



Legal Aid  
Agency

# Guidance on authorities and legal aid for cases in courts outside England and Wales

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## Version History

| <b>Version:</b> | <b>Date</b>    | <b>Reason</b>                                                                                                                          |
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| 1               | August 2013    |                                                                                                                                        |
| 2               | April 2014     | Update contact details and minor explanatory addition to paragraph 1.6                                                                 |
| 3               | September 2014 | Update to reflect judgment of the Court of Appeal in Re: JG                                                                            |
| 4               | November 2022  | Updated references to 2018 contract. Clarified that prior authority for leading counsel or 2 counsel should be applied for in advance. |

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# 1. Authorities

## 1.1 Introduction

1. For cases and matters under the 2018 Standard Civil Contract, applications for prior authority are governed by Paragraphs 5, 10, 5.11 and 6.60 of the 2018 Contract Specification.
2. Under Paragraph 5.11 of the 2018 Contract Specification, costs in respect of which prior authority has been obtained will not be disallowed on assessment, provided the authority was not obtained on the basis of incorrect information. The duty to the Lord Chancellor, via the Legal Aid Agency ('the Agency'), in relation to information relating to the application is a continuing one, and the grant of prior authority is conditional on the reasons and purpose for which the authority was given still subsisting at the point the costs are actually incurred. Paragraph 5.11 makes clear that the grant of prior authority will only guarantee the assessment of costs where circumstances have not materially changed between the grant of authority and the costs being incurred.
3. In general, prior authority can be sought only in respect of costs that are unusual in their nature or amount. However, the Specifications require prior authority generally to have been obtained where you seek to pay an expert higher rates than set out in the Civil Legal Aid (Remuneration) Regulations 2013 ('the Remuneration Regulations'), for the instruction of King's Counsel, (sometimes referred to as Leader or Leading Counsel) for example in the CIVAPP8 (where King's Counsel will act and claim as such), and for the instruction of more than one counsel. The Contract does not list other examples of potentially unusual expenditure although further guidance has been provided in family cases in relation to benchmarks of "unusual" hours below which prior authority should not be sought and ranges of hours within which prior authority have typically been granted for certain types of experts. This guidance may be found at: <http://www.justice.gov.uk/legal-aid/funding/using-experts>
4. Authority cannot be given, for example, for disbursements that are of an entirely routine nature and amount in relation to the type of proceedings concerned. Further, an inappropriate application for prior authority itself represents work that it was unreasonable to incur. Other than in relation to the fees of King's Counsel, more than one counsel or where experts fees exceed the prescribed rates in the Remuneration Regulations, all costs within the scope of a certificate have the potential, based on the reasonableness of the particular step and the amount claimed, to be allowed on final assessment. Nor, of course, can prior authority be given in respect of an expenditure or liability already incurred, since that would serve no useful function, but would simply deprive the Agency unnecessarily of its proper discretion of assessing the costs in the light of the full details of the case; the purpose of prior authority is, by definition, to enable the liability to be incurred.
5. Although it is generally not compulsory to apply for a prior authority (the exceptions being the matters referred to in paragraph 3, above) providers should consider doing so where there is a significant risk that the costs in

question may not be allowed on final assessment. The Agency will consider applications on the basis that costs which are at risk of being held to be unreasonable on assessment will usually come within the test of being either unusual in their nature or unusually large.

6. When obtaining authority to instruct King's counsel or to incur other unusual or unusually large expenditure, the provider should also get the client's consent, after telling him or her what the additional costs are likely to be, together with their impact on the statutory charge (*Re Solicitors, Re Taxation of Costs* [1982] 2 All E.R. 683).
7. The granting of prior authority is effectively a pre-assessment determination allowing particular costs. The Agency will not give authority for costs of a nature or at a level that it is anticipated would be disallowed on a final assessment. Under the Standard Civil Contract there is no appeal against the refusal of prior authority.
8. Note that whilst judicial views will always be considered, the court has no role in the prior authority system itself. A statement by the court that a particular disbursement is deemed reasonable is not binding on cost assessment and therefore does not replace the need to obtain a prior authority in order to provide any guarantee that the costs will be allowed on assessment. However, nor, conversely, can it bind the Agency to grant prior authority.

## **1.2 Authority for Counsel**

1. Under the Contract Specifications, the general rule is that a provider may instruct counsel without the need for prior authority where it appears reasonable in the context of the case or proceedings. When counsel entrusts a case to another counsel the permission of the regional office is not required.
2. However, unless authority has been given in the certificate or subsequently in writing from the Agency, King's Counsel or more than one counsel should not be instructed. Note that authority for King's Counsel is only required where King's Counsel is acting as such. There may be circumstances where King's Counsel chose to act and be paid at junior counsel rates, in which case no prior authority need be applied for if counsel is acting alone. However, authority will still be required if a second counsel is required.
3. Where unauthorised costs are incurred in instructing King's Counsel or more than one counsel there is no discretion to allow such costs on detailed assessment (Paragraph 6.59 of the 2018 Contract Specification. On receiving instructions, counsel should satisfy him or herself that any necessary authority has been obtained and that a copy of the certificate together with any amendments and or authorities are included with the instructions (Paragraph 5.13 of the 2018 Contract Specification see also *Hunt v. East Dorset Health Authority* [1992] 2 All ER 539).
4. All requests for authority to instruct or brief King's Counsel and more than one counsel are handled by experienced Case Managers in the Special Cases Unit (SCU). In family cases, all such applications are dealt with by the SCU in London or Cardiff. Non family applications are considered by any SCU office.

5. For the purpose of this guidance, with regard to applications for authority for King's and junior counsel or two junior counsel, "junior counsel" means any advocate other than a King's Counsel (this differs from the definition in the Remuneration Regulations, of a barrister in independent practice of less than 10 years call).
6. When applying for authority for counsel the provider should specify the extent of the authority sought and whether authority is sought to:
  - (a) brief or instruct King's Counsel alone;
  - (b) brief or instruct King's and junior counsel;
  - (c) brief or instruct two junior counsel.
7. The application should be submitted in good time and at a point where there is sufficient information for the decision to be made. Applications with insufficient information will not be granted including premature applications where there are assertions as to possible future complexity but the key issues are not yet clear. Telephone applications are likely to be granted only very exceptionally as it should be possible to submit the necessary information in writing, including by fax and e-mail, at the earliest opportunity.
8. Applications should be made on CCMS with supporting letter and/or note from counsel providing detail of the substantial novel or complex issues of law or fact that arise and the factors that demonstrate that they can only be adequately presented by King's Counsel or more than one counsel.
9. An authority for "briefing counsel" in respect of a hearing only covers the brief to appear itself, any necessary conference/consultation on the brief after its delivery and preparation of any necessary skeleton argument. It does not cover any conference/consultations or other work done on instructions before the delivery of the brief ((see *Din v. Wandsworth London Borough Council* (No 3) [1983] 1 WLR 1171).
10. An authority for "instructing counsel" is wider than one for "briefing counsel". It covers the involvement of counsel generally in the further conduct of the proceedings including being briefed to appear, subject only to assessment.
11. An authority for "instructing King's Counsel alone" permits him or her to settle pleadings or draft such other documents as are normally drafted by junior counsel.
12. Any authority granted may also be specific as to its scope for example limited to a conference or limited to all steps up to and including a named hearing. A fresh application must be made if a provider seeks to extend the terms of an authority that has been provided.
13. The agreement of the client must be sought to the instruction of King's or additional counsel where the additional cost may affect the amount of the statutory charge. If the client has not been informed of the position the

