

## 22. Tribunal Representation

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### 22.1 General

1. The Legal Aid Scheme has always concentrated funding on legal representation before the main civil courts, primarily because it is in Court proceedings that representation will usually be most beneficial to clients. By contrast most tribunals are very well suited to the needs of unrepresented clients. The scope rules of CLS funded representation, contained in paragraph 2 of Schedule 2 of the Act and the Secretary of State's Scope Direction and Authorisation therefore cover advocacy in only a limited range of tribunals as explained below.
2. CLS funding can, however, have an important role in providing initial advice and help to clients involved in tribunal proceedings. Subject to the usual means and merits criteria, Legal Help can cover any services in relation to tribunal proceedings other than advocacy or instructing an advocate in the proceedings. However, the amount of Legal Help which may be provided in relation to a tribunal case will depend on whether there is sufficient benefit to the client in so doing, taking into account the prospects of a successful outcome for the client and the cost benefit of the work being undertaken.
3. The framework for tribunals in England and Wales has been reformed by the Tribunals, Courts and Enforcement Act 2007 ("the TCE 2007"). The first group of tribunals were brought within the new regime on 3<sup>rd</sup> November 2008, with further tribunals to be added in due course. For full details see Transfer of Tribunal Functions Order 2008 [SI to be confirmed] and the First-tier Tribunal and Upper Tribunal (Chambers) Order 2008 [SI 2008 No 2684]
4. The TCE 2007 creates a unified jurisdiction for tribunals within its scope consisting of the First-tier Tribunal with certain rights of appeal and review to a new Upper Tribunal. The jurisdiction of the Upper Tribunal includes some challenges to first instance decisions which would previously have taken the form of judicial review proceedings in the High Court.
5. The implementation of the TCE 2007 has required a re-definition of the scope of legal aid in relation to tribunals. In particular, the Mental Health Review Tribunal and Care Standards Tribunal have ceased to exist as separate entities but have become part of the Health, Education and Social Care Chamber of the new First-tier Tribunal. References to the Mental Health Review Tribunal in our contracts and guidance now apply to:

“The First-tier Tribunal under any provision of the Mental Health Act 1983 or paragraph 5(2) of the Schedule to the Repatriation of Prisoners Act 1984, or the Mental Health Review Tribunal for Wales” - see paragraph 178 of the Transfer of Tribunal Functions Order 2008.

6. The following table lists the main tribunals relevant to the scope of legal aid (i.e. those for which Legal Representation may be funded), their new designation under the TCE 2007 and the statutory authority for funding:

<b>Tribunal</b>	<b>Authority for Funding</b>
Employment Appeal Tribunal	Schedule 2, paragraph 2(1)(f) funded as licensed work
Mental Health Review Tribunal (as defined above)	Schedule 2, paragraph 2(1)(g) as amended by the Transfer of Tribunal Functions Order 2008, funded as Controlled Legal Representation
Upper Tribunal, cases arising out of proceedings in the Mental Health Review Tribunal (as defined above)	Schedule 2, paragraph 2(1) (ga) as inserted by the Transfer of Tribunal Functions Order 2008, funded as licensed work.
Upper Tribunal, other cases	Secretary of State’s Authorisation set out at 22.3 below, funded as licensed work
Asylum and Immigration Tribunal	Schedule 2, paragraph 2(1)(h) (as substituted by Schedule 2 of the Asylum and Immigration (Treatment of Claimants, etc) Act 2004) funded as Controlled Legal Representation
Care Standards Cases in the First-tier Tribunal (see 22.4 below)	Secretary of State’s Authorisation set out at 22.3 below, funded as licensed work
General and Special Commissioners of Income Tax	Secretary of State’s Direction set out at 22.2 below, funded as licensed work
VAT and Duties Tribunal	Secretary of State’s Direction set out at 22.2 below, funded as licensed work
Special Immigration Appeals Commission	Schedule 2, paragraph 2(1) (ha) (as inserted by section 116 of the Nationality, Immigration and Asylum Act 2002) funded as licensed work.
Proscribed Organisations Appeal Commission	Schedule 2, paragraph 2(1) (i) (as inserted by Schedule 15 of the Terrorism Act 2000), funded as licensed work.

