

legal aid – fair access to justice



## Funding Prison Law Cases under the Legal Aid Scheme

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Legal Services Commission, August 2010

# Introduction

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1. This document is based on the presentation used for the training for prison law providers which took place in June and July 2010. It will help you to understand the new Prison Law section within the 2010 Standard Crime Contract, and focuses on the rules for conducting prison law work, including the need to apply for Prior Approval for Treatment Cases and the way that the new fee schemes work.
2. The 2010 Standard Crime Contract came into effect on 14 July 2010. The contract can be accessed at: [www.legalservices.gov.uk](http://www.legalservices.gov.uk) > CDS > Crime Contracts > 2010 Standard Crime Contract
3. This document is divided into three sections:

1

Overview of process and key changes

2

Prior Approval to undertake prison law treatment cases

3

Fixed and Standard Fees

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- 1** **Overview**  
Consultation process  
Key changes
  - 2 *Prior Approval*
  - 3 *Fixed and standard fees*

## 1

# Overview

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Consultation on prison law changes published	February 2009
Consultation meetings held with providers	May 2009
Response to consultation published	July 2009
(Based on consultation feedback the Prison Law fee schemes were redesigned)	
MoJ publish 'Refocusing on priority cases'	July 2009
(Raises concerns about the merits of some treatment cases and proposes removing them from the scope of Prison Law funding)	
The Law Society and other representative groups consulted about contract	September 2009
MoJ publish consultation response	February 2010
(Announces that treatment cases will still be funded under Prison Law, but that prior approval will be required)	
Tender for new contract commences	February 2010
New Contract begins	14 July 2010

The key differences between the Unified Contract (Crime) 2008, and the 2010 Standard Crime contract are:

- A new prison law section has been inserted into the Standard Crime Contract – prison law providers must comply with the terms and conditions of this section
- A new Prison Law Supervisor Standard – having a Prison Law supervisor is a requirement of the Standard Crime Contract for providers of prison law services
- Prior Approval is required to undertake Treatment Cases (Clause 12.24 of the Standard Crime Contract specification also allows us to introduce a system for limiting new matter starts for these cases in particular circumstances)
- A Revised Sufficient Benefits Test
- Fixed and Standard Fees replace hourly rates

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Overview

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**Prior Approval**

How Treatment Cases will qualify for funding

Applying for Prior Approval

3

Fixed and Standard Fees

## How Treatment Cases will qualify for funding

2.1 The Sufficient Benefit Test must be satisfied before you commence, or continue, to work on a case:

“Advice and Assistance or Advocacy Assistance may only be provided on legal issues concerning English and Welsh law and where there is sufficient benefit to the Client, having regard to the circumstances of the Matter, including the personal circumstances of the Client, to justify work or further work being carried out.

There should be realistic prospect of a positive outcome that would be of real benefit to the Client.”

Para. 12.6 2010 Standard Crime Contract Specification

2.2 When you apply for prior approval to undertake a treatment case you will have to set out how this test has been met.

## 2

# Prior Approval

- 2.3 The Standard Crime Contract specification at part B contains rules specific to the funding of treatment cases from paragraphs 12.79 to paragraph 12.97. Treatment cases concern the provision of Advice and Assistance on a legal issue to a serving prisoner on a matter relating to his treatment in the prison system. This does not include issues relating to a prisoner's sentence.
- 2.4 The rules on treatment cases aim to exclude objectively trivial cases, those which have no real chance of success and those which are not part of a bona fide complaint, from the scope of the contract.
- 2.5 Because of the range of factors which bear on the decision as to whether or not a case should be funded there are no absolute rules on which treatment cases will be granted prior approval. The contract sets out the types of case which we do not expect to fund, and some exceptional circumstances and exemptions to these guidelines. The prior approval process is a case by case assessment and it is for the provider making the application to justify why funding should be granted in accordance with the provisions of the contract.
- 2.6 For example, treatment cases which concern a complaint by a client about his/her living conditions are outside the scope of the contract as we consider these cases to be suitable for resolution through the prison internal complaints mechanism. However, if there is an issue which means that a case has a serious human rights dimension or the client has a severe mental health problem or severe learning difficulties such that, even with the help of other prisoners or staff she/he is not able adequately to formulate his complaint effectively then funding may be granted. In this situation details of the client's condition must be specified when applying for prior approval.