propriety of any authority may be queried on assessment (see *Re Solicitors, Re Taxation of Costs* [1982] 2 All E.R. 683).

### **1.3 Factors taken into account in relation to authorities for counsel**

#### **Generally**

1. Authority for King's Counsel or more than one counsel will generally only be granted in cases of exceptional complexity or importance. The question for the Agency is whether the issues in the case are such that the interests of the client cannot be fairly and properly presented without the assistance of King's Counsel or more than one counsel.
2. For example, in non family cases if there are very difficult issues of causation and/or very substantial quantum this will make it more likely that an authority will be granted. Factual or evidential complexity alone is unlikely to justify an authority for King's Counsel. If the reason for the application is merely that the case is of great importance to the legally aided client (for example a parent in contested care or adoption proceedings) this will not of itself be sufficient to justify a grant.
3. The urgency of the case or the convenience of the provider or counsel are not factors to be taken into account (although see below regarding the possibility of an authority for two junior counsel). The fact that the application concerns an appeal (including to the Court of Appeal) is not of itself a sufficient justification for authority (and see below regarding the Supreme Court).
4. Where cases are linked or a number of parties are legally aided in the same set of proceedings and there is no conflict of interest sufficient to justify the use of separate advocates then every attempt must be made to instruct the same counsel, including the same King's Counsel or second counsel. In family cases this is particularly relevant in appeal proceedings.

#### **Family Matters**

5. The Guidance on the use of King's Counsel in Family cases was revised in October 2011 following the consultation "Proposals for the Reform of Legal Aid in England and Wales CP12/10". This consultation proposed the following:  
  
"7.30 We believe that such an expensive, and very specialised, resource should only be provided at public expense where it is absolutely necessary. We therefore propose to tighten the guidance covering the engagement of a KC in a family case (whether the case is above or below the VHCC threshold) to make clear that they should only be approved by the LSC if they meet provisions equivalent to those applying in criminal cases. In brief, these provisions are that:
  - the case involves substantial, novel or complex issues of law or fact which could only be adequately presented by a KC; and
  - either the opposing party has engaged a KC or senior Treasury Counsel, or the case is exceptional for some other reason."

The Response confirmed that the proposal would be implemented. The following guidance should therefore be considered in light of this consultation intention, and is an expansion upon the above.

6. Authority for King's Counsel or more than one counsel will generally only be granted in cases of the most exceptional complexity or importance when considered against the generality of similar cases. The use of King's Counsel is an expensive and very specialised resource which should only be provided where it is absolutely necessary. The question for the Agency is whether the issues in the case are such that the interests of the client cannot be fairly and properly presented without the assistance of King's Counsel or more than one counsel. The use of King's Counsel or more than one counsel will only be approved by the Agency in family cases in circumstances equivalent to the provisions that pertain in criminal cases and in accordance with this guidance
7. Significant weight will be given to the level of representation of the local authority in public law cases. It will be necessary therefore in every application involving a local authority to confirm the level of representation and the name of counsel instructed on behalf of the local authority. Similarly where reliance is made on the level of representation of other respondents the name and legal aid reference of those respondents and details of the counsel instructed should be provided.
8. It does not follow however that if one party has King's Counsel or two counsel then all parties should have the same level of representation. The case for/against each party will be taken into account and each individual application will be considered on its own facts and merits.

By way of example:

- (a) where the local authority seek findings that the client was responsible for the death of a child and they have instructed King's Counsel, it is likely authority will be granted for the same level of representation at any fact-finding hearing.
  - (b) on the other hand, it is unlikely that authority would be granted for the children's legal team, since it will be expected that the issues of perpetration will largely be argued out between the local authority and the alleged perpetrators, the children's legal team primarily undertaking the role of marshalling and presenting the medical evidence and ensuring the court considers all the issues.
  - (c) generally King's counsel will only be authorised where the nature of the case raises very significant public interest issues, or is exceptionally complex, such that the interests of the client cannot be properly determined without the assistance of King's counsel.
9. Although family matters are by their very nature emotive, dealing with difficult and complex personal issues and the outcome of these cases are of the utmost importance to the parties involved, in the majority of family cases the



principles and law are generally well settled and therefore the matters in which the instruction of King's Counsel is justified will be most exceptional. This includes public law cases which are generally managed by junior counsel.

10. It is unusual (although not unheard of) for the decision to grant authority for King's Counsel to rest on a single issue. Normally, there is an accumulation of issues and the difficulty is in deciding at what point the level of complexity tips the balance. The factors to take into account when considering a request for authority are numerous and varied and may appear in any combination and to differing degrees. They may include:
  - (a) A genuine and significant challenge to statute or precedent case law;
  - (b) Substantial novel points of law;
  - (c) Numerous experts with conflicting expert opinion on an issue key to the case outcome;
  - (d) Allegations of extremely serious abuse or non-accidental injury;
  - (e) Concurrent or threatened criminal proceedings of the most serious nature;
  - (f) Unusually complex evidential problems.
11. This is of course a non-exhaustive list and each case can reflect elements of any of the above in varying degrees. This highlights why it is so important to consider each application on its own merits and for each issue to be described in detail in any application for authority. Most of the above issues singly and in combination will be within the capabilities of experienced junior counsel. In order for there to be merit in instructing King's Counsel there would have to be an accumulation of these factors and/or other individual factors of the most exceptionally complex nature.
12. If any of the factors above are present, how they affect the management of the individual client's case is also relevant. The relevance of each factor may well be different for each parent, child or other parties.
13. Challenges to statute or precedent case law must be genuine and significant (in respect of the class of cases concerned) and likely to result in new precedent or judicial guidance being set. Where new precedent/judicial guidance is set it is less likely that subsequent cases concerning the application of such new precedent/judicial guidance will satisfy the criteria for involvement of King's Counsel.
14. At first instance venue is an issue to which weight may be given as the less complex cases will usually be heard in the County Court and Family Proceedings Court. However, it is recognised that some cases that would otherwise be heard in the High Court are retained in the County Court for reasons of timetabling, expedition and judicial availability.

