

Part B

The Funding Code: Procedures

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CONTENTS

PART B

	Paragraph
B. The Funding Code: Procedures	
The Funding Code	
Part 2 – Procedures	3B-001
Part A – General	3B-001
A1. Scope of the Procedures	3B-001
A2. Varieties of Funded Work	3B-002
A3. Funding for Each Level of Service	3B-003
A4. Suppliers	3B-004
A5. Regional Directors	3B-005
A6. Funding Review Committee <u>Adjudicator</u>	3B-006
A7. Other Persons and Committees	3B-007
A8. Decisions under the Code	3B-008
A9. Guidance	3B-009
A10. Computation of Time	3B-010
A11. Service of Documents	3B-011
A12. Interpretation	3B-012
Part B – Controlled Work	3B-013
Section 1 – Scope of Part B	3B-013
B1. Scope of Part B	3B-013
Section 2 – All Controlled Work	3B-014
B2.1 Application Form	3B-014
B2.2 Attendance on a Client’s Behalf	3B-015
B2.3 Application from a Child	3B-016
B2.4 Application on behalf of a Child or Patient	3B-017
B2.5 Assessment of Means	3B-018
B2.6 Misrepresentation	3B-019
B2.7 Refusal of Controlled Work – Criteria	3B-020
Section 3 – Legal Help and Help at Court	3B-021
B3.1 Postal Applications	3B-021
B3.2 Upper Financial Limit	3B-022
B3.3 Previous Legal Help	3B-023
Section 4 – Help at Court Only	3B-024
B4.1 Matter Start and Applications	3B-025
Section 5 – Controlled Legal Representation Only	3B-026
B5.1 Grant of Controlled Legal Representation	3B-027
B5.2 Right of Review	3B-028
B5.3 The Controlled Legal Representation Financial Limit	3B-029
B5.4 Application by Post	3B-030
Part C – Certificated Work	3B-031
Section 1 – General	3B-031
C1.1 Scope of this Part	3B-031
C1.2 Solicitor and Client Obligations	3B-032
Section 2 – Applications	3B-033
C3. The Client	3B-033
C4. The Solicitor	3B-034
C5. The Regional Director	3B-035
C6. Form of the application	3B-036
C7. Special Children Act proceedings	3B-037
C8. Clients resident outside the United Kingdom	3B-038
C9. Applications on behalf of children and patients	3B-039
C10. Financial Eligibility	3B-040
Section 3 – Emergency Representation	3B-041

C11. Applications for emergency representation	3B-041
C12. Emergency and substantive certificates	3B-042
C13. The duration of emergency certificates	3B-043
Section 4 – Issue of Certificates	3B-044
C14. Issue where no contribution is payable	3B-044
C15. Offer of certificate where contribution payable	3B-045
C16. Notice of issue of certificates	3B-046
C17. Authorised Representation	3B-047
C18. Contributions from other persons or sources	3B-048
Section 5 – Refusal of Applications	3B-049
C19. Notification of Refusal	3B-049
C20. Refusal of Authorised Representation	3B-050
C21. Review by a Regional Director	3B-051
C22. Review by the Funding Review Committee <u>Adjudicator</u>	3B-052
Section 6 – Referral to Special Cases Unit	3B-053
C23. Criteria for Referral	3B-053
C24. Powers of Special Cases Unit	3B-054
C25. Case Plans	3B-055
C26. Contracting	3B-056
Section 7 – Referral to Family Mediation	3B-057
C27. Scope of the Mediation Requirement	3B-057
C28. Specified Proceedings	3B-058
C29. Exemptions	3B-059
Section 8 – Abuse of the Scheme	3B-060
C30. Repeated Applications for Certificates	3B-060
C31. Power to make Prohibitory Directions	3B-061
Section 9 – Form of Certificates	3B-062
C32. Matters Specified on a Certificate	3B-062
C33. Limitations and Conditions	3B-063
C34. Levels of Service	3B-064
C35. Proceedings	3B-065
Section 10 – Amendments	3B-066
C36. General Powers to Amend Certificates	3B-066
C37. Amendment by Authorised Solicitor	3B-067
C38. Effective Date of Amendment	3B-068
C39. Procedure on Amendment	3B-069
C40. Review of Amendments	3B-070
Section 11 Representations	3B-071
C41. Procedure for Making Representations	3B-071
Section 12 – Reporting Obligations	3B-072
C42. Duties of the Client	3B-072
C43. Duties of the Solicitor	3B-073
C44. Duties of Legal Representatives	3B-074
C45. Referral from the Court	3B-075
Section 13 – Decisions in Principle	3B-076
C46. Decisions Affecting Several Cases	3B-076
C47. Referral to Public Interest Advisory Panel	3B-077
Section 15 – Withdrawal of Funding	3B-081
C51. Power to Revoke or Discharge a Certificate	3B-081
C52. Revocation or Discharge of an Emergency Certificate	3B-082
C53. Revocation or Discharge on Grounds of Conduct	3B-083
C54. Discharge on Financial Grounds	3B-084
C55. The Show Cause Procedure	3B-085
C56. Notification of Discharge or Revocation	3B-086

Contents

C57. Review by the Regional Director	3B-087
C58. Review by the Adjudicator	3B-088
Section 16 – Adjudicator	3B-089
C59. Jurisdiction of the Adjudicator	3B-089

C60. Hearings Before the Adjudicator	3B-090
C61. Power to Determine Certain Issues	3B-091
C62. Power to Refer Decisions for Reconsideration	3B-092
C63. Further Information	3B-093
C64. Procedure Following a Determination by the Adjudicator	3B-094
C65. Reconsideration by the Regional Director	3B-095
Part D – Special Procedures	3B-096
Section 1 – Multi-Party Action (“MPA”) Procedures	3B-096
D1. Scope of MPA Contracts	3B-096
D2. Decisions under MPA Contracts <u>Decisions concerning MPA Funding</u>	3B-097
D3. Tendering for MPA Contracts	3B-098
Section 2 – Family Mediation	3B-099
D4. Applications for Family Mediation	3B-099
D5. The Family Mediation Code of Practice	3B-100
Section 3 – Committee Procedures	3B-101
D6. Scope of these Rules	3B-101
D7. Committee Hearings	3B-102
D8. Committee Decisions	3B-103
D9. Administration	3B-104
Section 4 – Exceptional Funding	3B-105
D10. Scope of these Rules	3B-105
D11. Form of Application	3B-106
D.12 Exceptional Funding Decisions	3B-107

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--- Looseleaf Page Break (6) ---

The Funding Code

Part 2 – Procedures

3B-001

Part A – General

A1. Scope of the Procedures

- 1.1. These are procedures for making decisions about the funding of services by the Commission as part of the Community Legal Service.
- 1.2. These Procedures apply from 1 April 2000. They do not apply to decisions about the funding of any services which were granted before that date.
- 1.3. The amendments that have been made since 1 April 2000 are summarised in the Annex to these Procedures. These amendments do not affect services granted before they came into force.

3B-002

A2. Varieties of Funded Work

The Commission may fund services as part of the Community Legal Service in one of the four following ways:

- (i) Controlled Work ~~– work carried out under the Commission’s General Civil or Criminal Contracts (or by a Public Defender) or through CLS Direct, which falls within the~~ services specified as Controlled Work under Rule 3 and which are funded from the Controlled Work Budget.

~~The~~ Contracts for Controlled Work may control the number of cases started in any period. Controlled Work is subject to Part B of these Procedures.

- (ii) Licensed Work – work other than Controlled Work which is carried out either:
 - (a) under the Commission’s General Civil Contracts; or
 - (b) as ‘Associated CLS Work’ under the Commission’s General Criminal Contracts or by a Public Defender.

Applications for Licensed Work must be made to or registered with the Commission in each case. Licensed Work is subject to the procedures for certificated work in Part C, together with such obligations as are specified in the contract.

- (iii) Individual Case Contracts – work carried out under a contract with the Commission which covers only an individual case. For this purpose an individual case may comprise a number of connected proceedings (for example a potential Multi Party Action). Work under individual case contracts is subject to the procedures for certificated work in Part C, except to the extent that the contract provides otherwise. Relevant procedures in Part D also apply.
- (iv) Other Grant or Contract Work – these are services under grants or contracts other than the Commission’s General Civil or Criminal Contracts or Individual Case Contracts. Such services are subject to any conditions contained in the relevant grant or contract, directions or orders by the Lord Chancellor and relevant procedures in Part D.

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3B-003

A3. Funding for Each Level of Service

The levels of service set out in paragraph 1.1 of the Criteria shall be funded in the following ways:

Controlled Work

- (•) All Legal Help not covered by Other Grant or Contract Work

- (•) All Help at Court
- (•) Controlled Legal Representation, namely Legal Representation ~~before~~:
 - (i) [before](#) a Mental Health Review Tribunal;
 - (ii) [before](#) the Asylum and Immigration Tribunal; ~~or~~
 - ~~(iii)~~ ~~(iii)~~ [before](#) the High Court, in relation to applications under section 103A of the Nationality, Immigration and Asylum Act 2002; ~~or~~
 - ~~(iv)~~ [provided by a Community Legal Advice Centre or Network and authorised under a contract to be funded as Controlled Work](#)

Licensed Work

- (•) All General Family Help;
- (•) All Help with Mediation;.
- (•) All Legal Representation not covered by Controlled Work, Individual Case Contracts or applications under section 6(8)(b) of the Act;

Individual Case Contracts

- (•) Multi-Party Action Contracts.
- (•) High Cost Case Contracts.
- (•) Exceptional Case Contracts.

Other Grant or Contract Work

- (•) Family Mediation.
- (•) Applications to the Commission under Section 6(8)(b) of the Act.
- (•) Such other services as may be authorised by specific orders or directions from the Lord Chancellor.
- [Applications for services which are ancillary to Other Grant or Contract Work](#)

3B-004

A4. Suppliers

- 4.1. Services funded by the Commission as part of the Community Legal Service may only be carried out by persons authorised to supply such services under a contract with or grant from the Commission.

3B-005

A5. ~~Regional~~ Directors

- 5.1. ~~For the purpose of these Procedures, the Commission will specify regions in England and Wales and will~~ appoint one or more Directors for the purpose of carrying out functions under these Procedures, a Regional Director for each such region.
- 5.2. ~~Regional~~ Directors will carry out functions on behalf of the Commission where such functions are given to them under these Procedures or Regulations or are delegated to them by the Commission.

3B-006

A6. ~~Funding Review Committee~~ Independent Funding Adjudicators

The Commission will appoint ~~a Funding Review Committee~~ Independent Funding Adjudicators to carry out functions under these Procedures, ~~either in respect of particular regions or generally.~~

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3B-007

A7. Other Persons and Committees

- 7.1. The Commission will appoint:
 - (i) a Director for the Special Cases Unit;
 - (ii) a Public Interest Advisory Panel;
 - (iii) a Multi-Party Action Committee;
 - (iv) such other committees or panels as it sees fit for the purpose of carrying out functions under these Procedures.
- 7.2. Committees and panels carrying out functions under the Procedures are subject to the rules set out in Section 3 of Part D.

3B-008

A8. Decisions under the Code

- 8.1. Subject to paragraph 2 and unless the Code specifies otherwise, the Commission, acting through its ~~Regional~~ Directors, shall be responsible for decisions under the Code, including exercising any judgment or discretion under the Criteria or Procedures.
- 8.2. Subject to any Order under Sections 3(5) or 6(4) of the Act, the Commission may by contract delegate decisions or responsibility for any decisions under the Code and such contracts shall specify the circumstances in which any such power may be exercised.

