

# Part A

## The Funding Code: Criteria

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## **The Funding Code (Access To Justice Act 1999)**

This Code has been prepared in accordance with section 8 of the Access to Justice Act 1999 (“the Act”).

Part I of the Code contains Criteria for deciding whether to fund or continue to fund services. A revised version of Part I will only come into force if approved by the Lord Chancellor and a resolution of each House of Parliament, or under the emergency procedure set out in section 9(7) of the Act.

Part II of the Code contains Procedures. A revised version of Part II will come into force when approved by the Lord Chancellor and laid before Parliament.

This revised version of the Code will come into force on 1 October 2007. Except for criteria 1.3 and 2.4 this version of the Code applies to all Levels of Service granted on or after 1 October 2007 and Levels of Service granted before that date will continue as if this version of the Code had not come into effect. Criterion 1.3 and the related definition of “residential assessment” in criterion 2.4 apply to any disbursements incurred on or after 1 October 2007.

# **The Funding Code**

## **Part 1 – Criteria**

**3A-001**

### **Section 1 Levels of Service**

#### **1.1 Levels of Service Available**

The Commission will fund only the following levels of service as part of the Community Legal Service, subject to the provisions of the Act, orders, regulations and directions made under the Act, these criteria and the Funding Code Procedures:

1. Legal Help.
2. Help at Court.
3. Family Help – this can be either Family Help (Lower) or Family Help (Higher)
4. Legal Representation – this can be either Investigative Help or Full Representation.
5. Family Mediation.
6. Such other services as are authorised by specific orders or directions from the Lord Chancellor.

**3A-002**

#### **1.2 Representation**

Legal Representation and Help at Court will be funded only in relation to proceedings for which advocacy may be funded in accordance with section 6(8) and paragraph 2 of Schedule 2 to the Act.

## 3A-003

### 1.3 Disbursements

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) All costs or expenses of or relating to the residential assessment of a child;
- ii) All costs or expenses of or relating to treatment, therapy, training or other interventions of an educative or rehabilitative nature.

## Section 2 Definitions

### 3A-004

#### 2.1 Levels of Service

**Note:** Nothing in these definitions limits the power of the Commission to place conditions or limitations on any grant.

“*Legal Help*” is a level of service the grant of which authorises services falling within Section 4(2) of the Access to Justice Act 1999 other than:

- (i) The provision of general information about the law and legal system and the availability of legal services (except where such provision is incidental to the provision of help in a specific case).
- (ii) Issuing or conducting court proceedings.
- (iii) Advocacy or instructing an advocate in proceedings.
- (iv) The provision of mediation or arbitration (but this does not prevent legal help being given in relation to mediation or arbitration or covering payment of a mediator’s or arbitrator’s fees as a disbursement).

“*Help at Court*” is a level of service the grant of which authorises help and advocacy for a client in relation to a particular hearing, without formally acting as legal representative in the proceedings, unless this is authorised by the Commission.

“*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 help in obtaining a consent order following settlement of a Family Dispute

“*Family Help (Higher)*” means a grant of Family Help other than Family Help (Lower)

“*Legal Representation*” is a level of service the grant of which authorises legal representation for a party to proceedings or for a person who is contemplating taking proceedings. This includes the following:

- (i) Litigation services.
- (ii) Advocacy services.
- (iii) All such help as is usually given by a person providing representation in proceedings, including steps preliminary or incidental to proceedings.
- (iv) All such help as is usually given by such a person in arriving at or giving effect to a compromise to avoid or bring to an end any proceedings.

Legal representation does not include the provision of mediation or arbitration (but this does not prevent help being given in relation to mediation or arbitration, or the payment of a mediator’s or arbitrator’s fees as a disbursement).

“*Investigative Help*” means Legal Representation which is limited to investigation of the strength of a proposed claim. Investigative Help includes the issue and the conduct of proceedings only so far as necessary to obtain disclosure of relevant information or to protect the client’s position in relation to any urgent hearing or time limit for the issue of proceedings.

“*Full Representation*” means a grant of Legal Representation other than Investigative Help.

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“*Family Mediation*” is a level of service the grant of which authorises mediation of a family dispute, including assessing whether mediation appears suitable to the dispute and the parties and all the circumstances.

3A-005

## 2.2 Case Categories

“*Clinical Negligence Proceedings*” means proceedings which include:

- (i) a claim for damages in respect of an alleged breach of duty of care or trespass to the person committed in the course of the provision of clinical or medical services (including dental or nursing services); or
- (ii) a claim for damages in respect of alleged professional negligence in the conduct of such a claim.

“*Family Dispute*” means a legal dispute arising out of a family relationship, including disputes concerning the welfare of children or which may give rise to Family Proceedings.

