

Unified Contract Civil Specification

Section 10: Family Category of Law Specific Provisions

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Part A - General Remuneration

Levels of Service

10.1 The following Levels of Service are available in the Family Category:

Level	Funded As
Legal Help	Controlled Work
Family Help (Lower)	Controlled Work
Family Help (Higher)	Licensed Work
Legal Representation	Licensed Work

The grant of each level is subject to all relevant Funding Code Criteria and Guidance in Volume 3 of the LSC Manual (or as published on our website at www.legalservices.gov.uk).

Remuneration for Family Work

10.2 The following table shows the remuneration regime for all Levels of Service and categories of case within the Family Category, subject to the further detailed provisions of this Section. All fees payable are exclusive of VAT and disbursements.

LEVELS OF SERVICE								
	Legal Help		Family Help (Lower)		Family Help (Higher)		Legal Representation	
	Payment By	Escape	Payment By	Escape	Payment By	Escape	Payment By	Escape
PUBLIC LAW								
s31 Care Proceedings	SF	3	SF	3	N/A	N/A	GF *	2
Other Public Law	SF	3	N/A	N/A	N/A	N/A	HR	N/A
PRIVATE LAW								
Divorce Only Cases Petitioner or Respondent	SF	3	N/A	N/A	N/A	N/A	N/A	N/A
Domestic Violence and Child Abduction Proceedings	SF	3	N/A	N/A	N/A	N/A	HR	N/A
All Other Private Law Family	SF	N/A	GF	3	HR	N/A	HR	N/A

10.3 The "Payment By" columns show how payment is determined using the following codes:

- SF = Standard Fee
- GF = Graduated Fee, i.e. two or more different Standard Fees are available for this service, entitlement being determined by the Specification. In the case of s31 Care Proceedings (marked GF*) the Graduated Fee applies to services other than advocacy or appeals against final orders; such services are payable by means of Hourly Rates.
- HR = Hourly Rates
- N/A = Not Available or Not Applicable

10.4 The "Escape" Columns show whether a case can escape from the Standard or Graduated Fee and be paid as an Exceptional Case in the Family Category of Law by way of Hourly Rates. For example "3" means that if remuneration calculated on an Hourly Rates basis, would be more than three times the amount payable by way of Standard Fee, then you can apply to us for the Claim to be

treated as an Exceptional Case and payment will be made solely by way of Hourly Rates.

- 10.5 These fee schemes apply from 1 October 2007 and are subject to the Transitional Provisions of this Specification. Further, where Legal Help has been provided in relation to a Family Dispute prior to 1 October 2007 Family Help (Lower) may not be claimed in relation to the same Family Dispute unless a separate Matter Start would be justified under Paragraph 5.15 of the Specification.
- 10.6 The Standard Fees and Hourly Rates payable are set out in sections 2, 3, 7 and 9 of the Payment Annex.

Regional Fees

- 10.7 Whilst some fees are of national application, certain Standard Fees vary according to region. All regional fees are set out in Payment Annex. Where a regional fees applies, you should claim the regional fee for the work of the fee-earner whose Schedule Office is situated in the applicable LSC Region.
- 10.8 Regional fees are determined in accordance with the LSC Regional Arrangements 2000 as follows:-

Regional Fee	LSC Region (Regional Office)
North	North Western Region (Manchester)
	North Eastern Region (Newcastle)
	Yorkshire & Humberside Region (Leeds)
Midlands	Merseyside Region (Liverpool)
	West Midlands Region (Birmingham)
	East Midlands Region (Nottingham)
London	Eastern Region (Cambridge)
	London Region (London)
South	South Eastern Region (Reading)
	South Western Region (Bristol)
Wales	Wales Region (Cardiff)

Cases Involving More Than One Fee

- 10.9 Where more than one Level of Service is legitimately provided for a Client, remuneration may be claimed separately for each Level of Service. For example, if a Client receives Legal Help followed by Family Help (Lower) the Legal Help fee is claimable in addition to the Family Help (Lower) fee.
- 10.10 Where the Payment Annex sets out more than one Standard Fee for a particular Level of Service only one Standard Fee may be claimed per case for that Level of Service. The Specification will determine which is the appropriate fee to claim.

