



Legal Aid  
Agency

**This publication has been withdrawn because it relates to a programme of work which is no longer live.**

**If you have training needs, we recommend visiting the [LAA's training and support website](#)**

## FREQUENTLY ASKED QUESTIONS

### Legal Aid Transformation

#### Index:

1. [Finding and registering for the modules](#)  
Legal Aid Providers and other external professionals  
LAA Staff
2. [Civil](#)  
Harmonising Barrister Fees  
Immigration and Asylum Uplift  
Family  
Miscellaneous – Civil Fees
3. [Crime Fees](#)
4. [Expert Fees](#)  
General  
Civil
5. [Prison Law](#)  
Sentence Calculation  
Disciplinary Cases  
Parole Board Cases  
Prison Law - Miscellaneous

# **1. Finding and Registering for the modules**

## **Legal Aid Providers and other external professionals**

### **1.1 Registration: What is meant by the Practising Certificate Number? Is it the Law Society Roll Number or the Actual Number on the Practising Certificate?**

Your Practising Certificate Number is your Solicitors Regulation Authority (SRA) Number. If the SRA Number has 5 digits please add a 0 (zero) to the left of your Practising Certificate Number.

### **1.2 Is the training only available for providers? I am a [software vendor/cost drafts person/other non-practicing professional].**

The training is delivered online. Anyone can register on the website. There are easy to follow instructions to register and neither a practicing certificate nor an account number are needed. Please follow this link to the training website: <http://legalaidtraining.justice.gov.uk/>

Each user will need to set up their own log in.

### **1.3 Is the training relevant for me?**

Please consider one or both of the following actions:

1. Complete the 'Overview' modules (which can be found under both the Crime and Civil tabs) which cover all reforms in their simplest form and consider if any of the more detailed training would be of use to you.
2. Contact your LAA Contract Manager for advice on usefulness.

### **1.4 Is there a fee which needs to be paid either when registering or downloading the modules?**

There is no fee to register for, access or complete the modules, and no maximum number of times you can complete them.

### **1.5 The training module will not open.**

The training modules will open in a pop-up window. Please note that by default Pop-up Blocker is enabled in most browsers. You can allow all pop-ups by disabling the pop-up blocker.

Please follow these steps if using Internet Explorer:

1. Click Internet Options on the Tools menu to open the Internet Options dialog box;
2. Click the Privacy tab, and then click to clear the ticked box next to Turn on Pop-up Blocker.
3. Click OK to confirm the action;
4. Click OK to close the Internet Options dialog box;
5. Refresh the page.

And you should follow these steps if using Google Chrome:

1. Click the Chrome menu, represented by an icon with three horizontal lines;
2. Select Settings;
3. Click Show advanced settings;
4. In the Privacy section, click the Content settings button;
5. In the Pop-ups section, select Allow all sites to show pop-ups. or customise permissions for specific websites by clicking Manage exceptions;
6. Refresh the page.

This should be sufficient to clear this issue and allow you to continue.

### **1.6 How can I get a hard copy of the training?**

Printable workbooks are available for Legal Aid providers and other external professionals for all online modules. They can be found in the same location as the training modules and are clearly marked as printable workbooks. They can be downloaded once the module has been completed.

### **1.7 Can I claim CPD points for the online training?**

Some Legal Aid Agency training modules are eligible for CPD points, however, the training for the reforms under the Transforming Legal Aid programme are not.

The Welcome Pack provides the following statement, amongst other useful information and should be read before completing the modules:

*Please note that these modules do not carry accredited CPD hours. It is the LAA's view that the training does not have sufficient educational content to warrant formal accreditation. However, providers may wish to incorporate this material into more complex training programmes of their own which can count towards their annual requirement.*

#### **LAA Staff**

### **1.8 I cannot find the training modules on the Justice Academy.**

The training modules are on the Justice Academy Website. Please follow the steps below.

1. Go to the Justice Academy to login
2. Type 'Legal aid' in the search box
3. Click on the Legal Aid Agency Homepage
4. Click on the LAA Business System button
5. Click the Legal Aid Transformation button which will take you to the modules.

### **1.9 Which module(s) should I complete?**

As an overall rule, all staff should complete the Overview modules for a general understanding of the reforms and what will be changing or staying the same. Further to this, the training is related to either civil or crime work, so do what is relevant to you.

However, staff should ask their line manager for advice and/or instruction on which subject-specific modules to take and when they should complete them to ensure normal business is not disrupted.

### **1.10 Where can I find the legislation enforcing the changes to cases with Borderline Merits, as made by the reform implemented on 27 January 2014?**

The statutory instrument that brought in these reforms was the Civil Legal Aid (Merits Criteria) (Amendment) Regulations 2014, which amended the Civil Legal Aid (Merits Criteria) Regulations 2013.

