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### Summary of LSC's response to specific consultation questions

#### Care Proceedings Graduated Fee Scheme

Consultation question	Proposal in consultation	Approach in final scheme	Justification
Q.4 Do you consider the supra regional groupings at Level 3 appropriate?	Different fees at Level 3 according to four supra regions	Supra regional split remains at Level 3	Whilst the majority of respondents disagreed with this approach and expressed a preference for either national fees or a London or South East uplift, we have maintained the approach proposed. This is because an analysis of the financial impacts on providers shows that supra regional fees have better impacts across regions overall.
Q.5: Do you agree with the proposal to pay only half the fee where the client is not involved throughout the case?	Level 3: Where a client is not involved in proceedings throughout the case only half the fee will be payable	Level 3: Pay the full fee regardless of whether the client is involved throughout the whole case	Enables 'swing and roundabouts' to operate more effectively for providers, cost of these cases already factored into the fees.
Q.6 Do you agree with the approach of having a single stage at Level 3?	One stage at Level 3	One stage at Level 3	The majority of respondents agreed with this approach. A single stage at Level 3 avoids the issues around linking stages to the Protocol, which is still under review.
Q.7 Do you agree with revised proposals around acting for more	A 50% higher fee is payable where two or more children are	A 50% higher fee is payable where two or more children are	The majority of respondents agreed with this approach.

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<p>than one child on the same case?</p>	<p>represented by the same solicitor</p>	<p>represented by the same solicitor</p>	<p>There were some calls for additional stages, but as the majority of cases relate to two or fewer children and the exceptional cases threshold has been reduced, the likelihood is that where costs are higher as a result of more children being represented the case will become an exceptional.</p>
<p>Q.8 Do you agree with revised proposals around acting for more than one parent on the same case?</p>	<p>A 25% higher fee is payable where both parents are represented by the same solicitor</p>	<p>A 25% higher fee is payable where both parents are represented by the same solicitor</p>	<p>Most of those respondents disagreeing with this proposal argued that best practice would require separate representation for each parent. Others argued that the fee should be 50% higher to reflect the approach in representing more than one child. We are maintaining our approach on the basis that joint representation of parents is appropriate in some instances. It is anticipated that where both parents are represented they would have similar issues, which is justification of a lower additional fee than that for children. If issues varied</p>

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			significantly it would represent a conflict of interest and prompt separate representation.
Q.9 Do you agree with the definition of advocacy? If not, what amendments would you suggest?	Advocacy can be claimed separately at Level 3 and is defined as all work associated with being at Court but does not include preparation for hearings	Definition of advocacy clarified, it will cover appearances as advocate before the Court, associated travel to Court, waiting time and attendance at any conferences provided by the advocate at court. Advocacy also includes attendance at the advocates meeting as set out in the Protocol. Preparation for hearings will continue to be covered by the standard fee. For the avoidance of doubt, advocacy does not include attendance at Court with Counsel or with another advocate. Only one person may claim for advocacy services at one hearing unless provided for under the Graduated Fees Order.	Clarification of definition of advocacy as a result of consultation responses that queried what would be covered, eg. attendance at advocates meeting as set out in Protocol. We have not excluded preparation for advocacy from the fee, as some responses suggested, because we need to bring the budget under more control and excluding additional work from the scheme would not achieve this. This approach is an interim measure prior to the longer term aim of a single family advocacy fee scheme covering both solicitors and barristers.
Q.10 Do you agree with the proposed approach to payment	Where there is a transfer of solicitor at Level 3, providers	Level 3 : Where there is a transfer of solicitor, if the costs	Previous proposals place too much of a financial risk on

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where a client changes solicitor?	will only be able to claim half the fee unless their portion of the case becomes exceptional	on the case up to that point are at or exceed the standard fee the full standard fee will be paid, if costs are below the standard fee half the fee will be payable	providers and would discriminate against clients transferring providers for valid reasons eg. a conflict of interest
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### Family Help - Private

Consultation question	Proposal in consultation	Approach in final scheme	Justification
Q.11 Do you agree to the approach to calculating whether a case is exceptional?	<p>No exceptional cases allowed for the divorce petitioner fee</p> <p>Exceptional cases calculated at Levels 1 and 2 combined and separately at Level 3 where a case reaches three times or over the fixed fees applicable. Uplifts do not contribute to the exceptional case calculation</p>	<p>Allow exceptional cases for divorce-petitioner fee</p> <p>Exceptional cases calculated at Levels 1 and 2 combined where a case reaches three times or over the fixed fees applicable. Level 3 will not be implemented in October.</p>	<p>If there are foreign elements involved in the divorce it is likely to be more costly – exceptional cases have been allowed in order not to discourage providers from taking on these cases</p> <p>A number of issues were raised around the calculation of exceptional cases at Level 3, with respondents arguing that uplifts and Special issue payments in the Bar’s Family Graduate Fee Scheme should contribute to the calculation. As we want to continue more detailed discussions around developing a family advocacy fee scheme with the Bar and</p>

