

## Guidance on Category Definitions 2010

### Introduction

1. The Category Definitions 2010 given in this section tell you which services fall into each Category of Law. The Definitions apply to all levels of service and replace the previous SQM Category Definitions.
2. The Category Definitions 2010 are one of the key supporting documents referred to in both the 2010 Standard Civil and Standard Crime contracts. The legal significance of the Categories and the rules on who can undertake work in a Category are set out in those contracts – see in particular paragraphs 1.18 and 2.39 to 45 of the 2010 Civil Specification.
3. There are also definitions of case categories in the Funding Code, but these are often different from the Contract Category definitions as they have a different function and reflect funding priorities. For example the Funding Code definition of Housing cases – those falling within section 10 of the Code Criteria – limits those criteria to cases concerning protection of the client’s home and a tenants rights regarding disrepair and quiet enjoyment. The definition of the Housing Category in the 2010 Category Definitions is intentionally wider and includes services on behalf of a client landlord and other housing cases which would be considered under the General Funding Code Criteria rather than section 10.
4. The fact that a case falls within a Category does not imply that it is necessarily within the scope of funding under Schedule 2 of the Act. There are also many cases which are within scope but do not fall within any Category and so can only be carried out as Tolerance work under the contract. A list of residual cases which usually fall outside all Categories is given at the end of this guidance.

### Format

5. Each category is given a definition so that cases and proceedings which fall within the definition can be assigned to the category without the need to list each one separately. This will aid the classification of less common cases and proceedings and of new proceedings. A list of certain case types or proceedings may also be provided in some categories, for

clarification or for the avoidance of doubt. Where provided, the list is not intended to be exhaustive.

### **Specialist Work and Supervisor Standards**

- 6 For most Categories, our contracts set out Supervisor Standards which cover and represent authority to undertake all work in the Category. For the following Categories, special rules apply:
- i) **Crime/Prison Law.** Within the Crime Category there is a separate Supervisor Standard for Prison Law. The 2010 Standard Crime Contract provides that Prison Law work may only be undertaken by providers with a Prison Law Supervisor (see section 12 of the Crime Specification). It is convenient to describe Prison Law as a sub-category within Crime, although Prison Law is not a separate “Category” as defined in our contracts.
  - ii) **Family.** Family is one Category but is an example of a Category where contracts may be tendered for and awarded on the basis of a limited range of services within the Category e.g. Public or Private Law work only. There are also services within the Category which have specific Service Standards e.g. Child Abduction. See the Family Specification and paragraph 2.15 of the main Civil Specification for further details.
  - iii) **Immigration.** In a similar way to Family, Immigration contracts may cover Immigration and Asylum or Non Asylum services. Matter Starts may also be allocated specifically to Asylum and Non Asylum matters. However Asylum is not a separate Category as such. See the Immigration Specification and paragraphs 1.29 and 2.15 of the main Civil Specification for further details.
  - iv) **Actions Against the Police etc/Abuse in Care.** This Category has both a general Supervisor Standard and a Supervisor Standard for Abuse in Care, either of which authorise work within the Category. See paragraphs 10.111 to 10.121 of the Civil Specification.
  - v) **Consumer and General Contract.** This Category has three Supervisor Standards, namely a General Standard and Standards relating to Professional Negligence and Disability Discrimination. The General Standard will cease to apply from 1 October 2012 – see paragraphs 10.83 to 10.99 of the Civil Specification. Matter Starts in this Category may only be used for professional negligence and discrimination matter, other Controlled Work being claimed at Tolerance Rates (paragraph 2.41 of the Specification). However non professional

negligence/discrimination work is still within the Category, as would be reflected by the Hourly Rates payable for any Licensed Work in the Category.

### **Overlaps between Categories**

- 7 The Categories are drafted to ensure that the majority of cases clearly fall within one Category or another. However, there will be some cases which genuinely fall within more than one Category in which case you can choose which Category to carry the case out in. Note, however, that some Categories are expressly exclusive – for example cases which fall within the Clinical Negligence Category are, by definition, excluded from the Personal Injury Category.
- 8 For the rules on overlaps between Categories which are “exclusive” i.e. Schedule Authorisation in that Category is generally needed to do the work, see the 2010 Civil Specification, paragraphs 2.44 to 45.
- 9 The Guidance below gives examples of overlaps between Categories – see in particular the guidance on Judicial Review and Public Law below. The following are also examples of overlaps:
  - i) Mental Capacity Act cases can fall within the Mental Health Category, but may equally fall within Community Care;
  - ii) Where clients are detained under immigration powers, cases concerning their treatment and conditions may well fall within both the Immigration Category and Actions Against the Police etc

### **Mixed Cases**

10. Some cases will arise as the result of a number of different underlying issues and in these instances classification to a Category will depend upon the overall substance or predominant issue of the case when taken as a whole.

