

## **Unified Contract Civil Specification**

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## **Preliminary**

### **1. Introduction to the working of the Scheme**

We set out here a brief outline of the main features of the Scheme. This outline is for information purposes only and does not in any way amend or detract from the provisions of the Funding Code, which set out the definition and scope of all funded Levels of Service (at Section 1 of the Funding Code Criteria), and the way different Levels of Service are funded (Part A of the Funding Code Procedures).

All Civil Contract Work is either:

- Controlled Work; or
- Licensed Work

In non-Family cases there are 3 Levels of Service for Controlled Work:

- Legal Help
- Help at Court
- Controlled Legal Representation (or “CLR”) which is Legal Representation:
  - Before a Mental Health Review Tribunal;
  - Before the Asylum and Immigration Tribunal;
  - Before the High Court in relation to applications under section 103A of the Nationality, Immigration and Asylum Act 2002; or
  - Provided by a Community Legal Advice Centre or Network and authorised under a separate contract to be funded as Controlled Work.

In Family cases Controlled Work covers:

- Legal Help
- Family Help (Lower)
- Legal Representation provided by a Community Legal Advice Centre or Network and authorised under a separate contract to be funded as Controlled Work

For Controlled Work the decisions to provide services are generally taken by you on our behalf, and this Contract controls the number of cases you may start through the allocation in your Schedule of a certain number of Matter Starts in each Category of Law. You have our authority to commence Legal Help and Help at Court Matter Starts without further permission from us, provided you have sufficient Matter Starts available and subject to any restrictions set out in your Office Schedule.

Licensed Work covers all Legal Representation other than CLR or services funded by Individual Case Contracts. In Non Family cases Legal Representation can take the form of either Investigative Help or Full Representation. In Family cases, Licensed Work covers Family Help (Higher) and Legal Representation other than provided by Individual Case Contracts.

This Contract operates as a license for you to undertake Licensed Work, normally subject to us approving your Client's application and subject to any limits we may place on the volume of Licensed Work cases you may start. For Licensed Work most decisions to allow you to take on a case and provide publicly funded services are taken by us through our Regional Offices, but you also have important powers such as the power to grant funding yourself in urgent cases.

## **2. Structure of the Civil Specification**

Sections 1 to 9 of this Specification are of general application to all Categories of Law. Sections 10 to 16 apply only to Contract Work carried out within specific Categories of Law. Where there is any conflict between the general and Category Specific provisions the Category Specific provisions shall have precedence over the general provisions (including these preliminary provisions).

## **3. Definitions**

Unless otherwise stated, the definitions set out in the Funding Code and the Standard Terms apply to this Specification

## **4. Transitional Provisions:**

The terms of this Specification shall apply to all matters commenced by you on or after the 3 October 2011. For the purposes of this rule you "commence" a matter when you complete an application for Contract Work. You may continue to perform Contract Work on any Matter Start properly started prior to 3 October 2011 under the previous Unified Contract Specification or General Civil Contract. These Matter Starts will be governed by the provisions of the previous specification under the Unified Contract, or General Civil Contract.

Help at Court, Family Help (Lower) and Controlled Legal Representation do not constitute a separate Matter Start where Legal Help has already been provided in relation to the same matter. If Legal Help has been commenced prior to 3 October any subsequent provision of Help at Court, Family Help (Lower) or Controlled Legal Representation in relation to the same matter will, subject to Category Specific provisions, be governed by the remuneration provisions of the previous specifications under the Unified Contract or General Civil Contract.

In relation to Licensed Work, this Specification applies to any application you or your Client make for funding on or after 3 October 2011. Remuneration under a certificate granted following an application made prior to 3 October 2011 will be governed by the previous specifications under the Unified Contract or General Civil Contract provided that all forms have been signed by you or your client before 3 October 2011 and are received by the Commission by 10 October.

For the purposes of deciding under this Specification whether a new Matter Start is justified, nothing in these transitional provisions prevents the existence of any Matter Starts under any previous specifications under the Unified Contract or General Civil Contract being taken into account.

## **Section 1: General Rules for Suppliers**

### **Applying the Funding Code and Regulations**

- 1.1 When providing any Contract Work you must apply the Funding Code and the Access to Justice Legislation.

### **Providing information to another Supplier**

- 1.2 If you have provided Controlled Work to a Client and that Client chooses to instruct another Supplier with regard to the same matter or issue, you are required, on request from the new Supplier and only with the consent of the Client, to give to the new Supplier the Client's file, or a copy, and reasons for the termination of the retainer, as soon as practicable.

### **Misrepresentation regarding Contract Work**

- 1.3 If it comes to your attention that a Client has:
- (a) wilfully failed to provide information relevant to your decision to carry out Contract Work on their behalf or our decision to grant a funding for Licensed Work; or
  - (b) has knowingly made a false statement or false representation
- and after this failure or false statement or false representation has occurred, you have carried out Contract Work on the Client's behalf, then you should report the matter immediately to the relevant Director.
- 1.4 The application form signed by the Client will incorporate an agreement by the Client to repay to us any costs we pay out to you, in the matter, in the event of the Client having withheld or misrepresented information with the intention of appearing to qualify for Contract Work.

### **General Powers – Controlled and Licensed Work**

- 1.5 In relation to Controlled Work, this Contract authorises you to take any decision relating to individual matters or cases save where we have provided otherwise (in this Contract or elsewhere)
- 1.6 In relation to Licensed Work you are only authorised to take decisions where the Contract so provides.

### **Categories of Work**

- 1.7 We will define and publish SQM Category Definitions, together with guidance on those categories on our website. Any reference in this specification to "Category of Law", "Category", or Category of Work" refers to our published SQM Category Definitions. This provision overrides the definition of these terms in the Standard Terms.

## Exclusive Categories of Work

- 1.8 The following requirements for carrying out Contract Work apply in addition to other rules within the Specification.

Category of Law/case	The Schedule Office must have in place at all times:
Immigration	Supervisor in Immigration
Clinical Negligence	Supervisor in Clinical Negligence
Personal Injury	Supervisor in Personal Injury
Family	Supervisor in Family
Mental Health	Supervisor in Mental Health
Any case which falls in an overlap between a Category of Law set out above and another Category of Law	Supervisor in one of the overlapping Categories
Any case which falls into both the Public Category of Law and the Crime Category	Supervisor in Public Law or Supervisor in Crime
Any case concerning civil proceedings under the Proceeds of Crime Act 2002	Supervisor in any Civil Category of Law or Supervisor in Crime
All other cases/Categories (including those on the Residual List)	Supervisor in any Civil Category of Law

## Reporting Controlled Work Claims

- 1.9 Unless we notify you otherwise, regardless of whether payment for work shall be made under a Standard or Graduated Fee, you must submit all your Controlled Work Claims on our Contract Report Form which will require you to report your profit costs (calculated in accordance with the relevant Hourly Rates set out in the Payment Annex), disbursements, counsel's fees and VAT.

## Section 2: Applications for Contract Work

### Funding Code Criteria

- 2.1 You must apply the relevant Funding Code Criteria to all Contract Work you undertake. These criteria must be applied both:
- (a) when the application for the prospective Client is made; and
  - (b) as and when further work is provided throughout the matter.
- 2.2 When applying the Funding Code Criteria you are required to have regard to the Funding Code Guidance and you must refuse to act in respect of any matter that does not meet the Criteria – see Funding Code Procedures Rule B8 below.

## Financial eligibility

### *Controlled Work*

#### **Relevant provisions from the Funding Code**

##### **B6 Assessment of Means**

- 6.1 Controlled Work shall only be carried out on behalf of a client who has been assessed as financially eligible in accordance with regulations and any Guidance thereon.
- 6.2 Subject to Guidance, satisfactory evidence in support of the client's information as to their means must be provided to the supplier before financial eligibility is assessed.
- 6.3 This Rule does not apply to services which, under the regulations, are available without reference to the client's financial resources.

- 2.3 The rates for financial eligibility are those set out in the Community Legal Service (Financial) Regulations 2000 (as amended). In making the assessment referred to in the Funding Code you are required to have regard to any financial eligibility Guidance issued by us.
- 2.4 Satisfactory evidence, as described in guidance, in support of the prospective Client's information as to their means must be provided to you before you assess financial eligibility, subject to the provisions of Paragraph 2.5. The evidence (or a copy) must be retained on the file.
- 2.5 You may assess the prospective Client's means without the accompanying evidence where:-
- (i) it is not practicable to obtain it before commencing the Controlled Work; or
  - (ii) pre signature telephone advice is given; or
  - (iii) exceptionally, the personal circumstances of the Client (such as the Client's age, mental disability or homelessness) make it impracticable for the evidence to be supplied at any point in the case.

Unless paragraph (iii) applies, you must require the Client to provide the evidence as soon as practicable. If satisfactory evidence of the Client's financial eligibility is not subsequently supplied, or if the evidence shows that the Client is not financially eligible, you may claim the work carried out as a Matter Start provided that:-

- (a) you have acted reasonably in undertaking work before receiving satisfactory evidence of the Client's means; and
- (b) you have acted reasonably in initially assessing financial eligibility on the information available.
- (c) If the matter is remunerated at Hourly Rates then you cannot Claim an amount representing more than two hours 'profit costs', nor can you Claim any disbursement beyond those incurred in the period before it is practicable to obtain satisfactory evidence of the Client's means.

We may monitor the number of your cases that fall into this category (for the avoidance of doubt, not including any cases to which Paragraph (iii), above, applies). If we consider it appropriate we may carry out further investigations. If, as a result of further investigation, it appears that you have breached this provision we may take appropriate action, including assessing a sample of your claims or applying a Sanction under Clause 29 of the Standard Terms.

- 2.6 The Funding Code Section B6 and Paragraphs 2.3 to 2.5 do not apply to Legal Help in potential proceedings or Controlled Legal Representation in proceedings or potential proceedings before a Mental Health Review Tribunal under the Mental Health Act 1983, where the Client's case or application to the Tribunal is, or is to be, the subject of the proceedings.
- 2.7 When assessing the means of a Child or Patient, the appropriate means which you must take into account are:
- (a) those of the Child/Patient: and
  - (b) in all cases other than applications for Legal Representation in non- family proceedings, those persons who have care and control or are liable to maintain him/her or usually contribute substantially to the child/patient's maintenance, subject to the exception provided for by Community Legal Service (Financial) Regulations 2000, Regulation 11 (3).
- 2.8 When assessing means where you accept an application for Controlled Work directly from a Child under Funding Code provision B4 below you must consider whether it is just and equitable not to aggregate the Child's means with those of the person liable to maintain him/her. The presumption is that there should be aggregation but you can decide not to aggregate (and assess only the Child's means) if, having regard to all the circumstances, including the age and resources of the Child (and any conflict of interest), you reasonably consider it just and equitable to do so. Non-aggregation is more likely to be justified where there is a conflict between the Child and the person liable to maintain him/her.

*Licensed Work*

- 2.9 We shall assess Clients' means and determine their financial eligibility in respect of applications for Licensed Work in accordance with the applicable Regulations unless we specifically authorise you to carry out such assessments.
- 2.10 Except in relation to Emergency Representation the assessment referred to at Paragraph 2.9 above must be carried out before you commence Licensed Work. You may commence Emergency Representation before the Client's means have been assessed but only if you reasonably consider that sufficient information has been provided to you to demonstrate that the Client is likely to be financially eligible having regard to the Guidance in Part D of the LSC Manual, Volume 3.

Application procedures - Controlled Work

<p><b>Relevant provisions of the Funding Code</b></p> <p><b>B2 Applications</b></p> <p>2.1 Unless otherwise specified by the Commission, all applications for Controlled Work shall be made to the supplier.</p> <p>2.2 Except as otherwise provided in these Procedures or in the contract, Controlled Work may not be provided unless the client has attended the supplier in person and completed an application on a form approved by the Commission.</p>
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- 2.11 The assessment of means section and the Client's details must be fully completed and the form signed by the Client in your presence before the Controlled Work is commenced, subject to the exceptions set out in Sections B7 and B3 of the Funding Code, and except that where the form is signed in the course of an interview you may claim all reasonable time from the beginning of that interview.
- 2.12 The completed form must be kept on the file. We may prescribe different forms for different Categories of Law or types of case or Client and for different Levels of Service. We may amend the form or forms from time to time upon giving at least 28 days notice to you .
- 2.13 Help at Court may be given to a Client who is in receipt of Legal Help without a further application being made.

