

19. Housing

3C-156

19.1 Scope

1. Section 10 of the Funding Code covers proceedings which concern the possession of the client's home, the client's legal status in the home, its repair and condition or the right to occupy it peacefully. Most cases within the housing franchise category will fall to be considered under Section 10.
2. The meaning of "home" is the client's main or only dwelling. It will include any mobile home or site that the client occupies as his or her residence.
3. Where, however, the case is a challenge against a public authority by way of judicial review or other public law proceeding, it will fall within Section 7 of the Funding Code. Cases involving homelessness, allocation policies, travellers' rights, mixed public law cases (involving both homelessness and immigration or homelessness and community care issues) and appeal proceedings under Part VII of the Housing Act 1996 will be dealt with under Section 7 of the Code and the decision making guidance in Section 16 will apply.
4. Some proceedings within the housing franchise category fall outside of both Sections 7 and 10 and fall to be considered under the Criteria of the General Funding Code. These will be housing cases which do not concern possession of the client's home, his or her status in it or the landlord's obligation to keep the client's home in good repair and allow the client quiet enjoyment of the property. This may include:
 - (a) proceedings under the Access to Neighbouring Land Act 1992;
 - (b) proceedings relating to the enfranchisement rights of a long leaseholder either under their lease or by statute;
 - (c) proceedings relating to improvement;
 - (d) proceedings concerning property which is not the client's home, e.g. if the client is the owner seeking possession of property which is not his or her own home. Note that such cases may well be excluded under paragraph 1(h) of Schedule 2 to the Act – see next section.

3C-157

19.2 Excluded Services

1. The Lord Chancellor's direction at paragraph 7 of section 3.3 of this guidance ensures that the great majority of housing cases coming within section 10 of the Code are within scope. Only housing proceedings relating to business tenancies or otherwise arising out of the carrying on of the client's business may be excluded. However, cases where possession of the client's home is in issue are always in scope, even if the case also concerns business premises. Therefore defence of possession proceedings relating to a shop or farm can be funded where the tenancy includes the client's home.
2. Cases within the housing franchise category which fall outside section 10 of the Code (see paragraph 19.1.4 above) are subject to the normal exclusions from scope. The most significant exclusion is paragraph 1(h) of Schedule 2 (business cases).
3. If a client owns and rents out a property, other than part of the property in which he or she lives, this is likely to constitute a business activity for the purposes of Schedule 2. This is especially so if the client has more than one such property. Claims brought or defended by the client which relate to such properties will therefore not be funded.

19.3 Levels of Service short of Full Representation

1. Legal Help and Help at Court have an important role in housing cases. They can only be provided as Controlled Work under the Unified Civil Contract. Examples of where it might be appropriate to provide Help at Court in housing cases are:
 - (a) where the client is a defendant to mortgage possession or other possession proceedings, where rent or mortgage arrears are not in dispute, it is unlikely that an immediate order for possession would be made, and, in the absence of a defence to the proceedings, the only issue appears to be the terms on which a suspended order would be made;
 - (b) where the client is a defendant to possession proceedings on the grounds of mortgage or rent arrears, where the claim for possession is not disputed, but there is a dispute over the amount of arrears owed by the defendant;
 - (c) an application to suspend or further suspend a warrant for possession or execution where no substantial issue of fact or law is raised.
2. The availability of Legal Help and Help at Court (if appropriate), should therefore be considered before an application for Legal Representation is made. Such an application may be refused if it appears premature or if it appears more appropriate for the client to be assisted by some other level of service under the Code. (Criterion 5.4.4).
3. Help at Court should not be used in any case where Legal Representation should be applied for, unless Legal Representation has been applied for and refused. Where Legal Representation is refused, the case should be dealt with under Legal Help, together with Help at Court as appropriate.
4. When a decision is to be made whether Legal Help or Help at Court is most appropriate the considerations to be taken into account are:
 - (a) the nature of the proceedings or hearing;
 - (b) the potential outcome or consequences; and
 - (c) the circumstances of the client.

