

# community legal service

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## Employing a solicitor for the first time

*Contracting Briefing No.5*  
*22<sup>nd</sup> July 2003*

This briefing applies to holders of Legal Aid contracts



**This briefing is a resource for your whole organisation. Please ensure that every member of staff involved in Legal Aid work has access to it.**

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This briefing has been checked and agreed for accuracy by the Legal Services Commission (LSC). It is not a substitute for reading the relevant documentation in full nor does it constitute legal advice. The General Civil Contract is an evolving document, and therefore managers and staff will need to take responsibility for ensuring that they comply with the latest requirements at their particular level. Each briefing reflects the position at the date it was published. Organisations should get further up-to-date advice on specific topics covered in briefings either from their network, their LSC regional office or CLS Support.

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## **Making the best use of this briefing**

We are aware that some of our briefings are fairly lengthy documents. Please do not feel that you are obliged to read the whole briefing from cover to cover – the headings on our contents page will point you towards the major themes under discussion.

## **Further sources of support and guidance**

If you need further guidance on any of the issues covered in this briefing, please contact your network, the Legal Services Commission or the CLS Support consultancy line – see the pages at the back of this briefing for contact details.

You may come across the telephone symbol 📞 at various points in the text which deal with what we regard to be a complex issue. The symbol is there to remind you that we are able to provide further clarification and/or guidance if you need it.

Please note that the What's New pages on ASA's website [www.asauk.org.uk](http://www.asauk.org.uk) provide guidance that highlights and clarifies both new and existing requirements for Quality Mark and General Civil Contract holders.

## Table of contents

1	Introduction .....	1
2	What will a solicitor add to our service?.....	1
3	Does our agency need a solicitor?.....	3
4	What are the financial costs of employing a solicitor? .....	4
5	Options for funding a solicitor post .....	6
6	Alternatives to employing a solicitor in your agency .....	8
7	How will employing a solicitor change the way we work? .....	9
8	Organisational, supervision and management issues .....	12
9	Recruiting a solicitor – some practical issues .....	13
10	Miscellaneous issues.....	16
11	Useful addresses.....	18
	APPENDIX A – SOLICITORS’ RULES OF CONDUCT.....	20
	APPENDIX B – Sample NfP advice agency solicitor post advertisement .....	27

## 1 Introduction

- 1.1 This briefing provides guidance to agencies that do not currently employ a solicitor but are considering doing so, and discusses the following issues:
- potential benefits and financial costs for your agency of employing a solicitor;
  - methods of funding a solicitor post;
  - alternatives to employing a solicitor;
  - possible changes that employing a solicitor might cause to the way your agency works;
  - management and supervision issues;
  - recruitment issues;
  - sources of further information.
- 1.2 The documents referred to in this briefing are:
- *The Guide to the Professional Conduct of Solicitors*, 8<sup>th</sup> edition 1999, published by the Law Society (GPCS)
  - Solicitors' Practice Rules (SPR) (included in the above *Guide*)
  - Specialist Quality Mark (SQM) standard, 1<sup>st</sup> edition April 2002
  - Legal Services Commission's (LSC) Not-for-Profit General Civil Contract (NfP contract)
  - LSC's solicitor's General Civil Contract (solicitor contract)
  - *Guidance on the Assessment of Costs for Controlled Work* (GoAC)
  - LSC's Bid Rules for General Civil Contracts for Controlled Work from January 2003 ("bid rules")
  - LSC's Regional Prioritisation and Contract Awards – an introduction (2003)

## 2 What will a solicitor add to our service?

- 2.1 The potential benefits to your *clients* of employing a solicitor include:
- additional capacity (if you will be employing an extra person);
  - extending the range of work you are able to deal with;
  - the ability to carry out particular types of work (particularly court work) without the need to refer;
  - access to Legal Representation certificates (formerly known as Legal Aid certificates) for litigation;
  - access to specialist barristers.
- 2.2 The potential benefits to your *agency* of employing a solicitor include:
- potential source of extra income, from certificated work and costs recovered from the "other side" in litigation;
  - chance to enhance the skills and experience of other staff (eg by enabling them to become involved in higher level work);
  - access to a further supervision and training resource;

- additional contribution to social policy work, particularly commenting on new and forthcoming legislation and conducting test cases to develop the law for the benefit of clients.

Additionally, the LSC in some regions has a preference for contracting with agencies that can carry out the full range of work that can be conducted under the Legal Aid scheme. This means that priority will be given to the award of solicitor contracts in particular LSC regions.

### **What can a solicitor do that is different from the service we already provide to our clients?**

- 2.3 Many specialist non-solicitor advisers have considerable legal knowledge and experience within their area of specialism. However, a solicitor can bring additional skills and qualifications such as:
- entitlement to conduct litigation (court cases) on behalf of clients;
  - right to represent clients in the County and Magistrates Courts, or ability to arrange representation by a barrister in these or the higher courts (eg the High Court and the Court of Appeal). If the solicitor has an additional qualification as a solicitor advocate, they can do higher court representation themselves (however, it is currently unusual to find solicitor advocates working in the not-for-profit (NfP) sector);
  - means of access for clients to Legal Representation certificates, to start or defend court action, which as well as funding the client's costs also gives them considerable protection regarding payment towards the other side's costs if they lose the case;
  - an approach to their work based on their legal skills and training, both in terms of how they diagnose a problem and the solutions they suggest. This may not necessarily be the right or the only approach for all clients, but an understanding of the legal context of a problem is essential to the task of outlining the full range of possible options. This can be particularly valuable when combined with other approaches to clients' problems used by advice agencies.
- 2.4 In practical casework terms, the "added value" a solicitor can provide is perhaps best explained by way of a few illustrative examples:
- test cases – pursuing legal points of general importance (eg to claimants, tenants or refugees) in the higher courts and the European courts;
  - debt – appeals against administration orders;
  - housing – emergency applications for injunctions to prevent illegal evictions and harassment; ability to sue landlords on behalf of tenants to obtain compensation for disrepair; challenging homelessness decisions in the County Court or by judicial review;
  - employment – access to Legal Aid funding to cover preparation for and representation at the Employment Appeal Tribunal;
  - immigration – access to Legal Representation certificates to appeal Immigration Appeal Tribunal decisions to the Court of Appeal; option to apply for judicial review of Immigration Service decisions to remove clients from the UK;<sup>1</sup>
  - environment/planning – ability to represent local tenants' groups at planning enquiries;

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<sup>1</sup> Note that the availability of judicial review in certain immigration cases may be severely curtailed by recent legislation.

- constitutions – ability to advise local voluntary organisations on constitutions and corporate and charity law issues;
- welfare benefits – judicial review of Social Fund decisions.

### **3 Does our agency need a solicitor?**

3.1 The question of whether or not you really need a solicitor is one to which you will have to give careful consideration. Some of the historical advantages of employing a solicitor have become less significant over time. With the introduction of Legal Aid contracting for the NfP sector, non-solicitor agencies can now obtain funding for disbursements (see CLS Support Contracting briefing no. 4, “Disbursements”, for what can and cannot be claimed as a disbursement).

3.2 Agencies also have greater access to barristers than in the past, for example via LSC-funded specialist support (formerly known as second-tier) services. Under the Bar DIRECT scheme, non-solicitor agencies can also apply to the Bar Council to be authorised to instruct barristers directly. The Bar Council is also proposing to allow clients themselves rights to directly instruct barristers in some circumstances, although this is unlikely to come into effect before Autumn 2003.

#### **Some issues to consider**

3.3 You will need to decide which kinds of work you want the solicitor to do. It might be useful to consider the following issues:

- What area/s of law would they work in?
- Will they work primarily as a caseworker?
- Will they be involved in supervising others?
- Do you want them to represent clients in court or at tribunals?
- Will they be involved in non-casework activities such as training and social policy?
- Do you want or need the solicitor to generate income?

3.4 You should therefore assess local need and demand for a solicitor service in the categories of law you are considering, and evaluate whether that need is currently being met elsewhere. You may already have a good idea of the level of need, perhaps based on your own agency’s experience of being unable to find solicitors to whom to refer clients.

3.5 You will need to be clear about what your priorities are for the post. For example, if you expect the solicitor to run a training programme for other agencies, then this will reduce the amount of time they have available to contribute to Legal Aid contract targets.

3.6 You should also consider whether the work you are planning to do needs to be done by a legally qualified person or could be satisfactorily carried out by a specialist non-solicitor caseworker.

3.7 We recommend that you research these issues thoroughly, both to satisfy your agency that local need justifies employing a solicitor and to convince funders of your case. You should also discuss your plans with other local agencies and networks you are involved with, including your local Community Legal Service Partnership (CLSP).

