

# The Community Legal Service (Funding) (Counsel in Family Proceedings) Order 2001 (as Amended)

(S.I. 2001 No. 1077)

<i>Made</i>	<i>15<sup>th</sup> March 2001</i>
<i>Laid before Parliament</i>	<i>20<sup>th</sup> March 2001</i>
<i>Coming into force</i>	<i>1<sup>st</sup> May 2001</i>

The **Secretary of State**, in exercise of the powers conferred on him by section 6(4) of the Access to Justice Act 1999<sup>1</sup> and now vested in him<sup>2</sup>, having regard to the matters specified in section 25(3) and having consulted the General Council of the Bar and the Law Society, makes the following Order:

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## NOTES

<sup>1</sup> 1999 c.22

<sup>2</sup> The functions of the Lord Chancellor under section 6(4) were transferred to the Secretary of State by the Secretary of State for Constitutional Affairs Order 2003 (S.I. 2003/1887), article and Schedule 1.

## PART I

### GENERAL

#### 1B-133

#### 1. Citation and commencement

This Order may be cited as the Community Legal Service (Funding) (Counsel in Family Proceedings) Order 2001 and shall come into force on 1st May 2001.

#### 1B-134

#### 2. Interpretation

(1) In this Order—

“the Act” means the Access to Justice Act 1999;

~~“Advocates Meeting” means an Advocates Meeting held in accordance with paragraph 4.5 or 5.2 of the Children Act Protocol or stage 2 or 3 of the Draft Public Law Outline but does not include communication between the advocates under paragraph 5.2 or stage 2 or 3 other than such a meeting;~~<sup>+</sup>

~~“Advocates’ Meeting” means an Advocates’ Meeting held face to face under paragraph~~

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~~<sup>+</sup> Substituted by the Community Legal Service (Funding) (Counsel in Family Proceedings) (Amendment No.2) Order 2007 (S.I.2007 No. 3169)~~

4.5 or 5.2 of the Children Act Protocol or stage 2 or 3 of the Public Law Outline;<sup>2</sup>

“assessment of costs” means the determination of all costs and disbursements due under the relevant certificate in relation to proceedings in which counsel has submitted a claim for payment under this Order;

**[“business accounts” includes accounts relating to trusts and investments whether or not those accounts are maintained for the purposes of, or in connection with, a business;]**

[“care proceedings” means proceedings under Part IV of the Children Act 1989;]<sup>1</sup>

[“Case Management Conference” means a Case Management Conference held in accordance with step 4 of the Children Act Protocol or stage 2 of the ~~Draft~~ Public Law Outline<sup>3</sup> ;]<sup>1</sup>

“certificate” means a certificate issued under the Funding Code certifying a decision to fund services for the client;

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[“Children Act Protocol” means the Protocol annexed to the Practice Direction (*Care Cases: Judicial Continuity and Judicial Case Management*) made by the President of the Family Division;]<sup>1</sup>

“client” means an individual who receives funded services from the Commission as part of the Community Legal Service under sections 4 to 11 of the Act;

“the Commission” means the Legal Services Commission established under section 1 of the Act;

**[“committal hearing” means any hearing to determine whether a person should be committed to prison;]**

“Costs Appeals Committee” means a committee appointed by the Commission for the purpose of considering appeals from the Independent Costs Assessor<sup>4</sup>;

[“*Costs Committee*” means a committee appointed by the Commission for the purpose of considering appeals in relation to costs, whether under this Order or generally;]<sup>5</sup>

“counsel” means a barrister in independent practice;

~~“Draft Public Law Outline” means the protocol for the judicial case management of public law Children Act 1989(a) cases, issued for consultation(b) on 21st June 2007 by the President of the Family Division<sup>6</sup>;~~

[“*Director*” means any Director appointed by the Commission under the Funding Code and includes any person authorised to act on his behalf, other than a solicitor authorised by contract to determine applications on behalf of the Commission;]<sup>4</sup>

“Director” means any Director appointed by the Commission in accordance with the Funding Code and any other person authorised to act on his behalf, except a supplier<sup>7</sup>;

“family proceedings” means proceedings, other than proceedings for judicial review, which arise out of family relationships, including proceedings in which the welfare of

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<sup>2</sup> Substituted by the Community Legal Service (Funding) (Counsel in Family Proceedings) (Amendment) Order 2008 (S.I 2008 No.666)

<sup>3</sup> Inserted by the Community Legal Service (Funding) (Counsel in Family Proceedings) (Amendment No.2) Order 2007 (S.I 2007 No. 3169)

<sup>4</sup> Inserted by the Community Legal Service (Funding) (Counsel in Family Proceedings) (Amendment) Order 2007 (S.I 2007 No .2443)

<sup>5</sup> Omitted by the Community Legal Service (Funding) (Counsel in Family Proceedings) (Amendment) Order 2007 (S.I 2007 No .2443)

<sup>6</sup> Inserted by the Community Legal Service (Funding) (Counsel in Family Proceedings) (Amendment No.2) Order 2007 (S.I 2007 No. 3169)

<sup>7</sup> Inserted by the Community Legal Service (Funding) (Counsel in Family Proceedings) (Amendment) Order 2007 (S.I 2007 No .2443)

children is determined, and including all proceedings under one or more of the following:

- (a) the Matrimonial Causes Act 1973;
- (b) . . .<sup>2</sup>
- (c) the Adoption Act 1976;
- (d) the Domestic Proceedings and Magistrates' Courts Act 1978;
- (e) Part III of the Matrimonial and Family Proceedings Act 1984;
- (f) Parts I to V of the Children Act 1989;
- (g) Part IV of the Family Law Act 1996;
- [(ga) the Adoption and Children Act 2002;]<sup>5</sup>
- (h) the inherent jurisdiction of the High Court in relation to children; and
- (i) the Civil Partnership Act 2004;]<sup>3</sup>

but excluding proceedings under either the Inheritance (Provision for Family and Dependents) Act 1975 or the Trusts for Land and Appointment of Trustees Act 1996.<sup>1</sup>

“function F1” **[has the meaning set out in article 2A];**

“function F2” **[has the meaning set out in article 2B];**

“function F3” **[has the meaning set out in article 2C];**

“function F4” **[has the meaning set out in article 2D];**

“function F5” **[has the meaning set out in article 2E];**

“Funding Code” means the code approved under section 9 of the Act;

[]<sup>6</sup>

[“harm” has the same meaning as in section 31(9) of the Children Act 1989 and the question of whether harm is significant shall be determined in accordance with section 31(10) of that Act;]

“Independent Costs Assessor” means an assessor appointed by the Commission for the purpose of considering appeals in relation to costs<sup>8</sup>;

[“Independent Funding Adjudicator” means an adjudicator appointed by the Commission to carry out functions under the Funding Code;]<sup>7</sup>

“Issues Resolution Hearing” means an Issues Resolution Hearing held in accordance with stage 3 of the ~~Draft~~ Public Law Outline<sup>9</sup>

“the main hearing” means the hearing at which the substantive issues are listed to be determined and are considered by the court;

**[“mental disorder” has the same meaning as in section 1(2) of the Mental Health Act 1983; ]**

[“Pre-Hearing Review” means a Pre-Hearing Review held in accordance with step 5 of the Children Act Protocol;]<sup>1</sup>

“the primary hearing unit” means the first day of the main hearing;

[]<sup>8</sup> and

[“Public Law Outline” means the outline set out in the table following paragraph 9 of the Practice Direction, Guide to Case Management in Public Law Proceedings, made by the President of the Family Division on 15th January 2008\(a\)](#)<sup>10</sup>

“the secondary hearing unit” means any day of the main hearing other than the first.

