "Weekly requirements" (which are the same figures allowed by the SSD when assessing whether someone is eligible for Supplementary Benefit.) When all the allowances have been deducted from the income, any money left over is called "assessed residual weekly income". If a person's assessed residual weekly income is zero or less then that person would qualify for advice and assistance without needing to pay a contribution towards legal costs. If a person's assessed residual weekly income is £200.01 or more, they would not qualify. In between these extremes is a sliding scale of contributions. Your Advocate will carry out the calculation to see if you are eligible for Advice and Assistance under the Green Form. You must take proof of all income for the previous week with you to the first appointment with the advocate.

If a person is in dispute with their partner then the partner's income is disregarded. Similarly, if there is a dispute as to the ownership of assets, then the value of those assets is disregarded.

During the initial meeting with an Advocate it may become clear that court action is needed. If this is so then a person will need to apply for a Legal Aid Certificate. This involves two things:-

First, the Advocate must provide a professional Opinion to the effect that the case is strong enough to justify the use of public funds.

Secondly, the person must fill in a detailed financial means test form – Form 1F. This is available from Advocates or the Legal Aid Office. If a person needs help in completing the Form then this can be given at the Legal Aid Office, or any other person can help. However, an Advocate who helps will not be paid for such a service out of public funds. The Form1F is assessed by the legal aid office on a similar basis to the Green Form but is based on income for the previous 13 weeks.

Once the Administrator of the Legal Aid Service receives a professional Opinion from an Advocate and the financial means form from the applicant, then consideration can be given to granting a Legal Aid Certificate. The Administrator will look at the strength of the case and the cost of running it and balance these against the benefits likely to be gained. If a person has assets other than their home worth £20,000 or more it is unlikely that they will be granted a legal aid certificate. That is also the case if the assessed residual weekly income is more than £200.01 per week. The Administrator does, however, have some discretion. It is probable that the legal aid will at first be limited to taking certain steps after which a full review will be made. There will be reviews as a case proceeds. A grant of legal aid may also have a requirement that a person pays part of the Advocate's costs by way of contribution. There will be a condition that the applicant repays the States from any assets recovered or preserved.

There is always the possibility that a person who does not qualify for legal advice and assistance under the Green Form Scheme might be granted a Legal Aid Certificate, but they will need to pay for the initial Advocate's opinion.

The sort of case which may be covered by the Green Form Scheme or full legal aid includes divorce, family problems, civil claims including personal injury cases and criminal cases. If you are unsure whether your case may be eligible for legal aid, please contact this office or your advocate.

Persons who are required by the SSD to make applications for affiliation and maintenance will be referred to an Advocate by SSD. They should make an appointment with an advocate once they have the necessary letter from the SSD.

Legal aid is not available to a person living in the Bailiwick in connection with any legal matters outside the Bailiwick. For example, if a Guernsey resident has an accident whilst on holiday in Spain then public funds cannot used to assist their claim. A person living in one island of the Bailiwick who wishes to have advice involving the law of another island must first obtain agreement of the Administrator before making an appointment with an Advocate. Persons living outside the Bailiwick must first obtain agreement from the Administrator before seeking advice from an Advocate under the Green Form Scheme. Such persons are, in principle, entitled to legal aid in matters involving a Bailiwick Court. For example, a holidaymaker from Holland could apply for advice under the Green Form Scheme and might also be given legal aid to bring a claim against a Guernsey resident following an accident in Guernsey.

Please also see the Frequently Asked Questions leaflet which is available from the Legal Aid Office or an Advocate.

Any questions relating to legal aid in the Bailiwick should be addressed to the Guernsey Legal Aid Service at the address given at the start of this information sheet. Please note the office is open between 8.30am and 4.30 Monday to Friday.

THE LAW SOCIETY of SCOTLAND
www.lawscot.org.uk

LEGAL ASSISTANCE IN SCOTLAND

FIT FOR THE 21ST CENTURY

LAW SOCIETY OF SCOTLAND DISCUSSION PAPER



INTRODUCTION

Scotland's legal aid system was introduced in the same post-war era which saw the creation of the welfare state. There was then, just as today, recognition of the need for a system to ensure all members of society, regardless of wealth or status, had access to comprehensive legal assistance. Access to justice and the upholding of the rule of law are as important to the social security of individuals in society as healthcare and education, and legal aid is how we make these concepts a reality. Legal aid is, in essence, the fourth pillar of the welfare state.

A well-functioning legal aid system can prevent small issues turning into serious problems, both for the individual and for other key public services and budgets. Without the ability to seek resolution, civil justice issues can lead to serious impacts on mental and physical health, relationship breakdowns, and loss of income and confidence. It is essential that people who may not have the necessary financial resources, can still access legal advice and services. Being involved in the criminal justice system can be a terrifying experience. Access to a solicitor at all stages is vital to ensure that when an individual is facing the full resources of the State, they do not stand alone. Full protection and representation in criminal matters, and a fair accessible system for civil disputes helps avoid miscarriages of justice and maintains society's trust in and respect for the justice system.

The current legal assistance system is no longer fit for purpose and the time is right for a root and branch change. The Legal Aid (Scotland) Act 1986 is almost 30 years old. The legal aid landscape has changed substantially as have our courts and the wider justice system. Significant amounts of secondary legislation and guidance have created a complex system which even expert practitioners find difficult to navigate. The existing system lacks clarity, is inefficient, and is administratively burdensome. It leads to unnecessary time and resources being spent by SLAB and solicitors at every stage of the process.

At a time of reforms to modernise the wider court and justice system, our system of publicly-funded legal assistance must be rethought to ensure an effective and sustainable service. We must ensure the service remains available across Scotland and that the best advice possible is available to everyone, regardless of their wealth or status. Those who provide this essential service must also be fairly paid to ensure we maintain our high standards and encourage new entrants to the profession.

We support the Scottish Government's commitment to work with stakeholders in a positive spirit to address these serious issues. The best solutions for legal aid are found when government, its agencies and the legal profession work constructively and in a spirit of shared understanding. The recommendations and proposals presented in this paper will not draw universal support from the profession. Indeed there remain divergent views within our committees on some of the proposals presented here, particularly for the future of civil legal aid provision. These suggestions are only a starting point for discussion. We have not made any final decisions on what would be the best way forward for legal assistance in Scotland. We are relying on our members and others to help inform our views on these important issues. The issues faced by legal aid in Scotland, coupled with the challenging public spending climate, mean there are no easy solutions, but we share a passion for protecting access to justice and strongly encourage a full and open discussion on the contents of this paper and on the legal aid system overall.

Mark Thorley and Ian Moir, Co-Conveners of the Law Society of Scotland's Legal Aid Committee

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EXECUTIVE SUMMARY

KEY ISSUES

- The landscape of the justice system has altered substantially in recent years. Major reviews of the courts and justice system have been conducted and substantive reform is being implemented. The legal assistance system has not always kept pace with these changes.

- Existing legal aid arrangements are not structured in a way that fully supports early resolution of cases. A delay in legal assistance aggravates delays in court procedure.

- The large number of legislative amendments and increasing volume of guidance over the years has made the legal assistance system increasingly difficult to navigate. A complex system means that court users may have difficulty understanding what type of legal assistance is available. In addition, there are frequent disagreements between solicitors and SLAB over interpretation of legal assistance regulations.

- There has been a real term decline in legal assistance expenditure for years. Lack of investment or re-investment of efficiency savings in legal assistance has made it increasingly difficult to maintain a sustainable, high quality legal assistance system across Scotland.

A new approach to legal assistance is required in order to prioritise simplicity, efficiency, quality, and sustainability.

KEY PROPOSALS

The recommendations made in this paper are designed to stimulate discussion on how to modernise and streamline the legal assistance system, and improve efficiency in the wider justice system. These proposals are simply one approach, and we welcome other ideas and a wide ranging discussion.

Legal Assistance

- Structural reform of the legal assistance system including the 1986 Act
- System should be designed to be easily processed using Legal Aid Online and supporting the increasing use of technology in the courts and in society as a whole, including the Digital Strategy for Justice
- Bringing legal assistance payments under the protection of the Late Payment of Commercial Debts (Scotland) Act 1995
- Savings should be reinvested into the legal assistance system
- Legal assistance rates should be regularly assessed in light of inflation

Criminal Legal Assistance

- Single criminal legal assistance certificate rather than range of categories
- Certificate to be underpinned by streamlined system of block fees

- Financial verification to be required at initial application stage only
- Fresh approach should be taken to eligibility criteria against backdrop of changes to welfare
- Appropriate cover for advice to suspects at police stations and appeals
- Block fees to be designed to encourage early resolution of cases, e.g. appropriate level of fee for S.76 pleas or early disposal is required

Civil Legal Assistance

- Single continuing grant of civil legal assistance, abolishing the distinction between advice and assistance, assistance by way of representation, and legal aid
- Reducing eligibility levels to ensure that public funds are focused on those most in need
- Redefining the scope of legal assistance to ensure that advice and legal assistance is provided in the most appropriate way
- Introducing affordable legal assistance loans, provided through SLAB to assist individuals with payment for legal services outwith the legal assistance system

CONCLUSION AND CALL FOR FEEDBACK

This is a discussion paper, with the intention of starting a conversation and encouraging new ways of thinking about legal assistance reform.

It has become increasingly clear that the system we have, although admirably delivering high standards of advice to a wide section of the population, cannot continue in the long term. We believe that a robust system of publicly funded legal assistance is fundamental for maintaining meaningful access to justice for people in Scotland. Such a system needs to be simple, efficient, and work smoothly with the wider justice system. The solicitors that deliver the service need to be adequately remunerated, to ensure that they can continue to run their businesses and invest in training new members of the profession to carry on the work in the long term.

The legal aid committee of the Law Society of Scotland has suggested these proposals as a starting point, one option for a more sustainable system.

We are seeking views on these proposals, and suggestions for other ways that legal assistance could be reformed to be sustainable for the future and fit for the 21st century. If you would like to respond, please contact us. We are happy to accept written feedback, or to arrange a meeting if appropriate.

THE CURRENT SYSTEM

LEGAL ASSISTANCE IN SCOTLAND

Legal assistance is help towards the cost of legal advice and representation so that people on low and moderate incomes can gain access to the legal system. It is paid for out of public funds and administered by the Scottish Legal Aid Board (SLAB).[1]

The legal assistance system in Scotland covers a range of categories of help for people in need of a solicitor. Legal assistance is divided into criminal legal assistance, civil legal assistance, and children's legal assistance.

- Criminal legal assistance supports those accused of a crime by the state.
- Civil legal assistance enables people to enforce legal rights and obligations under civil law.
- Children's legal assistance provides support for those involved in Children's Hearings proceedings.

The main categories of legal assistance are:

- Advice and Assistance;
- Assistance by way of Representation; and
- Legal Aid.

ADVICE AND ASSISTANCE

CRIMINAL ADVICE AND ASSISTANCE

WHAT DOES IT COVER?

This type of legal assistance allows for advice to be given on any matter of Criminal Scots law.

Criminal advice and assistance was heavily used in the past, but is now rarely used other than in connection with advice given at a police station.

Police Station Advice

[1] The phrase "legal assistance" is used in this paper as a collective term for all types of assistance which are available. The phrase "criminal legal assistance" is used to refer to all types of assistance available in criminal cases and, similarly, the phrase "civil legal assistance" is used to refer to all types of legal assistance available in civil cases. The terms are not to be confused with "criminal legal aid" and "civil legal aid" which are two specific forms of legal assistance.

Following the judgement in Cadder v HMA,[2] Scots Law recognised that a suspect must have the opportunity to consult a solicitor before being questioned in relation to a criminal allegation.

The work carried out by solicitors at the police station is charged under criminal advice and assistance regulations. In these circumstances a contribution may be payable even where the duty solicitor is in attendance.

WHO IS ELIGIBLE?

Criminal advice and assistance may be available subject to two tests: financial eligibility and whether the issue is a matter of Scots law. The solicitor's work is charged on a time and line basis up to an initial limit, with increases available for exceptional circumstances.

Criminal advice and assistance is generally available to individuals with a disposable income of £245 per week or less, and disposable capital of £1,716 or less.

If the client has a disposable income of between £105 and £245, the client has to pay a contribution. Contribution levels are on a sliding scale and are set out in the SLAB keycard.[3]

Police Station Advice

For police station advice, suspects are not subject to the upper weekly income and capital thresholds of £245 and £1,716. Clients with weekly disposable income between £105 and £245 will be eligible, but will still have a contribution to pay, the level of which is set out in the SLAB keycard. A suspect with weekly disposable income above the £245 will have the maximum contribution of £135 to pay towards the cost of this advice.

CIVIL ADVICE AND ASSISTANCE

WHAT DOES IT COVER?

Civil advice and assistance allows for advice to be given on any matter of Scots law. It does not, however, generally cover steps in connection with instituting, conducting, or defending proceedings.

Currently there are significantly more grants of civil advice and assistance than there are grants of legal aid. With the exception of diagnostic grants of civil advice and assistance (a grant allowing an initial meeting with a solicitor when the issue is not one of the standard categories for civil advice and assistance) there is a list of proved categories for which the solicitor can certify that a client is covered by. Subject then to financial verification the client can be admitted to civil advice and assistance.

[2] UKSC [2010] 43
[3] SLAB Keycard - http://www.slab.org.uk/common/documents/profession/documents/KeyCard.pdf

WHO IS ELIGIBLE?

Civil advice and assistance is generally available to individuals with a disposable income of £245 per week or less, and disposable capital of £1,716 or less.

Contributions are payable on a sliding scale, and the cost of legal assistance can be reclaimed from property recovered or preserved as a result of the legal action.

The solicitor's work is charged on a time and line basis up to an initial limit, with increases available for exceptional circumstances.

CHILDREN'S ADVICE AND ASSISTANCE

WHAT DOES IT COVER?

Children's advice and assistance is advice and assistance in relation to the Children's Hearings (Scotland) Act 2011, or the Children (Scotland) Act 1995 for proceedings in the Children's Hearings system and associated court proceedings.

WHO IS ELIGIBLE?

Children's advice and assistance is available to both children and adults involved in the proceedings. A child with sufficient capacity can instruct a solicitor directly, or an application can be made on their behalf by the child's parent/carer.

Children's advice and assistance is generally available to individuals with a disposable income of £245 per week or less, and disposable capital of £1,716 or less. Contributions are payable on a sliding scale. Unlike where a child applies for civil advice and assistance, if the child is capable of giving instructions and receiving advice, the resources of any person owing a duty to aliment are not aggregated for the purposes of assessing the child's resources.

The solicitor's work is charged on a time and line basis up to an initial limit, with increases available for exceptional circumstances.

ASSISTANCE BY WAY OF REPRESENTATION (ABWOR)

CRIMINAL ABWOR

WHAT DOES IT COVER?

A system of Criminal ABWOR is generally available where the applicant pleads guilty.

Criminal ABWOR also allows for representation in certain other categories of cases which were not envisaged back in 1986, such as first appearances from custody and at bail undertakings. In

addition, Criminal ABWOR is generally available for breaches of Court orders, parole hearings, and certain proceedings under proceeds of crime legislation which, again, were not envisaged in 1986. The full list of detailed Criminal ABWOR offences is contained within Regulation 4 and 5 of the Advice and Assistance (Assistance by Way of Representation (Scotland) Regulations 2003.

The block fee for Criminal ABWOR will generally cover all work, including up to 2 diets of deferred sentences. Additional payments can be made in certain circumstances.

WHO IS ELIGIBLE?

Criminal ABWOR is likely to be available subject to two tests: financial eligibility and whether the issue is a matter of Scots law. For some types of Criminal ABWOR there are other more detailed tests to be applied.

Since 10 April 2012, the eligibility thresholds have been £245 for weekly disposable income and £1,716 for disposable capital. If the client has a disposable income of between £105 and £245, the client has to pay a contribution. Contribution levels are set out in the SLAB keycard.[4]

CIVIL ABWOR

WHAT DOES IT COVER?

Civil ABWOR is a type of advice and assistance that allows for a solicitor to take steps in connection with instituting, conducting, or defending certain defined types of proceedings. For example, Civil ABWOR can be provided in mental health and immigration cases.

WHO IS ELIGIBLE?

A person must be eligible for advice and assistance if they are to receive Civil ABWOR. However, the financial tests are not applied, and there is no contribution, where Civil ABWOR is provided in relation to proceedings in front of the Mental Health Tribunal for Scotland or for custody appearances under the Matrimonial Homes and Protection from Abuse Acts.

CHILDREN'S ABWOR

WHAT DOES IT COVER AND WHO IS ELIGIBLE?

Children's ABWOR is available automatically to a child, without means or merits testing, for certain 'specified hearings' and for certain applications made by a sheriff.

ABWOR is also available to a child for any other children's hearing under the 2011 Act ('unspecified hearings') and for some pre-hearing panel meetings, but subject to financial eligibility tests, as well

[4] SLAB Keycard - http://www.slab.org.uk/common/documents/profession/documents/KeyCard.pdf

as a merits test to satisfy SLAB that the child requires legal representation in order to enable the child to effectively participate in the proceedings.

Children's ABWOR is also available to those considered 'relevant persons' under the 2011 Act, subject to means and merits testing.

LEGAL AID

CRIMINAL LEGAL AID

WHAT DOES IT COVER?

Criminal legal aid can cover funding for the defence in summary criminal proceedings, first custodial sentence cases, contempt of court cases, solemn criminal proceedings and criminal appeals.

Criminal legal aid can be provided in both the lower and higher courts as well as appeals to the Supreme Court as specified in the 1986 Act. It covers representation by a solicitor or advocate or solicitor advocate (as appropriate) and the assistance of a solicitor.

Summary Criminal Proceedings

There is a system of summary criminal legal aid which is generally available where the applicant pleads not guilty. The system of summary criminal legal aid is made up of a combination of block fees and time and line payments.

The majority of summary criminal legal aid cases are chargeable on a fixed payment basis in terms of the Criminal Legal Aid (Fixed Payments) (Scotland) Regulations 1999. The block fee for criminal summary legal aid will generally cover all work, including up to the first 30 minutes of trial. Additional payments can be made in certain circumstances.

Time and line payments will apply where the matter was originally to be heard under solemn proceedings but has been reduced to summary proceedings or where exceptional case status has been granted.

First Custodial Sentence Cases and Contempt of Court Cases

Section 23(1)(b) of the Legal Aid (Scotland) Act 1986 allows the court to grant legal aid for those deemed to be at risk of receiving a first custodial sentence.

Criminal legal aid can also be granted under Section 30 for contempt of court cases. However, contempt of Court in the High Court is dealt with under the Criminal ABWOR system (see above).

Solemn Criminal Proceedings

The solemn criminal legal aid system is made up of a hybrid of inclusive fees and detailed charges, with some time and line features for certain matters (e,g. perusals). There is also the ability to have exceptional case status granted.

Under section 76 of the 1995 Act, an accused may give notice in writing "that he intends to plead guilty and desires to have his case disposed of at once".

There have been various changes to the rates chargeable under solemn criminal legal aid as a result of bringing into force the application for exceptional case status.

Appeals

Lastly, solicitors can also apply to SLAB for criminal legal aid in respect of appeals.

WHO IS ELIGIBLE?

Summary Criminal Proceedings

Summary criminal legal aid is granted by SLAB and is used in summary cases in the Justice of the Peace Courts, Stipendiary Magistrate Courts and Sheriff Courts. The applicant must be eligible under the financial eligibility test and the interests of justice test.

Since 11 April 2011, the eligibility thresholds have been set at £222 for disposable weekly income, and £1,716 for disposable capital. In assessing disposable income SLAB take into account income from various sources, including benefits other than passport benefits.

Clients whose income and capital exceed these limits may still be eligible, if it can be shown that it would cause undue hardship to expect the applicant to pay for their own legal costs. The client does not have to pay a financial contribution in criminal legal aid cases.

First Custodial Sentence Cases and Contempt of Court Cases

The court may grant criminal legal aid for those deemed to be at risk of receiving a first custodial sentence if it is satisfied that the expenses of the case cannot be met without undue hardship to him or his dependents.

The court may grant criminal legal aid for contempt of court if it is satisfied that the expenses of the proceedings for contempt of court cannot be met without undue hardship to him or his dependents and that in all the circumstances of the case it is in the interests of justice that criminal legal aid should be made available to him.

Solemn Criminal Proceedings

Solemn criminal legal aid is available only in solemn cases in the Sheriff Court and High Court. Granting solemn criminal legal aid is subject to an eligibility test based on undue financial hardship.

An applicant for solemn criminal legal aid must pass an undue hardship test. An applicant whose disposable income is £222 per week or less and whose disposable capital is below £1,716 will receive criminal legal aid on the grounds of undue hardship. Where income and/or capital exceed these thresholds, then SLAB considers whether the excess is sufficient to cover the likely costs of the case. Where it is not, then criminal legal aid will be granted. Otherwise it will be refused.

Appeals

If criminal legal aid had been granted for first instance proceedings, a financial eligibility test is not applied in respect of the appeal. For other applications, depending on the type of appeal, an eligibility test based on undue hardship may be applied. In some types of appeal, leave to appeal must also have been granted by the courts and in others the Board must consider if it is in the interests of justice that criminal legal aid is made available.

Regulation 15 Cover

SLAB has the facility to make legal aid available in situations of special urgency under Regulation 15 of the Criminal Legal Aid (Scotland) Regulations 1996. Regulation 15 allows SLAB to make limited legal aid available, even where it has not been fully satisfied on all the eligibility criteria to allow urgent work to be carried out, including appearances at court hearings.

CIVIL LEGAL AID

WHAT DOES IT COVER?

Civil legal aid can be provided in a wide variety of cases in both the Court of Session and the Sheriff Court, as well as for appeals to the Supreme Court, and in other courts and tribunals as specified in the 1986 Act. It covers representation by a solicitor or advocate or solicitor advocate (as appropriate) and the assistance of a solicitor in all of the steps in relation and incidental to proceedings or settlement of a case.

WHO IS ELIGIBLE?

There is a tripartite test for eligibility for civil legal aid, assessed by SLAB.

- Means test
    - Civil legal aid is generally available to individuals with a disposable income of £26,239 or less, and disposable capital of £13,017 or less. Contributions are payable on a sliding scale, and the cost of civil legal aid can be reclaimed from property

recovered or preserved as a result of the legal action. It is estimated that around 75% of people in Scotland meet the financial eligibility criteria for civil legal aid

- Merit test
  - There must be probable cause, indicating a legal basis for the case
- Reasonableness test
  - SLAB will ask whether it is reasonable for the case to be funded through public funds, considering, for example, the prospects of success and recovery
  - SLAB will also seek to confirm that assistance is not available to an individual through other means, such as a union or professional body, or an insurance company.

In the Sheriff Court cases are dealt with primarily on a block fee basis but can also be dealt with on a time and line basis. Cases in the Court of Session are dealt with on a time and line basis. In both the Court of Session and the Sheriff Court civil legal aid is now subject to case cost limitations, restricting the amount that can be paid in relation to a case.

CHILDREN'S LEGAL AID

WHAT DOES IT COVER?

Children's legal aid is available only for specified proceedings under the 2011 Act, including proceedings relating to child protection orders, compulsory supervision orders, and those following the arrest and detention of a child.

WHO IS ELIGIBLE?

Children's legal aid is available to the child in all instances, and to a relevant/deemed relevant/seeking to be deemed relevant person and to 'section 126 individuals' for certain proceedings.

Child applicants in Sheriff Court proceedings
There is a tripartite test for child applicants for children's legal aid for Sheriff Court proceedings, assessed by SLAB:

- Means test
  - Children's legal aid is generally available to a child with disposable income of £222 per week, and disposable capital of £7,405 or less. Contributions are payable on a sliding scale.
  - If the child's disposable income or capital exceeds the limits, the financial test can only be met if it is shown that it would cause undue hardship if children's legal aid is not granted.
  - Unlike where a child applies for civil legal aid, the resources of any person owing a duty to aliment are not aggregated for the purposes of assessing the child's resources.

- Best interests of the child
    - SLAB must be satisfied that it is in the best interests of the child that legal aid be granted.
- Reasonableness
    - This is a wide-ranging discretionary test allowing SLAB to satisfy itself that it is reasonable in the particular circumstances of the case for legal aid to be granted.

Other applicants in Sheriff Court appeal proceedings

SLAB applies financial and reasonableness tests in all instances. For persons seeking to appeal a decision regarding their status as a relevant person, SLAB also must be satisfied that the applicant has substantial grounds. Where the applicant is a section 126 individual, SLAB must be satisfied that legal representation is required to enable the individual to effectively participate in the proceedings.

THE NEED FOR CHANGE

SIMPLIFICATION, MODERNISATION AND ENHANCING EFFICIENCY

We believe that the existing legal assistance arrangements are unsatisfactory because they are unduly complex, outdated and should better support reforms to court procedure which are intended to ensure that cases progress more speedily through the court system.

THE NEED TO SIMPLIFY A COMPLEX SYSTEM

Audit Scotland's report on Scotland's criminal justice system of 2011 states:

> "There have been significant changes to the criminal justice system since devolution, which have delivered major reform but have also contributed to its complexity."[5]

The report also states:

> "Processing cases through summary courts involves several different stages. There are many different, often independent, bodies and people involved, some of whom need to prepare for each stage and many of whom need to be present at court. Evidence may need to be shared, **eligibility for legal aid may need to be checked** and witnesses need to be present. **Given the complexities involved, many cases end up repeating stages in the process** until all the necessary elements are in place."[6] (Emphasis added)

In 2008, in its response to the Civil Courts Review, Which? Stated:

> "The system is currently too complex and difficult for people to find their way through. It is too formal and often so prohibitively expensive that this must act as a barrier for many sections of the community looking for justice."[7]

In 2011, in responding to proposals to introduce contributions into criminal legal aid, Families Outside stated:

> "The assessment for financial eligibility should be similar for different type[s] of legal processes. Any differences do not appear to have any rationale behind them and are confusing for those who are subject to such assessments. Legal processes are confusing and

[5] Audit Scotland, *An Overview of Scotland's Criminal Justice System 2011*, http://www.audit-scotland.gov.uk/docs/central/2011/nr_110906_justice_overview.pdf
[6] Audit Scotland, An Overview of Scotland's Criminal Justice System 2011, http://www.audit-scotland.gov.uk/docs/central/2011/nr_110906_justice_overview.pdf
[7] Civil Courts Review Response from Which?, 15 April 2008 - http://www.which.co.uk/documents/pdf/civil-courts-review-scottish-executive-which-response-177111.pdf

> intimidating enough for the lay population without applying different criteria to legal aid as well."[8]

Similarly, the Scottish Independence Advocacy Alliance stated:

> "The assessment of financial eligibility for ABWOR, summary and solemn legal aid should be similar. This will keep any payments consistent and additional administration to a minimum."[9]

There are attempts to address these issues through comprehensive reforms to the justice system. Further, the Scottish Civil Justice Council and Criminal Legal Assistance Act allows for regulations to ensure that eligibility tests for criminal legal aid and criminal ABWOR are harmonised. However, the differing categories of legal assistance means that eligibility often has to be checked repeatedly during the lifetime of a case. More thought needs to be given to the simplification of the legal assistance regime generally, and how this can support the wider reforms as well as become more effective and efficient itself.

It is not surprising that solicitors and members of the public have difficulty understanding what type of legal assistance is available in a particular circumstance and the different eligibility criteria and payment rates that apply.[10]

Over the years, the 1986 Act and associated regulations have been amended leading to a highly complex system of legal assistance provision in Scotland. The changing interpretation of the legislative framework has led to an overly complex system.

This is not in the interests of the public who access this service, the legal profession that provides it, or SLAB who administers it.

Significant amounts of secondary legislation and increasing volumes of guidance has created a complex system that lacks clarity and is administratively burdensome. For example, at the date of publishing this paper, SLAB has already issued over 40 mailshots to legal aid solicitors this year.[11] The majority of these contained guidance or clarification on the regulations or SLAB procedures. There is a need to minimise complexity for solicitors, applicants and SLAB. Guidance and regulations should be condensed, summarised and catalogued so that it is easier for solicitors and the public to understand how regulations operate in practice. This simplification should be underpinned by structural changes in the legal assistance framework.

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[8] Families Outside, 2011 - http://www.scotland.gov.uk/Resource/Doc/353312/0119028.pdf
[9] Scottish Independent Advocacy Alliance, Consultation Response to The Introduction of Financial Contributions in Criminal Legal Aid and Changes to Financial Eligibility http://www.scotland.gov.uk/Resource/Doc/353312/0119030.pdf
[10] It is worth highlighting that the SLAB Civil Solicitors Survey states "The most common reasons for dissatisfaction with the civil legal aid application process (C2b) given by those who were dissatisfied were in relation to bureaucracy, complexity or inefficiency of the application process."
[11] 2014 Mailshots - http://www.slab.org.uk/providers/mailshots/

The system should be streamlined and easy to apply. The system should be designed to be easily processed using Legal Aid Online.

ACCOUNTS

The process for preparing and negotiating accounts for legal assistance has become a complex and specialised process. 61% of solicitors surveyed by SLAB use a law accountant to prepare civil legal assistance accounts. The most common reasons given for doing so was that the process "Takes too much time for solicitors / speeds up the process" and that it is a "Specialist role / complex process".

Certainty in relation to accounts is important in encouraging solicitors to undertake work, and is vital for the sustainability of legal aid practices. The accounting process has become so complex and time consuming and solicitors cannot always be confident that fair payment will be made for work that is undertaken in good faith.

There are regular disputes around payments. Accounts are frequently abated, meaning that payment a solicitor is expecting to receive is not in fact received. In the past year, about 15% of the total amount claimed in civil legal assistance accounts was abated from the accounts paid. This suggests there is considerable difficulty being had in accurately understanding and being able to claim appropriately for the work being done. It also suggests that solicitors are not being paid the amount expected, which may lead to cash flow and sustainability issues for firms.

Taxation is a formal process where the solicitor and SLAB have the opportunity to make representations to an independent auditor who makes a decision on the fee to be paid. This is currently common place. The system of taxation is not transparent, and creates an element of inconsistency throughout the country. This results in SLAB dealing differently with the same issue depending on the location of the solicitor, and further uncertainty around what a solicitor can expect to be paid.

THE NEED TO INCREASE EFFICIENCIES THROUGHOUT THE JUSTICE SYSTEM

Legal assistance has an important role to play in the proper running of the justice system as a whole. Inefficiency in the wider justice system is currently being tackled through a significant programme of court reforms, and must also be dealt with in the structure of the legal assistance system.

EFFICIENCY IN THE CRIMINAL JUSTICE SYSTEM

Involvement in the justice process can be a stressful and highly charged experience particularly for victims and/or witnesses, but also for parties, accused persons, and for solicitors.

In 2011, Audit Scotland found that:

> "Many cases still have to repeat stages, costing around £10 million in 2009/10, others are subject to late decisions not to proceed, costing an additional £30 million. Much of this inefficiency is avoidable."[12]

The summary justice reforms, implemented in 2007 and 2008, were designed to bring about fewer summary cases scheduled for trial, and then not going ahead and therefore fewer victims and witnesses being cited to court to give evidence.

In 2012, a Scottish Government a Social Research Group evaluated the impact of summary justice reform. It found:

> "Among information, support and advice professionals, there was consensus that victims, and particularly witnesses, are still subject to inconvenience during their case due, primarily, to waiting times for trial to come to court, adjournments (colloquially known as 'churn') and waiting times in court. There was also consensus that the system was neither quick nor simple for victims or witnesses, and in some cases, the reforms had introduced new concepts which needed to be more clearly explained to victims, which staff sometimes found challenging."[13]

The Research Group also found that:

> "Efficiency was something that most people found difficult to define, although there was consensus that the system could probably be streamlined further to ensure savings to the public purse. For both police and expert witnesses there remains an element of inconvenience due to being cited to appear at court for cases which are later dismissed following a guilty plea. This was regarded as being the biggest barrier to achieving efficiency."[14]

In 2010 Sheriff Principal Bowen made recommendations to make sheriff and jury business more efficient and cost-effective. Sheriff Principal Bowen identified that the section 76 procedure:

> "is an opportunity for the accused to deal with the matter early and he is likely to receive a discount in his sentence from the sheriff in light of his early plea".[15]

In support of early resolution, in 2013, Victim Support Scotland stated:

> "A guilty plea at an early stage of the proceedings would spare much stress for victims and witnesses, since they will not be forced to attend trial to give evidence."[16]

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[12] http://www.audit-scotland.gov.uk/media/article.php?id=175
[13] Summary Justice Reform: Victims, Witnesses and Public Perceptions Evaluation, Scottish Government Social Research 2012 - http://www.scotland.gov.uk/resource/0038/00386764.pdf
[14] Summary Justice Reform: Victims, Witnesses and Public Perceptions Evaluation, Scottish Government Social Research 2012 - http://www.scotland.gov.uk/resource/0038/00386764.pdf
[15] Independent Review of Sheriff and Jury Procedure, 2010 http://www.scotland.gov.uk/Resource/Doc/314393/0099893.pdf
[16] Response from Victim Support Scotland to Reforming Scots Criminal law and Practice:

There is clearly a need to ensure that justice is done as swiftly as possible. However, the existing legal assistance arrangements are not structured in a way that supports this aim. For example, at the moment:

- Summary criminal legal aid can be easier to obtain than criminal ABWOR. This can encourage not guilty pleas in order to access funding for representation.[17]

- SLAB estimates that 6% of applicants who received summary criminal legal aid would not have been eligible for criminal ABWOR. Again, this might encourage the accused to tender a plea of not guilty in order to access funding.[18]

- Current legal aid arrangements do not provide an appropriate incentive to use the s.76 procedure which provides an opportunity for the accused to intimate that he wishes to plead guilty to the offences on the Petition.[19]

The recent reviews into criminal court practice and procedure have suggested reforms to ensure that cases are disposed of quickly whilst retaining flexibility to accommodate more complex cases. We believe that, in order for the Scottish Government's reforms to be achieved, there must be appropriate funding arrangements to ensure cases are resolved at the earliest possible stage.

EFFICIENCY IN THE CIVIL JUSTICE SYSTEM

The problem is equally acute for cases within the civil justice system. Lord Gill stated in his Scottish Civil Courts Review that:

> "Inefficiency in procedure comes at three main costs: the public cost in unnecessary and avoidable judicial and administrative procedures; the cost to the client or to the Scottish Legal Aid Board in payment for avoidable court appearances and for unnecessarily complex procedural steps; and the unquantifiable costs in stress and frustration to the litigant. All of these diminish public respect for the law and cause a loss of confidence in society's ability to resolve disputes justly."[20]

In 2013, in relation to women, children and young people experiencing domestic abuse, Scottish Women's Aid stated:

Reform of Sheriff and Jury Procedure, 15 March 2013 - http://www.scotland.gov.uk/Resource/0042/00425551.pdf

[17] Scottish Civil Justice Council and Criminal Legal Assistance Bill, Policy Memorandum (2012) http://www.scottish.parliament.uk/S4_Bills/Scottish%20Civil%20Justice%20and%20Criminal%20Legal%20Assistance%20Bill/b13s4-introd-pm.pdf

[18] Scottish Civil Justice Council and Criminal Legal Assistance Bill, Policy Memorandum (2012) http://www.scottish.parliament.uk/S4_Bills/Scottish%20Civil%20Justice%20and%20Criminal%20Legal%20Assistance%20Bill/b13s4-introd-pm.pdf

[19] Sheriff Principal Bowen's Independent Review of Sheriff and Jury Procedure provides an outline of the advantages of the S.76 procedure - http://www.scotland.gov.uk/Resource/Doc/314393/0099893.pdf

[20] Report of the Scottish Civil Courts Review, Volume 1, 2009 - http://www.scotcourts.gov.uk/docs/default-source/civil-courts-reform/report-of-the-scottish-civil-courts-review-vol-1-chapt-1---9.pdf?sfvrsn=4

> "Given that their lives are already disrupted and they have experienced considerable distress through the perpetration of abuse against them, the justice system has a legal and moral duty to ensure that the unwanted and unwelcome experience forced on them of engaging with the courts, through no fault of their own, is as short and trouble-free as possible."[21]

When cases are delayed and there are long periods of apparent inactivity, this does little to instil confidence among those involved in the system that their cases are being progressed with an appropriate sense of urgency. Applications for civil legal aid are measured in weeks if not months. This aggravates the delays in court procedure, and adds to the overall inefficiency and damaged credibility of the justice system.

It is essential, both in business management terms and in order to instil confidence and improve the experiences of those involved in the system that the courts function effectively.

UPDATING THE SYSTEM TO BE FIT FOR PURPOSE FOR THE 21ST CENTURY

Structural changes to the criminal justice system through developments in legislation and the common law have had a significant impact on the way the justice system operates. Similar structural reform of the civil justice system is underway in the form of civil courts reform and the wider Making Justice Work programme.

Legal assistance has not always kept pace with these developments.

Example 1 – Police Station Advice

In the case of *Cadder v HMA*[22] the United Kingdom Supreme Court stated that the European Convention on Human Rights (ECHR) requires that a person who has been detained by the police has the right to have access to a solicitor prior to being interviewed. Following the decision, the Criminal Procedure (Legal Assistance, Detention and Appeals) (Scotland) Act 2010 was introduced to ensure that the right to access a solicitor was enshrined in legislation.

The 2010 Act did not include appropriate funding arrangements for solicitors. Instead, the existing advice and assistance payment arrangements were adopted to fund this work. However, advice and assistance provisions were never designed for police station advice and the funding arrangements are, unsurprisingly, not fit for purpose (e.g. the provisions state that clients might have to pay a financial contribution but this is clearly impractical for police station interviews).

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[21] Written submission from the Scottish Women's Aid on Scottish Court Service recommendations for a future court structure in Scotland, 21 May 2013 http://www.scottish.parliament.uk/S4_JusticeCommittee/Inquiries/SCS8G._Scottish_Womens_Aid_-_general.pdf

[22] [2010] UKSC 43

In 2011, SLAB assured the profession that these funding arrangements were being used as interim measures, until something more appropriate was introduced.[23] However, these arrangements are still in place today, despite the publication of the Criminal Justice (Scotland) Bill, which will extend the right to legal advice to suspects further.

Example 2 – Solemn Legal Aid, Section 76 Cases

Under Section 76 of the 1995 Act, an accused may give notice in writing "that he intends to plead guilty and desires to have his case disposed of at once". If the Crown accepts the plea, no preliminary hearing or first diet will be necessary.

The Scottish Government's Evaluation Report of the High Court Reforms states that such pleas:

> "...save the greatest amount of court time and result in as little inconvenience to victims and witnesses as possible....."[24]

Section 66 of the Criminal Justice (Scotland) Bill introduces a requirement on the prosecution and the defence to communicate and lodge a written record of their state of preparation in advance of the first diet.

It is clear that the rationale for the introduction of this engagement is to encourage the early resolution of cases where possible. Solicitors will be required to attend managed meetings with prosecutors and assist in the preparation of written records.

However, at the moment, solemn legal aid fees do not support resolution at the earliest stage of the case. The fee for preparation for a hearing under section 76 of the 1995 Act (procedure where accused decides to plead guilty) is in the Criminal Legal Aid (Scotland) (Fees) Regulations 1989 as amended by the Criminal Legal Aid (Scotland) (Fees) Amendment Regulations 2013.[25] The absence of an early disposal fee at a suitable level means that there is no financial incentive to resolve matters early where appropriate. An early resolution fee is essential to support the cost effectiveness and efficiency of the wider criminal justice system.

Example 3 – Chapter 33AA Ordinary Cause Rules

From 3 June 2013 the Act of Sederunt (Sheriff Court Rules)(Miscellaneous Amendments) (No. 2) 2013 came into effect. This refers to Section 11 of the Children (Scotland) Act 1995 cases and is termed as "expeditious resolution of certain causes".

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[23] For example, see SLAB mailshot of 1 July 2011 - http://www.slab.org.uk/common/documents/profession/mailshots/2011/CriminalMailshotPoliceDuty1July2011FINAL.pdf

[24] An Evaluation of the High Court Reforms Arising from the Criminal Procedure (Amendment) (Scotland) Act 2004 - http://www.scotland.gov.uk/Publications/2007/02/19111137/0

[25] Regulations at: - http://www.legislation.gov.uk/ssi/2013/320/regulation/6/made

The introduction of Chapter 33AA introduces three new aspects to a Section 11 case proceeding to proof:

1. The pre hearing conference
2. The Joint Minute of the pre hearing conference
3. The case management hearing

The intention of the new rules is to enhance case management and limit the length and scope of the proof. This is an aim that we support, and that should result in a more efficient, less costly procedure that is better for the court system, parties, and children.

The new rules clearly introduce new elements to procedure in certain cases. These are not currently fully covered by existing civil fee regulations. As a result, the solicitors required to undertake this work cannot be confident that they will be fairly paid for work ordered by the court and done in good faith.

Conclusion

We believe that the legal assistance system has not always kept pace with changes to the justice system. However, if legal assistance is successfully developed as legislative needs evolve, court users and justice system stakeholders will obtain maximum benefit from the changes to the justice system.

FUNDING

SUSTAINABLE FUNDING FOR A VALUED SERVICE

Overall expenditure on legal assistance has been declining in real terms for years. The Government remains committed to further reductions in expenditure. In 1994/95, the total expenditure on legal assistance was £132.1 million. The Scottish Government's budget allocation for 2014-15 for legal assistance is £132.1 million. This is the same amount in cash terms but is significantly less in real terms. This is only around 57.6% of where it would have been had it reflected inflationary rates.[26]

Legal assistance provides financial assistance to enable those on low and moderate incomes to access legal services. Its continuation is vital in ensuring the right to a fair trial, enshrined in both common law and human rights legislation. If trends continue, solicitors are going to find it difficult to continue to offer these services and remain economically viable.

We believe that the Government should re-invest wider system savings into legal assistance expenditure before underfunding leads to a crisis in access to justice.

RATES

We believe that there should be increases in legal assistance rates. In 2011, the Scottish Government stated:

> "The Scottish Government has also remained committed to enabling the legal profession to be fairly remunerated for the work they do, whilst also ensuring value for money for the taxpayer."[27]

Current rates of payment to solicitors for all types of legal assistance are significantly underpaid in comparison to current private rates of charging.

Following the introduction of the 1986 Act the rates of legal assistance were set at approximately 10% less than the then charged private rate. This was on the basis that legal assistance was "guaranteed" as against the private client paying which was not always guaranteed.

Payment rates have not been revised upwards on an annual basis, in line with inflation. Some of the rates have remained static for more than 20 years. In April 1992, the summary criminal legal aid (and advice and assistance) hourly rate which applies in non-fixed fee summary cases was set at

[26] UK inflation data calculator - http://www.thisismoney.co.uk/money/bills/article-1633409/Historic-inflation-calculator-value-money-changed-1900.html
[27] The Scottish Government, A Sustainable Future for Legal Aid, 2011 - http://www.scotland.gov.uk/Resource/Doc/359686/0121521.pdf

£42.20. The rate has not been increased since.[28] This is in contrast to some other public sectors where pay has more closely been kept in line with inflation over the years. It is also in contrast to Sheriff Officer Fees which are reviewed and increased annually to ensure that there are appropriate increases in line with inflationary rates.[29] We believe that legal assistance rates should also be regularly assessed in light of inflation.

Without any significant increase in legal assistance rates since the introduction of the 1986 Act the rates of charging in private fees compared to legal assistance fees has grown hugely.

Although there have been attempts at targeted increases for solicitors in legal aid practice, these are often offset by fee reductions. Structural reforms have been designed to lead to increases in fees but it is not clear that the increases have in fact been achieved. For example, in 2010 a new fee structure for solemn fees was introduced, designed to provide a 7% increase in solicitors' fees. It has never been established that the 7% increase has, in fact, ever been achieved. Overall, the changes in the rates have not been successful in achieving a sustainable system of legal assistance provision.

If the proposals outlined in this paper are implemented there will be savings made, particularly in terms of case efficiencies and administrative savings in the SLAB budget. We believe that these savings should be re-allocated to allow solicitors to be properly funded.

UNPAID WORK - AREAS OF ROUTINE PRACTICE

There are a number of areas of routine practice for which legal assistance solicitors are not paid, including the verification of a client's eligibility and the processing of accounts online. The volume of unpaid work has increased as these procedures and processes have increased in complexity and scope over the years.

There should be consideration given to the funding of solicitors for these areas of routine practice. Alternatively, the processes should be simplified to ensure that unpaid work is kept to a minimum.

THE DECLINE IN FUNDING FOR LEGAL ASSISTANCE

The real term decline in expenditure on legal assistance has been ongoing for years. In 2011 Audit Scotland commented on criminal legal assistance expenditure:

[28] Gerry McCLay, Journal of the Law Society of Scotland, 2011 - Shall we party for our friend's 21st? - http://www.journalonline.co.uk/Referendum/1011784.aspx

[29] For recent increases see Act of Sederunt (Fees of Sheriff Officers) (Amendment) http://www.legislation.gov.uk/ssi/2013/345/contents/made; http://www.legislation.gov.uk/ssi/2012/341/contents/made and http://www.legislation.gov.uk/ssi/2011/432/note/made

> "The Scottish Legal Aid Board's main area of expenditure is legal aid fees paid to private solicitors. SLAB reduced these costs by 15 per cent in five years, from £104 million in 2005/06 to £98.5 million in 2009/10 (in real terms)."[30]

The real term decline of legal assistance can be traced further back than 2005/06. In 1994/95, the total expenditure on legal assistance was £132.1 million.[31] According to an inflation calculator which uses official UK inflation data to show how prices have changed, £132.1 million would equate to around £229.3 million today.[32] In fact, legal assistance expenditure was £150.5 million in 2013/14.[33] Given these figures we can see that legal assistance expenditure has seen a significant reduction in real terms over the 20 year period.[34]

In a report made by the SLAB to the International Legal Aid Group Conference 2011 in Helsinki:

> "Legal aid expenditure has been reducing in real terms for many years. In 2009-10 the cost of legal aid was around 10% less (£13m) than in 1998-99."[35]

SLAB's report to the Helsinki Conference suggests that in real terms, there has been a decline of almost 8% for criminal legal aid between 1998-99 and 2010-11 when expenditure was at its highest in cash terms.

The reason for the decline in real terms might be down to a number of factors-

- The general economic climate – recessions of the 1990s and 2008 onwards
- Political choices – e.g. successive Governments choosing not to invest in the legal assistance sector and introducing reforms to reduce expenditure
- The fall in crime - crime rates have been on a steady downward trajectory for years and this would also have had an impact on the overall expenditure over the years.

A consequence of the real-term decline in legal assistance expenditure is that the Scottish Government spends less on legal assistance in Scotland than anywhere else in the United Kingdom. In England and Wales, expenditure is around £39 per capita[36] and in Northern Ireland, around £55.[37]

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[30] Audit Scotland, An overview of Scotland's criminal justice system, 2011 http://www.audit-scotland.gov.uk/docs/central/2011/nr_110906_justice_overview.pdf
[31] Scottish Legal Aid Board, Annual Report 1994-95
[32] http://www.thisismoney.co.uk/money/bills/article-1633409/Historic-inflation-calculator-value-money-changed-1900.html
[33] Scottish Legal Aid Board, Annual Report 2013-14
[34] Inflationary rates are based on estimates of UK inflation data.
[35] International Legal Aid Conference Helsinki 2011: National Report from Scotland, Scottish Legal Aid Board, 2011
[36] Reform of Legal Aid in England and Wales: the Government Response, Ministry of Justice, July 2011
[37] Based on expenditure stated in Northern Ireland Legal Services Commission Annual Report 2011-12 and Northern Ireland Statistics and Research Agency mid-2011 population estimates

In Scotland, for 2010-11 when expenditure was at its highest in cash terms, expenditure was around £29 per capita.[38]

STATE FUNDING FOR LEGAL ASSISTANCE – IMPLICIT IN ENSURING ACCESS TO JUSTICE

Access to legal assistance for those with insufficient resources is recognised as being implicit in the right of access to justice by case law and the ECHR.

Article 6 of the ECHR guarantees the right to a fair trial in both civil and criminal proceedings. This has been interpreted as providing for a general requirement of some measure of "equality of arms" between the state and the individual or between the parties in the case.[39] As such, in criminal proceedings an adversarial justice system requires a degree of equality of arms with the prosecution service. In civil proceedings, the right to a fair hearing means the right to present one's case to a court under conditions that do not place one at a substantial disadvantage compared to the other party to the litigation.

