

3. Excluded Work

3C-010

3.1 General

1. This section deals with the scope of the Community Legal Service Fund. In applications for funding it is necessary to determine:
 - (a) whether the application relates to services covered by Schedule 2 of the Access to Justice Act 1999 which lists the exclusions from scope and, if so,
 - (b) whether those services can nevertheless be funded because they are within the Lord Chancellor's directions on scope.
2. The complete text of the Lord Chancellor's Directions on scope is set out at section 3.3 below and in Volume 1, Part C of this manual.
3. Cases are also excluded from the Community Legal Service if they are required to be funded by the Commission as part of the Criminal Defence Service (section 4(3) of the Act). The effect of this restriction is set out in section 1.3 of this guidance.
4. Paragraph 1 of Schedule 2 of the Act excludes certain categories of law from scope. The Commission's guidance on these exclusions and related directions is at section 3.4 below. Paragraph 2 of Schedule 2 restricts the funding of advocacy to certain courts and tribunals. Guidance on paragraph 2 is at section 3.5.
5. If an individual case is excluded by Schedule 2 and not brought back into scope by direction, it can be the subject of an application for exceptional funding under section 6(8)(b) of the Act. Guidance on exceptional funding, including representation at inquests, is at section 27 of this Guidance.

3C-011

3.2 Excluded Categories of Law

1. The Access to Justice Act 1999, paragraph 1 of Schedule 2, provides that the CLS may not fund services consisting of the provision of help (beyond the provision of general information about the law and the legal system and the availability of legal services) in relation to—
 - (a) allegations of personal injury or death, other than allegations relating to clinical negligence (exclusion amended by the CLS (Scope) Regulations 2005),
 - (aa) allegations of negligently caused damage to property (exclusion amended by the CLS (Scope) Regulations 2005),
 - (b) conveyancing,
 - (c) boundary disputes,
 - (d) the making of wills,
 - (e) matters of trust law,

- (f) defamation or malicious falsehood,
- (g) matters of company or partnership law,
- ~~(h) other matters arising out of the carrying on of a business,~~ or
- (i) attending an interview conducted on behalf of the Secretary of State with a view to his reaching a decision on a claim for asylum (as defined by section 167(1) of the Immigration and Asylum Act 1999).

Under Paragraph 1A of Schedule 1, the CLS may not fund services consisting of the provision of help to an individual in relation to matters arising out of or in connection with –

- (a) a proposal by that individual to establish a business;
- (b) the carrying on of a business by that individual (whether or not the business is being carried on at the time the services are provided);
- (c) the termination or transfer of a business that was being carried on by that individual

- 2. It is important to note that these exclusions relate to all services, including Legal Help, unless brought back into scope by way of Lord Chancellor’s Direction.

3C-012

3.3 LORD CHANCELLOR’S AUTHORISATION¹

- 1. This is an authorisation¹ by the Lord Chancellor under Section 6(8) of the Access to Justice Act 1999 authorising the Legal Services Commission to fund in specified ...

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circumstances services generally excluded from the scope of the Community Legal Service Fund by paragraphs 1 and 1A of Schedule 2 to the Act. In this authorisation¹ “excluded services” means services which would, but for this authorisation¹, be excluded under ~~those~~ paragraphs.

- 2. In this authorisation¹ descriptions of types of case and other terms should be interpreted in accordance with definitions contained in the Act and in the Funding Code. For convenience, separate rules are given below in relation to the main levels of service under the Code. For the avoidance of doubt, nothing in this authorisation¹ authorises the Commission to fund conveyancing services or the making of wills save where the authorisation¹ specifically authorises this. Applications for funding under this authorisation¹ must still satisfy all relevant criteria in the Funding Code and regulations.

3C-013

Part 1 – Legal Help And Help At Court

Conveyancing

3. The Lord Chancellor authorises the Commission to fund conveyancing services as part of Legal Help where this is necessary to give effect to a court order made in proceedings in respect of which the Commission funded services, or to an agreement reached, with the help of funded services, to settle or avoid family proceedings.

