

The Community Legal Service (Funding) (Counsel in Family Proceedings) Order 2001 – As amended – additions in bold

Amended by the Community Legal Service (Funding) (Counsel in Family Proceedings) (Amendments) Order 2003 – S.I. 2003 No. 2590

Laid before Parliament - 8 October 2003
Effective - 1 November 2003

PART I – GENERAL

Citation and commencement

1. This Order may be cited as the Community Legal Service (Funding) (Counsel in Family Proceedings) Order 2001 and shall come into force on 1st May 2001. The amendments set out below are subject to the following transitional provisions:

- (1) **The Order shall have effect as if the amendments had not been made in respect of -----**
 - (a) **work carried out before 1st November 2003; and**
 - (b) **subject to paragraph (2) work carried out on or after 1st November 2003 in relation to proceedings commenced before 1st November 2003.**
- (2) **Where proceedings are commenced before 1st November 2003 in a Magistrates' Court and are transferred on or after 1st November 2003 to a county court or the High Court, the Order (as amended) shall apply in respect of work carried out on or after the date of the transfer.**

Interpretation

2. In this Order:

“the Act” means the Access to Justice Act 1999;

“assessment of costs” means the determination of all costs and disbursements due under the relevant certificate in relation to proceedings in which counsel has submitted a claim for payment under this Order;

“care proceedings” means proceedings under Part IV of the Children Act 1989;

“Case Management Conference” means a Case Management Conference held in accordance with step 4 of the Children Act Protocol.

“certificate” means a certificate issued under the Funding Code certifying a decision to fund services for the client;

“Children Act Protocol” means the Protocol annexed to the Practice Direction (Care Cases: Judicial Continuity and Judicial Case Management) made by the President of the Family Division.

“client” means an individual who receives funded services from the Commission as part of the Community Legal Service under sections 4 to 11 of the Act;

“the Commission” means the Legal Services Commission established under section 1 of the Act;

“Cost Appeals Committee” means a committee appointed by the Commission for the purpose of considering appeals from the Costs Committee;

“Costs Committee” means a committee appointed by the Commission for the purpose of considering appeals in relation to costs, whether under this Order or generally;

“counsel” means a barrister in independent practice;

“family proceedings” means proceedings, other than proceedings for judicial review, which arise out of family relationships, including proceedings in which the welfare of children is determined, and including all proceedings under one or more of the following:

- (a) the Matrimonial Causes Act 1973**(a)**;
- (b) the Adoption Act 1976**(b)**;
- (c) the Domestic Proceedings and Magistrates’ Courts Act 1978**(c)**;
- (d) Part III of the Matrimonial and Family Proceedings Act 1984**(d)**;
- (e) Parts I to V of the Children Act 1989**(e)**;
- (f) Part IV of the Family Law Act 1996**(f)**; and
- (g) the inherent jurisdiction of the High Court in relation to children;

but excluding proceedings under either the Inheritance (Provision for Family and Dependents) Act 1975 or the Trusts for Land and Appointment of Trustees Act 1996.

“function F1” means all work, other than conferences:

- (a) which is carried out prior to the issue of proceedings; or

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- (a)** 1973 c.18.
 - b** 1976 c.36.
 - (c)** 1978 c.22.
 - (d)** 1984 c.42.
 - (e)** 1989 c.41.
 - (f)** 1996 c.27.

(b) which does not fall within functions F2 to F5;

“function F2” means all work carried out in connection with a hearing relating to injunctive relief or enforcement procedures, other than work which falls within function F5, including but not limited to preparation, advocacy, advising and drafting;

“function F3” means all work carried out in connection with a hearing **or, in care proceedings, an Advocates Meeting, Case Management Conference or Pre-Hearing Review**, other than work which falls within function F2 or F5, including but not limited to preparation, advocacy, advising and drafting;

“function F4” means all work carried out in connection with a conference (including a telephone or video conference), other than any conference which takes place on the same day as a hearing for which payment is claimed under function F5, including but not limited to preparation and advice;

“function F5” means all work carried out in connection with the main hearing **and in care proceedings, where the same counsel attend both the Pre-Hearing Review and the Main Hearing on behalf of a client, the Pre-Hearing Review**, including but not limited to preparation, advocacy, advising and drafting;

“Funding Code” means the code approved under section 9 of the Act;

“Funding Review Committee” means a committee appointed by the Commission for the purpose of considering appeals in relation to the discharge or revocation of a certificate, whether under this Order or generally;

“the main hearing” means the hearing at which the substantive issues are listed to be determined and are considered by the court;

“Pre-Hearing Review” means a Pre-Hearing Review held in accordance with step 5 of the Children Act Protocol.