The right to access legal assistance is reflected in ECHR case law:

- In Airey v Ireland[40], the European Court of Human Rights held that an indigent wife, who had been refused legal aid to bring proceedings in the High Court for an order of judicial separation, was entitled to legal aid in order for her right of access to the court to be effective.

- In Poitrimol v France[41], the Court declared: "Although not absolute the right of everyone charged with a criminal offence to be effectively defended by a lawyer, assigned officially if need be, is one of the fundamental features of a fair trial."

Where legal assistance is not funded appropriately this risks limiting the effectiveness of legal assistance. Article 6 (3) (c) requires that the assistance of the lawyer be effective. The ECHR is intended to guarantee rights that are not theoretical or illusory but are practical and effective.

- In Artico v. Italy[42], the court found that the right to free legal assistance in Article 6 (3) (c) is not satisfied only by a formal appointment of a lawyer if that assistance is not effective. The state must take "positive action" to ensure that the applicant effectively enjoys his or her right to legal assistance.

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[38] Per capita expenditure derived from General Register Office for Scotland mid-2011 population estimates
[39] Bertuzzi v. France, Judgment of February 13, 2003
[40] 32 Eur Ct HR Ser A (1979): [1979] 2 E.H.R.R. 305
[41] App No 14032/88, A/277-A, [1993] ECHR 54, (1994) 18 EHRR 130, IHRL 2956 (ECHR 1993), 23rd November 1993
[42] [1980] ECHR 4, (1981) 3 EHRR 1, IHRL 26 (ECHR 1980), 13th May 1980, European Court of Human Rights [ECtHR]

The right to legal assistance is also explicitly recognised in the EU Charter:

> "Legal aid shall be made available to those who lack sufficient resources in so far as such aid is necessary to ensure effective access to justice."[43]

CALLS TO ENSURE ADEQUATE REMUNERATION FOR LEGAL ASSISTANCE IN SCOTLAND

Over the years, while funding for legal assistance has been in decline in real terms, there have been calls to ensure that there is adequate remuneration for lawyers in legal aid practice:

In 2002 Lord Bonomy stated:

> "The defence of virtually all High Court trials is funded by criminal legal aid. The rates payable to counsel and solicitors have not increased for over ten years. Revisal of these rates is an issue that requires to be addressed at an early date."[44]

In 2009 Lord Gill stated:

> "If there is a substantial differential between legal aid rates and private market rates this may act as a disincentive for solicitors to take on legal aid cases except where they are very confident of winning the case. In our view the differential should not be allowed to become too large or there will be a risk to the supply of solicitors willing to undertake legal aid work."[45]

In 2010, Sheriff Principal Bowen stated:

> "It is important to ensure solicitors are properly remunerated for the work involved in representing a client on a sheriff and jury indictment and that working in this branch of criminal law practice is a realistic business proposition for solicitors."[46]

Similarly, in 2011, Lord Carloway highlighted the importance of legal aid funding for police station advice:

> "...the manner in which the right of access to a lawyer is made "practical and effective" will depend very much on that [legal aid] provision."[47]

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[43] EU Charter of Fundamental Rights, Article 47 - http://www.eucharter.org/home.php?page_id=56
[44] Lord Bonomy, Improving Practice - the 2002 Review of the Practices and Procedures of the High Court of Justiciary - http://www.scotland.gov.uk/Publications/2002/12/15847/14122
[45] Lord Gill, Report of the Civil Courts Review, http://www.scotcourts.gov.uk/docs/default-source/civil-courts-reform/report-of-the-scottish-civil-courts-review-vol-1-chapt-1---9.pdf?sfvrsn=4
[46] Sheriff Prinipal Bowen, Independent Review of Sheriff and Jury Procedure - http://www.scotland.gov.uk/Resource/Doc/314393/0099893.pdf
[47] The Carloway Review, 2011 - http://www.scotland.gov.uk/Resource/Doc/925/0122808.pdf

And, in 2012, the Scottish Human Rights Commission noted that:

> "While it is important to maximise the value of legal aid expenditure, in a time of austerity, it is essential to maintain a fair, high quality and equitable system which maintains public confidence and guarantees access to justice."[48]

The Society wants the profession to have more of a stake in future reform and has taken the decision to propose a system to the Scottish Government which is efficient, straightforward, and user-friendly and will save public expenditure across the justice system.

We believe that there should be increased legal assistance funding available particularly given the real term decline in expenditure on legal assistance over many years.

RE-INVESTMENT OF SAVINGS INTO LEGAL ASSISTANCE FUND

We believe that the Government should re-invest wider system savings into legal assistance expenditure.

PREVIOUS RE-INVESTMENT STRATEGY

In relation to proposals arising out of the summary justice reforms, on 28 February 2008, SLAB stated:

> "Under the revised legal aid proposals the Government has agreed to a substantial re-investment of the savings into additional fees for solicitors."[49]

In 2012, the Scottish Government's Social Research Group outlined that the summary justice reforms had made savings:

> "In 2007/8 the total expenditure on summary criminal legal assistance – that is on A&A, ABWOR and SCLA - for cases going through the Sheriff Courts was £58.2 million. In 2009/10 the equivalent figure was £47.2 million, a decrease of £11 million.
>
> As noted earlier, there is little evidence to suggest that typical per case costs for summary legal assistance have reduced since the reforms. As such, these savings appear to have arisen largely from the reduced volume of cases now reaching court.

[48] Scottish Human Rights Commission, Written Submission to the Justice Committee in relation to the Scottish Civil Justice Council and Criminal Legal Assistance Bill, September 2012

[49] Summary Criminal Legal Assistance Reform - http://www.slab.org.uk/common/documents/profession/summarycriminal/2007/summary_justice_reform_march2008_proposals.pdf

> However, some of the savings will also have occurred from the increase in the proportion of cases receiving ABWOR payments and the corresponding decrease in duty solicitor, advice and assistance, and summary criminal legal aid payments. This shift, at least in part, is attributable to the increase in earlier case disposal following the reforms."[50]

There has been no indication that the Government intends to re-invest any of the savings into additional fees for solicitors.

IMPORTANCE OF RE-INVESTMENT

Research has shown that investment in legal assistance can deliver savings to public services, to the wider economy, and add value to both clients and communities.[51]

Early and necessary interventions from advice and legal support prevent problems and expense further down the line. The funding landscape needs to be based on what works, and what works for the long term.

In an environment where reductions in public expenditure are required it is important that savings are made. However, against the backdrop of a real-term decline in legal assistance expenditure for years, it is equally important that efficiency savings are re-invested to ensure that legal assistance remains sustainable.

[50] Evaluation of the Reforms to Summary Criminal Legal Assistance and Disclosure, http://www.natcen.ac.uk/media/46403/evaluation-reforms-summary-criminallegalassistance.pdf

[51] Citizens Advice Bureau, Towards a business case for legal aid, July 2010 - www.citizensadvice.org.uk/towards_a_business_case_for_legal_aid.pdf; University of Sussex, Social Welfare Advice Services, A Review, May 2014 - http://www.lowcommission.org.uk/dyn/1405934416401/Social-Welfare-Advice-Services-Final-Report-20140603-Main-Text.pdf

THE PROPOSED SYSTEM

RETHINKING THE FRAMEWORK

The problems with the current system are clear – the framework has become overly complex and administratively burdensome, the system has not kept pace with changes to the wider justice system, and there is continuing pressure on the budget which has resulted in legal aid practice becoming an increasingly unsustainable option for solicitors.

We have begun the process of rethinking the framework. These are our initial thoughts on a new way of approaching legal assistance, with a view to ensuring that the system is efficient, fair, making the best use of resources, and sustainable in the long term. We believe that these proposals can form the basis for significant reform. Although the general structure remains familiar, the proposals suggest a more streamlined and common sense approach to providing legal assistance in the context of our justice system in the 21st century.

This is just one proposal, we hope that it will form the basis for a discussion moving forward, to encourage innovative thinking around how we ensure access to justice through publicly funded legal assistance in Scotland.

CRIMINAL LEGAL ASSISTANCE

STREAMLINED SYSTEM OF CRIMINAL LEGAL ASSISTANCE

We propose that a new system of criminal legal assistance is established. The system would not have separate categories of "criminal advice and assistance", "criminal ABWOR", "criminal summary legal aid" and "criminal solemn legal aid" and instead would introduce a single system of "criminal legal assistance".

Financial verification would be required at initial application stage only and we recommend that a fresh approach is taken in relation to eligibility assessment. We would welcome a wider discussion on this issue. We believe that such a discussion is important given the recent changes to the welfare system.[52]

In order to put in place a single streamlined system for criminal legal assistance we propose that a single legal assistance certificate is introduced, underpinned by a system of block fees. This will ensure greater consistency and understanding of criminal legal assistance across the justice system and will simplify its operation.

[52] UK Government – Simplifying the welfare system and making sure work pays - https://www.gov.uk/government/policies/simplifying-the-welfare-system-and-making-sure-work-pays

Other than for police station work and for pre-sift appeals work, a criminal legal assistance certificate would be used to provide funding cover in all criminal matters. For all matters, there would be provisions for exceptional case status where the solicitor could charge on a time and line basis where necessary.

Overall, the system would be easier to administer because, other than in a narrow range of cases, funding would be entirely block based.[53] A simplified system will not only help solicitors but may also help with the administration of legal assistance by SLAB.

POLICE STATION INTERVIEWS AND OTHER RELEVANT INTERVIEWS – PRELIMINARY BLOCK FEE

WHAT WOULD IT COVER?

Dealing first with attendance at police station interviews and also at other relevant interviews, it is suggested that a block fee should automatically apply to all matters where a solicitor is required to attend an interview in order to advise a suspect at any point during the interview process.

There should be two different block fees depending on whether the solicitor provides telephone advice or attends at the interview.

The attendance block fee would be set at a rate which would appropriately reflect the important role of the solicitor during the interview to represent, protect and advance the legal interest and rights of the suspect as well as the length of time spent at the interviews and the often antisocial hours involved in attendance.

The block fee also needs to reflect that solicitors have to ensure adequate staffing levels so that there is sufficient availability of staff cover and as well as having to ensure there are appropriate systems and infrastructure in place to travel to police stations, communicate with the SLAB helpline and submit forms online.

This change would bring the legal assistance system in line with the wider justice system reforms in relation to police station advice.

There should be a provision for exceptional case status if required.

WHO WOULD BE ELIGIBLE?

Advice for suspects at interviews should be a non-means tested benefit.

[53] At the moment there is a low level of grants for exceptional case status.

In relation to both the telephone and attendance blocks, there should be no contributions applicable, thereby removing any need for a financial eligibility check of the client at this stage of the process.

At the moment, suspects at the police station are not subject to the upper weekly income and capital thresholds. However, contributions will apply and a suspect with weekly disposable income above £245 will have the maximum contribution of £135 to pay towards the cost of this advice. This contributory system creates a practical problem. A suspect is unlikely to have documentation to hand to confirm income and capital, presenting the solicitor with substantial difficulty in satisfying him or herself as to the suspect's disposable income or disposable capital level with any accuracy.

Having no contributions applicable at this stage of the process would ensure that every member of the public who needs the services of a solicitor whilst questioned in a police station gets free automatic legal assistance, thereby increasing access to justice significantly. Such an approach would be consistent with other jurisdictions.

SUMMARY WORK

WHAT WOULD IT COVER?

The criminal legal assistance certificate would cover all types of summary case and all types of plea.

As such, instead of having a grant of "criminal advice and assistance", "criminal ABWOR" or "criminal summary legal aid", the client would simply have one grant of criminal legal assistance.

WHO WOULD BE ELIGIBLE?

The criminal legal assistance certificate should be granted by SLAB subject to a financial eligibility and interests of justice test.

The initial application for criminal legal assistance would be the only time that financial verification would be required for the grant. Following the grant of the legal assistance certificate it would be a matter for the solicitor to apply for the appropriate blocks.

During the course of the case, there would still be a duty upon the applicant to update the solicitor and the Legal Aid Board with any change in financial circumstances and any false declaration would obviously carry a criminal penalty.

Ensuring that there is generally only one point in a case where eligibility is checked will simplify the procedure for SLAB, solicitors and clients and will assist with the processing of the case through the courts system.

BLOCK FEES – PLEA OF GUILTY AND NOT GUILTY

Where the accused pleads guilty, the solicitor would receive a block fee.

Where the accused pleads not guilty, the solicitor would receive a block fee.

The block fees for both pleas should be set at the same rate and should be of a similar level to the fee that is currently in place for summary legal aid. The current arrangements have been criticised for allowing perverse incentives which "damage the efficient and effective operation of the justice system."[54] Having the block fees set at the same rate creates a unified system and ensures that the solicitor and his or her client have adequate funding arrangements in place to resolve matters early where appropriate.

This block fee would cover all work up to two diets of deferred sentences or the first 30 minutes of trial.

If there are further deferred sentences or if there is further work to be carried out then the solicitor would receive an additional block payment. In relation to additional deferred sentences, the amount of the fixed fee for the additional deferred sentences would be the same whether the client pleads guilty initially or whether he proceeds to trial.

ADDITIONAL BLOCK FEES

A system of additional block fixed fees could be used to cover the work of the solicitor at trials, bail appeals, further deferred sentences or the obtaining of expert reports.

The criminal legal assistance certificate would continue to apply to post-conviction work. Again, this would be dealt with by way of block fees. In this regard, the solicitor would receive a block fixed fee for each of the following matters:

- Parole board hearings;
- DTTO hearings;
- Proofs in mitigation;
- Breaches of court orders;
- Proofs of breaches of court orders; and
- Proceeds of crime.

SOLEMN PROCEDURE

WHAT WOULD IT COVER?

[54] Scottish Civil Justice Council and Criminal Legal Assistance Act 2013, Policy Memorandum http://www.scottish.parliament.uk/S4_Bills/Scottish%20Civil%20Justice%20and%20Criminal%20Legal%20Assistance%20Bill/b13s4-introd-pm.pdf

The criminal legal assistance certificate would cover all types of solemn case and all types of plea.

INITIAL APPEARANCE

A criminal legal assistance certificate would be granted automatically to any applicant who is prosecuted under solemn procedure.

There would be a system of block fees automatically payable to the solicitor for the first appearance.

WHO WOULD BE ELIGIBLE?

When the accused person is bailed or fully committed he or she would then become subject to an eligibility test. This would be the only time that financial verification would be required for the grant of criminal legal assistance.

During the course of the case, there would still be a duty upon the applicant to update the solicitor and SLAB with any change in financial circumstances and any false declaration would carry a criminal penalty.

Where the accused does not meet the eligibility test, the solicitor would still be entitled to the block fixed payment for any first appearance.

EARLY RESOLUTION

Following the first appearance, in order to facilitate their resolution at the earliest possible stage, fees should be structured so that the solicitor receives an early resolution fee for achieving a resolution by way of a section 76 hearing or at the first calling on indictment.

Early resolution fees mean that fewer victim and witness citations will need to be issued, facilitated by cases being dealt with at the earliest possible stage and more effective preparation resulting in fewer adjournments. It would also mean a reduction in the costs for trial preparation for cases that do not go to trial.

Early resolution fees support the cost effectiveness and efficiency of the wider criminal justice system and will reduce court delays.

CASE CONTINUED – BLOCK FEE SYSTEM

In relation to further diets and continuations, there should be a set of additional block fees for each diet, but the amount of each block these would be reducing on a sliding scale as the case progresses. This sliding scale would provide a further incentive to try and resolve cases at an early stage.

There could be a further block fee to cover work in preparing paper productions and witness statements.

CASE PROCEEDS TO TRIAL

Where a matter does proceed to trial we suggest that fees should be chargeable on an hourly basis. This is appropriate given the level of work involved, particularly towards the end of a trial where the evidence is reviewed and speeches and submissions are prepared.

POST-CONVICTION WORK

Where the solicitor is required to carry out post-conviction work, this could also be dealt with via block fees.

APPEALS – APPEAL CERTIFICATE

INITIAL APPEAL STAGE – PRE-SIFT COVER

The solicitor would apply to SLAB for cover for appeal funding, providing information about a ground of appeal. At this stage the appeal certificate will specify that the cover is for taking instructions, lodging the appeal and any other necessary work which has been outlined by the solicitor.

Initial cover would be through a system of funding which would continue until the appeal had passed, or had been refused by, the sift process.[55]

The time-limits are applied strictly by the appeal courts so urgent cover is necessary. The funding arrangements would also have to ensure due regard to economy in relation to the preparation of Appeals.

POST-SIFT COVER

Where the appeal passes the sift process, a criminal legal assistance certificate would be granted. The certificate would cover all types of appeal, regardless of the type of case or the type of court where it is to be heard.

Again, there should be a block system in relation to appeals, with additional blocks becoming applicable where appeal work is continued.

There would be a provision for exceptional case status.

[55] We would suggest a system of cover for appeals that is similar to existing arrangements for Regulation 15 (special urgency) cover.

WHO WOULD BE ELIGIBLE?

If a criminal legal assistance certificate had been granted at first instance, the financial eligibility test would not be applied in respect of the appeal, unless the accused had had a change of financial circumstances since the date of the original criminal legal assistance grant.

If a criminal legal assistance certificate had not been granted a financial eligibility test would apply.

EXCEPTIONAL CASE STATUS

Although a comprehensive system of fixed fee payments is proposed, there would need to be exceptions built in for where time and line is essential (e.g. where the case is unduly complex or lengthy). There would have to be provision for exceptional case status for all cases – interviews, summary, solemn and appeals.

The volume of cases with exceptional case status is currently monitored by SLAB and we would expect this monitoring to continue under any new arrangements.

SPECIAL URGENCY

It would be important that any new system introduced would continue to allow SLAB to make legal assistance available in situations of special urgency, currently available under Regulation 15 of the Criminal Legal Aid (Scotland) Regulations 1996.

In certain circumstances, SLAB should be able to make legal assistance available, even where it has not been fully satisfied on all the eligibility criteria to allow urgent work to be carried out.

CIVIL LEGAL ASSISTANCE

In 2011, the Scottish Government's white paper, *A Sustainable Future for Legal Aid*, set out four overarching themes for legal assistance reform:

- Focusing legal assistance on those who need it most
- Ensuring wider access to justice - the right help at the right time
- Maximising the value of legal assistance expenditure
- Making the justice system more efficient

We have kept these themes in mind when considering how the legal assistance system can be maintained in the long term, ensuring that those who are most in need are able to access the advice they need, and that legal assistance work remains a sustainable career option for solicitors across Scotland while legal assistance expenditure is kept at a level that can continue to be funded by the Scottish Government.

We suggest that one way of achieving this aim may be by revisiting the issues of eligibility and scope, and reconsidering the different means of providing advice. We suggest that it is possible to reduce the number of cases dealt with under legal assistance, while ensuring that appropriate advice remains available from a range of providers. The savings and capacity created by reducing the number of legal assistance cases must then be reinvested into the legal assistance system itself, ensuring that it becomes a robust, high quality, and sustainable system for the long term.

In addition, removing the distinction between different types of legal assistance will simplify and streamline the system, making it easier to understand, and better able to adapt to the needs of each case without causing unnecessary delay and confusion.

SINGLE CONTINUING GRANT

The distinction between advice and assistance and legal aid should be removed, and replaced with a general reference to "Legal Assistance".

SLAB would grant legal assistance after assessing an application, and applying the relevant financial, merits, and reasonableness tests. The financial tests will require modification to account for the introduction of a single eligibility threshold, rather than separate thresholds as currently exist for advice and assistance and legal aid. There would be financial checks on parties made on an ongoing basis, and the requirement to notify SLAB of any material changes in circumstance would be retained. However, the single grant of legal assistance would continue throughout the life of the case, being extended as required in response to the development of the case.

This could take the form of, at the outset, effectively a grant of the equivalent of advice and assistance but providing the ability to progress through the life of the case on a single grant of legal assistance. A cost limit could be in place for pre-court procedure, and ongoing stage reporting will ensure that it remains appropriate for legal assistance to be provided. Sanction will continue to be required for exceptional expenditure and items such as reports and instruction of counsel.

This would simplify the structure of the legal assistance system, and allow for a more natural development of the case and greater flexibility in case management by the client and his or her solicitor. Regular stage reporting would ensure that SLAB remained informed of the progress of the case. Reviews of financial, merits, and reasonableness grounds should be built in to the reporting process to ensure that SLAB remains satisfied that legal assistance remains appropriate.

FINANCIAL ELIGIBILITY

Around 75% of the Scottish population are currently financially eligible for civil legal aid, with varying levels of contribution.

Although we support the underlying notion that access to a solicitor for legal advice should be available to all who need it, given the pressure on the legal assistance budget, and the agreed need

to focus on those who need it most, we believe that the current high eligibility thresholds for legal assistance are unnecessary for meeting these goals.

THRESHOLDS

The increasing availability of alternative funding structures together with our proposal for strengthening and expanding the network of advice centres in Scotland (discussed below) will ensure that affordable and appropriate advice will remain available to all in Scotland. At the same time, the pressure on the legal assistance system will be reduced, and solicitors will have a wider range of business options, allowing them to form sustainable business plans that enable them to continue to provide legal assistance work where appropriate.

As part of the removal of the distinction between different types of legal assistance, and the introduction of a single continuing grant, there would be a single eligibility test on initial application for legal assistance. We suggest that the financial element of the eligibility test should be set between the current levels for advice and assistance and legal aid. The precise level will require further careful consideration, but the intention would be to considerably reduce the number of people eligible for legal assistance, removing those who are currently subject to high contributions. Those who have the financial resources to make high contributions should more appropriately be working with solicitors to arrange an affordable payment option as a private client. Only those most in need, who would be unable to realistically obtain legal assistance at a private rate, should qualify for publicly funded legal assistance.

SUBJECT MATTER OF DISPUTE

In addition to reducing the eligibility thresholds, we propose that the current practice of disregarding subject matter of dispute should be abolished.

Those who have good prospects of gaining access to considerable resources should reasonably be expected to be able to arrange a speculative fee agreement, access a loan for legal services, or agree an alternative payment plan to enable them to access legal services as a private client.

Individuals making a recovery of resources through legal action are currently likely to be subject to clawback through the legal assistance system, meaning that any property recovered or preserved can be used to pay the cost of legal assistance. As a result, the removal of the subject matter of dispute rule would not deprive individuals of resources they would otherwise retain. Instead, this proposal will increase the ability for solicitors and clients to make flexible and tailored arrangements that best suit the situation of the individual.

SCOPE OF CIVIL LEGAL ASSISTANCE

Civil legal assistance is currently available to some extent for all issues of Scots law. The inclusive scope of legal assistance in Scotland is admirable, and has the intention of ensuring that people have

access to support for all issues. However, it may be that the near universal scope is no longer necessary or appropriate in today's landscape of funding and advice options.

Our proposal to consider removing certain areas from the scope of legal assistance in Scotland is contingent on there being a properly funded and widely available advice network, separate to the traditional network of firms of solicitors providing pro bono and legal assistance work. We acknowledge that there are many qualified and experienced advisors working outwith the solicitor-client framework, and that, in many circumstances, these advisors will be able to provide the right support and advice to individuals without the need for a solicitor to be involved.

This does not negate the need for solicitors to be available to provide legal advice and representation when required. We propose a very limited number of areas for consideration to be removed from scope, and would not support a wide scale exclusion of legal assistance, as has been seen in England and Wales. In addition, our proposals must be taken in the context of the development and maintenance of a strong network of advice agencies, and the implementation of reforms to costs and funding and access to justice. Publicly funded legal assistance should be developed in light of the changes being made through the Taylor Review, Making Justice Work, and the Digital Justice Strategy.

We suggest that consideration should be given to the following areas being removed from the scope of civil legal assistance:

- Breach of contract
- Debt
- Employment law
- Financial only divorce
- Housing/heritable property
- Personal injury (with the exception of medical negligence)

In addition, we support the introduction of means testing for Adults with Incapacity applications that include a financial element. Other areas may also warrant consideration for removal, and some of the areas suggested here may not be deemed appropriate after further discussion. However, we feel that this is an appropriate starting point for the discussion.

Removing some areas from scope would see a reduction in the number of civil legal assistance applications and corresponding reduction in expenditure on legal assistance.

We believe that the types of issues that would be removed from legal assistance by excluding the suggested areas are such that could easily and properly be provided either by the advice sector or on a private client basis through a range of funding options including speculative fee agreements, loans for legal services, and payment plans involving deferral or instalments. These arrangements encourage more careful assessment of the merits and prospects of success of a case at an early stage, and provide greater flexibility for both clients and solicitors to agree a suitable funding model.

This allows firms to operate on a more commercial basis, and will encourage competition between firms and the growth of alternative affordable funding options.

Some of these areas, although technically in scope, are now often dealt with outwith the legal assistance system. Many solicitors will choose not to accept these cases on a legal assistance basis. In other areas, individuals may seek advice from other sources, such as Citizens Advice, in court advisors, or organisations that specialise in areas such as debt or housing. Removing these areas from scope would modernise the legal assistance system, and align it with the current best practice in the context of a modern advice sector.

ALTERNATIVE SOURCES OF ADVICE

A number of organisations currently provide excellent support and advice to individuals who are experiencing problems which may have a legal dimension. Law centres, advice shops, and specialist organisations can offer support ranging from help accessing information, to support in a court context. It is critical for a modern and effective society that the right help is available at the right time, and the effective reform of the courts and of legal assistance is dependent on the proper funding of a robust advice sector.

If, as we propose, legal assistance is removed from certain areas of law, it is critical that the organisations that currently provide high quality specialist advice in many of these areas (such as housing, employment, and debt) are able to continue to provide such advice with the confidence of secure and adequate funding.

ALTERNATIVE SOURCES OF FUNDING

These proposals would result in fewer cases being dealt with through legal assistance. These cases will still require to be supported, and many will still require solicitors. However, there are alternative ways to fund an individual accessing a solicitor without going through legal assistance.

PRIVATE CLIENT OPTIONS

As discussed above, we believe that the majority of cases taken out of the legal assistance system, whether by changes to scope or eligibility, that require a solicitor will be able to be dealt with by solicitors on a private client basis. The Taylor Review envisages an increasing range of options for managing the cost and funding of litigation, and solicitors already provide a variety of payment options including speculative fee agreements (particularly useful for areas such as personal injury and employment), unbundling of services or staged fees (allowing the solicitor and client to agree a fee for a specified item or stage of work, for example drafting a writ or progressing a case to the stage of a hearing), and instalment plans, which can help to make legal services affordable for those of moderate means while still allowing firms to manage cash flow.

In addition to agreements with the solicitor, commercially available sources of funding, such as after the event insurance and specialist legal loans, can help to protect against costs orders, and enable payment of legal fees and outlays in advance of an award being made.

LEGAL ASSISTANCE LOANS

In addition to commercially available loans, we suggest that it might be appropriate for the Scottish Government, through SLAB, to provide affordable loans for legal services to individuals who do not qualify for legal assistance. These loans could be used to cover outlays, or the cost of a solicitor. This would provide an alternative source of funding for individuals who may have difficulties obtaining an affordable commercial loan.

This would be a more efficient approach to the situation in the current system where an individual may qualify for legal assistance, but with a contribution of 100%. SLAB already arranges payment plans with individuals, and converting the system to a loan would reduce the amount of administration required by SLAB by removing the need to become involved in case management and assessing solicitors' accounts. Instead, an arrangement would be made with the individual for a specified amount, based on information provided about the case, and potentially secured if there are existing available assets.

As is currently the case with clawback, the solicitor would pay outstanding sums from any settlement or award before transferring the remainder to the client.

EXCEPTIONAL CASE STATUS

In order to have a meaningful commitment to access to justice, it is essential that a system is in place to ensure that, in exceptional cases, legal assistance can be made available by discretion. This would apply where an individual would not otherwise be able to secure funding to progress a case that is assessed as having merit and reasonable prospects of success, or where an individual's ECHR rights are at risk of being compromised due to a lack of legal representation.

This system must be designed and implemented with the intention of providing a real and meaningful mechanism for ensuring that legal assistance, as the funder of last resort, is not denied in a case where it is needed. We note that there has been some criticism of the exceptional case provisions introduced in England and Wales following the recent considerable reforms to the scope of civil legal assistance. Care must be taken to ensure that any system put in place is trusted and that members of the profession and public are confident in the fair operation of the decision making process.

CHILDREN'S LEGAL ASSISTANCE

We would propose that children's legal assistance should follow the model suggested for civil in terms of a single continuing grant, removing the distinction between advice and assistance, initial appearances and subsequent legal aid.

We do not propose amending the scope of children's legal assistance at this point, as this was recently reviewed and reformed by the Children's Hearings (Scotland) Act 2011.

GENERAL SYSTEM

LATE PAYMENT OF COMMERCIAL DEBTS

The UK is required to implement the terms of Directive 2011/7/EU on Combating Late Payment in Commercial Transactions, which provides for interest on late payments in commercial transactions. It is our understanding that legal assistance payments made to solicitors fall under the protection of this Directive, and should qualify for statutory interest in the event of late payment. However, the Late Payment of Commercial Debts (Scotland) Act 1998, which implements the Directive in Scotland, does not allow for legal assistance payments to be subject to the late payment interest. In addition to the fact that the Directive is not currently being properly implemented in Scotland, legal assistance payments to Advocates are specifically included in the legislation and it is incongruous that payments to solicitors are not similarly protected.

Any reform to the legal assistance system as a whole should ensure that the services being provided by solicitors are provided with the same protections as other commercial transactions, and on the same terms as Advocates within the legal assistance system.

As SLAB currently performs well on its targets for timeliness, this should not create a significant additional cost or burden to the legal assistance system. It would, however, correct the anomaly in the current system, provide comfort and protection to solicitors undertaking this important area of work, and would ensure that Scotland is in compliance with its obligations in the EU, protecting the UK from potential enforcement action if the issue of non-compliance was pursued.

USE OF TECHNOLOGY

LEGAL SERVICES IN A DIGITAL AGE

The ways in which legal services are provided are changing dramatically, in large part because of new technology.

SLAB's Legal Aid Online service has been used extensively since 2011 and document disclosure in criminal cases also takes place online.

The Law Society is currently providing smartcards to all solicitors, allowing them to carry out work without the need for traditional signatures and paper-based documents. The smartcard provides a secure digital signature and acts as a professional I.D. recognised across Europe. From next year it will replace the current practising certificate meaning the Society can offer a robust and reliable confirmation of credentials, helping reassure the public they are consulting a trusted legal advisor. The physical I.D. of the smartcard will be used by solicitors to access courts, prisons and police stations. Court practitioners can use the smartcard to lodge documents digitally in court. In terms of legal assistance, we hope that the smartcards will be fully integrated with the legal aid online system to assist solicitors and SLAB in processing applications and accounts.

We believe that significant advances can be made through wider deployment of technology. For the majority of cases, our court processes do not readily facilitate electronic working. The UK Supreme Court is an example of effective court technology: electronic bundles can be submitted and these bundles can be accessed on-screen in court. With the significant cost to the legal aid fund from photocopying case bundles, considering how electronic bundles could be used in trials and appeals could offer significant cost and efficiency savings. We are pleased to note the Digital Strategy for Justice in Scotland, which aims to provide "a modern, user-focussed justice system which uses digital technology to deliver simple, fast and effective justice and value for money, across the full extent of administrative, civil and criminal justice".[56] Reform of the legal assistance system should take place in the light of the wider development of the Digital Strategy and increasing role of technology in the justice system.

Outlays for sheriff officers and for shorthand writers in civil cases are also met from the legal aid fund. For the former, as the primary communications channel for an increasing number of people is online, there may be secure and reliable ways to carry out these functions online. For the latter, most courtrooms have the facilities for digital dictation and this is used when required in criminal cases; for civil cases, however, though the facilities are available, shorthand writers are instead engaged. We see no clear reason for the distinction.

[56] The Scottish Government, The Digital Strategy for Justice in Scotland, 20 August 2014

The use of videoconferencing is increasing, for instance, to clients detained in prison and for criminal appeals. There are potential savings to be realised through the wider deployment of these facilities. We believe, though, that the lack of wi-fi in the majority of courts across Scotland is a significant barrier for practitioners' adoption of new technology.

We have also been following developments in other jurisdictions, particularly in the way that legal advice is provided to the public. We have followed the development of telephone advice services in England and Wales, for instance, and the online advice platform developed by the Dutch Legal Aid Board, the Rechtwijzer. We can see the potential for online services. Some caution, however, around the 'digital divide' is needed: recent research suggests that young people may be less capable than anticipated with online legal services. Some cases will also be complex, and not particularly suited to an online process.

The Scottish Government has published *The Digital Strategy for Justice in Scotland* which sets out the Government's vision of how digital technology will transform the justice system.[57] The paper describes how the Government intends to

> "Use digital technology to transform the way in which we deliver justice services in the civil, criminal and administrative justice systems in Scotland".[58]

It sets out three main objectives. The first is to allow people and businesses to access information on a range of areas of interest, to inform their decisions and help them resolve any disputes that arise, or that is relevant to any court case. The second objective relates to fully digitised processes and systems within the justice system. The third objective is greater use of data analysis to predict future pattern.

We broadly welcome the aim outlined in the paper:

> "To use digital technology wherever possible to broaden access to justice, improve quality of service and safeguard the rights of citizens and users."[59]

We are aware of the innovative changes and opportunities that new digital solutions bring. It is important that these opportunities form an integral part to any reform to legal assistance.

[57] The Digital Strategy for Justice in Scotland, 2014 http://www.scotland.gov.uk/Resource/0045/00458026.pdf
[58] http://www.scotland.gov.uk/Publications/2014/08/5429/downloads#res458026

CONCLUSION AND CALL FOR FEEDBACK

CONCLUSION

This is a discussion paper, with the intention of starting a conversation and encouraging new ways of thinking about legal assistance reform.

It has become increasingly clear that the system we have, although admirably delivering high standards of advice to a wide section of the population, cannot continue in the long term. The system is in decline. This problem is not unique to Scotland – we only have to look to England and Wales to see the risks of failing to address the need for reform in a careful and thoughtful way. Funding pressures, reforms to the wider justice system, changes to the way that solicitors work and how people seek advice – all of these factors need to be taken into account. We believe that a robust system of publicly funded legal assistance is fundamental for maintaining meaningful access to justice for people in Scotland. Such a system needs to be simple, efficient, and work smoothly with the wider justice system. The solicitors who deliver the service need to be adequately remunerated, to ensure that they can continue to run their businesses and invest in training new members of the profession to carry on the work in the long term.

The legal aid committee of the Law Society of Scotland has suggested these proposals as a starting point, one option for a more sustainable system. We believe that a streamlined approach to criminal legal assistance will ensure greater consistency and understanding of criminal legal assistance across the justice system and will simplify its operation. In civil law, we believe that legal assistance could be much more focused on the areas where people may genuinely struggle to obtain a private solicitor to assist them with a case that has real merits, and suggest that there are ways in which the system could support and complement a robust advice sector and a competitive private market.

We encourage members and stakeholders to take our proposals as a starting point, and to engage in a wide-ranging discussion on how best to secure a sustainable system of legal assistance and access to justice for everyone in Scotland.

HOW TO RESPOND

We are seeking views on these proposals, and suggestions for other ways that legal assistance could be reformed to be sustainable for the future and fit for the 21st century. We welcome feedback from our members, SLAB, the Scottish Government, and other stakeholders. If you would like to respond, please contact us. We are happy to accept written feedback, or to arrange a meeting if appropriate.

CONTACT DETAILS

Legal Aid Committee
Atria One, 144 Morrison Street
Edinburgh
EH3 8EX

legalaid@lawscot.org.uk

Notes for Legal Aid Applicants

- Legal Aid in Jersey is granted to individuals who cannot otherwise afford to pay the full cost of legal representation, and who need that representation.

- The Legal Aid Scheme in Jersey is mostly funded by the legal profession. The lawyer appointed is permitted to charge a reasonable fee, but must act within the Legal Aid Guidelines as set down by the Law Society.

- You can view a copy of the Legal Aid Guidelines by arrangement with the Legal Aid Office. Whilst these notes are intended to be helpful, they do not cover every aspect of the Legal Aid Scheme.

Making an Application for Legal Aid

To make an application for Legal Aid you will need to complete a fairly detailed application form which will include details about your family's financial situation. These forms are available from:-

Acting Bâtonnier
40 Don Street
St Helier
Jersey
JE1 4XD

E-mail: email@legalaid.je
Telephone: 0845 800 1066
Fax: 01534 601708

If you have been charged with a criminal offence, you must supply your charge sheet.

If you have any documents or correspondence relevant to your application please supply the same.

If you need Legal Aid for a child, the parent with whom that child lives will usually be expected to make the application.

If you are given a Legal Aid certificate, you should then take this immediately to the law firm who has been appointed to act for you. That firm will then make an appointment for you to see a suitable person.

If you are in custody, the Police or Prison Service Officers will help you to submit your application.

Am I entitled to Legal Aid?

At the Legal Aid Clinic the Acting Bâtonnier will consider your application and will decide whether to give you a Legal Aid certificate.

Legal Aid is normally only given to people who live in Jersey. You may be eligible if you live elsewhere and have been charged with a criminal offence, or need legal advice in relation to a child who does live here.

Legal Aid is not available for every type of legal dispute or problem. The Acting Bâtonnier will decide whether your case, in accordance with the Legal Aid Guidelines, is one for which Legal Aid is available.

In deciding whether to grant Legal Aid, the Acting Bâtonnier will decide whether your case is at first sight strong enough to merit Legal Aid being given. This is a "merits test". Special rules apply to Legal Aid which is given in certain types of cases for example personal injury claims.

The Acting Bâtonnier will also decide whether you are financially eligible for Legal Aid. This is done on the basis of the financial information in your application form and is based on your household income and capital. This includes the income and capital of your spouse or partner. Children who need Legal Aid are assessed on their parent's financial position, and the parent will meet any fees charged.

Different guidelines will be used by the law firm that acts for you when deciding what you will be billed.

Can I choose my lawyer?

No. The lawyer appointed to help you will be the next lawyer on the Rota which is administered by the Legal Aid Office. Only in unusual circumstances will this not be the case.

If the lawyer originally appointed cannot act for you then a new lawyer may have to be appointed.

What will I have to Pay?

Your lawyer is entitled to charge you a reasonable fee (usually a percentage of the Factor A Rate fixed annually by the Court) in accordance with the Legal Aid guidelines. The guidelines include quite detailed rules about what you can be charged. These rules take into account your household income and capital as well as any settlement obtained in your case.

In relation to Family Matters: Your lawyer is able to charge you in accordance with your financial circumstances at the time that you are billed. You should specifically note that funds and/or property obtained through the division of assets in a family matter shall be taken into account when legal fees are charged, including those assets arising from the sale or transfer of the former matrimonial home.

Income	Liability for Contribution of Factor A Rate
£45,000+	100% maximum unless otherwise indicated by the Acting Bâtonnier
£35,000 -£45,000	75% maximum
£25,000 -£35,000	50% maximum
£15,000 -£25,000	25% maximum

The lawyer acting for you must provide you with a detailed engagement letter which should set out how you will be billed and provide an estimate of your legal fees. You must keep your lawyer up to date with any change in your finances, and if the fee position changes your lawyer should in turn keep you up to date.

You may be asked to make payments on account of fees provided that the amount you are asked to pay is fair. If you do not believe it is fair, you must raise this immediately with the law firm acting for you and then with the Legal Aid Office.

Complaints

If you have a complaint about your lawyer, discuss this first with the law firm that have been appointed. If this does not resolve it, raise your complaint with the Acting Bâtonnier.

If you wish to complain about a fee note issued to you, you have the right to seek adjudication on those fees from the Acting Bâtonnier. If you wish to do this, you must contact the Legal Aid office as soon as possible or you may lose the right to complain.

Can my Certificate be Taken Away?

Yes, in certain circumstances. It is impossible to list every example, but the reasons could include:

- A failure to disclose financial information or evidence in reply to a reasonable request; or a failure to provide complete or accurate information.
- Where it becomes clear that your case does not have enough merit.
- If you fail to give instructions to your lawyer or refuse to accept reasonable advice.
- Where your conduct is such that you become undeserving of assistance in the view of the Acting Bâtonnier or Bâtonnier. This could include being abusive or violent towards a lawyer or staff member.

Can I Appeal?

If you are unhappy with any decision made by the Acting Bâtonnier, or their staff, you have the right to ask for the issue to be referred to the Bâtonnier.

LEGAL AID GUIDELINES

(Approved 30 September 2005)

(Amended 7th June 2010)

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LEGAL AID

These guidelines were approved by the Jersey Law Society at a meeting of its members held on 30 September 2005, were amended by the Committee of the Law Society (the "Committee") on 7 June 2010 and are intended to provide information both to legal aid applicants and to advocates and solicitors who provide services under the Legal Aid Scheme. The aim is to achieve consistency in the way in which legal aid is granted, the manner in which the scheme is administered and the financial cost to legally aided individuals.

The guidelines are divided into three main sections:

PART I — Deals with the general availability of legal aid and the "merits" test applicable to different types of cases.

PART II — Deals with financial criteria for both the granting of legal aid and the rendering of accounts to legally aided individuals.

PART III — Deals with the general administration of the Legal Aid Scheme (otherwise known as the Tour de Rôle.)

The Committee shall have the power to make amendments to these guidelines from time to time when the Committee reasonably believes that such amendments shall not materially affect the nature of the Legal Aid Scheme or the burden placed upon advocates or solicitors providing services under the Legal Aid Scheme. Any other amendments to the guidelines may only be made with the approval of the members of the Jersey Law Society at a meeting called for that purpose.

PART I

The Availability of Legal Aid

1.1 Introduction

1.1.1 In general terms and subject as hereinafter provided, legal aid will be granted in Jersey where an individual (i.e. not a company) is in need of representation to pursue or defend a claim or proceedings before a court in Jersey.

Throughout these guidelines an individual who has applied for legal aid or intends to make an application is referred to as the "applicant". An applicant whose application has been granted is referred to as the "client". The advocate or solicitor appointed is referred to as the "advocate" or "solicitor" but these terms shall be taken to include any person to whom the advocate or solicitor has delegated work pursuant to Paragraph 3.11.2 of these guidelines.

1.1.2 An applicant will be considered to be in need of representation where their financial circumstances, taking into account the complexity of the litigation, would lead to hardship were they required to fully fund that legal representation and where their case has sufficient merit in the opinion of the Bâtonnier. What will constitute sufficient merit depends upon the type of case involved and the relevant tests are set out in these guidelines.

1.1.3 Generally, legal aid will only be granted to an applicant who is ordinarily resident in Jersey at the time the application is made. An applicant is ordinarily resident for the purposes of these guidelines if the applicant lives in Jersey habitually and lawfully, from choice and for a settled purpose, even if that is a specific and limited purpose, e.g. education.

Legal aid will be granted, subject to the appropriate financial or merits test, regardless of the applicant's place of residence if they have been charged with an imprisonable offence due to come before the Jersey courts or in cases which concern the welfare of a minor who is resident in Jersey.

1.1.4 Where an applicant is a minor or is financially dependent on their parent(s) or guardian their application for legal aid will generally be assessed on the basis of the financial position of their parent(s) or guardian (see 2.7 below).

1.2 The Bâtonnier's Discretion

(a) The Discretion to Grant Legal Aid

The Bâtonnier retains in all cases an overriding discretion to grant legal aid where the Bâtonnier believes that it is in the interests of justice to do so, regardless of the nature of the case or the personal or financial position of the applicant. Failing the exercise of that discretion, every applicant's application for legal aid shall be dealt with in accordance with the criteria set out in these guidelines.

The Bâtonnier may, irrespective of the financial circumstances of the applicant, issue a legal aid certificate to an applicant who has, for any reason, been unable to secure the services of a lawyer despite being able to pay full fees for representation. In such circumstances, the Bâtonnier will indicate on the legal aid certificate that the applicant is to be billed on a private client basis.

(b) The Discretion to Revoke or Withdraw Legal Aid Certificates

The Bâtonnier may, at his discretion, revoke a legal aid certificate in appropriate circumstances. These circumstances are not limited to, but may include:

(i) cases where an applicant has failed or neglected without good cause to provide sufficient financial information pursuant to section 2.2, or has provided inaccurate or misleading financial information;

(ii) cases which, in accordance with the criteria set out in these guidelines, lack the requisite merit;

(iii) cases where the applicant has persistently failed to give instructions to the advocate or solicitor and/or unreasonably refuses to accept the advice given to him by the advocate or solicitor. This may include an unreasonable refusal to submit to alternative dispute resolution;

(iv) cases where the applicant's past or present conduct makes him undeserving of assistance through the Legal Aid Scheme. Applicants would be likely to fall within this category if they are violent, abusive or otherwise act towards their advocate, solicitor or other adviser or staff member in a manner likely to undermine the relationship of trust and confidence between client and adviser.

1.3 The Legal Aid Scheme in Jersey

1.3.1 The Legal Aid Scheme in Jersey is administered by the Bâtonnier on behalf of the Jersey legal profession

In practice most of the Bâtonnier's day to day duties in connection with administering the Legal Aid Scheme are delegated to an Acting Bâtonnier or occasionally to another senior advocate or solicitor at the Bâtonnier's discretion. Reference is made throughout these guidelines to the Bâtonnier, but his day-to-day functions will normally be undertaken by the Acting Bâtonnier, from whose decisions an appeal lies to the Bâtonnier. The Acting Bâtonnier operates from an office referred to in these guidelines as the "legal aid office".

1.3.2 The Legal Aid Scheme has grown out of the obligations placed upon the profession through the oath administered to advocates and solicitors when they are formally admitted to practice in Jersey. The relevant part of that oath reads:

"Vous....assisterez aux Veuves, Pauvres, Orphelins et Personnes indéfendues."

The Legal Aid Scheme now extends well beyond the provision of legal assistance to widows, poor people, orphans and the undefended.

All Jersey advocates and solicitors of less than 15 years' call participate in the island's Legal Aid Scheme and are required to carry out legal aid work as directed by the Bâtonnier. The Legal Aid Scheme is administered in accordance with the "Tour de Rôle" which is effectively a list of participating lawyers to whom legal aid work is allocated in rotation.

Unless a costs order is made by a court in favour of the lawyer concerned or the legally aided individual, the solicitor or advocate (or the firm that they are employed by, hereinafter referred to as their "Firm") receives no payment for their services other than the fees, if any, which they are permitted to charge to the client. The advocate or solicitor or their Firm may be able to recover out of pocket disbursements from the Legal Aid Vote administered by the Judicial Greffier (see Paragraph 1.4.2.3 below).

This part of these guidelines is divided into (a) claims and proceedings in respect of which legal aid will generally be granted (Section 1.4), and (b) claims and proceedings where legal aid will not generally be granted (Section 1.5).

These guidelines also deal with the merits test that any particular legal aid applicant must satisfy in order to obtain legal aid in any particular case.

1.4 Claims and Proceedings in respect of which Legal Aid will generally be granted

The claims and proceedings in respect of which legal aid will generally be granted subject to the merits tests and financial tests set out in these guidelines, can generally be broken down into criminal investigations and proceedings, civil claims and proceedings, and family claims and proceedings. Each category is dealt with separately below.

1.4.1 Criminal Investigations and Proceedings

1.4.1.1 Criminal Investigations Prior to Charge

Generally speaking, legal aid will not be granted to an applicant prior to charge where that person is under investigation by the Police or Customs authorities but has yet to be charged with an offence.

A legal aid certificate will be granted to an applicant to provide for the attendance of an advocate during an interview at a police station in Jersey where the alleged crime under investigation is one of murder, manslaughter (or other offences where the death of an individual is the subject matter of a potential charge), rape or other serious sexual offences including sexual offences against children. Where issued, such a certificate extends to the attendance of the appointed advocate at any identity parade.

The Bâtonnier may, at his discretion, grant certificates for interview in other circumstances where, for example, the applicant subject to interview is regarded as particularly vulnerable.

1.4.1.2 Identity Parades

A legal aid certificate will not be issued to an applicant purely for an advocate to provide assistance during an identity parade. Where the applicant is under investigation in connection with an alleged offence of

murder, manslaughter (or other offences where the death of an individual is the subject matter of a potential charge), rape or other serious sexual offence including sexual offences against children the applicant may apply for representation under 1.4.1.1 above.

