

Legal Aid: a sustainable future



Consultation Paper

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July 2006

This consultation will end on 12 October 2006



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A consultation paper produced by the Department for Constitutional Affairs
and the Legal Services Commission

This information is also available on the DCA website at www.dca.gov.uk
and on the LSC website at www.legalservices.gov.uk

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1. Foreword

(by the Lord Chancellor and Secretary of State for Constitutional Affairs and Vera Baird QC MP, Minister for Legal Aid, and Sir Michael Bichard, Chair, Legal Services Commission)

- 1.1** We can be proud of our legal aid system. It is of the highest quality and guarantees access to justice. It is built on the work of a skilled and committed supplier base. Legal aid practitioners play a crucial part in ensuring there is an effective justice system the public can trust. However, legal aid is very expensive. Since 1997 the cost of legal aid has increased from £1.5 billion to £2.1 billion. This 10% real terms rise masks the 37% increase in spending on criminal legal aid. The growth on criminal legal aid is putting pressure on vital services for vulnerable people provided via civil and family legal aid. The system needs to be reformed and modernised to adapt to new circumstances, whilst safeguarding the high quality of service by providers.
- 1.2** Following publication of *A Fairer Deal for Legal Aid* last July, Lord Carter was commissioned to look at two areas. Firstly, to re-balance the legal aid budget to put it on a sustainable footing and ensure that the Government is procuring a quality, efficient and diverse service at the best price for the taxpayer. And, secondly to ensure that proposals are in line with the aims of the wider Criminal Justice System.
- 1.3** Whilst Lord Carter has been developing his recommendations over the past year, we have been making substantial progress in modernising the provision of legal aid, including:
- The Legal Services Commission's publication in March 2006 of its Community Legal Service strategy;
 - A cross-government strategy for providing people with better advice and help to resolve their disputes also published in March 2006;
 - The LSC's consultation paper on the Preferred Supplier scheme *Quality Relationships Delivering Quality Outcomes*, published in March 2006;
 - The Criminal Defence Service Act, which received Royal Assent in March 2006. It provides for the introduction of a new system of means testing in the courts. It also transfers the power to grant criminal legal aid representation from courts to the Legal Services Commission; and
 - The *Review of Childcare Proceedings System in England and Wales*, which was published in May 2006.
- 1.4** This Consultation Paper – jointly prepared by the Department for Constitutional Affairs and by the Legal Services Commission, and published alongside Lord Carter's Report – is a further vital component in our reform programme. This paper:
- Includes a list of questions for comment on Lord Carter's recommendations for criminal legal aid;
 - Sets out and invites comments on proposals developed by the Legal Services Commission, together with the Carter Review team, for new remuneration schemes for many areas of legal services provided under the Community Legal Service (civil, family and immigration legal aid); and
 - Sets out proposals by the LSC for a new Unified Contract that will underpin the introduction of these reforms and the Preferred Supplier scheme.

Some of the areas of implementation will require further detailed consultation by the Legal Services Commission and this document does not seek responses to those matters.

- 1.5** Lord Carter has engaged fully with the professions and other key stakeholders during the course of his review, and in doing so he has developed a wide range of recommendations to reform the current procurement system for legal aid, especially criminal defence services. Whilst we welcome Lord Carter's recommendations for a move towards a market-based procurement settlement for legal aid, we also recognise that consultation is a vital part of developing effective policies and all responses will be taken into consideration in shaping services.
- 1.6** Some of the proposals for fee schemes contained in Lord Carter's Review and in this paper are radical. There may be significant challenges ahead for firms and practitioners in moving to a market-based approach. However, we believe these proposals can achieve a more sustainable legal aid market where providers can cover their costs and achieve an acceptable return on their investment. We also recognise the need to safeguard the diversity of the supplier base. A significant proportion of suppliers are small firms and both this paper and Lord Carter's report have been informed by discussions with representative groups.
- 1.7** Reforms can only be taken forward by all stakeholders working together. But we are committed to creating an environment where there is access to justice and the best providers can thrive. We welcome your views, and look forward to receiving your responses to the questions set out in the paper.

Charlie
Falmer

Vera Beard

Michael Beard

2. Executive Summary

- 2.1** Lord Carter's Review of Legal Aid Procurement was established following the publication in July 2005 of *A Fairer Deal for Legal Aid* with the task of proposing reforms for the procurement of legal aid. Lord Carter published his interim findings in February 2006 and his full report was published on 13 July 2006. The terms of reference for the Review team set out that a new procurement scheme must deliver:
- A more open and responsive market, with risks shared between supplier and purchaser;
 - Incentives for swift conclusions and minimal costs to other parties; and
 - A diverse and competitive market of lawyers and others offering quality advice and advocacy.
- 2.2** Although Lord Carter has fully engaged with the professions and key stakeholders during the course of his review the aim of this consultation paper is to gather further views prior to moving towards implementing the proposed reforms. The consultation paper is broken into three sections, one addressing the proposals for Criminal Legal Aid, one for Civil, Family and Immigration and Asylum matters and finally the contracting regime that will support the achievement of Lord Carter's objectives. The key elements of these proposals are outlined below. It is proposed that, by 2010/11, Government will have achieved a steady state procurement system and be working within the resources available to deliver a sustainable legal aid scheme.
- 2.3** It is recommended that this be achieved following a phased implementation process, involving the introduction of new procurement and remuneration structures in both civil, family and criminal legal aid.
- 2.4** Details of the schemes and the proposed timetable for their introduction are set out in the following sections of this paper.

CRIMINAL LEGAL AID

- 2.5** Lord Carter's report outlines steps for the criminal legal aid market to reach a 'steady state' by 2010/11 where high quality and efficient providers can thrive. The proposed implementation plan provides for the introduction of changes in phases.
- 2.6** The proposal is that the first phase of implementation occurs in April 2007 when the new fixed fees for police stations and the graduated fee scheme for Crown Court litigators would be introduced along with the revised fees for magistrates' courts and Crown Court advocates. By September 2007 the Legal Services Commission would establish a competitively tendered panel for Very High Cost Cases (VHCCs), with an enhanced quality threshold.
- 2.7** October 2007 would see the roll out of the new boundaries for the revised General Criminal Contract. In April 2008 a new graduated fee scheme for the magistrates' court would be introduced. The final phase of implementation in April 2009 would centre on the launch of best value tendering for criminal legal aid when suppliers would compete for contracts on price once they have met the quality threshold. By this time the LSC would have completed the transfer of quality assurance for solicitors to the Law Society.

- 2.8** These proposals are intended to give suppliers the opportunity to show that they can provide efficient high quality services, and to ensure that efficient suppliers and smaller firms with entrepreneurial spirit would be able to expand and thrive. Smaller firms would also be able to explore options such as sharing backroom functions and IT resources. To assist with this restructuring it is recommended that the Government offer support through avenues such as advice from independent specialists and initial analysis of accounting information to identify key issues. The legal sector would also be able to use specialist advice services such as 'Business Link' via regional development agencies.
- 2.9** The proposed market would not be 'one-size' fits all, but would differ across communities, with, in some areas, closer management to address consumer choice for vulnerable and BME communities.
- 2.10** A fixed fee regime would allow efficient firms to be more profitable: they expend less input to produce the same quality service and get the same fee as a less efficient firm. The current scheme, which is based on inputs, does not sufficiently reward this efficiency. Also, under the new proposals, efficient firms would be able to win new contracts and be more competitive when best value tendering is introduced.
- 2.11** Fixed contracts would enable firms to undertake more predictable financial management and to exercise a greater degree of budget control. Moreover, the financial lending sector is fairly well disposed to the legal sector and proposals for fixed fees and bigger contracts would put firms in a stronger position when negotiating with financial institutions.
- 2.12** This consultation document is seeking views on the detailed recommendations for criminal legal aid procurement, which were set out in Lord Carter's report. The two documents should, therefore, be read together.
- 2.13** Should the overarching proposals be accepted there will need to be a separate consultation on the new General Criminal Contract working arrangements and the position of the new boundaries envisaged by Lord Carter for the police station schemes. Further consultation will also need to accompany any proposals for regulatory change.

Police Stations

- 2.14** It is proposed to introduce a system of fixed fee payments, which include travel and waiting payments, to the current schemes from April 2007. This will provide suppliers with time to re-structure their businesses and to meet the quality threshold (Peer Review level 2, see Lord Carter's report Chapter 5 paragraph 17) ahead of best value tendering in 2009.
- 2.15** Under the proposed scheme, contracts would be let on the basis of price competitive bids for high quality advice in blocks of cases and firms would continue to be paid a fixed fee for each case. To encourage continuity of representation and a high quality service for clients, the contract holder would be expected to 'keep' cases from the police station through to disposal.

Magistrates' Courts

2.16 Lord Carter has proposed that the existing standard fees be amended in April 2007 to include an element for travel and waiting. To reward efficient work, Lord Carter has proposed proportionately higher increases for both Category 1 cases and Lower Standard Fees. In the meantime, the LSC will improve the collection of data and develop with the DCA an alternative fee structure with a greater fixed or graduated element for the magistrates' court.

Crown Court (excluding Very High Cost Cases)

2.17 Advocates – Lord Carter has proposed further development of the successful Graduated Fee Scheme for advocates to encourage greater efficiency in working practices and ensure greater fairness. For instance, case fees will be paid to a single named advocate who will take responsibility for allocating payments where more than one advocate is used during a case. It is also proposed that many current bolt on fees are included in the main base fee and that payments for additional days at trial in long cases are made less significant than is currently the case, thereby rewarding efficiency.

2.18 Litigators – Lord Carter's analysis suggests that current payment methods in many Crown Court cases for litigators do not sufficiently reward efficient suppliers. Lord Carter has therefore recommended that a Graduated Fee Scheme be introduced for litigators along similar lines to that proposed for advocates.

2.19 Advocates and Litigators – It is recommended that the above reforms be followed in the medium term by a move to a single graduated fee covering both litigation and advocacy services accompanied by a move to price competition.

Very High Cost Cases

2.20 These cases currently account for a disproportionately large percentage of the Criminal Legal Aid Budget. Proposals for reform include enhancing contract terms to allow the LSC better to manage individual contracts. Lord Carter has also recommended that the quality threshold for VHCC contract holders be enhanced to ensure that firms have the ability and the capacity to take on the largest cases. It is anticipated that these reforms will enable a price competitive market by 2008 with solicitors bidding for access to the panel to include a list of their proposed advocates as part of their bid.

CIVIL, FAMILY AND IMMIGRATION LEGAL AID

2.21 This paper sets out for consultation our proposals to implement the first stages of Lord Carter's reforms for Civil and Family Legal Aid. Unlike the crime proposals, which are set out in detail in Lord Carter's report, the proposals for civil, family and immigration legal aid are set out in detail in this consultation paper. As with the proposals on crime they must be delivered within the resources available.

2.22 In order to ensure simplicity the LSC has endeavoured to make the proposed schemes as consistent as possible whilst recognising that they must reflect the nature of the work being provided and the best interests of clients. The paper also includes outline proposals for a Unified Contract that will standardise, update and simplify the LSC contract system and bring all providers into one contract regime (including Not for Profit (NfP) agencies, mediation services and Criminal Defence Service firms after expiry of the present CDS contract).

2.23 One of the key changes we are proposing is that of moving from the current position in which we pay for services that providers choose to deliver to one where we pay for the services that we wish to purchase. This will include both the nature of the work and the volume. Remuneration schemes and the new Unified Contract will be structured around the type of services purchased and designed to promote quality, reward efficiency and to ensure value for money. As a result the different treatment for solicitor providers and the NfP providers will not continue. It is the LSC's intention that the payment schemes outlined in this paper will apply to the NfP sector.

2.24 The current General Civil Contract, both solicitor and NfP, comes to an end on 31 March 2007 and will be replaced by the proposed new Unified Contract. There will not be a general bid round to award new contracts but at the same time existing contract holders will not automatically be awarded a new Unified Contract. The LSC are proposing that providers who do not meet a minimum fund take requirement, calculated against all their legal aid work will not be automatically awarded a new Unified Contract. They are proposing to fix the minimum income level at either £25,000 or £50,000 per annum and seek your views on whether this should be a requirement and if so what the amount should be (see section 11 on the Unified Contract for details). We believe that it is uneconomic for both the LSC and the provider to deliver this small amount of legal aid work, and this is consistent with our proposals for Preferred Supplier of moving towards fewer and larger contracts. Providers with a contract compliance audit score (CCA) of 3 and providers that have outstanding critical quality concerns will not automatically be awarded a new Unified Contract.

2.25 From April 2007 the Unified Contract will cover all the work of the organisation rather than a contract with individual offices. The main points of principle that we wish to include in the contract and on which we would welcome your views are summarised below:

- The introduction of a minimum fund take, either £25,000 or £50,000 per annum, as a pre-requisite for obtaining or keeping a Unified Contract;
- Providers that have a CCA score of 3 will not automatically be offered a new Unified Contract;
- Providers with outstanding critical quality concerns will not automatically be offered a new Unified Contract;
- An end to Licence only contracts;
- Sanctions under the contract to become effective immediately;
- Contract Terms, price, service structure and volume to be amendable on notice;

- In line with the proposals in the Preferred Supplier consultation, the required quality standard as measured by peer review, will be a peer review score of 1 or 2;
- The SQM will no longer be a stand-alone document and the key elements will be included in the Unified Contract;
- There will be the same contract terms for both solicitors and NfP organisations; and
- The current contract allows for annual reconciliation of payments against work reported. It is our intention that all providers will be reconciled to 100% by April 2008 and thereafter to 100% at the end of each subsequent financial year.

2.26 It is our intention, subject to the outcome of this consultation, that all the remuneration schemes proposed will become operational from April 2007 and that all the schemes will eventually apply to all our providers. The schemes have been designed with a number of fundamental principles in mind and these are set out below. We would particularly welcome your views on these:

- The introduction of fixed and graduated fee schemes to replace hourly rates and tailored fixed fees in Civil, Family and Immigration and Asylum work;
- It is our intention that eventually the schemes will apply to *all* providers, including NfP organisations that hold contracts. We will introduce transitional provisions, from April 2007, for the NfP sector to ensure that services to clients are maintained and that efficient organisations remain viable;
- There will be separate payments for disbursements, with some exceptions;
- That the statutory charge should no longer apply to any recovery or preservation of property at the Legal Help level. Legal Help costs will continue to form part of the statutory charge where recovery or preservation occurs after a certificate has been granted, and we propose that this should be the case across all categories of work. The amount of the statutory charge will be the amount of the fees paid under the new schemes, rather than actual costs incurred as now.

2.27 In immigration the proposed graduated fee scheme covers all immigration cases and the majority of asylum cases. There are also proposals to cover services for those asylum cases excluded from the graduated fee scheme and for services required to underpin the provision of advice and representation generally.

2.28 The proposals cover approximately 60% of net civil, family and asylum legal aid expenditure. The new schemes have been devised to be cost neutral although fixed fees will reduce the inflationary pressure on the legal aid budget caused by the rise in average case costs. For suppliers the change will enable efficient quality assured providers to benefit from their efficiency.

2.29 The LSC is currently considering how to introduce standard or graduated fees in all the remaining areas as soon as possible and certainly no later than 2010.

2.30 The following tables summarise the proposals for Civil and Family Legal Aid:

Category	Current arrangements	Proposal
Family		
Controlled Work	<i>All work covered by:</i> Tailored Fixed Fees FAInS Family Help trial	<i>Public law children</i> Graduated Fee scheme <i>Private law</i> Family Help (graduated fees)
Licensed Work	Hourly rates Family Help trial (GFH)	<i>Public law children</i> Graduated fees for s31 cases Rest at hourly rates <i>Private law</i> General Family Help (GFH) covered by Family Help (see above) Full representation paid at hourly rates (to be replaced by graduated fees in October 07)
Harmonised legal aid rates for county court and Family Proceedings Courts – private law family	Different rates for proceedings issued in the county court and Family Proceedings Courts	A new harmonised intermediate level of rates for both county court and Family Proceedings Courts
Immigration and Asylum		
Controlled Work (all immigration cases and “mainstream” asylum cases)	Hourly rates	<i>Legal Help</i> Graduated fees Controlled Legal Representation (CLR) Graduated fees up to onward appeal <i>Then</i> Hourly rates
Advice at the Asylum Screening Unit (ASU)	Hourly rates	Block contracts
Services in Detention	Hourly rates	Block contracts
Services for Special Immigration Appeals Commission (SIAC) clients	Hourly rates	Hourly rates
Services for Unaccompanied Asylum Seeking Children (UASC)	Hourly rates	Hourly rates
Licensed Work	Hourly rates	Hourly rates
Mental Health		
Controlled Work	Tailored Fixed Fees or Hourly rates NB All forensic cases hourly rates	Graduated fees for <i>all</i> work (including forensic)
Licensed Work	Hourly rates	Hourly rates
Remaining civil work		
Controlled Work	Tailored Fixed Fees	Standard fees
Licensed Work	Hourly rates	Hourly rates

3. How to respond

- 3.1** This consultation paper sets out a number of specific questions regarding the proposals put forward. Views and constructive comments 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.
- 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 for download from the DCA website www.dca.gov.uk and the LSC's website www.legalservices.gov.uk.
- 3.3** In accordance with the Freedom of Information Act 2000, the Legal Services Commission may publish your name and the contents of your response. If you provide reasons why you do not wish these details to be disclosed, this will be taken into consideration if a request for such information is received. If you have concerns about any disclosure you should mark your response clearly to identify the areas to withhold. In any event, responses will be disclosed in an anonymous or summary format.
- 3.4** Please send responses by e-mail, post or fax by **Thursday 12 October 2006** to:
- Emma McGovern
Contract Design Team
Legal Services Commission
Head Office
85 Gray's Inn Road
London WC1X 8TX
DX 450 Lon/Chancery Lane
Fax number: 020 7759 0534
E-mail: contract.design@legalservices.gov.uk
- 3.5** If you e-mail your response to us, which we would encourage, please put the words "consultation response" in the subject heading of the e-mail.
- 3.6** We would also ask you to ensure that your consultation response is sent to us once only, as this will make it easier for us to compile and monitor responses. We will acknowledge receipt of all responses by e-mail or post within one week.

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. Those on criminal legal aid refer to the proposals for schemes set out in Lord Carter's report. Those on civil, family and immigration legal aid refer to the proposals set out later in this paper.

GENERAL – FOR ALL RESPONDENTS

- 1.1 Do you have a particular interest in legal aid? If so, what (e.g. practising lawyer)?
- 1.2 If you are a lawyer, do you undertake legally aided work? If so, what type(s) and for how many years?
- 1.3 If you are a legal practitioner, how do you think these reforms will impact on your business?
- 1.4 How many fee earners are there at your firm?
- 1.5 Approximately, what proportion of your firm's work comes from legal aid?

CRIMINAL LEGAL AID

Lord Carter's report clearly sets out the proposed schemes for procurement of criminal defence services. Below are some questions relating to these schemes on which your views are sought.

General Questions

- 2.1 Do you agree that there is a need to modernise the procurement of criminal legal aid? Do the recommendations outlined in Lord Carter's final report address this issue? Please provide supporting reasons for your answer.
- 2.2 What is your view of the timetable for implementation suggested in Lord Carter's Report in Chapter 3, paragraph 120, table 3.1 and Annex 6.1? Do you have any comments on the proposal that a phased approach to implementation be followed? Do you have any other comments on this timetable which you would like the Department to take into consideration?
- 2.3 What benefits might be generated for defendants and other stakeholders by adopting these proposals? Also what impacts/disadvantages do you consider might result from implementation? Please give consideration to different diverse communities such as BME and rural communities.

- 2.4** What impact will any or all of the recommendations have on criminal legal aid providers? Please give consideration to firms of differing size, structure and practitioner mix. Do you have any other comments on this proposal which you would like this Department to take into consideration?
- 2.5** Lord Carter's proposals are designed to promote the provision of high quality advice and to support the effective and efficient operation of the Criminal Justice System. Do you believe that the measures proposed will achieve this? Please provide supporting reasons with your answer and explain which of the specific recommendations you agree/disagree with.

General Criminal Contract

3.1 Scheme Boundaries (Recommendation 4.1)

What is your view of Lord Carter's proposal that the Legal Services Commission adopt the method described in Chapter 4 paragraphs 4 to 9 and Annex 4.1 of the Review's final report to construct new General Criminal Contract boundary areas for all of England and Wales by October 2007? Do you agree or disagree with any of the specific recommendations? Please provide supporting reasons for your response.

3.2 General Criminal Contract Working Arrangements (Recommendations 3.2, 3.3, 4.2, 4.3, 4.4, 4.5 and 4.6)

Do you have any comments on the new General Criminal Contract working arrangements proposed by Lord Carter in Chapter 3 paragraphs 44 to 68 and Chapter 4 paragraphs 10 to 35 of the final report? Are there any impacts in particular that should be taken into account? If so please give reasons.

Proposed Criminal Schemes

4.1 Police Stations (Recommendation 4.7)

Do you have any comments on the Police Station scheme proposed by Lord Carter in Chapter 4 paragraphs 36 to 39 and Annex 4.2 of the final report? Are there any impacts in particular that should be taken into account? If so please give reasons.

4.2 Magistrates' Courts (Recommendations 4.8, 4.9 and 4.10)

Do you have any comments on the magistrates' court scheme proposed by Lord Carter in Chapter 4 paragraphs 40 to 45 and Annex 4.3 of the final report including the payment of assigned counsel? Are there any impacts in particular that should be taken into account? If so please give reasons.

