

TRANSFORMING LEGAL AID – NEXT STEPS

Changes for implementation in December 2013

Set out below is a summary of the changes coming into effect as a result of the MoJ's consultation paper "Transforming Legal Aid – Next Steps".

The MoJ intended to proceed with many of the proposals as set out in the original paper but subject to some modification. Some of the proposals were subject to further consultation (see later).

Changes planned for implementation on 2 December 2013 (albeit subject to Parliamentary approval):

Crime

Reducing the use of multiple advocates in criminal cases

There will be an amendment to the prosecution condition criterion for the appointment of multiple advocates and the process for determining the appointment of QCs and multiple counsel to make clear that it is not sufficient to demonstrate the need for multiple advocates for each and every defendant just because the prosecution have multiple advocates.

The current criteria include the 'prosecution condition' which relates to the following circumstances:

- 2 or more advocates have been instructed on behalf of the prosecution;
- The number of prosecution witnesses exceeds 80;
- The number of pages of prosecution evidence exceeds 1000.

The definition in the Criminal Legal Aid (Determinations by the Court and Choice of Representative) Regulations 2013 will be amended to require the application to also demonstrate that:

- The individual will be, or will be likely to be, prejudiced if they too are not represented by two or more advocates.

This will apply to all applications for multiple counsel submitted to court from 2 December 2013 even where the representation order for the case has an earlier date.

The process for applying to the court to extend representation will not be changed. However, all Crown Court determinations will be subject to approval by either a presiding judge (or a judge nominated by the presiding judge).

Contractual and regulatory amendments

The Criminal Legal Aid (Determinations by the Court and Choice of Representative) Regulations 2013 will be amended.

Very High Cost Cases (VHCCs)

Litigators and advocates instructed on VHCCs classified on or after 1st April 2013 will be funded as for earlier cases under individual case contracts. Cases operating under earlier VHCC schemes will continue to do so until their conclusion.

Contractual and regulatory amendments

Amendments have been made to the following contracts:

- 2013 VHCC Contract (for Organisations)
- 2013 VHCC Contract (for Self-Employed Advocates)
- 2010 VHCC Contract (for Organisations)
- 2010 VHCC Contract (for Self-Employed Advocates)
- 2008 Very High Cost Case (Crime) Panel Contract for Panel Members
- 2008 Very High Cost Case (Crime) Panel Contract for Panel Advocates

The amendments will come into effect on 2 December 2013.

Transitional arrangements:

The MoJ has confirmed the following transitional provisions in relation to the application of new rates to Very High Cost Cases:

- in cases subject to contracts signed before 2 December 2013, the new, reduced fees will apply to work done pursuant to any task list agreed with the LAA on or after 2 December 2013;
- the reduced fees will not apply to cases in which the court has set a trial date before 2 December 2013 and that trial date is on or before 31 March 2014;
- litigators and advocates instructed on VHCCs classified on or after 1st April 2013 will be funded as for earlier cases under individual case contracts. Cases operating under earlier VHCC schemes will continue to do so until their conclusion.

Prison

The scope of prison law has been reduced.

The scope of advice & assistance (including advocacy assistance) in prison law cases will be restricted to matters which:

- involve the determination of a criminal charge for the purposes of Article 6 of the European Convention on Human Rights (ECHR) - right to a fair trial;
 - engage Article 5.4 ECHR (right to have on-going detention reviewed); and
 - require legal representation as a result of successful application of the “Tarrant” criteria.¹
- with the exception that criminal legal aid will remain available for:
- all proceedings before the Parole Board, where the Parole Board has the power to direct release; and,
 - advice and assistance in relation to sentence calculation where the date of release (or the date on which the individual must be referred to the parole board for consideration of a direction that the individual be released) is disputed.

Contractual and regulatory amendments

The scope of Prison Law in the Criminal Legal Aid (General) Regulations 2013 has been amended (Regulation 12(2)).

