



FREQUENTLY ASKED QUESTIONS

CIVIL LEGAL AID REFORMS

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I) ELIGIBILITY

1. Does the new version of the Legal Aid Agency (LAA) provider eligibility calculator print any information on the form in addition to means data?

No. It prints the whole form for you to complete with the client (before the client signs it) however it's only the means data that is populated by the calculator. You can then use this form printed from the calculator as part of your file.

2. Are bank statements still an acceptable form of evidence for Tax Credits?

They are not listed under Tax Credits on the evidence checklist in the CW1. Evidential requirements for means have not changed and bank statements are still an acceptable form of evidence.

3. Will the changes being introduced as part of the eligibility reforms result in the LAA requesting contributions from clients when the Statutory Charge applies too?

There are three main ways that clients under the civil legal aid scheme may be required to pay towards the costs of their case: a contribution from capital, monthly contributions from disposable income and repaying costs at the end of the case via the Statutory Charge. Contributions from income and capital are determined by the client's financial circumstances through the means test; the Statutory Charge arises at the end of the case where money (including costs) or property are kept or gained as a result of the case. From the 1st April, a client may have to use all of these methods to pay towards their costs (this is no different from pre 1st April). Clients are required to pay income contributions where their monthly disposable income is £316 or more (i.e. clients with monthly disposable income of £315 or less are not required to pay income contributions); this lower threshold is unchanged but in the future the proportion of income required for the contribution will be moderately increased.

4. We send a letter to the Benefits Agency to complete details regarding client's eligibility. Will this still be accepted as it isn't included in the checklist?

A letter from the Dept of Work and Pensions is acceptable evidence of receipt of benefits. Remember clients receiving passporting benefits will still need to have their capital assessed. Lord Chancellor's guidance at section 12 Evidence Requirements will largely mirror the previous guidance in volume 2 part E of section 12.

5. Do the eligibility proposals mean that all clients requesting Legal Aid will now have to undergo a means test?

Capital passporting in civil cases has been abolished as of 1st April 2013, so that in the future we will apply the capital means test to all applicants whether or not they are in receipt of income-based benefits. However, civil legal aid is not means tested for certain types of proceedings, including for parents in care or supervision proceedings, or for people detained under mental capacity legislation seeking release.

6. On p11 of the CW1 we ask a question on risk based evidence. What is this and where is the guidance published on what providers should do?

Providers must refer to Lord Chancellors guidance for controlled work - Section 12 deals with evidence, including 'risk based' evidence for capital- this largely mirrors current guidance in Section 12 of Volume 2 part E of the Manual.

7. Are there any changes to the stat charge?

No changes of substance however the Civil Legal Aid (Statutory Charge) Regulations 2013 substantially replicate the pre April position but have made certain aspects more explicit on the face of the regulations (e.g. in relation to the treatment of legal aid only costs).

8. Should providers deduct the 3% cost of sale to Controlled Work means assessments?

No providers shouldn't apply this for controlled work.

9. Are there any changes to the means 4 form?

No – Other than rebranding for the Legal Aid Agency (LAA) there are no changes to this form.

10. What is a reasonable time allowed to complete the CW1 form? Do we have current standards and have we increased these as a result of the additions to the form?

Paragraph 3.10 of the 2013 standard civil contract and paragraph 3.12 of the 2010 civil contract states that providers can claim for all reasonable time from the beginning of an interview where the form is signed.

There are no published guidelines on what would be reasonable for completing a legal help form as what is reasonable will depend on the context of the case.

11. Where do we publish guidelines on what providers are required to submit in terms of evidence? At events we received a number of queries about mortgages and whether we request bank/mortgage statements and when providers should source these documents? Where are the rules/guidance published?

Section 12 of the Lord Chancellors guidance for controlled work deals with evidence and this largely mirrors current guidance in section 12 of Volume 2 part E of the Manual.

12. If assets held jointly but in different proportions rather than equally do you use these proportions i.e. effect of declaration of trust will not give 50/50 split?

Where documented evidence is provided to show that a joint asset is held in unequal shares you can use the proportions advised.

13. Are there any changes to the way a child's means are considered (this was raised in context of FPR 16.2 and 16.6 as parents means not previously taken into account)?

No

14. Can we publish any guidance for Controlled Work where we can be clear to providers (including mediators) how they should consider the Subject Matter of Dispute (SMOD) based on limited information from the client?

The Lord Chancellors guidance states the following and largely mirrors previous guidance in Volume 2 part E:

- 7.4.8 – Sometimes it will be obvious that a particular asset is in dispute between the parties, but in the family/matrimonial context the point is more difficult to determine if parties seek funding at an early stage and there are a range of assets which may or may not be at issue. The general approach should be that an asset should not be treated as the subject matter of the dispute if the other party has made no specific claim against it.
- 7.4.9 – If the funding is for services on issues about a child/children, then assets cannot be treated as subject matter of the dispute, even if the parties are litigating or otherwise in dispute over those assets (although the assets may be disregarded under any other appropriate heading).

Mediators are expected to know as much as a solicitor about what the issues are for the proposed mediation i.e. what the dispute is about; and to determine whether the case is suitable for mediation. The guidance acknowledges the difficulty for family disputes in early stages but confirms that there needs to be a specific claim by a party to the mediation rather than something that is part of general discussions or which may eventually come into the reckoning where no specific threat or claim has been made against an asset. Consequently a client can't just say everything, without specifying what it is and its value. Providers will need to ask clients what specific assets are in dispute.

If new information comes to light about SMOD (i.e. one client at the assessment meeting doesn't mention an asset as SMOD, but the second party does at the later assessment meeting) then it is the case that the original assessment of client 1 can be amended in light of this information.

15. Why is the pensioner disregard not included on the eligibility key card?

Please refer to the main Lord Chancellors guidance for controlled work. Also note that the rules around the pensioner disregard are also built into the calculator.

16. Are we updating the costs assessment guidance?

The costs assessment guidance has been updated with the new references. We have a contractual duty to consult on this and so it is currently with the Rep bodies for comment. The revised version will go up on the website shortly after Easter.

17. What happens if the partner refuses to sign or if the client does not want their partner to know that they are taking advice?

We expect the partner's signature to be obtained for Licensed work – exceptions have been made in truly exceptional circumstances (e.g. for the Guantanamo bay type scenario, or partner overseas in war torn country). For those clients where the partner declaration should be completed, but either the partner refuses to sign the form or the client advises that they do not wish their partner to know they are taking advice – e.g. about debts that the partner does not know about – or are afraid of the consequences should he / she find out, a note should be made as to the reasoning for not obtaining the partner's signature and retained on file for audit purposes. The LSC may monitor the number of cases that fall into this category and discuss any issues that may arise with provider firms. Evidential requirements still apply.

18. For Subject Matter of Dispute – what evidence is needed for showing something is in dispute?

Your initial case notes should indicate what the case is about and therefore whether it involves assets. The SMOD disregard applies to assets that are specifically claimed. The client may for example have a letter from the opponent (or the opponent's representatives) claiming the family home, but the client has other matrimonial assets which may ultimately be taken account of in some way in any final settlement that have not been specifically claimed. The family home would be the asset in dispute as it is specifically claimed.

19. Are court of protection cases excluded from means assessment and which regulation is this covered in?

Please see Regulation 5 (1) (g) of the Civil Legal Aid (Financial Resources and Payment for Services) Regulations 2013.

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II) FAMILY

Public Law

20. How do I know whether an applicant in certain proceedings is making a public law application or not?

Providers should refer to paragraph 1 and paragraph 9, part 1, Schedule 1 of LASPO (available on legislation.gov.uk) for details of matters which are within scope. Further guidance on public and private law matters is contained in the Cost Assessment Guidance.

21. Are discharge of care orders and contact with a child in care or a child subject to a care order in scope for public law?

Yes, orders under Part 4 of the Children Act 1989 are within scope of legal aid at Paragraph 1 (1) (b) Part 1, Schedule 1 and Paragraph 1 should be considered for full details. Civil legal services include pre-proceedings work carried out under Legal Help in relation to these proceedings.