Wills

4. The Lord Chancellor authorises the Commission to fund Legal Help in relation to the making of wills where the client is:
 - (a) aged 70 or over; or
 - (b) a disabled person within the meaning of section 1 of the Disability Discrimination Act 1995; or
 - (c) the parent of a disabled person (as defined in (b) above) who wishes to provide for that person in a will; or
 - (d) the parent of a minor who is living with the client but not with the other parent, and the client wishes to appoint a guardian for the minor in a will,
5. In paragraph 4, “parent” includes a guardian appointed under section 5 of the Children Act 1989 and any other person with parental responsibility for the child.

Criminal Injuries

6. The Lord Chancellor authorises the Commission to fund Legal Help in relation to applications to the Criminal Injuries Compensation Authority.

Excluded Proceedings brought within Scope

7. The Lord Chancellor authorises the Commission to fund Legal Help or Help at Court in relation to proceedings or potential proceedings falling within paragraphs 8 to 10, 12 or 15 to 17 below (types of case for which Legal Representation may be provided).

3C-014

Part 2 – Legal Representation

Case Categories

8. The Lord Chancellor authorises the Commission to fund Legal Representation, including excluded services, in any of the following types of case:

- (a) Proceedings under section 7 of the Code (Judicial Review), subject to the restrictions set out at paragraph 9 below.
 - (b) Proceedings under section 8 of the Code (Proceedings against public authorities concerning serious wrongdoing, abuse of position or power, or significant breach of human rights).
 - (c) Proceedings under section 10 of the Code (Housing) subject to the restrictions set out in paragraph 10 below.
 - (d) Proceedings under section 11 of the Code (Family Proceedings).
 - (e) Proceedings under section 14 of the Code (Quasi-Criminal Proceedings).
 - (f) Professional negligence proceedings, save where the alleged negligence relates to services provided in relation¹ to the client's business.
 - (g) Personal insolvency proceedings.
 - (h) Proceedings arising out of allegations of the abuse of a child or vulnerable adult;
 - (i) Proceedings arising out of allegations of sexual assault;
 - (j) Proceedings under the Proceeds of Crime Act 2002.
9. Paragraph 8 (a) above does not authorise the Commission to fund judicial review proceedings which fall within paragraph 1A(h) of Schedule 2 (business cases) unless those proceedings concern the serious wrongdoing, abuse of position or power or significant breach of human rights by a public authority.
10. Paragraph 8 (c) above does not authorise the Commission to fund housing proceedings relating to business tenancies or otherwise falling within paragraph 1A(h) of Schedule 2 (business cases)¹, save where possession of the client's home is in issue in those proceedings.

Public Interest Cases

11. The Lord Chancellor authorises the Commission to fund excluded services in Legal Representation in proceedings which have a significant wider public interest, other than proceedings which fall within paragraph 1A of Schedule 2 (business cases), or claims :
- i) which form part of a Multi-Party Action,
 - ii) which are not lead claims within the Action,
 - iii) which are primarily claims for damages, and
 - iv) in which the likely damages for the client do not exceed £5000.
- ~~The Lord Chancellor authorises the Commission to fund excluded services in Legal Representation in proceedings which have a significant wider public interest, other than proceedings which fall within paragraph 1(h) of Schedule 2 (business cases)¹.~~

Liberty of the client

12. The Lord Chancellor authorises the Commission to fund excluded services in Legal Representation in relation to hearings at which the liberty of the client is in issue.

