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Reference: 000000/TFF
Contract Number: **00/000000/0**

October 2004

Dear

Re: Tailored Fixed Fees Scheme for Civil (Non-Immigration) Work

Thank you for applying to join the voluntary TFF scheme. I am pleased to confirm that your firm has been accepted. If we have not already sent it to you, please find enclosed a copy of the signed agreement form for your records.

The response to the voluntary scheme has been encouraging, with latest figures showing just under 2000 firms nationally signed up, representing 64% of our spend on civil non-immigration Controlled Work, excluding mental health. The region with the greatest spend on mental health (London) also has the highest sign up rate for mental health spend (63%).

This level of take up allows us to plan expenditure for the current year with greater confidence. The regional office is currently reviewing new matter start allocations and will increase these where possible to meet priority needs. Please contact your account manager if you wish to increase your new matter start allocation.

The scheme heralds a new approach to managing contracts, with the cessation of costs compliance audits for work within the scheme in the majority of instances. This will enable us to focus our audit resources on work done outside the scheme.

The voluntary scheme is new, and we will be keen to learn from the experiences of firms before we finalise proposals for the mandatory version of the scheme, due to be implemented in April 2005. We will also consider carefully all responses to the consultation paper and you are encouraged to respond to this either direct to the LSC, or via your practitioner representative bodies (closing date for responses: 1st November 2004) if you have not already done so.

Optional para:

[Insert the regional approach to getting feedback on operation of the scheme e.g. user group meetings, follow up contacts by account manager etc]

As with all new initiatives, there are bound to be issues that need to be ironed out as we go along, and we will be publishing further guidance as and when required. The information provided in this letter and in our previous correspondence will, I hope, address the majority of your initial questions. Please feel free to contact your account manager if you have any further queries.

Guidance on the voluntary scheme

Contract requirements

A key point is that the contractual requirements under which legal aid work is funded remain the same, save as amended by the voluntary agreement. This means that the same rules apply regarding assessment of financial eligibility and application of the Funding Code, for example.

You do not, however, need to apply for extensions to the upper financial limit for Controlled Work, as, apart from in exceptional cases (see below) payment will be made at the fixed fee level whatever the costs incurred.

That does not mean that you should cease working as soon as the fixed fee level is reached. The fixed fee is based on an average and there will therefore be some cases where the costs as calculated on a time basis will be more than the fixed fee, and other cases where they will be less. In any fixed fee regime there will be swings and roundabouts in terms of individual cases. In such a regime it is your responsibility to ensure that overall, the total amount of fees received covers the cost of producing the work. As the voluntary agreement provides, in taking on the client on a fixed fee basis, you are accepting that fee as full payment for all work reasonably required for the client in that matter at the Controlled Work Level. The exceptions relating to the statutory charge, costs recovered from the other side, exceptional cases and disbursements in special circumstances are set out in the agreement and in our previous letter.

Exceptional cases

As we stated in our previous letter, we recognise that there may be wholly exceptional cases, where the costs justifiably reach a level not taken into account in your fixed fee calculations. The revised agreement therefore allows you to apply to us to be paid the full costs in any such case, rather than the fixed fee, provided the total costs exceed £2500.

Of course, any such cases that you reported in 2003-4 will already have been included in the calculation of your fixed fees. Therefore, if you wish to apply for such a payment, you should explain to us why you consider that the case or cases falls outside the pattern of those previous claims and should be regarded as “exceptional” in terms both of the type of case and the cost. We will consider this, as well as the extent to which the total of the costs reported by you this year exceeds the fixed fees payable. Therefore, although it will be sensible to approach your regional office to discuss such cases at an early point, we will need to take into account your full claim pattern for this year when making a decision, and it is likely that any decisions made prior to the end of the financial year will need to be provisional.

Reporting costs

As previously advised, you should report full costs on the CMRF using the current hourly rates. You should not adjust the rates to reflect the 2.5% increase on average costs, which has been taken into account when setting your fixed fee. We will take this increase into account when monitoring your performance. There is no need to insert the fixed fee figure on your reports as we already have this information.

If your firm is participating in the FAINs pilot, and you have signed up to the voluntary scheme for your non-family work, we will also apply a 2.5% uplift to your hourly rates for Family Controlled Work. Please report as usual using the existing rates. When we reconcile your contract (see below) we will make any necessary adjustments to your Standard Monthly Payment to reflect the increase.

Reconciling payments

As now, you will continue to receive a Standard Monthly Payment (SMP) against which your claims will be credited. However, as you are now in the voluntary scheme the amount credited for each claim will be the fixed fee –not the amount reported on the CMRF. This will apply to all claims submitted from 1 April 2004 and not just those made after the date of the agreement.