### **Generic Proceedings – General**

11. Because of the generic nature of certain proceedings, it is possible for them to arise out of very different matters. Which categories they fall into depends upon the underlying substance of the case and upon the professional skills and legal knowledge required to best present the client’s case.

12. For example, the need to take proceedings under the Protection from Harassment Act 1997 may arise in the context of a debt, employment, housing or family problem, or as the result of harassment by a neighbour or a complete stranger. An order under the Act may also be made in criminal proceedings. Although proceedings are all under the same Act, the particular skills and knowledge required to present the client's case will depend upon the nature of the underlying problem. Harassment by a landlord, for instance, would take specific knowledge not only of the relevant proceedings but also of material aspects of housing law, and such cases would therefore fall within the Housing Category. Similarly, harassment by a spouse, cohabitant (or ex-spouse or ex-cohabitant) or family member would fall within the Family Category. However, a case concerning harassment by a complete stranger would fall outside all of the established categories and therefore within the "residual list". Orders made under the Act within criminal proceedings (though not applications to vary or discharge) would fall within the Crime Category.
13. The same approach is taken to proceedings required solely for the purpose of progressing other, principal, proceedings. For example it may be necessary, in order to take proceedings for damages for personal injury, to restore a defendant company to the register. In these circumstances proceedings to restore a company to the register would fall within the Personal Injury Category.

#### **Appeals and Proceedings for Enforcement or Committal or to Vary or Discharge an Order**

14. All appeals (including specific appeals such as case stated and references to the European Court) and proceedings for committal or enforcement or to vary or discharge an order are covered by the Category in which the principal proceedings appear, unless specifically excluded. In rare instances where such proceedings do not relate to earlier principal proceedings, then categorisation will rely upon the underlying substance of the case.

#### **Professional Negligence**

15. Proceedings are covered by the civil category in which the original proceedings or case was conducted, or as provided for in any individual category. Where the original proceedings or case does not relate to a civil category, then the proceedings fall into the Consumer/General Contract Category.

#### **Inquests**

- 16 Work relating to an inquest should be categorised according to the subject matter of the case. Death in custody inquests are likely to fall within Actions Against the Police etc and/or Public Law.; hospital death inquests may come within the Clinical Negligence Category.
- 17 Note that because representation at inquests is categorised as Exceptional Funding under the Funding Code Procedures, the rules on exclusive categories (which relate to Controlled and

Licensed Work only) do not apply to inquest representation. Therefore although Actions Against the Police etc is an exclusive Category, a provider would not have to have Schedule Authorisation in that Category or Public Law to apply for exceptional funding for a death in custody inquest.

### **Judicial Review and Public Law**

18. Public law challenges to the acts, omissions or decisions of public bodies, in particular, challenges by way of judicial review (including under the Human Rights Act 1998) and habeas corpus are covered by the category in which the principal matter or proceedings appear or by the category which relates to the underlying substance of the case. They are also covered by the Public Law Category.
19. If arising in respect of matters or proceedings within the Crime Category, these cases will also fall within the Crime Category even though they are funded as part of the Community Legal Service. Crime practitioners are authorised to take these cases as “Associated CLS Work” under the terms of their 2010 Standard Criminal Contract. See also paragraphs 2.44 and 2.45 of the 2010 Civil Specification.
20. Note that the fact that a Defendant is a Public Authority does not bring a case within the Public Law Category. Only claims brought under public law principles come within that Category. Claims for damages against Public Authorities, other than Human Rights Act claims, do not usually fall within Public Law but may come within Actions Against the Police etc. Claims under the Human Rights Act may well come within both Public Law and Actions Against the Police etc.

### **Minor Civil/Criminal Overlaps**

21. Work falling within the Crime Category is generally excluded from any other category, but this is subject to the following seven minor exceptions:
  - (a) Legal Help to prisoners who may be subject to directions made or to be made by the Home Secretary under the Mental Health Act 1983 also falls with the Mental Health Category;
  - (b) Legal Help to prisoners concerning their treatment by the prison authorities or to those arrested concerning their treatment by the police may also fall within the Actions Against the Police etc Category;

