

Provider Q&A: *Legal Aid: a sustainable future*

Civil and Family Legal Aid

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These documents and the briefing events are intended to assist in clarifying our current proposals as set out in the consultation document. Your responses should be based on the full consultation document rather than this document or any other statement by LSC/DCA.

GENERAL ISSUES

1. What type of work will the schemes cover?

It is proposed that all civil controlled work, with some minor exceptions, will be covered by some form of standard or graduated fee scheme. In addition, most Family licensed work will also be covered. All fees have been presented exclusive of VAT.

2. How long will the schemes be in place?

It is intended that the schemes will remain in place until the introduction of competition on quality, volume and price as set out in the Carter Review.

3. Will the fee values remain fixed for the lifetime of the scheme and how will the impact of the schemes be assessed?

Although the intention is to create schemes that remain in place until competitive tendering we will need to monitor their operation carefully, especially during the first year. We will discuss issues arising with practitioners' representative bodies and other stakeholders through regular liaison meetings.

We will need to ensure that the fee levels are having the intended effect - delivering value for money within the budget whilst ensuring a sustainable provider base and access to quality services for clients.

4. Will the schemes affect existing work?

No – the proposed schemes will apply to legal aid cases that begin on or after their introduction (1 April 2007 in most cases).

5. How do the recommendations ensure that a high quality of legal advice can continue especially in complex cases that require multiple expenses?

The implementation of peer review as part of the Preferred Supplier scheme will provide a direct measure of quality and a means of not only sustaining standards under the new schemes but of increasing them.

Standard or graduated fees have operated successfully in other areas of legal aid (e.g. in crime). In moving to implement further standard or graduated fees we aim to strike the right balance between predictability, stability and simplicity of administration (for our providers and for us) and receiving a fair fee for the work done.

It should not be necessary or appropriate to turn away more difficult cases as standard fee levels are based on average case costs that include a range of complexity. Therefore some cases will take longer and be more complex, and some will take less time and be easier to resolve. However overall the work done will balance out so that the standard fee payments represent a fair level of remuneration. We will monitor case mix and outcomes to ensure that suppliers continue to provide an appropriate service.

An exceptional case mechanism has also been built into the schemes to ensure that truly exceptional cases continue to be undertaken. Disbursements are also excluded from the standard fee to help ensure that practitioners continue to take on those cases or clients with particularly complex needs.

6. How can you be sure that the schemes won't have a detrimental impact on BME providers and clients?

We are carefully evaluating any impact as part of the consultation process. A draft regulatory impact assessment for the proposals is available on DCA's website at www.dca.gov.uk

7. How have you set the exceptional case thresholds?

We are consulting on an exceptional case threshold of four times the fee for all the schemes. This means that any case (or sometimes stage of case) where the cost on hourly rates would exceed four times the standard fee will be paid at the hourly rates, subject to assessment. Since these cases will be paid for in full outside of the standard fee scheme they have been excluded from the data used to calculate the standard fees (if we did not do this we would be paying for the cases twice).

We are interested to receive feedback from providers on whether we have set the correct threshold for exceptional cases. The threshold must not be set so high that it will not meet the objective of allowing genuinely exceptional cases to be taken on. However, neither can it be set at a level that would allow a significant proportion of cases to escape the standard – which would destroy the swings and roundabouts principle of standard fees and undermine the benefits of the schemes.

It should be borne in mind that, because of the exclusion of exceptional cases from the standard fee calculations – increasing the proportion of exceptional cases (by reducing the multiplier) would have the effect of lowering the standard fees.

8. Is the current policy on matter starts going to continue?

In accordance with the DCA's public service agreement targets, one of the LSC's corporate targets for 2006/07 is to increase the number of acts of assistance (civil legal aid) to our clients to 750,000 by 31 March 2007.

9. Are there plans to fix average case levels for Welfare Benefits and Debt and what criteria will be used to determine this?

Proposals for fixed fees for the categories of welfare benefits and debt are included in the TFF Replacement scheme, which is detailed on p.27 of the consultation paper.

10. Is it proposed to impose fixed fees on judicial review cases and especially those already subject to the high costs case/special cases unit regime?

At present it is proposed that only care proceedings cases and a proportion of private law family cases (with a view to implementing fixed fees for final hearings from October 2007) are covered by a fixed fee at full representation. Judicial review cases will not be covered by a fixed fee. High cost and special cases are likely to be exceptional under both schemes and therefore paid at hourly rates subject to assessment.

