

The Use of Experts

Quality, price and procedures in publicly funded cases

Consultation Paper

Contents

1. Foreword	3
Part 1	5
2. Executive Summary	5
3. How to Respond	7
4. Consultation Questions	8
5. Introduction	10
Part 2 - Quality Assurance	12
6. Accreditation	12
7. Developments	15
8. The Way Ahead	16
Part 3 – Fees	17
9. Fees	17
Part 4 - Procedures	22
10. Procedures	22
Part 5	27
11. Question and Answer Briefing	27
Part 6 Impact Assessments	28
12. Initial Equality Impact Assessment	28
13. Initial Regulatory Impact Assessment	28
Part 7	31
14. Government Code of Practice Criteria	31
Part 8 - Annexes	32
ANNEX A The Commission and the CRFP	32
ANNEX B The Commission and the NRPSI and CACDP	34
ANNEX C Priorities for Accreditation	36
ANNEX D Outline Proposals for Direct Contracting	37
ANNEX E – Part 1 Crime – Current Guideline Rate Bands and Guidance	39
ANNEX E – Part 2 Crime – Proposed Guideline Rate Bands and Guidance	41
ANNEX F Civil – Proposed Guideline Rate Bands and Guidance	45
ANNEX G – Part 1 Family – Proposed Guideline Rate Bands and Guidance	48
ANNEX G – Part 2 Family – Particular Difficulties in Children Cases	52
ANNEX H Draft terms of Appointment	53

1. Foreword

The Legal Services Commission (the Commission) is committed to delivering services that meet the needs of clients and deliver value for money for the taxpayer. To achieve this it is essential that we work to continuously improve the quality of the services we purchase on behalf of clients while making best use of the limited funds available.

The Commission spent over £130 million on experts' fees in criminal, family, immigration and other civil cases during 2003-04¹. With demand on the limited legal aid budget increasing, we need to review the quality and cost of expert witnesses, just as we have already done with publicly funded solicitors and barristers. The proposals contained within this paper are a positive step and will deliver benefits to the legal profession, the Commission and, most importantly, the people who need our help at difficult times in their lives. The key benefits are:

- Raising the standard of services by encouraging the use of accredited (quality assured) experts
- Clear terms agreed up front (with faster payment), avoiding delays, misunderstandings and consequent disputes
- Simpler administration and procedures, reducing bureaucracy and saving costs
- Greater clarity - particularly when guideline payment rates are followed - over when fees may be reduced on assessment, resulting in fewer complaints by experts
- Greater control over the rising cost of experts' fees

Taken together, the proposals in this paper will, I believe, improve the quality of both the service received by clients and the service we deliver to solicitors. These proposals are part of our strategy to deliver a sustainable legal aid system and work closely with all those who provide services.

We look forward to receiving your responses to this consultation, which we will consider carefully as part of our decision making process. We are happy to meet with interested organisations during the consultation period to discuss our proposals and hear their views.

¹ In 2003–2004, the Commission paid over £200 million for disbursements in publicly funded cases (over £140 million CLS and over £60 million CDS). The Commission does not collect data on specific types of disbursements. Experts' fees appear in solicitors' bills as disbursements and it is the solicitors' responsibility to pay the experts. However, our estimate is that experts' fees account for about two thirds of our expenditure on disbursements.

Please let us have your views, and help us build a stronger, higher quality legal aid system, with the client at its heart.



Clare Dodgson
Chief Executive
Legal Services Commission
November 2004

Part 1

2. Executive Summary

Proposals

- 2.1 The Commission has addressed and continues to address the quality and cost of lawyers' services in Commission-funded cases. The proposals in this paper are to address those issues in relation to the use of experts.
- 2.2 We believe that solicitors should be encouraged to use accredited (quality assured) experts, i.e. experts and interpreters who are:
 - On the register maintained by the Council for the Registration of Forensic Practitioners (CRFP);
 - On the National Register of Public Service Interpreters (NRPSI); or
 - On the register of the Council for the Advancement of Communication with Deaf People (CACDP).
- 2.3 The Commission's long-term aim is to arrive at a position where all experts, who are regularly instructed in Commission-funded cases, are accredited.
- 2.4 To encourage accreditation, and to facilitate the instruction of accredited experts, the Commission will endorse accredited experts who agree to work as part of the Community Legal Service (CLS) and Criminal Defence Service (CDS).
- 2.5 Experts' fees in Commission-funded cases, like lawyers' fees, must be subject to control. The pressures on the legal aid budget are such that no element of legal aid expenditure can go without scrutiny.
- 2.6 The Commission will publish guideline rates for experts working as part of the CLS and CDS.
- 2.7 The guideline rates for experts in criminal cases, published in Appendix 2 to the Costs in Criminal Cases (General) Regulations 1986 (as amended), will continue to be the Commission's guideline rates for crime, with additional guidance.
- 2.8 The guideline rates for experts in civil cases will relate to those for crime, with higher maximum, and lower minimum, rates and guidance.
- 2.9 The guideline rates for family will be similar to those for civil, with guidance.
- 2.10 Commission-granted prior authorities (guaranteeing payment of the sum they specify) will be abolished. Rates, within the guideline rates and in accordance with the published guidance, will be accepted as reasonable on assessment. Provided such rates are charged, fees should be disallowed on assessment only if excessive time was spent or unnecessary work was carried out.

- 2.11 Prior authorities will no longer be needed to obtain payments on account of disbursements in Crown Court proceedings.
- 2.12 Terms of business between solicitors and experts will include Commission-specified terms, which will cover the timing of payment and the allocation of risk in the event that fees are reduced on assessment.
- 2.13 Task-specific block fees e.g. for specific reports, will be introduced where practicable.
- 2.14 There will be provision for prior approval of work by an expert, by a designated Commission Unit, in exceptional cases.
- 2.15 The Commission will replace case-by-case, individual payments on account of disbursements under civil certificates with a contract-by-contract, annual (or bi-annual) payment on account of disbursements.
- 2.16 Firms of solicitors that have been approved by the Commission as “Preferred Suppliers” will be able to self-grant authorities for expenditure on experts’ fees up to specified limits, thus providing a guarantee of payment to them for the fee incurred.
- 2.17 Direct contracting for experts’ services will be considered where practicable if this offers the possibility of better value for money.

Benefits

- ✓ Raising the standard of forensic expert services by encouraging the use of accredited (quality assured) experts;
- ✓ Clear terms of appointment (with faster payment and clear allocation of risk), avoiding delays, misunderstandings and consequent disputes;
- ✓ Simpler administration and procedures, reducing bureaucracy and saving costs;
- ✓ Greater clarity - particularly when guideline rates are followed - over when fees may be reduced on assessment; and
- ✓ Greater control over rising experts’ fees.

3. How to Respond

- 3.1 This consultation paper sets out a number of specific questions regarding the proposals put forward. Views are welcome on any aspect of the proposals and in particular on the issues identified in the consultation questions. Wherever possible, please provide evidence to support your comments.
- 3.2 We want to stress that this is a consultation paper and that it sets out only proposals. Whatever we implement, after consultation, we will continue to monitor the use of experts in the cases we fund and be willing to implement further reforms in the light of further information and developments.
- 3.3 We are particularly interested in hearing from bodies that represent expert witnesses, from solicitors who frequently instruct them and from lawyers and experts who already have views on what reforms are needed in this area. The views of members of the public who have had first hand experience of a case involving expert evidence are also welcome as, of course, are those of the judiciary and those involved in the administration of justice.
- 3.4 When responding please state whether you are responding as an individual or representing the views of an organisation. If responding on behalf of an organisation, please make it clear who the organisation represents and, where applicable, how the views of members were assembled. Copies of this consultation paper are available from the Commission's website www.legalservices.gov.uk
- 3.5 Unless you ask the Commission to keep the name and the contents of your response confidential, your name and the contents of your response may be made public. Please ensure that your response is marked clearly, if you wish your response or name to be kept confidential. Confidential responses will be included in any statistical summary of the comments received and views expressed.

Please send responses by e-mail, post or fax by **25th February 2005** to:

Name	Sue Wilson-Fraser
Address	Contract Design Legal Services Commission 85 Gray's Inn Road LONDON WC1X 8TX
DX	450 LONDON
Phone	020 759 0306
Fax	020 7759 0547
E-mail	sue.wilson-fraser@legalservices.gov.uk

4. Consultation Questions

- 4.1 Comments are welcome on all issues raised in the paper, but we particularly wish to hear from respondents in relation to the following questions:
- 4.2 Do you view services under the CLS and CDS (legal aid) as public services like the NHS? **(See para 5.2)**
- 4.3 Do you consider that accreditation will generally raise the quality of forensic services provided by experts? **(See para 5.13)**
- 4.4 Do you agree that the bodies identified by the Commission for the quality assurance function are the most appropriate? Are there any other bodies that should be considered as quality assurance bodies? **(See para 6.9)**
- 4.5 What is your professional body and do you consider that it would be practicable for it to work with the CRFP to develop a post-qualification forensic work specialism as we propose? **(See para 6.12)**
- 4.6 Do you agree with the Commission's view that, even in the long term, compulsory accreditation is not practicable? **(See para 6.14)**
- 4.7 To what extent do you support the Commission's quality assurance proposals and are they equally applicable to all types of proceedings? **(See Part 2)**
- 4.8 Do you agree that experts' fees for services under the CLS and CDS should be lower than in privately funded cases?
- 4.9 Do you agree that an expert should charge less in a less serious crime cases? **(See para 9.12)**
- 4.10 Do you agree that "proportionality" should affect experts' fees in civil cases?**(See para 9.15)**
- 4.11 What are your views on "proportionality" of costs in family cases? **(See para 9.21)**
- 4.12 Do you agree that, like lawyers, experts should keep a detailed record of the work they perform, (and of the time taken), and what do you think are the benefits and drawbacks of doing this? **(See para 9.33)**
- 4.13 Do you appreciate the Commission's difficulties in dealing with applications for prior authorities in cases that are not managed under individual case contracts? If so, do you agree that abolishing prior authorities and publishing guideline fees is a reasonable way of dealing with this issue? **(See para 10.4)**
- 4.14 Do you agree that, for (a) civil and (b) family proceedings, the guideline rates for experts should have (i) a lower minimum and (ii) a higher maximum? And if not why not?**(See Para 9.17 and Annexes F and G)**
- 4.15 Which view of an expert's obligation to the court do you feel most accurately reflects the current position? If neither, please state your view of the obligation **(See Annex H – Draft terms of appointment).**