The issue is whether representation by way of Help at Court is more appropriate and has greater benefit to the client than restricting the help provided to explaining to the client what steps they can take or writing a letter on their behalf. When weighing up the issues above it should be remembered that Help at Court must be of sufficient benefit, appropriate and cost effective.
5. As in most other case categories, Legal Representation in housing cases can take the form of either Investigative Help or Full Representation. However the great majority of housing cases do not require extensive investigation to enable prospects of success to be determined. Few housing cases will therefore satisfy the Criteria for Investigative Help and most cases requiring a certificate will proceed straight from Legal Help/Help at Court to Full Representation. In the few cases that do fall within section 10 of the Funding Code and require substantial investigative work, there is no need to consider whether the work should be carried out privately with a view to a conditional fee agreement (Criterion 10.2.1).
6. Where Investigative Help is applied for in a housing case within section 10 of the Code which is primarily a claim for damages and has no significant wider public interest, the minimum damages level is £1,000 compared to £5,000 in the General Funding Code (Criterion 10.2.2). This is in line with the jurisdiction of the Small Claims Track in relation to housing disrepair claims. Indeed, Investigative Help will be refused for all housing cases if the case has been or is likely to be referred to the small claims track (Criterion 5.4.6).

3C-159

19.4 Criteria to be applied for Full Representation

1. While housing cases within section 10 are a priority under the Code, the Commission will not fund cases which are weak or those where litigation is unnecessary. This is reflected in the Criteria for Full Representation which differ from those in the General Funding Code in four important respects:
 - (a) possession cases – because of the importance of cases concerning possession of the client’s home there is no strict requirement that the client must have at least 50% prospects of success in defending such a case. Instead, funding will only be refused if the client has no substantive legal defence to the proceedings (or if the client is bringing proceedings in relation to their own home, the prospects of obtaining an order are poor) (Criterion 10.3.2 – see guidance at section 19.7 below);
 - (b) cost benefit – for all cases under section 10 of the Code (whether possession or other claims within section 10) the cost benefit Criterion is a general test requiring simply that likely benefits of the proceedings must justify likely costs, having regard to the prospects of success and all the circumstances (Criteria 10.3.3 and 10.4.4). Therefore the strict cost benefit ratio in the General Funding Code do not directly apply to housing claims within section 10, even if the primary claim is for money. Guidance on this general form of cost benefit test is at section 4.9;
 - (c) notification to Landlord – an additional Criterion (10.4.2) applies to cases within section 10 other than possession claims. It therefore applies to housing disrepair, harassment and unlawful eviction claims. The Criterion allows for Full Representation to be refused unless the landlord or other person responsible for dealing with the matters complained of has been notified of the client’s complaint and given a reasonable opportunity to respond and put matters right, save where this is impracticable in the circumstances. See further section 19.6 below;
 - (d) conditional fees – funding will not be refused in any housing case under section 10 of the Code on the grounds that a CFA is suitable (Criteria 10.3.1 and 10.4.1 disapply Criteria 5.7.1).
2. The Standard Criteria for Legal Representation at section 5.4 of the General Funding Code apply to all housing claims whether or not they come within the priority cases to which section 10 applies. Those which are most significant are:
 - (a) alternatives to litigation (5.4.3) – see section 19.5 below;
 - (b) other Levels of Service (5.4.4) – see section 19.3 above;
 - (c) the need for representation (5.4.5) – see guidance on specific types of housing claim in section 19.7 onwards;
 - (d) small claims (5.4.6) full representation will be refused if the case has been or is likely to be referred to the small claims track.

3C-160

19.5 Alternatives to Litigation

1. Generally, unless the case is urgent, the client should fully consider the availability of local arbitration or mediation arrangements and/or the pursuit of a complaint within the jurisdiction of the Ombudsman (Independent Housing Ombudsman or the Local Government Ombudsman, as appropriate).
2. Full Representation will not automatically be refused in a case where an Ombudsman or local mediation or arbitration scheme exists. The issue is not whether the alternative offers the same remedy or outcome as litigation but rather whether pursuing such options before taking other steps is a sensible step which a reasonable private client would take, whether or not recourse to the courts might still be necessary in the future. It would not be reasonable for Full Representation to be

19. Housing

granted before such options have been explored with the client and, where appropriate, pursued. Regard should be had to the specific concerns of the client and the particular outcomes he or she wishes to secure. This will be relevant to whether the courts as opposed to arbitration, mediation or an Ombudsman might be best able to deliver what the client needs.

3. Solicitors will be expected both to be aware of the jurisdiction and availability of the relevant schemes and be able to discuss the alternative schemes when advising the client whether to apply for Full Representation.
4. When making an application, solicitors must indicate:
 - (a) what particular outcomes the client wants to achieve;
 - (b) whether any local arbitration or mediation schemes are available;
 - (c) why such a local scheme or either of the Ombudsmen are not suitable for the individual case, including information on local conditions, the options available and their effectiveness that have influenced the client's decision; and
 - (d) the particular circumstances of the case that make litigation the most appropriate route.
5. Full Representation may be refused if it is considered that the alternatives available are appropriate and should be tried before Full Representation is granted.
6. Where a tenancy agreement has an arbitration clause, solicitors should explain whether arbitration took place, and, if so, its outcome and why litigation is necessary. Where arbitration was not pursued, solicitors should indicate the particular circumstances of the case that made it unsuitable for arbitration. Any correspondence with the landlord should be submitted in support of the application.
7. Where solicitors are not familiar with Ombudsman Schemes, contact details are set out below. Each Ombudsman publishes information about their work.
8. Solicitors should also consider the possibility of mediation on an ongoing basis (see section 7) and report as necessary.

