



Law Society South West regional review (April 2013)

Inside this month's review

❖ News

- Surviving the Storm. Support and advice
- Price competitive tendering (crime)
- Have your say in PCT Consultation
- Legal Aid changes – key information and advice
- Civil Justice (costs)
- JAG responds to QASA Consultation
- New Deputy Vice President elected
- Santander agrees flexible CQS panel deadline
- BLS launch new recruitment service

❖ Events

- Civil Justice Roadshow – survival after the storm (Plymouth, 26 April)
- Equality & Diversity Forum (Exeter, 4 June)
- Equality & Diversity Forum (Bristol, 6 June)

❖ Law Society Conferences and Roadshows

❖ Compliance & Regulation Update

- Launch of Law Society Consulting
- SRA revised risk approach

❖ Practice Notes

- In-House Practice: Regulatory Requirements (28 February)
- Setting up a new practice: Regulatory Requirements (21 February)
- Client care letters (1 February)
- Claims Management (1 February)

❖ Consultations

- SRA Consultation on financial penalty guidance (closes 19 April)
- MoJ Consultation on criminal legal aid (closes 4 June)
- Law Society Consultation on criminal legal aid (closes 10 May)



News

Surviving the storm: support and advice

Following controversial government reforms to legal aid and the costs regime, many law firms are now faced with financial pressures and uncertain futures. Guidance is available for solicitors trainees worried about the viability of their firms.

<http://www.lawsociety.org.uk/advice/surviving-the-storm/>

Price-competitive tendering (PCT)

Lord chancellor Chris Grayling has announced a revised timetable for the introduction of price-competitive tendering for criminal legal aid services. The consultation includes measures to cut a further £220m from the criminal and civil legal aid budget.

<https://consult.justice.gov.uk/digital-communications/transforming-legal-aid>

<http://www.parliament.uk/documents/commons-vote-office/March-2013/5-3-13/6-Justice-LegalAidReform.pdf>

The Law Society has prepared a summary of the proposals:

<http://www.lawsociety.org.uk/advice/articles/transforming-legal-aid---summary-of-MoJ-proposals/>

Have your say in PCT consultation

The Law Society invites the profession's views on a number of alternatives to price competitive tendering for criminal legal aid ('PCT'). The purpose of this consultation paper is to give Law Society members an opportunity to contribute to shaping the vision and strategy of the Society in relation to future tendering for criminal legal aid services.

<http://www.lawsociety.org.uk/news/stories/consultation-procuring-criminal-defence-services/>

Legal aid changes: key information and advice

On 1 April 2013, the Legal Services Commission was replaced by the Legal Aid Agency, and the cuts imposed by the Legal Aid, Sentencing and Punishment of Offenders (LASPO) Act 2012 take effect.

Below is a high-level summary of the most important things you need to know about the new regime, together with links to some of the source materials (so far as they are available).

Scope cuts:

LASPO implements substantial scope cuts to civil legal aid. The details of what remains in scope can be found in the [LASPO Schedule 1](#). Part one of schedule 1 lists what is in scope, part two, what is excluded from scope, and part three deals with advocacy remaining in scope. There is also a [summary of the scope provisions on the Ministry of Justice website](#).

Domestic violence: trigger evidence:

Under the new family legal aid rules, most private law services are only available to the victims of domestic violence. In order to be entitled to legal aid, the client has to produce 'trigger evidence' proving that they are a victim of abuse. Legal aid will be available in private family law cases for applications for protective injunctions. No 'trigger evidence' is required for legal aid for an injunction application.

Legal aid is also available for divorce, and for children and financial disputes, if the client can produce 'trigger evidence'. Legal aid is not available to help the client get this evidence or to pay any disbursements that may need to be met.

The list of trigger evidence can be found in [regulation 33 of the Civil Legal Aid \(Procedure\) Regulations 2012](#).

The Ministry of Justice is drafting guidance and template letters to help clients get the evidence they need. However, we have major concerns as to whether clients will be practically able to get this evidence for themselves (even if it exists in their case) and as to how quickly the bodies processing these requests will



turn them around. We intend to keep lobbying the government on this issue, and would welcome examples of where serious difficulties have been caused as a result of these administrative hurdles.

If you have an example, [please email us](#).

