



# information sheet

## Legal Aid 2 – Fixed Fees

18<sup>th</sup> October 2007

This month has seen very significant changes to the way legal aid is provided in immigration and asylum cases in England and Wales. Although similar changes have been made in other areas of law, this information sheet is specifically about legal aid for immigration and asylum cases.

### Background

Until this month, legal advisers doing legal aid work were paid an hourly rate for the work they did. This was also subject to the need to ensure that the work done and the time taken were necessary. This hourly rate has not changed (not even to take account of inflation) since April 2001.

In 2004, the Legal Services Commission (LSC) introduced limits on the amount of time a legal adviser could spend on a legal aid case. These limits could only be extended with the LSC's permission. A legal adviser, who needed more time on a case, was required to complete a form and send it with further evidence to explain why the adviser needed more time.

In 2006, Lord Carter produced a report, commissioned by the government, setting out proposals for reforming legal aid. The report dealt with all legal aid – criminal and civil. A copy of Lord Carter's report *Legal Aid: A market-based approach to reform* is available at: <http://www.legalaidprocurementreview.gov.uk/publications.htm>

The changes this month change the way in which legal advisers are paid for legal aid work. The hourly rate has been replaced by fixed fees for new cases. However, there are some exceptions to this. These changes are to be a steppingstone towards 2009 when it is intended that legal advisers will have to bid against each other for legal aid contracts. The LSC refers to this as 'best value tendering'.

The changes in 2004 persuaded some legal advisers to stop doing legal aid work. Others reduced the amount of legal aid work they did. Several of those who stopped or reduced their legal aid work were among the most experienced and expert advisers. In anticipation of this month's changes, some other legal advisers have stopped doing legal aid work. The reason many of these have given for stopping or reducing their legal aid work is that the fees are simply too small and the time spent form-filling and complying with the bureaucracy required by the LSC is too great.

### Fixed fees

Fixed fees have come in this month – the LSC refers to a fixed and graduated fee scheme. Fixed means that the fee for all cases of the same type is the same regardless of how much time the legal adviser must spend on the case, unless the case is exceptional (see below). Graduated means that the fixed fee may rise depending upon the stage the case reaches. This essentially reflects little more than that there is a fixed fee for Legal Help and another fixed fee for CLR. The basic point that the fee is the same for all cases of the same type does not change.

Immigration cases are one type of case. Regardless of the type of immigration case (or the particular complexity of the case, or needs of the client), the fees are the same. Asylum cases are another type of case. The Legal Help fixed fee for asylum cases is higher than the Legal Help fixed fee for immigration cases.

### **ILPA information service**

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[www.ilpa.org.uk/infoservice.html](http://www.ilpa.org.uk/infoservice.html)

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If the case proceeds to an appeal, there is a CLR fixed fee. If the case is resolved without the need for a hearing, this CLR fixed fee is the same for all immigration and asylum appeals. If a hearing is needed, the CLR fixed fees are larger, and in these circumstances the CLR fixed fee for asylum appeals is also larger than for immigration appeals.

There are additional fixed payments if the legal adviser needs to take part in particular events – e.g. a Home Office interview or an appeal hearing (however, in most cases legal aid is not available for a legal adviser to attend Home Office interviews).

The LSC has produced a table setting out the various fixed and additional payments, and refers to various stages. The stage 1 fee is the Legal Help fixed fee. The fee for a case which is resolved without any appeal will be this – plus any of the relevant additional payments. The CLR fixed fee will be either the stage 2a or stage 2b fee. If there is no hearing, the legal adviser will receive the stage 2a fixed fee – plus any further relevant additional payments. If there is a hearing, the legal adviser will receive the stage 2b fee – plus any further relevant additional payments. The table is available at:

[http://www.legalservices.gov.uk/docs/civil\\_contracting/ImmigrationandAsylumFeeTables.pdf](http://www.legalservices.gov.uk/docs/civil_contracting/ImmigrationandAsylumFeeTables.pdf)

#### **Travel and waiting**

There is no additional payment or variation in the fixed fee for travel and waiting. A legal adviser will be paid the same fixed fee regardless of the length of the journey to the Home Office interview or AIT hearing centre and regardless of how long he or she is required to wait by the Home Office or AIT.

Travel and waiting can, however, be paid for the legal adviser to visit a client in detention. Travel time will be paid at the hourly rate, but for a maximum of 3 hours round trip (that is journey time to and from the place of detention). Waiting time will be paid at the hourly rate for the full waiting time.

#### **Exceptional cases**

If payment at the hourly rate would mean the legal adviser is paid more than three times the fixed fee payment, the case is treated as exceptional. Exceptional cases are paid at the hourly rate rather than the fixed fee. The “Legal Aid 3 – Exemption from Fixed Fees & Exclusive Contracts” information sheet gives more information.

#### **Swings and roundabouts**

The government and the LSC frequently refer to ‘swings and roundabouts’. What they are saying by this is that what a legal adviser loses on a case that takes longer or where travel and waiting time is longer will be balanced out by a case that takes less time or where travel and waiting time is short.