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## 1. Foreword

Civil cases funded through the Controlled Work scheme lie at the heart of the Community Legal Service (CLS). Through our contracts with solicitors and the Not for Profit sector, the Legal Services Commission (LSC) supports the wider government programme aimed at creating a more fair and inclusive society in which the needs of the vulnerable and disadvantaged communities are recognised and responded to.

Working in partnership with our suppliers, I am pleased that over the past four years we have made significant progress towards improving quality of advice and value for money under CLS contracts, enabling more clients to access better quality legal services. The challenge for us now is to work together to build on this success and secure the future of the scheme at a time when we are under financial pressure.

The report on the legal market prepared by Frontier Economics (“A market analysis of legally aided services provided by solicitors,” available from the Department for Constitutional Affairs’ website [www.dca.gov.uk](http://www.dca.gov.uk)) has provided us with an evidence base on which we can begin to shape the future of contracting. One of Frontier’s findings was that the current remuneration scheme does not do enough to secure value for money for the taxpayer and is too inflexible to reflect local market conditions facing suppliers. Frontier suggests that we consider moving away from paying for inputs, such as time and letters, to a system of paying fixed amounts for outputs. Such a system they argue, will deliver better value for money as suppliers have an incentive to deliver outputs in the most time, and therefore cost, efficient way. Moving to some form of managed competition on quality and price would enable the LSC to set payment rates that more accurately reflect national and local market conditions. The proposals in this paper are an interim step, designed to enable suppliers and the LSC to prepare for a future in which our approach to remuneration is increasingly focused on paying for outputs, with prices based on a system of fixed fees or determined by competitive tendering.

I believe that the proposals in this consultation deliver many benefits, most importantly to the profession but also to the LSC. For me the key benefits can be summarised as:

- ✓ An additional payment of 2.5% over and above average case costs for work within the voluntary or mandatory scheme
- ✓ For suppliers joining the voluntary scheme, a less intrusive contract management system, without the need for costs compliance audits in most cases, reducing uncertainty and transaction costs for both suppliers and the LSC
- ✓ Certainty of income without the risk of claims being reduced in the majority of cases

- ✓ Suppliers will be able to benefit financially from efficiency savings achieved through streamlining processes
- ✓ Suppliers will no longer be categorised on the basis of the costs compliance process
- ✓ Better fund control will enable us to consider increasing the number of new cases authorised each year

I would welcome your views on the proposals in this paper. We very much value input from consultees, and look forward to receiving your response to the consultation questions, which will be carefully considered as part of the final decision making process.



**Clare Dodgson**  
**Chief Executive**  
**Legal Services Commission**  
**July 2004**

## 2. Executive Summary

- 2.1 This paper sets out a new approach to remunerating publicly funded civil legal services provided by solicitors within the Controlled Work budget (Legal Help, Help at Court and Controlled Legal Representation). The paper proposes to move away from the current system of paying for inputs (time spent and disbursements incurred), to paying fixed fees for each case, based on suppliers' average claims in the period 1<sup>st</sup> April 2003 to 31<sup>st</sup> March 2004 plus 2.5%. The new scheme will apply to all civil categories of work including family, but excluding immigration, mental health cases where the client is sectioned following criminal proceedings, and family work undertaken by suppliers within the FAInS pilot.
- 2.2 The scheme is part of a wider strategy (including proposed changes to the Funding Code, which are being consulted on separately) designed to secure the future of Controlled Work scheme at a time when we are under financial pressure. It represents an evolutionary step away from the current system of payment based largely on inputs (time spent) towards the approach we are likely to adopt in the future of paying for outputs (defined pieces of work) at prices fixed by standard or graduated fees, and ultimately by managed competition.
- 2.3 The objectives of the scheme are to:
- Control costs and secure best value from a necessarily limited budget
  - Maintain or increase the number of new cases started, thereby increasing access to justice for funded clients
  - Reward those solicitors joining the scheme by increasing average fees by 2.5%
  - Adopt a new approach to managing contracts, which is less intrusive and has lower transaction costs for the LSC and solicitors than costs compliance audits
  - Enable both the LSC and solicitors to prepare for changes in payment arrangements likely to be introduced as a result of the current Fundamental Legal Aid Review, including managed competition and greater use of fixed fees across all levels of work
- 2.4 As we consider the scheme offers significant benefits to participants, we intend to introduce it as quickly as possible. Suppliers eligible to join the scheme will be able to sign up voluntarily from the date of publication of this paper, without waiting for the conclusion of consultation and the implementation of the mandatory scheme. We will retain the right to exclude suppliers from the voluntary scheme in certain circumstances. The closing date for joining the voluntary scheme will be **17<sup>th</sup> September 2004**, and suppliers wishing to join will need to return their signed agreements to their regional office by 4pm on this date.

- 2.5 We are particularly interested to learn from the experiences of suppliers joining the voluntary scheme before finalising the arrangements for the mandatory scheme. We will therefore be consulting for an extended period to **1<sup>st</sup> November 2004**, with the intention of publishing the final version of the mandatory scheme in December 2004, ahead of a go live date for the mandatory scheme of **1<sup>st</sup> April 2005**.
- 2.6 The voluntary scheme offers a number of significant benefits to suppliers, including the following:
- ✓ An additional payment of 2.5% over and above average case fees for work within the scheme
  - ✓ No costs compliance audits subject to satisfactory performance against a range of indicators
  - ✓ Certainty of payment without risk of reduction save in limited circumstances
  - ✓ New matter starts will not be reduced on the basis of rising average costs as prices are fixed
  - ✓ Suppliers will no longer need to seek extensions to financial limits for individual cases within the scheme
  - ✓ Suppliers will be able to realise increased profitability via efficiency savings
  - ✓ Suppliers will be more likely to be granted increases in new matter starts
  - ✓ Enables suppliers to begin preparing for future changes in approach to remuneration
- 2.7 Key to the success of the scheme will be suppliers' ability to manage resources effectively to deliver desired outcomes for clients within the funding available. The LSC will be paying a set amount per case, regardless of time spent or disbursements incurred, which means that suppliers will need to gain a greater understanding of their costs drivers, and to exercise more control over these (for example, expenditure on disbursements) to ensure that overall payments reflect work done, even though some cases cost more to conclude than others.
- 2.8 Those suppliers that are able to create efficiency savings whilst maintaining acceptable levels of quality will benefit from increased profitability. Moving to this system now will also enable suppliers to take full advantage of developments arising out of the current review of supply and purchasing arrangements, for example the likely future introduction of competitive tendering, block contracting and/or fixed fees.
- 2.9 Fixing fees per case will enable the LSC to budget more effectively, as we will know from the outset what each case will cost. This will allow us to plan increases in our allocation of new matter starts, secure in the knowledge that planned expenditure will fall within overall limits. At a time when we are looking to control costs and secure best value from a

necessarily limited budget, this certainty will be essential if we are to maintain or increase numbers of clients accessing our services.

- 2.10 The arrangements will also require a different approach to contract management by the LSC. It is proposed that costs compliance auditing becomes the exception rather than the norm for suppliers within the scheme, because the tailored fixed fee scheme will ensure that costs are within agreed limits. We would, however, continue to monitor performance in a number of areas, including quality of advice delivered and outcomes achieved, to ensure that the scheme does not have an adverse impact on services delivered to clients.