### Cases that are assumed not to be within the scope of funding for treatment cases

2.7 The contract includes examples of the type of case we believe are suitable to be dealt with by the prison complaints mechanism, and so assumed to be outside the scope of Prison Law funding. These are outlined below for convenience (Note that as on the previous page a client with serious mental health or serious learning difficulties may potentially be assisted):

1. entitlements to rights and privileges;
2. issues arising out of correspondence (except legally privileged correspondence);
3. food (where there is no religious dietary requirement involved);
4. exercise;
5. lost or damaged property;
6. issues arising out of the Incentives and Earned Privileges Scheme (IEPS) (save where an IEP Warning could have a serious impact on parole or progression).

2.8 However, as the process for granting prior approval is a case by case assessment each application will be reviewed by our caseworkers, and it is up to providers to make the case why funding should be granted in each instance.

### The process for applying for prior approval to undertake a treatment case

- 2.9 There is a new form - the Application for Prior Approval to undertake a Prison Law Treatment Case (PL1). This form is available from our website at:  
[www.legalservices.gov.uk](http://www.legalservices.gov.uk) > CDS > Criminal Areas of Work > Prisons
- 2.10 All applications for Prior Approval will be processed by the LSC Nottingham office (details of where to send the application are included on the front page of the form).
- 2.11 You must apply on a form PL1 to the LSC Nottingham Office for Prior Approval in order to start a Treatment Case under the Contract. A Treatment Case which is undertaken without having obtained Prior Approval is not contract work and so cannot be claimed for under the Standard Crime Contract.
- 2.12 If prior approval is granted then you will be issued with a prior approval code which you must keep on file – this is your authorisation to bill the case.
- 12.13 If an application for prior approval is rejected you will be given individual feedback on the application, and are entitled to re-apply with further information.

## 2

# Prior Approval

Some reasons why we may refuse your application for prior approval are listed below for information. This is not an exhaustive list, but is intended to illustrate the information we require when assessing applications to assist you in completing the PL1 form.

- no significant legal issue or human rights issue has been raised.
- On the information provided, you have not demonstrated that there is a realistic prospect of success or positive outcome for the client.
- The case appears to have minimal or borderline prospects of success and you have not set out your justification as to why there would still be some benefit to the client were the case to be funded.
- the information provided indicates that the case, at its highest, would bring only minimal benefit to the client.
- A notional reasonable private paying client of moderate means would be unlikely to instruct lawyers to deal with this issue.
- your client's complaint is about his/her living conditions, and so is suitable to be resolved through the prison internal complaints mechanism, and prisons and probation ombudsman. *[N.B. An exception would be where the client is said to have severe mental health problems or severe learning difficulties]*
- your client's complaint is about issues arising out of the Incentives and Earned Privileges Scheme (IEPS). You have given no indication as to whether an IEP Warning could have a serious impact on a parole or progression, and so this complaint is suitable to be dealt with under the prison internal complaints process. *[Ditto NB above]*

## Limiting New Matter Starts

- 2.14 We intend to publish a report by Summer 2011 on the post-implementation review of the changes to prison law. If the prior approval system has not prevented the numbers of treatment cases from rising then the LSC may decide to introduce a system of limiting new treatment cases.
- This is permitted under a clause in the contract, which is not in force from the contract start date of 14 July 2010 (see paragraphs 12.24 – 12.32 of the Standard Crime Contract Specification). This provision may come into effect between 1 July 2011 and 1 July 2012, but will only come into effect if we give you at least three months notice. Unless and until such notice is given, the system will not be in force.
  - If we introduce a system of new matter start allocations we will introduce a system for allocating on your contract Schedule a capped number of New Matter Starts to limit the number of Treatment Cases you are able to Claim for under the Contract.

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Overview

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Prior Authority

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**Fixed and standard fees**

(all figures ex. VAT)

Advice and assistance fixed fee

Disciplinary hearing standard fees

Parole board standard fees

Exceptional cases and non-standard fees

Claiming

# 3

## Fixed and standard fees

### Advice and Assistance - Fixed fee

Advice and Assistance fixed fee   **£220**

Exceptional threshold                £660

- 3.1 There is a single fee payable for all advice and assistance cases. The exception to this is for cases that cost more than £660 – these exceptional cases can be paid at the hourly rates set out in the payment annex of the 2010 Standard Crime Contract and reproduced at the end of this document.
- 3.2 The fee covers all Advice and Assistance on Treatment and Sentence Cases. The fee also applies if you start a Disciplinary Hearing or Parole Board Case where it is not clear if there will be an oral hearing. If a hearing is listed you can claim the Advice and Assistance fee then start an advocacy matter.
- 3.3 If it is clear from the start that there will be an oral hearing then no advice and assistance fee can be claimed. Your client should complete the Advocacy Assistance application forms.
- 3.4 In order to claim a fixed fee you must have worked on the case for 8 or more units of time (48 mins or £37.52 at the preparation hourly rate). No payment can be claimed for cases below this threshold.