(2) References to the levels of service ‘Legal Help’ or ‘Family Help (Lower)’ shall be construed as references to the receipt or provision of those levels of service granted in accordance with the Funding Code<sup>11</sup>.

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<sup>8</sup> Inserted by the Community Legal Service (Funding) (Counsel in Family Proceedings) (Amendment) Order 2007 (S.I 2007 No .2443)

<sup>9</sup> Inserted by the Community Legal Service (Funding) (Counsel in Family Proceedings) (Amendment No.2) Order 2007 (S.I 2007 No. 3169)

<sup>10</sup> [Inserted by the Community Legal Service \(Funding\) \(Counsel in Family Proceedings\) \(Amendment\) Order 2008 \(S.I 2008 No . 666\)](#)

<sup>11</sup> Inserted by the Community Legal Service (Funding) (Counsel in Family Proceedings) (Amendment) Order 2007 (S.I 2007 No .2443)

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## NOTES

<sup>1</sup> Inserted by the Community Legal Service (Funding) (Counsel in Family Proceedings) (Amendment) Order 2003 (S.I. No. 2003 No. 2590).

<sup>2</sup> Deleted by the Community Legal Service (Funding) (Counsel in Family Proceedings) (Amendment) Order 2003 (S.I. No. 2003 No. 2590).

<sup>3</sup> Inserted by the Civil Partnership Act 2004 (Amendments to Subordinate Legislation) Order 2005 (S.I. 2005 No. 2114).

<sup>4</sup> Omitted by the Community Legal Service (Funding) (Counsel in Family Proceedings) (Amendment) Order 2007 (S.I. 2007 No. 2443)

<sup>5</sup> Inserted by the Adoption and Children Act 2002 (Consequential Amendments) Order 2005 (S.I. 2005 No. 3504).

<sup>6</sup> Omitted by the Community Legal Service (Funding) (Counsel in Family Proceedings) (Amendment) Order 2006 (S.I. 2006 No. 2364)

<sup>7</sup> Inserted by the Community Legal Service (Funding) (Counsel in Family Proceedings) (Amendment) Order 2006 (S.I. 2006 No. 2364).

<sup>8</sup> Omitted by the Community Legal Service (Funding) (Counsel in Family Proceedings) (Amendment) Order 2006 (S.I. 2006 No. 2364).

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### [Function F1

**2A.—(1) Subject to paragraph (2), function F1 means all work—**

- (a) which is carried out prior to the issue of proceedings; or**
- (b) which does not fall within functions F2 to F5.**

**(2) Function F1 does not include work carried out in connection with a conference.**

### Function F2

**2B.—(1) Subject to paragraph (2), function F2 means all work carried out in connection with a hearing relating to injunctive relief or enforcement procedures, except a committal hearing.**

**(2) Function F2 does not include any work which falls within function F5.**

**(3) In this article “work” includes, but is not limited to, preparation, advocacy, advising and drafting.**

### Function F3

**2C.—(1) Subject to paragraph (2), function F3 means all work carried out in connection with—**

- (a) a hearing, including a committal hearing; or**
- (b) in care proceedings, an Advocates Meeting, Case Management Conference, Issues Resolution Hearing<sup>12</sup> or Pre-Hearing Review.**

**(2) Function F3 does not include any work which falls within function F2 or F5.**

**(3) In this article “work” includes, but is not limited to, preparation, advocacy, advising and drafting.**

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<sup>12</sup> Inserted by the Community Legal Service (Funding) (Counsel in Family Proceedings) (Amendment No.2) Order 2007 (S.I. 2007 No. 3169)

## Function F4

2D.—(1) Subject to paragraph (2), function F4 means all work carried out in connection with a conference, including a telephone or video conference , or an Advocates' Meeting under the Public Law Outline in proceedings other than care proceedings<sup>13</sup>;

(2) Function F4 does not include any conference which takes place on the same day as a hearing for which payment is claimed under function F5.

(3) In this article “work” includes, but is not limited to, preparation ~~and~~ advice advising and drafting<sup>14</sup>.

## Function F5

2E.—(1) Function F5 means all work carried out in connection with—

- (a) the main hearing; and
- (b) in care proceedings, where the same counsel attends either—
  - (i) under the Children Act Protocol, both the Pre-Hearing Review and the main hearing on behalf of a client, the Pre-Hearing Review; or
  - (ii) under the ~~Draft~~ Public Law Outline, both the Issues Resolution Hearing and the main hearing on behalf of a client, the Issues Resolution Hearing.<sup>15</sup>

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(2) In this article “work” includes, but is not limited to, preparation, advocacy, advising and drafting.]

### 3. Transitional provisions

This Order applies to all fees mentioned in article 4(2) payable to counsel under a certificate granted on or after 1st May 2001, and such fees payable under a certificate granted before that date shall be treated as if this Order had not been made.

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### 4. Scope

(1) In respect of proceedings to which this Order applies, the Commission shall fund services as part of the Community Legal Service in accordance with the provisions of the following articles.

(2) Subject to article 3 and paragraphs [(2A)] to (6), and to any limitations on the relevant certificate, this Order applies to counsel's fees in respect of all family proceedings in the High Court, county courts and magistrates' courts.

**[(2A) This Order does not apply to family proceedings in magistrates' courts where:**

- (a) prior authority to instruct counsel in respect of the work which was carried out has not been granted by the Commission; and**
- (b) on the assessment of costs by the Commission, instructing counsel to carry out that work was not considered to be justified,**

*[in which case all costs and disbursements in respect of such work shall be assessed in accordance with the rates set out in the Legal Aid in Family Proceedings*

<sup>13</sup> Inserted by the Community Legal Service (Funding) (Counsel in Family Proceedings) (Amendment) Order 2008 (S.I 2008 No. 666)

<sup>14</sup> Substituted by the Community Legal Service (Funding) (Counsel in Family Proceedings) (Amendment) Order 2008 (S.I 2008 No. 666)

<sup>15</sup> Inserted by the Community Legal Service (Funding) (Counsel in Family Proceedings) (Amendment No.2) Order 2007 (S.I 2007 No. 3169)

**(2B) This Order does not apply where counsel is instructed under Legal Help or Family Help (Lower).**<sup>17</sup>

(3) This Order does not apply to proceedings where the length of the main hearing exceeds 10 days.

(4) This Order does not apply to appeals to:

- (a) the Divisional Court of the High Court;
- (b) the Court of Appeal; or
- (c) the House of Lords.

(5) Where the Commission issues a High Cost Case Contract under the Funding Code, this Order applies except to the extent that the terms of such contract provide otherwise.

(6) Nothing in this Order shall affect any determination of the amount of costs payable under an order or agreement which provides that another party to proceedings or prospective proceedings shall pay all or part of the costs of a client.

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**NOTES**

<sup>1</sup> S.I. 1991/2038

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**5. Graduated fees**

(1) The amount of the graduated fee for counsel shall be the base fee or the hearing unit fee, as appropriate, in respect of the function for which the fee is claimed, which is specified in the Schedules to this Order as applicable to the category of proceedings and the counsel instructed, increased by any:

- (a) settlement supplement (“SS”) or additional payment;
- (b) special issue payment (“SIP”); and
- (c) court bundle payment [ (“CBP”)];

so specified.

