

2005 No. [184]

LEGAL SERVICES COMMISSION, ENGLAND AND
WALES

Community Legal Service (Funding) (Counsel in Family
Proceedings) (Amendment) Order 2005

Made - - - - 2005
Laid before Parliament 2 February 2005
Coming into force - - 28th February 2005

The Secretary of State, in exercise of the powers conferred upon the Lord Chancellor by section 6(4) of the Access to Justice Act 1999(a) and now vested in him(b), having regard to the matters specified in section 25(3) and having consulted the General Council of the Bar and the Law Society, makes the following Order:

Citation, commencement and interpretation

1.—(1) This Order may be cited as the Community Legal Service (Funding) (Counsel in Family Proceedings) (Amendment) Order 2005 and shall come into force on 28th February 2005.

(2) In this Order reference to an article or Schedule alone means an article or Schedule so numbered in the Community Legal Service (Funding) (Counsel in Family Proceedings) Order 2001(c).

Transitional provisions

2.—(1) This Order applies for the purposes of—

- (a) articles 3 to 16 and 18 of, and the Schedule to, this Order, to work carried out under a certificate granted, and amendments made to add new proceedings to an existing certificate, on or after the date on which this Order comes into force;
- (b) article 17 of this Order, to—
 - (i) a main hearing which concludes; and
 - (ii) a certificate discharged or revoked,on or after the date on which this Order comes into force.

(2) In all other circumstances the Community Legal Service (Funding) (Counsel in Family Proceedings) Order 2001 shall have effect as if articles 3 to 18 of, and the Schedule to, this Order had not been made.

(a) 1999 c.22.

(b) The functions of the Lord Chancellor under section 6(4) were transferred to the Secretary of State by the Secretary of State for Constitutional Affairs Order 2003 (S.I. 2003/1887), article 4 and Schedule 1.

(c) S.I. 2001/1077; amended by S.I. 2003/2590.

(3) In this article reference to a certificate is to a certificate to fund services issued under the Funding Code approved under section 9 of the Access to Justice Act 1999.

Amendment to the Community Legal Service (Funding) (Counsel in Family Proceedings) Order 2001

3. In article 2—

- (a) after the definition of “assessment of costs” insert—

““business accounts” includes accounts relating to trusts and investments whether or not those accounts are maintained for the purposes of, or in connection with, a business;”;
- (b) after the definition of “the Commission” insert—

““committal hearing” means any hearing to determine whether a person should be committed to prison;”;
- (c) in the definition of function F1 for “means” to the end substitute “has the meaning set out in article 2A;”;
- (d) in the definition of function F2 for “means” to the end substitute “has the meaning set out in article 2B;”;
- (e) in the definition of function F3 for “means” to the end substitute “has the meaning set out in article 2C;”;
- (f) in the definition of function F4 for “means” to the end substitute “has the meaning set out in article 2D;”;
- (g) in the definition of function F5 for “means” to the end substitute “has the meaning set out in article 2E;”;
- (h) after the definition of “Funding Review Committee” insert—

““harm” has the same meaning as in section 31(9) of the Children Act 1989(a) and the question of whether harm is significant shall be determined in accordance with section 31(10) of that Act;”;
- (i) after the definition of “the main hearing” insert—

““mental disorder” has the same meaning as in section 1(2) of the Mental Health Act 1983(b);”.

4. After article 2 insert—

“Function F1

2A.—(1) Subject to paragraph (2), function F1 means all work—

- (a) which is carried out prior to the issue of proceedings; or
- (b) which does not fall within functions F2 to F5.

(2) Function F1 does not include work carried out in connection with a conference.

Function F2

2B.—(1) Subject to paragraph (2), function F2 means all work carried out in connection with a hearing relating to injunctive relief or enforcement procedures, except a committal hearing.

(2) Function F2 does not include any work which falls within function F5.

(a) 1989 c.41; amended by Adoption and Children Act 2002 (c.38), section 120.
(b) 1983 c.20.

(3) In this article “work” includes, but is not limited to, preparation, advocacy, advising and drafting.

Function F3

2C.—(1) Subject to paragraph (2), function F3 means all work carried out in connection with—

- (a) a hearing, including a committal hearing; or
- (b) in care proceedings, an Advocates Meeting, Case Management Conference or Pre-Hearing Review.

(2) Function F3 does not include any work which falls within function F2 or F5.

(3) In this article “work” includes, but is not limited to, preparation, advocacy, advising and drafting.

Function F4

2D.—(1) Subject to paragraph (2), function F4 means all work carried out in connection with a conference, including a telephone or video conference.

(2) Function F4 does not include any conference which takes place on the same day as a hearing for which payment is claimed under function F5.

(3) In this article “work” includes, but is not limited to, preparation and advice.

