



**CIVIL LEGAL AID**  
**“THE SENTENCING AND PUNISHMENT OF CLIENTS AND PRACTITIONERS”**

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**Doughty Street Chambers, 21 July 2011**

1. The Government has set us a threefold challenge for the future:
  - i) Legal aid reform: “[Reform of Legal Aid in England and Wales: the Government Response](#)” (“the proposals”), June 2011, and the “[Legal Aid, Sentencing Punishment of Offenders Bill](#)” (“the Bill”).
  - ii) Implementation of the Jackson Report: “[Response to proposals for reform of civil litigation funding and costs in England & Wales](#)” (Jackson proposals”), March 2011; and
  - iii) The Consultation on County Court reforms: “[Solving disputes in the county courts: creating a simpler, quicker and more proportionate system](#)” (“County Court reforms”), March 2011.
  
2. This Seminar will focus on the legal aid changes insofar as they are likely to effect housing and community care practitioners. It will focus on four areas of change: (i) housing scope; (ii) community care scope; (iii) client access to publicly funded services; and (iv) remuneration. We will also briefly consider the Jackson and County Court reforms.
  
3. Timeline:
  - (i) The Bill: The Bill had its 1<sup>st</sup> Reading on 21 June. The Committee Stage started in the House of Commons on 12 July. The summer recess begins on 21 July. The Committee

Stage will resume on 5 September, recessing again between 15 September and 10 October. The Bill is likely to pass to the House in Lords in December. This stage is likely to provide the best opportunity for promoting any amendments. The government hopes that the Bill will receive the Royal Assent by **April 2012**.

(ii) Remuneration: The 10% reduction in fees are due to take effect on **3 October 2011**. On 13 July, the Ministry of Justice published the draft “Community Legal Service (Funding) (Amendment No.2) Order 2011. The Law Society and the Bar Council have been invited to comment on this by 10 August. One exception to the reductions is the remuneration under the outstanding family/housing Unified Contracts which will take effect in February 2012.

(iii) The Director of Legal Aid Casework, Scope and Eligibility: These changes depend upon the introduction of the primary legislation and the subsequent introduction by secondary legislation (funding orders). The updated Impact Assessment states at Annex A, paragraph 30 that “The assumption for all the proposals in this IA is that they would be implemented in **October 2012**.” The LSC have indicated that they anticipate terminating the 2010 Standard Civil Contracts prior to **November 2013** in the light of the changes in scope.

(iv) Contracting with the LSC/Director: The funding Code will be replaced by regulations made under the new Act which will govern the criteria and procedures for funding cases. The LSC currently has no plans to remove contracts as the method of procuring Legal Aid. The LSC is in the process of assessing the MoJ’s consultation response and determining what the impacts will be on how the LSC contract with legal aid providers. “The key issue will be to ensure client access is maintained for all remaining areas of legal aid provision through the various mediums available including telephone, on-line and face-to-face”<sup>1</sup>.

(v) Telephone Help Line: The CLA helpline will continue to offer specialist legal advice by telephone in the six areas that it does at present (debt, welfare benefits, housing, family, education and employment). When the proposed changes in scope are

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<sup>1</sup> Legal Aid Reforms (LSC website)

introduced, the CLA helpline will offer specialist legal advice in the following areas of law: debt (in so far as it remains in scope); special educational needs; discrimination (claims relating to a contravention of the Equality Act 2010); community care; family and housing. At that stage it will be the mandatory single gateway for applying for legal aid in the first four of these areas of law.

4. The government is anticipating savings of **£350m** from the legal aid reforms. Table 1 of the Impact Assessment of the Cumulative Legal Aid Reform Proposals (21.6.11) rather identifies savings of **£440m**:

Scope (family and civil):	£270
family <sup>2</sup> :	£170m
civil:	£105m
Civil and Family fee reductions:	£50m
family <sup>3</sup> :	£30m
civil:	£15m
Criminal Fee reductions:	£100m
Eligibility Proposals:	£5m
Expert Fee Reductions:	£10m.
Provision of Telephone Advice	£1-£2m

#### Savings from Civil Legal Aid

	Legal Help	Legal Representation
Scope Changes	£80m (42%)	£25m (37%)
Fee Reductions	£10m	£5m

5. The most significant savings from civil legal aid come from the scope changes. These are summarised in the Table at Appendix 3. Substantial savings arise from taking out of scope

<sup>2</sup> The breakdown between family and civil is taken from Table 2 of “Impact Assessment: Scope Changes” (21.6.11). This totals £275m rather than £270m.

<sup>3</sup> Taken from Table 1 – “Impact Assessment: Remuneration in Civil and Family Proceedings” (21.6.11). This totals £45m rather than £50m

all welfare benefits (£25m) and 75% of debt (£20m). Estimated savings in housing are £10m (a cut of 38%) from Legal Help and £3m (12%) from Legal Representation. The housing figures should be compared with the figures in the Impact Assessment (15.11.10) which were £7m (a cut of 31%) from Legal Help and £5m (17%) from Legal Representation. The most recent figures are based on the spend for 2009/10 which indicate a total housing spend of £26m on Legal Help and £25m on Legal Representation. The previous figures were for 2008/9 indicating a total housing spend of £23m on Legal Help and £29m on Legal Representation.

6. Overall, the savings will fall disproportionately on the Not for Profit Sector rather than solicitors given the cases taken out of scope and the higher savings to be made from Legal Help. It is estimated that civil legal aid expenditure going to the Bar will fall from £132m to £76m a reduction of 42%<sup>4</sup>, the greater impact being on the Family Bar. The Bar Council disputes these figures, and suggests that the loss to the civil legal aid Bar could be in excess of 50%<sup>5</sup>.

## **(A) LEGAL AID REFORM**

### **Scope of funding for housing and community care**

7. The headlines:

- a) Community care and judicial review remain within scope
- b) Legal aid will no longer be available for housing cases. Instead funding is restricted to specific types of case, which might previously have been dealt with under a housing franchise. These include cases involving “Loss of home”, “Homelessness”, “Risk to health or safety in rented home”, “Anti-social behaviour”, “Protection from harassment”, “Community Care”, “Immigration: accommodation for asylum-seekers”, “Equality” and “Judicial review”<sup>6</sup>. The Housing possession scheme is to remain. ;

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<sup>4</sup> Legal Aid Reform: Cumulative Impact – Equality Impact Assessment (November 2010)

<sup>5</sup> [310] of the Bar’s response to the Consultation

<sup>6</sup> See Part 1 of Schedule 1 to the bill. Note that there is a substantial issue about how the categories for public funded work might be defined. If you hold a housing franchise, will you be able to commence a judicial review concerning asylum support, community care, or allocations?

- c) No legal aid for welfare benefit cases, except judicial reviews (Response, paras 99-101);
- d) No legal aid for debt cases, except where there is an immediate risk to the home (Response, paras. 66-68).

### *The structure of the bill*

8. The [Access to Justice Act 1999](#) gave the LSC power to fund any services which it considered appropriate, subject to a list of excluded services set out in Schedule 2. The [Legal Aid, Sentencing Punishment of Offenders Bill](#) takes a different approach. The Lord Chancellor is given power to fund only those legal services listed in Part 1 of Schedule 1 to the Bill. As noted above, there is no reference to “housing” law in Part 1. Also, Part 1 is for the most part subject to a list of excluded services set out in Parts 2 and 3 of Schedule 1.

9. Even once the bill has been passed, its full effect will not be clear until the Government publishes further regulations and an amended Funding Code. In the meantime the best guide we have as to how it is intended to operate is set out in [Reform of Legal Aid ... the Government Response](#).

### *Response on scope: gains and losses*

10. Most of us are familiar with, and probably responded to, the proposals published last November. The Government listened, but only a little. In summary the following cases are to be brought back in scope:

- a) Unlawful eviction, but probably only where the client wants to remain in, or return to their home. (Response, paras. 78-80, and Annex A to the Response, para 69).
- b) Asylum support, but only where the individual is seeking accommodation (Response, paras.102-103);
- c) Orders for sale, but not applications for charging orders (Response, para. 67);
- d) Bankruptcy proceedings where the bankrupt’s estate includes a home (Response, para. 67).

11. On the other hand, there is to be no legal aid for trespassers facing eviction. This applies if “there are no grounds on which it can be argued ... that the individual is occupying ... otherwise than as a trespasser, and ... that the individual’s occupation ... began otherwise than as a trespasser” (See Response, paras. 33-35, and para. 27(9) of Part 1 to Schedule 1 of the Bill).

12. Areas which are to remain outside of scope, as envisaged by the initial proposals, include the following<sup>7</sup>:

- a) Housing disrepair save where (i) there is outstanding disrepair; and (ii) “there is a credible allegation that the disrepair poses a serious risk to the life or health of the client to their family”<sup>8</sup>.
- b) Actions concerning council house allocation (although probably not judicial reviews?)<sup>9</sup>;
- c) Actions to enforce a right to buy;
- d) Actions for wrongful breach of quiet enjoyment (presumably where no eviction is threatened - See Annex B at para 77, and Annex A at para 69).

### *Exclusions*

13. As noted above, the Bill contains a wide ranging list of legal services which are excluded from funding. These include, for example, claims for services provided in relation to personal injury, trespass to goods, trespass to land and matters of trust law (see Parts 2 and 3 of Schedule 1). However under the heading “Cross Cutting Issues” at Annex A, para 127 the Response says this:

“...Under the current legal aid scheme, there are provisions set out under the Funding Code to cover mixed cases, in which the case is partly in and partly out of scope. These provisions allow funding of the whole case in certain circumstances, and in

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<sup>7</sup> Response, Annex B, paras 75-82.

<sup>8</sup> See also para 29 of Part 1 to Schedule 1 of the Bill. Para 29(4) states that “‘harm’ includes temporary harm; ‘health’ includes mental health’. According to the Response “legal aid will be available for the early stages of such access to enable the merits of the claim to be investigated. Where a disrepair is found not to pose a serious risk to the individual or the family’s safety or health, further funding will not be available” (Annex B, para 75).

<sup>9</sup> Yet actions for judicial review are to be funded. How this will play out may not be clear until we see a new Funding Code/Funding Code Guidance

others they allow funding for aspects of the case. We will ensure that similar appropriate provisions are included in the new scheme.”

