

2. Levels of Service

2.1 What are Levels of Service?

3C-005

1. Section 4(2) of the Act describes in general terms the services which may be funded as part of the CLS. Since the Funding Code sets different Criteria for different services, and sometimes for different stages of a case, the Code divides the services which may be funded by the Commission under section 4(2) into discrete “Levels of Service”, each of which has its own legal definition and Criteria. Every application for funding must therefore specify the Level of Service applied for. Levels of Service are also of fundamental importance to the Code Procedures. Different services are delivered in different ways, as described below.
2. The Levels of Service available in the Code are listed in section 1.1 of the Criteria and are set out below. There are six principal levels, but two of these (Legal Representation and Family Help) can be provided in either of two alternative forms. Investigative Help and Full Representation which are the two forms of Legal Representation are treated as separate Levels of Service in this guidance. The two forms of Family Help are described in the Family Guidance (section 20).
3. Note that Emergency Representation is not a separate Level of Service under the Code. Emergency Representation should be regarded as simply a special procedure by which Legal Representation may be provided prior to a full assessment of means in cases of urgency. However Emergency Representation does have its own Criteria.
4. In some situations different Criteria apply even within one level of service. For example, in judicial review cases the Criteria for granting Full Representation are different according to whether or not the court has granted permission for the case to proceed.

2.2 How are Levels of Service Provided?

3C-006

1. Although this guidance is concerned primarily with Criteria, not Procedures, those Criteria can only be understood in the context of how the different levels of service are provided. Rule A2 of the Code Procedures describes the four ways in which services will be funded as part of the CLS. These are:
 - (a) **Controlled Work** – this is work carried out under contract which falls within the Controlled Work budget. The great majority of Controlled Work is authorised under the Commission’s Unified Contract but some Controlled Work is funded through CLS Direct or authorised as “Associated CLS Work” under the General Criminal Contract. Applications for Controlled Work are made to the supplier of the service i.e. the solicitor firm or not for profit agency holding the contract. No certificates are issued for Controlled Work.
 - (b) **Licensed Work** – although Licensed Work is also carried out under contract, every application for Licensed Work must be made to or registered with the Commission. Licensed Work is generally carried out under the Commission’s Unified Contract Civil Specification but some is issued as Associated CLS Work under the General Criminal Contract. The provision of Licensed Work is recorded by the Commission issuing a certificate under Part C of the Code Procedures.
 - (c) **Individual Case Contracts** – these are contracts which cover only an individual case, such as a high cost case, a multi-party action or other exceptional case.
 - (d) **Other Grant or Contract Work** – these are services under grants or contracts other than the Commission’s General Civil or Criminal Contracts or an

Part C The Funding Code: Guidance

Individual Case Contract. Examples include Family Mediation or funding for exceptional cases under Section 6(8)(b) of the Act (see Section 27 of this Guidance).

2. Prior to 2 April 2001 the Code Procedures also provided for a category called “Non-Contracted Work”. This was certificated Work for which any solicitor could apply. This covered all certificated cases other than family, immigration, clinical negligence and other personal injury work. Although certificates issued prior to 2 April 2001 continue in force until they are concluded, all applications for certificates from that date can only be funded as Licensed Work by solicitors acting under a Unified or General Criminal Contract or, exceptionally, under an Individual Case Contract.
3. Rule A3 of the Code Procedures specifies which Procedures apply to which Levels of Service. The effect of these rules for the principal Levels of Service is as follows:
 - (a) **Legal Help** – is almost always provided as Controlled Work under contracts; the only exception is Legal Help applied for to support an application for exceptional funding (see section 27 of this guidance)
 - (b) **Help at Court** – similarly this is always provided as Controlled Work under contracts;
 - (c) **Family Help (Lower)** – this is always provided as Controlled Work. It may be provided only by Family Suppliers ie. those with an SQM in the Family Category;
 - (d) **Family Help (Higher)** – this is Licensed Work. It therefore requires an application to the Commission for a certificate. It may be provided only by Family Suppliers;
 - (e) **Legal Representation** – this can be provided in a number of different ways. The rules are as follows:
 - (i) Legal Representation before a Mental Health Review Tribunal, Asylum and Immigration Tribunal or the High Court in relation to applications under section 103A of the Nationality, Immigration and Asylum Act 2002 is Controlled Work. The application for Legal Representation is therefore made to the supplier of the services, not to the Commission;
 - (ii) Similarly Legal Representation provided by a Community Legal Advice Centre or Network may also be funded as Controlled Work but only where this is authorised under a contract. Wherever Legal Representation is funded as Controlled Work it is known as “Controlled Legal Representation” or “CLR”.
 - (iii) Legal Representation may be funded under an Individual Case Contract issued by the Special Cases Unit. This may be either a Multi-Party Action Contract, High Cost Case Contract or Exceptional Case Contract. See Section 15 of this Guidance.
 - (iv) In all other cases Legal Representation is Licensed Work funded under certificates issued by the Commission.
 - (v) The rules as to which firms are entitled to provide Legal Representation in which categories of law are governed by the Unified Contract, rather than the Code Procedures. For most categories of law any firm with such a Contract can provide Legal Representation even if they do not have an SQM in the relevant category. However for family, clinical negligence, personal injury, mental health and immigration, firms can only carry out the work if they have a franchise in the relevant category. Also, Public Law challenges arising out of criminal cases can only be funded for firms with a Public Law franchise or as Associated CLS work under a General Criminal Contract. See paragraph 1.8 of the Unified Contract Civil Specification and the SQM Category Definitions in volumes 2 and 3.)