“the primary hearing unit” means the first day of the main hearing;

“Regional Director” means any Regional Director appointed by the Commission under the Funding Code and includes any person authorised to act on his behalf, other than a solicitor authorised by contract to determine applications on behalf of the Commission; and

“the secondary hearing unit” means any day of the main hearing other than the first.

Transitional provisions

3. This Order applies to all fees mentioned in article 4(2) payable to counsel under a certificate granted on or after 1st May 2001, and such fees payable under a certificate granted before that date shall be treated as if this Order had not been made.

Scope

4. (1) In respect of proceedings to which this Order applies, the Commission shall fund services as part of the Community Legal Service in accordance with the provisions of the following articles.

(2) Subject to article 3 and paragraphs (3) to (6), and to any limitations on the relevant certificate, this Order applies to counsel's fees in respect of all family proceedings in the High Court, county courts and magistrates' courts.

(3) This Order does not apply to proceedings where the length of the main hearing exceeds 10 days.

(4) This Order does not apply to appeals to:

(a) the Divisional Court of the High Court;

(b) the Court of Appeal; or

(c) the House of Lords.

(5) Where the Commission issues a High Cost Case Contract under the Funding Code, this Order applies except to the extent that the terms of such contract provide otherwise.

(6) Nothing in this Order shall affect any determination of the amount of costs payable under an order or agreement which provides that another party to proceedings or prospective proceedings shall pay all or part of the costs of a client.

Graduated fees

5. (1) The amount of the graduated fee for counsel shall be the base fee or the hearing unit fee, as appropriate, in respect of the function for which the fee is claimed, which is specified in the Schedules to this Order as applicable to the category of proceedings and the counsel instructed, increased by any:

(a) settlement supplement ("SS") or additional payment;

(b) special issue payment ("SIP"); and

(c) court bundle payment;

so specified.

(2) The total graduated fee, as set out in paragraph (1), shall be increased by 33% in respect of all work carried out while the proceedings are in the High Court.

Mixed and multiple claims

6. (1) Only one base fee may be claimed in respect of each of functions F1 and F4 in relation to any single set of proceedings.

(2) Where counsel carries out work relating to more than one category of proceedings within the same function in a single set of proceedings, he may claim the fee for one category only.

(3) Counsel shall specify the category of proceedings upon which the fee payable under this Order is to be based when he submits his claim for payment.

(4) For the purposes of this Order, applications to the court constitute a single set of proceedings irrespective of whether they are made separately or together, where they are:

(a) heard together or consecutively; and

(b) treated by the court as a single set of proceedings.

Representation of more than one party

7. Subject to article 9(1)(c), where counsel represents more than one party in the same set of proceedings, payment shall be made as if counsel represented a single party.

PART II - RULES REGARDING FEES

Hearing units

8. (1) Where:

(a) preparatory work for a hearing is carried out but that hearing does not take place;
or

(aa) in care proceedings, the advocates concerned are able to discuss all relevant matters without the need for an Advocates Meeting under paragraph 5.2 of the Children Act Protocol.

(b) preparatory work for the main hearing is carried out but counsel is prevented from representing his client because:

(i) he has withdrawn from the proceedings with the permission of the court because of his professional code of conduct or to avoid embarrassment in the exercise of his profession; or

(ii) he has been dismissed by his client

one half of the relevant hearing unit fee, without special issue payments or court bundle payments, shall be paid **and for the purposes of this paragraph “hearing” shall, in care proceedings, include a Case Management Conference or Pre-Hearing Review.**

(2) For the purpose of functions F2 and F3:

(a) one hearing unit fee shall be paid for each period of two and a half hours or less for which the hearing continues;

(b) the hearing shall:

(i) **subject to paragraph (2A)** commence at the time at which it is listed to begin or at the time at which counsel is specifically directed by the court to attend for that particular hearing, whichever is earlier;

(ii) end when it concludes or at 5pm, whichever is earlier; and

(iii) take no account of any luncheon adjournment; and

(c) where a hearing continues after 5pm and concludes on that same day, an additional one half of the hearing unit fee shall be paid in respect of the time on that day after 5pm.

