

## **VERY HIGH COST CIVIL CASES - SOLICITORS INFORMATION PACK AND GUIDANCE**

1. This Guidance, which is Guidance under para 26 of the Contract, sets out the Commission's procedures for individual very high cost civil cases. It sets out what actions you, the solicitor, should take when you take on a new case which is going to be very expensive, or when an existing case increases in cost to become very expensive.
2. This pack sets out:

### **The Background**

#### **Making an application for Full Representation**

#### **Use of a Case Plan**

#### **What are the contract payment terms?**

#### **Making an application for Litigation Support**

## **THE BACKGROUND**

### **The Funding Code, contracts and the Special Cases Unit (SCU)**

3. The Funding Code - Section 6 "Very Expensive Cases" includes extra criteria for very high cost civil cases. In particular, they are subject to an "affordability test" and the proposals put forward for progressing the litigation must be satisfactory. Once referred to the SCU, there must be a proper Case Plan and proposal for a fully costed stage. Each case will have an individual contract based on the agreed Case Plan and the price for each fully costed stage. The contract will allow progression of the case stage by stage, with an agreed price for each stage. The Case Plan will change as the case develops; in the early stages of a case future events will be more difficult to predict and will contain fewer details.
4. Details of what must be included in a Case Plan and a fully costed stage, and how they should be used, are set out later in the pack. Criteria for funding very high cost cases are set out in Section 6 of The Funding Code and in Section 15 of the Decision Making Guidance (Vol. 3 of the Legal Services Commission Manual).
5. The Commission has established a Special Cases Unit to manage these cases, based in the Brighton Regional Office. The SCU may manage cases from Brighton. Alternatively, the SCU will assign each case to one of ten Case Managers, drawn from the most experienced solicitors in the Regional Offices.
6. Multi-Party actions are subject to separate contract arrangement. This document deals only with individual cases referred to the SCU, whether for Full Representation or for Litigation Support.

### **What are these cases?**

7. The Referral Criteria are set out in rule C23 of the Funding Code Procedures and paragraph 3C - 146 of the Decision Making Guidance. In summary, they are that:-
- a) in the lawyer's professional judgment, the likely cost to settlement or other disposal will exceed £25,000;
  - b) the actual cost to settlement or other disposal will exceed £25,000 (this will be identified in any case not identified by the other criteria when an application is made to extend a costs limitation beyond £25,000); or
  - c) in the lawyer's professional judgment, if the case were to proceed to a contested trial or hearing (or in the case of appeal proceedings, to the conclusion of that appeal stage) the likely cost under the certificate might exceed £75,000.

All figures exclude VAT. Typically, they will be public law Children Act cases covering several children and requiring experts' reports, clinical negligence cases and actions against the police. Also, all Multi-Party actions or potential MPAs and all applications for Litigation Support (which provides partial funding for very high cost personal injury claims proceeding under a conditional fee agreement) will be referred to the Unit. The Commission anticipates that only a few thousand cases each year will be subject to these provisions.

#### **When does the contract start?**

8. The contract starts when the SCU first limits the certificate to the work set out in the fully costed stage of the Case Plan. It stays in force while the certificate is in force. Once the contract has started, the case will be managed through a series of fully costed stages until it ends. Each fully costed stage will state the cost of the stage broken down into disbursements, profit costs and advocacy costs. Once approved, the costs limitation on the certificate will be increased to reflect the cost of the approved stage.

#### **Claim for pre-contract costs**

9. It will often be the case that at the time a contract is entered into, particularly in the circumstances in para 7 (b) above, work has been undertaken under the certificate. Either after approval of your contract or with your application you will need to submit your claim for the pre-contract work to the Case Manager for assessment under the regime current at the time, either under the General Civil Contract or otherwise. This can take the form of time recording records with a clear explanation of the work undertaken and a summary of the costs claimed, or an assessed bill on form CLSCLAIM1. We are keen to simplify payment for this work and avoid the need for a costs draftsman to prepare a detailed bill. If you are dissatisfied with the assessment of your bill there will be a right of appeal to the Costs Committee. The costs, once agreed, will be paid by the Commission within 28 days. The rates you will use are those you would expect to get on a taxation or assessment. That approach will continue throughout the life of the case in family\_cases. After costs have reached £25,000 a different approach will be adopted in inter partes costs cases, see below.

