

## **CATEGORY DEFINITIONS 2013**

### **Introduction**

1. These are the Category Definitions 2013 as referred to in the 2013 Standard Civil Contract. Definitions of terms set out in those Contracts also apply to these Category Definitions.
2. In these Category Definitions:
  - i) References to “Legal Help” include Help at Court and in the Family Category only, Family Help (Lower) and Help with Family Mediation.
  - ii) References to “proceedings in a Category” cover the provision of Legal Representation (including Controlled Legal Representation) in that Category and, in the Family Category only, Family Help (Higher).
3. Services within the Crime Category are automatically excluded from all Civil Categories, except for any overlap between Categories specified in this document.

### **Legal Aid, Sentencing and Punishment of Offenders Act 2012**

4. The Legal Aid, Sentencing and Punishment of Offenders Act 2012 (hereafter referred to as “the Act” in this document) sets out the matters for which civil legal services may be provided. In some cases advice and assistance may only be provided to certain clients eg in private law children cases where the client must show evidence of having suffered domestic violence. In addition, there may be some instances where legal services may only be provided as a result of an application for exceptional funding (the parameters of which are described below). The Category Definitions show into which Category cases will fall but providers will need to satisfy themselves before undertaking work for any individual client that it is within the scope of the Act or that an application for exceptional funding has been approved.
5. Descriptions in this document of matters within scope of Part 1 of Schedule 1 to the Act are not exhaustive and should be read subject to the full provisions in Part 1 of Schedule 1 to the Act. For example, services described in Part 1 of Schedule 1 to the Act may be subject to exclusions in Parts 2 and 3 of Schedule 1 to the Act.

### **Overlaps between Categories**

6. The Categories are drafted to ensure that the majority of cases clearly fall within one Category or another. For example, mortgage arrears possession cases fall within the debt category and are excluded from the housing category. However, there will be some cases which genuinely fall

within more than one Category in which case you can choose in which Category to carry the case out.

7. An example of this is in discrimination cases, which may be dealt with either within the discrimination category itself or, where the underlying matter arises from an individual category such as education, within that category.
8. Some cases will arise as the result of a number of different underlying issues, which may either be in scope or the subject of an exceptional funding application, and in those instances classification to a Category will depend upon the overall substance or predominant issue of the case when taken as a whole.

### **Exceptional Funding**

9. Civil legal services that do not fall within the scope of Part 1 of Schedule 1 to the Act will fall to be funded under section 10 if the Director makes either: (i) an exceptional case determination (under section 10(2)(a) of the Act), or (ii) a wider public interest determination (under section 10(4)(b) of the Act).
10. Matters that are funded by virtue of a determination of the Director under section 10 of the Act will fall within the Category to which the primary problem or issue relates or, in the case of matters that are wholly unrelated to in-scope categories within Miscellaneous Work.

### **Inquests**

11. Legal Help in relation to an inquest under the Coroners Act 1988 into the death of a member of the client's family (paragraph 41 of Part 1 of Schedule 1 to the Act) will fall into the Category which relates to the underlying subject matter of the inquest. For example, Legal Help for an inquest where the client died in prison will be funded in the Actions Against the Police etc Category. Where an inquest does not fall within one of the Categories, it will be carried out as Miscellaneous Work.
12. Where any relevant grant of exceptional funding is made (in accordance with section 10 of the Act) for advocacy at an inquest, this will fall into the Category which relates to the underlying subject matter of the inquest, and where the inquest does not fall within any given Category, it will be included be carried out as Miscellaneous Work.

### **Judicial Review and Public Law**

13. Public law challenges to the acts, omissions or decision of public bodies (including under the Human Rights Act 1998), in particular challenges by way of judicial review (as described in paragraph 19 of Part 1 of Schedule 1 to the Act) and habeas corpus (as described in paragraph

20 of Part 1 of Schedule 1 to the Act) are covered by the Category in which the principal matter or proceedings appear or by the Category which relates to the underlying substance of the case (as referenced by the widest Category Definition incorporating excluded work). They are also covered by the Public Law Category.