- 4.16 Do you agree that, in criminal proceedings, the prosecution and defence should work to the same guidelines for experts' fees?(**See para 9.9**)
- 4.17 Do you agree that, given the width of crime guideline rate bands in the regulations, it is appropriate to introduce guidance on fees within the bands and to divide the bands? (**See para 9.11**)
- 4.18 Do you consider that additional specialisms need to be included in the crime guideline bands? If so, what are they, and what group do you consider they should be in? (**See Annex E- Part 2**)
- 4.19 Do you agree that the number and cost of experts' reports in public law Children Act cases have increased significantly in recent years? Do you consider that the assessment work undertaken (or not) by local authorities and the approach of a local authority towards payment of experts' fees has a significant impact? If so, please explain by reference to examples.(**See para 9.20 and Annex G-Part 2**)
- 4.20 Do you consider that, in public law Children Act cases, the court should pay for the expert services it approves/requires (in the same way that the court pays for professional and expert witnesses attending court to give evidence in criminal cases)? (**See para 9.24**)
- 4.21 Should solicitors and experts be able to agree to disapply any of the proposed standard terms of instruction in cases under the CLS and CDS?(**See Annex H**)
- 4.22 Do you consider that more detailed guidance than that proposed about fees is necessary and, if so, do you have any to suggest?(**See Annex E- Part2, Annex F and Annex G- Part 1**)
- 4.23 What are your views on the categories of expert proposed in the fees guidance? Have you others to suggest and, if so, in which group should they appear?
- 4.24 To help experts with questions about Commission-funded legal services do you consider that the Commission's website www.legalservices.gov.uk could usefully include a section for experts?

5. Introduction

- 5.1 This is a consultation paper on the use of experts in cases funded by the Commission.
- 5.2 The Commission was established under the Access to Justice Act 1999 (“the Act”) and is responsible for the Community Legal Service (CLS) and the Criminal Defence Service (CDS) (Legal Aid). Like the National Health Service (NHS), Legal Aid was brought into being with other social reforms after the Second World War. Services under the CLS and CDS are, like the NHS, funded from public money.
- 5.3 As required by the Act, the Commission has taken steps to address quality assurance (ss. 4 and 12) and value for money (ss. 5 & 18) in services provided by lawyers in the CLS and CDS. It now wishes to address these issues in services provided by experts and to simplify the procedures relating to the instruction of experts in the CLS and CDS.
- 5.4 Currently, in Commission-funded (legally aided) cases:
- experts are not subject to quality assurance²
 - experts’ fees have risen faster than lawyers’ fees
 - the procedures and rules relating to the instruction of experts are overly complex and poorly understood.
- 5.5 Part 2 of this paper sets out how the Commission proposes to address the first of these issues. Parts 3 and 4 address the other two. These proposals will help the Commission to meet its statutory obligation to obtain the best possible value for money as required by s.5(7) & s.18(3) of the Act.
- 5.6 An expert in legal proceedings is someone whose knowledge or experience of a particular field or discipline means they are competent to interpret facts, express opinions and draw conclusions on matters relating to that field or discipline, and who has been employed to do so.
- 5.7 When the services of an expert are needed, the required level of expertise depends on the particular circumstances of the case. Experts required in Commission-funded cases are generally those with professional qualifications e.g. doctors, accountants and engineers. The opinions of the most highly specialised experts are needed only rarely. What is required is an expert who is competent in their field or discipline and for the job in hand.
- 5.8 Many experts provide forensic services in their own time, as an adjunct to practising their profession. Others do so in their business or practising time, whilst others are either, in their own right or as part of a practice or business, wholly or substantially engaged in providing forensic services.

² The Commission’s contracts with lawyers require them to note whether or not they will use an expert again but this is not “quality assurance” in the sense anticipated by this paper.

- 5.9 Although interpreters do not provide expert evidence in the way that other experts do, they do provide expert services and the proposals in this paper also cover the use of interpreters.
- 5.10 In 2003–2004, the Commission paid over £200 million for disbursements in publicly funded cases (over £140 million CLS and over £60 million CDS). The Commission does not collect data on specific types of disbursements. Experts' fees appear in solicitors' bills as disbursements and it is the solicitors' responsibility to pay the experts. However, we estimate that experts' fees account for about two thirds of our expenditure on disbursements. On that basis the Commission spent over £130 million on experts in 2003–2004.
- 5.11 Commission-funded cases can be grouped as:
- Crime
 - Civil
 - Family (private and public law)
 - Immigration
- 5.12 The particular features of each type of case can affect issues relating to experts. For example:
- In criminal proceedings there should be “equality of arms”.
 - In civil proceedings, the Civil Procedure Rules (CPR) provide for “proportionality” on costs, and give the court power to restrict expert evidence and the experts' fees that may be recovered from another party, as well as direct evidence that shall be given by a single joint expert.
 - In some family proceedings, e.g. public law Children Act proceedings, the court exercises control over the use of experts and has power to control their costs.
 - In immigration proceedings, experts are mainly required for only a few specific tasks such as interpreting, reports on the country of origin, and medical reports on ill treatment and torture.
- 5.13 However, quality assurance, which we consider in Part 2, is relevant to them all. By raising the quality of expert evidence in general, an effective accreditation scheme for forensic experts would reduce the risk of miscarriages of justice.
- 5.14 Our Part 3 proposals are intended to facilitate the instruction of quality assured experts willing to work as part of the CLS and CDS. As legal aid is funded by the taxpayer, our proposals, as well as providing for greater transparency, also include controls on experts' fees, like lawyers' fees, in the CLS and CDS.

Part 2 - Quality Assurance

6. Accreditation

- 6.1 The Commission believes that experts who regularly provide forensic services should be quality assured (or “accredited”).
- 6.2 A number of high-profile miscarriage of justice cases (in which defective expert evidence was given and defective interpreting services were provided) prompted the establishment of a Government-supported accreditation body – the Council for the Registration of Forensic Practitioners (CRFP)³- for experts generally, and led to the Institute of Linguists (IoL)⁴ establishing, with Government support, the National Register of Public Service Interpreters (NRPSI).
- 6.3 The CRFP's central function is to prepare and manage a register of currently competent forensic practitioners - first the mainstream forensic specialties (science, fingerprints, scene examination) then extending to forensic medicine, transport investigation, computing, imaging and other professional areas. It covers experts who work in civil and criminal cases. Experts who have been accredited must go through a revalidation procedure every four years to demonstrate that they remain competent.
- 6.4 The Institute of Linguists wholly owns a non-profit making subsidiary - the National Register of Public Service Interpreters Ltd. Its purpose is to establish and maintain a register of interpreters who are currently competent to provide interpretation services in the law, local government and healthcare sectors.
- 6.5 The Council for the Advancement of Communication with Deaf People (CACDP)⁵ holds the Registers and produces a Directory of Language Service Professionals (LSPs):
- BSL/English Interpreters (Members, Trainees & Junior Trainees):
 - Lipspeakers (Level 2 and Level 3):
 - Interpreters for Deafblind People (Manual)
 - Speech To Text Reporters
- 6.6 We support the aims of these bodies (further information about them is set out in **Annexes A and B**) and consider that, where practicable and provided the fees charged are reasonable, solicitors in Commission-funded cases should instruct experts and interpreters who are on these registers. They are not registers of “super experts” but of experts who have been independently assessed as competent to provide forensic and interpreting services.

³ (www.crfp.org.uk)

⁴ (www.iol.org.uk)

⁵ (www.cacdp.org.uk)

- 6.7 Whilst we are aware of other bodies which assess or test experts who intend to carry out forensic work and which maintain registers of experts, it appears to us that the CRFP is the one body that has, and has had since its inception, many of the necessary attributes to do so consistently and effectively to an appropriate standard (quite apart from the fact that it was established with public money for that very purpose). We set out some of these attributes below:
- It puts the public interest first and has a strong user involvement in its governance
 - It is independent of sectoral interests and of Government
 - It has a published code of conduct with which all those registered must comply
 - Its register is accessible to all without charge and is updated daily
 - The register has defined and rigorous entry requirements which are based on a structured assessment of current competence against criteria developed within each individual specialty
 - Assessment is a requirement in every case - registration cannot be guaranteed simply on the basis of qualifications or length of service
 - Assessment is by a peer from the same professional specialty but from a different organisation
 - Assessments are subject to external verification
 - Procedures exist to avoid conflicts of interest (e.g. someone who has trained an applicant cannot be their assessor)
 - Registration is time-limited and must be renewed every four years by further assessment of current competence
 - Disciplinary procedures can lead to striking off the register.
- 6.8 We are, however, conscious that the resources of the CRFP are limited and that they have a huge task.
- 6.9 Therefore, we would like to see relevant professional bodies begin to work with the CRFP so that the numbers and types of experts who are registered increase much more rapidly than has been possible till now.
- 6.10 Professional bodies could, in consultation with the CRFP, develop post-qualification training and competence assessments within their specialties (if necessary working with bodies that provide training on court procedures, the expert's duties to the court etc). The CRFP could advise on these, applying their tested model which has been developed with lead organisations for each professional group on the register, and validate assessments. Those who passed the assessment would be eligible for entry on the CRFP register.