- 8.3. Where decisions are delegated under paragraph 2 above they shall be recorded in such manner as the Commission may specify.

3B-009

A9. Guidance

- 9.1. All persons making decisions under the Code shall have regard to guidance issued by the Lord Chancellor under Section 23 of the Act or by the Commission.
- 9.2. Guidance issued by the Lord Chancellor or the Commission shall be published in such form as the Lord Chancellor or the Commission consider appropriate.
- 9.3. Paragraph 9.2 does not apply to guidance given by the Commission in relation to individual cases.

3B-010

A10. Computation of Time

- 10.1. Where any time limit is specified under these Procedures that limit may be extended by the ~~Regional~~ Director as he or she thinks fit, even after the original time limit has expired.
- 10.2. Where, after exercising a delegated power, an Authorised Solicitor fails to submit forms or information to the ~~Regional~~ Director within the time limit specified by these Procedures, he or she shall provide the ~~Regional~~ Director with a written explanation for the delay.

3B-011

A11. Service of Documents

- 11.1. Where the Procedures provide for documents to be served, such service may be carried out by personal delivery, post, document exchange, fax or e-mail, save where the Commission or these Procedures specify a particular form of service for particular purposes.
- 11.2. Where a person to be served under these Procedures is acting by a solicitor, documents may instead be served on the solicitor unless the Code specifies otherwise.
- 11.3. Where a person is not acting by a solicitor documents may be served at that person's residence, last known residence or business address.

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- 11.4. Any document served by the Commission by post or document exchange shall be deemed to be served two days after it is posted or left at the document exchange, unless the contrary is proved.

3B-012

A12. Interpretation

- 12.1. Terms defined in the Act or in Section 2 of the Criteria have the same meanings in these Procedures.
- 12.2. These Procedures are divided into four Parts. References in any Part to a Rule mean a Rule in that Part, unless otherwise stated.
- 12.3. References in any Rule to a paragraph mean a paragraph within that Rule, unless otherwise stated.
- 12.4. Unless the context otherwise requires, the following definitions apply:

“Adjudicator” means one or more Independent Funding Adjudicators appointed under Rule 6

“Authorised Advocate” and “Authorised Litigator” have the meanings given in Section 119 of the Courts and Legal Services Act 1990.

“Authorised Representation” means Legal Representation (other than Controlled Legal Representation) or ~~Approved~~General Family Help in respect of which a solicitor has been authorised by contract to determine applications on behalf of the Commission and “Authorised Solicitor” means a solicitor so authorised

“Certificate” means a certificate issued under Part C of these Procedures and, unless the context otherwise requires, this includes an emergency certificate.

“CLS Direct” means arrangements by the Commission for the provision of legal advice and information by telephone or Internet.

“Condition” means a condition on a certificate which must be complied with by the solicitor or the client.

“Controlled Legal Representation” means Legal Representation specified as controlled work under Rule 3 above

“Controlled Work Budget” means any budget set by the Lord Chancellor for funding of the services specified as Controlled Work under Rule 3 above

“Court” means any court or tribunal in which advocacy may be funded in accordance with Schedule 2 of the Act.

“Director” means any Director appointed by the Commission under Rule 5, and includes any person authorised to act on his or her behalf, other than an Authorised Solicitor. Note that the Director of the Special Cases Unit may exercise any of the powers of a Director in relation to cases referred to the Unit.

“Duty Solicitor” means a solicitor attending a court under a contract to provide Legal Help and Help at Court for clients whose cases are before that court.

“*Early Neutral Evaluation*” means the referral of an issue to a neutral legal representative or expert who provides an opinion on the issue which is made available to the parties but is not legally binding upon them.

“*Exceptional Case Contract*” means a contract (other than a High Cost Case or Multi Party Action Contract) under which Legal Representation is provided for an individual case by a supplier who is not authorised to carry out the work applied for under a General Civil Contract or General Criminal Contract.

~~“*the FRC*” means the Funding Review Committee established by the Commission under Rule 6.~~

“*Generic Issue*” means an issue within an MPA or potential MPA which is common to all clients or to a particular group of clients.

“*Generic Work*” means work in an MPA in pursuing the Generic Issues, and includes:

- (i) the selection, preparation and trial of lead issues and lead cases;
- (ii) the co-ordination of the action on behalf of clients;
- (iii) any work determined to be Generic Work by the Commission.

“*Housing Proceedings*” means proceedings covered by Section 10.1 of the Criteria.

“*Legal Representative*” means any authorised litigator or authorised advocate.

“*Levels of Service*” means a level of service defined in Section 2.1 of the Criteria. If a level of service can take two alternative forms (for example Legal Representation can be either Investigative Help or Full Representation), each form counts as a separate level of service in these Procedures.

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“*Limitation*” means a limitation on a certificate which defines or limits the work which can be carried out under that certificate, either by specifying that work on the certificate or by placing a limit on the costs which can be incurred under it.

“*Litigation Friend*” has the meaning given in Part 21 of the Civil Procedure Rules (or any equivalent term in relation to courts or tribunals which are not covered by those Rules).

“*MPA Committee*” means the Multi-Party Action Committee appointed by the Commission under Rule 7 above.

“*MPA Unit*” means that part of the Special Cases Unit which the Commission has specified as responsible for MPAs.

“*Offer to Settle*” means an offer to settle under Part 36 of the Civil Procedure Rules.

“*Public Defender*” means a person who is employed by the Commission to provide services as part of the Criminal Defence Service under sections 13(2)(f) or 14(2)(f) of the Act, or any person acting on his or her behalf.

~~“*Regional Director*” means any Regional Director appointed by the Commission under Rule 5, and includes any person authorised to act on his or her behalf, other than an Authorised Solicitor. Note that the Director of the Special Cases Unit may exercise any of the powers of a Regional Director in relation to cases referred to the Unit.~~

“*Rules of Court*” means the Civil Procedure Rules, or equivalent rules in any court or tribunal which is not subject to those Rules

“*Solicitor*” includes any authorised litigator.

“*Substantive Application*” means any application for Legal Representation under Part C of these Procedures, other than an application for Emergency Representation.

“*Substantive Certificate*” means any certificate issued under Part C of these Procedures other than a certificate which covers only Emergency Representation.

“*Supplier*” means any person providing Controlled Work under these Procedures.

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Part B – Controlled Work

Part B – Controlled Work

3B-013

~~SECTION 1 – SCOPE OF PART B~~

B1. Scope of Part B

1.1. This Part contains the Funding Code Procedures which apply to Controlled Work.

1.2. The Rules in this Part do not apply to services provided through CLS Direct or by a Duty Solicitor

~~1.2. The Rules in Section 2 apply to all Controlled Work.~~

~~1.3. The Rules in Section 3 apply to Legal Help and Help at Court, except for Rule 3.1 which applies only to Legal Help.~~

~~1.4. The Rule in Section 4 applies to Help at Court only.~~

- ~~1.5. The Rules in Section 5 apply to Controlled Legal Representation only.~~
- ~~1.6. Rules 3.2, 3.3 and 4 apply only where Legal Help or Help at Court is provided under a contract which includes those Rules. Where Controlled Work is carried out under the Commission's General Civil Contract (Not for Profit) the Rules in this Part apply as set out in that contract.~~
- ~~1.7. The Rules in Sections 2, 3, 4 and 5 are contractual obligations contained in the Contract Specification which forms part of the Commission's General Civil Contract (Solicitors). References to "You" in these Rules means the solicitor or contracted supplier providing services under the contract, and "We" or "Us" means the Commission.~~
- ~~1.8. Rules in the Specification which do not include procedures for the making of decisions about the funding of Controlled Work are not included in these Procedures. Where the numbering of Rules in the Specification differs from numbering in this Part, appropriate cross references are provided.~~
- ~~1.9. Save where terms are defined in Part A of the Procedures, terms in Part B should be interpreted in accordance with the contract.~~

~~SECTION 2 — ALL CONTROLLED WORK~~

3B-014

B2.1 Applications Form

~~2.1 Unless otherwise specified by the Commission, all applications for Controlled Work shall be made to the supplier.~~

~~2.2 Except as otherwise provided **in these Procedures or** in the **Specificationcontract**, **you should not provide** Controlled Work **may not be provided** unless the client has attended **youthe supplier** in person and completed an application on **the relevant a** form approved by **usthe Commission**.~~

~~The completed form must be kept by you on the file, and its correct completion will be checked upon audit.~~

~~We may prescribe different forms for different categories of matter or client and for different levels of help.~~

~~We may amend the form or forms from time to time upon giving reasonable notice to you.~~

3B-015

B2.23 Attendance on a Client's Behalf

~~3.1 Where a client cannot for good reason attend on **a supplieryou** in order to apply for Controlled Work, that client may authorise another person ("the authorised person") to attend on their behalf.~~

~~The authorised person must provide you with information and satisfactory evidence in support necessary to assess the client's financial eligibility.~~

~~Where Legal Help is to be provided in relation to a will, then the authorised person must supply you with the information necessary to comply with any Guidance.~~

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~~Save where the Controlled Work is provided to a client whose physical or mental disability renders it impracticable to attend the office, no member, associate or employee of your firm (or family member of such member, associate or employee) may act as an authorised person for the purposes of this Rule.~~

~~3.2~~ You may not accept aAn application for Controlled Work may not be accepted from an authorised person on behalf of a client unless that client is, at the time when the authorisation is given, either present in or resides in ~~England and Wales~~the European Union.

3B-016

B2.34 Application from a Child

~~You may not accept a~~An application for Controlled Work may not be accepted from a child unless:

- (a) the Controlled Work is in relation to proceedings which the child is entitled to begin, prosecute or defend without a litigation friend, next friend, or guardian ad litem; or
- (b) there is good reason why any of the persons referred to in Rule ~~2.45~~ below cannot seek advice on the child's behalf and the child is old enough to give instructions and understands the nature of the Controlled Work.

3B-017

B2.45 Application on behalf of a Child or Patient

~~5.1~~ You may only accept aAn application for Controlled Work may only not be accepted on behalf of a child or patient from:

- (a) in the case of a child his parent or guardian or other person in whose care he or she is; or
- (b) in the case of a patient, the receiver appointed under Part VII of the Mental Health Act 1983, or the patient's nearest relative or guardian within the meaning of Part II of the Mental Health Act 1983; or
- (c) in the case of a child or patient, a person acting for the purposes of any proceedings as his or her litigation friend, next friend, or guardian ad litem; or
- (d) in the case of a child or patient, any other person where there is good reason why none of the persons specified in paragraphs (a)–(c) above can make the application, ~~and~~

~~there is sufficient connection between the child or patient and the other person to ensure that the other person is likely to act responsibly in the interests of the child/patient and the other person has sufficient knowledge of the child or patient, the problem and the child's or patient's financial circumstances to give proper instructions to you, provided always that~~

- 5.2 ~~No~~ application may be accepted under this Rule if made by a member, associate or employee of ~~your firm~~the supplier.

3B-018

~~B2.56~~ Assessment of Means

6.1 Controlled Work shall only be carried out on behalf of a client who has been assessed as financially eligible in accordance with regulations and any Guidance thereon.

6.2 Subject to Guidance, satisfactory evidence in support of the client's information as to their means must be provided to ~~you~~the supplier before ~~you assess~~ financial eligibility is assessed.

