

# Part **2B**

## The Funding Code: Procedures

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# The Funding Code

## Part 2 – Procedures

3B-001

### Part A – General

#### A1. Scope of the Procedures

- 1.1. These are procedures for making decisions about the funding of services by the Commission as part of the Community Legal Service.
- 1.2. These Procedures apply from 1 April 2000. They do not apply to decisions about the funding of any services which were granted before that date.
- 1.3. The amendments that have been made since 1 April 2000 are summarised in the Annex to these Procedures. Unless otherwise specified, amendments to these Procedures apply to all funded services from the date they come into force.

## 3B-002

### A2. Varieties of Funded Work

The Commission may fund services as part of the Community Legal Service in one of the four following ways:

- (i) Controlled Work –the services specified as Controlled Work under Rule 3 and which are funded from the Controlled Work Budget.

Contracts for Controlled Work may control the number of cases started in any period. Controlled Work is subject to Part B of these Procedures.

- (ii) Licensed Work – ~~the services specified as Licensed Work under Rule 3. work other than Controlled Work or Other Grant or Contract Work which is carried out either:~~

~~(a) under the Commission's Unified Contract; or~~

~~(b) as 'Associated CLS Work' under the Commission's General Criminal Contracts or by a Public Defender.~~

~~Unless otherwise specified under a Contract, a~~Applications for Licensed Work must be made to or registered with the Commission in each case. Licensed Work is subject to the procedures for certificated work in Part C, together with relevant procedures in Part D and such obligations as are specified in ~~the e~~Contracts.

- (iii) Individual Case Contracts – work carried out under a contract with the Commission which covers only an individual case. For this purpose an individual case may comprise a number of connected proceedings (for example a potential Multi Party Action). Work under individual case contracts is subject to the procedures for certificated work in Part C, except to the extent that the contract provides otherwise. Relevant procedures in Part D also apply.

- (iv) Other Grant or Contract Work – these are services which are not designated as Controlled or Licensed Work or covered by ~~under grants or contracts other than the Commission's Unified or General Criminal Contracts or~~ Individual Case Contracts. Such services are subject to any conditions contained in the relevant grant or ~~e~~Contract, directions or orders by the Lord Chancellor and relevant procedures in Part D.

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## 3B-003

### A3. Funding for Each Level of Service

The levels of service set out in paragraph 1.1 of the Criteria shall be funded in the following ways:

## Controlled Work

- (•) All Legal Help not covered by Other Grant or Contract Work
- (•) All Help at Court
- (•) All Family Help (Lower)
- (•) Controlled Legal Representation, namely Legal Representation:
  - (i) before a Mental Health ~~Review~~ Tribunal;
  - (ii) before ~~the Asylum~~ and Immigration and Asylum Tribunal;
  - (iii) before ~~the High Court, in relation to applications under section 103A of the Nationality, Immigration and Asylum Act 2002; or an Upper Tribunal in relation to any appeal or review arising from an Immigration and Asylum Tribunal;~~
  - (iv) provided by a Community Legal Advice Centre or Network and authorised under a eContract to be funded as Controlled Work

## Licensed Work

- (•) All Family Help (Higher)
- (•) All Legal Representation not covered by Controlled Work, Individual Case Contracts or Other Grant or Contract Work applications under section 6(8)(b) of the Act;

## Individual Case Contracts

- (•) Multi-Party Action Contracts.
- (•) High Cost Case Contracts.
- (•) Exceptional Case Contracts.

## Other Grant or Contract Work

- (•) Family Mediation.
- (•) Applications to the Commission under Section 6(8)(b) of the Act.
- (•) Such other services as may be authorised by specific orders or directions from the Lord Chancellor.
  - Applications pursuant to the Lord Chancellor's Direction on Cross Border Disputes.
- (•) Applications for services which are ancillary to Other Grant or Contract Work.

### 3B-004

#### A4. ~~Supplier~~Providers

- 4.1. Services funded by the Commission as part of the Community Legal Service may only be carried out by persons authorised to supply such services under a contract with or grant from the Commission.

### 3B-005

#### A5. Directors

- 5.1. The Commission will appoint one or more Directors for the purpose of carrying out functions under these Procedures.
- 5.2. Directors will carry out functions on behalf of the Commission where such functions are given to them under these Procedures or Regulations or are delegated to them by the Commission.

### 3B-006

#### A6. Independent Funding Adjudicators

The Commission will appoint Independent Funding Adjudicators to carry out functions under these Procedures.

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### 3B-007

#### A7. Other Persons and Committees

- 7.1. The Commission will appoint:
  - (i) a Director for the Special Cases Unit;
  - (ii) a ~~Special Controls Review Panel~~ ~~Public Interest Advisory Panel~~;
  - ~~(iii) a Multi Party Action Committee;~~
  - (iii\*) such other committees or panels as it sees fit for the purpose of carrying out functions under these Procedures.
- 7.2. Committees and panels carrying out functions under the Procedures are subject to the rules set out in Section 3 of Part D.

### 3B-008

#### A8. Decisions under the Code

- 8.1. Subject to paragraph 2 and unless the Code specifies otherwise, the Commission, acting through its Directors, shall be responsible for decisions under the Code, including exercising any judgment or discretion under the Criteria or Procedures.

- 8.2. Subject to any Order under Sections 3(5) or 6(4) of the Act, the Commission may by contract delegate decisions or responsibility for any decisions under the Code and such contracts shall specify the circumstances in which any such power may be exercised.
- 8.3. Where decisions are delegated under paragraph 2 above they shall be recorded in such manner as the Commission may specify.

### 3B-009

#### A9. Guidance

- 9.1. All persons making decisions under the Code shall have regard to guidance issued by the Lord Chancellor under Section 23 of the Act or by the Commission.
- 9.2. Guidance issued by the Lord Chancellor or the Commission shall be published in such form as the Lord Chancellor or the Commission consider appropriate.
- 9.3. Paragraph 9.2 does not apply to guidance given by the Commission in relation to individual cases.

### 3B-010

#### A10. Computation of Time

- 10.1. Where any time limit is specified under these Procedures that limit may be extended by the Director as he or she thinks fit, even after the original time limit has expired.
- 10.2. Where, after exercising a delegated power, an Authorised Solicitor fails to submit forms or information to the Director within the time limit specified by these Procedures, he or she shall provide the Director with a written explanation for the delay.

### 3B-011

#### A11. Service of Documents

- 11.1. Where the Procedures provide for documents to be served, such service may be carried out by personal delivery, post, document exchange, fax or e-mail, save where the Commission or these Procedures specify a particular form of service for particular purposes. References in these Procedures to forms or to applications in writing do not imply that hard copy written forms must be used. Forms include on-line forms and related processes.
- 11.2. Where a person to be served under these Procedures is acting by a solicitor, documents may instead be served on the solicitor unless the Code specifies otherwise.
- 11.3. Where a person is not acting by a solicitor documents may be served at that person's residence, last known residence or business address.

11.4. Any document served by the Commission by post or document exchange shall be deemed to be served two days after it is posted or left at the document exchange, unless the contrary is proved.

### 3B-012

#### A12. Interpretation

12.1. Terms defined in the Act or in Section 2 of the Criteria have the same meanings in these Procedures.

12.2. These Procedures are divided into four Parts. References in any Part to a Rule mean a Rule in that Part, unless otherwise stated.

12.3. References in any Rule to a paragraph mean a paragraph within that Rule, unless otherwise stated.

12.4. Unless the context otherwise requires, the following definitions apply:

“*Adjudicator*” means one or more Independent Funding Adjudicators appointed under Rule 6.

“*Authorised Advocate*” and “*Authorised Litigator*” have the meanings given in Section 119 of the Courts and Legal Services Act 1990.

“*Authorised Representation*” means Legal Representation (other than Controlled Legal Representation) or ~~General~~ Family Help (Higher) in respect of which a solicitor has been authorised by contract to determine applications on behalf of the Commission and “*Authorised Solicitor*” means a solicitor so authorised.

“*Certificate*” means a certificate issued under Part C of these Procedures and, unless the context otherwise requires, this includes an emergency certificate.

“*Community Legal Advice*~~CLS Direct~~” means arrangements by the Commission for the provision of legal advice and information by telephone or Internet.

“*Condition*” means a condition on a certificate which must be complied with by the solicitor or the client.

“*Controlled Legal Representation*” means Legal Representation specified as controlled work under Rule 3 above.

“*Controlled Work Budget*” means any budget set by the Lord Chancellor for funding of the services specified as Controlled Work under Rule 3 above.

“*Court*” means any court or tribunal in which advocacy may be funded in accordance with Schedule 2 of the Act.

“*Director*” means any Director appointed by the Commission under Rule 5, and includes any person authorised to act on his or her behalf, other than an Authorised Solicitor. Note that the Director of the Special Cases Unit may exercise any of the powers of a Director in relation to cases referred to the Unit.

“*Duty Solicitor*” means a solicitor attending a court under a contract to provide Legal Help and Help at Court for clients whose cases are before that court.

“*Early Neutral Evaluation*” means the referral of an issue to a neutral legal representative or expert who provides an opinion on the issue which is made available to the parties but is not legally binding upon them.

“*Exceptional Case Contract*” means a contract (other than a High Cost Case or Multi Party Action Contract) under which Legal Representation is provided for an individual case by a ~~supplier~~Provider who is not authorised to carry out the work applied for under a General Civil Contract or General Criminal Contract.

“*Generic Issue*” means an issue within an MPA or potential MPA which is common to all clients or to a particular group of clients.

“*Generic Work*” means work in an MPA in pursuing the Generic Issues, and includes:

- (i) the selection, preparation and trial of lead issues and lead cases;
- (ii) the co-ordination of the action on behalf of clients;
- (iii) any work determined to be Generic Work by the Commission.

“*Housing Proceedings*” means proceedings covered by Section 10.1 of the Criteria.

“*Legal Representative*” means any authorised litigator or authorised advocate.

“*Levels of Service*” means a level of service defined in Section 2.1 of the Criteria. If a level of service can take two alternative forms (for example Legal Representation can be either Investigative Help or Full Representation), each form counts as a separate level of service in these Procedures.

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“*Limitation*” means a limitation on a certificate which defines or limits the work which can be carried out under that certificate, either by specifying that work on the certificate or by placing a limit on the costs which can be incurred under it.