### 3. How to Respond

- 3.1 This consultation paper sets out a number of specific questions regarding the proposals put forward. Views are welcome on any aspect of the proposals, and in particular on the issues identified in the consultation questions. Wherever possible, please provide evidence to support your comments. We are particularly interested to learn from the experiences of suppliers entering the voluntary scheme before finalising the arrangements for the mandatory scheme and will be establishing regional and national forums for this purpose.
- 3.2 When responding please state whether you are responding as an individual or representing the views of an organisation. If responding on behalf of an organisation, please make it clear who the organisation represents and, where applicable, how the views of members were assembled. Copies of this consultation paper are available from the LSC's website [www.legalservices.gov.uk](http://www.legalservices.gov.uk).
- 3.3 Unless you ask the LSC to keep your name or the contents of your response confidential, your name and the contents of your response may be made public. Please ensure that your response is marked clearly, if you wish your response or name to be kept confidential. Confidential responses will be included in any statistical summary of the comments received and views expressed.
- 3.4 Please send responses by e-mail, post or fax by **1<sup>st</sup> November 2004** to:

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Civil Remuneration Team  
Legal Services Commission  
Head Office  
85 Grays Inn Road  
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## 4. Consultation Questions

Comments are welcome on all issues raised in the paper, but we particularly wish to hear from respondents in relation to the following questions:

- 4.1 Do you agree with the overall approach of fixing fees in advance of more fundamental changes to contracting and remuneration structures? If not, what measures would you recommend?
- 4.2 Do you agree with the proposed timing of the implementation of the voluntary and mandatory versions of the scheme?
- 4.3 Do you agree with the proposed exclusion of mental health forensic cases from the scheme?
- 4.4 Do you consider that other types or categories of work should be excluded for example all of mental health? If so, why?
- 4.5 Do you agree with the proposed arrangements in relation to family work done by FAINS suppliers?
- 4.6 Do you agree with the proposed methods for quantifying fixed fees for suppliers?
- 4.7 Do you agree with the proposed retention of current recording and reporting requirements?
- 4.8 Do you agree with the proposed control measures to ensure that quality of service and outcomes are not compromised by the scheme? Can you suggest any other indicators that we should use?
- 4.9 Do you agree with the proposed contract amendments?
- 4.10 Do you agree with the preliminary assessment of the impact on the promotion of equality?
- 4.11 Do you agree with the preliminary regulatory assessment?

## 5. The Proposals

### Introduction

- 5.1 This paper sets out a new approach to remunerating publicly funded civil legal services provided by solicitors within the Controlled Work budget (Legal Help, Help at Court and Controlled Legal Representation). The paper proposes to move away from the current system of paying for inputs (time spent and disbursements incurred), to paying fixed fees for each case, based on suppliers' average claims in the period 1<sup>st</sup> April 2003 to 31<sup>st</sup> March 2004 plus 2.5%. The new scheme will apply to all civil categories of work including family, but excluding immigration, mental health cases where the client is sectioned following criminal proceedings, and family work undertaken by suppliers within the FAInS pilot.
- 5.2 The scheme is part of a wider strategy (including proposed changes to the Funding Code, which are being consulted on separately) designed to secure the future of Controlled Work scheme at a time when we are under financial pressure. It represents an evolutionary step away from the current system of payment based largely on inputs (time spent) towards the approach we are likely to adopt in the future of paying for outputs (defined pieces of work) at prices fixed by standard or graduated fees, and ultimately by managed competition.
- 5.3 We believe that as a result of the approach we have taken in partnership with suppliers, with its emphasis on improving quality of advice and value for money and the standard of management in firms, the majority of our suppliers are now ready to take the next step.
- 5.4 When we introduced civil contracting we anticipated that as the quality of advice increased as a result of directing work to more specialist providers, average costs would also increase. Four years on from the start of contracting we now believe that the increases in average costs attributable to increased quality of advice have reached a plateau.
- 5.5 Costs compliance auditing and the recent bid round for civil contracts have allowed us to reduce the numbers of suppliers who over claim for work done, and over half of our suppliers have now achieved "category 1" status at costs compliance audit. This provides us with a high degree of confidence that the majority of our suppliers are now only claiming and being paid for work genuinely performed and that genuinely benefits the client.
- 5.6 Fixing fees per case will enable the LSC and suppliers to budget more effectively, as we will know from the outset the price for each case. This will allow the LSC to plan increases in new matter starts, secure in the knowledge that planned expenditure will fall within overall limits. At a time when we are looking to control costs and secure best value from a

necessarily limited budget, this certainty will be essential if we are to maintain or increase numbers of clients accessing our services.

5.7 Key to the success of the proposals will be suppliers' ability to manage resources effectively to deliver desired outcomes for clients within the funding available. The LSC will be paying a set amount per case, regardless of time spent or disbursements incurred, which means that suppliers will need to take more responsibility for controlling case costs. In any fixed fee regime there will be swings and roundabouts in terms of individual cases. In such a regime it is the supplier's responsibility to ensure that the overall, the total amount of fees received covers the cost of producing the work.

5.8 The arrangements will also require a different approach to contract management by the LSC. Costs compliance auditing will become the exception rather than the norm for suppliers within the scheme, because the tailored fixed fee scheme will ensure that fees are within agreed limits. We would, of course, still monitor quality of advice and outcomes achieved to ensure that these are not adversely affected.

5.9 The objectives of the scheme are to:

- Control costs and secure best value from a necessarily limited budget
- Maintain or increase the number of new cases started, thereby increasing access to justice for funded clients
- Reward those solicitors joining the scheme by increasing average fees by 2.5%
- Adopt a new approach to managing contracts, which is less intrusive and has lower transaction costs for the LSC and solicitors than costs compliance auditing
- Enable both the LSC and solicitors to prepare for changes in payment arrangements likely to be introduced as a result of the current Fundamental Legal Aid Review, including managed competition and greater use of fixed fees across all levels of work

5.10 To succeed in our objectives, the proposals need to be implemented rapidly, and have therefore been designed to be as simple as possible. We will also allow suppliers to join the scheme voluntarily immediately, in advance of the implementation of a mandatory scheme.

## **Background**

5.11 The Community Legal Service Public Service Agreement target 6, agreed by the LSC with the Lord Chancellor for the period 2003-2006 requires the LSC to *"increase year on year the number of people receiving suitable assistance in priority areas of law involving fundamental rights or social exclusion."* For civil work within the

Controlled Work scheme, this target has to be achieved within a fixed budget. If we are to increase the numbers of clients assisted, we must therefore control average case costs or implement other cost saving measures.

- 5.12 The underlying trend identified by the Legal Services Research Centre (LSRC) in their report "Legal Help Costs in the 3 years to February 2003," published in May 2003 has been one of increasing costs per case for civil (non-immigration) Legal Help matters. The rise in average Legal Help case costs has outpaced general inflation by 9 times between January 2000 and February 2003, an increase of 62%. Over this period the profit cost component of case costs increased by 58% from £126 to £199, and the disbursement component 122% from £9 to £20. Behind profit costs, the average work time recorded per case rose 42% from 132 minutes to 188 minutes.
- 5.13 The LSRC report estimated that 20% of the rise could be attributed to changes in the underlying case mix and case features (end stage, outcome etc.). Legal Help remuneration rate increases accounted for an additional 23-28% of the rise. The remaining 52-57% of the overall rise in average case costs could not be fully accounted for, but a proportion of it was likely to have been attributable to generally greater levels of input lying behind the (positive) change in case outcomes, for example as a result of increased specialism of advice.
- 5.14 In order to try to contain rising costs within the Controlled Work budget, the LSC has taken the following steps in 2003/4:
- Monitoring performance data to identify suppliers whose average fees are increasing significantly
  - Limiting the number of case starts of suppliers whose average fees have increased by more than 10%
  - Recovering costs from suppliers whose costs compliance audit shows them to be over claiming by over 10%
- 5.15 These measures have been partially successful in controlling the overall rise of average costs within the Controlled Work budget. The latest forecast indicates that increases in gross costs for civil non-immigration Legal Help have been restricted to 8% in the year 2003/4.
- 5.16 However, this control has not been achieved without sacrifice; the number of new cases started within the Controlled Work budget (excluding immigration) has fallen from 655,983 reported in our annual report for 2002/3 to a projected 587,000 in 2003/4 (both totals include solicitor and Not for Profit new matter starts).