Function F5

2E.—(1) Function F5 means all work carried out in connection with—

- (a) the main hearing; and
- (b) in care proceedings, where the same counsel attends both the Pre-Hearing Review and the main hearing on behalf of a client, the Pre-Hearing Review.

(2) In this article “work” includes, but is not limited to, preparation, advocacy, advising and drafting.”.

5. In article 4—

- (a) in paragraph (2), for “(3)” substitute “(2A)”; and
- (b) after paragraph (2) insert—

“(2A) This Order does not apply to family proceedings in magistrates’ courts where:

- (a) prior authority to instruct counsel in respect of the work which was carried out has not been granted by the Commission; and
- (b) on the assessment of costs by the Commission, instructing counsel to carry out that work was not considered to be justified,

in which case all costs and disbursements in respect of such work shall be assessed in accordance with the rates set out in the Legal Aid in Family Proceedings (Remuneration) Regulations 1991(a).”.

6. In article 5(1)(c) after “payment” insert “(“CBP”)”.

7. In article 6(1) for “Only one base fee” substitute “A maximum of two base fees”.

8.—(1) After article 9(1)(c) insert—

- “(ca) representation of a person who has difficulty:
 - (i) giving instruction, or

(a) S.I. 1991/2038.

(ii) understanding advice,
attributable to a mental disorder or to a significant impairment of intelligence or social functioning;

(cb) representation of:

(i) a parent or parents of a child who is the subject of proceedings, or

(ii) another person (including a child) against whom allegations are made that he has caused or is likely to cause significant harm to a child;

(cc) analysis of the business accounts of an individual, partnership or company;

(cd) in respect of proceedings which fall within paragraph 4 of Schedule 2, one or more experts;”.

(2) In article 9(1)(d) before “more than” insert “in respect of proceedings which fall within paragraphs 1, 2 or 3 of Schedule 2,”.

9. In article 9(2)—

(a) for “(c)” substitute “(cb)(i)”;

(b) for “(d)” substitute “(cb)(ii)”;

(c) after “court” insert “at that hearing”.

10. For article 9(4) substitute—

“(4) In relation to functions F2, F3 and F5:

(a) a special issue payment shall be made for each special issue certified;

(b) such payment shall equate to the percentage applicable to each special issue multiplied by the total hearing unit fees applicable to the function in which the issue arises, as specified in Schedule 1.”.

11. In article 9(5)—

(a) for “Subject to paragraph (8)” substitute “In relation to functions F1 and F4”; and

(b) in sub-paragraph (a), omit “in relation to functions F1 and F4”.

12. Omit article 9(7) and (8).

13. In article 10—

(a) for “£150” substitute “£287.50”; and

(b) for “£60” substitute “£115”.

14. In article 10A—

(a) for “£206.25” substitute “£162.50”; and

(b) for “£82.50” substitute “£65”.

15. After article 10A insert—

“Payments for enforcement procedures and contested injunction hearings

10B. In respect of a set of proceedings within paragraph 4 of Schedule 2, which include work carried out under function F2 in connection with a hearing relating to:

(a) injunctive relief which is contested, or

(b) enforcement procedures,

an additional payment shall be made at a rate of £250 in respect of Queen’s Counsel, and £100 in respect of counsel other than Queen’s Counsel.”.

16. After article 12(1) insert—

“(1A) In paragraph (1), reference to the base fee or the hearing unit fee means the single fee applicable to the function in which the settlement takes place, and no account is to be taken of multiple base fees or hearing unit fees which may be claimed in relation to a set of proceedings.”.

17. For article 17(6) substitute—

“(6) Counsel shall submit his claim for payment—

- (a) in respect of function F5, within two months of the conclusion of the main hearing;
- (b) in respect of all other functions, within two months of the discharge or revocation of the certificate to which it relates,

and if he fails to do so, the Regional Director may reduce the amount payable under this Order.

(6A) A reduction in the amount payable under paragraph (6) shall not be made unless counsel has been allowed a reasonable opportunity to show cause in writing why the amount should not be reduced.”.

18. For Schedule 1, substitute the new Schedule 1 set out in the Schedule to this Order.

Signed by authority of the Secretary of State

Dated

Parliamentary Under Secretary of State
Department for Constitutional Affairs

SCHEDULE

Article 18

“SCHEDULE 1

Tables of fees

1. In respect of the proceedings mentioned in paragraph 1 of Schedule 2, the amount of the graduated fee shall be as follows:

(a) in respect of Queen’s Counsel:

	<i>Base fee</i>	<i>Hearing unit fee</i>	<i>SS</i>	<i>CBP¹</i>	<i>CBP²</i>
	£	£	%	£	£
F1	200.00	-	-	40.00	79.00
F2	-	287.50	100	47.00	94.00
F3	-	431.00	100	82.00	165.00
F4	175.00	-	-	33.00	67.00
F5 primary	-	775.00	10	221.00	442.00
F5 secondary	-	550.00	-	135.00	271.00

¹Where the court bundle comprises between 176 and 350 pages.