## **Authorities for King's and Junior Counsel (not previously instructed)**

15. If authority is sought for King's and junior counsel (as opposed to King's Counsel alone):
  - (a) there will be a presumption that King's Counsel will operate without the assistance of a junior, and it is not a relevant factor that King's Counsel is not prepared to appear without a junior. This is true both at first instance and on appeal to any higher court;
  - (b) an application for both King's and junior counsel must justify not only that the case involves substantial novel or complex issues of law or fact but also that the case is exceptional compared with the generality of similar cases and/ or the local authority has instructed two counsel. In addition the application should state why the client cannot be represented adequately by one counsel alone and specify the work to be undertaken by each counsel and their role in the proceedings.
16. Where authority is sought for instruction of King's Counsel and retention of previously instructed junior counsel, it may be suggested that there is merit in keeping the experience, knowledge and trust that the funded client has in junior counsel. However, the fee-earner with conduct should also have this experience, knowledge and working relationship with the legally aided client, but may not be present at every hearing. Each case will be considered individually to determine the objective need for the continued instruction of junior counsel.
17. If junior counsel is to be retained, the respective roles of King's and Junior Counsel must be identified and justified. Authority will be given for King's and Junior Counsel where the provisions for authority for King's Counsel are met, but the following will be taken into account:
  - (a) The involvement of junior counsel already is such that it can be demonstrated that his/her assistance to King's Counsel will materially save time for King's Counsel sufficient to justify the junior's fees.
  - (b) The papers in the case are so voluminous that it is impossible for King's Counsel to handle them without a junior, either in preparation for the trial or at the trial itself.
  - (c) There are such a large number of witnesses that trial management requires King's Counsel to be assisted by junior counsel.
18. All of these factors will be affected by the timing of the instruction of King's Counsel. The sooner in the action authority is given the more likely it is that King's Counsel will be able to manage the case alone and vice versa.
19. Where authority has initially been granted for King's Counsel alone, but it subsequently emerges that junior counsel will be required for reasons not apparent when the initial authority was granted, an application for further and wider authority can be made and should be supported by a note from King's Counsel.

## Junior Counsel Taking Silk

20. Authority to instruct King's Counsel is only needed where King's Counsel will be acting as such. When a junior who has been instructed takes silk, the Agency will, on an application for authority for him or her to continue as a leader, take the following into account:
- (a) King's Counsel is permitted, and should normally be willing at any time before the first anniversary of being appointed as King's Counsel, to do any ordinary work of a junior in any proceedings he or she was instructed to settle before appointment;
  - (b) he or she may, at his or her discretion, continue to act as a junior for an unlimited time, inter alia, in a civil suit in which he or she was instructed before being appointed as King's Counsel and appeared as a junior at the trial or on an appeal before the first anniversary of the appointment;
  - (c) except as above, he or she should refuse to act as a junior after the first anniversary of being appointed as King's Counsel unless, in his or her opinion, such a refusal would cause harm to the client. In that event he or she may, at his or her discretion, continue to act until the second anniversary of the appointment;

in the event of King's Counsel not electing or being able to continue as a junior, it is open to a provider to instruct a fresh junior.

## Authority for two Junior Counsel

21. Authority for two junior counsel is needed where two counsel propose to claim separate fees. It is not, however, needed where there is an informal sharing of work and fees within a set of chambers. In any case where the Agency would be prepared to grant authority to instruct King's and junior counsel authority may be granted for two junior counsel, recognising that many experienced junior counsel prefer to continue with such cases with the assistance of a second junior.
22. In a case which would not otherwise warrant the instruction of King's Counsel, authority for two junior counsel might be justified in an exceptional case by the volume and complexity of the work and the timescale of the proceedings— for example where, unavoidably, a party is joined at a very late stage in a substantial and complex or novel case.
23. Volume of documentation is only likely to be considered exceptional where the number of trial bundles exceeds the number of final/main hearing days (350 pages per bundle) and/or the total case papers exceed 700 pages per final/main hearing day.
24. If counsel, or any other fee earner, is instructed to take a note of proceedings authority should be sought to incur such an expense (as it is unusual in nature). Regard may be had to the rates that are payable for a note taker in

criminal proceedings when determining a reasonable rate per hour or per day for this activity.

## **Supreme Court Appeals**

25. King's counsel appearing in the Court of Appeal can apply to the Court of Appeal for permission to appeal to the Supreme Court, but may not settle an application for permission to appeal to the Supreme Court. Authority may be granted for him or her to advise the Director on the merits of such an appeal, but only where he or she conducted the appeal hearing in the Court of Appeal (Supreme Court Practice Direction 3). The instruction of both King's and junior counsel may be appropriate once permission has been granted, although the instruction of King's counsel alone is increasingly common.
26. In Supreme Court cases the following authority wordings will normally be used:
  - (a) Authority is included to instruct leading and junior counsel, but only after permission to appeal has been obtained;
  - (b) Authority is included to instruct leading counsel alone, but only after permission to appeal has been obtained;
27. These authority wordings reflect the fact that, under Supreme Court Practice Direction 3, Petitioners and respondents to a petition for permission to appeal may instruct leading or junior counsel, but on taxation (assessment of costs) the Supreme Court allows only junior counsel's fees for any stage of a petition for permission to appeal, even if a public funding or legal aid certificate provides for leading counsel. The only exception to this practice is where leading counsel who conducted the case in the court below are instructed by the Director to advise on the merits of an appeal.
28. In all cases it is expected that authority to instruct Leading Counsel or 2 Counsel will be applied for in advance, but consideration may still be given to requests made after the event, subject to the guidance above

## **1.4 Employment of Experts**

1. A request for authority to instruct an expert must include an explanation as to why a pre-determination of the costs to be allowed is considered necessary: for example, because expert evidence is sought in an unusual subject area in relation to the nature of the case; where a second expert opinion is requested on an issue for which an expert's fees have already been incurred; where authority is sought to exceed the maximum rates or fees permitted by the Remuneration Regulations (or those considered by the Agency most appropriate to the form of expert to be instructed); or where the costs are unusually high because the expert has indicated that she or he will incur an unusually large amount of time in preparing a report or travelling and/or accommodation costs would be incurred by virtue of the distance of the expert from the client or provider;