➤ [Return to the index](#)

## **Civil**

### **Harmonising Barrister Fees**

Transitionals:

### **2.1 If a case is on legal help prior to 2/12/2013 but then moves to a full certificate after 2/12/2013 do the old or new rates apply?**

Moving from Legal Help to Legal Representation is a new application, therefore the new rates would apply.

CF1 Form:

**2.2 Does the form CF1 need to be submitted at the payment on account stage or when we submit our final fee note?**

The CF1 form is not required for Payments On Account but it is required when costs are included within the Claim 1 or 2, submitted by the Solicitor.

**2.3 Must a CF1 be used or can a Counsel's own fee notes be adapted to take into account enhancements?**

A Counsel's own fee note may not be used; the CFI form must be submitted for applicable cases.

Rates:

**2.4 Which categories will the following types of work (in the County/High Court for junior/senior counsel excluding Queen's Counsel) come under, as it is unclear from the attached schedule?**

- **Prep (including drafting)**
  - **Telecons**
  - **Conference/Negotiations at court**
- Prep (including drafting) : see answer to question 5, point 1, below
- Telecons, Conference/Negotiations at court: Attendance time (except where telephone calls are routine and the standard rate would apply)

**2.5 What the difference between attendance and advocacy?**

1. Preparation and *attendance* in the county court - £63 (London rate)  
Answer: Attendance is a meeting (whether face to face or via phone) to facilitate discussion of the facts of the case or issues arising with either the funded client, the instructing solicitor or anybody else that has relevance to the proceedings.
2. *Advocacy* in the county court - £59.40  
Answer: Advocacy is acting as an advocate before a Judge.

**2.6 Do the harmonised hourly London rates & non London rates relate to whether Counsel is from London or where the case is heard?**

The rates for Counsel should be based on where Counsel is based, rather than where the case is being heard.

**2.7 How do the 22nd April changes affect the rates for s31 Care / Supervision work and does this include changes to advocacy?**

1. The new rates are set out in Tables 2(c) in relation to the standard fees and in a new table 9aa for hourly rates in the Civil Legal Aid (Remuneration) Regulations 2013.
2. The hourly rates are determined by the level of judge before whom the matter is heard or before whom a case concludes.

There were no changes to the advocacy rates.

**2.8 Where can I find the current rates for Judicial Review cases and Help at Court?**

Judicial review work can be undertaken by a provider with schedule authorisation in Public Law or a provider with schedule authorisation in the category which relates to the underlying substance of the case.

Controlled Work is remunerated by one of the fixed fees payable in Table 1 of Schedule 1 to the Civil Legal Aid (Remuneration) Regulations 2013, depending on the schedule authorisation relevant to that case. Where a Controlled Work matter is to be paid at hourly rates as an "Escape Fee Case", the rates payable are those in either table 7(a) or 7(b) of that Schedule, again depending on the schedule authorisation relevant. The fixed fee payable for Legal Help Associated Civil Work under the Crime contract is the Public Law fixed fee.

Licensed Work is remunerated by the rates set out in Table 10(a) of Schedule 1 to the Civil Legal Aid (Remuneration) Regulations 2013.

Help at court is not an appropriate level of service in judicial review cases.

## **Immigration and Asylum Uplift**

### **2.9 Where a CW1 has been signed prior to 2/12/13 and the case subsequently progresses to CLR after 2/12/13, would the uplift apply to that case (should the other usual criteria apply later in the case)?**

The uplift would apply; it's the date that the application for civil legal services is initially made under the same variety of service (i.e. Controlled Work) that is relevant here.

Whilst the Legal Help form may have been signed prior to 2 Dec 2013, and the Controlled Legal Representation form afterwards, these are both within the same variety of work therefore they come within the definition of a pre-commencement case and the uplift applies.

### **2.10 Which cases still qualify for payment under the old UT rates and expert fees cost limits.**

The transitional arrangements are set out in the Civil Legal Aid (Remuneration) (Amendment) Regulations 2013 and in an online training module, which can be found at: <http://legallaidtraining.justice.gov.uk/course/category.php?id=88>. Those regulations confirm when the new rates and uplift arrangements apply.

In the circumstances where a CW1 was signed prior to 2 December 2013 and the CW2 signed post-2 December the pre December rates and uplift arrangements would apply to both the Legal Help (LH) and Controlled Legal Representation (CLR). It is the date that the application for civil legal services is initially made under the same variety of service (i.e. Controlled Work) that is relevant here. Whilst the LH form may have been signed prior to 2 December, and the CLR form afterwards, these are both within the same variety of service and they therefore come within the definition of a pre-commencement case.