4.3 Crown Court – Advocates (Recommendations 4.11, 4.12, 4.13, 4.14 and 4.16)

Do you have any comments on the Advocates' Graduated Fee Scheme proposed by Lord Carter in Chapter 4 paragraphs 46 to 57 and 67 to 68 and Annexes 4.5 and 4.6 of the final report? Are there any impacts in particular that should be taken into account? If so please give reasons.

4.4 Crown Court – Litigators (Recommendations 4.15 and 4.16)

Do you have any comments on the Litigators' Graduated Fee Scheme proposed by Lord Carter in Chapter 4 paragraphs 58 to 68 and Annex 4.6 of the final report? Are there any impacts in particular that should be taken into account? If so please give reasons.

4.5 Very High Cost Cases (Recommendations 4.17, 4.18, 4.19, 4.20, 4.21, 4.22 and 4.23)

Do you have any comments on the VHCC scheme proposed by Lord Carter in Chapter 4 paragraphs 69 to 103 and Annex 4.7 of the final report? Are there any impacts in particular that should be taken into account? If so please give reasons.

SUPPORTING MEASURES

The following questions relate to issues raised in Lord Carter's Report which apply to all types of legal aid.

5.1 Quality (Recommendations 3.1, 5.1, 5.2 and 5.3)

Do you have any comments on Lord Carter's proposals in Chapter 3 paragraph 43 and Chapter 5 paragraphs 11 to 29 for implementing a quality threshold for those who would like to undertake publicly funded work? Are there any impacts in particular that should be taken into account? If so please give reasons.

5.2 Transitional Arrangements (Recommendations 5.4, 5.5, 5.6, 5.7, 5.8 and 5.9)

Do you have any comments on the transitional arrangements proposed by Lord Carter in Chapter 5 paragraphs 90 to 141 of the final report? Are there any impacts in particular that should be taken into account? If so please give reasons.

5.3 Wider Justice System Efficiency (Recommendations 5.10, 5.11 and 5.12)

Do you have any comments on the arrangements to encourage optimal use of all resources within the justice system proposed by Lord Carter in Chapter 5 paragraphs 160 to 166 of the final report? Are there any impacts in particular that should be taken into account? If so please give reasons.

5.4 DCA/LSC – External Engagement (Recommendations 6.1, 6.2, 6.3, 6.4 and 6.5)

What are your views on Lord Carter's proposals in Chapter 6 on information management and sharing? Do you have any comments on the proposals regarding stakeholder relations and cross-justice system working arrangements?

CIVIL, FAMILY AND IMMIGRATION LEGAL AID

The following questions refer to the LSC's proposals set out in sections 6 to 11 of this paper.

Replacement for TFF (section 6)

- 6.1** Do you consider that any other types or categories of work should be excluded from the scheme? If so please explain why.
- 6.2** Which of the 2 options set out for the replacement of the TFF scheme do you prefer and why?
- 6.3** Do you agree with the proposals for payment of tolerance work? If not please explain why.
- 6.4** Do you agree that the scheme should apply to work done by NfP providers? Do you agree that there should be a transitional scheme and what are your views on our initial proposal?

Care Proceedings Graduated Fee Scheme (section 7)

- 7.1** Which of the 2 options set out for the Care Proceedings Graduated Fee Scheme do you prefer and why?
- 7.2** Do you agree with the proposals for this new level of service, Level 2? If not, how else might we encourage the provision of legal advice pre-proceedings?
- 7.3** Do you agree with the proposed fee structure for this level of service, in particular the distinction between client types? Are there any other factors that we need to consider in setting the fees?
- 7.4** Do you agree with the proposals for payments under the scheme, particularly the removal of the uplift, the method of fee calculation, and our proposals for advocacy payments? If not what alternative methods can you suggest?

Family Help – private (section 7)

- 7.5** Do you agree with the proposed scope of the scheme? If not what work do you consider should be included or excluded?
- 7.6** Which of the 2 options set out for the Family Help – Private Scheme do you prefer and why?
- 7.7** Do you consider that these are the appropriate points at which to differentiate between fees payable? If not what alternative structure would you recommend?
- 7.8** Do you agree with the proposals for removing the 15% uplift for panel members? If so how else might we encourage more experienced practitioners to undertake early work?
- 7.9** Do you agree with the proposals for payment of exceptional cases in Family Help – Private? If not please explain why.

7.10 Do you agree with the proposals for payment of advocacy? If not what alternatives can you suggest?

7.11 Do you agree with the proposals for the assessment and collection of contributions? If not what alternatives can you suggest?

Harmonisation of solicitor legal aid rates (section 7)

7.12 Do you agree with the proposal to harmonise the legal aid rates for private law family?

7.13 Do you agree with the proposed intermediate level of rates? If not why not?

Immigration & Asylum (section 8)

8.1 Do you agree with the proposed scope of the graduated fee scheme? If not, please explain why.

8.2 Do you agree with our approach to produce different forms of remuneration for those services outside of the graduated fee scheme? If not, what suggestions do you have for contracting these services?

8.3 Are there any other services or client groups that should be outside the graduated fee scheme?

8.4 Do you agree with the stages of the graduated fees and the services that we would expect to be provided in the majority of cases? If not, please explain why.

8.5 Do you agree with the proposals for additional payments? If not, please explain why.

8.6 Do you agree with the proposals to include interpretation and translation costs within the fees in asylum cases? If not, please explain why.

8.7 Do you agree with the proposals for exceptional cases? If not, what other structures should we put in place to pay for these cases?

8.8 Do you agree with the proposals for an early resolution payment? If not, how else might we encourage positive outcomes for clients early in the process?

8.9 Do you agree with the proposed arrangements for stage claims? If not, please explain why?

8.10 Do you agree with our suggested approach to provide advice, information, and referral at ASU? If not, how else could these services be provided?

8.11 Do you agree with the proposal to restrict client choice and allocate clients to particular providers on a rota basis? If not, what alternative mechanisms do you think could be introduced to ensure that clients are guaranteed access to legal advice in the short period available between making their asylum application and their substantive interview?

- 8.12** Do you agree with our suggested approach to provide legal services to clients in Detention Centres? If not, what alternative arrangements do you think could be introduced to ensure that clients are guaranteed access to legal advice and representation whilst reducing the administrative burden on the LSC?
- 8.13** Do you have any suggestions about how legal services could be provided to immigration clients held in prison?
- 8.14** Do you agree with our suggested approach to provide legal services to unaccompanied asylum seeking children? If not, do you have any other suggestions about how we can ensure that providers delivering services to this client group have the necessary experience and expertise?
- 8.15** Do you agree with our proposed approach with remunerating work outside the graduated fee scheme? If not, what suggestions do you have?
- 8.16** Do you agree with our rationale for selecting reduced numbers of providers to provide these services? If not, do you have any suggestions about how to minimise the administrative cost to the LSC?
- 8.17** Do you agree with our approach of extending the exclusive contracting arrangement for fast track clients to other services and client groups? If not, what other proposals do you have to help reduce duplication of advice?
- 8.18** Apart from the generic criteria that we set for bid rounds, do you have any suggestions for specific criteria that we should use in bid rounds for the exclusive services to ensure that providers have the right level of experience and expertise?
- 8.19** Do you agree with our approach to develop national and regional providers? If so, are you a provider or part of a network that would be interested in becoming this type of provider?

Mental Health (section 9)

- 9.1** Do you agree that Controlled Work for Mental Health should be remunerated with a graduated fee rather than a single fixed fee? If not please explain why.
- 9.2** Do you agree that we are justified in not paying a second level 2 fee for Negotiation and Preparation relating to a Tribunal hearing where the client has transferred from one section type to the current section type via a Tribunal hearing? Are there circumstances when the fee should be paid again? How would you suggest we define such cases?
- 9.3** Do you agree with the proposed stages for setting the fees? If not what alternatives would you suggest and why?
- 9.4** Which of the 3 options do you prefer for payment of forensic cases and why? Are there any other options we should consider?

- 9.5** Do you agree that it is neither justifiable to set different fees for different regions nor to set London and non-London fees? If not please explain why.

Common issues (section 10)

- 10.1** Do you agree with the proposals for varying the fees? If not please explain why.
- 10.2** Do you agree with the proposed arrangements for payment of exceptional cases? If not how else might we manage these cases?
- 10.3** Do you agree with the arrangements for payment of disbursements? If not please explain why.
- 10.4** Do you agree with the proposed arrangements for the application of the statutory charge? If not please explain why.
- 10.5** Do you agree with the proposals for payment of VAT? If not please explain why.
- 10.6** Do you agree with the proposal to remove payments for file review in order to fund more civil matter starts? If not please explain why.
- 10.7** Do you agree with the proposed amendments to the Funding Code set out at Annex C.

Proposed Unified Contract (section 11)

- 11.1** Do you agree with our proposal that eventually all our providers, including NfP organisations, will be covered by the same contract terms? If not why not?
- 11.2** Do you agree that there should be a minimum income requirement, if not why not? Do you agree with our proposal to introduce a minimum income requirement of (a) £25,000 or (b) £50,000? What do you think that the minimum income requirement should be and why? And if you do agree which of the proposed options for on the period over which the limit would be calculated do you prefer and why or do you have an alternative proposal?
- 11.3** Do you agree with our proposals for the future of the SQM? If not why not?
- 11.4** Do you agree with our proposals to introduce new provision on the length of the Unified Contract and powers to terminate the contract in order to introduce Lord Carter's reforms or CLACs and CLANs? What contract length would you like to see and do you agree with the proposals on termination?
- 11.5** Do you agree with our proposals on self-monitoring, approved personnel, an open book relationship and technology? Do you think that they will improve the working relationship between the LSC and its providers? If not why not?
- 11.6** Do you agree with our proposal that all contracts will include a number of new matter starts thereby bringing to an end licensed only contracts? If not why not and are there circumstances where licensed only contracts should continue?
- 11.7** Do you agree with our proposals to publish information about contracts? If not why not?

- 11.8** Do you agree with our proposals on quality assurance and client service particularly the use of peer review and mystery shopping? If not why not?
- 11.9** Do you agree with our proposals that under the contract all providers will be paid on the same basis? If not why not?
- 11.10** Do you agree with the removal of level 1 work for NfP organisations? If not why not?
- 11.11** Do you agree with our proposals to change the way that contract sanctions are imposed and our proposed changes to the CRB?
- 11.12** Do you agree with our proposal for amending contracts and allowing the LSC to introduce contract amendments at times other than April and October?
- 11.13** Are there any other points that you either agree or disagree with that have not been specifically addressed in these questions? Please give your reasons for either agreeing or not agreeing?

5. The proposals

Introduction to the proposals on civil, family and immigration

- 5.1** This paper sets out our proposals for a new approach to paying for all Civil Controlled Work as well as elements of what is now covered by Civil Representation in Family, both public and private law. These proposals are the first stage in the implementation of Lord Carter's reform of legal aid procurement and are designed to deliver the simplified structures that preferred supplier requires and we require to transform our business processes. It also covers our high-level proposals for a new Unified Contract, which in time will apply to all solicitor and NfP organisations and which will cover civil and criminal work.
- 5.2** These proposed changes are part of our strategy to ensure the sustainability of the legal aid market at a time when the legal aid budget continues to be under pressure. The LSC has already published its proposals for development of the Community Legal Service (*Making Legal Rights a Reality – The LSC's strategy for the Community Legal Service*) and reform of the legal aid market (*Quality Relationships Delivering Quality Outcomes – The Preferred Supplier Scheme, published in March 2006*). These papers set out **what** services we intend to buy to meet client needs and **who** we will buy these services from. Here we set out **how** we will pay for those services.
- 5.3** In accordance with Lord Carter's proposals for the reform of legal aid procurement we intend, wherever possible, to base payment for all civil work, family and immigration work, on a completed case or part of a case or on completion of a defined volume of work. We intend to achieve this by the time that we will be purchasing services exclusively from preferred suppliers. We anticipate that we will then move to commissioning services by way of competition based on quality and price.
- 5.4** The ideal would be to fix fees per case as this enables the LSC to budget more effectively but we recognise that this may not always be possible or desirable in some categories of law, particularly where the fees cover representation. For providers, the move towards fixed fees provides certainty of payment reducing the need for intrusive ex-post facto assessment and allows the provider to benefit financially from efficiency gains they achieve.

Remuneration

Civil Controlled Work

- 5.5** The Tailored Fixed Fee scheme has, during its first year of operation, contained the increases in average case costs experienced over the previous 5 years and has generally been well received by providers. This has allowed us to make available more acts of assistance without any additional cost to the legal aid budget. However, it was only ever introduced as an interim step, and we now intend to replace it with a standard fees scheme. Lord Carter has clearly set out his vision of the future for the procurement of legal aid and believes that the introduction of these schemes is a necessary step towards the introduction of competition on quality, capacity and price, helping both to restructure the market by allowing efficient, quality providers to flourish and will inform the

decision as to when competition can be introduced and in what form. We do not envisage competition being either desirable or possible until we are dealing exclusively with Preferred Suppliers.

5.6 Therefore we propose a standard fee scheme to replace the Tailored Fixed Fee scheme for the following categories of work:

- Debt
- Welfare Benefits
- Housing
- Community Care
- Education
- Consumer
- Clinical Negligence
- Personal Injury
- Actions Against the Police
- Public Law
- Employment

5.7 Following extensive discussions with Mental Health providers and representative bodies we intend to replace the current Tailored Fixed Fee and the current hourly rate schemes, with a new graduated fee scheme. We also propose to extend the range of work providers can undertake on behalf of their clients.

5.8 In Immigration we intend to replace the existing remuneration scheme that was introduced in 2004 with a graduated fee scheme for all immigration cases and for “mainstream” asylum cases. Following significant efforts to control expenditure and improve the quality of work delivered by providers, we believe that we can now devolve key decision making back to providers to remove many of the obstacles that the 2004 reforms necessarily created and introduce a streamlined payment structure. We have also included for consultation our proposals for changing the way that we purchase services that are excluded from the graduated fee scheme, namely services at the Asylum Screening Unit, for clients in detention and for Unaccompanied Asylum Seeking Children.

Family

5.9 For Family work covered by the existing TFF scheme, except for Public Law Children, which will be covered by a separate scheme, we intend to introduce a graduated fee scheme covering all controlled work and some work currently paid for under certificates. We have already consulted on this approach in 2004

(see the consultation paper *A new focus for civil legal aid – encouraging early resolution; discouraging unnecessary litigation*) and a trial and data gathering exercise commenced in October 2005. The proposals in this paper build on the trial and the previous consultation. The data gathered from the trial has proved invaluable in the development of these proposals and we will continue to monitor and learn from the trial. In addition to controlling expenditure, this new graduated fee scheme is intended to encourage early and amicable dispute resolution avoiding court litigation. We propose that the scheme will cover all Family work currently covered by Legal Help, Help with Mediation and General Family Help.

Family licensed work

- 5.10** We are proposing to consult in the early part of 2007 on the introduction of a graduated fee scheme from October 2007 to cover the remainder of private law family work.
- 5.11** In the short term we are proposing to harmonise the legal aid rates for the county court and the Family Proceedings Courts in private law family cases.
- 5.12** We are also proposing a graduated fee scheme for child-care cases covered by Section 31 of the Children Act 1989 and this paper presents our proposals for comment. We propose to work towards introducing this new scheme from April 2007, but recognise because of the complexity and importance of this work that following consultation this date might be revised.

Civil licensed work

- 5.13** The TFF Scheme for Controlled Work has demonstrated the benefits that fixed fee schemes can bring for both the LSC and for providers of legal aid and in time we intend to introduce standard or graduated fees, where appropriate, for all legal aid work. Over the next 18 months we will consult on the further extension of standard or graduated fee schemes in line with Lord Carter's proposals for the reform of legal aid procurement with the intention that these new schemes should be in place by 2009.

The New Unified Contract

- 5.14** Our current General Civil contract and mediation contracts come to an end on 31 March 2007 and therefore we intend to introduce a new Contract that will eventually cover all providers, criminal, civil and NfP that will support the proposed new remuneration purchasing structures and the development of preferred supplier. A summary overview of the significant changes from the current standard terms is included in this consultation.
- 5.15** The new contract will have three parts: a contract for signature; a set of standard terms applicable to all legal aid providers setting out the nature of the relationship between the LSC and its providers and specifications/schedules that will define the work that the LSC has commissioned and the fees to be paid for the work. This standardisation of the contract will require us to standardise payment regimes for all our contracted providers, so that fees are determined by the nature of the service that we are purchasing, rather than by the type of provider. It will also define the services that the LSC wishes to purchase and the volume of those services.

- 5.16** This consultation is intended to focus on the major principles of the Unified Contract and the criteria for the award of the new contract. There will be no general bid round for the award of contracts in 2007. However, we expect to move towards dealing with fewer and larger suppliers to improve efficiency and to encourage the provision of holistic services with an emphasis on early resolution of legal problems. For that reason, we wish to consult on the introduction of a minimum legal aid income level, either as an initial criterion for a contract award in 2007, or by fixing a minimum legal aid income level required to continue to hold a contract after March 2008. Any value target would be based on the total amount of legal aid income from all schemes and all categories of law.
- 5.17** The Unified Contract will also give the LSC power to specify a required number of Matter Starts and to specify the range of work a provider will undertake. We will be working on detailed contract terms during the period of consultation, with a view to publishing contract documents by the end of this year, having taken account of the responses to consultation.

The Not for Profit Sector

- 5.18** For the NfP sector the transition from the current funding arrangements to these new funding and contractual arrangements may be difficult for some organisations and we set out in this paper how we propose to manage this transition to ensure that services to clients do not suffer, that we adhere to the Compact on voluntary sector funding and ensure that our efficient NfP providers remain financially viable during the transition.
- 5.19** This move to encourage efficiency should reward those NfP suppliers who match the efficiency of solicitor firms, as they should make a surplus equivalent to the profit of those firms which can then be used to support their wider advice work, campaigning, policy work or lobbying. This should enhance the overall role of the sector. We are committed to ensuring that legal aid services work alongside the plethora of other CLS services and allowing NfPs to retain the surplus they generate will support this. The challenge for the sector is therefore to match the efficiency of the best in the private sector.
- 5.20** We recognise the potential difficulties that this change will create for NfP organisations. However, we can no longer justify the differing funding arrangements, where we are paying different prices for the same type of work, driven not by the nature or quality of the work but by the nature of the provider. The cases that we purchase from the NfP sector remain more expensive and as we roll out preferred supplier, where all providers will be delivering the same level of quality and working to the same work specification, this variance in price is no longer justifiable. As a consequence of this alignment we will also remove from the NfP contract the ability to undertake what is known as Level 1 work.
- 5.21** Note that some work will be excluded from the schemes and will continue to be paid at hourly rates. Where this is the case NfP providers will also be paid based on solicitors' hourly rates as specified by the contract.

Payment and contract management

- 5.22** Key to the success of the proposals set out in this paper will be providers' ability to manage resources effectively, within the funding available, to deliver desired outcomes for clients. As with the TFF scheme the LSC will be paying a set amount per case, or part of a case, regardless of time spent, which means that providers will need to continue to take responsibility for controlling the cost of delivering a case.
- 5.23** In any standard or graduated fee regime there will be swings and roundabouts in terms of individual cases, as providers will have experienced with the existing TFF scheme. The move, recommended by Lord Carter and integral to the preferred supplier scheme, towards fewer larger contracts, will reduce the impact of the swings and roundabouts inherent in standard fee and graduated fee schemes, on contracted providers.
- 5.24** The arrangements will require a different approach to contract and fund management by the LSC enabling us to significantly reduce the cost of administering the legal aid fund. We have already set out, in the consultation on Preferred Supplier, our proposals for how we intend to move to a simpler and more effective relationship with our providers and have begun to outline our proposals for how we intend to restructure the LSC with the focus on more constructive and risk-based performance management.

Objectives

- 5.25** The schemes and the Unified Contract have been developed to deliver the following objectives:
- Help to create a more sustainable legal aid scheme providing a platform for the introduction of managed competition where appropriate;
 - To allow the LSC to restructure to deliver significant savings on the cost of administering the legal aid scheme by removing ex-post facto bill assessment where possible;
 - Implementation of Lord Carter's proposal for the reform of Civil and Family legal aid procurement preparing for the introduction of competition on quality, volume and price;
 - Greater certainty and predictability in funding and payment for the LSC and providers;
 - Funding based on outputs;
 - Risk shared between the LSC and its providers;
 - To help deliver the simpler more efficient relationship between the LSC and its providers as set out in the Preferred Supplier consultation; and
 - Allow all providers to benefit financially from operating efficiently and enable efficient providers to grow in a sustainable manner.

5.26 Additional objectives for specific remuneration schemes are included in this paper, which set out detailed proposals for schemes in the following areas:

- The replacement for Tailored Fixed Fees (section 6);
- Family (section 7);
- Immigration and Asylum (section 8); and
- Mental Health (section 9).

5.27 There are however features that are common across all schemes:

- The schemes will apply to all providers, including NfP organisations that hold contracts in the relevant categories;
- Providers will be paid a fixed amount for each case, or part of case, regardless of whether individual cases cost more or less to complete;
- There will be separate payments for allowable disbursements, subject to some exclusions, which are set out under the schemes. We consider that this approach will ensure that practitioners continue to incur disbursements where these are required;
- The schemes will apply to all cases, for work within the scope of the schemes commenced on or after April 2007;
- Cases commenced before April 2007 will continue to be paid under existing arrangements, i.e., at hourly rates or under the TFF Scheme as appropriate;
- We recognise that there will be cases where costs justifiably reach an amount significantly in excess of the standard or graduated fee. Generally claims in excess of four times the appropriate fee will be regarded as exceptional and paid in full based on hourly rates. Exceptions to this are detailed under each scheme. We will assess all claims for exceptional cases. If on assessment the assessed bill is less than the exceptional limit then only the fixed fee will be paid. See section below for further details on exceptional cases;
- All fees exclude VAT;
- The contribution of costs from the Legal Help stage to any statutory charge liability of the client will now be based on the actual costs paid to the provider under the Scheme. More general changes are also proposed in relation to the contribution of Legal Help costs towards the amount of the statutory charge; and
- The proposed schemes will be supported by new contract specifications.