~~The evidence (or a copy thereof) must be retained on the file.~~

6.3 This Rule does not apply to ~~Controlled Legal Representation in proceedings before a Mental Health Review Tribunal~~ services which, under the regulations, are available without reference to the client's financial resources.

3B-019

~~B2.6~~ Misrepresentation

~~If it comes to your attention that a client has wilfully failed to provide information relevant to your decision to carry out Controlled Work on their behalf or has knowingly made a false statement or false representation and after this failure or false~~

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~~statement or false representation has occurred, you have carried out Controlled Work on the client's behalf then you should report the matter forthwith to the relevant Regional Director.~~

3B-021

B3.17 Postal Applications

~~7.1 You may accept an application for Legal Help by post from a client. Subject to paragraph 2, an application for Controlled Work may be accepted by post where there is good reason to do so, but not~~

~~7.2 Applications by post may not be accepted where the client is resident outside of England and Wales, the European Union and:~~

- ~~(a) such residence is purely temporary and the client can without serious disadvantage delay the application until they have returned to England and Wales, the European Union, or~~
- ~~(b) the Legal Help services could be applied for on the same matter by a person resident in England and Wales, the European Union, or~~
- ~~(c) it is otherwise unreasonable to accept the application.~~

3B-020

B2.78 Refusal of Controlled Work – ~~Criteria~~ Reasons

Where ~~you refuse~~ an application for Controlled Work is refused on the basis that the Funding Code criteria are not satisfied ~~or having granted an application, you or a supplier ceases to~~ provide Controlled Work on the basis that the Funding Code criteria are no longer satisfied ~~or that, in the case of Legal Help or Help at Court an extension to the financial limit is not justified, then you must~~ the supplier shall give the client brief reasons for ~~your~~ such refusal and ~~should~~, shall provide the client with information as to alternative ways of obtaining or funding services.

~~SECTION 3—LEGAL HELP AND HELP AT COURT~~

~~Note: The Rules in this Part are numbered 3.4, 3.5, 3.6 and 3.7 in the Specification. Rule 3.1 (Postal Applications) does not apply to Help at Court.~~

3B-022

B3.2 ~~Upper Financial Limit~~

~~You may only provide Legal Help where the costs do not exceed the limit set by us from time to time (“the upper financial limit”) for the Costs of Legal Help, inclusive of disbursements, in relation to any one matter unless we have given authority to exceed that limit.~~

~~An application for authority to exceed the upper financial limit must be made to the relevant Regional Director on the form specified by us.~~

~~If authority is granted to exceed the limit you may claim at the Contract rate for the work actually and reasonably carried out up to a maximum of the amount authorised by us in the particular case. The Upper Financial Limit set by us may vary by or within franchise category or by Schedule Office (including by reference to the franchise status of that Office).~~

Part B – Controlled Work

3B-023

~~B3.39~~ Previous Legal Help

~~Unless permitted to do so under a contract~~ Legal Help ~~You may not provide may not be provided~~ to a client who has received Legal Help for the same matter from another ~~solicitor or contracted~~ supplier within the six months preceding the application, except where:

- (a) there is a gap in time and circumstances have changed materially between the first and second occasions when the Legal Help was sought, e.g. a reconciliation which has failed; or

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- (b) the client has reasonable cause to be dissatisfied with the service provided by the first ~~solicitor or contracted~~ supplier; or
- (c) the client has moved a distance away from the first ~~solicitor or contracted~~ supplier and communication is difficult; or
- (d) the first ~~solicitor or contracted~~ supplier has confirmed ~~to you~~ that they will be making no claim for payment for the Legal Help ~~or advice and assistance~~.

~~When providing Legal Help in the circumstances set out in this Rule you should record the justification for doing so on the file.~~

3B-024

~~SECTION 4 – HELP AT COURT ONLY~~

~~Note: This Rule is numbered 4.4 in the Specification~~

3B-025

~~B4.1 Matter Start and Applications~~

~~The provision of Help at Court in a matter where you are already providing Legal Help will count as part of the same Matter Start and no separate application will be required beyond the original application for Legal Help. Where you are providing Legal Help and Help at Court in~~

~~the same matter, then the Upper Financial Limit set by Rule 3.2 will apply to the total of the Legal Help and Help at Court provided in that matter.~~

3B-026

~~Section 5—Controlled Legal Representation Only~~

~~Note: These Rules are numbered 5.3 and 5.4 in the Specification~~

3B-027

B5.110 Grant of Controlled Legal Representation

~~Controlled Legal Representation will be granted by your signature of the “Declaration and Grant” section on a properly completed application form and will take effect from the date of such signature. The “Declaration and Grant” must only be signed by a qualified solicitor, who is a member of or employee of your firm or by your franchise supervisor in the relevant category. If you do~~If a supplier does not have the devolved power to grant Controlled Legal Representation an application for Controlled Legal Representation may be made to the ~~Regional~~ Director on a form approved by the Commission.

3B-028

B5.211—Right of ReviewReview of refusal of Controlled Legal Representation

11.1 ~~Where you refuse~~ an application for Controlled Legal Representation ~~is refused or a grant of or, having granted the application, subsequently withdraw~~ Controlled Legal Representation ~~is withdrawn by the supplier, the client may, your client has a right to~~ seek a review of ~~your~~the supplier’s decision by the ~~Regional~~ Director and the Adjudicator. ~~You should advise your client of that right and keep a record of that advice on the file.~~

11.2 ~~The supplier shall advise the client of any right of review under this rule.~~

11.3 ~~Where~~ Controlled Legal Representation is refused or withdrawn by the ~~Regional~~ Director, either under this rule or under Rule ~~B5.110~~ above, ~~your~~the client may have that decision reviewed by the Adjudicator ~~(unless the decision relates only to the client’s financial eligibility).~~

11.4 ~~A review by the Adjudicator under this rule shall operate in the same way (with necessary modifications) as a review of the refusal or withdrawal of Certificated Work under Part C of these Procedures, save that in relation to proceedings before an immigration adjudicator or the immigration appeal tribunal the review shall be on the papers only.~~

11.5 This Rule does not apply in relation to proceedings under section 103A of the Nationality, Immigration and Asylum Act 2002.

--- Looseleaf Page Break (15) ---

3B-029

~~B5.3 The Controlled Legal Representation Financial Limit~~

~~You may only provide Controlled Legal Representation where the costs do not exceed the limit set by us from time to time (the “Controlled Legal Representation Financial Limit”) for the costs of Controlled Legal Representation, inclusive of disbursements, in relation to any one matter unless we have given authority to exceed that limit.~~

~~An application for authority to exceed the Controlled Legal Representation Financial Limit must be made to the relevant Regional Director on the form specified by us.~~

~~If authority is granted to exceed the limit you may claim at the Contract rate for the work actually and reasonably carried out up to a maximum of the amount authorised by the particular case.~~

~~The Controlled Legal Representation Financial Limit set by us may vary by or within franchise category or by Schedule Office (including by reference to the franchise status of that Office).~~

3B-030

~~B5.4 Application by Post~~

~~You may accept an application for Controlled Legal Representation by post where there is good reason to do so.~~

--- Looseleaf Page Break (16) ---

Part C – Certificated Work

Part C – Certificated Work

SECTION 1 – GENERAL

3B-031

C1.1 Scope of this Part

This Part applies to all applications for Licensed Work and Individual Case Contracts except to the extent that an Individual Case Contract provides otherwise and in this Part the term “application” means an application under this Part to carry out such work.

3B-032

C1.2. Solicitor and Client Obligations

- 2.1. In this Part “the solicitor” means the solicitor proposing to act for the client on whose behalf the application is made, or who is acting for the client under a certificate issued under this Part.
- 2.2. Except where the Commission specifies (by contract or otherwise) who may undertake the functions of the solicitor under these Procedures, such functions may only be carried out:
 - (i) by the solicitor personally;
 - (ii) by a partner of the solicitor; or
 - (iii) by a competent and responsible representative of the solicitor employed in the same office or otherwise under the solicitor’s immediate supervision.
- 2.3. Subject to paragraph 4, the solicitors may act as the client’s agent when carrying out functions under these Procedures.
- 2.4. Rules 6 and 42 place personal obligations on the client or, in the case of a child or patient, the person who applies on behalf of the client under Rule 9.

SECTION 2 – APPLICATIONS

3B-033

C3. The Client

- 3.1. Each application shall be on behalf of a client who is an individual.
- 3.2. Where an application relates to proceedings, the client shall be a party or proposed party to the proceedings.
- 3.3. An application may not be submitted in respect of a client who is a professional children’s guardian or parental order reporter acting as such in the proceedings.
- 3.4. An application shall not be granted in respect of a client who is subject to a Prohibitory Direction under Section 8 which applies to the application.

3B-034

C4. The Solicitor

- 4.1. Every application must specify the solicitor who is proposing to act for the client, and the person specified must not be a person who is disqualified from acting as such by his or her professional body.
- 4.2. Unless the application is for an Exceptional Case Contract a solicitor may only apply for funding if his or her firm holds a General Civil or Criminal Contract authorising work of the type applied for.

3B-035

C5. The ~~Regional~~ Director

- 5.1. The Commission may nominate one or more ~~Regional~~ Directors to consider applications in relation to particular cases or descriptions of case, and the Commission shall nominate a ~~Regional~~ Director to consider applications from clients who are not resident in England and Wales.
- 5.2. Where a ~~Regional~~ Director has been nominated under paragraph 1, any application covered by the nomination shall be made to that ~~Regional~~ Director.
- 5.3. Where no ~~Regional~~ Director has been nominated for an application, the application ~~shall~~may be made to ~~the~~any ~~Regional~~ Director. ~~for the region in which the office of the solicitor is situated.~~
- 5.4. Any ~~Regional~~ Director may transfer an application to a different ~~Regional~~ Director if it appears to him or her to be more convenient or appropriate for that other ~~Regional~~ Director to consider the application.
- 5.5. Where a certificate has been issued by a ~~Regional~~ Director, it may be transferred to a different ~~Regional~~ Director where appropriate and, if so, shall continue as if it had been a certificate issued by the new ~~Regional~~ Director.
- 5.6. If an application is for Legal Representation before the Employment Appeal Tribunal and it appears to the ~~Regional~~ Director that the hearing before that tribunal is likely to take place in Scotland or that the proceedings concern an appeal from a decision of a Scottish tribunal, the application shall be transferred to the Scottish Legal Aid Board.

3B-036

C6. Form of the application

- 6.1. Subject to Section 3 (Emergency Applications) every application shall be made on a form approved by the Commission, and the Commission may approve different forms for different levels of service or circumstances.
- 6.2. In the case of Authorised Representation, the application shall be made to the solicitor; in other cases the application shall be made to the ~~Regional~~ Director.
- 6.3. Save for emergency applications, any application to the ~~Regional~~ Director must be made in writing and the form shall be duly completed and signed by the solicitor and by the client.
- 6.4. Subject to Rule 8, each application shall be in English or, if the client is in or resides in Wales or the application relates to proceedings which may be heard in Wales, in either English or Welsh.

- 6.5. The **Regional** Director may request such further information from the client or the solicitor as he or she requires for the purpose of determining any application, and may require a client to attend a meeting for this purpose.