- 6.11 Under such a system, the CRFP would remain responsible for the register, and would continue to control entry to it, but much of the work in developing the necessary criteria within a specialty and in enabling the CRFP to handle individual applications for registration would be carried out by the relevant professional body – allowing the CRFP register to expand much more quickly. We have discussed this approach with the CRFP and they consider it to be a practical way forward. It is the process they have recently agreed in principle with the Royal College of Paediatrics and Child Health in developing criteria for paediatricians. We understand that they intend to follow a similar process in their planned work with the Royal College of Psychiatrists.
- 6.12 We appreciate that a significant expansion in the coverage of the register will need to be managed in a controlled manner. We would like to see it expand most quickly to cover the experts we fund most often and whose reports are the most expensive. The CRFP has indicated that it is prepared to give priority to these. Attached (**Annex C**) is a list of these experts. As we do not have detailed data on the types of experts we fund, the list has been compiled from discussions with experienced caseworkers in our regional offices.
- 6.13 There is a shortage of experts in some specialisms – particularly of doctors who are willing to work in family cases. We would not wish such experts to view CRFP procedures as a further deterrent to carrying out such work, thus exacerbating the shortage.
- 6.14 One point that we would like to make clear, as it is often a source of misunderstanding, is that we do not regard the compulsory registration of all expert witnesses as practicable. Our proposals are intended to facilitate and encourage the use of accredited experts, not to confine solicitors to instructing only accredited experts. We must also add that we do not believe that accreditation, of any type, could completely rule out the possibility of deficient expert evidence being given in future. However, our view is that accreditation will reduce that likelihood and this will benefit the good administration of justice.

7. Developments

- 7.1 Whilst we have been preparing this paper, three events relevant to the quality assurance of experts have occurred. First, the working group on sudden unexpected death in infancy, convened by the Royal College of Pathologists and the Royal College of Paediatrics and Child Health and chaired by Baroness Helena Kennedy QC has published its report.
- 7.2 The report recommends that:
- The Royal Colleges or specialty organisations should accredit experts
 - Doctors should have special instruction on the role of the expert witness before holding themselves out as court experts
 - Such instruction should be renewed at least every five years
 - Before an expert gives evidence, the judge should establish the expert's credentials.
- 7.3 Secondly, a pilot scheme has begun in the northwest of England, where an established expert panel scheme based on nominations by lawyers and judges is already in use by the courts. In the pilot, solicitors are invited to consider how they can use the CRFP register in connection with proceedings, and judges ask experts in those specialties that are available for registration whether they are on the CRFP register.
- 7.4 We welcome this initiative as a means of raising the profile of the CRFP, of increasing the awareness of the importance of accreditation among lawyers, experts and the judiciary and, we hope, as a forerunner of future practice. The CRFP have told us that the pilot is already beginning to highlight judges' interest in the concept of registration and their concern that the CRFP register should expand as quickly as possible to cover a wide range of specialties.
- 7.5 Thirdly, last year the Civil Justice Council established an Experts Committee to examine, and to produce a report on, experts in the civil justice system. As well as looking at the use and role of experts generally, this Committee is also looking at accreditation, training, professional discipline and court control of experts as well as their fees and expenses. The Commission looks forward to the publication of this Committee's report, which will inform the Commission's future policy in respect of experts in Commission-funded civil proceedings.

8. The Way Ahead

- 8.1 The following paragraphs outline how the Commission proposes to relate to the CRFP, IoL and CACDP and how their registers will affect the Commission's procedures.
- 8.2 The Commission will not question the competence of any expert who has been accredited by the CRFP or of any interpreter who is on the IoL's NRPSI or CACDP register.
- 8.3 Such experts will be asked if they are willing to work as part of the CLS and CDS. If they are, this could be noted on the appropriate register. Solicitors would then be able to instruct such experts knowing not only that they were competent but also that they had been endorsed by the Commission, so that there should be no issues over their fees or the service which they would provide.
- 8.4 Commission guidance would specify that, provided their fees were reasonable, solicitors should always select an accredited expert in preference to one who is not accredited.
- 8.5 Working "as part of the CLS and CDS" is explained in Part 4 of this paper. We also propose terms of agreement, between solicitors and experts who have agreed to work as part of the CLS and CDS.
- 8.6 In short, our proposals in Part 4 are to facilitate the instruction of quality assured experts who are willing to work as part of the CLS and CDS.

Part 3 – Fees

9. Fees

General

- 9.1 Experts' fees in Commission-funded cases, like lawyers' fees, must be subject to control. The pressures on the legal aid budget are such that no element of legal aid expenditure can go without scrutiny.
- 9.2 Information from our regional offices, from solicitors and from other sources⁶ shows that rates and amounts paid to experts, unlike those paid to lawyers in Commission-funded cases, have increased significantly in recent years. Information from our regional offices often shows wide variations in experts' fees – particularly in civil cases.
- 9.3 We believe that the main factors currently affecting rates are:
- Whether the solicitor has a wide choice of suitable expert
 - Whether there is effective (local) competition
 - Whether an expert operates as a (or in a) business providing forensic services
- 9.4 A solicitor's choice of expert may be limited by, for example, their own knowledge of the experts available, by shortage of time, by junior experts referring instructions to their senior colleagues (e.g. registrars to consultants) or by a real shortage of experts.
- 9.5 The effectiveness of (local) competition depends on several factors unconnected with the Commission. Whether an individual expert provides forensic services as a business or does so in their spare time, whilst continuing to practice their profession, is outside the Commission's control.
- 9.6 The LSC is not a direct purchaser of experts services, as there are so many experts in so many different fields and the services required vary from case to case. Therefore, it would be difficult for the Commission to attempt to contract with experts directly on a wide scale.
- 9.7 Having said that, in our view, direct contracting for some forensic specialisms has the potential to deliver benefits. Therefore, we set out our outline proposals for direct contracting in **Annex D**. We would be interested in hearing from any organisations, whether or not they are from one of the specialisms or areas outlined in our proposals in **Annex D**, that are interested in contracting directly with us to deliver better value for money.

⁶ For example the Bond Solon survey published in February 2003 showing that the average annual income for expert witnesses rose from £35,000 in 1999 to £50,500 in 2002, with some earning as much as £260,000 a year, despite this work being an adjunct to a professional career.

- 9.8 Provided we can effectively address quality and fees as set out in this paper, we expect to continue to rely on solicitors' contracting with experts on a case-by-case basis for most experts' services.

Crime

- 9.9 Guideline fees for experts in Commission-funded criminal cases already exist. Guidance and guideline rate bands for expert witnesses in criminal proceedings appear in Appendix 2 to the Costs in Criminal Cases (General) Regulations 1986 which is relied upon by our regional offices (**Annex E – Part 1**). The Crown Prosecution Service uses these guideline rate bands. This ensures a level playing field for the prosecution and defence and we see no reason to depart from them.
- 9.10 The courts also use these guideline rate bands. In Commission-funded criminal cases, when an expert attends court to give evidence, the court (and not the solicitor) is responsible for paying the expert.
- 9.11 As the bands are wide, we consider that, to assist defendants' solicitors and the experts they instruct, as well as those responsible for costs assessment, the guidance on the bands should be expanded so far as they relate to legally aided defendants, to provide greater certainty, and that this should be linked to divisions within the bands.
- 9.12 We consider that the seriousness of the case is a factor that should be taken into consideration when selecting an expert. A privately paying client would, we suggest, be prepared to pay more by way of experts' fees in a more serious (to them) case than in a less serious (to them) case. This concept is similar to the interests of justice test applied to the grant of a (legal aid) representation order. Our proposed new guidance and divided rates (and some proposed block fees for particular work/reports) are set out in **Annex E – Part 2**. So far as they relate to attendance at court (because the court – and not the solicitor or Commission - is responsible for payment) the proposed new divided rates are merely illustrative.
- 9.13 Of course, there will be exceptional cases in which higher rates will be justifiable. Proposed guidance on when higher rates may be justifiable in criminal proceedings is also set out in **Annex E – Part 2**.

Civil

- 9.14 Although experts' rates in civil proceedings have, historically, tended to be higher than in criminal proceedings⁷, we can see little justification for this.
- 9.15 As in criminal proceedings, we consider that privately paying clients would take into account the seriousness of the case (to them) when deciding what amounts they were prepared to pay in experts' fees. The Civil Procedure Rules (CPR) recognise this, as they require that, to be recoverable from an opponent, costs must be proportionate⁸. In our view, the concept of "proportionality" should also apply to experts' fees payable by the Commission. In some cases, an expert's

⁷ This may be because, historically, lawyers' fees in civil cases tended to be higher than in criminal cases.

⁸ Under Part 35.4 (4) of the CPR the court may also limit the amount of the expert's fees and expenses that the party who wishes to rely on the expert may recover from any other party.

fees should be lower than in other cases – towards the bottom of, or below, the crime guideline rate bands.

- 9.16 In many civil cases, solicitors may recover more from their client's opponent, under an order for costs, than they would have received from their client. However, it is generally accepted that an expert's duty to the court precludes them from recovering any kind of conditional or contingency fee.
- 9.17 Therefore our view is that the Commission's guideline rate bands for experts' fees in civil proceedings should be wider than those in criminal proceedings, providing for lower minimum rates and for higher maximum rates.
- 9.18 However, because historically, legal aid rates for experts in civil proceedings have tended to be higher than in criminal proceedings, the guideline rates we propose for civil proceedings are, overall, higher than those for criminal proceedings.
- 9.19 Our proposed bands (including divisions similar to those we propose for the crime bands) and guidance on them are set out in **Annex F** with our proposed guidance on when, exceptionally, higher rates may be justifiable.