## 4 What are the financial costs of employing a solicitor?

### Salary and “on costs”

- 4.1 Looking at advertisements for solicitors in *Legal Action* or Wednesday’s *Guardian* will give you an indication of the salaries currently being offered to solicitors employed in advice agencies. Salaries offered tend to be in the region of £22–30,000 a year. The amount offered would often depend on which part of the country the post is based in and the amount of experience expected. If you either have a local solicitor on your Management Committee or access to any other relevant contacts, you could check out local rates with them. You will need to add National Insurance, pension costs and overheads to this.

### Will we need to register for VAT if we employ a solicitor?

- 4.2 The rules regarding registration for and payment of VAT are complex and may apply to agencies whether or not they employ a solicitor. Any agency providing services under a contract (eg with the LSC) may have to register for VAT, depending on its annual turnover. This is an area where you will need professional advice, for example from an accountant. Your network may also be able to give you further guidance on VAT issues.

### What other overheads are associated with employing a solicitor?

#### Professional indemnity insurance

- 4.3 You **must** tell your insurers if you employ a solicitor. You should also check whether employing a solicitor would increase your premiums. You must also tell your insurers if your agency becomes involved in new or different types of work, eg conducting litigation on behalf of clients, as this may affect your premiums levels.

#### Practising certificates

- 4.4 All practising solicitors require a practising certificate, and as the employer you would be expected to pay for these. Certificates are renewable annually. The current cost is £700 per year (or £350 if the solicitor has earned less than £13,500 from the provision of legal services within the last twelve months).

#### Compensation Fund contribution

- 4.5 In addition to the cost of a practising certificate, you will also have to pay a mandatory contribution to the Law Society’s Compensation Fund, which exists to ensure that if a solicitor is dishonest the public will not suffer financially. The amount varies depending on whether the solicitor has held client money in the past twelve months and the number of practising certificates s/he has held. The current contribution levels vary up to a maximum of £500 per year.

#### Legal reference materials

- 4.6 You will need to budget for the cost of acquiring and maintaining relevant reference materials. If you are already providing advice in the area of law you want the solicitor to work in, you may already have some or most of the necessary materials. However, if you are developing a new area of law or a new type of work (eg litigation) then the costs of setting up the library may be significant. As well as books and journals, legal reference materials are increasingly being published in electronic formats (eg CD-rom and via the internet). You should also remember to budget for the annual cost of subscriptions etc to maintain the library.

### **Office equipment**

- 4.7 As when you employ any new worker, you will need to consider whether you have enough desks, phones, filing cabinets, computers and so on.

### **Stationery costs**

- 4.8 There will obviously be extra stationery costs because you are employing an additional caseworker who will get through a lot of paper! You may also decide to have your headed paper reprinted to reflect the fact that work is being done by a solicitor – see Appendix A, which refers to the relevant Solicitors' Practice Rule.

### **Accountants' fees**

- 4.9 The requirements of the Solicitors' Accounts Rules (see Appendix A) may mean that your accountants charge you more for your annual audit. Your accountant must be qualified, as required by the Account Rules (GPCS page 723) to prepare solicitors' accounts – this may mean that you have to change your accountant.

### **Administrative support**

- 4.10 You will need to consider the amount of administrative and secretarial support you can offer a solicitor. This will obviously depend on your current resources and any further funding you are able to obtain. This issue is covered in more detail at paragraphs 7.9 to 7.14 below.

### **Training and Continuing Professional Development**

- 4.11 Like any other type of adviser, solicitors have continuing education and training needs after initial qualification. The Law Society has set a minimum level of Continuing Professional Development (CPD) activities that solicitors must meet.
- 4.12 All solicitors must carry out at least sixteen CPD hours each year. At least 25% of these must be acquired by attendance at accredited training courses. There is also a compulsory management course that all solicitors must attend at some point during their first three years after qualification. The Law Society has produced a *Guide to the Law Society's CPD Scheme*, which is available to download in PDF format from the Society's website [www.lawsociety.org.uk](http://www.lawsociety.org.uk), or on request on 0870 606 2555.
- 4.13 In addition to the Law Society's requirements, if you are operating under a Community Legal Service (CLS) Quality Mark then all caseworkers including solicitors will need to meet the QM training requirements at the appropriate level. See, for example, SQM requirements D3.4 and D5.2.

### **Membership subscriptions**

- 4.14 Practising solicitors are members of the Law Society and will receive the Law Society's weekly publication, the *Gazette*. Solicitors (or other specialist caseworkers) may also want to join practitioners' associations such as:
- Housing Law Practitioners' Association
  - Immigration Law Practitioners' Association
  - Employment Lawyers' Association
  - Social Security Law Practitioners' Association
  - Community Care Practitioners' Group
  - Education Law Practitioners' Group

All these organisations produce useful material that will help the solicitor and your other advisers keep up to date with relevant legal issues and share good practice with peers. Membership of any of these bodies involves paying an annual fee, which you will need to budget for.

## 5 Options for funding a solicitor post

- 5.1 Whatever source of funding you decide to apply for, you will need to research local needs and get an accurate picture of the demand for the solicitor service you are planning. You will need to satisfy both yourselves and funders (a) that there is unmet need and (b) that employing a solicitor is the best way to meet it.
- 5.2 You should raise the issue with your local Community Legal Service Partnership (CLSP). You will be better placed to secure funding from both the LSC and other sources if the need you are seeking to meet has been identified as a priority in your local CLSP's Strategic Plan. For more information on the purpose and function of CLSPs, please refer to the LSC's *Guidance and information for CLSPs*, which is available to download in PDF format from the LSC's website [www.legalservices.gov.uk](http://www.legalservices.gov.uk), and the Advice Services Alliance's (ASA) briefing *Community Legal Service Partnerships – an introduction*, which is also available to download in PDF format from ASA's website [www.asauk.org.uk](http://www.asauk.org.uk).

### Local authority funding

- 5.3 Local authority funding, if available, may provide more flexibility regarding how you deliver your service, depending on a given authority's grant conditions. If the solicitor's salary is wholly or mainly funded by the local authority, then any extra money they generate (eg from certificated Legal Aid work) may provide additional income for your agency.

### LSC funding

#### Contracts

- 5.4 The LSC runs the CLS Fund, which pays for advice and legal representation to be provided for people involved in civil cases. It funds a range of levels of service, including Legal Help and Legal Representation. NfP agencies may apply for contracts to provide Legal Help – that is, advice and assistance for clients on legal issues. Agencies that employ solicitors may also be able to provide Legal Representation – that is, conduct litigation on behalf of clients. Note that we refer to funding from the CLS Fund under its more familiar title of Legal Aid in this briefing.
- 5.5 The Legal Aid budget is cash limited, and funding decisions are based on identified priorities. The LSC currently operates a system of regional prioritisation according to which each LSC Regional Office sets its own priorities for funding within certain wider national parameters. Contract award decisions should be based on information provided by CLSPs and Regional Legal Services Committees (RLSCs), and each Regional Director must publish a Regional Contracting Strategy, which will list identified priorities.
- 5.6 If a Regional Director decides that there is a need to fund new contracts in a given category of law, they will invite NfP agencies and solicitors' firms that have registered an interest to submit bids to the relevant regional bid panel. If you are considering applying to the LSC for funding you will therefore need to be familiar with both the terms under which you can bid (the bid rules) and your region's priorities. Both documents, *Bid Rules for General Civil Contracts for Controlled Work from January*

2003 and *Regional Prioritisation and Contract Awards – an introduction (2003)*, should be available either from the LSC website, [www.legalservices.gov.uk](http://www.legalservices.gov.uk), or from your LSC Regional Office (contact details are provided at the end of this briefing).

- 5.7 The LSC also expects that a solicitor will “add value” to the work they are paying for, beyond that which could have been achieved by the client or a non-solicitor adviser (see General Civil Contract (Solicitors), *Guidance on the Assessment of Costs for Controlled Work*, section 5.3, Beyond the Sufficient Benefit Test) and also NfP contract specification (from April 2003), section 3.12.6.
- 5.8 The LSC operates two types of funding contract for Legal Help/Help at Court levels of assistance – “solicitor” and “Not-for-Profit” (NfP). NfP agencies employing a solicitor have the option of applying for a solicitor contract or an NfP contract. In the case of a solicitor contract, the LSC will agree with you a maximum number of “matter starts” per year, and you are paid retrospectively for all matters your organisation has reported as completed. With an NfP contract, you are funded by the LSC to provide a set number of casework hours per year.
- 5.9 You are not required to have a solicitor contract if you are employing a solicitor to carry out Legal Aid work. However, if you already have an NfP contract at the time you employ a solicitor, you may be able to replace the NfP contract with a solicitor contract.
- 5.10 A detailed examination of the pros and cons of each type of contract is beyond the scope of this briefing. You can obtain more information and advice about which type may be better for your agency from your network or from the CLS Support project – contact details are provided at the end of this briefing.
- 5.11 In order to obtain a contract from the LSC, you will also need to meet (or be able to meet) the relevant Specialist Quality Mark (SQM) and contract requirements. This includes employing someone who has sufficient experience and competence in a given area of law to meet the relevant SQM category-specific supervisor requirements (SQM D3.2).
- 5.12 Again, a detailed description of these requirements is beyond the scope of this briefing, and you can obtain more information and advice from your network or from the CLS Support project.

