

Criminal Legal Aid Consolidated Guide

**Applying for legal aid for criminal cases in magistrates' courts
(Changes due to CDS Act 2006)**

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Please note that all references to the Department of Constitutional Affairs (DCA) should now be read as the Ministry of Justice (MoJ).

1. Introduction and overview

This document provides comprehensive information and guidance to staff of the Legal Services Commission (LSC) and Her Majesty's Courts Service (HMCS), as well as defence practitioners (solicitors), on how to administer the criminal legal aid applications process introduced by the Criminal Defence Service Act 2006 (CDS Act). It mainly addresses HMCS staff ('you') as the people chiefly responsible for administering the process, but solicitors and our staff at LSC should also be familiar with the procedures.

1.1 Key changes

The CDS Act, which came into force on 2 October 2006, changes the nature and criteria for application for criminal legal aid in magistrates' courts. The key changes are:

- to reintroduce means assessment for magistrates' court proceedings only
- to transfer authority to grant legal aid to the LSC, with you (HMCS staff) acting as our (LSC) agents
- to ensure that HMCS takes all the decisions relating to the Interests of Justice test and most of the means test assessments.

1.2 Core process

The core process of administering applications for representation orders (legal aid) remains the same. You will continue to process the applications for representation orders in the same timely and efficient manner you did before 2 October 2006.

The relationship between HMCS, LSC and the Department for Constitutional Affairs (DCA) will be governed by a Service Level Agreement (SLA).

1.3 Final decision

Whether or not the applicant is granted a representation order ('rep order') depends on the outcome of the Interests of Justice (IoJ) test and means test:

- You must carry out both tests before making a decision.
- If either test is failed, you must refuse a rep order.
- You cannot grant a rep order before both tests are passed.
- A court (i.e. bench) cannot override the means assessment or grant the rep order when the means test has been failed.
- Applicants can appeal a refusal on the IoJ test.
- Applicants can ask for a hardship review of their means test result.
- If either the appeal or the review is unsuccessful, the overall decision remains a refusal.

1.4 System

The new system consists of the following parts:

- Application forms (CDS 14, 15, 16 and 17)
- MAAT (Means Assessment and Appeals Tool)
- Solicitor online calculator
- Practice/training and simulator for MAAT training
- Guidance documents
- LSC National Courts Team (NCT) that assesses complex applications (such as applicants working for the armed services or self employed etc, see p21), high-risk applications (including those with negative disposable income or receiving income from shares or land etc, see pg 21 and 22 and further guidance in Annex 15) and hardship applications.
- The Service Level Agreement (SLA) that sets out the key responsibilities and performance targets.

2. Application Forms

All applications for a rep order in magistrates' courts must be in writing on one or more of the following forms. Oral applications can no longer be made; neither can the court grant a rep order without seeing a written application.

- CDS 14 Application for Legal Aid in Criminal Proceedings
- CDS 15 Financial Statement for Legal Aid in Criminal Proceedings
- CDS 16 Legal Aid in Criminal Proceedings, Application for Review on the Grounds of Hardship
- CDS 17 Statement of Truth (for Employed applicants in custody only)

2.1 CDS 14 Application for Legal Aid in Criminal Proceedings

This form must be submitted with all applications for rep orders. It contains the unchanged Interests of Justice (IoJ) test and sets out the following:

- the applicant's (and partner's where applicable) personal details
- a partner's involvement in the case, if they are a victim, prosecution witness, or co-defendant whose evidence conflicts with the applicant's case
- disability and equal opportunities monitoring data (completion is optional)
- information about the applicant's case
- contact details for the solicitor or their firm, including their LSC account number.

Please note that the following applicants must complete only CDS 14, as they don't have to undergo a means test. They are known as 'passported' applicants:

- those who are presented to a youth court, or are under 18 years of age and presented to an adult court
- those receiving the following benefits: Income Support, Income Based Jobseeker's Allowance, Guaranteed State Pension Credit (Guaranteed Credit).

For applicants in custody, please see the custody section (Annex 8).

2.2 CDS 15 Financial Statement for Legal Aid in Criminal Proceedings

This form is for **all other applicants**, i.e. those **not** in one of the passported categories.

CDS 15 contains questions on:

- income (employment, other state benefits, self employment, partnerships, directorships, private pension, maintenance, other income)
- family size (children, grouped according to age at next birthday)
- outgoings (housing, childcare)
- freezing orders, self-assessment tax forms and tax bracket
- their partner's income.

Please note: If the applicant is in custody, the partner need not sign the form, although their details must still be provided on the form. Also, if the partner has a conflicting involvement in the case, their details are not needed.

2.3 CDS 16 Application for Review on the Grounds of Hardship

This form is for applicants who wish to request a hardship review of their application either before they have undergone the formal means assessment or after it has taken place and they have been refused legal aid because of their means.

CDS 16 contains questions on:

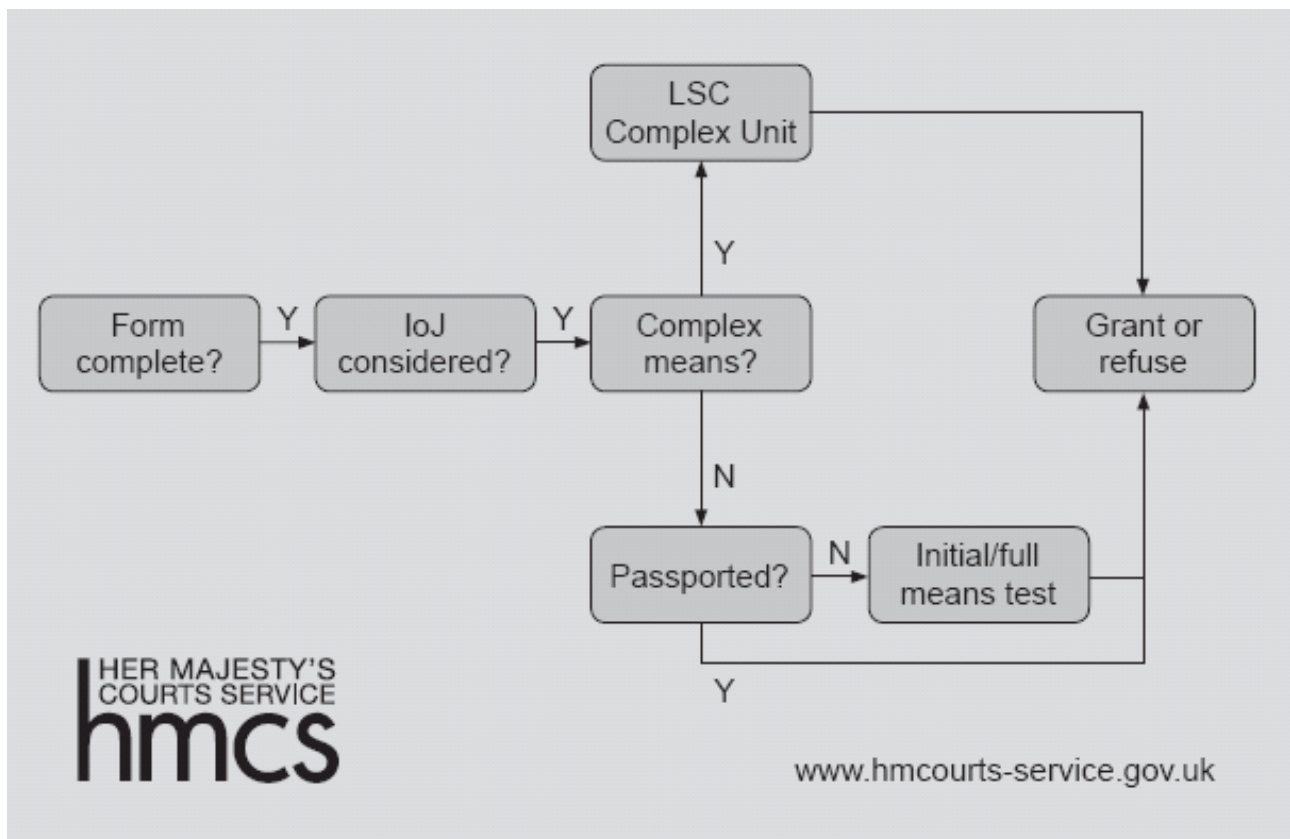
- other sources of funding
- solicitor's costs
- being denied access to income
- extra expenditure
- additional information.

2.4 CDS 17 Statement of Truth

This form is only for applicants who are in custody and cannot get documentary evidence of their salary or wage. It supports CDS 15. Applicants must submit CDS 15, CDS 17 and CDS 14 (which will set out the loJ test).

Applicants who are self employed and in custody cannot use CDS 17. They must produce evidence of income as set out in CDS 15.

3. Assessment process model – how does it work?



The above ‘assessment process model’ describes the steps in the application process, excluding appeals and reviews.

The rest of this guide looks at the individual steps of the process. It follows different types of applications through the system from beginning to end.

4. Obtaining, completing and submitting forms via solicitors

Solicitors can order the new forms free of charge by e-mail (cdsforms@ecgroup.co.uk), telephone (020 8867 3296) or fax (020 8867 3225). They are also available online at www.legalservices.gov.uk and are in the solicitor master pack. A small supply of forms has been sent to each court.

The applicant and their solicitor are responsible for getting the form(s).

You can give solicitors an 'emergency supply' of forms (for defendants in custody, for example) at court. You can order small stocks through Pindar (see Appendix 5 for how to order).

4.1 HMCS prioritising of applications

In most cases HMCS deals with administrative tasks on a first-come, first-served basis. Now that the CDS Act has made the grant process an administrative rather than judicial function, this approach may not always meet the applicant's needs or reflect the urgency of their circumstances. To respond to individuals needs you should prioritise applications.

Use the factors listed below to decide which applications to deal with first. Remember that the factors will vary in significance depending on each applicant's circumstances balanced against those of others on the list.

You should be able to process most applications that have factors listed below on the day you receive them. A delay in processing them would not justify an adjournment. Responsibility for ensuring the application can be processed on the same day lies with the applicant's solicitor as well as HMCS.

Priority factors (not in rank order)

- In custody: adults or youths, either remanded or following a police charge
- Persistent young offenders
- Adults or youths with mental health problems
- Those under 18
- Proximity to the next hearing date
- Persistent petty offenders
- Legislation-driven priority, e.g. applications from those in or needing secure accommodation.

4.2 Completing the forms

The applicant and their solicitor are responsible for completing the form(s) correctly and submitting relevant evidence. HMCS staff are not obliged to help applicants complete or check forms.

The applicant is responsible for the information in the means form. However, some applicants, particularly if they are mentally ill, illiterate or have learning difficulties, are likely to ask the solicitor to help them fill in the form. Solicitors can claim payment for helping defendants to complete forms, as follows:

If a rep order is granted, we will allow up to 30 minutes for completion of all the relevant forms, namely CDS 14, CDS 15, CDS 16 and CDS 17. Solicitors can claim this under the existing standard fee arrangement.

4.3 Submitting completed forms

- We will accept handwritten forms as long as the writing is legible, even when faxed or photocopied.
- As HMCS local officers, you may decide how and where the applicant or solicitor may send completed forms. If convenient, they can submit the forms to a courthouse or an administrative centre.
- For applications received at courthouses that lack administrative support, you may forward them to the administrative centre by whatever means you think appropriate. Warn the applicants that this will delay the processing of their application but will not affect the date a rep order will start.
- On receiving an application, endorse it as 'received on date/month/year'. The rep order, if granted, will start on this date, even if the application is later returned to the solicitor for amendment.
- Saturdays and bank holiday courts. You should enable applicants to submit forms when an occasional court is sitting. The type of facility will depend on local practice and staffing levels. Warn applicants that they are unlikely to get any indication of grant or refusal on these days because administrative staff will be absent. You should date any rep orders you subsequently grant from the date of receipt not date of processing.
- Applications cannot be e-mailed.
- Some court areas may accept faxed applications. This is an issue for local court areas and will depend on area resources. If an application is faxed courts can make the rep order decision and issue the rep order prior to receipt of the original documentation. However it is necessary to make sure that this is subsequently provided. If a supplier is repeatedly slow in providing the originals it is appropriate for courts to refuse to issue the rep order until the originals have been received.
- Multiple offences or series of offences. If an applicant is charged with more offences after a rep order is granted, you can process them on the original application if they are related to or form part of the original offence. However, if the later offences are unrelated to the original offence, the applicant must submit a new application form.

4.4 Signing the form

For audit purposes and with the exception of applicants with severe mental health problems, the applicant must sign the application form in all cases (refer to Annex 17). As most solicitors consult their clients face to face, this should not be difficult to arrange. While in some circumstances a solicitor interviews a client via video link or from behind a perspex screen, the applicant must still sign the form.

To avoid delay in processing applications for those appearing via video link, the solicitor may fax the signature page of the application form to the applicant, and ask him or her to sign it then return it to court, where it is attached to the relevant application form. The applicant's legal adviser or solicitor should endorse the form to explain how the signature was obtained.

4.4a Partner's signature

The partner must sign forms CDS 14 and 15 where their financial details form part of the assessment. Their signature allows us to check the information provided about the partner so that we may fulfil our duty to prevent fraud. In a few cases the partner need not sign:

- If the applicant is in custody and therefore cannot get the partner to sign.
- If the partner has a contrary interest, they need not give their details (please see section 2.1).

If we do need a partner's details and signature, this may not be waived even if the client would prefer to keep the proceedings from the partner. If the partner has given their details on CDS 15, they need only sign this form.

We have also agreed that a partner need not sign if the applicant cannot contact them to get their signature or the partner's medical condition makes them incapable of signing the form.

This could apply in various circumstances; for example, if the partner has been posted abroad, is on an overseas holiday, has been remanded in custody or is in hospital.

However, an applicant may not simply state their partner is unable to sign because of their circumstances and do no more about it. The applicant must try to get the signature. For example, if the partner is working or on holiday, they may still be able to provide a signature confirming their details by fax.

You should use your judgement when assessing the new criteria. You can ask the National Courts Team (NCT) for assistance, as with all the announced changes.

Once you have established that the partner need not sign, you should process the application as a correctly completed form. The start date for any consequent rep order should be the date the applicant first submitted the form, not the date their partner signed or when you agreed that they need not sign.

The applicant must explain on CDS 14 why their partner has not signed the forms, and what they have done to try and get that signature. Their solicitor must also endorse these explanations on the declaration page of CDS 14 or CDS 15.

4.4b HMCS approach to exercising discretion on lack of partner's signature

Please apply this amendment reasonably, as it is designed to help applicants who wish to benefit from legal aid but find it difficult to complete the form due to circumstances beyond their control.

If you think that the claims being made need further investigation, you should refer them to your designated NCT

Examples of missing signatures and how to process the application

- If the applicant has provided documentary proof of their partner's income as stated in the CDS 15, but has not been able to get a confirmatory signature from their partner, they must explain on CDS 15 why the signature is missing and what they have done to try and get it. You must assess whether you can accept the explanation. If you cannot, you should return the application. If you do accept it, you should then process the application.

In such cases, we consider the risk to the legal aid fund as low. This is because documentary evidence is available to verify the income, so a partner's signature is less important.

- If the applicant has stated their partner is receiving an income but they are unable to provide documentary evidence of this, the partner's signature or lack of signature is irrelevant since you should return the application as incomplete. Documentary evidence is more important than a signature in this case, so putting it right means providing the evidence first and the signature afterwards.
- If the applicant has stated on the form that their partner does not receive any income, they must explain on the CDS 15 why they cannot get the confirmatory signature and what they have done to try and get it.

In this case we would consider the risk to the legal aid fund as high, and you should first consider how acceptable the explanation is for the missing signature and the inability to get one.

If the reasons are acceptable, you should process the application and, whether it is granted or refused, ask your NCT office to investigate the applicant's statement.

As in all these examples, if you do not consider the explanations acceptable, you should return the application saying so. The applicant must then either try again to get the signature or explain why this is impossible.

- If the applicant states that their partner is unable to sign because they are an inpatient at hospital, they must give details of the hospital and ward as part of the written explanation on CDS 15. You should judge whether this explanation is acceptable and then either process the application or ask the applicant for further information or action. If the application includes no documentary evidence of the partner's stated income, you should treat it as a high-risk case, and refer it to your NCT office after processing. We accept that it may be difficult to get documentary evidence of means if a partner cannot tell the applicant where to find the necessary paperwork, so you should continue processing the application without this evidence.

We have told solicitors to fax, where possible, a copy of the declaration page of CDS 14 or 15 to the absent partner to get their signature. You should therefore accept this document as proof that the partner confirms the details about them in CDS 14 or 15.

Once you have established why the partner has not signed, you should process the application as a correctly completed form. A consequent rep order should start from the date the applicant first submitted the form, not the date when the partner signs or you decide they need not sign.

4.5 Signature by solicitor/counsel

The solicitor acting for the applicant must sign CDS 14, as they used to sign Form A. The solicitor does not need to sign the means form as they are unlikely to be able to certify means information.

If the solicitor instructs an agent/accredited representative or barrister and so authorises them to work on their behalf, the agent/accredited representative or barrister can sign the solicitor's declaration.

4.6 Accepting applications and endorsing them with an initial receipt date

Until now, solicitors have been able to hand in applications at court. This has complicated the system and caused delay. To avoid further disruption, please accept solicitors' applications locally at a courthouse or an administrative centre.

The CDS Act never set out to prevent solicitors claiming for work properly done in representing an eligible client. By establishing the original date of submission on the application form, they can be sure they will be paid for the work they do before the rep order is issued, even if the application is returned for additional information or due to a processing error, for example if the DWP check returns a result of 'undetermined'.

On receiving the form an applicant or solicitor at an administrative centre or courthouse, you (HMCS staff) should endorse it as 'received on date/month/year'. We will then treat this date as the start date for any subsequent rep order granted even if the form is later returned for amendment.

4.7 Receiving the form

- You must endorse an application that is handed in to you, either in the courtroom or in an administrative centre, as 'received on' the day you get it. Any consequent rep order would start from this date.
- If the only HMCS member of staff is a legal adviser, for example advising at a satellite court or at an occasional court sitting, they should accept and endorse the application with the date they received it.
- The HMCS member of staff accepting the application does not need to carry out a pre-submission check.

4.8 Returning applications

Ensuring HMCS performance measures are not affected by the returning of applications

To make sure the delay you will experience while waiting for amended applications will not affect your performance measures, the processing time will be counted from the date you receive a correctly completed application, not from the date it was originally submitted provided you update the date of receipt in the rep order screen on MAAT.

If you receive the complete application after 4pm, for the purpose of the performance measures its processing target time will start only from the following working day, and you should enter this date into MAAT.

We will use the original submission date as the start date of the rep order, regardless of the date entered onto MAAT as the date of receipt. Provided the forms were originally submitted on or before the conclusion of the case.

When you cannot process an application because it contains incomplete information, return the application to the solicitor named on the form. Explain why you are returning it. The solicitor should return the form to you after correcting it or adding the required information. The original application should be endorsed with the original date you received it. If you started to input the application onto MAAT prior to return you must locate and amend the original MAAT record upon resubmission.

When an application is returned by the DWP link as “undetermined”; you should double check the information entered on to MAAT, name, date of birth and NINO, amend if necessary and retry the DWP Link. If the data entry is accurate then you should attempt to contact the solicitor to obtain correct details, the solicitor may still be in the court building or contactable by phone. If the further information cannot be obtained then the application should be refused.

4.9 Solicitors and returned forms

If the solicitor doubts the accuracy of the applicant's account of the benefit they are claiming, they may submit a CDS 15 with/ or following the CDS 14, setting out the details of the benefit in such a way as to allow you to carry out a means assessment if the passported benefits (DWP Link) check fails.

The application should enable you to complete the processing, and if it satisfies both the IoJ and means tests, the rep order will be dated from the date you received the original application (whether or not it was complete).

The change does not mean that solicitors may knowingly submit incomplete forms or enable them to avoid providing a NINO for clients on passported benefits. Please inform your LSC Account Manager if solicitors persistently fail to complete applications correctly. You can find contact details for the LSC Account Manager for solicitors in your area on the LSC website (www.legalservices.gov.uk)

5. Early Cover

We have introduced an early cover payment scheme in response to solicitors' concerns that they may be asked to represent applicants without having a rep order granted and to ensure effective first hearings at court.

Early cover will be available in following cases:

- The applicant or their solicitor submits a completed application form (CDS 14, CDS 15) to HMCS within five days from instruction, provided that the date of the instruction is on or before the date of the first hearing; and
- You (HMCS) or NCT (where the case has been referred) fail to reach a decision by the time the first hearing takes place; and
- The eventual decision is that the application satisfies the loJ test but does not pass the means test.

