

DRAFT AMENDMENTS TO FUNDING CODE PROCEDURES FOR OCTOBER 2006

This note explains the proposed amendments to the Funding Code set out in the attached draft for consultation. The amendments are being made for a variety of reasons. Note that the amendments to Part B of the Procedures also have an impact on parts of the General Civil Contract Specification. The consequential amendments to the contract are attached separately.

Funding Review Committee Reform

The consultation paper “Reform of the LSC’s applications and appeals procedures” proposes that the existing Funding Review Committee structure be replaced by Independent Funding Adjudicators. Subject to consultation the Code Procedures have been amended to give effect to the reforms proposed in that paper. The most important amendments are those which deal with the jurisdiction and procedures before the Adjudicator – see Rules C59 to 65 of the Procedures.

Decisions in Multi Party Actions

The jurisdiction of the Multi Party Actions Committee has been widened through amendments to Rule C23 and Section 1 of Part D. The Committee can carry out all the functions of an Adjudicator in relation to all MPA work, not just that covered by an MPA contract. The MPA Committee will continue to function as a Committee.

Regional Directors

At present all decisions under the Funding Code are the responsibility of the Regional Director for the region in which the application is considered. Recently however the role of the Regional Director has changed very significantly to concentrate on local contracting arrangements to meet identified need in each region. Responsibility for funding decisions is being transferred to a new Director of Business Delivery and the Director of the Special Cases Unit rather than the existing Regional Directors. Currently Funding Code decisions are taken by staff within regional offices working to the new Director although decisions are still notionally made on behalf of the Regional Directors. The draft Code amendments replace the concept of Regional Directors with one or more Directors appointed to make decisions under the Code.

Framework for Controlled Work

The current definition of Controlled Work refers to the Commission’s General and Civil Contract and CLS Direct. However Controlled Work continues to be delivered in a variety of ways, including the housing duty solicitor scheme and a financial inclusion project. A more flexible definition of Controlled Work has been produced to reflect these changes so that Controlled Work covers all

work within the Controlled Work budget regardless of the precise contractual arrangements under which it is carried out.

We have also expanded the definition of Controlled Work to include Legal Representation provided through Community Legal Advice Centres and Networks within the scope of Controlled Legal Representation. Since the pilot block contracts for such services will include an element of what is currently funded as Licensed Work it is appropriate to remove these cases from the usual procedures for Certificated Work.

Procedures for Controlled Work – Part B

Part B of the Funding Code Procedures sets out the Procedures for Controlled Work. There is inevitably overlap between the Code Procedures and the terms of contracts under which services are delivered. However, not all matters can be left simply to contract because Section 8(5) of the Access to Justice Act 1999 requires the Funding Code to set out procedures for the making of decisions under the Code. When the Code was first established in April 2000 all the provisions of Part B of the Procedures were also included within the General Civil Contract. Over time this overlap of provision has become more and more complex with the increasing number of contracts and reforms.

We have therefore decided to review the contents of Part B of the Procedures and to greatly simplify and shorten Part B. The aim is for Part B to include only matters which in light of Section 8(5) of the Act need to be set out in the Code. Part B is therefore being re-written to cover only the issues which directly concern the rights of the client, such as the procedure for applying and the obligation to give the client reasons for refusal and rights of review of funding decisions.

Those parts of the Procedures which refer to clients residing in England and Wales have been widened to refer to clients residing anywhere in the European Union. This is to ensure compliance with the European Legal Aid Directive which requires equal treatment for clients across the Union.

Exceptional Funding – preparation costs

A small change has been inserted to give the Commission the power when considering an exceptional funding application, also to consider work which is ancillary to that application. This may be useful when considering exceptionally complex exceptional funding cases such as for example the New Cross fire inquest. Previously exceptional funding could only cover excluded services e.g. advocacy at an inquest leaving any application for Legal Help to be for any preparatory work to be administered separately as Controlled Work. The change will allow the Commission if appropriate to deal with any application for Legal Help for substantial preparation costs as part of the same process as considering the funding for advocacy.

Refusal on grounds of CFA availability and alternatives to litigation

We have made some small changes to the rules in C19 as to the giving of information to clients whose applications are refused on the grounds of CFA availability or alternatives to litigation. We can now rely on CLS Direct to provide information to the clients about suppliers in the locality and CLS information leaflets. Because information about alternatives to litigation will be specific to the individual case we have amended the rule to make it clear that the solicitor should provide the client with tailored information on what alternatives are available where applications are refused on this ground.