(2A) For the purposes of Function F3, where, in care proceedings, an Advocates Meeting is held on the same day as a Case Management Conference or Pre-Hearing Review, a hearing unit fee shall be paid as if the Advocates Meeting and the Case Management Conference or (as the case may be) Pre-Hearing Review together formed a single hearing beginning at the time when the Advocates Meeting began and ending when the Case Management Conference or (as the case may be) Pre-Hearing Review ended.

(3) For the purpose of function F5:

(a) where the hearing takes place on one day, the primary hearing unit fee shall be paid for the period from the time at which the hearing begins until 5pm on that day;

(b) where the hearing takes place over more than one day, whether by reason of being adjourned, split or otherwise:

(i) the hearing on the first day shall be paid at the primary hearing unit rate; and

(ii) the hearing on any subsequent date shall be paid at the secondary hearing unit rate; and

(c) where a hearing continues after 5pm and ends on that same day, an additional one half of the appropriate hearing unit fee (whether primary or secondary) shall be paid in respect of the time on that day after 5pm.

(d) where, in care proceedings, the same counsel attends both the Pre-Hearing Review and the main hearing on behalf of a client, a function F5 primary hearing unit fee shall be paid in respect of the Pre-Hearing Review and the main hearing shall be paid at the second hearing unit rate.

(e) where, in care proceedings, counsel makes written submissions as to orders consequential to the main hearing an additional secondary hearing unit fee shall be paid.

Special issue payments

9. (1) A special issue may arise where the proceedings involve, or, with regard to sub-paragraphs (e) to (g), are alleged to involve:

- (a) a litigant in person;
- (b) more than two parties;
- (c) representation of more than one child by counsel submitting a claim for payment under this Order;
- (d) more than one expert;
- (e) a relevant foreign element;
- (f) relevant assets which are not or may not be under the exclusive control of any of the parties; or
- (g) a party who has or may have been involved in the following:
 - (i) conduct by virtue of which a child who is the subject of the proceedings has, may have or might suffer very significant harm; or
 - (ii) intentional conduct which has, could have or might significantly reduce the assets available for distribution by the court.

(2) The judge hearing the case shall, at the conclusion of the relevant hearing, certify on a form provided for that purpose any special issues mentioned in paragraph (1)(a) to (c), and any mentioned in paragraph (1)(d) to (g) which were of substance and relevant to any of the issues before the court.

(3) The decision of the judge under paragraph (2) shall be final save on a point of law.

(4) Subject to paragraph (7):

(a) a special issue payment shall be made for each special issue certified in relation to functions F2, F3 and F5;

(b) such payment shall equate to the percentage of the single hearing unit fee applicable to the function in which the issue arises which is specified in Schedule 1 for that special issue.

(5) Subject to paragraph (8):

(a) counsel may, when he submits his claim for payment, claim a special issue payment in respect of any special issue which arises in relation to functions F1 and F4;

(b) such payment shall equate to the percentage of the single base fee applicable to the function in which the issue arises which is specified in Schedule 1 for that special issue.

(6) the Regional Director shall, in considering any claim made under paragraph (5), consider whether the work in question was reasonably carried out and, in respect of any special issues mentioned in paragraph (1)(d) to (g), whether the issue was of substance and relevant to any of the issues before the court.

(7) With regard to functions F2 and F3, where more than one hearing has taken place in a single set of proceedings, a special issue payment shall be made only in respect of one such hearing in relation to any special issue certified in respect of that hearing, and counsel shall specify in respect of which hearing in each function it shall be made.

(8) With regard to function F4, where more than one conference has taken place counsel shall specify in respect of which single conference the special issue payment shall be made.

Financial Dispute Resolution hearing payments

10. In respect of a set of proceedings which include proceedings for ancillary relief, an additional payment shall be paid at a rate of £150 in respect of Queen's Counsel, and £60 in respect of counsel other than Queen's Counsel, in respect of the Financial Dispute Resolution hearing in function F3.

10A. In respect of care proceedings, an additional payment shall be paid at a rate of £206.25 in respect of Queen's Counsel, and £82.50 in respect of counsel other than Queen's Counsel, in respect of the Case Management Conference in Function F3.

Court bundle payments

11. (1) A court bundle payment shall be made:

(a) where the court bundle comprises between 176 and 350 pages;

(b) where the court bundle comprises **more than 350** pages; and

(c) as a special preparation fee **in addition to the payment under sub-paragraph (b)** in accordance with article 16 where the court bundle comprises more than 700 pages.

(2) Where there is no court bundle, equivalent provisions to those in paragraph (1) shall apply to counsel's brief.