5.17 Our target for the 2004/5-year is to restrict increases in gross costs for civil non-immigration Legal Help to 3% whilst returning the numbers of publicly funded acts of assistance to 2002/03 levels.

5.18 In order to achieve this we believe a new approach is required, based on working in partnership with suppliers to secure the future of the scheme at a time when we are under financial pressure.

### **The Scheme**

5.19 This paper proposes that we move to paying fixed payments for civil (non-immigration) Controlled Work cases based on average case fees tailored for each supplier, in each category of law. Suppliers will be paid a fixed amount for each case, regardless of whether individual cases cost more or less to complete.

5.20 The scheme will initially be voluntary, but will become mandatory, following consultation, from 1<sup>st</sup> April 2005. We will retain the right to exclude suppliers from the voluntary scheme in certain circumstances (see below).

5.21 Suppliers joining the voluntary scheme will be able to:

- Benefit from a 2.5% increase in average case fees
- Reduce their financial risk (as they will no longer be subject to costs compliance audits in most cases)
- Calculate their income with greater certainty and plan more effectively
- Increase profitability by making efficiency savings
- Prepare for future changes in remuneration arrangements for publicly funded cases

5.22 To join the scheme voluntarily, suppliers should return a signed agreement form to their regional office by 4pm on 17<sup>th</sup> September 2004, or in the case of category 3 suppliers awaiting the outcome of an appeal of a costs compliance audit, register by this date their intention to join the voluntary scheme by writing to their regional office.

5.23 Reducing the audit activities for suppliers entering the voluntary scheme will allow us to focus on suppliers outside the scheme, in particular those with category 3 costs compliance ratings.

5.24 We will also continue to use existing mechanisms to control work done outside the scope of the voluntary scheme, or by suppliers who have not joined the voluntary scheme, including:

- Monitoring performance data to identify suppliers whose average fees are increasing significantly

- Limiting the number of case starts of suppliers whose average fees have increased by more than 10%. Under the current Contract Schedule, the Commission has power (clause B.16 (c)) to reduce the number of matter starts authorised where the supplier's average claims in any category of work are increasing by more than 10% relative to a previous period (currently set between April and September 2002). We will no longer need to apply this clause to suppliers in voluntary scheme, as we will be assured that their average costs will not be increasing during the Schedule period. We will however continue to apply the clause to reduce matter starts where appropriate for those outside of the scheme, although we will, with effect from 1 July 2004 be changing the 'baseline' period against which costs this year will be compared to October 2002 to September 2003 inclusive.
- Recovering costs from suppliers whose costs compliance audit shows them to be over claiming by over 10%

### **Scope – suppliers**

5.25 We will invite suppliers holding a General Civil Contract (Solicitors) to join the voluntary scheme unless we have significant concerns about their performance, which is likely to be where:

- The supplier has a confirmed category 3 costs compliance audit rating (no appeal outstanding) or
- The supplier is under official investigation or
- We are in the course of terminating the supplier's contract, or the supplier has indicated that they will be terminating their contract

5.26 Suppliers with a category 3 costs compliance audit rating who are currently appealing this rating and wish to join the voluntary scheme must register an intention to join by 4pm on 17<sup>th</sup> September 2004, and will be permitted to join the scheme if as a result of their appeal their audit rating changes to category 2 or above.

5.27 Suppliers with a confirmed category 3 costs compliance rating will be included when the scheme becomes mandatory if their contract continues.

### **Scope – categories of work and cases included in the schemes**

5.28 The voluntary and mandatory schemes will apply to all civil (non-immigration) categories of work. The only exceptions are:

- For both schemes, family work conducted by suppliers participating in the FAInS pilot will be excluded, as this will be remunerated under the pilot arrangements (for those fee earners within the pilot) or under existing arrangements (for those that are

not). FAInS suppliers will be able to include their non-family work within the tailored fixed fee scheme. Please see below for further guidance on how the 2.5% increase will apply to FAInS suppliers.

- We have excluded mental health cases where the client is sectioned following criminal proceedings (“SCR” matter type in the LSC’s “SPAN” reporting codes). Please see below for more details.

5.29 Under the voluntary scheme, suppliers must include all cases *reported as closed* after 1<sup>st</sup> April 2004. This means that the 2.5% increase will be backdated to include all claims within the scheme submitted from 1<sup>st</sup> April 2004. Note however that any claims reported as zero claims will not attract the fixed fee payment.

5.30 The mandatory scheme would apply only to cases *opened on or after* 1<sup>st</sup> April 2005.

#### **How will fixed fees be calculated?**

5.31 We propose to tailor fixed fees in both the voluntary and mandatory schemes to each supplier’s office and category of work on the basis of average claims submitted in the calculation period (1<sup>st</sup> April 2003 to 31<sup>st</sup> March 2004) plus 2.5%, adjusted to reflect the latest audit category rating for each supplier’s office, where known. We will write to those suppliers eligible to join the voluntary scheme, setting out the fees payable in each category of law in each office. Similar data will be provided prior to the launch of the mandatory scheme. We have set out below the general approach to calculating fees, with worked examples.

#### **Category 1 or preferred supplier**

5.32 Where an office has submitted 10 or more claims in a category of work in the calculation period we will calculate the total costs of these claims (including disbursements and VAT) plus 2.5%. We will divide the total by the number of claims in that period, to give a fixed cost per case in that category of law for that office. Any work done under tolerance will be included within the total for the category of law in which the work was reported.

#### ***Example A – Category 1 supplier with 20 claims in Debt:***

Total costs and disbursements 1/4/03-31/3/04	= £2,000.00
Plus 2.5% increase	= £2,050.00
Numbers of cases costs relate to: 20	
Fixed fee per case = £2,050.00 divided by 20	= £ 102.50

5.33 Where an office has submitted fewer than 10 claims in a category in the calculation period, a standard regional average plus 2.5% will be used to calculate fees.

5.34 The standard regional average will be calculated using costs data supplied by all category 1 suppliers within the region who have submitted fewer than 20 claims in that category of law in the calculation period.

**Category 2 supplier (no appeal outstanding)**

5.35 We will initially calculate fixed fees for each category of work at each office as per category 1 suppliers above.

5.36 For any category of law where 10 or more claims have been submitted by an office in the calculation period, we will make an adjustment to reflect the last audit rating result for that office.

5.37 We recognise that many category 2 firms will have taken steps to improve their performance following their audit. In appreciation of this, and to encourage category 2 suppliers to join the voluntary scheme, we will reduce the assessment rate by 10% for category 2 suppliers signing up before 17<sup>th</sup> September 2004. This will only apply to the voluntary scheme, not the mandatory scheme.