1.4.1.3 **Access to Telephone Advice**

In cases where an applicant has yet to be charged, but is to be interviewed in connection with an offence, they will have access to confidential telephone advice from an advocate or solicitor or other person approved by their employer lawyer or firm as competent to provide such advice. During normal business hours (9.00 a.m. to 5.00 p.m.) an applicant who is detained for interview in connection with an offence may contact the legal aid office in order to obtain legal advice. The Police and/or Customs authorities will do everything necessary to facilitate this advice being given both prior to and during the interview, whenever requested. Should it appear to the Bâtonnier at any time that the applicant requires representation at the police station in accordance with the principles set out above a legal aid certificate will be granted.

Between the hours of 5.00 p.m. and 9.00 a.m. (and during week-ends and bank holidays or at any other times when the legal aid office is closed) a detained applicant may have access to legal advice through the "Police Headquarters and Customs Duty Advocate Scheme", which involves the implementation of a rota on which certain lawyers participate voluntarily. Generally, the detained applicant will only be entitled to receive advice over the telephone but should circumstances arise where the detained applicant is being questioned in connection with an alleged offence of murder, manslaughter (or another offence concerning the death of an individual), rape or other serious sexual offence including sexual offences against children, then the Duty Advocate would generally be expected to attend at the police station to assist the applicant during interview. The

Duty Advocate in these circumstances will not be required to assist with an identity parade. Advice given in accordance with this paragraph must be given by an advocate or solicitor.

1.4.1.4 **Prison Board Hearings**

As the liberty of the applicant is at stake, legal aid will be granted to assist an applicant facing a hearing before the Prison Board.

1.4.1.5 **Criminal Proceedings following charge**

Where an accused applicant has been charged with an offence, legal aid will be available unless the charge falls within one of the circumstances listed under Paragraph 1.5 of these guidelines. In deciding whether it is appropriate to grant legal aid the Bâtonnier may have regard to the general sentencing policy of both the Magistrate's Court and the Royal Court of Jersey. Provided the charge is one for which legal aid would normally be granted, the Bâtonnier will issue a certificate for representation at first instance without consideration of the merits of the case.

The method and timing of an application for legal aid will depend upon the circumstances of the individual applicant as set out below.

1.4.1.6 **Individuals detained in custody after charge**

(a) Where an applicant has been charged and has remained in the custody of the police pending an appearance before the Magistrate's Court, that applicant may ask to be represented at court by the Duty Advocate. A Duty Advocate is available to attend at the Magistrate's Court every week day (two attend on Mondays) and no fees are charged to the applicant irrespective of their financial circumstances for representation on this occasion.

(b) Where an accused applicant has appeared in court following charge, and has been remanded in custody pending a further

appearance the prison is responsible for notifying the legal aid office of the applicant's application for legal aid and faxing through the relevant forms to the legal aid office. At that time, provided this is a case where legal aid should be granted, the Bâtonnier will issue a certificate.

1.4.1.7 **Individuals not detained in custody following charge**

Where an applicant has been charged by a centenier but has not been detained in custody or has been released on bail at the first Court appearance then the applicant must obtain a legal aid application form, complete it and deliver it to the legal aid office.

The applicant must deliver his application for legal aid within two working days of being charged, failing which the Bâtonnier may decline to grant legal aid.

1.4.1.8 **Where the Applicant already has an Advocate appointed to them**

If the applicant is already being represented by an advocate in connection with other charges, then the applicant will be appointed to the same advocate that is already acting for him in connection with that other matter whether those charges are related in any way or not. Generally a further legal aid certificate will not be granted in respect of any such charges unless, at the discretion of the Bâtonnier, the new charge amounts to a matter which is, (a) substantially different and, (b) will result in appreciable further work to the individual lawyer concerned. In other words, should the new charges lead to or be likely to lead to separate court appearances or, for example, an assize trial that would not have otherwise taken place then a further legal aid certificate would generally be granted.

1.4.1.9 **Breach (and similar) Proceedings and the extent of Legal Aid Certificates issued in connection with criminal investigations and proceedings (other than appeals against conviction and/or sentence)**

Where an applicant does not currently have a lawyer acting for him but the charge relates to a previous offence (for example a breach of probation or community service) then that matter shall be referred to the same advocate (or an advocate of the same firm) under a new legal aid certificate provided that no intervening conflict of interest has arisen.

1.4.1.10 A legal aid certificate issued in respect of an interview and/or other assistance prior to charge shall cover that particular item of work but shall also include any subsequent police interviews or identity parades and dealing with any subsequent charge brought against the applicant from the time of charge until the final resolution of the case.

1.4.1.11 Where a legal aid certificate has been issued it shall continue in effect until such time as the applicant has been tried before the Magistrate's Court or Royal Court and has either been acquitted or found guilty and, where found guilty, until such time as sentencing has been concluded in full. In the case of offences involving the possession or supply of controlled substances (or similar offences) the legal aid certificate issued shall cover any confiscation proceedings brought by the Attorney General.

1.4.1.12 Where a legal aid certificate has been issued in relation to a case which comes before the Royal Court of Jersey, and where an applicant is convicted, or pleads guilty, and is sentenced by the court then the certificate issued to the relevant lawyer shall include the preparation and submission of an opinion as to the merits of an appeal against conviction (if relevant) and sentence in accordance with the procedure set out below in relation to criminal appeals.

1.4.1.13 **Criminal Appeals**

Legal aid will be available in criminal cases to pursue an appeal against conviction and/or sentence where in the opinion of the Bâtonnier the appeal has sufficient merit. Sufficient merit will be present where the Bâtonnier considers there to be reasonably arguable grounds of appeal. In reaching his conclusion the Bâtonnier will take into account the opinion of those who act or have acted for the applicant as to whether there is sufficient merit and the Bâtonnier may take a view based upon the information available in connection with the appeal.

1.4.1.14 An applicant may apply for a certificate for an appeal against a conviction and/or sentence from the Magistrate's Court. Where such a certificate is issued, the certificate will cover the giving of an initial opinion as to the merits of an appeal and the prosecution of the appeal itself. If the advocate concludes that there are no reasonably arguable grounds of appeal, the applicant may apply for a certificate for a second opinion to be granted at the Bâtonnier's discretion.

1.4.1.15 The administration of legal aid in connection with criminal appeals from the Royal Court shall be carried out in accordance with the Practice Direction issued by the Jersey Court of Appeal on 19 September 2003 as set out below and/or any other Practice Directions that may be issued by the courts from time to time (the "Practice Direction").

1.4.1.16 Within a period of 28 days after conviction/sentence an appellant is required to give notice of an appeal/application for leave to appeal. This notice is given by prescribed form 1 and will have annexed to it (save with exceptions provided for under the Practice Direction) the written opinion of the advocate who represented the appellant at first instance.

1.4.1.17 The procedure to be followed in relation to an application for further legal aid in connection with an appeal will vary dependent upon whether, (a) a

lawyer was retained by the applicant at first instance or not (see 1.4.1.18 below); (b) whether that lawyer has produced an opinion favourable to the applicant or not (see 1.4.1.19 and 1.4.1.20 below); and (c) whether the lawyer who appeared at first instance is able to produce an opinion or prosecute an appeal on behalf of an applicant bearing in mind the nature of the grounds of appeal (see 1.4.1.21).

1.4.1.18 **Cases where a lawyer has not been retained at first instance**

In such situations a potential appellant may apply for legal aid in connection with the provision of an opinion as to the merits of appeal and, if appropriate, an appeal itself.

In such situations the appellant is responsible for (i) submitting an application for legal aid in the usual manner and (ii) ensuring that this is done forthwith following conviction and/or sentence to enable the legal aid office and the lawyers concerned to observe the Practice Direction.

Upon receipt of any such application for legal aid the Bâtonnier shall appoint an advocate to produce a written opinion as to the merits of an appeal within the time limits set out in the Practice Direction.

Should the said advocate decide that there is sufficient merit to such an appeal then the legal aid certificate already issued to that lawyer in respect of providing an opinion shall include the pursuance of the appeal on behalf of the applicant. No further legal aid certificate shall be granted unless it is apparent that considerable further work has been undertaken by the advocate appointed in forming an opinion as to the merits of the appeal.

Where the appointed advocate has issued an opinion to the effect that an appeal is without sufficient merit then the applicant may apply for a second opinion.

1.4.1.19 **Cases where an applicant has been represented at first instance and the Advocate has provided a favourable opinion on the merits of an appeal**

In such cases it is the responsibility of the advocate to ensure that:

(a) The appropriate appeal notice has been lodged.

(b) A copy of their opinion has been annexed to the said appeal notice (unless they have instructions to the contrary in accordance with the Practice Direction).

(c) An application for legal aid has been made in connection with the prosecution of the appeal.

(d) The legal aid office is provided with a copy of the advocate's opinion in connection with the merits of appeal (the applicant is deemed in applying for legal aid to consent to the sending of that opinion).

(e) The department of the Judicial Greffier is aware that an application has been made for legal aid and the name of the individual appointed to represent the applicant.

(f) Generally, all time limits under the Practice Direction are met or appropriate extensions applied for.

(g) Upon receipt of an application for legal aid in such circumstances the legal aid office shall issue a further legal aid certificate for the prosecution of the appeal. The legal aid certificate shall be granted in the name of the same advocate (or an advocate of the same firm) who appeared at first instance, saving always that the legal aid office shall first ensure that:

(i) the applicant has no objection to the same lawyer appearing in relation to the appeal who appeared at first instance. If the applicant does so object, and in the view of the Bâtonnier there are reasonable grounds for such an objection, then new legal representation shall be granted; and

(ii) where the applicant is of the view that his grounds for appeal should include reference to the manner in which the advocate appearing at first instance prosecuted the case, but reference to this is not made within the opinion given by the said advocate, and it appears to the Bâtonnier that there are reasonable grounds to suspect that this may generate a ground or further ground of appeal then new legal representation shall be granted.

1.4.1.20 **Where an Advocate has represented the applicant at first instance but has provided an opinion as to the merits of an appeal which is unfavourable to the applicant**

In such circumstances, it is the obligation of the advocate to advise the applicant that they may apply to the legal aid office for a second opinion.

Should the applicant wish further representation, it is the obligation of the applicant to do the following:

(a) Apply for a further certificate for a second opinion in relation to the merits of appeal.

(b) Disclose to the legal aid office a copy of the opinion that has thus far been provided by the advocate retained at first instance.

(c) Inform the legal aid office whether the applicant wishes to bring an appeal based on the conduct or performance of the advocate at first instance.

Upon receipt of such an application the Bâtonnier may form the view that the appeal proposed by the applicant is without sufficient merit. In this situation, the application for further legal aid will be refused. If it appears to the Bâtonnier that there may be prima facie grounds for appeal then the legal aid office shall appoint a second advocate to produce a further opinion as to whether the appeal has sufficient merit. It shall be incumbent on the advocate concerned to apply for any extensions of time that may be necessary pursuant to the Practice Direction.

Should the second advocate conclude that there are no reasonable merits to the appeal then further legal aid will be refused subject to the discretion of the Bâtonnier.

Should the second advocate conclude that there are arguable grounds for appeal then they shall undertake that appeal and no new legal aid certificate shall be granted unless it is apparent that considerable further work has been undertaken by the second advocate so appointed in forming an opinion as to the merits of the appeal or applying for any necessary extension of time. In such a situation a further legal aid credit may be granted at the discretion of the Bâtonnier.

1.4.1.21 **Cases where the Advocate who appeared at first instance feels unable to provide an opinion as to the merits of an appeal**

This may occur in one of the following situations:

(a) The subject matter of the appeal arises out of the conduct or performance of the advocate at first instance; or

(b) some other matter has arisen which makes it impossible or impracticable for the same advocate to continue to represent the applicant.

Where this situation arises it shall be the responsibility of the advocate (having informed the client) to inform the Bâtonnier of the position. It shall also be the responsibility of the Bâtonnier to contact the applicant to ascertain whether they wish further consideration to be given to the merits of an appeal. If this is the case the Bâtonnier shall appoint a second advocate to advise in relation to the merits of an appeal and a new legal aid certificate will be issued.

Should the second advocate conclude that there are arguable grounds of appeal then they shall pursue the said appeal in the usual manner save that no further legal aid certificate shall be granted unless it is apparent that considerable further work has been undertaken by the second advocate so appointed in forming an opinion as to the merits of the appeal. In such a situation a further legal aid credit may be granted at the discretion of the Bâtonnier.

Should the second advocate advise there are no arguable grounds for appeal then the applicant may apply for a second opinion.

1.4.2 **Civil Claims and/or Proceedings (excluding Family Matters) and the Merits Test in Civil Cases (excluding Family Matters)**

1.4.2.1 This category of legal aid case includes personal injury claims, contractual disputes including debt related issues, and tortious claims including claims in nuisance. It may include an application to issue or defend injunctive proceedings.

1.4.2.2 A legal aid certificate will be granted by the Bâtonnier in connection with a civil claim and/or proceedings when the Bâtonnier is satisfied that the claim or proceedings, based upon the information available at the time that

the application is made, warrant, at least, the obtaining of a reasoned opinion.

1.4.2.2.1 In all non-urgent civil cases the advocate or solicitor must then within two months, or such alternative period as may be specified by the Bâtonnier, write to the legal aid office providing a reasoned opinion on the merits of the case and identifying which of six categories the case falls into. That opinion must be signed personally by the advocate or solicitor appointed or an advocate or solicitor dealing with the matter on their behalf. The Bâtonnier will then reconsider the applicant's legal aid status depending upon the opinion received and will write to the applicant and the advocate or solicitor accordingly. The categories are as follows:

Category	Merit	Legal Aid Status
1.	Prospects of success are 80% or higher and the likely damages exceed the likely cost or the costs are otherwise expected to be fully recoverable.	Legal aid will remain in place.
2.	Prospects of success are between 60% and 80% and the likely damages exceed the likely costs by a ratio of at least 2:1.	Legal aid will remain in place.
3.	Prospects of success are between 50% and 60% and the likely damages exceed the likely costs by a ratio of at least 4:1.	Legal aid will remain in place.
4.	Prospects of success and/or the ratio of damages to costs remains unclear because further	Legal aid will remain in place and the Bâtonnier will set a date for review.

Category	Merit	Legal Aid Status
	investigations are required.	
5.	The prospects of success are borderline.	Legal aid is likely to be withdrawn unless there is an issue of public importance involved or the outcome is sufficiently important to the client for the Bâtonnier to decide, in his discretion, that legal aid should continue. If legal aid is withdrawn, the client may apply for a certificate for a second opinion.
6.	Prospects are poor.	Legal aid will be withdrawn. The client may apply for a certificate for a second opinion.

1.4.2.2.2 Where a certificate for a second opinion has been granted pursuant to 1.4.2.2.1 above and it is the opinion of the advocate or solicitor that the case does have sufficient merit (in accordance with 1.4.2.2.1 above), then that advocate or solicitor shall assume conduct of the case and pursue it to its conclusion. No new legal aid certificate will be issued.

1.4.2.2.3 Should the opinion of the advocate or solicitor alter during the course of continuing to act for the applicant from that given pursuant to 1.4.2.2.1 or 1.4.2.2.2 above, then they shall write to the Bâtonnier giving sufficient details and requesting the withdrawal of legal aid if appropriate.

1.4.2.2.4 In urgent cases, i.e. those where time will not permit the procedure detailed above, it is the responsibility of the advocate or solicitor to take such steps as may be necessary to protect the applicant's position. Where

the case is ongoing, the advocate or solicitor must then follow the procedure set out in 1.4.2.2.1 above. Where the advocate or solicitor is concerned that the case has insufficient merit to justify whatever urgent action may be required, then it is their responsibility to apply immediately for the legal certificate to be withdrawn.

1.4.2.3 In relation to personal injury claims (or other civil or criminal matters where legitimate expenses arise), the advocate or solicitor appointed may apply for funding for any out-of-pocket disbursements from the Legal Aid Vote administered by the Judicial Greffier. This provides purely for the advocate's/solicitor's out-of-pocket expenses to be met with prior approval, and does not provide a source of remuneration for advocates/solicitors.

1.4.2.4 In relation to any civil claim for which legal aid is granted, a certificate shall be issued in respect of each claim which could legitimately result in legal proceedings being brought, or defended, before a court in Jersey.

1.4.2.5 Where two applicants apply simultaneously for legal aid in relation to the same claim or set of proceedings, and their interests are identical and no conflict exists or is likely to arise between them, the Bâtonnier will issue one certificate to one advocate or solicitor to act for both applicants.

1.4.2.6 Generally, the legal aid certificate granted will cover all work undertaken by the advocate or solicitor up to the conclusion of litigation at first instance, unless the contrary is clearly stated on the certificate itself.

1.4.2.7 The Bâtonnier may, in certain circumstances, issue a certificate purely for an opinion in relation to the merits of a particular matter or action.

1.4.2.8 **Civil Appeals**

(a) An applicant may, as soon as is practicable following the issuing of the judgment which is to be the subject of the appeal, apply for a

further legal aid certificate to advise upon the merits of a civil appeal.

(b) The Bâtonnier will issue a legal aid certificate for an advocate or solicitor to advise upon the merits of an appeal if, in the opinion of the Bâtonnier based upon the information available to him, the appeal appears at least to justify a reasoned opinion. If the Bâtonnier is of the view that the appeal is wholly without merit, a legal aid certificate will not be issued.

(c) Where a legal aid certificate has been issued it shall be the responsibility of the advocate or solicitor to ensure that the applicant's position is protected in that all time limits for the filing of documentation and/or notices are met.

(d) Where a certificate has been issued for an advocate or solicitor to provide an opinion as to the merits of the appeal, the advocate or solicitor will provide a copy of his opinion to the legal aid office. In making an application for legal aid in connection with an appeal, the applicant is taken to have given their consent to the disclosure of the opinion.

(e) Where the advocate or solicitor is of the view that an appeal would have reasonable prospects of success, that advocate or solicitor shall proceed with the appeal to its conclusion. No further legal aid certificate shall be granted unless the Bâtonnier, at his discretion, decides that it would be appropriate to grant a further legal aid certificate due to the amount of work that has been undertaken by the advocate or solicitor appointed.

(f) Should the advocate or solicitor be of the view that there are no reasonable prospects of success then the legal aid applicant may contact the legal aid office and apply for a second opinion. If it

appears to the Bâtonnier that there is merit in obtaining a second opinion then a certificate will be issued for this purpose.

(g) If the second advocate or solicitor appointed is of the view that there are sufficient grounds of appeal then that advocate or solicitor shall proceed with the appeal to its conclusion. No further legal aid certificate shall be granted unless the Bâtonnier, in his discretion, decides that it would be appropriate to grant a further legal aid certificate due to the amount of work that has been undertaken by the lawyer appointed.

(h) If the second advocate or solicitor appointed is of the view that there are no sustainable grounds of appeal, subject to the overriding discretion of the Bâtonnier, further legal aid shall not be granted.

1.4.2.9 **The Employment (Jersey) Law 2003**

Legal aid certificates shall not be issued in connection with any claim or proceeding arising out of the Employment (Jersey) Law 2003, (including claims for unfair dismissal), save where legal aid would have in any event been granted in accordance with the general principles set out above i.e. in relation to claims or proceedings that can be brought before the Petty Debts Court or Royal Court.

1.4.3 **Family Claims and Proceedings (including issues relating to children)**

Cases where legal aid will generally be granted can be separated into four main areas:

(a) Injunctions and ex parte orders;

(b) Proceedings involving illegitimate children;

(c) Matrimonial claims and proceedings; and

(d) Public proceedings in relation to children.

A certificate may be issued either to bring or to defend such proceedings.

An applicant may also apply for a legal aid certificate to pursue or defend an appeal in relation to any of the above.

1.4.3.1 **Merits Test in Family Claims and Proceedings**

The Bâtonnier will not normally consider the merits of a case when granting a legal aid certificate in relation to a matter falling within (a) to (d) above save that the Bâtonnier shall satisfy himself that:

(i) Whatever the nature of the case, the applicant could not reasonably deal with the matter personally or with the assistance of another agency. This will generally apply to circumstances where the applicant could bring or defend a claim personally in the Petty Debts Court, or could use the mediation service. When in doubt, the Bâtonnier will issue a legal aid certificate.

(ii) in relation to injunctions, there appear to be some prima facie grounds for the obtaining of an injunction and some threat of harm to person or property, however slight, if legal aid is not issued. In this regard, the Bâtonnier shall be entitled to consider the steps that the applicant has taken to promote their own safety and the role that may be played or has been played by other agencies such as the police.

(iii) In relation to appeal cases, particularly involving purely financial matters, that there is a reasonable prospect of the appeal succeeding. The Bâtonnier may decide to issue a preliminary certificate for an opinion as to the merits of an appeal. Where such a certificate is issued it will generally be issued to the advocate or solicitor previously appointed, or to an advocate or solicitor of the same firm.

1.4.3.2 **Injunctions and Ex Parte Orders**

Legal aid certificates for injunctive relief or an ex parte Prohibited Steps Order may be applied for in the usual manner by an applicant obtaining, completing and delivering an application form in the usual way. However, in respect of urgent matters the legal aid office will make arrangements to see applicants as soon as possible. Where an applicant is already legally aided in relation to another matter, then the advocate or solicitor already acting for that individual may contact the legal aid office to inform them that in their opinion injunctive or other emergency relief is required, at which point a legal aid certificate shall be issued.

The categories of injunctive and emergency relief where legal aid will be granted are as follows:

(i) Non-molestation injunctions.

(ii) Ouster injunctions.

(iii) Injunctions seeking the return of a child.

(iv) Mareva injunctions.

(v) an ex-parte application for a Prohibited Steps Order.

Where an applicant requires on any one occasion more than one of the above types of injunction or order, and these may be brought through one

set of proceedings, then only one legal aid certificate shall be issued to cover all work. The legal aid certificate shall specify what type or types of injunction the certificate has been issued to cover.

Ordinarily, proceedings brought in connection with breaches of an injunction will be covered under the original certificate and no further legal aid credit will be issued unless the Bâtonnier, in his discretion, feels that this would be appropriate.

1.4.3.3 **Proceedings concerning illegitimate children**

(a) Only the parent (or reputed parent) of an illegitimate child may apply for legal aid in connection with that child.

(b) The parent (or reputed parent) may apply for a legal aid certificate or certificates in respect of the following issues:

(i) an application for parental responsibility;

(ii) maintenance;

(iii) arrears of maintenance where it is apparent to the Bâtonnier that the applicant cannot reasonably be expected to pursue an action personally through the Petty Debts Court;

(iv) any matter in respect of which an order could be made pursuant to article 10 of the Children (Jersey) Law 2002 namely residence, contact, a Prohibited Steps Order or a Specific Issue Order;

(v) illegitimacy proceedings (or illegitimacy and legitimacy proceedings).

One certificate may be issued to deal with two or more of the above matters at the discretion of the Bâtonnier.

1.4.3.4 **Matrimonial Claims and Proceedings**

An applicant who is or has been a party to a marriage may apply for a legal aid certificate or certificates in respect of the following:

(a) **Separation and Ancillaries**

A certificate issued under this heading will cover all ancillary matters including those relating to children of the marriage or the family and financial matters including the division of property and assets.

(b) **Divorce and Ancillaries**

A certificate issued under this heading will include the issuing of or responding to divorce proceedings and the resolution of all outstanding ancillary matters.

(c) Any matter in respect of which an order could be made pursuant to article 10 of the Children (Jersey) Law 2002 relating to a child of the marriage or the family, if not covered by a certificate issued under (a) or (b) above.

(d) Arrears of maintenance where it is apparent to the Bâtonnier that the applicant cannot reasonably be expected to pursue an action personally through the Petty Debts Court.

(e) Review of arrangements already in place following an agreement or court order arising out of separation or divorce.

One certificate may be issued to deal with two or more of the above matters at the discretion of the Bâtonnier.

1.4.3.5 **Public Proceedings**

Any applicant who faces proceedings brought by a Minister of the States of Jersey in connection with a child who has been in that applicant's care, will be granted legal aid subject only to the financial tests set out in these guidelines. In issuing a certificate, the Bâtonnier will give no consideration to the potential merits of the case.

1.4.3.6 **Multiple Legal Aid Certificates**

Where an applicant has been granted a legal aid certificate or certificates in connection with family claims and proceedings and a further application is made and granted at a later date in connection with a matter not covered under the original legal aid certificate(s), a new legal aid certificate shall be issued to the same advocate or solicitor previously appointed or to an advocate or solicitor of the same firm.

1.4.3.7 **Legal fees in Family Matters**

When granting a certificate to an applicant in relation to family matters, the Bâtonnier shall specifically draw to the attention of the applicant the parts of these guidelines which relate to the liability of the applicant to pay legal fees in accordance with their financial circumstances at the time that they come to be billed.

In particular, the Bâtonnier shall warn the applicant that funds and/or property obtained through the division of assets in a family matter shall be taken into account when legal fees are charged, including those assets arising from the sale or transfer of the former matrimonial home.

1.4.3.8 **The Children (Jersey) Law 2002**

Legal aid will not be granted in connection with any claim or application arising out of the provisions of the Children (Jersey) Law 2002, save in the circumstances set out above.

Subject always to the discretion of the Bâtonnier, a legal aid certificate will not be issued to any person in connection with parental responsibility for a child or any matter under article 10 of the Children (Jersey) Law 2002, unless the applicant is the parent (adoptive or natural) of the child in question or is believed to be a parent at the time that the application is made.

1.5 **Claims and Proceedings where Legal Aid will not generally be granted**

1.5.1 Legal aid will not be granted to pursue or defend an allegation of defamation (this includes claims for both slander and libel).

1.5.2 Applicants who apply for legal aid for assistance with purely debt related issues are likely to be referred in the first instance to the Citizens' Advice Bureau who will provide practical guidance. Where proceedings have been commenced against the applicant and it appears to the Bâtonnier in his discretion that these proceedings are complex or that for some other reason it would be in the interests of justice for legal representation to be granted, then legal aid may be granted. Legal aid will be granted in connection with a désastre application only if the applicant is intending to seek a declaration of désastre in connection with the applicant's personal assets and only if the applicant has already discussed the matter with the Viscount's Department and/or the Citizens' Advice Bureau.

1.5.3 Legal aid will not generally be granted to assist an applicant whose assets have been declared en désastre in an application to raise that declaration.

1.5.4 Legal aid will not be granted in connection with matters concerning curatorships.

1.5.5 Legal aid will not be granted in connection with the creation or administration of a tutelle.

1.5.6 Legal aid will not be granted in respect of criminal offences which in the view of the Bâtonnier, having had regard to the applicant's circumstances, do not carry with them a substantial risk of either a custodial sentence or a risk of loss of livelihood, or which are unlikely to carry a fine exceeding £500.

1.5.7 Notwithstanding the above statement of principle, in relation to offences under the Road Traffic (Jersey) Law 1956 as amended (the "Road Traffic Law"):

(a) Legal aid will not be granted in cases where the applicant has been charged with speeding offences.

(b) Legal aid will not be granted in cases where the applicant has been charged in connection with the non-payment of parking fines.

(c) Legal aid will not be granted in cases where the applicant has been charged solely with an offence or offences of drink driving pursuant to articles 27(1), 28(1) and 30(7) of the Road Traffic Law unless one or more of the following applies:

(i) the applicant is a minor;

(ii) the applicant has a history of prior convictions for similar offences which place him at peril of a custodial sentence;

(iii) the applicant had such a level of alcohol in his blood or breath that the Magistrate is likely to consider a custodial sentence;

(iv) the applicant intends to defend the charge on grounds which in the opinion of the Bâtonnier are reasonably arguable; or

(v) where "special reasons" may exist.

1.5.8 The Bâtonnier may decline to grant legal aid in a civil action where it is apparent that the legal issues are simple and the applicant could reasonably be expected to pursue the matter personally through the Petty Debts Court (i.e. in respect of sums below £10,000).

1.5.9 Legal aid will not be granted in respect of claims concerning immovable property where the matter in issue is small in comparison to the value of the property.

1.5.10 In the case of an appeal or proposed appeal, legal aid will not be granted if in the opinion of the Bâtonnier there is insufficient merit in the appeal.

1.5.11 Companies are not eligible for legal aid in any circumstances. For the avoidance of doubt, individuals may apply for legal aid in connection with defending or bringing claims against a company. Partnerships will only be eligible for legal aid where none of the partners has sufficient assets to meet legal fees in accordance with the normal criteria. Disputes between partners will qualify for legal aid in the usual manner. Sole owners of businesses which are not limited liability companies will qualify for legal aid in the usual manner.

1.5.12 Legal aid will not be granted for tribunal hearings or other disputes or matters which do not constitute matters which could be litigated before the Royal Court, Magistrate's Court or Petty Debts Court in Jersey. For the avoidance of doubt this includes, but is not limited to, proceedings before: (a) employment tribunals, (b) social security tribunals, (c) mediation carried out within the Petty Debts Court or, (d) disputes with the Minister for Housing concerning housing qualifications.

1.5.13 Legal aid is not available to assist with claims before the Motor Insurers Bureau, Criminal Injuries Compensation Board or appeals from adjudications of the Criminal Injuries Compensation Board.

1.5.14 Legal aid is not available to assist individuals in connection with non-contentious matters such as adoptions, deed poll applications, wills or probate (except in connection with litigious claims that would otherwise qualify for legal aid).

PART II

Financial Criteria

2.1 **The General Position**

The Legal Aid Scheme in Jersey is, in general terms, funded directly by the legal profession. Unless the advocate or solicitor appointed is awarded costs by a court in connection with litigation, or as the result of a settlement, the only fees that they recover will be the fees that they can reasonably charge to the client.

In assessing their liability for legal fees there is a two stage test for any legal aid applicant. First, the Bâtonnier shall apply certain criteria in deciding whether to issue a legal aid certificate (see Paragraph 2.3). Second, when a certificate has been issued, the applicant may be charged a reasonable fee by the advocate or solicitor or their Firm. That fee is to be calculated by reference to further criteria (see Paragraphs 2.9 to 2.12).

2.2 **Requests for Information**

Applicants must disclose promptly when asked such information as may reasonably be required by (a) the Bâtonnier (or the lawyer to whom he has delegated the matter) in considering their application in accordance with these criteria or, (b) the advocate or solicitor or their Firm in considering what fees should be charged to the client in accordance with these criteria. Where applicants fail or neglect without good cause to provide such information, or are found not to have made full and frank disclosure of their financial position, then the Bâtonnier shall be at liberty to decline to grant legal aid or to revoke any legal aid certificate that has been issued.

Where an applicant has provided financial information to the advocate or solicitor or their Firm, it is the responsibility of the applicant to inform their advocate or solicitor (or the person dealing with their case) of any material change whatsoever to their financial position. If it is found that an applicant has failed to keep their advocate or solicitor fully and promptly informed then:

(a) they will be charged for work done in accordance with these guidelines but the guidelines will be applied to the applicant on the basis of what the advocate or solicitor believes their true financial position to be. The applicant may of course refer the fee for adjudication pursuant to Paragraph 2.13;

(b) the advocate or solicitor may in any event apply for the legal aid certificate to be revoked, which application shall be considered at the discretion of the Bâtonnier.

(c) if it is established to the satisfaction of the Bâtonnier that an applicant misled the Bâtonnier to the extent that legal aid was granted when it should not have been, the Bâtonnier may direct that the applicant should pay the full legal fees of the advocate or solicitor or their Firm on a private client basis and at the hourly rates normally applied by that Firm to private clients.

2.3 **Eligibility for Legal Aid**

2.3.1 The following guidelines set out the financial criteria that shall be applied by the Bâtonnier when considering whether to grant applications for legal aid. The Bâtonnier shall have regard to:

(a) the applicant's household disposable capital (as defined below). If this exceeds £15,000 then the application for legal aid will generally be refused. The applicant may make a further application when their Household Disposable capital falls below

that level. If the applicant's household disposable capital is less than £15,000 then the Bâtonnier shall go on to consider;

(b) the applicant's gross household income (as defined below). If the applicant's gross household income exceeds £45,000 per annum then the application for legal aid will ordinarily be refused.

If the applicant's gross household income is below £45,000 per annum then legal aid will be granted (provided that, in the opinion of the Bâtonnier and as set out in these guidelines, the case has sufficient merit) unless the proceedings or matter which are the subject of the application are of a nature where the gross household income of the applicant, even though this is lower than £45,000 per annum, is in the opinion of the Bâtonnier of a level where the applicant should be expected to fund legal representation privately.

2.3.2 Where an applicant would not normally qualify for legal aid after the application of the financial criteria set out above, but the Bâtonnier in his discretion is of the view that the applicant's financial circumstances as a whole merit the granting of legal aid, or where their case is of such complexity or is likely to prove so expensive in terms of legal fees that it would be in the public interest to grant legal aid, then legal aid shall be granted. Unless the Bâtonnier directs otherwise the applicant will be liable to be charged 100% of the reasonable fees of the advocate or solicitor appointed or their Firm but in accordance with the hourly rates set out in Paragraph 2.11.2 and subject to an appropriate deduction being made, if any, pursuant to Paragraph 2.12.4.

2.3.3 The Bâtonnier may also issue a certificate to an applicant who is able to afford private representation but has not been able to appoint an advocate or solicitor for whatever reason (see Paragraph 1.2 (a) above). In such cases, the Bâtonnier will indicate on the legal aid certificate that the applicant is to be charged full fees at the Firm's usual private client rates

and without deduction. Such fees will not be subject to the adjudication of the Bâtonnier.

2.3.4 Legal aid will not be granted where the applicant has an alternative source of funding available to them; for example, where they are entitled to assistance from a union, employer or through an insurance policy that covers legal fees.

2.3.5 When deciding whether to grant legal aid the Bâtonnier shall not have direct regard to the expenditure or liabilities of the applicant save that in exceptional cases the level of necessary household expenditure or debts may be a reason for the Bâtonnier to exercise his discretion and to grant legal aid in a case where it would not normally be granted.

2.3.6 Where an applicant is a minor or is financially dependent on their parent(s) or guardian their application may be assessed on the basis of the financial circumstances of their parent(s) or guardian in accordance with 2.7 below.

2.4 Calculating Gross Household Income and Household Disposable Capital

If the applicant is married or living with someone (their "partner") as a couple, their partner's income and capital assets will be included within the applicant's household income and capital unless:

(a) they live apart because the relationship is over; or

(b) there is a conflict of interest between them in the matter which is the subject of the application for legal aid (e.g. separation or divorce)

2.5 Household Disposable Capital

2.5.1 For the purposes of these guidelines "Disposable Capital" includes:

(a) the combined capital of the applicant and their partner;

(b) all land and buildings other than the client's home, including timeshares;

(c) the market value of the client's home in excess of £100,000, after allowing for any outstanding mortgage and irrespective of whether the home is in sole or joint names;

(In considering their potential liability for legal fees where legal aid has been granted, however, the applicant must have regard to Paragraph 2.12.2.2 below);

Where there is a dispute as to the value of land or buildings, including the Former Matrimonial Home, the applicants may obtain a valuation at their own expense.

The market value of the home will not be adjusted simply due to the existence of family claims or proceedings (see Clause 2.5.2 (f)).

(d) money in the bank, building society, Post Office, Premium Bonds, National Savings Certificates etc;

(e) investments, stocks and shares;

(f) the money value of valuable items including boats, antiques (but not usually wedding or engagement rings or cars);

(g) money owing to the applicant;

(h) money due from an estate or trust fund;

(i) money that can be borrowed against business assets; and

(j) assets held within discretionary trusts where there is a reasonable expectation that in practice those assets will be made available to or be at the disposal of the applicant.

2.5.2 "Disposable Capital" does not include:

(a) loans from the parish or any body of the States of Jersey to assist the applicant in times of need;

(b) lump sums paid in respect of invalidity benefit;

(c) home contents (unless the contents include any single or collection of items valued at more than £10,000);

(d) clothing;

(e) tools and equipment of trade;

(f) savings, items or property the ownership of which is the specific subject of the legal aid matter. This would apply for example where a specific asset is in dispute as part of matrimonial proceedings, but not where the parties' separation or divorce is generally being resolved;

(g) savings which have been put aside to meet a specific liability which has been incurred prior to the application for legal aid being made. To fall within this category the liability must have been reasonably incurred and must be legally enforceable against the applicant. This would include, for example, sums of money set aside to meet income tax liabilities, social security liabilities etc; and

(h) lump sums which have been paid to a client by way of an interim or final payment in connection with a personal injury claim insofar as the said lump sums have been paid to compensate the applicant

for their special damages, i.e. loss of earnings, out of pocket expenses etc. Where these circumstances arise, and if the applicant is otherwise eligible for legal aid, the applicant shall be charged in accordance with their income and the level of that income shall reflect sums recovered in respect of lost earnings.

2.6 **Gross Household Income**

For the purposes of these guidelines, Gross Household income means the annual gross income received from any source by the applicant and/or their partner, less the following deductions:

(a) where the applicant lives with another adult, the sum of £2,100 may be deducted from their combined annual gross income;

(b) where the applicant's household contains a child or children, the sum of £2,900 per child may be deducted from their combined annual gross income. This allowance will not be applied to the income of a parent where their child or children do not reside with them for at least 50% of the time.

2.7 **Applicants who are Minors**

Where an applicant is a minor (i.e. under the age of 18), the following shall apply:

(a) if the minor applicant is financially independent and does not live with a parent or guardian, they shall be assessed on the basis of their own financial position. The legal aid certificate and the engagement letter issued pursuant to Clause 2.9 (the "Engagement Letter") shall be issued to the minor applicant who will be personally responsible for any fees charged;

(b) if minor applicants are married then they shall be assessed on the basis of their own financial position. The legal aid certificate and

the Engagement Letter shall be issued to the minor applicant who will be personally responsible for any fees charged;

(c) if the minor applicant is a child under the care of the Minister for Education, Sport and Culture then neither the child nor the Minister may be charged in connection with their representation. The legal aid certificate and the Engagement Letter will be issued to the minor applicant;

(d) if minor applicants are in custody at the time of their legal aid application, then they may make an application for legal aid on their own behalf and shall be assessed on the basis of their own financial position. The legal aid certificate and the Engagement Letter shall be issued to the minor applicant. If minor applicants are subsequently released from custody and returned to the care of their parent(s), and their advocate is of the view that it would be equitable for the parent(s) to contribute to the legal fees being incurred, the advocate or solicitor may write to the Bâtonnier. The Bâtonnier may then, at the Bâtonnier's discretion, decide to revoke the legal aid certificate and, if appropriate, issue a new legal aid certificate in the name of the parent(s).

(e) otherwise, where the minor applicant is financially dependent on their parent or parents, then the following shall apply:

(i) the minor's application and any consequent liability to pay legal fees shall be assessed on the basis of the parent's (being the parent with whom they live) or parents' or guardian's Gross Household income and Disposable Capital;

(ii) the legal aid certificate and the Engagement Letter shall be issued to the parent or parents or guardian who shall be

responsible for any fees charged. Those fees shall be charged on the basis of the parent's or parents' or guardian's Gross Household Income and Disposable Capital in accordance with these guidelines.

PROVIDED ALWAYS that if it is for any reason in the opinion of the Bâtonnier inappropriate or impractical for the parent or parents or guardian to be asked to co-operate with the minor's application, or to accept responsibility for legal fees then the Bâtonnier may issue a legal aid certificate accordingly in the name of the minor applicant and may direct that the minor is either not charged or is charged on the basis of the minor's own financial position.

2.8 **What Fee Contribution will the Client be asked to make?**

When the Bâtonnier has granted legal aid this does not mean that the client will not be charged for the legal representation that they receive.

The following criteria (Paragraphs 2.9 to 2.12) set out the obligations of the advocate or solicitor or their Firm in terms of (a) their responsibility when engaging a client to provide them with certain information; (b) their responsibility to keep proper records and maintain fixed hourly rates and (c) the rendering of fee notes in accordance with certain criteria.

2.9 **The Engagement Letter**

When an advocate or solicitor has been appointed to act for any legally aided client, that client shall forthwith be provided with a letter of engagement, in accordance with Rule 4 of the Jersey Law Society Code of Conduct which letter of engagement shall set out the following information:

(a) Who will be carrying out the work in relation to that matter and what their legal qualifications are.

(b) Where the work is not predominantly to be carried out by an advocate or solicitor, who will be responsible for supervising the work of the fee earner and what their legal qualifications are.

(c) To whom the client should address any complaints.

(d) Confirmation of the charge out rates to be utilised by any fee earner (or other staff) who may carry out work in relation to that matter (in accordance with the criteria set out in 2.11.2 and 2.11.3 of these guidelines).

(e) An estimate of the fees likely to be charged to the client by reference to the criteria set out in these guidelines. Where that estimate is stated to be subject to review, then the onus is upon the advocate, solicitor or their Firm to review the estimate on a regular basis so as to ensure that the client is at all times in a position to understand their likely exposure to legal fees.

(f) A clear statement advising the client that in the event of a dispute between them and the advocate or solicitor or their Firm concerning fees charged or to be charged, that client has the right to refer the matter to the Bâtonnier for adjudication. The letter must set out the relevant time limits and procedure for submitting the matter to adjudication.

(g) A clear statement explaining what will happen should the clients receive a settlement at the conclusion of their case to the extent that they fall outside the normal thresholds for granting legal aid.

(h) A clear statement reminding the client of their responsibilities under Clause 2.2 of these guidelines.

The advocate or solicitor or their Firm must issue an amendment to the Engagement Letter should any of the relevant circumstances change. For

example, where it has become apparent that the client's gross household capital or income have changed or are likely to change and thus that they will be billed differently.

2.10 **Payments on Account**

2.10.1 The advocate or solicitor appointed shall be permitted to ask the client to provide monthly payments on account of fees, or to provide limited funds at the outset of the matter provided that in doing so (a) they do not fall foul of the criteria set out in these guidelines and (b) the effect of that request is not to make it impossible or impracticable for the client to pursue the matter.

2.10.2 In the event of a dispute as to whether a payment on account is reasonable the advocate or solicitor is not entitled to suspend work on the client's case. Either the client or the advocate or solicitor shall have the right to refer the matter to the Bâtonnier who shall decide whether the request for funds on account was reasonable. Any such referral must generally be made within 14 days of the request for funds on account, failing which the client will be expected to provide the funds requested.

2.10.3 The advocate or solicitor shall not be entitled to require a payment to be made prior to any work being undertaken or where the making of such a payment is a condition of the arranging of a first appointment between the client and the advocate or solicitor appointed or an appropriately qualified person in their place.

2.11 **Time Records and Charge-Out Rates**

2.11.1 All advocates or solicitors shall keep proper records of the time that they have spent in dealing with a particular applicant's legal aid matter. The client may request a breakdown of that time spent at any point during the course of their case, or when they have received a bill. Only time that has

been reasonably and properly incurred to an client's case should be charged to the client.

2.11.2 The hourly charge out rates of all staff when engaged on legal aid matters shall not exceed the hourly rates allowed for the purpose of the taxation of legal costs in Royal Court cases from time to time. Those hourly rates shall not be increased in accordance with any factor uplift as would be permitted under taxation in certain circumstances.

2.11.3 Where clients are successful in pursuing their case so that an order for costs or an agreed settlement for the payment of their legal fees is obtained from the opposing or other third party, the advocate or solicitor appointed or their Firm may charge their full reasonable fees applying their usual private client rate provided always that should these fees for any reason prove to be irrecoverable and become the responsibility of the client, the provisions set out in these guidelines (including 2.11.2 above) shall apply and any account issued shall be reduced accordingly.

2.12 Charging Fees

2.12.1 The following criteria shall apply when calculating the maximum amounts that may be billed by the advocate or solicitor or their Firm. Where more than one legal aid certificate has been issued concurrently to a law firm in connection with a particular client the following limits shall apply to that client rather than to each individual legal aid certificate.

The advocate or solicitor will first have regard to the Household Disposable Capital of the client. The client's relevant Household Disposable Capital for these purposes will be their disposable capital (calculated in accordance with Paragraphs 2.5 and 2.12.2) at the time that the account comes to be issued, taking into account any capital sums or property that may have been recovered as the result of the legal representation received under the legal aid certificate.

The advocate or solicitor must then have regard to the client's Gross Household Income (in accordance with Paragraph 2.12.3) The client's relevant Gross Household Income for these purposes will be their Gross Household Income at the time that the account comes to be issued.

2.12.2 **Household Disposable Capital**

2.12.2.1 Where the client at the conclusion of their case obtains a settlement which leads to them having, at the time of billing, Household Disposable Capital in excess of £10,000, the advocate or solicitor appointed or their Firm shall be entitled to charge 100% of their reasonable fees but at the rate set out in Paragraph 2.11.2 of these guidelines and subject to Paragraph 2.12.4 (if appropriate) until the £10,000 threshold has been reached.

2.12.2.1 Where it becomes apparent during the course of acting for clients, or should become so apparent, that the assets likely to be recovered for clients are such that, at the conclusion of the case, they are likely to be charged differently to the manner proposed in the Engagement Letter then the advocate or solicitor appointed shall forthwith inform the clients of that fact and, if appropriate, advise them that they may wish to instruct the lawyer of their choice privately as an alternative to continuing with representation under the Legal Aid Scheme.

2.12.2.2 Notwithstanding the definition of Disposable Capital set out in Paragraph 2.5, where sums recovered are or represent the client's share of or interest in the former matrimonial home, such sums shall not be taken to fall within the client's Disposable Capital unless they exceed a net figure of £25,000. Any amount recovered in excess of that figure will be Disposable Capital.

2.12.2.3 Where the client has not recovered funds in connection with the former matrimonial home but has instead accumulated further equity in the home (or preserved the level of equity through a Mesher type order) then that

equity shall be included when calculating their Disposable Capital in accordance with Paragraph 2.5.1 (c) and the client shall be charged accordingly save that where this would result in financial hardship to the client the fee shall be reduced to a level that the client can reasonably afford taking into account their Gross Household Income and any unusual but necessary and reasonably incurred expenses and liabilities.

2.12.2.4 Where clients, at the time of billing, have Household Disposable Capital below £10,000, they shall be assessed for legal fees on the basis of their Gross Household Income alone and their Household Disposable Capital shall be disregarded.

2.12.3 **Gross Household Income**

2.12.3.1 Where the Bâtonnier has exercised his discretion to grant legal aid in a case where the client's Gross Household Income exceeds £45,000 per annum, then the advocate or solicitor appointed or their Firm may charge the client as provided for in Paragraph 2.3.2 or 2.3.3 as the case may be.

2.12.3.2 If, at any time, the advocate or solicitor appointed becomes aware that the financial circumstances of clients have changed in a material way, which is likely to affect their responsibility to pay legal fees then it shall be the responsibility of the advocate or solicitor appointed to advise the client accordingly and to alter the terms of their Engagement Letter.

Percentage of Fees to be Charged

Subject to Paragraph 2.12.4:

2.12.3.3 Where the Gross Household income of a client falls between £35,000 and £45,000 per annum, the client shall be liable to be charged a maximum of 75% of the advocate, solicitor or Firm's reasonable fees and applying the hourly rates set out in Paragraph 2.11.2.

2.12.3.4 Where the Gross Household income of an client is between £25,000 and £35,000 per annum the client shall be liable to be charged a maximum of 50% of the advocate, solicitor or Firm's reasonable fees and applying the hourly rates set out in Paragraph 2.11.2.

2.12.3.5 Where the Gross Household income of a client falls between £15,000 and £25,000 per annum the client shall be liable to be charged a maximum of 25% of the advocate, solicitor or Firm's reasonable fees and applying the hourly rates set out in Paragraph 2.11.2.

2.12.3.6 Where the Gross Household income of a client is below £15,000 per annum, the client must not be charged.

For ease of reference these provisions are also set out below in tabular form. The percentages stated are subject to any deduction that may be merited in accordance with Paragraph 2.12.4

Gross Household Income Table

Income	Liability for Reasonable Fees
£45,000 +	100% unless otherwise indicated by the Bâtonnier
£35,000 - £45,000	75%
£25,000 - £35,000	50%
£15,000 - £25,000	25%

The bands set out in Paragraph 2.12.3 indicate the maximum amount that can be charged to a client falling within the income limits set out. In assessing what amount should then actually be charged to an individual legal aid client the advocate or solicitor or their Firm shall ALSO have regard not only to the level of income but also to any unusually high but readonable and necessary expenses and liabilities of the client and shall reduce the level of any bills issued accordingly . They shall also have regard to whether a bill calculated in accordance with these guidelines could still cause financial hardship to the client (see 2.12.4 below).