Eligibility summary:

The [regulations](#) have been published. There are three major changes regarding eligibility:

- Passporting benefits - all applicants will be subject to means testing regarding their capital. Therefore, those on passporting benefits will only be passported in respect of the income part of the means test.
- Subject matter of the dispute (SMOD) disregard will be capped at £100,000. This will apply for all levels of service including controlled work / legal help.
- Contributions - The levels of income-based contributions will be increased to a maximum of approximately 30 per cent of monthly disposable income.

Exceptional funding:

Under LASPO, if a case is out of scope under schedule 1, it may still be possible to get legal aid for it under section 10, if failure to provide funding would mean that the client's human rights would be breached. This primarily relates to Article 6 and the right to a fair trial, but may relate to other articles as well. Information is available:

- [guidance on how the government intends to implement the test](#)
- application form that will need to be submitted alongside a standard form should in due course be found [here](#)

While there is nothing in the guidance that we believe is wrong, we would question whether the test should be interpreted quite as narrowly as the guidance suggests. There will undoubtedly be a need for test cases to determine how broadly the law should be read. The Public Law Project has set up a scheme, with help from the Law Society, to support practitioners in submitting exceptional funding applications and in identifying suitable test cases.

[More information about the scheme](#)

If an application for exceptional funding is successful, it will generally be backdated to the date you saw the client, so long as that was less than two months previously. However, if the application is unsuccessful, there will be no payment for it. The Law Society's view is that it is permissible for solicitors to charge clients for making an application, on the strict understanding that any such charge is refunded if the application succeeds. If you do so, it is vital to ensure that your client understands the basis of the charge and the circumstances in which it would be refunded.

Telephone gateway:

LASPO implements a mandatory telephone gateway for three categories of work (at Legal Help level).

1. debt
2. special educational needs (SEN)
3. discrimination

The exceptions are when the client:

- is in detention (including prison, a detention centre or secure hospital), or
- is under 18, or
- has been previously assessed by the gateway as needing face-to-face advice, has received this advice within the last 12 months, and is seeking further help to solve a linked problem from the same provider.

How the gateway will operate is detailed in [part 2 of the Procedure Regulations](#).

The lord chancellor's guidance section 8.7 - 8.12 provides further detail.

[View the guidance \(PDF\)](#)



Transitional arrangements:

The Ministry of Justice published a [policy statement \(PDF\)](#) on the arrangements for the transition of legal aid from the Access to Justice Act 1999 to the LASPO Act 2012.

The Advice Services Alliance has also produced useful [guidance on remainder work \(PDF\)](#). We recommend that you read these documents carefully to ensure you understand what happens to your ongoing cases post-April 2013.

Contract terms changes:

All legal aid providers will be subject to new or amended contracts. Face-to-face provision for family, immigration and asylum, housing and debt will be governed by the 2013 standard civil contract. Providers of civil legal aid in categories that have not been re-tendered and crime practitioners will be subject to the amended 2010 civil and crime contracts. Useful links:

- [2013 standard civil contract documentation including summary of changes](#)
- [amendments and summary of changes to the extended 2010 standard civil contract](#)
- [amendments to the standard crime contract 2010](#)

Remuneration:

The schedule of remuneration rates are no longer annexed to the specification. Instead, all civil payment rates are published in the [Civil Legal Aid \(Remuneration\) Regulations 2013](#). Rates remain unchanged and there are new fees for family mediation advice and drafting consent orders arising from a mediated settlement.

Training and advice:

We published some advice last autumn on the things you needed to take into account before implementation of the Act, and things you need to advise existing clients about in the categories where legal aid is being withdrawn. This advice still holds good, and you may wish to re-read it to help you assess the implications for your firm.

<http://www.lawsociety.org.uk/advice/articles/preparing-for-laspo--things-you-should-be-doing-today/>

Controlled work reviews: read our advice:

Under the new rules, if a client seeks a review of a decision that they are not entitled to controlled work, it is your responsibility to conduct that review. This is the position under the current rules, but the situation rarely arises at the moment. After April, it may well arise more frequently.