(2) The total graduated fee, as set out in paragraph (1), shall be increased by 33% in respect of all work carried out while the proceedings are in the High Court.

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**6. Mixed and multiple claims**

(1) **[A maximum of two base fees]** [Only one base fee]<sup>1</sup> may be claimed in respect of each of functions F1 and F4 in relation to any single set of proceedings.

(1A) For the purposes of paragraph (1), work carried out in connection with an Advocates’ Meeting referred to in article 2D(1) shall be excluded<sup>18</sup>.

(2) Where counsel carries out work relating to more than one category of proceedings within the same function in a single set of proceedings, he may claim the fee for one category only.

(3) Counsel shall specify the category of proceedings upon which the fee payable under this Order is to be based when he submits his claim for payment.

(4) For the purposes of this Order, applications to the court constitute a single set of proceedings irrespective of whether they are made separately or together, where they are:

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<sup>16</sup> Deleted by the Community Legal Service (Funding) (Counsel in Family Proceedings) (Amendment) Order 2007 (S.I 2007 No .2443)

<sup>17</sup> Inserted by the Community Legal Service (Funding) (Counsel in Family Proceedings) (Amendment) Order 2007 (S.I 2007 No .2443)

<sup>18</sup> Inserted by the Community Legal Service (Funding) (Counsel in Family Proceedings) (Amendment) Order 2008 (S.I 2008 No. 666)

- (a) heard together or consecutively; and
- (b) treated by the court as a single set of proceedings.

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## 7. Representation of more than one party

Subject to article 9(1)(c), where counsel represents more than one party in the same set of proceedings, payment shall be made as if counsel represented a single party.

## PART II

### RULES REGARDING FEES

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## 8. Hearing units

### (1) Where—

(a) preparatory work for a hearing is carried out but that hearing does not take place;  
or

(b) preparatory work for the main hearing is carried out but counsel is prevented from representing his client because—

(i) he has withdrawn from the proceedings with the permission of the court because of his professional code of conduct or to avoid embarrassment in the exercise of his profession; or

(ii) he has been dismissed by his client,

one half of a single relevant hearing unit fee, without special issue payments or court bundle payments, shall be paid.

(1A) For the purposes of paragraph (1)(a) “hearing” in care proceedings includes—

(a) a Case Management Conference;

(b) a Pre-Hearing Review;

(c) an Issues Resolution Hearing.

(1B) Where, in care proceedings, the advocates concerned are able to discuss all relevant matters without the need for an Advocates’ Meeting under paragraph 5.2 of the Children Act Protocol or stage 2 or 3 of the Public Law Outline, one half of a single function F3 hearing unit fee, without special issue payments or court bundle payments, shall be paid<sup>19</sup>

~~(1) Where:~~

~~(a) preparatory work for a hearing is carried out but that hearing does not take place; or~~  
~~(aa) in care proceedings, the advocates concerned are able to discuss all relevant matters without the need for an Advocates’ Meeting under paragraph 5.2 of the Children Act Protocol or stage 2 or 3 of the Draft Public Law Outline<sup>20</sup>; or<sup>1</sup>~~

~~(b) preparatory work for the main hearing is carried out but counsel is prevented from representing his client because:~~

~~(i) he has withdrawn from the proceedings with the permission of the court because of his professional code of conduct or to avoid embarrassment in the exercise of his profession; or~~

<sup>19</sup> Substituted by the Community Legal Service (Funding) (Counsel in Family Proceedings) (Amendment) Order 2008 (S.I. 2008 No .666)

<sup>20</sup> Inserted by the Community Legal Service (Funding) (Counsel in Family Proceedings) (Amendment No.2) Order 2007 (S.I. 2007 No. 3169)

~~\_\_\_\_\_ (ii) he has been dismissed by his client  
one half of the relevant hearing unit fee, without special issue payments or court bundle  
payments, shall be paid~~

~~(e) In this paragraph, 'hearing' shall, in care proceedings, include~~

~~\_\_\_\_\_ (i) a Case Management Conference;~~

~~\_\_\_\_\_ (ii) a Pre-Hearing Review; or~~

~~\_\_\_\_\_ (iii) an Issues Resolution Hearing<sup>24</sup>~~

(2) For the purpose of functions F2 and F3:

(a) one hearing unit fee shall be paid for each period of two and a half hours or less for which the hearing continues;

(b) the hearing shall:

(i) [subject to paragraph (2A),]<sup>2</sup> commence at the time at which it is listed to begin or at the time at which counsel is specifically directed by the court to attend for that particular hearing, whichever is earlier;

(ii) end when it concludes or at 5pm, whichever is earlier; and

(iii) take no account of any luncheon adjournment; and

(c) where a hearing continues after 5pm and concludes on that same day, an additional one half of the hearing unit fee shall be paid in respect of the time on that day after 5pm.

[(2A) For the purpose of function F3, where, in care proceedings, an Advocates' Meeting is held on the same day as a Case Management Conference, Issues Resolution Hearing or Pre-Hearing Review, a hearing unit fee shall be paid as if the Advocates' Meeting and the Case Management Conference, Issues Resolution Hearing or (as the case may be) Pre-Hearing Review together formed a single hearing, beginning at the time when  
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...  
the Advocates' Meeting began and ending when the Case Management Conference, Issues Resolution Hearing or (as the case may be) Pre-Hearing Review ended.]<sup>1</sup>

(3) For the purpose of function F5:

(a) where the hearing takes place on one day, the primary hearing unit fee shall be paid for the period from the time at which the hearing begins until 5pm on that day;

(b) where the hearing takes place over more than one day, whether by reason of being adjourned, split or otherwise:

(i) the hearing on the first day shall be paid at the primary hearing unit rate; and

(ii) the hearing on any subsequent date shall be paid at the secondary hearing unit rate; and

(c) where a hearing continues after 5pm and ends on that same day, an additional one half of the appropriate hearing unit fee (whether primary or secondary) shall be paid in respect of the time on that day after 5pm;

(d) where, in care proceedings, the same counsel attends —

(i) under the Children Act Protocol, both the Pre-Hearing Review and the main hearing on behalf of a client; or

(ii) under the ~~Draft~~ Public Law Outline, both the Issues Resolution Hearing and \_\_\_\_\_ the main hearing on behalf of a client,

a function F5 primary hearing fee must be paid in respect of either the Pre-Hearing Review or the Issues Resolution Hearing and the main hearing must be paid at the secondary hearing unit rate<sup>22</sup>;

(dd) where, in care proceedings, there is more than one Issues Resolution Hearing, subparagraph (d) applies only to the first such Hearing<sup>23</sup>;

<sup>21</sup> Inserted by the Community Legal Service (Funding) (Counsel in Family Proceedings) (Amendment No.2) Order 2007 (S.I 2007 No. 3169

<sup>22</sup> Substituted by the Community Legal Service (Funding) (Counsel in Family Proceedings) (Amendment No.2) Order 2007 (S.I 2007 No. 3169

<sup>23</sup> Inserted by the Community Legal Service (Funding) (Counsel in Family Proceedings) (Amendment) Order 2008 (S.I 2008 No. 666)

- (e) where, in care proceedings, counsel makes written submissions as to orders consequential to the main hearing an additional secondary hearing unit fee shall be paid]<sup>1</sup>.