2.12.4 **The Relevance of Household Expenses, Liabilities and Financial Hardship**

2.12.4.1 **Household Expenses**

Where the household expenses of the client are unusually high due to their individual circumstances but the advocate, solicitor or their Firm is satisfied that they are being reasonably and necessarily incurred where, for example, the client has a number of children and is meeting high child

care and/or accommodation costs, the advocate or solicitor or their Firm shall take this into account when rendering their bill and shall not issue an account which they know, or should know, would cause financial hardship to the client or their family. Expenses likely to fall into this category would include unusually high but reasonable expenses incurred in relation to:

(a) food;

(b) housing (where the standard of housing is necessary to accommodate the family);

(c) basic clothing costs;

(d) very high child maintenance payments paid pursuant to a court order;

(e) necessary utilities;

(f) tax; and

(g) childcare costs.

Reasonable expenses for these purposes would not include expenditure on items such as:

(h) school fees;

(i) telephone bills (landline or mobile);

(j) "Sky" or similar television subscriptions;

(k) savings plans;

(l) entertainment costs;

(m) holiday expenses; and

(n) non-essential clothing or catalogue expenses.

Where potential financial hardship can be avoided by the advocate, solicitor or their Firm putting forward appropriate suggestions for the payment of accounts by instalment they shall be permitted to do so provided always that no interest shall be charged to the client in respect of such instalment payments if they are paid promptly, and ordinarily no client shall be asked to pay instalments over a period longer than three years.

2.12.4.2 **Liabilities**

In rendering accounts the advocate, solicitor or their Firm shall have regard to the level of indebtedness of the client where those debts have been incurred prior to the granting of legal aid or where those debts have been reasonably incurred following the issuing of a legal aid certificate. The advocate, solicitor or their Firm shall not issue an account which they know, or should know, would cause financial hardship to the client or their family taking into account such liabilities. Again, any such hardship may be avoided by an offer on the part of the lawyer or the Firm to accept payment by instalment.

2.12.4.3 **Financial Hardship**

If, not withstanding the application of these guidelines, the quantum of an account is such that it could cause financial hardship to a client then if it is appropriate in all circumstances of the case, the account or the method of payment shall be reduced to an affordable level. Again, hardship may be avoided in some circumstances by an offer on the part of the lawyer or the Firm to accept payment by instalment.

2.13 **Fee Disputes**

2.13.1 In the event of a dispute between a client and the advocate or solicitor or their Firm in relation to the fees charged in connection with a legally aided matter then the advocate, solicitor or their Firm must remind the client of their right to refer the issue of the fees charged to the Bâtonnier for adjudication. The Bâtonnier will not normally entertain a fee adjudication in respect of any account which has not been queried by the client within six months of being issued.

2.13.2 At the request of either the advocate, solicitor or their Firm, or the client, the Bâtonnier shall carry out an adjudication as to whether the fees charged were properly charged by reference to the criteria set out in these guidelines. The relevant procedure and a time scale for the adjudication is set out in Clause 3.17 of these guidelines.

2.13.3 Where an adjudication carried out by the Acting Bâtonnier has not been appealed to the Bâtonnier within 28 days of being issued, it shall be considered final.

2.13.4 In carrying out his adjudication the Bâtonnier shall have the right to request and the client and/or advocate or solicitor shall provide such information and/or documentation as the Bâtonnier may reasonably need in order to carry out the adjudication.

2.13.5 An adjudication of the Bâtonnier will be binding on the advocate or solicitor or their Firm as well as on the client.

2.14 **Where Interim or Final Fees remain unpaid**

(a) The advocate, solicitor or their Firm shall remind the client of their right to submit the bill to adjudication and of the relevant time limits.

(b) The advocate, solicitor or their Firm may apply for the revocation of the client's legal aid certificate, which application will be considered at the Bâtonnier's discretion.

(c) Until such time as the matter reaches a conclusion or the legal aid certificate is discharged or revoked, the advocate or solicitor appointed shall continue to act for the client.

(d) If the advocate, solicitor or their Firm wishes to commence proceedings against the client for unpaid fees, they must first apply for the discharge of the client's legal aid certificate and no proceedings may be issued until that application has been granted.

PART III

The Administration of the Legal Aid Scheme

3.1 The Role of the Bâtonnier

3.1.1 The origins of the Legal Aid Scheme and the role of the Bâtonnier are described in paragraph 1.3 above.

3.1.2 The Bâtonnier may, and in recent times does, delegate his powers and responsibilities in relation to the administration of the Legal Aid Scheme to an Acting Bâtonnier and where such powers and responsibilities have been delegated, any decision of the Acting Bâtonnier can be appealed to the Bâtonnier. Appeals to the Bâtonnier must be delivered in writing to his office within 28 days after the person appealing has received notice of the decision or other action which he wishes to challenge, failing which that decision or other action shall become final and unappealable. References to the Bâtonnier throughout these guidelines should be taken to include the Acting Bâtonnier unless otherwise stated or the context requires otherwise.

3.1.3 The Bâtonnier is responsible for supervising the Acting Bâtonnier and for ultimately ensuring the proper running of the legal aid system.

3.1.4 The Bâtonnier is elected by the profession every three years. Changes to the holder of the office are duly notified to the general public by publication in the Gazette.

3.2 The Role of the Acting Bâtonnier

3.2.1 The role of the Acting Bâtonnier is to undertake such duties as may be delegated to the Acting Bâtonnier from time to time by the Bâtonnier.

3.2.2 In recognition of the burden of carrying out these duties, it is the current practice for the firm of the Acting Bâtonnier to have four members (including the Acting Bâtonnier) removed from the Legal Aid Rota for the period during which the office of Acting Bâtonnier is held.

3.2.3 The Acting Bâtonnier is changed approximately every two years. Due to the complexities and practicalities of administering the legal aid system, the office tends to circulate among appropriate lawyers within the larger firms in Jersey.

3.2.4 The present duties of the Acting Bâtonnier are as follows:

(a) To operate the legal aid office and to receive and respond to correspondence and telephone calls from those requiring assistance.

(b) To deal with the day to day administration of the Legal Aid Scheme and to respond to queries raised in relation to the operation of the Legal Aid Scheme.

(c) To operate the Legal Aid Scheme in accordance with these guidelines and to maintain proper records in relation to applicants, clients and lawyers.

(d) To consider applications for legal aid and, applying the principles set out in these guidelines, to grant or refuse those applications.

(e) To advise all applicants, clients or lawyers where appropriate, of their right to appeal to the Bâtonnier should they not accept any decision of the Acting Bâtonnier.

(f) To consider and accept or reject as appropriate requests for the revocation of legal aid certificates.

(g) To generally ensure the smooth operation of the legal aid system and to liaise where necessary between applicants, clients and lawyers, the prison authorities, the police and/or customs authorities and the courts of Jersey.

(h) To provide telephone advice whenever requested to detainees at Police Headquarters or Customs during ordinary office hours.

(i) To maintain such rotas in connection with the administration of legal aid as may from time to time be necessary, and to circulate those rotas to all individuals and bodies concerned.

(j) To deal with fee disputes in the manner set out in these guidelines and, where necessary, to adjudicate on those fee disputes.

3.2.5 **Delegation of Matters by the Acting Bâtonnier**

(a) The Acting Bâtonnier may delegate the adjudication of fee disputes pursuant to these guidelines to an appropriate advocate or solicitor who has been qualified for not less than five years. To this end, the Acting Bâtonnier will maintain a list of those advocates or solicitors who are prepared to assist with this task and adjudications shall be referred to them by rotation allowing for any conflicts of interest that may exist. Any member of the profession who has been qualified for an appropriate length of time may ask to be included on this list. Where an adjudication is referred to an advocate or solicitor, they shall receive a legal aid credit for carrying out the work which shall be done by them personally.

(b) The Acting Bâtonnier may, where strictly necessary, delegate the receipt of telephone calls pursuant to Clause 1.4.1.3 of these guidelines to an appropriate advocate or solicitor to a firm other than the Acting Bâtonnier's firm. To this end, the Acting Bâtonnier will maintain a list of those advocates or solicitors who

are prepared to assist with this task and telephone calls shall be referred to them by rotation allowing for any conflicts of interest that may exist. Any member of the profession may ask to be included in the list. The advocate or solicitor will receive one legal aid credit for six clients referred to them for telephone advice which advice shall be provided by them personally.

3.3 **Public Notices**

Where a matter needs to be brought to the attention of the general public, for example where the legal aid office is due to be closed for any particular reason or where it is moving to the care of a new Acting Bâtonnier, due notification will be given to the public through the Jersey Gazette. It is also customary for the Acting Bâtonnier to notify the courts and all others who may be involved in any way in the administration of legal aid.

3.4 **Legal Aid Applications**

Save as provided elsewhere in these guidelines, applicants for legal aid must obtain, complete and deliver to the legal aid office a legal aid application form which the Acting Bâtonnier will consider as soon as possible after receipt. The Acting Bâtonnier will then write immediately to the applicant telling the applicant whether the Acting Bâtonnier has granted or rejected the application and informing the applicant of matters arising from that grant or rejection. Legal aid application forms may be obtained from the legal aid office, the Magistrate's Court, Petty Debts Court, States of Jersey Police Headquarters, Customs and Excise, the Citizens' Advice Bureau and HM Prison at La Moye. ,

3.5 The Operation of the Tour de Rôle

3.5.1 When issuing a legal aid certificate to an applicant, the Bâtonnier will make that certificate out to the advocate or solicitor next in line to receive a certificate unless:

(a) another advocate or solicitor is already acting for the applicant in relation to another matter and it would be appropriate to ask them to deal with both. Where that advocate or solicitor works within a law firm the Bâtonnier may, where it is expedient to do so, make the certificate out in the name of an alternative advocate or solicitor working for the same firm;

(b) where, in the opinion of the Bâtonnier, it is necessary in the interests of justice to appoint an advocate or solicitor to the case where they are not the next in line (for example, this could arise where an advocate rather than a solicitor needs to be appointed to deal with the criminal case);

(c) where a genuine conflict of interest or a significant risk of such a conflict arises (such as would cause the advocate or solicitor appointed a difficulty pursuant to the Jersey Law Society Code of Conduct) the Bâtonnier shall appoint an alternative lawyer to handle the case;

(d) where an advocate or solicitor has been acting privately for a client and it becomes clear that the client's financial position means that an application for legal aid should be made, the advocate or solicitor should advise the client accordingly. Where a certificate is granted to an applicant in these circumstances, it shall be issued, in the absence of any intervening conflict, to the advocate or solicitor who has been dealing with the applicant previously or to another advocate or solicitor within their firm.

3.5.2 The Bâtonnier shall ensure that the Legal Aid Scheme, and the records relating thereto, are properly maintained to ensure:

(a) fairness both to applicants and lawyers in the allocation of legal certificates;

(b) that an accurate record is kept of those advocates and solicitors who are at any time suspended from the Legal Aid Scheme;

(c) to keep accurate records of those advocates and solicitors who are absent from the office for a particular period of time, but have not been suspended from the Legal Aid Scheme; and

(d) that consistency is maintained in the operation of the Legal Aid Scheme and in its general administration.

3.6 Suspension from the Legal Aid Scheme

3.6.1 An advocate or solicitor will be suspended from the Legal Aid Scheme in any of the following circumstances:

(a) where they are absent from Jersey for over four weeks;

(b) where they are not holding themselves out as a Jersey advocate or solicitor or as practising as a Jersey advocate or solicitor in the island;

(c) where they are absent from the office due to parental or sick leave for a period in excess of three calendar months; or

(d) where they are absent from the office, but within the island, for over four weeks, whether on holiday, business or otherwise.

3.6.2 Where a lawyer is suspended from the Legal Aid Scheme they shall not receive legal aid certificates during the period for which they are suspended, but the period during which they are suspended will not count

towards the fifteen years that the particular advocate or solicitor spends within the Legal Aid Scheme. Following the expiry of that period of suspension, the advocate or solicitor will return to the Legal Aid Scheme and their time on the scheme will then run again.

3.6.3 It is the responsibility of the advocate or solicitor to whom 3.6.1 applies to inform the Acting Bâtonnier that they should be suspended from the Legal Aid Scheme, and of the date of their return to practice.

3.7 Short absences of Advocates and Solicitors from the Legal Aid Scheme

3.7.1 Where an advocate or solicitor is:

(a) on holiday from the office for over three days but not more than four weeks; or

(b) sick and away from the office for over three months; or

(c) on parental leave for over three months;

that lawyer shall not receive legal aid certificates during the relevant period but shall not be suspended from the Legal Aid Scheme.

Where a sole practitioner is absent from the office for a period of less than 3 days only non-urgent certificates shall be issued to him during that period provided the legal aid office is advised in advance of their absence.

3.7.2 It is the responsibility of the advocate or solicitor concerned to inform the Acting Bâtonnier of their absences in advance, and to notify him of the date of their return to work.

Upon returning to work the advocate or solicitor concerned will be returned to the top of the list of lawyers to be appointed if they would have received a certificate but for their absence.

3.8 Crown Officers and other Advocates in States Employment

3.8.1 If an advocate or solicitor is employed by the Law Officers' Department, the Viscount's Department or the Judicial Greffe, they shall not be included in the Legal Aid Scheme and shall not receive any legal aid certificates. The period of time for which they have been employed will continue to count towards their fifteen year obligation under the Legal Aid Scheme.

3.8.2 It shall be the responsibility of the advocate or solicitor concerned to inform the Bâtonnier of the nature of their employment and to inform the Bâtonnier should they cease employment of this type.

3.8.3 Those advocates who are appointed as Crown Advocates to carry out prosecutions or other work on behalf of the Attorney General or States of Jersey, but who remain in private practice shall not be treated any differently from any other advocate or solicitor who is included within the Legal Aid Scheme.

3.9 Advocates/Solicitors employed on a part-time basis

3.9.1 Where an advocate or solicitor is employed on a part-time basis only, their obligations under the Tour de Rôle shall be reduced proportionately to the amount of time that they spend at work. The Acting Bâtonnier, in order to institute this concession, will require written confirmation from the employer of the advocate or solicitor's working hours, those working

hours to include all work undertaken for the employer regardless of whether they are performed at home or in the office.

3.9.2 It shall be the obligation of the advocate or solicitor to whom this clause applies to notify the Bâtonnier should the circumstances of their employment change in any way.

3.10 Changes in employment amongst Lawyers on the Tour de Rôle

3.10.1 Where an advocate or solicitor is employed by a law firm and leaves that law firm either to enter into sole practice or to join a different law firm it shall be the obligation of that advocate or solicitor to inform the Bâtonnier.

3.10.2 Where an advocate or solicitor leaves a law firm and has legal aid credits to their name, whether by virtue of having participated in the various rotas administered by the Bâtonnier or otherwise, these credits shall remain with the individual advocate or solicitor unless it has been agreed with that advocate or solicitor's employer otherwise.

3.10.3 Where an advocate or solicitor is leaving employment with a law firm but there are certificates issued to them in respect of applicants where their cases are still current, then the advocate or solicitor originally appointed to deal with the case remains responsible for those applicants and their cases.

In most situations, this will mean that the advocate or solicitor takes those applicants and their cases with them to their new employment or practice. The advocate or solicitor concerned may reach an agreement with their former employer whereby they (the former employer) retains those applicants and their cases and proceeds with them to a conclusion.

3.10.4 Where an advocate or solicitor ceases to practise law for whatever reason, or leaves Jersey then they must apply to be discharged from all legal aid certificates that they have an obligation to fulfil at that time. Such situations will be dealt with at the Bâtonnier's discretion. In general, the

presumption will be that the legal firm of the advocate or solicitor will retain the certificate which will be amended accordingly. No further legal aid credit shall be given to the firm for retaining the applicant. Where it would be inappropriate for the advocate or solicitor's previous employer to retain the applicant's case, the Bâtonnier will issue a new certificate for the benefit of a new advocate or solicitor in an alternative firm.

3.10.5 If an advocate or solicitor leaves employment with a firm and cannot remain responsible for particular applicants or their cases by virtue of a conflict which would arise within their new firm, and which would place them in breach of their professional duties and/or in breach of the Code of Conduct, then they may apply for the discharge of the relevant legal aid certificate. The Bâtonnier will, subject to his discretion, appoint the applicant to a different lawyer to deal with each case in accordance with its circumstances within the same firm as previously employed the advocate or solicitor originally appointed.

3.11 The Responsibilities of Advocates or Solicitors appointed under a Legal Aid Certificate

3.11.1 The advocate or solicitor appointed to represent an applicant under a legal aid certificate has personal responsibility to ensure that the applicant's case is conducted properly and competently and that the applicant is appropriately and professionally dealt with, save that these obligations may be delegated in accordance with the provisions set out below.

3.11.2 The advocate or solicitor whose name appears on the legal aid certificate may delegate their obligations under legal aid certificates to an appropriately qualified and supervised member of staff within their Firm or another legal firm. In such cases, responsibility for the work undertaken shall lie as follows:

(i) It is the personal responsibility of the advocate or solicitor named on the certificate to satisfy themselves that the procedures in place for the delegation of work internally or externally by the law Firm are appropriate;

(ii) it is the responsibility of the partners of their firm to ensure that the arrangements for the execution of legal aid work within the firm are adequate, properly supervised and well managed where work is delegated internally and to ensure that any Firm or lawyer to whom work is delegated externally is competent and able to do the work in question.

(iii) it is the responsibility of the advocate or solicitor carrying out the work (or directly supervising it where the work is undertaken by someone who is not an advocate or solicitor) to satisfy the usual high standards for client work that are required under the Code of Conduct.

3.11.3 Where an advocate or solicitor has been appointed under a legal aid certificate but subsequently completes fifteen years' service under this scheme, they will remain responsible for any legal aid cases which are at that point assigned to them.

3.11.4 Where an advocate or solicitor ceases employment with a particular firm, and remains within the profession with an alternative employer, the advocate or solicitor appointed on the certificate will remain responsible for the proper conduct of all certificates that have been made out to them unless proper arrangements are made for the certificates to remain with their original firm under that firm's supervision and management.

3.12 **The Revocation of Legal Aid Certificates**

Where the Bâtonnier has decided to revoke a legal aid certificate, he may remove the credit given to the advocate or solicitor who would have handled that case and will appoint an alternative applicant to them unless it is apparent that a significant amount of work has been done by the advocate or solicitor concerned and that it would be inequitable not to give them the benefit of the original legal aid certificate.

3.13 **Conflicts of Interest**

It is the responsibility of the advocate or solicitor appointed on a legal aid certificate to immediately identify any conflicts of interest or any significant risk of such a conflict which may arise. If conflicts are not identified at the outset, but the advocate or solicitor subsequently identifies the issue then unless there shall be very good reasons for the delay, the Bâtonnier will appoint a new advocate or solicitor (who will receive an appropriate credit) to deal with the case from that time onwards and shall appoint an alternative applicant to the advocate or solicitor originally appointed without further credit being given to them.

3.14 **The Duty Advocate Scheme**

3.14.1 The Bâtonnier shall administer a rota in connection with the Duty Advocate Scheme. This Scheme ensures the attendance of at least one advocate at the Magistrate's Court each week day to assist defendants. The Scheme is voluntary and shall be subject to the following rules:

(a) all advocates shall be invited to participate in the Scheme;

(b) the rota shall be administered so as to ensure that advocates are duly appointed to attend court each day and so as to ensure fairness amongst participating advocates. The rota shall be circulated well in advance;

(c) on their appointed day, the advocate concerned shall ensure that they attend the Magistrate's Court to assist all those in custody unless they are informed by the court staff that their attendance is not required. They may be required to attend in the morning, afternoon or at both court sittings;

(d) When attending the Magistrate's Court the advocate shall also assist any "walk in" defendants who request legal advice provided that it is practical for them to do so.

(e) upon attending court, it shall be the obligation of the advocate to inform the Bâtonnier that their attendance was required; and

(f) upon each occasion when a Duty Advocate is required, they shall be granted one legal aid credit. This will be awarded to the advocate who attended court, unless the Bâtonnier is notified of a contractual agreement to the contrary. Where the advocate appointed no longer takes part in the Legal Aid Scheme, the credit shall be awarded to an alternative advocate or solicitor from the same firm.

3.15 <u>The Administration of the Police Headquarters and Customs Duty Advocate Scheme</u>

3.15.1 The Bâtonnier shall administer a rota in connection with the Police Headquarters and Customs Duty Advocate Scheme. This Scheme ensures that advice (generally by telephone) will be made available to detainees prior to charge. The Scheme is voluntary and shall be subject to the following rules:

(a) all advocates and solicitors shall be invited to participate in the Scheme. Those lawyers who do take part must be confident that they have the requisite knowledge and experience to assist a detainee in connection with criminal offences, and must be

available at all times when on call to provide telephone advice and attend for interviews when necessary;

(b) the rota shall be administered so as to ensure that appropriate cover is in place and to ensure fairness amongst participating lawyers. The rota shall be circulated well in advance;

(c) it is the responsibility of participating lawyers to notify the Bâtonnier in advance of planned absences from the office or the island. Where a lawyer is unavailable to provide cover when requested, it is their responsibility to find alternative cover;

(d) each lawyer's period on call shall commence from 5.00 p.m. Thursday and finish at 9.00 a.m. the following Thursday. The lawyer shall receive two credits for each period on call. Where the week includes a bank or customary holiday, the lawyer shall receive one further credit for each bank or customary holiday. These credits shall be awarded personally to the lawyer concerned, unless that lawyer requests to the contrary; and

(e) each lawyer is expected to be easily contactable whilst on call. The Police and/or Customs authorities will only attempt to contact the lawyer between the hours of 11 p.m. and 7 a.m. where a detainee faces serious charges.

3.16 **<u>The Administration of the Citizens' Advice Bureau Scheme</u>**

3.16.1 Each Wednesday an advocate or solicitor attends at the offices of the Citizens' Advice Bureau to offer advice at a clinic. The public make appointments to see the lawyer through the CAB. The clinic takes place at lunch time.

3.16.2 The Bâtonnier shall administer a rota in connection with the CAB Scheme. The Scheme is voluntary and shall be subject to the following rules:

(a) all advocates and solicitors shall be invited to participate in the Scheme;

(b) each advocate or solicitor taking part shall perform two clinics on consecutive Wednesdays;

(c) the rota shall be administered so as to ensure that appropriate cover is in place and to ensure fairness amongst participating lawyers. The rota shall be circulated well in advance; and

(d) the lawyer attending the clinic receives one credit for each set of two sessions.

3.17 **Fee Adjudications**

3.17.1 When requested to do so by either the client or the advocate or solicitor appointed, the Bâtonnier shall carry out an adjudication to decide upon the fee that the client can reasonably be charged.

3.17.2 Where the Bâtonnier has been asked to carry out an adjudication neither the lawyer concerned nor the client shall commence any form of legal proceedings for the recovery of sums allegedly due in respect of fees.

3.17.3 Where the Bâtonnier carries out an adjudication, that adjudication shall be binding on both the lawyer and the client. Where an adjudication has been carried out by the Acting Bâtonnier either party may appeal to the Bâtonnier.

3.17.4 Upon receiving a request to carry out an adjudication the Bâtonnier shall within 14 days:

(a) write to the person who did not request the adjudication informing him of the request;

(b) Write to the lawyer requiring him to deliver his full files in original form to the office of the Bâtonnier within ten days after receipt of that notice:

(c) Write to the client requiring him to deliver to the office of the Bâtonnier, within ten days after receipt of that notice, a financial statement containing such information as to the client's circumstances as the Bâtonnier shall require.

3.17.5 Within two months of the request being made, and on the basis of the information and documents disclosed by the client and the lawyer, the Bâtonnier will make an adjudication.

3.17.6 In producing his adjudication the Bâtonnier will have regard to the financial criteria set out in Part II of these guidelines and shall use these as the basis for their adjudication. The Bâtonnier may set out a payment plan to be met by the client.

3.17.7 Upon receiving an adjudication made by the Acting Bâtonnier the client and/or lawyer must within 28 days, if either party wishes to appeal, deliver to the office of the Bâtonnier written notice that he is appealing, failing which the adjudication shall be considered final.

3.18 **Transitional Provisions**

3.18.1 These guidelines shall come into force with effect from such date as the Bâtonnier shall designate.

3.18.2 These guidelines shall only apply to applicants who make an application for legal aid after these guidelines come into force. Existing legal aid clients will not have their eligibility for legal aid reviewed simply in light of any new provisions introduced by these guidelines, and they must be billed in accordance with the Legal Aid Guidelines in force at the date that their legal aid certificate was issued.

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Practice Overview

Malcolm Bishop QC, sometime Deputy High Court Judge, Recorder of the Crown Court, Chair of the Isle of Man Legal Services Commission, is currently a Bencher of the Inner Temple, and Hon. Standing Counsel to Regent's Park College, Oxford University. He has strong connections with the Caribbean and is a member of the Turks and Caicos Islands Bar.

He has a widely based common law practice, which has taken him to most court Centre's in England and Wales, from the Magistrates' court to the House of Lords, within his specialist areas of crime, family and public law. He has also accepted instructions from commonwealth jurisdictions, and has a strong connection with Bermuda. He is currently briefed to lead a team of QCs and juniors in potential actions for alleged child abuse in Jersey. He is currently engaged in defending (leading Huw Evans of these Chambers) in a long case in the Turks and Caicos Islands where the former Premier and members of his cabinet face charges with fraud, bribery and corruption. He is back in the UK every three weeks and available for consultations then. Additionally he conducts regular conferences from the Caribbean by Skype.

He is regularly instructed in high-profile cases of the utmost seriousness, including the first ever Al Qaeda terrorist trial, the 'airline terrorist' trial, many cases of gangland killings, as well as serious fraud. He also appeared in the longest murder trial at the Old Bailey, and successfully defended in the notorious multiple shootings of two young girls in Birmingham on New Year's Day 2003.

He was a member of the Bar Council for many years and has served on innumerable committees and working parties, as well as lecturing widely to regional and national conferences.

Malcolm Bishop is willing to enter into arrangements in respect of conditional fees and direct access.

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Legal aid cuts: six lawyers on why they will damage our justice system

Why have lawyers taken to the streets to protest against legal aid cuts? Self-interest or because they care about the havoc they see being wrought on our legal system?

Interviews by Owen Bowcott and Stephen Moss

Tuesday 1 April 2014 18.56 BST

Legal aid, the provision of advice and representation in court to those who cannot afford to hire a lawyer, was established by Clement Attlee's Labour government in 1949. Supporters revere it as one of the principal pillars of the post-war welfare state. However, over the years, costs have escalated as the UK became an increasingly litigious society.

The Ministry of Justice estimates that legal aid in England and Wales now costs the taxpayer around £2bn a year and describes it as the most expensive system of its kind in the world. Lawyers dispute the figures, maintaining that costs are falling as crime rates decline and that many other countries' criminal-justice systems, which rely on investigating magistrates, are more costly.

The coalition government is not the first to attempt to limit the bill. The last Labour government began reducing fees in 1998. Criminal barristers say they had already suffered a 40% cut in income before the justice secretary, Chris Grayling, began imposing the latest round of savings.

Under the Legal Aid, Sentencing and Punishment of Offenders Act, which came into force last year, around £320m was sliced out of the annual budget for civil cases such as family, housing, debt and welfare law. Family courts have been inundated by separating couples forced to represent themselves in often traumatic cases.

The latest cuts of £215m to criminal legal aid - which have reduced lawyers' fees by up to 30% - have provoked successive mass walkouts by criminal barristers and solicitors since January. Solicitors and probation officers - who oppose Grayling's plans to privatise offender rehabilitation services - staged a 48-hour protest on Monday and Tuesday, culminating in a march on the Ministry of Justice (MoJ) bearing an effigy of the secretary of state. Criminal barristers, however, reached agreement with the MoJ last week after the government agreed to postpone, until after the election next summer, some cuts for advocacy in crown courts.

Last week, Imran Khan, who represented the family of Stephen Lawrence, said the cuts would make it impossible to take on a similar case today. What do other lawyers make of the changes? **Owen Bowcott**

Lord Macdonald QC

Former director of public prosecutions

The broad principle we have always had is that on legal aid you get high-quality representation. In many countries if you rely on the state for a lawyer in criminal cases, you receive very sub-standard representation. You see that particularly in the US where people facing charges on capital crimes get terrible representation from $10-an-hour lawyers because that's all the state is prepared to pay for.

Access to justice has to be as equal as possible. We don't want one quality of justice for the rich and one for the poor. If we are moving in that direction, it's a risky business. It can mean that the quality of justice differs according to the size of your bank balance.

I'm not a civil lawyer but it looks as though we are moving [in civil law] from a system that provided coverage across all areas to one that is now limited to certain areas. The legal aid cuts are directed at those most in need of legal assistance, such as housing or social welfare law. There's virtually no legal aid available in these areas now.

In housing law, unless you are in imminent danger of losing your home, you can't get legal aid. Housing disrepair has been badly impacted by these changes. The result is that people will be living in worse conditions - and sometimes in intolerable conditions - with no recourse to law.

People who haven't got money can't afford to go to law. It will lead to a decreasing lack of respect for the law if it's seen as being for people with money rather than people without money.

As far as judicial review is concerned [where the MoJ is also planning to restrict financial support], it's a major area of concern. My sense is that the approach of the justice secretary is, as with legal aid, not so much driven by financial considerations but ideology. He doesn't think that the courts ought to be able to challenge government actions because it's an undermining of democracy. He's wrong about that. *Interview by Owen Bowcott*

Raymond Shaw

Partner, Shaw Graham Kersh, London

In the old days, we solicitors used to be paid an hourly rate for most of the work we did under legal aid. The rates may have been lower than privately paid work, but we were at least paid for what we did. That meant the most complex and demanding cases would often prove to be the most profitable. Some years ago, the payment system was replaced by a computer program that in most cases provides a fixed fee for a particular case. That fee has been driven down and down, and is now at the point where people are finding it difficult to do the necessary work.

If a defendant comes to me with a complicated defence and multiple witnesses that need to be seen, and possibly with the need for expert evidence - or if they have mental-health problems or language difficulties - these issues add to the time required to prepare the case but generally produce no additional payment. What this

means in practice is that the very cases that require the most time and attention are also the least profitable. The danger is obvious.

Fees for police station work are about £200 per case. That's fine for a simple shoplifting case, but if, say, you are called to a case where five people have been arrested for a street fight, that could be two days' work, and you might have to return for a further interview on another day. We've entered a bizarre world where the most complicated cases earn the same as the simplest ones; you get the same fee regardless of whether it's shoplifting a packet of crisps or a murder.

Everyone knows these cuts are not sustainable. Standards have already fallen. You might be lucky and get a lawyer on legal aid who defends you brilliantly, but generally the standard of justice has been reduced. The direction of travel favoured by the government is that many firms will go out of business, and big practices will come to dominate. There will be mass redundancies among lawyers and shotgun weddings between practices.

Lawyers will be less inclined to take on the toughest cases. Think about the famous miscarriage-of-justice cases. There, the image is usually of a committed lawyer with a bee in his or her bonnet, determined to do something for their client. In the brave new world of factory law firms with non-qualified staff monitored for their productivity, where's the room for the lawyer to do this unprofitable and often unpaid work?

We pride ourselves on giving the fullest and best service to people of all backgrounds and whatever their needs, but changes to the legal aid system are making it difficult to protect some clients. We can now identify people who, when they walk through the door, we know are going to lose us money, and some firms are already turning those people away.

Imagine a "bag lady" walks in with bundles of papers. From a sea of paperwork she fishes out a summons for, say, not informing the benefits agency of a change in circumstances. She doesn't recall whether she ever told them, but she wants to fight the case. It would be so easy to send her on her way. Who will now take time to build up her trust, go through her papers, and work out what's really going on in her life? Who has the time and energy to do that in a world where everything is being cut? The government seems to think it's a badge of shame rather than a badge of honour that we have a legal system that is the pride of the world. You get what you pay for.
Interview by Stephen Moss

Clive Gomes

Solicitor, London

A lot of people think these cuts are only happening now, but they've been happening since 2008. Fixed fees were introduced in the crown court; committal fees were removed in magistrates' courts; fixed fees were introduced in police stations and were then subsequently reduced again. My firm's income has fallen by about 40%. I've tried to cut my overheads and slimmed the firm down, but now I have no option but to close and move out of the criminal law. It is sad because I've been in practice

since 1984 and love what I do, but the changes make it impossible for my firm to continue.

It used to be the case that you could balance work in the magistrates' courts, where you might be paid just £100 or £200, with better-paid work in the crown court, but that's no longer possible. And there's an even more sinister development: the justice ministry is reducing the number of contracts it offers to solicitors in such a way that only large firms will be able to bid for contracts. Small firms like mine will henceforth find it very hard to tender because we can't cover the number of duty slots that will now be specified.

What will happen - and indeed is already happening - is that big firms will get all the work, and because they are being less well paid than was the case in the past the preparation of cases will be done by unqualified staff. I've heard of examples of interns being taken on with nine-month contracts and doing a lot of the work. Clients will lose out and, especially in the smaller cases that make up the majority of solicitors' work, they will get a poorer service. *SM*

Lucy Scott-Moncrieff

Solicitor specialising in mental health tribunal cases, former president of the Law Society

The cuts are having a devastating effect on people who are unable to get the advice they need to work out whether or not they have a case and are unable to get representation if they do. This is totally counterproductive. Cases are being taken that should not be. People have to get assistance from the judge, and it takes much longer without the help of a lawyer. In family courts, if there's no lawyer, the judge has to satisfy himself or herself that all the relevant issues have been dealt with - and that's time-consuming.

The proposed cuts in judicial review [now going through parliament] are also going to make things extremely difficult. They are going to deny a lot of people justice. Firms can do a certain number of pro-bono cases and take some risk but, under these cuts, they are not going to be able to take such cases on in future. We will have to work out whether we can afford to do the necessary work before applying for permission.

What I find most shocking is the withdrawal of advice for welfare benefit cases. We have had a radical reform of benefits yet individuals on low incomes can't get advice as to whether they are being accurately calculated.

It seems utterly wrong that people should have no access to advice as to whether they have a case to take to appeal. Even if legal aid doesn't cover the hearing, in the past if a claimant had received advice beforehand then they often found someone to represent the case to court on a pro-bono basis. That won't happen now.

The government says that it's bad that we have the most generous legal aid system in the world. First, that's not true and, second, why does the government think that people being able to enforce their rights is a bad thing? I would have thought that effective enforcement of rights is what any government is about. *OB*

Richard Atkinson

Solicitor, chairman of the Law Society's criminal law committee

The vast majority of criminal firms will not be able to survive the cuts of 17.5% in fees. Solicitors' firms are simply not that profitable.

[The Ministry of Justice is] gambling that these changes are going to work. It's akin to betting on a rank outsider in the Grand National. They are betting on firms' commercial existence, on partners' houses and on the future of the criminal justice system. This has no basis in the evidence that I can see. There will soon be two types of firms: those who say they don't want anything to do with the new contracts and the ones that give it a go and go bust when it doesn't work.

There will be advice deserts, places where there are no firms to represent defendants. Solicitors will see that they can't make a profit. There are firms already that have gone under.

We have seen what happens to the standard of representation in public defence work, for example, in the US where it is left to law students, those who have retired or who are not at the peak of their profession. *OB*

Neil Kerr

Family law barrister

Legal aid has been removed from most branches of family law. It used to be available for divorce cases, though there were limits and it was means-tested. It was also available for contact and residence cases involving children, and for injunction proceedings for both alleged victims and perpetrators of domestic violence. Much of this has been dismantled.

It is still possible for alleged victims of domestic violence to get legal aid, but only if they supply some form of documentary evidence to support their case - a police report or a letter from their GP. But many of these victims do not want to report violence to doctors or the police, and the most vulnerable - such as people with language difficulties - are the least likely to make a report.

The one area where the government has retained legal aid, almost certainly because of the level of public and media interest, is where there are allegations of child abuse. Parents can still get legal aid if a child has been removed by the local authority, though even in this area there are concerns that the government may seek to tighten the rules.

The main difficulty that we're increasingly seeing as a result of these changes is the number of litigants in person - people forced to represent themselves in court because they can't get legal aid. This clogs up the system and makes it difficult for judges. Previously, where lawyers were representing both parties, it was possible in nine-tenths of cases for the lawyers themselves to frame some sort of accommodation, but now everything is left to the judge who is faced with two warring sides. The issue of an alleged perpetrator of domestic violence cross-examining an alleged victim also poses obvious problems.

During my career at the family bar, I've represented many fathers wanting access to their children, and I know they simply wouldn't have the wherewithal to represent themselves. They'll think: "I can't handle the stress of going to court myself", so that child never sees their dad again.

The family bar has not been as badly affected as the criminal bar, but there is a lot less work now and our incomes have fallen by about 30%. In my chambers, we haven't taken on any new pupils for five years. There's a danger that the bar will revert to what it used to be like - people with other sources of income who were treating the bar as a hobby. I don't think the criminal bar and the family bar will survive in their present form, not that that will worry the government. Justice is at the bottom of their list of priorities, and it's all about saving money. Perhaps Tesco will be doing the work in a few years' time. *SM*

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'Going into legal aid work now is career suicide'

Government cuts to legal aid means social welfare lawyers are a dying breed. So where will the next generation come from? Step up the Justice First Fellowship

Emma Howard

Wednesday 6 January 2016 07.30 GMT

After two law degrees, several years of fixed-term jobs, volunteering roles and the birth of her first child, Fanny Forest was working in a students' union and had given up on finding a trainee law contract. "My teachers at university told me that going into legal aid work is career suicide at the moment. There is no money left. But I didn't want to compromise and work in the corporate sector," she says.

Forest had long wanted to pursue a career in social welfare law. In some countries it is referred to as poverty law because it covers legal areas such as welfare benefits, housing, debt, community care and employment. Forest prefers to describe it as "the law of everyday life."

"It's about how you make sure you keep your job; are not abused at work; have a roof over your head; are not abused by the person you love, yet it now seems to be the obscure area of law that a tiny proportion of lawyers do," she says.

Since the Legal Aid, Sentencing and Punishment of Offenders Act (Laspo) came into force in April 2013, the number of cases granted legal aid in the UK has dwindled. The previous year, 275,678 social welfare cases were granted funding; by 2014/15, that annual figure had shrunk to 54,635. Entire legal areas, such as welfare benefits and employment, are now only eligible for government funding in exceptional circumstances.

The Ministry of Justice (MoJ) argues that the UK still has one of the most generous legal aid systems in the world and that it spends twice as much per inhabitant on legal aid than other countries with similar legal systems, such as Australia, Canada and the Irish Republic. An MoJ spokesman says that "legal aid has been protected for the highest-priority cases, where life or liberty is at stake; where there is a risk of serious physical harm or loss of home; or where children may be removed from a family".

But the impact of the cuts has been felt acutely by many law firms across the country forced to restructure, merge or close. Eleven law centres in England, Wales and Northern Ireland have closed in the last two years; 44 remain.

As a result, after completing a degree and spending over £10,000 on a legal-practice course, thousands of aspiring lawyers are finding themselves unable to find the trainee position they need to qualify.

Forest is one of the lucky ones. She is halfway through a trainee contract at one of the country's largest law centres, funded by a new scheme set up by a charitable trust, the Legal Education Foundation (LEF). In August 2014, it launched the Justice First Fellowship to fund legal contracts for the next generation of social welfare lawyers.

"The number of training contracts is minuscule in these areas of law," says the LEF chief executive, Matthew Smerdon. "There just simply won't be lawyers qualifying in the numbers that they used to. Where is the next generation of specialist lawyers going to come from?"

In its first year, the programme has supported nine trainee solicitors and is currently recruiting a second cohort and developing its first programme for pupil barristers. Trainees are hosted by law firms and legal centres and must complete placements in three areas of law in order to qualify. Applicants must have passed their legal practice course and commit to a two-year contract.

Inspired by two schemes created in the US, the Skadden Foundation and Equal Justice Works, the programme hopes to produce not just lawyers, but leaders. Trainees must develop a project that advances access to justice and may provide them with scope for employment once the contract is complete.

Tucked away on a corner beneath the busy ring road, Coventry Law Centre is hosting Forest. She is coordinating a project called Safeplace to help the centre advise and support more people who have experienced domestic violence.

"We need to get the message out that in some cases legal aid is still available and, if it isn't, we want to commit to at least providing initial advice," Forest says.

"If people with experience of domestic violence leave their partner, they may need an injunction, accommodation, support with issues of child custody, debt or defence against potential deportation."

To obtain legal aid, victims must provide evidence of abuse - such as a letter from a health professional or refuge - but it must be less than two years old. A recent report by a parliamentary watchdog found that more than a third of people who experience domestic violence are unable to provide the right evidence to qualify for legal aid. Finding this evidence can take time, which legal aid does not cover. Forest hopes that Safeplace, funded by LEF and some money from the local police, will create the time and enable the centre to intervene earlier in a victim's experiences.

Police data suggests that rates of domestic abuse in Coventry are the worst in the West Midlands. Forest is training volunteers and local partner organisations - such as women's refuges, social care workers, the police and health professionals - so they understand the referral process, the evidence requirements and what the changes to legal aid mean for victims in practice.

The project is creating a new referral stream and increased demand for the centre's services, which they hope will enable it to get future funding. In 2014-15, the centre assisted 37 victims of domestic abuse; it has already supported 70 since April 2015. "It's about realising when we have a role and when we need to back off because a person is not ready to enforce their rights. We have to adjust to our client base. It's been the case in business circles forever. Big city firms seem to be obsessed with commercial awareness. I don't see why the same thing can't apply to us. You have to know your community in order to be of use to them," she says.

The centre is now looking at developing a project that takes a similar approach to work with people who have learning disabilities.

Prior to the cuts, Coventry Law Centre had funded two trainees internally and two others with external money. Sue Bent, the centre's director, says of the Justice First Fellowship, "It's like a dream for us because it's properly funded, but, even more, it's about creating a movement of future social welfare lawyers. We have lost a lot of expertise in the sector and we've lost the potential leaders of the future. The LEF is trying to reverse the trend."

Willy Bach, a former Labour justice minister, who is now leading the party's review of Laspo and legal aid policy for Jeremy Corbyn, is sceptical. "It's hard to see the situation getting very much better," he says. "LEF, and no doubt others, are hopeful for the future, but can it really take away from the principle that the government of the day has given up on social welfare law? It's never been well paid, but if it's hardly in existence at all, lawyers are even less likely to do it.

"If the lawyers aren't coming through, that's another nail in the coffin for social welfare law as an essential part of the British legal system."

The Law Society offers 10 awards every year to fund trainees' course fees and contracts, but firms rarely offer paid work experience and there are few other paid opportunities available for aspiring social welfare lawyers.

Trainees at legal aid firms used to be able to access substantial grants from the Legal Services Commission (LSC) - the Legal Aid Agency's predecessor - to fund their training fees and salaries. The scheme, which supported around 100 trainees every year, was scrapped in 2010. The government said this would save £2.6m annually and that there were "too many lawyers chasing too little work".

In fact, the scheme seems to have been replaced with unpaid work experience and increased use of paralegals.: In a survey of 630 young lawyers by the Law Society's junior lawyers division in 2014, 30% had completed between one and three months unpaid work experience, with 23% continuing for more than six months. Sixty percent had worked as a paralegal in order to get a contract; a 15% jump since 2013. Paralegals normally have some legal training, but are not certified as lawyers. They often do casework, but under supervision, and receive a lower salary.

Oliver Carter, 28, spent three years working as a paralegal before he was offered a training contract at his firm Irwin Mitchell. "Law firms, in particular legal aid firms,

now do see paralegal work almost as a requirement because it is so prevalent and more cost-effective for firms with tight profit margins," he says.

Carter now co-chairs Young Legal Aid Lawyers, a group representing more than 2,000 trainee and junior lawyers, students and paralegals in England and Wales. In 2013, a survey of their members found that 50% earn less than £20,000 a year, with 5% earning less than £10,000. Their report concluded that the low salaries and expectations have made legal aid work unsustainable for those from lower socio-economic backgrounds. "Aspiring lawyers face increasing challenges in accessing the profession. This problem is particularly stark in the area of legal aid, where salaries are generally low and people from disadvantaged backgrounds can be unable to commit to unpaid work experience due to their circumstances," says Carter.

Bent is hopeful that the law centre will be able to provide Forest with a job once her contract ends, but LEF is careful to give no guarantee of a permanent position. As the impact of austerity takes its toll on the increasing numbers of people seeking help for issues such as housing, benefit claims and debt, it is clear the issue is not one of supply.

"Frankly, if the work isn't there then there will not be much of a 'next generation'," says Carter. "This isn't a problem of supply - there are plenty of law students and young lawyers who care about social justice and are motivated by wanting to make a difference, particularly to vulnerable and marginalised individuals and groups."

Helen Roberts, trainee

At the Speakeasy advice centre in Cardiff, Roberts, 28, advises about 15 clients a week. Most are either homeless or facing the prospect.

"There is an endless demand," she says. "We are always dealing with enquiries about new appointments."

Since the introduction of Laspo, legal aid is only available for housing cases where there is immediate threat of eviction or homelessness, or if it can be proved that a property is in such a state of disrepair that it is dangerous to the tenants. But in April, new legislation came into force in Wales that puts greater onus on local authorities to prevent homelessness. Roberts's fellowship funding from LEF has paid for training so that she can use this legislation to the advantage of her clients.

Roberts recalls a client with six children who was six months pregnant and had turned up at the centre on the day she was evicted by a private landlord. The council had refused her support, claiming her partner had not retained status as a worker. While they slept in a car and their children stayed with friends, the centre successfully argued that the council had misinterpreted their status and overturned the decision in four days.

Now Roberts believes that by setting up a drop-in clinic as part of her fellowship, she can support 10 more people every week. She says that this format will enable the centre to support those who "live in chaotic circumstances" and are unlikely to

commit to booked appointments - for example single-parent families and those experiencing mental illness, substance abuse or who speak poor English.

Amber Rowsell, trainee

Rowsell, 26, works in Colchester at the Coram children's legal centre, which provides advice and representation to children, young people and their families and carers. She spends most of her time helping 16- and 17-year-olds who have been abandoned, or left home due to abuse, neglect or family breakdown.

Local authorities have a duty to support young people in this position with accommodation, training and advice until their 21st birthday if they have housed them for more than 13 weeks before the age of 18. Rowsell helps young people to claim these rights.

Through her fellowship, Rowsell is also working to develop a pro-bono project at the centre to help children to acquire British citizenship and the access to public funds and rights to employment and education that come with it.

"There is such a hostile environment now for people without status," she says. "If you don't know the procedure and can't apply to the Home Office for citizenship then you lose so many of your human rights living in the UK."

"The environment at the moment in legal aid is really worrying. We could have a situation similar to the US where there is so little legal aid that the pro-bono projects take on most of that role. A lot of people are worried that the way pro-bono projects are run isn't as efficient or of such a high standard. It's a massive job to make sure it is."

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Legal aid cuts have led to surge in DIY defence, says charity

Report finds rise in number of people appearing in court without lawyer, while experts warn vulnerable defendants are having to fend for themselves

Jamie Doward and Tom Dare

Saturday 23 April 2016 21.56 BST

Miscarriages of justice and long delays in the criminal justice system are becoming more common because a growing number of people are having to represent themselves in court, legal experts have warned.

A new report, Justice Denied, suggests that a combination of legal aid cuts, complex bureaucracy and inadequate support and information for defendants have led to a surge in people appearing in court without a lawyer.

In one example given to the charity behind the report, Transform Justice, an unrepresented defendant remained silent during his appearance via video link from a police station. Only after he had been sent to prison did it emerge that he was deaf.

There are no official figures for the number of unrepresented defendants in magistrates courts - the Ministry of Justice (MoJ) is conducting an inquiry into the situation in the crown courts. But the report cites a wealth of evidence, including a survey by the Magistrates Association, official data from the MoJ, freedom of information responses, an online poll of lawyers, surveys of prosecutors, judges and magistrates and fieldwork carried out at courts - as proof that more people are appearing in court without legal representation.

The report states: "Interviewees had witnessed unrepresented defendants not understanding what they were charged with, pleading guilty when they would have been advised not to, and vice versa, messing up the cross-examination of witnesses, and getting tougher sentences because they did not know how to mitigate."

According to the Magistrates Association survey, its members reported that 25% of defendants who came before them in 2014 were unrepresented. Of 143 responses, drawn largely from members of the legal profession, to a Transform Justice poll, 90% felt there had been an increase in unrepresented defendants in the courts over the last two years.

The report quotes one prosecutor as saying: "I could count on the fingers of one hand how many have actually understood the charges. I have had one who was facing a GBH [grievous bodily harm] charge believing he is in court for common assault and being shocked when I had to tell him the serious nature of the charge."

