

Draft Amendments to the Funding Code for October 2007

These draft amendments are proposed changes to the Funding Code to give effect to the following reforms:

- i) The introduction of Family Help as proposed in our consultation paper 'Legal Aid Reform: Family and Family Mediation Fee Schemes; March 2007'
- ii) The criteria changes contained in our consultation 'The Funding Criteria for Child Care Proceedings; March 2007'

Introduction

Delete the last paragraph of the introductory text and replace with the following

This revised version of the Code will come into force on 1 October 2007 and applies to all Levels of Service granted on or after that date. Levels of Service granted before 1 October 2007 will continue as if this version of the Code had not come into effect, except for criterion 1.3 which applies to any disbursement incurred on or after 1 October 2007.

Code Criteria

Section 1 Levels of Service

1.1 Levels of Service Available

Delete "3. General Family Help". Replace with:

"3. Family Help – this can be either Family Help (Lower) or Family Help (Higher)"

Delete "5. Help with Mediation"

Renumber level 6 (Family Mediation) as 5

Renumber level 7 as 6

1.2 Disbursements

Replace existing wording under 1.3 with the following:

"Contracts or guidance may specify what items may or may not be charged as disbursements under each level of service. The following may not be charged under any level of service unless authorised by a specific order or direction from the Lord Chancellor:

- i) *Costs or expenses relating to the residential assessment of a child;*
- ii) *Costs and expenses in relation to treatment, therapy, training or other interventions of an educative or rehabilitative nature."*

Section 2 Definitions

2.1 Levels of Service

Delete the definitions of "General Family Help" and "Help with Mediation"

Add the following definition after the definition of "Help at Court"

"Family Help" is a level of service the grant of which authorises help in relation to a Family Dispute including assistance in resolving that dispute through negotiation or otherwise. Family Help does not include the provision of mediation services but

covers help and advice in support of Family Mediation. Family Help covers all services within the scope of either Legal Help or Legal Representation other than preparation for or representation at a contested final hearing or appeal.

- “Family Help (Lower)” means Family Help which is limited to exclude issue of proceedings or representation in proceedings other than in the following cases:
 - i) Family Help (Lower) includes help in obtaining a consent order following settlement of a Family Dispute
 - ii) For Private Law Children Cases only, Family Help (Lower) includes issue of proceedings
- “Family Help (Higher) means a grant of Family Help other than Family Help (Lower)

2.2 Case Categories

In the definition of “Special Children Act Proceedings”, delete the following:

“(ii) any parent of such a child or person with parental responsibility for the child within the meaning of the 1989 Act”

Re-number paragraph (iii) as (ii)

Add the following definitions at the end of section 2.2

“Private Law Children Cases” means proceedings concerning residence, contact and other private law issues concerning children other than issues of financial provision.

“Public Law Family Proceedings” means Special Children Act Proceedings, Related Proceedings (see Section 11.8) and Other Public Law Children Cases.

2.3 Other definitions

After the definition of “Regulations” insert the following:

“Residential Assessment” means any assessment of a child, whether under section 38(6) of the Children Act 1989 or otherwise, in which the child is assessed at any location other than his or her normal residence.

Section 11 Family

Delete sections 11.1 to 11.8 inclusive (Scope, Criteria for Help with Mediation, Criteria for General Family Help, Criteria for Family Mediation, Investigative Help, Criteria for Full Representation, Criteria for Special Children Act Proceedings and Related Proceedings)

Replace with the following:

11.1 Scope

This section applies to applications for Family Help, Family Mediation and Legal Representation in Family Proceedings

11.2 Help at Court

Help at Court is not available in relation to Family Disputes

11.3 Criteria for Family Help

11.3.1 Serious Family Dispute

Family Help may only be provided where the client requires ongoing help in relation to a serious Family Dispute. Guidance may specify what constitutes a

serious Family Dispute for this purpose.