Scope of specific exclusions

13. The following paragraphs limit the scope of specific subparagraphs of paragraph 1 and paragraph 1A of Schedule 2 of the Act. Cases which benefit from paragraphs 14 to 17 below may still be excluded under any other subparagraph of paragraph 1 or paragraph 1A of Schedule 2. For example, a case concerning a constructive trust would still be excluded if the case arose out of a proposal to establish a business or ~~the~~ the carrying on, termination or transfer of a business.
14. Paragraph 1(b) *conveyancing*. Where the Commission is funding Legal Representation in proceedings, the Lord Chancellor authorises the Commission to fund conveyancing services as part of Legal Representation where this is necessary to give effect to a court order made in those proceedings. Where the Commission is funding Legal Representation in family proceedings the Lord Chancellor authorises the Commission to fund conveyancing services as part of Legal Representation where this is necessary to give effect to an agreement reached, with the help of funded services, to settle or avoid those proceedings.
15. Paragraph 1(e) *matters of trust law*. The Lord Chancellor authorises the Commission to fund services relating to matters of trust law as part of Legal Representation where the matters of trust law concern implied, resulting or constructive trusts, trusts ...

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arising when a person dies intestate or where matters of trust law arise in cases under section 14 of the Trusts for Land and Appointment of Trustees Act 1996 concerning the ownership or possession of the client's home.

16. Paragraph (g) *matters of company or partnership law*. The Lord Chancellor authorises the Commission to fund services relating to matters of partnership law as part of Legal Representation where the Commission is satisfied that the client needs to rely on partnership law only in order to dispute whether a partnership existed, for example in order to contest liability on the grounds of undue influence.
17. Paragraph ~~(h)1A~~ *other-business* ~~matters arising out of the carrying on of a business~~. The Lord Chancellor authorises the Commission to fund services in relation to matters arising out of a proposal to ~~the~~ establish a business or the carrying on, termination or transfer of a business as part of Legal Representation where the Commission is satisfied that the client is reasonably disputing whether he or she was carrying on a business or intending to do so¹, for example where the client is contesting liability on the grounds of undue influence.

Mixed Cases

18. The Lord Chancellor authorises the Commission to fund excluded services in Legal Representation when the excluded services relate to issues which are only minor or incidental to the main purpose of the proceedings.
19. The Lord Chancellor authorises the Commission to fund Legal Representation in *partially excluded proceedings* where any of the following conditions apply:
 - (a) The client is a defendant or third party in proceedings brought against him or her by an opponent.
 - (b) The excluded issues were introduced into existing proceedings by an opponent.
 - (c) The client is bringing the proceedings but it is or would have been impracticable for the client to bring proceedings without also covering the excluded services.
20. In paragraph 19 above “partially excluded proceedings” means proceedings which (apart from this direction) are mostly within scope but which also include specific issues or causes of action which are excluded under paragraph 1 of Schedule 2 of the Act.

3C-015

Part 3 – Family Services

21. The Lord Chancellor authorises the Commission to fund excluded services as part of ~~General Family Help~~, ~~Help with Mediation~~ or Family Mediation. In relation to ~~General Family Help and Help with Mediation~~ this may include conveyancing services which are necessary to give effect to a court order or to an agreement reached, with the help of funded services, to settle or avoid family proceedings.

3C-016

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3C-017

Notes

¹ Amended with effect from 9 April 2007.

3.4 Guidance on Exceptions to Exclusions

Personal Injury

1. This exclusion covers all civil claims for personal injury, whether negligently or deliberately caused. It will exclude all cases relating to injuries or damage to an individual, even when the legal claim is not cast in terms of personal injury. So, for example, “tripping” cases are excluded even when they take the form of a claim that a local authority breached its statutory duty to maintain the highway.

