

Appendix 2

Policies for the Treatment of Granting and Assignment for Public Defence Service Cases

Assignments

1. Grants staff will assign to the Public Defender as lead provider, rather than to individual PDS lawyers. No more than the agreed maximum proportion of Auckland/Manukau caseload will be assigned to the PDS. On the basis of accumulated totals, the maximum level of assignments to the PDS will not exceed, for each proceedings category:
 - 33% of all assignments available in the Auckland and Manukau Courts
 - 50% of all assignments available on rotation
 - a 2 (PDS) to 1 (private provider) ratio of assignments available on rotation

The PDS Assignment Guidelines Summary Statement is attached as Schedule A to this Appendix.

2. The Public Defender, as lead provider, will be responsible for the allocation of cases to staff approved at the appropriate criminal proceedings category. On a day to day basis, this may be delegated to the Senior Supervising Lawyer.
3. The Public Defender will be responsible for any required re-allocation of a case within the PDS, and this will occur in consultation with the client. Approval from a Grants officer and consultation with the Service Development Manager will not be required for re-allocation within the PDS, but will still be required for re-assignment to an external lead provider if this is required.
4. 'Preferred lawyer' assignments where the client nominates the PDS will be assigned to the Public Defender as lead provider. Allocation of a particular lawyer when the PDS, or a particular lawyer within the PDS, has been nominated as preferred lawyer will be a matter for determination by PDS management, and will take place in consultation with the client.
5. 'In rotation' assignments for categories 1 & 2 cases will be assigned to the Public Defender following current policy, up to a maximum of 50% of total Auckland/Manukau 'in rotation' cases. The lawyer assigned by the PDS must be listed as available for categories 1 & 2 'in rotation' cases and be approved as a duty solicitor rostered at the Court (but not necessarily on duty on the day of assignment)².
6. 'In rotation' assignments for categories 3 & 4 cases will be assigned to the Public Defender following current policy, up to a maximum of 50% of total Auckland/Manukau 'in rotation' cases. The lawyer assigned by the PDS must be listed as available for categories 3 & 4 'in rotation' cases at the Court.

² For the duration of the duty lawyer test, "in rotation" assignments at the Auckland Court will be made in accordance with the protocols established under the duty lawyer test.

Grants and Amendments

7. The PDS will manage each assigned case within the total budget of the PDS, with no maximum grants made by Grants officers and no referral for amendments.
8. PDS will use a time recording system to record time taken, and other costing data, for individual cases. This data will be used to generate information required for management planning, and monitoring and reporting, as well as advising the cost of services for the calculation of the final repayment required by the client.
9. *Second criminal matter or matters*
The existing policy on additional charges will apply with the PDS cases. In other words, when Grants staff decide to treat an application as an amendment to a grant already assigned to the PDS, for the purposes of the PDS it will be treated as the same case. PDS staff will have the option to request consideration that the additional charge or charges be treated as a separate grant.
10. *Withdrawal of or amendment to, a grant of legal aid.*
The current policy and practice apply in the PDS cases. Sections 25 and 27 of the Legal Services Act 2000 detail circumstances in which the Agency can withdraw or amend a grant of criminal legal aid.

Disbursements

11. All disbursements will be managed by the PDS, with no referral to Grants staff.

Conditions on a Grant

12. Grants staff will retain responsibility for assessing the repayment requirement and setting up the conditions on a grant for the PDS cases. The decisions on conditions on a grant would be the same as if the case were not a PDS case.
13. Grants staff will assess the client's financial situation to set the prescribed repayment amount and make a decision on whether or not to require an interim repayment at the time the grant is approved. Grants staff will also make a decision to seek a client's authorisation to a charge over property as security for any debt. Grants staff will inform the legally aided person and the PDS of the conditions set.
14. The PDS will inform Grants staff when the case is finalised of the cost of services³ incurred.
15. If the PDS lawyer becomes aware that the financial situation of the applicant has changed or is not as it was conveyed to the Agency, the PDS lawyer is obliged to inform the Agency of this.
16. Agency standard procedures for the recovery of debt will apply including, when applicable, PDS obtaining a signed "authorisation to take a Statutory Land

³ The method used for calculating the cost of services is under development and when finalised will be incorporated in to this Statement.

Charge” letter from the aided person to allow a security over property to be taken and arranging registration or release of a statutory land charge and/or caveat.

17. The Debt Management Group staff will communicate directly with the legally aided person on the recovery of any repayment while the case is active and after the case is finalised.

Schedule A to Appendix 2

PDS Assignment Guidelines - Summary Statement

1. The calculations of assignment proportions for the PDS will be on the basis of the accumulated total number of assignments. Notwithstanding that the PDS commenced as a permanent service from 1 December 2008, the accumulated total number of assignments means the overall total number from the date the PDS commenced as a pilot plan (3 May 2004) to date. This approach of using the accumulated total number of assignments applies to
 - the number of assignments available, and
 - the number of assignments available on rotation
 - the numbers of assignments that have been made to the PDS and to private providers.

2. On the basis of accumulated total number of assignments, the maximum level of assignments to the PDS will not exceed, for each proceedings category:
 - 33% of all assignments available in the Auckland and Manukau Courts
 - 50% of all assignments available on rotation
 - a 2 (PDS) to 1 (private provider) ratio of assignments available on rotation.

3. The 2:1 ratio is a further restriction on the level of PDS assignments, and is introduced to ensure that in situations where the PDS is below the maximum levels but has capacity to catch up, it cannot do so at a rate that exceeds 2:1. The 2:1 ratio will therefore generally be employed (but not exceeded) to allow assignment up to the 50% on rotation maximum level if the PDS has the capacity. In exceptional circumstances, the Agency may agree to assign at a rate higher than 2:1 for specific reasons and a specific period of time.