Independent Housing Ombudsman

Telephone: 020 7836 3630

(This includes compulsory membership by social landlords and voluntary membership of private landlords, including some park homeowners (for tenants of mobile homes)) The Independent Housing Ombudsman uses a wide range of dispute resolution methods when investigating cases.

Local Government Ombudsman

Website: www.lgo.org.uk

Mr Tony Redmond (Greater London – all authorities in London North of the Thames (except the London Boroughs of Harrow and Tower Hamlets), the Greater London authority, and authorities in Essex, Kent, Suffolk, Surrey, and East and West Sussex) Telephone: 020 7915 3210

Ms Anne Seex (authorities in the West Midlands (except Coventry City), the London Borough of Tower Hamlets, Cheshire, Derbyshire, Nottinghamshire, Lincolnshire, Shropshire, Staffordshire and the North of England (except the cities of Lancaster and York)) Telephone: 01904 663200

Mr Jerry White (Remainder of England – all authorities in London South of the Thames, the London Borough of Harrow, Southern England (except Essex, Kent, Surrey, East and West Sussex and those London Boroughs North of the Thames)

East Anglia (except Suffolk) the South West, most of Central England and the cities of Coventry, Lancaster and York)

Mr E R Moseley (Wales) Telephone: 01656 661325; website:
www.ombudsman-wales.org

3C-161

19.6 Notification to Landlord/Others

1. Where the client is applying for Full Representation to bring proceedings in a case to which section 10 of the Code applies the application may be refused unless the landlord or other person responsible for dealing with the matters complained of has been notified of the client's complaint and given a reasonable opportunity to respond and put matters right, save where this is impracticable in the circumstances (Criterion 10.4.2). Giving notice will be treated as impracticable where the case is genuinely urgent, or where any delay would cause serious prejudice to the client's case.

Harassment and Wrongful Eviction

2. Legal Representation may be refused if there has been no letter before action or other prior contact with the landlord or agent with a view to resolving matters without the need for proceedings (unless the matter is so urgent or so serious that this would be inappropriate or would have no effect).
3. Where the primary remedy sought is an injunction or return to the property Legal Representation may be refused unless the matter has first been reported to the tenancy relations officer (TRO). If that step has not been taken justification for not doing so must be specifically set out in the application for Legal Representation. If contact with the TRO was made the solicitors should indicate what steps, if any, were taken by the TRO.

Protection from Harassment Act 1997

4. A warning letter must first be sent (unless the circumstances are such that this would be inappropriate) and the police should be notified. If the police fail to provide adequate assistance an application may be submitted.
5. Legal Representation is unlikely to be granted for enforcement proceedings unless the need for enforcement has been notified to the police and they have failed to provide adequate assistance having regard to their powers under the Act.

Homelessness

6. Legal Representation will not be granted unless the client has exhausted all available remedies and the housing authority has been notified of the proposed litigation and given a reasonable opportunity to respond. A letter before action should always be sent (*R v. Horsham District Council ex parte Wenman [1994] 4 All ER 68* and Criterion 7.4.4).

3C-162

19.7 Cases Concerning Possession of the Client's Home

Possession of Rented Property occupied by the Client

1. These cases come within section 10.3 of the Code. Legal Representation will be refused if the client has no substantive defence to the proceedings or the prospects of successfully avoiding an order for possession are poor.

19. Housing

2. Legal Representation will be refused in the absence of a substantive defence, (including where it applies, the defence that it would not be reasonable to make an order for possession), if the only issue to be placed before the court is whether an immediate possession order is appropriate. In such a case Criterion 10.3.2 will not be satisfied.
3. Legal Representation to defend possession proceedings will be refused if the only defences available are technical ones. The landlord should be approached to seek a compromise. It is recognised, however, that in some cases it may be tactically advantageous to the client not to draw the defects to the landlord's attention, thus allowing the tenancy to continue longer. If no approach has been made, solicitors must explain their decision not to do so and why Legal Representation is justified with specific reference to the costs benefit test. Where Legal Representation has been granted, and the technical defects are capable of being cured within the proceedings solicitors must report this to the Regional Office immediately so a decision may be made whether to continue funding.
4. Legal Representation is likely to be granted where there is a substantive defence to the possession action, including a defence as to reasonableness of the possession order being made, i.e. where the ground for possession has been made out but where the court must also assess whether it is reasonable in all the circumstances to make an order for possession.