*Postal Applications*

**Relevant provisions from the Funding Code**

**B7 Postal Applications**

7.1 Subject to paragraph 2, an application for Controlled Work may be accepted by post where there is good reason to do so

7.2 Applications by post may not be accepted where the client is resident outside the European Union and:

- (a) such residence is purely temporary and the client can without serious disadvantage delay the application until they have returned to the European Union, or
- (b) the services could be applied for on the same matter by a person resident in the European Union, or
- (c) it is otherwise unreasonable to accept the application.

2.14 “Good reason” for the purposes of the Funding Code provision above will be where:

- (a) the Client is in custody or detention, for example in a prison, police station, immigration detention centre or mental hospital, or is otherwise being prevented from attending your office;
- (b) the Client is in hospital;
- (c) the Client is elderly, ill or disabled or is caring for children or for another person who is elderly, ill or disabled and in either case the Client is as a result unable to travel to your office; or
- (d) there are exceptional circumstances such that the Client requires urgent legal advice before the she or he is able to attend your office.

A postal application is unlikely to be justified if the incapacity is temporary and the provision of Controlled Work could be postponed without prejudice to the Client.

*Attendance on a Client's Behalf*

**Relevant provisions from the Funding Code**

**B3 Attendance on a Client's Behalf**

- 3.1 Where a client cannot for good reason attend on a supplier in order to apply for Controlled Work, that client may authorise another person (“the authorised person”) to attend on their behalf.
- 3.2 An application for Controlled Work may not be accepted from an authorised person on behalf of a client unless that client is, at the time when the authorisation is given, either present in or resides in the European Union.

- 2.15 For the purposes of the Funding Code provision above “good reason” is as defined in Paragraph 2.14 above.
- 2.16 The authorised person must provide you with the information and satisfactory evidence in support, necessary to assess the Client's financial eligibility.
- 2.17 Where Legal Help is to be provided in relation to a will, then the authorised person must supply you with the information necessary to comply with this Section B3 of the Funding Code Procedures.
- 2.18 No partner, member, associate, shareholder or employee of your organisation (or family member of such partner, member, associate, shareholder or employee) may act as an authorised person for the purposes of Section B3 of the Funding Code Procedures.

*Telephone Advice*

- 2.19 You may give advice to a Client over the telephone before that Client has signed the application form where:
- (a) the Client cannot for good reason attend your office; and
  - (b) the Client meets the criteria for the provision of Legal Help (including financial eligibility)

and may make a Claim for this work provided that Client subsequently signs the application form.

- 2.20 For the purposes of Paragraph 2.19 “good reason” is as defined in

Paragraph 2.14 above. The reason relied upon should always be noted by you and kept on the file.

- 2.21 The Client does not have to attend your office to sign the application form after having been given the telephone advice. You may send the form to your Client, after you have given the advice, for signature and return.

*Previous Controlled Work*

**Relevant provisions from the Funding Code**

**B9.1 Previous Legal Help**

Unless permitted to do so under a contract Legal Help may not be provided to a client who has received Legal Help for the same matter from another supplier within the six months preceding the application, except where:

- (a) there is a gap in time, and circumstances have changed materially between the first and second occasions when the Legal Help was sought, e.g. a reconciliation which has failed; or
- (b) the client has reasonable cause to be dissatisfied with the service provided by the first supplier; or
- (c) the client has moved a distance away from the first supplier and communication is difficult; or
- (d) the first supplier has confirmed that they will be making no claim for payment for the Legal Help.

- 2.22 You are required to establish whether Funding Code Procedure, Section B9.1 above applies by making reasonable enquiries including (but not limited to);

- (a) asking the Client;
- (b) examining any documentation made available to another Supplier by the Client; and
- (c) considering the length of time that the issue or matter has been in existence and any steps in the issue or matter which have occurred.

If you fail to make reasonable enquiries in this situation any Claim for Controlled Work in relation to this matter may be disallowed where rule B9.1 applies.

2.23 Where Controlled Work has been given for the same matter from another Supplier within the six months preceding the application, you must obtain the consent of the Client to contact the previous Supplier on his/her behalf as soon as practicable in writing to:

- (a) Confirm the reasons for the termination of retainer; and
- (b) Request a transfer or copy of the file.

In the event that the Client refuses to give you consent to contact the previous Supplier, then you may not provide Controlled Work for that Client and may not make any Claim for payment in respect of any such work under this Contract.

2.24 In circumstances when you have made a request for a Client's file under Paragraph 2.23 above, you may not start work for that Client until you have received the file and considered its contents unless it is absolutely necessary to take steps immediately to protect the Client's position or meet a court deadline. If you undertake Controlled Work in a situation of urgency and then, having received the file, conclude that the requirements of rule B9.1 were not satisfied, you must cease acting for that Client immediately, but may still make a Claim for the work you have undertaken under Part 7 of this Specification.

We shall monitor the number of your cases that fall into this category and if this is high we may carry out investigations. If as a result of further investigation, it appears that you have breached this provision we may take appropriate action, including assessing a sample of your files or applying Sanctions under Clause 29 of the Standard Terms.

2.25 For the purposes of the Funding Code Procedures Rule B9.1 (b) above 'reasonable cause' does not include situations where the Client merely finds the first advice unpalatable and wants a second opinion.

2.26 If Rule B9.1(b) above applies you must, on request, signpost the Client to the appropriate regulatory body who can deal with the complaint regarding the alleged poor service received from the former Supplier. You should also provide your Regional Office with the details of the previous Supplier against whom the allegation of poor service has been made.

2.27 Rule B9.1 above does not apply if the Client changes legal advisor within the same organisation or the legal advisor changes organisation and continues to advise the Client.

2.28 Notwithstanding Rule B9.1 of the Funding Code Procedures you may provide Controlled Work in respect of an ongoing matter referred to you from another Supplier who is no longer able to act for the Client because of a conflict of interest or other good reason.

- 2.29 When providing Controlled Work in the circumstances of Paragraphs 2.22 to 2.28 you should record the justification for doing so on the file. Generally, changes to a third or subsequent Supplier on the grounds of dissatisfaction with the service provided by or breakdown in relationship with a previous Supplier will require greater justification. You should have regard to any Contract Work already carried out on the matter by the previous contracted Supplier and ensure that the Contract Work you carry out does not involve unnecessary duplication.
- 2.30 Where Controlled Work is provided in contravention of Funding Code Procedures Rule B9.1 and Paragraph 2.29 above, then the work provided cannot be claimed as Contract Work except under Paragraph 2.24.

*Application on behalf of a Child or Patient*

**Relevant provision from the Funding Code:**

**B5 Application on behalf of a Child or Patient**

- 5.1 An application for Controlled Work may only be accepted on behalf of a child or patient from:
- (a) in the case of a child his parent or guardian or other person in whose care he or she is; or
  - (b) in the case of a patient, the receiver appointed under Part VII of the Mental Health Act 1983, or the patient's nearest relative or guardian within the meaning of Part II of the Mental Health Act 1983; or
  - (c) in the case of a child or patient, a person acting for the purposes of any proceedings as his or her litigation friend, next friend, or guardian ad litem; or
  - (d) in the case of a child or patient, any other person where there is good reason why none of the persons specified in paragraphs (a)–(c) above can make the application.
- 5.2 No application may be accepted under this Rule if made by a member, associate or employee of the supplier.

- 2.31 “Good reason” for the purposes of the Funding Code provision above includes, but is not limited to, a conflict of interest.

- 2.32 You may only accept an application from an “other person” in relation to the Funding Code provision above if:
- (a) there is sufficient connection between the Child or Patient and the other person to ensure that the other person is likely to act responsibly in the interests of the Child or Patient; and
  - (b) the other person has sufficient knowledge of the Child or Patient, the problem and the Child’s or Patient’s financial circumstances to give proper instructions to you.
- 2.33 Rule 5.5.2 of the Funding Code set out above shall, for the purposes of this Contract, also include a director, partner, or shareholder of your organisation.
- 2.34 Where Controlled Work is carried out under Funding Code Rule B5 above, the application will be in the name of the Child/Patient but signed on his/her behalf. The form should be completed in the name of the Child/Patient but signed by the person who is applying on behalf of the Child/Patient with an annotation to that effect.

*Applications directly from a Child*

**Relevant provisions from Funding Code:**

**B4 Application from a Child**

An application for Controlled Work may not be accepted from a child unless:

- (a) the Controlled Work is in relation to proceedings which the child is entitled to begin, prosecute or defend without a litigation friend, next friend, or guardian ad litem; or
- (b) there is good reason why any of the persons referred to in Rule 5 below cannot seek advice on the child’s behalf and the child is old enough to give instructions and understands the nature of the Controlled Work.

- 2.35 Good reason for the purposes of Funding Code provision B4 above will include, but is not limited to, situations where there is a conflict of interest.
- 2.36 Where Controlled Work is provided directly to a Child under the Funding Code provision above the Child will sign the application form him/herself.

### **Controlled Legal Representation**

- 2.37 You should grant Controlled Legal Representation by signing the “Declaration and Grant” section on a properly completed application form. The grant will take effect from the date of such signature. The “Declaration and Grant” must only be signed by an adviser, who is one of the Approved Personnel of your organisation

### **Application procedures and Licensed Work**

- 2.38 Applications for Licensed Work are usually processed by us, but you should not make an application on behalf of a potential Client unless you have capacity under your allocation of Licensed Work Cases in your Office Schedule. The provisions for making these applications are set out in The Funding Code: Procedures, Part C Certificated Work. You are required to comply with these provisions when:

- (a) you apply for Legal Representation on behalf of your client; and
- (b) you process applications for Licensed Work under Paragraph 4.5 below.

### **Refusing applications and stopping Contract Work**

#### *Refusal of Contract Work for failure to meet Funding Code Criteria*

#### **Relevant provisions in Funding Code:**

#### **B8.1 Refusal of Controlled Work – Reasons**

Where an application for Controlled Work is refused on the basis that the Funding Code criteria are not satisfied or a supplier ceases to provide Controlled Work on the basis that the Funding Code criteria are no longer satisfied the supplier shall give the client brief reasons for such refusal and where relevant, shall provide the client with information as to alternative ways of obtaining or funding services.

- 2.39 For the purposes of Rule B8.1 above, information as to alternative ways of obtaining or funding services will include information on conditional fees, privately funded services or services offered by voluntary organisations. Where relevant the appropriate CLS Information leaflets shall be provided. The provision of such information will not be claimable as Contract Work, but need only be provided where relevant to the particular circumstances.

2.40 Reasons need not be given in writing unless:

- (a) requested by the Client; and
- (b) it is reasonable for you to provide written reasons.

*Refusal of Contract Work for good cause*

2.41 In addition to refusing Contract Work for failure to meet the Funding Code Criteria you may for another good cause

- (a) refuse to accept an application for Contract Work; or
- (b) (i) in the case of Controlled Work having accepted an application, decline to carry out or continue to carry out work;  
  
(ii) in the case of Licensed Work, either apply for discharge of the Certificate (if the Client consents) or request us to consider discharging the Certificate.

2.42 Good cause for refusing Contract Work under Paragraph 2.41 includes:

- (a) Where you lack appropriate Matter Starts under your Schedule to take on the case or matter;
- (b) Where you do not have the capacity to take on the case or matter;
- (c) Where you do not have the necessary skill or expertise to take on the case or matter; or for
- (d) Other professional conduct reasons such as actual or potential conflict of interest.

2.43 You must give the Director such information about a refusal to provide Contract Work to a Client as the Director may require.

