

8. Case Categories

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8.1 Categories in the Code

1. Criteria in the Code consists of a General Funding Code and a number of categories of case, such as family and housing, which have their own Criteria. Case categories in the Code differ from franchise categories which serve a different purpose (see section 8.3 below). When an application for funding is made, the Commission will determine whether it falls within any of the definitions of specific case categories set out in the Code. If it does, the Criteria specific to that category will be applied. If no specific Criteria apply, the Commission will apply the Criteria in the General Funding Code.
2. Criteria which are specific to case categories are contained in sections 6 to 13 of the Code Criteria. The start of each of these sections contains a definition specifying which cases the Criteria apply to. Guidance on these definitions and examples of types of proceeding within each category are given in the relevant sections of this guidance. Criterion 3.5 in the Code provides that guidance issued by the Commission may give examples of descriptions of proceedings in particular case categories.
3. Some Levels of Service in the Code are restricted to particular case categories, while others are more general:
 - (a) Legal Help and Help at Court – the Criteria for these Levels of Service are contained in the General Funding Code and apply regardless of the subject matter of the help being given;
 - (b) General Family Help, Help with Mediation and Family Mediation – these Levels of Service are available only within the family case category and are never subject to Criteria in the General Funding Code or other categories;
 - (c) Investigative Support and Litigation Support – both are forms of Support Funding which is essentially restricted to high cost personal injury cases. All applications for Support Funding will be considered under the relevant Criteria in the General Funding Code (together with the additional Criteria for very expensive cases if appropriate – see section 15).
4. Allocation of case categories is most important for applications for Legal Representation. The following are the case categories which have their own Criteria for Legal Representation under the Code. Each Code category is listed together with a reference to the section in this guidance which describes the scope of each category:
 - (a) Very Expensive Cases (section 15);
 - (b) Judicial Review (section 16);
 - (c) claims against Public Authorities (section 17);
 - (d) Clinical Negligence (section 18);
 - (e) Housing (section 19);
 - (f) Family (section 20);
 - (g) Immigration (section 29).
 - (h) Mental Health (section 21.4 and further guidance at section 12 of the Unified Contract Specification);

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8.2 Mixed Cases

1. Sometimes an application for Legal Representation will be made which seems to cover more than one case category in the Code. The rules for this situation are covered in section 3 of the Code Criteria. The approach is as follows:

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- (a) where there is a dispute as to which category the case falls into, the obligation of the Commission is to apply the Criteria which appear to it to be most relevant to the substance of the application. This means considering what the case is about from the client's point of view, rather than merely how the case is pleaded and presented;
- (b) where the application relates to a single set of proceedings which appear to cover work in more than one category, the Commission will apply the Criteria which appear most appropriate to the proceedings as a whole. This recognises the fact that only one set of Criteria can be applied to any one case. The Criteria applied should be those most appropriate to the primary remedy sought by the client, whether or not other work in the proceedings would naturally fall in a different case category;
- (c) if the application is for Investigative Help or Full Representation for potential proceedings which have not yet started, the Commission will consider whether it is appropriate for the different aspects of the case to be brought in separate proceedings, in which case any certificate issued might be limited to one aspect of the proceedings covered by a single case category. For example, an application to bring housing disrepair proceedings combined with damages for breach of contract not connected with the client's home might, if appropriate, be limited by the Commission to a certificate covering only the housing aspects of the claim;
- (d) where an application relates in part to work excluded under Schedule 2 of the Access to Justice Act, the Commission will consider the Lord Chancellor's authorisations set out in section 3.2 of this guidance. If some of the proposed work in the proceedings is excluded under Schedule 2 and is not brought back into scope by any of the authorisations, the Commission will refuse the funding if it appears that effective representation cannot be provided in the proceedings without the provision of the Excluded Work (Criterion 3.4).

8.3 Franchise Categories

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- 1. Case categories are given their own Criteria in the Funding Code where:
 - (a) it is necessary for the Code to reflect the priority of the case in question; or
 - (b) where the Criteria in the General Funding Code would not be appropriate to the subject matter of the case.
- 2. Case categories in the Code are therefore not the same as franchise categories, which divide into a wider range of categories reflecting different areas of legal expertise. Franchise categories are particularly important in family, immigration, clinical negligence and other personal injury cases where Legal Representation is restricted to franchised providers.
- 3. The legal scope of all the franchise categories is set out at Tab E in Volume 3 of this Manual. The following guidance describes how franchise categories relate to case categories in the Code.
- 4. Note that judicial review proceedings are a special case. All cases which come within the scope of judicial review as described in section 7 of the Code are subject to the Criteria in that section, whether the judicial review relates to housing, immigration or any other area of law. Otherwise the relationship between franchise categories and Funding Code case categories in applications for Legal Representation or Support Funding is as follows:
 - (a) Crime – all criminal proceedings fall within the crime franchise and are funded as part of the Criminal Defence Service. Representation in criminal proceedings falls outside the Community Legal Service and the Funding Code (see section 4(3) of the Act). A wide range of cases come within the definition of “criminal proceedings” for this purpose. See section 1.3 of this guidance;

