

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 and the Community legal Service (Funding) (Amendment No. 2) Order 2001 (S.I 2001 No.2996) with effect from October 2001. Changes made by these amending orders are shown in bold.

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:

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.

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 Regional 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;

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

“clinical negligence proceedings” means proceedings which include:

- (a) 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 Dependants) 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; and
- (h) the inherent jurisdiction of the High Court in relation to children;

“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 Immigration Appeal Tribunal or an adjudicator;

“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”;
 - (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”.

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.

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.

5. Remuneration under contracts

- (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

 - (c) **as part of the housing possession court duty scheme pilot; or**
 - (d) **as part of the alternative methods of delivery pilot.**²

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

(2) Subject to paragraph (1), 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 shall provide for payment by the Commission to be at rates no higher than the rates in the following paragraphs.

(3) **Subject to paragraphs (3A) to (3C)³ 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 1989.⁴

(3A) In relation to Legal Help and Help at Court within any category of work mentioned in paragraph (3B)(a) which is authorized as a specific category in the schedule to the contract with the Commission under which it is provided, payment shall be at rates no higher than those set out in Part I of the Schedule.⁵(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 be at rates no higher than those set out in Part II of the Schedule.⁶

(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 employment⁷.**

(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.⁸

³ Amended by the Community Legal Service (Funding) (Amendment) Order 2001 (S.I. 2000 No. 831).

⁴ 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.

⁵ Amended by the Community Legal Services (Funding) (Amendment) Order 2001 (S.I. 2001 No. 831).

⁶ Inserted by the Community Legal Service (Funding) (Amendment) Order 2001 (S.I. 2001 No. 831).

⁷ Substituted by the Community Legal Service (Funding) (Amendment) Order 2001 (S.I. 2001 No. 831).

⁸ Inserted by the Community Legal Service (Funding) (Amendment) Order 2001 (S.I. 2001 No. 831).

- (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 Legal Representation before a Mental Health Review Tribunal or, subject to paragraph (4B), before the Immigration Appeal Tribunal or an adjudicator appointed under section 57 of the Immigration and Asylum Act 1999 payment shall be at rates no higher than those set out in Part V of the Schedule.**
- (4B) **Paragraph (4A) shall not apply where the assessing authority considers that a case before the Immigration Appeal Tribunal or an adjudicator appointed under section 57 of the Immigration and Asylum Act 1999 either-**
- (a) **raises an exceptionally novel or complex point of law; or**
 - (b) **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).⁹**
- (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 paragraph (7)⁹), 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; or**
 - (c) **the tribunal constituted by section 9 of the Protection of Children Act 1999¹⁰.**

⁹ Inserted by the Community Legal Service (Funding)(Amendment) Order 2001 (S.I. 2001 No. 831).

⁹ Inserted by the Community Legal Service (Funding)(Amendment) Order 2001 (S.I. 2001 No. 831).

¹⁰ Paragraph 7 was inserted by the Community Legal Service (Funding)(Amendment) Order 2001 (S.I. 2001 No. 831).

6. Where a contract entered into by the Commission in accordance with section 6(3)(a) of the Act before 1st April 2003 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.

7. Foreign Law

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.

SCHEDULE¹¹**PART 1**

Legal Help and Help at Court - immigration, mental health, actions against the police etc, public law, education and community care

	<i>London Region</i>	<i>Outside London</i>
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

PART II

Legal Help and Help at Court – family, housing and employment

	<i>London Region</i>	<i>Outside London</i>
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

PART III

Legal Help and Help at Court – other work carried out under contract

	<i>London Region</i>	<i>Outside London</i>
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

¹¹ The Schedule was inserted by the Community Legal Service (Funding)(Amendment) Order 2001 (S.I. 2001 No. 831).

PART IV**Help with Mediation**

	<i>London Region</i>	<i>Outside London</i>
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

PART V**Legal Representation - Immigration and Mental Health**

	<i>London Region</i>	<i>Outside London</i>
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

Irvine of Lairg, C.
Dated 2nd March 2000

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.