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Dear Fiona

Proposed Amendments to General Civil Contract for 1 October 2006

I write with ILPA's response to this consultation.

1. Accreditation – Solicitors Specification 12.2.3 / NfP 13.2.3

We have no objection to the clarification that Level 1 Probationers should not have conduct of their own case files.

2. Special authorisation - Specification 12.2.13 / NfP 13.2.11

These changes are necessitated by the extension of fast track processes beyond Oakington and Harmondsworth and by the NAM legal advice pilot. We have no comment on the wordings, save to say that we continue to regret the limitation of the NAM scheme to a single pilot. Our submission to the Home Office's consultation about this was copied to Paul Newell at the LSC so you will be aware of our view that it would be more efficacious to run pilots in more than one area. It seems likely now that the initial pilot will be run only at Solihull, but I enclose for your reference a copy of our response of 30/6/06 to the DCA's consultation on the Ministerial Authorisation to enable this. You will see that we argued for wording flexible enough to enable further pilots to be conducted if thought appropriate in the light of experience. If that happens there would presumably be a need for amendment to 12.2.13(1), unless of course it were to be decided to dispense with the need for special authorisation if and when the NAM legal advice scheme is rolled out further.

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3. Attendance at interviews - Specification 12.3.2 / NfP 13.3.2

Subsection (d) of this part of the Specification, which provides for payment at NAM pilot asylum interviews, is obviously necessary to enable that scheme to operate. It would obviously have to be amended in the event of future roll-out of the scheme, regardless of whether or not special authorisation were required for participation.

We wish, however, to use this opportunity to take issue with breadth of the specification's basic assertion that the LSC *"will not pay for attendance at interviews conducted by the Home Office . . . unless . . . ."* One of our executive committee members raised this issue with the National Immigration and Asylum Team by e-mail on 5/7/06 in the context of funding for a particular case, but has not yet received a response. I hope that we will now fare better. The point is as follows:

> The legislative provision on which exclusion from *asylum* interviews is based is paragraph 1 of Schedule 2 of the AJA 1999, which gives effect to the exclusion of some types of work from CLS funding under legal help. It is paragraph 1(i) which relates to Home Office interviews. It excludes, expressly and only, interviews "conducted on behalf of the Secretary of State with a view to his reaching a decision on a claim for asylum (as defined by section 167(1) of Immigration and Asylum Act 1999)".
>
> So far as we are aware there is no other legislative provision excluding attendance at any other type of Home Office interview from CLS funding.
>
> So from where does the specification at 12.3.2 derive its power to purport to exclude all Home Office interviews save for the exceptions listed at 12.3.2(1)-(2)? Surely this is not lawful in relation to non-asylum interviews.
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> Please therefore amend the introductory section to 12.3.2 /13.3.2 by the insertion of the word "asylum" before "interviews", or explain on what legal basis you decline to do so.
>
> If you accept our view that the exclusion from funding of non-asylum interviews is *ultra vires* then please do not wait until 1/10/06 to notify all suppliers of the correct position, and to instruct NIAT caseworkers and auditors that funding is available for non-asylum interviews if justified by the interests of the client and the needs of the case.

4. Stage billing - Solicitors Specification 12.6 / NfP 13.6

We welcome the addition of an additional stage for billing, but with the following caveats:

1. Submission of a fresh asylum claim is not always a one-off event. Depending on the circumstances of a case, it may be necessary or expedient to submit an outline application in the first instance, to be amplified with

more detailed representations, evidence and reports subsequently. It is the work of preparing that subsequent submission which incurs the substantial costs and disbursements. Under the old stage billing arrangements a claim could be submitted after submission of a PAQ or SEF, not after submission of the initial asylum claim. By analogy, the trigger for the proposed new stage claim should be the date on which the substantive submission in support of a fresh claim is made.

2. a. The addition of another compulsory claim stages does not meet all of the grave concerns of our members about this issue. Practitioners are carrying high volumes of as yet unclaimable disbursements and work in progress in non-asylum cases and in various types of case which, due to delays by the Home Office, Entry Clearance Officers and the ports, drag on for months and years. Examples include complex non-asylum compassionate applications, and adjourned appeals awaiting reconsideration. The old arrangement for voluntary 6 monthly stage claims should be re-introduced, with or without the old £500 threshold for costs and disbursements incurred since the last claim.

   b. We prefer non-compulsion for this type of claim because, for example, some cases drag on for a long time without incurring great costs during some phases and compulsion would impose an additional administrative task of checking all cases for fear of missing a deadline with little or financial benefit. Also a practitioner may prefer to defer claiming in a particular case which seems to be to drawing to a close in order to avoid the additional administration of submitting a stage claim now and a very small additional final claim in the near future.

   c. We are aware that the LSC prefers compulsion because, according to our understanding, it is thought to facilitate your costs monitoring, but we believe this to be a fallacy. At the moment the LSC has no information at all about the costs being racked up in these long running cases while they are in progress. It does, however, have the information available from Unique Client Numbers and Matter-type codes to enable it, if it wishes to do so, to collate the ongoing value of claims either for a particular client or for particular case types. It would not be difficult to designate a new stage endpoint code to signal a voluntary 6 monthly claim – or indeed to designate several such codes for ease of distinguishing asylum/non-asylum and/or Legal Help/CLR if that were thought desirable.