22. Are adoption cases in scope and are these public or private law?

Civil legal services may be provided on the following Public Law matters under Paragraph 1 (1) Part1, Schedule 1: (g) orders for contact under section 26 of the Adoption and Children Act 2002 ("the 2002 Act");

- (h) applications for leave of the court to remove a child from a person's custody under section 36 of the 2002 Act;
- (i) placement orders, recovery orders or adoption orders under Chapter 3 of Part 1 of the 2002 Act (see sections 21, 41 and 46 of that Act);
- (j) orders under section 84 of the 2002 Act (parental responsibility prior to adoption abroad)

Matters not subject to evidential requirements prescribed in the procedure regulations

23. Certain applications under paragraph 10 of Part 1, Schedule 1 to the Act are in scope where they concern the "unlawful removal" of a child to a place in the United Kingdom. If one parent breaches a contact order is this "unlawful removal"?

Enforcement of contact does not fall within the scope of "unlawful removal". In general the exercise of one parent of their parental responsibility will not constitute unlawful removal under paragraph 10. A child could only be unlawfully removed for these purposes if there was a residence order in force and retention of the child was in breach of this order.

24. Has there been a change to the evidential requirements for injunctions?

No, under Paragraph 11 (1) Part 1, Schedule 1, DV injunctions are within scope of legal aid subject to meeting relevant means and merits assessments.

25. Is legal aid available for respondents in injunctions related to domestic violence and forced marriage?

Proceedings in relation to Family Homes and Domestic Violence are covered under Paragraph 11 Part 1 Schedule 1 of the LASPO Act and are in scope for all parties to proceedings.

26. Are warning letters before injunctions in scope and when does the eligibility waiver apply?

Yes (see Paragraph 11, Part 1, Schedule 1) as long as it meets the relevant merits criteria (including sufficient benefit) and means assessment. The waiver on financial eligibility limits in Regulation 12 of the Civil (Financial Resources and Payment for Services) Regulations 2013 only applies to Legal Representation i.e. where an application is being made to protect the client and not to Legal Help.

27. Are Part III Children Act matters within scope of legal aid and in which category?

Pre-proceedings advice is included within the definition of civil legal services. Advice to a client, therefore, where the local authority has concerns about the care of a child which may lead to care proceedings being issued by the local authority would be within scope of Paragraph 1 of Part 1, Schedule 1 to the Act. This would be a public law family matter as now. Applications under sections 17 and 20 of the Children Act relating to the provision of services and accommodation are included within Paragraph 6 of Part 1 as "community care services". It is expected that work, for example, in connection with applications for judicial review regarding the duty of the local authority to provide accommodation would be dealt with by providers under the community care category.

28. Are applications for wardship and other issues under the inherent jurisdiction within scope?

Civil legal services provided in accordance with Paragraph 9, Part 1, Schedule 1 i.e. inherent jurisdiction of the High Court in relation to children and vulnerable adults are within scope of legal aid. However advice in relation to any other proceedings regarding a child, for example Section 8 of the Children Act, would not fall within this paragraph and would in this case need to satisfy one of the evidence requirements prescribed in Regulations 33 and 34.

29. Children under 18 can get legal aid – would this extend to under-18 parents seeking a divorce?

The application of Paragraph 15 of Part 1, Schedule 1 of LASPO relating to children who are parties to family proceedings does mean that under 18s seeking a divorce would be in scope of legal aid.

30. If a child is 17 but subsequently turns 18 during the course of their case should funding continue?

No. Civil legal services provided in accordance with Paragraph 15 (5), Part 1, Schedule 1 are in scope where the child is under 18. Once a client is 18 civil legal services are no longer in scope under this paragraph. This rule applies equally to Controlled Work and Licensed Work.

Applying the evidential requirements prescribed in Procedure Regulations

31. How do I find out which cases the additional evidential requirements as stated in Procedure Regulation 33 and 34 apply to?

In order for civil legal services to be provided for a matter listed under paragraph 12 of Part 1, Schedule 1 one of the evidence requirements prescribed in Regulation 33 must be satisfied in order for the case to be within scope of legal aid. In order for civil legal services to be provided for a matter listed in paragraph 13 of Part 1, Schedule 1 one of the evidence requirements prescribed in Regulation 34 must be satisfied in order for the case to be within scope of legal aid.

A provider could undertake work for the client prior to this (i.e. pro-bono or privately) but legal aid could not be made available until evidence is provided, backdating is not possible.

Procedure Regulations can be found here:

<http://www.legislation.gov.uk/uksi/2012/3098/contents/made>

Director of Legal Aid Casework guidance on evidence requirements for private family law matters found at <http://www.justice.gov.uk/downloads/legal-aid/funding-code/evidence-requirements-for-private-family-law-matters-guidance-april-2013.pdf>

32. In response to particular questions raised on scope at face to face provider training events, the following cases need to satisfy prescribed evidential requirements to be in scope:

TOLATA cases (Trusts of Land and Appointment of Trustees Act 1996)

The Civil Legal Aid (Family Relationship) Regulations 2012 sets out when TOLATA work arises out of a family relationship. Where these conditions are met, it would be possible to advise on TOLATA matters provided one of the domestic violence evidence requirements prescribed in Procedure Regulation 33 were met. Whilst trust law is an excluded service at paragraph 11 of Part 2, Schedule 1, it would be within scope for victims of domestic violence in accordance with paragraph 12 (2) part 1, schedule 1.

S37 Matrimonial Causes Act (injunctions to freeze assets)

The Matrimonial Causes Act is one of the family enactments listed in paragraph 12 (9) of Part 1 of Schedule 1 of LASPO meaning you will need to obtain evidence of domestic violence in order for this to be in scope.

Special guardianship orders

Special Guardianship Orders are private law family (under Part II of the Children Act) and the client would need to provide evidence to satisfy domestic violence (Procedure Regulation 33) or child protection requirements (Procedure Regulation 34) to be in scope of legal aid.

Divorce petition

Funding will be available for divorce where the dv evidence requirements are met. Evidence of child protection issues will not bring funding for divorce into scope.

Declarations of parentage

Paragraph 12 (9) (I) Part 1, Schedule 1 states that civil legal services may be provided for advice on Part III of Family Law Act 1986, which includes s.55 Declarations of parentage provided one of the evidential requirements prescribed in Regulation 33 are met.

33. At which points in a case must I ensure evidence requirements are met?

You will need to ensure relevant evidential requirements are met each time a determination for a new form of service is made. This includes moving from Family Help (Higher) to Full Representation, including where the application relates to an amendment of a certificate.

34. Does evidence have to relate to the 2 parties involved in the case?

The requirements differ depending upon whether the client is making an application under paragraph 12, part 1, schedule 1 or Paragraph 13. Under paragraph 12, (victims of domestic violence), the evidence needs to identify that the client has been a victim of, or is at risk of, domestic violence from the other party. The evidence must demonstrate this. Both parties in any particular case could get legal aid provided they can both satisfy the evidence requirements and meet the means and merits criteria.

Under paragraph 13, advice for protection of children, the requirements are in relation to demonstrating that the client is seeking to protect a child who is at risk of abuse by another individual. Where a client is seeking to protect a child and can satisfy one of the prescribed evidence requirements at Regulation 33 or Regulation 34 of the Procedure Regulations the application would be within scope of legal aid.

35. Does the Domestic Violence definition include financial abuse?

The definition of Domestic Violence is any incident of threatening behaviour, violence or abuse (whether psychological, physical, sexual, financial or emotional) between individuals who are associated with each other (see <http://www.legislation.gov.uk/ukdsi/2013/9780111533987/contents>). This definition is applicable to all the prescribed forms of evidence contained in Procedure Regulation 33.

36. Can I apply for a prohibited steps order at the same time as a non-molestation order?

Unless you are making an application for a prohibited steps order in relation to the unlawful removal of children (see paragraph 10 Part1, Schedule 1) you will need to obtain evidence of either domestic violence or child abuse before an application for a prohibited steps order would be in scope for legal aid (see paragraph 12, Part 1 of Schedule 1). Advice on the private law children issues could only be provided once one of the evidence requirements (Regulation 33 or 34 of the Procedure Regulations) had been met. This would include where the non-molestation order was made.

Meeting the evidence requirements

37. Specific questions were raised at face to face provider training events around satisfying the evidential requirements in the Procedure Regulations 33 and 34.