In these cases the solicitor can claim a fixed fee of £75 from us at LSC (HMCS staff will not be involved in the claim and payment process).

If the rep order is granted the solicitor does not need to claim early cover, as the rep order itself would be dated from the date the application was first submitted and would therefore cover the payment for the first hearing.

Solicitors cannot claim early cover for applications where the hardship form (CDS 16) has been submitted directly to the NCT (with CDS 14 and 15) prior to HMCS carrying out a means test assessment.

6. Pre-order cover

Pre-order cover will continue to offer the solicitor an additional safeguard.

It allows for a claim of up to one hour's preparatory work in cases where the application does not satisfy the loJ test (regardless of whether the defendant passes or fails the means test).

This contrasts with the early cover scheme where the fixed fee is only paid to applicants who have satisfied the loJ test but have failed the means test.

Unlike the early cover scheme, a claim under pre-order cover is not time bound.

7. Pre-order work-further information for practitioners

Part B, paragraph 5.6 of the General Criminal Contract allows for solicitors to claim for work designated as representation from the date on which the order was granted. It also covers any legal advice or representation given on the same case **before** an order was granted where certain criteria are met. These include:

- the interests of justice required that the advice or representation was required urgency; i.e. there is a court hearing within 10 working days or less of the date of first instruction.
- There was no delay in making an application for a rep order; i.e. it was submitted no longer than five working days after first instruction.
- The pre-order advice was provided by the same solicitor's firm that was assigned the rep order.

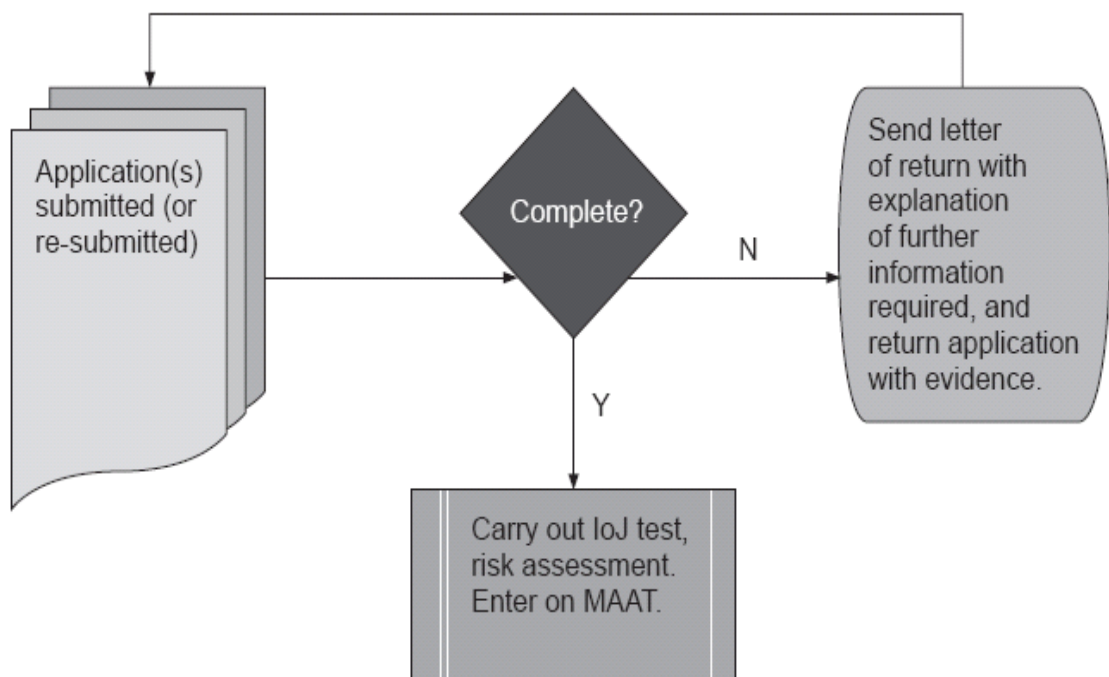
Example:

A client is charged with theft arising from shoplifting on Monday. The case is listed for an early first hearing at the magistrates' court on Wednesday. The day before the hearing (Tuesday) he goes to see his solicitor who provides preliminary advice. The solicitor completes an application for representation and posts it to the court that day. The application arrives at court on Wednesday. The solicitor represents the client at court on the Wednesday before the court has decided whether to grant representation. The client pleads guilty and the case is adjourned for four weeks for sentence, as reports are required. The court grants representation on Friday.

You would decide the date of grant for the purposes of this Rule to be Wednesday, as this is the day on which the court received the properly completed application. The hearing on Wednesday will therefore be covered by the representation order. In addition, the advice provided on Tuesday is also covered as pre-order work. Thus all the work after first instruction will form part of the core costs, the level of which will determine the standard fee payable.

If the court had refused to grant a rep order, the solicitor could have claimed up to one hour's work under pre-order cover.

8. Accepting applications



8.1 Definition of completed application

How a fully completed application looks depends largely which form(s) are being used to make an application. The detail of this will be covered in subsequent paragraphs.

IMPORTANT: you must immediately return incomplete forms to tell the

applicant or their solicitor of what corrections they must make and to minimise any possible delays to court proceedings.

8.2 Main completeness criteria

General completeness criteria for all forms:

- Are the forms signed and dated (by applicant, partner if relevant, solicitor where relevant)? If the applicant is in custody, we do not expect partner details to be provided on any of the forms. See section 4.4a.
- Where an applicant has severe mental health problems, a concession has been made that someone else can sign the application on the applicant's behalf, but the application must be accompanied by the relevant evidence, even in cases where evidence is not normally a requirement (such as receiving non-passported benefits). The application **cannot** be signed by the solicitor. Please refer to Annex 17 for additional guidance.
- Are personal details provided (name, DoB, NI number (NINO) where relevant, address)?
- Are the forms legible, regardless of ink colour?
- Are solicitor details provided (address, LSC account number)?
- Is there enough information/verification about the offences charged? The solicitor may supply this by way of a copy of the charge sheet and the previously allocated court case number.
- For further detail on the specific requirements of the IoJ paragraphs in CDS 14, please refer to IoJ guidance. This includes the information required for separate grants of representation where there is a conflict of interests between applicants.

Completeness of CDS 14 relevant to passported categories:

- For those under 18, has a date of birth been supplied?
- Please note the applicant does not have to produce documentary evidence.
- For passported DWP benefits (Income Support, Income Based Jobseeker's Allowance, Guaranteed State Pension Credit), has the applicant given their NINO or in its absence a DWP letter or other documentary proof of the benefit claim?
- Applicants remanded in custody by the court, who do not know their NINO or have no proof of their benefits claim can write on the application form 'in custody, NINO not known', to satisfy this requirement. See the 'in custody' section for more information

Only return forms if it is clear that the solicitor has completed them wrongly or failed to include a supporting document. This can be difficult to spot, and the NCT can advise you on specific cases. Please report persistent failure to correctly complete applications to your LSC Account Manager. We can impose various sanctions on poorly performing solicitors.

Completeness of CDS 15:

- Does the evidence provided match the tick boxes in the checklist?

- Has the applicant given documentary evidence to allow you to verify their statements and responses?
- Have all applicant-related questions been answered (Part A Q1-4, 5a, 6a and 7-10; introduction to Part B Q1)?
- If the applicant has declared on CDS 14 that they do not have a partner, they do not have to answer partner-related questions in CDS 14 and 15.
- If the applicant has declared on CDS 14 that they do have a partner but there is a conflict of interests (e.g. victim, prosecution witness), then they do not complete the partner-related questions in CDS 15.
- If the applicant is in custody, their partner need not sign any forms, but their income details are still required.
- If the partner's signature is required but has not been obtained, the applicant must set out in writing why their partner is absent and why they cannot be reasonably expected to get the signature.
- Has the applicant provided necessary evidence to support their declared income (e.g. payslips) and relevant outgoings?

Completeness of CDS 16:

Hardship reviews are carried out by the NCT at Nottingham or Liverpool. You need not undertake checks on the completeness of this form and should forward the application and any accompanying documents. See section 10.3 to 10.7 for additional information on the relationship between NCT and HMCS.

8.3 Returning applications

When returning application forms, please send them to the solicitor named in CDS 14. You should say why you are returning the application.

If you send the application to the NCT, the NCT will liaise directly with the solicitor about incomplete forms or the need for further information. The NCT will keep you updated on the progress of the application. You should discuss with the NCT how often they should send you an update.

You don't need to keep copies of original applications or evidence when returning incomplete forms.

The solicitor is responsible for re-submitting amended applications. You don't need to 'chase' solicitors or applicants about incomplete applications.

If a single solicitor or a firm keeps sending in incomplete application forms, please report this to your LSC Account Manager.

9. The Interests of Justice test (IoJ)

The CDS Act transferred the authority to carry out the IoJ test from the court to the LSC. We have delegated the authority for this task to HMCS as our agent.

Local HMCS management should decide which members of staff should administer the test.

The IoJ test has not changed in any way following the introduction of CDS Act. You can find guidance on completing the test on the Justices' Clerks Society website (www.jc-society.com)

Solicitors or advocates should decide how much detail to enter in the IoJ sections of the form. Insufficient information may mean the application is refused as not satisfying the IoJ criteria.

If the solicitor or advocate refers to the applicant's previous convictions in arguing why the application meets a specific IoJ criterion, they should attach copies.

How to appeal a refusal on grounds of the interests of justice is explained in section 14.1 'Interests of Justice Appeals'.

10. Determining risk

You will carry out a risk assessment for all applications. Risk in this context is the possibility of granting legal aid inappropriately or to applicants who have not given the correct information about their income.

The risk to the criminal legal aid fund will be managed in three different ways:

- If an applicant claims to be on DWP benefits you will check their NINO against the DWP database to validate the claim or they must produce documentary proof of their claim.
- All other applications must undergo 'risk determination' before means assessment (see next section).
- To detect fraud, we will audit and verify the evidence for a representative sample of all non-passported applications after processing.

You should assess applications on the CDS 15 for level of complexity and risk, and record the decision in the 'official use box' at the back of the form. Particular attention should be paid to re-submitted applications where the financial circumstances of the applicant have changed to now make them eligible. Where a court is concerned about this you should refer to the NCT.

10.1 Criteria for determining risk

Use the official use box' (reproduced below) in the CDS 15 to record a risk assessment on each case. You must do this in all cases where you are referring the application to the NCT.

INC	self/share	salary	Oth prop	trust
EX	childcare	Oth prop	mort	
AW	highp	freezing order	tax 40%	SA form
ANALYSIS (High Risk) HR (Low Risk) LR (at the point of initial risk assessment, NOT after it has been established that for example evidence is false)				
Give any other factors considered when deciding the application, including any information given orally.				

From the categories shown you can build up an overall picture of the applicant to help you decide whether a case is low risk or high risk. You should refer high-risk cases to the NCT. Please see Risk Assessment tables for precise instructions (section 10.3)

10.2 Terms used in the official box Income (INC)

The applicant must give details of their current job and wage or salary. They must provide supporting evidence such as payslips.

- Self/share – Circle if the applicant or their partner is self employed, in a business partnership, a company director or a shareholder in a private limited company.
- Salary – Circle if the applicant or partner earns a salary of over £33,000 a year gross.
- Oth Prop – Circle if the applicant or partner gets income from another property.
- Trust – Circle if the applicant or partner gets income from a trust fund.

Expenditure (EX)

Where the applicant declares on the CDS 15 form that the following apply, circle the relevant category:

- Childcare – Circle if childcare costs exceed £500 a month (evidence must be provided).
- Oth prop – Circle if the applicant or partner has expenses related to another property.
- Mort – Circle if housing costs are more than £500 a month (evidence must be provided).

Aura of wealth' (AW)

Higher risk criteria also include aura of wealth.

- Highp – Circle if the applicant or partner is high profile (eg a celebrity).
- Residential status may indicate income which has not been declared (see 13.2)
- Freezing order – Circle if the applicant or partner is subject to a restraint/ freezing order or an injunction.
- Tax 40% – Circle if the applicant or partner in the 40% tax band within the last two years (Q10 on CDS 15).
- SA form – Circle if the applicant or partner has completed a self-assessment tax form within the last two years.

An asset freezing order may signal the possibility of significant income or assets held, and thus is an 'aura of wealth' indicator. You may also expect an asset freezing order to apply if applicants are accused of large-scale fraud, money laundering, forgery, theft and other offences of dishonesty (ie 'appropriate prosecutor' cases such as those undertaken by the Serious Fraud Office).

Appropriate prosecutor cases that are not subject to a freezing order may be referred to us if other high-risk criteria apply or in cases of suspected fraud.

10.3 Referring to the National Courts Team

Complex and high-risk cases identified through the risk assessment tables below **MUST** be referred to NCT (after you have created a MAAT record and carried out an IoJ test).

Don't write anything on CDS 15 apart from MAAT and the case number or the information in the official use box. If you want to give the NCT any more information, please attach a separate sheet to the application form.

Complex cases – mandatory referral to NCT			
Question to ask	Where found?	CDS 15 'Risk assessment'	Action required
Is the applicant or partner self employed?	CDS 15, Part B Q1	Circle Self/share	Refer to NCT
Is the applicant or partner a partner in a business partnership?	CDS 15, Part B Q1	Circle Self/share	Refer to NCT
Is the applicant or partner a director of a company?	CDS 15, Part B Q1	Circle Self/share	Refer to NCT
Is the applicant or a partner a shareholder in private company?	CDS 15, Part B Q1	Circle Self/share	Refer to NCT
Has the applicant or a partner completed a self-assessment tax form?	CDS 15, Part B Q1 and 10c	Circle SA form	Refer to NCT
Is the applicant or partner subject to a freezing order or injunction?	CDS 15, Q10a	Circle freezing order	Refer to NCT

High-risk cases – discretionary referral to NCT			
Question to ask	Where found?	CDS 15 'Risk assessment'	Action required
Is there an aura of wealth ? Does something in the application make you think this person might be wealthy?	CDS 15	Circle salary (if applicable)	Refer to NCT if one other high-risk criterion applies
Has the applicant within the last two years paid income tax in the 40% tax band but stated a low income on form CDS 15?	CDS 15, Q10b	Circle tax 40%	Refer to NCT if one other high risk criterion applies
Has the applicant declared any other income : e.g. from shares, land or property assets or trust funds?	CDS 15, Q5	Circle Oth prop or trust	Refer to NCT

High-risk cases – discretionary referral to NCT			
Question to ask	Where found?	CDS 15 'Risk assessment'	Action required
Is the applicant being prosecuted by the Serious Fraud Office or does the case involve an allegation of fraud (appropriate prosecutor)?	CDS 14 and/or charge sheet and/or court legacy system	N/A	Contact NCT
Do you suspect the evidence? Does the evidence appear to have been created for the purposes of the assessment or not to be an official or independent record of income/outgoings. Has the evidence been tampered with or altered?	Evidence	N/A	Refer to NCT
Is the applicant making a further application for a representation order where previously the application was refused or representation was withdrawn due to abuse of the scheme? Has evidence been provided showing the change of circumstances?	CDS 15	N/A	Contact NCT
Do you generally suspect fraud? Does local knowledge make you feel false information has been provided to try to pass the means assessment?	Own knowledge	N/A	Contact NCT
Is this applicant in a high-profile role (eg footballer, celebrity)?	CDS 15 and own knowledge	Circle highp	Refer to NCT
Does the applicant have a residential address? Does the information provided by the IoJ test support this? (e.g. the applicant may be in prison or of no fixed abode)	CDS 14 / CDS 15	N/A	Contact NCT
Do the outgoings declared by the applicant significantly exceed the stated income?	CDS 15 / evidence	Circle mort or childcare if appropriate	Refer to NCT if one other high-risk criterion applies
Does the applicant have mortgage or childcare costs in excess of £500 a month?	CDS 15 Q7 and Q8	Circle mort or childcare if appropriate	Refer to NCT if one other high-risk criterion applies

Remember always to check the information in CDS 14 (Interests of Justice) as it contains extra details that may help in risk assessment.

When referring an application to the NCT, you should prepare the following.

Send a referral pack to the NCT containing:

- the original application forms (CDS 14 and CDS 15)
- the original evidence
- a cover referral form (refer to case transfer guidance in Annex 14)

(use appropriate DX numbers for sending hard copy packs as below):

Documents to be placed on the court file:

- copies of the application forms (CDS 14 and CDS 15)
- copies of the evidence (endorse as copies)
- a copy of the referral form.

10.4 Nottingham

Telephone	0115 908 4244
Fax	0115 908 4398
Email	Nottinghamnct.queries@legalservices.cjsm.net
DX	10035 Nottingham 1
Address	Fothergill House, 16 King Street, Nottingham NG1 2AS

10.5 Liverpool

Telephone	0151 242 5203
Fax	0151 242 5394
Email	Liverpoolnct.queries@legalservices.cjsm.net
DX	14208 Liverpool
Address	Cavern Court, 8 Mathew Street, Liverpool L2 6RE

Once papers have been transferred to the NCT, it will correspond with the applicant or solicitor until it has decided to grant or refuse the application. NCT will then inform the referring court so that the court can issue a rep order or notice of refusal to the applicant and solicitor.

NCT will not keep copies of papers. Our LSC corporate assurance department has told us that we do not need to keep papers in light of the HMCS retention policy. This position may be reviewed in light of any future audit findings (NAO or LSC/MoJ/HMCS internal audit).

Where the NCT has requested further information on a Complex or High Risk application but has not received it by the deadline agreed with the solicitor, the NCT will return the application directly to the solicitor, and inform HMCS, you should place a note to this effect on the court file.

10.6 Which NCT office to refer to

Region	LSC CJS area	NCT office
London	London Central London North East London North West London South East London South West	Liverpool
Midlands	Derbyshire Herefordshire Leicestershire Lincolnshire Northamptonshire Nottinghamshire Shropshire Staffordshire Warwickshire West Midlands Worcestershire	Nottingham
North (North East)	Cleveland Durham Northumberland North Yorkshire South Yorkshire Tyne and Wear West Yorkshire	Liverpool
North (North West)	Cumbria Greater Manchester Lancashire Merseyside	Liverpool
South (South East)	Bedfordshire Cambridgeshire Essex Hertfordshire Kent Norfolk Suffolk Surrey Sussex Thames Valley	Nottingham
South (South West)	Hampshire & IoW Devon Dorset Gloucestershire Cornwall Somerset Wiltshire	Nottingham Liverpool
Wales (Wales and Cheshire)	Cheshire Dyfed Powys Gwent North Wales South Wales	Liverpool

10.7 Referral form

The form below MUST be used in all referrals to NCT.

- Print two copies and attach one copy to the referral pack; and place the other on the court file.
- When you receive email notification of the result from NCT, print the email and attach it to the court file.
- Up-date the management information
- Check the actual result on the MAAT before making the final rep order decision.
- If the actual result on MAAT does not match the email information, contact an NCT officer.

REFERRAL FORM	
FOR HMCS TO COMPLETE	
MAAT number -	
Court/Process Centre -	
Contact name -	
Contact phone number -	
E mail address -	
Address for return of papers (DX) -	
Comments -	
FOR NCT TO COMPLETE	
Decision -	
Date of decision -	
Telephone - Liverpool 0151 242 5203	
Telephone – Nottingham 0115 9084244	
E-Mail – Liverpoolnct.queries@legalservices.cjsm.net	
E-Mail – Nottinghamnct.queries@legalservices.cjsm.net	

11. General principles of assessment

As the representation authority, we aim to make an assessment that is:

- transparent, and
- justifiable, and
- consistent on the aggregation of means.

The income of the applicant's partner must be taken into account and added to that of the applicant unless the partner has a contrary interest in the proceedings.

A partner is defined as anyone (including a person of the same sex) with whom the applicant lives as a couple. This includes any partners who may be living separately at present due to reasons other than that they have separated. For example: where one party lives away for work (armed forces, oil rig) or is in prison.

If the relationship has ended the resources are not aggregated, even if the two people remain under the same roof, as long as they consider the relationship over and live separate lives. For example: they may be waiting for the property to be sold in divorce proceedings.

For unmarried couples to be seen as partners, although not conclusive there should usually be some evidence of a pooling of financial resources and they must regard themselves as a couple. It would not be appropriate to aggregate the resources of, say, a brother and sister, or flatmates who are not living as a couple. Further evidence of living as a couple may include joint care of a child of the couple.

Issues may arise where a couple are married according to English law but have not undergone their traditional cultural ceremony and thus are not and never have been actually living together. In the eyes of each other and their family and community they are not yet married. In such cases it would be appropriate to treat them as though they were not married and therefore not to aggregate the resources in the assessment.

If an applicant has left his or her spouse or civil partner and has gone to live with a new partner as a couple in the same household, then the means of the new partner should be aggregated with those of the applicant.