“*Family Proceedings*” means proceedings which arise out of family relationships, including proceedings in which the welfare of children is determined (other than judicial review or quasi-criminal proceedings). Family Proceedings also include all proceedings under any one or more of the following:

- (a) the Matrimonial Causes Act 1973;
- (b) the Inheritance (Provision for Family and Dependents) Act 1975;
- (c) the Adoption Act 1976;
- (d) the Domestic Proceedings and Magistrates’ Courts Act 1978;
- (e) Part III of the Matrimonial and Family Proceedings Act 1984;
- (f) Parts I, II and IV of the Children Act 1989;
- (g) Part IV of the Family Law Act 1996;
- (h) the Adoption and Children Act 2002;
- (i) the Civil Partnership Act 2004; and
- (j) the inherent jurisdiction of the High Court in relation to children.

“*Special Children Act Proceedings*” means proceedings under the Children Act 1989 (other than appeal proceedings) where Legal Representation is applied for on behalf of:–

- (i) a child in respect of whom an application is made for an order under–
  - (a) Section 31 (a care or supervision order);
  - (b) Section 43 (a child assessment order);
  - (c) Section 44 (an emergency protection order); and
  - (d) Section 45 (extension or discharge of an emergency protection order).
- (ii) any parent of such a child or person with parental responsibility for the child within the meaning of the 1989 Act;

- (iii) a child who is brought before a Court under Section 25 (use of accommodation for restricting liberty) who is not, but wishes to be, legally represented before the Court.

“*Other public law children cases*” means public law proceedings concerning the welfare of children other than Special Children Act Proceedings or related proceedings (see Section 11.8) but including:

- (i) Appeals (whether interim or final) from orders made in Special Children Act Proceedings;
- (ii) Other proceedings under Part IV or V of the 1989 Act;
- (iii) Adoption proceedings, including freeing for adoption and applications for a placement order;
- (iv) Proceedings under the inherent jurisdiction of the High Court in relation to children.

“*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.

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3A-006

### 2.3 Merits, Costs and Damages

“*Prospects of Success*” means the likelihood of the client obtaining a successful outcome in the proceedings, assuming the case were determined at trial or other final hearing. Guidance may give examples of what may constitute a successful outcome for different types of proceeding.

Different categories of Prospects of Success have the following meanings:

- “Very Good” means 80% or more;
- “Good” means 60%–80%;
- “Moderate” means 50%–60%;
- “Borderline” means that Prospects of Success are not Poor, but because there are difficult disputes of fact, law or expert evidence, it is not possible to say that Prospects of Success are better than 50%;

- “Poor” means clearly less than 50% so that the claim is likely to fail;
- “Unclear” means that the case cannot be put into any of the above categories because further investigation is needed .

“*Likely Costs*” means an estimate of the likely total gross costs to be incurred on behalf of the client to disposal of the proceedings. This includes counsel’s fees, disbursements and any enhancement or uplift on costs. Where appropriate, costs should be calculated by reference to standard or prescribed remuneration rates set by the Lord Chancellor or the Commission. Likely Costs and all cost thresholds specified in the Code are exclusive of VAT.

“*Likely Damages*” means a realistic estimate of the size of any money award the client would receive if substantially successful at trial or final hearing, after allowing for any likely reduction through contributory negligence or otherwise. Likely Damages should be discounted (by anything up to 100%) if there is doubt as to whether the opponent will be able to pay the money award.

### 3A-007

#### 2.4 Other Definitions

“*the Act*” means the Access to Justice Act 1999 and terms defined in the Act have the same meaning in the Code.

“*Asylum and Immigration Tribunal*” means the tribunal established under section 81 of the Nationality, Immigration and Asylum Act 2002.

“*Central Budget*” means the budget set by the Lord Chancellor for the funding of very expensive cases in accordance with Code Procedures.

“*Conditional Fee Agreement*” or “CFA” means a conditional fee agreement or any other private funding arrangement authorised under the provisions of Part II of the Access to Justice Act 1999.

“*Contract*” means a contract with the Commission under which services are provided which are funded as part of the Community Legal Service.

“*Excluded Services*” means services which are excluded under Schedule 2 of the Act and are not covered by any direction or authorisation under section 6(8) of the Act.

“*Guidance*” means guidance published by the Lord Chancellor or the Commission for the purpose of making decisions under the Code.

“*Hague Convention*” means the convention defined in section 1(1) of the Child Abduction and Custody Act 1985.

- “*European Convention*” means the convention defined in section 12(1) of that Act.
- “*Hague Convention Countries*” has the same meaning as in the Reciprocal Enforcement of Maintenance Orders (Hague Convention Countries) Order 1979.
- “*Maintenance Orders (Reciprocal Enforcement) Act 1972*” means the Act as applied with such exceptions, adaptations and modifications as are specified in the 1979 Order.

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“*Multi-Party Action*” or “*MPA*” means any action or actions in which a number of clients have causes of action which involve common issues of fact or law arising out of the same cause or event.