Suspended Possession Orders in Rent or Mortgage Cases

5. Legal Representation is unlikely to be granted where the probable order is a suspended possession order e.g. where the arrears are not in dispute, reasonableness is not likely to succeed as a defence, and the only issue is the terms on which a suspended possession order would be made. In these circumstances, Legal Help or Help at Court may be appropriate.

Possession: Nuisance Cases

6. Where possession is sought for anti social behaviour, Legal Representation is unlikely to be granted either where the conduct is admitted, or, where the proceedings have been issued as a result of breached undertakings, unless a defence can be raised as to reasonableness. Examples of where Legal Representation may be appropriate are where the client's community care needs led directly to the breach or where the conduct complained of has ceased and is unlikely to reoccur. Legal Representation is likely to be granted where a substantive defence, including the issue of reasonableness, can be raised by the tenant.
- 6A. Where a demotion order is claimed in the alternative to a possession order or other than in a possession claim, the same considerations as set out in paragraph 6 above will apply to the grant of Legal Representation to defend those proceedings.

Client in Rent Arrears

7. Where the ground for possession is rent arrears, Legal Representation is unlikely to be granted if the arrears are the only issue, and are not in dispute, unless a defence can be raised on the issue of reasonableness. Whilst delay in payment (generated by the failure or delay of a local authority either to determine or pay housing benefit payment) is not a defence in itself, it may go to the issue of reasonableness where a reasonableness defence is being asserted.
8. Legal Representation is likely to be granted to a client who can show that no arrears of rent exist or who has a valid counterclaim which exceeds or significantly diminishes the alleged arrears e.g. damages for disrepair or quiet enjoyment.

Service Charges

9. It would not be reasonable for Legal Representation to be granted where service charges arrears are the only issue in dispute as it is unlikely that an immediate order for possession would be made and, where there is a dispute, the proceedings can be referred to the Leasehold Valuation Tribunal (LVT). Legal Representation will be refused in any case where the LVT would provide an effective way of pursuing or defending the claim. The LVT would not be appropriate in a case where a determination needs to be made as to whether the freeholder is entitled to claim for the item of work under the lease (as distinct from the reasonableness of the cost of that item).

Accelerated Possession Procedure

10. Legal Representation will be refused in cases which fall within the accelerated possession procedure under Civil Procedure Rules Schedule 2 CPR Order 49 Rules 6 and 6A unless, following consideration of the papers, the matter is listed by the court for an oral hearing. The decision as to whether or not to hold an oral hearing is one taken by the court on the papers. Until there is a decision that the matter should be listed for an oral hearing it would not be reasonable to grant Full Representation as there is no need for representation (Criterion 5.4.5). Once the matter has been listed for an oral hearing Legal Representation may be applied for in the usual way.
11. Where issues arise as to:
 - (a) the nature of the tenancy;
 - (b) whether the case falls within the accelerated procedure;
 - (c) whether there is a defence;
 - (d) whether there is some defect in the application;solicitors should assist the client to make representations, either by the completion of the form N11A or by preparing an affidavit under Legal Help, if appropriate.

Anti Social Injunctions

12. Legal Representation to defend an application for an anti-social injunction will generally only be granted where:
 - (a) There are very serious allegations;
 - (b) The allegations are denied wholly or substantially; and
 - (c) The matter cannot reasonably be dealt with by an undertaking.However Legal Representation may be justified if there is some question of inability to defend (e.g. mental capacity). In cases where the allegations made or issues raised are not sufficiently serious to justify Legal Representation or where mitigation is required at court, Help at Court may be appropriate.

Introductory Tenancies

13. In relation to introductory tenancies Legal Representation will be refused unless the client can establish:
 - (a) the tenancy was not “introductory” at the time the proceedings were issued;
 - (b) the section 128 notice is defective or was not served;
 - (c) the proceedings have been commenced prematurely; or
 - (d) that an adjournment is required under the principles set out in *Manchester City Council v. Cochrane* [1999] 31 HLR 810.
14. In relation to an introductory tenancy an internal review should be sought before Legal Representation is applied for.