“*Litigation Friend*” has the meaning given in Part 21 of the Civil Procedure Rules (or any equivalent term in relation to courts or tribunals which are not covered by those Rules).

“*Lord Chancellor’s Direction on Cross Border Disputes*” means the Direction made under section 6(8) of the Act to facilitate the funding of services covered by Council Directive 2003/8/EC of 27 January 2003 and dated 16 June 2008.

~~“*MPA Committee*” means the Multi Party Action Committee appointed by the Commission under Rule 7 above.~~

“*MPA Unit*” means that part of the Special Cases Unit which the Commission has specified as responsible for MPAs.

“*Offer to Settle*” means an offer to settle under Part 36 of the Civil Procedure Rules.

“*Private Law Family Children or Finance Case*” means:

(i) an application for Legal Representation which is within the scope of Section 11.11 or 11.12 of the Criteria; or

(ii) an application for Family Help (Higher) which would be within the the scope of those Sections of the Criteria if the case proceeded to Legal Representation.

“*Provider*” means any person providing Controlled Work under these Procedures.

“*Public Defender*” means a person who is employed by the Commission to provide services as part of the Criminal Defence Service under sections 13(2)(f) or 14(2)(f) of the Act, or any person acting on his or her behalf.

“*Rules of Court*” means the Civil Procedure Rules, or equivalent rules in any court or tribunal which is not subject to those Rules.

“*Solicitor*” includes any authorised litigator.

“*Substantive Application*” means any application for Legal Representation under Part C of these Procedures, other than an application for Emergency Representation.

“*Substantive Certificate*” means any certificate issued under Part C of these Procedures other than a certificate which covers only Emergency Representation.

~~“*Supplier*” means any person providing Controlled Work under these Procedures.~~

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## **Part B – Controlled Work**

### **Part B – Controlled Work**

### 3B-013

#### B1. Scope of Part B

- 1.1. This Part contains the Funding Code Procedures which apply to Controlled Work.
- 1.2. The Rules in this Part do not apply to services provided through Community Legal Advice ~~CLS Direct~~ or by a Duty Solicitor.

### 3B-014

#### B2. Applications

- 2.1. Unless otherwise specified by the Commission, all applications for Controlled Work shall be made to the ~~supplier~~Provider.
- 2.2. **Except as otherwise provided** in these Procedures or **in the** contract, **Controlled Work** may not be provided **unless the client has attended** the ~~supplier~~Provider **in person and completed an application on a form approved by** the Commission.

### 3B-015

#### B3. Attendance on a Client's Behalf

- 3.1. Where a client cannot for good reason attend on a ~~supplier~~Provider in order to apply for Controlled Work, that client may authorise another person ("the authorised person") to attend on their behalf.

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- 3.2. An application for Controlled Work may not be accepted from an authorised person on behalf of a client unless that client is, at the time when the authorisation is given, either present in or resides in the European Union.

### 3B-016

#### B4. Application from a Child

- 4.1. An application for Controlled Work may not be accepted from a child unless:
  - (a) the Controlled Work is in relation to proceedings which the child is entitled to begin, prosecute or defend without a litigation friend, next friend, or guardian ad litem; or
  - (b) there is good reason why any of the persons referred to in Rule 5 below cannot seek advice on the child's behalf and the child is old enough to give instructions and understands the nature of the Controlled Work.

### 3B-017

## **B5. Application on behalf of a Child or Patient**

- 5.1. An application for Controlled Work may only be accepted on behalf of a child or patient from:
- (a) in the case of a child his parent or guardian or other person in whose care he or she is; or
  - (b) in the case of a patient, the receiver appointed under Part VII of the Mental Health Act 1983, or the patient's nearest relative or guardian within the meaning of Part II of the Mental Health Act 1983; or
  - (c) in the case of a child or patient, a person acting for the purposes of any proceedings as his or her litigation friend, next friend, or guardian ad litem; or
  - (d) in the case of a child or patient, any other person where there is good reason why none of the persons specified in paragraphs (a)–(c) above can make the application.
- 5.2. No application may be accepted under this Rule if made by a member, associate or employee of the ~~supplier~~Provider.

### **3B-018**

## **B6. Assessment of Means**

- 6.1. Controlled Work shall only be carried out on behalf of a client who has been assessed as financially eligible in accordance with regulations and any Guidance thereon.
- 6.2. Subject to Guidance, satisfactory evidence in support of the client's information as to their means must be provided to the ~~supplier~~Provider before financial eligibility is assessed.
- 6.3. This Rule does not apply to services which, under the regulations, are available without reference to the client's financial resources.

### **3B-019**

[OMITTED]

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### **3B-020**

[OMITTED]

### **3B-021**

## **~~B7. Postal Applications~~**

- ~~7.1. Subject to paragraph 2, an application for Controlled Work may be accepted by post where there is good reason to do so.~~

~~7.2. Applications by post may not be accepted where the client is resident outside the European Union and:~~

- ~~(a) such residence is purely temporary and the client can without serious disadvantage delay the application until they have returned to the European Union, or~~
- ~~(b) the services could be applied for on the same matter by a person resident in the European Union, or~~
- ~~(c) it is otherwise unreasonable to accept the application.~~

3B-022

#### **B8. Refusal of Controlled Work – Reasons**

8.1. Where an application for Controlled Work is refused on the basis that the Funding Code criteria are not satisfied or a ~~supplier~~Provider ceases to provide Controlled Work on the basis that the Funding Code criteria are no longer satisfied the ~~supplier~~Provider shall give the client brief reasons for such refusal and where relevant, shall provide the client with information as to alternative ways of obtaining or funding services.

### **Part B – Controlled Work**

3B-023

#### **~~B9. Previous Legal Help~~**

~~9.1. Unless permitted to do so under a contract Legal Help may not be provided to a client who has received Legal Help for the same matter from another supplier within the six months preceding the application, except where:~~

- ~~(a) there is a gap in time and circumstances have changed materially between the first and second occasions when the Legal Help was sought, e.g. a reconciliation which has failed; or~~

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- ~~(b) the client has reasonable cause to be dissatisfied with the service provided by the first supplier; or~~
- ~~(c) the client has moved a distance away from the first supplier and communication is difficult; or~~
- ~~(d) the first supplier has confirmed that they will be making no claim for payment for the Legal Help.~~

3B-024

[OMITTED]

3B-025

[OMITTED]

3B-026

[OMITTED]

3B-027

#### **B10. Grant of Controlled Legal Representation**

If a supplierProvider does not have the devolved power to grant Controlled Legal Representation an application for Controlled Legal Representation may be made to the Director on a form approved by the Commission.

3B-028

#### **B11. Review of refusal of Controlled Legal Representation**

- 11.1. Where an application for Controlled Legal Representation is refused or a grant of Controlled Legal Representation is withdrawn by the supplierProvider, the client may, seek a review of the supplierProvider's decision by the Director and the Adjudicator.
- 11.2. The supplierProvider shall advise the client of any right of review under this rule.
- 11.3. Where Controlled Legal Representation is refused or withdrawn by the Director, either under this rule or under Rule B10 above, the client may have that decision reviewed by the Adjudicator (unless the decision relates only to the client's financial eligibility).
- 11.4. A review by the Adjudicator under this rule shall operate in the same way (with necessary modifications) as a review of the refusal or withdrawal of Certificated Work under Part C of these Procedures.
- 11.5. This Rule does not apply in relation to Controlled Legal Representation for proceedings before the Upper Tribunal, under section 103A of the Nationality, Immigration and Asylum Act 2002.

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3B-029

[OMITTED]

3B-030

[OMITTED]

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# Part C – Certificated Work

## Part C – Certificated Work

### *Section 1 – General*

#### 3B-031

##### **C1.1 Scope of this Part**

This Part applies to all applications for Licensed Work and Individual Case Contracts except to the extent that an Individual Case Contract provides otherwise and in this Part the term “application” means an application under this Part to carry out such work.

#### 3B-032

##### **C1.2. Solicitor and Client Obligations**

- 2.1. In this Part “the solicitor” means the solicitor proposing to act for the client on whose behalf the application is made, or who is acting for the client under a certificate issued under this Part.
- 2.2. Except where the Commission specifies (by contract or otherwise) who may undertake the functions of the solicitor under these Procedures, such functions may only be carried out:
  - (i) by the solicitor personally;
  - (ii) by a partner of the solicitor; or
  - (iii) by a competent and responsible representative of the solicitor employed in the same office or otherwise under the solicitor’s immediate supervision.
- 2.3. Subject to paragraph 4, the solicitors may act as the client’s agent when carrying out functions under these Procedures.
- 2.4. Rules 6 and 42 place personal obligations on the client or, in the case of a child or patient, the person who applies on behalf of the client under Rule 9.

### *Section 2 – Applications*

#### 3B-033

##### **C3. The Client**

- 3.1. Each application shall be on behalf of a client who is an individual.
- 3.2. Where an application relates to proceedings, the client shall be a party or proposed party to the proceedings.

- 3.3. An application may not be submitted in respect of a client who is a professional children's guardian or parental order reporter acting as such in the proceedings.
- 3.4. An application shall not be granted in respect of a client who is subject to a Prohibitory Direction under Section 8 which applies to the application.

### 3B-034

#### C4. The Solicitor

- 4.1. Every application must specify the solicitor who is proposing to act for the client, and the person specified must not be a person who is disqualified from acting as such by his or her professional body.
- 4.2. Unless the application is for an Exceptional Case Contract a solicitor may only apply for funding if his or her firm holds a ~~General Civil or Criminal~~ Contract authorising work of the type applied for.

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### 3B-035

#### C5. The Director

- 5.1. The Commission may nominate one or more Directors to consider applications in relation to particular cases or descriptions of case, and the Commission shall nominate a Director to consider applications from clients who are not resident in England and Wales.
- 5.2. Where a Director has been nominated under paragraph 1, any application covered by the nomination shall be made to that Director.
- 5.3. Where no Director has been nominated for an application, the application may be made to any Director.
- 5.4. Any Director may transfer an application to a different Director if it appears to him or her to be more convenient or appropriate for that other Director to consider the application.
- 5.5. Where a certificate has been issued by a Director, it may be transferred to a different Director where appropriate and, if so, shall continue as if it had been a certificate issued by the new Director.
- 5.6. If an application is for Legal Representation before the Employment Appeal Tribunal and it appears to the Director that the hearing before that tribunal is likely to take place in Scotland or that the proceedings concern an appeal from a decision of a Scottish tribunal, the application shall be transferred to the Scottish Legal Aid Board.