### **Legal Representation**

- 5.13 Legal Representation certificates fund you to conduct court cases on behalf of clients. Only contracted agencies employing solicitors can access this form of funding, as only solicitors may conduct litigation.
- 5.14 This type of funding operates differently to contract funding. Certificates are granted on a “case by case” basis. Funding is provided on a sliding scale, meaning that clients may have to contribute to the cost of their case. Having their case funded by a certificate benefits the client not only by paying for their own legal costs, but also by giving significant protection against having to pay the other party’s costs if the case is unsuccessful. However, if the client wins a case involving money or property, the LSC may apply a “statutory charge”. This means that the client may have to repay some or all of the money the LSC has spent on the case from any money gained.
- 5.15 If you are operating an NfP contract you need to be aware that time spent on full certificate work does not count against your contract hours total. However, work carried out under full certificates is potentially more profitable for your agency. The hourly rate paid by the LSC for this type of work is higher than the equivalent for

Legal Help work under a contract. Also, in many types of litigation you may be able to recover some or all of your costs from the “other side”, at a higher rate than the LSC would pay under the certificate. Conducting work under Legal Aid certificates is therefore a potential additional source of income for a solicitor agency.

However, it can be very time consuming to actually recover Legal Aid and other money owing, and once you have factored in the time and effort involved in this, the overall surplus you make may be considerably reduced. You need to be absolutely sure that your solicitor understands how the billing process works, as it is complicated and sometimes very bureaucratic. Not all solicitors understand “billing” – those trained in local authorities, NfP agencies and some private practice firms may not.

### **Other grant income**

- 5.16 As with local authority grant funding, charitable or other grant funding may offer more flexibility about the kind of work the solicitor can do. You will need to look at the available options such as the Single Regeneration Budget, the Community Fund (previously the National Lottery Charities Board), Neighbourhood Renewal Fund, European funding and money available from other grant-giving bodies. Any grant you receive is likely to be time-limited, meaning that you will have to either look for further funding to replace it, seek to make the post self-funding, or stop providing the service when the grant runs out.

### **Converting an existing post**

- 5.17 If you have a vacancy within your agency, you could consider appointing a solicitor to that post, using one or more of the above options to fund any additional salary and other costs.

## **6 Alternatives to employing a solicitor in your agency**

- 6.1 If you decide not to employ a solicitor yourself but believe that there is a local need for a specialist solicitor service not currently being met, you might want to consider:
- working with other agencies, perhaps by forming a consortium, to employ a solicitor who would provide services across a wider area. The LSC is open to bids from agencies coming together to make a joint application (for more information, see the “bid rules”, page 4). Any solicitor employed under a consortium arrangement would have to be employed by an agency meeting the requirements of the Employed Solicitors Code (see Appendix A) and would only be able to supervise other workers in the employing organisation.
  - encouraging another local solicitor agency or firm to practise in the particular category/ies of law for which you have identified a need for assistance. For example, if from time to time you deal with cases where judicial review is needed to challenge Social Fund decisions, you might want to work with a local private practice firm or your local Law Centre to encourage them to develop expertise in this kind of case.

### **Can we employ a barrister instead of a solicitor?**

- 6.2 It depends on why you want to employ a “legally qualified” person. Both barristers and solicitors are legally qualified, and barristers can bring valuable skills, training and experience to an agency. Some agencies (eg Law Centres) employ both solicitors and barristers. However, employing a barrister alone without employing a solicitor would not enable your agency to conduct litigation on behalf of clients and

neither would it enable you to access funding certificates. If you are considering employing a barrister, you should contact the Bar Council for further information and guidance.

## 7 How will employing a solicitor change the way we work?

- 7.1 The Solicitors' Practice Rules (SPR) will potentially have a significant effect on the ways in which your organisation works, including management and supervision practices, which are dealt with at section 8 and Appendix A below. In the following paragraphs, we deal with some of the other factors you should be aware of.

### Will the solicitor's conduct be governed externally?

- 7.2 Yes. All solicitors are regulated by the Law Society and must comply with the SPR (published in *The Guide to the Professional Conduct of Solicitors* (GPCS)). These rules apply not only to the solicitor but also to everyone working in the "solicitor's office", including other caseworkers and support/admin staff. However, it is the solicitor who has the professional responsibility for making sure that the rules are complied with and who faces disciplinary action (including the possibility of being "struck off") if they are broken (see Appendix A below for more information on the SPR).
- 7.3 This means that all the legal advice and casework carried out in your agency, **including** work done by non-solicitors, is the responsibility of your solicitor/s. It is therefore only fair that they are able to exercise control over the quality of that work. If you do not want all your work to be the solicitor's responsibility, then you may need to establish a separate legal entity to demarcate the work that will be the solicitor's responsibility. You will need to discuss any such arrangements in detail with the Law Society in advance.
- 7.4 The GPCS states that a solicitor employed by a "Law Centre, CAB, or similar non-commercial organisation" must comply with the SPR and the rules on employed solicitors (Chapter 4, GPCS).
- 7.5 Appendix A covers some of the main requirements that are likely to impact on the way you work. We cannot describe all of these in detail, as they fill an entire book. In practice, there is likely to be little in most of the requirements regulating solicitors that agencies would have difficulty in complying with. Many of the requirements will be familiar to agencies that have the SQM.
- 7.6 Breaches of the SPR can lead to a solicitor's conduct being investigated by the Office for the Supervision of Solicitors (OSS). This includes breaches by anyone supervised by the solicitor. The OSS can take disciplinary action against the solicitor, and refers serious cases to the Solicitors' Disciplinary Tribunal. Amongst other things, this tribunal has the power to impose fines, to suspend a solicitor from practising, and to strike off a solicitor. This gives you some idea about why solicitors have to retain ultimate control over their own work, and any work they have responsibility for within an advice agency (or anywhere else), in such a way as to meet the rules.
- 7.7 This also means that any complaints about your service may be dealt with externally, by the OSS. A client who makes a complaint and is not satisfied by any action your agency takes to deal with it has the right to take their complaint to the OSS. You may need to amend your complaints procedure to take account of this – see Appendix A, paragraphs 6.3 and 6.4.

## **LSC requirements – Specialist Quality Mark and contracting**

- 7.8 If you are not already working under a Legal Aid contract, the requirements of the General Civil Contract (GCC) and of the Specialist Quality Mark (SQM) are likely to have a significant impact on how your organisation operates. Further information on GCC and SQM requirements is available either from your advice network or the CLS Support project.

### **Administrative and secretarial support**

- 7.9 The amount of admin/secretarial support a solicitor needs will depend on their ability to be self-servicing, and on both your and their assessment of the desirability of the solicitor spending their time on admin tasks that will not count as contract work or attract any other income. Most solicitors are now used to drafting at least some of their documentation directly onto a computer. However, you will need to consider whether it is the best use of a solicitor's (relatively expensive) time for them to service all their own administrative needs. The more administrative support that is provided to a solicitor (or any caseworker) the more time they have to spend on direct client work.
- 7.10 The LSC recognises that carrying out work under contract brings with it a need for typing and admin support, and, under NfP contracts **only**, it funds a half-time admin worker post to support each full-time specialist caseworker post. The LSC does not prescribe how the money paid to fund admin support should be spent. However, you need to consider carefully the best way to use this support. In particular, will the admin worker primarily support contract work, or will they also be expected to provide support for other, non-contract work?
- 7.11 Since the LSC pays for someone else to carry out admin work, it will not expect caseworkers to spend time on it, and will not pay them to do so. The same issues arise, of course, in relation to any caseworkers operating under an NfP contract, not just solicitors. Operating an LSC contract brings with it additional administrative work. If caseworkers are spending time on admin tasks, your agency may find it difficult to meet its contract work targets.
- 7.12 Even if you are not receiving funding for admin support under an NfP contract, you will need to think about the need for admin/secretarial support to assist a solicitor carrying out litigation. Almost any involvement in court work brings with it a need for additional typing and admin support. Sometimes such support has to be available at very short notice, such as when applying for an injunction to try to prevent an illegal eviction.
- 7.13 However your admin work is funded, you need to consider what kind of work an "admin worker" will do, as the term is often used loosely to cover a wide range of activities. In this context, we are talking primarily about secretarial support such as audiotyping. You may also want an admin worker to carry out other tasks such as photocopying (some types of legal work demand vast quantities of copying, with bundles several hundred pages long being required in triplicate), filing, arranging appointments, or answering the door or the telephone. The work you decide to allocate to an admin worker will depend on your priorities and resources.
- 7.14 If your agency is committed to all workers being self-servicing, you will need to make sure that any solicitor you recruit understands this and is happy to work in this way. You may need to provide training (eg in typing skills).