- 10.11 Where you are providing a particular Level of Service you may not go on to grant or apply for a further Level of Service unless all work which could be carried out under the existing Level of Service has been completed. For example, if you are providing Family Help (Lower) you may not apply for a Certificate for Family Help (Higher) unless you have completed all work within the scope of Family Help (Lower) and all other relevant criteria are satisfied. See in particular Funding Code Criteria 11.3.3 and 5.4.4. The level of remuneration payable for a Level of Service is not a relevant consideration in deciding whether it is appropriate to move on to the next level.
- 10.12 Where it is appropriate to provide a particular Level of Service, such as Legal Representation, it does not follow that all lower Levels of Service may be claimed. In particular, if at the first meeting with the Client it is appropriate to grant the Client Emergency Family Help (see Paragraph 10.65 below) or Emergency Representation, no fee may be claimed for providing Legal Help or Family Help (Lower). However the necessary work can be claimed under the Certificate.
- 10.13 If, at the first meeting with the Client, it is appropriate to make an application for Legal Representation for that Client, but you do not have a Devolved Power to grant Legal Representation, you may claim Legal Help to advise the Client and make the application for Legal Representation, but you may not claim Family Help (Lower).
- 10.14 In domestic violence and child abduction proceedings there is no specific Standard Fee for Family Help as it is not anticipated that it will be necessary to negotiate before issuing proceedings. Therefore, you may proceed from Legal Help straight to Legal Representation where all other relevant Funding Code Criteria are satisfied.

Changes of Supplier

- 10.15 Funding Code Procedure Rule B9 and section 2 of the general provisions of the Specification restrict the ability of a Supplier to provide Legal Help where the Client has received Legal Help from another Supplier, except in specified circumstances. This approach applies equally to Family Help.
- 10.16 Where a Client changes Supplier the general rule is that both the old and new Supplier are separately entitled to payment for work done, including any Standard Fee for the Level of Service provided under this Specification. Subject to the exception below, if you would be entitled to a Standard Fee for work done either before or after the Client transferred, any entitlement to escape from that Standard Fee should be determined solely on the basis of the work you have undertaken.
- 10.17 The above approach does not apply where a Client transfers to a new Supplier during the provision of Legal Representation in s31 Care Proceedings – this situation is dealt with under Paragraph 10.37 below.

Enhancement of Family Prescribed Rates

- 10.18 The rules on enhancement of Hourly Rates in Paragraphs 7.36 to 7.41 of the general provisions apply to Family Work subject to Paragraphs 10.19 to 10.22 below.

10.19 No enhancement or potential for enhancement of Hourly Rates may be taken into account for the purpose of determining whether a case escapes from any Standard Fee or whether a half or full Standard Fee is payable on transfer of supplier (See Paragraphs 10.37 to 10.38 below)

10.20 The percentage by which Hourly Rates for Family Work may be enhanced may never exceed 100%.

Panel Membership Enhancement in Family Cases

10.21 Where the relevant work is done by a member of a relevant panel:

- (a) the Threshold Test at section 7.37 shall be deemed to be satisfied in respect of that work; and
- (b) the minimum level of enhancement allowed in respect of that work shall be 15%.

10.22 In paragraph 10.21:

“relevant panel” means:-

- (i) the Resolution Accredited Specialist Panel;
- (ii) in relation to work done under a Certificate which includes proceedings relating to children, the Law Society’s Children Panel; or
- (iii) The Law Society’s Family Law Panel Advanced.

“proceedings relating to children” means proceedings in which the welfare of children is determined, including, without limitation, proceedings under the Children Act 1989 or under the inherent jurisdiction of the High Court in relation to children.

Transitional Provisions

10.23 This Family Specification applies to matters commenced by you on or after 1 October 2007. If Legal Help has been commenced for Public Law Work prior to 1 October you may commence Family Help (Lower) relating to the same matter after that date in accordance with the provisions of this Specification, except that in that situation Family Help (Lower) may be claimed as a separate Matter Start. If a Private Law Legal Help matter has been commenced prior to 1 October you may not commence Family Help (Lower) in relation to the same matter after that date, but may apply for Family Help (Higher) provided all relevant Funding Code criteria are satisfied.

PART B – PUBLIC LAW FEE SCHEMES

Scope of Public Law Work

10.24 For the purposes of remuneration, “Public Law Work” covers all work which either:-

- Falls within section 11.7, 11.8 or 11.9 of the Funding Code Criteria (Special Children Act Proceedings, Related Proceedings and Other Public Law Children cases); or
- Relates to a Family Dispute which, if it proceeded to Legal Representation, would fall within any of those sections of the Funding Code.