3B-037

C7. Special Children Act proceedings

- 7.1. An application for Legal Representation in Special Children Act Proceedings shall be made at the first available opportunity and in any event the solicitor shall ensure that the application is received by the **Regional** Director within three working days of receiving instructions to act for the client in the proceedings.
- 7.2. Work done by a solicitor in Special Children Act Proceedings prior to the issue of a certificate shall be deemed to be work done whilst the certificate is in force, provided the application was made at the first available opportunity and received within the time limit specified above.

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3B-038

C8. Clients resident outside the ~~United Kingdom~~European Union

- 8.1. This Rule applies where the client resides outside the ~~United Kingdom~~European Union and cannot be present in England and Wales while his or her application is considered.
- 8.2. Such applications shall be written in English or in French.
- 8.3. Except where the client is a member of Her Majesty's Armed Forces, the application shall be sworn before a justice of the peace, magistrate, British consular official or any other person for the time being authorised by law in the place where the client resides to administer an oath for any judicial or other legal purpose.
- 8.4. The application shall be accompanied by a statement in writing, signed by a responsible person who has knowledge of the facts, certifying that Section of the application which relates to the client's financial resources.
- 8.5. The requirements of this Rule may be waived by the **Regional** Director where, if in his or her view, compliance with them would cause serious difficulty, inconvenience or delay and the application otherwise satisfies the Procedures.

3B-039

C9. Applications on behalf of children and patients

- 9.1. An application on behalf of a child or patient shall be made by a person of full age and capacity who is or who proposes to be the litigation friend of the child or patient in the proceedings.

- 9.2. Where the court has ordered that a child may conduct proceedings without a litigation friend, the application may be made by the child's solicitor.
- 9.3. Any certificate issued to a child or patient shall be in his or her name, stating the name of the person who applied for it on his or her behalf.
- 9.4. Any obligations on a client under these Procedures shall also apply to the person who made the application on behalf of the child or patient, and that person may be treated for all purposes under these Procedures as the agent of the child or patient.
- 9.5. The **Regional** Director may, where the circumstances appear to make it desirable, waive all or any of the requirements of this Rule.

3B-040

C10. Financial Eligibility

- 10.1. Save for emergency applications, or where under Regulations funding is available without reference to financial resources, a **Regional** Director shall not approve an application unless the client has been assessed as financially eligible under Regulations.
- 10.2. If a client has been assessed as financially eligible under an application under this Part, the **Regional** Director may, if he or she sees fit, treat the client as financially eligible in relation to any further application for the purpose of these Procedures.

SECTION 3 – EMERGENCY REPRESENTATION

3B-041

C11. Applications for emergency representation

- 11.1. An application for emergency representation may be made in such manner as the **Regional** Director (or in the case of Authorised Representation, the solicitor) may accept, including by fax or by telephone if the urgency of the situation requires it.
- 11.2. Where emergency representation is granted by an Authorised Solicitor, it shall take effect from the date of the solicitor's decision to grant it, but the solicitor shall thereafter notify the **Regional** Director of the grant on a form approved by the Commission.

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- 11.3. Notification by an Authorised Solicitor under paragraph 2 above shall be given as soon as possible and in any event not later than 5 working days after the decision to grant emergency representation.
- 11.4. Emergency representation may be granted before the client has been assessed as financially eligible under Regulations, but only if, in the opinion of the **Regional** Director or the Authorised Solicitor, sufficient information has been provided to demonstrate that the client is likely to be financially eligible.

- 11.5. An application for emergency representation may be treated as a substantive application if the **Regional** Director is satisfied that he or she has sufficient information to do so.
- 11.6. When an application for emergency representation is granted as such by the **Regional** Director, or when the **Regional** Director receives notification of such a grant by an Authorised Solicitor under paragraph 2 above, the **Regional** Director shall issue an emergency certificate and shall send the emergency certificate to the solicitor, and a copy of the certificate to the client.
- 11.7. The **Regional** Director may grant emergency representation which is conditional on the submission of further forms or information by such time as the **Regional** Director may specify.
- 11.8. A conditional grant of emergency representation under paragraph 7 above may be cancelled by the **Regional** Director if the further forms or information required by him or her are not submitted within the time specified.
- 11.9. When emergency representation is cancelled under paragraph 8 above the client, the solicitor and all other persons shall be treated for all purposes as if the grant had not been made.

3B-042

C12. Emergency and substantive certificates

- 12.1. Save where otherwise provided in these procedures or in Regulations, an emergency certificate shall have the same effect in all respects as a substantive certificate.
- 12.2. Where an emergency certificate has been issued to a client and a substantive certificate is subsequently issued to that client for the same proceedings while the emergency certificate is in force, the emergency certificate shall merge with the substantive certificate and the substantive certificate shall take effect from the date upon which the emergency certificate was granted.
- 12.3. Where an emergency certificate is merged in a substantive certificate, the substantive certificate shall state the date of issue of the emergency certificate and that the emergency certificate has been continuously in force from that date until the date of the substantive certificate.

Part C – Certificated Work

3B-043

C13. The duration of emergency certificates

- 13.1. Emergency certificates shall be subject to a time limit specified by the Commission which may be extended by the **Regional** Director in individual cases under Rule 10 of Part A.
- 13.2. Once such a time limit, or extended time limit, has expired, the emergency certificate shall cease to be in force and no further work may be carried out under it.

13.3. Otherwise an emergency certificate shall remain in force until it is discharged or revoked in accordance with these Procedures or is merged with a substantive certificate under Rule 12 above.

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SECTION 4 – ISSUE OF CERTIFICATES

3B-044

C14. Issue where no contribution is payable

14.1. Where the **Regional** Director is satisfied that all relevant Criteria and Procedures are complied with, that the client is financially eligible under Regulations and that no contribution is payable (either under Regulations or under Rule 18 below), the **Regional** Director shall issue a certificate.

3B-045

C15. Offer of certificate where contribution payable

15.1. Where the **Regional** Director is satisfied that all relevant Criteria and Procedures are complied with and the client is financially eligible but under Regulations or under Rule 18 below a contribution is payable, the **Regional** Director shall issue an offer to the client of a certificate, requiring:

- (i) any sums payable out of capital or by third parties to be paid forthwith if the sum is readily available or, if it is not, by such time as seems to the **Regional** Director reasonable in all the circumstances, and
- (ii) the first contribution payable out of income to be paid forthwith, with further contributions payable at monthly intervals thereafter.

15.2. The **Regional** Director shall notify the client of sums payable by way of contribution and of the terms under which a certificate will be issued if accepted.

15.3. A client who wishes to accept such an offer of a certificate shall, within 14 days of receiving the offer (or, if the urgency of the situation requires it, within such shorter period as the **Regional** Director may specify):

- (i) signify his acceptance of those terms on a form approved by the Commission and return it to the **Regional** Director, and
- (ii) if those terms require the payment of any sums of money, pay any sums due or, if the Commission has so specified, provide an undertaking on a form approved by the Commission to pay those sums under the terms of the offer.

15.4. When a client has accepted the offer, paid any sums due and given any required undertakings, the **Regional** Director shall issue a certificate.

3B-046

C16. Notice of issue of certificates

16.1. Where the **Regional** Director issues a certificate he shall send the certificate to the solicitor and a copy of the certificate to the client.

16.2. If a certificate relates to proceedings which are already in existence, on receipt of the certificate the solicitor shall forthwith serve a copy on the Court and notify all other parties to proceedings of the issue of the certificate in a form approved by the Commission, and shall forthwith serve such a notice on any person who becomes a party to the proceedings thereafter.

16.3. If proceedings are not in existence when the certificate is issued the solicitor shall:

- (i) (except in family proceedings) serve notice of the certificate on a form approved by the Commission when first notifying a potential opponent of the proposed claim;
- (ii) when proceedings are started, forthwith send a copy of the certificate to the Court and serve notice of the certificate in a form approved by the Commission on all other parties to the proceedings, unless such notice has already been served under paragraph (i) above; and
- (iii) forthwith serve such a notice on any person who becomes a party to the proceedings thereafter.

16.4. Any documents served on the Court under these Procedures shall form part of the papers for the use of the Court in the proceedings.

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16.5. Any document purporting to be a certificate issued under this Part shall, until the contrary is proved, be deemed to be a valid certificate issued to the person named in it and covering the services described in it and shall be received in evidence without further proof.

16.6. The **Regional** Director may waive any of the requirements of this Rule if the certificate covers Legal Representation in a multi-party action.

16.7. Nothing in these Procedures entitles an opponent to see the contents of a certificate, other than such information as is included in any notice sent under paragraph 3 above.

3B-047

C17. Authorised Representation

- 17.1. Where a solicitor grants Authorised Representation he or she will notify the **Regional** Director of that grant on a form approved by the Commission and the **Regional** Director shall issue a certificate with effect from the date of grant by the solicitor.
- 17.2. The solicitor shall thereafter serve notice in accordance with Rule 16 above.
- 17.3. Notification under paragraph 1 above shall be given as soon as possible and in any event not later than 5 working days after the decision to grant Authorised Representation.

3B-048

C18. Contributions from other persons or sources

- 18.1. If the **Regional** Director considers that either:
- (i) there are other persons or bodies, including those who might benefit from the proceedings or who have the same or a similar interest to the client in the proceedings, who can reasonably be expected to contribute to the costs of the proceedings but have not made an appropriate contribution, or
 - (ii) some other source of funding exists which could or should be used to contribute to the costs of the proceedings, then the **Regional** Director may, in accordance with Regulations, add what he considers to be a reasonable amount to the contribution (if any) due from the client under Regulations in respect of the client's financial resources.
- 18.2. The **Regional** Director may subsequently vary any contribution specified under this Rule as he or she considers reasonable.
- 18.3. Where the other persons being taken into account under this Rule are also parties to proceedings, the **Regional** Director shall not require an additional contribution under this Rule if he or she is satisfied that fair and appropriate cost sharing and funding arrangements are already in place in the proceedings.

SECTION 5 – REFUSAL OF APPLICATIONS

3B-049

C19. Notification of Refusal

- 19.1. Where an application to the **Regional** Director is refused under the Criteria or these Procedures, the **Regional** Director shall notify the client and the solicitor of the refusal together with a brief statement of the reasons for it.
- 19.2. Every such refusal shall notify the client of the right to have the decision reviewed by the **Regional** Director and the Adjudicator and of the right to make further written representations to the **Regional** Director.

19.3 Where a refusal relates to Criteria 5.6.1 or 5.7.1 (which concern the availability of conditional fee agreements), the Regional Director shall ensure that the client [has access to](#) general information about conditional fee agreements and information about [how to locate](#) firms in the client's area who undertake conditional fee work.

--- Looseleaf Page Break (22) ---

19.4 Where a refusal is under Criterion 5.4.3 (alternatives to litigation), the ~~Regional Director~~ [solicitor](#) shall ensure that the client is informed of the alternatives relevant to the decision and that the client is informed about how to pursue those alternatives.

3B-050

C20. Refusal of Authorised Representation

20.1. Where an Authorised Solicitor refuses an application for Authorised Representation, the solicitor shall notify the client of the refusal and the reasons for it, together with such information as the client would be entitled to if the refusal had been by the ~~Regional~~ Director under Rule 19 above.

20.2. The solicitor shall also notify the client of the right to have the decision reviewed by the ~~Regional~~ Director and the Adjudicator and of the right to make representations in writing to the ~~Regional~~ Director.