## Generating work for the solicitor

- 7.15 As with any specialist service, you will need to have good systems in place so that work is referred appropriately to the solicitor:
- internal referrals – all staff will need to have a clear understanding of how, when and what type of work to refer to the solicitor;
  - external referrals – it will be important to build a profile of your new service by networking, training and publicity, particularly if your agency is not already doing this type of work.

## Working under Legal Representation certificates

- 7.16 As discussed in paragraphs 5.13–5.15, most of the litigation work your solicitor carries out is likely to be funded by Legal Representation certificates. Working under certificates may represent a change in the way you work but, importantly, it protects your client from costs orders being made against them in most cases.
- 7.17 Because eligibility is calculated according to a sliding scale, your clients may have to pay significant amounts of money to the LSC during the lifetime of their certificate, depending on the level of their income and capital. This will only be repaid to them if they recover sufficient costs from the other side. If your agency is accustomed to providing a completely cost-free service, you may need time to get used to the idea of clients having to “pay” for your services in this way.
- 7.18 In certificated cases, there is a risk that the client will have to pay a contribution towards the amount you can expect to be paid for your work by the LSC if, as a result of having a certificate, they gain (or preserve) money or other assets. This is known as the “statutory charge”.

The statutory charge is complicated and can be the cause of considerable confusion for clients. However, it is important to remember that the charge applies only to:

- cases which are “worth money” – ie about financial compensation or property which has a monetary value, and;
- cases in which Legal Representation certificates are granted. This generally means court cases, although certificates can be granted in certain tribunal proceedings.

It is rarely relevant in most welfare benefit, homelessness, immigration and education cases. In practice, for most NfP agencies the statutory charge will be an issue only in housing disrepair, Employment Appeal Tribunal and illegal eviction and harassment cases.

A couple of simplified practical examples may illustrate how it works.

### *Case One – settlement*

After being issued a Legal Representation certificate, you issue court proceedings on behalf of a client in a disrepair case. However, after seeing the landlord’s full defence, you realise that an offer to settle is a good one even if they are not willing to pay the legal costs.

Calculation:

Compensation to client	£2,000
Less your legal costs to date of settlement	<u>750</u>
Client receives	£1,250

### *Case Two – court orders compensation and costs*

Calculation, costs:

Your total legal costs to date of court order	£4,500
Less costs which the other side is ordered to pay	<u>4,000*</u>
Shortfall in legal costs	£ 500
Compensation ordered to client	£7,500
Less shortfall in legal costs	<u>500</u>
Client receives	£7,000

[\*Even if you win a case, a court will sometimes order that it is not reasonable for your opponent to pay all of your legal costs. This can be because the court considers that you have claimed for work that was unnecessary, or that your client was responsible for wasting your time and should therefore pay that proportion of the costs.]

- 7.19 There are complex issues involved in representing clients in litigation when the client does not have a certificate. These are beyond the scope of this briefing. Further information and guidance may be available either from your advice network or the Professional Ethics section of the Law Society (contact details are provided at the end of this briefing).

## **8 Organisational, supervision and management issues**

- 8.1 Being the first and maybe the only solicitor in an advice agency is a very different experience from joining a pre-existing mixed team of lawyers and advisers such as those found in Law Centres. The issues we raise here are addressed primarily to non-solicitor agencies “adding on” a solicitor to their current service for the first time.

### **Management/supervision of a solicitor**

- 8.2 In some agencies, the solicitor operates a separate legal service, co-operating closely with the manager but reporting directly to the Management Committee. One of the circumstances in which you might want to consider arranging for a solicitor to be directly managed by the Management Committee is if the solicitor is paid more than the manager. Asking a less well-paid colleague to manage the solicitor might cause difficulties for both parties.
- 8.3 Apart from the question of pay, there is no particular reason why a solicitor should not be directly managed by your agency’s manager. Equally, there is nothing to prevent a solicitor joining a collectively run agency and becoming a member of the collective staff team. In either event, the solicitor’s personal supervision and management responsibilities regarding other staff under the SPR must be respected.
- 8.4 A solicitor will remain accountable to their line manager, Management Committee or staff collective for their performance. So, for example, if it is a term of their contract that they work a 37-hour week and they repeatedly do less, then you would proceed in the same way as with any other member of staff. If your agency holds the SQM, then the solicitor is subject to the supervision and file review requirements at D3.4 and E2, in the same way as any caseworker.
- 8.5 What you cannot do is demand anything of your solicitor that would involve a breach of the SPR. You will also need to design mechanisms for the solicitor to have the necessary degree of case management/supervisory control over staff whose work they have responsibility for.

- 8.6 Because of this, you will need to consider separating out responsibility for personnel management from responsibility for the supervision and management of the legal work of your agency. To avoid any potential tension arising from individual workers (eg the solicitor and centre manager) having responsibilities that may overlap, it is important to clearly differentiate respective supervision and management duties for all relevant individuals within your agency. These duties would include, eg, the management of personnel, financial management, supervision of legal advice and office management.

### **Management/supervision by a solicitor**

- 8.7 In order to meet the Law Society's supervision requirements (Practice Rule 13, see GPCS page 113–117) you will need to employ a solicitor "qualified to supervise" – that is, a solicitor who has held 36 months of practising certificates within the last ten years, and who has completed the training specified by the Law Society (currently twelve hours of training in management skills). You will often see job advertisements asking for a solicitor with "three years PQE" – "PQE" stands for "post-qualification experience".
- 8.8 In some circumstances, the Law Society may consider granting a "waiver" to a solicitor who cannot satisfy these requirements so that they can act as your supervising solicitor. This would normally only be granted to a solicitor with at least two years' experience. You should contact the Waivers Executive in the Law Society's Professional Ethics department for advice.
- 8.9 As discussed at paragraphs 7.2 to 7.6 and in Appendix A, a solicitor has supervision and management requirements placed upon them by the Law Society. You will need to ensure that the solicitor has satisfactory arrangements in place to meet these responsibilities. You will also need to consider whether you want the solicitor to supervise other casework staff, bearing in mind that this will take them away from other work (eg Legal Aid contract or income-generating casework).
- 8.10 As discussed in Appendix A, a solicitor is only able to supervise and manage one office that is open to the public at any one time. If you run, or are planning to run, outreach advice services, you must check that your solicitor will comply with the Practice Rules on supervision and management. You may also want to discuss any planned arrangements with the Law Society.
- 8.11 If you have a Quality Mark in any relevant category of law, then you will also need to ensure that supervision by and of the solicitor meets the requirements of the relevant Quality Mark standard.

## **9 Recruiting a solicitor – some practical issues**

### **Preparing to employ a solicitor**

- 9.1 Having considered all the issues arising from employing a solicitor, you will need to consider how the work they carry out and the way they conduct it will fit with your agency's ethos and current services, and either draw up appropriate policies/procedures or amend existing ones. You will also need to understand the different terminologies and approaches to work that a solicitor may use (eg what a solicitor means by advocacy may not be what you mean).
- 9.2 As with any recruitment process, you will need to draw up a clear job description and person specification. The job description should describe what the solicitor's role will

be and what work will be expected of them. The person specification should be clear about the specific qualifications, skills and experience you are looking for. For example, if the solicitor is to act as a supervisor for your Legal Aid contract, candidates will need to meet the relevant SQM supervisor standard requirements for the categories of law in which you will expect them to be working. Equally, if you are expecting the solicitor to conduct court work then you will be looking for experience of conducting litigation under full certificates.

- 9.3 It is also important to ensure that your existing workers, particularly caseworkers, are involved and informed during the recruitment process and are not made to feel undermined or devalued by the arrival of a solicitor. They need to appreciate the positive benefits to your organisation and to them of employing a solicitor (eg developing their skills by working at a level of greater complexity/specialism or being involved in litigation work).
- 9.4 If the post is funded by the LSC, and this is the first occasion that your agency has been offered a Legal Aid contract, you will need to ensure that all relevant staff members, including managers, caseworkers and Management Committee members, understand both contract and SQM requirements. You should not rely on one person, ie the solicitor, having sole responsibility for this. You should also aim to recruit a solicitor who has experience of working under a Legal Aid contract, ideally of the same type they will be working to when they come to your agency.

### **Advertising**

- 9.5 Advice agencies tend to find it difficult to attract suitably experienced solicitor candidates. This is partly due to a lack of solicitors with experience of social welfare law, and partly due to the NfP sector being unable to compete with private firms when it comes to salary levels for more experienced solicitors.
- 9.6 It is important to advertise widely to attract applications. When drafting your advertisement, think about highlighting the additional/particular benefits of working for your organisation (other than salary), such as the opportunity to “make a difference” to people’s lives, the chance to diversify by carrying out work other than routine casework (eg training, campaigning), good working conditions, even a good location. As advertising executives like to say – find your Unique Selling Point and use it! See the advertisement at Appendix B for an example of good practice.
- 9.7 As well as Wednesday’s *Guardian*, good places to advertise for solicitors are *Legal Action* magazine and the Law Society’s *Gazette* (a weekly magazine that all solicitors receive). Advertising in these journals is not cheap, but these are the places where solicitors tend to look for work. You could also speak to any contacts you have who employ solicitors, to find out where they have found it useful to advertise. You could also ask these people to circulate details of your vacancy as widely as possible, such as through network mailings.
- 9.8 You need to make sure that the content of your advertisement complies with your equal opportunities policy, and it is important to ensure that you reach as wide and diverse a pool of interested people as possible. As well as using press advertising, you could consider asking organisations such as the Society of Black Lawyers to circulate details to their members (contact details are provided at the end of this briefing).

