

24. The Code Procedures

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24.1 Scope and Content of the Procedures

1. The Funding Code is divided into two distinct parts: Criteria and Procedures. This is because section 9 of the Access to Justice Act 1999 establishes different processes for amending parts of the Code, depending on whether criteria for funding are being amended. Amendments to Part 1 of the Code can only take effect in two ways:
 - (a) when approved by a resolution of each House of Parliament (section 9(6) of the Act);
 - (b) under the emergency procedure in section 9(7). This allows amendments to the Criteria to come into effect where the Lord Chancellor considers it desirable but such changes cease to have effect unless they are approved by each House of Parliament within 120 days of coming into force.
2. By contrast Part 2 of the Code, the Procedures, can be amended by being approved by the Lord Chancellor and laid before Parliament, without the need for a debate or Parliamentary approval.
3. Most of the guidance in sections 1 to 21 concentrates on the Code Criteria, referring to procedural matters where they are particularly relevant. This section gives an outline of the Procedures generally and, in particular, identifies those Procedures which are significantly different to equivalent procedures under the Legal Aid Act 1988.
4. Funding Code Procedures are important in that any application for funding may be refused if Code Procedures are not complied with (standard Criterion 4.8). Further, any failure to comply with Code Procedures which results in a loss to the fund may entitle the Commission to reduce remuneration; see Clauses 1.1, 7.4 and 18.2(b) Unified Contract Standard Terms.
5. Section 8(5) of the Act identifies the broad scope of Code Procedures. These may include provisions about the form and content of applications, conditions which must be satisfied by an individual applying for funding, appeals, and the giving of information and reasons to persons whose applications for funding are refused.
6. The Code Procedures are themselves divided into four separate parts:
 - (a) Part A is of general application to all services funded under the Code. It specifies the way in which each Level of Service under the Code will be provided – see section 2, in particular 2.2, of this guidance. Part A of the Procedures also deals with definitions and certain general rules, some of which are identified at paragraph 7 below.
 - (b) Part B deals with the Code Procedures relevant to Controlled Work. All the Procedures set out in Part B of the Code Procedures are contractual obligations contained in the Specifications of the Unified Civil and Criminal Contract. Guidance on those rules is therefore set out with the Specification in Volumes 2 and 4 of the LSC Manual and is not repeated in this Volume.
 - (c) Part C contains the Procedures for Certificated, i.e. Licensed Work and work under an Individual Case Contract unless the contract specifies otherwise (rule C26.2 of the Code Procedures). Part C is therefore the heart of the Procedures applicable to all certificated work and is discussed in more detail in sections 24.2 and 24.3 below.
 - (d) Part D of the Code Procedures deals with three miscellaneous subjects:
 - (i) Multi-Party Action Procedures – see the Commission’s MPA Procedures 2000 in Volume 1 of the LSC Manual and the second half of section 15 of this guidance;

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- (ii) Family Mediation – see sections 20.10 and 20.11 of this guidance;
 - (iii) Committee Procedures – these cover all committees including the MPA Committee and Public Interest Advisory Panel and deal with matters such as majority voting and quorum.
7. As stated above, Part A of the Code Procedures is of general application and the following points should be noted:
- (a) Rule A8 provides that the Commission is responsible for applying the Funding Code except to the extent that this is delegated by contract. This is relevant both where the Code Criteria contain an express discretion, and also where application of the Criteria requires a matter of judgment, such as an assessment of the prospects of success of a claim.
 - (b) Rule A8.2 allows the Commission to delegate either decisions or responsibility for decisions under the Code by contract. In relation to Controlled Work, the Commission delegates responsibility to the supplier for the initial decision about whether to fund services; the Commission will not be involved or substitute its own view for that of the supplier in the individual case. By contrast, for Certificated Work, the Commission devolves only the decision, not responsibility for the decision. Therefore when a solicitor grants an emergency certificate under devolved powers and reports that to the Commission, the Commission will take what further action it considers appropriate on the individual case, which may include imposing further limitations or withdrawing funding.
 - (c) Under Rule A9 all persons making decisions under the Code, whether employees of the Commission or suppliers acting under contract, must have regard to guidance issued by the Lord Chancellor and the Commission. Guidance therefore has a greater status under the Funding Code than was the case for guidance issued by the Legal Aid Board under the Legal Aid Act 1988.
 - (d) Rules A10 and A11 contain standard provisions allowing the Commission to extend time limits under the Code and dealing with service of documents. The Commission has a general power to specify the form of service for particular purposes (such as requiring standard application forms in writing for most applications). Documents served by the Commission by post or document exchange are deemed to be served two days after they were posted or left at the document exchange by the Commission, unless the contrary is proved (Rule A11.4). This is important in relation to time limits under the Code for a client to apply for decisions to be reviewed by the Commission or the Funding Review Committee.
 - (e) Throughout the Code the term “Solicitor” is used to describe the supplier of services under a certificate. However the Code Procedures, for convenience, define this to include any person who is an authorised litigator within the meaning of the Courts and Legal Services Act 1990. Therefore, as patent agents, employed barristers or other classes of professionals become authorised litigators within the meaning of that Act they will assume the same rights and responsibilities as solicitors under the Code.
 - (f) The definitions in A12 make it clear that the term “Levels of Service” in the Code includes sub-levels such as Investigative Help and Full Representation. For example, when rule C32 states that each certificate must specify the Level of Service covered by it, it means that a certificate for Legal Representation must state whether it covers Investigative Help or Full Representation.

24.2 Procedures for Certificated Work

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1. The procedures for Certificated Work in Part C cover all applications for Legal Representation, or Family Help (Higher) other than:

- (a) applications for Controlled Legal Representation (primarily Legal Representation before a Mental Health Review Tribunal, Immigration Judge or the Asylum and Immigration Tribunal);
 - (b) Legal Representation under an Individual Case Contract which disapplies any provision of Part C. For work under such contracts, the Procedures under Part C apply unless the contract says otherwise – rule C26.2).
2. The Procedures are based around the issue and administration of certificates granted by the Commission. In most respects the Procedures are self-explanatory or follow closely equivalent procedures for legal aid certificates under the Civil Legal Aid (General) Regulations 1989. The following guidance highlights certain significant points arising out of the Procedures.