6. Replacement for Tailored Fixed Fees (Civil Controlled Work)

Scope – Providers

- 6.1** The scheme will apply to all providers with contracts in Actions Against the Police etc, Community Care, Consumer, Debt, Education, Employment, Housing, Clinical Negligence, Personal Injury, Public Law, Welfare Benefits and Family unless covered by a new Family specific scheme (see below) from April 2007.
- 6.2** The scheme will also apply to work conducted in these categories under tolerance by providers holding Family, Immigration and Mental Health contracts.

Scope – Work

- 6.3** The scheme will apply to all cases in the above categories commenced under Legal Help from April 2007, with the exception of ASBO proceedings in the Magistrates' and Crown Courts and debt proceedings in the Magistrates' Court. Rules 11.3 and 9.1 of the current General Civil Contract define this work. We do not propose to change the way that this work is paid for at this time.
- 6.4** Should we, as a result of consultation, decide not to introduce the Care Proceedings Graduated Fee Scheme in April 2007, Public Family Law Children cases currently conducted under Legal Help will be funded under the standard fee scheme that will replace TFF until such time as the graduated fee is introduced.
- 6.5** Note that where immigration contractors provide more than 30 minutes of advice relating to a client's NASS (National Asylum Support Service) status and open a new matter start, this work should no longer be reported as a non-asylum immigration matter. Instead, from April 2007, such matters should be reported under the appropriate civil category (welfare benefits, housing or community care) and will be paid the appropriate standard fee.

Q6.1 Do you consider that any other types or categories of work should be excluded from the scheme? If so please explain why.

The fee structure

- 6.6** The new scheme will consist of a standard fee per case in each category of work within the scheme or a transitional scheme. The fees have been based on claims and TFF payments in 2005/06 but exclude claims that we would consider “exceptional”.
- 6.7** We would prefer to move to a national fee for this work but recognise that this means that because of the generally much higher average prices for controlled work in London, providers in London would be hardest hit by the introduction of a national fee. From our analysis of the available data we would accept that the cost of running a legal aid firm in London is higher than in many parts of the country but these do not appear to justify or explain the much higher average prices in London, but we believe that the cost of delivering services can often be higher in rural communities.
- 6.8** Moving to a national fee would allow us to re-allocate funds to support the development of CLS services across many of the harder to reach communities in England and Wales, and provide potentially the best platform for the introduction of managed competition. This does depend on the national standard fee being sufficient to allow efficient quality providers, wherever they are located, to cover the cost of providing controlled work.
- 6.9** We have also considered introducing a regional fee (region being the current LSC region), which has the effect of reducing the impact on London providers and would deliver a much more even distribution of winners and losers under the scheme. If we were to adopt regional fees then we would see this as an interim step to lessen impact and we would work towards the introduction of national fees or fees determined by competition by 2010.
- 6.10** Therefore we have set out for consultation both the proposed national fees and the proposed regional fees. Whichever option is chosen, the overall cost will be the same.
- 6.11** Regardless of how we set the fees there will be a specific fee for each category of law.
- 6.12** The tables below show the proposed fees for options 1 and 2. We have combined the LSC regions of Merseyside and the North West.

Table 1 Proposed standard fees for Replacement for TFF (civil controlled work) scheme

Option 1

National fee

AAP	COM	CON	DEB	EDU	EMP	HOU	HOME LESS	MED	MSC	PI	PUB	WB
£239	£292	£156	£127	£293	£229	£163	£188	£219	£88	£210	£284	£143

Option 2
Regional Fees

	AAP	COM	CON	DEB	EDU	EMP	HOU	HOME-LESS	MED	MSC	PI	PUB	WB
West Midlands	£261	£274	£166	£141	£233	£197	£166	£191	£179	£91	£254	£308	£159
South East	£143	£183	£150	£98	£268	£161	£91	£104	£231	£84	£196	£113	£96
South West	£274	£249	£162	£127	£240	£256	£150	£172	£192	£91	£192	£277	£142
East	£163	£237	£172	£136	£196	£245	£148	£170	£216	£89	£204	£110	£143
Wales	£138	£420	£128	£126	£204	£113	£141	£162	£244	£79	£166	£200	£127
Yorks & Humber	£242	£354	£168	£134	£205	£240	£134	£154	£172	£91	£254	£334	£134
Merseyside & North West	£188	£185	£159	£117	£230	£223	£124	£142	£203	£84	£176	£195	£105
London	£421	£308	£254	£189	£440	£453	£206	£237	£391	£156	£315	£378	£223
North East	£155	£241	£110	£100	£155	£145	£124	£143	£163	£76	£174	£159	£129
East Midlands	£234	£295	£157	£122	£187	£187	£147	£169	£201	£88	£182	£242	£185
South	£253	£430	£125	£123	£339	£189	£181	£208	£395	£107	£231	£214	£113

Note on tables

* Qualifying homelessness and possession cases *only* will receive the higher fixed fee, calculated by reference to the differential between the relevant CLR and Legal Help rates as at present.

6.13 Fees for all categories include costs of counsel.

Q6.2 Which of the 2 options set out for the replacement of the TFF scheme do you prefer and why?

Tolerance cases

6.14 The fee for tolerance cases will be 15% less than the appropriate fee for cases conducted under a controlled work contract. We are proposing this as we want to encourage firms undertaking large amounts of tolerance work to obtain contracts which provides greater levels of quality assurance and therefore improved services to clients.

6.15 Eventually the concept of tolerance will disappear as we roll out Preferred Supplier and expand CLS Direct. By lowering the fee for this work at this time we hope to encourage those undertaking small amounts of this work either to refer the client to a specialist provider or to CLS Direct. There will be no provision for additional payments for “exceptional” tolerance cases as we consider that more complex cases should be undertaken by quality assured practitioners in the particular category of law.

Q6.3 Do you agree with the proposals for payment of tolerance work? If not please explain why.

Not for Profit sector

6.16 Under the Unified Contract there will not be any distinction between fee structures and payment systems for private practice and NfP organisations. The proposed fixed fees would also apply to NfP work in the relevant categories. This would mean that the payments per case would be the same for both sectors. As a public body with a statutory duty to achieve best value for money the LSC cannot justify an approach that pays different rates because of the nature of the provider, rather than the nature of the service contracted for.

6.17 This move to encourage greater efficiency should reward those NfP suppliers who match the efficiency of solicitor firms, as they should make a surplus equivalent to those firms' profits and should be able to use that surplus to support their wider advice work, campaigning, policy work or lobbying. This should enhance the overall role of the NfP sector and its wider social role. The LSC is committed to ensuring that legal aid services work alongside other advice services and allowing NfPs to retain the profit element will support this. The challenge for all NfP agencies is therefore to match the efficiency of the best private and NfP providers.

6.18 We recognise that this will provide a challenge for those NfP providers whose average costs per case currently exceed these figures. We also recognise the difficulties that moving to payment only after the event would cause. However we also believe that this move also provides an opportunity for efficient, quality assured NfP organisations to benefit, rewarding them directly for the volume of cases they are able to undertake. For these organisations this

represents the ability for them to increase the funding they receive and to grow at their own pace and in a manner that is sustainable, or to invest in new services as part of their involvement in the wider CLS.

- 6.19** The alignment of the contract will also ensure that all our providers are able to benefit fully from the changes in our contract management system that Preferred Supplier makes possible. This move also creates the necessary conditions for all our providers to prepare for the possible introduction of managed competition.
- 6.20** We will therefore explore the development of transitional arrangements for NfP providers. Any transitional arrangement will need to take into account the existence of work in progress and the impact that this has on an organisation's ability to take on new cases. One possible transitional scheme is that we could continue to base payments to NfP providers on the current funding formula from April 2007 but introduce requirements for numbers of cases to be provided by category of work. These requirements could be arrived at by dividing the amount of funding given to the provider in the category of work by the standard fee for that category.

Example

We currently pay a particular agency £48,000 pa under the NfP funding formula for a welfare benefits caseworker. The proposed solicitor's standard fee for welfare benefits is £143 per case. The case target would therefore be 335 (i.e. £48,000 divided by £143).

- 6.21** The starting point is that we will only pay for the cases actually begun. This means that if, for example the provider started 15% fewer cases than the target their payments would be reduced by 15%. This would be managed as now, by reducing future quarterly payments rather than claiming back part of payments already made.
- 6.22** However there will be factors that we would accept as good reason for a certain level of underperformance. This would include the agency dealing with exceptional cases – these are complex cases that cost at least 4 times the average).
- 6.23** As a corollary to this:
- We would make extra payments, based on the standard fees to providers that exceeded the targets provided that there was sufficient new case starts available to the provider.
 - We would no longer require performance of 1100 hours under the contract. However we would reserve the right to re-impose an hours target on a particular provider if for example, the provider was not continuing to take on an appropriate mix of cases or was 'case-splitting' to meet the case target.

Q6.4 Do you agree that the scheme should apply to work done by NfP providers? Do you agree that there should be a transitional scheme and what are your views on our initial proposal?

7. Family

Background

- 7.1 Lord Carter has stated that remuneration for family legal services should move to standard fees in order to provide greater certainty over funding and promote greater efficiency in the market. In this section we set out for consultation our proposals for two new remuneration schemes: a graduated fee scheme for private law cases called Family Help and our initial proposals for a graduated fee scheme covering Section 31 cases, the Care Proceedings Graduated Fee Scheme. We do not have any current plans to amend the Family Graduated Fee Scheme for the Bar.

Family Mediation

- 7.2 We are also proposing a change to the family mediation contract. From April 2007 all family mediation work will be conducted under Schedules to the Unified Contract, with a category specific specification for family mediation. This is in line with the LSC's aim to simplify as far as possible contract administration for both providers and the LSC. We intend to consult later this year on proposed changes to remuneration for mediation.

CARE PROCEEDINGS GRADUATED FEE SCHEME FOR SOLICITORS

The scheme

- 7.3 Here we present our proposals for the creation of a Care Proceedings Graduated Fee Scheme. Legal advice and representation in this area is currently provided under two levels of service, *Legal Help and Full Representation* (with some limited use of General Family Help). We are planning to introduce a new intermediate level of service to encourage the provision of pre-proceedings advice, in accordance with the Review of the Child Care Proceedings System, in an attempt to resolve matters without recourse to the court where appropriate, or to narrow the issues in dispute in proceedings as a minimum.
- 7.4 This will create a **graduated fee** structure for care proceedings with 3 levels as set out below.
- 7.5 Levels 1 and 2 form part of the new level of service called Family Help, which is further described in the next section. Levels 1 and 2 will be funded as Controlled Work.
- 7.6 Level 3 is Legal Representation and will be funded as Licensed Work.
- 7.7 There will be separate payments for advocacy. However, it is our intention that as soon as practicable we will include the cost of advocacy within all remuneration schemes so that we have a single fee covering both advocacy and preparation.

Objectives

- 7.8** In addition to the general objectives set out earlier, this scheme aims to encourage the provision of advice prior to proceedings being issued so that matters may be resolved where appropriate without recourse to the courts, or to narrow the issues for proceedings.

Scope – Providers

- 7.9** The schemes will apply to all providers with a contract in Family from April 2007. Note however that if after consultation the implementation of any of the scheme is delayed, work conducted under Legal Help will be covered by the TFF replacement scheme from April 2007.
- 7.10** Providers that do not hold a contract in Family may not conduct any Family legal aid work.

Scope – Work

- 7.11** The scheme will apply to all Public Law Family cases at Legal Help (see Level 1 below).
- 7.12** For all other levels of service (see Levels 2, 3 and advocacy below) the scheme will apply to care and supervision proceedings (s31 Children Act 1989) cases *only*.
- 7.13** All other public law family work is excluded from the scheme at Levels 2, 3 and for advocacy and will continue to be remunerated under the existing arrangements.
- 7.14** For the avoidance of doubt this means that applications for a care and/or supervision order are included and that the scheme covers all parties (including children and joined parties) save at level 2 which will apply only to parents and others with parental responsibility. This will reflect the pre-proceedings liaison work which local authorities are expected to undertake with parents and others with parental responsibility, in line with the Child Care Proceedings Review. It also means that the graduated fee will apply to some non-means, non-merits tested applications for funding, as well as some means and merits tested applications.
- 7.15** Cases under level 3 where total costs exceed £25,000 would qualify as Very High Cost Cases (VHCCs) and will be excluded from the scheme.

The Fee Structure

- 7.16** The LSC recognises the importance of a high level of skill and experience in dealing with these issues and that membership of the Law Society's Children Panel is an indicator of this. The Child Care Proceedings Review considers the case for restricting funding to members of this Panel, though this is subject to the Law Society's current review of this Panel. However, this policy could only be achieved only if there were a sustainable population of panel members, able and ready to take the work on. At present just over half of suppliers in the area of child care are members of the panel.
- 7.17** Lord Carter's report discusses the issue of supply of specialists with particular reference to child care. It suggests that LSC should fund training contracts more strategically than it does now and in particular should use them to grow specialist capability in the family area, and build the size of the Children Panel. The LSC agrees this, and has already begun the process of targeting training contract grants in 2006/07 to firms working in this area and that the eventual aim should be the restriction of child care funding to Panel members.
- 7.18** Also in accord with Lord Carter's recommendations, and the development of the Preferred Supplier arrangements, we will be obtaining greater assurance from suppliers in this and other areas that required quality will be delivered consistently through further development of peer review and are clear that the required quality is comparable with that which Panel members should deliver.
- 7.19** Over some years, panel membership has been encouraged by the payment of a 15% "uplift" on fees in appropriate cases, but this has not secured sufficient capacity to take all cases. Furthermore, with the introduction of graduated fees, a separate incentive to suppliers to deploy specialist expertise so as to help conclude cases expeditiously is no longer required. The LSC therefore proposes to seek the future development of expertise and capability through the above routes rather than paying differential fees. The fees given below would therefore apply to all suppliers, without uplift. They have been calculated on a cost neutral basis, using historical data including sums paid as "uplift". They are about 8% higher than the fees which would apply generally were "uplift" to continue, and 7% lower than those paid at the "uplifted" level. Comments are requested on this approach.
- 7.20** The fee structure is set out in the tables below. We are consulting on two fee schemes, a London and non-London and a National Fee. Ideally we would like to have a national fee but recognise that there are significant differences in the average cost of work in London driven in part by the increased cost of working in London and by the differential fee levels which have applied and therefore welcome your views on which scheme you prefer. We considered Regional fees but believe that the levels of complexity both for our providers and us would only serve to increase costs and deliver little in the way benefits, for providers, clients or the LSC

Care proceedings Graduated Fees Scheme fees calculated on a London/Non-London and National basis

Level 1 – Initial advice

London	Non-London
£198	£159

National
£164

Level 2 – Negotiation

London	Non-London
£346	£296

National
£296

Level 3 – Full representation

London

	Client type		
	Child	Parent	Joined Party
A High Court	£1,329	£1,154	£893
A Other Courts	£982	£853	£660
B High Court	£1,551	£1,615	£892
B Other Courts	£1,146	£1,193	£660
C High Court	£1,551	£2,098	£1,587
C Other Courts	£1,146	£1,550	£1,173

Non-London

	Client type		
	Child	Parent	Joined Party
A High Court	£1,136	£986	£763
A Other Courts	£840	£729	£564
B High Court	£1,326	£1,380	£763
B Other Courts	£980	£1,020	£564
C High Court	£1,326	£1,793	£1,357
C Other Courts	£980	£1,324	£1,003

National

	Client type		
	Child	Parent	Joined Party
A High Court	£1,054	£919	£697
A Other Courts	£779	£679	£515
B High Court	£1,230	£1,286	£697
B Other Courts	£909	£950	£515
C High Court	£1,230	£1,671	£1,240
C Other Courts	£909	£1,234	£916

Solicitor Advocacy

	Fee
Level 3a	£285
Level 3b	£443
Level 3c	£502

Q7.1 Which of the 2 options set out for the Care Proceedings Graduated Fee Scheme do you prefer and why?

Level 1 – Initial advice

7.21 This level is the equivalent of Legal Help and is intended to cover initial advice and support in care/supervision proceedings (s31 Children Act) cases and other public law children and family matters pre-proceedings.

7.22 The fee for Family Help – Public, Level 1 has been calculated on the basis of average claims made by all providers during 2004/05. We have not included in the calculations cases costing more than four times the fee which is our proposed exceptional cases unit.

7.23 No further uplifts or enhancements will be available at this level.

Level 2 – Negotiation

7.24 This level is the equivalent of Legal Help and is intended to cover initial advice and support in care/supervision proceedings (s31 Children Act) cases *and* other public law children and family matters pre-proceedings.

7.25 No further uplifts or enhancements will be available at this level.

7.26 The recently published Child Care Proceedings Review considers that more could be done to ensure that s31 applications are only made to court after all safe and appropriate alternatives to court proceedings have been explored. Legal advice may have a valuable part to play at this stage as it may encourage parents to engage in the process and ensure they understand the potential outcomes if they do not.

7.27 This work may already be conducted under Legal Help, however we consider that, as the process may be a lengthy one involving negotiations and meetings with local authorities and the clients involved are likely to have complex needs, a new level of service is required that pays a fee based on a higher rate than Legal Help. This follows the recommendations made by the Child Care Proceedings Review for the availability of pre-proceedings legal advice. We consider that the rates paid for Controlled Legal Representation (CLR) are more suitable as CLR is paid in categories (Immigration and Mental Health) where clients are also more likely to have complex social, health and linguistic needs.

7.28 This level will cover advanced advice and support, which will be focused around negotiations to resolve disputes where the local authority has provided written notice of their intention to issue proceedings in public law Children Act cases subject to the Protocol (i.e. care and supervision order applications). This level of service will be available to parents and those with parental responsibility for the subject child or children and will be available on a non means tested basis with the limited merits test for Family Help devolved to providers.

7.29 Level 2 will form part of Controlled Work and providers will not need to seek authority from the LSC to undertake work at this level. Work may be undertaken at this level once the local authority provides written notice of their intention to issue proceedings.

7.30 The fee has been set following discussions with specialist practitioners and represents approximately 6 hours of work in addition to that also available at Level 1 above. Where cases conclude at this level and costs reach in excess of four times the graduated fee, cases will be considered exceptional and paid in full based on hourly rates, subject to assessment.

- 7.31** Allowable disbursements are excluded from the fee and will be paid separately. Note however that all fees and costs of experts including in relation to assessments (including viability assessments) will be excluded as these will fall to the local authority as part of its core assessment work. The exclusion of therapy etc imposed by the Funding Code criterion paragraph 1.3 will also apply.
- 7.32** No uplifts or enhancements will be available at this level as the fees have been set bearing in mind the nature of the clients and the potential complexity of child care cases. No advocacy payments are available, as we do not consider they should be required at this stage.
- 7.33** Where a case begins as an Emergency Protection Order (EPO) and once the child has been made safe, the case must revert back to Level 2 and in some cases the matter may be resolved there. At this point the certificate covering the EPO should be discharged and the costs claimed.

Q7.2 Do you agree with the proposals for this new level of service, Level 2? If not, how else might we encourage the provision of legal advice pre-proceedings?

Level 3 – Full Representation

- 7.34** Given the important nature of the proceedings being brought, it is inevitable that a large proportion of cases will need to be decided in the courts. However even in those cases that do proceed to court, the early work at level 2 is likely to assist in narrowing and focussing the issues for proceedings.
- 7.35** Historic claims for full representation vary significantly according to who is being represented and where the case is being heard. It would therefore be inappropriate to introduce a single fee to cover all work at this level. We are proposing a range of fees, based on claims data for 2004/05, which will vary according to whether the client is the child, the parent (or person with parental responsibility), or is a joined party e.g. another family member. Higher fees will also be payable for cases heard in the High Court as it is understood that these cases are in general more complex and expensive to run.
- 7.36** Whilst the majority of cases that enter court proceedings will continue to the final hearing it must be recognised that parties may be joined at various stages in the proceedings and clients may similarly disengage along the way. We therefore propose to introduce staged payments and have based these stages on those of the Protocol.

Level 3a covers all work up to and including the Case Management Conference – steps 1-4 of the current Protocol. It will cover the revised First Hearing as proposed by the Child Care Proceedings Review.

Level 3b covers all work arising out of or following the case management conference and all preparation for the Pre-Hearing Review – step 5 of the current Protocol.

Level 3c covers all work arising out of or following the Pre-Hearing Review and all preparation for the Final Hearing.

Example

If the work ends at Level 3c then the fees for Levels 3a, 3b and 3c will be paid

If the work ends at Level 3a, for example because the solicitor is without instructions, then *only* that fee is due.

- 7.37 Cases concluding at this level where costs based on hourly rates reach in excess of four times the graduated fee will be considered exceptional. All cases claimed as exceptional will be subject to cost assessment. If, as a result they are assessed at a value of less than the exceptional case limit only the graduated fee will be payable.
- 7.38 Note that in addition to these provisions, cases qualifying as Very High Cost Cases will continue to be assessed as set out above.
- 7.39 No further uplifts or enhancements will be available at this level as the fees have been set based on historical claims, which already include these elements.
- 7.40 In addition, no uplifts or bolt-ons will be available for related private law proceedings covered by the certificate or placement order applications. Nor will separate certificates be available for these. It will therefore not be possible to claim other costs of the proceedings covered by the graduated fee. This is again because the fees have been set using historical data, which already includes these elements or their equivalent.