### **Interviewing and appointing a candidate**

- 9.9 We suggest that you ask a local solicitor with experience of conducting casework and billing for Legal Aid to sit on your interview panel. This should help you to check

the candidate's understanding and experience of both litigation and of billing. You should bear in mind that not all solicitors will necessarily have this knowledge and experience – those whose experience has been gained mainly in local authorities, certain kinds of private practice and advice agencies may not have the experience you are looking for, particularly if you are expecting the solicitor generate an income for your service.

9.10 At the stage of appointing a solicitor, in addition to taking up standard references, you should also ask for their “roll number” (a unique identifying number issued by the Law Society to all solicitors) and contact the Registration section of the Law Society to check:

- that the person is an admitted solicitor;
- the number of years post-qualification experience (PQE) they have.

The Registration section will also be able to provide you with some information on any disciplinary action taken against the solicitor, eg if the person has been or is due to be brought before the Solicitors' Disciplinary Tribunal, and it provides information regarding the number of complaints made against the person or any restrictions placed on their practising certificate.

You will also need to check that the Law Society has not made any disciplinary finding against your non-solicitor staff, such as ordering that they may not work in a solicitor's office.

### **Induction**

9.11 You will need to have a clear and comprehensive induction process, so that the solicitor understands your agency's ethos and methods of working, their own role, and your supervision and management arrangements. You will also need to ensure that they understand the nature of your funding arrangements, including the requirements of your Legal Aid contract if you have one.

### **Employing a solicitor in the longer term**

9.12 Many solicitors enjoy the opportunities provided by working in an advice agency. The NfP sector generally offers attractive working conditions, such as flexible working arrangements, generous holidays, good maternity and paternity leave and so on. Solicitors often also enjoy both the opportunity to work with and for local communities and the potential to make a difference to their lives. As noted above, these benefits are important in terms of both attracting and retaining solicitors, particularly as NfP agencies generally cannot compete with the purely financial rewards experienced solicitors could potentially earn in other parts of the sector such as private practice.

9.13 It is something of a balancing act to structure the solicitor's job so as to meet the needs of your clients, your agency and the solicitor in such a way as to make a long-term success of the venture. There is a danger that if the solicitor is involved in doing a large volume of “routine” casework to meet your Legal Aid contract requirements and/or to generate income, they may ask themselves why they are not doing the same work in private practice with the potential to earn more money! As with all workers in the service, you need to make sure that the solicitor's work remains stimulating and challenging. They might welcome the opportunity to use other methods to promote access to justice apart from individual casework, such as community legal education or campaigning, or they might want to develop their skills in an area of law that is new to them or new to your agency's services.

## 10 Miscellaneous issues

### Do we need to employ more than one solicitor?

- 10.1 There is no requirement that you employ more than one solicitor, and many agencies have just one. On the other hand, some agencies aim to employ a minimum of two solicitors. For example, it is a Law Centres Federation (LCF) membership requirement that Law Centres should employ at least two solicitors.
- 10.2 There are several reasons for this:
- If you only have one solicitor and they leave or are unexpectedly absent for a long period, you may be unable to continue to operate as before until a replacement is recruited.
  - The requirements of the SPR mean that it can be an onerous task for one person to be solely responsible for compliance.
  - Solicitors may prefer to work with another solicitor peer for both supervision and support purposes.
  - You may be obliged to appoint another solicitor if you have two offices. This is because, under the Law Society's supervision rules, no solicitor can be the sole solicitor "qualified to supervise" at two different offices for the same part of the week.
- 10.3 Even if you only have enough funding to recruit one solicitor initially, you should consider whether this is a satisfactory arrangement in the longer term, and if necessary look for further funding to enable your agency to recruit a second solicitor in due course.

### Do we have to have the SQM and a Legal Aid contract to employ a solicitor?

- 10.4 In theory, you can employ a solicitor without having a Legal Aid contract. In practice, you may find it very difficult to provide a service that makes best use of what a solicitor can offer without access to funding for disbursements. Similarly, it is very difficult to carry out litigation if clients do not have access to full Legal Representation certificates.
- 10.5 However, you do not already need to have a contract and/or SQM in order to apply to the LSC for funding to employ a solicitor. It is possible to apply on the basis that you meet most of the requirements (particularly the organisational ones) and will meet the others (particularly those relating to the category supervisor requirements) once the person is in post.

### Requirements of the Office of the Immigration Services Commissioner

- 10.6 Ordinarily, NfP agencies providing immigration/asylum advice must gain exemption from the Office of the Immigration Services Commissioner's (OISC) regulatory scheme. Failure to do so is a criminal offence.
- 10.7 Solicitors are not required to register with or gain exemption from the OISC, nor are individuals providing immigration/asylum advice under a solicitor's supervision. However, employing a solicitor does not automatically mean the OISC regulatory scheme will not apply to your agency. This will depend on your supervision arrangements for staff carrying out immigration work. If all employees who are giving immigration/asylum advice are doing so under the supervision of the solicitor, your agency will not need to seek exemption from the OISC. If you are providing, or are

planning to provide, immigration/asylum advice, you should contact the OISC for more guidance and information (contact details are at the end of this briefing).

- 10.8 All Citizens Advice Bureaux (CABx) have a block exemption from the OISC enabling them to carry out work at OISC Level 1 without applying for individual Bureau exemption. However, any work beyond this level may require CABx to obtain OISC exemption even if a solicitor is employed.
- 10.9 If you are a solicitor agency carrying out immigration work you should also have regard to the Law Society's *Guidelines for immigration practitioners*, and chapter 12, Annex 12C in particular. These were updated in June 2001 and are available at [www.guide-on-line.lawsociety.org.uk](http://www.guide-on-line.lawsociety.org.uk). The Law Society's Standards Board has also issued guidance on the supervision of immigration work, published in the Law Society Gazette, 17/10/2002 edition.

### **If we employ a solicitor, will we be able to train other workers to become solicitors?**

- 10.10 There are three stages to qualifying as a solicitor. The first is to obtain either a law degree or other degree plus the Common Professional Exam (CPE). The second is to successfully complete the Legal Practice Course (LPC). The third and final stage is to undergo a two-year training contract (formerly known as "articles") in a solicitor's firm or office. The trainee solicitor must be supervised by a training principal, a solicitor with at least five years' post-qualification experience, and must work in several different areas of law during their training period.
- 10.11 If you wish to train someone as a solicitor, you must therefore already have a solicitor with at least five years' experience working in your agency. You must also be able to provide the trainee with access to work experience in several different areas of law, and meet the cost of undertaking the compulsory Professional Skills Course (PSC), which trainees must complete during their training period.

### **LSC funding for trainee social welfare law solicitors**

- 10.12 In recognition of concerns about the small number of newly qualified solicitors going into Legal Aid work, the LSC awards a limited number of grants to solicitor organisations (private firms or NfP agencies) to enable them to sponsor the fees of a student on the LPC and to subsequently provide that person with a training contract.
- 10.13 The grants will cover 100% of the LPC fees, 75% of the Law Society's minimum salary for trainee solicitors during the training contract and the cost of the PSC. LSC Regional Offices are inviting organisations to bid for grants, and will make awards based on identified lack of provision of specialist advice in particular social welfare law categories and geographical locations. The LSC are still evaluating the scheme that ran in 2002/03 and have yet to make a decision about the availability of grants for 2003/04.
- 10.14 NfP agencies that employ a suitably experienced solicitor (qualified to act as training principal) will be able to apply under this scheme. You will need to express an interest to your LSC Regional Office and obtain details of regional priorities. If you are interested in applying, you should contact your Regional Office for further information.

### **Employing a solicitor "by accident"**

- 10.15 It is possible that a solicitor could apply for and be appointed to a "standard" caseworker post. If this happens, you will need to be clear whether you and they

intend them to work for you as a practising solicitor. If they are to work as a solicitor, you will need to address the issues raised in this briefing. If not, these issues will not be relevant.