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Applications

3. The Commission has a general power to nominate Regional Offices for particular purposes (rule C5). The London Office is nominated for dealing with clients who are not resident in England and Wales.
4. We publish a document entitled “Where Your Work is Processed” which specifies which offices deal with which forms and categories of case. This can be located on the Forms section of our website: www.legalservices.gov.uk. The addresses of our Regional Offices are included in that document and also set out in Volume 1 of the Manual.
5. Applications for certificates must be on the prescribed form. The main forms which must be submitted with relevant means forms, are:
 - (a) CLS APP1 for Legal Representation in non-family cases;
 - (b) CLS APP3 for Family Help (Higher) or for Legal Representation in Family Proceedings (other than Special Children Act Proceedings);
 - (c) CLS APP5 for Legal Representation in Special Children Act Proceedings;
 - (d) CLS APP6 Fax Emergency Application.
6. As from October 2007 there are no special rules for Special Children Act Proceedings in the Code Procedures, although new devolved powers are available – see section 20.26 of this guidance.

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Emergencies

7. Rules C11–C13 deal with emergency certificates – see section 12 of this guidance.

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Issue of Certificates

8. The rules for issue of certificates and contributions (C14–C18) differ in certain respects from those contained in the Legal Aid Regulations. In the Code Procedures the rules on service of notice of certificates and amendments have been changed. For example, there is no obligation to serve opponents with notice of amendment to a certificate unless the amendment is to change the level of service or the description of proceedings covered by the certificate (Rule C39.4). The general rule in the Procedures is that once proceedings are issued opponents are entitled to know of the existence of CLS certificate and the level of service and proceedings covered by it, but are not entitled to know any of the limitations or conditions on a certificate (rule C16.7).
9. Rules C16.2 and 16.3 deal with serving notice of the issue of certificates on other parties to proceedings. These rules have been amended for certificates issued from 2 April 2001. Previously the rules only required service on an opponent at the point of issue of proceedings. Rule C16.3 now requires notice of a certificate to be given when a funded client first notifies a potential opponent of the proposed claim. This

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covers not just formal letters before action but any notification of a potential claim, such as a request for information with a view to bringing one, whether under a pre-action protocol or otherwise. The aim of this change is to encourage greater openness in pre-issue correspondence within the spirit of the Civil Procedure Rules. This rule change does not apply directly to family proceedings although in general the Commission supports early disclosure of funding arrangements in family cases.

10. The power to request contributions from persons other than the client is contained in rule C18 (see the CLS (Financial) Regulations 2000, regulation 38(3)). It is wider than the power under the Legal Aid Regulations which only applied to persons with the “same interest” as the client. See further guidance at 5.5 and 9.14.

Refusals

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11. Rules C19 to C22 cover the procedures for refusal of applications. The Regional Office has a general duty to give reasons when applications are refused. Where an application is refused on the grounds of the availability of conditional fee agreements, the client will be able to obtain via CLS Direct general information about conditional fee agreements, in the form of a standard leaflet, together with details of firms in the area able to do conditional fee work. Where an application is refused on the grounds that alternatives exist to litigation, the supplier is responsible for ensuring that the client is aware of the alternatives and how to pursue them.
12. The Code Procedures establish wide general powers for the Commission to review its own decisions, usually by the client applying to the Regional Office to have the decision reviewed within 14 days of service of notice of the decision (see rule C21 for applications, rule C40 for amendments and rule C57 for discharge and revocation). See section 24.3 below for the jurisdiction of the Adjudicator.

Referral to Special Cases Unit

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13. The referral procedures are at rules C23–C26. See further guidance in section 15.

Referral to Family Mediation

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14. The detailed rules as to when a client must attend a meeting with a mediator prior to receiving a certificate for General Family Help or Legal Representation in family proceedings are contained in rules C27 to C29. See guidance at 20.11.

Abuse of the Scheme

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15. As under the Legal Aid Regulations, the Commission has power to make a prohibitory direction preventing clients who have abused the scheme from obtaining certificates in the future. This power will be exercised sparingly and only in relation to those clients who have made numerous unsuccessful applications for funding such that their conduct amounts to an abuse of the scheme. The procedures are set out at rules C30 and C31.

Form of Certificates

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16. The contents of the certificate, and any amendments, are conclusive. A certificate covering representation in proceedings covers all usual steps in proceedings of that type, including interim or interlocutory applications (see also sub-paragraph 20 below and paragraphs 20.26 onwards regarding the scope of certificates of Legal Representation in family proceedings). On assessment of costs, save where representation is pursuant to a contract, it is the only authority for the Commission to

pay the solicitor and counsel and the solicitor/counsel should check the extent of the cover. Rule C32 requires each certificate to state the level of service under the Funding Code covered by the certificate. A certificate can never cover more than one level of service at any one time. Rule C34 provides that a certificate may be amended from one level of service to another in only two specific situations:

- (a) when a certificate for Investigative Help is extended to Full Representation;
- (b) when a certificate for General Family Help is extended to Legal Representation in Family Proceedings.

17. Note that a certificate for Help with Mediation cannot be amended to a certificate for General Family Help or Legal Representation. Nor may a certificate for Investigative Support be amended to a certificate for Litigation Support. Furthermore, devolved powers under the Commission's contracts do not extend to amending a certificate to cover a new level of service where permitted under (a) or (b) above.
18. Rule C33 establishes the Commission's general power to place limitations and conditions on certificates. Limitations define what work can be carried out under the certificate. Conditions impose obligations on the solicitor or client to do something, such as reporting to the Commission in specified circumstances. Every certificate under the Funding Code contains a cost limitation specifying the maximum amount of costs (including any uplift or enhancement but excluding VAT) which may be incurred under the certificate.
19. Rule C35 contains the general rule that a certificate normally covers only one set of proceedings, but unlike the equivalent rule under the Legal Aid Regulations, there are now two exceptions to this:
 - (a) where the certificate relates to Family Proceedings. Rule C35.1(i) does not require the issue of a single certificate and the Director will exercise discretion in issuing or amending a single certificate;
 - (b) where the Director considers that two or more sets of proceedings are so closely related that they could be covered under a single certificate – an example might be where proceedings are taken to restore a company to the Register before going on to bring the substantive action.

The Director will usually issue a single certificate or amend an existing certificate where the client is involved in more than one set of family proceedings arising from the same relationship and between the same partners. However, proceedings which fall to be considered on different bases (for example means and/or merits tested as against non-means and/or non-merits tested) will be dealt with under separate certificates.

Where a certificate covers more than one set of proceedings it will set out for each of the proceedings covered a scope limitation on the work authorised as well as a costs limitation on the costs to be incurred. Solicitors will only have cover to carry out work up to the relevant costs limitation imposed. (See Volume 1, Part D, Section 3 paragraphs 39–40).