11. Do the proposed standard fees include or exclude counsels' fees?

Counsel fees are included in:

- TFF replacement fees
- Mental Health fees
- Private Law Family fees
- Public Law Children fees, levels 1 and 2
- Immigration fees.

Where counsel's fees are included – this means that the amount claimed for counsel in the period used to calculate the fees has been added into the calculation of the standard fee. There will therefore be no additional payments for use of counsel.

Counsel fees currently represent a very small percentage of expenditure in both TFF and mental health cases. There is a greater use of counsel in private law family, but this is mostly at the final hearing/preparation stage. This last stage is not included in the proposals for April 07 but will be the subject of a further consultation early next year.

In public law children cases, again there is very little use of counsel at initial advice stage (Level 1) - although we have included any fees in the data used to calculate the standard fee for that level. The Level 2 stage is a new one to reflect the expected changes to the childcare protocol and we would not expect counsel to be used at that stage.

In immigration counsel's fees are included (along with travel and waiting) and suppliers will be able to make an informed decision about when it is most appropriate/cost effective for them to use counsel –depending for example on their distance from the hearing centre.

Counsel's fees are excluded from:

- Level 3 - Public law children fees – full representation

Here, it is proposed that counsel's fees will be paid in addition to the proposed standard fees.

12. What level of reporting will be required for cases under fixed fee costs? Will the LSC still require a detailed breakdown of time spent?

For the short-medium term, the LSC will continue to ask for a breakdown of the time spent on cases to enable us to monitor the impact of the schemes and remunerate exceptional cases.

In the medium-long term, we would hope that this data would be available from firms' own case management systems.

13. I understand Counsel fees increased by 38% last year. Why therefore, is the thrust of the proposals to reduce fees for accredited solicitors?

The Carter Review focuses on the biggest area of legal aid spend (solicitor profit costs) and the consultation paper *Legal Aid: a sustainable future* reflects this approach. However, it is understood that there is a need to look at all areas of legal aid expenditure in the future.

14. Please outline the transitional arrangements for NfPs including computer software. Our software company will not be able to adapt our systems in time for the changes.

Transitional arrangements are currently being developed for NfPs in liaison with ASA. We are aware that there is potentially an issue around the time software suppliers have to adapt the systems and we are in discussions with software suppliers to determine whether these can be resolved.

TAILORED FIXED FEE REPLACEMENT

1. Why are you proposing to change the existing TFF scheme?

It has always been made clear that the TFF scheme was intended only as a transitional arrangement pending the introduction of standard fees that level the playing field and pay the same fees for the same type of case.

2. What are the main differences between the existing TFF scheme and the new proposals?

The main differences are:

- Instead of paying a tailored fixed fee based on a provider's individual average case costs, we will be paying a standard fee to all providers (including both NfP agencies and solicitors) based on average fees across solicitor contracts. We are consulting on both national and regional fees.
- The proposal is that standard fees will apply to the NfP sector as well. However we will be developing transitional arrangements from April 2007 to assist NfPs in moving to a new payment regime. These will be developed in discussions with representative bodies during the consultation period. We are also proposing that Level 1 work will be removed.
- The fee covers profit costs and counsel's fees. Disbursements are not included in the standard fee and will be paid separately.
- Exceptional cases are paid at 4 times the standard fee instead of 3 times in the existing scheme.
- These proposals do not apply to any Mental Health work. Immigration & Asylum and Family work are also excluded. We are consulting on separate schemes for these categories.

Tolerance cases will be paid at 15% less than the normal standard fee. This is to reflect the fact that a case conducted under tolerance is not subject to the same level of quality assurance as contracted categories. We also want to encourage moves towards category specific contracts where suppliers carry out large amounts of tolerance work.

3. Why are you consulting on 2 options – national or regional fees?

We decided to open the discussion to all providers because both options have potential benefits. A national fee scheme will be simpler to manage and promote consistency, as well as ironing out distortions to the average caused by individual providers in a particular area. It would also meet policy objectives of increasing funding to some of the less accessible areas of England and Wales. However, we have consulted on regional standard fees (at least as a transitional measure) so that providers can consider the different impacts of the two options. For example regional fees would reduce the impact on London providers of a fixed fee scheme. In either option however, there will still be providers that increase their fees under the new scheme, and those whose fees per case decrease.