*Refusing Contract Work on the basis of likely cost*

2.44 For the avoidance of doubt, “good cause” in Paragraph 2.41 does not include any considerations regarding the level of any Standard or Graduated Fee you may be entitled to receive under this Contract. In particular you may not refuse to undertake work on the grounds (however expressed) that the Standard Fee or Graduated Fee you would be entitled to Claim for that work does not represent what you consider to be appropriate remuneration in the circumstances of the individual case or matter.

*Refusing Contract Work on discriminatory grounds*

2.45 You must not decline to take on work from potential Clients which is within the scope of your Contract and which you have the appropriate skills and capacity to carry out, on any grounds which directly or indirectly discriminate on the grounds of their sex, race, racial group, ethnic or national group, religion or belief, sexual orientation, disability or age. In particular, you must not decline work because a potential

Client's disability, age or ethnic origin will or may result in additional costs or disbursements being occurred compared with a Client without that disability, age or from a different ethnic origin.

*Controlled Work following refusal of Legal Representation*

2.46 You must not provide or continue to provide Legal Help or Help at Court to the Client in relation to a matter where an application for Legal Representation has been made to us and refused, or where a Certificate has been discharged or revoked, except in the circumstances set out below.

2.47 Where the refusal/discharge/revocation is:

- (a) on the merits; then you should cease to provide Legal Help/Help at Court, beyond brief advice to the Client as to their options;
- (b) on the availability of other funding; then you should cease to provide Legal Help/Help at Court;
- (c) on the basis of scope; you should cease to provide Legal Help. Further, if the matter was also outside the scope of Legal Help, you may not claim in relation to any Legal Help you have purported to provide in the matter;
- (d) on the basis that the nature of the proceedings are such so as to make a grant of Legal Representation inappropriate or that Help at court is more appropriate; then you may continue to provide an appropriate level of Controlled Work, provided that the rules on provision on Controlled Work in this Specification are met;
- (e) on the basis that the application is premature; then you may continue to provide Legal Help under the same Matter Start subject to the application of the Funding Code Criteria;
- (f) on the basis of financial eligibility; then it would normally not be reasonable to carry on providing Legal Help or Help at Court and you should consider whether the proper information was before you when determining the financial eligibility for Legal Help

provided that in any case you may spend a reasonable period providing Legal Help in relation to any appeal or review.

2.48 Any provision of Legal Help in relation to a review of a refusal of a Certificate will not be a separate Matter Start if you have previously provided Legal Help in relation to the case and you may not claim a separate Standard or Graduated Fee.

2.49 You may not provide Legal Help/Help at Court or further Legal Help/Help at Court to a Client who has been offered Legal Representation in relation to that matter but who has refused it.

### **Section 3: Scope of Controlled Work**

- 3.1 You may undertake Controlled Work for Clients provided it falls within the scope of a Category of Law that you are authorised to undertake in your Office Schedule, subject to:
- (a) any particular Funding Code criteria at Part A of the Funding Code; applying to a particular Level of Services;
  - (b) any limitations set out in your Office Schedule;
  - (c) any areas of a Category of Law which are stated in the Category Specific provisions at Section 1.8 as being subject to exclusive categories of work; and
  - (d) the provisions of this Contract.
- 3.2 Unless we otherwise specify, all decisions relating to the provision and cessation of Controlled Work are taken by you.
- 3.3 You should exercise these powers in every appropriate case and these decisions should not be referred to the Regional Office although advice may be sought in cases of difficulty or doubt. These powers must in all circumstances be exercised in accordance with the terms of this Contract.
- 3.4 For avoidance of doubt, where you consider an application for Controlled Work, you are the assessing authority pursuant to Regulation 2(1) of the Community Legal Service (Financial) Regulations 2000 (as amended).

#### **Help at Court**

- 3.5 You may only provide Help at Court in relation to proceedings for which advocacy may be funded in accordance with directions under s.6(8) or paragraph 2 of schedule 2 to the Act, in accordance with section 2.4 of the Funding Code Guidance.

#### **Controlled Legal Representation**

- 3.6 You may undertake Controlled Legal Representation before
- (a) the Mental Health Review Tribunal in the Mental Health Category of Law;
  - (b) before the Asylum and Immigration Tribunal and for review and reconsideration matters under section 103 of the Nationality Immigration and Asylum Act 2002 in the Immigration Category of Law

in accordance with the criteria in the Funding Code and the provisions in this Specification, provided that your Office Schedule permits you to carry out Controlled Work in the relevant Category of Law.

**Relevant Provisions of the Funding Code:**

**B10 Grant of Controlled Legal Representation**

If a supplier does not have the devolved power to grant Controlled Legal Representation an application for Controlled Legal Representation may be made to the Director on a form approved by the Commission.

**B11 Review of refusal of Controlled Legal Representation**

11.1 Where an application for Controlled Legal Representation is refused or a grant of Controlled Legal Representation is withdrawn by the supplier, the client may seek a review of the supplier's decision by the Director and the Adjudicator.

11.2 The supplier shall advise the client of any right of review under this rule.

11.3 Where Controlled Legal Representation is refused or withdrawn by the Director, either under this rule or under Rule B10 above, the client may have that decision reviewed by the Adjudicator (unless the decision relates only to the client's financial eligibility).

11.4 A review by the Adjudicator under this rule shall operate in the same way (with necessary modifications) as a review of the refusal or withdrawal of Certificated Work under Part C of these Procedures.

11.5 This Rule does not apply in relation to proceedings under section 103A of the Nationality, Immigration and Asylum Act 2002.

3.7 Unless otherwise directed this Contract delegates to you the power to grant or refuse Controlled Legal Representation.

## **Section 4: Scope of Licensed Work**

### **Levels of Service**

- 4.1 Licensed Work comprises two Levels of Service:
- (a) Family Help (Higher), which is available only in the Family Category; and
  - (b) Legal Representation, which can take the form of either Full Representation or Investigative Help. Investigative Help is not available in the Family category.
- 4.2 The scope of these Levels of Service are set out in the Funding Code Criteria.

### **Undertaking Licensed Work**

- 4.3 You may only perform Licensed Work:
- (a) provided you are authorised to undertake a Licensed Work case under your Office Schedule;
  - (b) which is within the scope of the Funding Code Criteria (taking into account applicable Guidance in the Funding Code);
  - (b) which is covered by the terms of a current grant of funding;
  - (d) which is within a Category of Law of work you are permitted to undertake under your Office Schedule; and
  - (e) which is not prohibited by any restriction in your Office Schedule.
- 4.4 You must comply with the Funding Code Procedures, Part C – Certificated Work, which cover the process for applying for a Certificate to undertake Licensed Work.

### **Your powers in respect of Licensed Work**

- 4.5 Provided you have a Supervisor in the relevant Category of Law, and subject to any restriction within your Office Schedule, this Contract delegates to you power to carry out the following actions on our behalf:
- (a) Grant or refuse an application for Emergency Representation;
  - (b) Amend or refuse to amend a Certificate for Emergency Representation;
  - (b) Amend or refuse to amend certain limitations on a substantive Certificate for Legal Representation as specified in the Funding Code Guidance; and

(d) Any actions otherwise in the Category Specific provisions set out at Sections 10 to 16.

4.6 Your powers set out at Paragraph 4.5 above are subject to the following:

(a) You do not have the power to grant, amend or refuse to amend an Emergency Certificate for a judicial or statutory review (or any other proceeding considered under section 7 of the Funding Code) in the immigration Category of Law unless we have specifically granted you this power in writing; and

(b) You do not have the power to grant or amend an application on the ground that the case has a significant wider public interest. Decisions on public interest are taken by the Commission (where necessary after referral to the Public Interest Advisory Panel).

4.7 You are required to comply with Guidance on the exercise of Devolved Powers in Licensed Work contained in the “Funding Code Decision Making Guidance” in Part C of Volume 3 of the LSC Manual.

## **Section 5: Carrying out Controlled Work**

### **Commencing Controlled Work**

5.1 Between the Schedule Start Date and the Schedule End Date, you may commence cases in Controlled Work by using the Matter Starts that, in any Category of Law, we have allocated to you in the Office Schedule.

5.2 You may not make any Client or prospective client pay any fee, administration charge or similar for commencing work, opening a file, making an application for public funding or any similar activities. The exception to this is where the Matter in question is excluded from funding for Legal Help, but under the Lord Chancellor’s Direction on scope you apply for a Certificate for this matter and incur costs doing so.

5.3 You must use one Matter Start, subject to Paragraphs 5.6 - 5.22 on use of Matter Starts, and Matter Start boundaries and to any Category Specific rules on Matter Starts and Matter Start Boundaries set out in the applicable part of Sections 10 to 16.

5.4 Subject to your power to issue additional Matter Starts in certain priority Categories set out in Paragraph 5.5 below, you may not use more Matter Starts than allocated to you in your Office Schedule.

### **Self authorisation of additional Matter Starts in priority areas**

5.5 You may accept an application for Controlled Work notwithstanding the fact that you have reached the maximum number of Matter Starts authorised by your Office Schedule in the relevant Category of Law (and you have also used up your allocation of Tolerance Matter Starts available) if the following conditions are met:

- (a) the application is:
  - (i) in relation to a matter falling within paragraph 3 of the Lord Chancellor's Direction of 1 February 2000 on Community Legal Service Funding Priorities (Special Children Act proceedings (as defined in the Funding Code) and civil proceedings where the Client is at real and immediate risk of loss of life or liberty); or
  - (ii) by a Client suffering from severe mental health or learning difficulties; and
- (b) it is necessary to grant the application for Controlled Work as a matter of such urgency that it is not reasonably practical to obtain permission from the Regional Office via a Office Schedule amendment before providing the Controlled Work; and
- (c) the relevant Regional Office receives notification from you (on the form provided by us) within five working days of the grant of the application for Controlled Work; and
- (d) your Contract allows you to carry out work in the relevant Category of Law.

### **Controlled Work Category of Law and Matter Start Boundaries**

- 5.6 It is a requirement of this Contract that Controlled Work is allocated to individual Matter Starts appropriately and in accordance with the provisions set out in Paragraphs 5.6 - 5.22.
- 5.7 These provisions govern when a Matter Start may be commenced and when it is legitimate to commence more than one Matter Start for one Client. Where Controlled Work is paid for under a Standard or Graduated Fee it is essential that additional Matter Starts are not artificially created or used for work, which should in accordance with these Paragraphs and any Category Specific rules, be carried out under a single Matter Start. You are also required to comply with any Category of Law Specific provisions on use of Matter Starts set out at Sections 10 to 16. Conversely, you should not include clearly unrelated matters in a single Matter Start.
- 5.8 You must not open more than one Matter Start for a Client unless the Client has more than one separate and distinct legal problem. Legal problems will generally be regarded as separate and distinct where:
- (a) they necessarily fall under different SQM categories; or
  - (b) both
    - (i) If legal proceedings were started, or other appropriate remedies pursued, for each problem it would be appropriate for such proceedings to be both issued and heard, or for other remedies to be dealt with, separately; and

- (ii) Each problem requires substantial legal work which does not address the other problem(s).
- 5.9 For the purpose of paragraph 5.8 (b) above 'substantial legal work' must consist of at least:
  - (a) 30 minutes of preparation or advice; or
  - (b) separate communication with other parties on legal issues
- 5.10 Each separate Matter Start must be the subject of a separate application form. You must identify, and record on the appropriate case file, any point at which the work, which you are performing for any Client, becomes two separate matters and you open a separate Matter Start.
- 5.11 A Matter Start should be commenced only where all applicable Funding Code Criteria are met in respect of opening the new matter. In particular, each separate Legal Help Matter Start must satisfy the sufficient benefit test set out at Section 5.2.1 of the Funding Code Criteria.
- 5.12 Where the Client raises several issues at the first meeting, a single Matter Start should be completed to identify the issues and provide general, preliminary advice. If one legal issue is identified then the original, single Matter Start should be used for the provision of further Controlled Work. However, more than one Matter Start may be opened at the initial meeting where this is justified under paragraph 5.8.
- 5.13 A Matter Start cannot be in more than one Category of Law.
- 5.14 The fact that circumstances have changed or developments have occurred as the case has progressed will not mean that a separate Matter Start is required if the Controlled Work continues to be provided on the same overall legal issue.
- 5.15 If you have completed a Controlled Work matter, whether under this Specification or any previous Specification, you may not subsequently commence a Matter Start in relation to the same problem. The only exceptions are where:
  - (a) a period of at least 6 months has elapsed since you submitted your claim for that Controlled Work matter; or
  - (b)
    - (i) there has been a material development or change in the Client's instructions; and .
    - (ii) save where the matter was concluded under paragraph 5.33(b) below, a period of at least 3 months has elapsed since you submitted your claim for that Controlled Work matter; or
  - (c) the assistance provided on the problem formed only a minor part of the previous matter, such that the problem

did not qualify as a separate and distinct legal problem under paragraph 5.8.