10. If the SCU does not agree a fully costed stage or the proposed price for it, there is a right to have the case reviewed by the Funding Review Committee. However, there is no right of review if the SCU rejects a fully costed stage because it does not contain the required information.

## **MAKING AN APPLICATION FOR FULL REPRESENTATION?**

### **What forms are used and how do cases get to the SCU**

11. If you identify a case as potentially very high cost at the start for either of the reasons set out in para 7 (a) or (c) above, and seek Legal Representation, you should still apply to your Regional Office on the standard application forms (CLSAPP1 in non-family cases, CLSAPP3 for family cases, or CLSAPP5 for Special Children Act cases). If you identify it when a certificate for Investigative Help or Full Representation has already been issued, usually for the reason in para 7 (b) above, you should still apply to your Regional Office, using amendment form CLSAPP8. You must in all cases complete the relevant questions with the estimates of costs to settlement or other disposal, and trial and include a Case Plan with a proposed fully costed stage.
12. A Regional Office receiving an application will refer the case to the SCU which may deal with the case itself but, where possible, will arrange for cases to be dealt with by your nearest Regional Office, to build links between firms and Case Managers. Case Managers have the power to use special case management tools. They may obtain an independent counsel's opinion, seek representations from opponents against funding, attend conferences with counsel and experts and require specific issues to be covered in instructions to them.

### **What decisions are made?**

13. First, the Case Manager will decide, applying the Funding Code criteria, whether the case justifies funding or further funding. If the application is refused there is a right to have the case reviewed by the Funding Review Committee, which has replaced the Area Committee. Guidance on the criteria for funding high cost cases is in Section 15 of the Funding Code guidance.
14. Second, if the case is approved for funding, the Case Manager will consider your Case Plan and proposed fully costed stage and seek to agree these with you. If agreed, an appropriate costs limitation will be placed on the certificate. The agreed price for the work will be based on the appropriate charging rates, see paras 25 below.

## **USE OF A CASE PLAN**

15. After completing the application form the most important action is to produce a credible Case Plan. The Case Manager will consider your justification of the case, the legal and factual issues to be investigated and resolved, and the personnel you have selected and their ability to complete the work successfully, particularly counsel and any experts.

16. There are five standard Case Plan formats attached to this pack which are designed to assist you in producing a plan appropriate to your case. They set out a description of the case, your assessment of its prospects, the legal and factual issues to be investigated and resolved, details of costs to date, and the selection of counsel and experts to use on the case. They include examples of fully costed stage plans for the next stage of work to be undertaken.
17. The standard Case Plan formats are for use in the following types of case:
  - Public Law Children Act cases.
  - Private Law Children Act cases.
  - Ancillary Relief and other property family cases.
  - All other cases.
  - Investigative Help funding cases.
18. Because of the potential impact of the Statutory Charge it is essential that clients are sent copies of Case Plans and costed stages and given an explanation how they might be affected, for example if it is a matrimonial dispute about property or, even if inter partes costs are ordered, how any monetary award might be reduced by the amount payable to you under the contract in addition to costs recovered from the other side, see paras 58 to 60 below.

### **What stages will normally be applied?**

19. Clearly, the stages must reflect the type of case, the usual case management requirements of the courts and the opportunities for continuation of funding to be considered. Attached at Annex A you will find the Commission's normal stages to be applied to a contract. You can propose other stages where you consider there are exceptional reasons, for example, exceptionally detailed investigation work at the start of a case, to justify its funding.
20. Normal stages are set out for the common categories of very high cost cases:
  - Public Law Children Act cases.
  - Other family cases (including private law Children Act as well as ancillary relief).
  - Judicial Review cases.
  - Appeal cases.
  - Clinical Negligence, Personal Injury cases and other cases pursued through the Woolf Multi-track procedures.

### **What about plans for cases seeking Investigative Help funding?**

21. Investigative help funding is typically needed in Clinical Negligence cases. There are two significant issues to be recognised. First, when an application is made for funding there may be insufficient information to plan the full investigation. This preliminary

investigation will be funded under a standard cost limitation. A case plan and fully costed stage plan will then be required to complete any investigative activities identified.

