

## Prison law

### Frequently Asked Questions

Last updated: 16 September 2010

Latest additions:  
Questions 4.i; 11, 12

These frequently asked questions are based on queries raised by providers at the prison law training events that took place in June and July 2010, and questions submitted by e-mail.

We will update this document if/when more frequently asked questions arise. If you have any questions about the Prison Law scheme please contact your relationship manager in the first instance.

- 1. When do the new rules for Prison Law in the 2010 Standard Crime contract apply? (e.g. fixed and standard fees and prior approval for treatment cases) Is it from the date the legal aid forms are signed?*

The terms and conditions set out in the 2010 Standard Crime Contract apply to any cases started on or after 14<sup>th</sup> July 2010 when the contract came into effect – the date in the Unique File number will be used to verify this. Cases started before this date fall under the provisions of the previous Unified Contract.

- 2. If we represent a client in a re-categorisation case and the decision is negative can I close the file, claim the fee and then open a new file for the appeal?*

No. Paragraph 12.71(b) of the Contract Specification provides that advice and assistance in relation to an appeal in a matter on which previous advice and assistance has already been provided is not justified and so is not to be treated as a separate matter.

- 3. Will the LSC raise the use of video link facilities with prisons and courts? Access is often restricted to particular days/times and criminal justice agencies such as probation given priority. In some cases prisons will not allow their video link facilities to be used for legal visits, or allow video conferences between the prison and a firm's offices.*

The LSC will be working at a national level with the Ministry of Justice, National Offender Management Service and Her Majesty's Prison Service to improve the availability of and access to video conferencing equipment. If you experience particular issues in your local area you should raise this with your LSC relationship manager in the first instance.

4. *Paragraph 12.113 says that disciplinary cases will not pass the sufficient benefits test when there is no prospect of the client having additional days added to their sentence. Does this mean I can't represent clients in front of the governor as they don't have the power to impose additional days?*

Yes. In minor disciplinary cases where there is no risk that the prisoner will have additional days added to his or her sentence, and the provisions of Paragraph 12.114 do not apply (IPP or life sentence prisoner), the case is not in scope of the Contract (see also the answer to 4.i below). This is akin to the Interests of Justice test under para. 5(2)(a) of Sch.2 of the Access to Justice Act 1999, where a likelihood of loss of liberty is a factor which is considered when deciding whether legally aided representation should be granted in criminal proceedings.

4.i *My client is not serving an IPP or life sentence, but is a recall prisoner or a youth, and so is not at risk of having any additional days added to his sentence in disciplinary proceedings. Are there any circumstances in which I can assist or represent my client in a Disciplinary Case?*

Paragraph 12.115 sets out the circumstances where the Interests of justice test is capable of being met. If it is in the interests of justice for a person to be represented, the Sufficient Benefit Test is also satisfied. So, a prisoner with no risk of extra days who is not serving a life or IPP sentence might qualify for representation if:

(b) the determination of any matter arising in the proceedings may involve consideration of a substantial question of law;

(c) the Client may be unable to understand the proceedings or to state his own case;

(d) the proceedings may involve the tracing, interviewing or expert cross-examination of witnesses on behalf of the individual;

(e) there would be a negative impact on a subsequent parole review or categorization decision.'

If you consider that one or more of these limbs from the test applies then you should specify which one and record any additional reasons as to why you are commencing a Disciplinary Case for your client in a file note.

5. *If client's telephone call or letter is unclear on the "realistic prospects of success" or the possibility of "gaining a positive outcome" can a file be opened to investigate / check the merits? If on investigation the case does not pass the sufficient benefits test can I bill this work?*

If the case doesn't pass the Sufficient Benefit Test then any work done investigating merits etc. does not fall within the scope of the contract and so cannot be billed. In addition, such investigations ought to have been completed in fewer than 8 Units of time, and so the case would not have been claimable in any event.

6. *How does the LSC categorise cases into a) treatment and b) sentence cases e.g. would closed visits be sentence or treatment?*

Treatment Cases are limited to a prisoner's treatment within the prison system, whereas Sentence Cases concern a prisoner's progression through his sentence and through the prison system.

