

The Community Legal Service (Funding) Order 2000 (as amended)

(S.I. 2000 No. 627)

This Order has been amended by the Community Legal Service (Funding) (Amendment) Order 2000 (S.I. 2000 No. 1541) with effect from 1 July 2000, the Community Legal Service (Funding) (Amendment) Order 2001 (S.I. 2001 No. 831) with effect from 2 April 2001, the Community Legal Service (Funding) (Amendment No. 2) Order 2001 (S.I. 2001 No. 2996) with effect from October 2001, the Community Legal Service (Funding) (Amendment) Order 2003 (S.I. 2003 No. 651) with effect from 1 April 2003, the Community Legal Service (Funding) (Amendment No. 2) Order 2003 (S.I. 2003 No. 851) with effect from 15 April 2003, the Community Legal Service (Funding) (Amendment) Order 2004 (S.I. 2004 no 597) with effect from 1 April 2004, the Community Legal Service (Funding) (Amendment No. 2) Order 2004 (S.I. 2004 No. 2900) with effect from 30 November 2004, the Community Legal Service (Funding) (Amendment) Order 2005 (S.I. 2005 571) with effect from 4 April 2005, the Civil Partnership Act 2004 (Amendments to Subordinate Legislation) Order 2005 (S.I. 2005 No. 2114) with effect from 5 December 2005, the Adoption and Children Act 2002 (Consequential Amendments) Order 2005 (S.I. 2005 No. 3504) with effect from 30 December 2005, and the Community Legal Service (Funding) (Amendment) Order 2006 (S.I. 2006 No. 2366) with effect from 2 October 2006.

Legal Services Commission, England and Wales

<i>Made</i>	<i>2nd March 2000</i>
<i>Laid before Parliament</i>	<i>7th March 2000</i>
<i>Coming into force</i>	<i>1st April 2000</i>

The Lord Chancellor, in exercise of the powers conferred on him by sections 6(4), 19 and 105 of, and paragraph 1 of Schedule 14 to, the Access to Justice Act 1999, having had regard to the matters specified in section 25(3) and having consulted the General Council of the Bar and the Law Society, makes the following Order:

1B-027 1. Citation and commencement

This Order may be cited as the Community Legal Service (Funding) Order 2000 and shall come into force on 1st April 2000.

1B-028 2. Interpretation

(1) In this Order—

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

[“assessing authority” means, where remuneration is payable by the Commission under a contract, the authority to which it falls at any time to assess that remuneration (including assessing by way of appeal), and shall include a []⁴ Director of the Commission, or the Commission’s Costs Committee or Cost Appeals Committee, or the court;]¹

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

“client” means an individual who receives funded services;

“clinical negligence proceedings” means proceedings which include:

- (a) claim for damages in respect of breach of a duty of care or trespass to the person committed in the course of the provision of clinical or medical services (including dental or nursing services); or
- (b) a claim for damages in respect of alleged professional negligence in the conduct of such a claim;

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

“family proceedings” means proceedings, other than proceedings for judicial review, which arise out of family relationships, including proceedings in which the welfare of children is determined, and including all proceedings under one or more of the following:

- (a) the Matrimonial Causes Act 1973;
- (b) the Inheritance (Provision for Family and Dependents) Act 1975;
- (c) the Adoption Act 1976;
- (d) the Domestic Proceedings and Magistrates’ Courts Act 1978;
- (e) Part III of the Matrimonial and Family Proceedings Act 1984;
- (f) Parts I, II and IV of the Children Act 1989;
- (g) Part IV of the Family Law Act 1996;
- [(g) the Adoption and Children Act 2002;]⁵
- (h) the inherent jurisdiction of the High Court in relation to children; [and
- (i) the Civil Partnership Act 2004;]³

“fund” means the Community Legal Service Fund established under section 5 of the Act;

“funded services” means services which are provided directly for a client and funded for that client by the Commission as part of the Community Legal Service under sections 4 to 11 of the Act;

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

“group litigation” means litigation of a number of claims which give rise to common or related issues of fact or law;

“immigration proceedings” means any proceedings relating to immigration, nationality or asylum in:

- (a) the House of Lords;
- (b) the Court of Appeal;
- (c) the High Court; or before
- [(d) the Asylum and Immigration Tribunal]²;

“personal injury proceedings” means proceedings in which there is a claim for damages in respect of death or any disease or impairment of a person’s physical or mental condition, excluding proceedings for clinical negligence or proceedings arising from the disrepair of, eviction from or obligation to allow quiet enjoyment of residential premises.