### 3B-036

## **C6. Form of the application**

- 6.1. Subject to Section 3 (Emergency Applications) every application shall be made on a form approved by the Commission, and the Commission may approve different forms for different levels of service or circumstances.
- 6.2. In the case of Authorised Representation, the application shall be made to the solicitor; in other cases the application shall be made to the Director.
- 6.3. Save for emergency applications, any application to the Director must be made in writing and the form shall be duly completed and signed by the solicitor and by the client.
- 6.4. Subject to Rule 8, each application shall be in English or, if the client is in or resides in Wales or the application relates to proceedings which may be heard in Wales, in either English or Welsh.
- 6.5. The Director may request such further information from the client or the solicitor as he or she requires for the purpose of determining any application, and may require a client to attend a meeting for this purpose.

3B-037

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3B-038

## **C8. Clients resident outside the European Union**

- 8.1. This Rule applies where the client resides outside the European Union and cannot be present in England and Wales while his or her application is considered.
- 8.2. Such applications shall be written in English or in French.
- 8.3. Except where the client is a member of Her Majesty's Armed Forces, the application shall be sworn before a justice of the peace, magistrate, British consular official or any other person for the time being authorised by law in the place where the client resides to administer an oath for any judicial or other legal purpose.
- 8.4. The application shall be accompanied by a statement in writing, signed by a responsible person who has knowledge of the facts, certifying that Section of the application which relates to the client's financial resources.
- 8.5. The requirements of this Rule may be waived by the Director where, if in his or her view, compliance with them would cause serious difficulty, inconvenience or delay and the application otherwise satisfies the Procedures.

3B-039

## **C9. Applications on behalf of children and patients**

- 9.1. An application on behalf of a child or patient shall be made by a person of full age and capacity who is or who proposes to be the litigation friend of the child or patient in the proceedings.
- 9.2. Where the court has ordered that a child may conduct proceedings without a litigation friend, the application may be made by the child's solicitor.
- 9.3. Any certificate issued to a child or patient shall be in his or her name, stating the name of the person who applied for it on his or her behalf.
- 9.4. Any obligations on a client under these Procedures shall also apply to the person who made the application on behalf of the child or patient, and that person may be treated for all purposes under these Procedures as the agent of the child or patient.
- 9.5. The Director may, where the circumstances appear to make it desirable, waive all or any of the requirements of this Rule.

### **3B-040**

## **C10. Financial Eligibility**

- 10.1. Save for emergency applications, or where under Regulations funding is available without reference to financial resources, a Director shall not approve an application unless the client has been assessed as financially eligible under Regulations.
- 10.2. If a client has been assessed as financially eligible under an application under this Part, the Director may, if he or she sees fit, treat the client as financially eligible in relation to any further application for the purpose of these Procedures.

## *Section 3 – Emergency Representation*

### **3B-041**

## **C11. Applications for emergency representation**

- 11.1. An application for emergency representation may be made in such manner as the Director (or in the case of Authorised Representation, the solicitor) may accept, including by fax or by telephone if the urgency of the situation requires it.
- 11.2. Where emergency representation is granted by an Authorised Solicitor, it shall take effect from the date of the solicitor's decision to grant it, but the solicitor shall thereafter notify the Director of the grant on a form approved by the Commission.

- 11.3. Notification by an Authorised Solicitor under paragraph 2 above shall be given as soon as possible and in any event not later than 5 working days after the decision to grant emergency representation.
- 11.4. Emergency representation may be granted before the client has been assessed as financially eligible under Regulations, but only if, in the opinion of the Director or the Authorised Solicitor, sufficient information has been provided to demonstrate that the client is likely to be financially eligible.
- 11.5. An application for emergency representation may be treated as a substantive application if the Director is satisfied that he or she has sufficient information to do so.
- 11.6. When an application for emergency representation is granted as such by the Director, or when the Director receives notification of such a grant by an Authorised Solicitor under paragraph 2 above, the Director shall issue an emergency certificate and shall send the emergency certificate to the solicitor, and a copy of the certificate to the client.
- 11.7. The Director may grant emergency representation which is conditional on the submission of further forms or information by such time as the Director may specify.
- 11.8. A conditional grant of emergency representation under paragraph 7 above may be cancelled by the Director if the further forms or information required by him or her are not submitted within the time specified.
- 11.9. When emergency representation is cancelled under paragraph 8 above the client, the solicitor and all other persons shall be treated for all purposes as if the grant had not been made.

### 3B-042

#### **C12. Emergency and substantive certificates**

- 12.1. Save where otherwise provided in these procedures or in Regulations, an emergency certificate shall have the same effect in all respects as a substantive certificate.
- 12.2. Where an emergency certificate has been issued to a client and a substantive certificate is subsequently issued to that client for the same proceedings while the emergency certificate is in force, the emergency certificate shall merge with the substantive certificate and the substantive certificate shall take effect from the date upon which the emergency certificate was granted.
- 12.3. Where an emergency certificate is merged in a substantive certificate, the substantive certificate shall state the date of issue of the emergency certificate and that the emergency certificate has been continuously in force from that date until the date of the substantive certificate.

## **Part C – Certificated Work**

### 3B-043

### **C13. The duration of emergency certificates**

- 13.1. Emergency certificates shall be subject to a time limit specified by the Commission which may be extended by the Director in individual cases under Rule 10 of Part A.
- 13.2. Once such a time limit, or extended time limit, has expired, the emergency certificate shall cease to be in force and no further work may be carried out under it.
- 13.3. Otherwise an emergency certificate shall remain in force until it is discharged or revoked in accordance with these Procedures or is merged with a substantive certificate under Rule 12 above.

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### *Section 4 – Issue of Certificates*

#### **3B-044**

### **C14. Issue where no contribution is payable**

- 14.1. Where the Director is satisfied that all relevant Criteria and Procedures are complied with, that the client is financially eligible under Regulations and that no contribution is payable (either under Regulations or under Rule 18 below), the Director shall, subject to Rule 15A, issue a certificate.

#### **3B-045**

### **C15. Offer of certificate where contribution payable**

- 15.1. Where the Director is satisfied that all relevant Criteria and Procedures are complied with and the client is financially eligible but under Regulations or under Rule 18 below a contribution is payable, the Director shall issue an offer to the client of a certificate, requiring:
- (i) any sums payable out of capital or by third parties to be paid forthwith if the sum is readily available or, if it is not, by such time as seems to the Director reasonable in all the circumstances, and
  - (ii) the first contribution payable out of income to be paid forthwith, with further contributions payable at monthly intervals thereafter.
- 15.2. The Director shall notify the client of sums payable by way of contribution and of the terms under which a certificate will be issued if accepted.
- 15.3. A client who wishes to accept such an offer of a certificate shall, within 14 days of receiving the offer (or, if the urgency of the situation requires it, within such shorter period as the Director may specify):
- (i) signify his acceptance of those terms on a form approved by the Commission and return it to the Director, and

- (ii) if those terms require the payment of any sums of money, pay any sums due or, if the Commission has so specified, provide an undertaking on a form approved by the Commission to pay those sums under the terms of the offer.

15.4. When a client has accepted the offer, paid any sums due and given any required undertakings, the Director shall subject to Rule 15A, issue a certificate.

### **C15A. Notification to opponents prior to issue of certificate**

15A.1 Without prejudice to any power to grant Emergency Representation, the Director may require any party or potential party to proceedings to which the application relates to be notified of the application and to be given the opportunity to make representations to the Director before the application is granted or a substantive certificate is issued.

15A.2 The power under paragraph 1 may be exercised where either:

- (i) the application relates to a Private Law Family Children or Finance Case, or to such other category or description of case as is specified for the purpose of this Rule by the Lord Chancellor either by order under section 8(9) of the Act or by guidance under section 23 of the Act; or
- (ii) the Director considers that it would be appropriate to invite representations from the other party before public funds are committed to the case.

15A.3 Where the power under paragraph 1 is exercised:

- (i) the Direction shall notify, or require the solicitor to notify, the other party in a form approved by the Commission;
- (ii) in relation to cases covered by sub-paragraph (i) of paragraph 2 above, such notification shall invite representations only as to the financial eligibility of the applicant;
- (iii) the other party shall be given at least 14 days to make representations (unless the Director is satisfied that a shorter period is appropriate in light of the urgency of the case);
- (iv) the Director shall ensure that any representations received are copied to the solicitor; and
- (v) the Director shall take into account any representation received and any submissions made on behalf of the Client in response to those representations before determining the application.

## **C16. Notice of issue of certificates**

- 16.1. Where the Director issues a certificate he shall send the certificate to the solicitor and a copy of the certificate to the client.
- 16.2. If a certificate relates to proceedings which are already in existence, on receipt of the certificate the solicitor shall forthwith serve a copy on the Court and notify all other parties to proceedings of the issue of the certificate in a form approved by the Commission, and shall forthwith serve such a notice on any person who becomes a party to the proceedings thereafter.
- 16.3. If proceedings are not in existence when the certificate is issued the solicitor shall:
- (i) (except in family proceedings) serve notice of the certificate on a form approved by the Commission when first notifying a potential opponent of the proposed claim;
  - (ii) when proceedings are started, forthwith send a copy of the certificate to the Court and serve notice of the certificate in a form approved by the Commission on all other parties to the proceedings, unless such notice has already been served under paragraph (i) above; and
  - (iii) forthwith serve such a notice on any person who becomes a party to the proceedings thereafter.
- 16.4. Any documents served on the Court under these Procedures shall form part of the papers for the use of the Court in the proceedings.

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- 16.5. Any document purporting to be a certificate issued under this Part shall, until the contrary is proved, be deemed to be a valid certificate issued to the person named in it and covering the services described in it and shall be received in evidence without further proof.
- 16.6. The Director may waive any of the requirements of this Rule if the certificate covers Legal Representation in a multi-party action.
- 16.7. Nothing in these Procedures entitles an opponent to see the contents of a certificate, other than such information as is included in any notice sent under paragraph 3 above.