Suspension of Warrants of Possession

15. Legal Representation is unlikely to be granted to suspend a warrant of possession or execution if the application does not raise any significant issues of fact or law. Where, there is a substantive defence to the possession proceedings or to the enforcement of the order Legal Representation may be granted. This would not include technical or procedural irregularities which only “buy time” for the client. Examples of significant issues would be where:
- (a) a non-party is trying to stop the eviction;
 - (b) the client is asserting that a new tenancy has been created;
 - (c) the landlord has waived the breach by subsequent acceptance of rent or other conduct;
 - (d) an application to set aside the original possession order can be made e.g. because the tenant was not present at the hearing;
 - (e) an application can be made to postpone the date of possession, which, if granted, would reinstate the tenancy.
- Where Legal Representation is unlikely to be granted Legal Help may be available or, in appropriate cases, Help at Court.

Mortgage Possession

16. Legal Representation is likely to be granted to the borrower to defend possession proceedings brought by the lender where there are substantial defences for consideration by the court e.g. where one or more of the following arise:
- (a) allegations of fraud;
 - (b) allegations of duress or undue influence;
 - (c) where there are linked or (imminent) concurrent proceedings involving the borrower’s spouse, co-habitee or trustee in bankruptcy;
 - (d) where the client is not a party but where it might be appropriate for the client to be joined to the action because the client does have a defence;
 - (e) where there is a substantive counterclaim.
17. Legal Representation is unlikely to be granted where:
- (a) there is no substantive defence to a claim of arrears only;
 - (b) judgment has been entered and the representation is sought to set aside a warrant of possession in an arrears only case;
 - (c) duress or undue influence is alleged but at the relevant time the borrower received correct and appropriate legal advice from a solicitor;
 - (d) there is a procedural irregularity but no substantive defence.
18. In such cases, Legal Help should be used unless Help at Court is appropriate.
19. Legal Representation is likely to be granted to appeal if the District Judge exercised discretion unreasonably or misdirected him/herself in law. Legal Representation is likely to be refused if there is a lengthy delay before the client considered an appeal or only limited benefit to be gained.
20. Legal Representation is likely to be granted to pursue an action or counterclaim on the sale (including as to price or timing of the sale) where there are reasonable prospects of obtaining control of the sale and the quantum involved justifies the costs of representation.

Clients Seeking Possession of Rented Property

21. Where a landlord wishes to pursue possession proceedings, Legal Representation will not be granted until the landlord has first determined the tenancy or served a notice seeking possession and letter before action to the tenant. Note that some cases will be excluded from scope (see 19.2 above).

22. Most cases within scope where the client is seeking possession of rented property will be determined under the General Funding Code. However, if the client is applying for Legal Representation to **bring** proceedings seeking possession of his or her home, the Criteria in section 10.2 of the Code apply. The application will be refused if the prospects of obtaining an order for possession are poor.
23. Legal Representation is likely to be granted to a landlord who can show the tenant is in arrears of rent. Information must be provided as to the tenant's ability to discharge any judgment which may be made.

3C-163

19.8 Housing Disrepair

Disrepair

1. Disrepair claims brought by the client against his or her landlord fall within section 10 of the Code. Legal Representation will be refused where an alternative remedy is available which would achieve largely the same benefit and which could reasonably be pursued in the circumstances e.g. statutory nuisance proceedings in the magistrates' court which would result in essential repairs being effected. (Legal Representation is not available for proceedings under the Environmental Protection Act 1990), although Legal Help is available.
2. Legal Representation is likely to be granted to a client to take proceedings under Section 11 of the Landlord and Tenant Act 1985 and other relevant statutes or in negligence where the landlord has been given notice of the relevant defects and has not taken action to remedy them within a reasonable time, where the prospects of success are clear and quantum of damages can be estimated.
3. The Disrepair Pre Action Protocol covers cases under section 11 of the Landlord and Tenant Act 1985, section 4 of the Defective Premises Act 1972, common law nuisance and negligence and claims brought under the express terms of a tenancy agreement or lease. Provided that there is clear evidence of prior notice having been given to the landlord of the relevant defects by or on behalf of the tenant, the prospects of success are clear and quantum of damages can be estimated, Legal Representation is likely to be granted to a client to pursue the protocol.
4. Where a claim for personal injury or property damage is made in the disrepair proceedings Legal Representation may be granted (see 19.2 above). Such personal injury claims are excluded from the personal injury franchise and fall within the housing franchise category (see the SQM category definition in Tab E of this Volume 3). Separate applications for Legal Representation should be made for individuals other than the tenant e.g. the child of the family and visitors. Personal injury claims in which the property was not the home of the person applying will usually be excluded from scope under paragraph 1(a) of Schedule 2 of the Access to Justice Act 1999. If brought into scope for any reason they would be considered under the General Funding Code.
5. Whilst applications from private landlords to defend or counterclaim in a disrepair action are rare, Legal Representation may be granted where the prospects of defending the proceedings are moderate or above. If within scope at all (see section 19.2 above) such cases will be considered under the General Funding Code.
6. Legal Representation will not be granted where the value of the claim for damages is such that the case is likely to be allocated to the small claims limit unless and until the court re-allocates to the fast track.
7. The Criteria for housing disrepair claims are unlikely to be satisfied unless the following information is supplied with the application for Legal Representation:
 - (a) an adequate statement of case setting out the allegations of disrepair in detail;
 - (b) the date(s) when the landlord was put on notice and the method by which this was done;