## **Family**

### **2.11 What is the new terminology for 'residence' and 'contact' cases from 22.4.2014 and how will this affect existing certificates?**

Following the introduction of the Children and Families Act 2013, instead of orders for residence and contact, applications will now be made for child arrangement orders. There may be cases where certificates have been issued for residence or contact but where applications are not made before 22 April or final orders are made after that date.

- If a certificate has been issued for residence before 22 April, this will cover an application for a 'child arrangements order' determining where the child will live.
- If legal aid has been granted for contact proceedings before 22 April, this will cover an application for a 'child arrangement order' determining who the child will spend time with.

**2.12 The Private Family Law Children and Finance Evidence Requirements training module suggests that in order to satisfy Procedure Regulation 33(2)(h) evidence may be provided either by a medical practitioner who has examined a client or alternatively by a medical practitioner with access to the client’s health records. Is it correct that either will suffice?**

In accordance with amendments to Procedure Regulation 33(2)(h) as long as there has been an examination by a health professional, a letter or report from another health professional would be able to satisfy this regulation, even if they did not conduct the examination, if they have access to the medical records of the client.

<http://www.legislation.gov.uk/ukxi/2014/814/regulation/2/made>

**2.13 Do we have a handy guide on the Legal Aid Transformation changes in Domestic Violence evidence?**

The handy guide for changes to Domestic Violence Evidence is available at this link:  
[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/349472/evidence-requirements-private-family-law-matters-guidance.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/349472/evidence-requirements-private-family-law-matters-guidance.pdf)

**2.14 What are the different fees for Family Providers for advocacy and non-advocacy work from 22 April 2014?**

For work done under Family Advocacy Scheme (FAS) i.e. advocacy – the fee is based on the date of the hearing. There is no reduction in these fees however post 22 April the basis of payment is different i.e. by reference to tier of judge rather than court.

For work done under the Care Proceedings Graduated Fee Scheme or the Private Family Law Representation Scheme (CPGFS and PFLRS) i.e. all work excluding advocacy then the fee pay is based on the where the work concludes.

So there are 2 different calculations for different fee schemes e.g. there may have been a hearing (paid under FAS) before 22 April but case may only have concluded after 22 April (which is relevant to calculation of representation fees).

**Miscellaneous – Civil**

**2.15 What enhancements can be claimed by Counsel? What kind of evidence needs to be included in the threshold test?**

The consideration of billing in general, including enhancement is processed by the LAA cost assessor’s.

The Costs Assessment guidance at 12.1 indicated the General discretion to claim for enhancement, although reference to “provider” this discretion also applies to Counsel:

*12.1 It is for the provider to claim enhancement where he or she considers that it is justified and to indicate the level of enhancement sought. It will also be advisable for the provider to draw attention to any factors on which they particularly rely to justify either the need for enhancement or the level sought. However, in any event the assessor has a duty to consider whether, on the evidence before him or her, whether the claim for enhancement is justified.*

➤ [Return to the index](#)

**3. Crime Fees**

### 3.1 Where can I find the 22/4/2014 payment annex with revised hourly rates and fees?

Contract fees are in the Amendments to Schedule 4 documents in the following link:  
<http://www.legislation.gov.uk/all?title=criminal%20legal%20aid%20%28remuneration%29%20regulations>

### 3.2 Can you clarify if the 8.75% rate reduction that came into effect last week includes a reduction to:

- the £75 fixed fee for early cover and
- the £25 fee for refused means test completion

It is unclear from the guidance issued if the reduction includes the above.

We can confirm that the 20<sup>th</sup> March 2014 Remuneration Regulations includes a cut to the fees as set out in your E-mail. Specifically –

12. In paragraph 6 (Own client work)—
- (a) in Paragraph (2)(a), for “£52.55” substitute “£47.95”;
  - (b) in Paragraph (2)(b), for “49.50” substitute “£45.35”;
  - (c) in sub-paragraph (3), for “£75” substitute “£68.44”;
  - (d) in sub-paragraph (4) for “£25” substitute “£22.81”;

The Remuneration Regulations can be found here –

<http://www.legislation.gov.uk/ukxi/2014/415/schedule/3/made>

### 3.3 How does someone who is not financially eligible for legal aid in the Crown Court get remunerated for their legal costs should they be acquitted?

From 27 January 2014, an applicant who applies and is ineligible for legal aid in the Crown Court because their annual household disposable income is £37,500 or more, will be able to receive a payment in respect of their costs at legal aid rates from central funds if acquitted. In order to make a claim from central funds, the applicant will need to present a refusal notice to prove that legal aid was applied for and refused.