20.3. Where an application is refused by an Authorised Solicitor, the client may within fourteen days of being given notice of the refusal, apply to have the decision reviewed by the ~~Regional~~ Director and the Adjudicator and make representations to the ~~Regional~~ Director, and such an application for a review shall be made on a form approved by the Commission.

20.4. Where the client applies for a review under this rule, the case shall be considered by the ~~Regional~~ Director and the Adjudicator in accordance with and subject to Rules 21 and 22 below.

20.5. Where a certificate is granted following a review under this Rule, the case may be transferred to a new Authorised Solicitor if the client so requests and the new solicitor has indicated his or her consent to act.

3B-051

C21. Review by a ~~Regional~~ Director

21.1. Where an application is refused by the ~~Regional~~ Director or the client is dissatisfied with the terms upon which a certificate is issued or with the terms of any offer, the client may within fourteen days of the date of service of the notice of refusal, certificate or offer apply on a form approved by the Commission to have the decision reviewed by the ~~Regional~~ Director and the Adjudicator, and may make representations in writing to the ~~Regional~~ Director in support of the application.

21.2. The ~~Regional~~ Director will consider any representations received under this Rule and may, if he or she thinks fit, affirm, amend or reverse the earlier decision.

21.3. Where the ~~Regional~~ Director amends or reverses the earlier decision under this Rule, he or she shall notify the solicitor and the client of the decision and where appropriate, shall issue a certificate in accordance with Section 4.

21.4. Where the ~~Regional~~ Director issues a certificate under paragraph 3 above in any of the circumstances specified in paragraph 6 below, the ~~Regional~~ Director may, if he or she thinks fit and subject to guidance, backdate the certificate to a date no earlier than the date on which he or she received the application.

21.5. Where the ~~Regional~~ Director issues a certificate (whether under this Rule or otherwise) and is satisfied that:

- (i) any of the circumstances specified in paragraph 6 below apply, and
- (ii) the solicitor took all reasonable steps to apply to the ~~Regional~~ Director for emergency representation, and
- (iii) it was necessary for the solicitor to carry out urgent work before the application was determined,

the ~~Regional~~ Director may, if he or she thinks fit and subject to guidance, backdate the certificate to a date no earlier than the date such urgent work was undertaken.

--- Looseleaf Page Break (23) ---

21.6. The specified circumstances for the purpose of this Rule and Rule 65 are where either:

- (i) the ~~Regional~~ Director is satisfied that Criterion 7.5.2 (Judicial Review – the Presumption of Funding) applies, or
- (ii) in a review by the High Court under Section 101(2) of the Nationality, Immigration and Asylum Act 2002, the court reverses the decision of the Immigration Appeal Tribunal.

3B-052

C22. Review by the Adjudicator (“~~FRC~~Adjudicator”)

22.1. Subject to paragraph 2 below, where a client has applied to have a decision reviewed under Rule 20 or Rule 21 above and the matter has not been resolved by the ~~Regional~~ Director to the client’s satisfaction under Rule 21, the decision shall be reviewed by the ~~FRC~~Adjudicator.

22.2. No such review may be carried out where:

- (i) the refusal is on the grounds of the financial eligibility of the client under Regulations or any contribution due from the client under Regulations in respect of the client's financial resources;
- (ii) the refusal is of an application for emergency representation, save where the **Regional** Director has treated it as a substantive application under Rule 11.5 above;

SECTION 6 – REFERRAL TO SPECIAL CASES UNIT

3B-053

C23. Criteria for Referral

23.1 An application or an existing certificate shall be referred by the **Regional** Director to the Special Cases Unit where it appears to the **Regional** Director that either:

- (i) the actual or likely costs of the case exceed £25,000;
- (ii) if the case were to proceed to a contested trial or final hearing (or, in the case of appeal proceedings before the Court of Appeal or House of Lords, to the conclusion of that appeal stage) the likely costs of the case might exceed £75,000;
- (iii) the application or certificate relates to a multi-party action or potential multi-party action; or
- (iv) the application is for an Exceptional Case Contract.

and for the purpose of the above rules the Commission may treat more than one set of proceedings or certificates as a single “case” if they appear to the Commission to be closely connected or proceeding together before the court.

23.2 Applications and certificates which fall within paragraph (iii) above shall be subject to the Procedures in Section 1 of part D.

3B-054

C24. Powers of Special Cases Unit

The Director of the Special Cases Unit and persons authorised to act on his or her behalf may exercise any of the powers of a **Regional** Director in relation to applications and certificates referred to the Unit.

3B-055

C25. Case Plans

Where an application or a certificate has been referred to the Special Cases Unit, the Unit will require a costed case plan for the future handling of the proceedings.

3B-056

C26. Contracting

- 26.1. Where the Special Cases Unit grants or continues funding in a case which has been referred to it, it may direct that the case should continue under an Individual Case Contract.
- 26.2. Where the Special Cases Unit grants or continues funding in a case which falls within paragraphs (i) or (ii) of rule 23 above, the Unit shall direct that funding continue under a Multi-Party Action Contract or High Cost Case Contract.
- 26.3. Work under a Multi-Party Action Contract or High Cost Case Contract is subject to the procedures in Part C, except to the extent that the contract or these Procedures provide otherwise.
- 26.4. Work within the scope of a Multi-Party Action Contract or High Cost Case Contract may be carried out only in accordance with the contract, unless the Commission specifies otherwise.

~~26.5. Work under a Multi Party Action Contract shall be subject to the Procedures in Section 1 of Part D.~~

26.65. The Special Cases Unit may authorise an Exceptional Case Contract only if it is satisfied that it is necessary for the effective administration of justice to do so.

26.76. Where the Special Cases Unit declines to authorise an Exceptional Case Contract under Rule 26.65 the client or the solicitor may apply to have that decision reviewed by the Adjudicator.

C7. SECTION 7 – REFERRAL TO FAMILY MEDIATION

3B-057

C27. Scope of the Mediation Requirement

- 27.1. This Section applies to:
- (i) applications for Legal Representation in those Family Proceedings specified in Rule 28 below;
 - (ii) applications for General Family Help in relation to disputes which concern or might give rise to such proceedings.
- 27.2. In applications to which this Rule applies, the client must attend an intake assessment with a mediator before the application can be granted, unless it appears to the ~~Regional~~ Director or Authorised Solicitor that any of the circumstances set out in Rule 29 below apply.
- 27.3. Without prejudice to Rule 33 the ~~Regional~~ Director may place a limitation on a certificate for General Family Help or Legal Representation in Family Proceedings preventing further work,

other than provision of relevant advice, until the client has attended an assessment meeting with a mediator.

3B-058

C28. Specified Proceedings

28.1. The proceedings in which the requirement to see a mediator applies are those Family Proceedings which are within the scope of Section 11.11 or 11.12 of the Criteria other than proceedings under:

- (i) Section 37 of the Matrimonial Causes Act 1973;
- (ii) the Inheritance (Provision for Family and Dependents) Act 1975;

3B-059

C29. Exemptions

29.1. Where it is in the interests of justice that Legal Representation be granted as a matter of urgency and the criteria for emergency representation are satisfied (whether or not any certificate is in fact granted as an emergency certificate).

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29.2. Where there is no mediator available to the applicant or any other party to the proceedings to hold the assessment meeting. The Commission may issue guidance, either generally or in individual cases, as to circumstances which may be regarded as amounting to availability for the purpose of this Rule.

29.3. Where the mediator is satisfied that mediation is not suitable to the dispute because another party to the dispute is unwilling to attend an assessment meeting with a mediator to consider mediation.

29.4. Where Family Proceedings are already in existence and the client is a respondent who has been notified of a court date which is within eight weeks of the date of the notification.

29.5. Where the applicant has a reasonable fear of domestic abuse from a potential party to the mediation and is therefore unwilling and in fear of participating in mediation with them.

29.6. Where the applicant has been in receipt of Legal Help as part of the Family Advice and Information Networks Pilot in respect of the matters for which the applicant now applies for General Family Help or Legal Representation.

SECTION 8 – ABUSE OF THE SCHEME

3B-060

C30. Repeated Applications for Certificates

- 30.1. Where it appears to a **Regional** Director that a person has made three or more unsuccessful applications for certificates such that his or her conduct may amount to an abuse of services funded as part of the Community Legal Service, the **Regional** Director may report the matter to the Commission or to a committee appointed by the Commission for the purposes of this Section.
- 30.2. For the purpose of paragraph 1, the **Regional** Director may take into account any previous applications by or on behalf of that person for advice, assistance or representation under the Legal Aid Act 1988 and any court order declaring that person to be a vexatious litigant.

3B-061

C31. Power to make Prohibitory Directions

- 31.1. On receipt of a report under Rule 30 above, the Commission may make such other enquiries as appear to be necessary and, if the Commission consider that it may be appropriate to make a prohibitory direction under this Rule, the Commission shall disclose the report and any other material information to the person concerned and give him or her the opportunity to make representations in writing within such period as the Commission may specify.
- 31.2. If, having considered any such representations, the Commission is satisfied that the person's conduct has amounted to an abuse of the scheme, the Commission may make a prohibitory direction under this Rule that no consideration shall, for a period not exceeding five years, be given by any **Regional** Director or Authorised Solicitor to applications on behalf of that person.
- 31.3. A prohibitory direction under this Rule may apply either to applications in relation to proceedings of a description specified in the direction, or, in exceptional circumstances, it may cover any future or pending applications by that person whatsoever.
- 31.4. The Commission may in its discretion at any time vary or revoke a prohibitory direction in whole or in part.

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SECTION 9 – FORM OF CERTIFICATES

Part C – Certificated Work

3B-062

C32. Matters Specified on a Certificate

Each certificate issued under these Procedures shall specify:

- (i) the name and address of the client;

- (ii) where the client is a minor or a patient the name and address of any person who applied on behalf of the client under Rule 9;
- (iii) the name and address of the solicitor;
- (iv) the date the certificate was granted;
- (v) the level of service covered by the certificate;
- (vi) a description of the proceedings (or in the case of ~~Approved~~General Family Help, the dispute) to which the certificate relates;
- (vii) the opposing parties to the proceedings, save where the certificate is for ~~Approved~~General Family Help, Help with Mediation or Legal Representation in Family Proceedings or the ~~Regional~~ Director considers it inappropriate to specify all such parties;
- (viii) any limitations and conditions on the certificate.

3B-063

C33. Limitations and Conditions

- 33.1. The ~~Regional~~ Director may grant or issue a certificate subject to such limitations and conditions as he or she thinks fit, and limitations and conditions may be amended or imposed from time to time (including limitations to prevent further work being carried out under the certificate).
- 33.2. Emergency or substantive certificates granted by an Authorised Solicitor will be subject to such limitations or conditions as the solicitor imposes, in accordance with guidance, but the ~~Regional~~ Director may thereafter place such further or alternative limitations or conditions on such a certificate as he or she considers appropriate.
- 33.3. Every certificate shall be subject to a cost limitation specifying the maximum total amount of costs (including any uplift or enhancement but excluding VAT) which may be incurred under the certificate.

3B-064

C34. Levels of Service

- 34.1. A certificate for Legal Representation shall state whether it is for Investigative Help or Full Representation. ~~A certificate for ~~Approved~~General Family Help shall state whether it is for General Family Help or for Help with Mediation.~~
- 34.2. Where investigations have been completed under a certificate for Investigative Help, and an application for Full Representation in the same proceedings is granted, the ~~Regional~~ Director may amend that certificate to cover Full Representation.