Q7.3 Do you agree with the proposed fee structure for this level of service, in particular the distinction between client types? Are there any other factors that we need to consider in setting the fees?

Advocacy

- 7.41 In Public Law work solicitors – and in particular Law Society Children Panel members – are encouraged to conduct their own advocacy. There will however be occasions where it will be necessary to brief Counsel, for example due to the unavailability of the solicitor with conduct of the case owing to the listing of another case.
- 7.42 We have no plans at present to introduce further changes to the Family Graduated Fee Scheme under which barristers are currently paid for advocacy in Public Law Children cases. If we were to include an amount to cover own advocacy by the solicitor or a solicitor agent within the fees for Levels 3a-3c, then there would be a perverse incentive to instruct counsel.
- 7.43 We therefore propose to pay a range of graduated fees for units of advocacy conducted by solicitors. We have based the fees upon the average number of hearings in s31 cases and have considered the fees paid to barristers for similar work.

- 7.44** It is, however, important to note that the advocacy fees we are proposing for solicitors are lower than those applied to the Bar because the solicitor has a different relationship with the case; he or she is already familiar with the client, the details of the case and will have prepared the court bundle. The higher payments for barristers reflect the fact that they do not have day-to-day conduct of the case and it will take them longer to prepare for the hearing.
- 7.45** Waiting is included within the fee however travel may be claimed at current rates in addition to the fee. We will monitor travel costs and may review this policy over time.
- 7.46** Solicitors who have higher rights of audience may claim an uplift of 30% when conducting advocacy in the High Court.
- 7.47** The payments for advocacy set out in the table above cover all required advocacy at each stage. We recognise that for some of these hearings it may be necessary to brief counsel, who will be paid under the Family Graduated Fee Scheme. Where this occurs we will reduce the advocacy payment to the solicitor. The formula we will use to calculate the payment due is as follows:

Level 3a

Total advocacy payment available (exc VAT) = £285
 The solicitor attends x% of the hearings
 Advocacy payment due = x% of £285

Level 3b

Total advocacy payment available (exc VAT) = £443
 The solicitor attends x% of the hearings
 Advocacy payment due = x% of £443

Level 3c

Total advocacy payment available (exc VAT) = £502
 The solicitor attends x% of the hearings
 Advocacy payment due = x% of £502

Q7.4 Do you agree with the proposals for payments under the scheme, particularly the removal of the uplift, the method of fee calculation, and our proposals for advocacy payments? If not what alternative methods can you suggest?

Operation of Level 3

- 7.48** Given that the proposals set out above concern licensed work we will need to make changes to the LSC's current systems for managing such cases. We have not yet finalised our proposals but we envisage that providers will not be required to apply for a certificate to conduct Level 3 work up to the graduated fee. We anticipate devolving the grant of non-means, non-merits s31 cases to providers up to the graduated fee.

- 7.49 We envisage that once a certificate has been granted then providers will be permitted to conduct all required work up to Level 3c without applying for an amendment to the scope of the certificate. The profit costs payable will be limited to the appropriate graduated fees. We intend to monitor the cost of disbursements and intend to develop proposals for how these will be managed in the future.

FAMILY HELP – PRIVATE

The scheme

- 7.50 The consultation paper *A New Focus for Civil Legal Aid* published in 2004 proposed the piloting of a new level of service for private law family cases combining the levels of service currently covered by Legal Help, Help with Mediation and General Family Help. The main motivation for such a change was to encourage early and amicable dispute resolution and reduce incentives to resort to contested court litigation. This is in line with best practice set out in the Law Society Family Law Protocol.
- 7.51 Support for piloting this new level of family service (Family Help) was also set out in the joint DCA, DTI and DfES Green Paper – *Children’s Rights and Parents’ Responsibilities* and in the *Next Steps* paper published in January 2005 as a means of contributing to its objectives around early dispute resolution in private law contact cases.
- 7.52 A trial of the scheme began in October 2005 and the data gathered to date has helped inform the fee structure now proposed for all providers from April 2007. We will continue to gather data during this consultation period.
- 7.53 The scheme being trialled has shown that a graduated fee approach can be used in family cases but that that the current model is too simplistic and needs to take further account of the variety of family work. We are therefore proposing a graduated fee model with an additional level.
- 7.54 From April 2007 we intend to implement a single level of service, which will be known as Family Help – Private and will be paid for via a graduated fee model. The model will consist of three levels of **graduated fees**, defined by where a case finishes and the nature of the work. The fees set out in this document are intended to apply to all matter types i.e. children and/or financial. However we would invite comments on whether there should be any distinction in fees for different categories of work, particularly at level 3.
- 7.55 This new level of service will be funded as Controlled Work.

Scope – Providers

- 7.56 The scheme will apply to all providers with a contract in Family from April 2007. Providers that do not hold a contract in Family may not conduct any Family legal aid work.

Scope – Work

- 7.57** We propose that the scheme will apply to all Private Law family cases in the Family Category of Work (as defined in the Specialist Quality Mark) i.e. all Family cases save for Public Law Children cases. Domestic Violence cases are included in the scheme as are Trusts of Land applications under the Trusts of Land and Appointment of Trustees Act 1996. The scheme does not preclude making applications for Emergency Representation in the usual way.
- 7.58** The scheme will not, however, cover the final contested hearing and where cases cannot be settled prior to the final hearing, providers will continue to apply to the LSC for a full representation certificate in the usual way. It is the LSC's intention, in line with Lord Carter's proposals, to consult, in the early part of next year, on a graduated fee scheme to cover this work to be implemented by October 2007.

Q7.5 Do you agree with the proposed scope of the scheme? If not what work do you consider should be included or excluded?

The Fee Structure

- 7.59** In the current trial the fee arrangements distinguish between 'practitioners' and 'senior practitioners', as well as offering uplifted fees for members of one or more of the specialist family law panels. As in the case of care proceedings, The LSC believes that it can ensure the required quality of service, via peer review and does not intend to introduce these fee distinctions as part of this scheme.
- 7.60** As we have said before ideally we would like to introduce one national fee for this work but recognise the different impacts that this would have for providers. Therefore as with the TFF replacement we are consulting on the introduction of either a national fee or a regional fee (the regional fee being based on LSC regions) and we welcome your views on which fee structure you would prefer and why.
- 7.61** The fees to be paid are set out in the tables below. The fee payable will be the fee shown for the level at which the case concludes. Therefore if the case concludes at Level 3 then only the fee for Level 3 will be paid, the fees for Levels 1 and 2 will not be paid in addition. We believe that in line with Lord Carter's proposals for the reform of legal aid procurement and the development of Preferred Supplier it is no longer either necessary or desirable for us to award additional payments to members of recognised panels. The development of peer review as a direct measure of quality means that we can significantly reduce our reliance on proxies, such as panel membership to ensure and measure quality. Within this environment it should be left to providers to decide how best to structure their work in order to provide the required quality of service. As a result of this move and because we have used historical expenditure, which includes the additional payments, we have been able to increase the proposed payments at each stage benefiting providers as a whole, whilst maintaining the cost neutrality of the scheme.

Family Help – Fee Tables

Level 1

Option 1 – National fees

National
£113

Option 2 – Regional fees

West Midlands	South East	South West	East	Wales	Yorks & Humber
£120	£108	£120	£118	£99	£111
Merseyside	London	North West	North East	East Midlands	South
£92	£133	£98	£94	£114	£126

Level 2

Option 1 – National fees

	National
Fee	£320

Option 2 – Regional fees

	West Midlands	South East	South West	East	Wales	Yorks & Humber
Fee	£324	£340	£348	£368	£285	£305
	Merseyside	London	North West	North East	East Midlands	South
Fee	£280	£364	£280	£253	£325	£363

Level 3

Option 1 – National fees

National
£1083

Option 2 – Regional fees

West Midlands	South East	South West	East	Wales	Yorks & Humber
£1069	£1171	£1126	£1130	£948	£1026
Merseyside	London	North West	North East	East Midlands	South
£1022	£1118	£967	£968	£1052	£1157

The fees have been calculated based on Legal Help and General Family Help claims in 2004/05. An allowance has been made to reflect the changes to the scope of General Family Help introduced in July 2005.

Q7.6 Which of the 2 options set out for the Family Help – Private Scheme do you prefer and why?

Level 1

7.62 This level includes all cases, which complete at (but not beyond) the first meeting with the client, even where there is some interaction with third parties. In addition Level 1 includes cases, which complete after the initial meeting, on advising the client in person, on the telephone, or in writing. Cases also complete at this level where gathering information from the client was necessary to complete the work. Level 1 includes cases completed following communication with relevant third parties and those with direct influence on the outcome of the client's case or who can provide information relevant to the client's case. Relevant third parties are not witnesses, experts, counsel or others instructed on behalf of the client. Relevant third parties include courts and tribunals. Change of name applications, any work in regard to wills and providing information on the availability and benefits of mediation are also included in this level.

Level 2

7.63 This level includes all cases, which complete after time spent communicating with the other party/parties and/or other relevant third parties and their representatives. Such communication includes gathering information and negotiation, through telephone calls and face-to-face negotiations or other forms of Alternative Dispute Resolution, as well as through letters and written

submissions. Level 2 includes the preparation of any application to court including any application by consent. It does not include representation at any hearing. However if an application for a Consent Order is made in the first instance and attendance at court is necessary to obtain such a Consent Order then such attendance is included in Level 2. Level 2 includes any advice to the client in support of Family Mediation, help in drawing up any agreement reached in mediation and, where appropriate, help in confirming such an agreement in a court order. Level 2 includes undefended divorce/judicial separation.

Level 3

- 7.64** This level includes all work following the issue of proceedings (save in obtaining a Consent Order as above) excluding representation at a final contested hearing. Legal Representation should be applied for in the usual way for representation at a final contested hearing, including preparation for such hearing.

Q7.7 Do you consider that these are the appropriate points at which to differentiate between fees payable? If not what alternative structure would you recommend?

Q7.8 Do you agree with the proposals for removing the 15% uplift for panel members? If so how else might we encourage more experienced practitioners to undertake early work?

- 7.65** The fees to be paid are set out in the tables above. As in the case of child care, we believe that in line with Lord Carter's recommendations and the development of Preferred Supplier it is no longer either necessary or desirable for us to award additional payments to members of recognised panels. Training contracts will be funded more strategically to develop appropriate expertise. The development of peer review as a direct measure of quality means that we can significantly reduce our reliance on proxies, such as panel membership to ensure and measure quality. As a result of this move and because we have used historical expenditure, which includes the additional payments, we have been able to increase the proposed payments at each stage benefiting providers as a whole, whilst maintaining the cost neutrality of the scheme.
- 7.66** There will be no provision for exceptional cases at level 1 as this covers initial work only and any extra work required would take the case to level 2 or 3. Cases completing at levels 2 and 3 where profit costs are in excess of four times the appropriate fee will be treated as exceptional and paid in full at hourly rates, subject to assessment.

Q7.9 Do you agree with the proposals for payment of exceptional cases in Family Help – Private? If not please explain why.

- 7.67** Payments for advocacy are *included in the fees*. The Family Law Protocol encourages solicitors to conduct their own advocacy however we recognise that there are occasions when counsel must be instructed. In line with all other Controlled Work we propose that, where this is necessary, providers directly negotiate and pay fees. There will be no additional payments made where counsel is instructed. Counsel will continue to be paid under the Family Graduated Fee scheme where they are instructed under a Legal Representation certificate.

Q7.10 Do you agree with the proposals for payment of advocacy? If not what alternatives can you suggest?

Statutory charge

- 7.68** See section 10 below for details of the application of the statutory charge. Cases concluding at Level 1 above will be exempt from the statutory charge.

Contributions

- 7.69** At present contributions are not payable for Controlled Work, however they are for General Family Help, which is part of Licensed Work and subject to separate rules. This new level of service therefore combines what was controlled and some licensed work and we therefore need to consider our approach to contributions.
- 7.70** The impact of abolishing contributions for Family Help – Private would be significant and overall would adversely impact on available funding reducing new matter starts available and clients advised. We therefore propose that contributions continue to be payable for *part* of Family Help – Private and consider that when the case moves to level 2 would be the most appropriate point from which contributions should be applicable. We propose that practitioners would undertake the means assessment and would provide the LSC with information on the level of contributions payable. The LSC would then be responsible for collecting the contributions.
- 7.71** We will publish full guidance on the process for managing contributions following consultation.

Q7.11 Do you agree with the proposals for the assessment and collection of contributions? If not what alternatives can you suggest?

Cases proceeding to a Certificate

- 7.72** Where cases are not resolved under Family Help providers will be able to apply to the regional office for a certificate to cover Legal Representation to cover any contested hearing or further appeal. When this happens the solicitor may claim the standard fee for Family Help Stage 3, with any further work carried out under the certificate payable as now by way of hourly rate (until the proposed introduction of graduated fees for this work in October 2007).

- 7.73** We propose to retain the existing funding code merits criteria for Legal Representation but will ensure that those criteria are strictly enforced. This will include the requirement that there must have been reasonable attempts at settlement during Family Help and, in the case of ancillary relief cases, that no private funding options are available.
- 7.74** We will also retain the requirement that, subject to some important exceptions, the suitability of the case for mediation must have been assessed before Legal Representation is granted. In effect by applying this test only at the stage of seeking a certificate we intend to preserve or increase the use of mediation to resolve disputes but to have greater flexibility as to the stage at which mediation is most likely to be effective. We would particularly welcome the views of consultees on whether the existing exemptions from mediation referral (set out in Rule C29 of the Code Procedures) remain appropriate to the new regime.
- 7.75** A further consequence of Family Help is that the existing devolved power to grant 'Authorised Representation' in a limited range of proceedings in the Family Proceedings Court is no longer needed. The devolved power only exists in its current form because historically certain cases used to be funded as ABWOR rather than civil legal aid under the Legal Aid Act 1988.

TEMPORARY HARMONISATION OF LEGAL AID RATES IN PRIVATE LAW FAMILY – pending introduction of the new graduated fee scheme for private law family representation

Background

- 7.76** An internal review undertaken by the DCA on the use of judicial resources reported in July 2005. The review made a number of recommendations to encourage greater use of the magistrates' courts. One of the recommendations was to equalise the legal aid rates for the county court and Family Proceedings Courts.
- 7.77** At present solicitors are paid different hourly rates and different rates for items of work depending on whether the case is issued in the Family Proceedings Courts or the county court. The proposal is to pay new intermediate rates for private law family for both tiers of court.
- 7.78** In order to establish the new level of combined rates, the DCA and the LSC carried out a survey of 1000 family bills in March 2006. The proposed new rates are based on the data collected from the survey and are designed to be cost neutral.
- 7.79** For the purposes of this temporary harmonisation, we intend to continue the general uplift/enhancement provision under Legal Aid in Family Proceedings (Remuneration) Regulations 1991 and Legal Aid in Civil Proceedings (Remuneration) Regulations 1994, as well as the 15% automatic uplift for panel members (Law Society Advanced Family Panel members, Resolution Accredited Specialists and Law Society Children Panel members in children cases).

Objectives

- 7.80** The new intermediate level of rates will remove the current financial disincentive for solicitors to issue proceedings in the Family Proceedings Courts. It will encourage the greater use of the Family Proceedings Courts and help to reduce the pressure on the higher tiers of court and provide greater flexibility for cases to transfer between the tiers of court.

Scope – Providers

- 7.81** The new rates will apply to all providers with a contract in Family from April 2007. Providers that do not hold a contract in Family may not conduct any Family legal aid work.

Scope – Work

- 7.82** We propose that the new rates will apply to all private law family cases in respect of work done on or after April 2007.

Q7.12 Do you agree with the proposal to harmonise the legal aid rates for private law family?

The Fee Structure

New intermediate rates – Family Proceedings Courts and county court rates

	Outside London	London
Preparation	£61	£66
With Counsel	£36	£36
Hearing	£63	£66
Travel	£31	£32
Waiting	£31	£32
Letters Out	£6	£6
Letters In	£3	£3
Phone Calls	£6	£6

NB as stated above, uplifts will continue to apply

Q7.13 Do you agree with the proposed intermediate level of rates? If not please explain why

8. Immigration and Asylum

Background

- 8.1** The financial thresholds and individual case controls introduced in April 2004 in the immigration category were necessary to help control escalating costs and target our expenditure more effectively on cases with merit. The existing funding regime was seen as a relatively short-term measure and it was always intended that in time we would move to payment based on outputs. We have now made considerable strides in controlling costs and developing increasingly quality assured and value for money services. We therefore believe that now is the right time to introduce a “graduated fee scheme” that pays providers on completion of a case or stage of a case and which will devolve key funding decisions.
- 8.2** As well as the April 2004 reforms there were further changes when the Asylum and Immigration Tribunal (AIT) was introduced in April 2005. There have also been substantive changes in the way that applications are processed both at the decision and appeal stages and further changes are likely under the New Asylum Model (NAM). The new “graduated fee scheme” covers advice and representation up to and including the first appeal and is designed to be flexible enough to respond to any further process changes up until the implementation of the LSC’s Preferred Supplier Project.
- 8.3** The “graduated fee scheme” will apply to all immigration cases and the majority of asylum cases processed through most segments of the NAM, or in other words “mainstream” cases. We believe this will equate to approximately 75% of asylum applications. However there are still services that need to be purchased for the remaining 25% of asylum clients or to underpin the provision of advice and representation generally. The services that will be specifically excluded from the “graduated fee scheme” are:
- Information, advice and representation at the Asylum Screening Unit (ASU);
 - Advice and representation for those held in detention; and
 - Advice and representation for Unaccompanied Asylum Seeking Children (UASC).
- 8.4** The provision of these services will be through either exclusive contracts or exclusive panels. Following competitive bid round processes, this will restrict the work carried out to a smaller number of providers than has historically been the case. The services will have ring-fenced budgets that will vary from time to time depending on the volume of clients.

Objectives

- 8.5** In addition to the general principles set out above, the objectives of the new remuneration proposals are to:
- Devolve key funding decisions back to providers;
 - Provide incentives for obtaining successful results for clients as early in the process as possible;
 - Establish a more transparent link between asylum intake and legal aid costs and reduce the amount of unnecessary duplication of work;
 - Reduce the cost to the LSC of administering the current system of individual case controls;
 - Introduce arrangements that are flexible enough to account for changing immigration and asylum processes;
 - Ensure that at the ASU information and advice is available to all clients and representation is accessible to eligible clients;
 - Ensure that all clients have the opportunity to access legal advice before their substantive Home Office interview;
 - Ensure that clients in detention are able to access legal services; and
 - Ensure that certain sub-groups of clients are able to access specialist services.

Scope – Providers

- 8.6** The remuneration arrangements will apply to all providers holding a contract in immigration from 1 April 2007. Providers that do not hold a contract in immigration may not conduct any immigration work.

Scope – Work

- 8.7** The new remuneration arrangements will apply to all immigration and asylum cases and related services started on or after 1 April 2007.
- 8.8** Onward appeals are excluded from the graduated fee scheme and will continue to be paid for under existing arrangements. NfP providers will be able to claim solicitor payment rates for any of this type of work carried out on or after 1 April 2007 under the provisions of the proposed unified contract.
- 8.9** National Asylum Support Service (NASS) related advice in excess of 30 minutes, ie that constituting a New Matter Start, is no longer in the scope of the immigration category and will be paid for in accordance with section 6.

Q8.1 Do you agree with the proposed scope of the graduated fee scheme? If not please explain why.

Q8.2 Do you agree with our approach to produce different forms of remuneration these services and clients outside the graduated fee scheme? If not what suggestions do you have for contracting for these services?

Q8.3 Are there other services or client groups that should be considered outside the graduated fee scheme?

THE GRADUATED FEE SCHEME

8.10 The graduated fee scheme will consist of two stages:

- Legal Help – advice and assistance in relation to immigration, nationality, asylum, deportation or terms of entry to stay in the United Kingdom; and
- Controlled Legal Representation (CLR) – preparation and advocacy in relation to proceedings before the AIT.

8.11 There will be a single fee for work done under Legal Help in connection with the initial application. At the appeal stage providers will make the decision to grant CLR and then claim one fee for a case that concludes before the substantive hearing or a different, higher fee if representation is also provided at the substantive hearing.

8.12 Advocacy services, for example representation at the Home Office interview or at the AIT, will attract additional payments. This will be paid on top of the appropriate graduated fee. Providers that choose to instruct counsel in a case will be expected to pay for those services from the graduated fee and the additional payments.

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

8.14 In order to incentivise obtaining an early positive result for the client in asylum cases only, an early resolution payment will be made on top of the stage 1 graduated fee if the client is awarded full refugee status during that stage.

8.15 There will be no separate payment for travel and waiting time.

The Fee Structure

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

Table 5: Immigration and Asylum scheme fees

	Stage 1 (Legal Help)	Stage 2a (CLR)	Stage 2b (CLR)
Asylum Graduated Fee	£550	£300	£750
Asylum Early Resolution Fee	£250	N/A	N/A
Immigration Graduated Fee	£250	£250	£500

Table 6: Additional payments for immigration and asylum cases

Representation at the Home Office Interview (asylum only)	£300
Representation at oral CMRH	£150
Representation at telephone CMRH (pilot only at present)	£100
Representation at substantive AIT hearing	Asylum £350 Immigration £250
Additional hearing: part heard or re-list	Asylum £200 Immigration £150
Interpreter and translation costs	Included within fees in asylum cases only, so no additional payments will be made in asylum cases. Separate payment arrangements for immigration cases.
Other disbursements	Separate payment arrangements outside of the fees. See paragraph 8.41.