“*the 1989 Act*” means the Children Act 1989.

“*Overwhelming importance to the client*” means a case which has exceptional importance to the client, beyond the monetary value (if any) of the claim, because the case concerns the life, liberty or physical safety of the client or his or her family, or a roof over their heads.

“*prescribed*” means either set out in Regulations or specified by the Commission.

“*Proceedings*” means legal proceedings before any court, tribunal, arbitrator or panel in England and Wales, but mediation and any form of dispute resolution which cannot make a determination which is binding on the client do not count as proceedings.

“*Public Authority*” has the meaning given in section 6 of the Human Rights Act 1998.

“*Regulations*” means orders or regulations under the Access to Justice Act 1999.

“*Residential Assessment*” means any assessment of a child, whether under section 38(6) of the Children Act 1989 or otherwise, in which the child, alone or with others, is assessed, on a residential basis, at any location other than his or her normal residence. It also includes an assessment or viability assessment, whether residential or not, preparatory to or with a view to the possibility of a residential assessment.

“*Special Cases Unit*” means a unit established by the Commission under the Code Procedures whose functions include administering the central budget and issuing contracts in very expensive cases.

“*Wider Public Interest*” means the potential of the proceedings to produce real benefits for individuals other than the client (other than benefits to the public at large which normally flow from proceedings of the type in question).

## **Section 3 Case Categories**

### **3A-008**

#### **3.1 The General Funding Code**

Applications for funding will be considered under the General Funding Code except to the extent that different criteria are specified for specific categories of case or proceeding. Definitions and criteria for specific categories are given in sections 6–14 of these Criteria.

### **3A-009**

#### **3.2 Disputed Categories**

Where any issue arises as to which category a case falls into, the Commission will apply the criteria which appear to it to be most relevant to the substance of the application.

### **3A-010**

#### **3.3 Mixed Claims**

Where it appears to the Commission that an application for Legal Representation relates to proceedings covering more than one category, the Commission may apply the criteria which appear to it most appropriate to the proceedings as a whole. If proceedings have not been started, the Commission may consider each aspect of the case under the criteria relevant to it and may apply appropriate restrictions on any grant.

### **3A-011**

#### **3.4 Excluded Proceedings**

The Commission will refuse an application for Legal Representation if, in the view of the Commission, effective representation cannot be provided in the proceedings without the provision of excluded services.

### **3A-012**

#### **3.5 Guidance**

Guidance may give examples of descriptions of proceedings in particular case categories.

### **3A-013**

#### **3.6 Foreign Orders and Judgments**

Cases within the scope of section 11.14 shall be subject only to the criteria in that section (whether or not the proceedings in question are Family Proceedings).

## Section 4 Standard Criteria

### 3A-014

#### 4.1 Scope of this section

The criteria in this section apply to all applications under the Code.

### 3A-015

#### 4.2 English Law

An application will be refused if it relates to law other than that of England and Wales, save where this is permitted by or under section 19 of the Act.

### 3A-016

#### 4.3 Excluded Services

An application for the provision of excluded services will be refused.

### 3A-017

#### 4.4 Directions on Scope

Where an application relies upon a direction or authorisation under section 6(8) of the Act the application will be refused if any conditions specified in the direction or authorisation are not satisfied.

### 3A-018

#### 4.5 Identity of Client

An application will be refused unless it is for the benefit of a client who is an individual and who satisfies such other conditions as are specified in the Code Procedures.

### 3A-019

#### 4.6 Identity of Supplier

An application will be refused unless the proposed supplier of services is of a description specified in the Code Procedures.

### 3A-020

#### 4.7 Contract Scope

Where an application is for services which under the Code Procedures can be provided only under contract, the application will be refused unless the supplier has a contract and is permitted to provide those services under the terms of the contract.

### 3A-021

## **4.8 Procedures**

An application may be refused or rejected if any Code Procedures have not been complied with.

3A-022

## **4.9 Financial Eligibility**

An application will be refused unless the client is assessed as financially eligible under regulations, except where:

- (i) under Regulations services are available without reference to means: or
- (ii) Regulations or Code Procedures authorise services to be provided before completion of the financial assessment.

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3A-023

## **4.10 Conduct**

An application may be refused if it appears unreasonable to grant funding in the light of the conduct of the client in connection with this or any other application or in connection with any proceedings.

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# **Section 5 The General Funding Code**

3A-024

## **5.1 Application of General Funding Code**

This section applies, in addition to the criteria in section 4, to any application for funding, save to the extent that different criteria are applied for specific categories of case or proceedings in sections 6 to 14.

3A-025

## **5.2 Criteria for Legal Help**

### **5.2.1 Sufficient Benefit Test**

Help may only be provided where there is sufficient benefit to the client, having regard to the circumstances of the matter, including the personal circumstances of the client, to justify work or further work being carried out.