- 5.16 For the avoidance of doubt, for the purposes of Paragraph 5.15 (b):
- (a) The fact that the Client has failed to give instructions shall not constitute or give rise to a change in the Client's instructions;
  - (b) a decision or other response from another party to any correspondence, application, appeal or review or other request that was made in the course of the original Controlled Work matter cannot constitute a material development.
- 5.17 Where a matter has been closed under paragraph 5.33 below and claimed for but further work is necessary and a separate Matter Start is not justified:
- (a) the work already undertaken and the further work should be taken into account in determining whether the matter is an Exceptional Case that escapes from the Standard Fee or Graduated Fee provisions. If we agree to pay the matter as an Exceptional case, we will take into account any payments already made by way of the Standard Fee or Graduated Fee;
  - (b) you may claim further disbursements as part of the matter where appropriate;
  - (c) where the matter has already been paid as an Exceptional Case, the further work is payable on an Hourly Rate basis, subject to Assessment; and
  - (d) unless the matter is accepted as an Exceptional Case, the further work carried out will be included in any calculation of average costs per matter.
- 5.18 Where you act for more than one Client in relation to the same general legal problem a single Matter Start should generally be used. Matter Starts in respect of more than one Client may be commenced only where the following are satisfied:
- (a) If proceedings were issued each Client would be a party to those proceedings;
  - (b) Each Client has a separate legal interest in the problem or issue; and
  - (c) Where Legal Help is provided, there is sufficient benefit for each client in receiving Legal Help, having regard to the Legal Help provided to each other Client.
- 5.19 A Legal Help Matter Start is not justified in the following circumstances:
- (a) Providing information to Clients or to other persons contacting your organisation.

- (b) Supplying a new Supplier with a former Client's file or a copy, or information about the circumstances of termination of the retainer, under Paragraph 1.2 above.
- (c) Where on the day that work is carried out you are satisfied that the Funding Code Criteria are met for a grant of Emergency Representation, or other Licensed Work funding, in relation to the same matter and you grant or intend to grant such funding. Instead, all work carried out on the day of the grant of Licensed Work funding may be claimed under the resulting Certificate.
- (d) Sub-paragraph (c) shall not prevent the opening of a Matter Start where Legal Help is required on matters not covered by the Licensed Work funding.

5.20 For the avoidance of doubt, where Controlled Work has already been carried out for a Client then, subject to Category Specific provisions, a separate Matter Start would not be justified in the following circumstances:

- (a) Controlled Work in relation to an interim remedy in a matter on which Controlled Work has already been provided;
- (b) Controlled Work in relation to enforcement, a review, or an appeal (including an application for a Licensed Work Certificate) in a matter on which Controlled Work has already been provided.
- (c) If a Client seeks advice as to whether (s)he should change Supplier from a Supplier already providing Controlled Work. The provisions in Paragraphs 2.22 – 2.25 should be applied before any work is provided under a new Matter Start;
- (d) Providing Controlled Legal Representation in a matter for which you have been providing Legal Help.
- (e) Providing Help at Court in a matter for which you have been providing Legal Help.
- (f) Any work undertaken on a case by an agent on your behalf will form part of the same Matter Start as the parts of the Case handled by you.

However, notwithstanding paragraph (b), where the Client faces enforcement proceedings because he or she is alleged to have breached the terms of a suspended or postponed order, or is alleged to have breached the terms on which proceedings were adjourned, further Legal Help may be provided under a new Matter Start;

5.21 Any advice given to a Client over the telephone before that Client has signed the application form under Paragraph 2.19 above will count as the same Matter Start as work carried out after the application form has been signed. If the Client does not, for any reason, subsequently sign the application form then you may not claim for this work or count it as a Matter Start.

5.22 For avoidance of doubt, Paragraphs 5.6 to 5.21 apply irrespective of whether you purport to limit your retainer to only part of the stages, aspects or issues of a matter or matters that should properly be covered by a single Matter Start.

**Disbursements**

5.23 You may incur disbursements where:

- (a) it is in the best interests of the Client to do so;
- (b) it is reasonable for you to incur the disbursement for the purpose of providing Controlled Work to the Client;
- (c) the amount of the disbursement is reasonable and, where applicable, complies with Paragraph 8.38 of this Specification; and
- (d) incurring the disbursement is not prohibited by this section or the applicable part of Sections 10 to 16 of this Specification.

5.24 We may prescribe types of disbursements that may or may not be incurred in the provision of Controlled Work.

5.25 The provisions for reimbursing and claiming for the costs of disbursements depend on the type of Controlled Work and the basis of remuneration is set out in Section 7 below.

5.26 A non-exhaustive list of disbursements, which may not be incurred in the provision of Controlled Work, appears below.

<b>Disbursements which may not be claimed under Controlled Work</b>
Costs of (or expenses relating to) the residential assessment of a child or treatment, therapy, training or other interventions of an educative or rehabilitative nature unless authorised by the Lord Chancellor.
Ad Valorem stamp duties.
Capital duty.
Client’s travelling and accommodation expenses save in the circumstances prescribed in the Costs Assessment Guidance and unless they relate to treatment, therapy, training or other interventions of an educative or rehabilitative nature or to the residential assessment of a child.
Contact centre fees.
Court fees unless for a search/photocopies/bailiff service or as part of Controlled Legal Representation or otherwise permitted by Category Specific rules
Discharge of debts owed by the Client, for example, rent or mortgage arrears.
Fee payable on voluntary petitions in bankruptcy.
Immigration application fees
Mortgagees’ or lessors’ legal costs and disbursements.
Passport fees.
Probate fees.
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.

Any administration fee charged by an expert including, but not limited to, (i) a fee in respect of office space or provision of a consultation room, (ii) a fee in respect of administrative support services, such as typing services, (iii) a fee in respect of courier services and (iv) a subsistence fee.

Any cancellation fee charged by an expert, where the notice of cancellation was given to the expert more than 72 hours before the relevant hearing or appointment.

Where you instruct an expert:

- (a) We will not pay in excess of 45 pence per mile in respect of an expert's vehicle mileage costs; and
- (b) We will not pay in excess of £40 per hour in respect of an expert's travelling time

5.27 If you propose to incur a disbursement which does not appear in this list then you must consider whether the disbursement is recoverable or not by reference to its purpose (i.e. is it for the purpose of providing Controlled Work) and the provisions at Paragraph 5.23 above. The cost of the provision of legal advice by a person who is neither a lawyer nor supervised by a lawyer cannot be treated as a disbursement.

5.28 You may not use the Legal Help scheme where the only work to be undertaken by you is incurring the disbursement and passing the service provided (for example, a report) to the Client without the Client receiving any oral or written legal advice in relation to the particular circumstances that have arisen.

### **Use of agents**

5.29 Subject to Category Specific rules, you may occasionally use a solicitor or legal advisor working as an agent to carry out work on your behalf, provided that:

- (a) you assume total responsibility for ensuring that their work is properly supervised and complies with all terms of this Contract;
- (b) your supervision of them is in all respects equal to that of your Approved Personnel;
- (c) you are responsible for all payments to them in respect of this work; and
- (d) the use of such an agent does not increase the costs payable by us.

5.30 In the case of work which is covered by Standard or Graduated Fees, any fees or costs related to your use of agents will be included as part of the Standard Fee or Graduated Fee and may not be claimed separately.

### **Location of work**

5.31 In providing Controlled Work you must attend your Client in the Office named in the Office Schedule unless the Controlled Work is:

- (a) provided via any Outreach Work service specifically authorised by a Schedule or other contract issued by us; or

- (b) approved by us in writing in advance; or
- (c) provided to a Client on an individual basis where the Client for good reason cannot attend a Schedule Office and it is reasonable in the circumstances for you to accept instructions from that Client; or
- (d) Controlled Legal Representation or Help at Court at the appropriate court or tribunal; or
- (e) appropriate travel, to attend on counsel, experts, witnesses or site inspections.

“Good reason” in relation to Paragraph (c) above will be as in Paragraph 2.14 above.

### **Outreach work**

5.32 You may perform Outreach Work without our prior authority as authorised by your Office Schedule, and in accordance with the terms set out in the Office Schedule.

### **Ending Controlled Work**

5.33 You may make a Claim for a Controlled Work matter when any of the following events occurs:

- (a) the Client decides not to proceed, or indicates that they wish to take the matter forward themselves;
- (b) the Client fails to give instructions for three months (unless the matter is on hold, for example, because you are waiting for a third party to act or you have agreed this with the Client);
- (c) funding is granted under Section C of the Funding Code procedures (unless further Legal Help is required on matters not covered by the Certificate) or the matter begins to be funded outside this Contract;
- (d) you consider that the matter (having regard to Paragraphs 5.6 to 5.22 and any Category Specific rules on commencing Matter Starts) is completed;
- (e) you have informed the Client that the provision of Controlled Work is no longer justified having regard to the applicable Funding Code Criteria;
- (f) you can no longer act through a conflict of interest or other reason of professional conduct.

5.34 You may only cease working on a Controlled Work matter when one of the circumstances above applies. In particular, you may not cease before such a point has been reached because your costs calculated on an Hourly Rate basis exceed the amount you may claim for the Controlled Work matter under Section 7 of this Specification. Where you have previously made a Claim but further work is needed in the same matter in accordance with the rules at Paragraphs 5.6 to 5.22 and any Category Specific rules, a new Matter Start is not justified, you must not refuse to continue to work on the matter, save as otherwise provided under paragraph 5.33.

- 5.35 You must ensure that the reason for a matter ending is evident from your file. You must include the matter in a Consolidated Matter Report Form submitted to your Regional Office within three months of the matter ending using appropriate outcome codes.

**Clients with a financial interest in your costs**

- 5.36 If your Client has or is likely to have a financial interest in any claim or assessment (because the statutory charge applies, they are obliged to make a contribution to their legal costs, or otherwise) they are entitled to be made aware of the costs you are incurring. You must on a regular basis:

- (a) Notify your Client that they have a financial interest and explain why;
- (b) Explain that when you make your Claim for costs they have a right to make representations (see Paragraph 8.36 below); and
- (c) Provide them with an update of your costs.

- 5.37 If your Client has or is likely to have a financial interest in a matter paid by a Standard Fee or Graduated Fee:

- (a) the information to be provided under Paragraph 5.36 (c) must include:
  - (i) The Standard or Graduated Fee together with disbursements or other additional payments payable at that point of the case;
  - (ii) The point at which the costs of the matter may increase through being paid as an Exceptional Case or higher level of Graduated Fee; and
  - (iii) The costs that would be payable if the matter were paid at Hourly Rates.
- (b) Except where urgent work is required, you must notify your Client before undertaking work that may lead to the matter being paid as an Exceptional Case or at a higher level of Graduated Fee.