You can accept a simple declaration on the CDS 14 that the applicant is living with a partner (i.e. by completing the marital status information on the form CDS 14 and including a partner's details on CDS 14 or CDS 15) as evidence that the applicant has a partner. We will then aggregate the applicant's financial resources with that person's.

11.1 Contrary interest

Means are not aggregated if the partner has a contrary interest in the matter for which the applicant is seeking funding.

Contrary interest in the most obvious sense will arise where the partner is the alleged victim of the crime(s) the applicant is accused of and is seeking the rep order for; for example an allegation of domestic violence.

Means are also not aggregated if:

- the applicant and partner are both defendants in the same proceedings and a contrary interest is identified
- the partner is a prosecution witness in the case for which the rep order is sought.

11.2 Third party resources

In certain circumstances assets belonging to persons other than the applicant can be taken into account. These are where:

- (a) another person is, has been or is likely to be substantially maintaining the applicant or their partner, or
- (b) another person's resources have been or are likely to be made available to the applicant or their partner.

Note: 'person' for these purposes includes a company, partnership, trust or other group.

If (a) or (b) above apply, you can treat all or any part of the resources of the other person concerned as belonging to the applicant.

The assessment officer has discretion as to how much of the other person's resources they should treat as belonging to the applicant. In practice the assessment officer will include the income that the applicant or their partner has received from the third party, whether directly or paid out to another party on the applicant's behalf to meet their living expenses (e.g. utility bills, housing costs) during the period of calculation. (The period of calculation is the 12 months leading up to the date of the application for representation.)

The assessment officer will assume, unless shown compelling evidence to the contrary, that assistance given to and resources made available for the applicant in the past will continue to be given or made available in the future and will make their assessment on that basis. This situation will most commonly arise where the applicant has been supported by a family member, even though the applicant himself has no assets of their own.

Note that the resources belonging to the other person (as described at (a) and (b)) will be assessed in accordance with the normal rules of assessment. You have power to assess or if necessary estimate the value of such resources.

When dealing with an aggregated assessment, please note the information in section 4.4a about a partner's signature.

11.3 Calculating annual disposable income

The calculation of an applicant's gross annual income means the total annual income as at the date of the application. The relevant deductions are based on the 12-month period before the date of the application.

12. Passported

12.1 Category one: Department for Work and Pension (DWP) benefits

An applicant automatically satisfies the means test if they directly or indirectly receive:

- Income Support, or
- Income Based Jobseeker's Allowance, or
- Guaranteed State Pension Credit ('Guaranteed Credit').

An applicant directly receives the passporting benefit if they are the claimant.

An applicant indirectly receives the benefit if they are included in the benefit claim as a dependant of the claimant. The applicant is therefore passported if their partner gets one of those benefits and the applicant is included in the partner's benefit claim.

From 5 December 2005, a same-sex couple claiming state benefits will be paid as a couple and no longer as two single people. This applies whether or not the couple have a registered civil partnership in accordance with the Civil Partnership Act 2004. Passporting arrangements will therefore apply to married and cohabiting couples (including couples of the same sex) and civil partners.

To be passported, the applicant must be receiving the benefit at the time of the application. The applicant will not be passported on the basis that a benefit application decision is pending or if a benefit claim has been suspended (e.g. due to an investigation into suspected fraud).

A claim may be held 'clerically' by the DWP. This means it is not registered on the DWP database. This may be due to technical reasons or because the applicant has not yet been issued with a National Insurance number (NINO). In these circumstances the applicant must provide a letter from the DWP confirming that they are getting Income Support, Income-based Jobseeker's Allowance or Guaranteed Credit, or an increased rate of such benefit, and the date it applies from.

12.1.1. Providing details of the applicant's or partner's National Insurance number

A National Insurance number (NINO) is only required on the CDS14 where you are using the electronic link to DWP to check that they receive a passported benefit. This replaces the need for them to produce any other evidence. If they provide other supporting evidence (such as a Benefits Agency letter confirming that they receive a passporting benefit), the NINO is not required and you need not carry out a DWP check to confirm the evidence.

If an applicant does not directly or indirectly receive a passported benefit, a NINO is not required.

An applicant who is under the age 18 is NOT on a passported benefit, so is not required to provide their NINO.

A partner's NINO is ONLY required where you need to verify information through the DWP link. If an applicant directly receives a passported benefit, a partner's NINO is not required.

12.2 Category two: age-related passporting criteria

An applicant automatically satisfies the means test if they are to be presented to a youth court, or are under 18 years of age and are to be presented to an adult court.

No documentary evidence is required.

12.2.1 18 Year olds and over

A applicant who are aged 18 or over are not 'passported' on grounds of age.

12.2.2 For under 18s, who sign the form?

As with all types of applications the named applicant must sign the form.

Note: it is the age of the young person at the date the application is signed which is relevant.

13. Means test

Means-test formulae are based on the gross income of the applicant (and their partner where applicable).

13.1 Definition of income

Income is the total income from all sources that an applicant has received or may reasonably expect to receive during the period of calculation. The applicant's gross annual income means the total annual income as at the date of the application. The relevant calculations are based on the 12 month period before the date of the application.

Gross income includes all income whether from employment, state benefits (unless specifically disregarded) or elsewhere, e.g. assistance from friends or relatives.

Any payments made direct to third parties on the applicant's behalf will count as part of the applicant's gross income. This could mean payments made by an ex-partner direct to a third party on behalf of the applicant; for example, you would count as maintenance income rent paid by a parent or where a former partner pays the mortgage on the former matrimonial home direct to the lender.

Where an applicant is not capable of signing the application themselves, they must provide evidence of their income, please see Annex 17.

13.2 Applicants with no income

Although applicants have to provide only the evidence prescribed by the form we may wish to make further enquiries where there are concerns regarding eligibility. Applicants who have no income are not expected to prove this, but they are expected to provide further information on CDS15 about how they are managing to support themselves. You can accept their application as long as nothing else on the form contradicts this lack of income.

Where applications result in negative disposable income you should query how the applicant is managing to pay the outgoings. If you are satisfied by the explanation then continue to process, if you are not you should refer to the NCT. Applicants are asked to confirm their residential status, which the LSC will check against the Land Registry records. Applicants who declare they are a tenant or

home owner should explain how they are covering their housing costs in the further information box.

Applicants who live with parents and are supported by them do not provide their parents' income details. Parents' income is not aggregated for the purpose of the assessment. Where applicants declare income/support received from family/friends the figures declared should be used in the assessment.

Applicants declaring a nil income do not need to provide evidence per se however these applications are a potential risk in terms of eligibility. You should refer the application to the NCT where other information on the form or local knowledge leads you to doubt the declaration. This is not an exact science, however examples might include: lost job but no dismissal letter provided; court papers or other source suggest applicant in receipt of income; commission of offence is likely to require income i.e. drink driving. More information should be provided in the further information box on the CDS15.

Particular attention should be paid to forms suggesting a change in circumstances to nil income when submitted after a fail result. If a reason is not provided you should query this and if concerned about the explanation you should refer the subsequent application to the NCT.

We may check these applications after the grant decision has been made, as part of our fraud management. If we find the application is fraudulent, we may prosecute.

13.3 Employed applicants

Employed applicants will receive a payslip detailing their income, overtime and bonuses where applicable and their deductions typically tax, national insurance, and pension contributions.

As a quick check that the income shown is reflective of the usual income earned, divide the earnings to date by the number of pay periods (as shown on the payslip) and assess whether the average earnings approximately match the earnings shown on the payslip for this period. If the average earnings are significantly more (say 10% more) input the average income figure calculated into MAAT. If the applicant's circumstances have changed, for example overtime has stopped, and the payslip submitted is the **latest available**, accept the applicant's explanation and re-assess the application using the income figure in the payslip provided. If the payslip is not the most recent, ask for latest to be supplied

Child Care Vouchers

If child care costs/vouchers are shown as a deduction from the gross income side of the applicants' payslip, the amount of the deduction should be added back into the income to reflect the actual gross income received by the applicant. The applicant should also declare the costs of their child care in question 8.

13.4 Types of income

Type of employment	Income	Where found?	Evidence	While entering on MAAT extra action required
Employed	Salary	CDS 15, Q1	Last wage Slip	Use figure from evidence
Employed	Benefits in kind	CDS 15, Q1	P2	Use figure from evidence
N/A	Child benefit	CDS 15, Q2	None required	Check rate at Appendix 2. If the applicant states they have children, you MUST assume they get Child Benefit as this is an automatic entitlement
N/A	State benefits	CDS 15, Q2	Not required	Check rate at Appendix 2. Check disregarded benefits, Appendix 1.
N/A	Tax credit Paid four weekly	CDS 15, Q2	None required	Should be available to all applicants with children unless their income is over £58k (or £66k if child is one year or younger)
Pensioner	Pension	CDS 15, Q3	None required	N/A
N/A	Maintenance Income	CDS 15, Q4	None required	N/A
	Student income	CDS 15, Q5a	None required	Refer to NCT
	Rent from another property	CDS 15, Q5a	None required	Refer to NCT
	Board or rent from family or lodgers	CDS 15, Q5a	None required	Refer to NCT
	Other source	CDS 15, Q5a	None required	Refer to NCT
	Trust income	CDS 15, Q5b	None required	Refer to NCT
	Income (interest) form savings	CDS 15, Q5b	None required	Refer to NCT
	Income from savings	CDS 15, Q5d	None required	Refer to NCT
Erratic income	Salary	CDS 15, Q1 or Part B Q1	Last wage slip, 'accounts'	If Q1, then use figure from evidence; if Part B Q1, refer to NCT

Remember to exclude disregarded benefits. Even if the applicant provided them on Q2 of CDS 15, do NOT enter the figures on MAAT (see Appendix 1 for the list of disregarded benefits).

13.4 Income categories explained

13.4.1 Benefits in kind

This refers to benefits provided, usually by an employer, instead of or in addition to cash payments or normal salary. The most common example is the provision of a company car, fuel allowance or both. Free health insurance; free accommodation and luncheon vouchers are other common types of benefit in kind. Sometimes employers provide childcare vouchers or help to pay the employee's mortgage.

Benefits in kind are counted as income and must be added to the wages figure.

All these benefits, even though not received in cash, are treated as taxable income by HM Revenue and Customs (HMRC). As a general rule, therefore, from an assessment point of view we will take the value of any benefit in kind to be its taxable value. That is, you will treat this benefit as income in the same way as HMRC.

The applicant is asked to specify the taxable value of any benefit in kind received on form CDS 15 and to provide a copy of tax form P2 which will show the annual value. Therefore you should add this value to the applicant's gross income for the period of calculation.

Example: The applicant provides a P2 showing 'car benefit - £750' for the tax year; that is, the taxable value of the benefit in kind. Include £750 as income.

If the applicant earns less in total (including the benefit in kind) than £8,500 a year, then those benefits that they cannot convert into cash or cash equivalent (e.g. company cars or medical insurance) are disregarded for tax purposes. So their taxable value as stated on the P2 should be nil.

As outlined above, you must include the taxable value of benefits in kind as gross income. However, if you are carrying out a full means test to determine the applicant's disposable income, an allowance against income should be made where the employer provides accommodation to the applicant or pays childminding fees. In such cases the deduction made is the equivalent to the benefit in kind (plus any additional fees the applicant pays on top of that money for accommodation or to a registered child minder).

13.4.2 Child Benefit

Child Benefit is a tax-free weekly cash benefit payable to a claimant who is responsible for a child who qualifies. The benefit is paid by HM Revenue and Customs. Benefit is paid for each qualifying child, at a higher rate for the first or only child and a lower rate for each subsequent child. Check Appendix 2 for rates.

The figure for gross income must include Child Benefit which the applicant appears to be entitled to, even if not declared. If the applicant states that they or their partner have children who live in the household, you must include Child Benefit in the calculation even if the applicant has not completed Q2 on CDS 15.

If the applicant is a single parent, then as well as Child Benefit they may be entitled to Lone Parent Benefit (LPB). This was a tax-free weekly paid benefit. New claimants have not been able to make a claim for LPB since 6 July 1998.

If LPB has been declared on the CDS 15, you should include it in the assessment. In other cases you should not assume the applicant gets LPB.

Housing Benefit

Housing benefit is now a disregarded benefit and should be excluded from the assessment. The guidance notes have been amended to reflect this. MAAT will not be up-dated to remove this field from view for the time being.

13.4.3 Tax credits

Tax credits refer to Working Tax Credit and Child Tax Credit, which replaced Working Families Tax Credit and Disabled Person's Tax Credit from 6 April 2003 and are paid by HM Revenue and Customs. Working Tax Credit and Child Tax Credit are means tested, but are more generous than subsistence benefits such as Income Support or Income-based Jobseeker's Allowance.

Tax credits are not passporting benefits, and you must include in the assessment the net amount of tax credit received by the applicant or their partner (or both) for the period of calculation. HMRC will issue a Tax Credit Award Notice TC602 specifying how much the claimant is entitled to. Tax credits are paid four-weekly and should be claimed by all those with children who are earning less than £58k, or less than £66k if their child is one year old or younger.

Couples (whether married, civil partners, or otherwise cohabiting - including same-sex couples) must make a joint tax credits application, although separate award notices may be issued. For example, in the case of a married couple the husband may get Working Tax Credit while the wife gets the Child Tax Credit if she is judged to be the main carer of the children in their household.

13.4.4 State benefits

Certain state benefits are wholly disregarded for assessment purposes (see section 12.1). All other state benefits are included in the assessment as gross income as follows:

- Include the amount declared by the applicant of any state benefits or allowances (including pensions).
- If a monthly figure is quoted, the benefit will be payable four-weekly.

You should treat arrears of benefit as having been actually received when they were due; i.e. don't treat them as current income if they are paid for a time before the period of calculation.

13.4.5 Pensions

Include any payments that the applicant has received or may expect

to receive for the period of calculation in respect of State Pension (Retirement Pension), any occupational pensions or private pensions. Pension payments are taxable income for the purposes of HMRC, but pensioners do not have to pay National Insurance. Payments are for women over 60 and men over 65. Evidence (e.g. bank statement) is required for total pension income received of £1,000 (net) or more per month.

Certain pensions are to be disregarded for the purposes of the means assessment. Please check Appendix 1.

13.4.6 Maintenance income

This is maintenance the applicant receives for themselves or their dependent children or both. It will be paid by a spouse, former spouse or civil partner, or other parent of the child. Note: treat this income as belonging to the applicant, whether or not the order specifies that the payments are made to or for the children.

The maintenance may be being paid voluntarily, through a court order, or through the Child Support Agency.

Maintenance payments are not generally treated as taxable income for the recipient. So you should not treat these payments as taxed income unless the applicant provides evidence that they are paying tax on it.

13.4.7 Student income

If the applicant or their partner is a student, you should treat parental contributions and student grants or loans as part of their total income.

13.4.8 Trust income

A trust may provide income directly to the applicant or their partner, or commonly may make payments on the individual's behalf, for example meeting housing costs. You should include in the assessment any income that the applicant receives or may expect to receive from a trust (including payments to a third party on their behalf) for the period of calculation. You should treat this money as non-taxable income.

13.4.9 Income: savings and investments

If the applicant's capital, i.e. savings and investments, produces a regular monthly income, then you must include that income in the assessment. Form CDS 15 requests information on interest-bearing capital or capital that produces an income, and you should use these figures in the assessment.

13.4.10 Disregarded income

Certain state benefits are wholly disregarded for assessment purposes. So you calculate the applicant's gross annual income by assessing their total annual income from all sources except those benefits (refer to Annex 1).

Except for the benefits shown in Annex 1, you should take into account all other income that is due or will become due for the period of calculation.

13.4.11 Erratic income/seasonal workers

Use the income from the most recent wage slip to calculate an annual

figure for the purpose of the assessment. If a seasonal worker is found to be ineligible based on a monthly income that would not be available to them in other periods of the year and for which they must budget accordingly, they will need a more detailed review of their means. For this to happen the applicant must complete the CDS 16, enclosing evidence that supports their claim. The NCT does these assessments.

13.4.12 Self-employed applicants

If the applicant is self employed, they must provide accounts and, where applicable, a tax return. If the business is very new or particularly small so that no accounts or HMRC documents are available, they may submit bank statements or a cash book or any other account information as evidence.

You should automatically send applications from the self employed to the NCT for assessment. The NCT must decide whether the evidence in support of the application is sufficient. They will not process the application without the appropriate evidence.

Applicants who are contracted or who work 'cash in hand' and cannot produce accounts may provide a letter from their employer as proof of income.

13.4.13 Unobtainable evidence

If an employed applicant cannot provide evidence of their salary (because they are in custody), then a CDS 17 can be used to replace a wage slip and evidence of outgoings where applicable.

Self-employed applicants cannot use the CDS 17 if they are in custody or are otherwise barred from getting their documentary evidence.

13.5 Levels of means test

There are two levels of means test:

- the initial means test, taking into account 'gross income' and 'adjusting' it against the applicant's family unit size
- the full means test, taking into account 'gross income' and certain 'outgoings',

13.6 The initial means test formula

Gross income divided by weighting factor = adjusted income.

Weighting scale (used to calculate weighting factor):

Applicant	1
Partner	0.64
Child aged 0-1	0.15
Child aged 2-4	0.30
Child aged 5-7	0.34
Child aged 8-10	0.38
Child aged 11-12	0.41
Child aged 13-15	0.44
Child aged 16-18	0.59

The child's age is their next birthday from the date of application.

Include children only if they live in the same household as the applicant (for example, include children of separated parents only if for purposes of Child Benefit the applicant is counted as the main carer).

To calculate the weighting factor for an applicant, add up all relevant figures: e.g. applicant 1 plus partner 0.64 plus any factors for children (multiply the number of children in each age group by the relevant value).

13.7 Initial means test outcomes

There are three possible outcomes from this part of the assessment:

- **Pass** - lower threshold (if adjusted income is £12,475 or less)
- **Fail** - higher threshold (if adjusted income is £22,325 or more)
- **Full means test** (if adjusted income is more than £12,475 and less than £22,325).

13.8 The full means test formula

Gross income divided by weighting factor = adjusted income

Type of employment	Outgoings	Where found?	Evidence	While entering on MAAT extra action required
N/A	Mortgage / rent	CDS 15, Q7a	Mandatory if over £500	Use figure from evidence (if supplied)
N/A	Board / lodgings	CDS 15, Q7c	None required	N/A
N/A	Council Tax	CDS 15, Q7e	None required	N/A
Employed	Tax and NI	CDS 15	Last wage slip or SA tax form	Use figure from evidence
	Childcare (eg. childminder, maintenance)	CDS 15, Q8a	Mandatory if over £500	Use figure from evidence (if supplied)
	Childcare (maintenance for children not living with applicant)	CDS 15, Q9	Mandatory if over £500	Use figure from evidence

A living allowance is also added as a type of outgoing and the formula is: £5,676 multiplied by the 'weighting factor' (see the previous page for weighting factors).

13.9 Outgoings categories explained

13.9.1 Tax and National Insurance

The following sums should be treated as tax and NI outgoings:

- any income tax paid on that income
- any NI contributions paid or payable on that income under Part I of the Social Security (Contributions) Act 1992.

If the amount of tax and National Insurance paid, declared by the applicant on CDS 15, differs from the amount stated on the evidence supplied, use the amounts shown on the evidence itself. Annotate the CDS 15 to confirm that you have done this.

13.9.2 Housing costs

In calculating disposable income you can make an allowance for:

- the mortgage or rent payable for the period of calculation on the applicant's main home, or
- the cost of the applicant's living accommodation
- Council Tax paid or payable for the period of calculation.

13.9.3 Mortgage/rent

The amount allowed for mortgage or rental payments should be net of housing benefit. However, you can allow the rent or mortgage repayments in full if the applicant declares housing costs of over £500 a month (£6,000 a year). The applicant must provide evidence of the payment amount.

The amount to be allowed in the assessment is the rent or mortgage payable during the period of calculation. In practical terms it will not be easy to identify separately arrears of mortgage payments, as the applicant will generally declare these as a single revised monthly mortgage payment. If the applicant has already arranged to pay off arrears by increasing their weekly/monthly rent or mortgage payment, then, provided they are actually paying those increased payments, you can treat that increased rent or mortgage payment as the rent or mortgage payable in the assessment. This is different from where an applicant has started paying off arrears to reduce their disposable income with a view to qualifying for funding. You should view this as intentional deprivation of income and in such circumstances you should allow only the normal monthly rent or mortgage payments in the assessment.

No allowance is given for water rates, insurance premiums and other associated housing costs; these are not allowable deductions in the assessment. If the applicant's rent includes a clearly identifiable amount for water rates, then this should not be included as rent. However, you need not routinely ask the applicant whether the rent they have declared includes a sum for water rates.