Family (Private and Public Law)

- 9.20 In recent years, there has been a significant increase in the number and cost of expert reports – particularly in public law Children Act proceedings. Some reports can cost over (or even multiples of) £10,000.
- 9.21 Nevertheless, as things stand, we see no reason for a different approach in family cases. The seriousness of the proceedings and proportionality can also be issues in family proceedings. For example, spending large sums contesting an interest in a matrimonial home is likely to be more justified when there is a lot of equity than when there is little equity. Expert medical reports are likely to be less justifiable when the details of contact are in issue than when residence is in issue.
- 9.22 Our proposed bands (including divisions similar to those we propose for the crime bands) and guidance on them are set out in **Annex G – Part 1** with our proposed guidance on when, exceptionally, higher rates may be justifiable.
- 9.23 However, for the reasons set out in **Annex G – Part 2**, we consider that there are difficulties in implementing the totality of our proposals in public law family cases in the near future – although there is no reason in principle why guideline rates should not be applied.
- 9.24 As a separate issue, we question whether, particularly in public law family cases, the present arrangements concerning the use of experts are the most appropriate. It is the interests of the children that are paramount and, to that end, the courts' role is quite interventionist. In proceedings where the court determines what expert evidence is required in a child's interests, it may be more appropriate for the court to fund obtaining that evidence. The courts already pay the fees of experts who attend court to give evidence in criminal proceedings.

Immigration

9.25 We plan to publish a separate consultation paper on immigration cases, which will deal not only with experts but also with other issues relating to such cases. Therefore we merely outline our preliminary view in this paper. That is, because similar services and reports are regularly required in such proceedings, we expect to be able to specify fees for such services/reports on a block basis e.g. a specific fee for a country of origin report and a specific fee (or fees) for a medical report on ill-treatment and torture.

Fees Outside the Guidelines and Exceptional cases

9.26 We expect that publication of the guideline rate bands will help to ensure that solicitors instruct experts who charge within them. Where an expert charges more, the extra charge will have to be justified (in accordance with the Commission's published guidance) on cost assessment, or the fees will be reduced.

9.27 Similarly, as at present, if an expert's fee is higher than is considered reasonable (even though the hourly rate may have been in accordance with the guideline rate bands and guidance on them) the higher fee will have to be justified on cost assessment or the full amount will not be allowed.

9.28 For exceptional cases e.g. where the proposed overall fee for the work to be done is over £5,000 we accept that both the solicitor and the expert will need increased certainty as to whether the fee will be allowed on cost assessment and we outline proposals for dealing with such situations in the "Procedures" section of this paper.

All Cases

9.29 Most experts are not wholly engaged in the provision of forensic services. Therefore, and given the many different types of expert, we do not consider that it is necessary for experts' fees to be specified in regulations in the way that fees for the provision of professional⁹ evidence (and solicitors' fees) are specified. However, we do not rule this out should the proposals in this paper not prove effective.

9.30 However, we are very conscious of the fact that hourly rates are only one component of the cost of experts' services. The other main component is time.

Example:

9.31 Expert A may charge £70 per hour and expert B may charge £100 per hour. But if expert A would take 5 hours to prepare a report and expert B would take 3 hours to prepare a similar report, the report of the apparently more expensive expert – expert B - will cost £50 less than that of the apparently less expensive expert – expert A - ($£70 \times 5 = £350$ & $£100 \times 3 = £300$).

⁹ A professional witness gives evidence of fact (and not an expert opinion). Some professionals e.g. doctors are called upon to give evidence of fact in criminal proceedings because of the nature of their profession. The fees for professional witnesses in such cases are specified by regulations (the Costs in Criminal Cases (General) Regulations 1986 (as amended) after negotiations with professional bodies.

- 9.32 Therefore, where possible, we would like to move to specifying guideline block fees, instead of hourly rates, for specific work by specific experts (as we have for some particular work/reports in **Annex E – Part 2 and Annex G – Part 1**).
- 9.33 In the CLS and CDS, solicitors are required to keep on file detailed records of the time that they spend on cases and the Commission is able to audit their files. This assists us in our aim to obtain the best possible value for money, as required by the Act. We do not see why experts should not be subject to similar requirements. It would introduce more transparency. Greater transparency would also enable the Commission to identify experts who charge only a nominal sum for the introductory, or background, sections of their reports (because they prepare such reports regularly and do not have to repeat the work common to each report for each new report). This could also lead to savings.
- 9.34 The existence of a choice of expert and competition are factors that affect the price of expert services. Therefore, to increase the choice available to solicitors, we propose asking those organisations that maintain registers of experts to include information showing whether the expert is willing to work as part of the CLS and CDS. A “yes” would indicate that their charging rates were within those specified by the Commission and that they agreed to the Commission’s terms and conditions. Although entry in a register is not any indication of competence, we believe that registers can be useful in broadening choice.¹⁰

¹⁰ We are not, here, referring to the accreditation registers of the CRFP the IoL (NRPSI) or the CACDP as we put forward separate proposals in relation to them.

Part 4 - Procedures

10. Procedures

General

- 10.1 The current procedures relating to the instruction of, and payment for, experts can be simplified and improved.
- 10.2 Prior authorities (by which solicitors can get prior clearance from one of the Commission's regional offices to incur an expert's fee and be guaranteed payment in full) will be abolished, standard terms will apply in agreements between solicitors and experts and the payment on account provisions, for cases under civil certificates, will be streamlined.

Prior Authorities

- 10.3 Although the current prior authority procedures provide protection for the solicitor or expert (depending on which of them, without the prior authority, would have borne the risk of reduction on assessment or determination) the prior authority system often does not work well in practice.
- 10.4 Too often, the Commission's regional offices are not in a position to give informed consent to the instruction of an expert. They can often do little more than consider whether the proposed rates are in line with those charged by other experts in similar circumstances. When applications for prior authority are refused on other grounds, this is generally because the solicitors have submitted insufficient information to enable a prior authority to be granted.
- 10.5 In circumstances where the court has already granted leave for the instruction of an expert, or has indicated that it considers that the instruction of a particular expert is justifiable, the regional office can have other difficulties. Particularly in Crown Court and family cases, they may receive requests for urgent prior authorities for substantial sums. The urgency may arise because a court hearing is imminent or because the solicitor must comply with directions, or because of a prior delay. In these circumstances, regional offices can feel pressed into granting prior authorities at rates higher than they would otherwise have approved.
- 10.6 In those cases that are managed under the Commission's individual high cost case contracts¹¹, however, the Commission's case manager will have a good understanding of the case and an informed view. It is reasonable to expect them to be closely involved in decisions on the instruction of experts and to continue, as now, to be prepared to give advance authorisation to the use of experts and the work to be carried out by them in accordance with the case planning/project management approach taken in such cases.

¹¹ At present, individual high cost case contracts may cover crime cases when, if the case proceeds to trial, the likely trial would last for 41 days or longer. Broadly, they may cover other cases if the actual or likely costs of the case exceed £25,000 or if, were the case to proceed to a contested final hearing, the likely costs of the case might exceed £75,000.

- 10.7 In general, it is uncommon for experts' fees to be reduced or disallowed on a costs assessment. However, the publication of guideline rates and accompanying guidance plus provision for the allocation of the risk in the event of a downward assessment, as proposed in this paper, should (if the rates and guidance are followed) all contribute to further reducing the risk on cost assessment and, in the event of a downward assessment, ensuring that the reduction is borne appropriately.
- 10.8 In the Crown Court, judges now take a "case management" approach to cases before them. We would not expect this to increase in the number of experts' reports obtained by defence solicitors in such cases and we have not perceived any increase. Therefore, we take the view that in any criminal case where the judge has indicated that obtaining an expert's report for a specific purpose would be justified, no question as to the appropriateness of obtaining the report should normally be raised on any assessment of costs. We take this view even though the consequence is that one body (the court) will be sanctioning expenditure for which it has no financial accountability, and which has to be borne by another body (the Commission). Exceptions would be, for example, where, after the judge had made their direction, the circumstances changed to the effect that the solicitors should no longer have commissioned the report, or if the report ranged wider than the specific purpose indicated by the judge.
- 10.9 Similarly, in such circumstances, if the Commission is controlling the case under an individual high cost case contract, the Commission's case manager should authorise an amendment to the case plan to cover obtaining the report. However, in either case, (unless otherwise specified by the Commission's case manager) the overall amount of the fee will remain a matter for assessment.

Terms of Appointment

- 10.10 In our experience, solicitors and experts frequently do not agree between them clear terms of appointment at the outset. The solicitors may expect to pay the expert at the end of the case (when they are finally paid by the Commission). The expert may expect to be paid within 28 days of submitting their invoice. The solicitor may expect the expert to complete certain tasks within 28 days. The expert may believe that they are required to complete different tasks within three months. This generates unnecessary complaints, which are not good for the reputation of the CLS and CDS.
- 10.11 Therefore, we propose terms that must apply in the agreement (terms of appointment) between the solicitor and the expert. These are set out in **Annex H**. They begin with a statement of the expert's obligation to the court. We have reflected both views of this obligation that have been put to us.
- 10.12 The terms go on to require the solicitor to provide the expert with copies of any relevant protocols etc. This will help to highlight the expert's duty to the court and promote good practice.
- 10.13 The terms provide for:
- the solicitor to agree with the expert and then to specify the services required;

- the expert to notify the solicitor if they consider that any work that they have been instructed to carry out is unnecessary; and
- the solicitor to ensure that the expert is aware of the Commission's guideline payment rates and associated guidance and to agree a fee with the expert.

and include provision for the allocation of risk if the expert's fees are not allowed in full or are disallowed.

10.14 The terms provide for timely payments by the solicitor to the expert and for cancellation fees where appropriate.

Endorsed Experts – Working as Part of the CLS and CDS

10.15 Accredited experts will be asked if they are willing to work as part of the CLS and CDS. Working as part of the CLS and CDS means acknowledging that legal aid is a public service, agreeing to work in accordance with the Commission's proposed terms and conditions of appointment (**Annex H**) and agreeing to charge in accordance with the Commission's guideline rates.