7. For all other tribunals funding can be provided only for exceptional individual cases where application is made under section 6(8) (b) of the Act. See Section 27 of this Guidance.
8. Guidance on the Employment Appeal Tribunal is at Section 21.1 in this volume. The Rules governing Controlled Legal Representation are primarily contained in the Civil Specification; see section 12 and 14 thereof for the Immigration and Mental Health schemes. Guidance on the new tribunals brought in by the Secretary of State's Direction and Authorisation is at Sections 22.4 to 22.6 below. Guidance on the Proscribed Organisations Appeal Commission is at 22.7 below. Guidance on the Special Immigration Appeals Commission is at 22.8.

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#### **22.2 Text of Secretary of State's Direction on Tribunal Representation of October 2005**

1. This is a direction by the Secretary of State under section 6(8) of the Access to Justice Act 1999 ("the Act"). It authorises the Legal Services Commission ("the Commission") to fund in specified circumstances services generally excluded from the scope of the Community Legal Service Fund by Schedule 2 to the Act.
2. References in this direction to services which the Commission may fund are to the levels of service defined in those terms in the Commission's Funding Code ("the Code").
3. All applications under this direction remain subject to the relevant regulations under the Act and all relevant criteria in the Code.

#### ***Certain Proceedings before the Care Standards Tribunal\****

4. *The Secretary of State authorises the Commission to fund Legal Help, Help at Court and Legal Representation in relation to the following proceedings:*
  - (i) *Proceedings under section 4 of the Protection of Children Act 1999 (which relate to appeals against inclusion on a list of individuals who are considered unsuitable to work with children);*
  - (ii) *Proceedings under section 4A of the Protection of Children Act 1999 (which relates to applications for removal from the list of individuals who are considered unsuitable to work with children);*
  - (iii) *Proceedings under section 86 of the Care Standards Act 2000 (which relate to appeals against inclusion on a list of individuals who are considered unsuitable to work with vulnerable adults); and*

- (iv) *Proceedings under section 87 of the Care Standards Act 2000 (which relates to applications for removal from the list of individuals who are considered unsuitable to work with vulnerable adults).*

[\*Note that the above provisions shown in italics have been superseded by the TCE 2007 and the Authorisation printed at 22.3 below]

### **The General and Special Commissioners of Income Tax<sup>1</sup> and VAT and Duties Tribunal**

5. The Secretary of State authorises the Commission to fund Legal Help, Help at Court and Legal Representation in all proceedings before the General and Special Commissioners of Income Tax and before the VAT and Duties Tribunal in the circumstances specified below.
6. The circumstances are where:
  - (a) it is in the interests of justice for the client to be legally represented and therefore, that Legal Help, Help at Court and Legal Representation be granted; and
  - (b) the proceedings concern penalties which the courts have declared to be criminal in ECHR terms or where an appellant reasonably seeks to argue that the penalties under consideration by the tribunal are criminal in ECHR terms.

### **Certain Proceedings before the Care Standards Tribunal, the General and Special Commissioners of Income Tax, and VAT and Duties Tribunal**

7. Appeals from, or reviews of, the above tribunals (only in relation to the proceedings specified in paragraph 4, above, in respect of the Care Standards Tribunal) to the High Court, the Court of Appeal and the House of Lords may also be funded in the same specified circumstances.
8. For the avoidance of doubt, the Secretary of State authorises funding for cases which fall within sections 4–7 of the Direction and arise out of the running of a business.

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9. Only organisations authorised to do so by contract with the Legal Services Commission may provide Legal Help, Help at Court and Legal Representation under this Direction.

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## **NOTES**

<sup>1</sup> Commissioners for the general purposes of the income tax, referred to as “General Commissioners” in the Taxes Acts and commissioners for the special purposes of the Income Tax Acts, referred to as “Special Commissioners” in the Taxes Acts.

### **22.3 Text of Secretary of State's Authorisation on Tribunal Representation of October 2008**

- 1) This is an authorisation by the Lord Chancellor under section 6(8) of the Access to Justice Act 1999 ("the Act"). It authorises the Legal Services Commission ("the Commission") to fund in specified circumstances services generally excluded from the scope of the Community Legal Service Fund by Schedule 2 to the Act ("the Schedule").
- 2) This authorisation comes into force on 3rd November 2008.
- 3) References in this authorisation to services which the Commission may fund are to the levels of service defined in those terms in the Commission's Funding Code ("the Code").
- 4) This Authorisation replaces the Secretary of State's Direction on Tribunal Representation dated 31 October 2005 insofar as the functions referred to in that Direction are transferred by the Transfer of Tribunals Functions Order 2008. This Authorisation does not affect the 2005 Direction in relation to proceedings before the General and Special Commissioners of Income Tax and VAT and Duties Tribunal, or onward appeals from such proceedings.
- 5) All applications under this authorisation remain subject to the relevant regulations under the Act and all relevant criteria and procedures in the Code.
- 6) Only organisations authorised to do so by contract with the Commission may provide Legal Help, Help at Court and Legal Representation under this Authorisation.
- 7) This Authorisation only applies to proceedings arising under the law of England and Wales. It does not apply to proceedings arising under the law of Northern Ireland or Scotland, or to proceedings transferred to the First-tier Tribunal or Upper Tribunal from the High Court in Northern Ireland or from the Court of Session.