13.9.4 Accommodation costs

If an applicant states they are paying board and lodgings, then only the amount for accommodation can be allowed, and you should deduct an amount for food from the total board and lodgings figure declared on form CDS 15. If arrangements are informal, for example lodging with a close family member, and the applicant cannot specify how much they spend on food, then you should assume that half of the declared board and lodging element is for accommodation, with the rest for food and other incidentals not covered by the regulations.

If the applicant states accommodation costs of more than £500 a month (£6,000 a year), they must provide supporting evidence of this expenditure on form CDS 15.

13.9.5 Childcare costs

13.9.5a Childminders or nurseries

You can make an allowance for childminding expenses (paid to a registered childcare provider) that the applicant has paid during the period of calculation. Unless there are exceptional circumstances (e.g. disability of the child) you should only make such a deduction for a dependent child aged 15 or under.

13.9.5b Maintenance payments

You can make an allowance for genuine maintenance payments regularly made by the applicant (or their partner, or both, if they have an aggregated assessment). Such payments will go to: (a) a spouse/civil partner or former spouse/civil partner, or (b) a child, or (c) a dependent relative. Make the allowance only if the recipient does not live in the applicant's household. You can make an allowance whether the payments are being made under a court order, CSA ruling or voluntary agreement. Only allow for payments actually made. This allowance should be the amount spent during the period of calculation. There are no set limits to the amount you can allow under this heading for genuine payments. Maintenance payments could include simply paying an ex-partner's household bills or mortgage. The applicant doesn't need to provide evidence with the initial application.

If the applicant has declared expenditure of over £500 a month on childcare, they must give evidence (e.g. copy of bank statement, copy of agreement/contract with childcare provider) to support the figures stated.

13.9.6 Living allowance

The allowance made for living includes the following:

- Food and non-alcoholic drinks
- Clothing and footwear
- Housing*, fuel and power
- Household goods and services
- Health
- Transport
- Communication
- Education (excluding school fees)
- Miscellaneous goods and services

(*net of mortgage payments, rent and council tax).

You must deduct a standard amount representing cost-of-living expenses for the period of calculation. The amount is £5,676 for a single person.

If the individual has a partner or has children living in their household, deduct an amount calculated in accordance with the weighting scale, below.

Living allowance multiplied by weighting factor = adjusted living allowance

Applicant	1
Partner	0.64
Child aged 0-1	0.15
Child aged 2-4	0.30
Child aged 5-7	0.34
Child aged 8-10	0.38
Child aged 11-12	0.41
Child aged 13-15	0.44
Child aged 16-18	0.59

The child's age at their next birthday from the date of application.

Include children only if they live in the same household as the applicant (for example, include children of separated parents only if for purposes of Child Benefit the applicant is counted as the main carer).

13.10 Full means test outcomes

There are two possible outcomes from a full means test:

- Pass - threshold (if disposable income is £3,398 or less)
- Fail (if disposable income is more than the £3,398 threshold)

13.10.1 Contributions

The means-testing scheme in magistrates' courts will be non-contributory. If the applicant's financial resources are assessed to be within the eligibility limits, they will qualify for funding without having to pay a contribution towards the cost of their defence.

13.10.2 Capital

There is no assessment of capital except for:

- the interest income it generates
- the amount being drawn as income from a capital sum held in a bank, building society etc.

14. Appeals and reviews

14.1 Interests of Justice appeals

Applicants are entitled to request an appeal following a refusal on the IoJ test. They should explain in writing why they wish to appeal and confirm that their means have not changed since they first applied.

If their financial circumstances have not changed, you should send the appeal to a court or single magistrate for a decision.

If the applicant's financial circumstances have changed, they may need to take another means test. Depending on the type of change, they may need to submit a CDS 15.

An applicant or their solicitor has no right to attend an appeal hearing, so the local court has discretion as to how it conducts the appeal.

Please note: you must record details of an IoJ appeal and outcome on MAAT, under the IoJ appeal tab.

There is no appeal to the court or a single magistrate if an application has been refused on means.

14.2 Review of means where there has been an error

If the applicant believes an administrative error has occurred and the information they provided differs from the data held on MAAT, their solicitor must send HMCS the printout of the MAAT record so you can decide whether the error did occur.

If an error did occur, use the 're-assessment' functionality on MAAT. (*Note: for the time being 're-assessment' will include re-entry of data. A request has already been approved to upgrade MAAT to 'copy' the 'original' data and allow 'change' as part of 're-assessment'*)

If the applicant omitted information in the previous applications (for example, they did not give childcare costs and they or their partner has children), they should amend the returned form and resubmit it to the HMCS office carrying out the assessment.

You should use the re-assessment function on MAAT and choose 'previous assessment incorrect' to carry out the re-assessment.

14.3 Means review – hardship application to the NCT

The hardship review provides a safety net for applicants who have not passed the financial eligibility test, but are genuinely unable to pay for their defence costs. This may be because the costs of the case are particularly high, or because they have especially high outgoings; for example, care costs for a disabled relative.

The NCT undertakes to process a completed application under the hardship review process within two working days.

Hardship guidance is available at www.legalservices.gov.uk.

14.4 Applying for hardship

If applicants wish to apply for a hardship review after they have been refused legal aid under the means test, they must submit CDS 16 and a copy of CDS 15 which may be obtained from the court only if the applicant or solicitor have not retained a copy themselves.

If the hardship review is successful, the representation order will take effect from the date that the original application was submitted.

If the hardship application cannot be processed because further information is required which would make a difference to the result, the NCT will inform the applicant's solicitor. If the further information would not make a difference to the result the application will be refused.

A further hardship review application may be allowed if the circumstances of the case change significantly so that the costs estimate is no longer a reasonable assessment. An example of this might be where an expert is now required.

14.5 Estimate of costs

In addition to completing the Solicitor's Costs section of CDS 16, the solicitor must attach a written statement stating the name of the magistrates' court in which the case will be heard and explaining why the case requires the estimated hours, disbursements and fee-earner grade.

The applicant's solicitor is expected to provide the best possible information on the likely costs of the particular case based on their knowledge of it and professional experience of similar criminal litigation.

The estimate should be calculated as follows: estimated number of hours multiplied by the fee-earner grade.

Disbursements – the costs estimate should also include the estimated cost of any disbursements that the solicitor estimates will be actually and reasonably incurred. If counsel fees are required, they should be included as a disbursement.

The costs estimate does not allow for any mark-up that the solicitor may charge the applicant at the end of the case.

The hourly rates to be used are based on the "Guideline Figures for the Summary Assessment of Costs", which were revised in 2005 and can be found in the 'Hardship Review Guidance – Applicants' document on the LSC website or downloaded from the HMCS website. The applicable rate is that for the area where the court hearing the case is located.

To establish the correct hourly rate, solicitors must establish the grade of fee earner who will carry out the work. Fee-earner grades have been agreed between representatives of the Supreme Court Costs Office, the Association of District Judges and the Law Society. The categories are as follows:

- Grade A: solicitors with over eight years' post-qualification experience including at least eight years' litigation experience. Grade A rates are normally reasonably incurred in indictable proceedings and in serious either-way cases, in summary cases where the consequences may be grave for the client, in cases involving potentially difficult or dangerous clients, or in cases involving novel or difficult points of law.
- Grade B: solicitors and legal executives with over four years' post-qualification experience including at least four years' litigation experience.
- Grade C: other solicitors and legal executives and fee earners of equivalent experience.
- Grade D: trainee solicitors, paralegals and other fee earners.

In accordance with "The Justices' Clerks' Society Good Practice Guide: Taxation of Costs" we would expect most of the representatives in magistrates' courts to fall in the Grade B or C fee-earner category.

We will monitor the application of these rates and may publish new guidance or rates if it becomes clear that they do not accurately represent the applicant's ability to pay for reasonable private defence costs.

14.6 Appealing a hardship review decision

Hardship review applications that have been refused may only be resubmitted to the LSC if there has been a material change in the circumstances of the case, so that the original costs estimate is no longer a reasonable assessment.

In all other cases the hardship review's decision on financial eligibility is final, and the applicant or their solicitor may only challenge it by applying for judicial review.

Judicial review pre-action letters should be sent to the Legal Director, Corporate Legal Team, Legal Services Commission, 85 Gray's Inn Road, London WC1X 8TX and should include the case number and the grounds for challenging this decision.

15. 'Resulting' on legacy systems

The 'resulting' process remains the same and includes:

- granting
- refusing
- transfer
- withdrawal
- variation.

In case of transfer, variation or withdrawal, ensure that you update the MAAT record with relevant details. You can do this through the 're-assessment' function.

16. Communicating with the applicant/solicitor

For initial submission of applications and communicating with the applicant, HMCS remains the main point of contact.

The following letters/orders can be sent to the applicant. You will find templates on the HMCS intranet site:

- Grant/Refusal/Rep order

You must attach a print-out of information from the Passported or Means Assessment tab to any grant/refusal/variation/withdrawal/transfer orders sent out. This will inform the applicant/solicitor about the data held on MAAT.

16.1 Representation order production

Rep order production (i.e. legacy system single printing, batch printing, use of MS Word etc) is a local management issue.

Rep order wording: Attached at Annex 7 is a rep order that reflects the changes brought in by the CDS Act. Although the regulations have not prescribed a document, the version at Annex 7 has been agreed by the LSC and should be used by HMCS.

16.2 Bail-related hearings

If an applicant has been charged with an offence and is granted a rep order, any bail offences subsequently alleged are covered by the original rep order.

If a bail offence is alleged and there is no rep order, the defendant may submit a new application for representation. In these circumstances the early cover will start from the date of charge of the bail offence.

16.3 Change in circumstances

If the applicant has either:

- a change in their own financial circumstances, or
- a relevant change in their partner's financial circumstances

Then you should treat this as a 'change in circumstances' and carry out a re-assessment on MAAT.

The applicant can submit a new CDS 15 with their new financial circumstances to the HMCS office they originally applied to. A check box on the front of the

CDS15 has been added to identify applications, which are reporting a change in financial circumstances.

16.4 Transfer to another solicitor

If a defendant has been granted a rep order, any application for a change of solicitor remains subject to the existing provisions at Reg 16 of the CDS (Gen) (no 2) Regs 2001.

Therefore the CDS Act does not change the way you should transfer orders. A solicitor need not submit a new application form when requesting the transfer. HMCS local areas should continue to implement the CDS Act as before.

The applicant must still inform HMCS of any change in financial circumstances. If this occurs at the time of the requested transfer, the applicant should submit a CDS 15 showing the relevant income details. You must then carry out the steps detailed in the 'change of circumstances' section.

17. Fraudulent applications

The LSC fraud management strategy seeks to identify and tackle abuse of the new system. We took advice from the National Audit Office, and used our means assessment experience to write the strategy. We are taking the following measures to protect the scheme:

- Appropriate evidence must be collected and stringently checked.
- Where a passported benefit is declared, The DWP must verify the application in the absence of appropriate evidence.
- A single expert unit will identify, check and process high-risk applications.
- We will check a representative random sample of applications after the grant of legal aid.

We have the authority to contact third parties to verify information provided. This may include contacting the DWP, HMRC and the applicant's employer. If we need to contact the applicant's employer, we will do so discreetly.

If we find that an application is fraudulent, you must withdraw the rep order and the applicant may be prosecuted. The applicant is responsible for providing accurate financial information or notifying you of a change in circumstances. Solicitors must report fraudulent conduct.

18. Who can I call for support?

For casework-related queries and questions relating to evidence or how to interpret the form, contact one of the two NCT offices, as detailed in Section 10.4 and 10.5. Support hours are 8.30am to 5pm Monday to Friday.

For MAAT and any other IT issues contact the Fujitsu helpdesk:

0845 143 0101

19. Service Level Agreement (SLA)

HMCS performance targets

These are set out in the SLA as in the table below:

Table: Magistrates' courts performance target table

Performance indicator	Performance description	Target	Minimum standard acceptable
1	Proportion of grant decisions (average across all criminal justice areas) to be made by close of business the next working day after receiving a properly completed application form CDS 14	90%	
2	Proportion of grant decisions (average across all criminal justice areas) to be made by close of business the second working day after receipt	99%	95%
3	Proportion of grant decisions (average across all criminal justice areas) to be made by close of business five working days after receipt	100%	
4	Proportion of grant decisions (for any individual criminal justice area) to be made by close of business the second working day after the day you receive the application		90%
5	% appeals against refusals on the grounds of Interests of Justice processed in the 24 hours between receiving a properly completed appeal form at the administration centre notified by the Area Director and sending out the order/notice of refusal	95%	90%

LSC performance targets

Table: LSC referral response performance target table

Performance indicator	Performance description	Target	Minimum standard acceptable
1	Proportion of referrals to be decided by close of business the next working day	90%	
2	Proportion of referrals to be decided by close of business the second working day after receipt	99%	95%
3	Proportion of referrals to be decided by close of business five working days after receipt	100%	

Magistrates' courts Schedule of Losses

The following items, should they arise, will be included in the Schedule of Losses. The costs will be calculated by the group established to manage the SLA

HMCS

Incorrect granting of rep orders	(value of overspend)
Incorrect referrals to NCT	(cost per referral)

LSC

Delays in dealing with referrals	(cost per adjournment)
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20. Data protection

Under the SLA, LSC is the data owner and HMCS processes that data on behalf of LSC.

The SLA allows HMCS staff to manage and give out information on current rep orders to the defendant and their legal representative. You must refer any other requests for information on rep orders to LSC.

You should also be aware of section 20 of the Access to Justice Act 1999, which prohibits the disclosure of information in applications except to LSC, DCA or for the prosecution of offences and disciplinary proceedings and the like. A breach of this section is a criminal offence.

21. HMCS Management Assurance Programme (MAP)

21.1 Regularity of Checking

These checks will form part of the programme of management assurance, which is reported upon on a quarterly basis. The process of checking should therefore take place at the discretion of local management but must be within a period three months prior to the date upon which confirmation of assurance is submitted.

The checks should be undertaken with reference to the Guidance below

The total number of files examined should be recorded and those where issues are detected numbered separately, accompanied by a description of the issues identified, along with details of the proposed remedial action.

21.2 Volumes to be checked

As a general rule the number of checks undertaken each quarter must comprise a minimum of 5% of the total number of applications processed. However, Managers should consider the degree of risk to which the business may potentially be exposed when considering these volumes. For example if applications are being processed by a newly trained member of staff it might be considered prudent to initially check a higher percentage of the work that they have processed in order to ensure compliance.

Because of the risk-based approach to assurance, courts should ensure that their checks reflect the types of application that carry the greatest degree of risk to the legal aid fund. Therefore applications for the employed, self-employed and unemployed should receive greater proportionate attention than passported applications

The flow of checks is designed to explore:

- a) Quality of decision.
- b) Data accuracy.
- c) Appropriate retention of the file and evidence.

21.3 Quality Standards

In the Post Implementation Review of Means Testing in the Magistrates' Courts a number of areas of weakness were identified, comprising accuracy of decision making, accuracy of data and effective file retention. The following standards have therefore been adopted and the assurance checks must determine the degree of compliance.

Accuracy of Decision Making	92% (moving towards 98%)
Data Accuracy	92% (moving towards 98%)
File Retention	100%

21.4 Addressing under performance

In the event of an area of concern being identified during the checking process this should be highlighted in the report and remedial action determined and implemented.

When an area of under performance has been identified it is essential that the manager review the volume of checks that are undertaken in respect of the work to which they relate. The number should be increased to a level deemed appropriate and this volume should be repeated each quarter until the manager is satisfied that the level of performance has reached the correct standard at which point the quantity of checks can be reduced.

22. Complaints protocol

HMCS and LSC will continue to comply with their own customer service standards and complaints-handling procedures as detailed on your and our websites.

The SLA requires HMCS to collect information on complaints and report them to LSC every three months. From April 2008 this will be done through the existing Cafe system, which has been amended to facilitate collection.

All complaints about processing of legal aid applications must be logged on this system. If you do not have access to this yourself, please ensure that details of the complaint are passed on to the appropriate member of staff who can record them on to Café. The only relevant complaints for these purposes are those referring to the process itself and not to the outcome of a decision.

When you receive a complaint about work referred to the LSC (e.g. a hardship review), you must acknowledge the complaint and inform the complainant that the LSC will deal with the matter and respond within four working days of receiving the complaint. You must then send a copy of the complaint to the relevant LSC office the same day whenever possible, and certainly by the close of the next working day. The electronic method of communications between HMCS and LSC is as follows:

Forwarding complaints: methods

Original complaint	Method
In writing	Fax copy
Telephone	Write email
Email	Forward email

The email addresses at the LSC National Courts Team for complaints are as follows:

NCT office	Email for complaints
Nottingham	Nottinghamnct.queries@legalservices.cjsm.net
Liverpool	Liverpoolnct.queries@legalservices.cjsm.net

When we receive the complaint, we will follow our standard complaints procedure and record details on our complaints database. We will respond directly to the complainant.

If complaints relate to matters that are the joint responsibility of HMCS and LSC, then HMCS will act as the complainant's point of contact. You will liaise with us over a joint reply.

23. Contingency Plans

For problems with MAAT, please contact the Atos helpdesk, whose details are set out in this guidance.

If the DWP link is down, please report the problem to the Atos helpdesk (0845 143 0101).

Process the case as follows but also see note below:

- Select 'Temporary Pass'.
- Confirm by 'DWP Unavailable' and proceed with the case as normal.

You do not have to re-check any 'temporary pass' applicants or to re-assess the record in any way.

Please note: the DWP unavailable should only be used when it is confirmed that the DWP link will be out of action for a while, otherwise passported applications should be put to one side and tried again later that day. (It is accepted that this does not set a particular time limit, however if the link goes down at 3pm then it would be unnecessary to wait any longer and 'DWP unavailable' should be used). This is important if we want to minimise the number of cases where this approach is used to grant, as it exposes us to increased risk. Common sense should be used i.e waiting would not be appropriate if it was likely to result in a request for an adjournment.

If general problems mean that MAAT is likely to be unavailable for more than one day, you will be advised to turn to contingency plans. This means using a stand-alone spreadsheet option. Further guidance on accessing and using the spreadsheets will be circulated.

For IT problems that are not specific to MAAT or for any other local issues, local business continuity plans apply.

Annex 1: Disregarded Benefits

Certain state benefits are wholly disregarded for assessment purposes. So you calculate the applicant's gross annual income by assessing their total annual income from all sources, except the following:

- (a) any of the following payments made under the Social Security Contributions and Benefits Act 1992:
 - (i) Attendance Allowance paid under section 64 or paragraph 4 or 7(2) of Schedule 8
 - (ii) Severe Disablement Allowance
 - (iii) Carer's Allowance
 - (iv) Disability Living Allowance
 - (v) Constant Attendance Allowance paid under section 104 as an increase to a disablement pension
 - (vi) Council Tax Benefit
 - (vii) any payment made out of the Social Fund
 - (viii) Housing Benefit
- (b) any direct payments made under the Community Care, Services for Carers and Children's Services (Direct Payments) (England) Regulations 2003 or the Community Care, Services for Carers and Children's Services (Direct Payments) (Wales) Regulations 2004
- (c) any Exceptionally Severe Disablement Allowance paid under the Personal Injuries (Civilians) Scheme 1983
- (d) any pensions paid under the Naval, Military and Air Forces etc (Disability and Death) Service Pensions Order 1983
- (e) any Independent Living Fund payments
- (f) any financial support paid under an agreement for the care of a foster child.

Except for the benefits shown above, all other income that is due or will become due for the period of calculation should be taken into account.

Annex 2: State benefit rates

Type of benefit	Weekly rates from 07/04/08
Child Benefit	
Eldest/only child	£18.80
Each subsequent child	£12.55
Incapacity Benefit	
Claimant under pension age	
Short-term lower rate paid to the unemployed or Those not entitled to SSP	
Basic	£63.75
Adult dependency increase	£39.40
Short-term higher rate paid after 28 weeks of SSP	
Basic	£73.40
Adult dependency increase	£39.40
Long-term rate paid after 24 weeks at short-term higher rate or to those who are terminally ill	
Incapacity began before aged 35	£102.25
Incapacity began before aged 35 - 44	£93.40
Incapacity began before aged 44+	£84.50
Adult dependency increase	£50.55
Pensions	
Basic single person pension	£90.70
Adult dependency increase (per couple)	£54.35
Basic pension per couple	£145.05
Child dependency increase	
Per child	£11.35
Maternity Allowance	Up to £117.18 *
Increase for adult dependants	£39.40
Statutory Maternity/Paternity/Adoption Pay	Up to £117.18 *
Statutory Sick Pay	£75.40
* paid standard rate £117.18 or 90% of average weekly earnings if less.	