2. The request for prior authority must also be supported by sufficient information to justify the reasonableness of the costs requested, having regard to their unusual nature or amount.
3. If authority is granted, it will usually specify the maximum fee payable for any report, opinion, expert advice or transcript. This may be less than the amount applied for. If the ultimate fee is difficult to predict, an initial sum may be authorised to establish the benefit and costs involved in undertaking further work.
4. Providers are expected to identify and instruct appropriate experts directly (rather than through any agency or third party, whose involvement is considered to be an unjustifiable expense).
5. Where a partner or employee (including a solicitor employee) of a provider advising or acting for a client is involved in the provision of non-legal services, then authority will be refused unless the regional office is satisfied that:
  - (a) the business providing the service (e.g. photography) has been legitimately set up and does exist as a separate entity;
  - (b) those involved appear to have the necessary expertise to undertake the work involved;
  - (c) it appears unlikely that those involved would have to give evidence – other than formal evidence;
  - (d) the expenditure is justified in terms of the work to be undertaken and the amount involved, at least one other estimate being available, and
  - (e) the client has been informed of the position and agrees that the disbursement should be incurred using the business connected with the provider.”
6. This reflects the private client position, and is intended to ensure that the client’s interests are protected, having particular regard to any contribution payable and the possible operation of the statutory charge.
7. Factors which may influence the Agency include the following:
  - (a) the total financial commitment as far as an expert is concerned, including the cost of obtaining a report and tendering evidence;
  - (b) whether the legally aided client has agreed to costs which may increase the amount of any statutory charge.
8. For certificates issued in respect of applications for legal aid, maximum hourly rates or fixed fees are set out in the relevant Remuneration Regulations for most categories of expert. The Remuneration Regulations also set out a test of exceptional circumstances in which the Agency may pay fees or at rates in excess of those stated in the Regulations. Paragraph 6.60 of the 2018 Contract Specification provide that the Agency will only make such payments

where prior authority has been obtained. Requests for such authorities must specify the fee or rates sought together, where relevant, with an estimate of the time required. See paragraphs 3.39 to 3.46 of the Costs Assessment Guidance for further discussion of these provisions.

## **1.5 Legally aided clients' Travel Costs and Other Expenses**

1. The basic principle is that costs, whether paid by the client or by the Agency, are in reimbursement of the provider's profit costs, counsel's fees and disbursements properly and reasonably incurred. Since the provider is instructed by the client, it is only in limited circumstances that the provider could properly incur a disbursement in relation to his client's own expenses, e.g. travel costs.
2. The case of *R. v. Legal Aid Board, ex p. Eccleston* (QBD April 3, 1998, Law Society's Gazette May 20, 1998, The Times, May 5 1998) clarified the law on this subject. Mr Justice Sedley concluded that an assisted person's travel expenses could amount to a proper Solicitor's disbursement, for which the Legal Aid Board could grant prior authority, if the assisted person needed to see an expert whose report was essential for the proper conduct of the proceedings, and the assisted person could not otherwise afford the expenses involved in travelling to see that expert.
3. The implications of this judgment affect both costs assessments and applications for prior authority made under Paragraph 5.10 of the 2018 Contract Specification as an item which is either unusual in its nature or involves unusually large expenditure.
4. Whilst the amount requested is unlikely to be unusually large, the fact that the request concerns a personal expense of the client may arguably make the expense unusual in its nature.
5. The provider is not, of course, obliged to seek a prior authority. Such expenses may be recoverable on assessment as a disbursement provided that they have been reasonably incurred and are reasonable in amount. If the expense is allowed as a disbursement and the client recovers or preserves money or property as a result of the proceedings, then it will serve to increase any statutory charge liability. This type of expense will generally not be recoverable inter partes (as an item of costs as opposed to part of a special damages claim), but may be recoverable on a legal aid assessment by the court or the Agency.
6. Any person attending court, whether as a party, or as a witness called or reasonably intended to be called to give evidence, is entitled to recover their expenses as to:
  - (a) loss of income;
  - (b) travel;
  - (c) hotel expenses;

- (d) subsistence.
7. A provider may pay these expenses on behalf of his or her client, and then include the payments in the bill, as they would generally be recoverable as a disbursement. Receipts should be produced where relevant. The usual principles as to reasonableness apply. If it was unreasonable for the client to attend the hearing in furtherance of his or her case, for instance because there was no intention that the client would give evidence, or the hearing was an interim hearing where the client's presence was not strictly necessary, then the disbursements would not normally be allowed.
8. The expenses must also be reasonable as to amount and could be expected to fall within the following categories:
- (a) loss of income: only actual losses are claimable; therefore if the client is still paid while attending court, no notional loss of income is claimable.
  - (b) travel costs:
    - (i) travel by car at the mileage rate;
    - (ii) reasonable public transport costs: this will cover travel by the most economical and direct method. It would not generally be reasonable to allow a first class fare. Travel by coach may often be more economical than travel by rail;
    - (iii) hotel expenses: accommodation charges vary considerably across the country and it is difficult to give guidelines on specific amounts. It would be reasonable for accommodation to be of an adequate, but not luxurious standard;
    - (iv) subsistence: this would include reasonable expenditure on meals and non-alcoholic beverages, but not items such as cigarettes, newspapers etc.
9. Following [Eccleston](#), a funded client may be entitled to recover his or her travel expenses in connection with attending a medical or other expert. The client must be "impecunious" and that the expense must be necessary "in order to make or keep the case viable". When considering an application for prior authority in connection with such expenses the following criteria will be applied:
- (a) it must be demonstrated that the expenditure is necessary to keep the proceedings viable. In other words the test is that the litigation would not be able to continue or would fail unless this expense is met;
  - (b) the funded client must establish that he or she does not have the resources to meet the expense. The fact that a litigant is in receipt of welfare benefits does not automatically satisfy the test of "impecuniosity". The client should provide a full breakdown of weekly income and outgoings, together with capital resources, to demonstrate that he or she

cannot afford to meet the particular expense. A relatively small expense is unlikely to justify the grant of a prior authority, and should not generally be allowed on assessment unless the client is so impecunious as to be unable to meet even that small expense;

- (c) if the expert is based locally, then it would not generally be reasonable for the client to seek financial assistance under legal aid to attend the appointment. This is akin to a visit to the client's own provider's office. An application for prior authority or payment should generally be refused in these circumstances, unless the client can demonstrate that he or she is impecunious and that the proceedings would otherwise fail;
- (d) if the expert is based some distance from the client's home and the court where the case would be dealt with, justification should be provided as to why a local expert should not or could not be instructed. The provider should set out the steps which have been taken to identify an appropriate local expert, for instance, by reference to the Expert Witness Directory. It would not generally be reasonable to instruct a distant expert simply to avoid delay if adequate expertise is available locally.

