

## 11. Full Representation

### 11.1 Scope of Full Representation

3C-083

1. Full Representation is the primary form of Legal Representation under the Code. Although a certificate for Full Representation may contain such limitations or conditions as the Commission decides to impose, in principle Full Representation can cover all work needed to support legal proceedings to trial and beyond.
2. The legal definition of “Legal Representation” is contained in section 2.1 of the Code. Legal Representation can only be granted to a person who is already a party to legal proceedings or to a person who is contemplating taking legal proceedings. It cannot be granted to a person who considers that proceedings may be brought against him or her or who might be involved in some other way. Once granted, a certificate can cover any of the following:
  - (a) Litigation services – that is anything normally carried out by a solicitor or other authorised litigator as defined in the Courts and Legal Services Act 1990;
  - (b) Advocacy services – that is any work normally carried out by counsel or any other authorised advocate in legal proceedings;
  - (c) Legal services in relation to steps preliminary or incidental to proceedings;
  - (d) All such help as is usually given by a lawyer in arriving at or giving effect to a compromise to avoid or bring to an end any proceedings.
3. A solicitor or counsel acting under a certificate for Full Representation cannot themselves provide mediation or arbitration services in the same case, but the fees of a mediator or arbitrator can be claimed under such a certificate as a disbursement.

### 11.2 Conditional Fee Agreements (“CFAs”)

3C-084

1. Conditional fee agreements, or “no win no fee” agreements, allow a solicitor and client to agree that if the case is lost the client will pay nothing towards the solicitor’s costs, but if the case is won the solicitor will recover his or her costs and may be entitled to an additional “success fee”. The success fee covers the risk borne by the lawyer in financing the litigation.
2. In the Community Legal Service public funds should not be used to pay for the costs of litigation which could be funded by alternative means. In many non-family cases conditional fee agreements allow access to justice even for those with very limited means. This access has now increased as conditional fees have been made more effective by allowing the recovery of the success fee and insurance premium from an unsuccessful opponent.
3. In the general Funding Code Full Representation may be refused if the nature of the case is suitable for a CFA and the client is likely to be able to avail himself or herself of a CFA. Note that this criterion applies only in the General Funding Code and is disapplied in all the specific categories in sections 7–14 of the Code, save for certain cases brought as part of a multi-party action (see section 7.10 of this Guidance).
4. CFAs are given a wide definition in the Funding Code to cover any private funding arrangements authorised under Part II of the Access to Justice Act 1999. Insurance based funding in which insurance covers both sides’ costs but there is no Conditional Fee Agreement or uplift in the strict sense can also be taken into account under this criterion.
5. Refusal on the grounds of CFA availability always depends on the individual circumstances of the case. Whilst CFAs have mostly flourished in the area of personal injury litigation, which is excluded from the scope of CLS funding, CFAs

and insurance products in support of them can be obtained across a wide range of non-family disputes, subject to the individual merits and circumstances of the case. All legal categories falling within the General Funding Code, including contract disputes, land disputes and education damages claims, can be considered for this purpose.

6. The availability of After The Event insurance to cover potential liability and other costs will be taken into account in decisions under this criterion. It is recognised that whilst many cases with better than 50% prospects of success, will in principle be suitable for a CFA, insurance will not necessarily be forthcoming. The Commission will usually consider refusal on the grounds of CFA availability where:
  - i. It is possible to make a reliable estimate of the prospects of success (but see 10.2 of this Guidance in relation to Investigative Help);
  - ii. Prospects for success are good or very good, ie: 60% or better; and
  - iii. There is reason to believe that if the action is successful, costs will in substance be recovered from the other side.
7. In a case which appears suitable for a CFA the Regional Office will usually require written evidence of genuine attempts to obtain insurance. The Commission also reserves the right to contact insurers directly to determine whether they would support a CFA in the individual circumstances.
8. Where Legal Representation is refused on the grounds that the case is suitable for a CFA, information about firms in the client's area who undertake CFA work can be obtained from CLS Direct, [www.clsdirect.org.uk](http://www.clsdirect.org.uk), telephone 0845 345 4345 (rule C19.3 of the Code Procedures).

