

Community Legal Service Fund Funding Priorities

Direction

1. This is a direction by the Lord Chancellor under section 6(1) of the Access to Justice Act 1999 concerning the priorities that the Legal Service Commission should set for funding services as part of the Community Legal Service. It is supplemented by guidance under section 23.
2. In drawing up future annual plans and any revisions to the Funding Code, the Commission shall have regard to the following priorities.
3. The Commission should give top priority to the categories in this paragraph, ensuring that all cases within them that meet appropriate merits criteria can be funded:
 - (a) special Children Act proceedings (as defined in the Funding Code); and
 - (b) civil proceedings where the client is at real and immediate risk of loss of life or liberty.
4. After that, the Commission should generally give the following categories higher priority than others:
 - (a) help with social welfare issues that will enable people to avoid or climb out of social exclusion, including help with housing proceedings (as defined in the Funding Code) and advice relating to debt, employment rights, and entitlement to social security benefits;
 - (b) domestic violence proceedings;
 - (c) proceedings concerning the welfare of children (including proceedings under Part IV or V of the Children Act not included above, adoption proceedings, and proceedings concerning residence); and
 - (d) proceedings against public authorities alleging serious wrong-doing, abuse of position or power or significant breach of human rights.

Guidance

1. "My direction under section 6(1) sets out the broad categories of case which should be given priority for funding by the Legal Services Commission as part of the Community Legal Service. Under the new scheme, priorities will be given practical effect through the contracts for different categories of work which the Commission awards (which will reflect regional and local needs) and through the criteria in the Funding Code (which have national application). I have already approved the initial version of the Code and the basis on which contract awards have been made for 2000-01. Before approving the Commission's future Annual Plans and any revisions to the Code, I will look to satisfy myself that these priorities are adequately reflected.

2. Paragraph 3 of the direction defines top priority categories. The Commission should ensure that all cases in these categories that apply for funding receive it, subject to passing the criteria laid down in the Funding Code.
 - (a) Special Children Act proceedings are public law child protection cases for which legal aid is available now without a means or merits test. In other words, funding is available automatically for cases in this category.
 - (b) Cases about loss of life or liberty, on the other hand, will involve means and merits tests. These tests will need to be met before funding can be granted. In particular, the Commission will need to satisfy itself that the client faces a genuine threat to his life or of being sent to or held in prison or other detention, and that the proceedings are directly concerned with averting that threat. This will be true of most habeas corpus proceedings for example. Depending in particular on the client's country of origin and the other factual circumstances of the case, so will many (but by no means all) asylum cases.
3. Paragraph 4 of the direction contains other categories of case that deserve a high priority. Unlike paragraph 3, this paragraph is not intended to create a firm rule. It is not my intention that all cases in these categories should receive funding before any case in any other category. All categories contain a range of more and less pressing cases. It is equally important to take account of particular factors like the strength and importance of individual cases, as it is the category in which they fall. A factor which could arise in any category, and to which I expect the Commission to attach particular importance, is whether a case raises issues of wider public interest.
4. Broadly, there are two ways of giving effect in practice to different priorities for different categories of case. The first is by setting more or less rigorous requirements in the Funding Code for these categories. The second turns on the level of resources allocated to contracts for particular categories of case.
5. At present, the latter approach is only relevant at the Legal Help level (and for representation before immigration and mental health tribunals) where contracts control the amount of work that can be done. This is the principal mechanism by which priority will be given to providing help in the social welfare categories of law. In future years, the Commission should allocate at least the same proportion of the total resources available for Legal Help to the social welfare categories as it has done for 2000-01. I have deliberately expressed this priority at national level in very broad terms. Within it, different regions and localities will have different priorities as between, say, housing, employment and debt. The advice of Regional Legal Services Committees and Community Legal Service Partnerships will ensure that these are reflected in local decisions about contracts. These decisions should, of course, reflect the fact that many asylum cases will have top priority because the client's life will be at risk. Local priorities should not be set that have the effect of reducing a region's allocation of resources in the social welfare category as a whole.
6. For cases that require Legal Representation (or other more substantial levels of service), the Funding Code is the principal mechanism for giving effect to priorities. That is why the Code contains separate criteria for housing cases, claims against public authorities, domestic violence and children cases."