Guidance on applying to Central Funds is published on the National Taxing Team’s web page:  
<http://www.justice.gov.uk/courts/national-taxing-team/>

➤ [Return to the index](#)

## 4. Expert Fees

### General

#### 4.1 Can you please clarify which cases the 20% fee cut to experts applies too; is it those cases where certificates are being applied for from 2<sup>nd</sup> December or all instructions received from 2<sup>nd</sup> even though certificates will have been applied for before 2<sup>nd</sup>.

The 20% reduction will apply to cases opened by the solicitor on/after 2 December, subject to some transitional arrangements. The trigger will be the date that the case is opened by the solicitor rather than the date that an expert witness receives instructions or undertakes an assessment.

More information on the fee changes, including the transitional arrangements, can be found in the online training module, at: <http://legalaidtraining.justice.gov.uk/course/category.php?id=88>

#### 4.2 Can you please confirm the costs of DNA testing following the rate changes?

New rates were introduced in amendments to the Civil Legal Aid Remuneration Regulations. The rates followed the Government’s *Transforming Legal Aid* consultation paper, published in April 2013, which sought views on a proposed 20% reduction in fees payable to experts in civil, family and criminal proceedings in order to ensure that the fees paid to experts under legal aid deliver value for money to the taxpayer and more accurately reflect the fees paid to experts elsewhere.

Having considered the responses to the consultation, the Government announced in its *Transforming legal aid: Next steps* consultation response paper (September 2013) that it had decided to proceed with the proposal to reduce the fees payable to most experts in civil, family and criminal proceedings by 20% as proposed.

The rates in the Remuneration Regulations (as amended) will apply to all work undertaken by experts in all civil, family and crime work with a case start date or representation order date of on or after **2<sup>nd</sup> December 2013**.

**4.3 Please clarify the meaning of GP (records report) in the table of experts fees. We need to obtain medical information from GPs in many cases. We typically obtain either a copy of the medical records or a letter from the GP with a full explanation of diagnosis/prognosis etc.**

**I am not clear which of these the GP (records report) relates to. A request for a letter from a GP often costs up to £90.**

**Please can you clarify what a 'records report' is and how the LAA would treat an extension application/audit of costs for a GP's letter.**

For the purposes of the Regulations the term refers to retrieval of GP records (including summary reports based on those records). This is remunerated by way of a maximum fixed fee which can be exceeded where the LAA is satisfied that the exceptional circumstances set out in the Remuneration Regulations is met and has granted authority to that effect.

**4.4 What documents do I need to provide to support an Expert's credentials?**

Providers are required to satisfy themselves that an expert they instruct meets the standards. The expert's CV and their signed 'statement of truth' (once an expert report has been produced) will generally be sufficient for these purposes. However, if the provider ticks the relevant box on the claim/authority form to confirm that the expert does meet the standards they will not need to submit copies of those supporting documents alongside the claim/authority form.

Where an expert does not meet the standards the LAA will require evidence from a provider to justify why that expert has been used. Where a court has ordered that a particular expert be used a copy of the court order with the expert's CV should be submitted alongside the claim/authority form. If the LAA has granted prior authority to instruct an expert who does not meet the standards a copy of that authority should be attached to any subsequent claim form.

## **Civil**

**4.5 I am representing a child in a care matter, and was granted a certificate using delegated functions on 28 November 2013. As such, the case is not subject to the amended expert rates. However, a separate provider representing the father had a certificate granted on 2 December 2013, thereby being subject to the new rates. In such a case, the cost of the experts is usually shared equally across the parties and, therefore, would the old rates or the new rates apply as this would be a joint instruction.**

Subject to certain transitional regulations, the revised rates apply to all cases where the application date is on or after 2 December 2013.

In the scenario where there are a number of funded parties the case start date for each of those parties will depend on when the application for each individual was made. In this case one party obtained legal aid prior to 2 December, whilst another party only obtained funding after the amendment to the Remuneration Regulations had come into effect.

In these circumstances, where the costs of a single joint expert are to be shared by multiple parties, unless the exceptional criteria are met and prior authority is obtained there is no power to exceed the



rates set out in the Remuneration Regulations relevant to the particular certificate. It may be, therefore that the maximum rates that can be paid under the legal aid certificate of the parties will differ depending upon when the application for the certificate was made.