10.16 Accreditation registers will denote those experts who are endorsed, making it easy for CLS and CDS solicitors to instruct them, knowing that they will provide good quality, value for money services.

Payments on Account from the Commission

10.17 We propose that the Civil Legal Aid (General) Regulations 1989 should be amended to remove the provision for payments on account of disbursements in Licensed Work (civil and family certificated cases).

10.18 Instead, the Commission would make either annual, or biannual, general payments on account of disbursements for such cases on a contract-by-contract basis. The amount of the payments would be based on the amount of disbursements paid in the previous year or six months (excluding disbursements paid in cases under individual case contracts) but adjusted, as necessary, to reflect increases or decreases in numbers of certificates issued and any different mix of work.

10.19 Every year (or six months) and whenever a firm of solicitors can demonstrate that it is necessary, the amount paid on account would be compared with the amount being claimed for disbursements in bills, and adjustments made as necessary, to ensure that a broad balance is maintained. This will bring disbursements in Licensed Work (certificated cases) into line with those in Controlled Work.

10.20 Under the Solicitors Accounts Rules, such payments on account of experts' fees would be paid into the solicitors' client account, or used to pay experts' fees, within 28 days of receipt.

- 10.21 This proposal moves from an item-by-item and case-by-case approach to payments on account of disbursements, to a simpler annual or biannual system. It reduces bureaucracy and saves costs by reducing the number of transactions between solicitors and the Commission. Contractors would be able to hold the payments on account in a general client account and use them as necessary to pay invoices on individual cases (making an individual client or office account book entry).
- 10.22 For practical reasons, the small volume of work carried out as Associated CLS Work by holders of a General Criminal Contract, would be excluded from this process and individual applications for payments on account will be accepted for such cases.
- 10.23 On 1 April 2003, the Commission took over responsibility for the legal aid budget for criminal proceedings in the Crown Court and other higher criminal courts. At present, the CDS (Funding) Order 2001 requires solicitors to obtain a prior authority (from the Commission) in order to obtain a payment on account of disbursements in a Commission-funded Crown Court case. As we have proposed abolishing prior authorities, it follows that we propose that the CDS (Funding) Order should be amended so that prior authorities are no longer required in order to obtain such payments on account.
- 10.24 We consider that it is not practicable to propose annual payments on account for such criminal cases at present and that the best option is for such cases to continue to operate on an item-by-item and case-by-case basis, at least for the majority of contractors.

Exceptional Cases

- 10.25 Although we propose the abolition of prior authorities, we recognise that there will be a small number of exceptional cases e.g. that are not covered by an individual case contract but in which the proposed experts' fees will be over £5,000.
- 10.26 We propose to nominate a Unit in one of our regional offices to deal with such cases (and to monitor and report on them). Solicitors would apply to their usual regional office with full details of what steps they had taken to ascertain the best possible value for money and with the comparative quotations they had received. The regional office would send the application to the Unit. The Unit would consider whether the hourly rate charged was reasonable – in accordance with the guideline rate bands and guidance on them – and whether the work to be done and overall fee appeared to be reasonable.
- 10.27 The Unit would need full facts about what was proposed, and why, or an indication or order from the court that what was proposed was required. If the Unit was satisfied that all or some of what was proposed was justified they would issue a form or letter specifying what they had seen and describing what they considered reasonable.
- 10.28 On a cost assessment, no question as to reasonableness of the work described in the letter would then be raised (unless circumstances changed, after the form or letter was issued, to the effect that the work was no longer justified).

- 10.29 If, however, the proposed hourly rate was outside the guideline rate bands and guidance, this element would remain something to be justified on cost assessment.
- 10.30 Solicitors would be expected to apply to the Unit in good time. If there was urgency, the solicitor would be required to explain why. The Unit would fast-track applications where the urgency was not caused by delay.

Tailored Fixed Fee Scheme for Civil (non-immigration) work

- 10.31 In July 2004, the Commission published a consultation paper proposing a new approach to paying solicitors for civil Legal Help, Help at Court and Controlled Legal Representation cases.
- 10.32 Under the new scheme, solicitors are paid a fixed fee per case, which includes disbursements (including experts' fees) based on average fees per category of work. The proposals became operational on a voluntary basis from 1st October 2004, and a mandatory version of the scheme is due to commence 1st April 2005.
- 10.33 Under the voluntary scheme, solicitors do not need to apply for prior authorities or to extend the financial limit for cases as the amount paid per case is the fixed fee. The scheme permits additional payments for exceptional cases, and increased disbursement costs in certain limited circumstances. Full details of the voluntary scheme are available on our website. The final version of the mandatory scheme will be published in January 2005.

Preferred Suppliers

- 10.34 The Commission is presently running a "preferred supplier" pilot. The aim of the pilot is to identify the characteristics of the best performing firms of solicitors and to work with such firms to reduce bureaucracy in their dealings with the Commission.
- 10.35 In the pilot, the Commission is allowing firms, subject to guidance, to self-authorise expenditure on experts' fees up to £500 for crime cases in the magistrates' courts and up to £1,000 in other cases (apart from crime Crown Court cases). We intend a preferred supplier concept roll out after the pilot. If the approach to experts has been a success, firms of solicitors that meet the Commission's preferred supplier criteria will have a similar power. If the power were misused, this would prejudice the firm's preferred supplier status. Therefore, instead of a firm possibly suffering a loss on an individual case through being unable to recover, from the Commission, the entire expert's fee that they had agreed to pay, control would be exercised by monitoring the firm's overall performance in relation to the instruction of experts.

Part 5

11. Question and Answer Briefing

Q: When will the proposals take effect?

A: We will not make any decisions until we have considered the responses to our proposals. Implementation is likely to be phased.

Q: Are Counsel included in these proposals

A: No

Q: Which experts are covered by the proposals?

A: All experts, including interpreters, are covered by our proposals.

Q: Will accreditation by a body approved by the Commission be mandatory?

A: No.

Q: What does “endorsed” by the Commission mean?

A: An accredited expert who has agreed to work as part of the CLS and CDS (making it easy for solicitors to instruct them in commission funded cases).

Q: When do the guideline fees apply?

A: The guidelines apply to all Commission-funded cases. Departure from the guidelines is possible only when the particular circumstances of a case require the instruction of a more expensive expert.

Q: How will experts be paid under the scheme?

A: Experts will continue to be paid by the solicitors who engage them, but the proposed Terms of Appointment require solicitors to pay experts promptly.

Q; What happens next ?

A: We will consider the responses and publish our initial conclusions on our website by 30th April 2005.

Part 6 Impact Assessments

12. Initial Equality Impact Assessment

Our preliminary assessment is that the impact of these proposals on the promotion of equal opportunities across our supplier base, for experts and for clients will be neutral.

We will monitor the impact of the changes on access to publicly funded legal and expert services and report on any changes in accordance with the Commission's Equality Scheme.

We will also monitor access to the CRFP, IoL and CACDP registers.

13. Initial Regulatory Impact Assessment

Title of proposal

"The Use of Experts: Quality, price and procedures in publicly funded cases"

Purpose and Intended Effect of Measure

Background

The Commission contracts with suppliers of legal services to enable it to carry out its obligations under the Access to Justice Act 1999 - particularly obtaining best possible value for money (ss.5 & 18).

The Commission has addressed, and continues to address, the quality and price of lawyers' services and now wishes to address those issues so far as they relate to experts instructed in Commission-funded cases – to ensure that it obtains the best possible value for money.

Objectives

- The key objectives of the proposals are to:
- Encourage solicitors to instruct accredited experts provided their fees are reasonable
- To raise the profile of accreditation bodies and to suggest how they may expand
- Control rising experts' fees
- Reduce bureaucracy associated with the instruction of experts in Commission-funded cases
- Establish guideline fee rates and guidance to increase transparency and reduce uncertainty

The proposals extend to the Commission's suppliers (all of whom are in England and Wales) and to experts whom they instruct (who, with rare exceptions) will be in England and Wales.

Risk assessment

The proposals are intended to introduce greater certainty and predictability into experts' fees (assisting the budgetary planning of the Commission) and to reduce the risk of deficient expert evidence being given.

A risk for the Commission is that the accreditation proposals may discourage experts in specialisms, where there is a shortage of those willing to carry out forensic work, from doing so. To address this risk, the Commission has made it plain that it is not advocating compulsory accreditation.

Another risk is that the CRFP register does not expand as quickly as anticipated. To address this risk, the Commission has not ruled out other measures of quality or other bodies that may assess quality – but will evaluate each on its own merits.

Another risk is that, by publishing guideline rate bands, experts who would have charged less than the maximum rates will attempt to charge the maximum. The Commission has addressed this risk by dividing the rate bands, by guidance and by giving prominence to solicitors' obligation to secure the best possible value for money when they instruct experts.

Options

- i. Do nothing
- ii. Introduce fees guidance only
- iii. Introduce quality proposals, fees guidance and procedures simplification together

Benefits of options

(i) Do nothing

There are no apparent benefits to doing nothing.

(ii) Introduce the accreditation proposals only

It would not be practicable to introduce the accreditation proposals without any guidance on fees as both quality and cost need to be addressed and are best addressed together.

(iii) Introduce the quality proposals, fees guidance and procedures simplification together

The benefit of introducing all proposals together is that value for money does not depend only on price, but also on quality. It is sensible to simplify procedures, taking cost out of the system, at the same time as addressing quality and price.

Costs

The proposals should reduce some administrative costs for suppliers. However, abolishing prior authorities will introduce a greater degree of risk for suppliers and experts. To address this, we have specified guideline fee rates and guidance on them as well as proposing terms of agreement to apply between solicitors and the experts they instruct.

