

# **Working with the National Centre for Domestic Violence**

## **A Legal Services Commission Guidance Note**

**Last Updated: August 2009**

This guidance has been written in conjunction with the National Centre for Domestic Violence (the "NCDV") in response to requests from LSC contracted solicitors for guidance as to how to work with the NCDV within the terms of the LSC's Unified Contract.

The NCDV is a charitable organisation that assists victims of domestic violence in obtaining emergency injunctions. Established in 2001 as the London Centre for Domestic Violence, it is now expanding nationally and is seeking more firms willing to accept referrals to provide much needed legal assistance to victims of domestic violence.

The LSC fully supports the invaluable work of the NCDV, and other organisations working with victims of domestic abuse, to help ensure that they are able, where appropriate, to obtain emergency injunctions as quickly as possible. This Guidance Note seeks to explain how the NCDV works, and the obligations of LSC contracted firms when working with the NCDV.

This note has now been updated to reflect the introduction of the LSC's Unified Civil Contract.

### **1. What does the NCDV do?**

The NCDV does not employ qualified lawyers and therefore cannot itself provide professional legal advice or representation.

Victims of domestic violence requiring urgent legal assistance (in particular, to consider obtaining a non-molestation order) may either contact the NCDV directly for assistance or may be referred to it by another organisation, such as the Police, Refuge, Women's Aid, Victim Support or Citizens' Advice Bureau. The NCDV will speak to the victim to ascertain the circumstances of their case and their financial position.

Where it appears that it may be appropriate for the victim to seek an injunction in accordance with the relevant Regulations, Funding Code and LSC decision making guidance, the NCDV will contact local firms to find a solicitor willing and able to take on the case as a matter of urgency. Where the victim chooses not to pursue public funding, the NCDV may offer to assist them in preparing their application and provide someone to act as McKenzie Friend at the hearing.

If a referral is made and accepted, the NCDV can, where agreed with the solicitor and for a fixed fee per case<sup>1</sup>, provide the instructed solicitor with certain non-legal assistance (the “Non-legal Assistance”) in order to help resolve the matter as quickly as possible. This can include providing a draft witness statement and completing the administrative aspects of the FL401, the APP3 and the relevant LSC Means form so that these can be provided to the solicitor for their first meeting with the client. Both the statement and the forms must then be reviewed and finalised by the solicitor. The fees paid to the NCDV for the Non-legal Assistance are not recoverable from the LSC and must be absorbed as an overhead as explained in paragraph 3.3.

## **2. Accepting a referral from the NCDV**

Solicitors are under no obligation to accept a referral from the NCDV, and should only do so if they are satisfied that it is appropriate so to do and that they will be able to ensure that it is conducted to the requisite professional standards within the necessary timescale.

### **2.1 Referral fees**

Solicitors under contract to the LSC are obliged to abide by the Law Society’s Solicitor’s Introduction and Referral Code 1990 and are reminded of their obligations under the Code in respect of the payment of referral fees. No referral fees are charged by, or are payable to, the NCDV in any circumstances.

### **2.2 LSC funding**

Solicitors will only be remunerated by the LSC for work undertaken after the grant of appropriate funding. The grant of funding must be undertaken in accordance with the current LSC Unified Contract (the “Contract”), the Funding Code and relevant decision making guidance.

Procedure C11.1 of the Funding Code: Procedures provides that:

*An application for emergency representation may be made in such manner as the Director (or in the case of Authorised Representation [which includes Legal Representation<sup>2</sup>], the solicitor) may accept, including by fax or by telephone, if the urgency of the situation requires it.*

Solicitors must be aware of their contractual and client care obligations in accepting such an application and must, where they consider it necessary in a particular case, seek further information from the NCDV and/or the client, as appropriate, and must

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<sup>1</sup> Information on the costs of the NCDV’s fees can be obtained from the NCDV directly.

<sup>2</sup> Procedure A12.4 the Funding Code: Procedures.

satisfy themselves that the client, in turn, has been provided with all relevant information (including, in particular, the information referred to in paragraph 12.1.10 of the Funding Code: Decision Making Guidance) and understands his/her potential liability for costs. For this reason, and having regard to the requirements of the Solicitors' Code of Conduct, solicitors should speak directly to the client before exercising their devolved powers; this can be done by telephone if the urgency of the circumstances warrants it.

### **3. Using NCDV Services**

#### **3.1 Other services offered by the NCDV**

In addition to the Non-legal Assistance referred to in section 1 above, the NCDV offers a process serving service, which can include, where a power of arrest is attached to the order, assisting in drafting, and serving on the police, form FL415. The NCDV charges for the process serving service separately to the Non-legal Assistance.

#### **3.2 Solicitors' obligations**

Solicitors accepting a referral from the NCDV are under no obligation to use any of its services. It is entirely at the discretion of the solicitor where it is appropriate to use the services in any given circumstances.

It should, however, be reiterated that the NCDV does not offer legal assistance and the solicitor always retains full responsibility for, and supervision of, the conduct of the case and its funding, including in accordance with Clauses 2 and 10 of the LSC Unified Contract Standard Terms and Procedure C1.2 of the Funding Code: Procedure which deal with solicitor and client obligations. The solicitor must therefore be retained by the client, take instructions from them and review and finalise all documents with the client.

### **3.3 Fee Recovery**

In accordance with paragraph 2.5 of the Funding Code: Decision Making Guidance, fees for process serving will typically be recoverable as a disbursement to the extent that they are within the scope of the relevant certificate of public funding, reasonably incurred and of a reasonable amount.

No other fees payable to the NCDV are recoverable from the LSC and solicitors cannot charge for time spent by the NCDV interviewing the client or preparing documentation. As the work is not performed directly by a contracted solicitor, all such fees must be absorbed as an overhead in accordance with paragraph 5.27 of the Unified Contract which provides:

*The cost of the provision of legal advice by a person who is neither a lawyer nor supervised by a lawyer cannot be treated as a disbursement.*

### **4. How do I get involved?**

If you are not already involved and are interested in receiving referrals from the NCDV you should contact Steve Connor at the NCDV using the details provided below. He will provide you with any further information required, and, if appropriate, you will be added to the NCDV's database and will be contacted in due course with referrals.

### **5. Contacts and further information**

Steve Connor – NCDV

Sara Kovach-Clark – LSC

0844 8044 999

020 7783 7552

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