4. How were the proposed fees calculated?

The standard fees were calculated using average Tailored Fixed Fees.

The fees are cost neutral overall, and no money has been removed from the scheme. The 2.5% payment increase in 2004/05 has been protected.

5. Why are the proposed fees lower than the TFF's for my firm?

This may be because the TFF's for your firm are higher than average. However, the proposed fees also appear lower than TFF rates because:

TFF rates include VAT – whereas VAT will be paid in addition to the new standard fees.

TFF rates include disbursements – whereas disbursements will be paid on top of the new fees.

TFF Rates include 'exceptional cases' – but these have been excluded from the calculation of the new fees and will now be paid for separately.

6. Why are you proposing to increase the exceptional cases threshold from 3 times to 4 times the standard fee?

Standard fees were calculated using the latest figures and have taken into account some of the exceptional factors/costs. In the new proposals, disbursements do not form part of the standard fee and are paid separately.

The standard fee is therefore lower than if disbursements had been included, as they are in the current TFF scheme. This means that the exceptional case limit is now lower for providers in the majority of cases. The 4 times figure is therefore considered more representative of what an exceptional case will look like. It is estimated that just under 2% of cases will be considered exceptional under the new scheme.

In addition, the 4 times figure is consistent across the other civil remuneration proposals in the consultation paper.

7. In the NfP changes, will there be provision for special/complex cases in the proposed fixed fee per case method of remuneration?

In the consultation paper (p.31) we set out that exceptional cases (complex cases that cost at least four times the average) would be a factor that we take into account when reviewing agencies' performance against agreed case numbers.

CARE PROCEEDINGS GRADUATED FEE SCHEME

1. These cases can be very complex and vary considerably. How can a standard fee scheme work?

We have taken this complexity into account in the design of the scheme, with different fees for work conducted for different clients – children, parents, and joined parties. We have also designed a scheme with enough flexibility to reflect the fact that some of these cases vary considerably. There are three main fee stages based on the process of a case, and these will build into a graduated fee for each client.

Additionally we have developed an exceptional case limit to protect both the providers and the client in cases that are truly exceptional. In these circumstances providers will be remunerated on hourly rates, subject to assessment.

2. What work will Level 2 cover?

This level will cover advanced advice and support in care and supervision proceedings (s31 Children Act) to reflect the Child Care Proceedings Review recommendation that more could be done to ensure that s31 applications are made to court only after safe and appropriate alternatives to court proceedings have been explored. This level of service will be available to parents and those with parental responsibility for the subject child or children.

3. Why are you proposing to not have a representation for children by a guardian or solicitor at level 2?

The proposed level reflects the recommendations of the Child Care Proceedings Review. The welfare and interests of the child are at this stage protected by the social worker and the pre-proceedings process. Additionally, CAFCASS has no statutory functions around pre-proceedings and could not therefore allocate guardians at this stage.

4. What work will Level 3c cover?

It will cover all work arising out of or following the Pre-Hearing Review and all preparation for and representation at the Final Hearing. Contested interim care hearings will be covered under Level 3.

5. Providers don't have any control over the proceedings and Local Authorities often prolong things. This impacts on costs.

In some cases the delivery of the case will cost more than the fee, and sometimes it will cost less, but overall the differences will balance out. This means that, over the whole contract, providers will receive fair remuneration for the work they undertake. We have also introduced a specific fee for negotiations between parents and Local Authorities, in line with the Child Care Proceedings Review recommendations.

6. Why aren't solicitors paid the same as barristers for advocacy? Why isn't there a fee for each hearing?

The fees have been set to reflect that fact that a solicitor advocate will be familiar with the case, having worked on the case from the outset, whilst a barrister will need additional preparation time so as to familiarise themselves with the details of the case at hand.

A fee has not been given for each hearing as we expect the payments to balance out over a number of cases in line with the general principle of standard fees.

7. Will the graduated fee be payable per case or per certificate?

The fees are calculated using historical cost data, and reflect the current practice that each client in a case will be given an individual certificate. Therefore in the proposed graduated fee scheme, for each client who would have received a certificate, a fee is payable. In the case of a solicitor acting for both parents this would mean that two fees are payable. Similarly, where a solicitor is acting for two children as separate parties who are the subject of proceedings, two child rates will apply. This is part of the operation of swings and roundabouts in a standard fee scheme.