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## NOTES

<sup>1</sup> *Words in italics apply only to cases not subject to amendment by the*

<sup>2</sup> Inserted by the Community Legal Service (Funding) (Counsel in Family Proceedings) (Amendment) Order 2003 (S.I. No. 2003 No. 2590).

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### 9. Special issue payments

(1) A special issue may arise where the proceedings involve, or, with regard to sub-paragraphs (e) to (g), are alleged to involve:

- (a) a litigant in person;
- (b) more than two parties;
- (c) representation of more than one child by counsel submitting a claim for payment under this Order;

**[(ca) representation of a person who has difficulty:**

- (i) giving instruction, or**
  - (ii) understanding advice,**
- attributable to a mental disorder or to a significant impairment of intelligence or social functioning;**

**(cb) representation of:**

- (i) a parent or parents of a child who is the subject of proceedings, or**
- (ii) another person (including a child) against whom allegations are made that he has caused or is likely to cause significant harm to a child;**

**(cc) analysis of the business accounts of an individual, partnership or company;**

**(cd) in respect of proceedings which fall within paragraph 4 of Schedule 2, one or more experts;]**

- (d) [in respect of proceedings which fall within paragraphs 1, 2 or 3 of Schedule 2,]** more than one expert;
- (e) a relevant foreign element;
- (f) relevant assets which are not or may not be under the exclusive control of any of the parties; or
- (g) a party who has or may have been involved in the following:

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- (i) conduct by virtue of which a child who is the subject of the proceedings has, may have or might suffer very significant harm; or
- (ii) intentional conduct which has, could have or might significantly reduce the assets available for distribution by the court.

(2) The judge hearing the case shall, at the conclusion of the relevant hearing, certify on a form provided for that purpose any special issues mentioned in paragraph (1)(a) to (cb(i)), and any mentioned in paragraph (1)(cb(ii)) to (g) which were of substance and relevant to any of the issues before the court at that hearing.

(2A) Where work is carried out under function F3 or F4 in connection with an Advocates' Meeting, the relevant hearing under paragraph (2) is the associated Case Management Conference, Issues Resolution Hearing or Pre-Hearing Review, as the case may be<sup>24</sup>.

(3) The decision of the judge under paragraph (2) shall be final save on a point of law.

[(4) *Subject to paragraph (7):*

- (a) *a special issue payment shall be made for each special issue certified in relation to functions F2, F3 and F5;*

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<sup>24</sup> Inserted by the Community Legal Service (Funding) (Counsel in Family Proceedings) (Amendment) Order 2008 (S.I. 2008 No. 666)

(b) *such payment shall equate to the percentage of the single hearing unit fee applicable to the function in which the issue arises which is specified in Schedule 1 for that special issue.*]

**[(4) In relation to functions F2, F3 and F5:**

- (a) **a special issue payment shall be made for each special issue certified;**
- (b) **such payment shall equate to the percentage applicable to each special issue multiplied by the total hearing unit fees applicable to the function in which the issue arises, as specified in Schedule 1.]**

**(5) [In relation to functions F1 and F4][Subject to Paragraph 8]:**

- (a) counsel may, when he submits his claim for payment, claim a special issue payment in respect of any special issue[*in relation to functions F1 and F2*];
- (b) such payment shall equate to the percentage of the single base fee applicable to the function in which the issue arises which is specified in Schedule 1 for that special issue.

(6) the [2] Director shall, in considering any claim made under paragraph (5), consider whether the work in question was reasonably carried out and, in respect of any special issues mentioned in paragraph (1)(d) to (g), whether the issue was of substance and relevant to any of the issues before the court.

*[(7) With regard to functions F2 and F3, where more than one hearing has taken place in a single set of proceedings, a special issue payment shall be made only in respect of one such hearing in relation to any special issue certified in respect of that hearing, and counsel shall specify in respect of which hearing in each function it shall be made.*

*[(8) With regard to function F4, where more than one conference has taken place counsel shall specify in respect of which single conference the special issue payment shall be made].*

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## **10. Financial Dispute Resolution hearing payments**

In respect of a set of proceedings which include proceedings for ancillary relief, an additional payment shall be paid at a rate of £[150] **287.50** in respect of Queen's Counsel, and £[60] **115** in respect of counsel other than Queen's Counsel, in respect of the Financial Dispute Resolution hearing in function F3.

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**[10A** In respect of care proceedings, an additional payment shall be paid at a rate of £[206.25] **162.50** in respect of Queen's Counsel, and £[82.50] **65** in respect of counsel other than Queen's Counsel, in respect of the Case Management Conference in function F3.]<sup>1</sup>

Payments for enforcement procedures and contested injunction hearings

**[10B.— In respect of a set of proceedings within paragraph 4 of Schedule 2, which include work carried out under function F2 in connection with a hearing relating to:**

- (a) **injunctive relief which is contested, or**
- (b) **enforcement procedures,**

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**an additional payment shall be made at a rate of £250 in respect of Queen's Counsel, and £100 in respect of counsel other than Queen's Counsel.]**

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### **NOTES**

<sup>1</sup> Inserted by the Community Legal Service (Funding) (Counsel in Family Proceedings) (Amendment) Order 2003 (S.I. No. 2003 No. 2590).

<sup>2</sup> Omitted by the Community Legal Service (Funding) (Counsel in Family Proceedings) (Amendment) Order 2006 (S.I. 2006 No. 2364).

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## 11. Court bundle payments

(1) A court bundle payment shall be made:

- (a) where the court bundle comprises between 176 and 350 pages;
- (b) where the court bundle [comprises more than 350 pages]<sup>1</sup>; and
- (c) as a special preparation fee [in addition to the payment under sub-paragraph (b)]<sup>2</sup> in accordance with article 16 where the court bundle comprises more than 700 pages.

(2) Where there is no court bundle, equivalent provisions to those in paragraph (1) shall apply to counsel's brief.

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### NOTES

<sup>1</sup> Substituted by the Community Legal Service (Funding) (Counsel in Family Proceedings) (Amendment) Order 2003 (S.I. No. 2003 No. 2590).

<sup>2</sup> Inserted by the Community Legal Service (Funding) (Counsel in Family Proceedings) (Amendment) Order 2003 (S.I. No. 2003 No. 2590).

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## 12. Early settlement payments

(1) Subject to paragraphs (2) and (3), one settlement supplement shall be paid, as a percentage of the base fee or the hearing unit fee, as appropriate, applicable to the function in which the settlement takes place, where a settlement takes place which leads to the resolution of the set of proceedings.

**[(1A) In paragraph (1), reference to the base fee or the hearing unit fee means the single fee applicable to the function in which the settlement takes place, and no account is to be taken of multiple base fees or hearing unit fees which may be claimed in relation to a set of proceedings.]**

(2) Subject to paragraph (3), no settlement supplement shall be paid in respect of a settlement which takes place in:

- (a) function F1;
- (b) function F4;
- (c) the primary hearing unit of function F5 where the proceedings have been listed for less than 2 days; or
- (d) the secondary hearing unit of function F5.

(3) In respect of a set of proceedings which include proceedings for ancillary relief, an additional payment shall be paid at a rate of £171.88 in respect of Queen's Counsel, and £68.75 in respect of counsel other than Queen's Counsel, where a settlement takes place in function F1 which leads to the resolution of the set of proceedings.