20. Rule C35 also lists certain matters which cannot be undertaken under a certificate unless expressly authorised, either by an amendment to the certificate or a prior authority. The following matters require such express authorisation:
 - (a) bringing any form of appeal (C35.2);
 - (b) defending any appeal, other than an interim appeal (C35.2);
 - (c) services in relation to arbitration, either preparation for arbitration or the fees of an arbitrator, although advice in relation to the scope and consequences may be provided (C35.3);
 - (d) enforcement action following a judgment (C35.4);
 - (e) representation by an EU lawyer (C35.5);
 - (f) references to the Court of Justice of the European Community in Luxembourg for a preliminary ruling (C35.5).

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21. Authority may still be needed to incur certain specific costs, if the solicitor and counsel are to be sure of payment out of the Fund (see guidance on prior authorities in Volume 1 of the Manual).
22. A certificate limited to counsel's opinion will cover the costs of preparatory work necessary to refer the matter to counsel and a pre-opinion conference with counsel (if necessary) but will only cover one written opinion from counsel and will only cover settling pleadings where this is specified. Generally certificates will treat solicitors with higher court advocacy rights in the same way as counsel for the purpose of providing opinions. However, a certificate which specifically requires a solicitor's report or opinion does not extend to obtaining an opinion from external counsel or a solicitor with higher court advocacy rights – what is required is a report or opinion from the acting solicitor.
23. The certificate will specify both an individual solicitor to act for the client and a firm of solicitors/organisation. If there is a change of firm/organisation (although the same individual solicitor continues to be nominated), an amendment of the certificate should be applied for. However, the solicitor can entrust the conduct of the case to a partner of his or to a competent and responsible representative of his who is either employed in the same office or otherwise under his immediate supervision (C2.2). The solicitor must hold a valid practising certificate if profit costs are to be paid out of the Fund (otherwise only disbursements, including any counsel's fees, will be paid in respect of the uncertificated period).
24. In general, grants of funding are not retrospective. Work done prior to the date a certificate is granted will not be covered by the certificate except in the following cases:
 - (a) Work done in Special Children Act proceedings which is carried out prior to the certificate will be covered provided the application for the certificate was made at the first available opportunity and within three days of receiving instructions (see Rule C7 and section 20.12 of this guidance).
 - (b) Where work is done in certain judicial review or statutory review proceedings and the court subsequently grants permission for the judicial review to proceed or grants the statutory review, the Director may backdate the certificate to cover the work (C21 and 65). This power is most relevant to immigration matters. Guidance on its use is at section 29.
25. Generally if the wording is incorrect or not in accordance with the needs of the client it will affect:
 - (a) Solicitor and counsel, who will not get paid for work outside scope;
 - (b) The client who might not be funded for all that is necessary and who may become vulnerable to a personal claim for costs by the other party;
 - (c) A successful opposing party who might not be able to claim costs against the Commission.

Forum

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26. Where a certificate specifies the forum for proceedings then that forum must generally be used (but see below). Where a certificate is silent, proceedings may be taken either in a family proceedings court, county court or the High Court. Solicitors must, however, exercise great care in the decisions made as to forum in view of the possible penalties on costs assessment (and hardship to the client/prejudice to the Fund).
27. Where a certificate specifies proceedings in a county court it will not, unless amended, cover proceedings after a transfer to the High Court. If the client wishes to transfer the proceedings to the High Court then an application for an amendment must be made. If an application for transfer is made by any other party an application for the amendment of the certificate should be made immediately after the order

transferring the proceedings. In the absence of an amendment the certificate will not cover any subsequent work.

28. No amendment is required on a transfer of proceedings from a county court to the High Court where the certificate does not specify a particular court. Nor is an amendment required where the certificate specifies proceedings in the High Court and the proceedings are transferred down to a county court.
29. Certificates covering private law proceedings under the Children Act 1989 may contain a condition as to the court in which proceedings are to be commenced. Certificates covering proceedings under Part IV Family Law Act 1996 do not contain a condition as to forum.

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Amendments

30. The rules on amendments are at C36 to C40. The Commission has a wide general power to amend certificates as required. Guidance on solicitors granting amendments under devolved powers is at section 24.4 below. Most amendments relate to either the limitations or conditions on a certificate or to the parties to proceedings. However the description of funding can also be amended. As under the legal aid scheme, amendments are generally not retrospective. An amendment therefore only authorises work as from the date of the amendment. The three limited exceptions to this are:
 - (a) where the amendment is correcting a mistake in the certificate, i.e. where the certificate did not accurately reflect the funding which the Commission intended to provide. Such an amendment takes effect from such date as the Director specifies, usually the date the mistaken wording first appeared;
 - (b) where the identity of the solicitor or any change of address is amended on the certificate. Again, the amendment takes effect from the date specified by the Director, but unless there are exceptional circumstances the amendment will take effect from the date it is made;
 - (c) when a new costs limitation is imposed it generally supersedes any earlier costs limitations and takes effect from the date of grant of the certificate unless otherwise specified.
31. The Director may amend a certificate either following an application do so made on behalf of a client on a form approved by the Commission – CLS APP8 – or otherwise as he or she thinks fit (C36).
32. A solicitor authorised to do so under a contract may amend the certificate and notify the Director of any amendment, again on a form approved by the Commission – CLS APP8. Notification must be given as soon as possible and, in any event, not later than 5 working days after the decision to amend (C.37.1 and 2).
33. Where a client is dissatisfied with the solicitor's decision, the solicitor will apply to the Director to amend the certificate, again on the approved form CLS APP8 (C.37.3).
34. Where a Director amends a certificate he or she sends the amended certificate to the solicitor and a copy to the client. If the certificate covers proceedings which have commenced, the solicitor must send a copy to the court (C39.2).
35. Where the certificate covers proceedings which are in existence and the amendment to the certificate affects the description of the proceedings, the level of service covered or whether the certificate extends to bringing or defending any appeal, the solicitor must forthwith notify all other parties to the proceedings that that is the case. This means that the solicitor must give notice of such amendments but not of amendments to the limitation, including costs limitation. There is an exception where the Director notifies the solicitor that it is not necessary or appropriate to give notice to all parties (C39.4), e.g. in a multi party action.
36. The amendment will not be granted unless the regional office has all the information needed to consider the application. An application for an amendment is generally

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subject to the same criteria as an initial application for funding although this will not always be the case regarding appeals.

Review of Refusal of an Amendment

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37. 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 14 days of receiving notice of the amendment or the decision not to amend the certificate, apply to the Director for a review on the approved form. Note that the right of review covers all amendment decisions, not just refusals to amend a limitation (as was the case under the legal aid regulations).
38. The client may make written representations in support of the application for a review (C40.1). The Director may, after considering the client's representations, amend the certificate.
39. Where a review is not resolved to the satisfaction of the client by the Director, the Adjudicator reviews the decision, although it has no power to review a decision to amend or not to amend an emergency certificate (C40.2 to 40.4). Where a review by the Director is not concluded in the client's favour the matter is referred to the Adjudicator without any need for the client or his solicitor to take any further action.
40. There is generally no right of attendance before the Adjudicator.