Consultation with small business: The small firms' impact test

Many of the Commission's suppliers are small businesses. Their interests are represented through The Law Society and the Legal Aid Practitioners Group and other representative bodies (and, for Not for Profit organisations, by Advice Services Alliance) with whom the Commission will consult in respect of its proposals. Some experts operate in small businesses. Their interests are represented through expert witness bodies and through their professional bodies, with whom the Commission will consult in respect of its proposals. Although no disproportionate impact of the proposed amendments on small business has been identified to date, the Commission will re-evaluate its current assumption that this is the case after reviewing the responses to its consultation.

Competition assessment

The proposal will impact on all the solicitors' firms and Not for Profit organisations providing CLS and CDS services under the Commission's General Contracts. It will also impact on experts providing forensic services in Commission-funded cases.

Having applied the Cabinet Office's competition filter test to the relevant market (being suppliers of CLS and CDS services and forensic experts in England and Wales) we conclude that the implementation of the proposals will not have any significant effect (whether positive or negative) on competition in that market.

Monitoring and review

We will monitor the impact of the changes on suppliers and experts and report on any changes.

Consultation

We will consult on the proposals in accordance with the Government Code of Practice on consultation (see below).

Recommendation

It is recommended that the proposals for quality, price and procedures in relation to expert services in Commission-funded cases be implemented as proposed, subject to any amendments following consultation.

Part 7

14. Government Code of Practice Criteria

The LSC abides by the Government Code of Practice on Consultation, which came into effect on 1st April 2004.

The six consultation criteria in the Code are:

1. Consult widely throughout the process, allowing a minimum of 12 weeks consultation at least once during the development of the policy
2. Be clear about who may be affected, what questions are being asked, and the timescale for responses
3. Ensure that your consultation is clear, concise and widely accessible
4. Give feedback regarding the responses received and how the consultation process influenced the policy
5. Monitor your department's effectiveness at consultation, including through the use of a designated consultation co-ordinator
6. Ensure that your consultation follows better regulation best practice, including carrying out a Regulatory Impact Assessment if appropriate.

The full text of the government code is available from the Cabinet Office website at: www.cabinet-office.gov.uk/regulation/consultation/code.htm

Part 8 - Annexes

ANNEX A The Commission and the CRFP

General

The CRFP (www.crfp.org.uk) register was launched in October 2000. So far, it has registered over 1,500 forensic practitioners. Those who are registered are entitled to put the letters "RFP" after their name and carry an official, sealed certificate which states their specialty and the time period for which they hold registration.

The CRFP started to build the register beginning with some of the most well known specialties, divided into three broad areas:

- incident investigation
- medicine & healthcare
- science/engineering

It plans to identify further areas of forensic practice as the register builds and expands.

The CRFP register is accessible on-line, without charge.

Incident Investigation

At present the register is open to seven professional groups under this heading:

- fingerprint examiners
- scene examiners
- scene examiners working in volume crime
- fingerprint development specialists
- archaeologists
- collision investigators
- vehicle examiners

Medicine & Healthcare

At present the register is open to the following professional groups under this heading:

- forensic anthropologists
- forensic odontologists

- physicians (forensic medical examiners/police surgeons)
- physicians (paediatricians)

Science/Engineering

The register is open to all professional groups. The CRFP has divided these into the following eight. Applicants may apply for registration in one or more of them (and in sub-specialties under each of these headings).

- drugs
- firearms
- human contact traces
- incident reconstruction
- marks
- particulates and other traces
- questioned documents
- toxicology.

We understand that, over the next few months, the CRFP expects to be able to open the register to forensic practitioners in veterinary surgery, fire investigation, geology, computing, imaging and telecommunications and that exploratory discussions are underway with representatives of forensic psychiatry, podiatry and other medical specialties.

CRFP registration and endorsement by the Commission

The Commission will accept current registration on the CRFP register as evidence of competence. If the registered expert agrees to work as part of the CLS and CDS, the Commission will endorse them.

The CRFP has agreed that its register will either include a link to the Commission's website www.legalservices.gov.uk (which will identify those registered on the CRFP register whom the Commission has endorsed) or will itself identify those whom the Commission has endorsed.

Access

The CRFP register is accessible to all without charge. Any practitioner's registration can be checked quickly by consulting the CRFP website (www.crfp.org.uk).

ANNEX B The Commission and the NRPSI and CACDP

General

The Institute of Linguists maintains the National Register of Public Service Interpreters (NRPSI). In order to be entered on the register, interpreters must undergo training and demonstrate competence. Similar arrangements apply to BSL/English Interpreters and other Language Service Professionals with Deaf People on the CACDP register.

Criminal Justice Agencies' Protocol

Since 1 January 2002, criminal justice agencies have agreed to secure all their interpreters, wherever possible, from an approved national register. Police, courts, and other legal agencies use the NRPSI or the CACDP Register.

If a criminal justice agency is unable to select an interpreter from the NRPSI or the CACDP registers, they may choose one from another endorsed list. However, such an interpreter should, so far as is possible, meet standards at least equal to those required for entry on the NRPSI or CACDP directory - in terms of academic qualifications or proven experience of interpreting within the criminal justice system and professional accountability.

Suppliers of criminal defence services should aim to meet the same standard. The Commission's Criminal Bills Assessment manual provides that, if it is not possible to do so, a note must be made on file explaining the reasons why.

NRPSI & CACDP registration and Commission approval

The Commission will accept current registration on the NRPSI or CACDP register as evidence of competence. If the registered interpreter agrees to work as part of the CLS and CDS, the Commission will endorse them.

The Institute of Linguists and the CACDP have both agreed that their registers will either identify the members whom the Commission has endorsed or will include a link to the Commission's website www.legalservices.gov.uk where they will be identified.

Access

The NRPSI lists the interpreters assessed as currently competent to provide interpretation services in the law, local government and healthcare sectors. For each interpreter, it has a notes facility that can be used to denote those whom the Commission has endorsed.

The CACDP Directory lists the BSL/English interpreters and other registered Language Service Professionals (LSPs) who have met the standards required for admission to the relevant registers, who are bound by the Code of Ethics/Practice and Complaints and Disciplinary Procedure, with information about the registration status, category and history of each person.

The NRPSI is accessible on-line but only to subscribers. Without access to the register, solicitors have to rely on other sources of information to determine whether an interpreter

is accredited. The Commission is discussing access to the register, for holders of the Commission's contracts, with the Institute of Linguists.

The CACDP directory is also available on-line and in hard copy. Limited information about registered LSPs is available to all. However, details of those registered are only available to subscribers.

ANNEX C Priorities for Accreditation

This annex lists the specialisms that the Commission would like to be priorities for accreditation.

- Psychiatrists
- Psychologists
- Pathologists
- Independent social workers
- Accountants

ANNEX D Outline Proposals for Direct Contracting

Accountants

Accountants' forensic services are often provided in the course of a business and rates vary significantly.

Occasionally, specialised expertise is required and a city firm of accountants may be required to provide a report. At other times, a small local firm or a retired accountant, will have the necessary expertise.

It is unlikely that many accountants will, at least in the short term, obtain registration with the CRFP.

The Commission intends to consider appointing a limited number of specialist accountants firms to a panel. Tenders would be invited with proposals as to quality of service and expertise. The Commission would approve accountants on the panel. The Commission will consider involving the CRFP – to assess the competence of individuals nominated by tenderers.

Solicitors engaging accountants from the panel would know that their fees would be allowed on costs assessment. If, in a number of cases, the costs assessor considered that the fees charged were excessive, either because too much time had been spent or unnecessary work had been carried out, the Commission would take that into account in deciding whether the firm should remain on the panel.

The Commission would be interested in hearing from any firms of accountants that would be interested in panel membership.

Bodies instructed by the prosecution and other Government supported, or established, organisations e.g. the Forensic Science Service

The CPS, police forces and H.M Customs & Excise have agreements with some organisations on terms of business for expert forensic services. We see no reason why the Commission should not, similarly, agree terms with such organisations. In our view, the fact that an organisation e.g. the Forensic Science Service commonly provides services to the prosecution does not prevent defence solicitors from instructing one of its experts – provided the organisation is able to demonstrate impartiality - and, in civil and family cases, this would not be an issue at all.

Process Servers and Enquiry Agents

Process servers' and enquiry agents are not normally categorised as "experts" and are, therefore, outside the main provisions of these proposals. However, their services are regularly used by solicitors. There are a number of organisations that provide such agents, nationally and regionally and the Commission could invite bids for blocks of work.

Computer and mobile phone experts

Computer related crime and the use of mobile phones in identifying a person's location are two areas where we consider it would be useful to establish panels of experts for use by solicitors. It can be hard to establish true expertise in these areas and fees charged can be high and vary significantly.

NHS Trusts

We consider that there may be scope for the Commission to contract with NHS trusts for the provision of medical experts. In our view, the provision of services as part of the CLS and CDS is a public service like the provision of services as part of the NHS.

General

If we find that our proposals are not achieving the benefits that we envisage, we will begin to explore direct contracting in more detail: looking at competitive tendering and obligatory panel membership as possible ways forward, working with the CRFP wherever practicable.

ANNEX E – Part 1 Crime – Current Guideline Rate Bands and Guidance

APX 2 TO THE COSTS IN CRIMINAL CASES (GENERAL) REGULATIONS 1986

1. As there are no prescribed scales for the allowance for the remuneration of expert witnesses and certain other persons such as interpreters, the attached guidance is issued to assist taxing/determining officers by providing a point of reference on quantum for use when exercising their discretion in determining such claims.
2. The figures shown are based upon allowances made throughout England and Wales. It is intended that the information will be reviewed annually.
3. The rate bands shown cover a wide field of skill and, in some cases, a number of different skills. They provide neither a minimum nor maximum limit, merely a guide to the levels of allowances in normal circumstances. It may be appropriate, having regard to the particular circumstances of the case, to depart from the guidance scales contained herein. Such occasions will, however, arise exceptionally.
4. In exercising their discretion, taxing/determining officers are to bear in mind that each case must be considered individually. They are to take into account all the relevant circumstances surrounding the claim including such things as the work done, the status or experience of the person doing the work, and the availability of such persons in the area of the country concerned.
5. In cases of difficulty, taxing/determining officers should seek advice from their Regional Taxing Managers.