***Example B – Category 2 Supplier with contract in Debt, Welfare Benefits and Family where 20 claims were made in the calculation period in each category:***

**Debt**

Total costs and disbursements 1/4/03-31/3/04	= £2,105.26
Plus 2.5% increase	= £2,157.89
Assessment rate following costs compliance audit	= 15%
15% less 10% allowance	= 5%
£2,157.89 less 5%	= £2,050.00
Fixed fee per case = £2,050.00 divided by 20	= £ 102.50

**Welfare Benefits**

Total costs and disbursements 1/4/03-31/3/04	= £2,050.00
Plus 2.5% increase	= £2,101.25
Assessment rate following costs compliance audit	= 25%
25% less 10% allowance	= 15%
£2,101.25 less 15%	= £1,786.06
Fixed fee per case = £1,786.06 divided by 20	= £ 89.30

**Family**

Total costs and disbursements 1/4/03-31/3/04	= £2,050.00
Plus 2.5% increase	= £2,101.25
Assessment rate following costs compliance audit	= 6%

6% less 10% allowance	= 0%
£2,101.25 less 0%	= £2,101.25
Fixed fee per case = £2,101.25 divided by 20	= £ 105.06

5.38 Where an office has submitted fewer than 10 claims in a category in the calculation period, the standard regional average plus 2.5% will be applied in the category to the office.

5.39 The standard regional average will be based on costs data supplied by all category 1 suppliers within the region who have submitted fewer than 20 claims in that category of law in the calculation period.

### **Category 3 supplier (no appeal outstanding)**

5.40 It is not open to category 3 suppliers to join the voluntary scheme.

5.41 We will calculate fixed fees for category 3 suppliers in the mandatory scheme on the same basis as for category 2 suppliers above save that there will be no 10% allowance for category 3 suppliers.

### **Supplier with no costs compliance audit to date**

5.42 Where the supplier has submitted 10 or more claims in the category in the calculation period (1<sup>st</sup> April 2003 to 31<sup>st</sup> March 2004), the standard regional average plus 2.5% will be applied in the category until a costs compliance audit has been completed, after which we will recalculate fixed fees using the suppliers' claims during the calculation period and taking into account the audit category rating as set out above.

5.43 If the supplier has submitted fewer than 10 claims (or no claims) in the calculation period, fixed fees will be calculated based on the standard regional average plus 2.5% for each category of law.

### **Category 2 suppliers currently appealing costs compliance audit finding**

5.44 Category 2 suppliers with costs appeals outstanding may still enter the voluntary or mandatory schemes.

5.45 We will provisionally calculate fixed fees on the same basis as any other category 2 supplier (see above), but may amend this calculation once the final result of the appeal is known. In calculating the amount of the reduction pending outcome of the appeal, we will take into account any representations made by the supplier that are accepted by the regional office at the time of joining the scheme. If as a result of the appeal the audit rating is reclassified as category 3, the supplier will be removed from the voluntary scheme but included in the mandatory scheme if their contract continues.

### **Category 3 suppliers currently appealing a costs compliance audit finding**

- 5.46 Suppliers with costs appeals outstanding may register their intent to join the voluntary scheme based on the result of their appeal.
- 5.47 Suppliers should register by the same date (17<sup>th</sup> September 2004), and if their final result is category 1 or 2, they will be allowed to join the voluntary scheme. If the final result following appeal remains category 3, they will be excluded from the voluntary scheme but included in the mandatory scheme if their contract continues.

### **Housing category**

- 5.48 In April 2004 the Department for Constitutional Affairs announced that it proposed to allow an increase in rates for certain types of work within the housing category. These types of work are:
- Legal Help and Help at Court provided to a defendant to a possession summons
  - Legal Help in relation to a homelessness internal review.
- 5.49 These increases will only apply to work done within a category specific housing contract. The increased rates will be those currently payable for Controlled Legal Representation. The Department for Constitutional Affairs will be consulting on regulations to bring this pay increase into effect. However, in order that practitioners 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.
- 5.50 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 (probably once a year). 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.
- 5.51 Further information on the changes will be published in our newsletter, "Focus," as soon as possible.

### **Mental health category**

- 5.52 It is open to suppliers conducting mental health cases to take advantage of the benefits on offer by joining the voluntary scheme, including the 2.5% increase for the majority of their work. We have however excluded

“forensic” cases from the scope of the scheme, i.e. those cases where the client is sectioned following criminal proceedings (matter type “SCR” in the LSC’s SPAN reporting system), as we wish to explore whether we should adopt a different approach to controlling costs in such cases in light of the higher obligation to fund services for those in detention. We particularly welcome practitioners’ views on this in response to this consultation. Claim data in respect of SCR cases has not been taken into account in calculating fixed fees for the remainder of mental health work. Claims for work within the SCR matter type will continue to be paid under current arrangements, and subject to costs compliance audits as now.

### **FAlnS suppliers**

5.53 Where a supplier is participating in the FAlnS pilot, all their family work falls outside the scope of the scheme. In order for FAlnS suppliers to benefit from the 2.5% increase, we will adopt the following approach:

- FAlnS suppliers that do not do any work within the Controlled Work scheme apart from family cases will benefit from a 2.5% increase in charging rates for family Controlled Work
- FAlnS suppliers who conduct work in family and other categories of work within the Controlled Work scheme have the option to join the voluntary scheme for their non-family work. Where they do so, the 2.5% increase will be applied to their non family cases as set out above, and they will also benefit from a 2.5% increase in charging rates for family Controlled Work. If they choose not to enter the voluntary scheme for their non-family work, then they will not receive the 2.5 % increase for their non-family or family work.

### **Exemption of cases and variation of fixed fees**

5.54 Suppliers will not be permitted to “exempt” cases or to vary the amount of fixed fees once they have entered the voluntary or mandatory schemes.

5.55 We will reserve the right to amend the level of fixed fees where new Access to Justice legislation (including changes to the Funding Code) is likely to have a significant impact on case costs. In particular, the LSC is currently consulting on changes in the scope of family funding under the Funding Code. If such changes are implemented we reserve the right to amend the calculation of fixed fees for family work to take these changes into account. We may also amend the level of fixed fees as a result of contract management and costs compliance activities (see below).

### **Maintaining numbers of cases started**

5.56 In order for suppliers to achieve income at 2003/4 levels plus 2.5% for Controlled Work, they will need to take on at least the same number of

cases as taken on in 2003/4. This will provide an incentive to suppliers to at the very least maintain the number of cases started.

- 5.57 If sufficient numbers of suppliers join the voluntary scheme, we may also be able to increase new matter start allocations in priority categories above the initial allocation for 2004/5.

### **Payment arrangements**

- 5.58 Payment arrangements will continue unchanged for cases outside the scope of the voluntary and mandatory schemes.

- 5.59 For cases within the schemes, we will pay a fixed fee for each case, regardless of whether the actual costs reported are lower or higher than this sum, subject to certain limits (set out below).

- 5.60 The current upper financial limits for Controlled Work will no longer apply to work done within the voluntary or mandatory scheme, as the limit for each case will be the fixed fee.

### **Auditing and reporting**

- 5.61 As a major benefit to suppliers participating in the new scheme, costs compliance auditing will become the exception rather than the norm, subject to satisfactory performance against a range of indicators including outcome measures (see below). The remainder of the audit framework relating to quality of advice will remain in place.

- 5.62 Suppliers who held a General Civil Contract prior to 1<sup>st</sup> April 2004 but have never had a costs compliance audit will be required to undergo a costs compliance audit within the first year of joining either the voluntary or mandatory scheme.