➤ [Return to the index](#)

## **5. Prison Law** **Sentence Calculation**

### **5.1 In the consultation document there is mention of sentencing cases that might be in scope as they directly relate to the clients release. One such example is sentence planning and calculations. This has changed to sentence calculations only in the response to consultation. Does this mean that Sentence planning cases are no longer in scope?**

The only sentencing cases that are in scope under regulation 12 of the Criminal Legal Aid (General) Regulations 2013 as amended are sentence calculation cases – that is, those cases that relate to the calculation of the total period of time that the individual must serve in custody before either being entitled to release by the Secretary of State (where the prisoner is automatically released without consideration by the Parole Board), or becoming eligible for consideration by the Parole Board for a direction that the prisoner be released. Sentence Planning matters will no longer be in scope.

The sufficient benefit test in the contract means that work can only be undertaken in these cases where a prisoner, having exhausted the prisoner complaint system to query and dispute the calculation of his or her release or referral date, cannot resolve that dispute.

### **5.2 Can I grant Advice and Assistance to assist a prisoner in making a complaint in relation to their disputed sentence calculation?**

Advice and Assistance cannot be provided to assist a prisoner in making the complaint in relation to their disputed sentence calculation. The complaints process must have been exhausted in relation to sentence calculation matters before an application for criminal legal aid can be made. In Sentence calculation matters the sufficient benefit test will not be met unless the client has been unsuccessful in their attempt at resolving their complaint through the internal complaints procedure.

### **5.3 My client has only recently been sentenced but was represented by another firm at the Crown Court; can I provide Advice and Assistance on the client's sentence?**

In these circumstances Advice and Assistance on a client's sentence can only be provided if it has been at least 6 months since the date of the client's sentence hearing if their issue relates solely to that client's sentence calculation. Advice on sentence calculation prior to this should be given by the provider that represented the client at the time of their sentence hearing under the representation order in relation to those proceedings. (Paragraph 12.104 Part B, Standard Crime Contract 2010).

### **5.4 Specification B 12.101(b) states that the sufficient benefit test is only capable of being satisfied if the client has been unsuccessful in resolving their complaint through the internal prison system- how far does the client have to have gone?**

The client must have made reasonable attempts to resolve the complaint themselves and the firm should provide evidence of such attempts on file. This could include a COMP1 form and copy of the response, a COMP1A and the copy of the response from the governor or use of the Sentence Calculation helpline.

### **5.5 Does the scope of sentence calculation cover advice provided under the Tariff Expired Release Scheme (TERS)?**

Advice on TERS does not fall within the scope of sentence calculation as set out in regulations and is not in scope as of 2 December 2013, as there is no calculation involved with TERS, except perhaps

confirming what a prisoner's tariff expiry date is. However that is about the sentence they are serving and the date on which they become eligible to be considered for release by the Parole Board, not about TERS itself. Providers are advised that any TERS case started on or after 2 December 2013 falls outside the scope of the 2010 Standard Crime Contract.

➤ [Return to the index](#)

## Disciplinary Cases

Cases before the Independent Adjudicator:

- 5.6 Will independent adjudications that do not concern a 'criminal charge' (-this has a different meaning in the case of prison adjudications) be covered (these can still result in extra days being added to the sentence)? Does this mean where there is a threat of extra days or specifically where the client has committed a criminal offence as these are not the same?**

**Will cases concerning the disciplinary charge of a lifer before the independent adjudicator be covered by legal aid funding even though extra days cannot be added to their sentence?**

Disciplinary cases that involve the determination of a criminal charge for the purposes of Article 6.1 ECHR, or in which representation is allowed following application of the Tarrant criteria, will be in scope of criminal legal aid for prison law.

Cases will be referred to an independent adjudicator if they are so serious that additional days may be imposed as a punishment or, if the prisoner is not eligible for added days, the case is otherwise so serious that it should be inquired into by an independent adjudicator. Both categories of case engage Article 6(1) so will be within the scope of criminal legal aid for prison law.

Cases before the Prison Governor:

- 5.7 Will it be left for the governor to decide whether the Tarrant criteria will apply to the case? (Solicitors currently make representations to the governor as to why they believe the Tarrant criteria apply)**

If a prisoner requests legal representation for a disciplinary hearing before the governor, then the governor must consider and apply the Tarrant criteria to determine if the prisoner should be entitled to legal representation. This is set out in PSI 47/2011 which lists the criteria and principles that the governor should take into consideration. The PSI also states that the governor should take into consideration any reasons that have been put forward by the prisoner as to why they should be allowed legal representation.

- 5.8 Can I provide Advice and Assistance to a client to make written representations to request the governor to consider the Tarrant Criteria?**

Governor adjudication cases will only be in scope of criminal legal aid where the governor has given permission for legal representation after successful application of the Tarrant principles. If the Governor does not allow legal representation then the adjudication will not be covered by criminal legal aid.