## 1B-146

## 13. Incidental items

An incidental item payment may be claimed, where it was reasonably and necessarily incurred, in respect of the following:

- (a) listening to or viewing evidence recorded on tape, disc or video cassette, once in respect of each item, at a rate of £10.90 per 10 minutes running time; and

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- (b) ...<sup>1</sup>
  - (i) time spent travelling, at an hourly rate of £13.60;
  - (ii) incurring travel expenses at a mileage rate of 45p per mile or at the rate of the cheapest second class fare reasonably available, as appropriate; and
  - (iii) incurring hotel expenses at an overnight subsistence rate of £85.25 in respect of hotels situated within the London Region of the Commission and £55.25 elsewhere.

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**NOTES**

<sup>1</sup> Deleted by the Community Legal Service (Funding) (Counsel in Family Proceedings) (Amendment) Order 2003 (S.I. No. 2003 No. 2590).

**1B-147****14. Replacement counsel**

Where one counsel replaces another during the course of a function, payment shall be made to the replacement counsel and shall be divided by agreement between them.

**1B-148****15. Applications after the main hearing**

(1) Claims for payment in respect of work carried out after the main hearing shall be paid at the appropriate function rate.

(2) For the purposes of this Order, an appeal from a District Judge to a Circuit Judge or a High Court Judge, and all work relating thereto including but not limited to an advice on appeal, shall be treated as the commencement of a new set of proceedings.

**1B-149****16. Special preparation fee**

(1) Where this article applies, counsel may claim a special preparation fee in addition to the graduated fee payable under this Order.

(2) This article applies where:

- (a) the proceedings to which the relevant certificate relates involve exceptionally complex issues of law or fact[, or was otherwise an exceptional case of its nature]<sup>1</sup>; or
- (b) in public law children proceedings, in relation to work carried out within the secondary hearing unit of function F5, where the main hearing is split so that a period of at least four months elapses between its commencement and the time at which it resumes

such that it has been necessary for counsel to carry out work by way of preparation substantially in excess of the amount normally carried out for proceedings of the same type; or

(c) the court bundle comprises more than 700 pages.

(3) The amount of the special preparation fee shall be calculated by multiplying the number of hours of preparation in excess of the amount normally carried out for proceedings of the same type, by an hourly rate of £100.50 in respect of Queen's Counsel, and £40.20 in respect of counsel other than Queen's Counsel.

(4) Where counsel claims a special preparation fee for work carried out within functions F1 and F4, or within functions F2, F3 and F5 where no hearing takes place, he shall, when submitting his claim for payment, supply such information and documents as may be required by the []<sup>2</sup> Director as proof of the complexity of the relevant issues of law or fact and of the number of hours of preparation, and the []<sup>3</sup> Director shall decide what special preparation fee, if any, shall be paid.

(5) Where counsel claims a special preparation fee for work carried out within functions F2, F3, and F5 he shall apply accordingly to the judge hearing the case at the relevant hearing, who shall decide what additional fee, if any, shall be paid, and whose decision shall be final save on a point of law.

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**NOTES**

<sup>1</sup> Inserted by the Community Legal Service (Funding) (Counsel in Family Proceedings) (Amendment) Order 2003 (S.I. No. 2003 No. 2590).

<sup>2</sup> Omitted by the Community Legal Service (Funding) (Counsel in Family Proceedings) (Amendment) Order 2006 (S.I. 2006 No. 2364).

<sup>3</sup> Omitted by the Community Legal Service (Funding) (Counsel in Family Proceedings) (Amendment) Order 2006 (S.I. 2006 No. 2364).

## 1B-150

### 17. Claims for payment

(1) Claims for payment in respect of work to which this Order applies shall be submitted to the [<sup>3</sup>] Director and shall contain full details of the claim and copies of all relevant documents.

(2) Counsel may submit a claim for payment:

- (a) when the proceedings to which the certificate relates are concluded;
- (b) when the certificate under which the work has been carried out is discharged or revoked and any review by the Commission or the [Independent Funding Adjudicator]<sup>4</sup> has been completed;
- (c) when he has completed all work in respect of which he has been instructed up to and including function F2 or F3, as appropriate;
- (d) when he has completed all work in respect of which he has been instructed in function F5; and
- (e) where he has received no instructions from the instructing solicitor for a period of 3 months.

(3) Only one claim for payment may be submitted under paragraph (2)(c) in respect of any one set of proceedings.

(4) Only one claim for payment may be submitted in respect of function F4 in respect of any one set of proceedings.

(5) Any claim for payment may include a claim in respect of all work carried out in the proceedings for which counsel has not previously submitted a claim.

**[(6) Counsel shall submit his claim for payment—**

- (a) in respect of function F5, within two months of the conclusion of the main hearing;**
- (b) in respect of all other functions, within two months of the discharge or revocation of the certificate to which it relates,**  
and if he fails to do so, the [<sup>5</sup>] Director may reduce the amount payable under this Order.]

(6A) A reduction in the amount payable under paragraph (6) shall not be made unless counsel has been allowed a reasonable opportunity to show cause in writing why the amount should not be reduced.

(7) Any claim for payment shall include a claim in respect of all special issue payments, court bundle payments, settlement supplements and additional payments in respect of any functions for which the base fee or hearing unit fee, as appropriate, has been claimed and no later claim may be made in this respect.

(8) The [<sup>6</sup>] Director shall consider claims for payment under this Order and all relevant information and shall pay counsel such sums as are properly and reasonably due under this Order for work carried out within the scope of any relevant certificate or contract.

(9) No claims for payment on account of sums payable under this Order may be made.

## 1B-151

### 18. Appeals

(1) If counsel is dissatisfied with any decision of the [<sup>7</sup>] Director with regard to the assessment of his fees under this Order, he may, within 21 days of the date of the assessment, (or such longer period as the [<sup>8</sup>] Director may allow) make written representations to the Independent Costs Assessor by way of an appeal.

(2) In any appeal under paragraph (1) the Independent Costs Assessor shall review the assessment and shall confirm, increase or decrease the amount assessed.

(3) If counsel is dissatisfied with the decision of the Independent Costs Assessor he may, within 21 days of the date of the reviewed assessment, apply to the Independent Costs Assessor to certify a point of principle of general importance.

(4) Where the Independent Costs Assessor certifies a point of principle of general importance, counsel may, within 21 days of the date of the certification, appeal in writing to the Costs Appeals Committee against the reviewed assessment.

(5) If the <sup>9</sup> Director is dissatisfied with any reviewed assessment under paragraph (2), he may, within 21 days of the date of such reviewed assessment, certify a point of principle of general importance and appeal in writing to the Costs Appeals Committee.

(6) In any appeal under paragraph (5) the <sup>10</sup> Director shall serve notice of the appeal on counsel who may, within 21 days of the date of such notice, make written representations to the Costs Appeals Committee.

(7) In any appeal under paragraph (4) or (5) the Costs Appeals Committee shall review the decision of the Independent Costs Assessor and shall confirm, increase or decrease the reviewed assessment.

**1B-152**

## **19. Review of payments**

(1) Subject to the provisions of this article and article 4, payments under this Order shall be final payments.

(2) Nothing in this Order shall affect any right of a client with a financial interest in an assessment of costs to make representations after the conclusion of the set of proceedings with regard to such payments.

(3) Representations under paragraph (2) above may include representations as to the use of counsel in proceedings and as to the sums payable to counsel under this Order.