14. Many of the exclusions are currently in place (in Schedule 2 to the Access to Justice Act 1999). The issue of “mixed cases” is dealt with at paragraph 3.4 of the existing Funding Code Guidance (section 3C-017 of the Manual). In summary there is currently a blanket authorisation to fund excluded work if it falls within “Proceedings under section 10 of the Code (Housing)” (3.4.23), or if the excluded services “are only minor or incidental to the main purpose of the proceedings” (3.4.28).

#### *Exceptional Funding*

15. There is a new test for exceptional funding, for cases which would otherwise be out of scope. These will be funded “where, in the particular circumstances of a case, the failure to do so would be likely to result in a breach of the individual’s rights to legal aid under the Human Rights Act 1998 or European Union law” (Response, para 121). Note that the Impact Assessment on scope changes envisages that up to 25% of housing cases excluded from scope may nevertheless qualify for funding under the new excluded cases scheme. What type of cases the Government have in mind is not clear.

### **The telephone gateway**

#### *The current scheme*

16. Currently the LSC funds specialist help through a telephone advice service, Community Legal Advice (CLA), in the following areas of law: welfare benefits, debt, education, housing, employment and family. The service is access through a single telephone number, 0845 3454 345, open from 9am to 8pm Monday to Friday and from 9am and 12.30pm on Saturday. The call is taken by a non-legally qualified operator who conducts a preliminary means assessment. If the caller is eligible for funding, they are put through to a specialist adviser. That adviser will “take on the case. They will write letters on their behalf and speak to people like landlords and creditors. They can even prepare bundles of documents to take to an employment tribunal.”<sup>10</sup> According to the LSC’s annual report, CLA specialist advisers

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<sup>10</sup> LSC website – at [http://www.legalservices.gov.uk/public/community\\_legal\\_advice\\_helpline.asp](http://www.legalservices.gov.uk/public/community_legal_advice_helpline.asp)

dealt with 126,866 “acts of assistance” during the period April 2009 to March 2010, compared with a total of 718,395 Legal Help cases dealt with by CLACs, not-for-profit organisations and solicitors combined. In housing, the CLA accounted for about 20% of the total new matters starts.

17. There are two elements to the CLA helpline. The first is the non-legally qualified Operator Service, for which the LSC contracts separately.<sup>11</sup> The second element is the specialist advice service itself. This is supplied by a network of providers working under an amended version of the Legal Help scheme<sup>12</sup>. The LSC contracts for the provision of specialist, telephone-based Legal Help have already been the subject of price-based competitive tendering. According to the Information for Applicants issued in the most recent tender round, for family services in 2009, the contracts authorise providers to provide Legal Help through telephone contact up to a certain number of hours. The LSC then issue monthly payments in arrears based on the hours worked and reported. The process for case allocation is described as follows:

“Within these opening hours, Providers must staff the “front door” lines (which are the telephone lines on which new calls from new clients are referred to Providers by the Operator Service) according to a rota set by us. According to the language service they offer, Providers’ advisers log into call plans (English or Welsh) when required to by the rota. “Front door” calls are then passed down by the Operator Service and answered by advisers on the basis of “longest idle” (i.e. calls are directed to those advisers who have had the longest wait since ending their last call).”

18. Both face-to-face advice and Licensed (ie certificated) Work fall outside of the CLA contract. Therefore if the client is subsequently assessed as needing face-to-face advice, then the Provider may only provide this only if (i) they have a Unified or Standard Civil Contract; and (ii) the client happens to live within the provider’s procurement area. If the client needs Licensed Work, then the Provider may go on to give this no matter where the client lives, so long as the client wishes to continue to instruct them and the Provider holds a Unified or Standard Civil Contract. Otherwise they must refer<sup>13</sup>.

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<sup>11</sup> At least in 2009, this was held by Broadcasting Support Services (BSS), an organisation based in Manchester.

<sup>12</sup> There is no up-to-date list of the current contracts. Providers who were awarded CLA contracts in 2007 included A4E, Capita, the Children’s Legal Centre, DAWN (Advice Ltd), Eaga Partnership Ltd, Derbyshire Housing Aid, Maxwell Gillot, and Morgans Solicitors. See [http://www.legalservices.gov.uk/docs/civil\\_contracting/LSC\\_service\\_contracts\\_awarded\\_in\\_2003-07.pdf](http://www.legalservices.gov.uk/docs/civil_contracting/LSC_service_contracts_awarded_in_2003-07.pdf)

<sup>13</sup> See [http://www.legalservices.gov.uk/docs/cls\\_main/ITTFamily\\_January\\_09.pdf](http://www.legalservices.gov.uk/docs/cls_main/ITTFamily_January_09.pdf) at paragraph 2.B.12

### *The changes*

19. The Government has decided to turn the CLA helpline into a “mandatory single gateway to applying for legal aid”. Of the respondents to consultation, 86% were opposed to the proposal, and only 4% were in favour (Response, Annex D, para 5.). Despite that opposition, the Government plans to press ahead. For the moment the gateway will be mandatory for only four areas of law, namely debt; special educational needs cases; discrimination cases, and community care. Note the CLA helpline does not currently cover community care. According to paragraph 145 of the Response, “The Government will review the implementation of the mandatory single gateway for applying for legal aid in these four areas of law and use the outcome of this review to determine whether the mandatory single gateway should be expanded to other areas of law in due course”. The CLA helpline will continue to offer specialist advice other areas, but for the time being it will not be mandatory.

20. If the review leads to an expansion of the mandatory single gateway, it is pretty clear which areas of law will be next. Paragraph 153 of the Response notes that, once the scope changes are implemented, the only other areas of specialist advice that will be offered through the CLA helpline are family and housing.

### *How it will work*

21. The telephone gateway will be the only way to access legal aid unless:

a) The case is an emergency, in the sense that:

‘A client needs Legal Representation or Controlled Legal Representation and

- i) there is a need for an urgent injunction or other emergency judicial procedure and the advisor will be required to represent the client in person, either at a court, tribunal or other location for procedural reasons; and
- ii) there is an imminent risk to the life, liberty, or physical safety of the client or his/her family or the roof over their heads; or
- iii) any delay will cause a significant risk of miscarriage of justice, or unreasonable hardship to the client or irretrievable problems in handling the case and there are no other appropriate options to deal with the risk.’<sup>14</sup>

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<sup>14</sup> Annex D, paragraph 45.

- b) The client has previously been assessed by the mandatory single gateway as requiring advice face-to-face, has accessed face-to-face within the last twelve months and is seeking further help to resolve linked problems from the same face-to-face provider;
- c) The client is in detention (including prison, a detention centre or secure hospital);
- d) The client is a child (defined as being under 18);or

The client's case is out of scope, but the client may qualify for exceptional funding.

22. The way in which the single gateway will operate is explained at paragraphs 145-154 and Annex D to the Response. In summary:

- a) As currently happens with the CLA helpline, all new inquiries will be dealt with by the CLA Operator Service, with non-legally qualified staff;
- b) They will complete an initial financial assessment. They will also "explore the caller's problem to a level sufficient to effectively refer the client onto a suitable specialist legal advisor";
- c) Clients who are eligible for funding with then be referred for specialist advice. Subject to a list of specified exceptions, "legal aid specialist advice will only be available on the telephone". In short, clients will be referred for face-to-face advice only "where Legal Representation or Controlled Legal Representation is required or where the client requires face-to-face support".

23. Together with the Response the Government has published a series of updated Impact Assessments. The Impact Assessment for telephone advice notes as follows:

- 37. Face-to-face providers would have less control over case allocation and marketing as the majority of the legal aid work they would receive would be from referrals from the telephone service.
- 38. It is intended that all advice providers (whether current contract holders or not) would be able to bid for re-tendered telephone and face-to-face contracts under the proposal.

24. See also paragraph 62: "Under the existing CLA virtual call centre system, there is no requirement for providers to invest in expensive IT or telephony systems in order to offer the necessary services. All that is required is phone and secure Internet access". Price-based tendering will continue to apply. The IA continues:

90. There is a risk that smaller organisations may be less likely than larger firms to win telephone advice contracts if they are unable to benefit from the economies of scale in bidding for a larger volume of work and reflecting this in their price bid. Small firms may also be less likely to have the expertise in operating a phone based service.

### **Remuneration**

25. The good news is that the Government has dropped the proposal to extend “risk rates” to all cases where costs are likely to be recovered from the opponent (Response, paras 241-242). The government accepted the arguments that legal aid rates already represented risk rates in that they are significantly below private client rates; and that it could have unintended consequences in non-damages cases such as judicial review by discouraging settlements because of disagreements about which side should bear the costs.

26. However the other proposals for remuneration are to be taken forward, including the proposal to apply a 10% reduction to fees across the board for all civil work, for both solicitors and counsel. On 13 July, the Ministry of Justice published the draft “Community Legal Service (Funding) (Amendment No.2) Order 2011. It is anticipated that the following changes will be introduced on 3 October:

(i) All fees payable in civil cases will be reduced by 10%.

(ii) This will extend to all remuneration under the 2010 standard contracts. Legal Help standard fee will be £157 for housing; £266 for community care and £259 for public law.

(iii) the level of enhancements that can be paid to solicitors will be limited at 100% for cases heard in the Upper Tribunal High Court, Court of Appeal and Supreme Court and 50% for all other proceedings.

(iv) barrister rates will be codified and reduced by 10% (see Appendix 1).

24. The following reduction in fees have been deferred:

(i) As a result of the challenge in *R (Law Society) v LSC* [2010] EWHC 2550 (Admin), the family/housing Unified Contracts were extended to 30 November 2011. These are to be further extended until **Feb 2012**, when new contracts which are to be allocated under a non-competitive process, will take effect at the reduced rates<sup>15</sup>. The new limits on enhancements for work covered by these Unified Contracts will also be deferred to next February.

(ii) It had been the government's intention to apply the reductions to CLACs and CLANs. It has now been decided that it would be inappropriate to do so having regard to the circumstances in which the contracts were procured. The reduction will therefore be deferred until these contracts come up for renewal.