2. Such cases are excluded because they will generally be suitable for funding under conditional fee agreements or other private funding arrangements. Proceedings purely for an injunction to protect a client from future harassment will not be treated as falling within this exclusion.
3. However, the Lord Chancellor has issued a direction to authorise the funding of particular services in relation to personal injury proceedings. That direction authorises the Commission to fund services under Legal Help in order to assist a client to make an application to the Criminal Injuries Compensation Authority. In addition, the direction authorises the Commission to fund services as part of Legal Representation where the claim arises out of an allegation of abuse of a child or vulnerable adult. The term “vulnerable adult” includes the elderly, disabled or “patients” as defined by the Mental Health Act 1983. For the purposes of the direction it does not matter whether the abuse is alleged to have occurred while in the care of a public authority or not; or whether the proposed defendant is a public authority, an individual or otherwise. Claims based upon allegations of rape or other sexual assault are also in scope, whether they relate to one-off incidents or allegations of long-term abuse. The direction on sexual assault cases is not limited to children or vulnerable adults.
4. Only firms with a personal injury franchise may apply for Legal Representation in those cases where public funding can be made available. If the case is part of a multi-party action, representation may be restricted to firms on the Commission’s Multi-Party Action Panel in accordance with the Multi-Party Action ~~Panel~~ Arrangements 2010~~00~~, which are printed in Volume 1 of this Manual.

Allegations of negligently caused damage to property

5. This exclusion covers only physical damage to physical property. Cases concerning only diminution in value of property, poor quality building work or damage to intellectual property rights or a legal cause of action will not be treated as falling within this exclusion.

Conveyancing

6. This exclusion covers the preparation of transfers, conveyances, contracts and other documents in connection with, or ancillary to, the buying and selling of estates or interests in land. The Lord Chancellor’s direction authorises the Commission to fund conveyancing services as part of Legal Help and Legal Representation where this is necessary to give effect to a court order made in proceedings in respect of which the Commission funded services, or to an agreement reached, with the help of funded services, to settle or avoid family proceedings.
7. Similarly, where the Commission is funding Legal Representation in family proceedings the Lord Chancellor’s direction authorises the Commission to fund conveyancing services as part of ~~General~~ Family Help, ~~Help with Mediation~~ or Legal Representation where this

is necessary to give effect to an agreement reached, with the help of funded services, to settle or avoid those proceedings.

Boundary disputes

8. This exclusion covers disputes, usually but not always between neighbours, as to where the boundary between two properties lies. It does not exclude disputes concerning only rights of way over property, unless the right of way runs along a boundary so that the case concerns allegations by any party that the correct boundary between the properties is not being respected.

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Making of wills

9. This exclusion relates solely to the drafting of a will, it does not cover will related litigation, although such litigation is often out of scope by operation of another of the exclusions. Note that there is only one exemption to this exclusion. The Lord Chancellor's Direction authorises the Commission to fund Legal Help in relation to the making of wills where the client is one of the limited range of clients set out in paragraph 4 of the Direction, namely:
 - (a) aged 70 or over; or
 - (b) a disabled person within the meaning of section 1 of the Disability Discrimination Act 1995 ([now covered by the Equality act 2010](#)); or
 - (c) the parent of a disabled person (as defined in (b) above) who wishes to provide for that person in a will; or
 - (d) the parent of a minor who is living with the client but not with the other parent, and the client wishes to appoint a guardian for the minor in a will,"Parent" in this exemption includes a guardian appointed under section 5 of the Children Act 1989 and any other person with parental responsibility for the child.

Matters of trust law

10. This exclusion is wide ranging and covers a great variety of circumstances and types of proceeding. A useful guide to whether a trust case is excluded is to consider whether the proceedings in question relate exclusively to trust law or whether they could equally well be framed in another way. For example, if the client brings proceedings claiming that, because of an earlier agreement, the opponent in the case holds property on trust for the client, such a case could equally well be based on breach of contract or on the equitable doctrine of estoppel (which sometimes prevents a person dealing with property if they have previously promised to deal with it in a different way). Such a case would be within

scope, although it would not be a priority area, and would be considered under the General Funding Code.