Amendments have also been made to the Standard Crime Contract 2010 (including section 12 of Part B).

Experts’ fees

There will be a reduction in the fees payable to experts in all civil, family and criminal proceedings by 20% with the exception of:

- Neurologists, Neuroradiologists and Neonatologists in clinical negligence (cerebral palsy) cases
- Surveyors in housing disrepair cases where the rates codified in the Civil Legal Aid (Remuneration) Regulations 2013 will be retained
- current rates payable to interpreters inside London will be retained

¹ When a prisoner attends a disciplinary hearing before a governor he is asked whether he wants to obtain legal advice or representation. If the prisoner does not want any legal assistance the hearing proceeds. However, if the prisoner requests legal advice, the adjudicating governor will consider each of the following criteria (resulting from the case of R v Home Secretary *ex parte* Tarrant) and record their reasons for either refusing or allowing representation or a friend:

- the seriousness of the charge/potential penalty;
- a substantive point of law being in question;
- the prisoner being unable to present their own case;
- potential procedural difficulties;
- urgency being required; or
- reasons of fairness to prisoners and staff.

If the adjudicating governor allows the request they will adjourn the hearing for a reasonable time to allow the prisoner to telephone or write to a solicitor.

- rates payable to interpreters outside London will be reduced by 12.5% (limiting the reduction so rates do not fall below CPS paid rates)

This will apply to all work undertaken by experts in all work with an application date of on or after 2 December 2013.

Contractual and regulatory amendments

The Civil Legal Aid (Remuneration) Regulations 2013 will be amended.

Civil

immigration and asylum Upper Tier Tribunal cases

The current 35% uplift in rate paid for Immigration and asylum Upper Tribunal cases is to be removed.

Work in relation to an appeal before the Upper Tribunal (including applications for permission to appeal to the Upper Tribunal) will be payable at the rate set out in Table 8(c) of the Civil Legal Aid (Remuneration) Regulations 2013.

Contractual and regulatory amendments

The Civil Legal Aid (Remuneration) Regulations 2013 will be amended.

Self- employed barristers

Fees paid to self-employed barristers to be harmonised with those paid to other advocates appearing in civil (non-family) proceedings

Self-employed barristers in civil (non-family) cases will be remunerated at the same rates as other advocates in jurisdictions up to and including the High Court and other equivalent superior courts of record.

Changes to Legal Aid Forms

As a result of the above, the following civil and crime forms are being introduced for 2 Dec 2013:

- CF1 form – a new form which is required to allow Counsel to submit fee notes and claim enhancements
- CRM 3 form – updated to reflect changes in scope of legal aid for prison law

The following form is being removed from 2 December 2013:

- PL1 form – Prison Law Treatment cases are being removed from scope of Legal Aid and this form is therefore no longer required.

Other changes from 2 December 2013:

- AF1 – this form has been reviewed and the improvements will speed up the creation of cases for the Crime Advocates team
- CRM7 – the wording on page two of this form has changed and providers are now asked to differentiate between assigned and unassigned counsel. This enables LAA caseworkers to quickly identify the relevant counsel instructed.

Other changes for 2014

There are other changes which are planned for implementation on 27 January 2014. These are as follows:

- **Borderline Merits** - Removing legal aid for civil cases with borderline prospects of success.
- **Crown Court Eligibility** - Introducing a financial eligibility threshold, whereby any defendant with an annual disposable household income of £37,500 or more would be ineligible for legal aid in the Crown Court, subject to review on hardship grounds.

Further consultations

There are further consultation processes underway in relation to the following:

- Proposals for payment for permission work for judicial review cases.
- Reducing the fixed representation fees paid to solicitors in family cases covered by the care proceedings graduated fee scheme.

- Crime tendering.

The LAA has dropped the proposal for price competition and accepts that clients should be able to choose their representative. It is currently consulting on an alternative tendering model and some fee cuts.