22. Second, before completion of the investigation, the plans for future stages are less reliable. The Case Plan beyond the investigative stage would be expected to include options for the outcome, the major steps and the likely costs. In these sorts of cases, options for concluding the case may be settling on acceptance of liability, proceeding to a hearing on quantum alone, or proceeding to a full hearing with disputed liability. You should estimate the costs for these options by reference to the cost of previous similar cases, providing evidence by way of bills in those cases.
23. Any applications for Investigative Help in clinical negligence cases should be submitted to the Unit.

### **When do contract rates apply?**

24. Whether or not it is done under a contract, work up to the first £25,000 (excluding VAT) of solicitors' costs, disbursements and counsel's fees under the certificate are payable at the usual current rates, ie as if the contract had not been in force. If that first £25,000 includes less than £5,000 (excluding VAT) in counsel's fees, further work by counsel - up to a total value under the certificate of £5,000 (excluding VAT) - is payable at the rates applicable if the contract had not been in force. Exactly the same rule will apply to solicitors; if the first £25,000 of costs includes less than £5,000 in solicitors' costs, the work done by solicitors up to £5,000 (excluding VAT) will still be payable as if the contract had not been in force.
25. These thresholds are set at the point at which the solicitor and barrister are expected to accept part of the financial risk of pursuing the case in cases where inter partes costs are likely to be recoverable. They allow the solicitor and barrister to be paid at the generally applicable rates whilst assessing the risk of a case. Once the threshold is reached and it is decided to take the case to a conclusion they are paid at the lower, published contract rate, subject to the variations set out below. Solicitors and barristers should generally be able to form a clear opinion on the merits by the time the thresholds have been reached. Work done up to the threshold is known as the "risk assessment" stage. Cases where inter partes costs are likely to be recoverable are referred to as "inter partes costs" cases.

### **How are stages priced?**

26. The price of a stage will be made up of the proposed solicitors' profit costs, counsel's fees, experts' costs and other disbursements.
27. After the initial "risk assessment stage" in inter partes costs cases, contract rates will be those published by us from time to time. Where the published contract rates apply, profit costs will be the hours expended at an hourly rate for the work. You will need to assess the hours you require to carry out each of the activities in your fully costed

stage plan. There will be no separate payments for letters, telephone calls etc. The payment will be for the direct hours spent on the case by fee earners. This is intended to be simpler for both parties. It will reduce the need for a detailed assessment.

28. In inter partes costs cases solicitors and barristers will be paid at published contract rates exceeding the threshold set out in the preceding section. If barristers are planned to do any work in a fully costed stage, the solicitor must include them in preparing the stage, must give them a copy of the contract and must obtain their signature to a form agreeing to the contract payment terms. A proposed form is attached to this pack.
29. Experts' reports and other disbursements will be paid at the reasonable prices you agree with the individual suppliers. If you have not agreed them you will need to put in your best estimates of the costs. These will be incorporated into the overall agreed price for the stage. (You can apply to amend the contract if these costs are greater than estimated.)

### **What are the contract hourly rates?**

30. After the initial "risk assessment" stage, the contract rates vary depending on whether the case is expected to result in an order for inter partes costs.
31. For cases where inter partes costs are expected to be paid, for example clinical negligence or personal injury cases the Commission will pay at the following rates: solicitors £70 per hour, junior counsel £50 per hour and senior counsel £90 per hour. There will be no mark-up.
32. For cases where inter partes costs are expected to be paid but the case has only borderline prospects and is only to be funded because of overwhelming importance to the client, wider public interest or because of human rights issues, which a solicitor would not pursue at risk, for example, a borderline judicial review of a mental health detention decision, the Commission will pay a 30% uplift to the prescribed rates to reflect the additional financial risk, i.e. at £91, £65 and £117 per hour respectively.
33. For cases where inter partes costs are not expected to be paid, for example, Children Act and family cases, the Commission will pay in line with current remuneration rates as set out below. The Commission will also pay in line with current rates if an appeal in a successful case is being defended or to defend an appeal against an interim order.

### **For family and defended appeal cases (non prescribed rates) how will the hourly rate including mark-up be decided?**

34. The hourly rates will be those presently applied by the courts from the district surveys. The mark-up will be applied based on the skill level of the solicitor primarily undertaking the work and the complexity of the case. It is understood that some tasks will be delegated to junior fee earners. Only where a junior fee earner is carrying out a substantial and separately identifiable element of work in the Case Plan will a lower rate be applied.