11. It is important to distinguish between these two distinct situations:
 - (a) cases concerning pre-existing trusts, such as challenges to the decisions of trustees, seeking the removal of a trustee and proceedings under the Trustee Act 1925; and
 - (b) cases where the law deems a trust to be established. For example trusts arising when a person dies intestate, or where the law of equity implies that the trust is created.The first of these are excluded under Schedule 2 of the Act, the second, in general, are not. This is because the Lord Chancellor's direction authorises the Commission to fund services relating to matters of trust law where the matters of trust law concern:
 - (a) implied, resulting or constructive trusts;
 - (b) trusts arising when a person dies intestate; or
 - (c) where matters of trust law arise in cases under section 14 of the Trusts for Land and Appointment of Trustees Act 1996 concerning the ownership or possession of the client's home.

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12. It is important to note that where an express trust is created, even where it arose out of an implied, resulting or constructive trust, or where a person died intestate, proceedings concerning the express trust itself are excluded. Proceedings in relation to section 14 of the Trusts for Land and Appointment of Trustees Act 1996 concerning ownership or possession of the client's home are in scope regardless of whether the trust is express or not.

Matters of company or partnership law

13. All matters of company or partnership law are excluded, even where the client is not the person running the company or partnership. Some examples of cases that will be excluded under this head will be; director disqualification cases, minority shareholder actions, proceedings for the winding-up or for an account or declaration of partnership, a dissolution of partnership or an account or indemnity, company insolvency proceedings.
14. However, the Lord Chancellor's direction authorises the Commission to fund services relating to matters of partnership law where the Commission is satisfied that the client needs to rely on partnership law only in order to dispute whether a partnership existed, for example in order to contest liability on the grounds of undue influence.
15. This direction was made to allow funding to help clients who have a reasonable case that they never voluntarily entered into a partnership and are contesting liability on that basis. However the direction does not help clients who clearly were in a partnership but are simply seeking to dispute particular liabilities of that partnership

~~Other Matters arising out of the Carrying on of a Business~~
Help in connection with Business matters

16. This exclusion only applies where it is the client who has been carrying on the business or is seeking to bring proceedings on behalf of someone who was. It does not prevent the Commission funding cases between a business and a consumer provided the client is the consumer. In deciding whether a case is excluded, it is helpful to consider two questions:
 - (a) has the client been carrying on a “business” or intended to do so; and
 - (b) do the proceedings arise out of or in connection with the carrying on of that business?
17. The concept of a “business” is a wide, general one. The clearest example is where the client is self-employed. However, a business is not confined to cases of self-employment. Any activity carried out by the client with a view to profit may constitute a business, especially if the activity is a regular one. For example, regular buying and selling of used cars would be a business, but a one-off sale of a car would not be.
18. Repetition of the activity is not the defining characteristic of a business case. A one-off transaction entered into by the client for the purpose of making a profit may be regarded as business. The essential question is whether the motivation behind the activity is the making of profit. If so, the activity will usually be regarded as a business one, whether or not the client’s motives in engaging in the activity are charitable or altruistic. In all cases, consideration should be given to factors such as the size and nature of the transaction and whether the activity is one which is commonly undertaken for profit.
19. In some cases a person should be treated as carrying on a business even if the business is incorporated and the client is an employee of the company. The issue is whether the client is a director of the company or otherwise has day-to-day control of the company’s affairs such that the client can be said to be carrying on the business. The person who is running a small business such as a shop should be treated as carrying on a business if they are earning profits from the trade, but not if the client is simply the manager of a shop and is employed in that position by the company.

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20. This exclusion clearly excludes ongoing trading disputes of a business, such as proceedings in which the client is suing for money owed or is involved in any contract dispute arising out of the business. However, the wording of the exclusion makes clear that it also excludes disputes that arose out of the carrying on of a business that is no longer trading. Disputes relating to the establishment of a business, such as misrepresentation over the sale or purchase of a business are also excluded. Similarly, disputes arising out of the preliminary steps of establishing a business are excluded regardless of whether the business exists at the time of the application.