(2) References to the levels of service listed in paragraph (3) shall be construed as references to the receipt or provision of those levels of service granted in accordance with the Funding Code.

(3) The levels of service referred to in paragraph (2) are:

- (a) Legal Help;
- (b) Help at Court;
- (c) Legal Representation;
- (d) Help with Mediation; and
- (e) General Family Help.

(4) In this Order, any reference to the provisions of the Civil Legal Aid (General) Regulations 1989 shall be construed as though they were amended as follows:

- (a) any reference to “assisted person” shall be replaced by a reference to “client”;
- (b) any reference to “authorised summary proceedings” shall be replaced by a reference to “proceedings in a magistrates’ court”;

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- (c) in regulation 59, the words “legal aid” shall be replaced by “Legal Services Commission”;
- (d) in regulations 84 and 107, any reference to “regulation 83” shall be replaced by a reference to “regulation 4 of the Community Legal Service (Costs) Regulations 2000”;
- (e) in regulation 102, the words “or the Funding Code” shall be inserted after “these Regulations”;
- (f) in regulation 104, the words “or the Crown Court” shall be inserted after “magistrates’ court”;
- (g) in regulation 106A, the words “legal aid only costs” shall be replaced by “costs payable from the Community Legal Service Fund only”; and
- (h) in regulation 113(3), the words “section 16(6) of the Act” shall be replaced by “section 10(7) of the Access to Justice Act 1999”.

NOTES

- ¹ Inserted by the Community Legal Service (Funding) (Amendment) Order 2001 (S.I. 2001 No. 831).
- ² Substituted by the Community Legal Service (Funding) (Amendment) Order 2005 (S.I. 2005 571).
- ³ Inserted by the Civil Partnership Act 2004 (Amendments to Subordinate Legislation) Order 2005 (S.I. 2005 No. 2114).
- ⁴ Word omitted by the Community Legal Service (Funding) (Amendment) Order 2006 (S.I. 2006 No. 2363).
- ⁵ Inserted by the Adoption and Children Act 2002 (Consequential Amendments) Order 2005 (S.I. 2005 No. 3504).

1B-029 3. Funding of services—Direct payments

(1) The Commission may only fund services as part of the Community Legal Service under section 6(3)(b) of the Act as follows:

- (a) where a certificate was granted before 1st April 2001, to make payments in respect of the provision of Legal Representation in actual or contemplated proceedings other than the following:
 - (i) personal injury;
 - (ii) clinical negligence;
 - (iii) family;
 - (iv) immigration; or
 - (v) before a Mental Health Review Tribunal;
- (b) where authorisation has been given in an individual case under section 6(8)(b) of the Act.

(2) The Commission may only fund services as part of the Community Legal Service under section 6(3)(e) of the Act where authorisation for such funding has been given in an individual case under section 6(8)(b) of the Act.

1B-030 4. Where the Commission funds services under article 3(1)(a), the provisions of regulations 48, 59 to 63, 84, 100 to 102, 104 to 107A, 108 to 110, 112, 113(1), (2) and (4), 119(1), 122 and 149(7) of the Civil Legal Aid (General) Regulations 1989 shall apply.

1B-031 5. Remuneration under contracts¹

- (1) Paragraph (2) applies to contracts which have not been awarded:
 - (a) after competitive tendering as to price has taken place; or
 - (b) in relation to a particular case (including group litigation or potential group litigation) [; or
 - [(ba) as part of any pilot which provides for remuneration by way of one or more standard fees;]²
 - (c) as part of the housing possession court duty scheme²¹; or
 - (d) as part of the alternative methods of delivery pilot³ [; . . .
 - (e) as part of the family advice and information networks pilot⁴ [;
 - (f) as part of the fast track asylum decision and appeals process pilot⁵];[or

(g) as part of the Community Legal Advice Centres and Community Legal Advice Networks]²²

(2) Subject to [paragraphs (1) and (2A)]⁶, any contract for the provision of funded services under section 6(3)(a) of the Act which provides for the levels of service in this article[a relevant contract]⁶ shall provide for payment by the Commission to be at rates no higher than the rates in the following paragraphs.