**3C-085**

### **11.3 Prospects of Success**

1. The meaning and categories of prospects of success were discussed in section 4. In the General Funding Code the prospects of success Criterion 5.7.2 has the effect that:
  - (a) most cases can only be funded if they can show prospects of success of at least 50% (i.e. in the very good, good or moderate categories);
  - (b) if prospects of success are borderline, funding will be refused except in the following two circumstances, both of which are exceptional:
    - (i) a case has a significant wider public interest; or
    - (ii) a case is of overwhelming importance to the client, as defined in the Code (see section 4.10 of this guidance);
  - (c) if prospects of success are unclear, Full Representation will be refused. However it may be appropriate to grant a certificate for Investigative Help instead;
  - (d) if prospects of success are poor, funding will always be refused.

**3C-086**

### **11.4 Cost Benefit**

1. An application for Full Representation under the General Funding Code must be placed in one, and only one, of the following three categories:
  - (a) quantifiable claims;
  - (b) unquantifiable claims;
  - (c) public interest cases (whether quantifiable or unquantifiable).
2. Each of these three types of case has its own cost benefit Criterion (set out at 5.7.3 to 5.7.5 of the Code). Guidance on cost benefit in public interest cases is dealt with in section 5 of this guidance. All other aspects of cost benefit are discussed in section 4.

**11.5 Certificate Limitations**

1. A certificate for Full Representation will contain such limitations as to the scope of the work to be carried out as are appropriate to the circumstances of the case. The appropriate limitation on scope will vary according to the subject matter of the case as set out in the case specific guidance. Typically, limitations on the scope of work covered by a certificate will take one of the following three forms:
  - (a) investigative limitations – even where the prospects of success of the case are such that a certificate for Full Representation rather than Investigative Help is justified, it may still be the case that it is appropriate for further enquiries or investigation of the strength of the case to take place before the litigation proceeds. Therefore all limitations available for Investigative Help, including limitations only as to obtaining counsel’s opinion, are available for Full Representation. For example there may be cases where the merits of the claim as a whole appear sound, but where it is appropriate first to seek counsel’s opinion on a particular legal issue requiring specialist expertise before proceeding further;
  - (b) limitation for negotiations – the Code seeks to encourage the swift resolution of disputes without unnecessary or unduly protracted proceedings in court. Therefore, except where urgent court action is needed or the other side has already been contacted and refused to negotiate, certificates for Full Representation will often be limited to allow negotiations about the claim to take place. A standard form of limitation allows such work as is necessary to obtain disclosure of information from the other side, to negotiate a settlement directly or through use of ADR and to pursue any pre-action protocol which is applicable to the case in question. During such a period the opponent will know that the certificate covers Full Representation rather than merely Investigative Help, but opponents should not be informed of any scope or cost limitations on the certificate. It will however be clear that, if suitable proposals for settlement are not made by the opponent, the certificate will be extended to cover substantive court proceedings;
  - (c) proceedings limitations – where a certificate for Full Representation allows proceedings to be issued and pursued, the certificate will usually state the point in the proceedings to which work can be carried out, after which an extension to the certificate will be required either by the Commission, or by the solicitor directly if exercising a devolved power. Different approaches are appropriate for fast and multi-track cases:
    - (i) for fast track cases the court timetable makes it inappropriate for numerous successive amendments to be given. Therefore most fast track certificates will cover all work up to the exchange of witness statements, and filing of the listing questionnaire prior to the final hearing [Limitation CV056]. Franchisees will be able to remove this limitation to allow a case to proceed to trial if the Criteria continue to be satisfied;
    - (ii) cases in the multi-track will need to be kept more closely under review. The normal scope limitation will be initially limited to all steps up to disclosure and inspection and thereafter counsel’s opinion [CV065]. Thereafter, such a case could be extended to all steps up to filing the listing questionnaire as described above for fast track cases [CV056];
    - (iii) more substantial multi-track cases will require a greater number of successive scope limitations. It will be appropriate in many cases to review the merits of the claim after each case management conference [CV070 and 058] and after the pre-trial review, if any [CV057].

## Part C The Funding Code: Guidance

2. All certificates for Full Representation will also contain a costs limitation. Different limitations may be applied for different types of case, but unless the Commission decides otherwise, the initial costs limitation will usually not exceed £2,500.