Under paragraph 12.101, there is a list of Sentence Cases which could potentially pass the Sufficient Benefit Test, however, each case has to be determined on its own merits. We have also given an indication in the contract the types of Treatment Cases we could potentially be funded i.e. those which concern significant legal or human rights issue (see 12.86 and 12.87 of the Contract Specification), but again each case must be assessed on its own merits.

Closed Visits are an administrative measure which are applied if prisoners are proved or reasonably suspected of involvement in drugs smuggling through visits, or are considered to pose a reasonable risk of involvement. Therefore, an issue concerning Closed Visits could never be a Sentence Case, and given the content of PSI 40/2008, would be unlikely to pass the Sufficient Benefit Test for a Treatment Case. If an individual prisoner is able to show that the prison has applied PSI 40/2008 improperly, then judicial review under Associated CLS would be a more appropriate way of resolving this.

7. *How many Sentence Cases can I have open for the same client at the same time? Paragraph 12.35 says you must not begin more than one case at any one time – does mean you cannot run more than one case concurrently?*

*E.g. A prisoner may have issues with HDC (tagging), re-categorisation, challenging a report, and transfer to do a course. These are 4 distinct issues but all come under the definition of a Sentence Case.*

Paragraph 12.35 of the Specification states that you must not begin more than one Sentence Case or one Parole Board Case at a time. The client needs overall advice on those matters which arise out of his/her sentence and so only one file should be opened.

Where a client has a number of issues relating to his sentence, as in the example above it may be that more work is necessary to advise these issues and this might result in the case being claimable as an Exceptional Case.

8. *Can the position on mileage be confirmed - we know it is billed additionally to the fee as disbursements and thus paid on top of the fixed or standard fee but is there any further guidance on what is reasonable and what is not?*

Paragraph 12.42 says that "You may only claim for the mileage or the actual cost of public transport for travel as a Disbursement". There is no separate payment for travel time under the fixed and standard fees, and the Contract limits the amount of Travel Time which may be claimed on Exceptional Cases or Non-Standard Fee cases. However, there is no cap on actual mileage, provided it is reasonable. Providers are therefore entitled to claim the full mileage for a journey provided the most direct route is taken.

9. *When does Advice and Assistance stop and Legal Help start - is it for example when you reach the point where the only way forward is a letter before action?*

*E.g. where a re-categorisation decision seems challengeable does the Advice and Assistance file cover the submissions and work up to a decision being made, then a new Advice and Assistance file for dealing with the internal challenge (an essential pre-requisite of judicial review work), then a Legal Help file for dealing with the pre-action letter and CLS App 1 application etc?*

Where a re-categorisation decision is challengeable, Advice and Assistance should be used to cover the submissions and work up to a decision being made, and that same file be used to deal with the internal challenge (see Paragraph 12.71(b)). If the issue remains unresolved, then a letter written in accordance with the judicial review pre-action protocol should be written and claimed for under Associated CLS (see Paragraph 12.94)

10. *Can repatriation cases (where a client is being transferred to serve their sentence abroad) be funded under the prison law contract?*

Yes. It would be a Sentence Case, however, the process of applying for repatriation is straightforward, For the Sufficient Benefit Test to be met at the outset, your client would have to have demonstrated that he had applied unsuccessfully to be repatriated to serve his sentence abroad.

11. *When claiming prison law fixed and standard fees on the CDS6, do I enter the amount of the fee or the actual costs of the case?*

You should report the actual costs of the case. Profit costs, waiting costs, travel costs (reporting of travel costs is voluntary) and disbursements should be entered separately excluding VAT, along with the relevant VAT indicators. The LSC Online system will then calculate which fee is payable and credit you that amount, as well as any disbursements claimed.

More information is available in the prison law guidance available from <http://www.legalservices.gov.uk/criminal/prisons.asp>

12. *Can I open an advocacy assistance matter in a disciplinary case at the point the client instructs me if I believe there is a risk that the matter will be referred to the independent adjudicator, or do I wait until the matter is actually referred?*

Paragraphs 12.37 and 12.38 of the contract say that where it is clear that there is going to be an oral hearing then you should start the case as Advocacy Assistance. Where it is not clear that there is going to be an oral hearing the case should be started as Advice and Assistance, and you should close that Advice and Assistance file and start a new Advocacy Assistance matter if an oral hearing is subsequently listed.