8.17 The fees and additional payments specified will apply to *all* providers irrespective of geographical location. London providers will *not* attract uplifted payment rates.

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

Definitions

Asylum

Stage 1

8.19 This stage is Legal Help and the fee is designed to cover the following services:

- Grant of Legal Help;
- Initial advice, drafting of statement and representations;
- Consideration of Home Office decision, advice to client thereon and carrying out any necessary work;
- Applying the merit test for appeal; and
- Grant of CLR or appeal to Funding Review Committee (FRC) against refusal.

8.20 The fee for this work is **£550**, which is based on 8 casework hours and the costs of an interpreter and translation as may be incurred.

8.21 For cases within the scope of legal aid and meeting the sufficient benefits test, representation at the Home Office interview, and related costs, will be remunerated by way of an *additional payment* of **£300**. This covers preparation, representation at the interview, travelling and waiting costs and the use of an interpreter.

8.22 For asylum cases where full refugee status is awarded to the client at this stage, an early resolution payment of **£250** may be claimed *in addition* to the graduated fee.

8.23 Stage 1 will end at the point that CLR is granted or refused (including any appeal to the FRC). Where the case progresses beyond this point a stage claim must be made for Legal Help. Any post appeal advice and assistance will be included within the CLR fee.

Stage 2

8.24 This stage is CLR and is split into two sub-stages. The fee for **either** Stage 2a **or** Stage 2b will be claimed depending on where the case concludes.

Stage 2a

8.25 This is for cases in which representation is not provided at substantive hearing, normally because they conclude following the Case Management Review Hearing (CMRH). The fee has been designed to cover the following services:

- Lodging and drafting of appeal;
- Preparation of appeal; and

- Re-application of merit test.
- Where CLR is withdrawn, explaining the decision and assisting with FRC review process and carrying out any necessary work.

8.26 The fee for this work is **£300**, which is based on 4 casework hours and the costs of an interpreter and translation as may be incurred.

Stage 2b

8.27 This is for cases that the provider takes on to the substantive hearing. The fee has been designed to cover the following services:

- Lodging and drafting of appeal;
- Preparation of appeal;
- Consideration of determination – and advice to client thereon;
- Applying the merit test for application for reconsideration;
- Where the appeal is refused and the onward appeal is not being pursued, explaining the consequences of the decision and carrying out any necessary work; and
- Where the appeal is allowed, explaining the consequences of the decision.

8.28 The fee for this work is **£750**. This equates to **£300** for the work as per stage 2a and **£450** for an additional 6 hours of casework and the costs of an interpreter and translation as may be incurred.

8.29 Representation at the CMRH, representation at the substantive hearing, re-lists and all related costs will attract additional payments as set out in the table above. These reflect the different length and complexity of the hearings. Fees include the costs for travelling and waiting and the use of an interpreter. Payment for the CMRH will vary depending on whether it is an oral or other hearing.

8.30 For cases where an application for review and reconsideration is made, stage 2 ends at the point that the merits test is applied in relation to review and reconsideration and a stage claim must be made at this point. If the case does not progress a completed claim will be made.

Immigration

Stage 1

8.31 This stage is Legal Help and the fee is designed to cover the following services:

- Grant of Legal Help;
- Initial advice and completion of the application form where appropriate;
- Consideration of Home Office decision and advice to client thereon and carrying out any necessary work;

- Applying the merit test for appeal; and
- Grant of CLR or appeal to FRC against refusal.

8.32 The fee for this work is **£250**, which is based on 4.5 casework hours. Interpreter and translation costs are *not* included within the fee and will be paid separately.

8.33 Additional payment for representation at the Home Office interview is not applicable in immigration cases.

8.34 There will be no early resolution payment for immigration cases.

Stage 2

8.35 This stage is CLR and as with asylum cases, is split into two sub-stages. The fee for **either** Stage 2a **or** Stage 2b will be claimed depending on where the case concludes.

Stage 2a

8.36 This is for cases in which CLR is granted but the case concludes prior to the substantive hearing. The fee has been designed to cover the following services:

- Lodging and drafting of appeal;
- Preparation of appeal; and
- Re-application of merit test.
- Where CLR is withdrawn, explaining the decision and assisting with FRC review process and carrying out any necessary work.

8.37 The fee for this work is **£250**, which is based on 4 hours' casework.

Stage 2b

8.38 The fee is designed to cover the following services:

- Lodging and drafting of appeal;
- Preparation of appeal;
- Consideration of determination and advice to client thereon and carrying out any necessary work;
- Applying the merit test for application for reconsideration;
- Where the appeal is refused and the onward appeal is not being pursued, explaining the consequences of the decision; and
- Where the appeal is allowed, explaining the consequences of the decision.

- 8.39** The fee for this work is **£500**. This equates to **£250** for the work as per stage 2a and **£250** for an additional 4 hours of casework.
- 8.40** Note that the additional payment for representation at the substantive AIT hearing is less than the equivalent payment in an asylum case because interpreting costs will be paid separately for immigration cases and the hearing itself is generally likely to be shorter.

Q8.4 Do you agree with the stages of the graduated fees and the services that we would expect to be provided in the majority of cases? If not please explain why.

Q8.5 Do you agree with the proposals for additional payments? If not please explain why.

Disbursements

- 8.41** The cost of disbursements is generally excluded from the fees. The exception is the cost of interpreting and translation for asylum, which we would expect to apply in the vast majority of cases. The aim of including these costs within the asylum fees is to encourage providers to be efficient in their use of interpreters and translators, taking the lead in securing good value services and to reward providers who employ bilingual or multi-lingual caseworkers and/or have in house language services.

Q8.6 Do you agree with the proposals to include interpretation and translation costs within the fees in asylum cases? If not please explain why.

Exceptional Cases

- 8.42** Cases where justifiable costs for the work covered by the appropriate fee, based on hourly rates, exceed **four times** the value of the fees received will be treated as exceptional.
- 8.43** Work remunerated by way of additional payment will be excluded from the calculation. Disbursements paid outside of the graduated fee (e.g. experts' reports and interpreter and translation costs in immigration cases only) will be excluded from the calculation.
- 8.44** Work after an application for review and reconsideration will not be included within the calculation as this is subject to different remuneration arrangements.
- 8.45** The exceptional case calculation can only be performed at the conclusion of the case or following an application for review and reconsideration (the conclusion of stage 2) to incorporate all relevant stages within the graduated fee.

- 8.46** Where a case is exceptional, the total cost of the parts of the case covered by the graduated fee structure, based on hourly rates, minus the total value of payments received by way of graduated fee will be paid in full, based at the appropriate hourly rates.

Example

In the following asylum case, the fees for Stage 1 and Stage 2b have been claimed under the graduated fee scheme along with additional payments for representation at the Home Office Interview, representation at an oral CMRH and representation at the substantive AIT hearing. The case then progressed to the review and reconsideration stage. The cost for the work covered by the Stage 1 and Stage 2 graduated fees, based on hourly rates, is **£7,050**. Under the graduated fee scheme a fee of **£550** has been claimed for Stage 1 and a further fee of **£750** for Stage 2b, totalling **£1,300**.

Therefore, the following exceptional payment is made as follows:

- Graduated Payments made: **£1,300**
- Exceptional Threshold: **£5,200 (£1,300 x 4)**
- Actual costs incurred (excluding experts' reports & work remunerated by additional payments): **£7,050**
- Exceptional Payment due: **£5,750 (£7,050 – £1,300)**

Q8.7 Do you agree with the proposals for exceptional cases? If not what other structures should we put in place to pay for these cases?

Early Resolution Payment

- 8.47** An early resolution uplift of **£250** may be applied to the Stage 1 fee in asylum cases where full refugee status is granted at that stage. The early resolution payment will *only* be paid in these circumstances as this is the outcome that the client applied for and the decision will not be appealed. An early resolution payment will not be paid in cases where only a limited form of status or humanitarian protection is awarded.
- 8.48** There will be no early resolution payments for immigration cases, which normally rely on straightforward matters of fact that will be addressed at an early stage.
- 8.49** For the avoidance of doubt there will be no early resolution payment attributed to cases that are settled in the client's favour *later* in the process, even if this is the first work carried out by the provider.

Q8.8 Do you agree with the proposals for an early resolution payment? If not how else might we encourage positive outcomes for clients early in the process?

Stage Claiming

- 8.50** The General Civil Contract currently requires providers to report the costs of defined points in a case. However, as making an immigration or asylum application no longer involves the considerable delays of previous years – and under NAM asylum processing will be quicker still – we do not consider it necessary to maintain all these claim points for the new scheme. Under this scheme there will now be two claim points only in a case up to an application for reconsideration of the AIT decision (onward appeal). These will be as follows:
- The Legal Help Costs up to the lodging of the appeal or close of case.
 - The CLR costs up to an application for review and reconsideration or the close of case.
- 8.51** Any follow up work following an onward appeal will be included in the final stage claim made for that work. Claims for this work will be outside the retrospective legal aid arrangements and will not require a Costs Order, it will therefore only attract normal remuneration rates and not the 35% uplift.

**Q8.9 Do you agree with the proposed arrangements for stage claims?
If not please explain why.**

Uplift for Advanced Panel Membership

- 8.52** Current regulations allow 5% uplift in legal aid rates for all casework personally undertaken under an Immigration Contract by an individual accredited as an Advanced Caseworker under the Immigration and Asylum Accreditation Scheme. It is arguable as to whether this uplift makes a significant contribution to quality standards and we will keep its existence under review.
- 8.53** The uplift will not be applied to the graduated fees and additional payments claimed as more than one caseworker may undertake work on a file, but only the work personally undertaken by the Advanced Caseworker is eligible for the uplift.
- 8.54** You will therefore be required to calculate the hours of casework that the Advanced Caseworker personally undertakes and submit a claim once a year for the additional amount due to reflect the 5% uplift, based on the appropriate hourly rate.

Not for Profit sector

- 8.55** Subject to contract performance in 2006/07 and subject to any other criteria for the award of contracts in 2007/08, as a starting point NfP providers can expect the same level of non-disbursement related income in 2007/08 and we will develop transitional arrangements in order to agree the reconciliation process for cases started under both the old and new schemes. As with other categories of law, there will be no provision for existing Level One work under the new arrangements.

SERVICES EXCLUDED FROM THE GRADUATED FEE SCHEME

Services At The Asylum Screening Unit (ASU)

- 8.56** We believe that all clients should be provided with legal advice and information prior to applying for asylum and we are proposing that these services are delivered by dedicated on-site providers at the ASU. Part of the initial assessment by the provider would include whether clients required representation at screening, as is currently allowed, because they were particularly vulnerable. Representation would then be provided where appropriate.
- 8.57** After screening the on-site provider would refer the client to a provider in the area local to where the client will live whilst their application is being considered. The local provider will be given a copy of the screening documentation, the date of substantive interview, details of the client's language and any other needs and an appointment would be made for the client before they leave the ASU.
- 8.58** The on-site legal advice and referral would be delivered through exclusive contracts with a small number of providers and would be subject to a competitive bid round. There would be rules in the contract to ensure that work was referred equitably on a rota system with slots allocated according to the number of accredited staff each provider had. As well as ensuring that clients are able to access services in the short time available before their Home Office interview, we believe that this measure should also significantly reduce the amount of duplication of work. CLS Direct would continue to offer a signposting, referral and information service for those clients not passing through the ASU.

Q8.10. Do you agree with our suggested approach to provide advice, information and referral at the ASU? If not how else could these services be provided?

Q8.11. Do you agree with the proposal to restrict client choice and allocate clients to particular providers on a rota basis? If not what alternative mechanisms do you think could be introduced to ensure that clients are guaranteed access to legal advice in the short period available between making their asylum application and their substantive interview?

Services In Detention

Services to clients in Detention Centres

- 8.59** We already have exclusive contracts in place for clients who are in detention at Harmondsworth, Oakington and Yarl's Wood and whose case is subject to a Home Office fast track process. We also have instigated pilot advice surgeries at all Detention Centres in England and Wales to provide services to clients

without a representative, particularly at the end of the process. We are currently carrying out our evaluation of the pilot but our initial findings suggest that it has been a success and we would want to continue to provide this service.

- 8.60** Subject to the outcome of the evaluation, we are proposing to carry out competitive bid rounds to award exclusive contracts from April 2007 to provide all legal services in Detention Centres. This would encompass basic advice surgeries, telephone advice, bail hearings and, where applicable, fast track work. However in order to reduce the administration costs to the LSC of producing duty rotas and to achieve economies of scale and efficiencies for providers, it is likely that we will contract with fewer providers.

Q8.12 Do you agree with our suggested approach to provide legal services to clients in Detention Centres? If not what alternative arrangements do you think could be introduced to ensure that clients are guaranteed access to legal advice and representation whilst reducing the administrative burden on the LSC?

- 8.61** We also need to consider how best services can be provided to clients held in prison at the end of their sentence as it will not be possible to extend the duty arrangements to prisons as well as Detention Centres.

Q8.13 Do you have any suggestions about how legal services could be provided to immigration clients held in prison?

Services to clients in Police Stations

- 8.62** A pilot telephone advice service for clients held in Police Stations and Short Term Holding Centres started on 12 June 2006 and will run until 21 January 2007. We will consult with stakeholders about the success of the pilot during the evaluation period. If we decide to continue with this type of service, our approach is likely to be to award exclusive contracts from October 2007 to a small number of providers following a competitive bid round.

Services to clients detained under anti-terrorist legislation

- 8.63** The Special Immigration Appeals Commission (SIAC) deals with appeals in cases where the Home Office exercises statutory powers to deport or to exclude someone from the UK on national security grounds or for other public interest reasons; or to certify a person to be an international terrorist. This is low volume and high value work of a specialist nature and it is our intention to carry out a competitive bid round so that from October 2007 we will have a specialist panel of a small number of providers to deal exclusively with these cases. In considering our future remuneration arrangements for these cases, we will look to develop consistent practices with schemes that we develop for very high cost cases in other areas of law.

Services To Unaccompanied Asylum Seeking Children (UASC)

- 8.64** We are concerned that despite being eligible for representation at the screening interview, many clients in this group fail to secure representation and that this leaves them more vulnerable to abuse, eg trafficking. We are also concerned about whether all the appropriate legal remedies are being considered both during the asylum process and afterwards. For example there will be occasions where it would be more appropriate for a case to be dealt by a Child Care specialist than an immigration practitioner. Similarly we are concerned that other social welfare issues, such as community care, are not being considered.
- 8.65** We will address the lack of representation issue through our proposal above to contract specifically for services at the ASU. However as this group of clients make up around 10% of all asylum applicants we do not expect the on-site legal providers to be able to deal with all these cases from beginning to end. We are therefore proposing to set up an exclusive panel of specialist immigration and children providers to whom all cases would be referred by the on-site legal advisers at the ASU. The specialist panel would be subject to competitive bid round and we would aim to have the panel in place by April 2007. This work will need to tie in with the Home Office's UASC Reform Programme consultation.

Q8.14 Do you agree with our suggested approach to provide legal services to this group of clients? If not do you have any other suggestions about how we can ensure that providers delivering services to this client group have the necessary experience and expertise?

Remuneration For Work Excluded From The Graduated Fee Scheme

- 8.66** The method of remuneration will vary with some work continuing to be funded on a case by case and hourly rate basis with other work funded much more along the lines of a block contract with an overall contract value for an agreed totality of work rather than payments for individual acts of assistance and representation. For example, at Harmondsworth Detention Centre our assessment of the need for services might be for 45 fast track clients, 30 bail hearings for other clients and 6 advice surgeries a week and an out of hours telephone service. We would then decide how much we were prepared to pay for those services and how many providers we want to be involved and carry out a competitive bid round. The contract would have minimum and maximum performance indicators around outcomes, quality and access with financial penalties where the minimum standard was not reached and incentives where the maximum performance was exceeded.

8.67 Our suggested approaches and the provisional indicative financial allocations for 2007/08 are as follows:

Service provided	Value	Type of remuneration
Services to clients at the ASU	£2.5m	Block Contracts
Services to clients in Detention Centres	£8.5m	Block Contracts
Services to clients in Police Stations	£1m	Block Contracts
Services to SIAC clients	£9m	Hourly rates per case
Services to UASC	£5.5m	Hourly rates per case

8.68 Subject to the outcome of this consultation, block contracts will be awarded for the first three categories to the values suggested for 2007/08 following competitive bid rounds. The financial allocation for the last two categories is provisional and ultimately will be dependent on demand. As the Home Office UASC Reform Programme is rolled out it is likely that we will also move the arrangements for UASC to a block contract arrangement following competitive bid rounds.

Q8.15 Do you agree with our proposed approach for remunerating these services? If not what suggestions do you have?

8.69 In carrying out competitive bid rounds we will set out minimum standards that we expect of providers as part of the essential criteria. We will then select as few providers as possible to meet the demand for services. In some cases this could result in us merely awarding one contract, in others it may be more than that depending on who meets the essential criteria. When advertising the bid round we will specify the level of service we require and the minimum and maximum number of providers we are aiming to contract with. For example, at the ASU in Liverpool we may only want to contract with one or two providers whereas at Croydon we may feel that we need to contract with more because of the higher demand for services. Similarly at most Detention Centres we may only want to contract with one or two providers whereas at Harmondsworth it may be twenty.

8.70 Initially it will not be our intention to have a maximum number of providers on the SIAC or UASC panels, however we may decide to contract with fewer providers in future as the UASC Reform Programme is rolled out and we move towards block contracts.

8.71 At this stage it is also not our intention to carry out competitive bids rounds based on price but ultimately we may move to this position.

Q8.16 Do you agree with our rationale for selecting reduced numbers of providers to provide these services? If not do you have any suggestions about how to minimise the administrative cost to the LSC of providing these services?

Exclusive Contracts

8.72 One of the key challenges that the LSC faces is to reduce the duplication of advice. We believe that the key to achieving efficiencies and making more effective use of available capacity is to extend the services covered by exclusive contracts. One of the significant changes in the April 2004 reforms was the introduction of exclusive contracts in fast track locations. This successfully eradicated many of the touting practises that had become prevalent, ensured that clients had access to good quality services and reduced the number of clients changing representatives unnecessarily.

8.73 We would therefore prevent any provider without an exclusive contract from delivering the services excluded from the “graduated fee scheme”, with the possible exceptions already in place for existing clients and their close family members. The significant improvements that have been made to quality assure the legal aid provider base increases confidence that clients will get a good service whichever legal aid provider is instructed.

Q8.17 Do you agree with our approach of extending the existing exclusive contracting arrangement for fast track clients to other services and client groups? If not what other proposals do you have to help reduce duplication of advice?

8.74 As we have indicated above all the proposed new contracting arrangements outside the “graduated fee scheme” would be subject to a competitive bid round process. The tendering process will normally start around four months before the new arrangements are due to come into effect. Previous examples of tender documentation are available on the LSC’s website at www.legalservices.gov.uk

Q8.18 Apart from the generic criteria that we set for bid rounds, do you have any suggestions for specific criteria that we should use for the bid rounds for the exclusive services to ensure that providers have the right level of experience and expertise?

SUPPLY STRATEGY

8.75 In order to deliver all of the services required by clients we want to establish a network of providers who are able to respond quickly and flexibly to changes in demand. Our strategy therefore is to have a small network of national and possibly regional providers who deliver the backbone of our services throughout England and Wales and that are supplemented by smaller local providers from both private practice, law centres and the NfP sector. It is anticipated that these providers will be based predominantly near induction centres, hearing centres, detention centres and removal centres and in areas of high dispersal but that they will be able to provide services through outreach wherever they are required. Existing providers that are unable to develop into national provider may want to consider becoming such a provider by entering into formal consortium arrangements with providers in other locations.

Q8.19 Do you agree with our approach to develop national and regional providers? If so are you a provider or part of a network that would be interested in becoming this type of provider?

9. Mental Health

Background

- 9.1** The proposed Mental Health Controlled Work Remuneration Scheme set out in the following pages has been developed in parallel with our vision for the Community Legal Service outlined in the CLS strategy, *Making Legal Rights a Reality*.
- 9.2** We are committed to ensuring that legal rights are a reality for people with mental health legal problems just as they must be for others. Key to our thinking is the need to better reflect existing good practice in how mental health legal services are provided.
- 9.3** For example, we know from legal professionals and from their representative bodies that providing a high quality service in this area of law frequently means being able to advise on relevant community care problems.
- 9.4** While we do not propose to change the scope of Legal Representation, we also accept that it can sometimes be very beneficial to the client if their legal representative attends Hospital Manager’s Meetings, or is able to make representations at other meetings (such as Section 117 meetings and Care Programme Approach meetings) where their care and treatment is being reviewed and/or planned.
- 9.5** The proposed new graduated fee scheme for Mental Health will therefore fit with a proposed new contract specification for this category, which together will
- devolve more decisions about where and when attendance and advocacy is needed to clients and their representatives;
 - support current best practice in providing community care advice as appropriate;
 - allow for general attendance and representation at events at which the treatment and care of the client is discussed;
 - remove means testing for compulsory patients;
 - ensure cost neutrality across the range of Mental Health Controlled Work.

Further information about the proposed new contract specification for Mental Health will be published later this year.

The Scheme

- 9.6** We propose to pay providers a set fee for each Mental Health case. The payable fee will be one of a series of graduated fees which will be determined by the combination of levels of work that have been undertaken – Advice, Negotiation & Preparation, and Representation before the Mental Health Review Tribunal (MHRT).

9.7 We propose a series of graduated fees rather than a single fixed fee for the entire case because, unlike other categories of law, fees in mental health cover Controlled Legal Representation as well as Legal Help. Representation is different both qualitatively and quantitatively from Legal Help, and the right to representation before the MHRT is a critical one. Representation before the MHRT should be rewarded accordingly. We believe a graduated fee offers a fairer match between the work undertaken for the client and how it is paid than would a single fee; it will also generate fewer exceptional cases.