What Happens on a Change of Solicitor?

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41. No application for an amendment is necessary if the change of solicitor is within the same firm/organisation as this is treated as a delegation of the case provided the nominated solicitor holds a valid practising certificate and remains with the firm/organisation. If there is to be a change of firm/organisation even if the nominated solicitor stays the same, an application should be made for amendment.
42. The application will be made by the new solicitor and the standard form of application for an amendment (CLS APP8) which includes information as to the costs and merits of the case must be used. The reason(s) for the proposed change must be made clear in the application.
43. In dealing with an amendment request, including to a certificate of Emergency Representation, the regional office will consider the reason(s) for the change as well as all the circumstances of the particular case. The Funding Code Criteria are reapplied and the reasonableness of the proposed change considered. Factors relevant to the application are the work which has been done, the scope of the certificate and the work remaining to be done, so as to balance the reason(s) put forward for the change and any likely increase in costs.
44. An amendment is likely to be granted where:
 - (a) No or only minimal costs have been incurred under the certificate, or the application is made before a certificate has been issued;
 - (b) The change request follows a change of address by the client such that it would no longer be reasonable for him to continue to instruct the existing solicitor (having regard to the necessary personal attendances);
 - (c) The change is based on a conflict of interest – between the existing solicitor and client or between clients – sufficient to justify separate representation other than by the existing solicitor;
 - (d) The change is based on a change of firm by the existing solicitor unless the case falls in one of the categories that are restricted to contracted firms (family, immigration, clinical negligence or personal injury) and the existing solicitor is moving to a non contracted firm; or
 - (e) The amendment applied for is by a child to their own certificate in a public law Children Act case involving a guardian and the court has sanctioned the

proposed change. If it is not clear that the court has sanctioned the change, the amendment will be refused. This is because it is appropriate for the court to consider the position, having regard to the involvement of a guardian to protect the child's interests.

45. An amendment is likely to be refused where:
 - (a) The current funding is narrowly defined either because it covers only Investigative Help or Investigative Support or because the certificate is limited to certain, specified and usually preparatory steps (e.g. to obtain an expert's report, solicitor's report and/or external counsel's opinion on the merits). This is because where only limited, preliminary work is covered, the increase in costs arising from a change is unlikely to be justified until that work has been done;
 - (b) There has been a previous change of solicitor amendment in the same matter. The greater the number of requests, the less likely the amendment is to be granted;
 - (c) The stage reached in the proceedings is such that most of the necessary work has been undertaken and the likely increase in costs would be significant, e.g. the remaining work is to deal with a fully contested final hearing (even where the application is made shortly before trial or final hearing); or
 - (d) In cases of client dissatisfaction with the conduct of the case and/or of the solicitor, no complaint has been made under the solicitor's complaints procedure under Practice Rule 15.
46. An amendment will be refused where the change requested is to instruct a non contracted firm and the case falls in one of the categories that are restricted to contracted firms (family, immigration, clinical negligence or other personal injury).
47. If the existing solicitor is no longer prepared to represent the client the reason(s) for that are relevant and where appropriate the regional office will institute the show cause procedure, rather than amend the certificate. The solicitor/client relationship is one requiring mutual trust. When that relationship has broken down, the costs involved in conducting even straightforward cases could rise sharply as each step along the way becomes fraught with difficulties. On the other hand, the costs of duplicating work which are likely to arise from a change of solicitor should only be incurred, and an amendment granted, where this is objectively justified.
48. The request for a transfer may arise where the client does not want to accept the solicitor's reasonable advice. The solicitor has to consider whether unreasonable use is being made of the certificate. Where circumstances suggest this to be the case, an amendment will be refused.
49. If the amendment is refused, the show cause procedure may be instituted. This may be because the Funding Code Criteria appear to be no longer satisfied, or because it appears from the amendment request that the funded client has required the proceedings to be conducted unreasonably so as to incur an unjustifiable expense to the Fund, has unreasonably required proceedings to be continued (see Procedures C.53.4) or under Criterion 15.3 if in all the circumstances it was unreasonable for funding to continue.
50. Even where the amendment is granted, it may be appropriate to restrict the scope of the certificate more tightly than was previously the case. This may reflect the current costs or merits of the case or may be to obtain a report from the new solicitor on costs or merits or particular aspects of the case, so that the continuation of the certificate itself can be further considered. In the event of a report being required from the new solicitor under the amended certificate, the regional office will then specify an appropriate time period for its provision, usually two months. If a report is not received the regional office will reconsider the continuation of the certificate having regard to Section 15 of the Funding Code.

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51. Any lien for pre-certificate costs and disbursements is protected by Regulation 22(5) Community Legal Service (Costs) Regulations 2000.

Funding for Appeals

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52. Generally, if a litigant is unsuccessful in proceedings he or she can apply for funding for an appeal. Bringing or defending an appeal will, however, only be covered where this is specified on the certificate or approved by the Director (by way of an amendment), although no approval is required to defend an interim appeal (C35.2).
53. Where a certificate is amended to cover an appeal whether a certificate extends to bringing or defending an appeal, notice must be given to all other parties to the proceedings forthwith that that is the case (C39.4).
54. An application for an amendment should be made to the regional office as soon as possible in the light of the time limits for appealing and the general principle that appeals should be heard as quickly as possible. Any amendment will not operate retrospectively.
55. The Court of Appeal has previously indicated that, where the liberty of the subject is involved and the solicitor considers that there are grounds for appeal, he or she should lodge the notice of appeal in accordance with the time limits despite the absence of legal aid (*Jordan v. Jordan* (1992) *The Times*, June 22). The solicitor should apply promptly for an amendment or certificate and, if justified, an urgent amendment or certificate can be granted, limited, if appropriate, to putting in the notice of appeal, applying for any necessary stay of execution and obtaining an opinion.
56. In any event, prompt notification should be given to the other party/parties intending to appeal and of the fact that application is being made immediately, either for a certificate or for an amendment. In giving such notification the other party or parties should be asked if they will consent to an extension of time (but see also *Jordan v. Jordan* above).
57. Defending an interim appeal is regarded as being included within the scope of the certificate and no application to amend the certificate is necessary. Note, however, that an order for ancillary relief including in the Family Division is not interlocutory/interim and therefore a specific amendment is required both to bring or defend an appeal against such an order.
58. Appeals to the Court of Appeal are governed by CPR Part 52. Under Part 52 permission to appeal is required for all appeals except for certain appeals concerning the liberty of the client (see CPR 52.3). The Court of Appeal will initially consider applications for permission to appeal on the papers. If permission is refused on the papers in a CLS funded case, paragraph 4.17 of the practice direction under Part 52 requires the appellant immediately to send a copy of the reasons given by the Court of Appeal to the regional office. The Commission's approach to funding appeals covered by Part 52 is as follows:
- (a) extensions to certificates to cover appeals to the Court of Appeal which require permission will generally be limited to the application for permission on the papers only. The standard limitation for this is APL07;
 - (b) if application for permission is refused on the papers and the client wishes the application to be reconsidered at an oral hearing, the solicitor must apply to the regional office to extend the certificate for this purpose. Such an extension cannot be granted under Devolved Powers;
 - (c) such applications for funding must be accompanied by:
 - (i) a transcript or note of the decision being appealed;
 - (ii) the Court of Appeal's written reasons for refusing permission on the papers;