25. The draft Order also introduces maximum fees for experts, subject to the LSC granting prior authority on the basis of exceptional circumstances. Exceptional circumstances are defined as those where: the expert's evidence is key to the client's case; and either the complexity of the material is such that an expert with a high level of seniority is required or the material is of such a specialised and unusual nature that only very few experts are available to provide the necessary evidence. There will be a fixed fee of £225 for surveyors. The maximum rate for GPs will be £90ph in London (£99ph elsewhere; and occupational therapists £68ph (a common rate for London and elsewhere). In the longer term, the government intends to continue to develop plans to reform expert fees. This will involve working toward putting in place a more detailed and prescriptive scheme of fixed and graduated fees and a limited number of hourly rates.

### **Eligibility**

26. In summary the Response states are as follows:

- a) The "capital passporting" currently in place for client's in receipt of qualifying DWP benefits will be dropped. There will in future be no legal aid for clients who have

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<sup>15</sup> On 5 July 2011 the LSC published a "representative body consultation paper" setting out proposals for the new tender. The proposals can be downloaded from [http://www.legalservices.gov.uk/docs/civil\\_contracting/Family\\_tender\\_discussion\\_paper.pdf](http://www.legalservices.gov.uk/docs/civil_contracting/Family_tender_discussion_paper.pdf). Providers are invited to comment through the representative bodies (which include the Law Society, LAPG, ASA) by 2 August 2011.

disposable capital of over £16,000, whether or not they are receiving other benefits (Response, para 163)

- b) The proposal to require a fixed £100 contribution for every client with over £1,000 in capital is dropped;
- c) The disregards for assets which are the subject matter of a dispute is to be retained, subject to a cap of £100,000;
- d) The level of income-based contributions is to be increased to a maximum of 30% of monthly disposable income.

### **Other issues**

27. Other issues dealt with by the Response include the following:

- e) The Government will introduce the proposed “Supplementary Legal Aid Scheme”, whereby 25% of any damages recovered as a result of public funding will be payable to the legal aid fund;
- f) The Response restates “the Government’s long term intention to introduce price-based competition for civil and family proceedings delivered face-to-face” (Annex F, para. 3). As noted above, price-based tendering has already been conducted for the telephone contracts.
- g) The prospect remains of providers having to tender to deliver a range of services. See eg para. 305: “the Government will work with Legal Services Commission on a client and provider strategy, which will include consideration of the best way that services remaining in scope can be bundled in future procurement rounds to ensure that clients are able to access the services they need “;

Except, of course, that the LSC is to be abolished.

## **(B) RESPONSE TO REFORMING CIVIL LITIGATION FUNDING (THE JACKSON REPORT)**

### **Conditional Fee Agreements**

*The current position*

27. A number of firms have experience of running housing claims under a CFA. In outline the usual arrangement is:

- A “no win no fee” agreement.
- A “success fee” payable on top of basic fees, should the claim succeed<sup>16</sup>. This is calculated as a percentage uplift on basic fees, intended to reflect the risk of failure. Typically the agreement will give a lower success fee for work up to trial<sup>17</sup>, and a higher rate (usually 100%) for the final stages of the case.
- The client takes out “after the event” (ATE) insurance to cover their own disbursements and the opponent’s costs and disbursements should the claim be discontinued or fail. The premium is often calculated at the end of the case, as a proportion of the opponent’s final costs.
- Crucially, both the success fee and the ATE premium are recoverable from the opponent under an order for inter partes costs. The solicitor may be required to produce their risk assessment in order to justify the amount of the success fee claimed against the opponent.
- The solicitor is required to give impartial advice about insurance and alternative forms of funding, eg legal aid.

28. What if no ATE insurance is available? [Sibthorpe v Southwark LBC](#) [2011] EWCA Civ 25 concerned disrepair claims brought by two tenants under CFAs against Southwark. Both tenants had instructed the same firm, Belshaw & Curtin Solicitors. Unusually, the CFA agreements provided that the event the clients were unable to obtain any ATE insurance, the solicitors would indemnify them against payment of Southwark’s costs. The claim succeeded, but Southwark challenged the validity of the agreements were champertous. The CFA’s were upheld.<sup>18</sup>

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<sup>16</sup> The success fee is comprised of two elements, a risk element and a “deferred fee” element. The deferred fee element, typically around 10%, is intended to compensate the solicitor for the deferral in payment of fees (including disbursements) and the costs of setting up the CFA. It is not recoverable from the opponent, and unless waived, becomes payable out of any damages own by the client.

<sup>17</sup> In [Bowen v Bridgend County Borough Council](#) 2004, unreported, a costs master considered that a 100% success fee on all base costs in a series of 6 disrepair claims was excessive, and that an appropriate fee would have been 25%. In the event the agreements were ruled unenforceable against the local authority because the solicitors acting had failed to give their clients impartial advice

<sup>18</sup> According to the case report the agreement provided for a success fee of only 10%. It is not clear whether this included the deferred fee element.

## *The future*

29. The Government's plans are set out in the [Response to proposals for reform of civil litigation funding and costs in England & Wales](#). In short they intend to roll back the CFA regime to the much way it was in the 1990s. CFAs will remain lawful but:

- a) Any success fee will be paid by the CFA funded client, not the other side;
- b) Any ATE insurance premium will be paid by the client and not the other side; and
- c) The success fee will be capped at 100% of costs (as now), but in personal injury cases there will be a further additional cap on the success fee set at 25% of damages.

30. So will the solicitor still be required to carry out a formal risk assessment? Probably not. The main purpose of the assessment was to protect the other side from being overcharged on the success fee. Why have a risk assessment when the client, unlike their opponent, can shop around? See the Impact Assessment published with the Response: "Claimants would incur search costs and negotiation costs from selecting a solicitor willing to offer a favourable CFA, ATE insurance products ... and agreeing a success fee".

31. Will there be any ATE insurance available? See paragraph 2.34 of the Impact Assessment: "The reforms may lead to reduced levels of ATE insurance business and income, which might be substantial and have implications for the extent of ATE insurance coverage in future."

32. The reforms are incorporated in Part 2 of the [Legal Aid, Sentencing Punishment of Offenders Bill](#).

## **Damages**

33. To make up for the possible impact on claimants there will be "an increase of 10% in non-pecuniary general damages such as pain, suffering and loss of amenity in tort cases, for all claimants". Whether this will extend to damages for breach of contract, eg for repairing covenants, is unclear. The Equality Impact Assessment published together with the Response states at page 1 refers only to "an increase of 10% in non-pecuniary general damages such as pain, suffering and loss of amenity in tort cases, for all claimants."

### **Damages-Based Agreements (DBAs / “Contingency Fee Agreements”)**

34. These are “no win no fee” agreements where the solicitors’ fee is fixed by reference to amount of damages awarded, rather than to base costs. Currently they are unlawful in civil litigation. The proposal is to allow them. The client will still be able to recover costs against the other side if successful, at standard rates. However if the fees due under the DBA amount to more than the amount recovered from the opponent, it will fall to the client to make up the difference.

### **Qualified One Way Costs Shifting (QOCS)**

35. The idea of QOCS is to encourage access to justice by offering potential claimants a level of costs protection in the event that their claim fails. While they can still expect to recover costs if they succeed, they will if unsuccessful only be ordered to pay their opponents costs if they have acted fraudulently, frivolously, or unreasonably in pursuing proceedings, or if they are very wealthy. Lord Jackson had proposed this rule should apply in actions for housing disrepair and in judicial review cases, in recognition of the inequality of arms that exists between the parties. However the Government plans to introduce QOCS for personal injury claims only.

### **Proportionality**

36. Currently, under CPR Part 44, when assessing costs on the standard basis the court is required to consider whether costs are proportionate and reasonable. Even costs which are considered to be disproportionate may be recoverable. This follows from the ruling in [Lownds v SSHD](#) [2002] EWCA Civ 365; [2002] 1 W.L.R. 2450. In that case it was held that costs assessment should be a two stage process. The court should firstly consider whether the total sum claimed is proportionate, and then conduct an item by item assessment. If the sum claimed is proportionate, all that is required is that each item has been reasonably incurred for a reasonable amount. If the sum claimed is disproportionate, the court has to be satisfied that the work in relation to each item was necessary, and that the amount incurred was reasonable. If so then the costs claimed should still be allowed.

37. The Government has stated that rule in the Lownds case is to be revised, so that “proportionality becomes the dominant test over either reasonableness or necessity”. The original proposal summarised it thus:

214. ... the courts should first assess the reasonableness of the work done and the amount on an item by item basis. The court will then consider the proportionality of the resulting total costs and, if the total amount is disproportionate, make a further reduction to a proportionate level. This would reverse the current position...<sup>19</sup>

### **(C) SOLVING DISPUTES IN THE COUNTY COURTS**

38. The consultation has closed on 30 June 2011. It is not known when the Government is likely to publish its response.

#### **Allocation to track**

39. The most important proposal for our purposes is at paragraphs 105-120, regarding the allocation of cases between the small claims and fast tracks. For all damages claims:

...  
115. In view of these matters, we propose to increase the current small claims financial threshold from April 2012. The current upper limit is £5,000. There are a number of options for the level to which this might be increased - £10,000, £15,000 or £25,000. We consider that an increase to £15,000 would be most appropriate. By way of illustration, if the threshold is increased to £15,000 statistics show that up to 83% of all defended cases currently allocated to a case management track would fall within the new £15,000 limit.<sup>20</sup>

40. What about the £1,000 limit for claims which include a claim for works?: “... we have no plans at this stage to increase the [£1,000] small claims limit for housing disrepair. However we welcome your views on this matter”. And note the questions:

Q27: Do you agree that the small claims financial threshold for housing disrepair should remain at the current limit of £1,000?

Q28: If your answer to Q27 is no, what should the new threshold be? Please give your reasons.

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<sup>19</sup> The main driver for this appears to be the cost of fast track cases. According to the Jackson report, the average costs to damages ratio for litigated cases in the fast track is 130%.

<sup>20</sup> And the fast track threshold to be increased from £25,000 to £35,000.