9.8 A graduated fee will also allow us to monitor the impact of any changes to the legal and tribunal processes (for example as a result of the proposed amendments to the Mental Health Act 1983) and to adapt accordingly, so that we can continue to provide for high quality services while operating within our limited budget.

Q9.1 Do you agree that Controlled Work for Mental Health should be remunerated with a graduated fee rather than a single fixed fee? If not please explain why.

9.9 Funds for the use of counsel (both for providing an opinion and for advocacy) are included within the fees. Although counsel costs can be significant, counsel is instructed in a very small number of cases, and their use varies considerably by individual firm. It is therefore our view that the inclusion of funds for counsel in the fixed fee is the simplest way of allowing individual practitioners and firms to decide when to instruct counsel in the small number of cases when this is thought necessary.

9.10 Funds for time spent in 'Travel and Waiting', currently remunerated as a profit cost at a specific hourly rate, are also included within the fixed fee. While we recognise that in certain cases it is essential that a particular practitioner travels considerable distances on behalf of a client, in general we do not want to indirectly incentivise long distance travelling when there are equally suitable suppliers located closer to the client. This supports our intention to move towards commissioning mental health legal services in a more strategic way, letting contracts linked to specific Mental Health Trusts.

9.11 'Forensic' cases (i.e. cases where a client is detained via criminal proceedings) are included within the Scheme, however we set out for consultation three possible ways of treating these cases.

9.12 We propose to remove means testing altogether for compulsory patients, except in relation to Mental Capacity Act work. Currently, Controlled Legal Representation is not means tested, creating an incentive to move clients onto CLR as early as possible. Removing the means test altogether for patients under compulsory detention will simplify the process for suppliers and for the LSC.

- 9.13** The Scheme does not include disbursements, such as fees for independent expert reports, which will continue to be claimed and remunerated separately. We will be developing proposals on achieving better value for money with regard to the use of experts.

Scope – Providers

- 9.14** The scheme will apply to all providers with a contract in Mental Health from April 2007. As currently, providers that do not hold a contract in Mental Health may not conduct any Mental Health work.

Scope – Work

- 9.15** The scheme will apply to all Controlled Work in Mental Health, including advice in relation to the Mental Capacity Act 2005, and cases involving clients impacted by the decision in ‘Bournewood’.
- 9.16** The revised contract specification will provide clear guidance of how a case can be conducted, and the limits of work in each stage.

The Fee Structure

- 9.17** The fees to be paid are set out in the table below.

Mental Health scheme fees

Level	Fee
1 – Initial advice	£90
2 – Negotiation & preparation	£335
3 – Representation before the MHRT	£387

- 9.18** The fees have been set using claims data made by providers in 2005/06. They represent costs of work of different types of case – those covering only initial advice, those involving further preparation and negotiation work only, and those also involving representation. As explained above the fees include the costs historically claimed for use of counsel and for Travel & Waiting.
- 9.19** For all levels, the same fee will apply whether the patient is a resident at the NHS Trust or independent unit, or is being treated in the community.

Level 1 – Initial Advice

- 9.20** This level covers any initial advice on a mental health matter, including advice on whether to pursue it further, for example, up to the point when a client decides to make an application for a MHRT hearing. The fee includes any advice relating to the Mental Capacity Act, ‘Bournewood’, and to community care elements of the revised Mental Health specification. It also includes attendance by the client’s representative at any meetings (such as Care Programme Approach and Section 117 meetings) or Managers’ Meetings during this period.

Level 2 – Negotiation and Preparation

- 9.21** This level begins at the point when a client decides to make an application for a hearing before the Mental Health Review Tribunal. It includes the application process itself, all negotiation with third parties (such as doctors and hospital managers) and all preparation for the MHRT hearing. It also includes preparation in relation to Mental Capacity Act cases. This fee includes attendance by the client’s representative at any meetings (such as Care Programme Approach and Section 117 meetings) or managers’ meetings during this period.
- 9.22** We propose to pay Negotiation & Preparation once when a patient is transferred from one section type to another *via a Tribunal hearing* and applies for another Tribunal hearing during the same episode of illness (in other words, the patient has not been discharged from compulsion between hearings). This is because we believe that in the vast majority of cases the issues at stake are the same, and that little or no additional preparation is necessary. However, we welcome views on whether there are circumstances in which this would routinely not be the case.

Q9.2 Do you agree that we are justified in not paying a second level 2 fee for Negotiation and Preparation relating to a Tribunal hearing where the client has transferred from one section type to the current section type via a Tribunal hearing? Are there circumstances when the fee should be paid again? How would you suggest we define such cases?

Level 3 – Representation before the Mental Health Review Tribunal

- 9.23** This fee will pay for the act of representing a client before the MHRT. It therefore includes any fees payable to counsel for representation. Where the Tribunal adjourns, the fee will cover all the sittings of the Tribunal until a decision (disposal) is reached. This is because the proposed fees take into account the costs associated with adjourned hearings.
- 9.24** If no hearing takes place, the fee will not be payable, except when travel costs or counsel fees for representation have been unavoidably incurred. In this case the fee is payable in full.

Q9.3 Do you agree with the proposed stages for setting the fees? If not what alternatives would you suggest and why?

Aftercare and other relevant community care advice

- 9.25** Provision for specific community care work, including aftercare advice following discharge from a section and/or from a hospital, has been built into all three fee Levels. Where no hearing is listed, any necessary advice and assistance on aftercare is included in the Level 1 fee. Where a Tribunal hearing is listed but does not take place, aftercare is covered by the Level 2 fee. The Level 3 fee covers aftercare following discharge as a result of a hearing.
- 9.26** It will be important to read the policy paper ‘Mental Health and the Community Legal Service’, available later this year at www.legalservices.gov.uk, in order to fully understand our proposals relating to community care work.

Exceptions

- 9.27** Cases with justifiable costs in excess of four times the graduated fee would be treated as exceptional, and paid as claimed, at current rates. In order for a case to be exceptional, the total costs of the entire case (based on hourly rates) must be greater than four times the total of the set fees applicable for each of the Levels of work undertaken.

Transfer of cases

- 9.28** Where the care of a client transfers from one contracted provider to another, both providers will be entitled to the full fee for each of the Levels of work undertaken.
- 9.29** While we recognise that in some cases it will be necessary for work to transfer from one provider to another in order to ensure access to justice, we are also aware that there is a risk that the same work may be duplicated unnecessarily for a particular case. We will reduce this risk through appropriate contract management and file review processes.

Examples of how the fees will work

A patient is admitted, seeks advice, and requests attendance by their representative at a Care Programme Approach meeting (£90). The patient requests a hearing, at which point the level 2 fee becomes payable. This hearing is listed. During this period the patient also requests attendance by their representative at a Manager’s Meeting, which their representative attends. Following the Manager’s Meeting the patient is discharged. The Level 2 fee (£335) is payable. The total fee would therefore be £90 + £335 = £425.

A patient is admitted to hospital on a Section 2. The patient receives advice and assistance at Level 1 (£90) and applies for a hearing (£335). The hearing adjourns once, but reaches a decision at the second sitting (£387). As a result of the hearing the patient is not discharged but transfers to a Section 3. The

representative advises the client to apply for another hearing, and an application is made. We propose not to pay another Level 2 fee (but seek views on this). The hearing takes place, and the patient is discharged. A second Level 3 fee (£387) is payable. The total fee would therefore be £90 + £335 + (2 x £387) = £1199.

A patient is admitted, and seeks advice on whether to apply to the Tribunal (£90). The patient decides to apply, and their representative carries out the necessary preparation (£335). During preparation of the case, care of the client transfers from the original firm (A) to a different firm (B), who are also entitled to the Level 2 fee (£335). The client is discharged following the Tribunal hearing (£387). The fee payable to firm A is £90 + £335 = £425. The fee payable to firm B is £335 + £387 = £722.

A client requires a significant amount of initial advice in relation to a Mental Capacity Act matter. The costs of the case (based on current hourly rates) are in excess of 4 x the Level 1 fee, i.e. greater than 4 x 90 = £360. The case is therefore treated as exceptional, and is remunerated based on current hourly rates.

A case transfers to a firm after a Tribunal hearing has been listed, and the costs associated with preparing for the Tribunal are greater than 4 x £335, the payable Level 2 fee. The Tribunal sits for ninety minutes and decides that the patient should be discharged from their section. There are no aftercare costs as the patient remains in hospital voluntarily.

Although the costs of preparation are high, the total cost of the case based on hourly rates for the work done does not exceed 4 x the total of the relevant fees, i.e. 4 x (£335 + £387) = £2,889.

The case is therefore not exceptional, and so the firm receives the fees for Level 2 and Level 3 as normal, i.e. £335 + £387 = £722

Forensic cases

9.30 The LSC seeks views on how it pays for forensic work, i.e. work carried out on behalf of a client detained through criminal proceedings. We set out three options below.

Option 1

9.31 We could pay for forensic cases in exactly the same way as non-forensic cases, using the same suite of graduated fees set out above, with the same four times fee threshold for exceptional cases. A forensic case would become exceptional in the same way as any other high cost case. This is our preferred option, as it offers the stability of the graduated fees while providing for the higher costs of some forensic case, and will not impact on the fee values proposed above.

Option 2

9.32 A separate range of fees could be set for forensic cases, each of which would be higher than the fee for non-forensic work. The approach to exceptional cases would remain as outlined above. While the fees for forensic cases would be higher than those set out above, the fees for non-forensic cases would be lower than those set out above, since these have been calculated based on the costs of all cases, including forensic cases. Fees for forensic Levels would be in the region of 7-30% higher than those proposed above, non-forensic Levels would be approximately 10-25% lower than proposed above; this would vary by Level. Initial analysis suggests that firms carrying out a significant amount of forensic work would lose out under this option compared with Option 1 since under Option 1 most cases are exceptional.

Option 3

9.33 We could remunerate all forensic cases as per the current hourly rates.

9.34 While Option 1 is our preferred approach, as we think it offers significant advantages for both providers and the LSC, we welcome views on all three options.

Q9.4 Which of the 3 options do you prefer for payment of forensic cases and why? Are there any other options we should consider?

National fees

9.35 The experience of clients through the care pathway and the Tribunal process varies for reasons other than simply where they are based (particularly since individual clients often move to a different location) and the historical data on which the proposed fees have been set reflect this. We therefore do not propose to pay differently for work carried out by firms in different parts of England and Wales, for example in London. If we were to pay firms based in London more than those elsewhere, we would need to reduce the fees set out above in order to pay for this.

Q9.5 Do you agree that it is neither justifiable to set different fees for different regions nor to set London and non-London fees? If not please explain why.

Not for Profit sector

9.36 There are only seven NfP organisations with a Mental Health contract. If an NfP provider and the LSC agree that moving to payment under the new scheme immediately would be inappropriate, we could set targets for that organisation in a similar way to the TFF replacement scheme by looking at both their current case mix and the funding they receive for these cases.

Example

A Not for Profit mental health provider currently has a contract worth £33,400. It carried out 60 cases last year with a case mix of 15 cases that are equivalent of level 1 in the proposed new scheme, 15 incorporating levels 1 and 2, and 30 with levels 1, 2 and 3. At the new rates the same cases would attract £1350, £6,377 and £24,360 respectively, giving a total of £32,087 – slightly less than the current contract value. Assuming that we are commissioning a similar amount and kind of work, the contract could be set at the lower level or we could increase the case targets accordingly.

10. Common Issues on civil, family, immigration and asylum

Exemption of cases and variation of fixed fees

- 10.1** Providers will not be permitted to “exempt” cases or to vary the amount of standard or graduated fees.
- 10.2** The circumstances in which the LSC may vary the standard or graduated fees will be set out in the General Civil Contract as amended.
- 10.3** We will reserve the right to amend the level of fees where new Access to Justice legislation (including changes to the Funding Code) is likely to have a significant impact on case costs. Examples would be where the Lord Chancellor takes work out of scope or where there are changes to practices, for example the Judicial Case Management Protocol which affects Public Law Children work.
- 10.4** Where your actual costs are lower than the published standard or graduated fee we will not reduce the fee for any category, or part of category, unless the actual average costs of all providers have fallen by 10% or more. Should this occur we will not take any action without first consulting with the Law Society and other appropriate representative organisations.
- 10.5** We will review all fees at the end of each schedule year unless paragraph 10.3 above applies, in which case we will review the fees as soon as we know about the proposed changes.
- 10.6** Although we do not plan to reduce fees for individual providers, we reserve the right to investigate further and/or conduct a peer review where your costs are significantly lower than the standard or graduated fees payable to ensure that we are achieving appropriate quality and value for money. See section 19 below for further details of when we might conduct audits or peer reviews.

Q10.1 Do you agree with the proposals for varying the fees? If not please explain why.

Exceptional cases

- 10.7** As with the existing Tailored Fixed Fee scheme we will continue to allow cases to ‘escape’ from the fixed or standard fee regime where the costs exceed pre-determined limits. We recognise that similar provisions must be made for the new schemes set out in this paper, however the current system for assessment and payment of exceptional claims is complex and we now intend to simplify the process.
- 10.8** Cases will be treated as exceptional if the value of the work, when calculated on an hourly basis, exceeds four times the value of the fixed fee for the case or a stage of the case. All cases claimed as exceptional will be subject to cost assessment.

- 10.9** Exceptional cases will be excluded entirely from the standard fee schemes, and will be paid for at hourly rates as specified by the contract, subject to any additional scheme rules. These cases will be paid for throughout the year, as and when they are claimed and assessed, rather than at year-end as is the current practice. All exceptional cases will be subject to cost assessment and should the value of the case be assessed at less than four times the value of the fixed fee only the fixed fee will be paid.
- 10.10** We will publish detailed guidance on how claims will be made and processed as part of our response to this consultation.

Q10.2 Do you agree with the proposed arrangements for payment of exceptional cases? If not how else might we manage these cases?

Disbursements

- 10.11** The standard or graduated fees payable in each scheme include profit costs, travel and waiting, unless otherwise specified. They do not include other disbursements (with the exception of interpretation and translation costs in asylum cases).
- 10.12** We propose that disbursements will be reported as a separate item on the CRMF and credited to the providers account in the normal way. This is a change from the rules for the TFF scheme as we recognise that it is currently in the best interests of clients that providers are able to make decisions on the issue of disbursements based on the requirements of the clients case and free of any financial considerations.
- 10.13** However, the cost of disbursements is a factor that must be controlled if we are to live within the existing legal aid provision. We will therefore continue to monitor the average cost of disbursements and the use of disbursements. Where a provider moves out of profile we are likely to audit, on a sample basis to establish that the disbursements have been properly incurred.

Q10.3 Do you agree with the arrangements for payment of disbursements? If not please explain why.

The statutory charge and related issues

Calculation of the Charge

- 10.14** Under the new schemes the statutory charge, where applicable, will now (in relation to profit costs) be based on the standard or graduated fees paid. It will no longer, therefore, be calculated by reference to the time incurred on the case at hourly rates, unless the case falls to be paid in that way under an exceptional claim mechanism.

10.15 We consider that the new approach will have a number of advantages:

- Simplicity and predictability of the charge: it will be possible to provide clients with clearer estimates of any liability under the statutory charge at the start of a case;
- Transparency and fairness: the statutory charge will not exceed the total costs paid to the provider in any case.

10.16 Accordingly, the costs potentially forming part of the statutory charge for cases within the new remuneration schemes will be:

- **Tailored Fixed Fee Replacement:** the fixed fee or the exceptional claim payment made on that case;
- **Family Help – Private:** The appropriate level two or three fee received, or the exceptional claim payment.

Scope of the Statutory Charge

Family Help – Private

10.17 Cases completing under level 1 (see above) will be exempt from the charge. The Charge will apply to cases completing under levels 2 and 3 where non-exempt property is recovered or preserved.

10.18 Where, following Family Help – Private, such recovery occurs under a certificate for Legal Representation, the appropriate level 2 or 3 fee, or exceptional claim payment, will form part of the charge together with the relevant costs under the certificate.

Tailored Fixed Fee Replacement Scheme

10.19 We are proposing a general change to the current provisions concerning the statutory charge. At present, in the Financial Regulations the statutory charge attaches to relevant property recovered or preserved at the Legal Help stage in Family, Personal Injury and Clinical cases. We recognise that the most significant recovery at Legal Help level will have been in family cases, which now fall under a separate level of service.

10.20 Given that the statutory charge would be likely to arise at this level in only a small proportion of remaining Legal Help cases, our proposal is that the charge should no longer apply to any recovery or preservation of property at the Legal Help level. We believe this will simplify the TFF Replacement Scheme by removing the operation of the charge for cases completing within the Scheme. Legal Help costs will continue to form part of the statutory charge where recovery or preservation occurs after a certificate has been granted.

10.21 In order for uniform operation of the Scheme we are further proposing that the new provisions will apply across all categories of work. Therefore Legal Help costs in Actions Against the Police etc, Community Care, Consumer, Debt, Education, Employment, Housing, Public Law and Welfare Benefits will be included in the charge where relevant recovery or preservation subsequently occurs under a certificate

Operation of the statutory charge

10.22 Since it is proposed that the statutory charge will no longer arise at Legal Help level (or equivalent), under the Financial Regulations the charge will arise only in favour of the LSC rather than the provider.

Q10.4 Do you agree with the proposed arrangements for the application of the statutory charge? If not please explain why.

VAT

10.23 As described in recent Focus articles, the HMRC have confirmed the position in respect of general legal services provided to individuals who “belong” outside the EU: such services are deemed to be supplied in the place where the client does belong, and are outside of the scope of VAT. For VAT purposes, persons who have not been granted either permission or the right to remain in the UK are treated as belonging in their country of origin.

10.24 Accordingly, services provided to asylum seekers and those entering the UK without permission are generally outside the scope of VAT, which therefore, in principle, is not payable by the LSC. This applies to all legal aid work conducted on behalf of the client.

10.25 This guidance currently applies in respect of profit costs and barristers’ fees only. The LSC and Law Society are continuing to consult with HMRC on the position regarding disbursements.

10.26 Under the TFF scheme, VAT on previous payments, both of profit costs and disbursements, was included in calculating the fixed fee. It was the responsibility of providers to determine the appropriate VAT element of their fixed fee and there was no provision in the scheme for providers to report to the LSC cases where VAT should not have been paid. This has created difficulties for providers in reporting such cases to HMRC.

10.27 Under the new schemes proposed in this paper the fees generally exclude payments for disbursements. Accordingly it is proposed that the fixed fee is set as a figure net of VAT, and providers will specify when claiming the case whether VAT is payable. This will further enable VAT to be excluded from the statutory charge, where relevant. Disbursements, however, should be reported inclusive of VAT for the time being.

Q10.5 Do you agree with the proposals for payment of VAT? If not please explain why.

File review

10.28 At present providers may submit an annual claim for additional payments for file review. File review is a requirement of the Specialist Quality Mark and is in any event best practice to ensure quality advice. We now intend to remove the additional payments for all file review (including for Crime and Licensed Work).

Q10.6 Do you agree with the proposal to remove payments for file review in order to fund more civil matter starts? If not please explain why.

Regulatory changes

10.29 We anticipate that changes will be required to the Community Legal Service (Funding) Order 2000 and Community Legal Service (Financial) Regulations 2000 to give the LSC power to implement the proposed schemes. The Department for Constitutional Affairs will consult on any such changes separately.

Q10.7 Do you agree with the proposed amendments to the Funding Code set out at Annex C?

11. Terms and structure of the Unified Contract 2007

- 11.1** It is the LSC's intention to introduce from April 2007 a Unified Contract to replace the existing General Civil and Not for Profit Contract. We believe that the creation of this unified contract will significantly simplify our relationship with all our providers. Eventually, the new Unified Contract will apply to crime providers.
- 11.2** The situation is slightly different with the General Criminal Contract which will be automatically extended on 31 March 2007 to 31 March 2008 either on the existing Standard Terms or on Standard Terms specified following at least three months consultation. This would enable some or all of the terms of the Unified Contract to be introduced from 1 April 2007.
- 11.3** When we publish the Unified Contract, we will include an overview describing and explaining it and outlining the significant differences from the LSC's General Contracts¹, which it will replace. For this consultation, we provide a draft overview, rather than draft, detailed contract terms. We want to emphasise that, although we are proposing contract amendments that we consider are desirable, these are for consultation and we welcome your views.
- 11.4** We will positively engage with representative groups to ensure that the Unified Contract provides a vehicle that facilitates effective working with providers yet will still ensure that the LSC is able to meet its other obligations as a responsible public body.
- 11.5** The overview covers major issues. It does not cover minor amendments that will have little or no consequences for either the day-to-day performance of contract work or the application of contract sanctions, or which do not impact on the relationship between the LSC and providers.
- 11.6** We feel that it is important, during the consultation, to address the significant issues first. As the consultation continues, our intention is to produce a draft contract, by which time we should have resolved many of the significant issues and have identified any that are more difficult to resolve.
- 11.7** The one major issue where the overview does not propose a position is the final one – the April and October “windows” for amending the Specification. On a number of occasions they have caused problems and delays when introducing changes that would benefit clients. However, we want to discuss the issues with the representative bodies and seek views as part of this process. One way forward may be to establish an agreed protocol for introducing changes rather than having any fixed dates.

Criteria and conditional contracts

- 11.8** The Unified Contract includes a provision enabling the LSC to require specified volumes of work (see Matter Starts and case volume & mix). However, some providers currently perform only a small volume of LSC funded work. For the reasons set out elsewhere in this paper, we propose that Unified

¹ General Civil Contract (Solicitors), General Civil Contract (NfP), General Criminal Contract and General Mediation Contract

Contracts will be awarded only to providers to whom we have paid no less than either £25,000 or £50,000 in a period to be specified. The calculation will be based on all legal aid payments made to the firm in the relevant period.