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	<p>A higher settlement fee will be paid for cases concluding at Level 2 and finance cases settling at Level 3, this fee will form the basis of the exceptional case calculation.</p>	<p>The higher settlement fee will be paid as a bonus and excluded from the exceptional case calculation</p>	<p>solicitor Representative Bodies, we will not be implementing Level 3 in October.</p> <p>Providers should not be penalised for what is envisaged as an addition to the fixed fee in recognition of a case being settled earlier. Including settlement payments in the calculation of the exceptional fee would make it more difficult for those cases settling at this level to escape the fixed fee despite the fact that the scheme aims to encourage early settlement.</p>
<p>Q.12 Do you consider the supra regional groupings at Level 3 appropriate?</p>	<p>Different fees at Level 3 according to four supra regions and a London uplift on the South fee</p>	<p>Level 3 will not be implemented in October.</p>	<p>In light of consultation responses received on the issue of including counsel's fees in Level 3 fees and our ongoing discussions with the Bar and solicitor representative bodies, Level 3 fees will not be implemented in October. We will consult on revised proposals covering Level 3 and 4 (final hearing) later this year.</p>

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<p>Q.13 Do you consider the London uplift at Levels 2 and 3 appropriate?</p>	<p>London uplift on fees at Levels 2 and 3</p>	<p>There will be a London uplift on the Level 2</p> <p>Level 3 will not be implemented in October.</p>	<p>There were mixed views to this proposal from respondents. Whilst some agreed with the proposals, some reservations were expressed that the uplift was implied to be only temporary. Others disagreed on the basis of inconsistency with the Care Proceedings scheme and others argued that there should be a London uplift at Level 1.</p> <p>The London uplift remains at Level 2 in order to ensure sufficient provision of advice in London. We will not be implementing a London uplift for Level 1 as our starting point for all civil and family fee schemes is national fees where possible – this is also consistent with all other categories of Legal Help.</p>
<p>Q.14 Do you agree with the approach to domestic violence at Level 1?</p>	<p>Where a case involves only domestic violence issues at Level 1 there will be an exceptional case limit of three times the fee. An emergency representation application can</p>	<p>As proposed in consultation</p>	<p>The majority of respondents agreed with this proposal, there were a few calls to exclude domestic violence completely from the scheme or to lower the exceptional case</p>

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	<p>be made in the usual way</p>		<p>threshold. We are maintaining our proposal – our analysis indicates that domestic violence cases tend to be cheaper at this level as they move on to a certificate sooner and as such we view the fee as sufficient to cover this advice, where initial advice is particularly lengthy it will be covered by the exceptional case escape.</p>
<p>Q.15 Do you agree with the scope of children cases at Level 2?</p>	<p>Child abduction cases included in the scheme.</p> <p>Start of Level 3 in children cases after the conciliation appointment</p>	<p>Child abduction cases will be excluded from the fee scheme except for at Level 1 (Legal Help)</p> <p>Trigger for start of Level 3 children to be amended to the issue of proceedings.</p>	<p>Given the costs involved, all child abduction cases would be exceptional. As a result, it is logical to exclude them from the scheme.</p> <p>Responses showed that court practice differs and in some instances the first directions hearing takes place immediately after the conciliation appointment – this would not enable providers any time to apply for a certificate.</p> <p>Addresses mediation providers concerns that we were moving the requirement to consider</p>

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			<p>mediation back to later in a case</p> <p>Ensures consistency with approach in finance cases.</p>
<p>Q.16 Do you agree with the concept of a higher fee where settlement is achieved at Level 2 in children cases?</p>	<p>A higher settlement fee will be paid for cases concluding at Level 2</p>	<p>The higher settlement fee remains at Level 2. Level 3 will not be implemented in October.</p>	<p>Responses were fairly mixed, a number of respondents expressed concern that this would create a conflict of interest between solicitors and clients. We are maintaining the settlement payment in order to encourage early settlement where appropriate, which is one of the scheme's key aims. There are inherent tensions in any fee scheme between the solicitor and client, but given that solicitors are bound by professional rules and ethics we would expect them to act in the best interest of their clients in all cases.</p>
<p>Q.17 Do you agree with the scope of finance cases at Level 2?</p>	<p>Finance cases at Level 2 to include further negotiations and all work up to but not including the issue of proceedings, except where proceedings are issued for the</p>	<p>As proposed in consultation</p>	<p>Many respondents disagreed with this proposal on the basis that the fees were considered too low or that finance cases should be excluded from the fees as money could be</p>