10.25 Public Law Work is subject to the remuneration regime set out in the “Public Law” section of the table at Paragraph 10.2 above. Where Public Law Work is payable by means of a standard or graduated fee, the fee payable is as set out in section 2 of the Payment Annex.

10.26 “Public Law Proceedings” mean proceedings funded under sections 11.7, 11.8 or 11.9 of the Funding Code Criteria.

Fee Scheme Definitions

10.27 In the table at Paragraph 10.2 above

“s31 Care Proceedings” means proceedings or potential proceedings under section 31 of the Children Act 1989.

“Other Public Law” means any Public Law Work other than s31 Care Proceedings.

10.28 In the Payment Annex, fees for s31 Care Proceedings vary according to the identity of the party represented, the Court and the number of parties represented:-

“Child” applies where you represent the Child who is the subject of the proceedings.

“Parent” applies where you represent the parent of such a Child or a person who has parental responsibility for such a Child.

“Joined Party” applies to all other Clients in s31 Care Proceedings.

Under the Court heading “High” applies to cases proceeding in the High Court or Court of Protection; “Other” applies to cases proceeding in any other Court. If a case is transferred between courts the “High” rate applies only if the case was concluded at first instance in the High Court or Court of Protection.

Where you represent more than one party in the proceedings only one Standard Fee may be claimed by you, but this will be the higher fee marked “2” or “2+” in the Payment Annex provided you represented more than one party at at least one court hearing during the case.

Payment for Family Help (Lower)

10.29 Family Help (Lower) may only be granted where all criteria at section 11.3 of the Funding Code are satisfied. In addition, in Public Law Work remuneration for Family Help (Lower) may only be claimed where the following conditions are satisfied:-

- (i) the Local Authority has given written notice of potential s31 Care Proceedings in accordance with the DCSF/Welsh Assembly government guidance issued under the Children Act 1989 guidance and regulations, Volume 1, but no proceedings have yet been issued (application for an Emergency Protection Order does not count as issue of proceedings for this purpose);
- (ii) your Client is a Parent (as defined above);
- (iii) Your Client requires advice and assistance with a view to avoiding the proceedings, or narrowing and resolving any issues with the Local Authority.

Escape from the Family Help (Lower) Standard Fee

- 10.30 In determining whether you are entitled to claim Hourly Rates for Family Help (Lower) rather than the Standard Fee, you must take into account the time spent both under Family Help (Lower) and under Legal Help in relation to the same matter. In order to escape, your fees calculated on an Hourly Rate basis, must be at least three times the aggregate of the Legal Help Standard Fee and the Family Help (Lower) Standard Fee. If you are entitled to escape, Hourly Rates may then be claimed for both Legal Help work and Family Help (Lower) work.
- 10.31 For the purposes of calculating whether a case escapes from the Standard Fee, or for payment where a case has escaped, the relevant Hourly Rate for all work is that specified at section 7 (c) of the Payment Annex. In s31 Care proceedings where Legal Help is provided but there is no grant of Family Help (Lower), the relevant Hourly Rate is that specified at section 7(b) of the Payment Annex.

Legal Representation Devolved Powers

- 10.32 Unless otherwise notified by us, you have the Devolved Power to grant Legal Representation in Special Children Act Proceedings (as defined at section 2.2 of the Funding Code) and Related Proceedings (as defined at Paragraph 10.44 below). This Devolved Power replaces the previous deeming provision in relation to work done prior to the issue of a Certificate. The Devolved Power must, of course, be exercised only when all relevant Funding Code Criteria are satisfied, including whether separate representation is justified for your Client (Funding Code Criterion 5.4.5)
- 10.33 You may not exercise the Devolved Power if Legal Representation has previously been refused or withdrawn from your Client earlier in the same proceedings.
- 10.34 This Devolved Power does not replace or limit your Devolved Power to grant Emergency Representation where the criteria and guidance for doing so are satisfied.
- 10.35 As with other Devolved Powers, where you grant Legal Representation you must notify the Regional Office within five working days of the decision to grant in accordance with Funding Code procedures Rule C17. This notification should explain, where it is relevant, why it is appropriate for your Client to be separately represented.