19. Housing

- (c) an indication of whether there have been any previous proceedings e.g. in the magistrates' court and, if so, details of the outcome and copies of any expert(s) report(s) already obtained in connection with the issues of disrepair;
 - (d) details of the availability of local arbitration or mediation arrangements and ombudsman scheme or why it is inappropriate to pursue;
 - (e) where there have been previous proceedings, to justify an explanation why further action is justified;
 - (f) an estimate of the value of the claim, with reference to the severity of the disrepair, the small claims limit and relevant case law;
 - (g) copies of any relevant correspondence with the landlord or agents; and
 - (h) details of the opponent's financial circumstances and ability to pay (in all cases where compensation or costs will be claimed). This is particularly important where the opponent is a private landlord.
 - (i) confirmation of whether the Disrepair Pre Action Protocol applies or the justification for departing from the protocol in the particular case.
8. Legal Representation will not be granted if the main purpose of the proceedings is to obtain damages where the relevant cost benefit Criterion is not met. As explained in section 4.9 of this guidance whilst the cost benefit ratios in the General Funding Code do not apply directly to cases concerning disrepair to the client's own home they may be taken into account as guidelines as to whether a case is cost effective.

19.9 Harassment and Wrongful Eviction

3C-164

1. Legal Representation will be refused where the conduct complained of is trivial or is not recent and is unlikely to be repeated.
2. Legal Representation will be refused if in the circumstances of the case other steps would be more appropriate e.g. referral to the tenancy relations officer followed by the local authority taking proceedings in the magistrates' court under the Protection from Eviction Act 1977 or where a complaint should be made to the Housing Ombudsman.
3. Legal Representation is likely to be granted to a client as tenant or occupier if he or she can show a breach of covenant for quiet enjoyment, trespass or unlawful eviction, interference with or trespass to goods, assault or other breach of the Protection from Eviction Act 1977 **and** the prospects of successfully obtaining one or more of the following are at least moderate:
 - (a) an order enabling the client to return to the property;
 - (b) recovery of any personal possessions;
 - (c) an award of damages;
 - (d) an injunction.
4. Legal Representation is unlikely to be granted where the need for representation is not established or where the benefit to be gained does not justify the likely costs.
5. Legal Representation is unlikely to be granted where any order obtained is likely to be unenforceable due to the mental incapacity of the defendant, or in a claim for damages where no evidence has been provided of the opponent's ability to satisfy any judgment obtained within a reasonable period.
6. Provided the prospects of success are at least moderate, Legal Representation is likely to be granted to defend proceedings for harassment either where there are serious allegations which are denied either wholly or substantially; or there is any question of the client's ability to conduct his/her defence (through mental incapacity or other incapacity to understand the proceedings). A simple denial, without any further explanation, will not justify the grant of Legal Representation.
7. If the only relief sought is an order for return to the property, the benefit to be obtained may be insufficient to justify the potential costs where the nature and length of the tenancy are such that the order would last for only a short period of time.

8. Legal Representation will be refused if the basis of the estimated value of the claim is not set out in the application, including any claims for aggravated or exemplary damages. In cases involving personal possessions, the nature, age and current second-hand values of the items must be specified rather than the costs of replacement as new.
9. Legal Representation will be refused where any order obtained could not be enforced within a reasonable time or if there are no reasonable prospects of recovering costs and the operation of the statutory charge would be likely to extinguish any benefit likely to be gained. Details of the opponent's financial circumstances and ability to pay damages and costs must be provided.
10. Where the local authority are taking action in the magistrates' court under the Protection from Eviction Act 1977 Legal Representation will be refused unless the benefit of the separate civil proceedings can be shown.
11. Legal Representation may be refused if there has been no letter before action or other prior contact with the landlord or agent with a view to resolving matters without the need for proceedings (unless the matter is so urgent or so serious that this would be inappropriate, would have no effect or would be prejudicial, e.g. increase likelihood of violence).
12. Where the primary remedy sought is an injunction or return to the property Legal Representation may be refused unless the matter has first been reported to the tenancy relations officer (TRO). If that step has not been taken justification for not doing so must be specifically set out in the application for Legal Representation. Where the matter is so urgent or so serious that any delay would be inappropriate, have no effect or be prejudicial to the client's case it would be justified not to make contact. If contact with the TRO was made the solicitors should indicate, if known, what steps, if any, were taken by the TRO.