1. Consultant medical practitioner, psychiatrist, pathologist (from 6 May 2003)

Preparation (examination/report)	£70 - £100	(per hour)
Attendance at court	£346 - £500	(full day)

2. Fire (assessor) and/or explosives expert (from 6 May 2003)

Preparation	£50 - £75	(per hour)
Attendance at court	£255 - £365	(full day)

3. Forensic scientist (inc. questioned doc. examiner), surveyor, accountant, engineer, medical practitioner, architect, veterinary surgeon, meteorologist (from 6 May 2003)

Preparation	£47 - £100	(per hour)
Attendance at court	£226 - £490	(full day)

4. Fingerprint (from 6 May 2003)

Preparation	£32 - £52	(per hour)
-------------	-----------	------------

Attendance at court	£153 - £256	(full day)
5. Interpreter (from 1 January 2002)	£25 - £28	(per hour)

(with a minimum of 3 hours for those employed regularly in this capacity)

ANNEX E – Part 2 Crime – Proposed Guideline Rate Bands and Guidance

EXPERTS' RATES TABLE (Crime)				
DRAFT Appendix 2 to the Costs in Criminal Cases (General) Regulations 1986				
Date	Experts Type of Work, per hour/per day	A	B	C
Group 1				
6 May 2003	Preparation (examination/report) per hour	£70 - £80	£81 - £90	£91 - £100
	Attendance at Court per full day	£346 - £400	£401 - £450	£451 - £500
Group 2				
6 May 2003	Preparation per hour	£50 - £58	£59 - £67	£68 - £75
	Attendance at Court per full day	£255 - £292	£293 - £329	£330 - £365
Group 3				
6 May 2003	Preparation per hour	£47 - £65	£66 - £83	£84 - £100
	Attendance at Court per full day	£226 - £314	£315 - £402	£403 - £490
Group 4				
6 May 2003	Preparation per hour	£32 - £38	£39 - £46	£47 - £52
	Attendance at Court per full day	£153 - £188	£189 - £222	£223 - £256
Group 5				
1 Jan 2002	Interpreting	£25 Unregistered		£28 Registered

Proposed block fees

- Alcohol back calculation £150
- DNA report £300 per sample
- Second post mortem £500

Group	Membership of Group
1	Consultant Medical Practitioners, Psychiatrists, Pathologists
2	Fire Assessors and Explosive Experts
3	Forensic Scientists (including Questioned Document Examiners), Surveyors, Accountants, Engineers, Medical Practitioners, Architects, Veterinary Surgeons, Meteorologists
4	Fingerprint Experts
5	Interpreters
Notes	
For attending court, experts are paid direct from central funds (not by the solicitor)	

Draft Guidance

General

Solicitors must aim to obtain the best possible value for money when instructing experts in publicly funded cases just as in privately funded cases. If a solicitor is unsure whether an expert's fees provide value for money and are reasonable, they should obtain competitive quotes. Solicitors should ensure that they instruct experts who are competent for the task in hand.

Where practicable and provided the fees are reasonable, solicitors should instruct experts who are on the register of accredited experts maintained by the CRFP (www.crfp.org.uk) and interpreters who are on the NRPSI maintained by the Institute of Linguists (www.iol.org.uk) or the directory maintained by the CACDP (www.cacdp.org.uk).

Experts on such registers who have agreed to work as part of the CLS and CDS will be endorsed by the Commission. Instructing an endorsed expert means not only that the quality of the expert is assured but also that there should be no difficulties over their fees on any costs assessment.

Where there is a choice between an expert on the CRFP register (the NRPSI or the CACDP directory) and another expert, the solicitor should select the accredited expert unless there is good reason not to do so.

In appropriate cases, consideration must always be given to joint instruction of an expert with another defendant.

The “B” rates shown in the Experts’ Rates Table are the rates that the Commission expects normally to pay for an expert who is neither at the top of their specialism nor is within five years of qualification.

The “B” rates are the rates that the Commission expects to pay in most cases. However, there will be occasions when “C” rates or “A” rates are appropriate. Exceptionally, rates above the “C” rates may be allowed, but only exceptionally - for example, where it is necessary to instruct an expert at the very top of their profession.

Experts, entitled under this guidance to charge a “C” or a “B” rate, should be willing to charge a “B” or an “A” rate where such rates are, under this guidance, appropriate for the job in hand and experts endorsed by the Commission will be expected to do so.

On an assessment or determination each case will be considered individually, but in the light of this guidance. Where rates in excess of guideline rates are claimed, attendance may be required to explain the exceptional circumstances.

Use of band C

Band C should be used only in exceptional cases. The firm must fully justify the use of band C and this information must be retained on the file. At the very minimum, this justification must include:

- Full explanation of the type of report required
- Full explanation of the need for the report
- At least three competitive quotes

Scarcity

There may be occasions when, because of a scarcity of experts in a particular field, fees in excess of the guidelines and guidance on them may be allowed. However, excess fees will not be allowed unless the solicitor demonstrates they have taken all reasonable steps to obtain the best possible value for money by recording, on the case file, what they have done to attempt to obtain a suitable alternative expert (giving details of competitive quotes etc).

When recording their assessment of the expert, in accordance with Para. F5 of the Specialist Quality Mark, the solicitor should also note the fees charged and record (for future reference) that they were in excess of the guidelines.

ANNEX F Civil – Proposed Guideline Rate Bands and Guidance

EXPERTS' RATES TABLE (Civil)				
Date	Experts Type of Work, per hour/per day	A	B	C
	Group 1			
6 May 2003	Preparation (examination/report) per hour	£50 - £70	£71 - £100	£101 - £130
	Attendance at Court per full day	£250 - £350	£351 - £500	£501 - £650
	Group 2			
6 May 2003	Preparation per hour	£35 - £65	£66 - £74	£75 - £97
	Attendance at Court per full day	£184 - £255	£256 - £365	£366 - £475
	Group 3			
6 May 2003	Preparation per hour	£33 - £63	£64 - £99	£100 - £130
	Attendance at Court per full day	£155 - £300	£301 - £450	£451 - £640
	Group 4			
6 May 2003	Preparation per hour	£20 - £34	£35 - £47	£48 - £60
	Attendance at Court per full day	£100 - £180	£181 - £260	£261 - £330
	Group 5			
1 Jan 2002	Interpreting	£25 Unregistered		£28 Registered

Group	Membership of Group
1	Consultant Medical Practitioners, Psychiatrists, Pathologists
2	Fire Assessors and Explosive Experts
3	Forensic Scientists (including Questioned Document Examiners), Surveyors, Accountants, Engineers, Medical Practitioners, Architects, Veterinary Surgeons, Meteorologists
4	Fingerprint Experts

5	Interpreters
Notes	
For attending court, experts are paid direct from central funds (not by the solicitor)	

Draft Guidance

Solicitors must aim to obtain the best possible value for money when instructing experts in publicly funded cases just as in privately funded cases. If a solicitor is unsure whether an expert's fees provide value for money and are reasonable, they should obtain competitive quotes. Solicitors should ensure that they instruct experts who are competent for the task in hand.

Where practicable and provided the fees are reasonable, solicitors should instruct experts who are on the register of accredited experts maintained by the CRFP (www.crfp.org.uk) and interpreters who are on the NRPSI maintained by the Institute of Linguists (www.iol.org.uk) or the directory maintained by the CACDP (www.cacdp.org.uk).

Experts on such registers who have agreed to work as part of the CLS and CDS will be endorsed by the Commission. Instructing an endorsed expert means not only that the quality of the expert is assured but also that there should be no difficulties over their fees on any costs assessment.

Where there is a choice between an expert on the CRFP register (the NRPSI or the CACDP directory) and another expert, the solicitor should select the accredited expert unless there is good reason not to do so.

In appropriate cases, consideration must always be given to appointing a single, joint expert.

The "B" rates shown in the Experts' Rates Table are the rates that the Commission expects normally to pay for an expert who is neither at the top of their specialism nor is within five years of qualification.

The "B" rates are the rates that the Commission expects to pay in most cases. However, there will be occasions when "C" rates or "A" rates are appropriate. Exceptionally, rates above the "C" rates may be allowed, but only exceptionally - for example, where it is necessary to instruct an expert at the very top of their profession.

Experts, entitled under this guidance to charge a "C" or a "B" rate, should be willing to charge a "B" or an "A" rate where such rates are, under this guidance, appropriate for the job in hand and experts endorsed by the Commission will be expected to do so.

On an assessment or determination each case will be considered individually, but in the light of this guidance. Where rates in excess of guideline rates are claimed, attendance may be required to explain the exceptional circumstances.

Use of band C

Band C should be used only in exceptional cases. The firm must fully justify the use of band C and this information must be retained on the file. At the very minimum, this justification must include:

- Full explanation of the type of report required
- Full explanation of the need for the report
- At least three competitive quotes

Scarcity

There may be occasions when, because of a scarcity of experts in a particular field, fees in excess of the guidelines and guidance on them may be allowed. However, excess fees will not be allowed unless the solicitor demonstrates they have taken all reasonable steps to obtain the best possible value for money by recording, on the case file, what they have done to attempt to obtain a suitable alternative expert (giving details of competitive quotes etc).

When recording their assessment of the expert, in accordance with Para. F5 of the Specialist Quality Mark, the solicitor should also note the fees charged and record (for future reference) that they were in excess of the guidelines.