34.3. Where a certificate for General Family Help is in force, and an application for Legal Representation in Family Proceedings arising out of the same or a related family dispute is granted, the **Regional** Director may amend the certificate to cover Legal Representation in those proceedings.

34.4 Except as stated above, no certificate shall authorise more than one level of service.

3B-065

C35. Proceedings

35.1. Each certificate shall cover only one set of proceedings except where:

- (i) the certificate relates to family proceedings; or
- (ii) the **Regional** Director considers that two or more sets of proceedings are so closely related that they should be covered under a single certificate.

35.2. Legal Representation to bring or defend any form of appeal in proceedings is covered by a certificate only where this is specified on the certificate or approved by the ...

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...

Regional Director, except that no such approval is required to defend an interim appeal.

35.3. A certificate shall not cover services in relation to arbitration unless this is specifically authorised by the **Regional** Director.

35.4. A certificate shall not cover enforcement action unless this is specifically authorised by the **Regional** Director or, where appropriate, an authorised solicitor.

35.5. A certificate shall not cover representation by an EU lawyer or references to the Court of Justice of the European Community for a preliminary ruling unless this is specifically authorised by the **Regional** Director.

35.6. No client may have more than one certificate relating to private law family proceedings in force at any time, unless the **Regional** Director is satisfied that the certificates relate to different family relationships or that there are exceptional circumstances which make it appropriate to do so. In this Rule, a certificate relates to private law family proceedings if it is issued under sections 11.3, 11.10, 11.11 or 11.12 of the Code.

SECTION 10 – AMENDMENTS

Part C – Certificated Work

3B-066

C36. General Powers to Amend Certificates

The **Regional** Director may amend a certificate either following an application to do so made on behalf of the client on a form approved by the Commission, or otherwise as he or she thinks fit.

3B-067

C37. Amendment by Authorised Solicitor

- 37.1. An Authorised Solicitor may amend the certificate if authorised under the contract to do so and shall notify the **Regional** Director of any amendment on a form approved by the Commission.
- 37.2. Notification under paragraph 1 above shall be given as soon as possible and in any event, not later than 5 working days after the decision to amend the certificate.
- 37.3. Where a client is dissatisfied with the decision of an Authorised Solicitor to amend or not to amend a certificate, the solicitor will apply to the **Regional** Director to amend the certificate on a form approved by the Commission.

3B-068

C38. Effective Date of Amendment

- 38.1. Subject to paragraphs 2 and 3 below, an amendment shall take effect from the date of the decision to amend by either the **Regional** Director or an Authorised Solicitor.
- 38.2. Where a certificate is amended to impose a new costs limitation, the new limitation will supersede any earlier cost limitations on that certificate and will take effect from the date of grant of the certificate, unless the **Regional** Director specifies otherwise.
- 38.3. Where the **Regional** Director amends a certificate so as to:
 - (i) correct some mistake in the certificate; or
 - (ii) record a change of solicitor or any change of address on the certificate

the amendment shall take effect from such date as the **Regional** Director may specify (which may be before or after the date of the decision to amend).

3B-069

C39. Procedure on Amendment

- 39.1. Where a **Regional** Director amends a certificate (either under Rule 36 or following notification under Rule 37 or a review under Rule 40), he shall send the amended certificate to the solicitor and a copy to the client.

- 39.2. If the certificate covers proceedings which have commenced, the solicitor shall send a copy to the court.
- 39.3. Where a **Regional** Director refuses an application to amend a certificate, he shall notify the client and the solicitor in writing, including a brief statement of the reasons for so doing.
- 39.4. Where the certificate covers proceedings which are in existence and the amendment to the certificate affects the description of proceedings, the level of service covered or whether the certificate extends to bring or defend any appeal, the solicitor shall forthwith notify all other parties to the proceedings that that is the case (save where the **Regional** Director notifies the solicitor that it is not necessary or appropriate to do so).

3B-070

C40. Review of Amendments

- 40.1. Where a client is dissatisfied with a **Regional** Director's decision to amend a certificate or to refuse an application on his or her behalf to amend a certificate, the client may, within fourteen days of receiving notice of the amendment or the decision not to amend the certificate, apply to the **Regional** Director on a form approved by the Commission to have that decision reviewed by the **Regional** Director and the **FRCAdjudicator**, and may make written representations in support of that application.
- 40.2. The **Regional** Director will consider any representations received under this Rule and may, if he or she thinks fit, amend the certificate accordingly.
- 40.3. Subject to paragraph 4 below, unless a review under this rule has been resolved to the satisfaction of the client by the **Regional** Director, the **FRCAdjudicator** shall review the decision.
- 40.4. The **FRCAdjudicator** shall not review a decision to amend or not to amend an emergency certificate.

SECTION II REPRESENTATIONS

3B-071

C41. Procedure for Making Representations

- 41.1. Any person, including an opponent or potential opponent of a client who has applied for or has received a certificate, may make representations to the appropriate **Regional** Director and, subject to paragraph 8 below, such representations shall be considered by the **Regional** Director.
- 41.2. On receiving an application the **Regional** Director may, if he or she thinks fit, notify any other party or potential party to the proceedings that the application has been made.

- 41.3. The **Regional** Director may at any stage invite an opponent, potential opponent or other person or body to make representations where he or she considers that it is appropriate to do so before deciding whether to provide or continue to provide public funds to support the case.
- 41.4. Where the **Regional** Director considers that representations received are not material or are unlikely to affect any funding decisions, he or she shall inform the person making the representations that no further action will be taken on them.
- 41.5. Subject to paragraphs 4, 6 and 8, the **Regional** Director shall ensure that the solicitor has a copy of representations received under this Section or, where the representations are not in writing, shall write to the solicitor setting out the gist of the representations.
- 41.6. If representations are received from a person who is not a legal representative and it appears to the **Regional** Director that the person making the representations has neither sent them to the solicitor or client nor given permission for the **Regional** Director to do so, the **Regional** Director shall not copy them to the solicitor or the ...

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- ... client unless he or she has obtained the consent of the person making the representations to do so.
- 41.7. On receipt of representations, the **Regional** Director may, if appropriate, place limitations on any certificate, but shall not take steps to discharge or revoke a certificate on the basis of representations received unless the solicitor has been given an opportunity to respond to issues raised by the representations. If a certificate is in force it shall be deemed to cover reasonable work done in responding to representations, but such work must be carried out within the cost limitation.
- 41.8. The **Regional** Director need not consider representations in detail if they relate to proceedings which are not currently being pursued, for example because the individual case is stayed pending the outcome of a test case or other Generic Issue.
- 41.9. The **Regional** Director shall inform the person making representations of the outcome of his or her considerations, but is not obliged to do so until a final decision has been taken on them following any review by **FRC**[the Adjudicator](#) or until the time for applying for such a review has expired.

SECTION 12 – REPORTING OBLIGATIONS

Part C – Certificated Work

3B-072

C42. Duties of the Client

- 42.1. The client shall immediately ensure that the **Regional** Director is informed of any change in his or her financial circumstances which has occurred since the client's financial resources were assessed and which the client has reason to believe might affect the terms or the continuation of the certificate.
- 42.2. The client shall immediately inform the solicitor of any other change in his or her circumstances or in the circumstances of the case which he or she has reason to believe might affect the terms or the continuation of the certificate.
- 42.3. The client shall comply with any request by or on behalf of the **Regional** Director for such information as the **Regional** Director may require for the purpose of carrying out functions under the Code or Regulations.
- 42.4. The client shall attend a meeting with the **Regional** Director where requested to do so.

3B-073

C43. Duties of the Solicitor

- 43.1. The solicitor shall give a report to the **Regional** Director whenever requested to do so, containing such details as the **Regional** Director may specify for the purpose of carrying out functions under the Code or Regulations.
- 43.2. The solicitor shall also report to the **Regional** Director where:
- (i) the client gives the solicitor information under Rule 42 which the solicitor considers may be material to the terms or continuation of the certificate;
 - (ii) a certificate for Investigative Help is in force, as soon as investigations have been carried out such that prospects of success can be estimated in one of the categories provided for under the Code (other than Unclear);
 - (iii) the proceedings covered by the certificate have concluded or where otherwise all work authorised has been completed;
 - (iv) the client has died;
 - (v) a bankruptcy order has been made against the client;
 - (vi) the client has declined to accept any of the following:
 - (a) an Offer to Settle;
 - (b) a Payment into Court;
 - (c) an offer to mediate any issue in the proceedings;
 - (d) an offer to refer any issue in the proceedings to Early Neutral Evaluation;

- (e) an offer to participate in any alternative dispute resolution scheme specified by the Commission for the purpose of this Rule;

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- (f) any other offer of settlement of the proceedings which the solicitor considers may be reasonable;
- (vii) a certificate has been issued to a person who is an opponent of the client in the proceedings. This requirement does not apply to Family Proceedings other than proceedings considered under Section 11.12 of the Code (Financial Provision and Other Proceedings).

3B-074

C44. Duties of Legal Representatives

In addition to the specific duties of a solicitor under Rule 43 above, any legal representative carrying out work under a certificate shall ensure that the **Regional** Director is informed if it appears to the legal representative that:

- (i) the client has required the case to be conducted unreasonably or so as to incur an unjustifiable expense to the Fund or has unreasonably required that the case be continued;
- (ii) the client may have given inaccurate, misleading or incomplete information to the **Regional** Director where required to provide information under the Code or Regulations;
- (iii) new information or a change of circumstances has come to light which may affect the terms or continuation of the certificate;
- (iv) it is no longer possible to act or continue to act for the client (and in that case the legal representative shall give the **Regional** Director reasons why this is so).

3B-075

C45. Referral from the Court

Any court or tribunal hearing proceedings for which a certificate has been granted may report to the Commission any information which it considers may be relevant to a **Regional** Director's decisions as to the terms and continuation of a certificate.

SECTION 13 – DECISIONS OF PRINCIPLE

3B-076

C46. Decisions Affecting Several Cases

- 46.1. Where the Commission is considering granting an application which relates to proceedings which have a significant wider public interest, the Commission may require the client, as a condition of providing funding, to agree not to settle the proceedings without the consent of the Commission.
- 46.2. Where the ~~Regional~~ Director, the ~~FRC~~Adjudicator or MPA Committee are considering an issue concerning any application or certificate which appears likely to affect a group of claims or claims of any given description, the Commission may declare that the decision shall stand as a decision of principle under this Rule.
- 46.3. Any decision of principle under this Rule shall specify the cases or the description of cases to which it applies and the date on which it takes effect.
- 46.4. A decision of principle may be made under this Rule whether or not the clients affected by it have issued proceedings as part of a multi-party action or otherwise.
- 46.5. Where a decision of principle has been made under this Rule it shall apply to all claims of the description specified in the decision and the procedures for individual cases, including rights of review, shall take effect in light of the decision of principle.
- 46.6. Nothing in this Rule shall prevent an individual client asserting that:
- (i) his or her claim does not fall within the terms of the decision given; or
 - (ii) significant new information has arisen which was not before the Commission when the decision of principle was made or has since come to light such that there are grounds for reconsideration of the decision of principle;

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- 46.7. A decision of principle under this Rule may be varied as the Commission considers necessary and shall cease to have effect from such date as the Commission may specify.
- 46.8. Decisions under this Rule shall be published in such manner as the Commission thinks fit.