Protection from Harassment Act 1997

13. In a case brought under the Protection from Harassment Act 1997 Legal Representation may be granted where the prospects of establishing liability and causation are greater than poor and, where an injunction is sought, conduct sufficient to constitute harassment has occurred within the preceding 2–3 weeks, or, if earlier, that on the particular facts there is a real likelihood of repetition. Consideration should also be given to cost benefit and whether notification has been given to the landlord or agent.
14. Legal Representation may only be granted where the police have failed to provide assistance and it is reasonable in all the circumstances for the client to apply for an order.
15. Legal Representation will not be granted where the conduct complained of is trivial and unlikely to be repeated or the opponent is under an existing obligation not to molest e.g. is subject to bail conditions, is remanded in custody or is the subject of a restraining order in criminal proceedings under the Act (unless the obligation is likely to end imminently).
16. A warning letter must first be sent (unless the circumstances are such that this would be inappropriate) and the police should be notified. If the police fail to provide adequate assistance an application may be submitted.
17. Legal Representation is unlikely to be granted for enforcement proceedings unless the need for enforcement has been notified to the police and they have failed to provide adequate assistance having regard to their powers under the Act.

Defending Harassment Claims

18. Legal Representation is likely to be granted to a private landlord to defend proceedings where the tenant's allegations are answered in sufficient detail and the prospects of successfully defending the claim are at least moderate. A simple denial, without any further explanation, will not justify the grant of Legal Representation.
19. An application to defend proceedings will be refused if the matter could reasonably be dealt with by undertakings, for which representation is not considered necessary.
20. If within scope at all, see 19.2 above, such applications will be considered under the General Funding Code, not under section 10 of the Code.
21. Legal Representation is likely to be granted to allow a private landlord to pursue a counterclaim if the prospects of an order being made are at least moderate. Where the counterclaim consists of a financial remedy, Legal Representation will be refused if the cost benefit ratios in the General Funding Code are not met.

19.10 Homelessness**3C-165**

1. Judicial review in housing cases is considered under section 7 of the Code. This section expressly includes procedures under Part VII of the Housing Act 1996 (appeals on a point of law), as such cases fall to be determined on the basis of administrative law principles.
2. Legal Representation is likely to be granted to a client who is dissatisfied with a decision by the local housing authority to judicially review that decision where the prospects of success are moderate or above, or if the prospects are borderline and the case has significant wider public interest, raises significant human rights issues or overwhelming importance to the client. (See guidance in section 16 and paragraph 6(d) of Section 4.10.)
3. Legal Representation to judicially review will be refused where it is considered that in the circumstances of the case the appropriate remedy is to pursue an appeal on a point of law.
4. Examples of challengeable decisions are:
 - (a) the housing authority has unreasonably refused to extend the time (under Section 202) to apply for a review;
 - (b) two housing authorities are at odds e.g. as to local connection;
 - (c) the housing authority refuses to exercise the power to provide/continue to provide accommodation;
 - (d) the housing authority has simply failed to make a decision so the applicant cannot request a review, e.g. refuses to accept an application for accommodation;
 - (e) the applicant seeks to challenge the housing authority's allocation assessment or the legality of the housing authority's allocation scheme;
 - (f) the suitability of interim accommodation secured under section 188 is to be challenged;
 - (g) the applicant seeks to challenge an unlawful policy;
 - (h) a housing authority's decision to provide or withdraw accommodation or other related support or services under any statutory provision;
 - (i) the decision to terminate temporary accommodation following a request for review of the suitability of accommodation offered;
 - (j) failure to discharge the duty to protect property;
 - (k) failure to carry out a review.