[(2A) Where any relevant contract provides for payment for a unit of work to be based on an average value of units of work previously carried out, paragraph (2) shall not apply but the rates applied in calculating that average value shall be no higher than rates 2.5% greater than the rates in the following paragraphs.]⁷

(3) [Subject to paragraphs (3A) [to (3C)]⁹,]⁸ in relation to:

- (a) Legal Help; and
- (b) Help at Court

payment shall be at rates no higher than those provided in Schedule 6, paragraphs 1 and 2 of the Legal Advice and Assistance Regulations 1989.

[(3A) In relation to Legal Help and Help at Court within any category of work mentioned in paragraph [(3B)(a)]⁹ which is authorized as a specific category in the schedule to the contract with the Commission under which it is provided, [payment shall, subject to paragraph (7B),]²³ be at [rates no higher than those set out in Part I of the Schedule]⁹]¹⁰

[(3AA) In relation to Legal Help and Help at Court within any category of work mentioned in paragraph (3B)(b) which is authorized as a specific category in the schedule to the contract with the Commission under which it is provided, payment shall[, subject to Paragraph 4(A),]¹¹ be at rates no higher than those set out in Part II of the Schedule]¹².

[(3B) The categories of work mentioned—

- (a) in paragraph (3A) are: immigration, mental health, education, public law, actions against the police etc and community care; and
- (b) in paragraph (3AA) are: family, housing and employment.

(3C) In relation to any Legal Help and Help at Court provided in accordance with a contract with the Commission to which neither paragraph (3A) nor (3AA) applies, payment shall be at rates no higher than those set out in Part III of the Schedule.]¹²

[(4) In relation to Help with Mediation payment shall be at rates no higher than those set out in Part IV of the Schedule.

[(4A) In relation to –

- (a) Legal Representation before a Mental Health Review Tribunal or, subject to paragraph (4B), before the [Asylum and Immigration Tribunal]¹⁴; or
- (b) Legal Help or Help at Court provided within the housing category of work to an applicant on a review by a local authority under section 202 of the Housing Act 1996[5] (but not advice as to whether the applicant should pursue the review) or to a defendant to a possession claim in a county court.

payment shall be at rates no higher than those set out in Part V of the Schedule provided that where advocacy is carried out as part of any service referred to in sub-paragraph (b) payment shall be no higher than the rate set out there for preparation.]¹⁶

[(4B) Paragraph (4A) shall not apply in relation to Legal Representation before the Asylum and Immigration Tribunal –

- (a) where the assessing authority considers that a case either –
 - (i) raises an exceptionally novel or complex point of law; or
 - (ii) has significant potential to produce real benefits for individuals other than the client (other than benefits to the public at large which normally flow from proceedings of the type in question);
- (b) on an application under section 103A of the Nationality, Immigration and Asylum Act 2002 which is considered by a member of the Tribunal pursuant to paragraph 30 of Schedule 2 to the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004; or

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- (c) in proceedings for the reconsideration of an appeal pursuant to an order under section 103A.]¹³
- (5) In relation to General Family Help, payment shall be at rates no higher than the relevant rates provided in the Legal Aid in Family Proceedings (Remuneration) Regulations 1991.
- (6) In relation to Legal Representation (other than as provided for in [paragraph (4A), or where paragraph (4A) does not apply by virtue of paragraph (4B), or the Legal Representation referred to in [paragraphs (7) or (7A)]^{19,17}), payment shall be at rates no higher than whichever of those provided by the Legal Aid in Civil Proceedings (Remuneration) Regulations 1994 or the Legal Aid in Family Proceedings (Remuneration) Regulations 1991 would have been applicable if the representation had been provided under Part IV of the Legal Aid Act 1988.
- [(7) Paragraph (6) shall not apply to Legal Representation before—
- (a) Special Commissioners of Income Tax or General Commissioners of Income Tax;
 - (b) a VAT and duties tribunal constituted by Schedule 12 to the Value Added Tax Act 1994;¹⁸
 - (c) the tribunal constituted by section 9 of the Protection of Children Act 1999; [or
 - (d) the High Court on an application under section 103A of the Nationality, Immigration and Asylum Act 2002]¹⁸.
- [(7A) In relation to Legal Representation for any proceedings under the Proceeds of Crime Act 2002 in the Crown Court or a magistrates' court, payment shall be at rates no higher than those set out for magistrates' court proceedings in Schedule 2A to the Legal Aid in Family Proceedings (Remuneration) Regulations 1991.]¹¹
- [(7B) The maximum rate applicable in relation to any specialist immigration work shall be 5% greater than the maximum rate which would be applicable to that work but for this paragraph.
- (7C) In paragraph (7B) -
- “maximum rate” means a rate specified by this article as the rate that may not be exceeded in relation to payment by the Commission under a contract for the provision of funded services;
 - “specialist immigration work” means work carried out by a member of the Legal Services Commission's Immigration and Asylum Accreditation Scheme who is accredited to level 3 of that Scheme where -
 - (a) immigration is authorised as a specific category of work in the schedule to the contract with the Commission under which it is provided; and
 - (b) that work is within the category of immigration.]¹²
- [(8) Where any item in the Schedule is applicable to a fee-earner, the figure to be applied shall be—
- (a) the figure in the column headed “London Region” if that fee-earner's office is situated in the Commission's London Region;
 - (b) otherwise, the figure in the column headed “Outside Region.”]⁸