## **5.2.2 Funding as part of CLS**

Help may only be provided if it is reasonable for the matter to be funded out of the Community Legal Service Fund, having regard to any other potential sources of funding.

3A-026

## **5.3 Criteria for Help at Court**

### **5.3.1 Criteria for Legal Help**

The criteria for Legal Help apply to an application for Help at Court, in addition to the following two criteria.

### **5.3.2 The Need for Representation**

Help at Court may only be provided if the nature of the proceedings and the circumstances of the hearing and the client are such that advocacy is appropriate and will be of real benefit to the client.

### **5.3.3 Legal Representation**

Help at Court may not be provided if the contested nature of the proceedings or the nature of the hearing is such that, if any help is to be provided, it is more appropriate that it should be given through Legal Representation.

3A-027

## **5.4 Standard Criteria for Legal Representation**

### **5.4.1 Scope of this Section**

The following criteria apply to all applications for Legal Representation, in addition to the criteria relevant to the specific level of service applied for.

### **5.4.2 Alternative Funding**

An application may be refused if alternative funding is available to the client (through insurance or otherwise) or if there are other persons or bodies, including those who ...

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...

might benefit from the proceedings, who can reasonably be expected to bring or fund the case. For the purpose of this criterion only, alternative funding does not include funding by means of a conditional fee agreement.

### **5.4.3 Alternatives to Litigation**

An application may be refused if there are complaint systems, ombudsman schemes or forms of alternative dispute resolution which should be tried before litigation is pursued.

### **5.4.4 Other Levels of Service**

An application may be refused if it appears premature or if it appears more appropriate for the client to be assisted by some other level of service under the Code, such as Legal Help or Help at Court.

### **5.4.5 The Need for Representation**

An application may be refused if it appears unreasonable to fund representation, for example in the light of the nature and complexity of the issues, the existence of other proceedings or the interests of other parties in the proceedings to which the application relates.

### **5.4.6 Small Claims**

An application will be refused if the case has been or is likely to be allocated to the small claims track.

## **3A-028**

### **5.5 Emergency Representation**

#### **5.5.1 Urgency**

Legal Representation may only be granted as a matter of urgency where it appears in the interests of justice to do so.

#### **5.5.2 Limited Information**

Where only limited information is available to determine whether the criteria for Legal Representation are satisfied, emergency representation may be granted only if it appears likely on the information available that those criteria would be satisfied.

## **3A-029**

### **5.6 Criteria for Investigative Help**

#### **5.6.1 Potential for a Conditional Fee Agreement**

Investigative Help may be refused if the nature of the case and circumstances of the client are such that investigative work should be carried out privately with a view to a conditional fee agreement.

### **5.6.2 The Need for Investigation**

Investigative Help may only be granted where the prospects of success of the claim are uncertain and substantial investigative work is required before those prospects can be determined. Guidance may indicate what constitutes substantial investigative work for this purpose.

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### **5.6.3 Damages**

If the client's claim is primarily a claim for damages and has no significant wider public interest, Investigative Help will be refused unless the damages are likely to exceed £5,000.

### **5.6.4 Prospects after Investigation**

Investigative Help may only be granted if there are reasonable grounds for believing that when the investigative work has been carried out the claim will be strong enough, in terms of prospects of success and cost benefit, to satisfy the relevant criteria for Full Representation.

3A-030

## **5.7 Criteria for Full Representation**

### **5.7.1 Conditional Fee Agreements**

If the nature of the case is suitable for a CFA, and the client is likely to be able to avail himself or herself of a CFA, Full Representation will be refused.

### **5.7.2 Prospects of Success**

Full Representation will be refused if:

- (i) Prospects of success are unclear;
- (ii) Prospects of success are borderline and the case does not appear to have a significant wider public interest or to be of overwhelming importance to the client; or
- (iii) Prospects of success are poor.

### **5.7.3 Cost Benefit – Quantifiable Claims**

If the claim is primarily a claim for damages by the client and does not have a significant wider public interest, Full Representation will be refused unless the following cost benefit criteria are satisfied:

- (i) If prospects of success are very good (80% or more), likely damages must exceed likely costs;

- (ii) If prospects of success are good (60%–80%), likely damages must exceed likely costs by a ratio of 2:1;
- (iii) If prospects of success are moderate (50%–60%), likely damages must exceed likely costs by a ratio of 4:1.

#### **5.7.4 Cost Benefit – Unquantifiable Claims**

If the claim is not primarily a claim for damages (including any application by a defendant or a case which has overwhelming importance to the client), but does not have a significant wider public interest, Full Representation will be refused unless the likely benefits to be gained from the proceedings justify the likely costs, such that a reasonable private paying client would be prepared to litigate, having regard to the prospects of success and all other circumstances.

