

Guidance on Public Funding Certificate applications including Devolved Powers

Emergency Representation

The majority of certificated matters received are for proceedings in relation to judicial review, court of protection, and habeas corpus. It is important to establish in what circumstances, and at what point the use of devolved powers is appropriate. The guidance for emergency representation is contained in section 12, volume 3 of the LSC Manual, Decision Making Guidance. I have selected the points I think are most relevant to the specific categories of application and whilst some of the information is paraphrased I have provided the relevant funding code reference details where appropriate. The basic principles underpinning the use of devolved powers are that work must be imminent, the case must have sufficient merit and the client must be financially eligible.

Consistent, inappropriate use of devolved powers may result in the removal of devolved powers from your firm and would apply across all categories 3C-095.

Informing the client

It is important that where possible the potential consequences of issuing an emergency certificate are explained to a client. If a client fails to co-operate with request for further information or fails to accept an offer on a substantive certificate then this will result in the revocation of the certificate and will render the client liable for all the costs incurred under the emergency certificate. Whilst it is appreciated that clients with mental health issues may not be entirely receptive to this information, it is vital nonetheless that an attempt is made to provide it and you may wish to consider whether the independent advocate could assist in this respect **3C – 088 (9)**.

Wider Public Interest

Devolved powers should not be used on the basis that it is considered the case has a significant wider public interest. Decisions with respect to wider public interest will be taken by the commission and where appropriate will be referred to the Public Interest Advisory body **3C – 088 (11)**.

Urgency/Interest of Justice

There are specific circumstances where the use of devolved powers will be more likely to be appropriate. These are when seeking interim injunctive relief, representation at an imminent hearing or where a limitation is due to expire.

The use of devolved powers will be deemed inappropriate if the work considered imminent can in fact wait until the issue of a substantive certificate **3C – 089**.

The Mental Health Unit has provided a commitment to process applications within one week of receipt though in practice it is likely that applications will be processed within 48 hours. Imperative to the success of such a commitment is that applications are submitted directly to the unit. It is advised that all application should be submitted using the cover-sheet marked "URGENT, for the attention of the Mental Health Unit ", including any hand delivered documents.

When devolved powers have been exercised the substantive application must be received by us within five working days of the date that you exercised devolved powers **3C – 091 (20)**. Applications received outside this period without sufficient explanation will be date limited to the date the application is processed. This will only materially affect applications with full means assessments to the extent that from the date limit, the emergency certificate will provide no further cover until the substantive certificate has been issued. This should be borne in mind when a client is requested to accept an offer of funding, or where further information is requested in order to complete the means assessment.

In practice, an emergency certificate should not be required in the Mental Health category unless the work concerned must be completed before a substantive certificate could be issued. Circumstances where devolved powers may be appropriate are limited in the mental health category. As previously identified such circumstances would be when seeking injunctive relief, issuing protective proceedings or urgent representation.

It should also be noted that emergency certificates should be appropriately limited. In the examples provided appropriate limitations would be obtaining an interim injunction (CV026), paper application (JR004) and an initial hearing respectively (CV001).

Interest of Justice

In circumstances where representation is urgent the interest of justice criteria are unlikely to be satisfied if it cannot be demonstrated that there is a risk to life, liberty, personal safety or roof over the client's head; or the delay will cause miscarriage of justice, unreasonable hardship, or irretrievable problems handling the case. As such it must be that the consequences of not completing the work urgently are serious **3C – 089 (6)**.

Prospects of Success

Prospects of success should consider the merits of the application to final disposal and not just the work to be completed under the emergency **3C – 090**.

Scope Limitations

Appropriate limitations must be applied to an emergency certificate. For example, where a limitation is due to expire then an emergency certificate would be limited to the issue of the protective proceedings. An emergency certificate must not cover more work than that which must be completed immediately.

Scope limitations must always be specific and cannot be open ended. Leaving an emergency certificate open ended would contradict the purpose of an emergency certificate **3C – 091**.

Devolved powers should not be exercised as a matter of course, and should be reserved for situations demonstrating genuine urgency. Where a fee earner has concerns about exercising devolved powers, whether those concerns relate to means or merits, then guidance can be sought directly from the Mental Health Unit. Alternatively, it is possible to submit form CLS app6 by facsimile and both means and merits will be assessed as a matter of urgency.