NOTES

¹ These regulations were amended in relation to civil rates of remuneration with effect from 1 April 2001 by the Legal Advice and Assistance (Amendment No. 2) Regulations 2001 (S.I. 2001 No. 829). See the Reference Material section of this volume for details of all relevant remuneration rates.

² Inserted by the Community Legal Service (Funding) (Amendment No. 2) Order 2004 (S.I. 2004 No. 2900).

³ Inserted by the Community Legal Service (Funding) (Amendment No. 2) Order 2001 (S.I. 2001 No. 2996).

⁴ Sub-para (1)(e) and word omitted immediately preceding it inserted by the Community Legal Service (Funding) (Amendment) Order 2003 (S.I. 2003 No. 651).

⁵ Para (1): sub-para (f) and word “; or” immediately preceding it inserted by the Community Legal Service (Funding) (Amendment No. 2) Order 2003 (S.I. 2003 No. 851).

⁶ Amended by the Community Legal Service (Funding) (Amendment No. 2) Order 2004 (S.I. 2004 No. 2900)

⁷ Inserted by the Community Legal Service (Funding) (Amendment No. 2) Order 2004 (S.I. 2004 No. 2900).

⁸ Words in square brackets beginning with the words “Subject to paragraphs (3A)” inserted by the Community Legal Service (Funding) (Amendment) Order 2000 (SI 2000 No. 1541).

⁹ Words in square brackets substituted by the Community Legal Service (Funding) (Amendment) Order 2001 (S.I. 2001 No. 831).

¹⁰ Paras (3A), (3B): inserted by the Community Legal Service (Funding) (Amendment) Order 2000 (SI 2000 No. 1541).

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- ¹¹ Inserted by the Community Legal Service (Funding) (Amendment No. 2) Order 2004 (S.I. 2004 No. 2900).
¹² Para (3AA), (7), (8) inserted and paras (3B), (3C) substituted for para (3B) by the Community Legal Service (Funding) (Amendment) Order 2001 (S.I. 2001 No. 831).
¹³ Substituted by the Community Legal Service (Funding) (Amendment) Order 2005 (S.I. 2005 571).
¹⁴ Amended by the Community Legal Service (Funding) (Amendment No. 2) Order 2004 (S.I. 2004 No. 2900).
¹⁵ Paras (4), (4A), (4B): substituted for para (4) by the Community Legal Service (Funding) (Amendment) Order 2001 (S.I. 2001 No. 831).
¹⁶ Substituted by the Community Legal Service (Funding) (Amendment) Order 2005 (S.I. 2005 571).
¹⁷ Para (6): words in square brackets substituted by the Community Legal Service (Funding) (Amendment) Order 2001 (S.I. 2001 No. 831).
¹⁸ Amended by the Community Legal Service (Funding) (Amendment) Order 2005 (S.I. 2005 571).
¹⁹ Words in para (6) and whole of para (7A) inserted by the Community Legal Service (Funding) (Amendment) Order 2003 (S.I. 2003 No. 651).
²⁰ Paras (7B) and (7C) in square brackets made under the Community Legal Service (Funding) (Amendment) Order 2004 (SI No 597) and apply in relation to work done on or after 1st April 2004. In relation to work done before that date the Community Legal Service (Funding) Order 2000 shall have effect as if this Order had not been made.
²¹ Word omitted by the Community Legal Service (Funding) (Amendment) Order 2006 (S.I. 2006 No. 2363).
²² Inserted by the Community Legal Service (Funding) (Amendment) Order 2006 (S.I. 2006 No. 2363).