3B-077

C47. Referral to Public Interest Advisory Panel

- 47.1. Where an issue arises concerning any application or certificate as to whether a case has a significant wider public interest, or as to the nature and extent of that public interest, the ~~Regional~~ Director may refer the matter to the Public Interest Advisory Panel (“the Panel”).
- 47.2. The Panel shall report to the Commission on any matter referred to it in such manner as may be specified by the Commission and in accordance with guidance.

47.3. Any report by the Panel shall be sent to the solicitor, or in a multi-party action to the lead solicitor (who may copy it to other solicitors or clients as he or she considers appropriate), and the solicitor may make such further representations arising from the Panel's report as he or she thinks fit.

47.4. When making decisions on matters which have been referred to the Panel, the Commission shall take into account any report by the Panel and any further representations from the solicitor.

3B-078

[OMITTED]

3B-079

[OMITTED]

3B-080

[OMITTED]

SECTION 15 – WITHDRAWAL OF FUNDING

Part C – Certificated Work

3B-081

C51. Power to Revoke or Discharge a Certificate

51.1. The **Regional** Director may withdraw funding by either revoking or discharging a certificate from such date as he or she considers appropriate in accordance with section 14 of the Criteria and these Procedures.

51.2. Where a certificate is revoked or discharged no further services may be provided under it from the date of the notice or discharge or revocation and the retainer of the solicitor shall cease in accordance with Regulations.

51.3. Where a certificate is revoked the client shall repay to the Commission all costs paid or payable under the certificate and shall be liable to the Commission or the solicitor for such further costs as may be specified in Regulations.

51.4. The **Regional** Director may convert a discharge into a revocation if following the discharge information comes to light which would justify revocation under Rules 52 or 53.

3B-082

C52. Revocation or Discharge of an Emergency Certificate

52.1. An emergency certificate may be revoked or discharged on any of the grounds under which a substantive certificate may be revoked or discharged.

- 52.2. An emergency certificate shall be revoked if it is determined that, under Regulations, the client is not financially eligible for Legal Representation.
- 52.3. An emergency certificate may be revoked or discharged if the client fails to accept an offer of a substantive certificate within the time limit specified under Rule 15.
- 52.4. Subject to Rule 51.4 an emergency certificate shall be deemed to be discharged as soon as any time limit on the certificate, including any extension of the time limit by the **Regional** Director under Rule 13, has expired.

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3B-083

C53. Revocation or Discharge on Grounds of Conduct

- 53.1. A certificate may be revoked or discharged if the **Regional** Director is satisfied that the client has failed without good cause to provide information or documents or attend a meeting when required to do so under Procedures or Regulations.
- 53.2. A certificate may be revoked or discharged if the **Regional** Director is satisfied that the client has made an untrue or misleading statement or failed to disclose a material fact (either when making an application or when supplying information under Procedures or Regulations) and the **Regional** Director considers that the client failed to use reasonable care when doing so.
- 53.3. A certificate may be revoked or discharged if the client is declared a vexatious litigant by the court or is subject to a Prohibitory Direction under Section 8.
- 53.4. A certificate may be discharged if the **Regional** Director is satisfied that the client has required proceedings to be conducted unreasonably so as to incur unjustifiable expense to the Fund or has unreasonably required proceedings to be continued.
- 53.5. If a client's certificate is revoked or discharged under this rule, any other certificate of the client may be discharged if the **Regional** Director considers it appropriate in all the circumstances to do so.

3B-084

C54. Discharge on Financial Grounds

- 54.1. A certificate shall be discharged by the **Regional** Director if under Regulations the client is no longer financially eligible to receive it.
- 54.2. A certificate may be discharged if any contribution due from the client under Regulations has been outstanding for more than 21 days.

3B-085

C55. The Show Cause Procedure

55.1. Subject to paragraph 2 below, no certificate shall be revoked or discharged until a notice has been served on the client that the **Regional** Director may revoke or discharge his other certificate and that the client may show cause why it should not be revoked or discharged, and the **Regional** Director shall give the client an opportunity to respond and say why the certificate should not be revoked or discharged.

55.2. The show cause procedure does not apply to revocation or discharge of an emergency certificate under Rule 52.2, 52.3 or 52.4 above, to discharge on financial grounds under Rule 54 or to discharge under the following Criteria:

- (i) 14.5(i) (death of the client);
- (ii) 14.5(iv) (consent of the client);
- (iii) 14.5(v) (all work completed).

55.3. When notice is served under paragraph 1 above, no further work may be done or steps taken under the certificate unless authorised by the **Regional** Director.

3B-086

C56. Notification of Discharge or Revocation

56.1. When a certificate is discharged or revoked the **Regional** Director shall send notice of the discharge or revocation to the solicitor and shall send a copy to the client (unless the client has died).

56.2. Notice of discharge or revocation shall contain or enclose a brief statement of the **Regional** Director's reasons for revoking or discharging the certificate.

56.3. Notice of discharge or revocation shall also inform the client of the right to have the decision reviewed by the **Regional** Director and the **FRC Adjudicator** and of the right to make further representations in writing to the **Regional** Director.

56.4. The **Regional** Director may, if he or she considers it appropriate to do so, notify any other parties to the proceedings that a certificate has been discharged or revoked.

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56.5. When a certificate has been discharged or revoked and any review or reconsideration under Rules 57 or 58 has been concluded, the solicitor shall, if proceedings have commenced, serve notice of the discharge or revocation on a form approved by the Commission on the court and all other parties to the proceedings.

56.6. The **Regional** Director may waive any of the requirements of paragraph 5 above in an MPA.

3B-087

C57. Review by the ~~Regional~~ Director

57.1. Except where a certificate is discharged under the following criteria:

- (i) 14.5(i) (death of the client);
- (ii) 14.5(iv) (consent of the client);
- (iii) 14.5(v) (all work completed)

the client may apply on a form approved by the Commission within 14 days of service of the Notice of Discharge or Revocation to have the discharge or revocation reviewed by the ~~Regional~~ Director and the ~~FRC~~Adjudicator—and may make representations in writing in support of the application.

57.2. The ~~Regional~~ Director will consider any representations received under this Rule and may, if he or she thinks fit, restore the certificate or convert a revocation to a discharge, or vice versa, and if so shall inform the solicitor and the client of the decision.

57.3. Where a certificate is restored or a decision is changed under this Rule, the final decision shall take effect for all purposes as if the original decision to discharge or revoke had not been made (unless the ~~Regional~~ Director specifies otherwise).

3B-088

C58. Review by the ~~Funding Review Committee~~Adjudicator

58.1. Subject to paragraph 2, where a client has applied to have a revocation or discharge reviewed under Rule 57 and the matter has not been resolved to the client's satisfaction under that rule, the revocation or discharge shall be reviewed by the ~~FRC~~Adjudicator.

58.2. The ~~FRC~~Adjudicator may not review:

- (i) The revocation or discharge of an emergency certificate under Rule 52.2, 52.3 or 52.4;
- (ii) The discharge of a certificate under Rule 54 (financial grounds).

SECTION 16 – ~~THE~~ ADJUDICATOR

Part C – Certificated Work

3B-089

C59. Jurisdiction of the ~~Funding Review Committee~~Adjudicator

The ~~Funding Review Committee~~Adjudicator (~~“the FRC Adjudicator”~~) may review any decision of the ~~Regional~~ Director which has been referred to ~~it~~him or her under Rules 22, 26, 40, ~~or~~ 58 ~~or~~ 65.

3B-090

C60. ~~Hearings Before the Funding Review Committee~~Procedure before the Adjudicator

- 60.1. ~~Subject to paragraph 2 below, the client or any person authorised by the client may attend before the FRC to make representations.~~Subject to paragraph 2 below, determinations under these procedures shall be made on the papers.
- 60.2. ~~Where the FRC reviews a decision under Rule 40 (review of decisions or refusals to amend the certificate), the FRC shall consider the matter on the papers unless either:~~
- ~~(i) the amendment relates to a proposed change in the level of service covered by the certificate;~~
~~or~~
 - ~~(ii) the FRC considers that attendance by the client or a representative is appropriate in the particular circumstances of the case.~~Where the Adjudicator considers that it is in the interests of justice to hear oral representations before making a determination, the client or any person authorised by the client may attend before the Adjudicator to make such representations.
- 60.3. ~~Hearings before the FRC are subject to the rules set out in Section 3 of Part D.~~ Where the Director or the Adjudicator considers that the matter before the Adjudicator is of exceptional complexity or importance, the matter may be referred to a panel of two or more Adjudicators sitting as a committee, subject to the rules set out in Section 3 of Part D.

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3B-091

C61. Power to Determine Certain Issues

- 61.1. Where, in any review by the ~~FRC~~Adjudicator, an issue arises as to:
- (i) the prospects of success;
 - (ii) whether a case has overwhelming importance to the client;
 - (iii) cost benefit for the client (for the avoidance of doubt this excludes considerations of whether the case has a significant wider public interest);
 - (iv) whether a certificate should be discharged or revoked on the grounds of the conduct of the client under Rule 53;
- and that the issue or issues are raised in the reasons given by the Director in the decision under review, the ~~FRC~~Adjudicator shall determine that issue or issues.
- 61.2. A review under paragraph 1 shall be by way of a reconsideration of those issues and the decision of ~~FRC~~Adjudicator on such an issue shall be final.
- 61.3. Where, in the light of a determination by the ~~FRC~~Adjudicator under this Rule, the ~~FRC~~Adjudicator wishes to confirm the decision of the ~~Regional~~ Director, the ~~FRC~~Adjudicator shall do so and ensure that the client is informed.

- 61.4. If it appears to the ~~FRC~~Adjudicator that in the light of ~~their~~his or her determination of an issue or issues under this Rule, the decision of the ~~Regional~~ Director may not be correct or should be reconsidered, ~~they~~he or she shall refer the matter back to the ~~Regional~~ Director.
- 61.5. The ~~FRC~~Adjudicator shall give reasons for all determinations made under this Rule which are adverse to the client and shall ensure that such reasons are made available to the client and to the ~~Regional~~ Director.

3B-092

C62. Power to Refer Decisions for Reconsideration

- 62.1. Subject to Rule 61 and Rule 63 a review by the ~~FRC~~Adjudicator shall consider whether the decision under review was improper or unreasonable in the sense that either:
- (i) the ~~Regional~~ Director has not acted in accordance with the Code, the Act or Regulations, or;
 - (ii) the decision was one which no reasonable ~~Regional~~ Director could have made.
- 62.2. Where the ~~FRC~~Adjudicator does not consider that the decision of the ~~Regional~~ Director was improper or unreasonable under paragraph 1, ~~subject to Rule 63 he or she~~ shall confirm that decision and ensure that the client is informed.
- 62.3. Where the ~~FRC~~Adjudicator considers that the decision of the ~~Regional~~ Director was improper or unreasonable under paragraph 1, he or sheit shall refer the matter back to the ~~Regional~~ Director, specifying the grounds on which he or sheit is doing so.
- 62.4. The ~~FRC~~Adjudicator shall give reasons for its decisions made under this Rule and shall ensure that those reasons are given to the client and the ~~Regional~~ Director.