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- (b) Family – the scope of family proceedings in the franchise category and in the Funding Code are for practical purposes the same. Therefore proceedings within the family franchise category other than judicial review proceedings will be subject to the Funding Code Criteria for family cases and vice versa. The minor exceptions to this are set out at section 20.3 of this guidance;
- (c) Personal Injury – applications for Legal Representation for any personal injury claim coming within the scope of claims against a public authority as defined in Section 8.1 of the Funding Code will be considered under those Criteria. Most other non-clinical negligence personal injury claims will be excluded under Schedule 2 of the Act, but those which are not excluded will be considered under the General Funding Code. All applications for Support Funding for personal injury claims will be considered under the General Funding Code. Note that personal injury claims arising out of housing disrepair, eviction or harassment fall outside the personal injury franchise, and come within the housing Criteria in the Funding Code (Section 10);
- (d) Clinical Negligence – the scope of clinical negligence proceedings in the franchise category and in the Funding Code are the same. However, in very limited circumstances, a clinical negligence claim made within proceedings which include another cause of action against a detaining authority may be taken within the Actions Against the Police franchise category. In general, proceedings within the clinical negligence franchise category will be subject to the Funding Code Criteria for clinical negligence cases and vice versa. Where a claim for clinical negligence is properly made within the Actions Against the Police franchise category and the proceedings as a whole fall within the definition of a Claim Against a Public Authority (see Section 8 of the Funding Code), then the less stringent criteria for such claims will apply in place of the Funding Code Criteria for clinical negligence. Section 8 only applies to proceedings against public authorities concerning serious wrongdoing, abuse of position or power or significant breach of human rights;
- (e) Housing – the great majority of cases within the housing franchise category will be considered under the Criteria for housing cases in the Code. The scope of those Criteria is somewhat narrower than the franchise category since the Code Criteria only apply in cases concerning possession, status, disrepair and quiet enjoyment of the client’s home. Proceedings in which the client is seeking possession of another person’s home or concerning only rent or service charges due from a tenant may come within the housing or debt franchise categories but will be considered under the Criteria in the General Funding Code. See further guidance at section 19.1;
- (f) Immigration/Nationality – the Criteria for immigration cases in the Funding Code covers Legal Representation before the Immigration Judge or Asylum and Immigration Tribunal and any further appeals from that Tribunal to the Court of Appeal or House of Lords. Most other proceedings within the immigration franchise category will be judicial review, which come within Section 7 of the Code;
- (g) Welfare Benefits – most proceedings in the welfare benefits franchise category will either be judicial review cases or will be considered under the General Funding Code;
- (h) Employment – most proceedings in the employment franchise category, whether before the Employment Appeal Tribunal or the civil courts, will be considered under the General Funding Code;
- (i) Mental Health – the Funding Code Criteria in mental health cases apply to proceedings before the Mental Health Review Tribunal. Proceedings within the mental health franchise category before the civil courts will either be judicial

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- review proceedings or are likely to be considered under the General Funding Code;
- (j) Debt – proceedings in the debt franchise category are likely to be considered under the General Funding Code;
 - (k) Consumer and General Contracts – proceedings in the consumer and general contracts franchise category are likely to be considered under the General Funding Code;
 - (l) Education – proceedings in the education franchise category are likely to be considered under the General Funding Code unless they are judicial review;
 - (m) Community Care – unless they are judicial review proceedings, cases within the community care franchise category are likely to be considered under the General Funding Code;
 - (n) Actions against the Police – the full title of this franchise category has been amended to “Actions Against the Police, etc.”, to reflect the fact that it now covers actions against all bodies and individuals with power to detain. Most proceedings within this franchise category will be considered under the Code Criteria for claims against public authorities, even if they properly include an element of clinical negligence (see paragraph (d) above). However, those Code Criteria are in some respects narrower than the franchise category because they only apply in cases which concern serious wrongdoing, abuse of position or power or breach of human rights. Actions against the police which simply concern negligence short of serious wrongdoing would be considered under the General Funding Code. See further guidance at section 17.1;
 - (o) Public Law – most proceedings within the public law franchise category will either be judicial review cases or will be considered under the Criteria for claims against public authorities.
5. Most civil proceedings which do not fall into any franchise category but will be remaining within the scope of the Access to Justice Act 1999 will be considered under the General Funding Code.