## **Section 6: Carrying out Licensed Work**

### **The Boundary between Controlled Work and Licensed Work**

- 6.1 In carrying out Contract Work you must have regard to the boundary between Legal Help/Help at Court, usually provided as Controlled Work, and services such as Legal Representation, provided as Licensed Work (for the relationship between Controlled Legal Representation and Licensed Work Legal Representation, see sections 11 and 12 of this Specification concerning the Immigration and Mental Health categories). The respective scope of Legal Help/Help at Court and Legal Representation is set out in the Funding Code at Section 2.1 of the Funding Code Criteria, Part A, with Guidance at Part C of Volume 3 of the Manual, however there is some overlap between Legal Help and Licensed Work Legal Representation.
- 6.2 Where you are instructed in relation to proceedings or potential proceedings where Legal Representation would be available, you should as far as practicable before making an application for Legal Representation obtain any information reasonably necessary to determine whether the criteria in the Funding Code are satisfied.
- 6.3 Subject to the availability of Investigative Help, Legal Help is normally the appropriate level to carry out initial investigative work at least to the point where sufficient information is available both to allow you to ascertain the prospects of success on the application, and to enable you and us to reach an informed decision on each of the applicable criteria under the Funding Code for the Legal Representation sought.
- 6.4 In cases where the costs of investigation are likely to be substantial then you should make an application for Investigative Help.

#### *Pre action protocols*

- 6.5 You should carry out the work necessary to comply with any pre-action protocols under Legal Help unless the Category Specific provisions at Section 10 to 16 or Funding Code Guidance state that this work should be carried out under Investigative Help or Full Representation. In cases where the merits are unclear, you should take steps under Legal Help to comply with the protocol until sufficient information has been obtained to allow the relevant Funding Code Criteria to be applied for another Level of Service, otherwise any application is likely to be rejected as premature.
- 6.6 We do not generally require experts' reports to be obtained before an application is made for Legal Representation or Investigative Help, although the position will vary according to the type of dispute.

#### *Completion of investigations*

- 6.7 Where sufficient information has been obtained to allow the case to be accurately assessed, and if in your reasonable opinion the case is likely to satisfy the Funding Code Criteria for Legal Representation, you may either apply for a Certificate or continue to deal with the matter under

Legal Help. The latter would be appropriate where, for example, you consider that limited further negotiations will result in the matter being appropriately resolved.

- 6.8 Where however, as a result of your investigations your reasonable opinion is that the matter is unmeritorious and unlikely to justify the grant of Legal Representation, you should in any event cease to provide Legal Help in relation to the matter, beyond brief advice to the Client as to his or her options, subject to there being sufficient benefit to the Client and the other Funding Code criteria being met. Where your Client does not have a substantive defence to an action, it may still be appropriate to provide some Help at Court where mitigation is required and the Funding Code criteria are met.

### **Application of the Funding Code Procedures**

- 6.9 You must comply with the provisions contained in the Funding Code Procedures, Part C – Certificated Work, which are applicable to Suppliers undertaking Licensed Work.

### **Special Cases Unit**

- 6.10 Civil cases, which are likely to incur high costs, will be subject to separate contracts to be issued to Suppliers and managed, by our Special Cases Unit. You are required to refer any application for a Licensed Work Certificate, or case covered by a Certificate currently in force, to the Special Cases Unit if the case meets the criteria set out in Paragraph 6.12 below.
- 6.11 We may also refer any application for a Licensed Work Certificate, or case covered by a Certificate currently in force, to the Special Cases Unit if we believe it meets the criteria set out in Paragraph 6.12 below.
- 6.12 The criteria for referral to the Special Cases Unit are:
- (a) cases where the Client's costs (including any enhancement, Counsel's fees and disbursements but excluding VAT) are likely to exceed £25,000 to disposal;
  - (b) cases where the Client's costs (including any enhancement, Counsel's fees and disbursements but excluding VAT) might exceed £75,000 if it proceeded to contested trial; or
  - (c) cases relating to actual or potential multi-party actions.

### **Clients with a financial interest in your costs**

- 6.13 The provisions of Paragraph 5.36 and 5.37 apply also to your conduct of Licensed Work.

### **Prior Authorities**

- 6.14 If you apply in writing to the Director in advance, we may give you prior authority to incur certain types of costs. If you receive prior authority it means that, unless it becomes apparent that the authority was obtained as a result of your provision of incorrect information, the costs in question will be allowed on Assessment. Prior authority may be sought from the Director whenever you propose to incur costs which are either unusual in their nature or are unusually large. Any prior authority given takes effect subject to any overall limitation on costs (including the Costs Limitation) on the relevant Certificate.
- 6.15 Any decision by the Director under this provision is treated as an Assessment decision and is subject to the appeal provisions set out in Section 7.

### **Instructing Counsel**

- 6.16 All instructions delivered to counsel must:
- (a) include a copy of the current Certificate, where available ;
  - (b) include a copy of any prior authority to instruct counsel; and
  - (c) be endorsed with the Certificate reference number, where available.
- 6.17 Where the Certificate has not yet been issued at the point that instructions are delivered to counsel, a copy must be provided to counsel within 14 days of receiving it.

### **Graduated Fee in the Family Category of Work**

- 6.18 Specific provisions governing Graduated Fee work at the Licensed Work Level of Service in the Family Category of Work, including Payments on Account provisions are set out in the Category Specific provisions at Section 10 below.

## **Section 7: Remuneration of Contract Work**

### **Payment provisions applying to all Contract Work**

#### *Payment other than through this Contract*

- 7.1 Except as otherwise provided by us you must not charge a fee to the Client or any person for the services provided under this Contract or seek reimbursement from the Client or any other person for any disbursements incurred as part of the provision of such services.
- 7.2 Where you have been carrying out Contract Work on behalf of a Client, you may not accept instructions to act privately in the same matter from a Client unless you have advised the Client in writing of: -
- (a) the consequences of ceasing to be in receipt of services; and
  - (b) the further services which may be available under the Community Legal Service, whether from you or another Supplier, (including the possibility of an extension of the financial limit for Legal Help (if you are entitled to receive payment by Hourly Rates) or of an application for Legal Representation)

and the Client has nevertheless decided to instruct you privately. You must not ask your Client to instruct you on a private basis simply because your costs calculated on an Hourly Rate basis have reached the level of the Standard Fee or Graduated Fee payable for the matter or case on which you are acting.

- 7.3 Where a Client elects to instruct you privately in relation to a matter in which you have been providing Contract Work, a copy of the letter dealing with the matters required by Paragraph 7.2 must be kept on the file.
- 7.4 Subject to Paragraph 7.5, all payments for Contract Work must come through us, the exceptions being where the statutory charge in your favour applies or where you are responsible for collecting a contribution that is payable. Subject to this, you cannot be retained to act for the Client in the same matter under this Contract and on a privately paying basis at the same time.
- 7.5 This Paragraph represents our authority, pursuant to Section 22 (2) (b) of the Access to Justice Act 1999, for you to receive payment from another party under a Client's costs order or Client's costs agreement (as defined by Regulation 14 of the Community Legal Service (Costs) Regulations 2000 (as amended)) and under regulation 15 (3) of those regulations, to recover those costs at rates in excess of those provided for in this Contract or any other contract with us pursuant to Regulation 15(2). For the avoidance of doubt this authority applies in respect of both Licensed and Controlled Work and applies also to costs recovered in respect of counsel's fees. It also applies notwithstanding any Costs Limitation on a Certificate in Licensed Work cases.

7.6 For the avoidance of doubt, where an order or agreement for a sum of money is payable to the Client, in which the proportion of that sum that represents damages and the proportion that represents costs are not specified, we do not authorise you to retain any part of that sum, and you must claim the costs of any relevant work from us under the relevant provisions of this section.

**Payment for Controlled Work**

*Levels of payment for civil controlled work*

7.7 We will pay you for Controlled Work carried out in accordance with this Contract and properly claimed under one of the following payment methods:

- (a) Standard Fees
- (b) Graduated Fees
- (c) Hourly Rates

7.8 Subject to the detailed Category Specific provisions, the payment method applicable to each type of Controlled Work is as follows:

<b>Work</b>	<b>Levels of Service</b>	<b>Payment Method</b>	<b>Exceptions</b>
All Categories of Controlled Work apart from Immigration, Mental Health and Family	Legal Help Help at Court	Standard Fees	Exceptional Cases Tolerance Cases
Housing: ASBO proceedings in the Magistrates and Crown Courts	Representation funded as part of Criminal Defence Service	Standard Fee (CDS)	
Debt: debt proceedings in the Magistrates Court	Representation funded as part of Criminal Defence Service	Standard Fee (CDS)	

Family: Domestic Violence	Legal Help	Standard Fee	Exceptional Cases
Other Family Private Law	Legal Help Family Help (Lower)	Standard Fee Graduated Fees	None Exceptional Cases
Family Public Law (Section 31 Care proceedings)	Legal Help Family Help (Lower)	Standard Fee	Exceptional Cases
Family Public Law Non Section 31 Cases	Legal Help	Standard Fee	Exceptional Cases
Family cases under CDS	Representation funded as part of Criminal Defence Service	Standard Fee (CDS)	
Immigration: Non Asylum	Legal Help CLR	Graduated Fees	Exceptional Cases
Immigration: Asylum	Legal Help CLR	Graduated Fees	Exceptional Cases
Mental Health	Legal Help CLR	Graduated Fees	Exceptional Cases
Tolerance Cases	Legal Help Help at Court	Reduced Standard Fee	Exceptional Cases
Exceptional Cases	Dependant on Category of Law	Hourly Rates	

*Standard Fees and Graduated Fees*

7.9 We will pay for each Matter Start covered by Standard Fees and Graduated Fees:

- (a) properly conducted: and
- (b) claimed in accordance with the terms of this Contract.

The fees for the relevant Category of Law are set out in the Payment Annex. In taking on the Client to undertake Controlled Work covered by a Standard Fee or Graduated Fee payment, you are accepting that Standard Fee or Graduated Fee as full payment for all work reasonably required for the Client in that matter at the Controlled Work level (unless the Case subsequently becomes an Exceptional Case).

7.10 Standard Fees and Graduated Fees are inclusive of profit costs, travel and waiting time and counsel's fees (subject to the Category Specific provisions at Paragraphs 10 to 16 of this Specification), but are exclusive of other disbursements and VAT.

7.11 Subject to Category Specific provisions and the Exceptional Case provisions set below, payments for Legal Help and Help at Court shall

be by way of the Standard Fees specified for the relevant Category of Law in Section 1 of the Payment Annex.

- 7.12 Disbursements incurred on Controlled Work matters and not covered in 7.10 above may be claimed separately.
- 7.13 For the avoidance of doubt no payment is due for a Matter Start where no Claim is made, or where the amount of your Claim on an Hourly Rate basis would be nil.

*Provisions on Standard Fees and Graduated Fees*

- 7.14 The fact that you will only be entitled to payment of a Standard Fee or Graduated Fee should not affect your conduct of any matter or case, save as instructed by your Client.
- 7.15 You should not specifically target certain sorts of Clients or types of work in order to have the effect of maximising cases of lower complexity. However, subject to the provisions of Paragraph 2.41, you may change your case mix within a Category of Law by accepting a broader range of cases, reflecting the types of cases arising locally in this Category of Law, than previously.
- 7.16 You should apply for Licensed Work on a Client's behalf at the appropriate point, applying Paragraphs 6.1 to 6.9 above.
- 7.17 You are required to comply with any Category Specific provisions on use of Matter Starts set out at Sections 10 to 16 of the Specification and the general provisions on Controlled Work and matter boundaries at Paragraphs 5.6 - 5.22 prohibiting the unjustified use of additional Matter Starts. Claims in breach of these provisions will be disallowed and only one Standard Fee or Graduated Fee paid in respect of all the work that should have been claimed under one Matter Start.
- 7.18 Nothing in this Contract affects your rights to recover costs from another party in proceedings or prospective proceedings in excess of the amount payable by us as a Standard Fee or Graduated Fee.