## **11 Useful addresses**

### **Bar Council**

3 Bedford Row  
London WC1R 4DB  
Tel: 020 7242 0082

[www.barcouncil.org.uk](http://www.barcouncil.org.uk)

### **Law Society**

113 Chancery Lane  
London WC2A 1PL

Tel: 020 7242 1222

Professional Ethics department:  
Tel: 0870 606 2577  
Email: [professional.ethics@lawsociety.org.uk](mailto:professional.ethics@lawsociety.org.uk)

[www.lawsociety.org.uk](http://www.lawsociety.org.uk)

### **Legal Services Commission**

85 Gray's Inn Road  
London WC1X 8TX

Tel: 020 7759 0000

[www.legalservices.gov.uk](http://www.legalservices.gov.uk)

### **Office of the Immigration Services Commissioner**

Fleetbank House  
2-6 Salisbury Square  
London EC4Y 8JX

Tel: 020 7211 1500

[www.oisc.org.uk](http://www.oisc.org.uk)

### **The Society of Black Lawyers**

Room 9  
Winchester House  
11 Cranmer Rd  
Kennington Park  
London SW9 6EJ

Tel: 020 7735 6592

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## **Appendices**

**A** – Solicitors' Rules of conduct

**B** – Sample NfP advice agency solicitor post advertisement

## APPENDIX A – SOLICITORS’ RULES OF CONDUCT

### A1. Introduction

A1.1 The information in this section is provided to:

- highlight the main rules governing solicitors’ conduct that might impact on the way your agency works;
- facilitate a process of mutual understanding by explaining why a solicitor might conduct their work in certain ways that might be unfamiliar to your service.

A1.2 The conduct obligations on solicitors take a number of forms. Some are called “rules” and others “principles”, but their effect on the solicitor is largely the same. They are all contained in the Law Society’s *Guide to the Professional Conduct of Solicitors*, 8<sup>th</sup> edition 1999 (GPCS). There are references to this throughout this appendix. **NB:** As this edition of the *Guide* is now somewhat out of date, you must also check the on-line version at [www.guide-on-line.lawsociety.org.uk](http://www.guide-on-line.lawsociety.org.uk), and especially Chapter 32. You can also contact the Law Society’s Professional Ethics department for information and advice, who will be able to send you hard copies of various sets of rules (contact details provided at the end of this briefing). The Solicitors’ Practice Rules 1990 (SPR) and the Solicitors’ Accounts Rules 1998 (SAR) are particularly important.

### A2. Practice Rule 1 (basic principles) (GPCS page 1)

A2.1 This rule contains the basic principles that govern solicitors’ professional conduct. A solicitor must not do anything, or permit someone else to do anything on their behalf, “which compromises or impairs, or is likely to compromise or impair any of the following:

- a) the solicitor’s independence or integrity;
- b) a person’s freedom to instruct a solicitor of his or her choice;
- c) the solicitor’s duty to act in the best interests of the client;
- d) the good repute of the solicitor or of the solicitors’ profession
- e) the solicitor’s proper standard of work;
- f) the solicitor’s duty to the Court.”

### A3. Practice Rule 13 – Supervision and Management of a Practice (GPCS page 113)

A3.1 This rule governs both supervision and management of a solicitor’s office. Because it sets out what your solicitor must comply with, both your agency and the solicitor will need to be familiar with it in order to be clear about respective responsibilities, eg which parts of your service will the solicitor be responsible for, and if you have more than one office, which office is affected by this rule and when, etc?

A3.2 This is also the rule that may potentially cause your agency the most difficulty. The Professional Ethics department of the Law Society can provide advice about how to interpret and meet this rule in practice. It will also be useful for you to talk to other agencies with solicitors about how they meet the requirements of this rule. If you don’t know of any locally, contact your advice network, which should be able to provide guidance or refer you to other agencies in the same position as your own.

### **What is meant by “supervision” and “management”?**

A3.3 “Supervision” is defined as “the professional overseeing of staff and the professional overseeing of clients’ matters”.

A3.4 “Management” is defined as encompassing “the overall direction and development of the practice and its day-to-day control and administration. Management functions include business efficiency as well as professional competence.”

### **What do these requirements involve?**

A3.5 The minimum requirements are as follows:

- At least one solicitor in every practice has to be a solicitor “qualified to supervise” – that is, a solicitor who has held 36 months of practising certificates within the last ten years, and who has completed the training specified by the Law Society from time to time for the purpose of the rule. At the moment the training requirement is twelve hours of training in management skills.
- At least one solicitor “qualified to supervise” must be based at every office.
- No solicitor can be the sole solicitor qualified to supervise at two different offices for the same part of the week.
- Systems of supervision and management must encompass people working away from the office and work carried out in the evening or at weekends. In the case of evening and weekend work, the solicitor need not normally work at those times, provided he or she is available for emergency consultation and pays occasional visits to the office during such times.
- The solicitor must hold a practising certificate.

The Law Society may be prepared to grant a waiver for a solicitor with less than 36 months of practising certificates to enable him or her to be the supervising solicitor. The solicitor will have to make a formal application. You should contact the Waivers Executive in Professional Ethics for advice.

### **What does supervision involve?**

A3.6 The rule does not specify how supervision should be carried out. However, it does require that there is evidence of effective supervision and management, including properly documented evidence of management standards and procedures and any requirements laid down by the Management Committee. Providing such evidence is unlikely to be a problem for agencies complying with the SQM.

### **Does the supervising solicitor have to see all our incoming mail?**

A3.7 An earlier version of the rules contained a requirement that supervising solicitors should see all incoming mail. This is no longer specified, but it is likely that the Law Society would expect to see evidence of proper supervision of incoming post. See also guidance to SQM requirement D4.2, “Systems of Supervision”.

A3.8 The supervising solicitor does not necessarily have to check all incoming mail. It may be sufficient in some agencies for the solicitor to see as much of it as is necessary to get a proper idea of what is going on, eg to check that casework is being conducted properly and to be able to pick up if a complaint is made. On the other hand, you may wish to consider operating an “open” post supervision system where all your casework-related post is available to be seen by all caseworkers.

### **Does the supervising solicitor have to be physically present in the office all day?**

A3.9 They have to be based at the office (that is, the office must be the solicitor's "normal place of work" as defined in the notes to the rule). This does not necessarily mean the solicitor has to be there for the whole day. The rule recognises that the "day-to-day demands of practice" may take the solicitor out of the office, but it is not enough for the solicitor to merely "check in".

### **Can a solicitor supervise more than one office?**

A3.10 A solicitor can supervise different offices at different times during the week. So, for example, your solicitor could supervise one office for the first half of the week and another office for the second half. What they cannot do is be the sole solicitor qualified to supervise at two different offices for the same part of the week. So, if your agency has more than one office you will have to employ two supervising solicitors.

### **Does a solicitor's management and supervision responsibilities mean they cannot be managed/supervised?**

A3.11 No. See section 8 of this briefing for more information.

### **What about when the solicitor is absent?**

A3.12 If it is a temporary absence, the supervising solicitor must make satisfactory arrangements so that client work and other duties are properly carried out. If the absence lasts longer than a month, you will need to make arrangements for another solicitor, who is qualified to supervise, to do this for you. You may be able to set up a reciprocal arrangement with another local solicitor agency or firm, where your supervising solicitors agree to cover for each other in the event of any absence of over a month.

### **If we employ a solicitor, will we have to comply with Practice Rule 13?**

A3.13 The application of the rule to employed solicitors (ie those employed by non-solicitor organisations) is quite complex, but it is very likely that the way your organisation works and the work you want the solicitor to do will mean that the rule applies.

A3.14 The Law Society strongly encourages agencies thinking of employing a solicitor to talk to them in advance about how this rule will apply to them. The Society will be as sympathetic as possible, but its paramount concern is to ensure that clients get the same level of protection from the operation of these rules no matter where their solicitor is based – in an NfP service or in private practice. You should contact the Professional Ethics department of the Law Society to discuss these issues.

## **A4. Employed Solicitors Code (GPCS page 152)**

A4.1 Solicitors employed by advice agencies must comply with Practice Rule 4 and paragraph 7 of the Employed Solicitors Code 1990 (as well as with the other rules and principles of professional conduct). It requires the agency employing the solicitor:

- to be independent of central and local government;
- to have no funder in a majority position on its managing body;

- not to charge fees except under the Legal Aid scheme, or where the organisation indemnifies the client in relation to the solicitor's costs insofar as they are not recoverable from any other source;
- to effect professional indemnity cover reasonably equivalent to that required of solicitors under the Solicitors' Indemnity Insurance Rules.

A4.2 It also requires that all fees earned and costs recovered are paid to the agency in order to further the provision of the agency's services.

## **A5. Accounts Rules and Client Account (GPCS page 677)**

A5.1 A solicitor employed by an advice agency who receives or holds clients' money must comply with the Solicitors' Accounts Rules 1998 and has to pay a contribution to the Compensation Fund (see paragraph 4.5 of this briefing). You will need to make sure that any solicitor you employ is familiar with these rules, both in theory and in practice. Guidance is also available from the Law Society on the interpretation and practical operation of the rules.

A5.2 You will also need to make sure that your finance worker/bookkeeper is familiar with these rules. Any workers involved in handling money relating to client work also need to be aware of them. There are specific rules about accountant's reports (page 681), and your accountants/auditors will need to be familiar with and able to comply with these. This may increase your audit fees. Your accountant must be qualified, as required by the Account Rules (GPCS page 723) to prepare solicitors' accounts – this may mean that you have to change your accountant.