8. How was the exceptional case limit calculated and what hourly rates will apply to exceptional cases?

Exceptional cases will be remunerated through hourly rates, as currently detailed in Section 1-E in Volume 1 of the LSC Manual. The exceptional limit will be determined as a multiplier of the cumulative fees payable in a particular case. For example, under a national fee, a case where the client is a parent that ends following Level 2 Negotiation, the case will only be exceptional if recorded profit costs exceed £1,224 (4x £306). However, if the case progresses to Level 3, going to the High Court and ends at Level 3b - Preparation for the Pre-Hearing Review, the case would only be exceptional if recorded profit costs exceeded £12,228 (4x(£306+£1,146 + £1,605)).

In line with our proposals to not include separate uplift payments for Panel membership (see Para 7.19 of the consultation paper), exceptional cases will not be remunerated with additional uplifts. The historical data includes the Panel uplift payments, and the fees have been calculated to be cost neutral.

9. What is the basis on which it is proposed that there is a lower fixed fee for representation of parents and other family members than children in public law proceedings?

The fees are based on historical costs for those parties. At some stages of the case (eg. 3c) the fixed fee for representing parents and joined parties is higher than that for children.

10. Regarding those cases that will still be paid on an hourly basis, what rates are proposed? Who will assess claims for payment in those cases? Will the court still have a role in terms of undertaking detailed assessments of costs?

Those cases outside the graduated fee scheme will continue to be remunerated as at present, rates are detailed in section 1-E volume 1 of the Manual. The assessment process will remain unchanged for these cases.

FAMILY HELP – PRIVATE

1. What does the proposed scheme cover?

The scheme combines Legal Help, Help with Mediation, and General Family Help under a single level of service. It covers all work (including proceedings) in private law family cases except for preparation for and representation at a final contested hearing. This new level of service will be funded as Controlled Work and will apply to all providers practising private law family under a family contract from April 2007.

A year-long pilot exercise, designed to inform the development of the final scheme, began in October 2005 with 22 providers. In addition to the wider objectives of introducing standard fee schemes for the majority of civil work, the scheme intends to address the perverse incentives in the current system to proceed to Legal Representation.

We will consult in the early part of next year on extending the fee scheme to include the final hearing.

2. How were the fees calculated?

The fees are based on average costs for Legal Help and General Family Help.

The fees are not cumulative; rather providers would receive the fee for the level the case finishes at. Fees include counsel's fees but exclude disbursements and allowable disbursements will be paid separately. Exceptional cases are also excluded from the fee and the exceptional case limit is four times the appropriate standard fee.

3. Why are you planning a national rollout so soon after the Family Help pilot started?

Given the small sample number involved in the pilot, the focus of the exercise was on data collection and receiving feedback from participating providers. The payment structure used in this exercise was never intended to be rolled-out nationally in its current form, as key issues such as the statutory charge and contributions were not fully taken into account.

Feedback and information collected from the pilot has helped to inform the scheme we are consulting on. For example, the scheme has been expanded to three payment levels rather than two to try to better take into account the range of work undertaken.

4. Why are you proposing one fee to cover all work rather than a separate fee for children and finance cases as in the pilot?

We are consulting on whether it is appropriate to have separate fees for children and finance cases or a combined fee.

The rationale behind including only one set of fees in the consultation paper was that following Funding Code reforms, setting out that General Family Help should be used for children cases, and the implementation of the President's Private Law Framework with access to in-court conciliation/dispute resolution, it is likely that there will be a far more defined process for children cases, as there is currently for finance cases.

However, we welcome comments on this from providers, and suggestions on how the fees might better reflect the work, in response to the consultation.

5. Please clarify whether a Private Law Family Case (Level 3) fee includes or excludes disbursements and Counsel's fees.

The Level 3 Family Help – Private fee includes counsel fees but excludes disbursements. Disbursements will be reported as a separate item on the CMRF and credited to providers' accounts in the normal way. The approach to disbursements is set out at p.74 of the

consultation - we will continue to monitor the average cost and use of disbursements and where a provider moves out of profile we are likely to audit.

6. Why are you consulting on national and regional fees?

We decided to open the discussion to all providers because both options have benefits. A national fee scheme will be simpler to manage and promote consistency as well as providing a broader pool from which to calculate a truly representative average.

It would also meet policy objectives of increasing funding to some of the harder to reach areas of England and Wales. However, we have consulted on regional standard fees (at least as a transitional measure) so that providers can consider the different impacts of the two options (for example, regional fees would reduce the impact on London suppliers).