35. You will need to propose and justify the mark-up to be applied, by:
- Specifying the solicitor primarily undertaking the case and their membership of specialist panels. Members of the Law Society Children Panel and solicitors accredited by the SFLA will receive mark-up to reflect their higher level of competence.
  - Complexity of the work. It may be that specified items of work are particularly complex and need higher levels of competence. For example, child abduction work in a family case may be more complex and need greater competence and more attention by the solicitor than the ancillary relief aspects of the case. Different mark-up could be sought for the different elements of the case. It is not intended that this is to apply to individual and small items of work.
36. In justifying that exceptional competence is required to undertake the case you will need to apply the decision of Cazalet J in London Borough of "A" v M and SF, Family Division Oct 1994 for Care Cases and, for barristers, the particular arrangements for identifying and rewarding competence in the Family Advocate Graduated Fees Scheme for:
- i. Membership of The Law Society Children Panel or SFLA Panel as a reliable indicator of the solicitor's competence, (20% mark-up considered appropriate by Cazalet); plus
  - ii. The complexity of the case as an indicator of required competence (30% mark-up considered appropriate by Cazalet).
37. Typically in care proceedings, in line with present taxation practice, a panel member undertaking work of exceptional complexity will automatically receive 50% mark-up on all aspects, other than travel and waiting which do not normally receive mark-up. Typically in family proceedings, in line with present taxation practice, a panel member undertaking work will automatically receive the usual 50% mark-up on preparation and also 50% on attendances at court. In the most exceptional circumstances (where the majority of Cazalet J's exceptional circumstance factors arise) a panel member will receive 70%. Preparation and attendance by junior solicitors will not achieve mark-up as the work will not be exceptionally complex, nor will it receive consideration by an exceptionally competent solicitor.
- Expedition. It may be that specified items of work need to be completed very quickly, for example, the implementation of a freezing order or where the court proposes an acceleration of the timetable. Higher mark-ups could be sought for the urgent work justified by the additional cost which will be incurred in completing the work. It is unlikely that within a well-planned and managed claimant case there will be need for 'exceptional expedition'. This is more likely in defendant cases where unpredictable actions can be required which are outside the applicant's control and may not be reasonably foreseeable. There will be an opportunity for the solicitor to seek an

enhancement at the end of each stage for 'exceptional expedition' if this was in fact required.

### **What about the effect of the possible variation in hearing length on the price of a full hearing stage?**

38. For a stage including the full court hearing the stage price will be increased if the court hearing over-runs. You will have to propose in the Case Plan the costs per day of hearing over-runs for solicitors and counsel. The contract price will be based on the judge's allocation of time for the hearing. It is expected that the Woolf reforms will reduce the frequency of over-runs. When pricing a stage including a full court hearing, but prior to the judge's fixing the hearing length, an estimate should be used.

### **What happens if a Case Plan and fully costed stage cannot be agreed?**

39. If the Case Plan cannot be agreed with the Case Manager there is a right to have it reviewed by the Funding Review Committee. Any failure to agree the Case Plan is likely to be on the basis of the proposed work, the proposed stages, the competence of the personnel selected to undertake the work, or the hourly rates to be paid. The Committee can consider all these aspects of the Plan, within the constraints of the standard contract terms and procedures. Ultimately, the Commission has power to refuse or withdraw funding altogether if the proposals for progressing the litigation do not appear to be satisfactory.
40. The Committee will not be able to review on the basis of the solicitors' failure to provide the information required by the Commission in its required format.

### **Can the agreed stage price be increased?**

41. The SCU will amend the certificate to increase the agreed price for a fully costed stage only where work which could not reasonably have been foreseen has to be done or in other exceptional circumstances and only if the cost of the extra work will exceed 5% of the price.
42. The Case Plan (see attached for standard formats) will be specified in terms of prices for steps within a stage rather than detailed activities. It will not be possible for the Commission to identify minor changes in work from the Case Plan below the level of a step. This is because it is not intended that minor increases in work result in an increase in the stage price, for example, writing an additional letter. Hence the 5% tolerance has been applied. You will have to demonstrate and justify the increase over the original step price. Demonstrating that any proposed work is over and above that originally included in the price may be difficult. It is worth setting out examples to explain.
43. If an additional party is unforeseeably joined in proceedings then the work in reviewing that party's arguments will not be in the Case Plan at all. The decision on authorising additional work should be straightforward, as the work was clearly not included in the stage price.