- 5.63 The scheme will be implemented without making any changes to the recording and reporting requirements for suppliers. Suppliers will record and report actual costs and disbursements as now, but be paid the fixed fee per case. Recording actual time spent and disbursements incurred will provide suppliers with valuable contract management information, which will enable them to analyse trends and identify areas where efficiency savings could be made. It also means that no changes will be required to case management or software systems to implement the scheme.

- 5.64 We will monitor suppliers' performance to ensure that the scheme operates as intended and there are no adverse impacts on quality of service and outcomes achieved for clients. Areas to be monitored will include but not be limited to:

- Reviewing new matter start allocations, and requests for increases or decreases in these as against the supplier's allocations per category in previous years to ensure that case mix remains approximately the same (or adequate explanations are given for changes)
- Reviewing the types of cases within each category that the supplier is taking on (by checking case types reported)
- Reviewing outcomes achieved for clients (by checking outcome codes reported)
- Monitoring the distribution of cases across Controlled Work and certificated levels of help to ensure no significant changes in distribution without adequate explanation
- For suppliers with contracts at more than one office, checking the location where clients are being taken on to ensure that they are not being filtered to offices with higher fixed fees
- Assessing the quality of advice through audit processes based upon the Specialist Quality Mark and contract compliance, and quality indicators.
- Conducting variance analyses at least quarterly, of reported costs per case as against fixed fees. Where total reported costs fall significantly below fixed fees this would trigger further investigation to determine the reasons for this, including if necessary a control audit and/or costs compliance audit.

5.65 Where we have concerns about any of the data, these would be investigated further and could lead to additional contract management and audit activities. Poor audit results may still lead to contract sanctions, and may also impact on the award of matter starts - either those awarded within the current schedule period or future schedules, subject to the 80% guarantee in the contract. Audit record is likely also to be taken into account in any future tendering for services.

#### **Re-introduction of costs assessment and reductions in fixed fees**

5.66 We reserve the right to re-introduce costs auditing for any supplier within the voluntary or mandatory scheme. This will only occur where we have serious concerns about the way in which the supplier is conducting cases, which have not been satisfactorily addressed by discussions with the supplier. We expect this to occur only in a small minority of cases.

5.67 Where we do carry out a cost compliance audit we will reserve the right not to pay for work that is outside the terms of the contract (for example work for non-eligible clients or not within the scope of Controlled Work).

5.68 Where we terminate a contract under Standard Term 20.4 (c) or 20.13 (Fundamental Breach), we may assess claims and pay the lower of the assessed amount or the fixed fee.

- 5.69 Subject to the two exceptions above, we will make no reductions to payments in the current Schedule year for suppliers who join the voluntary scheme as a result of contract management activities or costs compliance audits. In other words our intention is that those suppliers who sign up to the scheme by 17<sup>th</sup> September 2004 will be paid the fixed fee for claims from 1<sup>st</sup> April 2004 to 31<sup>st</sup> March 2005 unless work is done outside the scope of the contract or their contract is terminated on certain limited grounds.
- 5.70 We may however reduce the level of the fixed fee payable to the supplier in their 2005/2006 Schedule where their reported costs are significantly below fixed fees in the 2004/5 Schedule year (taking into account any costs compliance audits in the period).
- 5.71 Suppliers joining the mandatory scheme may have their fixed fees adjusted both within the year and at the start of each schedule year if their reported or assessed costs fall significantly below fixed fees.
- 5.72 Although we do need to reserve these powers, in both voluntary and mandatory schemes, we will discuss the position with suppliers before taking action. We will bear in mind our wish to allow suppliers to gain the advantage of a reasonable level of efficiency savings and we will be concentrating our audit activity on those 'outliers' that give us significant concerns.**
- 5.73 Further details are set out in the proposed amendments to the General Civil Contract in the appendices to this paper and in the copy of the voluntary scheme agreement set out in appendix one to this paper.

#### **Contract amendments**

- 5.74 Proposed amendments to support the implementation of the scheme are set out in the appendices to this paper. We will ensure that suppliers joining the voluntary scheme benefit from any favourable amendments to the mandatory scheme following consultation.

#### **Regulatory changes**

- 5.75 We anticipate that changes will be required to the Community Legal Service (Funding) Order 2000 to give the LSC power to implement the mandatory scheme and the 2.5% increase to fees. Any such changes will be consulted on separately by the Department for Constitutional Affairs.

## 6. What will Happen Next?

- 6.1 We will write to all suppliers individually in July 2004, setting out details of the proposed fixed fees for each category of work and office, based on information held by the LSC.
- 6.2 Suppliers wishing to join the voluntary scheme should check the data supplied and confirm that it is correct. Any queries should be referred to the supplier's LSC regional office immediately. Included with the letter will be an agreement form that must be completed and returned **to the regional office by 4pm on the 17<sup>th</sup> September 2004**, the closing date for firms wanting to join the voluntary scheme. This can either be returned by post, DX, hand delivery or by fax.
- 6.3 On receipt of the agreement form the regional office will decide whether or not the supplier is eligible to join the voluntary scheme. If accepted, the regional office will counter-sign the agreement and the supplier will then enter the voluntary scheme.
- 6.4 Category 3 suppliers will be excluded from the voluntary scheme. However, category 3 suppliers currently in appeal may register their interest in joining the voluntary scheme by applying in writing to their regional director (to be received by 4pm on 17<sup>th</sup> September 2004). If on conclusion of the appeal the supplier's audit rating is amended to category 1 or 2 they will be permitted to join the voluntary scheme unless we have other significant concerns. Any category 3 firms that do not register their interest in joining the voluntary scheme will not be eligible to join the scheme regardless of the outcome of the appeal.

### Mandatory Scheme

- 6.5 It is proposed that the mandatory scheme be implemented with effect from 1<sup>st</sup> April 2005.

### Outline timetable

LSC consultation paper published	22 <sup>nd</sup> July 2004
Letters sent to suppliers setting out details of fixed fees and enclosing voluntary scheme agreements	End July 2004
DCA consults with the Law Society and the Bar Council regarding regulatory changes	To be confirmed
Closing date for joining the voluntary scheme, or (category 3 suppliers in appeal only) registering interest in doing so	4pm, 17 <sup>th</sup> September 2004
Voluntary scheme operational	20 <sup>th</sup> September 2004 (for claims submitted on or after 1 <sup>st</sup> April 2004)

LSC consultation closes	1 <sup>st</sup> November 2004
DCA consultation closes	Date to be confirmed
LSC publishes a post consultation summary and report, and final version of mandatory scheme	December 2004
Regulatory and contract amendments	In place to allow start date of 1 <sup>st</sup> April 2005 for mandatory scheme.
Mandatory scheme operational	From 1 <sup>st</sup> April 2005

## 7. Question and Answer Briefing

*Q: How long will the scheme operate for?*

A: We anticipate that the scheme will operate until at least 2006, but will need to keep this under review depending on the outcome of the Fundamental Legal Aid Review.

*Q: If I join the voluntary scheme can I change my mind later?*

A: No, once you have joined the scheme, it will not be possible for you to opt out.

*Q: Can I opt into the voluntary scheme for some of my civil work categories and not others?*

A: No, you have to opt in for all categories covered by the scheme. Note however that certain work within the mental health category is excluded (cases where the client is sectioned following criminal proceedings).

*Q: I have not received a letter giving details of my fixed fees. What should I do?*

A: Check to see whether you are eligible to join the voluntary scheme (see section 5 of this paper). If you are and you have not received a letter, contact your regional office.