If written representations are made in relation to the application of those criteria the work would be claimable as advice and assistance only if the decision is to grant representation

➤ [Return to the index](#)

## Parole Board Cases

### General Parole Board cases:

#### **5.9 Why will cases before the Parole Board where there is no power to direct release not be funded?**

The rationale for the scope criteria is set out in paragraphs 3-49 of annex B of the response paper.

#### **5.10 Does the scope of Parole Board cover release on temporary licence? Would this include Parole Board cases that are convened to release a prisoner in to open conditions?**

Release on temporary licence is considered by the Release on Temporary Licence Board (PSO 6300) rather than the Parole Board. The decision to release a prisoner on temporary licence is taken by the prison Governors and the Parole Board does not have the power to direct temporary release. Therefore this would not be a Parole Board case where the Parole Board has the power to direct release and would accordingly not be in scope.

Parole Board cases that are convened to consider whether to recommend to the Secretary of State that a prisoner can be transferred from closed to open conditions are not in scope. If the prisoner's categorisation is considered by the Parole Board at a hearing where the Board also has the power to direct the release of the prisoner, then the proceedings will be within the scope of criminal legal aid.

#### **5.11 Why is pre-tariff sift not covered by legal aid? - This can affect the prisoner's chances of being released. Will Pre- tariff cases be in scope at all?**

Pre tariff sifts will not be covered by criminal legal aid as these cases are not cases heard before the Parole Board in which the Parole Board has the power to direct release. Prisoners are able to use the complaints procedure in relation to the decision not to refer their case to the Parole Board for Pre-Tariff review.

Pre- Tariff Review cases will not be in scope as the Parole Board does not have the power to direct release in these cases but instead considers whether to recommend to the Secretary of State that the prisoner is suitable for a move in to open conditions prior to the expiry of their tariff.

#### **5.12 The Parole process for life sentenced prisoners involves a 2 stage process; the first involves the production of a dossier, at this point representations can be made on paper. Where the Parole Board has the power to direct release this will be stated in the dossier. Would funding be available under Advice and Assistance (Parole Board) for this type of work?**

##### **Will post tariff ICM reviews still be in scope (funded as advice and assistance)?**

The first stage of the parole process (the stage at which representations can be made on paper following the disclosure of the dossier) would be covered by Advice and Assistance for Parole Board cases provided that the Parole Board will have the power to direct release either on the papers or at an oral hearing. The notification letter from the PPCS will state the type of review (pre-tariff, on-tariff, post-tariff) that is being considered by the Parole Board and also makes reference to the time limit for representations to be made. On-tariff and post-tariff reviews will continue to be in scope of criminal legal aid for prison law, but pre-tariff reviews will not because the Parole Board does not have the power to direct release in a pre-tariff review.

Intensive Case Management (ICM) reviews could be funded as Advice and Assistance provided the ICM review forms part of Parole Board proceedings where the Parole Board has power to direct release i.e. the ICM would be used to make representations as to why the Parole Board review

should be done as an oral hearing and that oral hearing would be one at which the Parole Board would have the power to direct release.

**5.13 Will legal aid be available for issues that directly affect parole, such as resettlement or course completion? For example, if there was a condition imposed such as completion of a course that would directly impact on the likelihood of parole and a provider could not assist on this matter then this could have an impact on the client's liberty.**

Matters regarding a prisoner's sentence that may subsequently be considered by the Parole Board as part of a hearing where the Board has the power to direct release, such as categorisation, offender behaviour courses, sentence planning and non-Tarrant disciplinary proceedings before a Governor (and others), are not within scope of criminal legal aid for prison law. However, where the Board is making a decision on licence conditions or categorisation as part of a hearing where it has the power to direct release then such matters would be in scope.

Recall Cases:

**5.14 Will cases where the prisoner has been recalled to prison and their re-release is being considered be in scope?**

Recall cases that are considered by the Parole Board (where the Parole Board has the power to direct the release of the prisoner) will continue to be funded and remain in scope of criminal legal aid for prison law

Written representations under section 254(2) of the Criminal Justice Act 2003 for consideration of the release of a recalled prisoner will continue to be in scope of criminal legal aid for prison law. The initial written representations to PPCS will be funded through advice and assistance as the written representations to PPCS form part of proceedings before the Parole Board. If the Parole Board refers the case on to an oral hearing, the oral hearing will be funded by way of Advocacy Assistance.

This will include recall cases where representations are made to the PPCS under section 254(2) of the Criminal Justice Act 2003 and the prisoner is released using the Secretary of State's power of release. (N.B these types of cases will be funded as Advice and Assistance matters).