Appeals to the County Court

5. Legal Representation to apply to extend the time limit for appealing or to appeal on a point of law may be granted where the prospects of success are moderate or above. (See guidance in section 16 and paragraph 6(d) of section 4.10). Any challenge to the suitability of a section 193 offer of accommodation should be by way of statutory review under section 202 (1) (f) and, if subsequently necessary, by appeal under section 204 as an appeal on a point of law rather than judicial review. The new power to extend the 21 day time limit for an appeal, where there is good reason for the delay, belongs by way of appeal to the County Court rather than to the High Court on judicial review.
6. Legal Representation is unlikely to be granted for the appeal where:
 - (a) the 21 day time limit has expired unless it can be argued that there is good reason for the delay,
 - (b) what is in issue is not a point of law but a difference of opinion or judgment between the housing authority and the client on the facts of the case.

3C-166

19.11 Miscellaneous Proceedings

Alleged Unlawful Occupiers

1. Alleged possession proceedings brought on the basis that the client is an unlawful occupier fall within section 10.3 of the Code and Legal Representation is likely to be granted where the client has a substantive defence or can show a triable issue which is likely to avoid the possession order e.g.:
 - (a) the client asserts that a tenancy or licence exists which has not been validly determined;
 - (b) there is an intermediate undetermined tenancy or licence;
 - (c) there is a procedural irregularity which amounts to a defence;
 - (d) it is alleged that the occupier has acquired possessory title (twelve years' adverse possession);
 - (e) the client asserts that he has been given a licence to remain by the Local Authority. Legal Representation will only be justified if that licence has secure status.

NB: In the event of Legal Representation being granted a limitation to the initial summary hearing will be imposed – it is at that point that the court will decide whether there is a triable issue and only if that issue is likely to succeed will Legal Representation be continued.
2. Legal Representation is likely to be refused (unless a defence can be raised by way of estoppel) where the occupiers are within the classes of excluded occupiers in S.3(A) Protection from Eviction Act 1977, namely:
 - (a) persons who have entered the premises as trespassers (and their status has not changed) and an interim possession order under the Criminal Justice and Public Order Act 1994 is sought;
 - (b) persons occupying hostels where the status of the occupancy is not in issue;
 - (c) persons who have shared essential living accommodation with the landlord throughout their occupancy;
 - (d) persons staying on in holiday lets when the holiday lease has expired and the status of the occupancy is not in issue;
 - (e) persons living rent free by agreement.
3. Where the dispute involving the alleged unlawful occupier does not relate to possession proceedings, the guidance for the particular issue should be followed. e.g. harassment or wrongful eviction where such allegations are made.

Mobile Homes

4. Where the mobile home is being occupied by the client as his or her own home and the proceedings relate either to possession or to the landlord's obligations, they fall within section 10 of the Code. Where however the proceedings relate to other issues, such as a refusal of agreement to sale, it will fall within the General Funding Code.
5. Legal Representation may be granted to an occupant of a mobile home where the client requires a declaration relating to utilities, changing of the pitch, or refusal of agreement to a sale.
6. Legal Representation is unlikely to be granted where the applicant is a person renting a mobile home and the only issue is that of non-payment of rent where there is no substantive defence to proceedings.
7. The criteria for Legal Representation are unlikely to be satisfied if the following details are not supplied with the application:
 - (a) an adequate statement of case setting out the issues clearly;
 - (b) a copy of the agreement if an agreement has been provided by the site owner;
 - (c) copies of any correspondence with the site owner;
 - (d) details of the breach of the agreement.
8. Where there is an alternative remedy such as the referral of an issue to the local authority it would not be reasonable for Legal Representation to be granted (Criterion 5.4.5).

Travellers

9. Legal Representation may be available for judicial review proceedings in relation to a local authority's decision, the facilities provided or for proceedings under the Mobile Homes Act.
10. Legal Representation is not available for any criminal or civil proceedings brought in the magistrates' court under the Criminal Justice and Public Order Act 1994.

Objections to a Lender's Costs

11. Such cases will fall within the General Funding Code. Legal Representation may be granted to cover attending the detailed assessment of the lender's solicitor's costs under Section 70 of the Solicitors Act 1974 but only in cases where the costs and the reduction to be achieved are considerable. (This will be determined under Criterion 5.7.3.).

Anti Social Behaviour Orders (ASBOs)

12. Such cases must be the subject of an amendment where existing proceedings are already publicly funded. The amendment is likely to be granted where it is in the interests of justice that the client should defend the application
13. If the existing proceedings, in which the ASBO is issued, are not, for whatever reason, publicly funded, certificates are likely to be issued solely for the ASBO application where it is in the interests of justice for representation to be provided. Representation will be refused if the allegations made are not sufficiently serious to justify representation, the prospects of success are poor or if mitigation at court is required and it is considered that Help at Court is more appropriate.