5. Non-asylum immigration – capital limits

ILPA welcomes the increase in the capital limit to £8,000 in line with the limit in asylum cases, but is opposed to the contributory element.

You say that the options to be considered are "subject to the outcome of consultation on anticipated regulations". We are aware of no such consultation as yet. We contributed on 3/3/06 to the DCA consultation about the amendments to the regulations which, *inter alia*, introduced the present different capital limits for asylum and non-asylum cases, but are aware of no subsequent consultation on regulations. Have we missed something, or has the consultation to which you refer not yet commenced?

In our response to the DCA on 3/3/06 we wrote as follows:

> *ILPA opposes the proposed distinction [between asylum and non-asylum clients]. We believe that the same non-contributory scheme with an £8,000 capital limit should apply across the board for all immigration CLR. We make the following points in support of this position:*
>
> i. *No principled reason has been offered for treating appellants to the Asylum and Immigration Tribunal whose cases are classified as "immigration" differently, for financial eligibility purposes, to those whose appeals to the same Tribunal are classified as "asylum".*
>
> ii. *You assert a "significant volume of non-asylum clients who are not currently eligible for legal aid" without any indication of the basis for this assertion, or its relevance to capital limits. We are not aware that any statistics are collected that would be capable of disclosing how many unrepresented non-asylum appellants are unrepresented because they do not qualify for CLR on capital rather than on income or merits grounds. If we are wrong, please provide us with the evidential basis for your assertion. To the extent that we have been able to consult our members within the tight timetable for this consultation, we can say that our experience is that ineligibility on capital grounds alone is rare.*
>
> iii. *In any event, regardless of numbers, we repeat that no principled reason for distinguishing between "asylum" and "immigration" cases for capital eligibility purposes has been advanced. There are many highly compassionate appeals (for example, children refused entry clearance to join family in the UK) which it is impossible plausibly to argue could acceptably be excluded just because they are not asylum claims. Indeed h**ighly compassionate appeals may raise human rights (albeit not article 3) points** Once this is acknowledged for some cases it becomes apparent that an attempt to draw a rigid distinction at all is not an exercise that ought to be embarked on.*
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> iv. *You refer to the proposal to turn part of the CLR scheme into a contributory scheme as being "as for other forms of contributory legal aid", which again begs the question of whether CLR ought to*

v. *be contributory at all. Certificated work is contributory. CLR is not certificated work. It is not remunerated as such, and the Regional Offices play no part in the financial assessments. ILPA would oppose any attempt to create a hybrid 2nd class contributory scheme which imposed any additional burdens on practitioners in administration and/or collection of contributions.*

Our position is unchanged. We received no response from the DCA to our question about the evidential basis for supposing that there is a "significant volume" of non-asylum clients who are presently ineligible for CLR on capital grounds, and no answer to the point that many non-asylum applicants have cases just as compassionate as an asylum case. Regardless of the number of cases falling within the capital band £3-8,000 it would be to disadvantage such appellants in a wholly unjustifiable way to require the payment of contributions.

It is not clear whether the contributory scheme contemplated is a one-off payment in the manner of old Green Form scheme contributions or a an on-going monthly payment. We trust that it is the former, by analogy to capital contributions in certificated work, but that would not make it acceptable at this level and for this type of case.

Our strong preference is therefore for the new paragraph 5.8 to consist of your proposed draft (a). In the event that this is not accepted, then our strong 2nd preference would be for your proposed draft (c). If the LSC is determined to introduce a contributory scheme it should be the LSC that administers it. Our members who undertake publicly funded work are almost driven to the wall as it is by the administrative burdens of being your "suppliers". We cannot cope with any more, and we certainly cannot cope with the prospect of being the financial losers in the event of default by our clients. If this scheme is introduced against our wishes we certainly expect to have the same protection afforded as under licensed work, in that we are paid our costs in any event and it is up to the LSC to recover contributions. If the LSC does not relish that prospect, or doubts its financial viability, then it has the alternative of introducing option (a) instead. What it should not contemplate is the option of shifting the burden onto us.

6. Queen's Counsel

We have no quarrel with this sensible clarification.

7. Conclusion

I look forward to hearing from you about the outcome of this consultation, and meanwhile would be happy to answer questions you may have arising from any of the points made above.

I would also, as a matter of some urgency, welcome an immediate specific written response on the question of attendance at non-asylum Home Office interviews, and

whether you will be notifying suppliers that the present specification is wrong on this point.

Yours sincerely

Chris Randall
Chair of ILPA

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