41. What if you engage in the pre-action protocol in a case involving serious housing disrepair, but the works are carried out before issues? It is worth noting the current rules about costs and allocation, which it seems are to remain in place. Once the claim has been allocated to a track, the costs regime for that track will usually apply in respect of both future costs and pre-allocation (including pre-issue) costs: CPR rule 44.9(2). But note [Birmingham City Council v Lee](#) [2008] EWCA Civ 891; [2009] H.L.R. 15. In that case a tenant instructed solicitors to bring a claim for disrepair on a conditional fee agreement (CFA). They sent a letter in accordance with the pre-action protocol. Within a month the authority had completed most of the repairs, but disputed liability and quantum. The authority made a without prejudice offer to pay damages but not costs. The tenant issued a claim for damages of between £1,000 and £5,000. She agreed the claim should be allocated to the small claims track, but sought on allocation an award of fast track costs up to the date when repairs had been completed. The Court of Appeal held that the usual order to be made in those circumstances should be that “the claimant shall have her costs in the cause on the fast track basis up until [the date when repairs were carried out]

42. What if the claim is reallocated after issue? The CPR states that “unless the court orders otherwise, any special rules about costs applying ... to the first track, will apply to the claim up to the date of reallocation” (CPR rule 44.11).<sup>21</sup>

#### **Mandatory “pre-action directions” for money claims under £100,000**

43. The idea is that these will go further than the existing pre-action protocols, and be “given full force under provision made in primary legislation”. Paragraph 87 of the consultation document continues as follows:

We therefore envisage a staged process with **fixed costs applying at each stage**, with those costs relating to different dispute values and/or different case types. As an example, these stages might be:

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<sup>21</sup> Currently it is rare for claims to be reallocated to a lower track, but if proposed changes to the allocation thresholds are carried out this may well be more of any issue in the future – see Part (B) below.

1. **Triage** – what are the initial options available? For example, could the dispute be resolved by referral to an Ombudsman, a Regulator, or a trade association scheme? Or, does the matter require legal advice?
2. **Evidence gathering** – if stage 1 has not resolved the dispute, the parties/solicitors would attempt to resolve the matter and to strictly adhere to the timetable and directions set out in the relevant Dispute Management Process.
3. **Negotiation/settlement** – essentially a stocktaking stage, where most of the evidence has been gathered and the parties will be required to try to settle the claim via mediation or another dispute resolution process, which could be conciliation, arbitration or the parties arranging a settlement conference.
4. **Trial** - where the issue could not be resolved at the settlement stage, the parties would produce joint evidence packs (setting out the efforts made to settle the dispute and the evidence they wish the court to consider), and apply to the court for a final hearing.

### **Housing repossession**

44. With regards to the existing protocols, the consultation document notes that “lack of engagement remains an issue, particular on the part of the defendant (tenant or borrower)”. The document suggests that “A mandatory settlement stage, which brings the parties together earlier, is the most obvious way of getting both sides to engage pre-court”. The possible penalty for non-compliance is not explained (perhaps thought too obvious to mention?).

### **ADR**

45. Much of the consultation document is devoted to ADR. In summary the proposals include that:

- In every small claim the parties should be referred automatically to a mediation service;<sup>22</sup>
- For all claims worth up to £100,000:

...our longer term proposal for pre-action directions envisages a mandatory settlement stage before parties enter the court process. In the shorter term though, for county

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<sup>22</sup> Based on the Small Claims Mediation Service at Manchester County Court.

court cases in the fast and multi-tracks up to a case value of £100,000, we propose the introduction of compulsory mediation information or assessment sessions.

### **Fixed Recoverable Costs**

46. The consultation document considers the introduction of a system of fixed recoverable costs for fast track personal injury claims only. But again, note the questions:

Q13: Do you consider that a system of fixed recoverable costs could be applied to other fast track claims? If not, please explain why?

Q14: If your answer to Q13 is yes, to which other claims should the system apply, and why?

### **Timing**

47. The changes to track allocation limits are pencilled in for April 2012. The Impact Assessment gives a proposed implementation date of “April 2012 and April 2014”.

Robert Latham  
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20 July 2011

## Appendix 1 – Remuneration for Barristers in Independent Practice

(Schedule 7 of the draft Community Legal Service (Funding)(Amendment No.2)

### Order 2011)

<i>Category</i>	<i>Hourly Rate</i>
Junior counsel in County Court	£112.50 (outside London) £135 (in London)
Senior counsel alone or leading in High Court	£135
Led junior counsel in High Court or Court of Appeal	£112.50
Leading senior counsel in Court of Appeal	£157.50
Queen’s Counsel (where approved for instruction by LSC) in the High Court or Court of Appeal	£180
Leading senior counsel in the Supreme Court	£180
Queen’s Counsel (where approved for instruction by LSC) in Supreme Court	£225
Noter/Pupil/2nd led junior counsel	£36

## Appendix 2 – Summary of the likely effects of reform on housing cases

CASE TYPE	LIKELY CHANGES
Homelessness ASB injunctions Harassment	10% reduction in legal aid rates
Possession claims	10% reduction in legal aid rates Mandatory compliance with pre-action protocol? No funding for trespassers
Judicial reviews	10% reduction in legal aid rates Mandatory gateway if a “community care” issue?
Disrepair counterclaims	10% reduction in legal aid rates 10% increase in damages for torts? LSC to take 25% of any damages which exceed the arrears
Disrepair – serious ongoing problems	10% reduction in rates Proportionate costs only 10% increase in damages for torts? LSC to take 25% of any damages <b>Risk of re-allocation/loss of funding once repairs are carried out?</b>
Disrepair - less serious ongoing problems	<b>No legal aid</b> Fast track allocation likely CFAs, but no success fees or ATE Proportionate costs only 10% increase in damages for torts?
Disrepair – damages only	<b>No legal aid</b> 10% increase in damages for torts Small claim unless over damages over £15,000

	<p>A mandatory pre-action stage</p> <p>CFAs, but no success fees or ATE</p> <p>Proportionate costs only</p>
<b>Unlawful eviction - injunctions</b>	<p>10% reduction in LSC rates</p> <p>10% increase in damages for torts</p> <p>LSC to take 25% of any damages</p>
<b>Unlawful eviction - damages only</b>	<p><b>No legal aid</b></p> <p>Fast track allocation?</p> <p>A mandatory pre-action stage?</p> <p>10% increase in damages for torts</p> <p>CFAs, but no success fees or ATE</p> <p>Proportionate costs only</p>
<b>Transfers/Allocations</b>	<p>No legal help</p> <p>Probably investigative help and legal representation available for judicial review, subject to a 10% reduction in legal aid rates</p>
<p><b>All other work, including</b></p> <ul style="list-style-type: none"> <li>• <b>Advice on Status</b></li> <li>• <b>Leasehold Disputes</b></li> <li>• <b>Right to Buy</b></li> </ul>	<p><b>No legal aid</b></p>

### Appendix 3

#### Reduction in legal aid for customers (by spending) 2009/10

(taken from Table 2 of Impact Assessment: Scope – 21.6.2011)

LSC Statistical Category	Legal Help		Legal Representation	
	Reduction in spend (£m)	Proportion of spend	Reduction in spend (£m)	Proportion of existing spend
Combined Family	n/a	n/a	0	2%
Domestic Violence	n/a	n/a	0	0%
Financial Provision	n/a	n/a	10	72%
Help with Mediation	n/a	n/a	0	0%
Other Family Matters	n/a	n/a	2	83%
Priv. Law Children Act	n/a	n/a	110	70%
Private Family Mixed Domestic Violence	n/a	n/a	0	0%
<i>Total Family Private</i>	<i>50</i>	<i>84%</i>	<i>120</i>	<i>52%</i>
<i>Total Family Public</i>	<i>0</i>	<i>0%</i>	<i>0</i>	<i>0%</i>
<b>Total Family (private + public)</b>	<b>50</b>	<b>78%</b>	<b>120</b>	<b>22%</b>
Actions Against Police	0.5	44%	1	59%
<i>Community Care</i>	<i>0</i>	<i>1%</i>	<i>0</i>	<i>0%</i>
Consumer	0.5	100%	3	99%
<i>Debt</i>	<i>20</i>	<i>75%</i>	<i>0</i>	<i>13%</i>
Education	0.5	32%	0.5	50%
Employment	5	76%	0.5	95%
<i>Housing</i>	<i>10</i>	<i>38%</i>	<i>3</i>	<i>12%</i>
Asylum	0	0%	0	0%
Immigration	20	90%	1	24%
Clinical Negligence	0.5	75%	10	64%
<i>Mental Health</i>	<i>0</i>	<i>0%</i>	<i>0</i>	<i>0%</i>
Miscellaneous	0.5	82%	3	63%
Personal Injury	0.5	91%	3	80%
<i>Public Law</i>	<i>0</i>	<i>16%</i>	<i>0</i>	<i>1%</i>
<i>Welfare Benefits</i>	<i>25</i>	<i>100%</i>	<i>0</i>	<i>0%</i>
<b>Total Civil</b>	<b>80</b>	<b>42%</b>	<b>25</b>	<b>37%</b>
<b>Grand Total</b>	<b>130</b>	<b>50%</b>	<b>150</b>	<b>24%</b>

**2011 No.**

**LEGAL SERVICES COMMISSION, ENGLAND AND WALES**

**The Community Legal Service (Funding) (Amendment No.2) Order  
2011**

*Made* - - - - - \*\*\*  
*Laid before Parliament* \*\*\*  
*Coming into force* - - - - - \*\*\*

The Lord Chancellor makes the following Order in exercise of the powers conferred by sections 6(4) and 25(8A) of the Access to Justice Act 1999<sup>(23)</sup>.

The Lord Chancellor has consulted the General Council of the Bar and the Law Society in accordance with section 25(2) of that Act and has had regard to the matters specified in section 25(3) of that Act.

**Citation, commencement and interpretation**

**1.**—(1) This Order may be cited as the Community Legal Service (Funding) (Amendment No.2) Order 2011 and comes into force—

- (a) in relation to this article, articles 3, 4(c), 5, 6, 9, 10 and 11, 12 and article 7 in so far as it relates to Parts 4 and 5 of Schedule 1 to the 2007 Order, on October 2011.
- (b) in relation to article 4(a) and (b) and article 7 in so far as it relates to Parts 1, 2 and 3 of Schedule 1 to the 2007 Order—
  - (i) where funded services are provided under the 2010 Standard Civil Contract on .... October 2011;
  - (ii) where funded services are provided under the Unified Contract on .... February 2012;
- (c) in relation to article 7, in so far as it relates to Schedule 2 to the 2007 Order, and article 8 on .... February 2012.