**3B-047**

## **C17. Authorised Representation**

- 17.1. Where a solicitor grants Authorised Representation he or she will notify the Director of that grant on a form approved by the Commission and the Director shall issue a certificate with effect from the date of grant by the solicitor.
- 17.2. The solicitor shall thereafter serve notice in accordance with Rule 16 above.

17.3. Notification under paragraph 1 above shall be given as soon as possible and in any event not later than 5 working days after the decision to grant Authorised Representation.

**3B-048**

**C18. Contributions from other persons or sources**

18.1. If the Director considers that either:

- (i) there are other persons or bodies, including those who might benefit from the proceedings or who have the same or a similar interest to the client in the proceedings, who can reasonably be expected to contribute to the costs of the proceedings but have not made an appropriate contribution, or
- (ii) some other source of funding exists which could or should be used to contribute to the costs of the proceedings, then the Director may, in accordance with Regulations, add what he considers to be a reasonable amount to the contribution (if any) due from the client under Regulations in respect of the client's financial resources.

18.2. The Director may subsequently vary any contribution specified under this Rule as he or she considers reasonable.

18.3. Where the other persons being taken into account under this Rule are also parties to proceedings, the Director shall not require an additional contribution under this Rule if he or she is satisfied that fair and appropriate cost sharing and funding arrangements are already in place in the proceedings.

*Section 5 – Refusal of Applications*

**3B-049**

**C19. Notification of Refusal**

19.1. Where an application to the Director is refused under the Criteria or these Procedures, the Director shall notify the client and the solicitor of the refusal together with a brief statement of the reasons for it.

19.2. Every such refusal shall notify the client of the right to have the decision reviewed by the Director and the Adjudicator and of the right to make further written representations to the Director.

19.3. Where a refusal relates to Criteria 5.6.1 or 5.7.1 (which concern the availability of conditional fee agreements), the Director shall ensure that the client has access to general information about conditional fee agreements and information about how to locate firms in the client's area who undertake conditional fee work.

- 19.4. Where a refusal is under Criterion 5.4.3 (alternatives to litigation), the solicitor shall ensure that the client is informed of the alternatives relevant to the decision and that the client is informed about how to pursue those alternatives.

### 3B-050

#### **C20. Refusal of Authorised Representation**

- 20.1. Where an Authorised Solicitor refuses an application for Authorised Representation, the solicitor shall notify the client of the refusal and the reasons for it, together with such information as the client would be entitled to if the refusal had been by the Director under Rule 19 above.
- 20.2. The solicitor shall also notify the client of the right to have the decision reviewed by the Director and the Adjudicator and of the right to make representations in writing to the Director.
- 20.3. Where an application is refused by an Authorised Solicitor, the client may within fourteen days of being given notice of the refusal, apply to have the decision reviewed by the Director and the Adjudicator and make representations to the Director, and such an application for a review shall be made on a form approved by the Commission.
- 20.4. Where the client applies for a review under this rule, the case shall be considered by the Director and the Adjudicator in accordance with and subject to Rules 21 and 22 below.
- 20.5. Where a certificate is granted following a review under this Rule, the case may be transferred to a new Authorised Solicitor if the client so requests and the new solicitor has indicated his or her consent to act.

### 3B-051

#### **C21. Review by a Director**

- 21.1. Where an application is refused by the Director or the client is dissatisfied with the terms upon which a certificate is issued or with the terms of any offer, the client may within fourteen days of the date of service of the notice of refusal, certificate or offer apply on a form approved by the Commission to have the decision reviewed by the Director and the Adjudicator, and may make representations in writing to the Director in support of the application.
- 21.2. The Director will consider any representations received under this Rule and may, if he or she thinks fit, affirm, amend or reverse the earlier decision.
- 21.3. Where the Director amends or reverses the earlier decision under this Rule, he or she shall notify the solicitor and the client of the decision and where appropriate, shall issue a certificate in accordance with Section 4.
- 21.4. ~~Where the Director issues a certificate under paragraph 3 above in any of the circumstances specified in paragraph 6 below, the Director may, if he or she thinks fit and subject to~~

~~guidance, backdate the certificate to a date no earlier than the date on which he or she received the application.~~

~~21.5. Where the Director issues a certificate (whether under this Rule or otherwise) and is satisfied that:~~

- ~~(i) any of the circumstances specified in paragraph 6 below apply, and~~
- ~~(ii) the solicitor took all reasonable steps to apply to the Director for emergency representation, and~~
- ~~(iii) it was necessary for the solicitor to carry out urgent work before the application was determined,~~

~~the Director may, if he or she thinks fit and subject to guidance, backdate the certificate to a date no earlier than the date such urgent work was undertaken.~~

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~~21.6. The specified circumstances for the purpose of this Rule and Rule 65 are where either:~~

- ~~(i) the Director is satisfied that Criterion 7.5.2 (Judicial Review — the Presumption of Funding) applies, or~~
- ~~(ii) in a review by the High Court under Section 101(2) of the Nationality, Immigration and Asylum Act 2002, the court reverses the decision of the Immigration Appeal Tribunal.~~

3B-052

## **C22. Review by the Adjudicator (“Adjudicator”)**

22.1. Subject to paragraph 2 below, where a client has applied to have a decision reviewed under Rule 20 or Rule 21 above and the matter has not been resolved by the Director to the client’s satisfaction under Rule 21, the decision shall be reviewed by the Adjudicator.

22.2. No such review may be carried out where:

- (i) the refusal is on the grounds of the financial eligibility of the client under Regulations or any contribution due from the client under Regulations in respect of the client’s financial resources;
- (ii) the refusal is of an application for emergency representation, save where the Director has treated it as a substantive application under Rule 11.5 above;

*Section 6 – Referral to Special Cases Unit*

3B-053

## C23. Criteria for Referral

23.1. An application or an existing certificate shall be referred by the Director to the Special Cases Unit where it appears to the Director that either:

- (i) the actual or likely costs of the case exceed £25,000;
- (ii) if the case were to proceed to a contested trial or final hearing (or, in the case of appeal proceedings before the Court of Appeal ~~or House of Lords~~, to the conclusion of that appeal stage) the likely costs of the case might exceed £75,000;
- ~~(iii) (iii) the application or certificate relates to a multi-party action or potential multi-party action; or~~
- ~~(iv) the application relates to an appeal or proposed appeal to the Supreme Court;~~
- ~~(v) it is necessary to determine whether the case has a significant wider public interest or raises significant human rights issues in order to decide whether funding should be granted or continued; or~~
- (vi) the application is for an Exceptional Case Contract.

and for the purpose of the above rules the Commission may treat more than one set of proceedings or certificates as a single “case” if they appear to the Commission to be closely connected or proceeding together before the court.

23.2. Applications and certificates which fall within paragraph (iii) above shall be subject to the Procedures in Section ~~4~~2 of part D.

3B-054

### C23A. Cases subject to Special Controls

23A.1 Certain applications and certificates referred to the Special Cases Unit under Rule 23 shall be subject to Special Controls. Special Controls apply to the following cases:

- (i) all those which have been referred under sub-paragraphs (iii), (iv) or (v) of Rule 23;  
or
- (ii) those where the Director of the Special Cases Unit is satisfied that, if the case were to proceed to a contested trial or final hearing (or, in the case of appeal proceedings before the Court of Appeal to the conclusion of that appeal stage), the likely costs of the case might exceed £250,000.

23A.2 Where a case is subject to Special Controls it is subject to the Procedures in section 1 of Part D. For such cases, any right of review to an adjudicator arising under Rules 22, 26, 40, 58 or 65 is replaced by a right of review to the Special Controls Review Panel as set out in Part D.

## **C24. Powers of Special Cases Unit**

The Director of the Special Cases Unit and persons authorised to act on his or her behalf may exercise any of the powers of a Director in relation to applications and certificates referred to the Unit. For the avoidance of doubt nothing in these Procedures prevents the Director of the Special Cases Unit and persons authorised to act on his or her behalf carrying out functions on behalf of any other Director under these Procedures, but any special rules or procedures applicable only to Special Cases Unit cases shall apply only to cases referred under Rule 23 above.

3B-055

## **C25. Case Plans**

Where an application or a certificate has been referred to the Special Cases Unit, the Unit will require a costed case plan for the future handling of the proceedings.

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3B-056

## **C26. Contracting**

- 26.1. Where the Special Cases Unit grants or continues funding in a case which has been referred to it, it may direct that the case should continue under an Individual Case Contract.
- 26.2. Where the Special Cases Unit grants or continues funding in a case which falls within paragraphs (i) or (ii) of rule 23 above, the Unit shall direct that funding continue under a Multi-Party Action Contract or High Cost Case Contract.
- 26.3. Work under a Multi-Party Action Contract or High Cost Case Contract is subject to the procedures in Part C, except to the extent that the contract or these Procedures provide otherwise.
- 26.4. Work within the scope of a Multi-Party Action Contract or High Cost Case Contract may be carried out only in accordance with the contract, unless the Commission specifies otherwise.
- 26.5. The Special Cases Unit may authorise an Exceptional Case Contract only if it is satisfied that it is necessary for the effective administration of justice to do so.
- 26.6. Where the Special Cases Unit declines to authorise an Exceptional Case Contract under Rule 26.5 the client or the solicitor may apply to have that decision reviewed by the Adjudicator.

## **C7. Section 7 – Referral to Family Mediation**

3B-057

## **C27. Scope of the Mediation Requirement**

- 27.1. This Section applies to:

- (i) applications for Legal Representation in those Family Proceedings specified in Rule 28 below;
- (ii) applications for Family Help (Higher) in relation to disputes which concern or might give rise to such proceedings.

27.2. In applications to which this Rule applies, the client must attend a mediation assessment meeting with a mediator before the application can be granted, unless it appears to the Director or Authorised Solicitor that any of the circumstances set out in Rule 29 below apply.

27.3. Without prejudice to Rule 33 the Director may place a limitation on a certificate for Family Help (Higher) or Legal Representation in Family Proceedings preventing further work, other than provision of relevant advice, until the client has attended an assessment meeting with a mediator.