44. If a solicitor applies for an increase due to writing a large number of letters to the opponents it is unlikely that they will be able to demonstrate the work was not foreseeable and not included in the original stage price. This will more than likely not result in an increase in price.
45. To take a more marginal example if, in a judicial review case, the price of the step covering: 'receipt of respondents' evidence' was based on five statements being received from defendants which need to be reviewed, but in practice it turns out to be ten statements, additional work would be authorised if it were made clear this was the basis for the original price.
46. It is proposed that any such 'significant planning assumptions' which significantly affect the fully costed stage price be explicitly stated. This will be useful to both parties in setting out the basis for the stage price and in agreeing any subsequent variation to the price. If these planning assumptions prove inaccurate it would justify the solicitor applying for an increase in the stage price. In this example the additional work relating to the five additional statements would be authorised if the planning assumption was clearly set out from the start.
47. Finally, it is not intended that minor increases are aggregated across several steps within a stage to achieve the required 5% minimum increase. It is expected that applications will be made separately for increases in different steps within a stage in the case as they arise.

**What if I need to change the team of solicitors, experts or counsel working on the case?**

48. We expect material changes to the team running the case to be reported. For example, if the expert or counsel were replaced with one of significantly less relevant experience, the Commission would expect this to be reported. The Commission could then decide if the case team were capable of managing the contract. Alternatively, if staff of the same experience were brought onto the team but this would lead to disruption or delay to the case, we would expect this to be reported.

**What if I need an urgent change to the agreed Case Plan?**

49. If urgent work not covered by the Case Plan is needed a change can be authorised by the Case Manager by an exchange of faxes. For example, if you suddenly needed to obtain a world wide freezing order.

**What happens at the end of a stage?**

50. You must submit a report setting out the work completed, the outcome of the stage including any key documents, reports and opinions generated, and your fully costed Stage Plan for the next stage. A record of your actual costs incurred, including time spent, must be submitted for finalising the stage payment.
51. If the stage includes a full hearing which overran, you can provide details of the overrun to justify an increase in payment.

52. You can include applications for 'exceptional expedition' mark-up for work which was undertaken urgently and at additional cost which was not reasonably foreseen.
53. The Case Manager will decide whether funding should continue to the next stage and agree a new stage plan. Again, there are rights of review against termination of funding or failure to agree a fully costed stage plan for the next stage.
54. If the actual cost is 95% (or above) of the price, the agreed price is payable. If the actual cost is between 50% and 95% of the price, the actual cost plus 5% of the price is payable. If the actual cost is 50% (or below) of the price, only the actual cost is payable. Costs will be assessed by the Commission, with the usual rights of appeal. There will be no detailed assessments by the court, other than inter partes costs. Payment will be made immediately the costs are agreed.

### **What happens if the case stops part way through a stage?**

55. It is possible that the case may be stopped. The client may become financially ineligible for funding or information may become available that shows the client has not made full disclosure about the case. This could lead to discharge or revocation of the client's certificate, which would lead to automatic termination of the contract.
56. In such circumstances the solicitor will be paid their costs for the proportion of work undertaken in the stage plan.

### **WHAT ARE THE CONTRACT PAYMENT TERMS?**

57. Once a contract is in force, full payment of solicitor's profit costs and counsel's fees will be made at the end of each fully costed stage and, if a stage will last more than six months, payments on account will be made after each six month period on a pro rata basis [unless pro rata payment would bring payment excessively in advance of costs being incurred]. Disbursements over £100 will be paid as they are incurred.
58. At the end of the case, if you are awarded full inter partes costs no further payments are due from the Commission and all payments made under the certificate are repayable to the Commission.

### **What if there is an interim partial payment of costs?**

59. If the opponent makes an interim partial payment of costs they may be transferred to office account as costs with the agreement of the Commission. Any payments that have made by the Commission which are covered by the partial payment will be recouped. The distribution of costs will be reconciled at the end of the case.