[Read our advice on how you might approach controlled work reviews](#)

Webinars:

We are providing a number of webinars to help our members cope with the implementation of LASPO:

- [Dealing with self represented parties and the use of position statements](#)
- [Legal Aid Regulations 2013 - An Overview](#)
- [Legal Aid Roadshow \(free recording\)](#)

Civil Justice (Costs)

The forthcoming 1st April costs reforms will have a serious impact on litigation businesses and clients' abilities to make a claim for compensation. The reforms include:

- Non-recoverability of CFA success fees and ATE premiums
- Introduction of contingency fees for contentious business
- Referral fee ban in personal injury
- Introduction of Qualified One Way Costs Shifting in personal injury claims
- Changes to the rules on Part 36 and Proportionality
- Extension of the RTA portal to include EL and PL claims
- Fixed costs for all portal and fast track RTA and EI/PL claims



- Costs Management and Budgeting in all multi track claims

The Law Society has published a Civil Justice update entitled 'Survival after the big bang. Will your business be ready?'. Hard copies of the booklet are available on request (email matthew.still@lawsociety.org.uk) or can be downloaded <http://www.lawsociety.org.uk/representation/documents/civil-justice-roadshows-booklet/>

Joint Advocacy Group (JAG) responds to QASA Consultation

The Joint Advocacy Group (JAG) has published the analysis of responses to its fourth consultation together with its comments on the Quality Assurance Scheme for Advocates (QASA).

JAG has made a number of changes to the Scheme in response to the key issues raised to the fourth consultation; 348 responses were received in total. Of particular note are:

- It has extended the period for collection of judicial evaluation from 12 months to 24 months. The number of pieces of judicial evaluation required to enter, progress and reaccredit has been harmonised across the Scheme.
- There are amended entry requirements for QCs. A level 4QC has been introduced to differentiate QCs from other level 4 advocates.
- Phased implementation will remain the method of introduction of the Scheme as it is a practical necessity given the numbers of advocates involved.
- Further work will be undertaken to ensure consistency of the rules for the single Scheme across the three regulators.
- The scope of appeals for decisions taken under the Scheme has been standardised across the regulators. The definition of 'criminal advocacy' has been reviewed to ensure it includes the necessary categories of criminal work.

<https://www.barstandardsboard.org.uk/about-bar-standards-board/consultations/closed-consultations/qasa-fourth-consultation/>

Santander agrees flexible CQS panel deadline

Following negotiations between the Law Society and Santander some law firms will be able to continue acting on behalf of Santander while their Conveyancing Quality Scheme (CQS) applications are awaiting a decision.

www.lawsociety.org.uk/news/stories/law-society-and-santander-find-flexibility-in-cqs-panel-deadline/

Law Society elects new Deputy Vice President

The next Deputy Vice President of the Law Society will be property law expert Jonathan Smithers.

The Law Society Council has elected Mr Smithers, partner at Tunbridge Wells-based firm CooperBurnett, who will take up the role of Deputy Vice President in July 2013. Mr Smithers is expected to become President of the Law Society in 2015.

Mr Smithers began his training in 1984 at the firm of CooperBurnett, where he still practises. He qualified in 1986 and became an equity partner in 1990. He heads the firm's Property Department, and has managed the firm for over twenty years.

Admissions ceremony for solicitors admitted before 2009

On 12 July 2013, the Law Society is running an admissions ceremony for solicitors admitted to the roll prior to 2009.

<https://events.lawsociety.org.uk/ClientApps/Silverbear.Web.EDMS/public/default.aspx?tabid=37&id=192&orgId=1&guid=f048fab6-f82f-4117-81e6-2e96b328839f>



Bristol Law Society's new recruitment service

Bristol Law Society has announced the launch of its new recruitment service. The service will be run by Helen Read. A former lawyer, Helen became Recruitment Manager at Osborne Clarke for 6 years before setting up her own successful recruitment business.

http://www.bristollawsociety.com/bristol_law_society/news/bls-re-launch-recruitment-service

South West Events

Civil Justice Roadshow – Survival After the Big Bang (Plymouth 26 April)

The costs reforms introduced on 1st April will seriously impact litigation businesses and clients' abilities to make a claim for compensation. The reforms include:

- Non-recoverability of CFA success fees and ATE premiums
- Introduction of contingency fees for contentious business
- Referral fee ban in personal injury
- Introduction of Qualified One Way Costs Shifting in personal injury claims
- Changes to the rules on Part 36 and Proportionality
- Extension of the RTA portal to include EL and PL claims
- Fixed costs for all portal and fast track RTA and EI/PL claims
- Costs Management and Budgeting in all multi track claims

<https://events.lawsociety.org.uk/ClientApps/Silverbear.Web.EDMS/public/default.aspx?tabId=37&id=214&orgId=1&guid=aa3f4022-603a-46a4-b79f-7bb5928f8ecc>

Equality & Diversity Forum (Exeter, 4 June and Bristol, 6 June)

These free events explore current key diversity and inclusion related topics affecting the profession and provide practical tools to help you achieve best practice. The sessions will also explore compliance issues in relation to principle 9 and chapter 2 of the SRA handbook and an update on the Law Society's work to support the profession in this important area.