²Where the court bundle comprises more than 350 pages.

Special issue payments

<i>Category</i>	<i>%</i>
Litigant in person	10
More than two parties	0
More than one child	0
Difficulty giving instruction/understanding advice	0
Parents/allegations against others	0
Analysis of accounts	0
More than one expert	10
Foreign	0
Assets	0
Conduct	0

(b) in respect of counsel other than Queen’s Counsel:

	<i>Base fee</i>	<i>Hearing unit fee</i>	<i>SS</i>	<i>CBP¹</i>	<i>CBP²</i>
	£	£	%	£	£
F1	80.00	-	-	16.00	32.00
F2	-	115.00	100	19.00	37.50
F3	-	172.50	100	33.00	66.00

F4	70.00	-	-	13.00	27.00
F5 primary	-	310.00	10	88.00	177.00
F5 secondary	-	220.00	-	54.00	108.00

¹Where the court bundle comprises between 176 and 350 pages.

²Where the court bundle comprises more than 350 pages.

Special issue payments

<i>Category</i>	<i>%</i>
Litigant in person	10
More than two parties	0
More than one child	0
Difficulty giving instruction/understanding advice	0
Parents/allegations against others	0
Analysis of accounts	0
More than one expert	10
Foreign	0
Assets	0
Conduct	0

2. In respect of the proceedings mentioned in paragraph 2 of Schedule 2, the amount of the graduated fee shall be as follows:

(a) in respect of Queen's Counsel:

	<i>Base fee</i>	<i>Hearing unit fee</i>	<i>SS</i>	<i>CBP¹</i>	<i>CBP²</i>
	£	£	%	£	£
F1	200.00	-	-	40.00	79.00
F2	-	212.50	100	47.00	94.00
F3	-	325.00	100	82.00	165.00
F4	175.00	-	-	33.00	67.00
F5 primary	-	1075.00	20	221.00	442.00
F5 secondary	-	575.00	-	135.00	271.00

¹Where the court bundle comprises between 176 and 350 pages.

²Where the court bundle comprises more than 350 pages.

Special issue payments

<i>Category</i>	<i>%</i>
Litigant in person	0
More than two parties	40
More than one child	0
Difficulty giving instruction/understanding advice	25
Parents/allegations against others	25
Analysis of accounts	0
More than one expert	15
Foreign	25
Assets	0
Conduct	20

(b) in respect of counsel other than Queen's Counsel:

	<i>Base fee</i>	<i>Hearing unit fee</i>	<i>SS</i>	<i>CBP¹</i>	<i>CBP²</i>
	£	£	%	£	£
F1	80.00	-	-	16.00	32.00
F2	-	85.00	100	19.00	37.50
F3	-	130.00	100	33.00	66.00
F4	70.00	-	-	13.00	27.00
F5 primary	-	430.00	20	88.00	177.00
F5 secondary	-	230.00	-	54.00	108.00

¹Where the court bundle comprises between 176 and 350 pages.

²Where the court bundle comprises more than 350 pages.

Special issue payments

<i>Category</i>	<i>%</i>
Litigant in person	0
More than two parties	40
More than one child	0
Difficulty giving instruction/understanding advice	25
Parents/allegations against others	25
Analysis of accounts	0
More than one expert	15
Foreign	25
Assets	0
Conduct	20

3. In respect of the proceedings mentioned in paragraph 3 of Schedule 2, the amount of the graduated fee shall be as follows:

(a) in respect of Queen's Counsel:

	<i>Base fee</i>	<i>Hearing unit fee</i>	<i>SS</i>	<i>CBP¹</i>	<i>CBP²</i>
	£	£	%	£	£
F1	200.00	-	-	40.00	79.00
F2	-	187.50	100	47.00	94.00
F3	-	325.00	100	82.00	165.00
F4	300.00	-	-	33.00	67.00
F5 primary	-	812.50	10	221.00	442.00
F5 secondary	-	600.00	-	135.00	271.00

¹Where the court bundle comprises between 176 and 350 pages.

²Where the court bundle comprises more than 350 pages.

Special issue payments

<i>Category</i>	<i>%</i>
Litigant in person	30

More than two parties	30
More than one child	0
Difficulty giving instruction/understanding advice	25
Parents/allegations against others	0
Analysis of accounts	0
More than one expert	50
Foreign	30
Assets	0
Conduct	50

(b) in respect of counsel other than Queen's Counsel:

	<i>Base fee</i>	<i>Hearing unit fee</i>	<i>SS</i>	<i>CBP¹</i>	<i>CBP²</i>
	£	£	%	£	£
F1	80.00	-	-	16.00	32.00
F2	-	75.00	100	19.00	37.50
F3	-	130.00	100	33.00	66.00
F4	120.00	-	-	13.00	27.00
F5 primary	-	325.00	10	88.00	177.00
F5 secondary	-	240.00	-	54.00	108.00

¹Where the court bundle comprises between 176 and 350 pages.