(2) In this Order, “the 2007 Order” means the Community Legal Service (Funding) Order 2007<sup>(24)</sup> and words and phrases used in this Order have the same meaning as in the 2007 Order.

**Amendments to the 2007 Order**

**2.** The 2007 Order is amended in accordance with articles 3 to 10.

**3.** In article 3(1), in the definition of “family proceedings”, after paragraph (i) insert—

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<sup>(23)</sup> 1999 c.22. The reference in section 6 to the Lord Chancellor was changed to the Secretary of State by S.I.2003/1887 and changed back to the Lord Chancellor by S.I. 2005/3429. Section 25(8A) was inserted by section 153 of the Coroners and Justice Act 2009 (c.25).

<sup>(24)</sup> S.I.2007/2441, amended by S.I. 2008/1328, 2008/2704, 2009/2468, 2010/95 and 2011/1027.

“but excludes proceedings under the Inheritance (Provision for Family and Dependants) Act 1975<sup>(25)</sup> and the Trusts of Land and Appointment of Trustees Act 1996<sup>(26)</sup>”.

**4. In article 5(2)—**

- (a) in paragraph (b)(i) for “200% for non family proceedings” substitute “100% for proceedings”;
- (b) in paragraph (b)(ii) for “100%” substitute “50%”; and
- (c) after paragraph (d) insert—
  - “(e) must—
    - (i) provide for payment of expert services of a type listed in Section 1 of Schedule 6 at the fixed fees or at rates not exceeding the rates set out in that section;
    - (ii) provide that the Commission may increase the fixed fees or rates set out in Section 1 of Schedule 6 if it considers it reasonable to do so due to exceptional circumstances as defined in Section 2 of Schedule 6; and
    - (iii) include provisions relating to the payment of expert services that accord with those set out in paragraphs 3 to 5 of Section 2 of Schedule 6.”.

**5. In article 5A(3), omit sub-paragraphs (b) and (c).**

**6. After article 5B insert—**

**“Remuneration of barristers in independent practice providing funded services under a certificate in civil (non-family) proceedings**

**5C.—(1) This article applies where—**

- (a) funded services are provided by a barrister in independent practice under a certificate; and
- (b) the funded services are not advocacy services in family proceedings to which article 5A applies.

(2) Subject to paragraph (3), the Commission must fund payments to a barrister in independent practice at the hourly rates set out in Schedule 7.

(3) The Commission may increase the hourly rate for junior counsel in a county court if it considers it reasonable to do so.

**7. For Schedules 1 and 2 to the 2007 Order substitute Schedules 1 and 2 set out in Schedule 1 to this Order.**

**8. For paragraph 77 of Schedule 4 to the 2007 Order substitute—**

**“77.—(1) This paragraph applies where advocacy services within article 5A(3) are provided by counsel.**

(2) There shall be determined on cost assessment, a figure having regard to—

- (i) the work reasonably done by counsel;
- (ii) the remuneration that would have been payable had the services been remunerated in accordance with paragraph 76 as it applied before .....February 2012; and
- (iii) the remuneration that would have been payable had the services been remunerated under the provisions of the Community Legal Service (Funding) (Counsel in Family Proceedings) Order 2001<sup>(27)</sup>.

(4) The remuneration payable to counsel is the figure determined on cost assessment in accordance with paragraph (2) reduced by ten percent.”.

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<sup>(25)</sup> 1975 c.63.

<sup>(26)</sup> 1996 c.47.

<sup>(27)</sup> S.I.2001/1077; amended by S.I. 2003/2590, 2005/184, 2114 and 3504, 2006/2364, 2007/2443 and 3169, 2008/666, 2009/1854 and revoked by S.I. 2011/1027.

9. In Schedule 5 to the 2007 Order, omit paragraphs 4 to 6.

10. After Schedule 5, insert Schedules 6 and 7 set out in Schedule 2 to this Order.

### Transitional Provisions

11.—(1) Where funded services are provided under a certificate and—

- (a) the application for the certificate is signed before the date this Order comes into force in relation to those funded services, regardless of whether the scope of the certificate is extended on or after that date; and
- (b) the application is received by the Commission before the expiry of 7 days after the date this Order comes into force in relation to those funded services,

the 2007 Order continues to have effect as if this Order had not been made.

12. Where funded services are provided otherwise than under a certificate and—

- (a) an application for funded services is made before the date this Order comes into force in relation to those services; or
- (b) a client was in receipt of Legal Help before the date this Order comes into force in relation to that Legal Help and the funded services are extended on or after that date to include Help at Court or Legal Representation,

the 2007 Order continues to have effect as if this Order had not been made.

Signed by authority of the Lord Chancellor

2011

Parliamentary Under Secretary of State  
Ministry of Justice

## SCHEDULE 1

Ref

### “SCHEDULE 1

Article 5

### Fees and Hourly Rates

Subject to any specific provisions of this Schedule, words and expressions used in this Schedule have the same meaning as in the 2010 Standard Civil Contract or, in relation to services provided under the Unified Contract, that contract. The fees and rates in this Schedule are exclusive of value added tax. References to “Schedule Authorisation” shall, in respect of services provided under the Unified Contract, be read as “Specialist Quality Mark”.

## Part 1 — Civil Standard and Graduated Fees

### 1 – Legal Help and Help at Court

**Table 1**

The fees in this Table for Housing do not apply to the Housing Possession Court Duty Scheme – see Table 6.

<i>Category</i>	<i>Schedule Authorisation Standard Fee</i>	<i>Schedule Authorisation Exceptional Threshold</i>	<i>Tolerance Standard Fee</i>	<i>Tolerance Exceptional Threshold</i>
Actions Against	£239	£717	n/a	n/a

the Police				
Clinical Negligence	£195	£585	n/a	n/a
Community Care	£266	£798	£161	£483
Consumer General Contract	£159	£477	£134	£402
Debt	£180	£540	£111	£333
Education	£272	£816	n/a	n/a
Employment	£207	£621	£135	£405
Housing	£157	£471	£124	£372
Miscellaneous	n/a	n/a	£79	£237
Personal Injury	£203	£609	£139	£417
Public Law	£259	£777	n/a	n/a
Welfare Benefits	£150	£450	£122	£366

## 2 – Family Public Law

**Table 2 (a): Legal Help**

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*National*

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£132

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**Table 2(b): Family Help (Lower) – Section 31 Children Act 1989 care or Supervision proceedings only**

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*National*

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£365

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**Table 2(c): Legal Representation - section 31 Children Act 1989 Care or Supervision proceedings only**

<i>Party</i>	<i>Court</i>	<i>No. of Clients</i>	<i>Midlands</i>	<i>North</i>	<i>London and South</i>	<i>Wales</i>
Child	Other	1	£1,949	£1,598	£2,237	£2,183
Child	Other	2+	£2,922	£2,396	£3,355	£3,275
Child	High Court	1	£2,591	£2,125	£2,975	£2,903
Child	High Court	2+	£3,887	£3,188	£4,461	£4,354
Joined Party	Other		£1,033	£798	£1,201	£1,301
Joined Party	High Court		£1,374	£1,062	£1,597	£1,730
Parent	Other	1	£2,556	£2,123	£2,907	£2,633
Parent	Other	2	£3,196	£2,653	£3,633	£3,291
Parent	High Court	1	£3,399	£2,823	£3,866	£3,502
Parent	High Court	2	£4,249	£3,530	£4,832	£4,378

## 3 – Family Private Law

Words and expressions in Table 3(e), Table 3(f) and Table 3(g) have the same meaning as in Schedule 3.

**Table 3(a) – Legal Help**

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*National*

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£86

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**Table 3(b) – Legal Help – Divorce Petition Only**

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*National*

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**Table 3(c) – Family Help (Lower) – Children**

	<i>Fee</i>	<i>Settlement Fee</i>
London	£230	£138
Non - London	£199	£119

**Table 3(d) Family Help (Lower) – Finance**

	<i>Fee</i>	<i>Settlement Fee</i>
London	£241	£145
Non- London	£208	£125

**Table 3(e) Higher Standard Fee Scheme – Children**

<i>Region</i>	<i>Court</i>	<i>Family Help (Higher) Standard Fee</i>	<i>Legal Representation Standard Fee</i>
London	Other	£424	£302
	High Court	£509	£362
Non-London	Other	£353	£251
	High Court	£424	£302

**Table 3(f) Higher Standard Fee Scheme – Finance**

<i>Region</i>	<i>Court</i>	<i>Family Help (Higher) Standard Fee</i>	<i>Family Help (Higher) Settlement Fee</i>	<i>Legal Representation Standard Fee</i>
London	Other	£471	£95	£374
	High Court	£565	£113	£449
Non-London	Other	£392	£78	£311
	High Court	£471	£95	£374

**Table 3(g) Higher Standard Fee Scheme – Domestic Abuse Proceedings**

<i>Region</i>	<i>Court</i>	<i>Legal Representation Standard Fee</i>
London	Other	£608
	High Court	£729
Non-London	Other	£507
	High Court	£608

## 4 – Immigration

**Table 4(a) – Immigration Standard Fees**

	<i>Stage 1 (Legal Help)</i>	<i>Stage 2a (Controlled Legal Representation)</i>	<i>Stage 2b (Controlled Legal Representation)</i>
Asylum	£413	£227	£567
Immigration Non-Asylum	£234	£227	£454

**Table 4(b) Additional Payments – Home Office Interview**

Representation at Home Office Interview	£266
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**Table 4(c) Additional Payments for Advocacy Services**

	<i>Additional Payment</i>
Oral Case Management Review Hearing	£166

Telephone Case Management Review Hearing	£90
Substantive Hearing in the AIT	Asylum £302 Immigration £237
Additional Day Substantive Hearing	Asylum £161 Immigration £161

**Table 4 (d) Immigration Removal Centres Standard Fees (for exclusive Schedule Holders only)**

On Site Surgery - advising five or more clients	£360
On site Surgery - advising four clients or less	£180
Fast Track Standby Payment	£34.02