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	<p>purpose of consent order in which case it covers completion of the work necessary to obtain the order.</p>		<p>recouped through the statutory charge.</p> <p>We are maintaining our proposal – fees have been calculated using historical case cost data and no money has been removed from 2005/06 expenditure therefore the fees should be sufficient to undertake the work at this level.</p>
<p>Q.18 Do you agree with the concept of a higher fee where settlement is achieved at Level 2 in finance cases?</p>	<p>A higher settlement fee will be paid for cases concluding at Level 2</p>	<p>The higher settlement fee remains at Level 2. Level 3 will not be implemented in October.</p>	<p>Responses were fairly mixed, a number of respondents expressed concern that this would create a conflict of interest between solicitors and clients. We are maintaining the settlement payment in order to encourage early settlement where appropriate, which is one of the scheme’s key aims. There are inherent tensions in any fee scheme between the solicitor and client, but given that solicitors are bound by professional rules and ethics we would expect them to act in the best interest of their clients in all cases.</p>

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<p>Q.19 Would there be any justification for splitting the Level 3 children fee?</p>	<p>Single stage at Level 3 for children cases</p>	<p>Level 3 will not be implemented in October.</p>	<p>In light of consultation responses received on the issue of including counsel's fees in Level 3 fees and our ongoing discussions with the Bar and solicitor representative bodies, Level 3 fees will not be implemented in October. We will consult on revised proposals covering Level 3 and 4 (final hearing) later this year.</p>
<p>Q.20 Do you agree with the proposed stages for finance cases at Level 3 and the defining line between 3a and 3b? If not, what do you suggest?</p>	<p>Level 3a fee covers all work up the Financial Dispute Resolution (FDR) hearing, 3b covers the FDR hearing itself</p>	<p>Level 3 will not be implemented in October.</p>	<p>We will consult on revised proposals covering Level 3 and 4 later this year.</p>
<p>Q.21 Do you agree with the concept of a higher fee where settlement is achieved in finance cases at Level 3?</p>	<p>A higher fee will be paid for finance cases settling at Level 3</p>	<p>Level 3 will not be implemented in October.</p>	<p>We will consult on revised proposals covering Level 3 and 4 later this year.</p>
<p>Q.22 Do you agree with the proposed approach to payment where a client changes solicitor?</p>	<p>Where there is a transfer of solicitor at Level 3, providers will only be able to claim half the fee unless their portion of the case becomes exceptional</p>	<p>Level 3 will not be implemented in October. Where a transfer of solicitor occurs at Level 1 or 2 (Controlled Work) the relevant full fee will be payable to each solicitor</p>	<p>We will consult on revised proposals covering Level 3 and 4 later this year.</p>
<p>Q.23 Do you agree with the</p>	<p>The stat charge will apply to all</p>	<p>Stat charge at Levels 1 and 2</p>	<p>Acts as a disincentive for</p>

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levels at which the statutory charge will be applicable?	cases ending at Level 2 in favour of the solicitor. The charge will be based on the standard fee, or, if it is exceptional, the hourly costs	will only apply to cases finishing at Level 2, which are exceptional. The charge will be based on costs above the exceptional case limit. It will continue to be in favour of the solicitor	cases becoming exceptional. Ensures that all clients have stat charge exemption from the standard fee at Levels 1 and 2. Encourages settlement at Level 2 within the fixed fee.
Q.24 Do you agree with the proposals for how POAs will operate?	POAs can be claimed where the fixed fee is payable at up to 75% of the fixed fee	POAs can be claimed where the fixed fee is payable at up to 75% of the fixed fee	Some respondents queried why POAs could not be claimed up to 100% of the fee as fixed fees would remove the need for bills assessment. We are maintaining the POAs at 75% of the fee in order that providers have a financial incentive to bill cases and to avoid an increase in unrecouped payments on account.