The following should be noted with regard to evidence requirements:

- Health Visitors have to be registered with the Nursing and Midwifery Council and therefore are included as medical professionals for Regulation 33 (2) (h).
- Minutes from a child protection conference would be acceptable evidence, as long as the evidence contained all the information stipulated in Regulation 34 (2) (g).
- A social services letter could be from the Legal Director, or the legal department where the legal department is issuing correspondence on behalf of social services department, as long as all the information required to satisfy the specific Regulation is provided (Regulation 33(i) and Regulation 34 (f) and (g))

The following would not satisfy evidence requirements:

- Any oral evidence as all evidence must be provided in writing.
- A letter from anyone other than the chair of a MARAC as stipulated in Regulation 33 (1) (f)
- Non-refuge residence: Procedure Regulation 33 (1) (i) states that the client must have been “admitted for a period of twenty four hours or more to a refuge established for the purpose of providing accommodation for victims of, or those at risk of, domestic violence”
- Domestic Violence Protection Orders, which are being piloted in three Police forces (Greater Manchester, Wiltshire and West Mercia) are not included in Procedure Regulation 33 or 34.

Please note, in line with Parliamentary debate MoJ are further considering Regulation 33 (1) (i).

38. Does the requirement that DV evidence should be within previous 24 months run from the date of the incident or the date of the evidence (e.g. date of GP's letter)?

The requirement for the evidence to have been within the previous 24 months will depend on which piece of evidence is being provided. Please refer to Procedure Regulation 33 and the Director of Legal Aid Casework guidance on evidence requirements for private family law matters found at <http://www.justice.gov.uk/legal-aid/funding/funding-guidance>.

39. How will providers know that convictions are unspent and is there a time limit?

Where the date and length of conviction are known, it is possible to establish whether the conviction is spent or not using this document: www.justice.gov.uk/downloads/offenders/rehabilitation/rehabilitation-offenders.pdf. There is no time limit on unspent convictions.

40. Convictions do not normally have the name of the victims on them, will this satisfy the requirements?

Generally we expect records of convictions to have the victims name on, other than those for sexual offences. MoJ guidance has made this clear to the courts to make sure this requirement is met.

41. If a client is granted a without notice injunction (ex – parte injunction) and then later goes on to withdraw the application, will the fact the client was granted an injunction meet prescribed evidence requirements?

The granting of an ex parte order would satisfy the evidence requirements even if it is later withdrawn or expires. However, regard should be had to Regulation 42 of the Procedures Regulations which set out the circumstances when a change in the evidence provided needs to be reported and the general reporting requirements under Regulation 40.

Assistance for individuals in obtaining evidence

42. What information is available for clients to support them to obtain Domestic Violence (DV) or Child Protection evidence? Are template letters provided? Does it include information on possible charging?

The Ministry of Justice (MoJ) have published guidance for members of the public to help them understand what evidence will be required in relation to domestic violence or child protection for private family law matters and templates to help them obtain the evidence. It also sets out where costs may be payable and what these may potentially be. MoJ have liaised with the relevant bodies and raised the importance of this evidence for clients. Client guidance for victims of domestic violence and those seeking to protect of children can be found here: <http://www.justice.gov.uk/legal-aid-for-private-family-matters>

Resolution have also included templates on their website to assist clients to obtain evidence.

43. I have spoken to my local police and they stated they would only send information to solicitors and not to clients directly.

MoJ have engaged with Association of Chief Police Officers (ACPO) to ensure their understanding and participation of changes to Legal Aid. ACPO sent a communication out to police forces explaining the changes and that evidence would need to be provided to victims, not solicitors.

Family contractual queries

44. When can withdrawals of a determination be made in a family matter?

You need to ensure that the case is within scope of legal aid every time to you make a determination. Private family law finance and children cases are subject to prescribed evidence criteria being met in order for the case to be within scope of legal aid. Under Procedure Regulation 40, reporting duties include notifying the Director of any change in an individual's circumstances which might affect a determination that an individual qualifies for civil legal services. The Director may withdraw a determination at Licensed Work in all of the situations listed in Regulation 42 of the Procedure Regulations. Regulation 42 (k) (i) to (iii) provides that the Director also has the ability to withdraw a determination in specific situations with regards to the evidence requirements under Regulations 33 and 34. This is where relevant evidence was provided, but subsequently the position changes i.e.:

- conviction for an offence has been quashed,

- criminal proceedings have been concluded without a conviction or
- either application for injunction or PSO (Regulation 34(2)(h) have been withdrawn or refused - and there is no other evidence to satisfy the Regulation 33 or 34 requirements.

45. If you are advising on a protective injunction and the client also has children and finance issues do you use one matter start?

This remains one matter if it relates to the same family dispute, therefore you would continue to use one matter start for the case. Even if a NMS was opened for in scope work, advice could only be given on the private law children or finance issues once one of the evidence requirements in Procedure Regulation 33 or 34 (as appropriate had been met . The file should note when the evidence was provided. You need to consider the contract rules around opening subsequent NMS (3.35 onwards in the 2013 standard civil contract specification).

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III) Family Mediation and Help with Family Mediation

46. Can I claim for time spent making a referral to a family mediator under Help with Family Mediation and how would I find a legal aid contracted family mediator?

No, legal aid for Help with Family Mediation is only available once clients are participating in mediation, (Merits Regulation 38). People who think they may be eligible for legal aid should check the new 'Can I get Legal Aid Tool' www.gov.uk/check-legal-aid or you could search for family mediation services with a legal aid contract at www.legaladviserfinder.justice.gov.uk. Or if they want details of both legal aid and other family mediators they can go to the Find a Family Mediation Service tool at www.familymediationhelpline.co.uk/find-service.php. Additionally a good resource for separating or divorcing couples is 'the sorting our separation' website at www.sortingoutseparation.org.uk. Family Mediation is also covered on relevant pages on www.gov.uk.

47. Is Help with Family Mediation subject to the statutory charge?

Help with Family Mediation is treated in the same way as the rest of Controlled Work. So, the statutory charge does not generally attach unless a certificate is granted in the same matter. As Help With Family Mediation cannot become exceptional there is also not the same provision for costs over the exceptional limit to become subject to the charge as there is for Family Help (Lower).

48. When I am advising a client under Help with Family Mediation and the client requires conveyancing advice, is this in scope?

Yes.

49. What can I advise on under Help with Family Mediation, where I am drafting the Consent Order and find that some of the issues have not been fully resolved at mediation?

The £150 Help with Family Mediation fee is for specialist legal advice in support of mediation, where you are advising the client on the issues that are the subject of mediation. The £200 fee is for drafting the Consent Order only. If there are unresolved issues following mediation which require advice or negotiation then this work is out of scope and the client would have to fund this privately or satisfy the private law family evidential requirements prescribed in Procedure Regulation 33 for finance cases.

50. Is the £200 additional Help with Family Mediation Fee only available for married couples where a Financial Consent Application is to be lodged, and not for cohabitants or married couples who are not divorcing straight away and want to prepare a Separation Agreement?

The £200 Help with Family Mediation Fee is only available where a consent order is lodged and approved by the court and not for the preparation of a separation agreement for cohabitants or those who do not want to issue divorce proceedings.

51. Does the £200 additional Help with Family Mediation fee cover the completion of the Divorce Petition?

Help with Family Mediation is for advice in relation to the subject of the mediation and therefore does not cover the completion of the Divorce Petition.

52. Can court fees be paid as a disbursement under Help with Family Mediation?

In accordance with the Standard Civil Contract Specification (paragraph 4.24) court fees are generally not allowable disbursements in Controlled Work cases. The exception to this is for consent orders under Family Help (Lower). Therefore where advice and assistance is being provided under Legal Help and Help with Family Mediation the client must complete a fee exemption form available from the court if any court fee would otherwise be payable e.g. on the filing of a divorce petition or consent order.

53. Why has the requirement to consider mediation (and complete an APP7) been removed?

As the work remaining within scope of private law family is primarily for victims of domestic violence or where there are child protection issues, the nature of these cases mean mediation is unlikely to be appropriate. Mediation continues to be available for these clients should they wish.

54. Can mediation be delivered over the telephone? What about severely physically disabled clients?

Mediation must be face-to-face according to professional standards as set out by the Family Mediation Council.

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IV) IMMIGRATION

55. Who are the “competent authorities” referred to in paragraph 32(6) & (7) of part 1, Schedule 1 of the Act which will determine whether an individual is a victim of trafficking?