The test should be based on the nature of the expertise available. It may be appropriate to instruct an expert outside of the local area if he or she has specific expertise which is unavailable locally or a limitation period is approaching and the client could not be seen promptly locally (provided that the client and his or her provider was not responsible for the delay in instructing an expert). The nearest expert with appropriate expertise should be used. For example, it is not necessarily justified to use a London expert in a Manchester case if an appropriate expert is available in Liverpool;

- (e) the client must justify why he or she needs to attend the meeting with the expert. For instance, e.g. if a physical examination is necessary, then clearly it would be reasonable to do so;
  - (f) the application must provide a full breakdown of the proposed expense;
  - (g) any available alternative sources of funding should be considered.
10. Before granting an application for prior authority the Agency should take into account all the above criteria, and determine whether it is necessary for the proper conduct of the proceedings to incur the expense. If the authority is refused, written reasons must be provided for the decision.
  11. When considering applications, the Agency should also consider whether a private client of moderate means would incur the expenditure in all the circumstances of the particular case.
  12. Where a legally aided client is required to submit to a medical examination at the request of the other side, it is normal for those expenses to be borne by the party requesting the examination. In those circumstances, the expense is generally settled in advance and would not usually form part of the client's costs. If the expense has not already been paid by the opposing party, it



should be claimed as an inter partes item in the bill. Prior authority should be refused.

13. The same criteria as above should be applied to funded clients' travel costs to attend legal advisers, such as for a conference with counsel. It would generally not be reasonable for the client to seek prior authority to cover such expenses unless the criteria can be met, for instance where attendance in conference with a specialist counsel in London was essential before counsel could review the merits of the case.
14. So far as the costs of an expert attending on the funded client are concerned, the general principle is that litigants are expected to visit their professional advisers unless they are unable to do so. It is generally more economical for the funded client to visit the expert rather than vice versa, as the attendance of an expert on the client would involve a claim for both travel and incidental expenses, and the time spent in travelling as well as the attendance.
15. Prior authority for an expert's costs of visiting the client should only be granted in exceptional circumstances, for instance where the client is unable to visit the expert owing to physical incapacity, or the visit itself is the purpose, such as assessing the client at home.
16. So far as funded clients' travel costs to hospital are concerned, hospitals will pay the fares of patients attending for NHS treatment if they are in receipt of certain benefits, or if they are covered by a low income exemption certificate.
17. The above covers the most common scenarios. However, other types of application of a similar nature may be made. If the expense would have arisen even if the person was not legally aided, because it arose owing to the circumstances generally rather than directly and solely as a consequence of the proceedings or proposed proceedings, it does not constitute a disbursement and must be refused. If the expenses arise as part of the implementation of a court order or agreement, they do not form part of legally aided client's costs, but are rather the consequences of implementation. In these circumstances applications for prior authority and payment should be refused.
18. Each application should be considered on its own merits.

#### **1.6 Joint Instructions and apportionment generally (see also para 1.7 below)**

1. Parties should use a single expert jointly instructed where this is appropriate to the circumstances of the case (including in particular in ancillary relief applications). If the legally aided client unreasonably refuses to do so, then this should be reported by the provider as incurring an unjustifiable expense on legal aid (Regulation 42(j) of the Civil Legal Aid (Procedure) Regulations 2012).
2. Disbursements should be appropriately apportioned between parties (whether publicly funded or not) where that is reasonable, e.g. in respect of a single joint expert (but see paragraph 5 below). This may be equally as between the

number of parties (but see paragraph 1.8 below regarding public law Children Act cases). There may be some cases, however, where apportionment is not appropriate. Section 20(6) of the Family Law Reform Act 1986, for example, states that where a direction is given under that section for the use of scientific test, the party on whose application the direction is given will bear the costs of the test. In those cases consideration will need to be given as to which party had made the application for a DNA test (or other scientific test) to be obtained.

3. However, the existence of legal aid cannot affect the exercise of the discretion of the court (section 30 Legal Aid, Sentencing and Punishment of Offenders Act 2012 ('LASPO')). It is therefore both inappropriate and unreasonable to transfer the responsibility for a disbursement to a legally aided party solely by reason of their legal aid status. This is particularly relevant in private law Children Act proceedings, including contact proceedings, where only one of the adult parties or only the child may be legally aided. Providers should therefore not agree liability or apportionments which place or transfer financial liability on the legally aided client(s) merely on the basis that they are in receipt of legal aid and the court will need to have regard to section 30 as against the particular circumstances and expenditure. Providers must take care not to accept that legally aided clients will, through their certificates, bear costs and expenses unless this would be appropriate in the case of a private paying client.
4. The issue of apportionment of expert fees, particularly in private law children proceedings was considered in the case of *JG (a child) v Legal Services Commission and KG, SG and the Law Society and the Secretary of State for Justice* [2014 EWCA Civ 656]. In this case the judge in residence proceedings had directed that the costs of an expert should be borne by the child alone (the parents being privately funded). The judicial review was of the refusal of the LSC to meet the full costs of the report on the basis that it had not been apportioned between the parties. The Court of Appeal declined the invitation of the claimant and interveners to make any general finding of principle, in particular concerning the compatibility of Section 30(1) LASPO with Convention rights under the Human Rights Act. Looking at the specific history of the residence proceedings in question, however, the Court concluded that the normal order in that case would have been for the child to meet the costs of this report in full, irrespective of her legally aided status.
5. The general position remains, under section 30(1), that a child should not be made responsible for the full or disproportionate costs of a disbursement simply by virtue of his or her legally aided status. In obiter discussion, however, the Court suggested that there may be particular cases where the normal position may be departed from because of the inability of a party to contribute towards the cost, and that party's financial eligibility for legal aid may be a relevant factor in this.
6. In judgments of both Mr Justice Ryder and the Court of Appeal there is reference to an application for prior authority as being the normal practice

wherever a party's legal representatives or the expert are unwilling to take a risk as to the assessment of experts fees. As mentioned above, providers should consider making an application for prior authority if the cost is not equally apportioned, with full reasons for this being provided in the application. Prior authority should also be sought where the rates are more than those prescribed in the Remuneration Regulations and where the number of hours are unusual. However, where the rates are within the prescribed rates and within the usual number of hours for that particular type of expert an application for prior authority is unnecessary.

