



NORTHERN IRELAND
Legal Services
Commission

Delivering Value for Money in Access to Justice

The Policy and Practice of the Northern Ireland
Legal Services Commission in ensuring value for
money in publicly-funded legal services



An executive summary of this document is also available in an accessible format if required i.e. Braille, large print, audio cassette or in a minority ethnic language.

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1. Introduction

- 1.1 Legal aid is to help the people who need it most to address the issues that affect them most, through legal and other remedies. In doing so, the Commission must demonstrate value for money in the expenditure on public-funded legal services in Northern Ireland
- 1.2 This Policy Paper explains how the Northern Ireland Legal Services Commission (“the Commission”) proposes to comply with its statutory obligation to demonstrate value for money in all its expenditure on publicly-funded legal services. This paper sets out
 - (a) the value for money objectives that the Commission must meet under the Access to Justice (Northern Ireland) Order 2003 (the AJO 2003);
 - (b) how the Commission will ensure that its decision making takes account of value for money through the robust application of a value for money challenge; and,
 - (c) how the Commission intends to plan and carry out its value for money investigations, the nature and purpose of the various types of examination, the stages and processes involved, the reporting arrangements; and,
 - (d) the consequences of not providing value for money.
- 1.3 The application of the value for money principle is bound to lead to a changing relationship between the Commission and providers of legal services and with others in the justice sector in Northern Ireland. The Commission is committed to partnership working in the provision of access to justice. Partnership working will be beneficial to the effective application of the value for money principle in all decisions which lead to expenditure on legal aid. In order to understand the full scope of these changes, this document should be read in conjunction with the Commission’s Exposure Documents on the Northern Ireland Funding Code and Delivering Quality in Access to Justice, which sets out the Commission’s early thinking on the scope of publicly-funded legal services and the role of a provider registration scheme in providing access to justice.
- 1.4 Section 1 of this document describes the application of the value for money principle to publicly funded legal services in Northern Ireland. Section 2 describes the framework within which the Commission intends to undertake value for money activity to achieve its statutory obligations.
- 1.5 The Commission will apply the principle of value for money to all the services that it funds, including those provided by legal firms and not-for-profit organisations.

Section 1 - Value for Money in Publicly Funded Legal Services

1.1 Value for Money and the Access to Justice (Northern Ireland) Order 2003

1.1.1 Section 1 describes the application of the value for money principle to publicly funded legal services in Northern Ireland.

1.1.2 General Responsibility to ensure Value for Money: The Commission has a statutory responsibility to Parliament to ensure value for money in all expenditure decisions. This general responsibility is illustrated in the Audit (Northern Ireland) Order 1996 which gives the Comptroller and Auditor General the power to examine “the economy, efficiency and effectiveness with which an organisation has used its resources in discharging its functions.”

1.1.3 There is a general definition of value for money which sets out three elements of value for money - economy, efficiency and effectiveness. These can be defined in a number of ways, but are defined by the Northern Ireland Audit Office in the following ways:

- (a) Economy is concerned with minimising the cost of resources acquired or used, having regard to appropriate quality (In short, spending less);
- (b) Efficiency is concerned with the relationship between the output of goods, services or other results and the resources used to produce them
How far is maximum output achieved

for a given input, or minimum input used for a given output? (In short, spending well); and,

- (c) Effectiveness is concerned with the relationship between the intended results and the actual results of projects, programmes or other activities. How successfully do outputs of goods, services or other results achieve policy objectives, operational goals and other intended effects? (In short, spending wisely¹).

1.1.4 In practice the boundaries between economy, efficiency and effectiveness are seldom clear cut and this applies equally to expenditure on access to justice. The application of the value for money principle to access to justice is not static. The Commission will apply the value for money principle across all its services, but not as a set of rigid rules flexibility is essential and, in the exercise of the value for money challenge and in value for money investigations, judgement may require particular aspects to be varied according to the nature, scale and circumstances of the decision being made or the issues under investigation. The Commission will be using the robust application of value for money to enable it to fund as many cases as possible within the resources it has available.

¹ Lord Woolf, Aldous LJ and Brooke LJ [1996] EWCA Civ 831R-v-London Legal Aid Area Office

1.1.5 Specific Responsibilities to ensure

Value for Money: The AJO 2003 puts a range of specific responsibilities on the Commission. This paragraph sets out the relevant Article of the AJO in full².

- (a) “the time and skill which the provision of services of the description to which the question relates requires;
- (b) the number and general level of competence of persons providing those services;
- (c) the cost to public funds of the remuneration of persons or bodies providing those services;
- (d) the need to secure value for money.”

1.1.6 While the AJO 2003 will bring these responsibilities together, the Commission already has statutory responsibilities to assess the risk to the principle of value for money and evidence the achievement of value for money across all its expenditure. These responsibilities apply across public service organisations and are supported by Parliamentary and HM Treasury guidance. In relation to expenditure on publicly funded legal services in Northern Ireland the Commission will ensure that value for money is evidenced through:

- (a) an effective means of determining remuneration for the provision of all publicly funded legal services through evidence based service evaluation and in the light of available resources - **the resource challenge**;
- (b) an effective means of determining those people in greatest need of publicly funded legal services through evidence based research and in the

light of available resources - **the New Targeting Social Need (NTSN) challenge**;

- (c) an effective means of determining the services that will be provided through evidence based research and in the light of available resources - **the funding challenge**;
- (d) an effective challenge function applying to all decisions which affect expenditure on publicly funded legal services and encompassing the risks addressed by the three challenges described above - **the transactional challenge**.

1.1.7 The context to the value for money challenge and what these elements of the value for money challenge mean in practice is set out in the remaining sections of this document. It must be borne in mind that securing good value for money in publicly funded legal services is a shared responsibility between all the partners involved in the provision of these services - that is, the Commission, providers of legal services, people who apply for legal aid and the Courts. The Commission’s aim is to provide an evidence-based examination of how far and how well that responsibility is discharged and the impact of this on public funds. The Commission recognises the responsibility of other partners in the provision of publicly funded legal services.

1.1.8 In order to provide the context for the Commission’s value for money policy, there are certain economic features of the system of delivering publicly-funded legal services in Northern Ireland which

² Article 7(6) of the Access to Justice (NI) Order 2003.

must be set out. These economic features are common to many legal aid systems and many other publicly-funded services and they are set out in Section 1.2 below. These features have a direct impact on the nature of the decision-making in the Commission. It is the Commission's responsibility to assess and manage the risks inherent in the legal aid system, in partnership with others in the justice sector in order to deliver the highest quality publicly-funded legal services which target social need within the resources available.

1.2 The Economic Context of Publicly Funded Legal Services in Northern Ireland

1.2.1 There are several economic participants in the provision of publicly-funded legal services. These are:

- (a) Parliament, which provides the resources for publicly-funded legal services and requires evidence of the regularity, propriety and value for money;
- (b) other Government Departments with responsibility for legislative developments which are approved by Parliament, may impact on the cost of publicly-funded legal services, particularly where there is a potential breach of the Human Rights Act;
- (c) the Northern Ireland Court Service which sponsors the provision of publicly-funded legal services and is responsible for the operation of the Courts;
- (d) the judiciary who are responsible for the case management and judgments on publicly-funded criminal and civil case;

- (e) providers of legal services - solicitors, counsel and other providers; and,
- (f) expert witnesses across a range of fields which are used by providers of legal services to present a case;
- (g) the people who avail themselves of publicly funded legal services in Northern Ireland;
- (h) the other party or parties to proceedings which are publicly-funded; and,
- (i) the Commission and its staff and other partners, such as the Appropriate Authority and the Taxing Master, who make decisions on the amounts that are to be authorised and paid in publicly funded criminal and civil cases.

There are a range of risks that each of these participants must manage and there are tensions between these risks. With regard to civil legal aid, the Commission has adopted the NI Funding Code - Policy on Risk Management, which is attached at Appendix 1 to this document.