A5.3 The solicitor will need to set up a separate client account at a bank or building society. This account must be in the solicitor's name, and must include the word "client".

A5.4 If the solicitor handles only a small amount of client money each year, it may be possible to obtain a dispensation from the obligations to deliver an annual Accountant's Report. However, even if a dispensation is granted, the Solicitors' Accounts Rules must be complied with. Since the solicitor will still have held and received clients' money they will still have to pay the Compensation Fund contribution (see paragraph 4.5 of this briefing).

A5.5 If your agency never deals with client money or money from full Legal Aid certificate work then you may not need to open a client account. Contact the Law Society for further information.

## **A6. Solicitors' duty to the court (GPCS page 374)**

A6.1 Solicitors are officers of the court and have a duty not to deceive or mislead the court. This sometimes brings the solicitor into conflict with his or her client. A solicitor cannot continue acting for the client if this would involve deceiving or misleading the court.

A6.2 A solicitor acting as an advocate must also comply with the Law Society's Code for Advocacy.

## **A7. Rule 15 – Costs Information and Client Care Code (GPCS pages 27 and 265)**

A7.1 This rule requires solicitors to give clients information about costs and other matters and to operate a complaints handling procedure, in accordance with the Solicitors' Costs Information and Client Care Code.

A7.2 In practice, the client care requirements are unlikely to present any major problems for advice agencies, particularly those that are already used to working under CLS Quality Mark requirements. What will probably be new is the requirement to inform clients about costs. This is only likely to arise in cases where the client has a funding certificate and may (at least theoretically) have to pay your fees if they do not recover your costs from the other side in the case. There is a similar obligation imposed by the LSC (see SQM standard requirements F1.2 and F2.3). Setting hourly charging rates for workers and writing to clients with this information may take some getting used to.

## **Complaints**

A7.3 You need to be aware that if a client has a complaint about the professional work of a solicitor (or anyone working under that solicitor's supervision) then ultimately it might be raised with the OSS, which may potentially lead to disciplinary action being taken against the solicitor.

A7.4 You will need to amend your complaints procedure to reflect this. As a minimum, you must make sure that the solicitor is informed of any complaints made about advice or casework. Ideally, you should separate complaints about your legal/advice work from complaints about other aspects of your service. For example, clients who are unhappy with the legal service they have received could be advised to complain to their caseworker, then your supervising solicitor, then the OSS as necessary/appropriate. Clients who are unhappy with other aspects of your service could be advised to complain to the service manager and then to the Management Committee if necessary.

## **A8. Duty of confidentiality**

A8.1 "A solicitor is under a duty to keep confidential to his or her firm the affairs of clients and to ensure that staff do the same." Clearly for "firm" you can substitute "agency" or "Bureau", for example. There are exceptional circumstances in which this duty can be overridden. These include situations where the solicitor is being used by the client to facilitate a crime or a fraud (eg, a solicitor cannot assist in a benefit claim where they know that the client is lying). The duty is also overridden by a duty to report information to the LSC in certain circumstances, in relation to both contract and full certificate work (see, for example, NfP contract specification section 2.14, "When will the client's conduct affect their application?").

A8.2 Details on the rule and exceptions to it are set out in chapter 16 of the GPCS.

A8.3 It is important to note that the solicitor's duty of confidentiality means that Management Committees cannot have access to individual client files or information about clients unless the client gives express consent.

## **A9. Undertakings (GPCS page 351)**

A9.1 An "undertaking" is an "unequivocal declaration of intention" given by a solicitor or a member of a solicitor's staff to someone who places reliance on that declaration. The word "undertaking" need not necessarily be used. For example, if a solicitor, or someone working under the supervision of a solicitor, says "I promise you will have your money by Friday" – the person to whom this promise is made may argue that this is an undertaking. Undertakings are personally binding on the solicitor, and "a solicitor who fails to honour an undertaking is *prima facie* guilty of professional misconduct".

A9.2 Everyone working in your agency therefore needs to understand the nature and importance of undertakings. They should not be given lightly and must be complied with. If they are not, it is the solicitor who may be found guilty of professional misconduct, even if they did not personally give the undertaking.

A9.3 Because of the consequences of failure to honour an undertaking, you should consider introducing a policy requiring that non-solicitor staff do not give undertakings without first consulting with the solicitor – after all, it is not fair to bind a solicitor to something about which they know nothing. It is also an SQM requirement (E1.2) that solicitor agencies have a policy on undertakings and keep a clear record of them both centrally and on clients' files.

## **A10. Conflicts of interest (GPCS page 313)**

A10.1 The GPCS states that “a solicitor must not act where the solicitor’s own interests conflict with the client’s”. For “solicitor” you can also read “agency”. This means that your solicitor would be unable to act in any cases where there was a conflict between your agency’s interests (including Management Committee members) and the interests of the client.

A10.2 The GPCS also states that “a solicitor must not act where a conflict of interest (or a significant risk of conflict) arises between two or more clients”. It goes on to point out two important issues to bear in mind when considering whether or not there is a conflict of interest:

- “where a solicitor is acting for two or more clients ... [eg] ... husband and wife, the solicitor always owes a duty to each individual ... and he or she must advise each individual what is in that individual’s interests.
- a possible initial test to apply to the above circumstances to assist in identifying if a conflict exists is: what would occur if the solicitor were acting for only one of the parties?
  - Would the advice be different?
  - Do the parties have different interests?
  - Has one of the parties given the solicitor a piece of information on a ‘confidential’ basis that would affect the advice given to other clients, if the solicitor could disclose it?

If these factors apply, a conflict of interests has arisen”.

A10.3 It is also an SQM requirement (E1.2) that agencies must have a policy on conflicts of interest and must demonstrate that they check for potential conflicts in all cases. For more detailed information and advice on conflicts of interest, see CLS Support Quality Mark briefing no. 4, “Conflict of Interest”.

A10.4 Solicitors can also contact the Professional Ethics department of the Law Society for advice and guidance on individual cases, if the question of conflict of interest arises.

## **A11. Contacting the “other party” to a matter**

A11.1 A solicitor cannot normally contact the other party, ie the person or body with whom a client is in dispute, directly if they know that the other party has their own solicitor (GPCS page 360). Your solicitor must contact the other solicitor, unless the other solicitor agrees that your solicitor may contact their client directly.

## **A12. Use of employers' stationery**

A12.1 A solicitor can use their employer's stationery for their professional work, as long as either the letterhead or signature makes it clear that it is used by them in the course of their professional business and that they are responsible for the contents of the letter (GPCS page 146).

A12.2 You have the option of printing new stationery to include this information. Alternatively, the solicitor can, for example, put "solicitor" after their name at the bottom of their letters.

## **APPENDIX B – Sample NfP advice agency solicitor post advertisement**

***Stretch Yourself – Reach New Heights!***

### **CARLISLE LAW CENTRE**

**Lawyer** – 35 hours per week flexible (some evening commitments)

**£21,000** plus casual car user allowance and pension

Carlisle Law Centre is a trailblazer in shaping legal services to fit the needs of our local communities across Cumbria. Last year we gained lottery funding to develop an Education Unit alongside our casework operation. We need an imaginative lawyer to join our existing team contributing to both the day-to-day casework and the development of the Education Unit.

This is an exciting opportunity for a lawyer who enjoys versatility and innovation, as well as commitment to the community.

We have LSC contracts at Specialist level in housing, employment, community care, education, mental health, public law, as well as a franchise in welfare benefits. Experience in one or more of these fields is preferable.

For an informal discussion, contact Tony Brown on  
01228 518937  
or email: [tbrown.comlaw@lineone.net](mailto:tbrown.comlaw@lineone.net)

Carlisle Law Centre  
8 Spencer Street  
Carlisle, Cumbria CA1 1BG

Please contact the Law Centre for an Application Pack on 01228 515129 (telephone) or 01228 515819 (fax).