Reporting Obligations for Public Law Cases

10.36 Without prejudice to any other reporting obligations contained in this Contract and in the Funding Code procedures (see Rules C43 and 44 of the Procedures), where Legal Representation has been granted in any Public Law Proceedings, you must report to the Director where you become aware that your Client's interest in the proceedings is no longer sufficiently distinct from that of any other party to justify separate representation. If you fail to do so promptly we reserve the right to reduce or disallow any costs which have thereby been unnecessarily incurred.

Remuneration on Transfer of Supplier

10.37 The following rules apply where a Client transfers Supplier in s31 Care Proceedings to another Supplier, and the first Supplier ceases to provide representation in the proceedings but both the first and a subsequent Supplier carry out work which is within the scope of the Standard Fee:

- (i) Each Supplier should calculate their fees separately on an Hourly Rates basis – any Supplier whose fees on that basis are equal to or greater than the Standard Fee may claim the Standard Fee;
- (ii) Any such Supplier whose fees on an Hourly Rates basis are less than the Standard Fee may claim half the Standard Fee;
- (iii) If any of the Suppliers concerned have represented two or more Clients at one or more court hearings during the case, the Standard Fee for that Supplier will be that for representing 2+ Clients (or half of this fee as appropriate);
- (iv) In deciding whether a case escapes the Standard Fee, each Supplier is considered separately. Therefore, any Supplier whose own fees on an Hourly Rates basis are more than twice the relevant Standard Fee may claim to be paid on Hourly Rates for the portion of the case in which they have acted.

10.38 The following rules apply where a Supplier acts for more than one party but a Client transfers to a new Supplier during the case (typically for conflict of interest reasons) but the first Supplier continues to represent one or more Clients:

- (i) The first Supplier is entitled to a full Standard Fee in the normal way (see 10.28 for where the "2" or "2+" fee can be claimed), unless the case escapes that fee;
- (ii) In deciding whether a case escapes from the Standard Fee, each Supplier is considered separately. Only their own costs are taken into account for this purpose;
- (iii) Any Supplier, taking on a Client, who was not previously acting for any party in the proceedings may claim either a half or a full Standard Fee, applying the rules in Paragraph 10.37(i) and (ii) above; and
- (iv) Such a Supplier will escape from the Standard Fee, if their own costs on an Hourly Rate basis are more than twice the full Standard Fee, in the normal way.

Remuneration for Advocacy Services

- 10.39 Standard Fees for s31 Care Proceedings cover all work in the proceedings at first instance except for advocacy. Advocacy services are paid for separately from the Standard Fee. Where advocacy is provided by counsel, counsel will claim for such work under the CLS (Funding) (Counsel in Family Proceedings) Order 2001 (“the Graduated Fees Order”). Where you provide advocacy, including advocacy at any interim hearing you should claim for such work under Hourly Rates. This may include any enhancement of such Hourly Rates payable under Paragraphs 10.18 to 10.22 above.
- 10.40 Where you provide advocacy, your claim may include not just appearances as advocate before the court, but any associated travel and waiting time and attendance as advocate at advocates meetings in public law children matters. Work which would normally be included within counsel’s brief fee where advocacy was provided by counsel, other than preparation prior to the hearing, may be claimed by you if you provide advocacy in such cases.
- 10.41 Where you provide advocacy at court in s31 Care Proceedings you should claim at the relevant hourly rates set out in Table 9(a) of the Payment Annex. For this purpose:
- i) The rate for Advocacy may only be claimed for time spent providing advocacy in court;
 - ii) Time spent in negotiation, meetings, conferences at court on the day of the hearing and advocates meetings may be claimed at the Preparation and Attendance rate; and
 - iii) Other time should be claimed at the travelling and waiting rate
- 10.42 For the avoidance of doubt, advocacy does not include attendance by you at court with counsel or with another advocate, which is paid for under the Standard Fee or for cases which escape the Standard Fee, by the applicable Hourly Rates set out in Table 9(a). Only one person may claim for advocacy services at any one hearing, unless provided for under the Graduated Fees Order.

Related Proceedings

- 10.43 In this Specification “Related Proceedings” are proceedings which are being heard together with public law proceedings, or in which an order is being sought as an alternative to an order in such proceedings. An example is contact and residence proceedings which are being considered by the court, together with care proceedings.
- 10.44 Related Proceedings count as Public Law Work for remuneration purposes. No separate fee may be claimed for Related Proceedings, but any work done in Related Proceedings may be taken into account for the purpose of determining whether the case escapes from the Standard Fee.