#### 5 – Mental Health

**Table 5(a) – Basic fees**

<i>Basic Fees</i>	<i>Value</i>
Mental Health – non Tribunal	£253
Level 1 (Mental Health Proceedings)	£129
Level 2 (Mental Health Proceedings)	£321
Level 3 (Mental Health Proceedings)	£294

**Table 5(b) additional fees**

<i>Additional Fees</i>	<i>Value</i>
Adjourned Hearing Fee	£117
Remote Travel Payment: Level 1 (Mental Health Proceedings)	£69
Remote Travel Payment: Non-Tribunal, Level 2 (Mental Health Proceedings) , Level 3 (Mental Health Proceedings)	£138

#### 6 – Housing Possession Court Duty Scheme

**Table 6 Standard Fee**

<i>Standard Fees</i>	<i>Value</i>
London	£75.60
Non-London	£71.55

### PART 2 Hourly Rates – Controlled Work

#### 7 – Legal Help, Help at Court and Family Help (Lower)

**Table 7(a) Immigration exceptional cases, Mental Health, Actions Against the Police etc., Public Law, Education and Community Care**

<i>Activity</i>	<i>London Rate</i>	<i>Non- London Rate</i>
Preparation, Attendance and Advocacy	£52.65 per hour	£48.24 per hour
Travel & Waiting Time	£27.81 per hour	£27.00 per hour
Routine Letters out and telephone calls	£4.05 per item	£3.78 per item

**Table 7(b) Family and Housing (except as in Table 7 (c)) and Employment**

<i>Activity</i>	<i>London Rate</i>	<i>Non-London Rate</i>
Preparation, Attendance and Advocacy	£48.74 per hour	£45.95 per hour
Travel & Waiting Time	£25.74 per hour	£25.74 per hour
Routine Letters out and telephone calls	£3.78 per item	£3.65 per item

**Table 7(c) Legal Help or Help at Court provided in relation to a review under section 202 of the Housing Act 1996<sup>(28)</sup> and to a defendant to a possession claim in the County Court; Family Help (Lower) and related Legal Help in relation to care or supervision proceedings under section 31 of the Children Act 1989**

<i>Activity</i>	<i>London Rate</i>	<i>Non-London Rate</i>
Preparation, Attendance and Advocacy	£56.16 per hour	£52.56 per hour
Travel & Waiting Time	£27.81 per hour	£27.05 per hour
Routine Letters out and telephone calls	£4.05 per item	£3.78 per item

**Table 7(d) Immigration hourly rates cases**

<i>Activity</i>	<i>London Rate</i>	<i>Non-London Rate</i>
Preparation, Attendance and Advocacy	£51.62 per hour	£47.30 per hour
Travel & Waiting Time	£27.27 per hour	£26.51 per hour
Routine Letters out and telephone calls	£3.96 per item	£3.69 per item

**Table 7 (e) All other categories and all tolerance work**

<i>Activity</i>	<i>London Rate</i>	<i>Non-London Rate</i>
Preparation, Attendance and Advocacy	£46.53 per hour	£43.88 per hour
Travel & Waiting Time	£24.62 per hour	£24.62 per hour
Routine Letters out and telephone calls	£3.60 per item	£3.47 per item

**8 – Controlled Legal Representation****Table 8(a) Immigration – exceptional cases**

<i>Activity</i>	<i>London Rate</i>	<i>Non-London Rate</i>
Preparation and Attendance	£57.83 per hour	£54.09 per hour
Travel & Waiting Time	£28.62 per hour	£27.81 per hour

<sup>(28)</sup> 1996 c.52.

Routine Letters out and telephone calls	£4.14 per item	£3.87 per item
Advocacy	£65.79 per hour	£65.79 per hour

**Table 8(b) Immigration - Upper Tribunal cases where permission granted to Client (non Fast Track)**

<i>Activity</i>	<i>London Rate</i>	<i>Non-London Rate</i>
Preparation and Attendance	£74.36 per hour	£69.56 per hour
Travel & Waiting Time	£36.82 per hour	£35.78 per hour
Routine Letters out and telephone calls	£5.35 per item	£4.99 per item
Advocacy	£84.56 per hour	£84.56 per hour

**Table 8(c) Immigration - Other Hourly Rates Cases**

<i>Activity</i>	<i>London Rate</i>	<i>Non-London Rate</i>
Preparation and Attendance	£55.08 per hour	£51.53 per hour
Travel & Waiting Time	£27.27 per hour	£26.51 per hour
Routine Letters out and telephone calls	£3.96 per item	£3.69 per item
Advocacy	£62.64 per hour	£62.64 per hour

**Table 8(d) Representation in Mental Health proceedings**

<i>Activity</i>	<i>London Rate</i>	<i>Non-London Rate</i>
Preparation and Attendance	£57.83 per hour	£54.09 per hour
Travel & Waiting Time	£28.62 per hour	£27.81 per hour
Routine Letters out and telephone calls	£4.14 per item	£3.87 per item
Advocacy	£65.79 per hour	£65.79 per hour
Attending tribunal with counsel	£30.78 per hour	£30.78 per hour

## Part 3 – Hourly Rates – Licensed Work

### 9 – Family Prescribed Rates

**Table 9(a) Care Proceedings**

<i>Activity</i>	<i>Higher Courts</i>	<i>County Court and Family Proceedings Court</i>
Writing routine letters	£4.23 per item	£3.69 per item
Receiving routine letters	£2.12	£1.85

Routine telephone calls	per item £4.23	per item £3.69
Preparation and attendance	per item £70.07	per item £61.38
	per hour (London Rate) £65.84	per hour (London Rate) £58.41
	per hour (Non-London Rate)	per hour (Non- London Rate)
Attendance at court or conference with counsel	£37.13 per hour	£32.67 per hour
Advocacy	£70.07	£64.35
	per hour (London Rate) £65.84	per hour
	per hour (Non-London Rate)	
Travelling and waiting time	£32.18	£29.21
	per hour	per hour

**Table 9(b) Other Family Proceedings**

The fees in this Table do not apply to proceedings under the Inheritance (Provision for Family and Dependents) Act 1975<sup>(29)</sup> or proceedings under the Trusts of Land and Appointment of Trustees Act 1996<sup>(30)</sup> – Table 10(a) or Table 10(b) apply to those proceedings.

<i>Activity</i>	<i>Higher Courts</i>	<i>County Court and Family Proceedings Court</i>
Routine letters out	£6.35	
	per item	£5.40 per item
Receiving routine letters	£3.15	
	per item	£2.70 per item
Routine telephone calls	£6.35	£5.40
	per item	per item
Preparation and attendance	£70.56	£59.40
	per hour (London Rate)	per hour (London Rate)
	£65.75	£54.90
	per hour (Non-London Rate)	per hour (Non-London Rate)
Attending court or conference with counsel	£37.13	£32.40
	per hour	per hour
Advocacy	£70.56	£59.40
	per hour (London Rate)	per hour (London Rate)
	£65.75	£56.70
	per hour (Non-London Rate)	per hour (Non-London Rate)
Travelling and waiting time	£32.18	£28.80
	per hour	per hour (London Rate) £27.90
		per hour (Non-London Rate)

10 - Non Family Prescribed Rates

**Table 10 (a) Higher Courts, County Courts and Magistrates' Courts for work carried out with Schedule Authorisation**

<i>Activity</i>	<i>Higher Courts</i>	<i>County Court and Magistrate</i>
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<sup>(29)</sup> 1975 c.63.

<sup>(30)</sup> 1996 c.47.

		<i>Court</i>
Routine letters out	£6.75 per item	£5.94 per item
Routine telephone calls	£3.74 per item	£3.29 per item
Preparation and attendance	£71.55 per hour (London Rate) £67.50 per hour (Non-London Rate)	£63.00 per hour (London Rate) £59.40 per hour (Non-London Rate)
Attendance at court or conference with counsel Advocacy	£33.30 per hour £67.50 per hour	£29.25 per hour £59.40 per hour
Travelling and waiting time	£29.93 per hour	£26.28 per hour

**Table 10 (b) Higher Courts, County Courts and Magistrates' Courts for work not carried out with Schedule Authorisation**

<i>Activity</i>	<i>Higher Courts</i>	<i>County Court and Magistrates Court</i>
Routine letters out	£6.66 per item	£5.85 per item
Routine telephone calls	£3.69 per item	£3.24 per item
Preparation and attendance	£70.65 per hour (London Rate) £66.60 per hour (Non-London Rate)	£62.10 per hour (London Rate) £58.50 per hour (Non-London Rate)
Attending court or conference with counsel Advocacy	£32.76 per hour £66.60 per hour	£28.80 per hour £58.50 per hour
Travelling and waiting time	£29.43 per hour	£25.88 per hour

**Table 10(c) First Tier Tribunal**

<i>Activity</i>	<i>London Rate</i>	<i>Non-London Rate</i>
Preparation and attendance	£55.08 per hour	£51.53 per hour
Routine letter out and telephone calls Advocacy	£3.96 per item £62.64 per hour	£3.69 per item £62.64 per hour
Attending tribunal or conference with counsel Travelling and waiting time	£29.30 per hour £27.27 per hour	£29.30 per hour £26.51 per hour

## PART 4 – Family Mediation Fees

### 11 – Family Mediation

**Table 10(a): Willingness Test**

<i>Willingness Test</i>	£25
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**Table 11 (b): Assessment Meetings**

<i>Activity</i>	
Assessment alone	£87
Assessment separate	£87
Assessment together	£130

**Table 11(c): Mediation Fees**

<i>Category of Work</i>	<i>Single Session</i>	<i>Multi Session</i>	<i>Agreed Proposal</i>
All Issues Sole Mediation	£168	£756	£252
All Issues Co-Mediation	£230	£1,064	£252
Property and Finance Sole Mediation	£168	£588	£189
Property and Finance Co-Mediation	£230	£834	£189
Child Sole Mediation	£168	£462	£126
Child Co-Mediation	£230	£647	£126

## PART 5 – Rates for specialist support contracts

12 – Specialist support contracts in community care, debt, employment, housing, welfare benefits, mental health, immigration and public law

**Table 12**

<i>Category</i>	<i>Fixed fee</i>
Stand – by payment	£27 per hour
Advice payment	£63 per hour

## SCHEDULE 2

Article 5 and 5A

### Family Advocacy Scheme: Fees and Rates

#### 1 – Public law Advocacy Fees

Words and expressions used in this Schedule have the same meaning as in Schedule 4. The fees and rates in this Schedule are exclusive of value added tax.