2. Levels of Service

- (f) **Family Mediation** – this is always funded as Other Grant or Contract Work through the Commission’s Family Mediation Contracts with mediators. See section 20;
 - (g) **Other services authorised by specific orders or directions from the Lord Chancellor** – this Level of Service is simply a mechanism to allow for funding, usually on a pilot basis or in one-off cases, of any services not covered by any of the above levels. At present the main use of this level of service is in certain grants under section 6(8)(b) of the Act for courts and tribunals which are otherwise out of scope (see guidance at section 27). This level of service is usually referred to as “Level 6” (or, prior to October 2007 “Level 7”).
- 4. Up to July 2005 the Code used to include a level of service called Support Funding, which covered partial funding for high cost personal injury cases. Although no new cases of Support Funding can be issued, guidance on existing cases is at section 14.
 - 5. Up to October 2007 the Code used to include additional levels of service in the Family Category called General Family Help and Help With Mediation. These have now been replaced by Family Help but certificates for General Family Help or Help With Mediation issued before October 2007 continue in force and, in the case of General Family Help, may be extended to cover Legal Representation.

2.3 Connections between Levels of Service

3C-007

- 1. For the most part, each Level of Service is separate in that a person will apply for a specific Level of Service when funding is sought, the Commission or supplier will consider the Criteria relevant to that Level of Service and either grant or refuse the application.
- 2. There are two important exceptions to this approach:
 - (a) Legal Representation may take the form of either Investigative Help or Full Representation. This depends on whether it is possible to estimate the prospects of success of the claim. Therefore a person applying for Full Representation could be refused that but granted Investigative Help instead, if the Commission felt that the prospects of success were unclear and that further investigation was required. Although it is unlikely, an application for Investigative Help could be granted as a certificate for Full Representation if the Commission decided the relevant Criteria were satisfied
 - (b) In family cases Legal Representation only takes the form of Full Representation. Investigative Help is not available. Instead, there is a separate level called Family Help (Higher) to cover resolution of a family dispute excluding representation at a final court hearing. An application for Legal Representation in family proceedings could result in the grant of a certificate covering only Family Help (Higher) where appropriate, or vice versa. This is explained further in section 20.
- 3. The above two examples are also the only circumstances in which two different Levels of Service may be provided successively on a single certificate. That is, if a client is in receipt of Investigative Help or Family Help (Higher) and it has become appropriate to issue or continue proceedings not covered by those levels, this can be done by way of an application to amend the certificate to cover Full Representation.

2.4 Division between Legal Help and Legal Representation

3C-008

- 1. In non-Family cases the most important interface between the levels of service is between Legal Help/Help at Court on the one hand, and Legal Representation under certificates on the other. There is a significant overlap between work which can be carried out at either of these levels. The important points are as follows:

- (a) Legal Representation is only available for actual or contemplated proceedings before the courts and tribunals specified in paragraph 2 of Schedule 2 of the Act. These include the main civil courts, the Employment Appeal Tribunal, Mental Health Review Tribunal, Asylum and Immigration Tribunal and certain (mostly family) proceedings in a magistrates' court. Cases before other tribunals or where no proceedings are contemplated or in existence can be dealt with only by means of Legal Help;
 - (b) neither Legal Help nor Help at Court cover the issue and conduct of court proceedings. Therefore if a person wishes public funding for a solicitor to go on the record and to be formally represented in court proceedings, the application must be for Legal Representation;
 - (c) Legal Help cannot cover advocacy before any court or tribunal;
 - (d) Help at Court covers only informal advocacy, usually by way of mitigation at individual court hearings as detailed in the contract guidance. Ongoing Legal Representation in proceedings can only be covered by Legal Representation;
 - (e) Legal Representation includes representation for a person who is contemplating taking proceedings, but not for a person who is likely to be a defendant or other party in future proceedings. Such a person may only receive Legal Help until the proceedings are actually started;
 - (f) investigation of a potential claim, including work under a pre-action protocol, is an area of overlap in that such work can be carried out either as Legal Help or as Legal Representation. The approach is as follows:
 - (i) if the prospects of success of the potential claim are clear and all other Criteria for Full Representation are satisfied, a certificate covering Full Representation may be granted, but this will usually be limited to the early stages of proceedings, further enquiries and research and settlement negotiations with the potential opponent;
 - (ii) if the prospects of success are unclear, Full Representation is not available and the issue is whether the investigations should be carried out under Legal Help or under a certificate for Investigative Help. This depends primarily on the extent of the investigative work needed. Our guidance therefore sets thresholds for both profit costs and disbursements/counsel's fees. A certificate for Investigative Help will only be granted if the reasonable costs of investigating the case would be greater than the threshold. The details are set out at section 10.3 of this guidance. Note that in cases which are shown to require this much investigation, an application for Investigative Help can be made at the outset; it is not necessary to carry out work up to the threshold at the Legal Help level.
2. The fact that remuneration for Legal Help is now by way of Standard Fees does not affect the above principles. Legal Representation cannot be granted simply on the basis that the amount of work which needs to be carried out under Legal Help is substantial compared to the fixed fee. It is in the nature of any fixed fee regime that the fee will cover a range of cases.