14. If arising in respect of matters or proceedings within the Crime Category, these cases will also fall within the Crime Category.
15. Note that the fact that a Defendant is a Public Authority does not bring a case within the Public Law Category. For a case to constitute a public law challenge it must be determined according to judicial review principles (limited to paragraph 19 Part 1 of Schedule 1 to the Act). Claims for damages against Public Authorities, other than Human Rights Act claims, do not usually fall within Public Law but may come within Actions Against the Police etc. Claims under the Human Rights Act may well come within both Public Law and Actions Against the Police etc.

### **Minor Civil/Criminal Overlaps**

16. Work falling within the Crime Category is generally excluded from any other category, but there are some minor exceptions:
  - (a) Enforcement proceedings in the magistrates court arising out of the breach of an order of that court made in family proceedings where there is a risk of imprisonment also fall within the Family Category;
  - (b) Civil proceedings in the magistrates' court arising out of the breach of a financial order of that court where there is a risk of imprisonment also fall within the Debt Category;
  - (c) Associated CLS Work as defined in the 2010 Standard Crime Contract" including civil proceedings under the Proceeds of Crime Act 2002;
  - (d) Proceedings against a child for an Anti-Social Behaviour Order or Sex Offender Order and any associated Parenting Order, and for a Parenting Order made on the conviction of a child where the parent cannot be reasonably represented by the child's solicitor also fall within the Family Category;
  - (e) Proceedings for an Anti-Social Behaviour Order sought by a local authority against a tenant or a person living with him or her, or by way of an appeal against such an order to the Crown Court, also fall within the Housing Category.
17. These exceptions can be carried out under the 2013 Standard Civil Contract as well as by criminal practitioners under the 2010 Standard Crime Contract.

## **CATEGORY DEFINITIONS**

### **Debt**

18. Legal Help and all proceedings in relation to:

- (a) Court orders for sale of an individual's home (under paragraph 33(1)(a) of Part 1 of Schedule 1 to the Act);
- (b) Court orders for possession of an individual's home arising out of failure to make payment due under a mortgage (under paragraph 33(1)(a) of Part 1 of Schedule 1 to the Act). Possession of the home arising out of any other matter fall within the housing category and cannot be undertaken in this category.
- (c) A bankruptcy order against the individual under Part 9 of the Insolvency Act 1986 where the estate includes the individual's home and where the petition for bankruptcy was not presented by the client, including in relation to a statutory demand under Part 9 of that Act (paragraph 33(2) of Part 1 to Schedule 1 to the Act).

19. To the extent that any relevant grant of exceptional funding is made (in accordance with section 10 of the Act), this category includes Legal Help and all proceedings:

- (a) For the payment of monies due or the enforcement of orders in such proceedings (excluding any matter which falls within the housing category); and
- (b) Arising out of personal insolvency, including bankruptcy, administration, Debt Relief representation or IVA proceedings, but excluding representation in proceedings against parties in default of a fine or other order in criminal proceedings in the magistrates' court who are at risk of imprisonment.

### **Discrimination**

20. Legal Help and proceedings in relation to:

- (a) Contravention of the Equality Act 2010 (under paragraph 43(1) of Part 1 of Schedule 1 to the Act);
- (b) Contravention of a previous discrimination enactment (as defined in paragraph 43(3) of Part 1 of Schedule 1 to the Act), namely;
  - i) The Equal Pay Act 1970;
  - ii) The Sex Discrimination Act 1976;

- iii) The Race Relations Act 1976;
- iv) The Disability Discrimination Act 1995;
- v) The Employment Equality (Religion or Belief) Regulations 2003 (S.I. 2003/1660);
- vi) The Employment Equality (Sexual Orientation) Regulations 2003 (S.I. 2003/1661);
- vii) The Equality Act 2006;
- viii) The Employment Equality (Age) Regulations 2006 (S.I. 2006/1031);
- ix) The Equality Act (Sexual Orientation) Regulations 2007 (S.I. 2007/1263).