Decisions about who is a victim of trafficking are made by trained specialists in designated ‘Competent Authorities’:

The UKHTC Competent Authority

The UK Human Trafficking Centre (UKHTC) hosts one such Competent Authority. The UKHTC Competent Authority deals with all cases involving a UK or EEA national. They also act as the first point of contact for referrals made by external agencies such as the police, local authorities etc. If the UKHTC receives a case involving a national who is subject to immigration control, they will refer the case to a UKBA Competent Authority.

The UKBA Competent Authority

Linked but separate Competent Authorities sit in UKBA for situations where trafficking is raised as part of an asylum claim or in the context of another immigration process.

We would expect therefore that where an individual requires advice under paragraph 32 of Part 1 of Schedule 1 to LASPO, the relevant letters confirming whether there are reasonable grounds to believe that an individual is a victim of human trafficking (paragraph 32(6) or it has been conclusively determined that, they are a victim of trafficking (paragraph 32(7)), will come from the competent authority within UKBA.

56. When advising a client on asylum issues and the client then gets a letter from the competent authority stating there is reasonable grounds that the individual is a victim of trafficking. Can they open a new matter start or not?

If the individual has received a letter from the competent authority concluding that they are a victim of trafficking/are reasonably believed to be one, then provisions of paragraph 32 (1) of Part 1, Schedule 1 of

the LASPO Act apply and they can then advise on those elements which would otherwise be out of scope. 8.31 of the 2013 Standard Civil Contract Specification confirms that in such a scenario this advice will form part of the same matter start as the advice that they have been giving which was in scope i.e. asylum.

57. Are there time limits within which an individual who is a victim of human trafficking must apply for legal aid?

Yes, the application for funding must be made within 12 months of a conclusive determination that the individual is a victim of human trafficking or before the date that any leave to remain concludes. This is set out in Regulation 31(8) of the procedure regulations. However this paragraph of the regulation only currently applies to licensed work. At present there is no similar restriction in relation to Controlled Work.

58. Are immigration providers still required to provide a drop in service?

No this is not a requirement for the 2013 Standard Civil contracts.

59. Are damages for unlawful detention or removal within scope?

Legal Aid is available in accordance with paragraph 21 and 22 of schedule 1 LASPO 2012 and the LAA category definitions document for both 2010 and 2013.

60. Are we still funding surgeries within the Immigration and Asylum category of law?

Yes

61. Do we need to provide evidence of age when attending at immigration and asylum interviews for clients under 18?

There is no change here to what you would have done previously. Such information should be evidenced on the file. We would not envisage the UKBA requesting this information from you at the interview event for the purpose of your attendance.

62. Article 8 matters are no longer in scope. However, matters often cover Article 2, 3 & 8 and therefore some of the work will be in scope whereas some will not – how will this be dealt with in terms of file maintenance and time recording?

It will be necessary for the firm to apportion separate the work out between work within scope (as time recorded separately) and work undertaken which is out of scope such as Article 8 and not claimable.

63. Will advice to a victim of domestic violence extend to advising on any article 8 arguments?

No. The Act makes it clear that the advice relates to the grounds of the application being that the individual is a victim of domestic violence, this will not extend to any other grounds that may be raised which are not otherwise in scope by virtue of Paragraph 30 of Part 1, Schedule 1 of the LASPO Act. The recognition of victims of domestic violence in the Immigration context in the Act is not the same as in relation to Family law; it does not act as a method of bringing all out of scope Immigration advice back in to scope.

64. How should we work with Counsel in relation to cases that have a mixture of article 8 work and other in scope work?

This will be an issue for the respective firms to discuss with Counsel, that is, confirm which work is within scope and claimable and which work is not within scope and not claimable. The file must clearly apportion the work.

65. Where an individual is seeking advice under paragraph 28 (1) of Part 1, Schedule 1 of the LASPO Act, does their “partner” for the purposes of funding have to be a UK Citizen?

No. The Act confirms that the partner needs to be an “individual present and settled in the United Kingdom”. This has the same meaning as the rules made under section 3 (2) of the Immigration Act 1971.

66. Are deportation cases still in scope?

These would be in scope where the arguments being advanced relate to asylum or Article 2 or 3.

67. Article 8 is out of scope but can it be claimed as part of a detention matter where the detention interferes with a client's family life?

Please refer to paragraph 25 of Part 1, Schedule 1 of the LASPO Act for confirmation of what advice relating to an individual's detention under Immigration powers is within scope. Providers should refer to the Act, and specifically to sub paragraphs (a) to (d) to determine whether such advice would be in scope.

68. If we win the case on appeal on art 8 grounds (pro bono) but the asylum aspect is dismissed, what outcome code do providers report?

The codes used in reporting the outcome of the proceedings for which funding was granted should be reported, in this instance funding would only have been available in relation to the "asylum" grounds as defined in the 2013 SCC paragraph 8.1 and therefore it is the outcome of the funded proceeding which should be reported. In this case that would be a negative outcome.

69. Sometimes when a refugee is granted refugee status the court allows their family to make an application (family reunion) but under refugee convention. Is this in scope?

Please refer to the list of matters within the scope of Immigration & Asylum in 8.7 and 8.8 of the 2013 Standard Civil Contract Specification. Civil legal advice relating to applications for a leave to enter/remain in the UK are in scope where set out in paragraph 30 of Part 1, Schedule 1 of the LASPO Act. Whereas the unity of the family is an element of refugee status, in England or Wales the application is not made under that Convention. It is an application that is made under HC395 Immigration Rules and as such is not in scope under Part 1 Schedule 1.

70. Can a provider use delegated functions to grant themselves Licensed Work in an immigration/asylum matter?

Providers can still self grant for appeals to the Court of Appeal. The changes to Delegated Functions only relate to emergency representation in Judicial Reviews. We can confirm that providers will not have the delegated function to grant emergency funding for a JR in any category. Exceptions are set out in Section 5.3 of the Standard Civil Contract Specification 2013. They predominantly relate to emergency homeless applications.

71. For Immigration Removal Centre (IRC) Contracts, is the 50% increase on matter starts applicable?

Providers with Exclusive Schedules for Immigration Removal Centres (IRCs) are able to apply to their Contract Manager for additional Matter Starts in accordance with the 'Supplementary Matter Start' rules in the contract. However, provision to self-grant up to a 50% increase in Matter Starts does not apply to IRC work

72. Are all applications for leave to remain from an individual who is stateless within the scope of legal aid?

No. Those applications which are based on asylum grounds (i.e. under the refugee convention and/or Articles 2 and 3 of the ECHR) are within scope under paragraph 30 of part 1 to schedule 1 of the Act. The government believe that it is appropriate to retain legal aid for asylum cases, given the potential risks to the individuals involved and their particular vulnerability where the issues at stake may be in relation to life and liberty. An application for leave to remain, travel documents, citizenship etc based on the fact that the individual is a Stateless person, will not be in scope.

The government listened to consultation responses which suggested that legal aid should remain available due to the vulnerability of these individuals and because of the UK's obligations under the Convention of the Status of Stateless Persons 1954 and the Convention on the Reduction of Statelessness 1961. However the government considers that in these cases specialist legal advice is not required. The UK is fulfilling its international obligations by allowing legal aid to be available in the UK to anyone who meets the criteria, irrespective of their immigration status – so being stateless is not a separate or 'special' category under UK immigration law.

73. Is advice regarding the revocation of Refugee Status within the scope of Legal Aid?

Yes. Paragraph 30 of Part 1, Schedule 1 of the LASPO Act includes advice regarding an application for leave to enter/remain based on the refugee convention and/or Articles 2 and 3 of the ECHR. As part of any argument regarding the revocation of the refugee status the individual will continue to assert their arguments on this basis. Revocation of refugee status is also contained with the Qualification directive, advice on which as part of any application for leave is also in scope under this paragraph.

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V) HOUSING AND DEBT

74. Can certain housing matters still be carried out through the Community Care category of law?

Under the 2010 Standard Civil Contract, work undertaken in relation to sections 19-24 of the Housing Grants, Construction and Regeneration Act 1996 could be claimed under both Housing and Community Care. However, from 1 April 2013 this work will only be able to be claimed under the category of Community Care. However, there will still be some overlap in terms of the community care provisions that can be used to address a client's homelessness, which are also expressly included within both the Community Care and Housing categories. This work will still be available to be claimed under either category.

75. Can I advise a client on a housing related discrimination matter under my Housing contract?

Yes, you would be giving Housing advice, so this is not subject to the CLA Gateway.

76. In the scope of debt is 'court orders for sale of home'. Does this include Proceeds of Crime Act (POCA) orders where the property is being sold?