Another observed that the rise in unrepresented defendants was having an effect on sentencing: "On balance, a person who is unrepresented stands a 15% chance of getting a longer sentence or a worse outcome than if he was represented, even by a not very competent advocate."

The report's findings have alarmed senior members of the legal profession. "The efficiency and fairness of our justice system depends on both sides being properly represented," said Mark Fenhalls QC, the chairman of the Criminal Bar Association. "There is increasing evidence from civil and criminal courts that restricting legal aid is counter-productive and has made the court system less efficient and more expensive. An unrepresented defendant in a criminal trial is like having an unqualified person performing surgery. The patient, our justice system, is bound to suffer and in the long run society will spend more money picking up the pieces."

Judges interviewed for the report agreed that unrepresented defendants considerably increased the time needed for hearings. Laura Janes, a consultant solicitor with the Howard League for Penal Reform, who works with vulnerable young defendants, said cuts and changes to legal aid had left morale within the legal profession very low. "The way in which fees are paid make it much harder to have really experienced senior solicitors doing this kind of work. Sometimes that's what you need for really vulnerable defendants."

A magistrate interviewed by the Observer, said a lack of training meant many magistrates were unable to deal with unrepresented defendants. "You're left with a rickety cart and the wheels are coming off. If you don't have excellent training for people involved, particularly magistrates, they won't know the questions to ask and they won't be able to make appropriate decisions because they won't have the appropriate information. It really is as simple as that. It is very depressing."

Penelope Gibbs, director of Transform Justice, described the rise in unrepresented defendants as a "travesty", and warned that justice was in danger of being denied to some on modest incomes who did not qualify for legal aid. "People who are denied legal aid are often not wealthy. They get little information to prepare for court and are thrust into an adversarial and complex process which even those who are represented find hard to follow. No wonder they end up pleading guilty when in fact they have a reasonable defence, or getting a longer sentence.

"If we want to create a level playing field between prosecution and defence, we need either to offer everyone access to legal advice or to redesign the system so those without lawyers can more easily make their case." A Ministry of Justice spokesman said the number of people representing themselves in the crown court has remained stable since 2010. "Legal aid is available for both magistrate and crown court cases, subject to them being means tested," he added.

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Legal aid reforms could undermine fundamental principles of justice, warns CPS

The official prosecuting body fails to explicitly support any of the proposed changes

Oliver Wright | @oliver_wright | Tuesday 16 July 2013 | 0 comments

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Justice Secretary, Chris Grayling *PA*

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Government plans to reform legal aid for criminal suspects could undermine the fundamental principles of justice in England and Wales, the official prosecuting body has suggested.

In a surprising intervention, the Crown Prosecution Service said that proposals to limit legal aid and pay fixed fees to defence solicitors might not be "consistent with" the UK's six fundamental of principles of justice. It also warned one of the proposals set out by the Justice Secretary, Chris Grayling, could conversely have the effect of pushing up costs.

As part of proposals to save £200m by 2018, the Government plans to stop paying solicitors for the legal aid work they do, instead giving them a fixed fee for each case they represent. Defence lawyers have warned this will make it in their financial interest to recommend guilty pleas to their clients – regardless of the facts of the case.

Under the plans, the number of accredited legal aid firms will drop from 1,600 to fewer than 400 - meaning that hundreds of small high-street firms could be replaced by huge contractors such as G4S. But Mr Grayling has already backed away from proposals to deny defendants on legal aid the right to choose their own solicitor.

It is believed he was influenced by strong criticism of his plan in a Commons debate last Thursday by Conservative MPs, who argued that the state choosing a defendant's lawyer would be un-Tory.

He told MPs the idea was "only proposed in order to guarantee lawyers had enough business to make contracts viable". He added: "It is clear the profession regards client choice as important and so I expect to make changes that allow a choice of solicitor in the future."

In its response to the consultation, the CPS makes clear it has other concerns about the changes. Although its language is

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coded its response fails to explicitly support any of the proposed changes and hints that in parts they could be detrimental to justice.

"The CPS acknowledges the difficult financial position currently faced by the Ministry of Justice," it writes. "The CPS accepts that difficult decisions have to be taken if limited public funds are to be prioritised in a way which provides the greatest benefit to the wider community. But there must be a realistic expectation that any reforms arising out of this review will actually deliver those outcomes."

It then lists what it considers to be the six fundamental principles underpinning a fair and effective criminal justice system and critiques the Government's plans against them.

Among those is the retention of the self-employed criminal bar – which many believe will be threatened under the Government plans.

It writes: "The CPS expects to rely on the self-employed Bar in the future. Therefore, it is fundamentally important that a viable self-employed criminal Bar is maintained, albeit that it will need to adapt and modernise and may be smaller in size than it is now."

It also criticises proposals to encourage early guilty pleas in the Crown Court – which it warns could actually push up overall legal aid costs.

"The CPS is concerned that the proposals for the early guilty plea fee in the Crown Court may create a perverse incentive for those cases which currently plead in magistrates' courts to escalate to an early guilty plea in the Crown Court," it writes.

"This would be a retrograde step and would reverse the recent trend of an increasing rate of defendants entering guilty pleas to either-way matters in magistrates' courts."

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Overall it concludes: "The CPS acknowledges the difficult financial position facing the Ministry of Justice and that savings have to be made, however any reforms must be consistent with, or support and enhance, the six fundamental principles set out above, if they are to maintain the fair and efficient delivery of criminal justice."

Whitehall sources suggested that this should be interpreted as expressing significant concern about the effect of the total package of reforms.

Justice Secretary Chris Grayling said: "I have been very clear this is a genuine consultation and we are listening to views. We are now carefully examining all the responses and expect a short period of further consultation on certain changes to the current proposals, for example how to add client choice. This won't be a second consultation on every nut and bolt. We are not going back to the start, and we do need to bear down on legal aid costs."

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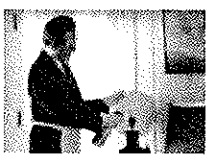
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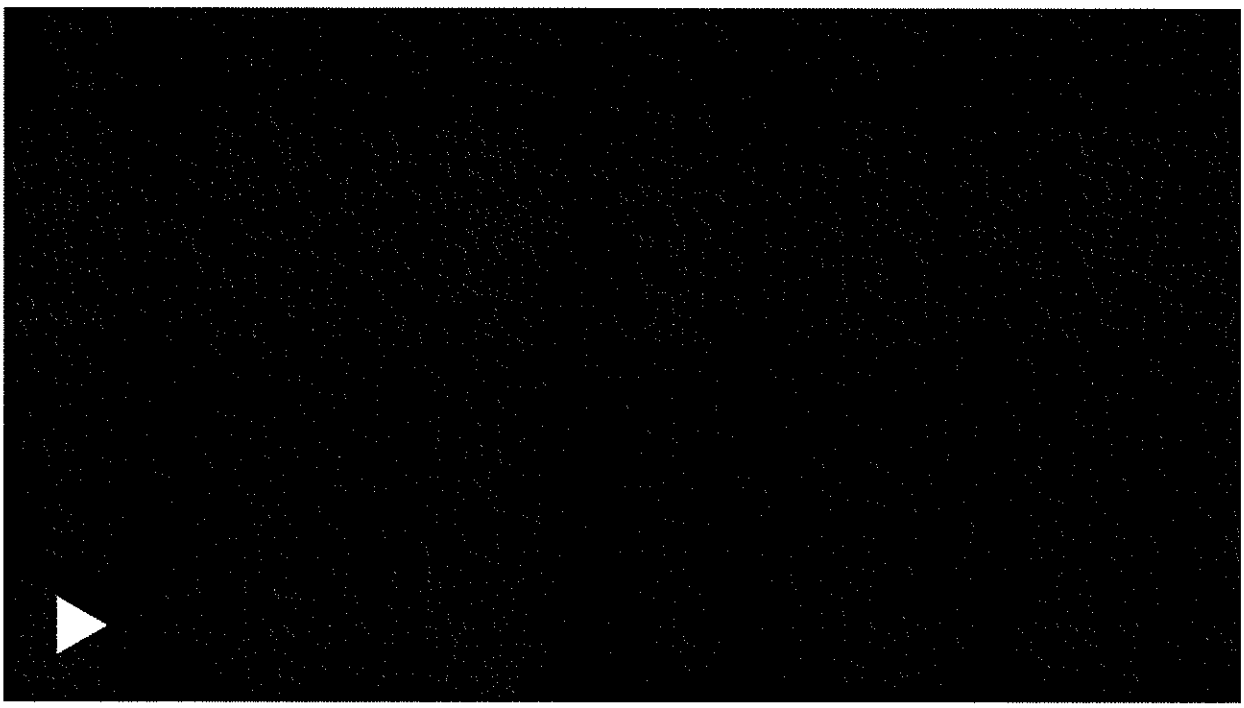


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Lord Neuberger, UK's most senior judge, voices legal aid fears

5 March 2013 UK



Lord Neuberger talks to the BBC's Clive Coleman

Legal aid cuts could make people feel they cannot access justice and then "take the law into their own hands", the UK's most senior judge has said.

Legal aid in England and Wales will be restricted in a range of civil cases from April to cut a current £2bn bill.

President of the Supreme Court, Lord Neuberger, told the BBC the changes may even lead to higher court costs.

The Ministry of Justice said legal aid would still be provided "to those who most need it".

The cuts mean people involved in a range of disputes, such as social welfare debt, employment, family problems, clinical negligence, divorce and housing problems will no longer be allowed legal aid.

But funding will continue for some cases including family law involving domestic violence or forced marriage and debt and housing matters where someone's home is at immediate risk.

You may find the savings the government thinks it's making in legal aid will be offset in other costs of courts and judges and court staff in supporting litigants in person
Lord Neuberger

It means many people will have to pay privately for advice, find charitable help or represent themselves in trying to solve their disputes.

The proposals are intended to cut the legal aid bill by £350m a year by 2015.

But Lord Neuberger said the consequences could in fact cost the government more.

He told the BBC: "My worry is the removal of legal aid for people to get advice about law and get representation in court will start to undermine the rule of law because people will feel like the government isn't giving them access to justice in all sorts of cases.

"And that will either lead to frustration and lack of confidence in the system, or it will lead to people taking the law into their own hands."

'No immunity'

Lord Neuberger said another problem would be the increase in the number of people who represent themselves in court because they could not afford or get legal aid for a lawyer,

"This will mean that court hearings will last longer, the burden on court staff and judges will increase," he said.

"And you may find the savings the government thinks it's making in legal aid will be offset in other costs of courts and judges and court staff in supporting litigants in person."

I think we need to be careful not always to run to the lawyer when we think we've got a problem
Sir Edward Garnier

Tory MP Sir Edward Garnier - a former solicitor general - said legal aid should not be immune from widespread cuts.

He told BBC Radio 4's Today programme that many disputes could be resolved without going to court.

"Now I'm not suggesting that, in every case, a landlord and tenant problem can be sorted out through some form of mediation or through some form of extra-legal means.

"But I think we need to be careful not always to run to the lawyer when we think we've got a problem."

Shadow justice minister Lord Bach - the former legal aid minister - said he agreed mediation could be used in more cases but said that it "doesn't come cheap either".

He told Today that, "at a time of recession and also at a time now of big welfare reform, to take away the ability of people to get free legal advice when they need it is absolutely scandalous".

Cuts should not be made "where you're attacking, frankly, the very poorest and the most disadvantaged in society", he added.

"Our whole system of justice is based on equality of law - if people can't get some access to justice then why should people believe in the rule of law anymore."

In a statement the Ministry of Justice said: "Legal aid will continue to be provided to those who most need it, such as where domestic violence is involved, where people's life or liberty is at stake or the loss of their home."

Deportation row

BBC legal affairs correspondent Clive Coleman said the changes were seen by many as nothing short of a revolution in the provision of legal aid with the government removing funding from entire areas of civil law.

The concern was that the cuts would affect the most vulnerable in society, he said.

The bill received Royal Assent after a parliamentary passage that saw it defeated 14 times in the House of Lords.

The Lords ultimately backed ministers by the narrowest of margins, with 238 votes on each side - a tie means a victory for the government.

I think attacking judges is not a sensible way to proceed. It causes me concern but it does not alarm me
Lord Neuberger

But our correspondent said there was was "absolutely no chance" the government would row back on the changes.

Lord Neuberger also said it was "unfortunate" that Home Secretary Theresa May had attacked judges for "ignoring" rules on deporting foreign criminals.

But he said he would not get into a "slanging" match with Mrs May.

The interview came two weeks after Mrs May accused judges of making the UK more dangerous by ignoring rules aimed at deporting more foreign criminals. She told the Mail on Sunday that they were choosing to "ignore Parliament's wishes".

"I think attacking judges is not a sensible way to proceed," Lord Neuberger said.

"It causes me concern but it does not alarm me. No government has done anything to undermine judges."

He added: "It is unfortunate that the home secretary has acted and spoken as she has done."

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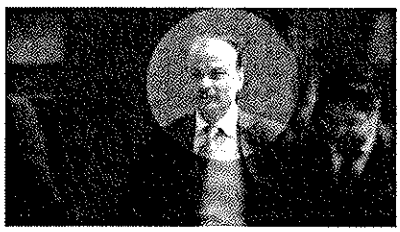
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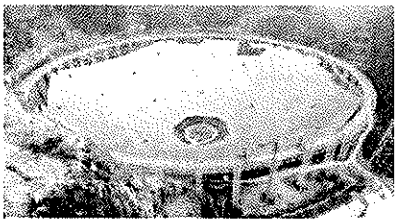
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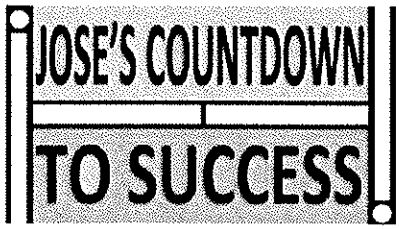
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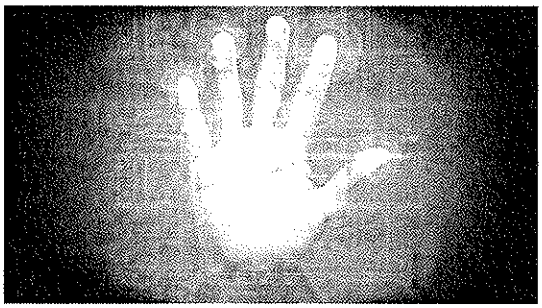
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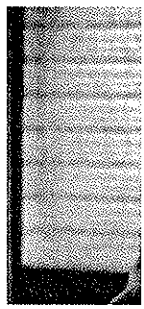
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Solicitors Regulation Authority

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Police station representatives accreditation scheme

About the scheme

Most solicitors' firms that carry out publicly funded criminal defence work have one or more accredited representatives—non-solicitor employees who go to police stations to advise and assist people who would otherwise have no legal representation. Accredited representatives are usually called out to a police station after the duty solicitor has spoken to the client by telephone.

The Police Station Representatives register is regulated by the Legal Services Commission. The aim of the scheme is to accredit non-solicitors to advise and assist suspects being held at a police station and to claim payment from the Legal Services Commission *[link: http://www.legalservices.gov.uk/]* (LSC) for having provided such assistance.

Applying for scheme membership

Applicants should refer to the:

- Standards of competence (PDF 11 pages, 44K) *[link: http://www.sra.org.uk/documents/solicitors/accreditation/criminal-litigation-psq-standards.pdf]* for the accreditation of solicitors and solicitors' representatives advising at the police station
- Legal Services Commission guide (LSC website) *[link: http://www.legalservices.gov.uk/criminal/police_stations.asp]* (follow the link – guide located on right hand side under 'documents')
- Portfolio assessment guidance (Law Society website) *[link: http://www.lawsociety.org.uk/support-services/accreditation/documents/criminal-litigation-scheme-guidance/]*
- Police Station Register Arrangements (LSC website) *[link: http://www.legalservices.gov.uk/criminal/stat_material/directions.asp]*, under

which the LSC operates and maintains the register of representatives

You can then register with one of the authorised assessment organisations *[link: http://www.sra.org.uk#authorised-assessment-organisations]*.

Your assessment organisation will inform you of the steps you must take next, providing you an assessments timetable and outlining the prerequisites of registration as a probationary representative.

You will complete three assessments:

- Portfolio *[link: http://www.sra.org.uk#portfolio]*
- Critical Incidents Test *[link: http://www.sra.org.uk#critical-incidents-test]*
- Written examination *[link: http://www.sra.org.uk#written-examination]*

Portfolio

The portfolio comprises two parts.

Part A consists of four case reports of advice provided at a police station with the direct involvement of a duty solicitor. The first two reports are of instances in which you've observed the duty solicitor giving advice, and the other two are of instances in which you have advised a client, under the direct supervision of a duty solicitor.

Submit the Part A reports to your assessment organisation. They will give you an application form to register with the Criminal Defence Service *[link: http://www.legalservices.gov.uk/criminal.asp]* as a probationary representative.

Probationary representative status lasts for 12 months, and allows you to work at police stations—on a limited basis—without direct supervision.

Part B must be completed before the end of your 12-month period as a probationary representative. It comprises five detailed reports of cases that you have conducted yourself at a police station.

Your assessment organisation will supply details of the portfolio assessment, including

- time limits,
- types of cases to include, and
- issues you should cover.

Download the Police Station Representative Accreditation Scheme portfolio completion guidance (PDF 37K) *[link: http://www.lawsociety.org.uk/support-services/accreditation/documents/criminal-litigation-scheme-guidance/]*.

Critical Incidents Test

This is a live role-play test, based on audio-tapes of simulated police-station interviews.

You can offer advice during set pauses in the recording. You can also choose to interrupt the interview to give advice.

Your responses are recorded and subsequently assessed.

Written examination

Some people are exempt from the written examination:

- barristers,
- fellows or members of the Institute of Legal Executives *[link: http://www.ilex.org.uk/]* (ILEX) who have passed the criminal law and litigation papers,
- anyone who has successfully completed the Legal Practice Course *[link: http://www.sra.org.uk/lpc]*,

The written examination assesses knowledge and understanding of basic criminal law, the law of evidence, police station procedures, the adviser's role and necessary skills.

Time limits

You must successfully complete at least one of the assessments within six months of registering as a probationary representative (an exemption from the written examination does not count for this purpose).

All assessments must be completed before your 12-month probationary representative period ends.

If you fail to meet the above requirements, the Criminal Defence Service will suspend you, and your firm will not be paid for work you perform at the police station.

Useful links

Legal Services Commission *[link: http://www.legalservices.gov.uk/]*

The Legal Services Commission (LSC) is responsible for the development and administration in England and Wales of the Community Legal Service *[link: http://www.legalservices.gov.uk/civil.asp]* and the Criminal Defence Service *[link: http://www.legalservices.gov.uk/criminal.asp]*.

Police Station Representatives Service
Defence Solicitor Call Centre
Email dscc.enquiries@ventura-uk.com *[link: http://www.sra.org.ukmailto:dscc.enquiries@ventura-uk.com]*
Tel 0845 543 8910

Authorised assessment organisations

What is an assessment organisation?

Assessment organisations administer Police Station Representatives Accreditation Scheme assessments on the SRA's behalf.

They also offer training to prepare people for the assessments (although it is not a compulsory part of the process).

The SRA operates a framework for the form and content of assessments, and authorises and monitors the assessment organisations.

We have authorised three providers as assessment organisations:

- Cardiff Centre for Professional Legal Studies *[link: http://www.law.cf.ac.uk/courses/professional/pdu/psras/]*
- Datalaw *[link: http://www.datalawonline.co.uk/]*

Before you select an assessment organisation, find out the answers to the following questions:

- When are the assessments held?
- What are the deadlines for submitting portfolios?
- Where are the role-play assessments held?
- What assessment preparation options are on offer?

Supervision

6 October 2011
Print this practice note
This practice note provides advice on how to ensure that you can be both a good solicitor and a good supervisor, and gives those being supervised guidance on how to ensure they receive effective supervision.

Legal status

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This practice note is the Law Society's view of good practice in this area. It is not legal advice.

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Practice notes are not legal advice, nor do they necessarily provide a defence to complaints of misconduct or of inadequate professional service. While care has been taken to ensure that they are accurate, up to date and useful, the Law Society will not accept any legal liability in relation to them.

For queries or comments on this practice note contact the Law Society's Practice Advice Service.

Professional conduct

The following sections of the SRA Handbook are relevant to this issue:

- SRA Code of Conduct 2011, chapter 7 on management of your business
- Training Regulations 2011 – Part 2 – Training Provider Regulations
- SRA Authorisation Rules for Legal Services Bodies and Licensable Bodies 2011
- SRA Practice Framework Rules 2011

SRA Principles

There are ten mandatory principles which apply to all those the SRA regulates and to all aspects of practice. The principles can be found in the SRA Handbook.

The principles apply to solicitors or managers of authorised bodies who are practising from an office outside the UK. They also apply if you are a lawyer-controlled body practising from an office outside the UK.

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Terminology

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Must - A specific requirement in legislation or of a principle, rule, outcome or other mandatory provision in the SRA Handbook. You must comply, unless there are specific exemptions or defences provided for in relevant legislation or the SRA Handbook.

Should

- Outside of a regulatory context, good practice for most situations in the Law Society's view.
- In the case of the SRA Handbook, an indicative behaviour or other non-mandatory provision (such as may be set out in notes or guidance).

These may not be the only means of complying with legislative or regulatory requirements and there may be situations where the suggested route is not the best possible route to meet the needs of your client. However, if you do not follow the suggested route, you should be able to justify to oversight bodies why the alternative approach you have taken is appropriate, either for your practice, or in the particular retainer.

May - A non-exhaustive list of options for meeting your obligations or running your practice. Which option you choose is determined by the profile of the individual practice, client or retainer. You may be required to justify why this was an appropriate option to oversight bodies.

SRA Code - SRA Code of Conduct 2011

2007 Code - Solicitors' Code of Conduct 2007

OFR - Outcomes-focused regulation

SRA - Solicitors Regulation Authority

CPD - Continuing Professional Development

Manager - the SRA Code defines manager as:

- a member of an LLP
- a director of a company
- a partner in a partnership, or
- in relation to any other body, a member of its governing body

Lawyer - the SRA Code defines lawyer as a member of one of the following professions, entitled to practise as such:

- the profession of solicitor, barrister or advocate of the UK
- a profession whose members are authorised to carry on legal activities by an approved regulator other than the SRA
- an Establishment Directive profession other than a UK profession
- a legal profession which has been approved by the SRA for the purpose of recognised bodies in England and Wales, and
- any other regulated legal profession specified by the SRA for the purpose of this definition

Supervisor - a person responsible for the supervision of another person (whether a paralegal, trainee or qualified lawyer). This includes not just those with ongoing responsibility for the supervision of an individual (eg a trainee supervisor), but also any person who has delegated responsibility for a piece of work - or a particular part of it - to another person, or who has undertaken responsibility for supervision of a particular matter.

Training principal - a partner, manager, director, owner, or someone of equivalent seniority and/or managerial status who meets the requirements of the SRA, as outlined in the Training Regulations 2011 Part 2 - Training Provider Regulations, and who is nominated by a training establishment to comply with Regulation 15 and take overall responsibility for the training of trainees during the training contract period.

The Law Society also provides a full glossary of other terms used throughout this practice note

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1 Introduction

1.1 Who should read this practice note?

Any solicitor in legal practice or employment in England and Wales who is responsible for the supervision of another individual in legal practice or employment, and any supervised solicitor or trainee who would like to know what they should expect from their supervisor.

This practice note is aimed primarily at private practice, although some of the information will also be relevant in the context of in-house practice.

1.2 What is the issue?

The proper supervision of work is a legal and professional requirement. Chapter 7 of the SRA Code of Conduct places an obligation on all solicitors, particularly managers, to have a system for supervising clients' matters, including the regular checking of the quality of work by suitably competent and experienced people (outcome 7.8). You must also comply with the statutory requirements for the direction and supervision of reserved legal activities and immigration work (outcome 7.7).

Everyone has a role to play in the proper management of your practice, however it is ultimately the manager who must ensure that the outcomes in chapter 7 of the SRA Code are met.

The Law Society's Great Quality of Life Survey, published in 2007, found that good supervision was the most important factor in motivating and retaining staff. However, the skills needed to be a successful solicitor do not necessarily encompass those needed to be a good and effective manager.

This practice note provides advice on how to ensure that you can be both a good solicitor and a good supervisor, and gives those being supervised guidance on how to ensure they receive effective supervision.

2 Why is supervision important?

The 2007 Code states that the term 'supervision' refers to 'the professional overseeing of staff and client matters'. In a day-to-day sense, supervision means the management of people and their activities.

Good supervision is beneficial in many ways. It:

- provides confidence in the quality of services provided to clients
- minimises the practice's risk by supporting the timely and error-free production of work
- provides a valuable opportunity to help individuals develop their skills
- impacts positively on job satisfaction, which will assist with recruitment and retention at your practice
- supports the supervisor's business by improving motivation, efficiency and profitability

3 Characteristics of good supervision

Supervision procedures may vary depending on:

- the type of work being undertaken in your practice
- the size of your business and number of offices
- the number of individuals under supervision
- the complexities of the work and the experience required
- the number, experience and qualifications of the employees, and
- the different working practices of groups or individuals.

Nonetheless, there are a number of key steps that can be taken to ensure good supervision:

3.1 Regular feedback

Supervisors should devote adequate time and attention to the person that they are supervising, and should be available to meet with them regularly to assess progress and offer feedback.

This ensures that the supervised person feels supported and that you are confident in both their work and development. Good feedback gives people the opportunity to:

- learn from their actions
- understand their strengths
- focus their efforts to improve

Give praise and recognition where it is due and ensure areas that need improvement are discussed.

You should agree to a clear schedule for feedback meetings. This will ensure regularity and certainty for the supervised person.

Formal appraisals should be combined with more regular, informal 'catch up' meetings.

The junior staff member should also feel that they can approach the supervisor with questions or concerns about their work at any time. Regular meetings and an 'open door' policy will help to create an environment that encourages the supervised person to ask for help, find solutions to problems and take responsibility for their self-development (see 5.3 below).

3.2 Tailor your supervision

Supervision of work should be tailored to both:

- the level of experience or seniority the supervised staff member has, and

- the type of work being supervised

For example, trainees will need much greater supervision than a person who has many years of experience in practice.

You should anticipate that substantive advice and communication to clients generally requires a much greater level of supervision than more routine or administrative work, depending on the skills of the individual.

3.3 Effective delegation

Delegation can be an important part of providing effective supervision when supervising the work of a more inexperienced person. Successful delegation involves:

- checking that the individual has the capacity to take on the work
- briefing well by providing sufficient information to enable them to do the task effectively
- explaining the background to the work and that individual's part in it
- being clear on the results you are expecting and the deadlines
- giving sufficient authority and resources to get the work done
- encouraging the individual to exercise initiative and ask questions
- giving guidance without interference or pampering

These points are expanded below.

3.3.1 Brief the supervised person effectively

A proper briefing is important when assigning work. You should give clear instructions and check that they have been understood. Provide sufficient information and factual background about a case or matter and ensure that the supervised person is aware of any specific requirements in relation to the way that the particular client likes to work, for example, within a client service agreement. The briefing should also include goals and deadlines. You may find it useful to give written instructions to more junior staff members.

You should state if a task must be done in a particular way and explain any working preferences, rather than leaving it to the other person to guess. Examples include:

- when you expect progress reports
- the times you are available to answer questions and offer guidance
- whether supervised individuals may make contact with the client directly, or should check with you first

Agree whether the matter should be reviewed by you on a regular basis (eg weekly), or only when certain 'trigger points' have been reached on the file.

Check that the individual has understood what you would like them to do by asking them to summarise the task and how they plan to tackle it.

You should provide both a clear explanation of expectations relating to individual pieces of work, and an overview of the supervised person's general objectives in relation to their role. It is helpful for them to understand how their work fits into the wider vision of the practice as a business.

3.3.2 Delegate work that encourages development

The Quality of Life survey found that staff are most motivated when they have some level of responsibility and challenging work that involves a high degree of client contact. While this type of work may not be available at all times, you should keep it in mind when delegating work.

Supervisors should provide work which enables supervised individuals to develop their skills. Supervisors should pitch work at a level that will ensure that the supervised individual feels appropriate pressure to perform, but not out of their depth and fearful.

It takes time to brief someone properly and, although initially it may be quicker to perform the task yourself, the pay off will come the next time you delegate this type of work.

3.3.3 Support ongoing learning and development

You should encourage learning and development through training, whether at formal courses or through office mentoring, based on the objectives for the role of the individual being supervised. This will ensure that they feel supported and encouraged in their work. You should work with them to identify skills gaps and opportunities for development in certain areas.

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4 Regulatory requirements

Chapter 7 of the SRA Code places an obligation on you to ensure that there is a system for supervising clients' matters, to include the regular checking of the quality of work by suitably competent and experienced people.

Managers will remain responsible for this overall supervision and management within the practice, however day-to-day supervision may be delegated.

All staff must be supervised, whether they are employees or independent contractors, such as locums or consultants, and irrespective of where the work is actually carried out.

4.1 Qualification to supervise

In order to comply with the SRA's Authorisation Rules, every SRA-regulated body must have at least one person (i.e. lawyer manager of an authorised body, recognised sole practitioner, law centre or in-house solicitor) who is 'qualified to supervise'.

This person must have been entitled to practise as a lawyer for at least 36 months within the last ten years and must have completed the training specified by the SRA for this purpose. In calculating the 36 months, any period of entitlement to practise as a lawyer of another jurisdiction can be taken into account in addition to your time entitled to practise as a solicitor.
The person 'qualified to supervise' does not have to personally supervise all work undertaken by the firm. However, an important part of that person's responsibilities is to ensure that unqualified persons do not undertake reserved work except under the supervision of a suitably qualified person.

4.1.1 Absence of person 'qualified to supervise'

The SRA specifies that you should make arrangements for the continuation of your practice in the event of absences and emergencies, for example holiday or sick leave, with the minimum interruption to clients' business (IB 7.4). Doing so would help to establish that you are complying with the outcomes in chapter 7 of the SRA Code. This may include ensuring that there is another person who is 'qualified to supervise' in your practice.

If you are a sole practitioners, you should have an arrangement with another solicitor to supervise your practice until you return from any absence.

4.1.2 In-house practices

Certain in-house practices (eg law centres) must have a solicitor or registered European lawyer who is 'qualified to supervise' as described in rule 12 of the SRA's Practice Framework Rules.

4.2 Training and experience

If you are a manager, you must train the individuals working in your practice to maintain a level of competence appropriate to their work and level of responsibility.

Those who are supervising client matters should have sufficient legal knowledge and experience to be able to identify problems with the quality or conduct of the work they are supervising, but might not necessarily need to be an expert in the area of work. The quality of the work must be checked regularly by suitably competent and experienced people.

You should ensure that everyone with supervisory responsibilities in your practice is adequately trained. The level and type of expertise required by the supervisor will depend on:

- The training, qualifications and experience of the individual who is being supervised
- the type of work being undertaken, and
- the number of individuals under supervision

5 Additional standards and protocols

Additional guidelines apply where the person being supervised is a trainee. A supervisor may also need to comply with the supervision requirements laid down by his or her practice, or as part of the practice's accreditation with a quality mark such as Lexcel or the Legal Services Commission's Specialist Quality Mark.

5.1 Training Contract Handbook

Trainee supervisors are responsible for providing practical day-to-day training and for giving trainees appropriate opportunities to meet the requirements of the training contract. Regulatory requirements relating to the development of trainee solicitors are covered in detail in the SRA Training Regulations 2011 Part 2 – Training Provider Regulations and the SRA's 'Training trainee solicitors' document, and are therefore not set out here. These resources provide detailed guidance on the responsibilities of trainee supervisors.

Throughout the training contract period, trainees must be properly supervised. Anyone involved in supervising a trainee should:

- have an appropriate level of legal knowledge and skills in the relevant practice area
- have adequate time and resources to supervise trainees
- have experience or training in the supervision of trainees
- understand the training requirements and the Practice Skills Standards, and
- understand the system of training within the practice

The practice's training principal must ensure that anyone involved in supervising trainees has adequate legal knowledge and supervisory experience or training.

5.2 Practice management standards

Practices who have been awarded quality marks such as Lexcel and the Legal Services Commission's Specialist Quality Mark are obliged to meet the practice management standards relating to supervision procedures and processes.

In relation to supervision, the Lexcel Practice Management Standard requires that:

- practices have a written description of their management structure which designates the responsibilities of individuals and their accountability
- there is a named supervisor for each area of work undertaken by the practice and that supervisor must have appropriate experience of the work supervised and be competent to guide and assist others
- practices have processes to ensure that all personnel, both permanent and temporary, are actively supervised, including processes relating to checks on incoming and outgoing correspondence; departmental, team and office meetings and communication structures; reviews of matter details in order to ensure good financial controls and the appropriate allocation of workloads, and the availability of a supervisor

These practice management standards identify supervision as an essential aspect of risk management within practices.

5.3 Internal supervision protocols

Many practices have internal supervision protocols, which define the roles and obligations of supervisors within the practice. Supervision protocols are described in more detail in section 6.2 below.

6 Encouraging good supervision

Support from senior management and from Human Resources (in larger organisations) is required to ensure good supervision practices are followed across your business. There are a number of institutional changes that you can make to encourage good supervision:

6.1 Provide training for all supervisors

You should consider providing training for supervisors to enable them to perform their supervisory duties well. Training could include:

- people management and development skills
- delegation skills
- coaching skills
- communication skills

Consideration should also be given to providing training in the management of associates to all new and existing partners. Senior associates who are responsible for the supervision of more junior persons should also receive guidance on how to supervise.

6.2 Review and clarify the supervisors' role

You should ensure that all supervisors in your practice understand the benefits of good supervision, are aware of their responsibilities and are prepared to fulfil them.

Establish guidelines or protocols that outline and clarify exactly what is expected of supervisors at your practice. A supervision protocol may:

- outline the practice's philosophy regarding supervision, for example: why it is important, who it is of benefit to, etc
- define the role and obligations of supervisors within the practice
- outline the type of work that may be delegated, and to whom
- outline the approval procedures for delegated work. Certain types of work, for example: document review and legal research, may not need, or be suitable for the closer supervision involved in, for example, advice to clients
- provide details of the type of training that supervisors are expected to have completed, where appropriate
- set out how supervision should be recorded so that the fact that supervision has taken place is reflected on the file
- set parameters for 'peer review' of work carried out by partners (see 6.8 below)
- provide guidance to junior persons on what they can expect from their supervisors and what their reciprocal responsibilities are

6.3 Encourage those being supervised to ask for help

Supervision is a two-way process. Even with all the right structures in place, it is not always possible for a supervisor to know when specific assistance is needed by the person being supervised. Those being supervised should also take responsibility for their own supervision and development.

Practices should encourage this by making it clear that they expect those being supervised to identify when it is appropriate to refer an issue to a supervisor, and to seek appropriate guidance and supervision.

An open and supportive atmosphere will foster a culture in which asking for help is seen as a natural part of personal development. A mentoring system (see 6.6 below) may also assist.

6.4 Conduct regular supervision performance reviews

Just as supervisors should have regular feedback sessions with the persons they are supervising, they should also be provided with regular reviews of their own performance. This can be achieved through meaningful and transparent annual appraisals, as well as less formal systems for monitoring progress throughout the year.

Where possible, '360° feedback' may be sought, to take in feedback from the supervised person as well as from the supervisor's superiors.

6.5 Provide adequate time for supervision duties

Supervisors may find it difficult to fulfil their responsibilities to the persons they are supervising due to their own workload commitments and billable hours target. It is important that supervisors are given sufficient time to effectively carry out their people management activities.

Encouraging supervisors to delegate appropriate work to the supervised person will have the two-fold result of freeing up more time for their supervisory role, and will provide the supervised person with more responsibility and greater job satisfaction.

6.6 Develop a mentoring system

Establishing a mentoring system within your firm may support the formal system of supervision, by providing newly qualified lawyers and those at the early stages of their career with additional face-to-face contact and advice.

6.7 Encourage informal supervision

Where possible, trainees and junior persons should share an office or office space with a partner or more senior person. This proximity:

- provides opportunities for informal supervision by the senior person
- enables the supervised staff member to observe and learn from the behaviour of the senior person, and
- encourages more face-to-face communication between the supervisor and the supervised person/s

6.8 Lead by example

On occasions it may be appropriate for work undertaken by a partner to be subject to 'peer review' by another partner. This may be the case if, for example, the matter is of particularly high value, or involves a novel point of law or complex drafting. The culture of the firm is important in making the practice of peer review acceptable and encouraged.

6.9 Consult external experts

Further improvements to supervision processes within your firm could be made by obtaining advice from outside management specialists, by considering the systems employed by other practices or by investigating non-legal business approaches to supervision.

7 More information

7.1 Other products and services

7.1.1 Practice Advice Service

The Law Society provides support for solicitors on a wide range of areas of practice. The Practice Advice Service can be contacted on 020 7320 5675 from 09:00 to 17:00 on weekdays.

Visit the Practice Advice Service website.

7.1.2 Law Society Consulting

If you require further support, Law Society Consulting can help. We offer expert and confidential support and guidance, including face-to-face consultancy on risk and compliance. Please contact us on 020 7316 5655, or email consulting@lawsociety.org.uk.

Find out more about our consultancy services

7.1.3 SRA

The SRA regulates solicitors in England and Wales. It makes and enforces the Solicitors' Code of Conduct.

Visit the SRA website

7.1.4 Law Society publications

- *Managing People in a Legal Business*
- *Leadership for Law Firms*
- *Lexcel People Management Toolkit*

Did you find what you were looking for?

- Yes ○
- No ○

What were you looking for?

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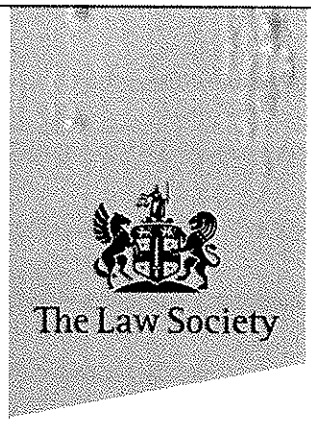
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Privacy - Terms





Criminal Litigation Accreditation

Application form guidance notes and policies

Application form guidance notes - Criminal Litigation Accreditation

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Overall guidance

1. These guidance notes are to assist you in applying for membership of the Criminal Litigation Accreditation (CLAS). The application form includes basic instructions to help you complete the form correctly. Additional **guidance notes** are provided here.
2. CLAS is designed to enable you to qualify to apply for inclusion on duty rotas under the Legal Services Commission (LSC) Criminal Defence Service Duty Solicitor Arrangements 2001.
3. **Emboldened words** (apart from document headings and advisory notes) are defined in the **glossary of terms** which follows.
4. The application form is designed to be completed electronically in Microsoft Word (1997 and later). Please answer all relevant questions and use the 'tab' key to progress through the form. Questions require a combination of typed answers, choosing an option from a drop-down menu or check box confirmation. You are also required to provide separate supporting documentation, which must be submitted along with your completed application form.
5. References to statutes and regulations include any subsequent statute, legislation or regulation directly or indirectly amending, consolidating, extending, replacing or re- enacting that statute or regulation and to all orders, directions and notices made or served under them.

If any developments after submission of this form would affect the answers given (whether in relation to complaints, claims, regulatory matters, changes to relevant persons or otherwise), you must notify the Law Society as soon as possible and, in any event, within 14 days of the change or the decision to make the change, whichever is the earlier.

Expected level of experience

There are three stages to attaining membership:

- Pass the Police Station Qualification ("PSQ")
- Pass the Magistrates Court Qualification ("MCQ")
- Meet fitness and propriety standards

If you intend to join a duty panel, you must pass both the PSQ and the MCQ assessments before you can qualify for the CLAS. Your application for accreditation must be submitted within three years of passing both qualifications.

You may attempt the PSQ and the MCQ in any order, or simultaneously.

Questions?

We cannot process your application if any relevant information or documentation is missing from your application form. If you are unable to resolve your query using information provided in the scheme guidance notes below, please contact us:

Tel: 0207 316 5550 **Email:** accreditation@lawsociety.org.uk

Glossary of terms

Term	Definition
Accreditation office	The Law Society office that will deal with applications to **the scheme**.
Continuing professional development (CPD)	Once accredited, all members of the Scheme will be required to ensure that they complete at least 6 CPD hours of criminal law related courses per year.
Glossary of terms	The glossary contained within these guidance notes.
Limited Liability Partnership (LLP)	A recognised body within the **SRA** Practice Framework Rules 2011.
Practice	Any law firm regulated by the **SRA,** including **Sole Practitioners**, partnerships, companies and **LLPs**.
Scheme design	The document setting out the framework of **the Scheme** including its objectives, benefits and the eligibility criteria.
Sole practitioners	A recognised sole practitioner pursuant to the **SRA** Practising Regulations 2011 until 31/3/2012 and thereafter the Authorisation Rules 2011.
SRA	Solicitors Regulation Authority.
The scheme	The Law Society's Criminal Litigation Accreditation Scheme, a quality standard designed to enable you to qualify to apply for inclusion on duty rotas under the Legal Services Commission (LSC) Criminal Defence Service Duty Solicitor Arrangements 2001.

Application form guidance notes

Section 1 - General information

All Applicants should complete sections A, B and C. Please note that some questions (where indicated) are only relevant for solicitors and other (non-solicitor) applicants.

A - Your details

Question	Guidance
2	Please provide the daytime telephone number for the practice or organisation at which you work. This will be the telephone number we will use in the event that we need to contact you to discuss your application.
3	Please provide your professional email address for the practice or organisation at which you work. This will be the email address we will use in the event that we need to contact you to discuss your application.
4	To be completed by solicitor applicants only. The SRA ID is your reference number which appears on the Law Society's public register.
5	To be completed by solicitor applicants only. Please indicate whether you currently hold a practising certificate.
6	To be completed by solicitor applicants only. Please indicate whether you have held an unconditional practising certificate at all times. If your answer is 'no', please provide further details.
7	To be completed by other (non-solicitor) applicants only. Please indicate your job title from the list of available options. If your title is not in the list, please select 'Other' and specify the title separately.
8	To be completed by other (non-solicitor) applicants only. Where professional qualifications are held, please confirm the full name of the qualification held, along with the professional body it was awarded by, your membership number and the date the qualification was attained.

B - Organisation information

Question	Guidance
9	To be completed by applicants who are employed in an **SRA** regulated organisation. Please provide the full registered name of your organisation, including a trading name if appropriate.
10	To be completed by applicants who are employed in an **SRA** regulated organisation. The **SRA** ID is the **practice's** reference number which identifies the **practice** and appears on the Law Society's public register. Each branch office of the **practice** will have its own individual **SRA** ID. The **SRA** ID being asked for here is the **SRA** ID for the main office.
11	To be completed by applicants who are employed in a non **SRA** regulated organisation. Please provide the full registered name of your organisation, including a trading name if appropriate.
12	To be completed by applicants who are employed in a non **SRA** regulated organisation. Please provide the full postal address for your organisation. This will be the address that we use to send you any post communications in connection with your application.

C - Suitability for accreditation

Applications for membership of **the scheme** may be accepted from solicitors, barristers and fellows and members of the Chartered Institute of Legal Executives, subject to approval by the Law Society.

Applicants will be expected to meet a set of minimum requirements before their application can proceed for assessment. We will reject applications on initial assessment, if Applicants are unable to demonstrate that they meet the minimum requirements.

We also carry out checks to ascertain whether an Applicant is a fit and proper person to be accredited by **the scheme**. Further details can be found below and in the General Application Criteria and Guidance on the website.

Question	Guidance
13 - 16	Please ensure that you provide full details of any issues that may affect your application and the reputation of the Criminal Litigation Accreditation. This information will be cross checked against information we hold.

Section 2 - Initial assessment

D - Scheme Specific requirements

Question	Guidance
17-19	All applicants must have completed either the PSQ or the Police Station Representative Accreditation Scheme and the MCQ prior to applying for membership of **the scheme.** The list of approved assessment organisations can be found on our website at: www.lawsociety.org.uk/support-services/accreditation/criminal-litigation/. Applicants can take the qualifications in any order or simultaneously. Assessments must be completed and an application submitted to the Law Society within three years. Copies of the course certificate must be enclosed with the application.

Declaration

The applicant and a partner or senior partner must each complete a declaration to confirm that:

- the information provided by the applicant is accurate and true
- the applicant meets **the scheme** criteria
- the applicant understands how the information provided by them will be used by the Law Society.

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Policies

Approved assessment organisations

A list of approved assessment organisations and their role can be found on our website: www.lawsociety.org.uk/support-services/accreditation/criminal-litigation/.

The Police Station Qualification

When you pass the PSQ, you can apply for inclusion on the CDS Police Station Representative Register and can then act in the same capacity as a police station representative (see the LSC Police Station Register Arrangements 2001 as amended for further details) and have duty rota cases referred to you, provided that the duty advocate has given the initial advice.

If you have previously completed the Police Station Representative Accreditation Scheme in accordance with the LSC Police Station Register Arrangements 2001 as amended, or previous arrangements, and comply with the all other requirements, you can apply for exemption from completing the PSQ assessments.

PSQ Assessments

There are two assessments:

- the portfolio
- the critical incidents test

You may attempt the police station assessments at any time following admission to the roll.

Both PSQ assessments must be passed within 12 months of the date of submission of the portfolio or the date the critical incidents test was first attempted, whichever is earlier.

If you do not pass both assessments within the 12 months, you will have to restart the process and submit a fresh portfolio.

You may change assessment organisation at any time during the assessment process. However, the start date for the 12 month completion period will be the date on which the portfolio was first submitted to any assessment organisation or the critical incidents test was first attempted.

You will be assessed against the expected standards of competence for advocates advising clients in the police station.

A - The Portfolio

The purpose of the portfolio is to encourage you to constructively reflect upon your police station practice and to enable an assessment organisation to assess your competence to advise clients in a police station by reference to the competence standards.

When you have registered with an assessment organisation of your choice, you will be provided with details of the requirements for completion of the portfolio.

Cases in the portfolio must not be more that 12 months old on the date of submission of the portfolio.

B - The Critical Incidents Test

The purpose of the critical incidents test is to enable an assessment organisation to assess your practical skills, abilities and effectiveness as an advocate acting for a client in a police station by reference to the competence standards.

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The test is a role-play test conducted using an audio-cassette and consists of a number of issues or problems posed to you, either verbally or in terms of their actions, by a police officer, client or third party. The audio-cassette will indicate when a response is expected from you. You will have 30 seconds in which to commence a response. There is no limit on the length of your response, but if you do not start the response within 30 seconds, you will lose the opportunity to do so for that particular issue.

The test is conducted under examination conditions, but you may take any relevant materials into the assessment. You should remember that the time available to refer to materials and texts is limited.

The assessment organisation you are registered with will provide details of the requirements for completion of the critical incidents test and will brief you on these requirements prior to the test commencing.

The Magistrates Court Qualification

To start the assessment process, it is recommended that the majority of applicants will need to have 12 months experience of criminal defence practice before attempting the MCQ assessments.

MCQ assessments

There are two assessments:

- the portfolio
- the interview and advocacy assessment

The assessments may be attempted in any order.

You will be assessed against the standards of competence for the accreditation of court duty advocate.

A - The portfolio

The purpose of the portfolio is to enable you to demonstrate the level and range of your experience of conducting cases in magistrates' courts and, in the case of the detailed summaries, to encourage you to constructively reflect on your magistrate's court practice, and to enable an assessment organisation to assess your competence by reference to the competence standards.

The portfolio comprises

- Part 1 – short notes on 20 cases
- Part 2 – detailed summaries of five cases not including any of the 20 short note cases

Cases used in the portfolio must not be more than 12 months old on the date of submission of the portfolio.

The portfolio must be passed within 12 months of the date it is first received by any assessment organisation. Failure to pass within 12 months will result in the applicant being required to restart the process with the submission of a fresh portfolio.

When you have registered with an assessment organisation of your choice, you will be provided with details of the requirements for completion of the portfolio.

B - The interview and advocacy assessment

The purpose of the interview and advocacy assessment is to enable assessment of your competence and effectiveness as an advocate acting for a client in magistrates' court proceedings by reference to the competence standards.

The assessment consists of two parts:

- a simulated client interview, and
- a simulated appearance in a magistrates' court

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In the latter of which you will make representations and/or submissions in respect of three cases, one of which will be a bail application.