21. For the avoidance of doubt, the following matters/proceedings are included in the category:

- (a) Legal Help for a claim in the Employment Tribunal in so far as it relates to a contravention of the Equality Act 2010 or a previous discrimination enactment;
- (b) Legal Help and Representation on an appeal to the Employment Appeal Tribunal, and onward appeals to the higher courts in so far as it relates to contravention of the Equality Act 2010 or a previous discrimination enactment.

#### **Education (Special Educational Needs)**

22. Legal Help and all proceedings in relation to:

- (a) matters arising under Part 4 of the Education Act 1996 (Special Educational Needs) (under paragraph 2(1)(a) of Part 1 of Schedule 1 to the Act);
- (b) assessments relating to learning difficulties under sections 139A and 140 of the Learning and Skills Act 2000 (under paragraph 2(1)(b) of Part 1 of Schedule 1 to the Act); and
- (c) any other matter within the scope of Part 1 of Schedule 1 to the Act where the primary problem or issue relates to the provision of, or failure to provide, education or funding for education.

23. For the avoidance of doubt, the following are included in the category:

- (a) Legal Help and all proceedings in relation to a contravention of Part 6 of the Equality Act 2010 (Education); and
- (b) Legal Help and all proceedings in relation to a contravention of a previous discrimination enactment as far as the matter concerns the provision or funding of education.

24. Proceedings in relation to judicial review of an enactment, decision, act or omission as far as this concerns the provision or funding of education. To the extent that exceptional funding is granted

(in accordance with section 10 of the Act) this category includes Legal Help and proceedings in relation to any matter where the primary problem or issue relates to the provision of or failure to provide education or funding for education.

## **Family**

25. Legal Help on matters and proceedings which arise out of family relationships as prescribed in Part 1 of Schedule 1 to the Act and in Regulations under the Act including proceedings in which the welfare of children is determined.

26. Included with the family category are Legal Help and all proceedings under the following legislation:

- (a) Orders under section 25 of the Children Act 1989 (“the 1989 Act”) (secure accommodation);
- (b) Orders under Parts 4 and Part 5 of the 1989 Act (care and supervision and the protection of children);
- (c) Approval by a court under paragraph 19 of Schedule 2 to the 1989 Act (arrangements to assist children to live abroad);
- (d) Proceedings under sections 8 and 11 of the Crime and Disorder Act 1998 for a Child Safety Order or for a Parenting Order made in proceedings for a Child Safety Order or a Parenting Order made on the conviction of a child;
- (e) Applications under the Adoption and Children Act 2002;
- (f) Orders under Part 4 of the Family Law Act 1996;
- (g) Forced marriage protection orders under Part 4A of the Family Law Act 1996;
- (h) Proceedings under ss 3, 3A or 5 of the Protection from Harassment Act 1997 arising out of a family relationship;
- (i) Proceedings under the Child Abduction and Custody Act 1985;
- (j) The inherent jurisdiction of the High Court in relation to children;
- (k) Proceedings under Part 1 of the Maintenance Orders (Reciprocal Enforcement) Act 1972 relating to a maintenance order made outside the United Kingdom;

- (l) Proceedings under the 2003 Brussels Regulation (No 2001/2003);
- (m) Proceedings under the EU Maintenance Regulation (No 4/2009);
- (n) Proceedings relating to the Convention on the International Recovery of Child Support and other forms of Family Maintenance concluded at The Hague on 23 November 2007.

27. In addition, the proceedings below are also included in the family category. These proceedings are only within the scope of Part 1 of Schedule 1 of the Act where the client meets certain criteria eg the client is a child, a victim of domestic violence, or where the proceedings involve the unlawful removal of children or the protection of children. However, the matters also fall generally within the family category for the purposes of applications for exceptional funding (made in accordance with section 10 of the Act). These are:

- (a) Parts 1 and 2 of the Children Act 1989;
- (b) Proceedings under the Family Law Act 1986;
- (c) The Matrimonial Causes Act 1973;
- (d) The Inheritance (Provision for Family and Dependents) Act 1975;
- (e) Section 17 of the Married Women's Property Act 1882;
- (f) Proceedings under section 14 of the Trust of Land and Appointment of Trustees Act 1996 which arise out of a family relationship;
- (g) Section 53 and Schedule 7 to the Family Law Act 1996;
- (h) Maintenance Orders (Facilities for Enforcement) Act 1920;
- (i) Proceedings under the Maintenance Orders Act 1950 and 1958;
- (j) Domestic Proceedings and Magistrates' Courts Act 1978;
- (k) Part 3 of the Matrimonial and Family Proceedings Act 1984;
- (l) Chapters 2 and 3 of Part 2 of the Civil Partnership Act 2004;
- (m) Schedule 1 to the Domicile and Matrimonial Proceedings Act 1973 and corresponding provision in relation to civil partnerships.

- (n) Applications for a parental order under the Human Fertilisation and Embryology Act 2008.

(See paragraphs 1, 9, 10, 11, and 14 to 18 of Part 1 of Schedule 1 to the Act).

## **Housing**

28. Legal Help and proceedings in relation to:

- (a) Possession of an individual's home (other than mortgage possession) (paragraph 33(1)(a) of Part 1 of Schedule 1 to the Act). Possession arising from mortgage arrears and court orders for sale of the home fall within the debt category and cannot be undertaken in this category.
- (b) Eviction from an individual's home of the individual or others, including unlawful eviction and planning eviction matters (paragraph 33(1)(b) of Part 1 of Schedule 1);
- (c) The provision of accommodation and assistance under Parts 6 and 7 of the Housing Act 1996 for an individual who is homeless or threatened with homelessness (paragraph 34 of Part 1 of Schedule 1 to the Act);
- (d) The provision of accommodation by way of community care services as specified in paragraph 6 of Part 1 of Schedule 1 to the Act, in relation to an individual who is homeless or threatened with homelessness;
- (e) Housing disrepair matters described in paragraph 35 of Part 1 of Schedule 1 to the Act, namely removing or reducing a serious risk of harm to the health or safety of the individual or relevant family member where the risk arises from a deficiency in the individual's rented or leased home and the legal services are provided with a view to securing that the landlord makes arrangements to remove or reduce the risk. This includes Legal Help 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 of Schedule 1.
- (f) Anti-social behaviour matters in the county court, namely orders under section 1B of the Crime and Disorder Act 1998, interim orders under section 1D (following an application under section 1B), intervention orders under section 1G in connection with a section 1B Order and anti-social behaviour injunctions under section 153A of the Housing Act 1996 (paragraph 36 of Part 1 of Schedule 1).
- (g) Injunctions under the Protection from Harassment Act 1997 arising from matters within paragraphs 1 and 2 of this section (paragraph 37 of Part 1 of Schedule 1 to the Act); and

(h) The powers of the Secretary of State to provide or arrange to provide accommodation under section 4 or 95 of the Immigration and Asylum Act 1999 (accommodation for persons temporarily admitted and asylum seekers) and section 17 of the Nationality, Immigration and Asylum Act 2002 (support for destitute asylum seekers) (paragraph 31 of Part of Schedule 1 to the Act).

29. To the extent that any relevant grant of exceptional funding is made (in accordance with section 10 of the Act) this category also includes any matters which concern the possession, status, terms of occupation, repair, improvement, eviction from, quiet enjoyment of, or payment of rent or other charges for premises (including vehicles and sites they occupy) which are occupied as a residence, including the rights of leaseholders under the terms of their lease or under any statutory provision (including enfranchisement). Cases including allocation, transfers and the provision of sites for occupation are also included.