### 3B-058

#### **C28. Specified Proceedings**

28.1. The proceedings in which the requirement to see a mediator applies are those Family Proceedings which are within the scope of Section 11.11 or 11.12 of the Criteria other than proceedings under:

- (i) Section 37 of the Matrimonial Causes Act 1973;
- (ii) the Inheritance (Provision for Family and Dependents) Act 1975;

### 3B-059

#### **C29. Exemptions**

29.1. Where it is in the interests of justice that Legal Representation or Family Help (Higher) be granted as a matter of urgency and the criteria for emergency representation are satisfied (whether or not any certificate is in fact granted as an emergency certificate).

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29.2. Where there is no mediator available to the applicant or any other party to the proceedings to hold the assessment meeting. The Commission may issue guidance, either generally or in individual cases, as to circumstances which may be regarded as amounting to availability for the purpose of this Rule.

29.3. Where the mediator is satisfied that mediation is not suitable to the dispute because another party to the dispute is unwilling to attend an assessment meeting with a mediator to consider mediation.

29.4. Where Family Proceedings are already in existence and the client is a respondent who has been notified of a court date which is within six weeks of the date of the notification.

29.5 Where allegations of domestic abuse have been made by the applicant against a potential party to the mediation which have resulted in either police investigations or the issue of civil proceedings for the protection of the applicant within the period of 12 months prior to the present application for funding.

29.6 Otherwise, where the mediator is satisfied that the client has a reasonable fear of domestic abuse from a potential party to the mediation and is therefore unwilling and in fear of participation in mediation with them.

## *Section 8 – Abuse of the Scheme*

### **3B-060**

#### **C30. Repeated Applications for Certificates**

30.1. Where it appears to a Director that a person has made three or more unsuccessful applications for certificates such that his or her conduct may amount to an abuse of services funded as part of the Community Legal Service, the Director may report the matter to the Commission or to a committee appointed by the Commission for the purposes of this Section.

30.2. For the purpose of paragraph 1, the Director may take into account any previous applications by or on behalf of that person for advice, assistance or representation under the Legal Aid Act 1988 and any court order declaring that person to be a vexatious litigant.

### **3B-061**

#### **C31. Power to make Prohibitory Directions**

31.1. On receipt of a report under Rule 30 above, the Commission may make such other enquiries as appear to be necessary and, if the Commission consider that it may be appropriate to make a prohibitory direction under this Rule, the Commission shall disclose the report and any other material information to the person concerned and give him or her the opportunity to make representations in writing within such period as the Commission may specify.

31.2. If, having considered any such representations, the Commission is satisfied that the person's conduct has amounted to an abuse of the scheme, the Commission may make a prohibitory direction under this Rule that no consideration shall, for a period not exceeding five years, be given by any Director or Authorised Solicitor to applications on behalf of that person.

31.3. A prohibitory direction under this Rule may apply either to applications in relation to proceedings of a description specified in the direction, or, in exceptional circumstances, it may cover any future or pending applications by that person whatsoever.

31.4. The Commission may in its discretion at any time vary or revoke a prohibitory direction in whole or in part.

*Section 9 – Form of Certificates*

**Part C – Certificated Work**

**3B-062**

**C32. Matters Specified on a Certificate**

Each certificate issued under these Procedures shall specify:

- (i) the name and address of the client;
- (ii) where the client is a minor or a patient the name and address of any person who applied on behalf of the client under Rule 9;
- (iii) the name and address of the solicitor;
- (iv) the date the certificate was granted;
- (v) the level of service covered by the certificate;
- (vi) a description of the proceedings (or in the case of Family Help (Higher), the dispute) to which the certificate relates;
- (vii) the opposing parties to the proceedings, save where the certificate is for Family Help (Higher), or Legal Representation in Family Proceedings or the Director considers it inappropriate to specify all such parties;
- (viii) any limitations and conditions on the certificate.

**3B-063**

**C33. Limitations and Conditions**

33.1. The Director may grant or issue a certificate subject to such limitations and conditions as he or she thinks fit, and limitations and conditions may be amended or imposed from time to time (including limitations to prevent further work being carried out under the certificate).

33.2. Emergency or substantive certificates granted by an Authorised Solicitor will be subject to such limitations or conditions as the solicitor imposes, in accordance with guidance, but the Director may thereafter place such further or alternative limitations or conditions on such a certificate as he or she considers appropriate.

33.3. Every certificate shall be subject to a cost limitation specifying the maximum total amount of costs (including any uplift or enhancement but excluding VAT) which may be incurred under the certificate.

**3B-064**

### **C34. Levels of Service**

- 34.1. A certificate for Legal Representation shall state whether it is for Investigative Help or Full Representation.
- 34.2. Where investigations have been completed under a certificate for Investigative Help, and an application for Full Representation in the same proceedings is granted, the Director may amend that certificate to cover Full Representation.
- 34.3. Where a certificate for Family Help (Higher) is in force, and an application for Legal Representation in Family Proceedings arising out of the same or a related family dispute is granted, the Director may amend the certificate to cover Legal Representation in those proceedings.
- 34.4 Except as stated above, no certificate shall authorise more than one level of service.

### **3B-065**

### **C35. Proceedings**

- 35.1. Each certificate shall cover only one set of proceedings except where:
- (i) the certificate relates to family proceedings; or
  - (ii) the Director considers that two or more sets of proceedings are so closely related that they should be covered under a single certificate.
- 35.2. Legal Representation to bring or defend any form of appeal in proceedings is covered by a certificate only where this is specified on the certificate or approved by the Director, except that no such approval is required to defend an interim appeal.
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- 35.3. A certificate shall not cover services in relation to arbitration unless this is specifically authorised by the Director.
- 35.4. A certificate shall not cover enforcement action unless this is specifically authorised by the Director or, where appropriate, an authorised solicitor.
- 35.5. A certificate shall not cover representation by an EU lawyer or references to the Court of Justice of the European Community for a preliminary ruling unless this is specifically authorised by the Director.
- 35.6. No client may have more than one certificate relating to private law family proceedings in force at any time, unless the Director is satisfied that the certificates relate to different family relationships or that there are exceptional circumstances which make it appropriate to do so. In this Rule, a certificate relates to private law family proceedings if it is issued under sections 11.3, 11.10, 11.11 or 11.12 of the Code.

## Part C – Certificated Work

### 3B-066

#### C36. General Powers to Amend Certificates

The Director may amend a certificate either following an application to do so made on behalf of the client on a form approved by the Commission, or otherwise as he or she thinks fit.

### 3B-067

#### C37. Amendment by Authorised Solicitor

- 37.1. An Authorised Solicitor may amend the certificate if authorised under the contract to do so and shall notify the Director of any amendment on a form approved by the Commission.
- 37.2. Notification under paragraph 1 above shall be given as soon as possible and in any event, not later than 5 working days after the decision to amend the certificate.
- 37.3. Where a client is dissatisfied with the decision of an Authorised Solicitor to amend or not to amend a certificate, the solicitor will apply to the Director to amend the certificate on a form approved by the Commission.

### 3B-068

#### C38. Effective Date of Amendment

- 38.1. Subject to paragraphs 2 and 3 below, an amendment shall take effect from the date of the decision to amend by either the Director or an Authorised Solicitor.
- 38.2. Where a certificate is amended to impose a new costs limitation, the new limitation will supersede any earlier cost limitations on that certificate and will take effect from the date of grant of the certificate, unless the Director specifies otherwise.
- 38.3. Where the Director amends a certificate so as to:
- (i) correct some mistake in the certificate; or
  - (ii) record a change of solicitor or any change of address on the certificate

the amendment shall take effect from such date as the Director may specify (which may be before or after the date of the decision to amend).

### 3B-069

### **C39. Procedure on Amendment**

39.1. Where a Director amends a certificate (either under Rule 36 or following notification under Rule 37 or a review under Rule 40), he shall send the amended certificate to the solicitor and a copy to the client.

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39.2. If the certificate covers proceedings which have commenced, the solicitor shall send a copy to the court.

39.3. Where a Director refuses an application to amend a certificate, he shall notify the client and the solicitor in writing, including a brief statement of the reasons for so doing.

39.4. Where the certificate covers proceedings which are in existence and the amendment to the certificate affects the description of proceedings, the level of service covered or whether the certificate extends to bring or defend any appeal, the solicitor shall forthwith notify all other parties to the proceedings that that is the case (save where the Director notifies the solicitor that it is not necessary or appropriate to do so).

### **3B-070**

#### **C40. Review of Amendments**

40.1. Where a client is dissatisfied with a Director's decision to amend a certificate or to refuse an application on his or her behalf to amend a certificate, the client may, within fourteen days of receiving notice of the amendment or the decision not to amend the certificate, apply to the Director on a form approved by the Commission to have that decision reviewed by the Director and the Adjudicator, and may make written representations in support of that application.

40.2. The Director will consider any representations received under this Rule and may, if he or she thinks fit, amend the certificate accordingly.

40.3. Subject to paragraph 4 below, unless a review under this rule has been resolved to the satisfaction of the client by the Director, the Adjudicator shall review the decision.

40.4. The Adjudicator shall not review a decision to amend or not to amend an emergency certificate.

### *Section 11 – Representations*

### **3B-071**

#### **C41. Procedure for Making Representations**

41.1. Any person, including an opponent or potential opponent of a client who has applied for or has received a certificate, may make representations to the appropriate Director and, subject to paragraph ~~7~~8 below, such representations shall be considered by the Director.

- 41.2. ~~On receiving an application the Director may, if he or she thinks fit, notify any other party or potential party to the proceedings that the application has been made.~~
- 41.32. ~~Without prejudice to Rule 15A, t~~The Director may at any stage ~~while a certificate is in force~~ invite an opponent, potential opponent or other person or body to make representations where he or she considers that it is appropriate to do so before deciding whether to ~~provide or~~ continue to provide public funds to support the case.
- 41.34. Where the Director considers that representations received are not material or are unlikely to affect any funding decisions, he or she shall inform the person making the representations that no further action will be taken on them.
- 41.45. Subject to paragraphs ~~3, 5 and 7 4, 6 and 8~~, the Director shall ensure that the solicitor has a copy of representations received under this Section or, where the representations are not in writing, shall write to the solicitor setting out the gist of the representations.
- 41.56. If representations are received from a person who is not a legal representative and it appears to the Director that the person making the representations has neither sent them to the solicitor or client nor given permission for the Director to do so, the Director shall not copy them to the solicitor or the client unless he or she has obtained the consent of the person making the representations to do so.
- ~~---~~ Looseleaf Page Break (29) ~~---~~
- 41.67. On receipt of representations, the Director may, if appropriate, place limitations on any certificate, but shall not take steps to discharge or revoke a certificate on the basis of representations received unless the solicitor has been given an opportunity to respond to issues raised by the representations. If a certificate is in force it shall be deemed to cover reasonable work done in responding to representations, but such work must be carried out within the cost limitation.
- 41.78. The Director need not consider representations in detail if they relate to proceedings which are not currently being pursued, for example because the individual case is stayed pending the outcome of a test case or other Generic Issue.
- 41.89. The Director shall inform the person making representations of the outcome of his or her considerations, but is not obliged to do so until a final decision has been taken on them following any review by the Adjudicator or until the time for applying for such a review has expired.