Annex 3: Childcare Costs

The regulations state that 'childcare costs' means the costs of care that is provided by one or more of the following care providers –

- (a) a school on school premises, out of school hours
- (b) a local authority, out of school hours –
 - i. for children who are not disabled, for the period starting on their eighth birthday and ending on the day before the first Monday in September after their 15th birthday
 - ii. for children who are disabled, for the period starting on their eighth birthday and ending on the day before the first Monday in September after their 16th birthday
- (c) a childcare provider approved by an organisation accredited by the Secretary of State under the scheme established by the Tax Credit (New Category of Care Provider) Regulations 1999
- (d) persons registered under Part XA of the Children Act 1989
- (e) persons referred to in paragraph 1 or 2 of Schedule 9A to the Children Act, in schools or establishments referred to in those paragraphs
- (f) persons prescribed in regulations made under section 12(4) of the Tax Credit Act 2002.

However, this definition excludes costs paid in respect of:

- the child's compulsory education or by a claimant to a partner (or vice versa) for a child for whom either or any of them is responsible under regulation 14 of the Housing Benefit (General) Regulations 1987; or
- care provided by a relative of the child wholly or mainly in the child's home.

If an applicant is claiming for child care costs, their application should include a claim for tax credits. Please refer to the tax credit section for more details about this claim (see section 24 'Income Categories Explained').

Annex 4: Means Test Examples

Example 1

For a single applicant with no dependants, if their total income is £22,325 a year they will be ineligible for a rep order as the income figure exceeds the £22,325 a year threshold. If the income is less than £22,325 a year, the assessment will move to the next stage.

Example 2

For an applicant who lives with a partner, if their total aggregated income is £34,000 the weighted total income is calculated as follows:

£34,000 divided by 1.64 (obtained by adding 1.00 + 0.64 – see Appendix 2 Weighting), which equals **£20,732**. The applicant's weighted income is below the initial threshold and the assessment will move to the next stage.

Example 3

If the applicant lives in a single-headed household with a child dependant aged 2 at the end of the period of calculation (i.e. the date of application), and if the total aggregated income is £15,000, then the weighted total income is calculated as follows:

£15,000 divided by 1.30 (obtained by adding 1.00 + 0.30), which equals **£11,538**. The applicant's weighted income is below the lower threshold, so the applicant is financially eligible without the need for further assessment.

Example 4

If the applicant lives with a partner and two children aged 9 and 13 at the end of the period of calculation (i.e. the date of application), and if the total aggregated income is £50,000, then the weighted total income is calculated as follows:

£50,000 divided by 2.46 (obtained by adding 1.00 + 0.64 + 0.38 + 0.44), which equals **£20,325**. The applicant's weighted income is below the upper threshold, and the assessment will move to the next stage.

Annex 5: CDS Form ordering by HMCS

To order CDS forms:

- Hand write the requests on the current Pindar stationery order form (until a new one is issued later in 2007).
- Details to go on the order form are as follows:
 - Form Ref. **CDS 14** - Application for Legal Aid in Criminal Proceedings
 - Form Ref. **CDS 15** - Financial Statement for Legal Aid in Criminal Proceedings
 - Form Ref. **CDS 16** - Legal Aid in Criminal Proceedings - Application for review on the grounds of hardship
 - Form Ref. **CDS 17** - Legal Aid in Criminal Proceedings - Statement of truth

Orders for these forms must be in multiples of 100, capped at 500 for CDS 14 and CDS 15 and 300 for CDS 16 and 17 per order.

The forms are available free of charge to HMCS, as we have made separate commercial arrangements with Pindar.

Annex 6: Using DX

To facilitate the transfer of documents from the courts to the LSC NCT offices in Nottingham and Liverpool for complex means cases, we are setting up DX facilities for courts that lack them.

To set up a full DX service normally takes about two weeks, so until then, the DX Reflex service will be used. This is like a courier service and will allow you to send documents as necessary.

Parcel despatch

For all parcels to the NCT, please use the DX Reflex service.

A court can arrange collections using this service. A named contact in your court will get a full instruction package including a user guide, escalation chart and the necessary paperwork direct from DX.

In summary, to use the service you will need to do the following:

- Label the parcel clearly with the full postal address of the LSC office you are sending it to, namely:

Liverpool NCT Office

Cavern Court
8 Matthew St
Liverpool L2 6RE

Nottingham NCT Office

1st Floor, Fothergill House
16 King St
Nottingham NG1 2AS

- Phone DX Call Centre on 01753 631669.
- Request collection before 4pm.
- Give details of where to collect and deliver the parcel. You will need to state the LSC full postal address and not the DX address.
- Give the LSC account number SAP No: 102927 and LSC cost code 045 PA003.
- Get a signature from DX to confirm the parcel has been collected.
- Store records for reference purposes.

Please note that this service has a 48-hour turnaround time. For example, for a call made for collection by 4pm on Monday, the collection will be on Tuesday with delivery on Wednesday.

To help with processing, the NCT will wherever possible prioritise applications received via DX Reflex. If you have any particularly urgent cases, please contact your nominated NCT contact.

All invoices for this service will be sent to the LSC until this arrangement is changed. The contract has been set up for this service only, so please send only means-associated parcels. For all other court business parcels, use your existing delivery service.

The full DX service can only be established following a site survey.

It is essential that you agree this with DX as soon as possible.

To set up DX Reflex, please refer to the DX Reflex User Guide on the CDS Internet site.

Annex 7a: Example Representation Order



Legal aid for representation

<Defendant's Name>
 <Defendant's Address>
 <Address Line 2>
 <Address Line 3>
 <Address Line 4>
 <Address Line 5>
 <Post Code>

[Case number: <Case number>]
 [Born: <Date of birth>]

In accordance with the Access to Justice Act 1999 and the Criminal Defence Service Act 2006, you are granted legal aid for **<Court type>** proceedings in relation to the offences listed below.

This order covers work by a litigator in the Magistrates' Court (including advice and assistance regarding an appeal against conviction or sentence but excluding the actual appeal proceedings). [You may also have a barrister to represent you because **<Reason>**.]

This order automatically extends if the case is committed for trial, sent for trial, or committed for sentence to the Crown Court to cover work by a litigator and one junior advocate in respect of the Crown Court proceedings.

The litigator appointed is **<Solicitor name>**, **<Solicitor firm name>**, **Solicitor firm address**, **<Address line 2>**, **<Address line 3>**, **<Address line 4>**, **<Address line 5>**, **<Post Code>**.

A copy of this order has been sent to your litigator/solicitor.

Date: <Date of order> **Designated Officer**

Why this representation order wording?

The LSC has approved this example rep order and has requested that HMCS adopt its wording. It is designed to cover summary, either-way and indictable offences. The document can be used unamended for any combination of the above.

We have maintained a pragmatic approach to rep order wording, accepting area variations as part of HMCS's traditional approach to legislative change. Litigators and advocates may need reassurance that rep orders do cover the work they do in either magistrates' or Crown Courts, as they are reluctant to accept the new idea of automatic extension.

The regulations do not set out a prescribed document, but feedback from HMCS showed that a standard version of the rep order would help.

What will we pay under a rep order

The following explanation is not a comprehensive guide to what we will pay under a rep order. It addresses questions being raised by HMCS staff about rep order wording.

- **The attached rep order is to be used for all grants of summary-only proceedings.** It covers the work in magistrates' court for eligible defendants, paying the agreed LSC solicitor rates.

The court may amend the rep order to provide more than one advocate or QC after an application, in exceptional extradition cases. If this is granted, the rep order must be amended to reflect the change. This procedure is the same as before the introduction of means testing on 2 October 2006, so we do not propose to issue guidance on this.

- **The order's wording also says that it covers work associated with the advice a solicitor would give on appealing a decision of the magistrates' court.** The order does not cover work beyond this, such as appearing at the Crown Court. An application to cover work at the Crown Court will have to be made by the solicitor to the Crown Court (see Annex 7b).
- **The rep order should also be used for either-way and indictable-only cases.** If the case is sent or committed for trial, the order automatically extends to cover work there. Courts do not need to extend orders or grant through orders. Work at the Crown Court is for litigators and one junior advocate.

In cases where the applicant has changed his election from Crown Court to magistrates' court, or a change in the charges has left the applicant with a case being heard in the magistrates' court only, a means assessment will need to be undertaken, if not already done before mode-of-trial decision, to ensure the rep order covers the summary proceedings.

A rep order automatically extends to cover work by a litigator and junior advocate for any subsequent hearings at the Crown Court, for cases committed for sentence.

Annex 7b: Appeals to the Crown Court

Why this representation order wording?

The LSC has approved this example representation order and has requested that HMCS adopt its wording. It is designed for use when the applicant has been granted funding to appeal against sentence or conviction in the Crown Court.

Annex 7 shows the standard magistrates' court order and this will be available via Libra in January 2008.

The appeals rep order will not be available in Libra until March 2008. Guidance about how to access the order will be issued nearer the time.

What will we pay under a representation order?

The following explanation is not a comprehensive guide to what we will pay under a representation order. It addresses questions being raised by HMCS staff about representation order wording.

The basic magistrates' order's wording also covers work associated with the advice a solicitor would give on appealing a decision of the Magistrates' Court. The order does not cover work beyond this, such as advocacy at the Crown Court, for which a new application to cover Crown Court work is required. (see below).

The 'appeal' order allows a solicitor to represent their client in the Crown Court to appeal against conviction and/or sentence from the Magistrates' Court. A notice of appeal must be lodged, following which an application for a representation order may be made orally or in writing to either the Magistrates' Court or the Crown Court, who are then responsible for generating their own written orders. An appeal order will cover the Crown Court work undertaken by a litigator and one junior advocate.

Applications to the Crown Court are not entered on MAAT.

Example Appeals Representation Order:

<Court Name>
Code <Court Code>
<Court Panel Details>

Representation Order

<Defendant’s Name>
<Defendant’s Address>
<Address Line 2>
<Address Line 3>
<Address Line 4>
<Address Line 5>
<Postcode>

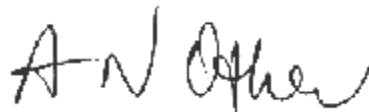
[Case number: <Case number>]
[Born: <Date of birth>]

In accordance with the Access to Justice Act 1999 and the Criminal Defence Service Act 2006 you, [Defendant’s name] were convicted at magistrates’ court on the[date]. You have been granted legal aid to appeal against sentence and/or conviction in the Crown Court in relation to the following offence(s):.

This order covers work undertaken by a litigator and includes representation by one junior advocate.

The litigator appointed is <Solicitor name>, <Solicitor firm name>, <Solicitor firm address>, <Address line 2>, <Address line 3>, <Address line 4>, <Address line 5>, <Postcode>.

A copy of this order has been sent to your litigator/solicitor.



Date: <Date of order>

Designated Officer

Annex 8: Applicants in Custody

If an applicant is in custody we realise there may be difficulties getting evidence to support the application. So, while applicants in custody must still complete the appropriate application forms, the rules on providing evidence have been relaxed.

Applicants in custody will apply for legal aid by providing forms as follows:

- Employed applicants: CDS 14, CSD 15 and CDS 17 (with evidence of out-goings where required). This completes the application and no further action is required.
- Self-employed applicants: CDS 14, CDS 15 and evidence as required by the CDS 15.
- Passported applicants: CDS 14. Applicants on income based Job Seekers Allowance must declare the date they last signed on for this benefit (question 11b on CDS14)
- If the applicant is remanded into custody, they may annotate the NINO section, but this only applies to those remanded by the court and not to those who are in police custody (please see 8.2).

Please see Annex 10 for further advice on 'passported' applications'.

CDS 17

- CDS 17 can be used by employed applicants only (not self employed applicants or partners)
- CDS 17 can be used to replace the evidence requirements associated with CDS 15. CDS 14 and 15 must be completed but where the form asks for evidence, for example a wage slip, CDS 17 can be used.
- CDS 17 can be used if the employed applicant is in custody. The form aims to ensure that people who cannot access the required evidence are not disadvantaged. So it applies to police custody after charge (where bail is refused).
- If CDS 17 has been used, this completes the application so the applicant does not need to supply the original evidence after the event. If the applicant is later released on bail, they need only supply any further Information if their release has led to a change in circumstances that means they no longer qualify for legal aid.
- If an applicant is held in custody and this means they lose their job, they complete CDS 15 stating that they have "lost their job due to being in custody". So they will not need to provide evidence of salary. If bail is granted and the applicant is re-employed, this amounts to a change in financial circumstances and the applicant must report this.
- An applicant detained under mental health law must be treated under the same rules as those governing applicants remanded in custody.
- If a partner's details are required on CDS15 and CDS 17, they must be provided. The partner will not, however, be expected to produce evidence or sign CDS 14, CDS15 or CDS 17 if the applicant is in custody, **unless** the partner is self employed. In this case, the usual evidence is still required.
- CDS17 gives LSC authority to verify the details provided with third parties. We may therefore contact the DWP, HMRC, and, where

necessary, the employer. If we contact an employer, we will do so as discreetly as possible.

- A completed CDS17 should contain sufficient detail to enable checks to be made with an identifiable employer at a later stage. Forms not completed to this standard should not be accepted.

Passported custody cases

Remanded in custody

For applicants who say they get a 'passported' benefit (either as the main claimant or where they are part of their partner's claim) and are detained in custody, you can consider CDS 14 as complete if the NINO is **not** given, provided:

- the applicant has been remanded in custody by the court
- the applicant does not know their NINO (or their partner's NINO, where appropriate)
- no other documentary evidence is available to them.

In these circumstances the solicitor representing the applicant should endorse CDS 14 'remanded in custody by [name] court on [date]; NINO unknown'. This endorsement should be on page 1 of CDS 14 in the NINO box.

To enter this onto the MAAT, process the application as 'passported' with a 'temporary pass' and confirm with "In custody".

The applicant's partner need not sign CDS 14 in these circumstances.

If the applicant has some documentary proof of the passported benefit being claimed, you should accept this without the need for a NINO or DWP check to verify the documentation/status of the claim.

If the application is made in this way, we may seek to verify the information provided. If we find that the information provided was false, the applicant may be prosecuted.

Overnight police custody

Applicants held overnight in police custody (but bailed on their first appearance in court) must supply their NINO, or other documentary evidence, before CDS14 can be considered complete. If they received income based Job Seekers Allowance, they must also declare the date they last signed on for this benefit.

This should allow the solicitor to claim the early cover payment, provided the application is submitted within five days of instruction. This case will still be treated for early cover purposes as a custody case.

Annex 9: Crown court proceedings

A means test is not required for applicants facing trial before the Crown Court, nor for applicants who have been committed for sentence to the Crown Court.

Indictable offences

If the applicant is charged with a section 51 indictable offence, they must complete CDS 14 and Form B. The timetable for the return of Form B is unchanged. The rep order will cover any proceedings in the Magistrates' Court, which are preliminary to the main Crown Court trial.

Either-way offences:

Applications submitted before mode of trial

If the application is submitted before mode of trial is decided, the applicant must complete CDS 14 and CDS 15. If the application succeeds, the rep order will automatically extend to cover proceedings that may subsequently take place before the Crown Court.

If the initial application is refused on means, but at the subsequent mode of trial hearing the applicant elects Crown Court trial or the Magistrates' Court declines jurisdiction, the applicant may re-apply by completing CDS 14 and Form B. The representation order should be dated from the date of re-submission, not back-dated to the original date of initial submission, and will cover the subsequent committal to the Crown Court. Any work prior to the mode of trial hearing cannot be claimed as the applicant was financially ineligible up to this point. It is considered unlikely that a solicitor will claim anything other than a Cat 3 lower standard fee for the committal hearing.

Applications submitted after mode of trial

If the applicant does not submit a legal aid application until after electing Crown Court trial or after the Magistrates' Court has declined jurisdiction, the applicant must submit CDS 14 and Form B. The rep order will cover any subsequent proceedings in the Magistrates' Court including the subsequent committal to the Crown Court. Again, it is expected that the claim will be a Cat 3 lower standard fee.

If the magistrates' court accepts jurisdiction for the case, and the applicant does not elect Crown Court trial, they must complete CDS 14 and CDS 15 to apply for a rep order.

Committal for sentence

If an either-way case being heard in the magistrates' court results in a conviction after trial or a guilty plea, then the person may be committed for sentence to the Crown Court, if the case has such serious features that it should attract a higher sentence than the magistrates can give. In these circumstances the rep order will provide for a litigator and junior advocate in the Crown Court.

If the initial application is refused on means, the applicant may re-apply by completing CDS 14 following conviction. The rep order should be dated from the date of re-submission, not back-dated to the original date of initial submission and will cover the subsequent committal to the Crown Court.

Discharge of case following committal for Crown Court trial

If a case has been committed for Crown Court trial and a rep order has been granted, it will cover any subsequent proceedings in the magistrates' court, which are preliminary to the main Crown Court trial.

If the case is subsequently discharged before the Crown Court trial, the rep order will cover work by the solicitor up to the point of discharge.

Variation of charge following committal

If an applicant has been committed for Crown Court trial, and the charge is subsequently amended to a summary-only offence, the applicant must satisfy the means test for representation to continue before the magistrates' court.

For non-passported applicants:

If the CDS 15 formed part of the original successful application and was submitted before mode of trial was decided, nothing further need be done.

However, if the application was submitted after committal for Crown Court trial, CDS 15 must now be completed.

For passported applicants:

If the passported sections of the original application have been struck through, this information will now have to be provided.

Defendant facing a series of related charges

If a defendant has been charged with a combination of related offences that are tried before the Crown Court as well as the magistrates' court, representation can be provided only for the summary offences if the applicant has already satisfied the means test.

In these cases, the same steps apply as for 'variation of charge following committal' (noted directly above).

Annex 10: Hints and tips on 'passported' applications

We have recently studied a sample of passported applications that were failed after interrogation through the DWP link. This has highlighted several points that solicitors may find it useful to keep in mind.

Why do applications come back as 'undetermined'?

To get a 'pass' through the DWP check, the National Insurance number, the date of birth and the first three letters of the surname must exactly match the DWP records. If any piece of information differs, the result will come back as 'undetermined'. The common problems we identify are detailed below.

National Insurance Numbers (NINOs)

The NINO is in a standard format - two letters, followed by six numbers and a single letter which will always be either A, B, C or D. If the NINO is not in that format, the DWP check will give an 'undetermined' result, which means the application will be refused. It might save some time if solicitors check the NINO format before submitting the application.

If the NINO is obviously wrong, solicitors should complete a CDS 15 giving details of the income from benefits. This will allow HMCS to do a full means assessment, which should result in a pass on means. No evidence of benefits needs to be provided; we will verify receipt of benefits with DWP later.

Dates of birth

About a third of the 'undetermined' results are because the date of birth is wrong. Some of the dates of birth have figures transposed e.g. 06/07/1980 instead of 07/06/1980, but other errors are that the day, the month or the year does not match the DWP records. We recommend that solicitors check the date of birth with the client and from the custody records.

'Check brick' errors

The 'check brick' is the first three letters of the applicant's surname. If these are entered incorrectly, the DWP check will return an 'undetermined' result. We find this most often fails with clients from cultures where the first name and surname are not commonly used.

However, it could be a spelling error, or the surname and first name may have been written on the form the wrong way round. Again, it is worth doing a sense check on how the form has been completed.

Why do applications come back as a 'fail'?

We find the two most common reasons for a 'fail' are as follows:

'Passported' benefit

The applicant is on benefits, but they are not on a 'passported' benefit. Often the applicant is on Incapacity Benefit, Carer's Allowance or receiving the retirement pension. In these circumstances they need CDS 15. We suggest that if solicitors are not absolutely sure that their client is on a 'passported' benefit, they should complete CDS 15. As applicants generally do know how much they get in benefits, we are looking into providing a quick-reference guide to alert solicitors to cases where their client might be on a 'passported' benefit. In this situation, there is no need to provide evidence. We will verify the receipt of benefits with the DWP later.

Suspended claims

The applicant is on a 'passported' benefit, but because they have missed their sign-on date (perhaps because they are in custody) their benefit entitlement has been suspended, and the DWP check will come back as a 'fail'.

To prevent an applicant failing the DWP check because they have been unable to sign on due to them being detained in custody, we have amended the DWP link to allow us to check for benefit entitlement from the date the applicant signed on provided this was within the previous two weeks.

This change only affects applicants in receipt of income based Job Seekers Allowance (other passported benefits do not require the recipients to sign on regularly to continue to receive them.)

We will be reviewing the policy of accepting a CDS 15 in these circumstances once the operational impact of this change has been assessed.