- (iii) an explanation from the solicitors, or counsel's opinion, explaining why funding should nevertheless be extended.
- (d) because of the time limits under Part 52 applications to extend certificates for appeals may be made on an emergency basis. Applications must be made by post or fax and will usually be dealt with within 24 hours of receipt. It is not appropriate for extensions to be given by telephone as the regional office will require sight of the information referred to above. Note that the key time limits are 15 days from the decision appealed against to file a notice of appeal, and 7 days after notice that permission has been refused on the papers to file a request for an oral hearing.
- (e) Where funding for an appeal is refused by the regional office and an appeal is made to the Independent Funding Adjudicator it is unlikely to be possible to arrange for the Adjudicator to consider the review within the Court of Appeal's time limits. In such cases application must be made to the court to extend the time limits for appealing. If the certificate is still in force an emergency application may be made to the regional office to amend the certificate to cover the application to extend time.
- (f) Note that when considering the Funding Code prospects of success criterion for funding an appeal, the issue for the regional office is the ultimate prospect of the appeal being successful, not merely the prospect of permission being granted. Therefore even if there are reasonable prospects of obtaining permission, funding will be refused if overall the prospects of ultimate success in the appeal are poor. Note also that the grounds for appealing are particularly limited in the case of "second appeals" i.e. where there has already been an appeal from a District Judge or High Court Judge. In those cases permission will only be given where the Court of Appeal is satisfied that there is an important point of principle or practice or there is some other compelling reason (see CPR 52.13(2)).

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Appeals to the House of Lords

- 59. Under the Funding Code an existing certificate can be amended to appeal to the House of Lords. Where appropriate the amendment will be limited to obtaining an opinion from counsel who conducted the case in the Court of Appeal (whether leading counsel or not).
- 60. To ensure consistency and to reflect the House of Lords Practice Directions the following standard wordings will be used as far as possible:
 - (a) To petition the House of Lords for permission to appeal the judgment of the Court of Appeal and, if successful, thereafter to prosecute the appeal in the case between the funded client/assisted person and the opponent.
 - (b) To obtain for consideration by the regional office counsel's written opinion on the merits of an appeal to the House of Lords against the judgment of the Court of Appeal; if junior external counsel or an external solicitor with higher court advocacy rights so advises he may settle the petition for permission; leading counsel may not settle the petition and may only be instructed to advise where he conducted the appeal hearing in the Court of Appeal in the case between the funded client/assisted person and the opponent.
- 61. Wording (a) is to be used where the regional office is satisfied as to the merits of the appeal without the need for an opinion to be obtained and wording (b) is to be used where an opinion is to be obtained to satisfy the regional office as to the justification for funding an appeal.
- 62. Wording (b) permits junior counsel to settle the petition but only allows leading counsel to be instructed (to advise but not settle the petition) where he conducted the

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appeal hearing in the Court of Appeal. Wordings in the same terms will be used for appeals from the Divisional Court.

63. Where a favourable opinion is obtained following the use of wording (b) then the certificate may be amended to delete that wording and substitute wording (a). Wording (b) may cover a conference or consultation but this will need to be justified on costs assessment. In the House of Lords such costs are only exceptionally considered to be justified at the permission stage.

Appeals to the Employment Appeal Tribunal

3C-252

64. The time for appeal is 42 days from the date when the extended written reasons for the decision or order of the Employment Tribunal were sent to the appellant, or, in the case of an appeal from a decision of the certification officer, 42 days from the date on which the written record of the decision was sent. Every notice of appeal sent out of time must be accompanied by a written application for an extension of time setting out the reason for the delay. An application for an extension of time cannot be considered until a notice of appeal has been presented.
65. It is not necessarily a good reason for delay in appealing that funding has been applied for, but not yet determined. In any case of doubt or difficulty, a notice of appeal should be served in time and an application made for directions.

Representations

3C-253

66. Although representations from opponents were an important part of the legal aid scheme, the procedures for doing so were not fully covered by the Legal Aid Regulations. Rule C41 of the Code Procedures covers representations. It establishes a general right for opponents and other persons to make representations and also a power for the Director to inform a potential opponent of an application and to invite representations.
67. The general rule is that representations will be disclosed to the client in whose case they have been made. If representations are received from a legal representative, these will automatically be sent to the client and there will be no separate procedure of asking the person making the representation whether they consent to disclosure. If representations are made by a person who is not a legal representative, the Director will not usually disclose the actual representations to the client without the permission of the person making the representations to do so, although the substance may be disclosed without consent if this can be done without revealing that person's identity.
68. Rule C41.8 provides that the Commission is under no obligation to consider representations in relation to cases which are not actively being pursued, for example individual cases which are stayed pending the outcome of a test case or lead issue in a multi-party action.
69. A person making representations will be informed of the outcome of the Commission's investigations, but the Commission is not obliged to do so until a final decision has been made following any review by the Adjudicator or until the time for applying for such a review has expired (C41.9).

Reporting Obligations

3C-254

70. Rule C42 places direct obligations on the client to respond to requests for information from the Commission or to attend a meeting where requested to do so. The client is also under an obligation to ensure that the Director is informed of changes to his or her financial circumstances. In addition, the client must inform his or her solicitor of any other change in his or her circumstances or the circumstances of the case which

might affect the terms or continuation of the certificate. These obligations under rule C42, and similar obligations under rule C6.5, are personal obligations of the client, in contrast to most obligations under the Procedures which may be undertaken directly by the solicitor (Rules C2.3 and C2.4).