Final Appeals

- 10.45 Standard Fees for s31 Care Proceedings cover work done (other than advocacy) up to conclusion of the proceedings at first instance. This includes:

- (i) Representation on any interim appeal; and
 - (ii) Any advice on the merits of an appeal against the final order.
- 10.46 Where Legal Representation is granted to bring or defend any appeal against the final order, this work will be paid by way of Hourly Rates.

Escape from the Legal Representation Standard Fee

- 10.47 In deciding whether a case escapes from a Standard Fee, only work which is within the scope of the Standard Fee scheme may be taken into account. Therefore all costs relating to advocacy services, disbursements and Final Appeals (see Paragraph 10.45 above) should be disregarded for this purpose.
- 10.48 Further, in determining whether a case escapes, no enhancement of Hourly Rates may be taken into account, whether on the basis of panel membership or otherwise. However if on this basis a case does escape and becomes payable by way of Hourly Rates then enhancements can be claimed on Hourly Rates as allowed for in this Specification (see paragraphs 7.36 to 41 of the general provisions and Paragraphs 10.20 to 10.22 above)
- 10.49 Cases escape the Standard Fee regime where costs on an Hourly Rates basis exceed twice the Standard Fee. For this purpose the fee to use is always the one which would be payable if the case did not escape.

For example: if a case transfers from the County Court to the High Court and concludes in the High Court, the High Court Standard Fee is payable and should also be used to calculate whether the case escapes. However in calculating the relevant Hourly Rate, County Court hourly rates shall be used for all work carried out in that court.

Payment on Account for Legal Representation

- 10.50 Payments on Account may be claimed for Family Work in accordance with Clause 17 of the Unified Contract Standard Terms. For this purpose applications for Payments on Account may not exceed 75% of the costs incurred by you calculated on an Hourly Rates basis. Further, Payments on Account relating to s31 Care Proceedings will not exceed 75% of the relevant Standard Fee unless at the time the application for Payment on Account is made you have either:
- (i) already incurred sufficient costs to escape the Standard Fee: or
 - (ii) have provided advocacy services (other than through counsel) at one or more hearings, in which case a separate Payment on Account may be claimed based on advocacy costs incurred but may not exceed 75% of the costs incurred.

Part C - Private Law Fee Schemes

Scope of Private Law Work

- 10.51 The remuneration rules governing Private Law work apply to all work within the Family Category other than Public Law Work.

Fee Category Definitions

10.52 In the table at Paragraph 10.2 above and in the Payment Annex, private law categories have the following meanings:

“Divorce Only Cases Petitioner or Respondent” means cases which qualify for a Divorce Petition Only claim for Legal Help under Paragraph 10.53 below, or where Legal Help is claimed on behalf of a Respondent to such a case as described at Paragraph 10.54 below.

“Domestic Violence Proceedings” means cases considered under section 11.10 of the Funding Code or services relating to a Family Dispute which, if it proceeded to Legal Representation, would be considered under that section of the Code.

“Child Abduction Proceedings” means cases considered under section 11.13 of the Code or services in relation to a Family Dispute which, if it proceeded to Legal Representation, would be considered under that section of the Code.

“All Other Private Law Family” means all other Private Law Work not in any other category in the table at paragraph 10.2

“Children” in the table of fees for Family Help (Lower) in the Payment Annex covers the fees which relate to Private Law Children Cases (as defined in the Funding Code)

“Finance” in the table of fees for Family Help (Lower) in the Payment Annex covers the fees which relate to any private law work in the Family Category other than Domestic Violence, Child Abduction or Private Law Children Proceedings

Legal Help Divorce Petition Only cases

10.53 The Payment Annex provides a higher Standard Fee for Legal Help for “Divorce Petition Only”. This fee may only be claimed where:

- (i) Your Client requires advice and assistance in order to initiate and progress proceedings for divorce, judicial separation or the dissolution of a civil partnership: and
- (ii) Those proceedings are issued: and
- (iii) Three months after proceedings are issued or when the proceedings are concluded (whichever is sooner) no other Level of Service is granted to your Client for any Family Dispute related to those proceedings: and
- (iv) You are satisfied that at that time it is unlikely that the Client will require any further services related to those proceedings.