# 3

## Fixed and standard fees

### Disciplinary Cases - Advocacy Assistance Standard Fees

Lower standard fee	<b>£223.48</b>
Lower fee limit	£391.30
Higher standard fee	<b>£618.26</b>
Higher fee limit	£1,853.91

- 3.5 There are two fees payable for advocacy assistance cases – a lower standard fee and a higher standard fee. The cost of the case at hourly rates determines which fee applies. The costs that are taken into account are the profit costs of the case and the waiting costs, together referred to as ‘core costs’ below.
- 3.6 If the core costs of the case are below the lower fee limit, then a lower standard fee is paid. If the core costs of the case are above the lower limit but below the higher fee limit then the higher standard fee is paid. If the core costs exceed the higher fee limit then the case is payable as a non-standard fee at hourly rates.
- 3.7 In order to claim a standard fee you must have worked on the case for 8 or more units of time (45 mins or £54.60 at the advocacy assistance hourly rate). No payment can be claimed for cases below this threshold.

# 3

## Fixed and standard fees

### Parole Board Cases - Advocacy Assistance Standard Fees

Lower standard fee	<b>£479.13</b>
Lower fee limit	£1,023.48
Higher standard fee	<b>£1,593.91</b>
Higher fee limit	£4,780.87

- 3.8 There are two fees payable for advocacy assistance cases – a lower standard fee and a higher standard fee. The cost of the case at hourly rates determines which fee applies. The costs that are taken into account are the profit costs of the case and the waiting costs, together referred to as ‘core costs’ below.
- 3.9 If the core costs of the case are below the lower fee limit, then a lower standard fee is paid. If the core costs of the case are above the lower limit but below the higher fee limit then the higher standard fee is paid. If the core costs exceed the higher fee limit then the case is payable as a non-standard fee at hourly rates.
- 3.10 In order to claim a standard fee you must have worked on the case for 8 or more units of time (45 mins or £54.60 at the advocacy assistance hourly rate). No payment can be claimed for cases below this threshold.

## Disbursements

3.11 Disbursements (including travel disbursements) are outside the fixed and standard fees for prison law and are paid separately as claimed.

3.12 Disbursements are subject to contract rules including reasonableness, and prior authority is now required for any single disbursement costing more than £500. This should be sought using the CDS4 form.

**Note:** the CDS4 asks which type of work the case involves but does not include the option of selecting prison law. When using the form for prison law you should leave this section of the form uncompleted and mark the form 'Prison Law'. You should also submit the CDS1, and 2/3 where appropriate. These issues will be addressed in future versions of the form.

3.13 Counsel costs are **not** claimable as disbursements for fixed and standard fee cases. Instead counsel's time should be reported as part of the claim using the same hourly rates as apply to providers' staff. However, in advice and assistance cases that have become exceptional, counsel can be paid as a disbursement.

# 3

## Fixed and standard fees

Parole Board Case - Advocacy Assistance Standard Fee worked example:

$$\begin{aligned} \text{Core costs} &= \text{Profit costs} + \text{Waiting costs} \\ \text{Payment} &= (\text{fixed fee} + \text{VAT}) + (\text{disbursements} + \text{VAT}) \end{aligned}$$

5 hours preparation @ £56.15 = £280.75

2 hours advocacy @ £68.25 = £136.50

2 hours waiting @ £26.30 = £52.60

2 letters written and 2 telephone calls @ £4.05 = £8.10

2 hours travel @ £26.30 = £52.60 (not included in core costs)

Disbursements as incurred = £25.00

Total case costs = £555.55 (includes all costs)

Core costs = £477.95

Payment = lower fee £479.13 + £25.00 disbursements = £504.13(+ VAT)

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## Fixed and standard fees

Parole Board Case - Advocacy Assistance Standard Fee worked example:

$$\begin{aligned} \text{Core costs} &= \text{Profit costs} + \text{Waiting costs} \\ \text{Payment} &= (\text{fixed fee} + \text{VAT}) + (\text{disbursements} + \text{VAT}) \end{aligned}$$

12 hours preparation @ £56.15 = £673.80

4 hours advocacy @ £68.25 = £273.00

4 hours waiting @ £26.30 = £ 105.20

5 letters written and 6 telephone calls @ £4.05 = £44.55

4 hours travel @ £26.30 = £105.20 (not included in core costs)

Disbursements as incurred= £427.75

Total case costs = £1,629.50 (includes all costs)

Core costs = £1,096.55

Payment = higher fee £1,593.91 + £427.75 disbursements = £2,021.66(+VAT)