An order for sale made under the Proceeds of Crime Act 2002 could fall under the scope of the Debt category. However, confiscation or restraint orders made under the same Act would not be in scope of the Debt category. Certain work under the Proceeds of Crime Act, including restraint orders, will fall under miscellaneous work.

77. Is advice in relation to allocations of housing accommodation in scope of legal aid?

Allocations of housing accommodation are out of scope of legal aid unless made by an applicant classed as homeless within the meaning of s175 Housing Act 1996. Please see Paragraph 34 of Part 1, Schedule 1 of LASPO. You will also need to consider any exclusions in Part 2, Schedule 1.

78. Which harassment cases are within the scope of the Housing category of law?

Protection from harassment is within the scope of legal aid as set out in paragraph 37 of Part 1, Schedule 1 of LASPO subject to any exclusions in Part 2, Schedule 1. This is not limited to the Housing category of law, however the work covered by Housing is limited to circumstances where the property is rented or leased.

79. In relation to housing disrepair, what type of evidence should providers obtain to ascertain that the disrepair is causing a risk to the applicant/member of family's health? Are there additional evidence requirements where there is a serious risk of harm?

There are no specific evidential requirements for housing disrepair cases. The nature of the evidence would vary on an individual case basis. The LAA would generally expect any expert reports to cover the disrepair element however medical evidence may be necessary to show that the disrepair which might not normally be considered dangerous might be so in relation to the individual client.

80. For a housing disrepair matter where there is a dispute between the provider and the LAA over whether there is a serious risk of harm to the client, is there any right of appeal?

Under the Civil Legal Aid (Procedure) Regulations 2012 there is a right of review by the Director against a determination that services are not civil legal services described in Part 1, Schedule 1 of the LASPO Act. There is however no right of appeal to an independent funding adjudicator.

81. Are damages regarding housing disrepair in scope? Can I claim for work regarding damages as part of the disrepair case?

You must refer to Schedule 1 of LASPO to identify whether a case is in scope and consider specific exclusions outlined in Part 2, Schedule 1. In relation to housing disrepair, Paragraph 35 Part 1, Schedule 1 only describes services in relation to the removal or reduction of the serious risk of harm to health, it does not outline any claim for damages. Damages arising from a disrepair claim will fall outside of scope and therefore must be funded separately from the injunction or order for repairs claim. If providers carry out both then it will be their responsibility to apportion the work and ensure that no legal aid claim is made for the out of scope work. An explanatory note should be maintained on the case file. Providers should note that if they do obtain a legal aid certificate the statutory charge will attach to any damages recovered in the same proceedings.

82. Should expert reports (e.g. surveyor reports) for Pre-Action Protocol on Housing Disrepair be claimed under legal help or legal representation?

Section 12 of the Lord Chancellors Guidance states that where services are provided at an early stage of the case to fund expert reports to investigate the merits of the claim, this work is claimed under legal help.

83. Can a counterclaim for damages be in scope in respect of any other issue than serious disrepair?

Any counterclaim that is properly pleaded as a defence to possession proceedings is in scope, subject to the Part 2 exclusions set out in paragraph 33 of Part 1, Schedule 1.

84. Is the threat of unlawful eviction in scope or does the client have to have been unlawfully evicted before legal aid advice can be given?

Reasonably alleged threat of eviction is in scope where the relevant merits criteria are met. See paragraph 33 of Part 1, Schedule 1 of LASPO.

85. Are damages for unlawful eviction in scope?

Damages for eviction are within scope. Paragraph 33 of Part 1, Schedule 1 describes civil legal services provided in relation to the eviction from the individual's home of the individual or others and this therefore could include any damages relating to this. As with all cases you must refer to Schedule 1 of LASPO to identify whether a case is in scope and then consider specific exclusions outlined in Part 2, Schedule 1.

86. Do providers need to apply for prior authority for a surveyors report?

Where a surveyor is instructed as part of Licensed Work at the rates set out in the Remuneration Regulations a prior authority is not required and the fees can be justified on assessment. Prior authority must be sought where the surveyor rate will exceed those set out in Remuneration Regulations, and may be sought where the expenditure is unusual or unusually high. There is no provision to apply for prior authority under Controlled Work. Instead, evidence supporting the claim for exceptional circumstances (as defined in the Remuneration Regulations) should be retained on file in case of assessment.

87. If an individual who owns their own home faces eviction arising from mortgage possession proceedings is this a housing matter?

Mortgage possession is within scope and falls under Debt. Work relating to the eviction will be undertaken under the category that the original possession issue arose in. If eviction is on the basis of mortgage possession then this is Debt work and the client must be referred to the Gateway. Eviction as a result of possession on any other basis (i.e. rent) falls within the Housing category.

88. Where a client is a tenant in a mortgaged property and the mortgage lender is seeking possession of the property from the landlord can advice be given to the client in relation to their rights? Which category would this fall under?

This would in principle fall under the Housing category as the client's issue is regarding their tenancy. The client's problem would need to fall within Part 1 Schedule 1 of LASPO (and not excluded under Part 2 and 3)

for advice to be given. The client must be directly involved in possession proceedings in relation to their home for advice to be given.

89. What happens where a creditor pays the charges for bankruptcy proceedings? Would this be classed as voluntary or involuntary bankruptcy as client could agree to it but creditor pays the actual charge?

The Act specifies that cases where the petition for a bankruptcy order against a client is made by a person other than the client would be in scope. However, providers should also be mindful of the Civil Legal Aid (Merits Criteria) Regulations 2013 which provide that legal help may only be provided where there is sufficient benefit to the client to justify work being carried out. For example, a case where a petition made by a creditor is undefended or otherwise agreed with the debtor would be unlikely to meet the merits criteria or to justify the provision of specialist legal advice.

90. Bankruptcy matters where the petition for bankruptcy was issued by a creditor are in scope. Can advice be given to clients who are not being made bankrupt themselves but co-own a property with the person who is being made bankrupt e.g. a spouse or partner?

Advice in relation to a bankruptcy order against the individual is within scope; BUT a co-owner would not qualify. Such a co-owner may qualify if an order for sale of the property was sought or if they were made homeless and were making an application for re-housing.

91. When can face to face providers use delegated functions in Debt matters to grant Legal Representation?

Providers can use their delegated functions in Debt where proceedings have been issued (as opposed to threatened) to grant legal representation where the relevant scope, means and merits criteria are met. Providers are reminded that when assessing merits they must consider alternative remedies, the need for representation, prospects of success and cost benefit and any work done must be at the relevant level of funding (controlled or licensed work). Guidance on the forms of Civil Legal Services can be found in section 6 of the Lord Chancellors Guidance on Civil Legal Aid which can be found at www.justice.gov.uk/legal-aid/funding/funding-guidance. Where advice under Controlled Work would be more appropriate clients must be signposted to CLA at the earliest opportunity (unless they are an exempted person). Any delay would be contrary to s.2.49 of the 2013 Standard Civil Contract Specification and s.7.2 of the 2013 Standard Civil Contract Standard Terms relating to acting in the best interests of potential clients and contract sanctions could be applied.

92. If the possession proceedings result from a Secured Loan on the property is this still in scope for Debt work, as the results have same outcome but it is not technically a mortgage?

Possession proceedings to enforce a Secured Loan on the client's home are in scope for Debt.

93. Is setting aside a 'warrant/order for possession/eviction' in scope? Including where oppression is a factor?

Work relating to warrant/order of possession/eviction is in scope, no matter what the grounds for challenge are (including on the grounds of oppression). The normal merits criteria will apply.

94. As a face to face debt provider could I sign up a child for legal help advice whose parents are subject to mortgage possession proceedings as an exempted person?

No. The child is not the proper client in this matter – it will be the parent (as owner and mortgagor) who will be the party to any proceedings. The child should not be considered the client in order to avoid the provisions of Part 2 of the Civil Legal Aid (Procedure) Regulations 2012 and therefore this is gateway work and must go through the CLA gateway.

95. Can advice be given to a client in relation to the validity of a mortgage where this arises out of possession proceedings? For example if a mortgage provider is seeking possession of the client's home due to mortgage arrears but the client is challenging the validity of the mortgage (the example given was that they're disputing that the signature on the mortgage agreement is theirs).

Yes as long as this argument is part of the defence for possession proceedings.