*Exceptional Cases provisions*

- 7.19 Subject to Category Specific rules, where the amount of any Claim as calculated on the basis of Hourly Rates (see Paragraph 7.28) exceeds the Exceptional Threshold for the relevant Category specified in section 1 of the Payment Annex then you can apply to us for the Claim to be treated as an Exceptional Case.
- 7.20 Exceptional Cases will be remunerated on the basis of Hourly Rates.
- 7.21 We will not normally refuse to treat a Claim as an Exceptional Case on the grounds that the case or matter should have been split into more than one case or matter. However, where it appears that a Claim covers clearly unrelated matters with the intention of avoiding payment by a Standard or Graduated Fee, we may ask you to resubmit your Claim accordingly. Any decision to request resubmission of Claims

under this Paragraph will be subject to the appeals procedure set out in Paragraphs 8.48 – 8.66.

7.22 We may assess the costs of each Exceptional Case Claim or a sample of them and where the amount assessed as payable for the Claim is:

- (a) nil, we will not make payment for the Claim; or
- (b) otherwise below the Exceptional Threshold referred to in Paragraph 7.19, we will pay the appropriate Standard Fee or Graduated Fee

otherwise, we will pay the amount assessed as payable for the Claim.

7.23 For the avoidance of doubt, where we refuse an application to agree a Claim as an Exceptional Case an appeal may be made against that decision to an Independent Costs Assessor and/or if necessary to the Costs Appeals Committee on a Point of Principle of General Importance. The procedures in this Section 8 shall apply to any such appeal.

7.24 For the avoidance of doubt any refusal by us of a request by you to treat a Claim as an Exceptional Case is excluded from Clauses 32 and 33 of the Contract Standard Terms.

7.25 Any Claims which we have agreed to treat as an Exceptional Case under the provision of Paragraph 7.19 will not be included in any “average” calculated under Paragraph 7.27 below.

#### *Tolerance Work*

7.26 Standard Fees and Exceptional Thresholds for Tolerance Matter Starts under your Office Schedule are set out in Section 1 of the Payment Annex.

#### *Right to amend Standard and Graduated Fees*

7.27 We may amend the level of Standard Fees and Graduated Fees where:

- (a) new Access to Justice Legislation and/or changes to the Funding Code is in our reasonable view likely to have a significant effect on costs of carrying out cases; and
- (b) average costs (as assessed on an Hourly Rate basis) of all Claims in a Category of Law are, in our reasonable view, for a period of at least 6 months at least 20% less than the Standard Fee or Graduated Fee payable in respect of those Claims.

The provisions set out at Clauses 13.1 to 13.11 and 13.13 of the Standard Terms will apply in respect of any amendment or proposed amendment under this Paragraph.

### *Hourly Rates*

- 7.28 Hourly Rates may only be claimed for Controlled Work where specifically authorised under this Specification. We will pay for each Matter Start covered by Hourly Rates that is properly conducted and claimed in accordance with the terms of this Contract at the Hourly Rates set out in Sections 7 and 8 of the Payment Annex. You may also Claim for disbursements incurred in accordance with Paragraphs 5.23 to 5.28.
- 7.29 The Hourly Rates applicable to Legal Help, Help at Court and Family Help (Lower) are set out at Section 7 of the Payment Annex. Where different Hourly Rates are payable according to the Category of Work, you may only claim the Category Specific rate if you are an SQM holder in the relevant category and you are acting under a Matter Start authorised in your Office Schedule. For all work carried out under Tolerance, the rates in Table 7(d) of the Payment Annex apply.

### **Payment for Licensed Work**

7.30 Subject to:

- (a) our and the Court's rights to assess Claims for Licensed Work; and
- (b) our rights under this Contract to reduce payments;

we will pay you for Licensed Work which is properly conducted and claimed in accordance with the terms of this Contract at the rates set out in the Payment Annex. All payments are subject to the Category Specific provisions at Sections 10 to 16 of this Specification.

### **Licensed Work Hourly Rates**

- 7.31 Subject to the Standard and Graduated Fees payable for Family Work under Section 10 of this Specification, we will pay for Licensed Work at the Hourly Rates set out in Sections 9 and 10 of the Payment Annex (also referred to as "Prescribed Rates"). All rates are exclusive of VAT.
- 7.32 For this purpose the Family Prescribed Rates set out in Section 9 of the Payment Annex apply to all Family Help (Higher) and Legal Representation provided in the Family Category with the exception of proceedings under:
- (a) The Inheritance (Provision for Family and Dependants) Act 1975;
  - (b) The Trusts for Land and Appointment of Trustees Act 1996; or
  - (c) Proceedings for judicial review

which will be paid at Non Family Prescribed Rates.

7.33 The Non Family Rates at Table 10 (a) of the Payment Annex apply only where at the time you carry out the work you are an SQM holder in the relevant Category, or where you become an SQM holder within six months of carrying out the work. Otherwise the Rates at Table 10 (b) are payable.

7.34 Prescribed Rates also apply to relevant work within detailed assessment proceedings.

7.35 In Section 9 and 10 of the Payment Annex the following definitions apply:

“Advocacy” means any appearance as advocate before the court in any trial, hearing, case management conference or other appointment but not other associated work at court.

“Care Proceedings” means proceedings for an order under Parts IV or V of the Children Act 1989 and includes proceedings under section 25 of that Act. Note that this covers a wider range of cases than “s31 Care Proceedings” for which Standard Fees are payable in accordance with Section 10 of the Specification.

“Higher Courts” means the High Court, Court of Appeal, House of Lords, Upper Tribunal, Employment Appeal Tribunal, Crown Court and Court of Protection.

“London Rate” applies, where relevant, to the work of a fee-earner whose Schedule Office is situated in the Legal Services Commission’s London Region.

“Other Tribunals” means the Care Standards Tribunal, General and Special Commissioners of Income Tax, VAT and Duties Tribunal, Special Immigration Appeals Commission and the Proscribed Organisations Appeal Commission.

“Preparation and Attendance” means all preparation and attendances, other than in respect of standard letters and telephone calls, advocacy and conferences with counsel, but including the drawing up and checking of a bill of costs.

*Enhancement to Prescribed Rates*

7.36 The following rules apply only to remuneration by way of Prescribed Rates under section 9 and 10 of the Payment Annex (but excluding for this purpose any determination as to whether a case escapes from any Standard or Graduated Fee - see section 10 below). No other form of enhancement or uplift is payable for such work.

7.37 The Threshold Test: on assessment of Licensed Work we or the court may allow fees at more than the Prescribed Rate in respect of any item or class of work where it appears, taking into account all the relevant circumstances, that:

- (a) the work was done with exceptional competence, skill or expertise;
- (b) the work was done with exceptional speed; or

- (c) the case involved exceptional circumstances or complexity.

7.38 Where we or the court consider that any item or class of work should be allowed at more than the Prescribed Rate, it shall apply to that item or class of work a percentage enhancement in accordance with the following provisions.

7.39 In determining the percentage by which fees should be enhanced above the Prescribed Rate we or the court shall have regard to—

- (a) the degree of responsibility accepted by the legal advisor;
- (b) the care, speed and economy with which the case was prepared; and
- (c) the novelty, weight and complexity of the case.

7.40 The percentage above the Prescribed Rate by which fees for work may be enhanced shall not exceed 100%. The exception to this is that in proceedings in the High Court, Court of Appeal, Upper Tribunal or House of Lords, we or the court may allow an enhancement not exceeding 200% where it considers that, in comparison with work in other proceedings in those courts which would merit 100% enhancement, the item or class of work relates to exceptionally complex matters which have been handled with exceptional competence or speed.

7.41 We or the court may have regard to the generality of proceedings to which the relevant Prescribed Rates apply in determining what is exceptional within the meaning of this provision.

*Fixed Costs for Advocates in fast track proceedings*

7.42 Where proceedings are allocated to the fast track as defined in Part 28 CPR:

- (a) the amount payable by us to any advocate, whether from your Approved Personnel or a representative instructed by you, shall not exceed the amount of fixed costs allowable under CPR rule 46.2(1);
- (b) the amount payable by us to any legal representative attending court to assist the advocate shall not exceed the amount allowable under rule 46.3(2) regardless of any amounts actually awarded by the court under CPR 46.

**Payments on Account to Counsel**

7.43 Where counsel has been instructed by you to carry out Licensed Work, (other than Family Help) counsel may apply to us on a form approved by us for a payment of account where any of the following apply:

- (a) 12 months have elapsed since the Certificate was issued;
- (b) A further period of 12 months or 24 months have elapsed;
- (c) The proceedings to which the Certificate relates have continued for more than 12 months and it appears unlikely that an order will be made for the costs of the case to be assessed within the next 12 months and delay in the assessment of costs will cause hardship to counsel; or
- (d) The proceedings to which the Certificate relates have concluded or you are otherwise entitled to have the costs of the case assessed or paid but counsel has not been paid for at least six months since you were first so entitled.

Any application for payment on account made under sub-paragraph 7.43 (a) or (b) above must be made within the period of two months before to four months after the event specified in those sub-paragraphs.

- 7.44 Counsel may not apply for payment on account under Paragraph 7.43 for any work which is covered by the Community Legal Service (Funding) (Counsel in Family Proceedings) Order 2001 (as Amended) (“the Graduated Fees Order”).
- 7.45 Where counsel applies to us under Paragraph 7.43 we will, subject to Paragraph 7.49 pay counsel up to 75% of what we consider to be counsel’s reasonable fees, taking into account any payments on account previously made and subject also to any Cost Limitation on the Certificate. Where counsel’s final fees are assessed at an amount less than our total payments on account to counsel we will recoup any deficit from counsel.

#### **Final payments to counsel**

- 7.46 Where you instruct counsel in relation to Controlled Work then unless we specify otherwise it is for you to agree counsel’s fees and pay counsel directly.
- 7.47 Where you instruct counsel in relation to Licensed Work, other than Family Help or work covered by the Graduated Fees Order, counsel’s fees will be subject to Assessment by us or by the court under this Specification and in accordance with Paragraph 7.49 below as appropriate, but we will pay counsel directly, save where any Category Specific rules or individual case contract specifies otherwise and subject to any overall Cost Limitation on the Certificate (see Paragraph 8.40 below).
- 7.48 Where you instruct counsel in circumstances to which Article 4(2A) of the Graduated Fees Order applies, counsel shall be paid at the Hourly Rates set out in Part 9 of the Payment Annex appropriate to the proceedings. Counsel may additionally claim as a disbursement reasonable travel and hotel expenses in the circumstances that such expenses would have been payable under the Graduated Fees Order.

- 7.49 When you instruct barristers in independent practice in relation to Licensed Work the rates at which we will fund services provided by barristers in independent practice are set out in Part 15 of the Payment Annex, provided that we may increase the hourly rate applicable to junior counsel in the County Court if we consider it reasonable to do so. This paragraph does not apply to services provided under the Family Category except for proceedings under the Trusts of Land and Appointment of Trustees Act 1996, Inheritance (Provision for Family and Dependents) Act 1975 and proceedings for judicial review arising out of family relationships.

## **Section 8 Assessment Procedures**

### **Basis of Assessment**

- 8.1 All assessments of Contract Work are to be on the Standard Basis as defined by CPR Rule 44.4(2), subject to the other provisions of this Specification and any Guidance issued by us.

### **Overview of claiming and assessment procedure**

- 8.2 You must comply with the provisions on claiming and assessment in respect of Contract Work set out in the terms of this Contract, the Community Legal Service (Financial) Regulations 2000, the Community Legal Service (Costs) & (Costs Protection) Regulations 2000 and the Civil Procedure Rules.