1.2.2 **Risks Managed by Parliament, Government Departments and the Northern Ireland Court Service:** Parliament, whether directly or through devolution of powers, needs to be assured that the resources which it votes for the provision of publicly-funded legal services in Northern Ireland are applied to the purposes for which Parliament intended and that the expenditure meets all the requirements of regularity, propriety and value for money set out in HM Treasury guidance. The Government has set the objectives of control,

predictability and value for money for the remuneration systems which support the delivery of publicly-funded legal services. In addition, there are categories of spending proposals which override any delegated authority; these are proposals which

- (a) could create pressures which could lead to a breach in Departmental Expenditure Limits, administration cost limits, or Estimates provision;
- (b) would entail contractual commitments to significant levels of spend in future years for which plans have not been set;
- (c) could set a potentially expensive precedent;
- (d) could cause repercussions for others;
- (e) are novel or contentious.

1.2.3 In seeking to deliver the three objectives set by the Government for criminal remuneration, namely **control, predictability and value for money**, the following principles have been established by the Northern Ireland Court Service and are endorsed as objectives by the Commission:

- (a) the system should be based on standard fees;
- (b) the standard fees should cover the substantial majority of cases;
- (c) the number of exceptional cases will be a small minority;
- (d) very high cost cases will be remunerated separately;
- (e) the system should be compatible with Court practice;
- (f) the system should be administratively uncomplicated;

- (g) the system should facilitate prompt payment;
- (h) variations should be standardised;
- (i) assessment/determination of fees should be performed by the Commission;
- (k) no certification role for the Taxing Master in standard fee cases; and
- (l) periodic review of the general operation of the remuneration, including the levels of the prescribed fees.

1.2.4 Risks Managed by the Judiciary:

The primary function of Judges is to decide contentious legal issues between the parties to litigation. In doing so, judges have regard to the relevant legislation and case law which is applicable to the matters arising, where those matters come before the Courts. Cases may be disposed of prior to hearing by way of settlement, withdrawal or other resolution. In addition to deciding cases, Judges are also involved in making Rules of Court which govern the practical procedure for dealing with cases in the particular Courts.

1.2.5 In order to manage these risks, the judiciary

- (a) make orders appointing representing solicitors, Counsel and expert witnesses;
- (b) issue Practice Directions on case management;
- (c) actively manage the throughput of cases in the Courts;
- (d) grant or refuse leave for proceedings to progress; and,
- (e) make judgments.

1.2.6 Risks Managed by Providers of Legal Services: The providers of legal services must manage issues such as

- (a) client service risks;
- (b) client financial risks, including the risk of becoming liable for an opponent's costs;
- (c) whether the proposed opponent has the resources to meet any Court Judgment;
- (d) court processes;
- (e) their businesses as sole trader, partners, employees or employers.

1.2.7 In order to manage these risks, a provider of legal services must be capable and have the systems in place to comply with a wide range of professional standards and the Practice and specific directions of the Court.

1.2.8 The Risks Managed by the People who use Legal Services: People applying for public funding for legal services must consider issues including:

- the ability to pay for legal services;
- financial eligibility for legal aid, including that of partners or other family members;
- the probability of success or failure in the proceedings;
- the cost and benefit of taking proceedings; and,
- the personal and financial impact of the case on themselves and their families.

1.2.9 In order to manage these risks, a person who uses legal services must decide on the financial risk and whether or not the likely outcome of the proceedings will be worth the cost of proceeding. In publicly-funded cases, the issue of a legal aid certificate effectively removes any financial risk of losing while retaining the potential upside risk of winning. There is no downside risk for the person in receipt of a legal aid certificate. The fact that a legally-aided person can never be responsible for the other party's costs is a major advantage.

1.2.10 The Risks Managed by Other Parties:

The risks managed by other parties who are not able to avail themselves of public funding appear to be mainly based on the assessment of financial risk, that is,

- the actual and potential cost of defending proceedings; and,
- the cost/benefit of applying for or responding to proceedings. The grant of legal aid significantly readjusts the risk of litigation for the opposite party³.

1.2.11 In order to manage these risks, other parties must consider the potential cost to them of proceedings and the probability of success in the light of the guarantee of funding to the assisted person that a civil legal aid certificate represents. Where the other party is also in receipt of publicly-funded legal services, then neither party has any reason to consider financial risk or value-for-money whatsoever in the outcome of the proceedings

³ Beldam LJ, Aldous LJ and Mantell LJ [1999] R-v- The Legal Services Commission Ex parte Parson

1.2.12 Where the other parties are also in receipt of legal aid, the issue of both legal aid certificates removes all financial risk and the consideration of it.

1.2.13 **The risks managed by the Commission:** The Commission must manage the following risks:

- (a) conformity to the general regularity, propriety and value-for-money requirements of Parliament, and specifically, providing remuneration for publicly-funded legal services which provides control, predictability and value for money;
- (b) the risk to the legal aid budget of volume changes in publicly-funded proceedings;
- (c) risks to the legal aid budgets, both civil and criminal, that are driven, in part, at least, by changes in the Northern Ireland, United Kingdom and European civil and criminal justice systems;
- (d) the risk to the legal aid budget of price changes to the services that are provided;
- (e) the risk that persons with sufficient means to pay for legal services themselves receive public funding;
- (f) the risk that persons with insufficiently meritorious cases receive funding, or continue to receive funding;
- (g) the risk that persons with available rights or facilities which make it unnecessary to apply for legal aid, do so and receive public funding;
- (h) the risk that the party who is not availing of publicly-funded legal

services and is successful in the litigation, successfully applies to the Court for costs against the Commission; and,

- (i) the principal/agent problem and the related issue of moral hazard.

1.2.14 In order to manage these risks, the Commission must have in place rigorous controls on the authorisation of expenditure on publicly-funded legal services and for the determination of remuneration for these services. These controls must address the above risks and in particular the principal/agent risk and the related issue of moral hazard. In order to explain how these controls will address this risk, the principal/agent relationship and the related issue of moral hazard are set out in the next section.

1.3 The Economic Model of the Provision of Publicly-Funded Legal Services in Northern Ireland

1.3.1 This section sets out the economic model that the Commission is applying to provision of publicly-funded legal services in Northern Ireland. This model draws from the analysis presented by Bevan et al (1994)⁴ and the purpose of this section is to use this model to put

- (a) the risks managed by all parties, including the Commission into context; and,
- (b) the steps that the Commission intends to implement to achieve value for money into this context.

1.3.2 The present system has experienced severe increases in both civil and criminal

⁴ Bevan et al Organising cost-effective access to justice in Social Market Foundation Memorandum No. 7 July 1994

legal aid expenditure in Northern Ireland, in total and in terms of average cost, despite the plateau in the number of cases.

1.3.3 A key principle on which the Commission relies in the present system, is the duty that the solicitor and Counsel has to the client, the legal aid fund and to the unassisted client ⁵

1.3.4 The economic model demonstrated in the provision of publicly-funded legal services is the principal/agent relationship. The Commission acts the part of the principal in this relationship, buying services from agents, the providers of legal services, which are used by a third party, the assisted persons and which affect a fourth party, the other party to the proceedings.

1.3.5 The principal/agent problem arises when a principal relies on an agent to deliver a service, and there is, between the principal and agent, both asymmetry of information (for example, where one party knows more about the processes, risk profile, customer behaviour and cost drivers than the other) and a difference in incentives (for example, the incentive to the principal is to control expenditure, while the incentive to the agent is to maximise income). If incentives are the same, but there is asymmetry of information, there is no problem, as the agent will act in the way the principal would want the agent to do. If incentives are different, but there is symmetry of information, there is again no problem, because the principal can see when the agent is not delivering what the principal wants.