- 11.9** This proposal is part of the move towards fewer, larger firms as set out by Lord Carter in his review and in our own consultation on Preferred Supplier. There are two possible approaches to the calculation of the minimum sum either retrospectively or prospectively.
- 11.10** In the former we would base the calculation on the payments made to the organisation in the 12-month period between 1 January 2005 and 31 December 2005. In the latter we would award a Unified Contract to all firms but include a clause that allows the LSC to terminate the contract to be terminated on three months notice if, in the period 1 January 2007 to 31 December 2007, the firm receives payment of less than the specified amount.
- 11.11** We believe that there is merit in both approaches. The first being cleaner and requiring less change and providing more certainty for the providers, the latter enabling organisations that are committed to providing legal aid to increase the amount of work that they undertake and allowing others to more effectively manage their exit.
- 11.12** We therefore welcome your views on whether the limit should be either £25,000 or £50,000 giving your reasons. We would also welcome your views on the two proposed time periods for calculating the limit.
- 11.13** The Unified Contract includes (and the General Civil Contract included) a requirement for immigration providers to meet specified criteria in respect of their appeals related work. Providers who fail to meet these criteria, measured over the period January – September 2006, will be awarded a contract that is conditional on their meeting the criteria within a specified period.

Specification

- 11.14** The Specification requires two distinct pieces of work. First, we will simplify it and improve its usability. This piece of work is unrelated to any policy changes.
- 11.15** Second, we will amend the Specification (subject to consultation) to give effect to the policy proposals in this consultation paper, our preferred supplier proposals and the CLS Strategy.

Timing

- 11.16** We will engage positively with our consultees over the summer and into the autumn. We expect to produce draft contract documents, illustrating the new structure, in August.

DRAFT CONTRACT OVERVIEW

INTRODUCTION

Purpose of overview

11.17 This overview describes the LSC Unified Contract, outlining the significant differences from the LSC's General Contracts², which it replaces, and explaining why such changes have been made.

Why make changes?

11.18 A restructured and updated contract provides a platform for the implementation of "Preferred Supplier" and the recommendations in Lord Carter's report, particularly those relating to tendering and fixed fees. It makes sense to have the Unified Contract in place as soon as possible, so that our providers can become familiar with it.

Transitional provisions – crime

11.19 Although the Unified Contract will come in April 2007, we will have not ended all General Criminal Contracts, which will stay in force unless specifically terminated e.g. in conjunction with a tendering exercise. Subsequently, we will authorise criminal work through a Schedule to the Unified Contract (see Contract length and tendering below).

11.20 However, we will look to amend the General Criminal Contract Standard Terms to include the same power as is in the Unified Contract (following a tendering exercise) to terminate contracts, to limit providers' rights to perform specified types of work, work in specified geographical areas etc (please see Contract length and tendering below).

GENERAL

Restructure – focus on the provider

11.21 Instead of focusing on work from a particular office, or under a particular contract, or in a particular class or category of work, we want to focus on our providers, our relationship with them and their overall performance. The Unified Contract will facilitate this and simplifies the contracting regime. Although we have retained a Contract for Signature, Schedules, Contract Standard Terms and a Specification:

- There will eventually only be one Unified Contract for each LSC provider, instead of separate General Contracts for each office;
- Each office will have Contract Schedule(s) for Civil, Children & Family, Criminal, or Mediation work, which include any terms specific to the provider;

² General Civil Contract (Solicitors), General Civil Contract (NfP), General Criminal Contract and General Mediation Contract

- The Contract Specification will include discrete sections on Civil, Children & Family, Criminal and Mediation work;
- The SQM will cease to be a contract document.

SQM

11.22 The SQM will no longer be a Contract Document. Instead, the Unified Contract will specify that providers must comply with either the SQM or such alternative quality standard, as the LSC considers equivalent.

11.23 We have identified some key SQM provisions in particular the elements of the SQM relating to client care and supervision, which will become contract terms in their own right. We will also preserve and amend to comply with all current legislation, the elements of the SQM that relate to discrimination and equality.

11.24 If an alternative quality standard is accepted by the LSC, the Unified Contract will specify that the LSC may see the auditing body's report (and may, if we wish, observe and monitor the audit ourselves).

Contract length and tendering

11.25 In common with many commercial contracts, the Unified Contract has a term of three years with an option (exercisable within the first two years) for the LSC to extend it for a further two years.

11.26 However, to enable us to implement Lord Carter's reforms within this period, the Unified Contract gives the LSC power, on three months notice, to restrict or terminate contracts in specified geographical areas, types of work or otherwise. A similar provision (but requiring a prior direction from the Lord Chancellor and specifying six months notice) has always been a feature of the LSC's General Contracts.

11.27 Given the acceptance of the Carter Review and subject to this consultation process, we no longer see any need for the prior direction provision. We have reduced the notice period to match the three months notice, to enable the reforms to be implemented, this applied to all London General Criminal Contracts since July 2004.

11.28 In areas where CLAC and CLAN contracts are awarded following a tendering process, we intend to use this provision to terminate (or if appropriate reduce) civil contracts where we consider that the services that we wish to fund will be provided by the CLAC or CLAN. Prior to this, and on the same basis, we also intend not to renew (or if appropriate reduce) relevant contracts in April 07 in CLAC/CLAN areas where tendering has already taken place.

Relationship

11.29 The Unified Contract will aim to maintain the co-operative relationship established by the General Contracts, under which providers and the LSC work together to achieve the LSC's statutory aims. However, to support the shift to "light touch" auditing by the LSC, the Unified Contract envisages providers monitoring their own performance. The LSC is proposing to introduce Key Performance Indicators into the contract.

Self-monitoring

- 11.30** The Unified Contract will require providers to monitor their own performance of LSC funded work. This enables the LSC to see concrete evidence of monitoring e.g. in an annual report recording the provider's performance, any action taken to improve performance, any action taken to correct underperformance, how any client complaints have been handled and the results of client satisfaction surveys (and by on-line monitoring – see Technology below).

Approved personnel

- 11.31** The Unified Contract will specify that LSC funded work may be performed only by personnel approved by the LSC (this has always been a term of the General Civil Contract (NfP)). The General Contracts give the LSC power, as a contract sanction, to exclude individuals from performing contract work (and to maintain a list of excluded individuals, accessible by providers).

- 11.32** We want to be able to achieve the same result without the need to apply a contract sanction and, as the purchaser; we consider it is reasonable to have the right to approve who will perform the services we fund. Under the General Civil Contract (NfP) the LSC automatically approved all personnel whom the provider employed unless they were excluded by Guidance. The Unified Contract will take the same approach but will specify that excluded individuals will not automatically be approved because the provider has employed them.

Open book

- 11.33** The General Contracts (SQM) provided for the disclosure of providers' financial information to the LSC auditors (or, if they prefer, to the LSC head office). Many simply provide their accounts and whatever other financial information is requested, but others provide only an accountant's report and supporting information.
- 11.34** The Unified Contract will require the disclosure of all financial information relating to LSC funded work, including operating costs and expenses as well as specified further information about the provider's finances, generally, and will require full disclosure of all financial information from Preferred Suppliers. We consider that this is consistent with the relationship we are aiming for with providers and with our statutory obligation to aim to obtain the best possible value for money.

Technology

- 11.35** The new Unified Contract will specify that in order to do business with the LSC providers they must be able to communicate with us electronically.
- 11.36** The Unified Contract will allow the LSC to specify the technical functionality of providers' case management systems etc. As these are no longer expensive purchases and most are widely compatible, we consider that this approach is justifiable (and is necessary to support communication and monitoring under the Unified Contract).

Matter Starts and case volume & mix

- 11.37** One of the LSC's aims is to improve vulnerable clients' access to legal services and to facilitate the resolution of clients' problems at as early a stage as possible, to avoid contested litigation. Therefore, and matching the LSC's policy of not generally awarding Licence only contracts, the Unified Contract will enable the LSC to require the completion of a specified number of Matter Starts (advice and assistance cases), volume of work (by value or otherwise) and mixture of cases. This means that no Licence only contracts will be awarded from April 2007 and existing Licence Contracts will not be extended.
- 11.38** In this respect, the Unified Contract represents a shift from a contract that merely enabled providers to perform work, to one where the LSC, as purchaser, commissions specified work to be done.

Openness

- 11.39** The LSC intends to make greater use of its website in communicating with providers. It already uses its website to advertise tenders, publish papers for consultation etc.
- 11.40** The General Contracts allowed the LSC to publish contract decisions – including the results of audits, contract sanctions, payments, the names of excluded personnel and, if a contract has been terminated, the names of partners etc. The Unified Contract will make the same provision but states that the LSC will publish this information on its website. It also provides that the LSC will publish the status of any provider e.g. as a “preferred supplier” and the status of any contract (see Quality of work and client service below).

Quality of work and client service

- 11.41** We want to continue to raise the quality of legal aid services. Therefore, the Unified Contract builds on what was achieved under the General Contracts.

Independent Peer Review

- 11.42** The Unified Contract will require providers to achieve a peer review rating of 2 by April 2009, instead of the rating of 3 that was required by the LSC's General Contracts. A rating of either 3 or 4 will result in a Contract Notice requiring the provider to improve. A rating of 5 remains, as it was under the General Contracts, a Fundamental Breach of contract. This will apply to firms wanting to become Preferred Suppliers.
- 11.43** Following detailed consultations, peer review, which began life as the LSC's piloted measure of quality under its General Contracts, has now successfully evolved into a settled and independent process, managed by the Institute of Advanced Legal Studies (IALS). The Unified Contract, therefore, recognises this and provides that the outcome of an independent (IALS managed) peer review binds both the LSC and the provider.

Mystery Shopping

- 11.44** The General Contracts included no facility for the LSC to send its representatives as “mystery shoppers” to assess the quality of providers’ services. We consider that this is a good way to gauge the quality of providers’ client service and initial advice and as such the Unified Contract will give the LSC permission to conduct mystery shopping exercises.
- 11.45** The LSC’s intention would not be to generate adverse publicity but to help providers to improve their services to clients. Mystery shopping would also enable the LSC to investigate, and respond to, occasional allegations in the media that a solicitor has “manufactured” a witness statement e.g. for a client in a criminal case or an immigration case.

Notifying negligence

- 11.46** The Unified Contract will require providers to notify a client if they consider they may have been negligent and, as a result, the client may have suffered damage. It is good practice to do this, in any event. This is a new provision that was not in the General Contracts.

Preferred Supplier

- 11.47** Providers that meet the LSC’s Preferred Supplier criteria will be designated as such. Under the Unified Contract, they may be relieved from specific compliance with all SQM requirements and will be given the additional powers set out in the Unified Contract Specification.

Payments and financial control

Not for Profit

- 11.48** NfP organisations, under their General Contract (NfP), were paid under a regime that began as something close to a grant but was intended to evolve into something much more like a normal commercial contract, and the General Contract (NfP) provided the framework for this evolution. For a variety of reasons, progress along this continuum was not smooth. Nevertheless, as a public body with a statutory obligation to aim to obtain the best possible value for money, we have now put NfP and for profit organisations on the same footing. Under the Unified Contract, they are both paid for work actually done (and, where appropriate, by fixed fees). (This provision will be subject to whatever transitional arrangements are put in place to manage this transition).
- 11.49** To maintain consistency of payment between for profit and NfP organisations, the Unified Contract does not pay for what, under the General Contract (NfP), was classed as “Level 1 Work”.

Indemnities and guarantees

- 11.50** The General Contracts provide that, where the provider is not a sole principal or a partnership, the LSC may require appropriate indemnities and guarantees from appropriate members of the provider’s personnel. The Unified Contract

will go further than this and will enable the LSC to require appropriate indemnities and guarantees (including bank guarantees) when appropriate, whatever the legal form of a provider.

Balancing payments & verifying claims

11.51 Similarly, the Unified Contract will specify that the LSC may recover any overpayments (e.g. for one type of work, or in respect of work from one office) by reducing any subsequent payments. The General Contracts gave the LSC a wide right of set-off (which will be retained in the Unified Contract) but the new provision anticipates that this approach to account management will be the norm, rather than an occasional intervention in exceptional circumstances. The LSC will be looking for providers' accounts to be in balance and for security – commonly, but not necessarily solely, in the form of verifiable work in progress – for any advance payments.

11.52 The Unified Contract envisages each claim for payment being supported by information from an electronic case management system. Payments on account for Licensed Work will continue to be made, but are linked to stages in a case. The LSC has, unfortunately, found that when providers have become insolvent, they have often overclaimed such payments on account. This approach should help to address that problem.

11.53 The Unified Contract will enable the LSC to specify, in a Schedule to each provider's contract, a "maximum overdraft limit". This will provide an automatic check on payments above this amount and a requirement to review risk. For Controlled Work and for Crime (lower) work, the LSC will expect claims and payments normally to balance 100% at the end of each financial year.

Simplification

11.54 When the General Civil Contract was introduced on 1 January 2000, this marked a significant change for providers and the LSC.³

Sanctions, access & reviews

11.55 Being new to contracting, it is fair to say that providers had genuine concerns about how the LSC would exercise its contractual powers. In response, the LSC included a number of safeguards into the contract. These have been effective. However, some of them have enabled providers intent on causing difficulties to overcomplicate procedures and issues leading to unnecessary cost and delay and risk to public funds. To address this, although the LSC will continue its past approach to contract sanctions and, indeed, strengthen central control over decision-making to ensure fairness and consistency, these formal safeguards will be removed from the Unified Contract.

11.56 A failure to provide access to premises, files etc results in an automatic cessation of all devolved powers, rights to start new cases and payments. In other words, it is compliance with simple, basic contract requirements that triggers these rights and payments.

³ In fact, the Legal Aid Board introduced the contract under the Legal Aid Act 1988 and was replaced by the LSC, under the Access to Justice Act 1999 on 1 April 2000.

- 11.57** The normal access to premises period has been reduced from 5 days to 48 hours (the normal notice period for school inspections).
- 11.58** In future the LSC will have the right to apply sanctions immediately, whether or not there is a risk to clients.
- 11.59** The internal review and review process will be replaced by a single review process. The composition of the CRB, which determines the review, may range from an individual member of the LSC's senior personnel, to the CRB with a constitution similar to the CRB under the General Contracts – and the composition is a decision for the LSC on a case-by-case basis. The CRB is the LSC's final decision-making body. It is not an independent decision-maker. The LSC has now had seven years' experience of such issues and believes that this is now a reasonable approach. We have no wish to make poor decisions and to lose subsequent legal actions.
- 11.60** Initially, all contract termination decisions will continue to be reviewed by the CRB as it was constituted under the General Contracts and all decisions that, under the General Contracts, were subject to internal review only will be determined by a senior member of the LSC's personnel. However, although it has been very helpful to have nominees of the Law Society and the Advice Services Alliance as members of the CRB, the Unified Contract – unlike the General Contracts – does not require the CRB to include such nominees. Instead, it enables the CRB to include the LSC nominees who, initially, will be the nominees of the Law Society and the Advice Services Alliance.

Contract amendments

- 11.61** The Unified Contract will allow amendments to be made to the Standard Terms – like amendments to other contract documents, after consultation and notice. After seven years, it has become a little artificial to maintain one document among others that cannot be amended and, for the purposes of clarity and simplicity; it may on occasion be more sensible to amend the Standard Terms rather than another document.
- 11.62** The Unified Contract Specification has modified the General Contract provisions that restricted amendments to the Specification to “windows” in April and October.

Questions on the Unified Contract

Q11.1 Do you agree with our proposal that eventually all our providers, including NfP organisations, will be covered by the same contract terms? If not why not?

Q11.2 Do you agree that there should be a minimum income requirement, if not why not? Do you agree with our proposal to introduce a minimum income requirement of (a) £25,000 or (b) £50,000? What do you think that the minimum income requirement should be and why? And if you do agree which of the proposed options for on the period over which the limit would be calculated do you prefer and why or do you have an alternative proposal?

Q11.3 Do you agree with our proposals for the future of the SQM? If not why not?

Q11.4 Do you agree with our proposals to introduce new provision on the length of the Unified Contract and powers to terminate the contract in order to introduce Lord Carter's reforms or CLACs and CLANs? What contract length would you like to see and do you agree with the proposals on termination?

Q11.5 Do you agree with our proposals on self-monitoring, approved personnel, an open book relationship and technology? Do you think that they will improve the working relationship between the LSC and its providers? If not why not?

Q11.6 Do you agree with our proposal that all contracts will include a number of new matter starts thereby bringing to an end licensed only contracts? If not why not and are there circumstances where licensed only contracts should continue?

Q11.7 Do you agree with our proposals to publish information about contracts? If not why not?

Q11.8 Do you agree with our proposals on quality assurance and client service particularly the use of peer review and mystery shopping? If not why not?

Q11.9 Do you agree with our proposals that under the contract all providers will be paid on the same basis? If not why not?

Q11.10 Do you agree with the removal of level 1 work for NfP organisations? If not why not?

Q11.11 Do you agree with our proposals to change the way that contract sanctions are imposed and our proposed changes to the CRB?

Q11.12 Do you agree with our proposal for amending contracts and allowing the LSC to introduce contract amendments at times other than April and October?

Q11.13 Are there any other points that you either agree or disagree with that have not been specifically addressed in these questions? Please give your reasons for either agreeing or not agreeing?

Annex A – Lord Carter’s Recommendations

Quality

Recommendation 3.1: The Legal Services Commission should begin from July 2006 a national roll-out of peer review assessment for all firms seeking a place in the new market so that the introduction of best value tendering can take place from April 2009 onwards. The Legal Services Commission should adopt four criteria to plan the roll-out of peer review:

- greatest quality impact for clients;
- greatest opportunity to restructure the local market;
- ensure a level playing field for all firms until best value tendering takes place; and
- assess the impact on the justice system.

Value

Recommendation 3.2: The Legal Services Commission should continue to develop the design of a best value tendering process around the framework set out in paragraphs 61 to 64 of the review’s final report, with specific arrangements for each local tendering round, so that a national roll-out of best value tendering should begin in April 2009.

Access

Recommendation 3.3: The Legal Services Commission should consider whether and how a small number of criminal defence practitioners could continue to provide niche services when the new General Criminal Contract arrangements are implemented in October 2007. Consideration should be given to how sub-contacting arrangements can be developed for referrals from firms who hold a General Criminal Contract as well as support for growth and consolidation.

Recommendation 3.4: The Legal Services Commission should explore the possibility of firms and not for profit agencies expanding into other categories of civil and family law. Depending on the area and the nature of the service, suppliers should be encouraged to develop services across a wider area of categories of civil and family law than is currently the case.

Recommendation 3.5: It is important that there is not one model for community legal advice centres, and the Legal Services Commission allows centres to develop in a pragmatic and flexible fashion that best suits their potential clients in the area where they are located (including sub-contracting service delivery where necessary).

Recommendation 3.6: It is recommended that the Legal Services Commission should carefully evaluate the impact of the transition in the first wave of community legal advice centres from 2007, so lessons can be learnt for later waves from 2008-09 onwards.

Recommendation 3.7: It is important that the Commission enable community legal advice networks to be developed in a pragmatic and flexible fashion that makes sense locally, as in some areas there could be informal networks that already exist and might be built upon, whereas elsewhere the networks would be a fresh

development. But the Legal Services Commission should ensure that all would-be network suppliers are subject to a robust tendering process, and that the network is ultimately based on the needs of clients.

Recommendation 3.8: It is recommended that the Community Legal Service strategy should not simply set the way forward for the Legal Services Commission, but should also provide a good working framework for other funders of legal advice services, including local authorities and other government departments in England and Wales, that allows them to add value to their spending in this area through working together with the Legal Services Commission. This better co-ordination should lead to better overall legal services for local communities, especially the more vulnerable groups.

Criminal defence

Recommendation 4.1: The Legal Services Commission should construct new General Criminal Contract boundary areas as set out in paragraphs 4 to 9 and Annex 4.1, for all of England and Wales by January 2007. This should be based on detailed maps and data covering existing police stations and duty schemes, suppliers, magistrates' courts, and distances between suppliers and police stations. An iterative process to create the new boundaries should be based on:

- developing larger areas for work where appropriate;
- a combination of minimum drive times between suppliers and police stations and grouping of existing duty police station schemes, as well as travel to courts;
- ensure new working areas allow performance standards to continue to be met for client access; and
- provide for possible exceptions for police stations in rural areas.

The new boundary areas should then be published for consultation prior to implementation with associated new working arrangements in October 2007.

Recommendation 4.2: The Legal Services Commission should put in place a series of measures that mitigate market fragmentation and allow firms to begin the process of restructuring.

The Legal Services Commission should consider the following measures:

- reduce duty solicitor service requirements for duty solicitor work so that it is in line with own client requirements. This should mean that any duty solicitor, accredited representative, probationary representative (non indictable offences) and solicitor with the police station qualification may undertake all types of work. Duty solicitor slots should be allocated to firms (in proportion to the volume of work they had undertaken between July 2005 and July 2006) rather than named individual solicitors. There should be a moratorium on new duty solicitor slots other than in response to changes in local need. Where new slots are required to meet demand the Legal Services Commission should notify firms that new slots are available;

- enforce the requirements that 80% of police station work and 50% of magistrates' court work is undertaken in house; and
- the duty solicitor rotas and remove those firms or individuals that have not undertaken duty solicitor work in a 12 month period.

The Legal Services Commission should consult on the above proposals and should introduce them as soon as is practicable, but no later than January 2007.