71. Rule C44 places obligations on all legal representatives carrying out work under a certificate, whether or not they are the solicitor nominated on the certificate. For example, counsel instructed in a case must ensure that the Director is informed if it appears to him or her that new information or a change of circumstances has come to light which may affect the terms of continuation of the certificate. Counsel may either contact the Regional Office directly (copying any papers to the solicitor) or may do so through the solicitor if appropriate.
72. Rule C43 places additional obligations on the solicitor acting for the client, in particular obligations to report to the Director in certain circumstances. This includes obligations to report the fact that the client has declined to accept an offer to mediate or refer an issue to Early Neutral Evaluation or to participate in an Alternative Dispute Resolution scheme specified by the Commission under rule C43 (however, there are currently no schemes specified under this rule).
73. The solicitor is also required to report if the client has declined to accept any Offer to Settle or Payment into Court (whether or not the solicitor considers these to be reasonable). Other offers of settlement need only be reported if the solicitor considers them to be reasonable, but if there is any doubt the solicitor should report. As with other obligations under the Code, failure to comply with the reporting obligations in section 12 of the Code Procedures which results in a loss to the fund may lead to the fund's loss being recouped from the solicitor.
74. The powers to reduce or recoup costs following breach of the Code arise from Clauses 1.1, 7.4 and 18.2(b) of the Unified Civil Contract Standard Terms in relation to Controlled or Licensed Work. In relation to Non-Contracted Work (certain certificates issued prior to 2 April 2001), deferment may be made under Regulation 102 of the Civil Legal Aid (General) Regulations 1989, which applies to breaches of the Code by virtue of Article 2(4)(f) and Article 4 of the Community Legal Service Funding Order 2000.
75. In general a solicitor must notify the Director where a certificate is issued to an opponent of the client in the proceedings. This enables the Director to reconsider whether it is cost effective for funding to continue. With effect from 2 April 2001 the reporting obligation no longer applies to family proceedings other than proceedings considered under Section 11.12 of the Code (financial provision and other proceedings). This change avoids unnecessary reports to the Regional Office especially in domestic violence cases and public and private children disputes where the issue of a certificate to the other party is unlikely to be important in deciding whether funding should continue.
76. The reporting obligations under the Code Procedures should be seen in the context of a more general obligation on the solicitor and any legal representative acting under a certificate to keep the merits of cases under review especially at key stages, at least to the same extent as would be true of a private case. Merits must be regularly reviewed to ensure that the general reporting obligations under rule C44 are complied with.

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Decisions of Principle

77. Rule C46.1 establishes the Commission's power to require a client to agree not to settle proceedings with a wider public interest without the consent of the Commission – see section 5.7 of this guidance. Rule 46 also establishes the Commission's power to make decisions of principle which will take effect in relation to all cases affected by them – see section 15.12 of this guidance.

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78. Rule C47 deals with the Commission's power to refer public interest issues to the Public Interest Advisory Panel – see section 5.6 of this guidance.

Support Funding

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79. Rules C48 to C51 deal with the procedure for Support Funding – see section 14 of this guidance.

Withdrawal of Funding

3C-257

80. A certificate may be brought to an end either by being discharged or revoked. The consequences of discharge and revocation are set out in Rule C51, regulations and section 13 of this guidance, which also goes through the grounds and approach to withdrawal of funding. Generally the grounds for discharge and revocation of certificates are similar to those which applied under the legal aid regulations. However, the power to discharge or revoke on the grounds of the client's conduct is more straightforward than under the legal aid regulations. A Funding Code certificate may be discharged or revoked (and the normal consequence will be revocation in cases involving dishonesty or serious non-disclosure) if:
- (a) 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 the Code Procedures or Regulations (such as obligations under rules C6.5 or C42);
 - (b) 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.
81. The Director has general powers to review any discharge or revocation other than discharges following the death of the client, consent of the client or when all work has been completed. This means that the Director can review a discharge or revocation on financial grounds or the revocation or discharge of an emergency certificate, although in those circumstances there is no further right of review to the Adjudicator.

Embargoes Pending Withdrawal of Funding

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82. When a "show cause" letter is issued stating that we are considering discharging or revoking a certificate the letter will generally contain an embargo stating that no further work may be carried out under the certificate without the prior approval of the regional office. This form of embargo does not prohibit the solicitor doing necessary work in responding to the show cause letter, but obtaining counsel's opinion or gathering any further evidence is not permitted without the prior approval of the office. For certificates issued under the Legal Aid Act 1988 the embargo is issued under Regulation 81 of the Civil Legal Aid (General) Regulations 1989, as amended and for certificates issued under the Funding Code the embargo operates under Rule C55.3 of the Funding Code Procedures. These provisions, which apply from April 2002, were introduced in response to the Court of Appeal decision of *Machi v LSC*, 20 December 2001.
83. When an embargo has been imposed, application may be made by letter, fax or telephone to the regional office for authority to carry out further work. As a general rule authority will only be given if it is urgent for further work to be carried out to protect the client's position. The regional office is unlikely to grant authority if it considers that rather than authorising work the client's position can be protected by arranging for a shortened show cause period and expediting any appeal against discharge or revocation to the Adjudicator.

84. There will however be some cases where a hearing is imminent and there is no time to complete the show cause or appeal procedure. This typically arises where a settlement offer is made just before trial or new information such as a counsel's opinion on the merits has just come to light. In those circumstances we will generally authorise only a written or oral application to adjourn the hearing. However the office will consider arguments for substantive funding of the hearing and will take into account the interests of the client, the likelihood of funding ultimately being continued, the length of the hearing and the risk to the fund. We are more likely to agree to fund the hearing if it is listed for no more than two days, if there is a real prospect of funding ultimately being approved on the merits by the regional office or Adjudicator, or where the risk to the fund of continuing is small (for example because the risk of proceeding with the hearing relates only to costs and the fund is likely to be protected through the operation of the statutory charge).

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24.3 Independent Funding Adjudicators (“Adjudicators”)

1. Adjudicators are drawn from a panel of independent solicitors and barristers who have an important function under the Code Procedures of reviewing certain decisions by the Regional Office. The appointment of Adjudicators is governed by the Legal Services Commission Review Panel Arrangements 2000 (as amended). The Arrangements, are contained in Volume 1 of the LSC Manual.
2. The jurisdiction of the Adjudicators under the Code arises only after a decision has been reviewed by the Regional Office. The Adjudicator may review four types of decision:
 - (a) refusals of a certificate, or where the client is dissatisfied with the terms on which an offer is made or a certificate issued (rule C22);
 - (b) decision to amend or not to amend a certificate (rule C40);
 - (c) discharge or revocation of a certificate (rule C58).
 - (d) a decision of the Special Cases Unit not to authorize an Exceptional Case Contract (rule C26.7 – see Section 15.14 of this guidance).