Both parts of the assessment will be held on the same occasion, and a applicant will have to achieve at least 50 per cent in each part in order to pass.

The test is conducted under examination conditions, but you may take any relevant materials into the assessment. You should remember that the time available to refer to materials and texts is limited.

The assessment organisation you are registered with will provide you with details of the requirements for completion of the interview and advocacy assessment and will brief you on these requirements prior to the test commencing.

Expected standards of competence

At the police station (PSQ only):

- The definition of crimes commonly dealt with in the police station, and of the means of discovering the definition of a crime where this is not known to the advocate
- The defences commonly available to defendants appearing in the police station, and of the means of discovering the requirements of a defence where these are not known to the advocate
- Vulnerable persons
- Immigration detainees
- Terrorism provisions
- Police and Criminal Evidence Act 1984 (as amended) and Codes of Practice issues under that Act, including (but not limited to): arrest, search, detention, samples, legal advice, charge and bail
- Disclosure
- Evidence: Burden and standard of proof, presumptions, documentary evidence, physical objects, judicial notice, hearsay, opinion, character, unfairly or illegally obtained evidence, adverse inferences, privilege, corroboration, challenging admissibility
- Disposal

At court (MCQ only):

- The definition of crimes commonly dealt with in the magistrates' court, and of the means of discovering the definition of a crime where this is not known to the advocate
- The defences commonly available to defendants appearing in the magistrates' court, and of the means of discovering the requirements of a defence where these are not known to the advocate
- Jurisdiction of the court
- Parents and guardians
- The different classification of offences
- The different modes of participating in a crime
- The different methods of commencing criminal proceedings, and the legal requirements of those methods
- Abuse of process
- Bail and custody time limits
- Disclosure
- Reporting restrictions
- Plea before venue, committal, sending and transfer of cases
- Special measures and common law powers to regulate procedure to deal with vulnerable persons
- Evidence: Burden and standard of proof, presumptions, documentary evidence, physical objects, judicial notice, hearsay, opinion, character, unfairly or illegally obtained evidence, adverse inferences, privilege, corroboration, challenging admissibility
- Sentencing, including default in relation to
- Appeal and review of magistrates' court findings.

Additional knowledge (MCQ and PSQ)

- The role of others within the criminal justice system

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- Police disclosure tactics
- Public funding

Procedure (MCQ and PSQ)

- Advising in relation to public funding and the role of a duty advocate
- Advising on the strength of the case against the client
- Advising on interview strategy at the police station
- Appropriately intervening and/or making representations
- Advising on plea and venue at court
- Advising on court procedure, including route to disposal and interlocutory applications
- Advising in relation to sentence and appeal

Ethical issues (MCQ and PSQ)

- Ethical and contractual rules
- Criminal Procedure Rules 2010 (and any successor rules)
- Law Society Practice Notes

Professional and specialist skills (MCQ and PSQ)

- Negotiation
- Advising clients and recognising vulnerability
- Advocacy
- Appraisal of issues

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What happens to the completed application form?

When an application form is received, we will send an acknowledgment email. We will then check the application to confirm that you are eligible to apply for accreditation – for example, that you have completed the prerequisite qualifications. If at this stage you appear not to be eligible, we will contact you and ask for further information in support of your application. If you are eligible, we will carry out a fitness and propriety assessment and make a decision on your application.

Membership term and re-accreditation

Membership is for an initial term of five years.

Members of the scheme will be expected to attend at least six hours per year of training courses or other approved **continuing professional development (CPD)** events to update your knowledge of criminal law, litigation and practice

The Law Society is expecting to implement a re-accreditation process in 2016.

Appeals

Any Applicant who is dissatisfied with a decision made on an application for accreditation is entitled to appeal to the Law Society against a refusal of accreditation or a conditional recommendation for accreditation.

Appeals will be determined by **the scheme**'s Chief Assessor on the basis of the application form and any written representations made by the Appellant. Please refer to our General Application Criteria and Guidance for further information on our appeals process.

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ACCREDITED
Criminal
Litigation

Standards of competence for the accreditation of solicitors and representatives advising at the police station

Education and Training Unit
Version 1

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The standards of competence are in three parts as follows

Part 1 Underpinning knowledge

Details the knowledge and understanding that the solicitor or representative will need to have in order to be competent when giving advice in the police station.

Part 2 Underpinning skills

Details the skills which the solicitor or representative will need in order to represent effectively the client in the police station and which should be demonstrated as the solicitor or representative undertakes the activities detailed in the units of performance in Part 3.

Part 3 Standards of performance

Details the standards of performance that the solicitor or representative should demonstrate at each stage of the process of representing the client. In order to demonstrate competent performance the solicitor or representative will need the knowledge and skills detailed in Parts 1 and 2. The solicitor or representative's understanding of how and the reasons why each of the performance criteria should be demonstrated in a police station situation may be examined in the written test. The standards of performance will be used to assess the candidate's performance in the critical incidents test.

Part 1 Underpinning knowledge

1.1 The role of defending the client

The solicitor or representative must be able to demonstrate a practical understanding of

1.1.1. ethical rules and principles relevant to advising and assisting a client at the police station

1.1.2. a solicitor's or representative's authority to act for a person detained in the police station

1.1.3. a solicitor's or representative's role and aims when acting for such a client with regard to the probing of the immigration officer's assessment of a client's immigration status, representations to be made to the immigration officer and the purpose of the advice to be given to the client

1.1.4. a solicitor's or representative's role and aims when acting for such a client with regard to the probing of the prosecution case, representations to be made to the police and the purpose of the advice to be given to the client

1.1.5. the effect that detention can have on a client's behaviour in the police station and appropriate responses to typical behaviour

1.1.6. how to identify a client's vulnerability

1.1.7. how to identify inappropriate behaviour by the police and when and how to respond to it

1.1.8. the need for accurate records to be made of the information obtained from the police, the instructions obtained from the client, actions taken and advice given to the client

1.1.9. the need to give consideration to any conflict of interests and the appropriate course of action where a conflict, or significant risk of a conflict of interests is identified.

1.2 An understanding of criminal law and procedure

The solicitor or representative must be able to demonstrate a practical understanding of the

1.2.1. basic sequence of events in criminal cases from the client's arrest/arrival at the police station, to conviction and sentence and the critical factors at each stage

1.2.2. definition of an arrestable offence

1.2.3. definition of a serious arrestable offence and the significance of an offence being so classified

1.2.4. different ways by which crimes may be tried

1.2.5. meaning of the terms: burden of proof, actus reus, mens rea, intentionally, recklessly, maliciously, dishonestly, knowing or believing, possession

1.2.6. defence of self-defence

1.2.7. modes of participation in crime of sole and joint principal and accomplice

1.2.8. law and procedure relating to young suspects and defendants

1.2.9. implications of the Human Rights Act 1998 for advice and assistance at the police station.

1.3 An understanding of relevant immigration law and procedure

The solicitor or representative must be able to demonstrate a practical understanding of

1.3.1. the basis upon which a person can be detained under the Immigration Act or other similar legislation
1.3.2. the meaning of the terms, overstayer, illegal entrant, asylum seeker, deportee, refugee, exceptional leave to remain
1.3.3. the main Immigration Act offences
1.3.4. the basic sequence of events in immigration cases from the client's arrest/arrival at the police station, to interview, the decision of the immigration officer and detention/release, and the critical factors at each stage.

1.4 An understanding of the common crimes

The solicitor or representative must be able to demonstrate that they are able to determine the components or elements of any crime, and defences that may relate to such a crime. In particular the solicitor or representative must be able to demonstrate an awareness of the components of the following common crimes, together with their specific defences sufficient to enable advice to be given to a client about the strengths and weaknesses of the prosecution case including the elements which the prosecution have to prove.

1.4.1. assault occasioning actual bodily harm
1.4.2. possessing a controlled drug with intent to supply
1.4.3. handling stolen goods
1.4.4. possessing an offensive weapon
1.4.5. taking a motor vehicle
1.4.6. theft
1.4.7. affray
1.4.8. criminal damage
1.4.9. robbery
1.4.10. burglary.

1.5 An understanding of the rules of evidence

The solicitor or representative must be able to demonstrate a practical understanding of

1.5.1. the legal and evidential burdens of proof as they relate to prosecution and defence
1.5.2. how facts are proved including the rule against hearsay and its exceptions
1.5.3. the evidential consequences of a suspect
  (i) remaining silent
  (ii) remaining selectively silent
  (iii) denying guilt at interviews
  (iv) lying
  (v) making a "mixed" statement
  (vi) making a confession

1.5.4. legal professional privilege
1.5.5. the evidential value of admissions made by a co-accused

1.5.6. the exclusion of an unreliable confession or evidence obtained unfairly (PACE s.76 and s.78).

1.6 A practical understanding of Police and Criminal Evidence Act 1984 (PACE) and the codes of practice under PACE

The solicitor or representative must be able to demonstrate a practical understanding of PACE and the codes of practice and of their interpretation in the light of case decisions, and an understanding of the evidential consequences of a breach, as they relate to

1.6.1. the search of the client's premises
1.6.2. arrest, voluntary attendance at the police station and search upon arrest
1.6.3. the duties of the custody office before and after the charge
1.6.4. responsibilities in relation to detained persons
1.6.5. detention, time limits of detention and reviews
1.6.6. searches of detained persons
1.6.7. the right to have someone informed when arrested
1.6.8. fingerprinting
1.6.9. the taking of intimate and other samples
1.6.10. the right to legal advice
1.6.11. charging
1.6.12. bail
1.6.13. the special treatment of juveniles and other vulnerable persons
1.6.14. the keeping of and entitlement to see the custody record
1.6.15. documentary evidence
1.6.16. cautions
1.6.17. the conduct and tape recording of interviews
1.6.18. identification procedures.

Part 2 Underpinning skills

Communication skills

The solicitor or representative must be able to communicate effectively with the client, the police officers involved and any third parties. The solicitor or representative must be able to

2.1.1. use language appropriate for the recipient
2.1.2. identify if there is a need for an interpreter
2.1.3. express requests, objections, ideas and advice with precision, logic and economy
2.1.4. listen actively
2.1.5. speak effectively and assertively
2.1.6. communicate in a manner and form that takes account of ethnic, cultural or other forms of diversity.

Negotiating skills

The solicitor or representative must be able to demonstrate negotiating skills. The solicitor or representative must be able to

2.2.1. identify the issues to be resolved
2.2.2. assess the relative strengths and weaknesses of the parties' positions
2.2.3. identify the strategy and tactics adopted by the other party
2.2.4. explain the benefits that would result from an acquiescence to his or her request
2.2.5. generate alternative approaches to the issues
2.2.6. make accurate records of the negotiation and the outcome.

Interviewing and advising skills

The solicitor or representative must be able to elicit effectively the relevant information from the client in order to be able to offer appropriate advice. The solicitor or representative must be able to

2.3.1. allow the client to explain his or her position
2.3.2. elicit relevant information
2.3.3. gain the trust and confidence of the client
2.3.4. assist the client to be able to decide upon the best course of action
2.3.5. agree on the action to be taken by both the client and the representative
2.3.6. deal with the above in a manner which takes proper account of ethnic, cultural and other forms of diversity
2.3.7. deal with any ethical problems which may arise when advising the client
2.3.8. accurately record the information elicited and the advice given.

Part 3 Standards of performance

The solicitor or representative must act in accordance with relevant ethical rules and principles at all times.

Unit 1 Respond to the request to attend

Element 1

Obtain information about the detained person and his or her circumstances.

Performance criteria

3.1.1. details about the detained person are obtained
3.1.2. the relationship between the detained person and the third party is established where appropriate
3.1.3. information about the circumstances of the arrest and any other people involved is sought
3.1.4. information about whether a criminal investigation is being conducted, is sought
3.1.5. details about the location of the detained person are obtained
3.1.6. reasons for concern regarding the detained person's well being, vulnerability or police conduct are identified
3.1.7. an appropriate assessment of the authority to act for the detained person is made
3.1.8. all information obtained is accurately recorded.

Range statement

The initial request to attend might be received from a friend or relative, existing or former client, an appropriate adult, the duty solicitor service, or the detained person choosing from a list at the police station.

Element 2

Consult with the custody officer by telephone.

Performance criteria

3.2.1. The custody officer is informed of the solicitor's or representative's status

3.2.2. Information is sought regarding the client and associated suspects, the alleged offence and the circumstances of the arrest

3.2.3. Information is sought regarding the evidence in support, detention, bail and charging decisions, the police officers involved, the police investigation and the officer's assessment of the client and actions taken.

3.2.4. Where appropriate, information is sought regarding the immigration officer involved and as to whether a criminal investigation is being conducted

3.2.5. An appropriate response is given to non disclosure of the information requested

3.2.6. Access to the client is sought and an appropriate response is given to a refusal to allow access.

Element 3

Consultation with the client by telephone, if access is obtained.

Performance criteria

3.3.1. the client is informed of the representative's status

3.3.2. the client is reminded that the conversation might not be private

3.3.3. the client is directly questioned about admissions, treatment and police responses to requests

3.3.4. information is sought to enable an assessment about the client's vulnerability to be made

3.3.5. the client's right to free legal advice service is explained

3.3.6. the client is advised to exercise the right to silence if questioned prior to the solicitor's or representative's attendance.

Element 4

Decide what action to take and communicate this decision.

Performance criteria

3.4.1. an assessment of the solicitor's or representative's competence to advise on the case is made

3.4.2. if the case is outside the solicitor's or representative's competence appropriate action is taken

3.4.3. an assessment of the need to make a personal visit is made

3.4.4. the urgency of the need for advice is determined

3.4.5. the custody officer and client are informed of the proposed course of action.

Unit 2 Consult with the appropriate officers at the police station.

Element 1

Consult with the custody officer.

Performance criteria

3.5.1. the custody officer is informed of the solicitor's or representative's status if this information has not been given previously
3.5.2. information about the client, the allegation and the investigation are sought
3.5.3. a copy or sight of the custody record is sought and an appropriate response is given to a refusal to allow access to the custody record
3.5.4. a private consultation of adequate duration with the client is sought and an appropriate response is given to a refusal to allow such consultation
3.5.5. the solicitor's or representative's presence during the police interview of the client is sought and an appropriate response given to a refusal to allow such attendance.

Element 2

Consult with the investigating officer.

Performance criteria

3.6.1. the investigating officer is informed of the representative's status if this information has not been given previously
3.6.2. information about the strength and nature of the prosecution case is sought and an appropriate response is given to a refusal to disclose such information
3.6.3. information regarding the purpose of the interview is sought
3.6.4. the proper arrangement of the interview room is sought
3.6.5. the solicitor's or representative's presence at the interview is sought and an appropriate response given to a refusal to allow such a presence
3.6.6. the investigating officer's consideration of the client's possible vulnerability and fitness for interview is confirmed.

Unit 3 Consult with the client

Element 1

Introduction to and assessment of the client.

Performance criteria

3.7.1. the client is informed of the solicitor's or representative's status, if this information has not been given previously
3.7.2. the client's trust and confidence are sought
3.7.3. an assessment is made of the client's vulnerability and fitness for interview
3.7.4. complaints of maltreatment of the client by the police or immigration service are ascertained together with any response made to such complaints
3.7.5. full records are kept of the consultation with the client.

Element 2

Inform and advise the client.

Performance criteria

3.8.1. the client is informed about the offence (s) alleged, what the prosecution would need to prove, the evidence in support, the strengths and weaknesses of the police case and prosecution evidence, the likely procedures to be followed in the event of the client being charged

3.8.2. instructions are taken from the client and any information obtained is kept confidential

3.8.3. reasoned and considered advice is given to the client concerning the answering of questions, the right to silence, the making of a written statement under caution, or the signing of a written record of any comment made to the police

3.8.4. where relevant, instructions are taken to establish the client's immigration status, and advice is given as to what action the police and/or immigration service may take, and as to the appropriate action to be taken by the client

3.8.5. an explanation is given of how the information gathered has been used to formulate the advice

3.8.6. an explanation of the conduct of a tape-recorded interview and its implications is given to the client

3.8.7. the solicitor's or representative's role during the interview is explained to the client

3.8.8. where appropriate an assessment is made of the solicitor's or representative's position with regard to the representation of more that one detained person.

Unit 4 Monitoring of and intervening during the interview.

Element 1

Ensure the proper conduct of the interview.

Performance criteria

3.9.1. an opening statement is made as appropriate

3.9.2. representations are made to the police or immigration officer if the interview room is not satisfactorily arranged and an appropriate response is made if these representations are ignored

3.9.3. improper behaviour by or questions from the police or immigration officer is recognised and responded to appropriately

3.9.4. attempts to undermine a decision by the client to exercise a right to silence are recognised and responded to appropriately

3.9.5. appropriate action is taken to ensure that the interview is accurately recorded

3.9.6. the time at which the interview should cease is recognised and responded to appropriately

3.9.7. full and accurate records of the interview are made.

Element 2

Advise the client during the interview.

Performance criteria
3.10.1. the client is advised without stopping the interview when appropriate
3.10.2. the interview is stopped in order to give the client legal advice in private, when appropriate
3.10.3. the client is made to understand the questions put and is allowed to answer freely.

Unit 5 Representing a vulnerable client.

Element 1
Identify a vulnerable client and ensure appropriate action is taken.

Performance criteria

3.11.1. the representative identifies a vulnerable client

3.11.2. appropriate representations are made to the police or immigration service to ensure that suitable provisions are made to prevent the client from being disadvantaged

3.11.3. the client is advised about the role of an appropriate adult or an interpreter, as appropriate, and the need to ensure that confidentiality is maintained.

Element 2

Working with an appropriate adult or interpreter.

Performance criteria
3.12.1. the appropriate adult or interpreter is made aware of his or her role
3.12.2. the interpreter is made aware of his or her duty to be impartial and to keep information confidential.

Range statement

The client might be vulnerable due to age, mental disorder or disability, a difficulty in understanding English, or a hearing or speech disability.

Unit 6 Identification procedures

Element 1

Advising the client on identification procedures.

Performance criteria
3.13.1. details of the witnesses' descriptions of the suspect to the police are sought and an appropriate response is given to a refusal to disclose this information
3.13.2. the client is given appropriate advice on the advantages and disadvantages of different identification procedures
3.13.3. the client is advised of the right to request an identification parade and the advantages and disadvantages of doing so

3.13.4. the client is advised of the consequences of not agreeing to take part in any identification procedure.

Element 2

Ensure that identification procedures are conducted fairly.

Performance criteria

3.14.1. representations are made to the police and precautions taken to ensure that the identification procedure is conducted fairly
3.14.2. appropriate advice is given to the client on participation in the form of identification chosen
3.14.3. a written record is kept of the identification procedure.

Range statement

The identification procedures on which advice might be given are identification parades, group identification, video film identification, confrontation, fingerprinting, identification by body samples, swabs, impressions.

Unit 7 Representing the client after the interview or identification procedure

Element 1

Ensure that improper questioning does not take place.

Performance criteria

3.15.1. appropriate representations are made to the police and at reviews that the client should be charged or released without further questioning
3.15.2. attempts are made to ensure that the client is not questioned further in the representative's absence.

Element 2

Ensure that after charge bail is given to the client where appropriate.

Performance criteria

3.16.1. appropriate representations to the police after charge about bail
3.16.2. the client is information about bail decisions.

Element 3

Advising the client.

Performance criteria

3.17.1. An explanation is given to the client about charging and bail decisions
3.17.2. The client is advised how to respond to subsequent approaches by the police to question him or her in the solicitor's or representative's absence
3.17.3. The client is referred to a specialist immigration advisor where appropriate having regard to the nature and complexity of the case and the knowledge and experience of the solicitor or representative.

The Law Society Gazette

No case for ban on paid McKenzie friends – regulators

By Chloe Smith | 26 May 2016

The case for a blanket ban on paid McKenzie friends has not been made, the Legal Services Board and the Solicitors Regulation Authority said in chorus today.

Responding to a judicial consultation, which, among other things recommended banning fee-charging McKenzie friends, the LSB argued that there was not enough evidence that their existence was harming consumers.

For its part, the SRA said that a blanket fee ban would mean litigants in person 'may not get access to support, even where there are no quality issues'. It said such a ban could even limit charities from charging small fees to recover their costs and warned the prohibition would be difficult to enforce.

The super-regulator said the judiciary had not examined what impact a ban on fee-charging McKenzie friends would have on consumers and did not explain why the current discretion courts have was not sufficient to manage any potential risks.

Neil Buckley (pictured), chief executive of the LSB, said: 'We know from our 2016 individual legal needs survey that 64% of consumers with a legal problem do not seek independent assistance in dealing with it. In this context, any moves to restrict consumers' choices should be targeted and based on evidence of detriment.

'We do not believe that the consultation paper adequately explains why a ban is necessary, what harm the ban would address or what the consequences of the ban might be for consumers.'

Listing its reasons for proposing a ban on paid McKenzie friends, the judiciary consultation warned that adding any extension to the rights of audience and litigation to McKenzie friends could create a 'new branch of the legal profession'.

But the LSB said it was 'not convinced' that the fact of a fee being charged or that more LiPs are asking courts to exercise their discretion means a new branch of the profession is being created.

It noted that recent data suggests that the prevalence of fee-charging McKenzie friends was 'relatively low overall'. Its 2015 legal needs survey showed that just four out of 5,512 consumers seeking legal assistance had recorded using a paid McKenzie friend as their main provider.

The LSB also warned against plans to codify the rules governing the courts' approach to McKenzie friends and to make McKenzie friends sign a standard form notice to let the court know if they intend to seek a right to conduct litigation or a right of audience.

It said the proposed rules appear to prevent judges from allowing individuals to exercise these rights if they are charging a fee or seeking to recover costs.

It cautioned that additional burdens on McKenzie friends, such as the standard form notice, might impact disproportionately on the most vulnerable consumers, particularly those who have less time to plan and prepare for a court hearing.

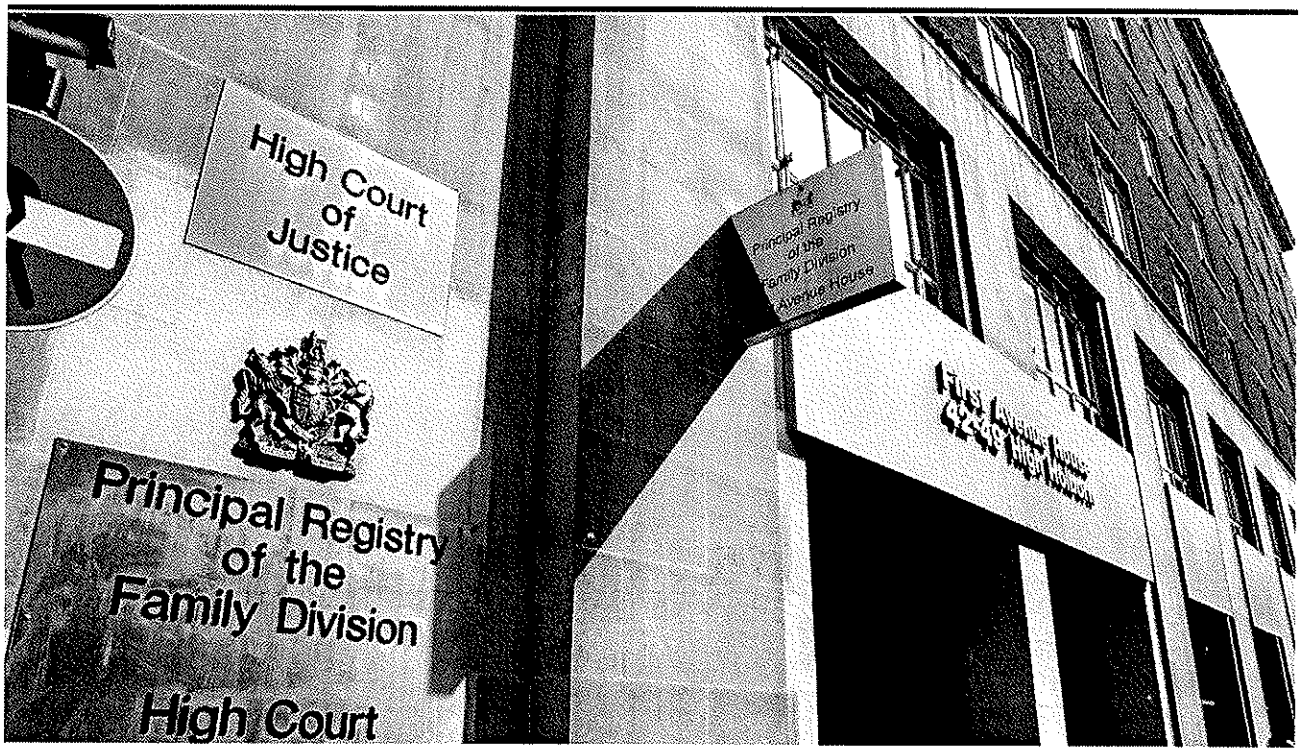
While the board said it saw the value of a code of conduct for McKenzie friends, there was insufficient detail for it to support the proposal.

The SRA said it supported codifying the courts' approach to McKenzie friends and creating a code of conduct. It said that while it was not in favour of making the process for appointing McKenzie friends unduly bureaucratic, it would support a standard form notice provided there was simple guidance on how to complete it.

Both the SRA and the LSB supported plans to rename McKenzie friends and to produce a plain-language guide for LiPs and their unqualified advisers.

The Legal Services Consumer Panel echoed the SRA and LSB in cautioning against banning fees, warning that the move could 'inadvertently impinge on access to justice as well as exacerbate existing vulnerabilities'.

The Law Society Gazette



Source: Jonathan Goldberg

News focus: my McKenzie friend nightmare

By Max Walters | 21 November 2016

One man's experience of being 'dragged through the mud' by a McKenzie friend highlights why this 'grey area in the law' is troubling the legal profession. Max Walters reports

Paid McKenzie friends are a growing phenomenon – and one causing concern in the legal profession. On the face of it, the option of having a friendly and reassuring face alongside you in court may appear welcome for many litigants, particularly those who fall outside the scope of legal aid.

However, professional bodies such as the Law Society point out that unregulated and unqualified McKenzie friends have no standards to adhere to and no need to prove they are capable of acting in a court or are worth the fees they charge.

A case study brought to the attention of the *Gazette* brings the message home. The litigant, whom we refer to as John, lost contact with his children after a family dispute in relation to which paid McKenzie friend David Bright was found guilty of perverting the course of justice. Bright was jailed for a year last month.

Bright, who represented John's ex-wife, ran an organisation called The Parents Voice (TPV) which offered McKenzie services in custody battles and family disputes. He submitted a report in court about John's children that he said had been written by a clinical psychologist. It was in fact compiled by his colleague and unqualified partner Claire Silverstone. She was also jailed.

Bright told the *Gazette* before he was sent to prison that the report was not used in court and that he 'genuinely believed' his partner was a qualified psychologist.

But John says his experience with Bright has had a profound impact on his current sad plight. Since the court hearing he said he has been estranged from his children and lost his job.

He added that he had been 'dragged through the mud' by an unqualified duo who should not have been operating before a family court.

The true impact of the report – if any – cannot be verified but John described his subsequent dealings with Bright as like being subjected to a 'harassment campaign'.

The *Gazette* has seen emails from a north London police team apparently informing John that a harassment warning had been served against Bright in relation to his conduct. 'I said I would go to police and he ignored me. He wrote to me and sent me texts – so I had no option but to seek a harassment warning,' John said. He claimed that Bright's 'abusive and threatening' behaviour saw him overreach his duties as a McKenzie friend.

Judicial consultation

A consultation by HM Judiciary on the issue of paid McKenzie friends closed in June, but a response is still awaited.

In the consultation, the judiciary proposed a ban on fee-charging McKenzie friends and recommended that all McKenzie friends sign up to a code of conduct. It said that rules governing the courts' approach to McKenzie friends be legally codified.

No timescale is in place for when the judiciary will publish any findings on the matter. A spokesperson told the *Gazette* that a summary of responses would be published 'in due course'.

Responding to the consultation in May, the Legal Services Board and the Solicitors Regulation Authority said there was no case to ban fee-charging McKenzie friends.

The LSB argued there was not enough evidence that their existence was harming consumers, while the SRA said that a blanket fee ban would mean litigants in person 'may not get access to support, even where there are no quality issues'.

However, the Law Society and the Bar Council want a ban on McKenzie friends receiving 'any form of remuneration' for providing legally reserved activities.

Law Society president Robert Bourns has warned that clients of fee-paid McKenzie friends have no assurance of their legal knowledge – and may be left with no redress if things go wrong. 'Our members have witnessed the damage done by inexperienced and, on occasions, unscrupulous McKenzie friends,' he added.

The Bar Council is running separate research alongside the University of Cardiff. Chair Chantal-Aimée Doerries said: 'Despite the seriousness of the issues being dealt with in the family courts, such as matters affecting children, little is currently known about the work of McKenzie friends.

'We believe that families and the wider public are in some cases paying for McKenzie friends without realising that these individuals are unregulated and often unqualified and uninsured. Individuals who want to act as McKenzie friends should only be allowed to do so where they do not receive a payment for the assistance that they provide to a litigant.'

In letters sent by Bright and TPV, which said 'these offices assist your ex-wife in numerous matters', John is told that he must pay maintenance fees or face a court order.

One letter added: 'If payment is not made, then your ex-wife will have no option [other] than to file a formal enforcement application to court at which point it is very possible that a full forensic study of the financial matter would have to take place.'

John told the *Gazette*: 'Why is a McKenzie friend, who is supposed to be there merely to assist the other side, contacting me, as a solicitor would, through letters, phone calls and further harassment?'

Ray Barry, chair of the Society of Professional McKenzie Friends (of which Bright is not a member), said there is a 'grey area in the law' concerning what Mckenzie friends are allowed to do.

Barry said rights of audience and rights of conduct of litigation are both reserved activities and it would be a criminal offence for a McKenzie friend to do either unless 'given specific permission'.

'While it is fairly clear what right of audience means, conduct of litigation is something of a grey area,' Barry said. 'Case law tends to limit it to passing oneself off as a solicitor when one is not, or purporting to represent someone as a solicitor would do'. He added that simply contacting an opposing party is unlikely to be construed as conducting litigation, provided that the McKenzie friend makes it clear they are not a solicitor and do not represent the litigant.

The *Gazette* has attempted to put these points to Bright but has not been able to make contact. A message on his website reads: 'Dear all, I am sure that by now you know of the situation.'

While it is unclear whether the communications in John's case breached any law, John believes the damage has already been done.

'The law offered me no protection when I was involved with my ex-wife. There were constant details about me splashed over social media, I lost my job and source of income and standing in the community. My whole world has imploded because of this.'

The Law Society Gazette

'Campaigning' McKenzie friends avoid £2,000 cost order

By Chloe Smith | 26 February 2016

A High Court judge has dismissed an order for two McKenzie friends to pay costs of £2,000, even though she said they went beyond their remit and racked up wasted costs in an immigration case.

Instead the claimant they were attempting to assist will have to bear the full burden of the £4,400 cost order.

Belinda McKenzie and Sabine McNeill acted as McKenzie friends on behalf of Melissa Laird in her attempt to fight her deportation to the US.

In this capacity they applied to renew a judicial review against a deportation order.

But after neither the claimant, who had been deported by this time, nor the McKenzie friends, turned up to the hearing dealing with the application, Mrs Justice Simler (pictured) initially ordered that the McKenzie friends should pay half the costs for pursuing a case which was 'unarguable' and 'misconceived'.

However in *Laird v Secretary of State for the Home Department* this week, barrister Simon Butler, acting for the McKenzie friends, warned that such an order could deter others from providing this kind of assistance for fear of the costs consequences.

He also said the court should have refused the pair permission to apply for judicial review as they were not entitled to conduct litigation.

Giving her judgment yesterday, Simler said: 'There is a great deal of guidance on what McKenzie friends are and are not entitled to do when they are providing such assistance and provided they don't step outside their proper remit they should have no fear [of a cost consequence].

'It seems to me there is no principled reason as to why a McKenzie friend should be treated differently than any other party.'

She added that holding the court responsible was 'an abdication of responsibility' and put too a high burden on the court.

She said: '[The McKenzie friends] wasted costs in relation to matters which could have been disposed of as academic in light of the claimant's removal from the country.

'It seems to be me they did significantly step outside the limits of their role as McKenzie friends. They also appear to have been pursing the case for their own campaigning purposes. They had their own personal interests as members of the Association of McKenzie Friends in the litigation, which was not in the claimant's own interest.'

But the judge ruled that the McKenzie friends should not pay costs as they genuinely believed they were helping the claimant. She also noted that, although they were aware they were not entitled to conduct litigation on the claimant's behalf, no order was made refusing them permission to do so.

Simler said: 'Looking at all of the facts in the round, whilst I am quite satisfied that the [McKenzie friends] overstepped the limits of their role and made the [Treasury Solicitor] accrue wasted costs, I step back from the brink of making them liable to pay costs personally and I do that in the regard for the impact such an order would have on them.'

She said the costs order against the McKenzie friends should be set aside, and said the burden of costs should fall fully on the claimant.

The Law Society Gazette

Reforms will leave clients vulnerable to rogue McKenzie friends – APIL

By John Hyde | 21 April 2016

The judiciary should act now to prepare for thousands of extra litigants in person who may be vulnerable to exploitation by paid McKenzie friends.

That was the call from the Association of Personal Injury Lawyers, which warned the proposed increase in the small claims limit will lead to a surge of PI litigants in person unable to afford a lawyer.

APIL said it was likely the sector would see similar increases in LiPs as those seen in family law following legal aid reforms in 2013, which led to a 30% rise in unrepresented parties.

The judiciary has asked for views on how best to manage McKenzie friends in future, and APIL said changes to the small claims limit will make greater regulation a priority.

'Some unregulated fee-charging McKenzie friends would likely exploit this influx of potential new clients, and the problems experienced with McKenzie friends in family cases will simply be repeated in the personal injury sector,' said APIL, which represents around 3,800 lawyers.

'We are concerned that, unchecked, "professional" McKenzie friends would essentially become an unregulated arm of the legal profession, ripe to exploit the inevitable increase in personal injury litigants.'

The association warned that a lack of consumer safeguards leave vulnerable people at risk of those without the training, skills or permission to carry out the work they are charging for.

'Removing the ability of McKenzie friends to charge money for their services will go a long way to removing this problem,' said APIL.

A code of conduct for McKenzie friends would at least offer some protection and show the court the individual is aware of what they can and cannot do, added the response.

It was also agreed that a standard form notice, signed by both the adviser and LiP, will provide information up-front for the judge to decide how a case should proceed.

The judiciary has proposed a ban on fee-charging McKenzie friends and recommended those in the sector should sign up to a code of conduct. The consultation was published in February.

It would also require them to acknowledge that they owe a duty to the court and a duty of confidentiality in respect of the litigation, and verify that they agree to abide by a code of conduct.

It also suggested replacing the term McKenzie friends, which it said could be confusing for litigants in person, with 'court supporter'.

The Law Society Gazette

Jailed McKenzie friend facing £12,000 claim

By Max Walters | 24 October 2016

A jailed McKenzie friend could be released from prison for the day to represent himself in a claim lodged by an aggrieved former client.

David Bright is facing a recovery claim from Andrew Hart, who claims he is due £12,000 from Bright and his organisation The Parents Voice. Bright contests the claim.

Hart used Bright as a McKenzie friend last year in a family dispute.

Hart's lawyer, Lawrence Stephens partner Adrian Ring alleged that his client did not get what was expected and that there was 'nothing substantial that showed what was being done' while Bright was representing him.

There was no record of any submission of documents or letters of advice.

Hart dismissed Bright in July last year.

According to the recovery claim, Hart agreed to pay Bright and TPV £500 per month, plus disbursements, expenses and any additional amounts for specific pieces of work.

However, Bright and TPV have since claimed that Hart agreed to pay £150 per hour + VAT. Ring alleged there was no written evidence for this figure and that all the invoices sent to Hart were for a specific period (usually monthly).

The case is due to take place on December 8 at Clerkenwell and Shoreditch County Court but Ring said it was possible that Bright could be granted leave to represent himself. The *Gazette* understands that Bright's former representatives, Rooks Rider Solicitors are no longer representing him after his conviction – though the firm declined to comment on the matter.

Earlier this month Bright and his partner and fellow TPV worker Claire Mann were jailed for one and three years respectively.

Bright submitted a psychology report during a dispute earlier this year that had been compiled by Mann.

Mann, using her maiden name Silverstone, falsely claimed to be a clinical psychologist.

She was handed a nine-month sentence but was also jailed for three years for running a harassment campaign against a mother at her daughter's school and for communicating a false bomb hoax.

The nine month sentence will run concurrently with that sentence.

A consultation by HM Judiciary on the controversial issue of paid McKenzie friends closed in June.

It proposed a ban on fee-charging McKenzie friends and recommended that all McKenzie friends sign up to a code of conduct, and that rules governing the courts' approach to McKenzie friends be legally codified.

The Law Society Gazette

Courtroom abuse sparks new McKenzie friend fears

By Chloe Smith | 1 June 2015

An imminent consultation by the judiciary on the proliferation of paid McKenzie friends in court is ringing alarm bells among lawyers, after a former nightclub bouncer was banned from providing such a service for grossly offensive behaviour.

Latest Bar Council minutes highlight fears that the judicial report will take a more accommodating line than the bar. Susan Jacklin QC (pictured), chair of the Family Law Bar Association, told a meeting that the judiciary does not share concerns that McKenzie friends 'are cannibalising work that the bar should be doing'.

The bar is launching its own investigation into fee-earning McKenzie friends in response to members' concerns.

These have grown more acute in recent days after Nigel Baggaley, described as the 'moving spirit' behind LLPs McKenzie Friends 4U and Diy Law Shop, was banned indefinitely from assisting anyone in court for behaviour which included calling a lawyer a 'lying slag'. Baggaley has served prison sentences for dishonesty and public order offences.

Derek Sweeting QC, chairman of the Bar Council's Legal Services Committee, said: 'The Bar Council's concern is that where members of the public are being asked to pay for the services of a McKenzie friend they should be aware that they are dealing with individuals who are unregulated, uninsured and who seldom have any legal training; often in circumstances where it would be no more expensive to instruct a junior barrister.'

The Bar Council said it has not yet formed an official view on the issue and will enter the discussion after the judiciary publishes its consultation.

The Legal Services Consumer Panel, which last year welcomed the emergence of remunerated McKenzie friends, also plans to respond to the judicial report.

Ray Barry, chair of the newly formed Society of Professional McKenzie Friends, acknowledged recent negative news reports but insisted that 'one or two bad examples are not typical of the main body of McKenzie friends'.

The Law Society Gazette

Unrepresented defendants crowd criminal courts

By Gazette newsdesk | 2 May 2016

The number of unrepresented defendants in criminal courts is increasing – but no one knows how big the problem is.

That is the conclusion of research published in a week when the lord chief justice complained that civil courts are having to abandon the adversarial system to deal with the increasing number of litigants in person.

Charity Transform Justice's study, *Justice Denied? The experience of unrepresented defendants in the criminal courts*, says that while there are no authoritative statistics on the numbers of defendants lacking a lawyer, 'the strength of perception of those working on a daily basis in the courts is compelling'.

Magistrates' and district judges' estimates of the proportion of unrepresented defendants in non-trafffic cases ranged from 15% to 40%. But the report's author, former magistrate Penelope Gibbs, said the lack of data means unrepresented defendants in the magistrates' courts 'are invisible in policy terms'. Courtroom data on whether defendants were legally aided is 'not systematically collected or collated', she said.

Law Society president Jonathan Smithers said the means test income threshold of £22,325 is rendering thousands ineligible for legal aid but unable to afford legal advice, 'leaving them no option but to represent themselves'. It is 'deeply concerning' that people are facing serious criminal charges without the support of a solicitor.

He called for the upper income limit for legal aid to be set at the 40% tax band.

Meanwhile, lord chief justice Lord Thomas of Cwmgiedd told peers that district judges in family cases are having to become 'much more inquisitorial' to cope with litigants in person. 'It is impossible in a family situation to expect the adversarial system to work,' Thomas told the House of Lords Constitution Committee.

Similarly, in the small claims courts, 'there is much more of a judge moving nearer to an inquisitorial role,' he said. 'I think this trend is inevitable if we cannot equip the citizen to do it or the state will pay.'

Concerns about the role of McKenzie friends assisting unrepresented litigants in the family courts dominated the annual conference of family law body Resolution last week.

The Law Society Gazette

Don't let lawyers' reputation go the way of politicians' – Woolf

By John Hyde | 15 March 2016

A former lord chief justice - and one of the architects of the modern civil justice system - has expressed public concern that the reputation of the legal profession is under threat.

Speaking at a conference in London today, The Rt Hon Lord Woolf (pictured) said one of the biggest challenges facing the legal sector is to uphold its standing with the public.

Asked about whether he would encourage young people to be a lawyer, Woolf said it had been a 'privilege' to practise and warned this should not be lost in future.

'I would hate to think our standards would sink below the standard I know so the reputation of the profession was to be tarnished,' he said.

'No matter how enthusiastic we may be things happen which really worry me. Things happened in the political arena which have challenged the reputation of politicians.

'We have to take great care we don't damage the occupation that I love. We can discard practices [that are] no longer relevant but cannot ignore standards.'

During a wide-ranging discussion at the SJ Live event, Woolf expressed his 'regret' at the need for McKenzie friends to step in to help those who cannot get legal representation in the conventional way, although he noted that some can provide 'great assistance'.

Woolf voiced concern that the volume and scale of inquires into historic child sex offences, notably the ongoing Goddard inquiry, threatens funding for other areas of justice.

'My fear is they are sucking huge amounts of resources away from the normal role of the justice system. We should be putting ordinary needs at the heart of the justice system first.'

But on the issue of whether increased court fees could help plug the funding gap, Woolf said the government should act 'responsibly' and maintain proportionality.

'[Fees] should not place a burden on a particular section of the community.'

Woolf, whose civil justice reforms came into force in 1999, advocated efforts to change the system and said the reform process should be 'continuous'.

As a member of parliament's joint committee on human rights, the judge was asked about government plans to replace the Human Rights Act with a British bill of rights.

He said: 'The present Human Rights Act serves us well but I am not entrenched. It is critical it should not be a bill which provides inadequate rights. If we have a new British bill of rights we are going to have a lot of work to do in the courts and as lawyers to absorb the new bill.

'Day in and day out, the courts have dealt with the Human Rights Act and accumulated a wisdom about applying it. We have, over time, seen things that have not have been constructive and tried to put them right. [Under a new bill of rights] there is going to be great uncertainty which will take a number of years to work out.'

The Law Society Gazette

Aid cuts leave thousands in hands of amateur lawyers, MPs told

By Catherine Baksi | 8 July 2014

MPs voiced concern over the 'cult of the amateur' lawyer as they heard that thousands of vulnerable people are falling through the net of legal aid funding following cuts.

Law Society deputy vice-president Andrew Caplen, Bar Council chair Nicholas Lavender QC and Jenny Beck, co-chair of the Legal Aid Practitioners' Group, were giving evidence this morning to the House of Commons Justice Committee on the impact of the civil legal aid cuts under the Legal Aid, Sentencing and Punishment of Offenders Act 2012.

They highlighted as particular concerns the failings of the exceptional funding system, complex eligibility rules and forms, an over-restrictive domestic violence gateway threshold and the impact of family legal aid on children who are denied contact with a parent.

Caplen (pictured) said the 'dramatic fall' in legal help means thousands are 'falling through the net'.

All three warned of the dangers of untrained, uninsured and unregulated professional McKenzie friends, who have emerged to fill the gap as people are left without access to proper legal advice and representation.

Beck told the committee that McKenzie friends give only the 'illusion of equality of arms' while Lavender said judges need to be stricter in not allowing paid McKenzie friends to speak in court.

MPs expressed concern at the growing phenomenon. Conservative MP Steve Brine called it the 'cult of the amateur', which Labour MP Jeremy Corbyn said is a 'dangerous scenario'.

MPs were also concerned at the evidence given on the low figures for the grants of exceptional funding, intended to be a safety net for cases no longer within the scope of public funding.

The witnesses told the committee that since LASPO came into force, there have been 1,520 applications, against the government's expected 5-7,000, with only 69 granted.

Of these 53 were for inquests and only 16 for civil legal aid cases. The witnesses said the scheme is complex and confusing, the application form takes hours to complete, the threshold is too high, and the Legal Aid Agency is not exercising its discretion.

Labour MP John McDonnell responded saying: 'It's not a problem; it's a nightmare.'

Caplen proposed that solicitors, as officers of the court, should be able to self-certify exceptional funding cases.

The committee will hear further evidence and report towards the end of the year.

Click here to view more articles in our private client section

Legal Aid Report Form and Request for Extension/Amendment

Client Name	Legal Aid Certificate Number	Legal Aid Certificate Date

Name of Advocate	Advocate's Firm	Advocate's Address
	Advocates Smith Taubitz Unsworth Ltd	Barrule Chambers, 36 Finch Road, Douglas, Isle of Man IM1 2PS

Matter Type
Stage Reached
Extension Requested
Reasons for Extension
Documents Enclosed
Time Required
Disbursements to be incurred

Do the prospects of success remain greater than 50%? Yes No
Is the Client co-operating with the Advocate and providing reasonable instructions? Yes No
Would a fee paying Client of reasonable means take the steps requested herein? Yes No
Details of Urgent Deadlines
Signed Advocate for Assisted Person
Date

For official use only

Extension Granted Yes No
Time Allowed
Steps to be Undertaken
Disbursements to be incurred
Next Reporting Requirement
Signed Legal Aid Certifying Officer
Date

Welcome to the PDS

The Public Defender Service was established in 2001 and provides high quality defence representation in all types of criminal cases. Our offices are based in Cheltenham, Darlington, Pontypridd and Swansea.

In 2014 we enhanced our level of service by creating a specialist Advocacy Unit. This unit provides a complete advocacy service with particular emphasis on serious and complex crown court cases. Our Advocates are based across the country and can operate anywhere within England and Wales.

(http://publicdefenderservice.org.uk/solicitors)

PDS Solicitors

(http://publicdefenderservice.org.uk/advocates)

PDS Advocacy Unit

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Darlington: 01325 289480
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DX: 328 London

PDS Solicitors

Solicitors Home

Who are we?

The Public Defender Service (PDS) is a criminal law supplier, funded by the Legal Aid Agency (LAA) and has offices in:

- Cardiff
- Cheltenham
- Darlington
- Pontypridd
- Swansea

We are a department of the Legal Aid Agency, an Executive Agency of the Ministry of Justice.

PDS Solicitors

We offer a completely independent criminal defence service covering the full range of criminal work from the police station through to the Crown Court and higher Courts where necessary.

We provide advice, assistance and representation free of charge for those under arrest or attending voluntarily at a Police Station 24 hours a day, 7 days a week.

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About Us

The Public Defender Service (PDS) is a department of the Legal Aid Agency, delivering a full range of quality services within the criminal defence market, from advice and representation at the police station and magistrates courts through to advocacy in the higher courts.

The PDS was established in 2001 and was the first salaried criminal defence service in England and Wales. We currently operate out of offices in Cheltenham, Darlington, Pontypridd and Swansea, as well as having an administrative hub in Cardiff. Our offices are well established as a provider of high quality defence advice and representation in police stations, Magistrates and Crown Courts in their local areas.

Our People

The biggest asset of the Public Defender Service is our staff. Each office employs a strong team of experienced Accredited Police Station Representatives, Duty Solicitors and Solicitor Advocates to deal with criminal cases at all levels from motoring matters to murder. We take part in local duty solicitor rotas and appear regularly in local Magistrates and Crown Courts whilst also advising on benefit investigations, subject to the availability of legal aid. All members of our team are committed and dedicated to ensuring that all of our clients are treated fairly and supported through what can be a traumatic time. We work hard to ensure the best possible outcomes for our clients and we are proud of the work we do, the people we help and the things we achieve.

All of our team deal solely with Criminal Law and have wide ranging expertise and skills in representing people in all sorts of different situations and for a whole range of offences. Whether you are detained at the police station or facing allegations at the Magistrates Court, Crown Court or elsewhere, we provide high quality legally aided representation. Whatever the offence you face, we have qualified and experienced members of staff who can assist you. If you

think you might require legal advice about a potentially criminal matter then contact (http://publicdefenderservice.org.uk/solicitors/contact-us/) us today for further advice.