## *Section 12 – Reporting Obligations*

### **Part C – Certificated Work**

3B-072

## **C42. Duties of the Client**

- 42.1. The client shall immediately ensure that the Director is informed of any change in his or her financial circumstances which has occurred since the client's financial resources were assessed and which the client has reason to believe might affect the terms or the continuation of the certificate.
- 42.2. The client shall immediately inform the solicitor of any other change in his or her circumstances or in the circumstances of the case which he or she has reason to believe might affect the terms or the continuation of the certificate.
- 42.3. The client shall comply with any request by or on behalf of the Director for such information as the Director may require for the purpose of carrying out functions under the Code or Regulations.
- 42.4. The client shall attend a meeting with the Director where requested to do so.

## **3B-073**

## **C43. Duties of the Solicitor**

- 43.1. The solicitor shall give a report to the Director whenever requested to do so, containing such details as the Director may specify for the purpose of carrying out functions under the Code or Regulations.
- 43.2. The solicitor shall also report to the Director where:
- (i) the client gives the solicitor information under Rule 42 which the solicitor considers may be material to the terms or continuation of the certificate;
  - (ii) a certificate for Investigative Help is in force, as soon as investigations have been carried out such that prospects of success can be estimated in one of the categories provided for under the Code (other than Unclear);
  - (iii) the proceedings covered by the certificate have concluded or where otherwise all work authorised has been completed;
  - (iv) the client has died;
  - (v) a bankruptcy order has been made against the client;
  - (vi) the client has declined to accept any of the following:
    - (a) an Offer to Settle;
    - (b) a Payment into Court;
    - (c) an offer to mediate any issue in the proceedings;
    - (d) an offer to refer any issue in the proceedings to Early Neutral Evaluation;

- (e) an offer to participate in any alternative dispute resolution scheme specified by the Commission for the purpose of this Rule;

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- (f) any other offer of settlement of the proceedings which the solicitor considers may be reasonable;
- (vii) a certificate has been issued to a person who is an opponent of the client in the proceedings. This requirement does not apply to Family Proceedings other than proceedings considered under Section 11.12 of the Code (Financial Provision and Other Proceedings).

### 3B-074

#### **C44. Duties of Legal Representatives**

In addition to the specific duties of a solicitor under Rule 43 above, any legal representative carrying out work under a certificate shall ensure that the Director is informed if it appears to the legal representative that:

- (i) the client has required the case to be conducted unreasonably or so as to incur an unjustifiable expense to the Fund or has unreasonably required that the case be continued;
- (ii) the client may have given inaccurate, misleading or incomplete information to the Director where required to provide information under the Code or Regulations;
- (iii) new information or a change of circumstances has come to light which may affect the terms or continuation of the certificate;
- (iv) it is no longer possible to act or continue to act for the client (and in that case the legal representative shall give the Director reasons why this is so).

### 3B-075

#### **C45. Referral from the Court**

Any court or tribunal hearing proceedings for which a certificate has been granted may report to the Commission any information which it considers may be relevant to a Regional Director's decisions as to the terms and continuation of a certificate.

### *Section 13 – Decisions of Principle*

### 3B-076

#### **C46. Decisions Affecting Several Cases**

- 46.1. Where the Commission is considering granting an application which relates to proceedings which have a significant wider public interest, the Commission may require the client, as a

condition of providing funding, to agree not to settle the proceedings without the consent of the Commission.

46.2. Where the Director, the Adjudicator or ~~Special Cases Review Panel MPA Committee~~ are considering an issue concerning any application or certificate which appears likely to affect a group of claims or claims of any given description, the Commission may declare that the decision shall stand as a decision of principle under this Rule.

46.3. Any decision of principle under this Rule shall specify the cases or the description of cases to which it applies and the date on which it takes effect.

46.4. A decision of principle may be made under this Rule whether or not the clients affected by it have issued proceedings as part of a multi-party action or otherwise.

46.5. Where a decision of principle has been made under this Rule it shall apply to all claims of the description specified in the decision and the procedures for individual cases, including rights of review, shall take effect in light of the decision of principle.

46.6. Nothing in this Rule shall prevent an individual client asserting that:

- (i) his or her claim does not fall within the terms of the decision given; or
- (ii) significant new information has arisen which was not before the Commission when the decision of principle was made or has since come to light such that there are grounds for reconsideration of the decision of principle;

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46.7. A decision of principle under this Rule may be varied as the Commission considers necessary and shall cease to have effect from such date as the Commission may specify.

46.8. Decisions under this Rule shall be published in such manner as the Commission thinks fit.

3B-077

~~C47. Referral to Public Interest Advisory Panel~~

~~47.1. Where an issue arises concerning any application or certificate as to whether a case has a significant wider public interest, or as to the nature and extent of that public interest, the Director may refer the matter to the Public Interest Advisory Panel ("the Panel").~~

~~47.2. The Panel shall report to the Commission on any matter referred to it in such manner as may be specified by the Commission and in accordance with guidance.~~

~~47.3. Any report by the Panel shall be sent to the solicitor, or in a multi party action to the lead solicitor (who may copy it to other solicitors or clients as he or she considers appropriate), and the solicitor may make such further representations arising from the Panel's report as he or she thinks fit.~~

~~47.4. When making decisions on matters which have been referred to the Panel, the Commission shall take into account any report by the Panel and any further representations from the solicitor.~~

3B-078

[OMITTED]

3B-079

[OMITTED]

3B-080

[OMITTED]

### *Section 15 – Withdrawal Of Funding*

## **Part C – Certificated Work**

3B-081

### **C51. Power to Revoke or Discharge a Certificate**

- 51.1. The Director may withdraw funding by either revoking or discharging a certificate from such date as he or she considers appropriate in accordance with section 15 of the Criteria and these Procedures.
- 51.2. Where a certificate is revoked or discharged no further services may be provided under it from the date of the notice or discharge or revocation and the retainer of the solicitor shall cease in accordance with Regulations.
- 51.3. Where a certificate is revoked the client shall repay to the Commission all costs paid or payable under the certificate and shall be liable to the Commission or the solicitor for such further costs as may be specified in Regulations.
- 51.4. The Director may convert a discharge into a revocation if following the discharge information comes to light which would justify revocation under Rules 52 or 53.

3B-082

### **C52. Revocation or Discharge of an Emergency Certificate**

- 52.1. An emergency certificate may be revoked or discharged on any of the grounds under which a substantive certificate may be revoked or discharged.
- 52.2. An emergency certificate shall be revoked if it is determined that, under Regulations, the client is not financially eligible for Legal Representation.
- 52.3. An emergency certificate may be revoked or discharged if the client fails to accept an offer of a substantive certificate within the time limit specified under Rule 15.

52.4. Subject to Rule 51.4 an emergency certificate shall be deemed to be discharged as soon as any time limit on the certificate, including any extension of the time limit by the Director under Rule 13, has expired.

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### 3B-083

#### **C53. Revocation or Discharge on Grounds of Conduct**

53.1. A certificate may be revoked or discharged if the Director is satisfied that the client has failed without good cause to provide information or documents or attend a meeting when required to do so under Procedures or Regulations.

53.2. A certificate may be revoked or discharged if the Director is satisfied that the client has made an untrue or misleading statement or failed to disclose a material fact (either when making an application or when supplying information under Procedures or Regulations) and the Director considers that the client failed to use reasonable care when doing so.

53.3. A certificate may be revoked or discharged if the client is declared a vexatious litigant by the court or is subject to a Prohibitory Direction under Section 8.

53.4. A certificate may be discharged if the Director is satisfied that the client has required proceedings to be conducted unreasonably so as to incur unjustifiable expense to the Fund or has unreasonably required proceedings to be continued.

53.5. If a client's certificate is revoked or discharged under this rule, any other certificate of the client may be discharged if the Director considers it appropriate in all the circumstances to do so.

### 3B-084

#### **C54. Discharge on Financial Grounds**

54.1. A certificate shall be discharged by the Director if under Regulations the client is no longer financially eligible to receive it.

54.2. A certificate may be discharged if any contribution due from the client under Regulations has been outstanding for more than 21 days.

### 3B-085

#### **C55. The Show Cause Procedure**

55.1. Subject to paragraph 2 below, no certificate shall be revoked or discharged until a notice has been served on the client that the Director may revoke or discharge his other certificate and that the client may show cause why it should not be revoked or discharged, and the Director shall give the client an opportunity to respond and say why the certificate should not be revoked or discharged.

55.2. The show cause procedure does not apply to revocation or discharge of an emergency certificate under Rule 52.2, 52.3 or 52.4 above, to discharge on financial grounds under Rule 54 or to discharge under the following Criteria:

- (i) 14.5(i) (death of the client);
- (ii) 14.5(iv) (consent of the client);
- (iii) 14.5(v) (all work completed).

55.3. When notice is served under paragraph 1 above, no further work may be done or steps taken under the certificate unless authorised by the Director.

### **3B-086**

#### **C56. Notification of Discharge or Revocation**

56.1. When a certificate is discharged or revoked the Director shall send notice of the discharge or revocation to the solicitor and shall send a copy to the client (unless the client has died).

56.2. Notice of discharge or revocation shall contain or enclose a brief statement of the Director's reasons for revoking or discharging the certificate.

56.3. Notice of discharge or revocation shall also inform the client of the right to have the decision reviewed by the Director and the Adjudicator and of the right to make further representations in writing to the Director.