Annex 11: Statutory provisions protecting witnesses from cross-examination

In some cases people who do not qualify for legal aid will choose to represent themselves. Certain circumstances will require HMCS to intervene to protect witnesses.

Cases involving sexual offences

The Youth Justice and Criminal Evidence Act (YCEA) prevents cross-examination by the defendant of victims in sexual offences cases (section 34).

If this possibility arises, the court will ask the defendant to instruct a solicitor/advocate to carry out the cross-examination. If the defendant applies for legal aid to secure public funding this will be means tested. If the defendant either fails to choose a solicitor/advocate or has their application for legal aid refused, the court will consider whether it must appoint one. If it does, the representative will be paid for out of LSC Central Funds.

Cases involving assault

In the case of assault, the prohibition on cross-examination, as provided for by section 35 of YCEA, applies only if the witness is a child or had given evidence chiefly by video recording or in some other way when a child. For these purposes, 'child', in the case of an assault, means a person under the age of 14.

In cases to which section 34 or 35 does not apply, section 36 permits the prosecution to apply for an order prohibiting cross-examination, or permits the court to decide to make such an order.

In either case, the court would invite the accused to appoint a representative to cross-examine the witness.

If, at the end of the period specified by the court, the accused has not appointed a representative, the court will consider whether it should appoint someone itself. If it does, that representative would be paid for out of central funds (YCEA Section 40).

A rep order cannot be granted to an applicant who has failed the means test. This would be beyond the court's powers ('ultra vires').

Annex 12: Interpreter's Costs

Pre-court work

If the solicitor has been subjected to interpreter's costs to assist with work carried out before the first court hearing and even perhaps before charge, the Justices could order payment from central funds, applying the judgment of Lord Justice Auld in R (on the application of Hale) v North Sefton Justices [2002] EWHC 257 (Admin).

Auld defined 'proceedings' very broadly for the purposes of the court agreeing payment from central funds for pre-court work. The question was whether it could reasonably be said that the advice being sought/given was 'in the proceedings' even though a charge had not yet been preferred.

Solicitors who want to submit a claim for pre-court work should agree it with a court officer beforehand. This is current practice when claiming on central funds.

Cost of interpreters in court proceedings

If a defendant requires an interpreter for court proceedings, the court is responsible for arranging the attendance and payment of an independent interpreter (Prosecution of Offences Act 1985 s.19(3)(b)). This is then paid out of central funds.

Cost of interpreters in investigation stage

If an interpreter is required when a solicitor is giving advice during the investigation stage of a case, the interpreter's costs may be included as a disbursement when claiming for payment under the General Criminal Contract (see the LSC Funding Code vol 4 para 4c-147).

Annex 13: Prescribed proceedings

The Access to Justice Act 1999 says that regulations may 'prescribe proceedings' that are defined as criminal so that they can be funded by a representation order under the Criminal Defence Service. These proceedings were previously funded under advocacy and assistance. To be granted funding for representation in the magistrates' court, individuals will have to pass a means test as well as the Interests of Justice (IoJ)

The Representation Authority will apply the IOJ test, which will remain the same. Solicitors will be encouraged to state in detail why the funding is needed. They should apply for a representation order for prescribed proceedings to the magistrates' court hearing the case. They should use a CDS 14 & 15, just as they do when applying for a rep order in other criminal proceedings. These applications will be subject to the full criminal means-testing policy.

The hearings affected are listed in the Criminal Defence Service (General) (No 2) Regulations 2001, (as amended) regulation 3(1) and (2), as follows:

(1) For the purposes of this regulation, 'the 1998 Act' means the Crime and Disorder Act 1998.

(2) The following proceedings are criminal proceedings for the purposes of section 12(2)(g) of the Act:

(a) civil proceedings in a magistrates' court arising from failure to pay a sum due or to obey an order of that court where such failure carries the risk of imprisonment;

(b) proceedings under sections 1, 1D and 4 of the 1998 Act relating to anti-social behaviour orders or sex offender orders;

(ba) proceedings under sections 1G and 1H of the 1998 Act relating to intervention orders, in which an application for an anti-social behaviour order is made in respect of a child;

(c) proceedings under section 8(1)(b) of the 1998 Act relating to parenting orders made where an anti-social behaviour order or a sex offender order is made in respect of a child;

(d) proceedings under section 8(1)(c) of the 1998 Act relating to parenting orders made on the conviction of a child;

(e) proceedings under section 9(5) of the 1998 Act to discharge or vary a parenting order made as mentioned in sub-paragraph (c) or (d);

(f) proceedings under section 10 of the 1998 Act to appeal against a parenting order made as mentioned in sub-paragraph (c) or (d); and

(g) proceedings under sections 14B, 14D, 14G, 14H, 21B and 21D of the Football Spectators Act 1989 (banning orders and references to a court).

- (h) proceedings under section 137 of the Financial Services and Markets Act 2000 to appeal against a decision of the Financial Services and Markets Tribunal;*
- (i) proceedings under sections 2, 5 and 6 of the Anti-social Behaviour Act 2003 relating to closure orders;*
- (j) proceedings under sections 20, 22, 26 and 28 of the Anti-Social Behaviour Act 2003 relating to parenting orders in cases of exclusion from school and parenting orders in respect of criminal conduct and anti-social behaviour;*
- (k) proceedings under sections 97, 100 and 101 of the Sexual Offences Act 2003 relating to notification orders and interim notification orders;*
- (l) proceedings under sections 104, 108, 109 and 110 of the Sexual Offences Act 2003 relating to sexual offences prevention orders and interim sexual offences prevention orders;*
- (m) proceedings under sections 114, 118 and 119 of the Sexual Offences Act 2003 relating to foreign travel orders;*
- (n) proceedings under sections 123, 125, 126 and 127 of the Sexual Offences Act 2003 relating to risk of sexual harm orders and interim risk of sexual harm orders;*
- (o) proceedings under Part 1A of Schedule 1 to the Powers of Criminal Courts (Sentencing) Act 2000 relating to parenting orders for failure to comply with orders under section 20 of that Act;*
- (p) proceedings under section 5A of the Protection from Harassment Act 1997 relating to restraining orders on acquittal; and*
- (q) proceedings before the Crown Court or the Court of Appeal relating to serious crime prevention orders and arising by virtue of section 19,20,21 or 24 of the Serious Crime Act 2007.*

Annex 14: New Functionality within MAAT system

Local Management Reports / Case Transfer / Case Status / Crown Court Indicator

New functionality within MAAT is to be rolled out in a staged approach to assist courts & NCT with managing performance and work flow whilst also enhancing the clarity of the stage of the application within the MAAT system.

Training events have been conducted on Local Management Reports in November for Performance Managers, Court Managers, Supervisors and training materials circulated. Further training events have been conducted Case transfer & case status for front line staff in November, December & January and training materials circulated.

Local Management Reports

A suite of reports on time taken for initial applications & IOJ appeals, flagging incomplete work, monitoring overturned DWP results & user account information is being released.

Case Status Functionality

There are 4 possible statuses for an application one of which should be selected from a drop down list in the Rep Order screen:

- **Current** – Active record which you are currently working on or have completed
- **Awaiting Further Information** – Active record where you have started to process the application through MAAT and discover you need further information to complete the assessment
- **Suspended** – Inactive record applied where further information has not been received for over a month (applications which should be changed to this status can be identified through the Flagging Incomplete Work local management report).
- **Created in error** – Inactive record where it is confirmed the record should not have been created i.e it is a duplicate of another record (see above link to Management reports) – Important Note: There should only be one MAAT record for each rep order.

Inactive records will not appear in any of the Local Management Reports, which are designed to assist HMCS to manage active records. All records (including inactive) will appear in the global management information database used by the LSC.

Where further information is requested the rep order screen includes an optional due date, which you may complete with either a notional date or a date you have agreed with the solicitor, there is also a notes field for any information you think will assist. Completing the optional date may help you to quickly determine which applications should be suspended.

Where records have been suspended due to lack of further information once a month has passed (see above) applications may be amended back to “current” active records where the further information is subsequently received. Remember to update the date of receipt

Case Transfer Functionality

When case transfer goes live a further suite of reports will be released to support tracking the flow of work between Courts & NCT and where necessary case transfer between courts in different areas (re assessments only).

There are 4 types of transfer: - 3 to NCT, which will be returned to the court that sent them and 1 from Area to Area (a specific court) where the record will remain with the receiving court.

Court to NCT – NCT to court – Transfer - Complex / High Risk / Hardship

Where an application needs to be referred to the NCT the application will be transferred in MAAT.

In the “transfer field” in the Rep Order screen, you should select the appropriate reason for transfer from the drop down list which will prompt a transfer section to be revealed. The following information will be displayed:-

Area / Ct you are in / Today's date / User doing transfer

You should select the appropriate destination for the transfer from the drop down list and click on transfer application button.

You will no longer have to send NCT an e-mail to notify them of the referral.

This record will be sitting in a queue for NCT from the following morning and can be identified by NCT within their local management reports.

HMCS should deal with the paperwork as before (see pg 23) and forward to the NCT. When NCT have completed the assessment they will go through the transfer process again to send the application back to the originating court. The next day the record will be sitting in the court report stating returned to HMCS awaiting update.

In order to facilitate prompt case progression, NCT will still let the court know the result by e-mail (or phone). Provided NCT have transferred the application back to the court, the court will be able to go into the record and update on the live system that day. If the record has been formally received and acted on it will not then appear in the Court's local management report the following day.

There is new secure network e-mail address for Courts to use (see page 23).

HMCS Area to Area transfer

MAAT records are read only for everyone, however, updating can only be done by a court in the assigned area. If a legal case has been transferred to a court in another area and subsequently a change in circumstances reassessment is required on the MAAT system the new court will be unable to access the record, therefore a transfer on MAAT is required.

Where you receive reassessment forms for a case which did not originate in your area you should contact the original court and ask them to transfer the record to you. Originating court should follow the instructions above selecting the appropriate destination by CJA & LJA (court) and clicking on “transfer”

The receiving court will need to go into the record and accept/receive the record, from this point the originating Court can no longer amend the record.

Note: Area to area transfers cannot take place on incomplete records

Annex 15: Additional Guidance to assist with Referral of Applications to NCT

This annex is designed to assist HMCS staff when determining whether to refer to NCT. It is hoped this will build on the guidance at pages 19-23 and help Court Staff identify those applications that are complex or show some element of risk. The examples provided are to be used as a guide only and as a useful tool for Court Staff. Please remember the NCT offices are still available for advice whenever necessary.

NCT have experience of dealing with many types of cases, which we would consider to be high risk. The list is not exhaustive, however the examples provided are some of the more common ones.

Previously self-employed or business ceased trading – Likely to be high risk

- Applicants who say they have been self-employed within the last 12 months and have since ceased trading are considered high risk because they may still be receiving income from the business. NCT would like to see proof from the applicant that the business has ceased trading and this would involve them supplying a set of closing accounts and a letter from the Tax Office showing their final Tax liability.
- From local knowledge you may identify that an applicant lives at an address that suggests an aura of wealth particularly if the applicant has declared they previously paid Tax at 40%, which suggests they were high earners.
- In some cases where an applicant has ceased trading, they sometimes take a job which is paid at a much lower figure than the income they were receiving from the business. Examples have been seen where they still have the same housing costs to pay on a much lower income, this indicates an area of risk.
- Applicants often cease trading and make an application for Benefit, which will show as either a fail or as undetermined on a DWP check via MAAT. This indicates an area of risk as The DWP may be asking for clarification from the applicant before determining their entitlement to benefit.

How do I decide if the applicant is self-employed – Complex referral required

- It is sometimes difficult to establish if an applicant is self-employed or not. Some applicants are not sure and often tick the box on the CDS 15 to say they are employed and then complete the self-employed section as well. If an applicant does this the NCT usually ask the applicant to confirm what their employment status is. We do this because it is possible to have a job and also run a small business or be self-employed at the same time.
- Applicants who work in the construction industry are mostly employed on a sub-contract basis, which means they are classed as self-employed because the company they work for provides them with the work and pays them. The Company pays them through a scheme known as the CIS scheme and you will see either a pay statement or a voucher slip. These can be identified because the statement or slip will show a deduction of either 18 or 20% for Income Tax only. A person who is a sub-contractor is responsible for paying his or her own National Insurance. They will not be entitled to sick pay or holiday pay and at the end of each financial year,

they are responsible for submitting their business accounts to HMRC (Inland Revenue)

- Example:

Construction worker, is paid £300 a week by the Company he works for. He is given a sheet each week showing his earnings to be £300 per week and a deduction of £60 per week for Tax; because of this, the applicant thinks the company employs him. He is in fact sub-contracted to the Company because he is responsible for his own National Insurance and notifying HMRC of his tax liability. He can also claim his business expenses back ie van and fuel costs etc by submitting his accounts to HMRC

The applicant is considered to be self-employed for means assessment purposes and as such this is a mandatory referral to NCT.

Company Cars and other Benefits in Kind – Possible High Risk

- If the applicant states they have a company car this will mean that their tax code will be different and they will pay more tax. The applicants Tax code will change according to the type of car they have and the value given to it by HMRC. To assess this we will have to see a copy of the form P11D (sometimes referred to as form P2) listing the taxable value.
- Any other forms of Benefit in kind such as Health Insurance, Luncheon Vouchers, Mobile Phones etc all have taxable values, which need to be calculated in the same way as a company car. Again, we will need to see a copy of the form P11D (see note above) listing the taxable value.
- If you are unsure whether the Benefits in Kind suggest a risk NCT will be able to advise you as whether a referral is appropriate. These can be an indicator of high income or risk because if the applicant is receiving these benefits they are more likely to have a well paid job. These cases also pose a risk because it is possible that the wage slip would show a lower income figure but the amount of tax paid would be significantly higher, due to the benefits in kind, than you would expect them to pay for example:

No Company Car Wages: £20,000 per year
Tax Code: 522

This would mean that you would pay Tax on earnings above £5225.

Company Car declared Wages Declared: £20,000
Company Car Taxable Value: £5225
Tax Code: 0

This would mean that you would pay tax on all of the £20,000 because you will have used up your Personal Tax allowance of £5225 with the value of the Company Car.

If we gave somebody the full tax paid on £20000 and didn't add in the Company Car taxable value as income they may be incorrectly deemed eligible. The applicant should be taxed on the full £25,225 figure

If you are unsure about how to treat a particular Benefits in Kind application then contact the NCT

Agency Workers and Commission only paid staff – Possible High Risk

Some applicants who are employed on temporary contracts by Employment Agencies often work erratic patterns and are sometimes responsible for their own tax and National Insurance payments. Their income can be difficult to work out, as it fluctuates. They can also be charged an agency fee.

Applicants may often work for several agencies so it is not always possible to see what their actual earnings are. If you see that a wage slip provided shows that they have earned a small amount for the periods but have declared high outgoings this is a good indicator that they may work for more than one Agency and may have additional earnings. Consider a referral or telephone your NCT for advice.

Some staff are paid on a commission only basis and the pay slips they provide may not be truly reflective of the amount they have actually received in previous months. Again high outgoings declared compared to what they appear to be receiving can indicate a risk. The year to date figure on pay slips is also a good indication to see if the income on the pay slip provided appears to be unusually low. Consider a referral or telephone your NCT for advice

Example

Wage slip provided for October 2007 shows monthly earnings of £200. The year to date figure (April 2007-September 2007) shows an income of £16,000. For assessments purposes, the applicant has earned £16,000 for the period April-September which equates to £2666.66 per month which would potentially put them over the upper threshold.

Armed Forces - Complex

Applicants serving in the Armed Forces can be referred to the NCT but this is not a mandatory requirement.

When assessing an application from a member of the Armed Forces, you will need to look at the pay slip and see if the applicant is receiving any additional allowances, overseas or housing allowances etc.

It is possible they have a partner who is not living with them due to a posting whose means may need to be included. It is also possible that the applicant may be the partner of someone employed by the Armed Forces who is posted abroad. In examples such as this, they would be separated by circumstances and not through a breakdown of the relationship. Their income should therefore be included in the assessment.

For example:-

Applicant charged with Drink Driving, Husband is posted in Iraq. If he was posted in the UK he would be living with his wife. Wife also works. Both parties would need to have their income jointly assessed. As the Husband is posted in Iraq he will be receiving a lot of

additional allowances but will also be having deductions taken from his pay to cover his living costs whilst out in Iraq.

If you see anything other than a straightforward wage please refer these to the NCT.

High Housing Costs – Possible High Risk

There are cases where an applicant will have high housing costs, whilst the guidance asks for evidence of the payment amount there are some circumstances where the other information on the form would lead you to question whether these costs are actually being paid.

For example: If an applicant has especially high housing costs in relation to their income, declares an income of £15000 per annum but pays a mortgage of £1100 per month. This could be an indication that there is an additional source of income not declared on the form and could be a reason for referral.

Additional Income- How can I identify this?

Many applicants are declaring wages, which do not fully support the kind of lifestyle they live. For example they may live in a particularly wealthy area, paying large housing costs but have a small income.

This can mean that they have additional funds available to them, which should be included in the assessment. This can be found in a variety of ways, for example, They may have a large amount of capital in Bank Accounts, which indicate they may be accessing this on a regular basis. If this is the case we need to ask how much they are taking and over what period.

Some people receive financial assistance from friends and relatives. This could be in the form of food or shelter or in monetary value. If it is monetary value it is important to quantify this so we are able to consider how much this has been worth to the applicant where figures are quoted these should be entered onto the MAAT system.

Some applicants own properties and rent these out. If this is the case they are considered to be high risk and also fall within the ambit of being self-employed. This is because any profit made from the rent is taxable HMRC should be aware of this. You will need to refer any of these to the NCT as a mandatory referral

It is possible that adult children often pay board and lodgings for living with their parents. Again, this is income however this does not need to be declared to HMRC . You are able to include this amount as income

You do not need to refer these to the NCT unless something else leads you to believe there is a risk.

The guidance at page 29 and 30 which previously stated that applicants are not required to provide any evidence and the application should only be referred where there is some doubt about the declaration has been clarified

Nil Income Cases - Possible High Risk

There is no hard and fast rule about nil income cases and at HMCS local or previous knowledge about a clients area is invaluable to the NCT. It could be a client lives in an

affluent area but does not have any income of any type, which indicates a high risk. Any doubt at all may result in you deciding this is a high risk.

It is particularly important if the client has had a recent change of circumstances that has resulted in them declaring nil income

Each case has to be taken on its own merit. HMCS does not have to ask for permission to refer these cases, and the NCT are very happy to receive referrals in Nil Income cases. If you feel you are able to ask questions at the outset please feel free to do so. If not please refer them directly to your NCT.

Additional information about the applicant's residential status has been included, together with a requirement for the applicant to provide more information in the further information box in the CDS 15. More information about this can be found in sections 10.2 and 13.2.

The NCT are happy to provide advice on any cases where you feel questions should to be raised.

Reassessments – Possible High Risk

If a change in circumstances makes a client eligible where a client previously failed these should be scrutinised closely. Where you are in any doubt about the explanation provided then please refer to the NCT. For example:- If the applicant has lost / left their job we would expect to see evidence of this e.g. a dismissal letter or other confirmation that the applicant no longer works for that organisation.

A new check box has been inserted on the front of the CDS 15 to indicate applications where a change of circumstances is being reported.

Annex 16: Guidance on Retention of Files & Evidence

The retention of files is vital for any subsequent assurance work that either the National Audit Office (NAO) or Legal Services Commission (LSC) will undertake. Without the file it cannot be positively confirmed that HMCS staff have conducted the means assessment and interests of justice test correctly. More importantly, without the file and the signature of the applicant and partner (where applicable) the LSC cannot conduct any verification of the income declared by the applicant, this is also particularly important in applications where the applicant has declared they have no income and do not claim benefits.

All Legal Aid Application (files) should be retained for a minimum of 3 years in accordance with the retention policy.

The following papers form part of the file and must always be retained:

A fully completed form CDS14, which is required in every application

Fully completed forms CDS15, CDS16 & CDS17 where applicable

Copies of any supporting evidence provided for either income or outgoings. Any original evidence should be returned to the applicant via their solicitor once the decision on the application has been made

Copy of the representation order made and any amendments to the order if applicable

Decision letter, with reasons for refusal where applicable

All correspondence(s) relating to the application, e.g. any requests made for further information

Additional information supplied to the court for any appeal on the Interests of Justice. It will be necessary for the legal advisor to make a note of the additional information provided, if it is the normal practice at your court to accept verbal appeals in court.

Any CDS15 requesting a re-assessment of means

Where you are asked to provide a file to the LSC for assurance work, it is vital that the file is located and submitted promptly, including any file that might have been transferred to the Crown Court. We have recently agreed a 100% file retention standard with LSC to reflect the importance of providing the file for such purposes.