7. Why have you changed the approach to that in the pilot and removed the settlement bonus?

The settlement bonus has been removed in order to incorporate as much as possible into the standard fee. Through removing the settlement bonus we have been able to increase the fee for all providers and avoid any potential discrepancies in defining a settled case. In addition, an appropriate incentive to settle at Family Help – Private remains in the need to apply for a certificate at the final hearing stage and the strict means and merits tests associated with this.

8. Following the changes in July 2005 much more work is done under General Family Help, has this been reflected in the fees?

Yes. We have attempted to reflect the New Focus Reforms in the proposed fee structure. We have monitored variances in the distribution of cases on a monthly basis following the Funding Code changes, in order that the assumptions we have had to make prior to the changes bedding down are as accurate as possible.

9. If we go onto hourly rates (after the standard fee) in private law family, will the 15% Panel uplift apply thereafter?

The 15% uplift for Panel members will continue to apply to those private law family cases going on to a final hearing, which will be covered by a Full Representation certificate and paid by hourly rates until October 2007. Whether this position will continue after October 2007 will be dependent on the final proposals for Family Help and the outcome of a proposed consultation in January 2007 on fees covering the rest of private law family work.

10. How does Carter impact family mediation? Are you proposing any changes there?

As stated on p.32 of the consultation paper, from April 2007 all family mediation work will be conducted under the Unified Contract, with a category specific specification for family mediation. We intend to consult in January 2007 on revised remuneration rates for mediation.

11. What will be the impact of standard fees in family work on the Statutory Charge?

It is proposed in the consultation paper (p.75) that the charge is based on the appropriate fixed fee, or exceptional claim payment and that it is in favour of the LSC.

TEMPORARY HARMONISATION OF LEGAL AID RATES IN PRIVATE LAW FAMILY

1. Why are you proposing to introduce temporary measures to harmonise fees for six months when the plan is to fix fees for all private law family from October 2007?

An internal review undertaken by the DCA on the use of judicial resources recommended harmonisation of the legal aid rates across the Family Proceedings Courts and the County Court. Ensuring the appropriate use of judicial resources and moving cases through the court system is one of the Department's priority areas of work. Different rates for different tiers of court is one of a number of reasons why proceedings are issued in the county court, when they could be issued in the Family Proceedings Courts - the DCA is keen to address this now.

The LSC anticipates consulting in the early part of 2007 on the introduction from October 2007 of a graduated fee scheme for representation in all private law family cases, which will include the final contested hearing. This would remove any rates disparity between the Family Proceedings Courts and the county court.

The proposed new intermediate rates for solicitors in private law family cases would be introduced in April 2007 to remove any disparity between levels of rates in the interim.

2. How will this affect the scope of the work that the Family Proceedings Courts will do?

It is not intended that the cases issued in the Family Proceedings Courts will be more complex, but that cases that are currently issued unnecessarily in the county court will be encouraged to be issued in the tier of court that fits the case.

3. If the scope of the work issued in the Family Proceedings Courts is going to change, will we be able to instruct counsel and, if so, will the Maximum Fee Principle still apply?

The Community Legal Service (Funding) (Counsel in Family Proceedings) Order was revised in 2005 and included changes in the application of the Maximum Fee Principle for the use of counsel in the Family Proceedings Courts. Since these revisions were made the application of the Maximum Fee Principle is of much less significance. We do not propose to make any further changes to the application of the Maximum Fee Principle.

IMMIGRATION

1. What is being proposed for Immigration?

A graduated fee scheme for all immigration and the majority of asylum cases with standard fees for different stages of work that is currently Controlled Work from 1 April 2007. A payment has been built-in for early positive results for the client in asylum cases.

Representation at the Home Office interview, where the client is eligible, or at the AIT will be funded by way of additional payments of fixed values in order to provide greater flexibility.

The fees incorporate an allowance for interpreter and translation costs in asylum cases *only* and no additional payments will be made for these services. Separate payments will be made for experts' reports when required in all cases, as well as interpreter and translation costs in immigration cases.

There will be no separate payment for travel and waiting time as this has been incorporated within the fees.

2. Will the scheme cover all Controlled Work in the Immigration Category?

The new remuneration arrangements will apply to all immigration cases started after 1 April 2007 and all the asylum cases included within the scheme started after 1 April 2007.