#### Authorisation

- 8) Subject to paragraphs 9 and 10, the Lord Chancellor authorises the Commission to fund Legal Representation in the types of proceedings described at paragraphs 11-14 which would otherwise be excluded services under paragraph 2 of the Schedule.
- 9) The Lord Chancellor authorises the Commission to fund services that would otherwise be excluded under paragraph 1 of the Schedule, including Legal Help, Help at Court and Legal Representation, in the types of proceedings described at paragraph 11-12, and in any onward appeals to the High Court, Court of Appeal, and House of Lords.

- 10) Services that would otherwise be excluded under paragraph 1 of the Schedule including Legal Help, Help at Court and Legal Representation, are authorised in the types of proceedings described at paragraph 13 (Judicial Review) and in any onward appeals to the High Court, Court of Appeal, and House of Lords. However services in such proceedings which would be excluded under paragraph 1(h) of the Schedule (business cases) are only authorised where the proceedings or potential proceedings concern:
- a) serious wrongdoing,
  - b) abuse of position or power, or
  - c) significant breach of human rights by a public authority.

#### **Proceedings before the First-tier Tribunal**

- 11) The following proceedings before the First-tier Tribunal:
- i) Proceedings under section 4 of the Protection of Children Act 1999 (which relate to appeals against inclusion on a list of individuals who are considered unsuitable to work with children);
  - ii) Proceedings under section 4A of the Protection of Children Act 1999 (which relate to applications for removal from the list of individuals who are considered unsuitable to work with children);
  - iii) Proceedings under section 86 of the Care Standards Act 2000 (which relate to appeals against inclusion on a list of individuals who are considered unsuitable to work with vulnerable adults);
  - iv) Proceedings under section 87 of the Care Standards Act 2000 (which relate to applications for removal from the list of individuals who are considered unsuitable to work with vulnerable adults); and
  - v) Proceedings under section 144 of the Education Act 2002 (which relate to appeals against a Direction of the Secretary of State prohibiting an individual from teaching and related activities).

## **Proceedings before the Upper Tribunal**

### Proceedings arising out of first-tier proceedings under paragraph 11 above

12) Proceedings in the Upper Tribunal, which arise out of proceedings specified in paragraph 11.

### Judicial Review Proceedings

13)

- a) Proceedings which are brought before the Upper Tribunal (wholly or primarily) to exercise its “judicial review” jurisdiction under section 15 of the 2007 Act; or
- b) Judicial review applications transferred to the Upper Tribunal from the High Court under section 31A of the Supreme Court Act 1981.

### Other Proceedings in the Upper Tribunal

- 14) Appeals to the Upper Tribunal under section 11 of the TCE 2007 (Appeals on a Point of Law) from decisions made by the First-tier tribunal, or, in relation to sub-paragraph (b) from decisions made by the Special Educational Needs Tribunal for Wales, where that tribunal is exercising its jurisdiction arising from the following provisions<sup>1</sup>:
- a) Section 9 of the Protection of Children Act 1999 (formerly the jurisdiction of the Care Standards Tribunal); or
  - b) Section 28H of the Disability Discrimination Act 1985 and section 333 of the Education Act 1996 (formerly the jurisdiction of the Special Educational Needs and Disability Tribunal).

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<sup>1</sup> These functions are transferred to the First-tier under the Tribunals Transfer of Functions Order 2008.