²Where the court bundle comprises more than 350 pages.

Special issue payments

<i>Category</i>	<i>%</i>
Litigant in person	30
More than two parties	30
More than one child	0
Difficulty giving instruction/understanding advice	25
Parents/allegations against others	0
Analysis of accounts	0
More than one expert	50
Foreign	30
Assets	0
Conduct	50

4. In respect of the proceedings mentioned in paragraph 4 of Schedule 2, the amount of the graduated fee shall be as follows:

(a) in respect of Queen's Counsel:

	<i>Base fee</i>	<i>Hearing unit fee</i>	<i>SS</i>	<i>CBP¹</i>	<i>CBP²</i>
	£	£	%	£	£
F1	225.00	-	- ³	40.00	79.00
F2	-	250.00	50	47.00	94.00
F3	-	300.00	50	82.00	165.00

F4	225.00	-	-	33.00	67.00
F5 primary	-	812.50	10	221.00	442.00
F5 secondary	-	600.00	-	135.00	271.00

¹Where the court bundle comprises between 176 and 350 pages.

²Where the court bundle comprises more than 350 pages.

³See article 12(3).

Special issue payments

<i>Category</i>	<i>%</i>
Litigant in person	25
More than two parties	10
More than one child	0
Difficulty giving instruction/understanding advice	0
Parents/allegations against others	0
Analysis of accounts	50
More than one expert	25
Foreign	25
Assets	25
Conduct	50

(b) in respect of counsel other than Queen's Counsel:

	<i>Base fee</i>	<i>Hearing unit fee</i>	<i>SS</i>	<i>CBP¹</i>	<i>CBP²</i>
	<i>£</i>	<i>£</i>	<i>%</i>	<i>£</i>	<i>£</i>
F1	90.00	-	- ³	16.00	32.00
F2	-	100.00	50	19.00	37.50
F3	-	120.00	50	33.00	66.00
F4	90.00	-	-	13.00	27.00
F5 primary	-	325.00	10	88.00	177.00
F5 secondary	-	240.00	-	54.00	108.00

¹Where the court bundle comprises between 176 and 350 pages.

²Where the court bundle comprises more than 350 pages.

³See article 12(3).

Special issue payments

<i>Category</i>	<i>%</i>
Litigant in person	25
More than two parties	10
More than one child	0
Difficulty giving instruction/understanding advice	0
Parents/allegations against others	0
Analysis of accounts	50
More than one expert	25
Foreign	25
Assets	25
Conduct	50 ³

EXPLANATORY NOTE

(This note is not part of the Order)

This Order amends the system for the payment of graduated fees for counsel for work in family proceedings as set out in the Community Legal Service (Funding) (Counsel in Family Proceedings) Order 2001 (“the 2001 Order”).

Articles 3 and 4 separate the definitions of the functions from the main definitions provision to make the definitions clearer. These articles also amend the definitions of functions F2 and F3 to provide for committal hearings to be included under the latter. Article 3 also inserts further definitions consequential on the other provisions of this Order.

Article 5 provides that the 2001 Order does not apply where the use of counsel has not been authorised in advance by the Legal Services Commission, or where the use of counsel is not considered to have been necessary on a costs assessment.

Article 7 makes an amendment to provide that in mixed or multiple claims, payment of the base fee under functions F1 and F4 may be claimed up to two times in a category.

Article 8 creates three new Special Issue Payments which may arise and be claimed, where applicable, at the rates set out in Schedule 1.

Article 10 provides that Special Issue Payments are to be paid at all F2 and F3 hearings and on all hearing units.

Article 13 provides for new increased rates for financial dispute resolution hearing payments.

Article 14 provides for new increased rates for care proceedings payments.

Article 15 inserts a new payment for enforcement procedures and contested injunction hearings.

Article 16 clarifies that where an early settlement supplement is payable it is calculated on the single base fee or hearing unit fee, whether or not multiple fees have been claimed in respect of a single set of proceedings.

Article 17 reduces the time limit for a claim for payment to be submitted to two months following the conclusion of the main hearing for the purposes of function F5, and for all other functions to two months following the discharge or revocation of a certificate.

Articles 18 substitutes a new Schedule 1 to provide for amendment to the Special Issue Payments rates, for the addition of the new Special Issue Payments to the relevant categories of proceedings and for new fees payable in respect of functions F1 to F5.