## Exceptional Cases and Non-Standard Fees

- 3.14 Advice and assistance cases with core costs higher than the exceptional case threshold, or advocacy assistance cases with core costs above the relevant higher fee limit will be paid at hourly rates.
- 3.15 For the purposes of calculating whether the case is exceptional profit and waiting costs are added together:

$$\text{Core costs} = \text{Profit costs} + \text{Waiting costs}$$

- 3.16 Travel cost is not included in the calculation to determine whether a case is exceptional. However, once a case has become eligible for payment at hourly rates payment for travel time is claimable. This is limited to 1 hour for each journey (two journeys make a round trip) and providers may claim this time for all journeys taken for the case. Once the case has qualified for payment at hourly rates, if the client is moved between prisons, the amount of travel time that can be claimed rises to 3 hours per journey, but this additional time may only be claimed for journeys made from that point onwards.
- 3.17 All exceptional cases and non-standard fees are subject to assessment.

$$\text{Payment} = ((\text{Profit costs} + \text{travel} + \text{waiting}) + \text{VAT}) + ((\text{disbursements}) + \text{VAT})$$

## Claiming

- 3.18 All cases must be claimed through the Contracted Work and Administration (LSC Online) system.
- 3.19 Claims under the new scheme should be submitted from 1<sup>st</sup> August as part of the July submission. Providers submitting claims line-by-line should not enter any claims under the new scheme before this date.
- 3.20 Claiming is similar to the current system however,
- A new prison ID field has been created for Prison Law Work
  - There are new matter type and outcome codes, specific to this work
- 3.21 Any claims for cases which start after 14 July will need to include this information. Cases started before 14 July must be claimed under the old unified contract rules.
- 3.22 All cases must first be claimed through LSC online at hourly rates, which will determine the correct fee for payment. Exceptional cases and non-standard fees will be flagged and a CDS18 Exceptional Case Claim Form- Crime should then be completed for the case and submitted with the case file. A caseworker will then assess the file and update the payment amount in the system with the post-assessment final claim value.
- 3.23 The following pages are screenshots of the LSC online claiming system and demonstrate the information required for each claim.

# 3

## Fixed and standard fees

PRIA – Advice and assistance

PRIB – Advocacy assistance at a disciplinary hearing

PRIC - Advocacy assistance at a parole hearing

### Outcome Details

\* Indicates required field

Printable Page Clear

### Header Information

Firm Name  
LSC Account Number  
Schedule

Office Name  
Submission Period

\* Stage Reached

Free standing advice and assistance

### Case Information

#### Outcome Details

* UFN	<input type="text" value="050510/001"/> <small>ddmmyy/NNN e.g. 010107/001</small>	* VAT Indicator	<input type="text" value="N-No"/>
* Client Initial	<input type="text" value="R"/>	* Disbursements excluding VAT	<input type="text" value="100.00"/>
* Client Surname	<input type="text" value="Espley"/>	* Disbursements VAT Amount	<input type="text" value="25.00"/>
* Gender	<input type="text" value="M-Male"/>	* Date Class of Work concluded	<input type="text" value="05-May-2010"/>
	<small>Male</small>	Prison ID	<input type="text" value="ACAM"/>
* Ethnicity	<input type="text" value="02-White Irish"/>		<small>ALTCOURSE</small>
	<small>White Irish</small>	Matter Type	<input type="text" value="21-CSC &amp; DSPD units referrals and assessments"/>
* Disability	<input type="text" value="NCD-Not Considered Disabled"/>		<small>21-CSC &amp; DSPD units referrals and assessments</small>
	<small>Not Considered Disabled</small>	Outcome Code	<input type="text" value="PL04-Written Representations R"/>
* Profit costs excluding VAT	<input type="text" value="100.00"/>		<small>PL04-Written Representations Refused</small>
* Travel costs excluding VAT	<input type="text" value="0.00"/>		
* Waiting costs excluding VAT	<input type="text" value="0.00"/>		

#### Outcome Details

# 3 Fixed and standard fees

Outcome Details

\* Indicates required field

Printable Page Close

Header Information

Firm Name  
LSC Account Number

Office Name  
Submission Period

Stage Reached  *Free standing advice and assistance*

Case Information

UFN   
ddmmyy/NNN e.g. 010107/001

VAT Indicator

Debursements excluding VAT   
Debursements VAT Amount

Date Class of Work concluded

Priest ID

Matter Type

Outcome Code

Client Initial

Client Surname

Gender

Ethnicity

Disability

Profit costs excluding VAT   
Travel costs excluding VAT   
Waiting costs excluding VAT

\* Stage Reached



Stage reached code determines which information is requested

\* UFN   
ddmmyy/NNN e.g. 010107/001

\* Client Initial

\* Client Surname

\* Gender

Male

\* Ethnicity

White Irish

\* Disability

Not Considered Disabled

\* Profit costs excluding VAT

\* Travel costs excluding VAT

\* Waiting costs excluding VAT

Date element of the UFN determines whether the case falls under the new or old scheme

Cases started before 14 July 2010 will be paid hourly rates. Cases started from 14 July 2010 will be paid fixed or standard fees.