1.3.6 The risk here is of supplier-induced demand which has been the subject of research in England and Wales since the early 1990's. In relation to legal aid, this risk has been explored by Cape and Woodhead⁶. Referencing Bevan⁷, Cape and Woodhead define the theses in support of supplier induced demand in relation to legal services as

- (a) because of the principal-agent and moral hazard problems, the cost of legal aid may be determined, not by the consumers of legal aid, nor the funders of those services, but by the suppliers (that is, lawyers); and,
- (b) lawyers would seek to manage their work to secure a target income which in real terms is the same or increased year-on-year.

1.3.7 The Commission draws the distinction, as is made in Cape and Moorhead, that supplier-induced demand does not mean that lawyers take cases without merit or are doing work which is unnecessary.

1.3.8 In publicly funded legal services in Northern Ireland, several causes appear to combine:

- (a) publicly-funded legal services are paid for by the Commission, provided by solicitors firms in the main, and consumed by those people who are eligible to receive legal aid. This type of arrangement can give rise to a range of behaviours in the buyer, provider and consumer which are collectively described as a moral hazard, therefore the Commission and the Northern Ireland Court Service confront the common problem of

⁵ Davy-Chiesman - v- Davy-Chiesman (1984) 1 ALL ER 321, CA; Clark-v-Clark (No2) (1991) 1FLR 179; Novoth-v-Tanner County Court (E) 1984 5CL 199

⁶ Cape, E. and Moorhead, R. 2005 Demand induced supply? Identifying Cost Drivers in Criminal Defence Services - A Report to the Legal Services Commission The Legal Services Research Centre London

- insurers who are remote from the services supplied by agents, the problem of moral hazard;
- (b) the assisted person relies on the lawyers to decide what services they will supply;
 - (c) lawyers provide advice to clients on whether or not a case should be pursued and, therefore, legal aid should be committed;
 - (d) in order to manage the risk associated with allocating funding to the inappropriate cases, or not allocating funding to appropriate cases, external lawyers are involved in the decision making on these transactions, that is, in the award of civil legal aid certificates, the granting of authority for expert witnesses and the granting of authority for Counsel - given the size of the legal profession in Northern Ireland there is a potential conflict of interest between those responsible for allocating the funding and those receiving the benefit of the funding through income;
 - (e) the lack of effective alternatives to lawyer and Court-based solutions to some of the problems or the lack of support from lawyers for these alternative solutions; and,
 - (f) the Commission's ability to address these systemic risks is limited to the challenge it can pose to each request for funding and each claim for payment - that is on a transactional basis - which does not effectively encompass a clear and shared definition of quality of service and value for money.

1.3.9 These factors expose the risk of supplier induced demand, and may be contributory factors behind the increases in the average costs per case of publicly funded civil and criminal cases. While average case costs in Northern Ireland are escalating, the volume of cases has remains relatively static. This trend poses significant budgetary and value-for-money risks to the Commission and to Parliament. The Commission is obliged to scrutinise, challenge and seek assurance on the value of what is being bought.

1.3.10 This model is important in understanding the risks that all parties manage. All legal aid expenditure in Northern Ireland currently is income for lawyers acting on behalf of people who live in Northern Ireland or using the Courts in Northern Ireland. The expenditure on legal aid is led by the demand for legal advice and remedies through the Court sought by the public through lawyers. This is the case even though there are situations where advice from other sources and other remedies could be more effective in addressing a client's justiciable problem. Lawyers get paid for providing legal advice and remedies through the Courts, even where other kinds of advice or other remedies would be more effective and less costly. Typically, also, the more work a lawyer does, the more the lawyer gets paid.

1.3.11 The position faced by the Commission is that of the principal/agent problem exacerbated by moral hazard. There are a range of statutory controls that the Commission applies to both civil and criminal legal aid through delegated

⁷ Bevan, G. (1996) Has there been Supplier-Induced Demand for Legal Aid? Civil Justice Quarterly Vol 15, 98-114

authority to staff and these controls extend to the decision-making of the Appropriate Authority, or through the Taxing Master. However, the Commission is much more poorly informed about the services being provided than a private client. There is an obvious difference in incentives as expenditure on publicly funded legal services by the Commission is lawyers' incomes from legal aid. The Commission can only control the total expenditure on legal aid by controlling lawyers' incomes from legal aid, either through standard fees or limiting the scope of work that attracts public funding.

1.3.12 The Commission will use the value for money challenges at all levels to address the risk associated with lack of information on the services that are being provided, the activities associated with these services and the reasons for these activities. The Commission will become an active buyer of services supporting access to justice, rather than a passive payer of lawyers. The Commission is not pursuing a procurement model for buying publicly-funded legal services. The procurement model involves contracting with individual firms for specific number of cases across defined proceedings types. The Commission considers that the risk to access to justice posed by a potentially diminishing provider network has not been assessed. However, the Commission will take every step to ensure that the benefits of a procurement based model, that is, client focused quality service, value for money and cost control are achieved. The remaining sections of this document set

out how the value for money challenge will operate in practice.

1.4 The Resource Challenge

1.4.1 The Commission must exercise a clearly defined challenge function over its expenditure on publicly funded legal services as a means of controlling public expenditure⁸. The legal aid system cannot be administered properly without regard to the availability of funding for it⁹. The challenge function has wide applications across all aspects of the Commission's business including:

- (a) the relationship between the Commission and its sponsoring body, the Northern Ireland Court Service, through the Board of the Commission and through the Chief Executive of the Commission, as the Designated Accounting Office, to the Director of Northern Ireland Court Service as the Principal Accounting Officer;
- (b) the setting, monitoring and control of budgets for expenditure on publicly funded legal services and the factors that influence this process, in particular the determination of remuneration.

1.4.2 The challenge function in relation to the Commission's relationship with its sponsoring body is set out in the financial Memorandum and the Management Statement. The challenge function on the setting, the monitoring and controlling of budgets for publicly funded legal services must, necessarily, be informed by the setting of level of remuneration for the provision of publicly funded legal services and the number

⁸ Dear Principal Finance Officer Letter 3 December 1991 Department of Finance and Personnel

⁹ Girvan J [2004] NIQB 48 Re The Law Society of Northern Ireland and a Decision by the Chief Executive of the NI Legal Services Commission

of cases that are to be publicly funded. It is also true that the setting of levels and remuneration must, necessarily, be informed by the budgetary process.

1.4.3 The Risk to Value for Money in Resource Allocation: The risks to value for money in resource allocation include the risk that

- (a) the total expenditure on publicly funded legal aid may not be accurately predicted and controlled;
- (b) the total expenditure on publicly funded legal services may not be controlled within the resources approved by Parliament;
- (c) average costs per case will continue to rise as a result of the principal/agent relationship between the Commission and the providers of publicly funded legal services.

1.4.4 A key objective for the Commission is to bring average case costs under control in order to bring predictability to the total budget for publicly funded legal services. The Commission will put the use of cost and volume parameters in forecasting and control for both criminal and civil legal aid work at the centre of decision making on setting fees. This is something that is the norm in the private sector, particularly in commercial and privately-funded legal work, where commercial clients insist on high levels of certainty and predictability over cost and value for money. The Commission believes that the imposition of a financial limit in advance of expenditure being incurred will provide a discipline to the legal

profession, in addition to enabling the Commission to ensure that no more than reasonable and proportionate costs are expended in conducting publicly funded civil litigation¹⁰.

1.4.5 The Commission's definition of value for money is important in the context of the commitment supporting the maintenance of an effective network of suppliers in Northern Ireland. The Commission has adopted the following definition:

"Value for money is the provision of legal services at the quality required and at the lowest economic cost consistent with the maintenance of an effective provider network."