The scheme will focus on the provision of advice and assistance in connection with an initial application and advice and representation at the first appeal. At this stage it is too early to evaluate the impact of the legal aid changes for onward appeals introduced in April 2005 so the assumption is that those arrangements will stay in place until at least April 2008. Onward appeals will continue to be paid under the existing arrangements. NfPs will be able to claim solicitor payment rates for any work carried out on or after 1 April 2007 under the provisions of the proposed unified contract.

For asylum cases the graduated fee scheme will focus on the remuneration for the majority of clients processed through most segments of NAM, or in other words "mainstream" cases. It is thought that this will equate to approximately 75% of asylum applications.

3. How does the LSC propose to pay for the services for asylum applicants not included within the scheme?

The consultation sets out the remuneration strategy for services that will be specifically excluded from the graduated fee scheme. These services are:

- Information and advice for clients at the Asylum Screening Unit
- Advice and representation for those held in detention.
- Advice and representation for Unaccompanied Asylum Seeking Children.

4. What about NfP providers?

The proposals for a unified contract will see NfPs subject to the same remuneration arrangements as solicitor organisations.

However, subject to contract performance in 2006/07 and subject to any other criteria for the award of contracts in 2007/08, as a starting point not for profit providers can expect the same level of non-disbursement related income in 2007/08 and we will develop transitional arrangements in order to agree the reconciliation process for cases started under both the old and new schemes. As with other categories of law, there will be no provision for existing Level One work under the new arrangements.

5. Will the fee values remain fixed for the lifetime of the scheme?

In immigration, the fees have been calculated on the basis that the measures we are suggesting to reduce duplication are implemented in full and that therefore in the majority of cases only one provider will deal with one case or stage of a case. If we are unable to more closely align the number of asylum applications to the number of new matter starts, we will need to revise the value of the proposed fees to reflect that on average less work will be carried out per new matter start.

6. Why aren't the fees based on historical average case costs as with the schemes for other categories of civil law?

Significant changes to immigration and asylum legal aid in 2004 and 2005 means that we have little in the way of complete and reliable historical data on average case costs on which we can base fees. Furthermore, changes in asylum processing and time delays in providers claiming mean that historical data is largely irrelevant.

The fees have been calculated by mapping the processes that an immigration or asylum application would routinely follow and the corresponding services that we would expect to be provided in relation to those applications.

A comprehensive map of how the proposed fees were reached has been provided to Representative Bodies on request.

7. Will the fees equate to less than the equivalent that some providers currently receive?

The fees have been calculated by mapping the processes that an immigration or asylum application would routinely follow and the corresponding services that we would expect to be provided in relation to those applications.

Values have been set for those services that we consider to be both fair to providers and represent good value for the Commission and taxpayers, based on currently hourly rates

The fees are based on an average and there will be some cases where the costs as calculated on an hourly basis will be more than the standard fee and other cases where they will be less but overall they should balance out.

However, an escape mechanism for cases where the costs are significantly higher than the value of the graduated fees has been included and a majority of disbursements will sit outside of the scheme and will be paid on a case-by-case basis. These measures are designed to remove any inherent disincentive for providers to take on particularly complex cases or cases that are likely to incur high disbursement costs.

We are also proposing that all non-mainstream cases are excluded from the graduated fee scheme and will be subject to separate payment arrangements and different contract schedules.

8. Why are you proposing to pay a national fee and not London/Non-London or regional fees?

London is an area where we currently have oversupply, whereas in several regions we are less confident about capacity and any further reduction in supply could have serious impact on access for clients. Therefore, we wish to redistribute the cost of providing a London weighting across all regions.

Travelling time is incorporated within the additional payments of the graduated fee scheme. The locations of Home Office interview sites and of hearing centres are such that the cost of travel for providers outside of London will often be higher than in London.

We propose to include the cost of interpreter and translation costs within the standard fees in asylum cases. We believe that the market rates for interpreters are often higher outside of London, so again not having an uplift helps to balance the discrepancy.

MENTAL HEALTH

1. What is being proposed for Mental Health?

A graduated fee scheme for Mental Health cases with standard fees for different stages of work that is currently Controlled Work from 1 April 2007.

The payable fee will be one of a series of *graduated fees* which will be determined by the combination of levels of work that have been undertaken –

- Advice
- Negotiation & Preparation
- Representation before the Mental Health Review Tribunal (MHRT).

Disbursements will be paid separately and there will be no separate payment for travel and waiting time.