21 Further, matters that in their nature do not in themselves appear to relate directly to business activity, but which are necessarily connected to the carrying out, establishment or winding down of the client's business activity are also excluded.

212. Some examples of cases that will be excluded under this head will be; intellectual property actions concerning the validity or infringement of a patent, trademark or registered design;, professional negligence proceedings against legal representatives or others concerning services which were provided for the client's business, proceedings concerning the enforcement of restraint of trade clauses and immigration cases of clients applying to establish themselves in business under the European Community Association Agreement (Ankara Agreement).

232. As with the partnership law exclusion, the Lord Chancellor's direction authorises the Commission to fund services in relation to matters arising out of the carrying on a business as part of Legal Representation where the Commission is satisfied that the client is reasonably disputing whether he or she was carrying on a business, for example where the client is contesting liability on the grounds of undue influence.

Case Categories

243. By direction, the Lord Chancellor has authorised the Commission to fund Legal Representation, including excluded services, in any of the following types of case:

(a) Proceedings under section 7 of the Code (Judicial Review);

EXCEPT where the proceedings arise out of the carrying on of the client's business UNLESS those proceedings concern the serious wrongdoing, abuse of position or power or significant breach of human rights by a public authority.

(b) Proceedings under section 8 of the Code (Proceedings against public authorities concerning serious wrongdoing, abuse of position or power, or significant breach of human rights);

The scope of section 8 is explained at section 17.1 of this guidance

(c) Proceedings under section 10 of the Code (Housing);

BUT NOT where the proceedings relate to business tenancies or otherwise arise out of the carrying on of the client's business, EXCEPT where possession of the client's home is in issue in those proceedings

(d) Proceedings under section 11 of the Code (Family Proceedings);

The scope of section 11 is explained at section 20 of the guidance

(e) Professional negligence proceedings, save where the alleged negligence relates to services provided to the client's business;

(f) Personal insolvency proceedings.

Personal insolvency proceedings are in scope, whether or not the insolvency was connected with the running of a business. It is important to note that while proceedings may fall within the definition of “insolvency proceedings” under the Insolvency Rules 1986, that does not mean that they are necessarily “personal insolvency proceedings” under the Code. In general, proceedings will not be considered to be “personal insolvency proceedings” under the Code until a bankruptcy petition has been issued.

However, proceedings that arise once a person is declared bankrupt, for which the trustee in bankruptcy assigns the cause of action back to the client, funding may not be granted to the client if that cause of action arose out of the client’s business.

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Public Interest Cases

- [254.](#) The Lord Chancellor’s direction also authorises the Commission to fund Legal Representation in proceedings that have a significant wider public interest, except where those proceedings arise out of the carrying on of the client’s business, and in relation to certain applications for funding within Multi-Party Actions.
- [256.](#) Further guidance on the meaning of Significant Wider Public Interest under the Code is set out at in section 5 of this guidance. The restriction of the exception in relation to Multi-Party Action cases is discussed in more detail at sections 15.2 and 15.3 of the Guidance.

Liberty of the client

- [276.](#) The Lord Chancellor’s direction authorises the Commission to fund Legal Representation in relation to hearings at which the liberty of the client is in issue.
- [287.](#) It is important to note that this exemption relates only to *hearings* at which the liberty of the client is in issue. It does not authorise funding for the excluded proceedings generally. This exception is most likely to arise where a client faces an application for committal to prison for contempt of court in proceedings that are otherwise excluded, for example personal injury, defamation or business cases.

Mixed Cases

- [298.](#) The Lord Chancellor’s direction authorises the Commission to fund excluded services in relation to issues that are only minor or incidental to the main purpose of the proceedings.
- [3029.](#) When considering whether the excluded issues are only minor or incidental to the main purpose of the proceedings, the important question is what, in substance, the case is really about from the client’s point of view. Is the excluded issue central to the case or does it merely arise incidentally during it? For example if the opponent in a case otherwise in

scope is a company or firm, it is possible that issues of company or partnership law might arise as to whether a director or employee was acting on behalf of the company or firm. Provided the client's main cause of action is not about company or partnership law the existence of such issues should be treated as minor and incidental so that the case could be funded in full.