10.54 In all other cases the basic fee for “Legal Help” at table 3(a) of the Payment Annex applies. This includes cases where the conditions of Paragraph 10.53 above are satisfied except that your client is the Respondent to the proceedings rather than the Petitioner. Note that for Divorce Only Cases Petitioner or Respondent, Domestic Violence Proceedings and Child Abduction Proceedings cases can escape from the Standard Fee for Legal Help – for all other family matters this is not possible.

Criteria for Family Help (Lower) – meaning of “significant family dispute”

- 10.55 You may only grant Family Help (Lower) where all relevant Funding Code criteria are satisfied, taking into account any guidance from those criteria in Volume 3 of the LSC Manual (or as published on our website). Family Help (Lower) may not be granted for those Family Disputes:
- (i) Which do not require or involve more than one meeting with the Client, whether or not followed up by written or telephone advice;
 - (ii) Where the Client’s primary concern is with processing a divorce, judicial separation or dissolution of a civil partnership and any associated property or children disputes do not satisfy the criteria for Family Help;
 - (iii) Where the dispute, if unresolved, would be unlikely to lead to family proceedings;
 - (iv) Where the primary issue is a change of name or advice about a will;
 - (v) Where the Client requires only general advice about the dispute and methods of dispute resolution, such as Family Mediation; or
 - (vi) Where the issue relates to child support only and the Child Support Agency has jurisdiction.

Cases with both finance and children issues

- 10.56 A Client may be granted Family Help (Lower) for both children and finance issues and may claim a separate Standard Fee for each, but the Funding Code Criteria must be considered and satisfied for each aspect separately. For example, where a Client’s divorce raises significant finance issues and also children issues, but the children issues would not satisfy the cost benefit criterion for Family Help (Lower) then the Client may be assisted generally under Legal Help (but this would involve only one Matter Start and one Standard Fee – see Paragraph 10.68 below), but Family Help (Lower) should be granted for the finance issues only.

Escape from Family Help (Lower) Standard Fees

- 10.57 In determining whether you are entitled to claim Hourly Rates for Family Help (Lower) rather than the Standard Fee, you must take into account the time spent both under Family Help (Lower) and under Legal Help in relation to the same matter. In order to escape, your fees calculated on an Hourly Rate basis, must be at least three times the aggregate of the Legal Help Standard Fee and the Family Help (Lower) Standard Fee. If you are entitled to escape, Hourly Rates may then be claimed for both Legal Help work and Family Help (Lower) work.
- 10.58 The Hourly Rate payable under the Payment Annex for Legal Help should be used both for determining whether a case escapes and, if a case does escape, determining remuneration payable.
- 10.59 The Settlement Fee should not be taken into account in deciding whether a case escapes the Standard Fee but if it does so, no Settlement Fee may be claimed.
- 10.60 If you are providing Family Help (Lower) for both finance and children issues, you will only escape from the Standard Fee if your total fees for all aspects on an Hourly Rates basis are at least three times the aggregate of the Legal Help

Standard Fee, the Family Help (Lower) Standard Fee for Children and the Family Help (Lower) Standard Fee for Finance. If the case as a whole escapes the Standard Fees in this way, all the work may then be claimed for under Hourly Rates.

Court Fees

10.61 Court fees are an allowable disbursement under Family Help (Lower) only where such fees are incurred for the purpose of obtaining a consent order. In all cases, court fees may only be incurred where they are a reasonable and proportionate step which satisfies the private Client cost benefit criterion (Funding Code criterion 11.3.2).

The Settlement Fee

10.62 The Payment Annex provides for Settlement Fees which are payable for cases which conclude under Family Help (Lower). Settlement Fees are payable in addition to any Standard Fee payable and may be claimed separately for settling children and finance disputes. A Settlement Fee may only be claimed if the following conditions are satisfied:

- (i) That aspect of the case (i.e. children or finance) has been fully concluded under Family Help (Lower);
- (ii) That aspect of the case does not proceed further to a new Level of Service within six months of the settlement, either with you or, so far as you are aware, another Supplier;
- (iii) There has been a genuine settlement to conclude that aspect of the case, rather than, for example, a reconciliation between the parties or one party dying or disengaging from the case;
- (iv) In the case of financial disputes, the settlement is recorded in a formal written agreement or consent order; and
- (v) The case has not escaped from the Standard Fee

10.63 When a settlement is concluded you must wait for at least 21 days before claiming the Settlement Fee. If you receive a Settlement Fee but you become aware that the settlement breaks down within six months of the date of the settlement you must notify us of that fact and the Settlement Fee will be reclaimable from you.