**Table 1 (a) Care or supervision proceedings under section 31 of the Children Act 1989 – graduated fees**

<i>Court</i>	<i>Hearing Unit 1 (up</i>	<i>Hearing Unit 2 (up</i>	<i>Conference Fee</i>	<i>Opinion Fee</i>	<i>Advocates' Meeting</i>	<i>Final Hearing</i>

	<i>to 1 hour)</i>	<i>to 2.5 hours)</i>			<i>Fee</i>	<i>Fee (per day)</i>
Family Proceedings Court	£86.72	£216.81	£127.71	£105.66	£128.16	£506.25
County Court	£95.40	£238.46	£127.71	£105.66	£140.99	£556.88
High Court	£114.48	£286.16	£127.71	£105.66	£169.20	£668.25

**Table 1 (b) Other Public Law cases - graduated fees**

<i>Court</i>	<i>Hearing Unit 1 (up to 1 hour)</i>	<i>Hearing Unit 2 (up to 2.5 hours)</i>	<i>Conference Fee</i>	<i>Opinion Fee</i>	<i>Advocates' Meeting Fee</i>	<i>Final Hearing Fee (per day)</i>
Family Proceedings Court	£75.83	£189.59	£127.71	£105.66	£128.16	£464.31
County Court	£83.39	£208.53	£127.71	£105.66	£140.99	£510.75
High Court	£100.08	£250.20	£127.71	£105.66	£169.20	£612.90

**Table 1 (c) Public Law – bolt-on fees**

<i>Category</i>	<i>Payable For</i>	<i>Fee Payable</i>
Client - Allegations of Harm	Hearings	25% of Hearing Unit Fee
Client - Lack of understanding etc	Hearings	25% of Hearing Unit Fee
Expert's cross examination	Hearings	25% of Hearing Unit Fee
Court bundle payments	Hearings	See table below
Exceptional travel fee	Hearings Advocates' Meetings and Conferences	£32.04

**Table 1 (d) Public Law – bolt-on fees - court bundle payments**

	<i>CB1 (350-700 pages)</i>	<i>CB2 (701-1,400 pages)</i>	<i>CB3 (over 1,400 pages)</i>
Interim Hearing	£59.40	£89.10	£89.10
Final Hearing	£159.30	£239.40	£318.60

## 2 – Private Law Advocacy Fees

**Table 2 (a) Private law children - graduated fees**

<i>Court</i>	<i>Hearing Unit 1 (up to 1 hour)</i>	<i>Hearing Unit 2 (up to 2.5 hours)</i>	<i>Conference Fee</i>	<i>Opinion Fee</i>	<i>Final hearing fee (per day)</i>
Family Proceedings Court	£62.69	£156.74	£125.37	£94.05	£397.04
County Court	£68.94	£172.40	£125.37	£94.05	£436.73
High Court	£82.76	£206.87	£125.37	£94.05	£524.07

**Table 2 (b) Domestic abuse – graduated fees**

<i>Court</i>	<i>Hearing Unit 1 (up to 1 hour)</i>	<i>Hearing Unit (up to 2.5 hours)</i>	<i>Final hearing fee (per day)</i>
Family Proceedings Court	£81.50	£203.76	£361.17

County Court	£81.50	£203.76	£361.17
High Court	£81.50	£203.76	£361.17

**Table 2 (c) Private Law Finance – graduated fees**

<i>Court</i>	<i>Hearing Unit 1 (up to 1 hour)</i>	<i>Hearing Unit 2 (up to 2.5 hours)</i>	<i>Financial Dispute Resolution Hearing Unit 1</i>	<i>Financial Dispute Resolution Hearing Unit 2</i>	<i>Early resolution fee</i>	<i>Conference Fee</i>	<i>Opinion Fee</i>	<i>Final hearing fee (per day)</i>
County Court	£63.18	£157.95	£101.07	£252.72	£126.36			
						£126.36		£443.70
							£94.77	
High Court	£75.83	£189.54	£121.32	£303.26	£151.65	£126.36	£94.77	£532.44

**Table 2 (d) Private law – bolt-one fees**

<i>Bolt-on Fee</i>	<i>Payable For</i>	<i>Fee Payable</i>
Client - Allegations of Harm	Private Law Children Hearings	25% of Hearing Unit Fee
Expert's cross examination	Private Law Children Hearings	20% of Hearing Unit Fee
Early resolution fee	Private Law Children Hearings	See Private Law Finance table above
Court bundle payments	Private Law Children or Finance Hearings	See table below
Exceptional travel fee	Hearings and Conferences	£32.04

**Table 2 (e) Private law children and finance – bolt-on fees - court bundle payment**

	<i>CB1 (350-700 pages)</i>	<i>CB2 (701-1,400 pages)</i>	<i>CB3 (over 1,400 pages)</i>
Interim Hearing	£59.40	£89.10	£89.10
Final Hearing	£159.30	£239.40	£318.60*

## SCHEDULE 2

Ref

## “SCHEDULE 6

Article 5

## Experts Fees and Rates

### Section 1

**Table**

<i>Expert</i>	<i>Outside London</i>	<i>London</i>	<i>London</i>	<i>Hourly</i>	<i>Comments</i>
	<i>Hourly Rate or fixed fee</i>		<i>Rate or fixed fee</i>		
A&E consultant	£126		£135		
Accident reconstruction	£90		£68		
Accountant	£50 - £135		£50 - £144		Partner £144,

Manager £108,  
Accountant £80,  
General staff £50

Anaesthetist	£135	£135
Architect	£99	£90
Cardiologist	£144	£144
Cell telephone site analysis	£90	£90
Child psychiatrist	£135	£90
Child psychologist	£126	£90
Computer expert	£90	£90
Consultant engineer	£90	£68
Dentist	£117	£117
Dermatologist	£108	£108
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
Employment consultant	£68	£68
Enquiry agent	£32	£23
ENT surgeon	£126	£126
General surgeon	£135	£90
Geneticist	£108	£108
GP (records report)	As required up to £63	As required up to £90
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	£135
Meteorologist	£126	£180 fixed fee
Midwife	£90	£90
Neonatologist	£135	£135
Neurologist	£153	£90
Neuropsychiatrist	£158	£90
Neuroradiologist	£171	£171
Neurosurgeon	£171	£90
Nursing expert	£81	£81
Obstetrician	£135	£135
Occupational therapist	£68	£68
Oncologist	£140	£140
Orthopaedic surgeon	£144	£144
Paediatrician	£135	£90
Pathologist	£153	£540 fixed fee

Pharmacologist	£122	£122
Photographer	£32	£23
Physiotherapist	£81	£81
Plastic surgeon	£135	£135
Process server	£32	£23
Psychiatrist	£135	£90
Psychologist	£117	£90
Radiologist	£135	£135
Rheumatologist	£135	£135
Risk assessment expert	£63	£63
Speech therapist	£99	£99
Surveyor	£225 fixed fee	£225 fixed fee
Telecoms expert	£90	£90
Toxicologist	£135	£135
Urologist	£135	£135
Vet	£90	£90
Voice recognition	£117	£90

## Section 2

### (Provisions relating to experts)

#### **Payment of expert services of a type not listed in Section 1**

**1.**—(1) This paragraph applies where the Commission receives a request for funding of an expert service of a type not listed in Section 1.

(2) In considering the rate at which to fund the expert service the Commission—

- (a) must have regard to the rates set out in Section 1; and
- (b) may require a number of quotes for provision of the service to be submitted to the Commission.

#### **Meaning of exceptional circumstances in article 5(2)(e)(ii)**

**2.** For the purposes of article 5(2)(e)(ii), 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.

#### **General provisions relating to experts**

**3.**—(1) The costs and expenses relating to experts listed at sub-paragraph (2) are not payable by the Commission as disbursements.

(2) The costs and expenses are—

- (a) any administration fee charged by an expert, including (but not limited to)—
  - (i) a fee in respect of office space or provision of a consultation room;

- (ii) a fee in respect of administrative support services, such as typing services;
  - (iii) a fee in respect of courier services; and
  - (iv) a subsistence fee;
- (b) any cancellation fee charged by an expert, where the notice of cancellation was given to the expert more than 72 hours before the relevant hearing or appointment.

4. The maximum amount that the Commission may pay as a disbursement in respect of an expert's vehicle mileage is £0.45 per mile.

5. The maximum amount that the Commission may pay as a disbursement in respect of an expert's travel time is £40.00 per hour.

## SCHEDULE 7

Article 5C

### Remuneration of barristers in independent practice

**Table**

<i>Category</i>	<i>Hourly Rate</i>
Junior counsel in County Court	£112.50 (outside London) £135 (in London)
Senior counsel alone or leading in High Court	£135
Led junior counsel in High Court or Court of Appeal	£112.50
Leading senior counsel in Court of Appeal	£157.50
Queen's Counsel (where approved for instruction by LSC) in the High Court or Court of Appeal .	£180
Leading senior counsel in the Supreme Court	£180
Queen's Counsel (where approved for instruction by LSC) in Supreme Court	£225
Noter/Pupil/2nd led junior counsel	£36

”

#### EXPLANATORY NOTE

*(This note is not part of the Order)*

This Order amends the Community Legal Service (Funding) Order 2007 (S.I.2007/2441) (“the 2007 Order”). It reduces the cap on the level of enhancements to hourly rates that can be paid to 100% for civil non-family proceedings in the higher courts and 50% for all other proceedings.

Schedule 1 (fees and rates payable for funded services) and Schedule 2 (fees and rates payable for advocacy services in certain family proceedings) of the 2007 Order, are replaced by new Schedules reducing the fees and rates payable by 10%.

The funding of expert services is brought within the ambit of the 2007 Order for the first time by the insertion of paragraph (e) into article 5(2) of the 2007 Order and the insertion of Schedule 6 into the 2007 Order. These provide for the fixed fees and hourly rates to be paid for the type of expert services listed in Schedule 6.