3C-009

2.5 Disbursements

1. The definition of each Level of Service specifies the work which can be carried out by the supplier at that level. In addition, guidance and contracts may specify what expenses may in principle legitimately be incurred under each level (Code Criterion 1.3).
2. The Funding Code specifically excludes the following disbursements from all levels of service:-
 - (i) All costs or expenses of or relating to the residential assessment of a child;

2. Levels of Service

- (ii) All costs or expenses of or relating to treatment, therapy, training or other interventions of an educative or rehabilitative nature.

Guidance on these exclusions is set out in section 5.7 and 5.8 of the Authorities guidance in Volume 1 of this Manual.

- 3. Non-allowable disbursements under Controlled Work are set out at paragraph 5.26 of the Unified Contract Civil Specification.

- 4. For Licensed Work the following list applies:

(a) Allowable Disbursements

- (i) Accident report fees
- (ii) Arbitration fees
- (iii) Birth and other certificates
- (iv) Client's travelling and accommodation expenses (but see (b)(ix) below)
- (v) Counsel's fees and expenses
- (vi) Court fees
- (vii) Enquiry agents' and interpreters' fees
- (viii) Experts' fees including medical reports
- (ix) Fees recoverable on oaths
- (x) Newspaper advertisements
- (xi) Non-Family Mediation fees
- (xii) Photographers' accounts
- (xiii) Search fees
- (xiv) Stamp duties for a nominal amount, e.g. the fee paid on a power of attorney
- (xv) Travelling expenses of a solicitor

(b) Non-Allowable Disbursements (in addition to those specified at paragraph 2 above)

- (i) Ad valorem stamp duties
 - (ii) Capital duty
 - (iii) Contact centre fees
- [With effect from 6 April 2009 to be replaced by:
- (iii) All fees, charges and costs of child contact centres, including assessments and reports on supervised contact, and of other professional assessments of contact between children and adults]
 - (iv) Discharge of debts owed by the client, e.g. rent or mortgage arrears
 - (v) Fee payable on voluntary petitions in bankruptcy
 - (vi) Mortgagees' or lessors' solicitors costs and disbursements
 - (vii) Passport fees
 - (viii) Probate fees
 - (ix) In the Family Category of Law only, costs of or expenses in relation to the provision of Family Mediation, conciliation or any other dispute resolution including Family Group conferences.
 - (x) In the Family Category of Law only, costs or expenses of risk assessments within section 16A Children Act 1989 and undertaken by Cafcass officers or Welsh family proceedings officers, including assessments of the risk of harm to a child in connection with domestic abuse to the child or another person.
 - (xi) In the Family Category of Law only, costs of or expenses relating to any activity to promote contact with a child directed by the court under Section 11A to 11G Children Act 1989. This includes all programmes, consideration of suitability under section 11E and other work to or with a view to establishing, maintaining or improving contact with a child or, by addressing violent behaviour, to or with a view to enabling or facilitating contact with a child insofar as such costs or expenses are not irrecoverable

Part C The Funding Code: Guidance

under Funding Code paragraph 1.3. Funding for assessments under Funding Code Criterion 11.4.1 as to whether mediation is suitable to the dispute and the parties and all the circumstances are not affected by this exclusion.

5. The fact that an item is listed as an allowable disbursement means that it is capable of being allowed, not that it will be usual to do so. For example, clients' travelling and accommodation expenses will only be allowed in exceptional circumstances where the client is so impecunious that it is not otherwise possible to progress the case (see *R v. Legal Aid Board No. 15 Area (Merseyside) ex parte Eccleston*, The Times, May 6, 1998).
6. For items not covered in the above list, the general principle is that a disbursement may only be claimed if it would be allowable on an assessment of costs between solicitor and client in court proceedings. The fact that a disbursement is irrecoverable as against the Community Legal Service Fund does not prevent it from being recoverable from the opponent if the item is allowed by the court on an assessment of costs between the parties.