This may lead to an adjustment of the SMP, as we will be matching payments made so far this year (as well as anticipated payments) to the fixed fee rather than the amount claimed. We currently intend to review contracts under the new arrangements in December 2004 / January 2005. An appendix with notional examples of how we will calculate the value of your claims is attached. If an adjustment of your SMP is required we will discuss the best way to achieve this with you, in order to minimise any adverse impact on cash flow.

Financial statements

We are currently working on the IT changes necessary to produce financial statements which include fixed fee information, but the amendments required are complex and are unlikely to be completed before May 2005. This means that any system produced quarterly statement provided to you before then will not reflect the position under the scheme and I apologise for this. However, when we carry out our review in December 2004 / January 2005, we will be able to write to you separately and let you know the correct position if any adjustments need to be made. Further, the new Schedule sent out to you in February 2005 will contain the correct figures reconciling payments against fixed fees

VAT and accounting rules

The Law Society is currently updating their guidance and is not yet able to confirm when this will be available. The Law Society is, of course, aware that there will be a transitional period during which firms will need to amend their records and we would hope that allowance will be made for this

The Statutory Charge for Controlled Work

As stated in my previous letter, there will be a new form for reporting amounts recovered under the statutory charge under Legal Help on claims made on or after 4th October, where the amount recovered is lower than the fixed fee and you have not made a nil claim. The new form will be published in the January 2005 update to the forms master pack.

Uplift for those with a housing contract

Regulations are expected to come into effect on 30th November 2004 which will authorise an increase in remuneration rates for certain types of housing work relating to homelessness –see Focus 45 p.16. This work is:

- Legal Help on a homelessness review carried out by the local authority under section 202 of the Housing Act 1996 in relation to a decision not to classify a person as homeless. These are written reviews and the increased rate will apply to those cases where the application for a review is actually made.
- Legal Help and Help at Court provided to a defendant to a possession summons. The increase is intended to apply to those situations where the client is facing possession proceedings in the county court, but the solicitor is providing Legal Help and Help at Court rather than Legal Representation because there is no defence to the claim that would meet the merits test.

These increases will only apply to relevant work done by suppliers with a category specific Housing contract. They do not therefore apply to those who only carry out housing work within a Tolerance.

The increased rates will be those currently payable for Controlled Legal Representation (CLR) except that the advocacy rate for CLR will not apply.

The new rates will apply to relevant work carried out from 30th November 2004.

However, in order that practitioners in the TFF scheme can benefit from the changes under the fixed fee scheme, the increases will need to be paid in addition to the fixed fee for the appropriate case.

Once the increase comes into effect, suppliers should record their costs as normal on the CMRF, including any work done at the higher rates. To claim separate payment of the extra amount, practitioners will be asked to fill in a simple one-off form, which will be included in the January 2005 update of the Forms Master pack.

This form will tell us the amount of the extra claim, representing the total of the difference between the work done at the old and the new rates on all relevant cases. We will only require the overall figure on this form, not a case-by-case breakdown. We will write to you in due course to confirm the date for submitting the form.

Conclusion

Further guidance on the voluntary scheme will be published in Focus, and on our website. We will also write to or telephone you to advise you of any significant updates. I look forward to working with you to ensure that the scheme meets our key objectives of increasing access to justice, and reducing transaction costs for firms and the LSC.

Yours faithfully,

Regional Director

Enclosed – Appendix 1 – Tailored Fixed Fee Voluntary Scheme Claim Calculation

Appendix 1 - Tailored Fixed Fee Voluntary Scheme Claim Value Calculation

Introduction

The purpose of this appendix is to provide two worked examples of how the LSC will calculate the value of the claims submitted by firms under the Voluntary Tailored Fixed Fee scheme. These total claim values will then be reconciled against total payments made to each firm.

Example A

Firm A is a solicitors firm that has joined the Tailored Fixed Fee voluntary scheme and has contracts and new matter starts in Housing, Family and Education. They are taking part in the FAInS pilot.

Since the start of their contract, Firm A have submitted the following claims:

Category	Number of Claims	CMRF Value
Claims Pre April 04		
All categories	80	£15,400
CC CA Recoupment	N/A	- £240
Claims Post April 04		
Education	2	£360
Family	15	£2,400
Housing	8	£1,000
Total claim value		£18,920

In order to establish the firm's claim position, the LSC will complete the following stages.