11.3.2 Cost Benefit

Family Help will be refused unless the benefits to be gained from the help provided justify the likely costs, such that a private paying client would be prepared to proceed in all the circumstances.

11.3.3 Other Levels of Service

Family Help will be refused if it is more appropriate for the client to be assisted by way of Legal Help or Legal Representation.

11.4 Criteria for Family Help (Higher)

11.4.1 Family Help Criteria

An application for Family Help (Higher) must satisfy the following criteria, in addition to the criteria for Family Help at 11.3 above

11.4.2 Referral to Family Mediation

Family Help (Higher) will be refused if, in accordance with Code Procedures, the case must first be referred to a mediator for a determination as to whether mediation is suitable to the dispute and the parties and all the circumstances

11.4.3 Suitability for Mediation

Family Help (Higher) may be refused if mediation is more appropriate to the case than Family Help (Higher)

11.4.4 Attempts at Settlement

Family Help (Higher) may be refused unless reasonable attempts have been made to resolve the dispute without recourse to contested proceedings, through negotiation or otherwise.

11.4.5 Public Law Cases

Family Help (Higher) may not be granted in relation to Public Law Family Proceedings

11.5 Criteria for Family Mediation

11.5.1 The Assessment Meeting

An assessment of whether mediation is suitable to the dispute and the parties and all the circumstances (“an assessment meeting”) may only be provided if the standard criteria in Section 4 are satisfied.

11.5.2 Substantive Mediation

Mediation beyond the assessment meeting may be provided only where the mediator is satisfied that mediation is suitable to the dispute and the parties and all the circumstances.

11.6 Legal Representation in Family Proceedings

11.6.1 Investigative Help

Investigative Help is not available in Family Proceedings. Legal Representation in Family Proceedings shall take the form only of Full Representation

11.6.2 Standard Criteria

The criteria at Section 5.7 of the General Funding Code (criteria for Full Representation) and criterion 5.4.6 (small claims) do not apply to applications for Legal Representation in Family Proceedings

11.6.3 Legal Representation Criteria

The criteria at Sections 11.7 to 11.14 below apply only to applications for Legal Representation

11.7 Criteria for Special Children Act Proceedings

Legal Representation shall be granted in Special Children Act Proceedings (as defined in Section 2) provided the relevant criteria in Section 4 and criterion 5.4.5 (the Need for Representation) are satisfied. The other standard criteria in Section 5.4 of the General Funding Code shall not apply.

11.8 Related Proceedings

Where Legal Representation has been granted to person in Special Children Act Proceedings or in Other Public Law Children Cases, Legal Representation may also be granted for that person in related proceedings which are being heard together those proceedings or in which an order is being sought as an alternative to an order in those proceedings.

Replace 11.11.1 with the following

11.11.1 Scope

These criteria apply to applications for Legal Representation in Private Law Children Cases, other than cases covered by sections 11.13 or 11.14

Code Procedures

Part A General

A3 Funding for Each Level of Service

Under “Controlled Work” after “All Help at Court” insert

- “All Family Help (Lower)”

Under “Licensed Work” delete “All General Family Help” and “All Help with Mediation”. Replace with:

- “All Family Help (Higher)”

Part C Certificated Work

Replace all references to “General Family Help” with “Family Help (Higher)”

Delete Rule C7 (Special Children Act Proceedings)

In C27.2 replace “an intake assessment” with “a mediation assessment”

In C29 (Exemptions from Mediation Referral) delete C29.4, 29.5 and 29.6 and replace with:

- “29.4 In relation to Private Law Children Cases, where the client has been notified of a court date which is within four weeks of the date of the notification
- 29.5 In relation to proceedings other than Private Law Children Cases, where the client is a Respondent in proceedings and has been notified of a court date which is within four weeks of the date of notification
- 29.6 Where the mediator is satisfied that the client has a reasonable fear of domestic abuse from a potential party to the mediation and is therefore unwilling and in fear of participation in mediation with them”