319. The Lord Chancellor's direction also authorises the Commission to fund Legal Representation in partially excluded proceedings where any of the following conditions apply:

- (a) The client is a defendant or third party in proceedings brought against him or her by an opponent.
- (b) The excluded issues were introduced into existing proceedings by an opponent.
- (c) The client is bringing the proceedings but it is or would have been impracticable for the client to bring proceedings without also covering the excluded services.

"Partially excluded proceedings" means proceedings which (apart from the affect of the direction) are mostly within scope but which also include specific issues or causes of action which are excluded under paragraph 1 of Schedule 2 of the Act.

342. A case can only be considered under this heading when it has more than one specific issue or cause of action. If proceedings have only a single cause of action, which is excluded the case cannot be regarded as partially excluded and cannot be funded, even if other non-excluded matters would arise within it.

332. A partially excluded case is one which is mostly within scope. Again it is a question of considering from the client's point of view what the most important aspects of the case are, rather than looking purely in legal terms at how the case might be pleaded. For example, the client might be involved in proceedings alleging both breach of contract and breach of trust against a particular defendant. A view must be taken as to whether such a case is primarily about breach of contract (and therefore should be treated as a partially excluded case) or whether it is primarily a case about the ...

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defendant's duties as a trustee (in which case the application must be refused as out of scope).

334. Partially excluded proceedings can only be funded if one of the three conditions listed above applies. The condition referring to excluded issues being introduced into existing proceedings by an opponent covers the situation where the opponent seeks to amend pleadings to raise new causes of action, for example to plead malicious falsehood in a breach of contract case. The condition also applies where an opponent defends and seeks to introduce excluded issues in a counterclaim. In applying the Lord Chancellor's direction on mixed cases an action, which consists of both claim and counterclaim, should be looked at as a whole. If the opponent's counterclaim raises excluded issues the action

will be treated as partially excluded proceedings. It may then be possible for funding to be granted to the client to defend the counterclaim. By contrast if the client was a Defendant it is unlikely that the client would be funded to bring a counterclaim which introduced excluded issues – to do so would not be covered by any of the conditions listed above.

354. In considering condition (c), the test is whether it is impracticable to bring proceedings which cover only the matters within scope. It is not enough that it would be more convenient to deal with the excluded and in scope issues within one set of proceedings, or that the court would be likely to wish to deal with the two aspects together.

General Family Help, ~~Help with Mediation~~ and Family Mediation

365. Where an application is for **General Family Help**, ~~Help with Mediation~~ or Family Mediation, funding may be provided despite the exclusions. The exception in relation to funding Legal Help for conveyancing services set out at paragraph 3.3.3 above applies also to services provided under ~~General Family Help, or Help with Mediation.~~

3.5 Excluded Courts or Tribunals

1. If an application relates to proceedings of a type not listed in paragraph 2 of Schedule 2, then Legal Representation is not available, as the Schedule excludes advocacy in such proceedings. Legal Help remains available.
2. Paragraph 2 of Schedule 2 provides that advocacy services can be provided in proceedings before:
 - (a) the Supreme Court,
 - (b) the Judicial Committee of the Privy Council in the exercise of its jurisdiction under the Government of Wales Act 1998, the Scotland Act 1998 or the Northern Ireland Act 1998,
 - (c) the Court of Appeal,
 - (d) the High Court,
 - (e) any county court,
 - (f) the Employment Appeal Tribunal,
 - (g) the First-tier Tribunal under any provision of the Mental Health Act 1983 or paragraph 5(2) of the Schedule to the Repatriation of Prisoners Act 1984, or the Mental Health Review Tribunal for Wales,
 - (h) the Asylum and Immigration Appeal Tribunal,
 - (ha) the Special Immigration Appeals Commission, or
 - (i) the Proscribed Organisations Appeal Commission.