Proceeding beyond Family Help (Lower)

10.64 Before applying for a Certificate for Family Help (Higher) you must complete all work which could be carried out under Family Help (Lower). The application for Family Help (Higher) should be made only when it becomes necessary to issue proceedings other than for the purpose of a consent order or in the case of a Respondent such proceedings have been issued.

Emergency Family Help

10.65 In some cases the Client will need representation in the interests of justice as a matter of urgency before a stage has been reached in the case, such that a grant

of Emergency Legal Representation would be appropriate. For example, if you are first contacted by a Client who has an imminent hearing pending which is not the final hearing, the appropriate Level of Service would be Family Help (Higher) rather than Legal Representation. Unless we have told you otherwise, you have a Devolved Power to grant Family Help (Higher) in such cases. You must apply the same procedures and criteria when granting Family Help (Higher) as you would when granting Emergency Representation, with necessary modifications.

Proceeding beyond Family Help (Higher)

10.66 You may only apply for Legal Representation when all work which could be completed under Family Help (Higher) has been completed. The material difference between the scope of Family Help and Legal Representation is that Family Help does not cover preparation for, or representation at, any final hearing. Therefore you may only apply for Legal Representation once any interim hearings have taken place and where the next step is to prepare for the final hearing. For this purpose, a final hearing is any hearing which the court has listed for the purpose of making a determination, either of the whole case or of any significant aspect of the case.

Part D - Other Provisions

Separate Matter Types

- 10.67 It is in the nature of family cases for Clients to have more than one Family Dispute at any given time. However, the family remuneration provisions, including Standard Fees, have been calculated on the basis of cases with more than one aspect. Therefore multiple cases and fees may not be claimed for a single Client, except in accordance with the provisions of this specification.
- 10.68 Except as provided below, you may not have more than one Legal Help Matter Start opened for a Client in the Family Category. As with other Categories of Work, where a Legal Help Matter Start has been concluded in the Family Category you may not start a new Matter Start in the Family Category for that Client unless the conditions set out in Paragraph 5.15 of the general provisions are satisfied.
- 10.69 The only exception to the above rule is that separate matters may be opened where they relate to Family Disputes which are entirely separate (typically because they arise out of different family relationships) and which would, if they resulted in proceedings, be issued and heard separately.
- 10.70 Where Legal Help has been provided, a grant of Family Help (Lower) or two grants of Family Help (Lower) in cases which have both children and finance aspects, do not count as a new Matter Start. A Client may never be in receipt of more than two grants of Family Help (Lower) at any time.
- 10.71 Where Family Help (Lower) has been concluded you may not grant Family Help (Lower) for the same aspect (children or finance) for the same Client unless the conditions set out in paragraph 5.15 for new Matter Starts are satisfied.

Use of Counsel

10.72 Counsel may be instructed under any Level of Service but if counsel is instructed under Legal Help or Family Help (Lower), you are responsible for agreeing counsel's fees and paying counsel out of the Standard Fee. Counsel's fees under Legal Help or Family Help (Lower) do not count as a disbursement unless

the case escapes from the relevant Standard Fee and may not be taken into account in determining whether a case escapes from that Fee.

- 10.73 If you instruct counsel under Legal Help or Family Help (Lower) and the case escapes from the Standard Fee you may, when claiming your fees on the basis of Hourly Rates, claim payment from us of counsel's fees as if such fees were a disbursement incurred by you. However in that situation the amount claimed from us may not exceed the sum which would have been due from us had counsel claimed for the work under the Graduated Fees Order.
- 10.74 In any case where you instruct counsel and counsel's fees are not payable by us under the Graduated Fees Order, you must pay counsel within 28 days of receipt of counsel's fee note.
- 10.75 If counsel is instructed under Family Help (Higher) or Legal Representation, counsel may claim and be paid by us under the Graduated Fees Order (see Paragraph 10.76 below).