## 22.4 Care Standards Cases

1. A limited range of First-tier Tribunal cases relating to the care and protection of children and vulnerable adults are within the scope of Legal Representation. Prior to the TCE 2007 these cases, which are listed at paragraph 11 of the Secretary of State's Authorisation set out 24.3 above, would have been heard by the Care Standards Tribunal. That tribunal was originally established under the Protection of Children Act 1999 but its jurisdiction was expanded under the Care Standards Act 2000.
2. Such proceedings may be funded even if the case arises out of the client's business (see paragraph 9 of the Secretary of State's Authorisation). However the normal financial eligibility rules for Legal Representation apply.
3. Legal Representation for Care Standards cases before the First-tier Tribunal is funded as licensed work. Applications must be made for a certificate in the normal way but all such applications should be sent to the Commission's Special Cases Unit at Exchange Tower, 2 Harbour Exchange Square, London E14 9GE.
4. As for other licensed work, only firms with a General Civil Contract with the Commission may apply, unless there are circumstances justifying the grant of an exceptional case contract (see Section 15.14 of this Guidance). Remuneration for Legal Representation before the First-tier Tribunal is payable at the Hourly Rates applicable to "Other Tribunals" as set out at Table 10(c) of the Payment Annex to the Civil Specification. For ease of reference the relevant rates are as follows:

	<b>London</b> £	<b>Outside London</b> £
Preparation	61.20	57.25
Travel/Waiting	30.30	29.45
Letters written/Telephone Calls	4.40	4.10
Advocacy	69.60	69.60
Attending tribunal with counsel	32.55	32.55

5. Care Standards cases do not usually fall into any existing franchise category. Applications will be considered under the General Funding Code. All the normal standard criteria for Legal Representation will apply. Applications will be refused on the grounds that

alternative funding is available (Criterion 5.4.2) if the client is a member of a trade union which can reasonably be expected to provide assistance in the proceedings. Such proceedings by their nature are not suitable for conditional fee agreements.

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6. Care Standards cases will be treated as unquantifiable claims due to the nature of the allegations involved and are therefore unlikely to be refused on cost benefit grounds. The most important consideration for the Commission is likely to be whether the application to the tribunal has sufficient prospects of success to justify funding. In general, cases can only be funded if the prospects of a successful appeal to the tribunal are at least 50%. Applications for funding are therefore likely to be refused if the client has serious criminal convictions which clearly justify the Secretary of State's decision to place the client on the list. By contrast, if the client does not have any serious relevant criminal convictions or has been placed on the list as the result of an isolated incident, so that there is doubt about the correctness of the Secretary of State's decision, funding will usually be granted.
7. The following wordings have been added to CIS for Care Standards cases:

<b>CODE</b>	<b>NAME</b>	<b>WORDING</b>
TB005	Protection of Children Act 1999 – S4	to be represented in proceedings under section 4 of the Protection of Children Act 1999
TB006	Protection of Children Act 1999 – S4A	to be represented in proceedings under section 4A of the Protection of Children Act 1999
TB007	Care Standards Act 2000 – S9	to be represented in proceedings under section 9 of the Care Standards Act 2000
TB008	Care Standards Act 2000 – S86	to be represented in proceedings under section 86 of the Care Standards Act 2000
TB009	Care Standards Act 2000 – S87	to be represented in proceedings under section 87 of the Care Standards Act 2000
TB010	Education Act 2002 – S144	to be represented in proceedings under section 144 of the Education Act 2002

## 22.5 Representation before the Upper Tribunal

1. The Upper Tribunal is the new appellate Tribunal established under the TCE 2007. Like the First-tier Tribunal the jurisdiction of the Upper Tribunal is currently limited to the range of cases so specified in the Transfer of Tribunal Functions Order 2008, but further categories of case are likely to be brought into scope during 2009. Although a primary function of the Upper Tribunal is to hear appeals from decisions of the First-tier Tribunal on points of law (under section 11 of the TCE 2007) the Upper Tribunal has wider statutory functions including the power to deal with certain judicial review matters which would previously have been considered by the High Court.
2. Legal Representation for proceedings before the Upper Tribunal is only within scope if it comes within the range of cases specified in Schedule 2 of the 1999 Act (mental health cases) or within paragraphs 12 to 14 of the Secretary of State's Authorisation set out at 22.3 above. The first effect of these rules is that legal aid is available in the Upper Tribunal for any appeal or review arising out of proceedings before the First-tier Tribunal which are themselves within scope. This applies to mental health and care standards cases as described above.
3. In addition, certain proceedings in the Upper Tribunal are within scope irrespective of the jurisdiction of the First-tier Tribunal. These are tribunals for which, prior to the TCE 2007, there was a right of appeal directly to the High Court. The Authorisation ensures that such appeals remain within the scope of funding. This applies to proceedings under:
  - a) Section 9 of the Protection of Children Act 1999 (formerly the jurisdiction of the Care Standards Tribunal); or
  - b) Section 28H of the Disability Discrimination Act 1985 and section 333 of the Education Act 1996 (formerly the jurisdiction of the Special Educational Needs and Disability Tribunal).
4. The TCE 2007 created a new power for judicial review proceedings before the High Court to be transferred to the Upper Tribunal. Such cases remain in scope before the Upper Tribunal. The same scope rules apply as for judicial review proceedings in the High Court – namely such cases are in scope unless they are business cases which do not concern serious wrongdoing, abuse of position or power or significant breach of human rights by a public authority. See paragraph 10 of the Authorisation.