### **Immigration and Asylum**

30. Legal Help on matters and all proceedings in relation to:

- (a) Immigration-related detention powers referred to in paragraph 25(1) of Part 1 of Schedule 1 to the Act;
- (b) Temporary admission to the UK under provisions referred to in paragraph 26(1) of Part 1 of Schedule 1 to the Act;
- (c) Restrictions imposed on an individual under the provisions referred to in paragraph 27(1) of Part 1 of Schedule 1 to the Act;
- (d) An application for indefinite leave by a victim of domestic violence as described in paragraph 28 of Part 1 of Schedule 1 to the Act;
- (e) A residence card application by a victim of domestic violence as described in paragraph 29 of Part 1 of Schedule 1 to the Act;
- (f) Rights to enter and to remain in the United Kingdom under the provisions referred to in paragraph 30(1) of Part 1 of Schedule 1 to the Act;
- (g) An application by a victim of human trafficking for leave to enter or remain in the United Kingdom (paragraph 32(1) of Part 1 of Schedule 1 to the Act);
- (h) A Terrorism Prevention and Investigation Measure notice as described in paragraph 45 of Part 1 of Schedule 1 to the Act.

For the avoidance of doubt it should be noted that services in relation to an application for judicial review are subject to paragraph 19 of Part 1 of Schedule 1 to the Act

31. Legal help and all proceedings before the Special Immigration Appeals Commission as described in paragraph 24 of Part 1 of Schedule 1 to the Act.
32. To the extent that any relevant grant of exceptional funding is made (in accordance with section 10 of the Act) this category includes Legal Help and all proceedings in relation to any matter where the primary problem or issue is an immigration or asylum matter.

**Welfare Benefits 2013 (the Welfare Benefits Category of Law does not apply to the 2013 Standard Civil Contract)**

33. Legal Help in relation to appeals on a point of law in the Upper Tribunal, Court of Appeal and Supreme Court for all welfare benefits (including housing benefit, war pensions, state pensions and other similar benefits under a social security enactment, the Vaccine Damage Payments Act 1979 or Part 4 of the Child Maintenance and Other Payments Act 2008).
34. Legal Help in relation to appeal on a point of law relating to a council tax reduction scheme from the Valuation Tribunal England and the Valuation Tribunal Wales to the High Court, Court of Appeal and Supreme Court<sup>1</sup>.
35. Legal representation for appeals to the Court of Appeal and the Supreme Court on a point of law in relation to all welfare benefits (including housing benefit, war pensions, state pensions and other similar benefits under a social security enactment, the Vaccine Damage Payments Act 1979 and Part 4 of the Child Maintenance and Other Payments Act 2008) and appeals on a point of law relating to a [council tax reduction scheme] to the Court of Appeal and Supreme Court.<sup>2</sup>
36. To the extent that any grant of exceptional funding is made this category includes;
  - (a) Legal Help in relation to all welfare benefits (including [council tax reduction scheme appeals], housing benefit, war pensions, state pensions and vaccine damage payments or similar payments), and in relation to proceedings before any welfare benefit review or appeal body;
  - (b) any subsequent or related proceedings before a court.

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<sup>1</sup> This is contained in the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (Amendment of Schedule 1) Order 2013 which is subject to Parliamentary approval.

<sup>2</sup> This is contained in the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (Amendment of Schedule 1) Order 2013 which is subject to Parliamentary approval.

## **Miscellaneous Work**

37. The following matters or proceedings (including Legal Help in relation to those matters and related appeals) are likely to fall outside all Civil Categories:

### Working with children and vulnerable adults

Legal Help and all proceedings in relation to:

- (a) The inclusion of a person in a barred list or the removal of a person from a barred list (paragraph 4(1)(a) of Part 1 of Schedule 1 to the Act);
- (b) A disqualification order under section 28, 29, or 29A of the Criminal Justice and Court Services Act 2000 (disqualification from working with children) (paragraph 4(1)(b) of Part 1 of Schedule 1 to the Act);
- (c) A direction under section 142 of the Education Act 2002 (prohibition from teaching etc) (paragraph 4(1)(c) of Part 1 of Schedule 1 to the Act).

### Protection from Harassment

Legal Help and all proceedings in relation to:

- (a) An injunction under section 3 or 3A of the Protection from Harassment Act 1997 (paragraph 37(1)(a) of Part 1 of Schedule 1 to the Act);
- (b) The variation or discharge of a restraining order under section 5 or 5A of that Act (paragraph 37(1)(b) of Part 1 of Schedule 1 to the Act),

(other than where they arise within the context of a Category).