### **1.7 Residential assessments; treatment, therapy and training and related expenses; risk assessments and contact activities**

1. Legal aid will not meet the costs of, or expenses relating to residential assessments or treatment, therapy, training or other interventions of an educative or rehabilitative nature (paragraph 4.28 of the Contract Specification).
2. The exclusion in paragraph 4.28 is widely drafted. It provides that costs of, or expenses relating to the residential assessment of a child or treatment, therapy or training or other interventions of an educative or rehabilitative nature may not be charged as disbursements and extends to costs or expenses of work undertaken with a view to, or to support, excluded work.
3. A residential assessment is any assessment of a child, whether under section 38(6) of the Children Act 1989 or otherwise, in which the child, alone or with others, is assessed, on a residential basis, at any location other than his or her normal residence. It also includes an assessment or viability assessment, whether residential or not, preparatory to or with a view to the possibility of a residential assessment. This excludes initial assessments or pre-assessments however they are described (the term viability assessment is sometimes used) and whether residential or not where they are preparatory to or with a view to a residential assessment.
4. These exclusions are clearly not confined to the costs and expenses of such interventions. Any accommodation or other expenses, including subsistence and travelling expenses relating to these items cannot therefore be charged as disbursements and must also be excluded from any application made by the conducting solicitor for prior authority (or for any increase in the costs limitation applicable to the legal aid certificate). This applies to all cases including public and private law Children Act cases.
5. Where it is not clear whether such costs or expenses are excluded in a case where this appears to be relevant, an application for prior authority or an amendment to the costs limitation will be refused for further information or confirmation.
6. Providers should, in relevant cases, draw the attention of the judiciary to the extent of the availability of legal aid as a court order cannot be followed by the Agency where excluded work would, as a consequence, be remunerated from legal aid. Providers should not reach any agreement which anticipates, or may lead to, excluded costs or expenses being met by the legally aided client,

nor which would transfer liability for payment of an expense on the basis that a particular party is legally aided. It should also be noted that careful consideration needs to be given by providers to what constitutes a legitimate disbursement which can legally and reasonably be expected to be met on the legal aid certificate – for example the costs of an assessment which could not be directed by the court under s38(6) or otherwise agreed by the parties would not be met. The parties cannot bind the ultimate costs assessor.

7. In addition certain other costs and expenses in the Family Category of law constitute irrecoverable disbursements under paragraph 4.28 of the Contract Specification. These are:
  - (a) Costs or expenses of risk assessments within section 16A Children Act 1989 and undertaken by Cafcass officers or Welsh family proceedings officers, including assessments of the risk of harm to a child in connection with domestic abuse to the child or another person; and
  - (b) Costs of or expenses relating to any activity to promote contact with a child directed by the court under Section 11A to 11G Children Act 1989. This includes all programmes, consideration of suitability under Section 11E and other work to or with a view to establishing, maintaining or improving contact with a child or, by addressing violent behaviour, to or with a view to enabling or facilitating contact with a child. Legal aid for assessments under Regulation 16 of the Civil Legal Aid (Merits Criteria) Regulations 2013 as to whether mediation is suitable to the dispute and the parties and all the circumstances is not affected by this exclusion.
9. The exclusion of risk assessments does not extend to specialist assessments of risk which require professional expertise (not of a social work nature) which is beyond that held by Cafcass officers/Welsh family proceedings officers. Such assessments, for example from a psychologist or a psychiatrist, required to inform the decision of the court may be based on some observation of contact, supervised or not.
10. However, the purpose of the report must be to express an expert opinion on risk and/or safety of contact in principle rather than any assessment of supervised contact itself or suitability for a domestic violence perpetrator programme. Any contact centre costs or fees must be met elsewhere and not included as part of the costs of the expert assessment. The work undertaken must also be within the scope of legal aid more generally – and not be otherwise excluded as well as being proportionate. Costs will be subject to cost assessment in the usual way and any claim (or application of prior authority) must include an appropriate breakdown of the work done (or which is proposed to be done), the relevant area(s) of expertise/qualifications and the rates applied.
11. As a consequence no prior authority will be granted for costs or expenses of this excluded work and no payment can be made under legal aid for them. This is so even where they have been directed by the court to be borne by the legally aided client.

## **1.8 Public Law Children Act Cases**

1. The guidance in this section applies only to costs or expenses which do not relate to residential assessments or other disbursements which are excluded from the scope of funding as explained in section 1.7 above.
2. In [\(Calderdale Metropolitan Borough Council v S \[2004\] EWHC 2529 \(Fam\) \(Bodey J\)](#), Calderdale, Bodey J accepted that a specialist report can and, on some occasions, should be comprised within a local authority's core assessment and/or should be part of the local authority's own basic case (paragraph 28). Local authorities will apply the statutory guidance of the Department for Education or the Welsh Assembly Government and the applicable assessment framework in relation to what constitutes appropriate local authority work and preparation falling to be undertaken prior to the issue of proceedings.
3. In the absence of any statutory or regulatory guidance on the distinction between reports which ought to be at the expense of the local authority and reports which should be funded by all the parties (except those unaffected by it), the following non-exhaustive considerations set out by Bodey J apply (para 35):
  - (a) The court has to exercise its discretion to apportion the relevant costs fairly and reasonably, bearing in mind all the circumstances of the particular case.
  - (b) The court will have regard to the reasonableness of how the local authority has conducted the information gathering process and with what degree of competence and thoroughness.
  - (c) The court will use its experience and 'feel' to be alert for cases where a local authority has done quite little preparation or else has prepared rather poorly. If for example, a local authority proposes the instruction of an independent social worker consultant (which for good practical reasons is agreed to be done on a joint-instruction basis), where the work would normally have been expected to be undertaken by the local authority as part of its core preparation, then the local authority will certainly or almost certainly be ordered to pay 100% of the costs involved.
  - (d) The court will have regard to the extent to which the report in question goes merely to satisfying the so called 'threshold' for state intervention, as distinct from helping the court to decide more generally what overall 'disposal' would best serve the interests of the child's welfare.
  - (e) A further consideration is the type of expert concerned and the nature of his or her involvement with the family and/or his or her role in the case. 'Treating' experts and others who have had a 'hands on' role with the family already are more likely to have to be paid for, if they charge a fee, by the local authority. Conversely, the fees of a purely forensic expert brought in specifically to make a full overview report to the court within the context of his or her discipline, are much more likely to be ordered to be shared in principle between the parties.

