

Phase 1 Civil Schemes Review – Proposed Amendments from 2010

The Consultation

The consultation proposes two amendments to the Phase 1 Fee Schemes in civil legal aid following a review of the schemes (as provided for in the Deed of Settlement with the Law Society). The review report *Phase 1 Civil Fee Schemes Review Final Report, April 2009* has been published alongside this consultation. The amendments are in the view of the LSC, the minimum necessary to put it in a position to continue with existing fees when the contracts are renewed.

The LSC is not proposing any amendments to the Phase 1 Fee Schemes with the exception of Personal Injury and Family.

Family Amendments

The LSC proposes changes to the Care Proceedings Graduated Fee Scheme (CPGFS).

Preparation

The LSC acknowledges that representative bodies consider that the scheme does not distinguish between general case preparation and preparation for a hearing. The CPGFS included all the historical costs of preparation including preparation for advocacy

Solicitors have also raised concerns about the increased emphasis that the Public Law Outline places upon preparation. This has meant additional preparation by solicitors as Local Authorities are submitting much more detailed documentation, earlier in the case, which now needs to be considered by solicitors acting both for parents and children.

The LSC states that it does not consider that the evidence so far has shown that there is a need to make any changes in this area. However it is currently consulting on a new remuneration scheme for advocacy and one of the issues in that consultation is how preparation for advocacy carried out by an in-house advocate is remunerated. That consultation closes on 3rd April 2009 and the LSC states that all responses will be carefully reviewed before any decisions are made on the options.

The LSC proposes three options to amending the CPGFS to pay for a separate fee for preparation for solicitors undertaking their own advocacy as follows:

Option 1 - Increasing the exceptional case threshold but not the standard fees and using the money released by bringing more cases under the fixed fee scheme to fund additional payments for advocacy.

The outlined fees are what the LSC proposes to pay for self-employed advocates as an additional payment should public law harmonization not proceed:

| Court | Interim Hearing Preparation Fee | Final Hearing Preparation Fee | Final hearing exceptional preparation Fee |
|-------|---------------------------------|-------------------------------|---|
| Other | £62 | £195 | £98 |
| High | £82 | £259 | £130 |

The LSC would also propose to increase the exceptional fee threshold from 2 to 3 times the existing standard fee.

Option 2 - Lowering the Level 3 in the CPGFS to remove the element of preparation for advocacy and include this as a separate payment

If it is to proceed with this option, the LSC would pay a slightly reduced additional preparation fee and a reduced level 3 fee as follows:

| Court | Interim Hearing Preparation Fee | Final Hearing Preparation Fee | Final hearing exceptional preparation Fee |
|-------|---------------------------------|-------------------------------|---|
| Other | £43 | £135 | £68 |
| High | £57 | £180 | £91 |

The proposed revised CPGFS Level 3 fees are set out below:

| Party | Court | No of Clients | Midlands | North | South | Wales |
|--------------|-------|---------------|----------|-------|-------|-------|
| Child | Other | 1 | £1443 | £1183 | £1657 | £1617 |
| Child | Other | 2+ | £2165 | £1775 | £2485 | £2426 |
| Child | High | 1 | £1919 | £1574 | £2203 | £2150 |
| Child | High | 2+ | £2879 | £2361 | £3305 | £3226 |
| Joined Party | Other | | £766 | £592 | £889 | £964 |
| Joined Party | High | | £1018 | £787 | £1183 | £1282 |
| Parent | Other | 1 | £1894 | £1573 | £2153 | £1950 |
| Parent | Other | 2 | £2367 | £1966 | £2692 | £2438 |
| Parent | High | 1 | £2518 | £2092 | £2864 | £2594 |
| Parent | High | 2 | £3148 | £2615 | £3580 | £3242 |

Option 3 - Introducing a process by which the solicitor's representation fees are reduced every time they instruct a self-employed advocate during a particular case.

The LSC points out that Option 3 would be challenging for providers and the LSC to administer. Unlike option 2, where solicitors could claim an additional fee, solicitors would have to report a reduced fee to the LSC on individual hearings, and it would make it difficult for them to know in advance, the minimum amount that they may be paid for a case. The LSC is therefore consulting, firstly, on whether it should make this change and introduce a preparation fee and secondly, whether it should do this on the basis of option 1 or 2 in order to maintain cost neutrality.

Personal Injury

PI has generally been outside the scope of legal aid since 2000 but a small range of cases remain within scope of CLS funding.

The proposals are as follows:

Proposal 1- A tolerance fee and exceptional case threshold for PI cases taken under tolerance by a provider

As there has been no tolerance fee for PI, there is no historical data to calculate this fee. Therefore the LSC is proposing a PI tolerance fee calculated with reference to the differences between

tolerance and fixed fees in other categories of work. This fee would be **£154**. The exceptional threshold would be 3 times the fee payable.

Proposal 2 - An increase to the PI fixed fee and exceptional case threshold

The increased fee is shown below:

| Old Fixed Fee | Old Exceptional Level | Amended Fixed Fee | Amended Exceptional Level | Tolerance Fee | Exceptional Level |
|---------------|-----------------------|-------------------|---------------------------|---------------|-------------------|
| £208 | £624 | £226 | £678 | £154 | £462 |

Timetable

Responses to the consultation must be submitted by **8th May 2009**.

The LSC has provided an online e-consultation tool for ease of response which can be found at:
<https://consult.legalservices.gov.uk/inovem/consult.ti/phase1review/respond>

Further Information

A copy of the consultation paper together with a copy of the final review report can be downloaded from the LSC's website at:

<https://consult.legalservices.gov.uk/inovem/consult.ti/phase1review/listdocuments>