Code of Conduct

Section 29 of the Legal Aid Sentencing and Punishment of Offenders (LASPO) Act 2012 provides for a code of conduct which is to be followed by PDS staff providing legal services to individuals. The code must, by statute, include duties to protect the interests of our clients and applies in addition to any professional code of conduct. The code can be found here. A copy of our complaints procedure can be found here.

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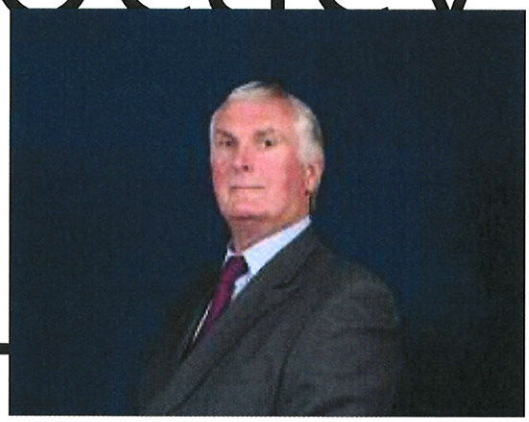
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Advocates Home

Advocacy



Unit

PDS Advocacy Unit

The Public Defender Service Advocacy Unit is a full service independent team of advocates.

We have a team of 25 barristers and higher courts advocates including seven Queens Counsel with experience at every level of the criminal justice system. We provide independent, high quality, professional advice and representation to accused persons throughout England and Wales.

Amongst our team, we have advocates who specialise in murder, fraud, historic and serious sexual offences, terrorism and Very High Cost Criminal Cases.

We can be instructed to carry out work by any solicitors looking for representation for their clients in the Higher Courts of England and Wales. We are able to operate nationally.

To find out more about our advocates, please visit Our Advocates (http://publicdefenderservice.org.uk/advocates/our-advocates/) page.

To contact us or speak to our clerk, please visit the Contact Us (http://publicdefenderservice.org.uk/advocates/contact-us/) page.

News Feed

John M. Burton QC appears in landmark Court of Appeal decision. (http://publicdefenderservice.org.uk/john-m-burton-qc-appears-in-landmark-court-of-appeal-decision/)

May 13 2016

John represented Dr Yilkes Bala at his trial which concluded in December 2013. Dr Bala had entered into a polygamous marriage with his second wife in Nigeria. They were both charged with the offence of conspiracy to breach certain immigration rules. John argued that section 2(2)(a) of the Criminal Law Act 1977 should apply to … Continued (http://publicdefenderservice.org.uk/john-m-burton-qc-appears-in-landmark-court-of-appeal-decision/)

JOHN M. BURTON QC AND GERRY MOHABIR OBTAIN A DISMISSAL OF ALL CHARGES IN A MULTI MILLION POUND BANKING FRAUD. (http://publicdefenderservice.org.uk/john-m-burton-qc-and-gerry-mohabir-obtain-a-dismissal-of-all-charges-in-a-multi-million-pound-banking-fraud/)

April 18 2016

The prosecution claimed that K was a party to a major international banking fraud that had secured well in excess of £150 million for the fraudsters. K's role was said to be that of a trainer of persons who were used to contact and defraud the victims and also as a money launderer involved in … Continued (http://publicdefenderservice.org.uk/john-m-burton-qc-and-gerry-mohabir-obtain-a-dismissal-of-all-charges-in-a-multi-million-pound-banking-fraud/)

Active defence: Use of Defence statements as a weapon (http://publicdefenderservice.org.uk/active-defence-use-of-defence-statements-as-a-weapon/)

December 04 2015

rather than a shield reaps rewards as Crown offers no evidence in three separate indictable only matters upon receipt of Defence Statements drafted by Emma Nott. R v SW, JUNE 2015 MANCHESTER MINSHULL STREET CC The defendant was charged with several counts of violent rape, assault occasioning grievous bodily harm with intent and penetration of ... Continued (http://publicdefenderservice.org.uk/active-defence-use-of-defence-statements-as-a-weapon/)

All News (/news/)

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About Us

The Public Defender Service Advocacy Unit was created in 2014 and is a wholly independent, nationwide advocacy service to legal aid solicitors and their clients.

We are an expert team of highly experienced barristers and Higher Court advocates, including Queen's Counsel (QCs). More information is published on Our Advocates (http://publicdefender.wpengine.com/advocates/our-advocates/) page.

We specialise in serious and complex criminal cases but our advocates can cover the whole spectrum of criminal legal aid work. For more information about our service, please go to How we work.

We can represent any individual who has secured legal aid funding (https://www.gov.uk/legal-aid) for their case and our advocates can be instructed by any solicitor firm in England and Wales.

The PDS Advocacy Unit operates independently from the PDS Solicitors. We have a central London office (http://publicdefender.wpengine.com/advocates/contact-us/) but have advocates based around the country who can cover cases throughout England and Wales, always ensuring that our clients have the most suitable advocate for their case.

How we work

We work like barristers' chambers: if a solicitor needs advocacy services, they can instruct us to:

- advise clients on the strength of the evidence;
- appear in any court from the Magistrates Court to the Supreme Court;
- brief clients on any potential sentence or ancillary orders;
- discuss the best course of action with the client;
- provide written advice on how to progress the case; and
- if necessary, provide advice on appeal.

Solicitors will remain responsible for the litigation work involved in the case and continue to bill the Legal Aid Agency for the work they do.

We cover all areas of criminal law but currently have particular expertise in cases involving:

- conspiracy
- drugs
- fraud
- murder and manslaughter
- serious organised crime
- sexual offences
- terrorism

Please visit Our Advocates (http://publicdefender.wpengine.com/advocates/our-advocates/) page to view their individual skills.

Further information about our service can be found on our Guide for Clients (http://publicdefenderservice.org.uk/wp-content/uploads/2014/10/PDS-Guidance-for-Clients.pdf) and Guide for Solicitors (http://publicdefenderservice.org.uk/wp-content/uploads/2014/10/PDS-Guidance-for-Solicitors.pdf).

Our advocates

Our advocates are regulated by the Bar Standards Board or Solicitors Regulation Authority and offer completely independent and impartial advocacy services.

As part of the Legal Aid Agency and wider Civil Service, we are also bound by the Civil Service Code of Conduct and are required to undertake our role independently of the government of the day. Further information can be found in our Code of Conduct (http://publicdefender.wpengine.com/wp-content/uploads/2014/08/Public-Defender-Service_Code-of-Conduct_March-2014.pdf).

We manage client conflicts of interest through 'ethical walls'. This is underpinned by our protocol (http://publicdefender.wpengine.com/wp-content/uploads/2014/08/PROTOCOL-FOR-RECEIPT-OF-THIRD-PARTY-INSTRUCTIONS-BY-PDS-ADVOCATES.pdf), based on Bar Standards Board and the Solicitors Regulation Authority guidance. A copy of our complaints procedure can be found here. (http://publicdefenderservice.org.uk/wp-content/uploads/2015/05/PDS-Complaints-Procedure-May2015.pdf)

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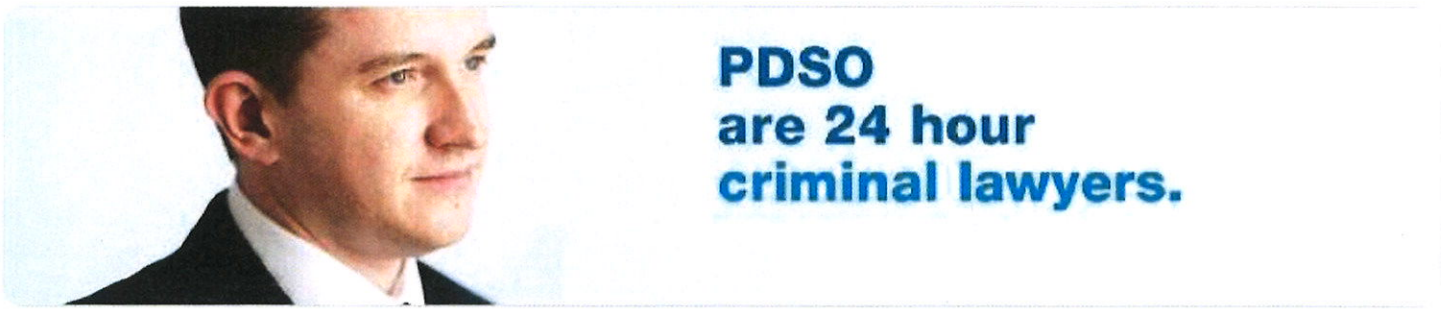
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About PDSO

PDSO, the Public Defence Solicitors' Office, provides advice and representation in criminal cases. Anyone entitled to legal aid can use PDSO's services.

We have a team of experienced solicitors and solicitor advocates who provide high quality advice and representation in all criminal matters. Public Defence Solicitors are all members of the Law Society of Scotland and are bound by the same standards of professional conduct that all solicitors in Scotland have. In addition we have our own code of conduct for Public Defence Solicitors.

PDSO started as a five-year pilot to compare criminal legal aid given by private solicitors with that given by salaried solicitors we employed in the PDSO. The Scottish Executive published a detailed research report in 2001, which concluded that the pilot had been worthwhile and had created much useful information on how criminal legal aid was working. Scottish Ministers decided they would continue the PDSO and in October 2003, Justice Minister Cathy Jamieson announced that the two new offices would open in Inverness and Glasgow.

In 2007, the then Deputy Justice Minister, Hugh Henry, asked that PDSO be expanded and offices were opened in Ayr, Dundee, Falkirk and Kirkwall. In 2008, the Scottish Government published a further report on the feasibility of the provision of criminal legal services by Public Defence Solicitors.

Today, PDSO operates nationally across Scotland and can help individuals who have a case calling in any Scottish court.

About us...

About PDSO

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Speak to us, we'll help.
24 hour Criminal Lawyers Scotland-wide

Call us on
0800 328 1222

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THE PUBLIC DEFENCE SOLICITORS' OFFICE

STANDARD TERMS OF ENGAGEMENT

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1. About the Public Defence Solicitors' Office

We are a team of directly publically funded criminal defence lawyers, with support and administrative staff, who provide advice and representation in relation to criminal cases at any court in Scotland. We are committed to being fearless in the conduct of your defence.

1.2 *The Public Defence Solicitors' Office and the Scottish Legal Aid Board.*

All PDSO staff and solicitors are employed by the Scottish Legal Aid Board under part V, section 28A of the Legal Aid (Scotland) Act 1986. The Director of the PDSO reports to the Chief Executive of the Board on administrative issues. In all other ways, PDSO operates entirely independently and it is the responsibility of the Director to determine the way the offices operate and to make decisions on individual cases. The Board assesses applications for criminal legal aid submitted by the public defence solicitors in exactly the same way as those submitted by private solicitors. PDSO does not submit accounts to the Scottish Legal Aid Board.

Public Defence Solicitors are paid an annual salary rather than making claims on the legal aid fund on a case by case basis. We have no financial interest in the outcome of your case. PDSO cannot charge you a fee. We only do work under legal aid. If your case is being funded under Advice and Assistance or Advice by Way of Representation legal aid then you may be liable to make a contribution to the cost of your case depending on your circumstances. Your PDSO solicitor will discuss this with you at the beginning of your case. Further details of this are explained below. If your case is funded by any other type of legal aid then you will not have to make a contribution.

1.4 *Codes of conduct;*

Solicitors working in the Public Defence Solicitors' Office are members of the Law Society of Scotland and are bound by the same rules and codes of conduct as any other solicitor in Scotland. These include;

a) *The Solicitors (Scotland)(Standards of Conduct) Pratice rules 2008.* The can be found online at http://www.lawscot.org.uk/Members_Information/Standards/.
b) *The Code of Conduct for Criminal Work.* This can be found online at http://www.lawscot.org.uk/Members_Information/rules_and_guidance/guides/Rules/Codeconduct/CodeCrimConduct.aspx

Solicitors with extended rights of audience (Solicitor Advocates) must also comply with the rules relating to conducting business in the High Court of Justiciary, Court of Criminal Appeal and Supreme Court. These are;

a) *The Solicitors (Scotland) (Rights of Audience in the High Court of Justiciary and Judicial Committee of the Privy Council) Rules 2002.* These can be found online at http://www.lawscot.org.uk/Members_Information/rules_and_guidance/guides/Rules/SolAdvocates/roshighcourt.aspx, and;

b) *The Solicitors (Scotland) (Supreme Courts) Practice Rules 2003.* These can be found online at http://www.lawscot.org.uk/Members_Information/rules_and_guidance/guides/Rules/SolAdvocates/SupremeCourtAdvocate.aspx

All of these rules can be obtained from The Law Society of Scotland at the address below.

The Law Society of Scotland
26 Drumsheugh Gardens
Edinburgh
EH3 7YR
Tel: 0131 226 7411

All solicitors working in the Public Defence Solicitors' Office are also registered with the Scottish Legal Aid Board to provide criminal legal assistance (legal aid in a criminal case). This means that they must abide by the *Code of Practice for Criminal Legal Assistance.* This can be found online at http://www.slab.org.uk/profession/guidance_manuals/the_code_of_practice_criminal.pdf or a copy can be obtained from the Scottish Legal Aid Board. The address for the Board can be found below at paragraph 11.2.

In addition all of our solicitors must abide by the *Code of Conduct for Public Defence Solicitors in Scotland.* A copy of this can obtained from any of our offices.

2. Meeting with your solicitor

We need to obtain certain information in order to make an application for legal aid on your behalf. When you are meeting with you Public Defence solicitor please bring with you (if you have not already done so):

- Some proof or your name and address. This might be a bank card, passport and a letter to your home.
- Some proof of any income that you have. This could be a recent wage slip, or a letter from the DWP confirming your benefits. If your financial position, or that of your spouse, changes please let us know straight away as this may affect any grant of legal aid. If you do not it can result in you having to repay

money to the Scottish Legal Aid Board and, in some cases, you can be prosecuted for a criminal offence.

- Proof of any savings, shares, heritable property other than your main home or any other capital that you may have.
- Your national insurance number.
- If you have a spouse please also bring details if their income, capital and national insurance number.
- Your bank details.

If you have come to Scotland from a country outside the European Union then please also bring your passport and any visa information that you have. If you are an asylum seeker please bring any correspondence from the Home Office that you have received.

3. Taking your instructions

3.1 *What we need from you*

It is very important that you tell us in as much detail as possible all about your case and what you remember. The more you tell us the better job we can do. If you have anyone that you think could be a witness for you then you must tell us straight away and give us the name, address and telephone number of that person if you have it. We will arrange to speak to them and take a statement from them.

3.2 *Our duty to you*

Our duty is to fight for you and your rights. We will give you prompt advice about the law that applies to you case and the procedure that will be followed in court. We will represent you at court and we will prepare your case. We will obtain the evidence that the prosecution has. Please be aware that there can be delays in this happening caused by the prosecution. We will advise you about the evidence against you and keep you informed about developments in your case. If necessary we can advise you and represent you in an appeal.

3.3 *Confidentiality*

Any communication that you have with any member of our staff is confidential. This means anything that you tell us in person, over the phone or in writing, will never be passed on to someone outside of the Public Defenders' office unless you agree to it. We cannot be forced by the court or the police to say what you have told us. This means that we cannot discuss your case with anyone in your family or a friend unless you tell us to. You can still bring a family member or a friend with you to meetings with us for support.

We will confirm at the start of the meeting that you are happy for that person to hear about your case and what you tell us.

3.4 *Withdrawal of service*

In certain situations way may have to withdraw from acting for you and suggest that you instruct another solicitor. Examples of when this may happen are (but not exclusively):

3.4.1 If it becomes apparent that there is a conflict of interest. This means that we may already act for or have knowledge of someone else involved in the case, This may be a witness or another person that has been charged along with you.

3.4.2 If your instructions become unreasonable. We also have a duty to the court and so we cannot mislead the court. The legal aid rules also insist that we must have due regard to economy. This means, for example, that we cannot conduct door-to-door enquiries and take statements from unnecessary witnesses.

3.4.3 If you give a contradictory position in relation to the offence to any person preparing a court report. For instance if you instruct us to plead guilty on your behalf and you later tell a social worker who is preparing a report for court that you did not commit the offence that you pled guilty to.

3.4.4 If you provide us with false information about your identity or false information in support of your legal aid application or if you fail to advise us about a material change in your financial circumstances.

3.4.5 We will not tolerate any abuse, either verbal or physical, harassment or intimidation of any member of our staff. If there is any such occurrence we will immediately withdraw from acting for you.

If we do withdraw from acting we shall immediately inform you of this in writing. We will also inform the court, the prosecutor and the Scottish Legal Aid Board.

4 Early pleas and changing your instructions

4.1 *When and how to contact us*

If you wish to enter a plea of guilty at any stage in your case you should inform us straight away. You can contact us in writing, telephone or in person. If you do wish to contact us to change your plea then please try to do this during normal office hours (9:00am to 5:00pm Monday to Friday) in order that we will have access to your file.

4.2 *Discount for an early plea*

The law in Scotland is that you will receive a discount in relation to the sentence imposed if there is an early plea of guilty. The level of discount varies depending on when the plea is made and the nature of the case but can be up to one third of the sentenced that would have been imposed after trial.

5 Who will be dealing with your case

5.1 If you have a particular solicitor in the office that you would prefer to deal with your case please let us know and we will do our best to accommodate that.

5.2 The solicitor who grants advice and assistance or AWBOR or who applies for criminal legal aid on your behalf is responsible for your file and preparing your case. You will be told the name of that solicitor and advised if the solicitor dealing with your case changes. The head of office at the PDSO office that you have instructed is responsible for all of the cases in that office and the Director of the Public Defence Solicitors' Office has overall professional responsibility for all of our cases.

5.3 Given the nature of doing work in criminal courts we cannot guarantee that the solicitor from our office that you will be dealing with will be the solicitor in court although that is always our aim. If it is a different solicitor, that solicitor will know all about your case, be able to fight your case and represent you in court.

6 Keeping you informed

6.1 We will confirm to you in writing that we have taken your case.

6.2 We will send you a copy of the summary complaint that was served on you along with any summary of evidence provided by the prosecution.

6.3 We will send you a copy of any petition that has been served on you.

6.4 We will confirm any court dates to you in writing (unless fixed less than a week ahead in your presence) and send you a reminder of those dates.

6.5 We can send a reminder by text message if you provide us with a mobile telephone number.

6.6 We will advise you when we have statements from the prosecution witnesses and of any developments in your case.

6.7 If you have a particular way that you would like to be contacted, for instance email rather than post, please tell us and we will do our best to meet your request.

7 Your obligations if on bail

7.1 You may have been released on bail by the police and been given a date to attend court or you may have been released on bail by the Court. If you have been "ordained to appear" you are not on bail and you have simply been ordered to come back to court on a certain date or dates.

7.2 If you are on bail there are standard conditions that you must keep to. These will be on the bail order that you have been given by the police or by the Court. They come from section 24 of the Criminal Procedure (Scotland) Act 1995 and they are:

"24(5) the standard conditions referred to in subsection (4) above [*bail conditions*] are conditions that the accused –

(a) Appears at the appointed time at every diet relating to the offence with which he is charged of which he is given due notice or at which he is required by this Act to appear;
(b) does not commit any offence while on bail;
(c) does not interfere with witnesses or otherwise obstruct the course of justice whether in relation to himself or any other person;
(d) makes himself available for the purpose of enabling enquiries or a report to be made to assist the court in dealing with him for the offence with which he is charged; and
(e) where the (or an) offence in respect of which he is admitted to bail is one to which section 288C of this Act applies [a sexual offence], does not seek to obtain, otherwise than by way of a solicitor, any precognition of or statement by the complainer in relation to the subject matter of the offence."

7.3 The police or the court may also impose special conditions of bail particular to you. These can be conditions like a curfew or not contacting a person or place relating to your case. You must abide by these conditions too. There is a process to ask for these conditions to be reviewed or removed by the court. If you wish to use this process please contact us straight away.

7.4 If you breach any bail condition you risk being remanded in prison and being charged with a separate offence of breaching bail which can lead to a maximum penalty of 60 days imprisonment in the JP court or 12 months imprisonment in the Sheriff Court.

8 Changing your address

8.1 If you change address you must inform us **immediately.**

8.2 If you are placed on bail by the court and you change address you must inform the court within **7 days**. Failure to do this can result in you being charged with a separate criminal offence. The maximum penalty on conviction for this offence is 60 days imprisonment in the JP court and 12 months imprisonment in the Sheriff Court. We can inform the court on your behalf and we ask that you give us at least 3 days notice of any change of address.

9 Legal aid

9.1 Advice and Assistance

This type of legal aid covers initial work done in the office and in writing. It does not cover any work done in court. It is granted by the solicitor and is only assessed on the basis of your income and that of your spouse. It does take account of set deductions if you support your spouse and any children. **Benefits such as Jobseekers Allowance and Income Support and some other state benefits are ignored for this calculation.** If you (along with your spouse if you have one) earn more than £107 per week after deductions you may have to make a financial contribution towards the cost of your case. You will be told about this by your PDSO solicitor and advised in writing what the maximum contribution will be. For example if your income is, after the set deductions is £107 then the maximum contribution that you will have to make is £7. If your income was £234 per week the maximum contribution would be £134. If your joint income is more that £234, after the standard deductions, you are not eligible. If you have more than £1,639 in savings you are not eligible.

9.2 Advice By Way of Representation (ABWOR)

This is an extension of Advice and Assistance and is granted by your solicitor. This covers all work done including representation in court by us. The financial test is the same as Advice and Assistance and you may have to make a contribution as above. It must also in the interests of justice that this is granted and it is not available in every case. For instance it is not available in minor road traffic cases.

9.3 Criminal Legal Aid

This legal aid is used in summary cases where you pled not guilty and in all solemn cases. In a summary case and application is made to the Scottish Legal Aid Board by your solicitor and it is decided by then on the basis of your income, capital and outgoings. The Board will also consider whether it is in the interests of justice to grant legal aid. In solemn cases application is made to a Sheriff and it is only assessed on your financial position. **You will not have to make any contribution to your cases costs if granted this type of legal aid.**

9.4 Appeal Legal Aid

This legal aid is used in appeal cases. The assessment id similar to solemn legal aid but application is made to the Scottish Legal Aid Board. You do not have to make any contribution if granted this type of legal aid.

10 Equality

10.1 Our office is committed to making our service available and accessible to as many people in Scotland as we can. We will not discriminate against you on the basis of your age, gender, sexual orientation, race, ethnicity, disability, religion, belief, or any aspect of your social status.

10.2 As part of this commitment we will ask you to complete with us an equality monitoring form. This allows us to collect information on the profile of our clients in order to improve accessibility to our service and recognise any special requirements that you may have when using our service. This information will be collected on an anonymous basis and the details about you will not be passed on to anyone else.

10.3 If you have any particular requirements when meeting with us or in relation to how we contact you and pass on information please tell us and we will do our best to meet those requirements. For instance you may want a female solicitor to deal with your case or you may prefer to get letters in large type or you may prefer to be contacted by telephone. If we are getting something wrong or anything that we do makes you uncomfortable then please tell us. We want to remove any barriers that exist in getting the best information that we can from you.

11 If you are unhappy with our service: How to make a complaint.

11.1 If you are unhappy or dissatisfied with our service or something in relation to your case and how it was handled by us:

11.2 We will always listen to your concerns and we hope that we will be able to resolve any problems between us. If you do wish to make a complaint then this

should be made to the Director of the Public Defence Solicitors' Office, Matthew Auchincloss. We would prefer that the complaint is made in writing so that we have a clear record of you compliant. This can be done by ordinary post and should be addressed to:

Matthew Auchincloss
Director of the Public Defence Solicitors' Office
Complaint
The Public Defence Solicitors' Office
50 St Mary's Street
Edinburgh
EH1 1SX

Or, you can contact the Director by email at:

mauchincloss@pdso.org.uk

Or, if you do not wish to complain in writing, the Director can be contacted at our Edinburgh office on 0131 557 1222.

If your complaint cannot be resolved this way than you can make a complaint to The Scottish Legal Complaints Commission. This is an independent body set up by The Scottish Government to investigate all complaints about the service of the legal profession. More information about the Commission can be found online at http://www.scottishlegalcomplaints.com/

The Commission can be contacted at:

The Scottish Legal Complaints Commission
The Stamp Office
10-14 Waterloo Place
Edinburgh
EH1 3EG
Tel: 0131 528 5111
Email: enquiries@scottishlegalcomplaints.org.uk

11.3 If you are unhappy or dissatisfied with how your Public Defence Solicitor, or any member of our staff, has conducted themselves when dealing with you:

Again, we will always listen to your complaint, and we will deal with it sympathetically. The complaint should be made to the Director (details as above). If you are unhappy with how the complaint is dealt at this stage then the matter

can be raised with the Chief Executive of the Scottish Legal Aid Board. The Board prefers to have these complaints in writing, More information can be found on the Board's website www.slab.org.uk and the Chief Executive can be contacted in writing or by telephone. The contact details are:

Lindsay Montgomery CBE
Chief Executive
The Scottish Legal Aid Board
44 Drumsheugh Gardens
Edinburgh
EH3 7SW

Tel: 0131 226 7061.

11.4 Timescale for dealing with your complaint.

We will always try to deal with your complaint within 28 calendar days of having received it.

11.5 Please note that this complaints process cannot change the outcome of your case. If appropriate you can discuss any appeal against a decision of the court in a criminal case with your Public Defence Solicitor.

JRS Consultants-uk.com

The cost of the Public Defender Service

The Cost of Employing a QC at PDS per year

Salary	=	£125,000 per year	for a 37 hour week 40.5 days leave and privilege days
Pension contribution	=	£30,000	
NI contribution	=	£16,151	
Practising Certificate etc	=	£877	
Clothing (bands etc)	=	£200	
Personal expenses	=	£650	
Archbold	=	£450	
Total	=	**£173,328**	

Cost of Employing a Self-Employed QC to work on a VHCC full time for a year

Say the trial takes 8 months (ie 1080 hours) to prepare and 4 months in court.
To pay a self-employed QC to do the same work done by a PDS QC would cost[1]:

		New Rates (cut by 1/3)	Old Rates
£63.70 x 1080 (prep)	=	£68,796	£103,194
£353.20x 80 (ct)	=	£28,256	£42,384
Total	=	**£97,052**	**£145,578**

It costs taxpayers <u>£27,750</u> more to employ a PDS QC to do a VHCC than to get a self-employed QC to do it – at the rates <u>before</u> they were cut by the MoJ. Whilst the PDS QC has a salary of £125,000, the self-employed QC has to pay his own expenses (Chambers rent, pension, travel, clerks fees, admin support, clothing, insurance etc, computer) out of his fee, making the equivalent salary at least 35% less – about £60,000, to do the most demanding and complicated fraud and terrorism cases.

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[1] PDS QC is contracted to work 219.5 days a year, 7.4 hours a day; ie 1620.6 hours a year
VHCC Cat 3 rate = £63.70 per hour (new rates); £95.55 (old rates)
VHCC daily rate = £353.20 a day (new rates); £529.80 (old rates)
All expenses are paid by the self-employed barrister.

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the key to best practice

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Job Description

Queen's Counsel, Senior Higher Courts Advocates and Junior Higher Courts Advocates

Reference Number	NA00038
Location	National
Business Group	Not Assigned
Full / Part Time	Full Time
Contract Type	Permanent
Salary	£46036 to £125000

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Closing date: Monday 17th February 2014 at 23.59pm

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Public Defender Service:Written question - 901235

Q Asked by **John Pugh** (Southport) [N] Asked on: 01 September 2015

Ministry of Justice Commons **901235**

Public Defender Service

To ask the Secretary of State for Justice, what assessment he has made of the (a) cost effectiveness and (b) level of use of the Public Defender Service.

A Answered by: **Mr Shailesh Vara** Answered on: 08 September 2015

The Public Defender Service (PDS) plays a vital role in ensuring access to justice for those eligible clients who are unable to secure representation. The PDS also support positive change within the Criminal Justice System, assists the Ministry of Justice and Legal Aid Agency colleagues and acts as a test-bed for digital working. As such, the value of the PDS is made up of many factors, not just representation of defendants. Therefore no direct assessment of cost effectiveness or level of use has been made.

Call to review Public Defender Service



21 January 2014By Catherine Baksi (URL=/catherine-baksi/4763.bio)

Topics: Criminal justice, (URL=/Criminal justice/59.subject) Legal aid and access to justice (URL=/Legal aid and access to justice/81.subject)

A Liberal Democrat peer has called for a review of the Public Defender Service (PDS), calling it a 'total waste of public money', as the Ministry of Justice seeks to grow the service's ranks.

The ministry this week advertised vacancies for a 'small number' of advocates - QCs and senior and junior higher court advocates - to work at the PDS, offering salaries between £46,036 and £125,000.

The job advertisement boasts 'generous allowances' for paid holiday, starting at 23 days a year; additional paid time off for public holidays; two and a half privilege days; a choice of pension schemes; paid paternity, maternity and adoption leave and free eye tests.

It follows the recent appointment of two QCs to the PDS's ranks – Gregory Bull, formerly of London's Red Lion Chambers and a former leader of the Wales & Chester Circuit and Alun Jenkins, from Queen Square Chambers in Bristol and London.

Hugh Barrett, the director of commissioning and strategy at the Legal Aid Agency, said the appointment of the pair with such 'strong and experienced track records' is proof of the PDS's 'continuing commitment to providing a high-quality defence service'.

But criminal barrister and Liberal Democrat peer Lord Carlile (pictured) condemned the ministry's action.

He told the *Gazette*: 'I'm shocked by the way the government is behaving. It is proposing to pay salaries that far exceed the amount paid in the legal aid sector, bearing in mind the additional benefits, such as paid holidays, secretaries, pensions and paid sick leave.'

He said the move will cause 'great anger' to the independent criminal bar, which faces swingeing fee cuts. Many barristers have refused to accept briefs in the most serious criminal cases under the reduced rates. The move to increase the capacity of the PDS will be seen by many as an attempt to get round the problem.

Speaking last year at the Bar Council's annual conference, attorney general Dominic Grieve QC warned criminal barristers that if they refused to take on cases at the new rates, the ministry would 'look elsewhere' for advocates.

Carlile, who said his own view is that the PDS should be abolished, called for the recently appointed justice minister in the Lords - barrister Lord Faulks QC - to take a fresh look at the PDS to assess whether it is a 'total waste of public money'.

The PDS, which was set up in 2001, has four offices – in Cheltenham, Darlington, Pontypridd and Swansea. Academic research in 2007 suggested the service is one and a half to two times as expensive as private practice.

Law Society chief executive Desmond Hudson said: 'It looks like the ministry is trying to find a way to break the dispute with advocates over fees. Bringing criminal defence services in-house isn't sustainable or desirable. Evidence shows that solicitors in private practice offer substantially better value for money than solicitor services delivered through the PDS. We continue to make the case to the MoJ that the most effective way to safeguard the future of high quality criminal defence is by facilitating a diverse supplier base and a market underpinned by client choice.'

Advertisement



Readers' comments (15)

- Anonymous21 January 2014 03:56 pm

  Please can we all be public defenders on those rates? No? Thought not.

  - Up VotesVote up (URL=#)
  - Down VotesVote down (URL=#)
- Anonymous21 January 2014 05:38 pm

  What is 'generous' about those 'benefits'? Holiday, maternity, pension are all statutory requirements. However, goodness only knows what a privilege day is; time off to recover from being a complete and utter Judas maybe?

  - Up VotesVote up (URL=#)
  - Down VotesVote down (URL=#)
- Tim Collins21 January 2014 07:25 pm

  Could it not have been run as a PCT exercise and why aren't Stobarts or G4S running this?

  - Up VotesVote up (URL=#)
  - Down VotesVote down (URL=#)
- Linda Jill Filby21 January 2014 07:49 pm

  The reason why the PDS has not already expanded since 2001 is surely because the powers that be quickly realised that private practitioners under contract who pay their own overheads are cheaper

  - Up VotesVote up (URL=#)
  - Down VotesVote down (URL=#)
- Anonymous21 January 2014 09:58 pm

  The MOJ will advertise huge salaries and then will insist on the lowest, no pay rise, and will eventually demean PDS employees. But that will happen only after they have decimated private practice. I tell you, we will have the highest qualified copier salesmen in Europe.

  Justice, where have you gone?

  - Up VotesVote up (URL=#)
  - Down VotesVote down (URL=#)
- Stephen Larcombe22 January 2014 09:32 am

When it comes to justice in the UK there is now a vacuum, which is being filled by policies promoting integrity free, profit generating srategems under state control, defendants and victims being processed in like fashion.

A mature democracy such as ours seems to be sleepwalking towards a more centrally controlled less free country, with the normal attributes of a civilised society being gradually corroded over time.

With the burden of regulation removed from the professional bodies making up the legal profession, surely they now have much more time to concentrate on controversial issues such as this?

Campaigning on these type of issues would in my view considerably enhance their standing with the public and would, in turn regain the respect of the Executive.

- Up VotesVote up (URL=#)
- Down VotesVote down (URL=#)

- David Crawford22 January 2014 10:08 am

  I am sure Andrew Mitchell and AT would agree with your every word, Stephen

  - Up VotesVote up (URL=#)
  - Down VotesVote down (URL=#)

- Anonymous22 January 2014 10:28 am

  They can't abolish the PDS .... they couldn't afford the PII "run off" !

  - Up VotesVote up (URL=#)
  - Down VotesVote down (URL=#)

- Anonymous22 January 2014 11:20 am

  Jobs for the boyoes ? But will the foxes trust the gamekeepers who become poachers? Better ask the hungry competition?

  - Up VotesVote up (URL=#)
  - Down VotesVote down (URL=#)

- Paul Nicholls22 January 2014 12:23 pm

  A state run service will be stretched, cash strapped, hopeless and not truly independent. It will also cost more in the long run than the appalling rates available on legal aid now.

  This is a truly appalling and cynical ploy by the MOJ to drive the coffin lid nails home of the challenge by the professions.

  You only have to look at the state of the similar massively criticised system in the US to see how such a widely available system would be perceived.

  The attacks from all sides in every area of legal practice by this current government have been calculated to decimate a centuries old profession.

  Whatever happened to freedom of choice?

  - Up VotesVote up (URL=#)
  - Down VotesVote down (URL=#)

Vacated, Effective, Cracked & Ineffective Trial Monitoring Form

(Court of General Gaol Delivery and Summary Courts)

Court ref:

Court/Date:		Date of Offence(s):	
Defendant Name:		Date of 1st Hearing:	
Prosecution Advocate:		Date of PTR:	
Defence Advocate (if applicable):		Date of Trial:	
Planned length of trial: [Nearest 30 mins]	Hours Mins	Actual Length of Trial: [Nearest 10 mins.]	Hours Mins

Case type
- Information only ☐
- Either way ☐
- Summary (motoring) ☐
- Summary (non-motoring) ☐

Trial outcome
- Vacated ☐
- Effective ☐
- Ineffective ☐
- Cracked ☐

No. of PTRs held: ☐
Total No. of Trial hearings: ☐

Was a FTA Warrant issued? yes ☐ no ☐

If effective: proceeded in Defendant's absence? yes ☐ no ☐

Unnecessary witness attendance *(record number in box)*

Prosecution Witnesses	Police	Adult	Child	Expert

Defence Witnesses	Adult	Child	Expert

Type(s) of Offence Code: (see overleaf) ☐☐☐☐

Prosecution Comments *(to include Reasons Code[s])*:
Reasons Code[s] ☐☐☐☐☐☐

Defence Comments *(to include Reasons Code[s])*:
Reasons Code[s] ☐☐☐☐☐☐

Prosecution Advocate (signature).....

Defence Advocate (signature).....

Court's Comments (Legal Officer, Courts)
Reasons Code[s] ☐☐☐☐☐☐

Judge's/Bench Chair's Comments:
Reasons Code[s] ☐☐☐☐☐☐

Legal Officer, Courts (signature).....

Judge/Bench Chair (signature).....

Reasons Codes

Cracked/Vacated Trials

A Acceptable guilty plea(s) entered late to some or all charges/counts on the charge sheet/Information, offered for the first time by the Defence

B Acceptable guilty plea(s) entered late to some or all charges/counts on the charge sheet/Information, previously rejected by the Prosecution

C Acceptable guilty plea(s) to alternative new charge/ count not previously on the charge sheet/ Information, offered for the first time by the Defence

D Acceptable guilty plea(s) to alternative new charge/ count not previously on the charge sheet/ Information, previously rejected by the Prosecution

E Defendant bound over, acceptable to the Prosecution, offered for the first time by the Defence

F Defendant bound over, now acceptable to the Prosecution, previously rejected by the Prosecution

G Defendant deceased

H Prosecution end case: insufficient evidence

I Prosecution end case: witness absent/withdrawn complaint

J Prosecution end case: public interest grounds

K Prosecution end case: adjournment refused

L Prosecution Advocate failed to attend

Ineffective/Vacated Trials

M1 Prosecution not ready: served late notice of additional evidence on Defence

M2 Prosecution not ready: specify in comments

M3 Prosecution failed to disclose unused material

N1 Prosecution witness absent: Police

N2 Prosecution witness absent: professional/expert

N3 Prosecution witness absent: other

O Prosecution Advocate failed to attend

P Prosecution increased time estimate: insufficient time for trial to start

Q1 Defence not ready: disclosure problems

Q2 Defence not ready: specify in comments (inc. no instructions)

Q3 Defence asked for additional Prosecution witness to attend

R Defence witness absent

S1 Defendant absent: did not proceed in absence (Judicial discretion)

S2 Defendant ill or otherwise unfit to proceed

S3 Defendant not produced by Prison Escort Service

S4 Defendant absent: unable to proceed as Defendant not notified of place and time of hearing

T Defence increased time estimate: insufficient time for trial to start

U Defence Advocate failed to attend

V Defendant dismissed Advocate

W1 Another case over-ran

W2 Judge/Bench Chair/Magistrate unavailability due to illness etc.

W3 Equipment / accommodation failure

W4 No interpreter available

X Insufficient jurors available

Code	Types of offence
ABH	Assault occasioning actual bodily harm
BUR	Burglary
CAD	Careless/inconsiderate driving
CAS	Common assault
DAD	Dangerous driving
DAM	Criminal damage
DCD	Death/serious injury by careless driving
DDD	Death/serious injury by dangerous driving
DDR	Drink driving/in charge/failing to provide
DQD	Disqualified driving
DRT	Drug trafficking offences
DRU	Drug offences (other than drug trafficking)
FRF	Fraud/forgery
GBH	Grievous bodily harm/wounding
GWI	Grievous bodily harm/wounding with intent
IND	Indecent images
MUR	Murder/attempted murder/manslaughter
OSM	Other summary motoring offences

Code	Types of offence *continued*
POC	Money laundering
POL	Offences against Police Officers
PUO	Public order
ROB	Robbery
SEX	Sexual offences
SNM	Other summary non-motoring offences
THG	Theft and handling stolen goods
XXX	Other Information/either way offences



Funding for Law Centres

Law Centres Network

25 November 2014



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Funding for Law Centres

Law Centres Network

A report submitted by ICF International

Date: 25 November 2014

Job Number 30259924

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Joe Sunderland is a Consulting Director at ICF International with over 17 years of extensive and varied experience as an economist and public policy specialist. Joe manages and directs major evaluations, impact assessments and other research studies on a wide range of policy issues. He has successfully led a number of complex strategic policy and economics projects throughout his career and his professional experience to date has involved extensive research and analytical work, stakeholder consultation and project management. Joe has previously held roles with 10 Downing Street, the Prime Minister's Strategy Unit, HM Treasury, Ofgem, The Allen Consulting Group and the Productivity Commission. Joe's policy expertise extends across a range of sectors and he benefits from extensive experience at the coalface of policy making. Joe holds a first class honours degree in economics from La Trobe University, Australia.

ICF International is a leading multi-disciplinary consultancy firm headquartered in London. The company has grown in scale and in the breadth of its services over the years. ICF's UK and EU services are focused on economics and public policy research and evaluation. Our principal clients are HM Government and its agencies, the European Commission and international institutions such as the World Bank, Asian Development Bank, United Nations and OECD. We have also undertaken many assignments for local government in the UK, charities and other voluntary organisations. We provide research and analytical services throughout the policy cycle, from analysis to inform policy formation, through implementation, communication and dissemination to monitoring, technical support and evaluation.

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Key messages

- Law Centres provide **free legal advice** to disempowered and disadvantaged citizens and community organisations.
- Law Centre activities are **targeted at those sections of the community which have the greatest need** such as the unemployed or low paid, disabled people, black and minority ethnic communities, women and children.
- What sets Law Centres apart from most other agencies and organisations are the services they provide, in the shape of **legal representation and individual casework aimed at the early and timely resolution of problems** which may otherwise escalate to more resource intensive parts of the justice system.
- Law Centres are able to deliver services in **new and innovative ways**, and are independent of government and so free to be unequivocally on the client's side.
- Law Centres are **independent and are accountable to their communities**. They are embedded at a grass-roots level, with local people acting on their management committees and Law Centre membership comprising of people from other local communities. Therefore, they are well-placed to provide independent advice to consumers on the most suitable solution in the circumstances.
- Evidence shows that **Law Centres deliver significant economic impacts**. These benefits accrue primarily in the form of direct and indirect savings in publicly-funded services. These would otherwise be incurred in the absence of the services delivered by Law Centres.
- It is estimated that Law Centres deliver the following gross outputs and outcomes:
  - **between £446.5 million and £519.5 million in direct cost savings** as a consequence of reducing the annual costs associated with debt and temporary accommodation;
  - **approximately £450.6 million in indirect cost savings** as a consequence of reducing 'downstream' or 'spillover' costs associated with homelessness, stress, anxiety and ill health; and
  - **£99.8 million in additional tax revenues** to the Exchequer as employment is created and/or safeguarded.
- Given that funding for Law Centres totalled £17.5 million in 2012-13 (not all of which comes from central Government) and the net revenue benefits to the Exchequer are at least £48 million, this suggests that **even just focusing on the pure fiscal benefits, Law Centres deliver benefits of more than twice the amount for which they are funded.**
- Law Centres **generate a number of wider benefits for the local communities in which they operate**. Although difficult to quantify, they are nonetheless significant for the large number of vulnerable people in crisis or at acute risk of further problems that depend on their advice and support.
- Despite the economic and wider social benefits delivered by Law Centres, **they face a significant challenge via changes to the funding environment in which they operate**. Arguably most significant of these changes is the Government's proposals to reform the justice system, as set out in the Ministry of Justice's business plan, and to reduce the Ministry's budget by £2 billion by 2015, including a reduction in civil legal aid expenditure of £350 million per year which has already taken effect.
- This uncertainty over funding comes at a time when Law Centres are seeing **significant increases and changes in demand** for their services that are attributed to the slow recovery from recession.
- **Improving the system of funding for Law Centres** (which can be instrumental in generating community cohesion/strength and empowerment for disadvantaged groups as well as downstream public sector savings) might be considered a significant new justice policy area.
- Within this context, Government's **policy objectives** could be:

- to create the conditions in which **every neighbourhood has access to a Law Centre** or other legal 'hub organisation';
- to ensure that there is a **simple and more comprehensive system of grant funding**, regardless of its source, available to Law Centres or hub organisations, particularly to cover the core costs of meeting the needs of the most disadvantaged groups; and
- to **build further the offer of Law Centres**, where there is an appetite for growth and development (potentially to address legal advice 'deserts'), so that they can start to generate sustainable income for themselves.

1 Overview of Law Centres

1.1 Role of Law Centres

Law Centres form part of the wider Not for Profit (NfP) sector, providing free legal advice to disempowered and disadvantaged citizens and community organisations. These client groups are normally 'missed' or generally not served by traditional firms offering standard products and service delivery methods[1]. The services provided by Law Centres typically focus on advice and casework in areas like housing, employment, immigration and welfare.

Law Centres are staffed by qualified and experienced solicitors and barristers. They provide representation at all levels of legal proceedings and in all courts, including up to European courts.

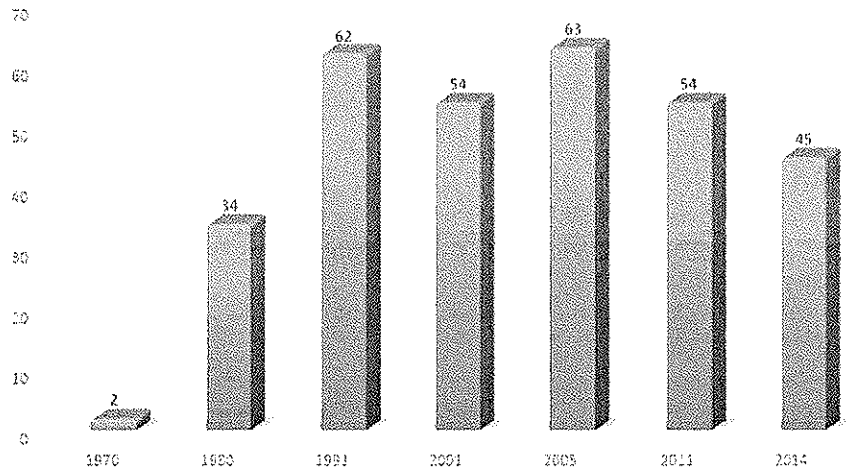
Law Centre activities are targeted at those sections of the community which have the greatest need such as the unemployed or low paid, disabled people, black and minority ethnic communities, women and children. These activities can be divided into three strands:

- **Individual casework** – Law Centres provide advice and representation on a variety of civil law matters including housing, debt, employment, welfare benefits, immigration, education and community care.
- **Legal education and prevention** – Law Centres provide legal education and training services to support agencies to help educate and empower citizens and community organisations about their legal rights.
- **Legal policy and test cases** – Law Centres often work with other organisations to frame policies, legal procedures and guidelines that affect their clients and the local communities in which they work.

As a result of these activities, Law Centres are in a strong position to spot emerging trends, to disseminate information to other support bodies and to propose remedies.

There are currently 45 Law Centres in England, Wales and Northern Ireland. Figure 1.1 shows that the total number of Law Centres has fallen in recent years, for which a major contributory factor has been the changes to legal aid funding.

Figure 1.1 Total number of Law Centres, by year

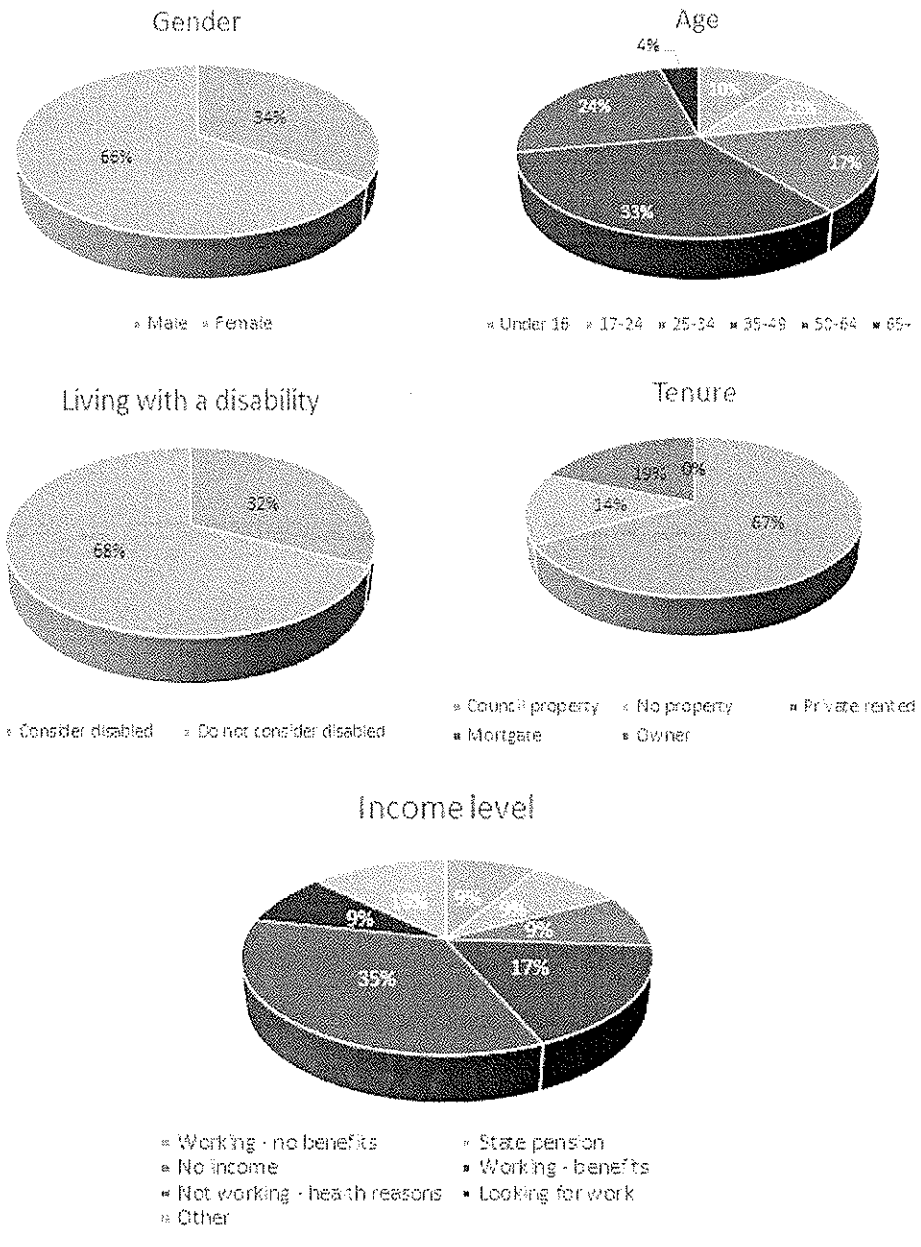


[1] In the NfP sector, a number of agencies provide legal advice and representation to clients. These include: Law Centres; Citizens Advice Bureaux (CAB) in England and Wales; and Advice UK branches. In terms of scale, agencies in the NfP sector employ the equivalent of between 15,000 and 30,000 people spending time providing advice, much of which is legal or quasi-legal in nature.