1.4.6 The Relationship between Standard fees and Costs to Supplier Firms:

The Commission is defining standard fees across all publicly funded family and non-family legal services and implementing standard fees set by Northern Ireland Court Service for publicly funded criminal defence services. There is a clear relationship between the total funding available, the total case workload that the Commission can support and what the Commission is able and willing to pay on a standard fee basis for any given case type. Historically, the review of fees for publicly funded legal services has not been a structured exercise and the setting of fees has been based on a comparative approach, with average costs increasing significantly and little evidence used to identify the cost drivers to provider firms. The "fair and reasonable" principle, and the influence

⁶ The full text of the Access to Justice (NI) Order can be accessed at the Commission's website at www.nilsc.co.uk

of taxation decisions on the setting of fees has tended not to examine with any degree of accuracy, the costs to provider firms, either in the calculation of such key business information as market-entry costs, overhead recovery, return on capital employed or the marginal cost of the carriage of a case. Furthermore, any evaluation that has been carried out has not been conducted to the level of detail which would support a rigorous analysis of the underlying need for all of the steps that are taken in proceedings.

1.4.7 The Commission aims to make clear the distinction between historic average cost to the Commission and the average cost to supplying firms. The setting of standard fees by the Commission will mean that a provider firm will manage the costs to it in order to maximise the profit to be gained from each case and in the round from the relationship with the Commission. In order to manage the potential risk to value for money in setting standard fees that are too high and the potential risk to the provider network of setting fees that are too low, the Commission must have an understanding of the cost and profit structure in supplier firms if it is to have assurance that standard fees are

- (a) not so low as to be below the long run marginal cost of taking charge of a case, below which the income from a case will not make a contribution to fixed costs; or,
- (b) not so high as to represent super profits for supplier firms.

1.4.8 **Developing the parameters for Standard Fees:** The definition of standard fees

during 2006/07 has been based on historic cost information derived from the assessment processes. As the standard fee environment develops, this costs information will become redundant. The Commission will adopt the following parameters for setting standard fees in civil legal aid

- (a) total funding available;
- (b) estimated and actual case workload through the Courts;
- (c) the average cost to supplier firms of managing cases through to conclusion; and
- (d) the levels of profit that supplier firms can sustain which still act as an incentive to do legal aid work of the quality required, while maintaining a network that supports access to justice.

1.4.9 The Commission recognises a range of risks that might be associated with a standard fee environment. These include:

- (a) the value for money implications in cases where the standard fee is greater than the costs incurred plus a reasonable profit; and,
- (b) the potential impact of standard fees on the quality and effectiveness of publicly-funded legal services that are provided.

1.4.10 The Commission will also assess value for money through quality and compliance auditing, value for money investigations and the management of Very High Cost Cases. The approach that the Commission will take to conduct value for money investigations is described later in this document.

1.4.11 Inherent in the Commission’s approach to assessing value for money will be the identification of efficiency savings in the provision of publicly funded legal services. Efficiency savings are those savings which can be made through, for example,

- better organisation of operations, administration and the provision of legal services;
- greater use of information and communication technologies;
- better utilisation of assets;
- more economical procurement practices;
- partnership arrangements with organisations in the public, private and not-for-profit sectors; and,
- the automation of clerical and administrative procedures.

1.4.12 In delivering efficiency savings, there should be no effect on the quality of service delivery since reforms resulting in efficiency savings in publicly funded legal services are designed ensure that there is greater control over the funding of cases along with more efficient cost effective administration. Legal aid will still be available to everyone who is financially eligible and whose case meets the required tests.

1.5 The New Targeting Social Need Challenge

1.5.1 New Targeting Social Need is the Government’s high level policy for combating the problems of

unemployment, increasing employability and addressing social exclusion. The aim of New Targeting Social Need is to ensure that existing resources are targeted towards people, groups and areas in greatest social need. New Targeting Social Need has a focus on tackling problems of unemployment, increasing employability and promoting the social inclusion of members of vulnerable groups. In addition, it is concerned with reducing inequalities in other policy areas such as health and housing.

1.5.2 New Targeting Social Need provides a context for the public funding of legal services in helping to combat poverty and social exclusion. In particular, legal problems often concern issues linked to financial exclusion (for example, welfare benefits and debt). It is also the case that unresolved disputes can have serious social impact, particularly when people experience problems in clusters that can serve to exacerbate social exclusion¹¹.

1.5.3 The risks to value for money in New Targeting Social Need include the risk that

- (a) expenditure on publicly funded legal services does not address poverty and social exclusion;
- (b) a person of more than moderate means receives publicly- funded legal services;
- (c) a person who is not entitled to receive publicly-funded legal services, does so;
- (d) a person who is entitled to receive publicly-funded legal services, does not;

- (e) where a person receives publicly-funded legal services, that these services do not address the problem that the person needs to have addressed;
- (f) where a person receives publicly-funded legal services wrongly, the cost of these services are not recouped; and,
- (g) where a person misrepresents his or her financial position in order to qualify for publicly-funded legal services.

1.5.4 In order to manage these risks, the Commission

- (a) applies financial eligibility tests which define the levels of income and capital holdings below which a person will be eligible for publicly-funded legal services;
- (b) applies the various requirements of the Statutory Charge;
- (c) implements robust counter-fraud policy and procedures; and,
- (d) implements robust debt recovery procedures, including the recovery of debt through the Court.

1.5.5 The Commission applies these procedures rigorously as they represent further important controls on the level of expenditure on publicly-funded legal services. There are a range of regularity, propriety and value for money issues which the New Targeting Social Need challenge poses for current and reformed services, for example, in ensuring that there is evidence that a person applying

for legal aid is in fact eligible. Related to these issues, the opportunity cost of providing publicly-funded legal services when they could have been funded privately, or when the proceedings should not have been funded at all, is too great for the Commission to ignore, particularly, given the budgetary pressures that the Commission must manage.

1.6 The Funding Challenge

1.6.1 The range of civil legal services for which public funding is available will be described in the Northern Ireland Funding Code. There are a range of exclusions which will operate and these are set out in Schedule 2 of the AJO 2003.

1.6.2 The Northern Ireland Funding Code (the Code) will set out the criteria for determining whether civil legal services should be provided in a particular case and if so, what services are appropriate. The Code will replace the existing merits test for civil legal aid as laid down in Article 10(4) of the Legal Aid, Advice and Assistance (Northern Ireland) Order 1981. The Code will be subject to parliamentary scrutiny before coming into force. The Commission is also required to undertake consultation before preparing the Code (Article 15(6) of the AJO 2003). This approach will draw upon the Funding Code which has been developed by the Legal Services Commission in England and Wales as a model but will also take fully into account the different legal services and legal aid culture in Northern Ireland.

1.6.3 The development of the Northern Ireland Funding Code will provide a control in terms of the scope of legal aid. It will have to be subject to ongoing research to ensure that the legal need of those in greatest social need is reflected in the priorities specified in the Code and through the criteria applied by staff in the Commission. The legal need of some Section 75 groups is particularly difficult to detect and has not been fully reflected in the Legal Need Survey conducted by the Commission. The Commission will have to pay particular attention to the needs of Section 75 groups and using qualitative research methodologies ensure that legal services provision adequately fulfils the legal need of these vulnerable groups. The risk to value for money in funding include the risks that the proportionally small but critical needs of Section 75 groups are not eroded by other demands on the fund.

1.7 The Transactional Challenge

1.7.1 The Commission is committed to ensuring that its policies and procedures in supporting the challenge functions described above are evidence based and reasonable. However, the Commission will continue to make decisions about the expenditure in civil and criminal legal aid during the period prior to the implementation of the AJO 2003 and during the period when the research and service evaluation to underpin these policies and procedures is being undertaken. The Commission therefore must implement a challenge to individual transactions where expenditure committed or authorised is described in the delegated authorities approved by the Commission which

support the challenge functions described above. Such transactions include the consideration of

- (a) the award of a civil legal aid certificate, and the appeal against refusal of a civil legal aid certificate;
- (b) a requests for extensions to Legal Advice and Assistance (both civil and PACE);
- (c) a request for Counsel;
- (d) a request for the engagement of expert witnesses in civil and criminal cases;
- (e) a request for exceptionality in criminal and civil cases; and, (f) authority to proceed in Very High Cost Cases.

