

To all Staff, Council, Legal Affairs and Policy Board
and all Committees

2 April 2008

FORMTEXT Dear Colleagues

**FORMTEXT Litigation between the Law Society and the Legal Services
Commission/Ministry of Justice**

A short while ago a Ministerial Statement was laid before Parliament.

I am therefore pleased to confirm that after a period of intense negotiations, the litigation between the Society and the LSC/MoJ has been settled.

The terms of settlement deliver to the profession financial benefits, a degree of certainty and stability, and mechanisms for reviewing some of the main issues of concern to the profession. A full list of the benefits is set out at the end of this message.

The terms of the settlement are in line with the mandate granted by Council at its last meeting.

Whilst we are pleased at the benefits achieved by the litigation, we do not consider this settlement to be the answer to all the problems facing legal aid providers. We know that many aspects of the Standard Fee Schemes continue to give serious cause for concern. Even with the increases in rates delivered under this settlement, legal aid fees remain worryingly low compared with the cost of delivering the service. You will be aware from our response to the best value tendering consultation that we doubt that a viable tendering scheme is achievable. We will continue to represent the profession robustly on all of these issues. The Society will be announcing tomorrow plans for research into immigration and asylum, childcare and mental health services to inform work on the future of legal aid in those areas.

Nonetheless, we believe that this represents a good deal for the profession. In addition to financial benefits the new arrangements provide a range of opportunities to make the arguments on behalf of the profession. The settlement offers the prospect of a period of more constructive engagement with the Commission. The settlement will establish a series of working parties to address key topics and to publish the outcome of these reviews. There will be much work to undertake from hereon in. Our Legal Aid and Legal teams who have worked on this have made a real contribution that I hope will be valued by every legal aid practitioner.

Kind regards.

Yours sincerely

Desmond Hudson
Chief Executive

THE SETTLEMENT

It is important to understand the limits of what could have been achieved from success in the litigation. A hearing date for our case had been fixed for late June 2008. Had we not reached a settlement, the LSC would have terminated contracts with a view to introducing new contracts in the autumn in which the graduated fee schemes were unchallengeable. This means that there would have been no prospect of returning to hourly rates. The profession would have been left with a historic dispute over whether they should have been paid on a different basis during this one year, and a prolonged period of disruption and uncertainty.

Council approved the deal subject to satisfactory resolution of a small number of outstanding issues. These matters have been resolved. In respect of the amnesty for unrecouped payments on account, we are satisfied that most legal aid providers will see real cash benefits, both in terms of not having money recouped and being saved the administrative burden of the process. We have retained our right to submit a complaint of maladministration to the ombudsman, in order to ensure that we are able to represent any of our members who have justified complaints that are not addressed by the new approach.

It has also now been agreed that the settlement is not conditional on there being no further challenge. In the event of a challenge covering the same issues as in our case, which is deemed serious by a jointly-instructed QC, the LSC may terminate contracts early, but the profession will retain the other benefits delivered by this settlement.

Financial benefits

A revised approach to unrecouped payments on account from more than six years ago – subject to cases involving dishonesty and / or greater than £20,000 on an individual case.
An increase of 2% on all legal help fixed fees and underlying hourly rates from 01/07/08
An increase of 2% in the hourly rates only for Level 2 Family Help lower
Care level 2 fee increased from £347 to £405
5% increase in CLR fees and rates for mental health (whether paid as standard fee cases or exceptional claims), plus 2% for remote travel payments
5% increase in CLR fees and rates for asylum and immigration cases covered by the standard fee scheme (whether paid as standard fee cases or exceptional claims)
New rules on Standard Monthly Payments so that changes will not happen so often, so unpredictably and with such large variations

Stability measures

A commitment by the LSC (subject to certain caveats, particularly relating to CLACs and CLANs) not to terminate the Unified Contract before it expires through effluxion of time in April 2010

Deferment of the further changes to family fee schemes (including standard fees for private law family litigation, adjustments to the escape threshold for care standard fees, and a new advocacy fee scheme) which had been due this year, until April 2010

Acceptance by the LSC that their right to amend contracts is significantly curtailed, and that therefore the historic approach of making significant structural changes during the life of a contract cannot continue

The rule on remainder work will be changed so that firms are entitled to undertake it for two years after termination of their contract, so long as it has not been terminated for fault.

Certainty

The LSC is publishing a route map for civil and family legal aid showing the way forward until 2013, in which it commits not to introduce price competitive tendering for civil and family cases before 2013

The LSC is announcing a delay of six months to the earliest possible date for the introduction of best value tendering for crime, and will publish a full route map in its response to the BVT consultation

The LSC is publishing (once purdah for the local elections is out of the way) a list of the areas in which CLACs or CLANs may be introduced before April 2010. No CLACs or CLANs will be launched outside these areas before that date.

Reviews

The following reviews are being set up, with terms of reference settled in the course of negotiations all reviews to be published.:

The setting up of a Consultative Group equivalent to the Criminal Contracts Consultative Group. An early task for this group will be a full review of the new fee structures

A joint review of peer review accreditation, the specialist quality mark and other quality assurance issues.

A joint working group to address concerns about the contract compliance audit processes.

A joint review of the immigration stage billing problem, with a report to be published by 30th June 2008.

Law Society involvement in the evaluation of CLACs and CLANs, including our Head of Research to be on the advisory board

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