56.4. The Director may, if he or she considers it appropriate to do so, notify any other parties to the proceedings that a certificate has been discharged or revoked.

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56.5. When a certificate has been discharged or revoked and any review or reconsideration under Rules 57 or 58 has been concluded, the solicitor shall, if proceedings have commenced, serve notice of the discharge or revocation on a form approved by the Commission on the court and all other parties to the proceedings.

56.6. The Director may waive any of the requirements of paragraph 5 above in an MPA.

### **3B-087**

#### **C57. Review by the Director**

57.1. Except where a certificate is discharged under the following criteria:

- (i) 14.5(i) (death of the client);
- (ii) 14.5(iv) (consent of the client);
- (iii) 14.5(v) (all work completed)

the client may apply on a form approved by the Commission within 14 days of service of the Notice of Discharge or Revocation to have the discharge or revocation reviewed by the Director and the Adjudicator and may make representations in writing in support of the application.

57.2. The Director will consider any representations received under this Rule and may, if he or she thinks fit, restore the certificate or convert a revocation to a discharge, or vice versa, and if so shall inform the solicitor and the client of the decision.

57.3. Where a certificate is restored or a decision is changed under this Rule, the final decision shall take effect for all purposes as if the original decision to discharge or revoke had not been made (unless the Director specifies otherwise).

### 3B-088

#### **C58. Review by the Adjudicator**

58.1. Subject to paragraph 2, where a client has applied to have a revocation or discharge reviewed under Rule 57 and the matter has not been resolved to the client's satisfaction under that rule, the revocation or discharge shall be reviewed by the Adjudicator.

58.2. The Adjudicator may not review:

- (i) The revocation or discharge of an emergency certificate under Rule 52.2, 52.3 or 52.4;
- (ii) The discharge of a certificate under Rule 54 (financial grounds).

#### *Section 16 – The Adjudicator*

### **Part C – Certificated Work**

### 3B-089

#### **C59. Jurisdiction of the Adjudicator**

Subject to Part D of these Procedures (cases subject to Special Controls) The Adjudicator may review any decision of the Director which has been referred to him or her under Rules 22, 26, 40, 58 or 65.

### 3B-090

#### **C60. Procedure Before the Adjudicator**

60.1. Subject to paragraph 2 below, determinations under these procedures shall be made on the papers.

60.2. Where the Adjudicator considers that it is in the interests of justice to hear oral representations before making a determination, the client or any person authorised by the client may attend before the Adjudicator to make such representations.

60.3. Where the Director or the Adjudicator considers that the matter before the Adjudicator is of exceptional complexity or importance, the matter may be referred to a panel of two or more Adjudicators sitting as a committee, subject to the rules set out in Section 3 of Part D.

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### 3B-091

#### C61. Power to Determine Certain Issues

61.1. ~~Subject to paragraph 2 below, w~~Where, in any review by the Adjudicator, an issue arises as to:

- (i) the prospects of success;
- (ii) whether a case has overwhelming importance to the client;
- (iii) cost benefit for the client (for the avoidance of doubt this excludes considerations of whether the case has a significant wider public interest); or
- (iv) whether a certificate should be discharged or revoked on the grounds of the conduct of the client under Rule 53;

~~and that the issue or issues are raised in the reasons given by the Director in the decision under review,~~ the Adjudicator shall determine that issue or issues.

~~61.2 In the case of an application or certificate which has been referred to the Special Cases Unit under Rule 23 (but is not subject to Special Controls under Rule 23A), sub-paragraph (iii) of paragraph 1 above shall not apply. Instead in such cases where an issue arises as to:~~

- ~~(i) likely damages; or~~
  - ~~(ii) any other benefit or remedy the client is likely to achieve in the proceedings;~~
- ~~the Adjudicator shall determine that issue or issues.~~

~~61.32.~~ A review under paragraph 1 or 2 shall be by way of a reconsideration of those issues and the decision of the Adjudicator on such an issue shall be final.

~~61.43.~~ Where, in the light of a determination by the Adjudicator under this Rule, the Adjudicator wishes to confirm the decision of the Director, the Adjudicator shall do so and ensure that the client is informed.

~~61.54.~~ If it appears to the Adjudicator that in the light of his or her determination of an issue or issues under this Rule, the decision of the Director may not be correct or should be reconsidered, he or she shall refer the matter back to the Director.

61.65. The Adjudicator shall give reasons for all determinations made under this Rule which are adverse to the client and shall ensure that such reasons are made available to the client and to the Director.

### 3B-092

#### **C62. Power to Refer Decisions for Reconsideration**

62.1. Subject to Rule 61 and Rule 63 a review by the Adjudicator shall consider whether the decision under review was improper or unreasonable in the sense that either:

- (i) the Director has not acted in accordance with the Code, the Act or Regulations, or;
- (ii) the decision was one which no reasonable Director could have made.

62.2. Where the Adjudicator does not consider that the decision of the Director was improper or unreasonable under paragraph 1, subject to Rule 63 he or she shall confirm that decision and ensure that the client is informed.

62.3. Where the Adjudicator considers that the decision of the Director was improper or unreasonable under paragraph 1, he or she shall refer the matter back to the Director, specifying the grounds on which he or she is doing so.

62.4. The Adjudicator shall give reasons for its decisions made under this Rule and shall ensure that those reasons are given to the client and the Director.

### 3B-093

#### **C63. Further information or Issues Arising**

63.1. Where in a determination by the Adjudicator it appears to the Adjudicator that the matter should be reconsidered by the Director in light of information or issues which were not raised in the reasons given by the Director, the Adjudicator may refer the matter back to the Director under this Rule.

### 3B-094

#### **C64. Procedure Following a Determination by the Adjudicator**

64.1. In a review of a decision under Rule 22 or Rule 40 (refusal or amendment of certificates) if, following a determination of issues by the Adjudicator under Rule 61 above, it appears to the Director that the criteria for granting or amending the certificate are satisfied and the client is financially eligible, he or she shall immediately grant or amend the certificate as required.

64.2. In a review under Rule 58 (discharge or revocation of a certificate) if, in the light of any determination by the Adjudicator under Rule 61 above, it appears to the Director that the certificate should be reinstated, he or she shall reinstate the certificate.

64.3. Where a certificate is reinstated under this Rule it shall be treated as having been continuously in force as if the discharge or revocation had not taken place, unless the Adjudicator specifies otherwise.

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### 3B-095

#### **C65. Reconsideration by the Director**

65.1. In any circumstances other than those covered by Rule 64 above, where a matter is referred to the Director by the Adjudicator under Rules 61, 62 or 63 above, the Director shall reconsider his or her decision taking into account the decision and reasons of the Adjudicator and any further information which has come to light.

65.2. Following a reconsideration under this Rule the Director shall either confirm his or her original decision or may alter or replace that decision and issue, amend or restore a certificate as appropriate.

65.3. Where the Director decides on reconsideration to reverse a decision to amend a certificate, the effect shall be as if the amendment had never been made, unless the Director specifies otherwise.

65.4. Where under this Rule a certificate is reinstated, the certificate shall be treated as if it had never been discharged or revoked, unless the Director specifies otherwise.

65.5. Subject to paragraph 8 a reconsideration by the Director under this Rule shall be final and shall be notified to the client and the solicitor.

65.6. The Director shall give reasons for any decision under this Rule which is adverse to the client.

65.7. ~~Where the Director issues a certificate under this Rule or Rule 64 above in any of the circumstances specified in Rule 21.6, the Director may, if he or she thinks fit and subject to guidance, backdate the certificate to a date no earlier than the date on which he or she received the application.~~

65.8. Where following a reconsideration under this Rule the Director confirms his or her original decision but does so for reasons which raise material issues which were not raised in the reasons for the original decision, the client may apply for a second and final review of the decision by the Adjudicator.

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## **Part D – Special Procedures**

### **Part D – Special Procedures**

## Section 1 – Special Controls

### **D1. Definitions**

#### 1.1 In Rules D2 to D6:

- (i) “the Director” means the Director of the Special Cases Unit;
- (ii) “the Review Panel” or “the Panel” means the Special Controls Review Panel

### **D2. Jurisdiction of the Review Panel**

#### 2.1 For all cases which are subject to Special Controls under Rule C23A:

- (i) any right of review to an adjudicator under Rules C22, 26, 40, 58 or 65 shall be replaced by a right of review to the Review Panel and Rules C60 to 65 shall not apply;
- (ii) the Director may at any time refer any issue which is relevant to the funding or continued funding of the case to the Panel (whether or not the Director has made a determination of that issue).

#### 2.2 Where a case is before the Panel, the Panel shall consider all aspects of the case which appear to it to be relevant to the funding or future funding of the case. This includes any issue as to whether the case has a significant wider public interest and the nature and extent of that interest.

#### 2.3 Where a case is before the Panel on a review of a decision by the Director under Rules C22, 26, 40, 58 or 65 the Panel shall either:

- (i) confirm the decision of the Director, in which case the decision of the Panel on that matter shall be final; or
- (ii) report to the Director setting out the Panel’s view on the issues raised in the review.

#### 2.4 Where a case is before the Panel in circumstances other than those described at paragraph 2.3, the Panel shall report to the Director setting out the Panel’s view on the issues it considers relevant to the funding or future funding of the case.

### **D3. Procedure before the Review Panel**

#### 3.1 The Panel shall consider cases on the papers, unless the Panel or its Chair considers that it is in the interests of justice to hear oral representations on behalf of the client. If so, the Panel may invite any person authorised by the client to attend before the Panel for that purpose and may also invite the Director or any person authorised by the Director to attend to make representations.

#### 3.2 The Panel shall give reasons for all determinations made under paragraph D2.3 above.

3.3 Any report by the Panel under paragraph D2.3 or 2.4 above shall be made in such manner as may be specified by the Commission.

3.4 Any such report by the Panel shall be sent to the solicitor, or in a multi-party action to the lead solicitor (who may copy it to other solicitors or clients as he or she considers appropriate), and the solicitor may make such further representations arising from the Panel's report as he or she thinks fit.

#### **D4. Determination by the Director**

4.1 On receipt of any report of the Panel under paragraph D2.3 or 2.4, the Director shall consider the report and any representations received from the solicitor under paragraph D3.4 before making any determination on the issues referred to the Panel.