Before sending the file to LSC you should check to ensure all the relevant documents are contained in the file and investigate any omissions. It is good practice to keep a copy of the papers but as a minimum courts should note on their records that the application has been sent to the LSC.

Further Information regarding documentation

Guidance regarding what you should do with the papers when referring applications to the NCT is set out at page 23 of this manual.

Where an incomplete application is returned to a solicitor by the court the appropriate procedure is set out at page 14 of this manual.

Where a complex or high risk application is returned to a solicitor by the NCT (when it is incomplete or further information has not been provided as requested), the court will have retained a set of photocopied papers. The NCT will notify the court by e-mail that the original papers have been returned to the solicitor. A note should be put on the court file with the photocopied papers to that effect. If the original papers are not returned to the NCT within a month to enable a decision of grant or fail to be made, the record may be suspended in MAAT by the court through their Local Management Report review (although the record should be reactivated if the papers are subsequently received and a grant/fail decision reached)

Annex 17: Applicants with Severe Mental Health Problems

There are some applicants who because of severe mental health problems are unable to give instructions to their solicitor and to understand the declaration on the CDS14 & 15 or are unable to sign the application form. It is likely that these applicants will be detained under the Mental Health Act or will be being kept under medical supervision. It is probable that their cases will be taken out of the legal system but there may be a handful of such cases every year that remain before the criminal courts.

If courts have concerns about the number of applications they are receiving where the applicant has been unable to sign the form him/herself, they should contact their NCT office.

Where the applicant lacks capacity, within the meaning of the Mental Capacity Act 2005, to instruct a solicitor as their representative and to sign the declaration on the CDS14 and 15, the LSC's contract does allow the solicitor to get someone else to sign the application on the applicant's behalf. (Contract Specification part B paragraph 1.3).

The application form may be signed by

- The applicant's attorney or deputy appointed under the Mental Capacity Act 2005
- The applicant's nearest relative or guardian
- A person acting as a Litigation friend
- Any other person who is acting in the applicant's best interest **and** who has sufficient knowledge of the applicant's financial affairs to be able to sign the declaration on the applicant's behalf.

The form cannot be signed by the solicitor or any other member, employee or associate of the solicitor's firm

The person signing the form takes on the responsibility for providing evidence of the applicant's income, so that his or her eligibility for legal aid may be determined. This will include evidence of non-passported benefits.

Solicitors should annotate the application form where the form has been signed by someone other than the applicant and the person signing on the applicant's behalf must print their name and state their relationship to the applicant.

Particular care should be taken to identify who has signed the application and where there is doubt, court staff should ask the solicitor to confirm who the signatory is to ensure that the proper evidence is supplied in cases where the applicant has not signed the form him/herself.

In cases where an applicant does have sufficient capacity to instruct a solicitor and sign the declarations on the CDS14 and 15 forms but is unwilling or physically unable to sign the form themselves special circumstances may apply. A solicitor who wishes to act for a client in this situation should refer the application (insofar as it can be completed) to the National Courts Team.

Annex 18: Magistrates' Court Means Forms Guidance

Notes on how to fill in the forms

CDS14: Application for Legal Aid in Criminal Proceedings

General

You must answer all questions on the form and provide evidence where necessary. If you do not, it may delay your legal aid and you may not receive free legal help from your solicitor.

We can only grant legal aid if you pass both the Interests of Justice and financial eligibility tests.

You must fill in the form in BLOCK CAPITALS and black or blue ink. If we can't read your application, we will return it. You should ask a solicitor for advice if you are not sure how to answer any questions on the form.

If your case will be heard in the Crown Court, you must fill in this form and court Form B only.

More detailed guidance can be found in 'Criminal Legal Aid Application Guide' at www.hmcourts-service.gov.uk

Part A - About you

Note 1 Do I need to provide my National Insurance number (in question 4 on page 1)?

The question is only compulsory if you receive a benefit named in question 11. If you or your partner cannot provide your National Insurance number and you receive a benefit in question 11 you must provide recent evidence instead, which must not be more than 3 months old e.g. a benefit book or notice of entitlement or a letter from Job Centre Plus setting out the benefits you receive.

Note 2 Why do you need to know my age (question 9) and benefit status (question 11)?

If you tick 'yes' to either question 9 or question 11, you are automatically financially eligible for legal aid. But if you tick 'no', you must also fill in form CDS15 and submit it with this form.

Note 3 What happens if I confirm that my partner is involved in the case as a victim, prosecution witness or co-defendant with a conflict (question 12)?

If you tick 'yes', you do not need to fill in any partner details throughout the form.

Note 4 What should I do if my partner is unable to sign the declaration?

If your partner is abroad or in hospital or otherwise unable to sign, for your application to be accepted you must set out the reasons why they are unable to sign and their current contact details in question 18 in Part A.

Note 5 What is the Further Information section for?

You may give us any additional information in support of your claim.

Note 6 What is the Disability and Equal Opportunities Monitoring part for?

You may fill in this part, but it isn't compulsory. Your personal information will be held confidentially and would help us with our statistical monitoring and research.

Part B - Interests of Justice

Note 7 How do I fill in this section?

If you can, you should get help from a solicitor to fill in PART B. This is because they can provide you with the proper legal reasons why you should be granted legal aid.

Your solicitor may wish to consult the guidance by the Justices' Clerks' Society on the Interests of Justice test, which is available at www.legalservices.gov.uk.

Note 8 I don't understand the reasons for wanting representation given in question 4a.

i) It is likely that I will lose my liberty if any matter in the proceedings is decided against me:

Loss of liberty does not include non-custodial sentences but does include remands in custody and prison sentences (including hospital orders). If the entry point for this offence in the Magistrates' guidelines is not custody, please explain why you think custody is likely in this case (for example, relevant previous convictions). Please give dates of relevant convictions, if known.

ii) I have been given a sentence that is suspended or non-custodial. If I break this, the court may be able to deal with me for the original offence:

You should give details of your sentence and its conditions.

iii) It is likely that I will lose my livelihood:

The loss of livelihood should be a direct result of the conviction or sentence - please provide supporting evidence where possible. This would normally refer to your current livelihood, although it can apply if someone is genuinely unemployed for a short period between jobs. If you plan to plead guilty, please explain how legal representation might help you avoid losing your livelihood.

iv) It is likely that I will suffer serious damage to my reputation:

Reputation refers to good character, including honesty and trustworthiness, and is not related to social class or position. 'Serious' damage is judged to happen in cases where the disgrace of a conviction is more than the direct effect of the penalty. If you plan to plead guilty, please explain how legal representation might help you avoid serious damage to your reputation.

v) A substantial question of law may be involved (whether arising from an act, judicial authority or other source of law):

This applies where any matter in relation to the proceedings raises a point of law which you cannot be expected to deal with unaided. Please explain why the question of law is relevant to the case. Questions of fact alone are not relevant. Where possible, please list the cases or laws which give rise to the question of law.

vi) I may not be able to understand the court proceedings or present my own case:

There may be a number of reasons why you may not be able to understand court proceedings or to present your own case. These may include (but are not limited to) mental or physical disability, poor knowledge of English, age or vulnerability. The ability to understand proceedings or to present your own case is also likely to depend on how complicated the case is.

vii) Witnesses may need to be traced or interviewed on my behalf:

You may need witnesses to be traced or interviewed to see whether they can support your case if pleading not guilty or to help with a plea of mitigation (an explanation for the offence given on behalf of a guilty party in order to excuse or partly excuse the offence committed in an attempt to minimise the sentence) if pleading guilty. You should explain why you need legal representation to trace or interview witnesses.

viii) The proceedings may involve expert cross-examination of a prosecution witness (whether an expert or not):

Expert cross-examination is likely to be needed where you are pleading not guilty and you expect the prosecution to call witnesses whose evidence you want to challenge. You are likely to need a lawyer to carry out expert cross-examination on your behalf if the evidence to be given by the prosecution witness is complicated or technical.

ix) It is in the interests of another person (such as the person making a complaint or other witness) that I am represented:

If you are charged with a sexual or violent offence, or where the person making a complaint is a child, it would not be appropriate for you to cross-examine in person. This criterion should not be used to argue that legal representation is in the general interests of your family or of the court.

x) Any other reasons

Please provide full details of any other reasons (which you have not mentioned elsewhere on the form) why you think it would be in the interests of justice that you are represented. For example, legal representation might be justified if you are likely to receive a demanding community sentence if convicted or if defence witnesses need skilful examination.

Part C - Declaration

Note 9 My partner is unable to sign the declaration.

If your partner is unable to sign, please refer to note 4 and question 19 in Part A, please also note, by signing your declaration on this form you are giving the Legal Services Commission your consent to approach and check the information where your partner is contactable.

CDS15: Financial Statement for Legal Aid in Criminal Proceedings

General

You must also fill in Form CDS14 and submit it with this form.

The form must be filled in BLOCK CAPITALS and black or blue ink.

We need to determine whether you are financially eligible. Full information must be given about your own means, and if relevant, your partner's means. Your application will be accepted if your partner is abroad, in hospital or otherwise unable to sign, but you must provide evidence of this.

If you do not provide supporting evidence where we ask, your application will be returned as incomplete.

To find out more about our financial assessment, you can read our guidance. This can be found in the office of any firm of solicitors involved in criminal defence work or online at www.legalservices.gov.uk/criminal/getting_legal_aid/guidance.asp

Part A

Note 10 How will you know how much I earn and how much tax and National Insurance I pay?

We will look at the evidence you provide (e.g. your payslip) to see how much you earn and how much you pay for tax and National Insurance.

Note 11 Which sections do I fill in if I am self-employed?

If you are self-employed you must fill in all sections including **PART B**.

Note 12 What kind of evidence do I provide to prove my income in question 1?

You must provide your most recent available pay slip or slips (no more than 3 months old). If you are employed and in custody but are unable to provide a pay slip, you must fill in Form CDS17: Statement of Truth. You will still need to provide evidence of your income if you work cash in hand.

Note 13 Why do I need to indicate the frequency of my income?

If your wages are irregular or sporadic we will need to look at your cumulative earnings for the tax year to date in order to calculate an estimation.

Note 14 What evidence should I provide if I receive 'benefits-in-kind' for question 1b?

You must provide your last P11 form.

Note 15 Why don't you ask for the amount of housing benefit?

We will ask you to tell us how much your housing costs are after deducting housing benefit, so you do not need to declare how much you receive here.

Note 16 What kind of evidence do I provide to prove any income I receive from a private pension in question 3?

If your pension is £1000 or more you must provide a recent bank statement to show the amount you receive from a private pension.

Note 17 What should I consider when completing question 7?

It is important that you tell us how much rent and/or mortgage is paid by you and/or your partner, after you have deducted the amount of housing benefit received.

Note 18 How do I prove that my housing or childcare costs are particularly high?

If your housing costs are more than £500 each month, you must provide a copy of your tenancy or rental agreement or mortgage statement. If your child-care costs are more than £500 each month, you must provide a receipt of payment or bank statement.

Note 19 What further information can I add on page 5?

The 'Further Information' box on page 5 can be used to clarify any information you have provided elsewhere on the form.

Part B

Note 20 I'm not sure if I am self-employed, in a partnership, or in a directorship.

If you are not sure whether you are self-employed or not, these questions may help:

- Do you give clients invoices for the work you do for them?
- Do you have a number of different clients that you work for?
- Are you responsible for the losses of your business as well as receiving the profits?
- Can you hire other people to do the work you've taken on?
- Have you invested your own money into your business?
- Do you provide major items of equipment which are essential for your work?
- Have you had to fill out a self-assessment tax return for Her Majesty's Revenue and Customs (HMRC)?

If you have answered **yes** to most of these questions then you are probably self-employed. Working for yourself (being self-employed) does not mean that you cannot also work for someone else (as an employee).

Many small businesses are **sole-traders**. This means that you receive all the income generated by the business to keep for yourself or to re-invest. You are in complete control and can make decisions as you choose. Sole-traders also assume complete responsibility for liabilities and debts.

As a sole-trader you are required to make an annual self-assessment tax return to HMRC. You must also keep records showing your business income and expenses. **You must supply both of these when applying for legal aid.**

In a **partnership**, two or more people share the risks, costs and responsibilities of the business. Each partner is self-employed and takes a share of the profits. Usually each partner shares in the decision-making and is personally responsible for any debts of the business. A partnership is not the same as a limited company. You should answer 'Yes' to this question even if you are a **sleeping partner** (that is, you are not involved in the partnership, but you are entitled to a share of the business and its profits).

The partnership itself **and** each individual partner must make an annual self-assessment tax return to HMRC. The partnership must also keep records showing business income and expenses. **You must supply your tax return, the partnership's tax return and the partnership's most recent business accounts when applying for legal aid.**

A **company director** is anyone registered as a director of a limited company (this does not include charities). A company director does not need to hold shares in that company. **You must supply your company's business accounts and your full self-assessment tax return when you apply for legal aid.**

For the purposes of this form **shareholder** means anyone who holds a number of shares in a **private limited company**.

If you have ticked "yes" to question 1s you must provide the most recent copy of your completed business accounts and your full self-assessment tax return form (sa100). It is not sufficient to only supply your tax calculation sheet.

If you are a **subcontractor** you undertake work from a contractor. From 6th April 2007, the Construction Industry Scheme (CIS) places an obligation on contractors to make a monthly return. CIS paper vouchers will not be used after this date. Subcontractors now receive a **statement of payment and deduction**, which **must** be provided when applying for legal aid.

If you work for an **agency**, you may not be classed as an employee of the company you are working for, but you must supply wage slips **for the last three months to date**.

Note 21 What evidence should I provide for question 1s if I have filled in a self-assessment tax return?

You must provide the most recent copy of your completed financial accounts and full self-assessment tax return form (SA100).

Note 22 What should I do if my partner is unable to sign the declaration at the end of the form?

If your partner is abroad, in hospital or otherwise unable to sign, please set out the reasons they are unable to sign and their contact details in question 19 on Form CDS14. By signing the declaration in this form you are giving the Legal Services Commission your consent to approach and check the information where your partner is contactable.

CDS16 Application for Review on the Grounds of Hardship

General

This form is for applicants who want to request a review on the grounds of hardship and can be submitted either together with or after the initial application. The CDS16 can only be submitted in addition to the CDS14 and CDS15. Further guidance on the CDS16 Hardship Review and evidence required can be found at:
http://www.legalservices.gov.uk/criminal/getting_legal_aid/hardship_unit.asp

CDS17 Statement of Truth

General

If you are an employed applicant in custody and are unable to obtain documentary evidence of your salary or wage, you must complete the CDS17 together with the CDS15. A CDS17 cannot be submitted unless accompanied by the CDS15

The CDS17 cannot be completed by **self-employed, unemployed** or **applicants in receipt of benefits**.

Should I give details of my income before or after tax and national insurance?

Applicants must indicate, using the tick box-provided, whether or not the income stated is before or after tax and national insurance.

Annex 19: Hardship Review Guidance

Information and guidance notes for completing form CDS 16: Application for review on the grounds of hardship

1. Background

What is a Hardship Review?

From October 2006 all applicants applying for legal aid in magistrates' court criminal cases are subject to a means test to determine their financial eligibility.

The court in which the case will be heard will carry out the means test. Guidance on the means test can be downloaded from www.legalservices.gov.uk.

Applicants not granted legal aid by the court because they fail the means test can apply to the Legal Services Commission (LSC) to have their financial eligibility reviewed. An application is made on the grounds that the applicant does not have sufficient means to pay for the cost of legal assistance, even though his or her financial resources are such that he or she is not financially eligible for a representation order under the applicable regulations¹. The financial eligibility review is known as the **Hardship Review**.

Who can apply?

In order to make an application for a Hardship Review the applicant must have previously applied to the court for legal aid in a magistrates' court criminal case and been refused on the grounds of financial eligibility.

2. Applying for a Hardship Review

How to apply

All applications for a Hardship Review must be submitted on form CDS16.

There are two stages at which an application can be submitted:

1. The applicant can apply for a Hardship Review after the initial application for legal aid has been refused by the court on the grounds that they are not financially eligible under the means test. Applications should be sent directly to the LSC (see section 2.3 Where to Send Your Application of this guidance for details).
2. If an applicant believes they will not be eligible for legal aid under the means test when the initial application to the court is made, they can submit an application for a Hardship Review at the same time. Form CDS16 and accompanying evidence should be submitted to the court together with the application for legal aid. If the court does not grant the applicant legal aid because they are not financially eligible, the Hardship Review application, together with forms CDS14 and CDS15 will be forwarded to the LSC by the court.

Completing the application form (CDS 16)

It is important that supporting documentation is enclosed with the application form.

Originals are not required – legible photocopies are sufficient. **Appendix A contains an Evidence Checklist for information.**

¹ Criminal Defence Service (Financial Eligibility) Regulations 2006 (S.I.2006 No. 2492)

Applications that do not have the required supporting evidence will be rejected without assessment if the supporting evidence is not provided when requested, within the agreed timescale in line with the LSC's further information policy.

Applicants must complete all relevant sections on the application form except Part A, Solicitor Details and Part B, Section 2 Solicitors' Costs, which must be completed by their instructed solicitor. Please print clearly in black or blue ink.

PART A - APPLICANT AND SOLICITOR DETAILS

Applicant Details

Applicants must complete this section.

Solicitor Details

The instructed solicitor must complete this section.

PART B – REASONS FOR REVIEW ON THE GROUNDS OF HARDSHIP

Section 1: Other sources of funding

Applicants must complete this section.

Applicants must state the amount of cash savings that they have available to fund the costs of their defence in bank, building society and Post Office accounts.

If applicants have a partner whose income was included in their application for legal aid, the amount of cash savings available to their partner should also be included in the appropriate box.

If any amount of an applicant's savings is required to meet an existing liability, evidence of this will need to be provided.

Section 2: Solicitor's costs

The instructed solicitor must complete this section.

2a. Type of offence - please state LSC Offence Code and the offence the applicant has been charged with.

2c. Fee Earner Grade - please state the grade of fee earner that will conduct the case (see Appendix B for details).

2d. Applicable hourly rate - the applicable hourly rate is that in force for the area in which the case will be heard.

Please state both the rate and the area (see Appendix B for details).

NOTE:

In addition to completing Part B, Section 2 of form CDS16, the instructed solicitor must attach a written statement stating the court in which the case will be heard and explaining why the case requires the estimated hours, disbursements and fee earner grade. Solicitor's costs will be assessed for reasonableness at this stage.

Section 3: Denied access to income

Applicants must complete this section if relevant.

Details should be provided of any income, which has been declared on the application, for legal aid (form CDS15) but which has been denied to the applicant e.g. where wages have not been paid.

Details should only be included of income that has been denied to the applicant in the 12 months before their application for legal aid.

If an applicant states that they have been denied access to a source of income they must provide evidence to support this e.g. a copy of a letter from their employer regarding suspension of pay.

Section 4: Extra expenditure

Applicants must complete this section if relevant.

The actual costs of a number of outgoings – Income Tax, National Insurance, housing costs and childcare costs, along with an annual living allowance are already accounted for in the means test.

The Hardship Review has the discretion to take account of outgoings not taken into account in the means test, such as any financial commitments that were taken on before the application for legal aid, and which are not covered by the annual living allowance e.g. loans.

Evidence will be required to show attempts have been made to reduce the monthly payments, defer payments or reschedule loans or credit agreements that will have an impact on the applicants ability to pay for legal assistance e.g. a copy of a letter from the lender refusing any request to reduce/stop payments.

The Hardship Review will generally allow expenditure relating to essential living costs when assessing an applicant's financial circumstance e.g:

- Arrears for rent / mortgage, utilities (gas, water, electricity) and Council Tax that are actually being paid.
Evidence to support this must be provided e.g. a copy of the relevant bill;
- Debt repayments where the applicant is able to provide evidence to show that payments cannot be deferred, payments reduced or the debt rescheduled.
Evidence to support this must be provided e.g. a copy of a letter from the lender refusing any request to reduce/stop payments;
- Any loan necessarily secured on the applicants home that pre-dates the case in question.
Evidence to support this must be provided e.g. a copy of the loan agreement;
- Payments made under the terms of a court order or judgement. Evidence to support this must be provided e.g. a copy of the order;
- Special expenses incurred by sick or disabled people e.g. special diet, medical items or travel expenses to hospital for treatment that have been occasioned by their sickness or disability or that of their partner/dependant children.
Evidence to support this must be provided e.g. proof of payment / a copy of a letter from GP;
- Loan repayments for essential household items such as refrigerators, cookers, washing machines etc where the loan is secured on the item. Evidence to support this must be provided e.g. a copy of the loan agreement.

Section 5: Additional information

Applicants must complete this section if relevant.