Description	Value	
Claims Pre April 04		
All Categories	In the four years of their contract proceeding April 04, Firm A submitted claims in all categories totalling £15,400 .	+ £15,400
CC CA Recoupments	Firm A received a CC CA audit in 2003 from which the LSC recouped £240	- £240

Description	Value	
Claims Post April 04		
All Categories	<p>Since April 04, the firm have claimed for 2 education cases totalling £360 and 8 housing cases totalling £1,000.</p> <p>The firm have signed up to a fixed fee of £220 for education and £170 for housing.</p> <p>TFF education value = 2 x £220 = £440 TFF housing value = 8 x £170 = £1,360</p> <p>Total TFF Claim value = £1,800</p>	+ £1,800
Excluding		
Immigration	Firm A have do not have an immigration contract.	+ £0
Family	<p>The firm are taking part in the FAInS pilot and therefore all their Family work is excluded from the scheme but they will receive the 2.5% uplift.</p> <p>Since April 04, Firm A have submitted 15 family claims totalling £2,400.</p> <p>Family Claim value = £2,400 + £60 = £2,460</p>	+ £2,460
Mental Health (non Forensic)	Firm A do not have a mental health contract.	+ £0
Mental Health (Forensic)	Firm A do not have a mental health contract.	+ £0
Additional Uplifts		
Disbursements	Firm A have not applied to their regional office for an uplift.	+ £0
Exceptional Cases	Firm A have submitted no claims over £2,500 in either education or housing and therefore have not claimed for any exceptional cases	+ £0
Housing Possession	The firm do not undertake housing possession cases and therefore do not receive this uplift.	+ £0
Total	Combining the above values gives a claim credit of:	£19,420

Example B

Firm B is a solicitors firm that has joined the Tailored Fixed Fee voluntary scheme and has contracts and new matter starts in Debt, Family, Welfare Benefits, Immigration and Mental Health. They are not taking part in the FAInS pilot and have opted out of the TFF scheme for their mental health work.

Since the start of their contract, Firm B have submitted the following claims:

Category	Number of Claims	CMRF Value
Claims Pre April 04		
All categories	400	£200,000
CCCA Recoupment	N/A	- £5,000
Claims Post April 04		
Debt	12	£2,000
Family	40	£10,000
Immigration	14	£30,000
Mental Health	5	£7,400
Welfare Benefits	15	£3,000
Total claim value		£247,400

In order to establish the firm's claim position, the LSC will complete the following stages.

Description	Value	
Claims Pre April 04		
All Categories	In the four years of their contract proceeding April 04, Firm B submitted claims in all categories totalling £200,000 .	+ £200,000
CC CA Recoupments	Firm B received a CC CA audit in 2003 from which the LSC recouped £5,000	- £5,000

Description	Value	
<i>Claims Post April 04</i>		
All Categories	<p>Since April 04, the firm have claimed for 12 debt cases totalling £2,000, 15 welfare benefits cases totalling £3,000 and 40 Family cases totalling £10,000</p> <p>The firm have signed up to a fixed fee of £200 for debt, £230 for welfare benefits and £245 for family.</p> <p>TFF Debt value = 12 x £200 = £2,400 TFF Welfare Benefits value = 15 x £230 = £3,450 TFF Family Value = 40 x £245 = £9,800</p> <p>Total TFF Claim value = £15,650</p>	+ £15,650
Excluding		
Immigration	<p>Immigration is excluded from the TFF scheme.</p> <p>Since April 04, the firm have submitted 14 claims totalling £30,000.</p> <p>Total Immigration claim value = £30,000</p>	+ £30,000
Mental Health (non Forensic)	<p>Firm B have opted out of the voluntary scheme for their mental health work and therefore receive the value of the claims on the CMRF.</p> <p>Since April 04, they have submitted 4 mental health claims totalling £2,400.</p> <p>Mental Health (Non Forensic) value = £2,400</p>	+ £2,400
Mental Health (Forensic)	<p>Forensic mental health cases are excluded from the voluntary TFF scheme.</p> <p>Since April 04, Firm B have submitted 1 claim worth £5,000 on which they will not receive a 2.5% uplift as they have not opted in for the rest of their mental health work.</p> <p>Mental Health (Forensic) value = £5,000</p>	+ £5,000

Additional Uplifts		
Disbursements	<p>Firm B applied to their regional office for an uplift to their claims on the grounds that they were spending more on disbursements. They clearly showed that their average disbursement value had increased from 2003-04 due to the firm employing more interpreters as they had had an increase in non-English speaking clients.</p> <p>Disbursement Uplift = £2,000</p>	+ £2,000
Exceptional Cases	Firm B have submitted no claims over £2,500 in either debt or welfare benefits and therefore have not claimed for any exceptional cases	+ £0
Housing Possession	The firm do not undertake housing possession cases and therefore do not receive this uplift.	+ £0
Total	Combining the above values gives a claim credit of:	£250,050