**5.15 Post Parole Board representations after the client has completed their imposed conditions are made and are considered without a Parole Board hearing but can directly relate to a prisoner's release, should these therefore be in scope?**

Post Parole Board representations such as those relating to the finalisation of licence conditions or representations dealing with aspects of the risk management plan (that may have altered as a result of the Parole Board hearing) will not be in scope of criminal legal aid unless they form part of proceedings where the Parole Board has the power to direct the release of the prisoner.

**5.16 Recall matters that relate to representations being made are not before the Parole Board, would this mean they are not in scope?**

Written representations under section 254(2) of the Criminal Justice Act 2003 for consideration of the release of a recalled prisoner will continue to be in scope of criminal legal aid for prison law. The initial written representations to PPCS will be funded through advice and assistance as the written representations to PPCS form part of proceedings before the Parole Board. If the Parole Board refers the case on to an oral hearing, the oral hearing will be funded by way of Advocacy Assistance.

**5.17 Can I provide Advice and Assistance in cases where my client has been recalled for breach of licence conditions and if so, in what circumstances would Advice and Assistance be claimable?**

The important factor in determining if a case is Advice and Assistance or Advocacy Assistance is what the provider knows at the time of instruction. For example if they are instructed to provide

written representations in order for the Parole Board to determine whether an oral hearing to consider the release of a prisoner is necessary then this would be claimable as Advice and Assistance. If at the point of instruction the provider is aware that there is going to be an oral hearing for the Parole Board to consider the release of the prisoner then this would be claimable as Advocacy Assistance only.

## Examples

**Client is recalled, he or she contacts provider. Provider determines that eligibility test is satisfied, opens Advice and Assistance file, and provider writes representations. Client is released by Parole Board following a paper review. Does the provider receive payment?**

Yes this would be payable as Advice and Assistance for Parole Board Matters as the Parole Board are still considering whether to direct the release of the client. Therefore the sufficient benefit test has been met.

**As before, but after provider opens Advice and Assistance file, provider writes representations which result in an oral hearing. Does the provider receive payment under Advice and Assistance or under Advocacy Assistance for the work done up until the hearing was granted?**

The provider would receive Advice and Assistance for the work done up until the hearing was granted as the written representations have resulted in an oral hearing being granted at which the Parole Board has the power to direct release.

Once the oral hearing was granted the Advice and Assistance file would need to be closed and an Advocacy Assistance file for the oral hearing would need to be opened.

**As before, but provider writes representations which are unsuccessful and the parole board makes no direction. Does the provider receive payment under A&A?**

The Provider would receive payment under Advice and Assistance in these circumstances.

**Provider writes representations (1<sup>st</sup>) which are unsuccessful and there is no direction. The provider then writes further representations (2<sup>nd</sup>) to the Parole Board within 28 days which result in an oral hearing being granted. Does the provider receive payment for the first reps and work done in their preparation, or only for the second reps?**

In this scenario the provider would be paid for the second representations only as this is the same case. They would be paid Advice and Assistance for making the further representations to the Parole Board and would then be able to claim Advocacy Assistance for the oral hearing.

They would have to close the Advice and Assistance file at the point at which the oral hearing was granted and then open the Advocacy Assistance file for the oral hearing.

This means that the provider would not be able to claim a separate fixed fee for the first set of written representations as these would be tied up in the same matter and therefore the provider is not able to claim one fixed fee for the first set of reps and another for the second set of reps. However, the profit costs for the 1<sup>st</sup> set of representations could be used to make the case an escape case but there would not be a separate fee in this case.

### 5.18 Does the scope of recall cases cover HDC recall cases?

Recall for breach of curfew (under s.255 of the CJA 2003) is not within scope as of 2 December 2013 as the decision on release is for the Secretary of State and not the Parole Board. However, recall for breach of (non-curfew) licence conditions (under s.254(2) CJA 2003) will remain in scope (see question 5, page 6).

➤ [Return to the index](#)

## Miscellaneous – Prison Law

### **5.19 Will we be able to continue to work on matters that are out of scope post 2<sup>nd</sup> December 2013 for clients who signed the application form prior to the 2<sup>nd</sup> December 2013? E.g. the client applied for legal aid in November for a matter that is to be determined in January**

Where the client has signed an application form prior to the 2<sup>nd</sup> December (in line with the transitional arrangements set out in regulations) for a matter which is to be determined post 2<sup>nd</sup> December the provider will be able to continue working on this matter subject to the sufficient benefit test being met at the time of the application and the relevant evidence of this being included on the file. E.g. if the application was made in December for a matter to be determined 6 months later it is unlikely that the sufficient benefit test will be met.