- (f) One reason that the costs of a jointly commissioned report ordered by the court will, generally speaking, be ordered to be shared in some way is that each party has an interest in having confidence in the integrity of the forensic process. However, if a party genuinely opposes a report being jointly commissioned, or disputes the need for a report at all then, provided this opposition is mounted for substantive reasons and not merely cosmetically or tactically, the court may take this factor into account in deciding how to exercise its discretion.
  - (g) The fact that a party is legally aided is not a reason for taking a different decision about costs from that which would otherwise have been taken. It would be wrong to pin a costs responsibility on the Agency which would not otherwise have been ordered against the legally aided individual concerned (section 30 LASPO).
4. The judgment makes it clear that there will be cases where a party has intervened on a discrete issue (for example, as to contact) and should plainly not be required to join in the costs of a jointly commissioned report on other issues (paragraph 53). Likewise, it was accepted that there will be some cases where even though it is determined that the costs of a joint report should in principle be shared, some apportionment other than equally between the parties would clearly be appropriate. Ultimately apportionment is a matter for the discretion of the court (paragraph 54).
  5. The decision in Calderdale suggests that wheresoever possible, issues regarding payment for jointly commissioned assessments and reports should be resolved by agreement in a collaborative way, having regard to the guidance which may appear in reported authorities and to the particular circumstances of the case in question.
  6. The Agency accepts that providers should seek to agree apportionments, having regard to the guidance given in the Calderdale case and that where an apportionment is justified this may be on a proportionate or pro rata, i.e. party headcount, basis. However, regard must be had to the work which should have been or should be carried out by the local authority. If legal aid issues cannot be agreed, then the court will need to apply the appropriate guidelines and indeed any agreement will in any event be subject to the approval of the court. Excluded work cannot be remunerated in any event (see paragraph 1.7 above). Furthermore, the Agency will not voluntarily fund work outside section 38(6) even if agreed by the parties.

## **1.9 Child contact centre fees, charges and costs**

1. Child contact centre fees, charges and costs are not an allowable disbursement (paragraph 4.28 of the Contract Specification). Contact centre fees are a client expense and not recoverable in any event. Supervised contact involves professional supervision and/or observation of the contact having regard to safety issues and/or contact reintroduction. Supported contact is contact taking place at a specified, neutral venue without any professional supervision although there may be contact centre staff present.
2. In respect of family proceedings in which the welfare of children is or may be in question, it is a function of Cafcass and Cafcass Cymru to provide information, advice and other support for the children and their families. Therefore contact centre fees, charges and costs and the costs of or expenses relating to any assessment or report (including on contact at a contact centre) based, in whole or part, on an observation or observations of contact with a child/children cannot be charged as a disbursement.
2. In addition Cafcass and Cafcass Cymru are responsible for responding to the court's imposition of a 'contact monitoring requirement'. This monitoring is undertaken by Cafcass or Cafcass Cymru and therefore no issue of charging/payment arises. It is not, therefore, for legal aid to provide, fund or support such services. Cafcass and Cafcass Cymru are the only bodies to whom this responsibility falls which, in addition, is subject to the jurisdiction and consideration of the court.
3. In all cases is expected that authority to instruct an expert, or incur expenditure will be applied for in advance, but consideration may still be given to requests made after the event, subject to the guidance above.

## **4. Funding for cases in Courts outside England and Wales**

### **2.1 Functions of the Director**

1. The Director's functions are exercisable in England and Wales (see sections 32 and 152 Legal Aid, Sentencing and Punishment of Offenders Act 2012('LASPO')). The Director may not determine that an individual qualifies for civil legal services relating to law other than that of England and Wales unless:
  - (a) express provision is made to the contrary in Part of Schedule 1 of the Act
  - (b) it is relevant for determining any issue relating to the law of England and Wales (for example where a point of foreign law arises as an issue in proceedings in this jurisdiction), or
  - (c) in other circumstances specified by the Lord Chancellor.
2. The general position therefore is that for legal representation to be provided, the proceedings in question must take place, or be likely to take place, in England or Wales. There is no requirement for the legally aided client to be present or resident in this jurisdiction. Legal representation can cover enforcement proceedings in England and Wales in relation to orders obtained

in other jurisdictions. However where enforcement is sought outside England and Wales, funding must be sought in the jurisdiction where enforcement is to take place.

3. Legal help can be provided for clients who are outside England and Wales, provided the advice relates to the law of England and Wales.

## **2.2 The European Court of Human Rights**

1. The European Court of Human Rights (ECtHR), based in Strasbourg, administers the European Convention on Human Rights (ECHR). It was established by the Council of Europe. Legal aid is not available for proceedings before the ECtHR but that court administers its own legal aid scheme (see below). Legal help may be used to advise a client of their position under England and Wales law and of the options available but may not be used to make an application to ECtHR or for legal aid from that court. This is because the law of the ECtHR is not formally part of the law of England and Wales as required by section 32 of the Act.
2. The Human Rights Act 1998, which came into effect in October 2000, requires UK courts to have regard to the ECHR when interpreting legislation, and public bodies to act in a way which is compatible with the ECHR. The Human Rights Act 1998 generally enables clients to apply to a court in England or Wales instead of, or before, applying to the ECtHR itself to complain that the UK government has breached their human rights. Applications from the UK to ECtHR are less common since the Human Rights Act came into force as the ECtHR generally expects applicants to have exhausted their domestic remedies before applying.
3. The ECtHR will consider an application for legal aid under its own scheme if the case is “communicated” (passes through the initial screening). The ECtHR asks the Agency for confirmation that the applicant would be eligible for legal aid in England and Wales. The client should complete the statement of means which would be relevant if the case was taking place in the domestic courts. They should send the form to the London Regional Office in Petty France with a letter saying that they are applying for a “certificate of indigence” for the ECtHR. They do not need to fill in an application form on the merits.
4. An assessment of means will be undertaken according to the usual principles and tells the client’s solicitor the outcome. The client or the solicitor sends that notification to the ECtHR.

## **2.3 The European Court of Justice**

1. Civil legal aid may include the cost of proceedings before the Court of Justice of the European Communities. In Luxembourg (European Court of Justice or ECJ) where a domestic court makes a reference to the ECJ under the Treaty of Rome. Although the European Court of Justice is not separately listed as a court for which advocacy services can be provided under Part 3 of Schedule 1 to LASPO, sub-paragraph 23 of that Schedule allows legal representation to cover proceedings which have been referred, in whole or in part, from proceedings that are within scope.