(4) Where a contract entered into by the Commission in accordance with section 6(3)(a) of the Act includes rules for the assessment of costs in proceedings in which fees have been paid or are payable to counsel under this Order, and such costs are to be assessed by the court, the court shall carry out such assessment in accordance with those rules.

(5) Where in any assessment of costs it appears that payments made to counsel are in excess of the amount properly and reasonably due to counsel under this Order or any relevant certificate, counsel's fees shall be reduced accordingly.

(6) Where in any assessment of costs payment to counsel under this Order alone would exceed any limit set by the Commission on the total costs payable under the relevant certificate or contract, counsel's fees shall be reduced accordingly.

(7) Counsel shall be informed of any reduction in his fees under this article and shall have the same rights to make representations with regard to any such reduction as would a solicitor, in accordance with the relevant rules of court, contract and regulations, as applicable.

(8) Where payment has been made under this Order which is in excess of the amount properly and reasonably due to counsel, the Commission may recover the excess payment either by way of repayment by counsel or by way of deduction from any other sum which may be due to him.

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### **NOTES**

<sup>1</sup> Sections in bold type face were inserted by Community Legal Service (Funding) (Counsel in Family Proceedings) Order 2005 (S.I. 2005 no. 184) and apply to work carried out under a certificate granted, and amendments made to add new proceedings to an existing certificate, on or after 28th February 2005, other than the amendment to Article 17 (6), which applied to all proceedings in existence on and commenced after 28th February 2005.

<sup>2</sup> Sections in italics apply only to work not covered by the Community Legal Service (Funding) (Counsel in Family Proceedings) Order 2005 (S.I. 2005 no. 184).

<sup>3</sup> Omitted by the Community Legal Service (Funding) (Counsel in Family Proceedings) (Amendment) Order 2006 (S.I. 2006 No. 2364).

<sup>4</sup> Substituted by the Community Legal Service (Funding) (Counsel in Family Proceedings) (Amendment) Order 2006 (S.I. 2006 No. 2364).

<sup>5</sup> Omitted by the Community Legal Service (Funding) (Counsel in Family Proceedings) (Amendment) Order 2006 (S.I. 2006 No. 2364).

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<sup>6</sup> Omitted by the Community Legal Service (Funding) (Counsel in Family Proceedings) (Amendment) Order 2006 (S.I. 2006 No. 2364).

<sup>7</sup> Omitted by the Community Legal Service (Funding) (Counsel in Family Proceedings) (Amendment) Order 2006 (S.I. 2006 No. 2364).

<sup>8</sup> Omitted by the Community Legal Service (Funding) (Counsel in Family Proceedings) (Amendment) Order 2006 (S.I. 2006 No. 2364).

<sup>9</sup> Omitted by the Community Legal Service (Funding) (Counsel in Family Proceedings) (Amendment) Order 2006 (S.I. 2006 No. 2364).

<sup>10</sup> Omitted by the Community Legal Service (Funding) (Counsel in Family Proceedings) (Amendment) Order 2006 (S.I. 2006 No. 2364).

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Dated 15th March, 2001

Irvine of Lairg, C.

1B-153

## SCHEDULE 1

### Tables of fees

1. In respect of the proceedings mentioned in paragraph 1 of Schedule 2, the amount of the graduated fee shall be as follows:

(a) in respect of Queen's Counsel:

	<b>Base fee</b>	<b>Hearing unit fee</b>	<b>SS</b>	<b>CBP*</b>	<b>CBP**</b>
F1	£150	--	--	£40	£79
F2	--	£287.50	100%	£47	£94
F4	£125	--	--	£33	£67
F5 primary	--	£800	10%	£221	£442
F5 second ary	--	£550	--	£135	£271

Special Issue Payments	
Litigant in person	5%
More than two parties	5%
More than one child	5%
More than one expert	10%
Foreign	0%
Assets	0%
Conduct	0%

\* where the court bundle comprises between 176 and 350 pages.

\*\* [where the court bundle comprises more than 350 pages]<sup>1</sup>

(b) in respect of counsel other than Queen's Counsel:

	Base fee	Hearing unit fee	SS	CBP*	CBP**
F1	£60	--	--	£16	£32
F2	--	£115	100%	£19	£37.50
F4	£50	--	--	£13	£27
F5 primary	--	£320	10%	£88	£177
F5 secondary	--	£220	--	£54	£108
Special Issue Payments					
Litigant in person		5%			
More than two parties		5%			
More than one child		5%			
More than one expert		10%			

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Foreign	0%
Assets	0%
Conduct	0%

\* where the court bundle comprises between 176 and 350 pages.

\*\* [where the court bundle comprises more than 350 pages]<sup>1</sup>

2. In respect of proceedings mentioned in paragraph 2 of Schedule 2, the amount of the graduated fee shall be as follows:

(a) in respect of Queen's Counsel:

	<b>Base fee</b>	<b>Hearing unit fee</b>	<b>SS</b>	<b>CBP*</b>	<b>CBP**</b>
F1	£175	--	--	£40	£79
F2	--	£212.50	100%	£47	£94
F3	--	£412.50	100%	£82	£165
F4	£150	--	--	£33	£67
F5 primary	--	£1,075	20%	£221	£442
F5 secondary	--	£575	--	£135	£271
Special Issue Payments					
Litigant in person		40%			
More than two parties		40%			
More than one child		5%			
More than one expert		20%			
Foreign		30%			
Assets		0%			
Conduct		50%			

\* where the court bundle comprises between 176 and 350 pages.

\*\* [where the court bundle comprises more than 350 pages]<sup>1</sup>

(b) in respect of counsel other than Queen's Counsel:

	<b>Base fee</b>	<b>Hearing unit fee</b>	<b>SS</b>	<b>CBP*</b>	<b>CBP**</b>
F1	£70	--	--	£16	£32
F2	--	£85	100%	£19	£37.50
F3	--	£165	100%	£33	£66
F4	£60	--	--	£13	£27
F5 primary	--	£430	20%	£88	£177
F5 secondary	--	£230	--	£54	£108
Special Issue Payments					
Litigant in person		40%			
More than two parties		40%			

More than one child	5%
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More than one expert	20%
Foreign	30%
Assets	0%
Conduct	50%

\* where the court bundle comprises between 176 and 350 pages.

\*\* [where the court bundle comprises more than 350 pages]<sup>1</sup>

3. In respect of proceedings mentioned in paragraph 3 of Schedule 2, the amount of the graduated fee shall be as follows:

(a) in respect of Queen's Counsel:

	Base fee	Hearing unit fee	SS	CBP*	CBP**
F1	£150	--	--	£40	£79
F2	--	£187.50	100%	£47	£94
F3	--	£300	100%	£82	£165
F4	£125	--	--	£33	£67
F5 primary	--	£812.50	10%	£221	£442
F5 secondary	--	£550	--	£135	£271
Special Issue Payments					
Litigant in person		30%			
More than two parties		30%			
More than one child		5%			
More than one expert		50%			
Foreign		30%			
Assets		0%			
Conduct		50%			

\* where the court bundle comprises between 176 and 350 pages.