### **5.20 Will cases concerning licence condition matters be in scope of legal aid?**

Post release Licence conditions matters (such as applications to vary licence conditions) will not be within the scope of criminal legal aid for prison law as they do not satisfy any of the scope criteria set out in regulation 12 of the amended Criminal Legal Aid (General) Regulations 2013.

Where Licence conditions are considered as part of the Parole Board proceedings at which the Parole Board is considering to direct release these proceedings would be covered by the Advocacy Assistance for the Parole Board matter. Separate legal aid funding would not be available.

### **5.21 How are you going to amend the supervisor standard to reflect the revised scope criteria (as 60-70% of work that is currently funded and included on the supervisor form will be removed from scope)?**

The supervisor standard is backward looking (e.g. work done in the previous 12 months) and therefore this will not be amended for the current crime contract. However the Prison Law Supervisor Standard will be amended for the new crime contract. This will be amended to reflect the scope changes, removing those criteria which will be unsuitable under the new scope of prison law. We will also look at the numbers of hours experience required. The LAA will work with APL to make amendments to the standards to ensure that the criteria are suitable for continuing to maintain the quality of supervisors going forward based on the scope criteria.

### **5.22 Most preparatory work used to be done through advice and assistance however due to the reduction in scope criteria this will no longer be possible. Will these be able to be funded through alternative means? E.g. they will result in potential JRs could they be funded as a JR? N.B. JR limited to 15 matter starts a year.**

Civil legal aid for judicial review may still be available, subject to means and merits. There is no limitation on new matter starts in relation to legal help for judicial review proceedings undertaken as associated CLS work under the 2010 Standard Crime Contract. Associated CLS is available for any matter that remains in scope of the amended 2010 Crime Contract.

Associated CLS is still available for any parole case that remains within scope or for any existing prison law case in which legal aid was applied for properly before 2 December 2013 - even if it concludes after 2 December 2013. For example, if a category A review commenced on 1 October 2013 and the final decision is made on 31 December 2013, as the original matter was within scope, associated CLS is available.

By contrast, associated CLS would not be available for a category A review case where the application for funding was made on or after 2 December 2013 as that matter would not be within scope of the amended 2010 Standard Crime Contract.

### **5.23 Will Exceptional Cases Funding be available for prison law matters after the implementation of the LAT reforms? (Will there be a mechanism to apply to the Exceptional Cases team in some circumstances?)**

The scope of Exceptional Case Funding under section 10 of LASPO is not being amended as part of the LAT reforms. Decisions on funding are taken on a case by case basis.

**5.24 Would cases that revolve around mistakes in dates of reviews for example be in scope – these would not directly relate to a Parole Board hearing directing release but if successful could have an impact on their release date so could be considered in scope.**

If there is a dispute about the expiry of the tariff date then this would be considered to be a sentence calculation case and would be within scope (see Q3 above)

**5.25 Will legal aid be available to assist HMP prisoners?**

The answer to your query is that these types of cases- a review of the youth lifer (HMP prisoners) sentence in the High Court - will continue to be funded as Prison Law Advice and Assistance, as they have a direct impact on the prisoner's liberty and concern a dispute of the length of the prisoner's sentence.

**5.26 We note ICM reviews can now opened can you clarified which prison law matter type description this should be given?**

You would need to use Matter Type code 33 - Written representations Parole Board. The ICM must form part of the Parole Board case in order to be claimable.

**5.27 What other issues can we open under matter code 18?**

The scope of Prison Law Legal Aid was reduced from 2nd December 2013 in line with the MoJ's consultation; Legal Aid Transformation. The three areas of Prison Law that remain in scope post consultation are (a) Sentence Calculation cases, (b) Disciplinary cases before the Prison Governor where the Prison Governor gives permission for representation based on the successful application of the Tarrant criteria or disciplinary cases that engage article 6.1 (disciplinary matters before an independent adjudicator) and (c) Parole Board matters in which the Parole Board has the power to direct release. Matter Type 18 therefore should be used for Advice and Assistance claims in relation to (a) above.

**5.28 Can you confirm whether Legal Help under Associated CLS, as Part 13 of the Standard Crime Contract 2010 can be used still for investigation stage for judicial review in recategorisation review representations/sentence progression cases.**

The Associated Civil Class of work under the Standard Crime Contract 2010 covers Judicial Reviews that arise from criminal matters started under this contract. Therefore if a Re-categorisation matter was started prior to 2nd December 2013 (when it was still in scope) which is now requires a Judicial Review then this could be opened under the Associated Civil Class of work subject to the Means and Merits test as normal (despite re-categorisation matters no longer being in scope).

➤ [Return to the index](#)