1.2 Demand for Law Centres

In 2012-13, over 120,000 cases were dealt with by Law Centres. Although there is no 'typical' client for the wide range of services provided by Law Centres, data from the Islington Law Centre provides a picture of the characteristics of the clients who accessed services in this diverse London borough in 2013 (Figure 1.2).

Figure 1.2 Selected characteristics of Islington Law Centre clients, 2013



The combined effects of cuts to public spending – specifically legal aid cuts, benefit reform and localisation of certain services (council tax support, discretionary housing payments) – have contributed to an increase in the unmet need for legal aid. On the one hand,

homelessness, rent arrears and other debt are worsening.[2] On the other hand, civil legal aid services are not being accessed nearly as much as they could be.[3]

A steep rise in demand for Law Centre services is evident in the areas of law that have been cut from the scope of legal aid. For example, Hackney Community Law Centre reported (in winter 2013) a 400 per cent increase in people looking for help with welfare benefits, a 200 per cent increase in people looking for help with immigration-related issues and a 500 per cent increase in calls to their telephone advice line[4]. However, diminishing resources are also preventing Law Centres from helping otherwise eligible clients: Cumbria Law Centre has reported that it now only has capacity to take on one in four cases presenting[5].

There are a number of policies, programmes and types of support related to the provision of legal advice and information for vulnerable and at-risk groups. What sets Law Centres apart from most other agencies and organisations are the services they provide, in the shape of legal representation and individual casework aimed at the early and timely resolution of problems which may otherwise escalate to more resource-intensive parts of the justice system.

Law Centres specifically target their activities at vulnerable citizens and communities. They are able to deliver services more effectively due to their direct experience of these groups' needs and local circumstances. They are able to deliver services in new and innovative ways, and are independent of government and so free to be unequivocally on the client's side.

Socially excluded individuals may lack the skills and capacity to make use of some existing forms of information and advice[6]

- One in twenty people have difficulties following straightforward texts independently.
- Accessing services by phone can be problematic for people with some mental health conditions.
- Around one in seven people from ethnic minorities need information to be translated into another language.
- Advice and information services are problematic for those who do not have English as a first language.

Consumers require and interact with legal advisors infrequently and often when they are particularly vulnerable, when matters have escalated and they face eviction, dismissal or benefits sanctions. They require independent legal advice because of the unequal relationship between the legal advisor and the client; the complex products and advice/services required; and difficulties in assessing the quality of services and the costs associated with them.

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[2] Cf. recent Joseph Rowntree Foundation reports "Monitoring Poverty and Social Exclusion 2013" (http://www.jrf.org.uk/publications/monitoring-poverty-and-social-exclusion-2013) and "The Homelessness Monitor: England 2013" (http://www.crisis.org.uk/news.php/756/new-report-says-almost-one-in-ten-have-been-homeless).

[3] Amply demonstrated in Steve Hynes, "Civil Legal Aid – the Secret Legal Service?", http://www.lag.org.uk/policy-campaigns/legal-aid-secret-service.aspx.

[4] Written evidence from the Law Centres Network (LAS 57) to the Commons Justice Committee on Impact of changes to civil legal aid under Legal Aid Sentencing and Punishment of Offenders Act 2012, http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/justice-committee/impact-of-changes-to-civil-legal-aid-under-laspo/written/8956.html.

[5] *Ibid.*

[6] SEU (2005) Improving Services, Improving Lives

Vulnerable clients are those likely to have the most complex or multiple needs and their cases would often cut across different Law Centre activities.[7] These clients are also sometimes poorly served by the legal aid system. Research has shown that people coping with years of social exclusion and poor levels of educational attainment and self-esteem were often confused by the instructions they were given and consequently left problems to fester or escalate.[8] Law Centres have the ability to respond appropriately to individual cases and individual clients' lives.

Working together to meet complex needs: Coventry Law Centre and Grapevine

Coventry Law Centre is a charity employing solicitors and paralegals to offer free legal advice and representation in the areas of community care, discrimination, employment, family, housing, immigration and asylum, money and debt, public law, and welfare benefits to the people of Coventry.

Grapevine is a Coventry-based registered charity that provides support for people with learning disabilities to lead independent and empowered lives within their local communities.

Both parties have worked together collaboratively on a project to support young people in Coventry who do not have regularised immigration status. During the two years of the project, it is expected that 400 young people will be reached, of which around 40 will receive intensive support. The help offered ranges from free expert legal advice to help accessing medical care and education and support in finding housing. The central aims of the project are to obtain immigration papers for the service users and to break some of the isolation suffered by undocumented young people.

Sources: http://covlaw.org.uk/immigration/ymproject.html, http://covlaw.org.uk/, http://covlaw.org.uk/clc/downloads/impact%20report%2011-12.pdf and http://www.grapevinecovandwarks.org/what-we-do.aspx.

Law Centres are independent and are accountable to their communities. They are embedded at a grass-roots level, with local people acting on their management committees and Law Centre membership comprising of people from other local communities. Therefore, they are well-placed to provide independent advice to consumers on the most suitable solution in the circumstances which might include referral to other support agencies, recommending not proceeding with a legal case and/or suggesting mediation with the other party to negotiate a solution.

Law Centres provide co-located and integrated advice provision that effectively meets the needs of excluded and at-risk groups. This includes working closely with non-legal organisations to ensure that all aspects of the client's problems can be addressed and resolved in a timely and coordinated fashion. Law Centres are active and preventative, intervening early to address root causes of complex social problems and focusing upon individuals, organisations and communities as a whole rather than on single issues.

1.3 Funding for Law Centres

Historically, the type of legal services provided by Law Centres has been publicly funded by legal aid and local authorities alongside funding through volunteer organisations and pro bono work undertaken by solicitors and barristers.

Between 2007-08 and 2012-13, the level of funding received by Law Centres decreased in nominal terms from £21.2 million to £17.5 million. Approximately half of funding support is

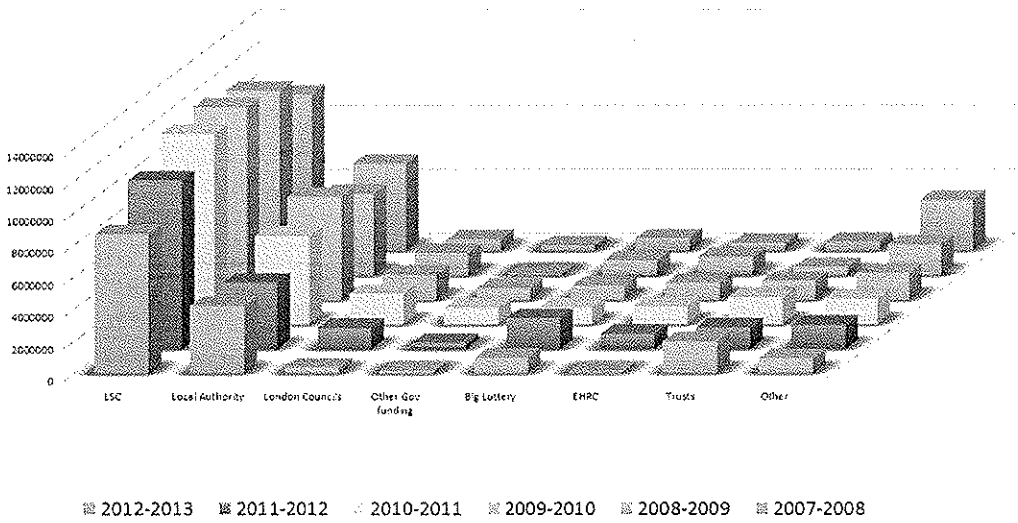
[7] Pleasence P, Buck A, Balmer N, O'Grady A, Genn H and Smith M (2006) *Causes of action: Civil law and social justice (2nd edn)* (London: The Stationery Office).

[8] *Ibid.*

concentrated in London followed by the Midlands and the North East of England.[9] The Ministry of Justice, through its Legal Aid Agency (formerly the Legal Services Commission (LSC)), is the most significant funder of Law Centre activities from its civil legal aid budget. In 2012-13, it provided just under £9 million in funding for Law Centres, representing around half of total Law Centre income (Figure 1.3).

Financial year 2013-14 saw a sharp drop in legal aid funding to Law Centres, in line with Government cuts to civil legal aid. The cuts targeted social welfare law – Law Centres' primary focus – reducing funding for it by over 75 per cent. This is expected to fall further in financial year 2014-15.

Figure 1.3 Funding for Law Centres, by source[10], 2007-2013



In summary, Law Centres are equipped with the knowledge to address effectively the needs of the local communities they serve. They can also tackle the barriers which exist to legal information, advice and services, delivering sustainable economic and social outcomes. However, while demand for the services provided by Law Centres continues to grow, the funding for such services is under threat.

[9] The drop in funding for London between 2010-11 (59 per cent of funding support) and 2012-13 (50 per cent) is due to a combination of individual council funding cuts with the discontinuation of strategic city-wide funding from London Councils, which until then had been an important additional layer of support. Overall, the drop in local authority funding in London was sharper than that for Law Centres outside of London.

[10] LSC (Legal Services Commission). EHRC (Equality & Human Rights Commission). FIF (Financial Inclusion Fund).

2 Economic impact and wider benefits of Law Centres

Through early intervention and advice, Law Centres seek to deliver positive outcomes while avoiding costs in the justice system by helping to stop cases being prosecuted and entering courts. They also reduce broader social costs by helping to broker negotiated solutions which avoid costs associated with evictions, bankruptcy, forced deportation, etc.

Evidence demonstrates that free legal advice can help improve outcomes for at-risk and excluded groups and also generate a number of wider benefits for local communities.

2.1 Sustainable economic impacts

Evidence shows that Law Centres deliver significant economic impacts.[11] These benefits accrue primarily in the form of direct and indirect savings in publicly-funded services. These would otherwise be incurred in the absence of the services delivered by Law Centres.

During 2010-11, Law Centres supported in the region of 26,000 clients with legal aid funds and a further 120,000 clients through one-off advice and pro bono clinics. The average cost per case of legal aid cases was around £370, although the range varies depending on the length of time involved and the type of case. The total cost of delivering services across all Law Centres – some 54 Law Centres before cuts imposed by the Legal Aid, Sentencing and Punishment of Offenders (LASPO) Act 2012 ('LASPO cuts') came into effect, and now 45 Law Centres after the LASPO cuts were introduced – was £21.9 million in 2011-12.

At current levels of funding, it is estimated that Law Centres deliver the following gross outputs and outcomes:

- between £446.5 million and £519.5 million in direct cost savings as a consequence of reducing the annual costs associated with debt and temporary accommodation;
- approximately £450.6 million in indirect cost savings as a consequence of reducing 'downstream' or 'spillover' costs associated with homelessness, stress and anxiety and ill health; and
- £99.8 million in additional tax revenues to the Exchequer as employment is created and/or safeguarded.

To quantify the net impact generated by Law Centres it is necessary to take account of additionality factors, including:

- deadweight – accounting for what would have happened anyway;
- displacement – accounting for outputs/outcomes generated elsewhere in the local economy; and
- attribution – excluding the outputs/outcomes associated with other advice and support provided.

Taking account of these additionality factors, as suggested in the HM Treasury Green Book generates the following net impacts (Figure 2.1).[12]

[11] PwC (2013), *Law Centre Network Social Impact Study.*

[12] HM Treasury (2011), *The Green Book: Appraisal and Evaluation in Central Government.*

Figure 2.1 Net impacts of Law Centres





Given that funding for Law Centres totals £17.5 million (not all of which comes from central Government) and the net revenue benefits to the Exchequer are at least £48 million, this suggests that even just focusing on the pure fiscal benefits, Law Centres deliver benefits of at least **twice** the amount for which they are funded.

2.2 Wider economic benefits

Law Centres generate a number of wider benefits for the local communities in which they operate. Although difficult to quantify, they are nonetheless significant for the large number of vulnerable people in crisis or at acute risk of further problems that depend on their advice and support.

Law Centres help vulnerable people to resolve their legal problems, often before they reach crisis point or trigger other problems. Much of the evidence suggests that advice-based interventions are more effective for individuals with the most acute or complex problems. For example, work by the Legal Services Research Centre points to the transformative role of legal advice for those with mental health and other social problems, including problems with debt.[13]

Law Centres are able to identify problems at an early stage and provide good quality advice that can create meaningful long-term positive change for clients, which offers better value in the longer term. Information and advice is a key tool of public policy and is used across almost all policy areas. It is particularly important to improving outcomes among at-risk groups because evidence demonstrates that information and advice-based interventions can be effective; and because better use of information may drive systemic improvements in delivery to these groups by public services and consumer markets.

Law Centres can empower individuals and build personal capacity and capabilities. Good information and advice can empower people to make choices about their lives and support better decision-making in consumer markets and in accessing and using other public

[13] See LSRC (2009), *Civil Law, Social Problems and Mental Health*, LSRC Research Factsheet No. 1, and Turley, C. and White, C. (2007), *Assessing the Impact of Advice for People with Debt Problems.*

services. It can also prevent future exclusion. Information and advice can help protect from a wide range of risk factors by positively shaping personal decision-making, behaviour and attitudes in ways that protect against future risks and build resilience.



"In the beginning we were isolated individuals, by the end of this difficult, and emotional journey, we have become a team of politically and legally educated activists who have proved ourselves a force to be reckoned with – what's not to like about that? [...] We parents and carers have learned more about our legal rights than we ever knew possible and [...] we will continue to educate ourselves and each other and do whatever we can to support our Early Years services in this city."

Quote from a Sheffield mother helped by her Law Centre to challenge a city council decision[14]

2.3 Social return on investment

The Law Centres Network commissioned independent consultants to estimate the social return on investment of the activities of Law Centres.[15] Although limited in scope, the research provides a useful illustration of the additional socio-economic benefits of:

- Individual Casework: taking up the majority of Law Centres' time and resources, including immediate short-term solutions to pressing issues and longer-term solutions that enable clients to become better able to tackle future problems, with the outputs varied but were estimated to be around £20,000 per case; and
- Education and Prevention: designed to prevent the type of problems that often result in individuals requiring legal assistance, were estimated to create a social return of around 6 (i.e. for every £1 spent, £6 worth of social value is created).

Furthermore, the issues raised via casework and education and prevention are often the root cause of problems faced by communities. As a result, Law Centres are in a strong position to influence the policy and practice of other agencies (and even 'bend' mainstream and other funding), as they disseminate information and propose remedies. For example, a Law Centre is likely to establish the reason why a council has a high eviction rate; evictees may not have been consulted properly; they may not have understood the conditions that have precipitated such action, and therefore have not responded correctly.

[14] Quoted in the Sheffield Star, 17 October 2013: http://www.thestar.co.uk/features/we-ve-proved-ourselves-a-force-to-be-reckoned-with-1-6154637

[15] nef (2009), *The Socio-Economic Value of Law Centres.*

Supporting homeless young people

In 2013, the Law Centres Network Young People's Programme, with the support of Freshfields Bruckhaus Deringer LLP, completed a review of Local Authority protocols relating to homeless 16 and 17 year olds. A total of 138 protocols were received from a total of 144 local authorities in England. The review looked at whether protocols were in line with the law and statutory guidance. Protocols are documents that should set out clearly what happens to a 16/17 year old on presentation to either the Local Authorities' housing or social services department. Protocols should go some way to ensuring that young people are not passed pillar to post between the two departments, with the potential consequence that they fall through the gap and remain homeless or in unsuitable and accommodation. The review came as a response to anecdotal evidence from Law Centre staff, working with young people, who reported that despite clear case law and statutory guidance many homeless 16 and 17 year olds were not being correctly assessed, accommodated and provided with the support they need and are entitled to from the Local Authority. The review culminated in a report in 2013 and was followed by the publication of a short guide in April 2014 designed to give homeless young people plain-language advice about their rights and point them to the best sources of local help.



Source: http://lawcentres.org.uk/policy-and-media/papers-and-publications/young-people

In summary, Law Centres generate significant net benefits to the public purse that would be foregone without the funding made available through the Ministry of Justice, local authorities, trusts, foundations and other sources. By leveraging charitable funds and pro bono assistance (and volunteers), Law Centres generate significant additional value over and above the amount of public money spent.

3 Funding of Law Centres

3.1 Changes in the funding environment

A significant challenge facing Law Centres and the activities they provide is changes to the funding environment in which they operate. Arguably most significant of these changes is the Government's proposals to reform the justice system, as set out in the Ministry of Justice's business plan, and to reduce the Ministry's budget by £2 billion by 2015, including a reduction in civil legal aid expenditure of £350 million per year which has already taken effect.[16]

Funding is being revised significantly in light of the reduced scope of legal aid following the implementation of the Legal Aid, Sentencing and Punishment of Offenders Act 2012, the reduction in local authority grants as a result of the 2010 Comprehensive Spending Review and the end of the Equality and Human Rights Commission-funded face-to-face legal advice for discrimination cases from March 2012.

Since the Act's implementation, additional restrictions in legal aid funding were introduced in Judicial Review, which will only receive legal aid funding once a judge has agreed the case is strong enough to proceed to a full hearing; and in exceptional case funding, a 'safety net' scheme for cases of outstanding importance, where actual approvals for legal aid funding by the Legal Aid Agency are significantly lower than forecast.

The Coalition Government has suggested that there is an overwhelming case for reform of the legal aid system.[17] It believes that, since the modern scheme was established in 1949, the scope of legal aid services has widened beyond what was originally intended and is now available for a very wide range of issues.[18]

The Coalition Agreement promised a fundamental review of legal aid to 'make it work more efficiently'.[19] In very broad terms, the Government has questioned when it is reasonable for the taxpayer to fund a person's legal costs and how to make savings from the legal aid budget while keeping the most pressing cases in scope. It wishes to:

- discourage cases from coming to court (at the taxpayer's expense) when they might better be resolved by other means, such as other forms of advice or mediation; and
- reduce spend and tackle inefficiencies in the criminal and family justice processes which unnecessarily drive up legal aid costs.

In addition to the impact of legal aid reforms on the funding available not only for Law Centres but also for the individuals they seek to support, there are a number of core reforms to the commissioning of public services which will impact on contestability in the provision of the services currently provided by Law Centres. Such reforms include:

- personal budgets completely decentralise the commissioning decision, moving from large 'block purchases' to millions of individuals choosing separately, therefore creating space for niche providers to compete;
- payment by results means that some of the most complex social problems will be newly addressable by whoever can promise to solve them – these problems are often where Law Centres have a competitive edge;
- the Localism Act including the introduction of 'right to challenge' where NfP providers can trigger consideration of an open procurement process;

[16] https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/217281/moj-2012-business-plan.pdf

[17] http://www.justice.gov.uk/legal-aid/newslatest-updates/legal-aid-reform

[18] The system of legal aid was established in 1948, as part of the post-war settlement, in response to the Rushcliffe Committee which recommended the establishment of a system for individuals to receive legal help. Preference was given to a system of solicitors in private practice giving legal aid advice.

[19] The Coalition: our programme for government (2010)

- the Public Services (Social Value) Act 2012 which places a duty on public bodies to consider social value ahead of a procurement and, in doing so, may result in more weight being placed on the additional value that the charitable sector potentially brings to procurement, but is still in its infancy;
- policies to support SME and NfP providers to participate in open public service markets, including: opening up public service markets will result in opportunities for a diverse range of organisations and sectors (i.e. reducing the barriers to entry for smaller providers, ensuring that government supply chains are managed well and are fair, supporting smaller providers to access capital/ capabilities to build sustainable enterprises); and
- Big Society Capital helping the NfP and social enterprises to access more resources and play a bigger role in delivering public services.

In summary, the bulk of the means by which Law Centres have been able to sustain their existence is to be removed from legal aid. At the same time, more traditional funders of advice locally, including Local Authorities, are under extreme funding pressure. Charitable Trusts remain supportive but do not have sufficient funds to maintain a comprehensive network of Law Centres. Consequently, services may not reach the most at-risk groups at key points – such as in crisis situations or through key life events and transitions.

3.2 Government funding considerations and opportunities for Law Centres

Within the context of more limited public resources and wider reforms to the funding environment in which Law Centres operate, it is relevant to ask whether the Government should provide financial support for the core work of some or all Law Centres. It has already been argued that the Government has an interest – based on market failures – in contracting with Law Centres to bring their strengths to delivery of legal information and advice. We have also demonstrated that there is an economic rationale in supporting the public good of Law Centres, with strong net benefits delivered to the public purse.

There remains a lack of clarity regarding how and to what extent the Government will support Law Centres and wider legal information and advice, and consequently local Law Centres find it difficult to plan and invest in their long term future. Conversely, public agencies get frustrated at the constant requests for support in the absence of a more clearly understood framework about what the Government will support. Most importantly, confusion over how the Government should support the sector potentially puts at risk the continued realisation of the benefits that the sector delivers for those who would otherwise find it challenging to access suitable legal representation.

Other countries have more systematic strategies for providing core support to the sector than the relatively ad hoc approach facing UK Law Centres. These national systems feature longer-term strategy that is widely consulted on and informed by provider insights; presumption of continued funding for existing services; and a multi-functional approach to provision that covers not just advice and casework but also public legal education and public policy work as core elements of publicly funded legal services.

International examples of funding for legal services

Australia – Community Legal Services Program

The Australian Federal Government and Australian State governments provide funding for community legal centres which are independent and community managed non-profit services providing a range of assistance on legal and related matters to people on low incomes and those with special needs. Community legal centres are designed to complement and build upon the services provided by legal aid commissions and the private sector. Community legal centres are funded under the Commonwealth Community Legal Services Program (CCLSP). The CCLSP is a dedicated program within the Attorney General's Department which supports and funds community

legal services as part of the Commonwealth's contribution to the maintenance of effective systems of justice and legal assistance. The CCLSP provides funding for an integrated mix of community legal services which are grounded in an evidence-based strategic plan focused on needs. The CCLSP forms an important component of the Australian Government's 'Strategic Framework for Access to Justice in the Federal Civil Justice System' which aims to maximise the level of integration between the various elements of the justice system.

Sources: http://www.ag.gov.au/LegalSystem/Legalaidprograms/LegalServicesProgram/Pages/default.aspx and http://www.ag.gov.au/LegalSystem/Legalaidprograms/LegalServicesProgram/Documents/Commonwealth%20Community%20Legal%20Services%20Program%20Guidelines.pdf

Canada – Legal Aid Ontario

Legal Aid Ontario (LAO) is responsible for administering the province's legal aid program and providing low-income Ontario residents with high-quality legal aid services in a cost-effective and efficient manner. Established by the Legal Aid Services Act, 1998, LAO is an independent but publically-funded and accountable non-profit corporation. It is the second-largest justice agency in Ontario and one of North America's largest providers of legal services. LAO provides legal assistance province-wide to low-income clients who are eligible for support for their family, criminal or immigration/refugee legal matters. LAO also funds 77 community legal clinics across the province which have a province-wide strategy for working together collaboratively to address legal needs. LAO receives the majority of its funding from the province of Ontario and the Law Foundation of Ontario. The funds LAO receives from the provincial government include an allocation of funds from the federal government. They are part of a cost-sharing arrangement with the federal government for criminal law, the Youth Criminal Justice Act, refugee and immigration cases, and other expenditures.

Sources: http://www.legalaid.on.ca/en/getting/typesofhelp.asp and http://www.legalaid.on.ca/en/about/fact_ataglance.asp

This uncertainty over funding comes at a time when Law Centres are seeing significant increases and changes in demand for their services that are attributed to the slow recovery from recession. The recession, and consequent rise in unemployment and poverty, has had a significant impact on the demand for social welfare advice services. Although a number of local authorities have offered additional funding to voluntary sector advice providers to help meet some of the increased demand, the pressure placed on their funding make this 'gap funding' unsustainable.

Improving the system of funding for Law Centres (which can be instrumental in generating community cohesion/strength and empowerment for disadvantaged groups as well as downstream public sector savings) might be considered a significant new justice policy area. Important decisions to be made include: whether to prioritise groups or a wider spectrum of interest based groups; whether to distribute the funding primarily through local authorities or central programmes.

Within this context, Government's policy objectives could be:

- to create the conditions in which every neighbourhood has access to a Law Centre or other legal 'hub organisation' – an organisation which provides the focus for providing or signposting information and legal advice across the communities and empowering groups (see Coventry 'troubled families' example below);
- to ensure that there is a simple and more comprehensive system of grant funding, regardless of its source (i.e. not necessarily from the Ministry of Justice), available to Law Centres or hub organisations, particularly to cover the core costs of meeting the needs of the most disadvantaged groups; and
- to build further the offer of Law Centres, where there is an appetite for growth and development (potentially to address legal advice 'deserts'), so that they can start to generate sustainable income for themselves (see the community interest company (CIC) examples below).

Coventry Law Centre and 'troubled families'

'Troubled families', or households with multiple and complex needs that draw significantly on public resources, have been prioritised by the Coalition Government, which devotes considerable resources to the issue through two departments – Communities and Local Government and Education. This interest has been echoed at a local level, where the Coventry Law Centre has been able to assist through an innovative project. The Law Centre has placed a specialist advice worker within the City Council's Troubled Families Team. The specialist adviser picks up complex matters that the Law Centre helps resolve in a targeted manner, generating considerable savings to the public purse. Initially, the project was grant-funded by the Baring Foundation. However, with this strong proof of concept in place, there is now a need for continued resourcing of this specialist service from public sources.

Source: see, for example, http://covlaw.org.uk/clc/newsclippings/20-05-13.html

Community interest companies

Rochdale Legal Enterprise

Rochdale Legal Enterprise ('RLE') is a community interest company (CIC) based in Rochdale. It is a not-for-profit solicitors practice. RLE works closely with Rochdale Law Centre and was set up to provide low cost professional legal services to individuals at affordable rates for those on low and middle incomes across the region. After staff costs and running costs any excess income generated from charges to clients is given to Rochdale Law Centre to help with its charity work. RLE is an idea that came about in 2011 when the end of legal aid for many areas was being discussed. Rochdale Law Centre, which had previously received funding from the LSC for over 200 Immigration cases per year, saw that funding reduce to 27 cases. As charities, Law Centres can't charge for their services, so organisations started looking into ways of providing low cost, quality legal advice. Rochdale was one of 7 groups to be selected for funding from The Baring Foundation to test pilot a solution. Funding was also obtained from the Transition Fund to help support setting up an employment law service to provide low cost services to individuals due to Rochdale Law Centre not being able to meet the demand for its services and in anticipation of the withdrawal of legal aid for employment matters from April 2013

Source: http://rochdalelegalenterprise.co.uk/

Islington Green Roots

Green Roots is the trading name for a new social enterprise which is wholly owned by Islington Law Centre (a registered charity). It is a not-for-profit and its primary aim is to improve access to justice. Green Roots offers high quality legal services at as low a price as possible to people who would otherwise go without access to a lawyer. This could include students, those with family reunion cases and those making applications under the points based system. The primary focus of Green Roots is to meet the legal needs of people who have little access to good provision.

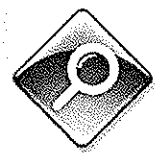
Source: http://greenrootslaw.co.uk/

There are options for achieving these outcomes, including building on the patchwork of current local authorities grant and development programmes. At the same time, we expect stronger measures in performance frameworks and service level agreements to ensure that funding is delivered in an efficient and effective way.

Within this context, there are a number of key considerations for the sector and those who fund it, including:

- What are the prospects for the sector to achieve external investment in the long term? Could the sector/LCN operating on behalf of the sector seek investment from BSC to fund modernisation, extent and scale the offer, etc.?
- Is there sufficient appetite in the sector to move from payment by inputs/outputs towards alternative funding mechanisms (i.e. potentially building on the metrics established through the PwC research)?
- What will future funding be used for – extending the range of the Law Centres and removing legal 'deserts' (would Law Centres be more sustainable if operating at a greater scale); investing in new technology, shifting towards greater use of alternative channels, such as phone and digital channels; etc.?
- To what extent is there is a need or desire to collaborate with other sources of legal advice and support, such as CABs to either fill gaps or remove duplication?

Community Budgets could provide additional revenue and give Law Centres greater freedom to work with partners (Local authorities, CABs, other providers of information and advice, etc.) to redesign services around the needs of citizens, improving outcomes, reducing duplication and waste and so saving significant sums of public money. Research by PwC and nef provides an opportunity to present an evidenced, negotiated business case and operational plan to local authorities/LGA on how legal provision can be redesigned, centred on the needs of local people and communities, to save resources and improve outcomes.



In summary, changes in legal aid, the wider policy environment and economic conditions are all contributing to an increased demand for social welfare services, including for the services provided by Law Centres. Concurrently, across the funding system, a reduction in funding is being experienced, with a move to more fragmented, issue-based and reactive funding streams.

The result is testing Law Centres to their limits given the funding gap at a time of increasing demand for free legal advice. This puts the future capacity and capability of Law Centres under pressure with resultant impacts for society and government.

The alternative is to provide intermediate core funding to support Law Centres to develop new business models in return for agreed development of objectives around innovative delivery of a core set of (redesigned) services to achieved enhanced outcomes, internal development and direct moves to sustainability through new funding/finance and commissioning schemes.

CHP 2016/52

IN THE HIGH COURT OF JUSTICE OF THE ISLE OF MAN
CIVIL - CHANCERY PROCEDURE

Between:

Louise Ann Creer
and
The Department of Home Affairs

Judgment of His Honour The Deemster Doyle, First Deemster and Clerk of the Rolls

delivered on the 29th day of July 2016

Introduction

1. On 17 May 2016 David Reynolds, an advocate at Gelling Johnson Farrant, requested that this matter be put before a Deemster in order that he could obtain a directions date as soon as possible.

2. By email dated 25 May 2016 the court clerk responded to Mr Reynolds confirming that the matter had been listed for directions at 3pm on 14 June 2016 (half an hour allocated). It was indicated that the parties should file and serve the directions that they suggest the court should make before 12 noon on 13 June 2016.

3. On 9 June 2016 the Attorney General's Chambers filed an application notice (the "Original Strike Out Application") and that too was listed for 3pm on 14 June 2016. The draft order sought was an order stated to be without prejudice to the issue of proceedings by the Claimant in the Summary or Ordinary Division (that was an error for the word Procedure) seeking damages in respect of her detention between 10 and 16 February 2016, that the Claimant's doleance claim as against the Department of Home Affairs be struck out.

4. On 14 June 2016 the court clerk asked Mr Reynolds to file his suggested directions. By email dated 14 June 2016 11:27 Mr Reynolds responded "asking for the opportunity to consider the Strike Out Application and being able to file a response".

5. On 14 June 2016 I made certain directions including the filing of a duly paginated bundle of documents by 21 June 2016, the Defendant to file and serve its skeleton argument by 4pm on 28 June 2016 and the Claimant to file and serve her skeleton argument by 4pm on 6 July 2016. I directed that the Strike Out Application be heard at 11am on 29 July 2016 (with 2 hours allocated).

6. By letter dated 29 June 2016 Keiron Murray, the Government Advocate acting on behalf of the Defendant, filed a substitute strike out application dated 29 June 2016 (the "Substitute Strike Out Application") and sought the court's permission to proceed with this application at the hearing on 29 July 2016 in place of the Original Strike Out Application. It was stated that the Substitute Strike Out Application followed clarification of the nature of the Claimant's case against the Defendant. The letter also enclosed the Defendant's unsigned skeleton argument dated 29 June 2016.

7. Mr Reynolds did not file the Claimant's skeleton argument by 4pm on 6 July 2016. He applied for various extensions. By email dated 1 July 2016 Mr Reynolds stated that the Claimant:

> "... is legally aided and applications to extend funding has (sic) to be made on a step by step basis.
>
> We would therefore be pleased if we could be provided further time to respond to the Defendant's application which we will not be able to do until a decision has been made as to whether funding will be granted."

8. By email dated 4 July 2016 to Mr Reynolds and Mr Murray the court clerk stated:

> "His Honour is minded to extend the time specified in paragraph 3 of the Order made on 14th June 2014 to 4pm on 15th July 2016."

9. By email dated 12 July 2016 Mr Reynolds said that he had received a letter from the Deputy Certifying Officer allowing 4 hours for "perusing documents/Skeleton Argument" and requesting that Mr Reynolds report back. Mr Reynolds was not happy with that amount of time and said that he had made an application to the Deputy Certifying Officer in respect of funding for the skeleton argument.

10. By email dated 15 July 2016 Mr Reynolds said he had not heard back in respect of funding for the skeleton argument. There was reference to the realisation by Mr Reynolds of the need for the matter to be "dealt with quickly". Mr Reynolds nevertheless requested some "further time to enable us to comply with the Directions ordered by the Court".

11. By email dated 20 July 2016 10:15 the court clerk responded indicating that the court was "minded to grant one further extension to 4pm on 22 July 2016."

12. By email dated 22 July 2016 11:06 Mr Reynolds stated:

> "... despite the Court kindly granting further time for us to be able to comply with the directions leading up to a hearing on the 29th of July 2016 as of yet we still have not received a response from Legal Aid as to whether or not funding will be extended to allow us to be able to prepare Skeleton Arguments and attend for any subsequent hearing."

13. Mr Reynolds asked that the hearing on 29 July 2016 be vacated and "a new timetable be prepared administratively". Mr Reynolds said that the Defendant would "not be prejudiced by a further delay and it is believed that it is in the interests of justice for such an application to be granted".

14. A timely response was forthcoming from the Attorney General's Chambers at 15:19 the same day whereby it was confirmed that the Defendant did not consent to the rescheduling of the hearing due to take place on 29 July 2016 and it was added:

> "The claimant's advocate and Legal Aid have had sufficient time to correspond and subsequently determine whether further funding will be allowed in this matter, and the court has kindly granted extensions already ... the view of the Department is that there should be no further extensions and the timetable should proceed as previously set out."

15. By email dated 26 July 2016 10:54 the court clerk notified counsel that the court was not minded to vacate the hearing on 29 July 2016 and the matter remained listed for that day.

Decision to proceed

16. Mr Reynolds renewed his application for an adjournment this morning. I was not persuaded that it was just to vacate today's hearing. There is a need for expedition in the hearing of doleance claims and applications to strike them out. Lack of legal aid is not a good reason to vacate the hearing.

17. The court has not been provided with a witness statement on behalf of the Claimant exhibiting any correspondence with the legal aid authorities and I am conscious that the legal aid authorities are not represented before me. Suffice to say I am not persuaded that the apparent fact that Mr Reynolds was, until yesterday, still awaiting legal aid approval for a skeleton argument and attendance at the hearing is a good reason for vacating this hearing and wasting further valuable and scarce court time. The Claimant was ordered on 14 June 2016 to file a skeleton argument by 4pm on 6 July 2016 and the court was minded to extend that period to 4pm on 22 July 2016. The Claimant and Mr Reynolds have had ample time to prepare for this hearing and to put in a skeleton argument but have failed to do so.

18. Where skeleton arguments are not filed promptly in appeal matters the appeal may be struck out without even considering its merits.

19. In *Patel v Mussa* [2015] EWCA Civ 434 Mr Patel, who had filed an application for permission to appeal, failed to comply with a direction to file a skeleton argument by 4 April 2014 but filed it by email at 7.07am on 12 May 2014, the day of the hearing. The bundle of documents for the appeal, which should have been filed at least 3 clear days before the hearing of the appeal, was not filed until the Friday before the appeal was due to commence on the Monday. The judge dismissed the application because the documents had not been filed on time. The English Court of Appeal dismissed an appeal against that decision. Moore-Bick LJ at paragraph 27 emphasised the importance of the timely filing of bundles and skeleton arguments. The learned Lord Justice stated:

> "The filing well in advance of the hearing of a skeleton argument and the production of a bundle of documents for use at the hearing were both essential if the judge was to have an adequate opportunity to prepare."

20. In *R (Kigen and another) v Secretary of State for the Home Department* [2015] EWCA Civ 1286 the English Court of Appeal in effect held that a delay awaiting a decision from a legal aid agency was not a good reason for failing to comply with procedural time limits. In the *Kigen* case Moore-Bick LJ at paragraph 15 referred to his view that:

> "... an inability to instruct solicitors because of a shortage of funds did not provide a good reason for delay."

21. At paragraph 16 the learned Lord Justice added:

> "... nor does it constitute good grounds for extending time."

22. At paragraph 17 it is plain that Moore-Bick LJ did not regard "awaiting a decision from the Legal Aid Agency" as a good reason for failing to comply with rules or orders. It is not normally regarded "as providing a good reason for delay". At paragraph 18 Moore-Bick LJ referred to the change in the climate of litigation and stated that it was:

> "... no longer appropriate to treat delay in obtaining legal aid as a complete answer to a failure to comply with procedural requirements. It may still be a factor that can be taken into account ... but no more."

23. At paragraph 25 Moore-Bick LJ stated:

> "... The explanation provided, namely, that the appellants were awaiting the outcome of their application for legal aid, is not one that I think can be regarded as satisfactory in the circumstances of this case."

24. Davies LJ at paragraph 32 stated that practitioners:

> "... should proceed in the expectation that any explanation based on the proposition that the delay was "only" for a few days, whether or not coupled with an explanation that a decision from the Legal Aid Agency was awaited, will not be received with indulgence by the tribunal or court."

25. The difficulties Mr Reynolds says he has had in respect of legal aid did not persuade me that I should adjourn the proceedings today or that there was a good excuse for failing to file and serve a skeleton argument in accordance with the court order.

26. In my judgment and in accordance with the overriding objective, it was appropriate for this court to proceed with the hearing today, such hearing having been set as long ago as 14 June 2016.

Decision in respect of the Substitute Strike Out Application

27. I could see the good sense of the filing of the Substitute Strike Out Application which followed clarification provided to the Defendant of the nature of the Claimant's case against the Defendant. Mr Murray referred to a letter dated 21 June 2016 from Mr Reynolds. The Claimant and her advisers have had a month to consider it and are not taken by surprise. The grounds for relief remain substantially the same i.e.:

> (1) out of time;
>
> (2) wrong defendant;
>
> (3) inappropriate relief.

There is the additional specific ground that the claim form discloses no reasonable cause of action.

28. I granted leave for the Defendant to replace the Original Strike Out Application with the Substitute Strike Out Application. Such leave was in the interests of justice and ensured that further court time was not wasted.

29. I now turn to deal with the various issues raised by the Substitute Strike Out Application.

Out of time

30. Mr Murray on behalf of the Defendant submitted that the doleance claim was out of time.

31. The doleance claim refers to the period in respect of which complaint is made being from 10 February to 16 February 2016. A doleance claim was filed on 12 May 2016, an amended front sheet was filed on 17 May 2016 and the claim was issued on 20 May 2016.

32. Rule 14.23 of the Rules of the High Court of Justice 2009 (the "2009 Rules") provides that the claim form must be filed:

(a) promptly; and

(b) in any event not later than 3 months after the grounds to make the claim first arose.

33. The Claimant's claim in respect of the allegation at paragraph 2 of the claim form (that the Department failed to provide codes of practice) could have been filed shortly after 16 February 2016 but the Claimant and her advisers chose to wait almost three months before filing the claim. In future cases it may be that the court will conclude that a claim form in similar circumstances, not issued until close to the expiration of the three months referred to in Rule 14.2.3(b) of the 2009 Rules, was not filed "promptly". In the present case I do not strike out the Claimant's claim on the basis that it is out of time.

34. In future litigants and counsel should not assume that they have three months to file a doleance claim. They must file it promptly and in certain circumstances that may mean well before the expiration of three months.

Other grounds

35. I turn now to deal with the other grounds of the Substitute Strike Out Application. I immediately say at the outset of this section of my judgment that I am not satisfied that the claim form is against the correct defendant and I am not satisfied that the claim has been properly pleaded against the Defendant.

36. The allegations on the claim form to the effect that:

(a) the Claimant was not given any information as to the grounds of her detention;

(b) the Claimant was prevented from having access to an advocate and was not accurately informed as to her rights regarding free legal advice whilst being detained;

(c) the Claimant was refused access to an advocate "within a reasonable time" having taken over 24 hours to provide the Claimant with access to an advocate;

(d) the Claimant was not provided with access to a private telephone call, or access to a private consultation, with an advocate whilst detained; and

(e) the Claimant's telephone calls with her advocate whilst detained were recorded;

are all, on the face of them, very serious allegations, but they are allegations against the police rather than the Defendant. The allegations specified in paragraphs (a) to (d) above are plainly against the police. Mr Reynolds states that the Claimant's case in respect of the allegation at paragraph (e) above is that a police officer recorded the telephone calls. It is not alleged that the Defendant recorded the telephone calls. Mr Reynolds says that the Claimant's case is that the Defendant enabled the police to record the telephone calls by their failure to ensure that there was an adequate code of practice in this respect. The vast majority of the allegations in the claim form arise from the detention of the Claimant at the hospital and are against the police. The police may say that the Claimant would not have been detained at hospital for so long if she had been open and honest with the police from the outset and produced the package she had secreted internally, especially after she had discovered at hospital that she was pregnant and there was an obvious risk to her baby. Individuals have responsibilities as well as rights.

37. All these matters may well be in dispute between the Claimant and the police. I should emphasise that the allegations made by the Claimant have not yet been tested in evidence at a trial. Serious disputed

factual matters are usually more appropriately dealt with in the Summary or Ordinary Procedures rather than through a doleance claim in the Chancery Procedure. Timothy John Swift, an advocate acting for the insurers of the Isle of Man Constabulary, in his witness statement dated 7 June 2016 at paragraph 9, states that he is awaiting instructions but anticipates that the issues raised in any claim against the police will be disputed on liability, causation and quantum. In his letter dated 1 June 2016 Mr Swift says that the factual matrix is in dispute.

38. The claim form refers to one defendant (the Department of Home Affairs) and yet throughout there are repeated references to the Defendants in the plural. There was considerable strength in Mr Murray's submissions that the Department of Home Affairs (the "Department") is the wrong party, that there is no reasonable cause of action against it and that it is not appropriate to grant the relief requested against the Department.

39. Mr Murray referred with some considerable force to arguments in respect of section 14 of the Police Act 1993 in respect of the Chief Constable's liability for torts committed by the Isle of Man Constabulary in the purported performance of their functions. On the face of it the doleance claim was against the wrong defendant. Moreover, it appears that there may be very significant disputes of fact as to what happened post-arrest and during the period of detention. Any claims for damages for false arrest, false imprisonment, trespass to the person, defamation or other actionable wrongdoing would best be dealt with by a claim in the Summary or Ordinary Procedure with disclosure and cross-examination of witnesses.

40. The only real issue raised in the claim which may have been relevant against the Defendant was an allegation poorly pleaded in paragraph 2 that:

> "... the Defendants (sic) have failed to either provide a proper and reasonable procedure, codes of practice and policies and in doing so have prevented the Claimant from knowing her grounds of detention."

41. It may be that if properly pleaded a claim that the Department had failed to provide a code of practice in respect of persons detained at hospital and who are suspected to have controlled drugs secreted internally, would have survived a strike out application. There may be the makings of a case in that respect. However, the present claim is far from properly pleaded and should not be permitted to proceed to a hearing.

42. Nowhere is there pleaded any duty on the Defendant to issue codes of practice in relation to those detained at the hospital and who are suspected to have controlled drugs secreted internally. The claim form does not even refer to section 75 of the Police Powers and Procedures Act 1998. Mr Murray refers to Code C of the Police Powers and Procedures Code Order 2014 made, he says, pursuant to the Police Powers and Procedures Act 1998. Mr Murray says that there is no pleaded:

> "... challenge brought by the Claimant to the lawfulness of or any deficiencies within any part of the Manx Code, in particular Code C thereof".

43. Mr Murray says that the Manx Code is materially identical to the Code in England and Wales. Mr Reynolds in a letter dated 21 June 2016 to Mr Murray appears to suggest that there is "one significant difference" between the Manx and English Codes relating to:

> "... a detained person in the Isle of Man who is believed to have secreted drugs internally remains at Nobles Hospital until they have passed the drugs and had any x-rays. In England and Wales a detained person is taken to the hospital for any x-rays but after that will return to police detention and other than the short time that they would be taken to the hospital, the Codes of Practice do not apply whilst under observations."

44. Mr Reynolds has not developed his arguments in a skeleton argument. Mr Reynolds has not referred to any significant difference in the wording of the Manx and English Codes.

45. Mr Murray says that the Department has no duty or power under the Police Powers and Procedures Act 1998 to pass a Code relating to medical matters. Mr Murray rightly says that the Department should not interfere with police operational matters. Mr Murray suggests that the main bulk of the Claimant's complaint lies against the manner in which the Constabulary have acted when arresting and detaining the Claimant at Nobles Hospital, apparently outwith the application of Code C. Mr Murray says that the Department had no duty to legislate in respect of persons detained at hospitals. Moreover, he adds in

respect of any discretion on behalf of the Department to issue guidance, the court should be slow to make a mandatory order requiring the Department to exercise the discretion in a particular way (*Blakemore* 1978-80 MLR 250). Mr Murray says that a failure to legislate is not an act which is amenable to challenge under section 6(5) of the Human Rights Act 2001.

46. The doleance claim has not been properly pleaded as against the Department. I grant the Substitute Strike Out Application on the basis that the doleance claim, as pleaded, is against the wrong defendant and the case against the Department has not been properly pleaded and discloses no reasonable case against the Department. The relief sought by the Claimant against the Department is not appropriate relief. There are alternative remedies open to the Claimant in respect of her allegations against the police.

47. Frankly, the doleance claim does not appear to have been properly thought out. Before more time and tax-payers' money is wasted, it should be struck out.

Conclusion

48. For the brief reasons specified in this judgment I strike out the doleance claim.

49. As the Claimant has from time to time benefitted from legal aid I am not minded to make any order against her or the Treasury. I am minded to make no order as to costs.

50. I am however concerned in respect of the amount of time that has been wasted in respect of this matter. It is unsatisfactory for an advocate to file a doleance claim and then take no action in response to a strike out application. The Claimant was ordered to file a skeleton argument, but Mr Reynolds (who is the advocate on record for the Claimant and an officer of this court) has failed to do so. It is not responsible or appropriate for an advocate to file a claim and endeavour to walk away from it at the first sign of trouble (see *R v C* 2003-05 MLR N 16).

51. I am not however minded to make a wasted costs order, but I express the hope that after this experience Mr Reynolds will carefully consider the position before acting in a similar way to which he has acted in these proceedings otherwise further time and costs will be wasted and adverse orders may have to be made.

52. I note that only yesterday I dismissed by consent another doleance claim filed by Mr Reynolds this time on behalf of Brian William Parton against the Department of Home Affairs and the Parole Committee in CHP 16/0053, and I vacated in effect two and a half valuable days of court time. When scarce court time is at a premium all potential litigants and their advocates should think carefully before they file court proceedings which are not then duly progressed. Filing legal proceedings with the court is a very serious step to take and litigants and advocates should carefully consider the position and the possible consequences before doing so.