Note that the Adjudicator has no jurisdiction in relation to emergency certificates or decisions based on financial conditions.
3. The jurisdiction of the Adjudicator is very different from that of legal aid Area Committees. The Adjudicator exercises a review jurisdiction and has the power either to uphold the Director's decision or to grant the review and refer the matter back to the Director for reconsideration. The Adjudicator has no general power to substitute his view for that of the Director. Instead the Adjudicator only has power to make a final determination and substitute his view for that of the Director in relation to four specific issues set out in rule C61.1. These are:
 - (a) prospects of success;
 - (b) whether a case is of overwhelming importance to the client;
 - (c) cost benefit for the client (for the avoidance of doubt this excludes considerations of whether the case has a significant wider public interest – it also excludes consideration of the cost benefit for the CLS Fund;
 - (d) whether a certificate should be discharged or revoked on the grounds of the conduct of the client under Rule C53 – this in particular covers discharge and revocation for non-disclosure of information by the client.
4. The approach of the Adjudicator will therefore be to consider in any review before him whether any of the above issues arise. If they do, the Adjudicator will consider any representations on behalf of the client in relation to those issues and will determine them. If the Adjudicator refers the matter back to the Director, he or she will be bound by the determination of those issues.
5. When determining issues under Rule C61.1, the Adjudicator will of course be bound by the terms of the Funding Code and should have regard to the Funding Code

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Guidance. Once the Adjudicator has exercised his discretion to determine what the prospects of success and likely costs to disposal are in a particular case, they will be bound to apply the Code Criteria in the light of those determinations. Thus, for example, in relation to a claim primarily for damages by the client which does not have a significant wider public interest, the Adjudicator will be bound by the cost benefit matrix set out in Criterion 5.7.3. Equally, in considering whether a matter is of overwhelming importance to a particular client, the Adjudicator has only to consider whether the case will fall within the Funding Code definition of overwhelming importance, not whether the client subjectively considers the case as of overwhelming importance to him or her.

6. In practice, the most important issues under C61.1 will be merits and cost benefit. The Adjudicator should normally consider both issues since these are inter-related to some degree. For example, even if the original refusal was based on the merits alone, if the Adjudicator reaches a different decision from the Director and decides that the appropriate merits criterion is met, he should then go on to decide whether the relevant cost benefit criterion is also satisfied. This is so the Director will have the benefit of the Adjudicator's determination on both issues when re-taking his or her decision.
7. In relation to all other issues, the function of the Adjudicator is simply to determine whether the Director has acted in accordance with the Code and Regulations and whether the decision was one which no reasonable Director could have made. This jurisdiction is therefore very much like a court on judicial review deciding whether a decision was lawfully made or was perverse or unreasonable in the *Wednesbury* sense, where the court is otherwise not considering the merits of the decision made.
8. After exercising this jurisdiction, the Adjudicator will either uphold the Director's decision and confirm that with reasons to the client or will refer the decision back to the Director, again with reasons. In many cases it may be that the Director has acted properly or reasonably on the basis of the information that was then available, but further information may have become available before the Adjudicator. In those circumstances the Adjudicator may, although he should not set aside the Director's decision under Rule C62.3, refer the further information back to the Director who will then reconsider the matter.
9. When cases are referred back to the Director, they will be reconsidered in the light of any determination of the issues listed at paragraph 3 above. The Director will also take into account any new information or changes to the law which have taken place since the Adjudication. The Commission will always seek to ensure that reconsiderations take place with the minimum of delay. In some cases where the way forward is clear, it will be possible for the decision to be formally made immediately after consideration by the Adjudicator.
10. Further guidance on the jurisdiction and administration of the review process is contained in the Commission's Appeals Manual which is available on the Commission's website.

24.4 Devolved Powers to amend Substantive Certificates

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1. Paragraph 4.5 of the Unified Contract Civil Contract Specification gives SQM holders a devolved power to amend or refuse to amend a limitation on a substantive certificate, in accordance with guidance. The following guidance describes the scope and procedure of this devolved power. Note however that many of the restrictions below do not apply to the devolved power in relation to appeals to the Court of Appeal, as described at paragraph 24 below.
2. The devolved power only applies in categories where you are a Franchisee and does not extend to amending certificates for any level of help other than Legal Representation. It may be exercised in relation to certificates for Investigative Help or

Full Representation. However an Investigative Help certificate cannot be amended to cover Full Representation using the devolved power. In those circumstances an application to amend must be made to the Commission.

3. The devolved power applies to all case types with the exception of the following:
 - (a) cases where total costs including counsel's fees and disbursements, but excluding any VAT, already exceed or are likely to exceed £10,000 including very high cost cases and all other cases referred to the Special Cases Unit;
 - (b) multi-party actions;
 - (c) clinical negligence actions;
 - (d) judicial review applications;
 - (e) cases where funding is granted on the grounds that the case has a significant wider public interest or raises significant issues of human rights;
 - (f) cases going forward on appeal, whether from a final or interlocutory decision of a court, tribunal or other judicial body, including an appeal to the Court of Appeal from a finding of the Social Security Commissioners. Appeals against local authority decisions regarding homelessness under the Housing Act 1996 are not excluded;
 - (g) enforcement proceedings consequent upon judgment or order (including committal) whether final or interlocutory;
 - (h) amendments to enable an application for a freezing order or a search order to be made.
4. In family cases, in addition to the above restrictions, franchisees can only amend certificates granted in the following proceedings:
 - (a) Section 17 Married Women's Property Act 1882.
 - (b) Trusts of Land and the Appointment of Trustees Act 1996.
 - (c) Applications relating to finances/property under the Domestic Proceedings in Magistrates' Court Act 1988.
 - (d) Children Act 1989.
 - (e) financial relief ancillary to divorce, judicial separation or nullity.

Amendment Type

5. The devolved power is further restricted in that it only enables the amendment of a certificate that contains the limitations set out below. Broadly, these are limitations where there is a requirement to:
 - (a) obtain counsel's opinion, or
 - (b) provide a solicitor's report or, in the alternative, to obtain counsel's opinion.Solicitor's report in this context means a report from the conducting solicitor. The certificates which may be amended are those containing the following limitations from the list of CIS standard wordings in Part F of Volume 3 of the LSC Manual:
 - (c) for civil non-family certificates – CV079, CV080, CV081, CV092, CV083, CV084, CV085, CV086, CV091, CV092, CV095, CV096, CV097, CV099;
 - (d) for certificates in the family category – A022, AA025, FM036, FM038, FM039, FM040, FM041, FM042 and FM043.Certificates may not be amended to correct mistakes or to change solicitor. The devolved power does not extend to amending the description of proceedings or adding parties to the proceedings or additional proceedings, including related proceedings in family cases.
6. Amendments may be made as to scope by the substitution of a new scope limitation enabling a case to proceed to the next appropriate stage justified in relation to counsel's opinion or solicitor's report. An amendment may include a final contested hearing where counsel's opinion or the solicitor's report is given at the final stage prior to hearing and justifies such an amendment.

