

FORCED MARRIAGE (CIVIL PROTECTION) ACT 2007

Funding Issues - General

1. Public funding in England and Wales is available in respect of applications for forced marriage protection orders. It is also available for issues surrounding forced marriages including representation on applications under the inherent jurisdiction and proceedings for nullity following a forced marriage.
2. Advice and assistance can be given to clients in the office under Legal Help (Level 1) and an application can then be made for a public funding certificate when representation is required in court proceedings.
3. Forced marriage falls within the family category for funding purposes. Therefore only providers who hold family contracts with the Legal Services Commission may make applications for public funding and be remunerated out of the Community Legal Service Fund.
4. Applications for certificated funding should be forwarded to the Regional Offices to which the solicitor usually sends applications. Applications will be subject to the usual Funding Code means and merits criteria appropriate to the particular application. However, in many cases an urgent application to the court will be required and in these situations providers should consider exercising their devolved powers to grant funding in the usual way, including having regard to all the issues including the source and detail of instructions, means information and in appropriate cases availability of a litigation friend/guardian.
5. For applications for forced marriage protection orders the Funding Code Criteria to be used when considering applications will be the same as in domestic violence cases (ie Criteria 11.10 of the Funding Code). The Funding Code Guidance on these applications can be found in Volume 3 of the Legal Services Commission Manual (paragraph 3C-197).
6. The solicitor rates at which these matters will be remunerated are contained in Table 9(b) of the Payment Annex to the Unified Contract.

Client eligibility

7. As forced marriage protection orders are to protect the client from harm the income and capital waivers applicable for domestic violence cases will also apply. This means that there is no maximum income or capital limit above which legal aid will not be available although the applicant may still be required to pay a contribution if their income or capital are in excess of a certain amount. Details of the current eligibility limits and contributions can be found on the LSC website at www.legalservices.gov.uk It should be noted, however, that the waiver only applies to the application for an order to protect the client from harm. It does not extend to other matters in the family proceedings such as nullity, children matters etc.
8. The applicant for public funding does not have to be British or be living in England and Wales to qualify for legal aid. The issue is whether the case relates to the law of England and Wales. Legal aid is also available regardless of immigration status and even if the client has no recourse to public funds. Legal aid is not classed as a “public fund” for these purposes.
9. In some cases the victim may be overseas or it may not be immediately possible to provide evidence of means. In accordance with the guidance in relation to the use of devolved powers, provided the solicitor makes a justifiable estimate of whether the client is financially eligible and follows the devolved power guidance then they will, even if it turns out that the client is not eligible, be paid for the work done pursuant to the grant of emergency representation. However, because of the eligibility waiver which is available in these cases, the upper eligibility limit will not in any event apply and any issue will usually relate to the level of contribution payable.

Client instructions

10. It is recognised that this type of work may involve cases where the solicitor will not receive instructions direct from the client. There may be difficulties

in receiving full instructions from the client and information may have been received from a third party (for example, the Forced Marriage Unit at the Foreign and Commonwealth Office). Therefore as much detail as possible should be provided on the application to enable the Legal Services Commission to process the application.

11. Some of the applicants may be minors and there may also be issues around the identification and appointment of a litigation friend/guardian ad litem. The applying solicitor should ensure that the position is entirely clear from the forms. In cases where the applicant is overseas and information has been provided to the solicitor by the Foreign and Commonwealth Office it may be that there is no suitable family member or friend who is able to be a litigation friend/guardian. In these exceptional cases it is possible that the solicitor will also act as litigation friend/guardian but this should be apparent from the forms provided by the solicitor. However, any certificate issued will not cover work or expenses incurred only as guardian (rather than as solicitor).

Respondents

12. The guidance and criteria as applies to non-molestation orders will apply to applications for funding from Respondents to defend applications for forced marriage protection orders. However, in many cases prospects of success and costs benefit criteria are unlikely to be satisfied by a respondent to a forced marriage protection order. Further guidance is given in the Family Decision-Making guidance (paragraph 3C-197, see, in particular, sub-paragraphs 11 and 12).