Recommendation 4.3: The register of potential very high cost criminal cases should be developed further to include early identification of cases. The prosecution authorities should work together to notify the Complex Crime Unit of a potential very high cost case on the questioning or charge of an individual. Changes to the Complex Crime Unit should ensure that the exception to the police station scheme operates effectively. This register should be in place by December 2006.

Recommendation 4.4: The Legal Services Commission should construct new General Criminal Contract working arrangements providing for access to own solicitor within and outside of contract areas and duty solicitor slots by January 2007 as set out in paragraphs 20 to 28 of Chapter 4. The new working arrangements should then be published for consultation prior to the implementation with associated new working arrangements in October 2007.

Recommendation 4.5: The duty solicitor call centre and CDS Direct should be monitored closely by the Legal Services Commission. The monitoring should be on a monthly basis and at a local scheme level, and should look at the volume of cases, and review their effectiveness and quality of service. If this fails to control any increase in volume of work being undertaken in the police station then DCA and the Commission should consider options for restricting defendant eligibility. This should happen alongside the introduction of the new police station fees in October 2007.

Recommendation 4.6: By January 2007, the Legal Services Commission should develop a methodology for allocating work under the new working arrangements, based on a minimum threshold that varies according to area and market conditions as described in paragraphs 29 to 35 allowing for duty slots within boundary areas, a percentage of out of area duty slots and own solicitor work within the boundary area. The Legal Services Commission should consult on the need for a minimum threshold that varies. The new working arrangements (including the need for a lower threshold) should then be published for consultation prior to implementation with associated new working arrangements in October 2007.

Recommendation 4.7: The Legal Services Commission should introduce a new police station procurement scheme, based on fixed fees per case that include travel and waiting, as described in paragraphs 36 to 39 and set out in Annex 4.2. The fees set out in Annex 4.2 should be subject to consultation and should be introduced in April 2007.

Recommendation 4.8: The Legal Services Commission should introduce a revised magistrates' court standard fee scheme including an element of travelling and waiting (as described in paragraphs 40 to 41 and set out in Annex 4.3). The fees in Annex 4.3 should be subject to consultation and should be introduced in April 2007.

Recommendation 4.9: The Legal Services Commission should introduce a new magistrates graduated court fee as described in paragraph 43. The Legal Services Commission should collect data to develop proxies. The Legal Services Commission should also collect data to develop an alternative basis for pricing cases that escape. The graduated fee scheme set should be developed and subject to consultation in June 2007 and should be introduced in April 2008.

Recommendation 4.10: Alongside the introduction of a new graduated fee scheme for magistrates' courts work in April 2008, DCA and the Legal Services Commission should review the issue of assigned counsel in magistrates' courts by April 2007 and should consider the following alternatives:

- counsel to be paid the basic fixed fee with a 10% uplift;
- solicitors to be paid a 50% uplift on the basic fee and thereafter disseminate monies as they believe to be appropriate to assigned counsel; or
- the development of a graduated fee scheme for assigned counsel.

The Legal Services Commission's preferred option should be published in June 2007 to be implemented in 2008 alongside the new graduated fee.

Recommendation 4.11: DCA and the Legal Services Commission should apply the ring fenced and capped budgets for Crown Court advocacy ancillary payments as set out in Annex 4.5. These budgets should be monitored on a quarterly basis. If the budget is exceeded in the financial year the payments will cease to be made as ancillary payments and will be automatically absorbed without further negotiation into the base fee for all following years on a cost neutral basis.

Recommendation 4.12: DCA and the Legal Services Commission should review the effectiveness of the October 2005 changes to the advocacy graduated fee cracks and guilties scheme in the Crown Court, and any changes proposed to this scheme, on the timing of cracked cases. This should report in January 2007 and be considered by the stakeholder mechanisms recommended in Chapter 6.

Recommendation 4.13: DCA and the Legal Services Commission should introduce a revised advocacy graduated fee scheme for crown court work (as described in paragraphs 46-55 and the tables in Annex 4.5) that increases base fees, introduces two new offence types, reduces the number of ancillary payments and makes total case fee payment to a single named advocate or two named advocates in two counsel cases. The fees should be subject to consultation and implemented in April 2007.

Recommendation 4.14: The introduction of a revised advocacy graduated fee scheme in the Crown Court in April 2007 will require the early identification of the trial advocate. Clerks and chambers should begin revising their working practices to ensure that advocates will be identified at the commencement of a case from this date.

Recommendation 4.15: The Legal Services Commission should introduce a new graduated fee scheme for litigators in the Crown Court. The Legal Services Commission, during consultation and prior to implementation in April 2007, should ensure that the fees set out in Annex 4.6:

- contain uplifts that appropriately reflect and remunerate differences in costs and complexity;
- are not missing uplifts that might provide greater cost reflectivity; and
- achieve the appropriate balance, in terms of payment, between the base fee and the uplifts described above.

If rebalancing or the creation of additional uplifts is required, this should take place within the proposed level of expenditure recommended for the scheme (see Chapter 6). The fees should be implemented in April 2007.

Recommendation 4.16: DCA and the Legal Services Commission should consider harmonising the separate litigation and advocacy graduated fee schemes in to a single graduated fee for all defence services in the Crown Court, for implementation as soon as possible after 2009, when the market has stabilised and legal services reforms allow for the creation of alternative business structures.

Recommendation 4.17: There should be a new specialist panel of suppliers to conduct very high cost criminal cases. In advance of inviting applications and bids from potential teams the Legal Services Commission should issue by April 2007 an expression of interest document detailing the criteria for membership of the new panel. This should fulfil the requirements (set out in paragraphs 70 to 74 and the detailed wording should be consulted on with the appropriate professional bodies.

Recommendation 4.18: The Legal Services Commission should establish a best value tendered panel for very high cost criminal cases based on the steps sets out in paragraphs 80 to 89. Prior to doing so the issues set out in paragraph 90 should be consulted on with the professional bodies. The invitation to tender should be issued by July 2007 with tenders submitted by September 2007 to allow implementation of the panel by October 2007.

Recommendation 4.19: The Legal Services Commission should require all defence teams and prosecution bodies to notify all cases that would be expected to last 25 days or more at trial and/or the defence teams are estimated to be £100,000 or greater. The Legal Services Commission should contract all cases that would be expected to last 41 days or more. They should have the discretion to contract any case expected to last greater than 25 days and less than 41 days and/or the defence teams are estimated to be £100,000 or greater. This should take effect by April 2007. The Legal Services Commission should consider developing criteria for other 'exceptional' cases that do not meet the 25 days and/or financial criteria.

Recommendation 4.20: The Legal Services Commission should design a pro forma notification document to assist in the early identification of potential very high costs criminal cases by September 2006. Annex 4.7 sets out the key points that this document should cover.

Recommendation 4.21: The existing High Cost Cases Review Board should develop a robust trial estimate procedure for very high cost criminal cases. The procedure would:

- provide an estimate of the trial length which should be scrutinised by the court, the prosecution and the defence;

- provide for a detailed timetable agreed by the prosecution, defence and the court within which the issues in the case can be fairly determined;
- build a process to monitor departures from that timetable and ensure these are justified to the court; and
- develop a mechanism by which the estimate set and any variations to the estimate should be reflected in the contractual terms for payments and management arrangements for both prosecution and defence teams.

This should be developed by the review board in November 2006 and implemented in January 2007.

Recommendation 4.22: The Legal Services Commission should make improvements to case management by the Complex Crime Unit (outlined in paragraph 96 and detailed in Annex 4.7) by recruiting qualified practitioners, establishing a referral and a post case audit panel and designing a very high cost criminal cases best value team protocol by October 2007.

Recommendation 4.23: The Legal Services Commission should consider the potential to generate a 5% saving on current spending through the combination of competition on rates and tighter management of very high cost criminal cases in the financial year 2008-09.

Civil and family

Recommendation 4.24: The Legal Services Commission should ensure the fixed fees for legal help with which they propose to replace tailored fixed fees in civil categories of law are sustainable within the overall legal aid budget, and consistent with maintaining a good quality supplier base.

Recommendation 4.25: Wherever possible, the Legal Services Commission should ensure that the dynamics, between the fixed fee for civil legal help and the payments for civil court work, act to reward early settlements where it is appropriate. The Legal Services Commission needs to look at this in more detail, and whether this means removing the current differential between legal help and representation rates, and should report with its findings by July 2008.

Recommendation 4.26: Where practicable, the Legal Services Commission requires firms to report success rates in civil certificated cases as one of the performance indicators in the contracts, so the Legal Services Commission is able to monitor if devolved powers for certification are being used properly.

Recommendation 4.27: Following the introduction of the first community legal advice networks in 2006, options for networks should be tested out in different areas by the Legal Services Commission to identify which approach works best in each of a variety of different circumstances.

Recommendation 4.28: Bids by suppliers to work in community legal advice networks should refer to arrangements they have together agreed for co-operation with other bidders, so that it can build on existing informal networks. This could include proposed co-location and active referral arrangements. Bidders should also be asked by the Legal Services Commission for their own proposals on how they would implement or exceed the contractual requirements. This should enable the

network to be flexible and take account of local factors. The Legal Services Commission would be free to accept or refuse bids on an individual basis, and determine which arrangements are best for clients.

Recommendation 4.29: The process of moving to indicative budget allocations by the Legal Services Commission for legal help for social welfare law through deprivation data should be managed carefully to minimise any disruption to services. As part of this process, the funding formula should enable the Legal Services Commission to decide in which local areas to expand case starts.

Recommendation 4.30: There should be no major changes in the current civil representation ex post facto remuneration scheme for the time being, but it should be kept under close review by DCA and the Legal Services Commission, together with the profession, and DCA and the Legal Services Commission should produce a report with their findings by July 2008. As part of this, DCA and the Legal Services Commission should consider how the various alternatives, such as a “success fee”, set out in Annex 3.1, might impact upon the current scheme.

Recommendation 4.31: The procurement strategy in the category of mental health should be kept under close review by the Legal Services Commission, as it will need to take account of future changes in mental health legislation, and if there is a move towards more clients being cared for at home and not detained. It is important that clients cared for at home are able to have access to legal advice, if it is required, and so supply centred around hospitals may need to be expanded to cover this category of clients (and permit referrals from the community legal advice network).

Recommendation 4.32: The Legal Services Commission should ensure the fee levels they are proposing for private law family are sustainable within the overall legal aid budget, and consistent with maintaining a good quality supplier base.

Recommendation 4.33: The move to the family help procurement scheme from April 2007, should be seen as paving the way to a graduated fee scheme for solicitors in private law family that includes the final hearing stage from autumn 2007.

Recommendation 4.34: The Legal Services Commission should replace the current public law children ex post facto scheme with a graduated fee scheme aligned with the Judicial Case Management Protocol for Care Proceedings. Other public law children work, that is not covered by the graduated fee scheme, should be kept under review by the Legal Services Commission and DCA, and consideration given to expanding the graduated fee scheme if volumes and costs increase in other public law children work.

Recommendation 4.35: The Legal Services Commission should ensure the fee levels they are proposing for the new public law children scheme for solicitors is sustainable within the overall legal aid budget, and consistent with maintaining a good quality supplier base.

Recommendation 4.36: The Legal Services Commission should consider the possibility of tailoring family contract sizes in relation to quality. For instance, a firm with a high peer review score, who might be prepared to be subject to more stringent performance targets, could be offered an extended contract, e.g. up to five years, with a three year break clause to check their progress against targets. Equally, a firm with a low peer review score, but who are prepared to improve to meet more stringent standards, could be offered a shorter length of contract, to enable time to improve with close monitoring from the Legal Services Commission.

Recommendation 4.37: The Legal Services Commission should encourage growth in family provision through best value based bidding on contract sizes and length of contract by 2009, but subject to the need to maintain a variety of good quality, efficient suppliers within the family justice system.

Quality assurance

Recommendation 5.1: The Legal Services Commission, DCA and Law Society should agree an operational process and timetable by September 2006 for transfer of all quality assurance for solicitors by April 2009. The Legal Services Commission will need to be satisfied by the arrangements put in place for quality assurance by the Law Society before effecting a handover of responsibility.

Recommendation 5.2: Peer review should also be assessed before transfer to the Law Society in April 2009 to ensure that a high level of client service is being delivered, resources are being correctly used, and that the needs of the rest of the justice system are being met. Such an assessment should cover both client satisfaction and justice system partners, so that quality assurance includes the quality of firms' effective interaction with the wider justice system. The assessment should be undertaken in partnership by the Law Society, Legal Services Commission, Bar Council and judiciary by April 2009.

Recommendation 5.3: A proportionate system of quality monitoring based on the principles of peer review and a rounded appraisal system should be developed for all advocates working in the criminal, civil and family courts. This system should be developed through a process chaired by a member of the judiciary in partnership with the Bar Council, Law Society, Legal Services Commission and DCA to ensure it covers all advocates with relevant rights of audience in these courts. The new quality monitoring system should be developed in the first instance for publicly funded criminal advocates, then for publicly funded family and civil advocates, and ultimately for all advocates. The scheme for publicly funded criminal advocates should be in place by the time the new graduated fee schemes are implemented in the Crown Court in April 2007. The system should be subject to a full regulatory impact assessment before being implemented.

Diversity and choice

Recommendation 5.4: The Legal Services Commission and DCA should help sustain a diverse supply base for legal aid services by working closely with the legal profession to introduce the following measures:

- monitoring of ethnic data throughout all stages of the transition to the market structure in 2010 and beyond;
- regular monitoring of quality checks to ensure that they have no unintended discriminatory effects; and
- a requirement that all suppliers have in place an equal opportunity policy, including specific measurable characteristics, which is regularly reviewed and which is followed; the policy should include the promotion of diversity in the workforce and the capacity of the firm to work effectively with the diversity of the community in its area.

Recommendation 5.5: The Legal Services Commission should maintain resource to monitor, assess and promote diversity within its suppliers. The Legal Services Commission together with partners, including DCA, should create a wider diversity advisory group to report to the Lord Chancellor and LSC Commissioners on the state of diversity within the suppliers of legal aid services and make recommendations for improvements where necessary. The Legal Services Commission, Law Society and the Commission for Racial Equality should jointly review the number of black and minority ethnic firms, and the number, status and integration of black and minority ethnic practitioners within firms providing legal aid services.

Helping suppliers

Recommendation 5.6: The Legal Services Commission should include the methods and timing of making payments to suppliers as a factor when determining the length of contracts awarded under a best value tendering process.

Recommendation 5.7: The Legal Services Commission should set up a financial advisory group as a regular forum in which DCA, suppliers and bankers can discuss how best to promote the availability of loan and equity finance for the sector.

Recommendation 5.8: There should be established a grant programme through a growth and consolidation fund, lasting from April 2007 to March 2009, totalling no more than £4 million, and administered by the Law Society to provide support for the necessary assistance that firms delivering legal aid will need to enable them to restructure in a way that will allow them to compete for new contracts under the best value tendering process from 2009 onwards.

Recommendation 5.9: There should be established a match-funded grant programme through an information technology modernisation challenge fund lasting from April 2007 to March 2009, totalling no more than £6 million and administered by the Law Society to provide support for all firms providing at least £50,000 of legal services in 2005–06 to invest in information technology improvements to their businesses.

Integrated justice

Recommendation 5.10: The appropriate use of limited resources by all participants in the criminal justice system should be pursued and enforced by the judiciary in their management of all types of cases. Internal judicial training, through the Judicial Studies Board, should be expressly developed to ensure that the comments set out above become standard practice and are rigorously enforced, through for example, the quality assurance schemes. Training developments should build on the existing work of the Judicial Studies Board in the area of judicial case management and would provide a backdrop against which it should help the proposed reforms to become more effective. The relevant judicial training should be in place for all Circuit and High Court judges by April 2007.

Recommendation 5.11: A review of the effectiveness of judicial, prosecution and defence adherence to the principles set out in the disclosure protocol (Disclosure: A Protocol for the Control and Management of Unused Material, 20 February 2006) should be conducted by the existing High Cost Cases Review Board reporting by July 2007.

Recommendation 5.12: DCA and the judiciary should review the criteria and regulations that allow for the appointment of two counsel to ensure that representation orders are only granted for those cases that genuinely require two advocates and in particular what circumstances should permit the instruction of two junior counsel as opposed to a QC and junior counsel. The review should be completed by October 2006 so that guidance can be issued and necessary changes to regulations made before the revised advocacy graduated fee scheme is introduced in April 2007.

Transparency

Recommendation 6.1: The Legal Services Commission should immediately move to set up dynamic management information systems by December 2006 so that they can effectively monitor and share key performance indicators relevant to the successful delivery of new procurement schemes.

Major indicators include the take-up of advice in the police station, proxies for case complexity in the magistrates' courts, differences between estimate of trial length and actual trial length for very high cost criminal cases. In civil and family, it could include the number of cases under legal help budget, or percentage of cases achieving significant benefit for the client or resolved without resort to court.

Recommendation 6.2: Using the new improved monitoring information, the Legal Services Commission should identify significant upward movements in unit cost and bring together all parties (using the mechanisms for stakeholder relations set out in Chapter 6) to secure shared understanding of the position and agreement to an adjustment down in price or other measures to bring unit cost back within the projected totals set out in Chapter 6 and in Annex 6.2.

Recommendation 6.3: DCA and its partners in the justice system should develop systems for ensuring a full understanding of volume pressures. The legal aid impact test is a good approach to ensuring that the volume implications of legislation or other deliberate changes in government policy are understood and quantified. It should be vigorously enforced through the government's collective agreement mechanisms. But it will need to be supplemented by a programme of research to ensure that volume pressures arising from subtler changes across the public services, for example in professional practice or rules of procedure, are better understood.

DCA should also work with the full support of the Cabinet Office and Her Majesty's Treasury to ensure that government collectively takes a balanced view of the costs and benefits of allowing legal aid volumes to rise. Where a volume increase is unavoidable or the consequence of a change in policy or practice which is desirable for the government as a whole, the government will need to accept that this will increase the total cost of the scheme and ensure additional funding is therefore made available. It will not be sustainable to offset increased costs from increased volumes through simple price cuts in the transition period and following the introduction of best value tendering in 2009-10 this will not be possible anyway.

Recommendation 6.4: Mechanisms for local information sharing and problem solving on legal aid should be established by the Legal Services Commission by April 2007 to promote opportunities for greater efficiency (or managing risks of inefficiency) which arise from practices and relationships in a particular place. For criminal legal aid the basis for such arrangements should be for the Legal Services Commission to be represented on local criminal justice boards supported by local defence practitioner feedback arrangements. Elsewhere, for example, local family justice boards may be used for family legal aid.

Recommendation 6.5: DCA and the Legal Services Commission should establish improved stakeholder engagement arrangements giving the precise format and timing for quarterly meetings of the senior members and officials from the key groups to update one another on dynamic management information and quarterly forecast reviews so that the first quarterly update can take place by January 2007. An annual roundtable chaired by the Lord Chancellor should also be established for the lead figures in the major representative bodies and agencies to report and discuss the major strategic issues affecting legal aid.

Annex B – Government Code of Practice Criteria

The DCA and the LSC abide by the Government Code of Practice on Consultation, which came into effect on April 2004.

- i. The six consultation criteria in the Code are:
- ii. Consult widely throughout the process, allowing a minimum of 12 weeks' consultation at least once during the development of the policy;
- iii. Be clear about who may be affected, what questions are being asked, and the timescale for responses;
- iv. Ensure that your consultation is clear, concise and widely accessible;
- v. Give feedback regarding the responses received and how the consultation process influenced the policy;
- vi. Monitor your department's effectiveness at consultation, including through the use of a designated consultation co-ordinator; and
- vii. 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

Annex C – Proposed amendments to the Funding Code (Family Help)

Code Criteria

Section 1 Levels of Service

1.1 Levels of Service Available

Delete “3. General Family Help” and replace with “3. Family Help”

Delete “5. Help with Mediation.”

Renumber level 6 (Family Mediation) as 5

Renumber level 7 as 6

Section 2 Definitions

2.1 Levels of Service

Delete the definitions of “General Family Help” and “Help with Mediation”

Add the following definition after the definition of “Help at Court”

“Family Help” is a level of service the grant of which authorises help in relation to a family dispute including assistance in resolving that dispute through negotiation or otherwise and help and advice in support of Family Mediation. Family Help includes all services within the scope of Legal Help as well as issuing proceedings and representation in proceedings where necessary to secure the early resolution of a family dispute, or to obtain a necessary consent order following settlement of part or all of the dispute and related conveyancing work. Family Help does not include representation at a contested final hearing.”

Section 11 Family

Delete sections 11.1, 11.2 and 11.3 (Scope, Criteria for Help with Mediation and Criteria for General Family Help).

Replace with the following:

“11.1 Scope

This section applies to applications for Family Help, Family Mediation or Legal Representation in Family Proceedings.

11.2 Legal Help and Help at Court

Legal Help and Help at Court are not available in relation to family disputes.

11.3 Criteria for Family Help

Family Help will be refused unless the benefits to be gained from assistance and representation for the client justify the likely costs, such that a reasonable private paying client would be prepared to proceed in all the circumstances.”

Code Procedures

Part A- General

A3 Funding for Each Level of Service

Under “Controlled Work”, after “* All Help at Court” insert
“All Family Help”

Under “Licensed Work” delete “* All General Family Help; * All Help with Mediation:”

Part C – Certificated Work

Section 7 – Referral to Family Mediation

Delete Rule 27.1 and replace with:

“27.1 This Section applies to applications for Legal Representation in those Family Proceedings specified in Rule 28 below.”

In Rule 27.3 delete the words “General Family Help or”

Delete Rule 27.6 (Family Advice and Information Networks Pilot)



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