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7. Amendments may only be made as to costs by association with an amendment to scope by simultaneously extending a costs limitation where necessary to cover the costs of the work authorised to a maximum not exceeding £10,000 including counsel's fees and disbursements but excluding any VAT. Amendments to extend costs limitations alone are not permitted under the devolved power.
8. The devolved power must not be exercised to amend a certificate where further work is embargoed, for example by the initiation of the show cause procedure or by notice that the client's contribution is in arrears.
9. The amendment must only be made where the next required stage or step can be justified by a favourable opinion having regard to the Funding Code Criteria and Guidance. The opinion of external counsel or the solicitor's report from the conducting solicitor should address these criteria. The opinion must be favourable and confirm that the criteria continue to be met, giving particular details as to prospects of success and cost benefit.
10. For the avoidance of doubt, a limitation to obtaining counsel's opinion includes a conference with counsel where required before the opinion is provided and also includes reference back to counsel for clarification of genuine ambiguity in the opinion. It does not include obtaining second opinion from the same or another counsel where the first opinion is unsatisfactory or unfavourable.
11. Where counsel provides an opinion which requires a further step to be taken before the opinion can be confirmed, the devolved power may be exercised to amend the certificate in order to cover that step (CV091). However, the recommendation must be assessed critically in relation to the Funding Code Criteria in order to be satisfied that it is reasonable to proceed to the step or steps recommended by counsel, notwithstanding the uncertainty in relation to the case. Regard should be had to the detailed guidance on the provision of Investigative Help in section 10 of the Funding Code Guidance in Volume 3 of the Manual.
12. Granting an amendment to a scope limitation entails selecting an alternative limitation from the standard wordings contained in Volume 3, Part F, of the LSC Manual. This must cover only the next justifiable stage or steps in the life of the proceedings. A certificate must always be limited in such a way that the scope of the certificate is regularly reviewed and the Funding Code Criteria reapplied. When the certificate is amended, a substitute limitation must always be supplied and must be one of the standard wordings. This is so even where the next stage is the final hearing – which is covered by limitation CV073 or FM016. Non-standard wording must not be used in any circumstances. Where you are unable to find appropriate limitation wording, you should contact the Regional Office for assistance.
13. The appropriate substitute limitation will be determined by all of the circumstances of the case, including the strength of either counsel's opinion or the solicitor's report. Regard should be had to Funding Code Guidance 11.5.

Recording the Decision and Notifying the Regional Office

14. The new limitation, the date of exercise and the person authorising the exercise must be recorded on the file. Both wording and the amount of costs authorised must be recorded.
15. The new costs limitation should adopt the figure which reflects only the likely total costs of the new work authorised by the scope amendments.
16. Any new costs limitation cannot exceed a maximum cost ceiling of £10,000 including disbursements and counsel's fees but excluding any VAT. The profit costs element is based on allowances claimed on a LSC funded basis, i.e. prescribed rates with any appropriate mark up or enhancement in a prescribed rate case. Where costs are or are likely to be in excess of £10,000 the application must be referred to the Regional Office.

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17. The franchisee must provide a report to justify the new limitation on form CLS APP8. Notification must be given as soon as possible, in any event not later than 5 working days after the decision to amend – see Funding Code Procedures C37.1 and C37.2 and Funding Code Guidance section 22, paragraphs 30–36. Attached to the form should be:
 - (a) counsel’s opinion or solicitor’s report together with the relevant expert’s report and any relevant court orders since the last amendment;
 - (b) justification for allowing the amendment in relation to counsel’s opinion or the solicitor’s report; or
 - (c) a report justifying the extension of the costs limitation where applicable.
18. The solicitor may combine the three required elements – merits, justification and costs – in a single solicitor’s report. Solicitor’s reports may only be filed as an alternative to counsel’s opinion where the limitation specifically so provides.
19. If the application and notification are not submitted within 5 working days after exercising the devolved power, a written explanation for the delay must be submitted. If notification is not provided or the explanation given does not (in the view of the Director) justify the delay, then payment will only be made in respect of work carried out up to 5 working days after the exercise of the power.
20. Where franchisees consider that an amendment to a certificate should be formally refused, the application together with the reasons for reaching that conclusion should be forwarded to the relevant Regional Office within five working days again using CLS APP8: see Funding Code Procedures C37.3. The Director will then consider the application for amendment and if the client remains dissatisfied with the Director’s decision there is a further right of review to the Adjudicator: see Funding Code Procedures C40 and Funding Code Guidance 24.3.

Regional Office Decisions

21. If the Regional Office decides that the devolved power has been exercised within the guidelines, an amendment to the certificate will be issued with effect from the day of exercise of the devolved power.
22. If the Regional Office decides that the devolved power is exercised outside the guidelines (except where the decision is ultra vires), the amendment will be issued. The certificate will then be embargoed by way of restrictive amendment to cover work to date only until amended further by the Regional Office or discharged/revoked following notice to show cause where it is considered that a continuation of funding is not justified. Franchisees’ decisions will be categorised for monitoring purposes. The monitoring categories in Funding Code Guidance 12.9 also apply on amendments of a substantive certificate.
23. Where the franchisee has exercised the devolved power to amend a certificate to cover a matter or step outside the scope of the Act, Funding Code, regulations or directions, i.e. ultra vires, then the amendment will not be issued because there is no authority to do so. The franchisee will not be paid for the work from the date of the amendment nor will the franchisee be able to claim costs from the client. A standard letter will be issued giving the reasons for the decision and notifying the franchisee of the right to apply for a review to the Adjudicator.
24. All suppliers have a devolved power to extend a certificate to defend an appeal to the Court of Appeal brought by the opponent. The purpose of this power is to ensure that funded parties can do the necessary work to defend such an appeal, including lodging papers and filing a skeleton argument, without undue delay to the court process.
25. Note that this power applies only to defending appeals and does not cover bringing any form of cross-appeal, which would require the authority of the Regional Office. Further, the devolved power does not include the power to extend the current cost limitation on the certificate. In many cases the existing cost limitation on a certificate

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may well be sufficient to carry out the necessary work to defend the appeal but if an extension is need, application must be made in the usual way.

26. This devolved power is not subject to the restrictions which apply to other forms of amendment as described at paragraphs 2–5 above. It can be exercised by a firm which does not have a franchise in the category covering the subject matter of the appeal.
27. When this devolved power is exercised in accordance with the above guidance, standard limitation APL02 – to be represented in the Court of Appeal – will apply. The usual procedures requiring notification of the exercise of devolved powers to the Regional Office within five working days also apply, as described above.