*Q: I'm not happy with the level of my fixed fees. What should I do?*

A: If you consider that the regional office has made an error in calculating your fixed fees, you should raise this with them as soon as possible. Note however that regional offices will not be able to amend fixed fees on the basis of projected future changes, for example to case mix, client type or fee earners employed.

*Q: Once I am in the scheme can I exempt expensive cases?*

A: No, all cases within the scope of the scheme will be paid for at the fixed fee rates.

Q: *What if I want to amend my fixed fees later on?*

A: The amount of fixed fees will remain as set at the start of the scheme until the scheme is replaced by new payment arrangements.

Q: *Where can I get more information?*

A: We will be publishing more information in our newsletter, *Focus*, and on our website [www.legalservices.gov.uk](http://www.legalservices.gov.uk). Your regional office contracting team will also be happy to assist you with any queries specific to your firm.

## 8. Initial Equality Impact Assessment

Our preliminary assessment of the impact of these proposals on the promotion of equal opportunities across our supplier base and for clients is that, as they will increase suppliers' existing levels of average costs by 2.5% (after taking into account costs assessments), they should have a positive impact on funding for suppliers, and on numbers of clients accessing publicly funded services within the Controlled Work scheme.

We will monitor the impact of the changes on access to publicly funded civil legal services and report on any changes in accordance with the LSC Equality Scheme.

## 9. Initial Regulatory Impact Assessment

### **Title of proposal**

"A Tailored Fixed Fee Scheme for Civil (non-immigration) Controlled Work"

### **Purpose and Intended Effect of Measure**

### **Background**

The LSC contracts with suppliers of legal services to enable it to carry out its obligations under the Access to Justice Act 1999, particularly obtaining best possible value for money (ss.5 & 18); meeting identified needs (s.4); and ensuring that funding is made available only in appropriate cases.

There is a fixed budget for funding cases delivered under contract within the Controlled Work scheme.

Suppliers' average costs per case have increased year on year, whilst in the last year the number of clients seen has fallen.

The Community Legal Service Public Service Agreement target 6, agreed by the Commission with the Lord Chancellor for the period 2003-2006 requires the LSC to *“increase year on year the number of people receiving suitable assistance in priority areas of law involving fundamental rights or social exclusion.”* For civil work within the Controlled Work scheme, this target has to be achieved within a fixed budget. This means that any increase in the number of people assisted must be funded through obtaining better value for money and costs savings.

### **Objectives**

The key objectives for the scheme are to:

- Control costs and secure best value from a necessarily limited budget
- Maintain or increase the number of new cases started, thereby increasing access to justice for funded clients
- Reward those solicitors joining the scheme by increasing average fees by 2.5%
- Adopt a new approach to managing contracts, which is less intrusive and has lower transaction costs for the LSC and solicitors than costs compliance auditing
- Enable both the LSC and solicitors to prepare for changes in payment arrangements likely to be introduced as a result of the current Fundamental Legal Aid Review, including managed competition and greater use of fixed fees across all levels of work

The proposed amendments extend only to the LSC’s suppliers – all of whom are in England and Wales.

### **Risk assessment**

The proposals are intended to introduce greater certainty and predictability into the budgetary planning of both the LSC and its suppliers.

The introduction of fixed fees will however require suppliers to take a more active approach to managing risk in order to ensure that overall amounts paid reflect work done even though individual cases may cost more or less than the fixed fee to complete.

The key risk for the LSC in implementing the scheme is that quality of service and outcomes achieved may be adversely affected by suppliers seeking to maximise profits from the scheme. The LSC will manage this risk by monitoring a range of quality indicators and taking corrective action where necessary.

## **Options**

- i) Do nothing
- ii) Introduce the voluntary scheme only
- iii) Introduce the voluntary and the mandatory scheme

## **Benefits of options**

### **(i) Do nothing**

There are no apparent benefits to doing nothing. If rising average case costs are not contained, then given the fixed budget for Controlled Work, inevitably fewer clients will gain access to publicly funded legal services. Retaining the current approach to costs control (costs compliance auditing) for all suppliers would also continue to impose a significant burden on the LSC and suppliers in terms of administrative costs and time spent which could be better targeted elsewhere.

### **(ii) Introduce the voluntary scheme only**

The key advantage of introducing the scheme on a voluntary basis only is that it could be implemented quickly, without the need for completion of a full consultation and consequent contract and regulatory amendments. The key disadvantage however is that the voluntary scheme is more limited in scope than the mandatory scheme (it excludes category 3 suppliers). Also, being voluntary, there is no guarantee that sufficient numbers of suppliers would participate to enable the LSC to control the budget sufficiently to enable the release of further new matter starts.

### **(iii) Introduce the voluntary and the mandatory scheme**

The benefit of introducing both schemes is that the LSC and suppliers will be able to commence implementation quickly for the voluntary scheme, and to ensure global coverage through the mandatory scheme.

## **Costs**

There are no changes to the reporting requirements for businesses in relation to any of the options set out above and suppliers will not therefore incur any costs in relation to software/IT amendments or forms.

The removal of costs compliance auditing will reduce contract compliance costs for suppliers.

### **Consultation with small business: The small firms' impact test**

Many of the LSC's civil law suppliers are small businesses. Their interests are represented through the Law Society and the Legal Aid Practitioners Group and other representative bodies with whom the LSC will consult in respect of its proposals. Whilst no disproportionate impact of the proposed amendments on small business has been identified to date, the LSC will re-evaluate its current assumption that this is the case after reviewing the responses to its consultation.

### **Competition assessment**

The proposal will impact on all the solicitors' firms providing CLS services under the LSC's General Civil Contract.

Having applied the Cabinet Office's competition filter test to the relevant market (being suppliers of CLS services) we conclude that the implementation of the proposals, which fix average costs at their current levels plus 2.5%, will not have any significant effect (whether positive or negative) on competition in that market.

### **Monitoring and review**

We will monitor the impact of the changes on suppliers and report on any changes.

### **Consultation**

We will consult on the proposals in accordance with the Government Code of Practice on consultation (see below).

### **Recommendation**

It is recommended that the proposals for the voluntary and mandatory schemes be implemented as proposed, subject to any amendments following consultation.

## 10. Government Code of Practice Criteria

The LSC abides by the Government Code of Practice on Consultation, which came into effect on 1<sup>st</sup> April 2004.

The six consultation criteria in the Code are:

- I. Consult widely throughout the process, allowing a minimum of 12 weeks consultation at least once during the development of the policy
- II. Be clear about who may be affected, what questions are being asked, and the timescale for responses
- III. Ensure that your consultation is clear, concise and widely accessible
- IV. Give feedback regarding the responses received and how the consultation process influenced the policy
- V. Monitor your department's effectiveness at consultation, including through the use of a designated consultation co-ordinator
- VI. Ensure that your consultation follows better regulation best practice, including carrying out a Regulatory Impact Assessment if appropriate.

