

CATEGORY DEFINITIONS 2015

Introduction

1. These are the Category Definitions 2015 as referred to in the 2015 Own Client Crime Contract and 2015 Duty Provider Crime Contract. Definitions of terms set out in those contracts also apply to these Category Definitions.
2. In these Category Definitions:
 - a) References to “Legal Help” include Help at Court;
 - b) References to “proceedings in a Category” cover the provision of Legal Representation (including Controlled Legal Representation) in that Category.
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 and criminal legal services may be provided.
5. In some cases advice and assistance may only be provided to certain clients e.g. Clinical Negligence cases. 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.
6. 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.

Crime

7. Representation in all proceedings defined as criminal proceedings under section 14 of the Act and regulations made under that section.
8. All criminal advice and assistance as defined in section 13 and 15 of the Act and regulations made under those sections.

9. All appeals in relation to criminal proceedings including applications for case stated arising out of criminal proceedings.
10. The Crime Category also includes Advice and Assistance and Representation in the following areas:
 - a) Prison Law (as defined in and applicable to the 2015 Own Client Crime Contract);
 - b) Associated Civil Work (as defined in and applicable to the 2015 Own Client Crime Contract and 2015 Duty Provider Crime Contract).
11. The undertaking of civil proceedings is excluded from the Crime Category unless falling within the definitions given above. Proceedings brought under the Environmental Protection Act 1990 for a statutory nuisance where the client is the complainant are excluded from the Crime Category as are proceedings under the Animal Welfare Act 2006 for the destruction of animals.

Overlaps between Categories

12. The Categories are drafted to ensure that the majority of cases clearly fall within one Category or another. 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. An example of this is in Mental Capacity Act cases that can fall within the Mental Health Category, but may fall equally within Community Care.
13. Another example of this is 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 Actions Against the Police etc, within that category.
14. 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

15. 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).
16. 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 the Miscellaneous Category.

Inquests

17. 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 included in the Miscellaneous Category.

18. 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 in the Miscellaneous Category.

Judicial Review and Public Law

19. 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.
20. If arising in respect of matters or proceedings within the Crime Category, these cases will also fall within the Crime Category.
21. 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

22. Work falling within the Crime Category is generally excluded from any other Category, but there is one minor exception under the 2010 Standard Civil Contracts: Associated Civil Work as defined in the 2015 Own Client Crime Contract and 2015 Duty Provider Crime Contract, which includes judicial review proceedings or proceedings for habeas corpus, provided those proceedings arise from a Matter or Case within the Crime Category, and proceedings under the Proceeds of Crime Act 2002.
23. The exception in paragraph 22 can be carried out under the 2010 Standard Civil Contract as well as by criminal practitioners under the 2015 Own Client Crime Contract and 2015 Duty Provider Crime Contract.

Clinical Negligence Category

24. Legal Help and all proceedings in relation to a claim for damages in respect of clinical negligence which caused a neurological injury to an infant as a result of which they are now severely disabled (paragraph 23(1) of Part 1 of Schedule 1 to the Act), where the client is the infant. The clinical negligence must have occurred while the infant was in his or her mother's womb, or during or after their birth but before the end of the period specified in paragraph 23(2)(b) of Part 1 of Schedule 1 to the Act.
25. To the extent that any relevant grant of exceptional funding is made (in accordance with section 10 of the Act) this Category also includes Legal Help and all proceedings in relation to a claim for damages or a complaint to a relevant professional body in respect of an alleged breach of duty of

care or trespass to the person committed in the course of the provision of clinical or medical services (including dental or nursing services); or a claim for damages in respect of alleged professional negligence in the conduct of such a claim.

Mental Health Category

26. Legal Help and proceedings under paragraph 5 of Part 1 of Schedule 1 to the Act.
27. To the extent that any relevant grant of exceptional funding is made (in accordance with section 10 of the Act), this category also includes advocacy for matters arising under the Mental Capacity Act 2005 which are not listed in paragraph 4 of Part 3 of Schedule 1.

Community Care Category

28. Legal Help and related proceedings concerning the provision of community care services, as defined in paragraph 6 of Part 1 of Schedule 1 to the Act, and the provision of facilities for disabled persons, as set out in paragraph 7 of Part 1 of Schedule 1 to the Act. This includes legal services provided in relation to community care assessments, service provision decisions, and issues around the delivery of services, but excludes any matter falling within the Welfare Benefits Category or Clinical Negligence Category and proceedings before the First-Tier Tribunal (Mental Health).
29. Legal Help on issues arising under the Mental Capacity Act 2005, and advocacy in proceedings to extent set out at paragraph 4 of Part 3 of Schedule 1 to the Act, regarding a person's capacity, their best interests (welfare and/or medical treatment) and deprivation of liberty issues.
30. To the extent that any relevant grant of exceptional funding is made (in accordance with section 10 of the Act), this category also includes advocacy for matters arising under the Mental Capacity Act 2005 which are not listed at paragraph 4 of Part 3 of Schedule 1.

Action Against the Police Etc Category

31. Legal Help and proceedings in cases under the following paragraphs of Schedule 1 to the Act:
 - (a) paragraph 3 (abuse of a child or a vulnerable adult)
 - (b) paragraph 21 (abuse of position or power by a public authority)
 - (c) paragraph 22 (significant breach of convention rights)
 - (d) paragraph 39 (sexual offences)

to the extent that the defendant is a public authority with the power to prosecute, detain, or imprison or the case is a claim for personal injury based on allegations of deliberate abuse of a person whilst in the care of a public authority or other institution.

32. Subject to the above, claims for damages for clinical negligence (including claims funded via exceptional funding) are included only if the clinical negligence forms part of a claim which includes another cause of action against a body or person with power to detain or imprison.
33. To the extent that any relevant grant of exceptional funding is made (in accordance with section 10 of the Act) this Category also includes Legal Help and all proceedings concerning any claim against a public authority with the power to prosecute, detain or imprison. To the extent that any

relevant grant of exceptional funding is made (in accordance with section 10 of the Act) this Category also includes Legal Help and all proceedings concerning:

- a) Applications to the Home Office under s. 133 of the Criminal Justice Act 1988 or the ex gratia scheme for compensation for wrongful conviction.
- b) Claims under the Criminal Injuries Compensation Scheme, including any applications to the First-Tier Tribunal arising out of a matter falling within the category.
- c) Claims for damages in respect of alleged professional negligence in the conduct of a matter included in the category.

Public Law Category

34. Legal Help and related proceedings concerning:

- a) the human rights of the client or a dependant of the client other than matters which fall within the definition of another Category;
- b) public law challenges to the acts, omissions or decisions of public bodies, including challenges by way of judicial review or habeas corpus.

35. To the extent that any relevant grant of exceptional funding is made (in accordance with section 10 of the Act) this Category also includes Legal Help and all proceedings concerning data protection and freedom of information issues.

Miscellaneous Work

36. 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);

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);
- c) 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);
- d) 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);
- e) Orders under section 72 or 73 of POCA (compensation) (paragraph 40(1)(f) of Part 1 of Schedule 1 to the Act);
- f) 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);
- g) 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);
- h) 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);
- i) 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.