***Do a job where you can make a difference***

## Getting further help

### Network contacts

Management Helpline

#### **DIAL UK**

St Catherine's Hospital  
Tickhill Road, Balby  
Doncaster DN4 8QN  
Tel: 01302 310123

James Kenrick

#### **Youth Access**

1a Taylor's Yard  
Alderbrook Road  
London SW12 8AD  
Tel: 020 8772 9900

Lynn Evans

#### **Law Centres Federation**

18-19 Warren Street  
London WC1P 5DB  
Tel: 020 7387 8570

Development Team Consultancy Line

#### **advice<sup>uk</sup> London Region**

12<sup>th</sup> Floor  
New London Bridge House  
25 London Bridge Street  
London SE1 9ST  
Tel: 020 7407 6622

Phil Jew and Chilli Reid

#### **advice<sup>uk</sup> national**

12<sup>th</sup> Floor  
New London Bridge House  
25 London Bridge Street  
London SE1 9ST  
Tel: 20 7407 4070

JJ Costello

#### **Shelter Cymru**

25 Walter Road  
Swansea SA1 5NN  
Tel: 01792 469400

#### **Citizens Advice**

Myddleton House  
115-123 Pentonville Road  
London N1 9LZ  
Bureau Management Consultancy Line  
Tel: 0845 120 2035  
CLS Consultancy Line  
Tel: 020 7833 7046/7134 or 01873 810101

Contracts Manager

#### **Shelter**

88 Old Street  
London EC1V 9HU  
Clssupport@shelter.org.uk

John Edwards

#### **Age Concern England**

Astral House  
1268 London Road  
London SW16 4ER  
Tel: 020 8765 7468

### Legal Services Commission Regional Office contacts

You can also contact your regional LSC office. If you aren't sure which area you are in, any regional office should be able to direct you to the one for your area. For queries about the Quality Mark only you can email the LSC at [sdg.issues@legalservices.gov.uk](mailto:sdg.issues@legalservices.gov.uk).

#### **London**

29-37 Red Lion St  
London EC1R 4PP  
Tel: 020 7759 1966

#### **North Western**

2<sup>nd</sup> Floor, Lee House  
90 Great Bridgewater Street  
Manchester M1 5JW  
Tel: 0161 244 5000

#### **South Western**

33-35 Queens Square  
Bristol BS1 4LU  
Tel: 0117 302 3000

#### **South Eastern (Brighton)**

3<sup>rd</sup> and 4<sup>th</sup> Floors, Invicta House  
Trafalgar Place, Cheapside  
Brighton BN1 4FR  
Tel: 01273 878800

#### **North Eastern**

Eagle Star House  
Fenkle Street  
Newcastle NE1 5RU  
Tel: 0191 244 5800

#### **East Midlands**

2<sup>nd</sup> Floor, Fothergill House  
16 King Street  
Nottingham NG1 2AS  
Tel: 0115 908 4200

#### **Yorkshire & Humberside**

Harcourt House, Chancellor Court  
21 The Calls  
Leeds LS2 7EH  
Tel: 0113 390 7300

#### **South Eastern (Reading)**

80 Kings Road  
Reading RG1 4LT  
Tel: 0118 955 8600

#### **Wales**

Marland House  
Central Square  
Cardiff CF1 1PF  
Tel: 029 2064 7100

#### **Eastern**

62-68 Hills Road  
Cambridge CB2 1LA  
Tel: 01223 417800

#### **West Midlands**

City-Centre Podium  
5 Hill Street  
Birmingham B5 4UD  
Tel: 0121 665 4700

#### **Merseyside**

Cavern Walks  
8 Mathew Street  
Liverpool L2 6RE  
Tel: 0151 242 5200

### Office of Immigration Services Commissioner (OISC)

The Office of the Immigration Services Commissioner, 5th Floor, Counting House, 53 Tooley Street, London, SE1 2QN Tel: 020 7211 1500 Fax: 020 7211 1553 [www.oisc.gov.uk/](http://www.oisc.gov.uk/)

### The Office of the Information Commissioner

Wycliffe House, Water Lane, Wilmslow, Cheshire SK9 5AF  
Tel: 01625 545 745 Fax: 01625 524 510 [www.dataprotection.gov.uk/](http://www.dataprotection.gov.uk/)



CLS Support Director: **Michael Eddowes**  
Senior Project Adviser: **Kem Herbert**  
Project Consultant: **Audrey MacDonald**  
Project Consultant: **Patrick Torsney**

## Consultancy service

CLS Support operates a telephone and e-mail consultancy service, providing help on the Quality Mark, the Legal Aid contract and other aspects of the Community Legal Service.

The telephone consultancy service is available to subscribers on **0870 7700 447** and is open **1.00 pm - 4.00 pm, Monday to Friday**.

We try to tailor our support as closely as possible to the needs of individual organisations. We answer enquiries at first contact wherever possible. If we need to carry out further research in order to answer your enquiry, we will tell you when we can get back to you and will contact you at that time even if a full response is not yet possible. If we need to send you written information, we will normally do so within five working days.

Alternatively, if you are a subscriber you can email us on **cls.support@asauk.org.uk** with your enquiry. Please include a contact telephone number so that we can call you back to discuss the details of your enquiry. We aim to respond to e-mail enquiries within five working days.

For information on how to subscribe go to the CLS Support pages of our website **www.asauk.org.uk**.

## Training

We run an annual national training programme, presently focusing on organisations with the CLS Specialist Quality Mark and/or a Legal Aid contract. Training is offered at various locations across the country. Our website contains details of our current programme, course prices and how to book places. Subject to demand, we may run further events to those advertised in the programme.

Subject to project resources and agreement over price, we will on request put on training courses organised on a block-booking basis. Please contact the consultancy service if you wish to arrange a block booking of any of our current courses or if you want to suggest an alternative course that you would like us to provide.

Note that organisations requesting a block-booking course are responsible for practical arrangements, eg. booking a venue, publicising the course, taking bookings.

## Seminars and workshops

Subject to project resources and agreement over price, we will on request put on seminars and workshops. For further information, please either contact the consultancy service or log on to the CLS Support training page of our website.

## Briefings

We publish two series of briefings. Our **Quality Mark** briefings deal with CLS Quality Mark requirements and procedures at all levels. Our **Contracting** briefings provide practical guidance on the Legal Aid contract to help organisations interpret and apply contract rules.

You can see some sample briefings on our website. Set out below is a full list of briefings available to subscribers. Titles in italics are currently in preparation.

## Series 1: The Quality Mark

- 1 Introduction to the Quality Mark
- 2 Client Feedback
- 3 Independent File Review
- 4 Conflict of Interest
- 5 Service Planning
- 6 People Management – Sample Procedures
- 7 Signposting and referral
- 8 Case Management and Client Care
- 9 *Data protection - is your handling of client information breaking the law?*
- 10 *The Specialist Quality Mark - getting the most out of it*
- 11 *The Quality Mark and other quality standards - for agencies working with young people*
- 12 *The CLS Quality Mark: Getting the Most Out of General Help*
- 13 *Data protection - sharing information in cases involving children and young people*

## Series 2: The General Civil Contract

- 1 Separate matters and Work that can count against contracts
- 2 Contract reporting arrangements – SPAN
- 3 Changes to Eligibility
- 4 Disbursements
- 5 Employing a solicitor for the first time
- 6 *Controlled Work and Contract Compliance*
- 7 *Sufficient Benefit Test*
- 8 *The General Civil Contract: the Framework - The Access to Justice Act 1999*
- 9 *The General Civil Contract: the Framework - Funding Code Levels of Service (2<sup>nd</sup> edition)*
- 10 *Performance against contract: the rules and your rights*

## Email Bulletins

Our Email Bulletin service provides regular updates on issues relating to the CLS Quality Mark and the Legal Aid contract. The service is an invaluable supplement to our written briefings, and offers subscribers:

- Up-to-date information on changes to or clarification of LSC requirements;
- Guidance and examples of best practice;
- Information on forthcoming policy developments;
- Updates on the work of ASA and CLS Support;
- Opportunities to provide feedback on issues of interest or concern.

There are two series of Bulletin, on the Quality Mark and the Legal Aid contract respectively. Bulletins are emailed to subscribers on our database as an attachment to an email message. The subject bar of the email contains the words 'CLS Support Email Bulletin' and a brief description of the content, to help you decide whether it is relevant to you and worth reading.

From time to time, copies of Bulletins are put on ASA's website, but if you want to receive them as soon as they are published, you should subscribe to the Bulletin service. Go to the CLS Support pages of our website for further information [www.asauk.org.uk](http://www.asauk.org.uk).

If you think that there are any aspects of the Quality Mark or the Legal Aid Contract on which future Email Bulletins would be useful, please email us at [bulletin@asauk.org.uk](mailto:bulletin@asauk.org.uk) with your suggestions.

**BRIEFING FEEDBACK SHEET**  
**CLS Support Contracting Briefing No.5**



Please let us have your views on this briefing and whether there are other aspects of the Quality Mark, General Civil Contracts or the Community Legal Service on which you would like more briefings. Feedback from your organisation will help us make future briefings as relevant and easy to follow as possible.

Did you find this briefing helpful?.....  
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Do you have suggestions for any changes that might have made it more useful to you?  
If yes, please specify:  
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Were there issues that you expected to be covered in this briefing and about which you want to know more? If yes, please say what these are:  
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Are there other aspects of the Quality Mark, General Civil Contracts or the Community Legal Service on which future briefings would be useful?  
If yes, please list below in order of importance:  
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Your name: ..... Tel: .....

Email: .....

Name/address of your agency: .....  
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.....  
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Please return to: Advice Services Alliance, CLS Support, 12<sup>th</sup> Floor New London Bridge House, 25 London Bridge Street, London SE1 9ST or email **cls.support@asauk.org.uk** and type in the subject bar "Contracting Briefing No. 5 Feedback"