The full text of the government code is available from the Cabinet Office website at: [www.cabinet-office.gov.uk/regulation/consultation/code.htm](http://www.cabinet-office.gov.uk/regulation/consultation/code.htm)

**Appendix One**  
**Voluntary Scheme**  
**Amendments to the General Civil Contract (Solicitors)**



- 3 However, subject to paragraphs 4 to 8 below payment will be made at the fixed rate in Table 5, whatever the amount claimed by you and recorded on the CMRF and Annex A (and B if applicable) of your Schedule is amended accordingly. (For the avoidance of doubt, no payment will be due where the amount claimed by you is nil).
- 4 We may assess your Claims in accordance with the provisions of the Contract.
- 5 Notwithstanding any assessment, we will make no reduction of the fixed rate payment due to you in respect of any Claim subject to the following:
  - 1) We will not pay for work that is outside the terms of the Contract (for example work for non-eligible clients or not within the scope of Legal Help).
  - 2) Where we terminate your Contract under paragraphs 20.4 (c) (Official Investigation or Report) or 20.13 (Fundamental Breach) then we may assess claims and pay the lower of the assessed amount or the rate payable under Table 5.
  - 3) If your rates in Table 5 have been set subject to completion of a costs compliance audit, we may amend those rates to reflect findings under Rule 2.15 as a result of the assessment on a sample of your claims.
- 6 We may also amend the payment rates in Table 5 as we consider reasonably necessary in order to correct any error (such as a miscalculation of the total of your Claims used to make up an average). If the amendment does not take place at your request, we will give you a reasonable opportunity (at least 21 days) to comment on the amendment before it is made.
- 7 We may make such amendments to the payment rates set out in Table 5 as we consider necessary to reflect any Access to Justice Act Legislation.
- 8 Your next Schedule will contain the same payment rates in Table 5 as this Schedule subject to the following:
  - 1) Any amendments under paragraphs 5 to 7 above.
  - 2) We may reduce the level of the fixed rate in any Category of Law in your next Schedule to reflect the results of any findings applied under Rule 2.15 of the Specification on a sample of your Claims from this Schedule period. If we do so, we will only make reductions where the assessed costs of the file sample are more than 10% below either the amount Claimed, or the amount of the fees payable under Table 5 which ever is the lower.
  - 3) We may also vary the payment rates set in Table 5 in your next Schedule in any Category of Work where the average of your Claims in that Category of Work over the remainder of this Schedule period is significantly below the relevant rate in Table 5. Average in this context means the total value

(recorded in accordance with paragraph 2 above) of all your Claims in any Category of Work made between the date of this agreement and the end of this Schedule, divided by the total number of such Claims. If we amend any rate under this paragraph, then the new rate must be set at a level no lower than that average and may be set at a level in between that average and the existing rate in Table 5.

- 4) We will only exercise the powers in sub paragraphs 8(2) and 8(3) above where we have significant concerns about either value for money or quality of work. If we are considering a reduction under 8(2) we will normally arrange for your files to be peer reviewed. Any amendments made to your next Schedule under sub paragraph 8(3) may be backdated to the beginning of that Schedule period (i.e. to 1 April 2005).
- 9 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.
- 10 Any amendments made to the General Civil Contract (Solicitors) in order to implement the compulsory scheme for fixed fees will also be incorporated into your contract as from the appropriate date (likely to be 1 April 2005).

#### **Amendments to the Standard Terms**

##### Clause 12A.4

Add the following sentence at the end of the Clause:

**‘However, where the assessed Claim relates to work to for which the fixed rates in Table 5 of your Schedule apply, then subject to the provisions of your Schedule, the amount due from us in respect of that Claim will be the appropriate fixed rate.’**

##### Clause 12 B.2

Amend the clause to insert the words in bold:

‘Subject to our right to Assess your Claims, the amount due from us in respect of any Controlled Work Claim is the amount properly claimed by you, **or where the Claim relates to work to for which the fixed rates in Table 5 of your Schedule apply, the appropriate fixed rate,** less:

- (a) the amount of any contribution payable by the Client; and
- (b) except where the Specification provides otherwise, the amount of any charge (whether contractual or statutory) arising under the Act.

### **Amendments to the Specification**

Rules 3.6 (Upper Financial Limit) and 5.5 (The Controlled Legal Representation Limit –Mental Health) will not apply.

**Signed for and on behalf of us by:**

Name:

Signature:

Status:

**Signed for and on behalf you by:**

Name:

Signature:

Status:

[Partner/Principal/Director/  
Other (please state)]

State type of Organisation:  
e.g. Partnership, Incorporated  
Practice, Limited Liability  
Partnership

This Contract amendment must be signed for you by a person who can bind you to it. If you are a partnership a partner must sign. If you are a sole practitioner solicitor, the sole practitioner (principal) must sign. If you are a company, a director must sign. This Contract amendment is valid only if it is signed by one of our Regional Directors or another person with the specific written authority of our Chief Executive.

**Appendix Two**  
**Compulsory Scheme**  
**Amendments to the General Civil Contract (Solicitors)**

## **TFF contract changes: compulsory scheme**

### **Contract Amendments**

These amendments will apply to all non-immigration Controlled Work Matter Starts commenced on or after 1 April 2005. This will include Family Matter Starts except where the supplier has a FAINS contract.

### **Contract Schedule**

#### **Annex A**

Existing paragraphs 5 and 6 are deleted.

A new paragraph 5 is inserted as follows:

‘The payment rates that apply to Contract Work are set out:

- (a) In Table 5 of this Schedule in respect of Legal Help, Help at Court and Controlled Legal Representation on all Matter Starts (except in the Immigration category) that commenced on or after 1 April 2005.
- (b) In paragraph 6 below in respect of all other Contract Work

The levels of service specified in this Schedule are the same as in the Funding Code.’

Existing paragraph 7 will be renumbered as paragraph 6. The first two sentences will be deleted and replaced with the following:

6 ‘The rates set out in this paragraph apply to all Controlled Work in the immigration Category of Work, all Controlled Work in other categories of Work on Matter Starts that commenced prior to 1 April 2005, and to all Licensed Work.

A new paragraph 7 will be inserted in Annex A as follows:

**7 Controlled Work (excluding Immigration): Matter Starts that began on or after 1 April 2005.**

#### **7.1 What will we pay for Matter Starts commenced during this Schedule?**

We will pay for Matter Starts that begin on or after 1 April 2005 at the fixed rates per Claim in each Category of Work set out in Table 5 of this Schedule.

These rates are based on either the average value of your Assessed Claims in a Category of Work or an average value of Claims in a Category of Work from Category 1 firms (or a group of such firms) in your geographical area as notified to you. In either case the average will be calculated by reference to Claims made during the 2003-4 Schedule year and by totalling amount of the Assessed Claims in the

Category of Work and dividing it by the number of such Claims. We will also add an uplift of 2.5%.

Your Claim submitted on the Consolidated Matter Report Form must however record details of actual disbursements and costs incurred using the hourly rates set out in paragraph 6 of this Annex.

Subject to our rights to Assess, we will make payment at the appropriate fixed rate in Table 5 whatever the amount of the Claim. For the avoidance of doubt, no payment is due where the amount of your Claim is nil.

### **7.2 Can we vary the payment rates for Claims under this Schedule?**

We have the right to Assess your Claims in accordance with the provisions of this Contract. We will not make any variation to the payment rates in Table 5 as a result of any assessment except as set out in the Specification.

We may amend this Schedule to adjust the payment rates in Table 5 as we consider reasonably necessary to correct any error (such as a miscalculation of the total of your Claims used to make up an average). If you have not requested the amendment, we will give you a reasonable opportunity (at least 21 days) to comment on the amendment before it is made.

We may also amend the payment rates set in Table 5 in any Category of Work where the average (total value recorded on the CMRF (less any amount assessed off) divided by number of Claims) of your (Assessed) Claims in that Category of Work over any 6-month period is below those rates. If we amend the rates under this paragraph, then the new rates must be set at a level no lower than the new average of your (Assessed) Claims over that 6 month period, and may be set at a level in between that new average and the existing rates.