2. A certificate must be specifically amended, to cover references to the European Court of Justice.

## **2.4 The European Union Legal Aid Directive**

1. The European Union Legal Aid Directive (2002/8/ESC) of 27 January 2003 came into operation across the European Union on 30 November 2004. The Directive sets certain minimum standards for legal aid schemes in the EU but applies only to cross-border disputes. Under Article 2 of the Directive, a cross-border dispute is one in which a party domiciled or habitually resident in one member state applies for legal aid in a different member state where a court is sitting or where a decision is to be enforced.
2. The Directive applies to civil and commercial disputes, including Family, but not criminal cases (Article 1). Further the Directive affects only the rights of natural persons, rather than companies (Article 3). The Directive adopts a wide interpretation of legal aid covering both pre-litigation advice, which in England and Wales would usually be funded under the Legal Help scheme, as well as representation in proceedings. Article 4 provides that Member States must grant legal aid without discrimination to Union citizens and third country nationals residing lawfully in any member state.
3. Paragraph 44 of Part 1 of Schedule 1 LASPO provides that all civil legal services that are required to be provided under Council Directive are in scope for legal aid. The Directive, however, specifically allows states to set financial eligibility levels (Article 5) and merits criteria (Article 6). The following points should be noted:
  - (a) For financial eligibility, in general the same rules apply to cross-border applications for legal aid as to applications within the United Kingdom. However, Article 5(4) of the Directive allows the thresholds to be exceeded by a cross-border applicant who is out of scope as a result of differences in the cost of living between different Member States. An applicant who is financially eligible for legal aid in his or her Member State of residence may be assessed as financially eligible within the United Kingdom.

Regulation 11 of the Civil Legal Aid (Financial Resources and Payment for Services) Regulations 2013 provides a discretion to waive eligibility limits in appropriate cases;

- (b) Regulation 72 of the Civil Legal Aid (Merits Criteria) Regulations provides the merits criteria for determining whether a cross-border applicant in a case described in Paragraph 44 Part 1 Schedule 1 LASPO qualifies for civil legal aid, taking into account the requirements of the Directive. The requirements for legal help will be met if the application is not manifestly unfounded. For legal representation the general merits criteria under those Regulations are first applied; if the general merits criteria are not satisfied, however, the Director must further consider whether legal representation should be granted in any event in order to guarantee access to justice, in order to ensure equality of parties, or in view of the

complexity of the case, taking into account the importance of the case to the individual.

- (c) The Directive allows Member States to exclude business cases and defamation proceedings from scope (Article 6(3)), as well as any cases where CFAs may be an alternative (Article 5(5)). Cross-border applicants are, of course, eligible to apply for exceptional funding under section 10 LASPO in any case determined by the Director not to be described in paragraph 44 (or any other Paragraph) of Part 1 Schedule 1 of the Act;
- (d) Member States must ensure that legal aid can in principle cover costs related to the cross-border nature of a dispute, such as interpretation, translation and, where appropriate, travel costs for the applicant (Article 7). The requirements of Article 7 will be taken into account in legal aid cost assessments;
- (e) a standard application form has been established under Article 16 of the Directive and may be used to apply for legal aid in any Member State. Use of the standard form is not compulsory, as cross-border applicants are entitled instead to use relevant national application forms. The standard application form will be sufficient to consider the applicant's entitlement to Legal Help in England and Wales. Where necessary, such Legal Help may then be used to assist the applicant in any subsequent application for Legal Representation;
- (f) The Directive also contains provisions concerning the transmission of legal aid applications between Member States – see section 2.5 below.

## **2.5 Transmission of Applications between Jurisdictions**

1. The aim of the EU Directive is to improve access to justice in cross-border cases by facilitating the transfer of legal aid applications where an applicant resident in one jurisdiction needs to apply for legal aid in a different jurisdiction. Such an applicant can choose either to apply to the foreign jurisdiction directly, or to apply to a designated authority within his or her own jurisdiction. The Directive therefore contains procedural rules relating to legal aid authorities in the Member State where the applicant is domiciled or habitually resident (the transmitting authority) and the Member State where legal aid will be considered (the receiving authority).
2. The provisions in Articles 13 – 16 of the Directive are similar to the requirement of the European Agreement on the Transmission of Applications for Legal Aid (the Strasbourg Agreement), which was ratified by the United Kingdom on January 17, 1978. As between Member States of the EU the provisions of the Directive take precedence (Article 20 of the Directive). However a number of countries outside the EU have ratified the Strasbourg Agreement. Apart from the United Kingdom, the countries which have ratified the Strasbourg Agreement are:
  - (a) Austria;
  - (b) Azerbaijan;

- (c) Belgium;
- (d) Bulgaria;
- (e) Czech Republic;
- (f) Denmark;
- (g) Republic of Ireland (Eire);
- (h) Estonia;
- (i) Finland;
- (j) France;
- (k) Greece;
- (l) Italy;
- (m) Lithuania;
- (n) Luxembourg;
- (o) Netherlands;
- (p) Norway;
- (q) Poland;
- (r) Portugal;
- (s) Spain;
- (t) Sweden;
- (u) Switzerland; and
- (v) Turkey

3. The provisions of the Directive and the Agreement supplement rather than replace national procedures for applying for funding. An applicant resident outside England and Wales is fully entitled to apply for funding using normal civil legal aid procedures.
4. The address for both transmitting and receiving legal aid applications in England and Wales is:

Central Customer Services Unit  
Legal Aid Agency  
8<sup>th</sup> Floor  
102 Petty France  
London  
SW1H 9AJ

Tel: 020 3545 8687  
Email: [ho.complaints@legalaid.gsi.gov.uk](mailto:ho.complaints@legalaid.gsi.gov.uk)

The Customer Services Team holds information about the legal aid systems of most ratifying countries and, where available, this is supplied to prospective applicants. This may help applicants to understand the tests which will be applied and any language requirements. Applicants should take care to submit only relevant documents and to summarise their cases briefly and clearly.

5. Legal help is available for the preparation of applications for transmission under the Directive or the Agreement, including obtaining any necessary translations. Applications and costs for legal help for these purposes are dealt with in the usual way. Legal help may be used to prepare an application for transmission under the Agreement, even though the help indirectly relates to

foreign law. Legal help can include obtaining an necessary translation of documents prior to transmission.

6. When considering outgoing transmissions, the Customer Services Team will check that an application is in the appropriate form and in a language which will be acceptable to the receiving authority. Most countries will accept applications in English, but it is helpful if applications and relevant supporting documents can be made available in the official language of the country involved. France requires medical reports and other documents (if submitted) to be accompanied by translations in French. Austria requires applications to be accompanied by translations in German. The Customer Services Team will transmit the application to the relevant receiving authority within 15 days of receipt of the properly completed papers (Article 13(4) of the Directive).
7. When receiving applications under the Directive or Strasbourg Agreement from persons resident outside England and Wales, the Customer Services Team checks that the application is in the proper form and language. The Agency accepts applications in English, French or Welsh. Where necessary, the Customer Services Team will assist the applicant in finding and transmitting the application to a provider able to provide Legal help.

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