2. Why have a graduated fee scheme rather than a single fixed fee per case?

In fact, there is effectively a single standard for the Legal Help element of a mental health case. However, because the majority of work in this area of law is carried out on behalf of detained patients and in relation to Mental Health Review Tribunal Hearings, work relating to legal proceedings (Controlled Legal Representation) is also included within the scheme. We have therefore decided to consult on developing two additional and separate stages: one for work relating to negotiation & preparation prior to a tribunal hearing, and one for representation at the hearing itself.

3. Will the scheme cover all Controlled Work in the Mental Health Category?

Yes – all cases beginning on or after 1 April 2007. We are suggesting that forensic cases should be included in the scheme but are consulting on several possible options.

4. Will the scheme be compulsory for all suppliers?

Yes. If the scheme is implemented following consultation, it will be mandatory for all providers holding a contract in mental health from 1 April 2007.

5. What about Not for Profit suppliers?

Currently under 1% of Mental Health providers are NfPs and we have identified the need to develop transitional arrangements for them in the consultation paper. We are keen to receive responses on this issue and will be working closely with NfP representatives during the consultation period to develop transitional arrangements.

Once the consultation has closed we will carefully consider all the responses and publish our final proposals for transition.

6. How have the fees been calculated?

The fees have been calculated by looking at the costs of recent mental health cases, i.e. those claimed for during 2005/06, and by mapping the pathways of these cases into the three stages of the new schemes. We have based the new fees on average case costs for each stage, with some adjustments to ensure cost neutrality (simply using average reported costs would not be cost neutral since cases paid under TFF were not paid the same as the reported costs of the case). The scheme is intended to be cost neutral, so that the overall cost of cases remains the same.

7. How has the exceptional case threshold been set?

Consistent with the fee schemes proposed for other areas of law we are proposing a 4 x exception threshold. In the mental health graduated fee scheme for a case to be exceptional the total costs of the entire case (based on hourly rates) must be greater than four times the total of the set fees applicable for each of the Levels of work undertaken.

8. Why are you proposing one set of national fees and not regional fees?

The experience of clients through the care pathway and the Tribunal process varies for reasons other than simply where they are based (particularly since individual clients often move to a different location) and the historical data on which the proposed fees have been set reflect this. In addition, it is common for providers to act for clients outside of their region – which means that basing fees on the location of the supplier would not be appropriate. We therefore do not propose to pay differently for work carried out by firms in different parts of England and Wales, for example in London. If we were to pay firms based in London more than those elsewhere, we would need to reduce the overall fees proposed in the consultation paper.

UNIFIED CONTRACT

1. Why is the Commission proposing to have a single Unified Contract in place of several current contracts?

Our General Civil Contracts and Mediation contracts will end on 31 March 2007 and require replacement in order for the important services we fund to continue at that time. We are taking the opportunity presented by replacement of the current contracts to make improvements to simplify the contract documentation and provide a better focus for our future relationship with legal services providers. The Unified Contract will provide a platform for the significant changes resulting from the legal aid reform process and our introduction of Preferred Supplier status in the coming years. The Unified Contract will give the Commission greater flexibility to adapt the contracting system to the needs of the reform process.

2. What are the benefits of the new contract?

The Commission currently purchases legal services through a number of different contracts. We intend to reduce the administrative burdens (on providers and the Commission itself) and complexity of the present arrangements by introducing a simpler and more flexible contract. The Unified Contract will focus on provider organisations, rather than office locations. The Unified Contract clarifies the type of service the Commission wants to buy to meet the need for legal services, rather than the nature of the provider, will determine the work specification, volume and prices. The contract documentation will be simplified (with a single set of standard terms) and updated, taking account of lessons learned during the period since the introduction of the contracting system. This simplification will benefit users of the contract at provider organisations and the Commission. The contract will include provisions to allow the LSC to specify technical aspects of provider case management systems, and assumes that electronic communication with providers will become the normal method for exchanging information.

3. Why is it proposed to introduce minimum contract (case start) volumes and to end 'licence only' contracts?

It is intended to support a shift towards the early resolution of legal problems and the avoidance of litigation, with the LSC commissioning specified work to be done rather than

operating a facilitative contract where providers can choose whether to provide early advice or deliver against our targets for acts of assistance.

Those suppliers with a 'licence only' contract will be offered a controlled work contract in addition. This will be sent out automatically as part of the schedule renewal. 'Licence only' contract holders will only be able to continue publicly funded work if they sign the controlled work contract.