96. Where a client is threatened with homelessness as a result of mortgage possession could this be dealt with as a homelessness matter under housing as opposed to a possession case under Debt?

The facts of the individual case will determine which route is appropriate, subject to the appropriate merits criteria. If the provider is attempting to avoid possession this would be Debt. However, if the provider is making an application to the local authority for re-housing on the basis of threatened homelessness this would be housing. Clients that require advice on mortgage possession must be signposted to CLA at the earliest opportunity (unless they are an exempted person). Any delay would be contrary to 2.49 of the 2013 Standard Civil Contract Specification.

97. A client lives abroad but has a mortgage with a UK bank/building society for the property that they live in abroad and this property is being repossessed due to mortgage arrears. Is this in scope of legal aid?

Possession proceedings involving the client's main home are included in paragraph 33, Part 1, Schedule 1 of LASPO. However, Section 32 of LASPO is clear that only matters of English and Welsh law are in scope.

98. Do providers have to wait for housing possession proceedings before providers can grant legal aid?

Providers do not need to wait for housing possession proceedings to be issued before providing advice under legal help, as long as the client has received formal written notification that proceedings will be issued (such as a section 8 or section 21 notice) unless there is some intervention. An application for legal representation will not be granted before proceedings have been issued at court by the opponent.

99. In mortgage/ rent possession can Legal Help only be undertaken where there is a full or partial defence?

Whilst you cannot get Legal Representation without a full or partial defence there is no such requirement for Legal Help.

100. Is succession of tenancy in scope of Housing? So, a tenant in local authority housing dies leaving children/spouse in the property who were not listed as tenants in the original tenancy. Would advice to assist those family members be in scope?

Succession of tenancy does not fall within scope unless there are connected possession proceedings.

101. Where agents are used to undertake Housing Possession Court Duty Scheme work will they need to adhere to the terms of the 2013 contract terms?

Clause 3.3 of the Standard Civil Contract Standard Terms specifies that a provider is required to supervise any agent as closely as it would its own staff, and ensure that the agent's work complies with the terms of the Contract. Paragraphs 10.28 to 10.34 of the 2013 Standard Civil Contract Specification also set out the management responsibilities on HPCDS providers wishing to delegate provision of service to agents, where such delegation has been authorised under the HPCDS provider's Contract Schedule.

102. If a mortgage possession case is at court, can a provider attend the court hearing and claim as a Housing Possession Court Duty Scheme (HPCDS) case?

A provider can advise a client under the Housing Possession Court Duty Scheme (HPCDS) where they hold a 2013 Standard Civil Contract in the Housing and Debt categories and have an Exclusive Schedule for the HPCDS and the provider is attending court under the HPCDS. Where a client contacts a provider for advice on a possession matter before the date of a possession hearing any attendance at court would be outside of HPCDS and must be done under the provider's 2013 Standard Civil Contract.

103. Is breach of quiet enjoyment in scope?

Breach of quiet enjoyment is only in scope in limited circumstances where it relates to illegal eviction or harassment by a landlord, or in relation to failure to carry out repairs of the property in a disrepair matter.

104. Is Legal Aid available for an individual who suffers from a statutory nuisance?

See paragraph 28(e) of the 2013 Category Definitions. Legal help is available for applications under section 82 of the Environmental Protection Act 1990 for a statutory nuisance where the application falls within the

terms of paragraph 35 of Part 1, Schedule 1 of LASPO. However, you will need to consider any exclusions in Part 3, Schedule 1, in relation to advocacy services.

105. Is a landlord withholding services (i.e. electricity, water etc) in order to get a tenant out of the property within scope?

Advice on such issues would only be in scope where it is reasonably contended that the withdrawal of services was an attempt to evict the tenant, see paragraph 33, Part 1, Schedule 1.

106. Is demotion of tenancy or demotion orders in or out of scope?

Demotion of tenancy and demotion orders is out of scope.

107. Is all work relating to Housing Benefit out of scope even where it is used as a defence to possession proceedings?

Work to obtain or re-instate Housing Benefit is out of scope, see paragraph 15 of Part 2, Schedule 1 of LASPO. If issues regarding Housing Benefit have led to possession proceedings then legal aid will be available to advise the client on their possession matter. This could include obtaining witness statements in support of a client's defence to a possession case. It could also include seeking an adjournment of possession proceedings to enable the client to resolve their Housing Benefit issues. However, as stated, legal aid will not be available to resolve the Housing Benefit issue itself. If providers carry out work in relation to Housing Benefit alongside a possession matter it will be their responsibility to apportion the work and ensure that no legal aid claim is made for the out of scope work.

108. Can I undertake a Judicial Review in relation to housing benefit?

Civil legal services provided in relation to judicial review of an enactment, decision, act or omission remain within scope of legal aid, subject to the exclusions in Part 2, Schedule 1 of LASPO. Any application for legal aid to bring a judicial review would be subject to the usual criteria, including prospects of success, notification to the proposed opponent and availability to the client of other procedures or appeals, as well as the interests of justice test in relation to an application for emergency representation.

109. What is the breadth of advice that is available under Housing for NASS Accommodation?

Please see paragraph 31 of Part 1, Schedule 1 of LASPO. You will also need to consider any exclusions in Part 2, Schedule 1.

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VI) LEGAL AND CONTRACTURAL QUERIES

110. Regarding the status of Points of Principles (PoPs) under the new Regulations – Can you confirm whether they are still binding in the same way they have always been to date?

We are not intending to have two PoP manuals or republish the PoPs as a result of the introduction of LASPO. If the PoP relates specifically to a matter which is now out of scope then it may still be relevant to matters which are continuing under AJA. That is the case at the moment as there are some PoPs which relate to previous contracts but which are still relevant going forwards for work which is still being undertaken.

111. When will the LAA manual (replacing the LSC manual) be available?

The new LAA manual will be finalised in July 2013 however all the constituent parts (including contracts, regulations and relevant guidance is available on the [justice website](#)).

112. Where can I find information on the civil KPIs?

Please see paragraphs 2.70 through to 2.84 in the 2010 civil specification and for the 2013 civil specification please see paragraphs 2.50 through to 2.66.

113. Does the contract (both 2010 and 2013) still allow for 10% of applications to be handled via post, email, fax, telephone (i.e. not face to face)?

Yes - the 2010 and the 2013 Standard Civil Contract Specification states that the number of matters where your Client does not attend you either because you accept a postal or faxed application or provide telephone or email advice must not exceed 10% of your total Matters opened in any Schedule period. This is explained in 3.14 to 3.20 of the 2013 Standard Civil Contract Specification and 3.25 through to 3.31 in the 2010 Standard Civil Contract Specification.

114. Will the Keycards be updated post LAR as they are widely used by providers?

Yes, they will be updated for 1 April.

115. The regulations refer to the 'Director' making the legal aid determinations, what does this mean for providers?

Section 5 of LASPO allow functions of the Director, such as the power to make determinations, to be delegated to other persons, including providers This is done via an authorisation subject to the provisions of Section 6. The appropriate authorisations can be found here: <http://www.justice.gov.uk/legal-aid/legislation/authorisations>

116. How do I self grant additional new matter starts (NMS)?

This option is only available to providers holding a 2013 Standard Civil Contract and the contract Schedule will authorise whether a provider is able to self grant. All providers' Schedules will confirm the number of matter starts allocated in the contract year 2013/2014. In accordance with the Invitation to Tender 'Information for Applicants document', the 2013 Standard Civil Contract Schedule permits a provider to self grant an additional 50% of matter starts allocated in the contract year 2013/2014 if they bid in:

- Family – Lots 1 and 2 (i.e. the bid was for up to 40 matter starts);
- Housing and Debt – Lot 1 (i.e. the bid was for up to 40 matter starts); and
- Immigration and Asylum – Lot 1 (i.e. the bid was for up to 50 matter starts).

Providers who bid in the following Lots will not be able to self grant and will need to contact their Contract Manager to request additional matter starts (in accordance with the supplementary matter starts rules set out in Section 1 of the 2013 Standard Civil Contract Specification):

- Family – Lot 3 (i.e. the bid was for 61+ matter starts);
- Housing and Debt – Lot 2 (i.e. the bid was for 61+ matter starts); and
- Immigration and Asylum – Lot 2 (i.e. the bid was for up to 76+ matter starts).