1.7.2 The Commission is aware of the range of risks that must be managed in each individual transaction, in particular, the potential for the setting of precedent which may, in effect, determine policy in the absence of proper policy analysis and risk management. Particularly, in the absence of a Funding Code, the risk to value for money in transactions include the risk that

- (a) those cases which are hopeless or are without merit are funded;
- (b) cases where there are no, or limited, prospects of success are funded;
- (c) work is authorised which is not necessary to the successful resolution of a criminal or civil case;
- (d) public resources are not wasted;
- (e) work is authorised that would not be authorised if the recipient was not legally aided but funding this work from his own resources;

(f) a Court does not consider that a plaintiff has made a prima facie case that the defendants, its servants or agents were negligent in any way, and yet the plaintiff has received public funding; and,

(g) an Appeal Court does not consider that an appeal was well founded or that there was a major issue of law requiring further consideration.

1.7.3 The application of the value for money challenge to all applications for public funding for legal services will continue to be based on the reasonableness test in that the Commission will consider

(a) whether or not a person of moderate means in a privately funded case would be advised, as well as willing, to take the action proposed; and

(b) whether or not a person of moderate means in a privately funded case would accept the financial risk of the action being proposed (for example, would a privately paying client be advised to throw more money at a case at a given stage, even to the extent of preparing an expert's report¹²) both in terms of the cost of the action itself, the likelihood of success of the case and, in the event of losing, facing a claim for costs from a successful defendant; and,

(c) whether or not the potential cost to the public purse outweighs the benefit that would accrue to the applicant, taking into consideration whether there will, in fact, be any cost to the legal aid fund¹³.

The Commission's decision-making will strongly emphasise the concept of "private client reality". Legal aid does not exist to place assisted persons in any better position than privately paying clients. The Commission must have regard to whether a privately paying client would reasonably be advised to litigate in the same circumstances and have regard to what a private client would do when being advised on steps likely to involve large expenditure¹⁴. The delegated authorities that the Commission puts in place to enable its staff to make decisions on the Commission's behalf will reflect this private client reality.

1.7.4 In all decision making, across both civil and criminal legal aid, and in "means and merit" applications and "non means" applications, the Commission will also need direct evidence of value for money in each transaction, that is, assessing the economy, efficiency and effectiveness in relation to each transaction. The Commission will develop the types of evidence and performance measures that will highlight value for money. The Commission will seek to use the most robust evidence available and where robust evidence is not available then the Commission's decisions making will reflect this. Examples of the tests that the Commission might seek are given on the following page.

¹² Hopper J [2002] EWHC Admin 5 CO 2092/2001 R-v-The Legal Services Commission

¹³ Kerr J [1994] NIQB Re McCann

Decision Type	Potential tests		
	Economy	Efficiency	Effectiveness
Application for civil legal aid certificate	Effective and timely case management	Quality of advice	Probability of success
Request for extension for Legal Advice and Assistance	Private client reality	Quality of advice, assistance and representation Effective case management service to client	
Request for Senior Counsel	Private client reality	Quality of advice, assistance and representation Effective case management service to client	Impact on outcome
Request for Expert Witness	Private client reality Effective procurement	Quality of advice and representation Effective case management service to client	Impact on outcome History of impact in other cases
Request for exceptionality in civil and criminal cases	Private client reality	Effective case management service to client	Impact on outcome

¹⁴ Venter-v-Scottish Legal Aid Board [1993] SLT 147

1.7.5 Counsel's opinion in supporting a civil legal aid application can be critical. While the Commission can gain some assurance about the prospects of success of a case for which public funding is being sought when it is accompanied by Counsel's opinion, this assurance is not absolute. Counsel acting for applicants has an important role to play in ensuring that legal aid applications are not pursued if they have no, or little, prospect of success. The Commission will review those applications which have been supported by Counsel's opinion which have subsequently been dismissed by the Court.

Section 2 - Service Evaluation and Research to Determine Value for Money

2.1 Conducting Value for Money Investigations

- 2.1.1 Section 2 describes the framework within which the Commission intends to undertake value for money activity. The cycle of marking, pilot studies and full Value for Money investigations described in this section is consistent with accepted value for money audit practice.
- 2.1.2 The Commission may conduct a value for money investigation into any aspect of publicly funded legal services with a view to improving the value for money of any aspect of these services, including determining the remuneration for the services provided. While this section sets out the value for money cycle, the Commission may consider using other approaches to inform particular strands of value for money work, for example, deriving performance indicators, case studies, benchmarking, and process mapping.
- 2.1.3 **Planning Value for Money Investigations**
The Commission will operate a structured approach to its quality and compliance audits and value for money investigations, whilst maintaining flexibility on the conduct, timing and priority of individual investigations. The three main stages are planning, investigation and reporting. Each has an important part to play in achieving an efficient and effective audit and making the best use of the Commission's staff and other resources and managing the relationship with providers of publicly-funded legal services.
- 2.1.4 **Baseline Assessments:** Successful value for money investigations require a good understanding of the provider firm, its organisation, its policies and objectives, its principal resources and the environment within which provider firms operate. This information will provide the Commission with the means to assess the main risks to value for money. Gathering this information is the purpose of the Commission's baseline assessment work, which forms the first part of the planning process.
- 2.1.5 Baseline assessments may cover a provider firm, a geographical group of provider firms, firms specialising in a certain type or type of publicly-funded legal services. The aim is to ensure that the Commission identify potential risks to achieving good value for money, highlight areas for continuing quality and compliance audit and attention, and suggest possible areas or subjects for individual in-depth and value for money investigations.
- 2.1.6 The Commission will gather and analyse information that is assembled and analysed on the background, objectives, activities, plans, resources, procedures

and controls in the provider firms concerned in relation to publicly funded legal services. This assessment will involve examination of the Commission's documented procedures and casework in relation to publicly funded legal services and will be supplemented by discussions with staff, practice management staff, partners and fee earners.

2.1.7 The Commission will conduct a full survey of all firms providing publicly funded legal services during 2006/07 and 2007/08. After that, the Commission would aim to carry out a full survey of a provider firm only once every three to four years. In between full surveys, information is kept up to date through the sampling of casework under the terms of the Registration Scheme and by marking as part of this process. In operation, this will be no different from the kind of watching brief that commercial clients maintain over their suppliers of legal services in the continuing search for value for the money spent on legal advice and representation.

2.1.8 **Marking:** Marking is the selective monitoring of key information and developments affecting the provider firm and its provision of publicly funded legal services. It keeps the audit up to date and able to respond as necessary to developments and changes relating to individual areas identified in general surveys as being of material audit interest. Particular attention is paid to the main management and financial information systems which support the provision of publicly funded legal services. Marking is not directed solely towards papers and other

documents held in provider firms offices and with other partners in the justice sector; personal contacts are an important means of keeping in touch with current and prospective developments.

2.1.9 **Strategic Audit Plans:** The Commission will direct a number of teams towards quality and compliance and value for money investigations. The Commission will prepare each year a strategic plan for baseline assessment, quality and compliance audit and value for money investigations based on general survey work, marking and other information. The plan will analyse the audit and value for money issues within view and identify the main factors which determine good value for money and assesses the potential risks.

2.1.10 The plan proposes an audit strategy, with an appropriate cycle of coverage of the providers of publicly funded legal services and the scope of publicly funded legal services. The strategy reflects a broad view of important value for money topics likely to arise during the next three years, but deals more firmly and in more detail with areas of activities chosen for examination in the first two years of the programme. Specific investigations are proposed for the first two years. Each year the plan is rolled forward, having been revised and updated in the light of developments. This enables the strategy of priorities to be amended as necessary and ensures that the quality and compliance and value for money investigations support the Commission in identifying and managing its resourcing, New Targeting Social Need and funding priorities.