5. Finally, proceedings are within scope if they are brought before the Upper Tribunal (wholly or primarily) to exercise its “judicial review” jurisdiction under section 15 of the TCE 2007. Section 15 gives the Upper Tribunal similar powers to those available to the High Court on judicial review, subject to a range of limitations set out in section 18 of the TCE 2007. For practical purposes we will only regard cases as within scope under this head if , prior to the TCE 2007, the issues in the case would have been brought by way of judicial review. For most cases before the Upper Tribunal, for example appeals concerning entitlement to welfare benefits which would previously have been heard before the Social Security Commissioners, the Upper Tribunal will be concerned wholly or primarily with its main appeal jurisdiction under section 11 of the TCE 2007 and the appeal will not be within the scope of funding.
6. All cases which are within scope before the Upper Tribunal will be considered under section 7 of the Funding Code criteria – the section which is also applicable to judicial review cases. This will apply whether the Upper Tribunal is exercising its functions under section 11 of the TCE 2007, section 15 or a combination of the two. All cases before the Upper Tribunal require the grant of permission to proceed - this fits with the pre and post permission criteria in section 7 of the Code including the Presumption of Funding which can arise under section 7.5.2 of the Code criteria.
7. Remuneration for all cases before the Upper Tribunal is at High Court rates. The Upper Tribunal is a Superior Court of Record (under section 3(5) of the TCE 2007), is subject to remuneration as a “Higher Court” (paragraph 7.32 of the Civil Specification) and subject to a maximum enhancement of up to 200% (paragraph 7.40 of the Civil Specification).
8. All cases before the Upper Tribunal are funded as licensed work. Applications for certificates should always be made to the Special Cases Unit. In relation to Mental Health appeals, applications should be made to the Mental Health Unit which is based in our Nottingham and Liverpool offices. For all other cases in the Upper Tribunal application should be made to the Special Cases Unit at Exchange Tower, 2 Harbour Exchange Square, London E14 9GE.
9. A range of new wordings have been added to CIS to cover cases before the Upper Tribunal. These include:

#### Mental Health

<b>CODE</b>	<b>NAME</b>	<b>WORDING</b>
MH023	Upper Tribunal Appeal	to be represented on an appeal or review to the Upper Tribunal against a decision of the First-Tier Tribunal

## Education

CODE	NAME	WORDING
ED022	Upper Tribunal Appeal	to be represented on an appeal or review to the Upper Tribunal against a decision of the First-Tier Tribunal

## Other Categories – Judicial Review Jurisdiction

MATTER TYPE	CODE	NAME	WORDING
NNEGL	NG051	Upper Tribunal Judicial Review	to be represented before the Upper Tribunal exercising its judicial review jurisdiction in relation to criminal injuries compensation
NHUSE	HO082	Upper Tribunal Judicial Review	to be represented before the Upper Tribunal exercising its judicial review jurisdiction
NWBEN	WB014		
NCARE	CC017		
NPLAN	PL033		

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### 22.6 The Revenue, VAT and Duties Tribunals

1. The Secretary of State's Direction brings into scope certain proceedings before the General and Special Commissioners of Income Tax and the VAT and Duties Tribunal. These tribunals have wide jurisdictions dealing with a range of matters relating to tax and duties. However, the Direction only brings the tribunals within the scope of CLS funding for a small range of cases, namely those where the following two pre-conditions apply:
  - (a) it is in the interests of funding for the client to be legally represented and therefore, that Legal Help, Help at Court and Legal Representation be granted; and
  - (b) the proceedings concern penalties which the Courts have declared to be criminal in ECHR terms, or where the appellant reasonably seeks to argue that the penalties under consideration by the tribunal are criminal in ECHR terms.
2. Applications for funding for these tribunals are subject to the same procedures as applications for representation in Care Standards cases, as described above. Therefore cases are funded as licensed work and all applications must be made on the normal forms to the Special Cases Unit in London. These tribunals are also subject to the same remuneration rates as are set out at paragraph 22.4.7 above.