4.2 Subject to paragraph D4.3, the Director shall then make a determination on those issues and any such determination shall be final.

4.3 Any assessment the Panel makes of the prospects of success of a case before it shall be binding on the Director.

4.4 The Director shall give reasons for any determination made under this Rule. In giving such reasons, the Director may, if appropriate, adopt all or any part of the report of the Panel under paragraph D2.3 or 2.4.

4.5 Without prejudice to paragraph D4.4, if the Director does not accept any such report of the Panel in any respect which is material to his or her determination, the Director shall give reasons for this conclusion.

#### *Section ~~21~~ – Multi-Party Action (“MPA”) Procedures*

3B-096

#### **D51. Scope of MPA Contracts**

51.1. Each MPA Contract shall specify the claims or types of claim to which it relates and shall specify the work which it covers, which will be either:

- (i) all work;
- (ii) Generic Work only; or
- (iii) such other work as is specified in the contract.

51.2. Work under an MPA Contract shall be subject to such conditions and limitations as the MPA Unit may impose.

51.3. Each MPA Contract shall specify a lead solicitor responsible for liaising with the MPA Unit.

3B-097

## **D62. Decisions concerning MPA funding**

~~62.1.~~ All decisions as to the scope or continuation of work relating to an MPA shall be made by the MPA Unit, save where the Unit decides to refer any matter to the Review Panel under paragraph D2.1(ii) above~~MPA Committee, in which case the decision of the MPA Committee on that matter shall be final.~~

~~62.2.~~ Refusal, amendment or withdrawal of funding for an MPA shall be subject to the same procedures and rights of review as other cases subject to Special Controls for work under certificates, except that:

~~(i) —The MPA Committee shall carry out all functions of the Adjudicator.~~

(ii) All applications on behalf of clients in the MPA shall be made through the lead solicitor. The responsibility of the lead solicitor under these Procedures shall be to the clients generally, not necessarily to respond to every request by an individual client.

(iii) All notices, decisions and reasons to be served by the MPA Unit shall be served on the lead solicitor. The lead solicitor shall communicate with clients and other solicitors where required to do so under the contract or by the Unit, or otherwise as he or she thinks fit.

~~62.3.~~ All decisions by the MPA Unit or Review Panel~~MPA Committee~~ relating to an MPA shall operate as decisions of principle under rule 46 of Part C of these Procedures in relation to all claims within the scope of that MPA, unless the Commission specifies otherwise.

**3B-098**

## **D73. Tendering for MPA Contracts**

3.1. The Commission shall publish procedures for tendering and issuing MPA Contracts and the standard terms of such contracts.

## *Section ~~32~~ – Family Mediation*

**3B-099**

## **D84. Applications for Family Mediation**

~~84.1.~~ An application for Family Mediation shall be made to the family mediator from who mediation is sought.

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~~84.2.~~ The application shall be made by the client attending on the mediator and completing a form approved by the Commission.

84.3. Before providing Family Mediation the mediator shall determine whether the client is financially eligible to receive it, and it shall be for the mediator to determine whether the criteria for providing or continuing to provide Family Mediation are satisfied.

84.4. Where a mediator decides that he or she is unable to provide or continue to provide Family Mediation, the mediator shall inform the client and provide reasons why this is the case.

### 3B-100

#### **D95. The Family Mediation Code of Practice**

95.1. Family Mediation shall be provided in accordance with a Code of Practice which shall form part of the mediator's contract.

95.2. The Code of Practice shall require the mediator to have arrangements designed to ensure that:

- (a) parties participate in mediation only if willing and not influenced by fear of violence or other harm;
- (b) cases where either party may be influenced by fear of violence or other harm are identified as soon as possible;
- (c) the possibility of reconciliation is kept under review throughout mediation; and
- (d) each party is informed about the availability of independent legal advice.

95.3. Where there are one or more children of the family, the Code of Practice must also require the mediator to have arrangements designed to ensure that the parties are encouraged to consider:

- (a) the welfare, wishes and feelings of each child; and
- (b) whether and to what extent each child should be given the opportunity to express his or her wishes and feelings in the mediation.

### *Section ~~4-3~~ – Committee Procedures*

### 3B-101

#### **D106. Scope of these Rules**

106.1. These rules apply to all committees and panels exercising functions under these Procedures, including the Special Controls Review Panel ~~MPA Committee, the Public Interest Advisory Panel~~ and any panel of Adjudicators acting under Rule 60.3 of Part C.

### 3B-102

#### **D117. Committee Hearings**

117.1. The Commission shall make arrangements for members of committees to meet as required to make decisions in individual cases.

117.2. Each committee shall include a chair. Unless nominated by the Commission the chair shall be elected by the members of the committee present from their number.

117.3. Except so far as the procedure of any committee is regulated by these Procedures or by the Commission, the Committee shall have power to regulate its own procedure and the ruling of the chair on any issue of procedure arising at any meeting shall be final.

### 3B-103

#### **D128. Committee Decisions**

128.1. Subject to paragraph 3, committee decisions shall be by a majority of members present and voting and, in the event of a tie, the chair of the meeting shall have the casting vote.

128.2. Subject to paragraph 3, three members of a committee shall form a quorum.

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128.3. Where only two members of a committee are present, they shall form a quorum and have power to deal with all matters before the committee on which they are in agreement as to the decision to be made.

128.4. It is the responsibility of the chair of a committee to ensure that reasons are given as required under these Procedures.

128.5. Any defect in the appointment or continued membership of a committee member shall not affect the validity of any decision by a committee.

### 3B-104

#### **D139. Administration**

139.1. The Commission shall make such other arrangements and procedures as it considers necessary for the establishment, membership and administration of committees.

#### *Section 54 – Exceptional Funding*

### 3B-105

#### **D140. Scope of these Rules**

140.1. These rules apply to applications to the Commission:

(i) for exceptional funding under Section 6(8)(b) of the Act;

(ii) under level ~~67~~ of the Code relating to representation in Inquest proceedings;

~~(iii)~~ ~~(iii)~~ applications pursuant to the Lord Chancellor's Direction on Cross Border ~~and~~ Disputes; ~~or~~

(iv) for services which are ancillary to (i), (ii), ~~or~~ (iii) above.

### 3B-106

#### **D151. Form of Application**

- 151.1. Applications under this Section shall be made to the Special Cases Unit.
- 151.2. Applications shall be made in writing on forms approved by the Commission.
- 151.3. Applications may be rejected if they do not contain sufficient information for either the Commission or the Lord Chancellor to carry out any determination required in an application under these rules.

### 3B-107

#### **D162. Exceptional Funding Decisions**

- 162.1. If the Commission refuse an application under these rules or decline to request funding from the Lord Chancellor under Section 6(8)(b) the Commission will write to the client confirming the decision and giving reasons.
- 162.2. A client may, within 14 days of receiving notice of this decision under paragraph 1 above apply to have the decision reconsidered by the Commission.
- 162.3. The Commission will reconsider any decision when requested to do so under paragraph 2 above and will write to the client setting out the further decision and giving reasons.

16.4 The Commission may at any stage refer an application for exceptional funding to the Special Controls Review Panel, in which case the procedures set out at D2 to D6 above shall apply with any necessary modifications.

### 3B-108

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## **Annex**

This annex lists the amendments that have been made to the Code Procedures since 1 April 2000:

- (i) on 1 July 2000 Rule B5.4 was added (Controlled Legal Representation – Applications by Post);
- (ii) with effect from 2 April 2001 amendments were made to Part A of the Procedures (General), to the following Rules in Part C (Certificated Work) C1, C4, C16, C23, C26, C43 and C59 and a new Section 4 was added to Part D (Special Procedures) covering applications under Section 6(8) of the Act. The changes mostly relate to the introduction of civil contracting for all cases and the abolition of the Initial Financial Limit for Controlled Work as well as changes to the rules on notice of issue of certificates to opponents, referral of cases to the Special Cases Unit and reporting the grant of funding to an opponent;

- (iii) with effect from 1 May 2001 Section 7 of Part C (Rules C27 to C29) and related definitions in Rule A12.4 were amended. The changes concern the rules and procedures for referral to Family Mediation;
- (iv) with effect from 31 December 2001 amendments were made to rules A2 and A3 (definitions of Controlled and Licensed work), A12 (definition of authorised representation), C3.3 and 3.4 (replacement of guardians ad litem by CAFCASS) and C11 (procedures for emergency representation);
- (v) with effect from 8 April Rule C55 was amended to provide for certificate embargoes in the show cause procedure;
- (vi) with effect from 1 April 2003, Rules C21 and 65 were amended to give the Director power to backdate certain certificates relating to judicial review. Rule B1 was amended to reflect changes in the Not-for-Profit Contract as was Rule C29 concerning Family Mediation;
- (vii) with effect from 1 April 2004 Rules B5.1 and 5.2 were amended to set out the rights of review arising from refusal or withdrawal of Controlled Legal Representation;
- (viii) with effect from 4 April 2005, Part A and Rule B5.2 were amended in relation to Controlled Legal Representation for proceedings under the Nationality, Immigration and Asylum Act 2002;
- (ix) with effect from 25 July 2005, a range of amendments was made Part A of the Procedures and to rules 48–50 in Part C and to section 4, Part D. The majority of the amendments relate to the “New Focus for Civil Legal Aid” reforms and concern CLS Direct, the control of multiple family proceedings, the abolition of support funding and representation at inquests;
- (x) with effect from 9 October 2006 a range of amendments were made covering reform of Funding Review Committees and Regional Directors, simplification of Part B of the Procedures and exceptional funding.
- (xi) with effect from 1 October 2007 Family Help was introduced as a new Level of Service, replacing Help with Mediation and General Family Help, Residential Assessments were removed from the scope of CLS Funding and changes were made to the criteria for Special Children Act Proceedings and the rules on referral to Family Mediation.
- (xii) with effect from 16 June 2008 amendments were made to apply the procedures for Exceptional Funding to applications under the Lord Chancellor’s Direction on Cross Border Disputes.
- (xiii) With effect from [1 April 2010] a range of amendments were made to the Procedures primarily relating to the “Legal Aid: Refocusing on Priority Cases” consultation.

These include new procedures for obtaining representations from opponents prior to grant and the new regime for Special Controls, overseen by the Special Controls Review Panel.

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