#### **5.7.5 Cost Benefit – Public Interest Cases**

If the claim has a significant wider public interest, Full Representation may be refused unless the likely benefits of the proceedings to the applicant and others justify the likely costs, having regard to the prospects of success and all other circumstances.

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3A-031

[OMITTED]

3A-032

[OMITTED]

3A-033

### **5.8 Criteria for Other Services**

#### **5.8.1 Orders and Directions**

Levels of service other than those provided for in the General Funding Code or elsewhere in these criteria may be funded only if a specific order or direction from the Lord Chancellor so provides, and then only in accordance with the terms of the order or direction.

#### **5.8.2 Reasonableness**

An application for such services may be refused if it appears unreasonable in all the circumstances to grant it.

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## Section 6 Very Expensive Cases

### 3A-034

#### 6.1 Scope

This section applies to applications or certificates for Legal Representation which have been referred to the Special Cases Unit in accordance with Code Procedures.

### 3A-035

#### 6.2 Relevant Criteria

All Criteria relevant to the level of service and category of case in question shall apply, as modified in this section, in addition to the Criteria set out in this section.

### 3A-036

#### 6.3 The Costed Case Plan

Funding may be refused if the proposals put forward for progressing the litigation including proposals as to cost do not appear to the Commission to be satisfactory.

### 3A-037

#### 6.4 Affordability

Subject to 6.5 below, funding will be refused or deferred unless it appears reasonable for funding to be granted in the light of the resources available in the Central Budget and likely future demands on those resources.

### 3A-038

#### 6.5 Top Priority Cases

The Affordability criterion in 6.4 shall not apply to:

- (i) Special Children Act Proceedings;
- (ii) judicial review proceedings under section 7 of the Criteria in which funding is to continue by virtue of criterion 7.5.2;
- (iii) other proceedings in which the life or liberty of the client is at risk.

### 3A-039

[OMITTED]

## Section 7 Judicial Review

### 3A-040

#### 7.1 Scope

This section applies to applications for Legal Representation in relation to court proceedings concerning public law challenges to the acts, omissions or decisions of public bodies, including in particular challenges by way of judicial review or habeas corpus and proceedings under Part VII of the Housing Act 1996.

### 3A-041

#### 7.2 Criteria for Investigative Help

##### 7.2.1 General Funding Code Criteria

Criteria 5.6.1 (potential for a conditional fee agreement) and 5.6.3 (minimum damages level) do not apply to applications for Investigative Help under this section.

##### 7.2.2 Is Judicial Review Available?

An application may be refused if the act or decision complained of in the proposed proceedings does not appear to be susceptible to challenge.

##### 7.2.3 Administrative Procedures

Investigative Help may be refused if there are administrative appeals or other procedures which should be pursued before proceedings are considered.

### 3A-042

#### 7.3 Criteria for Full Representation

If, at the time the application for funding is made, the court has not granted permission to bring the proceedings or if according to rules of court such permission is not required, the criteria in section 7.4 apply. If at the time the application is made the court has granted permission, the criteria in 7.5 apply.

### 3A-043

#### 7.4 Pre-Permission Criteria

##### 7.4.1 General Funding Code

The following criteria replace those in section 5.7 of the General Funding Code.

##### 7.4.2 Is Judicial Review available?

An application may be refused if the act or decision complained of in the proposed proceedings does not appear to be susceptible to challenge.

### **7.4.3 Administrative Procedures**

Full Representation may be refused if there are administrative appeals or other procedures which should be pursued before proceedings are considered.

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### **7.4.4 Notification to Respondent**

Full Representation will be refused unless the proposed respondent has been given a reasonable opportunity to respond to the challenge or deal with the applicant's complaint, save where this is impracticable in the circumstances.

### **7.4.5 Prospects of Success**

Full Representation will be refused if the prospects of successfully obtaining the substantive order sought in the proceedings are:

- (i) unclear;
- (ii) borderline and the case does not appear to have significant wider public interest, to be of overwhelming importance to the client or to raise significant human rights issues; or
- (iii) poor.

### **7.4.6 Cost Benefit**

Full Representation may be refused unless the likely costs are proportionate to the likely benefits of the proceedings, having regard to the prospects of success and all other circumstances.

3A-044

## **7.5 Post-Permission Criteria**

### **7.5.1 General Funding Code**

The following criteria replace those in section 5.7 of the General Funding Code.

### **7.5.2 The Presumption of Funding**

If the case has a significant wider public interest, is of overwhelming importance to the client or raises significant human rights issues, then, provided the standard criteria in Section 4 and Section 5.4 are satisfied, funding shall be granted save where, in light of information which was not before the court at the permission stage or has subsequently come to light, it appears unreasonable for Legal Representation to be granted.