For example: if a provider is allocated 30 matter starts in Family (i.e. it bid in Family Lot 2) for 2013/2014 then they will be able to self grant a further 50% or 15 matter starts in this contract year if the original matter start allocation is exceeded. Therefore in total this provider be able to commence up to 45 matter starts during the contract year 2013/14.

117. How will the LAA allocate miscellaneous matter starts?

All providers will automatically have the miscellaneous (MISC) on their schedule enabled so they do not need to request it. This will enable providers to do up to 5 of their total NMS allocation as miscellaneous work where the relevant criteria are met.

118. Will there be any guidance on the circumstances in which a Conditional Fee Agreements (CFA) would not be suitable? If not can we provide some?

Guidance on cases that would be unsuitable for Conditional Fee Agreements is included in the Lord Chancellors Guidance at www.justice.gov.uk/legal-aid/funding/funding-guidance. The test of suitability for a Conditional Fee Agreement (CFA) is an objective one, rather than a subjective one of whether an individual provider is willing to act under a CFA. The guidance also lists the factors that would suggest that a CFA would be appropriate. This requirement now applies to all applications for legal representation in non-family proceedings other than Mental Health First-tier Tribunal cases.

119. Under the 2010 Standard Civil Contract providers don't have the power to grant or amend an emergency certificate for Judicial Review (JR) proceedings unless the Legal Aid Agency (LAA) has specifically granted this power in writing. What is the position from 1st April 2013?

We can confirm that providers will not have the delegated function to grant/amend legal aid for emergency representation for a JR in any category of law, other than advice on the exceptions set out in 5.3(a) of the Standard Civil Contract Specification 2013 listed below:

“Judicial Review: you do not have the power to make a determination that a Client qualifies for authorised representation provided on an emergency basis, or to amend or refuse to amend a limitation or condition to which a determination in respect of Emergency Representation is subject, in relation to Judicial Review in any Category of Law, other than in relation to proceedings under Part VII Housing Act 1996 (as amended), section 21 National Assistance Act 1948 (as amended), section 20 Children Act 1989 (as amended) or section 47(5) National Health Service and Community Care Act 1990 (as amended) unless we have specifically delegated this function to you by way of an Authorisation. You must only exercise such a Delegated Function in relation to such cases and in such circumstances as we specify”

The Legal Aid Agency is putting in place operational provisions to deal with applications for emergency representation. Under this system, all providers will need to apply and gain prior approval from the Legal Aid Agency before JR work is undertaken. Please see the guidance on this process here:

<http://www.justice.gov.uk/downloads/legal-aid/funding-code/judicial-review-emergency-funding-process.pdf>

120. Where will the codes will be found in April for delegate functions – these were previously found in Volume 3 of the Manual?

Guidance on the proceedings codes has been produced for providers to use when utilising their delegated functions. It can be found here: www.justice.gov.uk/legal-aid/funding/funding-code/other-guidance-topics

121. Are there any guidelines for solicitors on implementing a process for reviewing controlled work and how should providers deal with and document reviews from potential clients where a case file has not been opened?

The law society has published guidelines on this process here:

<http://www.lawsociety.org.uk/advice/articles/determining-controlled-work-reviews-from-april-2013/>

Clients can request a review of a determination or withdrawal of a determination as outlined in Regulation 27 of the Civil Legal Aid (Procedure) Regulations 2012. This applies to determinations in respect of scope, means and merits. We would expect that providers should deal with reviews under their existing complaints policy.

122. Where a client has a problem where some work falls within scope of legal aid and some does not; how should providers deal with this and can they charge privately for the out of scope work?

Where a client is seeking advice and qualifies for legal aid, you must assure yourself that any advice provided falls within Part 1 of Schedule 1 to the Legal Aid Sentencing Punishment of Offenders Act 2012 (LASPO). If it is not clear from the evidence provided on the case file that all work is within scope of the legal aid scheme you will risk your costs being reduced on assessment.

If only some of the matters on which the client seeks advice fall within scope of legal aid and you wish to provide additional advice on the related matters that fall out of scope, you may wish to consider the following options:

- You are permitted to provide such advice on a pro bono basis; or,
- You may charge privately for that advice (see paragraph 1.37 of the 2013 Standard Civil Contract Specification and paragraph 1.50 of the 2010 Standard Civil Contract Specification).
- You may also apply for Exceptional Case Funding where relevant. If Exceptional Case Funding is granted and the client has already paid you privately for any of the work they must be refunded (paragraph 1.37 of the 2013 Standard Civil Contract Specification and paragraph 1.50 of the 2010 Standard Civil Contract Specification).

When acting privately on out of scope work concurrently with in scope work on the same case, you must still abide by any client care rules set by your relevant regulatory body.

When acting privately on matters within scope of legal aid you must also note the following:

- Where the work is in scope and you have a choice of providing the work privately or under legal aid – the choice made must be in the clients’ best interests and not yours. Under the relevant face to face contract you must act in the best interests of your clients and be uninfluenced by any factor other than the clients’ (and potential clients’) best interests (see Clause 7.2 of the 2013 Standard Civil Contract Standard Terms and the same Clause of the 2010 Standard Civil Contract Standard Terms).
- If a client instructs you privately on a matter that is in scope for legal aid you must provide them with the following information in writing:
- The consequences of ceasing to be in receipt of legal aid (see paragraph 1.33 of the 2013 Standard Civil Contract Specification and paragraph 1.46 of the 2010 Standard Civil Contract Specification);
- Details of any further legal aid services available from you or another provider (see paragraph 1.33 of the 2013 Standard Civil Contract Specification and paragraph 1.46 of the 2010 Standard Civil Contract Specification);
- The calculation of the costs to demonstrate that you are not advising them privately because you have reached the level at which Standard Fees or Graduated Fees would be applicable (see paragraph 1.34 of the 2013 Standard Civil Contract Specification and paragraph 1.47 of the 2010 Standard Civil Contract Specification).

A copy of the letter containing the above information must be kept on the file (see paragraph 1.35 of the 2013 Standard Civil Contract Specification and paragraph 1.48 of the 2010 Standard Civil Contract Specification). If the work carried out privately was out of scope of legal aid the retention of such a letter on file is unnecessary.

123. Does a provider’s Family NMS allocation include Help with Family Mediation?

Yes.

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VII) EXCEPTIONAL CASE FUNDING (ECF)

124. Have we committed to processing ECF work in a set timeframe?

Yes. We will process all applications within 20 days and 10 days for amendments.

125. Are we going to publish point of principles for ECF cases?

No, we are not going to publish point of principles.

- 126. Will undertaking an ECF case use one of my allocated new matter starts (NMS)?**
No. ECF matters granted by the LAA for controlled work will not come out of a providers allocation of matter starts.
- 127. For ECF cases, have the SRA provided any guidance with respect to solicitors being able to charge privately for preparing an application?**
We are not aware of any guidance that has been published however we recommend that if providers are unsure that they contact their representative body.
- 128. Will applications for ECF be counted in respect of the 2013 standard civil contract KPI around rejections and refusals for licensed work?**
Exceptional case funding cases will be taken into account for KPIs. There are no contract sanctions applied to KPIs moving forward.
- 129. Where can I find further information on making an application for exceptional case funding?**
We have published an information pack on our website <http://www.justice.gov.uk/legal-aid/make-an-application/exceptional-case-funding-applications>
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VIII) CIVIL LEGAL ADVICE (CLA)

- 130. Does the 2 year limit on completing remainder work apply to CLA?**
Yes, it does for CLA providers on the new 2013 contracts. For Welfare Benefits providers on the 2009 or 2012 CLA contracts different rules are applied.
- 131. Is the CLA legal advice finder being updated as a result of the new tender round?**
Yes. The legal advice finder was updated and can be found here: <http://legaladviserfinder.justice.gov.uk/>
- 132. Do CLA providers have to comply with the Domestic Violence evidential requirements too prior to advising a client?**
Yes. The DV evidence must be provided to the CLA specialist provider by the client before they start work on the matter.
- 133. Is there any information to assist in signposting clients to the CLA gateway?**
MoJ have produced an information leaflet for members of the public that you can download from the justice site and provide to clients. You can find it here: <http://www.justice.gov.uk/legal-aid/assess-your-clients-eligibility>
- 134. What is the cost of calling the CLA gateway?**
Calls from a BT landline cost 4p per minute. Calls from a mobile are usually more. Any client worried about the cost of the call can request a call back when they speak to an operator or a specialist. Clients can also book a call back online at callmeback.justice.gov.uk or text 'legalaid' and name to 80010 to receive a free call back.
- 135. How quickly will someone calling CLA be able to speak to a specialist advisor?**
Clients that qualify for the CLA specialist service will usually be transferred to a CLA specialist immediately. Both CLA operators and specialists are expected to answer 95% of calls live. In the unusual situation when a client needs to leave a message. Specialists are expected to respond within a maximum of two hours.