3. Since these cases are funded as licensed work the starting point is that only firms with a Civil Unified Contract may apply to do the work. However the Commission will be prepared to use its powers to issue exceptional case contracts in appropriate cases (see Section 15.14 of this guidance). Such contracts may be issued to firms holding a Crime Unified Contract or to any other firms or organisations, including accountants or others, who satisfy the Commission that they have specific expertise and ability in dealing with cases before these tribunals.
4. When applications are made, the first issue to be considered by the Commission will be whether the application relates to penalties that are likely to be criminal in ECHR terms. For greater guidance on this point refer to section 26.
5. Once it is concluded that the proceedings are criminal in ECHR terms, the Commission must consider the interests of justice test as required by the Direction. Refer to section 26 of the Guidance.
6. Applications for Legal Representation for these tribunals are subject to all the normal financial eligibility criteria which apply to Legal Representation under the CLS. Applications will be refused where a client has access to alternative funding to pay for representation for the tribunal.

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### **22.7 Proscribed Organisations Appeal Commission**

1. This tribunal was established with effect from 19 February 2001 under the Terrorism Act 2000. A number of organisations are proscribed under Schedule 2 of that Act. Under Section 3 of the Act the Home Secretary (or in the case of organisations concerned in terrorism connected to the affairs of Northern Ireland, the Secretary of State for Northern Ireland) has power to remove an organisation from the Schedule. Section 4 provides for any proscribed organisation or any person affected by a proscription to apply to the Secretary of State for deproscription. Following any refusal to deproscribe, the organisation or the individual has a right of appeal to the Proscribed Organisations Appeal Commission. The Commission's function is to consider whether the Secretary of State's refusal was flawed, applying judicial review principles.
2. Organisations appealing in this way will not be able to obtain CLS funding since such funding is only available to individuals. Individuals may apply for Legal Representation. Applications for such certificates will be considered under the General Funding Code. Two of the most important considerations in determining such applications are likely to be:

- (a) Prospects of success. Applications will always be refused if the prospects of a successful appeal to the Commission are poor. As for any other case, applications will be refused if the prospects of a successful appeal are only borderline, unless the case is of overwhelming importance to the client or has a significant wider public interest;
  - (b) Alternative funding. Although an application to the Commission may be brought in the name of an individual, the organisation itself will also benefit from any decision by the Commission that it should be deproscribed. Therefore in appropriate cases the Regional Office may require an explanation as to why the appeal could not be brought and/or funded by the organisation itself. Consideration will be given to refusing such applications under criterion 5.4.2 (Alternative Funding). However the regional office will always take the interests of the individual applicant into account. In some cases the individual will have a strong interest in deproscription, for example where this could lead to the quashing of a conviction under section 7 of the Terrorism Act 2000.
3. All applications to fund Legal Representation before the Proscribed Organisations Appeal Commission should be made to the Special Cases Unit in London. Cases will be funded as licensed work unless the usual criteria for issuing an occasional case contract are met. Pending any revision to the General Civil Contract, remuneration for cases before the Proscribed Organisations Appeal Commission will be at the rates specified for Other Tribunals as set out at paragraph 22.4.7 above.

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#### **22.8 Special Immigration Appeals Commission (“SIAC”)**

1. Proceedings before SIAC were brought into the scope of the CLS scheme by the Lord Chancellor’s Direction dated 10 December 2002. The Direction was superseded by paragraph 2(1) (ha) to Schedule 2 to the Access to Justice Act (inserted by the Nationality, Immigration and Asylum Act 2002) with effect from April 2003.
2. SIAC was established by the Special Immigration Appeals Commission Act 1997 in order to hear appeals against immigration decisions made by the Home Secretary under a variety of legislative provisions. The common feature in all SIAC appeals is that the Secretary of State’s decision concerned exclusion, departure, deportation, or removal of the client in the interests of national security or for the public good. The Commission’s function is to decide whether the Secretary of State’s decision was wrong in law or involved an improper exercise of discretion.

3. The normal financial eligibility criteria applies to applications for funding before SIAC. Cases are considered under section 8 of the Funding Code where the client alleges significant breach of human rights, otherwise under the General Funding Code. Cases before SIAC are of overwhelming importance to the client and/or raise significant human rights issues. If either of those considerations apply applications must demonstrate at least borderline prospects of success before SIAC.
  
4. Legal representation before SIAC is funded as licensed work and applications should be made to the Special Cases Unit at Exchange Tower, 2 Harbour Exchange Square, London E14 9GE. SIAC work will be remunerated in line with Other Tribunal work set out at 22.4.7 above.