## **What happened if the inter partes costs order does not cover all my costs?**

60. If the court decides not to order the costs in full against the opponents, application can be made to the Commission. The Commission will consider such applications, taking into account their value and the reasons given by the court for not ordering them in full. Normally payment would only be made where the court excludes them on principle. If the court does not order the costs in full because they are considered excessive it would not be reasonable for these costs to be paid by the fund.
61. It is possible that the case will be won but the Court will award costs in respect of those issues it has accepted and deny costs in respect of those issues it has not accepted. In these circumstances the Commission will pay, at the contract rate, for all or some of the work where costs have not been awarded inter partes. The inter partes bill must be taxed or agreed. Any agreement must be approved by the Commission because it could affect the Commission's and client's liability. A transcript of the judgment must be obtained for the Commission to consider the court's view on all arguments put forward. The Commission will pay, at the contract price, for work in support of arguments run that the court has obviously taken seriously. If necessary, the Commission will seek an opinion from independent counsel and, in any event, the Commission's decision on what costs to allow at the contract rate will be appealable to the Costs Committee whose decision will be binding on the Commission.
62. Where costs are not recovered in full the statutory charge is likely to apply. Your client must be informed of the estimated or actual financial cost to them of not receiving costs in full on any proposed settlement or outcome at trial (see para 18 above). If you seek to settle the case with not all costs being recovered from the opponent and with a claim against the fund, the agreement of the Case Manager to the proposed settlement must be obtained in advance.

### **Review**

63. At the end of the case you and the Case Manager may review how the case has progressed to identify whether there is any scope for improving the management of similar cases, or future liaison between you and the SCU.

## **MAKING AN APPLICATION FOR LITIGATION SUPPORT**

64. Litigation Support is available for very expensive personal injury cases where the case is proceeding under a conditional fee agreement and the costs (solicitor's profit costs and counsel's fees at prescribed rates excluding other disbursements) will exceed £15,000 OR disbursements will exceed £5,000 (excluding counsel's fees). It is expected that the solicitors will fund the first £15,000 and the Commission will fund costs over and above this sum. The solicitor will be expected to have obtained £100,000 of insurance cover for the client against the other side's costs. This is so the Community Legal Service Fund is not liable for other parties' costs.
65. Note: Investigative Support funding is available, as a pre-cursor to Litigation Support funding, where the prospects of the case are unclear and the costs of investigations are high, such that most firms would be unable to fund the investigation in full. This is when the costs of investigating the strengths of the claims exceed either of the following thresholds: (a) disbursements (including any counsel's fees) are or are likely to exceed £1,000; or (b) investigative costs at prescribed rates, that is £70 per hour other than disbursements have reached or are likely to exceed £3,000. It is required that the likely damages must exceed £5,000 to receive Investigative Support funding.

### **How do the contract terms differ from a full representation contract?**

66. The same individual case contract applies to both Litigation Support and Full Representation. The terms are identical, except where set out below:

### **What can be funded?**

67. Disbursements (excluding counsel's fees) above £5,000 and/or costs (solicitor profit costs and counsel fees at the published contract rates ) above £15,000.
68. Litigation Support funding is only available once a conditional fee agreement has been entered into. Investigative support is available for disbursements and investigative costs required in order to investigate the strength of the case to decide whether a conditional fee agreement should be entered into.
69. If you seek funding of profit costs a proportion of the success fee will be payable to the Community Legal Service Fund if the case succeeds. For example, a case is operating with a 50% success fee and the Commission agrees to fund £10,000 of costs (excluding disbursements) at prescribed rates out of total costs of £40,000. The Commission has funded 25% of costs and will be entitled to 25% of the success fee as well as its costs expended.
70. If you are seeking funding of disbursements only, the Commission will not be entitled to a share of the success fee.

### **What forms are used and how do cases get to the SCU?**

71. If you apply for Litigation Support you should apply direct to the SCU on form CLSAPP2. For these cases, you will be required to provide evidence of the conditional fee agreement and legal expenses insurance as well as a Case Plan with a proposed fully costed stage.

### **When do contract rates apply?**

72. Unlike full representation, the published contract rates apply from the start of funding.

### **What rates apply?**

73. The published rates which will apply to the contract are:
- a) £70 per hour for solicitors.
  - b) £90 per hour for senior counsel where the complexity of the case justifies the use of senior counsel;
  - c) £50 per hour for other counsel.
  - d) Travel time paid at 25% of the above rates.