2.1.11 The Commission will produce the quality and compliance and value for money investigations plans between October and January, for the financial year beginning the following 1 April. The Commission will consider the likely demands placed on provider firms and partner organisations with a view to producing a programme of investigations and audits which addresses the Commission's corporate risks effectively.

2.1.12 The Commission will inform provider firms and partner organisations provisionally of investigations which affect them, and discuss handling and timing. This is not a matter of seeking approval to carry out investigations, since final decisions on the scope, objectives and conduct of investigations will be taken by the Commission, but it is important to secure the co-operation of audited bodies as far as possible and give parties adequate warning of major audits in their areas.

2.1.13 **Investigation:** The investigation stage of the audit is normally in two parts. A pilot study confirms whether and how the work should proceed, and a full investigation provides the in-depth examination and audit evidence leading to report.

2.1.14 **Pilot Studies:** The purpose of a pilot study is to extend the assessment made at the general survey and strategic planning stages. It identifies the main issues to be pursued in the full investigation; the nature and extent of audit evidence required; the likely timing of the different stages and the audit resources and other skills needed. Likely

results are assessed and potential difficulties anticipated as far as possible. A pilot study also provides the basis for establishing liaison arrangements with the provider firms or organisations.

2.1.15 A pilot study is carried out by a quality and compliance team supervised by a Team Leader. The fieldwork involves examination and analysis of cases and other records, local visits as necessary and discussions with staff in provider firms and partner organisations. Outside expertise and advice may also be sought. The duration of a pilot study will vary according to size and complexity of subject, but normally lasts only four to six weeks. A pilot study may examine one firm or several firms and may examine one issue or a range of issues.

2.1.16 A report on the results of each pilot study is considered by the Commission's Quality and Compliance Team, whether to proceed to a full investigation and, if so, what should be the objectives, nature and timing of the further examination. There may be a gap before the full investigation begins - for example because of the prior demands of other quality and compliance, counter fraud or other work - but the provider firm will be kept informed about the results of the pilot study and arrangements for the full investigation and the likely timing.

2.1.17 **Value for Money Investigation:** A full investigation involves an extensive, in-depth examination to gather sufficient, relevant and reliable evidence on which the Commission staff can base a report to the Board of the Commission which, mainly, will be recommendations for the

setting of standard fees or for the achievement of value for money in the provision of publicly funded legal services. The Commission will

- (a) define, publish and consult on the terms of reference for the investigation, which will be approved by the Board of the Commission;
- (b) aim to conduct the main fieldwork within about four months of approval by the Board;
- (c) produce a draft report for consultation within about 2 months of the conclusion of the fieldwork;
- (d) make a final report to the Board within 2 months of the consultation on the final report ending.

2.1.18 A value for money investigation will involve the collection and analysis of a large quantity of information to support service evaluation, the consideration of alternative methods of service delivery and service improvements. A value for money investigation will also require discussions at various levels in provider firms and across the Northern Ireland justice sector. Progress on value for money investigations will be monitored by the Board of the Commission.

2.1.19 Facts and figures emerging from the examination are, as far as possible, discussed and cleared progressively with provider firms as the fieldwork proceeds. Provisional findings and conclusions will also be discussed with the Commission's partners in the Northern Ireland justice sector and other stakeholders. This reviewed and

documented material forms the evidence base from which the final published report will be developed.

2.1.20 Value for money reports will be available to all the Commission's stakeholders, including Northern Ireland Court Service and the Northern Ireland Audit Office. The Commission will discuss reports with key stakeholders, including Northern Ireland Court Service, the Law Society of Northern Ireland, the Northern Ireland Bar Council and other stakeholders from the voluntary, community and statutory sectors as appropriate, before publication to ensure accuracy and completeness and to confirm a balanced and fair presentation. Reports normally incorporate their response to any conclusions, criticisms, recommendations and other issues raised.

2.1.21 The Commission will use value for money investigations and, where appropriate, pilot projects to assess alternative forms of service provision and to identify efficiency savings in the delivery of publicly-funded legal services.

2.1.22.1 Appendix 5 provides an overview of the resource challenge in setting standard fees. The VFM activity that the Commission undertakes will seek to address the issues raised by the resource challenge.

2.1.23 Appendix 6 provides an overview of the New Targeting Social Need challenge in setting standard fees. The value for money activity that the Commission undertakes will seek to address the issues raised by the New Targeting Social Need challenge.

Appendix 1

The Northern Ireland Funding Code - Risk Management Policy

Date	Prepared by	Approved by	Comments
24 June 05	Chief Executive	Commission	Amended from non-ISO 9001 version approved on 18 February 2005

1. Introduction

1.1 Scope

This procedure is intended to apply to the development of

- (a) procedures in support of the implementation of the Access to Justice (NI) Order 2003, including the development and implementation of the NI Funding Code;
- (b) the Corporate and Operational Plans of the Commission.

1.2 Purpose

1.2.1 The purpose of this policy is to ensure that the Commission has an appropriate framework for considering the research, policy development and service development issues which will implement the NI Funding Code and the operational environment which will support the development and implementation of the NI Funding Code.

1.2.2 This policy

- (a) sets out the basis of the legislative framework which the Commission will use to develop the Northern Ireland Funding Code and the remuneration associated with services provided under this Code;
- (b) the characteristics of the service delivery environment that the Commission aims to have in place to meet the requirements of this legislative framework;
- (c) the key risk and quality issues that the Commission will address to achieve this service delivery environment;
- (d) the role of this policy in informing operational decision-making, and the development of the Commission's Corporate and Business Plans.

1.2.3 The Commission will use this policy to determine

- (a) the objectives and performance measures it will set in the Corporate and Business Plans across all its business, including the development of the NI Funding Code;

- (b) the communications and stakeholder strategy;
- (c) the financial management strategy.

1.3 Relationship to other policies, frameworks and procedures

1.3.1 **Management Statement and Financial Memorandum:** The Management Statement sets out the delegated authorities within which the Commission may operate.

1.4 Definitions and Abbreviations

1.4.1 The definitions and abbreviations used in this operating procedure are set out below:

The Commission: The Board of the Northern Ireland Legal Services Commission;

NILSC - the management and staff of the Northern Ireland Legal Services Commission;

1.5 Related Documents

1.5.1 The following documents are referred to in this operating procedure:

- Access to Justice (NI) Order 2003
- Corporate and Business Plans
- NILSC Management Statement and Financial Memorandum

2 Statement of Responsibilities

2.1 Introduction

2.1.1 This section sets out the responsibilities that the Commission, the Chairman and

the Chief Executive have in relation to the development and implementation of this policy.

2.2 The responsibilities of the Commission

2.2.1 The Commission will consider and approve changes to this policy in the light of the Commission's progress in achieving the objectives set out in the Corporate and Operational Plans and changes in the operating environment of the Commission.

2.3. The responsibilities of the Chief Executive

2.3.1 The Chief Executive will ensure that

- (a) this policy is reviewed to ensure that it supports the development and implementation of the Northern Ireland Funding Code under the Access to Justice (NI) 2003;
- (b) this policy underpins the development of the Commission's draft Corporate and Business Plans.

3 Northern Ireland Funding Code - Policy on Risk Management

3.1 Legislative Framework for the development of the Northern Ireland Funding Code

3.1.1 Article 15 of the Access to Justice (NI) Order 2003 (AJO (NI)), when commenced, will give the Commission the statutory power to develop the NI Funding Code.