Family Graduated Fees

- 10.76 The following rules apply when you instruct counsel whose fees are payable under the Graduated Fees Order, or would be so payable but for Article 4(2A) of that Order;
- (a) You must notify any counsel instructed in family proceedings, within fourteen days of:
- (i) those proceedings being finally settled or otherwise concluded: and
 - (ii) receiving notice of final revocation or discharge of the relevant Certificate (following any review by the Director and Funding Review Committee), whichever is the sooner, that the proceedings have been settled or otherwise concluded, or as the case may be, that the certificate has been discharged or revoked.
- (b) Where so requested, you must provide counsel with written confirmation that they were instructed to carry out the work in question, together with such other information as counsel may reasonably request for the purpose of applying for payment under the Graduated Fees Order. You must comply by sending the requested confirmation or information within seven working days of the latest of either:
- (i) receipt by you of the request together with any necessary accompanying documentation (such as counsel's claim form); or
 - (ii) receipt by you of any other information or documentation reasonably necessary for you to provide the confirmation or information (e.g. documentation required to show that a payment point has been reached such as notice of discharge of a Certificate),
- (c) You must include details (and attach confirmation) of all sums paid to counsel in the proceedings on any Claim for costs you make on Assessment. Where counsel has carried out work in the proceedings to

date that has not yet been paid, you must await the receipt of confirmation of payment before submitting your Claim.

- (d) On any Assessment of costs, if it appears to us or to the court that counsel has been instructed either:
 - (i) without any prior authority required under this Contract and where the use of counsel was not justified: or
 - (ii) in any other circumstances where it was not necessary for counsel to be instructed

your costs will be assessed as if counsel had not been instructed in the proceedings, as provided by guidance. Any sums paid or payable to counsel, under the Graduated Fees Order or otherwise, shall be deducted from the amount so assessed when calculating your fees.

- (e) Where the total sums payable on Assessment exceed any Cost Limitation imposed by the under the relevant Certificate or contract, the costs payable to you shall not exceed the amount payable in accordance with that Costs Limitation less such sums as are paid or payable to counsel under the Graduated Fees Order.
- (f) You must inform counsel whenever counsel's fees are reduced under Article 19 of the Graduated Fees Order and any reasons for that reduction, and provide counsel with such information as he or she requires in order to pursue any review or appeal against the Assessment allowed under this Contract or under the Graduated Fees Order.

Recovery of costs from another Party

10.77 Where you recover costs from another party to proceedings or potential proceedings, whether by way of court order or agreement, and those costs relate to work which falls within the scope of any Standard or Graduated Fee, you must choose one of the following options:

- i) accept and retain the costs recovered from the other party but make no claim from the fund for any work which falls within the scope of the Standard or Graduated Fee (for the avoidance of doubt you may not in that situation claim any 'legal aid only costs' under Paragraphs 8.22 or 8.23 of this Specification); or
- ii) pay all costs recovered from the other party into the fund but claim remuneration under this Specification in the normal way.

Experts working with Children

10.78 Where you are instructing an expert or other person who will, or be likely to, work or engage direct with a child/children in carrying out your instructions you must make it a term of their engagement that all those likely to work with or coming into direct contact with a child/children have been appropriately CRB checked and that you are entitled to ask for confirmatory evidence to be provided. This requirement does not apply to those experts working within or under the aegis of the National Health Service.

Applying for a Criminal Representation Order in Family Proceedings

10.79 If you are an SQM holder or Provisional SQM holder in the Family SQM category, then you may provide representation under Section 14 of the Access to Justice Act 1999 in:

- (a) Enforcement proceedings in the magistrates' court arising out of the breach of an order of that court in Family Proceedings where there is a risk of imprisonment;
- (b) To a child who is the subject of proceedings for an Anti-Social Behaviour or Sex Offender Order and/or to the parent of any such child in relation to an Associated Parenting Order; or
- (c) To a parent in relation to a Parenting Order made on the conviction of a child where the parent cannot reasonably be represented by the child's solicitor

provided that is in the interests of justice to provide representation (see Schedule 3 to the Access to Justice Act 1999).

10.80 Payment for representation under this Paragraph will be in accordance with the revised Standard Fee scheme in Part E, paragraphs 3.5.1-3 of the General Criminal Contract.

10.81 Representation under this Paragraph is part of the Criminal Defence Service (even though provided for under this Contract) and may also be performed by those with a General Criminal Contract. You apply for a Representation Order by completing forms CDS14 and CDS15 and sending them to the magistrates' court which is dealing with the matter. Representation Orders in the magistrates' court are granted subject to the individual passing the means test in the CDS (Financial Eligibility) Regulations 2006.