4. How many firms will not be offered contracts, if the proposed minimum contract value criteria are applied?

The precise number of firms that are likely to be excluded will depend on the basis used and the calculation period, for which options are given in the consultation. The value criteria will be based on all payments, for all categories of work, for the whole firm / organisation.

5. How will black/ minority ethnic firms and clients be affected?

An initial analysis of the impact on BME owned or managed organisations, based on a sample of providers, is available at www.dca.gov.uk with the consultation paper. Providers will be required to deliver appropriate services to BME clients and communities, and the Carter Review proposes that support will be provided to assist smaller organisations to make a transition to the new contracting arrangements.

6. How will you deal with any problems this will cause to clients in areas which lose supply?

We will continue to develop Community Legal Service Direct services and to make suitable arrangements for outreach provision so there will be no reduction in accessibility for clients. We also expect that many providers will welcome the opportunity to expand to take on extra work. As part of the consultation, the Commission will carefully consider any views about how access to good quality services can be maintained.

7. How do the changes in the contract fit with the Carter Review?

The Unified Contract provides the flexibility the Commission will need as the programme for delivery of a scheme based on competitive bidding evolves. The Unified Contract will remain in force for a period of at least three years, unless superseded by the introduction of competition on quality, capacity and price.

8. How does this tie in with the CLS strategy and preferred supplier?

The contract will contain a provision to limit the ability of providers to work in specified geographical areas or to conduct work in certain categories following a successful competitively tendered bidding process for a CLAC/CLAN. Similarly, if CLAC/ CLAN tendering has already take place, the issue of new contracts in the relevant area may be restricted. The Unified Contract will contain a number of specific provisions, for example for 'open book' accounting, peer review scores (a score of 2 'Competence Plus' by April 2009 is proposed), publication of contract status, and self- monitoring that directly support the implementation of Preferred Supplier.

9. The overview of the Unified Contract is short on the detail of the contract changes; when will the detail be available?

We expect to produce draft contract documents during September – allowing a further 6 weeks for consultation on the detail with key stakeholders, as usual. However, in the draft

overview, we cover the major issues expected to impact on the relationship between the LSC and providers: there will also be numerous detailed legal and structural changes, which will improve the usability and presentation of contract documentation.

10. Why is it necessary for the contract to include a provision to restrict or to terminate the contract on three months' notice?

The Commission believes this is necessary in order to provide sufficient flexibility to allow the progressive introduction of new arrangements based on local bid processes as recommended in the Carter Review. These are likely to proceed on a phased basis in different parts of the country. A similar provision, which requires a prior direction by the Lord Chancellor and specifies six months notice, exists under the current contract. Once "steady state" has been achieved, these provisions will be reconsidered.

11. The draft overview refers to transitional arrangements to assist NfP organisations to move from the current funding formula to the same payment terms as solicitors. When will the detail of transitional arrangements be available?

An important principle of the Unified Contract is that we will commission work from different providers according to a single fee structure. We recognise that the changes proposed may have significant effects on some NfP providers, and that individual agencies may need time to adapt to new systems of working and changes to the basis of funding. The detail and duration of transitional arrangements has not been decided: the consultation paper describes a possible basis for transition but we intend to work on the design of appropriate models during the consultation period, taking account of the views of NfP providers and representative bodies.

12. What is the bid/ allocation process for 2007?

There will be no general bid round for 2007 contracts. Providers who meet the contract criteria will be offered a Unified Contract (unless a bid or tender process has already taken place to establish a CLAC/CLAN). The contract will retain provisions for the operation of local bid rounds, where these are required to ensure adequate supply of legal services to meet need in an area.

13. How has the LSC Unified Contract Fee structure regime for not-for-profit contractors incorporated the Third Sector Full Cost Recovery commitment made by HM Treasury on behalf of all government departments?

Full cost recovery would continue to be achieved, as the profits received from the work would cover the full cost of a case. If NfPs match the efficiency of our best private and NfP providers they should make a surplus equivalent to a firms' profits and should be able to use that surplus to support wider advice work, campaigning, policy work or lobbying.

14. How will you ensure we are all at Peer Review 1 or 2 by the time of the unified contract when you are only just starting to Peer Review?

As set out on p.83 of the consultation, the Unified Contract will require firms wanting to become Preferred Suppliers to achieve a peer review rating of 2 or above by April 2009 rather than by April 2007.