Early settlement payments

12. (1) Subject to paragraphs (2) and (3), one settlement supplement shall be paid, as a percentage of the base fee or the hearing unit fee, as appropriate, applicable to the function in which the

settlement takes place, where a settlement takes place which leads to the resolution of the set of proceedings.

(2) Subject to paragraph (3), no settlement supplement shall be paid in respect of a settlement which takes place in:

(a) function F1;

(b) function F4;

(c) the primary hearing unit of function F5 where the proceedings have been listed for less than 2 days; or

(c) the secondary hearing unit of function F5.

(3) In respect of a set of proceedings which include proceedings for ancillary relief, an additional payment shall be paid at a rate of £171.88 in respect of Queen's Counsel, and £68.75 in respect of counsel other than Queen's Counsel, where a settlement takes place in function F1 which leads to the resolution of the set of proceedings.

Incidental items

13. An incidental item payment may be claimed, where it was reasonably and necessarily incurred, in respect of the following:

(a) listening to or viewing evidence recorded on tape, disc or video cassette, once in respect of each item, at a rate of £10.90 per 10 minutes running time; and

(b)

(i) time spent travelling, at an hourly rate of £13.60;

(ii) incurring travel expenses at a mileage rate of 45p per mile or at the rate of the cheapest second class fare reasonably available, as appropriate; and

(iii) incurring hotel expenses at an overnight subsistence rate of £85.25 in respect of hotels situated within the London Region of the Commission and £55.25 elsewhere.

Replacement counsel

14. Where one counsel replaces another during the course of a function, payment shall be made to the replacement counsel and shall be divided by agreement between them.

Applications after the main hearing

15. (1) Claims for payment in respect of work carried out after the main hearing shall be paid at the appropriate function rate.

(2) For the purposes of this Order, an appeal from a District Judge to a Circuit Judge or a High Court Judge, and all work relating thereto including but not limited to an advice on appeal, shall be treated as the commencement of a new set of proceedings.

Special preparation fee

16. (1) Where this article applies, counsel may claim a special preparation fee in addition to the graduated fee payable under this Order.

(2) This article applies where:

(a) the proceedings to which the relevant certificate relates involve exceptionally complex issues of law or fact **or was otherwise an exceptional case of its nature**; or

(b) in public law children proceedings, in relation to work carried out within the secondary hearing unit of function F5, where the main hearing is split so that a period of at least four months elapses between its commencement and the time at which it resumes

such that it has been necessary for counsel to carry out work by way of preparation substantially in excess of the amount normally carried out for proceedings of the same type; or

(c) the court bundle comprises more than 700 pages.

(3) The amount of the special preparation fee shall be calculated by multiplying the number of hours of preparation in excess of the amount normally carried out for proceedings of the same type, by an hourly rate of £100.50 in respect of Queen's Counsel, and £40.20 in respect of counsel other than Queen's Counsel.

(4) Where counsel claims a special preparation fee for work carried out within functions F1 and F4, or within functions F2, F3 and F5 where no hearing takes place, he shall, when submitting his claim for payment, supply such information and documents as may be required by the Regional Director as proof of the complexity of the relevant issues of law or fact and of the number of hours of preparation, and the Regional Director shall decide what special preparation fee, if any, shall be paid.

(5) Where counsel claims a special preparation fee for work carried out within functions F2, F3, and F5 he shall apply accordingly to the judge hearing the case at the relevant hearing, who shall decide what additional fee, if any, shall be paid, and whose decision shall be final save on a point of law.

Claims for payment

17. (1) Claims for payment in respect of work to which this Order applies shall be submitted to the Regional Director and shall contain full details of the claim and copies of all relevant documents.

(2) Counsel may submit a claim for payment:

- (a) when the proceedings to which the certificate relates are concluded;
- (b) when the certificate under which the work has been carried out is discharged or revoked and any review by the Commission or the Funding Review Committee has been completed;
- (c) when he has completed all work in respect of which he has been instructed up to and including function F2 or F3, as appropriate;
- (d) when he has completed all work in respect of which he has been instructed in function F5; and
- (e) where he has received no instructions from the instructing solicitor for a period of 3 months.

(3) Only one claim for payment may be submitted under paragraph (2)(c) in respect of any one set of proceedings.

(4) Only one claim for payment may be submitted in respect of function F4 in respect of any one set of proceedings.

(5) Any claim for payment may include a claim in respect of all work carried out in the proceedings for which counsel has not previously submitted a claim.