<https://events.lawsociety.org.uk/ClientApps/Silverbear.Web.EDMS/public/default.aspx?tabId=37&id=199&orgId=1&guid=41ca79e6-835e-4229-973d-05e1fda8df5b> (Exeter)

<https://events.lawsociety.org.uk/ClientApps/Silverbear.Web.EDMS/public/default.aspx?tabId=37&id=204&orgId=1&guid=e0d0e2c6-9e23-4b1a-95c5-4e093cfd426d> (Bristol)

Law Society Conferences and Roadshows

Our new events calendar makes it easier to see what's coming up over the following year.

27 April Junior Lawyers Division Annual Conference

<https://events.lawsociety.org.uk/ClientApps/Silverbear.Web.EDMS/public/default.aspx?tabId=37&id=158&orgId=1&guid=2e91522c-33b5-4a42-a566-68df1d5072f5>

1 May In-House Counsel Conference

<https://events.lawsociety.org.uk/ClientApps/Silverbear.Web.EDMS/public/default.aspx?tabId=37&id=157&orgId=1&guid=3b0b0fda-01f3-4d33-879e-fe3d81396878>



9 May Law Management Section Conference

<https://events.lawsociety.org.uk/ClientApps/Silverbear.Web.EDMS/public/default.aspx?tabId=37&id=113&orgId=1&guid=9f20d05c-e98a-41eb-9f43-fde594c779c0>

10-11 May Presidents & Secretaries Conference (local law societies only)

16 May Competition Section Annual Conference

<https://events.lawsociety.org.uk/ClientApps/Silverbear.Web.EDMS/public/default.aspx?tabId=37&id=162&orgId=1&guid=5677b11f-f9c2-4ab2-a484-8b21376e13f2>

17 May Criminal Law Conference

<https://events.lawsociety.org.uk/ClientApps/Silverbear.Web.EDMS/public/default.aspx?tabId=37&id=138&orgId=1&guid=26cd4b8a-af38-4b9c-8de4-929d33d29dc0>

22 October Excellence Awards (further details will be available shortly)

23 October Lexcel Conference

<https://events.lawsociety.org.uk/ClientApps/Silverbear.Web.EDMS/public/default.aspx?tabId=37&id=103&orgId=1&guid=80a7d6d3-2a90-4e9c-bb21-962c000c6e9f>

Compliance and Regulation Update

Launch of Law Society Consulting

Law Society Consulting in Risk and Compliance gives access to a hand-picked team of risk and compliance experts. These specialists provide the exemplary support your organisation needs to achieve compliance quickly and effectively:

1. assess your organisation's vulnerabilities;
2. identify issues that require attention; and
3. prepare an action plan of practical solutions to help resolve them.

<http://www.lawsociety.org.uk/advice/risk-compliance/law-society-consulting/>

SRA revised risk approach

Executive Director at the Samantha Barrass, has announced a revised approach to risk management following recent high cost interventions.

<http://www.sra.org.uk/sra/news/speech-barrass-compliance-march-2013.page>

In summary Ms Barrass said:

- Total budget for interventions in 2013 is £1.3 million which has been estimated to cover 30 interventions.
- 11 interventions have been undertaken to date this year.
- 2 interventions last week are likely to cost £1.8 million. An intervention into a firm the size of Cobbetts could cost £6 million.
- SRA aims to avoid interventions by working closely with firms in major difficulties.



- The behaviours of senior managers, combined with poor practices, result in a toxic combination. These firms are building a house of cards.
- SRA is looking to increasing the rates of managed orderly wind downs and reduce intervention costs.
- SRA will target high impact firms in terms of financial stability risk. Three key indicators form the basis of risk assessment.
 1. Drawings exceed profits.
 2. Borrowing more than the firm is worth
 3. Borrowing too much
- The top 600 firms have been RAG rated for financial stability risks. Firms showing no evidence of any of these signs are rated green, 1 are given an amber rating and 2 or more a red.
- Red rated firms will receive intensive supervision and be required to prepare detailed contingency plans and obtain professional insolvency advice.
- Amber rated firms may have regular financial assurance engagement visits, on a monthly basis, and be required to provide monthly detailed financial information.
- Green rated firms will receive minimal supervision.
- Reporting requirements
- Currently COLPs and COFAs are required to record all breaches, to report immediately any material breaches, and report all non-material breaches annually.
- Proposed change: remove the need for firms to report non-material breaches (still record all non-material breaches). ABSs need to report all non-material breaches on an annual basis.
- Firms can record this information in any way they wish, and will not be required to record and report non-material breaches in a standard format.
- The change requires an amendment to SRA rules and will be consulted on as part of the next phase of the Red Tape Initiative.