# 3

## Fixed and Standard Fees

Outcome Details

\* Indicator required field

Header Information

Printable Page Click

Form Name  
LSC Account Number  
Schedule

Office Name  
Submission Period

Stage Reached: IPBA Free standing advice and assistance

Case Information

Outcome Details

LFN: 00010001  
Client Initial: 0  
Client Surname: Espley  
Gender: M  
Ethnicity: 02-White Irish  
Disability: NED/NM Considered Disabled  
Profit costs excluding VAT: 100.00  
Travel costs excluding VAT: 0.00  
Waiting costs excluding VAT: 0.00

VAT Indicator: No  
Disbursements excluding VAT: 100.00  
Disbursements VAT Amount: 25.00  
Date Class of Work concluded: 05-May-2010

Prison ID: ACAM  
Matter Type: 21-CSC & DSPD units referrals and assessments  
Outcome Code: PL04-Written Representations R

New information is required for all Prison Law cases started on or after 14 July 2010

Prison ID

ACAM



ALTCOURSE

Matter Type

21-CSC & DSPD units referrals and assessments

21-CSC & DSPD units referrals and assessments

Outcome Code

PL04-Written Representations R

PL04-Written Representations Refused

## 3

## Fixed and standard fees

## Prison ID

Prison	Code
ACKLINGTON	AKCM
ALBANY	ALCM
ALTCOURSE	ACAM
ASHFIELD	ASKM
ASHWELL	AWCM
ASKHAM GRANGE	AGDF
AYLESBURY	AYIM
BEDFORD	BFBM
BELMARSH	BAAM
BIRMINGHAM	BMBM
BLANTYRE HOUSE	BHCM
BLUNDESTON	BDCM
BRINSFORD	BSAM
BRISTOL	BLAM
BRIXTON	BXBM
...	...

## Matter type

Code	Description
17	Licence conditions and arrangements
18	Sentence planning and/or calculations
19	Categorisations
20	Segregation
21	CSC and DSPD units referrals and assessments
22	Resettlement issues and planning
23	Minimum term review applications
24	Other sentence issues
25	Prison conditions
26	Treatment by staff
27	Discrimination
28	Communications and visits
29	Mother and baby issues
30	Compassionate release
31	Behaviour Courses
32	Other treatment
33	Written representations - Parole Board
34	Written representations - Disciplinary
35	Oral representations

The prison law codes, including a full list of prison IDs are also included in the claiming guidance that accompanies the CDS6 form.

## Outcome code

Code	Description
PL01	Discontinued
PL02	Change of Solicitor
PL03	Written Representations Successful
PL04	Written Representations Refused
PL05	Adjudication Guilty Plea
PL06	Adjudication Guilty After Hearing
PL07	Adjudication Not Guilty After Hearing
PL08	Adjudication Cracked Hearing
PL09	Parole Paper Hearing
PL10	Parole Oral Hearing Successful
PL11	Parole Oral Hearing Not Successful
PL12	Proceeded to Judicial Review
PL13	No further action

## 3

## Fixed and standard fees

## Advice and assistance

	<b>National and London</b>
Routine letters written and routine telephone calls per item	<b>£3.70</b>
Preparation hourly rate	<b>£46.90</b>
Travel and waiting hourly rate	<b>£26.30</b>

## Advocacy assistance at a disciplinary hearing

	<b>National and London</b>
Routine letters written and routine telephone calls per item	<b>£4.05</b>
Preparation hourly rate	<b>£56.15</b>
Advocacy hourly rate	<b>£68.25</b>
Travel and waiting hourly rate	<b>£26.30</b>

## Advocacy assistance at a parole board

	<b>National and London</b>
Routine letters written and routine telephone calls per item	<b>£4.05</b>
Preparation hourly rate	<b>£56.15</b>
Advocacy hourly rate	<b>£68.25</b>
Travel and waiting hourly rate	<b>£26.30</b>

These hourly rates for prison law work are taken from the payment annex of the 2010 Standard Crime Contract.

They should be used when recording and reporting costs, and are the rates that will be paid for exceptional cases and non-standard fees.