(6) Counsel shall submit his claim for payment within 3 months of the discharge or revocation of the certificate to which it relates and, if he fails to do so, the Regional Director may reduce the amount payable under this Order; provided that the amount payable shall not be reduced unless counsel has been allowed a reasonable opportunity to show cause in writing why the amount should not be reduced.

(7) Any claim for payment shall include a claim in respect of all special issue payments, court bundle payments, settlement supplements and additional payments in respect of any functions for which the base fee or hearing unit fee, as appropriate, has been claimed and no later claim may be made in this respect.

(8) The Regional Director shall consider claims for payment under this Order and all relevant information and shall pay counsel such sums as are properly and reasonably due under this Order for work carried out within the scope of any relevant certificate or contract.

(9) No claims for payment on account of sums payable under this Order may be made.

Appeals

18. (1) If counsel is dissatisfied with any decision of the Regional Director with regard to the assessment of his fees under this Order, he may, within 21 days of the date of the assessment, (or such longer period as the Regional Director may allow) make written representations to the Costs Committee by way of an appeal.

(2) In any appeal under paragraph (1) the Costs Committee shall review the assessment and shall confirm, increase or decrease the amount assessed.

(3) If counsel is dissatisfied with the decision of the Costs Committee he may, within 21 days of the date of the reviewed assessment, apply to that Committee to certify a point of principle of general importance.

(4) Where the Costs Committee certifies a point of principle of general importance, counsel may, within 21 days of the date of the certification, appeal in writing to the Cost Appeals Committee against the reviewed assessment.

(5) If the Regional Director is dissatisfied with any reviewed assessment under paragraph (2), he may, within 21 days of the date of such reviewed assessment, certify a point of principle of general importance and appeal in writing to the Cost Appeals Committee.

(6) In any appeal under paragraph (5) the Regional Director shall serve notice of the appeal on counsel who may, within 21 days of the date of such notice, make written representations to the Cost Appeals Committee.

(7) In any appeal under paragraph (4) or (5) the Cost Appeals Committee shall review the decision of the Costs Committee and shall confirm, increase or decrease the reviewed assessment.

Review of payments

19. (1) Subject to the provisions of this article and article 4, payments under this Order shall be final payments.

(2) Nothing in this Order shall affect any right of a client with a financial interest in an assessment of costs to make representations after the conclusion of the set of proceedings with regard to such payments.

(3) Representations under paragraph (2) above may include representations as to the use of counsel in proceedings and as to the sums payable to counsel under this Order.

(4) Where a contract entered into by the Commission in accordance with section 6(3)(a) of the Act includes rules for the assessment of costs in proceedings in which fees have been paid or are payable to counsel under this Order, and such costs are to be assessed by the court, the court shall carry out such assessment in accordance with those rules.

(5) Where in any assessment of costs it appears that payments made to counsel are in excess of the amount properly and reasonably due to counsel under this Order or any relevant certificate, counsel's fees shall be reduced accordingly.

(6) Where in any assessment of costs payment to counsel under this Order alone would exceed any limit set by the Commission on the total costs payable under the relevant certificate or contract, counsel's fees shall be reduced accordingly.

(7) Counsel shall be informed of any reduction in his fees under this article and shall have the same rights to make representations with regard to any such reduction as would a solicitor, in accordance with the relevant rules of court, contract and regulations, as applicable.

(8) Where payment has been made under this Order which is in excess of the amount properly and reasonably due to counsel, the Commission may recover the excess payment either by way of repayment by counsel or by way of deduction from any other sum which may be due to him.

,C.

Dated

SCHEDULE 1

(Omitted – no changes made)

SCHEDULE 2

Categories of proceedings

1. Category of proceedings: family injunctions.

Family proceedings (other than those for ancillary relief) for an injunction, committal order, or other order for the protection of a person (other than proceedings for the protection of children within paragraph 2).

2. Category of proceedings: public law children.

Family proceedings under Parts III, IV or V of the Children Act 1989, adoption proceedings (including applications to free for adoption), **proceedings under the Child Abduction and Custody Act 1985**, and other family proceedings within the inherent jurisdiction of the High Court concerning the welfare of children (other than proceedings for ancillary relief).

3. Category of proceedings: private law children.

Family proceedings between individuals concerning the welfare of children (other than those for ancillary relief or within paragraph 2).

4. Category of proceedings: ancillary relief and all other family proceedings.

All other family proceedings not within paragraphs 1 to 3.