6. Where a contract entered into by the Commission in accordance with section 6(3)(a) of the Act . . .¹ provides that the procedures for assessing the remuneration payable by the Commission shall be the same as those set out in the Civil Legal Aid (General) Regulations 1989, the Legal Aid in Civil Proceedings (Remuneration) Regulations 1994, or the Legal Aid in Family Proceedings (Remuneration) Regulations 1991, the court shall assess the remuneration accordingly.

1B-032

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- ¹ Words deleted by the Community Legal Service (Funding) (Amendment) Order 2001 (S.I. 2001 No. 831).

7. Foreign Law

1B-033

The Commission may fund as part of the Community Legal Service Legal Help relating to the preparation of applications for transmission under the provisions of the European Agreement on the Transmission of Applications for Legal Aid [and under Council Directive 2002/8/EC of 27th January 2003]¹.

NOTES

- ¹ Inserted by the Community Legal Service (Funding) (Amendment No. 2) Order 2004 (S.I. 2004 No. 2900).

Schedule¹

PART I

1B-034

LEGAL HELP AND HELP AT COURT – IMMIGRATION, MENTAL HEALTH, ACTIONS AGAINST THE POLICE ETC, PUBLIC LAW, EDUCATION AND COMMUNITY CARE

	London Region	Outside London
Preparation	£57.35 per hour	£52.55 per hour
Travel and waiting	£30.30 per hour	£29.45 per hour
Letters written and telephone calls	£4.40 per item	£4.10 per item

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PART II

LEGAL HELP AND HELP AT COURT – FAMILY, HOUSING AND EMPLOYMENT

	London Region	Outside London
Preparation	£53.10 per hour	£50.05 per hour
Travel and waiting	£28.05 per hour	£28.05 per hour
Letters written and telephone calls	£4.10 per item	£3.95 per item

1B-036

PART III

LEGAL HELP AND HELP AT COURT – OTHER WORK CARRIED OUT UNDER CONTRACT

	London Region	Outside London
Preparation	£50.70 per hour	£47.80 per hour
Travel and waiting	£26.80 per hour	£26.80 per hour
Letters written and telephone calls	£3.90 per item	£3.75 per item

1B-037

PART IV

HELP WITH MEDIATION

	London Region	Outside London
Preparation	£64.10 per hour	£59.95 per hour
Travel and waiting	£28.05 per hour	£28.05 per hour
Letters written and telephone calls	£4.30 per item	£4.30 per item

1B-038

PART V

[LEGAL REPRESENTATION – IMMIGRATION AND MENTAL HEALTH

LEGAL HELP AND HELP AT COURT – HOMELESSNESS REVIEWS AND POSSESSION PROCEEDINGS]²

	London Region	Outside London
Preparation	£61.20 per hour	£57.25 per hour
Travel and waiting	£30.30 per hour	£29.45 per hour
Letters written and telephone calls	£4.40 per item	£4.10 per item
Advocacy	£69.60 per hour	£69.60 per hour
Attending tribunal with counsel (Mental Health Review Tribunal only)	£32.55 per hour	£32.55 per hour

NOTES

¹ Sch 1 inserted by the Community Legal Service (Funding) (Amendment) Order 2001 (S.I. 2001 No. 831).

² Substituted by the Community Legal Service (Funding) (Amendment No. 2) Order 2004 (S.I. 2004 No. 2900).

Dated 2nd March 2000

Irvine of Lairg, C.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order imposes conditions on the funding of services as part of the Community Legal Service by the Legal Services Commission regarding:

- (a) direct payments for the provision of funded services; and
- (b) remuneration under contracts for the provision of funded services

It also provides for the funding of Legal Help for the preparation of applications for transmission under the provisions of the European Agreement on the Transmission of Applications for Legal Aid.