### **7.5.3 Refusal on the Merits**

Where the case does not appear to have a significant wider public interest, to be of overwhelming importance to the client or to raise significant human rights issues, Legal Representation will be refused if:

- (i) prospects of success are borderline or poor; or
- (ii) the likely costs do not appear to be proportionate to the likely benefits of the proceedings having regard to the prospects of success and all the circumstances.

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## **Section 8 Claims Against Public Authorities**

### **3A-045**

#### **8.1 Scope**

This section applies to applications for Legal Representation in relation to proceedings or proposed proceedings against public authorities concerning serious wrong-doing, abuse of position or power or significant breach of human rights, other than cases falling within the scope of section 7 (Judicial Review) or section 10 (Housing).

### **3A-046**

#### **8.2 Criteria for Investigative Help**

##### **8.2.1 Potential for a Conditional Fee Agreement**

Criterion 5.6.1 does not apply to applications under this section unless the application relates to a multi-party action.

##### **8.2.2 Police Complaints**

Investigative Help may be refused if it is more appropriate for the client to pursue the police complaints procedure than litigation.

##### **8.2.3 Damages**

Criterion 5.6.3 (minimum damages level) does not apply to applications for Investigative Help under this section.

### **3A-047**

### **8.3 Criteria for Full Representation**

#### **8.3.1 General Funding Code**

Subject to 8.3.5 below, the following criteria replace the criteria in section 5.7 of the General Funding Code in applications to which this section applies.

#### **8.3.2 Prospects of Success**

Full Representation will be refused if:

- (i) Prospects of success are unclear;
- (ii) Prospects of success are borderline and the case does not appear to have a significant wider public interest, to be of overwhelming importance to the client or to raise significant human rights issues;
- (iii) Prospects of success are poor.

#### **8.3.3 Cost Benefit**

Legal Representation may be refused unless the likely costs are proportionate to the likely benefits of the proceedings, having regard to the prospects of success and all other circumstances.

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#### **8.3.4 Police Complaints**

Full Representation may be refused if it is more appropriate for the client to pursue the police complaints procedure than litigation.

#### **8.3.5 Conditional Fee Agreements**

Criterion 5.7.1 does not apply to applications under this section unless the application relates to a multi-party action.

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## **Section 9 Clinical Negligence**

3A-048

### **9.1 Scope**

This section applies to applications for Legal Representation in Clinical Negligence Proceedings.

## 3A-049

### 9.2 Criteria for Investigative Help

#### 9.2.1 Potential for a Conditional Fee Agreement

Criterion 5.6.1 does not apply to applications under this section unless the application relates to a multi-party action.

#### 9.2.2 The Complaints Scheme

Investigative Help may be refused if it is more appropriate for the client to pursue the NHS complaints procedure than litigation.

## 3A-050

### 9.3 Criteria for Full Representation

#### 9.3.1 Conditional Fee Agreements

Criterion 5.7.1 (refusal on grounds that the case is of a type suitable for a CFA) does not apply to applications under this section unless the application relates to a multi-party action.

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## Section 10 Housing

## 3A-051

### 10.1 Scope

This section applies to applications for legal representation for a client in proceedings which concern possession of the client's home, the client's legal status in the home or the obligations of a landlord or other person to keep the client's home in good repair and allow quiet enjoyment of the property. However, this section does not apply to cases within the scope of section 7 (Judicial Review).

## 3A-052

### 10.2 Criteria for Investigative Help

#### 10.2.1 Potential for a Conditional Fee Agreement

Criterion 5.6.1 does not apply to applications under this section.

#### 10.2.2 Damages

In applications under this section the figure for minimum damages in criterion 5.6.3 shall be £1,000.

## 3A-053

### 10.3 Criteria for Full Representation – Possession Cases

#### 10.3.1 General Funding Code

The following criteria replace those in section 5.7 of the General Funding Code for proceedings which concern possession of the client's home.

#### 10.3.2 Prospects of Success

Full Representation will be refused if the client has no substantive legal defence to the proceedings or the prospects of successfully avoiding an order for possession (or, if the client is bringing proceedings, the prospects of obtaining such an order) are poor.

#### 10.3.3 Cost Benefit

Full representation may be refused unless the likely costs are proportionate to the likely benefits of the proceedings, having regard to the prospects of success and all other circumstances.

## 3A-054

### 10.4 Criteria for Full Representation – Other Housing Cases

#### 10.4.1 General Funding Code

The following criteria replace the criteria in section 5.7 of the General Funding Code in applications within the scope of this section other than possession cases.

#### 10.4.2 Notification to Landlord

Where the client is applying for Full Representation to bring proceedings the application may be refused unless the landlord or other person responsible for dealing with the matters complained of has been notified of the client's complaint and given a ...

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...  
reasonable opportunity to respond and put matters right, save where this is impracticable in the circumstances.