3.1.2 Article 15(6) of the AJO(NI) states that

“Before preparing the code the Commission shall undertake such consultation as appears to it to be

appropriate; and before revising the code the Commission shall undertake such consultation as appears to be appropriate unless it considers that it is desirable for the revised version to come into force without delay.”

3.2 The statutory criteria on setting fees

3.2.1 Article 7 (6) of the AJO obliges the Commission to have regard to

- (a) the time and skill which the provision of services of the description to which the question relates requires;
- (b) the number and general level of competence of persons providing these services;
- (c) the cost to public funds of the remuneration of persons or bodies providing those services; and,
- (d) the need to secure value for money.

3.3 The service delivery objectives

3.3.1 In order to meet the legislative requirements of the AJO 2003, the Commission aims to establish a service delivery environment characterised by

- (a) services which effectively target social need and promote social inclusion in the provision of access to justice through targeting based on evidence-based research;
- (b) a planned mixed economy in service provision (able to support partnerships with (and including) private, public and voluntary suppliers of services;

(c) a shift to early intervention to reduce justiciable disputes and minimise the profile of social exclusion characterised by progressive engagement in the legal process;

(d) an holistic and in-depth understanding of advice, legal and judicial processes in Northern Ireland based on effective partnerships and communications with partners in the public, private and voluntary sector, and a structured evidence-based methodology to underpin this understanding;

(e) fixed-fees for the provision of solicitors and counsel services linked to ensuring quality of services provided;

(f) a structured programme of review of fixed-fees at all times within Spending Review criteria set by the Northern Ireland Court Service;

(g) a regulation regime based on compliance with quality, value-for money, regularity and propriety standards set by the Commission;

(h) keeping to a minimum the cost of doing business with the Commission;

(i) Criteria for financial eligibility which are simple and easy to determine and which target legal aid on those who most need it.

3.4. Managing the risk and quality issues

3.4.1 The key quality issues that the Commission will need to manage to achieve a service delivery environment which will meet the legislative requirements are

- (a) a robust case management and financial management system which can provide timely and high-quality management information to support service delivery, service development, reform, accountability and communications;
- (b) a robust and timely research programme which will underpin service development and reform;
- (c) developing and maintaining positive working relationships with current and future providers of legal services to enable the Commission to achieve the understanding and capability to set fixed fees, as described at 3.3.1 above;
- (d) as part of the positive working relationships, a clear framework of quality management, regulation and compliance to underpin the Commission's relationship with all suppliers.

Appendix 2

Baseline Assessment

1. Purpose: The purpose of Baseline Assessment work is to enable the Commission to assemble and appraise information about a provider firm or organisation, or any aspect of publicly funded legal services to assist in the formulation of quality and compliance and value for money strategic plans.

2. Information Gathered: Baseline assessment will involve obtaining knowledge of:

Background: financial information on expenditure and receipts in relation to publicly funded activities, major resources and assets used to support these activities, organisational structure, quality and risk management processes, management information systems, case management systems, service policies and procedures; business plans and annual reports and accounts.

Objectives: business objectives in relation to the provision of publicly funded legal services, including client and customer focus.

Activities: the different ways in which the provider firm or organisation seeks to achieves its objectives.

Resources: the nature and characteristics of resources used by the provider firm or organisation (cash, manpower, land and buildings, fixed assets) and related risks.

Procedures and Controls: procedures and controls operated by the organisation to ensure that objectives are pursued with due regard for value for money (e.g., planning arrangements, financial control and management information systems, quality and risk management).

Other Relevant Information: any prima facie evidence of serious waste, inefficiency or ineffectiveness, from internal and external reviews or audits, including the result of previous Commission work and, for example, the work of the Criminal Justice Inspectorate, the Northern Ireland Audit Office, the Audit Commission, Northern Ireland Court Service, the Department for Constitutional Affairs, Parliamentary Select Committees and judicial committees.

3. Assessment of Information

(a) the clarity and adequacy of policy and operational objectives;

(b) the adequacy of procedures and controls designed to ensure economy, efficiency and effectiveness in the use of resources;

(c) operations carrying inherently high risk to good value for money (e.g., research and development work, new activities or programmes, etc);

(d) any apparent strengths and weaknesses in management and performance; and,

- (e) the effectiveness of the Commission in achieving its business objectives in relation to publicly funded legal services.

4. Conclusions from Baseline Assessment

The information gathered and assessments made during baseline assessments will be recorded in the Commission's quality and compliance and value for money management information systems.

Appendix 3

Marking

1. Baseline Assessment will provide the Commission with a reasonably comprehensive understanding of provider firms and the environment within which publicly funded legal services operate. To maintain this level of understanding, and to ensure that changes and new developments are reflected in planning and quality and compliance audit strategies, provider firms/organisations and the operating environment will be “marked” by the Commission as part of its ongoing risk management framework.
2. The role of staff undertaking marking involves:
 - (a) familiarisation with the policy objectives, operational objectives and main activities, working methods and problems of the provider firm organisation;
 - (b) keeping abreast of changes in policy, significant developments, schemes and projects in the justice and social welfare sectors in Northern Ireland, the United Kingdom and internationally;
 - (c) monitoring the output of financial control and management information systems;
 - (d) identifying signs of serious waste, extravagance or inefficiency;
 - (e) providing other Commission staff with information relevant to the audit tasks allocated to them;
 - (f) informing the management of the Commission of any developments likely to affect current work, quality and compliance or value for money plans.
3. The Commission will maintain a permanent record of all sources of information and the use they are put to.
4. Marking arrangements will be reviewed annually as part of the general survey process.

Appendix 4

Pilot Studies

1. The broad aim of a pilot study is to conclude whether a full investigation should proceed, and, if so, to recommend precise objectives and tasks for the investigation.
2. **Consultation and Assembling Information:**
 Although some of the relevant information will have been collected by baseline assessment and marking, more detailed information is required for the pilot study. This includes:
 - (a) interpreting and clarifying the broad objectives for a full investigation;
 - (b) identifying all relevant and material value for money factors that could influence the provision of quality publicly funded legal services;
 - (c) considering what detailed information is, or will be, available;
 - (d) carrying out sufficient test examination to form a judgement about the feasibility of achieving approved investigation objectives.
3. **Judgments and Assessments:**
 In the light of this work, the following judgments and assessments are made:
 - (a) whether all the agreed objectives for investigation are appropriate and can be met;
 - (b) whether the agreed objectives require definition in consultation with stakeholders;
 - (c) which aspects of the subject must be examined if the broad aims for a full investigation are to be achieved;
 - (d) whether such examination would be practicable and likely to provide hard audit evidence;
 - (e) the precise objectives, scope and audit task for a full investigation;
 - (f) staff resources (including skills and experience) which a full investigation is likely to require;
 - (g) any specialist help from within the Commission or from outside consultants which may be necessary or desirable; and,
 - (h) the duration and optimum timing of a full investigation.
4. **Proposals for a Full Investigation:**
 A pilot study results in a reasoned recommendation to senior management whether or not to proceed to a full investigation. If the recommendation to proceed, the pilot study report will set out:
 - (a) a statement of the objectives for a full investigation;
 - (b) a task outline for each block or area of audit investigation. (The outline determines the scope and objectives

for each task and indicates the audit approach, main sources of information etc. It includes individual plans of action which set out, as far as can be foreseen, the steps the examiner should take and the points at which progress reports should be produced.);

- (c) staffing proposals, including the need for specialist assistance;
- (d) proposals for the Commission and management of the investigation, including the allocation of tasks to individuals;
- (e) a timetable, including the timing of progress reports by individual examiners, progress meetings of the project team and supervision and review by the directorate.

Appendix 5

Full Value for Money Investigations

1. The essential purpose of the full investigation is to obtain sufficient relevant and reliable audit evidence to support a report to the Board of the Commission.
2. **Planning and Management:**
 Typically, a pilot study will have already been carried out and the objectives, approach, task outlines and timetable for a full investigation will have been approved. If, exceptionally, a full investigation is to be undertaken without a pilot study - for example because of urgency - a brief plan of the audit objectives, the work to be done and the resources required will be prepared and agreed with the Board of the Commission at the outset.