In addition, advocacy services may also be provided in certain specified proceedings before the Crown Court and magistrates' courts. These proceedings are listed in paragraphs 2(2) and 2(3) of the Schedule.

3. However, some additional proceedings have been brought into scope by way of Lord Chancellor's authorisation.

Death in Custody Inquests

4. The Lord Chancellor has issued an authorisation that authorises the Commission to fund advocacy services on behalf of the immediate family of the deceased at an inquest concerning a death occurring in police or prison custody, during the course of police arrest, search, pursuit or shooting or during the compulsory detention of the deceased under the Mental Health Act 1983. Applications for funding for representation at inquests in these cases are considered solely by the Special Cases Unit in London. The text of this Direction and related guidance is at section 27.

Care Standards Tribunal

5. Under the Secretary of State's Authorisation on Tribunal Representation of September 2009 the Mental Health Review Tribunal and Care Standards Tribunal have ceased to exist as separate entities but have become part of the Health, Education and Social Care Chamber of the new First-tier Tribunal on 3rd November 2008. The Lord Chancellor's authorisation also authorises the Commission to fund Legal Help, Help at Court and Legal Representation in relation to certain proceedings before the First-Tier Tribunal.
6. In addition, appeals from, or reviews of, the First-Tier Tribunal, in relation to those proceedings listed above, to the Upper Tribunal, High Court, the Court of Appeal and the House of Lords may also be funded.
7. This authorisation allows funding to be made available, in the above proceedings even when they arise out of the running of a business. Applications should be sent to the Commission's Special Cases Unit at Exchange Tower, 2 Harbour Exchange Square, London E14 9GE. For more detailed guidance on tribunal funding, see section 22 of this guidance.

General and Special Commissioners of Income Tax and VAT and Duties Tribunal

8. The Lord Chancellor's authorisation also authorises the Commission to fund Legal Help, Help at Court and Legal Representation in all proceedings before the Taxation Chamber of the First-tier Tribunal, cases that would formerly have been before the General and Special Commissioners of Income Tax and before the VAT and Duties Tribunal, as part of CLS in the following circumstances:
 - (a) Where it is in the interests of justice for the client to be legally represented; and
 - (b) the proceedings concern penalties which the courts have declared to be criminal in ECHR terms or where an appellant reasonably seeks to argue that the penalties under consideration by the tribunal are criminal in ECHR terms.

9. In addition, appeals from, or reviews of, the above tribunals to the Upper Tribunal, the Court of Appeal and the Supreme Court may also be funded in the same specified circumstances.
10. This authorisation also allows funding to be made available, in the above proceedings even when they arise out of the running of a business.
11. Further guidance in relation to these tax tribunals is set out in section 22 of this guidance.

Court of Protection

12. With effect from 1 October 2007, the Mental Capacity Act created a new Court of Protection, that is able to make decisions about the property and financial affairs and personal welfare of persons lacking the capacity to make those decision for themselves. An authorisation of the Lord Chancellor authorises the Commission to fund Legal Help, Help at Court and Legal Representation in relation to proceedings or potential proceedings before the Court of Protection, where two conditions are satisfied:
 - (i) the proceedings themselves fall within certain categories as regards the person whose personal welfare is the subject matter of the proceedings. This condition, broadly, seeks to capture the serious health and welfare cases that would previously have been considered by the High Court under its inherent jurisdiction; and
 - (ii) The Court has ordered or is likely to order an oral hearing at which it will be necessary for the applicant for funding to be represented.
13. Chapter 28 of the Guidance contains the Court of Protection authorisation and sets out further guidance in relation to funding of cases before that court.