#### 10.4.3 Prospects of Success

Full Representation will be refused if:

- (i) Prospects of success are unclear;

- (ii) Prospects of success are borderline and the case does not appear to have a significant wider public interest or to be of overwhelming importance to the client;
- (iii) Prospects of success are poor.

#### **10.4.4 Cost Benefit**

Full representation may be refused unless the likely costs are proportionate to the likely benefits of the proceedings, having regard to the prospects of success and all other circumstances.

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## **Section 11 Family**

3A-055

### **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 Significant Family Dispute**

Family Help may only be provided where the client requires ongoing help in relation to a significant Family Dispute. Guidance may specify what constitutes a significant 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 reasonable 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) is not available for 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 a person in Special Children Act Proceedings, Legal Representation may also be granted for that person in related proceedings which are being heard together with those proceedings or in which an order is being sought as an alternative to an order in those proceedings.

## **3A-063**

## **11.9 Criteria for other Public Law Children Cases**

### **11.9.1 Standard Criteria**

The standard criteria for Legal Representation in Section 5.4 of the General Funding Code do not apply in other public law children cases, save for the following criteria:–

- (i) 5.4.2 (refusal on the ground of the availability of alternative sources of funding);
- (ii) 5.4.5 (refusal on the ground that representation is not necessary).

### **11.9.2 Prospects of Success**

Where Legal Representation is sought on behalf of a client who is making or supporting an application or appeal, Legal Representation will be refused if the prospects of the application or appeal being successful are poor.

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### **11.9.3 Reasonableness**

An application for Legal Representation may be refused if it appears unreasonable for funding to be granted, having regard to the importance of the case to the client and all other circumstances.

3A-064

## **11.10 Domestic Violence Cases**

### **11.10.1 Scope**

These criteria apply to proceedings seeking an injunction, committal order or other orders for the protection of a person from harm (other than public law children proceedings).

### **11.10.2 Prospects of Success**

Legal Representation will be refused if the prospects of obtaining the order sought in the proceedings are poor.

### **11.10.3 Cost Benefit**

Legal Representation will be refused unless the likely costs are proportionate to the likely benefits of the proceedings, having regard to the prospects of obtaining the order sought and all other circumstances.

3A-065

## **11.11 Private Law Children Cases**

### **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

### **11.11.2 Referral to Family Mediation**

Legal Representation 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 before Legal Representation can be provided.

### **11.11.3 Suitability for mediation**

Legal Representation may be refused if mediation, supported if necessary by Family Help, is more appropriate to the case than Legal Representation.

### **11.11.4 Attempts at settlement**

Legal Representation may be refused unless reasonable attempts have been made to resolve the dispute without recourse to contested proceedings, through negotiation or otherwise.

### **11.11.5 Prospects of Success**

Legal Representation will be refused if prospects of success are poor.

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### **11.11.6 Cost Benefit**

Legal Representation will be refused unless the likely benefits to be gained from the proceedings for the client justify the likely costs, such that a reasonable private paying client would be prepared to take or defend the proceedings in all the circumstances.

3A-066

## **11.12 Financial Provision and Other Proceedings**

### **11.12.1 Scope**

These criteria apply to ancillary relief and other family proceedings concerning financial provision, and to all other family proceedings which are not covered by criteria elsewhere in this section.

### **11.12.2 Referral to Family Mediation**

Legal Representation 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 before Legal Representation can be provided.

### **11.12.3 Suitability for mediation**

Legal Representation may be refused if mediation, supported if necessary by Family Help, is more appropriate to the case than Legal Representation.

### **11.12.4 Attempts at settlement**

Legal Representation may be refused unless reasonable attempts have been made to resolve the dispute without recourse to contested proceedings, through negotiation or otherwise.

### **11.12.5 Prospects of Success**

Legal Representation will be refused if prospects of success are:–

- (i) borderline or unclear, save where the case has overwhelming importance to the client or a significant wider public interest;
- (ii) poor

### **11.12.6 Cost Benefit**

Legal representation will be refused unless the likely benefits to be gained from the proceedings for the client justify the likely costs, such that a reasonable private paying client would be prepared to take or defend the proceedings in all the circumstances.

### **11.12.7 Private Funding**

Legal Representation may be refused if it appears reasonable in all the circumstances for the proceedings to be funded privately, having regard to the financial circumstances of the client and the value of the assets in dispute.

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3A-067

### **11.13 Child abduction cases**

Subject only to Section 4, Legal Representation shall be granted to a person whose application under the Hague Convention or the European Convention has been submitted to the central authority in England and Wales pursuant to Section 3(2) or Section 14(2) of the Child Abduction and Custody Act 1985 and on whose behalf a legal representative has been instructed in England and Wales in connection with the application.