#### *Controlled Work – claiming and assessment procedure*

- 8.3 In respect of Controlled Work:
- (a) you are required to make a Claim for Controlled Work in accordance this Specification; and
  - (b) we may exercise our rights to assess your Claim(s) in accordance with this Section 8.
- 8.4 Within 3 months of the conclusion of a Controlled Work Matter (in accordance with Paragraph 5.33 above) you must make a Claim for payment for that Matter.
- 8.5 In order to make a Claim for Controlled Work you must submit a report to the relevant Director claiming an amount to be reconciled against the payments made to you under the Contract (a “Credit”) based on the appropriate Hourly Rates, Standard Fee or Graduated Fee applicable to the Controlled Work carried out, plus disbursements, and VAT. The report must be submitted on a form and in a format approved by us. Credits claimed will be set off against the Standard Monthly Payments under your Office Schedule.
- 8.6 Claims for Controlled Work which are covered by Standard Fees or Graduated Fees will not be reduced on Assessment (except as provided at Paragraph 8.45) but we may take into account the results of our Assessment in:
- (a) considering the level of Standard Fees and Graduated Fees under Paragraph 7.26 above;
  - (b) assessing your performance under this Contract; and
  - (c) deciding whether your work should be subject to quality assessment (e.g. peer review) or another form of audit.

#### *Licensed Work – claiming and assessment procedure*

- 8.7 In respect of Licensed Work, for Claims where the court is responsible for Assessment (in accordance with Paragraph 8.9 below), you must first submit your Licensed Work Claims for Assessment by the court; and when this Assessment is complete make a Claim for payment from us.
- 8.8 In respect of Licensed Work Claims where we are responsible for Assessment (in accordance with Paragraphs 8.9 to 8.11 below) you must submit to us a Claim for payment and Assessment on the required form.
- 8.9 When:
- (a) proceedings are commenced at court in any Licensed Work Case;
  - (b) when your claim is submitted for assessment the proceedings are in any court other than the magistrate's court; and
  - (c) either
    - (i) The claim for costs in the proceedings to which the Certificate (or any linked Certificates) relates includes a claim for "assessable costs" (as defined below) which exceed £2,500 (including Counsel's fees and disbursements but not including VAT); or
    - (ii) it is or may be necessary for the court to carry out a detailed assessment of costs payable to the Client by another party to the proceedings

your Claim for payment for Licensed Work must be submitted for detailed Assessment by the court, unless there are special circumstances where detailed Assessment is against the interest of the Client or will increase costs under the Certificate. It is a matter for the Director to decide, either on application or otherwise, whether such special circumstances exist.

- 8.10 For the purposes of Paragraph 8.9 (a) 'court' includes the Employment Appeal Tribunal, and where the conditions of Paragraph 8 (c) are satisfied for cases before that tribunal, Assessment of costs is by the Supreme Court Costs Office.
- 8.11 We may, subject to the consultation and amendment provisions contained in Clauses 13.4 to 13.11 and 13.13 of the Standard Terms, vary the assessment procedure and cost limits for assessment by the Court described in Paragraphs 8.9 and 8.10. We may issue guidance on the timing and content of any claim for assessment or payment of costs.
- 8.12 In Paragraph 8.9 (c) above "assessable costs" means costs that are claimed for payment from the Community Legal Service fund other than by way of any Standard Fee or Graduated Fee. Assessable costs include all costs in cases which you consider escape from a Standard Fee or Graduated Fee under the Exceptional Case provisions of this Specification, together with costs for work under the Certificate which falls outside of the scope of any Standard Fee or Graduated Fee scheme.

- 8.13 Where, following an order for detailed Assessment, you incur costs in seeking to recover money for the CLS fund and these costs are not assessed at a detailed Assessment hearing, you may apply to have these costs assessed by us.
- 8.14 In all other circumstances, your Claim for payment for Licensed Work will be assessed by us.
- 8.15 For the purposes of Paragraph 8.9 above, proceedings are commenced on the issue of the claim form and the “claim for assessable costs” relate to your profit costs (including those of any previous Suppliers), counsels’ fees and any other disbursements but excludes VAT and the costs of Assessment.
- 8.16 In cases where costs are to be subject to Assessment by the court, detailed Assessment proceedings must be commenced within the time specified in the Civil Procedure Rules.
- 8.17 All claims for Assessment and payment by us must be submitted within 6 months of the right to claim accruing. The right to claim accrues in the following circumstances: -
- (a) When an assessment certificate is issued by the court;
  - (b) Where the Claim is to be assessed by us:
    - (i) a final order of the court for detailed assessment of your CLS funded costs under this section; or
    - (ii) the later of the date of service of a notice of discontinuance under CPR 38.3 in respect of the entire proceedings to which the Certificate relates; or 3 months after the date of the dismissal of application to set the notice of discontinuance aside under CPR 38.4;
    - (iii) acceptance of an offer to settle or a payment into court under CPR Part 36 in respect of the entire proceedings to which the Certificate relates; or
    - (iv) if none of (i) to (iii) above apply, the date of the discharge or revocation of the Certificate (or, where relevant, the date that the discharge or revocation has been finally confirmed on appeal).

*Rules applying to detailed assessments*

- 8.18 Costs you incur in detailed Assessment proceedings may be included in the Licensed Work Claim to which the detailed assessment relates and are not payable separately. The amount of such costs payable shall be as determined by the detailed Assessment itself, except as provided by Paragraph 8.13.

- 8.19 The costs you incur in any appeal against a decision made in a detailed Assessment may only be claimed from us to the extent that this is ordered by the court hearing the appeal.
- 8.20 For the avoidance of doubt:
- (a) The costs referred to in Paragraphs 8.18 and 8.19 do not form part of the Statutory Charge and are not subject to the Costs Limitation on the relevant Certificate(s); and
  - (b) The costs of preparing and checking a bill of costs do form part of the Statutory Charge (where it applies to a case) and are subject to the final costs limitation on the relevant Certificate
- 8.21 Where fees of counsel that you have instructed are reduced on a detailed Assessment (or provisional Assessment) you must notify counsel of this reduction within 7 days of the date of that Assessment, and subsequently endorse your bill of costs with the date of this notification; where counsel's fees have not been reduced you should certify that no such notification was necessary.

*Cases where costs are payable by another party*

- 8.22 Where a Client's costs order or Client's costs agreement has been made you may in addition to the costs under that order or agreement ('inter partes costs') claim from us your legal aid only costs, as defined by Paragraph 8.28, at the rates specified in the Payment Annex to this Specification.
- 8.23 Where you have agreed and received the inter partes costs you may seek Assessment solely of your legal aid only costs under the provisions of Paragraphs 8.7 to 8.21. Otherwise, any Assessment of your CLS funded costs must be in respect of your full Claim.
- 8.24 Unless inter partes costs have previously been agreed, the Assessment of your CLS funded costs under Paragraph 8.9 (b) (ii) must be concurrent with the detailed Assessment of the inter partes costs.
- 8.25 The time period under Paragraph 8.17 for submitting to us a Claim for assessment under Paragraphs 8.16 or 8.17 may be extended with our agreement, but not beyond 3 months from the point that inter partes costs are agreed.
- 8.26 Where you do not intend to make a Claim in respect of a matter you must report to us on the form specified by us within 1 month of your receipt of inter partes costs.
- 8.27 You must notify us of any Client's costs order or Client's costs agreement within the time period specified at Paragraph 8.17, if you have not already submitted a Claim or reported under Paragraph 8.22 in respect of the matter.
- 8.28 'legal aid only costs' are costs:

- (a) of Contract Work not covered by a Client's costs order or Client's cost agreement;
- (b) of completing our forms and communicating with us; or
- (c) that have not been allowed on inter partes detailed Assessment or the paying party have reasonably refused to pay in agreeing inter partes costs:
  - (i) in respect of which we have granted prior authority under Paragraph 6.14;
  - (ii) in respect of work which we have specifically requested or authorised the purposes of considering the grant, continuation or amending the terms of funding;
  - (iii) that represents a reasonable adjustment you have made as a Supplier under the terms of the Disability Discrimination Act 1995;
  - (iv) in respect of the travel expenses of a Client other than to attend court as a witness of fact.

8.29 Where a Client's costs order or Client's costs agreement specifies that another party shall pay a proportion of the Client's costs (but not a fixed sum), for the purposes of Paragraph 8.28 work is not covered by that order or agreement in the same proportion that the Client's costs are not payable under that order or agreement.

*General provisions on claiming and assessment*

- 8.30 You may only Claim for work that has been actually and reasonably done and disbursements actually and reasonably incurred in accordance with the provisions of the Contract and that is supported by appropriate evidence on the file at the time of the Claim and Assessment. This is without prejudice to your right to Claim Standard Fees and Graduated Fees.
- 8.31 You must submit your Claims in accordance with the terms of any limitations placed upon that case including, but not limited to, limitations on Certificates. We may reject any Claim you make which does not comply with this rule.
- 8.32 Where any item of costs is to be claimed on more than one case, this fact must be recorded on each of the relevant files and Claims, together with the proportion of time and costs attributed to each matter. Consecutive attendances on the same Client/s where continuous are to be treated as a single item of costs for the purposes of this rule.
- 8.33 Whether or not your Client has a financial interest in the case, in carrying out Contract Work you must endeavour where possible to obtain a Client's costs order or Client's costs agreement as you would if acting for a privately paying client (including in any detailed Assessment proceedings or negotiations in respect of a Client's costs order or Client's costs agreement), and you must seek to protect the interests of the CLS fund on any detailed assessment of costs payable by another party.

- 8.34 Where you agree and receive inter partes costs in the circumstances of Paragraphs 8.23 or 8.26 we authorise you pursuant to Regulation 20(4) of the Community Legal Services (Costs) Regulations 2000 to retain those inter partes costs, subject to accounting to us for any interest due under Paragraph 8.35.
- 8.35 Where interest has been received or is payable on inter parts costs, you are entitled to the proportion of the interest which relates to the amount (if any) by which the inter partes costs exceed the amount paid or payable by us in relation to the relevant dispute or proceedings. The remainder of the interest is payable to us.
- 8.36 If your Client has a financial interest in any Claim or Assessment (because there a statutory charge applies or may apply, because they are obliged to make a contribution to their legal costs, or otherwise) they are entitled to make representations in relation to your Claim. Before submitting your Claim for assessment, whether by the court or us, you must:
- (a) Notify your client that they have a financial interest and explain why;
  - (b) Explain that they have a right to make representations and set out how they can make those representations, explaining such other steps that they may take to safeguard their interest;
  - (c) Provide them with a copy of your bill of costs or claim for costs; and
  - (d) Endorse your bill or Claim indicating that you have complied with steps (a) – (c) above.
- 8.37 Without prejudice to the generality of Paragraph 8.34 above, you should note the following provisions regarding costs and disbursements:
- (a) you may not claim for time spent on purely administrative matters (such as opening and setting up files, the maintenance of time/costing records) or in meeting the administrative requirements of your contract (such as the information return and the Claim for costs), unless expressly provided by this Contract;
  - (b) you may not claim for time spent on legal research over and above brief checks on the law , unless the case involves a novel, developing or unusually complex point of law, justifying either legal research by you or the obtaining of an opinion from counsel/a solicitor with higher rights of audience;
  - (c) you may not claim for any additional costs incurred by you or your Client because you are based in a location distant from your Client where it would have been reasonable for your Client to have instructed a Supplier located nearer to him or her;
  - (d) subject to Category Specific rules, you may not claim for Counsel's fees in the magistrates' court unless you have

obtained prior authority from us to instruct Counsel under Paragraph 6.14;

- (e) you may not Claim for the fees of Queens Counsel or more than one counsel unless you have obtained prior authority to instruct Queens Counsel or more than one counsel under Paragraph 6.14. For the avoidance of doubt, prior authority to instruct a Queen's Counsel is required only where Queen's Counsel will act as such but not where Queen's Counsel choose to act and be paid only at junior counsel rates; and
- (f) You may not claim for matters that properly fall as your overheads, such as internal communications, typing, administration and equipment costs, stationary, postage and courier charges, telephone charges and the time and costs of photocopying, save as provided for in Guidance.

8.38 Where you instruct an expert to deliver services of a type set out in Part 14 of the Payment Annex we will not pay fees in excess of those set out in that Part unless:

- (a) We consider it reasonable to increase such fixed fees or rates in exceptional circumstances; and
- (b) We have granted prior authority to exceed such fixed fees or rates on such basis.