### Proceeds of Crime

Legal Help and proceedings in relation to:

- (a) Restraint orders under section 41 of the Proceeds of Crime Act 2002 (POCA) including orders under section 41(7) of POCA (orders for ensuring that restraint order is effective) (paragraph 40(1)(a) of Part 1 of Schedule 1 to the Act);

- (b) Orders under section 47M of POCA (detention of property) (paragraph 40(1)(b) of Part 1 of Schedule 1 to the Act);
- (c) Directions under section 54(3) of POCA (distribution of funds in the hands of a receiver) (paragraph 40(1)(c) of Part 1 of Schedule 1 to the Act);
- (d) Directions under section 62 of POCA (action to be taken by receiver) (paragraph 40(1)(d) of Part 1 of Schedule 1 to the Act);
- (e) Orders under section 67A of POCA (realising property), including directions under section 67D of POCA (distribution of proceeds of realisation) (paragraph 40(1)(e) of Part 1 of Schedule 1 to the Act);
- (f) Orders under section 72 or 73 of POCA (compensation) (paragraph 40(1)(f) of Part 1 of Schedule 1 to the Act);
- (g) Applications under section 351 of POCA (discharge or variation of a production order or order to grant entry) (paragraph 40(1)(g) of Part 1 of Schedule 1 to the Act);
- (h) Applications under section 362 of POCA (discharge or variation of disclosure order) (paragraph 40(1)(h) of Part 1 of Schedule 1 to the Act);
- (i) Applications under section 369 of POCA (discharge or variation of customer information order) (paragraph 40(1)(i) of Part 1 of Schedule 1 to the Act);
- (j) Applications under section 375 of POCA (discharge or variation of account monitoring orders) (paragraph 40(1)(j) of Part 1 of Schedule 1 to the Act).

Note that where a confiscation order has been made against a defendant under Part 2 of POCA, civil legal services provided to the defendant in relation to directions under section 54(3) or section 67D of POCA that relate to property recovered pursuant to the order (paragraph 40(3) of Part 1 of Schedule 1 to the Act) are not within scope of Part 1 of Schedule 1 to the Act.

Note that where a confiscation order has been made under Part 2 of POCA against a defendant and varied under section 29 of POCA, civil legal services provided in relation to an application by the defendant under section 73 of POCA are not within scope of Part 1 of Schedule 1 to the Act.

### Environmental Pollution

Legal Help and all proceedings in relation to injunctions in respect of nuisance arising from pollution of the environment (paragraph 42(1) of Part 1 of Schedule 1 to the Act).

### Sexual offences

Legal help and all proceedings in relation to a sexual offence where the client is the victim of the offence, including incitement to commit a sexual offence, encouraging or assisting a sexual offence which the person intended or believed would be committed, conspiracy to commit a sexual offence, and an attempt to commit a sexual offence (paragraph 39(1) and (4) of Part 1 of Schedule 1 to the Act). This will include conduct which would be a sexual offence under the Sexual Offences Act 2003 or under section 1 of the Protection of Children Act 1978 but for the fact the conduct occurred before those provisions were in force (paragraph 39(5) of Part 1 of Schedule 1 to the Act).

### Victims of trafficking in human beings

Legal Help and all proceedings in connection with:

- (a) a claim for damages arising in connection with the trafficking or exploitation of an individual who is a victim of human trafficking (paragraph 32(3) of Part 1 of Schedule 1 to the Act); and
- (b) claims under employment law arising in connection with the exploitation of an individual who is a victim of human trafficking (paragraph 32(2) of Part 1 of Schedule 1 to the Act).

### Injunction to prevent gang-related violence

Legal Help and all proceedings in relation to injunctions to prevent gang-related violence under Part 4 of the Policing and Crime Act 2009 (paragraph 38(1) of Part 1 of Schedule 1 to the Act).

### Abuse of child or vulnerable adult

Legal Help and all proceedings in relation to abuse of an individual that took place at a time when the individual was a child or vulnerable adult (paragraph 3(1) of Part 1 of Schedule 1 to the Act), excluding any matter that falls within the Actions Against the Police etc. or any other Category.