Compliance support for firms

Remember the Law Society's risk and compliance service is available to offer ongoing support to members.

<http://www.lawsociety.org.uk/communities/risk-compliance-service/>

Practice Notes

Responding to a Financial Crime Investigation (14 March 2013)

Solicitors play a key role in facilitating business and financial transactions that underpin the UK economy. Because of this important role, criminals may target your services to help them commit financial crimes or to launder the proceeds of those crimes.

As a result, law enforcement may seek access to client files to investigate whether the client, and possibly you or a fellow solicitor, have committed a criminal offence. While you are required to comply with the law, you are also required to keep your client's information confidential.



This practice note aims to provide practical assistance on how to manage these competing obligations and provides a short overview of the main powers available to law enforcement when conducting financial crime investigations.

<http://www.lawsociety.org.uk/advice/practice-notes/financial-crime-investigations/>

Protecting your Online Reputation (7 March 2013)

Your online reputation, whether personal or corporate, can be damaged in a number of ways. The speed at which information can spread online potentially affects reputations at a quicker pace than ever before.

You/your practice should take steps to ensure that you portray a positive online reputation and the hard work spent in building up your reputation 'offline' is not compromised in any way by what happens online. This can be done by:

- building a profile online
- monitoring your online reputation .

Whether or not you/your practice has directly engaged in online activity to date, it is becoming increasingly commonplace for those who are interested in your services to interact in this way and it may be that others have already posted content about you/your practice.

This guidance includes information both about how to build a reputation online and factors to consider if responding to criticism online. In undertaking online activities you should always consider and observe your legal and professional obligations.

<http://www.lawsociety.org.uk/advice/practice-notes/protecting-your-online-reputation/>

Consultations

SRA Consultation on financial penalty guidance (closes 19 April)

The Solicitors Regulation Authority (SRA) is asking for feedback on its proposed guidance on the fines it can levy against firms and individuals that have breached the Code of Conduct.

The consultation outlines the approach that SRA decision makers will take on the levels of financial penalties it can set. The proposals look to make the fining criteria more consistent and transparent.

A clear fining policy is a key building block in a robust deterrent system, which is one of the fundamentals of good regulation. This in turn helps the SRA to protect consumers from poor conduct.

Assessing the seriousness of the conduct would involve looking at both the nature of the conduct and the harm caused to clients or others. Decision makers would be guided in individual cases to 'penalty brackets' within which to levy a fine.

Owing to the £2,000 limit on the SRA's fining powers in respect of 'traditional' law firms and those working in them, the guidance would currently be most relevant to ABSs and those working in them. The consultation also proposes that discounts of up to 40 per cent could be applied in warranted by the mitigating factors.

<http://www.sra.org.uk/sra/consultations/financial-penalties.page>

MoJ Consultation on Transforming Legal Aid (closes 4 June)

This consultation sets out the Government's proposals for further reform of the legal aid system in England and Wales, with the intention of delivering savings of £220 million per year by 2018/19.

<https://consult.justice.gov.uk/digital-communications/transforming-legal-aid>



Law Society Consultation on Legal Aid (closes 10 May)

The Law Society invites the profession's views on a number of alternatives to price competitive tendering for criminal legal aid ('PCT'). The purpose of this consultation paper is to give Law Society members an opportunity to contribute to shaping the vision and strategy of the Society in relation to future tendering for criminal legal aid services. It covers:

- the problems that exist with the present system
- reforms that could be made to the system
- the features and problems with Price Competitive Tendering
- the options that the Society wishes to explore.

<http://www.lawsociety.org.uk/news/stories/consultation-procuring-criminal-defence-services/>

For a full summary of all the recent Law Society consultation responses, please visit:

<http://www.lawsociety.org.uk/representation/policy-discussion/>

The Law Society, South West contact details

Regional Manager: Matthew Still

Email: matthew.still@lawsociety.org.uk

Telephone: 07969 046 708

Follow on Twitter: @ThelawsocietySW

Join us on LinkedIn: The Law Society South West networking group

<http://www.lawsociety.org.uk/about-us/regional-work/south-west/>