\*\* [where the court bundle comprises more than 350 pages]<sup>1</sup>

(b) in respect of counsel other than Queen's Counsel:

	<b>Base fee</b>	<b>Hearing unit fee</b>	<b>SS</b>	<b>CBP*</b>	<b>CBP**</b>
F1	£60	--	--	£16	£32
F2	--	£75	100%	£19	£37.50
F3	--	£120	100%	£33	£66
F4	£50	--	--	£13	£27
F5 primary	--	£325	10%	£88	£177
F5 secondary	--	£220	--	£54	£108
<b>Special Issue Payments</b>					
Litigant in person		30%			
More than two parties		30%			

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More than one child	5%
More than one expert	50%
Foreign	30%
Assets	0%
Conduct	50%

\* where the court bundle comprises between 176 and 350 pages.

\*\* [where the court bundle comprises more than 350 pages]<sup>1</sup>

4. In respect of proceedings mentioned in paragraph 4 of Schedule 2, the amount of the graduated fee shall be as follows:

(a) in respect of Queen's Counsel:

	<b>Base fee</b>	<b>Hearing unit fee</b>	<b>SS</b>	<b>CBP*</b>	<b>CBP**</b>
F1	£150	--	-- <sup>a</sup>	£40	£79
F2	--	£162.50	50%	£47	£94
F3	--	£300	50%	£82	£165
F4	£125	--	--	£33	£67
F5 primary	--	£812.50	10%	£221	£442
F5 secondary	--	£550	--	£135	£271
<b>Special Issue Payments</b>					
Litigant in person		10%			

More than two parties	10%
More than one child	5%
More than one expert	10%
Foreign	25%
Assets	50%
Conduct	50%

<sup>a</sup> see article 12(3)

\* where the court bundle comprises between 176 and 350 pages.

\*\* [where the court bundle comprises more than 350 pages]<sup>1</sup>

(b) in respect of counsel other than Queen's Counsel:

	<b>Base fee</b>	<b>Hearing unit fee</b>	<b>SS</b>	<b>CBP*</b>	<b>CBP**</b>
F1	£60	--	-- <sup>a</sup>	£16	£32
F2	--	£65	50%	£19	£37.50
F3	--	£120	50%	£33	£66
F4	£50	--	--	£13	£27
F5 primary	--	£325	10%	£88	£177
F5 secondary	--	£220	--	£54	£108
Special Issue Payments					

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Litigant in person	10%
More than two parties	10%
More than one child	5%
More than one expert	10%
Foreign	25%
Assets	50%
Conduct	50%

<sup>a</sup> see article 12(3)

\* where the court bundle comprises between 176 and 350 pages.

\*\* [where the court bundle comprises more than 350 pages]<sup>1</sup>

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**NOTES**

<sup>1</sup> Substituted by the Community Legal Service (Funding) (Counsel in Family Proceedings) (Amendment) Order 2003 (S.I. No. 2003 No. 2590).

**1B-154**

### Revised Schedule of Fees for cases under the revised scheme

#### Tables of fees

(1) In respect of the proceedings mentioned in paragraph 1 of Schedule 2, the amount of the graduated fee shall be as follows:

(a) in respect of Queen's Counsel:

	<b>Base fee</b>	<b>Hearing unit fee</b>	<b>SS</b>	<b>CBP<sup>1</sup></b>	<b>CBP<sup>2</sup></b>
	<b>£</b>	<b>£</b>	<b>%</b>	<b>£</b>	<b>£</b>
F1	200.00	-	-	40.00	79.00
F2	-	287.50	100	47.00	94.00
F3	-	431.00	100	82.00	165.00
F4	175.00	-	-	33.00	67.00
F5 primary	-	775.00	10	221.00	442.00
F5 secondary	-	550.00	-	135.00	271.00

<sup>1</sup> Where the court bundle comprises between 176 and 350 pages.

<sup>2</sup> Where the court bundle comprises more than 350 pages.

#### Special issue payments

<b>Category</b>	<b>%</b>
Litigant in person	10
More than two parties	0
More than one child	0
Difficulty giving instruction/understanding advice	0
<b>--- Looseleaf Page Break (79) ---</b>	
Parents/allegations against others	0
Analysis of accounts	0
More than one expert	10
Foreign	0
Assets	0
Conduct	0

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(b) in respect of counsel other than Queen's Counsel:

	<b>Base fee</b>	<b>Hearing unit fee</b>	<b>SS</b>	<b>CBP1</b>	<b>CBP2</b>
	<b>£</b>	<b>£</b>	<b>%</b>	<b>£</b>	<b>£</b>
F1	80.00	-	-	16.00	32.00
F2	-	115.00	100	19.00	37.50
F3	-	172.50	100	33.00	66.00
F4	70.00	-	-	13.00	27.00
F5 primary	-	310.00	10	88.00	177.00
F5 secondary	-	220.00	-	54.00	108.00

<sup>1</sup> Where the court bundle comprises between 176 and 350 pages.

<sup>2</sup> Where the court bundle comprises more than 350 pages.

#### Special issue payments

<b>Category</b>	<b>%</b>
Litigant in person	10
More than two parties	0
More than one child	0
Difficulty giving instruction/understanding advice	0
Parents/allegations against others	0
Analysis of accounts	0
More than one expert	10
Foreign	0
Assets	0
Conduct	0

(1) In respect of the proceedings mentioned in paragraph 2 of Schedule 2, the amount of the graduated fee shall be as follows:

(b) in respect of Queen's Counsel:

	<b>Base fee</b>	<b>Hearing unit fee</b>	<b>SS</b>	<b>CBP1</b>	<b>CBP2</b>
	<b>£</b>	<b>£</b>	<b>%</b>	<b>£</b>	<b>£</b>
F1	200.00	-	-	40.00	79.00
F2	-	212.50	100	47.00	94.00
F3	-	325.00	100	82.00	165.00
F4	175.00	-	-	33.00	67.00

F5 primary	-	1075.00	20	221.00	442.00
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F5 secondary	-	575.00	-	135.00	271.00
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<sup>1</sup> Where the court bundle comprises between 176 and 350 pages.

<sup>2</sup> Where the court bundle comprises more than 350 pages.

### Special issue payments

Category	%
Litigant in person	0
More than two parties	40
More than one child	0
Difficulty giving instruction/understanding advice	25
Parents/allegations against others	25
Analysis of accounts	0
More than one expert	15
Foreign	25
Assets	0
Conduct	20

(b) in respect of counsel other than Queen's Counsel:

	Base fee	Hearing	SS	CBP1	CBP2
	£	unit fee	%	£	£
F1	80.00	-	-	16.00	32.00
F2	-	85.00	100	19.00	37.50
F3	-	130.00	100	33.00	66.00
F4	70.00	-	-	13.00	27.00
F5 primary	-	430.00	20	88.00	177.00
F5 secondary	-	230.00	-	54.00	108.00

<sup>1</sup> Where the court bundle comprises between 176 and 350 pages.

<sup>2</sup> Where the court bundle comprises more than 350 pages.

### Special issue payments

Category	%
Litigant in person	0

More than two parties	40
More than one child	0
Difficulty giving instruction/understanding advice	25
Parents/allegations against others	25
Analysis of accounts	0
More than one expert	15
Foreign	25
Assets	0
Conduct	20

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1. In respect of the proceedings mentioned in paragraph 3 of Schedule 2, the amount of the graduated fee shall be as follows:

(b) in respect of Queen's Counsel:

	<b>Base fee</b>	<b>Hearing</b>	<b>SS</b>	<b>CBP1</b>	<b>CBP2</b>
	<b>£</b>	<b>unit fee</b>	<b>%</b>	<b>£</b>	<b>£</b>
F1	200.00	-	-	40.00	79.00
F2	-	187.50	100	47.00	94.00
F3	-	325.00	100	82.00	165.00
F4	300.00	-	-	33.00	67.00
F5 primary	-	812.50	10	221.00	442.00
F5 secondary	-	600.00	-	135.00	271.00

<sup>1</sup> Where the court bundle comprises between 176 and 350 pages.