### **What Funding Code criteria will apply for Litigation Support?**

74. The general Funding Code criteria in Section 5.7 of the Code apply. Guidance is set out in Section 14 of the Funding Code guidance.

### **What is a Case Plan?**

75. There is a standard Case Plan format attached to this pack for cases which are not children or family cases. It sets out a description of the case, your assessment of its prospects, the legal and factual issues to be litigated, details of costs to date, and the selection of counsel and experts to use on the case. It includes a fully costed stage plan for the next stage of work to be undertaken.
76. If disbursements only are being funded the fully costed stage need only cover the disbursements. A full case plan will be required to assess its effectiveness and track its progress. Even if disbursements only are being funded the Commission will wish to confirm that the case is properly managed.

### **What stages will normally be applied?**

77. It is expected that very expensive personal injury cases will follow the Woolf multi-track. Attached at Annex A you will find the Commission's normal stages to be applied in clinical negligence and personal injury cases.
78. If disbursements only are being funded it may be that they will all be paid in the one stage dealing with the exchange of expert evidence. In such cases only one stage will be applied to the contract.

### **Payments on Account**

79. Disbursements will be paid when incurred. Solicitor's profit costs and counsel's fees will be paid at the end of each fully costed stage and, if a stage will last more than six months, payments on account will be made after each six month period on a pro rata basis.

**LEGAL SERVICES COMMISSION  
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## STANDARD STAGES FOR CASE CATEGORIES

**Public Law Children Act** On the normal assumption that the case is not referred to the SCU until the judge gives first directions and that the directions will cover all actions up to a final hearing, a single stage will apply from the judge's directions to the final hearing. If revised directions are issued it is likely that the Case Plan and contract price would need revision.

The Case Manager will focus on ensuring that the court timetable is met through good planning. Experts (and counsel if required) should be selected and their availability confirmed early. All other parties should be predicted. Full instructions should be obtained and any Guardian ad Litem views considered, to ensure all issues are clear so the length of hearings can be accurately assessed.

**Private Law Matrimonial and Family** (ancillary relief, residence and contact). Separate sub-plans are expected for the major activities: children (including residence, contact, child abduction) and ancillary relief. For children issues (residence and contact) a single stage will be applied to the full hearing, assuming that negotiations and mediation have already failed by the time a case become very high cost. The existing condition that the solicitor must report an unfavourable Court Welfare Officer's report will remain in use. In complex financial disputes three stages are envisaged: issue of proceedings to offers of settlement, full hearing, and implementation of any final order. Normally each stage will take six months to a year, in line with the normal ancillary relief timetable. If there are no complex financial disputes a single stage will be applied to the whole case.

Historically these cases have escalated in time and cost, and therefore, they need close control.

**Judicial Review** Normally a three stage approach will be applied. First obtaining permission and filing of documents. Second, receiving and considering the respondent's evidence, and obtaining counsel's opinion on continuing. Finally, preparing a skeleton argument and attending at the full hearing. The early stages are normally short but there is a significant backlog in the court that may lead the total proceedings to run over a year. If there were a subsequent need to appeal any decision of the court this would be treated as a separate stage.

**Clinical Negligence, Personal Injury and Actions against the Police** It is expected that these cases would proceed in the Woolf multi-track. The standard Woolf stages will normally be used as Case Plan stages beyond investigation and pre-action protocol: Issue of Proceedings and final case management conference, and trial. In exceptional cases these stages can be subdivided to include all steps up to allocation, exchange or witness statements, or exchange of expert evidence. It is expected that each of these stages will take 6 months to a year.

**Housing** Disrepair cases are expected to be dealt with under the Woolf multi-track procedures. It is not expected there will be many defended possession cases with very high costs. Possession cases will be dealt with in one stage leading straight to a full hearing.

**Appeal** (To be developed).

**Other cases** Again the Woolf multi-track stages will be adopted as Case Plan stages. It is of concern that many non-matrimonial cases have run to seven years. We must assume that the Woolf reforms will result in greater control of the timetables. The Case Manager will need to support this judicial control by agreeing Case Plans to fit the key court stages.