- (c) enforcement proceedings in the magistrates court arising out of the breach of an order of that court made in family proceedings where there is a risk of imprisonment also fall within the Family Category;
  - (d) civil proceedings in the magistrates' court arising out of the breach of a financial order of that court where there is a risk of imprisonment also fall within the Debt Category;
  - (e) proceedings against a child for an Anti-Social Behaviour Order or Sex Offender Order, and any associated Parenting Order, and for a Parenting Order made on the conviction of a child where the parent cannot reasonably be represented by the child's solicitor, also fall within the Family Category;
  - (f) "Associated CLS Work" including civil proceedings under the Proceeds of Crime Act 2002;
  - (g) proceedings for an Anti-Social Behaviour Order sought by a local authority against a tenant or a person living with him or her, or by way of an appeal against such an order to the Crown Court, also fall within the Housing Category.
22. All seven exceptions are authorized to be carried out under the 2010 Standard Civil Contract, as well as by criminal practitioners under the 2010 Standard Criminal Contract. When performed as Legal Help under the Civil Contract claims should be submitted as Controlled Work claims in the usual way. The Family, Housing and Debt exceptions will be self granted Advocacy Assistance..
23. The undertaking of civil proceedings is excluded from the Crime Category unless specifically referred to in the Crime Category definition. Civil actions against prison authorities are included in the Actions Against the Police etc. civil Category. Advice and Assistance concerning the treatment of prisoners by prison authorities is included in the Crime Category other than in respect of actual or contemplated civil proceedings for damages for personal injury or property damage which, if in scope, remain within the CLS. This wording is intended to allow Crime practitioners to advise clients on prison complaints procedures and Prison Ombudsman cases where a legal issue arises, for example, in respect of property loss or confiscation etc, but not to take resulting civil proceedings for damages.

#### **Residual List – Cases outside all Categories**

20. For ease of reference the matters shown below have been classified by type of case/proceeding. Proceedings marked with an asterisk\* are excluded from the scope of the 1999 Act, either partially or completely, at all levels of service, and are listed here for reference purposes.

21. The following matters or proceedings (including Legal help in relation to those matters and related appeals) are likely to fall outside all Civil Categories:
- (a) **Administrative law:**
    - (i) proceedings for a declaration in respect of:
      - statutory charge;
      - other (in proceedings not falling within other categories);
    - (ii) proceedings by a vexatious litigant for leave under Section 42 Supreme Court Act 1981, other than where the proceedings in which leave is sought arise within the definition of an SQM category.
  - (b) **Arbitration:**
    - (i) proceedings under the Arbitration Act 1996, other than where they arise within the definition of a civil SQM category.
  - (c) **Change of Name:**
    - (i) matters or proceedings in respect of a change of name unless falling within the Family SQM Category.
  - (d) **Contentious probate:**
    - (i) all proceedings.
  - (e) **Company law:**
    - (i) proceedings for disqualification of a director\*;
    - (ii) proceedings for breach of confidence\*;
    - (iii) proceedings for breach of fiduciary duty\*;
    - (iv) proceedings under section 994 of the Companies Act 2006\*;
    - (v) proceedings to restore a company to the Register\* (unless the principal proceeding or underlying substance of the case falls within a civil category).
  - (f) **European Court:**

- (i) proceedings by way of a reference to the Court of Justice of the European Communities for a preliminary ruling (other than where they arise in proceedings in one of the civil SQM categories).

**(g) Harassment:**

- (i) proceedings under the Protection from Harassment Act 1997 (other than where they arise within the context of a Category).

**(h) Intellectual property:**

- (i) proceedings for infringement of copyright\*;
- (ii) proceedings for infringement of a patent\*;
- (iii) proceedings for infringement of trademarks and passing off\*;
- (iv) proceedings for infringement of trademark\*;
- (v) proceedings for infringement of and/or to revoke a registered design\*.

**(i) Land law:**

- (i) proceedings for a declaration as to an interest in land (unless the principal proceeding or underlying substance of the case falls within a civil SQM category);
- (ii) proceedings to set aside a declaration of trust\*;
- (iii) application for an order under section 30 Law of Property Act 1925/section 14 Trusts of Land and Appointment of Trustees Act 1996\* other than between associated persons as defined in the Family Law Act 1996;
- (iv) proceedings before the Lands Tribunal\*;
- (v) proceedings for rectification of the Land Register;
- (vi) proceedings under the Landlord and Tenant Act 1954\*;
- (vii) proceedings in respect of commercial premises\*;
- (viii) proceedings, as interpleader, to determine ownership of property\*;
- (ix) proceedings pursuant to proprietary estoppel\*.

**(j) Malicious falsehood:**

(i) proceedings for malicious falsehood\*.

**(k) Nuisance:**

(i) proceedings for nuisance (unless falling within the Housing Category);

(ii) proceedings under the rule in *Rylands v. Fletcher*;

(iii) proceedings under the Animals Act 1971.

**(l) Partnership:**

(i) proceedings for dissolution of partnership and an account\*;

(ii) proceedings for an indemnity\*.

**(m) Proceeds of Crime:**

(i) proceedings under the Proceeds of Crime Act 2002

**(n) Trespass:**

(i) proceedings for trespass to land (unless falling within the Housing Category).

**(o) Trusts:**

(i) proceedings for a declaration of a trust\* (unless falling within the Family Category);

(ii) proceedings for breach of trust\*;

(iii) proceedings to remove a trustee\*;

(iv) proceedings to vary a trust\*.

**(p) Wills:**

(i) where the client is aged 70 or over, or is a disabled person unless falling within the Family Category. Disabled person has the same meaning as that in s1 Disability Discrimination Act 1995.