<sup>2</sup> Where the court bundle comprises more than 350 pages.

#### **Special issue payments**

<b>Category</b>	<b>%</b>
Litigant in person	30
More than two parties	30
More than one child	0
Difficulty giving instruction/understanding advice	25
Parents/allegations against others	0
Analysis of accounts	0
More than one expert	50
Foreign	30
Assets	0

(b) in respect of counsel other than Queen's Counsel:

	<b>Base fee</b>	<b>Hearing unit fee</b>	<b>SS</b>	<b>CBP1</b>	<b>CBP2</b>
	<b>£</b>	<b>£</b>	<b>%</b>	<b>£</b>	<b>£</b>
F1	80.00	-	-	16.00	32.00
F2	-	75.00	100	19.00	37.50
F3	-	130.00	100	33.00	66.00
F4	120.00	-	-	13.00	27.00
F5 primary	-	325.00	10	88.00	177.00
F5 secondary	-	240.00	-	54.00	108.00

<sup>1</sup> Where the court bundle comprises between 176 and 350 pages.

<sup>2</sup> Where the court bundle comprises more than 350 pages.

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#### Special issue payments

<b>Category</b>	<b>%</b>
Litigant in person	30
More than two parties	30
More than one child	0
Difficulty giving instruction/understanding advice	25
Parents/allegations against others	0
Analysis of accounts	0
More than one expert	50
Foreign	30
Assets	0
Conduct	50

1. In respect of the proceedings mentioned in paragraph 4 of Schedule 2, the amount of the graduated fee shall be as follows:

(b) in respect of Queen's Counsel:

<b>Base fee</b>	<b>Hearing unit fee</b>	<b>SS</b>	<b>CBP1</b>	<b>CBP2</b>
<b>£</b>	<b>£</b>	<b>%</b>	<b>£</b>	<b>£</b>

F1	225.00	-	-3	40.00	79.00
F2	-	250.00	50	47.00	94.00
F3	-	300.00	50	82.00	165.00
F4	225.00	-	-	33.00	67.00
F5 primary	-	812.50	10	221.00	442.00
F5 secondary	-	600.00	-	135.00	271.00

<sup>1</sup> Where the court bundle comprises between 176 and 350 pages.

<sup>2</sup> Where the court bundle comprises more than 350 pages.

<sup>3</sup> See article 12(3).

### Special issue payments

Category	%
Litigant in person	25
More than two parties	10
More than one child	0
Difficulty giving instruction/understanding advice	0
Parents/allegations against others	0
Analysis of accounts	50
More than one expert	25
Foreign	25
Assets	25
Conduct	50

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(b) in respect of counsel other than Queen's Counsel:

	Base fee	Hearing	SS	CBP1	CBP2
	£	unit fee	%	£	£
	£	£	%	£	£
F1	90.00	-	-3	16.00	32.00
F2	-	100.00	50	19.00	37.50
F3	-	120.00	50	33.00	66.00
F4	90.00	-	-	13.00	27.00
F5 primary	-	325.00	10	88.00	177.00
F5 secondary	-	240.00	-	54.00	108.00

<sup>1</sup> Where the court bundle comprises between 176 and 350 pages.

<sup>2</sup> Where the court bundle comprises more than 350 pages.

<sup>3</sup> See article 12(3).

### Special issue payments

Category	%
Litigant in person	25
More than two parties	10
More than one child	0
Difficulty giving instruction/understanding advice	0
Parents/allegations against others	0
Analysis of accounts	50
More than one expert	25
Foreign	25
Assets	25
Conduct	50"

## SCHEDULE 2

### Categories of proceedings

**1. Category of proceedings: family injunctions.**

Family proceedings (other than those for ancillary relief) for an injunction, committal order, or other order for the protection of a person (other than proceedings for the protection of children within paragraph 2).

**2. Category of proceedings: public law children.**

Family proceedings under Parts III, IV or V of the Children Act 1989, adoption proceedings (including applications to free for adoption)[, proceedings under the Child Abduction and Custody Act 1985]<sup>1</sup>, and other family proceedings within the inherent jurisdiction of the High Court concerning the welfare of children (other than proceedings for ancillary relief).

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**3. Category of proceedings: private law children.**

Family proceedings between individuals concerning the welfare of children (other than those for ancillary relief or within paragraph 2).

**4. Category of proceedings: ancillary relief and all other family proceedings.**

All other family proceedings not within paragraphs 1 to 3.

## **EXPLANATORY NOTE**

*(This note is not part of the Order)*

This Order introduces a new system for the payment of graduated fees for counsel for work in family proceedings in the High Court, county courts and magistrates courts, as set out in article 4(2). The graduated fees vary with the nature of the proceedings and a number of factors designed to reflect their complexity. Provision is also made for an additional fee to be payable in proceedings involving an exceptional amount of preparation.

The Order also covers how and when claims for payment are to be made, and appeals and reviews of payments.

The Community Legal Service (Funding) Order 2000 (S.I. 2000/627), (as amended by the Community Legal Service (Funding) (Amendment) Order 2001 S.I. 2001/831) which provides for the funding of legal services as part of the Community Legal Service, will continue to apply to cases not within the scope of this Order.

In February 2005 the amendments to the Funding Order altered the system for the payment of graduated fees for counsel for work in family proceedings as set out in the Community Legal Service (Funding) (Counsel in Family Proceedings) Order 2001 (“the 2001 Order”).

Articles 3 and 4 separate the definitions of the functions from the main definitions provision to make the definitions clearer. These articles also amend the definitions of functions F2 and F3 to provide for committal hearings to be included under the latter. Article 3 also inserts further definitions consequential on the other provisions of this Order.

Article 5 provides that the 2001 Order does not apply where the use of counsel has not been authorised in advance by the Legal Services Commission, or where the use of counsel is not considered to have been necessary on a costs assessment.

Article 7 makes an amendment to provide that in mixed or multiple claims, payment of the base fee under functions F1 and F4 may be claimed up to two times in a category.

Article 8 creates three new Special Issue Payments which may arise and be claimed, where applicable, at the rates set out in Schedule 1.

Article 10 provides that Special Issue Payments are to be paid at all F2 and F3 hearings and on all hearing units.

Article 13 provides for new increased rates for financial dispute resolution hearing payments.

Article 14 provides for new increased rates for care proceedings payments.

Article 15 inserts a new payment for enforcement procedures and contested injunction hearings.

Article 16 clarifies that where an early settlement supplement is payable it is calculated on the single base fee or hearing unit fee, whether or not multiple fees have been claimed in respect of a single set of proceedings.

Article 17 reduces the time limit for a claim for payment to be submitted to two months following the conclusion of the main hearing for the purposes of function F5, and for all other functions to two months following the discharge or revocation of a certificate.

Articles 18 substitutes a new Schedule 1 to provide for amendment to the Special Issue Payments rates, for the addition of the new Special Issue Payments to the relevant categories of proceedings and for new fees payable in respect of functions F1 to F5.

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