This section should be used to inform us of any additional circumstances that are not taken into account elsewhere on the form and which will affect the applicant's ability to pay for the cost of their defence.

For all expenditure supporting evidence must be provided in the form of:

- Written confirmation of the expenditure including, where applicable, the repayment terms of loans; and
- Evidence that payments have been made – in the form of copies of bank statements or other independently verifiable evidence.

PART C – DECLARATION

Authority by partner

If any of the applicants partner's details are included on the form e.g. in Part B, Section 1: Other sources of funding, the partner must sign and date this section.

Declaration by applicant

Applicants must sign and date this section.

Declaration by solicitor

The instructed solicitor must sign and date this section.

NOTE:

Any forms received unsigned will be returned immediately.

What to include

Applications must include a form CDS16 and a copy of forms CDS14 and CDS15 that were originally submitted to the court. Accompanying evidence for both forms CDS15 and CDS16 must also be included.

Where to send your application

If an applicant submits their Hardship Review application at the same time as their initial application for legal aid both applications should be sent to the court where their case will be heard.

If an applicant submits their Hardship Review application directly to the LSC after being refused legal aid under the means test, they should send their applications to either the LSC's Liverpool or Nottingham regional office depending on where the instructed solicitor usually sends their legal aid claims. A list of which regional office applications for Hardship Reviews should be sent to is provided in section 10.6.

CONTACT DETAILS

NCT - Liverpool Office
Legal Services Commission
Cavern Walks
8 Mathew Street
Liverpool
L2 6RE
DX: 14208 LIVERPOOL-1
Tel: 0151 242 5203

NCT - Nottingham Office
Legal Services Commission
Fothergill House
16 King Street
Nottingham
NG1 2AS
DX: 10035 NOTTINGHAM-1
Tel: 0115 9084244

3. Assessing the Application

The National Courts Team (NCT) will carry out the Hardship Review on the basis of information provided by the applicant and their instructed solicitor. All requests for Hardship Reviews must be submitted on **Form CDS16**.

The form must be completed in full and accompanied by supporting evidence where required.

Where the form is incomplete, unsigned or otherwise required information is not provided, the application will be rejected back to the applicant's solicitor. Sufficient information must be held on file to allow the assessment to be checked / audited if necessary. All relevant parties must sign the form as this is a "statement of truth" and we may need to rely on it in the event of fraud.

Before beginning any assessment the form will be checked to ensure:

	Yes	No
Is the form legible?		
Is it the correct form?		
Is the form signed and dated by the applicant (and partner if relevant)?		
Has the appropriate evidence been provided by the applicant?		
Does the form include the solicitor's details including estimate of costs and attached explanation?		
Is the form signed and dated by the solicitor?		

If the answer to any of the above questions is "No" the form will be rejected and returned to the applicant's solicitor.

The Hardship Review provides a safety net for applicants who have not passed the financial eligibility test, but are genuinely unable to pay for their defence costs. This may be because the costs of the case are particularly high or because they have especially high outgoings.

Each Hardship Application will be assessed on its own merits and consideration given to whether the applicant has sufficient means to pay the solicitor's costs. The applicant's financial circumstances will be taken into account, along with the solicitor's costs estimate and any other information provided on the form.

The means test will initially determine the applicant's eligibility for legal aid based on their pre-tax income (weighted to take account of the applicant's family circumstances). If the result of that assessment is inconclusive the full means test will determine the applicant's eligibility based on their disposable income.

The Hardship Review will look at the applicants assessed level of disposable income and take account of:

- Any cash savings available to the applicant (and partner if applicable);

- The estimated costs of the case (provided by the instructed solicitor);
- Any income that the applicant has been denied access to in the 12 months before their application for legal aid;
- Any financial commitments that were taken on before the application for legal aid, that were not taken into account under the means test and which are not covered by the annual living allowance;
- Any further information that the applicant provides that would have an impact on their ability to pay for the costs of legal assistance.

Having taken the above into account the LSC will make a decision on whether the applicant should be granted legal aid.

Computation Period

The computation period used in the Hardship Review will be the same as that applied in the means test i.e. 12 months before the date of the application for legal aid.

This means that only items of expenditure that have occurred within the 12-month period before the application for legal aid will be considered. Where loans or credit agreements have been taken out prior to the application for legal aid, the LSC will take into consideration any future payments remaining.

If the applicant has shown that they have been denied access to a source of income only such amount as has been denied to the applicant during the 12-month period before the application for legal aid will be allowed.

Evidence

The applicant will be required to provide sufficient evidence to support the claims made in the Hardship application form (CDS16) i.e. if the applicant claims they have to make debt repayments they must provide credible and independently verifiable documentary evidence in the form of bank statements / loan agreement to support the claim.

4. Appealing the Decision

An applicant may resubmit a Hardship Review application only in instances where there has been a material change in the circumstances of the case to the extent that the estimate of costs provided by the instructed solicitor is no longer a reasonable assessment of the costs of the case.

In all other instances the Hardship Review's decision on an applicant's financial eligibility is final, and any challenge to it should only be pursued by making an application for Judicial Review.

Applicants should seek legal advice on how to make an application for Judicial Review. If an applicant intends to challenge the decision, a judicial review pre-action letter should be sent to the Legal Director, Corporate Legal Team, Legal Services Commission, 85 Gray's Inn Road, London WC1X 8TX, giving the relevant Case Number and setting out the grounds for challenging the decision.

5. High Court Referral

Regulation 14(5) provides that the LSC, when reviewing the application, may “(a) uphold the decision; (b) grant the individual a representation order; or (c) quash the decision”.LSC.

The LSC’s decision is final and any challenge to it should be by way of an application for Judicial Review. Accordingly, if the LSC upholds the decision of the representation authority (i.e. it considers that the individual **does** have sufficient means to pay for the cost of legal assistance), the individual should be told clearly in the decision letter that that decision is final and any challenge to it must be by way of an application for Judicial Review. The letter must explain that a Judicial Review pre-action protocol letter should be sent to the Corporate Legal Team, clearly quoting the individual’s case number and setting out the grounds of challenge to the decision.

If the individual wishes to challenge the LSC’s decision by way of Judicial Review, they should send their pre-action letter to the Corporate Legal Team, which on receipt, will immediately request the individual’s application from the LSC.

The Corporate Legal Team will review the LSC’s decision. If the Corporate Legal Team considers the decision was made correctly and in accordance with the regulations and guidance, the individual will be told in writing that their proposed application for Judicial Review will be resisted. However, if the Corporate Legal Team considers the decision is susceptible to challenge by Judicial Review, it will try to avoid litigation by referring the application for reconsideration by a senior member of the other LSC regional office. (i.e., if the original decision was made by the LSC’s Liverpool regional office, then it would be referred for reconsideration by the LSC’s Nottingham regional office, and vice versa).

Regulation 14(6) provides the LSC with a discretionary power to refer a question to the Administrative Court on a question of law arising out of the regulations. We anticipate that such referrals will be rare, and used only in exceptional circumstances. The process of referral to the Administrative Court is governed by an amendment to the Practice Direction to Part 54 of the Civil Procedure Rules. The application fee for an application is £400, and the question is dealt with in a summary way on the papers, unless the court orders otherwise. There is no avenue of appeal to a decision made by the court under this power, and this is reflected in the Practice Direction.

Conceivably, the LSC might wish to refer a question to the Administrative Court on a point of principle, which has occurred in a number of different applications, and which the LSC anticipates will recur commonly. The decision on whether to make a referral to the Administrative Court will be taken by the Corporate Legal Team, which will first consider whether the challenge could better be resolved by an application for judicial review before it considers making referral to the Administrative Court.

A challenge to the operation of the regulations or their effect on an individual’s case, or a claim that the regulations breach an individual’s human rights would be better dealt with by way of an application for Judicial Review, where an individual may apply using the urgent procedure if necessary. A judgment of the Administrative Court on a common point of challenge would, in any event, set a precedent and provide guidance for future challenges on that point.

APPENDIX A: Evidence Checklist

Form CDS16	Mandatory / Optional	Who should complete the section?	Evidence Required
Part A			
Applicant and Solicitor Details	Mandatory	Applicant and Solicitor	None
Part B			
Section 1: Other Sources of Funding	Mandatory	Applicant	None
Section 2: Solicitor's Costs	Mandatory	Solicitor	Attached statement from the applicant's solicitor justifying estimate of hours, disbursements and fee earner grade.
Section 3: Denied Access to Income	Optional	Applicant	Written confirmation that the applicant has been denied access to a source of income. The evidence should state the amount of income has been denied the applicant in the 12 months before the application for legal aid.
Section 4: Extra Expenditure	Optional	Applicant	Written confirmation of the expenditure including, where applicable, the repayment terms of loans; and evidence that payments have been made – in the form of copies of bank statements or other independently verifiable evidence.
Section 5: Additional Information	Optional	Applicant and / or Solicitor	For all additional information applicants must supply written, independently verifiable evidence.
Part C			
Declaration	Mandatory	Applicant and Solicitor	None

APPENDIX B: Costs quoted by applicant's solicitor

In addition to completing Part B, section 2 of form CDS16, the instructed solicitor must attach a written statement stating the court in which the case will be heard and explaining why the case requires the estimated hours, disbursements and fee earner grade.

Based on the means test threshold level for disposable income it is proposed that the Hardship Review will operate under the presumption that an unusually expensive case will be one that is estimated to cost in excess of £2,000 (exclusive of VAT).

Hourly rates

The applicant's solicitor is required to submit an estimate of costs based on the Department for Constitutional Affairs' "Guideline Figures for the summary assessment of costs".

All estimates must be in the form of Grade of Fee Earner multiplied by Estimated Hours plus the estimated cost of any disbursements (plus VAT where applicable). Details of offence type and initial plea should also be provided.

The applicable rate is that for the area in which the court that will hear the case is located.

Payment Terms

The Hardship Review will operate under the presumption that the payment terms offered by the applicant's solicitor will not usually be a factor in determining financial eligibility.

However, the applicant may request that the payment terms be taken into account where the costs of the case are estimated as being unusually expensive or where the applicant has unusually high outgoings

Grades of Fee Earner

In order to establish the correct hourly rate to be applied to any claim it is necessary to establish the grade of fee earner that will actually and reasonably carry out the work concerned. The categories of fee earner detailed below are not fixed but will be applied unless circumstances dictate otherwise.

The grades of fee earner have been agreed between representatives of the Supreme Court Costs Office, the Association of District Judges and the Law Society. The categories are as follows:

- Grade A:** Solicitors with over eight years post qualification experience including at least eight years litigation experience. Grade A rates are normally reasonably incurred in indictable proceedings and in serious either way cases, summary cases where the consequences may be grave for the client, in cases involving potentially difficult or dangerous clients, or in cases involving novel or difficult points of law.
- Grade B:** Solicitors and legal executives with over four years post qualification experience including at least four years litigation experience.
- Grade C:** Other solicitors and legal executives and fee earners of equivalent experience
- Grade D:** Trainee solicitors, paralegals and other fee earners.

In accordance with 'The Justices' Clerks' Society Good Practice Guide: Taxation of Costs' we would expect that most of the representatives in Magistrates' Court would fall in the Grade B or C fee earner category.

Band One Grade	A	B	C	D
Guideline Rates	195	173	145	106
Aldershot, Farnham, Bournemouth (including Poole)				
Birmingham Inner				
Bristol				
Cambridge City, Harlow				
Canterbury, Maidstone, Medway & Tunbridge Wells				
Cardiff (Inner)				
Chelmsford South, Essex & East Suffolk				
Fareham, Winchester				
Hampshire, Dorset, Wiltshire, Isle of Wight				
Kingston, Guildford, Reigate, Epsom				
Leeds Inner (within 2 km radius of the City Art Gallery)				
Lewes				
Liverpool, Birkenhead				
Manchester Central				
Newcastle – City Centre (within 2 km radius of St Nicholas Cathedral)				
Norwich City				
Nottingham City				
Oxford, Thames Valley				
Southampton, Portsmouth				
Swindon, Basingstoke				
Watford				

Band Two Grade	A	B	C	D
Guideline Rates	183	161	133	101
Bath, Cheltenham and Gloucester, Taunton, Yeovil				
Bury				
Chelmsford North, Cambridge County, Peterborough, Bury St E, Norfolk, Lowestoft				
Chester & North Wales				
Coventry, Rugby, Nuneaton, Stratford and Warwick				
Exeter, Plymouth				
Hull (City)				
Leeds Outer, Wakefield & Pontefract				
Leigh				
Lincoln				
Luton, Bedford, St Albans, Hitchin, Hertford				
Manchester Outer, Oldham, Bolton, Tameside				
Newcastle (other than City Centre)				
Nottingham & Derbyshire				
Sheffield, Doncaster and South Yorkshire				
Southport				
St Helens				
Stockport, Altrincham, Salford				
Swansea, Newport, Cardiff (Outer)				
Wigan				
Wolverhampton, Walsall, Dudley & Stourbridge				
York, Harrogate				

Band Three Grade	A	B	C	D
Guideline Rates	167	150	128	95
Birmingham (Outer)				
Bradford (Dewsbury, Halifax, Huddersfield, Keighley & Skipton)				
Cumbria				
Devon, Cornwall				
Grimsby, Skegness				
Hull Outer				
Kidderminster				
Northampton & Leicester				
Preston, Lancaster, Blackpool, Chorley, Accrington, Burnley, Blackburn, Rawenstall & Nelson				
Scarborough & Ripon				
Stafford, Stoke, Tamworth				
Teeside				
Worcester, Hereford, Evesham and Redditch				
Shrewsbury, Telford, Ludlow, Oswestry				
South & West Wales				

London Band Grades	A	B	C	D
City of London: EC1, EC2, EC3, EC4	380	274	210	129
Central London: W1, WC1, WC2, SW1	292	222	181	116
Outer London: All other London post codes: W, NW, N, E, SE, SW and Bromley, Croydon, Dartford, Gravesend and Uxbridge	210-246	158-210	152	111

APPENDIX C: The Full Means Test

Disposable income: £3398 threshold

Where the Gross equivalised income of an applicant falls between the initial filter and lower threshold the full means test will be applied to establish the applicant's disposable income. Disposable Income will be assessed using the applicant's actual income (not the equivalised figure) after making deductions for:

- Any income tax paid or payable in respect of the period of calculation;
- Any national insurance contributions payable for the period of calculation;
- Housing costs;
- Child care fees;
- Maintenance paid to a former partner; and
- An annual living allowance adjusted according to the individual circumstances of the applicant.

These are the only outgoings that are allowed.

The figure assessed will be measured against a disposable income threshold of £3398. If the applicant's income exceeds this figure they will be expected to pay for their own defence in the Magistrates' Courts.

Detailed guidance is provided on each of these allowances further on in this guidance.

Tax and National Insurance

The following sums should be deducted from total income when calculating the disposable income for the computation period:

- (a) Any income tax paid on that income.
- (b) Any National Insurance contributions paid or payable on that income under Part I of the Social Security (Contributions) Act 1992.

Housing Costs

In calculating disposable income an allowance can be made in respect of either:

- (a) The mortgage or rent payable for the period of calculation in respect of the applicant's main dwelling; or
- (b) The cost of the applicant's living accommodation.

An allowance will also be given for any Council Tax paid or payable in respect of the period of calculation.

Mortgage / Rent

The amount allowed for mortgage or rental payments should be net of housing benefit.

The rent or mortgage repayments can be allowed in full, however where housing costs declared are in excess of £500 per month (£6000 per annum) the applicant is required to provide evidence of the payment amount.

The amount to be allowed in the assessment is the rent or mortgage payable during the computation period. In practical terms it will not be easy to identify separately arrears of mortgage payments, as the applicant will generally declare these as a single revised monthly mortgage payment. If the applicant has already come to an arrangement to pay off arrears by increasing their weekly / monthly rent or mortgage payment, then, provided those increased payments are actually being paid by the applicant, that increased rent or

mortgage payment can be treated as the rent or mortgage payable in the assessment. This is different from a situation whereby an applicant has commenced paying off arrears in order to reduce their disposable income with a view to qualifying for funding. Such a situation would be regarded as intentional deprivation of income and only the normal monthly rent or mortgage payments should be allowed in the assessment in such circumstances. Mortgage repayments include the monthly premiums of any linked life insurance/endowment policies, PEPs, or other instruments which will be used to repay the capital sum borrowed.

No allowance is given for water rates, insurance premiums and other associated housing costs, these are not allowable deductions in the assessment. If there is a clearly identifiable amount relating to water rates included in the rent payable by the applicant then these should not be included as rent. However it is not necessary for the Representation Authority to routinely seek clarification as to whether or not the rent declared by the applicant includes a sum for water rates.

Accommodation costs

Where an applicant indicates they are paying board and lodgings then only the amount in respect of accommodation can be allowed, therefore the Representation authority will deduct from the total board and lodgings figure the amount declared on form CDS15 that is for food. In those cases where informal arrangements exist, for example lodging with a close family member, and the amount in respect of food cannot be specified by the applicant then it should be assumed that half of the declared board and lodging element is for accommodation, the remainder is assumed to be for food and other incidentals not covered by the regulations.

Where the applicant states expenditure on housing costs is more than £500 per month (or annual equivalent) they are requested to provide supporting evidence of the payment advised on the form. A further risk factor arises where the housing cost is advised to constitute more than one third of the applicant's gross income.

Maintenance in payment

In calculating disposable income an allowance can be made for genuine maintenance payments made by the applicant and / or his current partner to an estranged / former spouse or civil partner, a child or relative, who is not in any such case a member of the household of the applicant. An allowance can be made whether the payments are being made under a court order, CSA ruling or voluntary agreement. Only payments actually made can be taken into account. This allowance should be the expenditure incurred during the computation period. There are no set limits to the amount that can be allowed under this heading for genuine payments. Maintenance payments could include simply paying an ex-partner's household bills or mortgage.

Child Care Costs

An allowance can be made for actual child minding expenses (paid to a registered care provider) incurred by the applicant during the computation period. Unless there are exceptional circumstances i.e. disability of the child, it would only be correct to make such a deduction in respect of a dependant child aged 15 or under.

"child care costs" means the costs of care which is provided by one or more of the following care providers –

- (a) a school on school premises, out of school hours,
- (b) a local authority, out of school hours –

- (i) for children who are not disabled, in respect of the period beginning on their eighth birthday and ending on the day preceding the first Monday in September following their 15th birthday;
 - (ii) for children who are disabled, in respect of the period beginning on their eighth birthday and ending on the day preceding the first Monday in September following their 16th birthday;
 - (c) a child care provider approved by an organisation accredited by the Secretary of State under the scheme established by the Tax Credit (New Category of Care Provider) Regulations 1999;
 - (d) persons registered under Part XA of the Children Act 1989;
 - (e) persons referred to in paragraph 1 or 2 of Schedule 9A to the Children Act, in schools or establishments referred to in those paragraphs;
 - (f) persons prescribed in regulations made pursuant to section 12(4) of the Tax Credit Act 2002;
- other than costs paid in respect of the child's compulsory education or by a claimant to a partner (or vice versa) in respect of any child for whom either or any of them is responsible in accordance with regulation 14 of the Housing Benefit (General) Regulations 1987, or in respect of care provided by a relative of the child wholly or mainly in the child's home;

Where the applicant has declared expenditure on child care which is more than £500 per month he / she is requested on form CDS14 to provide supporting evidence (e.g. copy of bank statement, copy of agreement/contract with childcare provider) to support the figures stated.

Cost of Living Allowance

A standard amount representing cost of living expenses in respect of the period of calculation is deducted. The amount is £5676 for a single person.

Where the individual has a partner or has children living in his household, an amount calculated in accordance with the Equivalence scale.

N.B. It is the age of the child at the date of application i.e. at the end of the period of calculation, which determines which rate is appropriate.

This allowance takes into account food, energy bills and other basic living allowances.

Glossary

AW	Aura of Wealth
CDS	Criminal Defence Service
CJS	Criminal Justice System
DCA	Department for Constitutional Affairs
DoB	Date of Birth
DWP	Department for Work and Pensions
EX	Expenditure
HMCS	Her Majesty's Court Service
HMRC	Her Majesty's Revenue and Customs
INC	Income
IoJ	Interests of Justice
JCS	Justice Clerks' Society
LPB	Lone Parent Benefit
LSC	Legal Services Commission
MAAT	Means Assessment and Appeals Calculator
NAO	National Audit Office
NCT	National Courts Team
NI	National Insurance
NINO	National Insurance number
SLA	Service Level Agreement

Definitions

Freezing order

An order made by the court against an individual, preventing them having access to their assets.

The representation authority

The agency (HMCS or LSC) that has the responsibility of processing the legal aid application.

Aggregation of means

The total amount of the applicant's income and their partner's (where applicable) to be included in the assessment.