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3A-068

### **11.14 Registration of foreign orders and judgments**

#### **11.14.1 Scope**

This section applies to a person who;

- (i) appeals to a Magistrates' Court against the registration of or the refusal to register a maintenance order made in a Hague Convention country pursuant to the Maintenance Orders (Reciprocal Enforcement) Act 1972 or;
- (ii) applies for the registration of a judgment under Section 4 of the Civil Jurisdiction and Judgments Act 1982.

and who satisfies the criterion set out below.

#### **11.14.2 Legal aid abroad**

Legal representation under this provision shall be granted if the standard criteria in Section 4 are satisfied and if the client benefited from complete or partial legal aid, other public funding or exemption from costs or expenses in the country in which the maintenance order was made or the judgment was given.

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## **Section 12 Mental Health**

3A-069

### **12.1 Scope**

This section applies to applications for Legal Representation in proceedings before a Mental Health Review Tribunal under the Mental Health Act 1983 on behalf of a person whose case or whose application to the Tribunal is or is to be the subject of the proceedings.

3A-070

### **12.2 Investigative Help**

Investigative Help is not available in applications under this section. Applications for Legal Representation under this section shall take the form of Full Representation.

3A-071

### **12.3 General Funding Code**

The criteria in Sections 5.4 and 5.7 of the General Funding Code shall not apply to applications under this section (but this should not be taken as restricting the scope of the reasonableness criterion below).

3A-072

### **12.4 Reasonableness**

An application may be refused if it is unreasonable in the particular circumstances of the case for Legal Representation to be granted.

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# Section 13 Immigration

## 13.1 Scope

This section applies to applications for Legal Representation for a client whose case is before

- (i) the Asylum and Immigration Tribunal; or
- (ii) the High Court, in relation to applications under section 103A of the Nationality, Immigration and Asylum Act 2002.

3A-073

## 13.2 Investigative Help

Investigative Help is not available in applications under this section. Applications for Legal Representation under this section shall take the form of Full Representation.

3A-074

## 13.3 General Funding Code

The standard criteria for Legal Representation in Section 5.4 of the General Funding Code apply to applications under this section, save for criterion 5.4.6 (small claims). The criteria for Full Representation under Section 5.7 of the General Funding Code do not apply to applications under this section.

3A-075

## 13.4 Prospects of Success

Legal Representation will be refused if the prospects of achieving a successful outcome for the client are:

- (i) unclear or borderline, save where the case has a significant wider public interest, is of overwhelming importance to the client or raises significant human rights issues; or
- (ii) poor.

3A-076

## 13.5 Cost Benefit

Save where the case has a significant wider public interest, Legal Representation will be refused unless the likely benefits to be gained from the proceedings justify the likely costs, such that a reasonable private paying client would be prepared to take the proceedings, having regard to the prospects of success and all other circumstances.

3A-076.1

## **Section 14 Quasi-Criminal Proceedings**

3A-076.2

### **14.1 Scope**

This section applies to applications for Legal Representation in proceedings in which the client may be subject to orders or penalties which are (or which the client is reasonably contending are) criminal penalties within the meaning of article 6 of the European Convention on Human Rights.

3A-076.3

### **14.2 Investigative Help**

Investigative Help is not available in applications under this section. Applications for Legal Representation under this section shall take the form of Full Representation.

3A-076.4

### **14.3 General Funding Code**

The criteria in Section 5.7 of the General Funding Code shall not apply to applications under this section (but should not be taken as restricting the scope of the interests of justice criterion below).

3A-076.5

### **14.4 Interests of Justice**

An application may be refused unless it is in the interests of justice for Legal Representation to be granted.

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## **Section 15 Withdrawal of Funding**

3A-077

### **15.1 Scope**

This section applies where funding has already been granted under the Code Criteria. Funding may be withdrawn in accordance with the following criteria and the Code Procedures. Code Procedures may in particular specify the grounds for withdrawal of emergency representation.

3A-078

## **15.2 Criteria no longer satisfied**

Funding may be withdrawn where the criteria under which funding was originally granted are no longer satisfied.

**3A-079**

## **15.3 Reasonableness**

Funding may be withdrawn where it is unreasonable for funding to continue in all the circumstances of the case, taking into account the interests of the client, any wider public interest and the interest of the Community Legal Service Fund.

**3A-080**

## **15.4 Investigations**

Investigative Help will cease where it appears that sufficient work has been carried out to enable prospects of success to be determined.

**3A-081**

## **15.5 Other grounds**

Without prejudice to any of the above criteria, funding may be withdrawn:

- (i) where the client has died;
- (ii) where the client has had a bankruptcy order made against him or her;
- (iii) on financial grounds, in accordance with Code Procedures and Regulations;
- (iv) with the consent of the client;
- (v) where the case has been disposed of or all work authorised by the Commission has been completed;
- (vi) where, in accordance with Code Procedures, it is unreasonable for funding to continue in the light of the conduct of the client.

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