ANNEX G – Part 1 Family – Proposed Guideline Rate Bands and Guidance

EXPERTS' RATES TABLE (Family)				
Date	Experts Type of Work, per hour/per day	A	B	C
Group 1				
6 May 2003	Preparation (examination/report) per hour	£50 - £70	£71 - £100	£101 - £130
	Attendance at Court per full day	£250 - £350	£351 - £500	£501 - £650
Group 2				
6 May 2003	Preparation per hour	£35 - £65	£66 - £74	£75 - £97
	Attendance at Court per full day	£184 - £255	£256 - £365	£366 - £475
Group 3				
6 May 2003	Preparation per hour	£33 - £63	£64 - £99	£100 - £130
	Attendance at Court per full day	£155 - £300	£301 - £450	£451 - £640
Group 4				
6 May 2003	Preparation per hour	£20 - £34	£35 - £47	£48 - £60
	Attendance at Court per full day	£100 - £180	£181 - £260	£261 - £330
Group 5				
1 Jan 2002	Interpreting	£25 Unregistered		£28 Registered

Group	Membership of Group
1	Consultant Medical Practitioners, Psychiatrists, Pathologists
2	Fire Assessors and Explosive Experts
3	Forensic Scientists (including Questioned Document Examiners), Surveyors, Accountants, Engineers, Medical Practitioners, Architects, Veterinary Surgeons, Meteorologists
4	Fingerprint Experts
5	Interpreters
<p style="text-align: center;">Notes</p> <p>For attending court, experts are paid direct from central funds (not by the solicitor)</p>	

Proposed block fees

- DNA report £300 per sample
- Property valuation £130

Independent Social Work – CAFCASS rates

The Commission will apply the current CAFCASS payment rates to any urgent independent social work undertaken in public law Children Act proceedings due to the failure to allocate a CAFCASS guardian ad litem. This must be directed by the court only after CAFCASS has been given an opportunity to allocate a guardian and will be exceptional. The rates apply to both professional time and travelling and waiting and they include all ordinary disbursements including travel in England and Wales. The cost of interpreters and translators may be met as an additional item where these are necessary. (See Focus 40, December 2002 – page 19).

If independent social work is undertaken more generally it is reasonable to have regard to the current CAFCASS payment rates for self employed guardians. The CAFCASS rates should be applied to independent social work requiring the same level of expertise and experience as that of a self employed guardian. Higher payment rates may be justified in any particular case, having regard to:

- the level of expertise required,
- to any particular specialism required,
- to limited availability of appropriate expertise or
- extreme urgency.

However, it would be exceptional to allow rates above £50 per hour and rates up to £50 per hour can only be justified if it is clear that one or more of the relevant criteria are present.

In addition the payment of disbursements as a separate item can be justified, as there is no particular or continuing relationship between the expert and those instructing him or her.

The CAFCASS rates for self employed guardians for work done on or after 1 April 2004 are determined from the location of the local authority taking the proceedings and are as follows:-

All London authorities: £26.25 per hour

South East and Eastern Regions namely: £24.20 per hour

South East Region

Buckinghamshire, Oxfordshire, Berkshire,

Surrey, Hampshire, West Sussex, East

Sussex, Kent and Isle of Wight

Eastern Region

Hertfordshire, Essex, Bedfordshire,

Cambridgeshire, Suffolk and Norfolk

All other local authorities in England and all local authorities in Wales: £22.65 per hour

Draft Guidance

Solicitors must aim to obtain the best possible value for money when instructing experts in publicly funded cases just as in privately funded cases. If a solicitor is unsure whether an expert's fees provide value for money and are reasonable, they should obtain competitive quotes. Solicitors should ensure that they instruct experts who are competent for the task in hand.

Where practicable and provided the fees are reasonable, solicitors should instruct experts who are on the register of accredited experts maintained by the CRFP (www.crfp.org.uk) and interpreters who are on the NRPSI maintained by the Institute of Linguists (www.iol.org.uk) or the directory maintained by the CACDP (www.cacdp.org.uk).

Experts on such registers who have agreed to work as part of the CLS and CDS will be endorsed by the Commission. Instructing an endorsed expert means not only that the quality of the expert is assured but also that there should be no difficulties over their fees on any costs assessment.

Where there is a choice between an expert on the CRFP register (the NRPSI or the CACDP directory) and another expert, the solicitor should select the accredited expert unless there is good reason not to do so.

The “B” rates shown in the Experts’ Rates Table are the rates that the Commission expects normally to pay for an expert who is neither at the top of their specialism nor is within five years of qualification.

The “B” rates are the rates that the Commission expects to pay in most cases. However, there will be occasions when “C” rates or “A” rates are appropriate. Exceptionally, rates above the “C” rates may be allowed, but only exceptionally - for example, where it is necessary to instruct an expert at the very top of their profession.

Experts, entitled under this guidance to charge a “C” or a “B” rate, should be willing to charge a “B” or an “A” rate where such rates are, under this guidance, appropriate for the job in hand and experts endorsed by the Commission will be expected to do so.

On an assessment or determination each case will be considered individually, but in the light of this guidance. Where rates in excess of guideline rates are claimed, attendance may be required to explain the exceptional circumstances.

Use of band C

Band C should be used only in exceptional cases. The firm must fully justify the use of band C and this information must be retained on the file. At the very minimum, this justification must include:

- Full explanation of the type of report required
- Full explanation of the need for the report
- At least three competitive quotes

Scarcity

There may be occasions when, because of a scarcity of experts in a particular field, fees in excess of the guidelines and guidance on them may be allowed. However, excess fees will not be allowed unless the solicitor demonstrates they have taken all reasonable steps to obtain the best possible value for money by recording, on the case file, what they have done to attempt to obtain a suitable alternative expert (giving details of competitive quotes etc).

When recording their assessment of the expert, in accordance with Para. F5 of the Specialist Quality Mark, the solicitor should also note the fees charged and record (for future reference) that they were in excess of the guidelines.

ANNEX G – Part 2 Family – Particular Difficulties in Children Cases

The use of experts in family proceedings has grown significantly since the Children Act has come into force. Experts' fees are a very large element of the costs of Commission-funded Children Act cases.

In Public Law family proceedings:

- the court adopts a case management role, with judges specifying the number and names of experts and the work that they are to perform
- there is perceived to be a shortage of some types of expert
- there can be difficulty in apportioning experts' fees – in particular due to the involvement of a local authority and possibly a large number of parties.

Because of the key role taken by the courts in family proceedings – particularly in Public Law family proceedings, we would like to work with the courts (and with other public-sector funders of such proceedings) to find a way forward.

In the meantime, we consider that our proposals in this paper, including our proposal to abolish prior authorities, should not interfere with the courts' role in relation to experts in Public Law family cases subject to the Protocol for Judicial Case Management in Public Law Children Act cases. If a court nominates an expert for a particular task, the Commission would not take issue with the need for that task to be performed – though we would expect the rates charged, by any expert, to be within the guideline rates and guidance and would not expect the expert to take too long or to carry out unnecessary work. How precisely the court specifies what is required is an important consideration here and, we consider, can be an important factor in saving costs.

Having said that, although the Commission (in very large part) pays for them, the courts control experts in Public Law family proceedings, and we consider that quality assurance and cost controls can be implemented effectively only through working with the courts and in co-ordination with developments in courts' procedures.

ANNEX H Draft terms of Appointment

Legal Services Commission

Required Terms of Appointment – Experts

Overriding Duty (Two options for comment)

- (a) In cases of all types, the Expert's overriding duty is to the court at all times; or
- (b) In all cases except crime cases, the Expert's overriding duty is to the court at all times. In cases of all types, when giving evidence in court, the Expert's overriding duty is to the court.

At the Start

The appointer and the expert will discuss and agree what is to be done. The Appointer will confirm to the Expert:

- The client's name
- Whether a representation order or certificate has been issued and, if so, its number
- The type of case
- The client's objectives
- The purpose of the appointment
- What the Expert is to do, and by when

The Appointer will provide the Expert with copies of any relevant protocols, practice directions etc., which both the Appointer and the Expert shall comply with.

The Appointer will ensure that the Expert is aware of the Legal Services Commission's Guideline Rates for Experts, and associated Guidance, and will agree fees with the Expert.

The Expert will advise the Appointer if they consider that any work is unnecessary and of any other material issues in connection with their appointment.

Throughout the Appointment

The Appointer will promptly:

- Notify the Expert if there has been any relevant change to any information they provided
- Provide the Expert with all relevant information
- Deliver to the Expert legible copies of all relevant documents (including court orders)
- So far as they can, comply with the Expert's reasonable requests for further information

The Expert will promptly advise the Appointer if they consider that any work is unnecessary and of any other material issues in connection with their appointment.

The Expert will perform all work in a timely manner and with all the skill, care, diligence and accuracy reasonably expected of such an Expert.

Payment

The Appointer acknowledges that they, alone, are responsible for payment of the Expert's fees.

The Appointer will pay 75% of each of the Expert's invoices within 30 days of receipt, and will pay the balance due, in respect of each invoice, within 28 days of final assessment or determination of the Expert's fees.

Assessment and Determination

The Appointer will apply promptly for assessment or determination of the Expert's fees.

If the Expert's fees are not allowed in full on assessment or determination then:

- If the Appointer has instructed the expert to carry out unnecessary work, the Appointer will stand the loss.
- If the Expert's fees are reduced for having spent too long in performing work, or because the work has not been performed as required, or if it is of an inadequate standard, the Expert will stand the loss.
- If the Expert's rates are assessed as too high, the Expert will stand the loss (and the Expert shall repay, to the Appointer, any overpayment that they may have received from them).
- If the Solicitor has instructed a too highly qualified expert (and hence the rates are too high), the Solicitor will stand the loss.
- If the Expert has charged a cancellation fee (e.g. because a hearing or meeting has been cancelled or postponed at short notice) which is not allowed on assessment or determination, the party causing the cancellation shall stand the loss. If neither party has caused the cancellation, they shall share the loss equally and if both have caused the cancellation, they shall share it in proportion to their fault. Where the client has caused the cancellation, the Appointer shall be deemed to have caused it.