 Progress of the investigation is carefully monitored against approved plans - this is particularly necessary in the case of team investigations. Team leaders keep in close touch with all individual tasks and support team members. The Commission's management will regularly monitor the progress of investigations and discuss matters arising with representatives of the stakeholders and provider firms as necessary.

 The Commission will ensure that:
 - (a) value for money investigations confirm that the agreed investigation objectives are still relevant;
 - (b) consideration is given as to whether new objectives should be added;
 - (c) the audit approach adopted is proving effective;
 - (d) the audit tests and enquiries being carried out and the nature and extent of evidence being obtained, are of a sufficiently high standard to support firm and sustainable conclusions and recommendations;
 - (e) any departures from the timetable are justified and that the consequences of any delay are considered promptly.
3. **Reporting Progress to Senior Management:**
 Normally, the fieldwork of a full investigation should be completed within about four months. Within this timescale, teams will report monthly to senior management on progress. As soon as the broad shape of the results have become clear, Team Leaders will prepare an advance outline of the report for submission to senior management. The outline will indicate the proposed structure and content of the report and summarise the main issues to be covered and conclusions to be drawn. This outline will normally be submitted towards the end of the fieldwork stage of the investigation.

4. Final Report:

When the outline has been approved by senior management it will, subject to any further discussion with the provider firm or other stakeholder, form the basis for detailed drafting of the final report.

Appendix 6

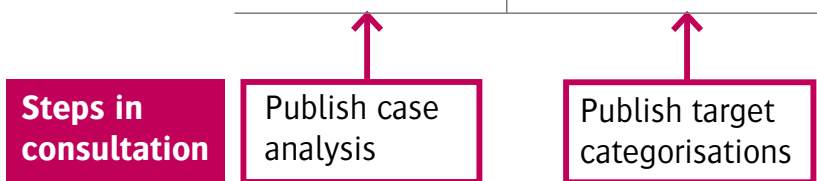
Overview of Resource Challenge in Setting Standard Fees

Activity	Input	Output
Risk Analysis	Application of risk management framework	Risks identified and treatment plan drawn up.
Analysis of available relevant information	Pool information from the Commission, NICTS other justice sector organisations in NI, UK and internationally identifying benchmarks, precedents, and any other relevant considerations.	The parameter within which standard fee will be set established.
Application of other comparators	Apply parameters taking account of NI conditions, (for example, differentials in cost of living). Background for standard fees	Definition of potential efficiency savings
Financial Modelling	Amendment to Forecasting Model and resource based financial accounting systems	Impact on the fund of proposed fee established to Comprehensive Spending Review, Spending Round processes
Consultation	Application of Consultation Policy to fee determining consultation process to be undertaken. Joint Protocol arrangements Communications policy Equality Impact Assessment	Standard Fees and Equality Impact Assessment.
Approval of NICTS for standard fee	Implementation Plan reflecting steps taken drawn up by Directors.	Approval/ (Disapproval) in principal to fee set from Commission. NICTS approval/disapproval in principal to fee set.

Appendix 7

Overview of New Targetting Social Need Challenge in Setting Standard Fees

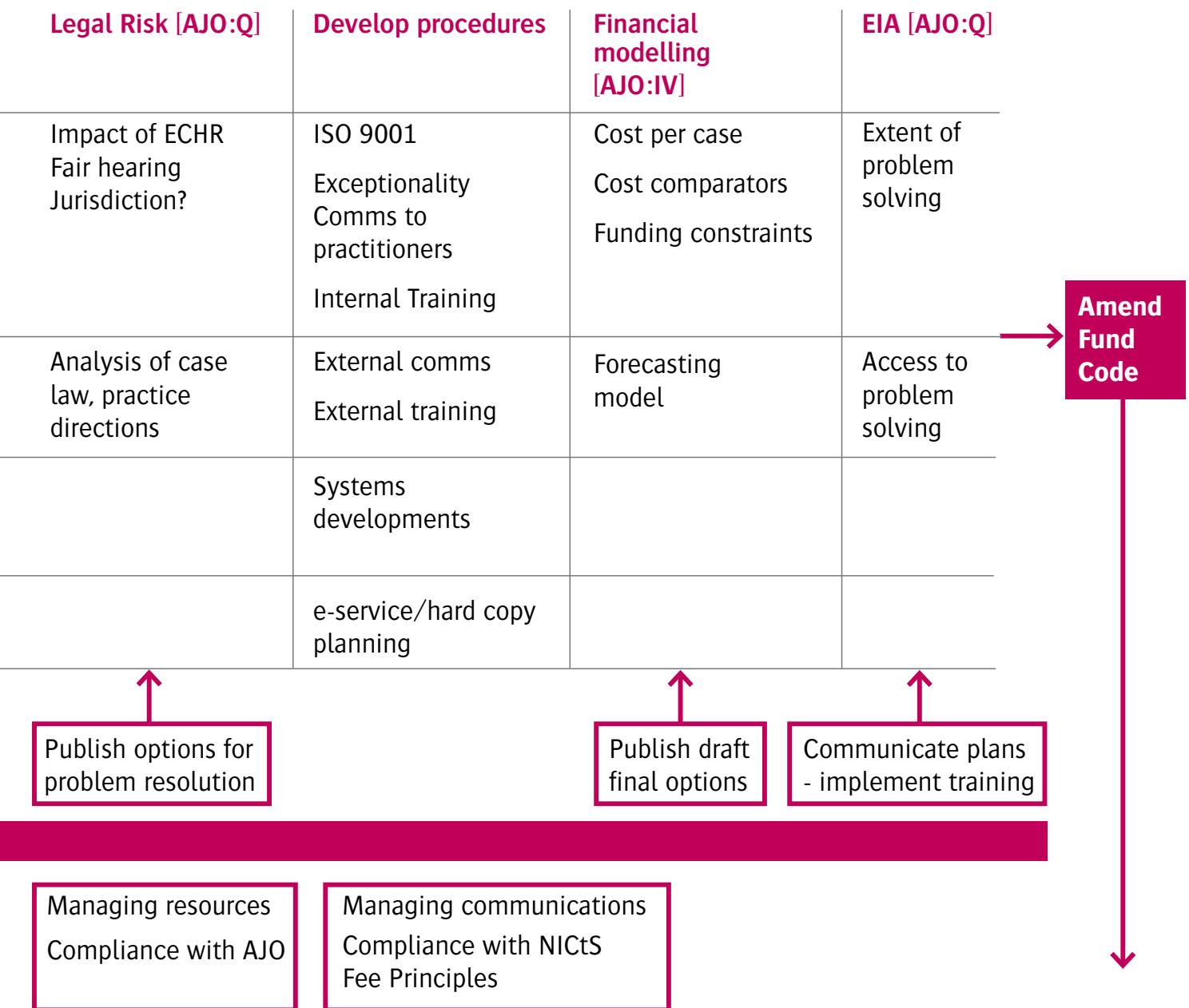
Research phase [AJO: QTIV]	Development of target categorisation of problems [AJO: TIV]	Development of options for resolution [AJO:QTIV]
Analysis of cases received Management Information and case management systems	High value 5% Median 60% Low value 35%	Judicial Jurisdiction? Representation?
Research programme	Social Welfare research	Research Programme
Ongoing communications framework	Current experience	
		Non judicial



Communications Framework with external stakeholders



- Review (as part of ongoing work of NILSC)
- Decide priorities for action on updating NI funding code
- Decide priorities for action in research programme
- Input into business plan and corporate plan



1. AJO 2003 abbreviations
- Q = Quality and availability of service providers
- T = Time and skill
- I = impact on public purse
- V = value for money



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