Subject to such limits where applicable, the amounts claimed for the provision of expert services must be justified on detailed assessment by the court or Assessment by us in the usual way. For the purpose of this paragraph 8.38, "exceptional circumstances" means that the expert's evidence is key to the client's case and either (i) the complexity of the material is such that an expert with a high level of seniority is required; or (ii) the material is of such a specialised and unusual nature that only very few experts are available to provide the necessary evidence. We will fund expert services of a type not listed in Part 14 of the Payment Annex at such rate as we may from time to time determine and in considering the same we will have regard to the rates set out in Part 14 of the Payment Annex and we may require you to provide us with a number of quotes in respect of the provision of the relevant service.

8.39 Any assessment undertaken by us, whether by the Director or by the Assessor or Costs Appeals Committee on a subsequent appeal, will be subject to any costs or other limitations imposed by us and costs will only be allowed at the appropriate rate as set out in Part B of this Specification.

8.40 For Licensed Work even if the court undertakes the assessment, we are only bound to pay costs in accordance with Paragraph 8.39 above.

- 8.41 On any Assessment of your costs, counsel's fees shall not be reduced by virtue of a Certificate Costs Limitation unless counsel's fees alone exceed the final limitation on the Certificate, in which case counsel's fees are paid up to that limitation and no further payment is made except in relation to any costs of detailed Assessment proceedings. You will then be responsible for the balance of counsel's fees, unless you had, at all material times, notified counsel of the relevant Costs Limitations.
- 8.42 Within 7 days of being notified of the outcome of either a detailed assessment by the court or Assessment by the Director, you must inform counsel, in writing, where the fees claimed on his/her behalf have been reduced or disallowed.
- 8.43 When we assess a sample of your Controlled Work Claims, we may apply any findings to your other claims for payment for Controlled Work. When we apply findings in this way, we may do so for all cases commenced under this Contract (or any previous contract it has replaced) where costs have been claimed from us either:
- (a) Since the date the file sample was requested for the last contract compliance audit; or
  - (b) From a date 12 months immediately preceding the date the file sample was requested for assessment on the current audit
- whichever is the most recent.
- 8.44 'Findings' for the purposes of Paragraph 8.41 above includes not only findings on particular practices (such as failing to assess financial eligibility) but in relation to more general matters, such as claiming excessive time for preparation or attendances or the average percentage reduction on assessment of a sample of your files.
- 8.45 When findings are applied to a claim under these provisions, then we have assessed that claim.

*Assessment of Claims for Standard Fees and Graduated Fees*

- 8.46 We have the right to Assess all your Claims for Standard Fees and Graduated Fees in accordance with the provisions of the Contract. However we will not amend any Standard or Graduated Fee payable to you as a result of an Assessment except as set out in this rule:
- (a) We will not pay for work that is outside the terms of the Contract (for example work for non-eligible clients, where the Funding Code Criteria are not met, work which is not within the scope of Controlled Work).
  - (b) Where your Contract is terminated and you do not (or are not permitted to) complete your matters and cases then:

- (i) If the Contract terminates under Clause 30.2 or 30.3 respectively of the Standard Terms, subject to the other provisions of this Paragraph and to any Category Specific provisions, we will pay the Standard Fee or Graduate Fee or pay the case as an Exceptional Case, as appropriate; or
  - (ii) otherwise, we may pay the lower of the Assessed amount or the Standard Fee or Graduated Fee.
- (c) Where more than one Standard Fee or Graduated Fee has been made for a case that should, in our reasonable view, have been treated as one Matter Start (see Paragraphs 5.6 – 5.22 and the Category Specific provisions) then we may Assess the Costs of any additional Standard Fee and Graduated Fee Claims as nil, so that only one Standard Fee or Graduated Fee is payable. Any appeal or review of such an Assessment under the Specification will proceed on the basis of determining this issue;
- (d) In the case of Graduated Fees, we may decide that you have claimed at the wrong level and restrict your payments to a lower level of Graduated Fee.

#### *Assessment of Claims for Hourly Rates*

8.47 We have the right to Assess all your claims for Controlled Work at Hourly Rates. The relevant Director may Assess the claim either before or after the Credit (as defined in Paragraph 8.5) in relation to that Claim has been given. Where an assessment is carried out after a Credit has been given in relation to any matter, then that Credit may be adjusted accordingly.

#### *Provisions on appealing our Assessment decisions – Controlled and Licensed Work*

8.48 If you or counsel are dissatisfied with any decision of the Director as to the Assessment of the costs of Contract Work, you may appeal to an Independent Costs Assessor (“the Assessor”). For the avoidance of doubt, subsequent references in this rule and its related Guidance shall include “Assessors” in cases where an appeal is dealt with by a panel of three Assessors rather than a single Assessor alone.

8.49 The appeal must be made in writing (setting out full reasons) within 28 days of notification of the Assessment decision, and must be accompanied by the file. The Director will only extend the 28-day time limit where you have requested an extension for good reason within 21 days. Any extension of the time limit will be for a maximum of a further 14 days.

8.50 Failure to comply with any of the requirements set out in Paragraph 8.50 above means that you accept the decision of the Director and lose your right to dispute it.

- 8.51 Where an appeal is to proceed the Director also has the right to make written representations (in addition to those contained in the original assessment) to the Assessor. If the Director does so, these will be sent to you not less than 21 days before the appeal papers are sent to the Assessor. If you receive such further representations from the Director then you have the right, within 14 days, to provide a written response to them.
- 8.52 The appeal shall be dealt with by the Assessor on the papers only. There is no general right for either party to attend or to be represented on the appeal. However, if either party considers that there are exceptional circumstances which mean that concerns or issues cannot be addressed in writing, they may make a written request (setting out full reasons) for an oral hearing, to the Assessor. Such an application must be made at the same time as:
- (a) in your case, you submit your written appeal; and
  - (b) in the case of the Director, at the same time as he or she makes any written reply (or, where no written reply is made, during the period allowed for making such reply) .
- 8.53 The Assessor will consider the request and notify both parties of his or her decision.
- 8.54 If:
- (a) neither party has made a request for an oral hearing but the Assessor believes that his or her review of some or all of the issues under the appeal cannot be concluded properly without hearing oral submissions; or
  - (b) having considered a party's request for an oral hearing, s/he is of the opinion that the request should be granted
- he or she will notify the parties of this. If either party chooses to attend at an oral hearing, having been given permission from the Assessor, the other party will also have a right of attendance and representation at the appeal and shall confirm whether or not they intend to exercise that right.
- 8.55 In any case, whether or not a party has made a request for an oral hearing, if the Assessor is of the opinion that an appeal is of such complexity and / or value that it should not be considered by a single Assessor alone s/he may, in his or her sole discretion, refer the appeal to a panel of three Assessors either to deal with on the papers only or by way of an oral hearing. If the Assessor is of the opinion that the appeal should be dealt with by way of an oral hearing, the provisions set out in the preceding Paragraph apply save that a panel of three Assessors shall deal with the appeal rather than a single Assessor alone.
- 8.56 For the avoidance of doubt, the Assessor may give procedural directions as to the determination of the appeal whether the appeal is to be dealt with on the papers only or an oral hearing basis.

- 8.57 On appeal, the Assessor shall review the Assessment whether by confirming, increasing or decreasing the amount assessed. The Assessor may apply his or her findings generally across files outside the sample before him or her under the terms of Paragraph 8.43. However, no such decision shall apply to any completed Assessments that you have not appealed within the time limit.
- 8.58 Where in dealing with an appeal on the papers only the Assessor identifies new issues (i.e. issues which have not been raised by either party under the appeal) the Assessor will, as s/he considers appropriate in the circumstances, either:
- (a) adjourn the appeal and seek representations from the parties before making his or her final decision; or
  - (b) refer the matter back to the Director for a new decision.

*Points of Principle of General Importance*

- 8.59 At any point after the submission of an appeal to the Assessor, but no later than 21 days after receipt of the Assessor's final decision, either you, the Director or the Assessor may seek certification of a Point of Principle of General Importance.
- 8.60 An application for certification of a Point (or Points) of Principle of General Importance must be made as follows:
- (a) in your case, by sending your application to the Director and, if one has already been appointed and their identity notified to you, to the Assessor. The Director will, within seven days of receipt of your application, forward that application to our Legal Director and, if an Assessor has been appointed but their identity not notified to you, to the Assessor also; and
  - (b) in the case of the Director, by sending an application directly to our Legal Director and copying that application to you and to the Assessor (if appointed);
  - (c) in the case of the Assessor, by sending the application to the Director. The Director will, within seven days of receipt, send the application to our Legal Director and notify you that the Assessor is seeking certification of a Point of Principle of General Importance.
- 8.61 All applications for certification of Points of Principle of General Importance, whether made by you, the Director or the Assessor, must set out the exact wording of the Point of Principle of General Importance being sought and explain, in detail, the basis of the application.
- 8.62 Upon receipt of an application for certification of a Point of Principle of General Importance our Legal Director will decide whether the matter should progress to the Costs Appeals Committee. If our Legal Director decides that the matter should not progress to the Costs Appeals

Committee for certification then the Legal Director will send the reasons for refusal to the Chair of the Costs Appeals Committee for approval and, if approved, to you, the Director and, where appropriate, the Assessor.

- 8.63 If our Legal Director or the Chair of the Costs Appeals Committee consider that the matter should proceed for certification to the Costs Appeals Committee then the matter will be listed for consideration by that Committee.
- 8.64 Applications for certification of Points of Principle of General Importance are, unless permission to attend is granted by the Chair of the Costs Appeals Committee, considered by that Committee on the papers only.
- 8.65 On considering an application under this rule, the Costs Appeals Committee will either:
- (a) decide whether to certify the Point of Principle of General Importance sought and/or, where appropriate, amend any of the Assessments of the Assessor to give effect to this determination, or refer the matter back to the Assessor for him to do so; or
  - (b) determine that there is no Point of Principle of General Importance raised by the application before it and refuse the application accordingly.
- 8.66 You, the Director and, where appropriate, the Assessor will be notified of the decision of our Legal Director and/or the Costs Appeals Committee.

## **Section 9 The Statutory Charge**

### **Application of the Statutory Charge to Controlled Work**

- 9.1 In all Categories of Work the Statutory Charge does not apply to any property recovered or preserved under Legal Help, i.e. where no other Level of Service is granted prior to that recovery or preservation.
- 9.2 If your Client's main or only dwelling is recovered or preserved under Family Help (Lower) it is exempt from the Statutory Charge.
- 9.3 If property other than the Client's main or only dwelling is recovered under Family Help (Lower) the Statutory Charge applies if the Claim escapes the Standard Fee, but is in your favour. The amount of the Statutory Charge will be the amount payable to you in excess of the amount which would otherwise have qualified for a Standard Fee – see regulation 43 of the Community Legal Service (Financial) Regulations 2000 (as Amended) and section 10 below.
- 9.4 Unless we otherwise specify, any decision to waive the Statutory Charge must be referred to the relevant Director.

### **Application of the Statutory Charge to Licensed Work**

- 9.5 You are required to apply the Statutory Charge to property recovered or preserved under Licensed Work you undertake according to the provisions in the Community Legal Service (Financial) Regulations 2000 and the Community Legal Service (Costs) Regulations 2000 (in both cases as amended and replaced from time to time). If you undertake Controlled Work on a matter and subsequently obtain a Certificate for Licensed Work in connection with the same dispute or proceedings, the Statutory Charge will comprise of both your costs of the Controlled Work and the Licensed Work. For these purposes, the costs of Controlled Work will be the amount payable to you by us under Section 7 above except that any Settlement Fee payable under Section 10 below will not be taken into account.
- 9.6 You do not have discretion to exclude the costs of Controlled Work from the Statutory Charge where Paragraph 9.5 applies.
- 9.7 Where property is recovered or preserved under Licensed Work the Statutory Charge will include the costs of non-financial aspects of the dispute or proceedings in accordance with *Hanlon v The Law Society* [1980] 2 All ER 199.