We may make such amendments to the payment rates set out in Table 5 as we consider reasonable and necessary to reflect any Access to Justice Act Legislation.

### **7.3 Payment of a fixed rate and performance of the Contract**

Notwithstanding the fact that you will only be entitled to payment at the fixed rates in Table 5:

- 1 You should continue to act reasonably in the best interests of the client as if you were paid on an hourly rate.
- 2 You should not intentionally change your case mix in order to have the effect of targeting lower cost work.
- 3 You should only apply for Legal Representation on a client's behalf at the appropriate point (see Rule 3.8 of the Specification).

- 4 You should not commence two or more Matter Starts for the same client where, under the previous payment arrangements, you would have only commenced one.
- 5 You should report cases in the most appropriate category of work, and not according to the amount of the fixed rate payable.

### **Amendments to the Standard Terms**

#### Clause 12A.4

Add the following sentence at the end of the Clause

‘However, where the assessed Claim relates to work for which the fixed rates in Table 5 of your Schedule apply, then subject to the provisions of your Schedule, the amount due from us in respect of that Claim will be the appropriate fixed rate.’

#### Clause 12 B.2

Amend the clause to insert the words in bold:

‘Subject to our right to Assess your Claims, the amount due from us in respect of any Controlled Work Claim is the amount properly claimed by you, **or where the Claim relates to work to for which the fixed rates in Table 5 of your Schedule apply, the appropriate fixed rate,** less:

- (a) the amount of any contribution payable by the Client; and
- (b) except where the Specification provides otherwise, the amount of any charge (whether contractual or statutory) arising under the Act.

### **Specification**

Rules 2.14 and 2.15 will be deleted and replaced as set out below. It is important to note that discussions are currently taking place between the LSC and The Law Society and LAPG in order to improve the contract compliance appeals process. Any amendments agreed as a result of that process will also be incorporated.

#### **Rule 2.14**

##### Assessments

**At the conclusion of any matter, you must submit a Claim to the relevant Regional Director on the Consolidated Matter Report Form. This Claim must show the costs of the Controlled Work calculated in accordance with the rates in paragraph 6 to Annex A to the Schedule and including disbursements, and VAT, less the value of the Controlled Work charge.**

**Credit for each Claim will be given at the relevant fixed payment rate per Claim set out in Table 5 of the Schedule, less the value of the Controlled Work Charge.**

**Each Claim must be limited to work that has been actually and reasonably done and disbursements actually and reasonably incurred in accordance with the provisions of the Contract and that is supported by appropriate evidence on the file at the time of the claim. The relevant Regional Director may assess the Claim either before or after the credit in relation to that Claim has been given.**

**Although we have the right to assess every Claim, we will normally assess a sample of your claims and apply those findings (usually expressed in terms of an average percentage reduction on the sample) by way of assessment to other files instead. This is on the basis that we would be likely to arrive at a very similar overall result if we assessed every file to which the findings are being applied.**

**When we assess a sample of Claims, we may apply any findings to your other Claims for payment for Controlled Work.**

**When we apply findings in this way, we may do so for all cases where costs have been claimed from us either:**

- (a) Since the date the file sample was requested for the last contract compliance audit, or**
- (b) From a date 12 months immediately preceding the date the file sample was requested for assessment on the current audit,**

**whichever is the most recent.**

**‘Findings’ for these purposes include the average percentage reduction on assessment of a sample of your files. If the sample relates only to a specific group of your files, then we will only apply the findings to that specific group.**

**When findings are applied to a Claim under this Rule, then that Claim has been assessed by us.**

## **Rule 2.15**

### **Effect of Assessments**

**Notwithstanding the amount at which a Claim is assessed, credit will be given for that Claim at the appropriate rate set out in Table 5 of your Schedule.**

However, we may give credit only for the amount assessed (including an assessment by way of a finding applied under Rule 2.14) in relation to a Claim or Claims where this is less than the appropriate rate set out in Table 5 of your Schedule and either:

- (a) **All or part of the Claim or Claims relates to work that is outside the scope of this Contract, or carried out for a client that is not financially eligible or for work that was not actually carried out or disbursements that were not actually incurred; or**
- (b) **We are entitled to terminate the Contract under clauses 20.4 (c) (Official Investigation or Report) or 20.13 (Fundamental Breach) of the Standard Terms.**

**Where findings have been applied under Rule 2.14, we may reduce the relevant rate in Table 5 in the Schedule following that in which the Claims were made in order to give effect to the findings. We will only do so under this Rule where the total amount assessed in relation to the sample was more than 10% below the lower of either the total amount claimed or the total amount credited in relation to the sample files.**

Where you are given notice of the decision to apply reductions after the Schedule period in which they will take effect has started, then any reductions will only apply to Matters started from the date of the notice.

- 1 Subject to the exceptions set out in this Rule, the amount of credit due in relation to any Claim will be the appropriate fee set out in Table 5 of your Schedule irrespective of whether the amount claimed or assessed is above or below that fee. The exceptions in (a) and (b) may also be applied to Claims which have not been individually assessed but which have findings applied to them. Thus, if we find that a percentage of your claims on a sample relate to out of scope work, we may apply that finding to the appropriate percentage of the remainder of your Claims (or group of Claims if the findings relate only to that group). In the case of exception (b), we will apply the appropriate percentage assessment rate to all of your Claims, but the rates in Table 5 will still operate as a maximum payment where the assessed amount is higher.
- 2 Where findings based on a sample show that the total value of work done and disbursements claimed on the sample is more than 10% below the amount of the Claim and more than 10% below the amount of the fees payable under Table 5 we may reduce those rates to give effect to this assessment rate. This reduction may be across all categories (except immigration) where the findings relates to all your Controlled Work, or to a particular category or categories where the findings relate only to that category or categories. This reduction will apply to matters started in the Schedule year immediately after that in which the claims were made. Where the audit of Claims made in a Schedule year takes place part way through the subsequent Schedule year, the reductions will only apply in any event to matters started after the notification of the decision was given to you by the Regional Director. This is because we may not complete assessment of a sample of claims made in one Schedule period until sometime in the next Schedule period. Where you appeal the decision, we

will not implement the reductions pending the appeal, but may backdate any reduction that would apply following the appeal to the same date that it would have taken effect had no appeal been made.

Rule 2.16 (Appeals) will be amended to replace any reference to Rule 2.15 with a reference to Rule 2.14.

### **Rule 2.18 (Basis of Assessment Reviews and Appeals)**

The following paragraph will be added to the Rule:

**‘Rule 2.15 shall apply to any assessment made by the Regional Director, or any revised assessment made by the Cost Committee or Cost Appeals Committee.’**

Paragraph 2 of the guidance to this Rule will be deleted, and a new paragraph 2 and 3 inserted as follows:

- ‘2. The relevant rates from paragraph 6 to Annex A to the Schedule will then be applied to the time allowed and the resulting sum will be added to any disbursements allowed and to any VAT to produce a figure for the costs of the case. Allowance will not be made for work which was not evidenced on the file at the time the claim was made in the form of timed and dated attendance notes, and where appropriate by relevant documentation, such as copies of documentation drafted or perused.
- 3 Notwithstanding the amount assessed on appeal, payment will be made at the appropriate fixed rate in Table 5 of your Schedule except in the circumstances set out in Rule 2.15.’

### **Abolition of Upper Limits**

Rule 3.6 (Upper Financial Limit) and Rule 5.5 (The Controlled Legal Representation Limit – Mental Health) will not apply.