The insertion of article 5C and Schedule 7 into the 2007 Order provide for fixed rates to be payable to barristers in independent practice where funded services are provided under a certificate and where the services are not advocacy services in family proceedings to which article 5A of the 2007 Order applies.

Section 3 of Schedule 4 to the 2007 Order deals with the remuneration of advocacy services in family proceedings not dealt with elsewhere in the 2007 Order. Article 8 of this Order amends paragraph 77 of Schedule 4 to the 2007 Order to bring the remuneration in these cases in line with the reduction in fees being made elsewhere in the 2007 Order.



Ministry of  
**JUSTICE**

**BY EMAIL**

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13 July 2011

Dear Sir/Madam

**THE COMMUNITY LEGAL SERVICE (FUNDING) (AMENDMENT No2) ORDER 2011**

**THE CRIMINAL DEFENCE SERVICE (FUNDING) (AMENDMENT) ORDER 2011**

I am writing to consult you on the terms of the attached draft Orders, The Community Legal Service (Funding) (Amendment No.2) Order 2011 and The Criminal Defence Service (Funding) (Amendment) Order 2011, pursuant to section 25(2) of the Access to Justice Act 1999. The Orders are intended to make a number of changes to the remuneration of the civil and criminal legal aid schemes on which the Government recently consulted.

The Government's consultation '*Proposals for the Reform of Legal Aid in England and Wales*' ran from 15 November 2010 to 14 February 2011 and the Government's response to the consultation was published on 21 June 2011. The consultation response document and equality impact assessment and impact assessment, as well as the original consultation paper and initial equality impact assess and impact assessments, are available on the Ministry of Justice website at the following link:  
<http://www.justice.gov.uk/consultations/legal-aid-reform.htm>

The purpose of this consultation is to ensure that the text of the Funding Orders deliver the policy intentions as set out in the Government's consultation response.

**The Community Legal Service (Funding) (Amendment no.2) Order 2011**

The attached draft order seeks to amend the 2007 Funding Order to enable the changes referred to in the Government's response, namely to:

- reduce all fees payable in civil and family matters by 10%; and,
- limit the level of enhancements that can be paid to solicitors in civil and family cases at 100% for cases heard in the Upper Tribunal High Court, Court of Appeal and Supreme Court and 50% for all other proceedings.

Alongside the consultation response, the Ministry of Justice published details of the specific fees and hourly rates that it intended to apply following the implementation of the 10% reduction. These fees and rates are replicated in the draft Funding Order with two exceptions:

- the figures in Table 1 of Schedule 1 in respect of "Schedule Authorisation" and "Tolerance" have been slightly amended. We have identified a number of errors with the table in the current Funding Order, which have now been corrected. In addition, in accordance with the Government's policy set out in '*Legal Aid Reform: The Way Ahead*' published in 2006, the figures in the "Exceptional Threshold" columns of both the "Schedule Authorisation" and "Tolerance" fees should be precisely three times the standard fee for each area of law. However, the figures contained in the table published alongside the response document were based on a simple 10% reduction on the figures contained in the current Funding Order. Correcting these errors has resulted in the following changes to this table:
  - a number of fees have been deleted on the basis that they are not payable under the current Legal Service Commission (LSC) contracts. These fees have been replaced in the table by "n/a";
  - in the column "Schedule Authorisation - Exceptional Threshold": with the exception of the entries for "Education", "Debt" and "Employment" all of the figures have been reduced by £1; in the case of "Education", the figure has been increased by £1; in the case of "Debt" and "Employment" there has been no change; and
  - in the column "Tolerance - Exceptional Threshold": the figures for "Housing", "Personal Injury" and "Welfare Benefits" have been reduced by £1; in the case of "Debt" it has been increased by £1; in the case of "Employment", "Consumer General Contract" and "Community Care" there has been no change.
- it had been the Government's intention, as set out in the consultation response, to apply the 10% reduction to fees paid to Community Legal Advice Centres and Networks (CLAC/Ns), alongside the reduction to other fees. However, as the response document made clear, the 10% reduction would not apply where the service had been procured following competition on price. Given that the Manchester CLAC procurement had a price competitive element, we have concluded that it would not be appropriate to introduce the 10% fee reduction under that contract. Although the same issue does not arise in relation to the other CLAC/N contracts, the Funding Order in effect at the time when these were awarded contained a clause specifically excluding CLAC/Ns from the scope of that order. We recognise that this could have given an expectation to bidders for those contracts that they were being procured on an individual basis and that the fees payable under those contracts would not be subject to alteration by legislation in the form of a Funding Order. We are therefore not applying the 10% fee reduction to CLAC/Ns via this route. Our intention is to implement this reduction the next time that we tender for the services currently provided under the CLAC/N contracts.

There have also been amendments to remove proceedings under the Inheritance (Provision for Family and Dependents) Act 1975 and the Trusts of Land and Appointment of Trustees Act 1966 from the definition of family proceedings for the purposes of the Order. Whilst proceedings under these Acts may fall within the family category under the Unified Contract and work may be carried out by providers with a family contract they are treated as civil cases by the courts and have traditionally been paid as

such. The proposed changes in articles 3 and 5 mean that these cases will continue to be treated as civil cases for the purposes of payment. However, as before they will also continue to fall within the definition of family proceedings under the Unified Contract so that family providers can continue to carry out this work.

As set out in the consultation response, our intention is to apply the changes in two phases, as follows:

In October 2011, we will introduce:

- the codification of counsel rates in civil non-family proceedings;
- the 10% fee reduction for all work covered by the 2010 Standard Civil Contract (civil-non family work); and
- the new limits on enhancements for work covered by the 2010 Standard Civil Contract.

In February 2012, as part of the introduction of the new family contracts, we will introduce::

- the 10% fee reduction for all work covered by the Unified Contract (family legal aid work and housing work carried out under the Unified Contract); and
- the new limits on enhancements for work covered by the Unified Contract.

As indicated above, although contained in this Order, the fee changes in respect of services provided under the Unified Contract will only be introduced when the new family contracts are commenced. The precise date for this is unclear.

### **The Criminal Defence Service (Funding) (Amendment) Order 2011**

The attached draft order amends the 2007 Funding Order to enable changes to be made to remuneration in criminal proceedings in the magistrates' court and Crown Court, as set out in the Government's response to the consultation. These changes are to:

- implement an overall fee of £565 for either way cases deemed suitable for summary trial where the defendant elects Crown Court and the case does not proceed to trial, but with the fee split between litigation and advocacy; enhance the lower and higher standard fee in the magistrates' court; abolish the committal hearing fee;
- reduce Crown Court fees for cracked cases by 25%, leaving the fees for guilty pleas unaltered. Litigator Graduated Fee Scheme cracked trials are being reduced by 25% and Advocates Graduated Fee Scheme (AGFS) achieve the same reduction through aligning PPE (the number of pages of prosecution evidence) rates in second and final third cracked trials and cutting by 11%;
- align the fees paid in Category A cases (murder, manslaughter and similar offences) with those paid in Category J cases (cases of rape and other serious sexual offences);
- remove the distinction between cases of dishonesty based on the value of dishonest act(s) below £100,000 (i.e. pay for all cases in Categories F and G at Category F fee rates);

- remove the premium paid for magistrates' courts standard fee cases in London;
- remove separate ancillary payments ("bolt-on" fees) by amending the definition of standard appearances to include the sentencing hearings; for AGFS claims the sentencing hearing will be counted as one of the five standard appearances included within the Basic Fee; and
- pay litigators in all cases with an estimated trial length of up to 60 days at the rates in the Litigators' Graduated Fee scheme, rather than at Very High Cost Case rates.

The draft Order also amends paragraph 10 of Schedule 2 setting out how the new fixed fees for elected either way cases will be applied to the original litigator and new litigator in cases which result in a cracked trial before a retrial takes place where the case is transferred. In the AGFS the new fixed fee will be payable in cases which result in a cracked trial before a retrial takes place in elected either way cases.

The draft Order also amends paragraph 10 of Schedule 2 setting out how the new fixed fees for elected either way cases will be applied to both the original litigator and a new litigator in cases which transfer.

In addition, we are taking this opportunity to remove the redundant references to Very High Cost Cases contract and panel contract in the Funding Order

As set out in the consultation response the Government's intention is to introduce these changes in October 2011.

### **Experts Codified Rates**

Both draft Orders also require the LSC to implement maximum fixed and hourly rates for all legally aided expert witness work, with effect from October 2011. We anticipate that the LSC will do this through amendment of the Unified Contract, the 2010 Civil Contract and the 2010 Crime Contract. The rates are set out at Schedule 6 of both Orders.

The expert types listed in Schedule 6 represent the most commonly instructed expert types. The rates would be the maximum allowable for the type of expert charge, subject to the LSC granting prior authority on the basis of exceptional circumstances. Exceptional circumstances are defined as those where: the expert's evidence is key to the client's case; and either the complexity of the material is such that an expert with a high level of seniority is required or the material is of such a specialised and unusual nature that only very few experts are available to provide the necessary evidence.

In considering requests for funding of expert types not listed in the Funding Orders, the LSC are likely to have regard to the codified rates in deciding the reasonableness of the amount charged and may request receipt of multiple quotes to ensure that the use of the expert represents value for money and reflects reasonable market rates.

In the longer term, the Government intends to continue to develop plans to reform expert fees, as set out in the consultation paper and response. This will involve working toward putting in place a more detailed and prescriptive scheme of fixed and graduated fees and a limited number of hourly rates.

The Government's intention is to introduce these changes in respect of all proceedings in October 2011.

**How to respond to this consultation**

I would be grateful to receive any comments (including nil returns) on the terms of the attached draft orders by 10 August 2011. Please send your responses by email to Maggie McDonald at [margaret.mcdonald@justice.gsi.gov.uk](mailto:margaret.mcdonald@justice.gsi.gov.uk).

Unless you ask that your response be kept confidential, we may make your response available under the Open Government Code.

Yours faithfully,

A rectangular box containing a handwritten signature in cursive script that reads "Catherine Lee".

**Catherine Lee**  
**Director, Access to Justice**