136. How does CLA deal with urgent mortgage possession matters? Will clients be referred to a face to face provider?

How CLA will deal with mortgage possession cases will depend on the circumstances of the case and the point at which the client makes contact. Where Legal Representation is required clients will be referred to an appropriate face to face advice provider or sometimes a Housing Possession Court Duty Scheme (HPCDS) provider if the client makes contact at the last minute. Where a client approaches a face to face provider directly and Legal Representation is justified they do not need to be signposted to CLA and they can be advised directly because Legal Representation is not subject to the mandatory CLA gateway.

137. Can we contact CLA on behalf of our client? For example where clients may have problems accessing the Gateway e.g. clients with mental health issues, limited spoken English.

All CLA operators and specialist caseworkers have been trained to identify specific client needs and where possible will aim to accommodate them. In addition to being able to communicate with CLA both online and by telephone there are a variety of service adaptations and adjustments available including a free telephone interpretation service. You can assist clients to contact CLA by: explaining about the different ways to contact CLA; providing people with a way to access CLA from your offices; booking a call back for the client online or by text or in exceptional circumstances; and only if the client consents, contacting CLA on their behalf.

138. Can an exempt person use the gateway if they want to?

Yes an exempt person can use the gateway if they would prefer to access the service in this way. CLA will however still conduct an assessment of suitability and they could conclude that a face to face advice service would still be more appropriate.

139. Is there a process for review of determinations, including the assessment of suitability, made by the CLA gateway?

Clients can request a review of any determination made by CLA including the decision that the client is suitable for remote advice. The process for such reviews are included within the CLA complaints guidance which can be found at www.justice.gov.uk/legal-aid/contracts-and-tenders/cla-contract-2013. All complaints and reviews must be recorded by the relevant provider and the LAA will monitor these as part of the usual contract management approach.

140. What criteria will CLA Providers use when making an assessment of suitability for remote advice?

CLA specialist advisors will make an assessment of whether a remote advice service (provided by telephone, online and post) will be appropriate for the client. The assessment is based on a consideration of whether CLA can:

- understand and act on the client's instructions; and
- the client can understand and act on the advice provided by CLA

More detailed guidance on specific factors that should be considered when making the Assessment of Suitability for Remote Advice has been provided to CLA. This provides a consistent framework for conducting the assessment of suitability and supporting clients via the available CLA service adjustments and adaptations. It will be published on <http://www.justice.gov.uk/legal-aid/contracts-and-tenders/cla-contract-2013>.

141. If CLA determine that a client requires face to face advice and refers the client to a face to face provider, do the rules regarding previous Controlled Work carried out by a different Provider at 3.40 to 3.45 of the 2013 Standard Civil Contract Specification apply?

You must always have regard to the 2013 Standard Civil Contract Specification in relation to previous controlled work carried out by a different provider. Where a client has been assessed as requiring face to face advice by CLA, this will be sufficient justification for the face to face provider opening a new matter start.

142. Are calls to CLA recorded?

Calls to the CLA operator service are recorded. You can read the CLA Privacy Statement here <http://www.justice.gov.uk/privacy/community-legal-advice-privacy-statement>

143. What does the definition of 'deprived of liberty' for the purposes of Exempted Persons mean? For example would the client need to be held within a high security hospital if they have been sectioned?

As long as you can evidence that the client has been deprived of their liberty they qualify as an 'exempted person'. The Civil Legal Advice and the Gateway Guidance for Civil Contracted Providers states that we would expect to see that the address for the client on the CW1 as well as general correspondence indicates where the client is being detained. For other examples you must record in the case notes why you consider that the client has been deprived of their liberty. You can find further guidance at <http://www.justice.gov.uk/legal-aid/assess-your-clients-eligibility>.

144. As a face to face debt provider how will we receive a referral for debt cases from the CLA service? Will it be via phone / e-mail or fax?

Please refer to the CLA General Provider Guidance on this point which you can find here <http://www.justice.gov.uk/legal-aid/assess-your-clients-eligibility>

145. Where a client has sought face to face advice pre-LASPO (i.e. before the 1st April 2013) and is then seeking further advice on a linked problem could they be considered an exempted person?

No. The client would not be an exempted person as they would not have been assessed by the CLA Gateway as needing face to face advice.

146. How will CLA deal with callers that want a Welsh Language service?

Welsh speaking clients who contact CLA will be able to speak to a Welsh speaking operator. If they qualify for legal aid they will be transferred to a CLA Specialist. Where providing advice to clients whose language of choice is Welsh, CLA must ensure advice is accessible to clients (in accordance with the Welsh Language Act 1993 (as amended) and Welsh Language (Wales) Measure 2011). As a minimum CLA Specialists must provide a Welsh language service to clients via the LAA approved interpreter service as well as Welsh translation of any written communication.

If following the assessment of suitability for remote advice the CLA Specialist adviser considers that a face to face advice service is more appropriate they must refer the caller to an appropriate face to face advice service. Our CLA Specialist providers that are responsible for delivering a face to face advice service in Education and Discrimination must provide a face to face advice to those clients that need it in Wales.

147. What telephone number should face to face providers use to check the CLA reference number?

Face to face providers should call 0845 124 7447.

148. Amending regulations have added work on Council Tax Reduction into Schedule 1 of LASPO. Which providers can do this work? Does it cover advice and/or representation to the valuation tribunal? Does it cover advice from counsel and the settling of grounds of appeal for appeals from the valuation tribunal to the High Court? Could advocacy/representation be authorised (even though normally excluded) on an exceptional basis?

Part 1 of Schedule 1 has been amended to include: 8A (1) Civil Services provided in relation to an appeal on a point of law to the High Court, the Court of Appeal or the Supreme Court relating to a council tax reduction scheme. Paragraph 8A (3) of Part 3 Schedule 1 of LASPO 2012 creates a specific exclusion of advocacy services in the High Court. Any civil legal services relating to the law of England and Wales not described in Part 1 Schedule 1, including excluded advocacy services, can be subject to an exceptional case funding application.

From 1 April until the 30 September 2013 Welfare Benefits advice is being delivered by 4 welfare benefits CLA contract holders. A tender is underway for face to face welfare benefits contracts to deliver this work

from 1 October 2013. A provider not holding a contract in the relevant category would need to satisfy the Effective Administration of Justice Test.

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IX) OTHER

149. Is there a client eligibility calculator?

From April 2013 members of the public will be able to use the 'Can You Get Legal Aid' tool at www.gov.uk/legal-aid. It provides a simple check of both scope and financial eligibility. Whatever the outcome, the user will be directed to the most appropriate source of help.

150. Where can we find details of legal aid providers?

The Find a Legal Advisor or Family Mediator directory will continue to be available at www.legaladviserfinder.justice.gov.uk. It is targeted at advisors and professionals. Members of the public should use the new 'Can You Get Legal Aid' tool at www.gov.uk/check-legal-aid.

151. Can providers with a Public Law contract continue to provide advice on Judicial Reviews (JRs) across other categories? Also can providers do JR work under other category contracts?

Civil legal services provided in relation to judicial review of an enactment, decision, act or omission remain within scope of legal aid, subject to the exclusions in Part 2, Schedule 1 of LASPO. Where a judicial review case relates to your category contract you can undertake it.

152. Where are the new civil expert rates published?

In the Civil Legal Aid (Remuneration) Regulations 2013 which can be found here: <http://www.legislation.gov.uk/uksi/2013/422/made>

153. Where can I find a copy of the slides that were presented as part of the face to face provider training events?

The slides have been published on the provider training website and can be found here: <http://legalaidtraining.justice.gov.uk/>

154. Where can providers access old LSC guidance for work continuing under AJA?

Certain guidance documents will be accessible on the new Justice website - those that are still valid or are of major importance (i.e. the funding code). Guidance documents that have been entirely replaced or for parts that are no longer in use will still be available on the archived LSC website; http://webarchive.nationalarchives.gov.uk/*/http://www.legalservices.gov.uk/

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