## Mediation

<b>Consultation question</b>	<b>Proposal in consultation</b>	<b>Approach in final scheme</b>	<b>Justification</b>
Q.25 Do you consider it is appropriate for the LSC to continue to pay for Willingness Tests?	The LSC will continue to pay for Willingness Test	As proposed in consultation	The majority of respondents agreed with this proposal. A few respondents argued the fee was not sufficient but given

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			it requires the service to attempt to contact the second party through letter and to make 2 attempts over the phone and can be undertaken by trained administrative staff we consider it sufficient and it remains unchanged.
Q.26 Do you consider that increasing the standard fee for assessment meetings, in order to provide a more holistic service, will assist clients in dealing with their problems and increase the number of clients who proceed to mediation? If not, say why not and what alternatives you would suggest.	Higher fees for assessment meetings to enable diagnosis and referrals to other services or organisations.	As proposed in consultation	The majority of respondents agreed with the proposal and we consider it will encourage the delivery of a more holistic service
Q.27 Do you agree with the new apportionment of mediation payments, for the different work types? If not, say why not and what alternatives you would suggest.	Different rates paid according to work types	As proposed in consultation	Many respondents agreed with the new apportionment of mediation payments and felt the changes to Agreed Proposals were appropriate. Some concerns were raised about the level of the fees in other areas but we consider them sufficient within the context of the operation of swings and roundabouts.
Q.28 Do you agree that Direct	Current multi session rates for	The fee for Child Only multi	In response to concerns that

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<p>Consultation work should be funded differently?</p>	<p>Child Only and All Issues mediation sufficient to accommodate direct consultation with children</p>	<p>session cases has been increased to reflect additional work that may be carried out in consulting directly with children.</p>	<p>the fees did not properly reflect the work involved in these instances. We have not amended the All Issues fee, as based on our data the average time reported by services on these cases is less than the standard fee and there is scope within the existing fee to undertake this work with an additional 1 hour.</p> <p>We will start to record cases that use direct consultation with children to understand the impact of the time spent on a case and whether it improves outcomes.</p>
<p>Q.29 Is the parties returning to mediation after a gap of three months the correct approach for determining the matter be treated as an entirely new application? If not, please explain why.</p>	<p>Regardless of the outcome of mediation, if parties return to mediation within 3 months then the mediator should reopen the case if it relates to the same matter.</p>	<p>As proposed in consultation.</p>	<p>The majority of respondents agreed with this proposal. It is different to the proposed time scales for family work owing to the different nature of the work.</p>

**Changes to Funding Code**

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Consultation question	Proposal in consultation	Final approach	Justification
Q.30 do you agree that General Family Help, Help with Mediation and Help at Court in family cases should be replaced by Family Help?	Family Help established as a new level of service in the Funding Code – General Family Help and Help with Mediation will be abolished and Help at Court will cease to be available in family cases	As proposed in consultation – the Ministry of Justice will proceed to draft and consult on regulations to give effect to this.	The majority of respondents agreed with the proposal.
Q.31 Is the distinction between Family Help (Lower) and (Higher) appropriate?	The scope of Family Help (Lower) in children cases will allow issue for the purpose of the client attending the first appointment for CAFCASS conciliation to take place.	The scope of Family Help (Lower) in children cases will include work up to but not including the issue of proceedings.	<p>Responses showed that court practice differs and in some instances the first directions hearing takes place immediately after the conciliation appointment – this would not enable providers any time to apply for a certificate.</p> <p>Addresses mediation providers concerns that we were moving the requirement to consider mediation back to later in a case.</p>
Q.32 Are the proposed criteria for Family Help appropriate? What other criteria could be considered?	Family Help (Lower) will only be provided where the client requires ongoing advice in relation to a substantive family dispute, the private client test should be applied and it will be refused if a client can be more appropriately assisted by another level of	The criteria remain as proposed in consultation.	Opinion was fairly evenly split – those disagreeing with the criteria tended to do so on the basis of the scope of Family Help (Lower) in children cases and that it was too late for mediation to be considered,

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	<p>service.</p> <p>Family Help (Higher) will be subject to further criteria around attempts at settlement and referral to mediation.</p>		<p>which has been amended as part of the final scheme.</p>
<p>Q.33 Do you agree with the point at which the mediation referral criteria applies under the new scheme and what changes, if any, should be made to the current exemptions from that requirement?</p>	<p>Amendments proposed to exemptions to mediation referral.</p>	<p>As proposed in consultation.</p>	<p>Again, those disagreeing did so on the basis of the scope of Family Help (Lower) in children cases and that it was too late for mediation to be considered, which has been amended as part of the final scheme.</p>