3B-093

C63. ~~Further Information~~Further information or Issues Arising

~~Where, in the course of any hearing before the FRC, further information comes to light which was not before the Regional Director at the time his or her decision was made and which the FRC considers may be material to that decision, the FRC shall ensure that such information is referred to the Regional Director. Where in a determination by the Adjudicator it appears to the Adjudicator that the matter should be reconsidered by the Director in light of information or issues which were not raised in the reasons given by the Director, the Adjudicator may refer the matter back to the Director under this Rule.~~

3B-094

C64. Procedure Following a Determination by the ~~Funding Review Committee~~Adjudicator

- 64.1. In a review of a decision under Rule 22 or Rule 40 (refusal or amendment of certificates) if, following a determination of issues by the ~~FRC~~Adjudicator under Rule 61 above, it appears to

the ~~Regional~~ Director that the criteria for granting or amending the certificate are satisfied and the client is financially eligible, he or she shall immediately grant or amend the certificate as required.

64.2. In a review under Rule 58 (discharge or revocation of a certificate) if, in the light of any determination by the ~~FRC~~Adjudicator under Rule 61 above, it appears to the ~~Regional~~ ...

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...

Director that the certificate should be reinstated, he or she shall reinstate the certificate.

64.3. Where a certificate is reinstated under this Rule it shall be treated as having been continuously in force as if the discharge or revocation had not taken place, unless the ~~FRC~~Adjudicator specifies otherwise.

3B-095

C65. Reconsideration by the ~~Regional~~ Director

65.1. In any circumstances other than those covered by Rule 64 above, where a matter is referred to the ~~Regional~~ Director by the ~~FRC~~Adjudicator under Rules 61, 62 or 63 above, the ~~Regional~~ Director shall reconsider his or her decision taking into account the decision and reasons of the ~~FRC~~Adjudicator and any further information which has come to light.

65.2. Following a reconsideration under this Rule the ~~Regional~~ Director shall either confirm his or her original decision or may alter or replace that decision and issue, amend or restore a certificate as appropriate.

65.3. Where the ~~Regional~~ Director decides on reconsideration to reverse a decision to amend a certificate, the effect shall be as if the amendment had never been made, unless the ~~Regional~~ Director specifies otherwise.

65.4. Where under this Rule a certificate is reinstated, the certificate shall be treated as if it had never been discharged or revoked, unless the ~~Regional~~ Director specifies otherwise.

65.5. ~~A~~Subject to paragraph 8 a reconsideration by the ~~Regional~~ Director under this Rule shall be final and shall be notified to the client and the solicitor.

65.6. The ~~Regional~~ Director shall give reasons for any decision under this Rule which is adverse to the client.

65.7. Where the ~~Regional~~ Director issues a certificate under this Rule or Rule 64 above in any of the circumstances specified in Rule 21.6, the ~~Regional~~ Director may, if he or she thinks fit and subject to guidance, backdate the certificate to a date no earlier than the date on which he or she received the application.

- 65.8. Where following a reconsideration under this Rule the Director confirms his or her original decision but does so for reasons which raise material issues which were not raised in the reasons for the original decision, the client may apply for a second and final review of the decision by the Adjudicator.

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Part D – Special Procedures

Part D – Special Procedures

SECTION I – MULTI-PARTY ACTION (“MPA”) PROCEDURES

3B-096

D1. Scope of MPA Contracts

- 1.1. Each MPA Contract shall specify the claims or types of claim to which it relates and shall specify the work which it covers, which will be either:
 - (i) all work;
 - (ii) Generic Work only; or
 - (iii) such other work as is specified in the contract.
- 1.2. Work under an MPA Contract shall be subject to such conditions and limitations as the MPA Unit may impose.
- 1.3. Each MPA Contract shall specify a lead solicitor responsible for liaising with the MPA Unit.

3B-097

D2. Decisions ~~under MPA Contracts~~ concerning MPA funding

- 2.1. All decisions as to the scope or continuation of work ~~under an MPA Contract~~ relating to an MPA shall be made by the MPA Unit, save where the Unit decides to refer any matter to the MPA Committee, in which case the decision of the MPA Committee on that matter shall be final.
- 2.2. Refusal, amendment or withdrawal of funding ~~under an~~ for a MPA ~~Contract~~ shall be subject to the same procedures and rights of review as for work under certificates, except that:
 - (i) The MPA Committee shall carry out all functions of the ~~FRC~~ Adjudicator.
 - (ii) All applications on behalf of clients in the MPA shall be made through the lead solicitor. The responsibility of the lead solicitor under these Procedures shall be to the clients generally, not necessarily to respond to every request by an individual client.

- (iii) All notices, decisions and reasons to be served by the MPA Unit shall be served on the lead solicitor. The lead solicitor shall communicate with clients and other solicitors where required to do so under the contract or by the Unit, or otherwise as he or she thinks fit.
- 2.3. All decisions by the MPA Unit or MPA Committee ~~under an MPA Contract relating to an MPA~~ shall operate as decisions of principle under rule 46 of Part C of these Procedures in relation to all claims within the scope of ~~the~~that MPA ~~Contract~~, unless the Commission specifies otherwise.

3B-098

D3. Tendering for MPA Contracts

The Commission shall publish procedures for tendering and issuing MPA Contracts and the standard terms of such contracts.

SECTION 2 – FAMILY MEDIATION

3B-099

D4. Applications for Family Mediation

- 4.1. An application for Family Mediation shall be made to the family mediator from who mediation is sought.

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- 4.2. The application shall be made by the client attending on the mediator and completing a form approved by the Commission.
- 4.3. Before providing Family Mediation the mediator shall determine whether the client is financially eligible to receive it, and it shall be for the mediator to determine whether the criteria for providing or continuing to provide Family Mediation are satisfied.
- 4.4. Where a mediator decides that he or she is unable to provide or continue to provide Family Mediation, the mediator shall inform the client and provide reasons why this is the case.

3B-100

D5. The Family Mediation Code of Practice

- 5.1. Family Mediation shall be provided in accordance with a Code of Practice which shall form part of the mediator's contract.
- 5.2. The Code of Practice shall require the mediator to have arrangements designed to ensure that:
- (a) parties participate in mediation only if willing and not influenced by fear of violence or other harm;

- (b) cases where either party may be influenced by fear of violence or other harm are identified as soon as possible;
 - (c) the possibility of reconciliation is kept under review throughout mediation; and
 - (d) each party is informed about the availability of independent legal advice.
- 5.3. Where there are one or more children of the family, the Code of Practice must also require the mediator to have arrangements designed to ensure that the parties are encouraged to consider:
- (a) the welfare, wishes and feelings of each child; and
 - (b) whether and to what extent each child should be given the opportunity to express his or her wishes and feelings in the mediation.

SECTION 3 – COMMITTEE PROCEDURES

3B-101

D6. Scope of these Rules

- 6.1. These rules apply to all committees and panels exercising functions under these Procedures, including ~~FRC~~, the MPA Committee, ~~and~~ the Public Interest Advisory Panel and any panel of Adjudicators acting under Rule 60.3 of Part C.

3B-102

D7. Committee Hearings

- 7.1. The Commission shall make arrangements for members of committees to meet as required to make decisions in individual cases.
- 7.2. Each committee shall include a chair. Unless nominated by the Commission the chair shall be elected by the members of the committee present from their number.
- 7.3. Except so far as the procedure of any committee is regulated by these Procedures or by the Commission, the Committee shall have power to regulate its own procedure and the ruling of the chair on any issue of procedure arising at any meeting shall be final.

3B-103

D8. Committee Decisions

- 8.1. Subject to paragraph 3, committee decisions shall be by a majority of members present and voting and, in the event of a tie, the chair of the meeting shall have the casting vote.
- 8.2. Subject to paragraph 3, three members of a committee shall form a quorum.

- 8.3. Where only two members of a committee are present, they shall form a quorum and have power to deal with all matters before the committee on which they are in agreement as to the decision to be made.
- 8.4. It is the responsibility of the chair of a committee to ensure that reasons are given as required under these Procedures.
- 8.5. Any defect in the appointment or continued membership of a committee member shall not affect the validity of any decision by a committee.

3B-104

D9. Administration

The Commission shall make such other arrangements and procedures as it considers necessary for the establishment, membership and administration of committees.

SECTION 4 – EXCEPTIONAL FUNDING

3B-105

D10. Scope of these Rules

10.1. These rules apply to applications to the Commission:

- i for exceptional funding under Section 6(8)(b) of the Act; ~~or~~
- ii under level 7 of the Code relating to representation in Inquest proceedings; ~~or~~
- iii for services which are ancillary to (i) or (ii) above.

3B-106

D11. Form of Application

- 11.1. Applications under this Section shall be made to the Special Cases Unit.
- 11.2. Applications shall be made in writing on forms approved by the Commission.
- 11.3. Applications may be rejected if they do not contain sufficient information for either the Commission or the Lord Chancellor to carry out any determination required in an application under these rules.

3B-107

D12. Exceptional Funding Decisions

- 12.1. If the Commission refuse an application under these rules or decline to request funding from the Lord Chancellor under Section 6(8)(b) the Commission will write to the client confirming the decision and giving reasons.

12.2. A client may, within 14 days of receiving notice of this decision under paragraph 1 above apply to have the decision reconsidered by the Commission.

12.3. The Commission will reconsider any decision when requested to do so under paragraph 2 above and will write to the client setting out the further decision and giving reasons.

3B-108

Annex

This annex lists the amendments that have been made to the Code Procedures since 1 April 2000.

- (i) on 1 July 2000 Rule B5.4 was added (Controlled Legal Representation – Applications by Post);
- (ii) with effect from 2 April 2001 amendments were made to Part A of the Procedures (General), to the following Rules in Part C (Certificated Work) C1, C4, C16, C23, C26, C43 and C59 and a new Section 4 was added to Part D (Special Procedures) covering applications under Section 6(8) of the Act. The changes mostly relate to the introduction of civil contracting for all cases and the abolition of the Initial Financial Limit for Controlled Work as well as changes to the rules on notice of issue of certificates to opponents, referral of ...

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- ... cases to the Special Cases Unit and reporting the grant of funding to an opponent;
- (iii) with effect from 1 May 2001 Section 7 of Part C (Rules C27 to C29) and related definitions in Rule A12.4 were amended. The changes concern the rules and procedures for referral to Family Mediation.
- (iv) with effect from 31 December 2001 amendments were made to rules A2 and A3 (definitions of Controlled and Licensed work). A12 (definition of authorised representation), C3.3 and 3.4 (replacement of guardians ad litem by CAFCASS) and C11 (procedures for emergency representation).
- (v) with effect from 8 April Rule C55 was amended to provide for certificate embargoes in the show cause procedure.
- (vi) with effect from 1 April 2003, Rules C21 and 65 were amended to give the **Regional** Director power to backdate certain certificates relating to judicial review. Rule B1 was amended to reflect changes in the Not-for-Profit Contract as was Rule C29 concerning Family Mediation.

- (vii) with effect from 1 April 2004 Rules B5.1 and 5.2 were amended to set out the rights of review arising from refusal or withdrawal of Controlled Legal Representation
- (viii) with effect from 4 April 2005, Part A and Rule B5.2 were amended in relation to Controlled Legal Representation for proceedings under the Nationality, Immigration and Asylum Act 2002
- (ix) with effect from 25 July 2005, a range of amendments was made Part A of the Procedures and to rules 48–50 in Part C and to section 4, Part D. The majority of the amendments relate to the “New Focus for Civil Legal Aid” reforms and concern CLS Direct, the control of multiple family proceedings, the abolition of support funding and representation at inquests.
- (x) with effect from 1 October 2006 a range of amendments were made covering reform of Funding Review Committees and Regional Directors and, simplification of Part B of the Procedures and exceptional funding.

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